COALITION-BUILDING and APEC

edited by Wilfrido V. Villacorta

PASCN
PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES
Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas

Yuchengco Center for East Asia De La Salle University
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PASCN
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Introduction

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Foreword

It has been 12 years since the Asia-Pacific Economic Cooperation (APEC) was created in response to the increasing interdependence among economies in the Asia-Pacific region. Initially functioning as an informal group with limited participation, APEC today has grown into a most significant vehicle for promoting trade, investment and economic cooperation especially among the 21 member-economies representing some of the major and fastest growing economies of the world.

While APEC in its thrust toward freer trade and sustained industrial growth has been largely concerned with the economic side of development, there has been a need to examine the growth of APEC as an organization and how, by going through the political and legal processes, it must be strengthened and transformed in order to meet its objectives and remain as an important instrument for economic cooperation and consolidation in the future. This concern is what this book addresses. By charting the future of APEC, this book also deals with the prospects of liberalization in the Philippines—giving vent to the issues raised by sectors resistant to liberalization and presenting the law-making process in the country.

It is interesting that the conceptual framework used in this study centers on coalition-building. The authors recognize that the strength of the APEC organization lies in its uniform posture regarding trade and investments, investment rules and competition policies. Indeed, for APEC to remain a competitive bloc in the fast-evolving global market, it must act cohesively to promote its own regional trade and investments.

On behalf of the PIDS and PASCN, I would like to take this opportunity to express my deepest thanks and appreciation to the authors of the papers included in this book. The quality and informative value of their studies reflect their wealth of knowledge in these matters. We would also like to extend our deepest gratitude to the Yuchengco Center for East Asia for the valuable assistance and support it gave in publishing this book.

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INTRODUCTION

The Asia-Pacific Cooperation (APEC) has the objective of pursuing four areas of cooperation: information sharing, trade and investment facilitation, trade and investment liberalization, and economic and technical cooperation. As it realizes its objective, the economic association has to go through the political and legal processes of consolidation.

Stimulated by the need to review and analyze its organizational growth, the “Coalition-Building and APEC” project was initiated by four member-universities of the Philippine APEC Study Center Network: De La Salle University, Ateneo de Manila University, University of Asia and the Pacific, and the University of the Philippines. Two economists, three political scientists and two law professors collaborated to present the inter-regional linkages of APEC and the Philippine APEC commitments, from the perspectives of political economy, international relations and international law.

This collection of papers discusses the future direction of APEC as a trade and investment regime by addressing two specific issues: the future of the organization in terms of its institutional forms as well as the future of the liberalization agenda in the Philippines. The first four papers examine the costs and benefits of evolving more formal structures, with rule-based orientation and more formal mechanisms. They begin with the view that the need for formal institutions is certainly increasing as economic integration generates its own necessary frictions. However, the notion of “open
Coalition-Building and APEC

regionalism" and the desire of APEC's founders to avoid over-bureaucratization has served to retard the process of formalization. Informal structures that are norm-based and consensual have their obvious benefits in terms of flexibility and maneuverability, but they present certain problems that require fresh approaches. Foremost among them is the legal conundrum within APEC. The agreements made by member-economies are not legally binding treaties, but compliance is expected based on the principles of fair play and estoppel. This vague status of the commitments invites controversy in the event that disputes arise.

Nevertheless, APEC serves a very useful purpose in the international community because it serves as a gauge for evaluating the true stance of member-economies on major economic issues. Their articulated positions are reliable signals, having been generated in an atmosphere of consensus and voluntarism. APEC includes some of the most powerful countries in the world. Whatever the temper of negotiations that take place within APEC could significantly determine the outcome of multilateral trade negotiations in the World Trade Organization. This referencing are undeniably crucial in a world where the liberalization agenda has suffered a number of obstacles.

POLITICAL ISSUES IN APEC'S DEVELOPMENT

APEC as an Institution

The first part of the book contains two studies on the political process of APEC's development as an organization. In Chapter 2, John Lawrence Avila compares the regional agendas of APEC and ASEM (Asia-Europe Meeting) while Malcolm Cook in Chapter 3 examines the effectiveness of ASEAN (Association of Southeast Asian Nations) as a collective action group within APEC. Both works provide extensive discussions of the theories that help in understanding the character of APEC in comparison to the ASEAN and ASEM.

In examining the different theories of institutionalization, Avila points out that the rationalist and liberal schools assume the maximizing and utilitarian behaviors of rational international actors. They are state-centered perspectives based on the interplay of interests. On the other hand, the cognitive school of thought recognizes the evolution of collective values and beliefs derived from common experiences within an organization. These experiences foster a social learning process that generates consensual appreciation of the benefits of interdependence.

Avila observes that APEC is still in the formative phase of institution-building. He attributes its deliberately cautious pace of development to the caveat of the Emi-
nent Persons Group against APEC’s “over-institutionalization and over-bureaucratization.” Founded on the concept of open regionalism, the association is meant to be a loose style of cooperation that does not aspire for a definite organizational form. Over the past 10 years, it has acquired some elements of an institutional framework: a sense of common principles, objectives and an organizational structure.

But because APEC is not a rule-making and rule-enforcing body, decisionmaking has to be made by consensus at all levels of the organization. Moreover, the rotating mode of leadership does not make for institutional continuity. Avila concludes that the current institutional form is state-centered, without a strong consensus on shared values and interests.

The ASEM is an even looser and more informal association, being more of a network and a forum for dialogue. Founded on the idea of “open continentalism,” it has no secretariat or permanent structures. ASEM does not intend to become a regional trade regime, but has a broader agenda that includes political and security dialogue and joint projects in science, education, culture and environment.

According to Avila, the asymmetry in the decision-making processes in Europe and Asia bears on agenda-setting in ASEM. While the European Union has a highly institutionalized mechanism for internal coordination, the Asian members of ASEM cannot rely on a single organization for the purpose of policy coordination.

He suggests that “both APEC and ASEM were attempts at engaging major powers in an institutional framework.” One reason for establishing APEC was to keep the United States engaged in the region militarily and economically. Similarly, ASEM aims at balancing relationships with the US and ensure that East Asian and European voices can be used to reinforce continued liberalization in the multilateral trading system.

Avila concludes that both APEC and ASEM have contributed to the development of a regional identity. “The emphasis on process rather than formal institutions in both APEC and ASEM facilitates social learning in its evolutionary approach to institutionalization and can promote mutual understanding, especially on sensitive issues.” He agrees with Andrew Elek (1994) that the style of cooperation in APEC and ASEM has its foundation in the ASEAN model. This approach requires conflict avoidance, consensus decision-making, non-intervention in the internal affairs of other states, and the formal equality of member-states. An exception to this approach is the European insistence in including the Myanmar issue in the agenda of ASEM.

Avila finds that the “institutional vagueness” of the two organizations has its benefits. It allows for more flexibility and room for maneuver, allowing for the application of national prerogatives and preserving the decision-making sovereignty of members.
ASEAN in APEC

For his part, Cook provides an exhaustive analysis of the formal bargaining and collective action theories as well as the theories of regionalization and regimes. He defines "economic region" as "an area within which geographical proximity and other factors, such as cultural similarity, historical closeness and depth of relations, harmonization of relevant state policies, lower both the objective and subjective transaction costs of economic relations among the regional actors, resulting in a high level of inter-actor economic activity." On the other hand, an "economic regime" is "a group of economic actors, or their representatives, that deliberately come together to organize their existing and future relations in a more predictable way through the adoption of rules and universal customs (i.e., the actions of actors define the regime, making it fundamentally different from an economic region)."

Cook regards ASEAN as a collective action group within APEC. As such, it remains in APEC for as long as it suits the interests of its member-states and APEC can deliver benefits that ASEAN as an organization cannot provide.

He describes the two organizations as having bureaucratic fora where personnel from each member-state's relevant bureaucratic bodies meet to negotiate with each other, and political fora where their political leaders also negotiate. There are likewise institutionalized channels of communication for non-state groups with national or international interests.

Cook also observes that states' preference for developing regional trading areas over multilateral institutions of a global nature is because "geographical proximity (often paralleled by cultural proximity) substantially lessens the cognitive barriers to the organization of such mechanisms/regimes." He notes that given the coordination and collaboration problems of multilateral institutions, regional institutions are an important aid to multilateralism, as they facilitate the formation of collective action groups for multilateral bargaining.

Both Cook and Avila alluded to the utility of "institutional nesting," which was advanced by Vinod Aggarwal (1994, 1998). This takes place when issue-specific arrangements in lower level regimes are brought into conformity with the principles and processes of broader multilateral institutions. The absence of institutional nesting would make comprehensive self-regulation a necessity and would increase the chances of friction within a regional grouping. Cook considers the ASEAN regime as partially "nested" within APEC, which in turn is seen to be "nested" within the World Trade Organization (WTO).

Cook found that ASEAN has been used as a blueprint for APEC, because many of the structural impacts of the ASEAN regime structure on intra-regime negotiations have been transferred to APEC.
Institution-Building in APEC

He asserts that the commonality of interests among ASEAN states and market actors vis-à-vis their relations with extra-regional actors is enhanced by the lack of substantial growth in intra-regional trade and the growing integration of domestic markets with extra-regional economies. Cook concludes that while the economic trends in APEC strengthen its definition as an economic region and weaken the same definition for the ASEAN region, the same powerful forces support the ASEAN member-states as a collective action group within APEC.

Cook’s examination of the record of ASEAN as a collective action group within APEC links its achievements to the ability of the more vocal member-states of ASEAN to seek out alliances with like-minded non-ASEAN East Asian states, especially China.

There were occasions, however, when the ASEAN was unable to harness all of its member-states’ support for its stated ASEAN interests. For instance, Singapore joined the U.S. call at Bogor for free trade by all states within the APEC region by 2010. Indonesia also supported this position initially, but was strongly criticized by Malaysia.

Moreover, the depth and spread of ASEAN’s institutionalization, according to Cook, hinder the full participation of ASEAN member-states in the APEC regime and as a member of the collective action group within it. He notes that “the institutionalization of ASEAN has become very dense with over 200 inter-state meetings a year, which stretch the state capacities of its member states to begin with.”

APEC membership has advanced ASEAN interest in terms of linkages to extra-mural organizations and states. According to Cook, the most noticeable benefit was the ASEAN-initiated creation of ASEM, which was officially inaugurated in 1996. He contends that “the tying of the ASEAN regime with the EU, China, Japan and South Korea, when combined with ASEAN’s links with APEC, means that the ASEAN regime is now a nexus that links its member states to all extra-regional actors, and which ASEAN was instrumental in shaping.”

LEGAL ISSUES WITHIN APEC

Chapter 4 of this book deals with the legal dimension of APEC. Sewfrey Candelaria’s paper delineates the characterization of APEC and the Individual Action Plans in international law. It also probes into the legal nature of APEC commitments — are they treaties that are legally binding, having created rights and obligations for the member-economies?
Is APEC a Treaty?

Candelaria concludes that the commitments enunciated under the APEC declarations are not legally binding treaties. The declarations have neither been ratified under international law, nor is there any judicial pronouncement concerning the legal nature of such agreements. There has also been no registration of the agreements with the United Nations.

Furthermore, the language of the declarations does not indicate the creation of legal rights and obligations among the parties. The aspirations and policies are broad, and the actions taken are unilateral and voluntary. The APEC commitments may be considered as "non-legal soft law."

At best, Candelaria believes that the APEC declarations may be regarded as agreements within the larger framework of the WTO. They reflect the principles of the global trading system: non-discrimination, market access, fair competition, reciprocity, the encouragement of development, and economic reform.

But while the APEC commitments are not governed by international law, they have some legal consequences. According to Candelaria, they may be considered as official acts of states and as evidence of the positions taken by states. The non-legal commitments nonetheless generate an expectation of, and reliance upon, compliance by the parties.

Despite their political nature, commitments made by APEC member-economies are binding based on the principles of fair play and estoppel. They may not, therefore, be ignored.

At present, there is still no effective mechanism for the resolution of controversies. However, APEC members, which are also WTO members, may resolve their trade disputes through the WTO dispute settlement mechanism.

Are Philippine Commitments Binding?

The Philippines' Individual Action Plan, which focused on greater market access through low tariffs, reduced cost of business, and stronger economic and technical cooperation, was a voluntary submission. Candelaria concludes that the obligations assumed by the Philippines under APEC in general and under the IAP have legal effects under the Philippine municipal law.

Article II, Section 2 of the present Constitution provides that "the Philippines...adopts the generally accepted principles of international law as part of the law of the land..." Since the WTO commitments of the Philippines are legally binding upon it, Candelaria asserts that APEC obligations are likewise binding upon
the Philippines. The reason that he offers is because APEC “is a regional arrangement, which supplements and complements the multilateral trading system.”

Moreover, he underscores the fact that no less than the President of the Philippines made the declarations about his country’s commitments and that there was subsequent legislation enacted by the Philippine Congress to fulfill such undertaking. Finally, the country’s hosting of the 1996 APEC Summit, reinforces its acquiescence to the binding effects of its declared commitments.

### Dispute Settlement

In Chapter 6, Maria Lourdes Sereno reviews the different modes of dispute settlement as they relate to the formulation of a Philippine position on resolving trade and investment issues in APEC. Like Candelaria, she believes that APEC obligations belong to the area of “soft law.” There is no certainty on the enforceability of Individual Action Plans nor the manner in which member-economies can be individually made accountable for the accomplishment of individual targets. Sereno avers that APEC neither establishes any rule, nor imposes any obligatory behavior in the legal sense. According to her, it will be the collective force of all the APEC member-economies that will compel individual members to comply with APEC targets.

Furthermore, the nature of tariff liberalization commitments is not rigid, because of the member-economies’ reluctance to bind themselves to any further liberalization targets. Sereno notes that there is no consensus towards the establishment of a formal structure for dispute settlement in the association. She asserts that the dynamism of APEC lies in the agenda of setting the pace for WTO negotiations by advancing liberal trade targets. She bases this claim on the assumption that “if the individual APEC countries are more radical in their offers than what they set out in the last Uruguay Round, the extent of the liberality of the new offers will determine the pace of the WTO negotiations.”

According to Sereno, trade negotiations occur at three levels: (1) multilateral (through the World Trade Organization), (2) regional (APEC and ASEAN for our region), and (3) bilateral levels.

In the WTO, a solution that is mutually acceptable to the parties to a dispute is preferred. In the absence of a mutually agreed solution, the first objective is to secure the withdrawal of the measures taken by a member that impose the benefits of another member.

WTO mandates the Dispute Settlement Body to administer the rules and procedures that govern the settlement of disputes. In APEC, the Committee on Trade and Investment (CTI) created a sub-forum called the Dispute Mediation Experts Group.
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(DMEG). Its work has been guided by the principle that dispute mediation should be without prejudice to rights and obligations under the WTO Agreement and other international agreements. It should also not duplicate or detract from WTO institutions and procedures.

Sereno concludes that APEC economies prefer to file complaints with the WTO if they believe there is a WTO-cognizable complaint. According to her, this attitude stems from their belief that more can be gained by resorting to the formal mechanisms of WTO than by risking the untested waters of the APEC. Member-economies belonging to the North American Free Trade Agreement (NAFTA) have adopted a judicialized system of dispute settlement.

CASE STUDY OF DOMESTIC COALITION-BUILDING

Interface between International and External Coalitions

Chapter 6 deals with the political economy and political dynamics of APEC-related legislation. Etel Solingen, in her book, Regional Orders at Century's Dawn (1998), underscores the close relationship between international and domestic coalitions. They either reinforce or rival each other. International coalitions that are supported by domestic coalitions are likely to survive. On the other hand, "domestic politics are never removed from systemic incentives, and do respond to global constraints" (Solingen 1998, p.54).

Relevant to the development of APEC is Solingen's admonition that "the survival of internationalist coalition requires that the benefits from economic liberalization be broadened to include more than the concentrated interests that often sustain those coalitions initially" (Ibid., p.58). In order to reduce domestic opposition to liberalization, she suggests the provision of "resources, compensatory payments, export incentives, targeted (rather than general) subsidies, and training geared to improve relevant skills" (Ibid.).

Dynamics of APEC Legislation

The paper on the political economy of Philippine APEC commitments by Wilfrido V. Villacorta, Tereso S. Tullao, Jr., and Angelo A. Unite in the chapter examines the politics of enacting new legislation required to fulfill the country’s APEC commitments. It describes the process involved in the formulation and deliberation of proposed APEC-related legislation, identifies the players involved in this process, and examines the conflicts of interest encountered in ensuring the passage of such legislation.
In its Individual Action Plan, the Philippines committed itself to opening retail trade to foreign participation, and to reviewing restrictions and existing provisions on foreign equity participation in investment companies and foreign membership in the board of directors of investment and financing companies.

In the distribution services sector, the Retail Trade Nationalization Act was replaced by the Retail Trade Liberalization Act of 2000.

In the financial services, the country has committed itself to review existing restrictions on foreign equity participation, with a view to allowing a higher level of foreign participation, as well as those on foreign membership in the board of directors, and the existing law on investment companies for the purpose of including a provision specifically providing for a maximum of 100% allowable foreign equity participation as well as to review restrictions on foreign membership in the board of directors.

In agriculture, the Philippines pledged to continue to implement its Tariff Reform Program (TRP) of progressively reducing tariffs and move toward a uniform rate of protection across sectors for sensitive agricultural products (including rice) in the period 1997-2004.

Political Contestation

The study describes the debates among legislators and the lobbying among interest groups during the deliberations on the liberalization of the retail trade. It also examines the more recent legislation that amends the General Banking Act and the Investment Company Act, and institutes safety nets to complement the Agricultural Tariffication Act.

Identified as a major factor that delayed the passage of laws related to Philippine APEC commitments was the inadequacy of leadership in both the executive and legislative branches. Entrenched special interest groups and lobbies in the retail trade and agricultural sector as well as limited infrastructure for enabling industries to compete also posed obstacles to APEC-related legislation.

The study proposes the following: (a) capacity-building and competitiveness-enhancing measures that include the provisions of irrigation facilities and farm-to-market roads in the agricultural sector, as well as improvements in the quality of bureaucratic service, and (b) greater coordination among the beneficiaries of liberalization. It is in the nature of the liberalization process that those who stand to gain from it are often the large, yet unorganized, majority while those who stand to be adversely affected are the small, yet disproportionately represented, minority. One way to promote consensus-building within Philippine society is for the government to undertake coalition-building efforts among those parties sympathetic to APEC commitments.
Coalition-Building and APEC

These coalition-building activities may consist of business forums, conferences, or media projects that will generate support for APEC policy. Such activities will eventually result in a more extensive democratization of economic activity.

FUTURE DIRECTIONS FOR APEC

All the articles have demonstrated that APEC is not a rule-making and rule-enforcing body. Because commitments are not legally binding treaties, their fulfillment heavily depends on the political will of member-economies. Such political will is manifested in forging consensus among government, industry and civil society. The legislative record of the Philippines has shown that it is one of the member-economies that have succeeded in domestic coalition-building to crystallize APEC commitments.

The APEC International Assessment Network (APIAN) provides a useful set of recommendations for strengthening the institutional mechanisms of the association. Its first policy report stresses that “APEC will fall short of its goals if it does not find a better match between its aspirations and its institutional structures.” Among its recommendations are the following:

1. **Strengthening of the APEC Secretariat.** The APIAN Report proposes more in-house capacity for the Secretariat so that it can monitor the implementation of APEC initiatives. This entails the creation of longer term professional positions and the designation of a Secretary General with a multi-year term of office.

2. **Deepening of APEC ties with other international and regional organizations, such as the WTO.** The APIAN report encourages ECOTECH to seek support from multilateral development banks that share APEC objectives. It calls for regular consultation with other regional trade arrangements, in order to ensure that their gains in liberalization are nested under APEC.

3. **Integration of Ministries of Finance into the APEC process.** This proposal underscores that the post-financial crisis agenda demands the effective integration of finance and development by APEC.

4. **Strengthening of partnerships with outside groups.** The APIAN study found that strong business and civil society participation contributes to successful implementation of APEC initiatives. The Report recommends that the business and NGOs be involved in all stages of the project cycle (APIAN 2000).
Institution-Building in APEC

The APIAN Proposals are shared by Vinod Aggarwal and Charles Morrison in their joint paper “APEC as an International Institution” (1999). Noting that the association is experiencing “some institutional disarray,” they propose that the APEC Secretariat improve its in-house analytical capabilities to help APEC leaders set priorities and realistic targets. They observed that the Economic Leaders’ Meetings “reflect the more personalistic rather than the institutionalized nature of the APEC process.” Nonetheless, these meetings are a significant element of the association and must continue in order to facilitate the processes of APEC cooperation. They stressed that such meetings should “be perceived as valuable within national governments and taken seriously by heads of state” (Aggarwal and Morrison 1999).

These recommendations must be given immediate consideration, as the non-economic raison d’etre of APEC assumes more importance in the coming years. Ponciano Intal, Jr. and Myrna Austria call for giving due attention to the overriding non-economic objectives:

“As tariffs and non-tariff barriers are progressively reduced to near zero, the marginal social benefit of trade liberalization is likely to be small while the social costs of dislocation and adjustment could be substantial. Thus, the complete opening up of an economy to intra-regional competition is likely to be politically acceptable domestically only if there are overriding non-economic objectives to regional integration” (Intal and Austria 1999).

In the 8th APEC Economic Leaders’ Summit held in Bandar Seri Begawan, Brunei in November 2000, the institutional and non-economic concerns of APEC were not fully addressed. The economic leaders simply noted the importance their finance ministries placed on building capacity in the areas of social safety nets, structural adjustments, good governance, and institutional frameworks for the financial and corporate sectors.

In their declaration, they also affirmed that “APEC must be a process which is open and transparent and which draws on the talents and creativity of our people.” They strongly encourage that APEC’s engagement and outreach to civil communities be continued and that the association “seek to develop partnerships with groups which share, and will add impetus, to our goals.”

The future summits of APEC for 2001-2004 will be held in China, Mexico, Thailand and Chile, respectively — all developing economies. Every host-country injects its priorities and orientation to the summit. It is hoped that the forthcoming summits will yield more substantial decisions that will strengthen the institutional capacity of APEC, so that its members will have greater sense of community and the association will have a more significant voice in the global economic relations.
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Chapter 2

APEC and ASEM: Reconciling Two Regional Agendas

John Lawrence V. Avila

INTRODUCTION

Both the APEC and ASEM arrangements reflect the growing interdependence and greater economic cooperation involving Asian countries. APEC is a regional forum whose work is primarily in the area of economic cooperation. ASEM, on the other hand, is an inter-regional arrangement with a broader, multi-dimensional focus aimed at promoting exchanges in economic, political and other fields. In large part, the economic dynamism of the East and Southeast Asian countries served as an impetus for these efforts. Phenomenal growth rates spurred by exports and foreign investment became the primary driving force for economic interdependence between Asian countries and the rest of the world. Indeed, the formation of APEC and ASEM is a manifestation of Asia’s rise to economic prominence and international recognition.

However, the institutional development of these cooperative arrangements lagged behind this primarily market-led integration process. APEC has consciously followed a path of informal and looser form of institutional structures and purposely avoided imitating the European experience of economic integration. Similarly, ASEM members have agreed to eschew formalism and move toward the “soft” kind of institutionalization. Both arrangements have steered away from the development of any form of supranationalism that could undermine the sovereign prerogatives of its member-states. Nevertheless, the achievements of both organizations remain significant and substantial.
APEC’s and ASEM’s initial successes have led to expectations that some degree of progress in their institutional framework should now take place. As transactions and exchanges among their members continue to increase, it would be reasonable to move toward a higher stage of institutional development. Certain principles and more definite rules and procedures could also be formulated to guide interstate commerce. As APEC enters its tenth year of existence, others suggest that a maturation of its processes and structures be its next logical step alongside further institutionalization. But critics have been quick to point out that the Asian financial crisis was in some sense a “crisis of institutions.” The surprise by which the Asian financial crisis was met and the rate at which it spread throughout the region exposed organizational inadequacies in managing such downturns. To these critics, the regional crisis has demonstrated that the existing forms of regional cooperation lack in substance and are largely ineffective in dealing with regionwide problems.

Indeed, the level of institutional organization in APEC and ASEM falls short of meeting the demands and expectations placed on them. Further development of their respective institutional frameworks would be desirable. But what kind of institutions can be expected to develop within the region, given the aversion of its Asian members to formalism? What alternatives are available to the rule-based, contractual form of Western regionalism? How will these organizations move from this stage to the next level of institutionalization?

To answer these questions, this paper looks into the unique experiences of APEC and ASEM, in the hope of providing an alternative view to conventional frameworks of institutional development. The study examines aspects of institution-building, decision-making processes, and systems of agenda-setting of both arrangements, and assesses their contribution to building regionwide norms, values, and rules.

This paper is premised on the idea that the institutional development of APEC and ASEM will depend on the degree of social learning within and between international organizations. This concept emphasizes international economic cooperation as a political and social process involving factors other than economic ones. Social learning can occur at different levels. First, APEC and ASEM benefit from “nesting” themselves with more developed institutions at the multilateral level, particularly with the WTO. Second, this process is also facilitated by the two cooperative arrangements. While ASEM largely draws inspiration from APEC, the latter can also learn from ASEM, particularly in the area of political cooperation. Finally, the process also relies on the maturation of sub-regional institutions. Institutional reform in APEC and ASEM can benefit from the linkages of sub-regional organizations within each arrangement.

The first section of this paper reviews the various theories and explanations of institutional development. The following section focuses on the unique character of
regionalism in Asia and the rationale for the underdevelopment of its institutions. The third section analyzes the specific forms and practices that these have taken in APEC and ASEM. The next section looks into the various factors that impinge on institutional development and change in both APEC and ASEM. It also looks into the incentives for and impediments to institutional formation in Asia. Finally, the paper assesses the prospects of institutional development in both regimes and their implications on each other and on the multilateral trading order. In the end, the study assesses the prospects for greater institutionalization in Asia.  

THEORIES AND EXPLANATIONS

There are different references to the term “institution.” Often, it is used in the structural sense, based mainly on Stephen Krasner’s classic definition of regimes as “implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations.”  

Richard Higgott (1994a) defines institutions as organized rules, codes of conduct, and structures that gain from cooperation attained over time by solving collective-action problems. Vinod Aggarwal (1994) distinguishes between ‘meta-regimes,’ which represent the principles and norms underlying international arrangements, and ‘international regimes,’ which in turn refer specifically to rules and procedures.

The reference to regimes suggests a formal organization or a more advanced stage of institution-building. Haggard and Simmons (1987) argued the need to differentiate regimes from the larger concept of institutions. They also stressed that regimes aid the “institutionalization” of international behavior by regularizing expectations emphasizing the process aspect of institutions. This view presents a more dynamic interpretation of the concept compared to Krasner’s rather static definition. The process view allows us to pay attention to the evolutionary or developmental aspects of the concept as well as the non-formal aspects that engender institutionalization.

Traditional frameworks regarding the study of institutions in international relations assume a rationalistic approach. This view centers on the maximizing and utilitarian behavior of actors in the international system. This rationalist logic underpins both the realist and liberal perspectives of institutions (see Higgott 1994b). The former perspective doubts whether cooperative institutions can overcome the self-interested behavior of states while the liberal school is more optimistic about the prospects as well as the outcome of cooperation among nation-states.

Borrowing from economics, the liberal school seeks to explain the process that leads to the creation of the most desirable structure of the international economy through the reduction or even elimination of artificial barriers to optimal market op-
Coalition-Building and APEC

erations and the deliberate introduction of the elements of coordination and harmonization. National economies cooperate with each other and move through clearly defined stages of integration toward uniform prices and free-factor mobility. The movement from free trade areas to common markets and economic union is accompanied by the development of an institutional framework defining and implementing rules to facilitate market operations. The integration of economic activities takes place through the establishment of political communities defined in institutional terms. The liberal view of institutionalism stresses formal institutionalization or what Keohane and Nye (1977) referred to as “institutional integration.” Institutions are created to reduce the costs of economic interdependence and create greater efficiency in the allocation of resources in the pursuit of common interests.

This approach is reflected in the theory of functionalism. Functionalism essentially adopts a utilitarian perspective of institutions, viewed in terms of their satisfaction of welfare demands and their responsiveness to the needs of its member-states. Regimes or institutions facilitate cooperation by helping lower the transaction costs and increase the flow of information between national economies. Later modifications to the liberal perspective examine political change and how emergent collaborative arrangements evolve toward a supranational body. The neo-functionalist approach, for instance, highlights the importance of the “spill-over” of functional tasks, or how cooperation in one issue-area may lead to collaborative behavior in other areas.

In short, the liberal school looks at how institutions may be “supplied” when there is sufficient “demand” for the functions they perform (Haggard and Simmons 1987). Critics of this perspective underscore its limited focus on instrumental rationality and the underestimation of political and social factors that impinge on the process of integration. Liberal institutionalist framework focuses on interdependence and the efficient integration of national markets without directly addressing issues of sovereignty or conflicts that may arise from the distribution of costs and benefits. It pays almost exclusive attention to the growth of markets and market transactions and fails to recognize that institutions are also arenas of conflict and the exercise of power.

An alternative set of explanations can be found under the realist approach to institutionalism. This view takes a statist perspective of cooperation and emphasizes the central role of power and interests in international economic relations. Much of its attention is on the importance of power maximization tendencies and power hierarchies in conditions of anarchy, and their influence on organizational development and behavior. Power structures help mold state action, consequently defining the possibilities of cooperation and regime formation (Haggard and Simmons 1987; Crone 1993). Realists look at international institutions principally as agencies of nation-states, which behave in a self-maximizing manner. Institutions per se have little influence on
state behavior and are largely driven by national interests. Neo-realism sees some prospect in the role of institutions in fostering cooperation, but highlights the need for leadership.

Specifically, the development of regimes or institutions is understood in the context of power asymmetries in the international system. For instance, the realist thought stresses the role of hegemonic powers in fostering the development of institutions through both positive and negative incentives (Keohane 1984). The success or failure of institutions is a function of the rise and decline of hegemonic powers, the central hypothesis being the presence of hegemonic or dominant power is vital to the formation of effective institutional arrangements. Their decline means the consequent breakdown of institutions as members resort to conflict to protect their self-interests.

The realist approach also stresses the relative gains/absolute gains dichotomy between nation-states engaging in cooperative behavior. This approach largely relies on game-theoretic models for preferences and how bargaining affects the structuring of preference orderings. These models rest heavily upon the specification of the pay-off matrix or the distribution of costs and benefits for different outcomes (Milner 1992). Moreover, game iteration or the institutionalization of cooperative relations results in greater opportunities and makes future collaborative behavior more likely. However, game-theoretic approaches fall short of determining whether regimes will actually arise, how they will be institutionalized, and, above all, what rules and norms will comprise them (Haggard and Simmons 1987).

Both realist and liberal schools are largely state-centered perspectives, beginning from the assumption of rational actors, and focused on the interplay of interests. Institutionalism then is a function of national preferences and dependent on the outcome of intergovernmental bargaining based on their nationally determined preferences and power capabilities. However, the emphasis on rationality and interests ignores the importance of ideas and "identity formation" as increasingly salient variables in the theory and practice of institutions despite the growing recognition of the importance of ideas in understanding international cooperation. As Higgott (1994b) argued, "rationality is conditioned by the strength of ideas that constitute an actor's understanding of interest. Rational action is not prior to the ideas that nourish it." Realism and liberalism assume identity as endogenously given, but it is important to recognize how ideas can transform interests. Moreover, the two traditional perspectives basically take an ends-means approach to the study of institutions. These traditional approaches pay little attention to long-term considerations and are almost exclusively concerned with short-term interests. One must understand the evolution of cooperative arrangements and factors that impinge on the development of institutions.

The significance of identity and the evolutionary perspective on institutionalization is considered under the cognitive school of thought. This approach offers a
different perspective on the study of international institutions by focusing on cognitive variables as they encroach on institutional construction and innovation. Regimes or institutions are theorized to be conditioned by ideology, values, and the beliefs they hold about the interdependence of issues. In other words, institutions are created and maintained not only by self-interests but also by collective values and consensual knowledge.

In contrast to the realist view, the cognitive approach underlines the significance of consensual knowledge, ideas, or cognitive interpretations of the environment and how this evolves as an actor goes through the learning curve (Haggard and Simmons 1987). In this sense, actors within organizations would not have fixed interests and institutions, but rather interests that evolve as the ideas and values of its members change. Cooperation here relies heavily on extensive shared interests and values such that communities sharing common values make regime formation easier and, conversely, value differentials make institution-building more difficult (Crone 1993). Cognitive understandings may change as new knowledge and information are generated and processed. New knowledge and understandings may lead decision-makers to calculate their interests differently and, consequently, make cooperative arrangements more attractive.

Keohane and Nye (1977) described the cognitive approach as attitudinal integration or the compatibility of attitudes at a given time. Others refer to it as social integration with emphasis on transnational relations or cross-boundary exchanges among non-state and sub-national actors. They view the cognitive approach as a process of social learning where interests and values evolve through experience and the generation of new knowledge, which allows the members of a given organization to develop trust and cooperation. Advocates of this view argue that learning affects international rules and cooperation by altering the range of incentives. Learning through increased economic and political exchanges contributes to the prospects of cooperation and reinforces institutions (Mack and Ravenhill 1994). Cooperation is influenced by the capacity of social organizations to process and absorb information and by the extent and duration of interaction among its members. By highlighting learning, cognitive theories characterize cooperation and institutionalization as a dynamic rather than a static activity.

What are the channels for social learning? The source of ideas can be found not simply in the interests identified by regional state policy-making elites but also in the influences of an emerging community of like-minded intellectuals and practitioners in the definition of regional identities (Higgott 1994b). For instance, studies on "epistemic communities," or issue networks, highlight the contribution of transnational coalitions. Epistemic communities refer to a professional group that believes in the same cause-and-effect relationships and shares common values and un-
understanding of a problem and a commitment to seeing them translated into public policy (Haas 1992; Milner 1992; Ravenhill 1998). These groups provide government with expert information, which creates focal points that promote cooperation. Value differences are then somewhat ameliorated by information provided by the knowledge elite, thus helping facilitate the integration process. These have also been referred to as “policy networks,” which are non-hierarchical, decentralized, and mostly informal interaction patterns among actors to solve collective-action problems. Recent literature describes this as the “track two” process, referring to forums and organizations that include intellectuals and practitioners sharing a common understanding of problems and issues. This is distinct from “policy communities,” which are more formalized relationships or sets of institutions between non-governmental and governmental members of a policy network (Higgott 1994b).

Another way to demonstrate social learning is through the nesting pattern of international regimes. This concept was first advanced by Aggarwal (1994), who observed that certain issue-specific arrangements in lower level regimes are brought into conformity with broader institutions. He terms this behavior “institutional nesting,” which somehow depicts the tendency of states to rely on higher level systems to advance cooperative behavior at a subsidiary level. This behavior suggests hierarchical, goal-oriented arrangements in contrast to the parallel form of institutionalization (Aggarwal 1998). Aggraval also described this behavior as an attempt at “institutional reconciliation” or efforts by regional institutions to be consistent with the principles of the multilateral trading system under the WTO. By having specific agreements nested within a larger and more developed regime, sub-level initiatives at institution-building avoid controversial issues while benefiting from the established processes and rules of the larger regime. Learning can also occur across regions. Camroux and Lecharvry (1996) observed that the composition, structure, and behavior of one region, not only impinge on, but also serve to structure, the evolving nature of other regions.

This concept of nesting can help us understand the relationships between regional institutions and the multilateral trading order under the WTO, as well as between sub-regional free trade areas such as ASEAN Free Trade Area (AFTA) and the North American Free Trade Agreement (NAFTA), and their relations with APEC. This suggests that regionalization is also a product of social and economic interaction. This is especially relevant in this study, which suggests that regionalization in APEC and ASEM is both influenced and reinforced by the other.

The continuing debate between the liberal, realist, and cognitive approaches to the study of institutions (see Table 1), in general, revolves around the differing emphasis on power, interests, and knowledge in international political economy. Both the realist and liberal views stress self-interest and statist rationality. The realist perspective focuses on situational and power considerations while the liberal view emphasizes
institutional effectiveness and functional rationality. On the other hand, the cognitive approach revolves around the role of knowledge and socialization in explaining regime formation and change. Neo-realism stresses the importance of power hierarchies and the system-level changes, while neo-liberalism highlights the significance of efficiency and market processes. Cognitive theories provide a historical or evolutionary perspective on institutionalization.

This study does not seek to resolve this debate here. Suffice it to say that each approach contributes to a better understanding of how and why institutions develop. It focuses on the contribution of the cognitive approach, particularly the nesting behavior, to providing an alternative explanation about institutional development in Asia.

The Structure of Asian Regionalism

It is widely believed that the present state of institutional development in Asia is poor and needs substantial improvement. Ravenhill (1998) described this situation as "institutional deficit," noting that the region has been historically characterized by the absence of regionwide institutions for inter-governmental collaboration. Soesastro (1997) concurred with his view, pointing to the absence of a strong tradition of regionalism and a short-lived experience in developing a sense of regional identity among Asia-Pacific countries. Aggarwal (1993) likewise noted the absence of a strong and stable commitment to the institutionalization of cooperation in the region. Whatever institutions exist in the region are commonly described as weak. Both APEC and ASEM are very much in the early stages of institution-building, though they manifest a growing sense of regional cooperation and adhere to common goals. Yet it is apparent that the level of institutionalization on a regionwide scale involving Asian countries is nowhere near the institutional complexity found in North America and Europe.

Regionalization in Asia has been an "undirected phenomena" and not primarily policy-driven (Higgott 1998b). Trade and investment transactions, contracted mainly by private business and the unilateral liberalization of regulatory barriers, are the main factors pushing the economic integration of these countries. The process of foreign direct investment and export-oriented industrialization has contributed to the growth of complementarity across the East and Southeast Asian economies (Petri 1993; Rudner 1995). But Asia’s rise to importance in the global economy has far outpaced its institutional convergence (Aggarwal and Morrison 1998). Market integration has preceded the institutional integration of the region.

Governments across the region have come to recognize the necessity of constructing governance structures at the international level to manage their increasing economic interdependence and reduce the negative effects of this relationship
Table 1. Three Schools of Thought

<table>
<thead>
<tr>
<th>Primary Value</th>
<th>Power maximization and national security</th>
<th>Growth and efficiency</th>
<th>Ideas and values</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional Structure</td>
<td>Power hierarchies</td>
<td>Administrative network and functionalism</td>
<td>Transnational linkage</td>
</tr>
<tr>
<td>Behavioral Dynamics</td>
<td>Inter-state bargaining</td>
<td>Cooperation through mutual satisfaction</td>
<td>Social learning through communication and interaction</td>
</tr>
<tr>
<td>Institutional Outcome</td>
<td>Balance of power</td>
<td>Fit between structures and function</td>
<td>Community of values</td>
</tr>
</tbody>
</table>

Note: Derived from Pentland (1973)

(Ravenhill 1998). However, institutionalization of regional inter-state cooperation involving Asian countries has been a rather slow and uncertain process. Miles Kahler (1995) made similar observations, noting that the region’s institutions displayed little characteristics of a formal organization, possessed few clear rules or injunctions, were narrow in scope, and had evolved over time from the bottom up rather than through episodes of constitution-making. Hadi Soesastro (1994b) concluded that the region lacks strong regimes because common principles and norms are too narrowly defined while cultural traditions and fundamental interests along both North-South and East-West lines divide it.

Overall, the preference is for a “soft” type of regime. This model consciously resists the idea of formal institutions and relies instead on an evolutionary approach to cooperation. The so-called Asian approach to cooperation rejects emphasis on legalism, formal agreements, contracts, and institutions. Asian regionalism, on the contrary, stresses informal consensus-building, ad hoc problem-solving diplomacy, confidence-building, elite-bonding, and peer pressure (Kahler 1994; Higgott 1998b). As one analyst describes it, the Asian way is to set out the principle first and negotiate the details afterwards.
National interests remain at the core of Asian regionalism, where sovereignty issues are primordial concerns. In Asia, national interests are shaped by concerns about sovereignty and a desire to sustain domestic political stability and national unity. Regional economic cooperation is primarily state-driven, where governments undertake actions on trade liberalization or other matters individually. International cooperation is conditional on sustaining, even enhancing, national sovereignty and autonomy. Higgott observed that Asian regional organizations are geared more toward sovereignty enhancement and not sovereignty pooling. At no regional level in the Asia-Pacific has there been any agreement to relinquish or “pool” aspects of sovereignty of individual state economic policy-making procedures and build supranational agencies without ceding national sovereignty to a regional authority (Higgott 1998a).

The development of institutions of regional cooperation in Asia has been closely linked with the structural changes in the international system. American military and economic hegemony in Asia from the mid-1950s made institutionalization unnecessary (Grieco 1998). Neither the U.S. nor East Asian countries saw economic regime formation as being in their interest, choosing instead to relate with each other on a bilateral basis. Most governments eschewed regional institution-building to avoid being drawn into a forum that would constrain national action and threaten their individual interests. As Crone (1993) concluded, Pacific institutionalization until the 1980s had been inhibited by power and value disparities, U.S. indifference, and small state hesitation to engage with the United States beyond existing bilateral ties.

For much of the post-war period, economic relations were subordinated to security concerns while a hub-and-spoke relationship centered on the United States. At the end of the Cold War, American policymakers sought to press their allies to share the burden of maintaining regional order. Moreover, the economic-driven confidence of Asian countries led them to seek a higher profile in the conduct of inter-state relations within the region and between the regions and other international actors over a range of issues. For the U.S., the prospect of extensive erosion of security and economic positions in the Pacific induced new enthusiasm for regional cooperation. On the other hand, Asian governments wanted some form of institutional framework to keep the U.S. engaged in the region and to manage the acrimonious relationship between the United States and Japan.

According to Donald Crone, U.S. predominance in the early post-war period inhibited early attempts at institutionalization and its decline in the 1980s led to regime formation in the region. Since the late 1980s, the prior dominance of bilateral system of inter-state relations has given way to multilateral or regionwide institutions. The end of the Cold War and changes in the security environment weakened the rationale for the underwriting of economic growth in Asia. Strategic incentives did not favor institutional formation during the peak of hegemony. But with the narrowing of
power differentials and the "leveling" changes in economic and power relations among countries in the Pacific rim, those incentives changed, thus creating a greater convergence of interests in institutional formation (Crone 1993). This view departs from the theory of hegemonic stability, which credits the initiation and sustainability of international institutions to hegemonic leadership.

The slow progress of the Uruguay Round of multilateral trade negotiations, the formation of the European Single Market, and the growing trend toward regionalism elsewhere also triggered moves toward regime formation in the Asia-Pacific region. There were also fears of growing competition for trade and investment from the transition economies of Eastern Europe and China and from countries in Latin America that had previously adopted market-oriented reforms. Reacting to these developments, Asia sought to strengthen regional arrangements and establish umbrella regional organizations with other continents. Higgott (1998b) noted the growing recognition in Asia that its competitive advantage may be best served by an open, liberal international trade regime underwritten by adherence to a set of norms, principles, and codified rules arbitrated by a multilateral body such as the WTO. APEC and ASEM can be viewed as an Asian response to the deepening of Europe's integration and the formation of NAFTA. In other words, the desire to create regional institutions stems from the common realization or appreciation among the region's national leaders of the need for some sort of regime to manage political and economic changes in the post-Cold War system.

Some observers have attributed Asia's institutional deficit to the absence of commonality of values, norms, and world views among East and Southeast Asian countries. Higgott (1994a) observed the absence of a sense of community in a linguistic, religious, cultural, political, or ideological sense and of some form of regional consciousness. Kahler (1994) went so far as to say that 'Asia' does not represent a common culture. Regional cooperation is also tempered by the East Asian policymaking style. For example, relationships among businesses and between businesses and governments are often characterized by long-term collaboration, reciprocal favors, and continuous negotiations rather than by market-mediated transactions and explicit contracts (Petri 1993). Hanns Maull (1998) coined the term "foreign policy cultures" to highlight the role of national values and norms in the foreign policies of states. He argued that differing national policy perspectives impinge on the willingness of states to cooperate as well as on the preferred forms of cooperation. Moreover, the vast disparity between developed and developing countries is a fertile ground for conflicting interests and values.

In short, varying perceptions and expectations arising from diverse political and economic systems and divergent economic performance between developed and developing members inhibited institutional development in Asia. These differences in
values and social understandings limit the congruence of economic objectives and understandings among region states (Harris 1993). Disparity in views challenges the concept of 'shared norms' that are supposed to represent a necessary condition for the construction of regimes and institutions (Ostry 1998).

However, it has been observed that there is now a greater degree of convergence of Asian values and perspectives that would allow the formation of institutions of regional economic cooperation (see Table 2). Higgott (1998b) supported this view when he observed a growing desire among a wide range of policy actors in East and Southeast Asia to establish a greater sense of regional cohesion. This has been brought about by years of economic growth and prosperity among the populations of Asia. Increased intra-Asian exchange and areas of cooperation have brought about the development of common Asian consciousness and identity. Economic growth increased Asian nations' awareness of their common traditions, cultures, and mores such as their emphasis on work ethics, education, and communal spirit (Funabashi 1995). Funabashi (1993) termed this phenomenon the "Asianization of Asia." A number of government leaders in Asia have deliberately fostered a distinct "Asian way" of devel-

Table 2. Asia in Inter-regional Arrangements

<table>
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<tr>
<th>APEC</th>
<th>ASEM</th>
<th>ASEAN</th>
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<tbody>
<tr>
<td>Japan</td>
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<td>PR China</td>
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<td>Hong Kong</td>
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<td>Taiwan</td>
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<td>South Korea</td>
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<td>Brunei</td>
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<td>Cambodia</td>
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<td>Indonesia</td>
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<td>Laos</td>
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<td>Malaysia</td>
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<td>Myanmar</td>
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<td>Philippines</td>
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<td>Singapore</td>
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<td>Thailand</td>
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<td>Vietnam</td>
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APEC and ASEM: Reconciling Two Regional Agendas

development, which places a premium on consensus and hierarchy as necessary conditions for sustained economic growth. This Asian brand of development rejects Western democratic standards. From an institutional standpoint, Asian preferences for consensus and evolution often contrast with the Western orientation toward formal contracts and negotiations. The growth of a notion of an Asian identity, no matter how loose, Higgott argued, has significance to the extent that other countries might feel obliged to define their policies vis-à-vis East and Southeast Asian countries in regionalist terms. In the following two sections, we discuss how these changes have found expression in APEC and ASEM.

A. Institution-Building in APEC

In many respects, APEC is a unique association owing to its members’ diverse cultural and political background and varying levels of economic development. Its sheer size and membership make it highly visible. APEC comprises the three largest economies as well as the most dynamic developing countries in the world. APEC’s members account for 67 percent of the global output, 81 percent of the world’s merchandise trade, and 53 percent of the world’s foreign direct investments. Since its inauguration in 1989, APEC’s activities have multiplied and broadened its membership to include more Asia-Pacific countries.

Despite its almost 10 years of existence, APEC is still very much in the formative phase of institution-building. Interestingly, this state of institutional underdevelopment is entirely deliberate. In defining the grouping’s vision, the APEC Eminent Persons Group (EPG) cautioned against “over-institutionalization and over-bureaucratization.” From the very beginning, sentiments were clear as to what APEC should not be. The association was determined to avoid what it viewed as unnecessary bureaucratic structures of the EU. Moreover, APEC was not meant to be either a negotiating forum like the WTO or a trading arrangement like the NAFTA.

What is APEC then? Higgott argued that APEC is neither an institution nor a regime. Rather, APEC has been commonly described as a process, evolving as a relatively loose form of cooperation (Elek 1995). It is a voluntary association of sovereign governments that does not aim to have an organizational form (Hughes 1991). Indeed, when APEC was established, there was no real consensus among the delegates to the Canberra meeting on exactly what forms or objectives the institution should have. In its initial phases, APEC’s goals were to lend support to worldwide trade liberalization and to assess trade, investment, and other common economic interests in the Asia-Pacific region. Only after three years of meetings did officials recognize the need to strengthen APEC’s role and agree to consider
the possibility of establishing a permanent mechanism to support, finance, and coordinate its various activities (Hirano 1996).

Over the past 10 years, however, APEC has come to have some elements of a regime or institutional framework (see Table 3). The APEC concept has unfolded incrementally, proceeding slowly toward the realization of long-term goals (Rudner 1995). A sense of common principles, objectives, and a supporting organizational structure has gradually taken shape. The association is progressively evolving in a manner called the “APEC process,” which means a step-by-step procedure for building consensus among all participants. It is a slow and deliberate process of decision-making that requires no formal obligations from the participating countries. The APEC process, as it has come to be known, establishes mechanisms for a wide range of joint consultations—a significant shift from the previous bilateral system.

Since 1989 APEC has come to define a set of principles and norms for itself, the central feature of which lies in the concept of open regionalism. Defined as “concerted unilateral MFN liberalization of trade,” this principle resists the idea of the formation of a trading bloc and favors openness toward a multilateral trading system. The APEC conception of a plurilateral regional economic cooperation is predicated upon an open, comprehensive, and non-discriminatory framework for international trade and investment (Rudner 1995). All official statements since the inaugural Canberra meeting have frequently referred to this principle.

The Seoul Declaration, adopted in the 1991 APEC Ministers’ Meeting, set the general objectives and principles of the organization. The accord laid down the fundamental objectives of APEC: (a) to sustain the growth and development of the region and enhance positive gains; (b) to develop and strengthen the open multilateral trading system; and (c) to reduce barriers to trade in goods and services and investment in a manner consistent with the GATT principles. Other principles were also adopted such as cooperation based on mutual benefit, commitment to open dialogue and consensus-building, and consultation and exchange of views based on mutual respect (Soesastro 1994). Moreover, members agreed that the association should be economic in focus, explicitly setting aside political and security issues. The document also defined the criteria for participating countries and formalized the holding of annual ministerial meetings supported by senior officials’ meetings and working groups. The declaration is significant for being the first official document that prescribed the association’s principles, objectives, scope of activity, and mode of operation.

Subsequently, the grouping’s vision of “deepening our spirit of community based on our shared vision of achieving stability, security, and prosperity for our peoples” was adopted in the first summit of APEC leaders in Blake Island. At the Bogor Summit in November 1994, the APEC leaders adopted a “Declaration of Common Resolve,” pledging to dismantle virtually all barriers to trade and investment.
**Table 3. Institutional Milestones in APEC**

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tbody>
<tr>
<td>Canberra 1989</td>
<td>Set out the basic principles of APEC</td>
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<td></td>
<td>Identified the specific elements of the work program</td>
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<td>Singapore 1990</td>
<td>Identified broad areas of cooperation to include economic studies, trade liberalization, investment, technology transfer, human resource development, and sectoral cooperation</td>
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<tr>
<td>Seoul 1991</td>
<td>Issued a declaration laying down APEC's principles, objectives, scope of activity, and mode of operation</td>
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<td>Bangkok 1992</td>
<td>Established a permanent secretariat in Singapore</td>
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<td></td>
<td>Appointed the Eminent Persons Group to chart APEC's vision</td>
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<tr>
<td>Seattle-Blake Island 1993</td>
<td>Initiated an annual leaders' meeting and issued a vision statement</td>
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<td></td>
<td>Approved a trade and investment framework</td>
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<td></td>
<td>Established the Pacific Business Forum</td>
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<td></td>
<td>Called for a meeting of APEC finance ministers</td>
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<td></td>
<td>Established a Budget and Administrative Committee</td>
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<tr>
<td>Bogor 1994</td>
<td>Declared the goal of free and open trade and investment in the Asia-Pacific by 2010 for industrialized countries and 2020 for developing economies</td>
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<tr>
<td></td>
<td>Established three pillars of cooperation, namely: (1) trade and investment liberalization, (2) trade and investment facilitation, and (3) economic and technical cooperation (ECOTECH)</td>
</tr>
<tr>
<td>Osaka 1995</td>
<td>Defined the Action Agenda and the fundamental principles of liberalization and facilitation</td>
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<td></td>
<td>Identified specific areas of ECOTECH*</td>
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<td></td>
<td>Set up the APEC Business Advisory Council to replace the EPG</td>
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<td></td>
<td>Established a voluntary consultative dispute mediation service</td>
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<tr>
<td>Manila-Subic 1996</td>
<td>Laid down individual and collective initiatives under the Manila Action Plan for APEC</td>
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<td></td>
<td>Defined the framework of principles for economic cooperation and development</td>
</tr>
<tr>
<td>Vancouver 1997</td>
<td>Endorsed early voluntary liberalization of 15 sectors</td>
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<td></td>
<td>Established the ECOTECH Sub-committee</td>
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<td></td>
<td>Defined criteria on membership</td>
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<tr>
<td>Kuala Lumpur 1998</td>
<td>Began review of the APEC process</td>
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</tbody>
</table>

* These are human resources development, industrial science and technology, small and medium enterprises, economic infrastructure, transportation, energy, telecommunication and information technology, tourism, trade and investment data, trade promotion, marine resource conservation, fisheries, and agricultural technology.
Coalition-Building and APEC

between the region’s economies. APEC leaders committed themselves to the ambitious goal of free trade and investment in the region by 2010 for industrialized economies and 2020 for developed economies.

In discussing ways to implement this goal, APEC ministers defined the fundamental principles for the liberalization and facilitation of trade and investment in the succeeding meeting in Osaka. These nine principles were comprehensiveness; WTO consistency; comparability; non-discrimination; transparency; standstill; simultaneous start, continuous process, and differentiated timetables; flexibility; and cooperation. The Osaka principles guaranteed the voluntary nature of cooperation and provided its members with enough leeway to fulfill their obligations to the organization. The Manila APEC meeting was significant for defining similar guiding principles governing economic and technical cooperation under the Declaration of an APEC Framework for Strengthening Economic Cooperation and Development. Complementing the principles of the Seoul Declaration, the Manila accord laid down the principles of mutual respect and equality given the diversity of members in various respects, mutual benefit and assistance, constructive and genuine partnership among industrialized and developing economies, and consensus-building.

APEC’s institutional structure revolves around the annual ministerial meetings chaired by APEC members on a rotating basis. This is complemented by committees, a secretariat, and various ad hoc working groups. On a formal note, the highest decision-making body in APEC is the annual ministerial meeting. Supported by the senior officials’ meetings (SOM) and several working groups, the ministers shape the direction and nature of the organization’s activities. Over the years, these various meetings have broadened their scope to include not only the trade and foreign ministries but also the agencies responsible for finance, transportation, the environment, science and technology, small and medium enterprises, and even gender issues.

Since 1993, the heads of government have become the ultimate authority on decisions affecting the direction of APEC (Hirano 1996). The initiation of APEC summity has helped developed a regularized means of high-level consultations that build rapport, mutual trust, and confidence in the region. These meetings have also significantly boosted the otherwise slow process of economic cooperation that resulted from the ministers’ meetings. Soesastro (1997) noted the benefits of having a “fast-track” political process as differentiated from the “normal” or bureaucratic mode to hasten the cooperative initiatives of the association. While strengthening and accelerating agenda-setting in APEC, the involvement of leaders has also helped resolve the institutional tension among APEC’s foreign and economic ministries (Aggarwal and Morrison 1998).

The leaders and ministers are supported by a small but permanent secretariat that coordinates and assists in APEC’s work projects and facilitates the flow of infor-
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Information among its members as well as between the association and the larger public. Established in 1992, the APEC secretariat is meant to be small in size and simple in structure, composed mainly of personnel seconded from their member governments. The secretariat has, on occasion, been supported by other APEC bodies. One of these is the EPG, which APEC ministers established in 1992 to help define the institution’s goals and objectives. The following year, the Pacific Business Forum was created and later replaced by the APEC Business Advisory Council to act as a permanent advisory body to the APEC leaders.

APEC’s modality is rooted in the idea of “concerted unilateralism,” in which each member economy prepares its own plan to liberalize trade and investment. Each plan is then subjected to peer review to help ensure compliance with the ultimate APEC goal. The APEC process relies on “peer pressure” to ensure members’ adherence to their commitments. This approach allows APEC members to take small but concrete steps and gain greater confidence among themselves as liberalization moves forward.

The APEC process suffers from a number of limitations. For one, APEC is not a rule-making institution nor is it empowered to issue or enforce directives over its members (Elek 1994). The joint ministerial and leaders’ statements and declarations mentioned above are statements of intent rather than legally binding contracts. None of these declarations and joint statements have binding force in international law (Hirano 1996). For example, the Seoul charter appeared in the form of a declaration and is not a legally binding treaty (Ogita 1997). Thus, decision-making is by consensus at all levels of the organization, where policy determinations are made at the national level. In general, many observers have described the APEC process as an Asian approach to economic cooperation, which is voluntary in nature and decision-making facilitated by consensus. APEC’s role then is limited to coordinating independent national decision-making processes in a manner that will facilitate economic cooperation. This structural feature recognizes that the diversity of member economies requires special consideration, but inevitably allows the process to push forward only as fast as the slowest member will allow it. Thus, consensus reflects a low level of trust among APEC’s members and limits the overall effectiveness of the organization.

APEC’s organizational set-up is characterized by institutional ambiguity. The rotating mode of leadership impedes institutional continuity and inevitably creates unrealistic expectations for each meeting to produce ‘action plans’ or political deliverables. Others have also observed that APEC’s specialized working groups develop largely their own agendas, often operate largely in an uncoordinated manner, and act quite independently of the broader APEC process (Rudner 1995; Aggarwal and Morrison 1998). Much of their work has been confined to information exchanges, inventories and surveys, and seminars for officials. In fact, the apparent result of this
plethora of meetings is duplication, overlap, and over-bureaucratization. The structural concentration of APEC activities under Foreign and Trade agencies of government also bring about the narrow focus on trade and trade-related issues (at the expense of ECOTECH concerns). In addition, the APEC secretariat is too small, underfunded, and limited in its functions to cope with the activities of the association. Already, there are calls to strengthen the secretariat, especially in connection with the monitoring of the implementation of the Osaka Action Agenda and Manila Action Plan.

More fundamentally, the emphasis on voluntary and non-binding principles casts doubts on APEC’s ability to achieve anything substantial other than diplomatic niceties and nice-sounding grand visions. In Bogor and Osaka, Asian economies lobbied hard for goals to remain voluntary targets and to be given enough room to decide for themselves the pace at which they will implement market-opening measures. Similarly, some members pressed these principles as conditions for agreeing to the failed Early Voluntary Sectoral Liberalization (EVSL) scheme.

While the APEC process avoids tedious negotiations and ratifications, it is difficult to guarantee compliance other than through peer pressure. Reliance on peer group pressure may not be sufficient to hold governments to their commitments. Instead, the liberalization process depends heavily on an efficient secretariat and a monitoring and adjudication infrastructure. But APEC lacks a strong central institution and a monitoring and evaluating system to hold governments accountable for their commitments. Critics argue that APEC’s core principles of voluntarism and flexibility in fact slow the pace of liberalization.

Nevertheless, APEC has had some success in developing itself as a meta-regime, but not as much in developing common rules and procedures. Most of its accomplishments are in the trade and investment areas. Even then it needs to pay more attention to ECOTECH and, in light of the Asian crisis, to integrate macroeconomic and financial issues into the APEC agenda. In operational rule-making and implementation, enforcement, and adjudication arenas, APEC facilitates the development of regimes by acting more to strengthen their operation by pushing for their extensions than by creating new alternative regimes at the regional level (Aggarwal and Morrison 1998). In other words, APEC has largely nested itself within the broader institution of GATT-WTO. For example, APEC proposals for a trade dispute-settlement procedure focuses on mediation and relies on the final arbitration procedure under the WTO. Most recently, APEC members opted to conclude negotiations on nine sectors initially included in its EVSL scheme under the WTO after its failure to agree on its terms. Even in efforts to deal with the aftermath of the regional financial crisis, the approach has been to support the initiatives of the International Monetary Fund (IMF), the Asian Development Bank, and other financial multilateral institutions. Rather than breaking
new ground, the early efforts of APEC have been focused on understanding and relying on existing international regimes and global institutions.

In sum, APEC’s institutional structure is characterized by incremental, cumulative, and self-sustaining liberalization (Drysdale et al. 1998). The current institutional form is state-centered, where agenda-setting is largely nationally driven. This approach avoids the issue of formalizing the structure of the organization prior to the emergence of greater identification and consensus of its role (Higgott 1993). Although ‘community-building’ is the objective, there is no strong consensus on shared values and interests. Indeed, principles such as unilateral and non-binding commitments may actually engender disagreements (Grieco 1998). There is no collective objective to which member-states can subscribe to ensure a deepening cooperation. The intent of APEC, however, is to provide a “structure of certainty” for inter-governmental economic cooperation in the region (Dobson and Lee 1994).

B. Inter-regional Cooperation in ASEM

ASEM was the culmination of Europe’s efforts to rediscover Asia and Asia’s attempt to reestablish its economic links with Europe (Lee 1997). Ruland (1996) referred to it as a striving to rebuild a relationship that has been marred by clashes over human rights, democracy, environmental issues, and trade. The avowed aim of the ASEM is to reinforce the weak link in the triangle of relations between Asia, North America, and Europe, and fill in the “missing link” in the global triangle. Thus, shortly after the release of the EU’s “New Strategy for Asia” and following a proposal from Singapore, a historic meeting between the heads of government from 10 Asian countries and the 15 member-states of the EU (including the president of the European Commission) took place in Bangkok in 1996 to inaugurate ASEM.

ASEM as a whole accounts for over 65 percent of the world’s gross national product, 61 percent of the global merchandise trade, and over half of the world’s foreign direct investment, which is almost comparable to APEC’s. Yet intercontinental trade and investment is perceived to be relatively underdeveloped and not commensurate to transpacific economic exchange. Nevertheless, Europe is an important trading market and a source of investment for many East Asian countries. Similarly, ASEM holds attraction for Europeans, given its commercial potential.

Following APEC’s lead, members encouraged concerted unilateral action in the facilitation and liberalization of trade and investment between Asia and Europe. To strengthen mutual trade and investment, certain initiatives aimed to eliminate trade obstacles through better application of existing rules, primarily those of the WTO. Both Europe and Asia share an interest in sustaining efforts toward continued liberal-
ization under the multilateral trading system, ensuring open markets, and maintaining transparency. Pelkmans and Fukusaku (1995) coined the phrase “open continentalism” to describe this principle, which in essence is similar to APEC’s open regionalism and its nesting tendencies. ASEM has been building on a program of activities since its first meeting in Bangkok. Finance and economic ministers have met several times to discuss issues of common concern. These ministers have endorsed an ASEM Investment Promotion Action Plan (IPAP) and a Trade Facilitation Action Plan (TFAP), and are establishing a common cause in WTO-related issues.

Relative to APEC, ASEM is quite informal in terms of institutional frameworks and member-states’ commitment. In fact, it has no institutional form to speak of—ASEM has no secretariat or other permanent structures. Thus it has been referred to as a loose forum for dialogue and a network rather than an organization. Moreover, the nature of ASEM is best described by what it is not meant to be. ASEM does not intend to become a regional trade regime like the APEC (Ruland 1996). It does not aspire to create an inter-regional free trade area. The association does not have a timetable for trade and investment liberalization. Preferential trade with Asia is not on the agenda primarily because of the existence of other preferential arrangements like the Lome Convention. Europeans have also insisted that their external trade policy will continue to be conducted within the WTO framework and not through preferential terms.

Unlike the APEC process, ASEM was a top-down initiative (Lee 1997). The association began straight away with a meeting with government leaders from both sides. The first ever meeting in Bangkok was largely an introductory ‘getting-to-know-you’ event with very meager results. The meeting was valued more for its symbolism rather than its substance (Soesastro and Wanandi 1996). The agenda that emerged at the first ASEM was an amalgam of EU and Asian (largely ASEAN) preoccupations. But like APEC, ASEM was explicitly intended to be the start of an extended process, not the inception of a formal set of institutions.

Although the primary purpose of ASEM is to encourage trade and investment exchanges, the association has a broader and a more comprehensive agenda that is not limited to economic issues. A substantive political dialogue has been commenced at both ministerial and official levels on global and regional issues of common concern. In Bangkok participating countries agreed to foster political dialogue, reinforce economic cooperation, and promote joint undertakings in the fields of science, education and development, culture, and environment, as well as in the fight against crime. APEC is more narrowly confined to regional trade and investment while ASEM discussions include political and security issues such as the UN reform and arms control and proliferation.

The next summit of European and Asian leaders in London produced more substantial results including an agreement on some guiding principles for the ASEM
process. At the London Summit, ASEM leaders endorsed the Asia-Europe Cooperation Framework, which set out the key objectives of the ASEM process, the key priorities and major areas of Asia-Europe cooperation, and a mechanism for the coordination and management of ASEM activities. The leaders agreed that the ASEM process should (a) be conducted on the basis of equal partnership and mutual respect and benefit; (b) be an open and evolutionary process; (c) ensure that enlargement is conducted based on the consensus of the heads of state and government leaders; (d) enhance mutual understanding and awareness through dialogue; and (e) promote cooperation through concerted action aimed to advance political dialogue and economic cooperation.

The leaders also agreed that the ASEM process will be an informal process and that ASEM need not be institutionalized. Instead, they agreed to pursue multidimensional dialogue and encourage exchanges beyond governmental channels. This process is intended to stimulate and facilitate progress in other forums, particularly between the business/private sectors, think tanks and research groups and, no less importantly, between the peoples of the two regions. Unlike APEC, ASEM has been particularly conscious of promoting dialogue on a broader range of issues and involving a greater number of stakeholders. Prior to each summit, the European Commission sponsored the Venice Forum (1996) and the Manila Forum (1997) involving various members of civil society (including distinguished persons from the academe, arts, and media) in discussions aimed at promoting mutual understanding between Asia and Europe. The business sector has its own Asia-Europe Business Forum to further enhance business cooperation between the two regions. In the cultural and social fields, the Asia-Europe Foundation provides some initiative to advance mutual awareness by promoting intellectual and cultural exchanges between think-tanks, universities, peoples, and cultural groups. Building inter-regional networks and information conduits is considered strategically important in institution-building in ASEM.

The London Summit also commissioned an Asia-Europe Vision Group to develop a medium- to long-term vision that would guide the ASEM process. A draft Vision Group report submitted to ASEM foreign ministers in 1999 called for the gradual integration of Asia and Europe "into an area of peace and shared development." The Vision Group also recommended "a fivefold expansion in student exchanges between the two regions by 2025 and the eventual goal of free flow of goods and services by the year 2025." The draft report also called for closer macroeconomic policy coordination and reform of the international financial system as well as coordination in political and security dialogue. Recognizing the need for an institutional point of coordination between its members and the need to ensure ASEM's momentum, the Group recommended the establishment of "a lean but effective secretariat." It also proposed the conduct of meetings among the ministers of environment, science
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and technology, and education in addition to those of ASEM ministers of foreign affairs, trade, and finance. These recommendations have been submitted for endorsement at the next ASEM Summit.

These achievements are all significant as no formal institutional mechanism on an inter-regional level previously existed between Asia and Europe. But there are immense obstacles to institution-building in ASEM. Mark Hong perhaps succinctly captured the difficulties that face ASEM by noting that, "ASEM is a bold and unique experiment which tries to promote cooperation between two regions with disparate levels of development, no common history except conflict, domination and exploitation, and very little in common in terms of values and systems—neither geography, ethnicity, politics nor strategic interests" (cited in Maull et al. 1998). Indeed, ASEM should really be viewed as a long-term process of institution-building.

For one, agenda-setting in ASEM is complicated by the decision-making process in both Europe and Asia (Yeo 1997). A sharp asymmetry in internal organization between the two regions exists. For another, the composition of ASEM is unique as it includes a supranational entity—the European Commission. The Asian member-states have had to deal with the EC as an equal sovereign entity not present in other regional cooperation efforts. While the EU could rely on a highly institutionalized mechanism for internal coordination and a long tradition of external relations with other groups of states, the Asian side had to start from nothing. The 10 Asian members of ASEM had to organize themselves on a regional basis considering the fact that their counterpart was the most advanced regional grouping in terms of economic and political integration. They also had to come up with joint positions on a number of contentious issues to present a united front at the Bangkok and London meetings. More significantly, the inclusion of political cooperation in the ASEM agenda pushes greater policy coordination between Asian governments on political and security issues.

The preparations of ASEM set off a hitherto unknown process of regional coordination in Asia. Prior to the Bangkok and London meetings, East Asian countries repeatedly met with each other at the ministerial and senior official levels to coordinate their positions. As the ASEM process got under way, Asian countries are now caucusing on a regular basis. Consequently, the emerging structure of the ASEM process intensified the need for regional coordination on the Asian side. Helped by Europe's willingness to recognize East Asia as a distinct region, a de facto East Asian Economic Caucus (EAEC) emerged. This was not possible in APEC due to opposition from the United States and Australia. But Asia-Europe inter-regionalism in the framework of ASEM facilitated an informal EAEC-like East Asian regional entity (Hanggi 1998). This development has important implications for regional cooperation in Asia.
C. Institutional Development in Asia

Comparing the two regional initiatives, Higgott (1998b) observed that APEC is more strongly institutionalized with a much more defined agenda than ASEM. ASEM is clearly different in scope and aspirations and presently has no strongly structured, let alone institutionalized, agenda. But the two associations have significant similarities too. In contrast to the institutionally driven integration efforts in Europe, both initiatives are biased against formal institutionalization from the beginning. By design, both arrangements have had minimal institutional structures. APEC and ASEM are both voluntary, non-binding consultative associations operating on the basis of consensus. The patterns of cooperation in both APEC and ASEM demonstrate a common distrust of bureaucratic structures and equal emphasis on informality, non-interference in each other’s internal affairs, consensus-building, unilateral but coordinated decisions, dialogue among political leaders, and tacit postponement of conflict-prone issues (Mauil et al. 1998).

Existing literature on regionalism in Asia accentuates the two dominant schools of thought on institutionalism. Liberal advocates argue that economic cooperation in APEC and ASEM has been largely market-driven and spurred by the decision of political leadership to provide some governance structure to manage the growing economic interdependence of its members. Much of this economic analysis centers on efficiency issues and concerns about market distortions that hinder the realization of freer trade within the region. Others concentrate on the trade diversion and/or creation effects of regional trade cooperation and their impact on the multilateral trading order. On the other hand, realist explanations of institutional development in Asia focus on the structural changes caused by shifts in power distribution and inter-state bargaining dynamics. Much of this analysis concentrates on the changes resulting from the end of the Cold War and the shifts in the relative power of the United States as determinants of regionalism in Asia.

Both perspectives highlight the central role of interests in the analysis of regionalism in Asia. The liberal perspective emphasizes the commonality of commercial interests of these economically interdependent states. Despite the increasing intra-Asian trade, Asian countries particularly recognize that a large proportion of their trade occurs with countries outside the region. Therefore, it is not in the interests of these countries to form an inward-looking trading bloc because the risks from trade diversion and retaliatory closure of export markets outside the region are great (Anderson and Snape 1994). Liberalists further argue that the constitutional framework to define the principles of the organization and the obligations of its members developed only after Asian countries began opening up their inward-looking economies to the outside world. Then, too, the North American and European decision to
participate in Asian regionalism was due mainly to their desire to benefit from the growing prosperity of the region. Moreover, the creation of ASEM was partly motivated by European concerns of being left out of APEC and Asian concerns of being dominated by the U.S. and Japan in APEC. For Asians, regular consultations and closer relations would provide them with a forum to influence Europe to favor an open system and assuage fears of European protectionism. On the other hand, Europeans were conscious of the denial of economic opportunity by their exclusion from APEC. Recognizing its failure to develop a dialogue with Asia, the EU sought to give higher priority to economic relations with Asia and other forms of economic cooperation toward the overall improvement of the cooperative climate (Pelkmans and Fukasaku 1995). Unlike the European style of functional integration, these arrangements were not envisioned to be an exercise in integration but merely to facilitate international commerce.

On the other hand, realists blame the region's institutional deficit on the deeper divergence of standpoints among the participating states (Rudner 1995; Hirano 1996; Ogita 1997). Each actor has different interests and expectations of the region's institutions. The linguistic, ethnic, cultural, and historical differences between the members directly impinge on the definition of rules and rules systems and cooperative institutions (Harris 1993; Maull et al. 1998). The level of institutionalization can be attributed to the members' opposing views of the nature of the regional cooperative arrangement. In general, developed economies wish to see the strengthening of institutions and legal frameworks whereas developing members prefer to see regional economic cooperation more as an evolutionary process (Higgott 1994). Specifically, ASEAN has been unwilling to see any form of supranational regime established in the region. This is reflective of the concern that rapid institutionalization would produce an inflexible organization and accelerate excessive liberalization of trade and investment without due consideration of the special circumstances of developing countries. On the other hand, developed members such as the United States have pushed for a more legalistic approach and an adherence to timetables for economic cooperation in APEC. In general, U.S. insistence on reciprocity and automaticity contrasts with the Asian preference for concerted unilateralism or voluntary liberalization through peer group pressure.11

Realists argue that regime formation in Asia largely proceeded from strategic reasons. Both APEC and ASEM were attempts at engaging major powers in an institutional framework. It is often said that one reason why APEC was established was because of a fundamental strategic objective—to keep the U.S. engaged in the region, economically and militarily. U.S. involvement is important because the region's economic prosperity over the last several decades is attributable to a large measure to the hegemonic presence of the U.S. as provider of regional peace and stability. APEC
became a means of maintaining beneficial ties between the U.S. and Asia at a time when binding security ties had become less important. From the American standpoint, APEC was established to counter the prospects of a closed, Japan-dominated Asia, and the Japanese approach toward more managed trade (Grieco 1998). Ironically, APEC was also conceived to keep U.S. hegemonic tendencies in check. Having Americans engaged in an open dialogue will help limit their propensity to engage in unilateral actions that would be detrimental to the multilateral trading system.

Similarly, ASEM offers an opportunity to balance relationships with the U.S. and make sure that East Asian and EU voices can be used to reinforce continued liberalization in the multilateral trading system. As Gerald Segal (1997) put it, the role of ASEM is to keep the Americans “honestly committed to multilateralism” and, at a more general level, to collectively oppose any other attempts at aggressive unilateralism.

Much of the discussion on ASEM also depicts the inter-regional cooperative effort as a counterweight to APEC. More specifically, Asia-Europe collaboration is meant to guard against U.S. hegemony in the global economy. Asian countries wanted a more extensive European economic presence in their region, motivated in part by a desire to offset the degree of economic dependence on Japan and the U.S. as sources of foreign investment and as trading partners. Another major strategic motivation of both APEC and ASEM was to include China as an emerging power in another multilateral framework of cooperation. China would then be exposed to the views of others and be subject to international rules and codes of conduct.

As mentioned earlier, ASEM also helped constitute an East Asian dialogue process between Japan, China, South Korea, and the ASEAN countries (Hanggi 1998). For ASEAN members, ASEM offered an opportunity to increase their collective bargaining power by including the three Northeast Asia powers into their camp. No less significant, an East Asian dialogue would also provide a forum for political discussion and confidence-building between Japan, China, and South Korea where nothing existed before. Greater policy coordination between these three East Asian countries and between this group and ASEAN will contribute to greater institutional cohesion in both APEC and ASEM.

Apart from viewing institutions exclusively as means to achieve certain ends, we can also examine the evolutionary process of institution-building in Asia. While it is important to look into rationalist considerations of cooperation, we should also highlight the importance of knowledge and social learning as contributing factors to regime formation and change. Although the main rationale for these institutions was economic, developing a greater understanding and awareness of the nesting pattern of regional regimes between and across international organizations was also vital. Social learning in APEC and ASEM can help overcome the differences between members and facilitate regime formation and cooperation.
A major rationale for both APEC’s and ASEM’s existence is to enhance the success of global institutions and norms. The agenda of both groupings directs its members to observe the rules and practices of the WTO. Consistency with the GATT-WTO regime or institutional nesting has been the dominant theme of Asian regionalization (Aggarwal 1993). APEC’s open regionalism and ASEM’s open continentalism ensure that both arrangements continue to complement the multilateral trading order. More importantly, they allow either institution to rely on and benefit from the more established institutions of the international system in promoting cooperation among themselves. Nesting is probably the only feasible alternative for bridging sub-regions, particularly those with such differentiated characteristics and those that lack any history of cooperative relations such as in Asia. These would allow existing sub-regional institutions to be nested within a broader and looser framework while preserving their existence. This same positioning would ensure that sub-regional efforts were in accord with generally agreed regionwide principles and that management of particular bilateral and sub-regional conflicts would not conflict with or impinge upon one another (Mack and Ravenhill 1994).

For instance, to prevent the near collapse of the EVSL, APEC members referred their proposals to the WTO, thereby allowing the initiative to continue and preventing it from being a stumbling bloc to the APEC process. Similarly, the inadequacy of both institutions in coping with the regional financial crisis was addressed by relying on the institutions of the IMF and the World Bank. ASEM established the ASEM Trust Fund, managed through the World Bank, to give affected countries access to the additional technical know-how needed to solve the financial crisis. In both instances, both institutions were nested upwards in a larger multilateral economic order (Grieco 1998). Financial instability and recession might have sparked pressures for increased protection among its members. But the nesting behavior of APEC and ASEM made them resilient in the face of crisis and allowed them to move their respective liberalization agenda forward and maintain open markets.

While both associations are marked by significant asymmetries in terms of their political frameworks, economic development and value systems, there has been a “progressive realization” of the benefits of economic cooperation and the formation of common principles and norms. APEC and ASEM contributed to the development of a regional identity, thus helping manage various aspects of regional and international relations (Higgott 1998b). The emphasis on process rather than formal institutions in both APEC and ASEM facilitates social learning in its evolutionary approach to institutionalization and can promote greater mutual understanding, especially on sensitive issues. The gradual, pragmatic, and voluntary nature of cooperation assists in building consensus.

Both associations helped to develop a consensus on the basic principles and norms that should govern international behavior and underline rules that define a
meta-regime involving Asian countries (Aggarwal and Morrison 1998). The creation of these consultative mechanisms facilitates cooperation through the development of a common vocabulary and, more ambitiously, common understanding of basic challenges and objectives of issue-areas. Frequency and coverage of policy-oriented dialogue in these institutions increase awareness of each other's concerns and motives (Elek 1994). For instance, the leaders' meetings in both forums also provide significant opportunities for confidence-building and mutual understanding. These summits and bilateral side meetings provide an opportunity for leaders to meet, become familiar with each other, and develop mutual trust. Leaders' meetings generate their own momentum as the host does his best to make the meeting produce significant results. This desire for a successful outcome itself acts as a spur to the continued progress of the grouping (Lee 1997). In short, APEC and ASEM can become significant vehicles for 'social learning' and the consolidation of the norms of multilateral citizenship (Higgott 1998b).

To some extent, learning also transpires between APEC and ASEM (Camroux and Lechervy 1996). In its mode of operation and scope of work, ASEM has emulated APEC. Institutional structures and mechanism in ASEM have followed the APEC practice of SOM meetings in defining trade and investment action plans and involving the business sector. But APEC can learn much from ASEM as well. The presence of political and security matters on the ASEM agenda can positively condition Asian receptiveness to cooperate on non-economic areas and foster the same level of discussion in APEC. Moreover, ASEM's achievement in facilitating the participation of civil society into its process and fostering greater cultural and people-to-people exchanges can provide useful lessons for APEC. And, as discussed earlier, the formation of a de facto EAEC coordinating process in ASEM will inevitably foster greater solidarity among Asian countries in APEC as well.

Critics, however, point to the limitations of the institutional nesting in developing more formal institutions in the region. Nesting, as expressed in the principle of "open regionalism," helps overcome or hides the tensions and differences within the association. But this does not foster the development of more reliable and sustainable institutions within APEC to support regional economic cooperation. Aggarwal and Morrison argued that open regionalism, in fact, retards the development of rule-formation, implementation, and enforcement at the regional level. They contend that rigid adherence to this concept will make it very difficult for APEC to move toward deeper institutionalism. The reason, however, may be due more to the influence of sub-regional organizations on the prospects of institutionalization in APEC and ASEM.

The style of economic cooperation in both APEC and ASEM has its foundation in the ASEAN model (Elek 1994). As Michael Haas (1997) termed it, Asian regional cooperation has been "ASEANized." The "ASEAN way" has been at the core of re-
gime formation in both associations, helping to define the principles and norms that guide economic cooperation. The integration of ASEAN way points to the centrality of ASEAN in both institutions and to institution-building in Asia. It describes the slow but deliberate manner in which this sub-regional organization moves. The essence of the ASEAN model was conflict avoidance rather than conflict resolution or dispute settlement, consensus decision-making, non-intervention in the internal affairs of other states, and the formal equality of member states. Adherence to these principles practically guarantees slow and time-consuming decision-making.

These principles can be found in ASEAN’s 1976 Treaty of Amity and Cooperation and the 1987 protocol amending the treaty. The accord guarantees mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations; the right of states to be free from external interference or coercion; non-interference in the affairs of one another; settlement of disputes by peaceful means; renunciation of threats or force; and effective cooperation among its members. These have been enshrined as cardinal principles in both APEC and ASEAN.

The ASEAN way found expression in the 1990 Kuching Consensus, which laid down the primary conditions for the participation of ASEAN countries in APEC. These conditions specified that (1) ASEAN’s identity and cohesion should not be eroded and all its cooperative efforts be preserved; (2) APEC should be based on the principle of equality, equity, and mutual benefit; (3) APEC should not be an inward-looking trade bloc but seek to strengthen multilateral trade and economic system; (4) APEC be a forum for consultations and constructive discussion on economic issues through dialogue rather than unilateral or bilateral measures; (5) APEC enhance the individual and collective capabilities of participants and articulate them in multilateral forums; and (6) APEC take a gradual and pragmatic approach to its eventual institutional structure and membership problems (Tan et al. 1992).

ASEAN remains very much a loosely structured organization, which is basically inter-governmental in nature and without supranational objectives. The grouping works by consensus-building, which ensures that no decisions detrimental to the national interests of its members would be taken. The consensus rule applies to all issues and levels. ASEAN’s ministerial meetings act as the association’s governing bodies while a limited centralized administrative secretariat is maintained to monitor and coordinate its activities. The principal function of the association then is to coordinate inter-state relations rather than to forge a more integrated regional economic community. ASEAN is therefore a highly decentralized organization and structure where the primacy rests on national control and sovereignty. In like manner, ASEAN officials have taken the position that APEC should essentially be a forum for consultations and constructive discussions on economic issues and that it “should proceed gradually and pragmatically, especially as regards its eventual
institutional structure." In this sense, institution-building in APEC and ASEM will only go so far as ASEAN will allow it to go.

ASEAN governments are generally uneasy about efforts to strengthen institutions formally for fear that a wider regional organization might dilute ASEAN's international role and subordinate it. There are concerns, for instance, that ASEAN might be eclipsed by APEC and ASEM (Haas 1997; Hanggi 1998). The reluctance of ASEAN toward institutionalization precisely stems from this fear of dilution and large-power domination. For instance, the ASEM process offers the prospect that a Asia-Europe cooperation framework might take the place of the EU-ASEAN dialogue mechanism. Michael Leifer argued that the very success of ASEM could diminish the EU-ASEAN relationship (Maull et al. 1998). Similarly, a highly institutionalized APEC will be antithetical to the philosophical underpinnings of ASEAN (Ariff 1994).

At the moment, ASEAN states retain much of the initiative, particularly from the Asian side. However, ASEAN has its limits as a model, having proven less successful in promoting economic integration than in building regional confidence (Naya and Iboshi 1994). The ASEAN approach also places a heavy burden on the socializing capabilities of APEC and ASEM (Ravenhill 1998).

D. Implications for Policy

In the face of the Asian financial crisis, both ASEM and APEC have proved to be largely ineffective (see Sheridan 1998). The Asian financial crisis has demonstrated that regional institutions are still rudimentary and ill-equipped to manage regionwide challenges. The crisis has given rise to questions about the need to strengthen the institutional framework of regional cooperation. Clearly, there is a need for institutional reform reviewing the organization's principles, structures and processes. Existing structural, procedural, and operational limitations hinder the effectiveness of both institutions to address future challenges. For APEC, there are questions about how the association will realize the Bogor vision. For its part, ASEM still has to achieve coherence of its institutions and processes.

The recent financial crisis in Asia was especially significant to ASEM. The Bangkok summit was supposed to mark Asia's new status in the world and demonstrate Europe's recognition of this status. A key component of the rationale for the first ASEM was that the then emerging Asian economic success—and Europe's aspiration to be part of it—would be the main drivers of the relationship. But by the time the 1998 London meeting was held, conditions had changed completely as growth gave way to recession. The Asian crisis altered mutual expectations associated with ASEM and exposed the narrowness of its agenda. On the other hand, APEC was conspicu-
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ously absent from any international response to the Asian crisis. During the Vancouver summit, APEC economic leaders eschewed any regional initiative to address the crisis, resolving instead to rely on the IMF. In fact, APEC seemed ill equipped to carry out a financial-crisis management function. The event also revealed the narrowness of APEC’s agenda and the need to include macroeconomic and financial issues as part of its cooperation efforts.

However, the fact that these cooperative alliances have not completely disintegrated in the face of the crisis points to their resiliency. The rapid spread of the crisis throughout the region reflects the high level of economic interdependence and the enduring institutional systems that have so far been achieved in the region. Indeed, the crisis has heightened the need for greater cooperation and coordination of policies as well as the continuous development of these arrangements’ institutional framework. It also revealed the need for greater institution-building that will help the system manage change.

One can argue that informality and institutional vagueness have their benefits. They allow for more flexibility and room for maneuver. Furthermore, they preclude rigid application of rules that would constrain national prerogatives, and help overcome national reluctance and mutual suspicion through accommodation. In essence there is virtue in structural ambiguity—and the most appropriate model seems to be the one that preserves a country’s decision-making sovereignty. However, there are doubts as to the effectiveness and sustainability of this model. The crisis showed that the present state of institutions in APEC and ASEM remains weak or underdeveloped. There is skepticism whether members of both organizations will ever get such a high level of mutual trust that will make rules and injunctions unnecessary. More importantly, their scope and agenda have expanded in such a way that it has entirely outgrown the lean and simple structure of the two institutions. These activities have increased the administrative demands on both institutions. In short, it is difficult to see how economic cooperation under APEC or ASEM can proceed without continuously developing their respective institutional frameworks.

Structural change caused by the Asian crisis provides new impetus for institutionalization in APEC and ASEM. However, differences in cultural beliefs, values, and norms remain important obstacles in defining more formal institutions and processes. Policies and initiatives intended to promote greater mutual learning and understanding will help address these concerns. Recent changes in cognitive understandings, helped by social learning and epistemic communities, assist in ameliorating these differences. APEC and ASEM should really be viewed as an extended educational process, which does not preclude the creation of formal institutions at a later time. The question is how to hasten the process of social learning to build stronger community values and norms.
## Comparative Shares of APEC and ASEM Economies (in percent)

<table>
<thead>
<tr>
<th>Country/Region</th>
<th>Share of World GNP</th>
<th>Share of World Merchandise/Trade</th>
<th>Share of World FDI</th>
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<tr>
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<td>21.29</td>
<td>6.92</td>
</tr>
<tr>
<td>South Korea</td>
<td>1.40</td>
<td>2.00</td>
<td>1.78</td>
</tr>
<tr>
<td>China</td>
<td>2.55</td>
<td>3.75</td>
<td>1.53</td>
</tr>
<tr>
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<td>0.63</td>
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<tr>
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<tr>
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<tr>
<td>ASEM</td>
<td>63.07</td>
<td>65.49</td>
<td>47.83</td>
</tr>
</tbody>
</table>

Note: (1) For trade and investment, data for Belgium includes Luxemburg. (2) 1990 data for APEC economies excludes Brunei, Chile and Papua New Guinea, 1997 except Brunei.

At the moment, it is not conceivable for either APEC or ASEM to replace the other bilateral, regional, or multilateral forums, particularly the WTO. They will have to continue to nest themselves on to the WTO, particularly in forging an agreement in difficult areas, enforcing compliance, and facilitating dispute settlement. Sub-regional arrangements such as the NAFTA and EU will probably achieve more by liberalizing and integrating their economies. In that sense, APEC and ASEM may benefit from the disciplines adopted by these more advanced economic arrangements.

Aggarwal and Morrison (1998) see Asian regionalism as possessing certain manifestations. The minimalist model stresses a community-building process rather than an organizational structure with community-building and mutual understanding as its primary objective. In this model, social learning and improvement in cognitive understandings will be important. The second model is patterned after that of the Organisation for Economic Co-operation and Development (OECD), for it seeks to provide a venue for identifying and discussing international economic issues. Note that the OECD operating style is consultative, informal, and communicative. In this organization issues are handled by special task forces initiated through a high-level consultative mechanism (Ostry 1998; Rieger 1989). The model will provide a center for research and information-sharing, imposing few policy constraints on its members. Finally, there is the "trade agreement model," the overriding purpose of which is trade liberalization, which can be achieved through a formalized process similar to those of other regional trade regimes. As argued above, this may be difficult given the reluctance of the Asian members toward formal institutions.

All these different forms of economic cooperation should be promoted in APEC and ASEM to enable both institutions to achieve their lofty visions. However, the goal of community-building requires a common identification of a regional identity. Social learning highlights the importance of nurturing political dialogue and cultural exchange as the foundation of a more sustainable economic cooperation effort.

NOTES

1. This study refers to East Asia (Japan, South Korea, and PR China) and Southeast Asia (mainly the ASEAN countries, principally Brunei, Indonesia, Malaysia, Philippines, Singapore, and Thailand). These countries form the core Asian members of both APEC and ASEM.

2. "Principles" are defined as beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice (Krasner 1983).
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3. For a brief history on Pacific regional economic cooperation, see Rieger (1989) and Soesastro (1994).

4. For recent discussions on open regionalism, see Bergsten (1997), Garnaut (1996), Yamazawa (1994) and Drysdale et al. (1998).

5. The ministers at the Canberra meeting felt it "premature" to decide on the organizational structure of APEC. But they managed to form a consensus on the broad principles of APEC stating that cooperation should: (a) sustain the growth and development of the region; (b) recognize its social and economic diversity; (c) involve a commitment to open dialogue and consensus based on mutual respect, (d) be based on non-formal consultative exchanges of views; (e) focus on those economic areas where there is scope to advance common interests and achieve mutual benefits; (f) directed at strengthening the open multilateral trading system and not involve the formation of a trading bloc; and (g) complement and draw upon, rather than detract from, existing organizations.

6. The Manila Framework also identified priority areas of developmental cooperation namely: (1) the development of human capital; (2) the development of stable, safe and efficient capital markets, (3) the strengthening of economic infrastructure; (4) the harnessing of technologies for the future; (5) the safeguarding of the quality of life through environmentally sound growth; and (6) the development and strengthening of the dynamism of small and medium enterprises.

7. Much of the leaders' time is actually conducted in bilateral 'side meetings.' Generally, these bilateral meetings help complement the APEC process, but discussions here are on a variety of political and security issues that are not connected with formal APEC programs. In this sense, the leaders' meetings are conducted more for their value in international diplomacy and domestic political terms rather than for trade, investment, or development cooperation.

8. APEC's only significant venture into rules-making so far is the 1994 agreement on Non-Binding Investment Principles (NBIP), which remains voluntary in its implementation.

9. There is a division of competencies within the European Union with the Commission being responsible for trade matters, and the individual countries for political matters. But there have been fundamental problems relating to how the EU and its member-states manage their external policy (see Rollo 1998).

10. Since 1994, foreign ministers of ASEAN countries have met regularly at the annual Post-Ministerial Conference (PMC) with their counterparts from China, Japan, and South Korea. In the midst of the Asian crisis, the leaders of ASEAN and those of China, Japan, and South Korea met for the first time on their own in December 1997. Surprisingly enough, they discussed the issue of a free trade area covering Southeast Asia and Northeast Asia (see Hanggi 1998).

11. U.S. focus on reciprocity stems from the suspicion of potential free-riding created by the unconditional MFN treatment. American policymakers were unwilling to see the benefits achieved through APEC to trickle down to non-members, particular the EU (see Rollo 1998).

12. Singapore PM Ooh proposed that Asia establish "Pacific-style" ties with Europe when he put forth the idea of ASEM in October 1994.

13. The "Asian way" incorporates six major principles: (1) Asian solutions to Asian problems; (2) equality of cultures; (3) consensus decisionmaking; (4) informal incrementalism; (5) primacy of politics over administration; and (6) pan-Asian spirit (see Haas 1985).
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Chapter 3

The Use of One Within the Other:

Malcom Cook*

CONCEPTUAL FRAMEWORK

Clarification of Terms

One indication of the need for more theoretical depth and of the superficial use of regionalization and regime theories to analyze the Asia-Pacific region and the formation and dynamics of both ASEAN and APEC is that, often, the terms “economic region” and “economic regime” are used interchangeably despite their fundamental difference. The most noticeable and potentially problematic interchanging of these two terms happens when an acronym for an inter-state regime1 (i.e., ASEAN or APEC) is used to describe the region (i.e., Southeast Asia or the Asia-Pacific) or even the unilateral actions of actors within these regions. Such interchangeability inferences that these actions are regime-based when in fact they have little or nothing to do with the regime and the actor’s reasons for being its member.

Roughly put, an economic region is an area within which geographical proximity and other factors, such as cultural similarity, historical closeness and depth of relations, harmonization of relevant state policies2, lower both the objective and subjective transaction costs of economic relations among the regional actors, resulting in a

*The author would like to thank PASCN for its support and Dr. Ponciano Intal and Dr. Bil Hansen for their useful insights.
high level of inter-actor economic activity. Thus, an economic region is defined and
delineated by the high level of economic activity among the actors alongside their
mutually shared and harmonizing characteristics. These then determine whether a geo-
graphical area is an economic region.

In counterpoise, Aggarwal defines regimes as “arrangements that regulate the
imposition of unilateral controls and the negotiations of bilateral accords,”\(^3\) where
economic regimes focus on arrangements dealing with intra-member and extra-member
economic issues. Krasner argues that actors choose to form regimes and submit to the
limitations on their unilateral action as regimes help increase information flows, facil-
itate the monitoring of relations and the arrangements concerning them, and create
valuable reputations for each actor, ideally leading regime membership to become a
virtuous circle for each member.\(^4\) Regimes are seen to draw their member-actors closer
together through explicit rules or unwritten but universally understood rules or cus-
toms that bind all actors to organize their shared relations in certain ways. All regimes
are assumed to have been purposively created and maintained by the member-actors to
help organize their relationships and assure that they are mutually beneficial and pre-
dictable. An economic regime is thus a group of economic actors, or their representa-
tives, that deliberately come together to organize their existing and future relations in a
more predictable way through the adoption of rules and universal customs (i.e., the
actions of actors define the regime, making it fundamentally different from an economic
region).

While regimes and regions are conceptually quite different, it is a common and
well-supported assumption that when actors identify themselves as being in an eco-
nomic region or strive to increase the level of activity among themselves, they often try
to organize themselves into regimes, thus creating a practical causal linkage between
the two terms. However, it is equally possible for externally or internally defined eco-
nomic regions to have no corresponding economic regimes, especially ones that are
inter-state in nature,\(^5\) or those that are difficult to define as economic regions with
economically focused regime structures.

Another important difference between these terms is that even if a region is also
bound completely by the areas of jurisdiction of the members of a regime organized to
facilitate economic activity in the region, the term “regime,” or its official acronym,
should only be used when referring to the actions of this organization and not to all
interactions that take place between actors within the region. The region in this sense
is a conceptually greater entity than the regime, and the regime should be treated only
as an entity within the region. Hence, it is possible for the region to witness an increase
or decrease in economic activity (i.e., in its “regionalism”) independent of regime ac-
tions, and for the regime to become more or less institutionalized irrespective of
changes in the level of economic integration among the regional actors.
The Use of One Within the Other

This clarification is of more than academic interest to this work, as it focuses not on economic regions and regional overlap, but on economic regimes and regime overlap. The difference between these two terms and their relationship is already supported by the literature on ASEAN and APEC, whereby it is widely understood that the formation of the APEC regime stemmed from the internally developed definition of the Asia-Pacific region as an economic region in need of an inter-state regime to help support this regional character. On the other hand, in 1967, it would have been difficult to see the geographical area bounded by the original five member-states of the ASEAN regime as an economic region, or the development of the ASEAN regime and its rules as stemming from the member states' definition of it as an economic region. Simply put, for APEC, the economic region came before the economic regime, while for ASEAN, the regime with its economic component and rules came before the region.

Another term that is intimately connected to, but separate from, the concepts of region and regime is the collective action group. The theory behind the term is most often seen to have stemmed from Olson's work, *The Logic of Collective Action*, in which he tries to determine why some groups achieve their organizational goals while others don't. Olson assumes that each member of a group is a self-interested actor that chooses to join and remain in the group only as long as it suits their interests and the other members allow it to remain within the group. Collective action groups are argued to be formed when it is in the interest of a group of actors to provide a collective good that any member-actor or a smaller group of member-actors cannot supply unilaterally.

Potential members of a collective action group must identify a collective action issue and generally agree on how they should distribute among themselves the costs of achieving the desired collective good. As intra-group information flows increase, alongside other collective goods offered by the economic regimes to their members, then certain actions can be treated as a collective action while the regime itself becomes a collective action group. This fusing of terms and the conceptualization of economic regimes as collective action groups are already established, though perhaps not yet fully developed, within the literature on regionalization and regimes. This elaboration, though, may allow observers of economic regimes to use the more refined quantitative and qualitative tools of the sociological research on collective action to better analyze regime dynamics and outcomes.

There is one caveat, though. In most of the sociological works perused for this paper, the study of collective action groups dynamics is internally focused where the group and its collective goods created are treated as a closed system within which the goods can be actualized fully within the group. However, the collective action group (ASEAN) and its desired goods cannot be treated in isolation but rather must be seen in relation to other actors within the larger collective action group (APEC). This differ-
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ent approach is necessary, as the key collective action good sought by ASEAN members within APEC is the incorporation by the latter of the former’s interests in terms of APEC’s organizational nature and its treatment of issues. Moreover, a collective good cannot be achieved solely within ASEAN but only through dynamic interaction between the ASEAN collective action group and the non-ASEAN members. Further clarification of this changed focus for collective action and its ramifications on the use of collective action theory will follow in the theory section.

Still another term that needs to be clarified operationally is the *state*, there being no consensus definition of the word in any field of study, only a plethora of definitions that are often contradictory or that conceptualize it at different levels of abstraction and with reference to different issues. Such clarification is also important because the two economic regimes this paper deals with are largely inter-state in nature from which stem much of the dynamics of each regime. The state here is thus defined as a set of authoritative bodies that collectively recognize legal monopoly over a bounded territory whose members these bodies represent in inter-state relations with other bounded communities’ authoritative bodies. The state here, as used, does not refer to a bounded society or its actors. As well, the definition of the state here will not be limited to the nonelected executive bodies and their actors, but will incorporate both the legislative and executive actors of this set of authoritative bodies.

Furthermore, the state here will not be treated as a single unitary actor with a full, internally developed understanding of the interests it is to pursue in different inter-state fora. Rather, the state and the interests of its bodies will be divided between political state actors and bodies, and bureaucratic state actors and bodies, where the elected or appointed legislative leaders of the state will be termed political state actors and the non-elected ones who are appointed by the political state leaders to head the executive bodies as bureaucratic state actors. It is important not to assume that the legislative and bureaucratic state actors are fully united in purpose or even share the same definition of state interests in inter-state relations. Instead, the member states of the two regimes have both political and bureaucratic actors whose leaders have the final say over state actions vis-à-vis the regimes. Thus, while the term *inter-state regime* infers negotiations and relations among states, the term *state* itself implies a set of negotiations and relations among the political and bureaucratic actors involved.

For this paper’s definition, the state will also be seen as the nexus for the set of relations between political or executive bodies tasked to deal with state interests in a specific issue area, and influential non-statal groups within the state’s bounded society with interests, often in opposition to each other, in the same issue area. This definitional complexity stems from the assumption that while the state has legal monopoly over its bounded society, its bodies do respond to social demands on itself and state policy, meaning that state interests in any issue area are partially defined by the
articulated interests of influential non-statal social groups. Thus, the state as a member of an inter-state regime is involved in at least three key levels of relations that work together to define both what a state's interests are within the regime and how effective said state will be at achieving them. These three levels are the 1) relations between the relevant state bodies and key non-statal social groups (state-society level); 2) relations between the political and bureaucratic bodies of the state (intra-state level); and 3) relations with other member states (inter-state level, which is most often analyzed in regime studies). It is further assumed that at all three levels, relations are most often those of negotiation and that a clear determination of which level of state negotiation is being dealt with at which time is analytically necessary. So is the understanding of how one level of negotiations affects the state's relations at the other levels and the state's overall ability to maximize its interests within a regime.

To integrate this complex disaggregation of the state as an inter-state regime member with the research problem, this paper will show that both the ASEAN and APEC regimes have bureaucratic fora where personnel from each member-state's relevant bureaucratic bodies meet to negotiate with each other; and political fora where the political leaders of member states also negotiate. Both regimes include purposively institutionalized channels of communication and influence for non-statal groups whose interests are either national or international in scope. Thus, each regime also systematically incorporates the three levels of negotiations with the state as integral parts of the regime. Therefore, if one looks at a single member-state of ASEAN and its individual interest definition and maximization efforts within the APEC regime, four levels of negotiations or sets of relations would emerge: 1) between relevant bodies of the state and relevant, influential non-state social groups with reference to the definition of state interests; 2) between the bureaucratic and political aspects of the state in relation to the definition and operationalization of these interests into policy with the political one being in control of the bureaucratic aspect; 3) between the state and other members of the ASEAN regime with regard to using ASEAN as a collective action group within the larger APEC regime; and 4) between the state as a member of this ASEAN collective action group and non-ASEAN members of APEC in view of the nature and actions of the APEC regime.

Theoretical Insights

To best set out the rationale behind the usefulness of treating regimes as collective action groups and how such an approach may lead to a better understanding of how ASEAN and APEC function as individual regimes and the effectiveness of ASEAN as a regime within APEC, this paper will integrate the overarching theory of
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collective action with the two most common approaches to regime studies, regionalization and regime theory. After this tripartite fusion, the final theoretical stage will highlight how the regime and collective action theories assume intra-group bargaining as a variable and how the insights of formal bargaining theory are also useful for the study of regimes. Again, it must be noted that the treatment of each theory will not be exhaustive or attempt to break new ground, but rather will focus on the integrative elements of all four in the hope of presenting a more nuanced approach to the study of regimes and regime interaction.

Collective Action Theory

Collective action theory’s main concern is to arrive at general explanations of why individual actors either choose to or choose not to form or join voluntary groups and why some of these voluntarily formed groups are able to achieve their stated or assumed goals while other groups fail. In many senses, the origins of the collective action theory start from a pessimistic basis, as Olson’s seminal work’s conclusion, according to Hardin, is that large groups will always fail while small groups may succeed. This suggests that failure is more likely than success and that success is dependent on the convergence of numerous factors. While not directly in line with the focus of this work, such a conclusion seems to cast doubt on APEC’s long-term success as a collective action group given its large number of member states and organizations and their diversity of origins and interests.

This seemingly negative conclusion of Olson’s stems from the key assumption of the collective action theory, which is common to most social science approaches—that each individual actor in an arena of action controls only limited resources and allocates them to try to maximize self-interest. Hence, an actor will only continue an action or set of relations that it perceives to be in its own overall interest. This assumption means that all groups are assumed to be derivative entities, where the shape and success of any group is dependent on its ability to insure that all or enough members perceive that they gain absolutely from their involvement and that others within or without the group do not reduce said actor’s overall interest in the group. Olson’s assumption of absolute self-interest led him strongly to the conclusion that the collective goods provided by collective action groups are merely inadvertent by-products of each actor’s drive to maximize its consumption of selective incentives brought about by membership, and to minimize the cost of offering these to other members of the group. This assumption of self-interest and its consequent supposition that group members attempt to maximize the benefit to themselves of group membership while minimizing the outlay of resources necessary to attain these gains, suggest that
collective action groups can be best seen as negotiating structures where the relative power of members is a key explanatory variable of group dynamics.

Sociologists in the area of collective action theory (many of whom are not so "negative" about the potential for successful collective action as Olson) have isolated certain conditions which help explain why self-interested actors meld into voluntary groups in the first place. One key determinant is whether or not potential group members are involved in pre-existing and harmonious social networks that link them together. The existence of these networks aid potential group members to identify shared interests in voluntary cooperation. It also provides potential members with an understanding of the other members and a basis by which to predict their potential actions and reactions vis-à-vis each other and the identified collective action interests. Thus, such networks are key to the identification of shared interests and the fostering of a sense of predictability of the actions of other members and of the group as well. The essential nature of this condition for the formation of collective action groups leads to the counterintuitive argument that even failed attempts at collective action have "silver linings," as they can help set the stage for the success of similar groups in the future by facilitating communication and information sharing among potential group members.¹⁴

A second determinant of collective action group formation and group size is that such groups only form if no potential member or outside actor is willing or able to supply the collective good unilaterally and, thus, said good can only be provided through voluntary cooperation. As a corollary, the creation of this collective good cannot be opposed by relatively powerful non-members, who could raise the potential negative spill-over effects for individual group members by threatening other interests and their resource allocations. The minimum size of the actual group is seen to be largely correlated to the smallest number of self-interested actors necessary for the provision of the mutually desired collective good and the maximum number of members needed to maximize the individual member gains from its provision at the lowest individual member cost. Efforts to relate with each other within a collective action group is a cost itself and the greater the number or diversity of members, the higher this cost becomes.

Apart from these initial conditions for the formation of groups, collective action theorists have identified certain group and collective good characteristics that impact upon the maintenance of group unity and its success in achieving its collective goals. In terms of group-based characteristics, one key is that a sub-section of the potential or actual group members choose to act as "promoters" and strong supporters of the specific set of collective actions by lowering the costs or increasing the gains of membership for others. Examples of these efforts are the building of solidarity among group members, advertising to others the present and potential future gains from collective actions, helping organize structures that link members together, and struc-
turing them to maximize harmony while minimizing opportunities for friction or disharmony.15 “Promoters” expend their resources to promote collective action to others either because they have a narrower margin of acceptance between potential interest attainment and its opportunity cost when deciding on an action, or their perception of their individual gains from the particular collective action or sets of actions is greater than that of others. This “promotion group” concept of collective action theory dovetails very closely with a concept often used in regime formation theory, that of an “epistemic community,”16 again exemplifying the integration possibilities between these two theories and their respective academic fields of study.

Another key group-based characteristic deemed instrumental in determining the lasting potential of a collective action group and its ability to harness individual member self-interest for the attainment of collective goals concerns the existence and credibility of collective sanctions (i.e., ability and willingness of all other group members to sanction group members who act against the interests of the group). Good examples of contra-group selfish behaviors are “free riding” and acts intended to turn the outside environment against the group. These group-based sanctions can either be informal, but universally understood, or regulated by express agreement and codification by the group. The importance of these sanctions again highlights the assumption of self-interest and its ramifications for the group as well as the potential costs for each member of joining any group.

Heckathorn thinks that said sanctions are of such importance to the group’s ability to achieve the desired collective goods that he sees them as a second-level collective good of the group itself.17 Heckathorn further explains that peer approval, a fundamental aspect of any group, is very easy to administer and a materially costless form of positive sanction where the threat of expulsion from the group is a very effective form of negative sanction.18 Both of these sanctions are of course often informal in nature and inherent components of any group, suggesting that groups wield certain powerful sanctions.

A third group-based characteristic of note is the level of interdependence among the group members and whether or not the interdependence is tied to the issue on which the collective action is being pursued or is present among the members but outside the focus of group action. It is argued that high levels of interdependence among members, especially when related to the concerns of the collective action, are beneficial as they may lead to situations where a gain or reward attained by one member positively affects others, leading to the development of an altruistic orientation of the group and its internal relations.19 This argument connects very well with much of regionalization theory and its contention that national economies and their actors are growing increasingly interdependent, resulting in closer and more harmonious relations within the group. This interdependence argument can also be integrated with the
social network point mentioned earlier by arguing that the condition of interdependence encourages mutual communication, which aids the development of strong social networks and thus increases the potential for collective action among these socially networked interdependent actors. Consequently, the presence of interdependent relations can be seen both as a characteristic supporting the creation of collective action groups, and their maintenance.

A final group-based characteristic developed by Kim and Bearman that is germane to the research problem is that the interests of individual members are variable over time on two levels. Firstly, at any time in the collective action group's existence, different members have differing levels of interest in the collective good being provided as well as varying amounts of resources to contribute to the group. This leads to intra-group heterogeneity and a need for the group to redefine relative contributions to maintain group unity. Secondly, member interests in the group and the goods themselves may be altered by members' dynamic interaction with each other in pursuit of these goods. When this process of interaction harmonizes interests or behaviors among the interactors, it creates a situation of "frame alignment" among the interacting members. This means that there is a key temporal element to the actors' definition of group-related self-interest in which the nature of the group's interaction mechanisms is vital to the group's longevity and success.

The first three group-based characteristics all help to support the group and its effectiveness while the last one points to a large potential for problems of heterogeneity, especially over time. The potential impact of this last factor leads Kim and Bearman to conclude that only a limited number of group structures aid group longevity by sustaining dynamic inter-member discussions and actions that yield new or increased shared interests, thus helping strengthen the group.

There are three good-oriented characteristics, one of which supports the maintenance of the group while the others make maintenance more problematic. Goods that have either pure or partial jointedness of supply facilitate cooperation among collective action groups. Pure jointedness of supply refers to goods whose cost does not increase at all with an increase in the number of users (i.e., all costs are fixed) while partial jointedness refers to goods whose cost rises less than proportionately to an increase in the number of users. These goods are seen to be supportive of collective action efforts, as the costs are all or mostly fixed and thus easier to measure for each individual member. Moreover, an increase in the number of members reduces the cost of the good for each member without risking the level of benefit derived from the good. This ability of the good to support collective action calls for larger groups by lowering individual member cost, which in turn counterbalances the rise in cost in terms of relational complexity and interest heterogeneity among members associated with increases in group size.
The second characteristic deals with the changing nature of goods vis-à-vis the interests of the group members over time. Heckathorn, in his definition of collective action efforts as production functions, notes that the nature of the good being provided by the group changes according to the members' individual interests over time. This means that the curve of the returns versus cost relations for each member goes through three stages, where: 1) marginal returns increase as start-up costs are absorbed; 2) marginal returns become the same for all contributors regardless of when they joined the group; and 3) marginal returns decrease when all potential returns from the good have been realized. Thus the benefit of the provision of the good changes over time for each member and is often assumed to decline after some time.

While the nature of a collective action good may not be categorized in such a manner (especially if the good is not concrete in nature but purely intangible and thus may have no problem of depreciation or certainly a different, less quantifiable one), Heckathorn's three-level division is still useful. It points out that the good itself and its usefulness to individual members may not be the same over time as the returns from the good may change. As a corollary to this, it is common that at the beginning of any endeavor, participants may be more willing to endure higher costs or receive lower actual gains in the hope of future potential gains, which may not be fully knowable or quantifiable. However, once a group and its actions have achieved "normalcy," the participants' enthusiasm may rapidly diminish, especially if they believe that they have a full understanding of the good's benefits and costs, the enthusiasm may disappear all together. This changing nature of the members' interpretation of a good and its relationship to member interest calculations again suggests the need for a group ability to redefine its structures over time.

The third and final characteristic of the collective good to be dealt with may be both the most complex to use analytically as well as the most crucial to the success or failure of collective action groups. While much of the discussion on collective action assumes that a predetermined good or set of goods is produced for the equal enjoyment of all members, this is by no means a "truth" of collective action. In his discussion on selective incentives, Olson describes a situation where a collective action group may be formed to supply a range of collective goods, some of which may not be accessible or beneficial to all actors. By definition, selective incentives, while being part of the group's overall production of goods, are useful only to certain members. Such a complex situation would mean that members' individual gain calculations depend on which collective goods they can benefit from and by how much. Logically, a similar calculation of costs would be necessary where each member must determine which goods they must contribute and to what extent. Needless to say, this significantly clouds the analytical picture and puts a much greater strain on each member's
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interest definition and its collective action cost/benefit calculation skills (a cost of collective action in itself).

This brief list of some of the conditions necessary for the creation of collective action groups and the characteristics or variables that affect the groups' longevity and success should clarify at least two interlinked aspects of collective action groups. The first states that the very fusion of self-interested actors into a group is a potentially volatile one. As has been mentioned, the process of interaction between members may lead to a change in their definition of their interest in the group's endeavor and the quid pro quo necessary to continue contributing to the group. This variability is further heightened by the fact that, while the collective action group itself is treated as a closed system (this assumption itself may not be tenable), its members are actors within a larger system and thus their definition of their individual interests may change over time given the changes within themselves or the group or in their relations with non-group actors.

A final contributor to this noted variability is that the nature and number of goods provided for each member may also change over time. This suggests that the study of collective action groups is a complex matter and it demands observation over a long period of time.

The second aspect of collective action groups is tied to the high potential for variability of member interest in the group. It presupposes that regular and structured negotiations among group members, especially if the group provides more than one good and the contributions of each member or usage of the goods are not equal, over contribution levels, addition or reduction of goods provided, and the focus of the group's efforts seem to be necessary. The necessity of regular member interaction, which may change the quality of relations among members and toward the group as a whole, further suggests that the nature of the group's structures and channels of communication is a key concern. However, as the self-interest assumption determines that any member of a collective action group has concluded (for the span of its membership) that membership suits its overall interest, these forces of heterogeneity and variability are only active within a larger condition of constancy.

As previously noted, this paper's case study is a particularly complex one, as the collective action group being studied is viewed as a member within a larger collective action group. Thus, the closed system assumption has been discarded and the focus is rather on the effectiveness of the collective action group in a particular set of relations with actors from its external environment and the consequent changes within the smaller group itself. This focus will hopefully add to the depth and applicability of collective action theory and is seen as important as few, if any, active groups are perfectly autonomous from their external environment or desire to be so. As well, foreshadowing regime theory, most regimes studied form both to attain intra-group
goals and those that call for the group to alter the dynamics of the external environment which encompasses the collective action group concerned and all of its individual members.

Regionalization Theory

Still tied to furthering the modeling of regimes in general and ASEAN in particular as collective action groups is an understanding of the relationship between regionalization and regime theory with the subsequent melding of both into the collective action theory. In the study of the formation of economic regimes and their maintenance, it is a commonly held contention that the processes of international economic change recently have spurred sovereign states within loosely defined regions to organize inter-state structures to help regularize and enhance relations among economic actors. A strong indication of the spread of regionally organized economic regimes is that from 1990 to 1994, 33 new regional trading agreements (RTAs) were recognized by GATT, most of whose members, excluding some trading powers like Japan and South Korea, belong to at least one and often more of these arrangements or previously formed ones.

The explosive increase in the number of regionally bounded (as distinguished from those bounded by a single state or a majority of the world) trading arrangements is seen to be partially due to some fundamental shifts both within the international economy and inter-state system in the post-World War II era. In terms of the international economy, under the generic rubric of "globalization," scholars and policymakers argue that the growing internationalization of capital and production networks has undermined the effectiveness of solely national policy tools and forced states to seek regional policy mechanisms to replace or supplement said weakening national policy tools. This is especially true in international capital transfers. While the volume and diversity of these flows have exploded recently, mechanisms linking capital importers and exporters or even tested formulae for forming them are sorely lacking.

In terms of states choosing to join RTAs instead of focusing their efforts on the development of global policy tools through multilateral institutions like the IMF or GATT/WTO, it is widely argued that states and commercial actors tend to choose the regional option, as geographical proximity (often paralleled by cultural proximity) substantially lessens the cognitive barriers to the organization of such mechanisms/ regimes. Evidently, historical trade and service provision patterns have tended to concentrate themselves among geographically contiguous political entities. Through these pre-existing harmonious ties, these contiguous actors have developed well-established social networks and lines of communications, which ease the development
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among themselves of shared institutions to deal with the new forces in the international economy. This point of historical ties among geographically proximate entities as a key support of regionalization mirrors the collective action theory argument of the importance of pre-existing social networks for the formation of collective action groups, thus exemplifying the integration of these two theories.

Supplementing these international economic forces pushing for regional inter-state institutionalization and the movement away from sovereign insularity are certain changes in the inter-state system of late. Among Realist International Relations scholars, the perceived decline of American hegemony worldwide and in the Asia-Pacific region specifically is considered a key explanatory variable for the process of regionalization. It is posited that with this decline, the provision of systemic or regional public goods such as a liberal trading order can no longer be credibly guaranteed solely by the self-interest of the hegemon but rather that groups of cooperating states must provide them. Along with this lack of hegemon-supplied systemic or regional goods, coupled with the hegemon’s asymmetrical surplus of power vis-à-vis other states declining, the interest of the hegemon to partake in inter-state institutions instead of relying on unilateralism is believed to have increased.

This structural argument is most germane to the Asia-Pacific region, as it has long been accepted that in the last 30 years the relative economic and political power of Japan and, more recently, China have increased vis-à-vis the United States whose hegemonic interests in the region have consequently declined. This view of hegemonic decline as a key variable in explaining the spread of inter-state regional organizations again shares a strong conceptual similarity to the collective action argument that self-interested actors will only voluntarily work together if no single actor is able or willing to provide these actors what voluntary cooperation will. It also echoes perfectly the collective action argument that groups will only form if no powerful actor in the extra-group environment strongly opposes the formation of the group.

A final inter-state level factor that is seen as a spur to regionalism and as a good partial explanation for the explosion of RTAs in recent years is the perpetual problems of supra-regional inter-state bodies in delivering promised reforms (collective goods) to the international economy and inter-state system. Given the coordination and collaboration problems of these multilateral institutions, it is argued that regionalism and its regional institutions are an important aid to multilateralism, as they ease the formation of bargaining coalitions (collective action groups) for multilateral bargaining, while also being good “laboratories” for new approaches to achieving reform that may be transferable to the multilateral level. While the complexity of the multilateral level and its problems of coordination are seen as a “negative” support for regionalization, the multilateral level and its organizations (like the United Nations, International Mon-
etary Fund, International Bank for Reconstruction and Development, and GATT/WTO) also play a "positive" role in regionalism. It is a know fact that all RTAs have asked to be officially recognized by GATT/WTO while almost all regional economic institutions also swear to be true to the spirit of the relevant multilateral institutions with which they often form formal linkages.

One reason such linkages and recognition is sought is that multilateral institutions can and do play the role of a third party monitor and mentor to the smaller and often enclosed regional grouping. This "institutional nesting" is important, as without it, the regional groupings would only be self-regulating according to their ability to monitor member actions and their possession of effective sanctions. Such a necessity for comprehensive self-regulation would certainly raise the costs of membership for each member and create a greater chance of friction within these regional groupings, thus hindering group formation and group longevity. This point concerning third-party monitoring may also be usefully incorporated into collective action theory, even if it somewhat undermines the closed system assumption of some of its theorists.

Thus, regionalism posits numerous interlocking reasons why states choose to organize themselves into voluntary regional organizations and shift their resources and interest attainment strategies away from the national and multilateral levels to the regional one. In terms of individual states expanding their scope from the national to the regional level, the international economic changes, most often packaged under the term "globalization," are seen as economically determinant with the perceived decline of a hegemon-dominated inter-state system also playing a key role. In terms of the choice of a regional over global approach, the positive and negative supports of multilateral institutions for regional institutionalization and the cohesive power of geographical proximity work together to again favor regionalism as the approach to self-interested state action. This brief description of the regionalization theory fits well into the collective action theory, as it explains why regional organizations are formed and how the shape and number of participants are arrived at while being true to the assumption that all voluntarily cooperating actors are self-interested.

Regime Theory

While the regionalism theory is quite powerful in explaining, at the macro-level, why states and other actors choose to create regional institutions to pursue their interests, regime theory allows us to look inside these formed institutions and evaluate how actors, most often states, choose to work together and mold their individual self-interests to pursue collective action. To frame this within the overarching theory of collective action, regime theory, which stems partially from the regionalization theory,
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explains how these groups are structured, and provides insights into which ones are or may be successful and why.

Regime theory presents three benefits for self-interested actors in setting up regimes as well as some insights into which issues or foci of concern are most supportive of regimes and which ones may prove to be more problematic. The first noted benefit is that the actors' agreement to work together in a structured and non-temporary manner immediately creates within the group a mitigation of zero-sum modes of defining self-interest for the issues the group must deal with by developing within each actor a vested interest in the regime as well as its longevity and success.34 Thus, through the institutionalization of a regime, each member-actor's definition of self-interest takes on added dimension in which said actor must consider the effects of its actions on the others in the regime and their own determinations of self-interest.

The salience of this vested interest in the regime (i.e., in pursuing a form of "enlightened self-interest," in which the externalities of an actor's actions are considered as relevant to the interests of said actor) may be increased if one sees each actor and the institution as active parts of a larger environment. Given the commitment of any actor to participate in a regime, the perception of that actor by other regime members and non-members will be partially based on their perception of the success of said regime and the role of the actor in the success or lack of success of the regime. The force of this factor is further enhanced by the fact that this altered perception by other actors of the regime member will become part and parcel of every other relation of said member.

Stemming from each regime member's vested interest in the success of the regime and in their contribution to this success is the second benefit of regimes for each self-interested actor. It is argued that regimes lessen the potential for volatility among the group members, thus decreasing the tension and bargaining difficulties. The political costs for each actor of a regime collapse or its failure to achieve the stated goals of these relations are much higher than if these relations among the same actors collapsed when no regime existed.35 Thus, the threat of expulsion from the regime of a member or members whose actions are perceived to work against the interests of the regime is seen to carry a very heavy political cost for those expelled. If this is true, then all members (especially if they gain much from the regime, have many other relations with the expelling regime members, or can find no replacement regime that can provide the gains of the regime they were expelled from), in their regime-based self-interest attainment strategies will be constrained from actions that could hurt the interests of other members. Thus, each actor's self-interest and the strategies for attainment become "enlightened" and the benefits of pursuing zero-sum-based games are reduced. This second point reflects very closely the contention of the formal collective action theory concerning the necessity and power of intra-regime sanctions to check group-damaging manifestations of member self-interest.

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The final benefit of regimes and their maintenance is only relevant if the regime does not provide a single uni-purpose collective good, but rather provides multiple goods or a good that has different uses for different members. Again, to fully grasp the import of this benefit, one must understand that without regimes, actors must either follow unilateral strategies or pursue non-structured less predictable sets of relations with the other actors. Fearon argues that regime formation and maintenance allows for the institutionalized clustering of issues with the subsequent increase in the group’s ability to offer side payments and selective incentives to specific actors to encourage them to maintain or enhance mutually beneficial relations with other regime members. This side-payment benefit harks back to Olson’s definition of collective action groups and the derivative nature of collective goods. Taking this point to its logical extreme, one may posit that regimes may only offer the collective good of the creation and maintenance of a predictable forum in which selective incentives are distributed and pursued by the various members (i.e., a single good defined by its multiplicity of uses for group members).

Integrated with these three noted benefits of regime membership are two observations on which kinds of regimes, or issues around which regimes may be formed, add to the potential longevity and success of a regime itself. Scholars have divided the regimes identified in today’s international economy and inter-state system into two distinct categories: 1) explicit or rule-based regimes, and 2) implicit or policy-based regimes. Explicit regimes are differentiated from implicit regimes by the existence of either externally or internally developed sets of codified rules with reinforcing sanctions, the presence of effective monitoring bodies with the power of rule enforcement, and the fact that the regime-based actions of the members are bound and shaped by said rules. While such regimes may be more difficult to create as they demand a greater loss of “independence” for each actor and thus demand a greater intensity of shared interest, these rules and their enforcement credibility could cause the regime to develop and entrench focal principles and their “enlightening” force over member actions.

Such focal principles and their purported force aid regime maintenance by 1) enhancing in the eyes of members and non-members the credibility of the regime while clarifying for all the scope and limitations of regime action; 2) providing the regime with a codified and relatively fixed benchmarking system to identify which individual member or sub-group actions are tolerable for membership and which call for expulsion; and 3) increasing the political or reputational costs of expulsion for erring members given this clarity of rules and reasons for expulsion. These assumed benefits of explicitness and strictness of rules reflect well the collective action argument that well understood and effective sanctions are, in the long run, strongly conducive to group success. This assumption highlights the relevance of negotiation and bargaining, especially during

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regime formation, and the need for an understanding of the factors involved in successful bargaining results.

In terms of which issues may be best suited to regime longevity and regime success, Stein and Snidal divide all regimes into those that focus on problems or issues of coordination and those of collaboration. Examples of coordination regimes are those that harmonize standardization and measurement methods among the actors to lower the costs of trade and sharing of research. This kind of regime good possesses high levels, even a purity of jointedness of supply, because once the standard is agreed upon by even two members, the cost for the original members of others joining would be low, if any, while their benefits would increase with each new member. These regimes would thus easily allow for, or even encourage, large numbers of members and may reduce the need for strong sanctions and thus inter-member bargaining. As well, given the lack of large variable costs, the problems of "free-riding" and the potential for decline in member interest in the third stage of the production function are often precluded or at least minimized. This lack of a need for contentious bargaining over allocation of differentiated benefits and costs among the members and over the development of sanctions and monitoring mechanisms is a good explanatory variable for the large number of coordination regimes and their longevity. This non-conflictual nature also often leads such regimes to be treated as "technical" rather than political institutions even though they are often formed by states. The lack of a distributive element also often leads these regimes to be solely under the purview of bureaucratic state bodies and rarely involving, in a more than ceremonial manner, the political state.

Scholars who study the political side of the state and international relations most often focus on what Stein and Snidal call collaboration regimes. Examples of these are redistributive regimes (such as the United Nations Conference on Trade and Development or UNCTAD-originated New International Economic Order or NIEO, weapons reduction agreements, and cartels). The goods and costs associated with these regimes are not necessarily equal for all members while the usage of the goods may be different from the costs involved. Such differentiation of usage and cost of goods along with their redistributive nature points to a lack of jointedness of supply and the consequent need for more intense and regular bargaining among members to form and maintain the regime. Note, for example, that arms reduction regimes and cartels often require high levels of intra-group monitoring and sanctioning of "free-riders," while suffering more from third-stage interest erosion than the above cooperative regimes. The importance of anti-free-rider sanctions and the problems of monitoring the faithfulness of other collaboration regime members have led others to call them "prisoner's dilemma" games. Such a framing and its call for treating the success of these regimes as intra-group and enforcement-based depict well the tension
within each member, and thus the regime as a whole, between support for mutually integrated action and zero-sum-defined self-interest, as noted by Olson.42

One can logically postulate that collaboration-based goods, owing to their lack of jointedness of supply and the need for more intrusive monitoring of other regime members, would benefit to a greater extent from an explicit regime and suffer more from an implicit one compared with coordination-based goods. As well, collaboration regimes would discourage large numbers of members as well as low barriers to entry, given the complexity of determining relative cost or benefit allocations and the monitoring of the allocations when members are added. Collaboration regimes thus present more opportunity for intensive "zero-sum" games-like bargaining, a greater need for effective sanctioning, and less chance for longevity and survival. These three characteristics also explain well why they are the focus of more academic studies and discussions among member-state political leaders or member-organization heads.

While most regimes are seen to be either coordination or collaboration ones (thus encompassing all the characteristics of their type of regime and excluding those of the other), this analytical delineation may not be that practical. Often, especially for inter-state ones, regimes are formed to bind members together not so much for prescribed sets of goals and a strict adherence to action as for a vague set of common principles that will guide their shared relations and attempt to address a wide set of overlapping issues. The first condition—formation around vague principles—can be seen as partially the cause of the second, as principles are used to shape interactions between actors concerning various issues, some of which may call for either coordination or collaboration. Also, regimes often add new issues to their agendas over time and the collective goods it offers. This noted expansion of the scope of regimes over time may also stem from the fact that actors are not perfectly rational and thus mutually beneficial collective action in one area may suggest new paths of collective action in other areas. This temporal change factor again demands, for a full understanding of the success of a regime and even its very nature, a long-term study, assuming the regime under study lasts long enough.

While it is quite easy to tie the regime theory to the collective action theory (in many ways the regime theory is a political science-based application of aspects of the collective action theory) and to identify the sequential relationship between the regionalization and regime theory in international economics, the brief description above of all three theories shows a need to delve into formal bargaining theory. Such a need is especially noticeable for inter-state collaboration-based regimes and those that are not bounded by a common cultural space. A common culture is supposed to ease relations by creating "frame alignment" among actors in terms of how issues are defined and in a priori priority lists. Cultural dissimilarity, on the other hand, often leads to "frame unalignment" in these areas. Regimes, at the very least, call for bargaining
among potential and existing members over which goods to supply, how many members to allow, what kinds of entrance criteria apply to aspiring members, and how to structure mutually integrated actions to make them predictable and optimal for the attainment of the good.

Given the predilection of inter-state regimes to be formed on incomplete or vague foundations, they necessitate negotiations over the practical operationalization of these principles, which policy issues should fall under them, and how and when new issues and collective goods should be added. For collaboration regimes, their redistributive nature suggests intense bargaining, given the individual cost or benefit calculations on which member self-interest and commitment are solely based. As the collective action group and the larger collective action group within which it will be analyzed in this paper are inter-state regimes encompassing both coordination and collaboration regimes, the analytical tools of formal bargaining theory would be of great use.

Bargaining Theory

As with the integration of regionalization and regime theory into collective action theory, the integration of regime theory with bargaining theory is no new theoretical ground. Thus, what this paper hopes to achieve is to add more depth and precision to a selective sampling of past integration efforts. As is well understood, bargaining among any two or more actors (much of bargaining theory unfortunately assumes a two-player-game framework) requires them to share some commonality or convergence of interests while not being in perfect agreement. Nash and Schelling thus define bargaining games as "situations where there are multiple self-enforcing agreements or outcomes that two or more parties would all prefer to no agreement, but the parties disagree in their ranking of mutually preferable agreements."43

Similarly, Sebenius argues that the traditional analysis of negotiation44 assumes three interlocking constants: 1) a given set of parties, 2) a given set of issues, and 3) the parties' fixed value or preference orderings for different possible settlements.45 From these very sparse definitions it is clear that collective action groups can be seen largely as structures of bargaining. Even more so is the subset of inter-state collaboration. Such a view of collective action groups goes back to Olson's argument of selective incentives as the core of these groups while suggesting our previous study of collective action groups and regimes may already have presented some insights into bargaining itself.

To start off, the third constant of Sebenius's description of the common approach to negotiation analysis (one which he himself does not abide by) seems to be a
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very static one and not particularly applicable to the study of inter-state regimes. As noted in the regime theory section, regimes, after formation, often choose to address new issues and attempt to provide new uses of existing collective goods or new goods, suggesting that their rationally bounded members did not have a strictly fixed set of priorities at the formation stage that was the only guide to their subsequent actions within the regime. Furthering this criticism, Heckathorn notes that the nature of collective goods and their value to different group members alter over time. This would seem to challenge the assumption of permanence unless said members, at regime formation, were able to properly decipher the changing value of regime membership over time and integrate this into their original preference orderings. In the case of regimes (especially explicit ones), it is argued that their creation produces focal principles which enhance or reshape individual member interest in the regime while developing a vested interest in its longevity. This implies that member interests are altered once a regime is formed.

These altered interest calculations of each member may impact on the actors' preference orderings by lessening the preference for withdrawal from the group. While one may argue that the Heckathorn nuance of declining interest in membership over time may counterbalance the membership interest amelioration of the other two, all three show that regimes' dynamics and the interests of actors and their attainment strategies are not static or fixed.

Apart from the group-based aspects of collective action groups, certain actor-based aspects of group membership may also add depth and complexity to the simple definition of bargaining or negotiation. Drawing from the section on regime theory, one may well note how each regime member and its self-interest maximizing interactions with others are not isolated from regime-based interactions. Rather, this set of relations is often only a small subset of every member's relations with other members and non-members. Given this open-system nature of actor interest calculation, regime membership can often be seen to replace pre-existing non-regime-based sets of relations aimed at the same goals as those of the regime. In the case of an actor shifting from one regime to another that offers similar collective goods, it should be clear how such a shift would alter this actor's relations with ex-regime members as well as with the new ones.

Taking this a step further, one may assume with any change in relations, such as the joining or leaving of a regime, all other relations affected by this action and their related preference orderings may be altered. This interconnected volatility of preference orderings of each actor and the effect on them of joining a regime clearly point to the high political cost of expulsion and the importance of the credibility of the regime for each actor.

On a less abstract level, one may assume that the presence or non-presence of a group of "promoters" may also affect the preference orderings of the parties con-
cerned as well as the intensity of their willingness to join the "game" in the first place.
As these promoters ease the relations among themselves and other group members, the costs of the negotiation for all non-promoters decline, thus logically changing non-promoter calculations of the cost or benefits of group actions and their preference ordering, as some preferences may be come less costly and thus more preferable. These promoters also actively disseminate information, often in a biased manner, to encourage members to join and work together more intensively. As preference orderings are lists of interests and the acceptable costs for attaining them, assuming the actor is rational, they must be based on an analysis of available information, and the "promoters" add to the body of information available and in a way that may not be balanced.

These points suggest two insights into the bargaining theory and its relation to regimes. Firstly, the dynamic nature and purposes of regimes suggest that the formal bargaining theory at its simplest level suffers in terms of explanatory power from its static assumptions. One must note that actor preference orderings in general and for any sub-set of relations cannot be conceived as permanent or fixed. Such assumptions may only be useful for studying regimes at a particular time and thus rather limiting. These points further strengthen the validity of seeing regimes as institutional settings that alter the bargaining game among its members and ease the "transaction costs" of bargaining while raising the costs of non-bargaining strategies vis-à-vis the regime concerns of each member.

Before laying out some of the useful aspects of formal bargaining theory, we should note that not all bargaining games or fora are "serious" in nature. The concept of non-serious bargaining is particularly tied to the gaps between actor rhetoric and practice. While almost all actors involved in bargaining situations and those organizing the bargaining situations themselves claim that they are negotiating in good faith toward the desired end, it is possible that they do not want an agreement or that they stick to such intransigently held, divergent preference orderings that no agreement is feasible. Thus, while real bargaining seems to be taking place, in reality no actions or proposals focused on feasible, mutual agreement are being tabled. This "non-serious" element of bargaining theory links well with Olson's argument that many collective action groups fail. As non-serious bargaining, on the surface indicates a functioning game and thus a group, but, in reality, signifies failure to achieve the goals set out by the interacting group.

This gap between rhetoric and action in certain bargaining situations and its contrary nature to the essence of bargaining itself is transferable to regimes in four ways. Firstly, if regimes are focused on a single set of issues and a single collective good but make no substantive progress in this regard while remaining intact, they could be seen as non-serious. Secondly, if a regime addresses more than one issue of
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common concern and seeks to provide one or more collective goods yet makes no substantive progress, then it is a non-serious regime.\textsuperscript{47} Thirdly, if a regime makes substantial progress only in some stated issues and production of collective goods, then the areas of non-progress could be called non-serious aspects of the regime. Finally, if after some time a regime member makes no more progress in regime relations while achieving only some of its goals, then the regime may no longer be treated as a serious one. Again, it should be noted that the settlement of issues of concern within a regime may be seen as a regime-provided collective good itself, assuming that without a regime structure, the members would not have addressed these same issues successfully. This concept of non-serious bargaining, and its corollary non-serious regimes, suggest that any analysis of a regime or regimes must first determine whether it is a serious one or not, and assuming that it is, which issues it is serious about.

The tools of the bargaining theory that may be useful to the treatment of regimes are best seen as variables that affect bargaining outcomes for the bargaining group as a whole and for each member in particular. The type of issue under negotiation is a key variable and, in the case of the "selection effect," a hard one to identify. The "selection effect" concept arises from the observation that different issues may have different strategic structures (or ways in which they can be dealt with) and that this difference may lead only to issues with particular strategic structures to be bargained over in a serious manner.\textsuperscript{48} This ties in well with the delineation between coordination and collaboration regimes and the observation that coordination issues are more likely to spawn successful regimes than collaboration ones.

Another issue-based variable tied to the "selection effect" and actor self-interest is the differences of depth of commitment and expenditure of resources by the bargaining parties with respect to the issues concerned. Such differences are caused by each member's calculation of the ability to enforce the terms of agreement. This means that the greater the perception of enforceability, the deeper the commitment to bargaining.\textsuperscript{49} Thus, non-serious bargaining occurs over issues where agreements are perceived to be relatively non-enforceable given the resources of the actors involved.

A final issue-based variable of note for regimes is the presence or non-presence of complementary issues or goods on the bargaining agenda. Such issues or goods are not as beneficial to the actors involved if dealt with independently of one another rather than in tandem.\textsuperscript{50} One example of these is the intra-group sharing of economic data (good 1). The standardization of its formatting (good 2) is complementary as the usefulness of any actor's information for others would be maximized if it came in a standardized manner.\textsuperscript{51}

The presence of these complementary issues or goods increases the chances of a successful bargaining outcome by increasing the benefits of cooperation and making preference orderings dynamic in nature. This complementarity of issues also relates to
bargaining tactics, as the addition of issues to a bargaining agenda which are complementary to already existing agenda issues is an oft-used tactic to increase the chances of a positive bargaining outcome. The same tactic is also proof of Olson’s selective incentives argument.

A second set of variables believed to have a great impact on bargaining games are actor-based ones. Considering that preference orderings of actors are assumed to be not completely in line and that each actor attempts to maximize the attainment of its preference orderings through interaction with other actors, the method each actor uses to pursue preference orderings is key. Risk-averse actors may choose to respond by offering more selective incentives to other actors who threaten to leave the negotiation or turn non-serious, thus lowering their attainment goals and prompting them to expend resources to allow other actors to further their attainment. Risk-taking actors may threaten to accept the costs of expulsion from the game to force other actors to “bend” and accept agreements that enhance the interests of the threatening actors. Thus, one reason for non-serious or very tortuous bargaining is a surfeit of risk-averse actors and a large percentage of aggressive risk takers.

As bargaining requires interaction with other self-interested actors, the level of certainty of each actor about the minimum preference ordering attainment necessary for the continued serious bargaining of each other actor is also a key concern. If the level of certainty is very low or incalculable for another actor, the uncertain actor may choose a more risk-averse strategy to protect its continuance in the game. On the other hand, the uncertain actor may purposefully take extreme bargaining positions to test the other actors’ resolves and strategies. With a higher level of security, such extremes are moderated. This point seems to support the argument that prior social networks encourage formalized groups, as they increase the level of certainty of each actor and its preference orderings and bargaining techniques.

These two points beg the question for political scientists of how power asymmetries among actors affect these actor-based variables. Answering this question requires an operational definition of power within bargaining situations, as the nature of actors’ power is often issue- and situation-specific. Yamaguchi defines power within exchange relations as being based on the ability of each actor to substitute the subject set of relations with another to achieve the same preference orderings, and on the ability of the other actors to achieve their bargaining goals with or without the presence of the subject actor. Thus the substitutability of relations for the actor and of the actor itself is a key element of its power. A “weak” actor lacks a large array of potential exchange partners in the given issue area and is easily substitutable by those it relates with in said issue area. This operational definition of power seems to add much depth to the regime theory argument of the role of the hegemon in regime formation. Note that the very definition of a hegemon is an actor who cannot be substituted by others.
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within the system and who is able to attain its value preferences in many ways including unilateralism, or the negation of exchange or bargaining.

The relative power of each actor vis-à-vis the other actors seem to have a great impact on the level of risk it is willing to accept in the pursuit of its goal. As if others need its presence, they will be willing to expend resources to keep it in and if it can substitute alternative relations to achieve its goals, the costs of having one’s risk become reality are not so damaging. Powerful actors may be more willing to take strong self-interested positions which threaten to turn the bargaining game into a non-serious one as the costs of such-would not be so high. Tied more closely to our case study, the ASEAN agreement to work as a collective action group within the APEC regime signifies an attempt to combine the resources of its members and make each member less substitutable for non-ASEAN APEC members. Such an effort increases one aspect of each ASEAN member’s relational power within APEC. This would thus mean that such an approach may allow each ASEAN member to take less risk-averse strategies, assuming ASEAN can work effectively as a collective action group and produce this collective good of more power for each of its members.

A bargaining structure-based variable known as “the shadow of the future” also plays a key role in defining bargaining processes and outcomes. This concept can be defined as the length of time each actor believes potential agreements will be in place and enforceable. As agreements are only agreed upon by each actor if it suits the actor’s self-interest, the “shadow of the future” is the length of time each actor calculates the collective agreement will affect its self-interest positively. The longer this shadow is, the more each actor may fight to attain an agreement most beneficial to its preference orderings and the more serious it will be about the game as a whole. Regimes can be seen to increase the length of the shadow as members expend resources to set up and maintain the regime and thus may be more willing to work within it for a long time. As well, within the formalized structure of the regime (especially explicit ones), bargaining between members may become routine and thus more predictable. This again may further the life of the bargaining situation and the agreements reached.

Tied to these variables, especially that of the relative power of different actors, is a set of strategies and tactics actors use within bargaining games to maximize the attainment of their preference orderings. The addition of complementary goods to encourage further participation has already been mentioned and serves as a good introduction to the set of tactics known as issue addition and subtraction. Issue subtraction and addition to the bargaining agenda can be used to strengthen the likelihood of bargaining success or to turn the bargaining game into a non-serious one. In terms of issue addition, issues may be added as selective incentives to allow certain actors to either continue negotiating by promising them more returns or to change their bargaining position vis-à-vis other issues already on the agenda, thus facilitating

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agreement among the bargaining actors. Within labor negotiations, this kind of issue addition is evident when management (or an arbitrator) agrees to include issues such as retraining programs and severance packages to encourage union flexibility over issues such as retrenchment and salary deductions.

Issues may also be added by certain actors to turn a bargaining situation into a non-serious game by introducing issues over which the bargaining actors are unable to come to an agreement. This strategy may be difficult to delineate in practice from high-risk strategies, as the introducing actor or actors, who are unable to fully predict the preference orderings, level of commitment to a successful outcome, and risk calculations of the other actors, may render the whole exercise non-serious through sheer miscalculation. On the other hand, an actor that feels its preference ordering is not being strengthened through negotiations with others may deliberately introduce a destructive issue to end the bargaining game.

Issue subtraction works in a reverse way. Issues that have no role in leading to an overall agreement may be removed to allow the now narrower bargaining agenda more chance of leading to an agreement. On the other hand, issues that are key to the participation of an actor or group of actors may be subtracted to encourage those actors to leave. The role of relative power figures in this strategy, as actors with greater individual or collective power may choose issue addition and subtraction strategies that risk turning the whole game non-serious. These actors are less committed to the game and would suffer less from its cessation. Thus, they may ask to remove issues that are costly to them in return for their continuing participation, and add those that would favor their preference orderings.

Similar to these issue-based strategies are those based on the size of the bargaining group. It is a well-known strategy of actors within a bargaining situation to attempt to add like-minded actors to the bargaining game to bolster their ability to maximize their preference ordering attainment. Apart from this kind of attempt, bargaining actors may push for the inclusion of parties that, given their reputation, would add legitimacy to the game and help solidify any agreement reached and its enforcement. Going back to collective action and hegemonic stability theories, one may assume that it may be a strategy of the original actors of a bargaining to include the most powerful actor not yet included and which has an interest in the issues being negotiated, thus ensuring that they will not oppose any agreement reached. Then, too, such an inclusion may make all the actors involved take the game more seriously. Any agreement reached that includes this hegemon would logically be more likely to be enforced with the hegemon at the table.

 Actors whose commitment to serious bargaining is suspect or whose risk-taking approaches are seen to work against the achievement of an overall agreement may be "subtracted" by the other actors. The removal of such actors is done to preserve the
seriousness of the game. Recalling our discussion on regimes, we can say that the development of procedural rules and well-understood sanctions may make such subtractive group strategies less likely by concretizing the risks of expulsion for actors with self-serving agenda. On the other hand, such rules and sanctions may make expulsion more likely by providing a clear rationale for this action, thus making the expulsion of one detract from the confidence of others in the bargaining game and its predictability less damaging. This shows that codified or universally understood rules of procedures affect group actions and their success. However, the negotiations over these rules and sanctions may threaten the bargaining game itself before the substantive issues of mutual concern are ever broached. This suggests that a “loosely” structured game may at times be preferable to ones that attempt to set down rigorous rules of procedure.57

Based on our definition of the state and its two level nature, one strategy that links both the issue and actor based ones above is worthy of note. Issues deemed important to the overall success and credibility of a bargaining agreement but are contentious for all or some of the bargaining states can be shifted from negotiations among the political leaders to the leaders of the states’ relevant bureaucratic departments.58 This subtraction of the issue from the political agenda and its addition to the bureaucratic one may have certain contributions to the success of the bargaining, whether concerning the said issue in particular or an agreement in general. It is a widely held assumption in political science that when issues are dealt with purely at the bureaucratic level, they are “sheltered” from the public eye and thus are less susceptible to shaping by public opinion and interested non-state interest groups. Given this assumption, the shifting of issues from one level of the state to another would mean that the corresponding interest calculations by each state would be altered, as its relationship to the state and its external environment (in this case, state-society relations) is altered.59 Moreover, the strength and dynamics of the social networks existing among the political leaders of the bargaining states and the leaders of their bureaucratic departments are most likely quite different, which may affect the different levels’ abilities to reach a consensus. This difference in social networks between the two levels may be greatest if the political or bureaucratic leaders of the bargaining states change in the course of bargaining, this disrupting their respective social networks.

Issues that are on the agenda but are not crucial to the overall agreement and among the bargaining states may also be moved from the political level to the bureaucratic one. Given the “sheltered” nature of the bureaucratic level, it is easier to allow these issues to become non-serious or “shelved.” Issues may also be shifted from the bureaucratic to the political level to facilitate consensus as well as overall agreement. This reverse argument stems from the fact that the political level officially reigns over the bureaucratic one and thus can force an
agreement when the actors at the bureaucratic level are unable to achieve consensus or appear to be delaying a final agreement. This possibility of delay at the bureaucratic level becomes more cogent if one views the bureaucratic level not as a unitary level but as consisting of departments that are self-interested and that define overall state interests by their own departmental interests. This assumption of bureaucratic self-interest adds another difference to the preference orderings of the two levels, along with its effect on bargaining.

This last strategy also shows how treating the state as a single unit limits one’s understanding of how states interact with each other and the alternatives available to them when working together to achieve collective goods. It also hints at how complex inter-state interaction is, given the dynamics of each state’s relations to its bounded population and within itself.

The final set of strategies that actors may adopt to influence the results of a bargaining game in their favor revolves around the use of time. An actor or a group of actors, at the risk of being excluded from an agreement others reach, may delay the proceedings in hopes that others will come to an agreement that is more favorable to their interest, thus speeding up the resolution of the game. This strategy is seen to pay more dividends, and run higher risks of actor exclusion, assuming the issues on the bargaining agenda have a long “shadow of the future,” and call for a speedy agreement that will maximize its benefits for each actor. However, such delaying tactics also erode the credibility of the bargaining game as it raises the opportunity costs for all actors participating in the negotiations.

Again, such delaying tactics can be avoided through the development of appropriate rules of procedure and sanctions. Individual actors can also threaten the delayers with ultimatums of the “take it (agree to this result) or leave it (exclusion)” variety. Notably, the effectiveness of delaying tactics as well as the use of ultimatums is greatly dependent on the actors’ relative power and the support for their tactics by other bargaining actors or influential external actors.

To sum up, this theoretical section envisages economic regimes as entities whose actions can be best understood by analyzing them through the integration of four theories. Collective action theory provides many tools for understanding why any self-interest-maximizing actor would choose to work with others and the dynamics of these interactions. Regionalization theory explains why states, as self-interested actors, choose to work together to pursue common economic ends, and the limitations to this cooperation. Regime theory provides insights into how these states choose to work together and structure these relations in pursuit of regionalization. Finally, based on the primacy of self-interest and the fact that collective action groups and their sub-group regimes have different costs and benefits for different members, bargaining theory provides insights into how actors pursue self-interests within groups.
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The linkages between these four theories and their analytical usefulness will be further clarified through an analysis of ASEAN’s effectiveness as a collective action group within the bargaining game of the encompassing economic regime of APEC. Some of the theoretical insights will be used to clarify the rationale behind the individual ASEAN member states’ action within this bargaining game, the importance of the structuring of both ASEAN and APEC economic regimes in this game’s outcomes, and the rationale behind non-ASEAN APEC member-state actions within the chosen bargaining game, especially their responses to the initiatives of ASEAN member states. Some of the above insights will be used to evaluate ASEAN as a collective action group and how it could have fared better in achieving its preference ordering as an economic regime and those of its member states. This last part may be helpful in studying post-1995 ASEAN regime actions within APEC, Asia-Europe Meeting (ASEM), and any other regime ASEAN member states may choose to join.

ASEAN WITHIN APEC

The study of the interaction between the ASEAN economic regime and the APEC one will be limited to the formative stages of the APEC regime from 1989 (when Australian Prime Minister Hawke officially announced in Seoul the idea of forming an Asia-Pacific regime) to 1995, and the adoption of the Osaka Action Agenda as “the template for future APEC work toward our common goals.” The study also takes into account the end the perfect overlap of membership brought about by the fact that Vietnam became a recognized member of ASEAN (but not of APEC until 1998). While many argue that APEC is still in its formative stages, it is still possible to understand how ASEAN, as a collective action group, impacted the structure, foci, and rules of APEC within this project’s time frame. Finally, this end point was chosen for two other reasons. Firstly, the periods of initial construction of regimes (i.e., agenda-setting), especially those with distributional implications, are seen to be both the most meaningful for understanding the preference orderings of each actor and their ability to maximize them within the regime and the most contentious.

Secondly, given the ongoing nature of ASEAN’s actions within APEC, academic resources on this topic for the post-1995 period are few and often schematic in nature.

Within this time period, the case study section will be divided into four parts to clarify the nature of the two economic regimes under study as well as the effects of their interaction. These are: 1) a brief look into the rationale behind the formation of APEC and the original members’ decisions to join; 2) the development of the ASEAN economic regime and an evaluation of its strengths and weaknesses; 3) the actions of the ASEAN economic regime and its member states within APEC and an evaluation of
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whether its preference ordering attainment was maximized, and 4) the impact on the ASEAN development of ASEAN’s role in APEC.

Regionalization and the Formation of APEC

Based on regionalization theory, the formation of the APEC economic regime and the reasons for member states joining it stem from the increasing intensity of economic relations among actors in the Asia-Pacific region, the lack of pre-existing inter-state structures to support this heightened interaction, and the problems with the multilateral inter-state organizations supporting global trade liberalization. The importance of these economically based forces for the formation of APEC and the agreement of the 15 original member-states to join can be best understood by first looking at how seemingly “unsuitable” the Asia-Pacific region is for the formation of inter-state regimes and their pursuit of collective action goods.

In terms of pre-existing social networks connecting the states of the region and a history of working together or even interacting with each other, the Asia-Pacific region’s states do not have a strong history of mutually beneficial interaction. The need to address this lack had often been noted by different political leaders within the region. In 1961 and 1965, for example, U.S. President Lyndon B. Johnson called for a Pacific organization “among free nations” (i.e., US allies in the Cold War inter-state system) to focus on security and development.63 This call was echoed in 1967 by Prime Minister Miki of Japan with his call for a Pacific Free Trade Area (PAFTA), which spurred the development of the non-state Pacific Basin Economic Council (PBEC) and the 1968 Pacific Trade and Development Conference (PAFTAD) in Tokyo.64 Even further back, the development of elite social networks in this region was already a concern of scholars, businesspeople, and bureaucrats, leading to the formation of the Institute of Pacific Affairs (IPA) in the 1920s (which became defunct in the 1950s).65 However, even with this long-standing desire of social elites within the region to set up institutionalized contacts with each other, very little progress was made and inter-state actions vis-à-vis other actors and inter-state relations in the region largely remained either unilateral or bilateral in nature.66 This historical lack of successful voluntarily formed inter-state institutions, despite stated desires, is also true for the East Asian region.

The lack of historical support for the treatment of the Asia-Pacific as an identifiable region with converging interests necessary for regime formation has led some to see it, bounded as it is by APEC member-states, as only a notion in the minds of a select group of regional elites, mostly made up of scholars and internationally minded bureaucratic state leaders.67 To buttress this argument that the region, if a region at all, is unsuitable for regime formation, others point out that the diversity of countries present
in the region is huge in terms of culture and levels of per capita income (even on a PPP basis) and integration into the international economy. This extreme diversity is seen to be aggravated in terms of regime formation potential by numerous intense historical antagonisms among the actors. All together, these factors suggest that even if APEC is an economic region (as it seems to be since its recent annual levels of trade intensity are higher than that of the EU), its potential for successful regime formation and interstate collective action is not good. And given the large number of countries in the region, the lack of long-standing and comprehensive social networks among the state leaders, and the cultural and economic diversity of its societies, collaborative regimes dealing with issues with distributional implications would seem to be especially difficult to organize and maintain.

The economic forces that are believed to have overcome these known socio-political problems of regime formation within the Asia-Pacific region appear to originate within the states themselves, within the region, and at the multilateral level. Many states in the region changed their economic policy direction from the 1980s onwards. In the case of New Zealand and Australia, starting in the mid 1980s, the states shifted their economic policy from one based on protectionism and selective opening of the domestic market to the international market to one based on encouraging much more comprehensive international integration. This intra-state change of economic philosophy and consequent legislation was supported at the bilateral level by the formation in 1983 of the Closer Economic Relations (CER) inter-state policy regime.

A similar policy direction change took place in key Southeast Asian states (like the Philippines and Indonesia, the two most populous countries in this region) from an import substitution industrialization development policy to one more based on economic liberalization and export orientation. Another significant intra-state move in the expansion of the Asia-Pacific economic region and the development of an inter-state regional economic regime was China’s radical shift in state economic philosophy from autarkic self-reliance to the “open door” policy of Deng Xiaoping from 1978 onwards. These intra-state moves, while partially in response to changes in the regional and global economy, strengthened the region’s potential for regime formation in three key ways.

With this change in focus, the domestic economies of the region became much more open, greatly speeding up the integration of the economic region through increased cross-border interaction. For example, South Korea’s 1990 international trade levels were 600 times its 1960 figures. This helped create a virtuous circle of more integration among economic actors, which in turn led to larger state interest in economic regime formation to manage and enhance these increasing ties, while also raising the costs of non-cooperation or nonmembership for each liberalizing state. Thus, with this intra-state change of economic interest definition, the states’ individual inter-
ests in economically focused collective action increased. Also, through these policy changes, the social networks between both market and non-market actors within the region have been strengthened by heightened contact and the greater potential for a commonality or convergence of individual economic interests.

A second noticeable change in many states that may be both a reason for and a result of this shift in economic policy was the increasing role of businesspeople from international firms in economic policymaking. This state-society change (i.e., a change in the structure of policymaking) is believed to have helped shift the interests of the states in the region by changing the information they accessed to determine their interests and "first-best" means of pursuing them.

Tying these two intra-state factors together is one benefit of regime membership in a member-state's pursuit of both economic liberalization and domestic, popular legitimacy. By laying the noted economic policy shifts and their consequent opportunity costs for domestic market actors at the feet of its membership in an inter-state regime, each liberalizing state, especially its political leaders, can deflect criticism caused by these opportunity costs from the state itself to the regime. Thus, by joining a regime, each state can benefit from the collective good of being able to identify the source of the policy shift as the requirements of membership and not as the "voluntary" choice of the state. This last point highlights both the complex sets of interests and relations a state and its actors are a part of and one of the intangible collective goods of regime membership.

As noted above, this set of intra-state policy shifts toward a more intense integration into the international market are seen to have been spurred by changes within the regional economy and the intensification of contacts between economic actors within the region. The Asia-Pacific economic region, as bounded by the borders of the 1995 members of APEC, (using 1994/5 statistics) encompasses about 40% of the world's population, more than 50% of the global GDP, and 40% of world exports. It also incorporates the world's three largest national economies. This collective economic weight makes this single region a considerable part of the global economy, and thus regional moves for closer political-economic cooperation have a global impact.

Apart from the size of the region, which would support the establishment of collective action groups to supply goods with a high jointedness of supply, the post-WW II economic growth of the region (especially in its East Asian sub-region) has encouraged regime formation by increasing the potential benefits of cooperation for each state. The strong growth of the East Asian sub-region has led other members of the Asia-Pacific economic region to identify it as a more important economic region, while also allowing for a greater convergence of interests among all of its actors and thus greater interest in regime formation.
This reunifying power of recent East Asian economic growth and maturation is seen to have had a great effect on North American and Oceanic states' interest (and consequent willingness to spend resources supporting their interest) in the region. Starting in the 1980s, exports from North America to East Asia grew faster than did imports from East Asia to North America. East Asia thus became the world's prime regional destination of agricultural exports. Given that the United States is the world's largest agricultural goods exporter and considering the importance of agricultural exports for Canada, Australia, and New Zealand, economic ties to actors in East Asia and support for Asia-Pacific economic integration became much more important. This growing attention of the "non-Asian" members to the Asia-Pacific region became evident when the United States, Canada, Australia, and New Zealand officially recognized in the late 1980s the value to their respective economies of exporting to East Asia. Within the Oceanic states, the growing importance of East Asia can be seen in government actions such as New Zealand's push for identifying itself as part of Asia and the release of official state publications like Garnaut's 1989 policy paper, *Australia and North East Asian Ascendancy*, which argued that Australia's economic future would be increasingly integrated in the Northeast Asian region.

In the case of Australia and New Zealand, their orientation toward East Asia became more important due to fears that their domestic economies' traditional export markets were drying up (seen to be partially due to the formation of the NAFTA economic regime and the closer integration of the EU region and regime), and that they had no alternative other than a free trade agreement with the United States to ensure their future economic stability. Thus, the formation of an Asia-Pacific spanning regime would provide them with an alternative means of achieving increased exports and export market stability to the less desirable option of a bilateral free trade agreements with the United States and its less dynamic import market. Going by Yamaguchi's definition of power, the support for an Asia-Pacific regime in the case of Australia and New Zealand can be well explained by their desire to set up a more satisfactory substitute set of relations to maximize their preference orderings. A "second-best" bilateral scenario would be when the US market and state actors could more easily substitute other relations for those with Oceanic actors than vice versa, leaving Australia and New Zealand with little relational power. This relative power and its recognition by Australia and New Zealand derives credence from the fact that the earliest proposals from the Australian state and academic actors for Asia-Pacific regime formation focused solely on the institutionalization of ties with East Asian states, purposefully excluding those involving the United States and Canada.

This intense interest within Oceania for the formation of Asia-Pacific economic regimes was also echoed by the Japanese state, especially by its bureaucratic department, the Ministry of International Trade and Industry (MITI). Starting from the 1980s,
specifically after the Plaza Accords of 1985 and the consequent rapid appreciation of the yen vis-à-vis the US dollar and other regional currencies, Japanese manufacturing corporations and banks greatly expanded their investments in Southeast Asia and later on in China. The explosion of Japanese private investment in Southeast Asia is most noticeable in the fact that Japanese private investment in Asian countries between 1986 and 1989 exceeded the cumulative total of Japanese private investment from 1951 to 1985, while increasing at an annual rate of 62% from 1984 to 1989. This explosion of new ties between Japanese market actors and those outside of Japan's borders is seen to have fundamentally reorganized the regional economic structures of East Asia, and those of Japan and the destinations of Japanese investment. With this massive outflow of investment capital, it is argued that East Asia became a single, meta-level production system with Japanese mother companies as the R&D and managerial headquarters, and their East Asian affiliates as centers of production. This conceptualization of East Asia as a single production system can be expanded to the Asia-Pacific, as the largest export market for these East Asian-produced "Japanese" goods is the US.

Japan responded to this rapid increase in the internationalization of its market actors by increasing its support for regional institutionalization as evident in the 1987 MITI New Asian Industry Development Plan, which called for intensified Japanese state efforts to help form a regional economic regime. Japan's interest in regime-building varied from that of Australia, as it called for active US participation in any regime. This support for a much larger geographical and cultural scope for the desired regime stems from three state interests of Japan. Based on the historical antagonism point discussed earlier, the Japanese state was very concerned that any regime proposal that excluded the United States and Canada would suffer from East Asian states and societies' fears of Japanese hegemony. In this sense, the Japanese state recognized its predominant exchange power within the Asia-Oceanic sub-region and how this predominance would make others less willing to join any regime to further integrate the sub-region unless counterbalanced by expanding the regime to cover the whole Asia-Pacific region.

It also argued that the Japanese state saw the development of an Asia-Pacific regime as a way of rearranging future relations between Japanese state and market actors and those of the United States. Like Australia and New Zealand, it wanted to develop a counterweight to the growing integration of the NAFTA and EU economies by providing an institutional mechanism to encourage further integration of the US economy within the Asia-Pacific. This need for a "competing" regime to maintain and enhance existing links between Japanese and North American actors becomes more salient when tied to the collective action theory assumption that all actors have numerous sets of relations to maximize their self-interest, with each set carrying consequent opportunity costs and resource expenditures. With the development of NAFTA,
the US and Canadian ties with Mexico became much more predictable and institutionalized, logically leading the affected actors to focus more on their interrelations than those in less predictable environments. Moreover, the US market has been, by far, the largest destination of Japanese private investment and exports, and the exports of Japanese overseas affiliates.

Finally, fears of a degradation in Japan-US ties were exacerbated by the Japanese state's worries over the US state's economic policy moves vis-à-vis East Asia. Again, similar to Australia and New Zealand, the Japanese state was concerned about the US state's potential increased economic bilateralism in the region and its use of "aggressive unilateralism." This intensified concern over the effects of the US state economic policy on Japanese market actors and the US-Japan relations stemmed from the growing number of acrimonious trade disputes between the United States and Japan, and between the United States and other East Asian states like South Korea. It was hoped that with the development of an economic regime that included the United States, both the fear of isolation from the US market and the costs of US aggressive trade policy could be minimized. Thus, the Japanese state strongly supported Asia-Pacific regime formation to help alter the perceived future relations between Japanese and American actors by including the US state in the planned regime, not excluding it, as Australia had planned.

The high levels of concern for the future of economic relations with the United States and the desire to support the rapid market-based increase in ties between domestic actors and East Asian ones led Japan and Australia (state, academic, and market actors) to play the role of "promoters" of regional, inter-state collective action. Upon the publication of the 1987 MITI Plan, the Australian policy paper on Northeast Asian ascendancy and Prime Minister Hawke's speech in Seoul, both MITI and the Australian state sent out envoys to prime other states on their desire for an Asia-Pacific economic regime and to convince them of its benefits.

Aside from these state-to-state promotion efforts, the Japanese and Australian states previously had been instrumental in the establishment of the Pacific Economic Cooperation Council (PECC), an organization that links together key bureaucrats, academics, and market actors of the region. This APEC-related NGO had its first meeting in Canberra in September 1980 and has served the function of creating social networks among regional elites and conducting discussions to enable the different actors and their respective states to "align their frames" toward economic cooperation. Its APEC-building role is considered so important that membership in PECC is seen as the "entree" into APEC. Both the strong diplomatic and financial resources of Japan and Australia and their view of a regime as the best means to satisfy their individual economic interests led them to adopt this role of regime "promoter" and lower the costs of formation for other potential regime members.
As could be gleaned from the earlier discussions on Japan and Oceania, the role of the United States in the region and its interest calculations played an important part in these states’ own interest calculations and preference orderings. The United States’ interest in supporting regime formation in the Asia-Pacific and the consequent costs are seen to stem from three interrelated factors. As noted before, the markets of East Asia have become much more important for American exporters since the 1980s and especially to certain politically powerful groups such as agricultural lobbies and airplane manufacturers. Tied to this increase in East Asian-directed exports is the fact that the US economy has become more “dependent” on international trade since WWII and more so since the 1980s.

The combination of these two closely linked factors suggests that the American state, in its interest calculations, has become more Pacificist in focus, especially since US trade with Asia in 1995 grew 1.5 times larger than US trade with the EU-bounded region. Also, the United States from the 1980s onwards has run a trade deficit with almost all other domestic markets in the Asia-Pacific region, adding to domestic interest-group pressure on the US state to reorganize trading relations within the region. Due to this greater integration of the US economy with that of East Asia and the dynamic growth of the latter, the costs to the US state and market actors of using such tools as the Super 301 sanctions threats and other forms of “aggressive unilateralism” were seen to have become both less effective and more costly.

On top of these new domestic interests of the US state in institutionalizing trading relations between US market actors and those in East Asia and the declining utility of both unilateral and bilateral means, the final factor was the potential isolation of the United States from East Asia. When the idea of an Asia-Pacific economic regime was broached, Prime Minister Mahatir Mohamad of Malaysia floated a third proposal (the second being the Australian one that excluded North American participation) for a Japan-led East Asian regime, which was to be called the East Asian Economic Grouping (EAEG), in Beijing. This “Asian only” regime proposal stemmed from Prime Minister Mahatir and certain Malaysian scholars’ belief that the construct of an Asia-Pacific region was rooted in the traditionally powerful Pacific members’ (the United States and Australia especially) desire to link themselves more tightly with the newly dynamic East Asia. This proposal, while ignoring the historical antagonisms of regional actors toward Japan and the importance of the American market for East Asian economies, was buttressed by two forces.

Firstly, as noted above, the trade-oriented relations between the United States and most of East Asia had become very strained, with the former aggressively calling upon these states to radically alter economic policies and market practices for the perceived benefit of US firms. Tied to this commonality of “negative” experiences with “the Pacific” was the increasing belief that there was an identifiable, culturally bound
form of Asian "collective capitalism," which was the reason for East Asian economic dynamism. The EAEG idea offered both a chance to shelter the East Asian states from US unilateral pressure through the development of alternative means and presenting a united front against US pressure, and a chance to limit the cultural diversity present in the regime by cutting out the "Western" states. The EAEG proposal was seen as instrumental in shifting the United States' definition away from focusing mostly on NAFTA toward including the APEC option.

The combination of these two factors, along with the growing sense of an East Asian identification of itself as a culturally coherent and unique region and the relative decline in the American market's global share of Japanese and other East Asian markets, led certain authors to see US interest in APEC as tied to the decline of the US state as a hegemon. This argument, while wed to the assumptions of Realist International Political Economy, dovetails nicely with the arguments of the collective action theory about power asymmetries and the problems of collective action group formation. It is also supported by the contention that the 1967 PAFTA proposal of Prime Minister Miki failed to be realized due to the US state's (then seen to be a clear global and regional hegemon) unwillingness to join.

Another change within the regional economy of the Asia-Pacific and its relation to actors' interest in APEC membership relates to the ASEAN member states. As noted above, all ASEAN member states' economies (excluding those of already fully integrated Singapore and the Sultanate of Brunei) had, since the 1980s, become much more integrated within the Asia-Pacific region, especially in terms of cross-border private investment flows. This obviously increased the interests of the respective states in pursuing closer and more predictable sets of relations with the states of the investors. With the opening up of China, India, and Eastern Europe, and the revival of Latin American economies, the ability of ASEAN member states' economies to attract development-spurring investments came under renewed threat. In Asia the threat was evident from 1989 to 1994 when ASEAN region's share of foreign investment absorption fell from 44% to 28%. (A similar threat has been present since the 1980s vis-à-vis the ASEAN states with the developing economies' ability to attract ODA.)

The increasing role of foreign investment (both private and public) in the economies of most ASEAN member states and the increasing problems of continued attraction has had two interest-altering impacts of relevance to ASEAN and APEC. Firstly, these investment flows and the integration of East Asian economies with the Japanese and American ones increased the potential benefits of individual ASEAN member-state participation in an Asia-Pacific regime. Their participation would allow for the development of more standardized and predictable relations with the states providing the investment, and address developmental issues within a new forum—one that's large enough to include key "Northern states," and yet smaller than the cumbersome
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and acrimonious UNCTAD. Secondly, these factors would encourage a more economically active ASEAN regime, as it began to recognize that Southeast Asia as a unified region can offer potential investors a combination of attractions that no individual ASEAN member-state economy can provide. This encouraged both a more economically focused ASEAN regime in general and, in particular, as a collective action group within APEC.

ASEAN member-states' joining APEC and acting as a collective action group within it was further supported by their shared goal of seeing ASEAN become a global player and not simply a Southeast Asian regional regime. This has been a longstanding goal of ASEAN—one which active membership in APEC would enhance. This same goal also points to an interesting avenue of study in collective action—how membership in one collective action group can increase the importance of each member in the group's external environment and help each member establish relations with non-group members.

With the intra-state and regional forces covered and their effect on key original members of APEC interest in forming or joining APEC, the multilateral (or global) level can be addressed. Two factors—one temporary and the other permanent—are important in understanding the timing of member states' interest in APEC formation: APEC's geographical scope and its form. The permanent factor has already been partially addressed above and ties into the earlier formation of NAFTA and the EU. From the 1980s on, the regional bloc argument of international political economy gained much favor and it was widely assumed that the global economy would become more and more regionalized. With the development of NAFTA and the impressive unification of Western Europe through the EU, the lack of such institutionalization in the Asia-Pacific was seen to be dated and opposed to the interests of "non-bloced" states.

Concern over the future economic impact of this lack of inter-state institutionalization was exacerbated by the apparent failure of the multilateral regime of GATT to support further liberalization of the global market. The problems of coming to an agreement in the Uruguay Round and its simmering disputes over a wide range of issues are seen to have encouraged the formation of APEC in three ways. Firstly, as many of the more contentious issues pitted the United States against the EU over EU market access, such disputes were seen to have united all of Asia-Pacific region's states against the concept of "Fortress Europe," and through the desire to pressure the EU. Secondly, as many of the APEC member-states are very trade-dependent and much of their continued economic growth was dependent on continued and predictable access to markets in Asia, North America, and Europe, the costs of a breakdown at the multilateral level would have been very costly and thus great efforts to help resolve the Uruguay Round were seen as justified.
This second point of the export-dependence of many of APEC's original member state economies ties in well with the third point—that of APEC's form of regionalism. As Ross Garnaut elaborated in 1989, APEC was set up under the principle of "open regionalism." Open regionalism, as differentiated from the exclusive regionalism of NAFTA, the EU's economic efforts, and ASEAN's AFTA, calls for the institutionalization of "regional economic integration without discrimination toward outsiders." It is argued that this kind of non-discriminatory regime focus was adopted to help spur the multilateral level's attempts at increased trade and investment liberalization by advancing it in an "open" manner on a smaller, more manageable scale. In this sense, APEC can be seen as a conservative regime fighting to maintain progress at the multilateral level and working against the "blocs" of the global market into exclusive regional economies.

This close and purposively supportive relation between APEC and WTO has led Aggarwal to argue that APEC is "institutionally nested" within GATT/WTO—something WTO's first chairman, Renato Ruggerio, also posits.

These three sets of factors that cover all levels of international relations from within the state to the globe itself are seen to have been the forces behind the formation of APEC and its vast geographical, cultural, and economic spread. APEC may be seen as one of the best "real-world" validations of the arguments of regionalization theory and its focus on actors' rationale for forming economic regimes. Tying APEC to the theory section, one may well surmise that the cultural diversity among its member states, especially in terms of organizational principles and economic philosophy, suggest that a tight rule-based regime may be difficult to successfully negotiate. Seen in light of the encompassing of both "North" and "South" within the structure of APEC, it also suggests that the incorporation of selective incentives to increase support for the group and the possibility of complementary goods are highly possible, given the high potential for different individual member-state preference orderings. However, the instability of the forces that are believed to have led to APEC and the temporal nature of some of them, when combined with the "inadequacies" of the region to support a regime, suggest that the problems of changes in members' interests and a decline in support for regime membership over the span of the APEC production function must be noted.

**ASEAN as an Economic Regime**

The identification by the APEC "promoters," Japan and Australia, of the ASEAN member states as a group and as a key player in the desired regime, and the official collective acceptance by ASEAN member-states of APEC membership raises the question of how effective a collective action group has ASEAN been within APEC. As noted above, the ASEAN member states identified certain strong reasons for acting
as a collective action group within APEC. To this list can be added the limited potential power of each ASEAN member-state within any Asia-Pacific regime and the increase in power each of these states could gain by effectively working together. To address this question, we will tackle the ASEAN economic regime and its potential to be a collective action group by looking at three aspects: 1) the suitability of the ASEAN economic region to support a commonality of economic interests among its states; 2) the economic policy efforts of the ASEAN regime and their effectiveness; and 3) the interface between the security, diplomatic, and economic strands of the ASEAN regime and its support for ASEAN as an economic collective action group.

Comparing the ASEAN economic region that is bounded by the original ASEAN member-states and the Sultanate of Brunei, and that of APEC during the years 1989 to 1995 would show two striking similarities. Firstly, within the ASEAN region, the per capita income, level of integration with the international market, and level of economic maturation of regional domestic economies are very diverse. The Singaporean per capita, for instance, was about 23 times larger than that of Indonesia during this period. This diversity among domestic per capita incomes has not been reduced, but actually increased over the post-colonial period (and over the life span of the ASEAN regime) as certain domestic economies (Singapore, Malaysia, and Thailand) have grown more rapidly (especially with respect to per capita income) than others (Indonesia and the Philippines). While the growing differences in wealth and economic structures, theoretically, should encourage closer regional integration, they question the ability of all states in the region to have similar economic preference orderings within the larger APEC regime.

While ASEAN is often presented as a regime of developing economies and "Southern" states, it may be more accurate to see it, like APEC, as a region and regime that incorporates both North and South. This differentiation of economies and consequent interests is aggravated by the fact that the two most populous countries, Indonesia (often seen to be the de facto leader of the ASEAN region and regime) and the Philippines, within the region have also been its poorest and least external trade-oriented.

Another similarity between the ASEAN and APEC economic regions, which can be viewed as somewhat contradictory to the above point, is the intra-state shifts of economic policy toward more integrative ones. Echoing the section on APEC and almost simultaneously with Australia and New Zealand, the Indonesian, Malaysian, Philippine, and Thai states shifted their policies in this direction. Within the Philippines, this was crystallized in the Ramos administration's Philippines 2000 program that sought, through liberalization, to spur sustained high growth rates and make the Philippines a "tiger economy" by the turn of the millennium. In a similar, if more ambitious, vein, the Malaysian state adopted the economic liberalization policy platform of
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Vision 2020, which sought to boost the Malaysian economy and allow it to gain the status of a developed economy by 2020. Very similar state-led programs and publicized expectations were noticeable in Thailand and Indonesia at the time as well. While these programs are noteworthy for their symbolic shift away from “dependency-oriented” rhetoric to more “international market-friendly” slogans, there is another important element to them.

As the political leaders of these states publicly announced such goals for their societies and attached themselves to increased economic liberalization as the means of achievement, their own reputations and power became strongly wed to the functioning of the market. Thus, their own-self interest and preference orderings for state policy and resource expenditure fell more in line with economic regime formation and interstate harmonization of economic policies. However, given the long protectionist history of many of these states and markets, and the accepted fusing of the concepts of post-colonial political sovereignty and economic nationalism, this rapid shift caused strains both in state-society relations and within these states themselves.

Examples of such strains to domestic political relations include, at the state-society level, the opposition to both Philippine membership in APEC and participation in AFTA by such business groups as the Philippine Federation of Industries. At the intra-state level, conflict over this rapid policy shift and its consequent reordering of the state’s foreign policy preference orderings and foci of attention are most noticeable in the marked difference in the levels of enthusiasm for APEC membership between President Suharto, a leading supporter of the APEC regime, and the Indonesian bureaucratic bodies in charge of foreign affairs and their leader, Ali Alatas. Finally, this shift also seems to have been both a result of, and aggravated, feuds within the bureaucratic state level of many ASEAN member-states, such as those in the Aquino administration, specifically between the National Economic and Development Authority, a supporter of the shift, and the Department of Trade and Industry, which was wary of it.

It can be argued that this shared shift to liberalization helped undermine the divergent effects of the different levels of economic maturation among domestic economies and led to some level of “frame alignment” among ASEAN member-states’ political leaders over economic issues. This “frame alignment,” while certainly not complete as there is a still much differentiation among the levels of openness of domestic economies in the region, helped spur within states and non-state actors both more interest in regime formation within the Asia-Pacific economic region and a strengthening of the ASEAN regime’s economic efforts.

While there was a noticeable shift in both the Asia-Pacific region and the Southeast one toward the support for economic collective action, the recent history of the ASEAN economic region has certain crucial differences from that of the encompassing APEC one. Based on regionalization theory and the definition of an economic region,
the economic space bounded by ASEAN member-states may be hard-pressed to be seen as a region, and certainly one that is becoming more integrated. In terms of intra-ASEAN trade as a percentage of its domestic economies' overall international trade, the region has been becoming less integrated.\textsuperscript{117} This lack of concrete integration among regional economic actors is most noticeable in the fact that in 1991 only 7% of Philippine exports were destined for the ASEAN region and that 9% of its imports were sourced from this region.\textsuperscript{118} The declining trade integration of the region is also not fully explainable by the earlier noted dramatic increase in trade “dependency” of domestic economies, as the absolute volume figures of intra-ASEAN trade have not flourished either. In the 1980s, intra-ASEAN trade figures were largely stagnant and only showed some signs of growth in the 1990s.\textsuperscript{119}

Casting more doubts on the “economic region” status of the ASEAN region is the fact that much of intra-regional trade is heavily skewed to particular sets of bilateral trade relations. About 50% of intra-region trade is actually Singapore-Malaysian trade and 30% is the combination of Singapore-Indonesia and Singapore-Thailand trade.\textsuperscript{120} In total, 80% of intra-regional trade involves the city-state economy of Singapore, thus supporting the theoretical argument of integration through complementary comparative advantage, but questioning the real level of regional integration.\textsuperscript{121}

This very unequal distribution of intra-regional trade integration suggests three key points for ASEAN as a collective action group within APEC. Firstly, the lack of economic integration among market actors (especially for those from the Philippines) and the limited resources these states have to maximize their economic interests suggest that individual state efforts to develop closer economic ties and common positions may not be so great. Secondly, based on collective action theory, the lack of integration within the region and the higher levels of extra-regional integration of these economies make it logical to assume that the state leaders should expend most of their economic goal-based resources on extra-regional economic relations (such as within APEC and the WTO). This call for more focus on alternative sets of relations than intra-ASEAN ones is strengthened by the fact that the region has not become substantially more integrated over time.

Finally, much of the recent increase in intra-regional trade figures is tied more to changes within the Asia-Pacific economic region than endogenous changes within the ASEAN economic region itself. With the inflow, for instance of Japanese, South Korean, Taiwanese foreign direct investment, much of the new intra-regional trade is also intra-industry trade.\textsuperscript{122} As much of this intra-industry trade is actually among the manufacturing affiliates of extra-regional multinational corporations (MNCs), and apart from the fact that the ASEAN region is not that economically integrated, the integration that is going on is more due to extra-regional than intra-regional dynamics. This last point is supported by the fact that intra-regional investment flows, as a
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percentage of total flows of investment into the domestic economies, are even less significant than the previously mentioned intra-regional trade flows.\textsuperscript{123}

While these statistics and observable trends suggest that the ASEAN region should not be seen as an “economic region,” they encourage ASEAN states to work together as a collective action group within larger economic fora. Due to the lack of substantial growth in intra-regional trade and the growing integration of domestic markets with extra-regional ones, the commonality of interests of regional market and state actors vis-à-vis their relations with extra-regional actors have been enhanced. Also, as many of the domestic economies (including Singapore, but excluding Brunei) are increasingly “dependent” on foreign investment (private and public, direct and portfolio),\textsuperscript{124} this commonality in forms of relations with extra-regional economic actors further supports the regional actor “frame alignment” and interest in acting as a collective action group when addressing these relations. Thus, while the economic trends in the APEC region strengthen its definition as an economic region and weaken said definition for the ASEAN one, these same powerful forces support the ASEAN member states as a collective action group within APEC.

This last point conforms to the collective action theory, as it is a good example of how actor interests change over time. It also shows how actors’ interest in collective action group membership (in this case ASEAN) can change due to alterations in extra-group relations, and why collective action groups should not be treated as closed systems.

This historical lack of intra-regional market forces pushing for economic integration, and the noted commonality in forms of relations with extra-regional markets is well exemplified in the kinds of economic activities the ASEAN regime has embarked upon and the effectiveness of these endeavors. In terms of efforts to increase intra-regional economic integration and economic policy harmonization, the ASEAN regime has not been very successful. This apparent failure is more salient as, from the beginning of this regime, calls for collective inter-state actions to spur said integration have been a part of the ASEAN discourse.\textsuperscript{125} The first attempts by the ASEAN regime to enhance intra-regional economies ties through exclusive regionalism was the Preferential Trading Agreement (PTA) adopted at the Second ASEAN Conference in 1976 and activated in 1977. Following the arguments of regionalization theory, supporters of closer economic integration of this time argued that regionally bound economic liberalization would create a much larger market with no dominant political-economic power and allow domestic firms and industries to expand and become more competitive globally. As well, it was posited that the creation of a more liberal internal market would allow the different domestic economies of the region to specialize in different economic niches, lessening the disintegratively competitive nature of ASEAN domestic economies.\textsuperscript{126}
However, the PTA proposal and its stated aspirations ran up against this problem of domestic market similarity, as each member wanted to protect similar industries from intra-regional as well as extra-regional competition. The PTA's exclusion list (areas not to be covered by reductions in intra-regional tariffs) was thus very long, and included most of the key export-oriented and import substituting industrial sectors of the domestic economies of ASEAN member states. In the end, PTA tariff reductions have been calculated to have benefited less than 5% of trade within ASEAN. The minimal impact of the PTA on lowering intra-regional trade barriers would seem to support the collective action theory assumption that actors will expend few resources and accept lower costs for strengthening relations that are not seen as important to their interest maximization strategies and the regime theory arguments on the difficulty of collaborative action with distributional effects.

The effects of this lack of pre-existing economic integration and the great differences between domestic economic wealth and maturation were also present in the death of the 1986 proposal for an ASEAN customs union. The customs union proposal, which called for a reduction of tariffs among regional states and the adoption of a common regional set of external tariffs, was unsuccessful due to opposition to these two features of a customs union. The Singaporean state and market actors strongly objected to the union's common external tariff, as this would have forced them to raise their external tariffs to harmonize them with those of their more closed neighbors. The Indonesian state rejected the proposal due to its perception that the timetables for intra-regional tariff reductions were too strict and did not allow enough time for adjustment. This mutual refusal of the proposal by Singapore and Indonesia, and the divergent reasons for it, highlight the different economic interests present within ASEAN states, and the difficulty of regime cooperation on intra-regional economic cooperation.

In recognition of the minimal impact of the PTA, the growing attachment of regional political leaders to “low politics,” and the greater role of market actors in domestic policy-making, ASEAN political leaders agreed in 1992 to AFTA, which became active in January 1993. Based on the same justification as the PTA proposal, AFTA is best seen as an extension of the PTA, like the WTO is of GATT. Similar to the WTO/GATT example, AFTA is a more comprehensive and rule-based set of policies than the PTA. In moving the ASEAN regime’s economic efforts to a more rule-based approach, it strengthened the dispute settlement mechanism (DSM), and was the first ASEAN set of economic actions to include a fixed timetable for individual state tariff reductions. With reference to its more comprehensive nature, AFTA assumes that, if it is not mentioned in either the inclusion or the exclusion list, a sector is included in the tariff cut inclusion list—a reversal of the PTA practice. As well, these inclusion and exclusion lists are not item-based, as in the PTA, but rather sector-based, lessening the
latitude for the targeted intra-regional protectionism by member-states. Finally, the AFTA agreement covers more economic areas than the PTA, such as the sections on the harmonization of customs procedures, and standards and measures. The inclusion of these sections means that the AFTA agreement incorporates not only trade liberalization issues (tariff reductions) like the PTA but also trade facilitation issues, unlike the PTA. With the high jointedness of supply of these trade facilitation, vis-à-vis the low jointedness of liberalization issues, AFTA may be more trade-“easing” than the PTA, and easier to implement.

While the AFTA agreement was the first official ASEAN document to mention free trade, and is noteworthy for its enhancements of the institutionalization of intra-regional liberalization, it also suffers from the problems of the PTA. Firstly, while AFTA’s treatment of the exclusion list is “stricter” than its PTA predecessor, excluded sectors are still numerous and important. Secondly, the DSM of AFTA lacks enforcement or sanction measures, which, drawing on Heckaworth’s arguments in the collective action theory part, raises questions on the real import of these changes. Finally, while more comprehensive than the PTA, AFTA is still calculated to only cover from 12% to 18% of intra-regional trade. Again, the exclusion list dynamics mirror the difficulty of certain member states to accept the costs of regional free trade, while the limited impact of AFTA underlines the fact that intra-regional economic collective action within the ASEAN region produces little overall impact.

This seeming lack of major progress on intra-regional integration, which highlights individual-state preference ordering differences, is contradicted by the success of the ASEAN regime’s efforts to act as a economic collective action group in its extra-regional environment. As noted earlier, it has been a long-standing goal of ASEAN member-states to act as a group in the external environment and to use this “groupism” to enhance the individual impact of member-states on said environment. This cooperative good-based desire also ties in very well with the noted similarity of member-state economies’ relations with the international market. The earliest signs of such a focus involved ASEAN member-states relations with the EC regime. In the early 1970s the ASEAN regime set up an office in Geneva to liaise with the EC over shared interests and disputes. This engagement by the ASEAN regime of actors in the external environment continued when the ASEAN regime granted the EC (1972), Australia (1974), New Zealand (1975), and Canada, the United States, and Japan (simultaneously in 1977) the status of ASEAN dialogue members. These extra-regional linking initiatives deepened even further with the invitation of Australian and New Zealand economic ministers to the relevant bureaucratic level ASEAN Conferences. These efforts have become so comprehensive that it is argued that, before APEC was established, the annual post-ministerial meetings of ASEAN with its Pacific dialogue partners were a quasi-official, quasi-Asia-Pacific regional economic forum.
Apart from this impressive tying together of ASEAN member-states with Asia-Pacific and global powers, ASEAN has also been successful in working as a collective action group in extra-regional economic fora and trade disputes. Most noticeably, ASEAN member-states were able to successfully work as a single unit during the international discussions over the Multi-Fiber Agreement, and as a member of the Cairns group of agricultural exporters during the Uruguay Round. This combination of linking ASEAN to important relating states and regimes and working as a group in multilateral trade disputes is, by definition, a mutually supporting one. In the case of the Cairns group, for example, it included Australia, New Zealand, and Canada, all dialogue partners of ASEAN. With this prior institutionalization of ASEAN dialogue partners relations, the social networks between these states and the ASEAN member-states state were enhanced, thus allowing them greater relational predictability and understanding of each other’s interests and strengths. This mutual confidence-building may have aided the working together of the ASEAN member-states and their dialogue partners within the Cairns group and thus its ability to impact the GATT negotiations. Similarly, the Cairns group negotiating experience further strengthened the above social networks and the utility of these ASEAN dialogue partner relations for all the states involved.

Thus, it appears that the intra-regional economic differences and similarities among domestic economies have been echoed in the successes and limitations of the ASEAN regime’s economic efforts. Furthermore, while the ASEAN region is not necessarily an economic region, such efforts and their results do seem to support the self-interest assumption of the collective action theory and its known consequences in terms of relations between actors. In areas where the individual states’ interests in working together were limited (trade integration), success was also limited, while areas of common interest (stronger extra-regional voice) spawned effective regime efforts and the production of desired regime-based collective goods. The ability of the ASEAN regime to offer its member-states multiple potential collective action goods (i.e., intra-regional integration, stronger links with external powers, collective diplomacy, etc.) means that even if it does not produce one, success in other areas allows it to remain relevant to its member-states. Two more important regime factors that need to be addressed to fully understand the ASEAN regime’s economic efforts is how these have been affected by the other areas of the ASEAN regime concern, and the institutional make-up of said regime.

Contrary to the limited effectiveness of the ASEAN regime in encouraging intra-regional economic integration, many see the ASEAN regime as the most successful and influential “Third World” regional grouping. Much of the praise of ASEAN stems from three interlinked factors. Firstly, and most powerfully, when compared to the intra-state and inter-state instability and strife of the Southeast Asian region be-
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fore ASEAN was established, the ASEAN period has been very stable and peaceful. This assumed connection between the development of the ASEAN regime and the increased stability of the region is buttressed by the fact that two previous attempts in the Southeast region to foster inter-state harmony failed—ASA of 1961 and Maphilindo of 1963—both of which failed due to intra-regime inter-state feuds. This long-standing recognition among state leaders of the need for some kind of regional grouping to mediate regional conflicts and ease intra-state insurgencies along with the failure of the first two attempts to pass muster, harks back to the point that even failed collective action attempts have a “silver lining” for future attempts.

This “silver lining” phenomenon can be seen in the establishment of ASEAN as a result of ASA and Maphilindo experiments, which were popularly legitimized by the individual member-states by claiming to be based on a shared and unique culture and need for regional unity against threats from the outside. These arguments created popular expectations that collective action by these states was both possible and necessary for the region’s future—two strong expectations that brought the leaders (new and old) back to the table for the formation of ASEAN. And even though they failed as regimes, the first two attempts set the groundwork for the formation of ASEAN by creating linkages between state bodies, and clarifying the ways agreement over certain issues among the participating states could be reached.

The second factor supporting this celebratory view of ASEAN is the belief that the ASEAN regime has been able to give both the ASEAN region as a whole and its individual states in particular a louder voice in East Asian diplomacy (most noticeably in dealing with Cambodian and Vietnamese conflicts) as well as globally. This “bigger voice” is tied to the first factor, as its intra-regional successful diplomacy is seen to have sheltered the ASEAN “front-line” states from becoming involved in the above conflicts or having these revolutionary movements spread to ASEAN societies. This ability of ASEAN to limit the destabilizing influences for member states and societies of the ASEAN region’s immediate surroundings was bolstered by the sharing of information of member states on terrorist and insurgent movements within their borders—a good example of a collective good with a high jointedness of supply. This willingness to share security information has been extended to the secret meetings of all ASEAN states’ bureaucratic leaders of intelligence agencies. Compared to economic efforts, intra-regional security integration has been more successful and due more to regime efforts than extra-regional forces.

The individual states’ gain of relational power and their ability to maintain regional stability through collective action within ASEAN led to the final factor. ASEAN has been praised for its ability to entrench itself in the region and its member states’ diplomatic actions (and not be tied solely to the personalities of its founding political leaders), while also being institutionally flexible enough to address new issues and
remain relevant\textsuperscript{145}. As noted above, ASEAN, on the economic front, has been able to both develop itself internally (through AFTA) while branching out to set up regime-based ties with important extra-regional actors. This impressive institutional expansion is not only true for the economic concerns of the regime. From having a nine-year span between the first two ASEAN political leaders summits, they have now become an annual event, strengthening the social networks among member-state leaders and making the ASEAN regime more salient to the societies of the ASEAN region.

To help organize these summits and establish itself as a permanent body, ASEAN formed a secretariat during the 1976 meeting of political leaders.\textsuperscript{146} Such a permanent body had become necessary, as the ASEAN regime institutionalization had flourished at the bureaucratic state level, with meetings among member-state bureaucratic bodies increasing to more than 200 a year. Finally, true to ASEAN’s primary focus on security concerns, its most noted institutional additional has been the 1993 development of the ASEAN Regional Forum (ARF).\textsuperscript{147} This innovation was strongly supported by extra-regional actors such as Japan and Australia. It also allowed the regime to be at the heart of a regular series of meetings between Asia-Pacific state leaders in which security issues are addressed. It was the first set of meetings of its kind. This last institutional innovation, of course, contributed to ASEAN’s goals of helping to minimize threats to the region, while adding to its weight as an actor in the international system.

The acknowledged success of the ASEAN regime as a diplomatic actor and insurer of intra-regional stability has affected the economic activities of the ASEAN regime in two ways. Firstly, while largely ineffective as an intra-regional economic actor, the positive impact of said regime on regional dispute settlement and stability is argued to have been a major support for much of the economic dynamism of the region since the formation of ASEAN.\textsuperscript{148} The comparative intra-state and inter-state stability of the ASEAN region helped encourage the huge inflows of foreign investment from the 1980s onwards, as investment flow directions are partially determined by the stability of the host society and its surrounding environment. This positive spillover effect seems to validate the ASEAN founders’ belief in the existence of a virtuous circle between regional security stability and economic development.\textsuperscript{149}

The other effect on the economic cooperation efforts of the ASEAN regime is more fundamental, as it deals with the kind of regime ASEAN is and how its collective action decisions are made. Due to the shared cultural values among the founding states and the large number of regional historical grievances (the death knell of the earlier ASA and Maphilindo attempts along with newer ones such as the actions of the Indonesian state during the Konfrontasi era) still present, ASEAN was set up and remains largely a policy-based regime with much tolerance for intra-regime disagreement. On the cultural front, this lack of binding rules of action and sanctions\textsuperscript{150} is seen...
to stem from the Malayo-Polynesian approach to relations and negotiations, known as
musgrawarah in Malay.\textsuperscript{151} In this approach to relations (often contrasted with the
adversarial "Western" ones) conflict resolution is subservient to maintaining smooth
relations among all actors, in this case the ASEAN member-states.\textsuperscript{152} This cultural
"frame aligning" of relations and the noted failures of ASA and Maphilindo are seen to
have been instrumental in the shaping of ASEAN as a policy regime that, at the politi-
cal level, eschews formal organizational bargaining for informal negotiations.\textsuperscript{153} Less
abstractly, the post-colonial desires for political autonomy of member-states and the
noted inter-state bones of contention within the ASEAN region\textsuperscript{154} led to the adoption
of the "national resilience" principle of ASEAN and the code of conduct of "the right
of each member-state to be the master of its own destiny and to pursue national
development and regional cooperation without interference from external powers."\textsuperscript{155}

Linking this approach to intra-regime relations to the theory section, this focus
on conflict avoidance can be seen both as a reason why ASEAN has been able to
maintain its relevance through time, given all the changes within the region, and for the
lack of closure on many intra-regional disputes. With such an approach, no actor is
forced ever to publicly lose face in an intra-regime debate and pay the reputational
costs of such a public defeat. This lack of a "loss of face" problem is especially key as
state leaders, especially political leaders, are often very concerned about their personal
reputations within the inter-state system, the region, their home societies, and their
states. Thus, the potential costs of such a loss would be very high for them and their
willingness to join any body that threatens such costs would be inversely low. As well,
given the vast nature of the ASEAN regime's efforts, a "hot" dispute in one set of
meetings could have negative spillover effects in other areas of ASEAN concern, again
creating a disincentive for conflict within the regime.

On the other hand, this lack of binding rules and sanctions increases the ability
of individual member states to "hijack" the ASEAN agenda and pursue individual state
interests under the guise of ASEAN interests. This group tolerance of "non-enlight-
ened" actor self-interest increases as the conflict avoidance approach undermines the
intangible and seemingly powerful group sanction of the threat of expulsion for such
actors. This institutional tolerance of individual action is most relevant to Prime Minis-
ter Mahatir's EAEG idea. This idea, and the timing of its announcement, was not a
coordinated action of the ASEAN regime, but rather an individual initiative of Prime
Minister Mahatir\textsuperscript{156}. Furthermore, the EAEG idea and its exclusion of "the West" is
perceived to have been contradictory both to Singapore's interests of expanding trade
liberalization as far as possible and to Indonesian President Suharto's strong support
for the APEC proposal. Yet, by 1993, the ASEAN regime had adopted the EAEG pro-
posal as an ASEAN project, after it had been softened terminologically before the East
Asian Economic Caucus (EAEC), which questioned its agenda-setting procedures but
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nonetheless spared Prime Minster Mahatir the embarrassment of having his proposal "die." This lack of defined rules of order and agenda-setting has led to the criticism that ASEAN is a regime that speaks with as many voices as its members, but is a non-serious bargaining structure when differences of interests come into play. In a similar vein, it is argued that, in the area of economic policy (where many divergences of state interests occur), the ASEAN regime has no overarching economic policy framework, only a collective support for state interests, convergent or not.

These non-economic policy-based elements of the ASEAN regime seem to have had three effects on the actions of ASEAN as a collective action group within APEC, two of which are negative, and the other positive. The positive effect reflects back on the growing importance of the ASEAN regime over time for its member-states and its expanding webs of meetings and social networking at all levels of the member states. This development has led to the strong connection between individual state interest maximization strategies and the continued development and relevance of the ASEAN regime. Given the key intra-mural and extra-mural role ASEAN plays for its member states, the idea of the larger APEC and its establishment gives rise to a fear among ASEAN member-state officials that it was a threat to ASEAN and its role in the international system, and to the "South" in general. This envisaging of APEC as a challenge to ASEAN both encouraged ASEAN member-state membership in it and membership as a group with the shared interest of "defending" the ASEAN regime.

The depth and spread of ASEAN regime institutionalization, however, threatens the ability of ASEAN member-states to fully participate in the APEC regime and as a member of the ASEAN collective action group within it. As noted before, the institutionalization of ASEAN has become very dense with over 200 inter-state meetings a year, which stretch the state capacities of its member-states to begin with. Considering the similar institutional development of the APEC regime and its involvement of similar state actors, the ability of individual ASEAN member-states to maximize their participation in both is brought into question. This problem of diplomatic overstretch is highlighted by the fact that in preparation for its chairmanship of the 1996 APEC Leaders Summit, the Philippine Department of Foreign Affairs (DFA) had to consider over 1,500 plans dealing with all the areas addressed in the Osaka Action Plan.

The second negative impact of ASEAN's non-economic policy-based components is tied to the conflict avoidance nature of ASEAN communication. Given the known economic interest differences among ASEAN member-states and the potential for alliances within the APEC forum between individual ASEAN member-states and like-minded non-ASEAN states, the lack of effective sanctions may lead ASEAN member-states to pursue interests not as a collective action group but in non-ASEAN-based alliances. Such a possibility would both weaken the collective action effectiveness of ASEAN and undermine its relevance as an extra-regional actor.
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ASEAN as a Collective Action Group Within APEC

Building upon the two above parts to the case-study section, this section will focus mostly on whether the ASEAN member-states, as a group, were able to achieve their preference orderings during the formative stages of the APEC regime. Within this focus, certain bargaining strategies of ASEAN as a group and some of its member-states will be addressed for a deeper understanding of the ASEAN regime’s role within APEC. This evaluation of the ASEAN regime’s effectiveness will be divided into four interlinked factors: 1) the “promoters” conceptualization of ASEAN within APEC; 2) the effectiveness of the ASEAN collective action group in shaping the nature of the APEC regime; 3) the success of this group in having its desired positions on certain substantive issues be accepted as the APEC position; and 4) an overall evaluation of the strengths and weaknesses of ASEAN within APEC.

In terms of the impact of ASEAN member-states and ASEAN as a regime on APEC formation, the first factor is especially crucial. This importance stems from the fact that, to a large extent, both the idea for APEC and its eventual shape and foci of attention were developed from Australian and Japanese state plans and their eventual integration. Both Australian and Japanese planners assumed that the participation of ASEAN member-states within the envisaged regime was of great importance to the fruition of APEC. This view of the APEC “promoters” of ASEAN as a key group of member states, and more especially as a collective action group within APEC, was publicly symbolized by the Japanese state’s delaying of its official approval of the 1992 Bangkok summit documents (one of the key pre-APEC, APEC formative meetings) until the ASEAN member-states had collectively given their official approval. Then, too, Australia, in its APEC “promotion” tour, visited the member-states of ASEAN early on and was particularly eager to gain Indonesian President Suharto’s nod for the APEC endeavor.

This shared interest of the Japanese and Australian states in ASEAN member-state participation and the linking of the APEC regime to the ASEAN was due to an APEC-related set of concerns and an extra-APEC one. In relation to the APEC concerns, both the Australian and Japanese states, after integrating their separate plans, were interested in developing APEC as a regional regime and not one that incorporated certain Asia-Pacific states only. If the ASEAN member-states had refused to join or if the ASEAN regime itself had rejected the APEC proposal, then this goal would have been compromised and the damaging claim that the APEC idea was simply a “Northern” construct would have been strengthened. As well, with the incorporation of ASEAN within APEC, the Australian and Japanese states could be assured of more support against US unilateralism (given ASEAN states and societies’ absorption of some of the costs of this US state practice) and thus the creation of a regime more able to moderate US trade policy and its externalities.
The second set of concerns again highlights the inutility of treating any arena of action (i.e. regime) as a closed system. As noted above, Japanese and Australian market and state actors had invested much money and efforts in developing ties with market and state actors in the ASEAN region and had tied some of their interest-maximization strategies to the smooth functioning of these ties. Certainly, if the ASEAN member-states had refused membership in APEC and seen it as a "Northern" attempt to rearrange these ties at the cost of ASEAN regional actors, then this smooth functioning prerequisite would have been adversely affected. As well, if the view among certain ASEAN regional elites that APEC was an attempt to replace ASEAN became widely accepted, both the APEC endeavor and these extra-APEC ties would have been damaged. In this sense, the growing integration of the Asia-Pacific economic region has led ASEAN, individually and as a regime, to gain more regional power, as other actors find those ties necessary. Thus, these Asia-Pacific economic forces can be seen, in the context of this case study, to have strengthened ASEAN as a regime and furthered its goal of being an extra-mural player of import.

Stemming from the "promoter's" concern for ASEAN acceptance and the fact that the ASEAN regime was widely viewed as a successful organizational form, the ASEAN regime played a key role in defining the nature and structure of APEC. This disproportionate (when compared to the combined economic and political power of ASEAN member-states vis-à-vis other APEC member states) influence can be partially traced back to certain strong regional similarities between the APEC region and ASEAN one. Both of these regions, as noted above, are very diverse and are witness to many historical grievances among their members. This sharing of "regime formation" inadequacies strengthened the role of ASEAN (as an organizational blueprint), as the shaping of APEC as a regime based upon strong rules and entrenched sanctioning ability was seen as unsuitable to such a diverse region as the Asia-Pacific. Thus, while not a cultural value shared by all APEC member-states, conflict avoidance and diplomatic informality became one of the founding hallmarks of the APEC regime. And given the fact that at the time of the founding of APEC, only two regional groupings of states in the post-WWII period had lasted for extended periods of time and had been externally validated as successful—the EC/EU and ASEAN itself—in terms of planning APEC as a system of structures, these two would play a large role.

With respect to the diversity of the APEC region and the lack of historical political interaction within it, the EC/EU model of a highly institutionalized, supranational regime was not seen as fitting, but was rather used as a negative model for APEC construction. The EC/EU model was rejected as being much too ambitious for a region such as APEC and much too bureaucratic and sovereignty-reducing to be attractive to regional states. On the other hand, the parallels between the APEC and ASEAN
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regimes are numerous and fundamental. For example, the APEC institution of the Eminent Persons’ Group as a non-political group of elite individuals who act as a source of ideas for regime development and preference orderings, was borrowed from ASEAN. Also, the interface between the political and bureaucratic state level elements of the APEC regime mirrors those of ASEAN. In both, the political leaders’ summits are treated as informal, “loosely” organized fora for conversation (often bilateral and not incorporating all of the regime’s political leaders). This apparent lack of organizational rigor at the political level is contradicted by the two regimes’ very well-organized, semi-permanent, and solidly structured meetings at the bureaucratic level.

This contradiction in the structure of the regimes between these two levels of state activity has led some APEC and ASEAN observers who key in on the political level to characterize them as “talking shops” and as somewhat non-serious, “vast, decentralized, orbiting intergovernmental congresses in intermittent session.” Along with the normal regime requirement for consensus before regime action is taken, these organizational similarities and the use of ASEAN as a “blueprint” for APEC mean that many of the noted structural impacts of the ASEAN regime structure on intra-regime negotiations have been transferred to APEC. Furthermore, if the structuring of the bargaining game itself is a key variable in actors maximizing their preference orderings while playing, it suggests that ASEAN, as a regime and set of individual state actors, has an advantage within APEC.

The worry of the “promoters” of ASEAN rejection of their proposal and the consequent lack of a “Southern” component also contributed to the ASEAN regime’s ability to influence the workings of APEC. This fear of the “promoters” specifically and other “Northern” member-states in general (stemming itself from the ASEAN fear of replacement) led to the consensus that every second APEC leaders’ summit should be held in an ASEAN member-country. While being a powerful symbolic validation of the ASEAN regime itself and its international prominence, this agreement also increases ASEAN’s importance within APEC. To fully exploit these “agenda-setting” advantages of ASEAN, the ASEAN political and select bureaucratic state leaders had met even before APEC became an official body to come up with common positions and bargaining preference orderings. These meetings, while not part of popular discussion, are one of the strongest examples of ASEAN as a collective action group within APEC and the ASEAN regime produced good of collective diplomacy.

In view of this “agenda-setting” power of ASEAN, the shared economic interests of its member-states (in terms of investment flow questions), the recognition by others of the importance for APEC of ASEAN participation, and the strong social networks among ASEAN state leaders, suggest that ASEAN member-states as a collective action group should have been able to attain their preference orderings more successfully than their raw exchange power capabilities would indicate. To test this
hypothesis, we will address four areas where ASEAN stated positions were in conflict with other member-state positions.

The first area concerns the oft-repeated difference of approaches to decision-making between "Western" actors and "Eastern" actors. While the APEC regime was first set up as a loosely organized policy regime (or principled club), the states of Australia, Canada, New Zealand, and the United States have been strong advocates of a more rule-based approach and the greater institutionalization of the APEC regime. This advocacy can be seen in four "Western" prescriptions for APEC from 1993 to 1995: 1) the US/Australian states' call for individual state-binding targets for near- and medium-term trade facilitation and liberalization efforts;\textsuperscript{172} 2) the Seattle proposal by the US state and APEC's EPG to develop APEC into a RTA (which, according to the GATT/WTO rules for RTAs, would demand the prescription of binding targets along with more rigorous institutional demands);\textsuperscript{173} 3) the US state's call for a uniform liberalization and facilitation schedule for all member states;\textsuperscript{174} and 4) the creation of an APEC Secretariat and annual regime budget.

All four proposals, especially the first, were seen by ASEAN member-states to contradict both the original spirit of APEC and the quid pro quo for ASEAN membership that APEC be a "loose, exploratory and informal consultative process,"\textsuperscript{175} in which progress would be gradual, informal, and by consensus.\textsuperscript{176} In terms of the first one, the ASEAN regime came out against this radical proposal, and, in alliance with Japan, South Korea, among other states, watered it down. This conflict over the depth of trade liberalization the APEC regime should address has been one of the greatest regime sticking points and one over which strong positions formed. Here, the consensus rule of the APEC regime came into play, and Malaysia's annex to the 1994 official agreement supporting the movement toward APEC free trade noted that all actions stemming from APEC decisions must be voluntarily accepted by all member-states.\textsuperscript{177} Thus, while the Bogor Summit of 1994 came out in support of the idea of eventual free trade, no concrete moves were made to achieve this goal through a change to a more "legalistic" regime.

The second and third points stem out of the calls for the development of a timetable for each member-state's attainment of the trade facilitation and trade liberalization goals of the APEC regime. It is noteworthy that ASEAN member-states were against such quantitative and fixed targets for ASEAN economic integration during the PTA period, but accepted them at the ASEAN level in AFTA. This opposition to such codification in APEC was again supported by other "Eastern" states such as Japan and South Korea, which were concerned about agricultural sector timetables, and China with its concern about the fast pace of APEC liberalization in general.\textsuperscript{178} On top of this introduction of the idea of targets was the US push for universal free trade for all member states by 2010. In the end, the APEC negotiations led to the Bogor
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agreement on timetables and the end goal of free-trade but developed a two-track approach to said end. The "Northern" member-states were to achieve the lofty goal by 2010, with the "Southern" states by 2020. All ASEAN member-states, along with China and Papua New Guinea, were included in the 2020 track. 

The two-track approach, while ceding to the demand for targets, was strongly advocated by Chinese and Malaysian participants, which justified it through the contention that the adjustment costs of full liberalization would be much higher for developing economies and thus these states needed more time. On the other hand, the targets were argued as necessary by their supporters to increase the relevance of the APEC regime globally and especially within Washington, where APEC was apparently not taken too seriously.

Given this debate over targets and levels of institutionalization, the timing of the end points suggests two things about the 1994 negotiations. Firstly, it shows that the perceived "shadow of the future" of the APEC regime and its shaping of actors' interests was quite long. Thus the negotiations over these future targets was consequently quite contentious. This level of contention was exacerbated by the fact that the collective good of eventual free trade was not supported by all member-states and was seen not as a cooperative good but a collaborative one in which there were significant distributional effects. While the acceptance of targeting suggests a major institutionalization of APEC, the 15- to 25-year timing of these end goals casts doubts on their "seriousness," especially given the voluntary caveat of APEC agreements. As well, the domestic political costs for the leaders of the states that opposed targets or from societies with major anti-free trade lobby groups were lessened as the timing of full liberalization was so far off from the present that they were hard to organize protests around. Finally, as all APEC member-states either belong to the WTO or are predicted to join it before 2020, the real impact of these targets is further questioned as they overlap with existing WTO proposals.

The fourth proposal, an APEC budget and secretariat, was opposed by ASEAN member-states as being too "institutionalizing," despite echoing prior institutional advancements of the ASEAN regime. While able to delay the adoption of these proposals, the ASEAN opposition was unable to stop them. However, the budget was approved at the meager level of US$2 million while the secretariat was given few powers. On top of this, the secretariat was located in Singapore, itself a compromise candidate being both an ASEAN member-state and a strong supporter of free trade.

From these four points it can be seen that the stated ASEAN desire of keeping APEC purely at the informal and consultative level has been surpassed by the interests of other states for a more weighty organization. As well, looking at the different issues will show that the ASEAN member-states have been successful at establishing alliances with other states that also support a slow gradual process for the APEC regime.
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This linking of ASEAN member-states and other East Asian states in negotiations over the direction of APEC has been so prevalent that it has led to the belief that an "informal" EAEC exists within the APEC regime.\textsuperscript{182} This contention of a similar "culturally bound" preference ordering for a policy-based "loose" APEC regime drew further strength from the Japanese 1995 proposal at the Osaka summit for an approach known as Concerted Unilateral Action or Concerted Unilateral Liberalization (CUA or CUL) to progress toward the 1994 Bogor end points.\textsuperscript{183}

The CUA approach was strongly supported by other East Asian member-states and opposed by the US participants, who believed it shifted the onus of progress from the regime itself back to the individual member states, as they themselves identified the means by which they would voluntarily move toward either the 2010 or 2020 deadline. This last point reflects the theoretical insight that in collaborative regimes, especially when actors have contrasting preference orderings, the greatest problems and debates occur on issues of policy enforcement, not policy formation. Moreover, this Osaka proposal exemplifies the "agenda-setting" power of the chairing state and how the agreement to have summits in ASEAN member-states strengthens their bargaining power.

The second area of ASEAN impact to be considered concerns the actions of its member states vis-à-vis the question of APEC "widening." The very question of widening is by itself a validation of the significance of APEC as a regime and the member states' allocation of resources for its development. If it was seen as non-serious then non-members would show little desire for membership. Here the story is a mixed one—ASEAN as a regime, and especially the Malaysian state, was able to add more "Southern" states to the APEC regime, but was ambivalent over Chinese state membership. The early inclusion of Latin American states in APEC was strongly supported by the Malaysian state and, more mutedly, by other ASEAN ones, whereas the timing of their inclusion was questioned by "Western" states. The "Western" argument was "deepening" before "widening" so that APEC could progress in achieving its goals and not be delayed by "widening." Along with this sequencing argument, the problems of the positive relationship between negotiating complexity and group size was raised. On the other hand, Malaysia's argument was Latin America's inclusion would provide more balance to the APEC regime and allow it to better represent the region. Given the unanimity qualification for any changes to the APEC structure and the theoretical insight that the cost to actors of stopping a group action or non-action against the wishes of the other actors is very high, the successful entrance of Chile to APEC suggests that ASEAN states, not just Malaysia, "grandfathered" Chilean entrance.

The ASEAN support for Latin American state membership exemplifies how many cross-sections exist within the APEC community. Such support goes against the grain of the EAEC proposal and the "East-West" schism within APEC, but supports
the “North-South” schism view. It is only logical that the ASEAN member-states supported Latin American state membership (actor addition), as they thought these states would share similar preference orderings to ASEAN member-states and thus bolster their bargaining power. At another level, one could see the support for the addition of these new actors as a delaying strategy to slow down both the present “Western” push for “deepening” and the speed of any future APEC “deepening.” Thus, the strategy of actor addition seems to have provided two interlinked benefits for its ASEAN supporters, while at the same time making the APEC negotiating forum more cumbersome.

Contrary to both the identification of ASEAN as a member of the “Eastern” subgroup of APEC or the “Southern” one was the ASEAN regime’s hesitation about supporting Chinese state inclusion. Such reluctance is explained in part by the fact that the Chinese domestic market has been identified as the greatest “challenge” to the ASEAN economies’ ability to attract both extra- and even intra-ASEAN-sourced investments. As well, certain Southeast Asian states hold grievances against China historically and ideologically. Such grievances stem from the post-colonial troubles of many ASEAN member states with communist insurgencies and the belief that the Chinese state supported said movements. Unlike in the case of Latin American membership, which the ASEAN regime supported, South Korean and Japanese states pushed for China’s inclusion against the US state’s reservations. The eventual inclusion of the Chinese state within APEC, while not originally supported by the ASEAN regime, however, suited the regime’s interests well as the Chinese state, shares many of these and sees itself as a “Southern” actor also. Thus, the unsupported addition of an actor has allowed ASEAN member states, through coalitions with the powerful Chinese state to further their preference orderings within APEC, exemplifying the changing nature of regimes over time and the bounded rationality constraint of all regime members.

The third set of ASEAN regime and individual member-state actions to be evaluated revolves around the desire of the ASEAN regime to “add issues to the APEC agenda” and focus APEC attention toward these. This set of issue addition and prioritization interests suits well the perception that the “Northern” states joined APEC so as to spur export market opening while “Southern” states joined to gain more concessions on technology transfer and human resources development. ASEAN’s issue addition and prioritization focus was thus less on regional trade facilitation and liberalization and more on regional economic development. This push for a more development-oriented regime that focuses on resource redistribution from wealthy regime member states to poorer ones was successful in the APEC regime’s adoption of Human Resource Development Initiative against US and Japanese reservations. ASEAN’s focus on a development agenda, however, did sit well with the Japanese state’s Part-
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ners for Progress (PFP) aid program and its desire to have it be enshrined as APEC's own development agenda. 188

As we have seen, these three sets of ASEAN regime interests were not supported by all other APEC member states. Yet many of them have been achieved, while certain others were "outbid" by competing interests. Based on our definition of power, it does seem that these ASEAN interests have been better served than a raw power calculation would suggest. This beneficial situation seems partially due to the use of the ASEAN regime as an organization "blueprint" for the APEC regime, as prompted the "Western" desires for more "depth" and rules to be "framed" as calls for change and redefinition, while the ASEAN interests were "framed" as conservative and true to the origins of APEC. As well, the historical resonance of the "North-South" dialogue and its consequent "framing" of the international market and inter-state system, was useful for ASEAN regime interests when combined with the identification of the ASEAN regime as APEC's "Southern" representative. This factor was most noticeable in the last set of interests and the support by the Japanese state of the ASEAN position that APEC should address both universal trade principles and development ones. Finally, the ability of the ASEAN regime and its more vocal member-states to seek out alliances with like-minded non-ASEAN East Asian states, especially China, added greatly to its ability to achieve some of its interests, including the strengthening of social networks among ASEAN member-states and like-minded ones. This convergence of APEC regime-related interests among the ASEAN regime and other East Asian states over a conflict avoidance approach also lends credence to the arguments of "Asian capitalism" and an "Asian way."

While the overall ASEAN record within APEC is quite impressive, its effectiveness as a collective action group suffered from the same problems within APEC it did vis-à-vis intra-ASEAN regional economic efforts. The inability of the regime to harness all of its members to support its stated APEC interests was most noticeable in the Singaporean state's support for the US state's call at Bogor for free trade by all states within the APEC region by 2010. 189 This contradictory position became more pronounced with the Indonesian state's initial support for the US proposal, which in turn came under strong attack by fellow ASEAN member-state Malaysia. This fissuring of the ASEAN collective action group was further exacerbated by the 1993 Indonesian support for the regime rule change from perfect consensus to a "consensus-X" rule. Under the latter mode, one member-state (X) is not allowed to veto an APEC decision supported by all others. This Indonesian state support for a "deeper" regime is most noteworthy as the "X" that was to be excluded so as to speed up APEC progress was assumed to be the Malaysian state. 190

This set of divergent intra-ASEAN interests for APEC may be partially explained by the tensions between the Indonesian and Malaysian states over the leader-
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ship and direction of the ASEAN regime. Thus, the tensions within a regime can be seen to work against the effectiveness of a collective action group in the external environment. The divergent interests also echo the fact that from the beginning different ASEAN member-states have had different views of the APEC endeavor and its interface with ASEAN's own development. Finally, Singapore's call for support of the US 2010 proposal reflects the "open" nature of its economy and the consequent lower economic and political costs of such a proposal, which again highlights the diversity of ASEAN domestic economies and how this leads to different relational interests among its member states. At the institutional level, this divergence of APEC-related interests within the ASEAN regime was well shown by the Indonesian state's blocking of the Thai/Philippine state proposal to hold official pre-APEC ASEAN summits.191

At a more abstract level, the external reputation of the ASEAN regime and its member states at the time of the formation of APEC greatly aided the regime's effectiveness as a collective action group. Such reputation allowed the regime to be considered as a necessary "leg" of the APEC construct—one whose stated interests must be addressed for the APEC endeavor to be successful. Without this extra-mural reputation (gained through the perceived success of ASEAN as an intra-regional collective action group and the economic dynamism of its domestic economies), it is doubtful whether all the interests the ASEAN regime did achieve within APEC would have been realized. Secondly, the long-standing success of the ASEAN regime and its ability to address the changing, and often divergent, interests of its member states over time led it to be the organizational model of APEC. Thus, whatever impact the structuring of negotiations has on bargaining outcomes would seem to favor ASEAN interests, especially that of using APEC to validate ASEAN's relevance and its approach to regime structuring. In a broader sense, the ASEAN regime was very effective (often not through direct action but rather due to the appreciation of the ASEAN experience by other APEC formers) at the macro-level of the APEC regime, while less so at the level of regime bargaining outcomes and policy-making. However, this macro-level effectiveness seems to have aided the ASEAN regime in attaining certain of its interests at this micro-level.

On a more pessimistic note, it has been argued that the ASEAN-like structure of APEC will limit the ability of the APEC regime to remain a serious regime, thus undermining its member-states' abilities to use APEC membership as a means to achieve state interests. This point, while still speculative and somewhat beyond the time scale of this case study, is noteworthy for two reasons. First, unlike the mostly Malayo-Polynesian cultural context of the ASEAN region and its acceptance of conflict avoidance over conflict resolution forms of communication, the APEC regime and some of its most powerful member-states do not share this cultural predilection. Given this cultural dissonance, the interest of these state-actors may either diminish vis-à-vis APEC mem-

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bership or shift to more confrontational, risk-taking approaches so as to "impose" their desires and communication patterns on the APEC regime. These two disruptive possibilities are strengthened in the case of the United States and Canada as both of which have alternative relations to APEC membership through which to address similar export market access issues (NAFTA and its spread throughout the Americas). For the powerful United States, a return to simple "aggressive unilateralism" in the region may be a possibility. And if this second possibility were to be realized, one of the key collective goods of APEC would be removed along with some of the interest of all of its member-states in regime membership.

APEC Membership's Effect on the ASEAN Regime

While the ASEAN regime played a key role in the formation of the APEC regime, the membership of the ASEAN member-states in APEC and their desire to act as a collective action group have also affected the progress of the ASEAN regime. These impacts, apart from the noted strengthening of the extra-mural reputation of ASEAN itself, fall into three categories: 1) negative effects on the ASEAN's exclusive regionalism efforts; 2) strengthening and diversification of ASEAN economic efforts; and 3) increased chances for the ASEAN regime to link with and help form other extra-regional groupings.

With the agreement of ASEAN member-states within the APEC regime to the 2020 deadline for universal free trade (due to the open regionalism principle of APEC), the desire of AFTA to differentiate, in favor of ASEAN regional market actors, the market access of ASEAN domestic economies is certainly undermined. Going by the "shadow of future" insight, one could further argue that this APEC-inspired temporal limiting of this favorable intra-regional market access may lessen the individual member states' interests in pushing through with the AFTA reductions, as their costs will remain the same but their potential benefits may be constrained by this time limitation.

A more intangible impact of APEC deliberations on AFTA's exclusive regionalism approach ties to the Philippine PECC member, Dr. Jesus Estanislao's call for AFTA to multilateralize its tariff reduction agreements to extra-regional actors by year 2003, the year the ASEAN member states had agreed to treat as the end-point for intra-regional tariff reductions. This last point suggests the potential for an intra-ASEAN debate over the proper way to liberalize, intra-regionally (AFTA), or through "open regionalism." Such a call and consequent debate both show the "ideational" impact of the APEC experience on ASEAN and is buttressed by the noted "openness" of ASEAN's "Northern" member-state, Singapore. Such a possibility is further strengthened by the Singaporean and Thai state suggestion of an ASEAN-NAFTA RTA.
At a different level, the involvement of ASEAN member-states in APEC and the large number of economic issues (even more than the WTO) APEC's bureaucratic level Senior Officials Meetings (SOMs) deal with have led to a diversification of ASEAN economic efforts. This enlarging influence of APEC on ASEAN stems from the ASEAN regime's desire to form common positions beforehand on all important issues considered within the APEC fold.\textsuperscript{195} This need to keep pace with APEC's vast agenda can be seen in the increased focus of the ASEAN bureaucratic level on the issue of intellectual property rights (IPR) and the formation of an ASEAN position on IPR treatment.\textsuperscript{196} As well, from 1994 there have been increased discussions within the ASEAN regime and region about the formation of an ASEAN investment area. Also, in 1996, an ASEAN Coordinating Committee on Services was established to address invisible trade issues and expand the coverage of ASEAN economic efforts to match those of APEC and the WTO.\textsuperscript{197}

While these efforts are certainly tied also to changes within the ASEAN region, exclusive of the impact of the APEC regime, the intra-ASEAN regime call for an ASEAN common position on economic liberalization by 2020 hints at a strong connection with APEC matters.\textsuperscript{198} As well, given the overlapping of APEC and ASEAN efforts to struggle with trade liberalization in services and the greater research resources of certain APEC member states, is likely that the ASEAN discussions on services will be greatly affected by the parallel discussions in APEC.\textsuperscript{199} Thus, the overlap between the APEC and ASEAN regimes is perfect for membership (for the duration of this case study) and significant in terms of economic agendas.

Apart from supporting the shift of ASEAN efforts toward "low politics," APEC membership has furthered the ASEAN regime interest of linking itself to extra-mural organizations and states. In this regard, the most noticeable benefit has been the ASEAN-initiated creation of ASEM, which was officially inaugurated in 1996.\textsuperscript{200} This tying of the ASEAN regime with the EU, China, Japan, and South Korea, when combined with ASEAN's links with APEC, means that the ASEAN regime is now a nexus that links its member-states to all the key extra-regional actors, and which ASEAN was instrumental in shaping. The interest of the EU in joining ASEM, while spurred by increasing economic activity (especially portfolio investment) between East Asian and European market actors, was also encouraged by the formation of APEC and its geographical boundaries. With the dynamism of East Asian economies and the promise of APEC regime's enhancement of Asia-Pacific economic integration, the EU felt aggrieved that it had been excluded, and was worried of being "shut out."\textsuperscript{201}

In a less formalized fashion, the membership of ASEAN member-states in APEC may have furthered East Asian inter-state linkages given the commonality of APEC-based interest and preference orderings. This has been addressed by the informal EAEC argument and seems to be further encouraged by the structure of APEC political
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summits. At these informal political leaders' summits, few all-inclusive meetings take place, but a large number of premeditated sub-group meetings in which no written minutes do. Such a structural encouragement for "secret" meetings, when combined with the arguments of East Asian cultural and economic interest similarities, suggests that the APEC regime serves to strengthen intra-East Asian unity and diplomatic integration. This APEC regime role is reflected in the term the "Asian 10" with its inclusion of all ASEAN member states (excluding Brunei), China, Japan, South Korea, Hong Kong, and Taiwan, all of which are, of course, APEC members.

In view of these concrete points, the impact of APEC membership on ASEAN suggests that one can treat the ASEAN regime as partially "nested" within APEC, which itself is seen to be "nested" within the WTO. While the sequencing of the creation of the ASEAN and APEC regimes and the greater entrenchment of ASEAN means that this "nesting" is both incomplete and by no means suggestive that ASEAN is subservient to APEC, it does bring forth the possibility that there may be a further fusing of the two institutions and the impact of APEC on ASEAN may increase. This APEC-ASEAN connection again harks back to our discussion of the collective action theory and how the intertwined sets of relations of an actor are both mutually impacting and supporting, thus strengthening the need for a theoretical understanding of regime behavior and change.

CONCLUSIONS AND RECOMMENDATIONS

The fears of certain ASEAN regime actors that the development of the APEC regime would undermine the relevance of the ASEAN regime and its interest of keeping extra-ASEAN powers from "dominating" the ASEAN region do not seem to have been realized. Rather, the formation of the APEC regime, with its inclusion of the states of the key sources of ASEAN-directed investment flows, may have actually given the ASEAN regime and its member-states greater voice in the political management of said flows, thus enhancing this non-domination interest of the ASEAN regime. Further, APEC membership has strengthened the movement of the ASEAN regime toward "low politics" and its continuing relevance to changing intra-ASEAN state interests and extra-regional influence. Thus, it may be best to see APEC membership not as a replacement of ASEAN but rather as a set of supplemental means for the ASEAN regime to address the economic concerns of its member states. These include those tied to investment flows and fears of the "blocing" of the international economy and inter-state system.

Ensuring the non-replacement of the ASEAN regime by the APEC one and the ability of ASEAN member-states to pursue their shared interests within APEC negotia-
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tions calls for the strengthening of ASEAN as a collective action group. This is necessary, as it is already noticeable that the pre-APEC summit formation of common ASEAN positions on issues to be discussed in APEC does not seem to have effectively harmonized ASEAN member-state preference orderings and actions within the APEC regime. Rather, the APEC regime discussions seem to highlight fundamental interest divergences among ASEAN member-states and provide them with supplemental means to pursue those interests. The historical development of ASEAN discourse and its institutional rules, while allowing the ASEAN regime to remain flexible, seems to work against the strengthening of its collective action potential in relation to these divergent APEC-related ASEAN member-state interests. The high tolerance of the ASEAN regime for individual member states “hijacking” the ASEAN agenda or ignoring it in practice obviously weakens the ASEAN regime’s ability to enforce individual member-state adherence to stated group positions. Given the importance for ASEAN as a regime and for its member-states to act as a collective action group, certain changes within the ASEAN regime maybe called for.

Based on collective action theory, the use of ASEAN regime summits to note formal disapproval of certain ASEAN member-states’ actions within the APEC regime may be useful, as this would increase the costs of going against the ASEAN position within APEC by questioning its influence and position within the ASEAN regime itself. While this may be contrary to the musgrayara contextuization of the regime, given the long-standing nature of the ASEAN regime and its established importance for all member-states, such a move should not threaten the future of ASEAN. Instead it could add yet another collective action good to the ASEAN regime. In support of this call for a more sanction-oriented ASEAN approach to its actions within APEC, some observers note that this kind of sanctioning has already been informally carried out by ASEAN member-states against Malaysia due to its disruption of the APEC process.

Recalling the bargaining theory insights, one may find it a good idea for the ASEAN regime to allocate more of its resources to calling for the APEC regime to focus more on developmental transfers of wealth. This effort should be possible, as it can be a necessary selective incentive for ASEAN member-state support for increased export market access. And given the fact that the Singaporean state is often not seen as a “Northern” one and thus is not called upon to receive ODA, such an ASEAN regime strategy would work to highlight the shared APEC-related interests of ASEAN member states, while bringing APEC dynamics closer to the stated goals of the ASEAN regime. Such a bargaining strategy may be successful as well given the support by the Japanese state for an APEC development agenda as a means to increase Japanese exchange power within the APEC regime and region. Finally, such a move would deepen ASEAN member-states’ support for APEC and ASEAN, help to assuage Malaysian concerns over the APEC process, and gain more popular support within ASEAN societies for APEC.
Another bargaining theory-related action that may be of use to ASEAN regime actions within APEC is shifting the APEC issues that highlight the fissures within the ASEAN collective action group from the level of political state discussions to those at the bureaucratic level. This may present two benefits to the ASEAN regime. One, it would shelter from the public these intra-ASEAN interest divergences, thus minimizing their negative impact on ASEAN’s image. Two, this “sheltered” nature of the bureaucratic level may allow for more successful delaying strategies as the costs of delaying would be reduced by the “secret” nature of these delays and the lack of popular attention paid to the workings of the bureaucratic level.

A final bargaining strategy that may aid ASEAN’s collective action efforts within APEC is drawn from the keys to the past successes of said efforts and a consideration of exchange power. Within the bargaining game of APEC’s formative negotiations, the ASEAN member-states were able to maximize their shared preference orderings when in alliance with like-minded member states, such as Japan and China. To further this useful coalition-building process within APEC, ASEAN, as a regime, may want to push for stronger economically oriented ties with these states and develop beforehand, especially at the “sheltered” bureaucratic level, common bargaining positions and strategies. While the Japanese state’s links with ASEAN and its exchange power are well understood and developed, the ASEAN regime’s relations with the Chinese state are less so. As many state and business leaders around the globe see the Chinese domestic market’s immense potential for growth and import absorption and the fact that the Chinese state is relatively unintegrated into the inter-state system, an ASEAN push for closer economic ties with the Chinese state in general may be quite beneficial.

The Chinese state’s absence from the WTO makes APEC the largest and most important inter-state economic regime that China is a member of, and is a key to “creatively engaging” China in the inter-state system. This lack of alternative sets of relations to engage the Chinese state in economic negotiations means that the Chinese state’s exchange power within APEC is increased, as a Chinese threat to exit APBC would mean a Chinese threat to exit the economic regimes of the inter-state system. Because the Chinese domestic market is seen as so potentially powerful, most APBC member-states have no desire or ability to seek alternative sets of relations. This disproportionate exchange power of the Chinese state within APEC, when combined with its similar APEC-related preference orderings to those of the ASEAN regime strongly suggest that the ASEAN regime should foster closer and more harmonious economic ties with China. Thus, notwithstanding frictions between ASEAN member-states and the Chinese states in other issue areas.

This exploratory paper also suggests certain new avenues of theory-based research that may allow the connection between the theories addressed and the study
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of regimes to be strengthened. As the APEC regime, ASEAN regime’s economic efforts, and ASEM seem to stem from a similar perception of the future of the international market and inter-state system (the “blocing” argument), it may be beneficial to focus more attention on this theory itself—its origins, assumptions, and reasons for its acceptance as “true.” As well, with the increasing networking of state actors through overlapping inter-state regimes and with non-state actors, domestic and foreign, the clearer definition of a state and its interest-maximizing strategies is necessary as the view of the state as a monolithic, unitary actor focusing on static sovereignty enhancement seems outdated. Finally, as hinted at in this paper, the interplay among regimes that share both overlaps in membership and in areas of collective action is in need of further study, especially the impacts of one regime on the other both at the macro-level of regime structuration and at the micro-level of regime bargaining outcomes.

Finally, at the macro-level, the theoretical insights would indicate that the future successes of the APEC endeavor and the ASEAN regime’s efforts to act as a collective action group within APEC are dependent on the continuation of the integrative economic forces noted as the reason for the development of APEC in the first place. If the Southeast Asian region’s dynamic economic growth (or its political stability) is seen to have ceased by the extra-regional sources of investment and other host economies become more attractive investment destinations, then the supports for the development of APEC and ASEAN’s exchange power within would be undermined. Also, said slowdown in economic dynamism and the consequent lowering of future expectations may undermine ASEAN’s own efforts at intra-regional economic integration and aggravate the observed differences in ASEAN member-states economic preference orderings and the competing natures of their economic structures.

The complexity of overlapping relations created by the ASEAN member-states decision to join the APEC regime and act as a collective group within suggests that factors that impinge on one set of relations (i.e., ASEAN regime-based sets of relations between ASEAN member-states) affect all others and put into question the effectiveness of ASEAN as a collective action group. Thus, to be successful, the relevant state bodies of the ASEAN member-states must systematically organize these relations and subsequent calculations of self-interest, while supporting these economic forces that are largely beyond their own control.
1. As the non-sovereign political entities of Taiwan/Chinese Taipei or Hong Kong are not directly discussed in this paper and as the operational definition of the state in this paper has no sovereignty criterion, the member-actors of APEC will be referred to as states and not economies. This is done as an economy is, by definition, an arena of action and not a purposive actor. This non-usage of the term "member-economy" should not be seen as a comment on PRC-Taiwan or UK-HK relations, but rather as done in the spirit of analytical clarity.


5. A good example of this is the oft-referred to economic region of “Greater China,” seen to include the SAR of Hong Kong, the political entity of Taiwan, and the People’s Republic of China. Sometimes, this geographical scope is even expanded to include Singapore and the Overseas Chinese community. While it is quite easy to show that this grouping is a definable economic region, there are few if any economic regimes present linking all of its members, and certainly none that are inter-state in nature.

6. For the view that the inter-state regime of APEC stemmed from the market-based creation of the Asia-Pacific economic region, see Garnaut.

7. For more details on the argument that ASEAN during its formative years was not created or envisaged by its founders as an economic regime, but that only later did this come to be one of the roles envisaged by its member-states for ASEAN, see Amitav Acharya, “The Association of Southeast Asian Nations: ‘Security Community’ or ‘Defence Community’,” *Pacific Affairs*, Vol. 64, Summer 1991, p. 159–77; Ramses Amer, “Territorial Disputes and Conflict Management in ASEAN,” in *The ASEAN: Thirty Years and Beyond*, eds. Maria Lourdes Aranal-Sereno and Joseph Sedfrey Santiago (Quezon City: International Institute of Legal Studies, University of the Philippines, 1997), p. 325–50, and Hill.

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12. Kim and Bearman, p. 70.

13. From this line of argument, one can easily see the genesis of the "free-rider" problem in which a member of a group attempts to benefit from the rewards of group membership while contributing nothing or very little to the maintenance of the group and its abilities to offer benefits to all members. This assumption and its apparent practical validity explains why the "free-rider problem" is a concern of all fields of social science.

14. See Kim and Bearman for more details on the "silver lining" of past failures.

15. For more information on the benefits of this sub-group of promoters and why selfinterested actors choose to become promoters, see Heckathorn.


20. Kim and Bearman, p. 73.


23. A collective action production function exists when the contribution of every member affects the ultimate level of the good produced positively, and that such contributions carry


28. For more information on the increase in international investment flows and the comparative lack of security mechanisms amongst states and/or firms, see Bowles, p. 228.

29. The recent growth of the service sector of the international economy can also be seen as an incentive for regionalism over global multilateralism as it is argued that geographical and cultural proximity is a more influential variable in service provision patterns than those of visible trade. This intriguing argument can also be seen as a potentially tempering or challenging point to much of the "globalization" literature. For more information, see Hill.


32. Hill, p. 12.

33. For more insights into the importance of third party monitoring for the success of regional organizations, see Beth V. Yarborough and Robert M. Yarborough, "Regionalism and Layered Governance: The Choice of Trade Institutions," Journal of International Affairs, Vol. 48, Summer 1994, p. 95–118.


35. Fearon, p. 298.

36. Fearon, p. 298.

37. For more information on explicit/rule based regimes and implicit/policy regimes, see Fearon, p. 298, Maria Lourdes Aranal-Sereno, "Dispute Settlement in ASEAN Economic
Agreements: Prospects and Problems," in The ASEAN: Thirty Years and Beyond, eds. Maria Lourdes Aranal-Sereno and Joseph Sedfrey Santiago (Quezon City: International Institute of Legal Studies, University of the Philippines, 1997), p. 385–420; and Kahler.

38. Fearon, p. 298.


41. In support of this interest diminution point, Keohane argues that “as the distribution of tangible resources, especially economic, become more equal (as Heckathorn noted may happen in the third stage of the production function), international regimes should weaken,” cited in Crone, p. 502. (parantheses added by present author).

42. For more information on how collaboration regimes have been treated as “Prisoner Dilemma” games and structures for dealing with problems of enforcement, see Fearon.

43. Cited in Fearon, p. 274.

44. In much of the literature on bargaining theory, the terms “bargaining” and “negotiation” are treated as interchangeable. This paper will follow this pattern, while mostly using the term bargaining.


46. For a popular example of the positive impact of promoters on preference orderings, it is quite common for the friendliness and competence of a sales clerk to impact greatly on a customer’s choice to buy something or not (i.e., join a set of relations or not) as well as on what the customer buys (i.e., preference orderings).

47. Reflecting back to the stillborn nature of the NIEO, even up to today, negotiations over similar issues take place within the UNCTAD structure, and “Southern” member-states still hold up the “Northern” member-states’ promise of contributing a minimum of 0.7% of their annual GNP to ODA. For the depiction of the UNCTAD negotiations as a non-serious bargaining game and NIEO agreements as non-serious results, see Rothstein, and Ramsay.

48. See Fearon for more insights into the “selection effect” and its limiting nature for bargaining analysis.
49. Fearon, p. 290.
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50. See Sebenius for more details on and examples of complementary issues and their positive effects on bargaining results.

51. A good example of the inutility of economic data if no common standard exists is the vexing problem of certain states incorporating re-exports in their export figures while others don't.

52. Sebenius, p. 292.


54. Fearon, p. 270.

55. Sebenius, p. 300.

56. Sebenius, p. 308.

57. For an example of how "loosely" structured negotiations and regimes may lead to more successful results than if these negotiations were "tightly" structured, see Michael Antolik, "ASEAN and the Utilities of Diplomatic Informality," in The ASEAN: Thirty Years and Beyond, eds. Maria Lourdes Aranal-Sereno and Joseph Sedfrey Santiago (Quezon City: Institute of International Legal Studies, University of the Philippines, 1997), p. 441–458.

58. Sebenius, p. 303.


61. APEC, *APEC Economic Leaders' Declaration for Action* (1995), Sec. 3.


63. Crone, p. 513.

64. Crone, p. 513.


66. For more details on the lack of inter-state social networking and institution-building in the Asia-Pacific region, see Kahler.


68. Examples of historical antagonism between states and societies of the region would include the antagonism felt toward the Japanese state and society by China, South Korea, and Southeast Asian states and societies, animosity toward China within Southeast Asia, etc. See Higgott, "APEC: A Skeptical View."

69. Funabashi, p. 5, Garnaut, p. 56.

70. For more information on this shift in state policy toward the domestic political economy in both Australia and New Zealand, see Garnaut, p. 95–117.

71. For more information on this intra-state change of economic philosophy and consequent policy, see Ponciano S. Intal, Jr., "ASEAN and...
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...tion,” in The ASEAN: Thirty Years and Beyond, eds. Maria Lourdes Aranal-Sereno and Joseph Sedfrey Santiago (Quezon City: Institute of International Legal Studies, University of the Philippines, 1997), p. 29–56.

72. Funabashi, p. 4.

73. Kahler, p. 28.

74. For changes of the like within Southeast Asian states and within ASEAN itself, see Maria Socorro Gochoco-Bautista, “The Evolution of ASEAN External Relations: Economic Aspects,” in The ASEAN: Thirty Years and Beyond, eds. Maria Lourdes Aranal-Sereno and Joseph Sedfrey Santiago (Quezon City: Institute of International Legal Studies, University of the Philippines, 1997), p. 112–113.

75. This phenomenon of states “hiding” the responsibility for policy shifts by arguing it they are necessary conditions of membership to an inter-state regime is noticeable in developing states relations with bodies like the IMF and IBRD. As well, it is a well used argument that the Japanese state uses the excuse of foreign pressure (gaiatsu) to lessen the political costs of policy shift desired by the Japanese state itself.

76. The three largest being the USA, Japan, and China. Funabashi, p. 2.

77. Again, it should be reiterated that in line with the paper’s definition of economic region used in this paper, pre-WWII Asia-Pacific was almost as integrated a region as today’s Asia-Pacific, with WWII and the Cold War acting as a disintegrative political interlude. Kahler, p. 27.

78. Garnaut, p. 89, 114.


80. For the Australian fears of a bilateral free trade agreement with the United States if no other broader regional organization could be developed, see Funabashi, p. 60. For the fear of Australia and ASEAN on the drying up of traditional markets, see Garnaut, p. 12. For more information on Australia and New Zealand’s focus on East Asia as a key economic region, see Crone.

81. For more details on this original exclusion by Australian planners of the North American states, see Nicole Gallant and Richard Stubbs, “APEC’s Dilemmas: Institution-Building around the Pacific Rim,” Pacific Affairs Vol. 70, Summer 1997, p. 207.

82. Bernard and Ravenhill, p. 181, Bowles, p. 222.

83. For more details on this argument of a regional production system with Japan at the center and the US as the export market, see Crone, and Bernard and Ravenhill.

84. Even before the moves to develop an Asia-Pacific economic regime, the Japanese state had been a strong supporter of the ASEAN regime and its economic endeavors and was the key force in the establishment of the Asian Development Bank (ADB) as well. For more information on the Japanese state’s role in supporting ASEAN economic endeavours, see Gochoco-Bautista, and Sueo Sudo, The Fukuda Doctrine And ASEAN (Singapore: ISEAS, 1992). For information on the Japanese state’s role in the formation of
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85. Funabashi, p. 37.
86. Funabashi, p. 58, and Gallant and Stubbs, p. 207.
87. Crone, p. 520.
89. For more details on Japan and Australia as collective action "promoters" and the role of PECC, see Funabashi, p. 1–10, Crone, p. 514, Aggarwal, p. 46–51, and Higgott, "APEC: A Skeptical View."
91. Funabashi, p. 5.
96. For more insights into the "Asian capitalism" argument, see Stubbs, Gallant and Stubbs, and Higgott, "The International Political Economy of Regionalism: The Asia-Pacific and Europe Compared."
97. Funabashi, p. 110.
102. Funabashi, p. 165.
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104. Funabashi, p. 73,78,106–7.
107. Aggarwal, p. 48; and Ruggiero is cited in Garnaut, p. 2.
109. This recognition of Indonesia as the leading state in the ASEAN region and regime can be seen in the Australian "promoters" belief that it was key for ASEAN regime support of APEC to get Suharto on side. Funabashi, p. 56. Looking at the EU discourse, authors often treat the Indonesian state and its role in ASEAN similarly to presentations of the German one and its role in the EU. As well, the depiction of the Malaysian state's role and actions in ASEAN share much with that of the French state and the EU.
111. For more information on this regional shift to "liberalization," see Hill, Intal, and Linda Low, "ASEAN in the New World Order," in The ASEAN: Thirty Years and Beyond, eds. Maria Lourdes Aranal-Sereno and Jospeh Sedfrey Santiago (Quezon City: Institute of International Legal Studies, University of the Philippines, 1997), p. 245–270.
112. For more details on this fusion of the concepts of political sovereignty with economic nationalism, see Amitav Acharya, "The Association of Southeast Asian Nations: 'Security Community' or 'Defence Community'," Pacific Affairs, Vol. 64, Summer 1991, p. 162, and especially the definition of the ASEAN principle of "national resilience." As well, Miles Kahler defines the three conceptual pillars of the political region of Southeast Asia and of ASEAN as 1) decolonization, 2) non-alignment, and 3) economic nationalism. Kahler, p. 21.
113. Funabashi, p. 120, and Intal.
116. See Intal for the argument concerning this shift of interests of ASEAN member states to "low politics" and the development of ASEAN Free Trade Area (AFTA). For more information on how the AFTA agreement is more comprehensive and binding than the earlier Preferential Trading Agreement (PTA), see Joseph Sedfrey Santiago, "ASEAN Framework Agreement on Services: Potential Role in ASEAN Economic Cooperation," in The ASEAN: Thirty Years and Beyond, eds. Maria Lourdes Aranal-Sereno and Jospeh Sedfrey Santiago (Quezon City: Institute of International Legal Studies, University of the Philippines, 1997), p. 421-440; and Jayant Menon, Adjusting toward AFTA: The Dynamics of Trade in ASEAN (Singapore: ISEAS, 1996).
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118. Menon, p. 16. For the region as a whole, intra-regional trade has only reached about 15-20% of the total trade, Hill, p. 6.

119. Hill, p. 4-6.

120. Hill, p. 7.

121. Hill, p. 7.

122. This is most noticeable in the fact that in 1980 (before the Plaza Accord spurred inflows of extra-regional FDI) 28.2% of intra-regional trade was manufactures, while by 1990 (after these inflows) it was 61.3%. Bowles, p. 223. As well, from 1978 to 1988, intra-industry trade as a percentage of total trade increased by 91% for the Philippines, 90% for Indonesia, 85% for Thailand, and 64% for Malaysia. Bowles, p. 223.

123. Hill, p. 17.

124. From 1985-1990, for the ASEAN 4 (Indonesia, Malaysia, Philippines, and Thailand) FDI inflows increased from 0.6% of the combined annual GDP to 2.4%. Bowles, p. 222. As well, portfolio investment to the ASEAN region as a whole increased from a total of 2.4 billion dollars US in 1990 to 25 billion dollars US in 1994. Tan Loong-Hoe and Chia Siow-Yue, p. 138.


126. Crone, p. 221.

127. Haas, p. 274. Also see Hill for more information on the low utilization rate of the PTA’s inclusion list, Hill, p. 7.


129. For more information on this movement to a more rule-based, sanction-oriented set of economic policies, see Aranal-Sereno, and Menon.

130. See Hill for more information on the changes to these lists and their requirements.

131. Menon, p. 28.

132. Hill, p. 5.

133. Low, p. 276-277.

134. Aranal-Sereno, p. 397.


139. Crone, p. 513.

140. Hill, p. 21.

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142. Hill, p. 7. Other "Third World" inter-state regimes include the Gulf Cooperation Council in the Middle East, ECOWAS in West Africa, the OAU for all of Africa, Mercosur and the Andean Pact in Latin America, and Caricom in the Caribbean.

143. For information on the effects of the fall of Vietnam on the ASEAN regime, see Kahler. For more background on the collective diplomacy track of ASEAN member states, see Acharya.

144. Acharya, p. 166.

145. Reflecting back on Kim and Bearman's point that very few collective action groups are able to maintain themselves, it would seem that the ASEAN regime is one such successful rarity.

146. Gochoco-Bautista, p. 88. The siting of this Secretariat in Jakarta can be seen as yet another sign of the Indonesian state's leadership mantle in the ASEAN regime and region.

147. Kahler, p. 16.


149. For more insights into the linking of these two phenomena and the supporting role economic development and cooperation was seen by ASEAN founders to play for intra-regional security dispute settlement and regional security resilience, see Kahler, Acharya, and Camilleri.

150. This is most noticeable by the fact that, while the two major economic agreements of ASEAN have both had DSMs, these DSMs have been given no "teeth," and no two states have ever used them. See Aranal-Seren.

151. Amer, p. 335. This Malay term approximates the Filipono term of pakikisama.

152. Amer, p. 335.

153. For more information on the policy regime (Principled club) nature of the ASEAN regime, see Intal, Gochoco-Bautista, and Aranal-Seren. Highlighting the lack of rules and detailed agreements stemming from ASEAN regime deliberations, the founding document of AFTA was only 8 pages in length, see Funabashi, p. 8.

154. A clear manifestation of this conflict avoidance over resolution point is that the Malaysian state still has territorial disputes with all other original member states of ASEAN, as well as Vietnam. Acharya, p. 173.


156. Funabashi, p. 69.

157. Low, p. 252.

158. Funabashi, p. 69.

159. Gochoco-Bautista, p. 119.

160. For the fear of APEC "replacing" ASEAN, see Funabashi, p. 67. For the interpretation of APEC as a "Northern" plot (an idea espoused by some of the original Philippine appointees to PECC), see Crone, p. 511.

161. The organizational strains of regime participation on individual actors is seen as one of the key costs of membership, and one that is particularly salient for small actors and
resource-poor actors. See Sebenius for more details on this problem. For insights into how membership in both ASEAN and APEC are stretching certain states’ diplomatic capacity, see Funabashi, p. 214, and Gallant and Stubbs, p. 212.


164. Funabashi, p. 56. Again this shows the assumption by non-ASEAN actors that Indonesia is the leading state within the ASEAN regime as well as how President Suharto’s strong attachment of Indonesian state interests to APEC membership was key to APEC’s success.

165. For this APEC regime produced collective good of moderating US trade policy and its disruptive effects, see Garnaut, p. 40.

166. Funabashi, p. 13. The OECD was also rejected as an organizational model as it was seen as too bureaucratic; even though some see APEC as rooted in the OECD process. See Funabashi, p. 514, for the OECD as a negative model point, and Camilleri, p. 322, for the OECD-APEC connection.

167. Funabashi, p. 77.

168. For more information on the informal and apolitical nature of APEC leaders summit., see Funabashi, p. 115–142. For information on the structured nature of APEC Senior Officials Meetings (SOMs), see Higgott, “APEC: A Skeptical View,” p. 71.


170. Gallant and Stubbs, p. 213.

171. Funabashi, p. 64.

172. Funabashi, p. 209.

173. See Garnaut, p. 8, 83, and Tan and Chia, p. 189, for more details on WTO requirements for a RTA.

174. Funabashi, p. 90.


178. Funabashi, p. 90.

179. Funabashi, p. 94–95.


181. Funabashi, p. 77.
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182. See Garnaut, p. 3, for the similar preference orderings of the ASEAN regime, and Japan and China vis-a-vis APEC development, and Funabashi, p. 109 for the informal “EAEC” contention.

183. See Gallant and Stubbs, p. 209-211, for more information on the CUA approach and how it meshed with ASEAN regime desires within APEC.


185. For more information on South Korean and Japanese state interests in this actor addition and the “grandfathering” role of South Korean diplomacy, see Funabashi, p. 73.

186. Funabashi, p. 115.


188. Funabashi, p. 98, 121.

189. Funabashi, p. 90.


191. Funabashi, p. 165.


193. Garnaut, p. 3.

194. Funabashi, p. 86.


197. For more details on the ASEAN investment area, see Hill, p. 11, and for details on the services committee, see Tan and Chia, p. 183.

198. Intal, p. 34.

199. Intal, p. 48.


203. For this term/concept the “Asian 10,” see Gochoco-Bautista, p. 90. For more details on the assumed desire of East Asian states for regional diplomatic integration and identity creation, see Stubbs, and Higgott, “The International Political Economy of Regionalism: The Asia-Pacific and Europe Compared.”

204. Hill, p.7, and Bowles, p. 221.


206. Funabashi, p. 92.
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Chapter 4

The Legal Characterization of the Asia-Pacific Economic Cooperation and the Individual Action Plans in International Law

Sefrey M. Candelaria

INTRODUCTION

The rise of APEC as a grouping of “economies” in recent years gave birth to a new concept of organization in the field of economic relations. APEC brought together “member-economies” whose states are themselves existing members of WTO and other regional economic groupings. This necessarily entails the need to define and delineate possible overlapping of international obligations or commitments, which may have been assumed by these member-states under the different trade regimes.

This research paper aims to inquire into the legal nature of APEC from the perspective of international law. The writer will examine the legal obligations, if any, arising from APEC membership and the assumption of Individual Action Plans (IAPs), including the legal consequences of non-compliance with these obligations. In regard to the latter issue, the international law principle of state responsibility will be applied.

The paper is organized as follows. The next section discusses the concept of legal obligations at the international level. A distinction will be made between binding legal obligations and moral obligations. Furthermore, the writer will emphasize the difference between obligations arising from municipal and international laws. A review of the basic sources of international law has been included for the purpose of providing the legal framework for analysis of the subject matter of inquiry. The third section is devoted to a synopsis of the development of rules pertaining to international economic relations, particularly the conduct of trade and commerce among nation-
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states. The question of the emergence of "soft law" in economic relations and the accompanying legal problems surrounding this concept will be discussed. The fourth section aims to apply the international legal standards and concepts set forth in the two preceding chapters to the characterization of APEC. The fifth section specifically uses the Philippine Individual Action Plan as a case study in order to analyze the impact of APEC on domestic law. In the final section which is the conclusion, the writer concludes that membership in APEC and assumption of IAPs are not without legal consequences from the perspective of international law. However, the extent to which "member-economies" of APEC would be willing to take legal action for non-compliance with APEC commitments is uncertain as there is no comprehensive dispute settlement structure within APEC itself. It is even uncertain whether "member-economies" would be inclined to treat problematic trade incidents as mere issues or actual legal cases. Their attitude toward these would be critical in realizing the goals of APEC in the long run.

LEGAL OBLIGATIONS AND SOURCES OF INTERNATIONAL LAW

Concept of Legal Obligations at the International Level

In his study, Professor D.M. McRae, attempted to investigate the implications of the growth of international organizations for the theories of obligation in international law. Professor McRae addressed specifically the problem of a lack of "complete legal system" within the world community, as observed by Professor Myres McDougal and his associates. Nonetheless, to appreciate the effectiveness of any rule of international law, one may well note that the answer to the fundamental question of why an obligation under international law is recognized "must proceed from the same source as answers to an enquiry into the basis of obligation in any other system of law."

Drawing from earlier analyses of what constitutes either a legal or moral obligation by Professors Hart and Smith, Professor McRae himself makes this distinction:

To say that a person has a legal rather than a moral obligation is to make a statement about the procedures for identifying the obligation and the circumstances in which the obligation arises. A person is said to have an obligation when the conduct in question is seen either by the person making the system or the person about whom the statement is made as something that should be done. Of course, the moral 'should' is used properly on many occasions that do not
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connote obligation, but a statement of obligation invariably contains such a prescription. If the prescription is justified by reference to its content, then the statement will be one about moral obligation. If, on the other hand, the justification is based not on content but on a formal structure of authority that contains formal means for identifying such statements of obligations, the obligation would be legal rather than moral. Thus, we say that a rule or prescription gives rise to a legal obligation if that rule or prescription can be shown to be authorized by, or to derive its validity from, the established procedures or institutions of a legal order. (Underscoring supplied)

This distinction, however, may have to take into account the characteristics of inter-state relations once applied to the world community. In this regard, Professor McDougal's approach has been viewed as more appropriate. Professor McRae states:

The notions of recognized or accepted authority and the manipulation of power to ensure acquiescence in the decisions emanating from that authority (thus ensuring, in part, its continued existence) provide the necessary basis for the kind of structure that can qualify obligation as legal rather than moral.

Despite these differing approaches, Professor McRae is of the view that "enquiries into obligation involve the same considerations whether we are dealing with a national, international or any other form of legal order."

Sources of International Law

Article 38 (1) of the Statute of the International Court of Justice enumerates the following sources of international law:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b. international custom, as evidence of a general practice accepted as law;
c. the general principles of law recognized by civilized nations; and
d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
Treaties

Definition

A treaty, according to the 1969 Vienna Convention on the Law of Treaties, is “an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

The term “treaty” is used as a generic term covering all forms of international agreement in writing concluded between states. Although the term “treaty” in one sense connotes only the single formal instrument, there also exists international agreements, such as, exchanges of notes, which are not a single formal instrument, and yet are certainly agreements to which the law of treaties applies. The question whether the expression “treaties” should be employed rather than “international agreements” is one of terminology rather than of substance.

Role as a Source of Law

Treaties and conventions occupy the first rung in the enumeration of sources in Article 38 of the Statute of the International Court of Justice. Although Article 38 intended no hierarchy, the priority it gives to treaties reflects an understanding of states and international lawyers alike, that the rights and duties of states are determined primarily by their agreement as expressed in treaties—just as in the case of individuals, their rights are specifically determined by any contract which is binding upon them.

Two principles justify this position: *lex specialis derogat generali* or special rules prevail over general ones; and the intention of the parties in selecting certain rules to govern their relations rather than general international law.

Categories of Treaties

i. General Multilateral Treaty

A general multilateral treaty establishes certain rules of behavior and is fundamental of a norm creating character, and as such, could be regarded as forming the basis of a general rule of law. It is open to all states or to all members of a regional group.

ii. Mechanism-Setting Treaty

These treaties provide a regional or functional collaborative mechanism by which States can regulate or manage a particular sphere of activity. These treaties advocate certain purposes and principles, which are achieved through the decisions, recommendations or rules adopted by the administrative organs established. The international regimes created by treaties of this class are sometimes termed “international...
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administrative law." An example of this is the General Agreement on Tariffs and Trade.

iii. Bilateral Treaties

This category of treaties encompasses treaties entered into between two States and those among three or four States. They facilitate a mutual exchange of rights and obligations regarding particular subjects, and their tone is contractual, rather than legislative.

Custom

Definition

Article 38 defines custom as "evidence of a general practice accepted as law." This definition has been criticized as inaccurate, because "it is the practice which is evidence of the emergence of a custom." What is needed is a general recognition that a particular practice is obligatory. Notwithstanding its phrasing, the definition contains the two most important elements of custom: general practice by states and acceptance as law.

Elements of Custom

i. State Practice

State practice encompasses any act, statement, or behavior from which its conscious attitude regarding its recognition of a customary rule can be inferred.

There are two views on what constitutes state practice. One view limits state practice to physical acts. This position finds support in Judge Read’s dissenting opinion in the Anglo-Norwegian Fisheries Case in which His Excellency writes that "[t]he only convincing evidence of state practice is to be found in seizures, where the coastal state asserts its sovereignty over trespassing foreign ships." On the other hand, the more popular view would consider both the acts and statements, or physical and verbal acts, of a state, as state practice.

According to the International Law Commission, the forms of acts or statements that would constitute state practice include:

Treaties, decisions of national and international courts, national legislation, diplomatic correspondence, opinions of national legal advisors, practice of international organizations.
State practice, as a concept, may be broken down further into its three component elements: duration, uniformity, and generality.

i.i. Duration

Provided that the consistency and generality of a practice are proved, no specific duration is required; the passage of time will of course be a part of the evidence of generality and consistency.\textsuperscript{22} In the North Sea Continental Shelf Cases, the International Court of Justice clarified that no precise length of time need be shown to determine that a practice has emerged as custom. Duration is helpful only to prove that the other requirements of custom have been met.\textsuperscript{23} The International Court does not emphasize the time element in its practice.\textsuperscript{24} In short, duration is a function of generality and uniformity.

In fact, there have been cases where, because of the immediate and widespread acceptance of international law rules, “instant customary law” has developed. Common examples of these are certain rules relating to outer space, and, arguably, the environment.

i.ii. Uniformity

The leading pronouncement of the Court with respect to uniformity appears in the judgment of the Asylum case, where it stated that “[t]he party which relies on a custom ... must prove that this custom is established in such a manner that it has become binding on the other party ... that the rule invoked ... is in accordance with a constant and uniform usage practiced by the States in question ...”

It follows from this that one single act or statement by a state will not give rise to customary rule but that the identical acts of statements must be repeated over time. Akehurst qualified this view by reviewing it within the context of the particular circumstances surrounding the Asylum case. In that case, Colombia sought to justify its grant of diplomatic asylum to Peruvian rebel leader Haya de la Torre by claiming that the exercise of diplomatic asylum is a custom. The Court disagreed with Colombia’s assertion, by noting the uncertainty, contradiction, fluctuation, and discrepancy in the exercise of this alleged custom. It concluded that “[i]t has not been possible to discern ... any constant and uniform usage, accepted as law.”\textsuperscript{25} Thus, what is crucial in meeting the uniformity requirement is not repetition but consistency in state practice.

However, the mere inconsistency in state practice is not a bar to the formation of a customary law. It is necessary to distinguish between the kinds of inconsistencies. Major inconsistencies in state practice, seen in a large number of states going against the rule, prevent the formation of custom. But minor inconsistencies, seen in a small amount of states defying in the rule, will not prevent the formation of custom. Further,
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when there is no practice that goes against an alleged custom, a small amount of practice would suffice to create a customary rule.26

Moreover, even if a customary rule has already been formed, there are situations in which such rule would not apply to particular states. This is the case of the persistent objector,27 wherein a state may contract out of a custom in the process of formation.28 Evidence of objection must be clear and there is a presumption of acceptance which must be rebutted.29 Villeger explains:

A persistently objecting state is not bound by the eventual customary rule if the state fulfills two conditions. First, the objections must have been maintained from the early stages of the rule onwards, up to its formation, and beyond .... Second, the objections must be maintained consistently, seeing that the position of other states which may have come to rely on the position of the objector, has to be protected.30

However, Professor Jonathan Charney challenges this rule as being merely of "temporary or strategic value." He asserts that this rule cannot serve a permanent role, because "one does not really believe that states have the independence freely to grant or withhold their consent to the rules of customary international law."31

There is also the case of the subsequent objector or a state, which dissents from a customary rule after its formation. It is doubtful whether a small group of states advocating a rule contrary to the custom can affect the status of the custom or can escape liability in case of the custom's breach. But if a substantially large number of states assert a new rule, "the momentum of increased defection, complemented by acquiescence, may result in a new rule."32 But if the process of defection is slower and neither the old nor the new rule can boast of drawing the majority of adherents to its ranks, the consequence is a network of special relations based on opposability, acquiescence, and historic title. 33

i.iii. Generality

The term "generality" introduces a quantitative dimension to the elements of state practice. It means that there is a common and widespread practice among states.34 "General," however, does not mean that the practice must be universal. Harris writes that the North Sea Continental Shelf Cases demonstrates the position that a practice need not be followed by all states for it to be the basis of a general custom;35 although Villeger suggests that there must at least be a representation of all the major political and socio-economic systems.36

Akehurst defines a general custom as one that is "binding, not only on states whose practice created it, but also on states whose practice neither supports nor rejects the custom, and on new states which come into being after the custom has become well
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established.\textsuperscript{37} There are times, however, when a general custom does not apply to a group of states within a region, because a special custom, which conflicts with the general custom, applies to the group. As between states to which the special custom applies, the special custom will prevail over the general custom, unless the general custom is \textit{jus cogens}.\textsuperscript{38} But between a State covered by a special custom and a state that is not, the general custom will apply.\textsuperscript{39}

\textbf{ii. Opinio juris}

State practice, by itself, does not suffice to create a customary rule. The Statute of the International Court refers to a "general practice accepted as law." Thus, there is an additional imperative that a state believes that when it follows a certain practice there is a legal obligation to do so and that if it were to depart from the practice, it would suffer some form of sanction. The Court clarified this in the \textit{North Sea Continental Shelf Cases}:\textsuperscript{40}

Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it.... The states concerned must therefore feel that they are conforming to what amounts to a legal obligation. The frequency, or even habitual character of the acts, is not in itself enough.

Being a belief or conviction, \textit{opinio juris} is necessarily a psychological element, which is a difficult, albeit an essential, ingredient to prove. There are two methods of approach that the ICJ has taken. In many cases the Court is willing to assume the existence of an \textit{opinio juris} on the basis of evidence of a general practice,\textsuperscript{41} or a consensus in literature, or the previous determinations of the Court or other international tribunals.\textsuperscript{42} In the second and more rigorous approach, the Court has called for more positive evidence establishing the recognition of the validity of the rules in question in the practice of states,\textsuperscript{43} The choice of either method depends on two factors: the nature of the issues and the discretion of the Court.\textsuperscript{44}

\textbf{General Principles of Law}

The phrase "general principles of law recognized by civilized nations" has been taken to connote principles so general as to apply within all systems of law that have achieved a comparable state of development.\textsuperscript{45} They are understood as general principles of justice, closely linked to natural law.\textsuperscript{46}
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In the committee of jurists who prepared the Statute, there was no definite consensus on the precise significance of the phrase. However, they regarded these principles in terms of rules accepted in the domestic law of all civilized states. Their intention was to authorize the Court to apply the general principles of municipal jurisprudence in so far as they were applicable to relations of states. An international tribunal chooses, edits, and adapts elements from better-developed systems; the result is a new element of international law, the context of which is influenced historically and logically by domestic law.

It is essential to note that the general principles of law exist only when there has not been practice by states sufficient to give the particular principle status as customary law, and the principle has not been legislated by general international agreement. If a given principle is affirmed constantly in international judicial decisions and accepted in the practice of states, it must clearly acquire the status of a custom. It matters little if the principle has been originally borrowed from municipal law. Such a principle becomes incorporated into international law by the normal operation of the sources of that system. The same may be said of numerous rules of municipal laws, which are embodied in treaties.

The question then of the status of general principles only comes into operation in the absence of relevant treaty obligations and of applicable rules of international customary law. Article 38 empowers the Court, when both customary and conventional law will not suffice, to resort to the rules of municipal law for the disposal of cases submitted to it. Article 38 authorizes the use of analogy.

Some of the principles the Court has applied relate to the administration of justice, such as the principle that no one may be judge in his own cause, the principle of res judicata, and, generally, rules of procedure. Others are principles of the most general character and applicable to the most diverse situations, such as good faith, abuse of rights, retroactivity, the obligation to repair a wrong, the territoriality of criminal law, acquiescence, and estoppel.

STANDARD-SETTING IN INTERNATIONAL ECONOMIC RELATIONS

Early State Practice

Classical international law, according to Professor Quincy Wright, appears to have left each state complete freedom to regulate or to prohibit commerce within its territory and with foreign states. In practice, this has not been so.
Professor Wright comments that "[c]ommercial treaties are among the oldest type of international agreements." Professor Georg Schwarzenberger has, in fact, traced treaties of commerce between Rome and Carthage, the agreements on frontier trade between Byzantium and Persia in the sixth century A.D., and the treaties of commerce and subsidy concluded between Kings of England and other medieval princes since the twelfth century. The significance of these treaties in the development of rules in international economic relations has been underscored by Schwarzenberger in the following manner:

In a process of increasingly liberal grant of safe-conducts the point was reached in the second half of the fifteenth century when the principle of freedom of commerce could be made articulate by reference to four standards: those of ancient rights, customary rights, most-favoured-nation treatment and national treatment.

Subsequently, treaties of commerce and navigation, concluded by Great Britain and other European Powers with emergent nations on the frontiers of western civilization in Latin America, Africa and Asia contributed further to the formulation of a number of new rules on the treatment of nationals of the contracting parties and their property. Through the nexus created between such treaties by most-favoured-nation clauses, these rules received even wider application. Beyond this, in pre-1914 international society these rules were increasingly taken for granted as an integral part of the minimum standard of international law regarding the treatment of foreign nationals and treated as part of general international customary law.

The establishment of the League of Nations further provided opportunities for states to crystallize practice in the realm of economic relations. However, it was not until the Second World War that world leaders finally recognized the need for a strong economic international order, according to Schwarzenberger.


The "beggar thy neighbor" policy, which promoted extreme economic nationalism among the industrialized nations and triggered the "trade wars" before the Second World War, became a grim reminder of the harshness of an international economic environment, which paid lip service to customary international rules of commerce.
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which either existed or were evolving at that time. In fact, Professor Schwarzenberger observed that during the inter-war period, states had abandoned the assumption that "(a)s long as the economic mechanisms of international trade were allowed to operate more or less automatically, a bilateral framework for the standards of international economic law sufficed."64

The need for a system of international economic rules to address the abuses committed by states in the exercise of near-absolute economic sovereignty before the Second World War was urged as early as 1941 by Professor Wright in his speech before the American Society of International Law, when he argued that:

International Law is ... ill adapted to the present interdependent world. The economic sovereignty of States must be limited by rules of positive law if a more stable and prosperous world order is to be achieved.55

He suggested six approaches under international law to achieve this goal: first, the development of the concept of abusive exercise of powers by international tribunals; second, the development of the concept of basic human right to trade, limited only by reasonable government control in the public interest; third, the establishment of an international economic commission tasked with conciliating claims and controversies arising from unjust governmental acts of business concerns; fourth, the founding of an international economic organization which could investigate and publicize the commercial practices of states; fifth, the negotiation of bilateral treaties on the basis of reciprocal and unconditional most-favored-nation treatment, gradually reducing tariffs and eliminating other obstructions to trade; and sixth, through multilateral treaties a code of fair practice in international commerce could be evolved.66

In response to the experience of the 1930s and anticipating the economic needs after the war, the United States and Great Britain led other Allied powers at Bretton Woods, N.H. in 1942 in designing the post-World War II international economic system based on a "directed order, a treaty order of made norms," as one contemporary writer described it.67 Professor Andreas Lowenfeld recalls the distinction between the American and British expectations of this new economic order as follows:

For the United States, the essential policy objective was 'the reconstruction of a multilateral system of world trade.' In the words of Secretary of the Treasury Henry Morgenthau, new international financial institutions were conceived as 'the alternative to the desperate tactics of the past—competitive currency depreciation, excessive tariff barriers, uneconomic barter deals, multiple currency practices, and unnecessary exchange restriction—by which governments vainly sought to maintain employment and uphold living standards.' The British state-
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ment of goals, though similar in purport, was more modest, and reflected the prospect that the United Kingdom would occupy a debtor's position at the war's end: 'Our long-term policy must ensure that countries which conduct their affairs prudently need not be afraid that they will be prevented from meeting their international liabilities by causes outside their control.'

Out of these policy objectives emerged proposals to establish a trade organization (whose function now rests upon the General Agreement on Tariffs and Trade—World Trade Organization),69 an international bank (International Bank for Reconstruction and Development or World Bank)70 to provide capital for the reconstruction of Europe and an international institution composed of professional economists, which will promote international monetary cooperation and provide temporary financing for countries facing severe balance-of-payments situation (International Monetary Fund).

The Problem of "Soft Law" in Economic Relations

One writer has observed that while states are often willing to undertake collective action in international economic relations, there is a tendency to be less concrete in the nature of the obligations that they are ready to assume.71 The following legal techniques have been identified as frequently resorted to:

First, States will retain discretion over the definition of the obligation they undertake. Second, they will avoid legal obligations.... Provisions which use these techniques tend to achieve the goals of collective action and limited constraint can be described as 'soft law.'72

The concept of soft law has become even more problematic in light of the phenomenon that these rules "do not only purport to influence the actions of states, but also of private individuals, including national and transnational corporations."73 Professor Seidl-Hohenfeldern opines further that "(i)n general, rules of 'soft' international law will not become directly applicable to individuals without the transformation or adoption of such 'soft rules' into the domestic law of the states having agreed thereto."74 However, he argues that when "soft law" has been introduced into domestic law as regional or universal customary international law, transformation or adoption into domestic rules of law may be effected by an article in the constitution of the state concerned, declaring the general principles of (customary) international law to be part of the law of the land.75
In terms of legal effects, commentators would readily distinguish between “legal soft law” and “non-legal soft law.” Gruchalla-Wesierski offers these definitions:

Legal soft law is found in international agreements, or decisions of international organizations, which legally bind States which are parties to them. Legal sanctions are clearly available for legal soft law. Non-legal soft law, also found in international agreements, is not legally binding upon the parties. Non-legal soft law generally makes available only non-legal (political) sanctions.

Legal soft law may be classified into treaties and legally binding decisions of international organizations, while non-legal soft law may take many forms, including instruments, such as codes of conduct.

Professor Seidl-Hohenveldern emphasizes that while soft law rules usually retain their character of relatively loose commitments, they do constitute commitments nonetheless and states, having accepted them, should not be allowed to disregard them at their own discretion. Subsequent acts, in this regard, have been viewed as possibly giving rise to legal effects. For instance, one such effect is that “soft law qualifies an act that is in accord with it as done in good faith; or a contradictory act may be viewed as a result of abuse of rights.”

Professor Seidl-Hohenveldern, however, cautions states against over-reacting and advises them to adopt proportionate actions to consequences of disregard of “soft rules,” since the non-observance of soft commitments could hardly be qualified as an objective international delinquency.

THE LEGAL NATURE OF APEC

Origins and Membership

APEC was established in 1989 in response to the growing interdependence among Asia-Pacific economies. It began as an informal dialogue group, but is now the primary vehicle for promoting open trade and practical economic cooperation within the region. Its goal is to advance Asia-Pacific economic dynamism and a sense of community.

APEC began with 12 founding members, namely, Australia, Brunei Darussalam, Canada, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Republic of the Philippines, Singapore, Thailand, and the United States. In November 1991, APEC accepted three new member economies, namely, People’s Republic of China, Hong Kong (its designation has been changed to Hong Kong SAR since 1 July
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1997), and Chinese Taipei. Subsequently, in November 1993, APEC accepted Mexico and Papua New Guinea as new members. Chile became a full member in November 1994. In November 1997, APEC economic leaders welcomed Peru, Russia, and Vietnam as new members of the APEC community effective in 1998. APEC’s 21-member-economies had a combined gross domestic product of over US$16 trillion in 1996 and 45% of global trade. 82

APEC operates by consensus. Members conduct their activities and work programs on the basis of open dialogue with equal respect for the views of all participants. 83 The APEC Chair is responsible for hosting the annual ministerial meeting of foreign and economic ministers. 84 The Chair rotates annually among APEC members. The APEC Chair for 1999 is New Zealand.

The initial years of APEC were focused largely on exchanges of views and project-based initiatives. 85 The concerns were simply to advance the process of APEC and to promote a positive conclusion to the Uruguay Round of GATT negotiations. Today, APEC is a forum whose purpose is to build the Asia-Pacific community through economic growth and equitable development through trade and economic cooperation. 86

Review of “Agreements”

Blake Island Economic Vision

On 20 November 1993, APEC economic leaders met for the first time at Blake Island, Seattle, Washington, to hold informal discussions. Their vision was for an Asia-Pacific that would harness the energy of its diverse economies, strengthen cooperation, and promote prosperity, and in which the spirit of openness and partnership would deepen and dynamic growth would continue, thereby contributing to an expanding world economy and supporting an open international trading system.

They envisioned a community of Asia-Pacific economies in which there was continued reduction of trade and investment barriers so that trade would expand within the region and with the world, and goods, services, capital and investment would flow freely among APEC economies. People in APEC economies would share the benefits of economic growth through higher incomes, a highly skilled work force, high-paying jobs, and increased mobility. There would be improved education, literacy rates, and growth in the arts and sciences. Advances in telecommunications and transportation would occur, and with the environment improved, there would be sustainable growth and a more secure future for the region.

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The Bogor Declaration of Common Resolve

On 15 November 1994 in Bogor, Indonesian President Suharto hosted the second meeting of APEC economic leaders, who discussed where the economies of the region needed to go in the next 25 years. In their Declaration of Common Resolve, the economic leaders agreed to achieve the goal of free and open trade and investment in the region no later than 2010 for the industrialized economies and 2020 for the developing economies. The economic leaders ensured that APEC would provide opportunities for developing economies to increase further their economic growth and level of development consistent with sustainable growth, equitable development, and member-economy stability.

The Declaration outlined the need to reinforce economic cooperation in the Asia-Pacific region on the basis of equal partnership, shared responsibility, mutual respect, common interest, and common benefit. Their vision was that APEC would lead the way in strengthening the open multilateral trading system, enhancing trade and investment liberalization, and intensifying Asia-Pacific development cooperation. The leaders also called for the acceleration of implementation of Uruguay Round commitments, and the successful launching of the WTO. Finally, the leaders also examined the possibility of a voluntary consultative dispute mediation service to supplement the WTO dispute settlement mechanism, which is the primary channel for resolving disputes within APEC.

The Osaka Action Agenda

On 19 November 1995 in Osaka, APEC economic leaders initiated the work of translating the Blake Island vision and the Bogor goals into reality. They adopted the Osaka Action Agenda, which firmly established the three pillars of APEC activities: free and open trade and investment, business facilitation, and economic and technical cooperation. They agreed to a set of fundamental principles as guides toward the achievement of liberalization and facilitation: comprehensiveness, WTO-consistency, comparability, non-discrimination, transparency, standstill, simultaneous start, continuous process, and differentiated time tables, flexibility, and cooperation.

They agreed that APEC would achieve the long-term goal of free and open trade and investment in several ways: first, through encouraging the efforts of voluntary liberalization within the region; second, by taking collective actions to advance liberalization and facilitation objectives; and, lastly, by stimulating and contributing to further momentum for global liberalization. To this end, each member-economy brought a package of initial actions demonstrating their commitment to achieving liberalization and facilitation.
Manila Action Plan for APEC

Economic leaders adopted the Manila Action Plan for APEC (MAPA) on 25 November 1996. MAPA includes the individual and collective action plans and progress reports on collective activities of all APEC economies to achieve the Bogor objectives of free and open trade and investment in the APEC region by 2010 and 2020. MAPA revolves around six themes: greater market access in goods, enhanced market access in services, an open investment regime, reduced business costs, an open and efficient infrastructure sector, and strengthened economic and technical cooperation.

APEC leaders further directed that priority be given to the following themes in economic and technical cooperation in six areas: developing human capital, fostering safe and efficient capital markets, strengthening economic infrastructure, harnessing the technologies of the future, promoting environmentally sustainable growth, and encouraging the growth of small and medium enterprises.

Vancouver Declaration—Connecting the APEC Community

At their 1997 meeting, the APEC economic leaders recognized members’ efforts to improve the commitments in their Individual Action Plans and reaffirmed their intention to update these annually. The leaders endorsed their Ministers’ agreement that action should be taken with respect to early voluntary sectoral liberalization (EVSL) in 15 sectors, with nine to be advanced throughout 1998 and implementation to begin in 1999. The blueprint for APEC Customs Modernization, which put forward a comprehensive program to harmonize and simplify customs clearances by the year 2002, was approved. The leaders reiterated their support for full and active participation in and support of the WTO by all APEC economies. They also welcomed the progress of APEC fora in involving businesspeople, academics, and other experts, women and youth in 1997 activities, and encouraged them to continue these efforts. They applauded the initiative to involve the youth throughout APEC’s activities in 1997, and noted the benefits of electronic commerce. Leaders instructed that a work program on electronic commerce be developed, taking into account relevant activities in other international fora. The leaders endorsed the Vancouver Framework for Enhanced Public-Private Partnership for Infrastructure Development, believing infrastructure was inextricably linked to the questions of financial stability that APEC was addressing.

Kuala Lumpur: Strengthening the Foundations for Growth

The APEC Leaders met in Kuala Lumpur in November 1998 to reaffirm their confidence in the strong recovery prospects of the Asia-Pacific economies. They agreed to pursue a cooperative growth strategy to end the financial crisis, and strengthen social safety nets, financial systems, trade and investment flows, the scientific and technological base, human resource development, economic infrastructure,
and business and commercial links. The leaders also welcomed the ministers’ decision to seek an EVSL agreement with non-APEC members at the WTO. They adopted the Kuala Lumpur Action Program on Skills Development to contribute to sustainable growth and equitable development while reducing economic disparities and improving the social well-being of the people.

The leaders in Kuala Lumpur also reviewed developments in the regional economic slowdown and APEC’s response to the crisis. They resolved to work together to support an early and sustained recovery in the region. To meet the challenges of the crisis, they agreed to pursue a cooperative growth strategy, including the following elements: growth-oriented prudent macroeconomic policies, appropriate to the specific requirements of each economy; expanded international financial assistance to generate employment and build and strengthen social safety nets; support for efforts to strengthen financial systems, restore trade finance, and accelerate corporate sector restructuring; new approaches to catalyzing the return of stable and sustainable private capital flows into the region; a renewed commitment to APEC’s goal of achieving free and open trade and investment; and urgent work within APEC and with other economies and institutions to develop and implement long-term measures to strengthen the international financial system.

The leaders in Kuala Lumpur supported continuing this work and instructed the APEC finance ministers to develop measures to implement proposals to improve transparency and accountability, to strengthen national financial systems, and to enhance the involvement of the private sector in the prevention and orderly resolution of international financial crises.

**APEC Priorites in 1999**

The key focus of APEC’s work in response to the current financial crisis is to reinvigorate growth and investment in the region. Emphasis on trade and investment liberalization and strengthening institutional and human capacity will contribute significantly to an effective APEC response to the crisis.87

New Zealand promised to pursue three broad themes in 1999:88 trade and investment liberalization and facilitation; strengthening markets; and broadening support for APEC.

**APEC Process of Engagement**

**Areas of Action**

There are three general areas for individual and collective action by APEC member-economies, corresponding to the three interrelated pillars of APEC.89
Coalition-Building and APEC

Under Pillar I, APEC groups are working to achieve trade and investment liberalization and the reduction and removal of formal barriers to trade, such as tariffs and restrictions on foreign investment. In addition, as tariffs are reduced, APEC is increasing attention to non-tariff barriers to trade.

Pillar II, business facilitation, includes a variety of steps economies are taking to make it easier to do business in the region. This includes simplifying and harmonizing the various members' customs procedures, mutual recognition of testing authorities for meeting industrial product standards, promoting investment by strengthening protection of intellectual property rights, and easing restrictions on regional travel by businesspeople. Studies show that business facilitation holds great scope for expanding regional output and trade, thus providing benefits to consumers, workers and producers alike.

Pillar III, economic and technical cooperation, or "ecotech," covers a variety of capacity-building activities conducted by APEC bodies. These aim to enhance members' (especially those of developing countries) ability to benefit from the liberalization agenda and reducing disparities within the diverse APEC region. APEC ministers have directed ecotech work to focus on six priority areas: developing human resources, establishing stable capital markets, building economic infrastructure, harnessing the technologies of the future, promoting environmentally sound growth, and strengthening small and medium-sized enterprises.

Mechanisms

The means by which these goals are realized are twofold: first, through the individual action plans; and, second, through the collective action plans.

a. Individual Action Plans (IAPs)

The IAPs are voluntary submissions made by individual member economies. The submission of these action plans is a prerequisite to membership, but their content is discretionary upon the individual economy. The voluntary nature of the liberalization initiatives that individual economies undertake to carry out gives these plans their most distinctive feature. The IAPs are a continuation or extension of unilateral liberalization initiatives which economies of the region have been implementing in the last two decades or so in their own economic interest. The action plans are revised annually to remain current and relevant. They remain APEC's main channel for trade liberalization. However, under the EVSL initiative, APEC is also working toward free trade in several key industrial and services sectors ahead of the 2010/2020 timetable. Initial efforts here affect trade in 15 sectors: environmental goods and services, fish and fish products, toys, forest products, gems and jewelry, oilseeds and oilseed products, chemicals, energy, food, rubber, fertilizers, automotive products, medical
equipment and instruments, civil aircraft, and a telecommunications equipment mutual recognition arrangement.93

b. Collective Action Plans94

The Collective Action Plans are plans reached through the process of consensus building between APEC member-economies.95 They refer to the issue areas discussed in the Osaka Action Agenda, intended both to boost activity in each area as well as to provide a means of monitoring and reporting the achievement of objectives.

In general, these collective actions by APEC economies focus on facilitating trade and investment within the region, and on making the conduct of business in the region easier, cheaper, faster, more predictable, and transparent.96

Legal Nature of APEC Commitments

APEC is a regional forum for consultation, review, and revision with a set of collaborative multilateral declarations as its foundation. It is an arrangement in which the member economies pledge to achieve the goals outlined in the various declarations.

In these declarations, the member-economies have pledged to find cooperative solutions to the challenges of the rapidly changing regional and global economy. They support greater market access, reduction of tariff and non-tariff barriers, enhanced market access in services, an open investment regime, reduced cost of doing business, an open and efficient infrastructure sector, and strong economic and technical cooperation. The APEC economies have committed themselves to achieving free and open trade and investment in the Asia-Pacific no later than the year 2020, taking into account the differing levels of economic development among APEC economies.

The question then arises as to the legal nature of the APEC commitments under international law. Can they be considered as legally binding upon the member-economies? How can they be classified? Are they treaties, creating rights and obligations for the members? Or are they merely political agreements, without any legal effect?

A treaty is generally understood as an international agreement, contractual in nature, between states or organizations of states, creating legal rights and obligations between the parties.97 The Harvard Research in International Law defines a treaty as a "formal instrument of agreement by which two or more states establish or seek to establish a relation under international law between themselves."98 The Vienna Convention on the Law of Treaties, which took effect in 1980, defines a treaty as "an international instrument concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation."99
Excluded from this definition of a treaty are nonbinding agreements such as joint communiqués, informal "gentleman's agreements," or parallel declarations of intent or understanding. These are declarations by states, whether unilaterally or collectively, that are not intended to constitute legal undertakings.

There is a general acceptance of the view that international agreements are not legally binding unless the parties intend them to be. A treaty or international agreement requires an intention by the parties to create legal rights and obligations governed by international law. If that intention does not exist, an agreement is considered to be without legal effect.

To determine such intent, one should draw inferences from the language of the instruments as well as the attendant and subsequent circumstances of its conclusion and adoption. Emphasis is often placed on the lack of precision and generality of the terms of the agreements. Statements of general aims and broad declarations of principles are considered too indefinite to create enforceable obligations and, therefore, such agreements should be presumed to be nonbinding. Mere statements of intention or of common purposes are grounds for concluding that a legally binding agreement was not intended.

Admittedly, it is very difficult to apply these criteria, especially in situations where the parties do not explicitly convey whether or not they intend to be legally bound, or when the parties intend their declarations to be taken seriously. Caution is necessary in inferring nonbinding intention from general and imprecise undertakings in agreements, which are otherwise treated as binding. However, if the text and the circumstances leave the intention uncertain, it is reasonable to consider vague language and mere declarations of purpose as indicative of an intention to avoid legal effect.

Following these criteria, we can see that the commitments enunciated under the various APEC declarations are not treaties, and are not legally binding as treaties. These declarations have not been ratified under international law, neither is there any judicial pronouncement as to the legal nature of such agreements. Nor has there been registration of the agreements with the United Nations.

Moreover, the language of these declarations indicates that they do not actually create legal rights and obligations between the parties. The aspirations enunciated are broad and indefinite, affirming general principles of liberalization and cooperation. They are broad policies, which the leaders then recommend for actions to their individual governments. All the actions taken, whether by individual countries or by APEC fora, are unilateral and voluntary. A perusal of the text shows that there are actually no legal rights and obligations created under the APEC declarations.

At most, they may be considered as agreements within the broader framework of the WTO. The APEC commitments embody the principles of the global trading
system under the WTO. These fundamental principles which make up the multilateral trading system are: non-discrimination, market access, fair competition, reciprocity, the encouragement of development, and economic reform.

As such, it is clear that the APEC commitments, by themselves, are not "governed by international law." The travaux préparatoires of the Vienna Convention on the Law of Treaties confirm the conclusion that nonbinding agreements are intended to be excluded from the Convention on the ground that they are not governed by international law.

This is not to say that the declarations have no legal effect whatsoever. Even the so-called purely political instruments may have legal consequences. They may be considered as official acts of states, evidence of the positions taken by states. "It is appropriate to draw inferences that the States concerned have recognized the principles, rules, status, and rights acknowledged.... [W]here points of law are not entirely clear and are disputed, the evidence of official positions drawn from these instruments can be significant."

Governments may enter into nonbinding engagements as to future conduct, with a clear understanding among the parties that the agreements are not legally binding. The so-called "gentleman's agreements" fall into this category. In these cases the parties assume a commitment to perform certain acts or refrain from them. The nature of the commitment is regarded as "nonlegal" and not binding. There is nonetheless an expectation of, and reliance upon, compliance by the parties.

It has been observed that:

States entering into a non-legal commitment generally view it as a political or moral obligation and intend to carry it out in good faith. Other parties and other States concerned have reason to expect such compliance from it.... [P]olitical texts which express commitments and positions of one kind or another are governed by the general principle of good faith. Moreover, since good faith is an accepted general principle of international law, it is appropriate, and even necessary to apply it in its legal sense.

There is considerable authority to establish that estoppel is a general principle of law as well. The consequence of this good faith principle is that a party which committed itself in good faith to pursue a particular course of conduct would be estopped from acting inconsistently with its commitment or adopted position when the circumstances showed that other parties reasonably relied on that understanding or position.

The fact that the states have entered into mutual engagements confers an entitlement on each party to make representations to the others on the execution of these
engagements. It becomes immaterial whether the conduct in question was previously regarded as entirely discretionary or within the reserved domain of domestic jurisdiction. By entering into an international pact with other states, a party may be presumed to have agreed that the matters covered are no longer exclusively within its concern. When other parties make representations or offer criticism about conduct at variance with the undertakings in the agreement, the idea of a commitment is reinforced, even if it is labelled as political or moral.\textsuperscript{115}

State Responsibility

The Theory of State Responsibility

Under international law, two requisites must concur to ensure that a state will incur responsibility: first, the commission of an unlawful act under international law; and, second, the imputability of the unlawful act to the state concerned.\textsuperscript{116}

An internationally unlawful act involves the violation of an international obligation, whether arising from treaty, custom, or general principles of international law.\textsuperscript{117} This unlawful act gives rise to state responsibility.\textsuperscript{118}

Responsibility is the necessary corollary of a right. All rights of an international character involve international responsibility. In general, if the obligation in question is not met, it is a basic principle of international law that a breach of an international obligation involves the duty to make reparation.\textsuperscript{119} In its judgment in the Chorzow Factory (Jurisdiction) case, the Permanent Court stated that:

\begin{quote}
It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself."
\end{quote}

Nonetheless, it is generally agreed that a nonbinding agreement, however seriously taken by the parties, does not engage their legal responsibility. Noncompliance by a party would not be a ground for a claim for reparation or for judicial remedies.\textsuperscript{120} This is not to say that the agreement need not be observed, or that the parties are free to act as if there were no such agreement. It is possible to conclude that states may regard a nonbinding undertaking as controlling even though they reject legal responsibility and sanctions.

Consequences of Non-Compliance with International Obligations

As has been previously stated, nonbinding agreements or "gentleman's agreements" do not fall under international law. They are not treaty obligations, which cre-
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APEC members which are also WTO members declared commitments merely because they are principles of fair play and estoppel. APEC member-economies may not ignore their declared commitments merely because they are political.

Although APEC is currently pursuing a method of dispute settlement, there is still no effective mechanism for the solution of controversies. However, between APEC members which are also WTO members, trade disputes between governments may be resolved utilizing the WTO dispute settlement mechanism.

WTO members commit themselves not to take unilateral action against perceived violations of the trade rules, but to seek recourse in the multilateral dispute settlement system and to abide by its rules and findings. The aim of the WTO dispute settlement mechanism is to secure a positive solution to a dispute. Thus, finding a mutually acceptable solution to a problem between members, consistent with WTO provisions, is encouraged. This may be possible through bilateral consultations between the governments concerned.

APEC INDIVIDUAL ACTION PLAN AND PHILIPPINE MUNICIPAL LAW

Review of the Philippine Individual Action Plan

This IAP articulates the Philippine response to the opportunities and challenges impelled, in general, by an increasingly globalized economic environment and, in particular, by the Bogor call for free and open trade and investment in the APEC region by 2010/2020. It is governed by the national vision of equitable growth and sustainable development, as enunciated in Philippine Agenda 21 dated 26 September 1996.

It is understood that as IAPs are rolling and forward-looking, the Philippine Individual Action Plan will, in due course, be updated to reflect future developments. The process of updating IAPs shall be conducted in the same collaborative and consultative mode. It shall be guided by appropriate studies.

Tariff Measures

At present, the Philippines continues to implement its Tariff Reform Program, a comprehensive review and rationalization of the country's tariff structure, which started in 1980. Now in its third phase, the Tariff Reform Program provides for the progressive reduction in applied rates of duty. The targeted final rate under the program is a uniform rate of 5% by year 2004, except for sensitive agricultural products whose tariffs are set inter-alia per WTO commitments.
The Philippines aims to progressively reduce tariffs. From 1997 to 2004, the Philippines will, first, continue the implementation of the Tariff Reform Program, moving toward a uniform rate of protection while maintaining exceptions for sensitive agricultural products; and, second, gradually expand minimum access volumes according to WTO commitments.

The Philippines also aims to ensure transparency of tariff regime. In the period covering 1997-2004, the Philippines will participate actively in APEC’s computerized database, updating its tariff data notifications as may be necessary.

Non-Tariff Measures

The Philippine import liberalization program calls for the elimination of non-tariff measures other than those maintained for reasons of health, safety, and national security. Pursuant to this, Central Bank Circular No. 92, R.A. 8178 and R.A. 8180 were enacted.

However, non-tariff measures (NTMs) still remain, such as the quantitative restrictions on rice maintained for food security, per Annex 5 of the WTO Agreement on Agriculture, residual import licensing requirements under cover of GATT Article XVIII-B, and import regulations maintained for reasons of health, safety and national security, as notified to the WTO.

To progressively reduce non-tariff measures from 1997 to 1999, the Philippines will progressively eliminate import-licensing requirements under cover of GATT Article XVIII-B, subject to review of the balance-of-payments situation. Likewise, to ensure transparency of non-tariff measures, the Philippines will exchange information with APEC on residual NTMs. This will be implemented starting in 1997 up to the year 2020.

Liberalization of Trade in Services

a. Telecommunications

Telecommunications is considered a public utility and under the Philippine Constitution, the provision of telecommunication services is limited to Filipino citizens or to corporations, associations, or entities which are owned at least 60% by Filipino citizens. The remaining 40% may be owned by foreigners. Domestic companies who wish to operate are required to secure a legislative franchise and a certificate of public convenience and necessity. Dial back, call back, or any other similar scheme is prohibited. Reselling is also not allowed. The grant of any authorization is subject to availability of radio frequencies.

Broadcast service is classified under mass media and the operation thereof is limited to Filipino citizens.
In line with the adoption of a more liberalized environment for the telecommunications sector, a more defined legal framework upon which the sector is to develop is warranted. Thus, three major and essential regulations were issued starting in 1993: E.O. No. 59, on mandatory interconnection; E.O. No. 109, mandating operators for CMTS and IGF to install and operate local exchange services to all unserved and underserved areas; and R.A. No. 7925, otherwise known as the Public Telecommunications Policy Act of 1995.

The Philippines participated in the Uruguay Round of Multilateral Trade Negotiations on trade in services and has included in its schedule of commitments certain identified areas in value-added services.

Within the context of the Philippine Constitution and Republic Act No. 7925, the Philippines has pledged to progressively reduce restrictions on market access for trade in services, from 1997 to 2010.

Specifically, the Philippines has promised to promulgate rules, regulations, and guidelines to further allow the market to grow and operate efficiently wherein the private sector shall be the prime movers in a competitive and liberalized environment. These may be in the aspects of effective interconnection and reasonable and fair revenue sharing scheme to encourage growth and expansion of services to unserved and underserved areas; measures to foster a healthy competitive environment and one where service providers can interact with one another with the end in view of encouraging their financial viability while maintaining affordable rates; and the installation of an administrative quasi-judicial process that is proactive, stable, transparent, and fair, giving due emphasis to technical, legal, economic, and financial considerations.

It also committed to progressively privatizing government telecommunications facilities, currently owned and operated by government, including facilities being undertaken under various bilateral arrangements. There is also a commitment to progressively exempt any specific telecommunications service from the Philippines’ rate or tariff regulations if the service has sufficient competition to ensure fair and reasonable rates.

The government intends to remove the requirement to secure prior authority when upgrading existing plant and network facilities, including the financing thereof by authorized carriers within their service areas.

There will be a periodic review of radio spectrum to allow entry of new service providers, avail of new and cost-effective technologies, and achieve a globally competitive telecommunications infrastructure.

The country also aims to harness and improve human resource skills and capabilities to sustain the growth and development of telecommunications in a fast-changing environment.
Finally, it shall eliminate franchising requirement for a value-added service provider (as long as it does not put up its own network) and allow the same to competitively offer its services and expertise.

From 2010 to 2020, the Philippines shall also endeavor to enact laws that will meet the deficiencies of its regulatory and policy framework and to further improve the investment environment and such other laws as may be necessary to make a globally competitive telecommunications sector. Likewise, the Philippines also aims to progressively provide for, among others, MFN and national treatment for trade in services.

From 1997 to 2010, the Philippines shall, to the extent that foreign investments are allowed to participate in the equity of a domestic corporation, not discriminate against any WTO member. All domestic carriers with foreign investments shall be treated under a similar regulatory and policy framework.

b. Transport

The Philippines participated in the GATT Uruguay Round of Multilateral Trade Negotiations on trade in services, including the extended negotiations on maritime transport services, have been suspended until the resumption of negotiations by year 2000.

Currently, various limitations on market access apply to all modes of transport services. For instance, under the Philippine Constitution, “no franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least 60% of whose capital is owned by such citizens.”

The participation of foreign investors in the governing body of any corporation engaged in activities expressly reserved to citizens of the Philippines (i.e., foreign equity is limited to a minority share) by law shall be limited to the proportionate share of foreign capital of such entities. All executive and managing officers must be citizens of the Philippines.

Likewise, all lands of the public domain are owned by the state. Only citizens of the Philippines or corporations or associations, at least 60% of whose capital is owned by such citizens, may own land other than public land and acquire public lands through lease. Foreign investors may lease only private-owned lands.

Moreover, Philippine laws provide that only aliens qualified to hold technical positions may be employed within the first five years of operation of the enterprise, but their stay must not exceed five years upon entry. Each employed alien should have at least two Filipino understudies. Non-resident aliens may be admitted to the Philippines for the provision of a service after a determination of the non-availability of a person in the Philippines who is competent, able and willing, at the time of application, to perform the services for which the alien is desired.
In the field of air transport services, the Philippines has established the domestic and international civil aviation liberalization policy with the aim of improving air service availability, quality, and efficiency through exposure to foreign markets and competition.

In international air transportation, two international carriers have been designated as official carriers. The Philippines has entered into an unlimited third and fourth freedom traffic at two points in member-economies at the Brunei Darussalam-Indonesia-Philippines East ASEAN Growth Area (BIMP-EAGA). Domestic routes have been opened for entry to a minimum of two operators in each route.

In addition to the aforementioned restrictions, which apply to all modes of transportation, there remain several limitations on market access applicable specifically to maritime transport services. For instance, cabotage transport is still limited to Filipinos. Government-owned cargoes remain subject to the Cargo Reservation Law, which requires that cargoes owned by government-owned or controlled corporations shall be shipped on board Philippine-flagged vessels. For specialized vessels, aliens may be employed as supernumeraries only for a period of six months. With respect to the leasing or rental of vessels without crew, bareboat charter or lease contracts are subject to approval by the Maritime Industry Authority (MARINA). And any repairs, conversion, or dry-docking of Philippine-owned or registered vessels are required to be done at domestic ship repair yards registered with MARINA.

The Philippines has liberalized the domestic shipping industry by providing for the entry of new operators and investors to enhance the level of competition and bring about reasonable rates and improved quality of service. From 1997 to 2000, the Philippines further aims to progressively reduce restrictions on market access for trade in services. To achieve this goal, the Philippines will undertake studies pursuant to the Foreign Investments Act on the possibility of opening up the nationality requirement of auxiliary maritime services such as management of shipping agencies and multimodal operation.

c. Energy

Republic Act No. 8180, entitled "An Act Deregulating the Downstream Oil Industry and for Other Purposes" was signed on 23 March 1996 and contained provisions that constitute the transition phase of the deregulation process. It provided for the liberalization of the import and export of refined petroleum products, liberalization of the entry of new players in the operation of refineries, and other oil facilities. It likewise reduced the rate of duty of crude oil from 10% to 3%, and from 20% to 7% ad valorem on refined petroleum products. R.A. 8180 also adopted an automatic pricing mechanism to enable the domestic price of petroleum products to approximate the international price of oil, and set the Oil Price Stabilization fund at P1 billion.
Republic Act No. 8184, otherwise known as "An Act Restructuring the Excise Tax on Petroleum Amending for the Purposes Pertinent Sections of the National Internal Revenue Code, as Amended," was signed in June 1996 and restructured the excise tax on refined petroleum products.

Executive Order No. 365, signed on 28 August 1996, specified the rates of duty on refined petroleum products. Further, it abolished the additional levy of P1/liter on P0.95/liter on refined petroleum products except lubricating oil base stock and other solvents, and crude oil, respectively.

In the coal industry, the importation of coal is presently regulated.

The electric power industry is undergoing restructuring and privatization with the objectives of ensuring availability and reliability of power supply, creating a competitive environment toward operational and economic efficiency, promoting private sector investment in power development to minimize government financial and risk exposure, rationalization of electricity prices, and ensuring socially and environmentally compatible energy infrastructure.

Executive Order No. 215, which was issued in 1991, made possible private sector participation in power generation. As such, a 210 MW gas turbine was built by Hopewell of Hong Kong. This can be considered as the first build-operate-transfer (BOT) plant in the Philippines.

The ownership and operation of transmission lines and substation facilities, including grid interconnection, is lodged with the National Power Corporation (NPC), a government-owned institution. Undertaking the distribution of electricity are private utilities, cooperatives and local government units.

With the full liberalization of the downstream oil industry, all regulations on oil price setting, including the Oil Price Stabilization Fund and the foreign exchange cover, will be removed. On the other hand, the import restrictions on coal will be lifted.

An omnibus bill on the policy framework to govern the electric sector will be proposed for legislation. The long-run marginal cost will be implemented in the pricing of electricity to reflect the true cost of providing the service. There will be a horizontal unbundling of the NPC's generation facilities into a number of distinct generation entities and subsidiaries.

d. Tourism

Proclamation No. 188 provides for the adoption of the Tourism Master Plan (TMP) as the blueprint for tourism development in the Philippines for the period 1991-2000. The TMP calls for the establishment of tourism linked to a variety of satellite destinations served by an international gateway in the country's main islands. Provision of infrastructure facilities has been programmed by the government. On the
other hand, tourism facilities and services have been identified for direct participation by the private sector, both local and foreign investors.

Investment in tourism-related activities is open to foreign nationals, who are allowed up to 100% equity. To encourage greater investments in the industry, Executive Order No. 63, entitled "Granting Incentives to Foreign Investors in Tourist Related Projects, Establishments and for Other Purposes," and Executive Order No. 226, otherwise known as the "Omnibus Investments Code of 1987," granted incentives to tourism enterprises. Some of the incentives available are entitlement to special investors resident visa, the right to remit earnings from the investment in the currency in which the investment was originally made, and the right to repatriate the entire proceeds of the liquidation of the investments.

However, certain restrictions continue to govern the industry. Only citizens of the Philippines or corporations or associations, at least 60% of whose capital is owned by such citizens, may own land other than public lands, and acquire public lands through lease. Foreign investors may lease only private-owned lands. No foreign equity is allowed if the specialty restaurant is not part of the facilities of a hotel. Aliens may be employed in specialty restaurants subject to pertinent provisions of the tripartite agreement among the Department of Tourism (DOT), Department of Labor and Employment (DOLE), and the Bureau of Immigration and Deportation (BID). A travel tax is imposed on all departing passengers, whether Filipino nationals or foreign, with certain exceptions.

Furthermore, as a general rule, only citizens of the Philippines can be employed in tourism-oriented establishments. However, for hotels and resorts, aliens may be employed subject to the pertinent provision of the tripartite agreement among the DOT, DOLE, and BID. In such cases, only hotels or resorts duly accredited by the DOT shall be allowed to engage the services of aliens. Foreigners may occupy a maximum of four managerial positions in a hotel or resort establishment. For new hotels or resorts, aliens whose services are required during the pre-operation stage and up to six months after the opening of the hotel or resort to the public may be engaged. The services of foreigners may also be engaged during special occasions or events, such as food festivals, provided the service contract shall be limited to a period of three months, renewable for a maximum period of another three months.

Based on its participation in the Uruguay Round of Multilateral Trade Negotiations on trade in services, the Philippines has included a schedule of specific commitments to certain activities in the tourism sector. The Philippines is also actively participating in the ongoing ASEAN negotiations on services as well as in BIMP-EAGA tourism activities.

From 1997 to 2000, the Philippines will review existing laws on tourism movement and investment, as well as investment plans and potential investment areas for
tourism projects. From 2001 up to 2020, the Philippines will liberalize existing regimes on investments and employment of foreign nationals and coordinate the amendments of rules and regulations on the movement of tourists, such as travel tax, immigration procedures, and visa requirements.

e. Distribution

Republic Act No. 1180, or the Retail Trade Nationalization Act, provides that only Filipino citizens may engage in retail trade. This forbids foreign citizens, associations, partnerships, or corporations not wholly owned by Filipinos from participating directly or indirectly in retail trade.

The Philippines will consider amendments to R.A. 1180 with the objective of allowing foreign investors to engage in retail trade subject to certain conditions, such as limitation on capitalization, and number of branches.

f. Financial

The passage into law of Republic Act No. 7721 (An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines) on 18 May 1994 had the effect of amending the General Banking Act or Republic Act No. 337 which, since 1948, had closed the domestic banking system to foreign banks (except for the four already operating then). Under R.A. 7721, foreign banks are authorized to operate in the Philippine banking system subject, however, to compliance with the implementing rules on modes of entry, guidelines for approval, and capital requirements, among others.

In 1994, after being closed for nearly 50 years, the insurance sector was likewise opened to new, 100% foreign-owned companies. Under Department Order No. 100-94 and 00-94-A, issued by the Department of Finance on 24 October and 18 November 1994, respectively, foreign insurance or reinsurance companies which will operate as a branch or where foreign equity (or in their intermediaries) is more than 40% shall be allowed entry within two years from the effectivity of the order. Capital requirements vary depending on the line of business, degree of ownership, and mode of entry.

Still as a result of its participation in the Uruguay Round of Multilateral Trade Negotiation, the Philippines made commitments under the GATS, particularly in banking, insurance, and securities. Furthermore, as a member of ASEAN, the Philippines is actively involved in the negotiations on trade in services, including the financial sector through the Coordinating Council in Services.

Currently, membership in the board of directors in investment companies is limited to Filipino citizens. In investment houses, foreign equity participation is allowed up to 49%. A majority of the members of the board must be Filipino citizens.
Foreign equity participation in financing companies is limited to 40%. Two-thirds of the members of the Board must be Filipino citizens.

The Philippines will review the current restrictions on foreign equity participation in investment banks, investment houses, and financing companies. It will also review existing law on investment companies with the objective of including a provision specifically providing for a maximum of 100% allowable foreign equity participation.

The country also aims to progressively provide for, among others, MFN and national treatment for trade in services. It will review restrictions on foreign membership in the board of directors of investment and financing companies.

**Foreign Investment**

As of November 1996, the Philippine investment regulatory and facilitation framework is contained in nine laws and executive issuances:

a. Executive Order No. 226 (Omnibus Investment Code of 1987) provides rules by which foreign investments may avail themselves of incentives;

b. Republic Act No. 7042 (Foreign Investment Act of 1991), as amended, by Republic Act No. 8179 (1996), inter-alia governs the entry of foreign investments without incentives. This liberalizes the minimum paid-in capital requirements for foreign investments in domestic market enterprises, opens selected economic activities to natural-born Filipinos who have acquired foreign citizenship;

c. Republic Act No. 7227 (Bases Conversion and Development Act of 1992) provides incentives to enterprises located within the Subic Bay Freeport Zone;

d. Republic Act No. 7916 (Special Economic Zone Act of 1995) provides incentives to enterprises located within the Special Economic Zones;

e. Republic Act No. 7844 (Export Development Act of 1994) provides incentives for export-oriented business;

f. Republic Act No. 7652 (Investors' Lease Act) allows qualifying foreign investors to lease private lands for an initial period of 50 years, renewable for up to 25 additional years;

g. Republic Act No. 7721 eases the restrictions on the entry and operation of foreign banks;

h. Republic Act No. 7718 (Amending the BOT Law of 1994) allows variations of schemes, eases restrictions on government financing and the setting of tolls and charges, and increases the opportunity for wholly foreign-owned corporations to undertake projects;
i. Republic Act No. 7888 allows the President to suspend the nationality requirements under Executive Order No. 226 in the case of equity investments by multilateral financial institutions such as the IFC and the ADB.

The Philippines does not discriminate against any investment source economy. All areas are open to foreign investment, except those restricted by legal and constitutional constraints, and for reasons of security, defense and moral concerns, and to protect SMEs.

Local content and/or foreign exchange requirements for motor vehicle developments and soap and detergent manufacturers have been modified under WTO-TRIPS (Trade-Related Intellectual Property Rights) Agreement.

The Philippines guarantees foreign investment against expropriation except for public use or in the interest of national welfare and upon payment of just compensation. It also allows full repatriation of earnings, profits, dividends, and investments subject to constitutional, legislative, and administrative limitations.

Existing laws for the settlement of disputes allow for voluntary and compulsory arbitration and administrative adjudication and litigation. The Philippines is also a signatory to the International Centre for Settlement of Investment Disputes.

The entry and sojourn of personnel movement of investors and key personnel are allowed, subject to existing immigration rules, regulations and procedures.

The Philippines' goal is to liberalize investment regime and overall investment environment by, among others, progressively providing for MFN and national treatment and ensuring transparency by the year 2020.

In its continuing liberalization program, the Philippines will improve its overall investment environment, taking into account its sustainable development thrust. The proposed liberalization measures include the extension of the application of the condominium law to industrial estates, the opening of the retail trade to foreign participation and the relaxation of the requirements and improvement of benefits accorded to foreign entities setting up regional headquarters and warehouses. Moreover, the Philippines is considering the liberalization of foreign equity participation in investment companies, financing firms, and investment banks/houses.

To enhance transparency of its investment regime, the Philippines will continue to update its contribution to the APEC guidebook on Investment Regimes and the APEC software network on investment regulations and investment opportunities. The Philippines will also participate in the APEC review mechanism.

To facilitate investment activities through, among others, technical assistance and cooperation by the year 2020, the Philippines will participate in technical assis-
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tance and cooperation activities, continue to pursue bilateral protection agreements with APEC economies, and examine the impact of investment rule-making and liberalization in the APEC region.

Intellectual Property Rights

The Philippines has established the legal framework for the protection of patents, trademarks, trade names, service marks, and copyright. It is also a signatory to the following conventions or agreements:

b. Paris Convention for the Protection of Industrial Property (since 1965)
d. Berne Convention for the Protection of Literary and Artistic Works (since 1951)
e. Rome Convention for the Protection of Performers, Producers of Phono-grams and Broadcasting Organizations (since 1984)
f. ASEAN Framework Agreement on Intellectual Property Cooperation (since 1995)

Existing laws are currently being amended to align with the WTO-TRIPS Agreement. Specifically, amendments have been submitted to Congress to align laws on patents, trademarks and copyrights, strengthen IPR enforcement, and update administrative procedures.

To ensure adequate and effective protection of IPR, and in compliance with WTO-TRIPS commitments and to strengthen its IPR regime, the Philippines, as determined by Congress, will undertake the following by the year 2000: align existing laws on patents, trademarks, and copyrights with TRIPS; enact new laws on the protection of plant varieties, geographical indications, layout designs of integrated circuits and undisclosed information; strengthen enforcement of IPRs; and update administrative procedures to meet new trends and developments.

To ensure that IPRs are granted expeditiously and there are adequate procedures and remedies for infringements, the Philippines will continue to modernize the IPR system through automation of administrative functions, updating of patent documents and science and technology reference materials, and effective research and industry linkages. Furthermore, the Philippines shall enhance IPR legislation to expedite granting of IPRs and to improve the civil and administrative regime for infringements.
To expand bilateral technical cooperation, the Philippines will continue to collaborate with APEC members in strengthening and modernizing the IPR system and availing itself of training programs on IPRs.

**Competition Law**

The Philippine Constitution mandates that the state must protect Philippine enterprises against unfair foreign competition and trade practices. It also prohibits monopolies and combinations in restraint of trade or unfair competition. The basic statute which prohibits unfair trade practices, monopolies and combinations in restraint of trade is the law on monopolies and combinations under Republic Act No. 3247, as amended, and the Revised Penal Code, as amended by Republic Act No. 1956. Although the country has statutes which prohibit unfair trade practices, it does not have a comprehensive anti-trust legislation.

The Philippines’ objective is to enhance the competitive environment in the Asia-Pacific region by introducing or maintaining effective and adequate competition policies or laws, thus ensuring transparency and promoting cooperation in APEC.

The country will review existing laws on competition with the end in view of improving the competition environment by the year 2000. To this end, the Philippines will, among others, endeavor to enact an anti-trust and anti-monopoly law, including the establishment of a Fair Trade Commission to enforce competition laws. The Philippines will continue to review and further improve its competition policy regime until 2020.

Until 2020, the Philippines shall avail itself of technical assistance within APEC to review and develop its competition policies and laws. Likewise, it shall participate in dialogues and exchange of information among APEC economies to ensure transparency and enhance mutual understanding of national competition laws and policies.

**Deregulation Measures**

The Philippines has successfully privatized a number of government-owned or controlled corporations and returned to private sector hands certain acquired assets. This consists of the first wave of privatization. It is now in the second and third wave of its privatization efforts.

The ongoing major restructuring of the tax system aims to make the system more equitable and the rates more reasonable while facilitating administration.

A major reform in the financial sector is the liberalization in the entry of foreign banks, with the issuance of Republic Act No. 7721 in May 1994. Under this law, entry of foreign banks is allowed under three modes: first, 10 new foreign banks can open branches in the Philippines with full banking authority; second, an unrestricted number of foreign banks are allowed to set up locally incorporated subsidiaries, up
to 60% of which may be foreign-owned; and third, an unrestricted number of foreign banks may enter the Philippines by acquiring up to 60% ownership of domestic banks.

Other reforms that have been implemented are the enhanced reduction of the reserve requirement, the lowering of the capital requirement for bank branching (particularly with respect to thrift banks), the expanded use of automated teller machines or ATMs, the liberalization of accreditation guidelines for securities dealership of treasury bills, and the simplification of reportorial procedures of banks. Similarly, the restrictions on repatriation of foreign investment have been lifted, and the ceiling on outward foreign investment has increased. There has been a reduction of the requirements for deposits and deposit substitutes, as well as the removal of the restrictions on automatic conversion into pesos of certain portions of foreign loans, which have limited foreign loan approvals. In addition, there has been an extension of foreign currency-denominated loans to indirect exporters, the lowering of Bangko Sentral ng Pilipinas (BSP) rediscount rate to increase utilization thereof, and the creation of an exporters' dollar facility funded by BSP.

The exchange rate continues to be market-oriented with the BSP participating in the foreign exchange market when warranted to minimize unwanted fluctuations. The domestic oil industry, on the other hand, has been liberalized with the issuance of Republic Act No. 8180 on 28 March 1996. This measure removed the restrictions on importation and exportation of petroleum products.

The Foreign Investments Act of 1991 has been amended. The amendments include the elimination of the list of strategic industries, reduction of the minimum paid-in equity capital from US$500,000 to US$200,000 for foreign-owned domestic market enterprises and to US$100,000 if they involve advanced technology or directly employ at least 50 employees.

Republic Act No. 529, which prohibits the payment of domestically contracted obligations in foreign currency, except in four cases, was repealed by Republic Act No. 8183 on 11 June 1996. Under the new law, all monetary obligations are to be paid in Philippine currency, although the parties may settle the obligations in any other currency at the time of payment.

To promote transparency of regulatory regimes by the year 2020, the Philippines will endeavor to further improve transparency of its regulatory regime through a more timely publication of laws and rules and regulations and in the most widely read newspapers. The Philippines will also eliminate trade and investment distortions arising from domestic regulations.

In its continuing program, the country will implement measures that will further deregulate its domestic regime by the year 2000, taking into account its sustainable development thrust.
The proposed liberalization measures include the extension of the application of the condominium law to industrial estates, the opening of the retail trade to foreign participation, and the relaxation of the requirements and improvement of benefits accorded to foreign entities setting up regional headquarters and warehouses in the country. Moreover, the Philippines is considering the liberalization of foreign equity participation in investment companies, financing companies, and investment banks/houses. Similarly, it is examining the deregulation of the rates and routes in maritime and land transport, as well as the elimination of restrictions on domestic borrowings of foreign firms.

The Philippines will continue to review and improve its regulatory regime up to 2020.

**Government Procurement**

Government procurement (GP) in the Philippines is governed by three main laws and administrative regulations:

a. Commonwealth Act No. 138, otherwise known as the Flag Law.

b. Presidential Decree No. 1594, which prescribes policies, guidelines, rules, and regulations for government infrastructure contracts.

c. Letter of Instruction No. 501, which covers the procurement of consulting services for government projects.

While all of the above provide for preferential treatment of local suppliers, P.D. 1594 and L.O.I. 501 allow for the participation of foreign suppliers in respect of government procurement.

The Philippines is signatory to the ASEAN Preferential Trading Arrangements (PTA), which provides for a 2.5% preferential margin (not to exceed US$40,000 worth of preferences per tender) in respect of international tenders for government procurement of goods and auxiliary services from untied loans submitted by ASEAN countries vis-à-vis non-ASEAN countries.

The Philippines endeavors to develop a common understanding of GP policies and systems as well as of each APEC economy’s GP practices by the year 2020. The country has committed to doing the following: compile and develop a database and make available to APEC partners information on GP laws and policies and opportunities; establish an inquiry point for public dissemination of GP laws and policies and opportunities; conduct extensive study of procurement policies in respect to the WTO Agreement on GP and similar initiatives; and participate in GP policy dialogues and exchanges of information within APEC.

In 2020 the Philippines aims to achieve liberalization of the GP market throughout the Asia-Pacific region. Already, it has liberalized its GP regime, subject to the provisions of existing laws and administrative regulations.
Mobility of Business People

Mobility of business travelers in the Philippines is governed by the Philippine Immigration Act. Under this law, a multiple-entry visa valid for one year is granted to foreigners who work for BOI-registered companies and regional headquarters (RHQs) and extended to their spouses and unmarried children below 21 years of age. A single-entry re-arranged employment visa valid for one year is granted to foreigners who work for representative offices, branch offices, and other non-BOI- or EPZA-registered companies. Finally, a single-entry treaty trader or investor visa valid for one year is granted to three nationals (Americans, Japanese, and Germans) who invest at least P300,000.00.

The so-called 9(a) visa is issued by the Philippine consular office in the country of origin of the non-immigrant, provided the BID has authorized its issuance. The BID, however, cannot authorize the issuance of the visa unless the DOLE has issued an alien employment permit (AEP). Both working visa and AEP are valid for one year.

The Philippines’ objective is to enhance the mobility of business people engaged in trade and investment in the Asia-Pacific region. In principle, the Philippines supports all efforts to facilitate the mobility of businesspeople involved in investment in the Asia-Pacific region. To make Philippine immigration laws more attuned to the needs of business people by the year 2000, the Philippines intends to grant multiple-entry visas initially valid for two years to foreign nationals working for BOI-registered companies. The country will extend to those holding investor or trader’s visa the privileges accorded to 9(a) visa holders from 59-day single entry to 60-day multiple entry. The country has also agreed to streamline the visa-processing procedure to reduce the processing time for 9(d) or treaty trader’s visa and 9(g) or pre-arranged working visa of foreign nationals working with BOI-registered firms no longer entitled to the special non-immigrant 47-A(2) visa.

Furthermore, a new Philippine APEC Business visa will be introduced to allow multiple entry for a maximum 59 days’ stay per entry. Such visa will have a five-year validity and is available only to bona fide businesspeople. The proposed business visa shall be offered on a reciprocal basis to all APEC economies. APEC business lanes shall be created at major ports of entry. Finally, the Philippines will consider establishing an immigration office in Makati City and will periodically review visa requirements and procedures and effect improvements where appropriate until 2020.

Legal Nature of Philippine Commitments

APEC is an international forum dedicated to producing tangible economic benefits for the region. The content of APEC’s objectives can be divided into two: trade
and investment liberalization, and economic and technical cooperation. The most prominent of APEC's commitments is the achievement of free trade in the region by 2010 for developed economies and 2020 for developing economies. APEC shares these goals with broader multilateral arrangements such as WTO. APEC hopes to exceed these arrangements by setting time-bound targets.

From the start, the understanding among members of APEC is that it would be consistent with and complimentary to the WTO. The Osaka Action Agenda set the framework for realizing the goals of the Bogor Declaration. The leaders agreed on a set of nine fundamental principles to define the process within the WTO framework. This language provides for a full and faithful implementation of Uruguay Round (UR) commitments by APEC, voluntary participation in the UR implementation process by APEC members who are not members of the WTO, and accelerating, deepening, and broadening of UR outcomes by APEC members on a voluntary basis.

APEC has emphasized voluntary, though coordinated, unilateral actions of members to reduce and eventually remove all trade and investment barriers.

The IAP clearly and concretely spells out how each economy will move more rapidly toward the goal of free and open trade and investments. The IAPs are economic blueprints which each APEC member will follow in achieving APEC's vision of liberalized trade and investment in the Asia-Pacific by 2010 for the group's richer members and 2020 for the group's poorer ones. These plans represent the best-effort commitments of each member and signals the process of directing all APEC economies steadily toward liberalization of trade and investment. The pace and extent of liberalization will vary according to each member-country's readiness.

The Philippine IAP zeroes in on three areas, namely, greater market access through low tariffs, reduced cost of business, and stronger economic and technical cooperation.

APEC is consensual and voluntary in approach. As the Economic Leaders' Declaration of Common Resolve states, "We have brought to Subic our individual and collective initiatives in fulfillment of our voluntary commitment to implement the Osaka Action Agenda." The IAPs are voluntary submissions from member-economies. The voluntary nature of the liberalization initiatives that individual economies undertake to carry out gives these plans their most distinctive feature. It might be said that the IAPs are a continuation or extension of unilateral liberalization initiatives which economies of the region have been implementing in the last two decades or so in their own economic interest. What the APEC process has added to the region's voluntary mode of trade and investment liberalization is a dynamic mechanism of consultation, review and revision, which is calculated to favor concerting, expanding, and improving action plans. In a way, the individual economy plans will always remain a work in progress until the goals of Bogor are finally achieved.
The point of inquiry, however, is the legal nature of the Philippines' commitments under APEC, in general, and under its IAP, in particular. This examination will be based on the provisions of municipal law in accordance with international law.

Article II, Section 2 of the 1987 Philippine Constitution provides that “the Philippines ... adopts the generally accepted principles of international law as part of the law of the land...”

In the absence of relevant treaties or statutes, the courts determine what constitutes these general principles. The most relevant decision to date on this matter is Tañada v. Angara (G.R. No. 118295, 2 May 1997). The Supreme Court, in discussing the constitutionality of the Philippine accession to the WTO, affirmed the principles of equity, reciprocity, and economic interdependence underlying the Philippines’ WTO commitments. The court stated that:

By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda* – international agreements must be performed in good faith. A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties xxx

Following this, the WTO commitments of the Philippines are legally binding upon it. Therefore, to the extent that APEC is a regional arrangement which supplements and complements the multilateral trading system, the APEC obligations are likewise binding upon the Philippines.

Article VII, Section 21 of the 1987 Philippine Constitution states that no treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate. However, in their deliberations on the present provision (Article VII, Section 21), the members of the Constitutional Commission recognized the distinction between a treaty and an executive agreement. In *USAFFE Veterans vs. Treasurer of the Philippines* and *Commissioner of Customs vs. Eastern Trading*, the Supreme Court made the same distinction.

“Executive agreement” is a term commonly used to designate international agreements made by the President without the advice and consent of the Senate, particularly by two-thirds of its members, as stipulated in the Constitution. The right of the executive to enter into binding agreements without the necessity of subsequent congressional approval has been confirmed by long usage. The making of executive agreements is thus a constitutional usage of long standing which apparently rests upon the President's vast but ill-defined powers in the fields of foreign relations and national defense.
Generally, international agreements involving vital political issues or changes of a national policy or those involving international arrangements of a permanent character usually take the form of treaties, which should be submitted to the Senate of the Philippines for its concurrence. International agreements embodying adjustments carrying out well established national policies and traditions, amendments to existing treaties, and those involving arrangements of a more or less temporary nature usually take the form of executive agreements. An executive agreement does not at all require the approval of the Senate. Nevertheless, it is a binding international obligation by the executive branch of the government on the basis of prior congressional authorization and within the limits set by Congress, or even without prior congressional authority but within the power generally recognized as vested in the President.

The United States State Department, however, cautioned in its Circular No. 175 dated December 3, 1955 that executive agreements shall not be used when the subject matter should be covered by a treaty. If an executive agreement has not been authorized by prior legislation or does not fall within the sphere of constitutional presidential authority, the agreement is regarded as void. An executive agreement shall be used only for agreements which fall into one or more of the following categories:

a. Agreements which are made pursuant to or in accordance with existing legislation or a treaty
b. Agreements which are made subject to Congressional approval or implementation; or
c. Agreements which are made under and in accordance with the President’s constitutional power

Executive agreements fall under two classes: (1) agreements made purely as executive acts affecting external relations with or without legislative authorization, which may be called presidential agreements; and (2) agreements entered into in pursuit of acts of Congress called Congressional-Executive agreements. Congressional-Executive agreements have come about in different ways. In some instances, Congress approves presidential agreements by legislation or appropriation of funds to carry out their obligations.

The Philippines follows a similar classification. Memorandum Circular No. 89, dated 19 December 1988, provides guidelines on when an international agreement is considered a treaty, which should be submitted to the Philippine Senate for concurrence in accordance with Article VII, Section 21 of the 1987 Philippine Constitution. The obligations undertaken by the Philippines under APEC may be considered as a presidential executive agreement and a congressional-executive one.
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Senate Resolution 97, adopted by the Philippine Senate on 14 December 1994, approves the Philippine commitments under the WTO as a treaty. In Subic, the APEC Leaders reaffirmed the primacy of the WTO-based multilateral trading system and urged all parties to effectively implement their Uruguay Round Commitments. Thus, the Philippines commitments under APEC is nothing more than an executive agreement to implement the treaty obligations under the WTO.

The same Senate resolution, however, contains a clause which states that nothing in it or in the WTO Agreement shall be construed to authorize the President alone to bind the Philippines to any amendment of any provision of the WTO Agreement or to exercise other than such powers as are already vested in him by the Constitution or laws.

Nonetheless, these commitments may be justified under the power of the President to enter into executive agreements by virtue of his constitutional powers. In the fields of the military and the foreign affairs, the President may exercise the largest measure of authority subject to the least amount of restriction under the Constitution. In these fields, he is perhaps entitled to claim a certain degree of inherent powers. He derives these powers over the foreign affairs of the country not only from specific provisions of the Constitution but also from custom and positive rules followed by independent states in accordance with international law and practice. In discussing this subject, the United States Supreme Court directs attention to certain powers not provided in the Constitution but vested nevertheless in the US government as inherently inseparable from the conception of statehood. These are the power to acquire territory by discovery and occupation, the power to expel undesirable aliens, and the power to make such international agreements which do not constitute treaties in a constitutional sense, commonly known as executive agreements.

Presidents have made numerous international agreements contemplated by a treaty, or which they considered appropriate for implementing treaty obligations and which no one seems to have questioned where their authority to make them is concerned. Perhaps it is assumed that Senate consent to the original treaty implies consent to supplementary agreements, by which it is assumed that the President takes care that the treaty is faithfully executed. However, executive agreements are never self-executing and cannot be effective as domestic law unless implemented by Congress.

The distinction between so-called executive agreements and treaties is purely a constitutional one and has no international legal significance. Whether an agreement is regarded as a treaty or an executive agreement is immaterial in international law. It still has binding effect as a treaty. However, as discussed in the previous chapter, the commitments made under APEC cannot be regarded as a treaty because these do not fulfill the requisites for a valid treaty. At most it is a political declaration which has binding effect.
A unilateral declaration by a state intended to benefit another state or group of states can be legally binding and governed by the law of treaties. An undertaking of this kind, if given publicly, and with intent to be bound, even though not made within the context of international negotiations, is binding.\textsuperscript{168}

However, if the text or circumstances leave the intention uncertain, it is reasonable to consider vague language and mere declarations of purpose as indicative of an intention to avoid legal effect.\textsuperscript{169} Other indications may be found in the way the instrument is dealt with after its conclusion.\textsuperscript{170} None of these acts can be considered as decisive evidence, but together with the language of the instruments they are relevant.\textsuperscript{171} The level and authority of the government representatives who have signed or otherwise approved the agreement may also be relevant.\textsuperscript{172}

As can be gleaned from the fact that it was no less than the President of the Philippines who made such declarations, subsequent legislation enacted by Congress to fulfill such undertaking and the act of the country in hosting the 1996 APEC Summit in Subic, it is clear that the Philippines intended such commitments to have binding effect.

Assuming arguendo that the Philippines did not intend such a pledge to have binding effect, the country is still obliged to act in accordance with the agreements. Governments may enter into precise and definite engagements as to future conduct with a clear understanding among the parties that the agreements are not legally binding.\textsuperscript{173} The so-called gentlemen's agreement falls into this category. In these cases, the parties assume a commitment to perform certain acts or refrain from them. The nature of the commitment is regarded as non-legal and not binding.\textsuperscript{174} There is nonetheless an expectation of, and reliance on, compliance by the parties.\textsuperscript{175}

A significant practical consequence of the good faith principle is that a party which committed itself to a course of conduct or to recognition of a legal situation would be estopped from acting inconsistently with its commitment or adopted position when the circumstances showed that other parties reasonably relied on that undertaking of position.\textsuperscript{176}

It is generally recognized that a non-binding agreement, however seriously taken by the parties, does not engage their legal responsibility.\textsuperscript{177} What this means simply is that non-compliance by a party would not be a ground for a claim for reparation or for judicial remedies. This point, it should be noted, is quite different from stating that the agreement need not be observed or that the parties are free to act as if there were no such agreement.\textsuperscript{178} States may regard non-binding undertakings as controlling even though they reject legal responsibility and sanctions.\textsuperscript{179}

Such agreements are excluded from the Vienna Convention on the Law of Treaties because they are not governed by international law.\textsuperscript{180} However, this conclusion does not remove them entirely from having legal implications.

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Based on the foregoing discussion, the only conclusion that can be drawn is that the obligations undertaken by the Philippines under APEC in general and under the Philippine Individual Action Plan have legal effects under Philippine municipal law.

Consequences of Non-compliance with Individual Commitments

The rights and obligations of a state in its international relations are determined by international law. It is this law, and not the municipal law of the state, which provides the standards by which to determine the legality of its conduct. Thus, regardless of whether the Philippines regards its obligations under APEC as binding or not, it has to be ready to face the consequences of non-compliance with individual commitments.

Multilateral agreements for regional cooperation and numerous bilateral and multilateral treaties on economic matters have dispute settlement clauses applicable to differences arising under those agreements. APEC has a similar clause.

Economic leaders of APEC’s member-economies declared to assist in resolving such disputes and in avoiding its recurrence by examining the possibility of a voluntary consultative mediation service to supplement the WTO dispute settlement mechanism, which should continue to be the primary channel for resolving disputes.

The dispute settlement mechanism under the WTO provides for the suspension of the application of WTO benefits by one member to another in the event that the latter member fails to fully implement within a reasonable period, and for which no satisfactory compensation is agreed upon. Such authorized retaliation should entail suspension of concessions or benefits that affect the same sector, but could conceivably be implemented in other sectors under the same agreement, or even under other covered agreements.

Not all interests of a state have the character of rights. The conduct by which a state violates some interest of another state may not be a delict, that is to say, the state whose interest is violated may not be authorized to execute a sanction by taking an enforcement action against the offending state. But it may react to a similar violation of an interest of the latter state. Such a reaction is called retorsion.

Retorsion refers to retaliatory measures that an aggrieved state is legally free to take whether or not the offending state committed an illegal act. Retorsion is often an equivalent act of retaliation in response to an unfriendly act. Trade boycotts or denial of trade benefits may similarly be directed against unfriendly acts or illegal conduct. But there are limits to retorsion. An unfriendly act that is disproportionate to an offense and causes substantial damage to another state may be viewed as an abuse of rights and, therefore, illegitimate. States not directly injured may also take such action if they have joined in collective counter-measures on the ground that the violation affected a collective interest or a common concern of the international community.
There are other forces, non-legal in nature, that motivate states to obey international law, such as established self-interest and expediency.\textsuperscript{188} It is easier to follow the rules of international law rather than oppose them. We have been adopting the policies of liberalization and deregulation because we think that these are good for us.\textsuperscript{189} Related to self-interest and expediency is the factor of world opinion. The fear of adverse reaction among peoples of the world can certainly motivate a state to obey the rules of international law.\textsuperscript{190} A very real motivation is encompassed by the desire for social approval in the society of nations.\textsuperscript{191}

In summary, non-compliance with individual commitments under APEC and the Philippine IAP may subject the Philippines to any or all of the following: the Dispute Settlement Procedure under the WTO, whenever appropriate, and the sanctions allowed under such system, retorsion, and social disapproval among the family of nations.

CONCLUSION

With respect to the consequences of membership and whether APEC commitments provide for concrete legal obligations, these commitments may be considered to be "non-legal soft law." There is no immediately identifiable international delinquency. However, there are legal implications for deliberate and unreasonable disregard of APEC commitments.

It may be argued that where imputations of violations refer to principles embodied in the WTO are concerned, there is enough basis to conclude that a breach of these GATT-WTO-based obligations engages WTO member-states' international responsibility. But the resolution of the dispute hinges upon a trade issue between WTO member-states.

On the other hand, the question of enforcement of the IAPs can be measured by existing principles of international law such as good faith, estoppel, and abuse of rights. To the extent that states have assumed subsequent acts pursuant to APEC commitments, these principles shall be applied to determine responsibility.

Insofar as Philippine commitments are concerned, existing constitutional mandates and jurisprudence affirm the applicability of soft law rules. Research shows that the doctrine of incorporation found in the Constitution provides the means by which soft law may find application in domestic law. In a supporting manner, the procedure on ratification of international agreements under Article 7 of the Constitution has been interpreted by the Supreme Court to be susceptible of exception with regard to executive agreements. Such agreements are the form that a majority of Philippine APEC commitments have assumed.
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NOTES

2. Id. at 91.
3. Id. at 93.
4. Id. at 90.
5. Id. at 93.
6. Id. at 94.
11. Id. at 70.
12. Id. at 71.
13. Examples include subjects, such as, extradition, air transport, trade, friendship, and alliance.
18. D'Amato, the Concept of Custom in International Law 88 (1971).
20. A number of publicists adhere to this view, among them being Messrs. M. Akehurst, R.R. Baxter, and M. Villeger.
24. Brownlie, supra, note 22.
26. Id at 28.
27. See generally Akehurst, supra, note 17; Charney, The Persistent Objector Rule and the Development of Customary International Law, 56 B. Y.B. Int'l. L. 1 at 24 (1985) [hereinafter Charney].
28. See Anglo-Norwegian Fisheries case, supra, note 19.
30. Villeger, supra, note 17, at 16.
31. Charney, supra, note 27.
32. Brownlie, supra, note 22, at 11.
33. Id.
34. Villeger, supra, note 17, at 13.
37. Akehurst, supra, note 17, at 29.
38. Jus cogens, according to Article 53 of the Vienna Convention on the law of treaties, is "...a peremptory norm of international law ... accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."
40. North Sea Continental Shelf Cases, supra, note 23, at 44.
41. See Lauterpacht, The Development of International Law by the International Court 380 (1958) [hereinafter Lauterpacht].
44. Brownlie, supra, note 22 at 7.
45. Vitally, The Sources of International Law, in Manual of Public International Law 143 (1968) [hereinafter Vitally].
47. Brownlie, supra, note 22 at 15.
48. 94 Hague Recueil 29 (1958 II).
50. Coquita - Defensor-Santiago, supra, note 16 at 40.
51. Vitally, supra, note 45.
53. Henkin, supra, note 10 at 91.
54. Electricity Company of Sofia and Bulgaria, 1939 P.C.I.J. (Ser. A/B) No. 79 at 199.
56. See the Corfu Channel Case 1949 I.C.J. Reports 18, Right of Passage over Indian Territory (Prelim. Obj.) 1957 I.C.J. Reports 141–142.
57. Vitally, supra, note 45.
58. See the Eastern Greenland Case, 1933 P.C.I.J. (Ser. A/B) No. 53 at 52; Case Concerning the Temple at Preah Vihear, 1962 I.C.J. Reports 17.
60. Id.
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62. Id. at 22.
63. Id. at 24.
65. Wright, supra, note 59, at 37.
66. Id. at 37–38.
72. Id.
74. Id. at 199.
75. Id.
76. Gruchalla-Wesierski, supra, note 70, at 40.
77. Id. at 46.
78. Seidl-Hohenveldem, supra, note 72, at 205.
80. Seidl-Hohenveldem, supra, note 72, at 205.
86. See Osaka Action Agenda, Manila Action Plan, Vancouver Declaration, Kuala Lumpur Declaration; Id.
87. All About APEC, supra, note 80.
88. Policies and Procedures, supra, note 84.
89. Id.
92. See Vancouver Declaration, supra, note 86.
93. See Osaka Action Agenda, supra, note 86.

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95. See Manila Action Plan, supra, note 86.
96. Id.
99. See Vienna Convention, supra, note 7.
100. Henkin, supra, note 10 at 391.
103. Schachter, supra, note 101.
104. Id.
105. The Vienna Convention on the Law of Treaties requires the adoption, authentication, promulgation, and registration of treaties.
106. Article 102 of the Charter of the United Nations provides as follows:
1) Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it. 2) No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this article may invoke that treaty or engagement before any organ of the United Nations.
107. Regional trading arrangements, in which a group of countries agrees to abolish or reduce barriers within the region, have been established in many parts of the world. The GATT recognizes, in Article XXIV, the value of closer integration of national economies through freer trade. It permits such groupings, as an exception to the general rule of most-favored-nation treatment [hereinafter Regional Trading Arrangements].
111. Henkin, supra, note 10 at 391.
115. Schachter, supra, note 101.
117. Id. at 173; Case Concerning the Treatment of Polish Nationals in Danzig, [1932] P.C.I.J. Ser. A/B No. 44.
118. Cheng, supra, note 116 at 171.

120. Schachter, supra, note 101.

121. Rodriguez, supra, note 108, at 94.


123. This measure lifted restrictions on importation of new motor vehicles and certain used trucks and buses.

124. This law removed quantitative restrictions (QRs) on sensitive agricultural products, except rice.

125. This law liberalized the importation and exportation of petroleum products.

126. Philippine Const., art. XII, Sec. 11.

127. Id.

128. Philippine Const., art. XII, Sec. 2.

129. Philippine Const., art. XII, Sec. 3 & 7.


132. Id.


135. APEC Secretariat, Update on Activities within APEC at 35 (September, 1996).

136. Parrenas, supra, note 134.


141. Id.

142. Id.


144. Article XXIV, General Agreement on Tariffs and Trade.


146. 105 Phil. 1039 (1950).

147. 3 SCRA 351 (1961).


150. Lissitzyn, supra, note 148.

151. Coquia, supra, note 145.


153. Coquia, supra, note 145.

154. Memorandum for the Senate Legislative Counsel and the Legal Adviser of the State Department, 14 I.L.M. 1588 (1975).
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157. 5 Hackworth, International Law 380. [hereinafter Hackworth].
159. Siazen, supra, note 137.
162. Sinco, supra, note 160, at 298.
163. Jones v. United States, 137 U.S. 202 (1890); Fong Yue Ting v. United States, 149 U.S. 698 (1893); Altman and Co. v. United States, 224 U.S. 583.
164. Id.
165. Hackworth, supra, note 157, at 176.
166. Id. at 184-186.
167. Sinco, supra, note 160, at 305.
169. O'Connell, supra, note 102, at 199.
170. Id.
171. Id.
172. Id.
173. Schachter, supra, note 101, at 299.
174. Id. at 300.
175. Id.
177. Schachter, supra, note 101, at 301.
178. Id.
179. Id.
180. Id.
184. Id.
185. Henkin, supra, note 10, at 586.
186. Oppenhein, supra, note 97, at 345.
188. Coquia - Defensor-Santiago, supra, note 16 at 7.
191. Id.
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Chapter 5

Toward the Formulation of a Philippine Position in Resolving Trade and Investment Disputes in APEC

Ma. Lourdes A. Sereno

INTRODUCTION

Several major changes that have swept the globe since last year have rendered the issue of dispute settlement in the Asia-Pacific Economic Cooperation (APEC) more complicated. At this point, any dispute settlement model will have to await a fuller unraveling of the institutional effects of many economic and technological changes. Meanwhile, it is hoped that the more useful aspects of this author's earlier research will remain despite the changes that are confronting everyone of us.

WORLD TRADE LAW, TRADE "BLOCS," AND DISPUTE SETTLEMENT

In the late 1980s to the early 1990s, the most debated issue in trade was the impact of the supposed "balkanization" of the world into three trade blocs in the multinational trade regime under the General Agreement on Tariffs and Trade (GATT). The concern originated from the reaction of non-European Community leaders to the single European Market project of the EC on the theory that it had led to a protectionist regime, which in turn resulted in the labeling of the European Union as "Fortress Europe."
Supposedly, the other bloc was the North American trade bloc led by the United States, Canada, and Mexico. These countries have created what is now known as the North American Free Trade Agreement (NAFTA), with plans of further expansion in the Americas. Its leaders trumpeted the eventual emergence of a Western Hemisphere Free Trade Area (WHFTA), or the American Free Trade Area.¹

Another trade bloc, which was perceived by some to be aborning, was the so-called East Asian trade bloc, supposedly led by Japan as well as China. The idea behind the bloc grew out of Malaysian Prime Minister Mahathir Mohamad’s “Look East Policy” and his championing of the East Asia Economic Grouping (EAEG). Eventually, the proposal to create the EAEG was watered down and downgraded to an East Asian Economic Caucus within the APEC umbrella, due largely to opposition from the United States. Subsequent events revealed the non-existence of any such blocs as Asian governments, despite the regional currency crisis, had not banded together in a “regionalization” mode. Rather, most of them preferred to work within the APEC mechanism and, in the case of Southeast Asia, primarily within the Association of Southeast Asian Nations (ASEAN) mechanism.

APEC, formed with North American countries on the eastern side of the Pacific and the Asian countries on the western side, has indeed proven to be a dynamic regional grouping. For one, it is presently highly significant because it includes China and Taiwan as members while the World Trade Organization (WTO), which is supposed to cover 90 percent of all world trade, does not. For another, APEC has put forth an ambitious agenda of becoming the single most important regional engine for trade and investment liberalization. Structurally, APEC is not a formal international organization in the sense that it has a distinct international legal personality. Rather, it is a structured forum for intense mutual consultation and dialogue on a wide range of issues, foremost among them, trade and investment.

A group of countries that can genuinely be called a trade group is the ASEAN. At present, not all of the ASEAN member-countries are members of APEC². ASEAN has been around for 33 years and, more often than not, has proven to be an effective mechanism for resolving regional political and security conflicts. It has also been successful in generating greater cultural and social exchange between its peoples. It has also led to the creation of successful partnering among its business leaders. It has largely survived on a very consensual approach to conflict resolution. However, despite its many attempts to introduce a more rule-based and formal mechanism to resolve trade and investment disputes, it has failed to show any success.
World Trade Organization

If there is anything that characterizes WTO, it is its strong rule-based regime. It is rule-based in relation to other international fora or conventions, and vis-à-vis APEC and AFTA. The historical experience of the United Nations Organization at decision making and implementation has been one of great difficulty and fractiousness. In the WTO, the decisionmaking process is clear; so is the rule-making process. Rule enforcement is also somehow clear. In the United Nations, for instance, it would be very difficult to impose sanctions on any of the members of the Security Council. It is also extremely difficult to bring a major power under the jurisdiction of a tribunal that can hand down an adverse decision against it, especially if it refuses to submits to that jurisdiction. This is not the case in the WTO. Accession to the WTO Agreement automatically means submission to the jurisdiction of the Dispute Settlement Body (DSB). The very first ruling issued by this body involved the United States which was required to change its federal rules on the initial level requirement of reformulated imported gasoline. The WTO has a system which, because of its design and structure, can apparently take to task even the only remaining superpower in the world.

The second characteristic of this rule-based regime is that the disciplines involved are quite substantial. The range of issues covers not just trade in goods but also questions of intellectual property rights and investment rules. It also includes the problematic area of services and even the politically sensitive agricultural practices and agricultural subsidies. There are also plurilateral rules on government procurement.

Indeed, the disciplines are significantly substantial, because even the violation of an international treaty on intellectual property rights is usually heard not before the World Intellectual Property Organization (WIPO) but the WTO. Likewise, it is with the WTO that the International Monetary Fund (IMF) is presently discussing the effects of the Asian regional currency crisis on global trade expansion. There are also ongoing discussions on whether any country can invoke the balance-of-payment exceptions to opt out of its obligations under the WTO. Every aspect of international economic life is somehow being affected by the WTO work. Countries are being subjected to a trade policy review mechanism on a periodic basis, which includes a report on a country's entire macro-economic framework. At present, a working group is discussing the relationship between anti-trust law, competition policy, and trade, subjecting even the structure of private businesses to possible international discipline.

The third characteristic of the WTO as a rule-based organization is that it has a formalized and working dispute settlement mechanism. No other organization has this system, not even APEC nor AFTA. All that AFTA has is a skeletal framework under the Protocol on Dispute Settlement, but it has not proven its capability to work. In
contrast, the WTO has already handed down 21 final and enforceable decisions since
it started operating in 1995. A panel, which is the technical body tasked with adjudica-
tion of trade cases, or the Appellate Body that conducts final reviews, is currently
resolving at least 30 cases. In fact, the threat of a panel or Appellate Body exami-
nation is already being used as a major negotiation tool on a bilateral basis by
several members.

The WTO, among all economic organizations, is also the most highly orga-
nized. It has committees, councils, and working groups operating on a regular basis,
with an administrative office in Geneva. As mentioned earlier, it also interacts closely
with other international organizations like the IMF, the World Bank, and the WIPO. It
is the dominant framework under which other international or regional economic orga-
nizations work, such as the APEC, which repeatedly emphasizes in all its documents
that the WTO is the first and best framework of its choice and that it is not going to
do anything to weaken in any way the primary role of the WTO. ASEAN has also
said as much.

Asia-Pacific Economic Cooperation

APEC obligations are largely considered to belong to the area of “soft law.”
Some do not even consider its obligations as quasi-legal. It has individual targets
and individual action plans, but the question of how these can be enforced or how
countries can be individually accountable for the accomplishment of those targets
is still in doubt. It does not establish any rule nor impose any obligatory behavior
in the legal sense. In other words, it will be the collective force of all the APEC
countries that will push individual members to comply with APEC targets.

Given its nature, APEC gives greater emphasis to trade and investment libe-
ralization and facilitation, technical cooperation and assistance, private sector
organizations, and people-to-people initiatives. The nature of tariff liberalization
commitments of its members is not rigid, making it impossible to talk about a
dispute settlement mechanism considering the countries’ reluctance to bind them-
selves to any further liberalization targets. The apparent consensus is not to push
for a formal structure for dispute settlement at present. However, the dynamism of
APEC lies in the agenda of setting the pace for WTO negotiations by advancing
liberal trade targets. This is based on the assumption that if the individual APEC
countries are more radical in their offers than what they set out in the last Uruguay
Round, the extent of the liberality of the new offers will determine the pace of the
WTO negotiations. Unlike APEC, which has the 2010 and 2020 virtually free
trade area targets, the WTO has no such targets.
ASEAN Free Trade Area

By 2003, the tariff rate for the original six members of the ASEAN will only be from 0 to 5 percent for 98 percent of all their tariff lines by the year 2003 (Vietnam has a delayed target while Laos and Myanmar have set specific targets.) The only exceptions will be politically sensitive products. The pattern for discussions on trade targets and dispute settlement in the AFTA is still through negotiation and consensus making. ASEAN does not want to depart from the consensus mode of decisionmaking despite a protocol on dispute settlement mechanism signed in November 1996. This protocol allows for a more formal process of bringing a complaint before a panel to be created whose decision can be appealed to the Senior Economic Officials Meeting (SEOM) and ultimately to the ASEAN economic ministers.

As early as 1976, when the basic ASEAN treaties were entered, a high council for the settlement of disputes had been provided for. But this council has never been convened. The protocol grants the creation of a technical panel, which will examine the substantive merits of economic complaints arising from violations of any obligation under the AFTA Common Effective Preferential Tariff (CEPT) scheme. For example, if a country bound itself that by 1998 the tariff for certain products would be only at 10 percent, an application of a tariff higher than that would be, technically, a violation. Theoretically, there is a way by which a member can bring forward a complaint, but it has never been utilized. So, the question is: Is ASEAN ready to depart from the old mode of consultation and negotiation before formal complaints are entered? Is any country willing to take action on trade disputes using the Protocol on Dispute Settlement Mechanism?

AFTA seems to be at a crossroads. While it has prided itself on being a consensus-based system, it also wants to adopt some of the dispute settlement characteristics of the WTO. ASEAN seems even more rule-based than APEC. The major problem, however, in establishing the rules orientation of AFTA is the lack of optimum free trade within the ASEAN because its national economies produce largely competing products. Some quarters believe that complementarity, which is the most desirable platform for economic integration, does not exist in the ASEAN. The result is a lack of will to implement a rigid system, where the probabilities of competing products within ASEAN jostling each other for market share are very high. Although this may be the case, it is undeniable that the ASEAN, especially through the AFTA scheme, has indirectly brought about greater interaction between the private sectors and the governments. It has largely been the spin-off of greater intra-ASEAN investments, and greater intra-ASEAN interaction in the private sector that to a large extent has been responsible for the apparent solidarity of ASEAN.
Coalition-Building and APEC

Another difficulty in creating a more rule-based system in the ASEAN is that its core economies are still young. In fact, considerations of an ASEAN currency and a regional fund (without the full participation of Japan or any other mature economy) that can absorb goods coming from the ASEAN, as well as certain economic adjustment costs that will be brought about by the re-alignment of currencies, will not succeed.

POINTS TO CONSIDER

There are several things to bear in mind in forming perspectives on international trade rules. First, trade negotiations occur at three different levels: (1) multilateral (WTO); (2) regional (in our region, APEC and ASEAN); and (3) bilateral country-to-country. Therefore, to understand where the market opportunities are, the business sector must be aware of whatever the negotiators intend to commit in all these different fora. In the Philippines, for instance, there is a grave misconception that many of the existing adjustments are the results of Philippine commitments to the WTO. The fact is that most of these commitments have been unilateral and are basically AFTA, not WTO, commitments. It is essential, therefore, to determine the source of the specific trade commitment being discussed.

The second thing to consider is the fact that one of ASEAN’s largest trading partners, China, is not governed by any international trade framework. When the mayor of Beijing decided to change the location of the first McDonald’s outlet from one corner of the city to another, McDonald’s could not bring forward a complaint in any forum against China. China is not bound by any regional arrangement that requires it to observe any particular rules. It largely operates according to the terms of its economic relationships with particular countries.

BASIC DEFINITIONS

Justice Florentino Feliciano provides a working definition applicable to certain concepts in this paper.

A more traditional way of looking at the settlement of disputes between states would be to examine the degree to which a third party intervenes in the process of settlement. If the process by which settlement is reached is purely bilateral, the exercise is characterized as negotiations. A third party may intervene for a strictly limited purpose, say, to bring the parties to sit together and begin inter se negotiations (good offices). In addition to bringing the parties together, the third
party may transmit proposals from one party to another; in this case, the process is called mediation. Should the third party be authorized to initiate motu proprio independent proposals for the settlement of the dispute, the process is called conciliation. The third party could, alternatively, be authorized to determine the antecedent facts, or the facts constituting a dispute; in this case, the third party is known as an inquiry commission. If a third party intervenes because he has been authorized to resolve the dispute on his own, there is either arbitration or judicial settlement, depending on whether the third party is chosen on an ad hoc basis, or is part of an institutionalized framework and standing system that is specifically designed for dispute resolution. The third party in this context may be an individual arbitrator, an arbitral board or tribunal, or a judge or court.

MODES OF RESOLVING TRADE AND INVESTMENT DISPUTES BY APEC COUNTRIES

This section presents a tabulation of the various modes of resolving trade and investment disputes that APEC economies have utilized. The tabulation and the accompanying analysis were based on the official reports submitted by each APEC economy on the dispute settlement modes.

The WTO Dispute Settlement Mechanism

Dispute settlement under the WTO mechanism is the prompt settlement of situations in which a member considers that any benefit accruing to it directly or indirectly under the WTO Agreement is being impaired by measures taken by another member. A dispute settlement mechanism aims to secure a positive solution to a dispute. Thus, a solution mutually acceptable to the parties to a dispute is preferred. However, in the absence of a mutually agreed solution, the first objective is usually to secure the withdrawal of measures concerned. A measure is any internal act, whether a law, an administrative action, or a judicial decision of a member.

The DSB is the WTO organ that is mandated to administer the rules and procedures that govern the settlement of disputes. It is made up of the representatives of all the members of the WTO. Each member is entitled to one vote.

The DSB has the following powers and functions: (a) to establish panels, (b) to adopt or reject panel and Appellate Body reports, (c) to maintain surveillance of the implementation of rulings and recommendations, and (d) to authorize the suspension of concessions and other obligations. It is understood that requests for conciliation
and the use of the dispute settlement procedures should not be viewed as contentious acts. Members engage in this procedure to resolve disputes.

If a measure adopted by a country (A) within its territory impinges on, for example, the exports of another country (B), the first step in dispute settlement is the filing of a request for consultation by the complainant. In this case, B is the complainant.

If B requests consultation with A, then A must consider the complaint of B. A must reply to the request within 10 days after its receipt and enter into consultations with B in good faith within a period of 30 days from the date of the request, with a view to reaching a mutually satisfactory solution. If A does not respond within 10 days, does not enter into consultations within a period of 30 days from the filing of the request, and if the consultation fails to settle a dispute within 60 days after the request for consultation, then B may proceed to request the establishment of a panel.

Good offices, conciliation, and mediation may be requested at any time by any party to a dispute. They may begin and be terminated at any time. Once they are terminated, the complaining party can then request the establishment of a panel. If the complaining party so requests, a panel may be established by the DSB. The function of the panel is to assist the DSB in discharging its responsibilities. Accordingly, a panel should make an objective assessment of the matter before it, including the facts of the case and the applicability and conformity of the measure with the relevant agreements. It should also make other findings that will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements, besides consulting regularly with the parties to the dispute and giving them adequate opportunity to develop a mutually satisfactory solution.

The request for the establishment of a panel should be made in writing, indicate whether consultations were held, identify the specific measures at issue, and provide a brief summary of the legal basis of the complaint.

The panel shall fix a timetable one week after its composition. The timetable for the panel procedures should not exceed six months starting from the panel’s establishment. It may be extended to, but in no case should be longer than, nine months. In determining the timetable for the panel process, the panel should provide sufficient time for the parties to the dispute to prepare their submissions. It should also set precise deadlines for written submissions by the parties.

Written submissions should be deposited with the secretariat for immediate transmission to the panel and to the other party or parties to the dispute.

The panel must keep its deliberations confidential and draft its reports without the presence of the parties to the dispute. Once it has produced a draft report, the panel shall submit the descriptive (factual and argument) sections of the draft to the parties involved for their comments. Comments must be in writing and must be submitted within the time set by the panel.
Resolving Trade and Investment Disputes in APEC

After receipt of comments from the parties, the panel shall issue an interim report to them, including both the descriptive sections and the panel’s findings and conclusions. The parties may submit written requests for the panel to review precise aspects of the interim report for which the panel shall meet with the parties. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the members.

The DSB shall adopt the report within 60 days of the issuance of a panel report to the members, unless one of the parties to the dispute formally notifies the DSB of its decision to appeal, or the DSB decides by consensus not to adopt the report. If the panel report is on appeal, the panel report shall not be considered for adoption by the DSB until the completion of the appeal.

Only parties to the dispute may appeal a panel decision.

The Appellate Body (AB) hears appeals from panel cases. It may uphold, modify, or reverse the legal findings and conclusions of the panel. Note that the AB reviews only issues of law covered in the panel report and legal interpretation developed by the panel.

Besides keeping its proceedings confidential, the AB drafts its report without the presence of any of the parties to the dispute. The AB shall submit its report to the members. Within 30 days following the report’s issuance to the members, the DSB may adopt the AB’s report or by consensus reject it.

When a panel or the AB concludes that a measure is inconsistent with a covered agreement, it shall recommend that the member concerned bring the measure into conformity with that agreement. In addition to its recommendations, the panel or AB may suggest ways by which the member concerned could implement the recommendations.

The DSB shall keep under surveillance the implementation of adopted recommendation or rulings. Any member may raise the issue of implementation of the recommendations or rulings at the DSB anytime following their adoption.

The 1958 New York Convention

The Convention on Recognition and Enforcement of Foreign Arbitral Award was born in 1958. It came out of the desire to ensure international enforcement of valid foreign judgments as a way to encourage cross-border trade and investment. However, its many exceptions put a cap on the accomplishment of this policy goal. One drawback of the Convention is the limitation of access to these arbitral procedures to awards made in the territory of the contracting party. In other words, even as early as then, there was already a bias in favor of allowing only member countries or contracting parties that ratified the convention to use these procedures.
A second restriction is that the 1958 UN Convention allows the parties to limit arbitrable disputes to those that they consider commercial in their countries. It is a way of giving the contracting party the power to limit the disputes that will be subjected to this kind of arbitration.

A third is the reciprocity provision. Article 3 requires that the contracting states shall recognize arbitral awards as binding and enforce them in accordance with the rules of the territory where the award is made. This is the rule or the law of the enforcement forum or venue, which limits thereby the scope of the enforceability of the awards.

A fourth limitation, found in Article 5, refers to instances when a contracting party may refuse the award. That is, even if the award was legitimately processed and due process was observed, the contracting party, a losing party, may still refuse recognition and enforcement on several grounds. The Convention specifically provides grounds that limit the basis for impugning an arbitral award. But to the extent that they still allow a party to impugn or not comply with the arbitral award, there is latitude to avoid the effects of the award, notwithstanding a binding agreement to submit to arbitration.

A party may impugn or refuse recognition and enforcement on the following grounds: 1) where a party presents proof to the competent authority of the enforcement forum that the contracting parties were under an incapacity; 2) that the agreement is not valid under the law applicable to it, meaning, in the substantive sense, it is not valid under the law where the award is made; and 3) non-compliance with due process, specifically if the parties were not given proper notice of the appointment of the arbitrators, or of the arbitration proceedings themselves, or if the contracting party was not able to present his case.

A fifth limitation states that where there is a conflict between the domestic or municipal law of the enforcement forum, there is a ground to resist recognition or enforcement of the arbitral award. More specifically, the provision states that “where the award is not yet binding or has been superseded or suspended by the competent authority of the enforcement forum, then the award will not be enforced.”

Despite these limitations, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is still the most important international instrument to support the international legal validity and binding force of an arbitration rendered under an arbitration agreement.

**Convention on the Settlement of Investment Dispute**

The Convention on the Settlement of Investment Dispute (CSID) is applicable to investment disputes, or when there is an investment agreement between an indi-
Resolving Trade and Investment Disputes in APEC

Individual or a national of a certain state with a contracting party state. It is not applicable where the parties involved are both individuals or both nation states. It applies only when there is a need to resolve disputes brought either by a contracting state against an individual or by a national against another contracting state. The Convention prohibits the contracting parties from withdrawing from arbitration once they have agreed to submit to it. Also, under the Convention, no contracting state is allowed to give diplomatic immunity or protection to its national that happens to be the individual involved in the dispute. The state of which a party is a national cannot intervene in the arbitration process the moment it is set into motion before the ICSID. A specific proviso states that when a party submits to the ICSID arbitration process, it cannot resort to any other remedy—judicial, administrative, or otherwise. That is why a contracting state to the ICSID can specify a condition before it submits or consents to arbitration—that all administrative and legal remedies in its territorial jurisdiction be exhausted first, precisely because the moment it submits to arbitration, there is no other remedy and protection left for it from its own state.

Another characteristic of arbitration under the ICSID is that the arbitration tribunal shall be the judge of its own competence. Under the UN Convention, a contracting party may resist enforcement of an arbitral award by questioning the competence of the tribunal, its composition, the manner of appointment, and even the arbitration proceedings. However, under the ICSID, parties are not allowed to raise such questions, as the tribunal itself will rule on its competence and the rules for the appointment and composition of the tribunal are very specific.

UN Commission on International Trade Law (UNCITRAL) and UNCITRAL Model

The UNCITRAL Convention created the United Nations Commission on International Trade Law, but it did not provide for the enforcement of foreign arbitral awards, only the model UNCITRAL law. The law, which has been adopted by about 80 countries, was later on enacted by the UN. Yet it must be emphasized that it is not a convention. The model law provides that the recognition and enforcement of foreign arbitral awards is not contingent upon the effectivity or binding force of municipal or domestic laws. Otherwise, there would be frequent resort to no-enforcement or many exceptions. Since the model law recognizes the minimum common characteristics or requirements for recognition of judgments by legal systems, it anticipates participants' objections on due process grounds. Thus, adjusting the model law allows for quasi-automatic enforcement of valid foreign judgments.
International Court of Arbitration of the International Chamber of Commerce

The International Court of Arbitration (ICA) is the arbitration body attached to the International Chamber of Commerce (ICC). Its function is to provide for the settlement by arbitration of business disputes of an international character and to ensure the application of the rules of arbitration of the ICC. However, the ICA is not a court that decides the matter placed before the ICC for arbitration. Rather, it acts as the overseer of the arbitration process. The arbitration of a dispute is the job of arbitral tribunals, which are appointed by the ICC.

Among the more developed economies, arbitration through the ICA is the more preferred mode of settling private sector disputes. Having operated for more than 70 years now, the ICA’s reputation for strong and solid supervision of arbitration conducted under its wings remains unsullied. However, it must be emphasized that the services of the ICA are not limited to dispute resolution by the ICC. It also offers the services of optional conciliators and pre-arbitral referees.

Arbitration is a widely used mode of settling international commercial disputes. Assuming that the domestic jurisdiction in which an arbitral award is sought to be enforced recognizes the final and binding character of an award rendered under the ICC rules of arbitration, then resort to arbitration can be considered as a positive and definitive solution to a trade and investment dispute.

Mediation

Good offices, mediation, and conciliation refer to the intervention of a third party aimed “not at deciding the quarrel for the disputing parties, but at inducing them to decide it for themselves.” In mediation, the third party facilitates the negotiations between the parties concerned. It involves direct conduct of negotiations between the parties at issue on the basis of proposals made by the mediator.” It facilitates communication to generate ideas and options around a deadlock. It is a political process, promoted as a mode of dispute settlement in many treaties, but its procedure is not regulated by international law.

On the other hand, good offices are a friendly offer by a third party, which tries to induce disputants to negotiate among themselves. Such efforts may consist of various kinds of actions tending to call negotiations between conflicting states into existence. Treaties and diplomatic practice do not easily distinguish between good offices and mediation, as they are similar and therefore may overlap. They may represent simply different degrees of advisory participation by a third state. If the offer is ac-
Resolving Trade and Investment Disputes in APEC

cepted by the contending parties and the third state thereafter participates in resulting negotiations, such participation is undertaken as mediation and the third state becomes a mediator. Naturally, a third party offering good offices may help identify yet another party as mediator.

The mediator acts as amicus inter partes in frequent communication with disputants through various means, including shuttle diplomacy. It serves as a facilitator and medium for communication between disputants.

Other “Soft Modes” of Settling Disputes

There are other modes of settling international disputes that fall under the “soft” category. These are as follows:

1. Unassisted negotiations in normal diplomatic negotiations, where there is no role for third parties
2. Fact-finding (UN Charter), which is the objective and impartial ascertain- ment of facts underlying a dispute by a third party
3. Commissions of inquiry (provided for in the Hague Conventions for the Pacific Settlement of Disputes), which is the precursor of conciliation in the form of treaties, which were in turn used to avert war. The commissions investigated facts and produced reports, but were not generally successful in practice because they had no power of initiation.
4. Conciliation, where the parties refer the dispute to a body of persons primarily for the purpose of coming up with an impartial ascertainment of facts and a suggestion of the appropriate lines of a settlement. It is the more modern reformulation of former commissions of inquiry, and initiated by the disputants. A conciliation panel is formed, the procedures are set out, the panel produces a report with recommendations, but the report is not an award. The procedure is provided for in the General Act for the Pacific Settlement of Disputes (1928, 1949).

APEC PROPOSALS FOR DISPUTE SETTLEMENT

In 1995, the Committee on Trade and Investment (CTI) of APEC decided to create a sub-forum on dispute settlement, which experts called the Dispute Mediation Experts Group (DMEG). Its work has been guided by the six-point principles adopted in Vancouver in 1997. Those principles are as follows:
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a. APEC dispute mediation should be aimed at encouraging greater confidence in the Marrakesh Agreement establishing the WTO and at reinforcing the integrity of WTO procedures.

b. APEC dispute mediation should be without prejudice to rights and obligations under the WTO Agreement and other international agreements, and should not duplicate or detract from WTO institutions and procedures.

c. APEC dispute mediation should be voluntary and encourage non-adversarial and voluntary approaches in the mutual economic interests of the parties involved and with due regard for the interests of other APEC members.

d. Work in APEC on dispute mediation should be in keeping with the evolution of APEC’s work on trade and investment liberalization and facilitation goals.

e. APEC members should be encouraged to work within the framework of existing international agreements and conventions for the resolution of disputes involving private parties. By doing so, they will help in the reinforcement of these agreements and conventions.

f. Priority should continue to be given to facilitating access to information on mediation, conciliation, and arbitration services available in member economies.

Under such guidelines, the DMEG has succeeded in creating a database of various modes of dispute settlement in the region, which was subsequently published in hard copy and posted on the APEC Web site. It has also sponsored several regional seminars on the WTO dispute settlement process and arbitration. This, on top of facilitating the exchange of ideas and experiences with the various modes of dispute settlement, foremost of which was that of the WTO.

In 1999, a commissioned report by the CTI recommended the abolition of the DMEG. It was suggested that the previous functions of the DMEG be merged with those of the chair of the CTI. The DMEG expressed its reservation over the recommendation, saying in effect that its work, which was primarily legal, could not be effectively carried out by non-legal institutions or persons. There is yet no final action on this recommendation.

One interesting point for further observation is whether the Trade Policy Dialogue, also conducted under the auspices of the CTI, can serve as an effective medium for dispute resolution. Apparently, the Philippines was able to raise its “tropical fruits” problems with Australia in the forum. Whether the response to such an issue effectively supported the Philippine struggle for greater market access for its fruit exports is not clear, though. What is clear, however, is that the Philippines was able to gain
Resolving Trade and Investment Disputes in APEC

Substantive and concrete progress in its complaint only when bilateral aggressive negotiations took place between the countries.

Inventory of the Various Dispute Settlement Modes Being Used by APEC Economies

As earlier mentioned, each member of APEC submitted a list of dispute settlement modes, which have been utilized or are recognized in their respective jurisdictions. This author has tabulated them in accordance with the classification of disputes that the DMEG formulated: between governments, between governments and private parties, and between private parties. (See Table 1 and Table 2.)

World Trade Law and Cyberspace

The most important change that has taken place in the world in the past two years has been the explosion of Internet usage and the proliferation of the commercial applications of the medium. While it has been one of the principal sources of growth for the more advanced economies—despite the crash of many technology and Internet stocks—it has also highlighted the reality that all major legal infrastructure in place, whether they are the model laws proposed by the UNCITRAL, the ICC, or the WTO, as well as those in the more advanced economies, are not sufficient to deal with the very complicated issues in cyberspace.

Two cyberspace issues impact greatly on the international trade law system. The first arises from the fact that the concept of electronic trade, be it of goods or services, was not anticipated in the global trade framework. This has led to serious debate on whether goods delivered electronically ought to be governed by GATT, GATS, or an altogether entirely different set of rules. The temporary solution to this impasse is the present standstill agreement where trade in information technology goods is to remain at zero for the time being. Meanwhile, the WTO has created a committee to determine the impact of electronic commerce on world trade, especially on world trade rules.

The second issue concerns national enforcement. The WTO perspective, despite its global bias, assumes the ability of nations to tax and monitor border trade. When this ability is muted by the very medium by which this trade is carried out, then the relevance of issues such as national protection and intellectual property rights protection becomes murky. To highlight the magnitude of the issue, the United States has estimated that its states are losing billions of dollars in tax revenues simply because the rules and the enforcement mechanism are not there.
Table 1. Despite Settlement Modes Being Used by APEC Economies

<table>
<thead>
<tr>
<th>Country</th>
<th>Disputes between governments</th>
<th>Disputes between governments and private parties</th>
<th>Disputes between private parties</th>
</tr>
</thead>
</table>
| Australia | • WTO Dispute Settlement Mechanism  
• Supports the view of the APEC DMEG that APEC government-to-government dispute mediation should aim to encourage greater confidence in WTO procedures and to reinforce the integrity of WTO procedures  
• Investment Promotion and Protection Agreement  
• ICSID | • International Arbitration Act 1974  
› Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)  
› ICSID  
› UNCITRAL  
• Australian Centre for International Commercial Arbitration  
• Australian Disputes Centre  
• Others such as the Institute of Arbitrators and Mediators Australia, the National Dispute Center, the Conflict Management Centre, Lawyers Engaged in Alternative Dispute Resolution and the International Chamber of Commerce (Australian Chapter)  
• Commonwealth Arbitration Assistance Service | |
| Brunei  | • WTO Dispute Settlement Mechanism  
• Bilateral Investment Treaties | • Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) | |
| Canada  | • NAFTA  
• Promotion and Protection of Investments  
• UNCITRAL Model Law  
• Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) | | |
<table>
<thead>
<tr>
<th>Country</th>
<th>Disputes between governments</th>
<th>Disputes between governments and private parties</th>
<th>Disputes between private parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>• WTO Dispute Settlement Mechanism&lt;br&gt;• Free Trade Agreements with economies such as Canada, Mexico, and Peru&lt;br&gt;• Investment Promotion and Protection Agreements</td>
<td>• ICSID&lt;br&gt;• Multilateral Investment Guarantee Agency (MIGA)&lt;br&gt;• Panama Convention in the Context of the Organization of American States (OAS)</td>
<td>• Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)&lt;br&gt;• Arbitration and Mediation Center&lt;br&gt;• Chamber of Commerce</td>
</tr>
<tr>
<td>China</td>
<td>• WIPO&lt;br&gt;• Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)&lt;br&gt;• Convention on the Settlement of Investments Disputes Between States and National of other States</td>
<td>• Bilateral Investment Protection Agreements</td>
<td>• Arbitration Law&lt;br&gt;• Joint Ventures Law&lt;br&gt;• Administrative Reconsideration Rules&lt;br&gt;• China International Economic and Trade Arbitration Commission</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>• WTO Dispute Settlement Mechanism</td>
<td>• ICSID&lt;br&gt;• Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)&lt;br&gt;• Office of the Ombudsman</td>
<td>• Hong Kong International Arbitration Centre</td>
</tr>
<tr>
<td>Indonesia</td>
<td>• Committed to finding ways to resolve trade and economic tensions among APEC economies through APEC dispute mediation services, without prejudice to rights and obligations under the WTO Agreement and other international agreements</td>
<td>• Convention on the Settlement of Investments Disputes Between States and National of other States&lt;br&gt;• Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)&lt;br&gt;• ICSID</td>
<td>• Indonesian National Board of Arbitration&lt;br&gt;• Indonesian Center for Commercial Dispute Settlement&lt;br&gt;• Special Commercial Court</td>
</tr>
<tr>
<td>Country</td>
<td>Disputes between governments</td>
<td>Disputes between governments and private parties</td>
<td>Disputes between private parties</td>
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</tr>
</tbody>
</table>
| Japan   | • WTO Dispute Settlement Mechanism | • Office of Trade and Investment Ombudsman  
• Convention on the Settlement of Investments Disputes Between States and National of other States  
• ICSID | • Protocol on Arbitration Clauses (the Geneva Protocol)  
• Convention on the Execution of Foreign Arbitral Awards (the Geneva Convention)  
• Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention)  
• Japan Commercial Arbitration Association |
| Korea   | • WTO Dispute Settlement Mechanism | • Convention on the Settlement of Investments Disputes Between States and National of other States  
• Bilateral investment promotion and protection agreements with APEC economies  
• Private parties affected by an administrative act of the Korean government may, in general, file a complaint with the administrative court, which may investigate allegations and make recommendations to redress the grievances | • Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)  
• The Korean Arbitration Law (contains the provisions on arbitration and related procedures of the UNICITRAL Model Law)  
• Korean Arbitration Board |
| Malaysia | • WTO Dispute Settlement Mechanism  
• Bilateral Trade Agreements  
• Investment Guarantee Agreements  
• ICSID  
• Convention on the Settlement of Investments Disputes Between States and Nationals of other States (Washington Convention) | | • Arbitration Act of 1952  
• Rules for Arbitration of the Kuala Lumpur Regional Center  
• Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 1985 (Act 320) |
### Resolving Trade and Investment Disputes in APEC

<table>
<thead>
<tr>
<th>Country</th>
<th>Disputes between governments</th>
<th>Disputes between governments and private parties</th>
<th>Disputes between private parties</th>
</tr>
</thead>
</table>
| Mexico       | • WTO Dispute Settlement Mechanism  
• Preferential Trade Agreements such as NAFTA  
• Participated actively and contributed to the work of APEC DMEG  | • Domestic Courts  
• Mechanisms for settlement of investor-state disputes in both Free Trade Agreements and Bilateral Investment Treaties  | • UNCITRAL Model Law  
• New York Convention,  
• Panama Convention,  
• Montevideo Convention,  
• NAFTA and the Free Trade Agreements with Bolivia, Costa Rica, Colombia, Chile, Nicaragua and Venezuela concerning alternative dispute resolution mechanisms |
| New Zealand  | • WTO Dispute Settlement Mechanism  
• Convention on the Recognition and Enforcement of Foreign Arbitral Award of 1958 (New York Convention)  
• WIPO Arbitrator’s Centre  
• Investment Promotion and Protection Agreements  | UNCITRAL  
Arbitrators’ and Mediators’ Institute of New Zealand  | |
| Papua New Guinea | • Convention on the Settlement of Investments Disputes Between States and Nationals of other States  | • There is an ongoing discussion between the government and private sector on the development of appropriate mechanisms/institutions  | |
| Peru         | • WTO Dispute Settlement Mechanism  | Convention on the Settlement of Investments Disputes Between States and Nationals of other States  | General Arbitration Law (based on the Model Law prepared by the UNCITRAL)  |
| Philippines  | • WTO Dispute Settlement Mechanism  | • ICSID  
• Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)  | • RA 876 (An Act to Authorize the Making of Arbitration and submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies and for Other Purposes)  
• EO 1008 (Creating an Arbitration Machinery in the Construction Industry of the Philippines)  |

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<table>
<thead>
<tr>
<th>Country</th>
<th>Disputes between governments</th>
<th>Disputes between governments and private parties</th>
<th>Disputes between private parties</th>
</tr>
</thead>
</table>
| Russia  | • Convention on Settlement of Investment Disputes Between a State and Foreign Citizens  
         • Convention on the Recognition and Enforcement of Foreign Arbitral Award of 1958 (New York Convention)  
         • European Convention on International Commercial Arbitration of 1961 |                                |                                |
| Singapore | • WTO Dispute Settlement Mechanism  
           • Bilateral consultations and Arbitration (through Investment Guarantee Agreements)  
           • Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York Convention) | • ICSID                        | • Singapore International Arbitration Center  
         • Singapore Mediation Center  
         • Advisory on Construction Mediation  
         • Singapore Information Technology Dispute Resolution Advisory Committee  
         • Consumer Association of Singapore |                                |
| Taipei  | • WTO Dispute Settlement Mechanism  
         • Active participation in the APEC discussion on DMEG services | • Ongoing review of its practice in dealing with disputes (1997-2010) | • Ongoing review of its practice in dealing with disputes (1997-2010) |
| Thailand | • WTO Dispute Settlement Mechanism  
         • ICSID  
         • ASEAN Investment Agreement  
         • UNCITRAL |                                | • Convention on the Recognition and Enforcement of Foreign Arbitral Award (the New York Convention) |
| USA     | • WTO Dispute Settlement Mechanism | • ICSID | • Convention on the Recognition and Enforcement of Foreign Arbitral Award (the New York Convention) |
Resolving Trade and Investment Disputes in APEC

<table>
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<tr>
<th>Country</th>
<th>Disputes between governments</th>
<th>Disputes between governments and private parties</th>
<th>Disputes between private parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vietnam</td>
<td>• Protocol on Dispute Settlement of ASEAN (for disputes with ASEAN member countries) • International Arbitration</td>
<td>With respect to foreign investors and businessmen: • Conciliation (in accordance with UNCITRAL Conciliation Rules 1980) • UNCITRAL Arbitration Rules 1976 • ICSID</td>
<td>• The Vietnam International Arbitration Center • Economic Arbitration Centers</td>
</tr>
</tbody>
</table>

With respect to domestic businessmen and investors:
• Court (in accordance with the Ordinance on Settlement of Claims and Petitions of Citizens or the Ordinance on Procedures for Settlement of Administrative Cases)

Table 2. Preferred Modes of Dispute Settlement by APEC Member-Countries

<table>
<thead>
<tr>
<th>MODE</th>
<th>Number of Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>WTO</td>
<td>16</td>
</tr>
<tr>
<td>ICSID</td>
<td>12</td>
</tr>
<tr>
<td>UNCITRAL</td>
<td>8</td>
</tr>
<tr>
<td>New York Convention</td>
<td>17</td>
</tr>
<tr>
<td>Washington Convention</td>
<td>8</td>
</tr>
</tbody>
</table>
EFFECTS OF CYBER DISPUTES
ON THE EXISTING DISPUTE SETTLEMENT MODEL

It is very difficult to pin down all the modes, mechanisms, processes, and jurisdictions that are trying to settle pieces of the entire gamut of cyberspace trade disputes. In the first place, jurisdiction in cyberspace is very hard to define. Enforcement in some instances is nearly impossible.

The anti-trust ruling against Microsoft by a US federal court forced everyone to rethink whether the integration and convergence model which information and communications technology could be accommodated in a legal framework that frowns on monopolies and combinations. When the German Internet firm Letsbuyit.com tried to bring consumers together to force prices of particular products to be lowered, a German court ruled that it violated two German laws against combinations in trade and selling below a minimum price. Critics said this ruling was wrong because it went against the integration and free market philosophies of the European Common Market.

An injunction suit has been filed against Napster.com for piracy by the Recording Industry Association of America. Several non-American songs are part of the Napster collection. What does a fellow APEC or WTO member do in that regard? What about cybersquatting on domain names? The WIPO has been issuing rulings in this area, but what is the extent to which existing WTO and APEC dispute settlement mechanisms affect this?

APEC ECONOMIES' PREFERENCE
FOR WTO DISPUTE SETTLEMENT

Apparently, APEC economies prefer to file complaints with the WTO if they believe that there is a WTO-cognizable complaint. In this regard, we can think of the famous Canada-Australia salmon case, the US-Canada periodicals case, the Singapore-Malaysia semiconductors case, the US complaints against Korea and Japan for taxes on alcoholic beverages, etc. It was never evident in any of these disputes that the mediation services nor good offices of APEC were resorted to. One gets the impression that the economies still believe that more is to be gained by resorting to the formal mechanism under the WTO than to try out the untested waters of the APEC.

In the case of the Philippines' trade dispute with Australia over the import quarantine against Philippine mangoes, bananas, and pineapple, the country used APEC to raise the issue without using, however, its proposed dispute mediation process.
ANALYSIS AND RECOMMENDATIONS

It appears that the existing proposals within APEC do not push for a strong dispute settlement mechanism because of the existence of the WTO. It also appears that countries such as the Philippines are willing to use APEC for raising its trade and investment concerns without necessarily expecting results.

To appreciate the implication of what particular mode of dispute resolution the Philippines will push for, the following points must be emphasized:

1. China, one of our most important trade partners and with whom we have been running an enormous trade deficit, and whose products are often the subject of anti-dumping petitions filed before the Tariff Commission, is not yet a member of the WTO, although that may soon change. Until that time comes, however, whatever trade dispute the Philippines or any private Philippine entity may have with China cannot be resolved using the rules-based and judicialized mode that is being employed in the WTO.

2. Although the Philippines is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, there is no strong tradition of arbitration, except perhaps with respect to arbitration in the construction industry. Despite the existence of an arbitration law, there has not been any noticeable use of arbitration as a mode of settling disputes between private individuals.

3. APEC members which also belong to NAFTA have instituted among themselves a judicial system of dispute settlement, which, although different in process, jurisdiction, and the qualifications of judges, are strongly rules-oriented.

4. In the ASEAN, only Singapore has a strong tradition of making use of arbitration for the purpose of settling disputes. Indonesia and Malaysia have arbitration centers, but these have not yet gained sufficient recognition as reliable and professional arbitration centers, unlike their regional counterparts in Hong Kong and Singapore. Brunei is not a signatory to ICSID. What all this demonstrates is that even in the ASEAN, the degree of comfort with third party-assisted or arbitrated disputes is not uniform, ranging from a strong system in Singapore to relatively weaker systems in the other countries.

The APEC has spent a lot of effort in collating and describing in narrative form the various modes of dispute resolution in the APEC economies. That first job is important, considering that the build-up of this kind of database is important if APEC is
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to propose anything of substance in the dispute settlement arena. Already, there are indications of a trend within APEC, some of which have been made explicit by APEC documents while some can be deduced only from observing the kind of attention and activities that the APEC and the DMEG have been giving to particular dispute settlement modes, namely:

1. The preferred option will still be the WTO dispute settlement mechanism for those that are part of the WTO. This is contrary to the position that the Philippines adopted earlier where it discouraged the immediate use of the WTO dispute settlement (DS) system. Apparently, although there is wisdom in this approach, the other APEC members that are also members of the WTO do not believe that it makes sense to temper their frequent use of the WTO DS system. This is true particularly of the United States and Canada, which have been among the most frequent users of the WTO DS system.

2. Mediation is only being encouraged on a government-to-government level, if ever, and again, only as a second alternative to the WTO system. In fact, government-to-government mediation may become relevant only with respect to APEC members that are not members of the WTO.

3. As long as the developed non-Asian countries dominate the agenda of the DMEG, then it may be theorized that the following will continue to occur:

   - The WTO DS will take preeminence over other modes;
   - There will be a stronger drive to make the database on the existing dispute settlement modes as open and accessible to businessmen in the region as possible.

Consider the other side of the picture. The only mechanism for resolution of economic disputes in the ASEAN is the 1996 Protocol on Dispute Settlement Mechanism. In an earlier article this author stated that, theoretically, although the pattern sought to be emulated by the Protocol is based on Article XXII and XXIII of the 1947 GATT (now the GATT 1994), which are the foundational dispute settlement articles of the whole international trade law framework being implemented by the WTO, there is very little chance of the Protocol being anything more than what it is now: paper provisions. The consensus culture of ASEAN is so strong (although this has been increasingly breached) that the Protocol will not likely be operationalized for a long time. Therefore, there is no ASEAN regional dispute settlement mechanism that can adversely affect the initiatives that will be launched in APEC in the area of dispute settlement.
Realizing these alongside its strategic trade interests and internal weaknesses, the Philippines may adopt a position on APEC dispute settlement and mediation along these lines:

1. For economies that are not part of the WTO, a ‘fast-track’ mediation system should be set up for government-to-government disputes.
2. The APEC’s technical capability as well as each individual member’s commitment under the technical assistance mode should be utilized to strengthen the country’s own lack of training, expertise, and experience in arbitration.
3. The Philippines should determine for itself the relevance of the APEC in the area of dispute settlement and mediation in light of the fact that the APEC has not even been used as a consultative mechanism before APEC members resort to the use of the WTO DS mechanism.

Realizing the variety and complexity of existing international mechanisms for resolving trade and investment disputes, the Philippines should take advantage of this occasion to draw to the attention of its people and its policy makers its own failings in this area. The best strategy that the Philippines can adopt in fact is not one that will depend on APEC mechanisms nor follow the APEC preferences. If the government is to maximize the opportunities and minimize the risks that the globalized economic environment poses to its people, then the least it can do is to engage in a massive educational and information campaign to make them aware of the inadequacy and serious deficiencies of the traditional, formal, and judicial method of settling disputes. What is important is that our people realize that there is a menu of options for settling potential disputes with the Uir business tners, competitors or foreign governments, and which their own governments may have with foreign business entities, as well as with governments. The process has to start now.
Coalition-Building and APEC

NOTES

1. Not the ASEAN Free Trade Area, which also called “AFTA.”
2. Vietnam, Myanmar, and Cambodia.
4. By “plurilateral,” we mean agreements in the WTO, of which there are four that are not mandatory for WTO members.
5. See India et al.
6. As of August 1999.
8. This section is drawn from Article XX and XXIII of the GATT 1994, Understanding on Dispute Settlement, and Working Procedures.
9. These descriptions are culled from the lecture of Dr. Aldo Chircop at the Workshop on International Maritime Dispute Settlement Procedure, conducted by the Institute of International Legal Studies, May 1999.
10. US Commerce Secretary William Daley reported in Seattle that there was a broad consensus for extending the moratorium from 12 to 18 months. With the collapse of the talks in Seattle, doubt persists on whether this agreement holds or not.

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The Government of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Kingdom of Thailand. 1987. Agreement for the Promotion and Protection of Investments. Manila.
Chapter 6

The Political Economy of Philippine Commitments to APEC:
The Legislative Record

Wilfrido V. Villacorta, Tereso S. Tullao Jr., and Angelo A. Unite

INTRODUCTION

Objectives

The objective of the study is to examine the political economy of enacting new legislation required to fulfill the commitments of the Philippines to Asia-Pacific Economic Cooperation. In particular, the paper describes the process involved in the formulation and deliberation of proposed legislation, identifies the players involved in this process, examines the conflicts of interest encountered in ensuring the passage of such legislation, and proposes measures to address these problems.

The tasks of this study are as follows:

1. Catalogue the major commitments of the Philippines to APEC in
   (a) retail trade,
   (b) financial services, and
   (c) agricultural sector.

* The authors gratefully acknowledge the research assistance of Mr. Gerardo Largoza, Mr. Juan Dayang, Jr., Ms. Rosalie H. Guerrero, Ms. Jacqueline V. Biasbas and Ms. Mishima Miciano.

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2. Analyze the legislative measures that seek to operationalize these commitments;
3. Identify the various interest groups involved in the process of formulating the required legislative measures; and
4. Examine the status and adequacy of the legislative measures in meeting the requirements of liberalization under APEC in the above-mentioned areas of concern.

Analytical Framework

This study adopts the political economy framework in examining Philippine APEC commitments. Political economy concerns itself with the distribution of the burden of adjustments in economic policy. It addresses the question of who will pay for the losses of those marginalized. Are the winners to compensate the losers, for instance, or should the latter be left to fend for themselves on the way to a better social reallocation of resources? These policy postures have ideological implications.

When the Philippines joined APEC, the nation was confronted with such choices. After all, liberalization under APEC tends to favor consumers but involves sacrifices and risks for some local producers. It makes for freer competition and minimum management of the economy by the state. It lifts controls over the financial market and, it may be argued, increases the chances of assault against the local currency.

In the discussion of development and liberalization, certain schools of thought figure prominently. The mercantilist approach views state intervention as a critical instrument for the development and safeguarding of the national interest. It believes in looking after local entrepreneurs and providing safety nets for the disadvantaged in the playing field. Mercantilism as a philosophy takes the state as the primary unit of analysis and, as such, measures wealth according to the balance of payments or similar accounts. It assumes that national welfare is desirable but only in so far as it does not compromise sovereignty or the national interest.

The neoclassical (liberal) school takes the position that development is best achieved through the free operation of market forces domestically and internationally. It believes in leveling the playing field and encouraging foreign competition. The proponents of this school are convinced that economic growth significantly increases with the adoption of liberalization measures.

Finally, the structuralists advocate a special quality of intervention that will make the market more efficient and economic growth more sustainable. It aims at increasing the gains and reducing the losses by putting in place the necessary economic structures. For instance, roads and bridges will mean lower costs for commerce,
while greater expenditures on education will make it easier for labor to switch from one industrial sector to another by acquiring a higher rate for learning new skills.

In analyzing the views of our respondents, particularly the lawmakers, we find that each of them adheres to any one of the aforementioned schools of thought. The divergence in their ideological premises mirrors the dynamics of Philippine political economy.

The uncertainty with which the public and our legislators regard liberalization can be attributed to the fact that the Philippines is relatively new to the ways of liberalization. Until the end of the Marcos period, government policy had traditionally favored import substitution and protectionism based on such policies as an overvalued exchange rate.

The advent of the Aquino administration opened up the economy. It began with import liberalization in 1986. However, the presidential cabinet itself was divided on the issue. Some members believed the country was not prepared for liberalization, while others thought that higher economic growth could be achieved by removing obstacles to the freer flow of goods and services.

When the Constitutional Commission was convened in 1986 to draft a new fundamental law, the same debate took place. An examination of the 1987 Constitution would give one the impression that it is a protectionist constitution. Consider this provision: "The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos (Art. II, Sec. 19)." On the other hand, the Philippine Congress has had no problems in passing laws on liberalization, deregulation, and privatization. This situation proves that the present charter does not necessarily pose an obstacle to attaining the goals of economic globalization. Otherwise, the relevant laws would have been declared unconstitutional if they were inconsistent with the relevant provisions of the Constitution.

But it is not solely ideology and legality that determine the position of our lawmakers. The congressmen are not only concerned with their primary task of making laws. They are mainly beholden to their constituents who are responsible for their political survival. Their voting behavior is rooted not in their ideological preferences or their party affiliations, but in interest groups among their constituencies. Lobbying in Congress, especially in the Lower House, is therefore most effective not only by applying direct pressure on the congressmen but, more importantly, by working on their constituencies.

These considerations are relevant in examining the responsiveness of our government to the requirements of its avowed individual action plans for APEC. When we study the process involved in enacting legislative measures for implementing these action plans, we must examine as well the interests that the legislators represent. Much depends on whether their districts are urban or rural, what powerful groups dominate their constituency, and how their personal and political interests are linked with these groups.
INDIVIDUAL ACTION PLANS OF THE PHILIPPINES UNDER APEC

A 1997 study that was conducted by the Philippine Institute for Development Studies (PIDS) documents the country’s APEC commitments as well as the process involved in arriving at these commitments. These pledges are contained in the Philippine Individual Action Plan (IAP) and call for further liberalization of foreign investment-related policy in the areas of retail trade, financial services, and tourism. The study compares Philippine APEC commitments with the country’s commitments to WTO and AFTA. One major difference cited is that the country’s APEC commitments are generally more comprehensive in the liberalization and facilitation of trade in services. Moreover, the PIDS study identifies five key players in the process of setting trade policy. These are the government agencies, academe, private and business sectors, consumers, and civil society organizations.

One of the objectives of APEC is to bring about a competitive service sector as well as a free and open investment regime within the Asia-Pacific region. In this light, the Philippines committed to consider measures aimed at responding to these objectives. These initiatives are outlined in the IAP and include the following:

a. Distribution: opening of retail trade to foreign participation.
b. Financial services: reviewing of restrictions/existing provisions on (1) foreign equity participation in investment companies, investment banks/houses, and financing companies; and (2) foreign membership in the board of directors of investment and financing companies.

While the IAP is silent with respect to commitments in the agricultural sector, the APEC Economic Leaders endorsed during their Fifth Meeting in Canada in November 1997 the early voluntary liberalization of 15 economic sectors in the member countries, including agriculture-based sub-sectors such as natural rubber, fish, forest products, and food. The proposal calls for the voluntary elimination of tariff and non-tariff barriers by the APEC member-countries within a specific time frame.

Distribution Services (Retail Trade)

Current Position

RA 1180, or the Retail Trade Nationalization Act, was replaced by RA 8762, or the Retail Trade Liberalization Act of 2000. The former law provided that only Filipinos may engage in retail trade. This forbade foreign citizens, as well as associations,
partnerships or corporations not wholly owned by Filipinos, from participating directly or indirectly in retail trade.

**Action Plan**

When the Individual Action Plan was submitted, the Retail Trade Nationalization Act was still in place. The IAP pledged to progressively reduce restrictions on market access for trade in services, the Philippine Congress deliberated on amendments to RA 1180, with the objective of allowing foreign investors to engage in retail trade, subject to certain conditions such as limitations on capitalization and number of branches.

**Financial Services**

**Current Position**

1. **Banking**

   The General Banking Law of 2000 (RA 8791) allows the Monetary Board to authorize a foreign bank to acquire up to 100% of the voting stock of only one domestic bank. This liberalization applies within seven years from the effectivity of the law, subject to guidelines pursuant to the provisions of the Foreign Banks Liberalization Act (Chapter VII, Sec. 73).

   Within the same period, the Monetary Board may authorize any foreign bank to further acquire voting shares of up to 100%. This authorization is given if the said foreign bank has acquired up to 60% of the voting stock of a bank, under the Foreign Banks Act and the Tariff Banks Act (Ibid.).

   An earlier amendment to the General Banking Act, or RA 337 of 1948, was RA 7721, passed in 1994. RA 7721 allowed the entry of foreign banks under three modes. First, ten new foreign banks could open branches in the Philippines with full banking authority. Second, an unrestricted number of foreign banks were allowed to set up locally incorporated subsidiaries, up to 60% of which may be foreign-owned. Third, an unrestricted number of foreign banks were permitted to enter the Philippines by acquiring up to 60% ownership of domestic banks.

2. **Insurance**

   In October 1994, after being closed for nearly 50 years, the insurance sector was opened to new, 100% foreign-owned companies. Under Department Order Nos. 100-94 and 100-94A issued by the Department of Finance on 24 October and 18 November 1994, respectively, foreign insurance or re-insurance companies, which would operate as a branch or where foreign equity in said company or intermediary is more than 40%,
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should be allowed entry within two years from the effectivity of the order. During this period, the number of foreign insurance companies that shall be allowed entry is five, but may be increased to ten upon approval of the President of the Philippines upon recommendation of the Secretary of Finance. Entry is allowed under any of the following modes: (a) ownership of the voting stock of an existing domestic insurance or re-insurance company or intermediary; (b) investment in a new insurance or re-insurance company or intermediary incorporated in the Philippines; or (c) establishment of a branch. Entry under mode (c) is not available to an intermediary. An applicant may avail itself of only one mode of entry. Capital requirements vary depending on the line of business, degree of foreign ownership, and mode of entry.

At the Uruguay Round of Multilateral Trade Negotiations, the Philippines made commitments under the General Agreement on Tariffs and Trade, particularly in the areas of banking, insurance and securities. Further, as a member of ASEAN, the Philippines is actively involved in the ongoing negotiations on trade in services including the financial sector through the Coordinating Council in Services.

3. Investment Companies (including mutual fund companies)

House Bill No. 12094, entitled “Investment Companies Act of 2000, was submitted on 25 August 2000, to replace House Bills No. 85 and 7294.

Foreign nationals were allowed to become members of the Board of Directors under House Bill No. 85, which sought to amend Republic Act No. 2629 (Investment Company Act, approved on 18 June 1960). The latter did not place any restrictions on foreign equity participation in investment companies. However, RA 2629 required all members of the board of directors of such enterprises to be Filipino citizens.

4. Investment Houses

Republic Act No. 8366, which was passed on 21 October 1997, liberalized the investment house industry by increasing foreign equity participation to a maximum of 60% of the voting stock of such enterprises, and by allowing foreign nationals to become members of the board of directors to the extent of their equity. The previous law, Presidential Decree No. 129 as amended (Investment Houses Law), limited foreign equity participation to 49% of the voting stock and required that majority (51%) of the members of the board be Filipino citizens.

5. Financing Companies

Under Republic Act No. 8556 (Financing Company Act of 1998), which was approved on 26 February 1998, foreign nationals are allowed to own a maximum of 60% of the voting stock of a financing company, provided the country of which the
foreign investor is a national, accords the same reciprocal rights to Filipinos in the ownership of financing companies or their counterpart entities. This law amended Republic Act No. 5980 (Finance Company Act) as amended, which limited foreign equity participation to 40% of total capital of a financing company. The new Act also repealed Section 8 of the previous law, which required that at least two-thirds of all members of the board of directors be citizens of the Philippines.

**Action Plan**

The Philippines committed itself to undertake the following measures between 1997 and 2000:

- Investment Banks and Houses - Review existing restrictions on foreign equity participation

- Financing Companies - Review restrictions on foreign equity participation with a view to allowing a higher level of foreign participation, as well as those on foreign membership in the board of directors.

- Investment Companies - Review the existing law on investment companies for the purpose of including a provision specifically providing for a maximum of 100% allowable foreign equity participation. Review as well restrictions on foreign membership in the board of directors.

**Early Voluntary Sectoral Liberalization (EVSL)**

**Current Position**

The Philippines maintains tariff quotas for sensitive agricultural products, the quantitative restrictions of which were lifted and tariffied pursuant to the WTO Agreement on Agriculture. RA 8178, dated March 1996, lifted the quantitative restrictions on sensitive agricultural products except rice. To date, the quantitative restrictions on rice, maintained for food security per Annex 5 of the WTO Agreement on Agriculture, remain.

**Action Plan**

The Philippines pledged to continue to implement its Tariff Reform Programme (TRP) of progressively reducing tariffs and move toward a uniform rate of protection across sectors except for sensitive agricultural products (including rice). The period covered was 1997-2004.
Agriculture

1. Natural Rubber

Current Position
Nominal tariff on natural rubber decreased from 20% in 1992 to 3% in 1998. This was a result of the TRP implemented under Executive Orders 470 (effective 24 August 1991), 264 (effective 15 January 1996), and 465 (effective 22 January 1998).

Proposal
The details of the proposed gradual reduction and/or elimination of tariffs and non-tariff measures are still being formulated. In general, however, the proposal involves reducing the duty altogether.

2. Food

Current Position
The EVSL proposal for food tariff liberalization covers only fresh and slightly processed fruit and vegetables (28 commodities), selected processed foods (19 products), and non-alcoholic and alcoholic beverages and barley malt (11 products). Most of the food products proposed for EVSL have tariff rates of 10% and 20%.

Proposal
Bring down applied tariffs to 5% and below by the year 2004 starting June 1999. Longer staging may be considered for sensitive products. Further liberalization would be considered, however, after achieving the 5% tariff level with the aim of eliminating all tariffs before the Bogor timeframe for free and open trade and investment of 2020 for developing economies.

3. Forest Products

Current Position
The proposed EVSL for the forest products sector covers, among others, raw products in the sub-sectors wood and wood products and pulp, paper, and paper products. The raw products under these include wood in the rough (logs), plywood, pulpwood, and waste paper.

The nominal tariff rate on imported logs stood at 10% in 1992 and was reduced to 3% in 1995. This was consequently reduced to zero under the ASEAN Common Effective Preferential Tariff arrangement. For pulpwood and waste paper, the nominal
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tariff rate had been at 3% from 1991 to 1998. For plywood, the nominal tariff rate stood at 15% in 1991, was reduced to 11.50% in 1995, only to be raised to 14.33% in 1996 and then reduced to 13.20% and 11% in 1997 and 1998, respectively.

Proposal

Removal of all tariffs by 1 January 2002 on products falling under Chapters 44 and 49 and by 1 January 2004 on products falling under Chapters 46 and 49. The raw products under these included wood in the rough (logs) and pulpwood.

4. Fish and Fish Products

Current Position

The proposed EVSL for fish and fish products covers, among others, raw products in three species groups, namely, demersal finfish, pelagic finfish, and crustaceans. The TRP, which started in 1981, reduced the average statutory duty from 43% to 28%. The second phase of the TRP decreased the nominal average tariffs to 20%. Further tariff adjustments on agricultural products, including fish, were instituted with the issuance of EOs 288, 313, and 328. The average tariffs on raw materials of fish products decreased to 19.22% in 1996 from 53.6% in 1992. The current average nominal tariff on raw materials of fish products is 10.68%.

Proposal

The proposal involves eliminating tariffs on the above products not later than 25 December 2005, converting specific duties to ad valorem rates, and abolishing compound rates which started last 1 January 1999. Products with 20% duty or less would be phased out quickly. As for non-tariff measures, these would be eliminated not later than 31 December 2007. Fish products with subsidies and are subject to sanitary and phytosanitary measures that are inconsistent with the WTO agreement should be removed by 31 December 2003.

THE DYNAMICS OF LEGISLATION ON APEC LIBERALIZATION

Retail Trade

The most contentious issue in APEC-related legislation was the liberalization of the retail trade. President Joseph Ejercito Estrada favored the entry of foreign retailers with at least $10 million in new capital for the next two years. After that period, the foreign retailers could only own up to 60% of a local retailing company.
Republic Act 1180, which was enacted in 1954, limited the operation of retail trade to Filipino nationals. The objective was to curb the alien dominance of retail trade and to protect the undercapitalized and inexperienced Filipino retailers.

The absence of competition, however, enabled an oligopoly to hold retail trade captive to its interests. It also prevented prices, services, and quality of consumer goods from meeting the standards of the world market, thus denying the Filipino consumers the opportunity to enjoy these products.

The protected retail trade sector also posed barriers separating the consumer and the manufacturer. It is a seller’s market in which consumers can only purchase from a small group of mega-retailers. From the point of view of local suppliers and manufacturers, it is a buyer’s market, because they have limited outlets through which they can reach potential buyers of their products.

Filipino consumers and small manufacturers had, therefore, been subsidizing the retailers. Retail prices of locally manufactured products were higher than those of their counterpart goods in other ASEAN countries. Affluent Filipinos were the only ones who can avail themselves of quality goods that were otherwise not locally available.

This protectionist regime was not only inefficient but it also promoted complacency among local retailers. They were not motivated to improve their products and services because they were assured of a home market. In contrast, retailers from neighboring countries expanded their operations overseas and aggressively competed with rival companies by constantly improving their products, services, and facilities.

Proponents of liberalization claimed that competition would reduce retail prices, thus increasing the purchasing power of consumers. The manufacturers would also benefit because retail trade liberalization would reduce prohibitive rentals on shelf space and restrictive credit terms. Competition would also improve wages and terms of employment in the retail sector besides expanding employment opportunities in both the retail and manufacturing sectors. Essentially, global retailing, according to them, would allow local consumers to buy goods at the least cost, and local manufacturers to compete with producers in other countries for the world market. Moreover, it would enable the economy to prepare for 2003 when the AFTA becomes fully operational.

In view of the perceived benefits of opening up the retail trade sector to foreign investors, particularly in large-scale retail enterprises such as department stores and shopping malls, the House Committees on Trade and Industry and Economic Affairs passed House Bill No. 7602, which sought to repeal RA 1180. The bill provided for the protection of small and medium-scale enterprises and small retailers like the “sari-sari” stores.

The bill imposed a minimum capital requirement for foreign investors:

• $5,000,000 or more for 100% foreign-owned entities;
• $2,000,000 per branch for 100% foreign-owned enterprises specializing in high-end or luxury products and operating within shopping centers; and
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- Two years after the effectivity of this proposed Act, foreign retailers entering the Philippines shall be allowed not more than 60% equity participation in retail trade enterprises in the above categories.

Retail trade enterprises with a capitalization not exceeding P200,000,000 remained reserved for Filipino citizens (including former natural-born citizens of the Philippines) and corporations wholly owned by Filipinos.

The following were the safety nets provided by the bill to allay the apprehensions of small- and medium-scale enterprises:

1. The Department of Trade and Industry would screen foreign retailers and allowed entry only to those who operated at least five branches or franchises, and had a five-year track record in retailing;
2. The bill prohibited the use of mobile or rolling stores, carts, multi-level and door-to-door selling;
3. Each foreign retail branch must be capitalized at $2,000,000 or more, and could only be established in shopping centers; and
4. No foreign retail store could be established outside the cities and the municipalities of the National Capital region and the provinces of Cavite, Laguna, Rizal, and Bulacan, unless authorized by the Sangguniang Bayan concerned.

In the Senate, the Committee on Trade and Commerce approved Senate Bill No. 153 (with amendments) of Senator Sergio Osmeña III. Senator Ramon Magsaysay Jr., the committee chairman, along with Senators Nikki Coseteng and Loren Legarda-Leviste, gave dissenting votes.

The committee version, authorized foreign enterprises to engage or invest in retail trade according to the following formula: 100% foreign equity participation for entrant foreign retailers with a paid-up capital of P10 million; 60% foreign equity participation (and 100% for erstwhile natural-born Filipino citizens) for foreign enterprises with a paid-up capital of P5 million. Enterprises with a paid-up capital less than P5 million were reserved exclusively for Filipino citizens, corporations wholly owned by Filipino citizens, and former natural-born citizens of the Philippines.

The committee version also stated that before a foreign retailer was allowed to engage in retail trade, he must also have no less than $50 million in paid-up capital in the mother corporation. He must also have a track record of at least five years in retailing, and no less than five retailing branches or franchises operating anywhere around the world unless such retailer has at least one branch capitalized at a minimum of US$25 million.
Supporters

The Department of Trade and Industry, Board of Investments, Department of Tourism, Commission on Philippine Overseas Workers, and the National Economic and Development Authority (NEDA) were the lead government agencies that supported the enactment of the bill. NEDA emphasized that the objective of the proposed law was to liberalize retail trade, thereby promoting the welfare of small retailers and consumers as well as tourism. The Department of Justice and the Department of Finance, consistent with the executive branch’s position on the matter, acquiesced to the bill’s passage.

The Bangko Sentral ng Pilipinas (BSP) took the position that in establishing the appropriate floors on the allowable foreign equity participation for retail trade establishments, the prime consideration was to strike a balance between establishing an efficient and competitive retail trade sector and protecting small retail businesses. In view of this, the proposed bills reserved exclusively for Filipino ownership retail establishments with a specified paid-in capital—US$0.2 million under H.B. No. 23 and P5 million under H.B. No. 788. The BSP noted, however, the wide gap between the capitalization requirement reserved exclusively for Filipino retail trade businesses mentioned above and those for foreign retail trade establishments. The divergences ranged from $5 million to $10 million under H.B. No. 23 and from P5 million to P10 million under H.B. No. 788. The BSP enjoined the Committee on Economic Affairs to consider narrowing the gap on the capitalization requirement without undermining the objective of protecting small retail establishments.

Given the current volatility of the exchange rate in the Asian region, the BSP suggested that the required equity investment in the final version of the bill be denominated in U.S. dollars to limit the need to update the amount of investment required.

Among the private entities, the Fort Bonifacio Development Corporation, Caltex Philippines Inc., and San Miguel Corporation expressed belief that the Filipino retailers would successfully hurdle the challenges posed by the entry of foreign investors. They likewise stated that it would be an insult to prejudge Filipino businessmen as being incapable of competing with foreign retailers. But while the American Chamber of Commerce and Industry and the Australian-New Zealand Chamber of Commerce and Industry were for liberalization with no minimum capitalization, the Consumer Union of the Philippines approved the liberalization with a formula: 100% foreign equity for enterprises with US$10 million dollars in capitalization.

Academic and research communities like the U.P. College of Business Administration and the PIDS concurred with the bill, observing that it contained provisions enhancing the local-foreign linkage and that 40 years of protectionism did not help industrialize the country.
Oppositors

Active in resisting retail trade liberalization were the Philippine Retailers Association (PRA), the Philippine Association of Supermarkets, Kilusan Tungo sa Pambansang Tangkilikan (KATAPAT), and the U.P. Law Center.

The Philippine Retailers Association vigorously opposed liberalization. Calling the retail trade sector "the last bastion of Filipino entrepreneurship," the association published full-page ads in newspapers voicing its stand on the issue. It was supported by the Beverage Industry Association of the Philippines, which pointed out that the 350,000 sari-sari stores nationwide were the only source of earnings among many low-income families (Today, 14 December 1998). For its part, the Koalisiyon Kontra Krisis launched a signature campaign against liberalization (Philippine Daily Inquirer, 1 December 1998).

In November 1998, about 5,000 businessmen and members of cause-oriented and religious organizations marched to the Philippine Stock Exchange office to protest the government’s compliance with International Monetary Fund conditionalities and its support of retail trade liberalization (Today, 27 November 1998). The Kilusan para sa Pambansang Demokrasya, the National Council for Economic Survival, and KATAPAT took turns in denouncing the proposed legislative measure.

The following were the principal arguments of the Philippine Retailers Association against retail trade liberalization:

1. Retail liberalization will not automatically bring down retail prices or increase the savings level of Filipino consumers.
   According to the Association, prices of goods are not dependent on whether or not the retail industry is liberalized. Retail prices are dictated by the retailers’ buying price and their gross margins. So long as manufacturers have to contend with such factors as high interest rates and high power costs, they will not be able to price their manufactured goods low. As it is, the margins of Philippine retailers are perhaps already the lowest in the world. Therefore, it is unfair for the bill to imply that the final consideration of how much the goods will be sold is solely dependent on the retailer.

2. Liberalization will not increase profits of sari-sari store owners.
   It was argued that sari-sari stores source their products from wholesalers, not retailers. Wholesaling itself is not closed to foreigners. Therefore liberalizing the retail industry is not the answer if the objective is to enable sari-sari stores to get a better deal from their wholesalers, since wholesalers—whether local or foreign—have always been allowed to set up shop in the Philippines.
What will really help the sari-sari stores is to gain access to distribution centers where they will not be discriminated against by sheer size and volume of purchase.

3. **Liberalization will not create jobs.**
   The PRA asserted that the entry of large foreign retailers will even displace local retailers, since foreign retailers enjoy a broader international network, are technologically superior, and can afford larger discounts due to their high economies of scale. And since small and medium retailers, which constitute over 90% of the Philippine retail sector, account for almost 75% of the total employment in the retail sector, the resultant unemployment from displaced small and medium retailers will result in an even more massive unemployment.
   The Association did not believe that the establishment of new retail outlets will create new jobs. It cited a study which concluded that for every 140 jobs created by Wal-Mart, 230 higher-paying jobs are lost. Also, expanded operations by manufacturing enterprises, which the bill claimed would create more jobs, is not an automatic result of the entry of foreign retailers. In fact, these large foreign retailers already have their own distribution and supplier base from which they derive economies of scale. It is hardly an assurance that they will source their products from local manufacturers, specially since local manufacturers themselves are saddled with high interest rates, high power costs, and similarly pressing concerns, which they ultimately have to factor into the cost of their products to be sold to retailers.

4. **Liberalization will not necessarily assist small and medium manufacturers.**
   The lobbyists of the Association further pointed out that retail liberalization cannot ensure that foreign retailers will purchase their stocks from local manufacturers. These foreign retailers will, more likely than not, utilize their own distribution and supply chains from which they can derive their economies of scale. Neither can liberalization guarantee that these foreign retailers will carry locally manufactured products in their stores whether here or abroad.

5. **Liberalization will not ensure higher wages and better conditions for employees in the retail trade sector.**
   It was also emphasized that foreign retail establishments are not labor-intensive operations. If at all, they will pay more for their expatriates who
will manage the local operations, plus a few local managers. But the reality is, this will more likely result in rampant pirating of skilled and experienced employees, who were trained by local retailers, and will be lured to join these foreign retailers for better salaries. Again, local retailers are at a losing end.

In his privilege speech at the House of Representatives, Rep. Enrico Aumentado called for a cautious and thorough review of the Estrada administration’s program of liberalizing the retail trade industry. He anchored his call for a review on two grounds. Firstly, the possibility that the liberalization of the retail trade industry may infringe upon Article XII of the Constitution. He asserted that any retail trade liberalization measure must conform to the provisions of Article XII or else be considered unconstitutional. Secondly, liberalization may undermine, if not kill, the local retail trade industry, which is the backbone of the economy in the countryside. Without safety-valves, giant foreign retail enterprises in the Philippines can easily expand their operations to the countryside, thereby endangering retail trade and exacerbating the unemployment problem.

Another congressman opposed to liberalization was Rep. Wigberto Tañada. In a privilege speech, he said the proposed repeal of the Retail Trade Liberalization Act will have grave consequences on the economy and the lives of the people. He added that there is nothing pro-poor or remotely pro-labor about a policy that will most likely displace Filipino retailers and workers once foreign retail giants are allowed to operate in the country. And there is nothing pro-labor, he said, about a policy measure that will give the ordinary Filipino retailer no real choice but to close down his business in the face of unfair competition.

The Philippine Chamber of Commerce and Industry (PCCI) argued that the present economic conditions do not yet warrant the opening up of the retail sector considering its effects on the overall economy—pressure on local manufacturers, balance of trade, and employment opportunity losses. PCCI said that a P100 million (US$2.5 million) capitalization can be justified but foreign equity must be limited to 40%, similar to the liberalization process employed in banking, construction, and telecommunications.

Consumer organizations and cooperatives like the National Market Vendors Cooperatives, Chamber of Filipino Retailers, and the Kilusan ng Mamimili sa Pilipinas also opposed the amendments to the existing retail trade law.

Constitutionality

The Department of Justice rendered the opinion that the opening up of the Philippine retail trade sector to foreign investments under the proposed Retail Trade
Liberalization Act faces no legal or constitutional obstacle. The principle of economic nationalism is enshrined in the 1987 Philippine Constitution based on the policy that the State shall develop a self-reliant and independent national economy effectively controlled by Filipinos. But notwithstanding the constitutional provision, Congress has the power not only to prescribe the percentage for certain areas of investment but also the choice of the areas of investment limited to Filipinos, provided, of course, that there is a recommendation from the economic and planning agency (although NEDA’s recommendation is not indispensable), and that the national interest so dictates.

The U.P. Law Center, through its Institute of Government and Law Reform, however, differed with the DOJ position. The Center said the bill under consideration would lead to alien control of the retail trade, which, taken together with alien predominance in other areas of the economy brought about by other laws allowing alien participation, would negate the constitutional mandate that the economy should be effectively controlled by Filipinos.

The Center further stated that “the Court sustained the constitutionality of the law (Retail Trade Nationalization law) even in the absence of express constitutional provisions mandating or authorizing nationalization of the retail business or, as contained in the 1987 Constitution, provisions directing the legislature to reserve for Filipino citizens or Filipino-controlled entities certain areas of investment (U.P. Law Center position paper, unpublished).” The 1987 Constitution categorically declares that the “State shall develop a self-reliant and independent national economy effectively controlled by Filipinos (Art. II, Sec. 19).” In this regard, it directs Congress, when the national interest dictates, (1) to reserve for Filipino citizens or for entities, of which 60% of the capital is owned by Filipino citizens, certain areas of investment; (2) to enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos; and (3) to give preferential treatment to Filipinos in the grant of rights, privileges, and concessions covering the national economy and patrimony.

R.A. 8762, or the Retail Trade Liberalization Act of 2000, was a consolidation of House Bill No. 7602 and Senate Bill No. 153. It was passed on 15 February 2000. The law provides that foreign-owned partnerships, associations and corporations formed and organized under the laws of the Philippines may, upon registration with the Securities and Exchange Commission (SEC) and the Department of Trade and Industry (DTI), or in case of foreign-owned single proprietorships, with the DTI, engage or invest in the retail trade business, subject to certain limitations (Sec. 5).

The following are the categories set by the new law:

“Category A – Enterprises with paid-up capital of the equivalent in Philippine Pesos of less than Two million five hundred thousand US dollars
(US$2,500,000.00) shall be reserved exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.

"Category B – Enterprises with a minimum paid-up capital of the equivalent in Philippine Pesos of Two million five hundred thousand US dollars (US$2,500,000.00) but less than Seven million five hundred thousand US dollars (US$7,500,000.00) may be wholly owned by foreigners except for the first two (2) years after the effectivity of this Act wherein foreign participation shall be limited to not more than sixty percent (60%) of total equity.

"Category C – Enterprises with a paid-up capital of the equivalent in Philippine Pesos of Seven million five hundred thousand US dollars (US$7,500,000.00) or more may be wholly owned by foreigners: Provided, however, That in no case shall the investments for establishing a store in Categories B and C be less than the equivalent in Philippine Pesos of Eight hundred thirty thousand US dollars (US$830,000.00).

"Category D – Enterprises specializing in high-end or luxury products with a paid-up capital of the equivalent in Philippine Pesos of Two hundred fifty thousand US dollars (US$250,000.00) per store may be wholly owned by foreigners (Ibid.)."

The foreign company is required to maintain in the Philippines the full amount of the prescribed minimum capital, unless it has notified the SEC and the DTI of its intention to repatriate its capital and cease operations in the Philippines (Ibid.).

The law provides that no foreign retailer will be allowed to engage in retail trade in the country, unless all the following qualifications are met:

(a) A minimum of Two hundred million US dollars (US$200,000,000.00) net worth in its parent corporation for Categories B and C, and Fifty million US dollars (US$50,000,000.00) net worth in its parent corporation for Category D;

(b) Five (5) retailing branches or franchises in operation anywhere around the world unless such retailer has at least one (1) store capitalized at a minimum of Twenty-five million US dollars (US$25,000,000.00);

(c) Five (5)-year track record in retailing; and

(d) Only nationals from, or juridical entities formed or incorporated in countries which allow the entry of Filipino retailers shall be allowed to engage in retail trade in the Philippines (Sec. 8).
The law provides further protection to small Filipino retailers. Qualified foreign retailers are not allowed to engage in certain retailing activities outside their accredited stores through the use of mobile or rolling stores or carts, the use of sales representatives, door-to-door selling, restaurants and sari-sari stores and such other similar retailing activities (Sec. 10).

Financial Services

Banking

In the area of financial services, Congress focused on amendments to the General Banking Act (RA 7721). Many lawmakers believed that reforms in the banking system should be addressed first before they turned their attention to other financial institutions. Still others thought that the liberalization of the banking sector already addressed the Philippines' commitments to the liberalization of financial institutions under APEC and the WTO. Some congressmen associated the financial crisis with liberalization and were discouraged from pushing for greater liberalization.

The Committee on Banks and Financial Intermediaries, chaired by Rep. Jose Macario Laurel IV, presented House Bill No. 6814, which was a revision of the General Banking Act (R.A. 337). In the proposed Revised General Banking Act of 1999, Filipino ownership requirement in new banks after the approval of the Act was reduced from at least 70% of the voting stock to at least 60% of the voting stock in such banks:

"Except as may otherwise be specifically provided by law: (a) at least sixty percent (60%) of the voting stock of any bank which may be established after the approval of this Act shall be owned by citizens of the Philippines; (b) the percentage of foreign-owned voting stock in any domestic bank existing as of the date of effectivity of this Act may be reduced and, once reduced, shall not be increased thereafter beyond forty percent (40%) of the voting stock of the bank; and (c) if the percentage of the foreign-owned voting stocks in any domestic bank existing as of the effectivity date of this Act is less than forty percent (40%) of the voting stock of such bank, this percentage may be increased to forty percent (40%) of the voting stock of the bank (Sec. 12)."

The second paragraph of Sec. 12 contained a new provision setting an absolute ceiling on the total foreign equity ownership in a bank regardless of the manner of acquiring such foreign-owned equity. As proposed in the bill, foreign-owned equity in a domestic bank may be acquired up to 40% or 60% of the voting stock as provided in the Bank Liberalization Act (RA 7721) and Thrift Banks Act (RA 7906):
"The aggregate foreign-owned voting stocks in a bank, whether acquired pursuant to the provision of this Act or under Subsections 2 (i) and (ii) of Republic Act No. 7721 and Section 8 of Republic Act No. 7906 or any other special law, shall in no case exceed sixty percent (60%) of the total voting stock of said bank.

"The limitations in the preceding paragraphs on the percentage of foreign-owned voting stocks shall also apply to a merged or consolidated bank arising from the merger or consolidation of two or more domestic banks with foreign-owned voting stocks (Sec. 12)."

RA 8791, known as General Banking Law of 2000, was passed on 12 April 2000 and replaced RA 7721. Under this new law, foreign individuals and non-bank corporations may own or control up to 40% of the voting stock of a domestic bank. This rule applies to Filipinos and domestic non-bank corporations.

The percentage of foreign-owned voting stocks in a bank is determined by the citizenship of the individual stockholders in that bank. The citizenship of the corporation which is a stockholder in a bank, follows the citizenship of the controlling stockholders of the corporation, regardless of the place of incorporation (Chapter III, Sec. 11).

The Monetary Board may authorize a foreign bank to acquire up to 100% of the voting stock of only one (1) bank organized under Philippine laws, within seven years from the effectivity of the new law. In the same period, the Monetary Board may authorize any foreign bank, which prior to the effectivity of this Act availed itself of the privilege to acquire up to 60% of the voting stock of a bank under the Foreign Banks Liberalization Act and the Thrift Banks Act, to further acquire voting shares of such bank to the extent necessary for it to own 100% of the voting stock thereof.

The Monetary Board is empowered to adopt measures that may be necessary to ensure that the control of 70% of the resources or the assets of the entire banking system is held at all times, by banks which are at least majority-owned by Filipinos (Chapter VIII, Sec. 73).

**Investment Companies**

For the mutual fund industry, Rep. Manuel Roxas II sponsored House Bill No. 85 entitled "The Revised Investment Company Act." It aimed at providing the legal framework and a favorable environment to stimulate the development of the industry. It specifically sought to allow an investment company to sell securities within or outside the Philippines to both Filipinos and foreigners. Foreign nationals were to be made eligible as members of the Board of Directors, consistent with another provision allow-
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ing a mutual fund to issue shares to foreigners. The Roxas bill likewise allowed foreigners to become board members provided that the majority of the members were residents of the Philippines.

On 25 August 2000, House Bill No. 12094, entitled “An Act Providing for the Regulation of the Organization and Operation of Investment Companies,” was submitted by the Committee on Banks and Financial Intermediaries. This bill sought to replace House Bill No. 85 and a similar bill, House Bill No. 7294.

Agriculture

In 1996, the Agricultural Tariffication Act (RA No. 8178) was passed. It replaced the quantitative import restrictions on agricultural products, except rice, with tariffs. Designed to make the agricultural sector globally competitive, the law promotes the use of tariffs in lieu of non-tariff import restrictions to protect local agricultural producers. Rice, however, remained subject to quantitative import restrictions. Consistent with the constitutional mandate of protecting Filipino firms against unfair trade, the government will employ anti-dumping and countervailing measures instead of imposing quantitative import restrictions.

To assist the agricultural sector in competing globally, the government can help raise farm productivity levels if it will provide the necessary support services such as irrigation, farm-to-market roads, credit, research and development, post-harvest equipment and facilities, and market information.

Complementing the Agricultural Tariffication Act are certain safety nets proposed by the lawmakers. These took the form of (a) general safeguard measures, (b) countervailing duties and (c) anti-dumping duties.

General Safeguard Measures

To protect local industries from injury or threat of injury directly attributable to the increased importation of any article subject to tariff concessions and other obligations assumed under the WTO agreement, the House Committees on Trade and Industry and on Ways and Means proposed House Bill No. 7613, “An Act to Govern General Safeguard Measures to be Taken in Response to an Increase in the Importation of Goods.” In this proposal, any person belonging to a domestic industry may file with the appropriate Secretary (either of Trade and Industry or of Agriculture) a verified petition stating facts which establish the requisites necessary for the application of a safeguard measure, accompanied by documents in support of these facts. These requisites include (a) an increased importation of the product whether in absolute terms or relative to domestic production; (b) a serious injury or threat of such injury to a domes-
tic industry that produces like or directly competitive products; and (c) a causal link between the increased imports of the products concerned and the serious injury or threat of such injury.

On 19 July 2000, RA 8800, also known as the Safeguard Measures Act, was approved. It was a consolidation of Senate Bill 2033 and House Bill 7613. Under this law, a general safeguard measure shall be applied by the Secretary, upon the Tariff Commission's final determination that an imported product brought in increased quantities has substantially caused serious injury or threat to the domestic industry (Chapter II, Sec. 5). Requisites for filing a petition to the appropriate Secretary as provided for in House Bill No. 7613 are likewise provided under RA 8800.

The law provides the factors for determining whether the increased importation of a product being considered was causing serious injury or threat to a domestic industry. They include the following: a) rate and amount of the increase in imports of the products concerned in absolute or relative terms, b) the share of the domestic market taken by the increased imports, and c) changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment (Chapter II, Sec. 12).

Countervailing Duties

Republic Act 8751, "An Act Strengthening the Mechanisms for the Imposition of Countervailing Duties on Imported Subsidized Products, Commodities or Articles of Commerce," which was enacted in June 1999, integrates the bills on countervailing duties. Under this law, a countervailing duty will be levied equal to the ascertained estimated amount of any bounty, subsidy, or subvention upon its production, manufacture, or exportation in the country of origin and/or exportation granted to any imported article. The Secretary has to determine if the importation is likely to injure an establishment of a Filipino industry. The injury criterion to a domestic industry would be applied only in the case of imports from countries which adhere to the GATT Code on Subsidies and Countervailing Duties.

Under this law, any person, natural or juridical, can file a petition to impose a countervailing duty, by or on behalf of the domestic industry. The Secretary of Trade and Industry, or the Secretary of Agriculture, as the case may be, can initiate action if sufficient evidence of the existence of a subsidy, injury and causal link is established.

An existing law governs countervailing duties: the Tariff and Customs Code of the Philippines as amended, Section 302. In accordance with RA 8751, that Code had to be recast for the following reasons:

- It was inconsistent with the WTO Agreement on Subsidies and Countervailing Measures, which the Philippines is legally bound to follow.
- Retaining the existing law would likely cause the government to be taken to
the WTO Dispute Settlement Body every time it was used. Protection was thus only temporary and costly.

- Certain provisions in the law were ambiguous and open-ended, and were inadequate in protecting domestic industries.
- Provisional measures on the imposition of a countervailing bond under the existing law were not sufficient to counteract the effects of subsidization during the pendency of the application for the imposition of a countervailing duty.
- The period for the disposition of a countervailing case was unlimited, entailing lengthy processes, and therefore costly on the part of the domestic industry.
- The jurisdiction over a countervailing case as well as the conduct of a preliminary determination under the existing law were lodged with the Secretary of Trade and Industry or the Secretary of Finance. Countervailing action was a trade issue and therefore should be administered by the government agencies, which were in a better position to "smell" the existence of subsidization.

**Anti-Dumping Duties**

RA 8752, known as the Anti-Dumping Act of 1999. It was passed on 15 July 1999. It integrates the various bills on the imposition of an anti-dumping duty. An anti-dumping duty is defined as a special duty imposed on the importation of a product, commodity, or article of commerce into the Philippines at less than its prevailing market price, when destined for domestic consumption in the exporting country. The duty is calculated as the difference between the export price and the prevailing market price of such product, commodity, or article (Sec. 3).

Section 3 of the law, which amends Section 301, Part 2, Title II, Book I of the Tariff and Customs Code of the Philippines, stipulates that "whenever any product, commodity or article of commerce imported into the Philippines at an export price less than its normal value in the ordinary course of trade for the like product, commodity or article destined for consumption in the exporting country is causing or is threatening to cause material injury to a domestic industry, or materially retarding the establishment of a domestic industry producing the like product, the Secretary of Trade and Industry, in the case of non-agricultural product, commodity or article, or the Secretary of Agriculture, in the case of agricultural product, commodity or article (both of whom are hereinafter referred to as the Secretary, as the case may be), after formal investigation and affirmative finding of the Tariff Commission (hereinafter referred to as the Commission), shall cause the imposition of an anti-dumping duty equal to the margin of dumping on such product, commodity or article and on like product, commodity or
article thereafter imported to the Philippines under similar circumstances, in addition to ordinary duties, taxes and charges imposed by law on the imported product, commodity or article (Ibid.)."

It provides that "even when all the requirements for the imposition have been fulfilled, the decision on whether or not to impose a definitive anti-dumping duty remains the prerogative of the Commission (Ibid.)." The law likewise stipulates that either the Secretary of Agriculture or Secretary of Trade and Industry "shall require the petitioner to post a surety bond in such reasonable amount as to answer for any and all damages which the importer may sustain by reason of the filing of a frivolous petition (Ibid.)."

There was opposition to the provisions on the surety bond and the Tariff Commission's prerogative on the imposition of the anti-dumping duty. Ricardo Guevara, Chairman of the Association of Petroleum Manufacturers of the Philippines, raised objections to this requirement. He believed that this was an unnecessary obstacle, which makes the filing of the petition more obstructive on the part of the petitioner (Philippine Star, 3 April 2000).

The Philippines Sugar Millers Association and the Chemical Industries Association of the Philippines also joined in opposing the two questionable provisions of the law. The latter association said that "there may be dumping petitions which are not necessarily frivolous but would not warrant an affirmative preliminary determination (Manila Bulletin, 11 August 1999)." However, the protests did not prevent the signing of the law.

CONCLUSIONS AND RECOMMENDATIONS

The factors that delayed the passage of laws related to Philippine APEC commitments were the following:

1. **Inadequacies in leadership in the executive and legislative branches.** Former President Joseph Ejercito Estrada and the former Speaker of the House of Representatives are perceived not to be as assertive in pushing for a pro-liberalization legislative agenda as former President Ramos and House Speaker Jose de Venecia, who were both accomplished coalition builders. Worse, LEDAC does not meet regularly. Because many of the congressmen had to be rewarded with committee chairmanships and memberships, the number of standing committees ballooned to 42, and special committees increased to 20. This slowed down the
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legislative process and was mainly responsible for the low output of bills passed. Also, a substantial number of eager, neophyte congressmen were fond of long interpellations. Among the older members of the Lower House, many had the penchant for delivering “personal” or “collective” privilege speeches. Moreover, the majority of congressmen had little familiarity with and interest in APEC matters. Many of them spent much of their time attending to the needs of their constituencies.

2. *Existence of entrenched special interest groups and lobbies.* This was especially true in the retail trade and agricultural sectors. The impact of these special interest groups was not as widely felt in the banking sector. This might be explained in terms of the “specific factors” model, which states that any move toward liberalization is likely to adversely affect the owners of those factors which are specific to an industry. Since banking is a service-oriented industry, it might be argued that the labor used here is more mobile than, say, land in agriculture. It also helped that the Commission on Banking Reforms, which had the full cooperation of the Bankers’ Association of the Philippines, finished its work and succeeded in building a consensus and a coalition for the purpose of instituting the needed reforms in the banking sector.

3. *Absence or inadequacy of infrastructure that would allow industries to compete.* A frequent observation made during the interviews was that the consensus toward liberalization would be built on stronger ground if there existed infrastructure needed to make local industries more competitive. Such infrastructure may be physical, such as roads and bridges, or it may be social, like the safety nets for marginalized workers. It seemed that liberalization had been sufficiently accepted at the intellectual level, but the cost of adjustment was still relatively high and might be brought down by a more concerted effort to provide the necessary competitiveness-enhancing measures. The reaction of their constituencies, especially those from the labor and agricultural sectors, was of particular concern to the congressmen.

4. *Ambivalence regarding the supposed gains from liberalization.* Reservations about liberalization under APEC came largely from respondents who had professed little faith in the “invisible hand” of market forces or of the “trickle-down” mechanism. They expressed fears that gains from liberalization might not automatically reach the sectors where they were needed, and thus might increase income inequality, both across and within nations. They argued in favor of the government intervention, through such redistributive measures as safety nets and progressive taxes.
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Since globalization is an irreversible process, our lawmakers must be more aware of their responsibility to help reduce the cost of adjusting toward a more liberalized trading environment and thus lessen the frictions associated with the transition. Liberalization efforts are founded on a multilateral framework are more likely to produce demands that would generate a stronger commitment from the implementing government. In this sense, such efforts create the momentum needed to address structural problems more aggressively, both for the short and long terms.

This paper proposes the following:

a. **Capacity-building and competitiveness-enhancing measures.** These include the provision of irrigation facilities and farm-to-market roads in the agricultural sector, as well as improvements in the quality of bureaucratic service. The smooth operation of a market system is premised upon the existence of a reliable civil service as well as the requisite physical infrastructure. Judicious investments in such areas of the economy will not only improve the overall productivity of our resources, but will also allow for faster adjustment and inter-sectoral transfer of labor and capital.

b. **Greater coordination among the beneficiaries of liberalization; coalition-building.** It is in the nature of the liberalization process that those who stand to gain from it are often the large, yet unorganized, majority while those who stand to be adversely affected are the small, yet disproportionately represented, minority. One way to break any impasse in the process of consensus-building within Philippine society is for the government to undertake coalition-building efforts among those parties sympathetic to our APEC commitments. It may be inferred from the results of the interviews that the socio-demographic profile of the average pro-APEC citizen is likely to be middle-class, educated, working in the service sector with a consumption basket that has a large import component.

Coalition-building activities may consist of business forums, conferences, or media projects designed to generate support for the policy. This becomes particularly relevant in the Philippines, since the consumer market, although large, has historically been difficult to organize. If the proper efforts are undertaken, consumers may provide the biggest leverage against entrenched lobbies, as they are likely to be supported by the emerging generation of congressmen coming from the entrepreneurial and professional backgrounds. The result will be a more extensive democratization of economic activity.
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About the Publishers

The Philippine APEC Study Center Network (PASCN) was established on November 23, 1996 by virtue of Administrative Order No. 303, as the Philippines’ response to the APEC Leaders’ Education Initiative. Among the goals of PASCN are to promote collaborative research on APEC-related issues; facilitate the exchange of information between or among government and non-governmental organizations, academic or research institutions, business sector and the public in general; encourage faculty and students of higher education to undertake studies, theses and dissertation on APBC issues; undertake capacity-building programs for government agencies on matters related to APEC; and provide technical assistance to government agencies and private organizations on APEC-related initiatives. Dr. Myrna S. Austria heads the PASCN Secretariat.

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Established in 1989 as an informal group in response to the growing interdependence among Asia-Pacific economies, the Asia-Pacific Economic Cooperation (APEC) has since grown into a most significant vehicle for promoting trade, investment and economic cooperation in the region.

This book centers on the concept of "coalition-building" as an instrument for the growth of APEC as an organization. It proposes that APEC be strengthened and transformed in order to meet its objectives and remain as an important instrument for economic cooperation and consolidation in the future.

The five studies presented in this book recognize that the strength of APEC as an organization lies in its cohesive stance regarding trade and investments.