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# OUT OF OTHERS' SHADOWS: ASEAN MOVES TOWARD GREATER REGIONAL COOPERATION IN THE FACE OF THE EC AND NAFTA

Deborah A. Haas\*

## INTRODUCTION

In January 1992, the Association of Southeast Asian Nations (ASEAN or Association) pledged to strengthen economic, political, and security ties among its members.<sup>1</sup> To achieve these goals, the ministers proposed the creation of an ASEAN Free Trade Agreement (AFTA).<sup>2</sup> ASEAN's so-called "mini dragons,"<sup>3</sup> feeling threatened by potential protectionist

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1. ASEAN is the acronym for the Association of Southeast Asian Nations. The Association of Southeast Asian Nations Declaration (Bangkok Declaration), Aug. 8, 1967, Indon.-Malay.-Phil.-Sing.-Thail., *reprinted in* 6 I.L.M. 1233 [hereinafter Bangkok Declaration]. The member states of this regional grouping include: The Republic of Indonesia, Federation of Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and Brunei Darussalam (admitted in January 1984). BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTES: ASEAN 1, 3 (Mar. 1989) [hereinafter BACKGROUND NOTES].

The ASEAN leaders held a summit meeting in Singapore (Singapore Summit) on January 27-28, 1992, where they expressed an urgent need for a boost of confidence, particularly in economic cooperation. They signed the Singapore Declaration to achieve their goals. Singapore Declaration of 1992, Jan. 28, 1992, Brunei-Indon.-Malay.-Phil.-Sing.-Thail., *reprinted in* 31 I.L.M. 498 [hereinafter Singapore Declaration].

2. Framework Agreement on Enhancing ASEAN Economic Cooperation, Jan. 28, 1992, Brunei-Indon.-Malay.-Phil.-Sing.-Thail., *reprinted in* 31 I.L.M. 506, 508. The Preamble to the Agreement states that the members are "[c]onscious of the rapid and pervasive changes in the international political and economic landscape, as well as both challenges and opportunities yielded thereof, which need more cohesive and effective performance of intra-ASEAN economic cooperation." *Id.*

3. See *U.S. ASEAN Ambassadors Open U.S. Tour to Encourage Trade and Investment*, [Jan.-June] Int'l Trade Rep. (BNA), at 542 (Mar. 25, 1992) (noting that the ASEAN nations constitute the fastest developing region in the world and calculating that the ASEAN market forms the third largest market, outside North America, for U.S. exports). Japan and the European Community (EC) still rank ahead of ASEAN

obstacles from the existing and proposed regional trading blocs,<sup>4</sup> emerged from the shadows of the European Community (EC) and the North American Free Trade Agreement (NAFTA) to form a free trade agreement of their own.<sup>5</sup> AFTA admittedly reflects a reaction to the proliferation of regional trading arrangements.<sup>6</sup>

After twenty-five years in existence, the Association lacked a strong record in economic achievement, with more success on political and security levels.<sup>7</sup> In their recent attempts to alter that trend, the ASEAN Foreign Ministers signed the Singapore Declaration of 1992,<sup>8</sup> to secure peace and prosperity in the region.<sup>9</sup> The ASEAN leaders emphasize that economic cooperation must now play a central role in the Association.<sup>10</sup> New global realities make it imperative that ASEAN act as a

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in receipt of market share of U.S. exports. *Id.*; see also Jim Impoco et al., *Where Growth is Job One*, U.S. NEWS & WORLD REP., Dec. 21, 1992, at 70 (assessing the Southeast Asian nations as "economic dragons," not political "dominoes," as they were characterized in the 1960s and 1970s).

4. See Michael Di Cicco, *Trade Bloc May Fall Short As an Answer to Nafta and EC*, J. COM., Mar. 26, 1993, at 5B (asserting that ASEAN touts AFTA as an "insurance policy" against NAFTA and the EC's single market systems).

5. See Michael Vatikiotis, *Action At Last*, FAR E. ECON. REV., Feb. 6, 1992, at 10 (announcing that AFTA ultimately aims to create a unified ASEAN market encompassing 330 million people and garnering a combined ASEAN Gross National Product (GNP) exceeding \$300 billion); see also Mark Magnier, *ASEAN Leaders Endorse Plan For Regional Free Trade Area*, J. COM., Jan. 28, 1992, at 5A (recognizing that this 330 million people market pales somewhat in comparison to the market of 350 million people and nearly \$4.4 billion that a united EC creates and the NAFTA market which can garner 360 million people and a six billion dollar market). [For the purpose of this Comment, dollar denominations refer to U.S. dollars unless otherwise indicated.] Singapore Prime Minister Goh Chock Tong argues, however, that even this smaller ASEAN market presents a more attractive alternative than disparate markets of the six member states on their own. *Id.*

6. See Paul Blustein, *Southeast Asia Joins the Bloc Party: Six Nations Figure Best Trade Defense is a Zone of Their Own*, WASH. POST, Nov. 10, 1992, at B1 (emphasizing that the Southeast Asian organization launched the trade plan in direct response to the North Americans and Europeans forming free trade areas and noting its retaliatory image).

7. See *infra* notes 35-64 and accompanying text (outlining ASEAN's lack of clear success in any of its trade programs, but highlighting ASEAN's accomplishments in ensuring peace in the volatile region).

8. Singapore Declaration of 1992, para. 2, *supra* note 1, at 499.

9. See Michael Vatikiotis, *Time for Decisions*, FAR E. ECON. REV., Jan. 16, 1992, at 23, 24 (maintaining that the Singapore Summit offered an opportunity for ASEAN to move forward in economic and security cooperation). To date, however, ASEAN has failed to demonstrate its effectiveness as an economic cooperative. *Id.*

10. See Jonathan Thatcher, *Southeast Asians Mark 25 Years Together*, REUTERS,

cohesive unit and dispel the nationalistic tendencies that may impede the success of ASEAN's goals.<sup>11</sup>

This Comment examines AFTA, the history of the organization leading to the Singapore Summit, the international economic environment that spurred its development, and the continuing interest in rearranging trade into regional groupings. Part I considers ASEAN's humble beginnings, its successes in maintaining peace and security in a war-torn region, and the general failure of ASEAN's economic projects to date. Part II assesses the factors that compelled ASEAN to form a free trade bloc. It focuses on ASEAN's fears of NAFTA and the EC and ASEAN's concerns that protectionism will eliminate its members from existing foreign markets. Part II also explains the EC's stricter approach to ASEAN and its determination to phase out the traditional "donor-recipient" relationship between the organizations. Part III analyzes the major components of AFTA and the Singapore Declaration, focusing on cooperation in intra-ASEAN trade, regional security, and dispute settlement mechanisms. Part III also explores the initial delays interfering with AFTA's development, the initial stalemate as ASEAN launched its tariff reduction plan in October 1993, and its final implementation on January 1, 1994. Part IV suggests possible repercussions of the actualization of the EC market, NAFTA, and AFTA. Part V describes other suggested avenues for increased cooperation in Asia. Finally, Part VI recommends that ASEAN establish a legal framework to support its efforts to increase regional trade and also examines the potential obstacles of certain models in creating such a formal legal structure. This Comment discusses the growing need for ASEAN to implement its newly approved AFTA and to encourage regional legal cooperation if the Association intends to make AFTA a success.

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Aug. 6, 1992, available in LEXIS, News Library, Archive File (citing one Malaysian foreign ministry official who urged that although ASEAN's political success continues, it must focus increased energy on economic issues).

11. Michael Vatikiotis, *Major Leaders Differ on Style, Agenda: Crux of the Matter*, FAR E. ECON. REV., Jan. 16, 1992, at 24; see Djisman Simandjuntak, *Building A Grand Design For the Future Through AFTA*, BUS. TIMES, Oct. 6, 1993, available in LEXIS, News Library, Bustms File (contending that ASEAN's credibility in policy making will hereafter be judged by AFTA as a test case).

## I. BACKGROUND ON AND CURRENT STATUS OF ASEAN COOPERATION: A HISTORICAL PERSPECTIVE

The Southeast Asian Foreign Ministers created ASEAN with The Association of Southeast Asian Nations Declaration (Bangkok Declaration)<sup>12</sup> in August 1967, but failed to define ASEAN's precise goals and its future role.<sup>13</sup> The founding states shared significant common concerns, including a commitment to anti-communism and anxiety about the balance of power in Southeast Asia.<sup>14</sup> The initial purpose of ASEAN was to develop a prosperous and peaceful community of Southeast Asian nations with a sense of regional identity.<sup>15</sup> The ASEAN founders designed the Bangkok Declaration on the premise that cooperation would promote the solidarity needed to encourage stability and economic achievement in the ASEAN region as well as throughout the world.<sup>16</sup>

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12. Bangkok Declaration, *supra* note 1.

13. See generally Frank Frost, *Introduction: ASEAN Since 1967—Origins, Evolution and Recent Developments*, in *ASEAN INTO THE 1990s* 1, 4-10 (Alison Broinowski ed., 1990) (outlining the historical development of ASEAN since 1967, noting the early pattern of gradual and cautious development, and highlighting the 1967 Bali Summit as a turning point in ASEAN cooperation); see also *infra* note 16 (describing the Bangkok Declaration and its stated goals).

14. See SHELDON SIMON, *THE ASEAN STATES AND REGIONAL SECURITY* 4 (1982) (noting that the member states maintain strong anti-communist views in their domestic policies, especially since all five original members have faced opposition from indigenous communist operations).

15. See MICHAEL LEIFER, *ASEAN AND THE SECURITY OF SOUTH-EAST ASIA* 1 (1989) (observing that promotion of economic, social, and cultural cooperation characterized the purported purpose of the Association while regional security actually loomed as the principal preoccupation of its founders). The argument continues that the original five members banded together in a self-protective mechanism intended to safeguard against internal threats. *Id.* Fear of domestic communist insurgency was a common concern of the ruling regimes in the ASEAN states. *Id.* These leaders believed that the external regional conflict spurred domestic instability and, therefore, joined to protect their fragile political systems. *Id.* Leifer argues that a notion of "collective internal security," particularly against threats of domestic communist insurgencies, prompted members to enter into the regional cooperation. *Id.* at 2-3.

16. The Bangkok Declaration, *supra* note 1, at 1234. The Bangkok Declaration states the goals of ASEAN as follows:

(1) to accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership . . . (2) to promote regional peace and stability through . . . respect for justice and the rule of law in the relationships among the countries of the region and within the auspices of United Na-

Unfortunately, ASEAN achieved only modest progress in its goal toward substantive cooperation during its first eight years.<sup>17</sup> Progress in the few ASEAN projects moved slowly, largely due to the need to achieve unanimous consensus of opinion before taking action, a principle known as *mushawarah*.<sup>18</sup>

#### A. THE BALI SUMMIT

The Bali Summit of 1976 signaled the first landmark ministerial meeting at which ASEAN members created practical programs affecting trade and security in the region.<sup>19</sup> Following the collapse of the non-commu-

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tions principles; (3) to promote . . . common interest in economic, cultural, technical scientific and administrative fields . . . and (4) to collaborate more effectively for greater utilization of . . . agriculture, industry, expansion of their trade.

*Id.*

17. Frost, *supra* note 13, at 5; see LAWRENCE B. KRAUSE, U.S. ECONOMIC POLICY TOWARD THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS 6-7 (1982) (proffering the benefits of ASEAN's modulated developmental style). The leaders avoided proposing grandiose projects, hoping to minimize unrealistic expectations that might pressure the countries' political structures. *Id.* Krause marvels, given the host of persisting political tensions within and among the member states, that ASEAN survived this period at all. *Id.*; see also *infra* notes 34-48 and accompanying text (outlining the major types of ASEAN projects attempted by ASEAN and the reasons why most of the prior ASEAN attempts at economic cooperation failed to reach the stated objectives).

18. See Josefina N. Soliman, *A Primer: The Association of Southeast Asian Nations*, ASEAN L. & SOC'Y J., July-Dec. 1986, 109, 121 (describing *mushawarah*, the consensus building mechanism utilized by ASEAN). Under the *mushawarah* principle all member states commit to the consensus reached by the group. *Id.* Each member approaches the process with the "mental state to agree." *Id.* In practice, however, reluctance of participants to agree on specific details indicates the pressures of nationalistic concerns. *Id.* To counter this problem, the members developed a process called the "six minus one" principle whereby ASEAN programs may proceed without a full consensus, but with only five of the nations assenting. Phua Kok Kim, *AFTA Council Finalizes List of Products For Tariff Cuts in 1994*, STRAITS TIMES, Oct. 7, 1993, available in LEXIS, News Library, Curmt File; see also SIMON, *supra* note 14, at 3 (asserting that since the members hesitate to bind themselves to one another, informal understandings may remain preferable to formal documents since the former generally prove simpler to modify when economic and security needs of the individual members dictate). The hesitation reflects the minimal level of mutual trust and lack of articulated interests shared by the members. *Id.*

19. See Dato' Paul Leong Khee Seong, *ASEAN: Choosing Our Destiny, in ASEAN AT THE CROSSROADS 5* (Noordin Sopiee et al. eds., 1987) (observing that ASEAN experienced "inertia" in the period between the founding in 1967 and the

nist regimes in Cambodia and South Vietnam in 1975, a greater sense of urgency and expanded activity replaced ASEAN's more gradual and cautious development.<sup>20</sup>

At the Bali Summit, ASEAN leaders adopted the Association's first major agreements.<sup>21</sup> The Treaty of Amity and Co-operation in Southeast Asia, signed on February 24, 1976,<sup>22</sup> established general principles for relations among ASEAN countries.<sup>23</sup> According to the Treaty, the Association's ministers agreed to strengthen economic cooperation and endorse new approaches for economic development and joint assistance.<sup>24</sup> Signed by all ASEAN members, the Treaty remained open for other Southeast Asian states to join as signatories.<sup>25</sup>

Bali Summit in 1976, and arguing that ASEAN's increased efforts in 1976 marked a strategic response to post-Vietnam War upheavals in the Indochina-ASEAN region).

20. See KRAUSE, *supra* note 17, at 6-8 (submitting that the leaders felt threatened by these developments and, therefore, responded by developing plans to strengthen cooperation in the Association). They placed the major emphasis on promoting economic development as the most reliable way of reducing internal support of revolutionary movements. *Id.*

21. See David Irvine, *Making Haste Less Slowly: ASEAN from 1975*, in UNDERSTANDING ASEAN 37, 42 (Alison Broinowski ed., 1982) (noting that the Bali Summit produced the documents which underpinned ASEAN projects in its next, more active period). The summit was significant not merely because of these resulting documents, but due to the more subtle psychological achievements. *Id.* at 50. The Bali Summit gave the Association a sense of "unity and solidarity" which prompted the notion that ASEAN finally put meaningful teeth into its decade-old lofty proposals of promoting peace through economic prosperity. *Id.* at 50-51.

22. Treaty of Amity and Co-operation, Feb. 24, 1976, Indon.-Malay.-Phil.-Sing.-Thail., reprinted in 27 I.L.M. 610.

23. See Frost, *supra* note 13, at 9 (noting that the aims of the treaty included promotion of peace, harmony, and cooperation as a means to enhance strength and unity among the states and their citizens).

24. Treaty of Amity and Co-operation in Southeast Asia, *supra* note 22, ch. III, art. 7, at 274.

25. Treaty of Amity and Co-operation in Southeast Asia, *supra* note 22, ch. III, art. 6, at 274. Article 6 provides:

The High Contracting Parties shall collaborate for the acceleration of the economic growth in the region in order to strengthen the foundation for a prosperous and peaceful community of nations in Southeast Asia . . . . In this regard, they shall continue to explore all avenues for close and essential cooperation with other States as well as international and regional organizations outside the region.

*Id.*; see *id.* at 276. ch. V, art. 18. Article 18 specifically provides: "[The treaty] shall be open for accession by other states in Southeast Asia." *Id.* at 275. ASEAN continues to encourage its Southeast Asian neighbors to sign and reasserted the invitation in

The Declaration of ASEAN Concord,<sup>26</sup> also signed at the Bali Summit, favored enhanced ASEAN efforts to increase economic activity.<sup>27</sup> The ASEAN Concord called for elevation of economic matters and cooperation to the same status as political and social issues.<sup>28</sup> The ASEAN leaders also adopted recommendations from a United Nations report<sup>29</sup> that proposed cooperation on basic commodities, such as food and energy, support for industrial projects, and promotion of intra-ASEAN trade.<sup>30</sup> The Bali Summit established the structural foundation and plans for the economic policies and projects that governed ASEAN until the recent watershed at the 1992 Singapore Summit.<sup>31</sup>

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the Singapore Declaration. Singapore Declaration, *supra* note 1, para. 3, at 499.

26. Declaration of ASEAN Concord, Feb. 24, 1976, Indon.-Malay.-Phil.-Sing.-Thail., reprinted in UNDERSTANDING ASEAN, *supra* note 21, at 278-82; see Irvine, *supra* note 21, at 49 (noting the signing of the Declaration and comparing it to the Treaty of Amity and Co-operation). Irvine argues that the Declaration of ASEAN Concord had direct and practical ramifications as it proposed a plan to foster heightened political, economic, social, and cultural cooperation and focused on plans to inaugurate preferential tariff arrangements and ASEAN joint industrial projects. *Id.*

27. Declaration of ASEAN Concord, *supra* note 26, at 278-82; see KRAUSE, *supra* note 17, at 7 (explaining that the ASEAN Concord adopted an economic program that included cooperation on basic commodities, support for industrial projects through the preferential trading arrangements, and promotion of intra-ASEAN trade generally).

28. KRAUSE, *supra* note 17, at 17.

29. See Amado Castro, *ASEAN Economic Co-operation*, in UNDERSTANDING ASEAN, *supra* note 21, at 70, 75-77 (noting that the ASEAN foreign ministers commissioned the report in 1969 hoping it would help the Association develop workable guidelines to refocus attention on economic cooperation).

30. *Id.* The U.N. report highlighted the need for increased productivity and industrialization and suggested several techniques for industrial development, including: (1) negotiating selective trade liberalization on a per item basis, with each barrier reduction designed to encourage balanced trade between the parties in products in which each has a comparative advantage; (2) creating "package deal" agreements aimed at establishing new large scale projects, particularly in industries new or foreign to the region and formulating infant tariff barriers to allow new products to become viable and eventually competitive in the new market; and (3) adopting "complementarity agreements" to encourage private enterprise in individual and related industries in the different ASEAN member states to create a system for each country to specialize in different products within that industry, and thereafter, to promote exchange of these products. *Id.* at 76-77.

31. Young Whan Kihl, *Intra-regional Conflict and the ASEAN Peace Process*, 44 INT'L J. 598, 610 (1989) (asserting that the Bali Summit spurred the subsequent restructuring of ASEAN activities including the establishment of a permanent ASEAN Secretariat in Jakarta, Indonesia). ASEAN thereafter proposed its major projects through this Secretariat. See generally Irvine, *supra* note 21, at 51 (outlining the structure and functioning of ASEAN through the Secretariat, the economic ministers,



Minimal economic progress followed the Bali Summit and the meetings of the foreign ministers.<sup>32</sup> To foster economic cooperation, ASEAN encouraged members to promote exports and avoid import substitution.<sup>33</sup> In pursuit of this goal, ASEAN implemented three major policy projects: the ASEAN Industrial Projects, "complementation schemes," and Preferential Trading Arrangements.<sup>34</sup>

### 1. ASEAN Industrial Projects

ASEAN endorsed a policy promoting the development of ASEAN Industrial Projects (AIPs).<sup>35</sup> AIPs encompass large-scale, capital-intensive ventures financed by ASEAN's member governments, who function as shareholders.<sup>36</sup> ASEAN economic leaders hoped the projects would spur domestic political support for the Association.<sup>37</sup> The policy, developed at the Bali Summit, featured high hopes for encouraging intra-ASEAN industrial integration.<sup>38</sup> Under the agreement, ASEAN members agreed

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and the array of *ad hoc* and Permanent Committees).

32. Frost, *supra* note 13, at 10. *But cf.* Irvine, *supra* note 21, at 61 (recognizing that after the Bali Summit, the ASEAN economic ministers accelerated their pace to develop working strategies from the broad policy proposals accepted in the Bali Accords). Stumbling blocks, however, manifested themselves immediately. *Id.* The ASEAN members maintained differing notions of the most appropriate ways to achieve economic cooperation. *Id.* Singapore and the Philippines aimed to encourage intra-ASEAN trade using tariff reductions. *Id.* Malaysia and Indonesia, on the other hand, hesitated over measures which could lead to opening their heavily protected developing industries to intra-ASEAN competition. *Id.*

33. See KRAUSE, *supra* note 17, at 10 (extolling the goal of regional integration as a preliminary effort toward ultimate global free trade and considering integration to be more attainable).

34. See generally KRAUSE, *supra* note 17, at 11-16 (discussing the major ASEAN economic projects); Frost, *supra* note 13, at 12-13 (analyzing the ASEAN projects and addressing the major problems of economic cooperation).

35. See BACKGROUND NOTES, *supra* note 1, at 5 (discussing the uses of industrial projects as an example of closer economic cooperation among ASEAN members).

36. BACKGROUND NOTES, *supra* note 1, at 5.

37. KRAUSE, *supra* note 17, at 11 (contending that continued support for ASEAN relies on having tangible evidence that the Association achieves economic progress). The economic leaders hoped to attract widespread attention through these industrial projects. *Id.*

38. See *id.* at 11 (explaining that ASEAN hoped to design its industrial projects large enough to achieve economies of scale, and assuming that the entire ASEAN market would be served); see also DONALD CRONE, THE ASEAN STATES: COPING WITH DEPENDENCE 43 (1983) (suggesting that the AIPs could create plants at the regional level that the individual countries could not afford alone). The import-sub-

to allocate an industrial project to each member.<sup>39</sup> It required that the host country subscribe sixty percent of the equity capital needed for the project, with the remaining forty percent supplied from the other four countries.<sup>40</sup> Of the five AIPs announced as a result of the 1976 Bali Summit,<sup>41</sup> only two of them became fully operational.<sup>42</sup> These industrial projects failed to achieve significant levels of success for two main reasons: each country preferred national industrial development, and the members wanted to export products to the broader world market.<sup>43</sup>

## 2. ASEAN Industrial Complementation Schemes

ASEAN established industrial complementation schemes as another showcase policy.<sup>44</sup> Complementation, designed to supplement the larger industrial projects, proposed that private firms in the same industry specialize in certain products and forego others to achieve greater efficiency

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stitution goal of these projects aims at increasing intra-ASEAN trade and diminishing reliance on imports of these manufactured products from other countries. *Id.*

39. See KRAUSE, *supra* note 17, at 11 (stating that the projects were granted conditionally pending feasibility studies).

40. Srikanta Chatterjee, *ASEAN Economic Co-operation in the 1980s and 1990s*, in *ASEAN INTO THE 1990S* 58, 68 (Alison Broinowski ed., 1990) (noting that each of the non-hosting members was supposed to agree to co-finance the project with 10% of the initial capital outlay and to absorb 20% of the production from the project); HANS H. INDORF & PATRICK M. MAYERCHAK, *LINKAGE OR BONDAGE: U.S. ECONOMIC RELATIONS WITH THE ASEAN REGION* 41 (1989) (indicating that a stumbling bloc in the AIPs was that many members could not make a final decision on which product to choose, or could not raise the required 60% of the original investment).

41. Young Whan Khil, *supra* note 31, at 610. The five original projects included: two urea projects in Indonesia and Malaysia; soda ash in Thailand; superphosphate fertilizer in the Philippines; and a diesel engines project in Singapore. *Id.*

42. See Chatterjee, *supra* note 40, at 68 (indicating that ASEAN abandoned the proposed projects in Singapore and Thailand, and scaled down the project in the Philippines). ASEAN still expects Singapore and Thailand to allocate new, suitable projects in the future. *Id.*

43. See KRAUSE, *supra* note 17, at 11 (underscoring that the preference margin is not immense, despite the automatic trade preferences granted from these designated projects). Another reason for limited success focuses on the notion that exporting to world markets creates better alternatives than relying on an ASEAN market, even a protected one. *Id.*

44. Basic Agreement on ASEAN Industrial Complementation, June 18, 1981, Indon.-Malay.-Phil.-Sing.-Thail., reprinted in 22 I.L.M. 1229; see CRONE, *supra* note 38, at 45 (recognizing that the industrial complementation schemes remain the least developed of the major areas of intra-ASEAN economic cooperation).

and economies of scale.<sup>45</sup> The ASEAN economic leaders chose to launch the project in the automotive industry.<sup>46</sup> Only one plan currently functions, however, and it accounts for only a small percentage of intra-ASEAN trade.<sup>47</sup> The scheme also failed to stimulate high levels of cooperation that would lend ASEAN the impetus to function as an integrated economic bloc.<sup>48</sup>

### 3. Preferential Trading Arrangements

The Association inaugurated the ASEAN Preferential Trading Arrangements (PTAs) in 1977.<sup>49</sup> PTAs provide a framework through which the Association provides discriminatory benefits favoring ASEAN products.<sup>50</sup> The PTA system consists of numerous instruments facilitating the granting of tariff preferences for legitimate ASEAN-made products, and not reexports.<sup>51</sup> The avenues originally designated for granting such

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45. KRAUSE, *supra* note 17, at 14; *see* INDORF & MAYERCHAK, *supra* note 40, at 41 (noting that the ASEAN Industrial Complementation Agreement suggests horizontal linkages between ASEAN industries aimed to take advantage of economies of scale); *see also* CRONE, *supra* note 38, at 45 (explaining that the plan should maximize the strengths of each country's manufacturing sector while minimizing "wasteful" competition). Crone contrasts these schemes with the AIPs in that the complementation program relies predominantly on the private sector for its planning and implementation. *Id.*

46. INDORF & MAYERCHAK, *supra* note 40, at 41.

47. *See* Chatterjee, *supra* note 40, at 69 (calculating that the aggregate value of intra-ASEAN trading involving the first industrial complementation project accounts for no more than one percent of total intra-ASEAN trade).

48. *See* Chatterjee, *supra* note 40, at 69-70 (assessing the stumbling blocs of industrial complementation). Lack of established goals and guidelines for negotiations over product choice, investment, and market access, hinder the process and increase bureaucratic delays. *Id.*

49. Agreement on ASEAN Preferential Trading Arrangements, initialed Feb. 16, 1977, Indon.-Malay.-Phil.-Sing.-Thail., *reprinted in* UNDERSTANDING ASEAN, *supra* note 21, at 283; *see* Irvine, *supra* note 21, at 61 (noting that in February 1976, following the Bali Summit, the ASEAN economic ministers reached an agreement on Preferential Trading Agreements (PTAs); but it was not signed until the third summit meeting held in Manila in January 1977).

50. Sahathavan Meyanathan & Ismail Haron, *ASEAN Trade Co-operation: A Survey of the Issues*, in *ASEAN AT THE CROSSROADS*, *supra* note 19, at 23 (noting that the PTA system accorded trade preference to products substantially of ASEAN origin).

51. Chatterjee, *supra* note 40, at 65-66; *see* Natalia Morales, *ASEAN Economic Cooperation: Issues and Prospects*, *ASEAN L. & SOC'Y J.*, July-Dec. 1987, at 19 (noting that progress of the preferential trading system could form the basis for ASEAN transforming into a free trade market).

preferences included: long term quantity contracts; the ability to purchase financial support at preferential interest rates; preference for government procurement; extension of tariff preferences; and the liberalization of non-tariff measures on a preferential basis.<sup>52</sup>

The PTAs focused on reducing trade barriers to basic commodities such as crude oil and rice, products of the AIPs, and merchandise promoting expansion of intra-ASEAN trade.<sup>53</sup> The PTA system, however, did little to increase total intra-ASEAN trade flows.<sup>54</sup> One commentator suggested that any possible increase in trade from the PTAs would affect only a few products, and that the limited size of tariff preferences and production constraints in the system tend to reduce the potential for increased trade.<sup>55</sup> Despite a lack of major success to date, the ASEAN

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52. Gerald Tan, *ASEAN Preferential Trading Arrangements: An Overview*, in *ASEAN AT THE CROSSROADS*, *supra* note 19, at 63.

53. The Agreement on ASEAN Preferential Trading Arrangements, Feb. 16, 1977, Indon.-Malay.-Phil.-Sing.-Thail., *reprinted in UNDERSTANDING ASEAN*, *supra* note 21, art. 2, at 284; *see also* Meyanathan & Haron, *supra* note 50, at 24 (outlining the methods adopted for liberalizing trade through exchange of tariff preferences). These methods include: (1) a voluntary approach whereby each country could volunteer a list of products for preferential treatment at each round of negotiations; (2) a matrix approach under which each country could make a specific request to get bilateral concessions from another country, which it could then grant on a multilateral basis to other members; and (3) an across-the-board approach which was adopted in 1980 and accords a twenty percent tariff reduction on all items with import trade value less than \$50,000. *Id.* The voluntary and matrix approaches were both discontinued; they were found to be overly restrictive and made successful trade liberalization impossible. *Id.* In regard to the across-the-board approach, ASEAN later reduced tariff rates more and raised import ceilings. *Id.*

54. *See* Ooi Guat Tin, *ASEAN Preferential Trading Arrangements: An Assessment in ASEAN AT THE CROSSROADS*, *supra* note 19, at 55, 57 (noting that the across-the-board tariff cuts were subject to the exclusion of "sensitive items" to protect industries of member countries producing similar items). This exclusion of sensitive items led to the PTA system's lack of success. *Id.* Tariff preferences could be suspended for several reasons: if the imports receiving preferential treatment threatened "serious injury" to domestic industries; if a member encountered problems with the balance of payments; if a country needed to limit exports to protect its internal domestic supplies of a product; and finally, if a member concluded that another member, or group of members, failed to abide by the rules of the PTA. *Id.*

55. Chatterjee, *supra* note 40, at 66; *see* Tin, *supra* note 54, at 55, 67 (speculating that the margin of preferences offered on most of the items exchanged is too low to provide ASEAN importers an incentive or a strong competitive edge over non-ASEAN importers). Tin further calculates that ASEAN cannot expect to increase intra-ASEAN trade in a significant way through the preferential tariffs because of the lack of complementarity in the ASEAN economies. *Id.*

ministers adopted the basic framework of the PTA system in the new AFTA framework.<sup>56</sup>

## B. SECURITY AND POLITICAL COOPERATION

The major achievements of ASEAN involve security and political cooperation.<sup>57</sup> ASEAN is often commended for ensuring decades of general peace in the region in spite of the threat of wars against communism that surround member states.<sup>58</sup> In 1971, ASEAN leaders signed the Zone of Peace, Freedom and Neutrality Declaration of November 27, 1971,<sup>59</sup> which endeavors to protect the peace, neutrality, and self-determination of the region.<sup>60</sup> These principles remain the primary vehicle for maintaining peace and regional security, and ASEAN continues to call for their realization today.<sup>61</sup> Indeed, the desire to sustain peace and

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56. See *infra* note 106 and accompanying text (describing the ASEAN Free Trade Agreement signed in Singapore in 1992).

57. See Kihl, *supra* note 31, at 610 (articulating that the credit for containment of intra-regional conflict in the 1980s stems largely from the resolve of the non-communist countries of ASEAN to develop and maintain a common security response to real and potential regional enemies). See generally Arnfinn Jørgensen-Dahl, *Regional Organization and Stability in the ASEAN Region*, in DURABLE STABILITY IN SOUTH-EAST ASIA 60, 64-65 (Kusuma Snitwongse & Sukhumbhand Paribatra eds., 1987) (asserting that compared within the scope of the global regional organization movement, ASEAN's economic and political performance record ranks high). Jørgensen-Dahl notes the irony that, at the time of the 1967 Bangkok Declaration, the leaders went to great lengths to avoid suggesting, at least in public, that they created ASEAN as a security bloc. *Id.* at 65. The foreign ministers' avoidance of calling ASEAN a political and security organization suggests the tenuous state of political relations in ASEAN's early years. *Id.*; see also U.S. DEP'T OF STATE, 3 U.S. DEP'T OF STATE DISPATCH 601 (Aug. 3, 1992) (noting that many problems existing at the time of ASEAN's founding still plague the region today). For example, conflicts continue in several regions. These include the conflict between Malaysia and the Philippines for control of Sabah; guerrillas of the Communist Party of Malaya which continue to strain relations between Malaysia and Thailand throughout the 1980s; and smuggling between Indonesia and Singapore also continues. *Id.* Moreover, the refugee situation in Northern Thailand, although significantly improved, still persists. *Id.*

58. See generally Kihl, *supra* note 31, at 612 (discussing intra-ASEAN conflict and concluding that despite lingering areas of contention, the determination among ASEAN members to unite and maintain a common security response against its enemies helped successfully contain these security threats).

59. Zone of Peace, Freedom and Neutrality (Kuala Lumpur Declaration), Nov. 27, 1971, Indon.-Malay.-Phil.-Sing.-Thail., reprinted in 11 I.L.M. 183.

60. *Id.* at 4.

61. See Singapore Declaration of 1992, *supra* note 1, para. 3, at 500 (reaffirming

regional stability subsumed the original intent of ASEAN to serve predominantly as an economic and cultural alliance.<sup>62</sup> The issues of regional security and continued economic growth intertwine,<sup>63</sup> however, and the 1992 Singapore Summit now confirms economic cooperation as the focus of ASEAN.<sup>64</sup>

## II. INADEQUACY OF ASEAN'S LOOSE COOPERATION: THE NEED TO DEVELOP A REGIONAL RESPONSE TO THE EC AND NAFTA

### A. ASEAN'S FEARS OF THE EC AND NAFTA

ASEAN initially exhibited concern about the 1989 United States-Canada Free Trade Agreement, wary that it might exclude ASEAN from an evolving North American trade zone.<sup>65</sup> This anxiety increased when

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that ASEAN seeks to realize ZOPFAN in consultation with friendly countries).

62. See LEIFER, *supra* note 15 (indicating that although "economic growth, social progress, and cultural development" formed the declared objectives of ASEAN, the founders mainly focused on security); see also *supra* notes 15-20 and accompanying text (explaining that initially the ASEAN leaders intentionally aimed at *not* defining ASEAN as a security bloc).

63. See generally Evelyn Colbert, *ASEAN as a Regional Organization: Economic, Politics, and Security*, in *ASEAN IN REGIONAL AND GLOBAL CONTEXT* 194, 200-01 (Karl D. Jackson et al. eds., 1986) (arguing that the promotion of regional cohesion will allow the ASEAN countries to pursue economic growth). Colbert contends that growth-supported economic and social improvements can both reduce causes of contention and strengthen national cohesion. *Id.*; see also INDORF & MAYERCHAK, *supra* note 40, at 17 (1989) (promoting the view of ASEAN as a "cocoon" sheltering the members from external interference and disturbance, thereby permitting the members to concentrate on national growth). In this view, regional cooperation serves as necessary factor in the pursuit of national development. *Id.* Indorf and Mayerchak conclude that ASEAN likely promotes a reciprocal process of benefit between the group as a whole and the members individually. *Id.*

64. See, e.g., Vatikiotis, *supra* note 9, at 24 (suggesting that the Singapore Summit created the necessary opportunity for ASEAN to accelerate towards attaining both of its chief goals: economic cooperation and acting "as a fulcrum for security in Southeast Asia"); see Vatikiotis, *supra* note 5, at 10 (articulating that Thai Prime Minister, Anand Panyarachun, boasted that after the Singapore Summit ASEAN's "enlarged vision" focuses on economic concerns). The summit's main achievement was the adoption of AFTA, aimed at increasing economic cooperation. *Id.*

65. See Keith A. Hay, *ASEAN and the Shifting Tides of Economic Power at the End of the 1980s*, 24 INT'L J. 640, 651 (1989) (asserting that ASEAN perceived the commencement of the United States-Canada Free Trade Agreement as a development that might potentially exclude ASEAN from an evolving North American trade zone).

discussion of a trade pact expanded to include Mexico.<sup>66</sup> ASEAN began to fear the possibility of being forced into heightened reliance on an Asian regional trading bloc if free trade within the EC and NAFTA limited ASEAN's access to European and North American markets.<sup>67</sup> Threat of growing protectionism continues to pervade the current world economic order, which, in turn, spurs the creation of the trading blocs as a means to both act and react.<sup>68</sup>

Consequently, leaders of ASEAN countries perceived the need for stronger ASEAN cooperation.<sup>69</sup> For example, Singapore's Prime Minis-

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66. See Susumu Awanohara et al., *New Kid on the Bloc*, FAR E. ECON. REV., Aug. 27, 1992, at 50 (observing the general feelings of uneasiness in Asia, based in fear that the United States will turn to low-wage Mexico as a primary source of imports and as a chief recipient of investments to the detriment of ASEAN industries). This anxiety may spur a more expansive Asian trade bloc in response. *Id.*; cf. Freddie Balfour, *Mexican Stand-off: Asian Companies Remain Cold on Free-trade Pact*, FAR E. ECON. REV., July 30, 1992, at 54 (stating that Mexico's high hopes for attracting Asian investment, upon the implementation of NAFTA, may fail to reach fruition). Mexico forecasted Asian investors rushing to take advantage of low-cost projects in Mexico and to enjoy duty-free access to U.S. and Canadian markets. *Id.* Yet, the Asian investors responded reticently and cautiously. *Id.*

67. See Mark Magnier, *Adversity May Push ASEAN to Accelerate Free-Trade Area*, J. COM., Feb. 25, 1992, at 4A (speculating about the pressures that could make ASEAN surge forward in its free trade area). These potential stresses include: the progress of common markets in North America and Europe; competition for investment capital from Mexico and Eastern Europe; and the region's own desire to sustain its strong economic growth. *Id.*; see also PM to ASEAN: *Forge Closer Economic Links*, STRAITS TIMES, Oct. 8, 1993, at 1, available in LEXIS, News Library, Currnt File (recounting Singapore Prime Minister Goh Chock Tong's urging that ASEAN members must intensify their economic collaboration and secure the interest of developed countries in the region as a means of combatting Western protectionism). The Prime Minister argued against ASEAN creating a protectionist bloc of its own, warning that ASEAN must maintain its links to the rest of the world to avoid atrophying in the region's own economies. *Id.*

68. See Nigel Holloway, *Across the Divide*, FAR E. ECON. REV., Sept. 10, 1992, at 74 (reasoning that both protectionism and free trade are "contagious"). Holloway argues that when one country grants preferential access to another's market, other trading partners fear they will be shut out. Then, they think the way to avoid such limited access is to try to join the free trade club and to lower barriers on other members' goods. *Id.*

69. *Fortress Asia?*, ECONOMIST, Oct. 24, 1992, at 35. The Malaysian Prime Minister, Mahatir Mohamad, who historically condemned the negative effects of trade blocs, responded to the recent explosion of trade blocs, stating: "A fortress Europe, a fortress America and a fortress East Asia will be calamitous for us all . . . [But], [i]f we don't hang together economically we will all hang separately." *Id.*; see also Mark Magnier, *Singapore to Host Economic Group Struggling With Free Trade in*

ter Goh Chok Tong announced that the EC and NAFTA now define ASEAN's operating environment, and unless ASEAN can match these competitors as a base for investment and as a market for their products, multinational corporations may divert foreign investment from the region.<sup>70</sup>

Four main factors drove ASEAN's compulsion to form AFTA. First, ASEAN feared that it would become an outsider in a world increasingly divided into trading blocs.<sup>71</sup> Second, ASEAN sensed a need for its own protective mechanism against an increasingly protectionist world, especially given the possibility that the General Agreement on Tariffs and Trade (GATT) might collapse.<sup>72</sup> The ASEAN members continued to

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*Asia*, J. COM., Sept. 15, 1992, at 5A (quoting outgoing Thai Prime Minister Anand Panyarachun who urged the need for ASEAN to expedite establishment of AFTA). Panyarachun suggests AFTA's benefits will include: increasing ASEAN's bargaining power in global trade; elevating the volume of intra-regional trade; and attracting foreign investment. *Id.*

70. Raphael Pura & Masayoshi Kanabayashi, *Watching and Waiting: Asian Nations Hope NAFTA Isn't a Sign of Rising Trade Barriers.*, WALL ST. J., Sept. 24, 1992, at R20.

71. Mark Magnier, *Free Trade: Can ASEAN Stay the Course?: Pact's Success May Lie in Perception of Economic Threat*, J. COM., Mar. 20, 1992, at 6A; see also Hay, *supra* note 65, at 647 (suggesting that to encourage continued economic progress, the ASEAN states must fight to attain and preserve access in the EC, North America and the dominant East Asian economies).

72. See *Global Economic Cooperation at a Crossroads*, SAN FRAN. BUS. MAG., Sept. 1992, at 14 (noting GATT's then uncertain future, citing the overdue deadlines and the stalled negotiations of which experts foresaw possibilities of "full collapse" of the process). Walter Hoadley, a former executive vice president and chief economist at Bank of America and current senior research fellow at the Hoover Institute, argued that without GATT to judge and oversee fair trade, regional trade agreements may grow more discriminatory and inimical. *Id.*

After the successful completion of the Uruguay Round on Dec. 15, 1993, the ASEAN leaders continued to argue that GATT spurs ASEAN to accelerate the AFTA project. Phua Kok Kim, *AFTA May Have to Speed Reform in Wake of GATT Agreement*, Says Dhana, STRAITS TIMES, Dec. 17, 1993, available in LEXIS, News Library, Currnt File. Singapore's Minister for Trade and Industry, Mr. S. Dhanabalan, maintained that reduction of most-favored-nation (MFN) duties under the Uruguay Round will make AFTA's preferential tariffs less effective. *Id.* He contended that ASEAN must accelerate tariff reductions under the AFTA Common Effective Preferential Tariffs (CEPT) scheme, otherwise tariffs within ASEAN would not be substantially lower than the MFN duties, and AFTA would therefore lack a preferential arrangement to attract investment and trade. *Id.*; see *infra* notes 105-120 and accompanying text (discussing the CEPT scheme which embodies the key to economic reform through tariff reductions in AFTA). See also *Thailand, Singapore Urge Faster Imple-*



promote the expected benefits of a collective voice, advancing that the Association, comprised of six member states, carries more persuasive weight than each country carries individually.<sup>73</sup> Third, members desperately hoped to maintain the explosive growth rates the region experienced in the late 1980s.<sup>74</sup> ASEAN members hoped increased trade liberalization through Common Preferential Tariffs<sup>75</sup> might sustain the

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*mentation of ASEAN Trade Zone*, U.P.I., Dec. 27, 1993, available in LEXIS, News Library, UPI File (highlighting Thailand Prime Minister Chuan Leekpai's argument that AFTA shall serve as the primary mechanism by which ASEAN states can optimize the benefits of the Uruguay Round).

73. ACM Siddhi Savetsila, Opening Statement by the Foreign Minister of the Kingdom of Thailand at the Twentieth ASEAN Ministerial Meeting (June 15, 1987), in *STATEMENTS BY THE ASEAN FOREIGN MINISTERS AT ASEAN MINISTERIAL MEETINGS 1967-1987* 565 (ASEAN Secretariat ed., 1987). For example, the Foreign Minister of Thailand, Siddhi Savetsila, noted the desirability and need for heightened unity and remarked that ASEAN's continued vitality is contingent upon effective economic cooperation. *Id.* He stressed that the strength of a collective market of six countries is infinitely greater than that of six disparate markets. *Id.* More recently, Singapore's second Foreign Minister, BG George Yeo, advised that a strong ASEAN would enable the organization to treat the "big powers" such as the United States, Japan, China, and the EC, on a fair and equitable basis. *BG Yeo: ASEAN Should Broaden Base to Be Ready for Upheavals*, STRAITS TIMES, Dec. 8, 1993, at 1, available in LEXIS, News Library, Currnt File. BG Yeo perceived ASEAN being "wooded" by the major powers in the wake of the Asia-Pacific Economic Cooperation forum and the impending completion of the Uruguay Round. He urged that "a united [ASEAN] enables us to extract better terms for ourselves." *Id.*

74. See Magnier, *supra* note 71 at 6A (noting that the region grew by an average of eight percent annually throughout the 1980s, spurred on by massive foreign investment, abundant natural resources and low labor costs); see also Hay, *supra* note 65, at 648 (indicating that Singapore and Thailand have particular concerns stemming from their economic success). The United States graduated Singapore from the general system of preferences (GSP) and as a result lost tariff benefits for a host of its products. *Id.* Thailand also had some GSP privileges curtailed due to a dispute over intellectual property rights. *Id.*

Despite ASEAN's concerns about maintaining growth, recent figures indicate that the ASEAN economies are expected to increase their growth rate in 1994 at an estimated 7.2%, up from an estimated 6.7% in 1993. *ASEAN Economies Expected to Grow at 7.2 Percent*, AGENCE FRANCE PRESSE, Oct. 29, 1993, available in LEXIS, News Library, Currnt File. This rate maintains ASEAN as the fastest growing region in the world with only a 2.3% projected growth rate for the industrialized countries, approximately 5.4% for the developing countries. *Id.* Inflation in ASEAN, however, could revert to the 1992 average of approximately 6.2%. *Id.*

75. See *infra* notes 105-120 and accompanying text (explaining the CEPT scheme as an integral mechanism of AFTA).

Association's progress.<sup>76</sup> Furthermore, the ASEAN members began to worry that their markets might begin to look less attractive in the eyes of foreign investors.<sup>77</sup>

### B. THE NAFTA CONCERN

For Southeast Asia, preliminary indications confirmed ASEAN's worst fears about NAFTA.<sup>78</sup> ASEAN feared that the United States would use Mexico<sup>79</sup> as a principal import source and a major recipient of U.S. investment.<sup>80</sup> The pressures raised by NAFTA began to spur Asian countries into creating countervailing blocs.<sup>81</sup> The ASEAN leaders viewed the establishment of NAFTA as a reason to pursue AFTA more aggressively.<sup>82</sup> For example, the Philippine government suggested that NAFTA should spur ASEAN to increase its efforts to establish a free trade area.<sup>83</sup> Malaysia, on the other hand, along with Japan, the Asian

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76. Magnier, *supra* note 71, at 6A.

77. See Pura & Kanabayashi, *supra* note 70, at R20 (suggesting that the once booming ASEAN economies fear that NAFTA will attract foreign investment that the ASEAN members would otherwise garner, as companies flock to Mexico to exploit the North American market).

78. See *Southeast Asia Expects Exports To Suffer After NAFTA*, J. COM., Nov. 24, 1992, at 2A (intimating that the prospect of NAFTA "sent a \$2 billion shiver throughout Southeast Asia"). Asian investment analyst, Patrick Lim, speculated that ASEAN member nations will suffer losses of at least \$2 billion in export earnings. *Id.* Lim also estimated that Malaysia alone would suffer \$396 million in direct export losses, particularly in the clothing and semiconductor sectors. *Id.*

79. See Michael Richardson, *Can ASEAN Meet the EC Challenge?*, INT'L HERALD TRIB., Jan. 21, 1992, available in LEXIS, News Library, Curmt File (noting that the low-cost labor, as well as better strategic access to the North American market, could hinder the ASEAN economies' attempts to attract export-oriented investments).

80. Awanohara, *supra* note 66, at 51. World Bank economist Alexander Yeats forecasted that Asian manufacturers of labor-intensive products, such as footwear, toys, and textiles, would suffer export losses up to \$400 million annually. *Id.* Those figures contrast starkly with anticipated losses of only \$10 million for other non-ASEAN exporters of the same products. *Id.*

81. See *infra* notes 200-238 and accompanying text (evaluating alternative proposals for free trade arrangements in ASEAN, particularly the Asia-Pacific Economic Cooperation (APEC), a mechanism currently hailed by most as a potential counter-measure to NAFTA).

82. See *supra* notes 64, 69, and 73 and accompanying text (offering the views of several ASEAN leaders regarding the need for increased ASEAN cooperation in light of NAFTA).

83. See *Asian Nations Fear Reduced Exports to North America*, BANGKOK POST, Aug. 14, 1992, at 21 (quoting Philippines' Finance Secretary Ramon del Rosario's

Newly Industrialized Countries (NICs), China, and ASEAN espoused and continue to argue more insistently for the East Asian Economic Caucus and the Asia Pacific Economic Cooperation.<sup>84</sup>

One of the Asian exporters' crucial concerns about NAFTA focused on how strictly the North American partners intended to impose "rules of origin" restrictions under which goods will qualify for duty-free admittance to the North American market.<sup>85</sup> ASEAN-based skeptics viewed protectionist pressures in the United States<sup>86</sup> as directed at the Asian countries' export-oriented manufacturing sectors, including textiles, automobiles and electronics.<sup>87</sup> Speculation abounded on the potential negative effects on ASEAN's overseas markets.<sup>88</sup>

ASEAN members anticipated that Mexico would hinder and usurp a high proportion of their export market in the United States.<sup>89</sup> For ex-

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contention that NAFTA gives the Philippines and its associates greater reason to "push forward" with AFTA).

After the establishment of AFTA and the passage of NAFTA in the U.S. Congress, Singapore and Thailand again began to voice strong appeals to expedite the AFTA plan. See Loh Hui Yin, *Singapore, Bangkok Exploring Ways To Enhance Bilateral Trade*, BUS. TIMES, Dec. 29, 1993, at 2, available in LEXIS, News Library, Currnt File (noting that the Prime Ministers of Singapore and Thailand agreed that ASEAN should accelerate implementation of AFTA to a closer goal date than the proposed date of fifteen years outlined in the Singapore Declaration).

84. See *infra* notes 202-240 and accompanying text (discussing alternative frameworks for free trade agreements among ASEAN nations).

85. Awanohara, *supra* note 66, at 51 (noting that the NAFTA agreement calls for strong rules of origin to prevent "free riders" from using Mexico as a back-door to the broader North American market). Generally, only those items produced in North America in accordance with NAFTA's highly restrictive rules of origin requirements will benefit from the NAFTA agreement. See Chwee Huay Ow-Taylor, *Facing the Challenge From NAFTA*, BUS. TIMES, Jul. 28, 1993, at 23, available in LEXIS, NEWS Library, Allnws File (offering the passenger motor vehicles percentage and the "yarn forward" rule as examples of the strict rules of origin requirements in NAFTA that may cause trade diversion away from East Asia).

86. See Michael Di Cicco, *Internal Strains Imperil ASEAN Bid to Create Regional Free-Trade Area*, J. COM., Oct. 20, 1992, at 5A (quoting Malaysian Prime Minister Mahatir's attack on NAFTA as a clearly protectionist group that will discriminate against non-NAFTA members).

87. Awanohara, *supra* note 66, at 50.

88. See Awanohara *supra* note 66, at 51 (noting the gloomy prospects of export displacement reaching \$400 million per year in certain sensitive and highly protected sectors); see also *Fortress Asia?*, ECONOMIST, *supra* note 69, at 35 (citing a University of Hawaii study which suggests that four percent of Asian trade with North America could be lost as a result of NAFTA).

89. Awanohara, *supra* note 66, at 51; see Gene Linn, *ASEAN Exporters Fear*

ample, thirty-eight percent of Mexican exports to the United States, totaling \$31 billion in 1991, consisted of motor vehicles and parts and electronic goods.<sup>90</sup> These same categories constituted fifty-six percent of Malaysia's exports to the United States.<sup>91</sup> Recently, Philippine businesses have become acutely aware that they too have much to lose to Mexico due to NAFTA.<sup>92</sup> NAFTA could easily provide Mexico, with its abundant and cheap labor, easier access to the North American markets and investments from U.S. industries; because of NAFTA, Mexico remains a continuous threat to ASEAN, rather than an opportunity for ASEAN industries to penetrate markets in Mexico, the United States, and Canada.<sup>93</sup>

Some commentators raised the specter of a world divided into powerful common interest blocs in response to such threats.<sup>94</sup> At the time, ASEAN foresaw protectionism as the most negative side effect of such regional groupings, threatening to impede ASEAN growth and progress.<sup>95</sup>

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*NAFTA Will Hurt Sales*, J. COM., April 7, 1992, at 4A (recognizing that Singapore is the only ASEAN partner realistically considering investment in Mexico). Robert Broadfoot, managing director of Political & Economic Risk Consultancy, Ltd. in Hong Kong, holds that the other ASEAN members will not flock to invest in Mexico. *Id.* For other ASEAN economies that lack investment resources which Singapore could exploit, Mexico does not present viable opportunities. *Id.* Mexico now looms as a bolstered roadblock to the North American markets which ASEAN members seek. *Id.*; see also Balfour, *supra* note 66 (noting Mexico's high hopes of attracting Asian investment).

90. Awanohara, *supra* note 66, at 51.

91. Awanohara, *supra* note 66, at 51.

92. See Ramon Isberto, *Trade: Asia Fears Emergence of Giant American Trade Bloc*, INTER PRESS SERVICE, Dec. 14, 1993, available in LEXIS, News Library, Curmt File (noting that for nearly every trade product exported to the United States, Mexico directly competes with the Philippines). These businesses also argued that NAFTA will intensify the trade advantages Mexico already enjoys. *Id.*

93. See Ow-Taylor, *supra* note 85 (citing low wages in Mexico, among other factors inducing Canadian and U.S. investments away from East Asia to relocate in Mexico). The other factors in this trend include removal of nontrade barriers. Examples of nontrade barriers include: investment barriers; countervailing and antidumping duties; quantitative limitations; and performance standards. *Id.*; see Linn, *supra* note 89 (noting that only Singapore is looking to invest in Mexico).

94. Cf. Seong, *supra* note 19, at 7 (promoting the notion that the global economy, consolidating under stress, requires ASEAN to face the challenge of the politics of market protectionism and to scramble for control of international market cliques).

95. Lim Soon Neo, *Kan Seng Fears Barriers if Trade Talks Fail*, BUS. TIMES, Oct. 17, 1992, available in LEXIS, News Library, Curmt File (noting Singapore's new Foreign Affairs Minister Wong Kan Seng's view that the regional groupings can

### C. THE EC'S STRICTER APPROACH TO ASEAN

Meanwhile, as ASEAN worried about the Association's stature amid world trading powers, the EC began changing its approach to ASEAN from a paternalistic relationship to one of equal standing in the world economy.<sup>96</sup> Commentators noted the EC's intention to treat ASEAN as a full-fledged, economically vibrant bloc, rather than as a stalwart group of non-communist developing countries in need of constant support.<sup>97</sup> The EC's determination that ASEAN should adopt Western-style respect for human rights<sup>98</sup> and open its markets evinced this change.<sup>99</sup>

### III. HIGHLIGHTS OF AFTA AND THE SINGAPORE DECLARATION

As the pressures of other regional trade blocs weighed heavily on the ASEAN foreign ministers at the Singapore Summit in 1992, they heralded new initiatives in the Association's struggle for heightened regional cooperation.<sup>100</sup> The ministers concluded the summit by promising

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move in two possible directions: one protectionist and one liberalizing). Under the protectionist approach, the regional blocs could turn inward by putting up trade barriers to protect their members' or domestic markets. *Id.* This approach inevitably damages the global trading system and promotes further dispersion into blocs. *Id.* Under the liberalizing approach, the regional groups would use their economic influence to promote global free trade. *Id.* The latter approach may merge the North American, European, and Asian blocs into a more cohesive global system. *Id.*

96. See generally ECONOMIC AND SOCIAL COMMITTEE, EC, RELATIONS BETWEEN THE EUROPEAN COMMUNITY AND THE MEMBER STATES OF THE ASSOCIATION OF SOUTH-EAST ASIAN NATIONS 4-10 (Herbert Nierhaus & Alma Williams eds., 1986) [hereinafter RELATIONS BETWEEN THE EC AND ASEAN] (commenting generally on EC-ASEAN relations and suggesting possibilities and requirements for continued intensive cooperation between ASEAN and the EC). The committee couched these requirements in very direct, pointed terms. For example, in the area of EC-ASEAN investment, the committee stated that ASEAN must: make national supply structures complementary; remove restrictions to market access within ASEAN; and promote economic development in all ASEAN countries. *Id.*

97. Rodney Tasker, *Facing Up To Security*, FAR E. ECON. REV., Aug. 6, 1992, at 8.

98. *Id.*; see *infra* notes 198-201 and accompanying text (discussing the EC's human rights concerns).

99. Tasker, *supra* note 97, at 8.

100. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, at 508. The agreement itself recognizes the complexities of the "new world order" and the need to heighten cooperation. The preamble states that ASEAN seeks

significant improvements in political and economic cooperation.<sup>101</sup> The summit leaders adopted a series of measures designed to move ASEAN toward an agreement binding the members to closer economic cooperation, most importantly, through a commitment to establish AFTA within fifteen years.<sup>102</sup> The Singapore Declaration of 1992 and the accompanying Framework Agreement on Enhancing Economic Cooperation,<sup>103</sup> however, contain sweeping goals with only limited details.<sup>104</sup>

#### A. COOPERATION IN TRADE

The Singapore Declaration implements the Common Effective Preferential Tariff (CEPT) scheme<sup>105</sup> as the principal mechanism for establishing AFTA.<sup>106</sup> The three major objectives of the CEPT scheme focus on increasing intra-ASEAN trade through accelerated tariff reductions; attracting foreign investment in ASEAN; and increasing the efficiency and competitiveness of the manufacturing sectors.<sup>107</sup> The key

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to enhance intra-ASEAN economic cooperation to sustain the economic growth and development of all member states, which, in turn, bolsters the stability and prosperity of the region. *Id.* at 507.

101. See Vatikiotis, *supra* note 5, at 10 (advancing the proposition that the summit reflected ASEAN's need to boost the image and morale of the Association and its member states, and calling the Singapore Summit a watershed period, equating it to the Bali Summit in 1976); see also *supra* notes 19-35 and accompanying text (outlining the history and importance of the Bali Summit for the Association).

102. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, art. 2, para. 1, at 508.

103. Singapore Declaration, *supra* note 1, at 499.

104. See Mark Magnier, *ASEAN Concludes Summit with Pact to Start Free-Trade Plan by 2008*, J. COM., Jan. 29, 1992, at 5A (noting that on the one hand, the steps taken represent a major change for the organization which historically focused on politics and security, while on the other hand, recognizing that the AFTA plan has a loose structure and several large loopholes, particularly the exclusion of "sensitive" items).

105. Agreement on the Common Effective Preferential Tariff (CEPT) scheme for the ASEAN Free Trade Area (AFTA), Brunei-Indo.-Malay.-Phil.-Sing.-Thail., Jan. 28, 1992, reprinted in 31 I.L.M. 513 [hereinafter CEPT Scheme].

106. Singapore Declaration, *supra* note 1, para. 5, at 501. The Singapore Declaration states: "ASEAN shall establish the ASEAN Free Trade Area using the Common Effective Preferential Tariff (CEPT) Scheme as the main mechanism within a time frame of 15 years beginning January 1, 1993." *Id.* See generally Peter Kenevan & Andrew Winden, *Flexible Free Trade: The ASEAN Free Trade Area*, 34 HARV. INT'L L. J. 224 (1993) (examining the mechanisms of the AFTA plan).

107. ASEAN Launches Product List for Tariff Reductions, XINHUA GEN NEWS SERV., Oct. 31, 1993, available in LEXIS, News Library, Currnt File.

provision of AFTA is the reduction of intra-ASEAN tariffs on all manufactured goods to a maximum of five percent by January 1, 2008, thus integrating ASEAN's domestic markets.<sup>108</sup> AFTA instructs each ASEAN member to assemble a list of products subject to tariff reductions and initially identified fifteen groups of products for inclusion in the agreement.<sup>109</sup> The initial trade agreement scheduled the implementation of the plan for January 1, 1993, and included a list of "fast-track" tariff liberalizations.<sup>110</sup>

In early attempts to implement the plan, ASEAN economic ministers met in October 1992, to consider the tariff programs.<sup>111</sup> Problems plagued this pivotal, post-Singapore Declaration economic ministers' meeting and led critics of AFTA to predict a bleak future for the Agreement's success in promoting heightened regional cooperation.<sup>112</sup>

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108. See CEPT Scheme, *supra* note 105, art. 3, at 517 (delineating coverage at the agreement to apply to manufactured goods, capital goods, and processed agricultural goods). The plan specifically excluded non-processed agricultural products. *Id.* Pura & Kanabayashi, *supra* note 70, at R20 (recognizing the larger aim of AFTA as luring potential investors to a bigger, more open, ASEAN market).

109. CEPT Scheme, *supra* note 105, at 513. The fifteen groups of products recognized for tariff reductions include: vegetable oils, cement, chemicals, pharmaceuticals, fertilizer, plastics, rubber products, leather products, pulp, textiles, ceramic and glass products, gems and jewelry, copper cathodes, electronics, and wooden and rattan furniture. Singapore Declaration, *supra* note 1, at 501.

110. Singapore Declaration, *supra* note 1, at 501. Magnier, *supra* note 69, at 5A (noting, however, that the members did disagree over which products to grant fast-track tariff reduction, prompting critics to charge that the members lack the political will to make the plan viable); see *infra* note 165 (explaining AFTA's fast-track tariff reduction plan). In fact, only Singapore actually proceeded with its scheduled cuts in January 1993. Hiroaki Kanazawa, *Anxious ASEAN Industries Ponder Life After AFTA*, NIKKEI WEEKLY, Mar. 14, 1994, at 20.

111. *ASEAN States Each Name 2,000 Items for Tariff Cuts* (Kyodo News Service), JAPAN ECON. NEWSWIRE, Oct. 21, 1992, available in LEXIS, News Library, Currnt File (discussing the list of items offered to reduce tariffs, which include items designated for the regular and accelerated tariff reduction list, submitted for the ASEAN economic ministers, meeting held in Kuala Lumpur, Malaysia). The designated product tariff cuts formed the proposed CEPT scheme, the first phase of implementation on AFTA. *Id.*

112. See *Malaysia Hits Thailand for Delay in AFTA Creation* (Kyodo News Service), JAPAN ECON. NEWSWIRE, Oct. 22, 1992, available in LEXIS, News Library, Currnt File (focusing on the contention surrounding Thailand's stalling in producing its list for tariff reductions before the economic ministers' meeting in Kuala Lumpur). Malaysia's trade minister, Rafidah Aziz, attacked Thailand for the delay, arguing that ASEAN could not let AFTA fail in infancy merely by allowing bureaucratic constraints to impede AFTA's start. *Id.*; see also Mark Magnier, *ASEAN Nations Detail*

The CEPT scheme and the PTAs promote the AFTA goal of eliminating or reducing non-tariff barriers to trade among the ASEAN countries.<sup>113</sup> For the purposes of trade among ASEAN countries, the CEPT scheme deems a product as originating from ASEAN if at least forty percent of its content originates from any member state. If this requirement is met, these products receive preferential tariff treatment.<sup>114</sup> The original plan intended for a second round of tariff reductions to bring levels down to twenty percent or less over five to eight years.<sup>115</sup>

According to the original CEPT scheme's objectives, the economic leaders planned to review tariff levels after eight years to determine the final exclusion list or any amendments to AFTA.<sup>116</sup> Despite other conflicts, the economic ministers proposed accelerating this timetable,

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*Products To Be Excluded From Accord; Lengthy List Sparks Skepticism*, J. COM., Dec. 24, 1992, at 3A (advancing that the members' attempts to exclude over 3,600 products from the tariff cuts also fuel the criticism); *infra* notes 147-166 (discussing the initial delays and the recent push to revive AFTA through the final CEPT list, implemented in January 1994).

113. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, at 509; see Kenevan & Winden, *supra* note 106, at 225, 230 (observing that although the designers of AFTA consider the PTAs the original building block of the new CEPT scheme, significant distinctions remain between the two systems). Characterized by its flexible provisions, particularly its exclusion lists, the PTAs resulted in far reaching abuse of these exclusions, which relegated the PTAs to near absurdity, offering free trade in goods nonessential in Southeast Asia, such as snow plows. *Id.* at 225. The PTAs made ambiguous provisions for widespread tariff reductions; it basically provided only a mechanism by which member countries could "offer" tariff reductions on a limited number of fixed products. *Id.* at 230. The broader CEPT scheme affords universal tariff reductions on all manufactured products, except for each country's list of specifically enumerated exclusions. *Id.* Even with these items, only the listing country may exclude them from tariff reduction. *Id.*

114. CEPT Scheme, *supra* note 105, at 514. The rules of origin adopted in the CEPT scheme broaden the range of goods which the agreement covers and are expected to encourage foreign investment. Kenevan & Winden, *supra* note 106, at 227. By lowering the domestic content requirement to forty percent of the content made in ASEAN, with twenty-five percent of the content being manufactured in the last exporting country and the remaining fifteen percent manufactured by any other ASEAN country, these guidelines should foster foreign investment in ASEAN by allowing producers with a significant portion of their manufacturing base outside ASEAN to access the preferential tariffs. *Id.* Therefore, the rules of origin provisions both encourage intra-ASEAN free trade and present ASEAN as a serious alternative to stationing production in other industrialized areas. *Id.*

115. Magnier, *supra* note 104, at 5A.

116. See CEPT Scheme, *supra* note 105, at 516 (outlining the general provisions of AFTA and the CEPT scheme).



agreeing to cut tariffs between zero and five percent within five to seven years for products on the accelerated list.<sup>117</sup> The ministers decided that the ASEAN PTAs or other established mechanisms should cover the vast array of products not governed by the CEPT scheme.<sup>118</sup> The plan also provided a mechanism and incentive for better positioned members to forge ahead in tariff reduction through a "show-off" policy.<sup>119</sup> The ASEAN members further pledged to explore other trade-enhancing agendas, including harmonized standards, unified testing procedures, product certification, fair competition guidelines, expansion of venture capital, and an end to foreign investment barriers.<sup>120</sup>

#### B. OTHER ECONOMIC HIGHLIGHTS OF THE SINGAPORE SUMMIT

Regarding cooperation in industry, the Singapore Declaration not only expresses the Association's desire to increase industrial linkages and make intra-ASEAN products more complementary by adopting innovative measures, it also urges strengthening existing arrangements.<sup>121</sup> The AFTA framework encourages members to increase cooperation in energy planning, information exchange, technology transfer, research and development, conservation and efficiency, and the search for supplies of energy resources.<sup>122</sup> AFTA members also agreed to promote cooperation in capital markets and to encourage free movement of capital and other financial resources.<sup>123</sup> In conjunction with these goals, the AFTA

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117. See *ASEAN States Each Name 2,000 Items For Tariff Cuts*, *supra* note 111 (recognizing that while the economic leaders argued over delays at the Kuala Lumpur meeting in October 1992, in an unusual step for ASEAN, they also agreed to hasten plans to reduce certain tariffs).

118. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, art. 2, para. 3, at 509; see *supra* notes 49-56 (describing the ASEAN PTA system).

119. Kenevan & Winden, *supra* note 106, at 233. The agreement allows advanced countries to accelerate the tariff reduction process, creating a "club within a club" which other members aspire to join. *Id.* The Singapore Declaration's list of fifteen products slated for fast-track reductions constitute a collective "show-off" effort. *Id.*

120. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, pmbl., art. 2, at 504, 507-10; See Magnier, *supra* note 104, at 5A (noting that the ASEAN members also agreed to eliminate other non-tariff barriers within five years of tariff reduction, listing other means to promote intra-ASEAN trade).

121. Singapore Declaration, *supra* note 1, at 501.

122. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, at 509.

123. See Singapore Declaration, *supra* note 1, at 501 (listing capital exchange among the measures "directed towards sustaining ASEAN economic growth and devel-

framework calls for liberalized use of ASEAN currencies in trade and investment<sup>124</sup> consistent with the respective national laws, monetary controls, and development objectives.<sup>125</sup>

Within the AFTA framework, the members recognized other organizations aimed at promoting regional growth and development both within ASEAN and between ASEAN and non-member states.<sup>126</sup> ASEAN acknowledged the importance of strengthening cooperation with other countries as well as with other regional trade groupings.<sup>127</sup> Through the Singapore Declaration, ASEAN reasserted the need for the world trading community to reach an agreement under GATT and vowed to uphold the principles of free and open trade.<sup>128</sup> This continued focus on GATT expressed diminishing faith in the Uruguay Round at the time; even upon the successful completion of the Uruguay Round in December 1993, ASEAN continued to call for reliance and focus on GATT.<sup>129</sup>

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opment which are essential to the stability and prosperity of the region").

124. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, at 509.

125. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, at 509; see Ho Kay Tat, *Southeast Asian Nations Urged To Harmonize Monetary Policies*, J. COM., July 21, 1993, at 5A (highlighting the speculated benefits of a unified monetary policy, including encouragement of intra-ASEAN trade and investment and promotion of stability, but recognizing that national interests may scuttle such attempts). Analysts recommend several approaches to harmonizing monetary policy. These include: allowing banks to open branches in each ASEAN member country; encouraging free flow of capital; and enhancing the mechanisms for listing products on stock exchanges and for marketing government bonds. *Id.*

126. See Singapore Declaration, *supra* note 1, at 502 (recognizing the importance of the Asia-Pacific Economic Cooperation (APEC) and an East Asia Economic Caucus (EAEC)); see also *infra* notes 200-228 and accompanying text (explaining the goals and likelihood of success of the APEC and EAEC proposals).

127. Singapore Declaration, *supra* note 1, at 502. The drafters of the agreement define significantly different scopes of importance to the two agreements, recognizing the wider reach of the proposed EAEC plan. *Id.* The text states that EAEC "could contribute to expanding cooperation among the region's economies, and the promotion of an open and free global trading system." *Id.*; see also *infra* notes 200-238 and accompanying text (defining and explaining the other possible regional frameworks within which to foster greater Asian cooperation). The Singapore Declaration focused on its recognition of the central role of the United Nations and pledged to participate actively in efforts to ensure that the United Nations is a key instrument for maintaining international peace and security. Singapore Declaration, *supra*.

128. Singapore Declaration, *supra* note 1, at 503.

129. Singapore Declaration, *supra* note 1, at 503; see Joseph P. Quinlan, *Trading Blocs Are Taking Over*, J. COM., Apr. 6, 1992, at 10A (asserting that a successful conclusion to the GATT talks could temper the increasing numbers of trading blocs

C. REGIONAL SECURITY DEVELOPMENTS OF THE  
JANUARY 1992 SINGAPORE SUMMIT

At the 1992 Singapore Summit, ASEAN made a significant departure from its prior practice of "timidly muting" regional security concerns.<sup>130</sup> Through the Singapore Declaration, ASEAN members welcomed all countries of Southeast Asia to accede to the Treaty of Amity and Co-operation in Southeast Asia with the intent to provide a common

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and help ensure that the alliances created are outward-looking and do not discriminate against other regions and nations). The argument continued that if, on the other hand, GATT failed, regional bloc building would accelerate, launching the world trading system into unknown territory. *Id.* Analysts and local leaders expect ASEAN to benefit significantly by the December 1993 GATT Agreements. See Yang Razali Kassim, *Asia: ASEAN Economic Forecast to Average 7.5 PC Growth*, BUS. TIMES, Mar. 14, 1994, available in LEXIS, World Library, Txtfe File (noting that the ASEAN Bureau of Economic Cooperation projects stronger growth in ASEAN stemming from heightened trade prospects expected to befall ASEAN as a result of the successful conclusion of the Uruguay Round); see also Kim, *supra* note 72 (discussing the implications of the Uruguay Round's final agreement on AFTA). Singapore's Minister for Trade and Industry, Mr. S. Dhanbalan expressed ASEAN's satisfaction with the results of the Uruguay Round, calling it a success, and noting that the consequential opening of markets will benefit Singapore's trade in particular. *Id.*; *Thailand, Singapore Urge Faster Implementation of ASEAN Trade Zone*, UNITED PRESS INT'L., Dec. 27, 1993, available in LEXIS, News Library, Allnws File (emphasizing that with the successful completion of the Uruguay Round, AFTA will serve as the primary vehicle through which ASEAN member states can optimize the gains of the Uruguay Round).

130. Tasker, *supra* note 97, at 8; see also *supra* notes 13-18 and accompanying text (discussing the historical background of ASEAN's unannounced focus on politics and security in the period leading up to the Singapore Summit). Despite this purported change in posture, one ASEAN scholar recently argued that ASEAN may no longer provide a viable framework to support and protect security in the region. See *Southeast Asia: New Realities Making ASEAN Redundant?*, INTER. PRESS SERV., Feb. 14, 1994, available in LEXIS, World Library, Txtfe File [hereinafter *New Realities*] (citing author-scholar Michael Leifer, of the London School of Economics, as questioning whether the new security realities of the post-Cold War world may make ASEAN somewhat "superfluous" as a safeguard for regional security). Leifer argues that ASEAN's "confidence-building machinery," based on conflict avoidance rather than collective defense against aggression, will languish outside of the Cold War balance of power model. *Id.* He cites the "ASEAN style" of security cooperation, which depends on the interpersonal relationships of officials and politicians but which functions smoothly only because the leaders never fully air their concerns or tackle contentious problems head-on. *Id.* Leifer criticizes this approach, stating "It may be the ASEAN way of doing things, but it does not solve the problem . . . It's the ASEAN way of not doing things." *Id.*

framework for wider regional cooperation.<sup>131</sup> At the Singapore Summit, the leaders agreed to invite Vietnam and Laos to sign the treaty and anticipated Cambodia's accession following the establishment of a new, stable government in Phnom Penh.<sup>132</sup> Today, the ASEAN ministers seek worldwide recognition of the Treaty through a United Nations resolution.<sup>133</sup> In addition to inviting other regional states to accede to the Treaty of Amity and Co-operation, ASEAN leaders also have encouraged broadening ASEAN membership and welcoming new dialogues

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131. Singapore Declaration, *supra* note 1, at 499. The declaration encourages ASEAN to foster a closer relationship with the Indochinese countries, following the Cambodian settlement. *Id.*

132. Vatikiotis, *supra* note 5, at 11. In July 1993, Vietnam and Laos, as well as Papua New Guinea, acceded to the Treaty, and ASEAN granted them observer status in the Association. Michael Leifer, *Will ASEAN Pay the Price for Peace?*, BUS. TIMES, July 28, 1993, at 22, available in LEXIS, World Library, Txtfe File. Cambodia, on the other hand, lags behind, largely due to continued lack of certainty about the stability of the Cambodian government. See Sinfah Tunsarawuth, *ASEAN Seeks Non-members' Support for Treaties*, STRAIGHT TIMES, Mar. 10, 1994, at 13, available in LEXIS, World Library, Txtfe File (identifying Cambodia as a security "hot spot" in the region, and noting that ASEAN remains worried but will not interfere); Kavi Chongkittavorn, *Cambodia Belongs in ASEAN*, INT'L HERALD TRIB., Sept. 14, 1993, available in LEXIS, Asia Library, IHT File (describing more than twenty years of civil war in Cambodia and promising a new, democratic government in the near future); *Finance Minister in Japan Calls for Urgent Aid*, BBC SUMMARY OF WORLD BROADCASTS, Dec. 13, 1993, available in LEXIS, News Library, Allnws File (stating that Cambodian Economy and Finance Minister Sam Rangsi asked for assistance from the international community in providing resources necessary to help Cambodia "consolidate a new era of political stability").

133. Singapore Declaration, *supra* note 1, at 499 (assessing the public relations benefit of such a resolution, the drafters concluded that it would signify ASEAN's commitment to, and emphasis on, the United Nations as the central organ for sustaining peace and security in the region).

with foreign trading partners.<sup>134</sup> Incidentally, the summit approved two new dialogue partners: China and India.<sup>135</sup>

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134. At the July 1993 ASEAN foreign ministers' meeting all six ASEAN leaders made formal statements articulating their hope that Vietnam, Laos, Burma, and Cambodia will eventually join ASEAN. Nusara Thaitawat, *Singapore: ASEAN Sympathies with Cambodia*, BANGKOK POST, July 27, 1993, available in LEXIS, World Library, REUTER File; Vatikiotis, *supra* note 5, at 11. Since 1993, the government of Vietnam has undertaken serious steps toward becoming a member of ASEAN and has been granted observer status in the Association. *Deputy Prime Minister Reaffirms Cooperation with ASEAN*, BBC SUMMARY OF WORLD BROADCASTS, Dec. 11, 1993, available in LEXIS, News Library, Allnws File; *Vietnam Presses ASEAN Membership Bid, Warns Spratly Claimants*, AGENCE FRANCE PRESS, Dec. 5, 1993, available in LEXIS, News Library, Allnws File; Ron Corben, *South-East Asia: Indochina, ASEAN Moves Closer to Integration*, INTER PRESS SERVICE, Sept. 6, 1993, available in LEXIS, News Library, Allnws File; *Hanoi to Take Measures to Help Regional Integration*, STRAITS TIMES, Dec. 17, 1993, at 16, available in LEXIS, News Library, Allnws File (observing Vietnam's proposals to implement "positive measures to create conditions" necessary for regional integration, including tariff reductions to abide by the AFTA CEPT scheme). See also Moon Ihlwan, *Better U.S.—Vietnam Ties to Help Hanoi Join ASEAN*, REUTER LIB. REP., Dec. 17, 1992, available in LEXIS, World Library, Txtfe File (noting that some observers foresee big economic differences as preventing it from attaining full membership in ASEAN and citing one Southeast Asian diplomat as contending that most ASEAN countries do not view the difference in ideology as a major impediment to Vietnam's membership in ASEAN). Myanmar (Burma) has also taken steps to join ASEAN, who pursues a policy of "constructive engagement" with Burma. *Thai House Committee Against Myanmar's Membership*, XINHUA GEN. OVERSEAS NEWS SERV., Dec. 27, 1993, available in LEXIS, News Library, Allnws File; *Myanmar Seeks "Meaningful Ties" with ASEAN*, STRAIGHTS TIMES, Dec. 24, 1993, at 12; *Burmese Leaders Due to Arrive in Indonesia*, REUTERS LIB. REP., Dec. 20, 1993, available in LEXIS, News Library, Allnws File. As for Cambodia, some commentators argue that Cambodia is not currently in the position to join ASEAN, but "for reasons of history, politics, and economics, it is likely to be the first Indochinese state to integrate with the non-communist community." Thaitawat, *supra*; see *Cambodia in Favour of APEC Membership-Minister*, REUTERS, Dec. 30, 1993, available in LEXIS, News Library, Allnws File (asserting that Cambodia's new government desires to join APEC, but that its first priority is to attempt to join ASEAN).

135. Vatikiotis, *supra* note 5, at 11 (noting that observers saw this as part of a broader effort to address the growing security dimension of the region). See generally Francois Heisbourg, *The New Strategic Environment: Traditional Players and Emerging Regional Powers*, 14 CONTEMP. S.E. ASIA, June 1992, at 1 (analyzing the way ASEAN will react to the strategic reordering of the world in the post-Cold War era, and addressing the challenges ASEAN must manage ahead including the "security vacuum" created by the end of the U.S.—Soviet rivalry).

The ASEAN foreign ministers began implementing the Singapore Declaration goals at their annual meeting on July 21-26, 1992, with a focus on regional security concerns in the South China Sea—specifically, the ongoing territorial disputes over the Spratly Islands.<sup>136</sup> For the first time, ASEAN leaders openly encouraged the United States to maintain a military balance and presence in the region.<sup>137</sup>

#### D. PROCEDURAL PRINCIPLES RESULTING FROM THE SINGAPORE SUMMIT

In article 1 of the Framework Agreement on Enhancing ASEAN Economic Cooperation, ASEAN members urge swift movement to fulfill the goals of the Singapore Declaration.<sup>138</sup> Although the agreement en-

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136. Tasker, *supra* note 97, at 8; see ASIA 1993 YEARBOOK 66-67 (Michael Malik ed., 1992) (explaining that the Brunei, China, Malaysia, Philippines, Taiwan, and Vietnam, all vie for the Spratly Islands for their strategic location linking the Indian and Pacific Oceans, and for the Spratly's potential riches in oils and mineral deposits).

137. See Tasker, *supra* note 97, at 9 (recognizing that Indonesia and Malaysia's non-aligned status made them historically uneager to accept a strong U.S. presence in the region, but their recent acquiescence reflects the post-Cold War realities that the United States now remains the only superpower in the region); see also SIMON, *supra* note 14, at 4-9, 16-19 (providing an in-depth study of ASEAN's historically divergent views regarding a maintained U.S. presence in the region); Impoco, *supra* note 3, at 70 (noting the need for the United States to reevaluate and refocus its attention to Southeast Asia, especially given what many regional states consider the neglect of the Reagan and Bush administrations of the area). President Clinton must reexamine how the United States can curtail the erosion of its influence in Southeast Asia due to lower economic involvement. *Id.* NAFTA continues to reinforce the perception that the United States is retreating from the region. *Id.*; see also, Vikram Khanna, *Soon, When Asia Sneezes, The World Could Catch Cold*, BUS. TIMES, Sept. 10, 1993, at 25, available in LEXIS, News Library, Allnews File (indicating that U.S. interests in Asia, especially its trade relations which currently far outpace trade with Europe, remain far too entrenched to justify a total withdrawal from the region). Khanna argues that U.S. willingness to maintain a security presence is not in doubt, but that the extreme demands on U.S. financial resources may present the greatest obstacle. *Id.*

President Clinton faces the challenge of reformulating U.S. policy on Asia, focusing on the region as a whole, and not just on China and Japan. Impoco, *supra* note 3, at 71. Clinton appears to want to approach this process through the APEC. See Hobart Rowen, *Clinton Courts a Hesitant Asia*, WASH. POST, Nov. 21, 1993, at H1, H4 (assessing that Clinton sees Asia as the next, if not final, frontier where U.S. exporters might profit). One Clinton Administration official stated the current policy: "We aim to promote in the Pacific Rim continued rapid growth, sustainable development and market-oriented economies open to international investment." *Id.* Rowen notes that a heightened U.S. involvement in the Asian economies will require a commitment to the region, particularly to insure military stability. *Id.*

138. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra*

courages all members to participate in intra-ASEAN arrangements, it allows implementation of such arrangements where only two or more member states are willing to proceed.<sup>139</sup> Any two member states may initiate intra-ASEAN arrangements if other states are not ready to implement them.<sup>140</sup> Procedural problems remain inherent due to this amalgamation of precision and flexibility.<sup>141</sup>

#### E. SETTLEMENT OF DISPUTES UNDER AFTA

AFTA loosely provides for dispute settlement through article 9 of the Framework Agreement, but the mechanism lacks the detail necessary for effective results.<sup>142</sup> The vague and undefined measures provide little direct guidance to the parties. The CEPT scheme encourages member states to grant "adequate opportunity for consultations" regarding any representations made by other members.<sup>143</sup> If the parties cannot settle their differences amicably, the CEPT scheme requires the countries to submit their disputes to "an appropriate body," such as the Ministerial

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note 2, art. 1, para. 1, at 508. The principles provide that the member states "shall abide by the principle of mutual benefits in the implementation of measures or initiatives aimed at enhancing ASEAN economic cooperation." *Id.*

139. See *supra* note 18, *infra* note 257 and accompanying text (explaining ASEAN's consensus building process and why it is considered a hinderance to ASEAN advancement). Implementation by only two or more member states significantly alters the historical consensus requirement that carries much of the blame for ASEAN's perceived lack of accomplishments in its twenty-five year history, and provides a potentially important boost to ASEAN progress. *Id.*

140. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, art. 1, para. 3, at 508; see Kenevan & Winden, *supra* note 106, at 228-29 (arguing that peer pressure will likely prove particularly effective in the CEPT scheme, especially given the prevailing consensus of the imperative of ASEAN economic cooperation in the wake of competition from NAFTA and the EC); see also *infra* note 257 and accompanying text (describing the consensus building process in ASEAN which inherently engenders an "Asia style" peer pressure).

141. See Kenevan & Winden, *supra* note 106, at 226 (describing the agreement as a "convention-protocol approach" developed to strengthen the possibility of agreement and insure participation). This approach, however, tended to result in a compromise of legal principles and enforceability. *Id.*

142. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, art. 9, at 511; see Kenevan & Winden, *supra* note 106, at 236-37 (concurring that the dearth of a precise mechanism for dispute resolution in AFTA remains as one of the weakest facets of the agreement).

143. CEPT Scheme, *supra* note 105, art. 8, para. 1, at 519-20. The agreement also allows a member claiming breach of agreement obligations to propose possible settlement details to the allegedly offending member. *Id.* art. 8, para. 2.

Level Council, and, if necessary, to the ASEAN Economic Ministers to settle these disputes.<sup>144</sup> This minimally defined approach to dispute settlement leaves open almost all procedures and mechanisms for conflict resolution. In comparison with its free trade counterparts in Europe and North America, the AFTA plan provides little guidance.<sup>145</sup> This lack of a firm dispute resolution mechanism may prompt calls for an ASEAN legal framework to work in concert with AFTA's goals.<sup>146</sup>

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144. Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, at 511; *see also* CEPT Scheme, *supra* note 105, art. 8, para. 3, at 520. The ASEAN ministers established the AFTA Council to supervise, coordinate and review the implementation of the AFTA agreement and assist in all matters related to the CEPT scheme. *Id.* at 519; Sharif Haron, *Regional Concern over NAFTA Impact*, BUS. TIMES, Oct. 9, 1992, at 18 (indicating that the AFTA Council would be ready for implementation after the member states prepared terms of preference, but ASEAN has yet to accomplish this step). The agreement, however, fails to delineate specifically what the role of the AFTA Council will be in mediating disputes, and the CEPT scheme provides no detailed guidance. Kenevan & Winden, *supra* note 106, at 236-37. To its benefit, the CEPT scheme does require that each ASEAN member state have equal representation on the AFTA Council, and directs the Council to call a formal meeting of the ASEAN heads of state every three years, and conducts a progress report during AFTA's eighth year of implementation. *Id.* at 226. These factors indicate that the AFTA Council may not become yet another impotent ASEAN agency, but instead may actually play a role ensuring the success of the agreement. *Id.* at 226-227.

145. North American Free Trade Agreement, Dec. 8-17, 1993, Can.-Mex.-U.S., reprinted in 32 I.L.M. 605 [hereinafter NAFTA]. NAFTA also places priority on reaching amicable settlement. *Id.* arts. 2003-06. Fall-back mechanisms are provided, however, in case consultations among the members themselves fail. *Id.* arts. 2007-22. The NAFTA directs the NAFTA Trade Commission to settle disputes through use of mediation, conciliation, good offices, and other alternative dispute resolution mechanisms. *Id.* arts. 2007-22. Should these means fail, the countries may request establishment of an arbitral panel to make fact findings and recommendations for resolution. *Id.* arts. 2008-15. NAFTA, in contrast to AFTA, also outlines measures for implementation and non-compliance with panel rulings. *Id.* art. 2019. Compare with CEPT scheme, *supra* note 105, art. 8, paras. 2-3, at 520 (indicating to whom allegedly aggrieved members may complain, and specifying that the AFTA Council, and if necessary, the AEM will hear disputes, without giving any concrete notice of the penalties available). NAFTA also encourages arbitration to settle international commercial disputes between private parties in the NAFTA region. NAFTA, *supra*, art. 2022. Under the "Publication, Notification and Administration of Laws" section, NAFTA provides rules fashioned to assure fair administration of laws, regulations, and other measures affecting traders and investors. NAFTA, *supra* arts. 1801-06. It prescribes that each country ensure independent or judicial review of action relating to matters encompassed in NAFTA, through each member's domestic laws. *Id.*

146. *See infra* notes 239-247 and accompanying text (discussing the current lack



## F. AFTA'S INITIAL DELAYS AND SKEPTICISM ABOUT ITS SUCCESS

ASEAN leaders recognize that ASEAN has always progressed very slowly.<sup>147</sup> For this reason, they consider the Singapore Declaration quite momentous, particularly if it strengthens ASEAN leverage against other trade blocs and motivates the NAFTA and EC countries to recognize ASEAN as a significant contender in the global economy.<sup>148</sup> Skepticism about AFTA's prospects for success remains, with critics focusing on AFTA's loose structure and loopholes.<sup>149</sup> For example, the plan excludes raw agriculture and services altogether.<sup>150</sup> In addition, several vaguely defined terms in the agreement may potentially hinder the plan, particularly the terms "sensitive" and "temporary."<sup>151</sup> Any country may omit items it considers "sensitive."<sup>152</sup> Further, the AFTA

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of, and impending need for, an ASEAN legal framework).

147. See Magnier, *supra* note 104, at 5A (citing Malaysian Prime Minister Mahatir Mohamad's view of ASEAN's unhurried pace in achieving progress); see also *ASEAN Must Give Top Priority to Economic Agenda: Anwar*, BUS. TIMES, Oct. 5, 1993, at 3, available in LEXIS, News Library, Allnws File (noting that ASEAN has been historically cautious in defining its initiatives). Malaysian Finance Minister Anwar Ibrahim stated that ASEAN tended to set rather conservative objectives, preferring to act with tempered cautiousness, and fearing the perception of failure if the leaders set overly enthusiastic goals. *Id.*

148. See *An Asian Free Trade Area and the NAFTA May Complement Each Other*, Zoellick Says [July-Dec.] 9 Int'l Trade Rep. (BNA) 1288 (July 29, 1992) (quoting both U.S. and British foreign economic leaders who address the AFTA plan with hope that the different trade blocs will use their collective powers in concert to benefit free trade, rather than hinder it). For ASEAN, the attention itself is important. *Id.* One senior Singapore official stated the goal: "send a 'big signal' to investors that ASEAN means business in promoting regional cooperation." Richardson, *supra* note 79.

149. Magnier, *supra* note 104, at 5A.

150. Phua Kok Kim et al., *AFTA Council Finalises List of Products For Tariff Cuts in 1994*, STRAITS TIMES, Oct. 7, 1993, at 25, available in LEXIS, News Library, Allnws File (indicating that the current AFTA framework only makes provisions for processed agricultural products).

151. Kenevan & Winden, *supra* note 106, at 236. The "temporary" exclusions in the CEPT tariff reduction plan have no definitive or mandatory phase-out. *Id.*

152. CEPT Scheme, *supra* note 105, art. 2, para. 3, at 516; see Framework Agreement on Enhancing ASEAN Economic Cooperation, *supra* note 2, art. 12, at 512 (adopting the principle that nothing in the agreement may prevent any member from ratifying measures that it views necessary for the protection of its national security, public morals, life and health of humans, animals and plants, and those measures necessary to protect artistic, historical, and archaeological pieces); see also

plan also receives criticism because the time frame for tariff reduction is considered too long and, therefore, not reflective of ASEAN's priority for regional cooperation.<sup>153</sup>

In the early stages of finalizing the CEPT scheme's tariff reductions list, several countries exhibited potentially elusive behavior.<sup>154</sup> For example, Indonesia voiced concern about the impact of quick liberalization on its cement and textile industries.<sup>155</sup> Large quantities of low-priced imports, particularly from South Korea, already have begun to impair intra-ASEAN trade.<sup>156</sup> Even as the national economies began to adjust to the goals of AFTA, some members called for delays.<sup>157</sup>

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Kenevan & Winden, *supra* note 106, at 236 (finding that there are no binding measures to determine what the term "sensitive" products encompasses and that it appears each member may define the exclusionary term however it deems most valuable).

153. See Richardson, *supra* note 79 (arguing that the fifteen year time frame for establishing the free trade area is unnecessarily lengthy, especially in light of the fast pace in which the EC moves toward a common market and the way the North American partners pushed through NAFTA on the fast-track). Several regional businessmen argue that seven years represents a more reasonable time frame to implement the plan. *Id.*; see also *Thailand, Singapore Urge Faster Implementation of ASEAN Trade Zone*, UPI, Dec. 27, 1993, available in LEXIS, News Library, UPI File (noting that the Prime Ministers of Thailand and Singapore both endorse swifter implementation of AFTA, particularly because of the increased competition they foresee stemming from the completion of the Uruguay Round).

154. See *Commerce Minister Hits Proposed ASEAN Free Trade Agreement*, AGENCE FRANCE PRESSE, Apr. 27, 1992, available in LEXIS, News Library, Allnews File (noting that domestic political struggles already plague AFTA). The different governments hold varying views regarding government intervention into their markets. *Id.* The Thai Commerce Minister called for his government to intervene in the market to protect some sectors, particularly agriculture. *Id.* At the same time, he recognized that politics plays its part in the decision making process, touting his own political platform and stating that he will prioritize aiding the poor and farmers without depending on private investors for political support. *Id.*

155. Ken Stier, *Southeast Asia's Hopes For Free Trade Meet Delays*, J. COM., May 4, 1992, at 6A (recognizing that certain sectors will definitely suffer under AFTA, and the government leaders will have to weigh the political effects on domestic industries).

156. See *id.* (underscoring Thailand's Industry Minister, Sompong Amornwiwat's, statement that national plans to implement AFTA must focus on averting any "excessive impact" on domestic industries). As early as May 1992, the Thai Foreign Ministry's ASEAN department recognized that Thailand might have to request an extension before implementing preferential tariffs on some products, or that it might have to expand its sensitive products list to shelter several additional industries from the effect of tariff privileges. *Id.*

157. *Id.*

Economists and trade officials cite several reasons contributing to ASEAN's lag in forming a regional free trade area.<sup>158</sup> These factors include: inability of the member states' economies to maximize economies of scale; the small size of most Asian economies and competition among themselves for the same market shares; opposition from the United States, the EC and Japan to ASEAN creating a retaliatory protectionist bloc; and the prevailing economic success in the region, which, until the threat of NAFTA, allowed ASEAN to feel relatively secure in its trade capabilities.<sup>159</sup> Some business sectors even question whether a free trade area will benefit or impair the regional economy.<sup>160</sup>

While pessimism lingers concerning the realization of AFTA, the historic triumphs of integration in the EC encourage belief in the prospects for ASEAN's success.<sup>161</sup> Additionally, ASEAN leaders indicate that the desire and recognized need for a working ASEAN free trade area exists and will help bolster the effort.<sup>162</sup>

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158. Mark Magnier, *Asians Play Catchup in Steps Toward Free-Trade Pacts*, J. COM., Jan. 27, 1992, at 1A.

159. See *Id.* (arguing that Asia does not know whether it will benefit from increased economies of scale with a free trade agreement, and contrasting Asian markets to the "heavy industrial triangle" of France, Germany, and the iron fields of Belgium, Luxembourg); see also Magnier, *ASEAN Nations Detail Products To Be Excluded From Accord*, J. COM., Dec. 24, 1992, at 3A (noting continued skepticism and arguing that the members lack a complementary pattern that would encourage intra-ASEAN trade).

160. See A.K. Bhattacharaya, *ASEAN: A Case Study in Regional Cooperation Among Developing Countries*, 17 WORLD FUTURES 225, 239 (1981) (arguing that empirical studies indicate that national business sectors distrust integration, fearing increased government intervention, diminished protection of domestic markets, and encroachment by foreign firms); see also Kanazawa, *supra* note 110, at 20 (noting that many local industries, accustomed to years of government-sponsored protectionism, decry the negative effects of ASEAN's free trade policies on local business' bottom lines).

161. See Amado A. Castro, *Economic Viewpoint: An ASEAN Free Trade Area*, 2 ASEAN L. & SOC. J. 15, 16 (July-Dec. 1987) (recalling that earlier projections concerning free trade and customs unions, such as the European Common Market, were also rather bleak, but that the European leaders forged ahead, secure in their belief of the political and economic advantages of creating a customs union).

162. See Mark Magnier, *ASEAN Leaders Endorse Plan For Regional Free-Trade Area*, J. COM., Jan. 28, 1992, at 5A (citing Singapore Prime Minister Goh Chok Tong's recognition of the need to join forces under such a trade arrangement, noting that a unified ASEAN offers a potential market of over 300 million people and a combined economic output of \$300 billion). Prime Minister Tong also acknowledged that, under AFTA, ASEAN is a much smaller market than a unified Europe or a unified North America but is much more appealing than if the six nations did not

## G. NEW TARIFF LIST REVIVES INTEREST AND OPTIMISM

Toward this end, the ASEAN countries made a momentous step forward in launching AFTA by finalizing the list of products facing rapid reduction and elimination of their tariffs through the CEPT scheme.<sup>163</sup> AFTA adds a total of 321 items to the original list of items scheduled for tariff reduction and deletes 516 items from the temporary exclusion list.<sup>164</sup> The CEPT scheme, implemented on January 1, 1994, proposes reductions under two programs: fast-track, now with 15,201 items scheduled for this type of reduction, and normal track, covering 25,837 items.<sup>165</sup> Prompted in part by the January 1, 1994, implementation of NAFTA and by the impending changes to GATT produced by the completion of the Uruguay Round, ASEAN leaders now urge a significant departure from AFTA's original sluggish pace. Additionally, several ASEAN economic ministers now call for the extension of the scope of AFTA beyond the manufacturing sectors. This quickened pace, proposals for increased application of AFTA, and the launching of the CEPT scheme all indicate that AFTA remains one of ASEAN's main priorities.<sup>166</sup>

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combine their efforts). *Id.*

163. *ASEAN Launches Preferential Tariff List*, JAPAN ECON. NEWSWIRE, Nov. 1, 1993, available in LEXIS, News Library, Allnws File. ASEAN Secretary General Dato' Ajit Singh called the decision to launch the CEPT scheme's product list a signal "that the ASEAN Free Trade Area has moved forward." *Id.*

164. *Id.*

165. *See id.* (explaining that under fast-track, products with tariffs presently over 20% will see tariff reductions of between zero and five percent within ten years, and within seven years for products with tariffs currently at 20% or less). The normal track program divides into two stages: first, items with tariffs currently more than twenty percent shall be reduced to 20% within five to eight years and to between zero and five percent within seven years thereafter; second, items with tariffs below twenty percent shall be reduced to between zero and five percent within ten years. *Id.* The tariff cuts began on January 1, 1994, although Brunei will implement its cuts on June 1, 1994. Chuang Peck Ming, *321 Items Added To List of Products Under Tariff Axe*, BUS. TIMES, Oct. 7, 1993, at 4, available in LEXIS, News Library, Allnws File. Each ASEAN country, with the exception of Brunei, made cuts to their tariff schedules, with the new tariff schedules implicating a divergent number of items as follows: 3,776 items on Malaysia's tariff schedules, 373 for Singapore, and 1,941 lower customs import items in Indonesia. Kanazawa, *supra* note 110, at 20.

166. *See ASEAN to Speed Up Free Trade Area Move*, BANGKOK POST, Feb. 1, 1994, available in LEXIS, World Library, Txtfe File (explaining the agreement among ASEAN officials to accelerate the creation of AFTA and the new goal to reduce the

#### H. AFTA: FULFILLING ITS DESIRED EFFECT OF RETURNING ATTENTION TO ASEAN

The AFTA plan appears to be accomplishing its desired effect of demonstrating the importance of ASEAN economic development. For example, shortly after the Singapore Declaration, Germany called for stronger cooperation between the EC and ASEAN and listed it as the "highest priority" in relations between the two regions.<sup>167</sup> Viewing AFTA as an avenue through which to mitigate Asian suspicions and fears over NAFTA, the United States presented the idea of a future linkage between AFTA and NAFTA.<sup>168</sup> For now, the Asia Pacific Eco-

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tariff reduction time period, broaden the range of products eligible for tariff cuts and ultimately attain a zero tariff level, as opposed to the zero to five percent range originally proposed). The major proposals for accelerating AFTA include: (1) expanding coverage of AFTA to factors of production and technologies; (2) free movement of labor; (3) adding unprocessed agricultural products to the tariff reduction program; (4) extending low tariff levels to products not made in ASEAN, especially high technology industry goods. *Id.*; see Yang Razali Kassim, *Thailand Wants AFTA to Cover More Areas*, BUS. TIMES, Mar. 23, 1994, at 18, available in LEXIS, World Library, Txtfe File (citing Thai Commerce Minister Uthai Pimchaichon's call for accelerated action in AFTA and noting the Uruguay Round conclusion as a factor compelling an increased scope of coverage and quickened pace); see also Kanazawa, *supra* note 110, at 20 (mentioning NAFTA as triggering and propelling the calls for accelerated pace).

The ASEAN economic leaders recognize that merely overcoming the hurdle of agreeing on the CEPT scheme does not necessarily indicate that ASEAN may not face future obstacles, but at least it signifies the importance ASEAN places on AFTA. Phua Kok Kim et al., *supra* note 150, at 25.

167. See *Trade Briefs: Asia Trade Bloc Feared*, J. COM., Mar. 6, 1992, at 5A (noting that prior to the successful completion of the Uruguay Round, German Deputy Foreign Minister Helmut Schaefer warned that failure of the world trade liberalization talks could result in the creation of an Asian-Pacific trade bloc aimed at Europe and particularly threatening to Germany).

168. See Pura & Kanabayashi, *supra* note 70, at R20 (quoting United States Undersecretary of State Robert Zoellick who promoted the idea of such a linkage, arguing that it would expand market integration between the two regions and suggesting that the two trade blocs might complement one another). Thailand and Singapore agreed to investigate the possibilities of developing direct linkages between AFTA and NAFTA to insure ASEAN goods direct access to U.S. markets. Loh Hui Yin, *Call For Linkage Between Afta and Nafita*, BUS. TIMES, Dec. 28, 1993, at 2, available in LEXIS, News Library, Allnws File. In fact, the ASEAN foreign ministers and United States Secretary of State Warren Christopher reached an agreement in principle to pursue such an arrangement. Yang Razali Kassim, *U.S. and ASEAN Agree to Find Linkages Between AFTA and NAFTA*, BUS. TIMES, July 28, 1993, at 1, available in LEXIS, News Library, Allnws File. Christopher asserted that President Clinton seeks

conomic Cooperation (APEC) appears to provide the most likely avenue for such a union. At the Seattle APEC meeting, Singapore Prime Minister Goh Chock Tong stated that Singapore eagerly anticipates the proposition to join NAFTA and thereby enjoy the benefits of market access to North America.<sup>169</sup> Japan also watches closely as ASEAN maneuvers into developing its own free trade area.<sup>170</sup>

#### IV. POSSIBLE REPERCUSSIONS OF THE EC, NAFTA, AND ACTUALIZATION OF AFTA

ASEAN leaders express new found urgency to increase the pace of regional movement in establishing the AFTA machinery.<sup>171</sup> They also foresee that the AFTA agreement will gather momentum as its players react to outside pressure and adjust to greater liberalization. They fear that, without AFTA, the region will be left behind.<sup>172</sup> ASEAN exporters voice concern that NAFTA will curtail opportunities for exports and fear that the EC's preoccupation with mass integration will detract attention away from global free trade, ultimately limiting ASEAN's inter-

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to foster a new era of United States-ASEAN cooperation based on the premise that they are "full and equal partners in the great enterprise of creating a New Pacific community." *Id.*

169. Yin, *supra* note 168, at 2.

170. See A.E. Cullison, *Tokyo: Building a Better Bloc?*, J. COM., Aug. 26, 1992, at 10A (observing that in light of the trade unification plans in the EC and now in North America, Japan now senses the need to focus more significant attention to its Asian trading partners); Cf. Percy R. Luney, Jr., *The Japanese View Toward NAFTA and Regional Trade Zones*, DUKE J. COMP. & INT'L L. 297, 304-7 (1992) (suggesting that despite Japan's history of aggression in the region, Japan is in an advantageous position to lead an Asian trade bloc, taking advantage of the Southeast Asian nations' fear of protectionism in the EC and NAFTA). The memory of Japanese aggression during World War II lingers, and although many of its neighbors still view Japan as a potential military threat to the region, the number of actual victims dwindles rapidly, thus potentially diminishing the barriers to cooperation with Japan. *Id.* at 305.

171. Magnier, *supra* note 69, at 5A (citing outgoing Thai Prime Minister Anand Panyarachun who argued "ASEAN needs to move onward and expedite the establishment of AFTA to increase our bargaining power in global trade, to expand the volume of our intra-regional trade and to attract foreign investment").

172. See Magnier, *supra* note 162, at 5A (quoting Singapore Prime Minister Goh Chock Tong's strong urging for ASEAN to push for a functioning AFTA in order to protect against other trade blocs in the region). Goh Chok Tong worries that ASEAN "will risk missing the [free trade] boat" if it fails to harness the trading power of its members. *Id.* Goh cites the need to join forces in order to become more attractive to foreign investors. *Id.*

national trading possibilities.<sup>173</sup> Proponents of NAFTA and the EC, however, insist that "fortress" protectionism will not result.<sup>174</sup>

ASEAN and its members remain concerned about the prospects for sustaining the rapid expansion of exports that started in the 1980s.<sup>175</sup> Today, an increasing volume of computers and related technologies, consumer electronics, toys, and textiles are churning off production lines in low-cost factories in the ASEAN region.<sup>176</sup> These products penetrate the North American and European markets and further widen trade deficits to ASEAN's advantage, which may ultimately result in a protectionist backlash.<sup>177</sup>

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173. Linn, *supra* note 89, at 4A; *see also* Khanna, *supra* note 137, at 25 (concluding that the Asian economies will bear the brunt of any rise in protectionism). ASEAN leaders and scholars also warn against a rise in anti-Asia sentiment in the West, stemming from the perception that Asia's economic successes result from unfair trade practices in Asia which create this advantage. *Id.*

174. Linn, *supra* note 89, at 4A; *see* Khanna, *supra* note 137, at 25 (citing EC Ambassador Andreas van Agt's insistence that Europe "has not entrenched itself in a bulwark").

175. *See Fact Sheet: Association of Southeast Asian Nations*, U.S. DEP'T OF STATE DISPATCH, No. 31, at 601 (1993) (noting that the ASEAN countries grew more rapidly than most developing nations during the 1980s); *see also* ASEAN-U.S. INITIATIVE: ASSESSMENT AND RECOMMENDATIONS FOR IMPROVED ECONOMIC RELATIONS, xxii (East-West Center and Institute of Southeast Asian Studies ed., 1989) [hereinafter ASEAN-U.S. INITIATIVE] (noting that most ASEAN members' economies are heavily export oriented, and that the United States remains the most important market for these goods).

176. Linn, *supra* note 89, at 4A; *see* Djisman Simandjuntak, *Building Grand Design for Future Through AFTA*, BUS. TIMES, Oct. 6, 1993, available in LEXIS, World Library, Allwld File (observing the ASEAN economies' ability to expand into the most dynamic sectors of global trade).

177. *See U.S. Announces New Trade Initiative with ASEAN*, AGENCE FRANCE PRESSE, Nov. 21, 1993, available in LEXIS, World Library, Allwld File (indicating that the United States currently runs a \$12 billion dollar trade deficit with ASEAN); *see also* Ruth Youngblood, *ASEAN Nations Attack Western Trade Tactics*, U.P.I., July 4, 1989, available in LEXIS, World Library, Allwld File (citing the ASEAN foreign ministers' fear and consternation over the ominous U.S. budget and trade deficits and their perceptions of escalating protectionism among the world's major economic powers); Anthony Rowley, *Faster Growth Through Liberalization*, BUS. TIMES, July 29, 1993, at 22, available in LEXIS, World Library, Allwld File (emphasizing the imperative to quell protectionism, especially given rising trade tensions and increasing trade surplus in East Asia).

## A. ASEAN ECONOMIC RELATIONS WITH THE UNITED STATES

As the U.S. trade deficit with the ASEAN nations grows,<sup>178</sup> ASEAN fears that the United States will turn to increasingly protectionist policies to close the gap.<sup>179</sup> In the near future, however, the United States will probably retain its position as ASEAN's biggest market,<sup>180</sup> but ASEAN exports to the United States will not likely experience an increased growth rate any greater than the "sluggish" growth rate of the U.S. economy,<sup>181</sup> mainly because the U.S. recession impedes demand for imports.<sup>182</sup> Currently, NAFTA further threatens ASEAN's economic standing vis-a-vis the North American market, especially given recent dim estimates of trade and investment diversions resulting from NAFTA.<sup>183</sup> ASEAN also worries about the possible implications of the expansion of NAFTA throughout the Americas.<sup>184</sup> Fears that NAFTA

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178. *U.S. ASEAN Ambassadors Open U.S. Tour To Encourage Trade and Investment*, [Jan.-June] Int'l Trade Rep. (BNA), at 542 (Mar. 25, 1992) (indicating that the United States currently runs a trade deficit of \$8 million with the ASEAN nations). In 1991, the United States exported \$21 billion in goods and services to ASEAN, while ASEAN exports to the United States increased to \$29 billion. *Id.*

179. Khanna, *supra* note 137, at 25; see Ow-Taylor, *supra* note 85 (asserting that "Fortress America" threatens East Asia's economic stronghold and export-led high growth strategy).

180. See Linn, *supra* note 89, at 4A (according to Robert Broadfoot, managing director of Political & Economic Risk Consultancy Ltd. in Hong Kong, the ASEAN already enjoys high market share in the United States and probably cannot increase that share significantly while the U.S. recession continues).

181. Linn, *supra* note 89, at 4A.

182. See ASEAN-U.S. INITIATIVE, *supra* note 175, at xxviii (concluding that capacity constraints in the U.S. budget and trade deficits may retard growth and lead to higher inflation).

183. See Ow-Taylor, *supra* note 85, at 23 (reporting figures from a recent Michigan State University study that estimates NAFTA's tariff elimination will cause approximately \$484 million in lost trade, and a nearly eight percent to twelve percent diversion of total trade, if the effects of removing non-tariff barriers enter the equation). The sectors most adversely impacted by non-tariff barriers include: food, chemicals, electronics, textiles and metals. *Id.* Other estimates, however, from the East-West Centre in Hawaii offer a less dismal scenario, figuring losses from tariff elimination at less than one percent of total exports per each individual ASEAN economy. *Id.* Nevertheless, they also present troubling estimates for investment diversion, ranging from 3% for Singapore to 8.4% for Malaysia. *Id.* But see *NAFTA Is No Threat To Economies of East Asia, Europe, Analyst Says*, [July-Dec.] Int'l Trade Rep. (BNA), at 1767 (Oct. 20, 1993) (citing Clyde V. Prestowitz, president of the Economic Strategy Institute, articulating that NAFTA hardly will have any noticeable effect on Asia).

184. Ramon Isberto, *Trade: Asia Fears Emergence of Giant American Trade Bloc*,



might evolve into a protectionist bloc highlight the potential that ASEAN might turn to a greater emphasis on Western Europe.<sup>185</sup>

#### B. ASEAN RELATIONS WITH THE EC

ASEAN and the EC enjoy a well-established trade relationship.<sup>186</sup> In March 1980, the EC and the ASEAN member countries signed an economic and commercial cooperation agreement, paving the way for development of stronger ties between Western Europe and Southeast Asia.<sup>187</sup> The agreement represented the first institutional link to connect two regional groupings and join highly industrialized and developing countries.<sup>188</sup> For the EC, the strategic location of ASEAN astride the Straits of Malacca, Singapore, and Lombok provides easy access to the bur-

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INTER PRESS SERV. Dec. 14, 1993, *available in* LEXIS, News Library, Allnws File (noting the comments of United States Ambassador to the Philippines, John Negroponte, stating his confidence that within the next decade or two, a broader American free trade area will emerge covering the entire continent). Chile is already scheduled as the next party with whom the United States shall create a free trade pact. *Id.* For its Asian competitors, the prospect of a broader American free trade area is disconcerting. *Id.* The Philippines, in particular, stands to lose market share in the Americas to Mexico, with whom it competes directly in nearly every product produced. *Id.*

185. Linn, *supra* note 89.

186. See generally Phan Wannamethee, *The Importance of the EC for South-east Asia: The Asian Perspective*, in WESTERN EUROPE AND SOUTH-EAST ASIA: CO-OPERATION OR COMPETITION? (Giuseppe Schiavone ed., 1989) (recognizing that the long standing relationship between ASEAN and the EC dates back to the economic domination of Asia by European countries before World War II).

187. See generally RELATIONS BETWEEN THE EC AND ASEAN, *supra* note 96, at 20-1 (summarizing the Cooperation Agreement). The agreement covers: commercial cooperation, with the parties committing to examining the possible mechanisms for removing trade barriers, creating new trading patterns through consultations, and improving market access; economic cooperation, including promotion of technological and industrial cooperation between the regions; and development cooperation and creation of a Joint Cooperation Committee. *Id.*

188. See generally Wannamethee, *supra* note 186, at 21 (noting that the EC subsequently concluded other cooperation agreements and additional ones are under negotiation, but the ASEAN-EC agreement took the lead); see also MICHAEL ANTOLIK, ACCOMMODATION AND DIPLOMACY 136-40 (1988) (noting that the EC is one of ASEAN's "dialogue" partners and joins in the post-ministerial meetings that afford opportunities for foreign ministers of ASEAN's allies to meet and join with other outside sympathetic states). Joining the EC at the post-ministerial meetings are representatives of Japan, Canada, New Zealand, Australia and the United States. *Id.*

geoning Asian market.<sup>189</sup> The EC appears well-suited to meet some of ASEAN's needs by providing a prospective market for its commodities and manufactured goods as well as potential for a direct source of investment into ASEAN's industrial sectors.<sup>190</sup> ASEAN recognizes the EC as a pioneer in regional cooperation, and the EC expresses its willingness to aid ASEAN regional development programs, hoping to thereby strengthen intra-ASEAN regional cooperation.<sup>191</sup> In so doing, the EC attempts to mold ASEAN in its own image and hopes to benefit economically from the undertaking.<sup>192</sup>

In 1991, ASEAN-EC trade reached a record high of \$50 billion.<sup>193</sup> ASEAN achieved some success by diversifying its exports to Europe. For example, the Philippines increased garment exports to the EC by twenty-five percent in 1991 to a total of \$456 million,<sup>194</sup> and sales to Germany soared thirty-nine percent to \$187 million.<sup>195</sup> Yet, the concern lingers that the EC may not remain the open, limitless market that ASEAN seeks.<sup>196</sup>

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189. ANTOLIK, *supra* note 188, at 136-40.

190. Wannamethee, *supra* note 186, at 20. *But see id.* at 25-37 (emphasizing the imbalance between ASEAN and the EC as trading partners and noting that ASEAN perceives the EC as a much more significant trading partner than the EC views ASEAN). ASEAN actually comprises a very small total of EC trade. *Id.* at 23-24. The EC could assist and benefit ASEAN in several key areas including: collaborating on research and development in industry; relaxing the restrictive agricultural policies; increasing direct investment and human resource development in ASEAN. *Id.* at 25-31; see Giuseppe Schiavone, *Western Europe and South-East Asia, in WESTERN EUROPE AND SOUTH-EAST ASIA, COOPERATION OR COMPETITION?* 1, 12 (Giuseppe Schiavone ed., 1989) (recognizing that the EC members tend to place their investment priorities on other areas besides ASEAN, and in its investments in ASEAN the EC generally focuses on services, particularly banking and finance, rather than manufacturing where ASEAN needs a greater boost of capital).

191. Wannamethee, *supra* note 186, at 21.

192. See generally RELATIONS BETWEEN THE EUROPEAN COMMUNITY, *supra* note 96, at 1-39 (outlining suggestions and requirements for more intensive cooperation between ASEAN and the EC). The specific comments in the opinion of the EC Economic and Social Committee make lists of demands for ASEAN to meet in order to encourage and continue EC-ASEAN trade relations. *Id.* at 4-7. They tend to encompass criteria which strongly favor the EC. For example, regarding investment, the opinion states that it is necessary within ASEAN to make national supply structures complement each other and remove market restrictions among member states. *Id.* at 5. In relation to shipping, the opinion requires "respect for EC rules of competition." *Id.* at 4-7.

193. *ASEAN News Roundup, NEWS & VIEWS INDON.*, Aug. 1992, at 1, 3.

194. Linn, *supra* note 89, at 4A.

195. Linn, *supra* note 89, at 4A.

196. Linn, *supra* note 89, at 4A. A new development may further intensify

Divergent visions concerning human rights create another obstacle that plagues ASEAN-EC relations.<sup>197</sup> Foreign ministers for the EC and ASEAN were scheduled to sign an agreement in Manila on October 29, 1992, to reaffirm the ASEAN-EC Co-operation Agreement originally signed in 1980.<sup>198</sup> The EC and ASEAN, however, remain unable to negotiate a new trade and cooperation accord due to Indonesia's continuing human rights violations;<sup>199</sup> Portugal blocked the agreement in protest of Indonesia's human rights violations, including the November 1991 massacre of more than fifty mourners demonstrating in East Timor.<sup>200</sup> Although ASEAN's recent adoption of a draft declaration on

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ASEAN's fear of a "fortress" Europe. On January 1, 1994, Europe inaugurated the world's biggest single trading market, the European Economic Area (EEA), linking the European Union with the European Free Trade Area. Mark Milner, *Bloc Bigger Than NAFTA 'From Many Points of View'*, GUARDIAN, Jan. 1, 1994, at 33, available in LEXIS, News Library, Allnws File. The EEA overshadows NAFTA regarding population, gross domestic product and percentage of world trade. *Id.*

197. See *Community Encourages Trade Links With Southeast Asia*, EUR. REP., July 31, 1993, available in LEXIS, News Library, Allnws File (recognizing the EC and ASEAN's widely differing opinions regarding human rights, and explaining ASEAN's "cultural relativism" argument that interpretation of human rights issues should vary according to the individual countries' own traditions). The EC, however, insistently reminds ASEAN that all of its members have subscribed to the Vienna Convention on Human Rights and are therefore obligated to uphold its principles. *Id.*

198. See *ASEAN News Roundup*, *supra* note 193, at 3 (acknowledging the foreign ministers' disappointment that Portugal foiled plans to renew the agreement).

199. *ASEAN New Roundup*, *supra* note 192, at 3; see Bob Mantiri, *Asia: Dutch Minister Welcomes Concept of ASEAN Peacekeeping Force*, INTER. PRESS SERV., Mar. 1, 1994, available in LEXIS, World Library, Allwld File (noting that dialogue between the EC and ASEAN regarding the renewal of the economic cooperation remains at a standstill due to the Portuguese boycott). ASEAN continues to assert that human rights and the environment should not be linked to trade. *Id.* An ASEAN Joint Communique stemming from the July 1992 ASEAN foreign ministers meeting in Manila insisted that human rights "are governed by the distinctive culture and history of each country and that their expression and application in the national context are within the competence and responsibility of each country." *Id.*

200. *ASEAN News Roundup*, *supra* note 193; see Michael Vatikiotis, *Unite and Act*, FAR. E. ECON. REV., Jan. 16, 1992, at 26 (observing the EC's conviction that trade and aid must be linked to human rights concerns); see also Tasker, *supra* note 97, at 8, 9 (elaborating a general EC attitude that ASEAN, with its sustained record of commanding growth, should no longer be coddled and handled on a "donor-recipient" basis, especially with regard to human rights).

Other ASEAN dialogue partners are becoming sensitive about ASEAN's human rights problems; for example, United States Secretary of State James Baker expressed some concern about human rights in East Timor at the July 1992, Foreign Minister's meeting, but was more anxious about Burma's deplorable human rights record. *Id.*

human rights may placate detractors, the declaration maintains ASEAN's rejection of the Western human rights vision, which places individual liberties above the collective interest.<sup>201</sup>

## V. OTHER POSSIBLE METHODS OF REGIONAL COOPERATION

ASEAN also has considered other mechanisms for implementing free trade arrangements. Discussions of other major vehicles for free trade cooperation include APEC, the East Asian Economic Caucus (EAEC), and the U.S.-ASEAN Initiative for Free Trade.

### A. ASIA PACIFIC ECONOMIC COOPERATION (APEC)

Formed in 1989, APEC aims to ensure that regional blocs do not stifle trans-Pacific trade and investment.<sup>202</sup> APEC's membership includes the ASEAN states, Australia, Canada, China, Hong Kong, Japan, New Zealand, South Korea, Taiwan, and the United States.<sup>203</sup> This forum also seeks to institutionalize regular consultations on global issues and to ensure that trans-Pacific trade and investment remain open despite the proliferation of trade blocs.<sup>204</sup> The United States favors using

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Japan indirectly raised the human rights issue with Japanese Vice Minister of Foreign Affairs Koji Kakizawa, asserting that respect for human rights will play an increasingly important role in Japan's official development of aid disbursements. *Id.* The ASEAN countries enjoy the most generous allotment of that aid. *Id.*

201. See *ASEAN Adopts a Human Rights Declaration*, NEWS & VIEWS INDON., Sept. 1993, at 1-2 (recognizing that Indonesia's draft, adopted by the ASEAN members' parliaments, differs from the Universal Declaration of Human Rights). The draft underscores the nonconditional principle which recommends that ASEAN repudiate any foreign assistance tied directly to requirements regarding human rights. *Id.*

202. See *Global Economic Cooperation at a Crossroads*, SAN FRAN. BUS. MAG., Sept. 1992, at 14, available in LEXIS, News Library, ARCHIVE File (specifying that APEC, formed in 1989, is the official governmental organization designed to promote multilateral cooperation). APEC consists of fifteen nations whose economies account for forty-six percent of world economic output and one-third of the volume of world trade. *Id.*

203. Clay Chandler, *Trade Focus Shifting From Europe to Asia*, WASH. POST, Nov. 17, 1993, at G1, G4.

204. Pura & Kanabayashi, *supra* note 70, at R20; see Tommy Koh, *Watch Asia-Pacific Collaboration Become Reality*, INT'L HERALD TRIB., Dec. 23, 1993, available in LEXIS, News Library, Allnews File (explaining that the cooperation focuses on trade, grounded in the economic principle of complementarity). Koh clarifies that while APEC is not a customs union and has no common external tariffs, its aim to increase cooperation and reduce barriers to trade in goods, services, and technologies facilitates the first attempt at "open regionalism." *Id.*

APEC as opposed to AFTA or the EAEC, which both specifically exclude the United States.<sup>205</sup> APEC presents itself as an inter-governmental institution that could fulfill the need for coordination and cooperation in the Asia-Pacific region.<sup>206</sup>

APEC drew sudden worldwide attention in November 1993, when the heads of state met in Seattle, Washington for the APEC Summit.<sup>207</sup> Until shortly before the Seattle conference, critics had regarded APEC as an insignificant "talking shop,"<sup>208</sup> but, nevertheless, the Summit attracted major attention in part because it marked an unprecedented meeting of the membership trade leaders.<sup>209</sup> The meeting came on the heels of NAFTA's passage in both the United States Congress and Senate, and President Clinton's shift in trade priorities away from a perceived stagnant Europe towards the vibrant Asia-Pacific region.<sup>210</sup> In fact, some commentators contend that the President's initiative in gathering the leaders in Seattle, and his new found commitment to APEC, may successfully allay fears of the return of the United States to an isolationist posture and disengagement from commitments to East Asia.<sup>211</sup>

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205. Pura & Kanabayashi, *supra* note 70, at R20.

206. See Myles Nienstadt, *An Overview, in THE UNITED STATES AND THE PACIFIC BASIN: CHANGING ECONOMIC AND SECURITY RELATIONSHIPS* 1, 7 (Mary B. Bullock & Robert S. Litwak eds., 1991) (citing a Thai participant at a recent conference on U.S. relations with the Pacific Basin who suggested that one of the greatest benefits of APEC as a broad Pacific trade institution would be that APEC could promote economic stability and free markets).

207. Ruth Marcus & Clay Chandler, *Clinton Preaches Open Markets*, WASH. POST, Nov. 21, 1993, at A29, A34.

208. Philip Bowring, *Reading the APEC Tea Leaves*, INT'L HERALD TRIB., Nov. 24, 1993, available in LEXIS, News Library, Allnws File; see Yang Razali Kassim, *Fretting About ASEAN's Clout in a Bigger APEC*, BUS. TIMES, Nov. 18, 1993, at 19, available in LEXIS, News Library, Allnws File (noting that APEC is now shifting to an accelerated pace in activity and visibility).

209. Chandler, *supra* note 203, at G1.

210. See Chandler, *supra* note 203, at G1 (highlighting that Secretary of State Warren Christopher recently attracted attention in European capitals when he stated that "Western Europe is no longer the dominant area of the world"). The Clinton Administration acknowledged that the United States has been too Eurocentric, especially given the realities that trade with the Asia-Pacific countries outpaces that with any other grouping. *Id.* Currently, the Asia-Pacific region dominates as the most economically dynamic sector in the world. *Id.*

211. Koh, *supra* note 204.

Similar to the fears about AFTA,<sup>212</sup> skepticism abounds concerning APEC. Cynics argue that the APEC summit offered no more than a photo opportunity for Clinton, and they dismiss the association on the grounds that APEC members lack political unity and are too disparate to form a cohesive global force.<sup>213</sup> Some nebulous successes did arise out of the meeting; the members agreed to strive toward creating a unified APEC based on promotion of free trade principles and aiming to reduce protectionism.<sup>214</sup> APEC also accomplished certain concrete achievements. Most notably, it admitted Papua New Guinea and Mexico in 1993, and resolved to admit Chile in 1994.<sup>215</sup> The conference also resulted in ASEAN questioning its role in APEC.<sup>216</sup> Upon APEC's formation five years ago, ASEAN constituted the core of the association, and was generally expected to hold a forefront position.<sup>217</sup> Pessimists, however, fear that the growth of APEC may dilute ASEAN's influence.<sup>218</sup>

As a result, ASEAN is determined to reassert its leadership role in APEC<sup>219</sup> and hopes that Indonesia's hosting of the next APEC meeting in 1994 will provide a catalyst for that end.<sup>220</sup> The ASEAN leaders strongly urge that ASEAN remain a priority, especially in light of concerns about potential conflicts between AFTA, APEC, and NAFTA.<sup>221</sup>

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212. See *supra* notes 149-162 and accompanying text (discussing the criticisms of AFTA).

213. Koh, *supra* note 204.

214. Koh, *supra* note 204.

215. *Asia Comes Out Ahead as APEC Settles Down*, SOUTH CHINA MORNING POST, Nov. 26, 1993, at 18.

216. Kassim, *Fretting About ASEAN's Clout in a Bigger APEC*, *supra* note 206, at 19.

217. Kassim, *Fretting About ASEAN's Clout in a Bigger APEC*, *supra* note 208, at 19.

218. Kassim, *Fretting About ASEAN's Clout in a Bigger APEC*, *supra* note 208, at 19. Others postulate, in the alternative, that the larger misgiving for ASEAN is whether a stronger APEC may undermine the cohesiveness of the ASEAN organization. *Id.*

219. *ASEAN Determined to Counter NAFTA*, REPORT FROM JAPAN, Nov. 23, 1993, available in LEXIS, News Library, Allnws File.

220. Marcus & Chandler, *supra* note 207, at A34.

221. *ASEAN to Oppose APEC Trade Bloc at Summit*, AGENCE FRANCE PRESSE, Nov. 17, 1993, available in LEXIS, News Library, Allnws File; see Florence Chong, *Danger of APEC-AFTA Conflict*, BUS. TIMES, Oct. 14, 1993, at 6, available in LEXIS, News Library, Bustms File (arguing that the concept of open regionalism requires an absence of trade barriers and implying that the idea of AFTA, creating a preference for intra-ASEAN trade, contradicts the goals of APEC). But see *U.S. to Proceed Slowly With APEC Identification*, XINHUA GEN. NEWS SERVICE, Nov. 2,

To that extent, some commentators think that ASEAN "won" in keeping APEC a loosely knit consultative body as opposed to a formal institution.<sup>222</sup> In fact, not all ASEAN leaders enthusiastically embraced the Seattle summit meeting and fanfare about APEC. For example, Malaysia's Prime Minister Mahatir boycotted the meeting, denouncing it as the superpowers' attempt to again dominate the region,<sup>223</sup> and adhered to Malaysia's position that the EAEC presents the proper mode for Asian economic cooperation.<sup>224</sup>

APEC seems to have taken the lead in the potential race to link the major economic powers outside of Europe.<sup>225</sup> In fact, at the first meeting of the APEC finance ministers on March 19, 1994, APEC furthered its attempts to organize the economic powers of the Pacific by developing more concrete and directed goals.<sup>226</sup> These principles include: "increasing cross-border flows of goods, services, and investment, the recognition that the private business sector was the primary engine for growth and that the capital markets needed further development for the effective mobilization and allocation of private business capital."<sup>227</sup> At the first finance ministers' meeting, the economic leaders made plans to develop their strategies at future meetings, thus indicating hope for the future for APEC.<sup>228</sup>

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1993, available in LEXIS, News Library, Allnws File (concluding that no inconsistencies arise between APEC and NAFTA).

222. *Asia Comes Out Ahead As APEC Settles Down*, *supra* note 215, at 18 (suggesting that President Clinton aimed to turn APEC into an Asian style North American Free Trade Agreement, but that ASEAN succeeded in limiting the scope to a looser, less formalized institution). This "failure" on Clinton's part left him in a poor position in APEC negotiations. *Id.*

223. Chandler, *supra* note 203, at G4. Cf. Yang Razali Kassim, *Mahatir Says He'll Attend Informal APEC Summit in Indonesia*, BUS. TIMES, Mar. 23, 1994, at 18, available in LEXIS, World Library, Allwld File (noting that Mahatir finally agreed to attend the APEC II summit scheduled for summer 1994, but that this gesture does not indicate his acceptance of "United States hegemony in the Pacific region").

224. *Malaysia Welcomes U.S. Stance on East Asia Economic Caucus*, U.P.I., Nov. 24, 1993, available in LEXIS, News Library, Allnws File.

225. See Koh, *supra* note 204 (asserting that APEC embodies the first example of open regionalism, that it encompasses the major Pacific economic powers, and concluding that although APEC represents an ambitious goal, it may not prove to be developed into a working reality if pursued at a comfortable pace).

226. See Sue Kendell, *APEC Finance Ministers to Meet Again*, AGENCE FRANCE PRESSE, Mar. 20, 1994, available in LEXIS, World Library, Allwld File (listing the overarching principles adopted by the Finance Ministers at the March 1994 summit).

227. *Id.*

228. *Id.*

## B. EAST ASIAN ECONOMIC CAUCUS (EAEC)

Malaysian Prime Minister Mahatir Mohamad proposed the creation of EAEC to function as an inter-Asian lobbying and consulting group.<sup>229</sup> The Caucus, under Mahatir's plan, would create an all Asian economic group that would explicitly exclude Australia, Canada, New Zealand, and the United States.<sup>230</sup> The United States only recently ceased denouncing the proposed economic organization as protectionist,<sup>231</sup> but continues to press for reliance on the more broadly based APEC forum.<sup>232</sup> Mahatir's plan warns that ASEAN could racially segregate world trade, so critics encourage Asian countries to seek bilateral free trade agreements with the United States.<sup>233</sup> Japan also exhibited more interest in the EAEC plan recently, and Japanese Foreign Ministry sources state that they feel less resistant to the idea than they had previously.<sup>234</sup> ASEAN refused to adopt Mahatir's initiative officially at the Singapore Summit.<sup>235</sup>

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229. Pura & Kanabayashi, *supra* note 70, at R20.

230. See *U.S. Official Says EAEC is Good for Free Trade*, JAPAN ECON. NEWSWIRE, Oct. 19, 1993, available in LEXIS, News Library, Allnws File (listing the countries included in the EAEC); see Michael Vatikiotis, *The Mahatir Paradox*, FAR E. ECON. REV., 20 Aug. 1992, at 16, 17 (judging Mahatir's rationale for excluding the Western powers as basically retaliatory). Mahatir argues that a stronger EC and the new NAFTA create increasing protectionism, against which Mahatir feared GATT would remain powerless. *Id.* The logic for excluding the North Americans and the Europeans is that if they insist on forming exclusive economic blocs, East Asia could similarly put up barriers. *Id.*

231. See *U.S. Official Says EAEC Is Good For Free Trade*, JAPAN ECON. NEWSWIRE, Oct. 19, 1993, available in LEXIS, News Library, Allnws File (noting that the Clinton Administration recently shifted American policy regarding the EAEC, now calling it a good attempt at promoting regional free trade). This new approach overturns previous U.S. policy which condemned the EAEC as exclusionary. *Id.*

232. *Id.*

233. Holloway, *supra* note 68, at 74; see Pura & Kanabayashi, *supra* note 70, at R20 (suggesting that the EAEC plan has encountered criticism and skepticism from Japan and other Asian nations who have refused to adopt the plan to avoid exacerbating trade frictions with the United States).

234. See Anthony Rowley, *Cheered On By Japan*, FAR. E. ECON. REV., Aug. 20, 1992, at 18 (speculating that if the United States were less hostile to the EAEC, Japan would be quite likely to declare more open and official support, and that the proposal would then be more forcefully debated within ASEAN as well).

235. Singapore Declaration, *supra* note 1, para. 5, at 502. The Declaration announced that regarding the EAEC, "ASEAN recognizes that consultations on issues of common concern . . . could contribute to expanding cooperation among the regional



## C. ASEAN-U.S. INITIATIVE

Prior to the formation of AFTA, recommendations arose for the creation of an umbrella agreement between ASEAN and the United States. The proposal would encompass provisions for both specific bilateral arrangements and multilateral efforts.<sup>236</sup> The creation of the United States-Caribbean Basin Initiative fueled ASEAN's desire to contemplate similar arrangements.<sup>237</sup> A joint committee examined the umbrella framework proposal and the ASEAN-U.S. economic situation. It suggested that the initial umbrella should establish guiding principles, based on GATT compatibility, for the conduct of trade and economic relations between the United States and ASEAN.<sup>238</sup> The committee also recommended a free trade agreement under the auspices of the ASEAN—U.S. Initiative umbrella.<sup>239</sup>

Discussions of an umbrella bilateral agreement highlight ASEAN's fear that the United States might, under its normal bilateral relations, pit one ASEAN member against another in order to gain the economic

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economies, and the promotion of an open and free global trading system." See also Vatikiotis, *supra* note 5, at 10-11 (indicating that the atmosphere at the Singapore Summit was soured by disagreements over EAEC because Indonesia wants the caucus to exist with the larger APEC, an idea that Mahatir rejects on the grounds that it would stifle Asian induced initiatives). But see K.I. Arasa, *Proposed Asian Bloc Seen in Need of Muscle*, J. COM., July 27, 1993 (indicating that at the July 1993 Foreign Ministers meeting the leaders agreed to work out a plan in which the EAEC would form a caucus with APEC).

236. See generally ASEAN-U.S. INITIATIVE, *supra* note 175, at xxix-xxx (outlining U.S.—ASEAN trade relations and making a forward reaching proposal for a free trade agreement between the United States and ASEAN).

237. Hadi Soesastro, *ASEAN-U.S. Economic Relations: An Update*, in ASEAN IN REGIONAL AND GLOBAL CONTEXT, 294, 307 (Karl D. Jackson et. al. eds., 1986).

238. ASEAN-U.S. INITIATIVES, *supra* note 175, at 190-91. The committee of the University of Hawaii's East-West Centre and Institute of Southeast Asian Studies recommended that the initial free trade umbrella should be based on the presumption that market mechanisms drive trade and investment; government intervention should be limited in time and scope; the plan should attempt to commit the states to "roll back" trade barriers, and lay the foundation for further bilateral and multilateral negotiations. *Id.*

239. ASEAN-U.S. INITIATIVES, *supra* note 175, at 191.

upper-hand.<sup>240</sup> By pushing one individual ASEAN member into too many concessions, the rest become vulnerable.<sup>241</sup>

Despite these concerns, the United States and ASEAN recently created a bilateral agreement to promote free trade between the parties, much in the image of the ASEAN-U.S. Initiative.<sup>242</sup> The United States views the agreement, named the U.S.-ASEAN Alliance for Mutual Growth (AMG), as a way to capitalize on AFTA and reduce the U.S. trade deficit with ASEAN.<sup>243</sup> ASEAN considers AMG an opportunity to increase its access to U.S. markets.<sup>244</sup>

Aside from AFTA, none of the proposals for free, or even more open trade in Asia, were widely accepted until the APEC summit meeting. Some Asian scholars have expressed skepticism over the success of *any* Asian framework because those recommended before APEC all lacked the prospect or potential of superpower endorsement.<sup>245</sup> APEC provides superpower support, but its potential for success remains questionable.<sup>246</sup>

## VI. POSSIBILITIES FOR AN ASEAN LEGAL COOPERATIVE FRAMEWORK

ASEAN presently lacks a formal legal framework to enforce the revolutionary AFTA plan.<sup>247</sup> A preliminary question arises as to whether ASEAN needs a regional court to serve this purpose.<sup>248</sup> To date, few

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240. Cf. Soesastro, *supra* note 230, at 295-96 (highlighting a view of the ASEAN-U.S. relationship as one "between unequal partners"). This view characterizes the relationship as one of North-South reliance. *Id.*

241. See *Youngblood*, *supra* note 177 (noting the ASEAN leaders consternation and their perception of a rise in protectionism by the major power and noting their distress that major trade blocs turn increasingly to bilateral mechanisms to deal with trade problems).

242. Yang Razali Kassim, *US, ASEAN Working Out Plan For Better Market Access*, BUS. TIMES, Nov. 22, 1993, at 1, available in LEXIS, News Library, Bustms File.

243. *Id.*

244. *Id.*

245. See, e.g., Holloway, *supra* note 68, at 74 (condemning the prior recommendations and asserting that Asia remains left with merely "framework" trade and investment agreements which will remain ineffectual unless the parties assert them as the necessary building blocks in creating a workable free trade arrangement with the United States).

246. See *supra* text at note 213 (explaining the criticisms about APEC).

247. George T. Shenoy, *The Emergence of a Legal Framework for Economic Policy in ASEAN*, 29 MALAY. L. REV. 116, 116 (1987).

248. See Kenevan & Winden, *supra* note 106, at 237 (highlighting the recommen-

significant proposals call for the establishment of such an enterprise, but the AFTA Advisory Commission's chairman recently proposed that ASEAN establish a dispute settlement mechanism.<sup>249</sup> Even though one ASEAN publicist considers law the most fundamental mechanism to guarantee "dynamic regionalism,"<sup>250</sup> current ASEAN proposals for further integration lack an established legal structure.<sup>251</sup> This deficiency in a legal framework raises serious doubts about ASEAN's current dispute settlement mechanisms<sup>252</sup> and increases the necessity to create a legal system to bolster AFTA.

ASEAN recognizes the importance and impending need to develop an ASEAN legal community. The founding documents of ASEAN include mandates to: (a) "promote regional peace and stability by encouraging respect for justice and the rule of law in the relationship among [the] countries of the region;"<sup>253</sup> (b) "study how to develop judicial cooperation including focus on a possible ASEAN extradition treaty;"<sup>254</sup> (c) and "study the desirability of a new constitutional framework for

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ditions of ASEAN trade leaders who stress the necessity for a stable organ for dispute resolution to help achieve the goals of AFTA). The AFTA Council alone will likely prove insufficient in filling this role due to the fact that in running the organization it remains beholden to the political will of AFTA members, and thus far, it lacks any procedural rules by which to govern and monitor AFTA and violations thereof. *Id.* at 237-38.

249. *ASEAN Urged to Set Up Dispute Settling Mechanism*, XINHUA GEN. OVERSEAS NEWS SERV., Jan. 29, 1992, available in LEXIS, News Library, Allnews File (discussing Dr. Emanuel de Dios's recent proposal and his view that the ASEAN's member's differing means of categorizing their products under the AFTA plan could lead to disputes).

250. Purificacion Valera-Quisumbing, *ASEAN Legal Cooperation: Quest and Challenge*, 1 ASEAN L. & SOC. J. 1, 3 (1986).

251. See Shenoy, *supra* note 247, at 118 (noting that currently there is little that can be labelled "ASEAN Law" in terms of truly supra-national community law). Without a regional legal structure, the ASEAN members are left to decide whether, when, and to what extent to follow the declared goals of the Association. *Id.* Issues of national sovereignty, therefore, tend to dominate supra-national concerns. *Id.* Critics suggest that for this reason the pace of economic cooperation in ASEAN would be set by how fast the slowest country is willing to proceed. *Id.*; see also Valera-Quisumbing, *supra* note 250 (emphasizing that international free trade integration agreements, which clarify dispute settlement mechanisms, ASEAN's most recent cooperation effort; AFTA lacks any such detailed legal plan).

252. See *infra* notes 142-146 and accompanying text (describing the dispute resolution mechanisms in the AFTA agreement and their lack of specificity).

253. Valera-Quisumbing, *supra* note 250, at 11 (citing Bangkok Declaration, 1967).

254. See Valera-Quisumbing, *supra* note 250, at 11 (citing ASEAN Concord, 1976).

ASEAN.”<sup>255</sup> In 1983, with these goals in mind, the ASEAN Standing Committee agreed on the advice of the ASEAN Law Association (ALA) to initiate regional cooperation in the legal field.<sup>256</sup>

The ALA and the ASEAN Standing Committee called for legal cooperation in the fields of the judiciary, legislature, law enforcement, and legal education.<sup>257</sup> Regarding legislation, the ALA recommended harmonizing legal rules affecting intra-ASEAN trade, international activities and regulations.<sup>258</sup> The ALA also advocated creating regional rules concerning trade, business, industry, taxation, transportation, communications, science and technology, patents, immigration, private international law and other fields.<sup>259</sup> In addition, the ALA suggested judicial cooperation in procedural areas including: service of documents, obtaining evidence in civil and commercial matters, reducing obstacles to filing suit, and making appearances in the courts of another ASEAN country.<sup>260</sup> Other proposals for law enforcement favor cooperation in facilitating extradition and emphasis on identification and investigation as areas in which to encourage interaction between police and prosecutors.<sup>261</sup>

ASEAN's Treaty of Amity and Co-operation,<sup>262</sup> which calls for creation of a system for peaceful dispute settlement, contains the preliminary foundations for a regional legal system. It recommends establishment of a High Council to recognize disputes between the parties and suggest suitable means of settlement.<sup>263</sup> Once established, the High

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255. See Valera-Quisumbing, *supra* note 250, at 11 (citing ASEAN Concord, 1976).

256. Valera-Quisumbing, *supra* note 250, at 11.

257. Valera-Quisumbing, *supra* note 250, at 12-14.

258. See Valera-Quisumbing, *supra* note 250, at 12-13 (noting that the ALA suggested that cooperation aimed at harmonization of national legal rules and formulation of regional rules should be approached simultaneously).

259. Valera-Quisumbing, *supra* note 250, at 13.

260. Valera-Quisumbing, *supra* note 250, at 13.

261. Valera-Quisumbing, *supra* note 250, at 13. An Agreement on Judicial Cooperation already exists between Thailand and Indonesia, signed March 8, 1978, that covers service of judicial documents, obtaining evidence, as well as reciprocal free access of nationals to the courts of either jurisdiction. *Id.* Additionally, extradition treaties currently exist between Thailand and Indonesia (1976), the Philippines and Indonesia (1976), and between Malaysia and Indonesia (1975). *Id.* ASEAN may broaden these agreements to include such rights and responsibilities among and between all six member states. *Id.*

262. See *supra* notes 22-25 and accompanying text (explaining the historical importance of the Treaty of Amity and Co-operation).

263. Treaty of Amity and Co-operation, *supra* note 22, at pmb1. In the preamble,

Council would provide reliable offices, mediation, inquiry, or conciliation to parties consenting to its authority.<sup>264</sup> The Treaty does not preclude recourse through other acceptable means of peaceful dispute settlement under article 33(1) of the United Nations Charter.<sup>265</sup>

The Treaty of Amity and Co-operation remains significant in that it articulates ASEAN's preference for the non-adversarial, non-formal methods of dispute management and resolution.<sup>266</sup> In attempting to create an ASEAN court, the members would likely retain the basic philosophy of non-confrontation and consensus,<sup>267</sup> while relinquishing only the normative requirement that the dispute resolution format be non-formal. A codified ASEAN legal framework could formalize and harmonize ASEAN laws, thus increasing the expectations of community law for the ASEAN members and outside trading partners. This harmonizing effect would, in turn, provide ASEAN with the needed security and incentive to engage in trade deals and provide a sense of potential outcome in the dispute.<sup>268</sup>

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the Treaty emphasizes "respect for justice and the rule of law" and the parties conviction that "settlement of differences or disputes between their countries should be regulated by rational, effective, and sufficiently flexible procedures, avoiding negative attitudes which might endanger [or] hinder cooperation." *Id.*

264. Treaty of Amity and Co-operation, *supra* note 22, at arts. 13-16.

265. Irvine, *supra* note 21, at 48; Treaty of Amity and Co-operation, *supra* note 22, at art. 17.

266. See Solimon, *supra* note 18 and accompanying text (discussing consensus building and the *mushawarah* concept).

267. Teuku Mohammad Radhie, *Harmonization of Laws: Issues and Prospects in ASEAN Law, Technology and Development*, 1 ASEAN L. & SOC. J. 50, 54 (July-Dec. 1986). The most significant ASEAN shared value is "respect for the use of peaceful, non-confrontational mechanisms in the management of conflicts." Clarita Carlos, *ASEAN Values For Regional Cooperation*, 2 ASEAN L. & SOC. J. 31, 32 (July-Dec. 1987). This non-confrontational method, which one commentator calls "the Asian Way," may seriously delay or impinge upon many aspects of regional cooperation. The "Asian Way" operates on the basis of unanimity. Michael Haas, *THE ASIAN WAY TO PEACE: A STORY OF REGIONAL COOPERATION* 6-7 (1989). ASEAN, like many Asian international organizations, makes decisions on the basis of unanimity and avoids coercive tactics. *Id.* For example, meetings often get postponed if the participants anticipate friction or dissension. *Id.* Most importantly, the "Asian Way" is grounded in the belief that "[e]veryone is entitled to the dignity of their own position and need not lose face." *Id.* at 8. Operating from these accepted cultural norms, Asian envoys first obtain commitments to abstract goals. *Id.* at 9. The process allows for open political discussions regarding the feasibility of executing ideals into practice. *Id.*

268. See, e.g., Anna Teo, *Law Reforms to Help Regional Drive*, BUS. TIMES, Jan. 12, 1994, at 2, available in LEXIS, News Library, Allnews File (noting Singapore's decision to

A. CREATION OF AN ASEAN LEGAL INSTITUTION  
IN THE SHADOWS OF THE EC MODEL

ASEAN lacks experience in constructing a regional judicial system and has experienced trifling success in harmonizing the national laws of the member states.<sup>269</sup> In attempting to pattern an ASEAN legal regime after the EC model, ASEAN would encounter fundamental differences between the two regional organizations, highlighting difficulties for any ASEAN endeavor to formulate a regional legal framework based on the EC prototype.<sup>270</sup>

The first major difference between the two regional groupings involves their origins. The EC was created as the result of a treaty,<sup>271</sup> which defined its powers, functions, and jurisdictional limits.<sup>272</sup> In contrast, a "declaration" created ASEAN in 1967, stating only its intention and general objectives.<sup>273</sup> Thus, the underlying objectives of the EC

review and reform its legal system to harmonize it, where appropriate, with international conventions and model laws, in an effort to facilitate international trade and dispute resolution). The proposed revisions aim to "create a more predictable legal environment for business operations." *Id.*

269. Cf. Valera-Quisumbing, *supra* note 241, at 15 (noting that the Fifth ASEAN Standing Committee initially called for harmonization of national laws and legal rules). The committee encouraged that studies be conducted in ASEAN to see how insights from the EC experience might apply in the ASEAN context. *Id.*

270. See Shenoy, *supra* note 247, at 128-29 (noting the differences between the two regional organizations, from the method in which they were created to their basic goals, and recognizing the suggestions that ASEAN adopt the EC present structures, but concluding that ASEAN is a paradox).

271. Treaty Establishing the European Economic Community, signed April 17, 1957, 298 U.N.T.S. 11, reprinted in 1 TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES 115-385 (1987).

272. Valera-Quisumbing, *supra* note 250, at 3-4; see also Elfriede Regelsberger, *The Dialogue of the EC/Twelve with Other Regional Groups: A New European Identity in the International System?*, in EUROPE'S GLOBAL LINKS 3, 8-11 (Geoffrey Edwards & Elfriede Regelsberger eds., 1990) (defining group-to-group relations as the result of the EC's "internal logic" and as the product of a complex intra-European bargaining process); see also John T. Lang, *The Sphere in which Member States Are Obligated to Comply with the General Principles of Law and Community Fundamental Rights and Principles*, LEGAL ISSUES EUR. INTEGRATION 1991/92 23 (outlining the mechanisms, regulations, and reasons for compliance with the general principles of European Community law). See generally Andreas Lukas, *EC-ASEAN in the Context of Inter-Regional Cooperation*, in WESTERN EUROPE AND SOUTH-EAST ASIA 94 (Giuseppe Schiavone ed., 1989) (summarizing the establishment of various regional integrations focusing on the EC model).

273. See Shenoy, *supra* note 247, at 117 (noting that the Bangkok Declaration,

and ASEAN differ. For example, the EC endeavored to form an integrated regional community, whereas ASEAN chose to create a loose "association" encouraging cooperation while maintaining national sovereignty.<sup>274</sup>

The second fundamental difference between the two organizations involves their dispute resolution mechanisms. The EC established its regional legal regime with the European Court of Justice as its focal point<sup>275</sup> that solely employs formal adjudicatory mechanisms.<sup>276</sup> ASEAN, in contrast, currently has no court scheme and prefers dispute solutions based on conciliation, mediation and dependable offices.<sup>277</sup>

#### B. IMPEDIMENTS TO DEVELOPMENT OF AN ASEAN LEGAL REGIME

Although ASEAN recognizes the value of creating a legal cooperation scheme, especially to enforce its heightened goals of economic integration, many obstacles hinder the process of such legal integration.<sup>278</sup> The legal systems of member states differ greatly, ranging from common to civil law systems, and to hybrids of both.<sup>279</sup> Other potential barriers

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ASEAN's formation document, is a vague and non-specific recognition of generalized goals of the organization and does not mention any specific course of action or time frame).

274. See Soliman, *supra* note 18, at 119 (highlighting that previously, the ASEAN member states vociferously repudiated all attempts to impose a supra-national structure with authoritative controls).

275. See generally Henry G. Schermers, *The European Court of Justice: Promoter of European Integration*, 22 AMER. J. COMP. L. 444, 444-45 (1974) (indicating that the EC originally created four main functioning organs envisioning that The Commission and European Parliament would govern political concerns, and that the European Court of Justice would supervise the Community legally).

276. See Soliman, *supra* note 18, at 119 (comparing the differences in dispute settlement between the EC and ASEAN, and noting that while ASEAN prefers a more nonadversarial and informal approach, employing reliable offices, conciliation, and mediation, the EC utilizes the formal approach); see also Radhie, *supra* note 267 at 54 (discussing the preference in the "Asian Way" for the non-formal, conciliatory method).

277. Soliman, *supra* note 18, at 119-20.

278. See Radhie, *supra* note 267, at 52-3 (arguing that ASEAN does need a uniform legal system, but that due to the diversity of cultural, political, and legal backgrounds, creation of a uniform legal system may remain elusive).

279. See Radhie, *supra* note 267, at 52 (outlining the differences in the legal systems between Brunei Darussalam, Malaysia, Singapore, Philippines, Thailand, and Indonesia). Common law forms the basis for the legal systems of Brunei Darussalam, Malaysia and Singapore. *Id.* Spanish and U.S. laws, however, significantly influence the Philippines legal system. *Id.* The Indonesian legal structure follows the basic con-

impede regional legal cooperation between the ASEAN members, including differences in colonial backgrounds, language, culture, religion, political systems, economic development, as well as differences in legal traditions enumerated above.<sup>280</sup> In its efforts to formulate a legal regime, ASEAN must ensure that the regional rules are "neutral" in nature to avoid impinging upon the cultural sensitivities of the member states. Experience suggests that ASEAN will likely rely on the *mushawarah* principle<sup>281</sup> to reach consensus on the delicate issues of harmonizing the ASEAN members' national laws into a regional system that respects cultural sensitivities and national sovereignty.<sup>282</sup>

Currently, several ASEAN countries use a variety of alternative methods for solving legal disputes.<sup>283</sup> Development in the Pacific Rim has created a need for businesses to find a neutral forum in which to resolve disputes, and this need has led to an increasing use of arbitration in the area.<sup>284</sup> The arbitration alternative accommodates the regions' societal attitudes toward peaceful dispute settlement. For example, in Thailand, conflict avoidance is highly prized, and litigation is customarily viewed as an inappropriate form of local dispute settlement.<sup>285</sup> With outside nations drawn increasingly into regional trade that gives rise to disputes, many now call for less reliance on local customs and for development of a formal court system to manage an increasing number of disputes.<sup>286</sup> Given this trend, ASEAN may find itself pressed from the outside to incorporate arbitration into its development of a formal regional legal system.

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structs of the Dutch legal system and the Thailand system derives from an amalgamation of the continental and common law structures. *Id.* See generally V.S. Winslow, *Fundamental Law in the ASEAN Nations: A Study in Diversity*, 1 ASEAN L. & SOC'Y J. 42 (July-Dec. 1986) (discussing in general the constitutional and legal frameworks of each ASEAN member state).

280. Shenoy, *supra* note 247, at 120.

281. See Soliman, *supra* note 18 (defining the *mushawarah* principle).

282. See Radhie, *supra* note 267, at 54 (discussing possible methods to initiate harmonizing the laws of the ASEAN members).

283. Jean Guccione, *ABA Panel Says Arbitration is 'Pacific' Way*, L.A. DAILY J., Aug. 10, 1989, at A1.

284. See *id.*, at 1 (explaining that many Pacific Rim countries, like the United States, are facing excessive trial delays due to overburdened court systems and are now opting for arbitration as a speedy and peaceful alternative).

285. *Id.* at 5.

286. *Id.* at 5.



## VII. RECOMMENDATIONS

### A. ASEAN ECONOMIC COOPERATION

ASEAN should actively strive to achieve the goals of AFTA. As the world increasingly divides into disparate trade blocs, ASEAN should strive to continue the great economic achievements its member countries have attained in the world economy. ASEAN nations recognize that with economic success comes responsibility, and loss of status as a developing nation.<sup>287</sup> ASEAN's trading partners now view ASEAN as a potential economic threat, particularly if it joins Japan and the other newly industrialized countries in an Asian trade bloc, although development of an active Asian trade bloc currently seems unlikely.<sup>288</sup> ASEAN will likely forge ahead with AFTA to present itself as a vehicle for viable, effective economic cooperation in Southeast Asia.<sup>289</sup>

### B. LEGAL FRAMEWORK

If ASEAN promotes heightened cooperation, it should create formal legal structures to serve in concert towards this goal.<sup>290</sup> Prospects for an ASEAN legal framework depend on the willingness and ability of the member countries to make necessary adjustments to their national laws. As compared with the EC, ASEAN appears to have a great chance of success among all the other regional organizations.<sup>291</sup> As a result of these anticipated accomplishments, ASEAN is often compared to the EC in its attempts toward regional cooperation. Nevertheless, the growing similarities and differences between the two regional groupings make it difficult to use the EC legal regime as a model for development of an ASEAN legal structure.

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287. See *supra* notes 96-99 and accompanying text (describing, for example, the changing views of the EC as it tries to push ASEAN to follow Western principles of free trade and human rights).

288. See *supra* notes 200-228 and accompanying text (discussing the inherent difficulties with both APEC the EAEC in ASEAN's efforts to formulate a unified Asian trade bloc).

289. See *supra* notes 200-228 and accompanying text (describing the possibilities of a broader Asian trade bloc forming to act in conjunction with or countervailing against the EC and NAFTA).

290. See *supra* notes 239-252 and accompanying text (describing the need for an ASEAN legal framework).

291. See Krause, *supra* note 17, at 5 (describing why ASEAN is similar to the EC in that they both are held together by political fears).

In its present form, ASEAN cannot exert any legal control over the regional economy.<sup>292</sup> Consequently, proposed advances in economic integration, potentially through AFTA, will require more than the declared intentions and general purposes announced through the Singapore Declaration.<sup>293</sup> Such integration will require a legally binding code at the regional level, which can regulate the conduct of member states, their conformity with codified rules, and the consequences of non-compliance. Attempts at integration ought to delineate a course of action and set of procedures for implementing the recognized policies. The major impediments to a legal framework likely will remain.<sup>294</sup> As mentioned, ASEAN will have difficulty choosing between the different models of legal regimes, or the member states may decide to craft their system.

### C. GUIDELINES FOR HARMONIZING ASEAN LAWS AND CREATING AN ASEAN LEGAL SYSTEM

The first stage in formulating regional legal rules should focus on harmonizing the laws of the member countries.<sup>295</sup> Recognizing that the EC model cannot be superimposed on an ASEAN legal system,<sup>296</sup> the ASEAN states must first take certain preliminary steps to create an ASEAN legal regime. The threshold stage involves designating fields in which to formulate regional legal rules. These fields include trade, business, industry, transportation, communications, science and technology.<sup>297</sup> In the second stage, member states should harmonize those national laws governing certain areas that affect the common ASEAN interest so that each country will have similar rules governing particular

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292. See *supra* notes 142-146 and 239-247 and accompanying text (noting the current lack of any truly supra-national ASEAN law to direct the association in dispute resolution).

293. See *supra* notes 100-129 and accompanying text (discussing the basic principles of the Singapore Summit and Declaration).

294. See *supra* notes 268-276 and accompanying text (describing the forces that will impede movement towards legal consolidation).

295. See Radhie, *supra* note 267, at 53 (recognizing that there is no requirement that all legal aspects be made uniform, but that it is necessary to have common region-wide legal rules in certain fields to facilitate cooperation).

296. See *supra* notes 177-199 and accompanying text (examining the complexities and resulting problems of attempting to implement the EC model on an ASEAN legal framework).

297. See, e.g., Radhie, *supra* note 267, at 54 (contending the first steps should be made in areas such as these which are considered "neutral" and will not impinge on the member's cultural sensitivities or legal constructs).

activities.<sup>298</sup> An ASEAN governing body, perhaps the ALA, may promulgate "model laws." For the immediate future, regional community laws should avoid reaching into "intimate legal areas," such as marriage, family, and inheritance law.<sup>299</sup> Probing into these delicate spheres may offend an individual member's cultural sensitivities and legal philosophies and frustrate any chance of harmonization.

Until recently, the EC approach to regional cooperation remained the only successful model. Today, ASEAN may look to the newly emerging NAFTA as another possible means of patterning regional cooperation, at least with regard to free trade. Without calling for a new regional court system, NAFTA provides for its own system of dispute resolution that is more developed than any ASEAN has devised.<sup>300</sup> The NAFTA approach to dispute resolution may prove a more acceptable and realistic model that ASEAN may decide to emulate in its dispute settlement mechanisms. ASEAN may also find that it need not take the bold step to create its own legal system and instead, maintain the current, traditional mechanisms through diplomatic, rather than judicial, channels.

### CONCLUSION

Regardless of the impediments, regional trade blocs represent the way of the present, if not the future.<sup>301</sup> ASEAN will continue to bind Southeast Asia, particularly in light of the Clinton Administration's shift to focusing its trade relations on the Asia-Pacific region and the new life breathed into APEC. Growing fears that NAFTA and a "fortress Europe" would spur a protectionist surge propelled ASEAN to create its own free trade arrangement. The question remains whether this impetus will encourage ASEAN to finally implement a successful economic framework, or whether nationalistic demands will make AFTA yet another one of ASEAN's acronymic pipedreams.<sup>302</sup> To protect and en-

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298. Radhie, *supra* note 267, at 53.

299. Radhie, *supra* note 267, at 54.

300. See *supra* notes 142-146 and accompanying text (outlining the NAFTA dispute resolution mechanisms and comparing those to the weak counterparts in the ASEAN documents).

301. See Quinlan, *Trade Blocs Are Taking Over*, *supra* note 129 (discussing the proliferation of regional trade blocs, and the contention that they will accelerate if the GATT talks fail).

302. See *Fortress Asia?*, *ECONOMIST*, Oct. 24, 1992, at 36 (reiterating the views of economists who stress that AFTA is "doomed to irrelevancy" because of its focus on tariff, rather than non-tariff barriers, its overwhelming bureaucracy, and overreaching restrictions). But see Ow-Taylor, *supra* note 85, at 23 (emphasizing that presently,

courage the new trading system, ASEAN must actively strive to implement a successful economic framework and a harmonized legal institution.

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AFTA offers the only strong security against NAFTA, and speculating that the other East Asia economic powers will continue to turn to APEC as a forum to communicate their concerns, but worrying that APEC may not provide proper venue).