

THE ORGANIZATIONAL ARCHITECTURE OF THE ASIA-PACIFIC: INSIGHTS FROM THE NEW INSTITUTIONALISM¹

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In the last two decades, a new research program has emerged on the study of international institutions. Its premise is simple: that international organizations can be studied using the same analytic tools that have been used to study institutions in comparative politics and political economy.² This paper draws on this literature to understand the evolution of regional institutions in East Asia, the political limits on these institutions, and how changes in institutional design might help generate more robust economic cooperation.

At the outset, it is important to specify some “stylized facts”: the features of the institutional landscape we speak to explain. Although the economic crisis of 2008-9 constitutes a potential stimulus for institutional innovation, its impact can only be evaluated against the backdrop of existing arrangements, some of very long standing.

For many years, a dominant puzzle was the relative paucity of regional institutions when compared either to Europe (for example Kahler 2001, Katzenstein 2005) or even the Western Hemisphere (Haggard 1997; Ravenhill 2007; Solingen 2008 for a comparison to the Middle East). This characterization is no longer accurate. Indeed, the opposite problem now seems more pressing. The region has witnessed an explosion of institution-building that has produced overlapping arrangements. At least five distinct institutional “complexes” can be distinguished³:

- The ASEAN, including the ASEAN Free Trade Area (AFTA) and the recent commitment to create an ASEAN Economic Community (AEC);
- The ASEAN+3 (APT) and its associated economic institutions, such as the Chiang Mai Initiative (CMI), but also the collateral development of multilateral ties among the Northeast Asian partners (China, Korea and Japan) through the Trilateral Summits;
- The East Asian Summit, currently including the APT as well as India, Australia and New Zealand but with (potentially) open accession rules;

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² Among the more important general statements of this research agenda are an early review by Martin and Simmons (1998) and collective research projects on legalization and world politics (Goldstein et. al. 2000), on the rational design of international institutions (Koremenos, Lipson and Snidal 2002, 2003) and on delegation and agency in international organizations (Hawkins et. al. 2006 and Bradley and Kelly 2008). Keohane 1984 is probably the most important progenitor.

³ I do not address the growing number of institutions forged by subnational governments, such as “growth triangles” and “growth corridors,” nor the myriad of specialized functional bodies in the region (such as the Mekong River Commission, Executives' Meeting of East Asia and Pacific Central Banks, Asian-Pacific Postal Union). However, an important issue for consideration is the role that such specialized bodies might play in implementing initiatives forged by the more central inter-governmental organizations.

- APEC, which remains the most significant trans-Pacific institution;
- The multiplicity of overlapping regional trade arrangements (Aggarwal and Urata 2006; Dent 2006; Suominen 2009; Ravenhill, this project), most of which are bilateral. These in turn can be broken down into clusters depending on the partners setting their substantive and procedural agendas (US-led, China-led, Japan-led, and so on). However, new multilateral regional trade arrangements have also emerged in recent years, most notably the China-ASEAN FTA and the Trans-Pacific Strategic Economic Partnership Agreement (TPP).

These five institutional complexes do not have common memberships, substantive agendas or decision-making procedures. The existence of such overlapping organizations requires that we consider not only the governance of each institution, but how and why tasks are allocated across them. Are these institutions complementary or competing? If institutions are competing, which ones appear to be “winning”?

Despite the proliferation of institutions, a second stylized fact is that many of these organizations seem “shallow” or “thin,” and in several senses.

- The agendas of regional institutions often appear quite expansive, even exhaustively so. But on closer inspection, the range of issues on which they are capable of forging joint action is often quite limited.
- Institutions operate on the basis of consensus decision-making procedures, which push toward modest “lowest common denominator” agendas and agreements.
- Commitments are non-binding, voluntary and in some cases simply imprecise.
- The extent of delegation to standing international secretariats or bureaucracies is tightly circumscribed and such institutions enjoy little independence.

This characterization is also partly misleading; the region has seen ongoing efforts to finesse consensus decision rules, strengthen commitments and expand delegation. The global economic crisis also appeared to spur new initiatives with respect to financial cooperation. But skeptics have more than a grain of truth in their favor. Despite the obvious economic success of the region, and the significance of the Chiang Mai Initiative, the proliferation of institutions has not been matched by formal economic cooperation that is particularly robust.

Section I provides an overview of the simple models of cooperation and delegation that undergird the new institutional literature. These models highlight how the extent of cooperation and delegation is limited by the heterogeneity of the membership. They also cast light on the crucial tradeoff between the “widening” of institutions by including new members and the prospects for “deepening” through more robust forms of economic cooperation.

Section II takes these models to the historical record, showing the extraordinary difficulty countries in the region have had in “deepening” regional institutions. ASEAN has played a crucial role in this regard, exercising political influence that far outstrips its economic weight. Rather, institutional innovation has come largely by “widening” existing institutions, but in the process also replicating their liabilities.

The drawbacks of the “ASEAN way” are widely recognized in the region, and a number of strategies have been pursued to finesse it by empowering smaller groups, either inside existing institutions (“variable speed geometries”) or through creation of altogether new

institutions (“convergence clubs”). Section III addresses these strategies, and argues that neither have proven particularly effective at deepening cooperation. Variable-speed geometries have had difficulty generating commitments that are both variable and precise. The creation of smaller “convergence clubs” such as FTAs in principle permit more intensive cooperation. As a matter of logic, however, it is not necessarily the case that these FTAs reflect a push toward deeper cooperation. Rather, they reflect the diverse interests of the countries negotiating them. As a result, they pose increasing coordination problems and will prove difficult to subsume under a more encompassing organization.

Efforts to change the design of regional institutions must ultimately look at two key questions: how interests will be represented, including through voting rules; and the extent to which tasks are delegated. These questions are addressed in Sections IV and V respectively. There is some evidence of efforts to finesse the constraints of consensus decision-making at the margin, particularly when redistributive transfers or lending is involved. Nonetheless, it appears highly unlikely that countries in the region would move from consensus procedures toward either weighted voting or more majoritarian decision-making rules.

Given the substantial differences in political systems across the region, it is also highly unlikely that we will see direct representation of citizens through regional parliaments. But mechanisms are emerging through which some non-governmental actors are represented, most notably business associations; these connections might be used more aggressively to discipline the process of economic cooperation.

Section V explores the logic of delegation. There is ample evidence of delegation in East Asian institutions, but most of it occurs from one inter-governmental body to another or to purely ad hoc structures. Two core problems are apparent, one having to do with the principals, the other with the agents. First, there is a mismatch between the stated economic objectives of many of the core institutions in the region and dominant influence exercised by foreign ministries. A crucial reform is to strengthen the role of inter-governmental bodies made up of ministers of finance, the economy, and trade as well as central bankers; such initiatives are already bearing fruit.

The second problem is that the extent of delegation to standing secretariats remains limited, with little history of delegation for the purposes of surveillance, monitoring of compliance, dispute resolution and other judicial functions. In considering what types of delegation would be both feasible and effective, I focus on several core problems in existing regional institutions and make three suggestions.

First there is a strong need for more independent information that will support monitoring, surveillance and assessment of what both individual countries and institutions have done. There is also a need for more outside checks on information provided through the inter-governmental process, either through business groups or academics. The creation of Compliance Boards and other peer review mechanisms and the initiation of Institutional Assessment Projects are means through which such information might be generated.

Second, regional integration efforts, whether bilateral (as in many FTAs) or multilateral (for example through the AFTA) need more robust dispute settlement procedures that will incentivize firms to be more actively engaged in pushing regional integration forward at the

policy level. One way of achieving this objective would be to explore granting direct standing to firms in dispute settlement procedures rather than relying solely on governments.

Finally, more attention needs to be paid to the use of transfers as a means of securing more flexible decision-making processes, more binding commitments and greater delegation. To date, this approach has been rejected by the richer countries in the region, but Regional Integration Funds could provide an institutional mechanism to combine transfers with closer monitoring of national policy commitments.

In terms of the locus of these reform efforts, the sheer breadth of APEC suggests that cooperation through that venue would yield the largest gains. However, institutional innovation is possible at all levels, from FTAs through ASEAN up to the most encompassing regional institutions: APEC, the EAS and APT.

I. A Simple Model of Cooperation and Delegation through International Institutions

The explanations for the “stylized fact” of relatively weak institutions range from culture (Acharya 2000, 2009), to historical animosities and nationalism (Rozman 2004; Shin and Sneider 2007), the legacies of the Cold War (Ikenberry and Moon 2008; Aggarwal and Koo 2008), and the emergence of new geostrategic rivalries centered on the relationship between the US, China and Japan (Green and Gill 2009). Others have argued that the very economic success of the region—in effect, integration through other means—has either mitigated the demand for inter-governmental institutions (Katzenstein 2005) or alternatively made institutions *more* robust than in other developing regions (Solingen 2008).

Yet in the simple analytic framework of the new institutionalism, the most obvious constraint on institutionalization is the extraordinary heterogeneity of the countries of the Pacific Rim. Among the more salient differences across countries have been alliance commitments; level of development; the nature of economic systems and development strategies and regime type. Table 1 outlines these differences and notes some of their predicted effects and examples from the region’s institutional history. For our purposes, the most important effect of this heterogeneity is that preferences vary with respect to a range of economic policies, including but by no means limited to the willingness to engage in further liberalization of trade and investment and deeper cooperation on “behind the border” issues.

Table 1 Structural and Preference Heterogeneity: Consequences for Cooperation		
Dimension	Predicted effects	Salient examples of institutional and policy consequences
Alliance arrangements	<ul style="list-style-type: none"> • Alliance commitments limit the significance of multilateral security arrangements • Tendency for multilateral security institutions to mirror alliance commitments 	<ul style="list-style-type: none"> • Persistence of "San Francisco system." • Creation of SEATO, Shanghai Cooperation Organization and "expansive bilateralism" such as TCOG and TSD • Limited institutionalization of Northeast Asia • "Lowest-common denominator" quality of multilateral security arrangements, including ARF, Six Party Talks.
Level of development	<ul style="list-style-type: none"> • Conflicts over financing of institutional initiatives • Divergent expectations about extent and terms of redistribution through international institutions • Conflicts over provision, access to, and rules governing pooled liquidity 	<ul style="list-style-type: none"> • Limited funding for trade facilitation and Ecotech through APEC • Continued link of CMI to IMF conditionality and move toward weighted voting in "multilateralized" CMI
Differences in economic system, and in preferences over liberalization in particular	<ul style="list-style-type: none"> • Conflicts over scope and pace of liberalization • Conflict over mechanisms for assuring compliance 	<ul style="list-style-type: none"> • Variable speed geometry of ASEAN FTA • FTAs not conforming with GATT/WTO Article XXIV commitments • Difficulty in enforcing and monitoring APEC Bogor commitments; "Individual Action Plan" approach • Failure of EVSL
Regime type	<ul style="list-style-type: none"> • Limits on direct representation (regional parliament) or representation for NGOs • Limited role for multilateral or regional courts • Conflicts over democracy and human rights agendas 	<ul style="list-style-type: none"> • Delay in China's entry into APEC following Tiananmen • Intra-ASEAN conflicts over Myanmar • Ongoing difficulties in integrating North Korea into regional institutions

The effects of divergent preferences can be clarified by considering a simple spatial model of cooperation (see Nielson and Tierney 2003, Lyne, Nielson and Tierney 2006; Hawkins et. al. 2006; Epstein and O'Halloran 2008). An emerging theoretical literature motivated by the European Union is also useful in clarifying the tradeoff between the widening and deepening of institutions (Alesina, Angeloni and Etro 2005; Hasken, Mattli and Plumper 2006; Berglof et. al. 2008).

Countries join international organizations because they provide public goods with positive externalities; these might take the form of mutual security assurances, access to pooled financial resources, free trade, or harmonization of regulatory policies. An extremely important assumption is that these network externalities exhibit increasing returns; the more members of an institution, the greater the benefits it can confer.

Political scientists tend to model cooperation as a mutual adjustment of policies, which may or may not entail delegation or centralization. Economists, by contrast, consider centralized provision of public goods financed by contributions from the members (for example Alesina, Angeloni and Etro 2005). Yet the basic insights emanating from the two literatures are quite similar. The loss of autonomy or *sovereignty costs* associated with membership is the extent to which the initial policies of members have to be adjusted on entry into the institution. Institutions may place little demands on their members, meaning that policy moves very little or that centralized provision of public goods is limited. Alternatively, entry into the institution may require members to move policy very dramatically or make substantial contributions in support of public goods; China's accession to the WTO is an important case in point.

As we will see in more detail below, the extent of policy adjustment required may be variable within any given institution. To begin, however, we will assume that accession to the institution commits countries to common policies; examples would be harmonization of customs procedures, an (Article XXIV conforming) FTA, the convergence criteria associated with European monetary union, or a stipulated contribution to a common budget. In this simple model, countries calculate the anticipated network externalities from forming or joining an organization, which are contingent on the number of other parties joining, and weigh them against the sovereignty costs of adjusting the policy status quo. It can be shown formally that the propensity of organizations to form is endogenous to a number of parameters, including the benefits derived from the public good, the number of issues on which countries seek to cooperate and the decision-making rules. We take up a number of these issues in more detail below, but focus first on the problem of preference heterogeneity.

Organizations are more likely to form among countries with similar or contiguous preferences. Countries with similar preferences can create an institution without having to move policies far from their stand-alone ideal points; those who want either more cooperation ("high-demanders") or less ("low-demanders"), by contrast, pay high sovereignty costs and will find the institution unappealing.

These distributional conflicts can be seen more clearly if we think about the formation of an institution that includes some but not all of the countries in a given region. How will the insiders to this institution think about the gains from enlargement or widening—bringing in new members—as opposed to deepening, or cooperating on new issues among themselves? Bringing

in more countries is presumably good since expanded membership increases the provision of the relevant public goods. However, it is easier to bring in countries with contiguous preferences than countries that are either high- or low-demanders. High-demanders will threaten insiders with further policy adjustments if they are granted any decision-making influence after entry (see Alesina, Angeloni and Erto 2005 for a treatment under majority voting rules). There are only three obvious ways for insiders to avoid this eventuality:

- stipulate ex ante that cooperation will be limited to the issues on which insiders agree;
- create decision-making rules that give insiders either veto power over new entrants or agenda control once they enter;
- change the nature of commitments themselves so that they are either non-binding or are "variable-speed."

Note that the very institutional arrangements designed to assure that insiders will exercise agenda control have the effect of making the institution less attractive to "high-demanders." As Epstein and O'Halloran (2008) put it, the limits of cooperation are determined by the organization's "biggest weakest link," or the lowest-demand country that the IO wishes to include in the organization (see also Berglof et. al. 2008).

Low-demanders, by contrast, pose the opposite problem of threatening to dilute the gains from the organization. This can only be managed in the context of a "common rule" institution by:

- stipulating strict accession rules that require up-front policy adjustments;
- strong monitoring, compliance and dispute-settlement mechanisms, including the threat of expulsion;
- decision-making processes that guarantee insiders agenda control.

Hausken, Mattli and Plumper (2006) extend these simple ideas into a consideration of the tradeoffs between widening and deepening. Insiders are likely to choose deepening (on the issues of interest to them) when the number of regulations and policies awaiting harmonization is relatively high in comparison to the number already harmonized. Insiders are more likely to opt for deepening—again, on the issues of common interest to the members--the more the mean preference of insiders deviates from the mean preference of outsiders in areas likely to become harmonized in the future. Again, insiders seek to avoid circumstances in which the admission of new entrants will shift the focus of the organization away from their (mean) preferences.

These simple models provide some insights into the relationship between global multilateral institutions and regional ones. Why would regional institutions form when there are presumably greater gains to be had within the context of global ones (as can be demonstrated theoretically most easily with respect to trade)? The reasons are twofold. First, although global institutions should in theory yield larger gains, preferences within those organizations are likely to be more heterogeneous. As a result, high- or low-demanders form regional institutions because they are more in line with their preferences. Note that regional organizations may be more robust in the extent of cooperation (for example if we compare the US-Korea Free Trade Agreement to the WTO) or less (say, the conditions for drawing from the IMF as compared with the proposed Asian Monetary Fund or Chiang Mai Initiative). Second, not only are preferences more closely aligned in regional groupings, but decision-making structures are more favorable to the members of the smaller grouping.

II. The Stylized Facts Revisited: Path Dependence in Asian Regionalism

This very simple model provides a number of insights into the evolution of institutions in the region, as well as some core features of their design; here I provide a brief overview of the evolution of the four main “institutional complexes” noted in the introduction—setting aside the FTAs for the moment—and show the substantial power wielded by the ASEAN incumbents on the regional architecture.

The US did not opt for a multilateral approach to the provision of security in Northeast Asia, on top of which multilateral economic institutions such as the OECD might be built (see Calder and Ye 2004). As a result, the most significant international institutions in the region were initially the bilateral alliance arrangements of the so-called “San Francisco system,” which were not simply military alliances but included substantial economic cooperation as well (Ikenberry 2001, 2003).⁴ Cold War cleavages blocked even the consideration of multilateral institutions among the major powers of Northeast Asia (China, the Soviet Union/Russia, the two Koreas, Japan and the United States) until Gorbachev’s Vladivostok speech of 1986 and the gradual embrace of multilateralism on the part of China since the mid-1990s (Goldstein 2005). Not until 1999, did a thin multilateral structure emerge linking China, South Korea and Japan in the form of the Trilateral Summits, and as will be seen this was a spinoff of an ASEAN initiative.⁵

In Southeast Asia, similar Cold War cleavages limited the scope of regional cooperation. The Southeast Asian Treaty Organization (SEATO), although multilateral in design, did not provide the foundation for trans-Pacific multilateral economic cooperation between the United States and Southeast Asia. As a result, ASEAN (1967)—and ASEAN procedures—came to exercise a very important influence over subsequent developments. Until some adjustments in the ASEAN Charter (2007), these included:

- an overwhelming emphasis on inter-governmental as opposed to supranational bodies, with a weak Secretary-General (nominated by member states in alphabetical order and serving a five-year term) and Secretariat (only created in 1976, initially with a staff of only seven);
- consensus decision-making procedures;
- strong norms of “non-intervention” or “non-interference,” which were typically interpreted to mean that compliance with joint initiatives was voluntary and non-binding.

Acharya (2009) traces carefully how these rules reflected very particular concerns about sovereignty costs, particularly given the newness of the countries in question. But these

⁴ These were with Australia (1951); New Zealand (1951); the Philippines (1951); South Korea (1953); Japan (1954); Thailand (1954); and the Republic of China (1954). A multilateral economic initiative by South Korea in 1966 to join these countries as well as Malaysia and Vietnam was disbanded in 1975.

⁵ The Joint Declaration on the Promotion of Tripartite Cooperation among the People’s Republic of China, Japan and the Republic of Korea (signed in 2003, at <http://www.aseansec.org/15284.htm>) makes reference to cooperation in trade and investment, and takes note of the output of a working group on a Northeast Asian FTA, but states only that “the three countries will explore, in a timely manner, the direction of a closer future economic partnership among the three countries” and that they will “launch an informal joint study on the possible modality of trilateral investment arrangements.” With respect to financial cooperation, Section III, para. 6 appears to commit to cooperation primarily through the Chiang Mai structures, discussed in more detail below.

procedures also reflected the substantial heterogeneity within ASEAN itself, a problem that has continued to plague the institution (Ravenhill 2007; Jones and Smith 2007).

In large part because of the weak institutionalization of Northeast Asia and the first-mover advantages enjoyed by ASEAN, much institutional development in Asia has constituted either a “widening” of the “ASEAN complex” or a response by “high-demanders” to the institutional deficiencies of it. ASEAN’s influence was first revealed in the creation of APEC. After a very long negotiation, ASEAN conceded to the formation of the new, trans-Pacific institution but insisted that it operate according to ASEAN rules. In the words of the Seoul APEC Declaration (1991 at www.aseansec.org/1041.htm):

“4. Cooperation will be based on:

- a. The principle of mutual benefit, taking into account the differences in the stages of economic development and in the sociopolitical systems, and giving due consideration to the needs of developing economies; and
- b. A commitment to open dialogue and consensus-building, with equal respect for the views of all participants.

5. APEC will operate through a process of consultation and exchange of views among high-level representatives of APEC economies...”

In addition, the so-called Kuching Consensus (1990) on ASEAN’s participation in APEC stipulated that APEC would not engage in formal negotiations that would lead to binding commitments on its members, a perfect example of agenda control. The APEC Secretariat, created in 1992, was if anything weaker than ASEAN’s. Seconded by the country hosting the APEC process for the year, the Executive Director’s energies were devoted primarily to making sure that the Leaders’ and Ministerial meetings ran smoothly; institutional continuity at the top of the Secretariat was altogether lacking.

The Bogor Declaration (1994) subsequently stated that “in order to facilitate and accelerate our cooperation, we agree that APEC economies that are ready to initiate and implement a cooperative arrangement may proceed to do so while those that are not yet ready to participate may join at a later date” (Para. 9). This statement of principle became the core of the Osaka Action Agenda approach from 1995. However, this idea of a flexible consensus clearly does not commit those who are “not ready” to subsequently join in any common undertaking, and not until 2001 was there an effort to clarify a process through which the “ready” could initiate and implement joint actions in the context of the institution.

Consensus rules set in train a predictable set of conflicts within APEC between high- and low-demanders (Ravenhill 2001). These did not fall precisely along lines of level of development, as Japan sometimes occupied an ambiguous position. But “Western” (and essentially Anglo-Saxon) countries not only wanted to place greater priority on trade liberalization, but wanted to negotiate binding agreements. The Bogor Declaration of 1994 defied expectations by committing the organization to the ambitious—if temporally distant and “two speed”—goal of “free and open trade and investment” by 2010 for industrialized countries and 2020 for developing ones. Yet subsequent developments revealed what could already be seen behind the scenes at Bogor: that the differences in preferences with respect to trade liberalization in APEC were too large to maintain the organization as a “single undertaking.” The Osaka Action Plan (1995) approach to implementing the Bogor Declaration, with its combination of a very wide agenda (15 policy areas), voluntary and non-binding Individual Action Plans

("concerted unilateral liberalization") and weak Collective Action Plans, with voluntary participation, was not a strategic blunder on the part of Japan. Rather, it reflected the fundamental constraints of the membership and implicit rules of the organization. The failure of the Early Voluntary Sectoral Liberalization (EVSL) initiative (Krauss 2004) made the same point even more forcefully.

The next round of institutional innovation—the formation of the ASEAN+3 (APT) structures—is often attributed to the "critical juncture" of the Asian financial crisis. The leaders of China, Japan and Korea were invited to an informal ASEAN leaders' meeting in December 1997, just as the US was being criticized for not responding to the crisis in a robust way (Stubbs 2002; Calder and Ye 2004; Aggarwal and Koo 2008). However, the origins of the APT are in fact much earlier, and can be found in a succession of selective "widening" efforts: ad hoc mechanisms through which ASEAN sought cooperation with important non-ASEAN members. These mechanisms included joint committees, "dialogue partnerships" and the Post-Ministerial Conferences.⁶ Yet the "founding documents" of the APT—from the Joint Statement on East Asian Cooperation (1999) to the Second Joint Statement on East Asia Cooperation (2007)—are clear that APT procedures would essentially mirror ASEAN's. Accession rules retained significant discretion on the part of ASEAN,⁷ and only ASEAN members could host APT meetings.

At the third APT summit in 1999, the organization appointed a group of scholars to flesh out what a deeper East Asian Community might look like (the East Asia Vision Group, or EAVG), followed by an inter-governmental East Asia Study Group (2002). The Study Group outlined an ambitious array of 17 short-term measures through which the APT process could be deepened. Yet it also called for an East Asian Summit and the creation of an "East Asian community." In November 2004, ASEAN agreed to convene an East Asian Summit (EAS), adding India, Australia and New Zealand to the ASEAN+3 structure.

Even though outlined as a longer-term goal that would result from "an evolutionary process that builds on the substantive comfort level of the existing ASEAN+3 framework (East Asia Study Group 2002, 59)," the idea of an East Asian community immediately raised delicate issues of membership. Would the EAS come to subsume the APT? Would this further "widening" of the ASEAN complex ultimately reach across the Pacific to a membership closer to APEC's, which in addition to the US included Russia, Taiwan, several Latin American countries and a number of small Pacific island countries? Or would ASEAN and APT incumbents favor a more narrow membership that did not have to accommodate new entrants with widely divergent views and a necessary dilution of their influence? It quickly became clear that China preferred the membership of the APT to that of the EAS. As Wu Xinbo (2009) points out, China believed that the purpose of including non-East Asian countries was to dilute Chinese influence, possibly at the behest of the United States. By contrast, Japan has favored a more inclusive regional organization, perhaps even including the United States.

⁶ For example, the first formal dialogue with Japan was held in 1973, but following the ASEAN-Japan summit of 1977 a variety of channels formed. Korea was made a Sectoral Dialogue Partner in 1989 and joint committees with China were formed as early as 1994. The ASEAN + 3 Foreign Ministers met informally as early as 1994. The first joint meeting between ASEAN, China, Japan and Korea took place in the context of preparing for the ASEM.

⁷ The delineation of accession rules to the EAS in 2005—on the part of ASEAN, it should be underlined—appeared to hold open the door to wider membership by setting standards that could include not only India, Australia and New Zealand but even the United States and others. The criteria included close ties to ASEAN, signatory to the ASEAN Treaty of Amity and Cooperation, and status as an ASEAN dialogue partner.

These conflicting preferences with respect to the core regional institutions were mirrored in competing proposals with respect to the membership in a regional FTA. The East Asia Study Group vetted the idea of an East Asia Free Trade Area and an East Asian Investment Area presumably based on the APT membership. In 2006, Japan proposed a Comprehensive Economic Partnership for East Asia (CEPEA) that would mirror EAS membership. At the 2004 APEC meeting in Santiago, the APEC Business Advisory Council (ABAC) proposed study of a Free Trade Area of the Asia Pacific (FTAAP), an idea that subsequently received support from a number of important advocates in the United States and was formally proposed by the Bush administration (Dent 2008, 219-221). Needless to say, these competing proposals have been impossible to reconcile and none has come to fruition. Rather, the trade agreement that seems most likely to expand is one that is not bound by a fixed membership, but which has an open accession clause (the Trans-Pacific Strategic Economic Partnership Agreement or TPP).⁸

Despite these differences with respect to membership, a common feature of all of these organizations is their commitment to “the ASEAN way.” In the 2000s, however, criticisms started to mount that these rules were retarding cooperation; the result has been a succession of institutional efforts seeking to finesse or circumvent them.

III. Finessing the ASEAN Way through Small Groups

The models described in Section I assume that the organization in question is trying to coordinate on a common policy, such as a free trade agreement, regulatory harmonization, or the budget contribution for the provision of a public good. However, an alternative is to allow or encourage smaller groups of like-minded states to form, either within existing institutions or through the formation of “convergence clubs.” Before turning to these alternatives, it is worth considering a more rigorous defense of “the ASEAN way,” and in particular its “soft” conception of law.

Hard and Soft Law

Proponents of “hard law” argue that both the *precision* of commitments and their *binding status* are crucial for those commitments to be credible. Precise and binding commitments are a necessary condition not only for adjudication and third party enforcement—and therefore to important forms of delegation and institution-building—but even for reputational effects to operate as well. How can I tell if you have violated your commitments if they are non-binding or I cannot even be sure what they are?

However, states may purposefully undertake commitments that are non-binding or even altogether ambiguous. Consider, for example, the following passage from the first ASEAN Concord of 1976 (3, ii): “member states shall progress towards the establishment of preferential trading arrangements as a long term objective on a basis deemed to be at any particular time appropriate through rounds of negotiations subject to the unanimous agreement of member states.” This is a somewhat extreme case of ambiguity about basic objectives. Nonetheless, ASEAN did subsequently commit in 1992 to an AFTA process that subsequently made at least some progress toward the freeing of inter-regional trade (Nesadurai 2003).

⁸ Signed by Singapore, Chile and New Zealand, Brunei subsequently joined and a number of other countries have signaled their interest in negotiating accession, including the U.S. (under the Bush administration), Australia, Vietnam and Peru.

In recent years, there has been a resurgence of interest in the possible benefits of “soft law.” Abbot and Snidal (2000) argue for example that soft law lowers sovereignty costs and therefore increases the prospects for compromise and the reaching agreements; this is arguably self-evident. However, Gerson and Posner (2008) also note that non-binding statements “can ultimately have real effect by working their way into customary international law or by providing the framework for informal inter-state cooperation.” The passage of soft law resolutions can signal future intent; when leaders pass even non-binding resolutions with respect to trade, they are signaling to important domestic audiences the future direction of policy. At the same time, soft law resolutions might elicit information from affected agents at lower cost, and thus help policymakers learn about the consequences of their actions in contexts characterized by substantial uncertainty.

There are good reasons for skepticism with respect to the merits of “soft law,” at least in the Asia-Pacific context. First, the positive effects of “soft law” depend heavily on the credibility of the institutions generating it. Many of the examples cited by Gerson and Posner involve the passage of non-binding resolutions by the US Congress, which clearly is capable of also passing binding ones. The proliferation of multiple “soft law” resolutions—as in both the Osaka Action Agenda and the ASEAN AEC—dilutes their signaling effect and thus the institutions’ credibility. Moreover, proponents of hard law are obviously correct about the implications of non-binding commitments for institutional development, a topic addressed in more detail below. If commitments are ambiguous, it is not clear what function monitoring or adjudicative bodies would serve. Soft law appears to be a cause as much as an effect of institutional weakness in the region.

Variable Speed Geometries

Is it possible to introduce discipline under soft law? One way of doing so is through “variable speed geometries.” Institutions can permit tiered commitments that conform more closely to the preferences of the actors. At least in principle, a variable speed geometry approach can entail precise commitments; they are simply differential. Nesadurai (2003) outlines an example from the AFTA. In the mid-1990s, governments began to backtrack on commitments to liberalization, which were not initially binding. Negotiations ensued through which original targets were relaxed to accommodate the interests of critical sectors, thus securing political support for the larger project. But the negotiations also produced quite precise, though variable-speed targets.⁹

The new ASEAN Charter institutionalizes the “ASEAN-x” concept, but this concept is decidedly looser. Under “ASEAN-x,” “flexible” participation in economic agreements is allowed “if there is a consensus to do so” (ASEAN Charter Art. 21 para. 2); note the ambiguity over whether such flexible participation would ultimately include binding, even if variable, commitments. The Singapore-Thailand Enhanced Economic Relationship (STEER) framework, launched formally in 2003, rested on a similar logic (labeled by Singapore’s Minister for Trade and Industry “2 plus x.”). Within APEC, the 2001 Shanghai Leaders’ meeting formally endorsed the “pathfinder” approach, which also permits initiatives to move forward among clubs of interested parties.

⁹ See the Protocol on the Special Arrangement for Sensitive and Highly Sensitive Products, September 30 1999, Articles II through V. As Ravenhill (2007) notes, not all of these commitments were subsequently kept.

But there is some reason to doubt whether these various formulae should be considered “variable-speed geometries” at all. Under a variable-speed geometry, countries undertake a common commitment but implement at different speeds. The formulae discussed above entail commitments on the part of some that will not necessarily be undertaken by others at all.

Variable-speed geometries obviously involve some important tradeoffs. At least in principle, the limited success of these efforts was not a function of the variable-speed nature of the commitments but the broader problem that commitments were not seen as binding. However, some difficulties do appear to arise when actors are variably committed. First, low-demanders will have incentives to overestimate the difficulty in meeting stipulated goals. This is particularly so if there are benefits from free-riding on the actions of high-demanders. At the limit, the “variable speeds” look little different than what would have occurred in the absence of any agreement (Ravenhill 2007 on the AFTA).

In principle, the institutional architecture of organizations with variable-speed geometries also need not be thin; within ASEAN, for example, the recommendations of the High Level Task Force on ASEAN Economic Integration argued for flexibility in meeting commitments, but at the same time proposed that commitments be more precise and transparent. The Task Force also called for the creation of an ASEAN Compliance Body that a strengthened Dispute Settlement Mechanism to “ensure expeditious and legally binding decision in resolving trade disputes.” But low-demanders may seek to weaken the institution through each of these avenues as well; by arguing for commitments that are not only flexible but imprecise and non-binding and by opposing independent information-gathering, monitoring and dispute-settlement or judicial functions.

Convergence Clubs: Misreading the FTAs

A third solution to the lowest-common-denominator problem is to forge agreements among countries whose preferences are more closely aligned. Such “convergence clubs” are presumably characterized not only by higher levels of cooperation but more robust institutional arrangements as well.

One strategic reason for the formation of such clubs is that the revealed benefits of cooperation and delegation will induce low-demanders to reassess their stand-alone or alternative-institutional ideal points, thus creating cascading agreements pushing toward freer trade (Baldwin 1997; this project).¹⁰ Such an outcome is certainly possible; the interest of other countries in joining the Trans-Pacific Strategic Economic Partnership Agreement (TPP), which began as an agreement between Singapore, New Zealand and Chile, might prove exemplary.

However, given weak multilateral disciplines on the formation of FTA's, it is important to note that clubs need not converge on higher levels of cooperation; they only need to constitute an equilibrium for their members. This more cautious assessment seems to more accurately capture the diversity of recent FTAs in the region. National initiatives followed national templates and accommodated the interests of the parties (Dent 2006; Aggarwal and Urata 2006; Hufbauer and Schott 2007).

¹⁰ This latter might occur either “positively,” as the benefits of membership are revealed (learning) or “negatively” if the formation of the convergence club actually lowers the welfare of non-members (discrimination). The pursuit of “high-quality” FTAs by the United States and the Bush administration’s strategy of competitive liberalization self-consciously pursued this logic.

Nor is it plausible that institutions that are incapable of generating common agendas and institutions in the first place will be able to reconcile or incorporate these divergent clubs once they have formed; to the contrary, the existence of path dependencies is amply apparent. At the APEC Ministerial Meeting in Santiago, Chile in 2004, member countries agreed to develop a set of non-binding “best practice” guidelines for FTAs and the Committee on Trade and Investment (CTI) subsequently produced several model chapters, including on institutional arrangements such as dispute settlement and accession rules. However, the APEC standards mirrored US agreements, and as a result were unlikely to have any significant effect on either existing or future FTAs among other parties. Moreover, some of the suggestions, such as simplified rules of origin and open accession rules, would undermine the very political foundations on which existing agreements rested. As Hufbauer and Schott (2007 33) put it succinctly mirroring the logic described above, “member countries almost always resist gratuitous entry by “outsiders,” mainly because that would reduce the implicit protection provided by the original deal.”

Sidepayments

The foregoing institutional solutions to diversity modulate the nature of commitments, membership and decision-making rules. An alternative to these solutions is to maintain the insistence on a common undertaking with respect to the given dimension of commitment (for example, trade liberalization or regulatory harmonization) but to offset the sovereignty costs of the low-demanders with sidepayments. The most direct way of doing this is through transfers or joint policies with a redistributive component. Redistributive bargains, including in the form of direct transfers (regional policy, agricultural supports), have arguably been pivotal to maintaining the European common market as a single undertaking. This solution requires a willingness and ability of the high-demanders to affect such transfers through the international institution, which will in turn depend on the perceived benefit of concessions from the low-demanders along the “primary” dimension of cooperation.

The use of sidepayments to achieve cooperation and delegation appear to be underappreciated in East Asia. The Initiative for Asian Integration (IAI, 2000), aimed primarily at the new entrants (Cambodia, Laos, Myanmar, and Vietnam or CLMV), represents a modest redistributive program tied loosely to the AFTA. Arguably, the entirety of ECOTECH constitutes a channel for such redistribution through APEC, and is repeatedly justified as a necessary complement to the TILF agenda.

There are several reasons why such transfers have been limited in the Asia-Pacific. The first is a classic sequencing or chicken-and-egg problem; the incentives to redistribute for the purpose of securing binding commitments is diminished in institutions that have not managed to make binding commitments. Yet governance issues may also matter; that those financing such transfers—namely the richer countries—will be more comfortable only where they can be assured of exercising appropriate influence in the decision-making process and the organizations delegated the redistributive tasks in question.

IV. Decision-Making: Representation and Voting in International Organizations

Voting rules can influence outcomes by enfranchising different coalitions of actors and thus changing the choices international organizations make. But since members are forward looking,

voting rules are also dependent on the composition and preferences of the membership; as a result, there are good reasons to be skeptical that formal changes in rules—many of which are in any case only implicit—are likely to resolve the problems outlined in the previous section. Nonetheless, we can at least identify the menu of choices and note the conditions under which alternative decision-making procedures have arisen. It is also important to consider other avenues of representation, particularly for interest groups.

Voting Rules

The most inclusive voting rule is a requirement for unanimity or consensus. Technically, all countries in such a system have veto power and they are sometimes called “unit veto” systems as a result. However, such a system does not require unanimous support—in effect, a “yes” vote by all—to undertake an initiative. All that is required is that the proposal avoids a veto. Former ASEAN Secretary General Severino is worth quoting at length on this point:

“Consensus on a proposal is reached when enough members support it—six, seven, eight or nine, no document specifies how many—even when one or more have misgivings about it, but do not feel strongly enough about the issue to block action on it. Not all need to agree explicitly. A consensus is blocked only when one or more members perceive the proposal to be sufficiently injurious to their national interests for them to oppose it outright.”

As we have seen, the formal (or typically the informal) structure of most multilateral institutions in East Asia conforms to this procedure.¹¹

If unit vetoes are likely to be associated as both cause and effect with shallower cooperation and less delegation, the opposite is not necessarily the case; that more majoritarian voting systems would be associated with higher levels of cooperation. Powerful (and richer) states are not likely to submit themselves to binding decisions taken by simple majority rule; weaker and poorer states would engage in excessive redistribution. The rich and powerful will either limit the agenda on which majority decision-making takes place, insist on voting rules that preserve their influence, such as weighted voting or the exercise of vetoes, or exit into convergence clubs in which they do not face such risks.

There are a variety of ways to split the difference between consensus rules on the one hand and simple majority rule on the other; these include qualified majority or supermajority rules, weighted voting, and granting vetoes to powerful members outright.¹² Although it seems highly unlikely that any of the major institutions in the region would explicitly move toward

¹¹ Maggi and Morelli (2006) argue that unanimity decision-making may be superior in the absence of third-party enforcement because decisions are self-enforcing. Once states agree on a particular policy there should be no incentive to deviate from it; if there was, the dissenting state would have blocked the adoption of the policy in the first place. However, as already outlined, such decision-making also empowers the “low-demanders”; higher compliance is bought at the cost of “shallower” cooperation.

¹² The international financial institutions combine weighted voting with supermajority voting that effectively grants vetoes to the US and/or advanced industrial states on some decisions. The UN Security Council is the classic case of granting a limited number of parties vetoes; majorities are required for UNSC decisions, but majorities that include all of the P5 (or at least their abstention).

Super-majority voting models are one way to mitigate these risks by requiring larger but not unanimous coalitions that include powerful members.

qualified majority voting, there is at least some evidence of efforts to finesse the constraints of consensus decision-making.

The most interesting of these is the case of the multilateralization of the CMI. Since 2004, the APT's review of the Chiang Mai Initiative has resulted in some of the most significant institutional developments in the region (see Kawai and Houser 2007; Grimes 2009; Henning 2009). In May 2007, the finance ministers agreed in principle to a self-managed reserve pooling arrangement governed by a single contractual arrangement; the subsequent negotiations centered on both substantive and procedural issues, including the decision-making around swap activation and the structure and process of surveillance. In May 2009, the Finance Ministers announced agreement on "all aspects" of CMI Multilateralization. Despite this announcement, many features of the agreement remained unclear. Nonetheless, agreement on the allocation of contributions to the newly-created pool appeared to equate to weights for voting purposes, which were described as follows: "the fundamental issues will be decided through consensus of members of ASEAN+3, while the lending issues will be decided through majority." It is not clear whether this majority would be a simple or qualified majority; China and Japan hold 32 percent each, while Korea holds a 16 percent share. A 70 percent threshold would give China and Japan vetoes, depending of course on basic votes. But if the major contributors retain the right to opt out of contributing to a loan package, members might settle for a lower activation threshold, even simple majority. However the details ultimately evolve, it appears that the CMIM process has produced a significant institutional innovation in the region in the form of weighted voting. It is also noteworthy that such weighted voting has emerged in the same sort of institutions in which it prevails elsewhere, namely, those in which it is important to accommodate the interests of creditors.

The "pathfinder" approach within APEC—discussed briefly above in the context of variable speed geometries—might also be seen as an alternative voting rule. Pathfinder initiatives require a full consensus for initial approval but permit initiatives to move forward with support from only 25 percent of the membership. As of August 2008, a total of nine pathfinder initiatives had been launched in such diverse areas as food mutual recognition arrangements (MRA), data privacy, and corporate governance, with all but one spearheaded by the advanced industrial states in APEC (including Singapore). Yet this interpretation of the pathfinder language in the Shanghai Declaration would technically still allow a veto over the initiative even if parties chose to abstain from joining (Feinberg 2003, 13). Since the pathfinder initiatives do not commit other parties to join ("...these initiatives should...encourage the broadest participation by other APEC members when they are ready to join..."), they really do not constitute a form of qualified majority voting.

Beyond Inter-governmentalism

The discussion so far has focused entirely on the representation of states. What are the prospects for wider-ranging modes of representation?

If there is a "democratic deficit" in Europe, it is a yawning chasm in Asia where there has to date been relatively little discussion of direct voter input or control over international institutions through elected regional parliaments. Again, the reason for strong inter-governmental bias is fairly obvious. The heterogeneity of political systems, and the persistence of authoritarian rule in a number of major countries in the region, is likely to block the evolution

of direct voter representation at the multilateral level. It is also likely to block the creation of courts in which individuals would have direct standing.

The potential for a more active NGO or private advisory role in international institutions is a more intriguing possibility. For reasons already noted, institutionalized representation of many civil society groups in Asia is likely to be blocked for political reasons or tightly circumscribed. For example, tripartism would have to accommodate official unions. The groups most likely to gain representation are business groups, such as the APEC Business Advisory Council (ABAC). The Pacific Economic Cooperation Council (PECC, 1980) is an even earlier progenitor. Private interests can influence agendas but also serve as monitors by providing alternative sources of information on organizational performance. To see how such monitoring might work requires consideration of the broader issue of delegation in international institutions.

V. The Varieties of Delegation

Delegation is a conditional grant of authority to an independent body to make decisions and take actions (following Lake 2006 and Bradley and Kelly 2008). Given that the weakness of standing secretariats is a leitmotif of the literature on Asian institutions, it is worth outlining the logic of delegation in some detail, starting with those forms of delegation that have the least binding effect on the policy positions of the principals and moving towards those that place harder constraints on governments (see Bradley and Kelly 2008). Before doing so, however, it is important to make some observations about the organizational characteristics of the “agent,” since these bodies can be of very different sorts.

If we take the peak council of country members—the inter-governmental structure—as the principal, we typically think of an executive, secretariat, commission or bureaucracy as the key agent; the extent of delegation to secretariats defines the extent of delegation within a given international institution. However, secretariats are only one body to which principals can delegate. Adjudicative bodies—courts, panels, arbitration committees—play a crucial role in resolving disputes and enforcing compliance. Moreover, principals can delegate to a variety of other entities as well, including outside experts, other international institutions (as has been the case in the CMI’s reliance on the IMF) and sub-groupings of the principals themselves.

This last form of delegation—from one inter-governmental body to another—is by far the most significant form of delegation in Asia’s international institutions. Inter-governmental structures can range in composition from the highly political summits among heads of state, which have been an enduring feature of both ASEAN and APEC, to meetings of foreign ministers and their subordinates (ie., “high level officials” or “ministerial” meetings), to meetings of trade, finance and other functional ministers, down through various working-level inter-governmental bodies.

From the perspective of furthering the goal of economic cooperation, the composition of the principals is important for what can get done. There is in fact a very important mismatch between the composition of the controlling bodies of key regional institutions and their stated objectives. Ministries of foreign affairs do not have influence over economic policy. Nor do they have the connections with interested private sector parties required to make credible commitments with respect to policy.

A crucial institutional innovation in the region may lie as much in the creation of new bodies of principals as in proposals for new bureaucratic agents. Two examples make the point. First, the influence of the APT structure over economic cooperation in the region rests heavily on the creation of the APT Finance Ministers meetings, which commenced in 2000. This pivotal body bears responsibility for a number of significant initiatives, including the CMI, the Asian Bond Markets Initiative and the APT Economic Review and Policy Dialogue. A core institutional reform in the ASEAN Charter is the delegation of responsibility for implementation of the ASEAN Economic Community (AEC) blueprints to the ASEAN Economic Ministers (AEM), through the newly established Council of ASEAN Economic Community. This body in turn has authority to delegate further to relevant functional ministerial bodies as well as to the Secretariat. A core institutional test of the AEC is whether these newly-formed bodies will prove as innovative for ASEAN as the meetings of finance ministers have proven for the APT.

Information Gathering and Agenda Setting

The core of delegation resides in the gains from an (institutional) division of labor: the principal delegates authority to a specialized agent with the expertise, resources and mandate to perform the given task. Probably the least risky form of delegation is a grant of research and advice authority, under which a specialized body or committee is granted the resources to conduct research and gather information on a topic.

A variant of this form of delegation centers on agenda-setting. Principals recognize that they are incapable of reaching decisions, for example as a result of socially intransitive preferences or cycling. In East Asia, the question of leadership can also be sensitive; the countries that are natural agenda-setters, including China, Japan and the US, may face risks in assuming that role. As a result, inter-governmental bodies have delegated to an outside body not simply to gather information but to set an agenda by proposing policies.

East Asian institutions have undertaken a lot of “research and advice” delegation, and it is precisely the basis for the critique that these institutions are “talk shops.” The array of bodies that take this form runs into the hundreds, from working-level intergovernmental meetings to highly specialized consultative bodies of experts; many of these operate on an ad hoc basis. Bodies of highly-visible policy intellectuals have also played important agenda-setting roles in the institutional development of all of the core bodies outlined here, including ASEAN, the APT, EAS and APEC, and have typically been formed in the advance of the negotiation of significant FTAs as well (for example, the Korea-Japan FTA Joint Study Group met for years). There have also recently been efforts to establish somewhat more enduring research and analytic capacities, for example, in the newly-established Economic Research Institute for ASEAN and East Asia (ERIA) and its flagship Deepening Economic Integration (DEI) project.

This sort of grant of authority for information and research or agenda-setting is by definition non-binding, and precisely for that reason has generated substantial skepticism. However, the logic of such delegation is much more complex than it may appear at first blush, since as in any delegation relationship policy experts may well have preferences that diverge from those of the principals. Lake (2006) outlines the dynamics of such informational delegation through a simple model in which the advisory body proposes policies that the principals can then either accept or reject. Recall that in the simple model of cooperation, states make choices about the extent of cooperation based on assessment of the net benefits. Research and

information gathering could in principle change those calculations, for example, by revealing the extent of negative externalities (transborder effects of pollution, such as acid rain) or positive ones (the precise extent of gains from trade or financial cooperation).

For such delegation to lead to increased cooperation, however, three conditions must pertain. First, the principals must be able to gauge whether the agents' proposals are superior to the status quo (the knowledge condition). Second, the agents need incentives to make proposals that are superior to the status quo. Satisfying this condition can be tricky in settings where preferences of the principals are heterogeneous. Ex ante, both the choice of issues on which to delegate and the identity of the agents themselves are subject to political compromises among the principals; as a result, high-powered advisory bodies, often do little more than recreate the heterogeneity among the principals. The most famous regional example of this sort was the well-known disagreements among APEC's Eminent Persons Group on "open regionalism."¹³ A third condition for increased cooperation is that the body of principals is capable of taking Pareto-improving decisions in the face of new information, which is obviously more difficult in the face of the consensus decision rules.

To date, there has been virtually no research on the extent to which this form of delegation has had effect in the Asia-Pacific. A further deficiency of these information-gathering, research and agenda-setting bodies is that they tend to be ad hoc, which increases the control of the principals but weakens their impact. More importantly, there has been little if any delegation for the purpose of independent assessment of whether cooperative initiatives have had the stipulated effect. ASEAN does not devote resources to serious study of the AFTA and its effects that could inform internal discussions; the surprise among ASEAN capitals at the highly skeptical 2003 McKinsey Consulting of ASEAN's progress was testimony to the absence of critical internal assessment. APEC does not study whether commitments reported under its trade and investment facilitation initiatives are in any way additional to what countries were already doing. And although the signing of FTAs is typically preceded by quite detailed analytic work on the potential gains from trade, there is much less research ex post on whether these agreements have had effect.

Implementation: Do Things Get Done in Asian Institutions?

A major reason why Asia is seen as thinly institutionalized centers on the absence of standing secretariats engaged in the direct implementation of projects. In theory, such delegation is most likely in issue areas in which there are informational and organizational economies of scale and in which tasks are frequent, repetitive and require specific expertise. The most obvious example of this sort of delegation is the international financial institutions, which exhibit both organizational and political advantages over national agencies in extending and monitoring conditional lending and other forms of assistance. The emergence of the CMI suggests that it is precisely in this area where the most substantial capacity to implement is emerging.

Outside of the ADB, however, there is little delegation of this sort in the Asia-Pacific, and the ADB itself has only recently been exploited as a possible implementing body for decisions

¹³ The differences centered on the American representative's preference for a more standard FTA vs. the concept of "open regionalism," under which concessions extended under the APEC process would be extended unilaterally beyond the region on an MFN basis.

taken in other forums.¹⁴ The reasons for this reticence appear to be both financial and programmatic. In organizations such as ASEAN, financial resources were scarce when the organization was founded and the capacity to pool and redistribute resources limited. Since that time, ASEAN has been hamstrung by budget rules that require equal contributions from all members, despite the fact that per capita incomes have diverged immensely (partly as a result of the accessions of the 1990s). The ASEAN Secretariat has a staff of only 60.

Within the institutions that encompass both developed and developing countries, such as APEC, the developed countries have been reluctant to commit financial resources. The result has been a fragmented and ad hoc implementation process, in which donors lead and finance initiatives they deem of interest but do not commit resources to the organization as a whole.

In addition to the financial constraints on delegation, principals may feel that they would lose control if too much power is delegated. This concern is exaggerated, in part because the line between the inter-governmental and supranational spheres is not as sharp as is often thought. An important example is the system of “comitology” within the EU (Joerges and Neyer 1997; Bradley 1997; Scott and Trubeck 2002). Although the Commission has primary responsibility for the implementation of Community initiatives, it is assisted by a dense network of committees made up of representatives from member states. These committees enable the Commission to establish dialogue with national administrations before adopting implementing measures, and to adjust those measures according to national circumstance.¹⁵

Regulation

Regulation constitutes a further level of delegation from implementing projects, and entails grants of authority to standing institutions that “create administrative rules to implement, fill gaps in, or interpret preexisting international obligations (Bradley and Kelly 2008, 14). The extent of such delegation is a function in the first instance of binding and uniform law, which is largely absent in East Asia. However, as the comitology structure in Europe demonstrates, such a process need not be—indeed cannot be—separated from participation by member states. Some of the more purely advisory and ad hoc bodies that currently exist in organizations such as ASEAN could be subordinated to such a process of regulatory development were the decision taken to develop a more permanent secretariat or commission structure; the development of common standards provides an important example. The AEC currently constitutes the most likely test of this proposition, but similar regulatory functions could emerge out of the current APT projects, which include areas as narrow as the harmonization of industrial statistics up through the Asian Bond Market Initiative, which has its own complex working group structure.¹⁶

¹⁴ On the relationship between summitry and implementing institutions in the Western Hemisphere see Feinberg with Haslam 2009.

¹⁵ In 2006, an important constitutional change established closer Parliamentary oversight over the comitology system.

¹⁶ WG1 has responsibility for research on ways to increase the supply of local currency denominated bonds; WG2 studies the business model of a new credit guarantee and investment mechanism for the region; WG3 focuses on a possible regional clearing and settlement mechanism and impediments to cross-border bond investment and issuance; and WG4 prepares Asian credit rating agencies for Basel II implementation fundamentals. Each of these could result in joint bodies focusing on greater intra-regional regulatory harmonization.

Dispute Settlement

An important reason for delegating to international institutions is to increase the credibility of commitments and to “lock-in” cooperative policy positions in the national arena. This can only occur by raising the costs of reneging. Compliance can be enhanced in two main ways: by granting parties the right to take violations of commitments to an independent third party dispute-settlement mechanism; or by allowing the international institution to play a more direct monitoring and enforcement role.

Dispute settlement in the four main regional institutions appears weak, but this is somewhat misleading. An important feature of recent FTAs has been the inclusion of dispute settlement mechanisms. ASEAN adopted a dispute settlement protocol in 1996 and an “enhanced” dispute settlement mechanism in 2004. This latter protocol is much more legalized and covers a range of inter-ASEAN agreements, going beyond trade to other functional protocols. To date, there has been little research on the use of these mechanisms in the region, which appear to be limited. Nonetheless, from an institutional perspective, stronger dispute settlement mechanisms could in fact have wide-ranging implications for all aspects of the decision-making process.

The strength of dispute settlement depends in the first instance on the extent of uniform, precise and binding law, discussed above in the consideration of hard and soft law. In any area of cooperation where there are incentives to behave opportunistically by reneging on commitments or “defecting,” the existence of clear statute has the benefit of increasing the probability of detection and bringing national law into conformity with international obligations. “Soft” law weakens both precision and the binding nature of commitments, and thus also has the effect of weakening possible means of enforcement.

Smith (2000) provides a useful introduction to the menu of choices with respect to dispute settlement mechanisms, and shows that the extent of delegation to DSMs can be “harder” or “softer” as well.

- Disputes can be handled by consultation, mediation and arbitration, or institutions can permit recourse to an independent third party in the form of a panel or court.
- If there is third party review, rulings can be binding on the parties or they can be subject to effective ex post revision or even veto by further formal or informal political processes.
- Some judicial bodies are ad hoc, and arguably weaker as a result, while others are standing bodies, with independence guaranteed through standard mechanisms (terms of appointment, independent budgets).
- The question of standing is a particularly interesting area of institutional development. Historically, only states have had standing; cases are brought by countries against countries. But this process is arguably less efficient since it introduces an additional hurdle through which an aggrieved party—ultimately a firm—must jump. Direct legal standing—the right for firms to bring cases—strengthens the force of law because of the high-powered incentives firms have to seek redress.
- Finally is the issue of remedies, which may range from measures that are legally binding in national law to those that are negotiable ex post.

A striking feature of the new FTAs is the inclusion of quite elaborate dispute settlement mechanisms. If we set aside the FTAs, the most important institutional innovations have taken

place in ASEAN. As envisioned by the High Level Task Force on Economic Integration (HLTF), the new system was to be comprised of an advisory, consultative and adjudicatory mechanism in addition to a revised ASEAN DSM. The HLTF proposed the creation of an ASEAN Legal Unit, the ASEAN Consultation to Solve Trade and Investment Issues (ACT), the ASEAN Compliance Monitoring Body (ACMB) or ASEAN Compliance Board (ACB), as well as an enhanced ASEAN DSM. The actual Protocol on the Enhanced DSM (2004) proved a surprisingly weak instrument, however. On the surface, the new DSM looked very similar to the WTO mechanism, showing many features of a highly legalized system, including the standard mechanism of consultations, terms for establishing independent panels and an appeal process. However on closer inspection, the Senior Economic Officials Meeting (SEOM)—a key inter-governmental body—plays a central role in the process. Like the WTO dispute settlement process, the 2004 Protocol adopted the negative consensus rule. Panels for disputes are convened upon the request by the complainant party unless there is a consensus finding by the SEOM not to do so. Since the complainant parties are unlikely ever to vote against a panel's establishment the process should be virtually automatic. However the SEOM's more general rules of procedure are consensual and firms do not have independent standing, meaning that governments socialized to a highly consensual inter-governmental process have to confront one another in an arena where other forms of cooperation are presumably being sought. Not surprisingly, the process has not been seen as complainant-friendly and it appears to have gotten very little—if any—use.

Credibility and Lock-In: Delegation for Monitoring and Enforcement

In principal, members of an international institution can allow the international body not only to monitor commitments but to enforce them as well. The European Commission has the authority to initiate proceedings before the European Court if it has reason to believe that a member state is failing to fulfill an obligation under EU law (such proceedings may also be started by another EU country).

That such measures are still a long way from consideration in East Asia would appear to go without saying given the absence of binding commitments, strong executive organizations or adjudicative bodies capable of rendering binding judgments. However, there have been marginal steps to strengthen monitoring and surveillance. Two examples can be mentioned. The first is the evolution of the peer review process in APEC.¹⁷ The core of the Osaka process is the Individual Action Plan; however, there has been no mechanism to guarantee that the IAPs are in any way substantively additional to what countries are already doing. In conjunction with the mid-term stock taking of progress towards the Bogor Goals in 2005, APEC strengthened the peer review process. These changes included the establishment of a time-table for the review of all 21 member economies. Prior peer reviews, which began at the second Senior Officials Meeting in 1997, were voluntary and ad hoc with no fixed schedule. The new peer review process also allows the review team to explore issues not listed explicitly in the IAPs, albeit with agreement of the reviewed party. Most importantly in terms of process, the new peer review adds a second outside expert and has been scheduled to coincide with the Senior Officials Meeting (SOM), which increases the probability that there is outside monitoring of commitments. This process in no way guarantees more robust collective action; nonetheless, its

¹⁷ See "IAP Peer Reviews: APEC Members Make Progress," APEC Newsletter March 2007 at http://www.apec.org/apec/enewsletter/mar_vol12/online newsa.html.

“naming and shaming” function could be strengthened by institutionalizing participation by business groups in the evaluation process.

A second example of monitoring and surveillance are the emergent institutions of the APT. ASEAN+3 finance and central bank deputies hold two-day meetings semiannually. At the Economic Review and Policy Dialogue, ministers exchange views. At present, external experts and ADB staff provide general input, but assessment and evaluation of performance and policy in any given country appears to be the domain of the country's minister. There is no peer review process. But given the consensus-driven culture of APT organizations, even the introduction of inter-governmental peer review would be less compelling than introducing formal participation from outside parties, whether from the ADB, independent economists, the private sector or even independent panels.

Conclusion

Whatever its advantages with respect to economic integration, the political and economic heterogeneity of the countries of the Pacific Rim has posed challenges to the governance of regional institutions. Until the 2000s, the dominant institutions in the region—initially ASEAN and APEC--managed this diversity through consensus decision-making, the absence of binding commitments, and correspondingly weak monitoring and adjudicative functions. Governments were also reluctant to delegate any significant authority to standing secretariats; international organizations had little role in setting agendas, implementing collective initiatives, or monitoring and assessing performance. In combination, these institutional arrangements fundamentally limited what institutions could achieve. It has been hard to demonstrate that regional institutions—rather than multilateral ones or the unilateral choices of governments—have contributed substantially to the tremendous growth and economic integration of the region.

Since these initial institutions were set in place, there have been several efforts at institutional reform of existing institutions. Variable speed geometries have been made explicit, but these have not generated commitments that were simultaneously both variable and “hard. Nor did “pathfinder” efforts in APEC and ASEAN produce as many followers as was initially anticipated. More fundamental institutional reforms of existing institutions, such as qualified majority voting, did not even come up for discussion.

The most important institutional reform governing the inter-governmental process has not had to do with decision-making rules but with the composition of inter-governmental bodies. The creation of the APT Finance Ministers meeting, and hopefully the new structures for the ASEAN Economic Community, empower ministries that are more capable of making binding decisions. Even marginal increases in the staffing of these inter-governmental bodies would be a step forward.

Rather than reform of existing institutions, institutional innovation in the region has come largely through the creation of altogether new institutions. The adjustment of *memberships* has proved more significant than the adjustment of *rules*. Two developments in this regard have proven noteworthy; the multiplication of FTAs; and the emergence of the APT as the institutional core of the regional integration process.

The proliferation of FTAs may well reflect the domino theory of liberalization advanced by Baldwin (this project), but from a governance perspective overlapping institutions create numerous coordination problems. Some of these new organizations reflect disaffection with existing institutions, both at the multilateral (WTO) and regional levels (APEC, AFTA). It is revealing that a number of APEC and ASEAN members are willing to make concessions that go far beyond what these organizations have managed to achieve (Ravenhill, this project). As argued above, however, “convergence clubs” need not mark a decisive move toward deeper levels of cooperation since they may be formed among “low demanders”; the China-ASEAN agreement arguably constitutes an example. A major institutional challenge for the region is whether these efforts can be reconciled through a more encompassing agreement that would accomplish three objectives: reap the increasing returns to be derived from wider cooperation (“widening”); push cooperation into new areas, most notably investment (“deepening”); and build common institutional procedures, including dispute settlement, that would make commitments credible (“legalization”). To date, the proposals for a more overarching FTA—whether a Free Trade Area of the Asia-Pacific, a Comprehensive Economic Partnership for East Asia, or an APT-led East Asian FTA—have foundered on debates over membership (see also Yamazawa 2008). Moreover, path dependencies are also starting to operate in an adverse way. With the conclusion of FTA projects between ASEAN and China, Japan and South Korea, much of the region’s trade will be covered by FTAs; the major outstanding exception are the tremendous gains to be reaped from more robust cooperation in Northeast Asia, which is unfortunately tied to developments with respect to North Korea (Haggard and Noland 2009). Yet a number of very specific features of these agreements pit the interests of insiders against outsiders, including the structure of phase-in of commitments, rules of origin, and accession rules. Rather than paving the way for an overarching agreement, the variety of memberships, rules and decision-making procedures will make these FTAs harder rather than easier to reconcile over time.

If the evolution of FTAs has resulted in institutional fragmentation, the emergence of the APT seems to signal a new regional focal point. From a purely economic perspective, coordination through APEC or a trans-Pacific organization would yield greater gains. The ascent of the APT necessarily poses the question of whether the exclusion of the United States (and of the Western Hemisphere more generally) is a temporary development or is likely to become an enduring feature of the regional institutional landscape. Nonetheless, there can be little question that the APT currently constitutes the most important locus of “deepening” initiatives.

Moreover, a striking institutional synergy has emerged. Japanese leadership of the ADB has permitted it to serve as a *de facto* secretariat for a number of APT activities, even in the absence of formal rules or explicit delegation to that end. A natural question to ask is therefore whether this cooperation can be extended to other policy areas, and what institutional reforms might facilitate it.

With respect to core decision-making structures, it is highly doubtful that consensus rules would be changed within any of the core institutions in the region (ASEAN, APT, EAS and APEC). The multilateralization of the CMI shows that the APT is capable of delegating to bodies that are governed by qualified majority or weighted voting, but it is not clear what if any other policy areas would be appropriate for this model.

As a result, more emphasis should be focused on the structure and process of delegation in these institutions: means through which inter-governmental bodies can increase the power of supranational ones to generate more robust cooperation.

Compliance Boards and Institutional Assessment Projects

A common complaint is that regional institutions have suffered from a deficit of independent information, including on what both countries and the institutions themselves have achieved. ASEAN's High Level Task Force on Economic Integration recommended the creation of a Compliance Board modeled on the WTO Textile Monitoring Body. The Textiles Monitoring Body is a quasi-judicial, standing body which consists of a Chairman and ten members, discharging their function on an ad personam basis and taking all decisions by consensus. The ten members are appointed by WTO Member governments according to an agreed grouping of WTO Members into constituencies but with rotation allowed within the constituencies. The purpose of the body is to supervise the implementation of the WTO Agreement on Textiles and Clothing by examining all measures taken under it and ensuring that they are in conformity with the rules. The advantage of this structure is that it overcomes the problem of self-dealing in the Osaka Action Plan model: the board has a mandate to focus on violations of rules—areas where countries are not in compliance with obligations—rather than areas where they are (as with the IAP model). The disadvantage of this model is that it replicates the inter-governmental structure of existing regional arrangements and consensus rules. One way of getting around this would be to constitute Compliance Boards that are tripartite, including government, academic and business representatives for this purpose. This structure would generate more independent policy assessments.

A related problem in assessing the role of international institutions in the region is the absence of independent research on whether they are having any effect. This is not simply a matter of showing compliance with commitments, but a deeper level of evaluation. Is the AFTA changing trade patterns in the region? Are FTAs leading to trade diversion? Have trade and investment facilitation agreements actually had the effect of reducing transactions costs to the extent claimed? This sort of research goes on within the academic community, of course, but there is no means of transmitting it into the deliberations of existing institutions. At all levels, from the ASEAN to the APEC, there is a need for independent assessment and evaluation that can constitute an input to policy deliberations. This can be accomplished in three ways; through economic research divisions or units within secretariats (where they exist) or the ADB; by commissioning ad hoc assessment studies; or through some mix of the two. Equally if not more important are assuring that this work is regularly summarized and presented before decision-making bodies within organizations: the ASEAN Economic Ministers, the APT Finance Ministers, perhaps through the EBRD process, and the Senior Officials or Finance Ministers meetings in APEC.

Private Standing in Dispute Settlement Mechanisms

A broad DSM model has emerged from the innovations in the WTO process and its modifications. However, the elaborate structure of these systems cannot hide the fact that governments continue to act as gatekeepers over the initiation of cases, and inter-governmental processes with consensus biases subsequently influence their disposition. A very simple remedy to this problem exists: grant private standing. Private agents have high-powered incentives that are missing in existing arrangements. Given that there is no leverage for such an innovation

given the multiplicity of FTAs currently on offer, a first step would at least be to commission a study of the modalities of introducing private standing.

Sidepayments: Regional Integration Funds

Finally, and on the most ambitious end of the spectrum, would be the creation of more direct linkage between institutional commitments and sidepayments to “low-demanding” states in order to secure their compliance with policy changes. ECOTECH seeks to build capacity in the region, and in specific areas, but does not link capacity building to commitments (which are in any case non-binding). Similarly, within ASEAN, the IAI and lending to the CLMV countries is broadly linked to the integrity of ASEAN, but is not tied to particular commitments, for example, in the AFTA or more ambitious AEC. One way of doing this at the ASEAN, APT or even APEC level would be the creation of dedicated Regional Integration Funds that would undertake lending in the context of voluntary—but monitored—commitments to accelerate compliance with regional commitments.

It is important to close with a reminder of the fundamental limitations of institutional fixes. Actors in regional institutions reach agreements not only substance, but on the rules that govern their interactions. Weak rules may well reflect underlying preferences. In the absence of a willingness to undertake binding commitments, it is misguided to think that changing institutions will matter much; to the contrary, institutions might even weaken if expectations are raised only to be dashed, as has happened so frequently in ASEAN and APEC already. However, preferences are not fixed. Providing better information and incentives for making compromises is something that institutions can and should be encouraged to do.

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