

PASCN Discussion Paper No. 2001-16

**Beyond Economic Cooperation:
Institution-Building in APEC**

Wilfrido V. Villacorta



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Yuchengco Center for East Asia

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Beyond Economic Cooperation: Institution-Building in APEC

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INTRODUCTION

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

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

This collection of papers discusses the future direction of APEC as a trade and investment regime by addressing two specific issues: the future of the organization in terms of its institutional forms as well as the future of the liberalization agenda in the Philippines. The first four papers examine the costs and benefits of evolving more formal structures, with rule-based orientation and more formal mechanisms. They begin with the view that the need for formal institutions is certainly increasing as economic integration generates its own necessary frictions. However, the notion of “open regionalism” and the desire of APEC’s founders to avoid over-bureaucratization has served to retard the process of formalization. Informal structures that are norms-based and consensual have their obvious benefits in terms of flexibility and maneuverability, but they present certain problems that require fresh approaches. Foremost among them is the legal conundrum within APEC. The agreements made by member economies are not legally binding treaties, but compliance is expected based on the principles of fair play and estoppel. This vague status of the commitments invites controversy in the event that disputes arise.

Nevertheless, APEC serves a very useful purpose in the international community because it serves as a gauge for evaluating the true stance of member-economies on major economic issues. Their articulated positions are reliable signals, having been generated in an atmosphere of consensus and voluntarism. APEC includes some of the most powerful countries in the world. Whatever the temper of negotiations that take place

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within APEC could significantly determine the outcome of multilateral trade negotiations in the World Trade Organization. This referencing are undeniably crucial in a world where the liberalization agenda has suffered a number of obstacles.

POLITICAL ISSUES IN APEC'S DEVELOPMENT

APEC as an Institution

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

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

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

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

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

According to Avila, the asymmetry in the decision-making processes in Europe and Asia bears on agenda-setting in ASEM. While the European Union has a highly

institutionalized mechanism for internal coordination, the Asian members of ASEM cannot rely on a single organization for the purpose of policy coordination.

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

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

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

ASEAN in APEC

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

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

He describes the two organizations as having bureaucratic fora where personnel from each member-state’s relevant bureaucratic bodies meet to negotiate with each other, and political fora where their political leaders also negotiate. There are likewise

institutionalized channels of communication for non-state groups with national or international interests.

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

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

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

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

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

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

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

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

LEGAL ISSUES WITHIN APEC

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

Is APEC a Treaty?

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

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

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

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

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

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

Are Philippine Commitments Binding?

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

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

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

Dispute Settlement

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

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

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

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

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

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

CASE STUDY OF DOMESTIC COALITION-BUILDING

Interface between International and External Coalitions

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

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

Dynamics of APEC Legislation

The paper on the political economy of Philippine APEC commitments by Wilfrido V. Villacorta, Tereso S. Tullao, Jr., and Angelo A. Unite in the chapter examines the politics of enacting new legislation required to fulfill the country's APEC commitments. It describes the process involved in the formulation and deliberation of proposed APEC-related legislation, identifies the players involved in this process, and examines the conflicts of interest encountered in ensuring the passage of such legislation.

In its Individual Action Plan, the Philippines committed itself to opening retail trade to foreign participation, and to reviewing restrictions and existing provisions on foreign equity participation in investment companies and foreign membership in the board of directors of investment and financing companies.

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

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

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

Political Contestation

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

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

The study proposes the following: (a) capacity-building and competitive-enhancing measures that include the provisions of irrigation facilities and farm-to-market roads in the agricultural sector, as well as improvements in the quality of bureaucratic

service, and (b) greater coordination among the beneficiaries of liberalization. It is in the nature of the liberalization process that those who stand to gain from it are often the large, yet unorganized, majority while those who stand to be adversely affected are the small, yet disproportionately represented, minority. One way to promote consensus-building within Philippine society is for the government to undertake coalition-building efforts among those parties sympathetic to APEC commitments.

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

FUTURE DIRECTIONS FOR APEC

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

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

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

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

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

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

The APIAN Proposals are shared by Vinod Aggarwal and Charles Morrison in their joint paper on “APEC as an International Institution” (1999). Noting that the association is experiencing “some institutional disarray,” they propose that the APEC Secretariat

improve its in-house analytical capabilities to help APEC leaders set priorities and realistic targets. They observed that the Economic Leaders' Meetings "reflect the more personalistic rather than the institutionalized nature of the APEC process." Nonetheless, these meetings are a significant element of the association and must continue in order to facilitate the processes of APEC cooperation. They stressed that such meetings should "be perceived as valuable within national governments and taken seriously by heads of state" (Aggarwal and Morrison, 1999).

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

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

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

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

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

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