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Yoshi Kodama
Ministry of Foreign Affairs for Japan

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Development of Inter-State Cooperation in the Asia Pacific Region:

Considerations for Regional Trade Compacts

by Yoshi Kodama¹

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I. Introduction.

This article will summarize the current progress of regional arrangements in the Asia Pacific Region. The main question presented here is whether a regional arrangement — whatever the level of institutionalization — is necessary for a given region, based on its political and economic conditions. While discussed in terms of the Asia Pacific cooperatives, a useful comparison may be drawn to the North American Free Trade Agreement. It is hoped that this discussion will provide a useful background in considering the specific policy recommendations and the appropriate institutional context in which to understand the NAFTA.

In order to examine these questions, I will first summarize the general conditions or motivations for regional arrangements. It is difficult to define clearly the elements which encourage regional arrangements. For the sake of convenience, I will juxtapose objective economic, political or security conditions, against policy considerations for establishing arrangements. If certain States in a region increase their economic interdependence, they are forced to coordinate their interests to avoid friction. This requires them to establish rules regulating each member's behavior.

Instead of this spontaneous method, the nations may use coordinated efforts to create a regional framework. Creating an economic area with a view toward obtaining economic efficiency and promoting development is one example. In this regard, it is useful to compare arrangements from the viewpoint of their basis and motivation. Most

arrangements, including the European Community (EC) and the NAFTA have both economic and political motivations.

There is often a correlation between increasing interdependence and the establishment of regional economic arrangements. Frequently, clear efforts are made to achieve political purposes. This includes cases in which regional economic integration is used to create friendly relations among potentially confrontational States, and in cases where some States form a single economic unit to enhance their international political influence.

It is difficult today to find regional arrangements which are motivated purely by economic factors. Political motivations almost always exist, including reactions to the development of regional arrangements in other regions and, more symbolically, to demonstrate solidarity among certain countries. If we examine the development of the EC, we recognize various elements which affected the nations' progress toward integration. It was natural that States with similar economic conditions chose regional cooperation to achieve a more efficient allocation of resources. On the other hand, the movement toward European integration has always been motivated by political considerations. At an early stage, the basic motivation to create a common market was Franco-German reconciliation and the creation of a stronger, more stable and more prosperous Europe during the Cold War. The development of the EC has always been flavored with some sense of protection of economic interests against the United States, and later against developing Asian countries.

Several complex elements could affect policy-makers' intentions when they consider what institutional framework they will establish: (1) whether it has a legal body or a forum for consultations; (2) whether or not strong dispute settlement mechanisms are built in; (3) the extent to which members' domestic policy is regulated by such an institution; and (4) by what mechanism they set up rules among member-States. Other conditions, such as cultural linkages among member-States and their relative economic conditions may indirectly influence the setting up of regional institutions.

On the basis of these considerations, this article will focus upon the Asia Pacific region. It can again be emphasized that before APEC, despite increasing economic interdependence in the region, there had been no successful attempt at creating regional arrangements. Examples of early unsuccessful attempts are the initiative for a Pacific Free Trade Area (PAFTA) in the 1960s, and an Organisation for Pacific Trade and Development (OPTAD) in 1968. Although it has achieved some political significance, the history of the Association of South-East Asian Nations (ASEAN) has been less than optimal from the perspective of trade and investment.

After these sporadic developments, the first successful framework for regional cooperation was the establishment of the Pacific Economic Cooperation Council (PECC) in 1980, an informal forum consisting of individual representatives of members. Some reasons for such modest early achievement may be summarized as follows. First, countries in this region are economically and culturally diverse. This could discourage attempts to establish an institutional framework in this region, even though economic interdependence has grown stronger. Second, developing countries have adopted a market-oriented strategy, creating exports with outside countries in an effort to promote competition. This may be incompatible with an authoritative institutional arrangement, which could serve as a protectionist body, negatively affecting free market mechanisms both inside and outside the region. Third, several political elements are present. For example, ideological confrontations such as that between Communist China and the cap-

alist Chinas (Taiwan, Hong Kong, and other Chinese traders in South East Asia) and between Indochina and the island nations may have been a major obstacle.

During the Cold War, a security framework based upon bilateral security arrangements with the United States diminished the need for a regional institutional arrangement. In some cases, security arrangements have developed along with economic integration, such as NATO/EC and the OAS and Latin American economic arrangements. Though it is difficult to quantify the interaction between security and economic factors, there certainly has been some mutual influence, whether occurring spontaneously or by design.

Full-fledged efforts toward regional cooperation began with the establishment of the Asia-Pacific Economic Cooperation (APEC) in November 1989, based upon Australia's proposal in the previous year. The background for this new dimension might be summarized as follows. First, increasing economic interdependence has encouraged mutual dialogue and cooperation. Trade once had a "vertical" aspect, consisting of industrialized countries and natural resource suppliers. This arrangement formed a "hub and spoke structure," with industrialized countries such as the United States and Japan at the center of vertically linked trade networks. Such arrangements differed significantly from less diversified regions such as the original EC and EFTA. Mutual interdependence is required in any arrangement, with equal participation among the affected countries. Otherwise, the characteristics of arrangements will differ, like development-oriented or assistant-oriented arrangements exemplified by the Lomé Convention. The present APEC members maintain certain vertical aspects, corresponding to the diversity of their stages of development. However, the increasing mutuality will enable members to establish an EC-like comprehensive arrangement.

Second, successful economic development of some medium and smaller economies has given those members the confidence to participate in a regional framework, thus allowing them to avoid domination by major economic and political powers. It is no accident that some developing States are the most provocative members in the discussion on the future of the APEC process. The reallocation of economic power within the region is a principal motivating factor for regional cooperation.

Third, with regard to security, the diminishing Cold War tensions have provided an indirect momentum for progress. Unlike Europe, the end of the Cold War is much less apparent in Asia, where ideological confrontations remain. However, the collapse of the Soviet Union has changed the strategic environment. More importantly, the introduction of economic pragmatism by socialist countries such as Mainland China and Vietnam creates a background for practical economic cooperation among ideologically different, but economically integrated countries.

In addition to these underlying conditions, it can be also pointed out that the APEC process is more policy-based. One result is that APEC is becoming a symbol of cooperation in the region, developing relations between East and Southeast Asia and North America. The alternative to this direction might be a separate development of a mutually exclusive NAFTA and EAEC (East Asia Economic Caucus) processes. Therefore, APEC is an increasingly important link between these potentially divisible regions.

Against this background, APEC can be a unique model of regional arrangements. It reflects the economic, cultural, and political diversity among its members, but has a prevailing universal aspect. Therefore, the future plan for APEC requires the same considerations needed for universal international organizations such as the WTO and the IMF. Expanding upon this point, APEC has the following features. First, its internal

cooperation is based on economic pragmatism, rather than cultural and psychological ties among its members. Second, it can fundamentally be an "open" arrangement to outside; APEC need not become an economically defensive organization. Third, APEC could become a more expansive arrangement so long as it maintains its current institutional flexibility. Fourth, APEC will continue to develop as an amalgam of subregional, multi-dimensional organizations such as NAFTA, the Australia-New Zealand Free Trade Arrangement, and an expected AFTA by ASEAN members.

APEC's present direction was set in the third ministerial meeting in Seoul in 1991 by adopting the Seoul APEC Declaration. This Declaration set forth the following objectives: (1) regional growth and the achievement of common interests for the region's inhabitants; (2) the strengthening a multilateral free trade framework in a global sense; and (3) the internal liberalization of trade and investment compatible with GATT principles.

With these objectives in mind, the Declaration stipulated two methods of cooperation. First, the organization is committed to the respect of mutual interests, considering its members' different stages of economic development and different social and political systems. Second, APEC seeks to promote open dialogue and consensus by respecting all members' views.

Therefore, APEC clearly recognizes diversity among its members, including their different stages of economic development and different domestic social and political systems. There is an intention to maintain the nations' economic development, based upon the free trade principle. In this context, free trade has two implications. One is the promotion of internal liberalization of trade and investment, and the other is the maintenance of free trade with outside economies. This second aspect can be achieved by maintaining the compatibility of the GATT-WTO principles, based upon the most-favored nation principle.

However, it is not totally clear how APEC will achieve GATT-WTO compatibility in the process of further development; regional arrangements always portend a potentially negative effect on the GATT-WTO framework. It is also unclear how APEC members' style of economic development can be integrated in the GATT-WTO framework. The post-war period has seen a process of constant discussion as to how underdeveloped countries can achieve economic development, and the GATT regime has been affected by this consideration. APEC members include several of the world's most rapidly growing economies, and how regional arrangements cope with these successful economies is an important issue. If East Asian countries have different patterns or styles of economic development, and if these patterns are useful to others, it will be worth considering how to incorporate them into the legal framework of an expected regional arrangement, and ultimately into the GATT.

Based upon these points, this article will first discuss the general basis for regional integration in order to judge whether the Asia Pacific region requires integration and, if so, what form of arrangement would be most effective. Second, I will examine the historical facts of various attempts at regional arrangements. Finally, focusing on the APEC process, I will summarize several issues, examining their implication for other regional trade compacts such as the NAFTA. Such issues include (1) membership scope and qualifications; (2) the nature of the institutional arrangement, whether flexible or relatively rigid; and (3) the program for cooperation, such as internal liberalization, harmonization, and the form of dispute settlement mechanism, if necessary.

II. General Conditions for Economic Integration in the Asia Pacific Region.

A. ASIA AND THE PACIFIC AS A REGION.

1. *Defining the Asia-Pacific Region.*

In considering inter-State cooperation in the Asia Pacific area, it is difficult to define the scope of the region. This issue has cast a shadow over arguments over membership eligibility in various planned arrangements proposed in recent times. Debates range from which countries should be included, to whether membership should depend upon a given level of economic development or a given type of economic system.² These arguments sometimes confuse geographical and functional definitions. Moreover, most projects have defined no clear policy as to geographical or functional determinants. Sometimes, an organization has pursued a certain policy in order to eliminate an undesired country.³ For instance, some policy-makers argue Russian should be excluded because it has not achieved a sufficient economic level or fully implemented a market economy.

Geographically, there is an argument that countries (or broadly, regions) facing the Pacific Ocean should be included in any Asia-Pacific compact.⁴ This definition will certainly tend to limit more goal-oriented criteria. However, such an objective selection may cause other debates. For instance, Argentina and Brazil will claim that they should not be excluded while Chile is included.

Functionally, it is sometimes argued that a certain level of economic development is necessary.⁵ This may be reasonable if a planned arrangement presupposes an advanced level of economic conditions to attain reasonable goals such as liberalization and harmonization. Required conditions could include a level of development, the prevalence of market mechanism, or a given level of liberalization. Similar requirements are set for membership in the OECD and the IMF.⁶ On the other hand, if an expected arrangement is aimed at promoting cooperation between countries at diversified stages, stricter rules will cause difficulties in achieving such a purpose, and the arrangement will be seen as discriminatory against less developed countries in the region.⁷

Adding to these difficulties is the relative novelty of an Asia Pacific compact. More precisely, the concept has not been clearly established, and is thus still evolving. The emergence of the Asia Pacific region has required increasing economic and political interdependence among potential members. This linkage must be enhanced by transportation, telecommunications, and personal exchanges.⁸ In this regard, it is difficult to observe a similar level of regional interchanges in the Asia Pacific region as have taken

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2. Robert A. Manning & Paula Stern, *The Myth of the Pacific Community*, FOREIGN AFFAIRS, Nov.-Dec. 1994, 79, at 80-81; see Robert O. Keohane & Joseph S. Nye, *POWER AND INTERDEPENDENCE* (1989).
 3. See Karl W. Deutsch, *THE ANALYSIS OF INTERNATIONAL RELATIONS* (3rd ed. 1988).
 4. Keohane & Nye, *supra* note 1.
 5. Ernst B. Haas, *BEYOND NATION STATE* (1964); see James A. Baker, III, *America in Asia: Emerging Architecture for a Pacific Community*, FOREIGN AFFAIRS, Winter 1991-1992, at 1.
 6. See Baker, *supra* note 5, at 14.
 7. Haas, *supra* note 5.
 8. *Id.*
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place in Europe and North America. Moreover, sub-regional units still exist. For instance, relations among ASEAN members can be clearly distinguished from relations between ASEAN and Northern Pacific Rim nations.⁹ U.S.-Japan relations have shown similar distinctions. Thus, geographical definitions are quite different from functional definitions.

2. *Some Features of the Asia Pacific Region.*

a. The existence of sub-regions.

As discussed above, the Asia Pacific Region is a relatively new geographical concept. For this reason, the area continues to be identified with several diverse sub-regions, which have both a geographical and a functional unitary character.¹⁰ These are East Asia (or, Northeast Asia, including China, Korea, Japan), Southeast Asia (which covers both Oceania and the Laotian and Malay Peninsulas), North America, Latin America and the South Pacific (Australia, New Zealand and Papua New Guinea).¹¹ With the economic development of Southeast Asian countries, there arises the concept of East Asia in a broader sense. The East Asia Economic Caucus initiative by Prime Minister Mahathir of Malaysia is an example.¹² However, "Asia-Pacific" is sometimes used in a narrower sense to include only the Asian Pacific Coast. In order to include the Americas, the term "Pacific Rim" is frequently used. Whether Latin American countries are included in the Asia Pacific Region is still debatable, though geographically they are included in Pacific Rim.

More functional sub-regional divisions are also used. The naming of "newly industrial economies" (NIES) may be a typical example.¹³ ASEAN has become another name for the second generation of NIES.

b. Characteristics of the Asia Pacific Region in a stricter sense.

The emergence of the concept of "Asia Pacific" in a broader sense (including North America and South Pacific) corresponds to the emergence of economic dynamism in "Asia Pacific" in a stricter sense.¹⁴ First Asian NIES emerged, followed by ASEAN. More recently, the Chinese mainland, Indochina, and some Latin American countries have emerged as participants in the Asia Pacific realm. Asia Pacific formerly existed only as "points and lines," among industrialized countries.¹⁵ The industrialization of NIES has been significant in identifying Asia Pacific as a region in a two-dimensional sense.¹⁶ The future development of this concept also will depend on further development of NIES,

9. See Deutsch, *supra* note 3.

10. Hadi Soesastro, IMPLICATIONS FOR THE POST COLD WAR POLITICAL SECURITY ENVIRONMENT FOR THE PACIFIC ECONOMY, 365 (1991).

11. *Id.*

12. See Kim Anderson, *Is an Asia Pacific Trade Bloc Next?*, 1994 JTWL 27 (1994).

13. Chia Siow Ue and Lee Tso Yuan, SUBREGIONAL ECONOMIC ZONES, A NEW MOTIVE FORCE IN ASIA PACIFIC DEVELOPMENT, 225 (1994).

14. Anderson, *supra* note 12.

15. See Haas, *supra* note 5.

16. Mark Borthwick, *Issues in Pacific Basin Regionalism*, in Hadi Soesastro and Han Sung-Joo (eds.) PACIFIC ECONOMIC COOPERATION, THE NEXT PHASE, 70 (1983).

although significant difficulties also lie within that concept.

Several general characteristics are germane to development of inter-State cooperatives. First, most countries in this region have either directly or indirectly been subjected to Western imperialism until sometime after the Second World War.¹⁷ Some countries, mainly in Southeast Asia, were under colonial rule.¹⁸ Others, including China, were under strong — if less overt — pressure from Western powers, having been forced to offer lease territories and ports, and to conclude unfavorable commercial treaties.¹⁹

As is true in other former colonized areas in the world, the region still suffers colonial legacies. For instance, arbitrarily drawn borders inherited from colonial times tend to ignore ethnic or cultural units in the region.²⁰ This problem results in potential, or sometimes actual, ethnic, cultural, or religious domestic conflicts, creating potential political instability. For the same reason, potential territorial disputes still exist in some areas.²¹

Second, the region abounds with historical political disputes, which have contributed to existing political instability.²² Some conflicts derive from above-mentioned colonial legacies and the resultant domestic instability. One example is the confrontations between Malaysia and Indonesia, which lasted for a significant period after their independence. Moreover, several legacies remain from the Second World War itself, such as the territorial dispute between Russia and Japan. Cold War confrontations also persist in some areas, such as the Korean Peninsula and Taiwan.²³

The once infamous North-South antagonism still occasionally manifests itself in the form of anti-Western (or anti-industrialization) campaigns. Since the end of the Second World War, the region has experienced all-out war in Korea and Indochina, as well as lower-level military conflicts, such as those between China and the Soviet Union, and Malaysia and Indonesia.

Third, there is a perception that most countries maintain an autocratic or authoritarian system, and are therefore anti-democratic.²⁴ This is certainly an exaggeration, probably stemming from the fact that Communist regimes still exist in the region.²⁵ Some claim, for instance, that Asian Communism is fundamentally rooted in traditional Asian sentiments. On the other hand, it is also true that some countries have resorted to military force to put down domestic minorities or defiant groups, as with the Tiananmen Square incident in 1989. This aspect creates further political instability and intensifies problems in relations with outsiders — thus, again, causing repercussions to regional instabilities.²⁶

17. H. Edward English, *The Emerging Pacific Community*, in Hadi Soesastro and Han Sung-Joo (eds.) *PACIFIC ECONOMIC COOPERATION, THE NEXT PHASE*, 91 (1983).

18. *Id.*

19. *Id.*

20. Soesastro, *supra* note 10.

21. *Id.*

22. *Id.*

23. Soesastro, *supra* note 10.

24. Michael S. Dobbs-Higginson, *ASIA-PACIFIC, ITS ROLE IN THE NEW WORLD DISORDER* (1994).

25. *Id.*

26. Keohane, *supra* note 2.

B. GENERAL MOTIVATIONS FOR REGIONAL COOPERATION.

This and the following section will discuss the process of regional cooperation in more general terms. This will allow us to examine later whether the Asia Pacific Region really needs a regional arrangement. Such arrangements require that economic interdependence, cultural identities and geographical proximity be taken into account.²⁷ It is also true that regional arrangements often are motivated by other than purely economic aspects. For example, governments also may desire to create a peaceful relationship among member-States, promote political influence, and stabilize common interests against external pressures.²⁸

1. *Economic Interdependence and Regional Arrangements.*

A debatable question in the economic aspect of regional arrangements is whether the creation of regional arrangements is a logical consequence of active economic transactions among relevant countries. When a group of countries have enhanced their economic interdependence, the immediate result is an increased exchange of advanced technology (such as telecommunications and transport), which in turn gives rise to increased commerce in products, money, information, and personal contact.²⁹ Naturally, this gives rise to common issues which require improved responsiveness of political authorities.³⁰

Economic interdependence is promoted primarily by activities of multinational enterprises, which require governments to provide more appropriate conditions for their activities.³¹ For instance, governments must work to eliminate governmental barriers to entry, improve investment laws, and harmonize technical standards.³² On the other hand, economic interdependence increases the need for more effective regulatory measures to cope with a more integrated regional economy.³³ Market failures can result from monopolistic or oligopolistic behavior by multinational enterprises, which have harmful effects upon the efficient functioning of a developing market mechanism.³⁴ As regional liberalization progresses, distribution problems also may become a policy consideration, leading in turn to a politically unacceptable allocation of economic benefits.³⁵ These circumstances will necessitate policy coordination to satisfy the demand from private economic entities.³⁶

27. *Id.*

28. Deutsch, *supra* note 3.

29. Keohane, *supra* note 2; see Baker, *supra* note 5.

30. Ernest B. Haas, THE UNITING OF EUROPE, POLITICAL, SOCIAL AND ECONOMIC FORCES 1950-1957, 97 (1958).

31. *Id.*

32. *Id.*

33. *Id.* An example is the U.S. response to Mexico's peso crisis.

34. Deutsch, *supra* note 3.

35. *Id.*

36. Haas, *supra* note 5.

It is also likely that governments recognize the necessity for policy coordination to maintain effective domestic economic policies. In the current world, fiscal policies of one government will immediately influence transnational money flow and commercial activities, thus reducing the effectiveness of domestic policies. The need for policy coordination will be further recognized as cooperation develops.

These are mainly passive methods of coping with economic conditions. Governments also may engage in policy coordination to achieve some regional policy goals.³⁷ An example is a creation of improved infrastructure for economic development. Such infrastructure includes physical conditions, such as the creation of transport and telecommunication networks at a regional level, as well as technical conditions, such as legal frameworks, taxation agreements, investment protection agreements, and navigation arrangements. The creation of a regionally-based dispute settlement mechanism may include such examples, which facilitate region-wide commercial activities.

It is debatable whether a more rigid permanent arrangement will be more effective than ad hoc policy coordination. The issue is whether institutionalized collective management may be better than ad hoc arrangements. In some areas, collective frameworks can work effectively to achieve goals, including trade liberalization at a multilateral level such as GATT. Collective liberalization may be more acceptable to domestic pressure groups, by persuading them that the nation should pursue a common international theme.

Mexico's liberalization policy in the framework of the NAFTA is a primary example. Mexican citizens regard the NAFTA as an extraterritorial disciplinary system; however, this is probably more acceptable to a domestic audience than if the same restrictions were implemented as a domestic policy. Furthermore, there is some question whether it is necessary to create rigid institutions with permanent bodies and regular meetings, thus subjecting signatories to a certain level of binding (legally or politically) decisions.

If it were feasible, a relatively rigid framework would more effectively promote the policy goals mentioned above. It would resist protectionist or nationalist pressures by engaging in internal liberalization or in harmonization at a regional level. An institutional framework also would provide a useful basis for economic factors by enhancing predictability — and, thus stability — by which economic activities would be gauged. When such a framework dealt comprehensively with the overall aspects of economic life, an arrangement for allocating benefits could be achieved, thus enhancing the division of labor among member-States.

Of course, this model reflects an ideal situation. In reality, there is a constant difficulty in establishing an effective inter-State arrangement, as most regional arrangements have experienced. Economic interdependence will require policy coordination. However, if cooperation were encouraged, an effective institutional arrangement could be implemented.

2. *The Political Aspect of Regional Cooperation.*

The examination of general motives is based upon an example of economic principle in an ideal form. In addition, economically irrational political elements and strategic security needs should be considered in examining regionalist movements.

37. Deutsch, *supra* note 3.

a. Improvement of Security Conditions.

What is frequently observed in practice is the creation of a regional economic framework to enhance relations among otherwise antagonistic partners. Intensified commercial transactions and personal exchanges will improve the underlying international relations, thus avoiding heightened political tensions. A well-known and successful example is the economic integration between Germany and France following the Second World War. Because the nations are now economically indispensable to one another, the likelihood of another European war is greatly diminished. Economic arrangements have facilitated political integration, thus improving stability in the region.

b. External Political Influence.

Economic arrangements also are used to strengthen member-States' political power towards outsiders. In a sense, this type of arrangement is similar to a military alliance. The collective power projection by the EC has mystified outsiders through its ability to reach and sustain complicated institutional arrangements. The creation of the European Commission, while maintaining governments of member-States, has made it difficult for outsiders to specify a proper target for negotiations, thus giving bargaining advantages to member-States.

Similarly, ASEAN members have begun to realize that collective policy-making is more influential toward outsiders. In this regard, small countries gain an advantage in most cases, since their position may be backed by a group of similarly situated nations. However, members also may be forced to adhere to the positions of stronger member-States.

c. Nationalistic Motivation.

In the examples above, there are cases in which regional arrangements are used to fulfil nationalistic desire by demonstrating unity and projecting collective power. Some regional groups of developing countries in earlier era had such a motivation. The Organization for African Unity was such a collective. The Arab League and the Organization of Petroleum Exporting Countries include similar elements. This type of arrangement may divert pressure from outsiders which member-States regard as a serious threat.

d. Counter-action Against Other Regional Arrangements.

More recently, it has become popular to create arrangements to retaliate against unfavorable actions by other multinational groups. The progress of European integration has been a constant motivation for similar attempts in competing regions, motivated by the fear of exclusion from a European trade bloc. This was probably true in the inception of EFTA. Recent movements like the NAFTA and APEC also have seen an anti-EC aspect. This obviously creates a danger of pre-war type economic confrontations among trade blocs.

e. Containment and Inclusion.

There are two goals which support inclusion of stronger nations in blocs of

weaker partners. First, regional arrangements have been aimed at containing unfavorable actions by one powerful member of an arrangement. Second, arrangements also are used to maintain strong commitment by one country, which other members regard as necessary for the benefit of the region. An example of the first type of arrangement is that NATO and the EC each provide a framework which Germany must obey. From Germany's viewpoint, such arrangements provide it with trust or credibility from other member-States, thus giving it an agreeable position in Europe. An example of the latter is the United States in APEC. Some countries in the Asian and South Pacific side of APEC expect a continuous U.S. presence in the region, based primarily upon their security and economic needs. The framework of APEC with the U.S. as a main member is thus a manifestation of the U.S. commitment to the western Pacific rim. APEC also has a negative containment aspect in its treatment of China. Smaller neighboring countries may wish to contain this giant country in a predictable and advantageous framework.

C. SOME GENERAL ISSUES CONCERNING THE PROCESS OF REGIONAL INTEGRATION.³⁸

In considering the creation of regional arrangements, it is also necessary to examine the actual process of creation.³⁹ This includes issues like the speed of the formation, areas given priority for integration, and stages of progressive dependence.

1. *Dichotomy Between Political and Economic Aspects.*

In some analyses of the integration process, such as the neo-functionist approach, it is argued that regional arrangements can be created smoothly if they begin with economic integration to enhance the general atmosphere for integration. This is particularly true during this stage of development, since cooperative feelings among policy-makers lead to a more complete political integration. Therefore, functional or "sectoral" integration in limited areas will be a good start for a steady integration process.

The best established model of this process is European integration, which started in limited areas such the regional management of coal and steel products.⁴⁰ This model was then expanded to more general trade matters, and is finally evolving into political areas.⁴¹ It is correct to say that regional integration should start in less sensitive areas, which are more acceptable for member-States, to avoid unnecessary confrontations. This argument is based upon the dichotomy between political and economic areas; the dichotomy was clearer when associated with military and non-military aspects.

However, particularly after the end of the Cold War, the distinction of political matters has become more ambiguous. This characteristic is stronger in Asian countries, whether sovereignty or nationalism is still sensitively considered. Thus, most economic issues tend to be recognized in a political context. As will be discussed later, the APEC process has a clear determination to concentrate upon economic fields; nonetheless, it invited some difficulties for the same reason.

38. Karl W Deutsch, *THE ANALYSIS OF INTERNATIONAL RELATIONS*, 3rd ed. 1988.

39. Deutsch, *supra* note 3, at 181.

40. Haas, *supra* note 5, at 451.

41. *Id.*

2. "Core Groups" for Integration.

In the process of integration, the functioning of core groups, "unifiers," or "balancers," is sometimes discussed. These terms refer to certain member-States which work to boost overall integration.⁴² For instance, the post-war European integration has been encouraged by strong relations between Germany and France. These factors have had a complementary relation to each other.

D. CONDITIONS FOR REGIONAL INTEGRATION IN THE ASIA PACIFIC REGION.

In examining the current circumstances in Asia Pacific, one can easily point to favorable elements for creating a regional arrangement. However, difficulties remain in creating a cooperative on the same level as Europe. The region is characterized by the progress of economic development and interdependence, but political instability continues to be a serious impediment.

1. *Economic Interdependence.*

The region has enhanced internal interdependence by increasing trade and investment among constituents. This interdependence has been encouraged by the development and sophistication of newly industrialized economies.⁴³ It is also striking that countries which maintain a communist regime are becoming players by increasing their economic ties with other industrialized and industrialising countries on a market-oriented economic approach. Economic transactions among the three Chinas (Mainland China, Hong Kong, Taiwan) are particularly significant in creating another economic sphere in the region.⁴⁴

ASEAN members also are deepening the overall economic relations among themselves.⁴⁵ Indochina countries are entering a similar path to development. Such economic development, particularly on the Asian side, has changed the trade structure of regional economy. Alignments which were formerly traditional vertical relations have become more horizontal, and therefore more equal. This fact has contributed to reducing north-south confrontations by strengthening north-north cooperative relations, like the EC and EFTA.

Formerly, the region had a hub and spoke type economic relationship, with the economic cores being Japan and the United States.⁴⁶ This feature is also changing into more regional mutual trade and investment, thus actively increasing trade and investment by NIES to other countries in the region. One feature of enhancing economic interdependence in the region is its outward-lookingness. Most advanced countries, such as the U.S. and Japan, have traditional economic relations with other areas; this phenomenon is

42. Manning & Stern, *supra* note 2, at 81.

43. *Id.*

44. Norman D. Palmer, *THE NEW REGIONALISM IN ASIA AND THE PACIFIC*, 175 (1991).

45. *Id.* See also Gavin Boyd (ed.), *REGIONALISM AND GLOBAL SECURITY*, 234 (1984).

46. Manning & Stern, *supra* note 2, at 88.

intensifying, along with deepening economic relations with other countries in the region.⁴⁷

NIES also are increasing trade and industries with outsiders, based upon their export-oriented economic strategy.⁴⁸ This feature certainly makes it difficult to create an exclusive regional arrangement. However, the question remains, what type of arrangement is most appropriate for the region? This is another fundamental issue in the APEC process.

2. *Geographic Proximity.*

Regional arrangements, by definition, have a certain regional basis. This aspect is, in some cases, related to the above-mentioned economic interdependence, since geographic proximity leads to an increase in economic transactions among States. It may also cause a cultural-psychological closeness, and sometimes bring about common political and security concerns. Therefore, in most cases, proximity is not itself an automatic source of integrative motivation, but elements deriving from it should be counted as relevant factors for regionally-based cooperation or integration.

In a diplomatic world, countries geographically close to each other inevitably make some dealings and set out arrangements such as border arrangements, commercial transactions, and immigration, based upon demands from the relevant audience. However, it is also true that proximity and the potential for cooperative relations can result in antagonism. Therefore, States may ally themselves with more remote but like-minded partners, rather than direct neighbours. This phenomenon has existed since the beginning of diplomacy, and still exists in the current world. An American military and political presence in relatively small Asian countries during the Cold War had such implications in terms of those nations' relations with their direct neighbors, such as the Soviet Union and People's Republic of China.

In the current era, it is also true that geography is not the only source of proximity. Technological advances have created proximity among remote countries through improvements in transport and telecommunications. Cultural factors and ideology may also ignore geography, creating close groups of States despite geographical remoteness. Therefore, the significance of geographical proximity is relatively decreasing in the current world.

From the beginning, the Asia Pacific Region has had difficulties defining itself as a single geographic unit, even with the improvements in transportation and telecommunications mentioned above. One physical feature of the region is that it forms a 'rim'-like shape, surrounding the Pacific Ocean. This may cause another difficulty in making them close to each other. Geographical elements are sometimes considered for allocation of institutions and physical arrangements. Most EEC institutions were located in Brussels, which sits between Germany and France; Washington DC was geographically at the center of the thirteen original States of America.⁴⁹

47. *Id.*

48. Palmer, *supra* note 44.

49. But see Manning & Stern, *supra* note 2, at 81. For a discussion of how a lack of shared values throughout the Pacific Rim may curtail economic cooperation beyond Asia.

In this regard, it is difficult to find a geographically suitable place for the headquarters, if any, of a future Asia-Pacific institutional arrangement. Perhaps Hawaii is one possibility, though its relevance in Asia Pacific dynamism may be limited. The existence of two areas of geographic significance, namely North America and East Asia, may make such an arrangement more difficult.

Against this background, it is inevitable that Asia Pacific, however close it may become as a region, preserves sub-regional groupings among themselves. These sub-regional groups will correspond to traditional geographic proximity, as well as in an economic, political and cultural sense. Such a direction will make the building of a regional arrangement more complicated, and this is currently happening. A parallel development of sub-regional arrangements, such as NAFTA and ASEAN, may be an inevitable result of the geographical background of Asia Pacific.

3. *Cultural Identity.*

Cultural factors are also regarded as a significant element in a regional arrangements. Common cultural backgrounds and shared values are one reason for successful arrangements, as in the case of the EC.⁵⁰ Cultural aspects are sometimes used to create a psychological exclusiveness or solidarity among member-States. However, cultural aspects also may create a defensive and aggressive posture toward external relations.

In this respect, the Asia Pacific Region may be one of the most culturally vague regions in the world. There is a clear division by historical background. For example, many East Asian countries formerly were dominated by Chinese or Indian culture, with a religious background of Buddhism and Confucianism. Other areas, such as North America and the South Pacific, have experienced a much stronger Western influence.⁵¹ Therefore, even though Western culture has spread to Asian countries, it cannot be denied that they have a different cultural and historical background. This presents several difficulties in using cultural elements for a 'glue' for regional arrangements.⁵²

However, it is also true that Asia Pacific nations have begun to realize their common elements, such as economic pragmatism. To a large extent, these countries are motivated by their desire for economic development. This aspect is one reason for the current progress of regional cooperation in Asia Pacific. From this fact, we may also deduce that regional arrangements may be based upon pragmatic, neutral cooperation, with the relative importance attached to extra-economic aspects, such as culture and history.

4. *Political Motivations.*

As discussed above, most regional arrangements tend to have political aspects, such as the desire to promote or limit political influence. The collapse of the Soviet Union and the corresponding loosening of tensions may reduce the need for a strong regional arrangement to cope with external threats, as in the EC during the Cold War. On

50. Palmer, *supra* note 44.

51. *Id.*

52. *Id.* But see Manning & Stern, *supra* note 2.

the other hand, it is becoming more important to deal with potential intra-regional conflicts.

Therefore, a regional arrangement may be used to create a basis for improved security within the region. This is one motivation for the post-war economic integration between France and Germany. However, the condition in Asia Pacific is not a one-to-one confrontation; therefore, more intense confidence-building will be required to improve the security condition. Strategically, the inclusion of China in an arrangement may be significant to preserve a dialogue with this powerful economic force. While Chinese inclusion may be the most significant achievements in any Asia Pacific accord, this has not yet happened in the APEC process. In a strategic sense, maintaining a U.S. commitment to East Asia has become an important consideration to any Asia Pacific accord. For the U.S., therefore, participation in an Asia Pacific arrangement will evidence its loyalty to the East Asia region.

On trade matters, intra-regional aspects are more dominant than external considerations. The reaction to the EC integration and increasing fear towards its protectionist tendencies is one aspect of a regional arrangement in the Asia Pacific region. Beyond this, it is difficult to see that the region is seeking one voice in trade negotiations. Originally, it is difficult to form a single position on other than a general principle. The region includes almost the entire spectrum of economic players, including advanced industrialized countries, newly industrialized countries, developing countries, agrarian countries, and natural resource suppliers. Therefore, the significance of a regional arrangement in this region may be more internal. For instance, it may be more feasible to include sub-regional free trade areas in a regional framework, preventing such areas from becoming exclusive zones. Regional supervision (whether institutionalized or not) may be effective for such a purpose. Regional pressure on some countries to encourage certain economic policies, including liberalization and coordination with others, may be useful in arriving at such an arrangement.

E. DOES ASIA PACIFIC NEED A REGIONAL ARRANGEMENT?

To summarize the discussion on motivations for an Asia Pacific regional arrangement, there are both advantages and significant obstacles to such a regional arrangement. On the positive side, several elements are common to similar attempts in other regions. The increasing economic interdependence and consequential common goals necessitate inter-State cooperation in the region. It is generally prudent to deal with certain types of problems at a regional level, if those problems are regionally rooted. Intensified economic transactions will require policy coordination, common infrastructures and dispute settlement in the region.

It may be doubtful, however, whether the creation of a separate arrangement in Asia Pacific for tackling such issues is really necessary. As examined above, the diversity of constituents in the Asia Pacific region is nearly complete. In order to deal with common issues in the region, existing multilateral frameworks and, if necessary, ad hoc bilateral treatment, are already available. It is difficult to find compelling reasons for creating an additional mechanism specifically for the region. Rather, there is a danger that a regional arrangement might weaken existing multilateral frameworks such as the WTO by its redundancy and complexity.

It may be that a regional arrangement will be complementary to the multilateral approach, thus filling gaps which multilateral frameworks will leave unsettled and fortify-

ing rules set out by multilateral arrangements. However, the Asia Pacific region contains almost the entire spectrum of multilateral regimes. Therefore, there will be little room for a regional arrangement to complement multilateral frameworks.

In the political aspect, it is difficult to find an urgent need for a regional arrangement in the region, unlike West Europe during the Cold War period. There may be two positive reasons as exceptions. One benefit is the creation of an arrangement to counter the protectionist tendency of the EC and similar organizations. Whether this will be necessary depends upon the future direction of the EC and the effectiveness of the WTO regime. The other is maintaining the U.S. commitment to East Asia, which some countries desired for political or economic reasons.

A regional arrangement will at least maintain dialogues and consultations between the U.S. and East Asian countries, and will force the U.S. to consider regional issues. Neither of these factors is motivated by an economic rationale. A regional arrangement in the Asia Pacific region is naturally a policy choice, and is not merely based upon an economic viewpoint. Policy-makers should consider possible costs and benefits as a result of the creation. Economically speaking, benefits may be less than costs for the reasons discussed above. Those who are in favor of such an arrangement should prove its utility in areas such as technical cooperation and infrastructure building, while showing that the arrangement can be established without weakening the multilateral cooperation.

Finally, obstacles to the creation of a regional arrangement in the region may be summarized as follows. First, the economic and social diversity among the constituents will become the single most significant obstacle to such an attempt.⁵³ In addition to diversified sizes and strengths, different policy goals among countries are also a controversial issue. The U.S. is presently attempting to maximize economic benefits from other countries, particularly in East Asia.

On the other hand, countries like Malaysia prefer a more Asian-based nationalistic arrangement, and thus are motivated by the political implications. The consequential problem is lack of leadership needed to create such an arrangement. External security conditions cannot become a unifier for the region, because countries have different security concerns, depending upon their geographical position and circumstances. This is a basic difference from the post-war Western Europe, which had a unifying core group (France and Germany), and external pressures for integration (strategically, the Soviet Union, and later, economically the U.S.).

II. Pre-APEC Development of Regional Cooperation.

A. GENERAL TRENDS.

It is generally believed that the Asia Pacific region has been the least active area in the world for regional cooperation, especially before the inauguration of APEC. This presumption normally has been made in comparison with other regions in a more advanced stage of cooperation, such as post-war Europe, Latin America, Africa, and more recently, North America. However, as will be discussed, APEC is not a revolution-

53. Manning & Stern, *supra* note 2, at 81.

ary step toward cooperation. Rather, it is a continuation of long-standing trends toward regional cooperatives.

It is true that there have been restrictive conditions for cooperation at the regional level so far, together with general negative elements which are summarized in the previous section. There are several negative conditions for the pre-APEC period. First, in the immediate post-war period, which featured the colonial structure and subsequent decolonization in Asia, newly independent nations were reluctant to seek inter-State cooperatives. In most cases, the new States were more in favour of nation-State building, of greater political and economic independence.

These States tended to be politically and economically separate, much as under the former colonial groupings. This was particularly notable in Southeast Asia, which had consisted of colonies of different western powers. For this reason, it was difficult to create a regional consciousness or identity. Therefore, from the economic development standpoint, a strategy of self-sufficiency was in the forefront; this was not a motivator toward nation-building in the economic field. At a regional level, the only possible motivation was an anti-imperialist perspective. This type of divisive feeling in the region was later added to by the dominance of the Cold War element, and therefore the attempt at a regional arrangement was again prolonged.

Second, most States in the region were dependent upon external powers, with separate interests. As mentioned in the previous section, the enhancement of regional economic interdependence may become a motivation toward cooperation, thus leading to regional arrangements. Few States were active trading countries; moreover, their economic ties were primarily for natural resources and manufacturing products.⁵⁴ The lack of regional economic interdependence originated from this colonial dependence, and was a main obstacle to regional cooperation.

Third, the newly independent developing countries were reluctant to create a cooperative relationship with more industrialized States in the region. The economic dependence upon regional economic powers has increased, but at the same time, psychological resistance and mistrust prevails. This fact also affected the cooperative atmosphere, and became a focus in dealing with issues like membership, mechanisms and resource allocations. It has long been believed that ASEAN countries opposed the establishment of an overall regional arrangement. Some nations, such as Malaysia and Indonesia, are still reluctant. Additionally, the tendency has existed among less developed States to consider other regional economic powers to be mere aid-donors; this has been another obstacle to an equal-footed regional arrangement.

One dilemma which existed in less developed States is the resistance to domination by regional and externally developed countries, while retaining the inevitable dependence upon such powers in economic, political and military terms. This element repeatedly has influenced the creation of regional cooperative attempts, with lasting effects upon subsequent negotiations. For instance, a functional arrangement like the Asian

54. This has often been referred to as vertical economic integration.

Development Bank has a clear mandate to balance regional and non-regional States by allocating voting rights between the two groups. In any sense, the linkage with outsiders is always natural and necessary.

It can be suggested, therefore, that excessive sensitivity to involvement of external powers should be replaced by a more generous attitude. There is a tendency to evaluate regional arrangements using criteria which focus on internal factors, rather than external factors such as participation of external countries. Consequently, the UN Economic and Social Commission for Asia and the Pacific (ESCAP), which includes purely external States such as the U.K., France, the Netherlands, is sometimes undervalued in comparison with arrangements like APEC, which excluded a European element. It is difficult to find a justification for such an approach.

On the basis of these viewpoints, the following section will examine the evolutionary progress of Asia Pacific regional cooperation. First, some sporadic initiatives preceding the Second World War will be summarized. Second, I will discuss the post-War trend, including regional-based attempts, sub-regional examples, like ASEAN, and trade-oriented cooperative attempts, which have finally led to APEC.

B. THE DEVELOPMENT OF COOPERATION.

I. *The pre-World War II Era.*

Prior to the Second World War, when most of the Asia Pacific region was covered by Western colonies (either nominally or *de facto*), and before there was a clearly crystallized notion of an Asia Pacific region, it was natural that attempts at regional cooperation were imaginary or ideological. Attempts at cooperation were sporadic, and were basically unofficial private attempts. It is difficult to see a direct link between such attempts and most post-war initiatives for cooperation, which have developed under radically different conditions.

a. Early attempts to create an Asian concept.

Virtually all propagation of "Asia" in the pre-war era was based upon an ideological background, with political propaganda taking an anti-Western or anti-colonial direction. It is no coincidence that such movements occurred in early modernized States, such as India and Japan. In India, the demonstration of an Asian theme lay in the context of its independence movement. This movement was based upon nationalism, and was directed almost exclusively against Western colonial domination. It is unclear whether India's independence movement included notions of regional cooperation. However, most movements in other countries during this era had a similar motivation and basis.

Of course, the majority of anti-colonial initiatives were exclusively domestic movements against imperialist States, rather than attempts to form an all-Asian front. This was clear in the anti-Western struggle in China in the late 19th and early 20th centuries, exemplified by the Taiping Rebellion and the Boxer Rebellion.

In Japan, which achieved early modernization and industrialization, the Asian-oriented political ideology was sporadically fermented by ideologues, mostly in reaction to the rapid westernization strategy of its government. These movements were associated with radical nationalistic activities, and therefore doubts remain as to whether such movements were capable of creating an arrangement with substance.

b. The Institute of Pacific Relations.

One of the early unofficial attempts, worth mentioning for its Asian Pacific wide scope, is the activity of the Institute of Pacific Relations (IPR). The IPR was a purely non-governmental body which organized all-Asian-Pacific conferences. These conferences, held mainly by academics, began with meetings in Honolulu from 30 June to 15 July 1925. The basic motivation was to promote the basic relations between Pacific peoples "to avoid misunderstanding and conflicts and to promote friendship and cooperation."⁵⁵ The original proposal was for a pan-Pacific YMCA conference, but later developed into a more general conference among Pacific rim countries including the United States, Australia, Japan, and China as well as several smaller States.

The Institute finally disbanded as a result of a U.S. Senate investigation.⁵⁶ What was notable about the IPR is its uniqueness in membership, which included States having a Pacific coast. This reflects a concern about deeply-rooted problems across the Ocean, which eventually contributed to the Pacific Theater of World War II.

In their first conference in 1925, a primary agenda item was immigration, which was a principal source of antagonism among attendees, and which became an indirect cause of the subsequent war. Succeeding conferences frequently dealt with other issues like the Chinese situation and economic conditions in the Asia Pacific region. These issues also related to tensions arising across the Pacific Ocean in the immediate pre-war period. The role of the IPR has been replaced by other attempts at cooperation after the war, which are more practical and action-oriented. The IPR was, however, valuable as an early attempt to create consciousness as Pacific States, and therefore as a bridge to subsequent attempts at cooperation.

c. Japan's initiative: the Great East Asia Co-Prosperity Sphere.

Another unique attempt in the pre-war era was the idea of the Great East Asia Co-Prosperity Sphere, by which Japan justified its military expansion into other Asian and Pacific countries, including China, Southwest Asia, and then Oceania. Its basic points were the creation of an Asian sphere, totally independent of Western domination and intervention, by linking natural resources in its peripheral areas to Japan, as a center of industrialization.

Although this idea reflected the anti-Western, nationalistic ideology of modern Japan, it generally is considered that the initiative was propaganda and the pretext of aggression, both toward and outside its members. Scholars recently have noted that Japan's initiatives in Asian or Pacific cooperation are viewed with suspicion by other Asian countries, particularly in Southeast Asia.⁵⁷ Those nations have generally opposed Japanese domination, even if only economically. This may be explained in part by the memory of the Great East Asia Co-Prosperity Sphere, which covertly attempted to subor-

55. Institute of Pacific Relations, 82 Cong., 2nd Sess (Internal Security Subcommittee).

56. *Id.*

57. Manning & Stern, *supra* note 2.

dinate other Asian countries to Japan.⁵⁸ Some commentators insist that APEC is so successful since it was originally proposed by Australia, and first agreed to by South Korea, and not by Japan.⁵⁹

2. *Some Features of the post-World War II Progress.*

Following the Second World War, there was an evolution through various regional cooperative initiatives. First, the overall trend toward regional cooperation was relatively inactive. In part, this was due to relatively low economic performance in many developing countries. This factor also preserved the economic dependence of less developed countries upon developed countries. Thus, there developed a hub-and-spoke arrangement between external powers and developing countries.

Second, the Cold War had a unique influence upon this region. This phenomenon brought about confrontational conditions, which occasionally led to military conflict (e.g. the Korean War, the Vietnam War), and more frequently, to political antagonism (e.g., in Southeast Asia between the two Chinas). The Cold War division also intensified political diversity in Asia, thus making cooperation at the regional level more difficult. Even today, reminiscences of the Cold War work as an obstruction to regional movements. This being the case, most countries have become pragmatic enough to concentrate upon economic development. Now, the three Chinas (the People's Republic of China, Taiwan, and Hong Kong) have all become members of APEC. Vietnam joined ASEAN in July 1995. On the other hand, sensitive elements remain, manifested by the People's Republic of China's resistance to full participation of Taiwan in APEC and other economic conferences.

Third, and most importantly, almost all successful regional cooperation attempts prior to APEC have been private schemes (though almost all maintain some governmental link, in terms of its budget source or participants. As is going to be summarized below, major completed frameworks, like the Pacific Trade and Development Conference (PAP-TAD), the Pacific Basin Economic Council (PBEC), and the Pacific Economic Cooperation Council (PECC), are all private, unofficial, non-governmental organizations, but, at the same time, all have some relations with governments at different levels respectively. Such an unofficial character of regional arrangements before APEC was simply the result of the reluctance on the side of relevant governments to create an official governmental organization.

However, the preservation of a private character had some advantages, resulting in successful, effective cooperation: Current economic dynamism is based upon market-oriented economic development, led by the active performance of the private sector, including multinational enterprises. Therefore, it is natural and effective for economic cooperation at the regional level be headed by cooperation amongst private entities. Given such a condition, a private initiative may be more appropriate for the natural creation of regional identity, without any element of forceful imposition by governments. A spontaneous cooperative mood in the private sector will lead to a steadier development of

58. See IMPERIAL STATEMENT OF THE DECLARATION OF WAR, Dec. 2, 1941, Kashima Peace Institute (ed.), 1 NIHON GAJIKO SHUYOH BUNSHO, NENPYOH (MAIN DOCUMENTS AND EVENTS OF JAPAN'S DIPLOMACY) 3.

59. See generally, *APEC A Brief History*, JAPAN ECONOMIC INSTITUTE OF AMERICA, 39. Oct. 20, 1995).

regional arrangements. At the same time, a private, unofficial effort may have sufficient flexibility with practicality, which can correspond to difficulties and volatility in actual circumstances. A strong governmental structure might also be too rigid for constructive cooperation. Finally, in actual cases, the private approach can avoid political sensitivity which governmental organizations cannot. With regard to the handling of membership issues, too, the elimination of the governmental element, at least pretentiously, may facilitate it by circumventing political implications. Sensitive political issues include, for instance, struggles by plural entities for the recognition as the legitimate government or representative, ideological confrontations at an official level, and, sometimes, territorial disputes between States. On the basis of these elements, the preponderance of the private sector in the post-war cooperation has become its uniqueness, distinguished rather reasonably from other more governmentally-oriented regional arrangements.

Fourthly, as is always the case in regional schemes in Asia Pacific, virtually all pre-APEC arrangements have been based upon an outward-looking perspective. This focus has sometimes influenced membership, structures, and policy-making.

3. *Major Inter-governmental Regional Attempts in the Post-war Period.*

The following section will summarize the characteristics of some initiatives by reference to the above-mentioned trends.

a. Initiatives for General Cooperation.

Early initiatives were not necessarily limited to trade and investment issues, except for the Asian Development Bank (ADB), or more subregional initiatives, such as ASEAN and SEATO.

The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP)⁶⁰ started as the United Nations Economic Commission for Asia and the Far East (ECAFE) in 1947, and adopted its present name in 1974. It is a regional commission under the UN Economic and Social Council; therefore it always has had the character of being the regional outlet of the UN in Asia Pacific. This aspect is unique to ESCAP. From its beginning, ESCAP has presented a question as to whether the body should be purely regionally-based or maintain its affiliation as a UN branch. It is symbolic that the members at its inauguration consisted of four Asian and six non-Asian countries. The early era of ECAFE influenced the decolonization process, and there was a debate as to the scope it would cover. Also, the covered area became rather broad, ranging from Islamic States like Afghanistan to Pacific Island countries.

To make matters more difficult, ECAFE lacked the resources for its first mission, post-war reconstruction. The subordination to the UN has been one reason why ESCAP has not been highly valued as a regional body. Some point out its insufficiency in the context of regional cooperation, along with its excessively wide scope, including research and planning, information collection, infrastructure-building, population policy, trade

60. David Wightman, *Toward Economic Cooperation in Asia*, THE UNITED NATIONS ECONOMIC COMMISSION FOR ASIA AND THE FAR EAST, (1963).

and investment, agriculture, transportation, and economic policy coordination.⁶¹ However, it is doubtful whether a purely regional arrangement was possible, particularly in the immediate post-war period, when Asian countries were political and economically feeble. ESCAP's broad scope is also derived from its attempt to deal with problems in a broader context, including social aspects. It is true that later trade-oriented arrangements may be more effective in cooperation, mainly because of their limited mandate.

Currently, the issue of external intervention has been resolved to some extent by the Lahore Agreement, which required non-regional members to refrain from opposing proposals which concern only a limited region. However, the problem remains as long as ESCAP is controlled by the Headquarters in terms of its budget and tasks. It is also pointed out that the problem lies in ESCAP's lack of authority to make use of resources for economic development at a proper level. This reflects the West's early opposition to giving Ecafe any authority beyond information collection and publishing. With all these limitations, however, the general perspective which ESCAP has maintained can be still evaluated, and its role as a provider of information as infrastructure has not been terminated. As long as other recent trade organizations concentrate on trade and investment issues, ESCAP's unique role will continue to exist.

Another unique organization is the Asian Development Bank (ADB), which is a functional inter-governmental body with an exceptionally organized structure. The Bank was established in 1966, under the auspices of ECAFE for the purpose of fostering economic growth and cooperation in the Asian Pacific region. Its activities consist of, *inter alia*, promoting investment of public and private capital for development purposes, and financing infrastructure building such as water supply, sanitation, urban development, and education. Before the creation of APEC, the ADB was sometimes regarded as the only inter-governmental organization with a rigid institution.

The ADB is similar to other institutions in that the external element exists inevitably, because countries outside the region are included as suppliers of funds. The ADB's historical role has been to balance its function as a bank with that of an effective intergovernmental body. The inclusion of the U.S. and Japan as principal donors reflects the desire to include both regional and non-regional economic powers, thus avoiding dominance by either power.

Care is also taken to ensure that one nation's capital share does not become disproportionate, by setting out the rule to the effect that "no such increase in the subscription of any member is authorized which would reduce the percentage of capital stock held by regional members below 60 per cent of the total subscribed capital stock of the bank."⁶² However, from a purely economic point of view, the effectiveness of such a quota-like arrangement is doubtful, particularly given the need for external funds. So the quota is basically political; this factor poses a number of difficulties for the bank.

Another balance the bank must strike is between its objective function as a bank and the necessity that it meet specific needs in the Asian Pacific region. In its early period, the Director of the Bank frequently affirmed that the ADB's policy is the sound banking principle.⁶³ However, it is doubtful whether the Bank could cease to pay attention to

61. See generally, *Human Resources Development Tops ESCAP Meeting Agenda*, ASIAN ECONOMIC NEWS, May 1, 1995.

62. Asian Development Bank, Dec. 4 1965, 17 U.S.T. 1418, T.I.A.S. No. 6103.

63. *Id.* at art. 5 § 3.

the real need for infrastructure, which may not always be profitable from a strictly economic point view. As a regional development bank, the Bank should also pay special attention to small, vulnerable industries, avoiding a propensity to support only big business. However, it is also true that, as a functional organization, the Bank has a mandate to function as a proper bank, thus it must attract subscriptions from fund-suppliers within and outside the region.

Finally, the ADB also must maintain its uniqueness as a bank with multilateral organization. Funding can be from governmental assistance and private investment on a bilateral basis, but there should be advantages in the coordination and planning by adopting a multilateral framework like the ADB. This is a serious issue, since it is directly related to the Bank's *raison d'être*.

In recent years, the Bank has more readily allocated special funds, which are contributed from member countries on concessional terms to less developed countries. It now administers the Asian Development Fund, the Technical Assistance Funds, and the Japan Special Funds. Special funds tend to reflect the preference of their subscribers, like the favorable treatment of Southeast Asia, following the preference contributing members. This aspect relates to the Bank's appropriate function, whether it should be based upon regional considerations or purely motivated by economic principles.

Another rather limited functional scheme, with a less rigid structure, is the Colombo Plan, which was established in 1950. The Plan was established, at first, as a cooperative scheme for Commonwealth members, but now covers a wider spectrum of nations, including the U.S. and Japan. Its principal aims are to foster economic development by facilitating donation from fund-rich countries.⁶⁴ Its operation is more bilateral, though there exists a council for multilateral deliberations. The Plan's attempts to broaden its assistance projects can be seen in its establishment of the Colombo Plan Staff College for technical education in Singapore in 1975.

Participation of non-regional members in the Plan makes more evident the necessity that cooperatives include an external element for effective regional cooperative schemes. During its early period, this was an advantage of the Colombo Plan for development assistance.

SEATO was an inter-governmental, sub-regional security scheme, with similarities to other regional institutions in terms of its link with non-regional powers and its difficulties in coping with diversity. SEATO was established in 1954 under the South-East Collective Treaty (the Manila Treaty), as a part of the anti-communist security network formed by the U.S. The organization disbanded in 1977. SEATO's dissolution generally is considered to represent a failure. However, from the beginning, SEATO was fraught with difficulties which are both common to other Asian-based schemes and unique from them.

A notable feature of SEATO is that its members consisted of two Asian countries, namely the Philippines and Thailand,⁶⁵ and 6 non-Asian powers, namely the U.S., the U.K., France,⁶⁶ Australia and New Zealand. Therefore, SEATO had the notable characteristic of intervention from external powers. It is also symbolic that one regional power, Indonesia, opposed SEATO from its inception until its dissolution.

64. *Id.*

65. An original member, Pakistan, later withdrew.

66. France later withdrew from the military aspects of the organization.

SEATO was a collective defense body, but both its mechanism and its operation were insufficiently modest. The Manila Treaty was ambivalent as a collective defense body; this reflected the U.S. misunderstanding of regional defense needs. Specifically, "the aggression by means of armed attack in the Treaty area against any of the parties or any of parties with unanimous agreement,"⁶⁷ as provided in the Treaty, "applie[d] only to communist aggression, and other forms of aggression or armed attack would merely require the U.S. to consult immediately with the allies."⁶⁸ This formula was weaker than other more typical bodies, such as NATO, in which any attack on one member would be automatically considered as an attack on all others, thus requiring automatic action by members.⁶⁹

SEATO's viability was further undermined by the U.S. policy to maintain bilateral security agreements with other Asian States, such as Taiwan, Japan, and Korea, to fortify its anti-Communist front. This may have been more favorable from the U.S. point of view, to correspond to the different needs and background of respective Asian States, and their respective diversity. The U.S. attitude was seen as subordinating its responsibilities as a SEATO member. For example, the 1962 joint statement by the U.S. Secretary of State and Thailand's Foreign Minister indicated that in the event of a communist attack on Thailand, the U.S. would lead its full support, without any prior agreement or consultation with other SEATO members.⁷⁰ This lack of collectivity in SEATO probably culminated in the U.S. intervention in Vietnam. From such a practice, it is doubtful whether SEATO was a collective military body in substance, let alone a regionally-based cooperative scheme.

Going back to the uniqueness of SEATO's context, it is worth considering the following points. First, reflecting the concern with the domestic instability of less developed Asian countries, SEATO had to deal with the counter-insurgency problem. This might be a complimentary part of a collective defense scheme in a normal sense, the main target of which may be an external attack. Moreover, military force has been used against domestic anti-government movements when such movements were motivated by a certain ideological basis. This raises a controversial issue concerning most of the regional collective security frameworks.

One reason for this is the tendency to incur, or at least justify, the intervention of a dominant power in a scheme. This is particularly the case when local less developed, politically unstable members are included in the scheme. In such cases, there are wider gaps between dominant and dependent members, making it still more likely for a major power to intervene in domestic political struggles. SEATO was no exception to this tendency, and mechanisms like a military consultative and intelligence structure and military advisers' representative committees are some of the most elaborate components of SEATO. Such aspects remind us that SEATO was derived from the Cold War.

Second, with some relation to the first point, reflecting the need for economic development, SEATO included some elements of development programs, along with its purely security concerns. This was shown by its 1973 commitment to a greater emphasis upon the support of development programs. SEATO intended to initiate economic pro-

67. See generally, DEP'T OF STATE, FOREIGN RELATIONS: OF THE UNITED STATES, 1952-1954, VOLUME XII: EAST ASIA AND THE PACIFIC (1984).

68. *Id.*

69. *Id.*

70. *Id.*

jects such as agricultural research and skilled labor training for its Asian members. It was also engaged in medical research in Pakistan and Thailand. However, it is doubtful that such projects had a significant outcome because of the benefits afforded by other economic bodies such as ECAFE, the ADB and the Colombo Plan. SEATO was dissolved without showing any substantial achievement in this economic area.

4. *Association of Southeast Asia-Nations (ASEAN)*⁷¹.

Among the various regional arrangements in Asia Pacific, both inter-governmental and non-governmental, the most highly-valued body may be ASEAN, which consists of relatively free, democratic Southeast Asian countries. ASEAN was founded by the Bangkok Declaration,⁷² and is a subregional, relatively inter-governmental organization. Interestingly enough, ASEAN's reputation has improved consistently, probably exceeding its real effectiveness. However, its recent practice shows some general signs of success. ASEAN should neither be over-estimated nor under-estimated. However, its current reputation has generally been exaggerated.

The background for ASEAN's positive reputation may be summarized as follows. First, ASEAN's coordination and cooperation have been extraordinary; successful rigid organizational arrangements in Southeast Asia are relatively rare. One opinion holds that the level of institutionalization indicates the sophistication of an organization's arrangements.⁷³ Under this theory, ASEAN's hierarchical structure, with the Summit, ministerial meetings, and various committees appears relatively advanced. This aspect is particularly highlighted by reference to the fact that all ASEAN members are developing countries. ASEAN members' economic successes tend to be regarded as ASEAN's success itself, and ASEAN's relative success can be counted as a successful form of regional cooperation between less developed countries.

Moreover, ASEAN's membership is purely Asian, with no external member States. This purism is also considered to be positive, in contrast to other bodies, such as ESCAP, SEATO, and the Colombo Plan, where a main contribution is made by economic and political powers outside the region.

Additionally, ASEAN's success in the political field has created a positive image as a cooperative body, even though ASEAN's achievement in the economic area has been less successful. ASEAN has gained a certain level of political clout by speaking with one

71. Wolfgang Moellers and Rohana Mahmood, eds, *ASEAN, Future Economic and Political Cooperation*, Proceedings of the Conference on ASEAN Future Economic and Political Cooperation, Kuala Lumpur, November 123-15 1992, Institute of Strategic and International Studies, Malaysia, 1993, Alison Broinowski, *ASEAN into the 1990s*, 1990. Oordin Sopiee, Chew Lay See and Lim Siang Kin, eds, *ASEAN at the Crossroads, Obstacles, Options, and Opportunities in Economic Co-Operation*, East Asia Analytical Unit, Department of Foreign Affairs and Trade, Malaysia, *ASEAN Free Trade Area, Trading Bloc or Building Block?*, 1994, *Handbook of International Organizations*, op cit, Association of Southeast Asia Nation, ASEAN.

72. The Association of Southeast Asian Nations Bankok Declaration, Aug. 8, 1967, 1025 U.N.T.S. 312, 1233 (hereinafter *Bankok Declaration*).

73. Sompong Sucharitkal, *Association of Southeast Asian Nations*, 5 I.L.M 1063 (1996).

voice on controversial issues — notably the Cambodian conflict, Indochina refugee issues and, more recently, the Spratly Island dispute. These successes, though limited, may be an overestimation of ASEAN by some commentators.

ASEAN was established in 1967, with the signature of the Bangkok Declaration by five foreign ministers from Thailand, Malaysia, Singapore, the Philippines and Indonesia. The main objectives set out in the declaration was first, "to accelerate the economic growth, social progress and cultural development,"⁷⁴ and second, "to promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields."⁷⁵ Therefore, ASEAN's aim basically has been economic cooperation to attain development, while promoting cooperation in various other fields. ASEAN's creation was not necessarily logical, if one considers the circumstances of the five original countries, each of which was widely diverse, and all of which were linked to external powers, mainly through former colonial channels. It is doubtful whether a clear identity as ASEAN — or Southeast Asia, for that matter — existed at the beginning. One may imagine, therefore, that ASEAN was a creation of the Cold War, supported by the U.S. strategy for a political and economic formation at the regional level. Consequently, it is not surprising that ASEAN had only limited success during its early era.

An attempt to avert ASEAN's early stagnation followed in the wake of the end of the Vietnam War in 1975. It is unclear how such conditions influenced cooperation among ASEAN members, but one can imagine that security concerns, as well as a need to promote domestic stability, led to the enhancement of economic and political cooperation against the communist camp. Thus, the first heads of government's meeting were held at at Bali in 1976, where they signed the Declaration of ASEAN Concord and the Treaty of Amity and Co-operation in Southeast Asia.⁷⁶ The organization also established a secretariat in Jakarta.

In the following year, the members signed the ASEAN preferential trading arrangements for trade liberalization.⁷⁷ ASEAN's achievements were first seen, however, in the members' political cooperation during the unstable period following the Vietnam War. In the wake of Vietnamese invasion of Cambodia in 1978, ASEAN members successfully articulated a common position against the Vietnamese-backed government in Cambodia, as well as opposing this conduct in international arenas, including the UN. Its strong pressure finally led to the withdrawal of Vietnam, and subsequently promoted the resolution of the Cambodia conflict.

ASEAN's success as a political group in this process created an image of a relatively well-organized body.⁷⁸ Internally, the Cambodia issue and other common regional problems may have encouraged a sense of cooperation among the members. This cooperation led to attempts to resolve problems in other fields, such as economic cooperation. This progress may be seen as an example of political cooperation encouraging policy integration in the economic sphere.

74. Bangkok Declaration, *supra* note 72.

75. *Id.*

76. Declaration of ASEAN Concord, Feb 24, 1976, (on file with ASEAN Secretariat); Bangkok Declaration, *supra* note 72, at Annex I. Treaty of Amity & Cooperation.

77. Agreement on ASEAN Preferential Trading Arrangements (PTA), Feb. 24, 1977, (on file with ASEAN Secretariat).

78. ASEAN Document Series 1967-1988 (on File with ASEAN Secretariat).

ASEAN's cooperation on political matters is seen in the internal consultation in their head-of-the-government level or ministerial meetings, where common issues are discussed and joint positions are created. ASEAN has been fortunate from the viewpoint of internal cooperation, in that its issues have not been of a divisive or pressing nature. Instead, the organization has been able to articulate a joint policy in response to the Indochina conflict and the consequent refugee problem. Through this process, ASEAN has become recognized as a political group, even though the members' real solidarity may be doubtful, considering the diversity in culture and domestic politics.

Another element supports ASEAN's political significance in the broader regional context. ASEAN's relatively high institutionalization and strategic importance have given the organization a role in Asia Pacific political consultation, though it is still at any embryonic stage. From 1984 onward, ASEAN foreign ministers collectively have consulted with foreign ministers from ASEAN's partners on various political and economic issues. This is the so-called ASEAN Post-Ministerial Conference, and the dialogue partners are Australia, Canada, the EC, Japan, Korea, New Zealand and the U.S. In 1993, this dimension was further enhanced by the establishment of the annual meeting of the ASEAN Regional Forum, which is more clearly designated as a forum for discussing regional security issues, again at the occasion of the Post-Ministerial Conference. Therefore, ASEAN is developing this aspect as, at least, a facilitator or regional political cooperation recently. ASEAN's activation in the political area is also motivated by the economic performance of each member-country, and has brought about another source of its positive reputation.

ASEAN has been highlighted by its political successes and its economic cooperation. Difficulties it has experienced are common to other economic cooperatives in the Asia Pacific region. These include diversity in its developmental stages and economic structure, which has hindered smooth economic and political cooperation.

ASEAN's makeup is as diverse as the States in Asia Pacific. It includes a highly developed, geographically small country (Singapore), newly industrialized countries (Malaysia and Thailand), countries with a less developed economy (Indonesia), an OPEC-style, resource-dominated State (Brunei), and recently, a Socialist country (Vietnam). This variety will increase with the expected participation of other Indochina countries, which have basically agricultural, less industrialized, economies.

In addition, ASEAN's traditional link with external economic powers may become an obstruction to regional cooperation. However, this aspect is proof of ASEAN's outward-looking stance, which has contributed to its recent economic success. It is reported that ASEAN members have begun to intensify their economic ties with newly industrialized Northeast Asian economies, and that ASEAN members themselves are becoming active investors in less developed Asian countries. Therefore, it is doubtful that ASEAN really needs rigid internal economic arrangements, which characteristically have an inward-looking character. Instead, ASEAN's economic cooperation could become a successful model for developing countries' mutual cooperation.

ASEAN's plan for regional trade liberalization started at the same time as the beginning of its active political cooperation. In 1977, ASEAN foreign ministers concluded their preferential trade agreement (PTA), which was the first attempt to achieve trade liberalization among members.⁷⁹ The agreement grants preferential tariff rates among

79. Agreement on ASEAN Preferential Trading Arrangements (PTA), *supra* note 77.

members.⁸⁰ However, this arrangement did not satisfy the requirements prescribed in the GATT for a legitimate form of regional arrangements.⁸¹

Furthermore, the agreement is insufficient as a regional trade liberalization scheme. Its scope was limited by its origin requirement, whereby products must contain at least 50 per cent ASEAN materials to qualify for the preferential treatment.⁸² This rule indicates that the arrangement was motivated by a regional import-substitution development strategy, rather than industrialization based on open trade and investment. In addition, members tried to minimize the application of the scheme by excluding certain protected products, while granting preferential treatment to non-traded products.⁸³ Thus, with such a limited scope, there is some doubt whether an effective plan for preferential treatment has been implemented.

The possibility of overcoming this stagnation is now enhanced by the agreements in 1992 to establish an ASEAN Free Trade Area (AFTA), consisting of the agreement on the Common Effective Preferential Tariff (CEPT). The AFTA plan is notably more ambitious and stronger than before, and the background for this new direction can be summarized as follows. First, unlike the preceding preferential agreement, the economic performance of ASEAN members has greatly improved with the relative enhancement of economic interdependence. The effective free trade arrangements generally require a certain level of intra-group trade and members' proper economic activities. Therefore, current conditions are much more conducive to a regional trade arrangement.

Second, with the progress of economic development, ASEAN countries have begun to shift to a more liberal, export-oriented approach to trade. In their previous project, ASEAN's trade policy was based on import-substituting economic development, which in turn was based upon an inward-looking protectionist perspective at both the regional and individual levels. AFTA has retained some protectionist elements. However, its overall stance is more liberal, aiming at further enhancement of trade and foreign investment, both of which have been bases for its previous economic development successes.

Third, ASEAN's recent practice of mutual cooperation and its relative success have also contributed to a further cooperative trend, which is enhanced by the successful formation of a political pressure group in its external dimension. ASEAN's recent creation of local economic zones across more than one country, and the success of those measures, also have provided another motivating force for economic cooperation at the inter-governmental level. A successful example of such economic zones is centered at Singapore. This cooperative includes Southern Malaysia (Johor) and Eastern Sumatra.

Fourth, external aspects also are significant, as is common in most regional arrangements. The recent trend of forming or strengthening regional trade arrangements have been an important motivation to ASEAN members. The proliferation of regional free trade arrangements, such as the European integrated market and the North American Free Trade Agreement, may have influenced ASEAN, possibly posing a competitive threat.

80. *Id.*

81. General Agreement on Tariffs and Trade: Multilateral Trade Negotiations. Final Act Embodying the Results of the Uruguay Round of Trade Negotiations, Apr. 15, 1994, 33 I.L.M. 1125.

82. Agreement on ASEAN Preferential Trading Arrangements (PTA), *supra* note 77.

83. *Id.*

One can see these conditions for ASEAN as virtually parallel for Asia Pacific in general, including the APEC process. This may be another reason why ASEAN's trade plan is considered a model for APEC's parallel attempts, both in terms of prospects and difficulties.

The core of AFTA is its plan for intra-trade liberalization through the use of preferential tariffs. The liberalization plan is multi-layered and thus flexible, reflecting the reality of the members' diverse economic stages of economic development. The agreement forecasts that over the 15 years beginning January 1, 1993, intra-regional tariffs will be reduced to 0.5 percent, and non-tariff barriers on most manufactured products will be eliminated. Among them, 15 product groups will be on a fast track, in which the tariff reduction should be achieved within 10 years. However, this mechanism excludes sensitive products including unprocessed agricultural goods and services. Moreover, at the discretion of each member, restricted products for the protection of national security, health and cultural tradition will be protected indefinitely.⁸⁴ The implementation of this scheme remains to be seen. Further difficulties also may arise during operations, considering economic conditions and the trade policy of some members. One should continue to observe the interaction between the AFTA scheme on the one hand, and the regional trade liberalization plan under APEC on the other.

One point which should be added about AFTA is its parallel character to APEC, both of which deal with the conditions of economic diversity and the need for export-oriented economic development. In a way, therefore, the AFTA project could become a model for APEC plans, to be drawn up subsequently. There are several reasons for this possibility. First, AFTA's trade liberalization scheme is a multi-layered, progressive, flexible program, explicitly excluding sensitive products. This results from the difficulties which would arise in implementing a more straightforward liberalization scheme. ASEAN requires a flexible, multi-layered approach.⁸⁵ Riegel proposed, first, that a customs union be formed by four similarly developed members, namely Thailand, Malaysia, the Philippines and Indonesia.⁸⁶

This customs union will then form a free trade area with Singapore, while maintaining the union as a unit.⁸⁷ In this free trade arrangement, the scope of liberalization will be limited to ASEAN-originated goods. Finally, there should be a special trade agreement with Brunei.⁸⁸ Now, Vietnam will be perhaps treated in the same way as Brunei. With regard to the relation with non-members, ASEAN members claim they will make efforts to expand AFTA treatment to outsiders. It is not clear how this commitment is related to the legal obligation of MFN treatment under the GATT, but this ambiguity may be also common to APEC's commitment to the MFN principle. AFTA's remaining protectionist approach can be seen in its rule-of-origin requirement, though the condition

84. The restriction on this latter category should be temporary, subject to review after 8 years.

85. Hans Christopher Rieger, *ASEAN: Free Trade Area or Customs Union*, 132 *FAR EASTERN ECONOMIC REVIEW* 58 (1 May 1986).

86. *Id.*

87. *Id.*

88. *Id.*

89. Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA), Jan. 28, 1992, 31 I.L.M. 513, art. 2 § 4.

has been softened. The agreement requires that a good should have ASEAN contents of at least 40 percent to qualify for the CEPT scheme.⁸⁹

Second, the safeguard measures are built into the AFTA liberalization scheme. The agreement specifically provides that member countries are allowed to suspend provisionally the CEPT preferences if rapidly growing imports cause serious injury to sectors producing like or directive competitive products.⁹⁰ This intra-regional safeguard is also a reflection of the flexible approach of AFTA, and could become a model for the APEC scheme.

Third, as for harmonization at the regional level, AFTA has not yet set forth a concrete plan. Its concern about non-tariff barriers could lead to a new attempt to harmonize technical standards among members. However, the progress of this aspect of trade liberalization remains to be seen.

Finally, AFTA has a notable provision concerning dispute settlement. Article 7 provides that differences between member countries are to be settled amicably between the parties concerned.⁹¹ The meaning of this provision is not totally clear, but ASEAN's preference for a consensual approach — as distinguished from a legalistic approach — can be seen. For instance, it has been proclaimed that differences in interpretation of the CEPT will be considered by the AFTA Council, a political body, in the first instance.⁹² If necessary, the matter may be referred to the ASEAN economic ministers. This approach to dispute settlement will be another issue which should be discussed in planning APEC.

Another scheme which ASEAN has attempted is regional industrial cooperation. ASEAN's industrial projects have experienced problems similar to other efforts at industrial cooperation among developing countries in other regions. The problems may be summarized as follows. First, as is common in any industrial policy both at the national and regional level, governmental industrial policies always have risks of becoming harmful, or at least meaningless, to private manufacturers. ASEAN's economic development has been largely motivated by private initiatives, based upon the market mechanism. Therefore, governmental intervention as industrial policy might negatively influence such flexible private economic activities. Governmental plans, which are generally large scaled, may also restrict the proper development of small and middle sized enterprises, the main economic actors in ASEAN countries.

Second, governmental intervention tends to have an inward-looking, protectionist effect upon foreign multi-national enterprises, whose investments have contributed to ASEAN's economic development.

Third, there is a tendency that regional industrial arrangements may be influenced by political or social preoccupations, which would also harm private economic activities. In the implementation of industrial plans, most decisions are political, such as the allocation of resources and the building of plants.

ASEAN's industrial planning was influenced by these concerns, and there is a marked trend toward projects that have intensified their private, non-interventionist, outward-looking character. The first attempt was made in 1980 by the ASEAN Industrial Projects (AIP), which tried to assign large-scale industrial projects to different member countries. These projects have generally been considered to be a failure, since the private sector made no effort to cooperate. Therefore, a subsequent project, the ASEAN industri-

90. *Id.* art. 6.

91. *Id.* art. 7.

92. *Id.* art. 8.

al complementation scheme, was established in 1981 to be more privately motivated. It sought to achieve cooperation among member countries in the production of particular brands, which is called the brand to brand complementation (BBC). The BBC has the cooperation of the ASEAN Chamber of Commerce in identifying and promoting projects. The products under this project were given preferential treatment. The latest project is even more liberalized and flexible. The ASEAN industrial joint ventures in 1983 utilized tariff preferences as investment incentives, and joint ventures with foreign companies were encouraged. To qualify, only two ASEAN participants were required, and non-ASEAN equity was allowed up to 49 per cent.⁹³ In addition, the local content of products should be at least 51 percent.⁹⁴ With this improvement in ASEAN industrial schemes, it has become less clear whether governmental planning is really necessary.

4. *Projects for Regional Trade Arrangements.*

Along with general inter-governmental cooperation schemes, there has been another stream of more functional, privately motivated attempts for regional trade arrangements. These measures are now coming to function in the development of the APEC process, which maintains some characteristics of early projects. Pre-APEC schemes were all unofficial, private plans, though governmental involvement was seen from the beginning. The development towards APEC was considered to be a process of higher involvement of governments, as is seen in the PECC (Pacific Economic Cooperation Council) process, a tripartite group consisting of members of business, academia and government.

a. *Academic Proposals.*

A possible trade arrangement in the Asia Pacific region started with a proposal for a Pacific free trade area by a Japanese academic Kojima in 1965. This proposal was first submitted to the Japan Economic Research Centre (JERC) in his paper entitled "A Pacific Economic Community and Asian Development Countries."⁹⁵ Its emphasis was the creation of an effective free trade area, and therefore the membership was limited to five developed countries, namely the U.S., Canada, Japan, Australia and New Zealand. The aim of the PAFTA initiative consisted of the creation of a free trade area for regional liberalization. The PAFTA also was to coordinate aid policy towards regional developing countries. Therefore, the initiative contained a collective approach to development assistance and trade preferences for less developed countries. Kojima later proposed an organization for Pacific trade and development (OPTAD) as a transitional body for an OPAFTA as a final goal.⁹⁶

93. The ASEAN Agreement on Industrial Joint Ventures, Nov 2, 1983, 22 I.L.M. 1233. This criterion was later relaxed to 60 percent.

94. *Id.*

95. Kojima, *An Asian-Pacific Regional Organization: An Explanatory Concept Paper*, prepared for the Committee on Foreign Relations, United States Senate, by the Congressional Research Service, Library of Congress, July 1979; see also Peter Drysdale, *The Proposal for an Organization for Pacific Trade and Development Revisited*, 23 ASIAN SURVEY 369 (1983).

96. Kojima, *supra* note 95.

The PAFTA proposal was criticized for its discriminatory nature against less developed countries, by creating a "rich men's group," and for its passive reaction to the common market created by the EEC. Consequently, subsequent arguments on regional arrangements concentrated upon a loose body, OPTAD-style with wider membership, including developing countries. However, the PAFTA proposal was based upon economic rationality, by which the formation of a free trade area required a group of similar economies. It presented an issue which is being revisited in the process of trade liberalization in APEC: whether trade liberalization should be made among similar economies by giving special treatment to less developed countries.

It may be premature to underestimate the value of the PAFTA proposal. Rather, the idea can be seen as a pioneer for later arguments.

The common feature among academic proposals was a loose inter-governmental organization, the membership of which included not only the above-mentioned five advanced countries, but other countries, such as ASEAN members, Korea, Hong Kong, and Pacific Island nations. The proposed organizational structure was more like that of the Organization for Economic Development and Cooperation (OECD), consisting of ministerial-level meetings, and regular sub-ministerial and steering committees. Although discussion of an Organization for Pacific Trade and Development (OPTAD) was a focus of attention by academics, economists, and officials, it was considered premature in comparison to the early PAFTA proposal. The main reasons for this failure are considered to have been its perceived prematurity in Asia and the mistrust among less developed countries, which feared domination by advanced countries.

b. Informal initiatives.

In 1968, a conference was held in Tokyo under the sponsorship of the Japanese Foreign Ministry to discuss Kojima's 1965 PAFTA proposal. The participants were academics from five countries which were designated as possible members of PAFTA. Subsequently, this Pacific Trade and Development Conference (PAFTAD) has been held every thirteen months, providing policy-oriented discussion on issues such as the form of a feasible regional arrangement, and inter-governmental cooperation for economic development. Its structure consists of a simple steering committee established in 1973 and 1974. The contribution of PAFTAD is considered to be its informality, flexibility, and the speed of personal connections among members. Although it has no direct policy-making function, its activities have become a useful source of information for policy consideration. This frequently results from governmental officials attending its conferences as observers. With the development of other forums such as the PECC and the APEC Eminent Persons' Group, the uniqueness of the PAFTAD has decreased. Its further contribution as a purely academic, policy-oriented body remains to be seen.

The Pacific Basin Economic Council (PEBC) was established in 1967, as a body of private business people from countries in the region.⁹⁷ Its first meeting was held in Sydney, and an annual meeting has been held each May in a member country by rotation. The structure of the Council is a network of national committees of each member, with a

97. See generally, *Asian Leaders Warn of Spats Blocking Pacific Growth*, ASIAN ECONOMIC NEWS, May 30, 1994.

steering committee for the annual meeting.⁹⁸ Currently, members consist of senior business executives from over 850 companies in 14 countries. Its main function is business familiarization for individual contacts. Some authors have questioned its early restriction of membership to advanced countries, as well as its utility for promoting regional cooperation.⁹⁹ However, as a uniquely private sector forum, the PBEC will continue to serve as a channel between the business world and governmental policy-makers. With its advanced, developing countries, the PBEC will have ample opportunity to encourage economic cooperation at the regional level.

The Pacific Economic Cooperation Council (PECC) was organized at the Canberra seminar held in 1980, and subsequent annual meetings have been held in a member country.¹⁰⁰ PECC's uniqueness lies in its structure, in that it is a tripartite group comprised of members from the private sector, academia and government. Its main activities are policy-oriented research and discussion for regional cooperation. It focuses upon trade cooperation, and specifically excludes military and security issues. This direction was reconfirmed in its notable Vancouver statement on Pacific economic cooperation, and its subsequent statements upon the Uruguay Round of multinational trade negotiations during the 1980s and early 1990s.¹⁰¹

PECC's structure has various advantages. As an informal non-governmental body, it can facilitate discussion among members, while government involvement ensures a more direct influence upon official policy. PECC's unofficial character has overcome sensitive political issues concerning its membership; its members include the "three Chinas", Russia, and some Latin American countries, as well as the EC.

With the establishment of APEC, PECC's significance may diminish. APEC has adopted some principles which PECC had fostered, such as a commitment to trade liberalization and the principle of open regionalism, both of which preserve economic links to non-regional countries. APEC itself has stated its respect for PECC activities in its statement.¹⁰²

IV. The Progress of the Asia-Pacific Economic Cooperation (APEC).¹⁰⁰

A. THE ORIGIN OF THE APEC PROCESS.

The first inter-governmental regional arrangement in the Asia Pacific region started in November 1989, when the first ministerial meeting of the Asia-Pacific Economic Cooperation (APEC) was held at Canberra.¹⁰¹ This initiative was first launched by Australian Prime Minister Bob Hawke during his meeting with the Korean President at Seoul in January of that year.¹⁰² These two powers took the initiative at the beginning, thus reducing the concern among less developed economies that regional powers would dominate the process.

98. *Id.*

99. *Id.*

100. APEC Canberra Declaration, Nov 7, 1989, 1994 BDIEL AD LEXIS 15 (hereinafter *Canberra Declaration*).

101. *Id.*

102. APEC PPA Brief History, *supra* note 59.

At the same time, doubt existed as to the behind-the-scenes maneuvering by Japan and the U.S.¹⁰³ Indeed, the single most serious obstacle to the Hawke initiative was the general resistance of ASEAN members. Hawke's special envoy, Ambassador Wolcott, visited potential Asian members to discuss their opinions of the initiative, and found that most ASEAN countries were concerned about several issues. They feared the possible dominance by regional powers, the weakening of the existing ASEAN cooperation, and the absorption of the ASEAN's growing political clout. As a result, most ASEAN members (except for Malaysia and Thailand) demanded the U.S. participate in the new scheme to diminish Japanese influence. This is true even though, in Hawke's original plan, the participation of North American countries had not been considered.

The initiative began as a modest, low-key cooperative scheme. This original idea has been preserved, although APEC's political influence may have been enhanced after its first informal leaders' meeting in 1993. APEC's characteristics from its inception can be summarized as follows. First, there is a notable flexibility in the arrangement, and informality has been preserved. This may have originated from the idea that such modest cooperation would function better for the region without the experience of a rigid overall regional arrangement.

Second, APEC's continuous commitment to openness is also discernible. Its pursuit of open regionalism and commitment to the GATT/WTO rules may be seen in its structure and operation.¹⁰⁴ APEC's preference for openness stems from members' preoccupation with the free-trade system, export-oriented economies with the market mechanism, and consequential linkage to the world market.

Third, APEC emphasizes relations with the private sector. This is due to the significant role of the private sector in economic development. APEC's programs clearly reflect business concerns such as trade liberalization, deregulation, harmonization, investment protection, and the program envisions a private-to-government dispute settlement mechanism.¹⁰⁵ This aspect is also evident in that APEC has paid attention to PECC's use of business representatives, and its establishment of the Pacific Business Forum. Participation of private concerns was institutionally fortified by the establishment of the APEC Business Advisory Council at the Osaka ministerial meeting in 1995. Thus there is a clear reluctance to promote rapid institutionalization, as well as a trend to avoid rigid, binding rules. Instead, APEC has expressed a definite preference for informality.¹⁰⁶

These characteristics basically reflect a number of institutional concerns of ASEAN. The latter's influence is also apparent in the APEC process in general. For instance, the ASEAN Secretariat, established in Singapore at the Bangkok ministerial meeting in 1992, is still a modest one. This policy reflects ASEAN's opposition to rapid institutionalization, which could restrict national policy-making. APEC's emphasis on voluntary commitments and consistency with the WTO also reflects ASEAN's concern about a possible exclusive trade bloc. Cooperation and developmental assistance, as well

103. Yoichi Funabashi, *Asia Pacific Fusion*, Japan's Role in APEC, 1995, pointed, in a journalistic way, that the Japanese Ministry of International Trade Industry was actively promoting a regional scheme, at the same time as the Hawke initiative.

104. Canberra Declaration, *supra* note 102.

105. *Id.*

106. *Id.*

as trade liberalization and facilitation are regarded as pillars supporting ASEAN's needs. APEC ministerial meetings and the informal leaders' meetings are alternated between an ASEAN member and a non-ASEAN country. So far, ASEAN's influence has not been weakened by the development of APEC. Rather, ASEAN seems to have strengthened its voice in the APEC forum through an increasing self-confidence caused by ongoing economic success.

B. THE BACKGROUND FOR THE APEC PROGRESS.

1. *Improvement of General Atmosphere.*

The 1980s can be characterized by the improvement of the region's general strategic conditions, as a result of the Soviet Union's reform attempts and the subsequent termination of the Cold War. However, some Cold-War-type disputes remained unresolved. A relative international stability may have encouraged a cooperative atmosphere. The region had been, and still basically is, characterized by the lack of general security framework, which has led to various bilateral or sub-regional security ties.

There are some indications that security concerns may be addressed on a more cohesive scale in the future. For instance, Soviet President Gorbachev introduced a regional framework with the aim of disarmament and confidence building, in his 1986 speech at Vladivostok.¹⁰⁷ However, this initiative was shunned by Western countries as propaganda. The ASEAN post-ministerial meeting with its dialogue partners, regularized in 1984, might be seen as a significant attempt at a comprehensive cooperative scheme. Moreover, in the field of economic cooperation, private initiatives like PECC enhanced conditions for regional schemes.

APEC was established in the context of such a relatively positive atmosphere. Its subsequent development parallels the progress of regional cooperation in different areas. For instance, in 1994 ASEAN established the ASEAN Regional Forum (ARF) to discuss regional security issues.¹⁰⁸ The ARF has some novel characteristics in the context of a regional security framework in Asia Pacific. For instance, it is a comprehensive, inclusive framework, like the Helsinki process, and includes the major relevant powers. Thus, it is different from a traditional type of alliance, which presupposes a confrontation or containment against potential enemies.

The ARF is not a rigid security framework, but rather a forum and a consultative scheme, without any dispute settlement mechanism. This aspect may reflect the general difficulties in creating too formal a scheme. In this regard, there are similarities between the ARF scheme and the APEC process. Similarly, the ARF is regarded as a complementary, loose framework to the existing, mainly bilateral, security networks. Thus, the ARF expanded and reframed the existing ASEAN Post-Ministerial meetings, thus avoiding the image of creating a completely new scheme.

107. Speech by Mikhail Gorbachev at a Ceremonial Meeting devoted to the Presentation of the Order of Lenin to the City of Vladivostok, July 28, 1986, Far Eastern Affairs, No 1 (1987). In this speech, the withdrawal of Soviet troops from Afghanistan was declared.

108. Members include ASEAN, as well as the U.S., Canada, the EU, Japan, South Korea, Australia, New Zealand, Papua New Guinea, China, Russia, Laos and Vietnam.

2. *General Economic Development.*

The increasing economic interdependence, coinciding with the successful development of less developed countries, may also have contributed to the APEC process. The progress of regional economic interdependence has naturally encouraged the general mood for regional cooperation, principally in the economic area. In particular, an increase in reciprocal trade has promoted cooperation among such countries, not limited to previous cooperation dominated by a developmental concern. The success of some former developed countries, such as the first Asian NIES and, later, ASEAN members, also motivated a cooperative framework.

3. *Political Aspects.*

The creation of APEC also was motivated by political considerations. The original Australian initiative included a willingness to solidify ties with its increasingly significant economic partners in Asia. Japan and the Asian NIES were willing to use APEC, to assure continued U.S. commitment to Asia as a trading partner and an anchor for regional security. NIES and ASEAN nations may have believed APEC could promote political influence within and outside the region. The U.S. also hoped to use APEC for active diplomacy toward Asia, mainly in the trade area. This policy was intensified around 1993, leading to the Seattle meetings that year.

China's linkage to a regional framework may be favorable for countries concerned about Chinese dominance. China itself may regard APEC as a means to further economic development by enhancing external trade. These policy considerations may have encouraged APEC's progress. On the other hand, such political preoccupations are potentially divisive among major sub-groups on basic issues, such as institutional form, trade liberalization, and cooperation programs. This negative tendency intensified recently, creating a fierce debate among APEC members.

4. *A More Reactive Aspect.*

Finally, there is also a more passive and reactive aspect in the creation of APEC. The development of an advanced regional arrangement by the EC and concern over its protectionist tendencies, contributed to the APEC initiative. Within the Asia Pacific region another concern was the U.S. approach to regionalism, first entering into the Canadian-American Free Trade Agreement (CFTA) and then the NAFTA. This trend encouraged a broader framework to assure the US commitment to Asia Pacific.

The ongoing Uruguay Round trade negotiations under the GATT also had a significant role in promoting a regional scheme. This may have been a regional alternative in case of the failure of the Round. APEC also was utilized to pressure the EC to work toward successful conclusion of the Round. The Uruguay Round was, indeed, an implicit actor for the development of APEC at an early stage. APEC's four consecutive declarations upon the Round from 1990 to 1994 are considered to be an early achievement by APEC.¹⁰⁹ In particular, the final 1994 declaration, along with the first leaders' meeting

109. See generally, Christopher B. Johnstone, APEC Trade Ministerial Focuses on WTO Agenda, JAPAN ECONOMIC INSTITUTE OF AMERICA, July 26, 1996.

the same year, pressured the EC to conclude the Round.

C. THE APEC PROCESS.¹¹⁰

1. *The First Canberra Ministerial Meeting (1989).*¹¹¹

The inaugural ministerial meeting was held at Canberra in 1989, and included the U.S., Canada, Japan, Korea, Australia, New Zealand, and ASEAN members. The main achievement of the meeting is its occurrence. The Joint Statement issued after the meeting was full of negative checkpoints, items to be avoided in the APEC process. These points included the avoidance of a trade bloc by ensuring compliance with the GATT rules. The ministers also avoided a decision upon a particular structure, since any such determination was premature. APEC was regarded as a modest consultative forum for exchange of views and research, not a rigid institution.¹¹²

APEC maintained and extended some existing basic principles, including the recognition of the economic and cultural diversity, and the possible implementation of work programs.¹¹³ The statement mentioned programs on economic studies, trade liberalization, investment, technology transfer and human resource development, reviews of data on regional trade flows and development, and the facilitation of trade, investment and technical transfer opportunities. These plans were further elaborated by subsequent senior officials' meetings. The statement also expressed a desire to strengthen relations with the People's Republic of China, Taiwan, and Hong Kong.

2. *The Second Ministerial Meeting at Singapore (1990).*¹¹⁴

APEC began to take shape more fully at the second meeting at Singapore. The Joint Statement suggested that regional cooperation for development, along with trade liberalization, were the main elements of APEC. The statement clearly expressed a desire to promote regional liberalization "so long as any such liberalization [was] consistent with GATT principles and [was] not to the detriment of other parties."¹¹⁵ Thus, the parties stipulated GATT's prohibition against protectionist policy. The APEC Declaration on the Uruguay Round was made on the same occasion, and promoted the successful conclusion of the Round.

110. Asia Pacific Economic Cooperation Forum (APEC): Declaration of Common Resolve, Nov. 15, 1994, 34 I.L.M. 758. (hereinafter *Common Resolve*).

111. Canberra Declaration, *supra* note 102.

112. *Id.*

113. *Id.*

114. APEC: Singapore Declaration on the Uruguay Round, 1990, (on file with APEC Secretariat).

115. *Id.*

This was APEC's first external policy declaration, and it demonstrated its shared interest. Ministers also agreed to a framework for work projects, which included (1) review of trade and investment data; (2) trade promotion and programs and mechanisms for cooperation; (3) expansion of investment and technical transfer; (4) a multilateral human resource development initiative; (5) regional energy cooperation; (6) marine resource conservation and marine pollution; and (7) telecommunications.¹¹⁶

3. *The Third Ministerial Meeting at Seoul (1991).*¹¹⁷

The meeting at Seoul was significant for the subsequent development of both activities and structure. Ministers clarified APEC's objectives and procedures by their Joint Statement and APEC Declaration. In the Joint Statement, "Ministers endowed APEC with a clear international personality."¹¹⁸ The legal meaning of this "international personality" was not initially clear, but at least APEC was becoming recognized as an independent entity at the international level.¹¹⁹ This was evident in the fact that in the following year APEC concluded an agreement on privileges and immunities with Singapore in creating its secretariat.

In addition, the statement again reconfirmed APEC's commitment to GATT rules, pointing out that APEC would pursue "trade liberalization within APEC on a GATT-consistent basis and not to the detriment of others."¹²⁰ The statement also set forth and authorized a list of work programs, consisting of ten schemes, which included the seven tasks mentioned in § III.C.2, *supra*, and added three others: fisheries, transportation, and tourism. Finally, the statement agreed that APEC members considered "the possibility of establishing a mechanism of a permanent basis so [as to] provide support and coordination for APEC activities at various levels."¹²¹ This led to the establishment of the secretariat in the following year.

The APEC Seoul Declaration may be the most significant document so far in the process in general. It clearly stipulated the objectives of APEC, which are (1) economic development of the region; (2) the enhancement of positive gains from economic interdependence by general liberalization; (3) the strengthening of an open, multilateral trading system; and (4) the reduction of barriers to trade and services, "in a manner consistent with Gatt principles, where applicable, and without detriment to other economies."¹²²

With regard to the mode of operation, the Declaration stipulated both (1) the principle of mutual benefit, taking into account the region's diversity, and (2) open dialogue and consensus building among members. The Seoul Declaration also set forth the principles for participation, including the requirements that (1) new participants should have strong economic links; (2) they should accept the procedures, objectives and princi-

116. *Id.*

117. APEC: Seoul Declaration, Nov 14, 1991, 1994 BDIEL AD LEXIS 16.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

ples of APEC; and (32) decisions will be made on the basis of a consensus of all participants.

APEC's structure was streamlined by stipulating the capacity of annual and additional ministerial meetings to determine the nature of activities and their implementation.¹²³ The structure also would include a "senior officials' meeting," responsible for developing the APEC process in accordance with the decisions of the ministerial meetings.¹²⁴ Finally, the Declaration proposed a "work programme," to be pursued by a working group.¹²⁵ Perhaps most notably, the three Chinas participated for the first time at the Seoul meeting.

4. *The Fourth Ministerial Meeting at Bangkok (1992)*¹²⁶.

The fourth meeting basically followed the agenda of the previous meeting, while adding some important institutional developments. It established the secretariat in Singapore. In the Bangkok Declaration on APEC Institutional Arrangements, Ministers also endowed a legal entity to the secretariat, to "enjoy such legal capacity as is necessary for the exercise of its functions."¹²⁷ It was also agreed that APEC had budgetary arrangements "to cover administrative and operation costs."¹²⁸ This budget is quite modest, reflecting an opposition to any strong institutional arrangement.

Ministers also agreed to establish a small eminent persons' group, made up of private academics, as an advisory body.

In the Bangkok Statement, ministers mentioned sub-regional arrangements, such as NAFTA and AFTA, and said that "APEC should encourage investment linkages, regional and sub-regional trade arrangements to be outward-looking and GATT-consistent."¹²⁹ This statement reflects some concern about the development of sub-regional arrangements. On the membership issue, the view was expressed that "APEC was entering a phase when consolidation and effectiveness should be the primary considerations, and the decisions on further participation require careful consideration in regard to the mutual benefits to both APEC and prospective participants."¹³⁰

Thus, as is common in regional arrangements, APEC began to balance its expansion on one hand, against the its potential effectiveness on the other. With this policy, it appears that APEC has become less enthusiastic about increasing its membership, choosing instead to protect and enhance its effectiveness.

123. *Id.*

124. *Id.*

125. *Id.*

126. APEC: Bankok Declaration on Institutional Arrangements, Sept. 10, 1992 1994 BDIEL AD LEXIS 14.

127. *Id.* This "legal capacity" may mean the legal function in Singaporean domestic law, rather than in the international dimension.

128. *Id.*

129. *Id.*

130. *Id.*

5. *The Fifth Ministerial Meeting and the First Leaders' Meeting at Seattle (1993).*¹³¹

The Seattle meeting basically reconfirmed APEC's objectives, in particular its commitment to regional trade liberalization. Instead of progressing toward a new era of APEC, the Seattle Declaration envisioned "a community of Asia Pacific economies."¹³²

However, some important arrangements were made by leaders. First, APEC decided that a Finance Ministers' meeting would be held subsequently. This was a departure from the previous attitude towards financial matters, since national financial authorities, particularly the U.S. and Japan, proposed that economic policy coordination be made within existing frameworks, such as the G-7 process and the OECD.

Second, the Pacific Business Forum (PBF) was established as an advisory forum, to be "comprised of two private sector representatives, including one representing small and medium business, from each member."¹³³ The PBF submitted their report for review at subsequent meetings. Third, APEC leaders adopted a non-binding code of principles covering investment issues. This was achieved in the following year.

Ministers also reconfirmed APEC's basic principles. In both the Joint Statement and the Declaration on an APEC Trade and Investment framework, they stipulated GATT consistency, consensus-building, flexibility and diversity, as before. Some institutional changes were made. First, the Committee on Trade and Investment (CTI) replaced the previous informal group on regional trade liberalization. This change was to allow APEC to pursue fully the reduction of barriers to trade in goods and services and investment among participants in a manner consistent with GATT principles and without detriment to other economies.¹³⁴

Second, the Group on Economic Trends and Issues (ETI) was established "to propose a direction that will engage a productive dialogue that will examine possible area of economic cooperation without extending into the realm of economic policy coordination."¹³⁵ On the membership issue, ministers "agreed to defer consideration of additional members for three years,"¹³⁶ in an effort to preserve APEC's effectiveness. Nonetheless, Mexico and Papua New Guinea were admitted, and it was agreed that Chile would join at the 1994 meeting. As with each previous year, the organization reaffirmed its Declaration on the Uruguay Round. This step is considered to have put pressure to the EC, leading to the conclusion of the Round later that year.

131. APEC: Seattle Declaration, Nov. 15, 1993 (onfile with APEC secretariat).

132. *Id.*

133. *Id.*

134. *Common Resolve*, *supra* note 110.

135. APEC: Seattle Declaration, *supra* note 131.

136. *Id.*

6. *Sixth Ministerial Meeting at Jakarta and the Second Leaders' Meeting at Bogor (1994).*¹³⁷

The 1994 meetings showed some important progress in cooperation, although they maintained APEC's principles of GATT consistency and the consideration of intra-regional diversity. In the APEC Leaders' Declaration of Common Resolve, leaders agreed to the goals of regional liberalization with specific deadlines. Free and open trade and investment in APEC is to be achieved no later than 2020, with the industrialized economies to lead the way no later than 2010. This commitment was broadly regarded as a political declaration, rather than a binding legal agreement, since until now, each member has maintained the principle of a voluntary liberalization.

Specific details of this liberalization program were not clarified; therefore its operations have yet to be observed. If the final goal of the program is the creation of a free trade arrangement, the 2010 or 2020 deadline may create a problem, in view of the WTO rule which contemplates a transition period of 10 years.

I believe that APEC should prove that a longer period of transition is necessary than that set forth in WTO rules. If the program espouses partial liberalization, all liberalization should be extended to non-members on a MFN basis, under the WTO rule. In this regard, leaders stated that "the actual reduction of barriers among APEC economies but also between APEC economies and non-APEC economies,"¹³⁸ but added that non-APEC developing countries would "benefit from the trade and investment liberalization in conformity with GATT-WTO provision."¹³⁹ This latter sentence is unclear, but the rule is that partial liberalization at the regional level should be extended to all outsiders, regardless of their level of development. This statement requires clarification by APEC.

The declaration also provided special treatment for developing members, by saying that "those that are not yet ready to participate may join at a later date."¹⁴⁰ It is not clear which prospective members deserve such treatment. Leaders also agreed to examine the feasibility of "a voluntary consultative dispute mediation service," to supplement the WTO dispute settlement mechanism; however, no details have been clarified.¹⁴¹

Another achievement was the adoption of the APEC Non-Binding Investment Principles, which stipulated some basic principles for regional investment, based upon liberalization and fairness. In this document, the ministers affirm that non-APEC investors should be treated equally with APEC investors, and eventually with indigenous investors, under the principles of non-discrimination and national treatment.

In the Minister's Joint Statement, the following institutional changes were agreed. First, the Ad Hoc Group on Economic Trends and Issues, developed for economic review and analysis, was transformed into the Economic Committee. There seems to be a ladder for promotion of groups, in that a working group may be raised to an ad hoc

137. Common Resolve, *supra* note 110.

138. *Id.* at 6.

139. *Id.*

140. *Id.*

141. *Id.*

group, and finally to a committee, as in this case.

In addition, the Budget and Administrative Committee (BAC) was established. This committee was given charge of budgetary issues and the improvement of operational and administrative efficiency. Finally, under the Committee on Trade and Investment, the ministers established the Subcommittee on Standards and Conformance and the Subcommittee on Customs Procedures.

7. *Seventh Ministerial Meeting and the Third Leaders' Meeting at Osaka (1995).*¹⁴²

Meetings at Osaka showed the initial stages of implementation of the Bogor Declaration's liberalization program. Reconfirmed principles included the principle of voluntary liberalization with collective actions in other areas. The Osaka meeting also ensured that APEC remains consistent with WTO agreements. The desirability of an APEC dispute resolution mechanism was also agreed upon, but details were not discussed. Leaders set January 1997 as the date for beginning overall implementation of the action plans for liberalization and facilitation. In order to achieve this, they set forth a general implementation plan in the Action Agenda, and demonstrated their commitment by offering preparatory liberalization and facilitation in the Initial Actions.

The Action Agenda again reconfirms the existing principles of WTO consistency, non-discrimination, and flexibility: "the outcome of trade and investment liberalization will be the actual reduction of barriers not only among APEC economies but also between APEC economies and non-APEC economies."¹⁴³ As to flexibility, the statement pointed out that "considering the different levels of economic development among the APEC economies and the diverse circumstances in each economy, flexibility will be available in dealing with issues arising from such circumstances in the liberalization and facilitation process."¹⁴⁴

The Action Agenda sets forth the liberalization and facilitation arrangements for each sector, while giving additional attention to sub-regional arrangements. In this regard, the members considered "extending on a voluntary basis, to all APEC economies, the benefits of reductions and eliminations of tariff and non-tariff measures, derived from sub-regional arrangements."¹⁴⁵ With respect to trade in services, particular attempts for a general harmonization or mutual recognition of standards and procedures become evident. This is seen particularly in the sectors of telecommunications, transportation, energy and customs procedures. The necessity for harmonization in the areas of competition policy, intellectual property rights, as well as rules of origin, are also demonstrated. Concerning a possible regional dispute settlement, APEC set forth an intention to create dispute settlement mechanisms, including disputes between governments and private entities.¹⁴⁶ This may reflect a request from the business sector, as shown in the Pacific Business Forum report.

142. APEC: Osaka Action Agenda on Implementation of the Bogor Declaration, Nov. 19, 1995, 35 I.L.M. 1111.

143. *Id.* at Part One, § A, 4.

144. *Id.* at Part One, § A, 8.

145. *Id.* at Part One, § C, 11.

146. *Id.*

The Joint Statement also stated that the cooperative aspect should be treated as a main pillar of APEC activities by noting that Ministers stressed the need to further promote economic and technical cooperation to achieve sustainable growth and equitable development in the Asia Pacific region.¹⁴⁷

On the institutional side, Ministers agreed to strengthen the secretariat, though specific planning was delegated to the Senior Officials' meetings. With regard to the participation issue, they also instructed the Senior Officers to consider APEC's policy on new membership and observer states. Finally, another new organization, the APEC Business Advisory Council (ABAC), was established, corresponding to the request by the Pacific Business Forum. This may strengthen the formal influence of business concerns upon the APEC process, but, on the other hand, this change may effect the previous methods of neutral, independent and, perhaps, more efficient business involvement.

D. SOME MAIN ISSUES IN THE APEC PROCESS.

The following part summarizes the main issues in the development of APEC process, based upon the above-mentioned observation of APEC's history.

1. *The Scope of APEC.*

Like other regional arrangements, APEC has reached the stage where it must balance effectiveness with size. The 1991 Seoul APEC Declaration set out the general criteria for new members.¹⁴⁸ However, the Declaration showed that new participants would be eventually admitted by consensus among existing members.

In order to achieve effective cooperation, APEC's arrangements will require a certain level of equal economic performance, as well as a certain level of development by each member. This aspect is particularly important for APEC, which, from the beginning, has had a diverse membership. On the other hand, regional stability and conflict prevention may require broad inclusion, just as the ASEAN Regional Forum in the security area has the principle of a comprehensive membership. Whether the expansion of sub-regional arrangements should be considered in the expansion of APEC itself is also an issue.

Mexico's admission was probably encouraged by the formation of NAFTA. Moreover, Chilean accession to NAFTA further encouraged its inclusion in APEC. A related issue is whether, with the development of NAFTA and a possible Western Hemisphere Free Trade Agreement, new members of an inter-American arrangement should automatically be admitted to APEC. The same issue is becoming apparent in

147. *Id.*

148. APEC: Seoul Declaration, *supra* note 117.

ASEAN meetings. As early as 1992, in the keynote speech of the Bangkok ministerial meeting, the Thai Prime Minister emphasized that "APEC, as a uniquely diverse and open consultative forum, holds vast untapped potential for cooperation in a broad range of areas, economic and otherwise,"¹⁴⁹ implying a wider political arena. Particularly with the informality which APEC maintains, a substantial expansion of its coverage is likely.

2. *The Structure of APEC.*

There is an agreement among APEC members that APEC should not seek a rigid institutional structure, in order to maintain its flexibility and voluntarism as principles.¹⁵⁰ Its institutional structure thus maintains a simple form, consisting of ministerial meetings as the formal supervisory body, senior officials' meetings, and a limited number of committees and working groups. Its secretary and budgetary arrangements are both quite limited to avoid a large bureaucracy.

On the other hand, with extensive development of APEC programs, the current loose structure might be insufficient. Indeed, APEC has shown a steady institutional development, with the establishment of permanent committees, establishment and expansion of the secretariat and budgetary arrangements, and the creation of an annual informal leaders' meeting. The issue of institutional expansion should be examined in light of the progress of APEC programs, including trade liberalization and various facilitation measures.

In considering this issue, we should bear in mind that the effectiveness of institutions is difficult to evaluate. Since its inception, a relatively soft, flexible, informal structure has been considered suitable for Asia Pacific cooperation. This is because such flexibility is expected to create efficient management. In this regard, the OECD-type soft organization was considered most suitable, as opposed to the EC type of rigid framework. Stereotypical images of these two types are summarized in Table 1. It is true that the OECD has been relatively successful in coordinating members' policy, even though it has no binding legal instruments for implementation. Rather, "peer" pressure and mutual verification are frequently pointed out to explain this efficiency.

However, this *de facto* mechanism is possible because the OECD is a group of countries, all of which have an advanced economy. This leads to a more equal footing and like-mindedness of members. This condition normally is difficult to achieve; APEC members, in particular, are far from "equal footing." Therefore, to provide a reliable, predictable and stable business environment, some situations may require a relatively rigid mechanism.

149. APEC: Bangkok Ministerial Meeting, Sept. 10, 1992, (on file with APEC Secretariat).

150. Canberra Declaration, *supra* note 102.

Table 1 Stereotypical images of the two types of organizations

	The EC-type	The OECD-type
general images	hard rigid formal regular	soft flexible informal less regular
internal arrangements	centralized binding rules judicial settlement majority rule	less centralized voluntary rules peer pressures unanimity rule
external relations	closed protectionism	open liberalized

3. *The Process of APEC Arrangements.*

One of APEC's objectives has been liberalization at the regional level, while maintaining consistency with the GATT-WTO rules. So far, the regional liberalization program has not been fully implemented. Therefore, the issue is whether APEC can effectively balance regional liberalization with WTO consistency. Under the WTO rule, APEC has two choices. It may create a free trade area incompatible with the WTO rules, or it may extend to non-APEC countries under the MFN principle. The 1994 Bogor Declaration has set forth the final goal of regional liberalization by 2020. It is unclear whether the aim is a free trade arrangement or partial liberalization with NFN extension to non-members.

Realistically speaking, it will be difficult to achieve complete intra-regional liberalization considering the members' economic diversity. It is also unrealistic to expect that all APEC members will extend intra-regional liberalization to non-members for domestically sensitive sectors. The 2020 transition deadline is far beyond the WTO's 10 year limit. APEC may use voluntary liberalization as an excuse in this regard by saying that any liberalization is on an individual basis, and that it therefore is not imposed by APEC. Thus, it is up to individual members whether regional liberalization should be extended to non-members. If APEC members act against the WTO rule, it is the members, not APEC, that should be blamed. This approach may be difficult to sustain, and eventually, APEC will be required under WTO to explain the legal basis for its programs.

Relating to liberalization/compatibility is the issue of sub-regional arrangements, such as NAFTA and AFTA. In addition, overlapping regional arrangements with APEC reflect an ongoing scheme of a free trade area for the Americas. Under the WTO rule, there is no distinction between a relatively comprehensive regional arrangement and sub-regional ones. Therefore, any sub-regional and overlapping arrangements shall themselves satisfy the conditions stipulated in the General Agreement.

On the other hand, the relation between an umbrella arrangement, like APEC, and sub-arrangements, like NAFTA and AFTA, may be difficult to coordinate, in part because of their differing levels of liberalization. For instance, NAFTA has achieved a more advanced level of liberalization than APEC, while AFTA may be a more limited. In combination with a more rigid rule of origins, this may cause discrimination among members in an umbrella arrangement. Another view is that an increase in free trade arrangements, whether sub-regional or overlapping, would lead to eventual free trade at the global level.¹⁵¹ But, in reality, the result may be increased discrimination. This issue should continuously be reevaluated.

A more political issue is the possible creation of an exclusive East Asian arrangement as a unit within APEC. The Malaysian initiative of an East Asian Economic Caucus (EAEC, originally named an East Asian Economic Group) has been widely debated in this context.¹⁵² This initiative is meant to counteract against the NAFTA; however, it may have a protectionist effect upon other APEC members. The specific scheme of an EAEC has not been made clear. It is at least a forum for discussion among geographically close economies in East Asia. There is a view that the EAEC initiative itself has placed pressure on the APEC process, thus increasing the strong commitment toward regional liberalization.

As economic transactions intensify, it is natural that both tariff and non-tariff measures (including administrative procedures and regulations) have become a focus of attention. In APEC, too, the treatment of non-tariff measures in major industrial sectors has been on the agenda. The solution to non-tariff measures may be their reduction or abolition.

However, if these measures are necessary from a policy standpoint, one viable solution is aligning these barriers with international standards. Although this would be possible among countries with similar levels of development, APEC members' diversity may prevent the utilization of such standards. Therefore, current APEC programs favor a mutual recognition of other members' trade standards and policies as an alternative solution. This can be seen in the Action Agenda for trade liberalization and facilitation, adopted in the 1995 Osaka meeting. However, it is difficult to imagine that mutual recognition will be implemented due to diverse administrative procedures, economic structures, and stages of development. Thus, standards of advanced and developing countries may be incompatible. Moreover, the reverse situation, in which developing members have stricter standards, also may occur.

As mentioned in recent joint statements, APEC is considering the creation of a dispute settlement mechanism at the regional level, which would supplement the WTO dispute settlement mechanism.¹⁵³ The Jakarta Statement, for instance, suggested that a regional settlement mechanism will be a mediatory body, rather than a WTO-style settlement forum.

151. C. Fred Bergsten, *APEC and World Trade, A Force for Worldwide Liberalization*, FOREIGN AFFAIRS, May/June 1994, at 20.

152. Linda Low, *The East Asian Economic Grouping*, Vol. 4, No. 4, THE PACIFIC REVIEW (1991); Nigel Holloway and Thony Rowley, *East Asian Trade Grouping at Top of Region's Agenda, An Insurance Policy*, FAR EASTERN ECONOMIC REVIEW, July 25, 1991, at 52; *Malaysians Question APEC Goal*, FINANCIAL TIMES Nov. 9, 1994.

153. APEC: OSAKA Action Agenda on Implementation of the Bogor Declaration, *supra* note 142.

These ideas may be based upon concern over recent trans-Pacific economic disputes, mainly between the U.S. and Asian economies. Thus, it may be argued that a more efficient settlement mechanism is required. However, if a regional settlement mechanism is established, it will be necessary to show why a separate regional mechanism can be more effective than the WTO process. APEC may argue that disputes in the Asia-Pacific region are distinct or that members would more willingly accept regional solutions. Table 2 describes legal and extralegal settlement mechanisms.

In all likelihood the WTO system would be more effective at resolving disputes. However, given the economic and political diversity of APEC members, it is doubtful whether an Asian-style dispute resolution system will be effective. Moreover, the business sector may favor litigation, since judicial opinions promote predictability as to the legality of business activities. This issue must be further researched.

Table 2: Ideal types of legal and extra-legal dispute settlement mechanisms.

	The legal mechanisms	Extra-legal mechanisms
Substantive aspect	Based upon law, with prescribed rules.	Law deemphasized in favor of ad hoc coordination.
Procedural aspect	Rigid procedural rules. Objective decisions. Adversarial proceedings. Binding judgments, with decisive effect.	Rules of Procedure deemphasized. Subjective decisions. Judgment may not be binding on subsequent parties.
General characteristics	Simple application of law. Based on purely judicial considerations. Legalistic fairness.	More general approach, considering various factors. Policy considerations may be included. Overall fairness.

E. FUTURE PROSPECTS FOR THE APEC PROCESS.

The arguments will continue as to APEC's future, especially as to whether APEC should maintain its "soft" and open structure or whether it should introduce a more rigid and closed style. APEC is likely to preserve its basic principles, such as its flexible, minimalist institutional arrangement, its voluntary approach to liberalization, and its non-discriminatory consistency with WTO. However, at the same time, elements substantially contrary to these principles will be introduced. For example, we already have seen gradual institutionalization in a more rigid form, such as the regularization of informal leaders' meetings, an increase in the number and responsibilities of committees, and an incremental expansion of the secretariat and of budgetary arrangements.

The restrictive attitude towards admission of new members, based in part upon the concern for APEC's effectiveness, may result from attitudes toward flexibility and similarity of purpose. On the other hand, APEC may expand the scope of its activities as a result of accumulated routine practice. The leaders' meetings are becoming a more comprehensive discussion body, covering both economic and non-economic matters, while retaining their informal position in APEC.

A newly established dispute settlement mechanism may increase its jurisdiction over non-economic matters under the guise of vague details regarding APEC competence. There is certainly a demand for a forum with broad coverage, including social matters, security aspects and human rights issues, though, at present, these areas are removed from the APEC process. This is made possible by APEC's enhancement of a cooperative mood through its frequent consultations and cooperative activities. Institutionally, the development of APEC's action-oriented programs will increase the need for a reliable institutional arrangement. This goal will be achieved through a deliberate expansion of APEC institutions. Therefore, APEC will become another example of an evolutionary formation of regional arrangements.

V. Conclusion.

In the Asia Pacific region, the establishment of a regional arrangement is not necessarily a prerequisite for its further economic development. Such an arrangement will have limited significance from an economic viewpoint, save for the enhancement of predictability or certainty and the provision of a forum for consultations. The Asia Pacific economic arrangement is motivated by more political considerations, including the reaction against other regions' initiatives for regional arrangements, and the avoidance of separate integration in both the Western and Eastern Pacific.

Against this background, an Asia Pacific regional arrangement will over towards pragmatic cooperation, while maintaining openness to outsiders. This reflects the characteristics of the region as a whole, which is economically, politically and culturally diverse.

The issues which the APEC process is expected to address in the future include its membership and the scope of an arrangement, its organizational structure, and its policy goals. These goals include internal liberalization, harmonization and the establishment of a workable dispute settlement (or consultation) mechanism.

As to APEC's implications for the NAFTA, and aside from the competitive aspects addressed above, several factors should be pointed out. First, while much less geographically remote than Asia Pacific nations, the NAFTA Parties are quite culturally

and politically diverse. Their economic systems are widely varied, with Mexico seeing unprecedented development due in part to the NAFTA itself. Each nation's ethnic background is quite divergent, with strong influence from English and French systems in the north, and a Latin culture in the south. Moreover, each nation has a distinct domestic policy, set forth by governments with diverse interests.

Additionally, several Central and South American nations are considering joining the NAFTA, and the entire region considers a Western Hemisphere Free Trade Agreement a real possibility. While many of these nations would bring substantial benefit to the accord, this growth can be compared to the difficulties faced by Asian and Pacific Rim nations during the growth of the Asia Pacific cooperatives. Therefore, the NAFTA should bear in mind the following lessons.

First, and perhaps most important, member nations must recognize the cultural, political and economic diversity among members and prospective members. This characteristic will involve all aspects of the treaty, its institutions and implementation.

In addition, the NAFTA is structurally flexible. This arrangement has definite advantages in early stages, in that it allows for ad hoc decision making and places reasonable limits on growth. However, APEC has demonstrated amply that this format — perhaps inevitably — will require greater structure as the need increases for binding arrangements and stronger dispute resolution mechanisms.

Finally, the NAFTA must ensure that its arrangements do not conflict with GATT-WTO requirements. It should not discriminate between internal and external trade, and should not allow regional concerns to dominate its free trade basis.
