Institutional Requirements for Regional Economic Integration: A Comparative Perspective on the EU, the Americas and East Asia

Preliminary incomplete draft

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Abstract

This paper discusses the importance of institutions for successful international economic integration comparing the EU with NAFTA and the ASEAN Free Trade Area (AFTA) as well as some other regional integration schemes. Taking the point of departure in neo-liberal institutionalist theories of international regimes and rational theories of international integration, especially the contributions by Moravcsik and Mattli, the respective institutional designs of EU, NAFTA and AFTA are compared. The question is asked: Can both 'supranational' institutions à la EU and less supranational and more intergovernmental institutions à la NAFTA and AFTA create 'credible' commitments'? The answer seems to be yes for NAFTA but less so for AFTA. A brief comparison with other integration schemes such as APEC suggests that a certain legal formalization is necessary to 'lock-in' liberalization and limit defection. Further, it is noted that the EU has moved much beyond a free trade area (FTA) to create an internal market, an Economic and Monetary Union (EMU) and a number of common policies. These common policies, especially the Structural Funds allow for some redistribution.

Introduction[1]

The different integration schemes in the world vary in various ways. They vary in functional scope, institutional set-up, size of membership and impact. The different factors used to explain this variance also vary, from economic gains over geopolitics to learning processes and creation of new collective identities.

If the integration schemes in different parts of the world are so different, are they all *sui generis*? Does it make sense to compare them? Some scholars have argued that they have enough common traits to be comparable. Most often at least they try to create freer trade, if not free trade, between the participating states. Many also try to create freer movement for services and capital. Then they become FTA Plus schemes. One possible way to look at this is that they constitute international regimes, i.e. rules, regulations and decision-making procedures (Krasner, 1983). But, as we shall see, one can argue that at least the European Union (EU) has gone beyond this and

[1] The theoretical part of this paper relies on earlier publications by the author, especially the introduction and concluding chapter in Finn Laursen (ed.), *Comparative Regional Integration: Theoretical Approaches* (Ashgate, 2003). See also the Spanish version in Laursen 2004. The section on NAFTA was included in a paper presented at the ISA Convention, Hawaii, March 2005. The author had hoped to include MERCOSUR in this paper but did not get time for this. That will be one of the next steps in this ongoing research. The author would like to thank Berenice Lara Laursen for research assistance.

become a political system which can make authoritative decisions for the entire group of participants (Easton, 1965; Lindberg and Scheingold , 1970).

Although much integration theory has been developed to explain the European case integration theory has also been used to study integration in other parts of the world, including the Americas, East Asia and the Pacific. In this paper we shall discuss the role of common institutions in economic integration comparing especially the EU, NAFTA and AFTA.

Game-Theoretic Perspectives

Regional integration efforts can be seen as an effort to overcome a fundamental problem in the relations among sovereign states, namely that of defection. According to classical international law states are sovereign. They do not have to accept supranational institutions. The international system is seen as anarchic. States can of course conclude agreements with other states, bilaterally or multilaterally; but once they find that conditions have changed, they are no longer bound by such agreements. They may be tempted to cheat to gain more for themselves relative to their partners. International agreements, therefore, can be fragile and unstable as long as they are based on the classical notion of sovereignty.

Modern game theory discusses this in a formal deductive fashion. The famous Prisoners' Dilemma game illustrates the situation where individually rational actors, which could be states, arrive at sub-optimal outcomes if they act independently. Further, the theory shows that agreements, which should realise optimal outcomes, will often be unstable because actors will be tempted to cheat or defect from the cooperative agreement to realise outcomes that are better for themselves in the short run (Brams, 1975; Stein, 1990; Taylor, 1987).

Post-war efforts at international cooperation among industrialized countries in the economic area can be seen as a response to the protectionism - and beggar-thy-neighbour policies - of the 1930s. Free trade, it can be argued, will normally be in everybody's interest. Yet, it is not so easy to realize. The states tried through the General Agreement on Tariffs and Trade (GATT) – now part of the World Trade Organization (WTO) - to facilitate and increase international trade. Yet, trade conflicts have remained an important aspect of relations among the industrialized countries (Grieco, 1990; Conybeare, 1987; Gilpin, 1987).

The experience of the original European Communities (EC) is instructive in this respect. The EC first of all started as a customs union, which should realise free trade among its members (and introduce a common tariff towards third countries). But once the customs union was in place (1968) it gradually became clear that a customs union is not sufficient to realize free trade. Member States could continue to protect their national industries through non-tariff barriers to trade (NTBs). Some of these were technical barriers to trade like different national standards for products (Pelkmans and Winters, 1988).

A number of cases followed. Many of these eventually were taken to the European Court of Justice (ECJ), which sometimes called for changes in national legislation or practices.

The EC's Internal Market project of the late 1980s can be seen as a renewed effort to overcome Prisoners' Dilemma situations. In the Single European Act (SEA) the Member States accepted the use of qualified majority voting (QMV) in the Council of Ministers to complete the Internal Market. The Commission under Jacques Delors also played a leadership role.

These elements of an independent Commission and QMV in the Council add up to what has been called supranationality (Keohane and Hoffmann, 1990). The Commission is an independent European body; it is there to represent and further the European interest. National interests are represented in the Council; but to the extent that QMV is accepted in the Council, no single member can stop the adoption of measures they do not like. One of the problems of traditional intergovernmental

cooperation and the rule of unanimity, is that the slowest members will normally determine the speed. Under such form of cooperation one should expect decisions to be based on the lowest common denominator. The EC on the other hand has created institutions that facilitate the "upgrading of the common interest" it was argued early on (Haas, 1961).

Another important institutional element in the EU is the ECJ which makes binding decisions. Community law is different from traditional international law. It has primacy if it conflicts with national law; and much EC legislation has direct effect (Louis, 1990).

If we compare the EU with other regional integration organizations some of these institutional differences become apparent. None of the other regional schemes have created independent supranational bodies like the EU Commission; none of them have accepted anything resembling Community law and real limits on their sovereignty in the form of binding majority decisions (see also Feld and Boyd, 1980; Jamar, 1982). In the EC there has been a pooling and delegation of sovereignty. According to Moravcsik this is done to assure 'credible commitments' (Moravcsik, 1998). Some scholars talk of 'supranational governance' when they describe the EU (Sandholtz and Stone Sweet1998). At least one scholar has also described the institutional setup of NAFTA as 'supranational governance' (Gruber, 2000). Yet, as we shall see later, NAFTA's institutional set-up falls very short of the EU institutions. And AFTA's institutions are even weaker.

Integration is not only about getting optimal outcomes, i.e. efficiency. There is also an element of redistribution in integration schemes. The game that can illustrate this is the Battle of the Sexes. Whereas the question about efficiency is the question of reaching the Pareto-frontier, the question of distribution is where you end up on the Pareto-frontier. An element of power enters the equation. Whereas liberal institutionalists scholars have looked at efficiency, realists and neo-realists have emphasized the question of power and distribution (Krasner, 1991, Little, 1997).

Among integration theories inspired by game-theoretical approaches we especially find Andrew Moravcsik's liberal intergovernmentalism and the contribution by Walter Mattli.

Liberal Intergovernmentalism and Mattli's contribution

Andrew Moravcsik's framework suggests three stages in integration studies, first national preference formation, then interstate bargaining and finally institutional choice (Moravcsik, 1998). The model is simple and could in principle be used to study integration in other parts of the world than Europe. Indeed, Moravcsik basically sees the EU as an international regime.

In this paper on institutions we are especially interested in stage three in Moravcsik's framework, namely institutional choice. The questions asked concern the reasons why states choose to delegate or pool decision-making in international institutions. Delegation in the EU refers to the autonomous powers given to the Commission and the European Court of Justice. Pooling of sovereignty refers to the application of majority decisions, especially in the Council of Monisters. To explain institutional choice Moravcsik contrasts three possible explanations: Federalist ideology, centralized technocratic management or more credible commitment. The answer he arrives at is that states delegate and pool sovereignty to get more credible commitments.

Walter Mattli has dealt with regional integration from a comparative perspective, comparing European experiences, including older ones, with experiences in other regions of the world. To explain regional integration both Moravcsik and Mattli emphasize demands from society as well as supply from politicians. Interstate bargaining determines supply in Moravcsik's framework. Mattli puts more emphasis on leadership, i.e. "the presence of an undisputed leader among the group of countries seeking closer ties:"

> Such a state serves as a focal point in the coordination of rules, regulations, and policies; it may also help to ease distributional tensions by acting as regional "paymaster" (Mattli, 1999, p. 14).

Successful integration then depends on both demand from market actors and supply from political actors. Willingness to supply integration "depends on the payoff of integration to political leaders" (Ibid., p. 13). On the supply side both "commitment institutions" (such as the Commission and ECJ in Europe) and an institutional leader are mentioned, but the latter is considered most important. Mattli mentions 'centralized monitoring and third-party enforcement' as examples of commitment institutions, and says,

> The provision of such institutions is one supply condition for successful integration, but it is a weak one. In its absence, cooperation may still be possible on the basis of repeat-play, issue-linkage, and reputation. Nevertheless, "commitment institutions" can catalyze the process of regional integration, particularly if they offer direct access to those actors with the greatest vested interests in seeing integration completed (ibid., p. 14).

Concerning the regional paymaster this role was played by Prussia in the German *Zollverein* in the 19th century. It is argued that Germany has played such a role in the EU. A central question on the supply side is how to overcome collective action problems associated with both Prisoners' Dilemma and Battle of the Sexes games. There must be mechanisms to deal with the temptation of defection as well as distributional inequities. In the case of NAFTA Mattli argues that the United States has been the regional leader. But in cases where there has been no undisputed leader, such as ASEAN and the Andean Pact, coordination problems 'are likely to be insurmountable. Two or more potential leaders in a group can also be a problem. APEC, where the United States and Japan are seen as contending leaders, is mentioned as an example (ibid., pp. 56-57).

Mattli has illustrated the varying outcomes of integration in a figure that we reproduce in slightly shortened version (Table 1).

Leaving out some of the integration schemes studied by Mattli we notice that he has the EU, NAFTA and EFTA until 1973 with highest success rate (1973 was the year the UK and Denmark left EFTA to join the EC). The lowest success rate is given to the Central American Common Market (CACM) after 1969, ASEAN, the Economic Community of West African States (ECOWAS), LAFTA and the Andean Pact. In the middle groups we find two contemporary schemes, the Asia Pacific Economic Cooperation Forum (APEC) and MERCOSUR.

Table 1: **Outcomes of integration schemes**

		(Uncontested) regional leadership	
		Yes	**No**
(Potential) market gains from integration	**Relatively significant**	**3** EU NAFTA EFTA (until 1973)	**2** EFTA (after 1973) APEC MERCOSUR
	Relatively insignificant	**2** CACM (until 1969)	**1** CACM (after 1969) ASEAN ECOWAS LAFTA Andean Pact

Success rate: 3 highest
1 lowest

Source: Adapted from Mattli (1999a), p. 66.

The Mattli framework for studying regional integration has the clear advantage of simplicity, singling out a small number of variables as decisive for the success of integration. It pays equal attention to demand and supply factors. The role of 'commitment institutions,' however, takes second place in Mattli's theory, and it is not mentioned in the table. Still we believe that the study of 'commitment institutions' deserves to be advanced.

Degrees of Economic Integration

We mentioned at the outset that the EU has gone much further than other integration schemes. One way to look at this is to use the steps suggested by economists.

Most integration schemes involve some economic integration. Economists distinguish between various stages of economic integration. Bela Balassa's classic five steps of economic integration are given in table 2.

Willem Molle has introduced some further distinctions, giving the following stages of economic integration: free trade area, incomplete customs union, customs union, incomplete common market, common market, economic union, monetary union, economic and monetary union, political union and full union. Political Union is reached when 'integration is extended beyond the realm of economics to encompass such fields as anti-crime policy (police) and foreign policy, eventually including security policy.' Full union involves 'complete unification of the economies involved.' A full union is likely to involve social security, income tax and macro-economic and stabilisation policy. The latter 'implies a budget of sufficient size to be effective as an instrument of these policies.' The end of the continuum thus is 'some form of a confederation or federation' (Molle 1994, p. 12).

Table 2: Balassa's Categories of Economic Integration

	No Tariff or Quota	Common External Tariffs	Free Flow of Factors	Harmonization of Economic Policies	Unification of Policies, Political Institutions
Free Trade Area	X				
Customs Union	X	X			
Common Market	X	X	X		
Economic Union	X	X	X	X	
Total Economic Integration	X	X	X	X	X

Source: Nye, 1971, p. 29.

Applied to the different integration schemes in the world it is clear that the EU has moved towards the last steps, unification of policies and creation of political institutions, while most other schemes try to establish free trade. The Maastricht Treaty included the plan for Economic and Monetary Union (EMU). Among the 15 member states before the big enlargement in 2004 12 had introduced the single currency, the euro. This has not made the EU a fully-fledged federation. The EU has not gone very far in the fiscal policy area, but the Stability Pact sets requirements for national fiscal policy. Some harmonisation of taxation policies has been tried, but with limited success. Taxation, including spending for social welfare, remains largely a national responsibility. The EU budget can maximum take 1.27 percent of the EU GDP.

On the political side the EU deals with foreign, security and lately also defence policies as well as Justice and Home Affairs Co-operation, the latter including police co-operation. As such the EU has become a political union, but the EU remains rather weak in these political areas where the Member States have been unwilling to transfer sovereignty to common institutions. Consensus or unanimity still dominates in 'high politics' areas and the Commission and ECJ gets less involved than in economic matters.

Looking at integration in other parts of the world many integration efforts include at least efforts to create free trade. This is clearly the case of NAFTA, Mercosur and the ASEAN Free Trade Area (AFTA). Many of these efforts began in the late 1980s and early 1990s and could be seen as responses to the internal market programme in Europe and to some extent the difficulties of concluding the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). Facilitation of investments is often a part of these schemes, too. There may also be provisions about services. NAFTA also has so-called side-agreements on environment and labour policies. But most states hesitate a lot about free mobility of persons. The EU has realised the four freedoms as part of the internal market: free movement of goods, capital, services and persons. None of the other integration schemes have gone so far in establishing a common market, but at least the Mercosur aims in that direction.

International Regimes and Supranational Polities

Integration schemes usually involve a certain degree of joint-decision making and the creation of some common formal institutions. As such they all involve the creation of regional international regimes.

Back in the early 1980s Stephen Krasner gave what has become know as the consensus definition of international regimes:

> Regimes can be defined as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations (Krasner, 1983, p. 2).

Neo-liberal institutionalists, especially Robert Keohane, has dealt with the role of institutions. When writing about international institutions in 1989 he argued that institutions affect states in three ways;

1. the flow of information and opportunities to negotiate;
2. the ability of governments to monitor others' compliance and to implement their own commitments – hence their ability to make credible commitments in the first place; and
3. prevailing expectations about the solidity of international agreements (Keohane, 1989, p. 2)

The concept of credible commitments was later used by Andrew Moravcsik's in his effort to explain institutional choice in the EU (Moravcsik, 1998). The EU has gone much further in pooling and delegating sovereignty than other integration schemes or wider international regimes such as the General Agreement on Tariffs and Trade (GATT), now embedded in the World Trade Organization (WTO). Is such pooling and delegation of sovereignty necessary to get credible commitments? And where do NAFTA and AFTA fit in?

In recent years we have seen an institutionalist turn in social sciences and studies of European integration (see for instance Aspinwall and Schneider, 2000). 'Institutions matter' we are told. If so,

different institutions presumably matter differently. Neo-functionalists, inspired by one of the EU's founding fathers, Jean Monnet, have tended to be sceptical about the possibility of creating 'credible commitments' through classical intergovernmental institutions.

Keohane suggested 'institutional variation' over three main kinds of institutions, viz. conventions, international regimes and international organisations. 'Variations in degrees of institutionalization exert substantial effects on state behaviour,' he said. Secondly, for an institutionalist perspective to be relevant, 'the actors must have some mutual interests' (Keohane 1989, p. 2). These propositions can be tested further in regional integration studies.

To apply Keohane's distinctions from 1989 to the EU we need to add some further distinctions. Jean Monnet mentioned the 'negative experience of international co-operation, whose institutions were incapable of decision-making.' He therefore proposed 'a joint sovereign authority' for the first European Community, the European Coal and Steel Community (ECSC) in 1950 (Monnet, 1978, p. 295). He also wanted to 'abandon the unanimity rule in favour of a new system in which, to everybody's advantage, the idea of the common interest would replace that of the national interest – or rather, the national interests of six separate countries' (Ibid., p. 353).

None of the other integration schemes or international regimes in the world have gone so far in the direction of giving common institutions 'supranational' powers. In that sense the EU is certainly *sui generis*, and some scholars have argued that the EU is more than an international regime (or international organisation), but less than a federal state (e.g. Wallace 1983).

Writing about the EC in 1991 Keohane and Hoffmann echoed this:

1. The EC is best characterized as neither an international regime nor an emerging state but as a network involving the pooling of sovereignty.
2. The political process of the EC is well described by the term "supranationality" as used by Ernst Haas in the 1960s (although not as often used subsequently) (Keohane and Hoffmann, 1991, p. 10).

In comparisons between the EU and other regional institutions we therefore need to add supranational institutions to those mentioned by Keohane in 1989.

On Keohane's other axis, mutual interest, we could use a rationalist game theoretic perspective, starting with conflicting interests (Deadlock) over dilemmas of common interests (Prisoners' dilemmas) via dilemmas of common aversions, especially co-ordination games with distribution problems (Battle of the Sexes) to situations of no conflict (Harmony) (see especially Stein 1982, and Krasner 1991, but also Grieco 1988 and Snidal 1991).

In Prisoners' Dilemma (PD) situations good institutions are required to get Pareto-efficient solutions. Under the Battle of the Sexes (B of S) institutions have to contribute to solving problems of distribution. In the case of Simple Co-ordination Games (SCG) there are neither problems of defection nor distribution. So no regimes are needed. When there are fundamental conflicts of interests (Deadlock) no co-operative institutions will emerge. Nor are they needed at the other end of the continuum in situations of harmony.

The suggestion is that the configuration of interests (or preferences) structures different kinds of situations that affect the institutional requirements if joint decision-making is to take place. The two fundamental situations requiring good institutions are, to use Stein's terminology, the dilemmas of common interests, where the issue is one of reaching efficient solutions, and dilemmas of common aversions, where the problem is one of distribution.

We have tried to summarise the essentials of the argument in Table 3. In pure conflict situations it is limited what institutions can do. Some convergence of interests will have to take place before there can be cooperation. At the other end, harmony of interests require no

institutionalisation. 'Parallel unilateral action' as advocated in East Asia and within APEC should be sufficient. The problem for AFTA and APEC may be that harmony of interests does not necessarily hold. Domestic pressures have made it impossible for APEC to progress towards freer trade in sensitive areas. AFTA has done somewhat better during the 1990s.

Simple co-ordination problems – like whether to drive on the left or right side of the road – requires decisions, but no elaborate regimes. They are basically self-executing once decided upon. It is suggested that the so-called Open Method of Co-ordination (OMC) invented by the EU and applied to employment policy under the Amsterdam treaty and a number of issues under the so-called Lisbon strategy of 2000 can solve simple coordination problems. The Lisbon Strategy set the strategic goal for the EU 'to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.' It is a good question, however, whether the problems the EU is trying to solve with the OMC are all simple co-ordination problems. So far progress seems to have been limited.

Table 3: Nature of Issues and Institutional Requirements

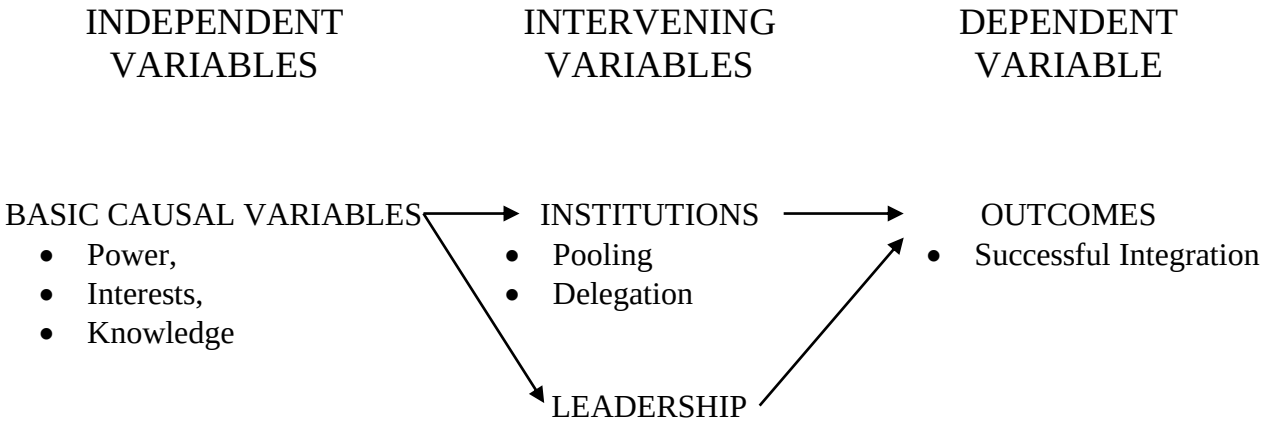
Nature of issue	Conflicting interests/pure conflict	Dilemmas of common interests (PD) Temptation to defect	Co-ordination problem with distributional issues	Simple co-ordination problem	Harmony of interests
Institutional requirements	Institutions to no avail Convergence of interests required	Pooling and delegation of sovereignty Sanctions against defection	Pooling and delegation of sovereignty Budgetary means	Open Method of Co-ordination (OMC) sufficient	Institutionalisation not necessary 'Parallel unilateral action' sufficient

Source: Compiled by the author

Used in a comparative perspective this raises the question whether other mechanisms than pooling and delegation of sovereignty can provide for 'credible commitments' when there are temptations to defect from agreements or distributional inequities follow from integration. The most obvious candidate for such mechanism is leadership (or hegemony), as we saw Mattli suggesting. A number of scholars have seen leadership as an important variable in processes of integration (e.g. Lindberg and Scheingold 1970). Thomas Pedersen has studied the role of France and Germany in the European integration process. These two countries have performed a kind of 'co-operative hegemony' he suggests (Pedersen, 1998).

A possible way to look at the relationship between institutions and leadership is to suggest that they both are intervening variables. This would give a basic research design like the one suggested in fig. 1. But it could also be the case that leadership is important in the process of establishing institutions, which would create a longer causal chain. Without going into further discussions of the logic of comparative research the suggestion is that comparison of a number of regional integration schemes should be able to advance our knowledge of the respective roles of institutions, including in particular supranational institutions, and leadership.

Figure 1. RESEARCH DESIGN: A Modified Structural Model



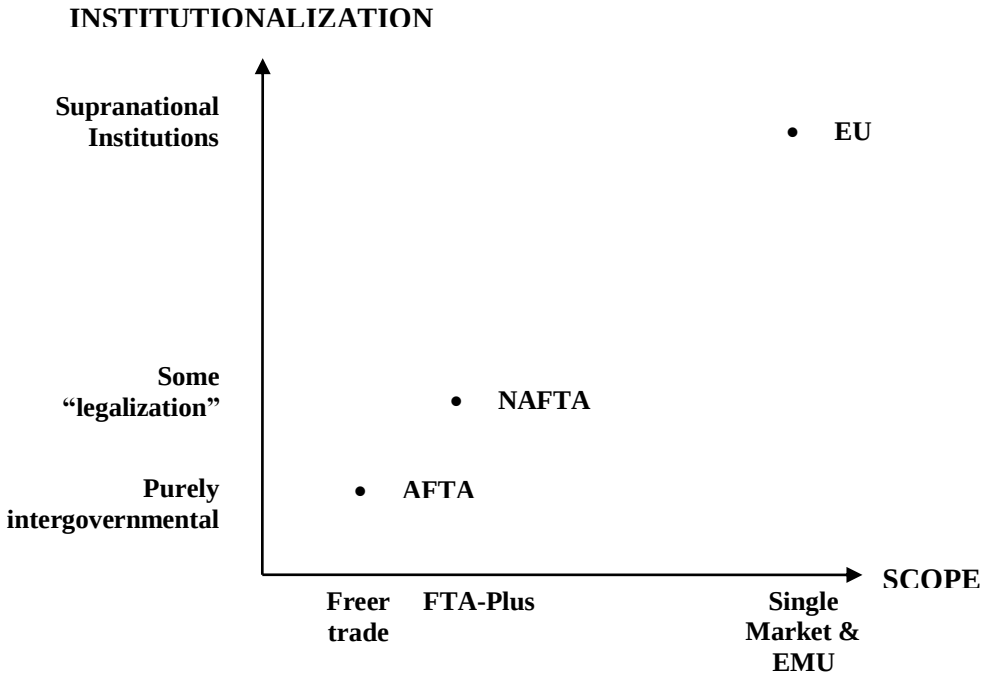
Source: Compiled by the author with inspiration from Krasner, 1983, p. 8

The dependent variable, 'successful integration', would in a comparative study mean 'freer trade'. To what extent do the participants succeed in abolishing tariffs and non-tariff-barriers to trade (NTBs)? Do they succeed moving further in the stages suggested by Balassa?

One could then further ask about the impact of 'freer trade'. Should we for instance expect increased intra-regional trade in relation to total trade? Given parallel efforts through GATT/WTO to create freer trade in the world, extra-regional trade could well increase at the same time.

In figure " we illustrate the relationship between institutionalization and scope of integration in AFTA, NAFTA and the EU. To what extent is that relationship causal? And if it is, how can one actually prove it?

Figure 2: Institutionalization and Scope of Integration in AFTA, NAFTA and the EU



The Case of NAFTA

In the following we shall give a brief overview of NAFTA's institutions in view of trying to compare NAFTA's institutional capacity and achievements with those of the EU.

The main institutions created by NAFTA are the following:

1. *The Free Trade Commission (FTC)*

The FTC shall "supervise the implementation of the agreement" and "supervise its further elaboration." It also gets involved in resolving disputes regarding the interpretation or application of the agreement and it supervises the various committees and working groups established by the agreement. It consists of cabinet-level representatives from the three member states or their 'designees' and meets normally at least once a year. Meetings are chaired "successively by each Party" (Article 2001; McKinney, 2000, 24).[2]

[2] The NAFTA Secretariat has a tri-national web site at www.nafta-sec-alena.org. It has links to the text of the NAFTA, status reports of panel reviews and panel decisions and reports. There are also links to the three national sections of the Secretariat where additional information can be found.

Each member state has designated a NAFTA coordinator. These coordinators are in charge of day-to-day management and implementation of the agreements.

More than 30 Committees and Working Groups have been established. Important areas of work include: trade in goods, rules of origin, customs, agriculture, subsidies, standards, government procurement, investment, services, and cross-border movement of business people. So the agenda goes well beyond tariffs for goods, to include NTBs, services, etc.

NAFTA also has a Secretariat, but in reality it is divided into three national sections located in Ottawa, Washington, D.C., and Mexico City. The mandate of the Secretariat is to assist the FTC and provide assistance to dispute panels and committees established under Chapter 19 of the agreement (Antidumping and Countervailing Matters) and panels established under Chapter 20 (Institutional Arrangements and Dispute Settlement Procedures). The FTC may also direct the Secretariat to support the work of other committees and working groups and in general facilitate the operation of the agreement (Article 2002). A planned coordinating secretariat in Naucalpan, Mexico, has not yet materialized (McKinney, 2000, 25).

The FTC has been able to accelerate tariff reductions in the mid-90s. It has also contributed to dispute settlement under Chapter 20 which foresees the establishment of an arbitral panel as a third step after consultation and a meeting of the FTC. Most disputes have been solved through consultation. Chapter 19 – antidumping and countervailing duties – does not foresee consultations or involvement of the FTC before the establishment of an arbitral panel (McKinney, 2000, 31).

At the end of 2004 about 130 panel proceedings had been completed, mostly Chapter 19 cases (anti-dumping and countervailing duties). Most of these, about 70, reviewed decisions by US agencies, followed by fewer than 40 directed against Canada. There were only 11 cases against Mexico. Interestingly, we also find that only three arbitral panels under Chapter 20 had been established.[3] So it is mainly in the anti-dumping area that we can talk of some delegation of authority to independent panels.

Let's add that NAFTA also has provisions on dispute settlement on financial issues (Chapter 14) and foreign investment (Chapter 11).

If we compare the FTC with the EU Commission it is clear that the FTC has very limited competences. As McKinney observes, "It has no physical location and no staff members of its own." He goes on to say:

> As its name indicates, the Free Trade Commission was established to deal primarily with trade facilitation matters as they arise in the context of the NAFTA agreement. It was neither intended nor designed to deal with the broader issues of economic integration as those that the European commission regularly addresses. The European Union has chosen to pursue a deeper level of economic integration than have the countries of North America, and a more elaborate institutional structure is required (McKinney, 2000, pp. 31-32).

In reality it is not enough to compare the FTC with the European Commission. When it comes to interpretation of the treaty and dispute settlement it is more correct to compare it with the ECJ. And some decisions made by the FTC, for instance acceleration of liberalization, are more correctly compared with those made by the Council of Ministers in the EU. So it is a rather mixed kind of institution.

However, it is also important to say that NAFTA is more than a pure free trade area (FTA). It deals with tariffs as well as technical barriers to trade (TBTs), government procurement,

[3] Http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailId=10.

investments, services, competition policy and intellectual property. And, as we shall see, side agreements on labour and environmental policies were added before US ratification. Miles Kahler has talked about a "GATT-plus" agenda including "issues of deeper integration, behind-the-border issues such as investment regimes, regulation of services, and environmental and labour standards" (Kahler, 1995, 82).

2. Commission for Labour Cooperation

NAFTA was negotiated during the administration of President George Bush in 1991 and signed on 17 December 1992. During the election campaign that year Bill Clinton had expressed some reservations about NAFTA and he promised to negotiate supplementary agreements on labour and environmental issue if elected. These side agreements were negotiated from March 1993 and signed in August that year. After ratification by Canada, USA and Mexico NAFTA went into effect on 1 January 1994 (McKinney, 2000, 7-13).

One of the supplementary agreements was the North American Agreement on Labour Cooperation (NAALC). It establishes the Commission for Labour Cooperation which is formed of a Council of Ministers and a trinational Secretariat. The Council consists of the three labour ministers or their representatives. It meets at least once a year in regular sessions. The Secretariat, now located in Washington, D.C. after originally being in Dallas, Texas, supports the Council of Ministers and undertakes labour-related research and public information.[4]

The NAALC lists 7 objectives, including 'to improve working conditions and living standards' and 'to promote compliance with, and effective enforcement by each Party of its labor law.' It also sets out 11 labour principles which it will promote 'to the maximum extent possible.' These are the following:

a. Freedom of association and protection of the right to organize
b. The right to bargain collectively
c. The right to strike
d. Prohibition of forced labour
e. Labour protections for children and young persons
f. Minimum employment standards
g. Elimination of employment discrimination
h. Equal pay for women and men
i. Prevention of occupational injuries and illnesses
j. Compensation in cases of occupational injuries and illnesses
k. Protection of migrant workers.[5]

Each of the three member countries has a National Administrative Office (NAO) within their labour ministry. One function of the NAO is to receive so-called 'public communications' regarding labour law practices in another NAALC country. Each NAO has its own domestic procedures for dealing with such communications and deciding which action to take. If a submission is accepted the next step is consultation with other NOAs on the issue. The NAO will normally gather information, possibly conduct a hearing. This will be followed by a public report of review. If the issue remains unresolved at this stage there will be ministerial level consultations. For some issues an Evaluation Committee of Experts (ECE) may be appointed. Exempt from this possibility are issues concerning

[4] The home page of the Commission for Labor Cooperation is: www.naalc.org

[5] Http://www.naalc.org/english/objective.shtml

freedom of association, right to bargain collectively and right to strike. The ECE is independent, normally consisting of three labour law experts. It will make recommendations. The parties may request a special session of the Council of Ministers. Efforts of mediation or conciliation may be tried. The final possibility, if the matter concerns child labour, minimum wages or occupational safety and health, is panel arbitration. Interestingly enough an arbitral panel can be convened by a two-thirds vote. Such a panel will have five members. It will make a recommendation on how to settle the dispute. If this does not solve the issue there is the possibility of a monetary assessment and should the offending country refuse to pay the complaining party is authorized to suspend NAFTA benefits (McKinney, 2000, 34-41).

A summary of these so-called 'public communications' dated March 2004 lists 28 cases. 17 concerned Mexico, 9 the USA and two Canada. Most of the cases concerned freedom of association/rights to organize. There were also many cases concerning occupational safety, minimum employment standards, right to bargain collectively and employment discrimination, and a few cases concerned protection of migrant workers and right to strike. Five submissions were not accepted for review. 14 led to ministerial consultations ending with an agreement on implementation of a joint declaration. So far no cases have gone further.[6]

As Mc Kinney has said:

> While monetary enforcement assessments and trade sanctions exist as possible methods of enforcing the terms of the NAALC for some issues, their use for that purpose is highly unlikely. The road to having a matter considered by an arbitral panel is a long and tortuous one. Multiple opportunities and incentives are provided to settle the dispute before that stage (McKinney, 2000, p. 46.)

The established system thus depends on consultations between domestic institutions. Only in exceptional cases, for a narrow range of disputes, can binding arbitration be used and such a step can be decided by a two-thirds majority vote in the Council of Ministers. This element of 'pooling of sovereignty', as we have seen, has not been applied so far.

The fact that a majority of complaints have concerned Mexico has also produced some bad feelings in Mexico. And the fact that the system does not foresee remedial action has also allowed scepticism in the labour movement to continue. But McKinney is right in underlining the 'significantly different histories, distinctive labour movements, and contrasting legal traditions' of the three member states (McKinney, 2000, 50-51). It is also worth to remember that the development of 'social policy' has progressed slowly in the EU.

3. Commission for Environmental Cooperation

The second side agreement negotiated by the Clinton Administration is the North American Agreement on Environmental Cooperation (NAAEC). Environmental groups in the United States were worried because Mexico had lower environmental protection than the United States. They feared a 'race to the bottom'. Labour unions feared that capital might migrate to Mexico because of lower environmental standards. Including an agreement on environmental cooperation thus was a way to improve chances of ratification (McKinney, 2000, 90).

[6] Http://www.naalc.org/english/pdf/pcommtable_en.pdf.

NAAEC establishes a Commission for Environmental Cooperation (CEC).[7]

The CEC is composed of a Council, a Secretariat and a Joint Public Advisory Committee (JPAC). The Council meets at the ministerial level at least once a year. The Secretariat, in Montreal, is an independent body. The JPAC is composed of 15 members, five from each member state, appointed by their respective governments. It acts independently and advises the Council.

According to Article13 of NAAEC the Secretariat may prepare a report on any matter within the scope of the agreement. According to Article 14 the 'Secretariat may consider a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law.' According to Article 15 "the Secretariat shall prepare a factual record if the Council, by a two-thirds vote, instructs it to do so." Further, "The Council may, by a two-thirds vote, make the final factual record publicly available." However, there are no provisions for arbitration or sanctions as a result of such submissions from individuals or NGOs (McKinney, 2000, 99). Since 1995 the Secretariat has received 50 submissions under Article 14. Most of the submissions have been terminated as either not having merit or not being valid according to the criteria set forth in the agreement. In 10 cases factual records have been published (McKinney, 2000, 105; see also http://www.cec.org/citizen/status/index.cfm?varlan=english). At least the procedure allows citizens to play a whistle-blower role.

Potentially more important is Part V of the agreement, which allows for complaints from a member state about "a persistent pattern of failure" by another "Party to effectively enforce its environmental law" (Article 22). If the Parties cannot solve the issue "the Council shall convene." If the Council does not resolve the issue "the Council shall, on a written request of any consulting Party and by a two-thirds vote, convene an arbitral panel to consider the matter. The condition is that the issue is trade related (Article 24). The dispute settlement panel will have five members. It will produce first an initial report, and, after input from the parties, a final report, which will be published. If this does not solve the issue the panel may be reconvened. It may then impose a monetary enforcement assessment. In case the party fails to pay the fine suspension of NAFTA benefits becomes a possibility, which involves raising of tariffs.

However, in 2000 McKinney concluded:

> … the process involved in sanctioning countries for a persistent failure to apply their environmental laws is by design highly convoluted, with multiple opportunities for the accused country to escape the sanctions. The clear intent is for environmental disputes among the member countries to be settled through consultation and cooperation. No disputes have yet been filed under Part V, and the likelihood that they will be seems remote. No private party access exists under Part V of the NAAEC, that is, consultations that begin the dispute settlement process under Part V of the agreement must be initiated by a NAFTA member government. Informal consultations among the member governments will likely preclude the more formal proceedings of the Part V dispute settlement process (McKinney, 2000, 109).

The decisive difference between NAFTA and the EU appears clearly here. There is no delegation of powers to supranational bodies like the European Commission and the ECJ. The possibility of delegation to panels under Part V of the environmental agreement has not been used.

Although the NAAEC foresees votes in the Council by two-thirds majority votes, and thus 'pooling' of sovereignty, this possibility has not been used. In the EU, if a Member States fails to implement the *acquis communautaire* it is usually the Commission that starts proceedings.

[7] The home page is at: www.cec.org.

4. *Border Environment Cooperation Commission and North American Development Bank*

Whereas the institutions mentioned so far are tri-national the two remaining institutions concern only the USA and Mexico. The Border Environment Commission (BECC) and the North American Development Bank (NADB) have been created to deal with environmental problems along the US-Mexican border. The former has its headquarters in Ciudad Juarez in Mexico and the latter in San Antonio, Mexico. The BECC runs technical assistance programmes and issues certification for projects seeking financial assistance through the NADB.[8]

According to the latest joint status report from the BECC and NADB the BECC's Technical Assistance programme has so far allocated US$30.3 million to 228 environmental infrastructure projects related to water, sewage and municipal waste in 131 communities on both sides of the border. The NADB has authorized US$14.6 million in grant funding to 166 institutional strengthening and project development studies for 78 border communities.[9]

It is worth noting that the USA and Mexico contribute equal amounts to the budget of the BECC and they have also contributed equally to the NADB's capital.

Space does not allow for a detailed account of NAFTA's achievements. The official view is positive. NAFTA has created the world's largest FTA and created more trade and foreign direct investments (FDI). During its first 10 years of existence trade among the three member countries doubled , from US$306 billion in 1993 to almost US$621 billion in 2002. In the case of Mexico, the poorest member countries, trade increased even more than for the United States and Canada. Mexican exports to the US grew by 234 percent and exports to Canada grew by 203 percent.[10]

Also FDI more than doubled between the three member countries, from US$136 billion to US$299.2 billion between 1993 and 2000.

The official view is also that environmental protection and respect for basic labour standards have been strengthened by NAFTA's side-agreements.

Economic growth 1993-2003 was 38% for the United States, 30.9% for Canada and 30% for Mexico. And it is claimed that productivity rose 285 in the United States, 23% in Canada and 55% in Mexico.[11]

Various NGOs, as one might expect, have been much more critical in their assessment of NAFTA. The US Public Citizen for instance says that "NAFTA contained 900 pages of one-size-fits-all rules to which each nation was required to conform all of its *domestic* laws – regardless of whether voters and their democratically-elected representatives had previously rejected the very same policies in Congress, state legislatures or city councils." Further,

> NAFTA is really an investment agreement. Its core provisions grant foreign investors a remarkable set of new rights and privileges that promote relocation abroad of factories

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[8] The website of the BECC is at www.cocef.org and the website of NADB is at www.nadb.org.

[9] Available at: www.cocef.org/files/document_99.pdf.

[10] "NAFTA: A Decade of strengthening a dynamic relationship" downloaded from: http://www.ustr.gov/Trade_Agreements/Regional/NAFTA/NAFTA_at_10/Section_Index.html

[11] NAFTA: A Decade of Success" downloaded from: http://www.ustr.gov/Document_Library/Fact_Sheets/2004/NAFTA_A_Decade_of_Success.html

and jobs and the privatization and deregulation of essential services, such as water, energy and health care.[12]

Without going further into claims and counter-claims it seems that most observers agree that NAFTA has created both trade and investments. However, as one should expect, the gains have not been evenly distributed, and there have been losers. NAFTA itself has not created mechanisms to deal with distribution issues.

The ASEAN Free Trade Area (AFTA)

The Association of South East Asian Nations (ASEAN) was established in 1967 by its original five members, Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei joined in 1984, Vietnam in 1995, Laos and Myanmar in 1997 and Cambodia in 1999.[13]

Although ASEAN had a broad agenda from the beginning, including economic cooperation, the main reason for establishing ASEAN was peace and stability in the region. After the end of the war in Vietnam the first summit took place in 1976 in Bali, where the Treaty of Amity and Cooperation (TAC) was signed.

In 1994 political cooperation was extended to include non-ASEAN countries through the ASEAN Regional Forum (ARF). Non-ASEAN participants in the ARF are Australia, Canada, China, EU, India, Japan, North and South Korea, Mongolia, New Zealand, Pakistan, Papua New Guinea, Russia, and the United States.

In the early years of ASEAN intra-ASEAN trade was between 12 and 15%. A Preferential Trading Arrangement was agreed in 1977, but it did not have much effect. It is only after the end of the Cold War that trade gets higher priority among ASEAN countries. It was at the 4th ASEAN Summit in Singapore in 1992 that the Framework Agreement on Enhancing Economic Cooperation was adopted.[14] At the same time the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area was agreed.[15] The CEPT scheme basically included all manufactured products except "unprocessed agricultural products". Products were divided into an Inclusion List, Temporary Exclusion List, General Exception List and a Sensitive List. For some products there was a Normal track, for others there was a Fast Track. The goal was to reduced tariffs to 0-5% over 15 years, thus not completely free trade.

The fifth ASEAN Summit in Bangkok in 1995 adopted the Agenda for Greater Economic Integration which included the acceleration of liberalization from 15 to 10 years. In 1997 the ASEAN leaders adopted the ASEAN Vision 2020 which also aims for closer economic integration.

The Hanoi Action Plan adopted in 1998 had more detailed plans for the period 1999 to 2004. Since this was the time of the Asian Crisis it should not surprise that the first section dealt with strengthening of macroeconomic and financial cooperation, but the second section dealt with enhancing greater economic integration. The stated goal was "free flow of goods, services and

[12] Quoted from the organization's website: www.citizen.org/trade/nafta/

[13] For general background, see website of ASEAN: www.aseansec.org

[14] "Framework Agreement on Enhancing ASEAN Economic Cooperation, Singapore, 28 January 1992" at www.aseansec.org/1165.htm

[15] "Agreement on the Common Effective Preferential Tariff (CEPT) Schee for the ASEAN Free Trade Area, Singapore, 28 January 1992" at www.aseansec.org/1164.htm

investments, a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities." So the implementation of AFTA would be accelerated, including trade liberalization. The number of tariff rates to be reduced to 0-5% in 2000 would be increased, so would the number of tariff rates which would be reduced to 0% by 2003 and the Inclusion List would be expanded thereby shortening the Temporary Exclusion List, Sensitive List and General Exception List.[16]

Between 1998 and 2003 the average tariff rate for products in the Inclusion List fell from 5.37% to 2.68% (see Table 4). In 1993 it had been 12.76%. By 2001 98.26% of tariff lines were included in the Inclusion List for the six oldest members of ASEA, but only 56.94% for the late-comers, Cambodia, Laos, Myanmar and Vietnam (see Table 5). These figures suggest a certain degree of success. Clearly trade among ASEAN countries is freer today that in 1992. But a more qualitative analysis would need to go into details with the tariff lines still not in the Inclusion List. There are also still a number of NTBs.

Table 4 :Average AFTA / CEPT Tariff Rates in Inclusion List

	1998	1999	2000	2001	2002	2003
Brunei	1.35	1.29	1.00	0.97	0.94	0.87
Indonesia	7.04	5.85	4.97	4.63	4.20	3.71
Laos	5.00	5.00	5.00	5.00	5.00	5.00
Malaysia	3.58	3.17	2.73	2.54	2.38	2.06
Myanmar	4.47	4.45	4.38	3.32	3.31	3.19
Philippines	7.96	7.00	5.59	5.07	4.80	3.75
Singapore	0.00	0.00	0.00	0.00	0.00	0.00
Thailand	10.56	9.75	7.40	7.36	6.02	4.64
Vietnam	6.06	3.78	3.30	2.90	2.89	2.02
ASEAN	**5.37**	**4.77**	**3.87**	**3.65**	**3.25**	**2.68**

Source: ASEAN Secretariat (here from www.us-asean.org/afta.asp)

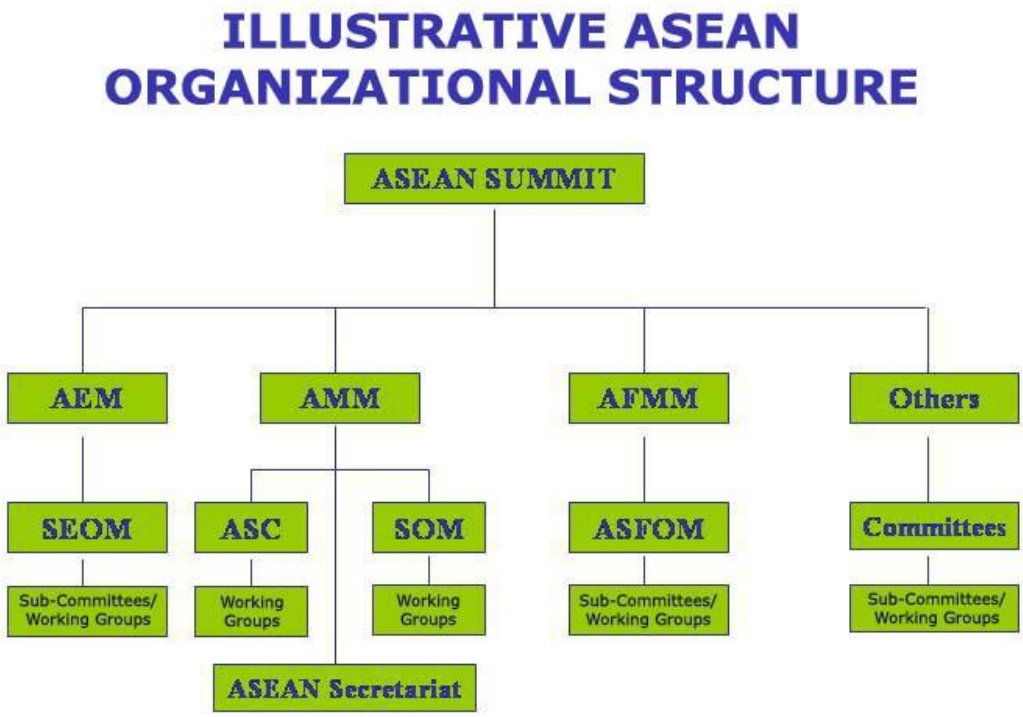
[16] "Ha Noi Plan f Action", at www.aseansec.org/2011.htm

Table 5: AFTA: Common Effective Preferential Tariff (CEPT) Lists for 2001

Country	Inclusion List	Temporary Exclusion List	General Exception List	Sensitive List	Total
Brunei	6,284	0	202	6	6,492
Indonesia	7,190	21	68	4	7,283
Malaysia	9,654	218	53	83	10,008
Philippines	5,622	6	16	50	5,694
Singapore	5,821	0	38	0	5,859
Thailand	9,104	0	0	7	9,111
ASEAN-6 Total	**43,675**	**245**	**377**	**150**	**44,447**
Percentage	**98.26**	**0.55**	**0.85**	**0.34**	**100**
Cambodia	3,115	3,523	134	50	6,822
Laos	1,673	1,716	74	88	3,551
Myanmar	2,984	2,419	48	21	5,472
Vietnam	4,233	757	196	51	5,237
New Members Total	12,005	8,415	452	210	21,082
Percentage	**56.94**	**39.92**	**2.14**	**1.0**	**100**
ASEAN TOTAL	**55,680**	**8,660**	**829**	**360**	**65,529**
PERCENTAGE	**84.74**	**13.40**	**1.28**	**0.55**	**100**

Source: ASEAN Secretariat (here from www.us-asean.org/afta.asp)

Figure 3:



AEM : ASEAN Economic Ministers
AMM : ASEAN Ministerial Meeting
AFMM : ASEAN Finance Ministers Meeting
SEOM : Senior Economic Officials Meeting
ASC : ASEAN Standing Committee
SOM : Senior Officials Meeting
ASFOM : ASEAN Senior Finance Officials Meeting

*Ministerial meetings in agriculture and forestry, trade, energy, environment, finance, information, investment, labour, law, regional haze, rural development and poverty alleviation, science and technology, social welfare, transnational crime, transportation, tourism, youth, the AIA Council and, the AFTA Council. Supporting these ministerial bodies are 29 committees of senior officials and 122 technical working groups.

Source: www.aseansec.org/13103.htm

One of the latest developments is a Declaration from Bali, 7 October 2003, in which the member states declared that "An ASEAN Community shall be established comprising three pillars, namely political and security cooperation, economic cooperation, and socio-cultural cooperation that are closely intertwined and mutually reinforcing for the purpose of enduring durable peace, stability and shared prosperity in the region"[17] The economic pillar was now referred to as an ASEAN Economic Community (AEC). A rather ambitious goal was set:

> The ASEAN Economic Community shall establish ASEAN as a single market and production base, turning the diversity that characterises the region into opportunities for business complementation making ASEAN a more dynamic and stronger segment of the global supply chain. ASEAN's strategy shall consist of the integration of ASEAN and enhancing ASEAN's economic competitiveness. In moving towards the ASEAN Economic Community, ASEAN shall, inter alia, institute new mechanisms and measures to strengthen the implementation of its existing economic initiatives including the ASEAN Free Trade Area (AFTA), ASEAN Framework Agreement on Services (AFAS) and ASEAN Investment Area (AIA); accelerate regional integration in the priority sectors; facilitate movement of business persons, skilled labour and talents; and strengthen the institutional mechanisms of ASEAN, including the improvement of the existing ASEAN Dispute Settlement Mechanism to ensure expeditious and legally binding resolution of any economic disputes.[18]

ASEAN remains intergovernmental, however. It remains a question whether it has the institutional capacity to implement the idea of an Economic Community.

The figure of the structure of ASEAN from the official website shows the Summit at the top (figure 3). The level below comprises various ministerial meetings, followed by senior officials at the next level and various working groups at the lowest level. According to the 'ASEAN way' consensus is the norm. There is no majority voting. So there is no pooling of sovereignty. Nor is there delegation of authority to independent bodies like the European Commission or ECJ.

For AFTA we notice there is a special AFTA Council appointed by the Economic Ministers.

The ASEAN Secretariat is weak compared with the European Commission, but has slowly been strengthened somewhat over the years. The Secretary General that heads the Secretariat is mandated to "initiate, advise, coordinate, and implement ASEAN activities". But, whatever delegation there may be is seems to be rather timid and limited.

ASEAN introduced a Dispute Settlement Mechanism (DSM) in November 1996 at a meeting in Manila. The DSM for the first time included the possibility of majority voting. The Protocol had sections on consultations, good offices, conciliation or mediation but also included the possibility of establishing a panel to assess a dispute. The panel report would be considered by the Senior Economic Officials Meeting (SEOM) which would make a ruling based on simple majority. Such ruling could be appealed to the ASEAN Economic Ministers (AEM) which would make a final and binding decision based on simple majority. Parties to the dispute would be present during the deliberations, but would not take part in the ruling or decision.[19]

ASEAN's DSM has been studied as an important innovation. In an article published in 2000 Miles Kahler noticed the idea of final and binding decisions, possibly arrived at by majority

[17] "Declaration of ASEAN Concord II" at www.aseansec.org/15160.htm
[18] Ibid.
[19] "Protocol on Dispute Settlement Mechanism" at www.aseansec.org/7813.htm

vote. "The model of dispute resolution chosen bore little resemblance to an ASEAN way of settling disputes (Kahler, 2000, pp 565-66). He admitted that the mechanism had not been used at the time.

The Bali Concord II (2003) quoted above suggests that the political elites of ASEAN were concluding that implementation of agreements was not good enough. The Concord stated that it was necessary to "strengthen the institutional mechanisms of ASEAN." The Concord itself was not very specific, but it did mention the recommendations of a High Level Task Force on ASEAN Integration as a first step. The section on institutional strengthening in the document from the Task Force would still employ the ministerial bodies and the senior officials for decision-making. But what about decision-making rules? The somewhat unclear answer was:

> Decision-making process by economic bodies to be made by consensus, and where there is no consensus, ASEAN to consider other options with the objective of expediting the decision-making process.[20]

These options, however, were not listed by the High Level group.

Concerning the Secretariat the modest suggestion was to "enhance the capability of the ASEAN Secretariat to conduct research and analytical studies."

Concerning Dispute Settlement the High Level Group suggested various methods, including adjudication modelled after the WTO Dispute Settlement system with binding decisions based solely on legal considerations. However, "countries may chose to make use of the appropriate mechanisms as they wish" (see flow chart, figure 4).

At a meeting in Vientiane in November 2004 an Enhanced Dispute Settlement Mechanism was agreed upon. Instead of appeals to the senior officials or economic ministers an Appellate Body was to be established, "composed of seven (7) persons, three (3) of whom shall serve on any one case." The new enhanced mechanism also foresees the possibility of compensation and suspension of concessions.[21]

Basically the new enhanced mechanism is more 'legal' than the 1996 mechanism. The possibility of appeal to the ministers – including the possibility of a majority vote – has been removed. The *ASEAN Annual Report 2004-2005* saw the new enhanced DSM as 'progress' "This enhanced DSM will issue binding rulings based solely on facts and provisions in the relevant ASEAN agreements." [22]

2004 also saw the adoption of a Framework Agreement for the Integration of Priority Sectors. The eleven priority sectors, accounting for 52.7% of intra-ASEAN trade, were: agro-based products, air travel, automotive products, e-ASEAN, electronics, fisheries, health care, rubber-based products, textiles and apparels, tourism, and wood-based products. The plan is to advance the elimination of tariffs on 85% of these products by three years to 2007 for ASEAN-6 and 2012 for Cambodia, Laos, Myanmar and Vietnam (CLMV).[23]

What emerges clearly is that ASEAN leaders are determined to move towards increased economic integration. Some progress is being made. But the upgrading of the institutional capacity of ASEAN and AFTA seems still to be a difficult process. Dispute settlement possibilities may have been improved. But it remains to be seen how much the new DSM will be used.

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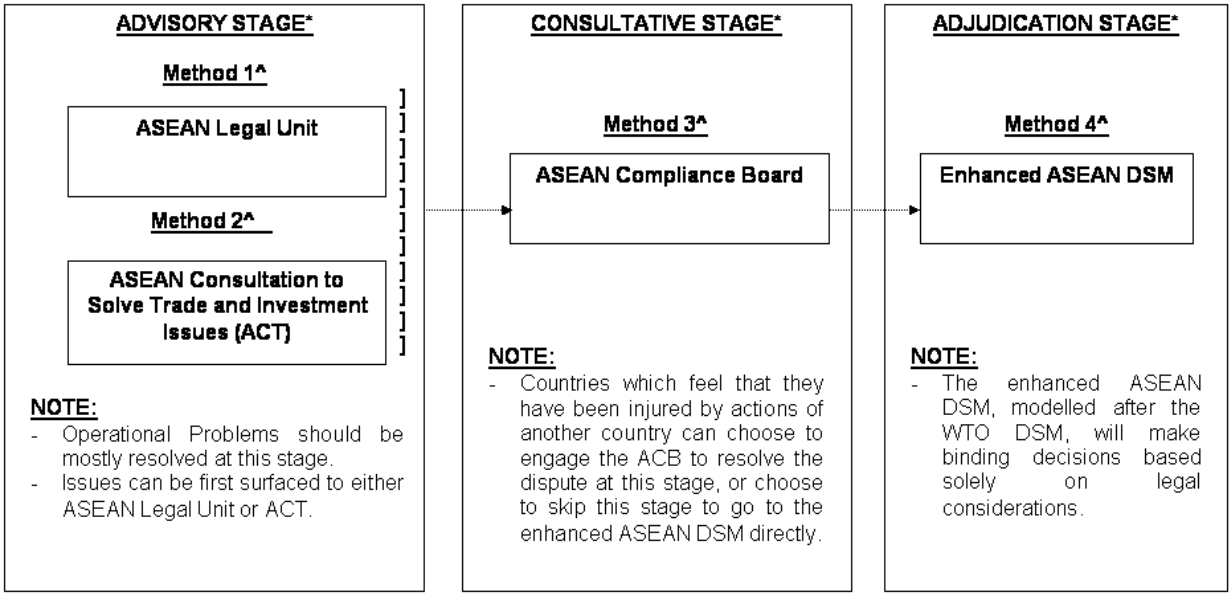
[20] "Recommendation of the High-Level Task Force on ASEAN Economic Integration," at www.aseansec.org/hltf.htm
[21] "ASEAN Protocol on Enhanced Dispute Settlement Mechanism" at www.aseansec.org/16755.htm
[22] *ASEAN Annual Report 2004-2005,* p. 34. Downloaded from www.aseansec.org/ar05.htm
[23] Ibid, p. 24.

Figure 4: FLOWCHART OF PROPOSED MECHANISMS AND PROCESSES OF THE ASEAN DISPUTE SETTLEMENT SYSTEM (High Level Task Force, 2003)



NOTE:

* While resolution of disputes should generally advance from the advisory stage to the consultative stage, and finally the adjudication stage as shown in the flowchart, this is not mandatory. Countries may choose to make use of the appropriate mechanisms as they wish.

^ Countries do not need to go through the four methods sequentially. After surfacing the issue at either the ASEAN Legal Unit or ACT, they can either go to the ACB or proceed directly to the enhanced ASEAN DSM.

- Upon mutual agreement, involved countries should engage in consultations or avail themselves of the good offices of the ASEAN Secretary General to engage in concurrent conciliation and mediation processes at any stage.

Source: Recommendations of the High Level Task Force on ASEAN Economic Integration" at www.aseansec.org/hltf.htm

Let us finally add that ASEAN is now establishing a Development Fund to narrow the development gap between the member countries.[24]

[24] Mentioned in "Joint Communique of the 38th ASEAN Ministerial Meeting, Vientiane, 26 July 2005." At www.aseansec.org/17592.htm

A Note on APEC

Asia-Pacific Cooperation (APEC) started as an informal ministerial level dialogue with 12 members in Canberra, Australia, 1989. In 1993 at Blake Island, United States, the first meeting of APEC leaders took place. In 1994 in Bogor, Indonesia, APEC set the goals of "free and open trade and investment in the Asia-Pacific by 2010 for developed economies and 2020 for developing economies." In Osaka, Japan, 1995 an Action Agenda was adopted and the following year an Action Plan was adopted in Manila. It included both Collective and Individual Action Plans outlining trade and investment liberalisation and facilitation measures.[25] The Individual Action Plans constituted the most important instrument of liberalisation, but they were voluntary.

To speed up liberalisation APEC endorsed a proposal for Early Voluntary Sectoral Liberalization (EVSL) in 15 sectors in Vancouver, Canada, in 1997. These 15 areas were: environmental goods and services, fish and fish products, forest products, medical equipment and instruments, telecommunications mutual recognition arrangement (MRA), energy sector, toys, gems and jewellery, chemicals, oilseeds and oilseed products, food sector, natural and synthetic rubber, fertilizers, automotive, and civil aircraft.[26]

The following year in Kuala Lumpur, Malaysia, APEC agreed on the first nine sectors for EVSL, but could not agree on the remaining. Basically the issues were sent to the WTO, where EVSL became known as Accelerated Tariff Liberalization (ATL). The main disagreement in 1998 was between the United States pushing for liberalisation and Japan that insisted that it could not liberalise forest products and fisheries.[27]

The last document on EVSL located on the APEC website is from the ministerial meeting in Auckland, New Zealand, 1999. It lists 10 EVSL projects agreed upon: Studies on forest products and fisheries, seminars on toy sector, food, medical equipment and energy, a dialogue on auto industry, training programmes for jewellery testing, and a survey of environmental goods and services markets.[28]

It seems that EVSL has disappeared from APEC terminology since 1999, suggesting that voluntary liberalization is not an efficient strategy. Some of the disagreements within APEC have also manifested themselves inside the WTO.

It should be admitted that some APEC countries did reduce tariffs through the IAPs. And trade did increase substantially among the APEC economies during the 1990s. But this is probably more due to the dynamic nature of some of the economies in the region, especially China. In any case it is difficult to separate the effects of the Uruguay Round from the effects of APEC trade facilitation. The basic structure of APEC is given in fig. 2.[29]

None of APEC's institutions involve pooling or delegation of sovereignty. There is no Commission or ECJ. There is no QMV when leaders of ministers meet. It is consensus and voluntary cooperation (see for instance Feinberg, 2003).

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[25] Information available at the website of APEC: www.apecsec.org.sg

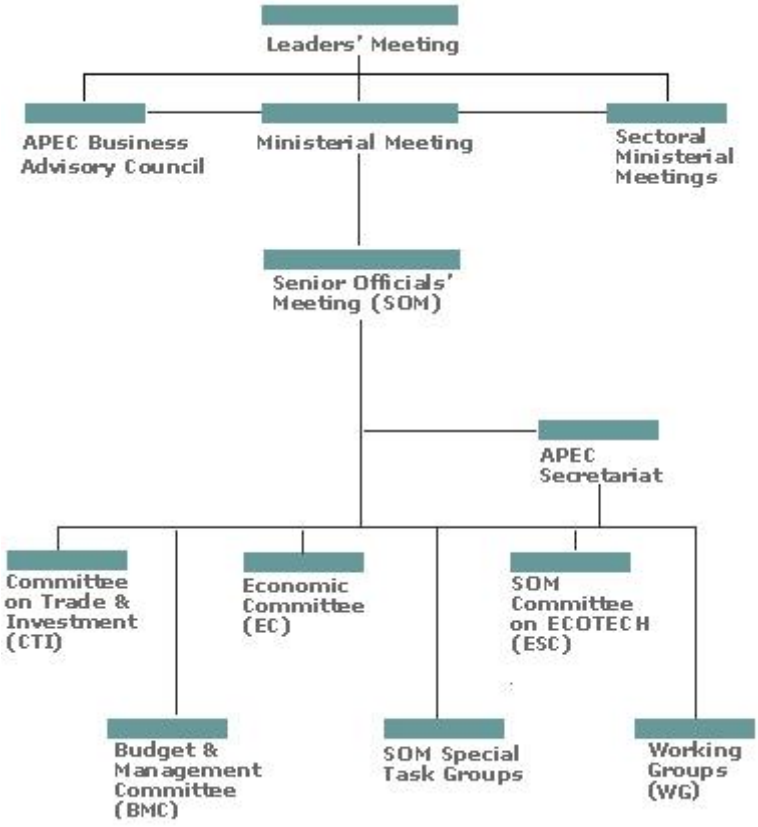
[26] http://www.apecsec.org.sg/apec/apec_groups/committees/committee_on_trade/early_voluntary_sectoral.html

[27] See for instance "US and Japan in Apec clash," *Financial Times*, June 23, 1989, and "Japan's fish slip through Apec net," *Financial Times*, June 24, 1998

[28] http://www.apec.org/apec/ministerial_statements/annual_ministerial/1999_11th_apec_ministerial/annex_b.html

[29] We have searched in vain on the internet to find a similar figure of NAFTA's structure.

Fig. 2: APEC Structure



Source: APEC's website

Table 6: Institutional capacity and achievements of four integration schemes

	EU	NAFTA	AFTA	APEC
Nature of agreement	**Framework treaty:** **Institutional framework for developing common policies**	**Law treaties:** **Specific policy rules in the treaties**	**Framework Agreement** **Main mechanism: Common Effective Preferential Tariff (CEPT) Scheme**	**Parallel national action:** **Voluntary liberalization**
Institutional capacity	**Pooling and delegation of sovereignty** **Some redistribution through structural funds and some common policies (esp. the Common Agricultural Policy)**	**Under the general NAFTA: No pooling, some delegation in respect to dispute-settlement** **Under the labour and environmental agreements: Some pooling, but not employed in practice; Some delegation of authority to panels, but used sparingly** **No redistribution**	**Under ASEAN in general: Consultation, consensus, no interference in internal affairs ('ASEAN way')** **AFTA includes 'commitments', some monitoring through intergovernmental bodies and Secretariat** **Dispute Settlement Mechanism includes some delegation, but not (yet) applied** **No redistribution, but ASEAN Development Fund is being established**	**No pooling, no delegation of sovereignty** **No redistribution**
Achievements	**Internal Market: free movement of goods, services, capital and persons** **Economic and Monetary Union (EMU)** **Several common policies**	**FTA-Plus: Goods, services, investments, competition: important increases in intra-NAFTA trade and FDI** **Cooperation on labour and environmental issues: minimal effects so far**	**Accelerated liberalization though 1990s** **Still some excluded sectors and NTBs** **Some beginning liberalisation of services and investments**	**Limited progress towards free trade** **Early Voluntary Sectoral Liberalisation (EVSL) unsuccessful for sensitive sectors**

Source: Compiled by the author

Tentative Conclusions

Table 6 summarises the argument. The argument has been that 'institutions matter'. But this has not been proven fully. A more tight research design including more cases could probably strengthen the conclusions. The alternative explanation, leadership, singled out by Mattli as more important than 'commitment institutions', should also be tested further by deeper empirical analysis.

Table 7 shows what happened to intra-regional trade through the 1990s. In NAFTA and MERCOSUR intra-trade increased relatively much, but in ASEAN barely. Actually intra-regional trade did not really increase over the last 30 years within ASEAN. (We could add that intra-regional trade fell sharply in MERCOSUR in 2001 and 2002, probably because of the Argentine crisis).

Table 7: Intraregional Export Shares, 1970-2000

	1970	1980	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
NAFTA	36.0	33.6	41.4	42.2	43.7	45.8	48.0	46.2	47.6	49.1	51.0	54.6	55.7
EU	59.5	60.8	59.0	58.7	59.5	56.2	56.8	63.5	62.8	62.1	62.5	62.9	61.6
MERCOSUR	9.4	11.6	8.9	11.1	14.0	18.5	19.2	20.3	22.7	24.8	24.8	20.6	20.8
ASEAN	22.9	18.7	19.9	19.3	19.1	20.0	22.7	23.0	22.9	22.1	20.6	22.4	23.9

Source: International Monetary Fund, *World Economic Outlook*, October 1999, Table 5.1, p. 129; The World Bank, *World Development Indicators*, 2004, p. 319.

Scholarship on regional integration faces the challenge of developing stronger comparative research designs for additional empirical research. Back in the early years of integration studies Nye presented a comparative study (Nye, 1971). The analytical model was rather complex and does not seem to have been much used. More recently Mattli has developed a comparative framework (Mattli, 1999). But most existing studies of regional integration are single case studies. More comprehensive studies are needed.

In a study published a few years ago Joseph Grieco looked at three systemic explanations when comparing the different degrees of institutionalization in Europe, North America and East Asia. A functionalist theory looking at the different level of intra-regional trade could not explain the differences. Interestingly enough, if we look at East Asia, intra-regional trade is greater than for ASEAN. Similarly, if we look at APEC it is higher than for NAFTA. Next he looked at hegemonic leadership. He operationalised it by looking at the share of GDP or exports of the largest state in the region (Germany for the EU, United States for NAFTA, Indonesia for ASEAN, Brazil for MERCOSUR, etc.) to the whole region. This theory did not explain differences in institutionalization either. His third effort to explain the differences in institutionalization was to look at shifts in relative disparities within a region over time. The hypothesis was the following: "when the relative disparities in capabilities within a region are shifting over time, disadvantaged states will become less attracted to institutionalization and the latter will become less likely to occur" (Grieco, 1997, p. 176). This theory, he concluded had some explanatory power. But in the end he admitted that "even if the concept of relative disparity shifts allows neorealism to account in some measure for the variation in regional institutionalization … it must be said that it is unlikely that any purely systemic-level argument will be able to account fully for that variation. A focus on systemic-level forces must be complemented with attention to domestic factors" (ibid., p.185).

Questions for further research include the role of power, interests, knowledge and values, negotiations and institutions. More detailed comparative studies of the role of commitment institutions and leadership would especially be useful. Have second generation integration schemes

turned out to be as resilient as predicted by some in the early 1990s? If so, why? Or will we see 'roll-back' as happened to many integration efforts in the 1970s?

In this paper we have compared the EU, NAFTA and AFTA. NAFTA has successfully created more trade and FDI between the three member countries. The elaborate dispute settlement system of NAFTA has mainly been used in anti-dumping cases. Consultations between national institutions have largely resolved other disputes. AFTA has created freer trade, but the impact has been limited and there are doubts about the possibilities of creating a real FTA-Plus without further institutionalization.

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