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**THE ASEAN ECONOMIC COMMUNITY**  
Dilemma's of a shallow trading club

**Author:**

Jacques Pelkmans

## The author

### Jacques Pelkmans

Jan Tinbergen Chair, College of Europe, Bruges  
Chair "Business & Europe", Vlerick School of Management, Leuven & Gent

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United Nations University - Comparative Regional Integration Studies  
Potterierei 72, 8000 Brugge, BE-Belgium  
Tel.: +32 50 47 11 00 / Fax.: +32 50 47 13 09  
[www.cris.unu.edu](http://www.cris.unu.edu)

## 1. Introduction and purpose

After three decades of growing 'economic and development cooperation' as well as regular, institutionalized foreign policy consultation between the EU and ASEAN, the two can be regarded as distant but warm friends. ASEAN has embraced the EU as a Dialogue partner and ensured its membership in the Asian Security Forum. ASEAN and the EU have founded ASEM and are strong supporters of the Asia – Europe Foundation. Even in the WTO, ASEAN has helped the EU in the late 1990s to push through the Financial Services Agreement, after the US had basically refused to act on it. Already since the mid-1980s, numerous programmes, workshops, business summits and other initiatives have promoted business links between companies of the two regions, while fostering FDI into ASEAN.

In those many years, the ASEAN region as a collection of fast growing and promising economies has had its fair share of attention of European business. Also the trade relationship has developed in a very healthy way despite setbacks like the Asian financial crisis of 1997.

Against this positive backdrop, this essay focusses on ASEAN as an organized grouping. The 42 years history of ASEAN since the Bangkok Declaration shows beyond a trace of doubt that ASEAN has grown into a significant organisation with considerable achievements. With the Bali summit of October 2003, ASEAN decided to build an ASEAN Economic Community (AEC), heralded as a further deepening of AFTA (ASEAN Free Trade Area) and a widening of the latter's scope. The very name of this ambitious initiative and the design in the wording of Bali is reminiscent of the EEC, its design and to some extent its developed practices. The question which drives the present essay is whether this ASEAN ambition is really appreciated in Europe for what it is, rather than uncritically taken for an adapted imitation of the EU as a model. I shall first pose two inconvenient questions, namely whether Europeans understand ASEAN, including AFTA, and whether ASEANs understand the EU? Following a few brief remarks about the recently adopted ASEAN Charter, I shall make the economic case for an AEC and discuss four strategic choices which must be addressed consistently and credibly. It is valuable to clarify that for none of those choices the EU can serve as a model for ASEAN. It is therefore pointless for ASEAN to regard the EU as a model for their integration. Nevertheless, the logic of the announced AEC would force ASEAN to transform itself further than it thus far has been prepared or capable of doing. In that process the EU can be most useful with technical assistance in e.g. technical barriers removal, customs procedures and automation and a range of other areas. This valuable, seemingly low-key work is the true support of ASEAN as a trading club. Its impact in markets is broadly positive, without any of the ASEAN delusions about the EU and of the EU dreams about setting the benchmark for economic integration in ASEAN.

## 2. Do Europeans understand ASEAN ?

It remains difficult for EU officials and academics to appreciate ASEAN for what it is and for what it is not. The principal reason for that is in itself understandable. Unconsciously, when discussing or analysing ASEAN or its impact, the reasoning and expectations are shaped by the European mindset, drenched in EU economic integration experiences and 'hard law'. In an essay like this, a fully-fledged analysis can not be offered but a flavour of what it means to 'step out' of the EU mindset can be provided. Let us first recall some milestones from ASEAN's development and the key characteristics of ASEAN and AFTA until Bali <sup>1</sup>.

ASEAN emerged in a threatening foreign policy context. Thus, ASEAN was born in 1967 as a Foreign Policy & Security caucus, but without any organisation or secretariat. The driving forces consisted of a complicated amalgam of communist threats nearby ( Vietnam, dominated by the USSR; China ) as well as domestically via insurgencies, besides a realisation by political leaders that the numerous border disputes amongst the 5 founding countries had to be chilled, if not pre-empted, by regular and ever warmer contacts. Right from the start, however, in the 1967 Bangkok Declaration, this is not what one reads, not even between the lines. In a delusive text, the Five avow 'economic cooperation' without almost any detail. Already at the time, the ASEAN ploy of agreeing first to 'cooperate' (seen as a politically crucial signal, and for that signal, substance is of a lower order) overrides everything. Indeed, a 1971 UN report was requested to provide ideas on how to fill in the vague notion of economic cooperation in the region. Virtually no action was undertaken on the basis of this report but this should not be read as a weakness of ASEAN. On the contrary, turning what was essentially a club of foreign ministers (and their diplomats) into some kind of economic grouping, even if a shallow one, would completely change the nature of the cooperation, whilst possibly delute their leadership. Thus, in the 1970s ASEAN was successful in the UN on e.g. Vietnam and some other pure foreign policy & security issues. The only

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<sup>1</sup> For readers who would like to have a systematic overview, see e.g. ASEAN Secretariat (1997), ASEAN Vision 2020, [www.aseansec.org/1814.htm](http://www.aseansec.org/1814.htm) ; idem, 2002, Southeast Asia, A Free Trade Area, [www.aseansec.org/pdf/afta/pdf](http://www.aseansec.org/pdf/afta/pdf) ; Pelkmans, 1997 ; Hill, 1997 ; Soviep et al. , 1987 for a massive survey of the early period.

treaty ever signed was a Treaty of Amity (about non-aggression) which consists of a few principles and is open to non-ASEAN countries, fully consistent with the purpose of ASEAN at the time, and still today. In this foreign ministers club, principles such as sovereignty and non-interference were riding high as a logical complement to the freezing or reduction of simmering disputes in the region.

The 'deepening' of ASEAN in the 1970s and early 1980s was almost entirely symbolic, yet not meaningless. It consisted in (1) the extensive PTA process <sup>2</sup>, (2) a heavy-handed attempt to engage in a kind of investment planning linked to trade concessions for multinationals and (3) the setting up of a miniscule ASEAN secretariat in Jakarta in 1976. Perhaps surprising to Europeans, all three were not meant to be effective and 'deliver' results. Quite the contrary, it was the *process itself*, the endless networking between all kinds of national officials, the familiarisation in working groups which was seen as the kind of 'deepening' ASEAN needed. Conflict avoidance took primacy and good connections between the administrations were regarded as the lubricant of a successful ASEAN. Not the striving for economic regionalism, nor, for that matter, any formalisation of their relationship. Except for a tiny elite which was in favour of deepening ASEAN into a form of economic regionalism, the economic cooperation networking remained a de facto instrument of good political and bureaucratic relations.

When Thai Prime Minister Anand – inspired by far-sighted economists in this tiny pro-ASEAN elite - proposed a free trade area in 1982, it fell on deaf ears. Another attempt in 1987 in Kuala Lumpur to prompt political leaders into this direction did not work out either <sup>3</sup>. In 1990 and early 1991, the political leadership in ASEAN was split on whether to pursue multilateralism directly and via APEC (just founded) or initiate an FTA as well. The latter was vehemently attacked as undermining the APEC principle of 'open regionalism'. However, ASEAN grew increasingly worried by the deepening of the EU into 'EC-1992' and by the US' defection of 'open regionalism' by signing NAFTA, a 'deep' FTA. Even Indonesia, traditionally not a frontrunner in trade liberalisation, had proposed in 1990 to begin to take the PTA more seriously by selectively starting a drastic tariff reduction process via what was called CEPT

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<sup>2</sup> PTA refers to Preferential Trading Agreement, although the term 'agreement' should not be too strictly interpreted. The PTA merely aimed at lowering intra-ASEAN tariffs, at the time still high and often changing.

<sup>3</sup> A nine –days (!) conference of think-tanks and the ASEAN committee of the ICC brought much of this policy elite together. See Noordin Sopiee et al., ed.s , 1987, *ASEAN at the crossroads*, Kuala Lumpur, ISIS, for a collection of the many papers.

tariffs ( tariffs only for ASEAN countries' imports). Since Indonesia is the dominant player given its sheer size ( at the time, some 50 % of all ASEAN-6 population), this signal could not be disregarded. Later in 1991 Thai Prime Minister Anand, back in power, and Singapore proposed AFTA, based on an elaboration of the Indonesian CEPT proposal.

For Europeans it is interesting to appreciate this move. Although dubbed a free trade area, the way towards it is curious, except when one comprehends the circumstances in ASEAN. The CEPT tariffs enabled a flexible practical formula of selectively reducing intra-tariffs to zero. True, there would of course always be the option to define the CEPT process horizontally (across the board reductions), once enough political backing would have been earned in the member countries. Indeed, the more horizontal approach was used later and so AFTA seemed in the end to be a regular FTA. However, by extrapolation from the late 1980s, it could just as well have come stuck in the cul-de-sac of selective reduction of an arbitrary list of goods. Another advantage of the CEPT was the avoidance of a treaty. The CEPT could be presented as an extension of the PTA. In doing so, one could by-pass the difficult Philippines' senate having lots of defenders of vested interests (i.e. protectionists). That country has a US-type constitution with the ultimate trade powers vested with the senate. In fact, ASEAN – as a club of foreign ministers - never wanted a treaty in the first place and there was strong resistance (behind closed doors) against a treaty, even when the economic character of ASEAN had suddenly become more prominent. A final merit of the CEPT, for ASEAN, was that it would not be necessary to notify AFTA to the GATT. ASEAN held that the PTA (a partial liberalisation) was legal under the GATT, at least for developing countries, so the CEPT, a variant of the PTA, would require no notification ( say, under art. 24, GATT).

All such aspects are little understood in Europe. A FTA without a treaty and not notified to the GATT only raises eyebrows. But this is not the end of the story. In the ASEAN summit of January 1992, when AFTA was formally born (but, again, without any detail yet), the complicated committee structure of ASEAN (all working from national capitals) was drastically simplified and the ASEAN secretariat was (slightly) strengthened. Once more, this can hardly be interpreted as a sound and timely reform to be 'ready' for AFTA. The secretariat remained extremely small in the 1990s <sup>4</sup> and was given no (drafting) power whatsoever. Expertise was scant and foreign assistance via the Dialogue partners (US, EU, Japan,

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<sup>4</sup> Personnel in 1991 counted no more than 55, including drivers and non-policy staff ! The sum of money member states were willing to devote to a stronger secretariat was peanuts – together some \$ 300 000 - and even this was difficult to obtain.

Australia) and the UNDP was called in to make up for this. Plenty of assistance contracts and money flew in and this is how the system was supported to some degree. The EU has been very active and indeed helpful with a myriad of technical expertise and study projects ever since AFTA was set up (and before). The upshot was that ASEAN countries paid less to the central AFTA process (except via their travel bills for tariff negotiations) than outside friends and international organisations (often funded by the very same principals).

The economics behind AFTA also tended to be misunderstood in Europe. The crux of AFTA is about competitiveness of ASEAN countries in *world* trade, not the promotion of intra-ASEAN trade. Some 80 % of ASEAN exports went to the three principal markets at the time : US, EU and Japan, plus a few other ones in the region (Hong Kong, Taiwan, Korea). The reasoning was that AFTA would force competitive discipline and efficiency on indigenous companies in ASEAN. This could be needed to withstand the liberalisation winds resulting from the forthcoming Uruguay Round. Another key driver of AFTA was the attraction of FDI to the region, in particular for multinationals which needed many suppliers near-by. The idea was that AFTA would signal greater openness and easier business for components and hence suppliers, helping all countries to lure investors to the region. In the beginning, few if any policy maker was interested whether AFTA would impact on intra-AFTA trade! <sup>5</sup>

### 3. A brief on ASEAN with AFTA

It was not at all clear at first whether AFTA would get a serious chance in ASEAN. Almost two decades later, however, the upshot is clear: ASEAN has changed *because of* AFTA and the dynamics it engendered. These dynamics can, in turn, be attributed as much to the external environment (e.g. the rise of China) as to intra-ASEAN pressures following from AFTA.

Before the Bali summit of 2003, AFTA had developed into a pure tariff union, but still without any treaty, considerable legal uncertainty, little result on a host on non-tariff questions and a non-performing dispute

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<sup>5</sup> See for instance Narongchai Akrasanee & David Stifel, 1992 (Narongchai was the AFTA architect behind PM Anand)

settlement process lacking credibility. Indeed, when beginning to address non-tariff issues and services (very prudently), it came to be labelled as AFTA-plus. This 'deepening' by intent was combined with enlargement with Cambodia, Vietnam, Laos and Birma (Myanmar), accidentally topped up by the 1997 Asian financial crisis. ASEAN and AFTA survived all this stress admirably. However, this is largely due to the fact that the arrangements (other than intra tariffs) and initiatives were extremely shallow.

Assessing AFTA on its merits as economic regionalism yields a modest score at best. The intra-tariff reduction process had gone well (above expectations). However, AFTA-plus was like 'keeping up appearances', with repeated deadlines for so-called NTMs (non-tariff measures) which were not even charted in any detail. A lot of NTMs are linked to or result from regulation and this requires far more than trade negotiation commitments. Treaty or not, it requires intrusive commitments of a domestic nature by ministries or regulators not used (or willing) to negotiate internationally. For credibility, such commitments would have to be legally enforceable - how to do that without a treaty is difficult to see in actual practice. An even more painful fact is that as late as 2004 (after Bali !), ASEAN (that is, some countries of the seven WTO members) had not implemented seven WTO agreements from the Uruguay Round. Thus, the actual practice of ASEAN looked a bit like WTO-minus! Also, the Dispute Settlement Mechanism decided in the late 1990s gave fewer rights than WTO and no transparency, again WTO-minus. As a result, it was not used. Economically, the question arose whether AFTA actually 'mattered'. As it turned out, intra-ASEAN trade did grow (but at best, equally fast as external ASEAN trade), but it was not explained by its regionalism. Virtually all intra-ASEAN trade avoided the use of form D (origin proof certificates) and true AFTA trade was estimated at 5 % only. The growth of intra-ASEAN trade was due to the simultaneous reduction of external (national) tariffs, mainly 'applied' tariffs which did not bring the administrative burden of origin proof for products having components from many countries <sup>6</sup>.

For ASEAN, nonetheless, AFTA was a success. Tariffs inside the group had come down to (practically) zero, the trade/FDI nexus so critical for ASEAN's competitiveness in the world was strengthened (a quick look at the very high shares of intermediate goods in ASEAN exports supports this), the region succeeded to attract FDI, even from China, and trade negotiators learned about AFTA-plus (which was helpful for all the FTAs set up in the Asia-Pacific). A sober analytical look casts doubt on the attribution to AFTA.

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<sup>6</sup> For a rigorous demonstration, see Manchin & Pelkmans-Balaoing, 2008.

For ASEAN AFTA had to support development via openness. Was AFTA a necessary condition? The answer is: No. Singapore's successful development was not only based on openness (zero tariffs) but also on credible domestic policies, liberalisation and stable rules. ASEAN/AFTA resulted in zero intra tariffs but accomplished none of the rest despite soft plans for AFTA-plus. Was it a sufficient condition? The fact is that AFTA has (by intent!) little impact on domestic policies, the extra FDI effect is small (note that multinationals often had targeted tariff relief already before) and the trickle-down effects on local suppliers have proven to be minor. AFTA-plus and beyond requires ASEAN to change profoundly and, so far, it seems unwilling or incapable of doing exactly that (Pelkmans, 1999). It is against this backdrop that one has to understand the AEC initiative (see 6. , below). External pressures in the Asia-Pacific (e.g. China as a competitor for FDI, apart from its trade competitiveness) and the failure of APEC put ASEAN under great strain to come up with bolder plans. Typical for ASEAN, the Bali summit <sup>7</sup> outlines a 'vision' at the highest political level, without any detail, but with the symbolic name of ASEAN Economic Community (besides a security Community and a peoples ASEAN!). It is hard to avoid the impression that the EU inspired ASEAN to go this route.

#### **4. Do ASEANs understand the EU ?**

For ASEAN business and numerous workers, EU countries ( 'Europe') simply represent one of the three big markets for exports and the origin of many multinationals. The EU as such is best known amongst policy-makers, business leaders and academics, not the ASEAN peoples. It is those elites which have gradually widened and deepened EU / ASEAN relations. Over four decades the EU has moved from being a 'donor' ( focussing on development aid) to a cooperation partner (still with funds but also GSP, for instance), a 'dialogue partner' and, more than once, an inspirator. Ever since Commissioner Cheysson pledged to spread the gospel of benign economic regionalism in the late 1970s with the EU as a worthy model, almost 30 years of conferences, seminars, reports, books and articles as well as technical assistance have been funded about 'possible lessons from the EU' for ASEAN <sup>8</sup>. Because of these tireless efforts, or perhaps simply because the EU itself has become respectable with its economic

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<sup>7</sup> See ASEAN Secretariat, 2003, Declaration of ASEAN Concord II (Bali Concord II), Bali , 7 Oct. 2003, [www.aseansec.org/15159.htm](http://www.aseansec.org/15159.htm)

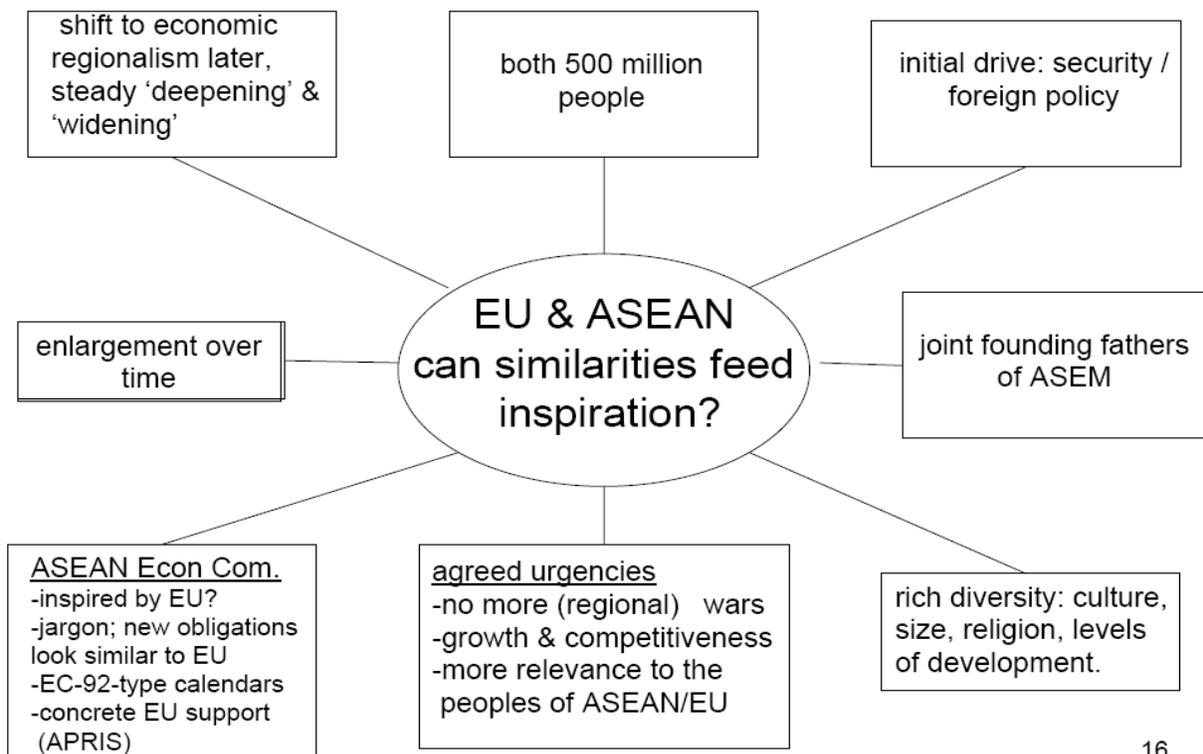
<sup>8</sup> Going back to e.g. Akranasee & Rieger, ed.s, 1982 ; Harris & Bridges, 1983 ; Langhammer, 1987 ; Langhammer, 1997 ; Suthipand, 1997 and, recently, Plummer, 2006. Of course, this list is not meant to be exhaustive by any means.

accomplishments and 'soft power', it has begun to dawn on many ASEANS or at least its elites, that the EU has commendable achievements and cannot be equated with the CAP and nasty anti-dumping.

This awareness is, more often than not nowadays, politically linked with a rhetoric suggesting that the EU and ASEAN have much in common or show similarities. A convenient summary of this rhetoric of similarities is provided in Figure 1.

Figure 1 goes to show that two very different groupings can nonetheless have some features in common. The question is whether and for what aspects these similarities matter for their respective models of economic regionalism. EU and ASEAN indeed have about 500 million people each, started both from foreign policy & security strategies (in resp. 1950 and 1967), have deepened, widened and enlarged membership, and jointly founded ASEM. Both also have great diversity in their grouping. One can even go so far as to hold that both share agreed urgencies such as no-more-regional-wars and a search for growth and competitiveness as a club.

**Figure 1: EU & ASEAN: similarities, real & perceptible**



Last but not least, ASEAN has adopted EU jargon and utilizes EU-type calendars (action plans) – so it seems – ever since the Hanoi ASEAN summit of 1998. No doubt, such manifold similarities can be rewarding in diplomacy and academic debate. However, to what extent they matter for a profound comprehension of one another's regionalism is a different question.

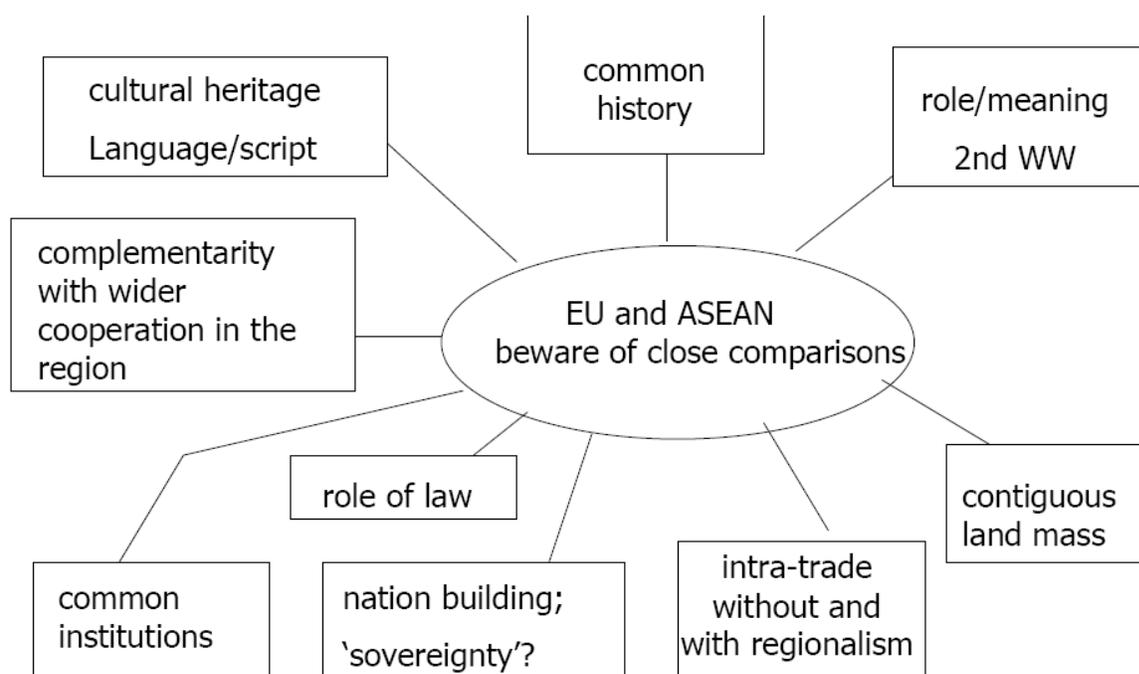
An analytical perspective, however, commands more attention for the multiple and profound differences as summarized in Figure 2. The critical difference with Figure 1 is that all the eight aspects mentioned here *do matter* for a proper

understanding of one another. ASEAN countries do not have a common history anywhere near to the extent that this has happened in Europe. A corollary consists in the cultural heritage, languages and scripts which differ markedly in ASEAN and appreciably less in the EU-6 ; with the EU counting 27, there are 23 recognized EU languages but their ultimate origins are not far apart <sup>9</sup>. The overriding impact of the horrors of the Second World War on the mindsets of

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<sup>9</sup> This argument is a matter of degree, of course. Finnish and Hungarian are of Asian origin as are some local languages (e.g. Basque). The different scripts of Bulgaria (Cyrillic) and Greece are nonetheless rooted in the European culture, so strongly influenced by the ancient Greek/Roman tradition.

**Figure 2: EU & ASEAN, multiple and deep differences**



the founding fathers of the EU has no parallel in South East Asia. This mindset has had a decisive effect on the fundamentals (e.g. pooling of sovereignty and supranational institutions) of the EU, in sharp contrast to ASEAN. The two groupings also differ in that EU countries initially (and largely still today with 27) added up to a contiguous landmass whereas ASEAN looks much more like an enormous archipelago with all the consequences this entails for contacts, transport and peoples' mobility across the region.

On the institutional side, the fundamentals reveal a striking contrast : the EU has common institutions right from the start and is built on treaties and traditions strongly based on a prominent role of law, whereas ASEAN has no truly common institutions (with an independent role and say), no treaty and a weaker tradition of law and case-law (surely, initially). This matters a lot for credibility not just between countries but precisely for economic agents wishing to trade and invest throughout the entire region. The EU, particularly in the beginning, and to a lesser degree still today, has evolved in a wider European cooperative framework of international organisations such as the OEEC (later, the OECD with non-European membership), the OSCE, the Council of Europe and its European Court of Human Rights.

Historically, NATO also played a major role, both for EU countries with NATO membership and for the neutrals in the EU (due to the de-facto protection effect of NATO for all). In (East) Asia, these institutions do not exist and some later attempts to 'organize (East) Asia' first via APEC and ASEM and subsequently by means of East Asian summits, as well as the Asian Security Forum, are useful but entirely voluntary and (again) not based on treaty commitments. These distinct approaches are not better or worse, they just signify contrasting fundamentals which ought to be uppermost in the minds of all analysts when seeking 'lessons of the EU for ASEAN'. Probably, there is a close relationship between these characteristics and the profound sense of 'nation-building' and sentiments of 'sovereignty' which typified ASEAN countries several decades ago and which still linger.

Once one realizes the enormous differences between ASEAN and the EU, which matter far more than the similarities, it might be somewhat easier to appreciate the ASEAN mindset when promoting its economic regionalism. In the final analysis this may also help to understand how the wording of the AEC, inspired by the EEC, came about. ASEAN delusions or illusions on deepening its regionalism may well be the result of a firm belief in the 'ASEAN way' of persuasive cooperation. What might be termed 'consensus' in Europe, is quite different in nature in much of what ASEAN does. 'Mushiwara' is more a habit, an attitude, a process, a respectful way of working with each other which – through talking and tireless diplomacy with patience – places conflict avoidance above everything. One prevents others from losing face, seeking what binds actors or Member States (not, what one ought to do) and ever attempting to maintain or build trust, showing flexibility when sensitivities play up. All this is firmly situated in a political tradition of permanent and deep respect of the national political leaders, hence, their prominence in setting the stage of any process and action plan of any significance.

It is this approach and 'ways-of-doing-things' which, in the early 1990s to Agree-First-Talk-After. Thus, the making of AFTA followed rather than preceded a prior top political decision of the heads of governments together, which was at best a short outline, no more. It is also likely to explain the EEC-like language at Bali in 2003, even though a High Level group had prepared a slightly more detailed plan of some substance. However, what worked with AFTA ( but hardly beyond tariffs), is a far taller order in the case of the AEC. Were ASEANs to appreciate the EU for what it is, they would realize that the agree-first-talk-later approach could not possibly work for this type of ambition.

## 5. ASEAN edging towards a treaty, called Charter ?

In November 2007 ASEAN's political leaders signed the ASEAN Charter (see [www.aseansec.org/21069.pdf](http://www.aseansec.org/21069.pdf)). One might be led to believe that this Charter is a sign that ASEANs do realize the profound changes a future AEC is bound to bring about to the organisation. An AEC is very likely to require a treaty, at the very least because numerous regulatory issues will have to be resolved by common 'laws' which ought to be implemented within national jurisdictions. How would this ever be assured without a treaty? It is hard enough to build a FTA on tariff decisions but they can be read easily by business. What credibility would and could an AEC have if defection or lousy and late implementation would become routine ? And this suspicion is reasonable since credibility and implementation issues have long plagued a loosely arranged ASEAN, and still cause problems in a fairly modest AFTA <sup>10</sup>. Why would it be better in a much more ambitious AEC, with different and (domestically) more pervasive instruments?

So, is the Charter to be considered as a treaty? The problem is that the answer is both yes and no. Yes, in that certain elements of the Charter clearly have legal consequences inside and outside, a critical item for the treaty of Vienna (on when a text can be seen as a treaty). One such consequence is obvious : ASEAN will receive legal personality. In modest ways, there are implications on substance like a future AEC. One can also argue that the ASEAN institutions and, what Europeans call the (ASEAN) 'acquis', are confirmed 'constitutionally'. It is therefore possible to maintain that the new ASEAN under the Charter is distinct from the old. However, the answer is also : No. No, in that (apart from some trivial points) nothing is new at all. The text consists (practically) entirely of codification or literal adoption of existing texts into a single one. Why would identical texts from the past suddenly be regarded as having treaty status, with the consequences that this implies [that is, unless one revokes, the country is bound ]. 'No' as well, because none of the substantial provisions are designed in an operational way [ except budget and administration]. The significance of the Charter for the AEC (the fifth 'purpose' in the text) is minimal as the AEC is neither formulated other than in general terms or nor connected with any article on instruments. This looks very much like the old ASEAN : no specifics or anything binding on instruments, despite ambitious and elegantly phrased aims.

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<sup>10</sup> For details and business views on lousy implementation and lack of credibility, see McKinsey's 2003 study on ASEAN Competitiveness ; unfortunately, but typically, this study has never been published and circulation is highly restricted.

## 6. Making sense of the AEC concept

The ASEAN Economic Community (first by 2020, since the Thai summit of December 2008, by 2015) is an idea seemingly inspired by the EEC and expressed in similar (though not identical) wording. The concept consists of the twin notions (long suggestively discussed among economists and business in the region) :

- i. ASEAN would serve as a 'production base' for world business
- ii. ASEAN would transform into a 'single market'.

The method of getting there adds up to the combination of the following instrumental goals :

- a. "free flows" of goods, (some) services, (all ? ) capital and (highly skilled, "talented") persons
- b. some harmonisation (given the term, this implies legislative power)
- c. firmly 'WTO-plus' in a number of areas
- d. firm dispute settlement, in the final stage even 'judicial'.

These ambitious methods would gradually emerge from various plans, 'roadmaps' and action plans, superficially analogous to the calendars of EC-1992. Thus, the 2007 AEC "Blueprint" is a successor of the Hanoi Action Plan of 1998, the High Level Task Force (Bali) recommendations, the 2004 Vientiane Action programme and follow-up. It is an amalgam of a dazzling variety of intentions or proposals. Such ASEAN 'lists' tend to accumulate suggestions over time without much discipline to 'clean up' old ideas which have proven not to work (or found unacceptable) or to rationalise and restructure the action plans, in the light of the overall aim of accomplishing an AEC. Note that this is radically different from the EU where the Commission has the monopoly right to propose, and will naturally assume political 'ownership' of proposals, whilst all proposals have to fit - or logically follow from - a constitutional set of economic free movements and the right of establishment. Moreover, such proposals are usually draft 'laws' (directives ; sometimes even "EC regulations", directly applicable, an unthinkable option for ASEAN) and have to pass both the Council of ministers and the European Parliament in co-decision. Subsequently,

Member States must implement (at least, directives), short of violating the treaty, and that will be sanctioned (in the final analysis) by the European Court of Justice.

The 'Blueprint' is a rolling programme which makes it hard to access. It blends all kinds of 'actions' of a diverse nature, from 'negative integration' ( zeroing CEPT tariffs, standstills, removal of NTMs, liberalizing investment and allowing non-national (but ASEAN-only) ownership, liberalizing services sectors) and 'positive integration' (harmonisation, common 'approaches', mutual recognition agreements – e.g. of conformity assessment of standards/ rules) as well as tangible cooperation (e.g. infrastructure, lowering the high 'trade costs' behind the border in ASEAN), softer cooperation, information & training, etc.

Since ASEAN is intergovernmental, blueprints (without a substantive treaty) can be no more than political commitments. As such, they ideally fit ASEAN practices of peer pressure while respecting *mushiwara* and preferences for flexibility. But one can also be sceptical when it comes to the hard core of what an AEC presumably is meant to be. Terms like 'free flow' (and in one instance in Bali, even 'free movement') are not carrying the same legal and economic connotations as they have in the EU (given the fundamental rights of economic agents in the treaty, enforced by what is in fact a supranational court).

The upshot is that an ASEAN "single market" is, so far, an unclear notion for business and consumers. The removal of NTMs is difficult and tedious in economic regionalism anywhere, and sometimes even inside federations. Even serious FTAs do not seriously try (e.g. NAFTA). Still, ASEAN has been toying with NTMs for over a decade, calling for notifications by Member States (which did not work because of the disconnect between domestic regulators and trade diplomats doing ASEAN) and shifting deadlines repeatedly, without almost any progress. The key issue of 'harmonisation' has no strict legal basis as ASEAN 'law' can only consist of 'agreements'. An agreement, whether a law or not (legally spoken), only makes economic sense when all ASEAN countries transpose it into domestic laws, and do so properly, and enforce it everywhere. All ASEAN has agreed to do so far is that the (weak) ASEAN Secretariat should 'monitor' the implementation and report on it. However, this is (purposefully kept) murky water : ASEAN has adopted a cosmetics "directive" (based on the EU cosmetics directive !) in 2005 (the first directive ever) but the mechanism to render this effective is informal <sup>11</sup>. The Blueprint speaks of 'regulatory schemes', another vague term. Finally, as everywhere and most prominently in the

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<sup>11</sup> See ASEAN agreement on the ASEAN Harmonized Cosmetic Regulatory Scheme, 2 Sept. 2003, [www.aseansec.org](http://www.aseansec.org) .

EU, behind 'harmonisation' or 'agreements', a myriad of standards, rules and infrastructure on testing & certification, accreditation, etc, will be required and this is hidden 'in' the Blueprint. However, the confidence in the AEC and its credibility with ASEAN and world business depends to a large extent on the reliance on such standards and conformity assessment, since this matters for their value-chain management across the region.

Therefore, it is more fruitful not to be distracted too much by the long lists in Blueprints and reflect briefly on how to make economic sense of an AEC. An AEC inspired by the EU experience (as ASEAN has suggested to be), yet in the intergovernmental context of ASEAN, should comprise at least of seven core elements :

1. a treaty with clear ASEAN-wide and domestic obligations on 'free flows', for issues critical for the 'production base' and for the 'single market'
2. with a legal, transparent (public and open) dispute settlement
3. realize and enforce radical customs reform (perhaps in a customs union rather than a FTA, with a special regime for Singapore)
4. pursue credible removal of technical barriers to trade, with domestic regulators in the forefront
5. strictly enforce all WTO Codes (of the Uruguay Round)
6. pursue credible services liberalisation (selectively)
7. free up investment

The economic impact of such a credible AEC is likely to be fivefold, all fitting the rhetoric of ASEAN at the highest political level. First, such an AEC would attract significantly more FDI than at present (*ceterus paribus*). Second, it would rapidly augment intra-ASEAN trade as intra-barriers would melt away more effectively. Third, it would accomplish better a major shortcoming of AFTA so far, namely, the trickling-down of trade and FDI effects to local suppliers, including their upgrading. This is extremely important for sustained economic growth up the comparative advantage ladder. Fourth, it would help increase ASEAN economic growth to rates reminiscent of pre-1997. Fifth, it would raise the credibility of ASEAN in East Asia and indeed with the EU, if not worldwide.

## 7. Can ASEAN realize the AEC ? Four strategic choices

As noted above, there are compelling reasons to doubt ASEAN's capacity or current political willingness to realize the AEC as strategically set out in Bali in 2003. This is not surprising. Few if any FTAs in the world (with the possible exception in the Caribbeans) have enounced such ambition. It is also good to remember the agonizing choice EFTA had to make in 1989 when the so-called Luxembourg process of aligning an unwilling, intergovernmental EFTA group to the ambitious EC-1992 process had run into the quicksand. EFTA was a serious but modest FTA which worked well within its constraints. However, once EFTA countries wanted to be part of the deep internal (EU) market to the maximum extent possible – without becoming an EU member - , if only because EFTA countries would lose out on FDI, this Luxembourg process could never provide solutions. Instead, Commission president Delors proposed the Oslo process in which EFTA countries would be prepared to give up selectively their intergovernmental instincts, short of staying out of the deep internal market. The European Economic Area (EEA) which emerged from this Oslo process proves that very deep market integration requires a profound transformation of the group and organisation.

For ASEAN the EU cannot possibly serve as a model, as discussed before. Let us discuss this issue of fundamental choice for ASEAN in a more systematic fashion. There are four strategic choices ASEAN must make in any event if it wants to realize a credible and economically effective AEC.

- I. What kind of economic regionalism ?
- II. What degree of specificity ASEAN wishes to agree on at the outset?
- III. What mechanisms will ensure credibility of implementation and compliance at the level of ASEAN Member States ?
- IV. Should the initial agreement (or treaty ?) leaves room or comprise incentives for deepening or widening (of scope) ?

## What kind of economic regionalism ?

The EU cannot serve as an example because it was ambitious right from the start. It will suffice to highlight three critical characteristics. First, the EU fully accepts to 'pool sovereignty' in selected but broad areas, something unthinkable in the ASEAN rhetoric. Second, the EU did not emerge from a history of hesitant and half-hearted intra-group trade liberalisation. Quite the contrary. The EU never was a PTA, or a FTA (except a partial FTA in coal & steel in the very early years), but a customs union and common market in the EEC treaty. It deepened to an Economic Union for all, a currency union for (now) 16 countries (with more coming in soon) and a full removal of internal frontiers for economic purposes. Third, it is supranational in certain respects, has centralized institutions with clearly delineated powers and deeply respects 'federal-type' free movements and establishment. This does not mean that Member States have lost all of their policy autonomy, but it does mean that the choice of making a credible, deep internal market is never in doubt for business and consumers. ASEAN should simply not refer to the EU in this respect. NAFTA might be a more suitable example : it is clear in its choice of intergovernmentalism but, at the same time, NAFTA countries are bound to the well-specified FTA in their treaty. NAFTA has no common institutions (except a tiny secretariat) and no common budget worth speaking off. But the reliance on law and treaties is never in doubt in NAFTA. Were ASEAN to reject the NAFTA model as its inspiration, and knowing that the EU model is lightyears away, ASEAN should explain to its own citizens and business inside as well as worldwide what exactly is its answer to this first strategic choice.

## Specificity of detail at the outset

The EEC treaty (and later amendments) is a framework treaty and is therefore not fully specified. However, the EU model opts for transfers of considerable (but selective) powers, at first based on vetoes, later with QMV (qualified majority voting). The assignments of the common institutions are nevertheless clear and various forms of recourse to the European Court of Justice exist to ensure that the common institutions perform these tasks properly ! Inaction on the core tasks is not accepted as a famous Court case against the Council of Transport ministers in 1985 proved : the Court sided with the European Parliament, against the Council, on the ground of a 'failure to act'. NAFTA has not opted for a transfer of

powers but for a clear choice nonetheless : no "agree-first-talk-after" attitude but a very detailed treaty (of nearly 2000 pages), with possibilities of litigation, which helps to discipline the execution of the agreement. It goes almost without saying that the Blueprint and the Bali text dramatically fall short of either the EU or the NAFTA choice. Also the Charter does not address this problem at all.

### **Implementation, compliance and enforcement**

Even when one would entertain the hope that an AEC could be built up with 'agreements' on many details, the question of implementation (in Member States), of compliance and sanctions of enforcement will determine much of the credibility in markets. The EU answer is once again of no use to ASEAN, as it has no dispute settlement but a quasi-federal "EC legal system " of its own with a distinct legal hierarchy in internal market matters. Within this tight system, Member States assume the overwhelming responsibility for implementation, compliance and enforcement, but always under the discipline of the Commission as the 'guardian of the treaty' and ultimately the Court in Luxembourg. In NAFTA the solution is far more modest but essentially clear as well : with a carefully set-up dispute settlement (and given the incredible detail at the outset), private litigation is kept at bay except when the settlement would fail. Of course, this requires a transparent dispute settlement procedure of high judicial quality and, not to forget, full ratification of the initial treaty ! With the immanent threat of private litigation in NAFTA, dispute settlement is well disciplined, too. The NAFTA system works because NAFTA is not a very 'deep' FTA (e.g. it has practically no harmonisation, is shallow on services, etc.). So far, ASEAN seems not to have addressed this paramount issue in any meaningful way. Sooner or later it has to face this choice and come up with a credible solution.

### **Room & incentives for deepening and widening**

NAFTA has made a clear choice in this regard : the NAFTA treaty is the end result and no substantial deepening or widening is foreseen. NAFTA sticks to its original purpose, a kind of WTO-plus arrangement. ASEAN speaks in similar ways of the AEC as the end station but merely in rhetorical terms. The EU, in contrast, is no inspirator here since it has proven to be a very dynamic grouping, whether

deepening in economic terms, or widening of scope, or enormous enlargement, or moves to include non-economic issues such as persons controls for internal (EU) security or selected questions of foreign affairs and (selectively and optionally) defence, all under the treaties.

## 8. Conclusions

ASEAN 's avowed aim to strive for an ASEAN Economic Community as formulated in the 2003 Bali summit is most ambitious on the face of it. It would appear to mean a very deep FTA-plus-plus which would help the region to remain attractive for multinationals and restore a higher growth path reminiscent of patterns before the Asian financial crisis of 1997. For a good understanding of this major initiative, the present essay has first discussed at some length the difficulties of Europeans attempting to comprehend ASEAN's ways of doing things and the delusions or illusions of ASEANs asserting that the AEC is inspired by the old EEC as a model. The recent adoption by ASEAN of its Charter is shown to be little more than a literal codification of its 'acquis' , except for giving ASEAN legal personality. On economic substance the Charter does not create legal obligations underpinning the construction of the AEC by 2015.

The paper cannot go into an economic analysis of the possible impact of an AEC on future growth, intra-ASEAN economic intercourse and external competitiveness of ASEAN countries in the world economy, not least vis a vis China. Nevertheless, in a broad-brush approach, it is possible to make economic sense of the AEC idea as a 'production base' (first of all, for multinationals and their value-chains) and, in selected ways, of an ASEAN single market. But this requires clarity and credibility for business inside and outside ASEAN on what the AEC is going to be and how firm the plans are for the elements which will form the core of its negative and positive market integration. This clarity is lacking at the moment, five years or more after Bali and with the deadline of 2015 only six years away. The 2007 Blueprint is rich and multi-faceted in providing numerous initiatives on paper but conceptually and in terms of institutional logic far from convincing.

But the fundamental problem is more profound. ASEAN neither has a treaty giving clear legal obligations nor an institutional structure generating confidence in decision-making or, for that matter, implementation, compliance at the national level and enforcement. This is critical for the AEC as it will

involve (domestic) regulatory issues which cannot be dealt with merely at the level of trade diplomacy (the traditional realm of ASEAN so far). Deepening market integration is precisely 'deep' because it penetrates the domestic arena of regulation and controls. The AEC, in other words, must be pervasive or it will remain a paper tiger at best.

In order to focus on the core of the issue, the paper ends by formulating four strategic choices ASEAN ought to address, short of failing on the AEC. The answers do not guarantee an effective AEC, of course, but they serve as necessary conditions. These choices are briefly illustrated by providing the (contrasting but clear) answers the EU and NAFTA have given at the time. The choices are : what kind of economic regionalism ASEAN wants ?, how much specification on detail ASEAN wishes to provide at the outset, what (credible) mechanisms for implementation, compliance and enforcement are ensured in unambiguous terms, and clarity on whether or not deepening and widening remains an option in the future. On all four strategic questions, the EU and NAFTA have distinct but clear answers. On none of them ASEAN has clear answers, let alone, legally helpful ones. This shows that the EU inspiration of ASEAN is a delusion. It also prompts the decisive query whether or not ASEAN is actually willing to be inspired by the NAFTA example, modest but with full legal clarity and consistency for business and citizens. If not, ASEAN should come forward with its own answers to these four strategic choices, as a necessary basis for a credible AEC with the economic impact the region hopes for.

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