[Michigan Business & Entrepreneurial Law Review](https://repository.law.umich.edu/mbelr)

Volume 7 | Issue 1

2017

Evaluating Financial Integration and Cooperation in the ASEAN

Brendan Harvey
University of Michigan Law School

Recommended Citation

Brendan Harvey, *Evaluating Financial Integration and Cooperation in the ASEAN*, 7 MICH. BUS. & ENTREPRENEURIAL L. REV. 119 (2017).
Available at: https://repository.law.umich.edu/mbelr/vol7/iss1/5

https://doi.org/10.36639/mbelr.7.1.evaluating

EVALUATING FINANCIAL INTEGRATION AND COOPERATION IN THE ASEAN

*Brendan Harvey**

Financial integration is less pronounced in the ASEAN than other measures of economic integration. This is particularly apparent when compared against other regions that have undergone similar integrative efforts, such as the European Union. Cross-border trade flows, foreign-direct investment, and investment in capital goods outstrip other investment flows. Regional institutional and legal structures governing these investment flows, while limited, present marked achievements towards creating an ASEAN financial community. The gap persists despite suggestions that the Asian Financial Crisis and the Global Financial Crisis (or the North Atlantic Financial Crisis from the Asian and Stiglitz perspective) would accelerate financial regionalism as a way to create a wider safety net against sudden capital outflow or capital stoppage. This paper will endeavor to offer legal, governance, and institutional explanations to explain the impetus for the ASEAN to integrate within itself instead of the Western financial system. It will offer suggestions to augment financial integration by making changes to the most effective initiatives.

Table of Contents

Introduction 121
I. Regional Over Global Integration 123
A. *Financial Imperatives* 124
B. *Additional Crisis Imperatives* 129
C. *Governance Imperatives* 132
D. *Potential Downsides* 134
E. *What is at Stake?* 136
II. Integration Initiatives 138
A. *Financial Services & the ASEAN Economic Community* 138
1. ASEAN Free Trade Area ("AFTA") 138
2. ASEAN's Framework Agreement on Services ("AFAS") 140
3. Asia-Pacific Economic Cooperation Forum ("APEC") 140

---

* J.D. Candidate, May 2018, University of Michigan Law School. I would like to thank the Vol. 7 staff of the *Michigan Business & Entrepreneurial Law Review* for their edits, comments, and suggestions, with special thanks to the Notes Editors who aided in the preparation of this piece for publication; Professor Michael S. Barr of the University of Michigan Law School for his advice on this piece; Professor Stephen Strand of Carleton College for first teaching me to think critically about economic and financial policy; and of course, my parents, Philip and Sheila Harvey, for their boundless love and endless support.

4. ASEAN-China Framework Agreement on Comprehensive Economic Cooperation ("ACTFA") 141
5. ASEAN-Australia/New Zealand Free Trade Agreement 141
B. *Economic and Financial Surveillance* 142
C. *Financial Regulatory Harmonization & Capital Markets* 144
D. *Monetary Cooperation* 147
1. The Chiang-Mai Initiative 147
2. The Multilateralized Chiang-Mai Initiative 151
III. Assessing the ASEAN Initiatives 155
Conclusion 158

Table of Acronyms

ABMI	Asian Bond Market Initiative
ACTFA	ASEAN-China Framework Agreement on Comparative Economic Cooperation
AEC	Asian Economic Community
AFAS	ASEAN Framework Agreement on Services
ACMF	ASEAN Capital Market Forum
AMRO	ASEAN+3 Macroeconomic Research Office
APEC	Asia Pacific Economic Cooperation Forum
ASA	ASEAN Swap Arrangement
ASEAN	Association of Southeast Asians Nations
ASEAN+3	ASEAN, China, Japan, and the Republic of Korea
BSA	Bilateral Swap Agreement
CEPT	Common Effective Preferential Tariff
CGIF	Credit Guarantee and Investment Facility
CMI	Chiang-Mai Initiative
ERPD	Economic Review and Policy Dialogue
EU	European Union
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IMF	International Monetary Fund
Loa PDR	Loa People's Democratic Republic
LIC	Low-Income Countries
LCY	Local Currency
MCMI	Multilateralized Chiang-Mai Initiative
SEOM	Senior Economic Officials Meeting
USD	United States Dollar

Introduction

The extent of financial integration amongst East Asia's developing and industrializing economies matches neither the orotund praise exhausted in its support after the 1997-1998 Asian Financial Crisis, nor the degree of economic regional integration otherwise enjoyed by the region.[1] Evidence suggests that regional financial integration lags significantly behind regional trade integration and that Asian economies maintain stronger financial links with the rest of the world than with other economies in the region.[2] Regional institutions and organizations in and around the financial sector are scarce and lack significant influence.[3] The interaction between national and international financial institutions is limited, even between nations such as Singapore, the Republic of Korea, and Japan, which have comparatively sophisticated financial marketplaces.[4]

This disconnect is particularly pronounced amongst the nations of the Association of Southeast Asian Nations, or the ASEAN.[5] The ASEAN consists of a diverse group of ten rapidly growing economies, each at different stages of economic and financial development: Vietnam, Thailand, Singapore, the Philippines, Myanmar, Malaysia, Lao PDR, Indonesia, Cambodia, and Brunei.[6] The fact that financial integration has not been a primary concern for this region is not surprising given its tumultuous history—the region was embroiled in several armed conflicts when the ASEAN was founded in 1967.[7] The ASEAN was formed principally as an organization dedicated to preventing war within the region through real economic benefit.[8]

In the decades following its inception, as a way of achieving its primary goal of economic well-being, the ASEAN focused on increasing integration with the global economy and global financial system. The ASEAN adopted the Washington Consensus policies supporting financial and trade

---

1. Nasha Ananchotiku, Shi Piao & Edda Zoli, *Drivers of Financial Integration: Implications for East Asia*, 3-5 (Asian Dev. Bank, Working Paper WP/15/160 2015).

2. *See generally* Eduardo Borensztein & Prakash Loungani, *Asian Financial Integration: Trends and Interruptions* (Int'l Monetary Fund, Working Paper No. 11/4, 2011).

3. Douglas Arner, Paul Lejot & Wei Wang, *Assessing East Asian Financial Integration*, 12 Singapore Y.B. of Int'l L. 1, 1 (2008).

4. *See id*.

5. *See* Geert Almekinders, Satoshi Fukuda, Alex Mourmouras, Jianping Zhou & Yonga S. Zhou, *ASEAN Financial Integration* (Int'l Monetary Fund Working Paper No. 15/34, 2015).

6. *Id*.

7. The ASEAN was established during the height of the Vietnam War. Indonesia had just been at war with Malaysia over its colonies. Malaysia had recently defeated a communist insurgency, while Indonesia had rebuffed an army coup.

8. *See* Association of Southeast Asian Nations, *ASEAN Declaration (Bangkok Declaration)* (Aug. 8, 1967), http://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/.

liberalization in pursuit of these economic goals.[9] Additionally, economic interactions within the region, especially trade and investment interactions, increased.[10] At the same time, the growing role of financially sophisticated markets in the Asian growth model set the stage for the Asian Financial Crisis of 1997.[11] The Asian Financial Crisis christened an important turning point in the role of finance in the ASEAN economies and marked what would become a push towards financial regionalism.[12] During the subsequent decades, ASEAN economies continued to focus on export-led growth, but "now combined with gradual financial liberalization, regional cooperation on issues of common concern and accumulation of defensive foreign exchange reserves."[13]

The Global Financial Crisis of 2007 marked another important point in the ASEAN's financial development. The wake of the Global Financial Crisis gave purchase to the idea that the ASEAN should pivot away from increasing integration with European and U.S. financial systems to instead focus on more balanced domestic and regional relationships.[14] Both the Asian Financial Crisis and the Global Financial Crisis evinced a growing reluctance to accept either the dominance of the Western financial system or the ability of the International Monetary Fund—which had played a pivotal role in souring the Asian Tigers on Western financial hegemony at the height of the Asian Financial Crisis—to intervene in the bloc's financial affairs. While both the crises highlighted the necessity of addressing a range of issues relating to financial integration, the Asian Financial Crisis in particular showed the ASEAN nations that there was a pressing need for a regional credit institution more aware of its members' economic and fiscal realities.[15] Recognizing this, the central banks and governments of the ASEAN (and the ASEAN+3)[16] embarked on several new initiatives for regional financial cooperation, including: economic surveillance overseen by the Economic Review and Policy Dialogue, a regional liquidity

9. *See* Qiao Liu, Paul Lejot & Douglas Arner, Finance in Asian Institutions: Regulation and Policy 65 (2013).

10. *See generally* Douglas Arner & Lotte Schou-Zibell, *Reforming The Global Financial Architecture: Implications for Asia*, 53 Japanese Y.B. Int'l L. 64, 66 (2010).

11. *Id*. at 65.

12. *Id*.

13. *Id*.

14. *See id*.

15. See *id*.; *see also* Jordan Kahn, *Southeast Asia and the IMF: One Decade Following the Economic Crisis, an Analogous Regional Institution is Needed to Withstand Contagion from Wall Street*, 26 Sing. L. Rev. 32, 32-33 (2008) (showing that, in the case of Thailand, Indonesia, and Malaysia, IMF recovery packages can correlate inversely with IMF involvement).

16. The ASEAN+3 is comprised of the ASEAN member states plus the People's Republic of China, Japan, and the Republic of Korea.

support facility called the Chiang Mai Initiative, and local currency bond market initiatives.[17]

This Note describes how economic and financial aspects of regional governance in the ASEAN has become manifest in loose transnational organizations and agreements with varying degrees of success. Section I describes three important drivers of regional integration that make the ASEAN's efforts a worthwhile undertaking: (1) the cost of financial intermediation abroad, which unnecessarily drives up the cost of capital when it returns to the region; (2) lingering animosity towards the IMF's actions during the Asian Financial Crisis; and (3) a respect for regional cooperation styled as the "ASEAN Way." Additionally, Section I finds that these are strong reasons for the ASEAN to prefer regional integration over integration with the (predominantly Western) international financial architecture. As this Note will make no attempts to quantify either *de facto* or *de jure* financial integration, these drivers will provide a rubric with which the ASEAN's various integration initiatives will be evaluated. Section II examines the ASEAN's attempts to encourage integration in financial services, cooperation in monetary policy, and capital market development. Section III summarizes essential findings that the organizations, while not as robust as other attempts at financial integration, such as those in the European Union (EU), are successful insofar as they create an integrative architecture.

I. Regional Over Global Integration

The ASEAN's reasons for preferring further regional integration over global integration can be broadly divided into financial and governance reasons. The financial reasons are rooted in the inefficient intermediation of Asian savings that arise from the region's relatively undeveloped financial systems, the slate of risks related to volatile capital flows from the West, the geography of information, and network externalities.[18] The governance reasons are rooted in the soft law architecture of international finance vis-à-vis the "ASEAN Way."[19]

This Note does not contend, *inter alia*, that further regional integration is manifestly better than global integration. This Note refers to de-integration from the global financial marketplace as "decoupling."[20] The idea of decoupling the ASEAN from its trade and financial connection with the rest of the world refers to weakening or eliminating "the impact of de-

---

17. Masahiro Kawai, *From the Chiang Mai Initiative to an Asian Monetary Fund*, 3 (Asian Dev. Bank Inst. Working Paper, ADBI Working Paper 527, 2015).

18. *See generally* Maria Socorro Gochoco-Bautista & Eli M. Remolona, *Going Regional: How to Deepen ASEAN's Financial Markets* (Asian Dev. Bank, ADB Economics Working Paper Series No. 300, 2012).

19. *See generally* Hector Uy, *ASEAN's Legal Framework on Financial Integration*, 89 Phil L.J. 231 (2015).

20. *See* Yung Chul Park, *The Global Financial Crisis: Decoupling of East Asia—Myth or Reality?*, iii (Asian Dev. Bank Inst., Working Paper No. 289, 2011).

mand and supply shocks emanating from the advanced countries on the region's economic performance shocks since the early 1990s. Available empirical evidence, including the faster recover of East Asia from the 2008 [Global Financial Crisis], does not appear to lend credence to the decoupling thesis."[21] The Note does argue, however, that the next measurable quantum of integration should be spent strengthening regional ties instead of global ones.

A. *Financial Imperatives*

The ASEAN countries face one of two different challenges. For the Lao PDR, Myanmar, Vietnam, and Cambodia, the challenge is to grow their legal institutions and banking systems to provide a basic level of connection to the international marketplace. For Malaysia, the Philippines, Singapore, Thailand, and Indonesia, the challenge is to further deepen their capital markets without reopening them to the same shocks incurred during the Asian Financial Crisis.[22] The task for the first group is straightforward: they can emulate the banking systems of more developed Asian economies. The task for the second group, however, is more complicated. While the second group has made strides in the development of their government bond and equity markets, their corporate bond markets remain shallow and illiquid.[23]

Both groups, however, share a common problem: the threat (illustrated during the Asian Financial Crisis) that bank finance can suddenly dry up.[24] The ASEAN nations that developed banking systems have come to depend on those banks.[25] When those banks stop lending, these countries lack an alternative funding stream.[26] Traditionally, this alternative stream is the corporate bond market, which in the West ground to a halt during the Global Financial Crisis.[27] A deeper regional market in ASEAN nations would have welcomed more companies that were starved for money, particularly those that could not advantage the global credit markets.

Compounding this structural issue is a reversal of expected capital flows, known as the "Lucas Paradox." The Lucas Paradox holds that capital flows in developing regions flow in an opposite direction—from poor countries to rich countries.[28] The lack of developed financial markets for capital encourages large investments to route first through large financial centers.[29] This recycling is inefficient because the distant, more developed

21. *Id*.

22. *See* Gochoco-Bautista & Remolona, *supra* note 18, at 1.

23. *Id*. at 2.

24. *See* Kawai, *supra* note 17, at 4.

25. *See id*.

26. *See id*. at 5.

27. Gochoco-Bautista & Remolona, *supra* note 18, at 2.

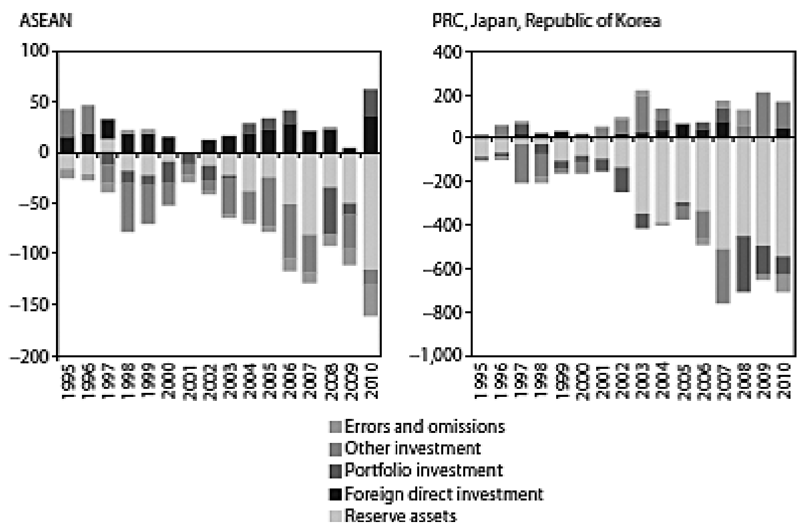
28. *See* Robert Lucas, *Why Doesn't Capital Flow from Rich to Poor Countries?*, 80 Am. Econ. Rev. 92 (1990).

29. Gochoco-Bautista & Remolona, *supra* note 18, at 2.

financial centers have no intrinsic advantage over regional financial centers in providing the information needed by investors. Asian savings tend to go abroad in the form of low-yielding reserve assets and return only in the form of high-interest foreign direct investment.[30]

TABLE 1[31]

Figure 3: Net Capital Flows (billion $)



Note: A positive number indicates capital inflow. Aggregate of the listed countries.
ASEAN includes Brunei Darussalam, Cambodia, Indonesia, the Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam.
For 2010, aggregate of the listed economies except Brunei Darussalam, Cambodia, and the Lao PDR.
Sources: IMF International Financial Statistics, available: elibrary-data.imf.org, downloaded 14 September 2011.

For this reason, Asian savings return as investment in the region, but in the process of intermediation abroad, they return as expensive, high-return instruments. Not only does the investment become more expensive to finance, but this financial intermediation is unnecessarily completed outside of the region. This process is inefficient; much of the information required by investors can be adequately collected within the region. For instance, despite the common perception of equity investments as being increasingly "global," most of the volatility in the ASEAN is attributed to regional factors.[32]

30. *Id*. at 7.

31. *Id.* at 8.

32. Gochoco-Bautista & Remolona, *supra* note 18, at 9; *see also* Jianxin Wang, *Forecasting Volatility of Asian Stock Markets: Contributions of Local, Regional, and Global Factors,* 28 ASIAN DEV. REV. 28, 54 (2011) (explaining that, for Morgan Stanley Capital International indices of dozens of international markets, models with regional volatility factors produce the best results).

While capital movement to inter-regional centers is not necessarily bad, "the assumptions of market completeness, information efficiency, and the absence of market distortions," can blind policymakers to the clear benefits of localized decision-making.[33] The generally accepted rationale for capital account liberalization and for full mobility of capital derives from the neoclassical assumption of a complete and liquid market without information asymmetries. Global capital movement is not unambiguously welfare-enhancing because the real world is replete with information distortions.[34] Remembering that the promised repayment of the lender is dependent on some future state where the borrower is capable of repaying, information asymmetry on the side of both lender and borrower broaches adverse selection problems. This issue is exemplified by the irrational lending behavior of mortgage originators in the run-up to the Global Financial Crisis and by the inability of European and U.S. institutions to evaluate the soundness of each other's financial products.[35] "These distortions, replicated and aggregated to the macro level, could lead to bubbles, panics, and manias in financial asset trading activity that sometimes lead to full blown crisis, especially if agents involved are systemically important entities."[36]

This informational disconnect is, in part, what precipitated the Asian Financial Crisis.[37] The crisis consisted of a massive outflow of foreign capital as international financiers suddenly lost confidence in the Thai, Indonesian, and Malaysian markets. Notably, all three countries were in the process of liberalizing their rules governing foreign direct investment. Until 1997, they had growth rates high enough that "they were hailed as 'Asian tigers' because of their 'sound economic fundamentals.' "[38] This changed in the second half of 1997 when these Asian tigers experienced a rapid and severe currency devaluation that plunged their countries into a deep and lasting depression. Of the many precipitates of the crisis, Joseph Stiglitz notes that, in the case of Thailand, foreign investors paid too much attention to Thailand's acquiescence to certain IMF conditions on exchange rates and not enough attention to the political-economic reality of the nation.[39] Pegging the Thai baht to the U.S. dollar ("USD") created an illusion of a devaluation-proof security. Based on this assumption, foreign investment poured into the Thai real-estate market, where lending decisions were not made "by a decentralized open capital market via arms-

33. *See* Gochoco-Bautista & Remolona, *supra* note 18, at 9.

34. *See id*.

35. *See id*.

36. *Id*. at 8.

37. For further discussion of the Asian Financial Crisis, *see infra*, at I.B.

38. *See* Kahn, *supra* note 15, at 39.

39. *Cf. id*. (contending that Thailand's bubble economy began with it accepting the obligations under Article VIII of the IMF's Articles of Agreement to lift controls on foreign exchanges).

lengths transactions, but instead based upon [personal] relationships."[40] This led to a range of transactions that varied from suspect to fundamentally unsound.[41] While the unreliability of the Thai real-estate market was known to other regional actors, this came as a shock to global investors who quickly withdrew their capital.[42]

One can, therefore, argue that the relative underdevelopment of financial systems in the ASEAN limited the gains from further global account liberalization due to the inefficient savings intermediation and that this intermediation provided the force behind the capital withdrawal of the Asian Financial Crisis. The high growth rate environment in the decade leading up to the Asian Financial Crisis, combined with the near complete absence of a regional bond market, meant that ASEAN borrowers had to turn to global borrowers for capital.[43] The ferocity with which Western investors invested capital in the ASEAN matched the ferocity with which they later withdrew their capital.

Aside from the paradox of capital flows, which is especially strong in the ASEAN region, most of the usual arguments for regional integration apply with greater force to an argument for global integration. Two of these arguments are economies of scale and diversification. Economies of scale bring depth and liquidity to markets; diversification allows investors to seek greater returns by balancing their portfolio across different risk profiles.[44] Global integration, rather than regional integration, would better advantage economies of scale and allow even wider risk diversification. The case for greater regionalism is found in the trade-off between "geography of information [, which] pulls in the direction of more localized markets," and "network externalities [, which] pull toward more [ ] global

40. *See id*. at 41.

41. *See id*.

42. *See id*. at 40 n. 51 ("Thailand further experienced inflation attributable to the big capital inflows and its [pegging] to the U.S. dollar[.]"). *See also* JOSEPH STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS, 111 (2002) ("In Thailand . . . it was the already bankrupt real estate firms and those that lent to them who had the most foreign-denominated debt."). Olivier Jeanne notes that this is a common feedback loop for developing economies. "The ebbs and floods of capital flows to developing and emerging market economies are determined by a number of factors, including the risk appetite of foreign investors, the returns available in mature markets, and the global business cycle. This [capital flow cycle] is amplified by several mechanisms. A boom in capital inflows is associated with a buildup in external debt, real appreciation of domestic currency, and a general rise in the price of domestic assets. These developments mutually reinforce each other, as the rise in the dollar value of domestic assets increases the 'internationally acceptable collateral' on the basis of which domestic agents can borrow abroad." The problem arises when this cycle flows in reverse: sudden capital outflows are associated with depreciation of the domestic currency market and a decline in the price of domestic assets. Olivier Jeanne, *Capital Flow Management and Macroprudential Policies in Asia*, *in* ASIAN CAPITAL MARKET DEVELOPMENT AND INTEGRATION: CHALLENGES AND OPPORTUNITIES 91, 94 (2014), https://www.adb.org/sites/default/files/publication/31180/asian-capital-market-development-integration.pdf.

43. *See* Gochoco-Bautista & Remolona, *supra* note 18, at 8.

44. *See id*.

markets."[45] Within the ASEAN, this pull strengthens the case for regional integration.

Foundationally, the role of financial markets is to analyze and distribute information needed by market participants. How a given investor chooses to allocate capital is the result of decisions made on the information provided by the markets. This involves two distinct analytical dimensions:

> *Geography of information*. Depending on the type of asset, the cost of obtaining that information would often be lower for investors whose geographic proximity to sources of information are closer. Such geographic proximity is especially important for markets that depend on firm-specific information—particularly equity markets—and less important for markets that depend on macroeconomic information—such as government bond markets.
>
> *Network externalities*. The processing of information requires market participants to interact in various ways, including through trading. This interaction gives rise to the network of externalities in information that is the fundamental source of market depth and liquidity. To take effective advantage of such externalities, markets require a certain size. But once a critical mass is reached, the advantages become less compelling.[46]

In markets that are too small, the net geographic costs of information would dominate the net economic gains from network externalities. Conversely, as markets get larger, the total costs of information rise as the average distance between investors and investments lengthens.[47] Once the market achieves a certain size, the externalities become important and the total gains from the network rise sharply. Once these gains overcome the geographic costs of information, a financial marketplace can become an important source of value to the economy. That most borrowers in the ASEAN must go abroad to issue in the global USD bond market rather than in domestic markets is evidence that regional markets have not yet reached a critical mass.[48]

There are good reasons, however, to believe that the regional markets in the ASEAN are now large enough to reach the size required to advantage network externalities.[49] Continuing with the example of corporate bond issuers: one of the most actively traded instruments in the Asian re-

45. *See id*. at 37.

46. *See* Gochoco-Bautista & Remolona, *supra* note 18, at 27 (summarizing the findings of Asian Development Bank, Emerging Asian Regionalism: A Partnership for Shared Prosperity (2008)).

47. *Id*. at 32.

48. *Id*. at 33.

49. *Id*. at 44 (further postulating that, in the case of the global corporate bond market, network externalities may no longer clearly outweigh the geographic information costs faced by Asian borrowers. In this case, if a regional market reaches critical mass, it may create gains from localized network externalities that are much larger in size relative to geographic formation costs. Ultimately, "[t]he existence of such a regional sweet spot for an ASEAN corporate bond market must be considered no more than a hypothesis at this time").

gional index is the iTraxx Asia ex-Japan index.[50] Notably, other comparably traded credit instruments are also regional credit default swap indices rather than global ones.[51] The two most actively traded credit instruments in the world are the DJ CDX North American Investment Grade Index and the iTraxx Europe Index.[52]There is no actively traded global credit default swap index.[53]

There are several other reasons why regional integration is, on balance, preferable over further integration with the global financial system. Generally, a focus on regional development would grow the capital marketplace and would help provide an alternative funding stream when bank financing—which has historically been the dominant avenue for ASEAN borrowers[54]—dries up. The undeveloped capital marketplace encourages capital to move outside of the region to financial intermediaries in the West before returning home, despite the added costs. These costs are magnified by breaks in the neoclassical assumption of the efficient marketplace. The greatest break is in the lower capacity of Western financial intermediaries to appreciate the economic reality of the countries in which they are investing (e.g. the case of investments in Thailand).[55] Focusing on regional integration can further reduce market inefficiencies by better balancing the costs associated with expanding the geography of information with the benefits of network externalities. Much of the volatility in the Asian marketplace can be attributed to regional factors, therefore, focusing on regional integration could maximize the gains from network externalities by reducing the overhead associated with expanding geographical information.

B. *Additional Crisis Imperatives*

The Asian Financial Crisis of 1997-98 has had an enduring impact on the ASEAN economies and their imperatives for policy formation. The economic and social dislocation in Southeast Asia and the Republic of Korea, caused by the evaporation of market confidence, produced a concern among state actors that the ASEAN lacked adequate national and regional crisis remedies. Specifically, state actors were concerned that only extra-regional governments and organizations, such as the United States and the IMF respectively, could provide significant credit infu-

50. *Id*. at 35.

51. *Id*.

52. *Id*.

53. *Id*.

54. Masamichi Kono, Vice Minister for International Affairs, Financial Services Agency of Japan, Keynote Address at the OECD-ADBI Roundtable on Capital Markets and Financial Reform in Asia: A New Strategy for Growth Finance in Asia (March 22, 2016) ("The Asian financial system has been traditionally dominated by banks, and the banking system has been at the core of the channels for finance growth and development.").

55. *See supra* Part I.A. (discussing the Thai real estate market).

sions.[56] These credit infusions came with a set of economic reform prescriptions that have since been criticized.[57] To illustrate the effect the Asian Financial Crisis had on creating an imperative for regional integration, it is best to return to the case of Thailand, precisely because it has since been hailed as the IMF's best student.[58]

With its central bank essentially insolvent following an attempt to maintain the baht's peg to the USD, the Thai government had no choice but to float the baht by the summer of 1997.[59] The value of the baht plummeted during the second half of 1997, and the entire Thai economy followed suit.[60] The stock market collapsed, and nearly half of all bank loans became non-performing.[61] The Thai government announced the closure of numerous financial institutions and promised to guarantee all outstanding loans and deposits held by the shuttered entities.[62] Thailand turned to the IMF for help, and in August 1997, reached an agreement for a bailout package of $17 billion USD.[63] Disbursement of these funds was conditioned on Washington Consensus compliant reform requirements, which required: fiscal austerity, contractionary monetary policy, a raise in interest rates, financial sector restructuring, a commitment to completely guarantee creditors of Thai financial institutions, deregulation, and privatization of state-owned enterprises.[64]

The IMF has since admitted to making mistakes in its efforts to repair the Thai economy. It has called its initial prescriptions "flawed in that the IMF did not expect such a severe economic downturn in the economy."[65] While the IMF did work with Thailand in 1998 to ease the stringent fiscal and monetary reforms it had required, the Thai economy failed to show significant signs of recovery. GDP remained 2.3 percent below pre-crisis levels, and approximately forty percent of all loans were still non-performing.[66] Chief among the critics of the IMF's handling of the Thai crisis (and of the Asian Financial Crisis at large) is Joseph Stiglitz, who contends that the IMF prioritized repayment of foreign creditors over the stabilization of the Thai economy.[67] He argues:

---

56. *See* Arner et al., *supra* note 3, at 10. For a more intricate analysis of the technical triggers of the Asian Financial Crisis, *see generally* John Head, *The Asian Financial Crisis in Retrospect—Observations on Legal and Institutional Lessons Learned after a Dozen Years*, 5 E. Asia L. Rev. 31 (2010).

57. *See* Head, *supra* note 56, at 65-70.

58. *See* Kahn, *supra* note 15, at 47.

59. *Id*.

60. *Id*.

61. *See* Stiglitz, *supra* note 42, at 112.

62. *See* Kahn, *supra* note 15, at 42-43.

63. *Id*. at 43.

64. *Id*.

65. *Id*. at 48.

66. *Id*.

67. *See* Head, *supra* note 56, at 65-70.

> There was an alternative to [the IMF's] massive interventions. . . . [It] could have facilitated the workout process; it could have tried to engineer a standstill (the temporary interruption of payments) that would have given the countries—and their firms—time to recoup. . . . It could have tried to create an accelerated bankruptcy process. But bankruptcy and standstills were not . . . welcome options, for they meant that the creditors would not be repaid. Many of the loans were uncollateralized, so in the event of bankruptcy, little might be recovered.[68]

Stiglitz also found the high interest rate policy, which the IMF pushed to stabilize exchange rates, especially problematic. "[W]hile the high interest rates failed to [stabilize exchange rates], they quickly led to an explosion of the debt burden."[69] Not only did these contractionary policies exacerbate the crisis, but they also led to a broad mistrust of the IMF within the region. "East Asian nations came out of the experience profoundly shaken and deeply resentful of the reaction of the developed world as embodied in the [IMF]."[70] The ASEAN in particular "found [IMF] conditions intrusive, inappropriate, and insensitive to specific economic and political conditions in affected countries."[71]

The crisis exposed the weakness of the ASEAN's regional institutions. This weakness was reflected in both the severe contraction of as well as limited prophylactic attention to regional capital flows. Before and during the Crisis, no organization, either within East Asia or within the ASEAN, was able to provide support to any state.[72] Short-term IMF credit was essential in each case but always came with output-reducing terms and without concern for the policy of noninterference that had characterized the ASEAN since its inception.[73]

While Thailand sought liquidity assistance from Japan at the start of the crisis,[74] neither Japan, the United States, nor the IMF (to whom Japan had broached the idea of condition-free credit injections), wished to abandon the conditionality of loans made under the Washington Consensus. The impasse led to suggestions for the creation of new regional institutions to address the potential for a similar crisis in the future, most notably in Japan's proposition for an Asian Monetary Fund, but the initiative was quashed by the United States and the IMF. Thus, the ASEAN remembers the conditions as not only disruptive to their domestic economies, but also likely to be disruptive or at least likely to be beyond debate, should they need to approach the IMF for future bailouts.[75]

---

68. STIGLITZ, *supra* note 42, at 208, 211-12.

69. *See* Head, *supra* note 56, at 66.

70. *Id*. at 68.

71. *Id*.

72. Arner et al., *supra* note 3, at 10.

73. *See infra*, Section I.C.

74. Arner et al., *supra* note 3, at 10.

75. *See id.*

C. *Governance Imperatives*

"Peculiar to international finance among the kinds of species of economic globalization, are the phenomena of territoriality and regulatory export of rules of governance."[76] The national law of dominant markets, informed by the house customs of a nation's largest financial institutions, has shaped most of the rules in international finance.[77] Owing to the absence of a unified transnational organization that has the final say on financial governance, like that of the World Trade Organization in international trade, a soft law architecture dominates the flow of funds between nations. In the ASEAN context, some argue that "soft law could also have a role in establishing a legal framework that downplays fluctuations, market over-confidence, and systemic risks" that are unique to this species of economic integration.[78]

The regulatory export of house rules without an international governing body creates obvious oversight problems. To the extent that host countries are willing to accept consolidated home country supervision in place of domestic supervision, global financial institutions can aggressively expand operations beyond their native borders.[79] However, "[s]ince the recent financial crisis, certain host country supervisors have questioned the ability of home country supervisors to adequately supervise foreign branches and to protect the interests of foreign customers."[80] On the other hand, if host country supervisors refuse to defer to the home country supervisor, transnational financial institutions will find themselves subject to oversight by a potentially contradictory latticework of regulatory authorities.[81]

The best way to avoid problems related to home-host country supervision is to ensure intensive cooperation among national regulators. Supervision in this field breaks down to two related tasks: harmonization and cooperation.[82] Harmonization is the task of narrowing differences between national regulatory regimes, for example, by agreeing upon rules or establishing common principles. Harmonization is ultimately a static process, as regulatory regimes are codified as law and promulgated.[83] Cooperation, on the other hand, refers to the development of a dynamic relationship between regulators, whereby they share information and make decisions together in real time.[84] While harmonization can be

76. Uy, *supra* note 19, at 233.

77. *Id*.

78. *Id*.

79. Eric J. Pan, *Four Challenges to Financial Regulatory Reform*, 55 VILL. L. REV. 743, 767 (2010).

80. *Id*.

81. *See id*. at 768.

82. *Id*.

83. *Id*.

84. *Id*. at 769.

achieved through international standard-setting bodies such as the International Organization of Securities Commissions or the Basel Committee, cooperation requires a stronger connection between national regulators.

> [T]he optimal conditions for cooperation between regulators occur [ ] when there is a pre-existing mutual understanding between regulators that comes about through familiarity with each other's regulatory frameworks, markets, and regulatory approaches. Thus, it is more likely for regulators to cooperate in an effective manner if they focus on developing bilateral, as opposed to multilateral, cooperative relationships. Cooperation will best take place if there is both harmonization of standards (i.e., coordination as a prerequisite of cooperation) and commonality of regulatory interests and philosophies.[85]

The ASEAN is uniquely suited to meet the qualifications for regulatory cooperation in several ways. First, the ASEAN's financial economy is open enough to be called a participant in the global economy, but the economy is not too open. The financial transactions in the ASEAN are focused principally on real economic concerns and not part of the exotic financial economy.[86] This middle-ground necessitates a regionally tailored regulatory architecture that vitiates wholesale adoption of U.S. or E.U. regulatory principles.[87] Second, the ASEAN has long nurtured a unique system of cooperation and dispute resolution dubbed the "ASEAN Way." Under the ASEAN Way, member states do not interfere with the internal affairs of other members, and decision-making and dispute resolution are only done by consensus.[88] This non-interference runs the gamut from refraining from public criticism of other members, to refusing to provide

---

85. *Id*. at 769-70.

86. Uy, *supra* note 19, at 236.

87. *See id*.

88. *See id*. at 236 n. 21 ("Article 2 of the Treaty of Amity and Cooperation in Southeast Asia provides that ASEAN members must abide by the following principles: Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; The right of every State to lead its national existence free from external interference, subversion or coercion Non-interference in the internal affairs of one another; Settlement of differences or disputes by peaceful means; Renunciation of the threat or use of force; and Effective cooperation among themselves."); *see also Id*. (summarizing the observations of Michael Ewing-Chow & Tan Hsien-Li, *The Role of the Rule of Law in ASEAN Integration* 4-5 (European Univ. Inst. Robert Schuman Ctr. for Advanced Studies, EUI Working Paper RSCAS 2013/16); ASEAN Vision 2020, ASEAN (Dec. 15, 1997), http://asean.org/?static_post=asean-vision-2020 ("We envision the Treaty of Amity and Cooperation in Southeast Asia functioning fully as a binding code of conduct for our governments"); Michael Ewing-Chow & Tan Hsien-Li, *The Role of the Rule of Law in ASEAN Integration* 11 (European Univ. Inst. Robert Schuman Ctr. for Advanced Studies, EUI Working Paper RSCAS 2013/16) ("[P]ractice of flexibility in ASEAN relations is well-ingrained from the time of ASEAN's establishment. Beginning with the Bangkok Declaration in 1967, ASEAN leaders made the deliberate choice to steer clear of binding legal obligations to allow for more flexible engagement. The . . . Declaration itself is only a political statement . . . that required no ratification. The ASEAN founding fathers wanted it to be an organization with minimal legal institutionalization. This was because ASEAN was first and foremost a diplomatic instrument for confidence-building at a time when their common concern was the containment of communist China. This emphasis on flexibility continues to permeate how ASEAN integration is to proceed.") (citations omitted).

sanctuary for insurgent or marginalized groups of other members.[89] "In the Southeast Asian milieu," with its potential for and history of destabilizing conflicts, "ASEAN's reinforcement of these general norms on a regional basis has led to the collective legitimization of the states as states" by their neighbor states.[90]

Uy and others argue that this standing tradition of noninterference has not only forced the ASEAN member nations to act as a bloc, but has helped smooth tensions that normally manifest as the democracy-deficit criticism in the realm of home-host country supervision.[91] It was a direct multilateral agreement that created the Chiang-Mai Initiative ("CMI")[92]—a network of bilateral swap agreements between the ASEAN nations to act as a regional liquidity support facility to prevent sudden capital stoppages.[93] Fundamental decisions regarding the CMI—such as membership—are decided through consensus, while lending issues are decided through majority.[94] The ASEAN+3 Finance Minister also committed to establishing the Macroeconomic Surveillance Office, an independent regional surveillance unit to support the successful implementation of the CMI. The ASEAN Capital Market Forum was founded with a focus towards projects that harmonize standards in capital market regulation. The culture of sovereign respect has (perhaps ironically) also aided in the creation of a regional dispute mechanism overseen by the Senior Economic Official Meeting, a body composed of an equal number of representatives from each member nation's financial regulatory body.[95]

D. *Potential Downsides*

Regional financial integration presents several problems that, while important, do not ultimately outweigh the potential benefits. Much of the criticism focuses on the ripple effect that the collapse of the Thai economy had on Indonesia and Malaysia. Once Thailand fell to crisis, Indonesia

89. Tom Ginsburg, *Eastphalia and Asian Regionalism*, 44 U.C. DAVIS L. REV. 859, 871 (2011).

90. *Id*.

91. *See*, *e.g*., Uy, *supra* note 19, at 234-239 (noting that, while incorporating-without-deliberating global financial principles is the norm for economically weaker nations, the ASEAN's policy of mutual noninterference has encouraged the cooperative development of financial norms).

92. *Id*.

93. *See* Kawai, *supra* note 17, at 6.

94. Uy, *supra* note 19, at 239.

95. *See id*. Some argue that the ASEAN Way militates not just in favor of regional integration, but against global integration. Observing how global investment law paradigms are codified in the ASEAN, Cho and Kurtz note that the ASEAN Way has established an overarching norm that "power elites (politicians and bureaucrats) and [other] domestic interest groups" will not want to cede their hegemony to extra-regional norms. *See also* Sungjoon Cho & Jurgen Kurtz, *The Limits of Isomorphism: Global Investment Law and the ASEAN Investment Regime*, 17 CHI. J. INT'L. L. 341, 364-66 (2017) (explaining that power elites will strive to protect the economic regime that has formed around the ASEAN Way).

was immediately divested by foreign investors.[96] The contagion is credited to the countries sharing similar structural faults, in addition to the nations being in trade competition.[97] When the Thai baht collapsed in 1997, the Malaysian ringgit, which was also pegged to the USD, experienced identical selling pressure and self-immolated by year's end.[98]

Greater regional integration could exacerbate these problems in future crises. A region-wide convergence of institutions, rules, and practices could expose the entire ASEAN to identical structural defects that ultimately caused the Asian Financial Crisis to spread from Thailand to Malaysia. As one of the goals of financial integration is the development of the ASEAN's capital marketplace,[99] ASEAN securities may begin to move as a single class, making each member state more vulnerable to similar economic shocks.[100]

This risk is particularly pronounced for the ASEAN's low income countries ("LIC"), the Lao PDR, Myanmar, and Cambodia. Greater capital inflows from the advanced ASEAN economies have played a key role in developing these countries' commodity and manufacturing sectors.[101] While these capital flows have been critical in raising productivity and economic growth, they have also increased these LICs' exposure to the business cycles of the more advanced economies.[102] Greater regional integration thus makes these LICs susceptible to the same capital stoppages and retractions that helped precipitate the Asian Financial Crisis.

Further criticisms can be drawn by analogy to international trade theory, particularly the infant-industry argument for tariff barriers. This idea supposes that a tariff is beneficial to a new industry while it learns to be efficient and competitive with international markets.[103] In this Note's measure of financial integration, the analogous argument holds that favoring regional financial integration functions as a pseudo-tariff barrier against accessing the global financial marketplace. Trade theory normally overcomes this argument by showing that while a tariff barrier can address a valid market distortion, there are far superior policies that address the market distortion directly.[104] This is where the analogous argument fails:

96. *See* Kahn, *supra* note 15, at 44.

97. *Id*. at 44-45.

98. *Id.* at 46.

99. *See infra* at Section II.C.

100. Michael Plummer & Ganeshan Wignaraja, *Integration Strategies for the ASEAN: Alone, Together, or Together with Neighbors?* 18-19 (East-West Ctr., Working Paper No. 92, 2007).

101. IMF, *Asia Pacific: Managing Spillovers and Advancing Economic Rebalancing*, Regional Economic Outlook (Apr. 2012) at 43.

102. *Id*.

103. *See* John Jackson et al., International Economic Relations: Cases, Materials, and Text on the National and International Regulation of Transnational Economic Relations 33-34 (6th ed. 2013).

104. *See id*.

the distortion that is being addressed in the case of needless extra-regional financial intermediation and capital outflows is precisely the movement of capital outside of the region. Moreover, the financial integration being measured here is not a zero-sum game; rather, it is the reason that the ASEAN must develop its own institutions as an alternative without erecting legal barriers against the global financial system.

The final opposing view is that the IMF is nevertheless the best institution to oversee transnational financial policy. Since its inception in December 1945, the IMF has constantly been refining its advisory and supervisory capacities and regularly intervening during financial crises throughout the world.[105] The IMF is still troubled by an institutional bias towards Western powers. The three tiers of the IMF leadership—the managing director, executive board, and the board of governors—reflect the economic power of the countries at World War II.[106] In the board of governors, China and Japan control less than ten percent of the vote.[107] The ASEAN controls just over three percent.[108] The problem with increased IMF supervision is twofold. First, the role the IMF played in the Asian Financial Crisis is disqualifying. Second, one can only sustain the argument that the IMF nevertheless offers the ASEAN compelling reasons to remain under its auspices on the grounds that its analytical and regulatory capacity surpass the extant ASEAN system. While true, the IMF itself admits that this is only a reason for the ASEAN to be gradual in its pivot away.[109]

E. *What is at Stake?*

"In theory, financial integration can bring important benefits to a country and to a region."[110] ASEAN member nations' financial systems remain primarily bank-centered,[111] despite the expansion of insurance company and pension fund activity.[112] Financial integration can spur the development of the financial sector and the development of more sophisticated financial products. This development can boost growth, employment, and open new markets for ASEAN's poorer regions. Integration can also help facilitate the development of deeper, more liquid markets that will in turn lower the cost of capital, improve resource allocation, and create a more diverse risk pool.

For the ASEAN in particular, an important component of financial integration is satisfying one of the bloc's primary objectives: "to create a

105. *See* Kahn, *supra* note 15, at 32-37.
106. *Id*. at 37-38.
107. *Id*. at 38.
108. *Id*.
109. *See* Almekinders et al., *supra* note 5, at 20-30.
110. *Id.* at 13.
111. *Id.*
112. *Id*.

single market and production base which is stable, prosperous, highly competitive, and economically integrated with effective facilitation for trade and investment."[113] The table below highlights the wide divergence in financial development among the ASEAN countries.[114]

TABLE 2. CREDIT TO THE PRIVATE SECTOR[115]

	Private Sector Credit (in percent of GDP)				GDP per capita	Credit Growth (in percent)	
	1990	2000	2010	2013	(US$, 2013)	2010-12 (Avg.)	2013
Indonesia	46	20	28	36	3,510	23	20
Malaysia	105	137	120	134	10,457	11	10
Philippines	18	42	30	36	2,791	15	16
Singapore	84	96	130	173	55,182	14	16
Thailand	83	108	97	121	5,676	15	10
Brunei		50	41	31	39,659	-1	7
Cambodia		6	28	45	1,028	27	27
Lao P.D.R.		14	22	39	1,594	41	36
Myanmar			5	15	1,113	59	66
Vietnam		35	115	97	1,902	18	13
China	87	122	130	136	6,747	17	15
India	35	36	54	57	1,505	18	15
Japan	126	117	107	115	38,491	0	5
Korea	122	129	154	156	24,329	5	3

Sources: CEIC Data Company Ltd.; Haver Analytics; and IMF staff estimates

The aforementioned financial, governance, and crisis imperatives offer very specific benefits to the ASEAN region and provide compelling reasons why the bloc should integrate financially. Developing more robust regional capital markets can help cut the cost of financial intermediation and protect against the sudden flight of capital. Creating a regional credit facility more attuned to the economic necessity of member nations can avoid the sting of IMF conditionality in the event of further crisis. Similarly, developing more robust regional institutions can both draw from and reinforce the ASEAN Way of mutual respect on which the bloc was founded.

The question remains, however, of how to evaluate the ASEAN's integration initiatives. In lieu of a quantitative metric, we can look to the imperatives themselves for guidance. Thus, the operative question becomes: To what degree do the ASEAN's various undertakings address the problems identified above? We may also posit a more basic question,

113. ASEAN Charter, art. 1, ¶ 5, Aug. 8, 1967, http://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf.

114. Almekinders et al., *supra* note 5, at 13.

115. *Id*.

drawing on more fundamental conceptions of institutional efficacy: Are the rules, qualifications, and criteria clearly explained? Or, is there an enforcement mechanism where necessary?

II. Integration Initiatives

Financial integration is associated with capital mobility and is defined as the extent to which an economy's financial system is not shielded or otherwise made separate from other national or international markets. There are a number of ways to quantify financial integration, such as intensive versus extensive measures and *de facto* versus *de jure* measures.[116] Such integration is hard to identify and measure consistently since it can only be measured by proxy values and since its use has been historically conflated with other measures of economic integration.[117] This Note makes no attempts to quantify financial integration within the region. While the study of this "true" financial integration can help divine the variables that contribute to a convergence of financial asset prices between markets, the analysis in this Note is more concerned with the regional institutions wanted by ASEAN market participants given the imperatives for integration addressed above. What this survey will show is that, while early attempts have been largely ineffectual, efforts to create regional surveillance institutions, capital market development initiatives, and several credit facilities establish a working framework for a regional financial community.

A. *Financial Services & the ASEAN Economic Community*

Limited growth has occurred in the regional trade in financial services and any improvement is likely to occur slowly. This sub-section discusses cooperation in financial services liberalization, the ASEAN Free Trade Area ("AFTA"), the ASEAN Framework Agreement on Services, the Asia Pacific Economic Cooperation Forum ("APEC"), the ASEAN-China free trade agreement, and the ASEAN-ANZ free trade agreement. All of these agreements were incorporated in the ASEAN Economic Community ("AEC") in 2015.

1. ASEAN Free Trade Area ("AFTA")

Any conceptual success secured by AFTA obscures its institutional deficit compared to more mature regional trade organizations. AFTA is administered by neither rule nor principle and maintains an informal orientation that emphasizes consultation backed by a toothless enforcement mechanism. Since AFTA was formally adopted by the Fourth ASEAN Summit in 1992, the agreement has been gradually expanded to include all

---

116. *See generally* Dennis Quinn, et al., *Assessing Measures of Financial Openness and Integration*, 59 Int'l Monetary Fund Econ. Rev. 488 (2011).

117. *See generally id*.

the member states under a commitment to reduce area tariffs to zero.[118] This is referred to as the Common Effective Preferential Tariff Scheme ("CEPT"). The CEPT includes several exceptions to the zero-tariff commitment, notably the "general exceptions," or "products which a country deems necessary for the protection of national security, public morals, the protection of human, animal or plant life and health, and protection of articles of artistic, historic, or archeological value."[119]

The AFTA typifies many of the problems presented by other ASEAN integration initiatives. The AFTA is a nonbinding declaration of intent, the application and implementation of which is left to the national customs and trade authorities in each member state.[120] This declaration-based approach to cooperation adopted by the ASEAN can be viewed as one response to the problem presented by the need to maximize participation without breaching the ASEAN Way.[121] While this flexibility enhances the probability of agreement and participation in a legal regime—only one percent of customs items are subject to the CEPT exception[122]—it also tends to compromise legal integrity and enforceability.[123] Any member could, without seeking approval of any other, declare any class of goods exempt under the general exceptions and re-impose a tariff. The AFTA also has a toothless enforcement mechanism. The ASEAN Protocol on Enhanced Dispute Settlement Mechanism ("Protocol") governs formal dispute resolution. ASEAN members may, after direct negotiations with one another, petition the Senior Economic Officials Meeting ("SEOM") to submit the dispute to the Protocol for formal review.[124] SEOM decisions require consensus among all ASEAN members, however, which will always include the aggrieved party and the alleged transgressor.[125] While the AFTA appears to have achieved its goal of largely eliminating regional trade barriers—in a way that preserves the ASEAN Way by leaving implementation to domestic authorities—the lack of enforcement mechanisms ultimately undercuts the agreement's potential to foster and maintain regional integration absent good will. This makes AFTA non-cohesive rather than rigorous or integrated. At base, AFTA cannot be called a marked step towards integration as it merely reduces to paper standard international negotiation.

118. *See* John P. Goyer, *ASEAN Free Trade Area: Making the Region More Investment Competitive*, 18 No. 4 E. ASIAN EXECUTIVE REP. 9 (1996).

119. *See Common Effective Preferential Tariff*, US-ASEAN BUS. COUNCIL, INC., https://www.usasean.org/regions/asean/afta/common-effective-preferential-tariff (last updated Sep. 17, 2016).

120. *See* Peter Kenevan & Andrew Winden, *Flexible Free Trade: The ASEAN Free Trade Area*, 34 HARV. INT'L. L.J. 224, 239-240 (1993).

121. *See id.* at 226.

122. *See Common Effective Preferential Tariff*, *supra* note 119.

123. Kenevan & Winden, *supra* note 120, at 226.

124. *Id*. at 226-27.

125. *Id*.

2. ASEAN's Framework Agreement on Services ("AFAS")

The 1995 AFAS seeks to reduce barriers to trade and financial services. It requires members only to negotiate to lift restrictions in specific market segments and to expand upon their commitments under the World Trade Organizations' General Agreement on Trade in Services ("GATS") as it is applied to other member states. While information on the AFAS is extremely limited, a report commissioned by Australia's Office of Regional Economic Policy support facility finds this agreement "both disappointing and unimpressive."[126] The report finds that while AFAS has achieved greater liberalization within the region than did GATS alone, the margin of preference (the degree to which each member state has substantively acted to reduce barriers to other regional financial service providers) is extremely wide.[127] While nations such as Thailand have almost no restrictions on the operation of financial service providers, nations like Brunei and Malaysia require case-by-case government approval and require local partners.[128] The report found, additionally, that those nations that do have restrictions apply them equally against ASEAN and non-ASEAN nations. For these reason, AFAS suffers the same basic flaw that AFTA suffers: it does not push integration further but merely restates the status quo with an ASEAN gloss.

3. Asia-Pacific Economic Cooperation Forum ("APEC")

While not strictly an ASEAN forum, prior to 2000, the APEC was the preferred forum for ASEAN leaders to establish Asia-Pacific-wide economic strategy and has since consisted principally of ASEAN member states.[129] Meetings of the APEC finance ministers commenced in 1993. This institution has also been characterized as ineffectual. The group's diversity of interests all but guarantees that informality and flexibility are central to all proceedings. This is reflected in the organization's key documents. For example, a resolution issued in 1994 on banking and securities regulation declares that "[m]ember economies *accept* that regulatory and institutional barriers to the outflow of investment will be minimized," and that all investors are to be treated equally, with "exceptions as provided for in domestic laws, regulations and policies [.]"[130] Though one cannot object to the character of these goals, "APEC's contribution to tangible

---

126. Arner et al., *supra* note 3, at 15.

127. *See* Vo Tri Tranh & Paul Bartlett, Ten Years of ASEAN Framework Agreement on Services (AFAS): An Assessment 1, 6 (Reg'l Econ. Policy Support Facility Project No. 05/004 2006), http://aadcp2.org/file/05-004-ExecutiveSummary.pdf.

128. *See* Arner et al., *supra* note 3, at 15-16.

129. *History*, Asia Pac. Econ. Cooperation, http://www.apec.org/About-Us/About-APEC/History (last visited Oct. 23, 2017).

130. *See* Asia Pacific Economic Cooperation Forum, Joint Statement of the Sixth APEC Ministerial Meeting (1994), http://investmentpolicyhub.unctad.org/Download/TreatyFile/2910.

integration has been negligible due to its lack of institutional authority and political fragmentation."[131]

4. ASEAN-China Framework Agreement on Comprehensive Economic Cooperation ("ACTFA")

Agreed to in 2002 and amended in 2015, the ACTFA has four primary objectives: (1) to strengthen and enhance economic, trade, and investment cooperation; (2) to liberalize and promote trade in goods and services; (3) to explore new areas of cooperation; and (4) to facilitate economic integration while reducing gaps in relative development.[132] The agreement commits its signatories to negotiate further liberalization of trade in the financial services (including establishing rules for foreign investment) with China. The ACTFA, like the AFTA and AFAS, is another agreement that only binds its members to engage in bilateral negotiations. This agreement has, however, achieved some success. Out of this agreement, China entered into independent free trade agreements with Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Brunei in 2010, as well as Cambodia, Laos, Myanmar, and Vietnam in 2015.[133]

While this agreement has been more effective than other financial service agreements, it is still unsatisfactory as a regional integration initiative for several reasons. ACTFA has no supervisory organization. "While a future ACTFA standing body could become a cooperative bridge between ASEAN and China with respect to trade, organizational aspects of ACTFA have lagged the development of trade between members, for no formal ACTFA agency exists." It also did not commit the ASEAN to negotiate with China, but only provided members nations a foundation from which to enter individual negotiations.

5. ASEAN-Australia/New Zealand Free Trade Agreement

In 2009 the ASEAN members signed free trade agreements individually with Australia and New Zealand and also signed an agreement establishing the ASEAN-Australia-New Zealand Free Trade Area ("ASEAN-ANZ FTA"). The agreement spanned trade in goods, financial services, electronic commerce, investment, and energy.[134] While this Agreement is laudable in its totality for being negotiated between Australia-New Zealand and the entire ASEAN community and for setting actual commit-

---

131. Arner et al., *supra* note 3, at 18.

132. Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation Between the Association of South East Asian Nations and the People's Republic of China, Oct. 6, 2003, http://www.asean.org/uploads/2012/06/22196.pdf.

133. *See* Arner et al., *supra* note 3, at 19.

134. *See Joint Media Statement on the Signing of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area Cha-am*, ASS'N OF SOUTHEAST ASIAN NATIONS (July 5, 2012), http://asean.org/?static_post=joint-media-statement-on-the-signing-of-the-agreement-establishing-the-asean-australia-new-zealand-free-trade-area-cha-am-thailand-27-february-2009.

ments to reducing tariff barriers, it fails with regards to its finance provisions. In addition to a general prudential carve-out clause in Article 3 of the Annex on Financial Services, a further clause enables member states to adopt or enforce measures necessary to ensure compliance with domestic laws or regulations.

B. *Economic and Financial Surveillance*

Several regional forums have emerged to facilitate economic monitoring, continue policy dialogues, and advantage peer pressure for better policies.[135] The ASEAN finance ministers established the ASEAN Surveillance Process in 1998. Its objective is to strengthen cooperation by "(i) exchanging information and discussing economic and financial development of member states in the region, (ii) providing an early warning system and a peer review process to enhance macroeconomic and financial stability in the region, (iii) highlighting possible policy options and encouraging early unilateral or collective actions to prevent a crisis, and (iv) monitoring and discussing global economic and financial developments which could have implications for the region and propose possible regional and national level actions."

In May of 2000, the Surveillance Process was expanded into the Economic Review and Policy Dialogue ("ERPD"), which extended the invitation from just the ASEAN's representative finance ministers to the finance ministers of the Plus-3 nations (China, Japan and South Korea) and ASEAN+3 central bank governors. The expectation was that countries would implement better macroeconomic and financial sector policy if they could be pressured annually by their peers.[136] Lacking any strong supporting mechanisms for surveillance, however, the ERPD had a weak start. Problems ranged from the absence of a competent secretariat that could guide the surveillance (and dialogue) process, to the absence of the central bankers, whose access to domestic market data was critical to the ERPD's mission.[137]

In 2005, the ASEAN+3 authorities undertook to strengthen the ERPD. First, the ERPD was integrated into the Chiang-Mai Initiative[138] as a dedicated research arm to confirm the financial crisis necessary for its activation, a role it has maintained to present.[139] Without this surveillance, it would be difficult for creditor states to monitor the financial performance of the borrowing state. Second, the ERPD encouraged member state's central bankers to join its internal dialogues. Central banks have a strong advantage in macroeconomic and financial surveillance and play

135. *See* Masahiro Kawai & Peter Morgan, *Regional Financial Regulation in Asia* 18 (Asia Dev. Bank Inst., ADBI Working Paper 460, 2014).

136. *See id*.

137. *See* Kawai, *supra* note 17, at 11.

138. See generally infra at II.D.

139. See id.

key roles in the actual disbursement of liquidity once need arises.[140] Third, a new surveillance unit, the ASEAN+3 Macroeconomic Research Office ("AMRO"), was established to support the ERPD by focusing on prophylactic measures.[141] Since its inception in 2011, AMRO has submitted country-specific surveillance reports quarterly. AMRO is also the only surveillance institution that has a full-time staff. It has found success in establishing its own independent relationship with ASEAN central banking authorities and regularly conducting country and sector analysis when requested.[142] "AMRO is now in the process of transforming itself into an international organization, which marks an important milestone in enhancing the effectiveness of ASEAN+3 financial cooperation. In this way, AMRO is expected to conduct impartial surveillance as an objective, independent, international organization."[143]

While some progress has been made on the ERPD and the AMRO has achieved visible success, their overall effectiveness is questionable at best. The ERPD remains largely a venue for information sharing with weak, occasional policy review or coordination.[144] It has not yet moved into the more "advanced due diligence" functions—chief amongst which is the early warning system—envisioned since the inception of the ASEAN Surveillance Process.[145] AMRO remains a modest organization in terms of budget and personnel.[146] Some commentaries suggest that AMRO should further refine its prophylactic research into two areas of work: (1) bilateral and multilateral surveillance and (2) macroeconomic or financial sector surveillance.[147] As AMRO currently assess the financial health of the ASEAN on a country-by-country basis, this expansion would push AMRO closer to a role similar to that of the IMF and potentially into direct dealings with the IMF.[148]

The degree to which AMRO should align itself with the IMF is naturally contentious. The IMF produces high-quality analyses of global economic developments, which AMRO may use to economize on its limited resources and to which AMRO could itself contribute. Under the IMF

---

140. *See id*.

141. *See* Kawai & Morgan, *supra* note 135, at 19.

142. *See id.*

143. *See* Kawai, *supra* note 17, at 12.

144. *See generally* Hal Hill & Jayant Menon, *Financial Safety Nets in Asia: Genesis, Evolution, Adequacy and Way Forward, in* NEW GLOBAL ECONOMIC ARCHITECTURE: THE ASIAN PERSPECTIVE 83-111 (2014) (as referenced in Kawai, *supra* note 17, at 13).

145. *See generally* Masahiro Kawai & Cindy Houser, E*volving ASEAN+3 ERPD: Towards Peer Review or Due Diligence?*, *in* SHAPING POLICY REFORM AND PEER REVIEW IN SOUTHEAST ASIA: INTEGRATING ECONOMIES AMID DIVERSITY 65-98 (2008).

146. AMRO maintains a full-time staff of twenty researchers. *See* Kawai & Morgan, *supra* note 135, at 19.

147. Reza Siregar & Akkharaphol Chabchitrchaidol, *Enhancing the Effectiveness of CMIM and AMRO: Challenges and Tasks*, *in* NEW GLOBAL ECONOMIC ARCHITECTURE: THE ASIAN PERSPECTIVE 55-82, 77 (Masahiro Kawai, et al. eds., 2014).

148. *See id*. at 77.

umbrella, AMRO could create a niche in regional surveillance with a mandate for addressing policy spillovers and finding scope for collective action.[149] On the other hand, AMRO may find its role outside the IMF as that of a dissenter. AMRO may offer contrasting assessments of vulnerabilities within the region when it disagrees with IMF findings. AMRO's place in surveillance discussions with ASEAN officials, moreover, may be more candid if it remained independent than if it carried the IMF's political baggage. Finally, relying on IMF surveillance does not make sense as the Multilateralized Chiang-Mai Initiative can be activated without IMF input.[150]

This is not to say that AMRO should not borrow from the IMF. Nonetheless, AMRO should focus more on regional surveillance and spillover issues, providing its own views on regional vulnerabilities. AMRO must also augment its own analytical capacity. If AMRO can develop its own analytical capacities to roughly resemble those of the IMF, it may be possible to "provide its own assessment as to whether a country requesting MCMI assistance satisfies prequalification criteria and to formulate its own independent conditionality in the event the Multilateralized Chiang-Mai Initiative ("MCMI") is activated without an IMF program. Once AMRO acquires adequate capacity, the MCIM's link with the IMF can be substantially reduced and ultimately eliminated."[151]

C. *Financial Regulatory Harmonization & Capital Markets*

Launched as part of the AEC, the ASEAN Capital Market Forum ("ACMF") was founded to achieve greater integration of the bloc's capital marketplaces. The ACMF laid out a list of objectives, which can be broadly summarized into the following points:

1) Achieve greater harmonization in capital market standards of the ASEAN in the areas of offering rules for debt securities, disclosure requirements, and distribution rules;

2) Facilitate mutual recognition arrangements or agreements for the cross recognition of qualification and education and experience of market professionals;

3) Achieve greater flexibility in language and governing law requirements for securities issuance;

4) Enhance withholding tax structure, where possible, to promote the broadening of the investor base in ASEAN debt issuance; and

5) Facilitate market-driven efforts to establish exchange and debt market linkages, including cross-border capital raising activities.[152]

Given the disparate nature of capital marketplaces in ASEAN—ranging from Singapore's status as a global financial center to the complete

149. Kawai, *supra* note 17, at 21.

150. *Infra* at II.D.2.

151. Kawai, *supra* note 17, at 22.

152. Kawai & Morgan, *supra* note 135, at 20.

lack of a stock exchange in Brunei and Burma—the path towards capital integration has been a series of fits and starts. The Managing Director of the Monetary Authority in Singapore labeled the process disappointingly slow during a 2015 address of the ASEAN Banking Council.[153]

Since its inception in 2004, the ACMF has borne limited fruit. The crowning achievement is the ASEAN Disclosure Standards ("Standards"),[154] a framework for information disclosure regarding cross-border issuance of debt and equity instruments. The Standards are common to all ASEAN member countries;[155] they are further compliant against the International Organization of Securities Commissions' disclosure and accounting standards.[156] The Standards also contain an additional set of requirements that draw on region-wide commonalities "necessitated by the practices, laws, and regulation of [member states]."[157] As of now, only Malaysia, Singapore, and Thailand have actually adopted the Standards, though other states have agreed to do so in the future.[158]

The ACMF also undertook to publish an ASEAN Corporate Governance Scorecard ("Scorecard"), which was intended to evaluate the performance of every publicly listed company in Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam. While the scorecard was meant to be published annually, it has only been published twice—once in 2013 and once in 2014.

An overall assessment of the ACMF's success is difficult to make. It has created only two products, the Standards and the Scorecard. The effects of both are difficult to measure. On one hand, the creation of a completely harmonized set of disclosure standards is an analytical success and a testament to what can be done the ASEAN way. On the other hand, for the Standards to have real impact, they need to be adopted by all the ASEAN nations. This movement is the only way to push the ASEAN forward together as an asset class. The Scorecard could be a boon for intra-regional investors to understand new capital marketplaces, but it is not published frequently. What the "mutual recognition framework" envisions is a harmonization of investment practices, rules, and regulatory requirements across the ASEAN.[159]

153. Ravi Menon, Chairman, Managing Dir. of the Monetary Auth. of Sing., Keynote address at the ASEAN Banking Council Meeting (June 12, 2015), http://www.bis.org/review/r150707c.htm.

154. The ASEAN Disclosure Standards were previously called the ASEAN and Plus Standards Scheme.

155. Kawai & Morgan, *supra* note 135, at 20.

156. *ASEAN Disclosure Standards*, ASEAN CAPITAL MKTS. FORUM, http://www.theacmf.org/ACMF/webcontent.php?content_id=00015. (last visited May 2017) [hereinafter *ACMF Initiatives*].

157. Kawai & Morgan, *supra* note 135, at 20.

158. *See* ACMF Initiatives, *supra* note 156.

159. *ASEAN Sets Its Sights On Capital Market Integration*, THE MANILA TIMES, (Apr. 5, 2015), http://www.manilatimes.net/asean-sets-its-sights-on-capital-market-integration/173546/.

That there are 10 separate market systems with widely-varying rules and levels of development makes the task more than complex enough, but because many of the reforms—for example, relaxation of foreign investment restrictions—require domestic legislation or even constitutional changes, they fall outside the purview of the ACMF. This makes the market integration effort unavoidably dependent on other parts of the overall [ASEAN] integration blueprint, which may be the market integration effort's Achilles Heel.[160]

Parallel to the ACMF is the Asian Bond Markets Initiative (ABMI) that was launched in 2002 by the ASEAN+3. The crux of the ABMI is the development of local currency ("LCY") bond markets as an alternative source of funding to foreign-currency-denominated bank loans. In this manner, the ABMI acts to minimize the currency and maturity mismatches that made the region vulnerable to sudden reversals of capital inflows. Additionally, the ABMI has become another way to promote regional financial cooperation and integration. During the early years of the ABMI, a roundtable of policy makers focused on improving access to the LCY bond markets for various users. These policy makers developed model settlement systems, rules, and regulations and provided best practices to domestic credit rating agencies.[161] Once models and recommendations were settled, they were distributed to member states but only as nonbinding recommendations.

The ABMI has, since 2008, achieved more cognizable success. In 2010, it launched the Credit Guarantee and Investment Facility ("CGIF"), which is operated by the Asian Development Bank. The CGIF provides credit enhancement to increase access by investment-grade firms to LCY bond markets and to lengthen the maturity of those bonds.[162] The guarantees issued by the CGIF are irrevocable and unconditional commitments to pay bondholders upon non-payment by the issuers through the tenor of the bond.[163] As of March 2017, the CGIF has issued seventeen credit guarantees cumulatively valued at $1.6 billion for bonds issued by thirteen companies in eight ASEAN member countries.

To accelerate infrastructure financing schemes through the LCY bond market, Thailand introduced a regulation allowing sovereign issuers with no sovereign rating to issue their own sovereign bonds on Thailand's LCY bond market.[164] The only state to take advantage of this arrangement was the Lao PDR, which had issued four batches of bonds by the end of 2015, the last of which was the first Lao PDR issue to ever be rated by a credit

---

160. *Id*.

161. Asian Dev. Bank, *The Asian Bond Markets Initiative: Policy Maker Achievements and Challenges* 3 (2017), https://asianbondsonline.adb.org/documents/abmi_achievements_and_challenges_draft.pdf. (hereinafter *Achievements and Challenges*).

162. *Id*.

163. *See generally* Credit Guarantee & Inv. Facility, *About Us*, http://www.cgif-abmi.org/#about-us (last accessed November 2017).

164. *Achievements and Challenges*, *supra* note 161, at 5.

agency.[165] To whet investor appetites further, the Asian Development Bank launched an online database providing analyses of the LCY bond markets throughout the ASEAN+3.[166] The database also includes primers on legal and regulatory frameworks, historical trends, taxes, trading market infrastructure, and registry arrangements. The effectiveness of the website is extremely difficult to gauge as its impact differs from investor to investor and case by case. Lastly, while the ABMI has spawned many forums, sub-initiatives, and councils, none of them has risen above the level of non-binding dialogue.

An overall assessment of the ABMI is difficult to make for reasons similar to those regarding the ACMF. All regulatory recommendations and best practices must be adopted at the national level, and there is little evidence to suggest that this has taken place to any significant extent. The CGIF has the potential to be a very powerful force for promoting investment in the ASEAN bond markets, but is sharply limited by its own limited capital of $1.75 million. Despite being a recommendation from the AMBI, Thailand's willingness to allow foreign sovereign bonds in its own bond market is essentially a domestic undertaking. It does, however, offer a strong precedential case for future cross-listings.

D. *Monetary Cooperation*

Regional monetary cooperation is broken up into three periods by three different agreements: the ASEAN Swap Arrangement ("ASA"), the Chiang-Mai Initiative ("CMI"), and the Multilateralized Chiang-Mai Initiative ("MCMI").[167]

1. The Chiang-Mai Initiative

The CMI was a landmark liquidity support facility for the ASEAN introduced in 2000. The purpose of the CMI was to reduce the risk of subsequent currency crises, manage those crises that nevertheless arise, and quarantine potential contagion. It began by layering on top of the ASA, a network of bilateral swap agreements ("BSAs") amongst China, Japan, the Republic of Korea, and between one of these Plus-3 countries and a select ASEAN member.[168]

a. *The ASEAN Swap Arrangement*

This arrangement began in 1977 as the ASA, itself a modest set of $100 million USD in foreign exchange swaps intended to facilitate spot sales and forward purchases of local currency for USDs amongst the ASEAN's

165. *Id*.

166. *Id*. at 6.

167. While an Asian Monetary Fund was broached by Japan in the immediate aftermath of the Asian Financial Crisis, the idea was abandoned in the face of resolute opposition by both the United States and the IMF.

168. *See* Kawai, *supra* note 17, at 12.

five largest central banks. The arrangement was only intended to be in place for one year, but was renewed every year up until 2000 and expanded to provide credit to all ASEAN members.[169] Use of the credit agreement required a pre-existing IMF agreement with the debtor state. This conditionality and the modest $100 million size prevented use of the ASA in 1997 when the members' balance of payment crisis was at its peak.[170]

The leaders of the ASEAN—profoundly resentful towards the IMF for its treatment of Thailand, Indonesia, and Malaysia during the Asian Financial Crisis—began convening regularly with the financial ministers of Japan, China, and the Republic of Korea to strengthen the region against further crisis. In 2000, representatives of the ASEAN+3 reached an agreement with respect to financial cooperation:

> In order to strengthen our self-help and support mechanisms in East Asia through the ASEAN+3 framework, we recognized a need to establish a regional financial arrangement supplement the existing international facilities. As a start, we agreed to strengthen the existing cooperative frameworks among our monetary authorities through the "Chiang Mai Initiative." The [CMI] involves an expanded ASEAN Swap Arrangement that would include ASEAN countries, and a network of bilateral swap repurchase agreement facilities among ASEAN countries, China, Japan, and the Republic of Korea[171]

Like other ASEAN resolutions, the CMI was an agreement to conduct further negotiations, rather than a final agreement on swap arrangements. Subsequent negotiations did follow, however, producing marked changes. In November 2000, the ASEAN leaders agreed to expand the ASA to $1 billion USD. Contributions were broken up between tier 1 countries and tier 2 countries.[172] Members of both tiers were eligible to borrow the maximum of twice their contribution.[173] Swaps could be drawn for up to six months, with a possible one-time extension of an additional six months.[174]

Although this enhanced ASA served as a symbol of ASEAN solidarity, its ability to ameliorate or prevent future crises was limited by three features. First, the amounts involved remained small despite the augmentation and still required IMF conditionality. Second, creditors could opt out of the arrangements. Under the original ASA, opting out was only possi-

169. *See id*.

170. *See* Kawai, *supra* note 17, at 13.

171. Ass'n of Southeast Asian Nations, *Joint Ministerial Statement of the ASEAN+3 Finance Ministers Meeting*, Asean.org (May 6, 2000), http://www.asean.org/storage/images/2012/Economic/AFMM/Agreement_on_Finance/The%20Joint%20Ministerial%20Statement%20of%20the%20ASEAN.pdf (hereinafter *Joint Statement on CMI*).

172. Tier 1 consisted of Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Each tier 1 country contributed $150 million USD each. The tier 2 countries, consisting of Vietnam, Myanmar, Cambodia, and the Laos PDR, contributed $100 million USD in total.

173. *See Joint Statement on CMI*, *supra* note 171, at 15.

174. *Id*.

ble in "exceptional financial circumstances." What qualifies as an exceptional circumstance remained undefined until 1992, when a revision to the agreement left definition to domestic regulators.[175] Third, renewal of an outstanding swap agreement was blocked if a second country applied for its swap.[176] Nonetheless, the presence of the ASA underscored the insistence by the ASEAN that it be treated as a unit and that it not be bypassed by direct dealing through its members states. The simultaneous creation of an economic surveillance process created a foundation for more dialogues in the future.

b. *Bilateral Swap Agreements*

The CMI provided for a potential total of thirty-three bilateral currency swap agreements: thirty agreements between each of the Plus-3 governments (Japan, China, and the Republic of Korea) and each of the ten ASEAN members, as well as three agreements between the Plus-3 governments. The number of BSAs that had actually been negotiated was slightly less than half of the potential maximum. Again, despite the CMI being only a commitment to negotiate further, most of these BSAs were negotiated further. As a result, the CMI, at its peak, totaled $92 billion USD.

TABLE 3[177]

Table 1: Progress on Bilateral Swap Arrangements under the Chiang Mai Initiative, April 2009

To: / From:	PRC	Japan	Korea, Rep. of	Indonesia	Malaysia	Philippines	Singapore	Thailand	Total
PRC	–	3.0[a]	4.0[a]	4.0	1.5	2.0[a]		2.0	16.5
Japan	3.0[a]	–	13.0[b]	12.0	1.0[c]	6.0	3.0	6.0	44.0
Korea, Rep. of	4.0[a]	8.0[b]	–	2.0	1.5	2.0		1.0	18.5
Indonesia			2.0	–					2.0
Malaysia			1.5		–				1.5
Philippines		0.5	2.0			–			2.5
Singapore		1.0					–		1.0
Thailand		3.0	1.0					–	4.0
Total	7.0	15.5	23.5	18.0	4.0	10.0	3.0	9.0	90.0

PRC = People's Republic of China; Korea, Rep. of = Republic of Korea.

Notes: [a] The agreements were in local currencies, and the amounts are US dollar equivalents.

[b] Japan–Republic of Korea BSA included both US dollar swaps ($10 billion from Japan to the Republic of Korea and $5 billion from the Republic of Korea to Japan) and local currency swaps ($3 billion equivalent each from Japan to the Republic of Korea and vice versa). The yen–won BSA was raised from $3 billion to $20 billion equivalent in December 2008 until end–April 2009, which was later extended to end–October 2009.

[c] There was also a $2.5 billion commitment (made on 18 August 1999) under the New Miyazawa Initiative.

[d] The table does not include the ASEAN Swap Arrangement, which totaled $2 billion.

Source: Government of Japan, Ministry of Finance website. http://www.mof.go.jp/english/

The CMI's results blend a purposeful display of regional solidarity with practical confusion. First, the sixteen bilateral lines established by the

175. *See The Chiang Mai Initiative*, PETERSON INSTIT. FOR INT'L ECON., https://piie.com/publications/chapters_preview/345/3iie3381.pdf (hereinafter Peterson on CMI).

176. *Id*.

177. Kawai, *supra* note 17, at 13.

Plus-3 nations entailed terms that make IMF sanction necessary for accessing eighty percent of the BSAs, instead of just introducing bespoke conditions for the region. The CMI's link to an IMF program and its conditionality was designed to address the concern that the liquidity shortage of a requesting country might be due to fundamental policy problems, rather than simple investor panic or a genuine external shock.[178] Second, the BSAs retained the opt-out provisions of the ASA. Though the BSAs required that individual partner countries carry out their bilateral agreements once a member country faced a crisis situation, the potential creditor countries retained the right to retreat from the arrangement.[179] This ability to retreat created a degree of uncertainty as to whether the needed liquidity would be fully secured by a potential borrower during crisis.[180] In turn, this uncertainty is exacerbated by a third flaw: each BSA must be activated "simultaneously and equiproportionately."[181] For example, if Thailand, which had a BSA with each Plus-3 nation, requested activation of one line of credit, it would automatically activate all three lines of credit.[182] This could have, potentially, encouraged a race to bottom, whereby all but the last potential creditor can retreat from a BSA while nominally protecting the spirit of the CMI. Finally, while regional in scope, the CMI was still a network of bilateral agreements; the CMI was not itself regional. While creditors would coordinate amongst themselves to affect joint activation of a BSA, it was "in this relatively limited sense, as well as falling under the rubric of the principles framework, that the swaps constitute[d] a [regional] network."[183]

Indeed, the CMI did not create a new institution, nor did it pool reserves of member states under central management. Contrary to the hopes of regional integration, the CMI did not mobilize a substantial fraction of the foreign exchange reserves of the Plus-3 nations; nor did the BSAs constitute a network beyond the very limited definition of acting jointly.[184] On the other hand, the CMI provided financial resources that were collectively substantial for the ASEAN.[185] More importantly, the BSAs provided a focus on concrete negotiations, economic surveillance, and region wide financial planning.[186] These advances were a tremendous step forward for a region guided by a policy of non-interference and agreements that regularly militate towards nonbinding resolutions.[187] The CMI was thus significant due to both the resources that it brought to bear on

178. *Id*.
179. *Id*. at 14
180. *Id*.
181. *See* Peterson on CMI, *supra* note 175, at 18.
182. *Id*.
183. *Id*.
184. *Id*. at 29.
185. *Id*.
186. *Id.* at 23.
187. *Id*.

crisis negotiations and due to the precedent it set for establishing regional institutions in the future.

2. The Multilateralized Chiang-Mai Initiative

While the CMI was more symbolic than effective, the need for a liquidity support mechanism for the region appeared less urgent as the region gradually recovered from the Asian Financial Crisis. The principal macroeconomic adjustments of the crisis-affected countries were through currency depreciation and maintaining a high ratio of exports to GDP. Most ASEAN nations posted large account surpluses throughout the early 2000s and experienced large net capital outflows. As a result, these economies have been accumulating vast foreign reserves.[188]

This large accumulation of reserves provided self-insurance against the kind of crisis that spread through the region a decade earlier. This was less the result of a conscious strategy to accumulate reserves and more the outcome of exchange rate intervention to prop up the export sector.[189] Even though a regional foreign exchange liquidity mechanism appeared less urgent considering the region's growing war chest, ASEAN ministers maintained momentum to evolve the CMI into a more effective mechanism. At a ministerial gathering in Japan in 2007, the ASEAN+3 ministers laid out the plans for the MCMI.[190]

Unlike the CMI, the MCMI is a single agreement, the terms of which were negotiated by and applied universally to all ASEAN+3 nations. The total size of the MCMI was set at $240 billion USD,[191] with eighty percent contributed by the Plus-3 countries and the remaining twenty percent by the ASEAN members.[192] The IMF de-linked portion was raised from twenty percent under the CMI to thirty percent of a country's maximum swap quota. Total available credit was determined by modifying a country's contribution by a "borrowing multiplier," which reflected the likelihood that the potential borrower would need to access the facility.[193]

188. *See* Chalongphob Sussangkarn, *The Chiang Mai Initiative Multilateralization: Origin, Development, and Outlook*, 6-7 (ADBI Working Paper No. 230, 2010).

189. *Id.* at 7.

190. Ass'n of Southeast Asian Nations, *Joint Ministerial Statement of the 10th ASEAN+3 Finance Ministers Meeting* (2007), http://www.mof.go.jp/english/international_policy/convention/asean_plus_3/20070505.htm ("[W]e unanimously agreed in principle that a self-managed reserve pooling arrangement governed by a single contractual agreement is an appropriate form of multilateralization.").

191. The facility was expanded from its initial $120 billion to $240 billion in 2012. The borrowing multipliers and each nation's relative contribution remained the same.

192. Sussangkarn, *supra* note 188, at 8.

193. *Id*.

Table 4[194]

Table 2: Financial Contributions, Maximum Swap Amount, and Voting Powers under the Chiang Mai Initiative Multilateralization

	Financial Contributions		Purchasing Multiple	Maximum Swap Amount	Voting Powers ($ billion)			
					Basic Votes	Votes Based on Contributions	Total Voting Powers	
Members	($ billion)	(%)		($ billion)			($ billion)	(%)
Plus Three	**192.00**	**80.00**	--	**117.30**	**9.60**	**192.00**	**201.60**	**71.59**
PRC total	76.80	32.00	--	40.50	3.20	76.80	80.00	28.41
PRC	68.40	28.50	0.5	34.20	3.20	68.40	71.60	25.43
Hong Kong, China	8.40	3.50	2.5	6.30	0.00	8.40	8.40	2.98
Japan	76.80	32.00	0.5	38.40	3.20	76.80	80.00	28.41
Republic of Korea	38.40	16.00	1	38.40	3.20	38.40	41.60	14.77
ASEAN	**48.00**	**20.00**	--	**126.20**	**32.0**	**48.00**	**80.00**	**28.41**
Brunei Darussalam	0.06	0.025	5	0.30	3.20	0.06	3.26	1.158
Cambodia	0.24	0.100	5	1.20	3.20	0.24	3.44	1.222
Indonesia	9.104	3.793	2.5	22.76	3.20	9.104	12.304	4.369
Lao PDR	0.06	0.025	5	0.30	3.20	0.06	3.26	1.158
Malaysia	9.104	3.793	2.5	22.76	3.20	9.104	12.304	4.369
Myanmar	0.12	0.050	5	0.60	3.20	0.12	3.32	1.179
Philippines	9.104	3.793	2.5	22.76	3.20	9.104	12.304	4.369
Singapore	9.104	3.793	2.5	22.76	3.20	9.104	12.304	4.369
Thailand	9.104	3.793	2.5	22.76	3.20	9.104	12.304	4.369
Viet Nam	2.00	0.833	5	10.00	3.20	2.00	5.20	1.847
ASEAN+3	**240.00**	**100.00**	--	**243.50**	**41.60**	**240.00**	**281.60**	**100.00**

ASEAN = Association of South East Asian Nations; Lao PDR = Lao People's Democratic Republic; PRC = People's Republic of China.

Source: Government of Japan, Ministry of Foreign Affairs of Japan (1999).

The ministers also decided on a broad decision-making mechanism for managing the MCMI.[195] Fundamental issues—review of the total size, contributions, borrowing multipliers, admission, and potential conditionality—are decided by consensus of the ASEAN+3. Lending issues—principal amount, renewals, and terms of default—are decided by majority vote.[196] The MCMI also created a sub-facility dedicated to crisis prevention. While relatively small at $24 billion USD, access to any portion of the sub-facility requires no IMF conditionality.[197] The motivation for its creation came from the mini-won crisis of 2008, wherein the Republic of Korea turned to the Federal Reserve Bank of the United States for liquidity support as it had not yet reached the crisis conditions necessary to activate the CMI, nor did it want to deal with the IMF.[198]

The MCMI is an improvement over the CMI. The credit facility is substantially larger; as a multilateral agreement, it represents a truly regional effort. The IMF de-linked portion is also substantially larger, both with regard to the primary credit facility and the crisis prevention sub-facility. Additionally, the dual voting system pays homage to the ASEAN Way

194. Kawai, *supra* note 17, at 16.

195. Sussangkarn, *supra* note 188, at 8.

196. *Id*.

197. *See id*.

198. *See id*.

without sacrificing the MCMI's efficacy.[199] These achievements notwithstanding, there is still the question of whether enough progress has been made to counter liquidity crises without sacrificing regional governance. There are three key problems: the adequacy of the MCMI, the remaining IMF link, and procedural clarity should the facility need activation.

TABLE 5[200]

Table 3: Available Financial Resources under the International Monetary Fund Rapid Financing Instrument and the Chiang Mai Initiative Multilateralization's International Monetary Fund-Delinked Portion

	IMF			CMIM			
	Quotas ($ billion)	Rapid Financing Instrument ($ billion)		Financial Contributions ($ billion)	Maximum Swap Amount ($ billion)	IMF-Delinked Amount ($ billion)	
Members		50% of Quota	100% of Quota			IMF link of 30%	IMF link of 40%
Plus Three	**43.066**	**21.534**	**43.066**	**192.00**	**117.30**	**39.600**	**50.700**
PRC total	14.384	7.192	14.384	76.80	40.50	16.560	19.980
PRC	14.384	7.192	14.384	68.40	34.20	10.260	13.680
Hong Kong, China	--	--	--	8.40	6.30	6.300	6.300
Japan	23.599	11.800	23.599	76.80	38.40	11.520	15.360
Republic of Korea	5.083	2.542	5.083	38.40	38.40	11.520	15.360
ASEAN	**13.282**	**6.677**	**13.282**	**48.00**	**126.20**	**37.860**	**50.480**
Brunei Darussalam	0.325	0.162	0.325	0.06	0.30	0.090	0.120
Cambodia	0.132	0.066	0.132	0.24	1.20	0.360	0.480
Indonesia	3.140	1.570	3.140	9.104	22.76	6.828	9.104
Lao PDR	0.080	0.040	0.080	0.06	0.30	0.090	0.120
Malaysia	2.679	1.339	2.679	9.104	22.76	6.828	9.104
Myanmar	0.390	0.195	0.390	0.12	0.60	0.180	0.240
Philippines	1.539	0.770	1.539	9.104	22.76	6.828	9.104
Singapore	2.126	1.063	2.126	9.104	22.76	6.828	9.104
Thailand	2.175	1.088	2.175	9.104	22.76	6.828	9.104
Viet Nam	0.696	0.384	0.696	2.00	10.00	3.000	4.000
ASEAN+3	**56.348**	**28.211**	**56.348**	**240.00**	**243.50**	**77.460**	**101.180**

$ = US dollar; ASEAN: Association of South East Asian Nations; ASEAN+3 = Association of South East Asian Nations Plus Three; CMIM = Chiang Mai Initiative Multilateralization; IMF = International Monetary Fund; Lao PDR = Lao People's Democratic Republic; PRC = People's Republic of China.

Source: Modified version of Siregar and Chabchitrchaidol (2014).

The total amount that a member country can draw from the MCMI equals its contribution times its purchasing multiple. Even with the increase in the total size of the facility, the maximum swap quota available to any country is likely insufficient for crisis response—the IMF de-linked portion is certainly too small. For instance, the maximum amount available to Thailand is $23 billion USD. While this exceeds the amount arranged under the IMF package during the Asian Financial Crisis, which was $17 billion USD, it is still smaller than the amounts raised for the Republic of Korea and Indonesia ($58 and $42 billion USD respectively) arranged during the crisis.[201] More troublingly, the IMF de-linked portion—the most important component in the greater concern of regional

199. The dual voting structure ensures that the most important class of issues are still consensus and thus abides by the ASEAN's soft policy of non-interference. The issues decided by simple majority vote grant the MCMI greater efficacy on financial issues.

200. Kawai, *supra* note 17, at 19.

201. *Id*. at 18.

integration—is vanishingly small. Thailand and Indonesia could only access $6.8 billion without IMF conditionality; the Republic of Korea only $11.5 billion. Notably, the mini-won crisis that spurred the creation of the prophylactic sub-facility proved this amount was insufficient. Facing conditions that did not yet constitute a crisis under the MCMI, the Republic of Korea secured $30 billion bilateral swap arrangement with the U.S. Fed.

To counter another crisis using the MCMI, then, the total size of credit available must increase. Given the IMF stigma left in many countries affected by the Asian Financial Crisis,[202] the IMF de-linked portion must also be expanded so that an ASEAN member may access credit without worrying about an IMF program.

There are several ways that the MCMI can be modified to meet these worries. First, the total resources could be doubled. This would dramatically raise the maximum available amount as well as the de-linked portion.[203] Second, the purchasing multiples can be increased for the most vulnerable nations and decreased for more robust economies. At the extreme, the multiple could be reduced to zero for the Plus-3 nations, which are unlikely to depend on the MCMI. Third, the IMF de-linked portion could be increased to one-hundred percent.[204]

As noted above, the IMF program requirement was initially put in place to address the concern that the liquidity shortage of a requesting country might be due to fundamental policy problems, rather than simple investor-panic or to a genuine external shock. This concern could be alleviated if a regional organization, namely AMRO, were to take the place of the IMF in identifying nations that have fundamental faults by suggesting reform programs of its own design. Finally, there is a lack of clarity over procedural matters pertaining to the activation of the MCMI. There is no precise economic information that is required for other MCMI members to make decisions on emergency assistance. When a financial crisis strikes a member country's responsiveness will be essential. Without any set criteria, such as "what information should be prepared when requesting assistance, what steps should be taken before contacting [MCMI] chair countries, and to whom they should speak if they need to use the facility very soon," activation may be delayed beyond the point MCMI's usefulness.[205] King amongst these problems is that the MCMI lacks a permanent secretary in charge of its activation. While AMRO is involved in the process insofar as it provides research services, an easy solution to this problem could be to seat the secretary within AMRO itself.

202. Takatoshi Ito, *Can Asia Overcome the IMF Stigma?*, 102 Am. Econ. Rev. 198, 198 (2012).

203. Kawai, *supra* note 17, at 19.

204. *Id*.

205. *Id*. at 20.

III. Assessing the ASEAN Initiatives

Cooperation in financial policy among the ASEAN economies has a limited history and limited results, even though the region's need for market reforms is part and parcel of the region's declared goals of economic betterment. Past regional initiatives on financial issues have lacked practicality and efficacy or, in the case of the Asian Monetary Fund, have been resolutely sent to the gallows. This result leads one to doubt the possibility of an effective regional financial body, especially given the strong role that the ASEAN Way of collective noninterference has played in determining norms of regional governance, particularly in the security realm.[206]

The ASEAN's financial integration has lacked an institutional or binding legal framework. In contrast to the rules-focused WTO or EU, the region's organizations have been oriented to have minimal impact on national rule. Instead, most pay lip-service to the idea of financial integration and pass the issue of enforceable agreements to bilateral negotiations. Taking heed of the significant governance and economic imperatives for integration is an important step, but it is merely the first step. The AFTA, AFAS, APEC, ACTFA, and the ASEAN-ANZ FTA all sustain and buttress this criticism. Asia has no over-arching political structure comparable to the EU and, judging from these agreements, there appears to be little appetite to concede national sovereignty. While the ASEAN Way appeared initially to be both a strong impetus to integrate (as it would foster an ever-closer Southeast Asian community) and a political expedient on the path towards integration, perhaps the bloc's policy of noninterference is the ultimate impediment to greater financial integration. This is all further exacerbated by great diversity in terms of economic and financial development, institutional quality, regulatory regimes, and capital account openness.[207]

The integration initiatives that have formed since 2000 have been much stronger, not only because they made cognizable steps towards financial integration, but because they have addressed the financial, governance and crisis imperatives for integration. The ACMF's Standards and Scorecard provide the basic tools for market participants to both offer and purchase debt and equity securities. The ABMI transcended its initial role as a mere policy forum to create a credit guarantee facility dedicated to infrastructure projects, to create an online database to enhance transparency in the LCY bond market, and to push Thailand to allow the novel sale of Lao PDR sovereign bonds in its own marketplace. The ERPD and the AMRO provide regional surveillance and prophylactic measures to militate against the chance of another crisis. If the AMRO can develop its institutional capacity, it could potentially eliminate the IMF link from the MCMI by becoming a new monetary authority. Similarly, the MCMI, by

206. *See, e.g.,* Nick Bisley, *The End of East Asian Regionalism?*, 17 J. East Asian Aff. 148 (2003).

207. *See* Kawai & Morgan, *supra* note 135, at 22.

evolving beyond the participatory problems of the CMI, proves that the ASEAN Way is not an insurmountable hurdle on the path towards financial integration.

The principal fault of these organizations is not that they are patently ineffectual, but that, in their current incarnations, they do not do enough. The ERPD, AMRO, ACMF, ABMI, and MCMI all have obvious paths that they must follow to become more robust. Each is theoretically well structured to address the various integration imperatives, but none is currently large enough to be deemed properly successful. This is essentially a problem of time. The ASEAN has only been focused on financial integration in the 20 years since the Asian Financial Crisis in 1997. To extrapolate the potential for increased institutional efficacy, it is instructive to turn briefly to the case of the EU.

European officials were early to recognize the potential benefits of, and barriers to, financial integration. The 1966 Segré report identified a home bias towards national governments and other domestic actors due to restrictions on permissible cross-border investment activity.[208] Few corporate securities were listed outside of their home markets. These conditions generally reflect the current condition of the ASEAN's financial markets, advanced technical sophistication notwithstanding.[209] Financial integration in the EU is now the most developed of any region—the result of "ratcheting up objectives adopted over a long period since the 1950s, leading in particular to the creation of a single market in financial services and a single European currency."[210]

While the EU founding treaties provided for the free movement of goods, services, and capital, these principles had no specific substance until EU financial integration turned to focus on harmonizing minimum standards.[211] Full harmonization proved impossible until the passage of the Single European Act, which created a common EU market based on "mutual recognition and common minimum standards, made applicable by EU directives and brought into effect through domestic law."[212] Much unlike the ASEAN policy of noninterference, EU member states must generally adhere to certain precepts so that legislation at the EU level will directly affect actors in individual states, while national governments may be liable in damages for failing to implement EU legislation.[213] Advantaging its comparatively greater power over member states, the EU has created the most developed regional institutions for financial supervision, regulation, and resolution. In so doing, it has also created the highest regional inte-

208. *See generally* SEGRÉ ET AL., EUROPEAN ECONOMIC COMMUNITY: THE DEVELOPMENT OF A EUROPEAN CAPITAL MARKET: REPORT OF A GROUP OF EXPERTS APPOINTED BY THE EEC COMMISSION (1996) (as referenced in Arner et al., *supra* note 3, at 33).

209. *See* Arner et al., *supra* note 3, at 33.

210. *Id*. at 34.

211. *Id*. at 35.

212. *Id*. at 36.

213. *Id*. at 35.

gration of rules, standards, and procedures. The EU financial architecture covers "financial intermediaries, securities regulation, accounting, company law, and regulation for institutional investors."[214] Nonetheless, major variances in national practices and institutions remain. Again obviating any *de jure* or *de facto* indices of integration and focusing on institutional quality, the EU still faces many obstacles:

> Continued diversity of financial systems, laws, and regulatory structures and practices; a complex system, with large number of players with overlapping responsibilities and potential conflicts of interest; continued evolution of EU-wide supervisory agencies with largely untested powers; large size, potential cumbersomeness, and lack of strong authority of the ESRB; national resistance to an expanded EU-wide authority and a tendency to protect domestic financial industries; inadequate information sharing; weak cross-border supervisory cooperation based on MOUs lacking legal force and tending to be overridden in crisis; and a lack of a legal framework for resolution and deposit insurance of cross-border financial firms.[215]

The EU's protracted experience of forming an integrated marketplace indicates the scale of the problem facing the ASEAN as it develops financially.[216] The EU is not, of course, a perfect proxy. The ASEAN economies are much more diverse in terms of financial development, macroeconomic concerns, and institutional capacity than the EU. Thus, reference to the EU cannot divine the appropriate level of financial regulatory cooperation and according institutional capacity.[217] What it can illustrate is that the ASEAN institutions need to be evaluated in the ASEAN context and that those institutions cannot be criticized only because they are not large enough. The ASEAN will inevitably undergo greater financial development, and the degree of institutional breadth will develop. The ERPD, AMRO, ACMF, ABMI, and MCMI are successes because they are structured to allow the ASEAN to address the financial, governance, and crisis imperatives for integration.

Lastly, some scholars have suggested the ASEAN's recent success in establishing a regional order can be attributed to China's growing enthusiasm for normalizing regional relationships. China's own economic détente in the mid-1990s coincided with the Asian Financial Crisis. The sixth ASEAN summit, held in Hanoi in December 1998, committed members to "a higher plane of regional cooperation to strengthen ASEAN's effectiveness in dealing with the challenges of [the global economy]."[218] While China's early foreign direct investment into the ASEAN was a significant infusion, it is also responsible for pulling investment away from the ASEAN. "The rise of China after 1998, and its attraction for foreign in-

214. *Id*. at 36.

215. Kawai & Morgan, *supra* note 135, at 21-22.

216. *See* Arner et al., *supra* note 3, at 36.

217. *See* Kawai & Morgan, *supra* note 135, at 5-12.

218. *Hanoi Declaration of 1998*, Dec. 16, 1998, http://asean.org/?static_post=ha-noi-declaration-of-1998-16-december-1998.

vestors, actually affected growth negatively in Southeast Asia, whose low-technology manufacturing industries also depend on foreign direct investment."[219] China has had an even more contentious relationship with the ASEAN in the security context, where China's occupation of the Spratley Islands and Mischief Reef have articulated "Beijing's willingness to use force as an instrument of foreign policies," even against its economic allies.[220] Furthermore, while China has certainly had a say in ASEAN+3 initiatives, its ability to drive discussions is limited by the ASEAN's insistence on consensus-building and unanimity.

China's willingness to participate in the ASEAN+3 system despite frequent security clashes with other members and the simple fact that it stands to gain little from any development initiatives is similar to its impetus to launch the Asian Infrastructure Bank. As part of its "One Belt, One Road," initiative, China wants to create the infrastructure necessary to sustain its own investments in Southeast Asia.[221] China is also trying to become a new financial hegemon in the region. China has regularly voiced its displeasure with the slow decision-making of the IMF, the World Bank, and its own minor position relative to its economic influence. While China is incapable of forcing ASEAN decision-making, it is capable of positioning itself as a necessary precondition to robust financial integration in the ASEAN.

Conclusion

Faced with significant imperatives to integrate financially, the ASEAN has launched a number of region-wide initiatives. Most of the early attempts under the umbrella of the ASEAN Economic Community are unsubstantial. The AFTA, AFAS, APEC, ACTFA, and the ASEAN-ANZ FTA edge closer to non-binding resolutions—ineffective agreements to agree that do not actually compel the member states to bridge their markets. In contrast, the later agreements—ERPD, AMRO, ACMF, ABMI, and MCMI—are significant structural achievements. While the various surveillance organizations, capital market initiatives, and credit facilities are not robust enough to be called categorical success, they lay the groundwork for a regional financial community that address the specific problems that the ASEAN has faced because of its connection to extra-regional institutions and markets. Despite its shortcomings and slow pace, the ASEAN provides a feasible and relevant case for regulatory cooperation on a voluntary basis.[222]

---

219. David Martin Jones & Michael L.R. Smith, *Making Process, Not Progress: ASEAN and the Evolving East Asian Regional Order*, 32 INT'L SECURITY 148, 165 (2007).

220. *Id*. at 175.

221. *See* David Dollar, *The AIIB and the 'One Belt, One Road'*, THE BROOKINGS INSTITUTION (2015), https://www.brookings.edu/opinions/the-aiib-and-the-one-belt-one-road/.

222. Kawai & Morgan, *supra* note 135, at 27.