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Simone Suelzer McCormick

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ASEM: A PROMISING ATTEMPT TO OVERCOME PROTECTIVE REGIONALISM AND FACILITATE THE GLOBALIZATION OF TRADE

SIMONE SUELZER MCCORMICK*

I. INTRODUCTION

The economic relationship between Europe and Asia dates back to the early years of trading via the ancient silk route. Goods from Asia, such as spices, silk, dyes and porcelain, were highly valued commodities throughout Europe. In return Asia valued glass and products made of precious metals from Europe. Trading was intensified by the discovery of the sea route to Asia by Vasco de Gamma in 1497-98.

Although it can be said that there had been a long-standing history of cultural exchange between the continents, the relationship between them became strained during the years of imperialist European policy and gunboat diplomacy. The ASEM process is a recent re-acquaintance between Asia and Europe that bears the promise of establishing a solid relationship that facilitates inter-regional trade. It is based on equality and sincere efforts of dialogue and cooperation.

The first new ties were established in 1980 when the EEC and ASEAN signed a cooperation agreement that came into force the same year. Since 1980 the EEC and ASEAN have worked on economic cooperation and achieved progress in the areas of investment and industrial

cooperation.¹ In addition, the Ministerial Meetings stressed the importance of human resource development and implemented several programs to intensify relations, such as scholarship programs, training opportunities, business management centers, etc.²

The ASEAN community was concerned, however, that the then impending single European market, "EEC 1992" and developments within Europe, such as Germany's unification, would deter from the cooperation process with ASEAN.³ Those concerns did not materialize and in 1996 the ASEM process was born which on one hand included a stronger, more unified EU and on the other a stronger ASEAN and additional Asian trading partners.

ASEM stands for Asia Europe Meeting and can be described as an open, mostly informal dialogue-based process. While ASEM's main interest is to establish closer economic cooperation between the two continents, it simultaneously seeks to create a foundation of cooperation based on political as well as social dialogue. Leon Brittan, Vice President of the European Commission, claims that the EC Commission proposed an EU-Asia strategy, which led to a proposal from the Asian side that the two regions should get together.⁴

The first Asia-EU meeting forum ("ASEM Summit") was launched in 1996 in Bangkok, Thailand at the initiative of the Singaporean Prime Minister Goh Chok Tong.⁵ The Asian member countries are seven ASEAN members, Thailand, Singapore, Malaysia, Brunei, Indonesia, the Philippines and Vietnam, plus three additional members, China, South Korea and Japan. All twenty-five EU members are members of ASEM.⁶

* Simone Suelzer McCormick earned her Juris Doctor from Golden Gate University of Law in 2004. *Nihil sine magno vita labore dedit mortalibus.* (Horaz) The author thanks her husband Glenn and daughter Maxine for their loving support. In addition, she expresses her indebtedness to Professor Dr. Sompong Sucharitkul for inspiring her research on ASEM, and moreover, for providing students with a forum to study international law and to grow as global citizens.

1. Sompong Sucharitkul, *EEC 1992: Impact on ASEAN*, Singapore Conferences on International Business Law, Conference VI: Current Development in International Transfers of Goods and Services 14, 14-16, Sept. 9-11, 1992.

2. Sucharitkul, *supra* note 1, at 17.

3. Sucharitkul, *supra* note 1, at 1-5.

4. MYUNG HOON CHOO, *DISPUTE SETTLEMENT MECHANISMS OF REGIONAL ECONOMIC ARRANGEMENTS AND THEIR EFFECTS ON THE WORLD TRADE ORGANIZATION* n. 180.

5. *Id.*

6. Since May 1st, 2004, the EU members are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom, Cypress, Czech Republik, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

The ASEM process is comprised of regularly occurring meetings that include summits of the respective heads of states of each country as well as specific ministerial meetings, lower level discussion fora and work groups. Thus far, there have been four ASEM summit meetings led by heads of state and senior officials from all member countries that set the parameters for the dialogue process. Between summits numerous meetings take place, including other senior official meetings and ministerial meetings between finance, foreign, economic and other ministers of the members. Per exemplum ASEM's calendar of events for the years 2002 to 2004 lists 66 meetings ranging from business forum meetings to environmental minister meetings to seminars on human rights and anti-terrorism.⁷

The multi-level and multi-dimensional approach promises to re-acquaint the two regions as well as establish a foundation for cooperation. This would facilitate interregional Asia-EU economic and trade relations thus contributing to the globalization of trade. Sakong II, chairman of the ASEM Vision Group noted that unlike the Asia-Pacific Economic Cooperation (APEC), which is limited to economic cooperation, ASEM is supposed to balance cooperation between the two regions, covering the areas of politics, security, economics as well as culture.⁸

Scholars have favorably commented on the ASEM process; "The advent of ASEM is of major significance because it established a close dialogue not only on economic issues, but also on political, cultural, and scientific subjects, including drug trafficking, terrorism, security, nuclear disarmament, arms control, and the environment."⁹ One commentator stressed the importance of the political dialogue of ASEM, "[...] one important aspect of trade liberalization is political economy...trade liberalization is a political process to secure economic results, rather than a pure economic process to achieve higher efficiency. Thus, by covering both economic and political issues, unlike APEC, ASEM was formed to serve as a balance to the paucity of the concrete results of APEC."¹⁰

The EU noted that the ASEM process reflects the evolution from an "aid to trade" relationship towards a more balanced and equal partnership.¹¹ Overall, ASEM is the first inter-regional institution that pledges to strengthen global institutions such as the UN and WTO and to strictly

7. See Calendar of ASEM Events 2002-2004 at http://europa.eu.int/comm/external_relations.

8. CHOO, *supra* note 4 at n. 189.

9. CHOO, *supra* note 4 at n. 281.

10. *Id.*

11. EUROPEAN COMMISSION, AN INTRODUCTION TO THE ASIA-EUROPE MEETING – ASEM; ASIA-EUROPE MEETING IV at 3 (2002).

abide by the principles of international law.¹² This cooperation promises to overcome protective regionalism and thereby contributes to the globalization of trade.

II. THE PARTICIPANTS

A. ASIAN MEMBERS

The Asian ASEM member countries consist of seven ASEAN countries plus South Korea, China and Japan. ASEAN stands for South East Asian Nations and was formed in 1967 by Indonesia, Malaysia, Singapore, Thailand and the Philippines and later joined by Brunei and Vietnam. This cooperation set forth social, economic and cultural goals for its region while maintaining a policy of "open door" regionalism.¹³

ASEAN's biggest accomplishments are the ASEAN Free Trade Area (AFTA) and the ASEAN Investment Area (AIA). Under AIA, signed in 1992, ASEAN agreed to promote itself as a "single investment region" with the goal to greatly modify previous constraints on foreign investors relating to such issues as restricted investment, entry and establishment, as well as foreign shareholding and equity.¹⁴

The AFTA framework agreement signed in 1992 by the six original signatories sought to establish a free trade area within 15 years beginning in 1993. This integration process was twice accelerated and completed by 2002.¹⁵ The free trade area has import tariffs from 0-5 % covering almost all their internal merchandise trade.¹⁶

ASEAN has established close ties to the EU by exporting such goods as machinery, textiles, agricultural products and chemicals.¹⁷ In 2002, EU imports from ASEAN were estimated at 61 billion Euros, while EU exports to ASEAN were valued at 42 billion Euros.¹⁸ Overall, the EU

12. N. Hassan Wirajuda, Statement by the Chair of the 5th ASEM Foreign Ministers' Meeting at para. 7 (Jul. 22-24, 2003) at http://europa.eu.int/comm/external_relations/asem/intro/index.htm.

13. Lawan Thanadsillapakul, *Open Regionalism and Deeper Integration: The Implementation of ASEAN Investment Area (AIA) and ASEAN Free Trade Area (AFTA)*, 3:2 ONLINE THAI. L.J. 2 (2000).

14. THANADSILLAPAKUL, *supra* note 13 at 6-9.

15. Under the Common Effective Preferential Tariff Scheme (CEPT), the free trade area is only in effect for products on the Inclusion List. Products on the Temporary Exclusion List (TEL), Sensitive List for Unprocessed Agricultural Products (UAP) and the General Exception List (GEL) still have to be integrated in the future.

16. THANADSILLAPAKUL, *supra* note 13 at 3-4.

17. Chris Patten to Attend ASEM Meeting, Bali, 23/24 July, Jul. 22, 2003, at para. 11, available at http://europa.eu.int/comm/external_relations/asia/news/ip03_1060.htm.

18. *Id.*

was ASEAN's second largest export market and the third largest trading partner after the U.S. and Japan.¹⁹

In addition to ASEAN's progress, other Asian ASEM members took important steps towards more open trade. In 2001 China announced its agreement with ASEAN to create a common Free Trade Area (FTA) within ten years.²⁰ In the same year China entered the WTO. Japan has also made commitments in furthering cooperation with its ASEAN neighbors. It concluded a Free Trade Agreement with Singapore.²¹ Furthermore, it established an ASEAN-Japan Committee as well as working groups with Thailand, the Philippines and Malaysia based on the concept of a Japan-ASEAN Comprehensive Economic Partnership to be accomplished within five to ten years.²² Also South Korea is in negotiations to enter a Free Trade Area with ASEM partners.²³

In totum, Asian ASEM member countries show the following economic statistics. They represent 31.5% of the world population, produce 18.9% of the world GDP, account for 24.7% of the world-wide exports of goods (15.9% of services) and for 17.5% of the world imports of goods (22.5% of services), and generate 7.5 of FDI outflows while absorbing 14.5% of inflows.²⁴

Overall, ASEM's Asian partners have shown closer economic cooperation within the last ten years, which will not only benefit them but will also benefit the ASEM process.

B. THE EUROPEAN UNION

The European Union's beginning development was contemporary to that of ASEAN. Its original goal was on one hand to rebuild a destroyed Europe to a large extent with the economic support of the United States' Marshall Plan. On the other hand the aim was to strengthen the economic and political relations in a much-divided continent in order to reestablish stability and peaceful cohabitation.

19. *Id.*

20. Commission of European Communities, Commission Staff Working Paper: Unity and Strength in Diversity 5, Fourth Asia Europe Meeting Summit, Sept. 22-24, 2002.

21. Statement by the Chair of the Ninth ASEM Senior Official Meeting on Trade and Investment (SOMTI 9) at para. 15 (Jun. 6, 2003) available at http://europa.eu.int/comm/external_relations/ asem/min_other_meeting/somti9.htm [hereinafter SOMTI 9].

22. *Id.*; Commission of European Communities, *supra* note 20 at 5.

23. SOMTI 9, *supra* note 21, para. 18.

24. Figures for 1998. in: Commission of the European Communities, Commission Working Document: Perspectives and Priorities for the ASEM Process (Asia Europe Meeting) into the new Decade, Brussels 2000.

Winston Churchill envisioned the EU's future in a speech after WWII, in which he called for a "kind of United States of Europe." Motivated by the desire to unify combined with a strong structural approach of EU organs, the EU has established a single European market and a monetary union. After the introduction of a single European currency, the Euro, in 1999 the EU is now shifting its focus towards more political integration as well as expansion.

The official birth year of the European Community, the predecessor of the EU, was in 1967 with the combining of the earlier established European organizations of the European Coal and Steel Community (ECSC) of 1951, the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) of 1957. The ECSC was created with the signing of the Treaty of Paris by "The Six," i.e., Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

At its core was the Schuman Plan a proposal by France's Minister Schuman to pool coal and steel resources from France and Germany to prevent a future war between them.²⁵ Coal and steel were not only the most important industries at the time; they were also essential in the creation of weapons. Schuman invited any other European power to join this agreement, which came into force in 1952.²⁶ Upon the creation of the ECSC, GATT granted "The Six" derogation from the most-favored nation treatment, to allow them to fulfill their ECSC obligations.²⁷ The same year the Six signed a treaty for the establishment of a European Defense Community (EDC) with the goal of integrating Germany into the Western European defense alliance.²⁸

In 1957 with the signing of the "Treaties of Rome" the Six established two further important organs, the EEC and Euratom. Both communities set up other crucial European institutions, the Parliamentary Assembly (which later became the European Parliament in 1962) and the Court of Justice in addition to the Council that had been created earlier by the ECSC. The main goal of the EEC treaty was the realization of four freedoms that distinguish a single market economy which include the free movement of persons, goods, services and capital.²⁹ The first step was the implementation of a single customs union. By 1968 all customs

25. Elke Thiel, *Die Europaeische Union*, BAYRISCHE LANDESZENTRALE FUER POLITISCHE BILDUNGSARBEIT 16 (2001).

26. *Id.*

27. See History of the European Union at http://europa.eu.int/abc/history/1952/1952_en.htm.

28. Thiel, *supra* note 25 at 16.

29. *Id.* at 20.

duties within the market were erased and replaced by common duties for non-members.³⁰ In 1993 the EEC's goals were achieved with the creation of a Single European Market.³¹

The merging of all three European communities, Euratom, EEC and ECSC and their respective established organs into one European Community not only marks the EU's birth-date but also its member's desire to extend the economic cooperation to the political level.

In 1970 all members signed the "Davignon Report" on political cooperation with the objective of Europe to speak with a single voice on all major international problems.³² The first steps in this direction were the direct election of the European Parliament by member citizens in 1984 and 1989.³³ While the goal of political unity seemed a challenging prospect, the attractiveness of the EC led to four expansion periods.

Then in 1973, Denmark, Great Britain and Ireland joined the EC. Greece became a member in 1981 and Portugal and Spain joined in 1986. Eastern Germany became a member by accession to Western Germany in 1990. Finland, Austria and Sweden joined in 1995. In May 2004 ten new members from Eastern Europe vastly enlarged the EU, which is seen as a challenging opportunity for the EU's future as an economic and political power.

The "Treaty of Maastricht" marks the official beginning of the EU, which came into force in 1993, the same year the single market went into effect.³⁴ It was preceded by the plans for an Economic and Monetary Union laid forth in the "Delors Packet" in 1988 by Jacques Delors, the President of the Commission, to be accomplished in three steps by 1999.

The first step set the permissible range of fluctuation for all participating currencies at 2.25% in addition to reconciling economic interest within national border and between nations.³⁵ The second step set up Eurofed, a European system of Central banks allowed to gradually control of national monetary policy.³⁶ The third step was characterized by the permanent fixing of exchange rates that would be replaced by the Single

30. *Id.*

31. *Id.*

32. The History of the European Union at: http://europa.eu.int/abc/history/1970/1970_en.htm

33. Thiel, *supra* note 25 at 47.

34. *Id.* at 48 and 96.

35. CLIVE ARCHER & FIONA BUTLER, THE EUROPEAN COMMUNITY – STRUCTURE AND PROCESS 86 (1992).

36. *Id.*

European currency. At this time the Eurofed assumed full control of national monetary and economic policy.³⁷ In 1999 the EMU members officially launched the “Euro”, Europe’s single currency. First used for money transfers, the Euro bills and coins were finally distributed to members for general use in 2002.

The EU statistics show that while EU population makes up 7% of the world population, it produces 24% of the world GDP and accounts for 19% of the worldwide exports of goods.³⁸

2004 marked an important year for the EU as its large expansion was followed by the signing of the *EU Constitution* on October 29, 2004. This brought together for the first time the many treaties and agreements on which the EU is based. The Constitution defines the balance of power between the EU and individual member states and it expressly grants EU laws primacy over laws of the member states.³⁹ Most importantly, the Constitution provides the EU with legal personality. This allows it to enter into international treaties, thereby increasing its status in world diplomacy.⁴⁰

Overall, the EU and its predecessor the EC have come a long way since its first cooperation in steel and coal. Driven by economic integration it fulfilled Churchill’s vision of a peaceful united Europe. There are, however, many challenges ahead. The EU’s Eastern expansion and the criticism brought by member states against the EU Constitution could lead to many changes. EU leaders, however, negated concerns from Asian trading partners regarding potential trade diversion from this expansion.⁴¹ They instead emphasized positive effects for Asian trading partners by instant access to an even larger market.⁴² Without a doubt, the EU needs to focus on political integration to strengthen the union; a goal expressed in the “Treaty of Maastricht;” and to establish a European identity in the international community through a united foreign and security policy.⁴³

37. *Id.* at 87.

38. Thiel, *supra* note 25 at 39.

39. BBC News UK Ed. “What the Constitution Says”, June 22, 2004, at <http://news.bbc.co.uk/1/hi/world/europe/2950276.stm>

40. *Id.*

41. Wirajuda, *supra* note 12 at para. 6.

42. *Id.*

43. Thiel, *supra* note 25 at 21.

C. PROBLEMS ARISING FROM RTAS

1. The Importance of the WTO for Trade and Globalization

The General Agreement on Tariffs and Trade (GATT) signed by 23 founding members in 1947 was established for the purpose of reducing tariffs and trade barriers. Its common goal was to facilitate trade and work towards the general globalization of trade. Over the last fifty years GATT membership gradually increased until in 1994 the institution of the World Trade Organization (WTO) replaced it.

The WTO is a product of the Uruguay Round of GATT negotiations that were successfully completed that year. The WTO is seated in Geneva, Switzerland and has a general membership of 146 states as of April 2003.⁴⁴ At the center of GATT principles lies its commitment to non-discrimination. This principle is implemented via GATT's pivotal clausal concepts of Most-Favorite-Nation (MFN) and national treatment that were established in GATT Art. I and III.

Article I

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting countries.⁴⁵

Article III

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale,

44. See www.wto.org/english/thewto_e/whatis_e/whatis_e.htm.

45. GATT TEXT from: <http://www.ciesin.org/TG/PI/TRADE/gatttxt.html>

purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection of domestic production.

2. The products of the territory of any contracting party imported in to the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.⁴⁶

2. The Argument of Setback of Globalization caused by Regional Trading Arrangements

Regional Trade Arrangements (RTAs) consist of alliances that are formed by neighboring territorial units for the purpose of economic and political integration through free trade areas or customs unions.⁴⁷ One of the earlier examples of a trade arrangement was the *German Zollverein*.

The *Zollverein*, or customs union, was formed in 1834 among eighteen small states and became a catalyst in creating a united Germany later in the century.⁴⁸ While RTAs can be very beneficial to their member states, their exclusive character has always held a potential for conflict with the interests of non-members.⁴⁹

There are two theories on the facilitating value of RTAs. One is the proximity school, which holds that regional arrangements are attributable to the natural factor of geographical proximity. The other is the discriminatory policies school, which suggests the artificial factor of preferential trade policy in trade arrangements.⁵⁰ At the same time while some economists view trade arrangements as the building blocks, others

46. *Id.*

47. Sungjoon Cho, *Breaking the Barrier Between Regionalism and Multilateralism: A New Perspective on Trade Regionalism*, 42 HARV. INT'L L.J. 419 (2001).

48. *Id.* at 420.

49. *Id.* at 420.

50. *Id.* at 425.

see them as stumbling blocks.⁵¹ The stumbling block theory suggests that these arrangements hinder the globalization of trade while the building block theory argues that RTAs create increasingly larger areas of free trade thus facilitating globalization of trade.⁵²

Under GATT Art. XXIV, which governs the formation of RTAs, regionalism is only permitted to the extent that it complies with the provisions of the article.

Article XXIV

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between economies of the countries parties to such agreements. They also recognize that the purpose of the customs union or a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or a free trade area; *Provided* that:

a. ...the duties and other regulations with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of duties and regulations... in the territories prior to the formation of such union...

b. ...the duties and other regulations with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the corresponding duties and other regulations... existing in the same

51. *Id.* at 434.

52. *Id.*

constituent territories prior to the formation of the free-trade area....⁵³

GATT Art. XXIV recognizes the existence of regional trading blocks by permitting the formation of customs unions and free trade areas when certain criteria are met. It allows contracting parties to avoid full adherence to the MFN status if they make a genuine attempt to develop free trade within the area under the premise that "regional economic groups can be viewed as a gradual step along the road to a free, less discriminatory world trade."⁵⁴ Thus, GATT encompasses the building block theory with regard to RTAs. As of 1994, there were 68 regional economic arrangements, which represent about 90% of the contracting parties in the WTO/GATT.⁵⁵

In addition, under GATT Art. XXV waivers absolved RTAs of any potential illegality.

Article XXV

5. In exceptional circumstances not elsewhere provided in this Agreement, the CONTRACTING PARTIES may waive an obligation imposed upon a contracting party by this AGREEMENT, provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties...⁵⁶

Thus, it is clear that the GATT framework favored the creation of RTAs despite the negative implications that they can have on non-members and the inhibiting effect they can have on globalization.

In fact, the EU has been criticized for having such an inhibiting effect on globalization. Some commentators have attacked the EU's policies: "the accommodation of the European Common Market's imperfect union in disregard of the legal requirements of Article XXIV was the beginning of the breakdown of the GATT's legal discipline"⁵⁷ The EU's practice of protectionism and inward-looking politics, especially regarding its

53. GATT TEXT from: <http://www.ciesin.org/TG/PI/TRADE/gatttxt.html>

54. CHOO, *supra* note 4 at 257.

55. CHOO, *supra* note 4 at 254, n 4.

56. GATT TEXT from: <http://www.ciesin.org/TG/PI/TRADE/gatttxt.html>

57. JADISH BHAGWATI, REGIONALISM AND MULTILATERALISM: AN OVERVIEW IN ASIA PACIFIC REGIONALISM 145-46 (1994), *cited in* CHOO, *supra* note 4 at 258, n. 32.

agricultural policies has been widely noted.⁵⁸ “Even though the Commission has sought to remove some national restrictions on non-EC imports – such as the national import quotas on Japanese cars, under Art. 115 EEC – in order to liberalize the EC’s external commercial policy, there remain problem areas for trading partners.”⁵⁹

In addition, other non-trade barrier concerns have been raised by developing countries as well as Asian ASEM partners. They fear the introduction of stricter standards by the EU, such as health, safety, and technical as well as environmental.⁶⁰ As a commentator noted, vertical discrimination symbolized by non tariff barriers — e.g. domestic regulations discriminating against foreign commerce — has tended to occupy the center of recent trade disputes.⁶¹ At the Asia-Europe Business Forum (AEBF VIII) in October 2003, the food working group addressed this issue and suggested that the EU work closer together with food exporting countries on issues of new regulations as well as food testing methodologies.⁶² Thus, the group places priority on mutual recognition arrangements, which aid in overcoming non-trade barriers.⁶³

In contrast, ASEAN as well as APEC received little criticism for any use of discriminating policies that inhibit global trade. Both practice open regionalism, which means trade liberalization, is extended to non-members.⁶⁴ ASEAN is committed to open regionalism because its economic interests lie outside the region.⁶⁵ At the same time ASEAN uses a consensus, or cooperation-based approach, that does not seek to implement rigid rules or systems on its members or trading partners.⁶⁶ ASEAN’s century-old “Musyawarah” practice is a consensus-based practice. Under this practice all issues concerned would be discussed and debated until reaching a final resolution with mutual recognition.⁶⁷

Originally, the ASEAN Free Trade Area was not established under the provision of GATT XXIV, but rather it was based on the Enabling Clause arrangement by the Tokyo Round.

58. CHOO, *supra* note 4 at 435.

59. ARCHER, *supra* note 35 at 57.

60. *Id.*

61. CHOO, *supra* note 4 at 457.

62. Food Working Group Recommendation AEBF VIII, Seoul October 2003, II. para. 2.5 & 7; available at http://europa.eu.int/comm/external_relations/asem/min_other_meeting/index_min.htm.

63. Chairman’s Statement, Asia-Europe Business Forum VIII, Oct. 27-29, 2003, pt. VII available at http://europa.eu.int/comm/external_relations/asem/min_other_meeting/index_min.htm.

64. Choo at 262; THANADSILLAPAKUL, *supra* note 13 at 2.

65. THANADSILLAPAKUL, *supra* note 13 at 6.

66. Choo at 262.

67. THANADSILLAPAKUL, *supra* note 13 at 1.

Notwithstanding the provisions of Art. I of the General Agreement, contracting parties may accord differential and more favorable treatment to developing countries, without according such treatment to other contracting parties.⁶⁸

Today, however, the legal status of many ASEAN members is no longer that of a developing country. Therefore, GATT Art. XXIV should control ASEAN. De facto ASEAN is already in compliance with Art. XXIV, because it does not create any higher trade barriers for non-members.⁶⁹ Instead, it implements an outward-looking policy with regard to non-members that is not in violation with Art. XXIV.⁷⁰ Overall, ASEAN's main goal has been to balance regional integration with the integration of ASEAN into the global economy.⁷¹

Overall, the ASEM process supports the building block theory as it combines three major regional trading areas.⁷² While there seems to be vast differences in approaches between the two RTAs, ASEM's progress has been positive. As a commentator noted, "it is feasible that the newly created ASEM could be effectively utilized as a desirable conduit to convey the idea of open regionalism to Europe, and thus soften the rigid structure of EU to be more compatible with the ultimate goal of the WTO."⁷³ While an individual RTA such as the EU may not facilitate globalization per se, it may be a successful stepping-stone nevertheless. By creating the inter-RTA ASEM the EU has committed itself to overcoming its protectionism and opening its market to a region of strong economic growth. Therefore, ASEM is a promising attempt to overcome protective regionalism and facilitate the globalization of trade while at the same time strengthening global institutions such as the WTO.

III. THE ASEM STRUCTURE AND PROCESS

ASEM is an informal process that is largely based on dialogue and the exchange of viewpoints and information at numerous meetings. Its goal is to promote and foster social, political and economic cooperation between European and Asian countries.⁷⁴

68. Enabling Clause, paragraph 1, cited in THANADSILLAPAKUL, *supra* note 13 at 5.

69. THANADSILLAPAKUL, *supra* note 13 at 5.

70. *Id.*

71. *Id.*

72. See CHOO, *supra* note 4 at 282.

73. CHOO, *supra* note 4 at 284.

74. EUROPEAN COMMISSION, AN INTRODUCTION TO THE ASIA-EUROPE MEETING – ASEM; ASIA-EUROPE MEETING IV 4-12 (2002).

The most important meeting is the ASEM Summit, which takes place every two years. It sets the goals and parameters to be achieved with the ASEM process. It also establishes the framework of operation for the involved nations. Each country is represented at the summit by its head of state as well as its senior officials, such as foreign, economic and finance ministers. Each country equally participates in the process of dialogue and discussion. The meetings alternate between a host nation from Europe and a host nation from Asia.

The second most important set of meetings in the ASEM process are the senior officials' meetings (SOM). SOM meet once every year to provide a platform to discuss management issues as well as to exchange political views. Like the regularly scheduled summit meetings they show the direct commitment and involvement of all member countries that participate directly. This does not only attest to the level of importance attributed to the ASEM process but also expedites the process itself by direct discussions and negotiations between high government officials.

Another important body is the Asia-Europe Vision Group, which was established at ASEM Summit II in London 1998, for the purpose of focusing on a future plan for ASEM. It consists of a panel of experts from each country, often, former government officials who identify and discuss issues of interest to the ASEM process. The Vision group meets about four times a year and produces an annual report of its findings. It has a permanent secretariat in Seoul, Korea.

The ASEM process furthermore consists of numerous lower level meetings that seek to further refine and implement ASEM summit and SOM recommendations. These meetings can be divided into three larger categories or pillars, the economic, the political and the cultural pillars.

The economic pillar consists of a forum to discuss financial issues and a forum to discuss economic issues. The finance forum is led by senior officials of the countries' respective finance ministries.⁷⁵ It consists of deputies that meet from time to time, as well as, core groups that meet on a regular basis to continue a dialogue on financial issues.

On the economic side there are two parallel fora that invite discussions on economic issues, the Asia-Europe Business Forum (AEBF) and the Senior Officials' Meeting on Trade and Investment (SOMTI). The AEBF allows the private and public sector to meet in order to exchange

75. See ASIA-EUROPE VISION GROUP, FOR A BETTER TOMORROW: ASIA-EUROPE PARTNERSHIP IN THE 21ST CENTURY (1999).

views and debate issues in specific working groups. These meetings occur annually, to which business representatives are invited. Likewise, regional as well as national business organizations and networks such as Chambers of Commerce or eminent business individuals are encouraged to participate in future SOMTI working groups.⁷⁶

The SOMTI provides the key forum in which to address economic issues. These issues include both specific trade facilitation (TFAP) and investment promotion action plans (IPAP). They also provide a forum to discuss WTO issues as well as other matters. One of the few ASEM institutions that support the economic pillar is the ASEM Trust Fund (ATF). The trust fund was implemented by the World Bank with the objective of providing technical assistance and training in social and financial sectors of Asian countries affected by the Asian economic crisis.

The political pillar is the least formally structured. It comprises of ad hoc ministerial meetings to discuss science and technology, environmental issues, migratory flow as well as issues like terrorism and women's rights issues.

Finally, the cultural and intellectual pillar discusses such topics as cultural heritage, youth and educational exchanges, child welfare, etc. ASEM created several institutions and programs to address these issues. One is the Asia-Europe Foundation which is a non-profit organization established in Singapore. It promotes social exchanges funded by voluntary contributions of ASEM members. The Asia-Europe Environment Technology Centre focuses on environmental cooperation between the environmental ministries of the member countries. Other activities of this pillar include the Asia-Europe Young Leader's Symposium and the Young Parliamentarians' Meeting.

The ASEM process has, however, received some criticism from senior officials as well as the European business community for attempting to tackle too wide a range of issues and lacking overall co-coordinating capacity.⁷⁷ Therefore, one goal for the upcoming ASEM V is to develop and adopt effective and streamlined working methods of the ASEM process.⁷⁸

76. SOMTI 9, *supra* note 21 at para. 10.2.

77. SOMTI 9, *supra* note 21 at para. 37.

78. Wirajuda, *supra* note 12, para. 8.

Despite ASEM's developing structure, ASEM remains an informal dialogue-based process. Through its specialized meetings it seeks to create fora in which to address and discuss specific issues that are of concern to the participating countries. As is apparent, the economic pillar dominates the ASEM process, but it is supported by fora that discuss political, social and cultural issues. Therefore, the multi-dimensional approach of ASEM creates a foundation on which it can build and develop closer economic cooperation. The goal to streamline the ASEM process in the future will likely result in closer and faster cooperation between the two regions.

IV. UNITY IN DIVERSITY⁷⁹

A. INDIRECT APPROACH: LAYING A FOUNDATION OF TRUST AND COOPERATION ON THE SOCIAL AND POLITICAL LEVEL

The Chairman of ASEM I, Prime Minister of Thailand Banharn Silpa-Archa, defined the cornerstones of ASEM in his statement following the meeting in Bangkok, Thailand in 1996.⁸⁰ The goals of the ASEM process are to develop a common vision for the future, fostering political dialogue, reinforcing economic cooperation and promoting cooperation in other areas.⁸¹ Fostering political dialogue and promoting cooperation in other areas such as regional concerns or cultural issues are indirect approaches to facilitate trade. While they do not emphasize trade directly, they create a solid foundation of understanding and trust. Thus, their influence on trade is indirect but nevertheless crucial to the overall process of economic cooperation. Enforcing economic cooperation is a direct approach that has been central to all ASEM summits and shall be discussed individually.

Fostering political dialogue is an important rapport-building cornerstone of the ASEM process. Leaders utilize the opportunity to exchange views on important world events and common international problems such as threats of terrorism and a reform of the UN. At the ASEM III summit, members agreed to the prevention of conflicts in conformity with the UN Charter. They also assented to strengthen regional and global initiative of arms control, disarmament and non-proliferation of weapons of mass

79. This slogan was coined by the Chairman of the ASEM IV in Copenhagen 2002. See Chairman's Statement, ASEM IV (Fourth Asia Europe Meeting), Copenhagen, September 22-24, 2002 at http://europa.eu.int/comm/external_relations/asem/asem_summits/asem4/stat.htm.

80. Statement by H.E. Banharn Silpa-Archa, First Asia-Europe Meeting (ASEM I), Mar. 2, 1996, at http://europa.eu.int/comm/external_relations/asem/asem_summits/asem1/stat.htm.

81. *Id.*

destruction.⁸² At the ASEM IV summit leaders went further in pledging to work closer together to combat terrorist threats to global peace and security.

At the conclusion of ASEM IV they passed the ASEM Copenhagen Declaration on Cooperation Against International Terrorism. At the same time they stressed the leading role of the UN and its Charter in fighting terrorism.⁸³ Another example is ASEM member's commitment to a reform of the UN system, including the Security Council.⁸⁴ This shows that ASEM strengthens the role of international organizations such as the UN and at the same time furthers the creation and expansion of international standards such as human rights and international peace.

Addressing Regional Concerns is another important aspect of ASEM. While its interregional approach focuses on global issues it realizes the importance of addressing specific regional or local concerns. At the first ASEM summit one of the areas of concern was the development of the Mekong River Basin.⁸⁵ At ASEM II, leaders sought to hold a seminar in the Philippines on "peace and society building" in areas that had been going through crisis and political turmoil.⁸⁶ Korea was one area of focus at ASEM III where leaders welcomed the first inter Korean Summit in Pyongyang June 2000 as a significant step towards peace. They issued a "Declaration for Peace on the Korean Peninsula."⁸⁷ This interest by member countries continued at ASEM IV leading to a similar declaration.⁸⁸ Overall, ASEM's interest in trade and global issues recognizes the importance of specific regional areas and their impact on international peace and stability.

In its goal to promote cooperation in social and cultural issues, ASEM pursues a holistic path to create lasting relations among nations and to develop human resources. It embraces ASEM member's diverse cultural

82. See Chairmen's Statement, Third Asia-Europe Meeting (ASEM III), Oct. 20-21, 2000, at http://europa.eu.int/comm/external_relations/asem/asem_summits/asem3_stat.htm [hereinafter ASEM III].

83. See Chairman's Statement, Fourth Asia Europe Meeting (ASEM IV), Sept. 22-24, 2002, at http://europa.eu.int/comm/external_relations/asem/asem_summits/asem4/stat.htm [hereinafter ASEM IV].

84. ASEM III, *supra* note 82.

85. See Chairman's Statement, First Asia Europe Meeting (ASEM I), March 1-2, 1996, at http://europa.eu.int/comm/external_relations/asem/asem_summits/asem1_stat.htm [hereinafter ASEM I].

86. See Chairman's Statement, Second Asia Europe Meeting (ASEM II), Apr. 3-4, 1998, at http://europa.eu.int/comm/external_relations/asem/asem_summits/asem2_stat.htm [hereinafter ASEM II].

87. ASEM III, *supra* note 82.

88. ASEM IV, *supra* note 83.

heritage and utilizes a group molding approach. It is based on the premise that before you can become a strong team you have to know the members of your team. This approach educates future generations of ASEM members by supporting cultural exchanges, youth groups and student exchange programs.

One example is the ASEM-DUO Fellowship Program to encourage cultural exchange programs.⁸⁹ To fund these programs, the non-profit organization Asia-Europe Foundation (ASEF) was created which is funded by voluntary contributions of member states. Furthermore, at the first *ASEM Conference on Cultures and Civilizations in Beijing, China*, December 2003, its attending ministers vowed to preserve and promote traditional and contemporary forms of art and cultural heritage.⁹⁰ They also stressed to launch more cultural exchange programs between the regions and expressly supported initiatives for cultural diversity taken by UNESCO.⁹¹

The EU describes ASEM's style of cooperation as one based on several crucial characteristics: informality, complementarity, multi-dimensionality, equal partnership and a simultaneous top down and bottom up approach.⁹² The informality of ASEM meetings places a high priority on dialogue to foster mutual understanding. Complementarity concerns the fact that issues should be discussed from an inter-regional perspective to avoid duplicating work. ASEM deals with a full spectrum of relations not just economic ones. Thus, it works on multi-dimensional levels. ASEM's work is based on equal partnership.

ASEM wants to provide platforms at high levels, but at the same time seeks to foster people-to-people contacts, including all sectors of society. Thus, ASEM utilizes a simultaneous top down and bottom up approach. This approach can be evidenced by ASEM's calendar of events for the years 2002 to 2004 lists 66 meetings. They include Business Forum Meetings, numerous ministerial meetings as well as seminars on human rights, educational exchanges and Young Parliamentarian Meetings.⁹³ The range of the spectrum of meetings is wide to include meetings that accelerate the ASEM process by participant high officials who have

89. *Id.*

90. Chairman's Statement, ASEM Conference on Cultures and Civilizations, Dec. 4, 2003, para. 9 & 12.

91. *Id.*

92. See European Commission, An Introduction to the Asia-Europe Meeting – ASEM; Asia-Europe Meeting IV (2002).

93. See Calendar of ASEM Events 2002-2004 at http://europa.eu.int/comm/external_relations/asem_process/calendar1.htm.

decision-making power. At the same time foundation building by educational measures has not been neglected. This approach has helped ASEM to build a large network of institutions and fora since its beginning in 1996.

Overall, ASEM's style and its goal of cooperation in the areas of politics, regional and cultural issues facilitates in build a strong foundation of understanding. This in turn will result in fostering trade relations and thus indirectly aid the inter-regional approach.

B. DIRECT APPROACH: MEETINGS AND PROCEDURES TO FOSTER TRADE RELATIONS

The large economic pillar provides for numerous meeting fora that allow exchanges and the implementation of policies in the fields of economics, business and finance. One important forum is the Asia-Europe Business Forum (AEBF) that allows the private and public sectors to meet and debate business issues. While this forum targets primarily cooperation of large business entities, AEBF also facilitates the participation of smaller and medium businesses as well.⁹⁴ Generally, businesses have a great interest in the lowering of trade barriers. In the AEBF, however, they are encouraged to participate in regional industrial development as well as training of people. Furthermore, ASEM members' economic ministers declared at a meeting last year their wish to involve the business sector more consistently into all levels of ASEM works.⁹⁵

One example to illustrate the importance of this AEBF approach can be derived from the car industry. The EU world market share of car production is 27%.⁹⁶ Some of the car producers are German corporations such as Volkswagen (VW and Audi), Bavarische Motorenwerke (BMW) and Daimler Chrysler. All are eager to expand in the Asian market, specifically the Chinese market because China has been experiencing an auto boom. So far less than 1% of China's city inhabitants own a car allowing for enormous future growth potential.⁹⁷ At the same time China's accession to the WTO requires it to lower import tariffs on cars that make up 80% of the cost of car.⁹⁸

94. See ASEM I, *supra* note 83; ASEM II, *supra* note 86.

95. Chairman's Statement, Fifth ASEM Economic Ministers' Meeting, Jul. 23-24, 2003, para.25 at http://europa.eu.int/comm/external_relations/asem/min_other_meeting/eco_min5.pdf.

96. Thiel, *supra* note 25 at 39.

97. *Id.*

98. *Id.*

Thus, in the future lower car prices will make cars more attractive for consumers. Last year VW, which owns two auto manufacturing plants in Shanghai and Changchun, noted a 90% increase in VW sales and 85% increase in Audi sales.⁹⁹ As a response to the already increased demand VW has expanded its production of car models for VW as well as Audi models.¹⁰⁰ Likewise, BMW and DaimlerChrysler noted the high demand for luxury cars, despite their high costs. Both manufacturers are responding to this demand by building auto plants in China. BMW is currently building a plant in the province of Liaoning and DaimlerChrysler, which currently only produces trucks and busses in China, entered negotiations about a plant in Guangdong.¹⁰¹

German car producers, however, face fierce competition from Japanese producers such as Toyota. This led to a decrease of VW's market share from 50% to 40% despite its growth rates.¹⁰² This example from the car industry shows the importance of integrating businesses in the ASEM process because while ASEM can create policies, close collaboration with corporate entities ensures that those policies are put into action. At the same time embedding corporate action into the ASEM process can ensure that there is reciprocal benefit for both regions.

ASEM emphasizes the importance of the global market economy and realizes the importance of trade stabilization through mutual support. As was seen in the Asian economic crisis, the interdependence of markets leads a global spread of originally local crisis. Thus, ASEM reacted by alleviating the impact of the economic and financial crisis on Asian countries with the help of funds from the ASEM Trust Fund (ATF).¹⁰³ This fund that was implemented by the World Bank had the objective to provide technical assistance and training in social and financial sectors of the affected Asian countries. Thus, the ASEM process embraces an approach of aiding areas of economic crisis to contain the effect such a crisis has on the global economy.

Another important aspect of ASEM's direct approach to foster trade is its commitment to work within the framework of the WTO. ASEM sees multilateral trade and investment rules as an important element in

99. Andreas Lorenz, *Markt der Zukunft-Deutsche Luxuskarossen fuer China*, Spiegel Online, Apr. 21, 2003, at <http://spiegel.de/wirtschaft/0,1518,245534,00.html>.

100. *Id.*

101. *Id.*

102. *Id.*

103. ASEM III, *supra* note 82.

cultivating transparency and stability in trade and the world economy.¹⁰⁴ Thus, ASEM requires its members to work towards entering the WTO, which led to China's accession to the WTO in 2001 as well as Vietnam to enter accession negotiations for its prospective WTO membership in 2005.¹⁰⁵ From the first summit onwards, ASEM stressed the importance of strengthening a rules-based trading system embodied by the WTO to promote global trade liberalization and foster a transparent and fair multilateral trading system.¹⁰⁶ ASEM has shown a strong commitment to strengthen the WTO organization by fully adhering to its rules and increasing its membership.

V. CONCLUSION

Despite some obstacles, the prospects for ASEM's success are high. This conclusion must be drawn from the promising economic prospects of the two regions involved, but also from the strength of the approach that ASEM encompasses.

ASEM is firmly based on equality, cooperation and an active use of dialogue involving all its partner countries. Both regions have placed a lot of hopes in this process, which is evidenced by ASEM's active progress in bringing the two regions together by the simultaneous use of a top down and bottom up approaches.

The ASEM process facilitates the globalization of trade because as an inter-RTA it reaches beyond its regional alliance. While pursuing trade from a global perspective it is able to overcome trade barriers. Thus, ASEM supports the building block theory embraced by the GATT regulations, which will help the protective EU to soften its trade barriers. ASEM is the first inter-regional institution that pledges to strengthen global institutions such as the UN and WTO. This cooperation promises to overcome protective regionalism and thereby contributes to the globalization of trade.

104. Chairman's Statement, Asia Europe Business Forum VIII, Oct. 27-29, 2003, para. 2 at http://europa.eu.int/comm/external_relations/asem/min_other_meeting/bf8_stat.pdf.

105. *Vietnam Membership Negotiations: Viet Nam Starts Its 'Quantum Jump' but Still Some Way to Go*, WTO News: 2003 News Items, Dec. 10-11, 2003, para. 3, available at www.wto.org/english/news_e/news03_e/acc_vietnam_12dec_e.htm.

106. ASEM I, *supra* note 83; ASEM II, *supra* note 84; ASEM III, *supra* note 80; ASEM IV, *supra* note 83.