

STUDENT CONTRIBUTION

The Future of Informalism in the Economic Integration of ASEAN

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This paper examines the doctrine of informalism, its place in the field of jurisprudence and why it influences the international legal system of ASEAN. It analyses the problems associated with the development of ASEAN's international legal system in the context of trade liberalization. It then seeks to answer the question of how ASEAN may enhance trade liberalization through innovations in its legal system and what aspects of an informal legal system may be maintained within a hard-law framework. It does this by analyzing rule-observance in soft law as well as analyzing some examples of flexibility-enabling mechanisms. The paper recommends how instances of legal informalism may be maintained within ASEAN as it seeks to further trade liberalization between its members.

Keywords

Informalism, ASEAN, The ASEAN Way, Relationship-based Legal System, Rule-based Legal System, Credibility, Flexibility, Network Norms, Safeguard Provision, Sunset Provision

A legal framework to regulate economic relations among members of ASEAN is developing. ASEAN must continue to develop this framework, and as ASEAN moves into further integration, an expanded number of binding undertakings will be required. Economic relations have evolved from a loose organization based on the ASEAN way to a more 'legalistic' framework based on rules and a dispute settlement mechanism.

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I. Introduction

Over the past decade, countries have become more economically inter-dependent and integrated as a result of globalization and international trade liberalization.¹ However, such liberalization has become increasingly bilateral and regional rather than truly multilateral.² As the prospects of successful multilateral trade negotiations fade, countries have sought alternative means of liberalising and increasing the flow of trade through bilateral and regional trade agreements and economic cooperative pacts.³ The ASEAN is a prime example; many of the vehicles for economic integration have adopted precepts of governance based upon soft law obligations with observance of rules being maintained through informal negotiations. While informal governance has been a more accommodating way for individual countries to liberalize trade, it also raises questions about the continuing viability of such liberalization. It has been strongly argued that in order to achieve long-term stability and sustainability, international organizations dedicated to this task must progress toward a rules-based framework of rights and obligations which goes beyond the aspirational declarations and understandings which have traditionally characterized the bulk of the ASEAN's work.⁴

The subject of the ASEAN's legal structure in the context of trade liberalization has been addressed by many writers.⁵ They have primarily explained the ASEAN's informal governance structure and the need to develop a rules-based system of governance to further economic integration. The authors have identified that there has been little focus on the role of informalism in its governance system and, in particular, how the ASEAN will be able to integrate informal methodologies into its inchoate but developing formal legal framework.

It is helpful to begin with a greater contextual understanding of the philosophical discipline of informalism and how it is analogized in law. 'Informalism,' as its original

¹ O. Morrissey & I. Filatotchev, *Globalization and Trade: The Implications for Exports from Marginalised Economies*, 37 J. DEV. STUD. 1-3 (2000).

² S. Gupta, *Changing Faces of International Trade: Multilateralism and Regionalism*, 3 J. INT'L COM. L. & TECH. 260 (2008).

³ *Id.* See also L. Tan, *Will ASEAN Economic Integration Progress beyond a Free Trade Area?*, 53 INT'L & COMP. L. Q. 935 (2004).

⁴ V. Aggarwal & J. Chow, *The Perils of Consensus: How ASEAN's Meta-Regime Undermines Economic and Environmental Cooperation*, 17 REV. INT'L POL. ECON. 262 (2010).

⁵ *E.g.*, P. Davidson, *The ASEAN Way and the Role of Law in ASEAN Economic Cooperation*, 8 SING. Y. B. INT'L L. 165 (2004); M. Ewing-Chow, *Culture Club or Chameleon: Should ASEAN Adopt Legalization for Economic Integration?*, 12 SING. Y.B. INT'L L. 225 (2008).