

The Emergence of ASEAN Regional Food Safety Governance: Structure, Substance, and Context

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ABSTRACT

Decades after its establishment, ASEAN has started to actively address food safety problems under a regional governance framework as foodborne diseases have been a significant public health issue in the Member States. Some ASEAN Member States with more technical, financial, and administrative resources have adopted various regulatory models, science-based rules, and border control measures. Less developed ASEAN Member States, however, are faced with many obstacles, such as incomplete and inconsistent laws and regulations, weak infrastructure for food supply chain management, and insufficient regulatory techniques and scientific expertise. Moreover, the agri-food sector in Southeast Asia is highly fragmented with many small and medium-sized players which have limited knowledge of complex food standards, making it strenuous to implement food safety regulations across the region. In light of such challenging situation, ASEAN has gradually strengthened regional cooperation on food safety with a number of key guiding principles, policy papers, cooperation agreements, and regulatory mechanisms since 2000. As argued by this article, a regional framework for food safety governance with clear contours has emerged. Of particular importance, ASEAN has animated the fundamental pillars of its regional food safety governance through bilateral cooperation with the EU, which has provided financial assistance and technical consultancy with the aim to export its best practices. Many ASEAN endeavors, as pointed out by this article, have followed the EU governance model through regulatory learning and institutional reproduction, including the “ASEAN Rapid Alert System for Food and Feed” and the “ASEAN Risk Assessment Centre for Food Safety.” Nevertheless, the trajectory of ASEAN’s development of institutional arrangements and substantive policies and rules may not necessarily resemble its EU counterpart due to significant differences in the organizational setting and power distribution, decision making process, scale of institutionalization, legal and political system, level of economic development, society and culture, and market structure. As a matter of institutional design, this article highlights the crucial importance to

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probe into ASEAN's embrace of the EU food safety governance model in terms of comparative regionalism and regulatory compatibility and to conduct more contextualized assessments in the long run.

I. INTRODUCTION

The Association of Southeast Asian Nations (ASEAN) is a regional intergovernmental organization jointly established in 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand.¹ The ASEAN Declaration (also known as the Bangkok Declaration), signed in the same year by the founding countries, outlined the organization's initial aims of regional peace and security.² Brunei Darussalam, Vietnam, Lao PDR, Myanmar, and Cambodia later joined, filling out ASEAN's current roster of ten Member States.³ ASEAN gradually shifted its focus during the 1990s post-Cold War era from regional peace and security to economic cooperation and development, laying a foundation for stronger regional integration.⁴ However, during the thirty years after ASEAN's establishment, while the Member States cooperated actively in core political and economic arenas, issues such as food safety received little attention.

As the production, distribution, and consumption of food globalized against the background of trade liberalization in recent decades, food safety issues have crossed state borders and pose significant governance challenges to economic development and public health.⁵ Just like other players in the global food supply chain, ASEAN has benefited from the growing trade in food and cannot be immune from risks of food safety problems. According to several World Health Organization (WHO) reports, foodborne diseases have been a significant public health issue in Southeast Asia,⁶ as the region's accumulated number of food safety incidents has been higher than among all WHO regions.⁷ The most recent statistics by the WHO indicate that, among the five billion reported cases of foodborne diseases (such as diarrhea) in children above five years of age worldwide, as many as 3.2 billion cases occurred in Southeast Asia.⁸

¹ *History: The Founding of ASEAN*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS, <http://asean.org/asean/about-asean/history/> (last visited Nov. 25, 2018) [hereinafter ASEAN].

² THE ASEAN DECLARATION (Bangkok, 1967), <http://tinyurl.com/jqyg8k9> [<https://perma.cc/PF28-S2VC>].

³ *Establishment*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS, <http://asean.org/asean/about-asean/overview> (last visited Dec. 25, 2018).

⁴ Andrew J. Crozier, *Festina Lente: An Introductory Sketch of the History of ASEAN, in* INTEGRATION IN ASIA AND EUROPE 13, 21 (Paul J.J. Welfens et al. eds., 2006); DONALD E. WEATHERBEE, INTERNATIONAL RELATIONS IN SOUTHEAST ASIA: THE STRUGGLE FOR AUTONOMY 73 (2015).

⁵ ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ECONOMIC OUTLOOK FOR SOUTHEAST ASIA, CHINA AND INDIA 2017: ADDRESSING ENERGY CHALLENGES 118 (2017) [hereinafter OECD]; see generally Ching-Fu Lin, *Global Food Safety: Exploring Key Elements for an International Regulatory Strategy*, 51 VA. J. INT'L L. 637 (2011).

⁶ WHO, *WHO Estimates of the Global Burden of Foodborne Diseases: Foodborne Disease Burden Epidemiology Reference Group 2007-2015*, at 76 (Dec. 3, 2015).

⁷ *Global Health Observatory Data Repository*, WORLD HEALTH ORGANIZATION, <http://apps.who.int/gho/data/node.home> [<https://perma.cc/UFX8-3BDT>]; OECD, *supra* note 5, at 118.

⁸ WHO, *Regional Food Safety Strategy*, at 2-3 (2014), <http://tinyurl.com/hh77hvj>. The food safety problems in ASEAN are caused by many factors, including lack of access to clean water. Consider the example of Indonesia. In 2015, only 68.8% of the Indonesian population had the means to gain access to clean water, making it the country that most needed improvement in the supply of drinking water in ASEAN.

To cope with existing or emerging food safety problems, some ASEAN Member States with more technical, financial, and administrative resources have adopted various regulatory models and established science-based rules and border control measures. However, other less developed ASEAN Member States are faced with many obstacles to implementing a framework for food safety governance, such as incomplete and inconsistent laws and regulations, lack of proper infrastructure for food supply chain management, and insufficient regulatory techniques and scientific expertise among government authorities and food business operators.⁹ More specifically, most small and medium-sized food manufacturers that account for the lion's share of the market in Southeast Asia have limited knowledge of "Good Agriculture Practice," "Good Manufacturing Practice" (GMP), or "Good Hygiene Practice" (GHP), making it difficult to implement food safety regulations across the region. Moreover, the structure of the food industry in Southeast Asia is fragmented. Many businesses of varying sizes and levels of development—from large processing plants, in which multinational corporations invest, to street vendors—are part of a long food supply chain that increases food safety risks and poses a tremendous challenge to regulation by the governments of the Member States.¹⁰ Finally, because the trade volume of food products among ASEAN countries has increased rapidly during the past few years, demand for border controls on imports and exports has also risen and rendered close cooperation between food inspection agencies and competent authorities more critical.¹¹

In light of this development, ASEAN has strengthened cultural and social cooperation in Southeast Asia since 2000, focusing on infectious diseases, the environment, human rights issues, and, more recently, food safety.¹² Of particular importance, ASEAN has animated the fundamental pillars of its regional food safety governance—the "ASEAN Food Safety Policy" (see *infra* Part II.B) and the "ASEAN Food Safety Regulatory Framework" (see *infra* Part II.A)—through bilateral cooperation and regulatory transplant programs with the European Union (EU). These institutionalized regional governance models have provided the Member States with guiding principles and directions to solidify food safety regulatory mechanisms at the ASEAN level.

Until 2016, approximately 33.4 million people in Indonesia were still unable to gain access to safe water.), development policy focusing primarily on the economy, and chemical substances (such as pesticides) used for agricultural/food products processing. In addition, the rapid population growth in many Southeast Asian countries has caused a large number of people to live in extreme poverty, with their living space congested and unsanitary—all of these factors have contributed to food safety problems in Southeast Asia. The role played by food products sold by street vendors has become increasingly indispensable in the food supply chain in Southeast Asia. However, without strict food safety regulation of their production, storage, and distribution, they have become one of the causes of food-borne diseases. See *Water Services in Indonesia "Worst in ASEAN", Only 68.8% Have Access to Clean Drinking Water*, COCONUTS JAKARTA (Nov. 23, 2015), <https://coconuts.co/jakarta/news/water-services-indonesia-worst-asean-only-688-have-access-clean-drinking-water> [<https://perma.cc/PDB3-Q62S>]; *Indonesia's Water and Sanitation Crisis*, WATER.ORG, <http://water.org/country/indonesia> [<https://perma.cc/2BU5-CAHA>]; Center for Science in the Public Interest, *Global & Local: Food Safety Around the World*, at 14-15 (June 1, 2005), <https://cspinet.org/sites/default/files/attachment/global.pdf> [<https://perma.cc/4JZ5-774F>].

⁹ See WHO, *supra* note [8], at 3-4.

¹⁰ OECD, *supra* note 5 at 29, 118-19.

¹¹ *Id.* at 119.

¹² See RODOLFO C. SEVERINO, ASEAN 59-60 (2008).

Nevertheless, food safety is a multi-level, multi-faceted, and interdisciplinary field of regulation and governance. Each of the ASEAN Member States has its own laws and legal system; level of development; technical expertise; financial resources; and historical, cultural, and culinary traditions. Can effective and efficient regional governance and international cooperation be achieved at the ASEAN level? How can Member States reconcile and mitigate the potential tension that derives from competition for trade and economic benefits while tackling public health issues? What are the normative ramifications of the problem with overlapping responsibilities among government agencies within the Member States (such as commerce and trade, agricultural policies, public health, environmental protection, and labor rights) and the limitations it places on international cooperation? Most of all, as a matter of institutional design, to what extent, if at all, can ASEAN look at the EU and adopt similar mechanisms and approaches despite the different economic, social, and political underpinnings of Southeast Asia and Europe? All of these issues merit further contemplation and remain problems to be addressed. While rich literature on EU regional food safety governance exists, exceptionally few analyses exist on the ASEAN regional framework for food safety governance, a scholarly lacuna that this Article seeks to fill.

Therefore, this Article aims to examine all of the ASEAN food safety initiatives in recent years, which serve as the emerging framework for regional governance (see Figure 1 for the current framework), and to analyze each of the major components. Part II shows the trajectory of ASEAN's development of regional food safety governance, which this paper describes as a shift from economic integration to public health protection. This developmental trajectory serves as the basis for discussing the construction of the regional food safety governance framework, the formulation of rules for international cooperation among the Member States, and the framework's relevance to ASEAN Member States' diverse social, economic, political and cultural contexts. Built upon such research on ASEAN's food safety governance framework, Part III provides a critical and comparative probe into the structural similarities and differences between ASEAN and the EU, further contextualizing and contrasting the regional governance models therein to assess the recent initiatives' potential impacts. Part IV concludes.

II. THE EMERGENCE OF REGIONAL FOOD SAFETY GOVERNANCE IN ASEAN: INSTITUTIONAL ARRANGEMENTS AND COMMON POLICIES AND RULES

As early as 2000, ASEAN started to strengthen regional cooperation on food safety issues with several policy papers, cooperation agreements, and regulatory mechanisms. Step by step, a regional framework for food safety governance with clear contours has steadily grown to its current form and substance in ASEAN. At its Ninth Summit in 2003, ASEAN decided that an "ASEAN Community" would be established in 2020, a timeline further expedited to 2015 by the Thirteenth ASEAN Summit in 2007.¹³ In 2008, ASEAN issued the "Roadmap for an ASEAN Community 2009-2015" with the goal of creating a single market and production base, which highlighted

¹³ See ASEAN, ASEAN ECONOMIC COMMUNITY BLUEPRINT 2 (2008).

the policy goals of developing the food, agriculture, and forestry industries¹⁴ and of ensuring food safety in the region.¹⁵

Based on these policy goals, the ASEAN Trade in Goods Agreement (ATIGA) was signed by the Member States in 2009¹⁶ to introduce specific rules to achieve the goal of a single market and production base in economic integration. Chapter 8 of the ATIGA states concrete rules for regulating “Sanitary and Phytosanitary” (SPS) measures, focusing on the protection of life and health of humans, animals, and plants when promoting trade and strengthening cooperation among Member States.¹⁷ Moreover, in November 2015, the ASEAN Community was officially established. Food security, food safety, and nutrition were the most important objectives for regional integration proposed at that time.¹⁸ The planned actions include ensuring that food businesses in the Member States are capable of complying with food safety regulations and standards,¹⁹ assisting Member States with implementing the “ASEAN Food Safety Policy,” and establishing common food safety standards.²⁰ Food safety, therefore, has become a critical issue for trade in food products in ASEAN.

The following sections examine the ASEAN food safety governance initiatives along the above trajectory and analyze the major components. The framework arrangements, institutional designs, and commonly adopted policies and rules at the ASEAN level will be discussed and analyzed in detail.

¹⁴ ASEAN, ROADMAP FOR AN ASEAN COMMUNITY 2009-2015 30-31 (2009), https://www.asean.org/wp-content/uploads/images/ASEAN_RTK_2014/2_Roadmap_for_ASEAN_Community_20092015.pdf [https://perma.cc/E4E5-V88E].

¹⁵ *Id.* at 31, 73-74.

¹⁶ ASEAN Trade in Goods Agreement, Feb. 26, 2009, <http://investasean.asean.org/files/upload/Doc%202020-%20ATIGA.pdf> [https://perma.cc/72U8-CSC3] [hereinafter ATIGA].

¹⁷ See *id.* at art. 79 (“The objectives of this Chapter are to: (a) facilitate trade between and among Member States while protecting human, animal or plant life or health in each Member State; (b) provide a framework and guidelines on requirements in the application of sanitary and phytosanitary measures among Member States, particularly to achieve commitments set forth in the ASEAN Economic Community Blueprint; (c) strengthen co-operation among Member States in protecting human, animal or plant life or health; and (d) facilitate and strengthen implementation of this Chapter in accordance with the principles and disciplines in the *Agreement on the Application of Sanitary and Phytosanitary Measures* contained in Annex 1A to the WTO Agreement and this Agreement.”)

¹⁸ At the Twenty-seventh ASEAN Summit held in Malaysia, the official establishment of the ASEAN Community and “ASEAN 2025: Forging Ahead Together” were announced. As part of ASEAN 2025: Forging Ahead Together, the ASEAN Economic Community Blueprint 2025 (AEC Blueprint 2025) includes five characteristics that relate to and complement each other, with the expectation of developing into an economic community with a high level of integration and cohesion. With regard to the development of food and agriculture sectors, it is expected that it will be (in their original terms) “[c]ompetitive, inclusive, resilient,” and “integrated with the global economy,” to achieve the goals of “ensuring food security, food safety and better nutrition.” The five characteristics are (in their original terms): “(i) A Highly Integrated and Cohesive Economy; (ii) A Competitive, Innovative, and Dynamic ASEAN; (iii) Enhanced Connectivity and Sectoral Cooperation; (iv) A Resilient, Inclusive, People-Oriented, and People-Centred ASEAN; and (v) A Global ASEAN.” ASEAN, *ASEAN 2025: Forging Ahead Together*, at 9-10, 59, 83-84 (Nov. 2015).

¹⁹ ASEAN, *AEC 2025 Consolidated Strategic Action Plan*, at 21 (Endorsed by AEM & AEC Council Feb. 6, 2017).

²⁰ *Id.* at 21.

A. The Current Food Safety Governance Framework and Institutional Design in ASEAN

As food safety involves a wide range of sectors, including agriculture, health, trade, and industry, the effective functioning of food safety governance mechanisms relies on integration and cooperation among relevant agencies. As a result, regional food safety governance in ASEAN consists of a series of collaborations among the ASEAN Health Ministers Meeting, the ASEAN Ministers of Agriculture and Forestry Meeting, and the ASEAN Economic Ministers Meeting,²¹ striving to bridge the gap between the Member States' different capacities for food safety governance.²²

More specifically, topics of cooperation under the ASEAN Ministers of Agriculture and Forestry Meeting include “food handling,” “harmonization of quarantine procedures [and] Maximum Residue Limits for pesticides residues” in crops, biotechnology, “animal vaccination,” “harmonizing of testing and quarantine procedures” for fisheries, harmonization of standards in ASEAN based on standards of the Codex Alimentarius Commission (hereinafter “Codex”), and information sharing in the ASEAN Food Safety Network. By contrast, under the ASEAN Economic Ministers Meeting, the focus is ensuring compliance with standards and regulations, such as cooperation, and includes “Mutual Recognition Agreements”; “harmonization of standards”; “enhancement of standards and conformity assessment infrastructure in Member Countries”; and “transparency of standards, technical regulations and conformity assessment regimes” at the ASEAN level. Finally, under the ASEAN Health Ministers Meeting, cooperation consists primarily of the implementation of the ASEAN Food Safety Improvement Plan.²³ As the fundamental pillars under the ASEAN Economic Community and ASEAN Socio-Cultural Community, these three Ministers Meetings have created subordinate mechanisms (as shown in Figure 1 below) to address different aspects of regional food safety governance and are of particular normative significance.

1. ASEAN Food Safety Regulatory Framework

The “ASEAN Food Safety Policy” not only provides guiding principles and directions for regional food safety governance, but also lays the foundation for the ASEAN Food Safety Regulatory Framework.²⁴ The ASEAN Food Safety Regulatory Framework was established as the implementation work of the Task Force ASEAN Food Safety Regulatory Framework, composed of the Prepared Foodstuff Product Working Group (PFPWG) and relevant teams under the ASEAN Ministers of Agriculture and Forestry Meeting and the ASEAN Health Ministers Meeting. This institutional arrangement must follow the ten principles of the “ASEAN Food Safety Policy” (further discussed in Part II.B) to animate a regional mechanism within

²¹ *ASEAN Bodies Related to Food Safety*, ASEAN FOOD SAFETY NETWORK, <http://www.aseanfoodsafetynetwork.net/AseanCommittee.php>.

²² *Advancing Food Safety in the ASEAN Community*, 2016 4TH APIFC & 7TH ACFNS (Oct. 11, 2016), <http://ilsisea-region.org/event/4th-apifsc-7th-acfns/> [https://perma.cc/7N6Z-Y6SD].

²³ *ASEAN Bodies Related to Food Safety*, *supra* note 21.

²⁴ ASEAN, *The ASEAN Food Safety Regulatory Framework*, at 1, 2 (2016).

ASEAN by coordinating and urging the Member States' food safety agencies to implement harmonized regulations at the domestic level.²⁵

The objective of the ASEAN Food Safety Regulatory Framework is twofold: to protect consumers' health and promote the free movement of safe food products within ASEAN. The objective is achieved through means including "enhancing the harmonization of SPS measures and standards for food," lowering technical barriers to trade in food products, and reducing the differences between national laws for regulating food safety in ASEAN Member States.²⁶ This is particularly important for the ASEAN Community's organizational goal of creating a single market and production base.²⁷

The scope of the ASEAN Food Safety Regulatory Framework includes regulatory issues regarding different stages of the food supply chain from primary production to ultimate consumption, including principles, rules, procedures, and coordination mechanisms for implementing the "ASEAN Food Safety Policy." On the basis of ASEAN's existing commitments to cooperate, the ASEAN Food Safety Regulatory Framework aims to construct a new legal framework to connect the food safety mechanisms within ASEAN, eliminate the differences between the mechanisms, consolidate all food safety governance mechanisms in ASEAN, and ensure the effectiveness of every part of the governance for the food supply chain through an integrated overall approach.³² With regard to detailed and specific rules for food safety at different levels, ASEAN will negotiate dedicated protocols for their formulation and seeks to adopt such protocols in the future to supplement this regulatory framework.²⁸

²⁵ For more details, please see *infra* Part II.B. ASEAN Regional Integration Supported by EU, *Overall Work Plan (1st May 2013 to 31st October 2016)*, at 43, Project No. DCI-ASIE/2010/021-657 (2013) [hereinafter ARISE].

²⁶ ASEAN, *supra* note 1, at 1-2.

²⁷ *Advancing Food Safety in the ASEAN Community*, *supra* note 22; ASEAN, *ASEAN Integration Report 2015*, at 118 (Nov. 2015).

²⁸ ASEAN, *supra* note 1, at 2-3.

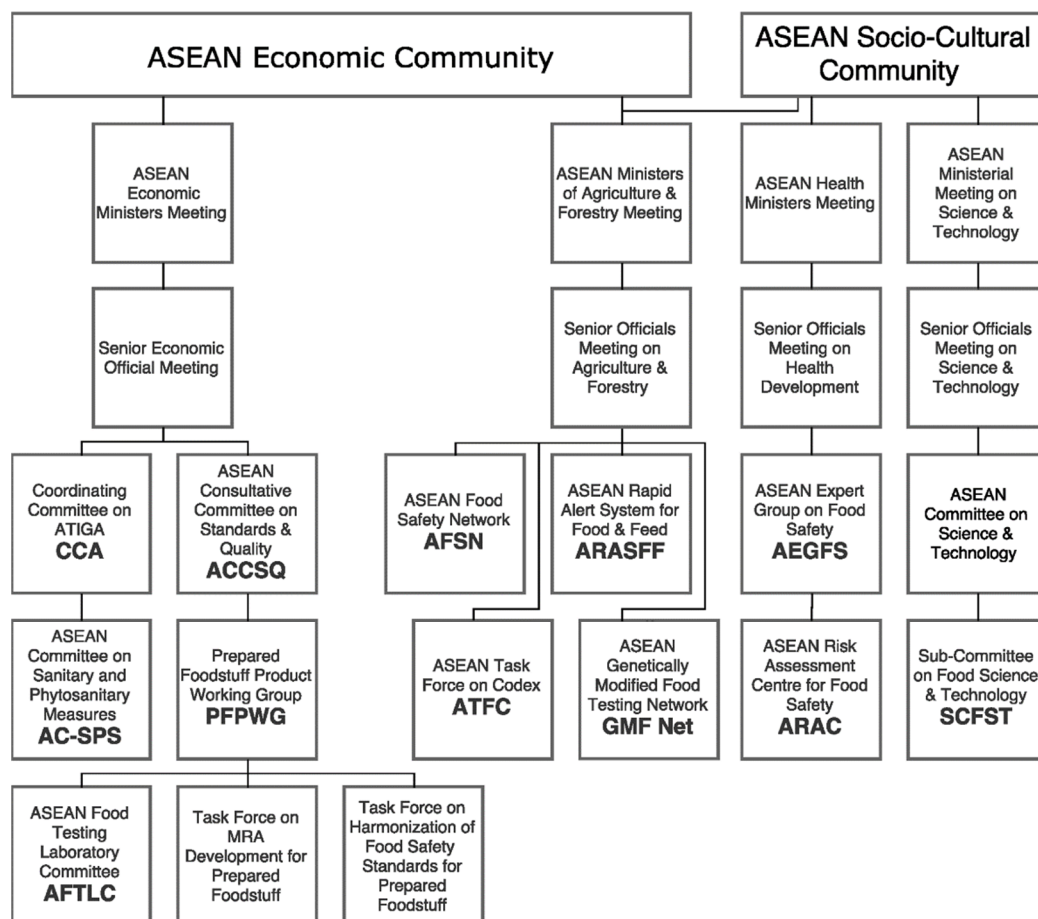


Figure 1: The Current State of Food Safety Governance Framework in ASEAN (consolidated and drawn by the author)

2. ASEAN Food Safety Network

With respect to consolidating and sharing information on food safety, the Twenty-fifth ASEAN Ministers of Agriculture and Forestry Meeting held in Malaysia in 2003 established the ASEAN Food Safety Network (AFSN).²⁹ The primary objective of the AFSN is to consolidate and ensure the free flow of food safety-related information and to serve as a platform for facilitating bilateral and multilateral discussions and exchanging information. In addition, an online discussion platform was established to support the operation of other relevant ASEAN agencies, such as the ASEAN Task Force on Codex and the ASEAN Consultative Committee on Standards and Quality. The AFSN is part of the “information sharing” strategy, one of the priorities under the ASEAN Expert Group on Food Safety’s ASEAN Food Safety Improvement Plan,

²⁹ About ASEANFSN: Background, ASEAN FOOD SAFETY NETWORK, <http://www.aseanfoodsafetynetwork.net/background.php>; Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, *Strategies for Improved Food Safety in Southeast Asia*, at 32 (Jan. 2013).

which is responsible for sharing material information under the Plan. At the same time, the AFSN plays a role in the “Strengthening ASEAN Risk Assessment Capability to Support Food Safety Measures Project”³⁰ by facilitating communications between risk assessors and risk managers. With ASEAN’s pursuit of a single market and production base to ensure the free movement of safe food products and effective operation of various food safety governance mechanisms within ASEAN, information sharing will continue to be one of the major methods of regional integration in the future.³¹

3. *ASEAN Expert Group on Food Safety*

The ASEAN Expert Group on Food Safety was established in 2000 at the ASEAN Health Ministers Meeting to provide support for food safety-related matters in ASEAN. Its tasks include improving food safety in ASEAN Member States and developing a strategic plan at the regional level to address various critical food safety issues. Importantly, the ASEAN Food Safety Improvement Plan was created by this Expert Group to promote food safety cooperation at the regional level in ten major areas, including “legislation, laboratory, food inspection and certification, information sharing, and consumer protection.”³² In 2017, the Senior Officials Meeting on Health Development adopted the Health Cluster 4 Work Programme for 2016 to 2020, according to which the “health cluster” mechanism would replace the “working group” mechanism to facilitate cross-sectoral collaboration and reduce regulatory discrepancies among ASEAN Member States.³³

4. *ASEAN Rapid Alert System for Food and Feed*

The ASEAN Early Warning System on Hazards and Outbreaks was set up to alert Members States in case of outbreaks of foodborne diseases, but its use was very limited. To enhance the consolidation and exchange of information in the fields of food safety and human health for the Member States’ competent authorities,³⁴ ASEAN, with considerable assistance of and consultation with the EU, established the ASEAN Rapid Alert System for Food and Feed (ARASFF).

In the EU, RASFF has operated for years, giving training to other regional organizations and groups under the European Commission’s Better Training for Safer

³⁰ STRENGTHENING ASEAN RISK ASSESSMENT CAPABILITY TO SUPPORT FOOD SAFETY MEASURES PROJECT, <http://www.aseanfoodsafetynetwork.net>. Strengthening ASEAN Risk Assessment Capability to Support Food Safety Measures Project, run under the ASEAN-Australia Development Cooperation Program, is coordinated by the AFGFS and includes cooperation with AFSN and the ASEAN Subcommittee on Food Science and Technology (SCOST). The purposes of this project are to boost general confidence in ASEAN’s capability to support Member States in the area of the production and consumption of safe food, to promote international trade and to enhance competitiveness.

³¹ GIZ, *supra* note 29, at 32-33.

³² OECD, *supra* note 5, at 119.

³³ *See generally* ASEAN, HEALTH CLUSTER 4 WORK PROGRAMME FOR 2016 TO 2020, available at http://asean.org/storage/2017/02/Agd-8.3_4.-ASEAN-Health-Cluster-4-Work-Programme_Endorsed-SOMHD.pdf [<https://perma.cc/AE9C-FDH7>]; *see also* Wanchai Srithongkham, Representative for Chairperson of Health Cluster 4 Ensuring Food Safety, Speech at Forum on Risk Analysis in ASEAN: Framework for Implementing Risk Analysis in ASEAN, (Sept. 12-13 2017), <http://ilsisea-region.org/wp-content/uploads/sites/21/2017/09/Mr.-Wanchai-Framework-for-Implementing-Risk-Analysis-in-ASEAN.pdf> [<https://perma.cc/2WRR-N3GR>].

³⁴ OECD, *supra* note 5, at 119.

Food Programme to assist and incentivize them to develop their own rapid alert systems based on the EU's model.³⁵ Through the ASEAN Regional Integration Support from the EU ("ARISE Program"), the RASFF has actively provided assistance to the ARASFF with respect to its continuing development, operation, and crisis management when facing food safety crises.³⁶ In this case, the ARASFF is a clear example of the EU exporting its RASFF governance model to other regional counterparts.³⁷

From a legal perspective, the ARASFF is largely based on ASEAN Member States' obligation, under Article 83 of the ATIGA, to notify in an SPS emergency situation. Originally a bilateral cooperation program between Thailand and the EU (system mimicking and regulatory transplant),³⁸ the system was extended to include all ASEAN Member States considering the overall regional interest of food safety governance.³⁹ The principal role of the ARASFF is to assist competent authorities of the Member States to exchange promptly notification and information when food or feed safety incidents occur.⁴⁰ It also helps Member States to take "corrective and preventive" measures⁴¹ and is an essential component of ASEAN's food safety regulatory network.⁴²

5. ASEAN Risk Assessment Centre for Food Safety

Another institutional arrangement that resulted from the ARISE Program is the ASEAN Risk Assessment Centre for Food Safety, established jointly by the ASEAN Health Ministers Meeting and the ASEAN's Senior Officials Meeting on Health Development in March 2016 in Malaysia.⁴³ Article 81.3 of the ATIGA explicitly refers to the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement) and incorporates the principle of risk analysis.⁴⁴ Also under the ATIGA, Member States agree "to be guided . . . by international standards,

³⁵ European Commission, *The Rapid Alert System for Food and Feed of the European Union*, at 25, 37 (Jan. 28, 2009).

³⁶ ARISE, *supra* note 25, at 86.

³⁷ Maria Weimer & Ellen Vos, *The Role of the EU in Transnational Regulation of Food Safety: Extending Experimentalist Governance?*, in *EXTENDING EXPERIMENTALIST GOVERNANCE? THE EUROPEAN UNION AND TRANSNATIONAL REGULATION* 51, 70 (Jonathan Zeitlin ed., 2015).

³⁸ Thailand National Bureau of Agriculture Commodity and Food Standards, *Terms of Reference of the Steering Committee of the ASEAN Rapid Alert System for Food and Feed (ARASFF)*, http://www.acfs.go.th/documentfile/ToR_ARASFF_Steering_Committee.pdf [<https://perma.cc/4M65-MKEW>].

³⁹ Tran Dong Phuong, Speech at ASEAN Feed and Rice Symposium: ASEAN Economic Community: Food Security and Rice as Priorities in Agriculture (Apr. 9, 2014).

⁴⁰ ASEAN RAPID ALERT SYSTEM FOR FOOD AND FEED, <http://www.arasff.net> [<https://perma.cc/PC73-SPYS>].

⁴¹ ASEAN, *ASEAN Food Safety Policy*, at 7 (May 2016).

⁴² ARISE, *supra* note 25, at 45.

⁴³ See *Overview*, ASEAN RISK ASSESSMENT CENTRE FOR FOOD SAFETY, <http://www.arac-asean.org/about/overview.html> [<https://perma.cc/W7AV-W5HY>].

⁴⁴ See ATIGA, *supra* note 16 at art. 81.3 ("Each Member State commits to apply the principles of the SPS Agreement in the development, application or recognition of any sanitary or phytosanitary measures with the intent to facilitate trade between and among Member States while protecting human, animal or plant life or health in each Member State."); Agreement on the Application of Sanitary and Phytosanitary Measures, art. 2.2, 5.1, 5.2, 1994, 1867 U.N.T.S. 493.

guidelines, and recommendations” from the Codex.⁴⁵ Such treaty texts should be cited as a legal anchor for the work of the ASEAN Risk Assessment Centre for Food Safety.

More specifically, the ASEAN Risk Assessment Centre for Food Safety is an agency necessary for putting into practice the harmonization of food safety standards based on the principle of risk assessment in ASEAN. As a result of the EU’s involvement, the role of the ASEAN Risk Assessment Centre for Food Safety is greatly similar to that of the European Food Safety Authority (EFSA). Its main task is to carry out independent risk assessments for food safety issues transparently and in a timely manner using available scientific resources. It responds to scientific inquiries concerning food safety issues from various ASEAN bodies at the regional level, provides scientific suggestions to assist the PFPWG or other relevant working groups in ASEAN with harmonization of standards, and implements measures such as risk management.⁴⁶ Additionally, because it is often necessary to strike a balance between consumer protection and fair trade when making rules for harmonization, during the process of harmonizing standards, the ASEAN Risk Assessment Centre for Food Safety must offer reliable and independent scientific suggestions aimed at harmonizing food safety standards and measures and lower barriers to trade in food products within ASEAN.⁴⁷

6. *ASEAN Committee on Sanitary and Phytosanitary Measures and ASEAN Task Force on Codex*

Another important institutional arrangement is the ASEAN Committee on Sanitary and Phytosanitary Measures (AC-SPS), which was established in accordance with Article 82 of the ATIGA. Through the ASEAN SPS Contact Points (ASCP), the committee is responsible for information exchange and cooperation with respect to SPS matters within ASEAN.⁴⁸ It removes non-tariff barriers to trade that result from SPS measures.⁴⁹ The Member States also have to set up SPS contact points to facilitate information exchange and cooperation.

Similarly, the ASEAN Task Force on Codex, established in 2000 under the ASEAN Ministers of Agriculture and Forestry Meeting, is intended to facilitate ASEAN’s internal discussion of Codex-related issues affecting interests of the ASEAN Member

⁴⁵ ATIGA, *supra* note 16, at art. 81.4 (“In the implementation of their sanitary or phytosanitary measures, Member States agree to be guided, where applicable, by relevant international standards, guidelines and recommendations developed by international organisations, such as the Codex Alimentarius Commission (Codex), the World Organisation for Animal Health (OIE), the International Plant Protection Convention (IPPC) and ASEAN.”)

⁴⁶ OECD, *supra* note 5, at 117-18; *Objective & Functions*, ASEAN RISK ASSESSMENT CENTRE FOR FOOD SAFETY, <http://www.arac-asean.org/about/objective.html> [<https://perma.cc/2V7F-7CPL>].

⁴⁷ ASEAN, *ARAC Background and Benefits to ASEAN*, 1 (2016); Speech at FAO Regional Training Workshop: Enhancing Effective Participation in Codex Activities in ASEAN Countries: ASEAN Risk Assessment Centre for Food Safety (ARAC) and Its Activities, (Jan. 9-11, 2017), http://foodsafetyasiapacific.net/wp-content/uploads/2017/01/Agenda-6-6ARAC-and-Its-Activities_Nur-Hidayah-Jamaludin.pdf [<https://perma.cc/7YK4-NEHQ>].

⁴⁸ The functions of the ASEAN Committee on Sanitary and Phytosanitary Measures should be to “facilitate exchange of information on such matters as occurrences of sanitary and phytosanitary incidents in the Member States and non-Member States,” and also to “facilitate co-operation in the area of sanitary and phytosanitary measures.” The Committee should also “endeavor to resolve sanitary and phytosanitary matters with a view to facilitate trade between and among Member States.” See ATIGA, *supra* note 16, at art. 82.

⁴⁹ See *id.* at art. 42.

States. The states can discuss the issues fully and exchange opinions prior to the Codex meetings to reach a consensus on the issues.⁵⁰

7. *Other Institutional Arrangements*

The ASEAN Food Reference Laboratories and the PFPWG were set up for food testing capacity and are the focus of food safety regulatory cooperation both in individual Member States and at the ASEAN level. To enhance Member States' capacity for food safety inspection and laboratory testing, the network of ASEAN Food Reference Laboratories was established under the ASEAN Food Testing Laboratory Committee (AFTLC, created by the PFPWG) in May 2004, with additional technical and financial support from the EU-ASEAN Economic Co-operation Programme on Standards, Quality and Conformity Assessment.⁵¹ This network connects the regional testing laboratories of various professional fields in ASEAN Member States, with areas such as microorganisms, pesticides, residues, and genetically modified organisms. It also develops evidence-based references for Member States to use in setting food safety standards for food testing.⁵² Furthermore, the reference laboratories in the network hold regular meetings to exchange techniques, experience, and educational training to help ASEAN Member States enhance their basic capacity for food testing.⁵³

The ASEAN Consultative Committee on Standards and Quality (ACCSQ) was set up in 1992 under the ASEAN Economic Ministers Meeting to handle technical barriers to trade in ASEAN, facilitate the realization of the ASEAN Free Trade Area (AFTA), and promote trade inside and outside ASEAN.⁵⁴ The scope of ACCSQ scope was later expanded to provided ASEAN Member States with assistance with respect to economic integration, since the success of efforts to remove technical barriers to trade largely depends on conforming Member States' domestic laws to international

⁵⁰ See *The 12th Meeting of ASEAN Task Force on Codex*, ASEAN FOOD SAFETY NETWORK (Apr. 18, 2012), <http://61.19.221.7/CurrentIssueDetail.php?CIId=93> [https://perma.cc/2GXA-74UT]; ASEAN TASK FORCE ON CODEX (AFTC), <http://atfc.afsn.net/>.

⁵¹ EU-ASEAN Economic Co-operation Programme on Standards, Quality and Conformity Assessment, between 2003 and 2005, was jointly developed by the ASEAN Consultative Committee on Standards and Quality, the European Commission, and ASEAN to strengthen business cooperation between the EU and ASEAN, assist ASEAN with regional integration, and reinforce the roles of the Consultative Committee on Standards and Quality and competent authorities of the Member States. Major areas relevant to food safety governance that are incorporated in the Programme include food testing laboratories, food inspection and standardization, legislation, information, and application of HACCP, GMP, and GHP. The Programme also contributed to the drafting of ASEAN Common Food Control Systems, ASEAN Common Principles and Requirements for Food Hygiene, and ASEAN Common Principles and Requirements for the Labelling of Pre-packaged Foods, and to the creation of other newly established regional initiatives, such as the network of ASEAN Food Reference Laboratories). OECD, *supra* note 5, at 118; Sylvia L. Sardy & Nurasiah S. Samhudi, *EU-ASEAN Cooperation Programme on Standard, Quality and Conformity Assessment*, 12 (Aug. 2004),

<http://www.asean.org/storage/images/archive/ACCSQ%20-%20Bulletin%2018/Article%20-%20INDONESIA%202.pdf> [https://perma.cc/YY4V-XXYC].

⁵² ARISE, *supra* note 25, at 43-44; OECD, *supra* note 5, at 117.

⁵³ OECD, *supra* note 5, at 117-18; see *ASEAN Food Reference Laboratories*, ASEAN FOOD SAFETY NETWORK, http://www.afsn.net/FoodLab/Food_Lab.php [https://perma.cc/5QT5-62ZU].

⁵⁴ *ASEAN Food Safety Standards*, ASEAN FOOD SAFETY NETWORK, http://www.afsn.net/consultative/food_standards.php [https://perma.cc/AZT9-KBDW].

standards, practices, and technical regulations and on the effective functioning of conformity assessment procedures.⁵⁵

The ACCSQ established the PFPWG in 2003 to help the ACCSQ eliminate technical barriers to trade in prepared food products⁵⁶ and to harmonize rules and standards for food regulation and safety. It also drafted documents regarding the harmonization of standards and rules, including the ASEAN Common Food Control Requirements (ACFCRs) documents. These documents were to be used as the basis for Member States to make domestic rules⁵⁷ and to allow Member States' regulatory authorities to build confidence in each other's food safety regulatory systems.⁵⁸ In addition, two task forces were formed under the PFPWG. One formulates harmonization rules for food regulation systems, labeling requirements for packaged food products, and food hygiene principles, and the other makes mutual recognition agreements for prepared food products systematically (rather than for any single product), the scope of which includes food safety standards, labeling, conformity assessment, review, and certification of GMP and Hazard Analysis and Critical Control Points (HACCP).⁵⁹ With regard to the progress of mutual recognition agreements, at the twenty-third meeting of the PFPWG held in November 2016, the PFPWG completed drafting the mutual recognition agreement for "Inspection and Certification System for Food Hygiene."⁶⁰

With respect to biotechnology, the ASEAN Genetically Modified Food Testing Network was established in 2003 to assist ASEAN Member States in addressing genetic modification and food safety issues with existing national resources and in acquiring relevant information. It also facilitates the exchange of resources and expertise with other agencies in the international community, such as the European Commission's Joint Research Centre and the International Life Science Institute.⁶¹ In addition, the ASEAN Task Force on Genetically Modified Food Testing Network was established to implement genetic modification-related rules and to conduct relevant activities in ASEAN.

⁵⁵ Gloria O. Pasadilla, Addressing Non-Tariff Measures in ASEAN, ARTNeT Working Paper Series No. 130, 8, 2013.

⁵⁶ Currently, the areas upon which the PFPWG works are led by four countries separately, including "achieving transparency of regulatory regime" (Thailand), "specifying the area for mutual recognition agreements" (Indonesia), "enhancing the technical infrastructure" (Philippines), and "strengthening of food safety standards" (Malaysia); *About ACCSQ PFPWG*, INTERNATIONAL LIFE SCIENCES INSTITUTE ASEAN FOOD SAFETY STANDARD DATABASE, <http://aseanfssdatabase.com/pfpwg> [https://perma.cc/P2XB-MWMG].

⁵⁷ See generally *ASEAN Harmonized Standards and Requirements*, ASEAN FOOD SAFETY NETWORK, http://www.afsn.net/consultative/Food_std_harmonise_std.php [https://perma.cc/5TSL-7Q4W].

⁵⁸ *Removing Barriers for Intra ASEAN Trade for Food Products*, ASEAN REGIONAL INTEGRATION SUPPORT FROM THE EU (July 15, 2014), <http://arise.asean.org/removing-barriers-for-intra-asean-trade-for-food-products> [https://perma.cc/XAL5-KCAB].

⁵⁹ ASEAN FOOD AND BEVERAGE ALLIANCE, HARMONISATION OF FOOD STANDARDS IN ASEAN: A SHARED VISION FOR REGULATORY CONVERGENCE 8 (2012) [hereinafter AFBA].

⁶⁰ On the other hand, the PFPWG continues to cooperate with other relevant ASEAN bodies on a mutually beneficial basis, making a comprehensive plan for the ASEAN Food Safety Regulatory Framework (detailed below). They seek to effectuate this plan to implement the ASEAN Food Safety Policy and facilitate trade. ASEAN, *AEC 2025 Consolidated Strategic Action Plan*, *supra* note 19, at 33.

⁶¹ Paul S. Teng & Andrew D. Powell, *Agrobiotechnology Potential in Singapore*, 10 ASIA PACIFIC BIOTECH NEWS 422, 426 (2006).

The Sub-Committee on Food Science and Technology was also established to promote intra-ASEAN cooperation on food science and technology and to enhance the quality of scientific institutions and human resources. Food safety is one of the priority areas of this sub-committee as set out in the ASEAN Plan of Action on Science, Technology and Innovation 2016-2025.⁶²

Lastly, the PFPWG plans to establish the ASEAN Food Safety Coordinating Committee to supervise the implementation of the above-mentioned ASEAN Food Safety Regulatory Framework and related protocols. The Committee will begin operations after a task force set up by the PFPWG formulates the rules for implementing the framework, and the task force will be dissolved after completing that work. Once the Committee is officially established, it will plan and supervise the implementation of the framework and protocols attached to it. The Committee will coordinate with relevant bodies under the ASEAN Health Ministers Meeting, ASEAN Ministers of Agriculture and Forestry Meeting, and ASEAN Economic Ministers Meeting to develop the protocols, and report the implementation progress on a regular basis.⁶³

B. Common Policies and Rules for ASEAN's Regional Food Safety Governance

Since institutional arrangements cannot work without substance, common policies, rules, and standards are crucial to build up ASEAN's regional food safety governance. In this regard, a number of regulatory instruments have been formulated in ASEAN to work closely within the aforementioned institutional arrangements. Such substantive elements include *inter alia* the ASEAN Food Safety Policy, the ASEAN Food Safety Regulatory Framework (which is both an institutional arrangement and a policy-oriented instrument) and many common rules for harmonizing Member States' food safety regulatory standards, laying the substantive foundation for ASEAN's regional food safety governance.

1. ASEAN Food Safety Policy as the Common Governance Anchor

With ASEAN's goal of regional integration, coping with food safety issues is the responsibility of multiple agencies of various areas and requires active cooperation of all participants in the food supply chain, from primary producers to consumers.⁶⁴ With the support of the EU's ARISE program, ASEAN confirmed the "ASEAN Food Safety Policy" in 2016 to guide various aspects of cooperation on food safety regulation among Member States.

The ASEAN Food Safety Policy is the common basis for the operation and coordination of relevant ASEAN agencies and bodies. It focuses on objectives including improving health protection, protecting consumer rights, ensuring the fairness of trade in food products, and facilitating the free flow of safe food products. It also provides a basis for Member States to formulate food safety policies and helps

⁶² ASEAN, ASEAN PLAN OF ACTION ON SCIENCE, TECHNOLOGY AND INNOVATION (APASTI) 2016-2025 28 (2016).

⁶³ *Id.* at 4.

⁶⁴ ASEAN, *ASEAN Food Safety Policy*, *supra* note 41, at 3-4.

them to design and implement food safety measures,⁶⁵ thereby harmonizing food safety regulatory rules for the food supply chain within ASEAN and strengthening cooperation.⁶⁶ Most importantly, the “ASEAN Food Safety Policy” sets out ten key principles, in particular the “integrated ‘food chain’ approach,” “science-based, independent risk assessment process,” “primary responsibility of food business operators,” and “reliable traceability system.”⁶⁷ The ten key principles seem consistent with the trends in reform for international food safety,⁶⁸ which has significant meaning not only as an indicator, but also is beneficial to the steady and sustainable development of the regional food safety governance framework.⁶⁹

2. *Harmonizing Food Safety Rules and Standards of ASEAN Member States*

The ATIGA has identified the harmonization of standards at the ASEAN as an important objective. Specifically, Chapter 7 of the ATIGA addresses “establish[ing] provisions on standards [and] technical regulations” to avoid unnecessary trade barriers during the process of creating a single market and production base.⁷⁰ Therefore, harmonization of regulations and standards, removal of technical barriers to trade, and developing mutual recognition agreements appear to be designed and stipulated to achieve the goals of creating a single market and facilitating trade.

As a general matter, working groups of the various professional fields are responsible for research on and analysis of harmonizing food safety standards.⁷¹ If a specific standard is included in a mutual recognition agreement or a harmonized regulatory regime, ASEAN Member States, as per existing mutual recognition agreements or harmonized regulatory regimes, are obligated to recognize the harmonized standard as equivalent to the domestic counterpart or to adopt the standard directly in relevant regulations and to make every effort to alleviate conflicts between

⁶⁵ *Id.* at 5.

⁶⁶ OECD, *supra* note 5, at 120.

⁶⁷ The ten principles in the ASEAN Food Safety Policy are as follows: “Integrated ‘Food Chain’ approach,” “Systematic Risk Analysis Framework,” “Science-based, Independent Risk Assessment Process,” “Primary Responsibility of Food Business Operators,” “Consistency with ATIGA and WTO’s SPS and TBT Agreements,” “Equivalence and Mutual Recognition,” “Harmonisation with International Standards,” “Reliable Traceability System,” “Strengthening and Harmonisation of Regional and National Food Control Systems,” and “Transparency.” ASEAN, *ASEAN Food Safety Policy*, *supra* note 41, at 5-12.

⁶⁸ See generally Mengyi Wang & Ching-Fu Lin, *Towards a Bottom-up SPS Cooperation: An Analysis of Regulatory Convergence in Food Safety Regimes*, 8 TRADE L. & DEV. (2016).

⁶⁹ ASEAN, *supra* note 1, at 4.

⁷⁰ ATIGA, *supra* note 16, at art. 71: “The objective of this Chapter is to establish provisions on standards, technical regulations and conformity assessment procedures to ensure that these do not create unnecessary obstacles to trade in establishing ASEAN as a single market and production base, and at the same time ensure that the legitimate objectives of Member States are met.”

⁷¹ Harmonization of rules in ASEAN focuses on four areas: quality, efficacy, safety, and administration. In 1992, the ACCSQ was established for interdepartmental harmonization of regulatory rules (including rules on food and medical products). The ACCSQ developed with various guidelines regarding food and medical regulations, including labeling, regulation of pesticides, and traditional medicine. INSTITUTE OF MEDICINE (OF THE NATIONAL ACADEMIES), ENSURING SAFE FOODS AND MEDICAL PRODUCTS: THROUGH STRONGER REGULATORY SYSTEMS ABROAD 47-48 (Jim E. Riviere & Gillian J. Buckley eds., 2012).

domestic rules and the harmonized standard.⁷² Furthermore, while the guidelines under the ASEAN Common Food Control Requirements are not binding, they are usually based on international standards and thus provide a basis for harmonization and may serve as a reference when Member States make subsequent mutual recognition agreements and related rules.⁷³

Harmonization at the regional level is not an easy task, especially because ASEAN Member States differ substantially in various aspects. ASEAN includes some of the least developed countries in the world, such as Cambodia and Lao PDR, and highly developed countries, such as Singapore. Nevertheless, even though the standards set by ASEAN are oftentimes more stringent than the domestic standards set by some Member States, through many years of cooperation and capacity building, ASEAN Member States have developed a set of rules that allow different timetables for implementing standards due to the different situations in the Member States.⁷⁴

Currently, the harmonization of rules and standards for food regulation and food safety in ASEAN is based mostly on guidelines, standards, and recommendations adopted by Codex, which are further modified to become rules in ASEAN.⁷⁵ Through the implementation of these common rules and standards, ASEAN Member States ensure a well-established food safety and food regulation system in the region and build confidence both in the region and in the international community in ASEAN's food safety governance, trade in food products and consumer protection. The instruments adopted at the ASEAN level as part of the ASEAN Common Food Control Requirements include⁷⁶ ASEAN Principles and Guidelines for National Food Control Systems;⁷⁷ ASEAN General Principles of Food Hygiene;⁷⁸ ASEAN Principles for Food Import and Export Inspection and Certification;⁷⁹ ASEAN Guidelines for the

⁷² ARISE, *Development of ASEAN Food Safety Policy Recommendations and Road Map for the Realisation of a Regulatory Framework for Food Safety*, at 11, (Aug. 14, 2014), http://arise.asean.org/wp-content/uploads/2014/07/REPORT_Workshop_Review_ACFCR_14-15-July-2014_final_08_08_14.pdf [<https://perma.cc/RXD9-UDCN>].

⁷³ ASEAN, *supra* note 1, at 118-19.

⁷⁴ INSTITUTE OF MEDICINE (OF THE NATIONAL ACADEMIES), *supra* note 71, at 48.

⁷⁵ ARISE, *supra* note 25, at 3.

⁷⁶ ASEAN Common Food Control Requirements are guidelines based on risk analysis and developed by using the integrated approach of "from farm to fork." ASEAN FOOD SAFETY NETWORK, *supra* note 50; ASEAN, *supra* note 1, at 118.

⁷⁷ The principles "provide practical guidance to assist the national government and their competent authority in the design, development, operation, evaluation and improvement of the national food control system. The document emphasizes the key principles and core elements of an efficient and effective food control system." See ASEAN, *ASEAN Common Food Control Requirements: ASEAN Principles and Guidelines for National Food Control Systems*, CAC/GL 82-2013 (endorsed Sept. 3-4, 2014), at 3.

⁷⁸ While providing "foundation for ensuring food hygiene," the document emphasizes the "key hygiene controls at each stage" of the food chain from primary production through to final consumption. In addition, the document recommends an "HACCP-based approach" to enhance food safety as described in an annex. ASEAN, *ASEAN Common Food Control Requirements: ASEAN General Principles of Food Hygiene*, CAC/RCP 1-1969, Rev. 4-2003 (endorsed Sept. 3-4, 2014), at 1. "The general principles are recommended to governments, industry (including individual primary producers, manufacturers, processors, foodservice operators and retailers) and consumers alike." *Id.*

⁷⁹ The document provides principles that should be considered and applied in inspection and certification systems for controlling food import and export (e.g., fitness for purpose, risk assessment, equivalency, and transparency). "By recognizing these principles, the inspection and certification systems would not hinder both regional and international trade." ASEAN, *ASEAN Common Food Control*

Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems;⁸⁰ and ASEAN Guidelines for Food Import Control Systems.⁸¹ Instruments adopted as part of the Food Safety Standards include ASEAN General Standards for the Labelling of Prepackaged Food,⁸² ASEAN Principles and Criteria for the Establishment of Maximum Level for Contaminants and Toxins in Food and Feed,⁸³ and ASEAN Guideline on Inspection and Certification of Food Hygiene.⁸⁴

III. FROM THE EU TO ASEAN: CONTEXTUALIZING REGIONAL FOOD SAFETY GOVERNANCE MODELS

The trajectory of ASEAN's development of institutional arrangements and substantive policies and rules, as analyzed above, may portray a promising picture of regional food safety governance in ASEAN. However, given ASEAN Member States' diverse social, economic, political and cultural contexts, it is critical to probe through a comparative lens the similarities and differences between ASEAN and the EU to

Requirements: ASEAN Principles for Food Import and Export Inspection and Certification, CAC/GL 20-1995 (endorsed Sept. 3-4, 2014), at 2.

⁸⁰ The document provides governments "a framework for the development of import and export inspection and certification systems." ASEAN, *ASEAN Common Food Control Requirements: ASEAN Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems*, CAC/GL 26-1997 (endorsed Sept. 3-4, 2014), at 1. Importantly, the document aims to "deal with the recognition of equivalence of inspection and/or certification systems and not with standards related to specific food products or their components (e.g., food hygiene, additives and contaminants, labelling and quality requirements)." *Id.*

⁸¹ The guidelines cover general characteristics that should be considered in food import control systems. The guidelines provide "a framework for the development and operation of an import control system to protect consumers and facilitate fair practices. At the same time, it can be ensured that unjustified technical barriers to trade do not occur." ASEAN, *ASEAN Common Food Control Requirements: ASEAN Guidelines for Food Import Control Systems*, CAC/GL 47-2003 (endorsed Sept. 3-4, 2014), at 1.

⁸² This document provides "guidance on general requirements for the labelling . . . for governments, regulatory authorities, food industries and retailers, and the consumers." ASEAN, *ASEAN General Standards for the Labelling of Prepackaged Food* (endorsed June 2-3, 2016), at 1.

⁸³ "The document has been prepared in consultation with the Agriculture Working Groups for Crops, Fisheries and Livestock." ASEAN, *ASEAN Principles and Criteria for the Establishment of Maximum Level for Contaminants and Toxins in Food and Feed* (endorsed by the 23rd PFPWG Meeting), at 2, <http://asean.org/storage/2012/10/ASEAN-Principles-and-Criteria-for-The-Establishment-of-Maximum-Level-for-Contaminants-and-Toxins-in-Food-and-Feed.pdf> [<https://perma.cc/MFU2-HSNN>]. "This document is an adoption of the General Standard for Contaminants and Toxins in Food and Feed (CODEX STAN 193-1995) with . . . [some] modification." *Id.* For example, Maximum Levels (MLs) "and the associated sampling plans from CODEX STAN 1[9]93-1995 are not included in the ASEAN document." *Id.* Instead, "the results of risk assessments conducted by [the ASEAN Risk Assessment Centre] provide information for the establishment of MLs for ASEAN and supplement recommendations from the Joint FAO/WHO Expert Committee on Food Additives." *Id.* The document "provides a basis for the establishment and maintenance of harmonised [MLs] for contaminants in food and feed," and "is recommended to be used by other relevant sectoral bodies in ASEAN for the development of MLs for contaminants and toxins in food and feed." *Id.*

⁸⁴ The document aims to "provide practical guidance to assist the national governments" of ASEAN Member States, "and their competent authority in inspection and certification of food hygiene," with checklists for food hygiene inspection of food establishments. ASEAN, *ASEAN Guidelines on Inspection and Certification of Food Hygiene* (endorsed Feb. 28-Mar. 1, 2015), at 1. "The guideline is designed according to the ASEAN General Principles of Food Hygiene, one of the ASEAN Common Food Control Requirements (ACFCR)." *Id.*

assess the potential successes and limitations of this emerging regional governance framework.

As evidenced in the foregoing analysis, the influence of the EU model can be seen ubiquitously in the institutional arrangements, common policies, and rules of ASEAN's food safety governance. In fact, many newly established mechanisms resulted from EU-ASEAN bilateral cooperation programs. Yet, as a matter of institutional design, to what extent, if any, would ASEAN benefit from looking at the EU and adopting similar mechanisms and approaches despite the different economic, social, and political underpinning of Southeast Asia and Europe?

From a historical standpoint, the EU and ASEAN have similar goals for regional integration, that it be broadly defined and practiced. Their bilateral cooperation can be traced back to 1977, when the need for establishing formal relations between them was confirmed at the tenth ASEAN Ministerial Meeting (of Foreign Affairs). The first ASEAN-EC Ministerial Meeting was held in 1978. Subsequently, in 1980, the ASEAN-EEC Cooperation Agreement was officially signed to facilitate cooperation on bilateral trade, industries, investment, and technology transfer. In the early 2000s, EU-ASEAN relations did not develop as smoothly as expected due to solid bilateral relationships between the EU and individual ASEAN Member States and to differences in the structure and organization between ASEAN and the EU. Therefore, in 2003, the EU refashioned its strategy for "a new partnership with South East Asia." This strategy involved fostering new dialogues, as well as establishing the regulatory cooperation framework of the Trans-Regional EU-ASEAN Trade Initiative.⁸⁵ This framework was intended to promote trade and investment, to build effective platforms for trade talks, and implement a regulatory framework for cooperation in areas including trade between the EU and ASEAN, market access, and investment issues. From 2004 to 2009, various activities were held under that framework, including food safety seminars and workshops. This confirmed that other non-EU countries indeed hoped and needed to understand the entire picture of the operation and policies of the EU's food safety governance. The aforementioned Better Training for Safer Food initiative was thus formed.⁸⁶

The Better Training for Safer Food initiative, which began in 2005, is essentially a training program for competent authorities of EU Member States and personnel in charge of regulatory affairs from non-EU states. It addresses rules in areas including food, feed, animal health and welfare, and plant health. It is intended to familiarize participants with the latest developments of the rules, allowing all EU Member States to enforce laws and regulations consistently, objectively, and appropriately.⁸⁷ Most importantly, the initiative proactively helps foreign authorities to build regulatory capacities to ensure food safety along the global supply chain, especially when food products constantly are imported from non-EU countries with various risks. The

⁸⁵ CLIVE ARCHER, *THE EUROPEAN UNION* 103 (2008).

⁸⁶ European Commission, Directorate-General for Trade, *TREATI – Work Programme and Progress Report*, at 4 (Dec. 2007).

⁸⁷ *Better Training for Safer Food (BTFSF): Main Objectives of BTFSF*, EUROPEAN COMMISSION, http://ec.europa.eu/food/safety/btsf_en [<https://perma.cc/NG8L-XVDH>].

initiative also promotes the harmonization of regulatory measures between EU and non-EU countries, seeking to ensure a level playing field for market competition.⁸⁸

The EU is experienced in terms of regional integration, including in economic integration, creation of a single market, removal of trade barriers, and reconciliation of differences in laws and administrative matters. The EU has actively sought to sign partnership or cooperation agreements with ASEAN (and certain individual Member States),⁸⁹ and it has, in many instances, expressed willingness to assist ASEAN with regional integration through experience and financial support.⁹⁰ The ARISE program, as analyzed previously, was a technical cooperation program between the EU and ASEAN from 2013 to 2016 based on past programs under which the EU offered assistance to ASEAN.⁹¹ By improving institutional arrangements and overall management during ASEAN's integration process, assisting ASEAN with liberalization and trade facilitation measures in key areas, and providing financial support and expertise—including sending experts—to the ASEAN Secretariat, the program strengthened communication and connection between the EU and ASEAN and helped ASEAN to build mechanisms for regional integration and to create a single market and production base.⁹²

Through technical and financial support from the EU,⁹³ ASEAN imported and copied the EU EFSA model, creating the ASEAN Risk Assessment Centre for Food Safety in Malaysia to serve as an independent institution for scientific inquiries. Competent authorities in ASEAN Member States consult this institution regarding food-related risks.⁹⁴ Similarly, the ARASFF follows the design and operation of the EU's RASFF model of regional governance, which was established to enable prompt notification and information exchange on the part of authorities in charge of food safety or public health when food or feed safety incidents occur.⁹⁵ Indeed, many newly

⁸⁸ *Id.*

⁸⁹ *EU-ASEAN Relations*, ASEAN RISK ASSESSMENT CENTRE FOR FOOD SAFETY, <http://arise.asean.org/about-arise/eu-asean-relations> [https://perma.cc/G56B-FFEZ].

⁹⁰ ERIA, ASIA-EUROPE CONNECTIVITY VISION 2025 CHALLENGES AND OPPORTUNITIES (AN ERIA-GOVERNMENT OF MONGOLIA DOCUMENT) 173 (2016), *available at* http://www.eria.org/Asia_Europe_Connectivity_Vision_2025.pdf [https://perma.cc/3798-BDLD].

⁹¹ This refers to the first and second EC-ASEAN Programmes for Regional Integration Support (APRIS). With the first one between 2003 and 2006 and the second one between 2005 and 2006, they assisted ASEAN in formulating policies and improving institutional capacity through the EU experience and strengthened cooperation between the EU and ASEAN. ARISE, *Annual Work Plan 2 (1st May 2014 to 30th April 2015)*, at 6; European External Action Service, *Regional Indicative Programme 2005-2006 ASEAN*, at 7, *available at* http://eeas.europa.eu/archives/docs/asean/csp/rip_05-06_en.pdf [https://perma.cc/8J65-3T7X].

⁹² *Programme Objectives*, ASEAN REGIONAL INTEGRATION SUPPORT FROM THE EU 2013-2016, <http://arise.asean.org/about-arise> [https://perma.cc/X4DZ-WZL2].

⁹³ The ASEAN Regional Integration Support from the EU is a program aimed to “support the implementation of key regional integration initiatives prioritized in the Master Plan for ASEAN Connectivity” and to “build the ASEAN single market and production base.” *Id.* The three components in the program include “high level capacity building,” “support to the realization of the single market for goods,” and “ASEAN Secretariat capacity building.” *Id.*

⁹⁴ *See ARAC Brochure*, ARAC: ASEAN RISK ASSESSMENT CENTRE FOR FOOD SAFETY, http://www.arac-asean.org/images/pdf/ARAC-Brochure_Fix5.pdf [https://perma.cc/NC2S-E8ES].

⁹⁵ ASEAN RAPID ALERT SYSTEM FOR FOOD AND FEED, *supra* note 40.

created mechanisms and rules at the ASEAN level are the results of bilateral cooperation programs with the EU.⁹⁶

Looking at the progress of the EU-ASEAN bilateral cooperation programs, it is reasonable to suggest that ASEAN also intends—incrementally or in a wholesale manner—to import the EU’s food safety governance system into ASEAN with the EU’s assistance and active involvement. But can the EU system be directly applied to ASEAN and work effectively? There must be further analysis of the similarities and differences between EU and ASEAN backgrounds with regard to legal system, level of development, society and culture, and industrial structure. In this regard, this Article offers, below, a preliminary analysis of some crucial aspects.

A. Does the EU Experience of Regional Food Safety Governance Have General Applicability?

The development of the EU’s regional food safety governance framework can, according to Alberto Alemanno, be divided into five phases.⁹⁷ Initially, the principal objectives were “creating a single market, removing trade barriers, and promoting regional economic integration,” followed by phases including “harmonization of rules,” “mutual recognition,” and “Europeanization of food safety laws.” After more than five decades, these phases progressed to the current mature regional food safety governance system based on the EU General Food Law (EC regulation 178/2002).⁹⁸ The following analysis focuses on how the EU, with many years of experience in regional food safety governance, has tried to establish its role as a shaper of rules for global food safety governance by exporting its governance system, bilateral cooperation, and participation in multilateral arenas.

1. The EU’s Experience in Fostering Regional Food Safety Governance

The first phase of the development of the EU’s regional food safety governance took place from 1962 to 1969. To achieve the ultimate goal of peace and collective prosperity, Article 3 of the Treaty establishing the European Economic Community (EEC), specifies that an internal market with the free movement of goods, services and capital should first be created to accomplish the mission of creating a common market. Thus, the legislative framework for food policies in Europe was formed initially to achieve economic integration rather than public health considerations.⁹⁹ In light of various trade barriers resulting from differences in the states’ domestic laws, in 1969, the Community created the General Programme for the Elimination of Technical Barriers to Trade¹⁰⁰ to handle trade barriers caused by regulatory differences.

This program led to the commencement of the second phase of Europe’s food safety management, from 1969 to 1985, in which the traditional “harmonizing rules”

⁹⁶ Thailand National Bureau of Agriculture Commodity and Food Standards, *supra* note 38.

⁹⁷ See generally ALBERTO ALEMANNO, TRADE IN FOOD: REGULATORY AND JUDICIAL APPROACHES IN THE EC AND THE WTO 33-72 (2007).

⁹⁸ Regulation (EC) No. 178/2002 of the European Parliament and of the Council, 2002 O.J. (L31).

⁹⁹ ALEMANNO, *supra* note 97, at 49.

¹⁰⁰ See General Programme for the Elimination of Technical Barriers to Trade, 1969 O.J. C 76/1; Council Resolution of 17 December 1973 on industrial policy, 1973 J.O. (C 117) 1.

approach was adopted. The second phase continued to focus on the facilitation of free movement of food products rather than matters of public health or consumer protection.¹⁰¹ Addressing issues related to the latter was a spillover effect of the Community seeking to ensure the achievement of the objective of market integration.¹⁰²

In 1985, the Commission of the European Community decided to abandon “recipe laws” and to adopt an entirely new approach for harmonizing the rules of different states.¹⁰³ The Commission extended this “new approach” to food products¹⁰⁴ and adopted the principle of mutual recognition, confirmed by the European Court of Justice in the *Cassis de Dijon* case in 1979.¹⁰⁵ Pursuant to this principle, if a product of another Member State is manufactured and marketed in accordance with laws and regulations in that Member State and provides the same level of protection, a Member State must permit the free movement of that product within its territory.¹⁰⁶ This is the third phase of Europe’s food safety governance system, from 1985 to 1997. Before 1992, with respect to food policies, the Community continued to focus on removing trade barriers and paid little attention to health issues. Therefore, although many food-related laws and regulations were passed and higher standards for health protection were adopted, these developments did not constitute a common food policy.¹⁰⁷

In the mid-1990s, after several food safety emergencies, the EU entered the fourth phase, from 1997 to 2002, featuring the “Europeanisation” of food safety risks. The free movement of food products was no longer the primary guiding principle for Europe’s food laws and regulations; it was replaced by the idea that food safety concerns not only consumers’ health but also a well-functioning internal market.¹⁰⁸ The outbreak of bovine spongiform encephalopathy (BSE) in the 1990s led the Member States and the Community to face the deficiencies in food safety regulation and marked the start of the EU’s food safety governance system.¹⁰⁹

The fifth phase, from 2003 to the present, features the “global approach.” In 2001, the European Commission proposed to turn the White Paper on Food Safety¹¹⁰ into a

¹⁰¹ALEMANNO, *supra* note 97, at 52.

¹⁰²ELLEN VOS, INSTITUTIONAL FRAMEWORKS OF COMMUNITY HEALTH AND SAFETY LEGISLATION: COMMITTEES, AGENCIES, AND PRIVATE BODIES 9 (1999).

¹⁰³*New Approach to Technical Harmonisation and Standards*, COM(85) 19 final (Jan. 31, 1985), then adopted by the Council Resolution on a New Approach to Technical Harmonization and Standards, 1985 O.J. (C136) 1; *see also* ALEMANNO, *supra* note 97, at 53.

¹⁰⁴*Completion of the Internal Market: Community Legislation on Foodstuffs*, COM (85) 603 final (Nov. 8, 1985). This paper is also called in Brussels jargon the “Mini White Paper” or “White Paper-bis”. ALEMANNO, *supra* note 97, at 54.

¹⁰⁵Case 120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR 650649.

¹⁰⁶The European Court of Justice took the same stance subsequently, holding in most cases that Member States shall not prohibit the sale of a product on the basis of consumer protection merely because its ingredients differ from those customarily used in the place of sale, and that Member States shall instead achieve the objective of consumer protection by requiring that the labels contain detailed information that would allow consumers to distinguish between and understand the different ingredients and manufacturing methods and make an informed decision. ALEMANNO, *supra* note 97, at 53-55.

¹⁰⁷*Id.* at 60.

¹⁰⁸*Id.* at 61.

¹⁰⁹*Id.* at 61-62.

¹¹⁰White Paper on Food Safety COM (99) 719 final (Jan. 12, 2000).

regulation covering general principles of food safety, the establishment of EFSA, and emergency measures to be taken in the event of various food safety incidents. The proposal, with minimal modifications, was adopted on January 28, 2002. The EU General Food Law,¹¹¹ which signified the Community's first attempt to take a holistic approach to addressing food safety issues as well as a comprehensive food safety regulatory approach "from farm to fork,"¹¹² upheld high standards for ensuring human health and consumer protection.¹¹³

In short, the EU underwent a slow and gradual change from of its focus on economic integration to its prioritization of regional food safety and global risk governance. The EU's food safety governance model emphasizes a "comprehensive integrated approach" for regulatory measures for all stages of the food supply chain, and it was responsible for the formulation of the comprehensive food safety policy "from farm to fork." Noteworthy mechanisms and rules include the following: general principles of law uniformly applied at the regional level, traceability systems, the principle of risk analysis for food safety (risk assessment and risk management as two organizationally independent phases), the precautionary principle, food businesses bearing the primary responsibility, readily available information for consumers, and proper labeling. Furthermore, with regard to institutional arrangements, EFSA is an independent and professional body primarily responsible for the scientific and technical side of food safety risk assessment and risk communication.¹¹⁴ Also, Articles 50, 51, and 52 of the EU General Food Law confirmed the basis for operation and procedures of the above-mentioned RASFF: when food or feed pose direct or indirect risks to human health, such situations should be promptly reported to the Commission.¹¹⁵ With the EU food safety governance system having developed to its current form, the EU's integration has undergone a change from purely economic considerations for the free movement of goods within the market to public interest considerations in protecting consumers and public health.

2. *The EU as an Active Exporter and Shaper of Rules in Global Food Safety Governance*

The EU's food safety policy and governance approach not only concerns the promotion of the safety of food products within the internal market, but also emphasizes an external relation of protecting against foodborne risks originating from other non-EU countries driven by the nature of the global food supply chain. The EU actively exports its food safety models and rules to help European food business

¹¹¹ALEMANNO, *supra* note 97, at 71-72.

¹¹²European Commission, *The Rapid Alert System for Food and Feed of the European Union*, COM (2009) 25 final (Jan. 28, 2009); *see also* ALEMANNO, *supra* note 97, at 72.

¹¹³ALEMANNO, *supra* note 97, at 72.

¹¹⁴In the EU General Food Law, risk assessment and risk management are separate powers and responsibilities. EFSA is responsible for risk assessment and risk communication and provides its independent scientific analyses for the risk manager (the European Commission) reference for making decisions. On the one hand, this lowers the possibility of the risk analysis being affected by other factors, which enhances the objectivity of the risk analysis; on the other hand, as risk management is essentially still making policy decisions, it is the European Commission's responsibility. RAYMOND O'ROURKE, *EUROPEAN FOOD LAW 194-95* (3d ed., 2005).

¹¹⁵The RASFF is in fact the result of putting into practice the principle of risk analysis, establishing a platform for risk communication among Member States with the expectation of fully carrying out the function of risk management.

operators enter non-EU markets and to assist other countries in strengthening their food safety systems and regulations.¹¹⁶ Judging by the EU's attempts to extend the application of its internal procedures and substantive standards to other countries, it seems fair to regard the EU as playing the role of a rule shaper unilaterally exporting its food safety governance system to push other countries to modify their rules and regulations. Since foreign businesses are attracted to the EU's internal market, the EU strictly imposes health and safety standards to compel the foreign businesses to meet the level of protection required by the EU.¹¹⁷ The EU has also made its food safety rules a condition of other non-EU countries' entering into the EU market¹¹⁸ and seems to have become a normative empire that even extends its regulatory rules to the territory of other countries.¹¹⁹

The EU has also engaged in cooperation activities with non-EU countries on food safety governance. One of the EU's methods of regulating imported food products is the so-called risk analysis. Although regulation based on risk confers flexibility to adjust the rules according to the products' actual risks and the importing country's food safety conditions, it also poses challenges to the effectiveness of the control and law enforcement on the EU's part.¹²⁰ For instance, many goods imported into the EU from other countries are not subject to border control measures; provided that shippers satisfy the formal requirements of customs checks, most of the imported food products and goods that they ship are allowed to move freely within the EU's internal market.¹²¹ Therefore, the implementation of the EU food safety governance framework involves multiple levels and multiple actors, and it requires constant modification and review based on new risk assessments and safety incidents. To ensure food safety within the EU, there must be effective cooperation among the EU and the competent authorities of other countries.¹²² Consequently, exporting the EU's food safety governance model to other countries has resulted not only in unilateral adjustments made by those countries importing the model, but is also an outcome that the EU has been actively seeking to achieve.¹²³ While the EU has been helping non-EU countries improve techniques and build institutional capacity, many mechanisms have been created to ensure cooperation with non-EU countries.¹²⁴ One of these mechanisms is that a non-EU country might be requested to exchange substantial information with EU food safety authorities prior to importing food products to Europe, which allows the EU to evaluate in advance the non-EU country's food safety rules, regulations, inspection,

¹¹⁶Weimer & Vos, *supra* note 37, at 52-53.

¹¹⁷See generally Zaki Laidi, *The Normative Empire: the unintended consequences of European Power* (HAL, hal-00972756) (2008), <https://hal.inria.fr/file/index/docid/972756/filename/cahier05.pdf> [<https://perma.cc/2CXK-Y9MY>].

¹¹⁸Regulation (EC) No. 178/2002, *supra* note [-], art. 11 (EC)..

¹¹⁹Weimer & Vos, *supra* note 37, at 53-54.

¹²⁰Weimer & Vos, *supra* note 37, at 54.

¹²¹Alberto Alemanno, *Solving the Problem of Scale: The European Approach to Import Safety and Security Concerns*, in *IMPORT SAFETY, REGULATORY GOVERNANCE IN THE GLOBAL ECONOMY* 171, 171 (Cary Coglianese et al. eds., 2009).

¹²²Weimer & Vos, *supra* note 37, at 54.

¹²³*Id.*

¹²⁴*Id.*

and risk assessment procedures.¹²⁵ Further, Regulation (EC) 882/2004 specifically requires that the Commission assist developing countries to build the capacity necessary to comply with European food safety rules¹²⁶ so that the EU is allowed, and indeed obligated, to take special measures to aid non-EU countries.¹²⁷

Apart from these two approaches, the EU actively participates in multilateral systems, including the WTO and Codex, to ensure that its food safety models and policies are reasonably recognized. The EU's participation in the WTO and Codex is particularly significant. The fact that the EU and other participants jointly developed rules and guidelines to some extent mitigates the EU's role as a unilateral "exporter of food safety rules."¹²⁸ In practice, the creation of Codex and other international standards, through the collective decision-making process in multilateral systems, often indirectly causes other non-EU countries to accept and adopt the EU's food safety rules and standards.¹²⁹ By assisting the European Commission with participation in the Codex committees and task forces through its experts, the EFSA can be regarded as a means of reaching its goal of promoting and urging the adoption of risk analysis methods favored by the EU in Codex. As stated by EFSA, its mission is to "contribute to and learn from international risk assessment activities and be fully embedded in the international scientific community."¹³⁰ This signifies that EFSA not only plays a critical role in food safety governance within the EU, but it also serves as the networked agency outside the EU that connects EU professional scientific institutions and various actors in the international community.¹³¹

In sum, there are two important observations from the EU's interactions with other countries in the international food safety governance system in the context of global

¹²⁵*Id.* at 55.

¹²⁶Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law and animal health and animal welfare rules, art. 50(2), 2004 O.J. (L165) 92 (EC).

¹²⁷With respect to the capacity-building program between the EU and other countries, scholars hold different views, both positive and negative. The negative view focuses on the EU's own interests, while the positive view focuses on what developing countries might learn and gain through the program. Some have also indicated that the outcome of the EU's efforts to assist developing countries with capacity building depends on certain other factors, such as the techniques and financial resources that the other countries already owned and their reliance on exportation and volume of exports. Therefore, whether the EU's food safety rules are a "catalyst" for non-EU countries' reform or, conversely, become trade barriers depends to a greater extent on the circumstances the non-EU countries are under and their relationship with the EU. Weimer & Vos, *supra* note 37, at 55.

¹²⁸The WTO rules often deeply influence its members' domestic rules concerning food, environmental safety, and consumer protection issues. For example, the EU thoroughly examined its food safety rules, system and framework in the late 1990s and early 2000s. The risk analysis incorporated in the EU General Food Law draws a clear line between risk assessment and risk management—this was not merely a result of the BSE crisis; it was also about the implementation of the WTO SPS Agreement and the role of the dispute settlement mechanism in the dispute between the EU and the US. *Id.* at 57-58; see generally Charles Sabel & Jonathan Zeitlin, *Experimentalist Governance*, in THE OXFORD HANDBOOK OF GOVERNANCE (David Levi-Faur ed., 2011), available at [http://www2.law.columbia.edu/sabel/papers/Sabel%20and%20Zeitlin%20handbook%20chapter%20final%20\(with%20abstract\).pdf](http://www2.law.columbia.edu/sabel/papers/Sabel%20and%20Zeitlin%20handbook%20chapter%20final%20(with%20abstract).pdf) [<https://perma.cc/8GLB-LMU8>].

¹²⁹Weimer & Vos, *supra* note 37, at 59.

¹³⁰See European Food Safety Authority, *International Activities – A Strategic Approach*, 3 (Jan. 29, 2009), http://www.efsa.europa.eu/sites/default/files/corporate_publications/files/intstrategyen.pdf [<https://perma.cc/C4Z2-DJEC>].

¹³¹Weimer & Vos, *supra* note 37, at 59-60.

governance.¹³² First, based on the economic incentives of the internal market and strict requirements of the food safety rules, the EU has been unilaterally pushing other countries to adjust their rules and regulations and, to a certain extent, has become an authoritative rule exporter in the global arena. On the other hand, the EU has also actively participated and exerted influence in multilateral governance mechanisms at the global level, allowing for the incorporation of EU food standards during the process of shaping the WTO rules and international standards. Using these multilateral food safety standards also helps to and to explain the EU standards' external effect.¹³³

B. Contextualizing Regional Governance in ASEAN and the EU: To What Extent Can EU Regional Food Safety Models Work in ASEAN?

Given the rigorous and strategic rule exporting activities taken by the EU, ASEAN's embrace of the EU food safety governance models merits a close, contextualized examination. Although the EU and ASEAN differ in their levels of economic development, society, political and economic systems, ethnicity, region, and even the institutional structure of the regional organizations, some similarities worth noting appear in their process of integration and policy directions. Western Europe faced serious economic crises in the 1970s, which led it to pursue a single European market for economic integration, seeking to resolve economic difficulties. Likewise, in the 1990s, Southeast Asia encountered grave economic and political challenges, as discussed above, due to the financial crisis in Asia and the rapid economic growth of China and India.¹³⁴

Despite such similar situations between the EU and ASEAN, they differ in the formation and implementation of market integration. They both chose to attempt to implement regional market integration, and, in the process, expanded the scale of the economy, reduced the average cost of production, created a larger market, and helped businesses gain competitive advantages. However, with respect to the roles that supranational organizations and states play during the process of integration, differences in political and economic factors, government policy tendencies, and the level of development and characteristics of each regional organization's institutional structure have resulted in differences that are often reflected in the actual process of integration and the means of accomplishing the goal. The EU and ASEAN differences in this respect are caused by each regional organization's institutional structure, vertical distribution of authority, level of institutionalization, and the like. At the same

¹³²However, some hold the view that the EU did not, in fact, intend to export its food safety regulation standards to other countries and that, regarding international food safety standards of Codex, the standards that are adopted are often not the ones favored by the EU. Therefore, some contended that with a simple majority of votes required for decision-making in Codex, although the EU's stringent food safety standards are often considered to be the source of rules for global governance, they are in fact more like the Achilles heel of the EU's food safety governance. To correctly understand the EU's ability to convert its system and rules to international influence, it is important that the EU commonly depends on the decision-making rules and distribution of power among the members in that organization. It is more accurate if the EU's ability to convert its system and rules to international influence is understood in that particular international context. See Alasdair R. Young, *Europe as a Global Regulator? The Limits of EU Influence in International Food Safety Standards*, 21 J. EUR. PUB. POL'Y 904 (2014).

¹³³Weimer & Vos, *supra* note 37, at 60.

¹³⁴See HIDETAKA YOSHIMATSU, THE POLITICAL ECONOMY OF REGIONALISM IN EAST ASIA 44-45 (2008).

time, such factors raise questions about the interoperability and compatibility of the EU's governance models in ASEAN and pose broader challenges to effective regional integration and food safety governance in the region.¹³⁵

1. Institutional Structures, Distribution of Authority, and Level of Institutionalization

With regard to institutional structures, some understand the EU to be a “quasi-federation.”¹³⁶ With Member States transferring part of their sovereignty, the EU is to some degree the center of the region and is in a position to force Member States to comply with EU law.¹³⁷ By contrast, ASEAN is not a supranational organization; it is an organization with a legal personality composed of several international legal persons.¹³⁸ However, ASEAN does not override its Member States' power, a difference in institutional structure between the EU and ASEAN.¹³⁹ Therefore, even though the two are based on the same economic theories with similar objectives for regional integration, and even though they based their integration on the same approaches or mutual recognition and harmonization of rules, their approaches to the harmonization of rules differ due to their institutional structures.

The EU usually advances its integration process by issuing regulations, directives, and interpretations of treaties and rules. Without independent legislative powers in its internal institutional structure, ASEAN operates based on the ASEAN Secretariat and three Community Councils. Therefore, regarding harmonization of rules, ASEAN is unable to interpret at the regional level the harmonization rules that were made to provide a basis for Member States' interpretation.¹⁴⁰ Consequently, with regard to ASEAN's integration of food safety regulations and transplantation of EU models is that, although there has been progress on introducing rules for harmonizing standards and regulations, the question of whether to establish an ASEAN court to ensure the uniform interpretation of ASEAN instruments and ASEAN regional-level rules¹⁴¹ to avoid discrepancies in Member States' interpretations of the rules in the future has yet to be resolved.

Moreover, with regard to the regional organizations' authority and level of institutionalization, when applying the EU models to ASEAN, the necessary confidence among trading partners can be developed only by having a regional level and supranational inspection agency. Some commentators are of the view that a critical element missing from ASEAN to further regional collective interests is a supranational neutral law enforcement agency similar to the European Commission. Such an agency would make common and organizational rules and would enforce relevant laws and

¹³⁵*Id.* at 44-46.

¹³⁶See Vivien A. Schmidt, *The EU and its Member-States: Institutional Contrasts and Their Consequences*, at 1 (Max Planck Institute for the Study of Societies, MPIfG working paper, No. 99/7, 1999).

¹³⁷Anowar Zahid, *Institutional Aspect of Economic Integration in the European Union and ASEAN: A Comparative Glimpse*, 5 INT'L J. HUMANITIES & SOC. SCI. INVENTION 16, 23 (2016).

¹³⁸See ASEAN, *The ASEAN Charter* (Jan. 2008), art. 3: “ASEAN, as an inter-governmental organisation, is hereby conferred legal personality.”

¹³⁹Zahid, *supra* note 137, at 24.

¹⁴⁰Zahid, *supra* note 137, at 23-24.

¹⁴¹Zahid, *supra* note 137, at 24.

regulations.¹⁴² Although ASEAN has, in recent years, gradually strengthened its institutional structure, under the current model of the “ASEAN Way,”¹⁴³ it seems that it would still be difficult to establish such an agency in Southeast Asia. Also, for ASEAN food businesses and exporters, setting up binding rules is not necessarily beneficial.¹⁴⁴

2. *Decision-making Systems and the Soundness of the Legal Framework*

Looking back on the development of the EU’s regional decision-making process, Article 94 of the TEEC requires the Member States’ unanimous consent for the Council’s to issue any directive.¹⁴⁵ This allows Member States to easily delay the progress of regional integration procedurally. In addition, the EU Member States’ food culture and tradition and their sensitivity¹⁴⁶ have increased the difficulty of integration in the area of food safety rules in Europe. In 1986, voting rules for proposals regarding the Community’s internal market were amended—the threshold for proposals to pass in the legislative process was changed to a qualified majority. Member States no longer have real veto power, which has expedited the European integration process.¹⁴⁷

As a consequence, the problem of directly transplanting the EU governance framework into ASEAN is that, while the EU has a long-developed legal framework to ensure Member States’ compliance with the rules, the decision-making process in ASEAN, which still relies on consensus pursuant to the principle of non-intervention, lacks the kind of binding force found in the EU’s structure and organization. Moreover, even though ASEAN has gradually set up new mechanisms, rules, and guidelines, Member States may nevertheless have an incentive not to comply if such norms are not supported by the legislative power to impose effective sanctions. As such, whether ASEAN will be able to achieve the success or level of integration seen in the EU by transplanting the EU governance model seems questionable.¹⁴⁸

¹⁴²See also YOSHIMATSU, *supra* note 134, at 60.

¹⁴³ASEAN Member States’ ASEAN Way refers to the way governments of ASEAN Member States interact with each other and the regional identity. Broadly speaking, it means “the basic international norms and the socio-cultural norms” for ASEAN Member States’ interaction, which essentially includes “respect for sovereignty, non-interference, non-use of force, quiet diplomacy (which may include informality and saving face), non-involvement of the organization in bilateral disputes, and mutual respect,” with its main characteristics being “frequent consultations, consensus-building, accommodation, discretion and conciliation.” Benny Teh Cheng Guan, *ASEAN’s Regional Integration Challenge: The ASEAN Process*, 20 COPENHAGEN J. ASIAN STUDIES 70, 74 (2004); see also Farish Noor, *Values in the Dynamics of Malaysia’s Internal and External Political Relations*, in CHANGING VALUES IN ASIA: THEIR IMPACT ON GOVERNANCE AND DEVELOPMENT 146, 166 (Han Sung-Joo ed., 1999); Jürgen Haacke, *ASEAN’s Diplomatic and Security Culture: A Constructivist Assessment*, 3(1) INTERNATIONAL RELATIONS OF THE ASIA-PACIFIC 57, 57 (2003).

¹⁴⁴GIZ, *supra* note 29, at 38.

¹⁴⁵Treaty Establishing the European Community (Nice consolidated version), Dec. 24, 2002, 2002 O.J. (C325) 33, art. 94 (“The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market.”) [hereinafter TEEC].

¹⁴⁶ALEMANNO, *supra* note 97, at 52-53.

¹⁴⁷See TEEC, *supra* note 145, art. 100A (later art. 95); *Id.* at 57.

¹⁴⁸GIZ, *supra* note 29, at 38-39.

In addition, the soundness of the decision-making system and legal framework would also impact the effectiveness of various ASEAN governance mechanisms and rules. For instance, as noted above, the ARASFF is legally founded on the obligation of notification in emergencies under Article 83 of the ATIGA, but it differs from the RASFF in the EU, which was founded on the legal basis of Regulation 178/2002. Regarding the ARASFF's operation and whether it is utilized by the Member States, the system still lacks the legal bases and detailed regulations that would enable it to operate more effectively, and no relevant agreement has been reached among the Member States. Thus, it remains to be seen whether the ARASFF is able to urge the Member States promptly to exchange food safety-related information. In practice, until November 2015, only two Member States provided notification via the ARASFF in 2009, 2010, and 2014.¹⁴⁹ With respect to the application of rules, although Article 83 of the ATIGA specifies the obligation of notification and states that Member States "shall" provide notification, the level of a food safety concern that would amount to a "food safety crisis," thus triggering Member States' obligation to notify, remains unclear. The level is not specified in this Article, and whether the Member States will be expected to enforce the rules and indeed fulfill their obligations in the future seems uncertain.¹⁵⁰

3. *Differences in Economic Development of Member States*

The EU's process of development has been relatively slow and progressive. It began with six Member States and has grown to include its current composition of twenty-eight Member States. With respect to the level of the Member States' economic development, one of the conditions of joining the EU is that the economy of the candidate's domestic market is already functioning properly. However, since ASEAN Member States differ substantially in economic development, opening the door for new candidates without any conditions might cause adverse effects for less-developed countries.¹⁵¹

In addition, from a social perspective, business groups in the EU can be regarded as independent political actors who set the agenda for integration and exert pressure on decision makers in regional organizations and Member States to advance the progress of the internal market. Furthermore, in the EU, private groups form business associations to pursue their own interests by participating in the governance agenda-setting process. By contrast, in ASEAN, the Member States usually play a leading role rather than the private sectors.¹⁵² Also, from a structural perspective, the economic actors in ASEAN are mostly small and medium enterprises,¹⁵³ which represent an

¹⁴⁹ASEAN, *supra* note 1, at 119.

¹⁵⁰The relevant EU experience is that the E. coli outbreaks within the EU exposed the RASFF's potential problems of risk communication. Incorrect or inconsistent information, before being confirmed by the RASFF contact points in the Member States, was quickly circulated in the RASFF network. The issue is whether inconsistent or unconfirmed information should be circulated in the RASFF network, which is one of the problems of the operation of the RASFF that remains to be solved in the future. See Weimer & Vos, *supra* note 37 at 80; see also James Lawless, *Conflicting Notifications in the EU's Rapid Alert System for Food and Feed (RASFF): 'Destabilization' in Food Risk Communication?*, 1 EUROPEAN JOURNAL OF RISK REGULATION 451 (2010).

¹⁵¹GIZ, *supra* note 29, at 39.

¹⁵²YOSHIMATSU, *supra* note 134, at 60.

¹⁵³Association of Chartered Certified Accountants, *SME Development in ASEAN*, at 6-7, Sept. 2016. As many as 96% of all enterprises in ASEAN are small or medium. *Id.* Whether in developed or developing

exceptionally high proportion of the business groups in ASEAN. Large enterprises and small and medium enterprises often hold different views on industrial and trade policies.¹⁵⁴ Compared to large enterprises, small and medium enterprises usually tend to object to trade policies that support market liberalization.¹⁵⁵ Consequently, though business associations in ASEAN have to some extent participated in the process of integration, that progress has been led mostly by Member States. In terms of corporate power and political leverage, the influence that business associates have on the Member States' decision-making process remains insufficient, so they have not become strong pressure groups that promote market integration.¹⁵⁶ Additionally, due to the "ASEAN Way," which is similarly adopted by business associations in ASEAN and is characteristic of their operation, they often need to adhere to their own procedural rules and the consensus policy. With caution and a lack of flexibility in their operations, it is difficult for them to maintain stable and consistent representation during the process of market integration.¹⁵⁷

Last, but not least, the difference in levels of cultural homogeneity of the Member States matters. Even though homogeneity among EU Member States is relatively high, indeed much higher than that among ASEAN Member States, there are still occasional differences in rules due to food culture and tradition that give rise to conflicts. The *Cassis de Dijon* case discussed above is an example of cultural conflicts in the free trade system.¹⁵⁸ The case involved a type of French liqueur (with a 15-20% alcohol content) that was intended to be imported to Germany. A German regulation mandated that the alcohol content of liqueurs be at least 25%, which prevented the importation of the French liqueur. Therefore, it would be difficult for the ASEAN Member States, with inherently vast differences in their cultural backgrounds, to avoid similar issues.

IV. CONCLUSION

Consumers in the ASEAN region have become more aware of health, nutritional value, and food safety,¹⁵⁹ but ensuring food safety is not merely a public health issue for ASEAN Member States. It is also an issue of whether their products can enter

countries, they have played a vital role in the Member States' economic growth. *Id.*; see also Badar Alam Iqbal & Mohd Nayyer Rahman, *Contribution of ASEAN-6 SMEs to Economic Growth of ASEAN*, 3 ECON. WORLD 258, 258-269 (2015).

¹⁵⁴It should be noted that the ASEAN Ministers of Agriculture and Forestry Meeting adopted in 2017 the ASEAN Public Private Partnership Regional Framework for Technology Development in the Food, Agriculture and Forestry Sector, which aims to promote dialogue and collaboration between the public and private sectors and may reduce barriers as such. See ASEAN, ASEAN Public-Private Partnership Regional Framework for Technology Development in the Food, Agriculture and Forestry (FAF) Sectors (Sept. 28, 2017), <http://asean.org/storage/2012/05/18.-ASEAN-PPP-Framework-FAF.pdf> [https://perma.cc/MFU2-HSNN].

¹⁵⁵See YOSHIMATSU, *supra* note 134, at 57.

¹⁵⁶GIZ, *supra* note 29, at 44-45.

¹⁵⁷See YOSHIMATSU, *supra* note 134, at 59-60.

¹⁵⁸MARIOS I. KATSILOUDES & SPYROS HADJIDAKIS, INTERNATIONAL BUSINESS: A GLOBAL PERSPECTIVE 510 (2007).

¹⁵⁹Nori KAWAZU, *Consumer Trends and Expansion of Retail Markets in Growing ASEAN Economies*, at 6-7 (Nomura Research Institute, NRI Papers No.182, 2013).

foreign markets and maintain competitiveness.¹⁶⁰ Looking at the ASEAN Vision for 2025, in general ASEAN's primary goal is still economic integration, and food safety governance is listed as one of the priority initiatives that are the means of attaining economic integration. In addition, it appears that the ultimate objective of ASEAN's efforts to harmonize food safety standards and regulatory rules in recent years has been to create a single market and production base.¹⁶¹ Arguably, its primary policy goal for food safety governance has not been public health or consumer protection. More recently, numerous governance initiatives at the ASEAN level aim to address the multi-level, multi-faceted, and interdisciplinary food safety issues in the region. However, each of the ASEAN Member States has its own laws and legal system; level of development; technical expertise and financial resources; and historical, cultural, and culinary traditions. It is not clear how effective and efficient regional governance and international cooperation can be successfully achieved at the ASEAN level.

The existing literature has not touched upon any in-depth analysis on the ASEAN regional framework for food safety governance, and this Article seeks to fill this scholarly lacuna. ASEAN's trajectory of development of regional food safety governance, to some extent, is similar to the EU's development of food safety governance. In recent years, through regulatory cooperation with the EU and by learning from the EU, ASEAN has incorporated many of the EU's institutional designs and arrangements. However, the ASEAN Member States and EU Member States differ substantially in various aspects including legal background, level of development, society, culture, and industrial structure. As a matter of institutional design, this Article examines the extent to which, if at all, ASEAN would benefit from referring to the EU and adopting similar mechanisms and approaches despite the different economic, social, and political underpinnings of Southeast Asia and Europe. Compared with the EU's regulatory experience, ASEAN has faced remarkable problems and a variety of practical limitations, which leaves room for discussion from a more contextualized perspective.¹⁶² The complexity of ASEAN Member States' organizational structures and the differences in political and economic systems may bring uncertainty to the transplantation of the EU's governance experience.

¹⁶⁰World Bank, *World Bank East Asia and Pacific Economic Update: Staying the Course*, at 89 (Oct. 2015).

¹⁶¹ASEAN, *supra* note 1, at 119.

¹⁶²Michael Ewing-Chow & Tan Hsien-Li, *The Role of the Rule of Law in ASEAN Integration* 1 (European University Institute, Robert Schuman Centre for Advanced Studies, Global Governance Programme-41, EUI Working Paper RSCAS 2013/16 (2013)).