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### Resource insecurity and international institutions in the Asia-Pacific region

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# Resource insecurity and international institutions in the Asia-Pacific region

*John Ravenhill*

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**Abstract** East Asian governments have long recognized that national security must incorporate a reduction of their vulnerability to the disruption of essential imports. The rapid economic growth of China and India has intensified competition for increasingly scarce resources, elevating resource security once again to the top of the international agenda. Issues that were previously regarded as ‘technical’ have been ‘securitized’ as state elites perceived possible conflicts over availability and pricing of natural resources as threats to national security.

International institutions have the potential to contribute to the defusing of tensions over the supply of commodities by providing, through various means, assurances regarding the behaviour of partners. Only the global institutions concerned with commodities trade, the International Energy Agency (IEA) and the World Trade Organization (WTO), have legally binding arrangements and the authority to impose sanctions on states that fail to comply with their obligations. But both have weaknesses: the IEA’s membership is limited; the WTO’s rules relating to raw materials trade are far from comprehensive. Most of the regional institutions in this field seldom go beyond information exchange or the setting of aspirational targets. At the bilateral level, government attempts to enhance resource security through minerals chapters in preferential trade agreements have had little success. Bilateral investment treaties are the only instances of cooperation at the sub-global level that incorporate legally-binding provisions.

The cooperation on resources issues in which countries have engaged has reflected the core characteristics of Asia-Pacific bilateral and regional intergovernmental institutions. The shallowness of cooperation reflects perceptions on the part of state elites that their interests in the resources sector are best served by national rather than collective action and that current cooperative arrangements fail to provide sufficient incentives to prevent states from succumbing to opportunistic behaviour in the event of a short-term clash of interests. The potential gains to be made from a cooperative approach to resource security remain largely unrealized.

**Keywords** natural resources; security; Asia-Pacific; institutions; cooperation; BITs; PTAs.

East Asian governments have long recognized that national security encompasses more than the traditional realist agenda of alliances, balance

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of power and arms control, and must incorporate reduction of vulnerability to the disruption of essential imports. This recognition of a more-encompassing definition of security was reflected in the concept of 'comprehensive security', first put forward in a report by a task force appointed by Japanese Prime Minister Masayoshi Ohira in 1980. Although the concept extended beyond concerns directly related to international economic relations, the report reflected the Japanese government's heightened perceptions of its vulnerability to a cut-off of supplies of critically important raw materials, especially energy, that followed the Arab-Israeli War of 1973–74 and the second round of oil prices rises that the Organization of the Petroleum Exporting Countries (OPEC) engineered in 1979.

The collapse of oil prices in the subsequent quarter of a century pushed concerns over the security of supply and pricing of raw materials to the back burner. But with the rapid economic growth of China and India, competition for increasingly scarce resources has intensified, elevating resource security once again to the top of the international agenda. The import dependence of China in particular and, consequently, its share in global trade in resources, has grown dramatically: China alone accounted for more than 50 per cent of the growth in world consumption of industrial metals between 2002 and 2005. Given the size of its economy, its demand for minerals plays a determining role in pricing in many raw materials markets.<sup>1</sup> Other Northeast Asian economies – Japan, Korea and Taiwan – are even more dependent on imports (although with the partial exception of Japan in the case of coking coal, their markets are of insufficient size to be the determining factor in international pricing). Asian demand for natural resources has helped to raise prices for many commodities, expressed in real terms, to close to all-time highs. Price rises underlay the increasing share of natural resources in global trade in the first decade of the twenty-first century: whereas the volume of resources trade was stable over the decade to 2008, its value increased by more than 20 per cent (WTO 2010: 40).

Concerns over rising prices have been accompanied by perceptions that a worldwide race is under way in which consuming countries are aiming to lock up reliable sources of supply. These concerns have been intensified by the actions of some governments to limit exports of foodstuffs and critical raw materials. In 2008, for instance, Cambodia, Indonesia, Kazakhstan, Russia, Argentina, Ukraine and Thailand all restricted food exports in an attempt to moderate domestic price rises, an action that was emulated by many East European countries and India in 2010.<sup>2</sup> China's restrictions on the export of certain minerals led to a dispute case being launched at the World Trade Organization (WTO) by the European Union (EU), Mexico and the United States in 2009;<sup>3</sup> the alleged suspension of rare earth exports to Japan at a time of a foreign policy dispute in 2010 attracted international notoriety.

The rare earths case is an excellent example of how an issue that had previously been regarded as a matter of economics becomes 'securitized'. Until recently, few people had much knowledge of rare earths or of their crucial role in many modern manufactures. Their supply was regarded as very much a technical rather than a security issue. But with the threatened curtailment of Chinese exports and an increasing recognition of China's dominant role in the marketplace, the issue became one of high security (a similar pattern to the securitization of the oil supply issue in the 1970s: so long as oil production and distribution was managed essentially by a cartel of Western-owned oil companies, oil did not figure prominently on security agendas, but once OPEC assumed a dominant role in the oil supply chain, the commodity assumed a central place in discussions of national security).

Actions by producers to limit exports and by some consuming countries to aggressively seek new sources of supply have increasingly politicized raw materials trade, leading many consuming countries to pursue defensive actions. In a particularly frank assessment, the Commission of the European Communities issued a warning in a communication to the EU Council in 2009 of the potential damage to European industry should it find itself locked out from accessing critical raw materials. But Europe is not alone in its concerns. Other consuming countries have sought to enhance their security of supply, often through the provision of public support for acquisition of exploration rights and/or the assets of existing developers. Early in 2008, for instance, the Japanese government published its 'Guidelines for Securing National Resources', in which it stated that it 'will support key resource acquisition projects by promoting active diplomacy and helping these projects to be strategically connected to economic cooperation measures, such as official development assistance (ODA), policy finance and trade insurance'.<sup>4</sup> Similarly, China reportedly set up a special fund to provide low-interest loans to enable companies to buy overseas oil and gas firms in 2009. It had already encouraged investment in iron ore mines in its 2005 Steel Policy, which provided for loans on concessional terms from state-owned banks, the push for foreign investment to be coordinated by the National Development and Reform Commission's utilization of its powers to approve foreign direct investment (FDI). Additional funding for overseas acquisitions was promised in 2009.

The temptation for governments to intervene to attempt to influence trade in commodities is heightened not just by the strategic significance of many raw materials, but also by the characteristics of commodity markets. Trade in commodities rarely approximates economists' idea of a perfectly competitive market. In many minerals and energy products, entry barriers are high in that very substantial investments are required. This entry barrier is often reinforced by licensing arrangements devised and implemented

by producing countries. Collusion among actors is often helped by another characteristic of natural resources – they are frequently very unevenly distributed, with relatively few economically-viable sources of supply. Historically, trade in many commodities consequently has been dominated by a small number of vertically-integrated companies that in some cases at times have used their oligopsony status to organize effective consumers' or producers' cartels. The coal market, for instance, has long been dominated by a cartel of Japanese steel companies that typically negotiated a price with the lead supplier (BHP). A similar situation characterizes the iron ore market, but with Chinese companies as the lead consumers in this instance. As Ben Smith (1978) suggested in pioneering work more than three decades ago, these markets are often best characterized as bilateral monopolies, with a pricing range determined by the costs of the 'best alternative' that the parties have.

For many commodities, the 'spot' market, which brings together producers and consumers for trades that lead to the immediate delivery of products, is residual, with a substantial percentage of overall trade in a commodity being locked up in long-term supply contracts (discussed in more detail below). The residual character of spot markets, in turn, ensures that the market price for many commodities is extremely volatile – a change in supply or demand that is small relative to global totals can lead to dramatic price movements. The development of futures markets has enabled producers and consumers alike to hedge against the risks of volatile prices, although the purchase and sale of futures contracts for speculative purposes may work against price stability (in itself a complex topic that this article cannot explore in depth: a useful overview of the debate is provided by the WTO (2010: 99–103).

With the rise of resource nationalism in the 1960s and 1970s, private sector actors were sometimes supplemented or displaced by state-owned entities in producing countries, particularly in the developing world, a development that increased the politicization of international commodity trade. Twenty-seven of the world's 50 largest oil companies are majority state-owned. China's state-owned oil companies are ranked fifth (CNPC), 25th (Sinopec) and 48th (CNOOC) in the world. Although they have attracted the most attention, China's state-owned companies in the oil industry are by no means unique: Korea's state-owned Korea National Oil Corporation and India's state-owned Oil and Natural Gas Corporation (ONGC), Videsh and GAIL India are all major players in resource markets in the region. But even where private ownership predominates, governments have increasingly been willing to provide substantial public finance to private companies to support their efforts to secure resources at favourable prices: the Japan Bank for International Cooperation has provided \$12 billion for energy acquisitions and also encourages Japanese companies to negotiate jointly with foreign partners.

The scarcity of resources relative to potential demand is the principal source of rents in this sector.<sup>5</sup> This 'natural' generation of rents may be reinforced by action by producers to limit supply – either through unilateral action or collusion in a cartel. Consuming governments, in turn, may attempt to capture some of these rents through measures intended to reduce demand – primarily tariffs or taxes on consumption. This tussle between producers and consumers is the conflict that most frequently attracts attention in discussions of resources trade. But this interstate struggle is only one dimension of the conflicts that resource trade generates. In addition, there is the potential for conflict:

- between corporations that are dominant players in markets and governments of consumer and/or producer countries;
- among consumer countries that are competing for access to resources; and
- among producer countries that are competing for investments and/or a share in the market.

In some ways, the third potential source of conflict, between consuming countries, which has attracted a great deal of recent attention, may be the most alarming for students of international relations, with its resonance with Japanese complaints in the interwar period that the country was being shut out from key sources of vital raw materials.

Where the competition is between producers and consumers over rents available under current market conditions, this may seem to be a strictly zero-sum situation where one party's gains come at the expense of losses for its counterparts so that no basis for cooperation exists. The reality of global resources trade is more complex, however, in that parties typically are not engaged in a one-off interaction, but an iterative process in which their respective bargaining resources will change. It is not in the interest of consuming countries, for instance, to either tax commodity imports at such a level or to push prices so low that producers have no incentive to invest in future supply. Similarly, it is not in the medium-term interest of producers to attempt to raise prices to such a level that consumer demand will fall or that consuming countries/companies will have a strong incentive to seek alternative sources of supply and/or substitutes for the imported commodity.

In relations between corporations and states, comparable inter-temporal variance in rationalities may prevail. Levels of production and/or pricing may be heavily influenced by private actors: again, the opportunity to exploit a short-term imbalance between supply and demand may not be in the medium- to long-term interest of the party holding a temporary bargaining advantage. Similarly, in the investment field, companies may have the capacity to extract a particularly favourable bargain when potential hosts

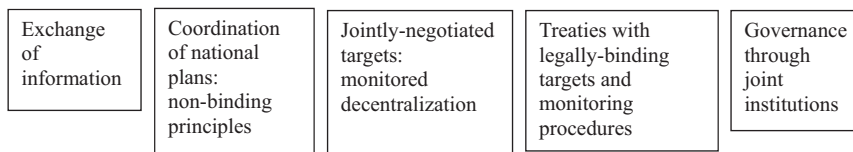


Figure 1 A continuum of international governance arrangements.

are seeking major investments in minerals projects, particularly in circumstances where the host has few alternatives because the companies possess specific expertise or can provide access to production chains. As has long been recognized in the literature on ‘obsolescing bargains’, however, once a company has committed itself to a major investment in what the transactions costs literature terms ‘specific assets’ (Williamson 1983), the balance of bargaining power may shift dramatically in favour of the host state (Moran 1974).

For students of international relations, one of the major roles that international institutions can play is to implement arrangements that assist in addressing shifts in bargaining power over time and, thus, the problem of variance in inter-temporal rationalities. In the remainder of this article, I examine the effectiveness of various institutional arrangements that have been put into place with the intention of facilitating cooperation in natural resources trade among states in the Asia-Pacific region and/or between states and private sector actors in the region.

### **Institutional arrangements for interstate cooperation in natural resources trade**

#### ***A continuum of international governance arrangements***

Institutional arrangements for interstate cooperation can be considered as a continuum that ranges from ad hoc mechanisms for information exchange at one end to joint governance institutions at the other (Figure 1).

Much of the literature on interstate cooperation in the Asia-Pacific region refers to the importance of putting into place means for confidence-building among states that have had little historical experience of working collaboratively to address problems. For critics of what is often seen as a central component of the ‘ASEAN Way’, the emphasis on confidence-building privileges processes at the expense of outcomes (Aggarwal and Chow 2010). Others, however, assert the importance of process as a valuable outcome in itself (Acharya 2009; Ba 2009). Exchange of information about national plans and priorities in an issue area is often central to these processes of confidence-building, as in the ASEAN Regional Forum, for example.



Information exchange imposes minimal constraints on participating governments. Indeed, it is questionable whether, strictly speaking, it should be termed cooperation, if one uses a definition of this concept widely accepted in international relations literature: 'when actors adjust their behavior to the actual or anticipated preferences of others, through a process of policy coordination' (Keohane 1984: 51–2). Information exchange implies that neither an adjustment of behaviour nor a process of policy coordination necessarily occurs. As we will see, many of the institutionalized mechanisms for interstate exchange on raw materials issues have not progressed beyond exchange of information.

The second and third points on the continuum above mark a move to genuine international cooperation. The first, involving coordination of national plans and/or the adoption of non-binding principles of behaviour, constitutes international cooperation in its weakest form. The expectation here is that the process of coordination and the adoption of common principles for addressing problems will induce behaviour change on the part of governments, possibly through a process of socialization and/or governments' fear for their reputations should they be perceived as an unreliable partner because of their failure to comply with commitments, even when these have been undertaken voluntarily.

While the coordination of national plans may induce behaviour change, it is not necessarily a function of joint negotiation. Plans may be adjusted voluntarily and unilaterally in the expectation that changes may generate national as well as collective benefits. The next point on the cooperation continuum involves collaboration in negotiating specific targets. For many observers, however, one of the most effective contributions that international institutions make both to confidence-building and to behaviour change is when they engage in a formal process of monitoring the activities of their members. The third point on the continuum incorporates formal procedures for monitoring performance in moving towards jointly-negotiated targets. Eichengreen (1994: xxvi) refers to institutionalization of this type as 'monitored decentralization' – a situation where individual states maintain substantial autonomy in how they attempt to meet the negotiated targets.

Moving further along the continuum of international cooperation takes one into the realm of greater institutionalization where states give up more of their autonomy to comply with jointly-negotiated rules in an international institution. Typically, such cooperation requires some harmonization of policies and the development of centralized monitoring procedures with the provision for punitive action against members who do not respect the rules that they have negotiated jointly. At the far end of the continuum, states have essentially ceded decision-making autonomy to an international institution in which legally-binding joint decision-making occurs – at present only a hypothetical situation against which real-world cooperation can be measured.

Other things being equal, the more institutionalized the cooperation – in other words, the further to the right on the continuum of cooperation the institution – the greater the contribution that it is likely to make towards reducing uncertainty about the behaviour of others and, thus, towards overcoming the prisoner’s dilemma-type situations in which actors frequently find themselves in their international interactions on raw materials. In the following sections, I explore the extent to which institutionalization has occurred at three levels of cooperation that involve Asian countries: the global, the regional and the bilateral.

## **1. Global institutions**

### ***The International Energy Agency (IEA)***

Interstate cooperation in the energy field began in earnest with the creation of the International Energy Agency (IEA) in the wake of the Arab-Israel War of 1973 and the subsequent OPEC oil boycott of several Western countries.<sup>6</sup> Founded in October 1974, the IEA is affiliated with the Paris-based Organisation for Economic Cooperation and Development, although the membership of the two institutions has never been identical.<sup>7</sup> The IEA’s establishment was a sign of recognition by the industrialized economies, prompted by the events of the previous 12 months, of their vulnerability to a curtailment of energy supplies.<sup>8</sup> The extent to which they were willing to give up decision-making autonomy to an international institution reflected the seriousness of the economic problems that they suffered following the OPEC oil boycott. Not only did they agree on provisions for an enhanced exchange of information on the oil market and national situations, but also, under the auspices of an International Energy Program, to permit the IEA’s Secretariat to declare an emergency, under which various actions by member-states became mandatory when supplies fell below specified thresholds. The provisions of the Emergency Sharing System include the implementation of measures to restrict domestic demand and the requirement that members accept the IEA’s allocations of oil available at a given time in international markets. A supplementary agreement negotiated in 1979 (the Coordinated Emergency Response Mechanism [CERM]) allows for a negotiated sharing of supplies in the event of a less drastic decline in availability. Members also accepted a requirement that they build up national emergency stocks to a total equivalent of 90 days of the previous year’s net imports.

In the four decades since its establishment, the IEA’s mission has been broadened beyond its initial focus on oil to include all forms of energy. As Van de Graaf and Lesage (2009: 314) note, the IEA’s role has moved from being an ‘oil consumers’ club’ to ‘become a global energy policy adviser’. The IEA’s original mission is embodied in one of its three Directorates, on Energy Markets and Security. The widening of its mandate is reflected

in the work of its other two Directorates. The one on Global Energy Dialogue has the responsibility for organizing discussions with non-IEA members that are major energy suppliers, consumers or transit sites. This Directorate is also responsible for monitoring the behaviour of member-states, producing peer reviews of their energy policies every four years as well as furnishing information on the energy policies of dialogue partners. The third Directorate focuses on Sustainable Energy Policies and Technology. It includes a climate change unit, which provides technical support for the UN Framework Convention on Climate Change and maintains a database on best practices in climate policy, including carbon pricing and energy efficiency. An Energy Technology Policy Division promotes global strategies to accelerate diffusion of energy technologies. A Technology Network Unit provides support for collaborative multilateral technology initiatives mainly through the staging of workshops.

The IEA is unusual among international institutions in this field in the comprehensiveness of its agenda and the extent to which members have empowered it. Its activities go far beyond promoting the exchange of information, including responsibilities for monitoring the behaviour of its members and, in emergency situations, directing member-states' behaviour. As Keohane (1978: 937) commented, the acceptance of the emergency programme 'represented a remarkable delegation of authority to an international organization'. The IEA itself lacks the capacity to impose sanctions in the event of non-compliance, although, in an emergency situation, states that do not comply with its directives may be denied a quota of supplies. Beyond this exceptional situation, the IEA depends on peer reviews and dialogue to implement agreements. Members' voting rights in the IEA are determined by the volume of their oil imports at the time of the Agency's establishment, but the practice in its governing board is to make decisions by consensus.

The IEA has twice invoked its emergency powers to intervene in international markets to release stocks: in 1991, during the Gulf War, and in 2005, after Hurricane Katrina disrupted US production. In both instances, however, action was taken under the less stringent CERM, which relies on a negotiated consensus and where the IEA lacks mandatory powers of allocation (there were reports in the aftermath of Hurricane Katrina that some countries had failed to comply with their obligations to impose measures to reduce domestic demand (Van de Graaf and Lesage 2009: 302)). Overall, the absence of any oil-induced shock to the global economy comparable to that of 1973–74 might be seen as testimony to the overall effectiveness of the IEA – although others might attribute this success to the capacity of Saudi Arabia to manage OPEC's overall output (but nonetheless may credit the IEA for its negotiations with producers at times of crisis). Certainly, there is little evidence that the IEA has had any effect in moderating the volatility of oil prices.

From the perspective of the Asia-Pacific region, the effectiveness of the IEA is limited by the requirement that its members must first be admitted to

the OECD. Its only members from Asia are Japan and the Republic of Korea. The IEA has, however, established dialogues with China and India. The dialogue with China began in 1996 with the signing of an MoU with China's National Development and Reform Commission: Chinese representatives subsequently participated in a wide range of IEA workshops, seminars and research projects. A similar dialogue with India began two years later. In 2009, both countries, together with Russia, were invited for the first time to the IEA's annual ministerial meeting. In the absence of full membership, however, no IEA disciplines apply to either country: for them, the IEA is merely a forum for the exchange of information.

Most commentators on the IEA make positive judgements on the capacity it has developed to collect and disseminate information on energy issues (Bressand 2010; MacNaughton 2007; Martin and Harrije 2005; Van de Graaf and Lesage 2009) (although dissatisfaction with its continuing emphasis on oil and its domination by Group of 7 (G7) members contributed to the push to establish the International Renewable Energy Agency in 2009). The OECD membership criterion, however, not only excludes most of the major energy-exporting countries, but also the countries in the Asia-Pacific region that are making the largest contributions to growth in world energy demand. Whereas IEA members accounted for three-quarters of global oil demand at the time of its establishment, by 2008, their share had fallen to 57 per cent; by 2015, the IEA predicts that the share will fall to under half of the global total (Harks 2010: 249).

### ***The World Trade Organization (WTO)***

Resources are subject to the same WTO disciplines as other traded goods. In the case of natural resources, disputes have arisen, however, over the point at which they actually become tradable goods. Producers (including OPEC) have argued that it is their sovereign right to impose limits on production: resources only become subject to WTO disciplines when they have been mined, drilled or otherwise turned into tradable goods. Principal consumers have challenged such interpretations.

International arrangements for managing commodity trade have been on the agenda throughout the life of the WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT). With the failure of the Havana Charter, GATT inherited the International Trade Organization's agenda on international commodity agreements. As part of the addition to the GATT Treaty of Part IV in 1965, contracting parties were tasked with the responsibility of devising measures to ensure that the primary product exports of developing economies attained 'stable, equitable and remunerative prices'. However, the demise of the New International Economic Order debate, the collapse of commodity prices in the 1980s and the rise of neo-conservative governments in many OECD countries all contributed to

international commodity agreements disappearing from the agenda of the global trade organization.

With the increasing competition among consumers for imports of natural resources, most of the attention at the global level has turned to the legitimacy of efforts by producing countries to place limitations on exports. Article XI of the GATT provides that no member shall impose prohibitions or restrictions other than duties, taxes or other charges, on the import or export or sale for export of any product. Article XI 2(a) does make one exception to the export prohibition: members are permitted to impose restrictions temporarily 'to relieve critical shortages of foodstuffs or other products essential to the exporting contracting party'. Any restrictions would be subject to the most-favoured-nation requirement of Article I – that is, they cannot be applied in a manner that discriminates among WTO members. The general interpretation of Article XI is that it applies to export restrictions and not to limitations on production, which are not within its remit. Export restrictions also appear to be legitimated by Article XX(g), which permits the adoption of measures to promote the conservation of exhaustible natural resources, provided that such measures are made effective in conjunction with restrictions on domestic production or consumption. Meanwhile, Article XXXVI, a component of Part IV of GATT, appears to allow developing economies to take action that would encourage diversification of their exports through, for example, greater domestic processing of raw materials (apparently legitimating some forms of restrictions on exports). Finally, Article XX(h) provides a general exception for measures taken in support of international commodity agreements that conform with the principles approved by the UN Economic and Social Council in its Resolution 30(IV) of 28 March 1947 (which are generally taken to be agreements that include consuming and producing countries alike) (WTO 2010: 162–76 provides a comprehensive discussion of WTO provisions relevant to international trade in commodities).

The WTO, like the IEA, sits towards the right of the continuum of international governance arrangements outlined above. It is treaty based: its members have signed on to an agreement with legally-binding obligations. The WTO itself has been mandated to monitor the performance of its member-states. And, unlike the IEA, it has legally-binding dispute settlement procedures through which sanctions may be authorized against states that fail to meet their obligations, even though such sanctions have to be imposed by members on a self-help basis. Nonetheless, as the WTO itself acknowledges, its rules 'were not drafted specifically to regulate international trade in natural resources. This has arguably led in some cases', the WTO (WTO 2010: 196) concludes, 'to regulatory gaps, or at the very least to a lack of clarity about the precise applicability of the rules in the particular circumstances that characterize natural resources trade'.

Given these ambiguities, some members (notably Japan and the EU) put forward proposals during the Doha Round negotiations to limit export

prohibitions and restrictions including export taxes (WTO2002a, 2002b). And they have used the accession protocols of new members as an opportunity to attempt to limit state restrictions on export trade (provisions in the Protocol of Accession of China to the WTO figured prominently in the complaint made by the US and others against China's restrictions on mineral exports). The WTO's Dispute Settlement Panel finding against China, if upheld on appeal, which had not been completed at the time of writing, will establish an important precedent for the use of WTO disciplines against countries seeking to limit exports of scarce raw materials. Nonetheless, the WTO's powers in this area remain limited: attempts by importing countries during the Uruguay Round to establish provisions on such issues as subsidies for resource production, dual pricing and export restrictions and taxes were rebuffed by commodity exporters (Selivanova 2010: 52–3). Moreover, some of the major commodity exporters, including many oil-exporting countries, remain outside the WTO. And in another key area relating to natural resources trade, investment issues, the WTO has yet to have any success in extending its authority (other than in services).<sup>9</sup>

## **2. Regional institutions**

### ***Asia-Pacific Economic Cooperation (APEC)***

Proposals for cooperation in energy and resources have figured prominently on APEC's agenda since its foundation in 1989. Energy was one of the sectors identified at APEC's inaugural ministerial meeting as a priority area for creating dialogue among members. An Energy Working Group was established in the following year and identified six foci: information exchanges on energy trends; supply and demand outlook; energy conservation and efficiency; research and development; environmental factors; and energy technology transfer (APEC 1990). A regional energy database was set up in 1991 (APEC 1991), but little else of substance was reported by the senior officials' working group in the first half of the decade. The grouping recorded that 43 of its 320 economic and technical cooperation projects by 1996 were in resources and energy, but these mainly took the form of workshops and other information-dissemination activities (Yamazawa 1997).

In 1996, APEC staged the first meeting of energy ministers at which 14 non-binding principles were adopted. It was not until 2000 that the ministerial meeting took action to monitor progress on the principles, adopting an implementation facilitation programme and a reporting and assessment programme. Participation in both programmes, however, was on a voluntary basis. The reporting and assessment programme, moreover, was based on self- rather than peer-review and required members only to report progress against indicators that they themselves had selected. An APEC Energy Working Group was established in 1990: it drafted an Energy Security Initiative (ESI) in 2000, which was adopted by APEC leaders in

November 2001, including 13 measures on which cooperation would take place. A review of achievements under the ESI in 2008 indicated that most of the outcomes took the form of study groups, information exchange or non-binding statements of principles and best practices (APEC 2008). It was only in the area of research and development that states were reported to have adopted policies in line with the ESI principles.

With the dramatic rise in oil prices in 2005, ministers proposed an action programme including trade liberalization, investment promotion and enhancing energy efficiency. But the action programme consisted of exhortations, rather than an agreement for collective action: no monitoring or review mechanisms were proposed as part of the programme (APEC 2005).

APEC has one considerable advantage over the IEA in its more inclusive membership, especially the presence of China (but in addition, two significant regional energy exporters, Indonesia and Russia). As commentators have frequently noted, however, in all of the dimensions of its cooperation, APEC has failed to move beyond information exchange, agreement on non-binding principles for cooperation, and assessment procedures that rely more on self-monitoring of nationally-determined targets than on genuine peer review of jointly-set objectives (Aggarwal and Morrison 1998; Ravenhill 2001). In the close to a quarter of a century for which it has been in existence, APEC has not moved beyond the point on the continuum of institutional cooperative mechanisms where it imposes minimal constraints on its members' policy choice.

### ***Association of Southeast Asian Nations (ASEAN)***

The first ASEAN summit in Bali in February 1976 acknowledged the vulnerabilities of ASEAN members to interruptions of supplies of raw materials: members committed to give one another priority in the supply of food and energy in 'critical circumstances' like natural disasters or similar developments that threatened to disrupt supply. Preferential trading arrangements were to be established for food and energy products that would take the form of long-term supply contracts, financing at preferential rates, privileges in government procurement and tariff preferences (Severino 2006: 213–4). But members subsequently failed to move beyond offering limited tariff preferences to one another with these products eventually being included within the scope of the ASEAN Free Trade Area.

The one exception to this disappointing record has been cooperation on energy issues, which has been on ASEAN's agenda since 1975, when Indonesia's national oil company circulated a proposal to other ASEAN member-states calling for cooperation in the oil industry. This proposal led to the establishment of an ASEAN Council on Petroleum in 1976. The most significant institutionalization came in 1986 when the grouping signed an Agreement on ASEAN Energy Cooperation. One significant outcome was the negotiation of an ASEAN Petroleum Security Agreement (ASEAN

1986b). Under the terms of the agreement, oil-exporting member-states agreed, when an importing state faced an emergency shortage (defined as supply less than 80 per cent of its normal consumption requirements), to provide supplies from surplus capacity to meet demand. In return, consuming states agreed that, in a situation of over-supply in the ASEAN market, they would purchase exports from member-states so that the demand would increase to at least 80 per cent of their 'normal' exports.

Members signed a revised agreement in 2009 in which they pledged to implement 'coordinated emergency response measures' when an ASEAN country was experiencing a shortfall of at least 10 per cent of normal domestic requirements of petroleum for a continuous period of at least 30 days. Similar to the provision in the IEA agreement, member-states facing an emergency are required to take measures to limit domestic consumption. Oil-exporting members are mandated to 'endeavour' to supply petroleum, but the agreement stipulates that 'assistance rendered under CERM shall be on a voluntary and commercial basis' (ASEAN 2009: para 3.2.1.(b)(ii)). A similar qualification is attached to one of the 'medium and long-term measures' identified for coping with energy supply responses: 'Oil Stockpiling, whether individually or jointly by ASEAN Member States, shall be on a voluntary and commercial basis' (ASEAN 2009: para 3.3.1.(f)). Proposals made in 2006 for joint stockpiling among the ASEAN Plus Three countries (ASEAN plus China, Japan and Korea) quickly disappeared off the agenda (Youngho and Koh 2009: 2).

While ASEAN's emergency measures for petroleum sharing may appear to reflect those agreed among OECD countries in the IEA, they differ in a crucial way: they are voluntary rather than mandatory. The language in the 2009 agreement is actually weaker than that of its 1986 predecessor, which makes references to the obligation of exporting states to 'commit to supply', although the obligations on importing states at a time of excess supply in the market were hedged with the phrase, 'so far as practicable'.

The 1986 agreement on energy cooperation also outlined objectives in the areas of planning, development, conservation, training, supply security and information exchange. Its only substantive component, however, was the creation of a Consultative Committee on Energy, which was to meet annually (ASEAN 1986a). In 1995, the agreement was amended to institutionalize annual energy ministers' meetings and senior officials meetings (ASEAN 1995).

ASEAN began issuing five-year ASEAN Plans of Action on Energy Cooperation (APAECs) from 1999 onwards (see texts at ASEAN 1999, 2004, 2010). They identified seven priority areas for collaboration: creation of an ASEAN power grid; creation of a trans-ASEAN gas pipeline; coal and clean coal technology; energy efficiency and conservation; renewable energy; regional energy policy and planning; and civilian nuclear energy. The ASEAN Centre for Energy, an autonomous entity established in 1998, taking over from the ASEAN-EC Energy Management and Training Centre,



has the legal capacity to conclude agreements with states, local and international organizations – it is the body charged with implementing the grouping's plans for energy cooperation. It also has a mandate to seek independent funding for its activities, which arguably has been its greatest success: mobilizing external funding from ASEAN's dialogue partners, the principal vehicle used to move towards realizing the grouping's aspirations to create a regional electricity grid and trans-ASEAN gas pipeline. Most of the other activities of the ASEAN Centre for Energy, documented in its annual reports, are workshops intended to disseminate information on energy technologies, etc. (The latest annual report available on its website, which was last updated in May 2006, at the time of writing in October 2011, was for 2003: ASEAN Centre for Energy 2003.)

According to the most recent APAEC (ASEAN 2010: 5): 'The APAEC 2010–2015 contains strategic programs with some quantitative, aspirational goals or targets that are expected to move the region towards enhancing greater energy security and strengthening international cooperation.' In assessing where ASEAN's collaboration in energy should be located on the continuum of international cooperation, the key word in the quote above is 'aspirational'. Although ASEAN has established what at first sight appears to be an impressive list of targets for cooperation on energy matters, the work programmes for these 'aspirational' goals are undertaken on an entirely voluntary basis. Targets are non-binding: there is no recourse should states fail to meet the goals and no dispute-settlement mechanisms beyond the politicization of disputes by moving them from meetings of senior officials to those of ministers to, ultimately, meetings of heads of state. Over the years, the emphasis on security in ASEAN's energy cooperation has been diluted as more attention has been given to new sources of energy (USAID 2005: 4–19).

A similar lack of success is evident in ASEAN's attempts to enhance food security for its member-states through the creation of an ASEAN Emergency Rice Reserve (AERR) under its 1979 ASEAN Food Security Reserve Agreement. Again, member-states' commitments were limited to a voluntary contribution of rice stocks. In the three decades that it has been in existence, the total stocks available to the AERR have not exceeded 87,000 tonnes of rice, equivalent to less than half a day's supply of rice for the region's economies. The initial commitments of the member-states were not increased, utilized or replenished (Dano and Peria 2006: 2). In 2008, at a time of rapidly rising prices because of shortages in global production, Cambodia and Vietnam (the latter being the world's second largest exporter of rice) both introduced restrictions on exports. Indonesia followed suit in 2009. A review of the programme found that it had been unresponsive to emergency needs because the reserves were too small, the bilateral negotiation procedure merely duplicated regular government-to-government talks, and the board was not able to manage the reserve as a regional institution because of insufficient funding for the secretariat (Briones 2011: 13).

### ***ASEAN Plus Three and the East Asia Summit***

Both the ASEAN Plus Three grouping and the East Asia Summit have ministerial-level working groups on energy. To date, they, and the associated meetings of senior officials, have not moved beyond forums for sharing information and supporting the initiatives taken by member-states. The East Asia Summit's Cebu Declaration on East Asian Energy Security (East Asia Summit 2007) is typical of the products of these fora: members committed themselves only to 'work closely together' towards realizing a long list of aspirations. Statements have endorsed general principles, but have failed to commit members to specific joint actions.

Japan initiated an East Asia Emergency Rice Reserve Pilot Project in 2004 (which ended in February 2010), providing around \$400,000 annually to finance the administration of the scheme. Japan was criticized, however, for contributing rice to the reserve that it had been obliged to purchase internationally as part of its WTO commitments, and the rice committed under the scheme was used primarily for food aid, rather than to stabilize the market. ASEAN Plus Three ministers agreed in principle in 2010 to earmark a rice stock of 787,000 tonnes for a new ASEAN Plus Three Emergency Rice Reserve, with pledges of 87,000 tonnes from ASEAN member countries, 250,000 from Japan, 300,000 from China and 150,000 from South Korea. One commentator noted, however, that the agreement was 'strong on the principles of cooperation, but short on specifics' (Briones 2011: 19).

### **3. Bilateral arrangements**

The first decade of the twenty-first century ushered in an era of bilateralism in international economic relations in the Asia-Pacific. Commentators have given most attention to the proliferation of bilateral preferential trade agreements (PTAs), with East Asian countries involved in 40 agreements that are being implemented, and a similar number under negotiation (Asian Development Bank 2008). Less prominent are international investment treaties, which, in 2009, were being negotiated worldwide at the astounding rate of four per week (UNCTAD 2010: 81). Many East Asian countries have been active participants in these treaties (Table 1), which continue to substantially outnumber the number of PTAs they have signed. More surprising, perhaps, is the distribution of bilateral investment treaties (BITs) across countries, with China the most active player and Japan among the least active (being overshadowed by both Cambodia and Laos – although this distribution reflects an historic imbalance between countries that are primarily hosts as opposed to sources of FDI).

The explosion of interest in bilateral arrangements on investment reflects the failure of multilateral action on the matter – both the OECD's Multilateral Agreement on Investment and the attempt by industrialized countries to pursue investment issues through the WTO as one of the

*Table 1* Bilateral investment treaties concluded by East Asian states, May 2011.

	Number of treaties	Disputes submitted to ICSID <sup>§</sup>
Brunei Darussalam	8	0
Cambodia	21	1
China	128	1
Hong Kong	15	n.m.*
Indonesia	63	2
Japan	18	0
Korea	90	1
Laos	23	n.m.*
Malaysia	67	3
Myanmar	6	n.m.*
Philippines	35	2
Singapore	41	0
Taiwan	23	n.m.*
Thailand	39	0 <sup>#</sup>

<sup>§</sup> International Centre for the Settlement of Investment Disputes (ICSID)

\* n.m. Not a party to ICSID

<sup>#</sup> Although Thailand signed the ICSID Convention in December 1985, it has not yet ratified it.

Source: UNCTAD (2012: Annex Table III.1); accessed at [http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ShowHome&pageName=Cases\\_Home](http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ShowHome&pageName=Cases_Home).

‘Singapore issues’.<sup>10</sup> It is also a reflection of the change in attitude of host countries, especially developing economies, towards FDI – the move away from policies of economic nationalism in the 1970s, when the emphasis was on constraining investors and on expropriation, to a situation where states are keen to increase their attractiveness to potential investors to secure a place in global production networks (Moran 1998). Competition for investment has been found to be the factor most strongly associated with states’ negotiation of BITs (Elkins, Guzman and Simmons 2006). And support has been found for the argument that the presence of a BIT encourages investment into the developing economy partner (Neumayer and Spess 2005; Salacuse and Sullivan 2005), although there is no evidence that BITs are associated with enhanced rates of economic growth or necessarily welfare-optimizing (Guzman 1998).

BITs represent a significant extension of legalization in international economic relations: ‘Although BIT texts are often drafted in an open and imprecise manner – usually encompassing no more than ten pages – they can be described as hard law as they delegate the authority of interpretation and implementation to transnational arbitration bodies’ (Berger 2008: 2–3). In particular, by providing for investor-state dispute resolution, they directly grant foreign investors legal personality. Foreign investors can take their

claims against a host government directly to an international tribunal: contrary to the custom in international law (Abbott *et al.* 2000: 409), they are not obliged to exhaust the remedies available in the courts within the partner before lodging an international claim. Contemporary BITS are comprehensive in their coverage, providing not just for third-party settlement of disputes, but also a broad definition of investment, provisions for compensation in the event of expropriation, and constraints on governments' capacity to limit the inflow or outflow of funds.

The relative neglect of BITS by students of international economic relations is surprising in that these treaties have the potential to make greater incursions on national sovereignty than most commercial treaties. Relatively few cases involving East Asian countries have been taken to the International Centre for the Settlement of Investment Disputes (ICSID), however – a total of only ten disputes involving countries that are a party to more than 400 treaties. In only one instance, a case launched in May 2011 by a Malaysian entrepreneur, has the Chinese government been taken to the ICSID. The paucity of claims may reflect asymmetries in power in the relationship and companies' calculations that their long-term interests may be harmed by launching litigation against a host government. And some countries, most notably China, in their early treaties, limited the recourse that their partners had to third-party dispute procedures; however, more recent agreements have incorporated and extended such provisions.

On the other hand, the relative paucity of claims may reflect the change in investment environment that the signing of BITS symbolizes. By offering investors the possibility of third-party dispute settlement, they have arguably constrained the freedom of action of the host states, provided much greater certainty for investors and helped overcome one source of insecurity – the change in the balance of bargaining power that occurs once investors have committed substantial resources to specific uses in host countries. Indeed, BITS have had so significant an impact on the bargaining relationship between investors and host countries that a backlash is under way: the United Nations Conference on Trade and Development (UNCTAD) noted in its 2010 *World Investment Report* that a number of developing economies had either denounced or were seeking to renegotiate some of their current BITS (UNCTAD 2010: 85–6). The investor-state dimensions of BITS have also attracted criticism in industrialized economies because of perceptions that they privilege foreign investors over their domestic counterparts: some members of the US Congress objected to Canadian companies' use of the investor-state provisions in the North American Free Trade Agreement (NAFTA); the Australian government's Productivity Commission (Productivity Commission, Commonwealth of Australia 2010: 271) advised the government not to include investor-state provisions in the investment chapters of any PTAs it negotiates. The Commission concluded that, given the existing protections available under Australian law, there did not seem to be an underlying economic problem that necessitated such provisions,

*Table 2* Tasks performed by international institutions governing commodities trade

	Information collection and dissemination	Non-binding principles and targets	Binding principles and targets	Institutionalized monitoring	Institutionalized dispute settlement mechanisms	Third Party Adjudication	Sanctions
IEA	Y	Y	Y	Y	N	N	Y
WTO	Y	N	Y	Y	Y	Y	Y
APEC	Y	Y	N	S*	N	N	N
ASEAN	Y	Y	N	Y	M*	N	N
BITs	Y	N	Y	P*	Y	Y	T*
PTAs	Y	Y	N	P*	M*	N	N

*Key:*

Y = Yes

N = No

S\* = Largely self-monitoring, but sometimes (weak) peer review

M\* = Dispute may be brought to the attention of meetings of ministers or heads of government

P\* = By the other parties to the agreement, rather than a separate organization

T\* = Through a third party, typically the International Centre for the Settlement of Investment Disputes.

and there was no evidence that investor-state provisions had a significant impact on investment flows. On the other hand, it noted, investor-state provisions ran the risk of limiting the capacity of the Australian Commonwealth or state governments to regulate the activities of foreign investors, who might also be privileged relative to their domestic counterparts.

In contrast to the marked changes in interstate relations brought about by BITs, government attempts to increase resource security through investment-related provisions in PTAs have enjoyed minimal success. A survey of minerals chapters in PTAs involving East Asian countries (Wilson 2012) found that all of the ten agreements with resource suppliers that included investment protection provisions had significant exemptions for resource sectors. Moreover, none of the resource chapters included a commitment on the part of exporting states to refrain from imposing export controls (the only agreements that mentioned export controls, those between Japan and Indonesia and Japan and Brunei, merely require consultation on quantitative restrictions and, in both instances, the suppliers reserve the right to impose such restrictions if they see fit – a much weaker discipline than found, for instance, in the EU's trade agreements with Algeria and South Africa (WTO 2010: 180)). Furthermore, Wilson notes, in none of the resource chapters have exporting countries committed themselves to providing their partners with resources on concessional terms: they fail to move beyond non-specific general commitments to cooperate in resources trade.

## **Conclusion**

The international system for governance of international trade in commodities is complex, multi-layered, yet far from complete. Institutions created with the intention to reduce concerns over insecurity in international commodities trade take multiple forms. For any single commodity, typically, no single institution exists that attempts to address all of the dimensions of security. Some are concerned with issues of investment, others with management of supply in the event of shortfalls. The functions of global institutions are frequently duplicated at the regional level.

In terms of the continuum of cooperation outlined earlier, very few of the institutions discussed in this article do more than collect and disseminate information and set aspirational targets, the realization of which depends on the goodwill of the countries concerned. Few have binding principles and targets, still fewer have institutionalized dispute settlement mechanisms and/or third party adjudication; the capacity to impose sanctions for non-compliance is rare (Table 2). No secular process towards a greater institutionalization or deepening of cooperation is evident. Certainly, more fora have been created: the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) (UN ESCAP 2008: Table 4.4) notes, for instance, that energy issues in the Asia-Pacific are the subject of more than 40 cooperative frameworks, including 17 intergovernmental groupings.

To what extent have these institutions helped overcome the problems associated with inter-temporal variation in rationalities outlined earlier? The one significant success, at least from the perspective of foreign investors, is the dramatic transformation of the investment regime brought about by the huge increase in the number of bilateral investment treaties in the last decade. Their legally-binding provisions, coupled with third-party adjudication (most often through the ICSID) and the possibility of sanctions being applied against parties that fail to respect their treaty obligations (typically host states because these treaties seldom impose significant duties on investors), substantially reduce the risk of losses from investment in specific assets in host countries. The potentially positive effects they may have on increasing the supply of commodities are obvious.

International cooperation aimed at managing supply in periods of crisis and shortfalls has had a mixed record. Members have invested the IEA with the most extensive powers of the institutions designed for this purpose, giving it both the authority to set quotas and to punish those who fail to comply with its directives. But the IEA has never used the full panoply of its powers in an emergency situation and compliance with its directives in at least one emergency situation was less than complete. Moreover, the relevance of the IEA to East Asia is limited by the restriction of its membership to OECD members. APEC, the most comprehensive of the regional institutions, has no powers for emergency allocations of commodities in times of crisis. The one regional institution that does attempt to address the issue, ASEAN, is hamstrung by the voluntary basis on which members' cooperation with its emergency stockpiling and allocation provisions rests. Its provisions – whether for petroleum or for rice – have never been invoked. In general, national stockpiling of resources remains far more significant than that undertaken by regional or global institutions.

International institutions have been largely ineffective in two of the areas that have generated substantial insecurity for consuming countries: restrictions on exports and issues of pricing. The WTO is best placed to enforce rules against countries imposing export restrictions, but its powers are limited and the scope of the rules ambiguous. To date, none of the recent PTAs that include minerals chapters have effective prohibitions against export restrictions. And none of the intergovernmental arrangements addresses issues of pricing other than indirectly – through encouraging expansion of supply through facilitation of investment through the BITs or through facilitating the realization of projects through financing feasibility studies, encouraging collaboration, or through expanding the sources of financing.

The plethora of institutions that cover resource issues share characteristics that are typical of intergovernmental cooperation in the Asia-Pacific at the regional and bilateral levels. They are characterized by 'soft' law – that is, they lack precise legally-binding obligations; mechanisms for enforcement; and institutionalized dispute-settlement mechanisms. A case can be made that 'soft law' approaches are advantageous, particularly if

no practical alternative is available (Abbott and Snidal 2000). Institutions built on soft law may also evolve into ones where the obligations of states are more clearly spelt out and made legally binding. However, such a 'hardening' of law has seldom been experienced in Asia-Pacific institutions, not least in those that deal with resources. It may be that soft law institutions are the only type that are acceptable to governments at the current time – but institutional design has consequences for the tasks that they (at least nominally) are charged with accomplishing (Aggarwal 1998).

Governments' continued preference for soft law approaches in the Asia-Pacific in itself requires explanation. One component is lack of confidence in the likely actions of other states, a factor compounded by the weakness of the institutions themselves (ineffective monitoring, lack of dispute-resolution procedures, etc.). But it is also a reflection of perceived lack of commonality of interests. That the effects of international institutions on reducing insecurity in commodities trade should be so limited should, perhaps, not be so surprising. The temptation to engage in non-cooperative behaviour in structures that, in the short term, resemble a prisoner's dilemma situation is very strong. Even long-term supply contracts between consumers and producers, which were favoured by some analysts (Klein, Crawford and Alchian 1978; Smith 1978) as a possible solution to problems of bilateral monopoly, insecurity of supply, opportunistic behaviour and high transaction costs, have frequently succumbed to defection (opportunistic behaviour) when either consumers (as with Japanese steel mills in the early 1980s) or producers (the Big 3 iron ore exporters – BHP, Rio Tinto and Vale in 2010) exploited market conditions to drive prices away from those agreed in the long-term contracts (Wilson forthcoming 2013).

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### **Notes**

- 1 China, however, was only the world's fourth largest importer of natural resources in 2008, trailing the EU, the United States and Japan. China's total imports were less than one half of the value of those of the EU, although they grew at nearly twice the rate over the years from 2000 to 2008 (WTO 2010: Appendix 3, p. 208).
- 2 'Export restrictions: cereal offenders', *Economist.com*, 27 March 2008; accessed at <http://www.economist.com/node/10926502/print>, 9 April 2011; Kym



- Anderson, Will Martin, and Signe Nelgen (2010) 'Export restrictions and food market instability', *Vox.eu*, 9 November; accessed at <http://www.voxeu.org/index.php?q=node/5760>).
- 3 The US lodged a dispute claim with the WTO in June 2009 over China's restrictions on the exports of bauxite, coal, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus and zinc. The EU, Canada, Mexico and Turkey subsequently joined the consultations. Argentina, Brazil, Chile, Colombia, Ecuador, India, Japan, Korea, Norway, Chinese Taipei, Turkey and Saudi Arabia registered their interest in the dispute as third parties. The dispute settlement panel rejected China's argument that the measures were justified under its right to conserve natural resources, noting that there was no clear link between the export restrictions and a comprehensive conservation policy. 'WTO panel rules against China's export restrictions on raw materials', *Bridges Weekly Trade Digest*; accessed at <http://ictsd.org/i/news/bridgesweekly/110043/>, 7 July 2011.
  - 4 Potential targets for support must meet one of two criteria: (1) 'projects to acquire exploration or development interests' or (2) 'projects related to long-term supply contracts that contribute to supplying ... resources to users in Japan'. The last clause in this quotation is typical of action by consumer states and points to a key potential source of international conflict: the emphasis is not on increasing aggregate supply to the market, but on increasing the supply to a specific country.
  - 5 The reference is to economists' conceptions of rent, that is, to profits gained in excess of the 'normal' profits that would be earned if capital was invested in alternative activities. In addition to scarcity, a second source of rents in the natural resource sector is the difference in costs of extraction of the resource: if commodities fetch the same price in international markets regardless of their source, producers that are able to extract resources more cheaply will earn rents above those of their competitors.
  - 6 The OECD previously had various structures, including committees on energy and on oil, for discussion of various dimensions of energy supply issues, including provisions for an emergency management system in the event of a disruption of supplies to Europe, the requirement that the OECD could only act if its members were in unanimity prevented an effective response to the crisis in 1973 (Scott 1994: 34–6).
  - 7 Only OECD members are eligible for membership in the IEA. Chile, Iceland, Mexico and Slovenia are OECD member countries, but currently not IEA member countries.
  - 8 The first of the three volumes of the official IEA history (Scott 1994) provides a detailed discussion of the organization's establishment.
  - 9 The other global institution that warrants mention is the Energy Charter Treaty (ECT), a legally-binding treaty that commits its members to investment protection on a non-discriminatory basis, non-discrimination among members on energy, trade and transport, and to dispute-settlement mechanisms for interstate and investor-state disputes. The ECT grew out of a 1991 proposal for a European Energy Community, however, and remains predominantly European-focused. Only Japan among Asian states is a signatory to the Treaty.
  - 10 One of four categories of issues – the others were competition policy, government procurement and trade facilitation – in a declaration issued by the 1996 WTO ministerial meeting held in Singapore: in 2004, WTO members stated that investment issues would not be on the agenda for the Doha Round of multilateral negotiations; of the 'Singapore issues', only trade facilitation survived.

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