CONTENTS

List of tables page xi
List of charts xii
General editors’ preface xiii

1. Introduction 1

2. The legal and institutional framework for ASEAN external agreements: the centrality of ASEAN external powers 32
   2.1 ASEAN legal personality and its implications 23
   2.2 Scope, principles and objectives of ASEAN external powers 32
      2.2.1 External objectives: the regional dimension 37
      2.2.2 Partner status 42
      2.2.3 Trade objectives 44
      2.2.4 Other objectives requiring external action 47
      2.2.5 Principles governing external action 49
   2.3 Who represents ASEAN and who concludes external agreements? Procedures under the Charter 51

3. An inventory and typology of ASEAN external instruments: overview and trends 58
   3.1 Introduction 58
   3.2 Legal quality 61
   3.3 A quantitative and content-based perspective on ASEAN's external instruments 68
   3.4 Who are ASEAN’s treaty partners? 79

4. ASEAN as a contracting party 84
   4.1 Introduction 84
CONTENTS

4.2 The different modes of ASEAN external relations 85
4.3 Treaty-making practice before and after the Charter 87
  4.3.1 Economic instruments 88
  4.3.2 Political and security instruments 91
  4.3.3 Socio-cultural instruments 92
  4.3.4 Partnership and co-operation instruments 94
4.4 Law of treaties and international responsibility: the
  ASEAN paradox and the pathology of legal ambiguity 102
4.5 International identity: indicators of collectivity 120
4.6 Chapter conclusions 130

5. Beyond market access? The anatomy of ASEAN's
  preferential trade agreements 134
  5.1 Introduction 134
  5.2 ASEAN economic integration through law: a point
     of reference for ASEAN's preferential trade agreements 139
  5.3 ASEAN's preferential trade agreements in the context
     of East Asian growth in regionalism 146
  5.4 Factors explaining substantive coverage and depth of
     de jure economic integration in ASEAN's PTAs 149
     5.4.1 Heterogeneity and proximity 150
     5.4.2 The relationship between de facto and de jure
         economic integration 155
     5.4.3 The intensity of ASEAN's trade with
         ASEAN + 1 partners 166
     5.4.4 Preliminary conclusions 178
  5.5 The substantive coverage and depth of ASEAN's PTAs 186
     5.5.1 The substantive coverage of ASEAN's PTAs 188
     5.5.2 The proliferation of co-operation provisions in
         ASEAN's PTAs 194
     5.5.3 The depth of WTO-plus commitments in
         ASEAN's PTAs 197
     5.5.4 The depth of WTO-extra commitments in
         ASEAN's PTAs 219
  5.6 Summary, conclusions and policy implications 227
CONTENTS

6. A regional strategy: a typology of ASEAN partnership and co-operation agreements 236
   6.1 Introduction 236
   6.2 Overview of the category 236
   6.3 The three hallmarks of ASEAN through partnership and co-operation 238
      6.3.1 ASEAN as a regional architect 239
      6.3.2 Soft law and the externalisation of the ASEAN Way 244
      6.3.3 ASEAN inter pares: the emergence of the legal person 250
   6.4 Conclusion 254

7. Between great-power rivalries and supranationality: ASEAN external instruments and regional hedging strategies 257
   7.1 Introduction 257
   7.2 Debating ASEAN external instruments 259
      7.2.1 Liberal views of ASEAN external instruments: market demands, regionalism and the benefits of legalisation 265
      7.2.2 Constructivism: ASEAN external instruments as social processes 268
      7.2.3 Realism: ASEAN external instruments as the continuation of diplomacy and strategy by other means 271
      7.2.4 ‘Analytical eclecticism’ and ASEAN external instruments 276
   7.3 ASEAN external instruments and hedging strategies 278
      7.3.1 Paradoxes of ASEAN external instruments 278
      7.3.2 Great-powers rivalry and regional integration in Southeast Asia 281
      7.3.3 ASEAN external instruments and external hedging: ‘omni-enmeshment’ of third parties and complex regional balancing 285
 CONTENTS

7.3.4 ASEAN external instruments and intraregional hedging: collective action without supranationality 292

7.4 Conclusion 295

Executive summary 297
Appendices 311
Index 567