

Regionalism v. Multilateralism – A View from the Asia-Pacific Region

Andrew L. Stoler¹
Institute for International Trade
The University of Adelaide

Introduction

As has already been documented by a large number of observers, trade policy in the Asia-Pacific region has taken a decided turn toward regional initiatives over the past decade. Most countries in the region were involved in very few, if any, regional trade pacts at the time the WTO was established. Governments' work in APEC was repeatedly characterized as "open regionalism" and APEC leaders' policy statements focused on emphasizing support for the WTO. Where regional trade agreements existed ten years ago, they were almost exclusively between next-door neighbors (e.g., Australia-New Zealand and ASEAN).

Today, in late 2006, the situation is very different. WTO's Doha Round is in suspended animation and may eventually be the first multilateral trade negotiation to fail to produce a result. Countries in the Asia-Pacific region – like Malaysia - that historically eschewed involvement in regional pacts in favor of the WTO now find themselves involved simultaneously in multiple free trade agreement (FTA) negotiations. Academic economists typically steeped in the benefits of the non-discriminatory system of the WTO wring their hands over damaging trade and investment diversion effects. In recognition of the high level of FTA negotiating activity in the region, Bhagwati's "spaghetti bowl" effect has been locally renamed as the "noodle bowl" problem.

If one includes South Asia in the mix and those negotiated between Asian countries and trade partners in the Western Hemisphere that border on the Pacific, there are more than 20 FTAs in force and more than 60 FTAs under negotiation in the Asia-Pacific region. No country or regional economy of any significance is not involved in FTA negotiations and many, like China, are undertaking several initiatives in parallel. No longer are the negotiations only between next-door neighbors: Australia is negotiating an FTA with China; the United States is negotiating with Korea and Malaysia; India is in talks with ASEAN and deals have been concluded between Chile and China and between Japan and Mexico. The so-called "P-4" FTA links Chile, New Zealand, Singapore and Brunei.

In addition, certain existing FTAs are being renegotiated with a view to broadening and/or deepening their initial coverage. ASEAN is engaged in impressive internal negotiations on mutual recognition agreements to facilitate the movement of professional service providers. China and ASEAN are working to complement the initial phase of their existing FTA with a trade in services component. A number of other agreements provide for further negotiations to

¹ The author is Executive Director of the University of Adelaide's Institute for International Trade. He was Deputy Director-General of the WTO from 1999 to 2002 and prior to that time was a senior official in the Office of the United States Trade Representative (1979 to 1999).

add to what was possible to achieve in the initial round of talks. For example, the Thailand – Australia FTA envisages a return to the table for the purpose of adding commitments on government procurement.

To what extent do these negotiations reflect a loss of faith in the WTO system? Is the flurry of activity related to China's growing importance in the global production chain and the need to accommodate regional production-sharing networks? Are the regional FTAs motivated by economic or political considerations? Is there an Asia-Pacific model for FTAs? What can we say about the impact of Asian regionalism on the WTO – is this “competitive liberalization” or destructive discrimination?

This paper examines these questions and concludes that Asia-Pacific regionalism has been stimulated mainly by the WTO system's failure in recent years to produce the on-going trade and investment liberalization that is the policy predisposition of a large number of countries in the region. Asia-Pacific countries have not abandoned the WTO – the WTO has failed to deliver what they need.

Characteristics of Asian Regionalism

APEC's Influence

Probably the easiest of the questions to address is that of whether there is an Asia-Pacific model for FTAs. With the aim of producing high-quality, WTO-consistent agreements, within APEC, a genuine effort has been undertaken to develop best practices for FTAs and other regional agreements and it is worth spending some time looking at what APEC members have agreed should be the ideal components of such agreements. A number of APEC members have successfully put these best practices into effect in their agreements. Others have been less successful, although there are a number of cases where initially marginal FTAs were recognized as the best that could be accomplished in the initial negotiating phase and they are now being improved through subsequent talks. Compared to FTAs negotiated in South Asia, Africa and, to some extent in Latin America, Asia-Pacific FTAs – including those exclusively between developing countries - tend to be of a higher quality and generally appear consistent with WTO requirements. Of course, this is not true of every FTA in the region.

Whether a particular FTA can be considered as “high quality” or not is not always a straightforward question to answer. APEC member economies adopted a set of “best practice” guidelines for FTAs in the region in late 2004² in an effort to ensure that regional FTAs supported both the WTO system and achievement of the APEC Bogor Goals designed to liberalize developed economies trade by 2010 and developing economies' markets by 2020. APEC members, at least, would have to consider that FTAs complying with the best practice guidelines are high quality agreements.

For APEC purposes, a major – and hardly surprising – characteristic of a high quality FTA is consistency with WTO disciplines found in GATT Article XXIV and GATS Article V. While the WTO's own surveillance and review mechanism in the Committee on Regional Trade Agreements has broken down, reasonable people can probably see readily enough whether individual FTAs comply with these disciplines. For trade in goods, does the FTA cover substantially all trade and are barriers removed within a reasonable period of time? Does an

² “Best Practice for RTAs/FTAs in APEC”, document 2004/AMM/003 adopted at the 16th APEC Ministerial Meeting, Santiago, Chile, 17-18 November 2004.

FTA incorporating trade in services liberalization eliminate substantially all discriminatory measures and have significant sectoral coverage as required by GATS Article V? Given that many of the players in the Asia-Pacific region are developing countries, additional flexibility is built in through the application of the WTO's "Enabling Clause". As a way of emphasizing this aspect of best practice, the guidelines contain an additional point on comprehensiveness that directs member economies to liberalize all sectors and to eliminate barriers to trade and investment. Phase out periods for tariffs and tariff rate quotas should be kept to a minimum.

Other APEC best practice guidelines deal with WTO Plus commitments, transparency, trade facilitation, simplification of rules of origin, cooperation, sustainable development and accession by third parties. In an effort to address the "noodle bowl" issue, APEC member economies are urged to use a consistent approach to rules of origin across all of their FTAs.

Singapore's FTAs with both Australia and the United States are especially strong, with strong rules for both goods and services, as well as investment and other WTO-plus questions like government procurement and competition policy. Not surprisingly, the Australian FTA with the United States is perhaps the gold standard for Asia-Pacific FTAs, although one still hears (justifiable) complaints about the American refusal to liberalize imports of sugar and very long transition periods for beef and dairy liberalization. In certain aspects the Australia-USA deal is superior to the twenty-five year old Closer Economic Relations agreement between Canberra and Wellington, which, curiously, has no rules for investment liberalization. China's agreements with both Hong Kong and Macau are strong FTAs (without a doubt special cases) and there are indications that the second phase of China's FTA with ASEAN may substantially increase coverage of sectors and issues left un-touched in phase one.

In their "Busan Declaration"³, APEC Economic Leaders agreed that high quality RTAs/FTAs were important avenues to achieve free and open trade and investment and they called for ongoing work to pursue high quality, transparency and broad consistency in RTAs/FTAs in the region. In large part, the record of Asia-Pacific FTAs is a pretty good one – although in certain cases the story is not complete. Certainly, in the first six years of the twenty-first century, the trade liberalization achieved through regional arrangements in the Asia-Pacific region has delivered far greater results than anything produced in Geneva⁴.

Selected National Dispositions

As already noted, a number of Asia-Pacific economies have made real efforts to negotiate high quality free trade agreements. Among those on the Western side of the Pacific, Australia, New Zealand, Singapore, Hong Kong and possibly China have a national disposition toward high quality FTAs. The book is still open on Korea and Malaysia – although it has to be admitted that the Korean authorities made an initial attempt to defy the powerful protectionist agriculture lobby with the Korea-Chile agreement.

Thailand's FTAs give a picture of a fairly advanced developing economy that is still reluctant to go the whole way in FTA negotiations. Its agreements are often half-hearted undertakings. In

³ The "Busan Declaration", also known as the "2005 Leaders' Declaration" was agreed on the occasion of the 13th APEC Economic Leaders' Meeting in Busan, Korea, 18-19 November 2005.

⁴ WTO's only contribution of note during the period has been the frequently impressive outcomes of accession negotiations – of which China is the best example. In terms of multilateral negotiations, one could easily argue that the Doha Round has now taken us backward from where we were in 2000 given the abandonment of work on the so-called "Singapore Issues".

addition, Thai negotiating partners like Australia have found that a number of market-opening commitments have failed to produce real economic opportunities because Thai officials have replaced reduced "at-the-border" barriers with other measures that have frustrated efforts to gain real market access. For example, in TAFTA, Thailand agreed to big reductions on tariffs applicable to automobiles with large capacity V-8 engines and Australian wines, but have since raised excise and sales taxes on these products (with no negative impact on Thai producers who make neither the engines nor the wine). What "saves" Thailand in this discussion is that initially negotiated agreements are often recognized in the text of the agreement itself as unsatisfactory with a commitment to further negotiations in the future. This is the case with the TAFTA, for example.

Japan is a reluctant late-comer to the game. Because of its highly protectionist agriculture lobby and relatively competitive manufacturing sector, Japan's interest in FTAs has either stemmed from reaction to China's active pursuit of FTAs or an imperative to avoid finding itself in a disadvantaged position in certain key markets (Mexico is a good example). Japanese FTAs – the few in existence today – tend to be "trade-light" and likely not comprehensive enough to satisfy either the WTO rules or the APEC guidelines. Longer term considerations linked to preservation of a semi-dominant Japanese manufacturing presence in the region have been behind Japanese efforts to create an East Asian sub-regional trade and economic grouping. (The USA and other Western Hemisphere APEC members have resisted this Japanese initiative).

China's position is particularly interesting. Having spent fifteen years joining the WTO and having a clear interest in the successful evolution of the non-discriminatory international trading system, China could easily have been anticipated to put its negotiating chips in the WTO basket. Instead, China has shown an unexpectedly strong appetite for regional and bilateral trade initiatives. At the same time, China has evidenced a surprising nonchalance with respect to the demise of the Doha Round. China's FTAs with Hong Kong and Macau are good ones and are clearly motivated on both sides by a desire to eliminate undesirable barriers to the full integration of the market and transition economies on either side of the technical border. With ASEAN, there is considerable evidence that China's FTA is linked to facilitation of the regional production-sharing arrangements and through tariff reductions that enhances competitive position of the final product on world markets. How the eventual services component of China's FTA with ASEAN will turn out is a matter of considerable speculation given the weakness of the Chinese services sector.

In 2006, China is simultaneously negotiating FTAs with Australia and New Zealand. Both Canberra and Wellington have made a "down-payment" in the negotiations by recognizing China as a "market economy" – rendering inoperable the infamous paragraph 15 of China's WTO accession protocol that would otherwise allow for discriminatory treatment of Chinese firms in antidumping cases. As a condition for commencing FTA negotiations, China required both countries to designate it – permanently – as a market economy. In exchange, China agreed to commit to comprehensive⁵ FTA negotiations covering manufacturing, services and agricultural trade. However, since the commencement of negotiations with both countries, China has repeatedly argued for multi-stage agreements that would start with free trade in manufactured goods and address (for it) sensitive sectors like services and agriculture only

⁵ At least in the case of Australia, this commitment was conditional in respect of including competition policy and government procurement in the FTA. On all other topics typically addressed in a modern FTA, China showed little reticence at the time the bilateral feasibility study was published.

later. Both Australia and New Zealand have resisted this approach and it is likely that the negotiations will either end in a high quality FTA or produce no result at all.

Singapore – a country with nearly no customs barriers to trade – has become a major player in the regional FTA game. Apart from its longstanding membership in ASEAN, Singapore now has FTAs with New Zealand, Australia, the United States and Japan as well as membership in the so-called “P-4” arrangement with New Zealand, Chile and Brunei. Singapore – an extremely strong and reliable supporter of the WTO and multilateralism – seems genuinely motivated by almost altruistic “competitive liberalization” concerns in its FTAs. At the same time, Singapore does not want to see itself disadvantaged vis a vis other competitors in major markets. Singapore’s appetite for the FTA game in the Asia-Pacific probably has much to do with Malaysia’s new-found interest in FTA negotiations. Other countries’ interest in the Singapore market have been primarily in the services sector where – in opposition to the approach Singapore takes to trade in goods – there are frequently high barriers to entry for foreign firms.

Australia, leader of the Cairns Group and a strong supporter of the multilateral system of the WTO, is another late-comer to the FTA family. In the early 1980’s Australia and New Zealand negotiated the first phase of the highly successful Closer Economic Relations trade agreement (ANZCERTA), which was supplemented later by an additional acceleration protocol. Aided by ANZCERTA, the two economies have been integrated to the point that few people find it surprising that governments periodically consider issues such as a common currency. New Zealand to the side, what motivates Australia in the Asia-Pacific FTA context?

Australia has negotiated FTAs in recent years with the United States and with Singapore and now has negotiations underway with China, Malaysia and – with New Zealand – ASEAN as a whole. A feasibility study has been launched into the possibility of negotiating an FTA with Japan. What was behind the Australian negotiation of an FTA with the United States? At the start of the talks, no major irritants in bilateral relations were evident, more than half of Australia’s MFN tariffs were at zero and nearly 45 percent of the U.S. MFN tariffs affecting Australia were also at zero. The average of both countries dutiable rates on remaining trade was five percent or less. Although Australia maintained an investment screening agency theoretically affecting investment from the USA, no investment proposal from the USA has ever been rejected by Australian authorities. On the other side, Australia has proportionately invested in the US economy at a rate three times the American foreign direct investment rate in Australia.

Without doubt, there was a strong political motivation to the Australian interest in an FTA with the USA and- at the same time – American politicians felt an unusually warm relationship with Australia as the country was one of the few to join the USA and Britain in the invasion of Iraq. Because several “big” issues⁶ were taken off the table at the start of the negotiations, it proved relatively easy to negotiate an extremely high quality FTA between the two countries. China is a different story altogether. Political motivation is again a strong factor, but Australia and China do not need an FTA in order for Australia to sell China large amounts of mineral and energy products in exchange for mass-produced manufactures. From the beginning, it was clear that the Australians were intent on using this FTA mainly to gain preferential access to the Chinese market for services – as well as some specialized agriculture and food products. China, for its

⁶ Australia never seriously considered making major changes to its state trading operation for wheat, the Pharmaceutical Benefits Scheme or Australian content rules for audiovisual programming and the USA made it clear from the start that the so-called “Jones Act” and sugar trade liberalization were not on the table.

part, had already achieved most of what it wanted through the designation by Australia of China as a “market economy” country. This divergent approach goes a long way toward explaining the difficulties Australia is now facing in its attempts to get a decent offer from China on services, for example.

Malaysia is another reluctant player in the regional FTA game and, apart from its participation in ASEAN, seems to be motivated by a desire not to be left out of markets liberalized through FTAs to some of its local competitors. Malaysian officials did not seriously consider entering into FTA negotiations with non-ASEAN partners and preferred to focus more or less exclusively on the WTO up until the Cancun Ministerial Conference in 2003. Over the next two years, Malaysia's frustration with the WTO grew and at the same time, officials in Kuala Lumpur watched Singapore and Thailand step up their own FTA negotiating activity. Finally, the Malaysians came to the conclusion that they could not afford to stay out of the RTA game and they are currently simultaneously negotiating ten bilateral and regional trade agreements with partners as diverse as the United States, Australia/New Zealand and India. To their credit, the Malaysians appear to be interested in pursuing high quality FTAs with coverage of substantially all trade. Earlier this year, the Malaysian Trade Minister was reported to express her dissatisfaction with the position taken by India in that country's negotiations with ASEAN where it was apparent that the Indians were interested in excluding long lists of products from coverage under the FTA.

Curiously, of all the Asian economies, Indonesia appears to be the least interested in pursuing FTAs, although as a member of ASEAN it is naturally involved in ASEAN-wide discussions with China and Australia/New Zealand. Another important ASEAN member, Vietnam, is clearly preoccupied with its ongoing effort to complete negotiations connected with its accession to the WTO.

High Quality Agreements in the Region

Because they can be seen as a benchmark against which to assess other FTAs negotiated in the Asia-Pacific region, the agreements generally recognized as “high quality” deserve some analysis in this paper. In this section, the focus will be on Singapore's agreements with the United States and Australia, Australia's FTA with the United States and the “P-4 Agreement” linking Singapore, New Zealand, Chile and Brunei. In addition, ASEAN's cutting edge work on mutual recognition agreements for professional services suppliers is discussed.

Singapore – Australia (SAFTA)

When Australian and American negotiators sat down to negotiate their bilateral FTA, both were assisted importantly by the fact that each country had recently negotiated high quality FTAs with Singapore. They found that many issues did not need to be re-hashed bilaterally because they had already been dealt with in similar ways in the agreements with Singapore. Singapore's FTA with Australia preceded its agreement with the United States.

As noted above, Australia and Singapore had different motives and objectives in the negotiation, but they were in some senses complementary in nature. Although Singapore maintained a tariff-free environment for goods (except for beer and stout) prior to the FTA, Australia was interested in using the agreement to obtain removal of investment restrictions and free up services trade. For its part, Singapore was able to use the agreement to gain preferential tariff treatment in Australia not only for Singapore-based companies but also for

Singapore-owned companies in next-door Indonesia. Singapore also gained access to Australia's government procurement market (Australia is not a member of the plurilateral WTO government procurement agreement).

The agreement has to be considered a very high quality FTA due to its extremely liberal treatment of trade in goods, trade in services, WTO-Plus provisions and, very importantly, because it is structured as a "living agreement that can be revised and improved over time through periodic reviews.

On the date of the FTA's entry into force (28 July 2003), Australia and Singapore immediately eliminated tariffs on all goods imported from the other. There is no doubt that the FTA satisfies GATT Article XXIV's requirement that substantially all trade between the members should be covered. They also agreed not to subject each other to safeguard measures and not to use export subsidies. The same approach to rules of origin as that used by Australia and New Zealand in the ANZCERTA were applied to the SAFTA and both governments undertook to implement an important number of trade facilitation measures in their customs operations (including the use of electronic means for all customs reporting). The FTA chapter on TBT and SPS measures built upon an existing mutual recognition agreement for conformity assessment and provides for the development of arrangements for the acceptance of equivalence of mandatory requirements in accordance with sectoral annexes.

For trade in services, SAFTA takes a "top-down"/"negative list" approach that guarantees full market access and national treatment to each country's services suppliers except where narrowly-defined exceptions are listed in a schedule of non-conforming measures. The top down approach to services coverage delivers far more significant liberalizing results and is also far more transparent than the arcane bottom-up scheduling techniques of the WTO's General Agreement on Trade in Services (GATS). SAFTA's coverage of trade in services is extensive and would certainly be found to be in conformity with GATS Article V's rules for regional trade agreements in services.

On a practical business level, Australian individuals and corporate services providers achieved some impressive gains on services through SAFTA. For example, the number of Australian universities whose law degrees are recognized increased to eight, making Australian education more attractive to Singaporean students. Conditions on the establishment of legal joint ventures in Singapore were also eased and Australian financial services providers were given a more certain business environment through the binding in SAFTA of a number of unilateral Singaporean reforms in financial services. The FTA's provisions on telecommunications services build on both countries' existing commitments in the WTO basic telecommunications protocol. Importantly, both countries eased restrictions on the temporary movement of business people (GATS mode 4), extended residency periods and allow for employment rights of spouses in certain types of occupations.

SAFTA's investment chapter gives Australian and Singaporean investors national treatment status in the partner FTA country except for a number of specifically detailed special cases (like Australian restrictions on ownership of Qantas or Telstra shares. Both countries opened much of their government procurement market to suppliers from the other – using the same approach as that employed in the WTO plurilateral agreement to which Australia is not a party. Other "WTO-Plus" provisions of SAFTA focus on the adoption and enforcement of competition policies, intellectual property rights protections that reflect an updating necessary given the

passage of time since the negotiation of the TRIPs agreement and a range of dispositions addressed to electronic commerce.

Earlier, attention was drawn to the “living agreement” nature of SAFTA. Already at the very first SAFTA Ministerial Review in July 2004, important improvements were agreed to the already high quality agreement. Australia and Singapore announced agreement on a Horticultural Goods Annex – facilitating Singapore’s exports of orchids and foliage to Australia – and a separate Food Annex – whereby Parties are able to recognize the other’s standards and compliance procedures for trade in foodstuffs as equivalent to their own. A number of entities were added to the coverage of the government procurement chapter in the first review and Singapore recognized a number of additional Australian Universities’ law degree programs. Through the review process incorporated in the agreement, Australia and Singapore were able to agree a forward work program that will include: regulatory reforms covering competition policy, education, industry and other government policies; improvements to the rules of origin and investment chapters; expanded commitments in government procurement; and, ongoing cooperation in telecommunications and electronic commerce questions.

Singapore – United States FTA

In many respects, Singapore’s FTA with the United States – negotiated over the period 2000 to 2003 - is quite similar to the agreement negotiated with Australia. This agreement was the first American FTA with an Asian country and at the time of its signing was signaled as a template for other US FTAs in the Asian region. It is another high quality FTA, but there are some important differences to the agreement negotiated with Australia. As noted earlier, matching up the SAFTA with the agreement negotiated between the USA and Singapore was helpful to US and Australian negotiators when they began work on the Australia-US Agreement – which in many ways took the best of each of the earlier agreements into account.

The twenty-one chapters comprising the main text of the FTA cover all traditional WTO topics, as well as the WTO-Plus subjects of competition policy, government procurement, electronic commerce, investment, TRIPS-Plus intellectual property protection and – significantly, chapters addressed to the promotion of respect for labor standards and environmental protection. In the same way as Australia’s FTA with Singapore, this FTA adopts the more liberalizing top-down approach to liberalization of trade in services and the removal of restrictions to flows of foreign direct investment.

In terms of liberalization of goods trade, the U.S. also stood to gain little from additional Singaporean liberalization of an already free market, but gaining a binding on a zero tariff environment is nevertheless worthwhile for business. For Singaporean exports to the U.S. market, tariffs were phased out in three stages, with the least sensitive tariffs eliminated immediately and the most sensitive sector tariffs eliminated over ten years.

An interesting innovation in the Singapore-US Free Trade Agreement is the incorporated “Integrated Sourcing Initiative” (ISI) for trade in high technology products. For a defined number of information technology products and medical devices – listed in an annex⁷ to the FTA – and which already face zero tariffs in the United States and Singapore, the ISI eliminates the requirement that these products meet specific rules of origin (ROO) when shipped between

⁷ Annex 3B of the US-Singapore FTA lists the products by description and by applicable tariff numbers in the US and Singapore tariff schedules. American implementing legislation for the FTA permits products to be added to the list only by express approval of Congress.

the United States and Singapore. Importers do not need to prove the products meet the ROO test, complete certification paperwork or pay merchandise processing fees. The streamlined ISI approach reduces the burden on importers and reduces transaction costs considerably.

For trade in services, the same top-down negative list approach produces a presumed elimination of market access barriers and national treatment for each other's services providers subject to limited exceptions listed in annexes of non-conforming measures. Detailed chapters deal with telecommunications services, financial services and temporary entry of natural persons. A top-down approach to investment liberalization eliminated the need in the FTA for any specific provisions addressed to commercial presence commitments in the services chapter.

The investment chapter of the Singapore – US FTA is a model for the most far-reaching liberalization in this area. The defined scope of what is meant by “investment” is extremely broad – much broader, for example than the definition of “investment” in the ASEAN treaty – and covers portfolio investment. Singapore and the USA give each other's investors pre-establishment national treatment rights and a standard of treatment which is the “better of national treatment of MFN”. Protection for investors is comprehensive and provides detailed rules for expropriation, transfers, prohibition of performance requirements and rules preventing undue interference with senior managers of boards of directors.

The Singapore - USA FTA incorporates provisions on investor-state dispute settlement. In the event of a dispute between an investor of one of the parties and a government of the other party that cannot be resolved through consultation and/or negotiation, the dispute can be submitted for international arbitration under (a) the International Center for the Settlement of Investment Disputes (ICSID) Convention and ICSID rules of procedures for Arbitration Proceedings; (b) under ICSID “Additional Facility” rules; (c) under UNCITRAL Arbitration rules; or, (d) under any other arbitration instrument or under any other arbitration rules agreed by the parties to the dispute.

As noted above, other WTO-Plus provisions in the FTA are dealt with in the chapters on competition policy, government procurement, electronic commerce, enhanced IPR protection and labor and the environment.

The Australia – U.S. Free Trade Agreement (AUSFTA)

Although one still hears complaints from some corners about this FTA's failure to liberalize American imports of sugar from Australia and long phase-out periods for U.S. TRQs affecting Australian beef, the agreement is clearly the “gold standard” of Asia-Pacific FTAs negotiated in recent years. In this FTA, the United States and Australia were able to combine the best features of each country's separate FTAs with Singapore and add certain features that improve on comparable features found in the Singapore FTAs. For example, at the time that Australia negotiated its FTA with Singapore the Parties based rules of origin on regional value content (RVC) calculations that can be complicated to administer and contribute to the “noodle bowl” effect. The United States convinced Australia that for purposes of AUSFTA, the simpler “change in tariff classification” (CTC) origin rule approach was superior and following the implementation of the deal with the Americans, Australian Customs convinced New Zealand to revisit the ANZCERTA rules of origin and replace the RVC standards with the CTC approach.

Government procurement is another area where both the US and Australia improved on the approach followed with Singapore.

In terms of trade in goods, there can be no doubt that the AUSFTA satisfies the GATT Article XXIV rules even if sugar was left out of the picture. Duties were eliminated on more than 99 percent of tariff lines covering industrial and consumer goods on the first day of the FTA's implementation and more than two thirds of all agricultural imports into the USA from Australia were also immediately subject to duty-free treatment (Australia eliminated all tariffs on US-origin agricultural products at the start of the implementation period). Where duty elimination had to be phased, it was generally organized over a period of less than ten years, although the American phase-in period for dairy and beef liberalization extends (in the case of beef) to nineteen years. For both countries, sanitary and phytosanitary (SPS) issues have long been a problem in agricultural trade and in a significant "living agreement" feature, the AUSFTA established a bilateral SPS Committee to address a range of current issues and work toward developing science-based measures to address potential trade problems in agriculture.

A significant issue that arose in the course of the negotiations concerned the Australian Pharmaceutical Benefits Scheme and pricing for drugs provided through this scheme. AUSFTA established a Medicines Working Group to promote discussion and understanding of issues in pharmaceuticals trade and the FTA requires that federal health programs must apply transparent procedures in the listing and reimbursement of pharmaceuticals.

For trade in services, AUSFTA employs a "top down" negative list approach to coverage and market access commitments that delivers considerably more breadth and liberalization than has so far been possible in the WTO. The only sectors or sub-sectors not liberalized fully to services suppliers of the FTA partner are those listed in a special annex of "non-conforming measures". In the AUSFTA, both MFN and national treatment non-discrimination are guaranteed across-the-board, as is market access. Article 10:4 of AUSFTA prohibits limitations of the kind found in most GATS schedules. For example, AUSFTA parties may not impose limitations on the number of services providers, the total value of their transactions, the number of their operations in-country or the type of legal entity they can establish to provide their services. In the WTO, permission to establish a local presence has to be negotiated sector-by-sector. In AUSFTA, permission to invest for this purpose is guaranteed automatically, with minor exceptions, by the operation of AUSFTA's Investment Chapter (Chapter 11).

Another important example of where AUSFTA goes beyond the WTO in services trade provisions is found in the FTA's provisions on "recognition". All that the GATS provides in this area is an exhortation to Members to base mutual recognition agreements (MRAs) on multilateral criteria and keep participation in MRAs open to outsiders. AUSFTA goes much further and establishes an institutional mechanism the purpose of which is to promote bilateral mutual recognition arrangements. The creation of a Professional Services Working Group with a mandate along these lines is a very significant step. This could eventually give rise to recognition in the United States of the qualifications of lawyers graduated from Australian law schools or facilitate work in Australia by U.S.-trained architects and accountants. The professional services providers have a lot to gain, but so too do the Universities and other schools engaged in providing professional services education.

For investment, with the exception of the limited number of instances where Australia or the United States maintain "non-conforming measures", the FTA confers an absolute, across-the-board right of establishment with investors of the FTA partner guaranteed both national

treatment and MFN on an unconditional basis. In addition, AUSFTA's Article 11.9 goes considerably beyond the WTO TRIMS Agreement in terms of the kinds of performance requirements that are not permitted under the agreement. Other important features of the FTA's investment chapter that are "WTO-Plus" for investors include the rules governing expropriation and compensation; rules setting out the protection of transfer payments relating to covered investments and the prohibition of foreign investors being required to appoint host country nationals to senior management positions, for example. It is important to bear in mind that the pre- and post-establishment protections for investors contained in the AUSFTA apply at all levels of government in both countries – a fact that is very important in the federal systems operating in the United States and Australia.

What AUSFTA does not provide for is investor-state dispute settlement. Although investor-state dispute settlement provisions are contained in both countries' FTAs with Singapore, it was pretty clear from the start of the negotiation that many parties in Australia did not want to see such provisions in an agreement with the United States. The reasons for this are not entirely clear although in the course of the negotiations it was rumored that the Australian Green and Democrat political parties (in opposition) had told the Government that they would oppose the FTA in the Senate if investor-state dispute settlement was part of the deal. The Liberal – National Party Coalition felt it didn't need the extra headache. Interestingly, although the American business community lobbied USTR insisting on investor-state dispute settlement in the agreement with Australia, it was fairly clear that the U.S. Government was happy to accommodate Canberra and leave it out of the FTA. Investor-state dispute settlement in NAFTA has frequently been politically problematic and it seems that the American Government was happy to trust in the good reputation of Australian Courts.

The AUSFTA's Chapter 14 builds on existing antitrust cooperation agreements between the two countries and then amplifies certain of the competition policy principles found in the WTO. For example, Article 14.4 goes beyond what the WTO provides for in terms of ensuring that state enterprises operate consistent with principles of fair competition and also specifically obliges the parties to ensure that governments at all levels do not provide competitive advantages to government businesses just because they are government-owned. In addition a range of obligations kick-in in respect of ensuring the competitive behavior of any privately owned monopolies that might be designated by either side after the entry into force of the agreement.

AUSFTA clearly goes beyond the WTO envelope in making an obligation to ensure competition in the market explicit. Article 14.2.1 provides "Each Party shall maintain or adopt measures to proscribe anticompetitive business conduct and take appropriate action with respect thereto..." This is another important area that clearly falls into the WTO Plus category, as are AUSFTA provisions on cross-border consumer protection and recognition and enforcement of monetary judgments. To work, competition policy needs to have "bite".

Notwithstanding the fact that the GATT – WTO system has had an agreement dealing with government procurement since the end of the Tokyo Round negotiations in 1979, the utility of the agreement has always been compromised by its very limited membership. WTO Members are not obliged to join the "plurilateral" agreement and Australia has eschewed membership from the start (a policy position that has barred Australian firms from competing in the American market for government purchasing). AUSFTA, by contrast, contains ambitious rules and market opening measures in the area of government procurement. A very considerable value of American and Australian government purchasing above the threshold of A\$ 81,800 is now

open to suppliers from the other country on a non-discriminatory basis. In addition to federal level procurement, substantial amounts of both countries' state-level procurement will also be opened to competition. The conditions of the market will be further improved by the ban on offsets under AUSFTA and by the FTA's explicit provisions on ensuring integrity in the procurement process. Experience under the WTO has demonstrated that it is not easy for suppliers to get used to selling to governments in another country. However, the potential markets are enormous and the contribution that AUSFTA makes in this regard to freeing trade between the USA and Australia is not to be underestimated.

One of the most widely-criticized chapters of AUSFTA is Chapter 17, addressed to the protection of intellectual property rights. Most of the criticism comes from those who believe the FTA goes too far in tilting the scales in favor of protection for the holders of intellectual property rights. There is a fine line between too much protection of intellectual property (such that it threatens to undermine competition and consumer welfare) and insufficient protection. Chapter 17 starts by requiring the parties to AUSFTA to observe a number of intellectual property rights treaties that have entered into force since the TRIPS Agreement was negotiated in the WTO. These include the WIPO Copyright Treaty of 1996, the WIPO Performances and Phonograms Treaty of 1996, the Hague Agreement Covering the International Registration of Industrial Designs (1999) and the Geneva Patent Law Treaty of 2000.

A considerable number of AUSFTA's TRIPS-Plus provisions relate to copyright and new technologies, such as rules for the protection of encrypted program-carrying satellite signals; liability-related provisions dealing with Internet Service Providers; and the requirement that there be criminal penalties for parties guilty of circumventing "effective technological means" that restrict unauthorized uses of copyrighted material. AUSFTA also provides for rules to govern the management and dispute resolution for domain names on the Internet. Another sign of the FTA's recognition of a changing commercial environment is the FTA partners' recognition that trademark coverage can go beyond things that are visible to the eye (for example, scents and sounds).

AUSFTA goes beyond what is found in the TRIPS Agreement in terms of its treatment of geographical indications and provides for fairly specific challenge procedures, for example, there is also a marginal expansion of the TRIPS requirement for the minimum term of trademark protection (10 years instead of the 7 years found in TRIPS). There is little doubt, however, that the most criticized "TRIPS Plus" aspect of AUSFTA is its requirement that the general term of copyright protection be expanded from the TRIPS standard of life plus fifty years to an AUSFTA standard of life plus seventy years. One could see this coming, as it had been a standard American demand in all of the FTAs negotiated prior to AUSFTA or under discussion. Both Singapore and Chile accepted such an extension before the Washington-based negotiators met with their counterparts from Canberra, making it politically impossible to settle for anything less from another developed country.

There is not a great deal that needs to be noted about the AUSFTA chapters addressed to labor and the environment. The enforceable obligations are restricted to the requirement that the Parties enforce their own domestic legislation in the areas of labor standards and protection of the environment. Still, although the FTA's provisions are not very dramatic, they do break ground compared to what is found in the WTO – which is absolutely nothing. As an interesting side note, labor unions on both sides of the Pacific have criticized the labor chapter as being inadequate mainly on the grounds that the underlying national legislation governments are obligated to uphold is bad legislation.

Recognizing that the AUSFTA is an agreement between two developed countries, both of which strongly support the WTO and WTO rules for negotiation of regional trade agreements, it is not surprising that this FTA should be the “gold standard” against which other FTAs in the region need to be judged.

“P-4” – The Trans-Pacific Strategic Economic Partnership Agreement

This very recent agreement (it entered into force for three of the four members in mid-2006), links New Zealand, Singapore, Chile and Brunei Darussalam in a trans-Pacific FTA grouped in a package with two associated agreements – an Environmental Cooperation Agreement and a Labor Cooperation Memorandum of Understanding. For New Zealand and Singapore, the P-4 Agreement builds on the pre-existing New Zealand-Singapore Closer Economic Partnership agreement (implemented in 2001) that remains in force in parallel to the P-4 arrangement.

The P-4 FTA appears to be a very high quality FTA in terms of its coverage and approach to trade in goods and trade in services as well as its significant number of “WTO-Plus” provisions. Given that three of the four P-4 member countries are developing countries, we might infer that the P-4 trans-Pacific process should be seen as a model for RTAs in the region. Among the four countries’ shared objectives set out in the FTA’s initial provisions is a statement of support for wider liberalization within APEC. Specific reference is made in the FTA of the shared objective to create an FTA consistent with GATT and GATS requirements.

The test of WTO consistency appears easily met – particularly when one considers the extra leeway given to developing countries through the Enabling Clause. No sector or particular product is excluded from the trade in goods provisions and the tariff elimination schedule is broad and relatively ambitious. New Zealand – Singapore trade was already totally free of duties prior to P-4 and Chile eliminated nearly 90 percent of duties from the entry into force of the new FTA – with all duties set for elimination by 2017. Brunei has been given some extra time, but also plans to eliminate all tariffs on goods trade, with the exception of a short list of products (alcohol, tobacco, firearms) that it will exempt on moral, health and security grounds. In another blow to the “noodle bowl”, the P-4 generally uses the CTC approach to rules of origin.

In addition to its commendable approach to tariff elimination, the P-4 FTA contains some very valuable non-tariff aspects. Export duties and agricultural export subsidies are prohibited under the agreement. Consistent with APEC trade facilitation objectives, the P-4 provides for advance rulings on customs questions, use of risk management techniques, creation of enquiry points, release of goods within 48 hours and an eventual objective of paperless trading among P-4 members. A Committee is established under the FTA to explore opportunities for collaboration and deal with SPS-related issues and a process is set out for the determination of equivalence – whereby an importing country would recognize SPS measures of an exporting country as equivalent to the importing country’s appropriate level of protection. There are similarly cooperative approaches taken in the FTA’s technical barriers to trade (TBT) chapter.

There are no special provisions in the FTA pertaining to the use of WTO trade remedies, such as antidumping or safeguards actions. If there is a “wart” on this otherwise impressive agreement’s provisions for trade in goods, it is the special treatment negotiated by Chile permitting the maintenance of a price band system for a limited number of products and Chile’s

special safeguard measures for a specified number of dairy products. Mitigating this deficiency somewhat is provision for the quantity-based safeguards to expand each year by 8 percent.

Impressively, this trans-Pacific FTA uses the negative list, “top-down” approach to liberalizing trade in services which is far more liberalizing and transparent than the GATS “bottom-up” approach. The assumption is always that a services sector is fully bound by the FTA’s market access and national treatment commitments unless the sector is not listed in the services schedule for the member concerned. There is also an MFN clause for services so that if one member of the P-4 should subsequently liberalize and aspect of trade in services not liberalized under this agreement in an agreement with a third party, the P-4 members automatically receive the benefits of the new liberalization. This is also a “living agreement” in important respects. For example, there is a process for dialogue and development of recognition of the equivalence of professional qualifications and priority areas for work have been agreed to include qualification and professional recognition for engineers, architects, geologists, geophysicists, planners and accountants. Similar to other FTAs adopting a broad approach to services trade liberalization, the P-4 includes a “denial of benefits” clause permitting members to deny the benefits of the services liberalization chapter to service suppliers that are owned or controlled by persons of a third country or which have no substantive business operations in any of the four P-4 member countries.

Financial services are not covered by the initial scope of the FTA, but a special annex provides for the negotiation on financial services coverage within two years of the entry into force of the agreement. Certain special provisions apply in the case of Chile relating to transfers arising from trade in services. Movement of natural persons commitments under P-4 are limited to those made by the member countries in the GATS, however, the agreement contains a review provision on this point which offers hope of a more liberalized future environment for business persons.

WTO-Plus provisions in the P-4 are also found in the agreement’s inclusion of provisions liberalizing government procurement for lists of covered entities and a prohibition on the use of offsets in connection with procurement. Chapter 9 of the P-4 FTA obligates each country to maintain competition laws, focus on anticompetitive agreements and maintain a competition policy authority responsible for enforcement. Unfortunately, an important WTO-Plus element to many modern FTAs – a chapter liberalizing foreign direct investment – is not an element in the P-4 Agreement. Evidently, investment was considered too complex to tackle in the initial negotiation. But that seems to be a relatively small fault on what is otherwise unquestionably a very high quality FTA.

ASEAN Work on Mutual Recognition Agreements in Services

ASEAN, and its associated ASEAN Free Trade Area (AFTA), is one of the oldest regional trading arrangements in the Asia-Pacific and given the diverse make-up and different levels of economic development of its membership, it has achieved a great deal over the years. In the current paper, ASEAN will not be treated extensively, per se, however, ASEAN members are currently engaged in some very significant and cutting edge work on mutual recognition agreements (MRAs) for professional services and this work deserves some comment.

More than a decade ago – as the WTO was being created in 1995 – ASEAN members negotiated the ASEAN Framework Agreement on Services⁸. Article V of this Framework envisaged the negotiation of ASEAN agreements that would recognize “...the education or experience obtained, requirements met, or licenses or certifications granted in another Member State, for the purpose of licensing or certification of service suppliers. “ At the Ninth ASEAN Summit, held in 2003, ASEAN members adopted the “Bali Concord II” which called for the completion of MRAs for qualifications in major professional services by 2008 in order to facilitate the free movement of professionals and skilled labor/talents in ASEAN. Priority services sectors designated by ASEAN for this purpose include engineering, nursing, architecture, accountancy, surveying and tourism. The first of the MRAs to be concluded and adopted is the ASEAN Engineers MRA adopted in Kuala Lumpur on 9 December 2005. Work is well advanced on the ASEAN Nurses MRA and it is expected that ASEAN members will adopt this second MRA at the 12th ASEAN Summit.

Given the difficulty of developing and agreeing MRAs for professional services, the work underway in ASEAN is extremely significant. Even in advanced developed country groupings like the European Communities, finding the common ground necessary to create meaningful and workable MRAs for professional services has been problematic, so when we see a diverse group of developing countries making the kind of progress evident in ASEAN, it is worth looking into in some depth.

The ASEAN Engineers MRA establishes the “ASEAN Chartered Professional Engineer” (ACPE) and enumerates the requisite qualifications for ACPE status. For example, a professional engineer must complete an accredited engineering degree, possess a valid and current professional registration or licensing certificate to practice, have acquired practical and diversified experience over a period of not less than seven years, and obtain a certification of no record of serious violation of technical, professional or ethical standards – either locally or internationally.

Those who satisfy the qualifications are eligible to be placed on a special register. From the register, they can apply to the nominated host country professional regulatory authority and ask for the status of “Registered Foreign Professional Engineer”. Upon approval, the successful ACPE, subject to applicable domestic laws and regulations, is permitted to work as a Registered Foreign Professional Engineer (RFPE), not in independent practice, but in collaboration with designated professional engineers in the host country.

To facilitate the operation of the Engineers MRA, the agreement sets up a number of institutions at both the national and ASEAN level. At the national level, each ASEAN member must designate a “Professional Regulatory Authority” (PRA) responsible for considering applications from ACPEs, monitoring and assessing professional practice of RFPEs and notify the ASEAN Chartered Professional Engineer Coordinating Committee when an RFPE has contravened the arrangements specified in the MRA. Each ASEAN Member State also establishes a Monitoring Committee for the purpose of developing, processing and maintaining an ASEAN Chartered Professional Engineers Register in the country of origin. At the ASEAN level, the ASEAN Chartered Professional Engineer Coordinating Committee confers and withdraws ACPE designations, facilitates development of registers and promotes acceptance of ACPEs within the ASEAN community.

⁸ Adopted on December 15, 1995.

While the ASEAN Engineers MRA is an impressive first step, it is hard to quantify the economic benefits likely to flow from the agreement – in particular because of the requirement that RFPEs must work with local engineering firms. However, the economic impact of the foreseen Nurses MRA is likely to be huge. Within ASEAN, there are serious shortages of nurses in some member states – in particular Singapore and, to some extent, Malaysia and Thailand – and a big surplus of nursing professionals in the Philippines. With the approval of what one hopes will be a practically workable MRA, we are likely to see important temporary movements of nurses across the region – with consequent welfare benefits.

ASEAN's work on MRAs for professional services is an important indication that ASEAN members are serious about meaningful economic integration within the bloc. This work is also a hallmark of high quality FTA work.

China's Free Trade Agreements

There is considerable speculation in the region and elsewhere that much of the recent FTA-related activity in the Asia-Pacific relates in one way or another to countries trying to cement particular relationships with China. With China having invested so heavily in WTO membership, it is perhaps a bit surprising to see China now so heavily involved in regional trade initiatives. It is easy to understand why China felt it desirable to negotiate FTAs with Hong Kong, China and with Macau, China. Production-sharing arrangements also probably argued for greater economic integration with the ASEAN member states. Other Chinese FTA efforts are slightly more difficult to appreciate. China is now involved in separate FTA negotiations with Australia and New Zealand. An FTA with Chile has recently been concluded and entered into force. Beijing is also in negotiations with Pakistan, the Southern African Customs Union and the Gulf Cooperation Council. A partial trade agreement has been signed with Thailand and China and ASEAN are working on the next phase of the ASEAN-China Agreement. All told, China is reportedly in FTA talks with 27 regions and countries whose combined trade with China in 2005 came to \$350 billion about one quarter of the country's total⁹.

China's protocol of accession to the WTO contains a discriminatory provision that permits other WTO members (under certain circumstances) to treat China as a "non-market economy" for purposes of antidumping action. This special provision does not terminate until 2015 unless individual WTO members determine in their own legislation that China should no longer be considered as a non-market economy. Beijing has always bristled at the suggestion that China has not made the transition to a market economy and has used the promise of free trade agreements to gain market economy status with its key trading partners. For example, in the case of Australia, Australian permanent recognition of China as a market economy was a prerequisite for Chinese agreement to start FTA negotiations.

That Beijing has embraced FTAs as an important policy tool is clear from government statements made at the time of WTO Director General Pascal Lamy's visit to Beijing in September, 2006. The spokesman for China's Ministry of Foreign Commerce (MOFCOM), Chong Quan, was reported to state that free trade agreements were seen by China as important supplements to the WTO and important channels to facilitate global trade and liberalized investment. Chong also said that China sees the development of free trade areas

⁹ From a statement made by Chinese MOFCOM spokesman Chong Quan reported in the People's Daily newspaper on 16 September 2006 and accessed by the author through the website for bilaterals.org.

as in keeping with the trend of regional economic integration underway in the Asia-Pacific region¹⁰.

What is the nature of the Chinese approach to FTAs? Are China's FTAs likely to be high-quality arrangements that satisfy the rules for FTAs found in GATT Article XXIV and GATS Article V? In the section that follows, this paper will examine the nature of China's FTAs with ASEAN and the newly completed FTA with Chile.

*ASEAN – China : Comprehensive Economic Cooperation*¹¹

China's FTA with ASEAN is a work in progress. Launched with the initial "Framework Agreement" signed at Phnom Penh on November 4, 2002, the initial agreement was supplemented in November 2004 with a complementary agreement on trade in goods. Negotiations on investment and services trade are ongoing. Recognizing that this is a trade agreement among developing countries and that, from the start, it was envisaged as a multi-stage negotiation, the agreement (at least so far) shows a perhaps surprising possibility of becoming a WTO-consistent high-quality FTA. In fact, written directly into the text of the initial Framework Agreement are the objectives of negotiating an agreement on trade in goods that "shall fulfill the WTO requirements to eliminate tariffs on substantially all the trade between the Parties".¹² In the case of trade in services, the agreement calls for negotiations to liberalize trade in services with "substantial sectoral coverage", progressively eliminating "substantially all discrimination" and expanding the scope of liberalization beyond commitments undertaken by the Parties under the GATS¹³. On investment, the Parties undertake to enter into negotiations to progressively liberalize the investment regime, strengthen cooperation in investment and provide for the protection of investments.

The ASEAN members and China agreed to a progressive approach to the liberalization of trade in goods. At the very start of the agreement, an "early harvest" package provided for the elimination of tariffs on live animals, meat and edible meat offal, fish, dairy produce, other animal products, live trees, edible vegetables, fruits and nuts and a number of other specified products. The Parties agreed to categorize all other goods as being subject to liberalization under either a "Normal Track" or "Sensitive Track" procedure, with the former due to be liberalized over the period 2005-2010 for the more developed "ASEAN 6" and China and over the period 2005 –2015 for newer ASEAN member states. Generally speaking, "Normal Track" liberalization is carried out with reference to five tariff bands. The supplementary 2004 ASEAN-China agreement on trade in goods incorporates two annexes that set out modalities for liberalization of both "Normal Track" and "Sensitive Track" tariffs.

While we do not yet know the outcome of ASEAN-China services trade or investment-related negotiations, there are a number of other interesting features in the ASEAN-China FTA (ACFTA). ACFTA-specific safeguard measures are permitted only during a period that ends five years after the completion of tariff elimination for the product. Another provision obligates the Parties to ensure that the obligations and commitments of the ACFTA are observed by regional and local governments and by non-governmental bodies exercising government-delegated powers within their territories. In the 2004 agreement, each of the ten ASEAN

¹⁰ Ibid.

¹¹ The official name for the agreement is The Framework Agreement on Comprehensive Economic Cooperation Between the Association of South East Asian Nations and the People's Republic of China.

¹² ASEAN-China Framework Agreement of 2002, Part I, Article 3, Paragraph 6.

¹³ Ibid, Part I, Article 4

member states recognize China as a full market economy and agree not to apply sections 15 and 16 of China's WTO protocol of accession.

China – Chile Free Trade Agreement (CCFTA)

According to China's Ministry of Commerce, bilateral trade between Chile and China has been growing at an average annual rate of 20 percent since 2000. Two-way trade in goods reached \$7.1 billion in 2005, with Chile now ranked second in importance among China's trade partners – mainly due to trade in copper. Copper accounts for 30 percent of Chile's exports to China and statistics from the International Copper Association show that half of China's imported copper comes from Chile.

With bilateral trade booming, and with both Chile and China very active on the FTA front, it is hardly surprising that China's first FTA with a Latin American country would be with Chile. The agreement went into effect on 1 October 2006 and is forecast to eventually exempt 97 percent of all bilateral goods trade from tariffs. At this stage, the CCFTA is a "trade in goods" only FTA without provisions addressed to trade in services or investment. However, in the explanatory document for the CCFTA produced by the Chilean Ministry of Foreign Affairs Directorate for International Economic Relations (dated May 2006),¹⁴ it is indicated that in a second phase of the negotiations, it is planned to incorporate in the FTA provisions addressed to services and investment. Also signaled in the explanatory document is Chile's intention to pursue negotiations with China on air transport and double taxation.

In terms of the CCFTA trade in goods agreement's compliance with WTO rules for FTAs, it would appear to comply with the "substantially all trade" rule. After the ten-year phase-in period, only one percent of Chile's exports to China (214 tariff lines or 3% of all lines) will be excluded from duty-free coverage under the agreement. 92 percent of all Chilean trade (37% of tariff lines) went to duty-free immediately on 1 October, with negligible additional trade (but 39% of tariff lines) being fully liberalized in year 1 and year 5 of the implementation period. At the ten-year mark, a further seven percent of trade (21 percent of tariff lines) will go to duty free. Included among the goods considered by China as "sensitive" and therefore held up until year 10 are beef, dairy products, eggs, clementines, kiwis and dried fruits, marmalades, juices, wines, plastic products, tires and certain woods. The agreement gives Chile geographic indication protection in China for "Pisco".

Chile's trade liberalization on imports from China is divided according to immediate, five-year and ten-year tariff elimination timetables, with three percent of all Chinese trade and 2 percent of Chilean tariff lines (152 lines) excluded from duty elimination. Just 50% of China's exports (75% of tariff lines) to Chile benefit from duty elimination at the start of the FTA implementation period. A further 21 percent of trade and 13 percent of tariff lines go to duty-free after five years. 26 percent of all trade and 10 percent of tariff lines are held up until year ten. Chile's list of sensitive products liberalized only in year ten, includes cements, certain chemicals, paints and resins, tires, wood products, textiles, glass products, windows, doors and parts of aluminum, clothes washing machines and wooden furniture.

The CCFTA's rules of origin appear complicated, being a mixture of CTC, regional value added rules and certain rules addressed to manufacturing processes. Both parties retain all of their rights and ability to use WTO-consistent trade remedies and a special CCFTA-specific

¹⁴ "Tratado de Libre Comercio Chile – China, documento elaborado por la Dirección General de Relaciones Económicas Internacionales, Mayo 2006.

safeguard system is established that, under agreed circumstances, can lead to restoration of tariff levels to MFN rates or suspension of further reductions. Additional chapters in the FTA address SPS issues and technical barriers to trade.

Like China's FTA with ASEAN, there is a good possibility that the eventual fully elaborated CCFTA will be in the category of high quality Asia-Pacific FTAs. The two parties seem to have made a good start with the trade in goods agreement. Chile clearly hopes that the final agreement – incorporating investment and double taxation provisions – will help to make Chile a launch-pad for Chinese investment into Latin America.

Regionalism v. Multilateralism: Doha Round Positions

We can document a considerable number of high quality free trade agreements in the Asia-Pacific region. In addition, there is the distinct possibility that a number of other agreements now under negotiations will eventually be concluded on a high-quality basis. What can be said about this for regionalism and the attitudes of countries in the region toward multilateral liberalization in the Doha Round?

Singapore would probably have to be identified as one of the ring-leaders of Asia-Pacific regional trade agreement negotiations. Both through the role Singapore has played in ASEAN and APEC and through its "leading by example" role of negotiating high quality FTAs, Singapore has demonstrated a taste for bilateral and regional agreements. At the same time, there is no evidence that Singapore has abandoned the WTO process. Those familiar with the positions taken by Singapore in Geneva and its efforts through the so-called "Colorado Group" would have to admit that this small country has done all that it can to promote a positive outcome to the Doha talks. The name of George Yeo is practically as well known as that of WTO's DG's in Geneva circles.

Australia and New Zealand clearly continue to see the WTO negotiations as their number one trade priority. Australian efforts as the chair of the Cairns Group to move the Doha Round forward were recently show-cased again in the September 2006 Cairns Group anniversary meetings. New Zealand's last two Ambassadors in Geneva have labored tirelessly to try to advance the centrally important negotiations on agriculture. If these two countries have joined Singapore as proponents of FTAs in the region, it is because they have concluded that the WTO is unlikely to deliver soon on promises of trade liberalization and they cannot put all of their eggs in one basket. Like Singapore, they have also worked hard to make their FTAs fully consistent with WTO rules.

Earlier, it was noted that ASEAN countries like Malaysia had also eschewed FTA activity in favor of WTO negotiations. Malaysia has stayed active in the WTO negotiations where the Malaysian Ambassador contributed importantly to progress made in the trade facilitation negotiations. However, like other countries in the region, Malaysia has come to the conclusion that the WTO will be slow in delivering – if ever – and it cannot in the meantime sit back and wait for trade liberalization to come only through the WTO route. Malaysia plays an active and constructive role within both APEC and in ASEAN.

Japan – as perhaps the most highly developed country in the region – continues to be seriously hobbled by its highly protectionist agriculture lobby in both WTO and on the RTA front. Japan has never been particularly helpful in the WTO negotiations and it is not really an enthusiast for

FTA negotiations – most of which it has entered into for defensive reasons. Against this background, there is no evidence that FTA negotiations in the Asia-Pacific region have somehow diminished Japan's support for the multilateral system of the WTO.

China is a developing country and notwithstanding the tremendous economic development witnessed since its accession to the WTO, it remains a country where its economic interests frequently align with those of other developing countries. At the same time, China is very different from other developing countries. China has a much greater stake in the health of the global trading system than does India, for example. China's global production share is expanding exponentially, with Chinese producers now making 20 percent of the world's refrigerators, 30 percent of air conditioners and televisions and fifty percent of all cameras. Monthly manufactured exports from China have grown from \$20 billion a month when China joined the WTO to \$80 billion a month today. Since 1990, this export-driven growth in China has lifted 400 million people out of poverty. By comparison, India – which has been a member of the GATT-WTO system since 1947 – accounts for considerably less than one percent of global trade in goods and services.

After spending so much time and effort on joining the WTO, and with so much at stake in terms of the continuing insurance policy it has by virtue of the WTO rules, it would have been reasonable to expect that China would have played a leading role in the WTO Doha Round. It has not. In fact, China's role in the Doha Round negotiations is generally regarded as disappointing by most observers who believe there is merit in the WTO system.

Some observers have attempted to explain this low profile as a strategic decision on the part of China. By playing an active and high profile role in the WTO, China could be expected to draw attention to its own policies, some of which might then form targets for other trading partners. China, they argue, is still digesting earlier reforms and has no desire to enter into important new commitments that might be forced on it by negotiating partners in the context of the Doha Round.

As late as mid-June, 2006 – only about a month before the situation in the Doha Round was recognized as so serious that negotiations were suspended – China sponsored a proposal in the industrial market access negotiations that would allow it, and other recently acceded Members of the WTO to escape the brunt of liberalization and undertake less-deep reductions in industrial goods tariffs on the grounds that countries like China had only recently "paid" in trade liberalization and should not have to pay again so soon.

On agricultural trade issues, China has allied itself with the members of the so-called G-20 group of developing countries. The most vocal spokesmen for this group are Brazil – which effectively leads the group – and India. China has taken a back-seat supporting role in the G-20. This is not a good place for a leading country like China to be. Brazil will always look out for its particular export interests in agriculture and these interests are very different from China's in the Doha Round. India – with its decidedly protectionist approach to agriculture – is an impediment to meaningful policy-making in the group and the Indian negotiators have gone out of their way to antagonize other major trading nations with their performance in the so-called G-6.

But China's less than helpful stance in the WTO has not come about due to Chinese distractions with regional trade agreements. The same issues (agriculture and services) that have held China back in the Doha Round have been problematic in bilateral negotiations. At

the same time, China has clearly used bilateral and regional negotiations and their consequent trade liberalization to lock in access to markets and supplies while ridding itself of the non-market economy stigma.

Conclusions

There is today an unprecedented level of bilateral and regional trade liberalization activity in the Asia-Pacific region. Much of it is taking place through the kind of high quality agreements that conform to APEC best practices and WTO rules for RTAs. Where the initially-negotiated FTAs are lacking in this respect, they generally contain provisions for further negotiations aimed at achieving a higher quality agreement. Often, the trade in services provisions of Asia-Pacific FTAs are negotiated only after “goods-only” FTAs. However, quite often these “goods only” FTAs appear to be fully consistent with the WTO rules for covering substantially all trade within the reasonable time frame of ten years (see the China-Chile agreement discussed above).

Most of the economies of the Asia-Pacific region (including APEC members on both sides of the ocean) have benefited enormously from the trade liberalizing achievements of the WTO and most have been strong supporters of the Doha Round of trade negotiations from the start. Throughout the talks, they have made and continue to make important contributions to the WTO process. Trade liberalization is a “religion” in much of APEC and the adoption of guidelines like the best practices for FTAs/RTAs is an indication of APEC’s desire to use FTAs in ways that help and complement work in the WTO.

One cannot help but conclude, however, that the WTO in recent years has been a big disappointment to countries in the Asia-Pacific region. In addition, for the most part, this is not the fault of countries in the region. Under the terms of the Doha Declaration, WTO Members were to have agreed modalities for agricultural liberalization in March 2003 and finished the overall Round at the end of 2004. For practical purposes, it is now the end of 2006 and not even the modalities for agriculture liberalization have been agreed. At the same time, promising new “WTO-Plus” topics like investment, competition and transparency in government procurement (a good-governance measure) have been jettisoned – and for no gain elsewhere in the negotiations. Who can blame the Asia-Pacific countries for concluding that if they want to pursue trade liberalization they need to do it outside the WTO system through bilateral and regional agreements?

Andrew Stoler
Adelaide, Australia
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