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## Bilateral Regionalism: Paradoxes of East Asian Integration

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# Bilateral Regionalism: Paradoxes of East Asian Integration

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I.

INTRODUCTION

Free trade agreements (“FTAs”) have rapidly proliferated in the new millennium. With unprecedented alacrity, countries on all six continents have signed FTAs, first with immediate neighbors, and then farther abroad. The notion of a contiguous trade bloc—Europe, NAFTA, MERCOSUR, ASEAN—has been unhinged. Yet despite these regional free trade areas, and in direct response to them, bilateral FTAs have recently taken center stage in many parts of the world.

Even in East Asia, one of the least integrated areas in the world, an FTA

race is under way. In the new millennium, a spate of bilateral FTAs has yoked East Asia's largest economies—China, Japan, Korea, and Singapore—with countries on various continents, though mostly in Asia. East Asia's first FTA, the 2002 Japan-Singapore New-Age Economic Partnership Agreement, has indeed ushered in a new age. In search of FTA partners, these countries now scour the Asia-Pacific and beyond. Where is East Asian integration heading?

This paper compares Chinese and Japanese approaches to FTA diplomacy. Korea and Singapore—though important contributors to the East Asian FTA landscape—lie outside the scope of this inquiry. Instead, we will examine the accomplishments and accommodations China and Japan have made in their quests to become the leaders of the region.

Part II recounts the affiliations that knit East Asia together during the 1980s and 1990s. This sheds light on the events, motivations, and actors animating the current FTA surge. As a purely economic matter, an FTA between Japan and Malaysia seems improbable until one considers the many Hitachi, Mitsubishi and Toyota factories built there over the last twenty years.<sup>1</sup> Similarly, China's FTA strategy largely mirrors its decade or so of regional engagement; it comes as little surprise that China's first FTA was with the Association of Southeast Asian Nations ("ASEAN").

Part III recounts the ongoing FTA surge in East Asia. Sparked by western protectionism (EU, NAFTA, MERCOSUR), and fanned by frustration with fruitless WTO negotiations, East Asian countries have also embraced the global vogue for FTAs. China and Japan prefer bilateral arrangements in the Asia-Pacific,<sup>2</sup> with an emphasis on "Asia." After assessing the current corpus of signed FTAs, the brighter of their future prospects are examined.

Part IV analyzes East Asian FTAs as examples of international economic law. A brief recitation of the relevant WTO provisions adumbrates the standards to which Japan and China have aspired. Though still early in their FTA trajectories, Chinese and Japanese FTAs nonetheless show discernible dispositions. Japan prefers comprehensive, "western-style" arrangements, aiming to capture the entire agreement in a single document. Provisions on dispute resolution, rules of origin, intellectual property, phytosanitary measures, or the like may be annexed, but there is always a definite *point of origin*. Japan has widened the *scope* of topics normally covered in FTAs, but the treaties themselves largely replicate western orthodoxies.

China has taken a different approach, incorporating both western and Asian legal principles into its FTAs. The Sino-Chilean FTA is a textbook western agreement, comprehensive to the core. But the China-ASEAN Free Trade Agreement ("CAFTA"), and to a lesser extent, the China-Pakistani Free Trade

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1. Walter Hatch, *Regionalization Trumps Globalization: Japanese Production Networks in Asia*, in *POLITICAL ECONOMY & THE CHANGING GLOBAL ORDER* 382, 388 (Richards Stubbs & G.R. Underhill eds., 2000).

2. Asia-Pacific is defined broadly to include Asia, the Americas, Australia, and New Zealand.

Agreement (“CPFTA”), belong to distinct political and legal cultures. China can thus modulate between the keys of western formalism and Asian incrementalism.

## II.

### REGIONAL INTEGRATION: THE EARLY YEARS

East Asian economic integration is not unfolding in a vacuum, but along paths well trod during the 1990s. On one level, the present FTA surge reflects recent initiatives by China and Japan to integrate their economies into the region and the world. But the FTAs can also be traced to the regional architecture laid out during the 1990s. First, regional bodies such as ASEAN and APEC created fora in which East Asian states could discuss and help shape international economic policy. Building on this experience—some might call it socialization—China and Japan have developed methods to integrate their economies into the regional landscape. By looking at regional bodies, and then China’s and Japan’s specific regionalization efforts, we gain critical insight into today’s FTA surge.

#### *A. Institutions: ASEAN & APEC*

##### *1. ASEAN*

Like the European Union (“EU”), the formation of the Association of Southeast Asian Nations (“ASEAN”) responded to a broad array of political, strategic and economic concerns.<sup>3</sup> But unlike the EU or other western arrangements, the group operates informally and consensually. Historically, it has not made decisions legally binding upon members,<sup>4</sup> preferring instead to operate along the “ASEAN Way” of informality, repeated consultations, and consensus-building.<sup>5</sup>

Initially, ASEAN focused mainly on political issues: the peaceful resolution of territorial disputes and the promotion of regional stability.<sup>6</sup> These aims and the resultant peace have, of course, contributed significantly to the economic stability and success of Southeast Asia.<sup>7</sup> But only in the wake of eco-

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3. Chia Siow Yue, *Regionalism and Subregionalism in ASEAN: The Free Trade Area and Growth Triangle Models*, in REGIONALISM VERSUS MULTILATERAL TRADE ARRANGEMENTS 275, 285 (Takatoshi Ito & Anne O. Krueger eds., 1997).

4. Seok-young Choi, Inst. of Southeast Asian Studies, Trends in Southeast Asia Series 12, Regionalism and Open Regionalism in the APEC Region 14 (2004).

5. See Paul J. Davidson, *ASEAN Features: The ASEAN Way and the Role of Law in ASEAN Economic Cooperation*, 8 SINGAPORE Y.B. INT’L LAW 165 (2004); Fu-Kuo Liu, *East Asian regionalism: Theoretical perspectives*, in REGIONALISM IN EAST ASIA: PARADIGM SHIFTING? 1, 22 (Fu-Kuo Liu & Philippe Régnier eds., 2003).

6. Yue, *supra* note 3, at 285.

7. Stuart Harris, *Asian Multilateral Institutions and Their Response to the Asian Economic*

conomic integration elsewhere did a free trade agreement make its way onto the ASEAN agenda.<sup>8</sup>

The ASEAN Free Trade Agreement (AFTA) of 1992<sup>9</sup> aimed to develop competitive industries in Southeast Asia by increasing intra-regional trade.<sup>10</sup> The Common Effective Preferential Tariff (CEPT)<sup>11</sup> would usher in this growth by minimizing tariffs on goods among the various ASEAN states.<sup>12</sup> Slowly but surely,<sup>13</sup> CEPT has reduced intra-regional tariffs on more than 99% of goods traded between the ASEAN-6 (Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand), and on nearly 80% of goods traded between the four less-developed members.<sup>14</sup> Nevertheless, given the high degree of economic complementarity already present among ASEAN states, AFTA “has had only a modest impact on trade liberalization in the Pacific Rim – even among its own membership.”<sup>15</sup>

ASEAN’s primary contribution to regional integration lies outside its economic agenda, and outside of Southeast Asia for that matter. ASEAN is *the* center of gravity for this part of the world. It continues to inspire trust in the region; often the latest Asian initiative began as a highly successful ASEAN one. The ASEAN Regional Forum and the “ASEAN Plus Three” framework<sup>16</sup> exemplify this trend. Both fora have linked China, Japan and Korea with Southeast Asia, and to a lesser extent, with each other.

## 2. APEC

Like ASEAN, the Asian Pacific Economic Co-operation Forum offers proof that regionalism in some parts of the world triggers regionalism else-

*Crisis: The Regional and Global Implications*, in *NEW REGIONALISMS IN THE GLOBAL POLITICAL ECONOMY* 119, 127 (Shaun Breslin et al. eds., 2002).

8. ASEAN previously flirted with free trade in the 1977 Preferential Trade Agreement, but insufficient support among the member states effectively sank this proposal. *See* Yue, *supra* note 3, at 287.

9. Framework Agreement on Enhancing ASEAN Economic Cooperation, Brunei-Indon.-Malay.-Phil.-Sing.-Thail., Jan. 28, 1992, 31 I.L.M. 506.

10. Shujiro Urata & Kozo Kiyota, *The Impacts of an East Asia Free Trade Agreement on Foreign Trade in East Asia*, in *INTERNATIONAL TRADE IN EAST ASIA* 217, 218 (Takatoshi Ito & Andrew K. Rose eds., 1997).

11. Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, Brunei-Indon.-Malay.-Phil.-Sing.-Thail., Jan. 28, 1992, 31 I.L.M. 513.

12. DILIP K. DAS, *REGIONALISM IN GLOBAL TRADE* 146 (2004) (“The original goal of AFTA was to reduce tariff rates on intra-ASEAN trade to between zero and 5 percent within 15 years beginning January 1993.”).

13. Yue, *supra* note 3, at 289.

14. *See* ASEAN, *The ASEAN Free Trade Area*, available at <http://www.aseansec.org/12021.htm>.

15. Thomas C. Fischer, *A Commentary on Regional Institutions in the Pacific Rim: Do APEC and ASEAN Still Matter?*, 13 *DUKE J. COMP. & INT’L L.* 337, 353 (2003).

16. *See infra*, Part IV.

where.<sup>17</sup> The late 1980s witnessed two regional shifts that alarmed unaffiliated Pacific states, notably Australia and Japan. First, the European Union advanced from a tightly knit customs union to an even more protectionist Single Market in the late 1980s. Second, the 1989 creation of Canada-US Free Trade Agreement (later, NAFTA) further raised the protectionist barriers to unaffiliated states. Seeking to buffet global waves by addressing regional issues, APEC has served as a sounding board, but little else.

From its inception, APEC aimed to liberalize trade in a soft, aspirational manner. It began “with no organizational framework,”<sup>18</sup> nor an exclusivity requirement. Part of its haphazard nature lies in the fact that many original members were already party to other FTAs.<sup>19</sup>

APEC took several years to commit itself to freer trade and investment in the Asia-Pacific, and even then only under the loosest of strictures.<sup>20</sup> It has promoted, or perhaps more accurately *proposed*, lower tariffs on goods traded between its twenty-one members. Consistent with the preferences of many of its Asian members, it did not employ legally binding strictures to do so.

Given their different levels of development, geopolitical ambitions, and interest in regionalization, China and Japan have had diverse roles in APEC. China, though not a founding member, has been a comparatively active one. Initially, APEC provided China a voice in regional affairs that it could not have had at the global level.<sup>21</sup> The organization’s nonbinding, non-intrusive nature did not threaten China’s zealously guarded sovereignty, and appealed to its hesitant approach to international organizations. At the same time, its economic agenda acculturated China to the new global dictum of lower tariffs, free movement of capital, and deregulation.

Japan, in keeping with its relatively low profile in regional affairs, has been a hesitant participant in APEC.<sup>22</sup> Though instrumental in establishing APEC, and setting its initial agendas,<sup>23</sup> Japan has since receded from prominence. One critic suggested that Japan had been marginalized into the role of mediator be-

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17. John Ravenhill, *A Three Bloc World? The New East Asian Regionalism*, 2 INT’L RELATIONS OF THE ASIA-PACIFIC 167,177 (2002).

18. Akiko Yanai, *Characteristics of APEC Trade Liberalization: A Comparative Analysis with the WTO*, in TRADE LIBERALIZATION AND APEC 1, 13 (Jiro Okamoto ed., 2004).

19. APEC initially comprised the six ASEAN states (Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand), Canada and the US (then parties to CUSFTA), Australia and New Zealand (then parties to ANZERTA), Korea and Japan.

20. The 1994 APEC Summit, in Bogor, Indonesia, pledged free trade and investment by 2010 for developed members and 2020 for developing members. See Choi, *supra* note 4, at 18.

21. Shen Ji-ru, *China & APEC: Regionalization from China’s Domestic Perspective*, in THE NEW REGIONALISM & THE FUTURE OF SECURITY & DEVELOPMENT 248, 257 (Bjorn Hettne et al. eds., 2000).

22. See S. Javed Maswood, *Japan’s foreign policy and regionalism*, in JAPAN & EAST ASIAN REGIONALISM 5, 9 (S. Javed Maswood ed., 2001).

23. Christopher M. Dent, *Regionalism & inter-regional co-operation*, in THE EUROPEAN UNION & EAST ASIA: AN ECONOMIC RELATIONSHIP 219, 222 (Christopher M. Dent ed., 1999).

tween the unilateral U.S. (with its insistence on free trade) and the wider Asian-Pacific community (which seeks a more multilateral approach to economic affairs).<sup>24</sup> There may be some truth to the interpretation, particularly in the realm of security but that does not burnish the rather dim view of Japan's regional leadership in the economic, cultural, monetary and political spheres.

### *B. National Efforts*

A less conspicuous, but no less transformative, type of regional integration has developed from the experiences of APEC and ASEAN. The thickening of interstate relations in the Asia-Pacific has generated spillover into new regional configurations. This section briefly highlights China's and Japan's varied attempts to regionalize in the past couple of decades.

#### *1. China: Dense Institutionalism*

Since the end of the Cold War, China has spun a dense organizational web around itself in Southeast Asia, Central Asia, and to a lesser extent, East Asia. China's relationship with ASEAN, for instance, has expanded in several directions. In 1991, China affiliated with ASEAN by becoming a consultative partner at the ASEAN Post-Ministerial Conference. In 1994, China announced its intention to take up security issues by joining the annual ASEAN Regional Forum.<sup>25</sup> China further deepened the relationship in 1997, pioneering the ASEAN Plus One framework, which Japan and Korea quickly emulated, creating ASEAN Plus Three ("APT"). Though only an informal addition to annual ASEAN meetings, the APT may be the only forum convening officials exclusively from East and Southeast to discuss international affairs.<sup>26</sup>

China's relationship with ASEAN has helped create trust and goodwill in the region. In November 2002, China acceded to ASEAN's Treaty of Amity and Cooperation in Southeast Asia (TAC-SEA), and thereby agreed to "resolve territorial and jurisdictional disputes by peaceful means."<sup>27</sup> This will allay China's coastal neighbors, especially the Philippines and Vietnam, both of which have territorial disputes with China over island chains in the South China Sea.<sup>28</sup> In addition, China and ASEAN further committed themselves to cooperate in the realms of economics, politics, and security in the October 2003 Joint Declara-

24. See Maswood, *supra* note 22, at 19.

25. See ASEAN Regional Forum, MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE'S REPUBLIC OF CHINA, Aug. 5, 2002, <http://www.fmprc.gov.cn/eng/wjbj/zjg/gjs/gjzzyhy/2612/t15313.htm>.

26. See Hugh De Santis, *The Dragon and the Tigers: China and Asian Regionalism*, WORLD POL'Y J. 23, 27-8 (Summer, 2005).

27. Declaration on the Conduct of Parties in the South China Sea art. 4, Brunei-Cambodia-P.R.C.-Indon.-Laos-Myan.-Phil.-Sing.-Thail.-Vietnam, Nov. 4, 2002, <http://www.aseansec.org/13163.htm>.

28. De Santis, *supra* note 26, at 24 (noting Chinese contestation of the Spratly Islands, with Vietnam, and Mischief Reef, with the Philippines).

tion on Peace and Prosperity.<sup>29</sup> China has thus actively engaged in a multi-pronged charm offensive to the south.

Importantly, China, unlike Japan, has also established its own regional organizations,<sup>30</sup> most notably the Shanghai Cooperation Organization (SCO). This grew out of the “Shanghai Five,” an agreement signed by China, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan to promote “confidence-building in the military sphere” and the “mutual reduction of military forces in border areas.”<sup>31</sup> Through time and mutual trust, the countries subsequently committed themselves to non-military threats, such as arms smuggling, drug-trafficking and religious extremism.<sup>32</sup> By the time SCO was formally established in 2001, its focus had shifted largely toward economic cooperation, energy and trade. China has thus carefully sculpted a credible, and peaceable, regional profile.<sup>33</sup>

## 2. Japan: Regional Production Networks

On the whole, Japan has been a tepid regionalist. Recent events suggest a more active regional policy ascendant, but for most of the postwar period, Japanese integration efforts were fairly superficial. This is not to suggest that the Japanese private sector and government have not invested heavily in Southeast Asia, China, Korea and Taiwan.<sup>34</sup> Japanese corporations have set up factories, and spent billions in foreign direct investment (FDI), with the result that transnational production lines now snake through East and Southeast Asia. Simultaneously, the government’s Official Development Assistance (ODA) has funded

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29. See Joint Declaration of the Heads of State/Government of the Association of Southeast Asian Nations and the People’s Republic of China on Strategic Partnership for Peace and Prosperity, Brunei-Cambodia-P.R.C.-Indon.-Laos-Myan.-Phil.-Sing.-Thail.-Vietnam, Oct. 8, 2003, <http://www.aseansec.org/15265.htm>.

30. Other regional organizations established, or actively promoted, by China include the Kunming Initiative, and the Greater Mekong Sub-region development program. The Kunming Initiative aims to foster economic ties among Bangladesh, Burma, China, and India, but has languished due to lack of support. See Zaglul Ahmed Chowdhury, *Kunming Initiative needs a push*, THE DAILY STAR, Aug. 31, 2005, <http://www.thedailystar.net/2005/08/31/d508311502121.htm>. The Greater Mekong Sub-region, proposed by the Asian Bank in 1992, aims to improve infrastructure in China and Southeast Asia. See *Multinational Greater Mekong Program Gears Up*, PEOPLE’S DAILY ONLINE, June 28, 2002, [http://english.peopledaily.com.cn/200206/27/eng20020627\\_98675.shtml](http://english.peopledaily.com.cn/200206/27/eng20020627_98675.shtml).

31. Declaration on Establishment of Shanghai Cooperation Organization art. 6, P.R.C.-Kaz.-Kyrg.-Russ.-Taj.-Uzb., Jun. 15, 2001, [http://www.sectsc.org/news\\_detail.asp?id=88&LanguageID=2](http://www.sectsc.org/news_detail.asp?id=88&LanguageID=2).

32. *Five-Nation Joint Statement Stresses Further Cooperation in Regional Security*, PEOPLE’S DAILY ONLINE, Aug. 26, 1999.

33. This contrasts with the unilateral and bellicose foreign policy of the United States. China benefits immeasurably from such diplomatic differences.

34. Glenn D. Hook, *Japan’s role in the East Asian political economy: An emerging region?*, in THE POLITICAL ECONOMY OF JAPANESE GLOBALIZATION 40, 49 (Glenn D. Hook & Hasegawa Harukiyo eds., 2001) (“Whether in the 1950s or the early twenty-first century . . . Japan’s focus on economics suggests the continuing use of ODA and FDI to shape the development path chartered by the economies of East Asia.”).

initiatives aimed at structural adjustment, improving infrastructure, and developing human resources in several of these countries.<sup>35</sup>

Japanese engagement with Asia stretches back to its colonial period, the Pacific War, and the so-called Greater East Asia Co-Prosperity Sphere. After the war, Japan invested in the natural resources and manufacturing sectors of several Asian neighbors,<sup>36</sup> a tendency that continues to this day. With the reevaluation of the yen in 1985, Japanese investment in Asia soared; the amount of investment between 1986 and 1989 surpassed the entire amount of investment between 1951 and 1985.<sup>37</sup>

Over time, these investments have yielded transnational production networks. Rather than manufacture goods in the expensive archipelago, Japanese automobile and electronics manufacturers offshored their production facilities, first to Korea and Taiwan, later to Southeast Asia. In any given Honda, for instance, one might find an Indonesian engine, Malaysian fenders, Thai clutches, and a Filipino transmission.<sup>38</sup> A similar transnational effort converges to produce a Panasonic television.<sup>39</sup>

These networks created a buffer zone for Japanese corporations as they faced increasingly severe competition from globalization and European and North American protectionism. By the end of the millennium, in the eyes of one observer, "Japanese political and business elites viewed the entire [Asian] region . . . as one organic unit, or what the Ministry of International Trade and Industry (MITI) began to call 'a soft cooperation network.'"<sup>40</sup> This soft network had the added benefit of keeping a large number of white-collar jobs for Japanese executives, who relocated to Southeast Asia in order to oversee the production facilities.<sup>41</sup> It also permitted the transfer of certain technologies from Japan to Southeast Asia, though this has not significantly spurred the capacity for technological innovation in the latter.<sup>42</sup>

Despite these efforts, it is important to note that there has been little regionalization outside of the economic realm. Japan has not attempted to increase its

35. Takashi Shiraiishi, *Japan & Southeast Asia*, in NETWORK POWER: JAPAN & EAST ASIA 169, 187 (Peter J. Katzenstein & T.J. Pempel eds., 1997).

36. Richard F. Doner, *Japan in East Asia: Institutions and Regional Leadership*, in NETWORK POWER: JAPAN & EAST ASIA 197, 203 (Peter J. Katzenstein & T.J. Pempel eds., 1997) (noting Japanese investment in Bruneian natural gas, Indonesian oil, Malaysian copper and Filipino iron).

37. *Id.* at 212.

38. *Id.* at 214.

39. Tessa Morris-Suzuki, *Japanese Technology and the New International Division of Knowledge in Asia*, in JAPAN'S FOREIGN INVESTMENT & ASIAN ECONOMIC INTERDEPENDENCE: PRODUCTION, TRADE & FINANCIAL SYSTEMS 135, 143 (Shojiro Tokunaga ed., 1992) (noting that Matsushita, the parent company of Panasonic, produces televisions "with components . . . from a variety of other Asian industrial nations.").

40. See Hatch, *supra* note 1, at 387.

41. *Id.* at 390.

42. See Morris-Suzuki, *supra* note 39, at 145.

regional role by tying foreign aid and investment to initiatives in other areas. This again may be reflective of Japan's unique relationship with the United States, which has limited the fields in which Japan may take a strong stance in international affairs generally, and on security arrangements in particular. Nonetheless, Japan has been free to pursue integration in the spheres of politics, monetary integration, or culture.

Japan's more assertive FTA strategy marks a recent deviation from its path of disengagement, though it is predicated upon these economic foundations. This is not to say that these linkages will lead inexorably to bilateral FTAs. Nevertheless, Japanese investment and aid in the rest of Asia have given it a leg up in negotiating agreements with Singapore, Thailand, Malaysia, Indonesia, and the Philippines.

### III. FTA SURGE

The new FTA boom has roots stretching back to the late 1980s. With the passage of the Single Market in Europe, and NAFTA in North America, protectionism flourished. Asia's two largest export markets, Europe and North America, were now considerably more difficult to penetrate. Southeast Asia responded in kind, forming its own regional trade agreement in 1992. China, Japan, and Korea, on the other hand, lacked the diplomatic networks, mutual trust, and institutional background that would permit such arrangements. With increased interaction in regional fora, that suspicion has somewhat abated.

The FTA vogue has other global determinants, namely apprehension over the Doha Round. If ever they could, countries can no longer rely solely on the WTO to lower trade barriers. Too many players—even traditional stalwarts of multilateralism like the United States—are deeply engaged in the bilateral enterprise. If unintegrated countries, like China, Japan, and Korea, do not gain preferential access to *some* markets, their exports face a tremendous disadvantage in the global marketplace.

With this background, China and Japan have entered the FTA fray. They have reached out to the countries with whom they cultivated better relations over the past decade or so. Since 2002, China and Japan have each signed three FTAs with countries in Asia and the Americas. Here we examine these arrangements, and then turn to future prospects.

#### *A. China: Diversity & Conformity*

China has signed Cooperative Economic Partnership Agreements (CEPAs) with Hong Kong and Macao, and FTAs with ASEAN, Chile, and Pakistan.<sup>43</sup> It

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43. See *China to advance bilateral, regional free trade negotiation*, CHINA VIEW, Sept. 15, 2006, [http://news.xinhuanet.com/english/2006-09/15/content\\_5097127.htm](http://news.xinhuanet.com/english/2006-09/15/content_5097127.htm).

is in late stages of negotiation with both Australia and New Zealand, and has begun talks with the Gulf Cooperation Council, Singapore, and the Southern Africa Customs Union. It has even conducted a feasibility study with distant Iceland,<sup>44</sup> and announced its intention to begin negotiations with Korea.<sup>45</sup> Chinese interest in free trade thus extends far beyond its immediate neighbors in the Asia-Pacific, even if they continue to be the focus of its FTA policy.

This section examines the four agreements (three foreign, one internal) China has signed. In addition to trade in goods and services, Chinese FTAs promote deeper economic integration through investment measures, protection of intellectual property rights, mutual recognition of standards, harmonization of custom procedures, and so on.<sup>46</sup> At the same time, it should be noted that China has not taken a cookie-cutter, one-size-fits-all approach to FTAs. Rather, with each new arrangement, China has proven itself to be flexible, dynamic, even conciliatory. This makes it a desirable and dependable trading partner for countries throughout the region, and perhaps the world.

### *1. Prelude: Hong Kong & Macao*

In line with its gradualist approach to opening up to the outside world, China began its free trade journey with the quasi-autonomous territories of Hong Kong and Macao. The Closer Economic Partnership Agreements (CEPA), which brought the former colonies further within the Chinese fold, marked tentative steps toward freer bilateral trade.<sup>47</sup> The agreement aims to “promote the joint economic prosperity and development” of China and Hong Kong, while facilitating “further development of economic links between the two sides and other countries and regions.”<sup>48</sup> Thus, China viewed this initial arrangement not only as a way of reinforcing economic links with Hong Kong and Macao, but also as a harbinger of future.

China’s first trade liberalization scheme covered, by today’s standards, a fairly typical range of topics: goods, services, and investment. For goods, Hong Kong merely maintained its zero-tariff rate on goods from China. China, for its part, phased out tariffs on goods originating in Hong Kong between 2004 and January 1, 2006.<sup>49</sup>

Trade in services covers various sectors, from the conventional (advertis-

44. *Id.*

45. See *China, ROK agree to start negotiations on free trade area*, PEOPLE’S DAILY ONLINE, Oct. 14, 2006, [http://english.people.com.cn/200610/14/eng20061014\\_311722.html](http://english.people.com.cn/200610/14/eng20061014_311722.html).

46. Ramkishan S. Rajan, *Trade liberalization and the new regionalism in the Asia-Pacific: taking stock of recent events*, 5 INT’L REL. ASIA PACIFIC 217, 221 (2005).

47. China signed CEPAs with Hong Kong on June 29, 2003, and with Macao on Oct. 17, 2003. Since the agreements are essentially the same, the focus here is on the Hong Kong CEPA.

48. Mainland and Hong Kong Closer Economic Partnership Arrangement Preamble, P.R.C.-H.K., Jun. 29, 2003, <http://www.tid.gov.hk/english/cepa/legaltext/fulltext.html> [hereinafter CEPA].

49. CEPA, *supra* note 48, art. 5.

ing, accounting, tourism, telecommunications, insurance) to the rarer (legal services, recognition of professional qualifications).<sup>50</sup> Given Hong Kong's status as a major financial hub, cooperation in banking and securities was of particular importance to China. The agreement a) permits state-owned banks to locate their international treasury and foreign exchange centers to Hong Kong; b) allows for mainland insurance companies, and other private enterprises, to list on the Hong Kong stock exchange; and c) calls for greater cooperation and information-sharing between financial regulators.<sup>51</sup> Quite understandably, China wants to draw on Hong Kong's expertise to build amore sophisticated financial sector. Moreover, China expects that Hong Kong service-providers and professionals will train Chinese workers in these new fields.<sup>52</sup>

Of course, certain provisions reflect the unique status of China vis-à-vis Hong Kong, and have not been duplicated in other agreements. One such innovation allows Chinese residents of Guangdong Province (on Hong Kong's northern border) to visit Hong Kong on special tourist visas.<sup>53</sup> More apropos of trade, Hong Kong and China have agreed to do away with anti-dumping measures.<sup>54</sup> From its very first free trade agreement, then, China has exhibited a degree of innovativeness, but also a willingness to take advantage of the unique features of the bilateral relationship. This adaptability manifests itself repeatedly.

## 2. China-ASEAN Free Trade Agreement

As described above, China actively cultivated better relations with its Southeast Asian neighbors throughout the 1990s. By attending various ASEAN meetings, cooperating on security issues, and developing a code of conduct for disputes in the South China Sea, China demonstrated its trustworthiness to the various members of ASEAN.<sup>55</sup>

This strategy has also had a significant economic component. Premier Zhu Rongji proposed the China-ASEAN Free Trade Agreement ("CAFTA") in 2001. In November 2002, China and ASEAN signed a loose Framework Agreement with multiple aims: strengthening economic, trade, and investment cooperation; liberalizing and promoting trade in goods and services; exploring new areas for economic cooperation; and facilitating the economic integration of the least de-

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50. See generally CEPA Annex 4, Specific Commitments on Liberalization of Trade in Services.

51. CEPA, *supra* note 48, art. 13.

52. Agata Antkiewicz & John Whalley, *China's New Regional Trade Agreements* 11 (Nat'l Bureau of Econ. Research, Working Paper No. 10992, 2004).

53. CEPA, *supra* note 48, art. 14.

54. *Id.* at art. 7.

55. Jusuk Wanandi, *China and Asia Pacific Regionalism*, in *THE RISE OF CHINA AND A CHANGING EAST ASIAN ORDER* 37, 44-5 (Kokubun Ryosei & Wang Jisi eds., 2004).

veloped ASEAN members.<sup>56</sup> As with the Hong Kong CEPA, this agreement introduces several innovations.

The Framework Agreement itself offers only the barest of skeletons, leaving the task of elaboration to subsequent agreements and annexes; CAFTA does not so much declare as *unfold*, a constant work in progress. This in itself comes as an innovation, reflecting concepts that scholars identify with Asian diplomacy generally: informality, incrementalism, and minimalism.<sup>57</sup> Rather than grandiose plans or dramatic breakthroughs, CAFTA has come into existence gradually, annex-by-annex, as a chain of modest steps. Typically, ASEAN diplomacy operates in the following way: issues are discussed; a level of agreement on certain (not all) issues is attained; a memorial sets forth the mutual understanding; parties reconvene a year later to continue discussions.

This gradualism seems to be working for China and ASEAN. The Agreement on Trade in Goods, the first annex to the Framework Agreement, entered into force in 2005.<sup>58</sup> It calls for the gradual reduction of tariffs by 2010 for the more developed members of ASEAN, and 2015 for the less developed members.<sup>59</sup> By that time, over 90% of trade between ASEAN and China will be tariff-free,<sup>60</sup> liberalizing “substantially all trade” within a decade.<sup>61</sup>

The first installation of the Agreement on Trade in Goods focused on agriculture. With the Early Harvest Program,<sup>62</sup> China and several members of ASEAN agreed to slash tariffs on 600 agricultural products beginning in 2004, eliminating them altogether by 2006.<sup>63</sup> Significantly, China takes the lead in lowering its tariffs before many of its ASEAN partners follow suit.<sup>64</sup> By all accounts, this has been a success for China and ASEAN; in just one year, Chinese

56. Framework Agreement on Comprehensive Economic Co-operation Between the Association of Southeast Asian Nations and the People's Republic of China art. 1, Brunei-Cambodia-P.R.C.-Indon.-Laos-Myan.-Phil.-Sing.-Thail.-Vietnam, Nov. 5, 2002, <http://www.aseansec.org/13196.htm> [hereinafter *Framework Agreement*].

57. See Liu, *supra* note 5, at 21-22.

58. Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China, Brunei-Cambodia-P.R.C.-Indon.-Laos-Myan.-Phil.-Sing.-Thail.-Vietnam, Nov. 29, 2004, <http://www.aseansec.org/16646.htm>.

59. *Id.* at Preamble.

60. See Minister Bo Xilai Answering Questions of the Press on China-ASEAN FTA, PRC Ministry of Foreign Commerce, <http://boxilai2.mofcom.gov.cn/aarticle/speech/200608/20060802846310.html> [hereinafter *Answering Questions*].

61. By agreeing to free up substantially all trade, China and ASEAN acknowledge the standards articulated, though rarely enforced, by the WTO. See *infra*, Part IV.

62. See *China-ASEAN Agriculture Trade on Fast Track*, CHINA DAILY, Aug. 9, 2004, <http://china.org.cn/english/BAT/103399.htm>.

63. *Id.*

64. Alyssa Greenwald, Note, *The ASEAN-China Free Trade Area (ACFTA): A Legal Response to China's Economic Rise?*, 16 DUKE J. COMP. & INT'L L. 193, 198 (2006) (noting the Early Harvest Program is “almost entirely one-sided, with China making the immediate concessions.”).

agricultural imports from ASEAN grew 46.6%, and exports grew 31.2%.<sup>65</sup> This has generated optimism on both sides for continued tariff reductions in other goods.

Since 2002, CAFTA has been fleshed out with additional agreements: the Protocol to Amend the Framework Agreement (2003);<sup>66</sup> a Dispute Settlement Mechanism (2004);<sup>67</sup> a Plan of Action for Information Technology (2007);<sup>68</sup> and most recently, a Service Trade Agreement.<sup>69</sup> Some of these, such as the Amendment Protocol, elaborate a list of procedures, contrasting quite markedly with the schematic Framework Agreement. It is tempting to call such additions “western,” in their desire to capture every imaginable contingency. Nevertheless, the China-ASEAN Free Trade Agreement retains a gradualism and informality unique among FTAs.

### 3. *Outward Bound: China-Chile Free Trade Agreement*

On October 1, 2006, the first part of the China-Chile FTA went into effect.<sup>70</sup> China adapted to Chile’s largely western standards, entering into an agreement of 121 articles, and 62 pages in English, making it much longer than the CAFTA (23 pages, 16 articles) and CEPA agreements (11 pages, 23 articles). Without a long history of trade relations, China and Chile elected a comprehensive package *ab initio*, minimizing ambiguity and clearly illuminating all details. China can thus operate in the keys of western formalism and Asian incrementalism.

Between 2007 and 2017, China and Chile will progressively eliminate tariffs on 97% of tariff lines.<sup>71</sup> In the first cut, already in effect, China eliminated

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65. *Answering Questions*, *supra* note 60.

66. Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation Between the Association of Southeast Asian Nations and the People’s Republic of China, Brunei-Cambodia-P.R.C.-Indon.-Laos-Myan.-Phil.-Sing.-Thail.-Vietnam, Oct. 6, 2003, <http://www.aseansec.org/15157.htm>.

67. Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation Between the Association of Southeast Asian Nations and the People’s Republic of China, Brunei-Cambodia-P.R.C.-Indon.-Laos-Myan.-Phil.-Sing.-Thail.-Vietnam, Nov. 29, 2004, <http://www.aseansec.org/16635.htm>.

68. Plan of Action to Implement the Beijing Declaration on ASEAN-China ICT Cooperative Partnership for Common Development, ASEAN-P.R.C., Jan. 14, 2007, <http://www.aseansec.org/19283.htm>.

69. *See China and ASEAN Signed the Service Trade Agreement*, Ministry of Commerce of the People’s Republic of China, Jan. 16, 2007, <http://english.mofcom.gov.cn/aarticle/subject/ cameetings/lanmuc/200701/20070104275170.html>.

70. Free Trade Agreement Between the Government of the People’s Republic of China and the Government of the Republic of Chile, Chile-P.R.C., Nov. 18, 2005, <http://www.direcon.cl/pdf/Texto%20Final%20ing.pdf> [hereinafter CCFTA].

71. *Sino-Chilean Free Trade Agreement to be Enforced As of Oct. 1*, Ministry of Commerce of the People’s Republic of China, Sept. 3, 2006, <http://english.mofcom.gov.cn/aarticle/newsrelease/significantnews200609/20060903198707.html>.

tariffs on 28% of its tariff lines, while Chile eliminated them on 43% of its tariff lines.<sup>72</sup> The first round of tariff reduction focuses on agricultural products, chemicals, textiles, and electronics.<sup>73</sup> Most importantly for resource-challenged China, copper is also included.

In keeping with the larger trend, the China-Chile FTA extends beyond goods and services. It addresses fair competition, diversification of trade, and dispute resolution.<sup>74</sup> In other words, *procedure* is a critical component to this agreement, and proceeds in elaborate detail.

#### 4. Investing in the West: China-Pakistan Free Trade Agreement

Unlike CAFTA, the China-Pakistan Free Trade Agreement (“CPFTA”)<sup>75</sup> did not spring from a long courtship between the two countries; it took just eighteen months and six rounds of talks.<sup>76</sup> While Sino-Pakistani diplomatic relations have been warm for most of their contemporary history<sup>77</sup> (both states were founded in the late 1940s), the FTA still came as a surprise. China’s regionalization efforts had focused primarily on Southeast Asia, and to a lesser extent, in Central Asia. The CPFTA attests to both China’s desire to be a regional leader, and Pakistan’s keen appetite for foreign investment and technology.

The CPFTA is not expansive, covering goods, services, and investment. It takes an extremely flexible approach toward tariff reduction, dividing tariffs into five categories, each with a different percentage reduction, and implementation deadline.<sup>78</sup> Periodic tariff reviews, including one “at the end of the fourth year or at the beginning of the fifth year,” ensure that implementing future tariff schemes will not damage either side. The agreement states that both sides “shall endeavor” to eliminate 90% of the tariff lines, but only spells out the reduction

72. See *China, Chile put free trade agreement into effect*, CHINA VIEW, Oct. 1, 2006, [http://news.xinhuanet.com/english/2006-10/01/content\\_5161337.htm](http://news.xinhuanet.com/english/2006-10/01/content_5161337.htm) (noting China eliminated tariffs on 2,834 products from Chile, leaving them on an additional 7,391; Chile eliminated tariffs on 5,891 Chinese products, leaving them on an additional 7,750).

73. *Id.*

74. CCFTA, *supra* note 70, art. 2.

75. Free Trade Agreement Between the Government of the People’s Republic of China and the Government of the Islamic Republic of Pakistan, P.R.C.-Pakistan, Nov. 24, 2006, [http://english.gov.cn/2006-11/24/content\\_452988.htm](http://english.gov.cn/2006-11/24/content_452988.htm) [hereinafter CPFTA].

76. See *China, Pakistan sign free trade agreement*, PEOPLE’S DAILY ONLINE, Nov. 24, 2006, [http://english.peopledaily.com.cn/200611/24/eng20061124\\_324918.html](http://english.peopledaily.com.cn/200611/24/eng20061124_324918.html).

77. See *Key developments in Sino-Pakistani relations*, Ministry of Commerce of the People’s Republic of China, Nov. 25, 2006, <http://english.mofcom.gov.cn/aarticle/subject/cnpkfta/lanmub/200611/20061103886177.html>.

78. Category I tariffs will be reduced to zero by 2010. Category II tariffs will be reduced to 5% or below by 2012. Category III tariffs will be reduced to 50% by 2012. Category IV tariffs will be reduced 20% by 2012. Category V tariffs will remain as they are. See CPFTA, *supra* note 75, Annex 1, Elimination of Import Customs Duties, <http://english.mofcom.gov.cn/accessory/200611/1164848975849.doc>.

of 85% of the tariff lines.<sup>79</sup> Flexibility is the operative word here.<sup>80</sup>

In addition, CPFTA slakes some of Pakistan's thirst for foreign investment.<sup>81</sup> It provides protection to Chinese investors in Pakistan, which has already brought significant Chinese investment into Pakistan's industry and infrastructure, including the Pakistan-China Industrial Zone.<sup>82</sup> In this light, free trade seems a distant afterthought to the imminent realization of financial cooperation. China is steadily cementing its position as a regional power.

### *5. New Horizons: Australia, New Zealand, South Korea*

For several years now, China has also been negotiating FTAs with Australia and New Zealand. Given the discrepancies in development between China and these two countries, all parties have expressed concern about the feasibility of an FTA. At present, New Zealand seems more inclined to sign an agreement than Australia.

#### *i. Australia*

Sino-Australian talks continue in starts and fits, as they have since the countries signed a Trade and Economic Framework in 2003.<sup>83</sup> Despite a recent attempt to set a two year time limit by which to conclude negotiations,<sup>84</sup> it is unlikely that both sides will make the necessary concessions. China wants lower tariffs on manufactured goods: clothing, footwear, and motor vehicles. By contrast, Australian manufacturers have sought protection from the intense competition that they already face from cheap Chinese exports.

On the other hand, Australia has not fully persuaded China to ease its steep agricultural tariffs. With hundreds of millions of its own underemployed farmers, and increased competition from CAFTA, China is not inclined to rush to further open its agricultural markets. Matters are even more complicated in services and investments. Australia seeks preferential access to China's growing services market (telecommunications, finance, construction), but China is reluctant to make such concessions to a developed country. In short, a comprehensive

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79. *Id.*

80. Indeed, it provides for maximum flexibility by permitting either party to terminate the agreement within six months of notifying the other. CPFTA, *supra* note 75, art. 82.

81. *See China, Pakistan To Ink Free Trade Deal*, CBS/AP, Nov. 23, 2006 (noting Pakistan's solicitation of foreign investment for infrastructure, industrial development and energy).

82. CPFTA, *supra* note 75, arts. 46-56. Twenty Chinese companies have committed to invest in the Pakistan-China Industrial Zone, currently being established in Punjab. Syed Fazl-e-Haider, *Chinese eye Pakistan's real estate*, ASIA TIMES ONLINE, Jan. 17, 2007, [http://www.atimes.com/atimes/South\\_Asia/IA17Df03.html](http://www.atimes.com/atimes/South_Asia/IA17Df03.html).

83. *See Australia-China Trade and Economic Framework*, AUSTRALIA MINISTRY FOR TRADE, Oct. 24, 2003, [http://www.trademinister.gov.au/releases/2003/mvt085\\_03.html](http://www.trademinister.gov.au/releases/2003/mvt085_03.html).

84. *Free trade agreement with Australia within two years: official*, PEOPLE'S DAILY ONLINE, OCT. 18, 2006, [http://english.people.com.cn/200610/18/eng20061018\\_312793.html](http://english.people.com.cn/200610/18/eng20061018_312793.html).

Sino-Australian FTA is still a long way off.

*ii. New Zealand*

New Zealand is closer to completing an FTA with China. In the ninth, and most recent, round of discussions, the countries addressed such critical complexities as rules of origin and market access. A New Zealand official's prediction that the agreement would be concluded between April 2007 and April 2008 seems plausible.<sup>85</sup>

Like its predecessors, this agreement will cover trade in products, services, investment facilitation, and the protection of intellectual property. It also envisions the possibility of "strategic cooperation" in fields like forestry, animal husbandry, and environmental protection.<sup>86</sup> What is new, and controversial, is Chinese pressure for New Zealand to admit skilled Chinese workers on temporary permits.<sup>87</sup> While it remains a touchy subject, New Zealand has tentatively suggested that specialists *outside* of sensitive sectors—chefs, doctors of traditional Chinese medicine, Mandarin teachers—could conceivably be admitted under the FTA.

*iii. Korea*

Finally, the prospects of a China-Korea FTA have also started to make headlines. In June 2005, Chinese Prime Minister Wen Jiabao raised the possibility of a bilateral FTA with his Korean counterpart, Prime Minister Lee Hae-chan. In 2004, China surpassed the United States to become Korea's top trading partner, devouring 20% of the country's exports, and absorbing a third of its FDI.<sup>88</sup> While these indicators hint at a deeper symbiosis, concrete plans for a bilateral agreement will likely stall until certain economic sectors receive specific assurances from their respective governments.

Korean farmers, clothiers and leatherworkers fear a flood of cheap Chinese imports, similar to those that have washed up on American, Australian and European shores. On the other hand, Chinese electronics manufacturers worry about low-priced and high-quality cell phones, MP-3 players, and other electronics from such Korean giants as LG and Samsung. Of course, these concerns affect government officials in China and Korea differently; democratically-elected

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85. See Simon Louisson, *NZ on track to sign FTA with China*, Oct. 19, 2006, [http://www.bilaterals.org/article.php3?id\\_article=6262](http://www.bilaterals.org/article.php3?id_article=6262).

86. See Trade and Economic Cooperation Framework between New Zealand and the People's Republic of China ¶2, P.R.C.-N.Z., May, 28, 2004, <http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreements/China/0-tecfmay04.php>.

87. See *Greens wary of deal on Chinese labour*, NEW ZEALAND HERALD, Oct. 5, 2006, [http://www.nzherald.co.nz/section/story.cfm?c\\_id=1&objectid=10404405](http://www.nzherald.co.nz/section/story.cfm?c_id=1&objectid=10404405).

88. See Ko Kyoung-tae, *Korea-China Free Trade Agreement Talks Gather Steam But a Sticky Path Ahead*, [http://www.bilaterals.org/article.php3?id\\_article=2567](http://www.bilaterals.org/article.php3?id_article=2567).

Korean leaders must respond to constituencies in ways that Chinese leaders do not.

In the space of a few years, Chinese FTAs have gone from rudimentary blueprints to exhaustive agreements. To some extent, this is a function of China's willingness to indulge trading partner preferences: ASEAN's for informality and gradualism, Chile's for immediacy and comprehensiveness. But it also reflects China's growing sophistication in dealing with its neighbors; China is no longer afraid of committing itself to a complicated web of international legal obligations, and will in all likelihood continue to draft treaties in this mold.

### *B. Japan: Scratching Beneath the Surface*

In contrast to China's newfound enthusiasm for FTAs, Japan has a longer and more contested history with them. During the Uruguay Rounds of the WTO, Japanese delegates aimed to minimize the "adverse effects" of FTAs; they wanted GATT to provide discipline to the formation and regulation of FTAs.<sup>89</sup> In particular, they sought clarification of the ambiguities in GATT Article XXIV, which sets out requirements for FTAs.<sup>90</sup> Until quite recently, then, Japan had staunchly advocated multilateral trade.

In the new millennium, however, Japan's fear of being excluded from the global FTA game has led to a realignment of its international economic policies.<sup>91</sup> A 2002 summary from Japan's Ministry of Foreign Affairs (MOFA) captures a key aspect of this about-face: "FTAs increase Japan's bargaining power in WTO negotiations."<sup>92</sup> Needless to say, credibility in multilateral institutions is not the primary aim of Japan's EPA policy. MOFA has also articulated Japan's desire to facilitate community-building, stability and prosperity in East Asia.<sup>93</sup> For the first time since the Pacific War, Japan is seriously attempting to transform its economic prowess into political and diplomatic capital; FTAs are the enzymes in this process of conversion.

With three agreements in effect, and several others in various stages of negotiation, Japan has entered the FTA age at full force. Technically speaking, Japan has entered the EPA age, which seeks deeper forms of integration in se-

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89. Haruo Saburi, *The GATT/WTO and Regional Integration*, 44 JAPANESE ANN. INT'L L. 77, 77 (2001).

90. *Id.*

91. Saadia M. Pekkanen, *Bilateralism, Multilateralism, or Regionalism? Japan's Trade Forum Choices*, 5 J. E. ASIAN STUD. 77, 92, 95 (2005).

92. See *Japan's FTA Strategy (Summary)*, THE MINISTRY OF FOREIGN AFFAIRS OF JAPAN, <http://www.mofa.go.jp/policy/economy/fta/strategy0210.html> [hereinafter *Japan's FTA Strategy*].

93. See Basic Policy towards further promotion of Economic Partnership Agreements (EPAs), approved by the Council of Ministers on the Promotion of Economic Partnership on Dec. 21, 2004, art. 1-1, THE MINISTRY OF FOREIGN AFFAIRS OF JAPAN, <http://www.mofa.go.jp/policy/economy/fta/policy0412.html>.

lected areas.<sup>94</sup> This section first examines the EPAs with Singapore, Mexico, and Malaysia, and then takes up Japan's ongoing negotiations.

### 1. Japan-Singapore New Age Economic Partnership<sup>95</sup>

Like its East Asian neighbors, Japan chose a comparatively minor trading partner to initiate its EPA strategy. Singapore made a sensible choice for several reasons, not the least of which was its virtually non-existent agricultural sector.<sup>96</sup> Singapore's advanced markets,<sup>97</sup> FTA experience,<sup>98</sup> and strong intellectual property regime persuaded Japanese officials that the agreement would make a good "learning experience."

The Japan-Singapore Economic Partnership Agreement ("JSEPA") encapsulates several features of Japan's grander economic policy. It aims to heighten Japan's regional presence by exporting financial and technological expertise to a key Southeast Asian player. Though a bilateral agreement, JSEPA envisions Japanese involvement with the rest of Southeast Asia,<sup>99</sup> particularly countries with nascent capital markets.<sup>100</sup> It also incorporates a wide range of cooperative measures in investment, information technology, tourism, science and technology, human resources development, and education. This is a wide-ranging plan for such a small partner-country, but reflects Japan's grand ambitions to integrate across geographic and strategic borders.

94. Economic Partnership Agreements (EPAs) differ from Free Trade Agreements chiefly in their scope. FTAs, *strictu sensu*, aim to eliminate tariffs only on goods and services. EPAs are more ambitious, seeking deeper integration of the two economies. EPAs may provide, for intellectual property rights; free movement of persons and labor; investment mechanisms; educational and scientific exchange. See *Japan's Policy on FTAs/EPAs*, Ministry of Economy, Trade and Investment (METI), March 2005; Taro Aso, *The Hallmarks of Economic Diplomacy for Japan*, Speech at the National Press Club of Japan, Mar. 8, 2006, <http://www.mofa.go.jp/announce/fm/aso/speech0603.html>.

95. Agreement Between Japan and the Republic of Singapore for a New-Age Economic Partnership, Japan-Sing., Jan. 13, 2002, <http://www.mofa.go.jp/region/asia-paci/singapore/jsepa.html> [hereinafter JSEPA].

96. Even so, the Japanese Ministry of Agriculture, Forestry and Fishing acquiesced to the Singapore agreement only after considerable "foot-dragging" to placate agricultural interests. See Ellis S. Krauss, *The US, Japan, and trade liberalization: from bilateralism to regional multilateralism to regionalism +*, 16 PACIFIC REV. 307, 320 (2003).

97. *Id.* at 319.

98. Singapore signed its first FTA with New Zealand in Nov. 2000. Since then, it has signed agreements with thirteen other countries, including Canada, EFTA, and the US. See *Singapore's FTA Network: Expanding Markets, Connecting Partners*, MINISTRY OF TRADE AND INDUSTRY – SINGAPORE, [http://www.iesingapore.gov.sg/wps/portal/!ut/p/kcxml/04\\_Sj9SPykssy0xPLMnMz0vM0Y\\_QjzKLN4g3C\\_UFSYGY5oFm-pFoY04YImah3philWEIMV-P\\_NxU\\_SB9b\\_0A\\_YLc0NDQ\\_iHJHAAF8\\_pE!/delta/base64xml/L3dJdyEvd0ZNQUFzQUMvNEIVRS82XzBFNIRV](http://www.iesingapore.gov.sg/wps/portal/!ut/p/kcxml/04_Sj9SPykssy0xPLMnMz0vM0Y_QjzKLN4g3C_UFSYGY5oFm-pFoY04YImah3philWEIMV-P_NxU_SB9b_0A_YLc0NDQ_iHJHAAF8_pE!/delta/base64xml/L3dJdyEvd0ZNQUFzQUMvNEIVRS82XzBFNIRV).

99. JSEPA, *supra* note 96, at Preamble ("enhancing economic ties between the Parties would strengthen Japan's involvement in Southeast Asia.")

100. *Id.* at art. 1(b)(i).

## 2. Japan-Mexico Economic Partnership Agreement<sup>101</sup>

In 2004, Japan signed its first, and perhaps only, EPA with a non-Asian state. Availing itself of Mexico's intricate FTA network of 43 countries, Japan gains tariff-free access to key European, North American and South American markets.<sup>102</sup> This is as far as Japan needs to go in the Americas. Mexico benefits from lower tariffs on Japan's \$60 billion food industry.<sup>103</sup> It also hopes to get an investment boost, though this seems unlikely in light of Japan's heavy investment in Southeast Asia. Japan would prefer to consummate EPAs with its existing production lines in Southeast Asia rather than create new ones in North America. Nevertheless, after a year in effect, both Japan and Mexico have seen significant increases in bilateral trade, with Japan doing slightly better.<sup>104</sup>

## 3. Japan-Malaysia EPA

After two years of negotiation, the Japan-Malaysia Economic Partnership Agreement entered into force in July, 2006. The economic interests of corporate Japan are well represented. The EPA progressively eliminates tariffs on automobiles and auto parts, bearing the unmistakable stamp of the car industry. For its part, Malaysia will receive a much-needed technological and financial boost to modernize its aging factories. The agreement eliminates tariffs on 97% of the value of bilateral trade,<sup>105</sup> including agricultural products, fisheries, footwear, rubber, and textiles. This is a good lesson for the Japanese agricultural sector, which will face even more severe competition if and when agreements with other countries materialize.

Like the others, the Japan-Malaysia agreement aims for cooperation across various sectors. Japan is concerned about the protection of investment and intellectual property rights, while Malaysia looks forward to deepening the "socio-economic partnership."<sup>106</sup> An example of the latter was announced in October, 2006, when Japan agreed to open a "Skills Training Centre" in Shah Alam, fif-

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101. Agreement Between Japan and the United Mexican States for the Strengthening of the Economic Partnership, Japan-Mex., Nov. 10, 2004, <http://www.mofa.go.jp/region/latin/mexico/agreement/index.html>.

102. See Takeo Miyazaki, *Envoy: Japan-Mexico partnership beneficial*, DAILY YOMIURI, Apr. 5, 2006 (noting Mexico had signed forty-three free trade agreements).

103. *Japan's parliament ratifies free trade pact with Mexico*, AGENCE FRANCE PRESSE -- ENGLISH, Nov. 10, 2004.

104. See Miyazaki, *supra* note 103 (noting that, ten months after the agreement came into effect, Mexican exports increased by 30%, and Japanese exports by 40%).

105. *Japan Hopes for Better Economic Ties with Malaysia Via JMEPA*, MALAYSIA ECON. NEWS, Oct. 2, 2006.

106. Agreement Between the Government of Japan and the Government of Malaysia for an Economic Partnership art. 1(b), 1(c), 1(d), Japan-Malay., Dec. 13, 2005, <http://www.mofa.go.jp/region/asia-paci/malaysia/epa/index.html>.

teen miles west of Kuala Lumpur. The center will train “master trainers” in the latest automotive technologies developed in Japan; they will in turn go back to their companies and instruct colleagues.<sup>107</sup> The footprint of the Japanese automobile industry is once again apparent, giving Malaysia a slight technological edge vis-à-vis its regional competitors: Indonesia, the Philippines, and Thailand.

#### 4. *Japan's EPA Future*

Japanese EPA diplomacy shows no sign of slowing. The present focus is to conclude the ongoing negotiations with Thailand, the Philippines, and Indonesia. Japan has had several rounds of discussions with each country, but cannot convince Southeast Asian auto manufacturers to phase out tariffs on Japanese cars and auto components.<sup>108</sup> Nevertheless, one of these agreements is fairly likely to be Japan's next.<sup>109</sup>

In 1998, Japan proposed an FTA with Korea.<sup>110</sup> In its annual report of the following year, the Ministry of International Trade and Industry (now Ministry of Economy, Trade and Industry) formally floated the idea that Japan should take a leading role in forming a regional trade bloc in Northeast Asia.<sup>111</sup> In 2002, Japan and Korea formed a joint study group to debate the desirability of an FTA, and six rounds of negotiations have been held since. Despite the potentially large gains for both Japan and Korea, no new negotiations have taken place since the sixth round of talks in November 2004.<sup>112</sup> Politics, at times, can trump economic logic, particularly when the relationship is as fraught as the one between Japan and Korea. Moreover, sensitive sectors in both countries (agriculture, fisheries, apparel) will need specific assurances, most probably in the form of subsidies, before agreeing to a bilateral arrangement.<sup>113</sup>

Though unlikely in the near future, a bilateral agreement between China and Japan is still an important theoretical exercise. Rumbblings of a Sino-

107. *Japanese-Style “Train the Trainer” Centre for Local Auto Sector*, MALAYSIAN ECON. NEWS, Oct. 21, 2006.

108. See, e.g., Aranee Jaiimsin, *Thailand-Japan pact could damage auto-parts industry*, BANGKOK POST, Feb. 26, 2007; *Indonesia to exempt duty on Japanese auto parts*, PEOPLE'S DAILY ONLINE, Aug. 24, 2006; *Briefing Paper on the Japan-Philippines Economic Partnership Agreement (JPEPA)*, Prepared by the office of Rep. Teddy Casiño, 2-3, [http://www.bilaterals.org/IMG/pdf/JPEPA\\_briefing\\_Paper-final.pdf](http://www.bilaterals.org/IMG/pdf/JPEPA_briefing_Paper-final.pdf).

109. Japan's Efforts on Economic Partnership Agreement (EPA), THE MINISTRY OF FOREIGN AFFAIRS OF JAPAN, <http://www.globalwarming.mofa.go.jp/policy/economy/fta/effort.pdf> [hereinafter *Japan's Efforts*].

110. The Japanese ambassador to Korea, Ogura Kazuo, became the first senior official to go on the public record in support of such an arrangement. See Kevin G. Cai, *Is a Free Trade Zone Emerging in Northeast Asia in the Wake of the Asian Financial Crisis?*, PAC. AFF. 7, 13 (Spring 2001).

111. *Id.* at 12-13. The bloc would have consisted of Hong Kong, Korea and Taiwan.

112. *Japan's Efforts*, *supra* note 110.

113. Highly industrialized, technologically savvy, and highly protective of their agricultural sectors, Japan and Korea lack the natural complementarity that favors an agreement between China and Japan.

Japanese Free Trade Agreement have been heard for some time now,<sup>114</sup> most recently in an article from Mainichi Shimbun.<sup>115</sup> Certainly the two economies share complementary strengths and needs that could prove mutually beneficial. An RTA could further expand Japanese production networks for important items like industrial machinery, precision instruments, consumer electronics, semiconductors, and computers. Coupling Japanese capital and technology with China's educated workforce could also lead to a new symbiosis. Moreover, the growing Chinese market and hunger for high-end goods could help prevent the hollowing out of the Japanese high-tech and luxury apparel sectors.<sup>116</sup> Indeed, by Japanese estimates, an FTA with China would raise Japan's gross domestic product by half of a percent.<sup>117</sup> For the time being, this kind of arrangement is unlikely to develop given the fractious political relationship between China and Japan.

Finally, Australia and New Zealand appear on Japan's distant EPA horizon. Talks have begun with both nations, though resistance from Japan's agricultural sector remains strong,<sup>118</sup> Australia's status as a major supplier of natural resources to Japan does not help in this regard.<sup>119</sup> The business communities of the countries have suggested a two-step approach, attending first to areas of mutual interest before moving on to a comprehensive EPA.<sup>120</sup>

#### IV. EAST ASIAN FTAS

For the past five years, China and Japan have sown the seeds of regional integration through far-reaching FTA diplomacy. Attention to these new forms of international economic law sheds light on the current boom, and helps illuminate the possibility of future regional integration. A brief overview of the relevant WTO provisions on free trade agreements frames the discussion.

##### *A. The WTO on FTAs*

As members of the WTO, China and Japan must at least *consider* minimal obligations before establishing free trade agreements. China, as a developing

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114. When Vice Premier Wu Yi visited Japan in May 2005, to pick one example among many, he suggested that a Free Trade Agreement was one of six ways to ameliorate Sino-Japanese relations. See *China-Japan Free Trade Agreement Urged*, CHINA DAILY, May 19, 2005, [www.chinadaily.com.cn/english/doc/2005-05/19/content\\_444049.htm](http://www.chinadaily.com.cn/english/doc/2005-05/19/content_444049.htm).

115. See Mainichi Shimbun, *Japan to Pursue Free Trade Deals with China*, REUTERS, Jan. 3, 2006 (reporting that Japan will start negotiations on a free trade deal with China in 2009), [www.bilaterals.org/article.php?id\\_article=3407](http://www.bilaterals.org/article.php?id_article=3407).

116. Manabu Hara, *Asian Giants: FTA with China a big plus for Japan*, ASAHI SHINBUN (ENGLISH EDITION), Oct. 3, 2005, at 1.

117. *Id.*

118. *Japan's Efforts*, *supra* note 110.

119. See *Japan's FTA Strategy*, *supra* note 93.

120. *Id.*

country, may avail itself of the less onerous standards articulated in the Enabling Clause.<sup>121</sup> In addition to notifying the WTO,<sup>122</sup> both China and Japan must satisfy three requirements.<sup>123</sup> First, the elimination of duties and other restrictions must apply to “substantially all the trade” between countries.<sup>124</sup> Second, restrictions on trade with countries *outside* of the FTA cannot be higher than they were “prior to the formation of the free-trade area.”<sup>125</sup> Third, the formation of the FTA must take place “within a reasonable period of time.”<sup>126</sup> As a developing country, China may avail itself of the less onerous standards articulated in the Enabling Clause.<sup>127</sup>

By and large, Chinese and Japanese FTAs liberate substantially all trade, though Japan adheres to this standard somewhat more strictly. Japanese FTAs consistently exceed the *de facto* standard of 90% of trade in goods, with no economic sectors entirely excepted.<sup>128</sup> Japan’s EPAs eliminated tariffs on 98% of trade with Singapore,<sup>129</sup> 94% with Mexico, and 95% with Malaysia.<sup>130</sup> Additionally, Japan has agreed to accomplish the tariff reductions within the generally accepted “reasonable period” of ten years.<sup>131</sup>

China has also taken the requirement seriously. The agreements with ASEAN and Chile both eliminate tariffs on 90% of trade in goods within a decade.<sup>132</sup> The Pakistani agreement, by contrast, does not extend quite so far, in effect aspiring to reach 90%, but concretely providing for only 85%. Nevertheless,

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121. See Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, GATT Doc. L/4093 (Nov. 28, 1979), B.I.S.D. (26th Supp.) 203 (1980) (permitting developing countries to “accord differential and more favourable treatment to developing countries, without according such treatment to other” members).

122. See Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, General Agreement on Tariffs and Trade art. XXIV(7)(a), 333 I.L.M. 1153, (1994) [hereinafter *GATT*].

123. See Sydney M. Cone, III, *The Promotion of Free-Trade Areas Viewed in Terms of Most-Favored-Nation Treatment and “Imperial Preference,”* 26 MICH. J. INT’L L. 1, 6 (2005) (concentrating WTO requirements into three principles).

124. GATT, art. XXIV (8)(b).

125. GATT, art. XXIV (5)(b).

126. GATT, art. XXIV (5)(c).

127. See Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, GATT Doc. L/4093 (Nov. 28, 1979), B.I.S.D. (26th Supp.) 203 (1980) (permitting developing countries to “accord differential and more favourable treatment to developing countries, without according such treatment to other” members).

128. See MITSUO MATSUSHITA ET AL., *THE WORLD TRADE ORGANIZATION: LAW, PRACTICE AND POLICY* 359-60 (2003).

129. MINISTRY OF FOREIGN AFFAIRS, *Overview of Japan’s International Situation and Japanese Diplomacy*, 34 (2004).

130. See *Japan Hopes for Better Economic Ties with Malaysia via JMEPA*, MALAYSIA ECON. NEWS, Oct. 2, 2006.

131. See, e.g., *Malaysia, Japan To Hold Meeting to Enhance Economic Ties*, ASIA PULSE, Jul. 11, 2006 (noting elimination of imports duties on textiles and fruit immediately, on rubber products and plastics within eight years, and on chemicals, steel, and automotive parts within ten years).

132. See *supra*, Part IV (A)(ii), (iii).

given that Pakistan and China can avail themselves of the lower standards permitted by the Enabling Clause, this still represents an impressive effort. Again, only time will tell how closely China and Pakistan actually get to “substantially all the trade.”

*B. Chinese and Japanese FTAs*

China and Japan have evinced different and, to a certain extent, competitive strategies in adapting international economic law to political and diplomatic prerogatives. Scholars have noted the tension generated in Tokyo when Beijing signs an FTA, and vice versa.<sup>133</sup> With each new agreement, China and Japan augment their regional stature, and boost their prospects to emerge as the regional leader.

China has taken pains to accommodate the expectations of partner countries. Chile, as its previous FTAs show,<sup>134</sup> prefers orthodox, comprehensive FTAs, focusing almost exclusively on goods. Accordingly, the China-Chile FTA covers primarily trade in goods, and has few of the innovations apparent in other FTAs. On the other hand, greater flexibility appears in the China-Pakistan FTA, which defers key FTA elements – such as which products to lower tariffs on – to later negotiations. This kind of uncertainty would be anathema to the comprehensive approach generally favored in western FTAs.

The China-ASEAN FTA proves to be the most interesting as a specimen of international economic law. The “ASEAN Way” of incremental consensus-building emerges as the key characteristic in the ongoing expansion of this agreement. After learning how to cooperate with ASEAN through a decade of political and security initiatives, China has agreed to operate by its cardinal diplomatic principle. With each new annex that China and ASEAN sign, the relationship deepens, dispelling Southeast Asian anxieties about the “China threat.”

Japan has shown a more orthodox approach to free trade agreements, though not woodenly so. Relying on decades of investment and involvement with Southeast Asia, Japan has also focused its first wave of EPAs there. This will not only help Japan’s key industries (automobile and electronics) acclimate to increased global competition (including China), it could also lead to new forms of regional cooperation, as the training school planned for Shah Alam demonstrates.

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133. See Samuel S. Kim, *Regionalization and Regionalism in East Asia*, 4 J. EAST ASIAN STUDIES 39, 51 (2004).

134. Chile’s FTAs with Canada (1997), Mexico (1999), Cost Rica (2002), El Salvador (2002), the US (2004), Chile (2004), and the European Free Trade Agreement (2004) have all covered trade in goods and services. They were, moreover, notified to the WTO under the more restrictive provisions of GATT XXIV and GATS V, and not the more liberal Enabling Clause. See Jo-Ann Crawford & Roberto V. Fiorentino, *The Changing Landscape of Regional Trade Agreements*, (WTO Discussion Paper No. 8, 29-33, 2005), [http://www.wto.org/english/res\\_e/booksp\\_e/discussion\\_papers8\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/discussion_papers8_e.pdf).

Indeed, Japan's new international economic law is most interesting when it deviates most widely from the meat and potatoes of goods and services. For instance, what kinds of scientific and educational opportunities will the EPA with Malaysia lead to? How can Japanese expertise in the financial services and capital markets sectors be exported to Thailand? What kind of measures will Japan adopt to allow Filipina nurses and care givers into Japan? In honing its FTA practices, Japan is closely reevaluating the opportunities and strengths of its relationships with various "benefactor states" in Southeast Asia.

## V.

### CONCLUSION

Since 2002, a new wave of regional integration has swept East Asia. In their own ways, China and Japan have promoted economic regionalization through a wide array of FTAs (EPAs) that crisscross the Asia-Pacific. This movement has multiple motivations; it responds to protectionism elsewhere, heightened competitiveness in numerous sectors, and the realization that interdependency is, quite literally, the way of the world. In addition, the FTA explosion is closely tied to the emerging contest for regional leadership by China and Japan. Both countries have assumed an FTA (EPA) strategy that links recent diplomatic pushes with current economic mandates. While both countries are eager to be the regional hub, it is not clear whether this desire will spark a region-wide free trade agreement, or a continued streak of bilateralism. In all likelihood, only when a significant number of China's and Japan's FTA partners *overlap* will a regional free trade agreement be imaginable. Alternatively, a neutral third party such as Korea may step in to bridge the gap.