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East Asia Institutionalises: China, Japan and the Vogue for Free Trade

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Abstract

In the past decade East Asia has taken steps to increase regional integration. This paper examines the vogue for Free Trade Agreements (FTAs) currently raging in China and Japan. After mapping the regional links that knit East Asia together during the 1990s and 2000s, the focus then shifts to the specific trade agreements that China and Japan have signed. Both countries exhibit a particular FTA “style;” Japan has adopted a more orthodox and comprehensive approach to its treaties, while China has shown greater flexibility and gradualism when dealing with FTA partners. It is still unclear whether these efforts will lead to a region-wide FTA, or a continued crisscrossing of bilateral arrangements. In either case, China’s eagerness to adapt to partner country expectations likely gives it an edge in becoming the regional hub of East Asia.

Keywords

Free Trade Agreements, International Economic Diplomacy, Regionalism, East Asia, China, Japan

1. Introduction

Free trade agreements (FTAs) have rapidly proliferated in the new millennium. Countries on all six continents have signed FTAs, first with immediate neighbours, and then farther abroad. The notion of a contiguous trade bloc – such as the European Union (EU), North American Free Trade Agreement (NAFTA), Mercado Común del Sur (MERCOSUR), Association of Southeast Asia Nations (ASEAN) – has been unhinged. In direct to these larger free trade areas, bilateral FTAs have sprung up 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, mostly in Asia. East Asia’s first FTA, the 2002 Japan-Singapore New-Age Economic Partnership Agreement, has literally ushered in a new age. In search of FTA partners, these countries now scour the Asia-Pacific and beyond.

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This paper compares Chinese and Japanese approaches to FTA diplomacy. Korea and Singapore, important contributors to the East Asian FTA picture, lie outside the scope of this inquiry. Part 2 recounts the affiliations that knit East Asia together during the 1980s and 1990s, particularly the achievements of the Asia-Pacific Economic Cooperation (APEC) and ASEAN. This background sheds light on the events, motivations and actors animating the current FTA surge. Part 3 recounts the ongoing FTA surge in East Asia. Sparked by Western protectionism and frustration with fruitless World Trade Organization (WTO) negotiations, East Asian countries have also embraced the global vogue for FTAs. Part 4 analyses East Asian FTAs as examples of international economic law. 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. China has taken a different approach, incorporating into its FTAs both Western and Asian legal principles.

2. Regional Integration: The Early Years

East Asian economic integration is not happening in a vacuum, but along paths well trod during the 1990s. The present FTA surge retraces 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, also known as socialisation, China and Japan have developed methods to integrate their economies into the region. By looking at regional bodies, and then China’s and Japan’s specific regionalisation efforts, we gain critical insight into today’s FTA mania.

2.1. *Institutions: ASEAN and APEC*

2.1.1. *ASEAN*

Like the European Union, the formation of the Association of Southeast Asian Nations responded to a broad array of political, strategic and economic concerns.¹ But unlike the EU or other Western arrangements, the group operates informally and consensually. Historically, it has not made decisions legally binding upon members,²

¹ C. S. Yue, ‘Regionalism and Subregionalism in ASEAN: The Free Trade Area and Growth Triangle Models’, in Takatoshi Ito and Anne O. Krueger (eds.), *Regionalism versus Multilateral Trade Arrangements* (University of Chicago Press, Chicago, 1997) p. 285.

² S. Choi, *Regionalism and Open Regionalism in the APEC Region* (Institute of Southeast Asian Studies, Singapore, 2004) p. 14.

preferring instead to operate along the “ASEAN Way” of informality, repeated consultations and consensus-building.³

Initially, ASEAN focused mainly on political issues: the peaceful resolution of territorial disputes, and the promotion of regional stability.⁴ These aims and the resultant peace have, of course, contributed significantly to the economic stability and success of Southeast Asia.⁵ But only in the wake of economic integration elsewhere in the world did free trade surface onto the ASEAN agenda.⁶

While ASEAN has enjoyed modest success in economic integration,⁷ its primary contribution to regional integration lies outside the economic realm, and outside of Southeast Asia for that matter. ASEAN is *the* centre of gravity for this part of the world, rarer still in being comprised solely of Asian states. 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” (APT) framework exemplify this trend. Both fora have linked China, Japan and Korea with Southeast Asia, and to a lesser extent with each other.

2.1.2. APEC

Like ASEAN, the Asian Pacific Economic Cooperation offers proof that regionalism in some parts of the world triggers regionalism elsewhere.⁸ 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 the 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 not much else.

³ See P. J. Davidson, ‘ASEAN Features: The ASEAN Way and the Role of Law in ASEAN Economic Cooperation’, 8 *Singapore Yearbook of International Law* (2004) p. 165; F. Liu, ‘East Asian Regionalism: Theoretical Perspectives’, in F. Liu and P. Régnier (eds.), *Regionalism in East Asia: Paradigm Shifting?* (RoutledgeCurzon, London, 2003) p. 22.

⁴ Yue, *supra* note 1, p. 285.

⁵ S. Harris, ‘Asian Multilateral Institutions and Their Response to the Asian Economic Crisis: The Regional and Global Implications’, in Shaun Breslin *et al.* (eds.), *New Regionalisms in the Global Political Economy* (University of Warwick, Warwick, 2000) p. 127.

⁶ See Yue, *supra* note 1, p. 287.

⁷ See ASEAN, *The ASEAN Free Trade Area*, available at <www.aseansec.org/12021.htm> (noting that the ASEAN Free Trade Agreement has eliminated intra-regional tariffs on more than 99 percent of goods traded between the so-called ASEAN-6 (Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand) and on nearly 80 percent of goods traded between the four less developed members (Burma, Cambodia, Laos and Vietnam)).

⁸ J. Ravenhill, ‘A Three Bloc World? The New East Asian Regionalism’, 2 *International Relations of the Asia-Pacific* (2002) p. 177.

From its inception, APEC aimed to liberalise trade in a soft, aspirational manner. It began “with no organizational framework”,⁹ nor an exclusivity requirement. Part of its haphazard nature lies in the fact that many original members were already party to other FTAs.¹⁰ And perhaps indicative of its partially Asian constituency, it did not employ legally binding strictures to do so.

Given their different levels of development, geopolitical ambitions and interest in regionalisation, 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 it could not have at the global level.¹¹ The organisation’s non-binding, non-intrusive nature did not threaten China’s zealously guarded sovereignty, and appealed to its hesitant approach to international organisations. At the same time, its economic agenda acculturated China to the new global dictates of lower tariffs, free movements of capital and deregulation.

Japan, in keeping with its relatively low profile in regional affairs, has been a lacklustre participant in APEC.¹² Though instrumental in establishing APEC, and setting its initial agendas,¹³ Japan has since receded from prominence. One critic suggested that Japan had been marginalised into the role of mediator between the unilateral US, with its insistence on free trade, and the wider Asian-Pacific community, which seeks broader cooperation in economic affairs.¹⁴ There may be some truth to the interpretation, but that does not burnish the rather dim view of Japan’s regional leadership.

2.2. *National Efforts*

2.2.1. *China: Dense Institutionalism*

Since the end of the Cold War, China has spun a dense organisational 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,

⁹ A. Yanai, ‘Characteristics of APEC Trade Liberalization: A Comparative Analysis with the WTO’, in J. Okamoto (ed.), *Trade Liberalization and APEC* (RoutledgeCurzon, London, 2004) p. 13.

¹⁰ APEC initially comprised the six ASEAN states (Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand), Canada and the US (then parties to the Canada-United States Free Trade Agreement (CUSFTA)), Australia and New Zealand (then parties to the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZERTA)) and Korea and Japan.

¹¹ J. Shen, ‘China & APEC: Regionalization from China’s Domestic Perspective’, in B. Hettne (ed.), *The New Regionalism and the Future of Security and Development* (Palgrave Macmillan, Hampshire, UK, 2000) p. 257.

¹² See S. J. Maswood, ‘Japan’s Foreign Policy and Regionalism’, in S. J. Maswood (ed.), *Japan and East Asian Regionalism* (Routledge, London, 2001) p. 9.

¹³ C. M. Dent, ‘Regionalism & Inter-regional Co-operation’, in C. M. Dent (ed.), *The European Union and East Asia: An Economic Relationship* (Routledge, London, 1999) p. 222.

¹⁴ See Maswood, *supra* note 12, p. 19.

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.¹⁵ China further deepened the relationship in 1997, pioneering the ASEAN Plus One framework, which Japan and Korea quickly emulated, creating ASEAN Plus Three. Though only an informal addition to annual ASEAN meetings, the APT may be the only forum in which officials from East and Southeast Asia, but nowhere else, convene to discuss international affairs.¹⁶

China's relationship with ASEAN has created trust throughout 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".¹⁷ This allayed China's coastal neighbours, especially the Philippines and Vietnam, which have outstanding disputes with China over island chains in the South China Sea.¹⁸ In addition, China and ASEAN further committed themselves to cooperate in the realms of economics, politics and security in the October 2003 Joint Declaration on Peace and Prosperity.¹⁹

China has also established its own regional initiatives,²⁰ most notably the Shanghai Cooperation Organization (SCO). This grew out of the "Shanghai Five", an agreement signed by China, Kazakhstan, Kyrgyzstan, Russia and Tajikistan for the purposes of "confidence-building in the military sphere" and "mutual reduction of military forces in border areas".²¹ Over time, the countries have committed themselves to non-military threats, such as arms smuggling, drug-trafficking and religious extremism,²² and lately toward economic cooperation, energy and trade. China has thus carefully sculpted a credible, and peaceable, regional profile.

2.2.2. *Japan: Regional Production Networks*

On the whole, Japan has been a tepid regionalist. Recent events suggest a more dynamic regional policy, but for most of the post-War period, Japanese integration

¹⁵ See ASEAN Regional Forum, Ministry of Foreign Affairs of the People's Republic of China, 5 August 2002, <www.fmprc.gov.cn/eng/wjlb/zjzg/gjs/gjzzyhy/2612/t15313.htm>.

¹⁶ See H. De Santis, 'The Dragon and the Tigers: China and Asian Regionalism', 23 *World Policy Journal* (Summer 2005) pp. 27–28.

¹⁷ Declaration on the Conduct of Parties in the South China Sea, 4 November 2002, Article 4.

¹⁸ De Santis, *supra* note 16, p. 24 (noting Chinese contestation of the Spratly Islands, with Vietnam, and Mischief Reef, with the Philippines).

¹⁹ 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, 8 October 2003.

²⁰ China also plays important roles in the Kunming Initiative, which fosters economic ties between China and South Asia, and the Greater Mekong Sub-region, which improves infrastructure in China and Southeast Asia.

²¹ Declaration on Establishment of Shanghai Co-operation Organization, 15 June 2001, Article 6.

²² 'Five-Nation Joint Statement Stresses Further Cooperation in Regional Security', *People's Daily Online*, 26 August 1999.

efforts were limited to the economy. Of course, the Japanese private sector and government have poured money into Southeast Asia, China, Korea and Taiwan.²³ The twin arms of governmental official development assistance (ODA) and corporate foreign direct investment (FDI) created transnational production lines that now snake across East and Southeast Asia.²⁴

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 neighbours,²⁵ a tendency that continues until the present. With the re-evaluation of the yen in 1985, investment in Asia soared; the amount of investment between 1986 and 1989 surpassed the entire amount of investment between 1951 and 1985.²⁶

When the cost of manufacturing goods in the Japanese archipelago grew too expensive, automobile and electronics manufacturers offshored their production facilities to Southeast Asia. In any given Honda, for instance, one might find an Indonesian engine, Malaysian fenders, Thai clutches and a Filipino transmission.²⁷ A similar transnational effort converges to produce a Panasonic television.²⁸

These networks created a buffer zone for Japanese corporations as they faced increasingly severe competition from globalisation and Euro-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’”.²⁹ 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.³⁰ 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.³¹

Despite these achievements, Japan has shown little interest in regionalisation outside of the economic realm. This may reflect in part Japan’s unique relationship

²³ G. D. Hook, ‘Japan’s Role in the East Asian Political Economy: An Emerging Region?’, in G. D. Hook and H. Harukiyo (eds.), *The Political Economy of Japanese Globalization* (Routledge, London, 2001) p. 49.

²⁴ T. Shiraishi, ‘Japan & Southeast Asia’, in P. J. Katzenstein and T. J. Pempel (eds.), *Network Power: Japan and East Asia* (Cornell University Press, Ithaca, 1997) p. 187.

²⁵ R. F. Doner, ‘Japan in East Asia: Institutions and Regional Leadership’, in Katzenstein and Pempel, *ibid.*, p. 203.

²⁶ *Ibid.*, p. 212.

²⁷ *Ibid.*, p. 214.

²⁸ T. Morris-Suzuki, ‘Japanese Technology and the New International Division of Knowledge in Asia’, in S. Tokunaga (ed.), *Japan’s Foreign Investment & Asian Economic Interdependence: Production, Trade & Financial Systems* (University of Tokyo Press, Tokyo, 1992) p. 143.

²⁹ See W. Hatch, ‘Regionalization Trumps Globalization: Japanese Production Networks in Asia’, in R. Stubbs and G. R. Underhill (eds.), *Political Economy & The Changing Global Order* (Oxford University Press, Oxford, 2000) p. 387.

³⁰ *Ibid.*, p. 390.

³¹ See Morris-Suzuki, *supra* note 28, p. 145.

with the United States, which has forced Japan to take a more limited stance in international affairs generally and security arrangements in particular. Nonetheless, Japan has been free to pursue other forms of integration, whether in the spheres of politics, monetary integration or culture.

Japan's recently assertive FTA strategy in one way deviates from this low profile. But it is vitally predicated upon these economic foundations; Japanese investment and aid in Southeast Asia have given it a leg up in negotiating agreements with Singapore, Thailand, Malaysia, Indonesia and the Philippines.

3. 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, initially lacked the diplomatic networks, mutual trust and institutional background that would permit such arrangements. After a decade or so of network building, these countries have entered an FTA boom. 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.

3.1. *China: Diversity and Conformity*

China has signed Closer Economic Partnership Arrangements (CEPAs) with Hong and Macao, and FTAs with ASEAN, Chile and Pakistan.³² It 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,³³ and announced its intention to begin negotiations with Korea.³⁴ Chinese interest in free trade thus extends far beyond its immediate neighbours in the Asia-Pacific, though that continues to be the important locus in 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

³²⁾ See 'China to advance bilateral, regional free trade negotiation', *China View*, 15 September 2006, at <news.xinhuanet.com/english/2006-09/15/content_5097127.htm>.

³³⁾ *Ibid.*

³⁴⁾ See 'China, ROK agree to start negotiations on free trade area', *People's Daily Online*, 14 October 2006, <english.people.com.cn/200610/14/eng20061014_311722.html>.

property rights, mutual recognition of standards, harmonisation of custom procedures, and so on.³⁵ 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 and even conciliatory. This makes it a desirable and dependable trading partner for countries throughout the region, and perhaps the world.

3.1.1. *Prelude: Hong Kong and 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 CEPAS, which brought the former colonies closer into the Chinese fold, marked tentative steps toward freer bilateral trade.³⁶ 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”.³⁷ 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 China’s next rounds of FTAs.

China’s first trade liberalisation scheme covered a fairly typical range of topics: trade in goods, trade in services and investment facilitation. 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 1 January 2006.³⁸

Trade in services covers various sectors, from the conventional (advertising, accounting, telecommunications, insurance) to the rarer (tourism, legal services, recognition of professional qualifications).³⁹ Given Hong Kong’s status as a major financial hub, cooperation in banking and securities was of particular importance. The agreement a) permits state-owned banks to locate their international treasury and foreign exchange centres 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.⁴⁰ Quite understandably, China wants to draw on Hong Kong’s expertise to build a sophisticated financial sector. Moreover, China

³⁵ R. S. Rajan, ‘Trade Liberalization and the New Regionalism in the Asia-Pacific: Taking Stock of Recent Events’, 5 *International Relations of the Asia Pacific* (2005) p. 221.

³⁶ China signed CEPAs with Hong Kong on 29 June 2003, and with Macao on 17 October 2003. Since the agreements are essentially the same, the focus here is on the Hong Kong CEPA.

³⁷ Mainland and Hong Kong Closer Economic Partnership Arrangement (hereinafter CEPA), 29 June 2003, Preamble.

³⁸ *Ibid.*, Article 5.

³⁹ See generally CEPA Annex 4, Specific Commitments on Liberalization of Trade in Services.

⁴⁰ CEPA, Article 13.

expects that Hong Kong service-providers and professionals will train Chinese workers in these new fields.⁴¹

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.⁴² More apropos trade, Hong Kong and China have agreed to do away with anti-dumping measures.⁴³ From its very first free trade agreement, 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.

3.1.2. *China-Asian Free Trade Agreement*

As described above, China actively cultivated better relations with its Southeast Asian neighbours 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.⁴⁴

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 loosely worded Framework Agreement with the multiple aims of: strengthening economic, trade and investment cooperation; liberalising and promoting trade in goods and services; exploring new areas for closer economic cooperation; and facilitating the economic integration of the least developed ASEAN members.⁴⁵ As with the Hong Kong CEPA, this agreement introduces several FTA 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.⁴⁶ Rather than grandiose

⁴¹ A. Antkiewicz and J. Whalley, 'China's New Regional Trade Agreements', 11 *National Bureau of Economic Research, Working Paper* 10992 (2004).

⁴² CEPA, Article 14.

⁴³ *Ibid.*, Article 7.

⁴⁴ J. Wanandi, 'China and Asia Pacific Regionalism', in K. Ryosei and J. Wang (eds.), *The Rise of China and a Changing East Asian Order* (Japan Center for International Exchange, Tokyo, 2004) pp. 44, 45.

⁴⁵ Framework Agreement on Comprehensive Economic Co-operation Between the Association of Southeast Asian Nations and the People's Republic of China (hereinafter Framework Agreement), 5 November 2002, Article 1.

⁴⁶ See Liu, *supra* note 3, pp. 20–22.

plans or dramatic breakthroughs, CAFTA has come into existence gradually, annex-by-annex, as a chain of modest steps. ASEAN diplomacy typically operates in the following way: issues are discussed; a level of agreement on certain (but 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. The Agreement on Trade in Goods, the first annex to the Framework Agreement, entered into force in 2005.⁴⁷ It calls for the gradual reduction of tariffs by 2010 for the more developed members of ASEAN, and 2015 for the less developed members.⁴⁸ By that time, over 90 percent of trade between ASEAN and China will be tariff-free,⁴⁹ liberalising “substantially all trade” within a decade.⁵⁰

The first installation of the Agreement on Trade in Goods focused on agriculture. With the Early Harvest Program,⁵¹ China and several members of ASEAN agreed to slash tariffs on 600 agricultural products beginning in 2004, eliminating them altogether by 2006.⁵² Significantly, China takes the lead by lowering its tariffs before many of its ASEAN partners follow suit.⁵³ By all accounts, this has been a success for China and ASEAN; in just one year, Chinese agricultural imports from ASEAN grew 46.6 percent, and exports grew 31.2 percent.⁵⁴ 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);⁵⁵ a Dispute Settlement Mechanism (2004);⁵⁶ a Plan of Action for Information Technology (2007);⁵⁷ and

⁴⁷ 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, 29 November 2004.

⁴⁸ *Ibid.*, Preamble.

⁴⁹ See PRC Ministry of Foreign Commerce, *Minister Bo Xilai Answering Questions of the Press on China-ASEAN FTA*, <boxilai2.mofcom.gov.cn/aarticle/speech/200608/20060802846310.html>.

⁵⁰ By agreeing to free up substantially all trade, China and ASEAN acknowledge the standards articulated, though rarely enforced, by the WTO.

⁵¹ See ‘China-ASEAN Agriculture Trade on Fast Track’, *China Daily*, 9 August 2004, <china.org.cn/english/BAT/103399.htm>.

⁵² *Ibid.*

⁵³ A. Greenwald, ‘Note: The ASEAN-China Free Trade Area (ACFTA): A Legal Response to China's Economic Rise?’, 16 *Duke Journal Comparative and International Law* (2006) p. 198.

⁵⁴ *Minister Bo Xilai Answering Questions*, *supra* note 49.

⁵⁵ 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, 6 October 2003.

⁵⁶ 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, 29 November 2004.

⁵⁷ Plan of Action to Implement the Beijing Declaration on ASEAN-China ICT Cooperative Partnership for Common Development, 14 January 2007.

most recently a Service Trade Agreement.⁵⁸ Some of these, such as the Amendment Protocol, contain an elaborate list of procedures, contrasting quite markedly with the heavily 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.

3.1.3. *Outward Bound: Chine-Chile Free Trade Agreement*

On 1 October 2006, the first part of the China-Chile FTA went into effect.⁵⁹ 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*, minimising ambiguity and clearly illuminating all details. China can thus modulate between the keys of Western formalism and Asian incrementalism.

Between 2007 and 2017, China and Chile will progressively eliminate tariffs on 97 percent of tariff lines.⁶⁰ In the first cut, already in effect, China eliminated tariffs on 28 percent of its tariff lines, while Chile eliminated them on 43 percent of its tariff lines.⁶¹ The first round of tariff reduction focuses on agricultural products, chemicals, textiles and electronics.⁶² 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.⁶³ In other words, *procedure* is a critical component to this agreement, and proceeds in elaborate detail.

3.1.4. *Investing in the West: Chinese-Pakistan Free Trade Agreement*

Unlike CAFTA, the China-Pakistan Free Trade Agreement (CPFTA)⁶⁴ did not spring from a long courtship between the two countries; it took just 18 months

⁵⁸ See Ministry of Commerce of the People’s Republic of China, *China and ASEAN Signed the Service Trade Agreement*, 16 January 2007, <english.mofcom.gov.cn/aarticle/subject/ cameetings/ lanmuc/200701/20070104275170.html>.

⁵⁹ Free Trade Agreement Between the Government of the People’s Republic of China and the Government of the Republic of Chile (hereinafter CCFTA), 18 November 2005.

⁶⁰ Ministry of Commerce of the People’s Republic of China, *Sino-Chilean Free Trade Agreement to be Enforced as of Oct. 1*, 3 September 2006, <english.mofcom.gov.cn/aarticle/newsrelease/significanctnews200609/20060903198707.html>.

⁶¹ See ‘China, Chile put free trade agreement into effect’, *China View*, 1 October 2006, <news.xinhuanet.com/english/2006-10/01/content_5161337.htm>.

⁶² *Ibid.*

⁶³ CCFTA, Article 2.

⁶⁴ Free Trade Agreement Between the Government of the People’s Republic of China and the Government of the Islamic Republic of Pakistan (hereinafter CPFTA), 24 November 2006.

and six rounds of talks.⁶⁵ While Sino-Pakistani diplomatic relations have been warm for most of their contemporary history⁶⁶ (both states were founded in the late 1940s), the FTA still seemed a surprise. China's regionalisation efforts had focused primarily on Southeast Asia, and to a lesser extent on Central Asia. The CPFTA attests to both China's newfound desire to be a regional leader, and Pakistan's keen appetite for foreign investment and technology.

The CPFTA is not expansive, covering trade in goods and 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.⁶⁷ 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 percent of the tariff lines, but only spells out the reduction of 85 percent of the tariff lines.⁶⁸ Flexibility seems the operative word here.⁶⁹

In addition, CPFTA slakes some of Pakistan's thirst for foreign investment.⁷⁰ It provides protection to Chinese investors in Pakistan, which has already led Chinese companies to invest in Pakistan's industry and infrastructure.⁷¹ The first signs are already visible.⁷² In this light, free trade seems a distant afterthought to the imminent realisation of financial cooperation. China is steadily cementing its position as a regional power.

3.2. *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 minimise the "adverse effects" of FTAs; they wanted the General Agreement on Tariffs and Trade (GATT) to provide discipline to the

⁶⁵ See 'China, Pakistan sign free trade agreement', *People's Daily Online*, 24 November 2006, <english.peopledaily.com.cn/200611/24/eng20061124_324918.html>.

⁶⁶ See Ministry of Commerce of the People's Republic of China, *Key Developments in Sino-Pakistani Relations*, 25 November 2006, <english.mofcom.gov.cn/aarticle/subject/cnpkfta/lanmub/200611/20061103886177.html>.

⁶⁷ Category I tariffs will be reduced to zero by 2010. Category II tariffs will be reduced to 5 percent or below by 2012. Category III tariffs will be reduced to 50 percent by 2012. Category IV tariffs will be reduced 20 percent by 2012. Category V tariffs will remain as they are. See CPFTA, Annex 1, Elimination of Import Customs Duties.

⁶⁸ *Ibid.*

⁶⁹ Indeed, it provides for maximal flexibility by permitting either party to terminate the agreement within six months of notifying the other. CPFTA, Article 82.

⁷⁰ See 'China, Pakistan to Ink Free Trade Deal', CBS/AP, 23 November 2006.

⁷¹ CPFTA, Articles 46–56.

⁷² Twenty Chinese companies have committed to invest in the Pakistan-China Industrial Zone. See S. Fazl-e-Haider, 'Chinese eye Pakistan's real estate', *Asia Times Online*, 17 January 2007, <www.atimes.com/atimes/South_Asia/IA17Df03.html>.

formation and regulation of FTAs.⁷³ Until quite recently, 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.⁷⁴ Japan's Ministry of Foreign Affairs (MOFA) captures this change with paradoxical brevity: "FTAs increase Japan's bargaining power in WTO negotiations."⁷⁵ Needless to say, credibility in multilateral institutions is not the primary aim of Japan's Economic Partnership Agreement (EPA) policy. The MOFA has also noted Japan's desire to facilitate community-building, stability and prosperity in East Asia.⁷⁶ For the first time since the Pacific War, Japan is seriously attempting to transform its economic capital 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 selected areas.⁷⁷ This section first examines the EPAs with Singapore, Mexico and Malaysia, and then takes up Japan's ongoing negotiations.

3.2.1. *Japan-Singapore New Age Economic Partnership*⁷⁸

In what has become a standard trend among East Asian countries, 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.⁷⁹ Singapore's advanced markets,⁸⁰ FTA

⁷³ H. Saburi, 'The GATT/WTO and Regional Integration', 44 *Japanese Annual International Law* (2001) p. 77.

⁷⁴ S. M. Pekkanen, 'Bilateralism, Multilateralism, or Regionalism? Japan's Trade Forum Choices', 5 *Journal of East Asian Studies* (2005) pp. 92, 95.

⁷⁵ See Ministry of Foreign Affairs of Japan, *Japan's FTA Strategy (Summary)*, <www.mofa.go.jp/policy/economy/fta/strategy0210.html>, (hereinafter Japan's FTA Strategy).

⁷⁶ See Ministry of Foreign Affairs of Japan, *Basic Policy Towards Further Promotion of Economic Partnership Agreements (EPAs)*, Article 1-1, <www.mofa.go.jp/policy/economy/fta/policy0412.html>.

⁷⁷ Economic Partnership Agreements (EPAs) differ from FTAs chiefly in their scope. FTAs, *strictu sensu*, aim to eliminate tariffs only on goods and services. EPAs aim for deeper integration of the two economies, and may provide for intellectual property rights, free movement of persons and labour, investment mechanisms, educational and scientific exchange. See Ministry of Economy, Trade and Investment (METI), *Japan's Policy on FTAs/EPAs*, March 2005; T. Aso, 'The Hallmarks of Economic Diplomacy for Japan', speech delivered at the National Press Club of Japan, 8 March 2006, <www.mofa.go.jp/announce/fm/aso/speech0603.html>.

⁷⁸ Agreement Between Japan and the Republic of Singapore for a New-Age Economic Partnership (hereinafter JSEPA), 13 January 2002.

⁷⁹ 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 E. S. Krauss, 'The US, Japan, and Trade Liberalization: From Bilateralism to Regional Multilateralism to Regionalism', 16 *Pacific Review* (2003) p. 320.

⁸⁰ *Ibid.*, p. 319.

experience⁸¹ and strong intellectual property regime persuaded Japanese officials that the agreement would make a good “learning experience”.

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 key Southeast Asian players. Though a bilateral agreement, JSEPA envisions Japanese involvement with the rest of Southeast Asia,⁸² particularly countries with nascent capital markets.⁸³ 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.

3.2.2. *Japan-Mexico Economic Partnership Agreement*

In 2004, Japan signed its first, and perhaps only, EPA with a non-Asian state. Availing itself of Mexico’s own intricate FTA network of 43 countries, Japan gained tariff-free access to key European, North American and South American markets.⁸⁴ This is as far as Japan needs to go in the Americas. Mexico benefits from lower tariffs on Japan’s USD 60 billion food industry.⁸⁵ 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 both seen significant increases in bilateral trade, with Japan doing slightly better.⁸⁶

3.2.3. *Japan-Malaysia Economic Partnership Agreement*

After two years of negotiation, the Japan-Malaysia Economic Partnership Agreement entered into force in July 2006. Japan’s decades of economic engagement with Malaysia are well represented. The EPA progressively eliminates tariffs

⁸¹ Singapore signed its first FTA with New Zealand in November 2000. Since then, it has signed agreements with 13 other countries, including Canada, European Free Trade Association (EFTA), and the US. See Ministry of Trade and Industry – Singapore, *Singapore’s FTA Network: Expanding Markets, Connecting Partners*, <www.iesingapore.gov.sg/wps/portal/!ut/p/kcxml/04_Sj9SPykssy0xPLMnMz0vM0Y_QjzKLN4g3C_UFSYGY5oFm-pFoYo4YImah3philWEIMV-P_NxU_SB9b_0A_YLc0NDQ_iHJHAAF8_pE!/delta/base64xml/L3dJdyEvd0ZNQUFzQUMvNEIVRS82XzBFNIRV>.

⁸² JSEPA, Preamble (“enhancing economic ties between the Parties would strengthen Japan’s involvement in Southeast Asia”).

⁸³ *Ibid.*, Article 1(b)(i).

⁸⁴ See T. Miyazaki, ‘Envoy: Japan-Mexico partnership beneficial’, *Daily Yomiuri*, 5 April 2006.

⁸⁵ ‘Japan’s parliament ratifies free trade pact with Mexico’, *Agence France Presse – English*, 10 November 2004.

⁸⁶ See Miyazaki, *supra* note 84 (noting Mexican exports increased by 30 percent and Japanese exports by 40 percent during the first ten months).

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 modernise its aging factories. The agreement eliminates tariffs on 97 percent of the value of bilateral trade,⁸⁷ including agricultural products, fisheries, footwear, rubber and textiles. This is good training for the Japanese agricultural sector, which will face even severer competition if and when other agreements with other countries materialise.

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”.⁸⁸ An example of the latter was announced last October, when Japan agreed to open a “Skills Training Centre” in Shah Alam, 15 miles west of Kuala Lumpur. The centre will train “master trainers” in the latest automotive technologies developed in Japan; they will in turn go back to their companies and instruct colleagues.⁸⁹ The footprint of the Japanese automobile industry is once again apparent, giving Malaysia a slight edge *vis-à-vis* its regional competitors: Indonesia, the Philippines and Thailand.

3.2.4. *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.⁹⁰ Nevertheless, one of these agreements is likely to be Japan's next.⁹¹

4. 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

⁸⁷ ‘Japan Hopes for Better Economic Ties with Malaysia via JMEPA’, *Malaysia Economic News*, 2 October 2006.

⁸⁸ Agreement Between the Government of Japan and the Government of Malaysia for an Economic Partnership, 13 December 2005, Article 1(b)–(d).

⁸⁹ ‘Japanese-Style “Train the Trainer” Centre for Local Auto Sector’, *Malaysian Economic News*, 21 October 2006.

⁹⁰ See e.g. A. Jaiimsin, ‘Thailand-Japan pact could damage auto-parts industry’, *Bangkok Post*, 26 February 2007; ‘Indonesia to exempt duty on Japanese auto parts’, *People's Daily Online*, 24 August 2006; *Briefing Paper on the Japan-Philippines Economic Partnership Agreement (JPEPA)*, prepared by the office of Rep. Teddy Casiño, pp. 2, 3, <www.bilaterals.org/IMG/pdf/JPEPA_briefing_Paper-final.pdf>.

⁹¹ The Ministry of Foreign Affairs of Japan, *Japan's Efforts on Economic Partnership Agreement (EPA)*, <globalwarming.mofa.go.jp/policy/economy/fta/effort.pdf>, (hereinafter Japan's Efforts).

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 will help situate the discussion.

4.1. *The WTO and FTAs*

As WTO members, China and Japan must abide by certain obligations before establishing free trade agreements. In addition to notifying the WTO,⁹² they must satisfy three requirements.⁹³ First, the elimination of duties and other restrictions must apply to “substantially all the trade” between countries.⁹⁴ 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”.⁹⁵ Third, the formation of the FTA must take place “within a reasonable period of time”.⁹⁶ As a developing country, China may avail itself of the less onerous standards articulated in the Enabling Clause.⁹⁷

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 percent of trade in goods, with no economic sectors entirely excepted.⁹⁸ Japan’s EPAs eliminated tariffs on 98 percent of trade with Singapore,⁹⁹ 94 percent with Mexico and 95 percent with Malaysia.¹⁰⁰ Japan has also agreed to do so within the generally accepted “reasonable period” of ten years.¹⁰¹

China has also taken the requirement seriously. The agreements with ASEAN and Chile both eliminate tariffs on 90 percent of trade in goods within a decade. The agreement with Pakistan, by contrast, does not extend quite so far, in effect

⁹² See Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, General Agreement on Tariffs and Trade (hereinafter GATT), Article XXIV(7)(a).

⁹³ See S. M. Cone, III, ‘The Promotion of Free-Trade Areas Viewed in Terms of Most-Favored-Nation Treatment and “Imperial Preference”’, 26 *Michigan Journal International Law* (2005) p. 6.

⁹⁴ GATT, Article XXIV (8)(b).

⁹⁵ *Ibid.*, Article XXIV (5)(b).

⁹⁶ *Ibid.*, Article XXIV (5)(c).

⁹⁷ See Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, 28 November 1979 (permitting developing countries to “accord differential and more favourable treatment to developing countries, without according such treatment to other” members).

⁹⁸ See M. Matsushita *et al.*, *The World Trade Organization: Law, Practice and Policy* (Oxford University Press, Oxford, 2003) pp. 359, 360.

⁹⁹ Ministry of Foreign Affairs, *Overview of Japan’s International Situation and Japanese Diplomacy*, 2004, p. 34, <www.mofa.go.jp/policy/other/bluebook/2004/chap1.pdf>.

¹⁰⁰ See ‘Japan Hopes for Better Economic Ties with Malaysia via JMEPA’, *supra* note 88.

¹⁰¹ See *e.g.* ‘Malaysia, Japan to Hold Meeting to Enhance Economic Ties’, *Asia Pulse*, 11 July 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).

aspiring to reach 90 percent, but concretely providing for only 85 percent. Nevertheless, given that Pakistan and China can avail themselves of the lower standards dictated 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”.

4.2. *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.¹⁰² With each new agreement, China and Japan augment their regional stature.

China has taken pains to accommodate the expectations of partner countries. Chile, as its previous FTAs show,¹⁰³ 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, flexibility is the operative word 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 favoured 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 add, 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. Decades of investment and involvement in Southeast Asia have paved the way for Japan’s first wave of EPAs in that region. 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.

¹⁰² See S. S. Kim, ‘Regionalization and Regionalism in East Asia’, 4 *Journal of East Asian Studies* (2004) p. 51.

¹⁰³ Chile’s FTAs with Canada (1997), Mexico (1999), Costa Rica (2002), El Salvador (2002), the US (2004), Chile (2004) and the European Free Trade Association (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 J. Crawford and R. V. Fiorentino, ‘The Changing Landscape of Regional Trade Agreements’, *WTO Discussion Paper* No. 8, 2005, pp. 29–33, <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 kind 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 caregivers into Japan? In honing its FTA practices, Japan is closely re-evaluating opportunities and the strengths of its relationships with various "benefactor states" in Southeast Asia.

5. Conclusion

Since 2002, a new wave of regional integration has swept East Asia. In their own ways, China and Japan have promoted economic regionalisation through a wide array of FTAs/EPAs that crisscross the Asia-Pacific. This movement has multiple motivations, including the protectionism of regional efforts elsewhere, heightened competitiveness in numerous sectors and the realisation 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 previous diplomatic efforts 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 differences.