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Papers

Prospects for Linking PTAs in the Asia-Pacific Region

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The rapid proliferation of preferential trading agreements (PTAs) in the Asia-Pacific region in the early years of the twenty-first century is by now a very well-known phenomenon. In the last five years at least 18 PTAs between APEC members have been concluded, with at least a further 20 under negotiation. A full list of these initiatives is provided in Table 1. A number of others are at various stages of study or discussion, and in some of these cases the opening of negotiations is believed to be imminent. Adding in the five agreements that were already in existence in the region before the turn of the century, a realistic assessment of current initiatives suggests therefore that there could be over 40 PTAs operating in the APEC region in the near future, possibly more. This is in addition to the PTAs that APEC members have been pursuing and concluding with partners outside the APEC region.

All but two of the concluded agreements are bilateral free trade agreements (FTAs). Parallel to the spread of these bilateral FTAs there have been ongoing efforts to promote the concept of a regional trade bloc in East Asia. A proposal for an East Asian Free Trade Agreement (EAFTA), covering the members of the ASEAN Plus Three group, has been on the table since 2000, but agreement to move forward on this proposal has not so far been reached. In the meantime the three major Northeast Asian economies (China, Japan and Korea) have each pursued their separate preferential trading arrangements with the Southeast Asian economies of the ASEAN (Association of Southeast Asian Nations) group. China and Korea have concluded free trade agreements with ASEAN as a group, while Japan initially preferred to pursue bilateral FTAs with individual ASEAN economies, and has only recently taken steps toward an agreement with the full ASEAN group.

Table 1: Preferential Trading Agreements Between APEC Economies
(Listed by participant members rather than official name of the agreement)

(a) Initiatives Active Since 1999

Agreements Concluded	**Agreements Under Negotiation[1]**
Bilateral	
Singapore-New Zealand	Japan-Korea
Singapore-Australia	Japan-Thailand (substantially agreed)
Singapore-Japan	Japan-Philippines (substantially agreed)
Singapore-USA	Japan Indonesia
Singapore Korea	Korea-Thailand
Chile-USA	US-Thailand
Chile-Korea	Australia-China
Chile-China	Australia-Malaysia
Mexico-Japan	New Zealand-China
US-Australia	New Zealand-Malaysia
Perú-USA	Peru-Thailand
Thailand-Australia	Singapore-Canada
Thailand-New Zealand	Korea-Mexico
China-Hong Kong SAR	US-Malaysia
Japan - Malaysia	US-Korea
Thailand-China[2]	Chile-Thailand

	Korea-Canada
Plurilateral	
ASEAN-China	ASEAN-CER
Chile-New Zealand-Singapore-Brunei (TPSEP)[3]	ASEAN-Japan
	ASEAN-Korea (FTAA)

(b) Agreements In Existence Before 1999

NAFTA (USA, Canada, Mexico)
ANZCERTA (Australia, New Zealand)
AFTA (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam)
Chile-Canada
Chile-Mexico

Sources: *APEC Secretariat, Member Economies/ FTA/RTA Information (http://www.apec.org/webapps/fta_rta_information.html)*
Okamoto, J. (2006)

Although new PTAs between APEC economies are routinely announced as steps toward achievement of APEC's Bogor goals, in one respect they represent a fundamental departure from the original APEC vision. The Bogor Declaration envisages a region whose markets would be integrated by the establishment of free trade and investment within the region on a non-discriminatory basis. Preferential trading agreements on the other hand are inherently discriminatory. While they result in liberalised trade between their members, they discriminate against non-members. A multiplicity of preferential trading agreements in the Asia-Pacific region gives rise to complex patterns of preference, discrimination an d exclusion, and is a recipe for fragmentation of regional markets and trading relationships, thereby denying APEC economies and their businesses the full efficiencies and other benefits that could be attainable through the greater integration of the markets of the region.

The trend to proliferating PTAs is however likely to be irreversible in the short run, since the magnetic attraction of the larger economies as preferential trading partners has given rise to a "domino effect", whereby smaller economies of the region find themselves impelled to seek their own bilateral agreements with major trading partners, to avoid being disadvantaged relative to their competitors. A tendency toward the emergence of "hub and spoke" configurations of PTAs is a further consequence of this effect, in which the benefits of preferential trade liberalisation accrue disproportionately to the "hubs".

From a business perspective, concern over the fragmentation effect of multiplying PTAs has centred on the potential for increased transaction costs associated with the development across the region of a "spaghetti bowl" of PTAs containing inconsistent provisions on matters such as rules or origin. The proposals for a regional trade bloc in East Asia have also drawn concern over the likely consequence of a "split down the middle of the Pacific" between separate trading blocs on either side of the ocean, again limiting the potential for the region as a whole to benefit from the full integration of its markets.

Given these concerns it is not surprising that increasing attention has been given to exploring ways of countering the fragmentation effects of multiplying PTAs. One possible avenue, which is the subject of this paper, is the promotion of "convergence" between existing and future PTAs in the region.

Meanings of Convergence

Convergence among PTAs can be considered in a number of dimensions. One dimension relates to the mechanisms for linkage between the existing PTAs and the likelihood that members of existing agreements will seek such linkages. At the most ambitious level, linkage could involve the formation of progressively larger preferential groupings, including through the expansion and amalgamation of existing PTAs, so that they eventually converge towards regional free trade and investment. A more limited and possibly more complicated process could involve the evolution of parallel agreements with overlapping membership that may co-exist with each other. It is possible, even likely, that both forms of convergence could occur simultaneously prior to the final stage of full regional integration.

The question arises as to whether the spread of such linkages might eventually achieve the objective of full Asia-Pacific integration. If they do not, trade and investment relations in the Asia-Pacific region could remain fragmented by discrimination. Discrimination between the larger groupings that might have emerged through the linkage processes could arguably be more damaging, although the "spaghetti bowl" would be simplified by coalescence into a small number of larger preferential groupings.

A second, and obviously related dimension of convergence concerns the extent to which linkages between agreements require harmonisation of provisions and the extent to which such harmonisation is feasible. There are a number of possible variants of harmonisation of FTA provisions, depending in part on the nature of the linkage that is being pursued.

If convergence is viewed as the creation of a single agreement through the amalgamation or expansion of existing agreements, the neatest solution is of course the establishment of a single set of provisions to which all members of the new larger agreement subscribe. This requires either full acceptance by all parties of the provisions of one of the pre-existing agreements, or agreement by all parties to a modified set of provisions acceptable to all. A possible variant is the adoption of a "variable geometry", or "tiered" approach", with provisions divided into a common "core" set of provisions adopted by all parties, and a further set of provisions from which some members may be allowed to wholly or partly opt out. The conditions under which opting out is permitted might also be the subject of agreement among the parties.

Where convergence takes the form of co-existing agreements with overlapping membership there will inevitably be differences between the provisions of the agreements concerned. If the difference lies simply in the range of issues covered, the position is similar to that of a single agreement with "variable geometry". Where there is inconsistency between the agreements in provisions on a specific issue, potentially more difficult issues arise as to how the inconsistency will be resolved for the parties that are members of both agreements.

Convergence could also involve the adoption of common provisions across the separate PTAs in the region, without necessarily proceeding toward amalgamation of the agreements, at least initially. Adoption of common provisions could be regarded as an end in itself, or a step towards future amalgamation of agreements. Adoption of common provisions has the potential to simplify the "spaghetti bowl", provided that the common provisions embrace issues that give rise to the most costly "spaghetti bowl" effects, such as rules of origin. The extent of the contribution to achieving full regional integration would depend also on the extent to which the common provisions cover the trade flows of the region. Discrimination and consequent fragmentation of regional trading relationships will remain entrenched to the extent that significant regional trade flows remain outside the scope of the common provisions.

Existing "Linkage Initiatives"

There are several examples in the Asia-Pacific region of initiatives that involve linkages between pre-existing agreements. The Trans-Pacific Strategic Economic Partnership (TPSEP) widens a zone of free trade that originally embraced only Singapore and New Zealand, to include also Chile and Brunei Darussalam. Some of the ASEAN Plus One initiatives overlap with bilateral PTA initiatives between the non-ASEAN partner and individual ASEAN economies. The ASEAN-China FTA (ACFTA) subsumed an earlier agreement between China and Thailand. Korea has FTAs both with Singapore and with the ASEAN group as a whole[4]. Japan, which has an FTA with Singapore and has been negotiating bilaterally with Thailand, Malaysia, the Philippines and Indonesia, is now moving to negotiate an FTA with ASEAN as a group. Australia and New Zealand each have FTAs with Singapore and Thailand as well as negotiations under way with Malaysia, and are also negotiating for an FTA with the full ASEAN membership. If the EAFTA were to proceed it would effectively represent convergence of the "ASEAN Plus One" initiatives involving China, Japan and Korea.

The case of ACFTA and the China-Thailand agreement is the only example to date of one agreement being fully amalgamated into the other. In this case the relatively narrow China-Thailand agreement, which covered only agricultural products, was treated simply as an "early harvest" precursor of the ACFTA, which has wider coverage.

The TPSEP on the other hand has not superseded the earlier New Zealand Singapore Closer Economic Partnership (NZSCEP) agreement, which will continue to operate in parallel to it. The rules of origin in the TPSEP and the NZSCEP are quite different, based in the former case on change in customs classification and in the latter case on regional value content. This presumably means that exporters in Singapore and New Zealand will be able to choose the rule of origin regime under which they export to each other's market. Since the TPSEP has not yet entered into force, it is too early to assess how this might work out in practice. Differences in issue coverage between the two agreements are likely to be less problematic. The absence of an investment chapter in the TPSEP, for example, presumably means that investment relations between New Zealand and Singapore will be governed solely by the NZSCEP.

The ASEAN-Japan negotiations and the negotiations for an ASEAN-Australia-New Zealand FTA (AANZFTA) also raise interesting issues. These are the cases where ASEAN's prospective partners have already concluded or are in the process of negotiating bilateral FTAs with individual ASEAN members. It is not yet clear how these bilateral FTAs will relate to the wider agreements with ASEAN as a group. One possibility is a "variable geometry" approach where the prospective ASEAN-Japan FTA and the AANZFTA contain a "core" of provisions in common with the bilateral FTAs, leaving the bilateral FTAs to go further in areas where agreement cannot be reached in the wider agreement.

On the other hand there may be pressure for the ASEAN-wide agreements to adopt provisions that are inconsistent with provisions in the bilateral FTAs, perhaps due to changes in perceptions as to what provisions are desirable. For example Australia and New Zealand are known to be pressing ASEAN to adopt rules of origin based on the change in customs classification approach in AANZFTA, contrary to the regional value content approach adopted in their respective agreements with Singapore, as well as to the approach followed in AFTA. Adoption of regional value content rules in AANZFTA on the other hand, as preferred by ASEAN, would clash with the rules based on change in customs classification adopted in Australia's and New Zealand's bilateral FTAs with Thailand. In the case of the ASEAN-Japan FTA ASEAN is pressing Japan to adopt the 40% regional value content rule that is ASEAN's preferred standard, which is significantly more

generous than the regional value content rules that Japan has sought in its bilateral FTA negotiations with ASEAN members.

Similar issues will inevitably arise if an EAFTA is to be negotiated. In that case there will be questions of how EAFTA will cohere both with ACFTA, the ASEAN-Korea FTA and the proposed ASEAN-Japan FTA, and with any bilateral FTAs that remain in force between China, Japan and Korea and individual ASEAN members.

The examples that have arisen so far are all cases of how a pre-existing agreement should relate to a new agreement that includes both the members of the pre-existing agreement as well as a number of additional members. Only in the case of Thailand-China and ACFTA has the pre-existing agreement been fully subsumed into the newer agreement, and this was a relatively simple case, as already noted. In the TPSEP/NZSCEP case it has been decided that the two agreements will operate in parallel, even though they contain inconsistent provisions on some issues. It will be interesting to see how this works out in practice. In the other cases the approach to be followed has yet to be clarified, although in the case of the three "ASEAN Plus One" initiatives and AANZFTA it appears fairly certain that the new agreements will be less ambitious than the bilateral agreements with which they overlap, so that the latter will almost inevitably continue in operation in parallel with the new wider agreements. It remains to be seen how potential clashes in provisions between the bilaterals and the wider agreements will be resolved.

The convergence represented by these developments is clearly far from a self-sustaining process, and cannot yet be regarded as a credible route to full regional integration. The trade flows involved in the TPSEP are very small, and although the members have emphasised that the agreement is open to accession by new members, this opportunity is yet to be taken up. In particular it may not be realistic to expect larger economies of the region to be willing to accede to the TPSEP. While ACFTA and the ASEAN-Korea FTAs have been concluded, the outcome of the Japan-ASEAN and AANZFTA negotiations remains to be seen. Prospects of moving forward on EAFTA remain hostage to the troubled political relationships between the three major East Asian economies of China, Japan and Korea. Of these three only Korea has so far moved to open negotiations for a trans-Pacific FTA with the United States.

Gaps in the Preferential Trading Architecture of the Asia-Pacific Region

When considering the potential for preferential trading initiatives in the Asia-Pacific region to evolve into full regional integration, an important feature of the existing state of preferential trading developments to keep in mind is that the economic superpowers of the region are lagging behind in the pursuit of preferential relationships with each other.

Figure 1 shows that PTAs already concluded cover 45% of intra-APEC export flows, and this figure would rise to 55% if all PTAs currently under negotiation are successfully concluded. On the other hand, 45% or almost half of intra-APEC export flows remain untouched by PTA initiatives. Figure 2 in turn makes clear that it is primarily the trade flows between the major "hub" economies and the flows involving Taiwan (Chinese Taipei) and Hong Kong that have remained outside the scope of the regional spread of PTAs. Trade flows between the US, China and Japan and all trade of Taiwan and Hong Kong except Hong Kong's trade with China and New Zealand have yet to be the subject of a serious PTA negotiation. Korea and Japan have held FTA negotiations but those negotiations are currently suspended. Prospects for establishment of free trade among the major Northeast Asian economies in the foreseeable future do not appear bright. It remains to be seen whether the recently announced commencement of FTA negotiations between the US and Korea will catalyse increased interest in PTAs between the major Northeast Asian and North American economies.

Figure 1: Coverage by PTAs of APEC Member Exports to Other APEC Economies
(2002-4 Trade Data)
Source: IMF Direction of Trade Statistics

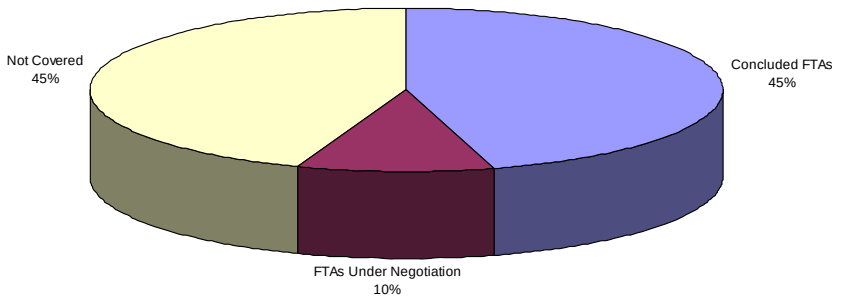
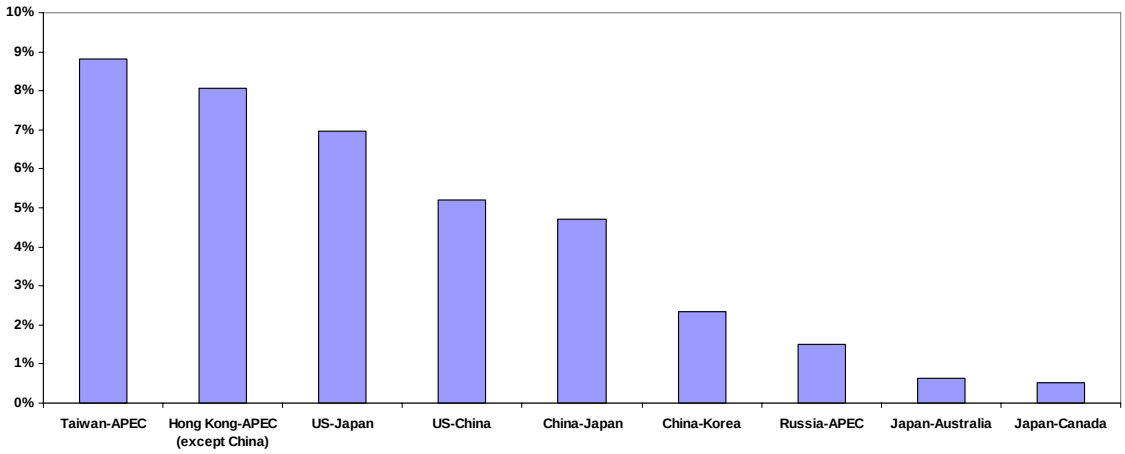


Figure 2: Share of Intra-APEC Exports in Main Bilateral Flows not Covered by Concluded PTAs or PTAs Under Negotiation
(2002-4 Trade Data)
Source: IMF Direction of Trade Statistics



Provisions of Existing Agreements: Divergence and Scope for Convergence

The existing PTAs in the Asia Pacific region exhibit great diversity in their provisions, reflecting the ways in which the members of each agreement have customised the provisions of their agreements to reflect their political sensitivities and specific aspects of their economic circumstances, especially those related to levels of development. This diversity is found for example in the treatment of sensitive products and sectors in the provisions on trade in goods and trade in services. It is found also in the so-called "trade-plus" provisions that increasingly are an important element in modern PTAs.5 There are differences in the extent to which "trade-plus" provisions are included and also wide differences in the content and design of the provisions when they are included.

This section of the paper considers these divergences in greater detail, from the perspective of implications for the prospects for eventual convergence.

Trade in Goods

Provisions on trade in goods in FTAs involving developed economies are constrained to meet the requirements of GATT Article XXIV[6], which requires the elimination of all duties and other restrictive regulations of commerce on "substantially all trade" between the parties within a "reasonable period of time". Although the interpretation of GATT Article XXIV is notoriously elastic, it does impose a degree of uniformity, in that FTAs involving developed Asia-Pacific economies invariably provide for the complete removal of trade barriers between the parties on most products, even though there is considerable variation in the time period over which the elimination of barriers is to be implemented and in the identity and scope of products excluded from the provisions of the agreement.

Agreements whose membership is confined to developing economies[7] may take advantage of the more lenient provisions of the Enabling Clause of 1979, which allows much greater flexibility, allowing agreements in which tariffs and other barriers are not fully eliminated, and where liberalisation provisions may apply to only a very limited range of products, on a "positive list" basis. Although some FTAs between APEC developing economy members have been notified to the WTO under the Enabling Clause, they generally do not take advantage of the full flexibility offered by that provision. Generally these agreements provide for full elimination of trade barriers on products covered by the agreement[8], and in some cases also have a very limited range of products permanently excluded from liberalisation.

Variations in the provisions on trade in goods in Asia-Pacific FTAs reflect different sensitivities attached to particular products. In some cases the sensitive products are simply excluded from the liberalisation commitments altogether, as in the case of a range of agricultural products in each of Japan's FTAs or sugar in the case of the US FTA with Australia. In other cases sensitive products are subject to lesser liberalisation commitments. In AFTA for example the treatment finally agreed for a small range of sensitive products is that the tariff reduction process will end at a positive tariff percentage rather than at zero. Each member is able to choose the products designated as sensitive. This procedure is also followed in the ACFTA, where each member has designated a large number of products as "sensitive products". There is a rather low correlation between the products listed as "sensitive" by each ACFTA member.

An emerging trend, reflected for example in Australia's and New Zealand's FTAs with Thailand, is to avoid permanent exclusion of sensitive products, and to deal with sensitive products in other ways, such as very lengthy transition periods for the phasing out of tariffs, and use of various special transitional measures for sensitive products during the phase-out period. Phase-out periods of up to 20 years, as found for Thailand's sensitive agricultural products in the afore-mentioned two agreements, are becoming increasingly common, along with use of special measures such as special safeguard measures and tariff rate quotas, also used for Thailand's sensitive products in the same two agreements. Bilateral emergency actions are often provided for textile and clothing products. Another technique is to defer decisions on liberalisation of sensitive products until some specified future date or until some specified future event has occurred, as for example in the Korea-Chile FTA, where a decision on liberalisation of a large number of sensitive agricultural products is deferred until after the conclusion of the Doha Round. The sequencing of the tariff reductions can also vary, from equal annual or bi-annual instalments to heavily back-loaded arrangements where the majority of the liberalisation occurs at the end of the phase-out period. The proportion of products on which tariffs are eliminated immediately or early in the phase-out period also varies enormously between agreements, and between partners in the same agreement.

The use of product-specific and usually highly restrictive rules of origin is another technique routinely used for sensitive products in PTAs. Rules of origin however are so important in determining both the trade effects of an FTA and the prospects for convergence, that they deserve separate consideration.

Rules of Origin

There are no WTO rules governing the use of rules of origin in FTAs[9]. The parties in each FTA are thus free to establish whatever rules of origin they choose. Rules of origin (ROOs) are now well-recognised as a crucial factor in determining the true degree of liberalisation of trade in goods provided by any FTA. The costs imposed on exporters by ROOs, for example in record-keeping and documentation, production down time, and switches to more expensive input mixes, count as an offset to the cost advantages provided by tariff preferences. Rules of origin can often be more important than tariff preferences in determining the degree of market access provided by the FTA. One indication of this is the extent to which exporters choose not to use the tariff preferences available under FTAs, and prefer to continue to incur the MFN tariff when exporting to the partner country. This is usually interpreted as an indication that the costs of complying with the ROO exceed the value of the tariff preferences, although there can also be other reasons for non-utilisation of tariff preferences.

Rules of origin can vary enormously in the extent to which they restrict or facilitate trade. Some rules are deliberately restrictive, responding to pressures from import-competing producers demanding to be sheltered from the additional competition that would otherwise result from the tariff preferences under the FTA. A sufficiently restrictive ROO can completely nullify the effect of the tariff preferences. In other cases restrictive ROOs may simply reflect poor design. ROOs perceived by one partner in an FTA as unduly restrictive can be an ongoing source of friction between the partners.

Econometric analysis has indicated that restrictive or selective rules of origin have a significant adverse affect on aggregate trade flows, while at the same time there is a marked increase in trade in intermediate goods when restrictive or selective rules of origin are applied to final goods. An indirect indication of the power of rules of origin in influencing trade is the close attention paid to them by commercial interests when FTAs are being negotiated. Insistence on restrictive rules of origin may also be a way for governments to achieve *de facto* exclusion of additional products from liberalisation within the FTA, even if those products nominally become duty-free.

Inconsistent rules of origin across the PTAs in a region play a key role in the fragmentation of regional markets that results from proliferation of PTAs. They are also widely seen as the main culprits for the increased transaction costs that are expected to be imposed on businesses in economies that participate in multiple PTAs. Adoption of common rules of region is crucial in any programme to promote convergence across the region's FTAs. However, because of the vital role of ROO in determining the effect of an FTA in liberalising trade, it is also crucial that any common ROOs that are adopted are designed to facilitate rather than restrict trade.

At one level there is widespread consensus on the desirable features of ROOs that are intended to facilitate trade. These rules should be "should be as straightforward as possible, and should be transparent, clear and consistent, and should not impose unnecessary compliance costs" (PECC Common Understanding 2006); "easy to understand and to comply with" (APEC "Best Practice" guidelines 2006). At the level of practical application however there is intense debate over the type of rule of origin that best meets these criteria, and also wide variations in the way that each type of rule is applied within the region's PTAs.

ROOs are generally of three types. Regional value content (RVC) rules require a specified percentage of the value[10] of the final product to be added in the partner country. Change of customs classification (CTC) rules require a change in customs classification at a specified level between the intermediate inputs imported from outside the area and the final product exported to the partner A

third approach is to specify a part or parts of the manufacturing process that must take place within the area. For example the "triple transformation" rules for garments in NAFTA and some other US FTAs require that each step in the transformation from raw material to yarn to cloth to finished garment must be performed within the area.

The debate over which type of ROO best meets criteria such as those proposed by PECC and APEC focuses on the choice between RVC and CTC rules. One school of thought holds that RVC rules with a low value content requirement and generous cumulation provisions best meet the criteria. This has been the view held by ASEAN, which has used a 40% RVC rule with full cumulation as the basic ROO for AFTA, and has been pressing, with partial success, for the adoption of this rule as the standard rule in all "ASEAN-Plus" FTAs. Another school of thought holds that the apparent simplicity in RVC rules is illusory, and that even an apparently generous RVC rule imposes undue costs on exporters and subjects them to unmanageable risks as to their ability to satisfy the rule on a continuous basis. Supporters of this view point to anecdotal evidence of low preference utilisation in PTAs where RVC rules are in use. They hold that CTC rules offer exporters much greater certainty and are consequently more trade-facilitative. Exporters know the tariff classification of their inputs and their final products, and this knowledge is all that is required for complete certainty as to whether their products will satisfy the ROOs.

Unfortunately the Harmonised System (HS) of tariff classification was not designed with ROOs in mind, with the result that a single CTC rule will not be suitable for every product. As a consequence comprehensive application of the CTC approach typically requires that the ROO for each tariff category be specified. This results in extremely lengthy ROO schedules. The complexity of these schedules is however more apparent than real. Exporters are generally interested only in a small number of products and so will be interested in the small sections of the schedules that deal with those products, which provide them with precise guidance as to the requirements for meeting the ROOs on the products they wish to export.

On the other hand it is also the case that the effect of CTC rules for particular products will be understood only by the firms involved in the production and export of those products. The limited extent of understanding of the effect of a particular ROO can assist special interests in taking advantage of this non-transparency to press for ROOs that will severely restrict the ability of competitors in the partner country to export under the preferences. The resulting ROOs may be both restrictive and complex.

CTC rules are used in all US FTAs in the Asia-Pacific region. Australia and New Zealand recently became converted to the advantages of CTC-based rules, and are in the process of converting the CER rules to this basis from their original RVC-based format, and have also pressed for the adoption of CTC-based rules in their more recent FTA negotiations, including in AANZFTA.

This is an important debate. If the arguments the opponents of RVC rules are correct it would be unfortunate if this type of rule became established as the norm in a large part of the Asia-Pacific region. On the other hand the advocacy of CTC-based rules by the US, Australia and New Zealand is tarnished by the way that these rules have been deliberately made much more restrictive for products sensitive to themselves, for example autos and textiles in NAFTA and clothing in the agreements of Australia and New Zealand with Thailand.

In addition to the fundamental debate over the type of ROO to be used there are also wide variations in the way that each type of ROO is used in Asia-Pacific FTAs. Variations in RVC rules arise from differences in the percentage of regional value content required, differences in that way that regional value content is calculated, different cumulation provisions, and from the way that for

some products RVC rules are combined with a specific process requirement. Variation in CTC rules arise from different levels at which the change in customs classification is defined and differences in the way that CTC rules may be combined with a specific process or RVC rule that must be satisfied simultaneously. Each variation potentially creates additional transaction costs for exporters to the market concerned.

These differences are prevalent both across agreements and for different products within the same agreement. Differences are often explained by the desire to make the ROOs more restrictive for particular sensitive products, for example where a particularly restrictive RVC or CTC provision, or combination of RVC and CTC provisions is used, or where a specific process rule is combined with the basic RVC or CTC rule.

Additional differences that can be costly for exporters are in different documentation and certification requirements. In some agreements origin must be importer-certified, while in others the requirement is for exporter certification, and in the latter agreements there is a further difference between those where exporter self-certification is allowed and those where certification must be by a designated official agency, with attendant additional costs.

Prospects for Convergence

For the short and medium-term the diversity of provisions in Asia-Pacific FTAs relating to liberalisation of trade in goods has created a picture of great complexity. Different trade flows covered by these FTAs are subject to different product exclusions, different tariff phase-out profiles for different goods, different application of special safeguards and tariff quotas to different goods, and often different rules of origin.

It would be technically possible to bring some or all of the liberalisation provisions within the scope of a single FTA, in which each member has different commitments to different partners. This is in fact already the case, admittedly in a rather minor way, in the TPSEP, where the commitments of each partner are different, and where the commitments for example of New Zealand to Chile and Brunei differ from its commitments to Singapore. Another example outside the APEC region is the DR-CAFTA agreement between the US, five Central American countries and the Dominican Republic. This however would in no way reduce the complexity of the existing transitional provisions, unless steps were taken to harmonise those provisions themselves.

Further complexity would be introduced if agreements with overlapping membership provided for different tariff rates or different rules of origin to apply to the same product traded between the same partners. In the one existing Asia-Pacific case for which the necessary information is available, the overlap between the NZSCEP and the TPSEP, exporters will apparently be able to choose between the different rules of origin in each agreement, but this will have no implications for tariff treatment, since tariffs on all trade between New Zealand and Singapore were already eliminated under the NZSCEP. Where two agreements provide different tariffs for the same product traded between the same partners, this could be handled by providing that the lower of the two tariff rates should apply, as is done in the case of the overlap between the DR-CAFTA agreement and the Central American Common Market. The issue becomes more problematic however if the rules of origin also differ, so that exporters must choose between two different combinations of tariff rate and rule of origin, as is also the case in the DR-CAFTA agreement. No cases of the latter kind appear to have arisen in the Asia-Pacific region as yet, but they cannot be ruled out for the future.

The picture in the Asia-Pacific will change considerably in the longer-term, when the provisions for liberalisation of trade in goods in all agreements have been fully implemented. Under these conditions tariffs and other trade barriers will have been removed on most products in

trade between the members of the various agreements, although significant exclusions in some agreements may well remain. The discrimination or fragmentation of trading relationships that will remain in the region under these conditions will arise from three sources: differences in the pattern of product exclusions in the different agreements, gaps in the coverage of the region by PTAs, and differences in ROOs. These differences will also stand as obstacles to the establishment of region-wide integration through amalgamation of the different PTAs.

This analysis suggests that three considerations are important for minimising the longer-term obstacles to convergence of the provisions on trade in goods among Asia-Pacific PTAs. First, the extent of permanent product exclusions in each PTA should be minimised. Second, ways need to be found to overcome the existing obstacles to liberalisation of regional trade flows that are not yet covered by existing arrangements. Third, steps should be taken to resolve the debate over the preferred type of ROO, and to reach consensus both on the type of ROO to be used in the region and how it should be applied to each industry or sector.

The third of these lines of attack, the move toward a common approach to ROOs, is both extremely important and also an appropriate area for regional consultation and cooperation, for example within APEC. The debate over the relative merits of the two main competing types of ROO ought in principle to be resolvable at a technical level, although the difficulties of doing so in practice should not be underestimated. Reaching consensus on how a given type of ROO should be applied across industries and across agreements will however certainly be a very difficult task, since the more restrictive ROO provisions in particular have generally been introduced to accommodate deeply entrenched vested interests, and will not be easily surrendered.

One possible alternative approach may be to consider allowing different ROO to operate in parallel across the region. The availability of the different ROOs in the TPSEP and NZSCEP may provide a limited experiment in using this approach. In this case however the situation is greatly assisted by the fact that the tariff remains the same (i.e. zero) regardless of the ROO used. Elsewhere in the region, allowing the operation of different ROOs in parallel would be problematic until the tariffs associated with the use of each ROO are also reduced to zero. Even then, proposals to allow different ROOs to be used in parallel would face opposition from the same vested interests that have supported establishment of the existing divergent ROOs in the first place.

The alternative to reaching agreement on a common regional approach to ROOs is that the fragmentation of regional markets brought about by the proliferation of PTAs in the region will persist indefinitely, to the extent that differences in ROOs remain significant and the liberalisation achieved in PTAs is not multilateralised.

Trade in Services

Liberalisation of trade in services inevitably involves behind-the-border measures, since most barriers to services trade are regulatory in nature. It will also inevitably be often a highly controversial subject, since the barriers to services trade are typically embedded in regulations that have been developed to serve legitimate purposes, and also since there are often deep political and social sensitivities surrounding foreign involvement in some service sectors. Liberalisation is also complicated by the different ways that services can be supplied, now generally represented by the four modes of supply recognised in the GATS.

A particular issue that has had to be addressed in the treatment of services trade in PTAs is the relationship between GATS Mode 3 (commercial presence) and investment, since commercial presence necessarily involves investment and many modern PTAs also include an investment chapter.[11] The issue is further complicated by the fact that whereas GATS mode 3 in principle

involves liberalisation of both pre-establishment and post-establishment phases of investment in service industries, investment chapters in some PTAs contain only post-establishment provisions, while others contain both pre-and post-establishment provisions. The post-establishment provisions of investment chapters in PTAs may go well beyond GATS-type services measures in the extent of investor-protection provided.

In PTAs in the Asia-Pacific region, as elsewhere, a stylised distinction has come to be recognised between two approaches to the liberalisation of services trade and to the relation between services trade and investment provisions, although in reality there are a number of variations on each approach. One approach is known as the GATS approach, in which the services trade provisions essentially follow the structure of the GATS, detailing commitments in each mode of supply for the sectors covered, on a positive list basis. In agreements following this approach the investment chapter may apply only to non-services sectors. If the investment chapter includes post-establishment provisions only, this means that the only pre-establishment commitments on investment in the agreement will be those contained in the services commitments on mode 3. At the other extreme it would be possible for the services provisions to contain only very limited pre-establishment commitments, while the investment chapter contains much more extensive pre-establishment commitments for other sectors.

The second approach is often referred to as the "NAFTA approach". In this case the services chapter typically covers both GATS modes 1 and 2 under the heading of "cross-border supply" of services. Investment in all sectors is covered in the investment chapter, which may include both pre-establishment and post-establishment provisions. A negative list approach to sectoral coverage is adopted. GATS Mode 4 (movement of natural persons) may be covered in a separate annex.

There are at least two difficulties involved in linking the services provisions of different PTAs. First, there is the question of excluding commitments in sensitive sectors and modes of supply, and of allowing exceptions to the commitments in the sectors and modes of supply where commitments are made.[12] In the "positive list" modality followed in the GATS approach, the sectors and modes of supply in which commitments are made, and exceptions to those commitments, are specified. Under the "negative list" modality of the "NAFTA approach" sectors and modes of supply in which commitments are not made must be listed, and the a list of "non-conforming" measures details the departures from full liberalisation in the sectors and modes of supply that are not excluded. In principle the same exclusions and reservations could be achieved under both approaches, but the "NAFTA approach" is much more demanding since it requires that a decision be made, explicitly or implicitly, for every sector and mode of supply.

In general it is likely that more far-reaching commitments will have been made in agreements following the NAFTA approach. This highlights the second difficulty in linking different agreements, which arises when one of the agreements has followed the GATS approach while the other has followed the NAFTA approach. It may be difficult for members of an agreement that has followed the GATS approach to accept the reduced flexibility likely to be involved in the agreement that has followed the NAFTA approach.

"Trade Plus Provisions"

There is great diversity in both the coverage and content of "trade-plus" provisions in Asia-Pacific PTAs. Developed economies such as the US, Japan, Australia and New Zealand have typically sought inclusion of a full range of such provisions: investment, standards and conformance, customs procedures, intellectual property, government procurement, competition policy, electronic commerce, and sometimes trade remedies. There are exceptions; for example there is no investment chapter in the TPSEP.

At the other end of the spectrum, ASEAN has sought to limit the issue coverage in the "ASEAN-Plus" agreements to goods, services, investment and dispute settlement, even though individual ASEAN members may have accepted wider issue coverage in bilateral FTAs with the same partners. ASEAN has also favoured a sequential approach to the negotiation of provisions, with trade in goods provisions being negotiated first, followed successively by negotiation of services, investment and dispute settlement. The China-Chile FTA has been concluded initially as a goods-only agreement, leaving other provisions to be possibly negotiated later. Developed economies on the other hand have generally sought comprehensive issue coverage from the outset in their FTAs.

There is however considerable variation in the content of "trade-plus" provisions of the Asia-Pacific FTAs with comprehensive issue coverage. The key difference is between provisions containing "soft" obligations that impose no substantive requirements on the parties and are not usually subject to dispute settlement, and provisions containing "hard' obligations that require the parties to undertake specific actions or refrain from specific actions, and that may be subject to dispute settlement. Provisions with "soft" obligations are generally expressed in terms of "best efforts" and "agreements to cooperate and exchange information", and are likely to represent compromises between the divergent preferences of developed and developing economy partners.

The variation in levels of ambition of the "trade-plus" provisions in Asia-Pacific FTAs may reflect, in unknown proportions, simple differences in degrees of readiness to take on "hard" obligations, and conflicts over what the content of any "hard" obligations should be. One area of clear conflict is over intellectual property provisions. In part the conflict in this area is over enforcement, but there is also a conflict over the optimum extent of intellectual property protection that should be provided, reflecting divergence between the interests of the producers and consumers of intellectual property, overlaid by considerations such as the importance of adequate intellectual property protection in attracting foreign direct investment. Other areas of overt conflict have been environmental standards, labour standards, and capital controls. In the area of environmental and labour standards however, the USA, as the principal *demandeur* in this area, appears to be moving away from an insistence on "hard" obligations, in favour of agreements to cooperate on environmental and labour matters.

"Variable Geometry", Templates, and Prospects for Convergence

The variety of coverage and content in the "trade-plus" provisions of Asia-Pacific FTAs suggests that a "variable geometry" approach might offer the best prospects for convergence. This could involve a single agreement in which the members assume different ranges and levels of obligations, possibly on the basis of agreed criteria that might include levels of development. It could also involve overlapping agreements, where one agreement containing "core" provisions, to which all parties subscribe, coexists with separate agreements in which more advanced obligations are assumed by subsets of the members of the "core" agreement that are in a position to do so. This would appear to be one possible way in which the relations between "ASEAN Plus" FTAs and bilateral FTAs of individual ASEAN members will eventually be defined.

There is however a countervailing tendency for some developed APEC economies, especially the US, to adhere to an "FTA template", in which the coverage and content of "trade-plus" provisions is fully specified. This "template" is reportedly presented to prospective FTA partners as a "single undertaking" that must be accepted in its entirety, with little variation. Convergence then depends on the willingness of the prospective partner to accept the "template". A prospective partner for whom parts of the "template" are unwelcome is faced with the choice between swallowing its objections and accepting the unwelcome provisions, or opting out of the proposed FTA.

A particular problem for convergence arises if more than one major economy establishes its own FTA "template", and if there are inconsistencies between the different "templates". The outlook then is for the establishment of multiple "hub and spoke" configurations centred on each major economy as a "hub", where the FTAs in each configuration converge on the "template" of the "hub", but where the prospect of convergence between the configurations with their inconsistent "templates" is remote. Other economies may then either seek to follow one of the "hub" templates in their own FTAs, as Mexico has tended to do (essentially following the NAFTA template), or, if they seek to participate in more than one "hub and spoke" configuration, be willing to adapt the design of their FTAs to the "template" of each configuration, as Chile and Singapore gave tended to do.

Role for APEC's "Model Provisions"

APEC is currently embarked on a programme of developing "model provisions" for RTAs/FTAs, with a target of producing a full range of agreed "model provisions" by 2008. Draft model provisions have already been put forward in the following areas: trade in goods, services, investment, trade facilitation, technical barriers to trade, government procurement, safeguards, e-commerce and dispute settlement. Reaction to these drafts suggests that the drafters have done well, but also that consensus on "model provisions" will be difficult to achieve.

These "model provisions" obviously have a potentially valuable role to play in promoting convergence among Asia-Pacific PTAs. The contribution of the "model provisions" will be especially valuable if agreement can be reached on the full range of provisions, and if APEC economies demonstrate a willingness to put the "model provisions" into practice. Given the conflicts that exist over the design of some of the more controversial provisions, such as intellectual property, a substantial degree of compromise is likely to be needed in order for agreement to be reached on a full set of "model provisions", and it remains to be seen whether this will be attainable. The most valuable and most vital "model provision" would be a model provision on rules of origin that specifies in as much detail as possible the approach to be taken to rules of origin in Asia-Pacific PTAs.

A full set of "model provisions" could be very useful in both the "variable geometry" and "template scenarios". Under a "variable geometry" approach, confidence in the eventual outcome could be strengthened if even those FTA members making limited commitments do so in line with the "model provisions", and if it is understood that the further components of the "model provisions" will be adopted in the fullness of time. Under the "template" approach, acceptance of a full set of "model provisions" could overcome the potential problem of inconsistent "templates", highlighted above.

Conclusions

There has been modest progress towards linking some PTAs in the Asia-Pacific region. It would not be realistic however to suggest that a self-sustaining process leading to full integration across the Asia-Pacific region though linking the region's PTAs is under way.

There are major gaps in the coverage by PTAs of the region's trade flows. The gaps include trade flows between the region's largest economies. The existence of these gaps indicates the existence of serious obstacles to the liberalisation of trade flows between these major economies in the region, and these obstacles are in turn major impediments to achievement of region-wide free trade.

There is great diversity in the provisions of the region's PTAs, reflecting the different ways in which members of different PTAs have addressed their particular sensitivities.

In the short and medium term the diversity in the provisions of the region's PTAs relating to liberalisation of trade in goods creates very complex patterns of discrimination and fragmentation. In the longer term a significant part of the complexity will be eliminated when the provisions of all agreements have been fully implemented. Even then however differences may remain in the pattern of product exclusions in the different agreements, there may be significant gaps in the coverage of regional trade by the various agreements, and the region's markets will continue to be divided by the different rules of origin in the different agreements unless steps have been taken to harmonise rules of origin in the meantime.

Taking steps toward the adoption of a common approach to rules of origin could be one of the most difficult but also one of the most important contributions to avoiding the long-term fragmentation of regional markets by PTAs. This would require reaching consensus first on which of the two main competing approaches to rules of origin should be preferred, and then reaching a further consensus on how the preferred approach to rules of origin should be applied across industries in the different PTAs across the region.

Finding ways to link the services provisions of the region, and to harmonise the different approaches to the relation between services and investment provisions, is likely to involve especially difficult challenges.

The diversity in the coverage and content of "trade-plus" provisions in Asia-Pacific PTAs suggests that a "variable geometry" approach to these provisions may be necessary if the FTAs are to be successfully linked. On the other hand insistence by major economies on non-negotiable FTA templates may inhibit region-wide convergence while encouraging convergence within separate "hub and spoke" configurations.

APEC's programme to develop agreed "model provisions" for RTAs/FTAs can make a substantial contribution toward convergence among the FTAs in the region, especially if agreement can be reached on the full range of provisions, and if APEC economies demonstrate a willingness to put the "model provisions" into practice. The most valuable "model provision", but also the provision on which agreement is likely to be most difficult to reach, would be a model provision on rules of origin that specifies in as much detail as possible the approach to be taken to rules of origin in Asia-Pacific PTAs.

Endnotes

[1] Agreements under study or discussion are not listed here, even if negotiations are believed to be imminent. Proposed agreements for which the negotiations appear to have been suspended without any apparent intention for them to be resumed are also not listed. The proposed New Zealand-Hong Kong and Singapore-Mexico agreements are in this category. On the other hand, the Japan-Korea proposal is listed because while negotiations are suspended they may not have broken down permanently. Likewise there is uncertainty as to whether the Free Trade Area of the Americas (FTAA) negotiations may be revived in the future. The FTAA is bracketed because of course most of the participants are not APEC members. The FTAA would cover the following trade flows between APEC members that are not currently covered by FTAs: Canada-Perú, Mexico-Perú, Chile-Perú (although the latter two are already covered by more limited preferential arrangements).

[2] There is some doubt whether the Thailand-China FTA should be included in this list. Details are scarce and it is sometimes presented as an "early harvest" agreement, linked to the main ASEAN-China agreement.

[3] The TPSEP (Trans Pacific Strategic Economic Partnership) is sometimes known informally as the 'P4' ('Pacific 4') Agreement.

[4] A comparison of the Singapore-Korea and ASEAN-Korea FTAs could not be made for this paper, as the text of the latter has not yet been sighted.

[5] Modern PTAs typically contain provisions on some or all of the following: investment, standards and conformance, customs procedures, intellectual property, government procurement, competition policy, and electronic commerce. The term "trade-plus" is applied here to these provisions purely for convenience, to distinguish provisions in these areas from measures liberalising trade in goods and services

[6] GATT Article XXIV and the Enabling Clause contain the WTO rules for provisions on trade in goods in PTAs. GATS Article V contains the corresponding rules for provisions on trade in services. The rules are almost universally agreed to be unsatisfactory, and the possibility of amending them was included as an agenda item in the DDA negotiations. The prospect of securing meaningful change in the rules has however generally been assessed as minimal or zero, even before the DDA negotiations were suspended.

[7] There is no formal definition of "developing country" in the WTO. Developing country status is thus a matter of self-selection. Among Asia-Pacific economies Singapore, Hong Kong, Chinese Taipei, Korea and Mexico typically present themselves as developing economies in the WTO context, even though the latter two are OECD members and the first two named have per capita incomes exceeding those of many OECD members.

[8] In the case of the ASEAN Free Trade Agreement (AFTA) a target of 0-5% was initially set for tariff reductions. The target was later amended to 0%.

[9] WTO efforts on rules of origin have been limited to non-preferential rules of origin. A combined WTO/World Customs Organisation programme, mandated by the Uruguay Round, to establish an agreed set of non-preferential rules of origin, is many years behind schedule. There has been no move to establish multilateral rules on preferential rules of origin.

[10] The way that value added is defined often differs between agreements, and has significant implications. The level (e.g. 4-digit or 6-digit) at which CTC rules are specified can also vary, and also has significant implications.

[11] This issue does not arise in the GATS itself, because there is no WTO agreement on investment

[12] There is no Enabling Clause for trade in services.