

# Taking Stock: China's First Decade of Free Trade

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## Abstract

China has established itself as a global economic presence in the past ten years. This article explains one important but overlooked aspect of this rise, China's new free trade agreements (FTAs). This paper situates the FTA boom within a framework of international political economy and China's recent regional rise. This paper probes the question of how China selects its FTA partners, referencing US trade practice and policy as a framework by which to analyze China's own preferences. This paper then explores the main features of China's FTAs, finding that it has adopted a flexible FTA strategy that attends closely to China's own unique social and economic prerogatives at this time, and also matches well with partner expectations. This paper concludes with a discussion of both guiding principles and concrete proposals that may be applied to China's FTA strategy.

## I. Introduction

China's rise to prominence scarcely needs introduction at this point. Its steady economic growth over the past three decades captures headlines the world over. But this success has been attributed largely to China's careful tending of its domestic economy, so many wise policy decisions to attract foreign domestic investment, to form joint ventures with leading foreign companies, and to corporatize China's state-owned enterprises. But China's influence stretches far beyond its shores. As a global economic power, China's footprint comprises hundreds of billions of dollars in U.S. treasury bonds,<sup>1</sup>

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<sup>1</sup> See U.S. Treasury, *Major Foreign Holders of Treasury Securities*

multi-billion dollar investments in Anglo-Australian mining companies,<sup>2</sup> labyrinthine infrastructure projects snaking throughout Africa,<sup>3</sup> and bilateral trade agreements with several Latin American countries.<sup>4</sup> These outward advances have helped position China as the world's second largest economy, and its second largest exporter.<sup>5</sup> Scarcely a week goes without China becoming another country's largest trading partner.<sup>6</sup>

Part of China's transformation from regional player to global power is a growing web of international legal obligations. In the early 1980s, as China took the first steps toward reforming the economy, it played a passive role in international organizations, such as the United Nations.<sup>7</sup> A comprehensive

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(<http://www.ustreas.gov/tic/mfh.txt>) (noting China is the largest holder of US treasury bonds (\$868 billion), ahead of Japan (\$787 billion) and the UK (\$350 billion)).

<sup>2</sup> See Chinese Investment in Rio Tinto, BBC NEWS, Feb. 12, 2009 (noting that China would double its investments, to take an 18% share of the mining giant).

<sup>3</sup> Howard French, *The Next Empire*, ATLANTIC MONTHLY, May 2010 (describing Chinese investment in oil production, mining, agricultural, and other fields), (<http://www.theatlantic.com/magazine/archive/2010/05/the-next-empire/8018>).

<sup>4</sup> These include FTAs with Chile, Peru and Costa Rica.

<sup>5</sup> See generally Index Mundi, Country Comparison>Exports, <http://www.indexmundi.com/g/r.aspx?c=ci&v=85> (drawing on statistics generated by the CIA World Factbook).

<sup>6</sup> See, e.g., Malcolm Moore, China overtakes the US to become Brazil's largest trading partner, TELEGRAPH, May 9, 2009, (<http://www.telegraph.co.uk/finance/economics/5296515/China-overtakes-the-US-as-Brazils-largest-trading-partner.html>); Chris Zappone, China turns trade tables on Japan, BUSINESS DAY, Nov. 19, 2008, (<http://www.theage.com.au/business/china-turns-trade-tables-on-japan-20081119-6b1d.html>) (noting that China eclipsed Japan to become Australia's leading trade partner), China Overtakes the US as Japan's Largest Trading Partner, Japan External Trade Organization, Feb. 28, 2008, (<http://www.jetro.go.jp/en/news/releases/20080229066-news>).

<sup>7</sup> See, e.g., Ann Kent, Beyond Compliance: China, International Organizations & Global Security 222-23 (2007). "In comparison with its attitude to international law and international organizations in the 1950s, 1960s and even early 1980s, its [China's] acceptance of, and integration into, the international system have been nothing short of extraordinary." Kent draws this conclusion based on her analysis of China's participation in four international legal regimes: security, banking, environment and human rights. Though China's compliance in all four regimes improved between 1980 and 2005, there were still significant room for further compliance in the last two categories. See *id.*, 226. (featuring a chart

network of linkages between China and the rest of the world was not established until the late 1980s, when Beijing joined practically all important international organizations.<sup>8</sup> In addition, it played little role in the creation of new groupings.<sup>9</sup> In the 1990s, China took an increasingly extroverted stance in the region, both by establishing new organizations, such as the Shanghai Cooperation Organization (SCO)<sup>10</sup>, and by participating more actively in those where it was already a member. By joining the WTO in 2001, China joined another important multilateral organization, while deepening commitments to various forms of economic liberalization, such as phasing out tariffs on key products, opening up its services market to foreign companies, and clarifying its trade rules and regulations.<sup>11</sup> Multilateral settings have thus helped China establish a reputation as a regional power with global ambitions, but much of China's diplomatic energy focuses on *bilateral* relations, such as the so-called G-2 with the United States, or with supranational organs such as the EU and ASEAN.<sup>12</sup> Indeed, China's profusion of bilateral investment treaties during

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with China's compliance). See also James V. Feinerman, Chinese Participation in the International Legal Order: Rogue Elephant or Team Player, *The China Quarterly*, March 1995.

<sup>8</sup> See Samuel S. Kim, International Organizations in Chinese Foreign Policy, *Annals of the American Academy of Political and Social Science*, Vol. 519, China's Foreign Relations (Jan., 1992), pp. 140-157.

<sup>9</sup> See Michael Yahuda, China & Regional Co-operation, in *CHINA'S PLACE IN GLOBAL GEOPOLITICS: INTERNATIONAL, REGIONAL & DOMESTIC CHALLENGES* 102, 103, 104 (Kjeld Erik Brodsgaard & Bertel Heurlin eds., 2000) (noting that China refrained from joining any third world grouping at the UN, and constituted a "Group of One" until the 1990s).

<sup>10</sup> The Shanghai Cooperation Organization is a intergovernmental international organization creation of which was proclaimed on June 15, 2001 in Shanghai whose main goals are to promote effective cooperation in various aspects as well as maintaining security and stability through joint efforts by the member countries. (<http://www.sectsc.org/EN/brief.asp>).

<sup>11</sup> Barry Naughton, The Chinese Economy: Transitions & Growth 390-391 (2007). See also Icksoo Kim, Accession into the WTO: External Pressure for Internal Reforms in China, *Journal of Contemporary China* 433, 433 (2002); Shin-yi Peng, The WTO Legalistic Approach and East Asia: From the Legal Culture Perspective, *1 Asian-Pac. L. & Pol'y J.* 13 (2000); Pitman B. Potter, China and the International Legal System: Challenges of Participation, *The China Quarterly*, 191, September 2007.

<sup>12</sup> Yahuda, *supra* note 9, at 103 ("China's leaders have preferred to conduct their serious foreign relations in bilateral rather than multilateral frameworks.").

the 1990s and 2000s bespeaks the preference for bilateral negotiations.<sup>13</sup> A more recent manifestation of bilateral preferences is its new spate of free trade agreements.<sup>14</sup>

As of March 2011, China has entered into eight free trade agreements or regional trade agreements, with countries as geographically and developmentally diverse as Chile, New Zealand, Pakistan, and Singapore, as well as with regional bodies such as ASEAN. During this same period, China has been negotiating FTAs with neighbors such as India and Korea, and more distant countries such as Australia, the Gulf Cooperation Council, Iceland, Norway, and among others.<sup>15</sup> The emphasis on FTAs reflects a new stage in the ongoing development of China's foreign policy, as well as a growing reliance on international law and legal institutions to cultivate economic relations. In the words of China's Ministry of Commerce, FTAs offer "a new platform to further opening up to the outside and speeding up domestic reforms, an effective approach to integrate into the global economy and strengthen economic cooperation with other economies, as well as particularly an important supplement to the multilateral trading system."<sup>16</sup>

Despite the importance of this new FTA boom, few scholars in China or the United States have analyzed China's FTAs, or FTA policy, in a rigorous or comprehensive fashion. A handful of working papers addressed the topic when China first set out on this trajectory,<sup>17</sup> but do not account for the recent

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<sup>13</sup> For a complete list of China's bilateral investment treaties, see United Nations Conference on Trade and Development, Total Number of Bilateral Investment Treaties concluded, 1 June 2010 [sic], ([http://www.unctad.org/sections/dite\\_pcbp/docs/bits\\_china.pdf](http://www.unctad.org/sections/dite_pcbp/docs/bits_china.pdf)). For a history of China's policies on BITs, see Guiguo Wang, China's Practice in International Investment Law: From Participation to Leadership in the World Economy, 34 YALE J. INT'L L. 575 (2009).

<sup>14</sup> For a detailed discussion of China's bilateral preference, see *infra*, Part III.B.

<sup>15</sup> See Ministry of Commerce of the People's Republic of China, China FTA Network, (<http://fta.mofcom.gov.cn/english/index.shtml>).

<sup>16</sup> See Ministry of Commerce of the People's Republic of China, China FTA Network, (<http://fta.mofcom.gov.cn/english/index.shtml>).

<sup>17</sup> See, e.g., Agata Antkeiwicz & John Whalley, China's New Regional Trade Agreements, NBER Working Paper no. 10992, Dec. 2004, (<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan022759.pdf>); Yang Zerui, China's FTA Developments: Paper Presented at APEC Study Center/PECC Trade Forum Conference, May 26, 2004, ([http://www.pecc.org/resources/doc\\_view/135-chinas-fta-developments](http://www.pecc.org/resources/doc_view/135-chinas-fta-developments)); Jiangyu Wang, China's Regional Trade Agreements: the Law, Geopolitics, and Impact on the Multilateral Trading System, available

surge of FTA activity. Recent scholarship examines the trend from a comparative angle,<sup>18</sup> but fails to address the substance of China's FTAs, as well as underlying policy motivations in significant detail. This article contributes to the scholarly discussion by examining FTAs as specimens of Chinese international economic law, and articulating a framework through which to analyze the motivations and strategies of China's law and policymakers.

The argument proceeds in five parts. In the first part, we establish the theoretical foundations of free trade agreements, highlighting the dominant methodologies through which to evaluate FTAs. In the second part, we examine China's globalization, paying particular attention to the processes of internationalization and regionalization that China has undertaken over the past twenty years, as well as its participation in bilateral and multilateral organizations. The third part probes the question of how China selects its FTA partners, referencing US trade practice and policy as a framework by which to analyze China's own preferences. The fourth part investigates three of China's FTAs in light of the theoretical and practical consideration raised earlier. The fifth part includes a discussion of both guiding principles and concrete proposals that may be applied to China's FTA strategy.

## II. The theoretical foundations of free trade agreements

Policymakers, lawyers and economists have debated intensively about the benefits and drawbacks of regionalism vis-à-vis multilateralism as well as the effects that they might impose respectively on the greater global economic integration and multilateral liberalization.<sup>19</sup> Regionalism can be broadly defined as "a tendency towards some form of preferential trading arrangements between a number of countries usually belonging to a particular region."<sup>20</sup> Another definition of regionalism is "any policy designed to reduce

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at <http://law.nus.edu.sg/sybil/downloads/current/jiang.pdf>.

<sup>18</sup> See Timothy Webster, *Bilateral Regionalism: Paradoxes of East Asian Integration*, 25 BERKELEY J. INT'L L. 434 (2007) (comparing Japan's and China's FTA race); Claude Barfield, *The Dragon Stirs: China's Trade Policy for Asia-and the World*, 24 ARIZ. J. INT'L & COMP. L. 93 (2007).

<sup>19</sup> See, e.g., Jagdish Bhagwati, Regionalism and Multilateralism: An Overview, in NEW DIMENSIONS IN REGIONAL INTEGRATION. Jaime de Melo & Arvind Panagariya, eds; Robert Z. Lawrence, Emerging Regional Arrangements: Building Blocks or Stumbling Blocks?, in 5 FINANCE AND THE INTERNATIONAL ECONOMY 22-35 (Richard O'Brien ed. 1991).

<sup>20</sup> Regionalism Versus Multilateralism: Will Preferential Agreements Undermine The Global Trading System, available at:

trade barriers between a subset of countries regardless of whether those countries are actually contiguous or even close to each other.”<sup>21</sup> However, as to “multilateralism”, it is much harder to define. Certain scholar defined “multilateralism” as coordinating relations among three or more states in accordance with certain principles’ that order relations between them.<sup>22</sup> Moreover, they think multilateralism represented a generic institutional form and shall be constructed on the basis of certain principles (generalized principles of conduct, indivisibility, and diffuse reciprocity) which differentiated it from other forms of international relations.<sup>23</sup> Particularly, trade multilateralism has meant “application of the most-favored-nation principle on a non-discriminatory basis.”<sup>24</sup> Accordingly, certain scholars characterize the “international rule of law” as the single most important goal of the international system, one upon which all other goals depends.<sup>25</sup> However, not every nation aspires to multilateralism. For example, unilateralists and regionalists stress the threat that multilateralism poses to national autonomy and freedom of action.<sup>26</sup> In contrast to multilateralism approach, regionalism is another option that is available to countries.<sup>27</sup> Furthermore, there are a few different ways in which regionalism can be

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<http://www.res.org.uk/society/mediabriefings/pdfs/1998/July/lahiri.pdf> (last visited Sept. 23, 2010), Regionalism versus Multilateralism, a Controversy edited by Sajal Lahiri, July 1998 issue of the ECONOMIC JOURNAL.

<sup>21</sup> L. Alan Winters, Regionalism versus Multilateralism, Policy Research Working Paper, available at: <http://www.unige.ch/ses/ecopo/demelo/Cdrom/RIA/Readings/Winters96.pdf>.

<sup>22</sup> See Caroline Bouchard & John Peterson, Conceptualising Multilateralism--Can We All Just Get Along? (available at: [http://www.mercury-fp7.net/fileadmin/user\\_upload/E-Paper\\_No\\_1\\_2010.pdf](http://www.mercury-fp7.net/fileadmin/user_upload/E-Paper_No_1_2010.pdf)), citing John Gerard Ruggie, Multilateralism: the Anatomy of an Institution, 46 INTERNATIONAL ORGANIZATION 561, 567-568(1992).

<sup>23</sup> See id.

<sup>24</sup> See John Van Oudenaren, What is "Multilateral"?, policy review, no. 117, available at: <http://www.hoover.org/publications/policy-review/article/7264>.

<sup>25</sup> See Gabriella Blum, Bilateralism, Multilateralism, and the Architecture of International Law, 49 HARV. INT'L L.J. 323, 332-333 (2008).

<sup>26</sup> See id. at 326.

<sup>27</sup> See C. O'Neal Taylor, Regionalism: The Second-Best Option, 28 ST. LOUIS U. PUB. L. REV. 155 (2009)(examining whether regionalism meets the expectations, needs and capabilities of developing countries and how this option could be improved to address development issues).

achieved<sup>28</sup> by entering into free trade agreements (“FTA”) and forming customs union are the two most common tools.

A FTA is a negotiated agreement between two or more countries or economic entities under which they agree to lower tariffs, as well as reduce non-tariff barriers, on goods imported from the other member(s). FTAs constitute a major departure from the most-favored-nation obligation of WTO members, which requires that all members apply the same tariffs to all other countries’ products.<sup>29</sup> Because they lower tariffs, FTAs contribute to trade liberalization. Unlike customs unions, members of FTAs maintain their own tariff policies when trading with non-members. To ensure protection of these preferences and prevent exploiting the low tariff rate between FTA members by third parties, FTAs establish “rules of origin”<sup>30</sup> to identify which products are eligible for favorable tariff treatment, and prevent third parties from shipping through a lower-tariff member to a higher-tariff member.<sup>31</sup>

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<sup>28</sup> See OECD, *Regionalism and the Multilateral Trading System*, available at: [http://www.oecd.org/document/54/0,3343,en\\_2649\\_36442957\\_39704046\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/54/0,3343,en_2649_36442957_39704046_1_1_1_1,00.html) (last visited September 10, 2010). In fact, the phenomenon/trend that the countries use regional trade agreements to counter any unreasonable acts, requests and practices of their trading partners by including internal measures in FTAs that are not usually covered in international treaties, is called “aggressive regionalism.” The Korea-US FTA offers a typical example. See Won-Mog Choi, *Aggressive Regionalism in Korea-U.S. FTA: the Present and Future of Korea’s FTA Policy*, 12 J. INT’L ECON. L. 595, 597 (2009).

<sup>29</sup> See John H. Jackson, *THE WORLD TRADING SYSTEM* 160-162 (2d ed., 1997).

<sup>30</sup> Rules of origin are the criteria needed to determine the national source of a product. See Won-Mog Choi, *Defragmenting Fragmented Rules of Origin of RTAs: A Building Block to Global Free Trade*, 13 J. INT’L ECON. L. 111(2010); John Coyle, *Rules of Origin as Instruments of Foreign Economic Policy: An Analysis of the Integrated Sourcing Initiative In The U.S.-Singapore Free Trade Agreement*, 29 YALE J. INT’L L. 545 (2004) (borrowing the ideas from the political science literat, it provided a detailed discussion about “rules of origin” as the necessary components of all bilateral free trade agreements); Masahiro Kawai & Ganeshan Wignaraja, *Free Trade Agreements in East Asia: A Way toward Trade Liberalization?*, ADB BRIEFS, No. 1, June 2010 (Rules of origin raises transaction costs and thus constitute a challenge to the FTAs)

<sup>31</sup> See Mohammad F. Nsour, *Regional Trade Agreements in the Era of Globalization: A Legal Analysis*, 33 N.C. J. INT’L L. & COM. REG. 359, 370 (2008); Moshe Hirsch, *Rules of Origin as Trade or Foreign Policy Instruments? The European Union Policy on Products Manufactured In The Settlements In The West Bank And The Gaza Strip*, 26 FORDHAM INT’L L.J. 572 (2003).

Countries sign trade agreements for various reasons.<sup>32</sup> Entering into FTAs can underpin strategic alliances, contributing to security arrangements.<sup>33</sup> Smaller countries can also benefit from access to larger markets by signing FTAs with larger countries. Furthermore, FTAs can help bolster exports and secure domestic reforms for economic development, which in turn expedites broader multilateral accords.<sup>34</sup> From a tactical perspective, signing FTAs might help spur broader integration of the member states' economies, political systems, militaries, and so on.<sup>35</sup>

There are a few global issues that we need to bear in mind in analyzing free trade agreements. First, in analyzing the respective comparative advantage of multilateralism and regionalism, we need to understand that achieving the overall welfare of international society might not necessarily overlap with an individual country's objectives. Second, global problems do not necessarily need global solutions.<sup>36</sup>

#### *II.A. Economic rationality*

Economists analyze trade liberalization by considering both short and long-term effects as well as weighing the social and private costs of adjustment. Long-term effects are most important for successful free trade agreements. The most important long-term gains include increased competition, stimulus to investment and more efficient use of economic resources.<sup>37</sup> The short-

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<sup>32</sup> John Whalley, *Why Do Countries Seek Regional Trade Agreements?*, in *THE REGIONALIZATION OF THE WORLD ECONOMY* 63, 64 (Jeffrey A. Frankel ed., 1998).

<sup>33</sup> The European Union and ASEAN agreements are good examples of this "spillover" effect.

<sup>34</sup> Jeffrey J. Schott, *Assessing US FTA Policy*, in *FREE TRADE AGREEMENTS: US STRATEGIES & PRIORITIES*, 359, 363 (Jeffrey J. Schott ed., 2004), ([http://www.petersoninstitute.org/publications/chapters\\_preview/375/13iie3616.pdf](http://www.petersoninstitute.org/publications/chapters_preview/375/13iie3616.pdf)).

<sup>35</sup> The EU would be the paradigmatic case of this multidisciplinary integration. What began as an effort to link the steel and coal communities of six western European countries has grown to be an enormous supranational body comprising 27 states connected by agreements in economic, social, regulatory, financial, labor and other fields. See *What Does the EU Do?*, ([http://europa.eu/abc/12lessons/lesson\\_5/index\\_en.htm](http://europa.eu/abc/12lessons/lesson_5/index_en.htm)).

<sup>36</sup> See, e.g., Robert Howse, *The End of the Globalization Debate: A Review Essay*, 121 HARV. L. REV. 1528 (2008) (commenting on how countries have strategically adapted to globalization); Blum, *supra* note 25.

<sup>37</sup> See Masahiro Kawai & Ganeshan Wignaraja, *Free Trade Agreements in East Asia: A Way toward Trade Liberalization*, ADB Briefs, p. 4-5, No. 1 (2010); An



term effects of creating a free trade agreement are measured in terms of trade creation and trade diversion.<sup>38</sup>

Jacob Viner initiated the evaluation of preferential trade agreement by assessing the trade creation and trade diversion effects.<sup>39</sup> Trade creation occurs when lower-cost imports from one trading partner replace domestic production in another. Trade creation leads to efficiency gains for each country because each country will shift from a higher-cost domestic source product to a lower-cost foreign product. Each country will eventually begin to specialize in producing those items in which they have a comparative advantage. On the other hand, trade diversion occurs when lower-cost imports from a non-member country are prevented from entering a member country because of tariffs or non-tariff barriers. While not banned from entering in the strict sense, they are instead replaced by higher-cost imports from a FTA partner country.<sup>40</sup>

While this basic binary explained the effects that entering into FTAs might cause, scholars have introduced a wide variety of critiques. For example, this basic binary is static in nature, and ignores such factors as economics of scale, spill-over effects, and improved investment climate.<sup>41</sup> In addition, economics cannot account for the entire logic behind FTAs. By including political concerns in the discussion, debate focuses on the question of whether they represent “stumbling blocks” or “building blocks”<sup>42</sup> to accomplishing the

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Australia-USA Free Trade Agreement: Issues and Implications, available at: [http://www.dfat.gov.au/publications/aus\\_us\\_fta\\_mon/](http://www.dfat.gov.au/publications/aus_us_fta_mon/) (last visited August 31, 2010).

<sup>38</sup> See generally Jacob Viner, *THE CUSTOMS UNION ISSUE* (1950); Béla Balassa, *THE THEORY OF ECONOMIC INTEGRATION* (1961), Jaroslav Vanek, *GENERAL EQUILIBRIUM OF INTERNATIONAL DISCRIMINATION : THE CASE OF CUSTOMS UNIONS*, *HARVARD ECONOMIC STUDIES* (1965); J.E. Meade, *THE THEORY OF CUSTOMS UNIONS* (1955); R.G. Lipsey, *THE THEORY OF CUSTOMS UNIONS: TRADE DIVERSION AND WELFARE* (1957); William H. Cooper, *Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy* (Congressional Research Service 2006).

<sup>39</sup> See JACOB VINER, *THE CUSTOMS UNION ISSUE* (1950).

<sup>40</sup> See *supra* note 37.

<sup>41</sup> See Jason R. Wolff, *Putting the Cart before the Horse: Assessing Opportunities for Regional Integration in Latin America and the Caribbean*, 20-SPG *FLETCHER F. WORLD AFF.* 103, 105 (1996).

<sup>42</sup> These terminologies are elegantly popularized by Robert Lawrence. See Robert Z. Lawrence, *Emerging Regional Arrangements: Building Blocks or Stumbling Blocks?*, 5 *FIN. & INT'L ECON.* 22 (1991).

broader goals of the global trading community.<sup>43</sup>

Certain scholars support FTAs because they believe that FTAs act as a building block to multilateral trade liberalization.<sup>44</sup> Instead of breaking up global trade into protectionist blocs, FTAs can assist in furthering the cause of multilateral trade negotiations,<sup>45</sup> and stimulate growth within the area. Regional arrangements such as FTAs lead to increased demand for extra-regional goods due to increased investment.<sup>46</sup> Furthermore, FTAs facilitate deeper integration between the member states, which may in turn facilitate increased trade with rest of world. Empirical researches also participated in this debate.<sup>47</sup> For example, the “gravity equation” approach has been an empirical workhorse in international trade to study the ex post effects of FTAs on trade flows.<sup>48</sup>

Other scholars oppose FTAs because FTAs may undermine the development of the multilateral trading system.<sup>49</sup> Some scholars strongly advocate that national governments should not pursue FTAs at the expense of multilateral negotiations.<sup>50</sup> One fervent multilateralist, Jagdish Bhagwati, points out the “spaghetti bowl” problem of regional trade arrangement

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<sup>43</sup> Sungjoon Cho, Breaking the Barrier between Regionalism and Multilateralism: A New Perspective on Trade Regionalism, 42 HARV. INT’L L.J. 419, 430 (2001).

<sup>44</sup> See, e.g., Jeffrey A. Frankel, Regional Trading Blocks in the World Economic System (1997) (appropriately arranged FTAs are building blocks for global liberalization).

<sup>45</sup> Michael Ewing-Chow, Southeast Asia and Free Trade Agreements: WTO Plus or Bust?, 8 S.Y.B.I.L. 193 (2004).

<sup>46</sup> Robert Z. Lawrence, Emerging Regional Arrangements: Building Blocks or Stumbling Blocks, 5 FIN. & INT’L ECON. 22 (1991).

<sup>47</sup> Scott L. Baier & Jeffery H. Bergstrand, Economic Determinants of Free Trade Agreements, Journal of International Economics 64 (2004).

<sup>48</sup> Tamim Bayoumi & Eichengreen, Barry, Is Regionalism Simply a Diversion? Evidence from the Evolution of the EC and EFTA, in Regionalism vs. Multilateral Arrangements (Takatoshi Ito & Anne O. Krueger ed., 1997).

<sup>49</sup> Rahul Sen & Sadhana Srivastava, ASEAN's Bilateral Preferential Trade and Economic Cooperation Agreements: Implications for Asian Economic Integration, 26 ASEAN ECON. BULL. 194 (2009) (if not properly designed and managed, FTAs might become a stumbling block towards integration).

<sup>50</sup> See generally JAGDISH BHAGWATI, THE WIND OF THE HUNDRED DAYS: HOW WASHINGTON MISMANAGED GLOBALIZATION (2000); Jagdish Bhagwati, U.S. Trade Policy: The Infatuation with Free Trade Areas, in THE DANGEROUS DRIFT TO PREFERENTIAL TRADE AGREEMENTS 1 (Jagdish Bhagwati & Anne O. Krueger eds., 1995); Jagdish Bhagwati, PTAs: The Wrong Road, 27 L. & POL’Y INT’L BUS. 865 (1995).

(including FTAs) where various idiosyncratic preferential trade agreements, complicated rules and variable tariffs will increase unnecessary costs and finally defeat the objective in reaching a clean tariff regime under WTO.<sup>51</sup> Moreover, FTAs may create new interest groups as a result of trade diversion whose economic survival depends upon the maintenance of trade preferences.<sup>52</sup>

### *II.B. Political-Economic and institutional analysis*

Regionalism is an enduring feature of the multilateral trading regime and one of the natural paths of evolution of human civilization.<sup>53</sup> Certain scholars found that the preference for bilateralism or multilateralism in international lawmaking is often determined not by an informed choice but by an instinctive association of political schools or bureaucratic affiliations with different forms of international regulations.<sup>54</sup>

With the development of the institutional analysis, no bright line exists between economic analysis and political analysis, with the difference resting only as a matter of degree when making analysis, whereas political analysis are more inclined to make certain value judgments.<sup>55</sup> Public choice theory could be regarded as a tradeoff between political institutions and legal institutions.<sup>56</sup> Public choice theory suggests that the political process has an in-built

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<sup>51</sup> See JAGDISH BHAGWATI, *TERMITES IN THE TRADING SYSTEM: HOW PREFERENTIAL AGREEMENTS UNDERMINE FREE TRADE* (2008).

<sup>52</sup> See David Quartner, *Public Choice Theory, Protectionism and the Case of NAFTA*, Economic viewpoints, Institute of Economic Affairs 2006.

<sup>53</sup> See Cho, *supra* note 43, at 419.

<sup>54</sup> Blum, *supra* note 25. See also, Kyle Bagwell & Robert W. Staiger, Domestic Policies, National Sovereignty, and International Economic institutions, *QUARTERLY JOURNAL OF ECONOMICS*, Vol. 116, No. 2 (2001); Robert C. Feenstra & Tracy R. Lewis, Negotiated Trade Restrictions with Private Political Pressure, *QUARTERLY JOURNAL OF ECONOMICS*, Vol. 106, No. 4 (1991).

<sup>55</sup> See Suthiphand Chirathivat, Asean-China Free Trade Area: Background, Implications And Future Development, 13 *J. ASIAN ECON.* 671 (2002).

<sup>56</sup> See ALAN PEACOCK, *PUBLIC CHOICE ANALYSIS IN HISTORICAL PERSPECTIVE* (1992); Cynthia R. Farina & Jeffrey J. Rachlinski, Getting Beyond Cynicism: New Theories of the Regulatory State: Foreword: Post-Public Choice?, 87 *CORNELL L. REV.* 267 (2002); Peter L. Kahn, The Politics of Unregulation: Public Choice and Limits on Government, 75 *CORNELL L. REV.* 280 (1990); Paul B. Stephan III, Interdisciplinary Approaches to International Economic Law: Barbarians Inside the Gate: Public Choice Theory and International Economic Law, 10 *AM. U. J. INT'L L. & POL'Y* 745 (1995).

tendency to promote protectionist measures favored by organized interest groups rather than trade liberalization that would benefit society as a whole.<sup>57</sup>

Moreover, certain political economists have used political economy framework to analyze the viability of FTAs between countries as well as the desired form that they will take by emphasizing the interaction between industry special interest groups and political institutions.<sup>58</sup>

### III. China's globalization

China's recent FTAs must first be situated within its rising influence in regional and global affairs. The boom began along mainland China's border: Hong Kong, Macau, ASEAN, and Pakistan. It now spans both coasts of the Asia-Pacific: New Zealand, Chile, Singapore, Costa Rica. To understand China's FTA partnerships, we must understand how China engaged the periphery over the past two decades. China's diplomatic efforts to cultivate good relations with its neighbors are indivisible from its present strategy of entering FTAs with them.<sup>59</sup> After discussing China's regionalization strategy, we take up its preferences for bilateral relationships. This sets the stage for discussing the narrow question of how China selects its FTA partners.

#### III.A. Dense institutionalization

We have used the term "dense institutionalism" to describe China's recent engagement with its periphery.<sup>60</sup> More specifically, dense institutionalism refers to China's policy of increased interaction with neighboring countries through active participation in regional organizations, as well as the establishment of new ones. This section highlights the important changes in China's foreign policy, beginning in the early 1990s, when China took its first

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<sup>57</sup> David Quartner, *Public Choice Theory: Protectionism and the Case of NAFTA*, 26 ECON. AFFAIRS 59, 60 (2006).

<sup>58</sup> See, e.g., Gene M. Grossman & Elhanan Helpman, *The Politics of Free-Trade Agreements*, 85 AM. ECON. REV. 667, 690 (1995).

<sup>59</sup> The notion that free trade agreements, whether bilateral or multilateral, distort international trade has been a key component of international economics for much of the past century. But it is also clear that countries sign FTAs for reasons unrelated to economics, such as political goodwill, security arrangements (US-Israel FTA), or towards larger political goals (such as the creation of a modern supranational organization in the form of the EU. The fundamental issue of free trade agreements, as Paul Krugman put it, is fundamentally "a question of political economy rather than of economics proper." See Paul Krugman, *The Move Towards Free Trade Zones*, FED. RESERVE BANK KANSAS CITY ECON. REV., Nov./Dec. 1991, 5, 17.

<sup>60</sup> Webster, *supra* note 18, at 440.

steps toward regional integration by joining regional bodies such as ASEAN and APEC. By the end of the 1990s, China took a more extroverted stance towards its immediate neighbors in Southeast, East, and Central Asia, and the Asia Pacific region more generally, through more active engagement in regional bodies, as well as the establishment of its own regional body, the Shanghai Cooperation Organization (SCO). After joining the WTO in 2001, China's integration policy had important spillover effects; relationships built on political and security concerns—such as those with ASEAN and SCO—gradually gave way to economic agreements covering trade, investment and services. At the moment, all of China's FTA partners are either bordering countries, or members of regional institutions in which China participated during the past two decades.

In the 1980s and early 1990s, China was still relatively inward looking. Deng Xiaoping cautioned that China should not seek leadership (*buyao dangtou*), and repeatedly warned the Chinese political establishment against playing a role in regional or international affairs.<sup>61</sup> ASEAN led a campaign to engage China, instead of ostracizing it.<sup>62</sup> Leaders in Beijing reacted warmly and joined ASEAN, first as a consultative partner in 1991, then as a member of the ASEAN Regional Forum in 1994, and finally as a member of the ASEAN + 1 framework in 1997. During the Asian Financial Crisis of 1997, China incurred additional goodwill from Southeast Asia by not devaluing its currency, despite pressure to do so.<sup>63</sup> Since that time, China has signed several treaties or other diplomatic documents on security, diplomacy and territorial matters with ASEAN<sup>64</sup>, creating a stable bedrock of goodwill upon which to build closer economic relationships. In 2000, Zhu Rongji's proposal to explore further cooperation in free trade with ASEAN built on the diplomatic efforts of the previous decade.<sup>65</sup> In 2010, the trade in goods

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<sup>61</sup> DENG XIAOPING, 3 DENG XIAOPING WENXUAN [Selected Works of Deng Xiaoping] 321 (1993).

<sup>62</sup> See David Shambaugh, *Return to the Middle Kingdom?*, in POWER SHIFT 23, 27 (David Shambaugh ed., 2005).

<sup>63</sup> See Ministry of Foreign Affairs of the People's Republic of China, *Pro-Active Policies by China in Response to Asian Financial Crisis*, Nov. 17, 2000, <http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18037.htm>.

<sup>64</sup> For example, Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues (<http://www.aseansec.org/13185.htm>), Memorandum of Understanding between the Governments of the Member Countries of ASEAN and the Government of China on Cooperation in the Field of Non-Traditional Security Issues (<http://www.aseansec.org/15647.htm>).

<sup>65</sup> See Wang Xiangjiang, Si Jiuyue & Zhu Changdu, Zhu Rongji Chuxi Zhongguo

portion of the FTA went into effect.<sup>66</sup>

China has also reached out to its regional neighbors through membership in the Asia-Pacific Economic Cooperation (APEC), an intergovernmental consultative body aimed at promoting intraregional trade and investment.<sup>67</sup> Though APEC has not instituted formally binding measures to lower tariffs or other trade barriers, it has allowed the major and minor powers of the Pacific Rim to discuss international economic issues outside of bilateral exchanges. China's participation in APEC not only burnished its regional image,<sup>68</sup> but also promoted linkages with countries beyond its immediate borders. China thickened ties to current FTA partners like New Zealand, Chile, and Peru, and potential FTA partners like Mexico through these meetings.

In 1996, China made its strongest commitment to regional multilateralism by establishing, with four other countries, the Shanghai Cooperation Organization (SCO). SCO initially aimed to ease military tension among China, Russia, Kazakhstan, Kyrgyzstan and Tajikistan through confidence-building measures and force reductions along the border.<sup>69</sup> Since then, China has played the leading role in the organization, by setting up and underwriting a permanent secretariat in Beijing.<sup>70</sup> China is also pushing the agenda from its traditional focus on security, towards economic cooperation, improving the investment environment, and reducing nontariff barriers.<sup>71</sup> In addition, Premier Wen Jiabao proposed a free trade area<sup>72</sup>, though such an

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Dongmeng Lingdaoren Huiwu [Zhu Rongji Attended the Meeting of the Leaders from China and ASEAN], available at: <http://www.gmw.cn/01gmrb/2000-11/26/GB/11%5E18616%5E0%5EGMA1-207.htm>.

<sup>66</sup> See China-ASEAN free trade area starts operation, *www.chinaview.cn* 2010-01-01, available at: [http://news.xinhuanet.com/english/2010-01/01/content\\_12739017.htm](http://news.xinhuanet.com/english/2010-01/01/content_12739017.htm).

<sup>67</sup> APEC, About APEC: What is Asia-Pacific Economic Cooperation?, ([http://www.apec.org/apec/about\\_apec.html](http://www.apec.org/apec/about_apec.html)).

<sup>68</sup> Yahuda, *supra* note 9, at 110.

<sup>69</sup> David Shambaugh, *China's Military Views the World: Ambivalent Security*, INT'L SEC'Y, Winter, 2000, 52, 72.

<sup>70</sup> Louisa Lim, *China and Central Asia Boost Ties*, BBC NEWS, Sept. 24, 2003, (<http://news.bbc.co.uk/1/hi/world/asia-pacific/3130852.htm>).

<sup>71</sup> Shanghai Cooperation Organization, Joint Communique of the Premiers Meeting of the Shanghai Cooperation Organization, Sept. 23, 2003.

<sup>72</sup> See Chris Devonshire-Ellis, *The Shanghai Cooperation Organizations Growing Trade Influence*, available at: <http://www.2point6billion.com/news/2010/11/10/the-shanghai-cooperation->

agreement has yet to materialize. Still, as in ASEAN, SCO has moved from an organization concerned mostly with security and politics into one that actively promotes economic cooperation. While SCO has yet to lead to an FTA, the organization itself reveals China's aspirations to be a regional leader in the fields of politics, diplomacy, security and economics. Its incremental approach to relationship-building, first tackling matters of common concern before elevating to deeper levels of interactivity, and recent pursuit of economic interests speak to China's regional aspirations.

### *III.B. Bilateral or multilateral ?*

It is worth mentioning a few preliminary issues before diving into China's preference for bilateralism. First, as is well known, multilateral trade negotiations under the WTO are making little progress, such that no feasible alternatives to regionalism or bilateralism have emerged. The bilateral approach has been adopted by many major trading powers, including the US and EU.<sup>73</sup> The adoption of bilateralism is thus not particular to China. Second, China is also responding to other countries' efforts to sign FTAs, what we might call the "peer pressure" theory of FTAs. If everyone else is signing FTAs and China is not, its exports and investments correspondingly suffer.<sup>74</sup> China certainly doesn't want to be left out of the economic integration through regional arrangements. Concluding FTAs ensures a level playing fields between China and other large economies like the US and Japan. Third, multilateral treaties and bilateral treaties are both necessary components of the international law infrastructure,<sup>75</sup> even as they promote different goals.<sup>76</sup> In reality, a global solution might not be the best solution for certain global issues. Indeed, China's policymakers seem to agree on this point in their pursuit of the bilateral approach (evinced in the FTA boom) and multilateral approach (evident in China's WTO negotiations and rule-making process) as complements to one another.<sup>77</sup>

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organizations-growing-trade-influence-7957.html

<sup>73</sup> See, e.g., Sungjoon Cho, *Defragmenting World Trade*, 27 NW. J. INT'L L. & BUS. 39 (2006).

<sup>74</sup> By way of example, like many other country, Korea is in a dilemma: on one hand, they want to sign FTA with China to urge the liberalization of China's markets, while on the other hand, they need to protect their agricultural products at home.

<sup>75</sup> For detailed discussions about multilateralism versus regionalism, see Part III.A. See also Blum, *supra* note 25 at 333.

<sup>76</sup> See *id.*

<sup>77</sup> See Vice Minister Yi Xiaozhun Discusses China's Choices and Actions in the

In the intensive debate between multilateralists and bilateralists, China, like other countries, is aiming to maximize its welfare while observing international obligations. China has struck upon a “middle way” of combining multilateral and bilateral approaches. Membership in various international organizations enhances China’s power and status, but also gives China the opportunity to demonstrate that it will honor its commitments, and actively participate in the making of new international rules.<sup>78</sup> On the other hand, for various economic and political reasons, China has actively sought out bilateral FTAs.

Nevertheless, it is clear that China *prefers* bilateralism, which offers many advantages vis-à-vis multilateralism.<sup>79</sup> Despite a laundry list of generic characteristics of bilateralism<sup>80</sup>, only some of them reflect China’s particular circumstances and preferences.

First, bilateralism allows governments to conclude the types of agreements they need and want in a way that best suits their needs and interests and to choose their partners to such agreements.<sup>81</sup> In other words, it is better tailored to meet the specific needs of the present relationship, and influence future relations by making strategic decisions about which goods to liberalize, which services to protect, and so on. The bilateral approach allows more flexibility, creativity, political expediency, and ownership over the provisions. This is generally applicable for China. As revealed previously, in choosing FTA partners, China tends to choose partner countries that are resource rich, but not superpowers. Obviously, China will not have this

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Greater Trend of Regional Economic Cooperation, (<http://www.hchzq.gov.cn/dbylt/ShowArticle.asp?ArticleID=56>).

<sup>78</sup> Qingjiang Kong, China’s WTO Accession and the ASEAN-China Free Trade Area: the Perspective of a Chinese Lawyer, 7 J. INT’L ECON. L. 839, 843, 846 (2004).

<sup>79</sup> Arie Reich, Bilateralism versus Multilateralism in International Economic Law: Applying the Principle of Subsidiarity, U. TORONTO L.J. 263 (2010) (describing and interests of states, and allow decisions to be taken on a level closer to the people; they enable full reciprocity without free-riding; they are easier to negotiate and consummate; they can address technological change and shorter product cycles faster than the WTO; they provide efficient signaling to other participants in the multilateral system and to investors; and they are convenient platforms for political agreements.) Cf. Paul Krugman, Is Bilateralism Bad?, NBER Working Paper #2972, May 1989 (<http://time.dufe.edu.cn/spti/article/krugman/krugman022.pdf>)

<sup>80</sup> See *id.*

<sup>81</sup> See generally Taylor, *supra* note 27 (arguing that bilateralism allows greater flexibility with regard to design and content of the regional agreement).



luxury in WTO negotiations. Moreover, areas not covered by the multilateral treaties or commitments may be included in FTAs. For instance, the FTA with New Zealand covers movement of people, under which New Zealand can send business people to China and China can send skilled workers to New Zealand in areas where shortages exist.<sup>82</sup> In addition, the China-New Zealand FTA contains enhanced investment protection provisions.<sup>83</sup> Furthermore, China will also have more control over the timing of the negotiation. A multilateral treaty could not possibly allow China such opportunities and protections. Most importantly, as a major carve out of MFN, without the concern to give the same preferential treatment to all members, China might venture somewhat further in terms of opening its market to FTA partners. In summary, bilateralism can give the countries more room to customize the arrangements to the specific needs and circumstances of the particular relationships.<sup>84</sup>

Second, reciprocity is possible only in bilateral deals. Under the most-favored nation ("MFN") principle, China must extend to all WTO members the best trading privileges granted to any one member, and must treat goods of an importing WTO member's trading partners on equal terms with one another.<sup>85</sup> It will clearly be a losing deal for China if China extends to each WTO member on equal tariff reduction concession as those in China's FTAs while those WTO members are not obligated to extend reciprocal concessions. In fact, this is precisely the "free-riding" problem that concerns scholars and critics of bilateral agreements.<sup>86</sup>

Third, bilateral agreements are easier to conclude. The failure to launch a new round for trade negotiation in Seattle, the collapse of the Cancun

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<sup>82</sup> New Zealand-China Free Trade Agreement, National Interest Analysis. (<http://www.chinafta.govt.nz/1-The-agreement/3-Publications/National-interest-analysis.pdf>)

<sup>83</sup> In addition to the provisions on national treatment and most-favored-nation treatment, the FTA provides for additional protections for New Zealand investments in China beyond those available under prior agreement, including protection from unjustified expropriation; provisions to allow the free transfer of investment funds; and the incorporation of minimum international law standards of fair and equitable treatment and full protection and security.

<sup>84</sup> Blum, *supra* note 25, at 339.

<sup>85</sup> Peter Yu et al., *China and The WTO: Progress, Perils, and Prospects*, 17 COLUM. J. ASIAN L. 1, 21-22 (2003).

<sup>86</sup> See, e.g., Rodney D. Ludema & Anna Maria Mayda, *Do Countries Free Ride on MFN?*, 77 J. INT'L ECON. 137 (2009).

negotiations, and the uncertainties in the Doha round negotiation<sup>87</sup> have generated tremendous unease and distrust among states, and led some to question the practicability of multilateralism generally. By contrast, bilateral agreements are certainly easier to conclude; only two parties need reach agreement, not 153 as in the WTO. However, certain scholars caution against confusing the efficiency of the negotiation process with the efficiency of its outcome, simply because efficient negotiation process does not necessarily produce efficient outcome. To reach an efficient outcome might need lengthy and uneasy negotiations.<sup>88</sup> Multilateral negotiations cycles are getting longer.<sup>89</sup> International investment law well exemplifies the expediency of the bilateral approach. The failure of the international community to form a multilateral investment agreement suggests the difficulty of arriving at mutually agreeable multilateral treaties. In its absence, bilateral investment treaties have proliferated, and become their own corpus of international law.<sup>90</sup>

Fourth, for certain countries, signing FTAs has signaling effect—that they are interested in attracting foreign investment by improving their legal infrastructure via signing FTAs.<sup>91</sup> Some argue that there might be a “race to the bottom” when all the least developed countries are signing bilateral treaties in order to attract foreign capital. However, China doesn’t need to sign FTAs in order to attract investment, as it has been a magnet for foreign direct investment since the 1980s when few FTA was in place.<sup>92</sup>

Fifth, bilateralism can promote political and strategic objectives. For example, the FTA with ASEAN to some extent improves the friendship between China and ASEAN.<sup>93</sup> Moreover, China can build its regional leader

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<sup>87</sup> Sungjoon Cho, *Beyond Doha's Promises: Administrative Barriers as an Obstruction to Development*, 25 BERKELEY JOURNAL OF INTERNATIONAL LAW 395 (2007).

<sup>88</sup> Blum, *supra* note 25 at 352.

<sup>89</sup> Reich, *supra* note 79, at 277-278.

<sup>90</sup> See, e.g., Efraim Chalamish, *The Future of Bilateral Investment Treaties: A De Facto Multilateral Agreement*, 34 BROOK. J. INT'L L. 303 (2009)

<sup>91</sup> See, e.g., Andrew T. Guzman, WHY LDCS SIGN TREATIES THAT HURT THEM: EXPLAINING THE POPULARITY OF BILATERAL INVESTMENT TREATIES, 38 VA. J. INT'L L. 639 (1998).

<sup>92</sup> See, e.g., Cai Congyan, *China-US BIT Negotiations and the Future of Investment Treaty Regime: A Grand Bilateral Bargain with Multilateral Implications*, 12 J. INT'L ECON. L. 457 (2009).

<sup>93</sup> See Qingjiang Kong, *China's WTO Accession and the ASEAN-China Free Trade Area: the Perspective of a Chinese Lawyer*, 7 J. INT'L ECON. L. 839 (2004); see also Jiangyu Wang, *China's Regional Trade Agreements: The Law, Geopolitics, and Impact on the Multilateral Trading System*, 8 S.Y.B.I.L. 119 (2004); Jeremy Leong, *Singapore:*

image by its artful FTA strategy. Japan certainly has felt the pressure -- with the implementation of ASEAN-China FTA<sup>94</sup>, there is a growing fear in Japan that ASEAN countries will gradually become China's backyard.<sup>95</sup>

Sixth, bilateral and regional arrangement has become one of the best ways to shift export markets and get around of non-tariff barriers. In fact, Vice Minister Yi Xiaozhun has explicitly expressed in his speech at China-New Zealand FTA Workshop that "the Chinese government adheres to free trade, keeps market open and opposes trade protectionism."<sup>96</sup> Since the international financial turmoil, anti-dumping frenzy (particularly, the U.S.) toward China's exports clearly suggested a resurgence of trade protectionism in the U.S. The China-ASEAN FTA launched, under which China and ASEAN member states imposed zero tariffs on over 90% of their products, which will facilitate the bilateral trade among the countries under the framework. Moreover, the industrial investment cooperation measures under the FTA will obviously facilitate China's overseas investment in the ASEAN member states, which is a pragmatic way to shift the export markets and get around the confrontational trade barriers.

Of course, bilateralism need not diametrically oppose multilateralism and they are not necessarily mutually exclusive. Instead, they can be complementary forces. Multilateral rules or arrangements may constitute a foundation which provides a basic and overarching infrastructure for future development, while bilateral agreements could attend to detailed rules for effective implementation.<sup>97</sup> However, it might turn into another way - multilateral treaties and bilateral treaties might become hindrance of each other. Parties always need a strong reason to sign an additional bilateral treaty

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*Review of Major Policy Statements*, 11 S.Y.B.I.L. 277 (2007); Gensheng Li & Wei Yue, *Zhongguo - Dongmeng Ziyou Maoyiqu Shishi Xiaoguo Fenxi* [Analysis of the Effect of the Implementation of China-ASEAN Free Trade Zone], COOPERATIVE ECONOMICS AND TECHNOLOGY, Volume 4 (2010).

<sup>94</sup> C.f. Wang Jiangyu, *Association of Southeast Asian Nations-China Free Trade Agreements*, (papers.ssrn.com/sol3/papers.cfm?abstract\_id=1456242) (Given the non-existence of an international legal personality in ASEAN, as well as participation in the FTA by individual countries as sovereign States, the FTA is actually a regional agreement with eleven parties.)

<sup>95</sup> See *The China-ASEAN Free Trade Agreement: Who's Happy, Who's Not*, available at: <http://www.knowledgeatwharton.com.cn/index.cfm?fa=viewArticle&articleID=2227&languageid=1> (last visited Mar. 15, 2011).

<sup>96</sup> See [http://fta.mofcom.gov.cn/enarticle/enrelease/201007/3094\\_1.html](http://fta.mofcom.gov.cn/enarticle/enrelease/201007/3094_1.html).

<sup>97</sup> Blum, *supra* note 25, at 371.

where they have committed to a multilateral treaty previously.<sup>98</sup> *Vise versa*. Moreover, signing parties need always think carefully about the compatibility of the arrangements when doing so sequentially. However, China doesn't seem to adopt this strategy by taking advantage of the sequential interactive dynamics between multilateral approach and bilateral approach. Instead, China adopted the dual-approach, pursuing multilateral and bilateral simultaneously, aiming to solve different issues.

Lastly, bilateral arrangements can serve some experimental function. FTAs can help Chinese companies to experience the trade liberalization on a small scale and learn to adapt to the wider-scale as multilateralism progresses.<sup>99</sup>

#### IV. Choosing FTA partners

How does China choose its FTA partners? This is a tough question to answer, and one that few experts could predict with any certainty. Approaching the question of how China's selection process requires some tentativeness and modesty.

Since China has not publicly articulated its FTA strategy, nor its selection criteria for FTA partners, other methods of investigation are needed. One way to approach the issue is through comparison, by looking at other countries' trade policies. When mapping out its trade strategy, China grappled with two possible models: those of Japan and the United States.<sup>100</sup> Japan emphasized investment in the region, and the establishment of transnational production lines to but sealed off its domestic market from products made in the region.<sup>101</sup> By contrast, the US has opened its domestic markets in the pursuit of economic interdependence with FTA partners in North and South America. China has followed the US policy of more open integration, inviting neighboring states to establish a strong commercial presence in China, increasing bilateral investment between the two states, and expanding the relationship beyond mere economics (qua Japan). This in turn encourages the perception that China's economic growth presents an opportunity, not a threat, to the partner's prosperity.<sup>102</sup>

We cannot, of course, assume complete commensurability between

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<sup>98</sup> *Id.* at 373.

<sup>99</sup> Yang Jiang, *China's Pursuit of Free Trade Agreements: Is China Exceptional?*, 17 *REV. INT'L POL. ECON.* 238, 250 (2010).

<sup>100</sup> See Zhang Yunling & Tang Shiping, China's Regional Strategy, in *POWER SHIFT: CHINA & ASIA'S NEW DYNAMICS* 48, 53 (David Shambaugh ed., 2005).

<sup>101</sup> Webster, *supra* note 18, at 442-443. See also Raymond J. Ahearn, CRS Report for Congress, Japan's Free Trade Agreement Program (2005).

<sup>102</sup> *Id.*

China's FTA policy and the United States'. But since the United States is more transparent about its selection process, some indicia of China's own trade policy can be plumbed analogically. While China has not made a wholesale adoption of Western models, whether multilateral or neoliberal, it has pragmatically adapted elements of foreign models to suit its own conditions.<sup>103</sup> It would not be surprising to see certain aspects of US trade policy reflected in China. We do not minimize the enormous differences between the US, a prime architect of the postwar multilateral trading system, and China, a historically reluctant participant in international organizations, and only a recent advocate of bilateral engagement. But US policy presents a typology that may, or may not apply, to China's FTAs.

When serving as United States Trade Representative in 2003, Robert Zoellick announced thirteen factors that he weighed in determining whether to launch FTA negotiations with a country.<sup>104</sup> These included such factors as geographic diversity (Asia, Middle East, Africa, the Americas), domestic business and agricultural interests, cooperation in security and foreign policy, and ensuring a mix of developed and developing countries.<sup>105</sup> Zoellick further noted that no single factor was dispositive, nor was one factor more heavily weighted than another.<sup>106</sup> Thereafter, the US Government Accountability Office ("GAO Report") further subdivided the Zoellick factors into six categories: partner country readiness (adherence to rule of law, political will), economic benefit to the US, benefits to broader strategy of trade liberalization (such as meeting WTO obligations), compatibility with US trade interests, support from Congress and the private sector, and the resource constraints of the government.<sup>107</sup> As noted in the GAO Report, however, the most important factors in choosing trade partners included "U.S. trade strategy, foreign policy, and foreign economic goals."<sup>108</sup> The appendix to the Report

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<sup>103</sup> See generally RANDALL PEERENBOOM, CHINA MODERNIZES: THREAT TO THE WEST OR MODEL FOR THE REST? 5-6 (2007).

<sup>104</sup> See Following the Bilateral Route?, WASHINGTON TRADE DAILY, May 9, 2003. The list is also available in a comprehensive report published by the Government Accountability Office. See International Trade: Intensifying Free Trade Negotiating Agenda Calls for Better Allocation of Staff and Resources, Jan. 2004, GAO-04-233 (hereinafter GAO Report), (<http://www.gao.gov/new.items/d04233.pdf>).

<sup>105</sup> Id. at 7-9.

<sup>106</sup> Id. at 7.

<sup>107</sup> Id. at 9-10.

<sup>108</sup> Id. at 10.

lists individual factors that the US weighed in signing each FTA.<sup>109</sup>

Jeffrey Schott elegantly broke the Zoellick factors down into four categories: domestic politics, economic policy considerations, partner country commitments to trade liberalization, and foreign policy considerations.<sup>110</sup> Because Schott abstracted the categories in such a way that they do not exclusively reflect US characteristics, we adopt them for our analysis.

To be sure, it would be a mistake to view China's FTA policy solely through the prism of the United States'. In general, China's foreign policy pays far less attention to the domestic political situation and internal conditions of partner countries than the US. Indeed, since its founding, China has steadfastly hewn to the principle of non-interference in the internal affairs of other countries, preferring instead to "live and let live." If the U.S. has sought to introduce a world order of international institutions promoting multilateral trade and limiting state sovereignty, China instead promotes a worldview stressing "the equal, unfringeable sovereignty of all states large and small, Western and non-Western, rich and poor, democratic and authoritarian, each to run its own system as it sees fit, whether its methods suit Western standards or not."<sup>111</sup> In both principle and practice, China is relatively less concerned with such matters as a country's human rights record, political system, transparency, environmental protection, or commitment to multilateral trading system.<sup>112</sup> Noticeably, Vice Minister Mr. Yi Xiaozhun mentioned that China's selection criteria include first, the potential partner maintain good political and diplomatic relationship with China; second, the potential partner has complementary economic structures with China and

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<sup>109</sup> Id. at 37-56. For example, the Moroccan FTA stemmed from six factors, which include (1) to promote openness, tolerance, and economic growth across the Muslim world, (2) to recognize Morocco's "staunch" alliance in the war on terror, (3) to ensure Moroccan support for U.S. positions in WTO negotiations, and (4) to encourage sustainable development, environmental protection, transparency and increased accountability of Moroccan government institutions. Id. at 47-48.

<sup>110</sup> Jeffrey Schott, for instance, refined Zoellick's thirteen factors into four: domestic politics, economic policy consideration, partner country commitments, and foreign policy considerations. See Schott, *supra* note 23, at 365.

<sup>111</sup> See Principles of China's Foreign Policy, Asia for Educators, ([http://afe.easia.columbia.edu/special/china\\_1950\\_forpol\\_principles.htm](http://afe.easia.columbia.edu/special/china_1950_forpol_principles.htm)).

<sup>112</sup> China's relationships with such countries as North Korea, Burma, Sudan and Zimbabwe are often singled out to show that China supports "rogue regimes." A less tendentious view of these relationships would suggest that China places economic, geographical, and historical linkages above political ones.

share import/export pattern with China, and as a result, the realization of free trade will not impose significant adverse impact on China's industries relating to national economy as well as the people's livelihood; third, the potential partner has significant domestic market and could also serve as a trade hub; fourth, the potential partner shares common desire with China to enter into FTAs.<sup>113</sup>

Of course, factors such as domestic politics, economic considerations, and foreign policy also influence China's selection of partner countries. Take the issue of domestic politics. To be sure, Chinese politics manifest themselves rather differently than they do in the US, where a democratically elected Congress reflects the interest of the Member himself, his constituents, and powerful lobbying groups. In China, domestic politics are far less transparent. After a series of internal discussions, policies are often announced by central leaders, and then left to the responsible organ or agency for implementation. Nonetheless, it is still possible to discern the influence of domestic politics on Chinese FTA patterns.

#### *IV.A. Domestic politics*

41. One of the most striking examples of domestic politics influencing trade policy may be the China-ASEAN FTA. For many years, China has tried to build up its western and southwestern regions, whose economic development lags significantly behind richer coastal areas. In the late 1990s, leaders from various provinces in southwest China, such as Sichuan, Yunnan and Guangxi, pressured the central government to enter an FTA with ASEAN.<sup>114</sup> Provincial leaders hoped that tariff-free access to Southeast Asia would make Chinese manufactured and agricultural goods more competitive in those markets. Moreover, increased trade flows between southwest China and Southeast Asia (Laos, Vietnam, Thailand) would convince Beijing to increase transportation services (roads, railroads, airline routes) between these two areas. By directly shipping goods over the southwestern border, Chinese manufacturers and farmers could avoid the transportation costs of first

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<sup>113</sup> See Buzhang Fangtan: Yi Xiaozhun Buzhang Tan Zhongguo zai Quyu Jingji Hezuo Daqushi xiade Jueze yu Zuowei [Interview with Minister: Vice Minister Yi Xiaozhun Discussed China's Choice and Performance against the Backdrop of Regional Economic Cooperation], <http://yixiaozhun.mofcom.gov.cn/aarticle/speeches/200705/20070504725234.html>.

<sup>114</sup> The China-ASEAN Free Trade Agreement: Who's Happy, Who's Not, Knowledge@Wharton Public Policy & Management, May 12, 2010, (<http://www.knowledgeatwharton.com.cn/index.cfm?fa=viewArticle&articleID=2227&languageid=1>).

sending goods to China's east coast, and then shipping them to Southeast Asia. Given the very low profit margins associated with the agricultural products grown in these areas, a reduction in transport fees would significantly boost profitability and competitiveness. In the case of the ASEAN agreement, then, domestic political pressure played an important role in Zhu Rongji's proposal of 2000. A similar motivation – developing the western provinces –likely propelled the China-Pakistan FTA.<sup>115</sup>

#### *IV.B. Economic considerations*

Economic considerations weigh heavily in China's FTA calculus. Chief among them is the continuation of its unprecedented economic growth. This in turn requires expanding, or at least maintaining, high growth in such sectors as construction, heavy manufacturing (steel), light manufacturing (copper), infrastructure (railways, roads) and the production of consumer goods.<sup>116</sup> These forms of economic activity require enormous amounts of natural resources, which China has assiduously scoured the world over, notably in Africa,<sup>117</sup> Australia,<sup>118</sup> and South America.<sup>119</sup> At present, China is the largest consumer of copper, tin, zinc, steel, iron ore, and coal; and the second largest consumer of aluminum, petroleum and lead, and the fourth largest consumer of gold.<sup>120</sup>

China's pressing need for raw materials illuminates several of its recent

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<sup>115</sup> See Syed Fazl-e-Haider, Pakistan's Trade Bear-hug with China, *ASIA TIMES*, Apr 21, 2010, available at: [http://www.atimes.com/atimes/South\\_Asia/LD21Df01.html](http://www.atimes.com/atimes/South_Asia/LD21Df01.html)

<sup>116</sup> See, e.g., Ministerio de Comercio Exterior y Turismo, Peru-China Free Trade Agreement: Joint Feasibility Study, 6-7 (noting that China's highest growth industries include manufacturing, construction and transportation); David Menzie et al., China's Growing Appetite for Raw Materials, U.S. Geological Survey Open File Report, 4-5.

<sup>117</sup> See French, *supra* note 3; DEBORAH BRAUTIGAM, *THE DRAGON'S GIFT* (2009).

<sup>118</sup> See Minerals Council of Australia, Fact Sheet – The Australia China Minerals Trade, April 2005, ([http://www.minerals.Org.au/\\_\\_data/assets/pdf\\_file/009/8829/MCA\\_au-china\\_fact\\_sheet\\_april-1.pdf](http://www.minerals.Org.au/__data/assets/pdf_file/009/8829/MCA_au-china_fact_sheet_april-1.pdf)).

<sup>119</sup> See Claudio Loser, China's Rising Economic Presence in Latin America, Before the U.S.-China Economic and Security Review Commission, July 21, 2005, 2, ([http://www.uscc.gov/hearings/2005hearings/written\\_testimonies/05\\_07\\_21\\_22\\_wrts/loser\\_claudio/wrts.pdf](http://www.uscc.gov/hearings/2005hearings/written_testimonies/05_07_21_22_wrts/loser_claudio/wrts.pdf)).

<sup>120</sup> See Minerals Council of Australia, *supra* note 118.



choices for FTA partners.<sup>121</sup> Chile, Costa Rica, and Peru account for a few drops in China's ocean of world trade, a topic more fully explored below. But vast copper reserves made Chile an ideal partner for a free trade agreement with China, while Peru's silver, iron ore and copper were also attractive. By entering into FTAs with these countries, China was able to correct trade deficits that it ran with both countries due to its heavy reliance on their mineral imports.

At the same time, China must open up new markets for its exports. In today's global economy, and particularly after the global recession, reliance on exporting to the EU, US and Japan will no longer serve all of China. China is particularly interested in promoting agricultural and manufacturing trade with Southeast Asia, which will help develop its largely agrarian and underdeveloped western regions, such as Xinjiang, Tibet and Yunnan.

Like the US and Japan, China prefers to enter FTAs with countries with which it transacts very little trade.<sup>122</sup> Though China's main trading partners include the US, EU, and Japan, there is very little chance of an FTA with any of these countries. An FTA with either Japan or the US would require both parties to overlook a long history of mutual suspicion, while certain sectors – such as agriculture and intellectual property – could not be arranged satisfactorily as between China and the US, or China and Japan. Rather, as one Chinese observer stated, “China does not have the confidence to open its market to those economies that are huge and far more advanced than its own.”<sup>123</sup> China has opted for countries with small economies and low volumes of bilateral trade, which will prevent the Chinese domestic market from experiencing a flood of cheap imports into its domestic market. Furthermore, entering into FTAs with those relatively less powerful trading partners is certainly more manageable for China. Moreover, it could also help China diversify its import sources and export market. By focusing on countries with abundant natural resources, China can ensure that it obtains the materials it needs to promote economic growth without endangering domestic industries through excessive competition.

Finally, China seeks to complete FTAs with countries that have healthy

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<sup>121</sup> See, e.g., Yang Liyan & Lei Xiaohang, FTA Zhanluexia Woguo Haiwai Nengyuan Touzi de Falv Wenti Yanjiu [On the Several Legal Issues of China's Entergy Investment Abroad under FTA], 4 J. POLI. SCI. & L. 67 (2009).

<sup>122</sup> The US, for instance, has signed FTAs with Oman, Bahrain, Morocco, and Singapore, none of which conduct significant bilateral trade with the US.

<sup>123</sup> Sheng Lijun, *China-ASEAN Free Trade Area: Origins, Developments and Strategic Motivations*, Institute of Southeast Asian Studies Working Paper: International Politics & Security Issues Series No. 1 (2003) 8.

economies and strong credit ratings. Agencies like Standard and Poor's and Fitch count Chile and Peru as South America's first and second most creditworthy countries, respectively, and Argentina, Bolivia and Ecuador as its least.<sup>124</sup> It is not surprising, then, that China first signed an FTA with Chile, and then Peru, while an FTA with Argentina, Bolivia or Ecuador does not appear to be in the cards.

#### *IV.C. Foreign policy*

Foreign policy may not be as important to Chinese trade policy as it is in United States trade policy, but it still plays a key role. In selecting FTA partners, the United States considers the country's adherence to rule of law, as well as its commitment to trade liberalization, and to WTO commitments more specifically.<sup>125</sup> Not so China. As noted above, China's traditional concern for state sovereignty renders it essentially uninterested in a partner country's internal affairs, such as adherence to rule of law, respect for international norms, or interest in democratic politics. Nor does China seem especially concerned with whether a country embraces free trade, multilateralism or another economic paradigm. China does not appear to weigh a partner country's commitment to multilateral trade liberalization in making its FTA choices. Chile, for instance, has signed many bilateral and multilateral FTAs,<sup>126</sup> which cover 75% of its trade.<sup>127</sup> Pakistan, by contrast, has signed only three bilateral FTAs, and one regional one.<sup>128</sup>

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<sup>124</sup> See Peru-China Free Trade Agreement: Joint Feasibility Study, 12. Chile received an A from both Standard and Poor's and Fitch, while Peru earned a BB+.

<sup>125</sup> See GAO Report, *supra* note 104, at 8, 10 (noting that the United States weights a potential partner country's commitment to the "trade disciplines" of the WTO).

<sup>126</sup> See Biblioteca del Congreso Nacional de Chile [The National Congressional Library of Chile], *Tratados de libre comercio firmados por Chile* [Free trade agreements signed by Chile], ([http://www.bcn.cl/carpeta\\_temas/temas\\_portada.2005-11-29.5590492629/area\\_2.2005-12-01.2439583052](http://www.bcn.cl/carpeta_temas/temas_portada.2005-11-29.5590492629/area_2.2005-12-01.2439583052)) (listing as FTA partners Canada, Mexico, Central America, the European Community, the US, Korea, the European Free Trade Area, and China). In addition, Chile is negotiating treaties with many other states, including Thailand, Indonesia, and the Gulf States.

<sup>127</sup> See Whalley & Antkiewicz, *supra* note 17, at 13.

<sup>128</sup> See Tanveer Ahmed, *Nepal intends to sign FTA with Pakistan in JEC meeting*, DAILY TIMES, July 24, 2010, ([http://www.dailytimes.com.pk/default.asp?page=2010%5C07%5C24%5Cstory\\_24-7-2010\\_pg5\\_3](http://www.dailytimes.com.pk/default.asp?page=2010%5C07%5C24%5Cstory_24-7-2010_pg5_3)).

Two additional foreign policy considerations of the US Trade Representative include striking a balance between developed and developing countries, and maintaining geographic diversity.<sup>129</sup> The former is important because developed countries currently have the market to purchase US goods and services, while developing countries are likely to do so in the future. Such arrangements can help lock in longer term market plans. Geographic diversity is also important because of the US' desire to be active in many parts of the globe, and to hedge against regional economic downturns, such as the Asian financial crisis of 1997-98.

China too seems concerned with striking a balance between developed and developing countries in its FTA platform. Though China has concluded a greater number of FTAs with developing countries, the recently concluded FTAs with New Zealand and Singapore, and ongoing negotiations with Australia, indicate that China also places a premium on developed countries. China wants to create a sound economic environment for all of its exports, both electronic and other and consumer goods (to developed countries) and agricultural products and textiles (to developing countries). Nonetheless, certain policymaker of China has seen entering into FTAs a new bridge to facilitate cooperation between China and other developing countries.<sup>130</sup>

Geographic diversity, at this stage, seems to be a secondary concern for China, whose FTA preferences are circumscribed to the Asia-Pacific region. As noted above,<sup>131</sup> China has invested considerable diplomatic resources towards establishing itself as a regional power, and to a lesser extent, a global one. As economic matters are now firmly part of that diplomatic initiative, FTAs will tread the same path blazed by China's recent regional engagements in politics and security. The FTAs with ASEAN, Singapore and Pakistan, all indicate the importance of location in China's FTA strategy. Slightly farther afield, China has also signed agreements with countries on both sides of the Pacific Ocean, such as Chile, Costa Rica, Mexico and Peru, as well as New Zealand. Its ongoing discussions with Australia suggest the geographic limits of its strategy: the Pacific. This suggests that China is not aiming toward strict geographic contiguity often associated with "natural" trading blocs,<sup>132</sup> but rather the idea that China wants to be a, if not *the*, center of gravity in the

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<sup>129</sup> GAO Report, *supra* note 104, at 8-9.

<sup>130</sup> See Zhu Hong, Ziyou Maoyi Xieding – Zhongguo yu Fazhanzhong Guojia Nannan Hezuo de Xinqiaoliang [Free Trade Agreements – New Bridge for South-South Cooperation between China and other Developing Countries], International Trade, Volume 9, 2009.

<sup>131</sup> See *supra*, Part III.A.

Asia-Pacific region.

On the other hand, China's discussions with European countries such as Norway, Iceland, the Gulf Cooperation Council and the Southern Africa Customs Union hint at a larger global strategy. But the seriousness of such negotiations remains unclear at this point. Certain negotiations have been stalled for years,<sup>133</sup> while others do not appear to be concluding any time soon. For the foreseeable future, China will most likely cling more closely to its Asian neighbors, and across the Pacific.

## **V. China's FTAs and similar agreements**

China has signed FTAs with ASEAN, Pakistan, Chile, Mexico, Peru, Costa Rica, Singapore, and New Zealand.<sup>134</sup> Mainland China preceded the FTA boom by signing Cooperative Economic Partnership Agreements (CEPAs) with Hong Kong and Macau. The Economic Cooperation Framework Agreement between Chinese mainland and Taiwan recognizes the tremendous cross-strait economic activity of recent years.<sup>135</sup> As this amounts to over a dozen agreements, analyzing each one (as well as their numerous annexes and follow-up agreements) would be impractical. Accordingly, this section focuses on three treaties, with ASEAN, Peru, and New Zealand. This grouping captures the geographic and developmental diversity of China's FTA partners, as well as the variety of forms the agreements have themselves taken. China's FTAs do not follow one path, but adapt to partner preferences. After a decade, the greatest defining feature of Chinese FTAs is their malleability. Though clear principles underlie the FTAs, each agreement is itself the product of a unique collaboration between China and the partner country, according to the circumstances of the day.

Before describing the characteristics of Chinese FTAs, another comparative note provides a model by which to make sense of them. Like China, the United States has also signed a flurry of FTAs in the new

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<sup>132</sup>See Krugman, *supra* note 59, at 17.

<sup>133</sup> The last round of SACU negotiations, for instance, took place over six years ago. See Ministry of Commerce of the People's Republic of China, China-SACU FTA, (<http://fta.mofcom.gov.cn/topic/ensacu.shtml>).

<sup>134</sup> Please find a list of China's FTAs or similar agreements at the end of the article.

<sup>135</sup> See Kun-Ming Chen<sup>1</sup>, Meng-Chia Tsai et al., Impact of Cross-Strait Trade Liberalization: A Computable General Equilibrium Analysis, CHINA & WORLD ECONOMY, Volume 17, Issue 6, pages 106–122, November-December 2009 (applies a computable general equilibrium model to investigate the potential economic effects of trade liberalization across the strait)

millennium, many of them with the same countries as China.<sup>136</sup> The US has derived a model,<sup>137</sup> as well as enhancements to that model,<sup>138</sup> to which it more or less adheres in negotiating FTAs. The model includes sixteen subject areas, two restricted categories (agricultural, labor mobility), and other rules for safeguards such as antidumping or countervailing duties.<sup>139</sup> The enhanced model increases protection of intellectual property and investment, while covering new areas such as corruption, transparency and capacity-building.<sup>140</sup> For present discussion, the specifics of the US model are secondary to the simple fact that the US hews to a model (or two) when negotiating FTAs. In reality, because of their limited bargaining power, small economies like Bahrain, Morocco and Oman largely follow US standards in the final form of the agreement.

By contrast, China imposes less stringent standards on its FTA partners. The substance of Chinese FTAs shifts with the preferences and legal requirements of the partner. If one partner wants to take the process in steps, China obliges. If another partner wants a more comprehensive arrangement, China agrees. Some FTAs cover the three pillars of FTAs—trade in goods, trade in services, investment protections—but some do not. In addition, FTAs may include special provisions for labor and environment,<sup>141</sup> or

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<sup>136</sup> Under the second Bush administration (2000-08), the United States entered into FTAs with Singapore (2003), Chile (2003), Australia (2004), Morocco (2004), Central America (2005), Bahrain (2006), Oman (2006) and Peru (2007). See Office of U.S. Trade Rep. (U.S.T.R.), *The President's 2008 Trade Policy Agenda* 107-115 (2008), ([http://www.ustr.gov/assets/Document\\_Library\\_Publications/2008/2008\\_Trade\\_Policy\\_Agenda/asset\\_upload\\_file649\\_14563.pdf](http://www.ustr.gov/assets/Document_Library_Publications/2008/2008_Trade_Policy_Agenda/asset_upload_file649_14563.pdf)). The Bush administration also signed FTAs with Korea, Colombia and Panama in 2007, but Congress has not approved any of them. *Id.* at 2.

<sup>137</sup> See C. O'Neal Taylor, *Regional Trade Agreements: Current Issues & Controversies: The U.S. Approach to Regionalism: Recent Past & Future*, 15 *ILSA J. INT'L & COMP. L.* 411, 420-6 (2009) (noting that the NAFTA model contains sixteen subject matter areas, contains obligations and exceptions adopted from GATT, and excludes various items such as rules on antidumping and countervailing duties, as well as subject matters like labor mobility and agricultural).

<sup>138</sup> *Id.* at 428-433 (describing the WTO model as incorporating all of the NAFTA features, revising the chapters on intellectual property rights and investment, and covering new areas such as corruption, transparency, and capacity building)

<sup>139</sup> *Id.* at 430.

<sup>140</sup> *Id.* at 433.

<sup>141</sup> See New Zealand Ministry of Foreign Affairs & Trade, *New Zealand – China*

enhanced protections against expropriation.<sup>142</sup> Developing countries such as Pakistan and ASEAN have also negotiated “Early Harvest Programs,” whereby China opens up its agricultural markets by lowering tariffs on partner country exports before the partner country reciprocates. This conciliatory gesture assures trade partners that China acts with their interests in mind, and helps quell the “China threat” that afflicts much of Asia (and the world).

#### *V.A. ASEAN*

The China-ASEAN Free Trade Agreement took a decade to negotiate and enter into force, a reflection of ASEAN’s gradual approach to international relations and binding agreements more generally. Through repeated interactions between 2000, when Premier Zhu Rongji proposed the FTA at the Fourth China-ASEAN Leadership Forum in Singapore, and 2010, when it came into force, China adhered to the ASEAN way: meeting regularly to discuss important issues, agreeing to smaller issues before tackling more sensitive ones, and making progress incrementally, instead of one fell swoop. China even made concessionary gestures, such as the Early Harvest Program, to elicit goodwill and trust from ASEAN.

China was the first country to sign an FTA with ASEAN,<sup>143</sup> followed by Korea,<sup>144</sup> Japan,<sup>145</sup> Australia,<sup>146</sup> India.<sup>147</sup> The China FTA is best understood

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Free Trade Agreement, 50 (2008) (hereinafter “NZCFTA”).

<sup>142</sup> China-Peru Free Trade Agreement, Apr. 28, 2009, entered into force Mar. 1, 2010, Art. 133. New Zealand China Free Trade Agreement, Chapter 11, Section 1, Article 145.

<sup>143</sup> Rahul Sen & Sadhana Srivastava, Research Note: ASEAN’s Bilateral Preferential Trade & Economic Cooperation Agreements: Implications for Asian Economic Integration, ASEAN ECON. BULL., Aug. 2009, at 194, 196

<sup>144</sup> Korea and ASEAN signed agreements on trade in goods in 2006, trade in services in 2007, and investment in 2009. See Korea-ASEAN FTA to Boost Trade Ties, Korea Times, June 2, 2009, [http://www.koreatimes.co.kr/www/news/biz/2010/2010/05/123\\_4616.html](http://www.koreatimes.co.kr/www/news/biz/2010/2010/05/123_4616.html).

<sup>145</sup> Japan and ASEAN signed a comprehensive (goods, services, investments) FTA with ASEAN in 2008. See ASEAN-Japanese to take effect Dec. [sic], Kyodo News, Oct., 22, 2008, (<http://search.japantimes.co.jp/cgi-bin/nb20081022a6.html>).

<sup>146</sup> See Joint Media Statement of the Signing of the Agreement Establishing the ASEAN-Australian-New Zealand Free Trade Area, Cha-am, Thailand, Feb. 27, 2009, (<http://www.aseansec.org/22255.htm>) (covering goods, services and investment).

<sup>147</sup> See Joint Media Statement of the Seventh AEM-India Consultations, Bangkok, Aug. 13, 2009 (covering only trade in goods), (<http://www.aseansec.org/22563.htm>).

as a series of agreements, rather than the “big bang” type of pact favored by developed countries like the US, Japan, and Australia. China and ASEAN first signed a Framework Agreement in 2002, in essence an agreement to agree. The Framework articulates the broad economic aims of the China-ASEAN relationship (strengthening cooperation in trade and investment, liberalizing services, exploring new areas for economic cooperation), and acknowledges the special status of the least developed members of ASEAN (Vietnam, Laos, Cambodia, Myanmar), but imposes no legally binding commitments. These commitments have instead been assumed incrementally, over the course of many years. They include the Early Harvest Program (2004), Agreement on Trade in Goods (2005), Agreement on Trade in Services (2007), Agreement on Investment (2009), and other agreements on dispute settlement and information technology. The trade area itself took effect on January 1, 2010, six years after the Early Harvest Program went into effect. It is still too early to conclude what economic effect the FTA will have on bilateral economic relations. But the rapid increase in bilateral trade, from \$40 billion<sup>148</sup> in 2000 to \$193 billion<sup>149</sup> in 2008, suggests that both sides are gaining from increasingly favorable market access.<sup>150</sup>

#### *V.B. Peru*

China and Peru initiated negotiations for the FTA in September 2007, during an APEC meeting in Sydney, highlighting that organization's centrality to China's FTA diplomacy.<sup>151</sup> Eight rounds of negotiations later, in April 2009, leaders from both countries signed an FTA in the Great Hall of the People.<sup>152</sup> Nineteen months of negotiations is relatively short,<sup>153</sup> especially when compared with ASEAN and New Zealand, suggesting that China can respond

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<sup>148</sup> Suthiphand Chirathivat, *ASEAN-China Free Trade Agreement: background, implications and future development*, 13 J. ASIAN ECON. 671, 673 (2002).

<sup>149</sup> See *China Ready to Accommodate on ASEAN-China FTA*, ASEAN SECRETARIAT, Jan. 22, 2010.

<sup>150</sup> See <http://fta.mofcom.gov.cn/list/chinadongmeng/dongmengnews/1/dongmengList.html>

<sup>151</sup> See China-Peru FTA Entered into Force on March 1, XINHUA NEWS SERVICE, Mar. 1, 2010.

<sup>152</sup> See *id.*

<sup>153</sup> China, Peru sign free trade deal amid global financial crisis, XINHUA NEWS SERVICE, Apr. 28, 2009, ([http://news.xinhua.com/english/2009-04/28/content\\_11274558.htm](http://news.xinhua.com/english/2009-04/28/content_11274558.htm)).

quickly and nimbly to partner expectations.<sup>154</sup> Here, Peru's experience of negotiating agreements with the United States (2006), Chile (2006), Canada (2008), and Singapore (2008) suggested it may prefer a comprehensive approach. More important, the agreement was signed amidst worldwide economic recession. When many countries resorted to protectionism,<sup>155</sup> Peru and China signaled that their economies were strong enough to withstand the additional pressure of cheaper exports.

The FTA covers the full basket of goods, services and investment, and accounts for 90% of bilateral trade in goods over a number of years.<sup>156</sup> Like the ASEAN agreement, the Early Harvest Program gives Peru preferential access to Chinese markets before China enjoys similar access to Peruvian markets.<sup>157</sup> One salient feature of the Peru-China FTA is enhanced protection when investment is expropriated for national security reasons, a mandate of the 1993 Peruvian Constitution. In addition, the FTA also calls for a more legalistic review of investment disputes. Article 63 of the Peruvian Constitution grants foreign investors the same privileges and protections as Peruvian nationals.

#### *V.C. New Zealand*

After fifteen rounds of negotiations over three years, China signed its first FTA with a developed country, New Zealand, in 2009. As we might expect, this a comprehensive agreement (goods, service, investment) that is predicted to over 96% of bilateral trade, putting it more comfortably within the WTO approved requirements of FTAs. One controversial aspect of the FTA – the first in China's FTA history – was the introduction of labor mobility. With a high unemployment rate for skilled workers, China aims to employ its excess labor in New Zealand's schools, restaurants, offices and various other trades. Three types of labor provisions exist in the agreement. First, executives and

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<sup>154</sup> The New Zealand FTA took over three years to negotiate. See NZCFTA, *supra* note 112, at 10-11 (2008). The Australia FTA, negotiation of which began in 2003, has yet to materialize. The ASEAN agreement was laid out between 2002 and 2009. The Early Harvest program began in 2004, while the goods agreement with ASEAN's most developed countries began in January 2010. The goods agreement with the least developed members begins in 2015.

<sup>155</sup> For instance, the US's imposition of tariffs on Chinese tires, as well as the "Buy American" provisions of the American Recovery and Reinvestment Act of 2009 led many to fear a return to Depression-era protectionism.

<sup>156</sup> See *China-Peru FTA Entered into Force on March*, XINHUA NEWS SERVICE, Mar. 1, 2010.

<sup>157</sup> *Id.*



managers in certain service areas (computers, construction, education) can apply for three-year renewable visas to work in New Zealand. Second, a set number of positions is available for jobs with Chinese characteristics, such as Chinese chefs, Mandarin teachers, wushu instructors, and practitioners of traditional Chinese medicine.<sup>158</sup> A third group of positions opens after determining that New Zealand has a skills shortage in a particular field. If local labor cannot fill the post, up to 100 Chinese citizens may work in a very diverse group of occupations for up to three years.<sup>159</sup>

An additional feature of the China New Zealand FTA is the inclusion of labor and environmental provisions. Since 2001, the New Zealand Ministry of Foreign Affairs and Trade has required the incorporation of environmental<sup>160</sup> and labor standards<sup>161</sup> into FTAs. Though not part of the FTA itself – probably a concession to China -- these provisions impose legally binding obligations on China to cooperate with New Zealand on matters such as sustainable development, abolition of child and compulsory labor, and elimination of employment discrimination.<sup>162</sup> To achieve these lofty goals, the Labor MOU provides for dialogues and cooperative activities on labor laws, working conditions and labor inspection. Likewise, the Environment Cooperation Agreement (ECA) obliges China to cooperate with New Zealand on environmental management, nature conservation, and in various technological fields. The ECA permits members of the public, and NGOs to submit views on the efficacy of the ECA, potentially applying pressure on China from sectors of the society from which it has heretofore manage to neutralize.

## VI. Comments and recommendations on China's FTA strategy

China has incentive to commit to multilateral disciplines with the WTO through which to gain non-discriminatory access to large markets and

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<sup>158</sup> NZCFTA, *supra* note 141, at 42.

<sup>159</sup> Twenty-five occupations—boatbuilder, computer application engineer, diesel mechanic, plumber, radiation therapist and university lecturer, among others—are covered. See *id.*

<sup>160</sup> New Zealand Ministry of Foreign Affairs & Trade, Framework for Integrating Environment Issues in to Free Trade Agreements, (<http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/WTO/0-environment-framework.php>).

<sup>161</sup> See Framework for Integrating Labor Standards and Trade Agreements, (<http://www.mfat.govt.nz/Media-and-publications/Publications/Trade-matters/0-labour.php>).

<sup>162</sup> *Id.*

intercept discrimination against her by fellow large powers.<sup>163</sup> On the other hand, China has also been pursuing her free trade agreement strategy as FTAs can serve her need for flexibilities in trade and economic negotiations which is unavailable in multilateral negotiations. Moreover, FTA negotiations constitute an opportune platform where China can ask for those she truly wants, which would be embarrassing to ask publicly.<sup>164</sup> Furthermore, with the unpromising prospect of U.S. demand in the near future, FTAs could provide China with significant regional markets. In any event, while pursuing FTAs, China should also be proactive in pushing for multilateral arrangement.<sup>165</sup> In sum, China has to strike a balance in its trade strategy including both multilateral and bilateral approaches.<sup>166</sup>

#### *VI.A. Macro-Level considerations and FTA negotiation strategies*

##### *VI.A.i. Individualize negotiation strategy*

62. As discussed previously, China's FTA strategy is motivated by several concerns, including the opening up of markets for Chinese exports, improving relations with its neighbors as part of China's smile diplomacy, and obtaining natural resources, etc. China looks at each FTA as a unique opportunity to secure a mutually advantageous agreement, paying particular attention to what China and the partner country can gain from the relationship. This includes taking on obligations that may work to the short-term detriment of Chinese citizens, including farmers, but may increase goodwill with China's neighbors, who are suspicious of the player on the block. In contrast to the U.S. practice in using a model FTA, China does not have a model FTA, and its FTAs vary from each other, both in form and coverage. This in reality reflects both a pragmatism in recognizing differences across partners, but also the clear linkage being established between seemingly conventional trade interests and China's interests in broader economic, diplomatic and strategic

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<sup>163</sup> John Whalley, *China in the World Trading System*, 52 CES ECONOMIC STUDIES 215, 226 (2006).

<sup>164</sup> Henry Gao, China's Strategy for Free Trade Agreements: Political Battle in the Name of Trade, page 17, available at: [http://www.networkideas.org/ideasact/dec09/pdf/Henry\\_Gao.pdf](http://www.networkideas.org/ideasact/dec09/pdf/Henry_Gao.pdf).

<sup>165</sup> See, e.g., *China and Doha*, BEIJING REV., available at: [http://www.bjreview.com.cn/world/txt/2006-12/14/content\\_50751.htm](http://www.bjreview.com.cn/world/txt/2006-12/14/content_50751.htm) (Jeffery J. Schott pointed that China should work closely with other major trading nations to ensure that the WTO talks re-engage and progress.)

<sup>166</sup> "China is walking by two legs", in the words of Vice Minister Yi Xiaozhun. Available at: <http://www.hchzq.gov.cn/dbylt/ShowArticle.asp?ArticleID=56>.

relationships.<sup>167</sup> Given the fact that the objectives in each negotiation vary, it is advisable for China to customize its negotiation strategy for each potential FTA partner respectively.<sup>168</sup>

With respect to long-term strategies, there is a long list of FTAs that are under negotiation or consideration, although it seems that all of them will take a long time to conclude, for one reason or another. The FTAs that are under negotiations include the following: China-GCC (Gulf Cooperation Council) FTA<sup>169</sup>, China-Australia FTA<sup>170</sup>, China-Iceland FTA, China-Norway FTA<sup>171</sup> and China-SACU (Southern African Customs Union) FTA. The potential FTAs that are under consideration including: China-India Regional Trade Arrangement Joint Feasibility Study, China-Korea FTA Joint Feasibility Study, China-Japan-Korea Joint Study, and China-Switzerland FTA Joint Study. It seems that as long as those potential partners need China more than China needs them<sup>172</sup>, China will have stronger bargaining power in the negotiation dynamics and China can afford to wait.

*VI.A.ii. Continue bilateral negotiations while simultaneously push for an East Asian FTA*

Based on our analysis, we predict that the future of China's FTAs will continue to be bilateral. Though scholars and official occasionally rumble of an East Asian FTA or Asia-wide FTA, such a plan would require difficult multilateral negotiations among states that have not generated sufficient goodwill and trust. Given the failure of multilateral trade negotiations at the WTO level, it is unlikely that the China, Japan, Korea and ASEAN could easily overcome historical and political enmities to join together. Instead, China will likely to seek out small trade partners who possess strategic

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<sup>167</sup> Antkiewicz & Whalley, *supra* note 17.

<sup>168</sup> See, e.g. Claude Barfield, *The Dragon Stirs: China's Trade Policy For Asia—And The World*, 24 ARIZ. J. INT'L & COMP. L. 93 (2007).

<sup>169</sup> Energy security bears significant importance in the negotiations.

<sup>170</sup> See, e.g., Yanning Yu, *Trade Remedies: The Impact on the Proposed Australia-China Free Trade Agreement*, 18 MICH. ST. J. INT'L L. 267 (2010) (emphasized that the enactment of trade remedy measures in FTAs may relieve political pressures that are imposed on negotiating parties to some degree during negotiations and thus facilitate agreements).

<sup>171</sup> The Eighth Round Negotiation of China-Norway FTA was held in Oslo, Norway from Sept.14 to 16, 2010. See [http://fta.mofcom.gov.cn/enarticle/enrelease/201009/3504\\_1.html](http://fta.mofcom.gov.cn/enarticle/enrelease/201009/3504_1.html).

<sup>172</sup> See, e.g., [http://fta.mofcom.gov.cn/enarticle/enrelease/201006/2939\\_1.html](http://fta.mofcom.gov.cn/enarticle/enrelease/201006/2939_1.html).

interests for China, at least in the near future: whether on the security front (like Pakistan), diplomatic front (like ASEAN), or labor mobility front (like New Zealand).

However, with its rapid development in economy, it is a good opportunity for China to push for an East Asia-wide FTA through which to seize the leadership role in Asia. Indeed, there are already various proposals for a region-wide FTA including an East Asia Free Trade Area among the ASEAN+3 countries and a Comprehensive Economic Partnership for East Asia among the ASEAN+6 countries. It is debatable whether or not it is desirable to create a region-wide FTA by consolidating the plethora of bilateral and plurilateral FTAs. Scholars have divergent viewpoints. Certain scholars argue that a region-wide FTA would generate much greater benefits than the existing FTAs by increasing market size and therefore specialization and economies of scale, facilitating investment and technology transfer, and simplifying tariff schedules, rules and standards. Moreover, prior Asian financial crisis had warned people in Asia that collective efforts are needed when facing common challenges in the areas of trade and investment.<sup>173</sup> Furthermore, an East Asian-wide FTA adopting a uniform rule of origin will be administratively efficient to reduce the “spaghetti bowl” effect in Asia.<sup>174</sup> However, pessimists argue that the countries of East Asia are too diverse to be able to agree on an FTA. In any event, pushing for an Asia-wide FTA seems a plausible strategy for China to achieve its broader goal as the regional leader in Asia.

#### *VI.A.iii. Lever hubbing effect*

Certain scholars found that hubbing effect plays an important role in China’s FTA strategy.<sup>175</sup> Many of China’s FTA partners are important FTA hubs. So far, China has concluded FTAs, or entered into negotiations, with almost every major region in the world, including Europe (Iceland and Norway), America (Chile, Peru and Costa Rica), Middle East (GCC), Africa (SACU), East Asia (Korea), Southeast Asia (ASEAN and Singapore), South Asia (Pakistan and India), and Oceania (New Zealand and Australia). By entering FTA with those partners who are FTA hubs, China could potentially tap into the broader markets created by the FTA arrangements that are already in

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<sup>173</sup> Masahiro Kawai & Ganeshan Wignaraja, *Free Trade Agreements in East Asia: A Way toward Trade Liberalization?* 2 ADB Briefs (June 2010).

<sup>174</sup> See *id.*

<sup>175</sup> Henry Gao, *China’s Strategy for Free Trade Agreements: Political Battle in the Name of Trade*, pages 9-10, available at: [www.networkideas.org/ideasact/dec09/pdf/Henry\\_Gao.pdf](http://www.networkideas.org/ideasact/dec09/pdf/Henry_Gao.pdf).

place.<sup>176</sup>

*VI.A.iv. Speed is precious*

With the China-ASEAN Free Trade Agreement came into force, there is a growing fear in Japan that ASEAN countries will gradually become China's backyard.<sup>177</sup> Moreover, depending on how fully the FTA is implemented, the China-ASEAN FTA might put the United States at an economic disadvantage. The Obama Administration needs to push the Congress to renew the Trade Promotion Authority in order for FTAs successfully negotiated by the U.S. trade representatives to be approved by the Congress. As a result, China should try to make FTA arrangements as quickly as possible to get an edge in the regionalism.

*VI.A.v. Artfully handle FTAs and BITs*

Unlike prior practice where FTAs and BITs are used as two separate and parallel legal instruments to address trade and investment issues respectively, it is currently not unusual to find an investment chapter in FTAs. As a result, there is greater possibility that countries will have to face a more comprehensive mode of negotiations where both trade and investment issues are on the negotiation table all at once.<sup>178</sup> For instance, the US has been successfully using its leverage to gain access in key service sectors in partner countries in return for accelerated bilateral tariff elimination. Similarly, China needs to analyze carefully what it can offer and what it can gain in both trade and investment. In the situation where potential partners need China more than China needs them in terms of trade<sup>179</sup>, China should try to negotiate trade and investment matters all at once, and it should be able to use the leverage to request more from its counterpart. In addition, from an administrative perspective, a comprehensive inclusion of investment matters into an FTA might reduce the costs of administrating the bilateral economic relations.<sup>180</sup> Moreover, it is a good way for China to make sure that it can invest and subsequently control strategic resources.

Should China decide to incorporate an investment chapter into an FTA,

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<sup>176</sup> See *id.*

<sup>177</sup> The China-ASEAN Free Trade Agreement: Who's Happy, Who's Not

<sup>178</sup> *Id.*

<sup>179</sup> See, e.g., [http://fta.mofcom.gov.cn/enarticle/enrelease/201006/2939\\_1.html](http://fta.mofcom.gov.cn/enarticle/enrelease/201006/2939_1.html).

<sup>180</sup> Chang-Fa Lo, *A Comparison of BIT and the Investment Chapter of Free Trade Agreement from Policy Perspective*, 3 ASIAN J. WTO & INT'L HEALTH L. & POL'Y 147, 149 (2008).

it needs to pay attention to two important issues. First, China should be especially cautious in affording pre-investment national treatment to foreign investors, simply because pre-investment national treatment can bring a more far-reaching influence upon host state than post-establishment national treatment.<sup>181</sup> Second, given it is unclear whether an investor may rely on a most-favored-national clause (MFN) to invoke the dispute settlement provisions of a third party treaty that are relatively more favorable to the investor<sup>182</sup>, it is advisable for China to exclude the application of MFN on dispute settlement provisions at the moment.

*VI.A.vi. Continue asking for recognition of market economy status from FTA partners*

China's status as an economy in transition has put China in a significant disadvantage in the anti-dumping investigations.<sup>183</sup> As a result, China has been seeking recognition of market economy status from individual countries through various ways. Among them, using this recognition as a precondition to start FTA negotiations is a smart strategy. In fact, as more and more economies recognize China's market economy status, there would be pressure on those stubborn ones who still deem China as a non-market economy.

*VI.A.vii. Establish an efficient and effective disputes settlement and enforcement mechanism*

An efficient dispute resolution mechanism is paramount to a successful arrangement of free trade agreement. As mentioned previously, nowadays lots of FTAs cover both trade and investment matters. Given the different nature of trade and investment, they warrant differentiated dispute mechanisms. As Professor Alan Sykes insightfully pointed out that a private right of action for money damages is particularly valuable in international investment arena whose objective is to lower the cost of capital for new investments, while this objective is absent in trade matters, where trading nations will often prefer to act as political filters and deny private enforcement actions that can reduce

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<sup>181</sup> Cai Congyan, *China-US BIT Negotiations and the Future of Investment Treaty Regime: A Grand Bilateral Bargain with Multilateral Implications*, 12 J. INT'L ECON. L. 457, 473 (2009).

<sup>182</sup> See, e.g., Scott Vesel, *Clearing A Path Through A Tangled Jurisprudence: Most-Favored-Nation Clauses and Dispute Settlement Provisions in Bilateral Investment Treaties*, 32 YALE J. INT'L L. 125 (2007); Yannick Radi, *The Application of the Most-Favoured-Nation Clause to the Dispute Settlement Provisions of Bilateral Investment Treaties: Domesticating the "Trojan Horse,"* 18 EUROPEAN JOURNAL OF INTERNATIONAL LAW 757 (2007).

<sup>183</sup> See Andrew L. Stoler, *Treatment of China as a Non-Market Economy: Implications for Antidumping and Countervailing Measures and Impact on Chinese Company Operations in*

political welfare.<sup>184</sup> Here, the dispute settlement mechanism under the framework of NAFTA is a good example to follow.

Moreover, a dispute arising under an FTA is also likely to be covered by the WTO Agreement and the dispute settlement mechanism as stipulated in BITs. To avoid this possible parallel proceedings, it is advisable to include a “single forum” requirement as Article 2005 of Chapter 20 in NAFTA<sup>185</sup>, which essentially requires the parties to choose one forum to solve the disputes.

#### *VI.B. Domestic institution building and internal coordination*

For firms using FTAs, institutional support from government agencies<sup>186</sup> and non-governmental agencies such as business associations are important. It is estimated by some that the low utilization ratio of China's FTAs in certain areas may be due to a lack of awareness about existing FTAs and the benefits, a lack of information on the relevant rules.<sup>187</sup> A study indicates that the Ministry of Commerce and China Customs have important roles to play in helping firms to use FTAs for exports and therefore should strengthen their capacities to support the business community's use of FTAs for exports and the expansion of services and FDI flows.<sup>188</sup> Non-governmental agencies, such as law firms and private consultants, are another source of assistance for firms.

Importantly, to address the firms' concerns, more efforts should be made to improve the assistance available for making the best use of the signed FTAs. Special programs and institutions should be developed to provide FTA-related information, training, and consulting services for China's

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*the WTO Framework* (2003).

<sup>184</sup> Alan O. Sykes, *Public versus Private Enforcement of International Economic Law: Standing and Remedy*, 34 J. LEGAL STUD. 631 (2005).

<sup>185</sup> See <http://www.nafta-alena.gc.ca/en/view.aspx?x=299&mtpiID=153#A2005> (last visited November 7, 2010)

<sup>186</sup> The main government agencies involved in assisting firms with issues regarding FTA usage and certificate of origin applications in the PRC are: the Ministry of Commerce (including local departments of commerce), China Customs, the Ministry of Foreign Affairs, and other agencies such as the State General Administration for Quality Supervision, Inspection, and Quarantine.

<sup>187</sup> PwC, *China's Free Trade Agreements Lowering Landed Costs and Gaining Competitive Advantage*, available at: [http://www.pwccustoms.com/webmedia/doc/633910492656405807\\_fta\\_lower\\_land\\_cost.pdf](http://www.pwccustoms.com/webmedia/doc/633910492656405807_fta_lower_land_cost.pdf).

<sup>188</sup> Yunling Zhang, *The Impact of Free Trade Agreements on Business Activity: A Survey of Firms in the People's Republic of China*, ADBI Working Paper Series, October 2010.

corporations. An electronic information exchange and sharing mechanism should be built by governmental and non-governmental agencies cooperatively in order to maximize the utilization of services provided by both the public and private sectors.<sup>189</sup>

Lack of communication and difficulty of inter-agency coordination, particularly between the Ministry of Commerce and Ministry of Foreign Affairs, has significantly reduced the administrative efficiency in handling FTA related matters. As a result, establishing an FTA taskforce made of representatives of key government agencies would be an efficient way to facilitate domestic coordination.<sup>190</sup>

As argued before, an effective and efficient dispute settlement mechanism is essential for the success of FTAs. However, under most of the FTAs, a private party who is unsatisfied with the measures adopted by a government can only report the matter to his own government, who will conduct a multi-facet balance (taking into account of economic and political concerns) and then decide whether or not to raise the matter with the other government. As a result, intensive exchange of information and cogent cooperation between governmental agencies and private parties are crucial to ensure efficient conflict-resolving under the framework of FTAs. In order to facilitate the cooperation between public sectors and private sectors to solve the problem the asymmetry of information because of the different objectives between public sectors and private sectors, this article tries to promote a workable formula and information filter mechanism for the trade agency to prioritize petitions.

## VII. Conclusion

China's trade policy and FTA strategy has significant implications on all, whether inside or outside of China. Multilateralism (such as WTO) and regionalism (such as FTAs) are the two major paths for international trade. China needs to continue to "walk by two legs": China needs to participate more proactively in the rule-making of multilateral negotiations on international trade while making full use of FTAs (as part of its larger political and diplomatic framework) to influence the international environment.

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<sup>189</sup> Id. at 27

<sup>190</sup> Zhang Fan, *Lun Goujian Zhongguo de FTA Zhanlue* [On Establishing China's FTA Strategy], 5 CHINA OPEN HERALD 74 (2004).



- Appendix 1

Signing Parties	Implementation date	Name of the Agreement
The People's Republic of Bangladesh, the People's Republic of China, the Republic of India, the Lao People's Democratic Republic, the Republic of Korea and the Democratic Socialist Republic of Sri Lanka	2006.9.1	Asia-Pacific Trade agreement
the People's Republic of China and the Republic of Costa Rica	2010.4.8	The Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Costa Rica
the People's Republic of China and the Republic of Peru	2010.3.1	The Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Peru
the People's Republic of China and the Republic of Singapore	2009.1.1	The Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Singapore
the People's Republic of China and New Zealand	2008.10.1	The Free Trade Agreement between the government of the People's Republic of China and the government

		of New Zealand
the People's Republic of China and the Republic of Chile	2006.10.1	The Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Chile
the People's Republic of China and the Islamic of Pakistan	2009.10.10	The Free Trade Agreement between the Government of the People's Republic of China and the Government of the Islamic of Pakistan
the People's Republic of China and Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations(collectively, "ASEAN")	2010.1.1	Framework Agreement on comprehensive economic co-operation between the people's republic of China and the association of South East Asian Nations(2002), Agreement on trade in goods of the framework agreement on comprehensive economic co-operation between the people's republic of China and the association of South East Asian Nations(2004), Agreement on trade in services of the framework agreement on comprehensive economic co-operation between the people's republic of China and the association of South East Asian

		Nations(2007)
Mainland China and Hong Kong, Macao SAR government	2003	Closer economic partnership arrangement(2003), various supplementary agreements
Mainland China and Taiwan	2010.6.29	Economic Cooperation Framework Agreement