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# **Dynamics of Competitive Liberalisation in RTA Negotiations: East Asian Perspectives**

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## **DYNAMICS OF COMPETITIVE LIBERALIZATION IN RTA NEGOTIATIONS: EAST ASIAN PERSPECTIVES**

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### **Introduction**

In East Asia there is a surge of initiatives to form bilateral and sub-regional FTAs (free trade agreements). The list of such initiatives is rather impressive. However, in the four years since the first initiative was launched with the proposal for a Japan-Korea FTA, only a few have been actually concluded amongst East Asian countries, namely the Japan-Singapore Economic Partnership Agreement (JSEPA) and the ASEAN-China Comprehensive Economic Cooperation Framework Agreement.

In addition, Singapore has concluded FTAs with New Zealand, Australia, EFTA and the US, and Korea has concluded a FTA with Chile. Singapore is negotiating similar agreements with Canada, Mexico and Korea. The Japan-Korea FTA negotiations have not been abandoned, and Japan is negotiating FTAs with Chile, Mexico, Thailand, and the Philippines. In addition to those above, Korea is also negotiating a FTA with Mexico. Thailand appears to be the fourth East Asian country that has entered the FTA game. It is interested in negotiating a FTA with China, Japan, and Korea and a host of non-East Asian countries.

Since concluding its first framework agreement with China, which has a FTA component, ASEAN has been courted by other trading partners. A framework agreement is being negotiated with Japan, and will be concluded before the end of 2003. India has made a similar proposal. The US, through Bush's Enterprise for the ASEAN Initiative proposed bilateral FTAs with selected ASEAN countries. Having been drawn into the game as well, the challenge to ASEAN as a group is to consolidate the various initiatives that it and its members are engaged in so as to be able to promote region-wide and global trade liberalization. In the East Asian context today, ASEAN has a specific role that it can play and can carve out for itself in promoting the development of an East Asian Economic Community through trade cooperation and liberalization. In doing so it is not so much a matter of becoming a hub -- or the hub -- in East Asia, but more so to prevent it and its individual members from becoming spokes to other hubs that could endanger its cohesion.

The proliferation of FTAs in East Asia need to be seen in the context of ASEAN's strife towards deeper integration in Southeast Asia and the desire in East Asia to build an East Asian Economic Community as well as East Asia's interest in a successful outcome of the WTO Doha Development Round.

Bilateral and sub-regional FTAs are being promoted on the assumption that they will produce a kind of “competitive liberalization” as economies are being challenges to undertake more ambitious market opening measures. It is also proposed that the separate agreements can become “building blocks” towards regional and ultimately global free and open trade.

What has developed thus far in East Asia is a sense of “competitive confusion” as it becomes more and more apparent that East Asian countries do not have a clear idea about the dynamics of the processes,

specifically the risk of trade fragmentation and political tensions resulting from the un-coordinated processes. The fact that more and more countries are contemplating to join in the FTA game for defensive reasons signals a clear and present danger. Even with the few agreements that have been concluded it also becomes more and more apparent that linking them is a rather complicated matter. Although they might not become stumbling blocks to region-wide or global free trade, but they do not necessarily become building blocks either. Rather they may end up being simply “bumbling blocks”.

If indeed it is not too late, perhaps a few key principles can be adopted by the region and countries in East Asia to develop processes that can exploit the potential benefits while reducing the risks (Findlay *et al*, 2003). This paper is an attempt at examining those key principles.

### **Understanding the Context**

FTAs in East Asia are essentially politically driven. However, politics alone cannot bring about a successfully negotiated outcome. The Japan-Korea FTA proposal was meant to cement a political relationship that greatly improved in the late 1990s. However, it did not come off the ground because the economic benefits from the FTA were perceived to be too asymmetrical to the Koreans. The Japanese side of the joint study, undertaken by IDE/JETRO, showed that if tariffs are eliminated Japan's exports to Korea will expand much more than Korea's exports to Japan, and consequently Japan's trade surplus with Korea will grow by about 35 percent. In addition, the Korean side of the joint study, undertaken by KIEP, showed a negative income and welfare effect for Korea. In the public symposia on the Japan-Korea FTA proposal held in Seoul and Tokyo, the proposed FTA was strongly opposed by Korean journalist and some business circles as being too premature. Some argued that China should be included to mitigate Japan's economic influence (Kagami, 2003).

The Japan-Singapore agreement (JSEPA), signed in January 2002, can be regarded as politically driven as well. In the context of the Southeast Asia's development post-crisis, Singapore sees the need to differentiate itself from the rest and to remain in the radar screen of its major trading partners by going into bilateral FTAs. Negotiations with New Zealand was to provide a training ground. Japan was next, as Japan was looking for a partner with which it can conclude an agreement. Singapore has virtually no agricultural sector and provided a suitable training ground for Japan. One main purpose of Japan is to gradually erode the domestic resistance to agricultural liberalization through a series of FTA commitments. JSEPA has been advertised as a “new age” partnership agreement, some kind of “state-of-the-art” agreement that goes beyond the WTO agenda. Singapore wants to see both its FTAs with New Zealand and Japan (and the more recent ones with Australia and the US) as a way to push others to do the same, and in so doing advances the liberalization at the regional (AFTA, APEC) and global (WTO) level.

It is perhaps still too early to assess the impact of JSEPA that entered into force on 30 November 2002. A preliminary assessment by Leow (2003), described the following benefits of JSEPA. First, tariff savings, which according to the Singapore Ministry of Trade and Industry (MTI) would amount to S\$ 60m per year immediately and S\$ 330m per year within 5 years. This is presently the main quantifiable benefit. The business community in Singapore, according to Leow, is still unclear about the rules of origin (ROO) that are applied. Second, the agreement provides legal guarantee of services and investment rules. Both Singapore and Japan are legally bound to their services and investment commitments. For instance, Japan has committed to allow up to 1/3 foreign capital participation in NTT. However, it is still unclear whether MNCs operating from Singapore qualify in Japan. Overall, the commitments in services and investment made in the agreement bind existing *status quo*. No commitments were made to further liberalize existing regimes and many sectors remain unbound. Third, investment protection rules. The agreement provides for an investor-state dispute resolution mechanisms to protect Japanese and Singaporean investors. However, this may not be significant as Japan and Singapore are generally seen as stable investment environments. Fourth, the agreement also promotes economic cooperation on various functional levels between Singapore and Japanese government agencies. However, they are not legally binding. Fifth, the agreement provides “signals to market”, namely as a signal for Japanese and Singaporean businesses to move into each other's markets. It cannot be determined whether this is already happening.

The Japanese side has made known that the benefit of JSEPA to Japan thus far is the sudden increase of beer exports to Singapore, growing by about 35 percent since last year. It is also too premature to assess the benefits of the recently concluded Singapore-Australia Free Trade Agreement (SAFTA). As can be seen from Table 1 on the key outcomes of SAFTA for Australia, the explicit expectation is also for an increase in Australia's exports of beer to Singapore. It is unlikely that beer consumption in Singapore is likely to increase dramatically as a result of its FTAs. This is a clear illustration of trade diversion at work, and that the gains to Japan and Australia will only be temporary so long as Singapore continues to negotiate other FTAs. Perhaps, the gains from FTAs with Singapore are mainly to be found in the non-goods trade sectors.

Table 1 Singapore-Australia Free Trade Agreement (SAFTA) -- Key Outcomes for Australia

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- ?? Elimination of all **tariffs** from entry into force, including on Australian beer and stout.
  - ?? Comprehensive and transparent “negative listing” of **services** commitments.
  - ?? Restrictions on the number of wholesale **banking licenses** to be eased over time.
  - ?? More certain, and enhanced operating environment for **financial services suppliers**.
  - ?? Conditions eased on establishment of joint ventures involving Australian **law firms**.
  - ?? Number of Australian **law degrees** recognized in Singapore doubled from 4 to 8.
  - ?? Removal/easing of **residency requirements** for Australian professionals.
  - ?? Mutual recognition agreements (**MRAs**) between **architects and engineers** under way.
  - ?? National treatment and market access commitments for Australian **education** providers.
  - ?? Singapore government overseas **scholarships** will be tenable at Australian universities.
  - ?? The **environmental services** sector will be largely open to Australian businesses.
  - ?? Open market access and national treatment for a range of other **service sectors**.
  - ?? Transparency of **investment restrictions** in Singapore's government-linked companies.
  - ?? **Investors** protected against expropriation; compensation for expropriation or other loss.
  - ?? **Telecoms** regulators must operate in transparent manner and properly explain decisions.
  - ?? Telecoms service suppliers have **right of appeal** to an independent authority.
  - ?? Telecom **interconnection** provided on non-discriminatory, timely, cost-oriented terms.
  - ?? Telecoms regulators to adopt or maintain **effective sanctions** to enforce decisions.
  - ?? Agreement to facilitate **consultation** with telecoms industry participants.
  - ?? Australian firms get national treatment in **procurement** by 47 Singapore agencies.
  - ?? Protection of **intellectual property** supplied in government tender processes.
  - ?? **Short term entry** for Australian business people extended from 1 month to 3 months.
  - ?? **Long-term business residents** in Singapore granted total stay up to at least 14 years.
  - ?? **Spouses** of business people can work as managers, specialists, office administrators.
  - ?? Commitment to address **anti-competitive** business practices.

(continued)

- ?? **Competitive neutrality** disciplines to apply to government-owned businesses.
- ?? Cooperation on eliminating trade in goods infringing **intellectual property rights**.
- ?? Measures to prevent the export of goods infringing **copyright or trade marks**.
- ?? No customs duties on bilateral **electronic transmissions**.
- ?? Agreement to facilitate **paperless trading** in order to reduce business transaction costs.
- ?? Promotion of confidence in bilateral **e-commerce**, e.g. in electronic signatures.
- ?? Cooperation on investigation and prevention of infringements of **customs** law.

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Source: Australian Department of Foreign Affairs and Trade  
 (www.dfat.gov.au/trade/negotiations/safta/safta\_outcomes.html)

Trade in goods, i.e. tariff elimination, also is a less significant element in U.S.-Singapore Free Trade Agreement. Singapore is to apply zero tariffs immediately on all U.S. products, including beer and stout -- the only items that has been subject to tariff protection. U.S. tariffs on 92 percent of Singaporean goods are also to be eliminated immediately with remaining tariffs phased out over eight years. Singapore also agreed to allow the importation of chewing gum (banned since 1992) from the U.S. with therapeutic value for sale and supply subject to laws and regulations relating to health products. The ROO provision in the agreement stipulates that only exports with substantial transformation and value added done in Singapore can be conferred "Singapore origin" and qualify for the FTA tariff rates. A major controversy in the U.S. itself is with regard to the rules of origin in textile and garments and the issue of whether they might become a precedent for other trade agreements (Nanto, 2003). The controversy did not lead to formal rejection because it was noted that U.S. import quotas in textiles and apparel are due to be eliminated anyway on 1 January 2005 under the WTO agreement. Moreover, Singapore is not a major trading partner in the textile and apparel sector. The yarn forward rule of origin requires that products be made from U.S. and/or Singaporean originating yarn, with limited exceptions. For imports into the U.S., all other assembly processes must be carried out in Singapore.

The U.S.-Singapore FTA also provides for imported inputs used in the manufacture of the final products within Singapore to be classified under a different tariff classification from the final product. For some electronic products, the origin is Singapore if a certain percentage of the value added (typically 35 to 60 percent) is done in Singapore. An interesting provision in the FTA is the Integrated Sourcing Initiative that applies to components produced in non-sensitive, globalized sectors, particularly IT and certain medical devices, on which both countries do not impose tariffs. These components, including about 100 IT products, will be treated as being of Singapore origin when they are used in the manufacture of final products in Singapore. For example, qualifying IT components manufactured on the Indonesian islands of Batam and Bintan and exported to the U.S. in products assembled in Singapore would be considered to be of Singapore origin.

Trade in services is the main component of the FTA. The FTA is to accord substantial market access across each other's entire services sector, subject to a "negative list". The negative list deals with sectors that usually require government certification or licenses (lawyers, accountants), involve governmental institutions (airports, provision of social security, public hospitals, government corporations), or involve national policy (atomic energy). The other components of the agreement are: e-commerce and digital products; investment, intellectual property rights; competition policy; government procurement; customs procedures (regarded as "ground breaking"); temporary entry of personnel; labor and environmental provisions; and dispute settlement.

The U.S. side does not expect any significant economic effects of the agreement with Singapore because of the relative small size of the Singapore economy. The agreement was rejected by one of the 31 Administration trade advisory committees, namely the Labor Advisory Committee, stating that it repeated the same mistakes of the NAFTA. Some see the agreement mainly as providing a standard for FTAs with other countries. In terms of U.S. security interests, the FTA would add a formal economic link to the security relationship with Singapore. The FTA is also seen as providing an additional link between the two countries that could enhance cooperation on certain issues such as terrorist financing and customs inspections, and in determining courses of action on issues of interest to the US in fora such as ASEAN or the ASEAN Regional Forum (Nanto, 2003).

Singapore has been in the forefront amongst ASEAN economies in the FTA game. The direct effects of its bilateral FTAs may not be significant for the other ASEAN countries. The above examination of Singapore's FTAs also shows that the nature of its FTAs does not lend itself readily to an adoption by other ASEAN countries. However, this should not mean that other ASEAN members should be indifferent to Singapore's undertakings. Singapore may be given the role (by ASEAN) as the first mover, to use the FTA to strategically engage major economic partners in the Southeast Asian region as a whole. Singapore is more readily to do so than other ASEAN countries. However, being given such a role implies that Singapore fully consult and brief other ASEAN countries on the process and progress of its FTA negotiations. This has not been the practice in the past.

A more consolidated, coordinated process in and by ASEAN, including in the development of a common external policy, should be seen as an important element of an ASEAN Economic Community, which is already firmly placed in the ASEAN agenda.

While it may give Singapore the role of first mover, ASEAN should have a firm strategy to involve in FTAs as a group. The Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the People's Republic of China (the ASEAN-China CEC), signed on 4 November 2002, will enter into force on 1 July 2003. The agreement explicitly aims at the establishment of an ASEAN-China FTA within 10 years. It is the first for ASEAN (as a group) and is also the first for China. The process leading to the signing of the agreement has been relatively short and swift. This has surprised many observers, including within ASEAN itself. But the agreement is essentially a framework agreement with many of its components still to be negotiated further. Negotiating the FTA has commenced and is to be concluded by 30 June 2004. The negotiations, conducted by the ASEAN-China Trade Negotiation Committee, will produce schedules for tariff reduction and elimination over a period from 1 January 2005 to 2010 for ASEAN 6 and China, and from 1 January 2005 to 2015 for the newer ASEAN members. This is a rather ambitious goal.

Implementing the agreement will be a major challenge for ASEAN and China. The negotiations may turn out to be more difficult and time consuming than anticipated. However, both sides should recognize that it may not be desirable to conclude the negotiations in big haste only to produce a "dirty" FTA. The process of negotiations itself will be as important to the relationship as the outcome. From ASEAN's perspective it will force the group as a whole to have a constructive engagement with China. Therefore, it was a strategic decision of the part of ASEAN to broaden the basis for the engagement from a narrowly focused FTA, as originally proposed by China, into a comprehensive economic cooperation package. To have framed the relationship within an FTA framework would be very risky since trading relations between ASEAN and China are bound to be highly contentious (Soesastro, 2003).

The ASEAN-China agreement is essentially politically motivated. This should not be a justification for producing a "dirty" FTA. It should be recognized, however, that ASEAN-China relations are one of the most important relationships in East Asia. Sheng (2002) has given a clear and succinct explanation on China's position in regard to developing closer economic relations with ASEAN. "For China, the process of working for an FTA with its South-east Asian neighbours is just as important as the outcome itself". This is also how ASEAN feels about the engagement. According to Sheng, this is the first time in Chinese history that it found common interest to engage all the Southeast Asian countries constructively, to talk about cooperation, instead of quarreling on issues such as the dispute over the Spratlys. The process can be seen as "political confidence-building" for both sides.

For ASEAN, apart from the importance of the engagement with China, the invitation by China to enter into a formal economic agreement of some high profile, i.e., one that has an FTA component, has brought ASEAN back to the center stage (Soesastro, 2002). Thus ASEAN did not hesitate to accept China's offer. ASEAN was ill-prepared to start a negotiation to form a FTA with China, but it grabbed the opportunity. To some extent, ASEAN's assumptions proved right. Japan has also made a similar, albeit less firm, offer. The U.S. came up with the Enterprise for ASEAN Initiative, and even India has proposed an ASEAN-India FTA.

If indeed the process is seen by both sides as political confidence-building, it may well be that the negotiations can proceed rather amicably. This suggests, however, that the process should not be left to the trade negotiators. Since the agreement is a "comprehensive" one, it should be given attention to at the highest levels of government. This will ensure that the negotiations will not get bogged down.

There are increased speculations that the FTA component of the agreement will practically be negotiated bilaterally. Alternatively, the forum for negotiation will be ASEAN-China, and the rules and principles will be commonly agreed upon, but individual ASEAN countries will come up with its own tariff reduction schedules. This more consolidated process should at least be secured. Unfortunately, some ASEAN members have other ideas. Thailand has proposed to start bilateral negotiations with China, and the Chinese side appears to be reluctant to reject this invitation. This will be a big blow to ASEAN as it will further

reduce ASEAN's ability to play a major role in facilitating the building of an East Asian Economic Community. More importantly, it threatens ASEAN cohesion and credibility.

Japan too, with its two-prong approach of negotiating an ASEAN-Japan framework agreement and negotiating bilateral FTAs with selective ASEAN members, is threatening ASEAN's cohesion and credibility (Aquino, 2003; Feridhanusetyawan, 2003). Korea, for other motives, has refrained from embarking on a Korea-ASEAN FTAs. It should also be advised not to go into bilateral FTAs with selective ASEAN countries. Korea should perhaps focus its attention and efforts to promoting the region-wide East Asian FTA, EAFTA, as contained in the Vision for East Asia outlined by the East Asian Vision Group, and officially adopted by the East Asian Study Group. However, if Korea decides to join in the FTA game, or what Soogil Young (2003) described as participating in "the race for spokes", it must at the same time do a number of things: (a) contribute to APEC efforts towards the Bogor goals as well as to the success of the WTO Doha Development Agenda; (b) promote liberalization of agriculture policies at home as part of rural restructuring and revitalization; (c) complete financial and industrial restructuring and firmly establish good governance at home; (d) work with ASEAN to provide the necessary leadership to steer cooperation; (e) promote financial and monetary cooperation in East Asia; and (f) pursue strong and effective diplomacy in five concentric circles (Korea-China-Japan trilateral level; ASEAN Plus Three; APEC; ASEM and the multilateral level).

Kim (2003) has proposed three possible ways to form a FTA at the region-wide level. The first, most ideal one is to immediately negotiate a region-wide FTA. This may prove to be too premature. However, the groundwork can be prepared. The second way involves forming a trilateral FTA in Northeast Asia (China, Japan, Korea) and subsequently link it to AFTA. Its feasibility is being questioned because of difficulties to bring in China into this trilateral undertaking. However, it was China that first proposed to study the possibility of this trilateral FTA (Tsugami, 2003). It will be more difficult proposition if Taiwan is to be included, which some consider only logical (Hakateyama, 2003). The third is through various bilateral FTAs between ASEAN and Northeast Asia, and then consolidate them into a pan-regional FTA. This may prove to be a very complicated task unless individual agreements are being designed towards convergence. This suggests the importance of developing guiding principles for the region, which could be applied globally as well.

### **Basic Guiding Principles**

For various reasons, East Asian economies are likely to promote bilateral and sub-regional FTAs. This is a political reality. Basic guiding principles need to be developed so that the prevailing political pressures to develop FTAs can be channeled in ways that maximize their potential benefits while minimizing the risks [1].

The many reasons for promoting FTAs have been surveyed in Findlay *et al* (2003). Observations suggest that FTAs in East Asia have the following characteristics. First, they are being pursued within a "multi-layered" trade policy involving bilateral, regional and multilateral initiatives. Governments in the region appear to be confident that they can pursue all trade policy options at the same time. The fact is that the many FTA proposals absorb a lot of attention and scarce policy-making resources. Perhaps unintentionally, these FTAs create a systematic threat to the WTO and the Doha Development Round.

Second, the FTAs deal with a wider range of issues beyond border barriers to trade and investment, but these comprehensive agreements tend to be constructed around a core FTA. This is not the case with the agreements involving Singapore, which tend to be built around services liberalization. It remains to be examined whether those services liberalization commitments are indeed based on PTAs (preferential trading arrangement) schemes.

Third, a number of countries are joining in the FTA game or will do so essentially for defensive reasons because they do not want to be left out. This has created greater confusion as countries become more and more unclear where all these FTAs may lead to. Japan feels that it is being highly disadvantaged by Mexico inclusion in NAFTA and its many bilateral agreements, specifically with the EU. However, this is mainly

because Mexico's MFN tariffs remain high at an average of 16 percent (Saeki, 2003). In East Asia, particularly in the ASEAN region, MFN tariffs have fallen significantly resulting in small tariff differentials between MFN tariffs and AFTA's CEPTs (common effective preferential tariffs).

Fourth, the various FTAs in East Asia are pursued in an un-coordinated fashion. Lack of coordination or clarity not only exist region-wide but also within an individual country. A case in point is Japan. It is said that the Ministry of Foreign Affairs is adopting the misguided approach of developing bilateral FTAs with selected ASEAN countries while METI is promoting an agreement with ASEAN as a group. Thailand may also become a spoiler by pursuing its own bilateral FTA with China although there is already an ASEAN-China agreement which included a FTA component. ASEAN members have yet to develop a common strategy to dealing with FTAs as part of an common external trade policy.

Fifth, bilateral FTAs have not been able to deal with the sensitive sectors of their participants. Even though Singapore does not have a meaningful agricultural sector, during the FTA negotiations with Japan the issue of gold fish exports became a major issue. During this negotiation process, the policies that guided the Japanese side were based on the decision of the Research Commission on Trade in Agriculture, Forestry, and Fishery products of the Liberal Democratic Party of 3 September 2001, which stipulates the following: (a) Japan must be careful not to have negative impacts on domestic agricultural, forestry and fishery industries; (b) as a specific issue, tariffs on agricultural, forestry and fishery products are not to be further curtailed or revoked under the two-country agreement, because this subject has to be discussed in the WTO (emphasis added); (c) similar bilateral agreements which will be negotiated in the future are to be dealt with under the same policy (Kagami, 2003). This stance either suggest that Japan is ready to give up in exchange for more concessions to be had in the multilateral framework or it clearly realize that not much will be achieved in the WTO.

Nanto (2003) also reported that in the U.S.-Singapore negotiations the U.S. was willing to commit to introduce more liberal rules of origin (ROO) for textiles in the FTA assuming further liberalization on ROO is achieved in the WTO.

If indeed FTAs tend to be tailor-made to exempt the sensitive sectors of their respective participants they cannot easily be made open to accession by others.

As was concluded at the "East Asia Trade Policy Strategy Conference" at the Australian National University (Canberra), from 20 to 21 March 2003, the following guiding principles will need to be introduced [2]. If FTAs are to function as stepping stones (or building blocks) to multilateral free and open trade:

- ?? They must be made genuinely open to further accession rather than tailor-made to particular sets of interest (Principle of Open Clubs); and/or
- ?? They should contain specific provisions which ensure that the benefits are subsequently extended on a MFN basis (Principle of Multilateralization).
- ?? Other important provisions include harmonization of and the adoption of common ROO methods, which are simple, liberal and transparent.

Perhaps the most powerful and important principle is that of multilateralization. This has been adopted by ASEAN as a matter of practice (Findlay *et al*, 2003). If East Asia could agree to adopt this principle in any of its future FTAs, this could set a positive precedence to others.

#### **Footnotes**

[1] This was one of the objectives of discussions at the "East Asia Trade Policy Strategy Conference" at the Australian National University on 20-21 March 2003.

[2] The report of the Conference will be published.

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