

THE EVOLVING FRAMEWORKS FOR INTERNATIONAL TRADE NEGOTIATIONS

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Globalization has fundamentally shifted the nature of international economic relations. Countries increasingly rely on international institutions and agreements in managing their trading relations with other economies. Given that the world economy has become more globalized, countries face greater difficulty in pursuing isolationist economic policies. The modalities of international trade negotiations have evolved significantly over time, but it seems clear that cooperation through multilateral efforts will become increasingly important, and perhaps more complex or difficult, as trade becomes less reliant on the physical concept of borders and as automation changes the nature of employment.

Eager to promote liberalization for economic growth in the age of globalization, countries have adopted a variety of trade policy strategies. These strategies include efforts and negotiations at the multilateral, regional, and bilateral levels, and often some mix of all three. Countries have attempted to maximize opportunities for flows of trade, investment, and services, meanwhile harmonizing or otherwise reconciling different domestic rules and regulations. This multilayered trade strategy has required government officials to engage in complex negotiations through multiple legal frameworks

in support of widely diverse constituencies that include domestic producers, multinational corporations and international service providers, and consumers.

Each of the three trade policy “layers” (global, regional, and bilateral) has distinctive features in terms of negotiations and rules. The global layer includes the World Trade Organization (WTO), which replaced the General Agreement on Tariffs and Trade (GATT) in 1995. The WTO is a consensus-based institution that is used for negotiations that involve competing interests within a broader shared vision aimed at greater economic welfare. The GATT/WTO system is today the embodiment of a U.S.-led international liberal order built through a series of multilateral negotiating rounds over the past six decades. The key guiding principle of this order is nondiscrimination, as stipulated in the GATT Article 1, with its egalitarian most favored nation treatment among members. This is meant to avoid trade discrimination among WTO members by granting equal treatment to all.

Many nations have come to view the long-serving GATT/WTO system as essential to maximizing the benefits from a more interconnected global economy, but the WTO has become increasingly ineffectual in trade

liberalization negotiations. This became evident in the 1999 Ministerial Meeting in Seattle with the growing influence of developing countries and non-governmental organizations. These newly empowered members and increasingly prominent outside groups were strong enough to hamper further global liberalization in the WTO, which still operated under a consensus-based decision-making approach among its then nearly 150 members. The motives for the resistance varied from old-fashioned protectionism to fears of neocolonialism to radical environmental and anti-capitalist stances. Although the WTO managed to launch the Doha Development Round two years later, negotiations continued to be bogged down.

The breakdown in global trade negotiations pushed a great number of members to pursue alternative bilateral and regional trading agreements for which there was no set model. Countries thus faced a whole new set of questions and options, and the result was increasing diversity in the specific agendas and norms for trade negotiations. An examination of the power relationships between countries provides an interesting perspective on how and why specific agendas were chosen for certain free trade agreements (FTAs) and not others.

THE ROLE OF POWERFUL ECONOMIES IN BILATERAL FTA PROLIFERATION

Countries' agendas are the basis for any kind of international negotiation or policy coordination. Countries have to identify interests that will be commonly pursued, or problems to be jointly solved, in international arrangements such as trade agreements. Norms that underpin these agendas also serve as important elements in international cooperation. An examination of a variety of FTAs over the years shows that powerful economies have had an important role not just in influencing the agenda of trade agreements, but also in establishing broad acceptance of the norms underpinning them. In other words, the creation and maintenance of FTAs are generally contingent upon the

powerful party's ability to impose its values on others, and its interests will largely determine the agenda and rules of the trading agreement.

While multilateral efforts at trade liberalization through the WTO have stalled to a large extent since the start of the millennium, FTAs have continued to proliferate at a rapid pace. This is because "FTAs provide participating countries with flexibility in view of both picking their partner countries and the content of these agreements."¹ But they also allow countries to cover a wider range of issues, a fact that can be attributed in large part to powerful states with huge markets attempting to impose their own regulatory and legal standards on their trading partners.

For instance, both the European Union (EU) and the United States have instruments in place to provide assistance to workers and industries that are hit by trade liberalization.² Both usually require potential trading partners to comply with core International Labour Organization (ILO) standards, such as the "Fundamental Principles and Rights at Work,"³ which stop "countries—for example, Colombia, Peru and South Korea—from amending or failing to enforce domestic labour standards to gain a competitive advantage in trade or investment."⁴

The EU has targeted Asian countries as potential FTA partners and in the process is attempting to propagate globally its agendas and norms such as deregulation in government procurement. In 2006, the European Commission published its Global Europe Communication, which announced a marked shift in the EU's trade strategy from a "multilateralism first" approach to a more strategic approach based on bilateralism with a focus on major Asian trading partners.⁵ This strategy has manifested itself in the conclusion of the following FTAs with key Asian trading nations:

- Vietnam (signed June 30, 2019, and yet to enter into force);
- Japan (entered into force February 1, 2019);

- Singapore (signed October 19, 2018, and yet to enter into force); and
- South Korea (entered into force July 1, 2016).⁶

The EU negotiating agenda also targeted some key developing nations in Asia:

- India (negotiations started in 2007, although rounds halted in 2013);
- Indonesia (negotiations started in 2016);
- Malaysia (negotiations started in 2010);
- Myanmar (negotiations started in 2015);
- Philippines (negotiations started in 2015); and
- Thailand (negotiations started in 2013, although none have taken place since 2014).⁷

The EU's pursuit of these bilateral FTAs with Asian developing states has contributed to the changing nature of the international trade environment, including the multitude of FTAs proliferating across the Asia-Pacific region. There currently are as many as 158 FTAs in Asia (signed and entered into effect).⁸

In addition, the EU has viewed trade negotiations as a way to capitalize on and improve human rights, labor standards, and environmental protection while pursuing economic benefits. For example, the EU-Vietnam Trade and Investment Agreements include “sanitary and phytosanitary measures” designed to “protect human, animal or plant life or health in the territory of each Party while facilitating trade between the Parties and to ensure that SPS [Sanitary and Phytosanitary] measures adopted by each Party do not create unnecessary obstacles to trade.”⁹

While powerful states can set the agenda for bilateral FTA negotiations, they can also affect negotiations in a negative way by hampering

the launch of more liberalized FTAs. For instance, Japan has concluded an FTA with the Association of Southeast Asian Nations (ASEAN) and separate bilateral FTAs with seven ASEAN member countries. In most cases, Japan concluded these FTAs without even broaching the subject of eliminating tariffs on its agricultural produce. Instead, in order to conclude negotiations, Japan offered to provide economic cooperation such as human resource development, further delaying the liberalization of its domestic agricultural sector.

This is a unique feature of Japan's FTA negotiations. Although Japanese trade negotiators request that the tariffs levied on most goods in ASEAN countries be eliminated, with the exception of textiles, tariffs on nearly all of Japan's industrial products have already been eliminated or their tariff rates have been reduced, so Japan cannot provide that “prime cut” known as preferred market access to FTA counterparties. For example, of the 940 items for which tariffs were *not* eliminated in FTAs that Japan concluded before the existence of the Trans-Pacific Partnership (TPP) agreement, 850 were agricultural, forestry, or marine fisheries products, including rice and grain.

As long as there remain domestic political difficulties in eliminating tariffs on agricultural produce in Japan, the country will be forced to rely on offering other benefits to conclude FTAs. Such benefits have included the promotion of direct investment, economic and technical cooperation, or the movement of people. A recent example is the intake of nurses and caregivers from the Philippines and Indonesia.

Article 24 of the GATT recognizes any FTA or tariff union as a legitimate exemption to most favored nation tariff treatment. This exemption allows for the abolishing of tariffs on “essentially all trade” between countries party to the agreement. This “essentially all” means, for practical purposes, 90 percent of all trade of each country party to the agreement, making it possible for Japan to exempt items such as rice and sugar. Therefore, FTAs concluded between

Japan and Southeast Asian nations are examples of liberalization without political pain.

Sticking to this approach, Japan has concluded only FTAs that have avoided, to every extent possible, promises to liberalize its agricultural industry. That changed in 2013 when Japan became a negotiating member of the TPP, now succeeded by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), following the withdrawal of the U.S., where Japan made concessions on pork and beef tariffs in response to U.S. demands for greater market access. The U.S. proved to be powerful enough to secure these Japanese agricultural liberalizations in the negotiations and has apparently resecured them in more recent talks with Japan on a bilateral FTA in 2019.

Generally, however, when it comes to regional FTAs, or multilateral negotiations where three or more countries seek to enhance their trading relations, the “powerful party” dynamic you might see in bilateral FTAs is much less significant. This is true even if the negotiations include less-developed economies. Once a powerful party enters into negotiations in a multiparty framework, it has strong incentives to want those negotiations to succeed and will often relent from even core policy interests rather than run the risk of the FTA’s collapsing under its demands.

The TPP, again, is a useful example. It included chapters on health, the environment, and labour rights,¹⁰ all high priorities for the U.S. under President Barack Obama. In addition, the U.S. had emphasized the importance of promoting competition policy and dealing with state-owned enterprises (SOEs). However, when the U.S. sought to ensure a level playing field or competitive neutrality between SOEs and private companies, Malaysia, Vietnam, and Singapore, all of which possess their own SOEs, expressed their vigorous opposition to the U.S. proposal. Eventually, the U.S. made exceptions for local SOEs and sovereign wealth funds for the TPP. The U.S. decision not to impose its own will on the other members was therefore important for the successful conclusion of the original TPP in 2015.

INFLUENCES OF SUPPLY-CHAIN PRODUCTION NETWORKS

The use of bilateral or regional FTAs to promote trade liberalization has received an important boost from the growing political influence of multinational corporations (MNCs) with large supply-chain networks. These companies have identified FTAs as an effective way to lower the cost of producing and selling abroad. They see FTAs as promoting stability and efficiency, especially when it comes to previously fragmented supply-chain networks where parts or components are produced in different countries and products frequently cross borders before getting to the final consumption stage. This global production pattern encourages MNCs to “lobby for liberalization with countries from which they source.”¹¹

The emergence of “global value chains” has boosted the share of intermediate goods in trade as more firms and countries join these diffuse production networks. As firms focus more on specialized tasks and less on the complete production process, new opportunities arise for firms in developing countries, including in the least developed countries, to become part of these regional and global networks.¹²

In this context, the “Rise of the South”¹³ has precipitated a change in the nature of global trading relations. As of 2015, 47 percent of global manufacturing exports (in value terms) originated in the Global South or developing countries generally,¹⁴ and the direction of global trade flows, including flows of intermediate goods, has switched from an overwhelmingly South–North orientation to one that includes large elements of South–South trade.

In terms of a percentage of world trade, South–South trade “rose slowly from 11.4 per cent in 1995 to 12.8 per cent in 2000, then expanded dramatically to 25.3 per cent in 2015.”¹⁵ Asia is particularly important in this regard, “account[ing] for approximately 75 per cent of the trade between developing countries over the 1995–2015 period.”¹⁶ These developing states, with much lower labor costs, are already attractive destinations for investments by

MNCs. FTAs add further value to these countries' investment attractiveness.

Yet the different product coverage and time framework for liberalization through a number of FTAs could make it difficult for MNCs as they attempt to identify which FTAs would be most effective in cost-saving for their businesses. In these instances, MNCs end up facing a “spaghetti bowl” of regulations when they must deal with various rules of origin with specific standards and involving specific procedures. From a business prospective, there is thus now a strong incentive to support mega-FTAs in order to simplify compliance costs to the greatest possible extent. Even these, however, risk fragmenting the world trading system into competing blocs.

CONCLUSION

The effective collapse of the Doha Round in 2015 and the emergence of mega-regional FTAs such as the TPP point to a great weakening of the centrality of the WTO in global trade. Speaking globally, however, mega-regionals are “not a good substitute for multilateralization inside the WTO” because those mega-FTAs would make the world trading system fragmented (as they are not harmonized among themselves) and exclusive (as China and India are not generally included now and may never be).¹⁷

Uncertainties in the global rule-based and open trading system highlight the WTO's importance in providing “a common language for problem solving, dispute resolution, regulation and administration.”¹⁸ But as long as there continue to be inefficiencies in this system, countries will continue to use a variety of bilateral, multilateral, and regional trade agreements to implement their selected agendas and pursue trade liberalization in a more discriminatory way.

ENDNOTES

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