

CHINA'S REGIONAL TRADE AGREEMENTS: THE LAW, GEOPOLITICS, AND IMPACT ON THE MULTILATERAL TRADING SYSTEM

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This paper examines China's recent movement in negotiating and signing regional trade agreements (R.T.As) in the context of the regionalism versus multilateralism debate in international trade law, focusing on the China-Hong Kong Closer Economic Partnership Arrangement (CEPA) and the proposed *China-ASEAN Free Trade Agreement* (CAFTA). The broader background consists of the potentially negative effects of regional trade arrangements like CAFTA, which may conflict with the economic goals of the multilateral trading system of the GATT/WTO regime. Countries, however, have a variety of non-economic considerations in approaching R.T.As, such as regional stability and national security. Furthermore, the literature suggests that although the economic benefits to members of R.T.As vary depending on the circumstances, at least they are apparent in some cases. This paper, after introducing the content and progress in the CEPA and CAFTA negotiations, discusses the geopolitical considerations behind China's R.T.A. approach. It also analyses the legal status and WTO-consistency of China's R.T.As. It concludes that while multilateralism still serves the long-term interest of trading nations for peace and prosperity, the multilateral trading system should accommodate regionalism in a fashion that strikes a balance between the economic and non-economic concerns of the various countries and the goal of broader liberalisation in global trade and investment. China, as a rising trade power with global influence, has the responsibility of promoting regional integration and global trade liberalisation in the interest of the aforesaid balance.

I. INTRODUCTION

International trade is a process that involves a wide-ranging, transactional and cross-border commercial exchange of goods and services between individual persons, corporate entities, and states. Thus, the body of international trade law is regarded as a legal regime governing the economic and commercial activities attendant to foreign trade. However, the various policy or legal aspects of trade are much more complicated than economists are wont to admit. The recent "trade and ..." phenomenon, which concerns the linkage between trade and non-trade issues and has generated a tremendous literature, reveals the panoply of non-economic concerns.¹

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¹ Jeffrey L. Dunoff, "Rethinking International Trade" [1998] 19 U.Pa.J.Int'l Econ.L 347. The "trade and ..." linkage issues, as commonly regarded, include "trade and environment", "trade and labor", "trade and competition policy", "trade and human rights", "trade and intellectual property", "trade and competition policy", and a few others. Labor and environment linkages are probably the two most debated topics in the "trade and ..." phenomenon.

Regionalism² in the international trading system, insofar as it involves the question of trade and discrimination, is linked to one of the oldest “trade and ...” problems.³ As part of international trade activity, regionalism bears the full nature of trade, which is a multifaceted issue that encompasses economics, domestic politics, national security and geopolitical factors. For this reason, an individual effort towards regional preferential trade arrangements (hereinafter “R.T.As” and “R.T.A.” when appropriate) or free trade agreements (hereinafter “F.T.As” or “F.T.A.” when appropriate)⁴ should be carefully examined in its particular context and the various non-economic factors underlying it must be taken into consideration.

While regionalism has been in existence for over half a century (since World War II),⁵ China has only very recently jumped onto the bandwagon. This trend was initially embodied by the formation of the *China-Hong Kong Closer Economic Partnership Arrangement* (CEPA) and the *China-Macao CEPA*. China has also signed framework agreements to establish free trade zones with the Association of Southeast Asian Nations (ASEAN) and is currently negotiating similar arrangements with Australia, New Zealand, and the MERCOSURE (the South American Common Market) countries. The CEPAs, which are already in operation, are R.T.A.-like arrangements between China and the two “special administrative regions” under the Chinese political sovereign, with the signatories acting as members of the World Trade Organization (WTO).⁶ The proposed China-ASEAN Free Trade Area, with a nice acronym “CAFTA”, stands on par with the North America Free Trade Area (NAFTA) and the European Union (EU) and creates one of the world’s largest F.T.As. It is also the largest F.T.A. made up of developing countries.⁷

Two fundamental questions need to be answered with regard to China’s recent R.T.A. approaches. First, what are the motivations behind these moves? We must explore this because motives decide the content, scope and all future acts of China, with regard to its pursuance of R.T.As. Eventually, the R.T.As participated in by China, in conformity to its strategic goals, will have profound implications on the fate of the multilateral trading system under the auspices of the WTO. As the WTO has noted, “political considerations will inevitably feature in decisions to establish regional trading arrangements.” Political factors,

² Regionalism in the context of international trade was defined as “the promotion by governments of international economic linkages with countries that are geographically proximate.” See Nigel Grimwade, *International Trade Policy* (London: Routledge, 1996) at 232. However, in recent decades, regional trade agreements have been signed by countries located in different regions and even different continents, such as the *US-Israel Free Trade Agreement* and the *US-Singapore Free Trade Agreement*. To modify the traditional definition, regionalism can now be broadly characterised as the tendency towards the creation of preferential trade arrangements between a number of countries, which discriminate against third countries.

³ James H. Mathis, *Regional Trade Agreements in the WTO* (The Hague: T.M.C. Asser Press, 2001) at 1.

⁴ The coverage of regional preferential trade arrangements is broadly defined here. See *supra* note 2. Generally, R.T.A.(s) and F.T.A.(s) are used interchangeably in this article.

⁵ See Grimwade, *supra* note 2, at 251-282. See also WTO Secretariat, *Regionalism and the World Trading System* (Geneva: World Trade Organization, 1995) at 25-38. Jagdish Bhagwati has observed that there have been two phases of regionalism in the post-World War II period. The first phase occurred in the late 1950s and early 1960s. It is represented by the European Community (EC), the European Free Trade Area (EFTA), the Latin America Free Trade Association (LAFTA), the Central African Customs and Economic Union (CACEU) and a few others. The second wave of regionalism, an ongoing phenomenon, first occurred in 1980s. The EU and NAFTA are typical examples of F.T.As concluded in this period. See *Ibid.*

⁶ Mainland China, Hong Kong and Macao are all WTO Members. China joined the WTO in 11 December 2001, and Macao and Hong Kong obtained the Contracting Party status of the General Agreement on Tariffs and Trade (GATT) in 11 January and 23 April 1986, respectively, as separate customs territories under the British sovereign and Portuguese sovereign. See the “Membership” section on the WTO’s website at <<http://www.wto.org>>.

⁷ ASEAN-China Experts Group on Economic Cooperation, “Forging Closer ASEAN-China Economic Relations in the Twenty-First Century”, online: ASEAN website <<http://www.aseansec.org>>, (hereinafter the ASEAN-China F.T.A. Report).

especially *realpolitik*, play a role, which is no less significant than economic considerations. This is especially true of China's recent R.T.A. approach in East Asia. After its accession to the WTO, China has been actively engaging major countries in the region including ASEAN members, Japan, South Korea, Hong Kong and Taiwan.⁸

The second fundamental question concerns the complex impact of China's R.T.As on the WTO-led multilateral trade system. This involves a two-level analysis. First, are the R.T.As concluded by China consistent with existing WTO rules, especially the most-favored-nation (M.F.N.) clause and GATT Article XXIV? On its accession to the WTO, China committed itself to implementing the WTO agreement as well as the annexed Multilateral Trade Agreements.⁹ A violation of WTO obligations through R.T.As will certainly cause serious concerns among other WTO members and further undermine China's credibility in international trade. Secondly, the impact of China's R.T.A. approach on the future of the multilateral trade talks (currently the WTO's Doha Round of negotiations) shall be examined. As a potential conflict exists between the proliferation of regional trading blocks (which attempts to realise regional or bilateral trade liberalisation) and the WTO regime (which thrives to liberalise trade multilaterally without preferential discrimination), exponents on both sides are now engaged in an enormously heated debate regarding the orientation of the international trade system.¹⁰ Ultimately, China's sheer size of population and territory, its top-ranking economy and trade volume as well as its position of leadership within the developing world, makes the Chinese position on "regionalism versus multilateralism" a crucial determinant that may alter the direction of this ongoing debate.

This article is an attempt to outline and analyse the contents and implications of recent Asian R.T.As and proposed R.T.A. frameworks that concern China. This attempt has a view towards evaluating WTO compliance of China's R.T.As as well as their impact on the future direction of the multilateral trading system. Part II lists China's R.T.A. movements and briefly outlines the scope and content of each R.T.A. Part III discusses the geopolitical factors behind China's R.T.As. Part IV examines the relevant WTO rules on R.T.As and evaluates the consistency of China's R.T.As *vis-à-vis* these rules. Part V analyses the impact of China's R.T.A. approach on the multilateral trading system. In conclusion, this article argues that China's pursuit of regional and national security and great power status is not only legitimate, as there are no meaningful WTO rules prohibiting it, but also beneficial to the region considering East Asia's troublesome geopolitical layout. However, in this pursuit, China should be mindful of the importance of the multilateral trading system. As a top trading power, China is responsible for the promotion of multilateral trade liberalisation rather than to be obsessed with regionalism. On the other hand, it should be realised that the quest for regional trade arrangements is indicative of many weaknesses of the WTO-led multilateral trading system. Regional movements for free trade, as practised by China, should be permitted. Going further, they should be encouraged, so far as they do not create trade diversions and divergent rules from the multilateral trade system.

⁸ The use of the terms "country" and "countries" follows the Explanatory Notes to Article XVI of the *Uruguay Round Agreement Establishing the World Trade Organization*, which provides, "The terms 'country' and 'countries' as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO."

⁹ *Protocol on the Accession of the People's Republic of China*, annex to the *Accession of the People's Republic of China* (2001) WTO Doc. WT/L432 at Part I, Arts. 1(1), (2) and (3) (hereinafter China's WTO protocol).

¹⁰ See e.g., Jagdish Bhagwati, *The World Trading System At Risk* (Hemel Hempstead, Herts.: Harvester Wheatsheaf, 1991). A very good recent account of this debate is a book edited by Richard Pomfret titled *Economic Analysis of Regional Trading Arrangements* (Northampton, MA: Edward Elgar Pub, 2003), it features the masterful works of Jacob Viner, Harry Johnson, Robert A. Mundell, Paul R. Krugman, Lawrence H. Summers and many others prominent economists.

II. CHINA'S RECENT R.T.A. INITIATIVES AND THEIR CONTENTS

A. *The CEPAs between Hong Kong, Macao and Mainland China*

The *Mainland and Hong Kong Closer Economic Partnership Arrangement* (CEPA) was signed in June 2003 by the representatives from the Chinese central government and Hong Kong Special Administrative Region of the PRC (HKSAR).¹¹ This was the first R.T.A. for both sides. Three and half months later, the Mainland concluded a similar agreement with Macao.¹² Our focus will remain on the *China-Hong Kong CEPA* because the agreement between China and Macao is virtually modeled after the former.

1. *The negotiating history of the China-Hong Kong CEPA*

The idea of forming a R.T.A. with Mainland China was first conceived by the Hong Kong business community. In 1999, the Hong Kong General Chamber of Commerce (HKGCC), anticipating China's entry into the WTO, initiated a project to assess its impact on specific industries in Hong Kong. The final report, *China's Entry into the WTO and the Impact on Hong Kong Business* was released in January 2000.¹³ It suggested that the Hong Kong government, in its efforts to help local business, should "explore the benefits of a Free Trade Area agreement with the Mainland, similar to the NAFTA type regional trade agreement, which would be in keeping with WTO rules."¹⁴ In 19 December 2001, Hong Kong's Chief Executive Tung Chee Hwa raised the request to China's central government and subsequently, obtained endorsement. Formal negotiations began in February 2002, immediately after China's accession to the WTO in December 2001. On 29 June 2003, the CEPA Main Agreement was signed, witnessed by Chinese Premier Wen Jiabao. Three months later, on 29 September 2003, the six annexes were also signed. This gave the main agreement workable details. CEPA and its annexes have become effective as of 1 January 2004.

CEPA consists of a Main Agreement together with six annexes and two tables.¹⁵ Briefly speaking, it covers three broad areas. They are trade in goods, trade in services and trade and investment facilitation.

2. *China-Hong Kong CEPA on trade in goods*

In respect of the goods trade, China has agreed to eliminate tariffs on imported goods of Hong Kong origin in stages. As of 1 January 2004, China undertakes to eliminate tariffs on 273 categories of Hong Kong products, representing over 4000 items.¹⁶ According

¹¹ The official website of the China-HK CEPA is <<http://www.tid.gov.hk/english/cepa/index.html>>.

¹² The official website of the China-Macao CEPA is <<http://www.macao.gov.mo/cepa.phtml?lang=en>>.

¹³ Information about the report can be found at the <<http://www.chamber.org.hk/wto/content/reports.asp>>.

¹⁴ The "Executive Summary" of the HKGCC report on "China's Entry into the WTO and the Impact on Hong Kong Business," available at <http://www.chamber.org.hk/wto/report/wto_summary.asp>.

¹⁵ The Main Agreement is entitled *Mainland/Hong Kong Closer Economic Partnership Arrangement*. The six annexes under the framework of the main text are, respectively, Annex 1: Arrangements for Implementation of Zero Tariff for Trade in Goods, and Table 1 (under Annex 1): List of Hong Kong Origin Products for Implementation of Zero Import Tariff by the Mainland; Annex 2: Rules of Origin for Trade in Goods, and Table 1 (under Annex 2): Schedule on Rules of Origin for Hong Kong Goods Benefiting from Tariff Preference for Trade in Goods; Annex 3: Procedures for the Issuing and Verification of Certificates of Origin, and Form 1 (under Annex 4): Certificate of Hong Kong Origin (CEPA); Annex 4: Specific Commitments on Liberalisation of Trade in Services, and Table 1 (under Annex 4): The Mainland's Specific Commitments on Liberalisation of Trade in Services for Hong Kong, and Table 2 (under Annex 4): Hong Kong's Specific commitments on Liberalisation of Trade in Services for the Mainland; Annex 5: Definition of "Service Supplier" and Related Requirements; and Annex 6: Trade and Investment Facilitation. The full texts of CEPA are available on Hong Kong's official website for CEPA at <<http://www.tid.gov.hk>>.

¹⁶ See *ibid.*, Art. 5(2) of the Main Agreement, and Arts. 2 and 3 of Annex 1.

to the Hong Kong authority, this, together with China's commitments upon accession to the WTO, will cover 90 percent of Hong Kong domestic export to China.¹⁷ For other products, China will apply zero tariff rates by 1 January 2006 upon application by Hong Kong manufacturers.¹⁸ Non-tariff measures, except for safeguards, are precluded by CEPA. The Main Agreement prohibits either side from taking anti-dumping, countervailing, tariff rate quotas or any other non-tariff measures that are inconsistent with WTO rules, on goods originating from the other side.¹⁹

3. *China-Hong Kong CEPA on trade in services*

CEPA grants market access to the mainland to a total of eighteen Hong Kong services industries. According to commentators, these concessions constitute "the most significant component"²⁰ of the CEPA pact. It covers, amongst others, management consulting, convention and exhibition, advertising, accounting, banking, securities, insurance, logistics, movie industry, construction, shipping and value-added telecommunications services.²¹

Compared with China's commitments to other WTO Members States in its accession protocol,²² CEPA gives Hong Kong businesses a "first move" advantage. In the prescribed eighteen industries, Hong Kong service providers can enjoy preferential treatment ahead of China's WTO timetable. One example is that of the management consulting industry. According to China's WTO commitments, wholly foreign owned enterprises (W.F.O.E.) will not be permitted before 11 December 2007. CEPA, however, allows Hong Kong service providers to establish W.F.O.E. as of 1 January 2004.²³ Certain preferential forms of treatment extended to Hong Kong businesses even go beyond China's WTO obligations. In banking, for example, China's WTO commitments mandate a minimum asset requirement of US\$20 billion for overseas financial institutions to establish branches and US\$10 billion for subsidiaries in China. In comparison, the minimum asset requirement is only US\$6 billion for Hong Kong entities.²⁴ In logistics services, although China has made no commitments in its WTO accession agreements, CEPA allows Hong Kong residents to establish W.F.O.E. in the Mainland as of 1 January 2004.²⁵ In legal services, although China gives little concession to other WTO Members, Hong Kong law firms are allowed to establish representative offices in China that operate in association with Mainland law firms, albeit that the association cannot take the form of a partnership. Chinese law firms can employ Hong Kong barristers or solicitors, while Hong Kong permanent residents with Chinese citizenship are permitted to sit the bar examination in the Mainland and acquire Chinese legal professional qualifications.²⁶ This goes far beyond China's commitments as reflected in its WTO services schedule.

4. *China-Hong Kong CEPA on trade and investment facilitation*

In Articles 16 and 17 of the Main Agreement and in Annex 6, the both sides agree to pursue trade and investment facilitation through greater transparency, standardisation and

¹⁷ Hong Kong Trade Development Council, "CEPA and Opportunities for Hong Kong" (20 October 2003), online: <<http://www.tdctrade.com/econforum/tdc/tdc031002.htm>>.

¹⁸ See *supra* note 15, the Main Agreement, Art. 5(3) and Annex 1, Art. 5.

¹⁹ See *supra* note 15, the Main Agreement, Arts. 6, 7 and 8.

²⁰ Matt Pottinger "Hong Kong Fleshes Out Its Chinese Trade Accord, Giving Multinational Hope" *Wall Street Journal* (30 September 2003) A18.

²¹ See *supra* note 15, Table 1 (under Annex 4).

²² See *supra* note 9.

²³ See *supra* note 15, Table 1 (under Annex 4).

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

enhanced information change.²⁷ This is especially so in trade and investment promotion, customs clearance, quarantine and inspection of commodities, food safety and quality assurance, electronic commerce, transparency in law and regulation, small and medium-sized enterprises, and in respect of the trade in Chinese medicine and medical products.²⁸ Pursuant to Article 3 of Annex 6, China and Hong Kong have established a Joint Steering Committee for the overall coordination of CEPA affairs.

B. *The China-ASEAN Free Trade Agreement (CAFTA) Proposal*

1. *The negotiating process of CAFTA*

At the ASEAN-China Summit of November 2000, Chinese Premier Zhu Rongji put forward a basket of proposals to strengthen cooperation in East Asia, including, “seen in the long run” that China and ASEAN should explore the possibility on the formation of a F.T.A.²⁹ At his suggestion, a China-ASEAN Experts’ Group on Economic Cooperation (Experts’ Group) was established to look into the possibility of establishing a free trade area between the two sides.³⁰ In its final report issued in October 2001, the group suggested the construction of a “WTO-consistent ASEAN-China F.T.A. within ten years”.³¹ It noted the profound implication of CAFTA as follows:

[T]he establishment of a F.T.A. between ASEAN and China will create an economic region with 1.7 billion consumers, a regional G.D.P. of about US\$2 trillion and total trade estimated at US\$1.23 trillion ... [T]he removal of trade barriers between ASEAN and China will lower costs, increase intra-regional trade and increase economic efficiency. The establishment of an ASEAN-China F.T.A. will create a sense of community among ASEAN members and China. It will provide another important mechanism for supporting economic stability in East Asia and allow both ASEAN and China to have a larger voice in international trade affairs on issues of common interest.³²

The report also recommended that China and ASEAN adopt a comprehensive and forward-looking framework of economic cooperation, so as to forge closer economic relations in the 21st century. In November 2001, the Seventh China-ASEAN Summit endorsed the ideas envisaged by the Experts’ Group and initiated the negotiation progress.³³ At the Eighth China-ASEAN Summit in Phnom Penh, Cambodia in November 2002, ASEAN and Chinese leaders signed the *Framework Agreement on the Comprehensive Economic Co-Operation between ASEAN and China* (hereinafter the “FA”). Having come into force on 1 July 2003, it provides the groundwork for the eventual formation of the CAFTA by 2010 for the six older ASEAN members and 2015 for the newly admitted members (Cambodia, the Lao PDR, Myanmar and Vietnam).³⁴ The FA was amended by a Protocol

²⁷ See *supra* note 15, Main Agreement, Art. 16.

²⁸ *Ibid.* at Art. 17.

²⁹ “Zhu Rongji chuxi di sici Zhongguo-Dongmeng lingdaoren huiwu” (Zhu Rongji attends the fourth China-ASEAN Summit) *Xinhua News Agency* (25 November 2000).

³⁰ ASEAN Secretariat, “ASEAN Annual Report 2000–2001”, online: ASEAN website <<http://www.aseansec.org>> at 10.

³¹ See the ASEAN-China F.T.A. Report, *supra* note 7 at 36.

³² *Ibid.* at 2.

³³ ASEAN Secretariat, “ASEAN Annual Report 2001–2002”, online: ASEAN website <<http://www.aseansec.org>>.

³⁴ *Framework Agreement on Comprehensive Economic Co-Operation between the Association of South East Asian Nations and the People’s Republic of China* (5 November 2002), online: ASEAN website <<http://www.aseansec.org>> [hereinafter the FA].

signed on 6 October 2003 by China and ASEAN at their 2003 annual summit in Bali.³⁵ The FA represents the first F.T.A. initiative by both ASEAN (as a group) and China (outside the Greater China Area³⁶).

2. *Scope and measures for economic cooperation under the FA*

With a view to establishing the CAFTA before 2010, the parties to the FA agreed to strengthen cooperation and to “progressively liberalise and promote trade in goods and services as well as create a transparent, liberal and facilitative investment regime.”³⁷ This suggests that the proposed CAFTA will cover trade in goods and services, as well as, trade and investment facilitation. In addition, the FA opens the door for parties to “explore new areas and develop appropriate measures for closer economic co-operation.”³⁸ Specific measures towards the realisation of CAFTA, which will be implemented progressively in the coming years, include the following:³⁹

- (a) *Elimination of tariffs and non-tariff barriers in substantially all trade in goods;*
- (b) *Liberalisation of trade in services with substantial sectoral coverage;*
- (c) *Establishment of an open and competitive investment regime that facilitates and promotes investment within CAFTA;*
- (d) *Special and differential treatment and flexibility to the newer ASEAN Member States, including Cambodia, the Lao PDR, Myanmar and Vietnam;*
- (e) *Flexible measures to allow the parties in CAFTA negotiations to address their sensitive areas in the goods, services and investment sectors with such flexibility to be negotiated and mutually agreed based on the principle of reciprocity and mutual benefit;*
- (f) *Trade and investment facilitation measures, such as simplification of customs procedures and the development of mutual recognition arrangements;*
- (g) *An open attitude toward further liberalisation in new areas/sectors; and*
- (h) *The establishment of appropriate mechanisms for the effective implementation of the FA.*

3. *Early-Harvest Programme (EHP) for trade in goods under the FA*

In addition to obligations to enter into negotiations for the ultimate free trade pact, the FA also establishes an Early Harvest Programme (hereafter, “the EHP”). Implemented as of 1 January 2004, it aims to reap the immediate concessions offered by the parties, mainly China. The EHP allows the reduction of tariffs on certain products before the onset of CAFTA. Initially, it aims to implement tariff reduction on these products over three years: to 10 percent before 2004, to 5 percent before 2005, and to zero tariffs no later than 1 January 2006.⁴⁰ A distinctive feature of the EHP is that China has also given unilateral concessions to ASEAN members who feel they would not benefit as much from the EHP. These concessions cover over 130 agricultural and manufacturing products.⁴¹ In essence, it “allows ASEAN products to be exported to China at a significant concessionary rate so

³⁵ *The Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation Between the Association of South East Asian Nations and the People's Republic of China* (6 October 2003), online: ASEAN website <<http://www.aseansec.org>> [hereinafter the *Protocol*].

³⁶ The Greater China Area includes Mainland China, Hong Kong, Macao, and Taiwan.

³⁷ FA, *supra* note 34, art. 1(b).

³⁸ *Ibid.* at Art. 1(c).

³⁹ *Ibid.* at Art. 2.

⁴⁰ Annex 3 of the FA, Part B. A slightly different schedule is used for the newer ASEAN members.

⁴¹ Annex 2 of the FA.

that ASEAN countries can actually benefit from the benefits of a free trade agreement even before the agreement itself is finalised.”⁴² In return, the ASEAN countries agree to give tariff concessions to China under the Harmonized System (H.S.) on tariffs for agricultural products including meat, fish, fruit, vegetables and milk.⁴³ In total, the EHP has targeted a host of some 600 products listed in Chapters 1–8 of the H.S., mostly agricultural products which are to be unilaterally liberalised by China.⁴⁴ In addition, China agrees to grant WTO benefits (mainly M.F.N. treatment) to ASEAN members which are not official WTO members yet.⁴⁵

Initially, the FA took a multilateral approach to tariff reduction. For example, tariff concessions under the H.S. approach were to be multilateralised to all parties (*i.e.* all ASEAN members and China) provided that the same products are included in their EHP. But, because the Philippines and China failed to establish an EHP scheme, other countries in the region subsequently considered that this would therefore allow the Philippines to “free ride”. In addition, fear that some ASEAN countries like Thailand, which have more efficient farm sectors, could suppress the growth of the agricultural sector in others, has also deterred ASEAN members from implementing a multilateral approach under the EHP. Malaysia was amongst the first to negotiate a clause in 2003, allowing it to offer lower agriculture tariffs *only* to China in return for the latter’s concessions under the EHP.⁴⁶ This practice has since been consolidated in the 2003 Protocol, which replaces the original Article 6(3)(b)(i) of the FA with a new provision. The new provision recognises that a party may accelerate its tariff reduction and/or elimination under the EHP to the rest of the parties “on a unilateral basis.”⁴⁷ Meanwhile, one or more ASEAN members are still allowed to conduct negotiations and enter into acceleration arrangements with China so as to fast-track their tariff reduction or elimination. However, this shall only be done on a “bilateral or plurilateral” basis. In other words, no conditional or unconditional M.F.N. status is granted under the EHP except to Brunei and Singapore.⁴⁸

A good example of a tariff acceleration arrangement is the *China-Thailand Agreement on Accelerated Tariff Elimination under the Early Harvest Programme*,⁴⁹ which prescribes that China and Thailand shall eliminate tariffs on all vegetable and fruit products no later than 1 October 2003 (ahead of the EHP effective date of 1 January 2004, as well as, the targeted zero tariff date of 1 January 2006).⁵⁰

4. *Negotiation agenda for goods, services, investment and other areas to complete CAFTA*

Goods not covered by the EHP are subject to further negotiation within specified timeframes. The FA categorises these goods into two tracks. The first, the “Normal Track”, contains products tariff rates which shall be gradually reduced or eliminated in accordance with specified schedules (to be mutually agreed by the Parties) over a period from 1 January

⁴² “ASEAN, China Launch First Stage of Free-Trade Plan” *AFP* (7 October 2003).

⁴³ *Ibid.*

⁴⁴ China, however, has excluded from EHP some agricultural products such as rice and palm oil, which are said to be major exports from ASEAN countries. These products are to be negotiated in the coming years.

⁴⁵ FA, Art. 9. Currently Cambodia, Vietnam and the Lao PDR are not WTO Members.

⁴⁶ “Malaysia Early Harvest Clause a Way out for RP” *The Manila Times* (7 April 2003), online: The Manila Times <<http://www.manilatimes.net/national/2003/apr/07/business/20030407bus4.html>>.

⁴⁷ The *Protocol*, *supra* note 35, Art. 2.

⁴⁸ *Ibid.* Only Brunei and Singapore will, subject to conformity with specified requirements, automatically become parties to any arrangements that have been agreed on or will be agreed to between China and any other ASEAN state under the EHP. See *ibid.* at Annex 2. Singapore has already become a Party to the China-Thailand EHP arrangement.

⁴⁹ Text of the agreement is available on China’s Ministry of Commerce website at <<http://www.mofcom.gov.cn>>.

⁵⁰ *Ibid.* at Art. 1.

2005 to 2010 by the ASEAN 6 and China, and from 1 January 2005 to 2015 for the newer ASEAN members.⁵¹ The "Sensitive Track" represents a second category of products specified by an individual Party on its own accord in respect of which, a timeframe is not imposed on further liberalisation. Parties are merely required to reduce (or eliminate when applicable) tariffs on Sensitive Track products "in accordance with the mutually agreed end rates and end dates."⁵² In addition to tariffs, the negotiations shall also include, among others, rules of origin, out-quota-rates, re-negotiation of concession schedules, non-tariff measures, trade remedy laws, trade facilitation measures, as well as, trade related intellectual property protection.⁵³ In terms of the timeframe, the FA prescribes that the goods negotiations shall commence in early 2003 and be concluded by 30 June 2004.⁵⁴

The FA, however, does not have a mandatory timeframe for the negotiations on services and investment, except that negotiations shall commence in 2003 and be concluded "as expeditiously as possible for implementation in accordance with the timeframes to be mutually agreed."⁵⁵ Substantive negotiations in these two areas have already started for the conclusion of the framework texts and the first packages of commitments are set for the second half of 2004.⁵⁶ The negotiations on services seek to progressively eliminate substantially all discrimination and to prohibit new discriminatory measures with respect to trade in services between the Parties.⁵⁷ The FA also seeks to expand the depth and scope of liberalisation in trade in services beyond those undertaken by China and ASEAN Members under the GATS.⁵⁸ This could result in an acceleration of China's WTO commitments on services for ASEAN, not unlike what China has done for Hong Kong and Macao. As for investment, the FA aims, through negotiations, "to obtain commitments on liberalizing the investment regime, increasing market access as well as commitments on protection of investment in the China market."⁵⁹

Besides trade and investment, China and ASEAN have also identified five priority sectors for strengthened cooperation. They include agriculture, information and communications technology, human resources development, investment and the Mekong River basin development. Eleven other activities such as standard mutual recognition and harmonisation, electronic commerce, technology transfer, and specific projects such as the acceleration of the railway project linking Singapore and China's southern city of Kunming are also in mind.⁶⁰ All these efforts indicate that the FA is indeed a herald for an all-embracing pact of economic cooperation.

C. Other R.T.A. Proposals involving China

After the bold proposal for CAFTA, China has also reached out to a number of countries for free trade arrangements. China has engaged in a series of bilateral talks with the MERCOSUR countries. In September 2003, both sides agree to start bilateral agreements in specific areas and mechanisms to increase integration and facilitate trade.⁶¹ In May 2004,

⁵¹ The FA, Art. 3(4)(a)(i).

⁵² *Ibid.* at Art. 3(4)(b).

⁵³ *Ibid.* at Art. 3(8).

⁵⁴ *Ibid.* at Art. 1(1).

⁵⁵ *Ibid.* Art. 8(3).

⁵⁶ ASEAN-China F.T.A. *Factsheet*, online: website of the Ministry of Trade and Industry (MTI) of Singapore <<http://www.mti.gov.sg>>.

⁵⁷ The FA, Art. 4(a).

⁵⁸ *Ibid.* at Art. 4(b).

⁵⁹ MTI of Singapore, *infra* note 62.

⁶⁰ The FA, Annex 4.

⁶¹ "From the Regions: China Intensifies Regional Trade Talks" *Bridges Weekly Trade News Digest* Vol. 7, No. 32 (1 October 2003), online: The International Centre for Trade and Sustainable Development website <<http://www.ictsd.org>>.

China also agreed to start bilateral F.T.A. negotiations with Singapore and the Gulf Cooperation Council (GCC) countries.⁶² Another major move is made on China's western front, under the auspices of the Shanghai Cooperation Organization (SCO) which comprises China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan. The SCO was originally a purely political group formulated in 1996 to improve regional stability and counter the influence of Islamic fundamentalism in central Asia. Prompted by China, premiers of the five member states of the SCO signed a multilateral economic cooperation Framework Agreement on 23 September 2003 in Beijing. It is meant to "deepen" the economic connections between member states and "improve the investment environment".⁶³ More significantly, Chinese Premier, Wen Jiabao made three proposals concerning economic cooperation within the SCO, the most surprising being the long-term objective to establish a free trade area within the SCO.⁶⁴ This proposal has been consolidated into a Framework Agreement.

China has also extended invitations to Australia and New Zealand which are regarded by China as part of the Western world and long-term US allies.⁶⁵ On 25 October 2003, during the state visit of Chinese President Hu Jintao to Australia, China and Australia signed a Trade and Economic Framework Agreement, which is regarded as "the first steps towards a free trade agreement worth billions of dollars".⁶⁶ A few days later, the Chinese leader also reached a consensus with his New Zealand counterpart to start negotiations for a free trade deal between the two countries.⁶⁷

III. THE MOTIVATIONS BEHIND CHINA'S R.T.A. APPROACH: POLICY AND GEOPOLITICS

A. *The Primary Motivations: Economics or Geopolitics?*

Cooperation through free trade arrangements is, by definition, economic in nature. It is difficult, however, to conclude that China's recent R.T.A. moves were only economically driven. They are, at least, not for immediate and short-term economic benefits, though immediate unilateral concessions from China to other parties involved in the R.T.As are immense. To use the CEPAs as an example, although Hong Kong and Macao will be China's first choice to supply products and services with a high value-added dimension to the Mainland Chinese market and thus reap immediate, as well as, long-term trade and

⁶² See Laurel Teo "F.T.A. Talks with China in November" *The Straits Times* (15 May 2004). And see "GCC States Eye Trade Pact with China" *Xinhua News Agency* (9 May 2004).

⁶³ Shanghai Cooperation Organization, News Release, "Joint Communiqué of the Premiers Meeting of Shanghai Cooperation Organization" (23 September 2003), online: Ministry of Foreign Affairs of China website <<http://www.fmprc.gov.cn>>.

⁶⁴ *Bridges Weekly*, *supra* note 61. See also "Shanghai Zezuo Zuzhi Chengyuan Guo Zongli Huiwu: Wen Jiabao Ti San Changyi [SCO Premiers Submit: Wen Jiabao put forward three proposals]" *China News Agency* (23 September 2003), online: China News Agency <<http://news.sina.com.cn>>.

⁶⁵ In November 2003, at the annual ASEAN PLUS THREE (China, Japan and Korea) Summit, then Chinese Premier Zhu Rongji proposed to form a F.T.A. with Japan and South Korea. The responses he received from the two countries were hardly positive. So far, there has been no substantive negotiation for a China-Japan-Korea F.T.A. The three countries, however, have agreed to start the feasibility study. As David Wall of the Royal Institute of International Affairs in London notes, "There is not much chance of a trilateral F.T.A. in Northeast Asia for now then. Which is why Roh and Hu could only agree to leave it to academics to chew over, endlessly." See David Wall "East Asia F.T.A.? Dream On!" *Japan Times* (2 July 2003).

⁶⁶ Steve Lewis, John Kerin & Negel Wilson "China: New Economic Era Begins" *The Australian* (25 October 2003).

⁶⁷ Fran O'Sullivan "Chinese Minister Says Free Trade Deal Likely" *New Zealand Herald* (13 January 2004), online: New Zealand Herald <<http://www.nzherald.co.nz>>.

employment-creation rewards,⁶⁸ the immediate economic gain to the Mainland is not so obvious. That is probably why Hong Kong leaders have said that “[t]his agreement has given us an opportunity that our neighbouring countries can only dream of.”⁶⁹ The *Wall Street Journal* further noted that “the [CEPA] pact contains almost no concessions to China, because Hong Kong is already one of the freest economies in the world and doesn’t impose import tariffs except on a handful of goods and services.”⁷⁰ China’s R.T.A. framework agreement with ASEAN, especially the EHP, demonstrates a consistent feature of unilateral concessions to open up first and embrace other countries’ exports to China. Ultimately, experts believe that the long-term benefit of CAFTA will be enormous to both sides.

China’s R.T.A. approach, as a strategic movement, must be viewed in a larger context that embraces both economic and geopolitical considerations, with the latter playing a relatively more important role at this stage. It is a part of China’s regional and global strategy in light of its national interests. As its economy and global influence grows, China has acquired the confidence to proactively employ a variety of tactics and moves to achieve its interests. However, as the following sections aim to demonstrate, although China has yet to clearly manifest its ultimate goal, its rhetoric and actions indicate that it is a pragmatic, constructive partner rather than a destructive player solely concerned with pushing its interests unilaterally.

B. Supporting Hong Kong, Role Model for Taiwan, and the Construction of the “Greater China Economic Circle”

From the outset, the *China-Hong Kong CEPA* has been viewed as an arrangement “devised by China to bolster Hong Kong’s battered economy after a prolonged downturn.”⁷¹ According to the *Wall Street Journal*, the considerations for supporting the incumbent Hong Kong administration chaired by Chief Executive, Mr. Tung Chee Hwa (who, it is said, was hand-picked by Beijing) far exceed that of economic benefit. This makes the CEPA almost a unilateral gift to Hong Kong.⁷² Hong Kong’s economy, since the former British colony’s return to China, has been in the doldrums. As the *Asia Times* observes, “since Tung became chief executive in 1997, the city has suffered two recessions that have seen property prices fall by 60 percent. Unemployment is running at 8.3 percent—something unheard of in this once-vibrant financial hub.”⁷³ On 1 July 2003, the Sixth Anniversary of the change of sovereignty in Hong Kong, half a million local residents marched along the streets to protest against the city authority. The direct cause was the so-called Article 23 Bill, a legislative proposal, which if turned into law, will make treason, secession, sedition or subversion against the Mainland central government illegal. The underlying causes, however, appear to include public disquiet over Tung’s failure to rescue the Hong Kong economy.⁷⁴ It is against this background that the Chinese leadership decided to deliver CEPA as a “gift” to the unpopular Hong Kong government. This was indicative in Chinese Premier Wen Jiabao’s speech after the signing ceremony. He said that the “real gift [evidenced by CEPA]

⁶⁸ See Hong Kong Trade Development Council, *CEPA and Opportunities for Hong Kong* (20 October 2003) and Hong Kong Trade Development Council, *CEPA’s Opportunities Beyond WTO* (2 October 2003), online: Hong Kong Trade Development Council website <<http://www.tdctrade.com>>.

⁶⁹ “Hong Kong and China Sign Free Trade Deal” *Financial Times [Asian Edition]* (29 June 2003).

⁷⁰ Matt Pottinger “A Back Door to China Opens Wider—Hong Kong Fleshes Out Its Chinese Trade Accord, Giving Multinationals Hope” *Wall Street Journal* (30 September 2003) A18.

⁷¹ Angela Mackay “A Trade Bridge to the Mainland” *Financial Times* (31 December 2003).

⁷² See Pottinger, *supra* note 70.

⁷³ Antoaneta Bezlova “‘One Country, Two Systems’ under Fire” *Asia Times* (17 July 2003), online: Asia Times <<http://www.atimes.com>>.

⁷⁴ Bryan Walsh “Will CEPA Make Any Difference” *Time [Asia]* Vol. 162 No. 1 (14 July 2003), online: Time (Asia) <<http://www.time.com/time/asia>>.

is the determination of the new Chinese leadership to strengthen the implementation of 'One Country, Two Systems', the principle of 'self-governance of Hong Kong people' and the Basic Law in Hong Kong.⁷⁵

The importance of a politically stable and economically prosperous Hong Kong to China is, of course, not confined to concern of Hong Kong alone. China's "One Country, Two Systems" policy was devised to apply to all the areas that were not previously within the original sovereignty of the 1949-established PRC—Macao, Hong Kong and Taiwan. As Taiwan is the only region which is not currently unified with the Mainland, the "One Country, Two Systems" scheme must prove workable in Hong Kong in order to be acceptable to the Taiwanese. The implication here is that if Mainland China can "give" CEPA to Hong Kong, it can similarly afford the same to Taiwan, provided that Taiwan agrees to unify with China. In fact, a senior official of China's Ministry of Commerce extended an offer of a closer economic partnership agreement to Taiwan in November 2003. Taiwan's Mainland Affairs Council, however, swiftly refused the offer on the grounds that such an agreement would be a devise for "One Country". This was, of course, not acceptable to Taiwan.⁷⁶

The long-term goal of the closer economic partnership agreements, as noted by Chinese officials and academics, is to integrate the economies of Hong Kong, Macao and Taiwan and then establish the long proposed "Greater China Economic Circle".⁷⁷ However, as Mainland China has become Taiwan's largest market,⁷⁸ Taiwan's need to integrate closer with the Mainland market is becoming increasingly urgent. Thus, although China's discussions with the ASEAN nations, as well as, its recent offer to sign a Hong Kong-like CEPA with Taiwan have been met with "anxiety and skepticism",⁷⁹ a "Greater China Economic Circle" is very likely to come into being. This will be the starting point for China's assertion of its economic superpower status.

C. Economic Security

It has been argued that having one's own R.T.As is a defensive strategy against the proliferation of other R.T.As, spurred on by the fear of being "left-out". This is supported by the proposition that European integration spurred the formation of NAFTA. In turn, NAFTA and the EEC contributed to the surge of R.T.A. initiatives in the Asia-Pacific region. According to this view, R.T.As are related to the economic security of participating countries, which Mansfield has defined as "the maintenance of given levels of welfare and state power through access to resources, finance and markets." Mansfield observes that eroding hegemony, global recessions, and strategic interdependence provide strong incentives for countries to establish or enter into R.T.As. R.T.As become necessary to help guarantee that access to key foreign markets will not be curtailed and that their competitiveness abroad will not be undermined.⁸⁰

⁷⁵ "Wen Jiabo Xiwang 'Anpai' Neng Wei Xianggang Dailai Gengduo Shangji [Wen Jiabao wishes CEPA will bring more business opportunities to Hong Kong]" *Xinhua News Agency* (29 July 2003).

⁷⁶ "Dalu Yao Tai Qian CEPA; Tai Luweihui Fandui [CEPA offer to Taiwan by Mainland rejected by Taiwan's Mainland Affairs Council]" *Phoenix TV News [China]* (13 November 2003), online: Phoenix TV News <<http://www.phoenixtv.com/home/news/taiwan/200311/13/146119.html>>.

⁷⁷ "Dalu Yu Xianggang Qian CEPA Cu Liangan Jian Xin Jinji Hezuo Jizhi [Mainland-HK CEPA urges the establishment of new mechanism for cross-strait economic cooperation]" *China News Agency* (5 July 2003), online: <<http://business.sohu.com/85/38/article210753885.shtml>>. See also Pan Hongqi "CEPA Shi Fen Shenme Yang De Dali? [What kind of big gift is CEPA?]" *Beijing Youth Daily* (30 June 2003).

⁷⁸ See Taiwan trade statistics online: <<http://www.trade.gov.tw/stat>>.

⁷⁹ US, *China's Growth as a Regional Economic Power: Impacts and Implications: hearing before the US-China Economic and Security Review Commission (USCC)*, 108th Cong. (4 December 2003) (statement by Merritt T. Cooke), online: United States Congress <<http://www.uscc.gov>> (hereinafter "USCC hearing on China as Regional Power").

⁸⁰ E.D. Mansfield, "The Proliferation of Preferential Trading Arrangements" [1998] 42 J.Confl. Resolution 523.

China has not expressed fear of being “left-out”. However, considering that all its major trading partners are presently involved in R.T.As, such a fear is a reasonable one. China also needs a stable supply of raw materials and commodity components from Southeast Asian countries. Further, China is now the world’s second largest energy consumer after the United States (US) and has witnessed dramatically increased imports of oil and natural gas. Therefore, to meet its energy demands, China has the incentive to engage energy-rich countries, including ASEAN members. The fast growing Chinese economy has also increased China’s reliance on ASEAN nations for commodities to support its export economy or status as “world factory”,⁸¹ not to mention the fact that ASEAN also represents an increasingly important export market for China.

D. Wooing ASEAN for Regional Security and Influence

As one commentator notes, “the ASEAN-China agreement is essentially politically motivated.”⁸² The fact is China’s economic growth has been surpassing that of every country in the world for over a decade. China is inescapably heading towards economic superpower status. Such a statement means that China is assiduously pursuing a strategy to transform its economic clout into political influence by practising “mature”, “constructive”, and “responsible” great power diplomacy.⁸³ At this time, China’s main goal is to build political trust with its neighbours and other important players in the region so as to strengthen regional security in favour of itself. The CAFTA proposal, especially the EHP which gives early unilateral concessions to ASEAN states, is likewise directed to allay fears of a “China threat” amongst China’s weaker Asian neighbours, who have suffered loss of foreign direct investment and have struggled to compete with China over the last decade.⁸⁴

Competing with Japan (and even the US) for regional leadership and influence is another concern. Thus, the CAFTA proposal is widely regarded as a way of pre-empting the dominance of other powers in Asia.⁸⁵ Japan has engaged ASEAN since 1973.⁸⁶ Yet, largely because of Japan’s deep-rooted “Look West” orientation, it has never seriously initiated a comprehensive cooperation programme with ASEAN, aside from direct investment. Moreover, the Japanese economy’s recent languishing growth has encouraged Asian countries to look elsewhere for an engine of growth. As for the US, it has been mostly occupied with the anti-terrorism campaign since September 11. In China’s view, it is presently the best time to rise up and take a leadership position by stressing economic cooperation in its diplomacy. This economic cooperation is direly needed by nations in the region, even by long-term allies of the US such as Australia and New Zealand.⁸⁷

⁸¹ Currently, China mainly imports resource-based or agriculture-based products (minerals, pulp, wood, vegetable oil and sugar) for ASEAN countries. The share of machinery and electrical components for assembly into final goods has been growing in China. Recently, China has also been proactively buying national gas and oil fields in Indonesia.

⁸² Hadi Soesastro, “Dynamics of Competitive Liberalisation in R.T.A. Negotiations: East Asia Perspectives,” (Paper presented to the PECC Trade Forum) April 2003, online: Pacific Economic Cooperation Council <<http://www.pecc.org>>.

⁸³ *Supra* note 79 (statement of Bates Gill, Freeman Chair in China Studies, Center for Strategic and International Studies).

⁸⁴ In 1980–2000, China’s accumulated net FDI totaled \$209 billion while ASEAN’s accumulated net FDI totaled \$172 billion for the same period. See Phar Kim Beng “ASEAN and China’s Regional Concerns” *Asia Times* (21 January 2003), online: *Asia Times* <<http://www.atimes.com>>. CAFTA can slow this trend by providing multinationals with more incentives to invest or stay in ASEAN while continuing to enjoy the benefits of China’s huge domestic market.

⁸⁵ Chua Lee Hoong “China-ASEAN Trade Pact—A Landmark Agreement?” *Straits Times* (4 November 2002). See also Phar Kim Beng, *supra* note 84.

⁸⁶ *Ibid.*

⁸⁷ The effect of China’s “economic incentive” diplomacy (so I call it) can be seen in Chinese President Hu Jintao’s visit to Australia and New Zealand in October 2003. Local media hailed Hu’s friendly gesture and

E. *The Ultimate Goal: Quest for "Peacefully Ascendancy" to Great Power?*

In international relations, "how a country rises often has more drastic consequences for the world than the rise itself."⁸⁸ History and international relations scholars, such as Donald Kagan and Joseph Nye, have observed that since the era of the Greek city-states, rising powers have tended to destabilise the established international system as they seek to make the system serve their interest.⁸⁹ Conceivably, the incumbent superpower will employ all possible means that it possesses, including resort to military ones, to contain, deter, or stop the development of the rising power. Arguably, there has only been one instance in history that an emerging power rose to greatness without such a conflict. That happened when the US supplanted Britain as the dominant global power in the early twentieth century.⁹⁰ Certainly, China appears to be playing this rising power role in the early twenty-first century. Given that the United States has an advantage in the areas of technology, human and natural resources, population, and especially an efficient and effective legal and political institutional structure, it is not likely to be "replaced" by any other nation in the foreseeable future. But it is fairly possible that a rising power like China could grow as strong and great as the United States. This will literally cause US's loss of status as the world's "single superpower". Furthermore, if a rising power exercises its strength in an aggressive, unilateral and expansionist way, it will certainly damage the interests of other countries voluntarily or reluctantly engaged with it.

Aware that its growing strength as a potential superpower may cause concerns and even fears amongst other countries, Beijing's leadership has sought to soothe the worries of the international community. The aim is to give history a chance to witness a second peaceful emergence of a great power.⁹¹ In a speech at Harvard during his December 2003 visit to the US, Chinese Premier Wen Jiabao after describing China's ambitious plan for economic and social development, affirmed to the Americans that his country subscribes to the idea of "*heping jueqi*" (meaning "peaceful ascendancy").⁹² To achieve this, he said that China needs "peaceful international development and a stable domestic development."⁹³ Thus, China's worldwide R.T.A. movement, which has primarily engaged its Asian neighbours at this stage, is aimed at expanding its political influence through peaceful economic exchange and cooperation.

IV. THE LEGAL ASPECT: WTO CONSISTENCY OF CHINA'S R.T.As AND THE INADEQUACY OF WTO LAW

A. *The Need for WTO Compliance*

In theory, any WTO member's regulations and state activities relating to trade should comply with WTO rules. As mentioned earlier in this article, by its accession to the WTO, China

policy declaration that focused on economic cooperation and political dialogue. This was contrasted with US President Bush's almost single-minded focus on security and anti-terrorism.

⁸⁸ Yoichi Funabashi "China's Long-Term Strategy: Peaceful Ascendancy" *The Asahi Shimbun* (2 December 2003), online: The Asahi Shimbun <<http://www.asahi.com>>.

⁸⁹ See Douglas H. Paal, "The Regional Security Implications of China's Economic Expansion, Military Modernization, and the Rise of Nationalism," in Hung-mao Tien and Tun-jen Cheng, eds., *The Security Environment in the Asia-Pacific* (Taiwan: The Institute for National Policy Research, 2000) at 80.

⁹⁰ *Ibid.* at 90.

⁹¹ A Japanese Newspaper has noted a researcher at a state-sponsored think tank in Beijing commenting that "China aims to grow and advance without upsetting existing orders" and the Chinese "are trying to rise in a way that benefits our neighbours." See Yoichi *supra* note 88.

⁹² "Remarks of Chinese Premier Wen Jiabao: Turning Your Eyes to China" *Harvard University News* (10 December 2003), online: Harvard University <<http://www.harvard.edu>>.

⁹³ *Ibid.*

has committed itself to abide by all the rules of the multilateral trading system. Violation of which will be considerably detrimental to both its own credibility as well as that of the WTO. Thus, China's R.T.A. policy, to the extent that international obligations are involved, would seek to conform with WTO rules, provided that there are relevant and meaningful WTO provisions in place.

The framers of the CEPAs and the China-ASEAN FA have, rhetorically, been prudent on the question of WTO compliance. One of the "General Principles" of the two CEPAs is "to be consistent with the rules of the World Trade Organization."⁹⁴ In the "Preamble" of the FA, the eleven countries bring their negotiations under the WTO framework by "reaffirming the rights, obligations and undertakings of the respective parties under the [WTO]".⁹⁵ In the main text of the FA, substantive WTO obligations are mentioned in eight places, covering a variety of areas including tariff reduction, trade remedy laws and services.

The presumption is, of course, that there must be something in the GATT/WTO that can be "complied with." The GATT/WTO regime is founded on a core principle: non-discrimination, which encompasses a "most-favored-nation" (M.F.N.) rule and a "national treatment" rule.⁹⁶ More relevant to R.T.As is the M.F.N. rule which according to the WTO Secretariat, "is so important that it is the first article of the [GATT]" as well as "a priority in the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)."⁹⁷ Basically, the M.F.N. clause requires any Member of the WTO to extend unconditionally "any advantage, favor, privilege or immunity" affecting customs duties, charges, rules and procedures they give to products originating in or destined for any other country.⁹⁸

By definition, regionalism is at odds with the M.F.N. clause. The draftsmen of the GATT and WTO were well aware of this and therefore, created several exceptions for R.T.As. Under the current WTO regime, R.T.As are subject to three sets of rules. The first is Article XXIV of GATT 1947 which, as clarified in the *Understanding on the Interpretation of Article XXIV* of the GATT 1994, provides for the formation and operation of customs unions and F.T.As on trade in goods. The so-called "Enabling Clause", formally called the *Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries* passed by the GATT Council in 1979,⁹⁹ permits preferential trade arrangements in trade in goods between developing country Members. Finally, Article V of GATS, entitled "Economic Integration", governs the formation of R.T.As in the area of trade in services.¹⁰⁰

Are the above rules effective in terms of judging the WTO-consistency of any R.T.A.? One commentator notes that "R.T.As are generally WTO-consistent", albeit "this is because the requirements of Article XXIV and the Enabling Clause and GATS are very weak and have never been enforced."¹⁰¹ This statement reveals the poverty of the WTO rules in containing regionalism, despite the WTO's view that it threatens the multilateral trading system. The

⁹⁴ See e.g., *China-HK CEPA*, Main Text, Art. 2 (2).

⁹⁵ *China-ASEAN FA*, Preamble.

⁹⁶ *General Agreement on Tariffs and Trade*, 30 October 1947, 58 U.N.T.S. 187 at Arts. I and III [hereinafter GATT].

⁹⁷ WTO Secretariat, *Understanding the WTO* (Geneva: World Trade Organization, 2003) at 10-11, online: WTO <<http://www.wto.org>>.

⁹⁸ GATT, Art. I(1).

⁹⁹ *The Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries*, (1979), GATT Doc. L/4903 [hereinafter the Enabling Clause].

¹⁰⁰ *Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, 1867 U.N.T.S. 3 at Annex 1B, art. V [hereinafter WTO Agreement].

¹⁰¹ Peter Lloyd, "Implications for the Multilateral Trading System of the New Preferential Trading Arrangements in the Asia Pacific Region," (Paper presented at the PECC Trade Forum) November 2002, online: Pacific Economic Cooperation Council <<http://www.pecc.org>>.

following sections examine the problems associated with the relevant WTO rules concerning regional trade integration, with particular attention paid to China's R.T.As.

B. *The Substantive WTO Requirements: The Rules and the Problems*

It is necessary to first identify the legal status of China's accomplished R.T.As (the two CEPAs) and the half-materialised CAFTA (the FA) under the WTO law. GATT addresses two types of R.T.As by drawing a distinction between custom unions (hereafter "C.U.s") and F.T.As. Additionally, GATT also governs the interim agreement leading to the formation of a C.U. or F.T.A. A C.U., according to GATT Art. XXIV:8, is essentially an arrangement in which all participating countries adopt common external trade tariffs and eliminate substantially the trade barriers between themselves. China's R.T.As, however, belong to the second category; namely F.T.As, the features of which are described as follows:

A Free Trade Agreement/Area (F.T.A.) is a reciprocal arrangement whereby trade barriers between participating nations are abolished. However, each member determines its own external trade barrier against non-F.T.A. members independently. Most commonly, barriers to trade are reduced over time and in most cases, not all trade is completely free of national barriers.¹⁰²

The two CEPAs are apparently F.T.As and the CAFTA FA is an interim agreement leading to the formation of a F.T.A. In China's notification to the WTO Council for Trade in Goods and Council for Trade in Services regarding the CEPAs, they are described as "[establishing] a free-trade area within the meaning of Article XXIV of the GATT 1994 and [providing] for the liberalisation of trade in services within the meaning of Article V of the GATS."¹⁰³ The FA also makes its purpose, to establish a "China-ASEAN F.T.A. within 10 years"¹⁰⁴, clear.

With regard to trade in goods, GATT has one general principle and two substantive rules governing R.T.As. Paragraph 5 of GATT Article XXIV sets a principle for closer economic integration between WTO Members, stating that "the purpose of a [C.U.] or of a [F.T.A.] should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories."¹⁰⁵ The two substantive rules are the "substantially-all-trade" (hereafter, "S.A.T.") requirement and the "not-on-the-whole-higher" (hereafter, "N.W.H.") requirement, embodied in GATT Articles XXIV:8 and XXIV:5 respectively. In addition, pragmatically recognizing that a C.U./F.T.A. cannot come into being overnight, GATT also permits the formation of an interim agreement but states that it "shall include a plan and schedule for the formation of such [C.U.] or of such [F.T.A.] within a reasonable period of time."¹⁰⁶

Simply put, GATT Article XXIV:8 requires that parties to C.U.s or F.T.As eliminate "duties and *other restrictive regulations of commerce*" with respect to "*substantially all the trade*" between their constituent customs territories.¹⁰⁷ Simple as it sounds, this requirement has nonetheless caused major interpretative difficulties, which have prevented the WTO itself from enforcing this provision. According to the Committee on Regional Trade agreements

¹⁰² Tim Martyn, *A Complete Guide to the Regional Trade Agreements of the Asia-Pacific* written for the APEC, March 2001, online: Asia Pacific Economic Cooperation website <<http://www.apec.org>>.

¹⁰³ *Closer Economic Partnership Arrangement between China and Hong Kong, China, Notification from the Parties* (submitted on 12 January 2004), WT/REG162/N/1, S/C/N/264, and *Closer Economic Partnership Arrangement between China and Macao, China, Notification from the Parties*, (submitted on 12 January 2004), WT/REG163/N/1, S/C/N/265.

¹⁰⁴ FA, Art. 2.

¹⁰⁵ GATT, Art. XXIV:5.

¹⁰⁶ GATT, Art. XXIV:5(c).

¹⁰⁷ *Ibid.* at Art. XXIV:8 (emphasis added).

(hereafter, “the CRTA”), the WTO’s specialised agency for monitoring R.T.As, two issues relating to this requirement, have hindered the assessment of R.T.A’s fulfillment of relevant WTO law. These are the meaning of S.A.T. and the scope of the list of “other restrictive regulations of commerce” (hereafter, “O.R.R.C.”).¹⁰⁸

As early as 1995, the WTO Secretariat has noted that “differences of opinion among participants in working parties regarding the interpretation of the [S.A.T.] requirement have been a major reason why working parties have not reached a consensus on the GATT consistency of individual agreements.”¹⁰⁹ Since the inception of GATT, there have been two approaches towards the interpretation of the S.A.T. requirement. The first one is characterised as a “quantitative approach”. It favors defining S.A.T. as a statistical benchmark such as, a certain proportion of trade between the parties, to indicate that the coverage of a given R.T.A. fulfills this rule.¹¹⁰ The problem with this approach is that “a single numerical definition or threshold” cannot suit the various contexts in which the S.A.T. requirement is used.¹¹¹ Worse, it can be easily taken advantage of, so as to exclude sensitive sectors such as agriculture and textiles. The other interpretation, the “qualitative approach”, proposes that no sector (or at least no major sector) is to be excluded from intra-R.T.A. trade liberalisation.¹¹² Ironically, this approach might not automatically result in free trade even if it does include all sectors.¹¹³ As noted by the CRTA, a number of suggestions have been proposed by Members of the WTO in an attempt to bridge or complement the two approaches.¹¹⁴ However, no such agreement has been reached.

The S.A.T. requirement is further complicated by mention of the O.R.R.C. in Article XXIV:8. This paragraph states that apart from the S.A.T. requirement, WTO Members may still “where necessary” exercise their rights to maintain duties or restrictions under GATT Articles XI (quantitative restrictions), XII (balance-of-payment exception), XIII (non-discriminative administration of quantitative restrictions), XIV (exceptions to the principle of non-discrimination), XV (exchange arrangements) and XX (general exceptions).¹¹⁵ Members to R.T.As cannot agree on other trade restrictive measures, such as antidumping, safeguard or countervailing duties, which are not mentioned in the list. What other measures should be incorporated into the list is a highly contentious question.¹¹⁶

The second substantive rule, the N.W.H. requirement embodied in GATT Article XXIV:5, stipulates that in a F.T.A. or interim agreement leading to a F.T.A., “the duties and other regulations of commerce” of the parties to the F.T.A. in respect of trade with third parties “shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the [parties] prior to the formation of the [F.T.A.], or interim agreement as the case may be.”¹¹⁷ It has been generally recognised that Article XXIV:5 therefore governs “external” relations, while Article XXIV:8 deals with mainly the internal trade liberalisation of C.Us or F.T.As. Again, the language used here is short but ambiguous enough to prevent the enforcement of the rule. Apart from highly disputable and undefined

¹⁰⁸ WTO, Committee on Regional Trade Agreements, *Synopsis of “Systemic” Issues Related to Regional Trade Agreement* (2 March 2000), WTO Doc. WT/REG/W/37 at para. 52.

¹⁰⁹ See *supra* note 5 at 13.

¹¹⁰ *Supra* note 106, para. 54(a).

¹¹¹ *Ibid.*

¹¹² *Ibid.* at para. 54(b).

¹¹³ *Ibid.*

¹¹⁴ *Ibid.* at para. 55.

¹¹⁵ GATT Art. XXIV:8(b).

¹¹⁶ In fact, this problem has generated a good number of disputes before the WTO’s Dispute Resolution Body (DSB). See e.g., *Turkey—Restrictions on Imports of Textile and Clothing Products* (1999), WTO Doc. WT/DS34/AB/R; *United States—Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea* (2002), WTO Doc. WT/DS202/AB/R; and *Canada—Certain Measures Affecting the Automotive Industry* (2000), WTO Doc. WT/DS139/AB/R, WT/DS142/AB/R.

¹¹⁷ GATT, Art. XXIV: 5(c).

terms such as “higher or restrictive” and “other regulations of commerce” (O.R.Cs), one major problem lies in whether, a country-by country and product-by-product examination of the effect of increases in tariffs is necessary in order to determine if the N.W.H. requirement is met. Heated debates have been generated since the GATT’s examination of the legitimacy of the *Treaty of Rome*, which established the EEC. In addition, no agreement has been reached among GATT/WTO officials and member-countries as to how an Article XXIV:5 evaluation should be made.¹¹⁸ In *Turkey—Restrictions on Imports of Textile and Clothing Products*, a WTO panel indicated that Article XXIV:5(a) requires that the effects of the resulting trade measures and policies of the new regional agreement should not be more trade restrictive *overall* than the constituent territories’ previous trade policies.¹¹⁹ In essence, the panel concluded that the terms of this provision “do not address the GATT/WTO compatibility of *specific measures* that may be adopted on the occasion of the formation” of a new R.T.A.¹²⁰ This conclusion, although shared by the Appellate Body, is not the end of the debate as WTO’s cases do not constitute legally binding precedents. Another controversial and unresolved major issue relating to the N.W.H. standard has been R.T.As’ rules of origin (R.O.Os). Since the formation of the EEC, it has been debated in the GATT/WTO that R.O.Os of R.T.As have been designed and administered in a way to create new trade barriers to trade with third countries. An additional concern is that the absence of GATT guidelines on R.O.Os for R.T.As have left R.T.A. participants free to adopt whatever rules they may deem appropriate.¹²¹

Moreover, GATS Article V, the equivalent of GATT Article XXIV for services, is modeled closely on GATT Article XXIV. In the GATS, the “substantially-all-trade” ambiguity is only slightly abated, but by no means clarified. Most significantly, a R.T.A. is required to have “substantial sector coverage,”¹²² with the term “substantial” understood “in terms of number of sectors, volume of trade affected and modes of supply.”¹²³ Based on this, a tighter standard is evinced as the requirement becomes such that a R.T.A. is to not raise barriers to third countries. That is, it is applied sector by sector rather than “on the whole”. For a covered sector, “substantially all discrimination” is to be removed.¹²⁴ As observed by the CRTA, Article V has also caused much controversy and ambiguity, which have yet to be resolved.¹²⁵

C. *The Notification and WTO Examination Process: Ill-Enforced Requirements*

All R.T.As concluded by WTO Members require notification. The confusion and ambiguity caused by the relevant WTO notification rules is by no means less severe than the aforementioned substantive rules. GATT Article XXIV:7 indicates that any Member deciding to enter into a C.U. or F.T.A. shall promptly notify the WTO Members “as will enable them to make such reports and recommendations to contracting parties”.¹²⁶ GATS Article V:7(a) contains a similar requirement. However, the major issue is that “the time at which notification of R.T.As should be made is neither precisely formulated nor homogeneously expressed in the rules.”¹²⁷ In practice, despite the requirement in GATT XXIV:7(a) that Members “shall

¹¹⁸ WTO Secretariat, *supra* note 5 at 14-15.

¹¹⁹ *Turkey—Restrictions on Imports of Textile and Clothing Products* (1999), WTO Doc. WT/DS34/R at paras. 9.120-121 [hereinafter the panel report of *Turkey—Textile*].

¹²⁰ *Ibid.* at para. 9.122.

¹²¹ WTO Secretariat, *supra* note 5 at 15.

¹²² GATS Art. V:1(a).

¹²³ GATS Art. V:1(a), fn. 1.

¹²⁴ GATS Art. V:1(b).

¹²⁵ CRTA, *supra* note 108 at paras. 70-103.

¹²⁶ GATT Art. XXIV:7(a).

¹²⁷ CRTA, *supra* note 108 at para. 12.

promptly notify”, most R.T.As are already in force long before the WTO is in receipt of notification. WTO Members have taken contrasting views with regard to the time of notification. One is that notification and submission of information should take place before entry into force. This will render most R.T.As automatically illegal under WTO law. The other is that the lack of precision in the text implies a “regulatory forbearance” which reflects the “pragmatism” necessary to address complex negotiations for the formation of a R.T.A. This is especially so, in the context of the political difficulty of notifying agreements before ratification.¹²⁸

Most notified R.T.As have been interim agreements.¹²⁹ GATT XXIV:5(c) requires that these agreements include “a plan and schedule for the formation of a customs union or of a free trade area within a reasonable time.” However, no definitions to the key terms (“interim agreement”, “plan and schedule” and “reasonable time”) are provided. Such lack of consensus has led to controversy as to whether any particular interim agreement actually qualifies as such. Furthermore, with regard to interim agreements, Article XXIV provides for the Contracting Parties (the WTO Members) to make recommendations to parties to a R.T.A. This should take place if, after having studied the plan and schedule included in the interim agreement, they “find that such agreement is not likely to result in the formation of a [C.U.] or [F.T.A.]” within a reasonable period of time. Accordingly, the parties shall not maintain or put into force such a R.T.A. if they are not prepared to modify it in accordance with these recommendations. As noted by John H. Jackson:

The interesting thing about this procedural language is that it does not require advance or later approval of the Contracting Parties of GATT. Instead, it places the initiative with the Contracting Parties to put forward recommendations for changes in the preferential agreement. This means technically, once the agreement has been notified to the GATT, unless the Contracting Parties can somehow arrive at an agreed set of recommendations, the language of GATT permits the preference parties to go ahead. The presumption is thus in favor of the preferential arrangement.¹³⁰

Jackson further notes that, “the Contracting Parties of GATT have never made an agreed set of recommendations to notifiers of preferential agreements.”¹³¹ As a result, “many such arrangements have been entered into and operated which arguably do not fully comply with the policy goals and the intent and spirit of Article XXIV of GATT.”¹³²

Naturally, this situation leads people to question the work of the WTO’s Committee on Regional Trade Agreement (CRTA). The CRTA was established in February 1999 and is charged with the principal duties of overseeing, under a single framework, all R.T.As and to consider the systemic implications of such agreements on the multilateral trading system and the relationship between them.¹³³ There is evidence to suggest that the CRTA has fulfilled its second mission as it has released a number of valuable reports on this issue and instilled public awareness about the difficulties that regionalism poses to the multilateral trading system. However, the CRTA’s performance with regard to its first mission is an openly recognised failure. According to the committee’s 2003 Report to the General Council of WTO, at the end of 2003, the Committee had a total of 147 agreements under examination. Of which, “no progress was, however, made on the completion of the examination reports.”¹³⁴ In

¹²⁸ *Ibid.* at para. 13.

¹²⁹ WTO Secretariat, *supra* note 5 at 12.

¹³⁰ John H. Jackson, *The Jurisprudence of GATT and the WTO: Insights on Treaty Law and Economic Relations* (Cambridge: Cambridge University Press, 2000) at 104.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ For the terms of reference of the CRTA, see WTO, *Decision on the Committee on Regional Trade Agreements of 7 February 1996*, WTO Doc. WT/L/127, online: WTO website <www.wto.org>.

¹³⁴ WTO, General Council, *Report (2003) of the Committee on Regional Trade Agreements to the General Council*, WTO Doc. WT/REG/13 (2003).

fact, no examination report has been finalised since the WTO's establishment in 1995. This has prompted the WTO Director-General to conclude that the CRTA has failed "so far in assessing the consistency of the ... R.T.As notified to the WTO, due to various political and legal difficulties, most of which are inherited from the GATT years"¹³⁵ and that "since the establishment of the WTO, Members have been unable to reach consensus on the format, let alone the substance, of the reports on any of the examinations entrusted to the CRTA."¹³⁶ As a result, the CRTA has never approved any R.T.A. as WTO-consistent. Likewise, it has never officially declared a single R.T.A. to be in violation of GATT/WTO rules.

D. *So, Is There the Need to Comply with WTO Rules?*

Theoretically, the answer is yes. After all, if a country is a Member of the WTO, it is under a mandatory obligation to comply with the rules of the multilateral trading system. However, a more useful answer is probably "no" because of the reasons implied in the above analysis. To summarise, firstly, the WTO rules on the introduction of R.T.As are too ambiguous to be useful operationally. The inadequacy of the WTO rules is principally to blame, as opposed to Members' non-compliance (if any). Secondly, the nature of the WTO as a consensus-based institution prevents it from strengthening enforcement of the existing rules. For example, the examination of the EEC was an attempt to strengthen enforcement. However, it was given up in early GATT days due to a clash of political interests and was never revived. Although the reason behind failure of enforcement is the divergent interpretations of WTO rules by Members, the real implication seems to be that almost no R.T.A. can ever be declared unlawful under the current WTO regime and that the process of CRTA examination can, in practice, be ignored.

Experience shows that to comply literally with GATT/WTO rules governing R.T.As, Members, involved in R.T.As, need only to notify the agreements to the WTO in a timely fashion either before or after their taking effect. Until the WTO substantially revises its rules governing regional economic integration, there is no imminent need for R.T.A. members to worry about compliance with the substantive WTO requirements. In this sense, since China has already notified the WTO of its R.T.As, it can be assumed that those R.T.As should be deemed compatible by the WTO unless the WTO reflects otherwise by adverse reports and recommendations.¹³⁷

V. A REALIST VIEW

A. *National and Regional Security as a Legitimate Goal in International Trade Relations*

In the absence of multilateral control through WTO rules, nations are free to pursue many goals through the conduct of regional integration through R.T.As. The primary purpose

¹³⁵ WTO Secretariat, *WTO Annual Report 2002* (Geneva: WTO, 2002) at 114.

¹³⁶ WTO Secretariat, *WTO Annual Report 2003* (Geneva: WTO, 2002) at 111.

¹³⁷ There is a counter-argument to the effect that the legal status of R.T.As in the WTO can be considered as remaining unclear. Thus, WTO Members, in any event, preserve their rights under the dispute settlement procedures with regard to R.T.As. See WTO Secretariat, *Compendium of Issues Related to Regional Trade Agreements*, WTO Doc. TN/RL/W/8/Rev.1(2002) at para. 24. This argument, however, does not go against the prima facie compatibility of a R.T.A. Furthermore, even if a R.T.A. is challenged before the DSB for non-compliance with the WTO framework, based on above analysis, the DSB does not possess the legal tools to examine the legal standings of R.T.As vis-à-vis WTO rules. In *Turkey-Textile*, the panel observed that "it is arguable" that panels do not have jurisdiction to assess the overall compatibility of a customs union with the requirements of art. XXIV of GATT. In the end, the panel assumed *arguendo* that the arrangement between Turkey and the EC is compatible with the requirements of GATT Arts. XXIV:8(a) and 5(a). The Appellate did not address this issue. See *ibid.* at para. 27.

of regional economic integration, according to a World Bank report, “is often political, and the economic consequences, good or bad, are side effects of the political payoff.”¹³⁸ Political benefits such as peace and security are, quite rightly, of paramount concern to the framers of many R.T.As. This is based on the rationale that regions that are highly integrated economically tend to have less internal conflict. For example, the preamble to the *1951 Treaty establishing the European Coal and Steel Community* states its aims, “to create, by establishing an economic community, the basis for broader and deeper community among peoples long divided by bloody conflicts.”¹³⁹ The founding fathers of the European Community (EC) even considered that economic integration would make war “materially impossible”.¹⁴⁰

The idea that trade fosters global peace is a long-established liberal conviction.¹⁴¹ Theorists like Montesquieu and Kant and practitioners like Woodrow Wilson asserted that economic relations between states pacify political interaction. The literature of modern economics and international relations discloses that states fight for two reasons and that both are related to cost contests. Cost contests involve two elements. The first is that there is a zero-sum competition for an “excludable good”. Secondly, that states choose a settlement method but the choice of method is typically, non-zero-sum. Liberal conviction is based on these two elements. Firstly, states fighting each other must have incentives to compete. This incentive is often competition over an excludable good. States differ over such goods which each cannot possess simultaneously. Secondly, there is uncertainty as to private information about strategic variables (capabilities, resolve, and so on) possessed by each state. If states could credibly share private information, efficient *ex ante* bargains could be identified. In itself, uncertainty provides weak or unresolved states with an opportunity to conceal weaknesses even as competition creates an incentive to bluff. It is only by imposing costly contests, by military or similar measures, that states can distinguish resolute opponents from those seeking to bluff. Furthermore, uncertainty also causes states to overlook the likely consequences of their contests.¹⁴²

In the sense that it helps remove incentives for states to engage in conflict, interdependence functions to promote peace. In addition, it serves to reduce the uncertainty that states face when bargaining in the shadow of costly contests. The argument put forward by a group of international relations scholars is that “interdependence makes it easier to substitute nonviolent contest for militarized disputes in signaling resolve.” This is because “states that possess a range of methods of conflict resolution have less need to resort to the most destructive (and costly) techniques,” while “states without linkages must choose between a very limited set of options, including—more often—war.”¹⁴³ Specifically, based on empirical studies and quantitative analysis, the argument concludes:

Trade and direct investment increase cross-border economic contact and raise a state's stake in maintaining linkages. Monetary coordination and interdependence demand that states strike deals. Though such interactions, states create a broad set of mutually beneficial economic linkages. While these linkages may deter very modest clashes, their main impact is as a substitute method for resolving conflict. Political shocks that threaten to damage or destroy economic linkages generate information, reducing uncertainty when leaders bargain. Threats from interdependent states carry more weight than threats from autarchic states precisely because markets inform observers as to the veracity of political “cheap talk.” Multiple channels of economic interactions

¹³⁸ World Bank, *Trade Blocs* (Oxford: Oxford University Press for the World Bank, 2000) at 11.

¹³⁹ *Ibid.* at 12.

¹⁴⁰ *Ibid.* at 13.

¹⁴¹ Erik Gartzke *et al.*, “Investing in the Peace: Economic Interdependence and International Conflict” [2001] 55 *International Organization* 391 at 394.

¹⁴² *Ibid.* at 397-399.

¹⁴³ *Ibid.* at 400.

help states to credibly communicate, increasing the “vocabulary” available to states in attempting to assess relative resolve.¹⁴⁴

Despite other concerns such as supporting Hong Kong and pursuing the “Greater China Economic Circle” (which is roughly a Chinese domestic matter), the major consideration behind China’s R.T.A. approach lies in engaging its Asian neighbours for the sake of creating a peaceful and friendly regional environment for its economic development. China’s goal not only coincides with that of its neighbours, but also serves a supreme interest in the region. That supreme interest is peaceful existence and enhanced security.

Given East Asia’s war scarred history of colonisation, diverse culture, extremely fragmented ideological groupings, long existing border disputes and deeply rooted mistrust in regional politics, it is an area where conflicts are easily generated. Countries in East Asia, especially China and Korea, have a traditional lingering mistrust of Japan because of its history of aggression. Recently, China’s ascendance as a regional and global power has raised both economic and strategic fears to its neighbours. The conventional “China threat” theory has been in place for decades. Indeed, ASEAN was originally formed to contain a communist China. However, the perception of a threat from the “dragon” (China) has persisted in contemporary intra-Asian regional politics. One major dispute between China and its southern neighbours is that they have all laid claim to the Spratly islands and the Paracel islands (called *nansha* and *xiasha* islands, respectively, by the Chinese) in South China Sea, which are of strategic and, potentially, economic importance. Since the 1970s, China has been involved in battles with Vietnam and has exchanged fire with the Philippines and Malaysia over the islands.¹⁴⁵ Given the PRC’s growing military might and uncompromising history in safeguarding its claimed territory, there is reason for China’s smaller and weaker neighbours to fear that the giant dragon may seek to resolve these disputes by force. In turn, this fear can lead to political distrust, arms races and eventually, regional instability. Worse, China and its Asia neighbours would not be able share the benefits of each others’ rapidly growing economies.

R.T.As, if managed well, are certainly capable of promoting peace and common security. A World Bank publication describes the role of R.T.As in this regard.

[T]rade relations, including [R.T.As] and, especially, deeper arrangement, might assist political relations between member countries by developing means for avoidance and management of intramural conflict. The negotiations between leaders of neighbouring countries that are required to form and operate an [R.T.A.] tend to generate trust between them. This helps them identify with each other, understand each others’ problems, and interpret each others’ actions. Trade talks allow political and economic elites to form coalitions from subsequent collaboration and consensual action.¹⁴⁶

China’s recent R.T.A. movement is based on this rationale that R.T.As can be used as an instrument to strengthen friendship with its neighbours and enhance regional security. Thus, serving its long-term central task of economic growth and development of *zonghe guoli* (national strength). Observers widely hold the view that “there’s more than trade at stake.”¹⁴⁷ The geopolitical dimensions of China’s economic diplomacy imply that “for Beijing, cementing closer economic ties with neighbouring East Asia states is also about establishing regional influence and leadership at the expense of the US and other major

¹⁴⁴ *Ibid.* at 418.

¹⁴⁵ Jianming Shen, “China’s Sovereign over the South China Sea Islands: A Historical Perspective” [2002] 1 Chinese J.I.L. 94 at 100-101.

¹⁴⁶ Maurice Schiff & Alan Winters, *Regional Integration and Development* (Oxford: co-publication of the World Bank and Oxford University Press, 2003) at 192.

¹⁴⁷ Michael Vatikiotis & Murray Hiebert “Free Trade Agreement: China’s Tight Embrace” *Fast East Economic Review* (17 July 2003).

economic powers” and that “China ... hopes to form at some point a counter power comparable to the US and Europe by unifying Asian countries.”¹⁴⁸ However, there is no reason to presume that China is the “wolf” taking advantage of innocent Little Red Riding Hood. Perhaps, it is more significant that these economic-diplomatic measures put forward by China will also “lock in” China’s role as a promoter of regional stability. In the East Asia context, China’s R.T.A. approach is closely accompanied by a host of other efforts to provide increased support for and participation in regional security mechanisms. In November 2002, China co-signed the *Declaration on the Conduct of Parties in the South China Sea* with ASEAN. This reaffirms China’s respect for and commitment to freedom of navigation in and over flight above the South China Sea “provided for by the universally recognised principles of international law”.¹⁴⁹ This further reiterates the principle that parties should “resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force In accordance with universally recognised principles of international law.”¹⁵⁰ Furthermore, on 8 October 2003, in response to ASEAN’s decade-long plea, China acceded to the *Treaty of Amity and Cooperation in Southeast Asia*, a dispute settlement procedure established by ASEAN in 1976, becoming the first country outside ASEAN to do so. This treaty commits China to use peaceful means to resolve territorial disputes.¹⁵¹ In addition, China is obliged to not “participate in any activity which shall constitute a threat to the political and economical stability, sovereignty, or territorial integrity” of other signatory states.¹⁵² According to an American observer, this series of strategic moves is underlined by the intent to “ease ASEAN fears that China has territorial designs on the South China Sea claims of littoral ASEAN members.”¹⁵³ Even more significantly, they contribute to the creation of an environment of peaceful co-existence between China and Southeast Asia. This has an almost determinative effect given the fact that China is in a good position to unilaterally destroy stability in this area. Evidently, China’s past behaviour, very different from the current approach and based on restrained unilateral acts and insistence on bilateral (rather than multilateral) talks, has caused grave concern among ASEAN members. Yet, its smaller neighbours have embraced China’s new moves. Notably, after China’s accession to the Treaty of Amity, ASEAN’s spokesman interpreted the ASEAN understanding of China’s motivation as follows:

China needs a favorable environment in the region to continue its economic development, which is not inconsistent with ASEAN’s strategic needs ... China wants to be seen as a responsible member of the international community, a country that is prepared to follow the rules accepted by the international community ... [On the part of ASEAN], there is no other way to deal with China but to engage it in regional process. China is important as a neighbour politically, in terms of security and is also important as an emerging economic power.¹⁵⁴

¹⁴⁸ *Ibid.*

¹⁴⁹ *Declaration on the Conduct of Parties in the South China Sea*, between the Governments of the Member States of ASEAN and the Government of the People’s Republic of China, 4 November 2002, Phnom Penh, Cambodia, Art. 3, online: ASEAN website <www.aseansec.org>.

¹⁵⁰ *Ibid.* at Art. 4.

¹⁵¹ *Treaty of Amity and Cooperation in Southeast Asia*, signed on 24 February 1976 and amended in 1987 and 1998, respectively, art. 2 (hereinafter TAC), online: ASEAN website <www.aseansec.org>.

¹⁵² *Ibid.* at Art. 10.

¹⁵³ USCC Hearing on China as Regional Power, *supra* note 79 (statement of John J. Tkacik, Jr., research fellow in China Policy, the Heritage Foundation).

¹⁵⁴ Isaqani de Castro “China snuggles up to Southeast Asia” *Asia Times* (7 October 2003), online: <<http://www.atimes.com>>.

B. Regional Integration and Multilateral Liberalisation: The Moral Obligation to Ensure R.T.As as Building Blocks

Regional integration through free trade agreements has been shadowed by heated “regionalism versus multilateralism” debates. At the core of the debates are the costs and benefits of regionalism. The classic model for analysing the economic effects of regional trade arrangements is still Jacob Viner’s scholarship on the concepts of trade diversion and trade creation.¹⁵⁵ Viner explains how R.T.As (including F.T.As and C.U.s) have opposite effects on welfare or income. Trade creation takes place when, as a result of the removal of tariffs on intra-area trade, domestic production of a good is displaced by imports from another member of the R.T.A. whose comparative advantage enables it to produce the goods at a lower cost. On the other hand, the preferential tariff rate established by a R.T.A. might cause trade diversion, defined as a shift of production away from a lower-cost producer outside the R.T.A. to a higher-cost source of supply within it.¹⁵⁶ Viner concludes that the formation of a R.T.A. will lead to improvement in economic efficiency and welfare if trade creation exceeds trade diversion. The opposite effect, which is harmful to economic efficiency and welfare, will be generated if trade diversion exceeds trade creation.¹⁵⁷

Viner’s main contribution was in showing that the formation of a R.T.A. is not necessarily welfare-improving. As eminent economist Jagdish Bhagwati puts it, “to destroy the common fallacy that a preferential move toward (total) free trade was necessarily welfare improving and thus to demonstrate that all preferential paths to (total) free trade were not monotonic in welfare.”¹⁵⁸ Following from Viner, an enormous amount of literature on the benefits and costs of R.T.As was generated. The modern version of the debate focuses on whether R.T.As serve as a “stumbling block” or “building block” to multilateral trade liberalisation. Bhagwati asserts that R.T.As are by definition discriminatory and thereby trade diverting. In addition, he also argues that R.T.As are inherently unhealthy for its members because they are led by the R.T.A. rules to engage in wasteful, discriminatory trade practices rather than trade induced by healthy market preferences.¹⁵⁹ Both Bhagwati and Anne O. Krueger, another prominent opponent of R.T.As, cite R.T.A. rules of origin (R.O.O.s) as a negative product of R.T.As. They claim, for example, that the R.O.O.s in one R.T.A., more than likely would not coincide with the R.O.O.s in many of other R.T.As. Eventually, the incongruity of these different regulations governing the same subject matter could create a customs administration nightmare and lead to a “spaghetti-bowl” phenomenon.¹⁶⁰

The many exponents of R.T.As question the assumptions of Bhagwati and his fellows. Economist Robert Z. Lawrence argues that the theory traditionally applied to R.T.As (by Bhagwati, Krueger, and others) is too narrow to be applied to recent R.T.As such as NAFTA. Recent R.T.As involve far more economic integration than elimination of tariffs and therefore lead to a reduction in barriers on services trade, investment, and other areas.¹⁶¹ He concludes that these dynamic welfare enhancing characteristics of R.T.As are likely to outweigh any trade diversionary effect.¹⁶² Going further, Lawrence Summers suggests that

¹⁵⁵ Jacob Viner, *The Customs Union Issue* (Carnegie Endowment for International Peace 1950).

¹⁵⁶ Grimwade, *supra* note 2 at 237-38.

¹⁵⁷ *Ibid.*

¹⁵⁸ Jagdish Bhagwati, *The World Trading System at Risk* (Hemel Hempstead, Herts: Harvester Wheatsheaf: 1991) at 59.

¹⁵⁹ Jagdish Bhagwati, “Multilateralism and Regionalism in the Post-Uruguay Round Era: What Role for the US?” in O. Memedovic, ed., *Multilateralism and Regionalism in the Post-Uruguay Round Era: What Role for the EU* (Kluwer, 1999) at 34.

¹⁶⁰ *Ibid.* at 36.

¹⁶¹ US Congressional Research Service, William H. Cooper, *Free Trade Agreements: Impact on US Trade and Implications for US Trade Policy* (Washington D.C.: The Library of Congress, 2002) at 12.

¹⁶² *Ibid.*

R.T.As (including both traditional tariff-reduction R.T.As and modern more comprehensive R.T.As) are generally favorable tools for trade liberalisation because of the following propositions. Firstly, under the existing trading structure, plausible regional R.T.As are likely to have trade creating effects that exceed their trade diverting effects. Secondly, even trade diverting R.T.As are likely to increase welfare. Thirdly, R.T.As have other beneficial effects in addition to their impact on trade. Finally, reasonable R.T.As are as likely to promote global liberalisation as to slow it down.¹⁶³

Obviously, the literature on the costs and benefits of R.T.As does not offer conclusive answers as to whether trade creation will exceed trade diversion or *vice versa*. It is, however, important to note that there is no major dispute as to the final goal of multilateral trade liberalisation. The controversy lies in whether R.T.As set up forces that encourage or discourage the evolution toward globally freer trade. In his highly regarded writing of 1996, economist C. Fred Bergsten praises the multilateral approach as follows:

The global approach is fundamentally superior because it maximizes the number of foreign markets involved and avoids the economic distortions (and political risks) of discrimination among trading partners. Indeed, the succession of GATT "rounds" throughout the postwar period has made a major contribution to the freeing of global trade.¹⁶⁴

Bergsten nevertheless argues that R.T.As, in lieu of multilateral trade negotiations, are the next best things. In contrast to the many deficiencies of the multilateral approach, the regional approach turns out to be less time-consuming and reaches meaningful results in a less complicated manner. Moreover, R.T.As often serve the priority national security concerns of countries involved.¹⁶⁵ Hence, common ground arises as both sides agree that "the economic impact of regional arrangements depends on their particular architecture, including how far they go in reducing trade barriers and how many sectors they cover."¹⁶⁶ Bhagwati recognises that Viner's model can lead to the conclusion that "preferential moves can indeed be welfare improving. It just depends on the parameters."¹⁶⁷ A World Bank special report on trade regionalism concludes, "Whether or not trade diversion dominates trade creation depends on the specific circumstances."¹⁶⁸

The supreme principle is that a R.T.A. should be designed, with appropriate policy choices, to supplement multilateral trade liberalisation. This principle is not inconsistent with the aforesaid position that national and regional security is a legitimate goal to pursue in regional economic integration. There is no inherent conflict between pursuing security in a R.T.A. and setting up the R.T.A. to be friendly to global-scale trade liberalisation which we value.¹⁶⁹ When we admit that regionalism is only "second-best", it is important to keep in mind that its general structure should not be inconsistent with a policy that will eventually meet the needs for "first-best." However, a balance is to be struck. On one hand, the

¹⁶³ Lawrence H. Summers, "Regionalism and the World Trading System," in Jadish Bhagwati, ed., *Trading Blocs: Alternative Approaches to Analyzing Preferential Trade Agreements* (Boston: MIT, 1999) at 562.

¹⁶⁴ Institute for International Economics, C. Fred Bergsten, "Competitive Liberalisation and Global Free Trade: A Vision for the Early 21st Century" Working Paper No. 96-15, online: Institute for International Economics < <http://www.iie.com> >.

¹⁶⁵ *Ibid.*

¹⁶⁶ WTO Secretariat, *World Trade Report 2003* (Geneva: WTO, 2003) at 62.

¹⁶⁷ Bhagwati, *supra* note 158 at 59. However, Bhagwati qualifies this recognition by two further points relevant to GATT art. XXIV. First, for a R.T.A. to be welfare improving, it is not necessary that regional trade liberalisation be 100 percent. A lesser amount of reduction in trade barriers can also lead to welfare improvements. Second, with the progressive cut of tariffs (eventually towards zero) in a R.T.A., the gain from trade creation is less, while the probability of loss from trade diversion is increased. See *ibid.* at 60.

¹⁶⁸ *Trade Blocs*, *supra* note 138 at 61.

¹⁶⁹ Bergsten argues that "regional and global liberalisation initiatives have mutually reinforcing throughout the past three decades or more" and that "the fears of some observers that regionalism would derail globalism have been demonstrably overcome." See Bergsten, *supra* note 164.

international trade regime should make itself ready to embrace the seemingly unstoppable trend of regionalism. On the other hand, an international trade policy should be formulated to encourage R.T.As to achieve trade creation and avoid trade diversion for the sake of members and to minimise harm to third-countries. The bottom line is that R.T.As should not be used for protectionist purposes.

Leading trade powers, such as the US, EU and China, bear the responsibility of ensuring that the regionalist policies they actively pursue serve as “building blocks” for multilateral trade liberalisation. The arguments of both the proponents and opponents of R.T.As should be credited to the extent that they point out the positive and negative aspects of R.T.As in the world trading system. The technique is easy to express but probably difficult to implement. Using a Chinese idiom, it is to *yangchang biduan*, maximising favorable factors and minimising unfavorable ones.

The US has been a leader of free trade since World War II. Yet till 2001, the US has only entered into two F.T.As (the US-Israel F.T.A. and NAFTA). Neither of which was initiated by itself. However, in following years, the US has been proactively involved in bilateral trade talks, having signed F.T.As with Jordan, Singapore, Chile, Australia and a number of Central and South America countries. However, as one commentator notes, “most of these [F.T.A.] deals ... are unlikely to have a major impact on the gigantic US economy, given the amount of additional trade at stake: Singapore, for example, is a city-state of more than 4 million whose dynamic economy is already largely open.”¹⁷⁰ Obviously, the US is implementing a strategy that can be characterised as “competitive liberalisation”. This term was (allegedly) coined by Bergsten in his 1996 article which argues that R.T.As will trigger a wave of liberalisation towards global free trade as nations compete to open their market to one another in fear of being left-out.¹⁷¹ It is no secret that Washington’s aim in regionalism is to induce other major players in world trade, including the EU, Japan and the coalition of a large number of developing countries, to compete within the broader, multilateral agenda of the WTO. At the same time, the US does not cease to press the other trading powers to act in multilateral talks. At the beginning of January 2004, United States Trade Representative (USTR) Robert Zoellick wrote to the trade ministers of the other 146 WTO Members. He indicated that “the US does not want 2004 to be a lost year for the Doha Development Agenda” and suggested ways to advance negotiations in 2004.¹⁷² With his “common sense” proposal, Zoellick traveled all over the world one month later and embarked on a global push to make strong progress in multilateral trade negotiations in 2003.¹⁷³ The trip earned the support of many countries, including China, on a variety of sensitive issues which had collapsed during the WTO Cancun Ministerial Conference in 2003. Hopefully, this will bring a revival of the Doha Round negotiations.¹⁷⁴

The above example does not necessarily suggest that the US is sincerely devoted to multilateralism. As a matter of fact, the US has been criticised for its overuse of aggressive unilateralism for many years. The implications for China, however, are that trading powers that pursue regionalism to cure the deficiencies of multilateralism should not lose sight on the multilateral approach towards global free trade. China became the world’s fourth largest trading nation in 2002 and its third largest importer in 2003.¹⁷⁵ Like the US, the EU

¹⁷⁰ Paul Blustein “US, Singapore Near Pact on Trade: Talks Are First of Many Bush Administration Plans to Pursue for Bilateral Deals” *Washington Post* (20 November 2002).

¹⁷¹ *Ibid.* See also Bergsten, *supra* note 164.

¹⁷² United States Trade Representative, Press Release, “Zoellick Embarks on Global Push to Make Strong Progress in 2004 on the Doha Trade Negotiations” (8 February 2004), online: Office of the US Trade Representative <<http://www.ustr.gov>>.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.* See also, United States Trade Representative, Press Release, “Transcript of Ambassador Robert B. Zoellick, US Trade Representative Press Conference” (12 February 2004), online: Office of the US Trade Representative <<http://www.ustr.gov>>.

¹⁷⁵ See WTO, News Release, 2004 Press/373, “World Trade 2003, Prospects for 2004” (5 April 2004).

and other leading trading powers, China plays an important role in shaping international trade policy. In addition, China's traditional role as a leader of Third World suggests that its behaviour is likely to influence the trade policy orientation of other developing countries. As a rising power which appears willing to shoulder a larger global responsibility, China should take a pragmatic R.T.A. approach which balances its national objectives with multilateral trade liberalisation. The proposed *China-ASEAN Free Trade Agreement* (CAFTA) should be designed in a fashion that is consistent with this balance. Such a balance is very likely to be achieved if the R.T.A. framework is constructed with the following considerations in mind.

1. *A sound international trade policy has two faces*

First, it should be pragmatic enough to accommodate the security needs of trading nations, so long those needs do not go against positive international law. In the East Asian context, in particular with respect to China and its neighbours, economic interdependence through integration has become essential both for each country's security needs as well as for regional stability. There is no inherent conflict between these two goals. As noted by the World Bank report, even though R.T.As arise for essentially political reasons, there are strong reasons to ensure that they are set up with economic efficiency in mind. Only efficient and economically sustainable R.T.As can help solve political problems. On the other hand, wasteful or divisive R.T.As can only produce opposite effects in the long run.¹⁷⁶ In the case of China's R.T.As with its neighbours, various authoritative studies show that the economic returns are strong and obvious. The ASEAN-China Experts' Group's report on the feasibility of CAFTA suggests that "an ASEAN-China F.T.A. will increase ASEAN's export to China by 48 percent and China's exports to ASEAN by 55.1 percent. The F.T.A. increases ASEAN's GDP by 0.9 percent or by US\$5.4 billion while China's real GDP expands by 0.3 percent or by US\$2.2 billion in absolute terms."¹⁷⁷ The larger welfare-improving effect of China's R.T.As was also confirmed by a policy study of the United Nations Conference on Trade and Development, which uses the gravity model and the computable general equilibrium (CGE) model, two basic macro-economic models, to assess the empirical effects of R.T.As.¹⁷⁸ According to the study, the simulation results of both models suggest that the proposed Japan-Korea F.T.As have negative coefficients in all the experiments conducted with the exception of the agriculture sector. However, expanding this arrangement to include China resulted in a positive estimated coefficient on trade integration between these economies. This is strongly significant in both the manufacturing and overall merchandise sectors. Therefore, this suggests that "a bloc centred on China might be beneficial".¹⁷⁹ Further expanding the arrangement to include ASEAN also results in highly significant increases in positive efficiencies.¹⁸⁰ These results provide economic legitimacy for China and its neighbours' R.T.A. initiatives in the region, even if these initiatives are themselves politically driven.

2. *The moral, but not legal, obligation to pursue multilateral liberalisation in regional initiatives*

As discussed above, multilateral liberalisation is in the long-term interest of trading nations. However, the process of pursuing multilateralism is long and arduous and the associated

¹⁷⁶ See Schiff & Winters, *supra* note 146 at 264.

¹⁷⁷ The ASEAN-China F.T.A. Report, *supra* note 7 at 31.

¹⁷⁸ UNCTAD, *Assessing Regional Trade Arrangements in the Asia-Pacific*, Policy Issues in International Trade and Commodities, Study Series No. 15, U.N. Doc. UNCTAD/ITCD/TAB/16, U.N. Sales No. E.01.II.D.21 (2001).

¹⁷⁹ *Ibid.* at 18.

¹⁸⁰ *Ibid.*

benefits are possibly remote. Furthermore, in certain areas the collective action mechanism for global liberalisation cannot be established (to avoid the free-rider problem). Thus, countries should be allowed to pursue the “second best” approach that would improve the economic welfare of the parties involved. After all, the world trading system does not require trading nations to be deontological; they are merely obligated to comply with the positive legal rules in the system. Apart from this long-term and probably remote, interest, countries can pursue the benefits of liberalised trade on a smaller scale as long as the detrimental effects are limited and not obvious. This can be characterised as trading nations’ “mid-term” interest.¹⁸¹ In the event that trade diversion outweighs trade creation, the economies can still go ahead with a R.T.A. as long as it enhances the mid-term economic welfare of their countries. Theory and practice suggest that R.T.As combining only small economies are likely to be trade diverting.¹⁸² However, especially for developing countries in desperate need for development, R.T.As should be assessed on the basis of national objectives and criteria as opposed to whether they satisfy the relevant WTO articles or the purposes of the multilateral trading system. In the rare case where there is a conflict, meeting the purpose (not necessarily positive laws) of long-term multilateral liberalisation is probably only an abstract moral obligations while meeting the objectives of economic development would become a more urgent need.

3. *Promoting rules convergence as a way of promoting multilateral liberalisation*

The well-known imprecision and ambiguity of GATT Article XXIV and GATS Article V, as well as, the inability of WTO Members to reach consensus on the interpretation of these articles, has led to deadlock where there is no universally accepted understanding of all the important provisions in the articles. The effect is that members are practically left with a broad discretion to unilaterally adopt their own interpretations of the disputed provisions. While this situation is clearly undesirable, the decisive movement toward its reform is not likely to be achieved in the near future. This is due to the sheer complexity of extracting sufficient political will from WTO Members. For individual WTO Members who are willing to ensure that the R.T.As they are involved in are consistent with the spirit of the multilateral trading system, one of the best things they can do is to promote rule-convergence and minimise “spaghetti bowl” problems through harmonisation and adoption of common rules. This is especially so in highly divergent but crucial areas such as rules of origin, customs valuation, trade facilitation and investment. Where there are relevant WTO provisions in place, the R.T.As should follow those rules as closely as possible. In other areas where WTO rules are absent, international standards or “best practices” should be developed and adopted. China and its R.T.A. partners are now in the best position to contribute to the convergence approach because most of the R.T.As that they are involved in are still at the negotiating stage.

VI. CONCLUDING REMARKS

China’s recent R.T.A. initiatives, contributing significantly to the proliferation of regional trade arrangements, should be viewed in a broad context encompassing the country’s and

¹⁸¹ In the analytical framework of this article, the long-term interest, which refers to the eventual goal of global trade liberalisation, is certainly and undisputedly, the goal. The mid-term interest is worth pursuing because while the benefits are obvious, the damage to other members of the international trade community is non-obvious, limited and not a result of international legal obligations. The short-term interest refers to those benefits which can be achieved at the expense of massive environmental damage, human rights violations, or direct violations of the positive rules of international trade law.

¹⁸² Schiff & Winters, *supra* note 146 at 263.

its neighbours' economic, political and security concerns. Like other R.T.As, this could run at odds with the goal of the multilateral trading system even though it is equally likely to supplement the process of multilateral trade liberalisation. The ideal way is to use multilateral trading rules, embodied in the WTO regime, to control the direction of regionalism and minimise the adversary effects of multilateralism. The existing WTO rules, including mainly GATT Article XXIV and GATS Article V, are evidently weak, ambiguous and almost devoid of enforcement. Legally, it could be argued that in the absence of positive WTO rules that prohibit it, WTO Members should be free to pursue a particular goal through trading behavior. From a realist point of view, this article shows that, in the absence of prohibitive WTO rules, China's R.T.A. approach is just another example of how the international trade system should be pragmatic enough to accommodate the vital security needs of trading nations. This is especially crucial in the East Asian context given its history and geopolitical layout, for example, China's complex political and military role in the region. An alternative route in East Asia, which excludes politically driven regional integration, could be much less effective in promoting regional prosperity and stability. However, trading nations, especially leading trade powers like China, have a moral obligation to ensure that their R.T.As serve as "building blocs" for multilateral trade liberalisation through promoting rule convergence. Yet, I would not suggest putting this moral obligation above national objectives, as there are no international legal obligations to compel this.

