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“Resource-based industries and development of the AANZFTA”

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Resource-based industries and development of the AANZFTA¹

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Often sensitive industries such as those dependent on agricultural resources are left out of FTAs. On the other hand, FTAs can bring in specific non-WTO aspects like competition policy to facilitate trade. In this paper, the development of the AANZFTA is analysed within a framework characterising “good” FTAs, and in terms what it may deliver with respect to resource-based industries. Past FTAs involving partner countries, changes over time, interviews with and submissions from relevant parties are analysed. The analysis suggests that the AANZFTA will be a more difficult agreement to develop to fruition than have bilateral agreements between the parties.

Key words: Free Trade Agreements; sensitive sectors; rules of origin

¹ This paper draws extensively on Scollay and Trewin (2006) which analysed the ASEAN Australian New Zealand Free Trade Agreement (AANZFTA) in terms of related bilateral Free Trade Agreements (FTAs).

Introduction

There has been a dramatic increase in so-called Free Trade Agreements (FTAs)² over recent years. In terms of World Trade Organisation (WTO) notifications, the number have nearly doubled over 2000-2005 from those notified in the previous 50 plus years between 1948-2000 (from 91 to 180) (see www.wto.org for more details on notified FTAs). Over 25 per cent of the WTO notifications over 2000-2005 were associated with Southeast and East Asian countries (Pasadilla 2006). Incorporating the number under consideration or negotiation shows that the growth in FTAs is unlikely to abate in the future, especially given the uncertainty associated with the WTO Doha Development Round.

Often sensitive industries such as those dependent on agricultural resources³ are left out of FTAs, unlike the situation in comprehensive multilateral trade agreements. As Australia and New Zealand are classified as developed countries in the WTO, the AANZFTA being negotiated between ASEAN (Association of South East Asian Nations) and the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA, or CER for short) would have to be notified to the WTO under GATT Article XXIV rather than under the Enabling Clause. FTAs involving developed countries have to comply with all the requirements of Article XXIV, which includes the requirement for coverage of “substantially all trade”. The Enabling Clause is aimed at encouraging less developed and developing countries to participate in world trade. FTAs under the Enabling Clause are between developing countries (as in the case of the ASEAN Free Trade Agreement (AFTA)), or are non-reciprocal preference programs granted by more to less developed countries, and are exempted from some requirements including Article XXIV. Article XXIV might be seen as a constraint to successful implementation of a FTA between some countries, but Singapore and Japan have signed off on a FTA and, although sensitive agriculture has been included, this is in quite restrictive terms (maintaining constraints on limited trade in goldfish, tuna and cocoa powder from Singapore to Japan, and containing only 14 per cent of the number of zero tariff commitments compared to Japan’s WTO commitments). “Substantially all trade” has not been clearly determined in the WTO.

On the other hand, FTAs can bring in specific non-WTO aspects to facilitate trade including in sensitive sectors, such as through greater flexibility in terms of the timing of trade liberalisation. Along these lines, the CER has put anti-dumping claims under competition policy. Thus whilst farming groups (e.g. Australian pork) are seeking options to improve the accessibility of Australia’s anti-dumping system, and anti-dumping cases

² FTAs is used as a generic term that includes Regional Trade Agreements (RTAs), which involve groups rather than individual countries, as well as Preferential Trade Agreements (PTAs), which might be non-reciprocal as in the case of the Pacific Regional Trade Agreement (PARTA) with its preferential access for Pacific Island Nations to Australian and New Zealand markets. Often these trade agreements overlap as in the case of the ASEAN Australian New Zealand FTA (AANZFTA) and bilateral FTAs between Australian and/or New Zealand with individual ASEAN countries.

³ The focus is on agricultural resource-based industries rather than resource-based industries in general as minerals and energy trade is relatively free and New Zealand does not have significant minerals and energy industries like Australia.

in agricultural products are continuing to be brought forward under WTO arrangements, these aspects are irrelevant under the CER and the underlying issues dealt with under competition policy. This competitive approach led to the Australian dairy industry having by mid-1990, when New Zealand trade in dairy products was to become free and fair, to restructure and become competitive which it has to the extent of now exporting competitively in a wide-range of dairy products. Also under the CER, standards have been harmonised, including through joint food standards, to the extent that goods sold legally in either country generally may be sold in the other and this can have associated agricultural trade benefits. There have been some areas of dispute with quarantine restrictions on the entry of some New Zealand fruit and vegetables such as apples and pears into Australia. New Zealand has more open quarantine arrangements than Australia because of its geographical location, for example in the case of bananas.

A number of issues are raised in the above discussion:

- Should sensitive sectors like agriculture be included in FTAs like the AANZFTA?
- Can FTAs advance agricultural trade liberalisation outside of multilateral agreements?
- Are regional agreements like the AANZFTA likely to be more successful in including agricultural liberalisation than an associated group of bilaterals?

In this paper, following some background on AANZFTA-related FTAs, the development of the AANZFTA is analysed within a stated framework characterising “good” FTAs (e.g. includes “problem” sectors and is comprehensive, maximizing trading opportunities), and in terms of what it may deliver for agricultural-based industries with respect to the above issues. Past FTAs involving partner countries, changes over time, interviews with and submissions from relevant parties are analysed. The analysis suggests that the AANZFTA will be a more difficult agreement to develop to fruition than have bilateral agreements between the parties, in part due to sensitive sectors like agriculture needing to be included in “good” FTAs, though agricultural liberalisation can only be fully undertaken at the multilateral level. This contrasts with alternative views that group-to-group negotiations such as in the Free Trade Area of the Americas (FTAA) could be quicker than a collection of bilateral agreements as there are fewer players involved and there are benefits from leaving problem sectors like agriculture out of FTAs.

Background

ASEAN, Australia and New Zealand as a group started FTA negotiations in 2005 that are expected to be completed in two years with the AANZFTA fully implemented within ten years. These negotiations build on a long history of involvement between the two groups of countries dating back to when Australia became the first country to establish formal links with ASEAN in 1974. In 1993 it was formally proposed that the scope for cooperation between AFTA and CER be examined, which subsequently occurred along four tracks, namely Ministerial consultations, trade facilitation, business relationships (Australia and New Zealand have many business managers working in ASEAN), and “think-tankings”. In 2002 a broad-gauged Closer Economic Partnership (CEP) between ASEAN and CER was signed, followed by the FTA negotiations.

In relation to the individual partners, the CER entered into force on 1 January 1983 and has evolved to cover substantially all goods and services. In August 1999, the Prime Ministers of both countries outlined their policy on regional agreements in a joint Prime Ministerial Statement: “New Zealand and Australia are willing to consider free trade agreements with significant individual economies or regional groupings, where they would deliver faster and deeper liberalisation than the multilateral process, with the objective of gaining better market access for our exporters, faster economic growth and stronger employment growth. Such arrangements would need to reflect the principles underpinning the CER, including WTO consistency.” This statement sets out a basis for the development of the AANZFTA from a CER perspective.

ASEAN initiated AFTA in 1992 with a focus on regional tariff reductions, initially through to 2008 but revised to a shorter period up to 2003. This agreement was subsequently broadened to cover non-tariff barriers, harmonisation of standards, etc. However, there are a number of sensitive sectors including agricultural ones such as rice that have been excluded from the tariff reductions, etc. Associated agreements have now also been signed on trade in services and investment. ASEAN as a group has been looking to enter into trade agreements with other countries such as China as well as the CER.

Australia, New Zealand and individual ASEAN member countries have a number of bilateral FTAs between themselves that could have implications for the AANZFTA. For example, Lloyd (2005) in an analysis of the Australia-Malaysia FTA (AMFTA) which is currently under negotiation suggests in relation to investment negotiations that those for AANZFTA should follow relevant bilateral approaches such as on investor protection, dispute settlement mechanisms, and national treatment to deepen the agreement, as well as attempt to outlaw investment incentives. It is envisaged that AANZFTA will cover in a consistent and compatible way, bi-lateral trade between Australia and New Zealand on the one hand and each individual ASEAN member on the other, but not the bilateral trade between Australia and New Zealand themselves, or the trade among the ASEAN members themselves. In respect of Australia, the Singapore-Australia Free Trade Agreement (SAFTA) entered into force in July 2003 and the Thailand-Australia Free Trade Agreement (TAFTA) was signed in July 2004.

New Zealand has a FTA with Singapore, the New Zealand Singapore CEP (NZSCEP), which was completed before the SAFTA. Negotiations on a CEP Agreement between New Zealand and Thailand were concluded in November 2004 and entered into force from 1 July 2005. In parallel with this CEP, arrangements on labour, environment and customs cooperation were negotiated. Arrangements on these first two aspects have not been part of Australian negotiations which reflects differences in the socio-economic environment and the political economy of the two countries. Negotiations for a Trans-Pacific Strategic Economic partnership Agreement (TPSEP) involving Brunei Darussalam, Chile, New Zealand and Singapore were recently concluded. The TPSEP (together with the parallel agreement on labour and environment) was expected to enter into force early in 2006. New Zealand and Malaysia have also started formal rounds of

negotiations. Australia and New Zealand have followed each other's FTAs apart from a few exceptions, the most notable being the United States which has a FTA and defence agreements with Australia but not New Zealand.

The Guiding Principles for Negotiation on AANZFTA are based on an objective of the FTA being mutually beneficial for all parties, and with this objective in mind, the negotiations will be guided by the following principles:

- (a) The FTA should be comprehensive in scope, covering trade in goods, services and investment.
- (b) The objective of the FTA should be to move towards deeper economic integration between the two regions through progressive elimination of all forms of barriers to trade in goods, services and investment; and through trade and investment facilitation and economic cooperation measures.
- (c) The FTA should, where relevant, build on members' commitment in the WTO.
- (d) Due consideration should be given to the different levels of development and capacity of the Member Countries to participate in comprehensive trade and investment liberalization. The FTA should therefore include provisions for flexibility, including special and differential treatment, especially for the newer ASEAN members.
- (e) Recognising the different levels of development among the Member Countries of the two regions, provision should be made for technical assistance and capacity building programs to enable all parties to participate fully and to obtain full benefit from the FTA.
- (f) The FTA will be designed to enhance and improve transparency in trade and investment relations between the parties.
- (g) The modalities and time frames of the FTA, including differentiated timeframes for Australia and New Zealand, ASEAN-6 and CLMV (Cambodia, Laos, Myanmar and Vietnam), and products, should be settled at an early stage of the negotiations.
- (h) The FTA will be open to inclusion of issues not covered by the existing AFTA and CER Agreements, to be agreed by all parties.
- (i) The terms of the FTA will be subject to periodic review.
- (j) The FTA should be consistent with WTO provisions, including GATT Article XXIV and GATS Article V.
- (k) The FTA should draw, as appropriate, on elements of economic integration agreements of ASEAN and CER. In addition, the elements of any FTA involving ASEAN Member Countries, Australia and New Zealand may be used as reference points.
- (l) AFTA and CER will continue to exist as distinct, functioning agreements, as will the FTAs between ASEAN Member Countries, Australia and New Zealand. No provision in the FTA will detract from the terms and conditions of bilateral and plurilateral FTAs between ASEAN Member Countries, Australia and New Zealand.

These Guiding Principles have had different interpretations in the negotiations, including in respect of covering "substantially all trade". Agriculture would be expected to be

considered in the AANZFTA as it has in the above related comprehensive FTAs between individual ASEAN and CER countries, though often with some flexibility. Agricultural products have no special provisions in the CER, SAFTA and the NZSCEP, but make up the majority of “sensitive list” products in ASEAN (Scollay 2003).

Agricultural trade liberalisation means in WTO terms, market access, export subsidies, and domestic support. In a FTA context, market access is covered but generally not export subsidies which is a multilateral issue (though the NZTCEP does prohibit export subsidies in agriculture), and generally never domestic support as this would not benefit parties inside the FTA any more than those outside the FTA. Satisfactory agricultural trade liberalisation through FTAs is dependent on a satisfactory WTO outcome in this regard.

A “good” FTA framework

There can be “good” or “bad” FTAs depending on the treatment of aspects such as comprehensiveness. There have been a number of research reports that have set out similar frameworks of the characteristics of a “good” FTA (e.g. APEC (2006) and PECC (2006) – see the appendix for an outline of these frameworks). One such framework that has been drawn on by the Australian Departments of Foreign Affairs and Trade, and Agriculture, Forestry and Fisheries, was RIRDC (2005) in which a Ten-point checklist for better PTAs/FTAs (with the underlying “good” rationale in brackets) was set out:

1. Is the price reduction maximized?
(Trade benefits are maximized when price change is maximized)
2. Are ‘problem’ industries included in the PTAs?
(Increased competitive pressures can lead to additional benefits, especially for ‘problem’ industries)
3. Is the PTA comprehensive, including substantially all trade that would have occurred under free trade
(Comprehensive PTAs create fewer distortions and lower administration and compliance costs)
4. Are the rules of origin simple, consistent and flexible?
(Complex and inflexible rules of origin increase the costs of PTAs)
5. Does the PTA increase certainty for trade and investment?
(Significant benefits can be gained through increasing the certainty of the trade and investment environment)
6. Does the PTA also liberate investment rules?
(PTAs can achieve investment liberalisation to the benefit of both countries)
7. Is the PTA free of any ‘new protectionist’ measures, such as unnecessary environment, labour market or competition law requirements?
(Although important, domestic issues should be excluded from PTAs as they can prevent trade liberalisation and provide questionable benefit)
8. Are the details and consequences of the PTA well understood following a transparent process and independent analysis?
(PTA negotiations should be as transparent and inclusive as possible and detailed independent analysis of costs and benefits should be published)

9. Have PTA partners reinforced their commitment to the WTO and is there a sunset clause to multilateralise the PTA?

(Member countries of PTAs should reinforce their commitment to successful multilateral liberalisation)

10. Does the PTA allow for expansion to include new members and potential integration with other PTAs?

(PTA should extend beyond regional agreements and PTA members should be open to expanding membership and merging PTA groupings)

One of the more important points in terms of the focus of this paper is Point 2, related to “sensitive” sectors. Pasadilla (2005) argues that special treatment of agriculture can have both positive and negative consequences. On the “positive” side, he argues that leaving sensitive agriculture out of the negotiations enables a focus on other more mutually beneficial sectors. He mentions that Scollay (2003) argued that when the trading partners are not competitive in agriculture then its exclusion from the FTA reduces the chance of agricultural trade diversion. (Scollay (2003) also argued that with competitive agriculture, agriculture's inclusion in FTAs leads to trade creation.) However, on the “negative” side such an approach could lead to a focus on FTAs at the expense of multilateral approaches which are necessary for full agricultural liberalisation.

Moreover, including such sensitive sectors even with extended time for liberalisation paves the way for progress on future multilateral negotiations. An added advantage is that any liberalisation in FTAs is generally in terms of more liberated applied tariffs rather than bound tariffs as in multilateral negotiations.

In looking at the discussion around this issue it should be borne in mind the points made in respect of a “good” FTA framework, in particular the above point on including “problem” industries to obtain the benefits of increased competitive pressures which would include a “first-best” more efficient allocation of resources. Agriculture being a small proportion of GDP may lead to the view that it is not important in terms of resource allocation but as shown in the case of Japan, agriculture has a disproportionate influence on important economic resources such as land that can constrain overall structural adjustment and economic performance.

The above key “good” FTA framework points have a strong connection to the earlier listed Guiding Principles, for example comprehensiveness, price reductions maximised, reinforce WTO commitments, and transparency in trade and investment.

The key “good” FTA framework points also underlie the assumptions in economic modelling of the optimal gains from trade and investment liberalisation under the AANZFTA (see next section for details on this modelling). For example, the assumptions of maximum tariff reductions, and the inclusion of sensitive sectors such as agriculture, are included in the modelling.

In addition, the Australian farming sector has stated that multilateral trade liberalisation offers the greatest gains for Australian farmers as the WTO is the best avenue for

removing all forms of trade distorting policies and for providing more predictable and legally enforceable access to markets (AFPRG 2006). However, with the proliferation of bilateral and regional trade agreements, they have also stated that Australia should negotiate such agreements where they provide substantial gains in market access that cannot be achieved otherwise in a similar time frame. The agreements should also be WTO-consistent and contribute to the overall goal of trade liberalisation. Agreements that are not comprehensive, such as excluding agriculture, are seen as not being in Australia's interests. The Australian farming sector has also stated that food safety is non-negotiable but that appropriate measures dealing with product safety and integrity must be applied transparently, be least trade distorting, and not discriminate between domestically produced and imported goods. Again key "good" FTA framework points arise in the farming sectors position such as WTO-consistency, inclusion of all sectors, and comprehensiveness in the sense of covering all forms of trade distortions.

Analysis of the development of the AANZFTA

The development of the AANZFTA is analysed within the "good" FTA framework just outlined, specifically in terms of what it may deliver in respect of agricultural-based industries – mainly in terms of the factors mentioned above such as sensitive sectors, comprehensiveness, rules of origin, and so on⁴. The analysis will draw on past FTAs, changes over time, and discussions with and submissions from various government officials, business representatives etc.

Sensitive sectors

(This subsection covers Point 1 on Maximising price reductions and Point 2 on Including "problem" industries.) Agriculture has been shown to be a sensitive sector in both TAFTA and NZTCEP with tariffs to be phased out, including over the longest period of 20 years. During this transitional period there are provisions to use Tariff Rate Quotas (TRQs) and special safeguard measures for certain sensitive products (this includes agricultural goods but the number of allowed sensitive sectors are limited). For goods subject to the special safeguard measures, duties may be increased up to the Most Favoured Nation (MFN) level on imports in excess of specified quantities set out in the agreement. The products covered by the special safeguards are meat, dairy and horticulture products, with transitional periods of 10 to 15 years. The volume of imports required to trigger the special safeguards rises year-by-year through the transitional period. The TRQ provisions apply to dairy and some horticultural products, and in the case of TAFTA, also to coffee, tea and cane sugar. The TRQs specify gradually increasing volumes to be subject to the preferential tariffs as they are phased down during the transitional period. Import volumes in excess of the TRQ levels are subject to an out-of-quota tariff 10 per cent below the MFN rate. Imports become duty-free and quota-free at the end of the transitional period. The transitional period is 15 years for most TRQ products but some 20 years for dairy products. The products subject to TRQs in TAFTA

⁴ The ten-point checklist for "good" FTAs made up of these factors will basically be followed apart from those just covering investment (Point 6) or other points that are not strongly related to agriculture, or are not covered in the AANZFTA Guiding Principles such as Point 5 on Increased certainty (separate of aspects in Point 8 on Transparency etc) and Point 10 on New members.

and NZTCEP are among products for which Thailand has also scheduled TRQs in its commitments under the WTO Agreement in Agriculture. The TAFTA and NZTCEP specify that the TRQs in those agreements are separate from, and do not in any way modify, Thailand's TRQs under the Agreement on Agriculture.

Some analysis of sensitive sectors was undertaken in Scollay and Trewin (2006). The first component of this analysed the frequency distribution of tariff levels for sensitive sectors of the eight ASEAN countries that applied tariffs (Singapore does not) or who were not in the process of WTO accession and tariff determination like Vietnam was at the time of the analysis. This analysis was repeated just for agricultural products to determine if there were any different points arising. Some of the key points that arose were:

- a couple of the more developed countries in Brunei and Malaysia had no sensitive agricultural sectors;
- opposite to the outcome across all sectors of the more developed ASEAN countries applying the highest level of tariffs, in agriculture this tended to be less developed countries like Cambodia, Laos, and Myanmar (as well as the Philippines in respect of some meats), though at a lower tariff level;
- as with the outcome across all sectors, Cambodia with its recent accession to the WTO had one of the narrowest range of associated tariffs across agriculture (0-20%) in conjunction with Indonesia who in agriculture had the range of 0-10% compared to an overall range of 0-30% (though this has risen in respect of rice in recent times – see Warr (2005));
- in terms of the largest number of sensitive agricultural sectors, the less developed countries of Laos and Myanmar had the largest number (75 and 128 respectively) and the largest proportion relative to all sensitive sectors (75/88 and 128/270 respectively – the Philippines was next at 20/264);
- as with the outcome across all sectors, Cambodia had the largest number of sensitive agricultural sectors with associated applied zero tariffs (6) followed by Indonesia (4), and Laos and Myanmar (2 each) (the implications of zero tariffs for so-called sensitive sectors are discussed later in this section).

Another component of the analysis looked at the frequency distribution of the number of ASEAN countries with the same sensitive sectors. There were no sensitive sectors that applied to more than 5 of the countries (the largest cases were plastics, footwear, motor vehicles and colour TVs). In the case of agriculture this was for only 3 of the countries, with capsicums. There was also a much lower proportion of 2 countries with the same sensitive agricultural sectors (6% in agriculture compared to 20% across all sectors).

In some of the above same sensitive sector cases, the tariffs were large in some countries (20-60%) but low in other countries (0-4%). Over 100 sensitive sectors had zero applied tariffs and 7 of these were agricultural sectors, about half the overall rate. These last aspects raise the question of what is meant by sensitive if the sector is not associated with high applied tariffs, and the implications for FTAs given sensitive sectors often have different treatment in terms of the degree of tariff cuts or the period for implementing such cuts (if tariffs are already low such treatment has little meaning apart from locking

in low applied rates by lowering bound rates). In addition to longer phase-out periods and other measures mentioned earlier, sensitive sectors could obtain non-tariff forms of protection, such as through anti-dumping actions, but would not need to be deemed sensitive for such action to be applicable. It may be that sensitive reflects a situation where the sector is deemed to be possibly requiring flexibility to raise tariffs or implement Emergency Safeguard Measures. This last aspect may be better in that applying consistently high tariffs on sectors where countries have a comparative advantage could impede the development of downstream industries with high value adding (e.g. as in the case of India and Sri Lanka with tea – lucrative blending being undertaken in a neighbouring country with more open trade policies). The majority of the high tariff sectors were associated with low Revealed Comparative Advantage (RCA, often measured by a product's share in a country's exports in relation to its share in world trade) and low exports (the correlation was a significant -0.16) but around a dozen data points had positive RCAs. Colour TVs in ASEAN was an example of a components sector with strong comparative advantage also having some high tariffs. Other sectors with high tariffs and a strong RCA included agricultural products in beans and ginger. In the Australian case the correlation between Australian tariffs and exports was -0.018. There were a small number of sectors with high tariffs and low exports but their contribution to the correlation estimate was swamped by a large number of sectors with low tariffs and high or low RCAs (reflecting the view that it is not worth protecting sectors where you have no comparative advantage, and that there was no need protecting sectors where you have a comparative advantage).

A few other points that can be drawn from this analysis were:

- the large proportion of sensitive sectors applying in only a single country may appear somewhat surprising given the view that there are strong similarities between the ASEAN countries in some aspects (e.g. the evidence that ASEAN countries have been forming networks of components in some industries like electrical products but even in this case the networks appear to be taking advantage of differences between ASEAN countries such as in their stages of development which also influences agriculture's comparative advantage);
- This last point would suggest a key approach to improving ASEAN's trade and investment situation would be to free up these aspects, at least internally in the first instance (If ASEAN took a "Union of overlapping sets" approach in negotiations and made any sector sensitive that an ASEAN country deemed as sensitive then it would appear less attractive as a negotiating partner than individual ASEAN countries).

Some further analysis of the ASEAN sensitive sectors was undertaken in relation to Australian exports and imports. In the majority of cases (737 out of 1415), Australian exports were less than imports, suggesting that Australia would not be a threat to these sensitive sectors though the reverse applied in respect of agricultural sectors with exports being greater than imports in the majority of sectors (207 out of 257). In a further 379 cases there were no associated Australian exports or imports with roughly the same proportion applying in the agricultural sectors. In only 299 of the 1415 cases, or around 20 percent of the ASEAN sensitive sectors, did it appear Australia had a possible

comparative advantage and this would be relatively higher across agricultural sectors. Thus in agriculture, Australia and New Zealand would be more of a threat to the sensitive sectors which are mainly associated with developing countries. Not that trade competition for domestic producers is necessarily undesirable as it promotes efficiency which has been shown in the case of the CER in which tariffs between the partners' trade are very low.

Comprehensive

(This subsection covers Point 3 on Comprehensiveness.) Typically agreements such as those above also contain chapters on technical barriers to trade (TBT), and sanitary and phyto-sanitary measures (SPS). In relation to TBTs, ASEAN have agreed to a mechanism to effectively address private sector complaints in this area. With respect to SPS, in the area of aquaculture development, ASEAN are working towards harmonisation of testing and quarantine procedures, and more generally in respect of regulations. Under the CER, measures are not allowed to be disguised barriers to trade and must have a scientific basis. There are commitments to harmonise standards and procedures such as quality accreditation systems, and have regular dialogues between senior officials. Bilateral agreements between ASEAN and CER countries tend to follow the WTO. The bilateral agreements between CER countries and Thailand have elements that go beyond WTO provisions such as working towards harmonisation without changing protection levels; considering accepting control, inspection and approval procedures of partner, following internationally recognised procedures – review own procedures on request with respect to being reasonable and necessary; consultative/cooperative approach to non-complying shipments; avoid suspending trade based on one shipment; and establish expert group or SPS/Joint SPS Committee.

Interviews with parties involved in relevant FTAs, and submissions to the development of specific FTAs by interested parties, also related to the comprehensiveness issue. Australian Plantation Products and the Paper Industry Council (APPPIC) stated in a submission that the AMFTA could offer benefits for some of their industry interests but also risks to its manufacturing interest, and pointed to the need for some balance. Dairy Australia who supply for local Malaysian consumption as well as processing for export, agreed that meaningful gains in market access were needed and added that tariffs and licensing arrangements mainly benefited multi-national processors, not local industries. Some of the industry groups that felt more threatened by FTAs, such as APPPIC etc, pushed for strong positions on anti-dumping and standards. Quarantine was raised by a number of food industry groups and some governments, such as the Australian Chicken Meat Federation and the Northern Territory and Western Australian governments, but in these cases from the perspective of not liberalising trade given the risk to the health of Australian industries. Standards were also raised by a range of industries including the Winemakers Federation of Australia.

Officials from the New Zealand Ministry of Economic Development are firmly of the view that standards and other TBT issues must be addressed in FTAs, in parallel to tariff issues, if market access is to become truly effective. There is a significant difference between the attitude of larger companies like Fonterra who are interested in the effects of

FTAs on their international supply chain management, and smaller exporters who tend to be most concerned with direct market access for their finished products. New Zealand places a very high priority on bio-security controls at the border because of the serious consequences of a major pest incursion or disease outbreak for New Zealand's vital agriculture and forestry industries. Poultry products and pork are the main industries that do in practice derive significant protection from bio-security measures in New Zealand. As in Australia, industry opposition can be expected to proposals to relax quarantine controls for these products.

Rules of Origin

(This subsection covers Point 4 on Simple, consistent and flexible Rules of Origin.) Rules of Origin (ROOs) have moved over time from being based on the share of the country of origin in the production of a good to those based on a Change in Tariff Classification (CTC) (DFAT 2007). The ROOs in existing FTAs of the ASEAN and CER countries exhibit a significant evolution of thinking in both groups on the way that ROOs should be designed, which will undoubtedly influence the positions they are likely to take on this issue in the AANZFTA negotiations.

Both AFTA and CER utilize a regional value content (RVC) rule for ROOs. In the CER the requirement is 50% RVC, whereas in AFTA the requirement is 40% RVC, with full cumulation allowed among the AFTA members which is important for the production networks that have been a feature of ASEAN. The NZSCEP and SAFTA also follow the RVC approach. The later TAFTA and NZTCEP mark a decisive change in the approach taken to ROOs by the three countries concerned. The basic approach used in these agreements is the CTC. All products in the HS Tariff Classification are listed in the agreements either at the 6-digit or aggregated to the 4-digit level, and the applicable rule is specified in every case. For the vast majority of items the basic rule is a CTC rule, either a change in customs heading or CTH (change at the 4-digit level) or change in customs sub-heading or CTSH (change at the 6-digit level). Very occasionally a particular heading or sub-heading is excluded from the changes that are deemed to confer origin. For a small number of products a specific process or processes must be performed in order to confer origin. For example in the case of processed frozen fish, three or more processes listed in the agreement must have been performed in the territory of a party. For a small number of products there is a requirement that they must be "wholly obtained" in the territory of a party, as in the case of tobacco products, or produced from natural plants found in the territory of a party, as in the case of natural rubber products. This requirement could result in the loss of some value adding opportunities as was mentioned earlier in relation to tea blending. In both TAFTA and NZTCEP additional restrictiveness is introduced for some products by combining a CTH or CTSH rule with an RVC rule that must be satisfied as well as the applicable CTC rule. ASEAN has also begun to introduce CTC and specific process rules into AFTA as alternatives to the 40% RVC rule, meaning that for the products concerned exporters have a choice as to which ROO to use. Specific process rules have been introduced for wheat, wheat flour and wood products. The rules of the ASEAN China FTA (ACFTA) closely follow the AFTA rules; that is the basic requirement is a 40% RVC rule, but specific process rules that closely follow the corresponding AFTA rules have been introduced. CTC rules have also

been introduced for a limited range of products, including for salmon and herrings (CTSH rule). There are also rules for some types of wool that require the wool to have been produced from 'sheep, lambs or other animals raised in the ACFTA'.

A number of the above approaches are not consistent or simple, making trade more difficult, whereas on the other hand some show flexibility in terms of offering a choice of approach that will maximise trade. This illustrates that it is difficult to generalise about ROOs and that each case has to be assessed of its merits.

Non-trade issues

(This subsection covers Point 7 on "New protectionist" issues.) The CER belongs to an older generation of agreements and in some senses is very advanced. A particularly advanced feature is the use of harmonised competition law provisions to take the place of anti-dumping actions on trade between the two countries. This has facilitated trade between the two countries.

The NZTCEP and TPSEP include understandings on labour and environment issues, and as mentioned earlier these are not issues that Australia has include in its FTAs and are issues that have been sensitive to developing countries in WTO negotiations. These aspects, along with quarantine differences, could lead to complications in the negotiation of the AANZFTA.

Some of these non-trade or domestic issues can be constraints to or facilitators of trade but are probably best handled separately of trade negotiations and on their own merits (RIRDC 2005).

Transparency and independent analysis

(This subsection covers Point 8 on Better understanding through transparency and independent analysis.) Transparency involves peer review before FTAs are finally concluded, and texts of FTAs being publicly available as soon as possible after agreements have been concluded. These have been an element of the Thai-related FTAs involving Australia and New Zealand.

In respect of the AANZFTA, modelling undertaken as part of a review process has shown that a good agreement could lead to substantial economic gains to all partners, including from agricultural liberalisation which is incorporated in the modelling. The CIE (2000) estimated the gains from a FTA between ASEAN and the CER (with zero tariffs on goods and services by 2005) to be around US\$48 billion (in net present value terms over the period 2000 to 2020) with the majority of the gains going to ASEAN (US\$26 billion) and of the CER countries, the smaller New Zealand gaining the least (US\$3.4 billion). Earlier estimates that did not take into account service trade liberalisation and productivity gains from trade liberalisation were much lower at US\$16 billion. Agriculture has been one of the big beneficiaries of productivity gains resulting from research and development. The AFTA sensitive list is taken as predominantly unprocessed agricultural products that are granted more flexible liberalisation arrangements. The largest proportional increases in estimated production from the

modelling are in agriculture and manufacturing, including non-durable manufacturing which comprises of processed foods such as dairy products, sugar and beef for the CER countries.

Commitment to the WTO

(This subsection covers Point 9 on a Commitment to the WTO and a sunset clause to multilateralise the FTA.) There is no sunset clause in the AANZFTA to multilateralise it but there is a clause that ensures there are periodic reviews of the FTA that could recommend such action. There are also specific clauses to build on members' commitments in the WTO, and to be consistent with the WTO, including GATT Article XXIV and GATS Article V.

Overview

The analysis shows that there are a number of differences both between the negotiating partner groups, and within the groups themselves, that make the negotiations more difficult than between individual countries. One of these differences was in relation to sensitive sectors in which agricultural sectors were prevalent in some of the less developed ASEAN countries as well as more country specific and with more non-zero applied tariffs than for non-agriculture. Such sensitive sectors have been dealt with in some of the bilateral FTAs such as those involving CER countries and Thailand through longer liberalisation periods, etc, but some ASEAN countries seem to view some agricultural sectors such as rice as being sensitive indefinitely. Australia and New Zealand would offer a greater threat in agriculture to ASEAN, especially for developing country members, than in many other sectors and also many other prospective partners. Selective bilateral FTAs would seem to be more attractive under these circumstances and a number of these seem to have been initiated to avoid such difficulties. Consolidation of liberalisation commitments within ASEAN would make an FTA such as AANZFTA more attractive to partner countries as well as facilitating intra-ASEAN trade with its associated benefits to ASEAN countries and countries that trade with them. There would be advantages in an FTA with ASEAN rather than individual member countries in terms of linking directly into production networks and easier access to the ASEAN market as a whole for exporters and investors in the partner countries.

Another difference identified in the analysis was in respect of comprehensiveness with the negotiations covering all sectors such as services, investment, etc, all barriers including non-tariff barriers (NTBs), quarantine etc. Many of these aspects, as well as intellectual property, government procurement, and competition policy, are more difficult to organise internally within a diverse group of countries like ASEAN than they are externally in bilaterals between more comparable countries, for example between CER countries and Singapore. The same situation can apply in the other direction with some CER agricultural sectors being sensitive in terms of quarantine arrangements that would not be an issue with countries like Singapore with a small agricultural sector but might be with other ASEAN countries like the Philippines.

There have been differences over time observed in past FTAs involving CER and ASEAN countries, the most notable being in respect of ROOs. ROOs have started to

evolve from a share of the country of origin in the production (RVC) of a good to those based on a Change in Tariff Classification (CTC), or on occasions a combination of the two, or even based on having undergone a particular process. ROOs are not as critical for agricultural products per se as they are for more processed products but there can be situations like with the earlier mentioned tea blending case and a lot of agricultural products are inputs into processed foods which form part of the ASEAN production networks. An example of difficulties that can be caused by ROOs of the type described above is for flour, bakers' wares from Australia to the United States which contains the condition "provided that the products containing over 10% by weight of milk solids do not contain non-originating dairy products" and raises difficulties with New Zealand content in exports. A bit like the "spaghetti bowl" effect⁵, a mix of ROOs within ASEAN countries would add to the complexity of negotiating AANZFTA over bilateral agreements between CER and ASEAN countries. Consistent ROOs would contribute to minimising the "spaghetti bowl" effect but if this consistent set was based on a "Union of overlapping sets" approach then there would be costs in terms of lost trading opportunities.

Within the CER countries there are some differences such as on the inclusion of chapters on labour and the environment in some New Zealand but not Australian agreements, as well as in relation to agriculture, such as in respect of quarantine on products like bananas that are not grown in New Zealand but are in Australia, that could cause greater difficulties for AANZFTA over bilateral agreements between specific CER and ASEAN countries.

Modelling of the AANZFTA has shown that there are big gains from liberalisation, including through agricultural productivity, but that these gains are relatively different for the various parties. There was no modelling of some of the less measurable benefits that would flow from the FTA such as better quarantine arrangements so it is not surprising that there do not appear to be any estimates of the benefits of operating with ASEAN as a group (e.g. better access to production networks) over a group of bilateral FTAs. Bilaterals with the more developed ASEAN countries would deliver most of the measured gains to CER countries. WTO liberalisation would be necessary to obtain the full benefits from agricultural liberalisation such as from the removal of export subsidies. Modelling has also shown that the AANZFTA is less important in economic terms to all countries involved in the AANZFTA than China-related FTAs. This last aspect is reflected in business interest in the various agreements. Where the gains from liberalisation are greater and more direct there will be greater interest, suggesting the AANZFTA may lag behind bilateral FTAs and those involving other partners. This would be one explanation of less progress on the AFTA CER CEP than expected that was mentioned in Access Economics (2001) which looked at the benefits and costs of a FTA between Australia and Singapore.

Much of the above discussion has been premised on the need to include "problem" sectors such as agriculture, a stated component of a "good" FTA. Others such as Pasadilla (2005) have stated there are positives and negatives from the inclusion of "problem"

⁵ The proliferation of overlapping FTAs that may lead to complications for traders and administrators.

sectors such as agriculture in some FTAs. Mention is made of a suggestion in Scollay (2003) that exclusion of agriculture may be a positive when trading partners are not competitive in agriculture as this would avoid trade diversion effects, and the diversion of effort from more mutually beneficial sectors. However, this is a “second-best” outcome which dismisses the effects of competition on the performance of such sectors and efficient allocation of resources, which can be significant in the case of agriculture even when its contribution to GDP is small because of its influence over important resources such as land that can affect overall economic performance.

In terms of the drivers of the negotiation of FTAs, these are more than those listed for a “good” FTA which tend to focus on direct economic effects. If the history of FTAs is analysed then it can be appreciated there have been various drivers at work. Many have been developed between major traders which would favour bilaterals between CER and selective ASEAN countries over AANZFTA. This aspect would be different if ASEAN liberalised its internal trade and brought forward the advantages of a regional grouping without the disadvantages of differences in trade aspects. There have also been strategic drivers of FTAs and this is often put forward as a justification of the cost of the Common Agricultural Plan (CAP) in the European Union (EU). This could be a factor favouring AANZFTA over bilaterals and there has been a long history of CER countries engaging with ASEAN purely on diplomatic grounds. On the other hand, the strength of agriculture in many countries’ political economy might go against any trade agreement involving agriculture being implemented. There have also been development drivers associated with the implementation of some FTAs as with the preferential trade access Australia and New Zealand offer to less developed countries, in particular the Pacific Island Nations. A similar rationale might apply to the CLVM aspects of the AANZFTA but as pointed out in Scollay and Trewin (2006), the AANZFTA will diminish relative tariff differentials between CLVM and other ASEAN countries. Whether these preferences are best approached bilaterally, in a separate agreement, or as an aspect of the AANZFTA, is debatable, especially given the differential level of development of some countries within such groupings, Vietnam in the case of CLVM. Generally FTAs are motivated by a combination of the above drivers.

In summary, the analysis would suggest that the AANZFTA will be a more difficult agreement to develop to fruition than have some bilateral agreements between the parties, due in part to sensitive sectors such as agriculture which are best included but require progress within the WTO for the full benefits of liberalisation to be realised.

Conclusion

Scollay and Trewin (2006), on which this paper is drawn, highlighted a number of key issues in the general development of the AANZFTA, a number of which are relevant to the agricultural focus taken in this paper. These are listed here along with some specific agricultural-related responses:

- The existing agreements exhibit a preference for comprehensiveness in both product and issue coverage

(Thus it should be expected that agriculture will be included in the AANZFTA);

- Comprehensive product coverage in the existing agreements is facilitated by the use of extended time periods, TRQs and special safeguards

(This has been shown in the case of Thailand but may be more difficult with some other ASEAN countries that have seen some agricultural sectors as sensitive indefinitely);

- Flexibility can be provided to cater for the sensitivities of individual members while maintaining overall WTO-consistence of the agreement

(The first part of the response to the preceding point applies);

- Preferences will diminish over time as the level of tariffs continues to decline with liberalisation, unilaterally, bilaterally and multilaterally. Ultimately the preferential impact is likely to be largely in the nature of “levelling the playing field” in the Australian and New Zealand markets, both among ASEAN members and between ASEAN and other existing and future partners of those two groups. One implication is that other provisions in the FTA will grow in importance, supporting a comprehensive approach at the outset

(Agriculture will need to give consideration to quarantine and other such aspects);

- The existing agreements suggest the generosity of concessions offered by Australia and New Zealand may be related to the degree of openness in partner’s markets

(Few of the ASEAN countries have open agricultural markets but the approach in the AANZFTA to agriculture can probably be gained from that which has developed within the CER);

- In the existing agreements, Australia and New Zealand have offered the longest implementation periods, with corresponding lessening of the value of preferences, for their most sensitive products, notably textiles and clothing, which are also subject to the most restrictive rules of origin

(Quarantine and related issues may be treated similarly with respect to agriculture);

- Consolidation of liberalisation commitments with ASEAN would facilitate the development of a coherent ASEAN approach to sensitive products and make AANZFTA more attractive, as well as facilitate intra-ASEAN trade with its associated benefits

(This is particularly relevant to agriculture which contains a large proportion of the sensitive sectors);

- Provisions on government procurement, intellectual property (IP) and competition policy are included in the existing agreements, but inclusion of these issues does not necessarily imply a need to undertake substantial obligations. An important issue is whether such provisions should be subject to dispute settlement. This is not generally the case in the existing agreements

(Agriculture is not a key focus here, especially in respect of government procurement, but the issues have some relevance, in particular IP in the case of agricultural productivity);

- Consistency of rules of origin across ASEAN FTAs could be an important contribution to untangling the “spaghetti bowl” effect with its high costs (ROOs are not as big an issue with agriculture directly, more via their impact on processed products, but when these are applied so as to constrain trade, agriculture can be as adversely affected as other sectors); and
- It would be desirable for ASEAN to seek a definite assessment of the relative advantages and disadvantages of RVC versus CTC in facilitating trade and converge to the most appropriate approach

(As just mentioned, this can be just as desirable for agriculture as for other sectors, especially for processed food production networks).

At the outset of the paper a number of issues were raised in respect of agriculture and FTAs. These issues were:

- Should sensitive sectors like agriculture be included in FTAs like the AANZFTA?
- Can FTAs advance agricultural trade liberalisation outside of multilateral agreements?
- Are regional agreements like the AANZFTA likely to be more successful in including agricultural liberalisation than an associated group of bilaterals?

The overarching issue considered in this paper is the interaction between agriculture and FTAs, in particular in relation to regional agreements between groups of countries versus bilateral agreements versus multilateral agreements. An evolving history of FTAs is considered in the analysis, along with discussions and written submissions on the issue from government officials, businesses etc. The “good” FTA framework that is set out shows how the exclusion of “problem sectors” like agriculture from FTAs would only be at best a “second-best” outcome due to constraining competition and resource allocation.

Though from an agricultural perspective, the best approach to trade liberalisation would be a multilateral one, there has been a rapid rise in FTAs in recent years since the multilateral round stalled. A number of “good” FTA frameworks have been developed with a common feature that they mimic the best aspects of a multilateral agreements such as comprehensiveness. Still modelling shows that although gains from agricultural liberalisation are substantial in both cases, the gains from multilateral reform are much larger. A multilateral agreement is required to achieve the full benefits of agricultural liberalisation such as through the removal of domestic support and export subsidies. “Good” FTAs need to be building blocks for multilateral agreements through some of the points mentioned earlier like simple etc ROOs and even addressing aspects like export subsidies as in the case of the NZTCEP. Any progress on agricultural liberalisation in a FTA would be an advance on current multilateral negotiations.

There is no modelling of the benefits of ASEAN as a group relative to a group of ASEAN bilateral FTAs but the modelling of the major bilateral FTAs between the Australia and ASEAN countries shows that the majority of the benefits to Australia are captured by these bilaterals. Analysis shows that if ASEAN can get its internal act

together than it would bring forward additional benefits such as easier access to regional networks of production over bilateral agreements. The analysis suggests that the AANZFTA will need to include agriculture like the WTO negotiations and likewise will be a more difficult agreement to develop to fruition than have bilateral agreements between the parties. This contrasts to a position put on the FTAA (which has stalled in part due to agriculture) that it is easier to deal with a smaller number of (aggregate) groups.

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Appendix: GUIDELINES ON “HIGH-QUALITY” FTAs

PECC Trade Forum Proposal for an APEC Common Understanding on RTAs

Relation to the “Pathfinder” Concept

While preferential trading arrangements (PTAs) may not meet the formal criteria for “Pathfinder” initiatives, the array of PTAs in which APEC economies have engaged may usefully be viewed in the spirit of the “Pathfinder” concept. This implies that they should be fully consistent with APEC objectives and principles. It also implies that participation in the network of PTAs being developed within the APEC region should, over time, become open to all APEC economies.

Conformity with APEC Liberalization Objectives

Commitment to the Bogor Goals

It is important that APEC members engaging in PTAs re-affirm that they remain committed to the Bogor goals and that pursuit of PTAs does not detract from that commitment. It should be acknowledged that this means that the liberalisation and facilitation provisions of PTAs between APEC members must be extended to all APEC economies by the Bogor target dates.

Timetable

The timetable for liberalisation within PTAs between APEC members should be consistent with the Bogor dates i.e. it should not extend beyond 2010 in PTAs involving developed APEC economies and beyond 2020 in other PTAs.

MFN Liberalisation

It is important that MFN liberalization should proceed in parallel with PTAs being implemented by APEC members. This will assist in minimising negative effects of PTAs and will provide assurance that the Bogor goals will ultimately be reached. In order to minimise negative effects of PTAs it is important that all MFN barriers be reduced to moderate levels as soon as possible, thereby limiting margins of preference in PTAs and so reducing the scope for trade diversion. Elimination of peak tariffs and tariff escalation must be a priority.

Conformity with APEC Principles in the Osaka Action Agenda

Non-Discrimination

In line with the APEC principle of non-discrimination, credible assurances should be given that the concessions provided within the PTAs between APEC members will be made available to all APEC members as soon as circumstances allow, and no later than the Bogor target dates, by one of the three following means:

- a credible up-front commitment on the part of APEC members to eventually multilateralise the concessions that they make to PTA partners.
- inclusion in each PTA of an “open accession” clause, providing for the automatic acceptance of a membership application from any economy willing to join the PTA on the same terms and conditions.
- a credible form of commitment to inclusiveness, whereby each member demonstrates preparedness to entertain the possibility of a PTA relationship with every other member, whether through negotiation of a bilateral PTA or through membership of a larger PTA grouping, and that no APEC member will be permanently excluded from larger PTA groupings that may develop among APEC economies.

WTO-Consistency

In line with the APEC principle of WTO-consistency, PTAs between APEC members should be fully consistent with GATT Article XXIV and GATS Article V. It must be recognised that this is a necessary but not a sufficient condition for ensuring that these PTAs contribute to the achievement of APEC objectives.

Comprehensiveness and Flexibility

In line with the APEC principles of comprehensiveness and flexibility, PTAs among APEC members should cover trade in both goods and services, and should also cover all sectors, with sensitive sectors being liberalised on a slower timetable with due regard to the sensitivities of member economies.

Transparency

In line with the APEC principle of transparency, APEC members should institute their own process of peer review of PTAs involving APEC members. To be fully effective, peer review should occur before the PTAs are finally concluded. It is also important that provision be made for the inclusion of PTAs in the IAPs of APEC members. Also in the interests of transparency, the texts of PTAs should be made publicly available as soon as possible after agreements are concluded.

Co-operation

In line with the APEC principle of cooperation, peer reviews of PTAs involving APEC members should provide an opportunity for discussion of any problems that the PTAs being reviewed may be causing for other APEC members, and of ways of resolving those problems.

Consistency with other APEC Principles

Where relevant, provisions in PTAs among APEC members should be linked to the specific sets of Principles that APEC members have adopted such as the Principles on Competition and Regulatory Reform, the Non-Binding Investment Principles, the Principles on Government Procurement, and the Principles on Trade Facilitation.

Promoting Convergence and Minimising “Spaghetti Bowl” Problems

Rules of Origin

Rules of origin are not an appropriate mechanism for protecting “sensitive sectors” or for facilitating adjustment to liberalisation. Complex rules with protectionist purposes should be avoided. Ideally rules of origin should as far as possible be neutral in their impacts on trade flows. Rules of origin should be as straightforward as possible, and should be transparent, clear and consistent, and should not impose unnecessary compliance costs. It is important to allow full cumulation in PTAs with multiple members. The development by APEC members of “best practice guidelines” for preferential rules of origin would be a very useful contribution.

Facilitation Measures

Adoption of harmonised provisions across PTAs in the APEC region should be encouraged, especially for provisions on trade and investment facilitation. Use should be made wherever possible of international standards and APEC-wide agreements and processes, including mutual recognition agreements.

Exploration should be undertaken of the potential for harmonisation of facilitation provisions across PTAs to contribute to APEC objectives by opening the way for APEC-wide application of the provisions in question and by assisting eventual convergence of PTAs.

Consideration should be given to the development of “best practice” guidelines for each type of provision typically found in PTAs.

“Best Practice” Guidelines for PTA Liberalisation

APEC members should endeavour to ensure that the liberalisation of both goods and services within PTAs is progressive and automatic.

In the case of services trade, binding of the status quo should be regarded as acceptable. Where liberalisation is undertaken, MFN liberalisation should be regarded as the norm, especially in key infrastructure sectors. APEC members should not insist on preferential liberalisation by their PTA partners in these key sectors. To facilitate liberalisation of trade in services, relevant domestic regulations should be subject to a necessity test, and should be applied in the least trade restrictive manner possible.

In cases where liberalisation cannot commence immediately “negative lists” should be employed, with provision for regular reviews aimed at removing all remaining trade restrictions. This should apply to both goods and services trade, including “sensitive sectors”. The “negative lists” should be subject to “sunset clauses” and there should be no permanent exclusions.

Development Dimension

PTAs and Closer Economic Partnerships (CEPs) between APEC economies should allow for assistance in capacity building to be provided to developing economy members by their developed economy partners. The potential for CEPs to serve as vehicles for the provision of regional public goods should be recognised and exploited.

PECC Best Practice for RTAs/FTAs/ in APEC

RTAs/FTAs involving APEC economies can best support the achievement of the APEC Bogor Goals by having the following characteristics:

Consistency with APEC Principles and Goals

- They address the relevant areas in Part 1 (Liberalisation and Facilitation) of the Osaka Action Agenda (OAA) and they are consistent with its General Principles. In this way they help to ensure that APEC accomplishes the free trade and investment goals set out in the 1994 Bogor Leaders Declaration.
- They build upon work being undertaken by APEC.
- Consistent with APEC goals, they promote structural reform among the parties through the implementation of transparent, open and non-discriminatory regulatory frameworks and decision-making processes.

Consistency with the WTO

- They are fully consistent with the disciplines of the WTO, especially those contained in Article XXIV of the GATT and Article V of the GATS.
- When they involve developing economies to whom the Enabling Clause applies, they are, whenever possible, consistent with Article XXIV of the GATT and Article V of the GATS.

Go beyond WTO commitments

- In areas that are covered by the WTO, they build upon existing WTO obligations. They also explore commitments related to trade and investment in areas not covered, or only partly covered, by the WTO. By so doing, APEC economies are in a better position to provide leadership in any future WTO negotiations on these issues.

Comprehensiveness

- They deliver the maximum economic benefits to the parties by being comprehensive in scope, and providing for liberalisation in all sectors. They therefore eliminate barriers to trade and investment between the Parties, including tariffs and non-tariff measures, and barriers to trade in services.
- Phase-out periods for tariffs and quotas in sensitive sectors are kept to a minimum, and take into account the different levels of development among the parties. Thus they are seen as an opportunity to undertake liberalisation in all sectors as a first step towards multilateral liberalisation at a later stage.

Transparency

- By making the texts of RTAs/FTAs, including any annexes or schedules, readily available, the Parties ensure that business is in the best possible position to

understand and take advantage of liberalised trade conditions. Once they have been signed, agreements are made public, in English wherever possible, through official websites as well as through the APEC Secretarial website.

- Member economies notify and report their new and existing agreements in line with WTO obligations and procedures.

Trade Facilitation

- Recognising that regulatory and administrative requirements and processes can constitute significant barriers to trade, they include practical measures and cooperative efforts to facilitate trade and reduce transaction costs for business consistent with relevant WTO provisions and APEC principles.

Mechanisms for consultation and dispute settlement

- Recognising that disputes over implementation of RTAs/FTAs can be costly and can raise uncertainty for business, they include proper mechanisms to prevent and resolve disagreements in an expeditious manner, such as through consultation, mediation or arbitration, avoiding duplication with the WTO dispute settlement mechanism where appropriate.

Simple Rules of Origin that facilitate trade

- To avoid the possibility of high compliance costs for business, Rules of Origin (ROOS) are easy to understand and to comply with. Wherever possible, an economy's ROOS are consistent across all of its FTAs and RTAs.
- They recognise the increasingly globalised nature of production and the achievements of APEC in promoting regional economic integration by adopting ROOS that maximise trade creation and minimise trade distortion.

Co-operation

- They include commitments on economic and technical cooperation in the relevant areas reflected in Part II of the OAA by providing scope for the parties to exchange views and develop common understandings in which future interaction will help ensure these governments have maximum utility and benefit to all parties.

Sustainable Development

- Reflecting the inter-dependent and mutually supportive linkages between the three pillars of sustainable development – economic development, social development and environmental protection – of which trade is an integral component, they reinforce the objectives of sustainable development.

Accession of Third Parties

- Consistent with APEC's philosophy of open regionalism and as a way to contribute to the momentum for liberalisation throughout the APEC region, they are open to the possibility for accession of third parties on negotiated terms and conditions.

Provision for periodic review

- They allow for periodic review to ensure full implementation of the terms of the agreement and to ensure the terms continue to provide the maximum possible economic benefit to the parties in the face of changing economic circumstances and trade and investment flows. Periodic review helps to maintain the momentum for domestic reform and further liberalisation by addressing areas that may not have been considered during the original negotiations, promoting deeper liberalisation and introducing more sophisticated mechanisms for cooperation as the economies of the Parties become more integrated.