



# China and East Asian Regionalism

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**Abstract:** *East Asia is steadfastly marching towards regional economic integration through a number of regional trade agreements (RTAs) and China is a major driving force behind this movement. This paper analyses China's RTAs and their impact on regionalism in Asia. It addresses the criticisms that China's RTAs are politically but not economically driven, that China's RTAs create the hub-and-spoke bilateralism and that China's RTAs are not World Trade Organization consistent. It discusses China's position on East Asian regionalism, pointing out that China wishes East Asia to pursue regionalism on multi-track and at multi-speed, that China tends to 'do easy things first' with low integration and liberalisation and then gradually move to deeper liberalisation and integration and that China's definition of 'open regionalism' does not include outside countries such as the USA and the EU. The paper makes suggestions for improving China's RTAs in the interest of establishing an East Asia free trade agreement.*

## I Introduction

In the proliferation of regional/free trade agreements ('RTAs' or 'FTAs'),<sup>1</sup> Asia, especially East Asia, is not a shy participant. The database of the Asian Development Bank (ADB) shows that all its members that are politically regarded as Asian countries have signed or at least are in the process of negotiating RTAs. By 2010, these Asian countries had concluded 120 RTAs, with 63 RTAs under negotiations and a new RTA proposed.<sup>2</sup> A number of Asian economies, including China, Japan, India, South Korea, Malaysia and Singapore, are at the forefront of this wave of regionalism in world trade. These government-led agreements have greatly strengthened the originally market-driven economic integration in Asia and are paving way for establishing more formal architectures for regional economic integration in Asia.

China plays a central role in the ongoing formation of Asian regionalism. The world's second largest economy, China is the largest importer and exporter in Asia.<sup>3</sup> It sits at the centre of the region's production-sharing networks, absorbing parts,

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<sup>1</sup> For the purpose of this paper, RTA and FTA will be used interchangeably.

<sup>2</sup> Free Trade Agreement Database of Asia, available at <http://www.aric.adb.org/>.

<sup>3</sup> China is also the largest exporter and second largest importer in the world. See *Trade Profiles: China* at [http://stat.wto.org/CountryProfiles/CN\\_e.htm](http://stat.wto.org/CountryProfiles/CN_e.htm).

components and raw materials from its Asian neighbours.<sup>4</sup> China is also a significant buyer of other country's consumer goods. It is already the economic driving force in the region and aims to acquire a political weight that matches its economic influence. In this capacity, China has been involved in a wide range of RTA initiatives since it first embarked on regionalism in 2001. A recent press release of China's Ministry of Commerce (MOFCOM) indicates that the total trade between China and its 10 FTA partners (Association of South East Asian Nations (ASEAN), Pakistan, Chile, Singapore, New Zealand, Peru, Costa Rica, Hong Kong (HK), Macau and Taiwan) reached US\$ 521.3 billion, or 24% of China's total foreign trade, in the first nine months of 2010.<sup>5</sup>

More significantly, China has made the conclusion of RTAs a national strategy, which, in China's political language, usually suggests that the Chinese state will mobilise all possible resources to fulfil its realisation. In his 2009 Work Report to the National People's Congress, Chinese Premier Wen Jiabao stated 'China will accelerate the implementation of the FTA strategy.'<sup>6</sup> The Chinese government has advocated FTAs as a way to ensure the steady growth of China's foreign trade because they can induce trading partners to recognise China's market economy status, reduce trade disputes and restrict the use of technical barriers.<sup>7</sup>

Such a high-profile approach to regionalism and bilateralism has put China under tremendous criticisms, which has largely come from the following directions:

- China's RTAs are politically driven and thus, conduct only shallow integration.
- China's RTAs have led to hub-and-spoke bilateralism favourable only to China.
- China's RTAs are not consistent with the law of the World Trade Organization (WTO).

This paper aims to address those criticisms by examining China's regional trade arrangements in the context of the global and Asian regionalism. While the criticisms may sound unfair to the eyes of China, some merits in the criticisms should not be overlooked. This paper argues that most of the criticisms raise actually irrelevant—and to some extent, hypocritical—questions. All RTAs are politically driven. Although RTAs between big and smaller economies will inevitably lead to the hub-and-spoke situation, this can be mitigated by smaller economies' RTAs with other economies. Further, shallow integration is not necessarily detrimental, especially when it builds up the foundation for deeper integration in the future. The relevant WTO rules at this stage are not able to determine whether an RTA is WTO-consistent or not. In a realistic view, one could only hope that larger trading nations such as China should aim to achieve a balance between pursuing regionalism and multilateralism. In this endeavour, China should particularly be mindful of the unnecessary costs generated by its RTAs to

<sup>4</sup> On Asia's increasingly integrated production network see, generally, Asian Development Bank (ADB), *Emerging Asian Regionalism: A Partnership for Shared Prosperity* (ADB, 2008).

<sup>5</sup> 2010 Nian Woguo Zimaoqu Jianshe Qude Xinjinzhan [New Achievements in China's Establishment of FTAs in 2010], press release of the Ministry of Commerce of the People's Republic of China, 22 December 2010, available at [http://fta.mofcom.gov.cn/article/ftanews/201012/4574\\_1.html](http://fta.mofcom.gov.cn/article/ftanews/201012/4574_1.html) (hereinafter, MOFCOM 2010).

<sup>6</sup> W. Jiabao, Work Report of the Government to the Second Session of the 10th National People's Congress, 5 March 2009, available at <http://www.gov.cn>.

<sup>7</sup> C.L. Lim and J. Wang, 'China and the Doha Development Round', (2006) 44 *Journal of World Trade* 1323 (quoting the PRC Ministry of Commerce).

business, especially the spaghetti effect caused by multiple rules of origin (ROOs). In the long run, China should work with its trading partners in East Asia, including Japan, Korea and ASEAN countries, to establish a ROO union that can lay the foundation for an East Asian Economic Community.

The paper is organised as follows: Part II briefly introduces the RTAs that China has concluded or is negotiating. Part III offers a critical introduction to and analysis of the various criticisms directed to China's RTAs. Part IV discusses the impact of China's approach to economic integration in Asia in the context of the competing strategies on Asian regionalism proposed by nations in the region. Part V puts forward recommendations on how China can play a constructive role to promote open and deeper regionalism in Asia. Part VI concludes.

## II China's RTAs

By 2010, China had been involved in RTAs with about 30 countries or economies, which include 11 RTAs concluded, five under negotiations or with a framework agreement signed and eight proposed.<sup>8</sup> As scholarship on China and regionalism is steadfastly growing, several published papers have examined in detail the RTAs concluded by China.<sup>9</sup> For this reason, this part introduces, largely as a background, the RTAs that China has signed or under negotiation or consideration between China and its trading partners.

### A Chinese RTAs in Effect

By the end of 2010, China has signed the following trade agreements in the name of FTAs, the Closer Economic Partnership Arrangement (CEPA) or the Economic Cooperation Framework Agreement (ECFA):

- China–ASEAN FTA
- China–Pakistan FTA
- China–Chile FTA
- China–New Zealand FTA
- China–Singapore FTA
- China–Peru FTA
- Mainland China–HK CEPA
- Mainland China–Macau CEPA
- Mainland China–Costa Rica FTA
- Mainland China–Taiwan ECFA
- Asia-Pacific Trade Agreement

<sup>8</sup> Data available at China's official web site for FTAs (<http://fta.mofcom.gov.cn>). See also *FTA Status by Country, 2010*, at <http://www.aric.adb.org/10.php>.

<sup>9</sup> See F. Snyder, 'China, Regional Trade Agreements and WTO Law', (2009) 43 *Journal of World Trade* 1–57; J. Wang, 'China, India, and Regional Economic Integration in Asia', (2006) 10 *Singapore Year Book of International Law* 269–305; A. Antkiewicz and J. Whalley, 'China's New Regional Trade Agreements', (2005) 28 *World Economy* 1539–1557; and J. Wang, 'China's Regional Trade Agreements: The Law, Geopolitics, and Impact on the Multilateral Trading System', (2004) 8 *Singapore Year Book of International Law* 119–147.

Professor Francis Snyder divides China's RTAs into three categories, which are, respectively, 'economic integration agreements with HK and Macau, "standard" RTAs, such as the regional framework agreement with the Association of South East Asian Nations (ASEAN) and agreements directly related to it, and bilateral FTAs with individual sovereign states, namely Chile and Pakistan.'<sup>10</sup> Given the recent developments of China's RTA movement, a description of China's concluded RTAs based on a slightly varied version of Snyder's tripartite typology is presented later, which classifies China's trade agreements as four categories: 'regional integration agreements,' 'standard' RTAs, 'Greater China economic integration agreements' and 'development' agreements.

*a) Regional Economic Integration Agreements (REIAs)*

REIAs are those China signed and intend to sign with a group of neighbours for the purpose of promoting regional economic integration. The only concluded REIA is the ASEAN–China FTA (ACFTA) signed between China and the 10 members of the ASEAN. However, China is also discussing with Japan and South Korea, as well as with central Asian states, for the feasibility of establishing a China–Korea–Japan FTA and an economic cooperation agreement for the Shanghai Cooperation Organization.<sup>11</sup>

The idea of forming an ACFTA originally came as a surprise to his counterparts in the ASEAN countries. Chinese Premier Zhu Rongji proposed at the China–ASEAN Summit of November 2000 to form an FTA between China and the ASEAN. In November 2002, Chinese and ASEAN leaders signed the Framework Agreement on Comprehensive Economic Co-operation (hereinafter the Framework Agreement), which laid the groundwork for the eventual formation of an FTA by 2010 for China and the six older members of ASEAN ('ASEAN 6,' including Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand), and by 2015 for the newer ASEAN Members States (the 'CLMV' countries including Cambodia, Laos, Myanmar and Vietnam).<sup>12</sup> The Framework Agreement was amended by a protocol in 2003,<sup>13</sup> followed by two 2004 agreements to implement the Framework Agreement, which are the Agreement on Trade in Goods and the Agreement on Dispute Settlement Mechanism under the Framework Agreement.<sup>14</sup> Further, 2007 and 2009 witnessed the signing of the Agreement on Trade in Services and the Agreement on Investment. The ACFTA took full effect on 1 January 2010 as the world's biggest regional trade deal measured by population and third largest by value.

The ACFTA eliminates tariffs for trade in goods between China and the ASEAN 6 and targets to join other ASEAN members for this zero tariff treatment in 2015. However, the ACFTA is also known for its rather innovative Early Harvest

<sup>10</sup> Snyder, *op cit* n 9 *supra*, at 6.

<sup>11</sup> The Shanghai Cooperation Organization (SCO), members including China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan, was originally created in 1996 as a regional organisation in central Asia to promote cooperation on political and security issues such as anti-terrorism, border disputes, ethnical conflicts, etc. See SCO's web site at <http://www.sectsc.org>. Driven largely by China, its activities have now expanded into regional economic cooperation.

<sup>12</sup> Wang (2004), *op cit* n *supra* 9, at 124. The text of the Framework Agreement is available at the ASEAN Secretariat's official web site at <http://www.aseansec.org/13196.htm>.

<sup>13</sup> The text of the protocol is available at the ASEAN Secretariat's official web site at <http://www.aseansec.org/15157.htm>.

<sup>14</sup> The text of the DSM Agreement is available at the ASEAN Secretariat's official web site at <http://www.aseansec.org/16635.htm>.

Programme (EHP), under which the parties agreed to cut tariffs on certain products before and after the onset of the formal FTA. That is to say, this FTA permits each country to exclude hundreds of sensitive goods from the zero tariff treatment, in many cases until 2020. In brief, eight categories of agricultural products and dozens of specific manufactured goods would be liberalised ahead of the planned establishment of a free trade area. ASEAN countries are allowed to come up with exclusion lists indicating the items for which they would not grant tariff concessions to Chinese goods. In essence, the EHP ‘allows ASEAN products to be exported to China at significant concessionary rates so that ASEAN countries can actually benefit from the benefits of an FTA even before the agreement itself is finalized.’<sup>15</sup>

The signing of the agreements on trade in goods, services and investment turns the ACFTA into a rather comprehensive FTA. The Dispute Settlement Mechanism (DSM) Agreement represents another landmark achievement in China–ASEAN bilateral trade relations. It provides a formal and institutional design for solving trade and investment disputes between China and an ASEAN Member State. The significance of this agreement lies in its establishment of a rule-based setting for the resolution of economic disputes between the nations concerned, without which the governments are likely to resort to unilateral and retaliatory measures if they feel—sometimes rightly—that the multilateral trading system similar to the WTO does not provide for efficient and fair dispute settlement methods.

#### *b) Standard Bilateral FTAs*

Standard bilateral RTAs are those typical FTAs signed between China and individual sovereignty states, including Chile, New Zealand, Singapore, Peru and Pakistan and Costa Rica.

The China–Chile FTA,<sup>16</sup> signed in November 2005 and entered into force in October 2006, was China’s first standard bilateral trade agreement with a sovereign state. It eliminates immediately 74% of Chile’s tariffs and 63% of China’s tariffs within two years. By 2015, 97% of both countries’ tariffs are to be eliminated.<sup>17</sup> In 2008, the two countries signed the Agreement on Trade in Services, with the Agreement on Investment being negotiated. The FTA establishes an institutional framework for supervising the implementation of the agreement, composed of a Free Trade Commission, a Committee on Trade in Goods, a Committee on Sanitary and Phytosanitary (SPS) Measures and a Technical Barriers to Trade (TBT) Committee. The dispute settlement mechanism permits the establishment of an arbitral panel to resolve the disputes in line with the spirit of the WTO’s Dispute Settlement Understanding.<sup>18</sup>

With Pakistan, China concluded an FTA in November 2006, which became effective in July 2007.<sup>19</sup> An Agreement on Trade in Services was signed in February 2009. It is not surprising that the China–Pakistan FTA ‘is very similar to but more limited in scope than

<sup>15</sup> ‘ASEAN, China Launch First Stage of Free-Trade Plan’, AFP, 7 October 2003.

<sup>16</sup> Information on the China–Chile FTA can be found at the web site of the PRC Ministry of Commerce at <http://fta.mofcom.gov.cn> and at the web site of Chile’s National Customs Services at [http://www.aduana.cl/prontus\\_aduana\\_eng/site/artic/20070227/pags/20070227172530.html](http://www.aduana.cl/prontus_aduana_eng/site/artic/20070227/pags/20070227172530.html).

<sup>17</sup> World Trade Organization (WTO), *Trade Policy Review: People’s Republic of China—Report by the Secretariat*. WT/TPR/S/161, 28 February 2006.

<sup>18</sup> China–Chile FTA, Chapter X.

<sup>19</sup> Information on the China–Pakistan FTA can be found at the web site of the PRC Ministry of Commerce at <http://fta.mofcom.gov.cn>.

the China–Chile FTA.<sup>20</sup> China agrees to liberalise 36.4% of its tariff line by the end of 2012 when China's overall tariff will fall to 6.1%.<sup>21</sup> Under the services agreement, China will open its market to Pakistan in 28 service sub-sectors. All these commitments make the agreement look similar to one in which China offers economic help to its regional ally. However, the investment provisions in the FTAs provide important protection for China's strategic investment in Pakistan's infrastructure and natural resources.<sup>22</sup> The FTA is still a standard agreement in terms of its legal form and comprehensive structure, which set a comprehensive framework for deeper economic integration in the future.

The China–New Zealand FTA was signed in April 2007 and entered into force in October 2008.<sup>23</sup> To China, this is a landmark FTA as it was the first FTA China has signed with a developed country and the first comprehensive FTA covering goods, services and investment as a 'single undertaking' for China. It provides for the removal over time of tariffs on 96% of traded goods from New Zealand (excluding the 'sensitive' products) to realise zero tariff for these goods by 1 January 2013, with the remaining tariffs phased out by 1 January 2019. New Zealand commits to eliminate tariffs on all products from China, while allowing tariffs on 'sensitive' products to be phased out at the latest by 2016. For services, China has made WTO-plus commitments in 15 sub-sectors for four main service sectors. A rather unique feature of the FTA with respect to services is that it includes a reciprocal Most-favoured Nation (MFN) clause that applies in specified sectors under which service suppliers in those sectors in the two countries will automatically receive the benefit of any commitments each other makes in future FTAs that are more liberal than those in the China–New Zealand FTA. MFN treatment is also given to investors and investment. It is also China's first FTA that includes a Memorandum of Understanding on Labor Cooperation and an Environment Cooperation Agreement. These two symbolically important agreements require the two countries to enhance communication and cooperation on labour and environment matters, including promoting better understanding and observance of the principles of the International Labor Organization's Declaration on Fundamental Principles and Rights.<sup>24</sup>

China and Singapore signed an FTA in October 2008, which is a rather comprehensive, WTO-plus FTA, again with another developed economy. Under the FTA, China agrees to accord zero tariff for 97.1% of the goods of Singapore origin by 1 January 2010, while Singapore commits to eliminate all tariffs of goods imported from China by 1 January 2009. For services, the two countries have made commitments in a number of sectors beyond their WTO obligations.

The China–Peru FTA was signed in April 2009 and became effective in March 2010.<sup>25</sup> Covering goods, services, investment, intellectual property rights, trade facili-

<sup>20</sup> Snyder, *op cit n supra* 9, at 27.

<sup>21</sup> World Trade Organization (WTO), *Trade Policy Review: People's Republic of China—Report by the Secretariat (Revision)*, Part II, para 32, WT/TPR/S/230/Rev.1, 5 July 2010. Note China's overall average tariff is 9.8% in 2010.

<sup>22</sup> Snyder, *op cit note supra* 9, at 28.

<sup>23</sup> Information on the China–New Zealand FTA can be found at the web site of the PRC Ministry of Commerce at <http://fta.mofcom.gov.cn>, and at the official China–New Zealand FTA web site established by the New Zealand Ministry for Foreign Affairs and Trade at <http://www.chinafta.govt.nz>.

<sup>24</sup> New Zealand Ministry of Foreign Affairs and Trade, *Key Outcomes: New Zealand–China Free Trade Agreement*, available at <http://www.chinafta.govt.nz>.

<sup>25</sup> Information on the China–Peru FTA can be found at the web site of the PRC Ministry of Commerce at <http://fta.mofcom.gov.cn>.



tation, dispute resolution, etc., it has been described as ‘China’s first all-encompassing FTA with a Latin American country’ by MOFCOM.<sup>26</sup> It aims to realise zero tariff on 90% (in terms of tariff lines) of each other’s imports in 10 years. WTO-plus commitments have been made on services under which China has agreed to provide national treatment for service suppliers from Peru in 16 sub-sectors in exchange for the same treatment for Chinese service suppliers by Peru in 90 sub-sectors. On investment, the parties agreed to grant national treatment, MFN and Fair and Equitable Treatment to investors and investment from each other.

China and Costa Rica established diplomatic relations in June 2007 and concluded an FTA in April 2010, which is China’s most recent bilateral trade agreement as well as its first comprehensive FTA with a Central American country.<sup>27</sup> Despite that bilateral trade between the two countries was only US\$ 3.18 billion in 2009 (which made Costa Rica as China’s ninth largest trading partner in Latin America and China as Costa Rica’s second largest trading partner in the world),<sup>28</sup> the FTA is an advanced agreement that ‘covers a broad range of areas with high level of liberalization’ in the words of the Chinese Ministry of Commerce.<sup>29</sup> Under the FTA, almost all Costa Rican goods (except sugar) will enjoy immediate, duty-free access to the Chinese market, while 58% of goods of Chinese origin get the same treatment. The parties have also made WTO-plus commitments on dozens of sub-sectors in services.

### c) *Greater China Economic Integration Agreements*

The trade agreements signed between Mainland China and HK, Macau and Taiwan respectively, from China’s perspective, are tasked to promote economic integration in the Greater China Area.<sup>30</sup> A common feature of the agreements is the significant imbalance of rights and obligations between Mainland China and the three peripheral economies over which China has claimed sovereignty.

The *Mainland and Hong Kong Closer Economic Partnership Arrangement* (China–HK CEPA), signed in June 2003, marked the start of China’s regional initiative, which was followed immediately by the signing of the China–Macau CEPA three and a half months later.<sup>31</sup> The CEPAs contain substantial unilateral concessions from China to the two former Western colonies in merchandise and commercial services trade and investment. Under the two CEPAs, China agreed to afford duty-free treatment on imported goods of HK and Macau origin in stages. The CEPA ROO, which is relatively liberal, features a 30% added value of HK’s local content. In the area of trade in services, the mainland offers preferential treatment to HK and Macau service

<sup>26</sup> Shangwubu Guojisi Fuzeren Jiedu Zhongguo–Bilu Ziyou Maoyi Xieding [Head of the International Division of MOFCOM on the China–Peru FTA], press release of the PRC Ministry of Commerce, 28 April 2009, available at [http://fta.mofcom.gov.cn/article/chinabilu/bilunews/200904/692\\_1.html](http://fta.mofcom.gov.cn/article/chinabilu/bilunews/200904/692_1.html). The China–Peru FTA is more comprehensive than the China–Chile FTA at least in the sense that the latter does not have detailed investment protection provisions.

<sup>27</sup> Information on the China–Costa Rica FTA can be found at the official FTA web site of the PRC Ministry of Commerce at <http://fta.mofcom.gov.cn>.

<sup>28</sup> Data available at the PRC Ministry of Commerce’s web site at <http://www.mofcom.gov.cn>.

<sup>29</sup> MOFCOM(2010), *op cit* n 5 *supra*.

<sup>30</sup> Wang (2004), *op cit* n *supra*, at 130.

<sup>31</sup> In the China–HK CEPA, two supplements to CEPA, called CEPA II and CEPA III, were signed on 27 October 2004 and 18 October 2005, respectively. See HK’s official web site on CEPA at <http://www.tid.gov.hk/english/cepa/index.html>.

suppliers in most service areas, effectively granting business in these two economies the first-mover advantage.

An economically and politically more significant economic integration agreement is the cross-state ECFA between Mainland China and Taiwan, which was signed in June 2010 and took effect in September 2010.<sup>32</sup> Although it was deliberately not so named for political reasons,<sup>33</sup> the ECFA is essentially a framework agreement for an FTA-style comprehensive economic partnership agreement that covers trade in goods, services, investment, institutional arrangements and dispute resolution. Significantly, the ECFA leaves room for economic cooperation in almost all areas of the cross-strait economic relations, thus laying a solid foundation for deeper economic integration between China and Taiwan.

The asymmetry of rights and obligations in the ECFA is significant and obvious. In other words, it 'has [Mainland] China doing most of the economic opening in the initial round.'<sup>34</sup> Under the EHP, the two parties have agreed to phase out tariffs for goods on the EHP list in two years after the EHP took effect. Mainland China has committed to substantially lower tariffs on, or otherwise further open its markets to, 539 products of Taiwanese origin in exchange for Taiwan's similar treatment for only 267 goods imported from the Mainland. In terms of monetary value, Taiwan can harvest 90% of the total benefits from tariff reduction.<sup>35</sup> In addition, Mainland China has opened under ECFA to 18 agricultural products originated in Taiwan with no reciprocity required, allowing Taiwan to continue to prohibit the importation of agricultural goods produced in Mainland China. On services, Mainland China would open 11 sub-sectors (including three financial services sub-sectors) to Taiwan in exchange for the limited liberalisation of nine sub-sectors (including one financial sector) by Taiwan.

#### *d) Development' RTAs*

Development RTAs refer to those preferential tariff arrangements made for the purpose of promoting intra-regional trade through exchange of mutually agreed concessions. The Asia-Pacific Trade Agreement (APTA), known as the Bangkok Agreement between 1975 and 2005, is the first preferential trading arrangement among developing countries in the Asia-Pacific region, developed under the auspices of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP). China joined the agreement in 2001 and started offering concessions from 2002. Presently, 749 tariff lines carry lower rates than the MFN rates committed under the WTO, mostly involving textile products.

<sup>32</sup> Information on the ECFA can be found at the web site of the PRC Ministry of Commerce at <http://tga.mofcom.gov.cn/subject/ecfa/index.shtml> and at Taiwan's official web site for the ECFA at <http://www.ecfa.org.tw>.

<sup>33</sup> Both Mainland China and Taiwan, somewhat incorrectly, feel that the term 'FTA' is used for agreements between sovereignty states. As Taiwan (officially named the Republic of China) and Mainland China (the People's Republic of China) do not recognise each other's sovereignty, the use of FTA will be doomed to incur strong political backlash at home for the two governments.

<sup>34</sup> R. Kwong, 'China and Taiwan Sign Landmark Deal', *Financial Times* (online), 20 June 2010.

<sup>35</sup> Precisely, Taiwan's Minister of Finance estimated that China would cut import tariffs worth US\$ 930 million per year, while the cuts on Taiwan's side would only account for US\$ 105 million. See J. Tang and T. Zhang, 'ECFA: An Appetizer [ECFA: Yidao Qiancai]', *New Century Magazine*, Issue 27, 5 July 2010, available at <http://www.caing.com>.



### B RTAs under Negotiations or under Considerations

Currently, China is in the process of negotiating six FTAs, including the China–Australia FTA, China–Gulf Cooperation Council FTA, China–Iceland FTA, China–Norway FTA, China–Southern African Customs Union FTA and the China–Switzerland FTA.<sup>36</sup> In addition, joint feasibility studies have been completed for a China–Korea FTA, a China–Japan–Korea FTA and a China–India Regional Trade Arrangement. As the negotiations and joint feasibility studies are held secretly, very little information is known to the public with respect to the progresses of those FTAs. That said, it is sufficiently clear from these movements that China is pursuing all out its ‘FTA strategy’ as declared by Premier Wen.<sup>37</sup>

### III Responses to Several Criticisms to China’s RTA Movement

As China has been perceived by many as a challenger to the international economic order,<sup>38</sup> some American strategists allege that ‘[i]n numerous areas of its economic interaction with other countries, China is now pursuing strategies that conflict with the norms, rules, and institutional arrangements that attempt to structure the global order.’<sup>39</sup> In particular, on foreign trade policy with respect to RTAs, ‘China makes no effort to hide its preference for low-quality, politically motivated bilateral and regional arrangements over more economically meaningful (and demanding) multi-lateral liberalisation through the WTO or even high-quality agreements with individual trading partners.’<sup>40</sup> These American strategists criticise that:

China’s pursuit of bilateral and regional trade agreements with neighboring countries is almost wholly political. Its ‘free trade agreement’ with the [ASEAN] accepts those countries’ own penchant for weak accords, covering only a small share of its commerce with them in an effort mainly to assuage their fears of being swamped (especially in terms of attracting foreign investment) by their huge neighbor. When China has agreed to consider liberalization pacts with countries that seek economically meaningful agreements, such as Australia, progress has been limited.<sup>41</sup>

China’s trade policy strategy to create an Asian trading bloc (starting with the ACFTA) is also vigorously criticised:

Such a regional grouping entered on China will . . . be full of exceptions and deviations from WTO norms that limit its economic impact. But it is still virtually certain to trigger a sharp backlash from the United States and European Union, and probably numerous developing countries, because of its new discrimination against them. . . . Even more important systemically, it will create a tripolar global regime with a new Asian pole to counterpoise the existing power centers in Europe and North America. Such a configuration . . . would pose a serious threat to the present institutional construct and could accelerate the deterioration of today’s global system.<sup>42</sup>

<sup>36</sup> Information on the FTAs under negotiations can be found at <http://fta.mofcom.gov.cn>.

<sup>37</sup> See n 6 *supra* and the accompanying text.

<sup>38</sup> F. Bergsten, C. Freeman, Nicholas R. Lardy, D.J. Mitchell, ‘China Debates Its Future’, (Chapter 2), *China’s Rise: Challenges and Opportunities* (Peterson Institute for International Economics and Center for Strategic and International Studies, 2008), at 9–31 (noting that ‘[t]here are increasing signs . . . that China is not comfortable with the current international economic system’).

<sup>39</sup> *ibid.*, at 12.

<sup>40</sup> *ibid.*, at 14.

<sup>41</sup> *ibid.*, at 15.

<sup>42</sup> *ibid.*, at 16.

In essence, these criticisms allege that China's RTAs are politically driven but economically only involve 'shallow integration' rather than 'deep integration,' that China's RTAs are not consistent with WTO law and that China's RTAs will incur possible resentment from the USA and the EU and possibly trigger a domino effect of pursuing RTAs by developing countries. In addition to the aforementioned, there are also criticisms that allege that China's RTAs are likely to generate a hub-and-spokes situation in Asia, leading to other (smaller) Asian countries' dependence on China. This part addresses these criticisms.

### *A China's RTAs are Politically, Not Economically, Driven*

It has to be stressed that all RTAs are politically driven. The WTO, in several of its official reports, points out that the formation of RTAs is driven by both economic and political considerations.<sup>43</sup> Thus, '[p]olitical considerations will inevitably feature in decisions to establish regional trading arrangements,'<sup>44</sup> which could include consolidating peace and increase regional security or acquiring great bargaining power in multilateral or regional trade negotiations.<sup>45</sup> Howard Rosen notes that:

[T]he US–Israel and US–Jordan FTAs are clear examples of the use of trade policy—specifically bilateral free trade agreements—as a means of pursuing foreign policy objectives. The United States' foreign policy interests in these countries and the region are much more significant than its economic interests. Although the agreements serve several objectives, the primary reason the United States entered into them was to pursue foreign policy goals.<sup>46</sup>

RTAs, if managed well, are certainly capable of promoting peace and common security, as a World Bank publication observes that 'trade relations, including [RTAs] and, especially, deeper arrangement, might assist political relations between member countries by developing means for avoidance and management of intramural conflict.'<sup>47</sup> This political virtue of RTAs is especially important for China as the country proclaims to pursue 'peaceful rise' through conducting economic diplomacy that cements closer economic ties with its neighbouring Asian states.<sup>48</sup> Needless to say, the rise of China has caused concerns—and to some extent, fears—among its Asian neighbours.<sup>49</sup> However, as the present author noted in another paper, economic interdependence generated by those RTAs could effectively help reduce tensions between China and the smaller Asian countries as '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.'<sup>50</sup> This is

<sup>43</sup> See World Trade Organization (WTO), *World Trade Report 2003* (World Trade Organization, 2003), and World Trade Organization (WTO), *World Trade Report 2007* (World Trade Organization, 2007).

<sup>44</sup> WTO (2003), *op cit*, at 50.

<sup>45</sup> *ibid.*

<sup>46</sup> H. Rosen, 'Free Trade Agreements as Foreign Policy Tools: The US–Israel and US–Jordan FTAs', in J.J. Schott (ed), *Free Trade Agreements: US Strategies and Priorities* (Institute for International Economics, 2004), at 51.

<sup>47</sup> M. Schiff and A. Winters, *Regional Integration and Development* (Oxford University Press, 2003) 192.

<sup>48</sup> On the political motivations behind China's RTAs, see generally Wang (2004), n 9 *supra*.

<sup>49</sup> T. Johnston, 'South-East Asia: A Wider Radius', *Financial Times* (online), 27 January 2010 (noting that South-east Asian nations fear that China might someday take over the regional production chain and 'swallow south-east Asia's lunch' and that those nations' relations with China are burdened with negative historical baggage).

<sup>50</sup> Wang (2004), *op cit* n 9 *supra*, at 141.

especially true of the China–Taiwan agreement, which, according to Taiwan’s president Ma Ying-jeou, ‘indicated that peace [between Taiwan and China] is within reach.’<sup>51</sup>

Politically driven RTAs are not necessarily economically inefficient. The analytical framework of the economic effects of RTAs is still based on the key concepts of trade creation and trade diversion introduced by Jacob Viner.<sup>52</sup> With respect to the trade stimulating effects of RTAs on the participating members, the finding of economic literature generally suggest that RTAs have a positive welfare consequence on the members.<sup>53</sup> However, the voluminous literature does not offer conclusive evidence as to whether, in any particular RTA or all the RTAs overall, trade creation will exceed trade diversion or vice versa.<sup>54</sup> Not surprisingly, the distinguished economist Lawrence Summers remarked acrimoniously that ‘[t]rade diverting regional arrangements may be desirable despite their trade diverting effects’ and that he found ‘it surprising that this issue is taken so seriously—in most other situations, economists laugh off second best considerations and focus on direct impact.’<sup>55</sup>

In the case of China’s RTAs, the direct impact is that China and its RTA partners are harvesting tremendous economic benefits in addition to the political gains. Under most of China’s RTAs, tariffs on goods will be lowered to zero in a few years, with immediate and substantial tariff reduction upon the effectiveness of the agreements. For example, the China–ASEAN FTA, since its full implementation in 2010, has reduced China’s averaged tariff on ASEAN goods from 9.8% to 0.1%, and ASEAN 6’s average tariff on Chinese goods from 12.8% to 0.6%.<sup>56</sup> The two CEPAs have eliminated China’s tariffs on imported goods of HK and Macau origin. The China–Singapore FTA has realised duty-free treatment for trade in virtually all goods between the two countries. Considering also the substantial liberalisation in services, the prospect of China’s economic integration with its RTA partners is rather impressive.

### B China and the Hub-and-Spoke Bilateralism

Richard E. Baldwin reminds us that the political economy that drives the proliferation of RTAs in Asia may lead to hub-and-spoke bilateralism, which tends to favour imports from the hub and produce trade diversion.<sup>57</sup> As the World Bank observes, in the hub-and-spoke pattern, ‘the largest markets sign individual agreements with a wide range of peripheral countries among which market access remains restricted.’<sup>58</sup> Such a system ‘can marginalise the spokes, where market access conditions are usually less

<sup>51</sup> ‘Ma Ying-Jeou Says the Signing of the ECFA is Significant which Means Cross-Straits Peace is within Reach’, Newswire, China News Agency, available at <http://www.chinanews.com/tw/2010/06-29/2369747.shtml>.

<sup>52</sup> J. Viner, ‘The Economics of Customs Unions’, in M.N. Jovanovic (ed), *International Economic Integration: Critical Perspectives on the World Economy, Volume I: Theory and Measurement* (Routledge, 1998), at 168–183.

<sup>53</sup> Asian Development Bank (ADB), *Asian Development Outlook 2002* (ADB, 2002), at 176; World Bank, *Global Economic Prospectus 2005* (World Bank, 2005), at 57–65.

<sup>54</sup> Wang (2004), *op cit* n 9 *supra*, at 143.

<sup>55</sup> L. Summers, ‘Regionalism and World Trading System’, in Federal Reserve Bank in Kansas City (ed), *Policy Implications of Trade and Currency Zones* (Federal Reserve Bank in Kansas City, 1991), at 299.

<sup>56</sup> ‘China–ASEAN FTA Has a Good Start’, news item at the web site of the PRC Ministry of Commerce at [http://fta.mofcom.gov.cn/article/ftazixun/201102/5114\\_1.html](http://fta.mofcom.gov.cn/article/ftazixun/201102/5114_1.html).

<sup>57</sup> R. Baldwin, ‘The Spoke Trap: Hub and Spoke Bilateralism in East Asia’, in B. Eichengreen, Y.C. Park and C. Wyplosz (eds), *China, Asia, and the New World Economy* (Oxford University Press), at 51.

<sup>58</sup> World Bank (2005), *op cit* n 53 *supra*, at 40.

advantageous than in the hub, which enjoys improved access to all of the spokes.’ In a region that accommodates several large economies, overlapping hub-and-spoke configurations tend to emerge. In the worst scenario, hubs have multiple FTAs with smaller spokes, but the spokes do not liberalise between themselves.<sup>59</sup> This will not only create multiple layers of discrimination through exclusive trade preference and complex ROOs but also place the spokes at a disadvantage as foreign investment tend to move to the hubs in order to gain more market access.

Using a global ‘computable general equilibrium’ model (GEMAT) to trace the numerical impact of trade globalism, regionalism and bilateralism, ADB found that if two hub-and-spoke configurations in Asia are stimulated, namely the ‘China hub’ and the ‘ASEAN hub,’

Compared to the Asian free trade scenario that extends MFN status to countries outside Asia, the Asian hub-and-spoke scenario generates somewhere between one fifth and one quarter of the global gains. Within developing Asia [excluding Japan], hub-and-spoke systems are inferior to regional free trade and to multilateral liberalisation initiatives. A [China] hub generates just over half the benefits of Asian free trade for Asian developing countries, and an ASEAN hub, which implicitly entails the removal of more trade distortions, about 70% of the benefits.<sup>60</sup>

However, in pursuing trade bilateralism, the hub economies—in the ADB model, which are China and ASEAN—gain larger benefits. For instance, China’s welfare gain from a regional hub position is almost four times that from pan-Asian free trade, and ASEAN as well is better off by becoming a hub than under the Asian free trade scenario.<sup>61</sup>

Thus, at least from an economic perspective, the hub-and-spoke bilateralism does exist, although its net effects might be exaggerated. First, it is not likely that Asian regionalism, or even East Asian regionalism, is featured with one hub surrounded by many hubs. In terms of trade capacity, East Asia has a few ‘power centres,’ including ASEAN, China, Japan and Korea. Among these power centres in Asia, it will be difficult to identify who is far more powerful than others to be the hub and who are obviously the weaker spokes. Second, all the East Asian economies are actively pursuing bilateralism and have signed numerous FTAs that have formed a complicated ‘noodle bowl,’ which makes it even more difficult to determine the hub and the spokes. For instance, as the first country in Asia to sign FTAs, Singapore has been involved in 35 concluded and proposed RTAs, the largest number among Asian countries. One would have problems in characterising Singapore either as a hub or a spoke. In fact, Singapore has successfully eliminated the possibility of being treated merely as a spoke by signing FTAs with many countries, including both great trading powers and small economies.

That said, to eliminate the economically bad situation of hub-and-spoke bilateralism, the best solution is to pursue regionalism on a broader basis—namely, involving more East Asian countries with fewer agreement. For example, an East Asian Free Trade Area could effectively avoid such a situation by putting all the East Asian economies in a trading zone free of internal tariff and non-tariff barriers.

<sup>59</sup> Asian Development Bank (ADB), *Asian Development Outlook 2006* (ADB, 2006), at 281.

<sup>60</sup> *ibid.*, at 288.

<sup>61</sup> *ibid.*

### C *WTO Consistence of China's RTAs*

In principle, all RTAs signed by WTO members should comply with the relevant WTO law on regionalism, which include Article XXIV of the General Agreement on Tariffs and Trade (GATT) 1947, the so-called 'Enabling Clause,' which gives differential treatment to developing countries, and Article V of the General Agreement on Trade in Services (GATS).<sup>62</sup> Under the most important Article XXIV of GATT, an RTA must eliminate 'duties and other restrictive regulations of commerce' with respect to 'substantially all the trade' between their constituent customs territories (the so-called 'substantially all-trade' or SAT requirement).<sup>63</sup> Further, Article XXIV:5 of GATT requires that in an RTA, or interim agreement leading to an RTA, 'the duties and other regulations of commerce' of the parties to the RTA 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 [RTA].'

Francis Snyder examined carefully the specific normative, institutional and procedural aspects of China's RTAs, focusing on non-preferential ROOs, safeguards and dispute settlement mechanism, and concluded these rules are largely precise, clear and compatible with the WTO law. In short, 'China's RTAs are substantially based on WTO law, integrate WTO law to a considerable extent and for the most part are drafted with a view to WTO-consistency.'<sup>64</sup>

Despite the apparent consistency with WTO law as suggested by Professor Snyder, the present author has, quite provocatively, argued elsewhere that WTO law on RTAs, as it currently stands, is very much irrelevant when it comes to assessing the legality of RTAs:

[F]irstly, the WTO rules on the introduction of RTAs 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). Second, 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 the failure of enforcement is the divergent interpretations of WTO rules by Members, the real implication seems to be that almost no RTA can ever be declared unlawful under the current WTO regime and that the process of the [Committee on RTAs] examination can, in practice, be ignored.<sup>65</sup>

## IV **China and East Asian Regionalism**

China's RTAs form part of the development of regionalism in Asia, especially in East Asia. As noted previously, Asian economic integration has largely been a market and corporations-driven process than a policy-driven process. China is playing a leading role in this integration process. First, China's rapidly growing imports have created a new and stronger basis—in addition to the American and European markets—for regional growth in Asia. China is now the world's second largest trader and importer and is the largest export destination country for Japan, Korea and Taiwan and one of the largest for the ASEAN. Second, China sits comfortably at the centre of the region's production-sharing scheme. A 2004 United Nations Conference on Trade and Devel-

<sup>62</sup> For a detailed analysis of WTO law on regionalism, see Wang (2004), *op cit* n 9 *supra*, at 132–138.

<sup>63</sup> Article XXIV:8 of GATT.

<sup>64</sup> Snyder, *op cit* n 9 *supra*, at 5 and 29–47.

<sup>65</sup> Wang (2004), *op cit* n 9 *supra*, at 138.

opment report observes that '[d]eep production sharing practices within the [East Asian] region have contributed substantially to the rise of intraregional trade flows. In particular, China's emergence as a major production site for labor-intensive stages of production and assembly has exerted a huge impact on such flows, both within Asia and between Asia and the rest of the world.'<sup>66</sup> ADB also noted that 'as the hub of production networks that involve components manufactured throughout East Asia, the PRC has become a major force driving regional integration.'<sup>67</sup>

China was the first East Asian country to initiate government-driven economic integration with the ASEAN with the signing of the 2001 China–ASEAN Framework Agreement. This move triggered a domino effect that compelled Japan, South Korea and India to jump on the bandwagon. Policy-makers are now following the markets in promoting trade regionalism in Asia, focusing on establishing an institutional framework to further economic integration. This requires the East Asian economies to cooperate on setting regional policies on trade, investment and finance, which in turn means that a regional body with certain power given by the East Asian countries needs to be established as the institutional oversight for economic integration. Although the consensus for building an East Asian economic community largely exists in Asia,<sup>68</sup> there are several competing strategies as to how this can be achieved.

On its surface, East Asian economic integration has been centred on the ASEAN. In other words, the more powerful countries in the region, including China, Japan and South Korea, allow ASEAN to sit in the 'driver's seat' for Asian regionalism. It is of course a delusion to view ASEAN as the widely accepted leader for this cause as well as a natural hub for economic integration. In fact, both China and Japan are much more powerful than ASEAN in terms of their trading capacity and geopolitical influences. Ironically, this is the very reason why neither China nor Japan would allow each other to take the 'driver's seat.' Thus, the ASEAN leadership 'actually depends to a large extent on distrust, rivalry and non-cooperation among the great powers.'<sup>69</sup> However, ASEAN certainly has some other advantages: ASEAN has a long history of conducting regional economic cooperation and is more experienced than other players in terms of institutional development. ASEAN's integration approach, the so-called 'ASEAN Way,' which features a gradual, pragmatic, individual-issue based multi-track and multi-speed architecture, provides a valuable template for broader economic integration in Asia. ASEAN has declared a new blueprint for establishing an ASEAN Economic Community, which puts it far ahead of other Asian economies in acquiring experiences on institutional building for regional cooperation. Further, a successful ASEAN Economic Community can be the basis for an East Asian economic community.

For decades after World War II, Japan hesitated to be involved in Asia-only regionalism and would rather view itself as part of the Western world. Japan concluded an Economic Partnership Agreement with Singapore (the Japan–Singapore Economic Partnership Agreement (JSEPA)) in 2002 cautiously based on its renewed interest in regionalism. Triggered by the China–ASEAN FTA Framework Agreement, Japan

<sup>66</sup> United Nations Conference on Trade and Development (UNCTAD), *Trade and Development Report 2004* (UNCTAD, 2004), at 46.

<sup>67</sup> ADB (2008), *op cit* n 4 *supra*, at 47.

<sup>68</sup> See generally ADB (2008), *op cit* n 4.

<sup>69</sup> L. Jones, 'Still in the "Driver's Seat," But for How Long? ASEAN's Capacity for Leadership in East Asian International Relations', (2010) 29 *Journal of Current Southeast Asian Affairs* 97.



started negotiating with ASEAN and concluded the ASEAN–Japan Comprehensive Economic Partnership Agreement in April 2008.

As Asia is increasingly becoming the most dynamic area for economic growth, Japan certainly wishes to enhance its engagement in the region and take the leadership position. Most importantly, Japan wishes to use regionalism to counterbalance the influence of a rising China.<sup>70</sup> For this, Japan has advocated to create a value-based East Asian Community featuring the principles of openness, flexibility, transparency and inclusiveness as well as the shared universal values such as democracy, human rights and rule of law.<sup>71</sup>

In contrast, China's RTA strategy is mainly based on economic cooperation for mutual benefits. This low-key profile, on one hand, was purposely designed to alleviate the concerns of Asians on China's mighty resurgence. On the other hand, China at its current stage of development probably does not have many values (such as the human rights, rule of law, democracy as proclaimed by Japan) to sell to its Asian neighbours. Yet, China enthusiastically supports the idea of an East Asian Economic Community as the region is vital to China's security and economic interests.<sup>72</sup>

China's position on Asian regionalism can be summarised in the following sections.

#### *A A Multi-Track Approach with a Preference on Bilateral FTAs*

China believes that regionalism can be pursued simultaneously through both bilateral and regional approaches, although it has implied that an East Asian economic community should be preceded by bilateral or sub-regional FTAs linking the major economies in the region. Vice Minister Yi Xiaozhun of the Chinese Ministry of Commerce recently disclosed China's desired path to an Asian economic community: 'China wishes that, on the basis of the ASEAN–China 10 + 1 free trade area, we could accelerate the establishment of the China–Korea FTA, China–Japan FTA and eventually the China–Japan–Korea FTA. On this basis, we will then work on the ASEAN+3 (China, Japan, Korea) FTA. Meanwhile, we are open to the idea of an ASEAN+6 FTA (China, Japan, Korea, India, Australia, New Zealand), as well as the Trans-Pacific Partnership (TPP) Agreement.'<sup>73</sup> Of course, the priority will be given to the formation of a Greater China economic community that integrates Mainland China with HK, Macau and Taiwan.

#### *B Easy Things First, Low Starting Point, and Economic Concessions for Political Goals*

Despite the criticism of conducting only 'shallow integration,' China has always been willing to start with a low threshold for bilateral, such as accepting ASEAN's 'own penchant for weak accords' as alleged by some American strategists.<sup>74</sup> In addition, almost all of China's FTAs with Asian countries (except for the China–Singapore

<sup>70</sup> See generally, S. Yul, *Japan's New Regionalism: China Shock, Universal Values and East Asian Community*, WIAS Discussion Paper no. 2009–005 (Waseda Institute for Advanced Studies, 2009).

<sup>71</sup> *ibid.*, at 1–5.

<sup>72</sup> Y. Zhang, *China and Asian Regionalism* (Singapore: World Scientific, 2010), at 7–8.

<sup>73</sup> Cited in *Conference on Free Trade Agreements in Asia Opened in Beijing*, Newswire, China News Agency, 13 December 2010, available at [http://fta.mofcom.gov.cn/article/zhengwugk/201012/4455\\_1.html](http://fta.mofcom.gov.cn/article/zhengwugk/201012/4455_1.html) (accessed 1 January 2010).

<sup>74</sup> See n 41 *supra* and the accompanying text.

FTA) started with an EHP that offers tariff reduction even before the formal formation of the FTAs.<sup>75</sup> In addition, China's FTAs permit the parties to exclude a wide range of 'sensitive' products from further liberalisation.<sup>76</sup>

The relatively low starting point does not mean that China is not interested in conducting 'deeper integration.' It probably only reflects China's tradition of being pragmatic, flexible and gradual in foreign affairs. Although early FTAs signed by China focused almost entirely on goods and services,<sup>77</sup> the recent comprehensive RTAs concluded or negotiated by China cover investment, standards, dispute resolution and other areas. The early framework work agreements initially materialised liberalisation in goods and services, but also identified areas for future cooperation. This was obviously the case of the China–ASEAN FTA, the two CEPAs and the ECFA. Later development has shown that this was not a false promise. Over the years, the China–ASEAN FTA and the CEPAs have been largely turned into comprehensive FTAs.

Although China stresses 'mutual interests' for the FTA parties, it does not adamantly insist upon full reciprocity. In other words, it is willing to let its Asian FTA partners to harvest more economic benefits from the FTAs. For example, the CEPAs only require China to lift its tariffs on goods imported from HK and Macau as well as substantially liberalise its services sectors, while the two special administrative regions under Chinese sovereignty are almost free of obligations (which probably because they are already free trade ports with very few tariff and non-tariff barriers). In the China–ASEAN FTA, China also gave unilateral concessions to ASEAN members that felt they would not benefit as much from the EHP.<sup>78</sup>

### C Open Regionalism with Chinese Definition

China rhetorically embraces the concept of 'open regionalism.' Chinese Premier Wen Jiabao stated in the First East Asian Summit in December 2005 that 'I wish to emphasise that East Asia cooperation should be a transparent and open process. It should not be something that is closed, exclusive and directed against any particular party. China takes the position that in pursuing regional cooperation, it is imperative to be open-minded and promote open regionalism so as to achieve progress for all countries and development in all regions.'<sup>79</sup> He indicated China's support for 'the participation of India, Australia and New Zealand in the East Asia cooperation process' as they will expand greatly the scope of cooperation, and welcomed the USA, the EU and other countries and organisations outside the region 'to enter into relations with the East

<sup>75</sup> EHP is included in the China–ASEAN FTA, China–Pakistan FTA, the CEPAs and the ECFA. China has also indicated to have the EHP in its FTAs with Japan and Korea if possible.

<sup>76</sup> For example, the Sensitive Track in the China–ASEAN FTA permits the participating countries to protect a limited amount of trade goods, which, according to their own perception, are sensitive for their economies. The number of sensitive tariff lines must not exceed 400 or 10% of the total import value based on 2001 trade statistics for the ASEAN 6 and China, and 500 for other four ASEAN countries. See J. Wang, 'Association of Southeast Asian Nations—China Free Trade Agreement', in S. Lester and B. Mercurio (eds), *Bilateral and Regional Trade Agreements: Case Studies* (Cambridge University Press, 2009), at 198.

<sup>77</sup> Antkiewicz and Whalley, *op cit* n 9 *supra*, at 1540.

<sup>78</sup> Annex 2 of the Framework Agreement of the China–ASEAN FTA, discussed in Wang (2004), *op cit* n 9 *supra*, at 125.

<sup>79</sup> J. Wen, *Be Open and Inclusive and Achieve Mutual Benefits and Common Progress*, speech at The First East Asia Summit, Kuala Lumpur, Malaysia, 14 December 2005, available at <http://www.fmprc.gov.cn/eng/wjdt/zyjh/t228275.htm>.

Asia cooperation mechanism and to play a positive and constructive role in promoting stability and development in East Asia.<sup>80</sup>

The statements of Premier Wen and Vice Minister Yi Xiaozhun carry a very clear message: regarding what states ought to be included within the East Asian regional community, China prefers the ASEAN + 3 (China, Japan and Korea). It has reluctantly accepted the participation of India, Australia and New Zealand but would not welcome the inclusion of other countries outside the region such as the USA and the EU.

What are the implications of the aforementioned Chinese position for Asian regionalism? First, China obviously wishes to control the pace of regional economic integration in China. Hence, an East Asian economic community would not be desired if it is not based on bilateral or trilateral FTAs between the major regional economies, including China, the peripheral Chinese economies (HK, Macau and Taiwan), Japan, Korea, ASEAN and possibly India, New Zealand and Australia. This means that China would not be enthusiastic in promoting early establishment of a region-wide institutional framework for economic integration in East Asia. China would be happy to watch the institutional building of the ASEAN community and possibly endorse it as the foundation for creating an institutional architecture for East Asian economic cooperation in the future.

Further, China wishes East Asian regionalism can maintain an 'Asian' identity by excluding the participation of the great powers from outside, especially the USA and the EU, who, under the Chinese definition of 'open regionalism,' are only welcome to develop economic relations with the proposed East Asian community as the region's global partners but not as members of the community. In short, it might be correct to conclude that China intends 'to produce an East Asia Free Trade Area led by China within the next decade as part of its broader strategy of promoting regional identity and solidarity.'<sup>81</sup>

## V Improving China's RTAs: Some Suggestions

Any suggestion to 'improve' China's RTAs would be a fake issue if the reference framework is not clearly identified. The question is for what purpose, towards what end and based on what standard should China improve its RTAs? As all China's major trading partners are pursuing regionalism and China and its RTA partners have gained tremendous economic benefits from their trade agreements, it would be both hypocritical and unrealistic to ask China not to implement its 'FTA strategy.'

It is, however, submitted that the reference framework must be based on China's long-term interest as well as the impact of China's RTAs activities on its Asian neighbours. China has a long-term interest in broader liberalisation on a multilateral basis that can generate greater net benefits for all trading nations. As one of the world's largest trading powers, China has a responsibility to ensure that its RTAs are building blocks for the multilateral trading system. As a major driving force behind East Asian regionalism, China also shoulders the responsibility to accelerate the creation of an East Asia-wide FTA that can benefit all countries in the region on a more equal basis than hub-and-spoke bilateralism.

<sup>80</sup> *ibid.*

<sup>81</sup> Bergsten *et al. op cit* note 38 *supra*, at 16.

The first suggestion is related to addressing the negative impact of Asian RTAs on the multilateral trading system. RTAs can cause the famous ‘spaghetti bowl’ or ‘noodle bowl’ effect resulted from different trading rules and preferences under multiple, overlapping, discriminatory trade agreements. In particular, the complexity of the tariff rates and ROOs will not only add huge business costs but also make the international trading system chaotic.<sup>82</sup> Asian FTAs, including those signed by China, are of no exceptions. In fact, the president of ADB already warned that the Asian ‘noodle bowl’ effect of FTAs could impede broader regional and global integration.<sup>83</sup>

As Kawai and Wignaraja observe, the Asian noodle bowl phenomenon lies in the facts that ‘different FTAs in Asia contain varying coverage, modalities and time frames for tariff concessions,’ ‘tariff preferences margins vary across products and FTAs’ and ‘ROOs differ across FTAs and products while origin administration also differs significantly across East Asian countries.’<sup>84</sup> For instance, except for the China–ASEAN FTA, China–Singapore FTA and the AFTA, which use the single and simple regional value content (RVC) rule, the majority of Asian FTAs use a combination of at least three ROOs.<sup>85</sup> Further, regarding the RVC rule, most Asian FTAs require a 40% or higher RVC. Probably the most restrictive RTA in terms of ROOs is the Japan–Singapore EPA, which contains product-specific rules for individual products, with RVC as high as 60% for certain products. The 30% RVC in China’s two CEPAs is probably the lowest RVC requirement in East Asian FTAs.

Thus, China’s RTA practice demonstrates that the country is willing to take a relatively more liberal attitude towards ROOs, namely adopting simple rules and lower RTC requirements. It is suggested that China takes the lead to establish an ‘ROO Union’ by adopting identical ROOs in its FTAs with Asian countries. Preferably, the proposed ROO union should adopt in principle only the simple RVC rule for most products, and the content requirement should not be higher than 30% as required in China’s two CEPAs. The simple ROO requirement can be adopted in the proposed China–Japan FTA, China–Korea FTA and China–Japan–Korea FTA, the ASEAN + 3 FTA and eventually, the East Asian FTA. This requires China, Japan, Korea and ASEAN, when negotiating their new FTAs, to be mindful of the future of East Asian regionalism, especially with their aim to create an East Asia-wide RTA. Identical ROOs in bilateral or sub-regional FTAs will lay a solid foundation for a common ROO regime in the eventual East Asia FTA.

At some point in the future, all the intra-region FTAs will be consolidated into a single FTA. Although whether this will be an ASEAN + 3 or ASEAN + 6 community is a debatable question, it is certain that such an East Asia-wide FTA will be composed of and benefit most countries in the region. For this reason, bilateral agreements pursued by East Asian countries, including China, should be made friendly to the future East Asian economic integration arrangement. For this purpose, China should support the establishment of an institution in East Asia to develop common standards and best practices to guide the bilateral and sub-regional FTAs. This body, with the

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<sup>82</sup> J. Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (Oxford University Press, 2008), at 61–71.

<sup>83</sup> For a discussion of the Asian noodle bowl phenomenon, see M. Kawai and G. Wignaraja (eds), *Asia’s Free Trade Agreements: How is Business Responding?* (Asian Development Bank and Edward Elgar, 2010), at 11–19.

<sup>84</sup> *ibid.*, at 14.

<sup>85</sup> *ibid.*, at 15.

participation of all interested East Asian countries and under the auspices of a regional forum such as the East Asian Summit or the ASEAN, should produce a set of guidelines and principles for the FTAs in East Asia with a view of ensuring that those agreements lead to integration rather than fragmentation of trading relations in East Asia. It is even highly possible that bilateral and sub-regional arrangements, if designed with measures incorporated to mitigate distortions and inefficiencies, can deepen regional economic integration and even 'present additional opportunities to those currently accommodated within the multilateral framework.'<sup>86</sup>

## VI Conclusion

East Asia is steadfastly marching to regional economic integration and China is a major driving force behind this movement. China has signed a number of bilateral FTAs and is in the process of negotiating more such agreements with countries within and without Asia. This paper divides China's RTAs into four groups, namely REIAs, economic integration agreements for the Greater China area, standard bilateral agreements and development agreements. It argues that there is not necessarily anything wrong with China's RTAs being loaded with political goals such as pursuing national unification and regional security. These RTAs are also consistent with WTO rules, although the relevance of WTO law is questionable as it is ambiguous and has never been adequately interpreted and applied to measure the legality of any RTA. The paper also discusses China's position on East Asian regionalism, pointing out that China wishes East Asia to pursue regionalism on multi-track and at multi-speed, that China tends to 'do easy things first' and then gradually move to deeper liberalisation and integration and that China's definition of 'open regionalism' does not include outside countries such as the USA and the EU. The paper has also made suggestions to China for improving its RTAs in the interest of establishing an East Asia FTA, including the establishment of a 'Rules of Origin Union' and the development of best practices for bilateral and sub-regional FTAs through an institution under the East Asian Summit or the ASEAN. In short, as the most powerful country in Asia, China has a leadership responsibility to ensure that its own RTA activities contribute to 'the emergence of a strong, prosperous, and outward-looking Asian economic community.'<sup>87</sup>

*First submission: March 2011*  
*Final draft accepted: May 2011*

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<sup>86</sup> ADB(2006), *op cit* n 59 *supra*, at 290.

<sup>87</sup> ADB (2008), *op cit* n 4 *supra*, at 273.