



Philippine Institute for Development Studies  
*Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas*

## A Comparative Study of Bilateral FTA/CEP Arrangements

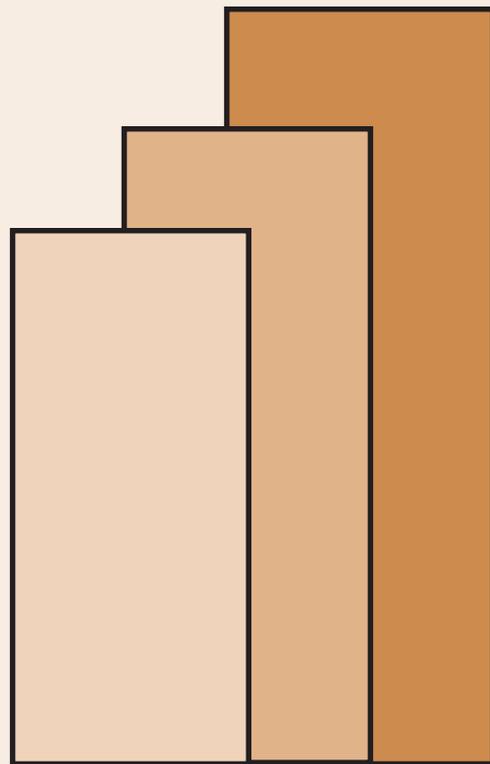
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# **A Comparative Study of Bilateral FTA/CEP Arrangements**

John Lawrence Avila

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# **A Comparative Study of Bilateral FTA/CEP Arrangements**

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## **Abstract**

This study is a comparative analysis of recently concluded bilateral free trade or closer economic partnership agreements including the Japan-Singapore Economic Partnership Agreement (JSEPA), the New Zealand-Singapore Closer Economic Partnership (NZSCEP), the United States-Singapore Free Trade Agreement (USSFTA), the Singapore-Australia Free Trade Agreement (SAFTA), and the Korea-Chile Free Trade Agreement (KCFTA). The primary objective here is to describe and analyze the structure and institutional aspects of these agreements. This paper draws out the general outlines of these bilateral accords looking into their defined principles, scope of preferences, system of rules, and other regime features. These five bilateral agreements are examined against their consistency with WTO, comprehensiveness defined in terms of the scope and depth of the agreement, the degree of flexibility defined in terms of coverage of exemptions given to members, and the level of institutionalization, referring to the organizational and implementing aspects of the agreement.

Keywords: bilateral agreements, structural and institutional aspects of FTA/ CEP, Japan-Philippines economic partnership

## Executive Summary

The growing trend toward preferential trading arrangements, particularly of the bilateral kind, has become a prominent feature of the international trading system. The lowering and elimination of tariff barriers are a major part of most bilateral FTAs. The coverage of contemporary agreements now extends beyond the traditional areas of trade policy and typically includes investment, services and standards. Investment and services trade liberalization are now common features of many bilateral agreements. Economic and technical cooperation and exchange have also been included. Not a few of the current crop of FTAs have been broadly termed as “closer economic partnerships” to reflect the broader scope of collaboration between the member states.

This study will undertake a comparative analysis of recently concluded bilateral free trade or closer economic partnership agreements including the Japan-Singapore Economic Partnership Agreement (JSEPA), the New Zealand-Singapore Closer Economic Partnership (NZSCEP), the United States-Singapore Free Trade Agreement (USSFTA), the Singapore-Australia Free Trade Agreement (SAFTA), and the Korea-Chile Free Trade Agreement (KCFTA).

The primary objective here is to describe and analyze the structure and institutional aspects of these agreements. This essay draws out the general outlines of these bilateral accords looking into their defined principles, scope of preferences, system of rules, and other regime features. This will hopefully enable us to identify certain benchmarks and establish a reference point for other countries seeking to establish preferential trade arrangements.

To evaluate these five bilateral agreements, this paper employs some general principles that ideally characterize preferential trade arrangements. First, they are examined against their consistency with WTO, particularly provisions relating to GATT Article XXIV governing free trade areas and customs unions. These agreements are also analyzed on the comprehensiveness defined in terms of the scope and depth of the agreement. It would be significant to determine whether any of these bilateral accords go beyond their commitments under WTO rules. The study will also seek to describe the degree of flexibility defined in terms of coverage of exemptions given to members. Finally, the level of institutionalization, referring to the organizational and implementing aspects of the agreement, will be described here.

These five trade agreements show a broad coverage of economic cooperation extending beyond tariffs and non-tariff measures and including other areas of cooperation such as investment and services. While the traditional approach of preferential tariff elimination in merchandise trade remains a central feature, these FTAs go beyond cross-border goods trade issues and provisions of existing WTO agreements (see Table 1). Some of the agreements here are referred to as Closer Economic Partnership (CEP) agreements to describe not only trade liberalization and facilitation but also a broader area of economic and technical cooperation.

Table 1: Coverage of FTAs/CEP

	JSEPA	SAFTA	USSFTA	NZSEPA	KCFTA
Tariff and non-tariff elimination	●	●	●	●	●
Trade remedies	●	●	●	●	●
Rules of origin	●	●	●	●	●
Customs valuation and administration	●	●	●	●	●
Investment	●	●	●	●	●
Services	●	●	●	●	●
Mutual recognition of standards	●	●	●	●	
Government procurement	●	●	●	●	●
Intellectual property protection	●	●	●	●	●
Competition policy	●	●			●
Dispute settlement	●	●	●	●	●
Electronic commerce/ICT	●	●	●		
Science and technology	●				
Human resource development	●	●			
Small and medium enterprises	●				
Tourism development	●				
Labor			●		
Environment			●		

## Trade in goods

The JSEPA, SAFTA and NZSCEP provide for the immediate elimination of tariffs as well as the elimination of quantitative restrictions. The tariff elimination schedule between South Korea and Chile allowed for accommodation of each other's domestic interests. Most of these accords were short of complete liberalization. The JSEPA virtually involved no new tariff liberalization on agricultural products. Given the relatively low trade barriers in Singapore, the USSFTA, JSEPA, SAFTA and NZSCEP had little significance in the area of tariff elimination.

The FTAs under review had different approaches to ROO. JSEPA, USSFTA, and KCFTA adopted the more technically complicated product-by-product approach to determining origin of products, containing voluminous annexes detailing the rules for each traded product. On the other hand, SAFTA and NZSCEP adopted the more simple threshold approach. For SAFTA, all products need only fulfill a general rule of a specified threshold of local value content of 50 percent. NZSCEP stipulates an area content threshold of 40 percent to qualify for duty-free entry.

The agreements also extend cooperation in trade facilitation, particularly in mutual recognition or harmonization of product standards and sanitary and phytosanitary standards. The JSEPA, SAFTA, and NZSEPA provides for mutual recognition, unilateral recognition, or harmonization of product standards and sanitary and phytosanitary standards. The USSFTA took a step towards eliminating standards, technical regulations and procedures in trade in telecommunication products and services.

## Trade in services

All the FTAs surveyed here all include a section on services (see Table 2). The KCFTA, USSFTA and SAFTA adopted the negative-list approach to its commitments in bilateral services trade with all sectors considered *a priori* liberalized provided an exception was expressly reserved.

The KCFTA guarantees mutual market access and right of establishment waiving the requirement of a local presence. NZSEPA and JSEPA adopted the positive list approach.

While aiming for preferential liberalization of services trade, member countries also sought to exclude certain sectors from the agreement or apply conditions to market access and national treatment. The negative list approach adopted in KCFTA, USSFTA and SAFTA produced a list of services sectors exempted from the agreement. Most reservations were made for Mode 4 or movement of natural persons.

Services supplied by an investor or Mode 3 of services trade, together with investments in the manufacturing sector, falls under the chapter on investment in all treaties under review. The general aim is to increase access to each other’s markets fostering open environment for cross-border investment, minimize restrictions, and strengthen protection of investment. MFN and national treatment applies for all stages of investment, from pre-establishment to post-establishment phase. For some, this section also contains comprehensive provisions on investment promotion and protection. In addition, an investor dispute resolution mechanism has also been put in place to protect each other’s investors.

Table 2: Services commitments

	JSEPA	SAFTA	USSFTA	SNZEPA	KCFTA
Business services	●	●	●	●	●
Professional services	●	●	●	●	●
Computer services	●	●	●	●	●
Communication services	●	●	●	●	●
Construction and engineering services	●	●	●	●	●
Distribution services	●	●	●	●	●
Educational services	●	●	●	●	●
Environmental services	●	●	●	●	●
Financial services	●	●	●	●	●
Health services		●	●	●	●
Tourism and travel services	●	●	●		●
Recreational, cultural and sporting services	●	●	●	●	●
Transport services		●	●	●	●

### Other areas of cooperation

The term “New Age” has come to characterize contemporary FTA arrangements spreading throughout the Asian region. The five agreements covered in this study all depart from the conventional focus of free trade areas and has come to include areas aimed at expanded economic and technical cooperation (see Table 3). They contain chapters on competition policy, science and technology, human resource development, small and medium enterprises, electronic commerce, tourism development and broadcast development. In the case of the USSFTA, provisions on labor and environment were included.

Table 3: Other areas of cooperation

	JSEPA	SAFTA	USSFTA	NZSEPA	KCFTA
Competition policy	●	●	●	●	●
Government procurement	●	●	●	●	●
Intellectual property protection	●	●	●	●	●
Science and technology	●				
Human resource development	●	●			
Trade and investment promotion	●				
Small and medium enterprises	●				
Broadcast development	●				
Tourism development	●				
Environmental issues			●		
Labor standards			●		
Electronic commerce		●	●	●	

The JSEPA is the more wide-ranging of the FTA agreements surveyed here. It establishes a formal science and technology cooperation framework to foster collaboration in research and development in areas of advanced technologies relevant to the development of current and future industries and community in Japan and Singapore. The JSEPA also includes joint cooperation in human resource development and programs to provide technical assistance to benefit third parties, particularly from developing countries within the region. In addition, Japan and Singapore agreed to work together to promote cooperation between and amongst small and medium enterprises from both countries. The USSFTA is the only agreement under survey that contains provisions pertaining to environmental and labor standards.

### **Institutional issues**

All of the agreements reviewed here included a provision on dispute avoidance and settlement. Members have agreed to establish a system of dispute settlement procedures, including investment disputes. The provision focuses on consultations, negotiations, conciliation and arbitration rather than the application of trade sanctions.

A supervisory committee has also been established to ensure the proper implementation, conduct reviews, and propose amendments to the agreement. Other functional committees, covering different areas of cooperation, were also established. These joint bodies are to serve as channels for bilateral coordination, management, and monitoring of the implementation of the agreement. Regarding the settlement of disputes, arbitral tribunals are to be established to assess and resolve a complaint. The JSEPA increase economic cooperation on various functional levels between Singapore and Japanese government agencies. JSEPA established the following committees: (a) joint committee on financial services cooperation, (b) joint committee on MRA, and (c) joint committee on science and technology.

### **Concluding observations**

The five bilateral FTA/CEP agreements surveyed in this paper appear consistent with WTO rules and disciplines. In general, the removal of tariff and non-tariff barriers is immediate except for the KCFTA, which contains a phase-in tariff elimination timetable. Many initiatives go beyond cross-border goods trade issues. In fact, they may be characterized as WTO-plus arrangements, particularly in services and investment and many include new issues such as

government procurement, competition policy and, in the case of the USSFTA, even labor and environment standards. Relatively, the JSEPA is much wider in scope though the USSFTA is more detailed and stringent. Parties to these agreements allowed certain flexibilities in the provision of trade remedies, negotiated exemptions and deferred timeframes for tariff elimination. Institutional issues, such as those referring to monitoring and dispute settlement, were also major features of the agreements.

There is also substantial differentiation among the five agreements. There were different approaches to defining rules of origin raising the prospect of overlapping and conflicting trade rules that could complicate regional transactions. These countries also took separate paths to services liberalization with some opting for the negative-list approach while others choosing the positive-list approach. There were also some variation in the degree of harmonization of national standards and policies.

These five agreements were the result of tedious and often difficult and drawn out negotiations between the countries involved. The outcomes were the result of bargaining and compromises as each country sought to push its national interests in the agenda. Nevertheless, these agreements present varied and innovative approaches and modalities to bilateral trade liberalization. They can be helpful guides for other countries, particularly in the Asian region, intending to enter into their own free trade agreements.

# A Comparative Study of Bilateral FTA/CEP Arrangements

John Lawrence Avila<sup>a</sup>

## I. Introduction

The growing trend toward preferential trading arrangements, particularly of the bilateral kind, has become a prominent feature of the international trading system. Structural changes in the global economy and the growing interdependence between national economies have induced many countries to establish free trade arrangements. Several countries across the region have concluded bilateral trade deals in the past few years. The recent failure of the World Trade Organization meeting in Cancun reinforced this trend. The collapse of the Doha round of multilateral trade negotiations bolsters the demand for alternative arrangements in order to guarantee access to foreign markets.

The drift in the direction of bilateralism has important consequences for countries involved in such an arrangement as well as for those who are excluded from it.<sup>1</sup> A free trade agreement (FTA) between two or more countries foster greater reciprocal benefits and contribute to economic growth. Members of an FTA benefit from mutual preferential access that are better than those extended to others. More significantly, lowering trade barriers on merchandise trade can lead to cooperation in other important commercial areas. Market access in services and investment can likewise improve. Exchanges in technology and human resource development are further enhanced. Trade liberalization and facilitation encourages closer economic linkages and leads to deeper integration.

There are concerns about the diversionary effects of preferential trade arrangements. The discriminatory character of free trade areas could potentially harm non-member countries. A bilateral free trade agreement cannot only divert trade but also investment flows away from countries excluded from such a deal. The cost of exclusion could be high leading to welfare and efficiency losses for competing countries as well as for consumers of the member countries. Trade discrimination may bring about higher transaction costs and other opportunity losses.

The calculation of benefit and cost essentially depend on the makeup of a bilateral free trade agreement. The lowering and elimination of tariff barriers are a major part of most bilateral FTAs. The coverage of contemporary agreements now extends beyond the traditional areas of trade policy and typically includes investment, services and standards. Investment and services trade liberalization are now common features of many bilateral agreements. Economic and technical cooperation and exchange have also been included. Not a few of the current crop of FTAs have been broadly termed as “closer economic partnerships” to reflect the broader scope of collaboration between the member states.

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<sup>1</sup> See Austria and Avila (2001) and Avila (2003). See also Scollay and Gilbert (2001).

This study will undertake a comparative analysis of recently concluded bilateral free trade or closer economic partnership agreements involving Asian countries. The primary aim of this comparative study is to discover a possible template that could serve as a guide for the Philippines as it considers entering into a bilateral free trade area.<sup>2</sup> What framework or model should guide the Philippine's decision to enter into a bilateral FTA? What would be the scope of this bilateral arrangement? What should be the negotiating modalities? This paper intends to fill in this research gap by examining recently concluded preferential pacts. This study will be limited to the following:

- Japan-Singapore Economic Partnership Agreement (JSEPA)
- New Zealand-Singapore Closer Economic Partnership (NZSCEP)
- United States-Singapore Free Trade Agreement (USSFTA)
- Singapore-Australia Free Trade Agreement (SAFTA)
- Korea-Chile Free Trade Agreement (KCFTA)

This sample includes bilateral trade treaties officially entered into by participating members. Four of these agreements involve Singapore, an economy with relatively low tariff barriers and with no agricultural sector. An FTA with Singapore as a member, therefore, could have limited significance for larger economies with higher levels of protection. This may limit the comparability of these treaties.

However, the aim of this study is not to evaluate the economic significance of these trade pacts. Rather, the primary objective here is to describe and analyze the structure and institutional aspects of these agreements. The FTAs studied here differ significantly. This paper intends to highlight and compare the unique characteristics of each these trade partnerships. This paper draws out the general outlines of these bilateral accords looking into their defined principles, scope of preferences, system of rules, and other regime features. This will hopefully enable us to identify certain benchmarks and establish a reference point for other countries seeking to establish preferential trade arrangements.

## **II. Guiding Principles**

To evaluate these five bilateral agreements, this paper employs some general principles that ideally characterize preferential trade arrangements. First, they are examined against their consistency with WTO, particularly provisions relating to GATT Article XXIV governing free trade areas and customs unions. These agreements are also analyzed on the comprehensiveness defined in terms of the scope and depth of the agreement. It would be significant to determine whether any of these bilateral accords go beyond their commitments under WTO rules. The study will also seek to describe the degree of flexibility defined in terms of coverage of exemptions given to members. Finally, the level of institutionalization, referring to the organizational and implementing aspects of the agreement, will be described here.

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<sup>2</sup> See Avila and Manzano (2002) for a discussion on the considerations for entering into a bilateral free trade area.

### *WTO-consistency*

By definition, all free trade areas or customs unions violate the principle of non-discrimination provided in the Most-Favored-Nation and National Treatment provisions of the GATT. However, trade rules permits a deviation from this general principle under Article XXIV of GATT and Article V of GATS. The conditions for the formation of discriminatory trade agreements under GATT Article XXIV call for the reduction of tariffs to zero and the elimination of other restrictive regulations on substantially all trade between the participants. The scheme should also not raise external duties and other regulations against non-members. It is further provided that the implementation period for the tariff reduction scheme should not exceed ten years.<sup>3</sup>

Conditions under Article V of GATS likewise call for substantial sector coverage (in terms of number of sectors, volume of trade affected and modes of supply with no a priori exclusion of any modes); and the elimination of substantially all existing discriminating measures and/or prohibition of new or more discriminatory measures.

Compliance with GATT Article XXIV and GATS Article V guarantee consistency with WTO rules. However, there has been no consensus among WTO members as to how to define the precise meaning of these and other requirements of Article XXIV. The ground rules under these two articles suffer from systemic issues rendering them less effective in imposing discipline in the preferential trade arrangements.<sup>4</sup> The WTO Committee on Regional Trading Agreements (CRTA) has not been able to perform its task of reviewing and passing decision on the RTAs submitted to it for approval. It is unlikely that there will be consensus on the interpretation of Article XXIV of GATT and Article V of GATS soon. Ways on how to make free trade areas more compatible with multilateral liberalization have yet to be defined.<sup>5</sup>

### *Comprehensiveness*

A free trade area is noteworthy if it broadens the current level of bilateral cooperation and extends beyond its members' commitments in the WTO. The FTA should be comprehensive in its scope and depth of liberalization. This could be defined in terms of product coverage such as percentage of trade covered and/or sectors included or excluded. In addition, the bilateral agreement should go further than the usual liberalization in goods trade and should make progress into other areas of economic integration. Members should be willing to commit to opening measures over and above their current WTO obligations. Simply, this means that the integration should call for WTO-plus measures.

The term "New Age" has come to characterize modern FTA arrangements. They depart from the traditional focus on tariff reduction in trade in goods. These new FTAs have also

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<sup>3</sup> See WTO (2000).

<sup>4</sup> Crawford and Laird, 2000.

<sup>5</sup> Krueger, 1999.

included trade facilitation issues such as mutual recognition of standards and sanitary measures and harmonization of customs and licensing procedures. Countries negotiating these “closer economic partnerships” or CEPs have also included services trade liberalization, intellectual property protection, investment liberalization and facilitation, competition policy, and government procurement. They also contain provisions aimed at deepening economic cooperation in science and technology, human resource development, small and medium enterprises, and electronic commerce. These FTAs complement and extend the goals of the multilateral trading system by hastening the liberalization process and introducing new elements into the trade agenda.

### ***Flexibility***

Considering the different levels of development of countries that partner in an FTA, flexibility is sometimes featured in the scheme to account for the particular concerns about adjustment or domestic sensitivity to liberalization. Flexibility can refer to the exclusion, whether permanent or temporary of certain sensitive sectors, such as agriculture or fisheries. Certain industries may also be removed given constitutional and other legal restrictions on foreign ownership and access. A timetable determining the timing and phasing in of tariff reduction and other market opening measures can also accommodate domestic adjustment concerns.

### ***Institutional features***

Finally, it is relevant to examine the extent to which the FTA is institutionalized. This would refer to provisions on trade remedies, safeguards, and dispute avoidance and settlement. It would be relevant to determine whether a system of dispute settlement procedures, including investment disputes, exists. Such a provision will focus on consultations, negotiations, conciliation and arbitration rather than the application of trade sanctions. This can also refer to the level of harmonization or mutual recognition of customs procedures and product standards.

Usually, a supervisory committee is also established to ensure the proper implementation, conduct reviews, and propose amendments to the agreement. Other functional committees, covering different areas of cooperation, may also be provided. These joint bodies are to serve as channels for bilateral coordination, management, and monitoring of the implementation of the agreement. Regarding the settlement of disputes, arbitral tribunals are to be established to assess and resolve complaints.

## **III. Characteristics of Asian FTAs**

This study surveys five free trade agreements or closer economic partnerships involving Asian countries. Singapore is party to four of these FTA agreements. After concluding agreements with Japan, New Zealand, the United States and Australia, the city-state is still seeking to establish similar treaties with Canada, Chile, South Korea, India, EFTA, and Mexico. Singapore’s aggressiveness in pursuing bilateral free trade agreements

stems from its own vulnerability as a small, trade-dependent economy. A bilateral strategy is directed at attracting foreign investors and ensuring access to key markets for Singaporean exports. More significantly, the slow progress towards trade liberalization in ASEAN Free Trade Area, particularly after the Asian financial crisis, has compelled Singapore to look outside the region for alternative paths to trade and investment liberalization and facilitation. Moreover, the failure of the Early Voluntary Liberalization scheme stalled the movement towards open trade in APEC. With the prospect of a deceleration in regional and multilateral liberalization, bilateral FTAs offer Singapore a strategic option as well as an insurance policy.<sup>6</sup>

The Singaporean leadership pursued an FTA strategy to place the country at the center or hub of a regional network of bilateral free trade agreements. The strategy of linking up with countries around the Pacific Rim bolsters the country's position as a hub for the regional operations of transnational firms. The Singaporean government availed of the first-mover advantage to maximize economic benefits and eventually set itself up as a model for ASEAN liberalization.

Japan signed its first ever bilateral trade agreement with Singapore in January 2002. Previously, Japanese trade policy was steadfastly supportive of the multilateral framework rejecting the FTA route. As many countries have involved themselves in regional pacts, Japan feared isolation. Tokyo is particularly concerned about conceding its regional position to China, which has moved towards establishing its own free trade agreement with ASEAN. Moreover, Japan has realized the importance of a bilateral trade strategy after the failure to launch a new round of multilateral trade negotiation in Seattle in 1999. Tokyo recognized that FTAs could complement the WTO system as a means of promoting the world trade liberalization.<sup>7</sup>

After 12 rounds of negotiations, Japan and Singapore concluded the JSEPA, which entered into force in November 2002. Singapore was the sixth largest export market for Japanese goods and Japan's thirteenth largest import source in 1999. Japan is also the second largest investor in Singapore's manufacturing sector. Tokyo chose Singapore for the reason that there are hardly any sensitive areas between two countries, such as agriculture and forestry and fishery. Singapore was a safe prospect for Japan because the country is already relatively open and posed little threat to its domestic sector.

In November 2000, Singapore and New Zealand concluded a similar agreement. The NZSCEP is part of New Zealand's broader strategic trade and economic interests, which seeks to push forward global trade liberalization. Frustrated with the stalled process at the WTO and APEC, Auckland shared Singapore's concern about trade developments at the regional and global level. A partnership with Singapore, with its comparatively open trade and investment regime, would help accelerate free trade liberalization within APEC and push the WTO forward in global free trade and stimulate interest among other potential partners (such as the United States) to join such an arrangement in a larger

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<sup>6</sup> For a discussion of Singapore's FTA policy, see Rajan and Sen (2002), and Low (2001).

<sup>7</sup> For a discussion of Japan's motivations, see Ogita (2003) and Urata, (2003).

FTA.<sup>8</sup> New Zealand wanted to send a clear signal to international markets of its commitment to global free trade. An agreement with Singapore would represent an overture to other Asian countries of New Zealand's willingness to engage with them.<sup>9</sup>

After ten rounds of negotiations, Australia also signed a free trade agreement with Singapore in February 2003. The SAFTA was Australia's first FTA since concluding one with New Zealand. Singapore was Australia's seventh largest trading partner and 7<sup>th</sup> largest export market in 2002. Australia's objectives for SAFTA were to improve market access for Australian goods and service exporters; and to promote closer economic integration with the East Asian region. Like New Zealand, Canberra pushed its FTA strategy to help stimulate further liberalization in the region as well as at the multilateral level. Australia chose Singapore given its willingness to pursue bilateral trade liberalization. The most-developed country in the Southeast Asian region, Singapore also lacked the barriers protecting sensitive sectors for trade in goods that would have made negotiations difficult.

In May 2003, the United States successfully negotiated its first FTA in Asia by concluding a free trade agreement with Singapore. The US is one of the most important trading and investment partners for Singapore being its second largest and largest foreign direct investor. On the other hand, Singapore is the US' 11th largest trading partner. The USSFTA is one of the most far-reaching trade and investment agreements ever concluded by the United States. Washington hopes that the USSFTA will serve as useful model that would facilitate future bilateral FTAs with other regional economies, particularly from the ASEAN.

The USSFTA forms an integral part of the Administration's larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives. The United States is pursuing a strategy of "competitive liberalization," in which global, regional and bilateral trade negotiations would complement and reinforce each other. The objective of US trade policy is directed at opening up foreign markets to American traders and investors, support and reward domestic market-oriented reforms, and strengthen strategic partnerships.

However, there are some who view the US approach to bilateral FTA policy as rather passive. According to Richard Feinberg (2003), the US has been a follower rather than a leader in this area. He observed that the initiative to establish bilateral agreements came from the prospective relatively smaller trading partner and not the United States. The US has entered into FTA discussions on an ad hoc basis, generally in response to an insistent external request, not as the considered unfolding of a carefully designed internally-generated strategic plan approved in cabinet and by the president.<sup>10</sup>

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<sup>8</sup> In 1998, the Pacific Five or P5 concept of pentagonal free trade area involving Australia, Chile, New Zealand, Singapore and the United States was proposed. But the proposal did not beyond discussion stage after getting lukewarm support from Washington DC.

<sup>9</sup> See Hoadley (2003) for a analysis of New Zealand's trade policy regarding FTAs.

<sup>10</sup> See Feinberg (2003) for a discussion of US trade policy.

Three years of negotiations to establish a free trade area between South Korea and Chile was finally completed and signed in February 2003. Chile was already a party to nine other bilateral agreements and partnering with South Korea was a logical step in its overall trade policy. On the other hand, the KCFTA represented a significant change in Seoul's traditional trade policy. Like Japan, South Korea remained one of the few WTO member countries not taking part in any bilateral or regional FTAs. A shift away from its traditional multilateral approach developed due to the mushrooming regional trade arrangements all over the world. South Korea was worried about the possible trade diversion effects against the country's trade interests. Korea's dependence on foreign trade also stressed the need for securing of export markets and accelerated opening and restructuring of the Korean economy.

The South Korean government was particularly interested in forging trade arrangements with Japan and China, which it views as a key strategic trade partners. It is exploring establishing a free trade region in the East Asian region comprising the three economic powers. Before establishing FTAs with larger trade partners, however, Korea felt it needed to pursue pacts with smaller partners first in order to minimize the risk and possible losses and to gain negotiating and operational experience of FTA. Seoul chose Chile as its first FTA partner because of Chile's open trade policy. Also, Korea believed that Chile's accumulated experience in concluding FTAs with other countries would certainly serve as a guide to conducting successful negotiations with other countries. In addition, an FTA with geographically distant Chile is aimed at diversifying its trade relations.<sup>11</sup>

## **A. Trade in Goods**

These five trade agreements show a broad coverage of economic cooperation extending beyond tariffs and non-tariff measures and including other areas of cooperation such as investment and services. While the traditional approach of preferential tariff elimination in merchandise trade remains a central feature, these FTAs go beyond cross-border goods trade issues and provisions of existing WTO agreements (see Table 1). Some of the agreements here are referred to as Closer Economic Partnership (CEP) agreements to describe not only trade liberalization and facilitation but also a broader area of economic and technical cooperation. In one such initiative, there are provisions on labor standards and the environment.

### ***Tariff elimination***

The elimination of tariff barriers between bilateral partners entering into an FTA is a central element of all agreements under review. Member countries agreed to grant preferential tariff free market access to an extensive range of products, in most cases covering practically the entire range of bilateral merchandise trade. Generally, the concessions made here represent a substantial improvement from the WTO commitments made by the participating countries.

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<sup>11</sup> See Cheong (2002), Sohn (2001) and Chung (2003) for a discussion on South Korea's FTA policy.

**Table 1: Coverage of FTAs/CEP**

	JSEPA	SAFTA	USSFTA	NZSEPA	KCFTA
Tariff and non-tariff elimination	●	●	●	●	●
Trade remedies	●	●	●	●	●
Rules of origin	●	●	●	●	●
Customs valuation and administration	●	●	●	●	●
Investment	●	●	●	●	●
Services	●	●	●	●	●
Mutual recognition of standards	●	●	●	●	
Government procurement	●	●	●	●	●
Intellectual property protection	●	●	●	●	●
Competition policy	●	●			●
Dispute settlement	●	●	●	●	●
Electronic commerce/ICT	●	●	●		
Science and technology	●				
Human resource development	●	●			
Small and medium enterprises	●				
Tourism development	●				
Labor			●		
Environment			●		

The JSEPA provides for the elimination of tariffs on goods covering 98.5 percent of current bilateral trade between Japan and Singapore, extending the coverage of zero-tariff concessions beyond the current 65 percent. Under JSEPA, Singapore committed to grant zero-tariff treatment on all imports from Japan after entry into force of the agreement, while Japan increased its zero-tariff commitments from the current 34 percent to 77 percent of total tariff lines. SAFTA and NZSCEP likewise commit its members to grant immediate duty-free market access to each other's exports. All Australian tariff lines will be duty-free for Singapore products, up from the current 50 percent of duty free Australian tariff lines. JSEPA, SAFTA and NZSCEP also eliminated quantitative restrictions. NZSCEP prohibits export subsidies for all goods, including agricultural products.

All US exports to Singapore will enjoy zero tariff with immediate effect upon entry-into-force of the USSFTA, while the United States agreed to phase out more than 92 percent of its tariff lines immediately and the remaining after 8 years. However, the US also retained tariff rate quotas on beef, dairy products, peanuts, sugar and cotton, which will be increased and eventually phased out after 10 years, and imposed a condition for textiles and garments imports.

Under the KCFTA, tariffs for about 77.5 percent of Chilean exports and 66.7 percent of Korean exports will face immediate and complete liberalization. The coverage of duty-free status will be further increased to 88.4 percent of Chilean exports and 83.7 percent of Korean exports after five years. After 7 years 97% of the value of Chilean exports to Korea will enter the market duty free. Korean exports of automobiles, mobile phones and computers, which accounted for 66 percent of its trade with Chile, particularly benefit from this accord.

However, the agreement between South Korea and Chile allowed for greater liberalization to accommodate each other's domestic interests. KCFTA contains a rather complicated schedule for tariff elimination: Chile maintains five different lists: the first list of products are to be liberalized immediately with the remaining four following a 5, 7, 10 and 13 year phase out period (See Table 2). Korea had six different lists: the first to be liberalized immediately and the other five following 5,7,9,10 and 16 year timetable (See Table 3).

Some of these accords were short of complete liberalization. The JSEPA virtually involved no new tariff liberalization on agricultural products as those included tariff lines that already had low rates. Japan only agreed to a 14 percent increase in zero-tariff commitments with regard to agricultural products. Similarly, the tariff adjustment under NZSCEP had very minimal impact as the value of trade between New Zealand and Singapore in protected sectors is relatively low. Given the relatively low trade barriers in Singapore, the USSFTA, JSEPA, SAFTA and NZSCEP had little significance in the area of tariff elimination.

**Table 2: Chile's Tariff elimination schedule (10-digit HS Code, %)**

Category	Total	Industrial Products	Farm Products	Forest Products	Marine Products	Main Description
Year 0	2,450 (41.8)	1,478 (30.6)	677 (92.9)	96 (100)	199 (99)	TVs, vehicles, PCs, cellular phones
Year 5	1,994 (34.1)	1,992 (41.3)			2 (1.0)	Polyethylene, vehicle parts
Year 7	14 (0.2)	14 (0.3)				Oil or petrol-filters
Year 10	1,190 (20.3)	1,180 (24.4)	10 (1.4)			Electric accumulators, cleaner
Year 13**	152 (2.6)	152 (3.2)				Textiles, clothing
E ***	54 (1)	12 (0.2)	42 (5.7)			Washing machines, refrigerator
Total	5,854	4,828	729	96	201	

\* Item categorization, Harmonized System (HS) code modification may lead to a change in the number of item.

\*\* Liberalization over a transitional period of 13 years, with the elimination starting from the sixth years.

\*\*\* Customs duty applied shall not be eliminated.

Source: Chung, 2003

**Table 3: Korea's Tariff Elimination Schedule (10-digit HS, %)**

Category	Total	Industrial Products	Farm Products	Forest Products	Marine Products	Main Description
Year 0	9,740 (87.2)	9,101 (99.9)	224 (15.6)	138 (58.2)	277 (69.5)	Mixed feeds, pure-bred breeding animals, silk fabrics, coffee
Year 5	701 (6.3)	-	545 (38.1)	70 (29.5)	86 (21.5)	Bracken, roses, bean curd, wine, almonds
Year 7	41 (0.4)	1 (0.01)	40 (2.8)	-	-	Fruit juice, prepared fruit, meat of poultry or heading, soup, potatoes
Year 9	1 (0.01)	-	1 (0.07)	-	-	Other fruit juices
Year 10	262 (2.3)	-	197 (13.8)	29 (12.3)	36 (9.0)	Tomatoes, pork, cucumbers, kiwis
10S*	1 (0.01)	-	1 (0.07)	-	-	Grapes
Year 16	12 (0.1)	-	12 (0.8)	-	-	Prepared dry milk
TRQ** + DDA***	18 (0.15)	-	18 (1.26)	-	-	Beef, chicken, mandarins
DDA	373 (3.3)	-	373 (26)	-	-	Garlic, onions, red peppers, dairy products
E ****	21 (0.2)	-	21 (1.5)	-	-	Rice, apples, pears
Total	11,170	9,102	1,432	237	399	

\* liberalization over a transitional period of 10 years on a seasonal basis

\*\* Liberalization with tariff quota

\*\*\* Tariff elimination schedule shall be negotiated after the end of the Doha Development Agendas of the WTO

\*\*\*\* Customs duty applied shall not be eliminated

Source: Chung, 2003

Tariff liberalization was more significant in the case of the KCFTA. However, Korea excluded 21 goods from the tariff reduction program, obtaining exemptions for apple, pears, and rice imports to minimize adverse effects on Korean farmers. Exports of grapes from Chile were given ten years until liberalization. Chile also excluded 54 products from the tariff elimination scheme sensitive items such as refrigerators, retreated tires, and washing machines. Some textiles, some steel and new tires have 13 years with 5 years grace.

### ***Rules of Origin***

Given that none of the accords under review are customs unions, rules of origin that determine whether a given product will enjoy preferences were a prominent feature in these agreements. Conventionally, rules require that substantial transformation and value-added work should take place in the originating country. There are three main methods used to establish if sufficient processing or substantial transformation has been undertaken: (i) change of tariff classification (ii) value added (iii) specific manufacturing process.<sup>12</sup> Strict documentation in the form of certificates of origin is also demanded for bilaterally traded goods.

<sup>12</sup> See Brenton (2003).

The FTAs under review had different approaches to ROO. JSEPA, USSFTA, and KCFTA adopted the more technically complicated product-by-product approach to determining origin of products, containing voluminous annexes detailing the rules for each traded product. ROO are negotiated taking into consideration current and future production trends, particular relevant in the case of Singapore, where most of its production is outsourced and re-exported.

In the case of JSEPA, only exports with ‘substantial transformation’ and sufficient value-added can qualify as a product originating under the agreement. Substantial transformation is deemed to have occurred if there is a change in tariff classification (CTC). Singapore managed to obtain additional flexibility for 264 products, which will qualify for preferential tariff treatment if their Singaporean content is at least 60 percent of the selling price. Other countries producing these products can avail of preferences extended under JSEPA as long as source inputs of up to 60 percent come from either Japan or Singapore.

The USSFTA contained over 240 pages of product specific rules of origin. Only exports with substantial transformation and value-added work, including R&D, design, engineering and purchasing, done in Singapore can qualify as originating products. For textiles and apparel, the United States applies the ‘yarn forward rule of origin’, whereby products only made from US or Singapore originating yarn will be eligible for immediate tariff elimination. The United States, however, commits to introduce more liberal ROOs for textiles once further liberalization on ROOs is achieved in the WTO.

A distinguishing feature of the USSFTA is the Integrated Sourcing Initiative (ISI). The ISI cover components from non-sensitive sectors which both the US and Singapore already trade freely in, including about 100 IT products and certain medical devices. Under ISI, some IT components are conferred Singapore origin, regardless of where they are made. Non-member countries will have the opportunity to benefit from the initiative.

Chile and Korea broadly defined the scope of the country of origin to provide preferential tariff treatment to a wide range of exported items. However, strict requirements on agricultural products’ country of origin were set in order to prevent imports via a third country. The KCFTA defines processing requirements that must be conducted by the exporting country in order to benefit from tariff elimination under the FTA.

SAFTA and NZSCEP adopted the threshold approach, taking into account ease of implementation. Compared to the product-by-product approach, the threshold approach is more simple and flexible. For SAFTA, all products need only fulfill a general rule of a specified threshold of local value content of 50 percent. For a limited number of electronic and electrical goods, the threshold was set at 30 percent. NZSCEP stipulates an area content threshold of 40 percent to qualify for duty-free entry. This means that two-fifths of a product's value, or post-testing cost, must have been added in New Zealand and/or Singapore. Profit and general costs of doing business are not included in area content. The last process of manufacture must occur in the exporting country—either New Zealand or Singapore—and the process must be substantial.

### ***Trade remedies***

Both the NZCEP and SAFTA agreed not to apply safeguard measures against each other. Safeguard measures are temporary measures designed to lessen import competition and allow domestic industries some room for adjustment. Such a measure take the form of the suspension of tariff reduction and an increase in the rate of customs duty on the good to a level not exceeding the MFN applied rate.

On the other hand, the JSEPA and USSFTA provides for the application of safeguard measures in cases of serious injury to domestic industry and balance of payments purposes. The KCFTA contains special reference on emergency measures for agricultural goods. Korea and Chile agreed that should severe injury or market disruption occur because of a surge in imports of agricultural products, the parties can impose measures necessary to address the injury by stopping the FTA tariff reduction or increasing tariffs up to the MFN rate.

The KCFTA, SAFTA and NZSCEP also contain chapters on anti-dumping and countervailing duties, retaining rights and obligations under WTO agreements. The NZSCEP moved beyond WTO anti-dumping provisions by raising the threshold at which the level of dumping is seen as *de minimis* and reducing the period for review and/or termination of anti-dumping duties. New Zealand and Singapore agreed to bring greater discipline to anti-dumping investigations and to minimize the opportunities to use anti-dumping in an arbitrary or protectionist manner.

### ***Standards and conformance***

Trade facilitation addressed itself to mutual recognition or harmonization of product standards and sanitary and phyto-sanitary standards. The JSEPA contains an agreement on conformity assessment providing for the mutual recognition of test results and certification by recognized conformity assessment bodies in both countries, particularly for electrical and electronic products as well as the telecommunications equipment. Avoiding duplication of testing and certification of products reduces potential time lags and cost burdens. Both countries have also agreed to consider a future mutual recognition agreement on pharmaceuticals. The agreement provides for stringent monitoring and verification procedures by designated authorities to ensure the integrity of the decisions of conformity assessment agencies.

The USSFTA took a step towards eliminating standards, technical regulations and procedures in trade in telecommunication products and services. The US and Singapore also agreed to information exchange and joint development of standards and conformity assessments to facilitate compliance.

SAFTA builds on the 2001 Mutual Recognition Agreement on Conformity Assessment between Australia and Singapore. The Agreement provides for mutual recognition of test reports and/or certificates issued by the exporting country to testify that they meet with

the mandatory requirements of the importing country. This means that products would be already tailored for the destination market upon their arrival there, and removes the need for duplicative testing and/or certification in the importing country before the product can be sold. Australia and Singapore have agreed to develop arrangements for the acceptance of the equivalence of mandatory requirements for specified industry sectors.

Unlike the JSEPA and USSFTA, SAFTA extends the coverage to sanitary and phytosanitary measures (SPS). SAFTA seeks to harmonize all mandatory requirements in all technical measures and SPS measures set out in each other's laws, regulations and administrative requirements. Negotiations are proceeding in relation to food standards and horticultural products. NZSEPA also seeks to abide by principles of mutual recognition, unilateral recognition, or harmonization of product standards and sanitary and phytosanitary standards. A mutual recognition conformity assessment agreement covering electrical and electronic equipment came into effect with the NZSEPA. Singapore and New Zealand also promise to expand mutual recognition to include telecommunications equipment, pharmaceuticals, chemicals and food. Korea and Chile merely reaffirmed WTO principles on product standards and SPS measures. However, both parties will observe equivalence of SPS measures.

### ***Customs procedures and administration***

With the elimination of tariffs, there is still a need to have good customs procedures to ensure the free movement of goods. Without good customs procedures, it would increase compliance costs and diminish the benefits that are accrued to the tariff elimination. All five FTA/CEP agreements surveyed here commit their members to improve and simplify customs clearance of goods, cooperate through exchange of information, improve transparency, and use communications technology and modern risk management tools for cargo clearance processes. The main thrust, however, stresses cooperation rather than harmonization.

### **B. Trade in services**

Contemporary FTAs include a section on services, improving on the traditional orientation on trade in goods. The objective is to build on their GATS commitments and improve preferential market access and national treatment to service providers. All the FTAs surveyed here all include a section on services (see Table 4). The KCFTA, USSFTA and SAFTA adopted the negative-list approach to its commitments in bilateral services trade with all sectors considered *a priori* liberalized provided an exception was expressly reserved. The KCFTA guarantees mutual market access and right of establishment waiving the requirement of a local presence.

Under the USSFTA, all suppliers are assured of fair and non-discriminatory treatment and market access covering cross-border services trade, services supplied by an enterprise or a natural person, and overseas consumption of services. Singapore made broad ranging commitments in the areas of ICT services, express delivery, direct selling, healthcare, education and financial services including banking, securities and insurance. Singapore gave US banks better access to Singapore's retail banking sector, remove quota on

qualifying full bank and wholesale bank licenses for US banks. Singapore also promised to further deregulate its professional services in the areas of land surveying, architecture and engineering. Both countries agreed to observe high standards of openness and transparency including consultations with interested parties, advance notice, reasonable comment period, and publication of regulations.

**Table 4: Services commitments**

	JSEPA	SAFTA	USSFTA	SNZEPA	KCFTA
Business services	●	●	●	●	●
Professional services	●	●	●	●	●
Computer services	●	●	●	●	●
Communication services	●	●	●	●	●
Construction and engineering services	●	●	●	●	●
Distribution services	●	●	●	●	●
Educational services	●	●	●	●	●
Environmental services	●	●	●	●	●
Financial services	●	●	●	●	●
Health services		●	●	●	●
Tourism and travel services	●	●	●		●
Recreational, cultural and sporting services	●	●	●	●	●
Transport services		●	●	●	●

The agreement on telecommunication and e-commerce services was far-reaching. Service suppliers from both sides will have access to respective public telecommunication networks, including submarine cable landing stations, with transparent and effective enforcement by telecommunication regulators. Robust competition safeguards to protect against discriminatory and anticompetitive behavior by incumbent suppliers in areas such as interconnection, collocation, access to rights of way and resale. Both sides also agreed to work towards the implementation of a comprehensive arrangement for mutual recognition of conformity assessment for telecommunication equipment. Both sides commit to the non-discriminatory treatment of digital products and the permanent duty-free status of products delivered electronically.<sup>13</sup>

Singapore and Australia have significantly improved their market access and national treatment commitments and committed to a wide range of services sectors in SAFTA beyond what has been committed at the WTO including professional services, telecommunications, financial services, transportation services, tourism, distribution services, environmental services, and recreational, cultural and sporting services. Singapore is extending full market access and national treatment to Australian service providers for university, adult, and vocational and technical education, construction, sporting services, computer and related services, and auxiliary transport services.

NZSEPA and JSEPA adopted the positive list approach. New Zealand extends no limitations on national treatment and market access for modes 1-3 for courier services,

<sup>13</sup> See Low (2003).

telecommunications, motion picture projection services, construction and related engineering services, distribution, retail, franchising, and environmental services. It also included dental services, computer services, equipment repair services, information technology (ICT) services, market research services, management consulting services, financial services, manufacturing services, land surveying services, printing services, courier services, environmental services and maritime, air and auxiliary transport services. Singapore has in turn committed to liberalize our architecture, financial and engineering services, and will continue to maintain our open regime in sectors such as nursing services, research & development services, rental services, management consulting services, courier services, telecommunications services, certain health services, distribution services and university and technical education services. Both New Zealand and Singapore have also agreed to regularly review their commitments and to progressively expand them.

JSEPA liberalizes trade in services by expanding commitments significantly beyond what both countries committed in the WTO. In terms of the sectors covered, Japan expanded its commitments to 135 services sectors from 103 or 86 percent out of a total of 157 sectors. Singapore expanded its commitments to 139 sectors or 88.5 percent from 61 listed in its WTO commitments. The JSEPA also contains separate chapters on financial services, telecommunications, broadcast services and tourism services. Japan and Singapore agreed to promote cooperation in the financial sector and capital market development and strengthen financial sector linkages between the two countries.

### *Exclusions*

While aiming for preferential liberalization of services trade, member countries also sought to exclude certain sectors from the agreement or apply conditions to market access and national treatment. The negative list approach adopted in KCFTA, USSFTA and SAFTA produced a list of services sectors exempted from the agreement. For the KCFTA, the provision on services liberalization does not apply to cross-border trade in financial services, air transport services, and services provided in the exercise of governmental authority.

Under the USSFTA, Singapore excluded air and maritime services, broadcasting, social security services, financial institutions extending Singapore dollar credit facilities, public schools, and operation of government hospitals. On the other hand, the US excluded air and maritime services, patent agencies and customs brokers licensing, broadcasting, mining, registering securities, social services, and atomic energy. The US also sought strong safeguards to protect against discriminatory and anti-competitive behavior by incumbent suppliers of telecommunication services. For SAFTA, Australia maintains reservations on telecommunications, medicine, postal services, and supply of therapeutic goods. Singapore maintains reservations in architecture, financial auditing, tax related activities, royalty collecting, land surveying, mailing services and several restrictions on wholesale banking services.

Singapore excluded telecommunications, air transport, maritime, archive services and financial services from the NZSEPA. New Zealand placed some limitations to national treatment and market access obligations for transport, including air transport, recreational and tourism service commitments have also been made with limitations.

### *Movement of persons*

Most reservations were made for Mode 4 or movement of natural persons. JSEPA contains a separate chapter on movement of natural persons, which includes; (a) business visitors, such as salespersons, will be permitted to enter and operate in Japan for a period of 90 days; (b) intra-corporate transferees will be permitted to stay and work in Japan for as long as they are required by their companies; (c) investors will be permitted to stay in Japan in order to establish and maintain their investments; and d) engineers can enter to service their contracts with companies in Japan. Both countries have also agreed to work towards the mutual recognition of professional qualifications.

Likewise, the KCFTA allows the temporary entry of businesspersons without requiring that person to obtain an employment authorization. It also encourages the relevant bodies to develop mutually acceptable standards for licensing and certification of professional service providers. The NZSEPA makes it easier for New Zealand nationals to supply service on a temporary basis in Singapore. New Zealand further liberalized its regime for intra-corporate transferees, doing away with the residency requirement for some professions and occupations.

The USSFTA improved market access opportunities in the area of professional services. Both sides will engage consultations to develop mutually acceptable standards and criteria for licensing and certification of professional service providers, especially with regard to architects and engineers. Under the agreement, Singapore citizens will be allowed to enter the US for up to 90 days without labor market test except for professional services requiring government certification or licenses. Singapore in turn has agreed to recognize degrees from four US law schools for admission to the Singaporean bar. It also reduced board of director requirements for architectural and engineering firms and phased out capital ownership requirements for land surveying services.

The SAFTA contains a separate chapter covering the movement of businesspersons. The Chapter will facilitate the movement of businesspersons directly involved in cross-border trade and investments. In addition, both countries have committed that neither country shall require labor market testing, labor certification tests or other similar procedures as a condition for temporary entry of businesspersons. SAFTA will also seek to promote mutual recognition agreements of professional qualifications, such in architecture, engineering, law and medicine.

This chapter is to enhance such trade and investment flows by facilitating easier temporary entry to Australia for Singapore citizens and permanent residents on business through expeditious and streamlined immigration clearance. Intra-corporate transferees (i.e., managers, executives and specialists within organizations) will be permitted to stay

and work in Australia for a committed period of up to 14 years. On the other hand, Australians will now be granted longer periods of stay in Singapore, from previously one month to three months stay, to facilitate business transactions. Long-term business residents working for Australian companies in Singapore will be granted an initial period of two years. This can be extended on application for periods of up to three years at a time, for a total term not exceeding 14 years. Spouses of long-term business residents in Singapore will now have the right to work in managerial, specialist and professional occupations, and in office administration. In professional services, residency requirements for Australian professionals such as architects, engineers, accountants and auditors, have been abolished or eased by Singapore.

### **C. Investment cooperation**

Services supplied by an investor or Mode 3 of services trade, together with investments in the manufacturing sector, falls under the chapter on investment in all treaties under review. The general aim is to increase access to each other's markets fostering open environment for cross-border investment, minimize restrictions, and strengthen protection of investment. MFN and national treatment applies for all stages of investment, from pre-establishment to post-establishment phase. For some, this section also contains comprehensive provisions on investment promotion and protection. In addition, an investor dispute resolution mechanism has also been put in place to protect each other's investors.

South Korea and Chile agreed to extend national and most-favored-nation treatment to each other's investments. The scope of the KCFTA includes all kinds of investment, direct and indirect. Nationality requirements for senior management in new investment have been removed. Investment protection for financial institutions such as banks, insurance companies, and savings and finance companies are to be given four years after the establishment of the KCFTA.

The chapter on investment under the JSEPA strengthens protection of investments and provides access to each other's markets. Investors from both countries will enjoy the liberal investment regimes covering the pre-investment stage to the post-investment stage. The disciplines provided for under this chapter are comprehensive and include both the traditional disciplines of investment agreements like national treatment, expropriation and compensation. Neither party shall expropriate or nationalize investments in its territory, or take "any measure equivalent to expropriation or nationalization" of investments made by investors of the other party, except for public purpose, on a nondiscriminatory basis and upon the payment of compensation. Neither party is to impose or enforce performance requirements as a condition for the establishment, expansion management or operation of investments in its territory of an investor of the other party.

The JSEPA also takes a negative-list approach to investment cooperation making the agreement comprehensive in terms of scope of coverage and depth of disciplines. However, Singapore and Japan listed some reservations limiting the application of the accord on certain industries. Both countries listed a total of 21 reservations (12

reservations for Japan, covering about 20 industries and 9 for Singapore). The JSEPA investment chapter does not apply to government procurement. Each country shall accord the other equal access to the courts of justice both in pursuit of and in defense of investor rights. An investor state dispute resolution mechanism was established to protect Japanese and Singaporean investors. Temporary safeguard measures are to be applied in the case of serious balance of payments difficulties.

The JSEPA also contains provisions on investment promotion and protection. Japan and Singapore agreed to jointly organize industry-specific missions and seminars for high-growth and other industries, including the info-communications technology, electronics and logistics sectors. Both countries will also jointly organize study missions to research and gather data on trade and investment environments, as well as to assess business opportunities in third countries for Japanese and Singapore businessmen and enterprises.

The SAFTA chapter on investments covers both investments in the manufacturing and service sectors. Its main objective is to improve the investment environment for Australian and Singapore investors. Ranging from the pre-establishment to post-establishment stage, concessions are premised on the more liberalizing and transparent negative list approach. Investors are protected against expropriation or 'measures having effect equivalent to nationalization or expropriation' and will be entitled to compensation should expropriation or other loss occur. There is an investor-state disputes settlement mechanism, whereby an investor of one party can seek disputes settlement concerning an alleged breach of an obligation of the party, which causes loss or damage to the investor or its investment. Transfers and remittances shall be freely allowed, however a balance of payments safeguard article is included.

Interestingly, this privilege is extended to non-nationals who are permanent residents and enterprises under the JSEPA and SAFTA. Foreign investors can benefit from JSEPA and SAFTA as preferences are not limited to only nationals of Singapore or companies owned by Singaporeans but include permanent residents and enterprises with substantive business operations in Singapore.

Parties to the USSFTA and NZSEPA agreed to extend to the other the better of MFN status or national treatment to each other's investors. Both agreements allow each party shall allow the other party to freely repatriate all investments and proceeds from investments. The accords do away with unfair performance related requirements. The USSFTA allows US companies the right to own equity stakes in Singaporean entities that may be created through the privatization of government-owned services. The NZSEPA and USSFTA promised to submit any legal disputes for the arbitration or conciliation by the International Center for Settlement of Investment Disputes.

#### **D. Economic and technical cooperation**

The term "New Age" has come to characterize contemporary FTA arrangements spreading throughout the Asian region. The five agreements covered in this study all depart from the conventional focus of free trade areas and has come to include areas aimed at expanded economic and technical cooperation (see Table 5). They contain

chapters on competition policy, science and technology, human resource development, small and medium enterprises, electronic commerce, tourism development and broadcast development. In the case of the USSFTA, provisions on labor and environment were included.

**Table 5: Other areas of cooperation**

	JSEPA	SAFTA	USSFTA	NZSEPA	KCFTA
Competition policy	●	●	●	●	●
Government procurement	●	●	●	●	●
Intellectual property protection	●	●	●	●	●
Science and technology	●				
Human resource development	●	●			
Trade and investment promotion	●				
Small and medium enterprises	●				
Broadcast development	●				
Tourism development	●				
Environmental issues			●		
Labor standards			●		
Electronic commerce		●	●	●	

### *Government procurement*

The JSEPA opens market access to government procurement, lowering the threshold values above which government procurement would be subject to WTO-GPA discipline. The threshold for goods and services (except construction services) was reduced to Special Drawing Rights (SDR) 100,000, representing a SDR 30,000 reduction for both countries. This gives greater more opportunities to Singapore companies and businesses that would like to participate in Japanese government procurement contracts. Both countries also agreed on joint cooperation in the exchange of information on government procurement.

The SAFTA is aimed at expanding the scope for promotion of trade between Australia and Singapore through government procurement. Under the agreement, suppliers from both parties will be treated equally as any locally established supplier. Australian suppliers of goods and services are guaranteed non-discriminatory national treatment in tendering for procurement business with 47 Singapore ministries, agencies and statutory authorities. Both countries also agreed to cooperate to ensure that policies and procedures that are adopted will facilitate access to government procurement opportunities by suppliers via electronic means, or e-procurement.

South Korea and Chile agreed to open on a reciprocal basis of each other's government procurement markets. The KCFTA gives exporters and producers of each party non-discriminatory access to opportunities to tender for public procurement contracts. The threshold for services and supplies is SDR 50,000 and SDR 5,000,000 for construction services.

The NZSEPA establishes a single government procurement market and prohibits ‘offsets’ or measures used to encourage local development or improve balance of payment accounts by requiring domestic content. Suppliers from New Zealand and Singapore will be given equal and non-discriminatory access to government tenders valued at above SDR 50,000. Procurement will be conducted based on the principles of transparency, value for money, fair dealing, accountability, due process, non-discrimination and open and effective competition.

The USSFTA builds on WTO government procurement agreement ensuring transparency, non-discrimination, predictability and accountability. It provides reciprocal, competitive government procurement opportunities for both parties. The monetary thresholds for government procurement disciplines have been lowered to US\$56,190 for goods and non-construction services, and to US\$6,481,000 for construction contracts and are adjusted biennially for inflation.

### ***Intellectual property protection***

These FTAs also sought to broaden cooperation in intellectual property protection. The scope of cooperation under the JSEPA includes patents, trade secrets and related rights and foreign patent laws; IP brokerage or licensing, management, registration, and exploitation; patent mapping; trademarks, unfair competition and related rights; copyright, designs and related rights, particularly in the area of protection in the digital environment and the development of e-commerce; intellectual property databases; technology and market intelligence; and IP public education and awareness programs.

Strong commitments to enhance intellectual protection standards were particularly expressed under the USSFTA. The agreement called for the extension of the term of protection for copyrighted works, performances and phonograms. Additional copyright protection standards relevant to the digital environment, such as anti-circumvention provisions and secondary liability for Internet service providers were also provided for. The agreement also calls for stronger protection for bio-inventions, strengthen patent protection especially for pharmaceuticals and stronger protection for well-known marks. The USSFTA calls for the registration of all trademarks, including sound marks. The agreement also emphasized robust enforcement obligations, such as creating an additional avenue for right owners to opt for statutory damages and criminalizing corporations that use pirated software.

Australia and Singapore agreed to cooperate on eliminating trade in goods infringing intellectual property rights, including by exchanging information; and agreed to take measures to prevent the export of goods that infringe copyright or trade marks. Australia and Singapore have also agreed to affirm elements of protection to account for the changing nature of media and communication such as digitization of content and internet communication. Both countries committed to accede to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty beginning 2005. The WCT and WPPT address copyright protection issues raised by the digital revolution by enacting clear and appropriate legal provisions, which are not

found in the existing international agreements and conventions on copyright. Australia and Singapore have also committed to adopt a common standard of protection for the protection of industrial designs by ensuring compliance with the provisions of the 1999 Geneva Act of the Hague Agreement Concerning the International Registration of industrial designs.

The KCFTA provides adequate and effective protection and enforcement of intellectual property rights, including well-known trademarks. South Korea and Chile agreed to protect the geographical indications on products such as Korean Ginseng, Korean Kimchi, and Boseong tea for Korea, and Pisco and other related products for Chile.

### ***Competition policy***

All of the agreements here also sought to improve cooperation to promote fair competition and ensuring that anticompetitive business practices are proscribed. Despite the absence of a national competition law in Singapore, the country promised to take necessary action within available resources to control anticompetitive practices under the JSEPA (with respect to the telecommunications and energy sectors) and SAFTA. In its agreement with Australia, Singapore committed to take reasonable measures to ensure that it does not provide any competitive advantage to any government-owned enterprises.

The provision on competition policy only calls for cooperation but does not provide for harmonization of domestic laws and policies. Parties will maintain their respective competition policy and laws while agreeing to cooperate through information exchange, technical assistance, etc. None had recourse to common dispute settlement in this area.

### ***Other areas of cooperation***

The JSEPA is the more wide-ranging of the FTA agreements surveyed here. It establishes a formal science and technology cooperation framework to foster collaboration in research and development in areas of advanced technologies relevant to the development of current and future industries and community in Japan and Singapore. The JSEPA also includes joint co-operation in human resource development and programs to provide technical assistance to benefit third parties, particularly from developing countries within the region. In addition, Japan and Singapore agreed to work together to promote cooperation between and amongst small and medium enterprises from both countries.

In the area of e-commerce, Singapore agreed to cooperate with New Zealand, Australia, and the United States in the field of ICT. The NZSCEP seeks to develop an electronic environment that supports electronic applications in customs administration. Under the SAFTA, parties agreed not to impose customs duties on electronic transmissions between them. Singapore and Australia agreed to work towards the mutual recognition of electronic signatures, encourage the interoperability of digital certificates by businesses, cooperate to enhance the acceptance of paperless trading, and take measures to protect online personal data. The USSFTA extends MFN/national treatment and permanent duty free status to electronically delivered products.

The USSFTA is the only agreement under survey that contains provisions pertaining to environmental and labor standards. Singapore and the United States agreed to cooperate on environmental and labor issues and ensure that standards are not lowered in pursuit of trade. The agreement also commits each government to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with the other party. In addition, the USSFTA requires each government to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. In addition, the FTA includes provisions that will remove barriers to bilateral trade in environmental products and services, with the potential to reduce costs for purchases of pollution abatement and other environmental equipment. Moreover, each party may make claims under agreement's dispute settlement mechanism in cases of disputes involving environmental and labor standards. Enforcement in both cases is enacted through monetary penalties.

## **E. Institutional issues**

### ***Dispute Avoidance and Settlement***

All of the agreements reviewed here included a provision on dispute avoidance and settlement. Members have agreed to establish a system of dispute settlement procedures, including investment disputes. The provision focuses on consultations, negotiations, conciliation and arbitration rather than the application of trade sanctions.

A comprehensive set of dispute settlement procedures is detailed in the JSEPA. Singapore and Japan have negotiated to ensure that if differences arise as to the interpretation or the implementation of rights and obligations under the agreement, a predictable, efficient and effective framework is in place to resolve the dispute as quickly as possible. Under the NZSCEP, disputes will be subject to consultations and if no satisfactory resolution can be reached the matter will be referred to the ministers involved.

Dispute settlement mechanism under the USSFTA emphasizes cooperation and consultation rather than traditional trade sanctions. Singapore and Australia agreed to subject disputes to consultations, negotiations, conciliation and arbitration just like the WTO, thereby enhancing the rule of law in international trade. For investment disputes, the submission of the dispute to such conciliation or arbitration must be made within three years of the investor becoming aware of the breach of the SAFTA investment provisions the International Center for Settlement of Investment Disputes, for conciliation or arbitration or arbitration under the rules of the United Nations Commission on International Trade Law.

Under the KCFTA, the parties agreed to establish effective procedures to promptly resolve disputes. For issues that fall under both the Korea-Chile FTA and the WTO Agreement, parties may select either dispute settlement procedure to resolve the disputes. The agreement established a Free Trade Committee to discuss the monitoring of the

implementation of the Agreement, evaluation of the FTA-effects, and all other matters related to the management of the Agreement.

### *Supervision*

A supervisory committee has also been established to ensure the proper implementation, conduct reviews, and propose amendments to the agreement. Other functional committees, covering different areas of cooperation, were also established. These joint bodies are to serve as channels for bilateral coordination, management, and monitoring of the implementation of the agreement. Regarding the settlement of disputes, arbitral tribunals are to be established to assess and resolve a complaint. The JSEPA increase economic cooperation on various functional levels between Singapore and Japanese government agencies. JSEPA established the following committees: (a) joint committee on financial services cooperation, (b) joint committee on MRA, and (c) joint committee on science and technology.

## **IV. Summary observations**

The five bilateral FTA/CEP agreements surveyed in this paper appear consistent with WTO rules and disciplines. In general, the removal of tariff and non-tariff barriers is immediate except for the KCFTA, which contains a phase-in tariff elimination timetable. Many initiatives go beyond cross-border goods trade issues. In fact, they may be characterized as WTO-plus arrangements, particularly in services and investment and many include new issues such as government procurement, competition policy and, in the case of the USSFTA, even labor and environment standards. Relatively, the JSEPA is much wider in scope though the USSFTA is more detailed and stringent. Parties to these agreements allowed certain flexibilities in the provision of trade remedies, negotiated exemptions and deferred timeframes for tariff elimination. Institutional issues, such as those referring to monitoring and dispute settlement, were also major features of the agreements.

There is also substantial differentiation among the five agreements. There were different approaches to defining rules of origin raising the prospect of overlapping and conflicting trade rules that could complicate regional transactions. These countries also took separate paths to services liberalization with some opting for the negative-list approach while others choosing the positive-list approach. There were also some variation in the degree of harmonization of national standards and policies.

These five agreements were the result of tedious and often difficult and drawn out negotiations between the countries involved. The outcomes were the result of bargaining and compromises as each country sought to push its national interests in the agenda. Nevertheless, these agreements present varied and innovative approaches and modalities to bilateral trade liberalization. They can be helpful guides for other countries, particularly in the Asian region, intending to enter into their own free trade agreements.

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