

**CENTRAL POLICY UNIT  
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**A STUDY ON HONG KONG IN THE REGION:  
ROLE, ISSUES AND STRATEGIES**

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## **HONG KONG'S BRIDGING ROLE IN CHINA-INDIA ECONOMIC EXCHANGES**

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### **I. Purpose**

1. This report gives an account of the recent significant growth in bilateral trade and other economic exchanges between the Mainland and India. It deals with China's and India's efforts to secure free trade agreements (FTAs) within the region, the significance of such treaty behaviour, the prospect of a China-India FTA, and some ways in which the Hong Kong S.A.R. (HKSAR) Government could strengthen Hong Kong's role as a bridge between China and India. The Mainland-Hong Kong Closer Economic Partnership Arrangement (CEPA) already exists as an important framework for the Mainland-Hong Kong trading relationship. The report therefore focuses on the use of bilateral free trade agreements as a major policy tool which the HKSAR Government may also choose to employ in relation to India.

### **II. Background: China-India Bilateral Trade and Investment in Recent Years**

2. China-India bilateral trade in terms of the gross volume of imports and exports surged in the first six months of 2004, recording a year-on-year increase of 93.1 percent. China's exports to India grew by 65.7 percent while imports from India grew by 113.5 percent. Year-on-year increases in volume of exports and imports in previous years had been rising steadily – a 23.4 percent increase in 2001, followed by 37.6 percent in 2002 and 53.6 percent in 2003.<sup>1</sup> Results for the first nine months of 2004 went on to show that China-India trade had increased by 83.8 percent against the

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<sup>1</sup> "China-India Trade Keeps Increasing Fast", Ministry of Foreign Affairs of the PRC, 10 August 2004, available at [www.chinaembassy.org.in](http://www.chinaembassy.org.in).

same period during the previous year. Figures for the whole of 2004 showed a 79 percent increase over 2003 figures (i.e. USD13.6 billion), making China India's second largest trading partner. Similarly, India entered into China's list of top ten Asian trading partners.<sup>2</sup> A further year-on-year increase of 38 percent in 2005 brought the figure to USD18.7 billion, coupled with calls by the President of the Federation of Indian Chambers of Commerce and Industry (FICCI) for the diversification of India's export basket where iron ore still constituted more than half of India's total exports.<sup>3</sup> China was India's third largest trading partner in 2005 while over 150 Indian enterprises set up branches for more than 1,000 projects in China. Similarly, the Chinese Embassy in New Delhi described India as "one of the most important overseas markets for project contracts for Chinese enterprises".<sup>4</sup> In sum, the slightly less than USD19 billion bilateral trade figure by 2005 stood in stark contrast to a figure of only USD2 billion in 1999.<sup>5</sup>

3. 2005 and 2010 are significant dates in light of the Five-Year Plan of China-India Comprehensive Trade and Economic Cooperation which was concluded in March 2005 and set a target figure of USD20 billion for bilateral trade by 2008. By 2006, the figure had already reached USD24.9 billion, exceeding the Five-Year Plan target figure and making China India's second largest trade partner that year, while making India China's tenth largest trading partner.<sup>6</sup> Average annual growth in trade in recent years reached 45 percent,<sup>7</sup> with some predicting that bilateral trade could be worth USD50 billion by 2010.<sup>8</sup> This was, however, before the current global crisis. In any case, bilateral trade reached USD38.7 billion dollars in 2007, still 33 times the

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<sup>2</sup> "China, India Move Closer in Trade", *Asia Times*, 11 February 2005, available at [www.atimes.com](http://www.atimes.com).

<sup>3</sup> "China-India Trade Grows Amid Friction", *Asia Times*, 19 April 2006, available at [www.atimes.com](http://www.atimes.com).

<sup>4</sup> "US \$20 Billion China-India Trade Target Will Be Surpassed Before 2008", Federation of Indian Chambers of Commerce and Industry, 10 July 2006, available at [www.ficci.com](http://www.ficci.com). See also, "China-India Trade to Surpass Target", *The Hindu*, 11 July 2006.

<sup>5</sup> Tarun Khanna, "India Needs to Encourage Trade with China", *Working Knowledge*, Harvard Business School, 6 December 2006, available at [www.hbswk.hbs.edu](http://www.hbswk.hbs.edu).

<sup>6</sup> "New Progress Achieved in China-India Trade, Economic Co-Operation", 1 February 2007, available at [www.mofcom.gov.cn](http://www.mofcom.gov.cn).

<sup>7</sup> Others have put it at 50 percent since 2002; Tarun Khanna, "India-China Trade", podcast, Council on Foreign Relations, 28 January 2008, available at [www.cfr.org](http://www.cfr.org).

<sup>8</sup> "China, India Trade to Hit USD20 Billion This Year", *China Daily*, 22 November 2006, available at [www.chinadaily.com](http://www.chinadaily.com).

1995 figure. China remained India's second largest trading partner, as India continued to be China's tenth largest trading partner.

4. India's major exports to China typically include iron ore, plastic and linoleum, marine products, cotton yarn and fabrics, organic and inorganic materials, aluminium and pharmaceutical products. Typically, China's exports include organic chemicals, coal and briquette, medicine and pharmaceutical products, textile yarn, non-ferrous metals and project-related goods.<sup>9</sup> We might also add chemicals to the list of India's exports and electronics and machinery to China's exports.<sup>10</sup>

5. As for investment, some figures had shown China's FDI in 2006 to have been at USD48.47 million in September of that year, with India's realised investment in China's non-financial sectors at USD136 million. There was concern however with Indian restrictions on FDI in strategic sectors – e.g. airports, ports, telecommunications and information technology.<sup>11</sup> According to China's MOFCOM in 2007, India needed USD380 billion investment in infrastructure construction alone in the next six years, namely in construction contract projects for roads, bridges, railways, ports and power stations. MOFCOM views this sector as one in which China has enjoyed “favourable development” – “India now has become one of China's most important overseas contractual project markets”.<sup>12</sup>

6. One analyst from the Harvard Business School cited an improvement in China-India relations in recent years as a contributing factor and that President Hu Jintao and President Manmohan Singh share a common aim to reduce poverty in both nations. Nonetheless, there is still a gap between India's liberal trade rhetoric and reality, with one example being Indian concerns about protecting the telecommunications industry.<sup>13</sup>

### **III. India's Trade Barriers**

7. Traditionally, significant barriers have existed in relation to trade with India. Critics point out that the significant growth rates mask the fact that volume-wise the

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<sup>9</sup> “China-India Trade Touches \$10 Billion in Nine Months”, *The Hindu Business Line*, 3 December 2004, quoting Mr. Yuan Nansheng, Consul General of China, available at [www.thehindubusinessline.com](http://www.thehindubusinessline.com).

<sup>10</sup> Source: M. Arunchalan, Chairman, AR International (HK) Ltd., webcast interview available at [hktde.com](http://hktde.com).

<sup>11</sup> “China, India Trade to Hit USD20 Billion”, *op. cit.*

<sup>12</sup> “New Progress Achieved”, *op. cit.*

<sup>13</sup> Tarun Khanna, “India-China Trade”, *op. cit.*

figures represent only a fraction of the total trade volume of both countries.<sup>14</sup> The consensus seems to be, however, that while there are real barriers to trade with India, domestic Indian reform is moving in the right direction.

8. Tariff barriers (TBs) include higher tariff rates than the overall average tariff of all developing countries (current bound rates are at 48.6 percent)<sup>15</sup>, tariff peaks in agricultural products especially, high tariffs on alcohol and passenger motor vehicles and motorcycles, tariff escalation in both agricultural and non-agricultural products, a considerable gap between bound and applied rates which lessens certainty for importers,<sup>16</sup> the use of optional tariffs (i.e. the choice between ad valorem and specific duties on 271 tariff lines at last count), tariff rate quotas (i.e. the gap between in-quota and out-of-quota rates, affecting skimmed and whole milk powder, infant milk food, maize, crude sunflower seed or safflower oil and refined rape, colza or mustard oil), as well as product-specific tariff exemptions which increase tariff complexity and pose transparency problems.<sup>17</sup>

9. Non-tariff barriers (NTBs) include India's customs procedure which traditionally required burdensome documentation; delays and risks in those procedures; a wide discretion in customs valuations; import licensing for balance of payments (BOP) reasons which has since been removed; the continued use of a banned items list (tallow, fat, animal oils), a restricted items list (livestock products, chemicals) which require import licensing and a "canalised" items list (petroleum products, pharmaceuticals and bulk grain) which has since been ruled WTO inconsistent; the cumbersome and intransparent nature of licensing as well as the impossibility of obtaining some licenses; technical barriers (TBTs) such as the requirement of prior certification by the Bureau of Indian Standards (BIS); non-scientific-based sanitary and phyto-sanitary measures (SPS measures), and trade remedies such as anti-dumping action.<sup>18</sup>

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<sup>14</sup> Henry Gao, "Bilateral Trade between China and India: Trade Barriers", Symposium on China, India and International Economic Law, National University of Singapore, June 2006 (unpublished, on file).

<sup>15</sup> See India's Trade Policy Review, Report by the Secretariat (Revision), WT/TPR/S/182/rev.1, 24 July 2007, sect. III, para. 2 (hereafter, "India TPR, Secretariat Report").

<sup>16</sup> *Id.*

<sup>17</sup> Gao, *op. cit.*

<sup>18</sup> *Id.*

10. While India is liberalising, this promises not to be an overnight process. The latest WTO Secretariat Report on India's Trade Policy Review (2007) notes:

- (a) That “[s]ince its previous Review in 2002, India has continued to reduce barriers to imports. The tariff has become the main instrument of trade policy and remains an important albeit declining source of tax revenue. The Government has continued to reduce applied MFN tariffs on non-agricultural products to meet its goal of reaching ASEAN tariff levels on these products by 2009. As a result, the overall average applied MFN tariff has fallen from over 32 percent in 2001/02 to less than 16 percent in 2006/07, widening the already large gap between the average tariffs for non-agricultural products (12.1 percent) and agricultural products (almost 41 percent). When ad valorem equivalents of non-ad valorem rates are taken into account, the overall average tariff is around 17.5 percent, reflecting these relatively high tariffs. Analysis of effective protection is complicated by the tariff exemptions granted for certain goods and uses. These exemptions (together with drawbacks) are aimed, inter alia, at mitigating the adverse impact of tariffs on exports and have continued to be simplified during the period under review. However, the overall average applied tariff based on customs duty collection rates is around 10 percent, suggesting that the effective rate is considerably lower, in great part due to these exemptions.”<sup>19</sup>
- (b) The use of import restrictions under GATT Articles XX and XI has declined while 3.5 percent of tariff lines continue to be subject to such measures (some 415 tariff lines, including arms and ammunition, live animals, works of art, mineral and vegetable products).<sup>20</sup> India also continues to monitor around 300 sensitive products following removal of quantitative restrictions in 2002 (e.g. edible oil, cotton, silk, milk and milk products, cereals, fruit and vegetables, spices, automobiles, tea, coffee, alcoholic beverages and small industry products),<sup>21</sup> and continues to use state trading for food security, marketing and domestic supply reasons.<sup>22</sup>
- (c) A decline in the use of anti-dumping measures since 2002.<sup>23</sup>
- (d) Harmonisation of its standards with international norms in relation to TBTs.<sup>24</sup>

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<sup>19</sup> India TPR, Secretariat Report, Sect. III, para. 1.

<sup>20</sup> *Id.*, para. 40.

<sup>21</sup> *Id.*, para. 41.

<sup>22</sup> *Id.*, paras. 3, 80.

<sup>23</sup> *Id.*, para. 4.

- (e) Consolidation and streamlining of SPS laws,<sup>25</sup> especially with the passage of India's Food Safety and Standards Act in August 2006.<sup>26</sup>
- (f) Attempts to deal with the complexity of tariff exemptions following the Indian Finance Minister's budget speech in 2006.<sup>27</sup>

11. Nonetheless, problems remain in these areas as well as others. The decline in applied tariffs for non-agricultural products highlights the wide gap between bound and applied tariffs and the consequent uncertainty to producers and importers. For example, tariff rates actually rose in recent years for tea, coffee, pepper, cloves, cardamom, poppy seeds, garlic, cut flowers, and honey thus raising protection for unprocessed agricultural and raw products.<sup>28</sup> In any event, tariffs for non-agricultural products (NAMA) are between 0-40 percent while agricultural tariffs can reach 150 percent with an average of 117.2 percent.<sup>29</sup> Likewise, escalating tariffs (from unprocessed to semi-processed products) remains a problem, despite signs of de-escalation in paper, printing and publishing, and most recently in food, beverage, tobacco, textiles and leather.<sup>30</sup> As for tariff rate quotas, India's 2007 Trade Policy Review shows that these remain on 14 tariff lines.<sup>31</sup> Similarly, the decline in the use of anti-dumping measures is measured against the fact that in the ten-year period between 1995 and 2005, India was the highest user of anti-dumping actions in the world, with an average of 40 actions and 30 measures annually. Again, in respect of the harmonisation of standards, India currently has some 1,300 standards with only around 53 percent of those issued between 2002 and 2006 harmonised with ISO/IEC

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*, para. 58.

<sup>27</sup> *Id.*, para. 32.

<sup>28</sup> *Id.*, paras. 30-31.

<sup>29</sup> *Id.*, para. 23.

<sup>30</sup> *Id.*, paras. 30-31.

<sup>31</sup> *Id.*, para. 32.

standards.<sup>32</sup> Other difficulties include the use of Government procurement as a policy tool;<sup>33</sup> a complex export regime actually designed in order to reduce a traditional anti-export bias;<sup>34</sup> the reservation of certain industries (atomic energy and substances notified by the Department of Atomic Energy, railway) to the public sector; continued industrial licensing requirements for five industries and 326 products reserved for the small-scale manufacturing sector (down from 799 previously); direct subsidies in agriculture, food, petroleum and railways; implicit subsidies in electricity and water, and the pausing of India's privatisation programme in July 2006.<sup>35</sup> There have been no major changes in import/export procedures and customs valuation. Indeed, both processes have been improved through the use of electronic procedures such as the electronic data interchange system (EDI) to speed up clearance, and the Risk Management System (RSM) which also discontinues routine assessment, audit and examination during customs clearance.<sup>36</sup>

12. All this creates a justification and opportunity for bilateral negotiation as a useful tool in lowering trade barriers. As a rule of thumb, it is more difficult for countries with large trade volumes to negotiate bilateral FTAs than those with smaller trade volumes. This may create an opportunity for Hong Kong, especially in light of India's own nascent FTA programme which this report will now go on to examine. Some of the factors discussed above could also indicate what feasible offensive interests Hong Kong might have in negotiating with India.

#### **IV. China's and India's Evolving FTA Programmes**

13. In March 2005, China's Ambassador to India had announced that Chinese representatives in the China-India Joint Study Group (JSG) had recommended a China-India FTA.<sup>37</sup> In response, the President of the FICCI, who had also called for the diversification of Indian exports, particularly in manufactured items and processed products, was reported to have considered the idea "premature".<sup>38</sup>

14. Nonetheless, both China and India have firmly entered the FTA race. By 2007, China had notified 11 FTAs to the WTO, having engaged in an "FTA spree"

<sup>32</sup> *Id.*, para. 54.

<sup>33</sup> *Id.*, para. 5.

<sup>34</sup> *Id.*, para. 6., also paras. 82-90, 97-100.

<sup>35</sup> *Id.*, para. 7.

<sup>36</sup> *Id.*, paras. 14, 16, 18.

<sup>37</sup> "China-India Free Trade Agreement (FTA) Can Be the Most Significant Event this Decade – China pushes for FTA", *India Daily*, 25 March 2005.

<sup>38</sup> "China-India Trade Grows Amid Friction", above.



following its CEPAs with HK and Macau in 2003 and its FTA with Chile in 2005. Negotiations followed with New Zealand, Pakistan, the Gulf Cooperation Council (GCC), Australia and Iceland. The China-Pakistan FTA was concluded in November 2006 following the 2005 Early Harvest Programme, the China-New Zealand FTA was completed in April 2008 and the China-Peru FTA in November 2008. This report will focus instead on India which currently lags behind China in the breadth of its FTA programme.

15. At a glance, India grants preferential tariffs under SAFTA (previously SAPTA), the Asia Pacific Trade Agreement (previously known as the Bangkok Agreement), the preferential areas tariff with the Seychelles, Mauritius, and Tonga, and its FTAs with Sri Lanka and Singapore. At time of writing, India is also poised to sign the India-ASEAN FTA.<sup>39</sup> Nonetheless, with the exception of Sri Lanka and the lesser developed countries (LDCs) in SAFTA tariff coverage is less than 50 percent with very little in terms of the concessions. The overall average tariff for LDCs is 15.5 percent to 10.6 percent. This compares poorly with India's overall MFN tariff rate of 15.8 percent. Agriculture, textiles and clothing are particularly sensitive areas. Having said that, overall average tariff for Sri Lankan imports is encouraging at 3 percent.<sup>40</sup>

16. India's turn towards FTAs is also fairly recent. Like many countries, India had been a "WTO purist" and favoured negotiation at the multilateral level where India also plays a vocal role in advocating special and differential (S&D) treatment for developing countries. The shift came during the Vajpayee Administration following what one commentator observed to be the clear isolation of India during the WTO Ministerial meeting in Doha in 2001. According to this view, India's FTA programme was driven as much, if not more by the strategic need to engage in coalition-building as it was by market access concerns. India's FTA negotiations was spurred on by its Commerce Ministry's report on the Medium-term Export Strategy 2002-2007 (MTES), witnessing the commencement of talks with Sri Lanka, MERCOSUR, Egypt, Thailand, ASEAN, Singapore, Afghanistan, Bangladesh, Myanmar, South Africa and the GCC. In sum, India's economic strategy now encompasses securing access to developing country markets within a coalition of developing countries. It has been

<sup>39</sup> "India to Sign FTA with ASEAN", *Business Standard* (Mumbai), 20 January 2009; "India-ASEAN FTA May be Signed in April", *The Economic Times* (Mumbai), 21 February 2009.

<sup>40</sup> India TPR, Secretariat Report, Sect. III, para. 36.

observed that the consensus amongst Indian economists is that India's FTA programme is justified in part by overriding strategic objectives. In particular, proposals to form an East Asian Economic Community (EAEC) prompted India to adopt a "Look East" policy. It also prompted Prime Minister Vajpayee to propose an Asian Economic Community (AEC) during the Second India-ASEAN Summit in Bali in October 2003. This policy has since been reaffirmed, for example in the Union Commerce Minister's address to the Indo-American Chamber of Commerce on 13 August 2004.<sup>41</sup>

## **V. Negotiating with India**

17. Nor has India eschewed negotiations with Singapore which stands in a comparable position to Hong Kong. While Singapore has a somewhat larger manufacturing sector and Hong Kong's services sector and cross-border trade volume is larger, both are highly open economies. If anything, the Singapore experience in negotiating with India shows that an open economy may tend towards becoming no more than a negotiating issue, and does not necessarily prevent negotiation itself. This is shown by the successful conclusion of the India-Singapore Closer Economic Cooperation Agreement (CECA).

18. The Singapore negotiating experience could provide some useful lessons on the factors which may cause the greatest difficulty in negotiations with India. Such factors in Singapore's case included India's relative inexperience at the time in negotiating beyond goods, the need to secure wide consultations with Indian industry, coordination challenges between the different Indian Ministries, India's demand for very strict rules of origin, and its demand for Singapore-based service providers to be majority-owned and controlled by Singaporeans. There were also different negotiating expectations. While Singapore's aim was to facilitate a conducive business environment, attract multinational corporations to base their operations in Singapore and increase trade and investment flows, the Indian negotiators demanded swift, reciprocal benefits such as increased Singapore investments in India and market access for its services sector professionals. Some of India's fears concerned potential penetration into the Indian market by third-country traders and producers – e.g. in the form of third-country dumping – as well as fears about the lack of Indian competitiveness in certain sectors such as the auto sector when compared to

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<sup>41</sup> See Chak Mun, "CECA – The Strategic Imperatives", (2006) 10 *Singapore Year Book of International Law* 1, 2-3. Mr. See Chak Mun served both as Singapore's Head of Mission in Geneva, and as Singapore High Commissioner to India.

ASEAN.<sup>42</sup> Others were in the nature of teething problems and relative inexperience. Another lesson was that Singapore took the initiative to propose an FTA.<sup>43</sup>

19. There was also a need to ensure the support of Indian industry, and assuage industry fears in India about the penetration of Singapore-based MNCs into the Indian market.<sup>44</sup> Support from the Confederation of Indian Industry (CII), the Federation of Indian Chambers of Commerce and Industry (FICCI) and the Associated Chambers of Commerce and Industry of India (ASSOCHAM) was crucial in the face of vocal criticism – for example, from the chemicals and banking sectors which feared the dumping of Singapore chemical products in the Indian market, and banking sector liberalisation.<sup>45</sup> In terms of industry support for the India-Singapore CECA, the Union Commerce Minister assured small traders that an incremental approach towards liberalisation will be taken in that sector, and went on to emphasise the development of supply chains from Singapore and the entry of Indian professionals into the Singapore market following mutual recognition agreements (MRAs). In the real estate sector, Indian developers looked forward to Singaporean inward-investment.

## **VI. Challenges Posed by Regional FTAs**

20. These questions concerning the conduciveness of Indian policy towards bilateral agreements and the feasibility of negotiations with India concentrate on some of the positive reasons Hong Kong might have to position itself with India through the instrumentality of a bilateral FTA. But there are also significant “defensive” reasons for entering into an FTA with India.

21. There are two distinct types of challenges facing Hong Kong at the present moment. The first has to do with China’s own regional treaty policies, while the second has to do with the treaty behaviour of regional countries.

22. A common assumption about Hong Kong’s position in respect of the Mainland lies in the “two-way portal” model – i.e. that Hong Kong will be China’s avenue to the world and the world’s avenue to China. According to this view, Hong

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<sup>42</sup> *Id.*, 6.

<sup>43</sup> *Id.*, 3, 5.

<sup>44</sup> *Id.*, 6.

<sup>45</sup> *Id.*, 6.

Kong's strategy should be to "lean in" towards China while simultaneously "facing out". Part of the difficulty with that assumption, however, is that it assumes the continued importance of Hong Kong as a bridge in China's economic and other relations with the world. That assumption is now thrown into doubt because of China's own burgeoning economic relations with the world.<sup>46</sup> China has moved swiftly ahead in negotiating and concluding its own FTAs with regional countries and the world outside. It has not required Hong Kong to play a role in order to facilitate its exchanges with these economic trade partners. At the same time, Hong Kong's autonomy in having its own customs borders means that China's FTAs with trading partners are not extended to Hong Kong. If Hong Kong wishes to enjoy the same advantages, it should either seek to have these FTAs extended to Hong Kong, or conclude FTAs of its own. Some of the challenges here, due in large part to the question of what Hong Kong can offer in such negotiations, have been discussed elsewhere.<sup>47</sup>

23. But there is also a wider challenge. What has also emerged in the meantime is a regional East Asian context which is already, radically different from that which existed when the Asia-Pacific Economic Cooperation forum (APEC) – to which Hong Kong is party – was first conceived. The East Asian agreements we have today are made up of discriminatory treaty rules. They are free trade agreements, as defined and regulated by GATT Article XXIV and GATS Article V.<sup>48</sup> Unlike APEC's declared policy of open-regionalism FTAs are discriminatory; hence the intense discussion at

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<sup>46</sup> The phrase "two-way portal" is Wang Gungwu's; Wang Gungwu, "Hong Kong's Challenge: Leaning in and Facing Out", Seminar on Hong Kong in the Asia-Pacific Region – Issues and Opportunities", organised by the Central Policy Unit of the Government of the Hong Kong S.A.R. and the Centre of Asian Studies; Council Chamber, The University of Hong Kong, 23-24 November 2007 (unpublished).

<sup>47</sup> C.L. Lim, "Hong Kong in the Era of Asian and Global Trade Regionalism", Seminar on "Hong Kong in the Asia-Pacific Region", organised by the Central Policy Unit of the Government of the Hong Kong S.A.R. and the Centre of Asian Studies; Council Chamber, The University of Hong Kong, 23-24 November 2007 (unpublished).

<sup>48</sup> C.L. Lim, "Free Trade Agreements in Asia and Some Common Legal Problems", in Yasuhei Taniguchi, Alan Yanovich & Jan Bohanes (eds.), *The WTO in the Twenty-First Century: Dispute Settlement, Negotiations, and Regionalism in Asia* (Cambridge: Cambridge Univ. Press, 2007), 434.

present about how the WTO should regulate them.<sup>49</sup> Those who are not party to these Asian FTAs risk being shut out of East Asian and Southeast Asian preferential markets.

24. Putting aside ASEAN's creation of an ASEAN Free Trade Area (AFTA),<sup>50</sup> the real change so far as the current Asian trading order is concerned, came with China's offer of an FTA to ASEAN in 2001. The ASEAN Secretariat had proposed economic integration between ASEAN and the "Plus Three" countries – China, Japan and South Korea. Since no consensus could be reached, the ASEAN Chair proposed individual FTAs between ASEAN and China, Japan and South Korea (the so-called "ASEAN plus One" treaties). A year later, China endorsed the idea of a China-ASEAN FTA (CAFTA).<sup>51</sup> ASEAN and China now aim to complete CAFTA by 2010 for ASEAN Six (2015 for ASEAN 10).<sup>52</sup> Even though China came into the FTA game relatively late,<sup>53</sup> CAFTA has had a decisive effect on the treaty behaviour of

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<sup>49</sup> Henry Gao & C.L. Lim, "Saving the WTO from the Risk of Irrelevance: The WTO Dispute Settlement System as a 'Common Good' for RTAs", (2008) 11 *Journal of International Economic Law* 899, 899-903; *The Future of the WTO: Addressing Institutional Challenges in the New Millennium, Report by the Consultative Board to Director-General Supachai Panitchpakdi (Sutherland Report)*, 2004, paras. 103-107; The Warwick Commission, *The Multilateral Trade Regime: Which Way Forward? – The Report of the First Warwick Commission (Warwick Report)*, 2007, pp. 49-50.

<sup>50</sup> C.L. Lim, "A Mega Jumbo-Jet': Southeast Asia's Experiments with Trade and Investment Liberalisation", in *The New International Architecture in Trade and Investment: Current Status and Implications*, APEC Human Resources Working Group Capacity Building Network (Singapore: APEC Secretariat, 2007), 115.

<sup>51</sup> Michael Ewing-Chow, "ASEAN-China FTA: Trade or Tribute?", (2006) 10 *Singapore Year Book of International Law* 251.

<sup>52</sup> Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the People's Republic of China, Phnom Penh, 5 November 2002; Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation Between ASEAN and the People's Republic of China, Vientiane, 29 November 2004; Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the People's Republic of China, 14 January 2007. These treaties and the various protocols are available on Singapore's FTA website at: <http://www.iesingapore.gov.sg/wps/portal/> (visited 20 September 2008).

<sup>53</sup> Henry Gao, "The RTA Strategy of China", in *The New International Architecture*, *op. cit.*, 33.

Japan,<sup>54</sup> and subsequently caused a regional FTA race between China, Japan, South Korea and India. Recently, in April 2008, Japan completed the ASEAN-Japan Closer Economic Partnership Agreement. In recent years, Japan has also been adopting a “multi-track” approach towards its trade negotiations with ASEAN and ASEAN members. It has focused its efforts on a range of bilateral FTAs with individual ASEAN nations (i.e. Singapore, Malaysia, the Philippines and Thailand) before concluding its 2008 FTA with ASEAN as a whole. Japan probably learnt from the Chinese experience where China had found itself negotiating not with one partner (i.e. ASEAN) but ten separate nations at once, and a Japanese strategy was found to avoid that outcome. As for Korea which signed its first modern FTA as late as 2003 (the Korea-Chile FTA),<sup>55</sup> it too has since caught up with Japan and China by completing the Korea-ASEAN Trade in Goods Agreement in 2007. This followed the landmark but publicly controversial Korea-US FTA (KORUS).<sup>56</sup> ASEAN and India, in the meantime, have all but concluded the ASEAN-India FTA.<sup>57</sup>

25. What is notable is that China, Japan, South Korea and India have thus far been content not to conclude FTAs with each other but to trade through their individual FTAs with ASEAN. Korea initially preferred an ASEAN plus Three scenarios, including ASEAN, China, Japan and South Korea but when Korea realised that an ASEAN plus Three Agreement would not be realised in the immediate future, it too entered into individual negotiations with ASEAN and individual ASEAN countries.

26. Any question about Hong Kong playing a bridging role in China-India economic exchanges faces the challenge of Hong Kong being one of the few countries in region which have not entered into FTAs, putting aside the Mainland-Hong Kong

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<sup>54</sup> Hatakeyama Noboru, “A Short History of Japan’s Movement to FTAs (Part 3)”, 22 *Journal of Japanese Trade & Industry*, March/April 2003, 42. This confirms the theory of competitive liberalism advocated by former USTR Robert Zoellick and is also closely related to the “domino effect” theory of trade negotiations. For competitive liberalism in the Asia-Pacific, see Christopher Findlay, Mohd. Hafiah Piei & Mari Pangetsu, “Trading with Favourites: Free Trade Agreements in the Asia-Pacific”, in Riyana Miranti & Denis Hew (eds.), *APEC in the 21<sup>st</sup> Century* (Singapore: ISEAS, 2004), 89, 92.

<sup>55</sup> For Korea’s FTA policy, see Dukgeun Ahn, “Korea’s FTA Policy”, in *The New International Architecture*, *op. cit.*, 49.

<sup>56</sup> Yong-Shik Lee, “The Beginning of Economic Integration between East Asia and North America? – Forming the Third Largest Free Trade Area between the United States and the Republic of Korea”, (2007) 41 *Journal of World Trade* 1091.

<sup>57</sup> “India-ASEAN FTA Hinges on Indonesia, Market Access”, *Economic Times* [Haryana], 21 March 2008; Rituparna Bhuyan, “Indo-ASEAN May Miss Target Date”, *Business Standard* [New Delhi & Mumbai], 29 October 2008. For India’s treaty practice, see further, Rahul Sen, “New Regionalism in Asia: A Comparative Analysis of Emerging Regional and Bilateral Trading Agreements involving ASEAN, China and India”, (2006) 40 *Journal of World Trade* 554.

CEPA. Should Hong Kong embark fully on an FTA programme, it will have some catching up to do. However, Hong Kong enjoys one benefit – or at least does not suffer one disadvantage – in the event that it chooses to seek negotiations with India. Hong Kong already has a CEPA with China, now India's most important trading partner in the region. If Hong Kong succeeds in opening negotiations with India, it should seek to leverage on the Mainland-Hong Kong CEPA in addition to putting forward non-CEPA related offensive interests. Timing and co-ordination with the Mainland will be important, if not critical to the success of such an approach. It may be considered that the absence of a China-India FTA at the present time could present Hong Kong with a window of opportunity, and that an FTA with India could stimulate other economic partners into entering into other FTAs with Hong Kong. These issues bear further study and reflection.

## **VII. Conclusion**

27. Hong Kong may wish to consider the strong position which ASEAN and Singapore currently enjoy against the background of a fast growing China-India economic relationship. Both have FTAs with India and China. The HKSAR Government may wish to consider ASEAN's method of treating an FTA with India as a useful policy instrument, and a useful complement to the CEPA with the Mainland.