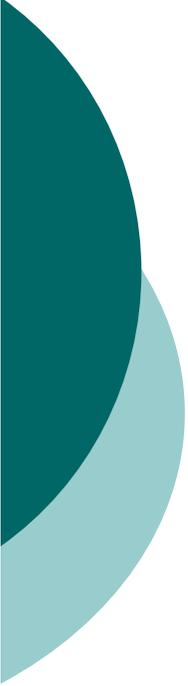


The Impact of Mega-FTAs on the WTO Legal System

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1. Changing structure of global trade and investment governance
 - (1) The stalemate of the Doha Development Agenda;
 - (2) Proliferation of FTAs and BITs
 2. TPP as a means to the FTAAP, and beyond
 3. Beyond the TPP: Reinvigorating the WTO



1. Changing structure of global trade and investment governance

(1) The stalemate of the Doha Development Agenda

Nov-01	WTO members meeting at Qatar agreed to launch the DDA. They set a goal to finish the round by Jan 1, 2005.
Jan-02	Talks start by selecting chairpersons of negotiating groups.
Mar-03	Members missed deadline for deciding on modalities on agriculture and NAMA.
Sep-03	Cancun Ministerial collapsed.
Jul-04	Members agreed on a framework for the DDA at GC meeting. They also agreed to start negotiations on trade facilitation.
Jan-05	Members missed deadline for finishing the DDA.
Dec-05	Hong Kong Ministerial agreed to eliminate agricultural export subsidies by 2013, but failed to agree on the modalities.
Apr-06	Members missed the deadline for agreeing on the modalities.
Jul-06	DG Lamy suspended the negotiations.
Feb-07	Lamy declared the resumption of the negotiations.
Jul-07	Chairmen of negotiating groups on agriculture and NAMA published draft texts.
	Jul-08 Informal Ministerial failed to agree on modalities.
Dec-08	Revised chairman's texts were published.
Jul-09	US and developing countries deadlocked on further liberalization by the latter.
Mar-10	Members held stock-taking meeting.
Apr-11	Chairmen of negotiating groups submitted reports.
Jun-11	Lamy provided a draft LDC-plus package.
Dec-11	Geneva Ministerial agreed on the need of seeking new approach.



Changed power structure as the major cause for DDA stalemate

GATT rounds

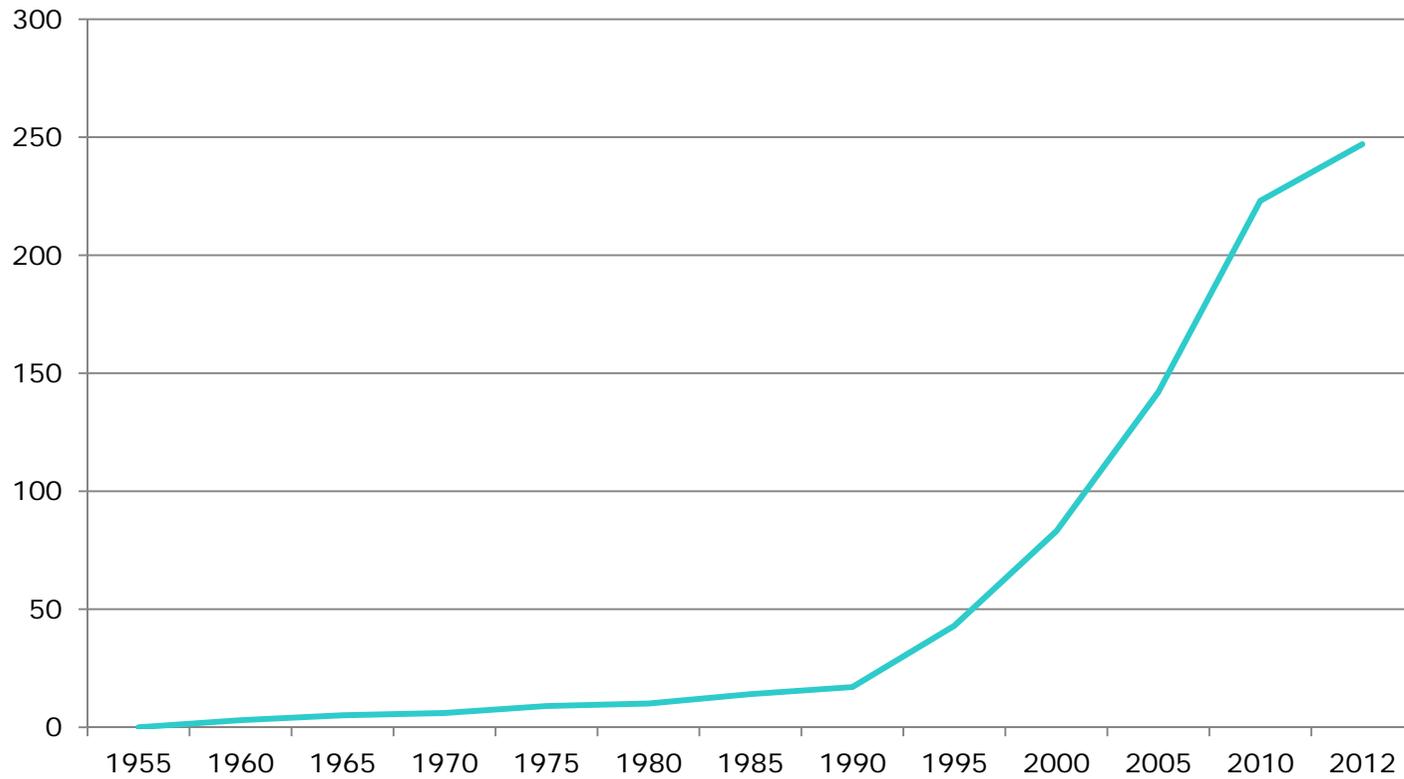
- The Quad (US, EU, Japan and Canada), could conclude negotiations by reaching agreement among them, which would later be adopted by consensus.

DDA

- New key players (US, EU, India, Brazil and China) conflict with each other on a number of issues on the DDA negotiating agenda, there is a slim chance that they will reach agreement on the whole package of the DDA.

(2) Proliferation of FTAs and BITs.

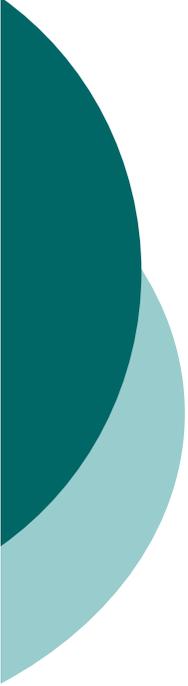
Number of FTAs in force



(Source: JETRO, List of world's FTA. Available at
[<http://www.jetro.go.jp/jfile/report/07001524/07001524.pdf>]

Recent FTAs aim at deep integration

Subject matter of the TPP	WTO-plus/WTO-extra
A. Market access	
A-1 Trade in goods (manufactured products/textile & apparel/agriculture)	○ (WTO+)
A-2 Services (cross-border services/financial services/telecommunication/movement of business persons)	○ (WTO+)
A-3 Government procurement	○ (GPA)
A-4 Investment	○ (service Mode 3) / ○ (other investments)
B. Border measures	
B-1 Rules of origin	○ (TPP rules of origin)
B-2 Trade facilitation	△
B-3 Trade remedies (anti-dumping/countervailing measures/safeguards)	△
C. Domestic regulation	
C-1 SPS (sanitary and phytosanitary measures)	△
C-2 TBT (technical barriers to trade)	△
C-3 Intellectual property rights	○ (TRIPS+)
C-4 Competition policy	○ (SOE regulation)
C-5 E-commerce	△
C-6 Investment	○ (WTOX)
C-7 Environment	○ (WTOX)
C-8 Labor	○ (WTOX)
C-9 Cross-cutting issues (regulatory coherence/ business facilitation/ utilization by small and medium enterprises/ development)	○ (WTOX)



What are the major causes of the deep FTAs (and BITs)?

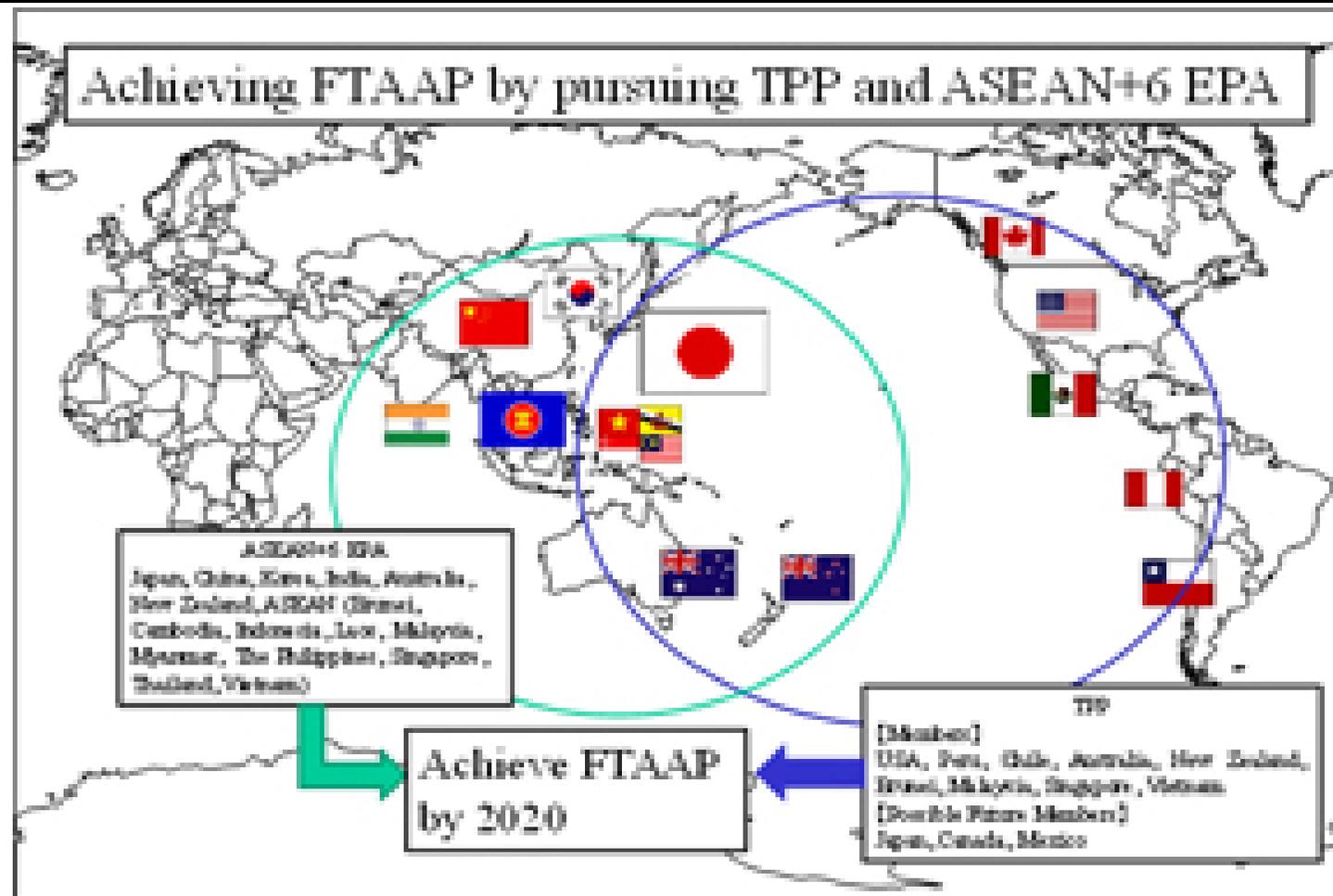
- Delay and deadlock of the multilateral trade negotiations;
- Domino effect of regionalism;
- The Asian Financial Crisis of 1997-1998; and
- Supply chain globalization
 - Stages of production process/service provision are unbundled and spread across borders.
 - Factories and offices have been unbundled internationally, thus creating the **trade-investment-services nexus** (Richard Baldwin (2011)).



GSC and deep integration

Policy areas for GSC	Policy measures needed
Policies for the reduction of service link costs	Tariff reduction; Trade facilitation; Building logistical infrastructure; Liberalization of movement of business persons; Harmonization of laws and regulations
Policies for the reduction of production costs of each production process	Human resource development; Enhancement of production support services; Liberalization and facilitation of investment; Government procurement market access; Protection of intellectual property rights; Harmonization of laws and regulations; Development of supporting industries; Formation of industrial agglomeration

2. TPP as a means to the FTAAP, and beyond





TPP will be the most feasible means to the FTAAP

APEC members that have expressed interest in acceding to the TPP:

- Korea, Philippines, Taiwan, Thailand

Other states that have expressed interest:

- Columbia, Costa Rica, Laos

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TPP might become *de facto* global standards for global supply chains

Mega-FTAs under negotiation

- TPP
- TTIP (Transatlantic Trade and Investment Partnership)
- RCEP
- Japan-EU FTA

TPP is taking the lead of the mega-FTA race. Rules of the TPP might be incorporated in other mega-FTAs by reference.



3. Beyond the TPP: Reinvigorating the WTO

The future of the WTO might not be promising ...

- Even if the WTO finds ways to overcome the deadlock of the DDA, reflecting the changed power structure among the Members, its role in the global trade governance will be diminished, and will be replaced by FTAs and BITs.

And, this might have two detrimental results:

- (1) Accumulation of FTAs and BITs will have a small chance of producing global rules and institutions which come up to the WTO.

Rather, countries will suffer from the fragmentation of rules and institutions and the cost of dealing with overlapping rules and institutions will increase.

- (2) Some countries, most probably the least-developed countries (LDCs), will be excluded from the global supply chains and the networks of FTAs and BITs. They will be excluded from prosperity and this will exacerbate global economic disparity and social disorder.

WTO should be reinvigorated

Functions	WTO	FTA
trade liberalization	⊙ (MFN)	△ (preference)
investment liberalization	△ (service Mode 3)	△ (wide but preferential)
rule-making	⊙ (multilateral/ plurilateral negotiation)	○ (WTO+/WTOX)
sensitivity to developing countries	⊙ (S&D; capacity building; Aid for Trade)	△ (limited S&D; limited capacity building)
monitoring rules and policies	⊙ (Trade Policy Review Mechanism; peer review at committees)	△ (Joint Commission)
dispute settlement	⊙ (judicialized dispute settlement mechanism)	△ (weak dispute settlement mechanism)



These are important and effective institutional infrastructure of the WTO as part and parcel of the global trading system, which cannot be attained by the proliferation of FTAs and BITs, or even by the TPP and other mega-FTAs.

We should, therefore, redefine the role of the WTO, based on the requirements of global supply chains, a new reality of the 21st century global economy. We should give it a new mandate, and mobilize its institutional infrastructure for the realization of the new mandate.

How can this be realized?

Who takes the initiative?



Reference:

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