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The Other Side of the FTAs: China's Multilateralism and the Balkanization of the Global Trading Rules

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When a State becomes the contracting parties to multiple FTAs concurrently, the State has to face serious challenges since all these different FTAs present different rules in certain segments of the agreements. All the participants are thus forced to walk a tightrope as one government is now supposed to play by many different playbooks. It is time to understand the real impact of the FTAs on the current trade regime, so that the States can take an informed decision when they devise their respective FTAs. Given the continued failure to complete the deals in the Doha Development Agenda, it is necessary that the States purport to negotiate and conclude bilateral or regional trade agreements with like-minded countries, and apply new rules of trade through such agreements. But the consequence of such regional experiments of fragmented rules should not be forgotten, in particular, concerning the long-term impact on the multilateralism. This article argues that the real impact of FTAs, particularly multilateral ones, does not lie in mere preferential tariff concessions, but rather gradual dismantling of multilateralism through incorporation of fragmented rules of trade. In this respect, China's role is critical in devising and implementing FTAs in a way that can also help preserve the multilateralism.

Keywords: Multilateral FTAs, WTO, DDA, Fragmentation, Global Trade Regime, China, TPP

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1. Introduction

Free Trade Agreements ("FTAs") continue to proliferate globally and the multilateral trading regime enshrined in the World Trade Organization ("WTO") Agreements is facing a serious challenge. The Asia Pacific region has seen more robust activities in terms of negotiating and concluding FTAs of various sorts. While all these FTAs adopt similar structures and share strong similarities, they also set forth different rules in certain areas and conduct new experiments. As a matter of fact, FTAs among like-minded friends are arguably the best place to carry out experiments of new rules that have been elusive in the multilateral fronts where competing interests of countries hardly meet.

Such being the case, perhaps one of the gravest mistakes that one could make is to consider FTAs as simply bilateral trade agreements offering preferential tariff rates. This misunderstanding is usually observed in calculating the prospective benefit of an FTA in the course of making a decision on whether to pursue an FTA with another country or not, wherein a focus is placed on the assessment of the direct economic impact as a result of the elimination of tariff rates "at the border." This, of course, constitutes an important assessment of an FTA. However, this is just one puzzle of the entire picture of the FTA at issue and the calculation of tariff rate elimination should not be equated with the total implication of the FTA. More importantly, when the FTA sets forth new rules affecting international trade, it is imperative not to lose sight of this crucial aspect of the FTA.

Today, when one State becomes contracting parties to multiple FTAs at the same time, which is increasingly the case,[1] the government of the State is faced with a serious challenge: namely all these different FTAs present different rules, one way or another, in certain segments of the agreements. Participants in the agreements are now forced to walk a tightrope as one government is now supposed to play by many different playbooks. Navigating through the myriad of different rules has become a serious challenge, if not entirely impossible. This is hardly the case under the WTO Agreements where all 161 Members are subject to the same rules.

It is time to understand the real impact of the FTAs on the current trade regime, so that the States can take an informed decision when they devise

their respective FTAs. Given the continued failure to complete the deals in the Doha Development Agenda ("DDA"), it is indeed understandable and even necessary that the States purport to negotiate and conclude bilateral or regional trade agreements with like-minded countries, and apply new rules of trade through such agreements. What they have missed in this respect, however, is that FTAs are just much more than mere preferential tariff concessions and that experiments of new rules through fragmented agreements could carry systemic implications for the global trade. Whenever a new FTA comes up, therefore, close scrutiny should be applied to this rule-side of the FTAs rather than the market liberalization-side of them.

The primary purpose of this research is to analyze the real effect of the multilateral FTAs under the current fragmentation of global trade regime focusing on China's multilateralism. This essay consists of five parts including the short Introduction and Conclusion. Part two will discuss the different rules included and tested in the multilateral FTAs. Part three will investigate some examples of new rules in the recent FTAs, whereas, Part four will share some side effects of new experiments in the FTAs. Finally, Part five, as conclusion, will search for legal and policy measures responding to new challenges occurring in the current multilateral trade regime.

2. Why Are Different Rules Included and Tested in FTAs?

In any discussion on FTAs, a question may be raised as: why do States seek to include and test new rules of trade in their respective FTAs? An argument can be made that if States limit their FTAs to the conventional areas of tariff reduction and market liberalization, all these complexities and headaches arising from trade rules could be dispensed with. They would not have to deal with different versions of trade rules and enjoy the uniformity enshrined in the WTO regime. The problem of this approach, however, is that trade rules have been outdated and rendered unable to deal with some of the recent challenges and demands of the global community.[2] Just imagine the drastic and dramatic changes in the world that we have gone through during the past 20 years since the inception of

the WTO in 1995. As a matter of fact, DDA has bogged down not as much as because of the different views of Members on tariff rate reductions, but because of the diverse positions on how to adopt new rules in various sectors of the global trade.[3] As the consensus on rules has not been reached yet, what has emerged instead is the surge of trade disputes over how to interpret existing texts and norms, and disputes, a majority of which could have been resolved or avoided with a timely adoption of the new rules in the trade sector.

The growing frustration with the multilateralism and the increasing demand in the market have found their outlet in the FTAs. As FTAs with like-minded countries come to offer a venue where new rules can be discussed in good faith and consensus over the new rules can be reached relatively easily, the States have realized that FTAs indeed provide them with a good opportunity to devise and implement, although in small scale with territorial confinement, various new rules of trade. Since an FTA is so broad in scope as to cover all things relating to bilateral economic relationship, it is like a loose-leaf file or an expandable pouch: new pages can be easily inserted into this file or pouch. As such, the spread of FTAs has brought about instances where new rules are tested and experimented in these trade agreements. As for the States as well, adoption and implementation of new rules of trade have become a priority when it comes to FTAs.

Mentioned differently, the pendulum of global FTAs has indeed shifted from the 'tariff reduction' to the 'rule setting.' The following statements of US President Obama in his State of the Union address in January 2015 can be shared in this regard:

> Twenty-first century businesses, including small businesses, need to sell more American products overseas. Today, our businesses export more than ever, and exporters tend to pay their workers higher wages. But as we speak, *China wants to write the rules for the world's fastest-growing region*. That would put our workers and our businesses at a disadvantage. *Why would we let that happen? We should write those rules.* We should level the playing field. That's why I'm asking both parties to give me trade promotion authority to protect American workers, with strong new trade deals from Asia to Europe that aren't just free, but are also fair. It's the right thing to do.
>
> Look, I'm the first one to admit that past trade deals haven't always lived up to the hype, and that's why we've gone after countries *that break the rules* at our

> expense. But 95 percent of the world's customers live outside our borders. We can't close ourselves off from those opportunities. More than half of manufacturing executives have said they're actively looking to bring jobs back from China. In the Asia Pacific, we are modernizing alliances while making sure *that other nations play by the rules*-in how they trade, how they resolve maritime disputes, how they participate in meeting common international challenges like nonproliferation and disaster relief.[4]

President Obama's reference to China in the context of trade was both direct and pointed. In his speech, he underscored that "China wants to write the rules for the world's fastest-growing region" in a way "that would put [US] workers and [US] businesses at a disadvantage." He then stated, the US "would [not] let that happen." Obama continues that the US "should write those rules," to "level the playing field" in the area of global trade. After warning China's 'writing rules on trade,' he then moved on to ask for the Trade Promotion Authority – namely, fast track authority to negotiate trade deals under which the US Congress can vote only up-or-down for completed deals, which he has just secured.[5] So, the collective reading of these statements indicates that "writing trade rules" is the critical objective of the US trade negotiation at the moment and such writing of rules is mainly geared toward the fierce competition with China. If anything, President Obama's statement almost admits that one of the major goals of the on-going Trans Pacific Partnership ("TPP") is to adopt new 'rules' on trade so as to counter the expansion of Chinese influence in this part of the world.

China has responded in kind. On its part, China has also been pursuing its own network of FTAs where it can adopt new rules on trade as it deems appropriate. The Regional Comprehensive Economic Partnership ("RCEP") and Free Trade Areas of Asia Pacific ("FTAAP") are the mega-FTAs that China is currently advocating to introduce new rules on trade.[6] In this respect, China is even setting up a more comprehensive economic cooperation network spanning over Asia and Europe under the name of "One Belt, One Road ("OBOR")" initiative which was unveiled in 2013 when Chinese President Xi Jinping visited Kazakhstan.[7] China's OBOR aims to establish a new silk road connecting China, central Asia and Europe, composed of the land-based "Silk Road Economic Belt" and the ocean-based "Maritime Silk Road."[8] This may be called a Chinese version of a 'super-mega-FTA' that can potentially cover a sizable swath of

Eurasian countries. These two silk roads are said to enable China to increase its influence in global affairs, and help expand its export market that can absorb the overproduction in China. As such, this new project is, by nature, designed to introduce and implement new rules on economic cooperation including trade. The Chinese ambassador to Estonia recently referred to on OBOR:

> Some of you may wonder why we put forward the initiative. Well, it is not difficult to get a clue from the development momentum of today's world. First of all, the Belt and Road initiative answers the call of our time. We are now in a globalized world. The economic integration is accelerating and regional cooperation is on the upswing, but *global economy remains in a period of profound adjustment*, with risks of low growth, low inflation and low demand interwoven with risks of high unemployment, high debt and high level of bubbles. The performance and policies of major economies continue to diverge, and uncertainties in the economic climate remain prominent. The Belt and Road initiative will promote free flow of economic factors, highly efficient allocation of resources and deep integration of markets; encourage countries along the Belt and Road *to achieve economic policy coordination and carry out broader and more in-depth regional cooperation of higher standards; and jointly create an open, inclusive and balanced regional economic cooperation architecture* that benefits all. The initiative is a positive endeavor to seek *new models of international cooperation and global governance*.[9]

The focus on rules is likely to intensify among the States pursuing FTAs. The States with hegemonic dominance tend to place more emphasis on the establishment of rules that would favor their goods and services. Other countries with less influence usually end up accepting new rules inserted and incorporated in respective FTAs.

3. Examples of New Rules in Recent FTAs

Examples of new rules in recent FTAs abound indeed. Every FTA includes, though with varying degrees, new sets of rules to regulate a wide range of issues covering the bilateral economic relationship. A few selected examples are as follows.

A. Ensuring Legitimate Policy Space

One of the core objectives that each contracting party pursues in negotiations of an FTA is to ensure legitimate policy space of government agencies once the FTA goes into effect. As much as recent FTAs have become detailed and comprehensive, it also follows that much of the regulatory authority of the government falls under the coverage of the FTAs. As a consequence, it has become imperative to find ways to guarantee each contracting party's government agencies to preserve policy space to exercise their legitimate regulatory authority. Much of the controversies and debates taking place in FTA negotiating tables are related how to (or not to) preserve policy space.

This objective can be achieved through many different ways. *E.g.*, some FTAs expand the scope of a general exceptions clause or introduce a new exceptions clause so as to explicitly carve out certain governmental measures from the coverage of an FTA.[10] Some of the FTAs also include provisions that stipulate favorable consideration of certain types of governmental measures.[11] Yet, other FTAs clarify the discretion accorded to the governments of contracting parties with respect to particular types of measures.[12] Likewise, some types of measures are exempted from dispute settlement proceedings, which is another way of guaranteeing wide latitude of discretion of government agencies.[13] To the extent, these direct and indirect policy space guarantees are not found in the WTO Agreements, they constitute novel rules applicable to trade between contracting parties. How these experiments fare would carry a significant implication for the development of the global trading norms?

B. Dispute Settlement Mechanisms

Dispute settlement mechanisms offer yet another example of experiments of new rules in the FTAs. New schemes of resolving disputes are created and introduced. *E.g.*, Korea-EU FTA and Korea-China FTA adopted a non-binding mediation mechanism to deal with disputes of Non-Tariff Barriers ("NTBs").[14] This new dispute settlement mechanism is the reflection of the fact that NTBs have become one of the most controversial and complex issues in recent FTAs. Navigating through the web of laws and regulations, both written and unwritten, of the FTA partners is sometimes like walking down the labyrinthine streets of an old city. Unpredictable exercise of discretion and invisible regulatory restriction

couched in vague terms unfortunately neutralize the benefits from the tariff elimination of the FTAs. NTB detection and elimination has thus become critical. After having realized the inherent limitations of the existing dispute settlement mechanism in dealing with disputes of NTBs, this new scheme of mediation has been introduced as a flexible alternative wherein parties are more expected and willing to accept and implement decisions of third party mediators. Here again, depending upon how these new schemes would fare in the future, perhaps other countries will follow suit, as well.

In a similar vein, parties to the FTAs have started to strengthen the function of the Joint Committee, a bilateral consultative body of an FTA, in a way that can issue a 'binding' interpretation of the text of the FTA.[15] Once issued, this binding interpretation then constrains a dispute settlement entity – such as a panel or arbitration tribunal - that hears the dispute. Through the Joint Committee, therefore, the parties specifically control the decision making process of the international dispute settlement body established under the FTA at issue.[16] In a sense, the Joint Committee almost exercises the function of a *de facto* appellate mechanism. Similarly, various new experiments are also taking place in the FTAs in the field of dispute settlement. More new rules are thus coming up and put to test through the operation of FTAs.

C. Fisheries Subsidies

At the same time, new issues that have stayed outside the scope of conventional trade agreements somehow come to fall under the FTAs for the first time. As is well known, many new issues have been put on the negotiating tables of DDA for a long time, but failed to find their ways into the text of the WTO Agreements as the grand settlement among Members has been as elusive as ever. For better or worse, these 'stray issues' are then taken up by States in their respective FTAs.

One such example may be found at fisheries subsidies.[17] This issue represents a global effort to introduce a new legal regime wherein governments are prohibited from providing subsidies to their domestic fisheries industries, since these subsidies have been found to be a major culprit of the depletion of fish stocks globally. Prohibition of subsidies to fisheries sectors has been touted as the most efficient way of slowing down the depletion of the marine species. As a result, this issue has become one of the core topics of the DDA negotiations.[18]

However, Members have failed to reach consensus since, as with any other new issues, countries have different ideas of how to introduce new rules on fisheries subsidies.[19] Having failed to secure consensus, this issue is now successfully finding its place in the text of the TPP, a multilateral free trade agreements among twelve nations.[20] This has been made possible by the US, Australia and New Zealand that have been vocal advocates of the fisheries subsidies issue in the DDA negotiations and that are currently spearheading the negotiations of the TPP. In other words, these proponents of fisheries subsidies are purporting to fulfil their botched WTO goals through the TPP framework. Once finalized, this would be the first instance where fisheries subsidies norms are to be included in a trade agreement.

This is an interesting development because the core elements of fisheries subsidies as are discussed at the WTO with Members are still presenting divergent views. Notwithstanding this situation in the WTO, the TPP has adopted its own rules of fisheries subsidies applicable to twelve contracting parties, which have been largely copied from the fisheries subsidies negotiations at DDA. Once new fisheries subsidies rules are introduced in the TPP, the outcome will then be transported back to the negotiating tables of the WTO. So, it is apparent that there exists a two-way communication channel between the WTO and FTAs. This interaction with the WTO underscores the importance of new rules experiments in the FTA front.

D. Inserting Linchpins for Overlapping Issues

An FTA also turns out to be a place where a wide range of distinct and separate issues that have been dealt with in separate legal instruments previously are now brought and bundled together under the umbrella of a single agreement. An FTA of these days indeed addresses a wide range of issues of economic regulation spanning over conventional trade issues and other non-conventional issues such as investment, competition, environment, etc. The combination of conventional trade issues with non-conventional ones in the same agreement has raised the novel question of how to align and coordinate them in the single legal instrument. As, in pre-FTA era, all these issues evolved independently from each other through separate international agreements, they were not amenable to be condensed into one document as if it were the case for the WTO Agreements.

Not surprisingly, there are internal conflicts or inconsistencies among different issues although they are in the same agreement.

Take services and investment as example! These two different issues are dealt with in separate chapters of an FTA. They have evolved separately through independent legal instruments: the former through the WTO Agreements (i.e., General Agreement on Trade in Services), while the latter through bilateral investment agreements ("BITs").[21] Despite the different routes of birth and growth, the financial services issue and the investment issue are the two sides of a coin. As a matter of fact, mode 3 of financial services is none other than investment.[22] Despite of this close relationship, since the two issues have evolved through separate routes, few studies have been conducted on how to align and coordinate the two issues in the same FTA and more importantly how to "cut and grind" the intersection so that these two inherently different rules can now fit together nicely. *E.g*., a financial services chapter contains or refers to a general exceptions defense, whereas an investment chapter does not permit invocation of such an exception.[23] What is permitted in one chapter is not so in another chapter of the *same* agreement. [Emphasis added]

The FTAs where all these diverse topics converge under single instruments have prompted parties to contemplate and introduce, for the first time, linchpin provisions that address intersection issues and overlapping areas. This seems to be arguably one of the major contributions of FTAs brought by their exploration and implementation of new rules in international trade. Given that 'fragmentation' is regarded as one of the fundamental challenges to contemporary international law, States would often create and insert various linchpins in the text of the FTAs so as to connect freestanding issues; they provide a meaningful testbed for alignment and coordination of different issues. If continued, this may lead to help finding a viable way to overcome the problem of fragmentation of norms of international law.

4. Side Effects of New Experiments in FTAs

All in all, trying new rules in FTAs should be a generally good thing. Improved rules could regulate economic relationship between the contracting parties

more efficiently and appropriately. Loopholes can be filled in and dots can be connected. More importantly, results from the experiments can guide other countries that, having learned from the experience of forerunners, can structure better rules. The WTO could also fine-tune their own rules being discussed in the multilateral setting. These positive contributions, however, are accompanied by the negative consequences, as well. There are side effects that should be adequately taken into account from the logistical, policy and legal aspects.

A. Logistical Aspect

More than anything else, new rules mean a lot of work for the government. Introduction of new rules through multiple FTAs stands to impose significant logistical burden on the contracting parties, as rules of one FTA are not entirely compatible with those adopted in another FTA. If a multilateral agreement is a one-size-fits-all suit, an FTA is a tailor made suit that fits only the specific contracting parties. Naturally, all these individual FTAs come with different sizes and shapes as parties are all different. Consequently, when one country is parties to many different FTAs at the same time, it should wear all these different clothes at the same time. One FTA may have a baggy jacket, while another FTA has a slim jacket. As all FTAs follow the strict rule of a "self-contained regime," one contracting party should wear all these suits of different sizes at the same time. It should be a lot of hassle to deal with all these FTA-specific peculiarities simultaneously and harmoniously. Wearing all these suits – i.e., implementing all these FTAs – at the same time may not be entirely impossible but should demand a lot of work.

In considering various exceptions clauses in the FTAs, existence of an exceptions clause in one FTA may be able to justify a particular governmental measure within the parameters of that FTA. Absence of such a provision in another FTA then may not be able to justify the same measure to the extent the FTA is concerned. At this juncture, a government looking at the two FTAs would be in a dilemmatic situation because the same governmental measure is treated differently in two different trade agreements that it has signed. *E.g.*, what is permitted in the Korea-Australia FTA may not be permitted in the Korea-US FTA. Then, a probable outcome would be for the government to refrain from adopting the measure altogether even if it is justified at least under one of the

FTAs. This outcome is the reflection of the reality that from a government's perspective more often than not new rules means adoption or amendment of laws and regulations, which are by nature based on the notion of general application: quite often, laws and regulations apply to all entities within the territory without necessarily distinguishing nationalities of goods, services and investments. With respect to tariff rates, such distinction is feasible and operable by applying the rules of origin at the border. When it comes to the rules, however, such distinction is hardly feasible or operable as new rules means changes of national policies and systems of the contracting party, which in turn means changes "across the board" within the territory. Pinpoint amendments or surgical changes targeting a certain country are sometimes possible, but often incorporation of new rules entails their implementation across the board within the contracting party.

Let's assume that Korea joins the TPP, which is likely in all respects.[24] At that point, fisheries subsidies are permitted when Korea deals with other FTA partners but are prohibited *vis-à-vis* with twelve TPP partners. However, fisheries subsides are not like tariff concessions which are amenable to compartmentalization among different treaty partners, so to speak. They are to *prohibit* Korea from providing subsidies to the fisheries industry *without reference to* any particular trading partner or source of importation. [Emphasis added] Provision of subsidies to fisheries sectors is just prohibited by the TPP. On the other hand, the same support is not prohibited under other FTAs. The permission under these other FTAs, however, is almost meaningless because the prohibition under the TPP virtually tackles them in the first place. It does not matter how other agreements stipulate. Korea cannot maintain a subsidies program with respect to certain States and prohibit it with respect to others. A particular type of governmental action is banned *ex ante* under the norms of fisheries subsidies, so the virtual effect is the same as the blanket prohibition of Korea's measures regardless of permission or non-permission of individual FTAs.

It then follows that governments are now required to set their regulation at the most stringent standard of FTAs regardless of how respective bilateral FTAs actually provide. This "convergence to the most stringent standard" would force a government to move in a position to seek perennial changes of laws and regulations as a result of conclusion of every new FTA. This understanding

of accepting new 'rules' as opposed to mere 'tariff reductions' possibly leads States to go through domestic implementation proceedings of the endless DDA settlements, albeit in a smaller scale. Furthermore, such continuing flow of new rules across the board would also raise the possibilities of conflicts among various rules, when those new rules of a new FTA do not fully dovetail with the other rules, existing FTAs and with others on the negotiating tables.

B. Policy Aspect

The endless domestic implementation process of trade deals is not a phenomenon that is observed in the multilateral regime such as the WTO Agreements. When it comes to rules, the multilateralism would be more sensible: there is adoption of the rules by *all* Members *at the same time* and application of the *same* rules until they are changed as a result of a new round. [Emphasis added] The introduction of new rules in the FTAs therefore runs the risk of further breaking down the already complex international trade rules. The co-existence of multiple rules at the same time for the same topic would only escalate tension and confrontation among different trading blocs established by the mega-FTAs. It would not help stabilize the global trading regime. As a general matter, a sustainable global trading regime should facilitate resolution of disputes rather than causation of new ones.

C. Legal Aspect

FTAs are indeed permitted under Article XXIV of the General Agreement on Tariffs and Trade 1994 (hereinafter GATT 1994). Upon careful reading of Article XXIV, however, it becomes evident that what is permitted under this provision is a preferential measure that is "necessary for the formation of the FTA,"[25] which does not put other non-parties in a more disadvantageous position than before.[26] It may not cover *all* the consequences flowing from the creation of an FTA, however. [Emphasis added] *E.g*., if a new situation occurs as a result of an FTA, it is not entirely clear whether such situation is also to be covered by Article XXIV because arguably the situation is not "necessary for the formation of the FTA," which appears to cover the negotiation and conclusion stages. Thus, anything relating to the FTAs can be covered by Article XXIV and thus be justified under the provision are not a proposition that can be accepted as such.

This rationale applies with equal force to instances where the Members adopt in their respective territories two different sets of rules affecting trade as a result of concluding different FTAs.

As a corollary, systematic changes, taking place by adopting new rules of an FTA, may lead to a situation where they cannot be justified by Article XXIV. In fact, Article X of GATT 1994 is also supportive of the proposition that uniformity is indeed one of the core elements of the trade norms of the member States.[27] Introduction of various new rules through FTAs now stands to implicate these other norms of the WTO Agreements that all the FTA partners are presumably supposed to abide by unless deviation is justified by Article XXIV.

5. Conclusion: New Rules in FTAs and New Challenges

The surge of FTAs shapes up a new landscape of the global trading regime. Nonetheless, many things still remain on a drawing board and it is too early to tell the exact implication and impact from these fragmented regional trade agreements. The final balance sheet of the new regime will be only available when the new landscape takes root. Perhaps what we are seeing now is just the tip of the iceberg.

Fragmentation of international law has been referred to as a key challenge for the international community.[28] It has been discussed so far in the context of "between or among different norms" of public international law. But in fact, fragmentation is also taking place even within the sub-set of a norm of international law – be it international trade law, international investment law, or international environmental law – through the operation of myriads of bilateral and regional FTAs. This phenomenon of further fragmentation at a sub-level would not serve the interest of any State, nor the collective interest of the international community at large. Rules-friction or the rules-mismatch would become more acute and conspicuous in that situation.

All FTAs have the same objectives with similar agendas. However, they contain different rules in one way or another. A State is then supposed to implement all these different rules at the same time. It is like all these FTAs play

the same tune under the same title of trade deals, but the rhythms are all different. If one has to dance to different rhythms at the same time with different dancing partners, masterful choreography is everything. Otherwise, one would easily step on the foot of the dancing partners.

What again underscores the role of the WTO? The Organization and its multilateralism are the source of the masterful choreography of the global performance. The deeper FTAs penetrate the global trading regime, the more evident the benefit of multilateralism becomes.

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10. *See* the general exception clause in the Free Trade Agreement between the Government of the Republic of Korea and the Government of Australia (hereinafter Korea-Australia FTA), entered into effect on Dec. 12, 2014, art. 22.1, ¶ 3. This is the first instance where a general exceptions clause has been inserted in a trade agreement with respect to an investment chapter.
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17. As for the global effort to introduce new rules on fisheries subsidies through trade agreements and divergent views among different states, *see generally* WTO, Negotiations on Fisheries Subsidies, *available at* https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm (last visited on July 30, 2015).
18. The Doha Ministerial Declaration provided in paragraph 28 that the discussions on clarifying and improving disciplines under the SCM Agreement were to move forward "while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives." The Ministers further noted that, "in the context of these negotiations, participants should also aim to clarify and improve WTO disciplines on fisheries subsidies." *See* WTO, Ministerial Declaration of 14 November 2001, WT/MIN (01)/DEC/1, 41 I.L.M. 746 (2002) (hereinafter Doha Declaration), adopted on Nov. 20, 2001. In the Hong Kong Ministerial Declaration, paragraph 9 of Annex D, the cross-reference to trade and environment is reiterated along with the "broad agreement that the Group should strengthen disciplines on subsidies in the fisheries sector, *including* through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing." [Emphasis added] *See* WTO Negotiating Group on Rules, Draft Consolidated Chair Texts of the AD and the SCM Agreements of 30 November 2007, TN/RL/W/213; WTO Negotiating Group on Rules, *New Draft Consolidated Chair Texts of the AD and the SCM Agreements* of 19 December 2007, TN/RL/W/236.
19. *See* WTO Negotiating Group on Rules, New Draft Consolidated Chair Texts of the AD and the SCM Agreements of December 19, 2008, TN/RL/W/236.
20. Draft text of TPP art. SS.16, ¶ 6, *available at* http://www.fao.org/fishery/topic/3195/en (last visited on July 10, 2015).

21. Roughly as many as 3,200 BITs have been concluded by individual states so far. *See* UNCTAD Database (International Investment Agreements Navigator), *available at* http://investmentpolicyhub.unctad.org/IIA/IiasByCountry#iiaInnerMenu (last visited on July 10, 2015).
22. Korea-China FTA arts. 9.5 & 9.13.
23. Korea-U.S. FTA, art. 23.1, ¶ 2, & n. 1. *Cf.* ch. 11.
24. A. Fifield, *South Korea Asks to Join Pacific Trade Deal, Washington Says Not So Fast*, Wash. Post, Apr. 15, 2015, *available at* https://www.washingtonpost.com/world/asia_pacific/south-korea-asks-to-join-pacific-trade-deal-washington-says-not-so-fast/2015/04/15/85d7396a-e39e-11e4-ae0f-f8c46aa8c3a4_story.html. *See also* D. Ignatius, *A Breakthrough on Trade in Asia*, Wash. Post, Jan. 29, 2015, *available at* https://www.washingtonpost.com/opinions/david-ignatius-a-breakthrough-on-trade/2015/01/29/6e2c376c-a806-11e4-a06b-9df2002b86a0_story.html; June Park, *South Korea's Policy Choices in the TPP Era*, 307 E.W. Center Asia Pacific Bull. (Apr. 9, 2015); J. Fitzgerald, *A Primer on the Free Trade Bill*, Boston Globe (May 21, 2015); M. Winker & Sam Kim, *Park Seeks Trade Deal from U.S.-Led TPP and China Bilateral Pact*, Bloomberg (Jan. 1, 2014); Statement of Korea's Vice Minister of Foreign Affairs, IISS Cartagena Dialogue: The Trans-Pacific Summit on "Korean Perspective on the Pacific Alliance (Mar. 9, 2015), *available at* https://www.iiss.org/en/events/cartagena%20dialogue/archive/2015-8d0d/plenary2-b370/cho-6d2f (all last visited on July 29, 2015).
25. GATT 1994, art. XXIV, ¶ 5, chapeau.
26. *Id.* ¶¶ 4 & 5 (b).
27. *Id*. art. X (Publication and Administration of Trade Regulation). It provides that:

> 3. (*a*) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

28. *See Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law*, Rep. of Int'l Law Comm'n, 58th Sess., Apr. 13, 2006, U.N. Doc. A/CN.4/L.682. For details, *see* C. Leathley, *An Institutional Hierarchy to Combat the Fragmentation of International Law: Has the ILC Missed An Opportunity?*, 40 NYU J. Int'l L. & Pol. 259-306 (2007).