BILATERAL FREE TRADE AGREEMENTS: A COMPARATIVE ANALYSIS OF THE AUSTRALIA–UNITED STATES FTA AND THE FORTHCOMING AUSTRALIA–CHINA FTA

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I INTRODUCTION

This article will examine the process behind, and the likely influence of, two key free trade agreements that will have profound effects on Australia's trade with the world in the 21st century. The first is the existing Australia–United States Free Trade Agreement ('AUSFTA') which commenced operation from 1 January 2005. The second is the putative Australia–China Free Trade Agreement ('ACFTA'). The article also examines some of the key political and trade ramifications underpinning each of these agreements.

II THE AUSFTA

A Background

While the genesis of liberalised trade between Australia and the United States dates back to the 1930s,[1] serious momentum was not achieved until the 1980s under Prime Minister Bob Hawke, who proposed (unsuccessfully) a free trade pact aimed at reducing agricultural trade subsidies among agricultural exporting countries.[2] Hawke's proposal was set against the backdrop of the stalled Uruguay Round negotiations (1986–1994), being conducted under the auspices of the *General Agreement on Tariffs and Trade* ('*GATT*'), which were in deadlock after Europe's refusal to acquiesce to US demands that Europe eliminate all trade-distorting protection on agricultural goods.[3] Following a tepid reception in the

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1 For a timeline of events leading to AUSFTA, see Senate Select Committee on the Free Trade Agreement between Australia and the United States, Parliament of Australia, *Interim Report* (2004), Appendix A.

2 Stephen Hutcheon, 'Ministers to Seek Support for Hawke Trade Proposals', *The Sydney Morning Herald* (Sydney), 31 January 1987, 3.

3 John Edwards, 'US Shifts Stance in Trade Deadlock', *The Sydney Morning Herald* (Sydney), 27 February 1989, 11.

US for Hawke's proposal, discussions ebbed until 1992 when President George H W Bush offered to begin negotiations on a trade pact with the new Australian Prime Minister, Paul Keating. At the time, Australia was experiencing a recession with 10.5 per cent unemployment and a two to one trade deficit with Japan.[4] Keating rejected the offer due to 'protectionist' wheat, cattle, and other agribusiness subsidies in the United States that he believed would harm Australian farmers and reduce any Australian advantage in the bilateral agreement. Gareth Evans, then Minister for Foreign Affairs, went so far as to characterise US wheat subsidies as 'the act of a hostile power'.[5] Keating's rejection of the offer was also motivated by Japanese concerns that a bilateral trade agreement between Australia and the US would harm Japan. In a statement to the House of Representatives, he remarked:

> The Australian public understands very well Japan's significance in our external relations. Japan is the world's second largest national economy, accounting for about 14 per cent of global output. It has been our largest trading partner since 1970. … [On my visit to Japan the government] acknowledged an uneasiness in Japanese political and business circles about the increasing trend to preferential trade arrangements. … I said that Australia would not be party to any trade arrangement which was directed against Japan.[6]

Discussions on free trade were revived in March 2001 when Australia's Minister for Foreign Affairs, Alexander Downer, visited the United States to discuss in detail the possibility of a bilateral trade agreement.[7] President George W Bush signalled a 'strong interest' in pursuing a bilateral agreement with Australia and noted in a letter to Prime Minister John Howard that 'the pact would need to open up trade for all sensitive sectors from both economies' and that any deal 'would need to be truly substantive and comprehensive and deliver tangible benefits for both countries'.[8] At the same time the Department of Foreign Affairs and Trade ('DFAT') commissioned a study with the Centre for International Economics ('CIE') to measure the financial costs and benefits of the prospective agreement.[9] The study endorsed a free trade agreement ('FTA') and concluded that both Australia and the United States stood to gain from the agreement.

In a June 2002 address to the US Congress, Prime Minister Howard asked the Congress to give President Bush the authority to negotiate new trade agreements. He remarked that

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4 Michael Wines, 'Bush, in Australia, Under Fire on Trade', *The New York Times* (New York), 1 January 1992, 6.

5 Ibid.

6 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1992, 2002 (Paul Keating, Prime Minister).

7 Virginia Marsh, 'Australia Bid to Give US Trade Talks Fresh Impetus', *Financial Times* (London), 21 March 2001, 15.

8 Brendan Pearson, 'Bush Tells PM: Let's Talk Trade', *The Australian Financial Review* (Sydney), 27 April 2001, 1.

9 Leon Berkelmans et al, *Economic Impacts of an Australia–United States Free Trade Area* (2001) Centre for International Economics <http://www.thecie.com.au/publications/CIEAUSFTA_economic_impacts_DFAT.pdf> at 15 October 2007.

> we in America and Australia have an historic opportunity to give even greater momentum to our bilateral economic relationship. And that is why Australia has proposed the negotiation of a free trade agreement between our two countries. A comprehensive free trade agreement, by boosting trade and investment between us, would add a stronger economic dimension to the very deep bilateral ties that are already there.[10]

In November 2002 the United States and Australia announced the start of negotiations on AUSFTA.[11] In March of the following year the first round of trade negotiations were held at DFAT in Canberra.[12] The United States and Australia concluded five rounds and 11 months of talks on AUSFTA in 2004, but only after agreeing to exclude sugar[13] from the agreement and to forestall the elimination of tariffs on beef and dairy industries for a prolonged period (eighteen years and nine to eighteen years, respectively).[14]

The United States Congress implemented enabling legislation for AUSFTA on 14 July 2004 (House of Representatives) and 15 July 2004 (Senate). President George W Bush signed legislation implementing AUSFTA on 3 August 2004, heralding the agreement as a 'milestone in the history of [the US–Australia] alliance'.[15]

The Australian Parliament followed suit, implementing domestic enabling legislation on 13 August 2004.[16] The agreement came into international legal force on 1 January 2005 and was heralded as 'the most important bilateral economic agreement ever undertaken by Australia'.[17]

B Developments Since January 2005

From its inception, there has been considerable controversy surrounding AUSFTA, notably with regard to its exclusion of sugar, its limiting provisions on beef and dairy industries and, broadly, its effects on the provision of health care in Australia.

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10 Prime Minister John Howard, 'Address to Joint Meeting of the US Congress' (Speech delivered at the United States Congress, Washington, DC, 12 June 2002) <http://www.pm.gov.au/media/Speech/2002/speech1703.cfm> at 15 October 2007.

11 'US–Australia Talks to Start', *Financial Times* (London), 14 November 2002, 5.

12 Matt Wade, 'Free-trade Dealers Keep Cards Close to Chest', *The Sydney Morning Herald* (Sydney), 19 March 2003, 8.

13 The sugar production sector is among the most protected US industries, shielded by a 'formidable' tariff-quota policy that bottlenecks the flow of sugar and syrups into the country: ACIL Consulting, *A Bridge Too Far?: An Australian Agricultural Perspective on the Australia/United States Free Trade Idea: A Report for the Rural Industries Research and Development Corporation* (2003) 36– 8 <http://www.rirdc.gov.au/reports/GLC/ACIL-ABridgeTooFar.pdf > at 15 October 2007.

14 Jeffrey J Schott, 'Free Trade Agreements and US Trade Policy: A Comparative Analysis of US Initiatives in Latin America, the Asia-Pacific Region, and the Middle East and North Africa' (2006) 20 *The International Trade Journal* 124.

15 President George W Bush, 'Remarks on Signing the United States–Australia Free Trade Agreement Implementation Act' (Speech delivered at the White House, 9 August 2004) <http://www.access.gpo.gov/nara/nara003.html> at 15 October 2007.

16 *US Free Trade Agreement Implementation Act 2004* (Cth).

17 DFAT, *Australia–United States Free Trade Agreement (AUSFTA): Advancing Australia's Economic Future* (2004) 1 <http://www.dfat.gov.au/trade/negotiations/us_fta/ausfta_brochure.pdf> at 15 October 2007.

Australian farmers and many American commentators alike viewed the exclusion of sugar in AUSFTA as inconsistent with George W Bush's rhetoric emphasising the need to open all sensitive sectors to trade under AUSFTA.[18] Noting that the US sugar industry accounts for less than one per cent of US farm sales but accounts for seventeen per cent of agriculture's contributions to political interests since 1990,[19] *The Wall Street Journal* condemned the decision to remove sugar from the negotiating table and characterised the sugar industry as 'highly coddled' and 'uncompetitive.'[20] As the world's fourth-largest sugar exporter,[21] Australia was projected to make its largest gains in AUSFTA through the sugar and dairy industries.[22] In a statement on the exclusion of sugar in AUSFTA, DFAT observed that sugar

> was a sensitive issue for the United States … and it did not prove possible for the United States to offer to increase current access. Faced with a decision of whether to walk away from the negotiations, the Government decided that the potential benefits from AUSFTA as a whole did not justify denying those benefits to the rest of the Australian community for the sake of one – albeit very important – agricultural sub-sector.[23]

The Australian Government's willingness to acquiesce to US demands to remove sugar from the negotiations when Australia stood to gain the most from sugar exports reflects the fact that bilateral FTAs allow flexible solutions to particular negotiating points and key goods and services. Particular national sensitivities can indeed be quickly resolved when there are just two parties to the agreement.

C Trends and the Way Ahead

In assessing the AUSFTA after three years of operation, two particular points should be borne in mind. First, any early evidence of improved trade is patchy; second, DFAT has advocated taking a long term view, with 'officials from the Department of Foreign Affairs and Trade stress[ing] it would take years before the full effects of the deal were felt'.[24]

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18 See Pearson, above n 8.

19 Michael Schroeder, 'Sugar Growers Hold Up Push For Free Trade', *The Wall Street Journal* (New York), 3 February 2004, A13.

20 Editorial, 'Sweet Sabotage', *The Wall Street Journal* (New York), 3 February 2004, A14.

21 Schroeder, above n 19, A13.

22 Editorial, 'Aussie Rules', *The Wall Street Journal* (New York), 17 February 2004, A20.

23 DFAT, Australia–United States Free Trade Agreement: AUSFTA – Frequently Asked Questions (2005) <http://www.dfat.gov.au/trade/negotiations/us_fta/faqs.html> at 15 October 15.

24 Joseph Kerr, 'First Signs of Gains after US Free Trade Deal', *The Australian* (Sydney), 7–8 October 2006, 8.

The DFAT Annual report 2005-2006 noted that:

> The AUSFTA Joint Committee, co-chaired by Mr Vaile and his then US counterpart in Washington on 7 March 2006, gave momentum to the important ongoing work under the Agreement, including mutual recognition of professional qualifications and integration of Australian and US financial markets. To ensure a comprehensive whole of government approach, the department consulted state and territory governments before and after the meeting. We made successful representations to two US states (Oklahoma and Tennessee) to sign up to the government procurement provisions of the Agreement. Australian companies now have access to the government procurement markets of 31 US states. The department coordinated the implementation of AUSFTA across the Government and chaired mandated bilateral discussions on agriculture, sanitary and phytosanitary matters, rules of origin and professional services. We helped Australian businesses take advantage of the Agreement by providing a responsive email and telephone hotline service. The department answered hundreds of AUSFTA-related inquiries in addition to conducting direct industry consultations. The department chaired a government-industry working group on the US Farm Bill to monitor the debate in the United States on agricultural subsidies affecting Australian exports and to develop strategies encouraging reform of the Bill. The department worked with the US Administration on the implementation of the new E-3 visa, creating 10,500 places per year for qualified Australians. The visa became operational on 2 September 2005.[25]

The DFAT report essentially confirms that the effects to date of AUSFTA have been in specific and narrow areas.

III THE AUSTRALIA–CHINA FTA

A Background

The ACFTA concept originated in the Australia–China Trade and Economic Framework signed in Canberra on 24 October 2003 by Australia's then Trade Minister, Mark Vaile, and China's Vice Minister for Commerce, Yu Guangzhou, in the presence of Prime Minister John Howard and the Chinese President Hu Jintao, who was on his official visit to Australia. It was noted that:

> The Framework …includes a commitment by both governments to undertake a detailed joint study into the feasibility and benefits of a FTA between Australia and China.[26]

The Framework stipulated that the feasibility study should be completed within two years, or by 31 October 2005.[27]

The feasibility study was ultimately completed in March 2005, seven months earlier than scheduled. It concluded that the negotiation of a FTA would lead to significant economic benefits for both Australia and China.[28] For Australia, ACFTA would:

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25 DFAT, *Annual Report 2005–2006* (2006) 57 <http://www.dfat.gov.au/dept/annual_reports/index.html> at 15 October 2007.

26 The Hon Mark Vaile, MP, 'Australia–China Trade and Economic Framework' (Media Release, 24 October 2003).

27 DFAT, *Trade and Economic Framework between Australia and the People's Republic of China* (2003) [8] <http://www.dfat.gov.au/geo/china/framework/economic_framework.html> at 16 October 2007.

28 DFAT, *Australia–China Free Trade Agreement Negotiations* <http://www.dfat.gov.au/geo/china/fta/> at 16 October 2007.

- encourage greater trade and investment flows across all sectors, including agriculture, manufactures, minerals and energy, and services;
- address both tariff barriers and non-tariff measures that hinder Australian access in the Chinese market;
- add momentum to Australia's regional and multilateral trade liberalisation efforts; and
- provide a framework for closer economic cooperation between Australia and the world's fastest-growing major economy.[29]

Independent economic modelling (commissioned by DFAT) conducted by the Centre of Policy Studies of Monash University along with experts from the Chinese Academy of Social Sciences and Nankai University, has concluded that an ACFTA covering all sectors would increase output and employment for both Australia and China. Based on the modelling, DFAT claimed that if ACFTA had commenced from 2006, 'Australia's real GDP would receive a US$18 billion (A$24.4 billion) boost in present value terms over the period 2006–15, and China's real GDP would increase by up to US$64 billion (A$86.9 billion) over the same period.'[30]

Modeling produced by the Australian Chamber of Commerce and Industry has shown that Australian exporters have generally realised gains from the strong complementary relationship between Australian exports and Chinese imports. It noted that:

> [F]or a given export profile, Australian exporters are doing relatively better in the Chinese marketplace than in other export markets. If realised, an Australia–China FTA would place Australia in a unique position – having FTAs with two of the world's major economic powerhouses – China and the United States of America.[31]

Following the completion of the aforementioned feasibility study, Prime Minister Howard, on an official visit to China, agreed with Premier Wen Jiabao on 18 April 2005 that the two countries would commence negotiations on a FTA.[32]

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29 DFAT, *Australia–China Free Trade Agreement Negotiations: Potential Benefits – Overview* <http://www.dfat.gov.au/geo/china/fta/facts/overview.html> at 16 October 2007. The document adds that the 'larger benefits to China reflect in part the greater gains China stands to reap from the liberalisation of its own economy. Australia has already reaped many such benefits from our own progressive economic reforms and liberalisation over successive decades'.

30 Ibid; Dr Yinhua Mai – The Centre of Policy Studies, *Modelling The Potential Benefits Of An Australia–China Free Trade Agreement* (2005) DFAT <http://www.dfat.gov.au/geo/china/fta/modelling_impact.pdf> at 16 October 2007

31 Australian Chamber of Commerce and Industry, *Riding the Chinese Dragon: Opportunities and Challenges for Australia and the World: Position Paper* (submitted to DFAT) (2005) DFAT 2 <http://www.dfat.gov.au/geo/china/fta/submissions/1NBU_06_Australian_Ch~0006.pdf> at 16 October 2007.

32 DFAT, *Australia–China Free Trade Agreement Negotiations* <http://www.dfat.gov.au/geo/china/fta/> at 16 October 2007.

B Negotiations

Having perhaps learned a few lessons from the AUSFTA negotiations, Australia

> underlined the importance [it] attaches to a single undertaking – that is, no exclusions of any major sector from the negotiations, no part of the FTA is agreed until everything is agreed. The Chinese side has accepted this.[33]

To that end, the ACFTA negotiations are being conducted through

> four parallel working groups, covering: agriculture, quarantine and technical regulations and standards; trade in goods, and government procurement; trade in services, investment and electronic commerce; intellectual property, competition policy, transparency, and legal and institutional issues.[34]

Therefore, an ACFTA should be a very comprehensive agreement.

So far the talks have spanned more than two years and nine negotiating rounds, but due to the all-in-one approach there are no signs that an agreement is imminent. Therefore, 'the negotiations for an Australia–China FTA are likely to be protracted and be conducted over several years – potentially as much as three to five years'.[35]

The completed portion of the negotiations can be roughly divided into the following three stages:

1 *The First Stage*

The first stage of ACFTA negotiations consisted of the first three rounds, which focused on information exchange between the two countries.

The first round was launched by Mark Vaile and China's Vice Minister of Commerce, Wei Jianguo, in Sydney on 23 May 2005.[36] In launching the negotiations, Mr Vaile said:

> as from today, senior trade officials will map the way forward for the negotiations, operating on the principle that they will be comprehensive, covering agriculture, goods, services and investment, and be completed as a single undertaking.[37]

The focus of the first round was on procedural issues such as the formation of the negotiating teams.[38] After the first round of negotiations, DFAT called on Australian stakeholders to submit 'their views on the FTA negotiations with China in writing'.[39] By 24 June 2005, more than two hundred submissions had been received by DFAT's China FTA Taskforce from industry groups, individual businesses, community groups and members of the general public.[40]

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33 DFAT, *Australia–China FTA Negotiations: Fifth Round of Negotiations* (June 2006) <http://www.dfat.gov.au/geo/china/fta/060601_subscriber_update.html> at 16 October 2007.

34 DFAT, *Australia–China FTA Negotiations: Third Round of Negotiations* (11 November 2005) <http://www.dfat.gov.au/geo/china/fta/051111_subscriber_update.html> at 16 October 2007.

35 Australian Chamber of Commerce and Industry, above n 31.

36 DFAT, *Australia–China FTA Negotiations: First Round of Negotiations* (26 May 2005) <http://www.dfat.gov.au/geo/china/fta/050526_subscriber_update.html> at 16 October 2007.

37 Ibid.

38 Ibid.

39 Ibid.

40 DFAT, *Australia–China FTA Negotiations: The Public Submissions Process* (24 June 2005) <http://www.dfat.gov.au/geo/china/fta/050624_subscriber_update.html> at 16 October 2007.

The second round of negotiations was held in Beijing from 22 to 24 August 2005. The meeting began with a wide-ranging and comprehensive exchange of information about each other's trade and investment regimes. Each side put a range of detailed questions to the other, and both sides agreed that all issues could be discussed, without prejudice to the position that either might take in the negotiating phase.[41]

The third round of negotiations was again held in Beijing, from 2 to 4 November 2005. It continued the exchange of information about each other's trade and investment regimes in preparation for market access negotiations. Each side raised further questions, including follow-ups to earlier queries and new questions on issues not previously covered. It was agreed that the initial information exchange phase of the negotiations had finished, although each side would continue to seek clarification from the other, as necessary, on aspects of respective trade and investment regimes.[42]

2 *The Second Stage*

The second stage of ACFTA negotiations also consisted of three rounds, namely the fourth, fifth and sixth rounds. The focus of this stage was to work on the structure of the possible provisions of the text of the FTA.[43]

The fourth round of negotiations took place in Canberra from 27 February to 2 March 2006. It was the first substantive negotiating meeting, providing a solid basis for discussions on virtually all possible provisions of the text of the FTA.[44] Following this round, Chinese Premier Wen Jiabao visited Australia from 1 to 4 April 2006. The ACFTA negotiations were a major theme of his visit, and he agreed that the difficult issues in the FTA talks should be dealt with in a timely manner. Wen thus 'proposed that both sides should aim to achieve breakthroughs in the next one to two years'.[45]

The fifth round of negotiations took place in Beijing from 22 to 24 May 2006, during which time both sides started to consider the possible shape and content of the FTA. Australia tabled texts for an initial 15 proposed chapters of an agreement, covering goods and services including areas of importance for Australian business such as the protection of intellectual property rights, standards for goods, rules of origin and customs procedures. During what was described as 'good discussion', China agreed that investment and government procurement would also need to be included in the agreement.[46]

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41 DFAT, *Australia–China FTA Negotiations: Second Round of Negotiations* (1 September 2005) <http://www.dfat.gov.au/geo/china/fta/050901_subscriber_update.html> at 16 October 2007.

42 DFAT, *Australia–China FTA Negotiations: Third Round of Negotiations* (11 November 2005) <http://www.dfat.gov.au/geo/china/fta/051111_subscriber_update.html> at 16 October 2007.

43 DFAT, *Australia–China FTA Negotiations: Fourth Round of Negotiations* (3 March 2006) <http://www.dfat.gov.au/geo/china/fta/060303_subscriber_update.html> at 16 October 2007.

44 Ibid.

45 DFAT, *Australia–China FTA Negotiations: Visit of Chinese Premier* (26 April 2006) <http://www.dfat.gov.au/geo/china/fta/060426_subscriber_update.html> at 16 October 2007.

46 DFAT, *Australia–China FTA Negotiations: Fifth Round of Negotiations* (June 2006) <http://www.dfat.gov.au/geo/china/fta/060601_subscriber_update.html> at 16 October 2007.

Moreover, both sides planned to exchange market access offers in goods and agriculture at the sixth round in September 2006, as well as market access offers in services and investment before the end of the year. The slight gap in timing was a reflection of the fact that services and investment issues are sensitive from China's perspective, and that more time was needed to work through issues that are fundamental to market access negotiations in these areas. The Chinese side noted that the negotiations with Australia were complex and represented a level of ambition in a FTA that was unprecedented for China.[47]

The sixth round of negotiations was held in Beijing from 31 August to 6 September 2006. Although DFAT described the discussions as 'useful', market access negotiations on goods did not begin as planned at the previous round.[48] Both sides agreed that China would need to provide more detailed information to enable those specific negotiations to commence. Australia's tariff offer was on hold. After six rounds of talks, Australia took the view that 'much work needs to be done to reach agreement on the shape and content of the proposed FTA'. [49]

Following the sixth round, Australia and China held the Eleventh Joint Ministerial Economic Commission ('JMEC') in Sydney on 3 October 2006. Talks on the ACFTA negotiations dominated the JMEC. At the meeting, China's Minister of Commerce, Bo Xilai, committed to start market access talks on goods and services at the seventh round, thus marking a significant milestone in the negotiations.[50]

3 *The Third Stage*

The third stage of the ACFTA negotiations includes rounds seven to nine, which have focused on issues relating to market access. So far, progress has been negligible.

The seventh round was held in Canberra from 11 to 15 December 2006. At this round, both sides tabled their requests and offers on market access for goods, as well as lists of barriers affecting market access requests on a range of services[51] with proposals on how to lower them.[52]

When tabling its opening offer on goods, Australia stressed that it was conditional on a similarly high-quality offer from China, as well as on improved access for Australia to China's services market and on good outcomes on non-tariff barriers and other issues. The Australian negotiating team told China that it

47 Ibid.

48 DFAT, *Australia–China FTA Negotiations: Sixth Round of Negotiations* (14 September 2006) <http://www.dfat.gov.au/geo/china/fta/060914_subscriber_update.html> at 16 October 2007.

49 Ibid.

50 DFAT, *Australia–China FTA Negotiations: JMEC meeting* (3 October 2006) <http://www.dfat.gov.au/geo/china/fta/061003_subscriber_update.html> at 16 October 2007.

51 DFAT, *Australia–China FTA Negotiations: Seventh Round of Negotiations* (20 December 2006) <http://www.dfat.gov.au/geo/china/fta/061220_subscriber_update.html> at 16 October 2007.

52 DFAT, *Australia–China FTA Negotiations: Ninth Round of Negotiations* (29 June 2007) <http://www.dfat.gov.au/geo/china/fta/070629_subscriber_update.html> at 16 October 2007.

believed China's offer could be improved, and asked it to come back with a better offer.[53]

The eighth round of negotiations took place from 26 to 30 March 2007 in Beijing. Market access discussions on trade in services continued from the previous talks and negotiations began on barriers to trade in investment. China did not, however, deliver an improved offer on market access for goods as requested by Australia at the seventh round. It told Australia that it was not in a position to provide an improved offer for goods, citing time constraints as one of the reasons. Australia replied that before it would be willing to move to the next stage of detailed, line-by-line tariff negotiations, it expected China to offer the same degree of trade liberalisation as it had.[54]

The ninth round of negotiations was held from 18 to 22 June 2007 in Beijing. There was no sign of significant movement on market access issues in general although progress was made in some areas. Market access negotiations on goods started at the seventh round remained on hold, pending an improved offer by China. China understood that Australia would not move to detailed tariff negotiations until it got a greatly improved offer, but was unable to tell Australia precisely when it would be able to come forward with such an offer. Talks continued at the ninth round on the full range of other issues, including the draft text of the proposed FTA.[55]

After two years of negotiations, some progress had been made in the discussions on which rules of origin methodology should be used in the FTA. During the ninth round, China indicated its 'in-principle agreement' to Australia's longstanding proposal to use 'change of tariff classification as the principal methodology for the FTA's rules of origin'.[56]

As mentioned above, market access negotiations on services began at the seventh round when both sides presented lists of barriers they face in each other's services sectors. Australia tabled further lists of barriers at the eighth round. Australia has altogether tabled 133 barriers affecting access for Australian services suppliers to China. At the eighth round, Australia also tabled a number of barriers facing its investment, mainly in the mining sector. At this round, a good deal of time was spent on each of the services barriers tabled including, in Australia's case:

> barriers affecting financial services, telecommunications, education, construction, engineering, architecture and urban planning, transport and logistics, legal services, accountancy, mining and environmental, tourism and sporting services.[57]

Moreover, two days were spent on the discussion of investment issues. As noted above:

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53 DFAT, *Australia–China FTA Negotiations: Eighth Round of Negotiations* (12 April 2007) <http://www.dfat.gov.au/geo/china/fta/070412_subscriber_update.html> at 16 October 2007.

54 Ibid.

55 DFAT, *Australia–China FTA Negotiations: Ninth Round of Negotiations* (29 June 2007) <http://www.dfat.gov.au/geo/china/fta/070629_subscriber_update.html> at 16 October 2007.

56 Ibid.

57 Ibid.

> It was evident at the ninth round that a big gap remains between the expectations of Australia and China on both services and investment. China has considerable sensitivities in these areas and progress continues to be slow.[58]

C Analysis of Some of the Relevant Issues Surrounding an ACFTA

With the putative ACFTA, the same basic issue arises as with the AUSFTA: an asymmetry in market size and productive capacity. The population differentials are stark: Australia with just over 20 million people, compared to the US with nearly 300 million and China with 1.3 billion. As a 'minnow' economy, Australia must therefore necessarily adopt a tactical and a tightly focused approach to such FTA deals. This is especially the case with a possible FTA with China, given that it follows on the heels of AUSFTA and is therefore informed by the full narrative of those negotiations and the early practical emanations of that agreement and its aftermath.

An early set of examples is provided by the respective stands on perceived national trading strengths and weaknesses. One of Australia's traditional strengths – agriculture – has come into particular focus during the negotiations with China. According to DFAT Assistant Secretary of Agriculture Virginia Greville, there are 'many impediments in negotiating with China because they [perceive] Australian agribusiness as a serious threat.'[59] Australia's response has thus been to focus on co-operation rather than blatant competition. As Greville puts it, '[w]e are technologically superior and while we are small and our productive capacity is constrained, we produce really good niche stuff and we can fill niches in their markets and we can cooperate with them.'[60]

On the other hand, the official attitude with respect to the so-called 'threatened species' of Australia's productive capacity has not been so obviously paraded. For example, it was reported in 2006 that, according to the federal government, '[i]ndustry plans for Australia's manufacturing, textile and clothing industries are not up for negotiation in a free trade deal with China …'.[61] The motor vehicle and clothing sectors enjoy 'heavy protection … although tariff rates are set to fall from 2010.'[62] According to the same report, 'Australia and China are in the early stages of trade negotiations, and agriculture, services and manufacturing are proving the most contentious areas.'[63]

Even early stage stances are instructive: this putative bilateral trade deal clearly reveals binary weakness and correlative strength in the potential partners. Australia's acknowledged strength – agribusiness – sits alongside its Achilles heel, namely, maintaining a viable manufacturing base into the 21st century.

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58 Ibid.

59 Brad Watts, 'China Terrified of Australian Agribusiness, says DFAT', *The Canberra Times* (Canberra), 16 September 2006, 21.

60 Ibid.

61 'Textiles 'not Negotiable' in China FTA', *The Age* (Melbourne), 20 August 2006.

62 Ibid.

63 Ibid.

D Contextual Issues

A certain amount of caution will remain a feature of the ongoing ACFTA negotiations, mainly because of the abiding perception that Australia has come off second best under AUSFTA. To the extent this is true, it may well have been due to political and economic naivety. In any event it was quite likely an inevitable aspect of Australia's fairly recent enthusiastic embrace of bilateral deals, which has gathered pace as the multilateral Doha Round negotiations being hosted by the World Trade Organization ('WTO') have floundered. Alternatively, it could simply be an inevitable consequence of a small economy's entry into a bilateral trade deal with a 'super-sized' economy. It may be that the intimate set of understandings which come with such a deal inevitably favour the much larger of the two contracting parties.

Of greater significance is the question of how Australia will cope with China's economic ascendancy. On this score, the US offers an instructive example, notwithstanding that it has a substantially larger economy than does Australia. The US has a large trade deficit with China, principally due to the impact of cheap Chinese manufactured goods, which flood the US market much as they do the Australian market. The threat to the manufacturing base in the US is consequently enormous without the artificial, expensive and increasingly anachronistic protection afforded by a high and extensive wall of tariffs designed to impede the flow of imports.

Offshore as well, the threats loom large to the US economy and the US model of doing business. Two examples clearly illustrate this. First, Princeton-based economist Gene Grossman 'estimates that 30 million to 40 million service jobs in the US will become open to electronic offshoring in the near future'.[64] The post war settlement of secure jobs 'at home', within the known and comfortable boundaries of the domestic market, looks set to be thrown on its head by a globally competitive price structure that will trigger the mass, virtual migration of higher-end jobs encapsulated in the service industry model.

The second example is just as dramatic in its challenge to the hegemonic US model of doing business and to the US's long-held pre-eminence. Theory of the firm scholarship is thriving in spite of the fact that the company form is several centuries old. The corporate form and its theoretical base are under intense scrutiny in the US literature. Emerging stakeholder theories of the firm are in steady 'battle' with the US shareholder dominated orthodoxy. Within the body of US scholarship, there are indeed several notable critics of shareholder orthodoxy, including Margaret Blair, Thomas Kochan and Lynn Stout.[65] They argue that stakeholder models of the firm are far more representative of firm complexity in a modern economy. An example of the new dynamics resulting from China's rapid rise is the recent concession by Wal-Mart, the largest private employer in

64 Anthony Elliott, 'Community Spirit Not a Thing of the Past', *Higher Education Supplement, The Australian* (Sydney), 6 December 2006, 28.

65 See, eg, Margaret M Blair and Thomas A Kochan (eds), *The New Relationship: Human Capital in the American Corporation*, (2000) 1–27; Lynn A Stout, 'Bad and Not-So-Bad Arguments For Shareholder Primacy' (2002) 75 *Southern California Law Review* 1189.

the world and a US corporate behemoth, to the establishment of the first trade union in the company's history – in China's southern Fujian province.[66] This illustrates the potentially dramatic implications on firm theory and practice of a shift away from the shareholder dominated orthodoxy; and it undoubtedly has implications for Australian firms doing business in China and more broadly in Asia.

Fundamentally new ways of doing business are emerging, and it just so happens they are no longer dominated by the US. As Dixon notes, focusing on a simplistic, or US-centric, version of globalisation

> hides … what is perhaps the most significant, and potentially enduring, development: the creation of new forms and patterns of relations and interdependencies between the state and non-state policy actors in international arenas.[67]

In summation, commerce in the 21st century looks set to display a distinctly Asian emphasis, just as US commercial values dominated the 20th century.

IV CONCLUSION

Bilateral FTAs have become very popular among many nations, including Australia, who are pursuing them more aggressively in light of the stalled Doha Round of WTO talks. That Australia, a relatively small economy, has been able to secure a FTA with a close political and historic ally such as the US is a measure of the new mobile context of international trade deals. AUSFTA is not merely in place, however, because of historical ties with the US. Australia is seen as having significant sectoral strength in agriculture, and key agricultural products thus played a central role in AUSFTA's formulation, and will continue to do so.

Bilateral FTAs allow 'asymmetric nations' – in terms of their population, economic size, and GDP – to enter into meaningful and mutually beneficial trade arrangements. Australia has hitherto enjoyed particular advantages and efficiencies in sectors considered critical by larger nations and putative trade partners, and these efficiencies provide an excellent rationale for FTAs, both now and into the future.

In the emerging FTA with China, agriculture and other significant sectors of the Australian economy, such as resources, will thus undoubtedly play an important role in the negotiating rounds to come. How Australia balances its strong interest in these more traditional sectors with its desire to improve access to China for Australian service providers will ultimately be a critical factor in any assessment of the merits of a final agreement.

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66 Rowan Callick, 'Wal-Mart Allows First Union Shop in China', *The Australian* (Sydney), Monday 31 July 2006, 12.

67 John E Dixon, *Responses to Governance: Governing Corporations, Societies and the World* (2003) 167.