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Implications of Free Trade Agreements - Papers by Meredith Kolsky Lewis, Associate Professor, School of Law, Victoria University of Wellington

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VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"The TPP and the RCEP (ASEAN + 6) as Potential Paths Toward Deeper Asian Economic Integration" 

Asian Journal of WTO & International Health Law and Policy, Vol. 8, No. 2, pp. 359-378, September 2013
Victoria University of Wellington Legal Research Paper No. 11/2017

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Facing the trend of globalization, voices within Asia have been calling for deeper Asian integration. In the international economic context, numerous competing visions have been proffered over the years as

to what form that integration should take, and which country or countries should lead that process. Amongst these various possible forms of integration, the Trans-Pacific Partnership has emerged as a contender to expand into a Free Trade Agreement of the Asia-Pacific. Unlike any models proposed previously, the TPP includes the United States, but at present does not include China. In turn, the momentum of the TPP appears to have spurred China to push more actively for its own multiparty grouping, the ASEAN+6, currently known as the Regional Comprehensive Economic Partnership ("RCEP"). In this article, the author analyzes the similarities and differences between these two potential paths towards Asian integration and identifies factors that may influence each agreement's prospects of expanding further.

"Expanding the P-4 Trade Agreement into a Broader Trans-Pacific Partnership: Implications, Risks and Opportunities"

4 Asian Journal of WTO & International Health Law and Policy 401 (2009)
Victoria University of Wellington Legal Research Paper No. 12/2017

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In 2005, New Zealand, Singapore, Chile and Brunei entered into a path-breaking free trade agreement, the Trans-Pacific Strategic Economic Partnership Agreement which is also known as the P-4 Agreement. The agreement contains an open accession provision which explicitly contemplates the expansion of the agreement to include other countries willing to commit to its terms. The expansion of the agreement has important implications for the world trading system. Its broad coverage and open accession provision may suggest that the agreement has the potential to serve as a stepping stone in the path towards further multilateral trade liberalization in the WTO context. On the other hand, expanding the agreement could result in an agreement so powerful that its members no longer consider devoting energies to liberalizing in the WTO context to be of great importance. The article explores some of the unique aspects of the TPP as well as the potential implications of expanding the agreement, both for the East Asian region and for the broader multilateral trading system.

"Human Rights Provisions in Free Trade Agreements: Do the Ends Justify the Means?"

Loyola University Chicago International Law Review, Vol. 12, No. 1, 2014
Victoria University of Wellington Legal Research Paper No. 13/2017

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Numerous Free Trade Agreements (FTAs) contain provisions imposing human rights-related obligations, particularly in the case of agreements between the European Union and a developing country (often a former colony). Such obligations often consist of hortatory "best endeavors" language rather than legally binding provisions. Even the small number of provisions that are binding are very rarely enforced. Furthermore, even if an FTA features human rights-related provisions, it may contain other terms that have negative implications for human rights. Thus, including human rights provisions in FTAs will not necessarily result in better human rights outcomes. There are additional reasons to be cautious about the potential for FTAs to improve the circumstances of developing countries. There is an inherent inequality in FTA negotiations between developed and developing countries. And trade agreements vary significantly in the degree to which they provide for financial, technical, logistical, and other forms of assistance to their developing country participants. Given the unfavorable bargaining power developing countries face in FTA negotiations with developed country partners and the trend towards negotiating FTAs that are not well-aligned with poorer countries' interests, FTAs may not be a suitable forum for addressing human rights-related concerns. Furthermore, even though the European Union's FTAs among others contain human rights clauses, such FTAs by and large do not include the countries with the worst human rights abuses. While human rights violations occur in all countries, there is a significant correlation between level of economic development and such abuses. The countries that are considered to have the highest levels of corruption and human rights abuses are not, by and large, participating in FTAs or other reciprocal trade agreements, at least in part because they are not members of the WTO. While the WTO is not a panacea for developing countries, it may provide the better space – as compared to FTAs – for achieving objectives in furtherance of human rights objectives.

"Trade Agreements and Regulatory Autonomy: The Effect on National Interests"

Susy Frankel, (ed.) LEARNING FROM THE PAST, ADAPTING FOR THE FUTURE: REGULATORY REFORM IN NEW ZEALAND (LexisNexis 2011)
Victoria University of Wellington Legal Research Paper No. 14/2017

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International economic law agreements – including the World Trade Organization (WTO); free trade agreements (FTAs); and bilateral investment treaties (BITs) – can impact regulatory freedom in a number of important ways. Such agreements may include provisions that either mandate or encourage regulatory reform. Reforms may be called for in order to effectuate harmonisation; to facilitate cross-border trade and investment through regulatory cooperation; or merely to comply with newly established international, plurilateral, or bilateral standards. New Zealand's participation in an array of trading arrangements, therefore, has significant implications for the country's regulatory autonomy and ability to effect policy decisions. Trade agreements can impact New Zealand's regulatory options both directly – through provisions in agreements to which New Zealand is a party, and indirectly – as a result of agreements with or between some of New Zealand's trading partners to which New Zealand is not a party. This indirect impact should not be underestimated. This chapter has three objectives: first, to identify the agreements that may impact upon New Zealand's regulatory autonomy, both directly and indirectly (Parts II and III of this paper); second, to use the context of consumer interests to provide specific examples of the ways in which trade agreement commitments affect policymaking options (Part IV); and third to discuss empirical and further research that will be conducted in the next project phase with the aim of measuring the effects trade agreements have on New Zealand's regulatory autonomy in the consumer interests area (Part V). Within the broad category of consumer interests, this project will focus on regulatory regimes that affect food safety/biosecurity; the safety and purchasing of pharmaceuticals and product safety and performance standards.

"The Trans-Pacific Partnership: New Paradigm or Wolf in Sheep's Clothing?"

Boston College International & Comparative Law Review, Vol. 34, p. 27, 2011

Victoria University of Wellington Legal Research Paper No. 15/2017

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The Office of the United States Trade Representative (USTR) is currently negotiating with seven other countries to form a new trade agreement called the Trans-Pacific Partnership (TPP). The TPP has the potential to expand into a Free Trade Agreement of the Asia-Pacific (FTAAP). At present there are several competing models for Asia-Pacific economic integration that exclude the United States entirely. In such an environment, the TPP presents the United States with a welcome opportunity, not only to participate, but also to take a leadership role in establishing the terms for a region-wide agreement. Nevertheless, the USTR must make the TPP sufficiently attractive to other Asia-Pacific economies, such that those countries will prefer the TPP over other integration models. This will require the USTR to partially diverge from its standard FTA template and liberalize in new areas. Although doing so may be politically challenging, it is the United States' best strategy if it wishes to solidify a role for itself in an economically integrated Asia-Pacific.

"The Prisoners' Dilemma Posed by Free Trade Agreements: Can Open Access Provisions Provide an Escape?"

Chicago Journal of International Law, Vol. 11, pp. 631-661, 2010

Victoria University of Wellington Legal Research Paper No. 16/2017

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This article explains why free trade agreements (FTAs) that are not compliant with the spirit of GATT Article XXIV's requirement that such agreements cover "substantially all the trade" between the parties pose serious challenges for the multilateral trading system. It notes the paradoxical behavior of WTO members in continuing to negotiate such free trade agreements to the detriment of the WTO. It characterizes this paradox as a form of Prisoners' Dilemma, in that although members would be better off pursuing trade liberalization via the WTO, their dominant strategy is to pursue FTAs. The article goes on to propose a pragmatic solution to resolve the dilemma that attempts to navigate the difficulties posed by both retrospective and prospective solutions.

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members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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