
5 The changing nature and reach of BRTAs

While a range of institutional arrangements affect international trade and investment (chapter 4), the potential influence of bilateral and regional trade agreements (BRTAs) has increased significantly in recent years. This chapter examines the changing nature and reach of BRTAs, and in particular preferential trade agreements (PTAs), both globally and in relation to the Australian economy.

Section 5.1 reports on the increase in the incidence of PTAs notified to the WTO. Section 5.2 outlines the nature and scope of PTAs and how this has changed over time while section 5.3 describes the nature and scope of PTAs currently in force with reference to agreements entered into by Australia and key trading partners. Section 5.4 reports on the extent to which international trade and commerce are influenced by bilateral and regional trade agreements.

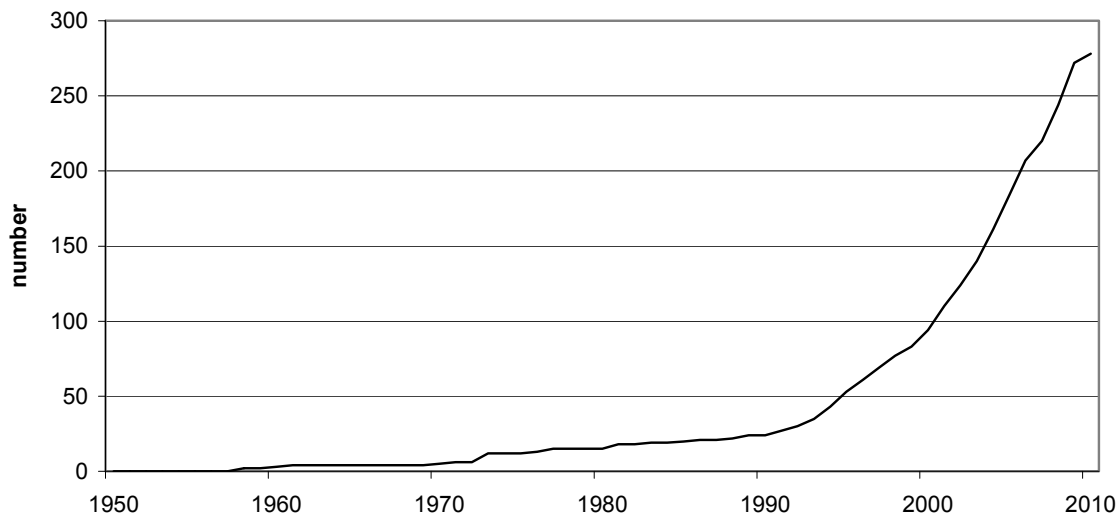
5.1 Growth in preferential trade agreements

The number of PTAs has grown significantly over the last 50 years. In the early 1960s there were 9 agreements in force.¹ At present there are 288 agreements notified to the WTO and many more under negotiation (figure 5.1).²

¹ The nine trade agreements in force in the early 1960s were the Central American Common Market (CACM), the European Free Trade Association (EFTA), the Treaty of Rome (from which the EU evolved), EFTA—Finland Association, the Latin American Free Trade Area (LAFTA), the Canada — Australia trade agreement, the Ghana — Upper Volta trade agreement, the EEC — Greece interim agreement and the Equatorial Customs Union (comprised of the Central African Republic, Chad, Congo and Gabon).

² The WTO data on notifications is not a precise measure of the number of agreements in place. This is partly because, on the one hand, notifications under both GATT Article XXIV (for the goods component of an agreement) and GATS Article V (for the services component of the agreement) are included in the tally. Similarly, accession agreements, such as where new members joined the European Union, can be counted as separate agreements in force. On the other hand, there is a substantial number of other regional and bilateral agreements that define trade relations between countries that are not notified to the WTO: for example, agreements between some members of the former Soviet Union.

Figure 5.1 Number of trade agreements notified to the WTO^a
 Number and date of entry into force

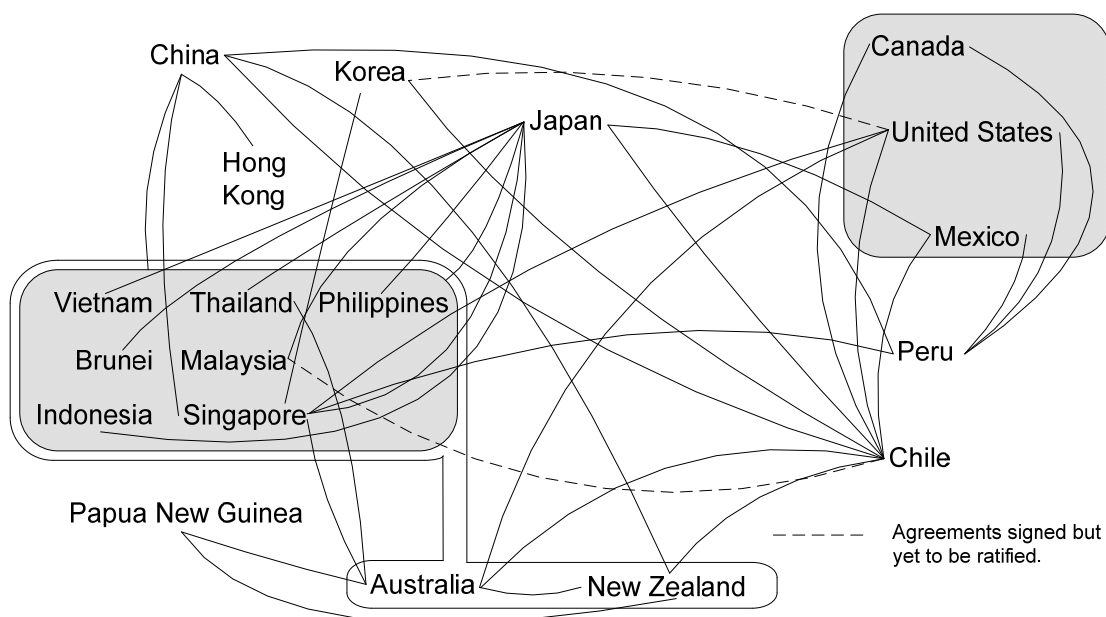


^a Only includes agreements that are presently in force.

Source: WTO (2010b).

The growth in the number agreements has resulted in substantial overlap and inter-linkages between agreements. For instance, amongst APEC economies, there are numerous agreements that interlink members, as illustrated in figure 5.2.

Figure 5.2 Inter-linkages between PTAs in the APEC economies, 2010



Sources: Lloyd and Maclaren (2004); WTO (2010b).

5.2 The evolving nature of PTAs

There has been a broad evolution in the nature of PTAs since the end of the Second World War, which can be thought of as having occurred in three relatively distinct ‘waves’. The first wave extended until the 1970s while the second wave centred on the 1980s and was associated with an increased incidence and broadening of scope of agreements. The third wave has been characterised by the dramatic expansion in the incidence of PTAs since the 1990s and a further expansion in the scope of some styles of agreement.

First wave

Early, or ‘first wave’, trade agreements tended to be fairly limited in scope, with preferential liberalisation of merchandise trade a primary focus of the agreements. In part, this was in response to the prevailing high tariffs following the Great Depression.

Examples of first wave agreements include some of Australia’s early agreements, such as those with New Zealand and Canada. There were also attempts to develop agreements among developing countries, but these efforts had mostly collapsed by the 1960s. The most significant of the early agreements was the 1958 European Economic Community agreement, which was the predecessor of the European Union (which has expanded over time and now includes 27 member countries). However, this agreement was more comprehensive than other first wave agreements and had strong economic integration objectives.

Second wave

The second wave of bilateral and regional trade agreements was characterised by the emergence of the United States into the PTA arena in the 1980s. The entry of the United States into PTAs has been attributed to the expansion of the European Union and uncertainty over prospects for the Uruguay Round. Prior to this time, the United States had only focused on the multilateral approach to trade liberalisation. The first US agreement was with Israel in 1985, followed by one with Canada in 1987 (which was subsequently expanded to include Mexico, forming NAFTA, which entered into force in 1994). For Australia, the second wave was marked by the 1983 Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA).

The scope of second wave agreements was generally broader than earlier agreements, often including provisions on non-tariff barriers, competition policy and dispute resolution procedures. However, the focus primarily remained on merchandise trade (Adams et al. 2003).

Third wave

The growth of agreements since the 1990s has seen almost all WTO member countries become involved in PTAs. Some of the key developments of PTAs during the period include:

- the development of bilateral trade agreements between the European Union and other European states, often as a precursor to EU membership;
- substantial development of bilateral agreements trading partners by the United States, along ‘hub and spoke’ lines (box 5.1);
- rapid growth in involvement in PTAs by Asian countries. The Asian Development Bank (ADB 2008) noted that there were less than 10 agreements involving Asian countries in 1990, but by 2007 there were over 200 agreements that had either been concluded, were under negotiation, or were being proposed; and
- Japan’s move towards PTAs. Like the United States, Japan had previously focused on multilateralism. Its first preferential trade agreement was with Singapore in 2002 and it now has 11 agreements in force notified to the WTO.

While large economies such as the United States, Japan, China and the European Union have pursued numerous agreements in recent years, there are no PTAs between any of these economies.

The coverage of third wave agreements has, as a rule, expanded considerably over that of earlier first and second wave agreements. Issues covered include services, investment, competition policy, government procurement, e-commerce and intellectual property. Labour and environmental provisions are also a feature of many third wave agreements and are a particular focus of US PTA negotiations. That said, merchandise trade remains an important focus of many third wave agreements. While globally, tariffs on merchandise trade have generally fallen, as a result of both multilateral and unilateral reform, some high tariffs remain (chapter 4). Hence, market access gains for traded goods remain a key objective (or source of sensitivity) for many industries.

As noted in chapter 4, agreements can be subject to review and modification, so that existing first or second wave agreements can be modified to reflect third wave issues. One example, ANZCERTA, is discussed in the following section.

Box 5.1 'Hub and spoke' agreements

The 'hub and spoke' characterisation refers to cases where major trading nations conduct a series of bilateral agreements with numerous smaller trading partners. The most obvious examples of hubs under this framework are large economies such as the European Union and the United States. ASEAN, China and Japan are also emerging hubs.

The drivers behind the formation of these types of relationships are varied, and the motivations can differ significantly between the 'hub' and the 'spoke' parties. Bhagwati (2008) identified a number of reasons why small or developing countries might seek agreements with hub countries:

- **Trade Preferences.** At its simplest, the appeal of a preferential trade deal is to improve market access opportunities and gain a competitive advantage over competing exporters. However, in response, competitors seek to negotiate their own bilateral agreement with the hub economy in an attempt to counter potential trade-diversion from existing agreements, leading to an increasing number of 'spokes'.
- **Security.** Smaller countries may undertake bilateral agreements to more closely align themselves with the economic and political fortunes of larger powers.
- **Economic reform and credibility.** Developing countries may engage in agreements with hubs either to lock in domestic reforms or as a means of improving credibility to attract new investment from abroad.

The motivations of hub economies can vary. Competitive expansion of bilateral and regional trade agreements in response to increased activity of other hub economies may be a source of motivation for increasing participation in PTAs. Another may be the ability to push for reforms in areas such as intellectual property, labour laws and environmental standards that may not be possible within a multilateral setting.

Baldwin (2009) has argued that the hub and spoke approach creates a web of bilateral agreements that raise transactions costs and can favour the development of industry in hub countries, rather than spoke countries. In the context of east Asia, Baldwin argued the development of two hubs within the region — China and Japan — risked potential regional divisiveness, rather than regional cooperation.

5.3 The scope of specific PTAs in force

Most BRTAs are based on preferential arrangements although, as noted above, many agreements entering into force tend to be quite comprehensive in their scope, with provisions covering a wide range of topics beyond preferential treatment with respect to tariffs. While coverage of the agreements is broadly similar, there are some differences between agreements reflecting the objectives and sensitivities of partner countries.

Australian agreements

The main current Australian bilateral and regional trade agreements are the relatively long-standing ANZCERTA with New Zealand and Australia's more recent agreements with Singapore, Thailand, the United States, Chile and New Zealand/ASEAN.

ANZCERTA

The ANZCERTA came into effect in 1983. It has been modified over time, leading to increasing economic integration between the two countries. The agreement was preceded by the 1966 New Zealand-Australia Free Trade Agreement, which had led to the managed removal of trade barriers on between 60 and 80 per cent of merchandise trade, while having no mechanism for the removal of the remaining barriers (Brown 1999, DFAT 1997).

Initially, ANZCERTA only covered trade in goods, but was extended as a result of a series of reviews. Provisions for consultation and review are contained within the formal agreement and provide a mechanism for on-going adaptation. A 1988 review led to changes such as a protocol on harmonisation of quarantine procedures, as well as a protocol on trade in services. Subsequent reviews led to the inclusion of 'third wave' provisions including mutual recognition, harmonisation of standards and harmonisation of the business environment, including business law.

With respect to trade in goods, the ANZCERTA provides for the prohibition of tariffs and quantitative restrictions subject to rules of origin (RoO) and permitted exceptions. In addition, the agreement contains measures to minimise market distortions, such as through agreed limits on industry assistance, anti-dumping actions and bans on export subsidies. It also seeks to address non-tariff barriers through harmonisation of quarantine, customs and other standards.

The ANZCERTA Trade in Services Protocol provides for free trade in services, except for designated services subject to existing regulations, such as telecommunications, aviation, broadcasting and postal services. The Protocol contains a number of provisions that cover, amongst other things, national treatment, market access, most-favoured-nation (MFN) treatment, and commercial presence.

To date, investment is not explicitly covered within the agreement, although an Investment Protocol is currently under negotiation. As with AUSFTA, it is intended that the agreement will include an increase in investment thresholds above which proposals are subject to screening by the Foreign Investment Review Board (FIRB) (Rudd and Key 2009).³

ANZCERTA has often been cited as a relatively good example of a preferential trade agreement. For example, Lloyd observed:

If we had wanted a model [for negotiating a preferential trade agreement], we could not have done better than the original CER agreement as extended in the 1990s. This is the cleanest and least bureaucratic agreement anywhere in the world and is more trade-liberalising and integrating than any other agreement in the world except the European Union. (sub. 3, p. 5)

While the economic integration agenda that surrounds the ANZCERTA gives it a broad scope of influence in trans-Tasman relations, it is notable that the agreement does not cover intellectual property rights, environmental concerns or, currently, investment.

More recent agreements

The five PTAs signed by Australia in the last decade (with Singapore, Thailand, the United States, Chile and ASEAN/New Zealand) share a number of similarities. In addition to preferential tariff concessions on goods trade, these agreements contain provisions relating to trade in services, investment, intellectual property, electronic commerce, government procurement and competition policy. Table 5.1 illustrates the broad chapter coverage of each of Australia's recent agreements.⁴

While these third wave agreements cover a wide range of topics and seek to increase economic integration, preferential trade liberalisation with respect to merchandise trade remains a key objective. The importance of merchandise trade liberalisation will vary between agreements, depending on the prevailing market access barriers. For instance, tariffs and quantitative restrictions were of relatively low significance in the case of Australian trade with Singapore, as a result of the relatively low pre-existing barriers, whereas in cases such as Thailand and the United States, there were significant pre-existing market access barriers with respect to some products. For example, Thailand had high existing tariffs on automobiles and a range agricultural products. While the agreements contain preferential trade liberalisation between the agreement partners, they do not necessarily result in the complete or immediate removal of tariffs and quantitative restrictions. The actual tariff and quota commitments under recent agreements are discussed in chapter 6.

³ New Zealanders are already exempt from FIRB screening for residential real estate investment in Australia.

⁴ It should be noted that in some cases, the text of a chapter may simply codify existing arrangements or, as noted by Cutbush (sub. DR89, p. 6) in relation to chapters dealing with quarantine provisions, may actually specify that the issue is excluded from more preferential treatment afforded to other issues covered by the agreement.

For trade in services, key features of recent agreements are similar and include items such as: provisions for national treatment to ensure that partner country service providers are treated no less favourably than domestic providers; mutual recognition of selected professional qualifications; and reductions in restrictions on commercial presence by foreign service providers. A key feature of services trade is that many of the barriers are behind-the-border measures. To this end, to varying degrees, agreements also include attempts to harmonise regulatory frameworks and impose regulatory disciplines on trade agreement partners.

Table 5.1 Coverage of Australia's recent PTAs^a

	SAFTA	AUSFTA	TAFTA	ACI-FTA	AANZFTA
Goods	●	●	●	●	●
Agriculture		●			
Rules of Origin	●	●	●	●	●
Customs administration	●	●	●	●	●
Sanitary and phytosanitary measures	●	●	●	●	●
Technical barriers to trade	●	●	●	●	●
Trade remedies		●	●	●	●
Services	●	●	●	●	●
Investment	●	●	●	●	●
Telecommunications	●	●		●	*
Financial services	●	●		●	*
Movement of natural persons	●		●	●	●
Competition	●	●	●	●	●
Government procurement	●	●		●	
E-commerce	●	●	●	●	●
Intellectual property	●	●	●	●	●
Education	●				
Labour		●			
Environment		●			
Transparency		●	●	●	
Economic cooperation					●
Cooperation				●	
Institutional arrangements	●	●	●	●	●
Dispute settlement	●	●	●	●	●

^a Dots represent chapter coverage of topic in agreement text. Asterisks indicate topic is covered in an annex to a chapter.

Source: adapted from Mortimer (2008).

Investment is one of the prominent third wave issues that was not explicitly addressed in the ANZCERTA agreement, but which is part of all recent agreements. Investment provisions seek to improve transparency and legal protections for

investors, as well as address limits on foreign equity. One change that came about as a result of AUSFTA was an increase in the thresholds for US investors into Australia above which investments from the US are subject to screening by the Foreign Investment Review Board.

Intellectual property is another third wave issue that features in some of Australia's recent agreements. However, it is the provisions of AUSFTA that involved the most substantial changes to Australia's intellectual property regulations. Under the agreement, Australia adopted a range of provisions from the US intellectual property system, substantially strengthening protection for copyright owners. Australian obligations included:

- ratifying a range of international agreements;
- extending the term of copyright and patent protection; and
- increasing enforcement and protections for intellectual property holders.

Provisions on competition policy are also common to modern agreements. As with intellectual property, AUSFTA and ACl-FTA contain more extensive provisions than Australia's other agreements, which are limited to a principles-based chapter, intended to guide the development of competition policy in partner countries. In AUSFTA, the agreement provides for greater cooperation in detection, investigation and enforcement of breaches.

Government procurement provisions in BRTAs typically involve national treatment of foreign suppliers from other agreements, such that parties can not apply local content preferences. DFAT (sub. 53) note that government procurement can be a sensitive issue and it is not covered in all agreements. In the case of Australia's agreements, there are substantive government procurement provisions in ANZCERTA, SAFTA, AUSFTA and ACl-FTA, although the nature of the arrangements varies considerably. They are not part of either TAFTA or AANZFTA. In TAFTA, there is a chapter heading on the topic, establishing a working group to progress the issue.

A new feature of Australian PTAs is the economic cooperation chapter in the most recent agreement with ASEAN and New Zealand, which provides for trade and investment related cooperation. An Economic Cooperation Work Program, for which Australia provides funding assistance, has been established that provides technical assistance and capacity building to developing ASEAN countries.

International approaches to preferential agreements

New Zealand

In addition to its agreements involving Australia, New Zealand has bilateral trade agreements with Singapore, Thailand, China and Malaysia. It is also a member of the ‘Trans-Pacific Strategic Economic Partnership Agreement’ (P4 Agreement). Negotiations are currently underway for the Trans-Pacific Partnership agreement which builds on the P4 Agreement and expands its membership to include the United States, Peru, Vietnam, Australia and Malaysia (MFAT 2010).

New Zealand’s approach to trade agreements has similarities to that of Australia. It pursues comprehensive agreements, with a similar chapter framework to the Australian agreements. Its trade partners are also similar. One case of interest, though, is New Zealand’s agreement with China. New Zealand is the first OECD country to negotiate an agreement with China. Australia’s negotiations with China have been quite protracted — commencing in 2005, they are yet to be concluded.

United States

The United States has PTAs in force with 17 countries. It has also signed agreements with three additional countries, including Korea, but these are yet to be approved by Congress. The majority of US PTA partners are developing countries, particularly countries in Central and South America. The largest US agreement is NAFTA, with Canada and Mexico.

The United States has a quite rigid comprehensive approach to conducting trade agreement negotiations and adopts a ‘WTO-plus’ approach. That is, it pursues an agenda in its agreements that extends beyond the scope of multilateral negotiations under the WTO. The United States typically pursues a strong agenda for bilateral tariff reductions on merchandise trade, although within this approach significant exceptions are made, including in its agreements with Australia and Korea, where designated agricultural products are excluded. Similarly, RoO can restrict access to preferential tariff cuts, and the RoO for NAFTA are particularly complex.

In services, the United States has achieved measures resulting in greater transparency. It has also negotiated agreements prohibiting any ‘local presence’ requirements on PTA partners that require cross-border service providers to have a local base of operations and/or be resident in the importing country. However, Heydon and Woolcock (2009) suggest that the United States’ exclusion, from a number of its agreements, of services measures maintained at the sub-national level reduces the effective coverage of those agreements.

In other areas, the United States has generally achieved comprehensive investment provisions and has pursued provisions to impose more stringent copyright protection. The United States also insists on provisions addressing labour and environmental standards in its agreements.

European Union

The European Union operates the most prominent and long standing modern PTA which, as a customs union with common external tariffs, has a particularly strong economic integration focus. Since its entry into force (as the European Economic Community) in 1958, with six members, it has been progressively expanded to 27 members.⁵

While the European Union is itself a preferential trade agreement, as an integrated economy, it also strongly pursues PTAs with third parties (usually developing countries) and has almost 30 satellite agreements in force. Unlike the United States, the European Union adopts a more flexible approach, in keeping with the differing range of objectives it pursues with potential partners. Agreements with near neighbours (which potentially may accede to the European Union) tend to be comprehensive in nature. Other agreements with countries in Europe and the Mediterranean have a regional stability focus, while its agreements with African, Caribbean and Pacific countries incorporate flexibility with the stated aim of addressing development needs. Overall, however, its agreements tend to be more modest in terms of the commitments negotiated than those of the United States (Heydon and Woolcock 2009).

Asia

Asian economies have generally been later than Europe and America in pursuing agreements on trade and investment. However, since the 1990s, the growth has been rapid and there are now over 200 agreements either in force or being negotiated or proposed that involve Asian countries. In Asia, there is a range of approaches that different countries have adopted in pursuing agreements, with countries pursuing both bilateral and regional variants. But unlike the United States, which pursues uniform style agreements, including with respect to bilateral tariff preferences, Asian agreements are often less trade focused. They are often labelled as ‘cooperation’ and ‘partnership’ agreements, and, while tariff cuts form part of these agreements, they are often only broad commitments, with details left for further

⁵ European Union member countries are signatories to a number of treaties. Trade commitments, which require members to form a customs union, are contained within the Treaty Establishing the European Community.

negotiation over time. For instance, Singapore has pursued a network of agreements, despite its own very low tariffs, with agreements emphasising issues such as intellectual property and product standards. The China-ASEAN agreement provides only broad commitments to progressive bilateral tariff reductions (Whalley 2008). China and Japan are in the process of negotiating a significant number of agreements.

5.4 The global reach of trade agreements

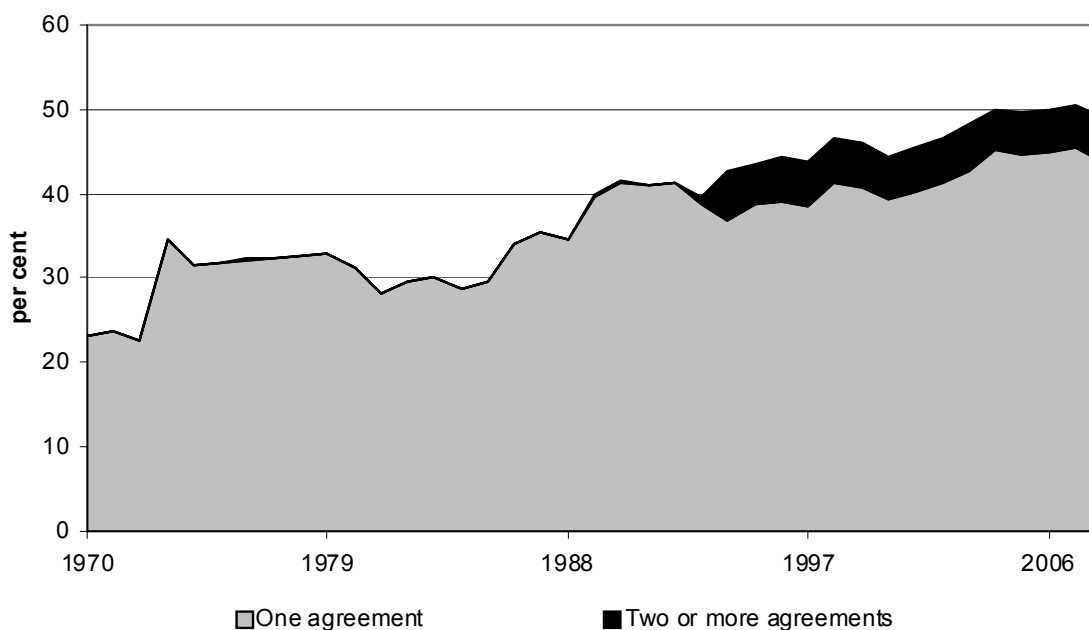
The recent growth in the number of agreements means global trade, including that of Australia, is being increasingly influenced by the formation of PTAs and other forms of bilateral and regional trading agreements.

Share of global trade between trade agreement partners

The proportion of global trade between PTA partners has increased over time. Figure 5.3 illustrates the growth in the share of global merchandise trade between partners over the 38 years to 2008. Trade between parties to trade agreements has increased from around one quarter of total global merchandise trade in 1970 to about half in recent years. Available information also indicates that the proportion of trade, by value, that may be directly influenced by two or more agreements has steadily increased in recent years (darker shaded area, figure 5.3). However, it should be noted that the figure represents total trade between trade agreement members, rather than the share of that trade that is granted preferential treatment under PTAs. The share of merchandise trade that is granted preferences under an agreement will be lower because the MFN tariff will be zero in many cases, or, where MFN tariffs are non zero, exporters may not utilise preferences due, for example, to compliance requirements.

While the greatest growth in the number of new agreements occurred in the period since the mid-1990s, the change in the proportion of global trade between partners over the same period has been relatively small. Rather, the growth has been driven by the earlier formation of large agreements such as the European Union and NAFTA. The EU effect is quite distinct. Its formation in 1958, followed by a number of accessions, including that of the United Kingdom in 1973, drove much of the increase in the share of trade between agreement partners. In fact, intra-EU trade accounted for 18 per cent of total global goods trade in 2008. Similarly, trade within NAFTA, which came into force in 1994 as a successor to the earlier US-Canadian agreement, also comprises a significant share of global trade, accounting for 6 per cent of total goods trade in 2008.

Figure 5.3 Share of global merchandise trade between parties to PTAs^a



^a Based on value of merchandise trade in US dollars and covering 416 regional and bilateral trade agreements, comprising 311 notified to the WTO and 105 not notified to the WTO.

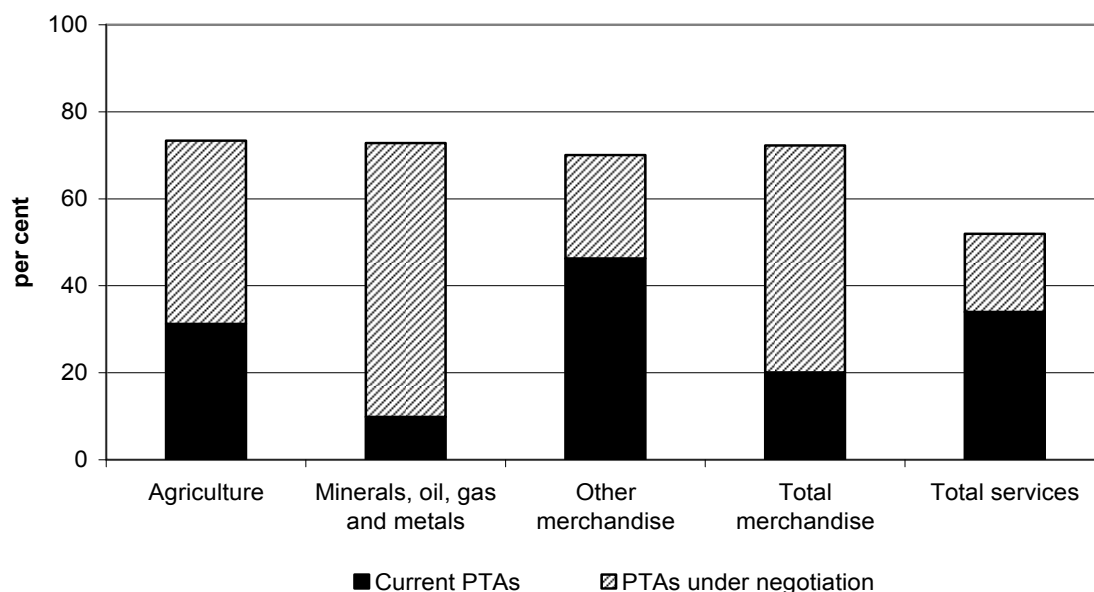
Source: Commission estimates using trade data from UN Comtrade database and trade agreements from the WTO (Renard, C., WTO, Geneva, pers. Comm., 14 November 2008) and Medvedev (2006).

Share of Australian trade with PTA partners

Trade with PTA partner countries accounts for a substantial proportion of Australia's total trade. This share would increase substantially with the completion of PTAs under negotiation. In 2009, Australia's current PTA partners accounted for around a fifth of all merchandise exports and a third of services exports (figure 5.4). Also notable is that countries with which Australia is currently negotiating a PTA accounted for a further 52 per cent of merchandise exports, and 18 per cent of services exports, in 2009. Assuming current negotiations are concluded, this will mean that PTA partners account for the majority of Australian export markets – although, as noted above, not all of the trade between agreement partners receives preferential tariff concessions.

With respect to imports, in 2009, current PTA partners were the source of a substantial share of both merchandise (38 per cent) and more particularly, services (44 per cent) (figure 5.5). Again, countries with which negotiations are currently ongoing are the source of a substantial share of merchandise imports (33 per cent in 2009), although this is less so the case for services imports, with those countries only accounting for 7 per cent of services imports in 2009. As noted above however, not all trade between agreement partners receives preferential tariff concessions.

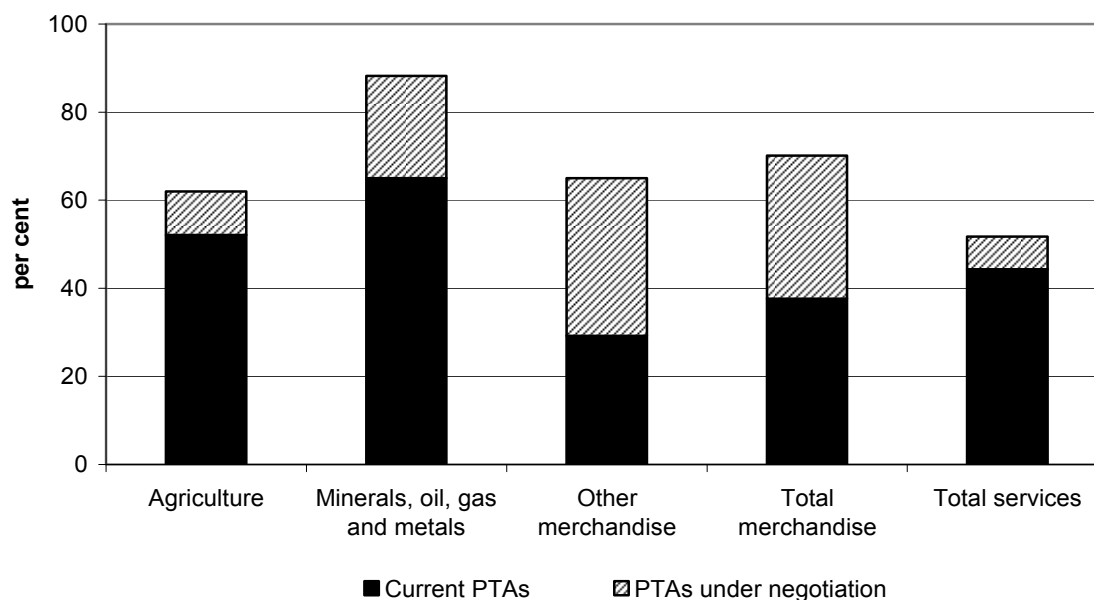
Figure 5.4 Share of Australian exports to PTA partners, 2009^a



^a Agriculture category is based on HS Chapters 1–20 and 50–52. Minerals, oil, gas and metals category is based on HS Chapters 26,27 and 71–81.

Source: Commission estimates using World Integrated Trade Solution (WITS) data and ABS (*International Trade in Goods and Services, Australia, Sep 2010, Cat. no. 5368.0*).

Figure 5.5 Share of Australian imports from PTA partners, 2009^a



^a Agriculture category is based on HS Chapters 1–20 and 50–52. Minerals, oil, gas and metals category is based on HS Chapters 26,27 and 71–81.

Source: Commission estimates using World Integrated Trade Solution (WITS) data and ABS (*International Trade in Goods and Services, Australia, Sep 2010, Cat. no. 5368.0*).