



# Creating unfinished institutions: power trajectory and the consequences of incomplete trade agreements

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## Abstract

Today, there is uncertainty about the future of global trade. In the west, major comprehensive trading arrangements are renegotiated or exited. Meanwhile in Asia, new but more limited trade agreements, particularly those signed by China and India, proliferate. What are the likely consequences of these new but divergent trends? To develop a better understanding of these changes in international trade, this article develops a framework focused on the under-theorized relationship between the comprehensiveness of a trade agreement and the power trajectory of the signatories. The framework suggests rising states can benefit from initially unfinished agreements that they can subsequently expand as their bargaining power increases. Relatively declining states conversely can derive advantages from comprehensive agreements because this allows them the option to lock-in a deteriorating power position by making alteration of the existing treaty more difficult. Original analysis of four states' trade agreements, and two major agreements, NAFTA and the China-ASEAN FTA, constitute a plausibility probe of this framework.

**Keywords** Institutional selection · International institutions · Trade · China · Institutional design

## Power trajectory and unfinished institutions

Uncertainty over the future influences the design and development of international institutions in crucial ways; where states are uncertain about the relative distribution of benefits from an agreement, they can limit its coverage and the breadth of their commitment by allowing details to be 'filled-in' once they have discovered its consequences. Under these conditions, limited agreements that entail fewer changes in behaviour are more efficient because they allow states to avoid the negotiation

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costs entailed by creating an extensive agreement that will become quickly outdated. Such lower commitment agreements also allow signatories to minimize unnecessary changes in their own behaviour. Instead, with a limited deal the signatories can adapt the agreement and their behaviour as they learn about the resulting distribution of gains (Koremenos 2001, 2016). This is why, despite being designed to create predictable commitments, agreements can evolve substantially over time (Haftel and Thompson 2018, p. 26; Abbott and Snidal 2000). However, where relative certainty over the resulting distribution of gains from an agreement exists *ex ante*, more complete, higher commitment agreements are more efficient because adaptation of the agreement over time would only increase negotiating costs and uncertainty whilst bringing no adaptation advantage. In other words, if no changes in the resulting distribution of benefits are expected (or where changes in the distribution of gains can be anticipated *ex ante*), why incur the costs entailed by multiple subsequent negotiations when these can be included in an initial complete agreement? (Williamson 1979).

Crucially, efficiency costs are not the only consequences that flow from agreement selection, the design of an agreement also impacts downstream bargaining dynamics (Krasner 1990 in Cameron and Tomlin 2002). One party might derive advantages from negotiating elements of an agreement at a later date, despite the increased costs associated with subsequent negotiations (Cooley and Spruyt 2009). This is likely to be particularly true where one participant's relative bargaining power increases following conclusion of the agreement because it is likely to be able to achieve a better deal at later negotiations. That is, where the power trajectory of one state drastically diverges from that of their counterpart, limited agreements are likely to have important strategic downstream advantages for that state. This becomes important when, following conclusion of an agreement, states make attempts to change the initial agreement in order to achieve more favourable outcomes (Young 1982; Albert O Hirschman 1970). Recent research has demonstrated that the success of reform attempts depends on a number of factors, including the ability of the dissatisfied states to exercise outside options by using alternative institutions (Lipsky 2017). Where these options do not exist, such a strategy will be costly and have limited chances of success (Morse and Keohane 2014). The organizational density and resource availability in a given issue area can also mean that outside options are often limited because environments already populated by a number of institutions make the benefits of a new institution or agreement much less clear (Abbott, Green, and Keohane 2016). In such circumstances, agreements that are initially limited can provide opportunities for signatories with a positive power trajectory to reform an agreement as their bargaining power increases even where fewer outside options exist. This process of reforming existing agreements is often constrained by path dependence whereby past choices limit downstream opportunities for change (Pierson 2000, Kellerman 2018, Jupille 2013). The more comprehensive the agreement, the more costly are such changes down the line. A more limited initial agreement then can help to decrease the costs associated with future changes and create more possibilities for subsequent reform.

In this article, the intuition that limited agreements offer distinct advantages for rising states is developed to allow empirical assessment of its plausibility. In the next



section, a definition of a comprehensive agreement is developed and the mechanism by which limited agreements impact bargaining dynamics is outlined. It is suggested that states with positive power trajectory vis-à-vis their negotiating partner may benefit more from more limited agreements so that they can fill-in the details of the contract subsequently as their bargaining advantage grows. Conversely, those with a declining power trajectory will in general benefit from high commitment agreements that lock-in a relatively declining bargaining position, provided that high levels of uncertainty do not bring efficiency costs to the fore.<sup>1</sup> The remaining sections constitute a plausibility probe of this idea applied to trade agreements concluded by four major trading powers with varying power trajectories: The USA, Japan, China, and India. The subsequent section is concerned with comparison between the evolution of NAFTA and the China-ASEAN Free Trade Agreement (CAFTA). The paper concludes by drawing out the implications of this theoretical approach for international trade cooperation more generally and outlines areas for future research.

## Consequences of agreement coverage

With significant and potentially long-term changes in the US approach to international trade cooperation, (Lester and Manak 2018), new trade barriers emerging in Europe (Sampson 2017) and continuing questions over the role that China will play in global economic governance more generally, (Bishop and Xiaotong 2019; Stephen and Parížek 2019) it is increasingly important to understand the relationship between power trajectory and trade cooperation. Does China's rise represent a challenge to the global economic order? Does the changing US approach indicate a retreat from its active engagement in global economic governance? What will be the consequences of shifting power distributions on world trade more broadly? The interaction between trade agreement design and the power dynamics of the signatories constitutes an important part of answering these questions.

When considering the consequences of agreement design, the costs associated with path dependence, that is the costs incurred in adapting, extending, or replacing an existing agreement, are of primary concern. These costs are determined by the degree to which an initial agreement alters the behaviour of the contracting party compared to its behaviour in the absence of an agreement.<sup>2</sup> One way this can be measured is by analysing the scope of an agreement since an agreement that covers more issue areas will tend to require a greater number of behavioural changes than one that covers fewer areas. If an agreement is more limited in the number of issues it addresses and/or results in lower levels of liberalization in these areas, then the scope of changes entailed by the agreement is reduced. Such an agreement therefore increases the costs of repudiation as

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<sup>1</sup> Whilst the issue of preference formation in trade negotiations is an important one, this is beyond the scope of the article. The purpose here is to understand the ways in which states may benefit from different agreement designs rather than explaining the preferences of states themselves.

<sup>2</sup> As the article builds on insights from contract theory, the terms 'agreement' and 'contract' are used interchangeably throughout.



the behavioural changes that will result from a return to the pre-agreement status quo will be greater. Higher commitment agreements then are agreements that can only be substantially altered by incurring significant costs in terms of behavioural changes and sacrifice of existing relation-specific investments either on the part of the state itself or by sub-state actors. In trade, these relation-specific investments are associated with the costs of exporting of goods or services tailored to serve to a specific market or on the reliance of imports from a particular market that will be costly to replace (Hirschman 1980). An agreement that covers goods and services will, all else equal, result in more relation-specific investments than a trade agreement that covers simply goods. The more areas covered by the agreement then, the higher the resulting commitment. Low commitment agreements conversely are those where major subsequent changes are possible with relatively little cost. One way of ensuring that future changes will be low-cost is to conclude a limited initial agreement in anticipation of expansion of the agreement. Such an approach requires fewer changes in behaviour rather than those required by the conclusion of an agreement that is then revised in an area already covered. This tactic of expansion also means that no relation-specific investments have been made by firms in order to orient their business towards the new market in this issue area. Following this logic, it is clear that a more comprehensive/higher commitment agreement provides safeguards for relatively declining states because it provides more certainty. It also means that any subsequent changes will require a relatively rising trade partners to incur higher shifting costs should they wish to change the agreement down the line.

In terms of the power trajectory of the signatories, their relative bargaining position is likely to impact their patience in securing an initially comprehensive deal, with rising states tending to be possessed of greater degrees of patience than relatively declining states. By signing a more limited initial agreement such a patient, rising state may 'be willing to make a (smaller) current payoff in return for a soft legal agreement that has some prospect of enmeshing the impatient state in a process that will deliver the concession down the road'. (Abbott and Snidal 2000, p. 447) Whilst such agreement design choices provide potential downstream bargaining advantages, because the individuals and states making decisions on these agreements are not possessed of perfect rationality, it is not inevitable that they will take advantage of the opportunities available to them (Williamson 1981, pp. 553–54; Simon 1996). There are likely to be a number of reasons why states may not take advantage of the full range of possibilities resulting from agreement design, ranging from bureaucratic inefficiency, domestic politics, regime type, or simply miscalculation. The purpose here then is not to develop a predictive theory or a theory of preference development but rather, with focus on a small number of cases, to develop a mid-level framework and explore the possibilities that arise from the interaction of agreement design and state power trajectory (Porta and Keating 2008, p. 198).



## **Divergent power trajectory: comparing the USA, Japan, China, and India**

The economic sphere is arguably where the most substantial and consequential shifts in the distribution of power have occurred in recent years. In the last decade, China and India have emerged as major economic powers, whilst established states such as Japan and the USA have witnessed a gradual decline in their relative economic position. Given their divergent power trajectories, the development of these countries' trade agreements is instructive. The relevant measure of power trajectory is relative since in trade negotiations it is the relative bargaining power of the parties involved that is of interest in shaping outcomes. The most straightforward way to measure power trajectory is by relative share of global GDP because in trade negotiations bargaining power is largely determined market size, which, in turn, is determined by the purchasing power of a given state. The USA and Japanese share of global GDP has declined since 1980 (the period in which all of their trade agreements were signed), whilst the Indian and Chinese share has dramatically increased over the same period (IMF 2019). To probe the utility of the framework outlined here, the following sections explore the approaches of these four major trading powers and the opportunities that arise from their particular agreement choices.

### **The USA**

The approach of the USA to trade agreements is well established, it has concluded the most comprehensive trade agreements in the world, and it is the champion of wide-ranging FTAs 'going beyond industrial market access to include agriculture as well as a broad range of services, issues of investment protection, regulatory regimes, and intellectual property'. (Aggarwal and Urata 2013, 75–78) In terms of the level of liberalization and the number of substantive provisions, US agreements constitute four of the top five of most comprehensive bilateral agreements, including the first and third most comprehensive (Dür, Baccini, and Elsig 2014). Even the earliest bilateral agreement concluded by the USA with Israel in 1985 includes provisions on intellectual property and government procurement that are often absent in modern agreements signed by China and India. Similarly, in subsequent bilateral agreements concluded by the USA, for example, with Jordan, cover both goods and services and include provisions on intellectual property, government procurement, labour, and the environment. The agreement with Jordan was ground-breaking in its breadth as it was the first agreement of its type to include a provision on e-commerce.(Malkawi 2007, 153) The US deal with Singapore in 2003 was even broader in its coverage and used by the USA to establish precedents in matters such as financial services and e-commerce, labour rights, and the environment. These precedents were utilized in the subsequent deal with Chile.(Feinberg 2003, 1030) Not only did Singapore guarantee



zero tariffs on all US goods immediately but the FTA also ‘ensured that Singapore will eschew duties *on future* US products whose very existence is not yet imagined but that will constitute the cutting edge and eventually the bulk of USA-Singapore trade’. (Aggarwal and Urata 2013, 109) In the same year as the Singapore deal was concluded, the USA signed a deal with Chile which covers trade in services, goods, investment, and includes dedicated sections on telecommunications and financial services. Like most US agreements, the agreement with Chile adopts a negative list approach, meaning that all products or industries are liberalized unless explicit exceptions are made. In comparison with the deal Chile struck with China in 2005 (a deal still being upgraded in 2019), the US agreement is broader and conforms to the more comprehensive approach and covers intellectual property, government procurement, investment, labour, and the environment. The dispute resolutions provisions in the agreement with Chile were also expanded beyond those found even in the NAFTA agreement and included protection against ‘breach of “an investment authorization” or “an investment agreement”’ (Gantz 2004, 752) The US deal with Australia in 2004 too was very comprehensive, and a particularly notable aspect of the agreement was the concession required of Australia in terms of intellectual property rights: ‘significant chunks of Australian law [needed] to be re-written, or frozen, in return for a free trade deal with the USA’ (Weatherall 2004a, b, 3) What is particularly striking about the IPR clause in the agreement is its complexity; ‘it is breathtakingly long, detailed, and opaque’. (Weatherall 2004a, b, 3) Subsequent deals with Oman, Morocco, Bahrain, Peru, and Colombia adopt a similarly comprehensive approach and cover goods and services trade, intellectual property, government procurement, labour and the environment, and, where pre-existing agreements were not already in place, investment provisions.

The US-Korea agreement, concluded in 2007, broadly adopts the comprehensive US template and again incorporates a negative list approach but goes even further and includes a ‘snapback clause whereby the USA can respond if there are any harmful surges in South Korean auto imports due to the agreement’. Under this part of the agreement, the USA would be able to re-impose a 2.5% tariff on Korean vehicles (WTO 2014). Further, the agreement incorporates a clause that means ‘when new services emerge in either country they are automatically covered unless identified as an exception; if either country unilaterally liberalizes a measure that it had listed as an exemption, it is automatically covered under the FTA. Further, if either the USA or Korea gives preferential treatment to service providers from a third country under another FTA, it must also provide preferential treatment to its KORUS FTA partner’. (WTO 2014) US agreements then begin with broad coverage, deep liberalization, and only become more comprehensive over time.

The USA and its trade partners have shown very little tendency to revise or amend their agreements in the years following entry into force. This makes sense given the comprehensive nature of the agreements and the costs that would be associated with such changes. One important exception to this is the case of NAFTA which merits further discussion in subsequent sections of this article.



## Japan

Japan's approach to bilateral trade agreements has evolved in recent decades. Japan's deals tend to be of higher quality (that is, they cover more issues and result in greater initial liberalization) than agreements signed by China or India. The agreements signed by Japan all tend to include goods, services, and investment in the initial agreement, as well as 'behind the border' issues. Japan's Economic Partnership Agreements (EPAs) address issues not dealt with in a number of China's or India's agreements such as financial services, information and communications technology, human resources development, small and medium enterprises, and tourism. (Kovrigin and Suslov 2006, 50). A good illustration of the broad nature of Japan's agreements is its first bilateral deal with Singapore (JSEPA) concluded in 2002. As with US agreements, this deal incorporated government procurement, intellectual property and competition, but unlike US agreements does not cover labour or the environment. In contrast to the positive list approach favoured by China and India, but like the approach adopted by the USA, the JSEPA adopts a negative list approach and thus results in deeper liberalization because all goods are liberalized unless explicitly stating otherwise. The agreement has been called a 'new age' agreement because it includes provisions on intellectual property, education, broadcasting, and tourism. (Kovrigin and Suslov 2006, 50).

The lessons of the Singapore agreement were applied in Japan's next deal with Mexico in 2004. As with other Japanese deals, the scope of the agreement is restricted with respect to agriculture but eliminates tariffs on 96 percent of trade between the two countries and covers not only goods and services but also investment, government procurement, and competition. (WTO 2008) Japan has also concluded bilateral deals with ASEAN members, Malaysia, the Philippines, Thailand, and Brunei. These agreements cover goods, services and investment as well as government procurement, intellectual property, the environment and labour, indicating the broadness of their coverage. Like India, China, and the USA, Japan also concluded a bilateral agreement with Chile, but unlike in the cases of India and China, the initial agreement was broad and again included provisions on competition, government procurement, intellectual property, the environment, and labour. ("Agreement Between Japan and the Republic of Chile" 1994).

Finally, Japan concluded a trade deal with ASEAN as a whole, even after securing agreements with 6 of its individual members. In strategic terms the AJCEP has been seen as a reaction to the 'ASEAN-China FTA which caught Japanese leaders by surprise'. (Daquila and Huy 2003, 912) In contrast to China's approach though, Japan sought to secure standardized rules for greater liberalization of investment laws. The agreement with itself covers liberalization of goods and services and contains provisions on investment, whilst the list of exemptions covers over 90 percent of trade between the two parties. (Thalang 2007) Japan also agreed to eliminate tariffs on 93 percent of imports from ASEAN within 10 years, whilst six ASEAN members agreed to remove tariffs on 90 percent of Japanese imports within the next 10 years (*Japan Today* 2007). In short, despite agricultural exceptions, the AJCEP





is relatively comprehensive in terms of issue coverage and liberalization when compared to the deals signed by China and India.

As with US agreements, the agreements between Japan and its trade partners are not regularly adapted or expanded in the ways, as we shall see, observed in the agreements concluded by China and India.

## China

In most of China's trade negotiations, its negotiators have pushed for narrow agreements that entail limited liberalization and are subsequently expanded over many years in subsequent negotiation rounds as it leaves 'many aspects as the subject of continued negotiation'. (Hepburn et al. 2007, 20) China's agreements also often incorporate a more limited number of advanced provisions (such as investment, environmental, and labour provisions) and often simply re-affirm existing WTO commitments. Even the few advanced provisions that are included in some Chinese trade deals are often vague and liberalization entailed in the agreements is often shallow (Salidjanova 2015; Sampson 2019, 7). The first major bilateral agreement by China with ASEAN in 2004 covered goods only in the initial agreement and liberalization was limited. The agreement allows both parties to register a long list of goods in 'sensitive' and 'highly sensitive' categories that were not subject to tariff reductions until 2020. (Sampson 2019, 10) An additional services deal between the two parties was not concluded until 2007. This component is also relatively limited and incorporates a provision that states 'At subsequent reviews... the Parties shall enter into successive rounds of negotiations to negotiate further packages of specific commitments under Part III of this Agreement so as to progressively liberalize trade in services between the Parties'. ('Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Co-Operation between the Association of Southeast Asian Nations and the People's Republic of China' 2007; Sampson 2019, 10) The agreement with ASEAN was expanded again through an additional deal on investment in 2009 and in 2010 when the China-ASEAN free trade area was created. Since this time further talks to upgrade the agreement have been ongoing (Xinhua 2019).

China also concluded a deal with Pakistan in 2006. The agreement covered only goods liberalization and on only 35% of products upon entry into force. Expansion of the goods agreement was built-in to the initial deal and future liberalization and extension were dependent on subsequent negotiations under phase II of the agreement (M. Sampson 2019). The agreement also does not include chapters on competition, intellectual property rights, or public procurement. Three years later, in 2009 an additional agreement was concluded to liberalize trade in services and in 2015, a new banking services protocol was also agreed by the two parties, alongside a large round of memorandums of understanding. (Haider 2015; in Sampson 2019). Subsequently eight more rounds of negotiations have occurred under phase II of the agreement, culminating in an upgrade the deal in late 2016. (Sampson 2019, p. 14)





In 2019, a further amending protocol was also agreed by the two parties. (Pakistan Ministry of Commerce 2019).

In 2008, China concluded a deal with New Zealand that is more detailed in comparison to previous agreements but even here both parties agreed to extend the agreement in subsequent negotiations on services, competition policy, e-commerce, the environment, and government procurement after the initial agreement. (Sampson 2019, 16) China and New Zealand agreed to upgrade the deal further in late 2019 (“China and New Zealand Agree to Upgrade Free Trade Deal after Three Years of Negotiating” 2019). China’s subsequent bilateral deal with Singapore incorporates similar levels of coverage as the New Zealand agreement but still covers fewer issues than the agreements signed by Singapore, with the USA, Japan, or the EU. The agreement with Singapore was further upgraded in 2018 (Siong 2018). Long-running negotiations between China and Australia were also finally concluded in 2015 following disagreements regarding coverage of the deal. Australia wanted a comprehensive agreement from the start, whereas Beijing wanted a limited initial deal (Jiang 2008b, 182).

Like the USA, China concluded a deal with Chile, but this was a much more limited arrangement. As with its previous agreements, the 2005 deal with Chile was not negotiated as a single undertaking, rather goods and services components were negotiated sequentially. The agreement has been upgraded as recently as 2019 (“China FTA Network” 2019). China has also concluded a deal with Peru, but on implementation only 1 percent of imports from China were liberalized with most of the liberalization scheduled to take place in 2019, ten years after the agreement was first concluded. Finally, in 2013 China signed its first deals with European partners in the form of Switzerland and Iceland. Both agreements again adopt a positive list approach which tends to result in reduced breadth of coverage than does a negative list approach as adopted by the USA.

It might be suggested that the limited nature of China’s deals is a result of the reluctance of its partners to conclude more in-depth agreements; however, this is not borne out by the negotiations. For example, China’s agreement with Australia took more than a decade to finalize and the reasons for this slow progress resulted from China’s preference for a limited agreement. Negotiations stalled due to the inability of both parties to agree on the scope of the agreement. Australia wanted a ‘commercially meaningful’ comprehensive agreement with Beijing preferring a ‘selective, gradual approach to trade liberalization’ (Jiang 2008a, 182). Indeed, it has been said that the adaptability of China’s agreements is their ‘most striking feature’ across all partners (Wang 2017). In the agreement with ASEAN also, for ASEAN the concern was not the coverage of the agreement per se but rather a fear that their markets would be overwhelmed by cheaper and superior Chinese goods. This was eventually overcome with the Early Harvest Program and other concessions from China, leading to a more limited deal.

In almost all of the trade agreements concluded by China with a range of partners then, we observe a consistent pattern of initially limited deals that are gradually adapted and expanded over time as China’s bargaining power increases.



## India

India's trade agreements like China's, entail limited levels of commitment compared to international standards, address relatively few Singapore issues, and rarely cover government procurement, competition, the environment, or labour rights. In many cases, they are even more limited than those concluded by China. India tends to liberalize a reasonable amount of goods trade in their agreements, but this is less true with respect to services liberalization. India also exhibits a strong tendency to negotiate these elements sequentially, with extensive expansions and amendments of the initial agreements over time.

Of India's agreements still in force, the earliest was signed with its neighbour Bhutan in 1949. The initial agreement was extended and renewed in 1972, 1983, 1990, and 1995. The 1995 deal expired in 2005 but was renewed for another ten years in 2006, and most recently, the deal was again renewed in late 2016 for another 10 years. ("Trade Agreement between India and Bhutan" 2016) The coverage agreement itself is narrow in that it covers liberalization in goods only and does not include competition, government procurement, intellectual property, the environment, or labour standards. It stretches to a mere eight pages with additional notes and annexes, a clear example of a very low commitment agreement. ("Agreement on Trade, Commerce and Transit between Bhutan and India," n.d.). As with the agreement with Bhutan India's trade deal with another of its small neighbours, Nepal has gone through a large number of iterations. The first agreement was concluded in 1950 and was followed by agreements in 1960, 1971, 1978, 1991, 1996, 2002, and finally 2009, the last of which remains in force. (Mukherji 2010) Each of these iterations gradually broadened the scope of the deal, and in 2009, the agreement validity period was increased from 5 to 7 years with an automatic extension of another seven years built-in (Batra 2012, 80). Subsequent deals with Sri Lanka and Afghanistan were similarly limited and, in the case of the latter, the contract covers trade in goods only and excludes provisions on competition, government procurement, labour, the environment, and services liberalization ("India and Afghanistan Preferential Trade Agreement" 2020).

Following conclusion an agreement with Singapore, India signed a bilateral agreement with Chile in 2006, its first with a single country outside Asia. It covers only goods and not services (or investment) (WTO 2010). In its trade negotiations with ASEAN India, like China (but unlike Japan), opted to conclude the goods and services agreements with ASEAN sequentially. In terms of the goods agreement itself—its coverage is again relatively narrow because India excluded 489 items from the concession list completely and an additional 590 items from complete tariff elimination (ASEAN 2004). Following the landmark deal with ASEAN, India's deal with South Korea in 2009 covered liberalization in both goods and services the scheduled reduction in tariffs on 85% of Korean exports over eight to ten years is 'slower and less comprehensive than the Korea-USA and the Korea-EU free trade agreements... [The] CEPA has also been criticized for not addressing the financial sector'. (Shahid 2011, 86) As a consequence of the limited scope of the agreement, South Korea has been pushing India to upgrade



the treaty, particularly because there is a perception that Japan was offered a comparatively 'better deal'. (Times of India 2015) In response, an Indian commerce official has been quoted as saying: 'South Korea is very keen on upgrading the CEPA. However, we feel that it is too early to revise it' (Times of India 2015).

As with China's agreements then, India adopts an approach of initially limited deals that are subsequently expanded, sometimes numerous times. Given its economic growth, India's bargaining advantage has only increased as it has engaged in these agreement expansions. It is well known that there remain strong protectionist forces within India, particularly related to sectors such as agriculture (Anklesaria 2018). It may be objected that these domestic drivers of agreement coverage present a problem for the idea that limited initial agreements present benefits for states with a positive power trajectory. Yet, these explanations are complimentary since India's power trajectory (measured by indicators such as GDP) is closely related to the success of domestic industries. As the size of the economy grows (and India's power trajectory is positive) these domestic industries, protected by tariff and non-tariff barriers, will have access to a growing domestic market protected from foreign competition. Over time, these industries will be in a stronger position as India liberalizes further and expands the initially limited trade deals that it has concluded. Delaying negotiation on sensitive issue areas to a later date may allow India to take advantage of its greater progress in these areas. An interesting implication of the theory then is that limited trade agreements might represent an important element of a development strategy pursued by rising states such as India and China.

## Cross-case comparisons

It might be that the variation observed in the coverage of agreements is a function of the four major powers concluding agreements with different collections of states. Consequently, the agreements may vary in coverage simply to take into account the different economic strengths and weaknesses of negotiating partners but do not offer any downstream bargaining advantages. Fortunately, because the four major powers have concluded deals with many common partners we can evaluate this by examining whether the same trends hold when the identity of the negotiating partner is held constant. This allows the elimination of a range of confounding factors. When analysing agreements with common partners the same trends can indeed be observed in agreements signed with Chile, Singapore, ASEAN, and Peru by the major powers. The tables below show the relative breadth of the major partner agreements with each country in terms of agreement coverage. These measures are derived from original analysis of the trade agreement texts and WTO reports as well as data from existing studies (Dür et al. 2014).

To evaluate the reliability of this analysis, a second measure is included, 'agreement score 2' taken from analysis of agreement coverage in a separate study (Dür et al. 2014). In every case, the coverage of the agreements concluded by rising states is lower than that concluded by the relatively declining states. The variation we observe is therefore unlikely to be an artefact of these powers concluding agreements with different counterparts. In agreements signed by Chile, those concluded



with USA and Japan score 6 for the USA, and 7 for Japan, whilst China and India score much lower at 3 and 1, respectively. Similarly, in agreements with Singapore, the USA and Japan score 7 and 6, respectively, whilst China and India both score 4 (Dür et al. 2014).

These data also allow us to address the other possible explanations for variation in agreement coverage such as learning over time. For example, the Singapore agreements show that the deal with China was signed many years after the deal with the USA yet is nonetheless more narrow in its coverage. It would be difficult to account for this in terms of the relative inexperience of Chinese or Singaporean negotiators. The agreements with Chile are also a clear demonstration of the trend of China and India to conclude more narrow agreements than the USA and Japan, and this is again confirmed across both measures. The ASEAN agreements present a more mixed picture; agreement breadth across the 3 countries (China, India, and Japan) is very similar. However, this is likely to be an outlier because of Japan's approach of negotiating with ASEAN members separately and is thus slightly anomalous. Finally, the direct comparison between the Chinese and US agreements with Peru shows that subsequent negotiation opportunities are possible in the agreement concluded by China (Table 1).

This demonstrates a key difference in the opportunities presented by trade agreements concluded by rising powers compared to relatively declining powers even whilst holding the identity of the negotiating parties constant. To explore these comparisons even more deeply, it is worth focusing closely on some examples. In terms of the difference in approach between the rising and declining power, it has been demonstrated that in the China–Chile agreement the parties pay lip service to the importance of labour rights, environmental issues, and social security, yet these references are ambiguous and not formally implemented in the agreement, rather they are ‘addressed in separate agreements that are not binding or enforceable’ (Salidjanova 2015, 30–31). The China–Peru agreement also incorporates even less coverage than this and there is no mention whatsoever of labour or the environment. Conversely, in the US agreements both incorporate detailed and binding sections dedicated to these issues; indeed, the environmental sections of these agreements include annexes that cover specific areas of cooperation. (Salidjanova 2015, 31) The differences in the preambles to these agreements have also been noted elsewhere—those in the Chinese agreements are far shorter, whilst the US sections detail cooperation in fields as diverse as corruption or drug-trafficking (Salidjanova 2015).

Compared to China's deals US agreements cover more product categories and substantive areas of cooperation, and are negotiated ‘from the start with as comprehensive a list as possible. [Whereas] China prefers to start with a much narrower list, and expands it if necessary’. (Hepburn et al. 2007, 17) Additionally, China's deals have tended to ‘contain few advanced provisions’ as it tends to repeat its pre-existing commitments under the terms of its WTO accession and even those agreements that do include mention of advanced provisions these are often limited to particular sectors of the economy, or added in a separate documents, such as memorandums of understanding (Salidjanova 2015, 18) To explore the opportunities resulting from



**Table 1** Comparison with common partners<sup>1</sup>

Agreement	Goods	Service	Competition	Government procurement	Intellectual property	E-commerce	Environment	Labour
Chile-China	Yes	No	No	No	Partial	No	Partial	Partial
Chile-India	Yes	No	No	No	No	No	No	No
Chile-Japan	Yes	Yes	Yes	Yes	Yes	No	Partial	No
Chile-US	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Peru-China	Yes	Yes	No	No	Partial	No	No	No
Peru-US	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Singapore-China	Yes	Yes	No	No	No	No	No	No
Singapore-India	Yes	Yes	No	No	No	Yes	No	No
Singapore-Japan	Yes	Yes	Partial	Yes	Partial	No	No	No
Singapore-US	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ASEAN-China	Yes	No	No	No	No	No	No	No
ASEAN-India	Yes	No	No	No	No	No	No	No
ASEAN-Japan	Yes	Yes	No	No	No	No	Partial	Partial
ROK-China	Yes	Yes	Yes	Partial	Partial	No	Partial	No
ROK-India	Yes	Yes	Yes	Partial	Partial	No	No	No
ROK-US	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Assigning a value of 1 when a clause is included, a value of 0 when it is not included and 0.5 when there is partial coverage, provides the results outlined in table 2 under 'agreement score 1' for each agreement



**Table 2** Comparison scores with common partners

Agreement	Score 1	Score 2 <sup>2</sup>
Chile–China	2.5	5
Chile–India	1	1
Chile–Japan	5.5	7
Chile–US	8	7
Peru–China	2.5	5
Peru–US	8	7
Singapore–China	2	4
Singapore–India	3	4
Singapore–Japan	4	7
Singapore–US	8	7
ASEAN–China	1	2
ASEAN–India	1	2
ROK–China	4.5	6
ROK–India	4	6
ROK–US	8	7

<sup>1</sup>Compiled using WTO factual abstracts, factual presentations, and original agreement texts

<sup>2</sup>This measures the comprehensiveness of the trade deals using an index score based on seven potential substantive provisions contained in each contract, one provision indicates whether an ‘agreement foresees that all tariffs (with limited exceptions) should be reduced to zero... The other six provisions capture cooperation that goes beyond tariff reductions, in areas such as services trade, investments, standards, public procurement, competition, and intellectual property rights’ (Dür et al. 2014)

different agreement design choices, a more detailed look at the most significant agreements signed by the USA and China is informative.

## CAFTA vs NAFTA/USMCA

It is clear that the approach of relatively rising major economic powers and relatively declining major powers differs when it comes to initial coverage of their trade agreements, but what are the consequences of this and what can this tell us about the future of international trade cooperation more generally? A comparison of the China-ASEAN Free Trade Agreement and the North American Free Trade Agreement is instructive.

The 2004 ASEAN–China agreement, was both narrow in terms of substantive coverage (limited to goods) and shallow (limited liberalization even in the areas covered ). Both signatories could register hundreds of goods that were not subject to tariff reductions until 2020 (Sampson 2019). A deal on services was later negotiated but was similarly limited in scope, and states ‘At subsequent reviews... the Parties shall enter into successive rounds of negotiations to negotiate further packages of



specific commitments under Part III of this Agreement so as to progressively liberalize trade in services between the Parties'. ("Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-Operation between the Association of Southeast Asian Nations and the People's Republic of China" 2004), The services agreement falls well short of similar EU and US agreements in terms of the depth of liberalization that it entails. After the deal on services, the agreement was again expanded as part of a separate agreement on investment in 2009, In 2010, the agreement was further expanded when the China-ASEAN free trade area expanded, despite the difficulties faced in some ASEAN countries resulting from the original deal.

Compare this approach with that of the USA in relation to NAFTA. The initial agreement was the most comprehensive free trade agreement ever concluded to that point, (Burfisher and Frederic 2019, 4) incorporating provisions on environment, intellectual property, and labour for the first time in a trade agreement. It reduced virtually all tariffs between the USA and Mexico to zero within 15 years. (Lester and Manak 2018, 154) Unlike the China-ASEAN agreement, NAFTA also lowered barriers in services, investments, and established standards for patents and trademarks. (Hufbauer, Cimino, and Moran 2014) The investment provisions of the agreement accorded national treatment to investors across the region. (Hufbauer, Cimino, and Moran 2014, 20) Unlike the agreement between China and ASEAN, the NAFTA remained unchanged for 26 years until renegotiation of the increasingly unpopular agreement was proposed by President Trump twenty-two years after its implementation. Yet despite its centrality to the presidential election of 2016, what is notable about the renegotiated NAFTA deal is how little it has changed from the original agreement. (Gertz n.d.) The reasons why this change has been relatively minor can provide valuable insights for the future of international trade cooperation.

The process of renegotiating NAFTA, initiated by the Trump administration, began in August 2017. The main negotiating priorities of the administration were strengthening rules of origins requirements, particularly in the auto sector, where the goal was to increase origin requirements from 62.5% to 85%. It also wanted improved access to the Canadian dairy market, make bilateral procurement symmetrical between countries (in terms of dollar values) in order to reduce the US trade deficit. The USA also wanted to secure a built-in sunset clause that would take effect 5 years after conclusion of the new agreement, and weaken the dispute settlement procedure towards making it non-binding, or even to go so far as to remove the chapter from the agreement entirely, whilst simultaneously increasing the enforceability of labour and environmental aspects of the original agreement. (Lester and Manak 2018, 152–68).

Even taking into account adoption of extreme initial positions for negotiating purposes, in light of its negotiating goals the USMCA can be regarded as only a partial success for the Trump administration. The USA has secured slightly more favourable access to the Canadian dairy market but failed to remove the chapter 19 dispute resolution provisions present in NAFTA. (Gertz n.d.) In terms of rules of origin in the auto sector, USMCA incorporates a 75% requirement, up from 62.5% in NAFTA but below the US objective of 85%. (US Trade Representative 2019) Elsewhere in the auto sector, the USA secured agreement from Mexico that 40 to 45





percent of the cars built in North America must be made in a factory that pays a minimum hourly rate of \$16.(Swanson and Tankersley 2020) The USA also succeeded in inserting a sunset clause; however, this will take effect after 16 years, not the 5 years that the USA initially demanded.(Lester and Manak 2018, 164).

What can we learn from these outcomes? The initially high commitment agreement locked-in the advantage of the USA (in absolute terms) for 26 years as the US advantage over its negotiating partners was not expected to increase substantially in 1994. Now when the USA attempted to revise or expand the agreement it was much more difficult because domestic stakeholders in the USA had made transaction specific investments in the 26 years since implementation of the agreement. Radical changes to the status quo would have therefore been costly for all participants.

Further, one of the weaker parties to the agreement, Canada could resist change to the status quo because of the relatively favourable existing agreement. Canada could stick to an existing arrangement in a way that was not possible for ASEAN during subsequent negotiations with China because the status quo had not settled into a stable equilibrium due to constant expansions. In the case of NAFTA however, Canada could refuse to conclude the new deal without maintaining the original dispute resolution process; in other words, there was a detailed status quo which was costly to change and easier to defend. (“Trudeau Says Canada Won’t Sign NAFTA Deal without a Dispute Resolution Process, Culture Protections” 2016)

Comparison of the case of ASEAN–China and NAFTA illustrates two important differences between the expansion of limited agreements and renegotiation of comprehensive agreements. First, more comprehensive agreements, by their nature as covering more areas and liberalizing more deeply, require more dramatic changes in behaviour and so movement from this equilibrium is more costly. Second, the initial comprehensive agreements give weaker negotiating parties a status quo to defend in a way that is not possible in agreements where the status quo has not been precisely defined.

## Implications for international trade

The preceding analysis suggests that the initial coverage of a trade agreement determines the ease and scope of downstream revision of trade agreements, with important consequences for bargaining dynamics between the signatories. With reference to cross-case comparisons, this article has suggested that varying levels of agreement coverage can have different implications for states depending on their power trajectory. A comprehensive initial agreement provides opportunities for states with a relatively declining power trajectory for a substantial period following conclusion of the deal because it allows it to lock-in its deteriorating bargaining advantage and protects it from unfavourable revisions by its counterparts. The cases of Japan and the USA with their limited incidence of agreement expansion or revision support this. The analysis of NAFTA further demonstrates that, over the long term it is more difficult for a relatively declining power to substantially revise or expand a comprehensive agreement even where it has significant bargaining advantages. On the other hand, the analysis shows how limited initial agreements, such as the China-ASEAN



FTA, benefit major rising powers such as China because it is relatively easy to continually expand the agreement as their bargaining advantage grows. Such an agreement makes it more difficult for the parties with less bargaining power to resist subsequent expansions of the agreement because the existing status quo is ill-defined.

What are the broader implications for trade cooperation more generally? There are indications that the unique approach to the China-ASEAN deal suggests that the limited design of the agreement may have consequences beyond the bilateral relationship by providing an alternative model to comprehensive trade agreements signed by other major trading powers in Asia. The recently concluded Regional Comprehensive Economic Partnership (RCEP) is a multilateral agreement between ASEAN states, Australia, China, Japan, South Korea, and New Zealand and so is subject to more complex power dynamics given the larger number of participants. However, it is interesting to consider how the bilateral and multilateral agreements may interact. The original intention of RCEP was to combine the existing ASEAN + 1 agreements together, but this was difficult because there are important differences between the preceding ASEAN + 1 deals. Whilst all covered trade in goods, services and investment were absent in a number of them. Even if the same sections were included in the separate ASEAN + 1 deals, the content of these sections is different. The level of tariff concessions extended to different partners by ASEAN is varied (Elms 2020, 2). As a result, RCEP incorporates different tariff schedules for each participant and the speed of tariff reductions differs (Elms 2020, 3). Even here though the structure of the agreement may present opportunities for adaptation and expansion of the agreement at a later date, there is some indication that China's limited approach to its trade agreements had an indirect impact on the development of RCEP, particularly in terms of the investment provisions of the agreement. In China's FTAs with Australia, Korea, and ASEAN, the agreements refer to investment protection rather than incorporating investment protection and liberalization as seen in Japan's agreements with individual ASEAN members. China's trade agreements also do not include China's investment schedules or provisions on market access (Wang 2017, 166). Whilst it was originally hoped that RCEP represented an opportunity to 'level up' investment provisions, the agreement instead ended with a lowest common denominator approach (Ewing-Chow and Losari 2020). Unlike most of the existing investment agreements among the participants in RCEP, the RCEP Investment Chapter does not contain an investor-state dispute settlement (ISDS) mechanism. Instead, the parties would discuss this within two years after the agreement enters force (Ewing-Chow and Losari 2020).

What are the implications of the finding that more limited agreements provide advantages to rising states whilst more comprehensive deals can benefit relatively declining states? It is important to note that the framework developed here indicates possibilities, not certainties. That is, though the preceding analysis suggests particular forms of agreement provide advantageous opportunities for states depending on their power trajectory, it is not inevitable that states will take them due to a range of factors. These factors that may limit state's ability or tendency to take advantage of these opportunities merit further research, yet the existence of these opportunities, created by the interaction of agreement design and power trajectory, is itself important. It suggests that over time states such as China and India will benefit from



increasingly comprehensive agreements as their bargaining advantage increases. It also suggests that the USA is unlikely to benefit substantially from the renegotiation of its existing agreements.

## Declarations

**Conflict of interest** The author declares that there is no conflict of interest.

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