

Letter to the Editor, *Australian Financial Review*, Friday 13 June 2008

“Taking Australia-Japan FTA Negotiations to New Levels”

Luke Nottage, Sydney Law School
Co-Director, Australian Network for Japanese Law

Prime Minister Rudd is right to suggest some EU-like institutions for the Asia-Pacific. Regional arrangements can generate more transparency and public participation, and hence legitimacy, than multilateral systems. Yet they can minimise parochial impulses often found in national and even bilateral approaches, including potentially the Free Trade Agreement (FTA) anyway being negotiated between Australia and Japan.

Regional arrangements need not replicate all the “hard law” and supporting institutions built up since 1958 into the EU. But the Asia-Pacific could institutionalise more regulatory cooperation, for example in setting the minimum product safety standards permitted under the WTO. The head of the new “Consumer Agency” mooted now for Japan could join the New Zealand Minister on our Ministerial Council for Consumer Affairs. In specific areas, such as food regulation, we could add other countries like Japan and China to the agency that Australia has developed jointly with New Zealand. We could add looser commitments to other business law harmonisation, as Australia and New Zealand did in 1988 following its FTA of 1982. That also underpins their negotiations for a treaty allowing readier enforcement of judgments from each others’ courts, as among EU states. We don’t need to bind ourselves yet to a supranational court like the European Court of Justice.

Softer innovations like these might restore more genuine sovereignty than we have now under the WTO or the lopsided Australia-US FTA. They should also undermine the objection that Australasia remains too diverse to take collaboration to new levels. Diversity has anyway been turned into a strength within the EU, now with 27 countries of all shapes and sizes.

More collaboration in regional initiatives could help Japan finally get over the dark legacy it left in the region during World War II, like the EU did for Germany. Ex-PM Keating also over-exaggerates Japan’s “mono-culturalism and insularity”. Only last week, its Supreme Court declared unconstitutional aspects of the Nationality Law, affecting thousands of children of mothers particularly from South-East Asia. Indeed, Australia should study how a Bill of Rights can be entrenched in a Westminster-style democracy.

Ex-PM Hawke also remains sceptical, yet he too acted unexpectedly when proposing what became APEC (Asia-Pacific Economic Cooperation) in 1989. Officials, politicians and other leaders still managed to make that work. But after two more decades of closer integration in our region, it’s time to add some lessons from the EU.