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RESEARCH NOTE

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Regional Trade Agreements and the WTO

Regional Trade Agreements (RTAs) under the World Trade Organization (WTO) definition include actions by governments to facilitate trade through Free Trade Agreements (FTAs) or Customs Unions (CUs).

Background

The last 10 years has seen a rise in the number of RTAs being considered across the globe. As at 30 June 2002 there were 169 RTAs notified to the GATT/WTO[1] and still in force.

The rise in RTAs has been attributed to:

- uncertainty over the state of multilateral negotiations before the WTO Uruguay Round and after the Third Ministerial in Seattle
- preference for the simplicity of RTAs after the 1997 Asian economic crisis, and
- the snowball effect of states avoiding possible exclusion through non-participation.

The last 10 years has also seen a transformation in the character of RTAs. RTAs are no longer confined by geographic region but extend across the globe. There is an increase in RTAs mirroring and even anticipating WTO regulations such as the North American Free Trade Agreement (NAFTA) environment and labour provisions. Finally, there is an increased preference in developed states for comprehensive FTAs. Of the 169 RTAs notified to the GATT/WTO and still in force, 115 are FTAs.

The WTO View

One of the central principles of the GATT/WTO system is the Most Favoured Nation (MFN) principle as outlined in Article I of the GATT. This article forbids the pursuit of discriminatory trade practices by one member against another. Simply stated the goods of one nation must be accorded equal treatment as goods from any other country. An equivalent principle is outlined for services in GATS[2] Article II.

Despite this, RTAs are accepted by the WTO under specific conditions outlined in the regulations of GATT Article XXIV, GATS Article V, and in a provision known as the 'Enabling Clause'.

GATT Article XXIV recognises that the aim of RTAs is to facilitate world trade and that this aim is enhanced through the inclusion of all trade sectors and diminished by the exclusion of any major sectors.

The article reaffirms that such agreements are aimed at decreasing barriers to trade between parties, rather than increasing barriers to trade between parties and non-parties to the agreement. The article also reaffirms transparency as a fundamental principle in the negotiation and conclusion of RTAs.

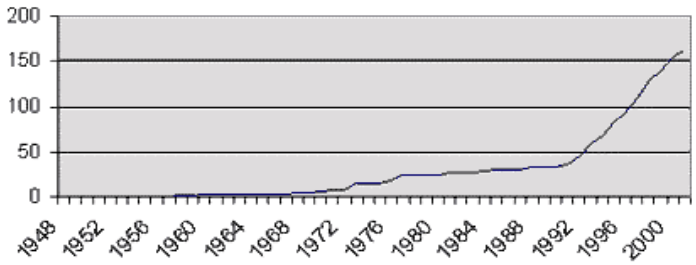
GATS Article V imposes the same criteria as GATT Article XXIV. RTAs are allowed if the criteria—comprehensive intra-party trade liberalisation; negligible effect on non-party trade; and transparency—are all met.

The Enabling Clause refers to the 1979 decision of GATT members allowing exceptions to the MFN status in favour of developing nations. The decision basically gives developing nations the ability to enter into preferential trading agreements. Once again a firm commitment to transparency is given.

Do RTAs Help or Hinder Trade Liberalisation?

Proponents of RTAs argue that such agreements allow nations to prepare for wider liberalisation through allowing liberalisation on a limited scale. As countries become accustomed to limited liberalisation their transition to wider and comprehensive liberalisation will be easier.

RTAs in Force by Date of Notification to the GATT/WTO



Source: WTO 2000
http://www.wto.org/english/tratop_e/region_e/regfac_e.htm

'Costs' in the conclusion of an RTA could include industry, customs and quarantine restructuring. Once these costs are foregone in an RTA there is no need to address them again in multilateral negotiations. Accordingly, nations already participating in RTAs will more readily negotiate multilateral trade liberalisation.

This argument is supported by the simple notion that negotiations are more difficult as the number of participants increase. Multilateral negotiations at the WTO, involving 144 members from diverse developmental stages, cultures and political economies, are problematic to say the least. Negotiations have also proven difficult at smaller forums such as APEC (21 members) or the Free Trade Area of the Americas (35 members). Negotiations involving a small number of participants are easier. This is further enhanced when the small number of participants share common political, cultural and economic systems.

A comprehensive RTA may also liberalise trade further than is possible through the WTO, thus setting the pace for future multilateral negotiations. Examples of this include RTAs that include agreements on government procurement, investment, competition policy, standards, essential services and environmental standards.

Opposed to this is the counter argument that RTAs are not 'stepping stones' to trade liberalisation, but rather 'potholes'. The theory is that as a nation accrues a certain amount of benefit from participation in an RTA, it will prefer to maintain this status quo rather than open itself to greater risk for diminished returns.

In this view, RTAs create a sub-class of economies that are neither wholly protectionist nor wholly liberalised, but suspended between the two.

Supporting this is the belief that RTAs are heavily influenced by factors beside trade. Nations enter into RTAs for strategic, political and cultural reasons such as European Union eastward expansion which has been used to cement common security arrangements and further economic reforms in transitional economies. Further, the negotiation of RTAs is often strongly influenced by domestic opinion, possibly causing trade liberalisation to be limited by single-interest lobby groups.

Jurisdiction of Dispute Settlement

Under Article 23 of the *Dispute Settlement Understanding*[3] the WTO has both the authority and obligation to investigate violation of WTO obligations. A member is not bound by decisions of an external body on a WTO dispute.

However, dependent upon how WTO compatible an RTA is, signatories may have to contend with possible overlaps or conflict in jurisdiction between the dispute settlement bodies of the RTA and the WTO.

Examples could include situations where measures not considered by a WTO dispute settlement body under GATT Article XI may be brought before an RTA dispute settlement body.

Further situations could occur where dispute settlement can be considered under both the dispute settlement bodies of the WTO and the RTA. In such a circumstance, the jurisdiction and relative dominance of the WTO and the RTA would be in question. Participants in a dispute could seek a decision from the tribunal under which they are most likely to gain a positive result.

Issues

- What are the implications of the rising number of RTAs for multilateral negotiations–will it weaken or strengthen them?
- Would Australia remain as strongly supportive of the Cairns Group if given preferential access to the US agricultural market?
- What are the marginal gains to be achieved in multilateral as opposed to bilateral (RTA) trade liberalisation?
- Will other nations that successfully negotiate RTAs with key partners continue to support multilateral trade liberalisation efforts?

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1. The General Agreement on Tariffs and Trade (GATT) Uruguay Round (1986–1994) led to agreement on the establishment of the World Trade Organization to replace the GATT Secretariat in 1995.
2. General Agreement on Trade in Services.

3. WTO understanding on rules and procedures governing the settlement of disputes agreed to in the Uruguay Round of negotiations (1984–1994).