

# **The Challenge of Negotiating RTA's for Developing Countries: what could the WTO do to Help?**

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# The Challenge of Negotiating RTA's for Developing Countries: what could the WTO do to Help?<sup>1</sup>

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## Abstract

This paper examines the challenges that confront negotiators of Regional Trading Arrangements because of the second best nature of the arrangements. It shows that human resource constrained administrations in developing countries are likely to be at a particular disadvantage in carrying out the necessary assessments of the costs and benefits of specific proposals for RTA. It then considers the Sussex Framework for assessing RTA as a specific example of a relatively low cost but robust approach to analysing RTA without recourse to sophisticated modelling. The paper then suggests that for reasons of international negative spillovers from RTA and asymmetric information there is a case for public provision of such analytical frameworks free or at low cost to developing countries. The WTO could in principle provide the analytical, training and advisory services but is unlikely to do so for political reasons. The paper concludes by proposing a new international organisation, the Advisory Centre on RTA, closely modelled on the Advisory Centre on WTO Law set up to help developing countries involved in trade disputes

## *1. Introduction*

Preferential regional and bilateral trade agreements (RTA is the WTO term for these and that is used here) are on the increase (by how much is controversial, see Messerlin (2007) for example and arguably affect less than 20% of world trade by value, Medvedev 2006). What is not controversial is that The top trade powers (notably the EU, the US, China, Japan) are actively pursuing such agreements at the same time as momentum in multilateral trade negotiations has at best slowed. It is also worth noting that developing countries are involved in 125 out of 193 preferential agreements notified to the WTO Secretariat and in force as at March 2007 ( see table 1).<sup>2</sup>

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<sup>1</sup> I am grateful The British Department for Business, Enterprise and Regulatory Reform for financial support for this work

<sup>2</sup> 205 agreements were notified and in place by July 2007. See [http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm)

Table 1

Preferential agreements notified to WTO by type as at March 2007	preferential arrangements*	Free trade Agreements*	Customs Unions*	Services agreements*	Total
South-South	18	22	5	16	61
North-South	0	40	1	20	61
North- North	0	15	8	8	31
Transition-Transition	0	33	0	0	33
North-Transition	0	4	0	0	4
South-Transition	0	3	0	0	3
Total	18	117	14	44	193

\*including later accessions to already notified agreements

Source: derived from  
[http://www.wto.org/english/tratop\\_e/region\\_e/eif\\_e.xls](http://www.wto.org/english/tratop_e/region_e/eif_e.xls)

Neither Article XXIV of the GATT nor Article 5 of the GATS exerts much discipline on the workings of RTA between WTO members. In any case discipline is exerted after rather than before the event so the impact of any negotiating mistakes or adverse effects on third countries is unlikely to be corrected unless a dispute is brought and so far there have been few of these. The challenge for participants in any given bilateral or regional negotiation is thus to negotiate an outcome that maximises benefits and minimises costs for themselves and ideally minimises costs for non members and the trade system (though it is hard to see who is there to argue for it in any given negotiation).

Bilateral agreements are intrinsically more difficult to evaluate than either multilateral or unilateral liberalisations because of their second best nature ie the balance of costs and benefits is not a given. Economic analysis can deal relatively straightforwardly with this through concepts of trade creation and trade diversion. Even for relatively simple trade barriers such as tariffs or those that can be expressed as tariff equivalents measurement of these effects is not always straightforward and requires a relatively specialised set of economic analytical skills. This problem of measurement is further complicated because increasingly RTA go beyond the simple dismantling of border barriers to trade in goods. Such agreements now include services and other elements of deep integration (regulatory liberalisation in particular, but also competition policy, intellectual property protection and investment) where

data is poorer, analytical tools less developed and the domestic legal implications of any agreement complex and potentially substantial. The wide ambit and intensity of liberalisation taken along with the necessity to cover substantially all trade and sometimes deal with many partners, suggests that individual RTA could be, in principle, as difficult to negotiate as a WTO negotiation with 150 parties.

The bureaucratic stresses for developed countries with relatively well resourced administrations can be substantial. For administrations in developing countries where human capital is often the binding constraint the resource demands of negotiating one or more RTA alongside multilateral and unilateral trade policy-making are potentially much greater. This is a recipe for misunderstandings about implications of specific policy changes demanded by an agreement and in particular for economic and social development. All of this is further complicated by the possibility that each RTA negotiated by any given country could differ markedly from other RTAs under negotiation or in operation by or in that country. The issue of differing rules of origin (Baldwin, 2006, Gasiorek 2007,) is the most obvious but not the only example. These interactions could mask possibly serious economic and developmental costs.

Finally the unambiguous losers from RTA are those excluded. First they are discriminated against and any trade or investment diversion damages them with no offsetting benefits from trade creation (unless some aspects of services or other regulatory liberalisation in a given bilateral agreement is effectively *erga omnes*). Second, fear of preference erosion may make participants in RTA reluctant to negotiate non-discriminatory trade liberalisation multilaterally. Third, partners in a RTA may lobby against multilateral or unilateral mfn liberalisation. Fourth, the human resource cost of negotiating and implementing RTA may reduce engagement in multilateral or unilateral non-discriminatory liberalisation.

## ***II. What can be done to relieve human resource constraints and reduce potential costs?***

Given what is known about the potential effects of RTA from economic theory and experience of previous episodes of preferential liberalisation (eg formation of EU) it is possible to construct a systematic framework that could be used to assess the potential impact of any given agreement. The elements in such a framework would include:

1. a systematic checklist for analysing what is in and what is out of any proposed RTA and how that relates to WTO rules and any other agreements in force.
2. a guide to the WTO and domestic legal and legislative requirements to implement individual elements of any agreement.

3. guidance on how to assess the potential economic impacts of any agreement as an aid to reducing costs and increasing benefits for partners and third parties. This is potentially complex but;
  - a. it is possible to derive some rules of thumb about likely impacts on economic welfare on the basis of readily available diagnostic statistics (importance of trade in the economy, trade shares and trade patterns with potential partner(s) and third countries, similarities and differences in trade and production structures among potential partners, the level of mfn applied tariffs and size and pattern tariff peaks, the importance and incidence of NTBs where available, the importance and type of intra industry trade generally and with potential partners).
  - b. Although these rules of thumb are relatively easy to assess in the case of shallow Integration (removal of border barriers) they are less useful in the case of deep integration where barriers derive from domestic regulation (notably but not only in services, intellectual property protection and foreign investment).
  - c. The framework could be designed to give guidance on how to identify products and services where deep integration is likely to be important in generating gains from specialisation and integration into supply chains with potential partners. Such gains would in turn help to raise productivity and generate dynamic economic gains that can offset any trade diversion losses from shallow integration.
  - d. Diagnostic statistics and case studies could help to identify industries most likely to expand and contract as a result of a given RTA and hence some indications of where to look for social (eg regional employment effects, income distribution, gender, health) and environmental consequences and the need for flanking domestic policies to maximise benefits and minimise costs.
4. The extension of the economic assessment to include economic modelling (both general and partial equilibrium) to allow more precise quantitative assessments of overall welfare effects (general equilibrium) and of the potential impact on trade, production and consumption for particular products or industries (partial equilibrium). Both of these approaches could be used in conjunction with social accounting matrices and household surveys and other data bases to explore potential social and environmental impacts in a more detailed way.
5. an interactive electronic version that could guide users through the checklist and calculate diagnostic statistics and even allow some modelling would potentially reduce time and human resource cost.

One version of such a framework already exists. Funded by the British Department for International Development (DFID) economists at the University of Sussex have developed what has come to be called the Sussex Framework, designed specifically to assess any proposed RTA in a low

human-resource intensive manner and with a focus on development. The next section will discuss the Sussex Framework in detail and what we learn from it about the applicability of such a framework, its strengths and weaknesses and how it might aid negotiators.

### ***III. The Sussex Framework: can RTA be analysed in a practical, reliable and economical manner?***<sup>3 4</sup>

The conceptual basis of the Sussex Framework is to consider the political, social and economic viability of a given RTA. Its likely economic impact will depend on a number of key factors, and we provided a checklist of issues to be systematically evaluated. These are summarised in Box 1.

The first step in applying the Framework is to consider the importance of each element in the checklist with respect to the proposed agreement. In the context of the Economic Partnership Agreements (EPA) proposed between the EU and members of the ACP group of countries for example it is immediately clear that: there are substantial asymmetries between the EU and the proposed EPA country groupings; what is being proposed is a free trade area (FTA) where rules of origin will be important; the introduction of elements of deep integration and issues of trade-related development assistance complicate the negotiations, but the result may be potentially more beneficial and development friendly if they are correctly designed.

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<sup>3</sup> Rather than re-presenting the basic description of the Sussex framework this section is a lightly edited version of Evans et al (2007) with the addition of a discussion of the resource and training requirements. I am grateful to my colleagues for allowing me to use our joint work *in extensio*. The original is available at

<http://www.sussex.ac.uk/Units/caris/wps/Carisbp01.pdf> and the original study, Evans et al (2006), at <http://www.sussex.ac.uk/Units/caris/CARIS/DFIF-RTA-REPORT.pdf>

<sup>4</sup> While the framework was developed with DFID support the usual disclaimers apply – the views expressed are those of the author(s) and do not necessarily represent the view of DFID.

<b>Box 1: Identifying what needs to be evaluated</b>	
<i>Checklist</i>	<i>Issues</i>
1 Economic relationship between partners	size, asymmetry, tariff levels, cost differences...
2 FTA or Customs Union?	flexibility, rules of origin
3 Overlap with other agreements?	complementarities v spaghetti bowl
4 Expected difficulties in negotiation	depth & scope of PTA, sensitive sectors, exceptions
5 Barriers to trade	tariffs, NTBs - incidence, levels & range
6 Elements of deep integration?	Trade facilitating institutions and policies: investment rules, competition policy, labour mobility, standards, property rights, dispute resolution...
7 WTO compatibility?	important if third country may be affected
8 Role of aid donors	political motivation behind the agreements, presence of technical / development assistance

The second step is to consider the economic viability and consequences of a proposed agreement, including an assessment of the potential welfare consequences. Viability depends on the magnitude and distribution of benefits, both across and within countries. The overall welfare impact will depend on the extent of shallow integration, as well as on deep integration

In the first instance, any RTA involves a process of shallow integration. We have known for more than half a century that the potential net benefits from lowering trade barriers in a RTA are inherently ambiguous, because they involve both trade creation and trade diversion. Trade creation arises whenever more efficiently produced imported goods replace less efficient domestically produced goods. Trade is “created” and yields welfare gains. Trade diversion occurs when sources of supply switch away from more efficient non-partner countries to less efficient partner countries. Trade diversion reduces welfare, and the net welfare impact of a RTA will depend on the relative size of the two effects.

There are a number of rules of thumb, which are well grounded in economic theory, that help in evaluating the relative importance of trade diversion and trade creation.

1. The higher are the initial tariffs, the greater is the likelihood of both trade creation and trade diversion.
2. The greater the number of RTA partners, and the more similar is the product mix in the member economies, the more likely it is that there will be trade creation because there is more scope for specialisation.
3. The wider the differences in comparative advantage between partners and the higher the initial share of trade between them, the more likely the RTA will be welfare improving.

In addition to the potential, but once and for all, efficiency gains and losses, there may be welfare gains arising from growth effects induced by economic integration. There might be faster technical change and total factor productivity growth and scale economies arising from increased specialisation, and/or positive externalities between firms and/or sectors.

These dynamic gains are typically more likely to arise in the presence of deep integration. We then use a range of diagnostic indicators that shed light directly and indirectly on the welfare consequences of a given RTA. A number of these indicators are directly related to the rules of thumb outlined earlier, and thus help in evaluating the shallow integration consequences as well as distributional implications. There are no easy rules of thumb for evaluating the implications of deep integration. The economics of the transmission mechanisms between deep integration and economic growth is an emerging field, and the relationships are more complex and less well understood than with shallow integration. Nevertheless, there are some indicators, which are useful in considering deep integration.

### **Box 2: Shallow and Deep Integration**

Shallow, or negative, integration involves the removal of border barriers to trade, typically tariffs and quotas.

Deep, or positive, integration involves policies and institutions that facilitate trade by reducing or eliminating regulatory and behind-the-border impediments to trade, where those impediments may or may not be intentional. These can include issues such as customs procedures, regulation of domestic services production that discriminate against foreigners, product standards that differ from international norms or where testing and certification of foreign goods is complex and perhaps exclusionary, regulation of inward investments, competition policy, intellectual policy protection and the rules surrounding access to government procurement.

These are exactly the issues that form the heart of the EU single market for goods and services and typically require a degree of harmonisation or convergence of norms and standards, or mutual recognition of each other's regulatory processes and standards.



## Shallow integration

Consider, for example, Table 2 below, which provides indicators for four countries involved in actual or proposed agreements with the EU. On the export side for the partner countries there will already be low tariffs on manufactures - except for a few special cases, which may differ for each partner, while sensitive agricultural products are no doubt excluded. Typically then there is little improved market access to the EU. On the import side, most of the potential partner tariffs are high, particularly for India. If we link these measures to the pattern of trade, we see that the share of imports from the EU is lowest for the two Caribbean economies while the US is an important supplier. This suggests considerable scope for trade diversion (switching away from the US to the EU as a supplier for a RTA with the EU) - especially for Jamaica. India has a higher share of imports from the EU, and a much lower share of imports from the US. However, with an EU import share of 25% (and which has been rapidly declining) the majority of imports are sourced from third countries. If we add the low degree of similarity in production structures as proxied by the similarity of export structures (24%), this again suggests the likelihood of trade diversion over creation in a RTA with the EU. In comparison the similarity in the exports of the EU and the US is above 69%.

**Table 2: Some diagnostic indicators<sup>5</sup>**

	Average tariff	Share of imports		Export similarity index <sup>6</sup>
		EU	US	
Jamaica	15.2 %	8.2%	8%	45%
Trinidad & Tob	18%.	12.6%	34%	33.4%
Egypt	18.4%	27%	12%	34.4%
India	28.3%	25%	6%	24.0%

Similarly for Egypt the share of imports with the EU is only 27%, with the US accounting for 12%; the degree of export (or production) similarity is higher

<sup>5</sup> The data is for Jamaica and Trinidad and Tobago is for 2003, for Egypt 2003, and India 2004 (Indian average applied tariffs have fallen substantially since 2004 and now stand at around 12% after the Budget of 2007).

<sup>6</sup>This is the Finger-Kreinin index and is a way of measuring the degree of similarity between a pair of countries trade or production structures. If they are identical the index is equal to 1, if they are completely different the index is equal to 0.

than for India. These figures suggest perhaps slightly less trade diversion for Egypt than for India but nevertheless still considerable scope for this using the Sussex Framework we can explore these issues more fully by a more detailed and disaggregated examination of these indicators, by looking at further indicators, such as the relative competitiveness of partner countries, examining indices of trade intensity; and importantly through looking at the evolution of these indices over time. It is also worth pointing out, that even when comparing two countries within a given grouping and proposed RTA — Jamaica, and Trinidad and Tobago – there are considerable differences between them and therefore also of the likely impact. Within the CARIFORUM EPA grouping those differences then become much more pronounced when the other countries are added in ranging from the tiny OECS states, to the Dominican Republic. This suggests that the impacts are likely to differ widely across countries, and that countries priorities and agendas are thus likely to be different. Using the Sussex Framework these issues can be identified and analysed.

### **Deep Integration**

From the perspective of shallow integration The Sussex analysis indicates that the effects of RTAs between the EU and partner countries are complex, but that typically there is considerable scope for trade diversion. This result should make us cautious in concluding that the welfare effects are likely to be positive. The next step is to consider elements of deep integration. Welfare gains from a successful process of deeper integration are likely to be considerably higher than losses from shallow integration. Deep integration is permits both more niche market specialisation and the creation of stable value chains.

The possible range of further gains associated with deeper integration include: technology transfer and diffusion both through trade and FDI, pro-competitive gains from increasing import competition in an environment of imperfect competition, which may also allow greater exploitation of economies of scale in production and the greater use of intermediate inputs; the increased geographical dispersion of production through trade that supports the exploitation of different factor proportions for different parts of the production process and/or (ii) local economies of scale through finer specialization and division of labour in production; externalities arising from institutional changes that lead to a wide increases in productivity.

With the Sussex Framework, we argue that the potential for gains from deeper integration depends on the extent to which the FTA creates a “common economic space” among partners. This common economic space requires both removal of barriers to trade that operate behind borders (e.g. discriminatory taxes and regulations) as well as actions to undertake common policies needed for dealing with the existence of public goods and externalities. Of course, the impact of deep integration will clearly depend on whether the norms adopted are appropriate — i.e. generate positive externalities and promote trade.

Broadly speaking, adopting appropriate standards is synonymous with finding the appropriate institutional framework for dealing with externalities. Some of these elements can be done by the market through private contracting, but they may require a facilitating environment. Foreign direct investment (FDI) is an important channel for productivity-enhancing deep integration via technology and know-how transfer, quality improvement and specialisation. Hence any assessment of the potential for deep integration gains from a requires an analysis of the investment regimes in place, of the levels and patterns of existing FDI flows, and of the possible clauses that could be negotiated in the context of a RTA which encourage further FDI.

A key indicator of existing and the potential for further deep integration is the degree to which intra-industry trade (IIT) is currently taking place. Broadly, IIT takes three forms. First, it is the exchange of similar but differentiated goods (the same trade heading) of broadly similar qualities and prices; secondly, it is the exchange of similar goods of different qualities and prices (first and second categories together are known as horizontal IIT); and thirdly it is the exchange of goods within a trade classification that represents a vertically integrated supply chain (parts for finished or part-finished goods). The last of these clearly includes the cases of global or regional supply chains, which have had a large positive impact on trade and growth in east Asia.

Each of these forms represents a way in which economic integration can encourage niche specialisation and generate productivity gains, as well as lead to trade induced technological change. Such gains can yield increases in trade, and more than compensate for any trade-diversion losses arising from shallow integration alone.

Our work on EU Egypt IIT suggests that while IIT has been growing fast in Egypt it is still at a very low level and is unlikely to represent a high current potential for deep integration. Taken alongside FDI flows into Egypt, which seem focussed on energy and domestic market access, the scope for deep integration to offset the bias towards trade diversion (indicated by the diagnostic statistics noted above) is relatively low (although there may be niches where harmonisation of standards and conformity testing can generate substantial gains and our work includes a suggestive case study on new potatoes<sup>7</sup>).

**Table 3: IIT indicators for India & the EU**

	<i>India-World</i>		<i>EU-India</i>	
	<b>1992</b>	<b>2004</b>	<b>1992</b>	<b>2004</b>
<b>% of Trade which is IIT</b>	43	52	19	39
<b>% of Trade which is vertical IIT</b>	18	35	8	18

<sup>7</sup> See Evans et al (2006) **196:198** for details

India on the other hand shows relatively high levels of and growth in IIT indices. Levels and growth rates are below but comparable with China and Brazil. Overall 52% of Indian total trade in 2004 was in IIT and some two thirds of that was in vertically integrated IIT. India-EU IIT lags somewhat behind the India-world IIT shares. This suggests 5 Technically measured by Grubel-Lloyd and CEPII indices (apply to the authors for more detail but means of calculating set out in the Framework document) (particularly when taken with the fast growing totals of inward and outward FDI) that deep integration in an EU-India FTA could potentially generate substantial gains and compensate for any trade diversion losses.

To see a self-standing example of the Framework used to assess a proposed FTA between India and the EU see Gasiorek et al (2007) at [http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc\\_135101.pdf](http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_135101.pdf)

### **Robustness**

We have tested the Framework and the usefulness of the diagnostic statistics and the rules of thumb against more sophisticated and resource intensive analytical methods, notably general equilibrium and partial equilibrium modelling on a potential EU-Egypt fully reciprocal FTA and an EU-Caribbean REPA. Overall the Sussex Framework gives very similar predictions of likely economic welfare effects of these proposed agreements to the modelling work with the added advantage of being able to drill down at sectoral or geographical level in a way that the models, typically, cannot do.

### **Practicalities**

Experience in applying the Sussex Framework in the context of actual or potential negotiations suggests that it and/or any equivalent analytical framework does clarify the potential effects of any give RTA in a helpful way for negotiators and helps prioritisation of objectives in the negotiations.

In terms of implementation the checklist is relatively easy and straight forward. The questions and the required answers are qualitative. They are in essence the questions that any administration would need to ask to begin the process of writing a negotiating brief for ministers. The advantage of the checklist is that it is ready made, coherent, and covers issues that experience of previous negotiations suggests are important. It reduces the risk of issues being overlooked because of lack of resources or expertise – not least if the country concerned has no depth of, or recent experience in, such a bilateral negotiation. Clearly not every issue on the checklist is relevant to every negotiation but it allows particular issues to put to one side as an act of deliberate policy rather than by accident.

The rules of thumb and the diagnostic statistics which underlie them require more expertise. The diagnostic statistics are designed to be calculated using the standard trade and tariff databases – WITS and TRAINS – which developing countries can download free from the World Bank. They can be calculated using standard spreadsheets. The formulae to calculate them need

economic expertise to derive, apply and to interpret the results. Someone with a strong grounding in the economics of trade and trade policy eg with a Master's level training can with time work out how to apply them. With a week or so training they could start to derive useful results within 2-3 weeks after that and with some initial guidance begin to provide policy relevant analytical judgements immediately after that. We have now used the framework in the context of RTA involving the EU, Caribbean ACP countries, India, Egypt, ECOWAS and COMESA states, Russia and Ukraine. Each run has reduced the time to calculate to calculate the statistics and interpret them. A first draft of a handbook on the methods plus two training modules have been prepared<sup>8</sup> which will help shorten some of the training and implementation periods for new users. Ideally an electronic version of the Framework would allow the checklist to be completed and the diagnostic statistics to be derived rather quickly. It could also allow some quantitative modelling to be undertaken although that would require significantly more expertise and raise the cost, also significantly.

The discussion so far is very much in the context of shallow integration. The lack of a clear conceptual base and hence of, relatively, easily derived diagnostic statistics beyond measures of IIT and FDI means that greater expertise is required to examine the prospects for deep integration. Above all the lack of fine grained services statistics or easy ways of linking regulatory changes to improved performance of the services sector and any externalities for wider economic performance limit the ability to come to quick conclusions. Which suggests that it requires accumulated experience with the Framework looking at a range of economies combined with local knowledge of sectors that which are likely to benefit from deep integration with bilateral partners.

Experience to date suggest that investment in training and expertise in the use of the Framework or something similar to it could pay off for countries facing a number of bilateral negotiations or, as in the case of the EPAs or FTAA, where there is both local regional integration with a number of local partners and bilateral North South integration going on. For countries which may only face one bilateral agreement at a time, investment in standing analytical capacity may be uneconomical particularly if there is high staff turnover as high quality human capital is bid away to other public sector jobs or to the private sector. The question of the provision of analytical services in these circumstances, whether from private or public sectors is examined in the next main section.

### **Conclusions from research leading to and application of the Sussex Framework**

1. Bilateral and regional trade agreements are here to stay (and may represent the policy response to market led trade integration at a regional level notably in Europe, the Americas and east Asia)

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<sup>8</sup> It is hoped to make this available via the UNCTAD Virtual Institute before the end of 2007.

2. They are complex and human resource intensive to understand and negotiate particularly as each may have special characteristics
3. For developing countries shallow integration - is likely to generate trade diversion losses and hence put a premium in identifying potential gains from deep integration. This will be particularly so when implementing reciprocal bilateral and regional liberalisation in the place of existing but asymmetric liberalisation (notably Regional EPAs and EU Neighbourhood FTAs)
4. The Framework requires training in its use and experience of its application to extract most from it particularly in the more complex task of assessing any potential for deep integration gains that might offset any trade diversion losses.
5. The Sussex Framework is a clear, coherent, consistent and robust framework for analysing a given proposed agreement with relatively light human resource requirements. In that sense it is a proof of concept for a standardised approach to complex negotiations whether the Framework or something developed from it.

### ***What is the interest and potential role of the WTO in helping Developing Countries negotiate RTA effectively?***

#### **Interest**

The WTO's interests derive first from its rules on preferential liberalisation in Article XXIV of the GATT and Article 5 of the GATS. These rules clearly acknowledge that preferential liberalisation is prima facie in breach of the principle of non discrimination but also that preferences are a fact and hence require rules to minimise negative effects on the multilateral system. Given that, historically, preferential integration has been a major policy instrument of the membership – most notably the EU and NAFTA members - and the increase in notifications of preferential agreements since the formation of the WTO (see [http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm)) - it is not surprising that negotiations on procedures and disciplines on RTA were included in the Doha Mandate. The new Transparency mechanism agreed (albeit provisionally) in December 2006 is the first product of that.

The difficulty with WTO rules on RTA is that apply ex post. Even the new transparency mechanism only asks that countries in new negotiations on RTA *endeavour* to notify the WTO and that they notify the WTO of the provisions of any signed agreement when they are made public.

The problem is that RTA generate substantive difficulties for the WTO. First and as we have seen RTA create incentives for gainers from RTA (notably the winners from trade diversion) to resist RTA members cutting their MFN tariff in multilateral negotiations (or indeed unilaterally). The importance of preference erosion as an issue in the DDA points that up. Second as RTA proliferate they threaten to increase the number of disputes brought to the WTO by countries which consider their mfn rights have been impaired particularly if the Transparency Mechanism leads to non-members becoming better informed of the content and hence likely impact of new RTA.

Policies which threaten not only the dynamic of multinational liberalisation but also increased litigation within the system suggests a WTO institutional interest in actions *ex ante* which help to reduce both risks, particularly where some countries are less able to negotiate effectively because of resource constraints. Having an agreed standardised framework with which to assess RTA would also give non members of the RTA and academics, NGO, parliamentarians, business and the media a means of scrutinising proposed RTA in a consistent way. Such a framework would act not just as a negotiating tool but also as an enhanced transparency mechanism.

### **What Role might the WTO (or other multilateral institutions) Play *Ex Ante in preparing parties for RTA negotiations***

The very fact of it being a negotiation between WTO members would make a role for the institution and the Secretariat parties potentially more difficult. Neither the WTO as an institution nor the secretariat (individually or collectively) could take or be perceived to take, implicitly or explicitly, sides in any RTA negotiation among the membership. That constraint would seem on the face of it to preclude helping any member to use a framework like the one outlined above to prepare a negotiating position. This prohibition would presumably apply equally to any other multilateral organisation (eg UNCTAD or the development banks).

There might be a list of actions that the WTO might not be precluded from undertaking such as:

1. getting international agreement on the content and structure of a standardised analytical framework
2. delivering/sponsoring generic training on the implementation of such a framework in Geneva or in developing countries
3. certifying private providers (consultants, academics, NGO) who could give training and technical assistance in preparing negotiating positions.
4. managing a trust fund to fund or partially subsidise these for developing countries activities perhaps endowed from the Aid for Trade funds agreed at the Hong Kong WTO Ministerial.

5. giving written and approved legal advice/guidance on how to 'WTO-proof' any agreement on a without prejudice basis as far as the rights of any party to take disputes cases after implementation.

Even this however might be too much for the membership to accept and it would take time to negotiate such a package and there are arguments that in any case much of this could be left to the private/non-profit sector to deliver.

### **A digression on private versus public provision**

There is already limited private provision of such analytical services. Many consultancies, research institutes and academics provide trade policy advice to developed and developing countries. Such advice to developing countries is often provided via aid funded technical assistance contracts. There is no reason why an analytical framework such as outlined above should not be marketed in this way and compete with other approaches. And, indeed, the Sussex Framework is deployed in this way.

There are two reasons for an element of public provision and/or regulation of quality. First is asymmetric information. Just as countries without depth of bureaucratic resource to assess FTA might make errors in negotiation so they might make errors in selection of expertise and analytical method. Given that RTA negotiations tend to be lumpy and not often repeated such mistakes might be costly. The second is that there is the risk of creation of international public 'bads' in the negotiation of any given RTA and a major risk of spaghetti bowl effects from the cumulative effect of many countries being members of many bilateral agreements. There is no incentive on the part of the negotiators for the interests of third parties or the trade system to be taken into account. In the worst case negotiators may be actively negotiating to maximise their gains from trade diversion in RTA partners' markets at the expense of third parties. An internationally agreed and sponsored framework could include provisions which encouraged more trade-system-friendly RTA agreements. These considerations constitute, prima facie, a case for international public provision of services and regulation of quality control. Additionally such a centre would build up expertise very quickly and generate economies of scale in provision of analysis and advice.

### **A Proposal for an Advisory Centre on Regional Trading Agreements**

Accepting that:

1. there is a case for subsidised public provision of:
  - a. an approved analytical framework to assess the economic, development and legal implications of particular RTA
  - b. training in its implementation
  - c. advice on the framework's application
  - d. advice on the implications of its outputs for negotiating strategy
  - e. and the accreditation of providers of such training and advisory services

to human resource constrained developing country administrations engaged in negotiation of an RTA



2. there are potential difficulties in persuading 150 members of the WTO to agree to the Organisation taking on such a potentially politically exposed role

Then it follows that there is a case for a new small international organisation to provide these services.

There is a precedent and model for such an organisation in the Advisory Centre for WTO Law (ACWL) which was set up in 2001 to provide advice and training for developing countries engaged in dispute settlement actions in WTO. The situation is similarly one in which WTO members have different interests albeit that RTA negotiations are not necessarily adversarial in the way that WTO disputes, by definition, are. The ACWL was set up explicitly to level the playing field for developing countries in disputes to allow for their lack of experience and depth of expertise in WTO law that would allow them to act effectively in a dispute. If two developing countries are on the opposite sides of a dispute and request advice then one (usually the higher income one) is directed to a roster of external counsel (approved law firms and appropriately qualified individuals who charge at the same rate as the ACWL) to avoid a conflict of interest. Least developed countries get free access to the services of ACWL and in the case of a conflict of interest get preferred access to ACWL lawyers. Other developing countries get access by joining the ACWL and contributing to the trust fund that underpins it and paying on a sliding scale of hourly rates for legal advice in specific cases again broadly based on income per head. Developed countries have no access to services. Current membership is 10 developed countries and 27 developing countries and rising. The institution is small – 8 legal staff and two administrators – and is based in Geneva where it has status as an international institution under Swiss law. It is governed by a management board of 5 reporting to a general assembly.

This model looks to be extremely relevant to the problems facing developing countries negotiating RTA identified above. The main differences are first that the ACWL is staffed by lawyers whilst economists would dominate in the proposed centre and second that the new centre would have to create its own agreed analytical framework. There is a substantial corpus of trade cases and specialist training in legal analysis of such cases in universities world-wide as well as generic legal representation skills. Any such organisation dealing with the negotiation of RTA would have to begin by getting agreement from its members on the analytical framework. There is also a smaller global community of trade economists than lawyers from which to draw expertise.

This analysis suggests that there is a case for a new international institution provisionally called the Advisory Centre on RTA (ACORTA) with the remit of giving advice to developing countries engaged in RTA negotiation on how to minimise costs of such agreements and maximise the benefits. The Centre would be closely modelled on the membership rules, eligibility conditions, governance and financing model of the ACWL.

## Conclusions

This paper has examined the complexities of assessing the impact of RTA on economic welfare and development and the difficulties these might present to under-resourced negotiators in developing countries. It has demonstrated proof of concept on an analytical framework that could help negotiators assess the costs and benefits of shallow and deep integration at relatively low resource cost and without recourse to sophisticated and expensive analytical methods. It proposes that while private provision could deliver the necessary training and advice there is a case based on asymmetric information and the potential for damage to the international system for an internationally financed Advisory Centre on Regional Trading Arrangements to provide training, negotiating advice and accreditation for private providers based on an agreed analytical framework

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