



Organization of
American States

Evaluating the Contributions of RTAs to Governance of Services Trade
Sherry Stephenson and Maryse Robert
Hong Kong, June 3, 2011



Organization of
American States



Introduction: OVERVIEW OF RTAs BY REGION

- Until the 1990s, regional trade arrangements (RTAs) were few and very limited in scope both in terms of the issues covered and the liberalization commitments envisaged
- Most RTAs were limited to coverage of trade in goods with no mention of trade in services
 - Three notable exceptions: the European Union (EU), the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), and the Canada-U.S. Free Trade Agreement (CUSFTA)



Trends Today in Regionalism

- **Proliferation of RTAs in Services around the World**
- Since the mid-1990s, RTAs have proliferated, with almost 300 agreements (85 on services) notified to the WTO by late 2010
- Although RTAs covering trade in services are more recent, notifications for services agreements under GATS Article V have grown at a faster pace
- Key players, such as the United States, the EU, and Japan, as well as other players including several developing countries have in the last decade signed several RTAs covering services with partners beyond their immediate neighborhood.
- Countries that are parties to RTAs now account for more than 80% of services trade
- To date, the WTO still governs the services relations among large players (U.S., EU, Japan, China, India, and Brazil)



RTAs by Region

- **The Americas**
- First region to embrace regionalism wholeheartedly; has remained at forefront in developing innovative approaches to the treatment of services trade
 - NAFTA model (comprehensive agreement, with negative list approach)
 - Since NAFTA: 24 sub-regional arrangements concluded containing disciplines on trade in services, either in the form of new FTAs or as part of an effort to deepen already-existing regional economic integration groupings



Trends Today in Regionalism: The Americas

- Most countries in the Americas have embraced the comprehensive, negative-list approach of the NAFTA for services in their FTAs negotiated with other partners in the region: 12 countries stretching from Canada to Chile along the Pacific Coast, and the Dominican Republic, have negotiated similar-type FTAs using this approach
- MERCOSUR: Positive-list approach with standstill clause. Liberalization of intra-trade in services posited by December 2015
- Members of all but one of RTAs negotiated in the Americas have adopted the NAFTA “negative list” architecture for liberalizing services trade – in contrast to countries in other regions of the world, where the “positive list” approach continues to dominate
- Two countries have in recent years gone back on the NAFTA model: Venezuela (2006) and Bolivia (2010)



Trends Today in Regionalism: Asia

- East Asia as a whole does not have an 'institutional' regionalism, and East Asia's economic integration relies largely on regional production and trade networks—a 'market-driven' integration
- Before 2000, there were roughly 75 effective RTAs in the world, but only five RTAs in East Asia, all of them being legally covered by the enabling clause under the WTO with a negligible scope of trade liberalization
- Now, East Asian region is at the forefront of regionalism. Out of 286 RTAs notified to the WTO as of September 2010, East Asian countries had participated in 171 (60% of the total). The RTA race in the region is not over yet because other East Asian countries have become more aggressive in pursuing regional trade talks



Trends Today in Regionalism: Europe

EU is the world's largest preferential agreement

- After imposing a moratorium on negotiating new RTAs from 1999-2006 to focus on the WTO Doha Round, the EU in 2007 began negotiating a new generation of more ambitious or comprehensive RTAs
- Lack of progress in the Doha negotiations was an important consideration in the EU's decision to lift the moratorium, and so were other factors, including pressures from European businesses to include what the United States was offering in its RTAs and to insert competition and investment policy, two issues that are not part of the Doha Round agenda



Trends Today in Regionalism: Europe

- Twenty-nine (29) RTAs had been notified to the WTO by the European Union, as of late May 2011, of which only eight (8) cover services
- In its 2006 *Global Europe Trade Strategy*, the EU targeted a number of larger countries and regions for negotiations, including South Korea, India, Canada, and the Association of South East Asian Nations (ASEAN)



Political Economy Considerations in Pursuing RTAs in Services

- Not all regional negotiations are identical and not all regional partners have the same ability to extract a high level of engagement
- Services trade negotiations are fashioned by the political and economic environment in which they take place, and they encompass an international component and a domestic element
- Governments can use trade negotiations to take advantage of the outside pressure offered by these processes to mobilize public support and domestic groups for their objectives
- They may also build coalitions and alliances with other parties or transnational actors to enhance their chance of achieving their preferred outcome
- This process seems to be easier to achieve in a regional context than in the multilateral context of the WTO negotiations for a variety of reasons, the most obvious one being the lack of focused external pressure and the lack of clearly identified benefits in the multilateral context, traceable to desired objectives



Political Economy Considerations in Pursuing RTAs in Services

- When negotiators encounter adversity at home and strongly entrenched vested interests for the opening of certain sectors, building such coalitions may prove extremely problematic, to the point that achieving the services commitment may be impossible without a huge component of external pressure that can be evoked either in the form of the enticement of a very large market or the clout of a very powerful trading partner



Political Economy Considerations in Pursuing RTAs in Services

For US, foreign policy component critical for the choice of the RTA partner, but economic motives dominate the content of the RTAs

- Detailed content of US pacts has been far more influenced by economic than political considerations. Starting with the Israel pact, the US has sought to include “frontier” subjects—well beyond the scope of contemporary GATT or WTO agreements.
 - The Israel FTA covered, for the first time, included trade in services (Declaration);
 - CUSFTA covered services and investment and had a dispute settlement mechanism;
 - NAFTA covered services, investment, intellectual property and government procurement, along with side agreements on labor and environment
 - Use of common NAFTA-type template since then



Political Economy Considerations in Pursuing RTAs in Services

- **For EU**, foreign policy component not decisive for choice of RTA partner but emerges in wider scope of RTA content, with a long list of provisions of little economic value and no enforceable commitment.
- '*Global Europe*' initiative obeys to two key considerations for European foreign policy, quite different from those described in the US case
 - First, the implicit rivalry with the United States.
 - The second foreign policy motive is the EU conviction that it has the best governance in the world and that it should use its 'soft power' to export this governance to different regions of the world.
 - 'Creeping export process' of the EU's own regulatory framework to its trading partners. This is the very frequent recourse towards the notion of 'convergence' among the EU and partners regulations—of course, a convergence towards EU regulations



Organization of
American States

Political Economy Considerations in Pursuing RTAs in Services

For Asia, both economic and foreign policy considerations drive the choice of partners and scope of the RTA

- East Asian countries must overcome several challenges: RTA-related preferences are underutilized in East Asia, a factor which compounds the relatively shallow East Asian integration, with RTAs having a relatively low coverage of products and services and wide exceptions of sensitive products and sectors
- Northeast Asian economic integration: RTA will likely be more positive and more efficient than separate bilateral RTAs among the China, Japan, and South Korea
- If trilateral 'CJK' (China, Japan, Korea) RTA: the next step would be a 'CJK plus ASEAN' RTA because all three countries already have separate RTAs with ASEAN. If the 'CJK plus ASEAN' RTA is signed and opened to India, Australia and New Zealand, would be exactly the same as the Comprehensive Economic Partnership in East Asia (CEPEA) proposed by Japan



RTA Convergence: A Bottom-up Approach

- Initiatives to replace multiple RTAs by large regional agreements are taking place in several regions of the world
- **Most of these initiatives emphasize trade and economic integration within a given region, and not between regions**
- In **Europe**, the European Union has expanded its membership and the scope of its economic integration arrangement to countries in Mediterranean, Eastern Europe and the Balkans
- In **Asia** a ten-year strategic plan was agreed in 2007 to realize the long-positied East Asian Free Trade Agreement through expanding ASEAN to include China, Japan and Korea
- In **the Americas**: 11 countries bordering on the Pacific to create an *Arco del Pacífico* agreement through consolidating 11 existing NAFTA-type RTAs (since 2008); *Mexico and Central America* (since 2008); *Área de Integración Profunda* (AIP)[Chile/Colombia/Mexico/Peru]: Common Market (since 2011)



Organization of
American States

RTAs and Governance

Question to examine:

Do RTAs support or debilitate the WTO General Agreement on Services (GATS) in its governance function as the keeper of rules and liberalization commitments on services trade for WTO Members and in what ways?



1. ARCHITECTURE

- Are RTAs weakening the GATS as an institution
- Reply: YES
 - Lack of enthusiasm for negotiating services in Doha Round; only one-third of WTO members have submitted offers
 - Plurilateral negotiations of 2007 went nowhere
 - Several countries who did not submit offers are in process of negotiating RTAs on services



1. ARCHITECTURE

- RTAs have diverted attention and focus away from multilateral system
- Alternative architecture developed by RTAs in form of “negative list” approach
 - Pioneered by ANZCERTA and NAFTA and now taken around the world; 23 RTAs
 - WTO members have shown themselves unwilling to adopt innovations in negotiations that would strengthen and modernize the GATS architecture



1. ARCHITECTURE

- Two parallel but alternative and different governance structures for services trade is confusing for service providers and government officials; need to learn two languages: positive and negative list:
 - possible overlapping disciplines; obligations
- Zone of “non-negotiation” between four largest trading entities still intact: how long?



2. COMPLIANCE

- Are RTAs weakening the compliance of WTO members with WTO rules?
- NO and YES
 - NO: RTA members do not appear to be settling their services disputes in their regional agreements; thus not undermining the GATS system by forum shopping; few services disputes taken to RTAs ; 20 services disputes taken to WTO as of Dec. 2010



2. COMPLIANCE

- YES: WTO has not managed effective oversight of RTAs under Article V disciplines of GATS
 - Many RTAs not notified to WTO;
 - No agreement on how to apply Art V criteria
 - Lax disciplines of Enabling Clause
 - WTO will reduce relevance if it does not adjust to new RTA reality



3. ABILITY TO PROMOTE REFORMS

- Are RTAs helping to move forward reforms in services area?
 - YES AND NO: Many RTAs have disciplines on Government Procurement that cover both goods and services
 - NO: Not much progress in other unfinished areas: safeguards; subsidies; domestic regul.
 - RTAs unable to engender services liberaliz.; can usually only capture autonomous efforts



3. ABILITY TO PROMOTE REFORMS

- YES: RTAs have developed new or stronger disciplines
 - “Ratchet Clause”
 - Stricter transparency provisions
 - Unconditional MFN, national treatment and market access
 - Provisions on electronic commerce
 - Some RTAs have gone further in definitions for “temporary movement” categories (CSS, ISS, graduate trainees, semi-skilled, etc.)



4. FOSTERING SERVICES TRADE

- Have RTAs helped or impeded growth of services trade?
- DIFFICULT TO EVALUATE as depends upon quality, breadth and depth of each RTA
- YES: for some RTAs we studied with negative list architecture through application of “excess growth” methodology



4. FOSTERING SERVICES TRADE

- “Excess growth” methodology measures the growth in trade in services between the members of an RTA *as compared with* the growth of trade in services with non-members of the RTA, comparing the time periods before and after RTA in effect
- Findings: RTA shown to be a factor accelerating the growth of intra-zone services trade relative to the growth of extra-zone trade for four agreements: US-Chile (2004); US-Singapore (2004); Mexico-Japan (2005); and CARIFORUM-EC EPA (2008)



OVERALL EVALUATION

- RTAs found on whole to be weakening the multilateral trading system through:
 - Diverting attention away from GATS
 - Providing parallel and competing architecture
 - Developing new rules and disciplines
- But WTO can improve the situation through improving oversight of RTAs and allowing flexibility to incorporate these innovations



OVERALL EVALUATION: SUGGESTIONS

- Negotiate voluntary best-practice guidelines for new RTAs and modifications of existing ones;
- Negotiate a hierarchy of best practice guidelines for North-North, North-South and South-South RTAs;
- Negotiate a level of RTA discipline in between that of Article V and the Enabling Clause for South-South RTAs;
- Establish WTO advisory services and/or a Centre on RTAs for developing countries;
- Allow WTO members to incorporate some of RTA features into plurilateral agreements under the GATS, i.e. across the board binding of cross-border services trade