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Evaluating the Contributions of Regional Trade Agreements to Governance of Services Trade

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Abstract

Since the early 1990s, regional trade agreements (RTAs) covering trade in services have proliferated, with 95 RTAs on services notified to the World Trade Organization (WTO) under Article V of the General Agreement on Trade in Services (GATS), as of June 2011. This paper discusses how RTAs support or debilitate the GATS in its governance function as the keeper of rules and liberalization commitments on services trade for WTO members. It addresses this question and its implications for governance by focusing on four different issues: architecture; compliance; ability to promote reforms; and actual impact of RTAs on fostering services trade.

JEL Classification: F13, F15, F59

Contents

1. INTRODUCTION

The world of international trade experienced nothing less than an economic revolution in the 1990s. Numerous countries in the world undertook reforms aimed at dismantling protectionist measures in their own markets and at promoting a more open and dynamic pattern of integration into the world economy. In several countries, trade in services and investment rulemaking were at the forefront of the reforms being undertaken. It was felt that easing restrictions on foreign investment could foster economic growth and that removing barriers to trade in services could lead to lower prices, improved quality and greater variety of both goods and services, as well as stimulate exports.

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 included limited coverage of trade in goods with no mention of trade in services, although there were three notable exceptions—the European Union (EU), the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), and the Canada-United States (US) Free Trade Agreement (CUSFTA).[1]

The European Economic Community (EEC) (which later became the European Community and has been the European Union [EU] since the Maastricht Treaty in 1993), under the Treaty of Rome in 1957, was the first integration agreement to incorporate trade in services. The free movement of services alongside the freedom of establishment are essential for an effective functioning of the internal market. They guarantee EU service providers the right to establish themselves in any member state and the right to provide services cross-border on a temporary basis on the territory of the state different from the one where they are established. However, in practice, intra-EU trade in services is impeded by sectoral regulations and other protectionist barriers in most member states.

ANZCERTA and CUSFTA were the first bilateral trade agreements to include trade in services. While ANZCERTA came into force on 1 January 1983, the Trade in Services Protocol brought services into the agreement from January 1989, allowing most services to be traded free of restriction across the Tasman Sea. In the case of CUSFTA, which entered into force on 1 January 1989 and was superseded by the North American Free Trade Agreement (NAFTA) as of 1 January 1994, the agreement applied only to a list of covered services whereas services that were not covered were not subject to the obligations of the agreement.

Since the early 1990s, RTAs covering trade in services have proliferated, with 95 RTAs (including 85 that are in force) notified to the World Trade Organization (WTO) under Article V of the General Agreement on Trade in Services (GATS), as of June 2011. This paper will attempt to address a number of questions raised by this proliferation. First, it provides an overview of the different trends in the world economy today involving regionalism, highlighting the proliferation of RTAs in services around the world, the political economy considerations in pursuing RTAs in services, and the convergence experiences of RTAs which are underway. It explains the possibilities for convergence of those RTAs with similar structure, particularly in the Americas. The paper concludes by addressing governance issues related to RTAs in trade in services. It touches upon the governance problem created for the multilateral system by the widening gap between RTAs and the WTO GATS.

[1] The US-Israel Free Trade Agreement, which entered into force on 1 September 1985, included a Declaration on Trade in Services. For more information, see http://www.sice.oas.org/Trade/US-Israel/index_e.asp

2. OVERVIEW OF DIFFERENT TRENDS IN THE WORLD ECONOMY TODAY INVOLVING REGIONALISM

Since the mid-1990s, RTAs have proliferated, with almost 500 agreements notified to the WTO by June 2011.[2] Although RTAs covering trade in services are more recent, notifications for services agreements under GATS Article V have grown at a faster pace, as noted by Roy, Marchetti, and Lim (2009).[3] Key players, such as the US, the EU, and Japan, as well as other players[4] including several developing countries, have in the last decade signed several RTAs covering services with partners beyond their immediate neighborhood. The result is that countries that are parties to RTAs account for more than 80% of services trade even though, to date, the WTO still governs the services relations among large players (US, EU, Japan, the Republic of China [henceforth, PRC], India, and Brazil).[5]

This section will discuss the key issues surrounding regionalism and trade in services: Why are RTAs proliferating? What are the political economy considerations in pursuing RTAs in services, and the convergence experiences of regional agreements underway?

2.1 Proliferation of RTAs in services around the world

The Americas

More than any other region in the world, the Americas was the first to embrace regionalism wholeheartedly and has remained at the forefront in developing innovative approaches to the treatment of services trade.

The crafters of the NAFTA in the early 1990s took a different path from the negotiators of the WTO GATS, though both agreements were being negotiated simultaneously. While political caution on the part of developing countries dictated a very timid approach to the structure of the GATS as well as the adoption of a "positive list" or gradual approach to the undertaking of market access commitments, the NAFTA negotiators took the opposite track of high ambition. Spurred by the active participation of the business community, they abandoned the CUSFTA model, which applied only to a list of covered services, where services that were not covered were not subject to the obligations of the agreement, to famously adopt the alternative "negative list" approach to market opening. Although often mistakenly understood as meaning a complete liberalization of service restrictions, in reality the "negative list" translated into an across-the-board legal assurance of access for service providers and investors at the level of existing regulations.

The greatest achievement of this alternative approach developed in the Americas in terms of services and investment was to bring the main virtues of the GATT for trade in goods, namely transparency and the predictability of a rules-based system, to bear on services in a way that the WTO GATS structure and rules failed to do. This proved to be of great importance because over time, as countries began to perceive the numerous shortcomings of the GATS and its rigidities, the alternative offered by the NAFTA structure became increasingly attractive and its adherents increasingly numerous.

Since the mid-1990s, the countries of the Americas have been at the vanguard of the negotiation of NAFTA-type free trade agreements—they are characterized by their ambitious

[2] As of June 2011, some 489 RTAs, counting goods and services notifications separately, had been notified to the GATT/WTO. Of these, 358 RTAs were notified under Article XXIV of the GATT 1947 or GATT 1994; 36 under the Enabling Clause; and 95 under Article V of the GATS. At that same date, 297 agreements were in force. See http://www.wto.org/english/tratop_e/region_e/region_e.htm.

[3] See Roy, Marchetti, and Lim (2009).

[4] For example, Australia; Chile; the PRC; Costa Rica; Hong Kong, China; the Republic of Korea; Malaysia; Mexico; New Zealand; Peru; Singapore; and Thailand.

[5] See Roy, Marchetti, and Lim (2009).

nature and their objective of carrying out trade liberalization and integration not only for goods but also for services, as well as other key issues such as investment, intellectual property, and government procurement. Since the entry into force of the NAFTA, countries in the Western Hemisphere have negotiated and concluded no fewer than 30 sub-regional arrangements[6] among themselves containing disciplines on trade in services, either in the form of new RTAs or as part of an effort to deepen already-existing regional economic integration groupings.

Most countries in the Americas have embraced the comprehensive, negative-list approach of the NAFTA for services in their trade agreements negotiated with other partners in the region.[7] Twelve countries stretching from Canada to Chile along the Pacific Coast, and the Dominican Republic, have negotiated similar-type RTAs using this approach. Moreover, the members of the Central American Common Market (CACM)[8] also chose the same approach in their services and investment agreement, whereas the members of the Andean Community[9] and those of CARICOM[10] each opted for a "negative-list" services agreement within their own separate integration process, though with a slightly different structure from that of NAFTA. In South America, the members of the Common Market of the South (MERCOSUR)[11] chose a different model than the NAFTA and adopted the Protocol of Montevideo on Trade in Services in 1997, with the objective of achieving full liberalization of trade in services and an open regional market for services through periodic rounds of negotiations. Seven such rounds have already taken place. The Protocol of Montevideo, which entered into force on 7 December 2005, establishes a program for the liberalization of intra-trade in services within an overall implementation period of ten years from the date of entry into force, i.e., by December 2015. Although modeled after the "positive list" approach of the GATS, MERCOSUR countries have also innovated with respect to the WTO by agreeing in 2001 to a transparency exercise consisting of the listing of all existing restrictions in services trade with a view to their progressive removal. This transparency exercise is complemented by a "standstill" provision prohibiting the adoption of new restrictions.[12] It is

[6] In addition to NAFTA, this number also includes the Bolivia-Mexico FTA, which was replaced in 2010 by an Economic Complementarity Agreement (ECA) between the two countries. The ECA does not have a services chapter.

[7] For more information on the experience of Latin American countries in implementing the trade agreements they have signed with the US, see Robert (2011).

[8] The CACM members are: Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

[9] The current members of the Andean Community are: Bolivia, Colombia, Ecuador, and Peru. The liberalization of trade in services has been suspended in the Plurinational State of Bolivia since December 2006, in accordance with Decision No. 659 of the Commission of the Andean Community ("Service Sectors Subject to Further Liberalization or Regulatory Harmonization") of 14 December 2006. Decision No. 659 also provides that financial services and the further liberalization of the minimum percentages of nationally-produced programming on national free-to-air television will be subject to special treatment and will continue to be regulated by sectoral decisions on which, to date, the members of the Andean Community have not yet agreed. For more information, see

http://www.comunidadandina.org/normativa/dec/D659.htm

[10] The members of CARICOM are: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

[11] The members of MERCOSUR are: Argentina, Brazil, Paraguay, and Uruguay. On 4 July 2006, MERCOSUR members approved the Protocol of Adhesion of the Bolivarian Republic of Venezuela to MERCOSUR. The entry into force of the Protocol must be ratified by the parliaments of the five countries involved. As of April 2011, the approval of the Congress of Paraguay was still pending.

[12] In December 2008, MERCOSUR adopted a Plan of Action to Further the Program for the Liberalization of Trade in Services. This Plan of Action has a four-stage timeline, the target being to complete the liberalization program in 2015. By 2009: each member had to analyze the current situation to define the least sensitive sectors (whose liberalization would not pose serious problems), as well as those of intermediate and high sensitivity, and those whose regulatory frameworks could be harmonized or complemented. By 2010: each member committed to consolidate the regulatory status quo of sectors where no commitments yet exist; to eliminate restrictions on market access and national treatment in the least sensitive sectors; and to take steps to harmonize or complement regulatory frameworks in sectors where this is deemed necessary. By 2012: each

worth noting though that Uruguay, a MERCOSUR member, has also elected the NAFTA-type approach in its free trade agreement with Mexico, which entered into force on 15 July 2004, although the negative list has yet to be completed.[13]

As mentioned above, members of all but one of the sub-regional agreements negotiated by countries in the Americas have adopted the NAFTA modality of the negative list approach for liberalizing services trade as outlined above (see Box 1).[14] This stands in contrast to countries in other regions of the world, where the "positive list" approach continues to dominate. However, many of the RTAs that countries of the Americas have exported to trading partners outside the region have also been based on a NAFTA-type, negative list approach, which means that the innovations discussed in this section for the treatment of services trade have found their way around the world.

Although there is no doubt that the Americas is in fact the region that has the most wholeheartedly moved beyond the multilateral system toward deeper and more comprehensive services disciplines, two countries have in recent years gone back on the NAFTA model. In 2006, the Bolivarian Republic of Venezuela withdrew from the Group of Three (G3) Free Trade Agreement[15] between Colombia, Mexico, and Venezuela, which had entered into force on 1 January 1995. And Bolivia withdrew from the Bolivia-Mexico Free Trade Agreement, in force since 1 January 1995, and replaced it with an Economic Complementarity Agreement (No. 66) with Mexico, which came into force on 7 June 2010. The Plurinational State of Bolivia considered "the chapters on investment, services, intellectual property and government procurement incompatible with the country's new Constitution, which had entered into force in February 2009." (ECLAC 2010:100)[16] The scope of the new agreement is strictly limited to trade in goods and does not include any service-related provisions.

member committed to eliminate restrictions on market access and national treatment in sectors of intermediate sensitivity. By 2015: each member committed to eliminate restrictions on market access and national treatment in the most sensitive sectors and to eliminate domestic regulatory measures that have been identified as bureaucratic obstacles to intra-zone trade. For more information, see

http://www.sice.oas.org/Trade/MRCSRS/Decisions/DEC4908_s.pdf On 16 December 2010 the MERCOSUR Common Market Council reiterated to MERCOSUR members the need to implement the December 2008 decision. For more information, see

http://www.sice.oas.org/Trade/MRCSRS/Decisions/DEC5410_s.pdf.

[13] The agreement does not cover financial services, air transport services, or government procurement. For more information, see http://www.sice.oas.org/TPD/MEX_URY/Negotiations/Texto_s.pdf

[14] For more information on the experience of Latin American countries in implementing the trade agreements they have signed with the US, see Robert (2011).

[15] For more information, see http://www.sice.oas.org/Trade/go3/G3INDICE.ASP.

[16] See ECLAC (2010) Latin America and the Caribbean in the World Economy 2009–2010

Box 1:

Liberalization Modality in RTAs in the Americas

Choice of Liberalization Modality	
Negative List Approach	**Entry into Force**
NAFTA	1994
Costa Rica-Mexico	1995
Group of Three (Colombia-Mexico-Venezuela), now G-2	1995[17]
Canada-Chile	1997
Mexico-Nicaragua	1998
Chile-Mexico	1999
Mexico-Northern Triangle	2001
CACM-Dominican Republic	2001[18]
Chile-CACM	2002[19]
CACM-Panama	2003[20]
Chile-US	2004
Mexico-Uruguay	2004
CARICOM	2006[21]
Andean Community	2006[22]
CAFTA-DR-US	2006[23]
Chile-Panama	2008
Peru-US	2009
Chile-Peru	2009
Chile-Colombia	2009
Canada-Peru	2009
Colombia-Northern Triangle	2009[24]
Colombia-Canada	2011[25]
	Signed
Colombia–US (signed)	2006
Panama-US (signed)	2007
Canada-Panama (signed)	2010
Mexico-Peru (signed)	2011
Panama-Peru (signed)	2011
Costa Rica-Peru (signed)	2011
Positive List Approach	**Entry into Force**
MERCOSUR	2005

Source: OAS Foreign Trade Information System (SICE).

[17] The Bolivarian Republic of Venezuela withdrew from the G-3 in 2006.

[18] The agreement entered into force in: Costa Rica on 7 March 2002; El Salvador on 4 October 2001; Guatemala on 3 October 2001; Honduras on 19 December 2001; and Nicaragua on 3 September 2002.

[19] The agreement entered into force in 2002 in Costa Rica and El Salvador; in 2008 in Honduras; and in 2010 in Guatemala. The bilateral protocol between Chile and Nicaragua was signed on 23 February 2011.

[20] The agreement entered into force in: Costa Rica on 23 November 2008; El Salvador on 11 April 2003; Guatemala on 22 June 2009; Honduras on 9 January 2009; and Nicaragua on 21 November 2009.

[21] The CARICOM Single Market entered into force on 1 January 2006.

[22] For more information, see: http://www.comunidadandina.org/comercio/comercio_servicios.htm

[23] The agreement entered into force in: Costa Rica on 1 January 2009; Dominican Republic on 1 March 2007; El Salvador on 1 March 2006; Guatemala on 1 July 2006; and Honduras and Nicaragua on 1 April 2006. For more information on how Costa Rica and the Dominican Republic have been willing to overcome political economy obstacles to take on significant disciplines in the area of services trade in the CAFTA-DR, see Robert and Stephenson (2008).

[24] The agreement entered into force in: El Salvador on 1 February 2010; Guatemala on 13 November 2009; and Honduras on 27 March 2010.

[25] It is expected that the FTA will enter into force on 15 August 2011.

Asia

Several countries of the Americas have in turn taken the NAFTA-type approach beyond the borders of the region to "export" this model around the world. They have negotiated similar agreements with trading partners in Asia, Northern Africa, and the Middle East. To date, more than 20 NAFTA-type agreements have been negotiated over the past 15 years between countries of the Americas and those outside the region, most of these with East 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.[26] 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 (Protocol on Trade Negotiations Asia-Pacific Trade Agreement, Global System of Trade Preferences among Developing Countries, Laos-Thailand Preferential Trade Agreement, and ASEAN Preferential Trade Agreement [PTA]).

However, since 2000, East Asian countries have been actively engaging in RTAs, with a resulting network at present of multiple bilateral, intra-regional, and cross-regional agreements among them as shown in Table 1, the latest key illustration being the Economic Cooperation Framework Agreement signed by the PRC and Taipei,China in June 2010.

Table 1: Preferential Trade Arrangements, Selected Countries in Asia

Country	Goods Notifications (PTAs)	Goods Notifications (Accessions)	Services Notifications (EIAs)	Services Notifications (Accessions)
PRC	9	1	7	0
Hong Kong, China	1	0	1	0
India	12	1	2	0
Indonesia	7	0	4	0
Japan	11	0	10	0
Republic of Korea	8	1	5	0
Malaysia	8	0	5	0
Philippines	8	0	4	0
Singapore	18	0	15	0
Taipei,China	3	0	3	0
Thailand	10	0	6	0
Viet Nam	7	0	4	0

Note: PTAs are preferential trade agreements and EIAs are economic integration agreements.

Source: WTO PTA Database (http://RTAis.wto.org/).

Now, the East Asian region is at the forefront of regionalism.[27] Out of 286 RTAs notified to the WTO as of September 2010, East Asian countries were participants in 171 PTAs (60% of the total). The RTA race in the region is not over yet because other East Asian countries are currently aggressively engaging in regional trade talks.

[26] Bark and Kang (2011).

[27] See Kawai and Wingnaraja (2010).

Europe

In Europe, the EU has been the key driver of the proliferation of RTAs. The EU itself, initially established in 1957 as the European Economic Community, is the world's largest preferential agreement. Twenty-nine RTAs had been notified to the WTO by the European Union, as of the end of May 2011, of which only eight cover services (see Table 2). After imposing a moratorium on negotiating new RTAs from 1999 to 2006 to focus on the WTO Doha Round, the EU in 2007 adopted a new trade policy and began negotiating a new generation of more ambitious or comprehensive RTAs. As recently noted by Ahearn (2011), continuing lack of progress in the Doha negotiations was an important consideration in the EU's decision to lift the moratorium, as were other factors, including pressures from European businesses to include what the US was offering in its agreements and to insert competition and investment policy, two issues that are not part of the Doha Round negotiations.[28]

Table 2: EU Preferential Trade Arrangements Notified to the WTO (Services)

Country	Coverage	Type	Notification	Status
EC-Albania	Goods and Services	FTA & EIA	GATT Art. XXIV & GATS Article V	In force
EC-CARIFORUM EPA	Goods and Services	FTA & EIA	GATT Art. XXIV & GATS Article V	In force
EC-Chile	Goods and Services	FTA & EIA	GATT Art. XXIV & GATS Article V	In force
EC-Croatia	Goods and Services	FTA & EIA	GATT Art. XXIV & GATS Article V	In force
EC-Former Yugoslav Republic of Macedonia	Goods and Services	FTA & EIA	GATT Art. XXIV & GATS Article V	In force
EC-Mexico	Goods and Services	FTA & EIA	GATT Art. XXIV & GATS Article V	In force
EC-Montenegro	Goods and Services	FTA & EIA	GATT Art. XXIV & GATS Article V	In force
European Economic Area	Services	EIA	GATT Art. XXIV & GATS Article V	In force

Note: PTAs are preferential trade agreements and EIAs are economic integration agreements.

Source: WTO PTA Database (http://RTAis.wto.org/).

2.2 Political economy considerations in pursuing RTAs in services

Why are RTAs proliferating? A first answer flows from the few economic forces driving the sometimes conflicting demands for RTAs: the desire to benefit from trade preferences, but also to avoid to be excluded from preferences granted to other countries, the willingness to improve domestic policy coherence and also to have deeper coordination with partners, the tendency to favor or not "the big over the small".

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

[28] See Ahearn (2011).

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.

However, when negotiators encounter adversity at home and strongly entrenched vested interests against 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.

The new regionalism of the recent RTAs represents a break with history, in that these new agreements respond to a new economic logic, which is investment-driven. This is particularly true for smaller developing economies like the Central American countries and the Dominican Republic, for whom the signaling effects of an RTA with a developed country, like the US, help them attract investment, serve as an export platform of goods and services to larger markets, and, in so doing, contribute to foster growth and development. Such agreements also lock in key domestic reforms. This explains why smaller developing countries have signed on to free trade agreements over the past decade that contain disciplines in “new” areas such as trade in services, investment, technical barriers to trade, competition policy, and intellectual property.

An additional and powerful foreign policy motive for RTA proliferation emerges very clearly in the US- and EU-related RTAs, though in quite different terms. It is also visible in the case of the small economies which have consistently looked at RTAs as “hubs” which reinforce their political ties as well as fit their economic needs.

The US

In the US case, the foreign policy component is critical for the choice of the RTA partner, but economic motives dominate the shaping of the content of the RTAs—hence the strong similarity of the structure of all the US-related RTAs. While foreign policy and military alliance relations loom large in the US choice of RTA partners, the 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, which are well beyond the scope of contemporary GATT or WTO agreements. Thus the Free Trade Agreement with Israel covered, for the first time, trade in services; CUSFTA covered services and investment and incorporated a dispute settlement mechanism; NAFTA covered services, investment, intellectual property and government procurement, along with side agreements on labor and environment; and similar subjects were addressed in most of the subsequent agreements. Comprehensive economic coverage in trade pacts was not only the policy of successive presidents, starting with Ronald Reagan; it also responded to the insistence of key Congressional committees that focused more on the economic opportunities and challenges created by the pacts than their foreign policy consequences.

Europe

By contrast, in the EU case, the foreign policy component is not decisive in the choice of the RTA partner—the EU is ready to sign a RTA with almost every country in the world, except the PRC and the US. Rather, this component emerges in the much wider scope of the content of the EU-related RTAs, with a long list of provisions of little economic value and no enforceable commitment, but bringing some foreign policy aspects. The European RTAs have always been permeated by foreign policy considerations. First, the EU itself was a way to stop wars among European nations. Second, the Preamble of the Treaty of Rome which founded the EU aims to “lay down the foundations of an ever closer union among the

peoples of Europe" (EEC 1957)[29]—quite a brave statement a few months after Soviet tanks had crushed the Hungarian Revolution. Then, the Treaty of Rome opened the door to RTAs between the EU and the rest of the world when dealing with former European colonies (now the African, Caribbean, and Pacific countries, or ACPs).

Since then, the EU has shown a distinctive "addiction to discrimination" (Wolf 1994: 22) fuelled by two aspects of foreign policy.[30] First is the competition between the European Commission and the member states for being in charge of foreign affairs, with trade being for the Commission a way to progressively step in the broader foreign affairs agenda. Second, almost every member state wants to include its zone of (past) influence in an EU RTA: Mexico and MERCOSUR (and Latin America, more generally) for Spain and Portugal; Eastern European neighbors for Germany, Poland, and Romania; Mediterranean countries for France and Italy; etc.

The most recent illustration of this addiction is the "*Global Europe Trade Strategy*" initiative launched by Lord Mandelson in 2006 and carried on in 2010 by K. de Gucht. Like the previous ones, this initiative obeys to two key considerations of European foreign policy, quite different from those described in the US case. First is the implicit rivalry with the US. Since the late 1990s and early 2000s, this motive has pushed the EU to make inroads in the US sphere of influence by signing RTAs with countries having or close to having a RTA with the US—Chile, Caribbean, Central American and Andean countries, Jordan, Mexico. Since 2006, the *Global Europe* initiative has aimed to preempt US RTAs, the best illustration being the Republic of Korea-EU FTA, signed on 6 October 2010 in Brussels. The negotiation of a Comprehensive Economic and Trade Agreement (CETA) with Canada, the US largest trading partner, launched in 2009 is another manifestation of the rivalry with the US. This motive continues to dominate the EU approach with respect to large potential trading partners, such as MERCOSUR, India, or the ASEAN countries.

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. This aspect is dominant in the RTAs between the EU and small economies, such as the ACPs, the Mediterranean countries, the Gulf countries, and the EU neighbors in the Balkans and in Eastern Europe (Ukraine, Caucasus). This driving force has faced some fierce resistance among the EU trading partners, as best illustrated by the *de facto* impasse in many of the RTAs negotiated with the ACPs.

Combined, these two motives give a very distinctive shape to the EU-related RTAs. First, the EU has a long list of RTA provisions that are totally absent in the US-related RTAs. Out of a total of 54 standard RTAs provisions, 31 provisions are found only in EU-related RTAs.[31] They range from competition policy, taxation, or consumer protection to health, information society, public administration, social matters, illegal immigration, asylum, terrorism, and human rights. Second, the foreign policy motive gives to the EU-RTA provisions a diplomatic tone expressing broad, often vague, intents to be fulfilled in the future, in sharp contrast with the legally enforceable terms of the US-related RTAs.

However, as these intents are similar to those supporting EU laws and regulations, they are used by the EU as a "creeping export process" of its 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. Such an approach creates severe frustrations among the EU RTA partners who discover too late that they may have signed texts with more commitments than initially thought and who are not ready to abide by them.

[29] EEC (1957). See the Preamble section.

[30] Wolf (1994: 22).

[31] Horn, Mavroidis, and Sapir (2009).

Asia

Lastly, the Asian economies appear in an intermediate position with economic and foreign policy considerations driving the choice of the partners and the scope of the RTA content. Their shift from multilateralism to regionalism is based on several factors. On the one hand, the strong "market-driven" feature in East Asia lends a key role to economic factors. Moreover, the fact that East Asian countries have become major players of international trade makes quite reasonable for most countries in the world to participate in RTA talks with East Asian countries. On the other hand, foreign policy considerations are surfacing. East Asian RTAs are seen as a practical and cooperative response to the spread of regionalism throughout the world, with the hope to secure foreign markets, in particular their neighboring countries, threatened by US- and EU-related RTAs. Second, there has been a more competitive aspect among East Asian RTAs, in particular the race to become the regional "hub" in East Asia, an important motive behind the approach of the ASEAN countries or the Republic of Korea.

Third, the successive disasters and crises in the East Asian region, from the financial crisis in 1997–98 to the 2003 health crisis related to the Severely Acute Respiratory Syndrome (SARS) to bird flu in 2003 to the 2004 Indonesian tsunami to the 2008–2009 financial crisis to the 2011 Japanese nuclear disaster, have exposed the lack of intra-Asian cooperation mechanisms. Efforts to enhance intra-regional cooperation and economic integration are seen as a good, pragmatic, demand-driven option to address such issues.

That said, East Asian countries must overcome several challenges in the near future. The utilization of RTAs by exporters should be improved: RTA-related preferences are underutilized in East Asia, a factor which compounds the relatively shallow East Asian integration, with many RTAs showing a relatively low coverage of products and services and wide exceptions of sensitive products and sectors. Other challenges include the promotion of a more comprehensive coverage of trade in both goods and services, and dealing with multiple rules of origin to form a region-wide RTA in East Asia.

In this respect, the new developments in Northeast Asian economic integration are particularly interesting. Recently, the Republic of Korea and the PRC have started RTA discussions at the government level, and the Republic of Korea and Japan are now discussing the resumption of their bilateral RTA talks that halted in late 2004. Moreover, at a PRC-Japan-Republic of Korea summit meeting held in October 2009, the heads of state agreed to conduct a study regarding the possible formation of a PRC-Japan-Republic of Korea RTA and to discuss the result of the study at their summit meeting in 2012. The evaluation of a Northeast Asia RTA is likely to be more positive and deemed more efficient than separate bilateral RTAs among the three countries. Once this study is completed, the Republic of Korea, Japan, and the PRC should examine whether they will continue to pursue bilateral RTAs or integrate them into a trilateral RTA.

2.3 RTA convergence: a bottom-up approach

Given the myriad number and complexity of RTAs now existing, a new phenomenon has begun recently with a bottom-up movement toward convergence by like-minded members of some of the RTAs. This convergence is an interesting development in the panorama of regionalism and can be seen as an effort to rationalize the complications created by numerous sets of rules and market access requirements contained in overlapping regional agreements.

Examples of movement toward RTA convergence so far are very recent and still limited. However, they are gaining traction and significance as governments may finally be reacting to the complexities of an ever-growing network of RTAs and attempt to bring greater rationalization to the situation through a voluntary merging of agreements.

The initiatives that we observe in the direction of replacing multiple RTAs by large regional agreements are taking place in several regions of the world and among a variety of countries, large and small, developed and developing alike. Interestingly, most of these initiatives emphasize trade and economic integration within a given region, and not between regions. In Europe, the EU has expanded its membership and the scope of its economic integration arrangement to countries in the Mediterranean, Eastern Europe, and the Balkans. In Asia a ten-year strategic plan was agreed in 2007 to realize the long-posited East Asian Free Trade Agreement through expanding ASEAN to include the major economies of the PRC, Japan and the Republic of Korea. In the Americas negotiations began in 2008 among 11 economies bordering on the Pacific to create an *Arco del Pacifico* agreement through consolidating 11 existing NAFTA-type RTAs.

RTAs have proliferated at an astonishing rate in both the Americas and Asia, as well as in Africa. The lack of a coherent, region-wide framework has led to a variety of agreements among countries, covering different products, trade disciplines, phase-outs, rules of origin, and other.

While the Americas were at the forefront of regional activity for the decade of the 1990s, Asia has since caught up and has now surpassed the Americas as the region with the highest number of intra-regional agreements per country.[32] The countries of the Americas (including the US and Canada) had concluded or deepened 64 bilateral trade agreements and customs unions between 2000 and 2010, as compared with a total of 61 concluded RTAs for the 16 Asian economies during this same period.[33] This proliferation is continuing apace, as 71 new agreements are currently under negotiation in the Americas and around 80 RTAs are either under negotiation or proposed in Asia. In Africa the total number of RTAs concluded between 2000 and 2010 is less than that in either Asia or the Americas, but these have been increasing at a rapid pace. Countries in Africa have also been engaged in regionalism but at a slower pace and with a resounding preference for customs unions rather than free trade agreements.

In Europe, the EU has continued to expand from its six original members in 1952 to 27 members, through five successive enlargements over the period 1973 to 2007. This expansion absorbed seven former members of the European Free Trade Association (EFTA) and ten members of the former Eastern Europe trading bloc, as well as other smaller European nations.[34] The current 27 members of the EU represent no less than 85% of the continent's gross domestic product (GDP) and 68% of the continent's intra-regional trade.[35]

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[32] The World Bank's FTA Database provides information on the number of regional agreements concluded around the world. It can be found at: http://wits.worldbank.org/wits/gptad.htm. The WTO database on regional trade agreements provides information on a subset of these, namely the PTAs that have been notified by their members to the WTO. It can be found at: http://rtais.wto.org/?lang=1. Both databases can be searched by country, region, legal provisions, date of notification or entry into force. The OAS Foreign Trade System provides extensive information on PTAs that have been concluded or are under negotiation by countries in the Americas. It can be found at: www.sice.oas.org.

[33] See Kawai and Wignaraja (2010). This study points out that on the whole, Asia seems to be opting for bilateral agreements rather than plurilateral ones. Information on trade agreements in the Americas is taken from the Organization of American States (OAS) Trade Agreements Database which can be found at www.sice.oas.org.

[34] EU integration area has effectively, if not formally, been extended to the remaining states of EFTA as well through the European Economic Area (EEA) Agreement, which entered into force in January 1994 for the EU States and is currently in effect with Iceland, Liechtenstein, and Norway. The other EFTA member—Switzerland—has concluded two sets of bilateral agreements with the EU in 1999 and 2004. Under the EEA Agreement and the bilateral agreement, the Internal Market of the EU is extended to these four countries and EFTA States can conduct their business under the same legal framework and are subject to the same rights and obligations as operators in the EU States. See *A Short Introduction to 50 Years of EFTA*: A Fact Sheet of the European Free Trade Association, April 2010, at http://www.efta.int/publications/fact-sheets/general/short-history.aspx.

[35] The figures on European intra-regional trade have been taken from www.wto.org/english/res_e/statis_e/its2008_e/section1_e/its08_highlights1_e.pdf

The Americas

Several experiments are underway in the Americas—of which there is little awareness as of yet—to consolidate similar regional trade agreements. Given the large number and overlapping levels of regulatory complexity created by RTAs with various configurations of membership, a bottom-up movement toward convergence has begun recently in the Western Hemisphere. The move toward convergence represents an attempt to rationalize the complications created by numerous sets of disciplines and market access requirements among several like-minded parties to RTAs based on a similar NAFTA-type template.

The effort at convergence in the Americas has been spearheaded under the guise of the *Arco del Pacífico* initiative and involves 11 Latin American countries that border the Pacific and who are parties to numerous NAFTA-type RTAs. Participating countries are Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Peru. The US and Canada, although also parties to NAFTA and NAFTA-type RTAs, are not participating in this convergence effort.[36]

The objectives of the *Arco del Pacifico* initiative are three: to deepen existing trade agreements and eventually move toward common rules; to broaden economic cooperation and trade facilitation among participating countries; and to engage more deeply in coordinated economic relations with the Asia-Pacific region.[37] To date, six ministerial meetings have been held and four Working Groups have been set up to focus the discussions, including a key one on "Trade Convergence and Economic Integration."[38] This Working Group has been given the task of identifying ways of moving toward common rules on accumulation of origin, a complex issue. The group has also been asked to analyze existing trade and integration agreements in the areas of technical barriers to trade, sanitary and phytosanitary measures, customs procedures, trade facilitation, countervailing measures, services, investment, government procurement competition policy and dispute settlement, to see how existing disciplines may be made to converge.[39]

While only at the beginning, this convergence effort of the *Arco del Pacifico* represents a major initiative in the Americas to consolidate existing RTAs into a broader agreement.[40] The effort may gain in significance as governments finally react to the complexities of an ever-

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Croatia is currently in the final stages of negotiating its accession to the EU, with the objective of finalizing this in mid-2011, to subsequently become the 28th member state of the EU.

[36] The US is a party to six FTAs with countries in the Americas (NAFTA with Canada and Mexico, and FTAs with Chile, Peru, and the five Central American countries plus the Dominican Republic) and two more signed but not yet in force (with Colombia and Panama). There has, however, been an explosion of trade agreements in the region to which the US is not a party, including the discussions of the *Arco del Pacífico*, South American unification efforts and multiple bilateral agreements. The only ongoing negotiation in which the US is currently participating is that of the TPP or the Trans-Pacific Partnership Agreement. Though a relatively latecomer to the negotiations of regional agreements, despite the NAFTA, Canada has been actively pursuing FTAs over the recent period and has negotiated six such agreements with countries in the Americas (namely with Chile, Colombia, Costa Rica, Panama, and Peru, besides the NAFTA). Canada is involved in ongoing negotiations with CARICOM, Central America (CA-4), and the Dominican Republic.

[37] See chapter IV on "Integration and Trade Initiatives" in ECLAC (2009).

[38] The other three Working Groups set up under the *Arco del Pacífico* initiative are: Trade Facilitation and Infrastructure; Investment Promotion and Protection; and Competitiveness.

[39] The website of the *Arco del Pacifico* initiative can be found at: http://www.arcodelpacifico.org.

[40] A parallel initiative launched by President George W. Bush, also in 2008, is the "Pathways to Prosperity in the Americas," ongoing among 15 countries representing 86% of hemispheric trade. Almost all these countries (excluding Belize, but including Uruguay which has a FTA with Mexico) is party to one of more similar NAFTA-type FTAs. The overarching goal of Pathways is to expand economic opportunities for all as markets become increasingly integrated and promote inclusive growth and prosperity, in part through the sharing of experiences and best practices aimed at empowering small business, facilitating trade, building a modern workforce, and developing responsible and sustainable business practices by improving environmental practices, protections, and cooperation. Ministerial meetings among participating countries are held once a year. There are no plans to open talks on convergence at present and it is unlikely that this issue could come up in the near future. The website for the "Pathways to Prosperity in the Americas" is: http://www.pathways-caminos.org.

growing network of regional agreements and attempt to bring greater rationalization to this situation. [41]

Another convergence effort is taking place between six members of the *Arco del Pacifico,* that is, between Mexico and Central America. In June 2008, on the occasion of the 10th Tuxtla Mechanism Summit, the countries of the region agreed to initiate negotiations aimed at achieving convergence of their free trade agreements into a single instrument. On 26 March 2009, the vice ministers of foreign trade of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Mexico agreed on an action plan for the convergence of their free trade agreements. From May 2010 to May 2011, five negotiating rounds were held.[42]

Finally, it is worth noting that four ARCO members, Chile, Colombia, Mexico, and Peru signed the Declaration of Lima on 28 April 2011, launching the "Pacific Alliance," which creates a framework for "deep integration" that will eventually allow for the freer movement of goods, services, people, and capital among these four ARCO members.[43]

Europe

In Europe, the expansion of the EU has created convergence. The EU is now composed of 27 sovereign member states representing nearly 90% of the continent's GDP and approximately 70% of the continent's intra-regional trade.[44] The Union's membership has grown from the original six founding states of the European Economic Community—Belgium, France, (then West-) Germany, Italy, Luxembourg and the Netherlands—to the present day 27 by successive enlargements as countries acceded to the treaties and by doing so, pooled their sovereignty in exchange for representation in the institutions. To join the EU a country must meet the Copenhagen criteria, defined at the 1993 Copenhagen European Council. These require a stable democracy that respects human rights and the rule of law; a functioning market economy capable of competition within the EU; and the acceptance of the obligations of membership, including EU law. Evaluation of a country's fulfillment of the criteria is the responsibility of the European Council. No member state has ever left the Union, although Greenland (an autonomous province of Denmark) withdrew in 1985. The Lisbon Treaty now provides a clause dealing with how a member leaves the EU.

There are five official candidate countries—Croatia, Iceland, Macedonia, Montenegro, and Turkey. Albania, Bosnia and Herzegovina, and Serbia are officially recognized as potential candidates. Kosovo is also listed as a potential candidate but the European Commission does not list it as an independent country because not all member states recognize it as an independent country separate from Serbia.

Four Western European countries that are not EU members have partly committed to the EU's legislations: Iceland (a candidate country for EU membership), Liechtenstein, and

[41] If the *Arco del Pacifico* attempt at convergence should prosper, the question must be asked as to what becomes of the numerous bilateral and plurilateral FTAs currently in force among the 11 participants? Would the broader regional agreement replace these or would they all continue to co-exist, either during a transition phase or indefinitely? The solution envisaged by the negotiators of the now abandoned FTAA (Free Trade Area of the Americas) agreement designed to include all of the democratically elected governments of the Americas was to include a provision allowing pre-existing sub-regional integration agreements to continue operational only in the case where their provisions went beyond or were deeper than the broader regional FTAA agreement.

[42] The first round of negotiations for the convergence of the existing free trade agreements between Central American countries and Mexico took place in Mexico City in May 2010. The second round was held in San Salvador in August 2010. The third round of negotiations took place in Mexico City on September 27–30, 2010, the fourth round in Guatemala on 31 January–4 February 2011, and the fifth round was held in Mexico City in May 2011.

[43] See nota de prensa 5690 of 28 April 2011 on the website of the Government of Peru: http://www.presidencia.gob.pe/index.asp

[44] Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

Norway, which are a part of the single market through the European Economic Area, and Switzerland, which has similar ties through bilateral treaties. The relationships of the European microstates Andorra, Monaco, San Marino, and the Vatican include the use of the euro and other areas of cooperation.

Asia

The ten members of ASEAN have long considered their grouping as a nucleus from which an expanding area of East Asian integration would grow, based on the template of the ASEAN Free Trade Area agreement (AFTA) and the ASEAN Framework Agreement on Services (AFAS), and they have been moving consistently in such a way as to make this happen. The first objective is that of an East Asian Free Trade Agreement involving the ASEAN+3 of the PRC, Japan, and the Republic of Korea. However, rather than embarking on a region-wide negotiation, ASEAN members have preferred to negotiate a series of individual bilateral trade agreements with these three major East Asian trading partners, all of which have now been completed as detailed below. The next step will be the attempt to merge these existing agreements into a broader one. At end 2007 the heads of state/government of the ASEAN+3 (the PRC, Japan, the Republic of Korea) countries adopted a Cooperation Work Plan, set to run for ten years (2007–2017) which is to result in the conclusion of all of the ASEAN+1 FTAs, together with their implementation, and the intensification of discussions to establish a region-wide FTA.[45] Economic and financial cooperation is a key section of the Work Plan in this regard. Labor mobility is to be a part of this discussion, as well as measures to promote trade facilitation. The objective of expanding the ASEAN Investment Area to a broader East Asia Investment area is also mentioned.

In addition to the convergence efforts of the ASEAN+3 which are now getting underway more earnestly, 16 nations in East Asia are simultaneously entertaining the prospect of an even broader integration effort that is being spearheaded by Japan in the form of the "Comprehensive Economic Partnership for East Asia (CEPEA)." This proposal would encompass the 16 members of the East Asia Summit, which includes the ASEAN Plus Three members together with India, Australia, and New Zealand. These two processes are currently not viewed as alternatives in the region, and both are being pursued simultaneously.

The six members other than ASEAN that are involved in the CEPEA discussions have negotiated a series of separate arrangements with various other members of the grouping. However, ASEAN has recently completed free trade agreements with all of the other six members of the East Asia Summit. Thus the ASEAN model or template has effectively been accepted by end 2010, with slight variations, by all of the other East Asian trading partners. It seems very likely that the ASEAN template will be taken as the basis for convergence. If so, the CEPEA negotiations would involve the merging of the five existing arrangements below into a broader, region-wide trade agreement at some point in the future:

[45] The Second Joint Statement on East Asia Cooperation: Building on the Basis of ASEAN Plus Three Cooperation, adopted by the Leaders of the ASEAN Plus Three countries in Singapore on 20 November 2007 can be found at the ASEAN Secretariat website : http://www.aseansec.org/21099.htm The ASEAN Plus Three Cooperation Work Plan 2007–2017 to realize these objectives can be found at: http://www.aseansec.org/21104.pdf.

- ASEAN Economic Partnership Agreement with Japan (December 2008);
- ASEAN- Republic of Korea Free Trade Agreement (trade in goods provisions came into effect in June 2007, an agreement for trade in services was signed in 2007, and the trade in investments provisions were signed in 2009);
- ASEAN-PRC Free Trade Area (January 2010)
- Free Trade Agreement with Australia and New Zealand (jointly), the AANZFTA (January 2010);
- ASEAN-India Trade in Goods (TIG) Agreement (January 2010); the Trade in Services and Investment Agreements are still under negotiation.

Asian Leaders at the Fourth East Asia Summit of October 2009 welcomed both integration efforts (the East Asian Free Trade Agreement and the CEPEA). However, and more pointedly, the Statement of Leaders from the more recent 16th ASEAN Summit in April 2010 emphasized the key core role of the ASEAN template in the architecture of the future agreement.[46]

Pros and Cons of Regional RTA Convergence

The movement which seems to be gaining traction, though in its initial stages, of merging or "converging" existing RTAs around a commonly accepted template is taking hold in several regions of the world. The replacement of multiple bilateral RTAs by larger regional ones has both pros and cons and raises interesting questions of implementation.

The positive aspects of this phenomenon are compelling due to the economic efficiency gains they would engender. Large regional RTAs provide potential answers to the "spaghetti bowl" problem of overlapping, multiple preferential agreements. They absorb the confusing array of "bilaterals/plurilaterals" into large, more economically beneficial and more integrative trade arrangements. As a result, the potential for trade diversion is reduced as the resulting larger RTA covers a greater share of its members' trade. Additionally, simplification in the variety of rules and conditions for market access reduces the transactions costs for exporters. And the oversight requirements for government officials stemming from multiple trade agreements are also consolidated, thus reducing administrative costs as well.[47] Convergence of various RTAs into broad regional groupings involving important trading partners brings the world economy closer to a more efficient global outcome. And economic modeling suggests that the larger the grouping, the larger the gain.[48]

The negative aspects of convergence are linked to political economy factors as well as to potential implications for the governance of the multilateral trading system. Large RTAs can be difficult to negotiate, even between trading partners who have bilateral agreements based on a similar template. They require accommodation among major powers.[49] A large number

[46] The Summit Statement noted "...the initiatives being undertaken to take forward broader regional integration by considering the recommendations of both East Asia Free Trade Agreement (EAFTA) and the Comprehensive Economic Partnership for East Asia (CEPEA) studies together. *We look forward to receiving the progress report at the 17th ASEAN Summit in October 2010 and to discussing with our Dialogue Partners the future direction of regional architecture with ASEAN at its core."* **(**para 30, emphasis added). Working groups involving the 16 nations in the CEPEA effort have since been formed in August 2010 to study Economic Cooperation, Rules of Origin, Customs Procedures and Tariff Nomenclature.

[47] Negotiating the rules of origin in a convergence effort is particularly challenging; for this reason the participants in the *Arco del Pacifico* initiative have chosen to highlight this area in the initial stage. However, if members manage to consolidate the rules of origin for various smaller agreements to allow for accumulation, then the benefits for exporters would be tremendous.

[48] See the feasibility study prepared by Robert Scollay on the "Possible Pathways towards a Free Trade Area of the Asia Pacific (FTAAP)" carried out at the request of the APEC Senior Officials in 2009 which can be found on the APEC website. www.apec.org.

[49] This is the case of the "ASEAN+3" and the CEPEA which will require agreement among the PRC, Japan, and the Republic of Korea, and the TPP whose negotiations involve the US and possibly soon Japan.

of members and numerous pre-existing RTAs may reduce the template to a less ambitious rather than a more ambitious level when the agreements converge, thus depriving the future broad agreement of its deeper integration potential. And division of the world economy into large, competing trading blocs may also serve to undermine the governance structure of the WTO, which is predicated on an open, non-discriminatory system of rules. The most favored nation (MFN) principle would be in effect permanently set aside were such large trading arrangements to be created, with attention of members directed to promotion of regional trade rather than to multilateral trade liberalization. Smaller developing countries and non-members of the large regional groupings would be those to suffer most from the abandonment of an MFN-based multilateral trading system. The question of implications for governance may need to be posed in terms of which set of circumstances is most harmful for the WTO: the continued proliferation of small and overlapping RTAs or the move to consolidate these into larger trading blocs?

With regard to implementation, the question must be asked of what becomes of all existing bilateral and plurilateral RTAs? Would the broader regional agreements replace these or would they all continue to co-exist, either during a transition phase or indefinitely? [50] If immediate replacement is not realistic, then it would be necessary to design some sort of orderly path of transition toward the convergence of many agreements into one. One possibility in this regard is to include a provision allowing bilateral RTAs to continue to exist only in the case where their provisions go further than the broader agreement.

3. GOVERNANCE

Much of the expressed concern over RTAs has revolved around the question of whether they are supportive of, or detrimental to, the multilateral trading system. For services, the question would be how RTAs either support or debilitate the WTO GATS in its governance function as the keeper of rules and liberalization commitments on services trade for WTO members.

A recent study carried out for the OECD Trade and Agriculture Directorate examines the political economy reasons for countries to enter into RTAs, dividing these between the strategic political and economic reasons and the domestic political and economic reasons. It finds that although countries of different sizes and levels of development have different motivations for entering into RTAs (including foreign policy reasons for large trading nations), on the whole RTAs are viewed to be not unfriendly to the multilateral trading system.[51] The study reaches this conclusion after examining various hypotheses on RTAs as precedent-setters, the reasons behind the selection of partners and the decision to negotiate RTAs, the results of asymmetrical negotiations, the sequencing of reforms, RTAs as preferential instruments of foreign policy, and the domestic consequences of over-reaching services commitments. The study finds that the multilateral friendliness of a given RTA depends considerably on the strategic motivations of the countries that negotiate them, as political economy factors figure much more importantly in the decision and the content of RTAs than they do at the multilateral level. Despite the predominance of political considerations for the conclusion of RTAs, the study concludes that services provisions of RTAs are on the whole multilateral-friendly because the domestic politics of trade in services make it difficult to achieve real liberalization through binding agreements at any level.[52] However, the more market-opening services commitments negotiated in RTAs are extended on an MFN basis, which is often the case, the more services will be supportive of the multilateral system.

[50] This was the solution envisaged by the negotiators of the FTAA (Free Trade Area of the Americas) draft agreement, which was to cover the 34 democratically elected governments of the Western hemisphere but which was never concluded after several years of preparation (1995–1998) and negotiation (1998 to 2004).

[51] See VanGrasstek (2011).

[52] Ibid, p. 45.

This section takes a somewhat different approach to examining the relationship between the multilateral trading system and regional trade agreements. In discussing this question and its implications for governance, we look at four different issues: architecture; compliance; ability to promote reforms; and actual impact of RTAs in fostering services trade. Our conclusions are somewhat more pessimistic than those of the OECD study in terms of systemic implications for the WTO, although our conclusions are similar to those of the OECD study in terms of the lack of discriminatory economic impact of RTAs in the services area.

3.1 Architecture: are RTAs weakening the WTO GATS as an institution?

Answer: Yes. The positive answer to this question arises from two reasons. The first is that WTO members have shown themselves less than enthusiastic about negotiating services in the Doha Round. Although begun more than a decade ago, the services negotiations soon lagged behind the other two main areas of the Round in terms of progress and attention has appeared to be focused elsewhere. No new offers have been put on the table in recent years. And in total, less than one-third of the WTO membership has submitted offers at all over the past decade (only 44 out of the 153 WTO members). What is currently on the table is considered to be less than adequate in terms of the initial ambitions for a services outcome. Most developing countries have been wary of considering proposals of significance including across-the-board binding of cross-border services trade (modes 1 and 2), the binding of a certain percentage of sectors for commitments on commercial presence (mode 3), or adjusting existing commitments to bind at the level contained in national laws or actual regulatory practice. Many developed countries have been unwilling to put forward more liberalizing proposals for temporary movement of natural persons (mode 4).

The recent attempt to both invigorate and innovate in the GATS negotiations through the plurilateral negotiations in 2006–2007 unfortunately did not prosper, despite a considerable number of rather comprehensive plurilateral requests and several rounds of discussions. Very few developing countries participated in submitting plurilateral requests.[53] These discussions do not look likely to be revived. With the adoption of the "competitive liberalization" approach by the US, the new EU negotiating blueprint in 2006 which legitimized the regional track and the Japanese negotiating strategy formally adopted in 2002 and 2010 doing the same, together with the strong forays into regional negotiations over the past five years by the PRC and the Republic of Korea, negotiating dynamism by the major trading entities seems to have clearly changed orientation and to be focused on the pursuit of regionalism.

The second reason for a positive answer for the weakening of the multilateral system by RTAs is the development of an alternative structure to the GATS for governing services. As WTO members have not shown themselves willing to change anything in the GATS structure to improve its functioning, countries have continued to experiment in the regional arena and RTA innovations proliferate as alternatives to the multilateral system.

Regionalism has provided a significant alternative structure for governing services trade in the form of the negative list approach which differs in many fundamental respects from the GATS. The negative list approach, begun with the ANZCERTA and the NAFTA agreements, has now been taken around the world, with many examples of RTAs in this architecture having been negotiated between trading partners in the Western Hemisphere, particularly the US, Mexico, Chile, Canada, and Peru, and countries in the region as well as trading partners of these countries in northern Africa, the Middle East, and East Asia.[54] To date, more than 20 negative list-type RTAs have been negotiated in the past 15 years between

[53] For more on the plurilateral negotiations and number of participating developing countries, see http://www.uscsi.org/wto/

[54] See Stephenson and Robert (2011).

countries of the Americas and those outside the region, and several negative list RTAs have been negotiated by countries within the East Asian region. At present, the largest experiment in regional integration involving services is being carried out under the Trans-Pacific Partnership (TPP) negotiations, begun in March 2010. The TPP is slated to become the nucleus of a possible future Free Trade Area of the Asia Pacific (FTAAP), with a tentative completion date of November 2011 and once completed, could gradually evolve into an APEC-wide agreement, eventually embracing all 21 APEC members. Of the current nine participants in the TPP negotiations, seven have previously negotiated NAFTA-type negative list agreements on services and investment, and this is the model that is being followed for the TPP.[55]

It is doubtful that this alternative negative-list or hybrid structure will prevail at the multilateral level given the resistance that manifested itself during the Doha Round negotiations to any changes in the GATS structure and rules. Thus these competing normative frameworks can be considered to provide alternative models for governing services trade and possibly to be at crossroads with each other.

Having two parallel but alternative normative structures to govern service trade flows means that both negotiators and service providers need to learn two languages to navigate: the positive list language and the negative list language. This makes it confusing for service providers who are required to understand both a schedule of GATS commitments (which frequently do not translate into actual market access) and the non-conforming measures set out under a negative list schedule to determine under which conditions a given service (for example, construction/ engineering services) can be provided to a WTO member that is also an RTA partner. And government officials need to understand both types of architecture if their country has engaged in negative-list RTAs so that they will know which rules govern a given service transaction. This degree of complexity may be one of the reasons why a given RTA template tends to be reproduced on a consistent basis by major trading partners so as to minimize the degree of duplication.[56] Possibly for this reason as well we are at present witnessing a tendency toward the convergence of similar type RTAs in different regions of the world to minimize the transactions costs and the complexity of overlapping governance systems.[57]

It is the architecture of the GATS itself that has allowed the development of an alternative approach to liberalizing services trade. The positive list architecture of the GATS is very different to that of the many RTAs structured according to the negative list approach and which various analysts have shown to have gone further than the GATS in disciplining services trade and in liberalization.[58]

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[55] The nine members participating in the Trans-Pacific Partnership (TPP) negotiations at present include: Brunei, Chile, New Zealand, and Singapore (the original four members of the Strategic Economic Partnership [SEP] agreement that came into effect in 2006), as well as Australia, Malaysia, Peru, the US, and Viet Nam. All of these economies with the exception of Malaysia and Viet Nam, have previously negotiated and currently have in place a NAFTA-type agreement involving services and investment. Japan has expressed an interest in joining the TPP negotiations but its parliament has not yet officially decided to do so.

[56] The US has developed a template that it reproduces very faithfully in RTA negotiations, to the point where trading partners of regional agreements are obliged to accept the template or not pursue the negotiations, such as happened in the case of Malaysia. The EU also has a template for services/ investment that it reproduces in its Economic Association Agreements and in its EPA with CARIFORUM. The US and Canada always negotiate under a negative list approach, while the EU, the PRC and ASEAN always negotiate under a positive list approach for services. Japan has entered into both types of agreements, depending upon its trading partners. While Chile prefers a negative list approach, it has shown itself flexible to accommodate the needs of its trading partners when necessary.

[57] See Stephenson (2011).

[58] See study by Fink and Molinuevo (2007) on East Asia and the study by Stephenson (2006) on "Comparing the Degree of Liberalization in Services under Multilateral and Regional Trade Agreements," available on the PECC website. Both show the much more significant degree of coverage of services commitments and extent of liberalization in RTAs as compared with the GATS.

The one redeeming feature so far in the RTA panorama is the lack of agreements between the four major trading partners, namely the US, the EU, Japan, and the PRC. These countries, representing more than 50% of world trade in services, have so far not negotiated RTAs among themselves. This abstinence has meant that the governance function of the GATS has not been threatened as much as it would be if major trading entities were to abandon the multilateral trading system altogether in pursuit of bilateral or regional trading relations. If that does happen in the future, the governance of the WTO will be sorely tested and severely undermined in the services area, to a greater degree than it has been so far.

3.2 Compliance: are RTAs weakening the compliance of WTO members with WTO rules?

Answer: No and Yes. In the case of compliance with WTO rules, it is interesting to note that RTA members do not appear to be settling their services disputes in their regional agreements. They are thus not undermining the GATS system by forum shopping. In fact, of all the RTAs on services that are in effect, disputes have been brought up (to the authors' knowledge) under only one (NAFTA). Either services disputes do not arise under RTAs or countries choose not to disagree with their RTA partners. Surveying all of the disputes that have been taken to the WTO, 22 cases cite the GATS in the request for consultations (as of June 2011).[59] Of these disputes, the US has been a complainant in nine, the European Communities in four, Canada and Japan each in one, with the other complaints having been brought by developing WTO members. Three disputes involve the sale and distribution of bananas, three disputes involve measures affecting financial services, three disputes involve distribution services and two disputes involve measures affecting the automotive industry. Interestingly, only one dispute brought to the WTO involved countries who were parties to a regional trading arrangement involving the issue of interconnection in telecommunications between the US and Mexico.[60] In fact, under the NAFTA two disputes have arisen on services between the US and Mexico. One was taken by Mexico to the NAFTA for resolution (cross-border trucking) and the other by the US to the WTO for resolution (telecommunications). The difference in the outcomes is striking. While Mexico began the process of complying with the decision of the WTO ruling on the telecom case, despite a clear decision of the NAFTA panel in Mexico's favor in the trucking case in 2001, Mexico was unable to obtain compliance from the US to modify its practices on trucking for over a decade. After the panel's ruling, the US and Mexico agreed to a Cross-Border Trucking Services Demonstration Program which gave licenses to a select number of Mexican carriers to operate in the US under strict regulations. However, the US Congress withdrew funding for the Program on 11 March 2009. In response, Mexico imposed retaliatory tariffs amounting to $2.4 billion on a number of US agricultural and industrial goods on 16 March 2009. Mexico later expanded the list of US items subject to punitive tariffs. On 3 March 2011, fully a decade after the NAFTA Panel had issued its report, US President Barack Obama and Mexican President Felipe Calderon announced that the two parties had come to a resolution of this outstanding dispute and that they had reached a preliminary agreement aimed at resolving the bilateral dispute over access of Mexican trucking services to the US market. Once the final agreement on a new cross-border trucking program is concluded, Mexico will immediately lower by 50% the retaliatory tariffs it slapped on some US exports.

[59] See http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A8#selected_agreement

[60] See Stephenson and Robert (2011). The authors wish to thank Alicia Nicholls, a research consultant at the Shridath Ramphal Centre for International Trade Law, Policy & Services at the University of the West Indies, Cave Hill Campus in Barbados for her research assistance on this issue. The only other dispute involving countries who are members to a regional trading arrangement is the complaint brought by Honduras against Nicaragua concerning measures affecting imports from Honduras and Colombia. However, this complaint was brought to the WTO in June 2000, before the Central American Integration System (SICA) had a regional services agreement in force. The regional agreement on services for Central America was brought into effect only after the countries of the region had negotiated and implemented the CAFTA-DR agreement.

The remaining 50% of the value of the tariffs will be suspended when the first Mexican operator is expected to receive operating authority under the new program.

While it is difficult to know in the above-mentioned cases whether it is the robustness of the dispute settlement process, or the willingness of the parties involved to comply with the Panel decision, or a combination of both that made the difference, it may have implications for countries who have the choice of a forum for settling their grievances in the services area in a reluctance to choose an RTA dispute settlement process over the WTO process.[61] One interesting development regarding WTO dispute rulings on services is the evidence of new restrictions included in new RTAs as a result of these rulings. For example, the US-Republic of Korea FTA included a letter annexed to the chapter on cross-border trade in services where both parties state that the cross-border trade in gambling and betting services is not subject to Chapter Twelve (Cross-Border Trade in Services) and investment in gambling and betting services is not subject to Chapter Eleven (Investment).[62]

In general, the WTO has been unable to bring a substantial oversight to the proliferation of RTAs and in consequence their compliance with the provisions of Article V of the GATS has not been evaluated in a significant manner. Not one official opinion exists on the compatibility of an RTA with Article V. The WTO Committee on Regional Trade Agreements has not been able to apply the criteria of Article V in a rigorous manner, as these need further precision and WTO members have not agreed on the definition of "substantially all services trade" as defined in terms of number of sectors, volume of trade and modes of supply. Those RTAs concluded between developing countries fall under the lax or non-existent disciplines of the Enabling Clause and have either not been notified or not been examined in any detail.

There has not been a comprehensive reporting to the WTO of all the agreements negotiated on services. As mentioned earlier, 95 RTAs have been notified to the WTO under Article V as of June 2011. This is not, however, representative of all of the RTAs that have been concluded on services. The WTO Secretariat writes that this information is not exhaustive since it is impossible to account accurately for non-notified RTAs where information is scarce or inconclusive.[63] The WTO has recently adopted a text with some modest strengthening of rules for Article V but these will not significantly change the way in which RTAs are treated under the WTO, which has been very lax. With the ever-expanding number of RTAs being negotiated around the world, this concern has been accentuated. Fears have been raised that the WTO will reduce its relevance if it does not adjust to the rise of regionalism. Suggestions have been made by prominent trade economists recently to "multilateralize regionalism" through the following suggestions:

i) Negotiate voluntary best-practice guidelines for new RTAs and modifications of existing ones;
ii) Negotiate a hierarchy of best practice guidelines for North-North, North-South, and South-South RTAs;
iii) Negotiate a level of RTA discipline in between that of Article V and the Enabling Clause; and
iv) Establish WTO advisory services and/or a Centre on RTAs for developing countries.[64]

[61] Despite the willingness to bring disputes on services to the WTO for resolution, the credibility of the WTO has recently been severely affected because of the lack of its ability to enforce the panel and appellate body's decision on cross-border gambling in the complaint brought by Antigua and Barbuda against the US and the subsequent withdrawal of the commitments in this area by the US. However, this case is not representative of the general outcome of service disputes brought to the WTO where most panel decisions have been respected.

[62] See http://www.sice.oas.org/TPD/USA_KOR/Draft_text_0607_e/asset_upload_file993_12732.pdf

[63] See WTO website http://www.wto.org/english/tratop_e/region_e/region_e.htm where up-to-date information on RTAs currently in force can be found in the summary tables of the WTO RTA Database. See also Crawford and Fiorentino (2005).

[64] See Baldwin and Thornton (2008), and Dadush (2010).

Increasingly, trade experts emphasize that since regionalism is here to stay, the solution to the governance problem must be to work with it, not against it, and try to encourage regional agreements to converge or harmonize their approach through concerted WTO intervention.

3.3 Innovating on reforms: are RTAs helping to move forward reforms in the services area?

Answer: Yes and No. RTAs have improved upon the multilateral GATS regime in some ways and not in others. Many RTAs have disciplines on government procurement that cover both goods and services. In fact, all of the RTAs negotiated by the US contain this discipline as do the majority of those negotiated by the EU, Japan, Chile, Mexico, and Singapore.[65] Government procurement rules for services have yet to be written at the WTO and the Government Procurement Agreement is still applied on a plurilateral basis only, with very few developing country adherents. However, RTAs have not been able to develop rules for emergency safeguards where only two RTAs contain such provisions and which have not been used to present.[66] Neither is this the case for subsidies where disciplines have been included in only a couple of RTAs among developed countries (the EU and ANZCERTA) and with no progress in the GATS. In the area of domestic regulation some RTAs reproduce the GATS language of Article VI but do not go further.[67]

However, RTAs have some disciplines that are lacking in the GATS. Many RTAs have included chapters on competition policy, electronic commerce and intellectual property rights that apply to both goods and services. Some recent RTAs include separate chapters on transparency with much stricter provisions that also apply to services. Importantly, a large number of RTAs include comprehensive disciplines on investment that cover both goods and services and that provide for market access for investors as well as guarantees for the treatment of investors and their investments. Some RTAs have also gone further in the area of temporary movement, particularly a few recent North-South RTAs that have added new categories of workers. Canada has negotiated recent FTAs with Colombia and Peru that go quite far in covering all professional categories with no numerical limits and also expand coverage of worker categories beyond professionals to include "technicians." In Asia RTA members have also experimented with relaxation of categories of workers such as the inclusion of nurses and health practitioners in agreements between Japan and the Philippines and Indonesia, or PRC massage therapists in the RTA between Australia and the PRC. The EU has included categories of independent service suppliers and graduate trainees in its only completed Economic Partnership Agreement (EPA) with CARIFORUM without numerical limits.

With few exceptions, RTAs have not been able to push countries to liberalize their service sectors at a faster pace than they would otherwise do this on their own. It has been on the whole the case that the sequencing of reforms in the services area has been the same whether at the multilateral or regional level, with governments preferring for a variety of reasons to undertake reforms domestically first and then commit these within trade agreements when appropriate. So RTAs have not generally been the instruments through which governments have first committed to liberalization and then subsequently undertaken reforms. The nature of domestic political economy forces are such that agreement on regulatory reforms cannot easily be undertaken in the context of an international negotiation but must be agreed through trade-offs at the national level. Nonetheless, in several instances this has happened at the regional level whereas this has only happened in the

[65] See VanGrasstek (2011). The author emphasizes the use of RTAs as precedent setters and this is particularly the case in the area of government procurement.

[66] See Mattoo and Sauvé (2010).

[67] See VanGrasstek (2011).

WTO in the telecoms area and for specific reasons that are unique to the historical context of those negotiations.[68]

RTAs can really only discriminate between service suppliers at the border, for example through differentiating in the percentage of equity allowed for foreign investors or the numbers of foreign workers granted entry as between various suppliers. But once the services are inside the border, the regulations are applied in the same way to all service suppliers, foreign or domestic. In this way, RTAs in services are much less discriminatory arrangements than might be imagined, since many of the restrictions on services trade are "behind-the-border" impediments. Thus, once the decision is made to undertake regulatory reform at the national level, the subsequent reforms are applied to all on an MFN basis. Many policy analysts underscore the need to implement these reforms as quickly as possible to get the benefits of increased competition since infant industry protection in services has not been shown to bring any benefits.[69]

Some RTAs also include provisions that make them effectively "dynamic" instruments with respect to ongoing services liberalization. This is the case of those agreements containing a "ratchet clause" or an in-built provision for automatic future liberalization providing for the binding application to other RTA partners of all measures that are liberalized and brought into effect after the entry into force of the agreement. This provision means that effectively parties to RTAs can only move toward greater openness, and that this cannot be reversed under the agreement. Other RTAs contain a requirement for undertaking periodic review and negotiations for further market access opening. NAFTA-type RTAs often include a Review Clause of this nature.

3.4 Fostering services trade: have RTAs impeded the expansion of services trade?

Answer: Cautious No. This question is difficult to answer without undertaking empirical studies on the impact of RTAs on service trade flows. However, a recent study by Stephenson and Robert (2011) that carried out calculations on this variable has shown that for those RTAs with an adequate data set for examination, RTAs have fostered services trade.[70] The study used a simple methodology to calculate "excess growth" for certain RTAs entered into by countries in the Americas. This methodology attempts to capture how trade in services has evolved after the entry into force of some key RTAs based on a comparison of the performance of services trade between the same partners and prior to the agreements.[71] It is explained in the Annex.

Applying the "excess growth" methodology to four different RTAs involving countries of the Americas for which it was possible to gather reliable datasets[72] shows that for these

[68] See Robert and Stephenson (2008). Costa Rica agreed to liberalize both its telecom and financial services sectors as a result of the conclusion of the CAFTA-DR with the US. Mexico agreed to liberalize its financial services sector as the result of the NAFTA and Chile did likewise as a result of the US-Chile FTA. These market opening measures have subsequently been applied to all service providers, not just the RTA partner.

[69] This opinion was expressed by Hamid Mamdouh, the Director of the WTO Services Division, during the discussion at the PECC-ADBI Conference on "Services Trade: New Approaches for the 21st Century," Hong Kong, China; June 2011.

[70] Ideally, the best way to examine the effect of FTAs is with gravity models (for services trade, goods trade, and foreign direct investment), but the data and computational requirements of such exercises are beyond the scope of this paper.

[71] The results reported in this section are drawn from a study by Stephenson and Robert (2011), who recognize with gratitude the original contribution of Thibaud Delourme in developing the statistical approach for this methodology and applying it to the regional groupings to obtain the results reported in this section for services trade and goods trade.

[72] Although we examined the "excess growth" trends for NAFTA, the results were not felt to be accurate enough to warrant inclusion in the discussion as it was not possible to carry out the calculations in the same manner as for the other agreements given the limitations in the data sets. As NAFTA was concluded some time ago, there

agreements, "excess growth" in services (between partner countries) is shown to increase after the RTA entered into force, in some cases significantly. And for members of three out of four agreements, the differential in "excess growth" is shown to increase more for services than for goods, indicating that the impact of the agreement on stimulating growth in services trade has been greater after its entry into force than its impact in stimulating growth in goods trade. This is the case for the US-Chile RTA where growth in services trade accelerated more between the two trading partners after the RTA than with the rest of the world during the five years following the RTA (2004–2009), resulting in an "excess growth" of 3.11% for the US and Chile combined, indicating that for both countries, trade in services has grown at a faster rate than that with other countries, in contrast to the earlier period prior to the agreement (2000–2004). This is likewise true for the US-Singapore RTA where "excess growth" in services rose from -2.48% during the five years prior to the RTA (2000-2004) to 0.94% during the five years following the agreement (2004–2009). The RTA between Mexico and Japan (2005) is also associated with a significant increase in "excess growth" of trade in services, rising from -13.79% during the five years before the FTA (2000–2005) to 8.54% during the four years following the agreement (2005–2008). Lastly, in the case of the more recent CARIFORUM-EC EPA, the "excess growth" for services for the EU and CARIFORUM countries combined rose from -4.96% over the period prior to the agreement (2000–2008) to 7.64% after the agreement (2007–2009). The latter two RTAs show a particularly strong stimulus to services trade.

Thus, although causality is difficult to prove, the "excess growth" calculations show that for those RTAs with an adequate dataset to merit an examination of trends prior to and subsequent to the entry into force of an agreement, services trade has increased more between RTA partners than it has with the rest of the world. However, growth in services trade was also shown to be positive between the RTA members and the rest of the world, indicating that the agreements have not had a negative impact on other trading partners.

Two other factors have contributed to RTAs being less discriminatory in the services area than is the case of RTAs for goods, making them more stimulating to services trade globally. Many commitments on services under RTAs involve changes to the regulatory regimes that cannot be applied on a discriminatory basis and are subsequently granted on an MFN basis.[73] This was the case of Mexico and its liberalization of banking services under the NAFTA, as well as the case of Costa Rica and its liberalization of insurance and certain telecom services under the CAFTA-DR. Applying liberalization on an MFN basis often proves to be the more economically efficient course of action in the services area.

The design of the rules of origin (ROO) provisions for services in RTAs has also contributed to the ability of these agreements to foster services trade. Most RTAs opt for liberal rules of origin extending the benefits of the trade agreement to all third country investors as long as they are established in an RTA territory and engage in substantial business operations. In so doing, they do not discriminate by nationality of the suppliers. Thus a firm from any third country established in the territory of an RTA member that conducts substantial business operations and is not a paper company is eligible to conduct cross-border trade and to benefit from the RTA if it is commercially established in the country. Trade experts have opined that because of the liberal construction of the ROO provision in most RTAs, the discriminatory wedge they create is minimal.[74]

are no time series on services trade available for Mexico and Canada for the years prior to the agreement. For more details on the application of this methodology and its results, see the study by Stephenson and Robert (2011).

[73] See VanGrasstek (2011).

[74] See Beviglia-Zampetti and Sauvé (2006).

4. CONCLUSION

On the whole, the panorama of considerations discussed above indicates that the interaction between the RTAs and the WTO system shows a mixed picture with respect to governance. While the economic effects of the RTAs and their provisions do not seem to be unfriendly to the GATS and have not impeded the growth of services trade on the part of the RTAs examined, nonetheless this outcome depends very much on the quality of the agreement concerned—the extent of its sectoral coverage and the depth of its disciplines. Many current RTAs may fail to meet the more stringent criteria for deep integration. When the commitments made under RTAs are subsequently applied on an MFN basis, this is the best possible outcome for combining the benefits of regionalism with the multilateral system.

RTAs have been testing grounds for moving forward some disciplines in the services area but not others. In terms of WTO compliance, the WTO is currently lacking in ability to effectively survey and evaluate RTAs with respect to their compliance with the criteria of GATS Article V. On the other hand, RTA members do not seem to be settling services disputes in the regional context and have therefore not created any alternative jurisprudence that might come into potential conflict with WTO rules.

However, the sheer number of RTAs being concluded and their diversity do represent a potential weakening of governance at the multilateral level. Regionalism has provided a significant alternative architecture for governing services trade in the form of the negative list approach which differs in many fundamental respects from the GATS and is finding an increasing number of adherents around the world.

The issues discussed above call attention to the need for the WTO to focus its attention on RTAs to try and ensure that they are truly “multilaterally friendly”. This is particularly important in light of the stalemate of the Doha Round and its possible future abandonment. The WTO needs to have both strengthened oversight of the diverse universe of RTAs as well as greater flexibility in order to allow for the incorporation of some of the innovative elements in RTAs into the GATS in the form of sectoral or plurilateral agreements that can push the envelope of services liberalization further along among smaller groups of like-minded countries.

Such plurilateral agreements could either focus on specific sectors or could constitute agreements by type of discipline. For example, an agreement among WTO members to bind all cross-border trade in services (modes 1 and 2) would be a very useful step, particularly for developing members. An agreement on a package for commercial presence (mode 3) would also be very significant, such as the binding of applied regimes on foreign direct investment (with limited sectoral exceptions) or agreement on the binding of a certain percentage of sectors within a mode 3 package. A plurilateral approach to moving forward services trade liberalization must be put on the table if the WTO is to regain its relevance in the services area. An open-ended group of ‘like minded countries’ could act as the equivalent of “pathfinders” to move forward with such initiatives. Any resulting plurilateral agreement should, of course, be open to acceptance by any WTO member willing to sign on when it is able to do so.

Experimentation with the governance of services trade has become the exclusive purview of RTAs only over the past decade. In order not to fall into irrelevance, it will be very important for the WTO to join in the ongoing dynamism of shaping rules and negotiating modalities that reflect the changing character of services trade and regulations. Otherwise its governance structure will fail to provide the overarching umbrella within which the RTAs should operate in a multilaterally-friendly manner.

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ANNEX

"Excess Growth Methodology"

The "excess growth" methodology measures the growth in trade in services between the members of an FTA *as compared with* the growth of trade in services with non-members of the FTA. Calculations of total trade include imports and exports. Data are drawn from international (OECD and IMF Balance of Payments) and national sources (USTR Dataset and Eurostat) to obtain statistics on trade in services *by trading partner*. Calculations are carried out for: (a) the average growth in total trade in services between a member of a given FTA and the other members, which is labeled intra-zone trade; and (b) the average growth in total trade in services between that same member and the rest of the world, excluding other members, or the extra-zone trade. By subtracting the growth in extra-zone trade from the growth in intra-zone trade, i.e. (a) – (b), it is possible to obtain a measure of "excess growth" which indicates whether trade in services between a member of a FTA and the other members has grown faster (positive excess growth) or slower (negative excess growth) than trade with non-members. This "excess growth" is then calculated for every member. The "total excess growth" is calculated for the regional grouping as a whole by subtracting the growth of total extra-zone trade from the growth of total intra-zone trade. These calculations are carried out for two periods: before and after the agreement enters into force in order to observe the performance of services trade and test whether the existence of an FTA might be a factor in accelerating the growth of intra-zone trade relative to the growth of extra-zone trade or not. Expectation is for the "excess growth" in services trade of the members of a FTA involving services liberalization to be higher after the agreement enters into force than it was prior to the agreement. Results are also shown for the Δ Growth, which is simply the differential in excess growth after and before the FTA: Δ Growth = Excess growth after the agreement minus Excess Growth before the agreement.

The time frames for calculating the "excess growth" figures have been chosen in function of the longest time period of available and comparable statistics for services trade for the parties to an agreement. The years studied were symmetrical, that is an attempt was made to cover the same number of years prior to and after the agreement.