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WTO Accommodates RTAs: A Triumph of Pragmatism over Pristine Theory

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The World Trade Organization (WTO) champions global free trade on the basis of a set of universal norms and principles, developed through consensus. But of late as it falters on delivery, as in the stalled Doha Round of negotiations, members are reaching their own arrangements through Regional Trading Arrangements (RTAs) to advance their perceived commercial interests. This is particularly true of Asia and the Pacific region, as evidenced in the Trans-Pacific Partnership (TPP) reached at the recent APEC (Asia Pacific Economic Cooperation) Summit in Honolulu. Resistance to this inexorable phenomenon would be futile, and so the WTO, whose need still obviously exists, is doing well by tweaking its fundamentals to accommodate this phenomenon through coexistence and coherence, as indicated in its 2011 Report.

Introduction

The WTO rests on a tripod. Those familiar with the laws of physics will be aware that an object is most stable when it rests on three legs. Is what is true of physics, also valid for trade? Testing it would be a worthwhile intellectual challenge. The first of the triad that holds up this champion of global free-trade, with near-universal membership of 153 with Russia now also on the cusp of joining, is the Multilateral Agreement on the Trade in Goods (including GATT 94 and associated agreements). The second is the General Agreement on

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Trade in Services, or GATS. The third is the Agreement on the Trade-Related Aspects of Intellectual Property Rights or TRIPS. It is noteworthy that the last two distinguishes it from its predecessor GATT which only dealt with goods. But this has not absolved the WTO from being still seen by many as a 'rich man's club' with concomitant passionate opposition.

Underlying Principles

Like any other multilateral system, the WTO is also governed by a set of principles that form its essence. The first of the tripod, the Trade in Goods, has four basic rules. The first is that it is only through tariffs that protection can be provided to domestic production against foreign competition, and the use of quantitative restriction, though with some exceptions is prohibited. The second is that those tariffs should be reduced, and Non-Tariff Barriers (NTBs) eliminated, and the tariffs so reduced bound against any increases. The third is that each member must accord all others 'Most Favoured Nation' (MFN) treatment, though noteworthy are exceptions provided by Regional Trading Agreements (RTAs) and the Generalized System of Preferences (GSP). The fourth is that no distinction can be made between imported and domestic productions in levying taxes or applying regulations, i.e. 'national treatment' (NT) must be universally accorded.

The second leg of the tripod has to deal with GATS. Their characteristics are intangibility and invisibility, as opposed to the visibility of goods. The WTO has recognised over 150 such service sector activities. These range from banking, insurance and telecommunications to recreational, cultural and sporting, comprising nearly 30 per cent of all contemporary trading. GATS has a framework for discipline in the four modes in which trade in services take place. These are, Mode-1, cross-border supply: Mode-2, consumption abroad: Mode-3, where suppliers move to territory of consumers: and, Mode-4, which involves movement of 'natural persons'. The principles of MFN and NT also apply.

The third and last leg involves TRIPS. The objects of intellectual property are the creation of human minds, and Intellectual Property Rights (IPRs) pertain to those of the creators of innovative or artistic works. These cover copyrights, patents, industrial designs, trademarks and other such signs of product distinction that generate consumer loyalty. TRIPS complements other agreements under the World Intellectual Property Organization (WIPO). It covers those aspects of intellectual property issues related to trade, and indicates minimum standards and periods for protection that are legally enforceable. As with goods and services, the rules of MFN and NT are applicable.

The WTO system thus constitutes a variety of multilateral legal instruments. It is to be treated as a 'single undertaking' subjecting all, in one stroke, to all its provisions, norms and rules. The responsibilities, however, are varied as some WTO members enjoy 'Special and

Differential Treatment' (SDT) because of their low level of economic development. In theory, decision-making is by consensus which could at times be irksome as Georgia holding up the Russian membership, but in reality, the shots are called by the big players, huddled together with the Director General, currently Pascal Lamy of France , in what is called the Green Room. Changes to rules of trade are brought about through rounds of negotiations. The current one, called the Doha Development Round, has reached an impasse because of some fundamental differences mainly between the developed and emerging economies. The epithet 'Development' in the Rounds name was meant to mollify the poorer countries who, however, remained entirely unconvinced as to its genuineness. Everyone pays lip-service to the round, but no one seems overly anxious for its conclusion, except perhaps for the WTO Director General and his staff of 640 persons.²

Enter FTAs

Unsurprisingly, with the Doha Round in limbo, countries are anxious to make the best trade deals they are able to, particularly with their major trading partners. The result has been a spate of RTAs. This is particularly true of Asia now, on who's rising economic clout the attention of the world is focused. To be fair though the European Free Trade Agreement (EFTA), and the European Union itself must be considered among the earlier and most important RTAs, though with multiple goals, like the North American Free Trade Agreement (NAFTA), a lesson Asia seems to have learnt well. Logically they appear to erode, and indeed to some extent do, the global principles enunciated by the WTO. But the WTO's position appears to be that if the RTAs are inevitable, one might as well 'relax and enjoy'. Indeed the WTO allows for such derogation, perhaps designed earlier to fit in the major European and American players, through GATT Article XXIV and GATS Article V, though the language has been kept deliberately vague. The Doha Round actually endorsed those, adding some clauses to underscore transparency. The idea appears to be 'Don't ask too much, don't tell too much!'³ The intertwining understandings are often seen as a 'spaghetti bowl' or 'noodle bowl' in Asian parlance, a phenomenon that has sorely perturbed unabashed votaries of pristine free trade like Jagdish Bhagwati, who has called it a 'fool's way of doing business'.⁴

² Information and analyses provided above are based on the personal experience of the author who had served as Ambassador and Permanent Representative of Bangladesh to the WTO between 1996 and 2000. He was also Chairman of WTO Trade Policy Review Body, and of the WTO Committee on Trade and Development.

³ Gary Clyde Hufbauer and Jeffrey J. Schott, 'Fitting Asia-Pacific Agreements into the WTO system' .Paper presented at a Joint Conference of the Japan Economic Foundation and the Pearson Institute for International Economics, Washington DC, 27 November 2007.

⁴ 'Reshaping the WTO', *Far Eastern Economic Review*, (January/February 2005).

Asia-Pacific Takes the Lead

Rules require that the WTO is notified of RTAs, separately for goods and services. Between 2000 and 31 December 2010, 484 RTAs were notified to the WTO out of which 293 were in force.⁵ Contemporary RTAs tend to want to broaden and deepen their coverage becoming more and more ambitious and comprehensive including services, investments, trade facilitation, government procurement, intellectual property, electronic commerce and even labour and environment. Some are bilateral, comprising little more than existing WTO principles, such as the one of Pakistan's, according of MFN to India (reciprocating India's 1996 WTO-centered decision), but announced with much fanfare obviously because of its political implications as a 'tectonic shift in bilateral relations'.⁶ At the two-day Seventh International Conference on South Asia, organised by the Institute of South Asian Studies (ISAS) in Singapore on 23 and 24 November 2011, Ambassador Shyam Saran stated that it had impacted the South Asian Free Trade Agreement, whose progress otherwise is unremarkable, with a 'new energy'. Recent attention is on Asia and the Pacific, given the importance of the region in politics and economics.

In consonance with India's 'Look East' or 'Look and Engage East policy', an important development is India's several trade arrangements with the regional countries. Worth particular mention is the India-ASEAN (Association of Southeast Asian Nations) agreement, which received an impetus during Prime Minister Manmohan Singh's visit in November to the region and to the Bali Summit. As of now, the Agreement is on goods, trade reaching US\$50.33 billion in 2010 and expecting to grow to US\$72 billion in 2012. But it is the services sector that is key to India, contributing over 55 per cent of its GDP, but Philippines a strong regional player in the area, is somewhat chary and 10 rounds of talks have not broken the logjam.⁷ India has also signed not 'free trade' but 'Comprehensive Economic Cooperation Agreement (CECA)' bilaterally with Singapore and South Korea in 2005 and 2009 respectively. Since then, with Singapore, bilateral trade has doubled to reach US\$17.4 billion in 2010-2011.⁸ The fact that the CECA with South Korea is more political is evidenced in that it is more 'cautious' and less 'tariff slashing' than Korea's FTA's with Europe and the US, for instance.⁹ The latest in the series was the CECA with Japan, signed in February 2011, said to 'hold promise' particularly in the important services sector.¹⁰

⁵ Most statistics in this respect are cited from 'WTO Annual Report 2011', Geneva, 2011.

⁶ Shahid Javed Burki, 'A New Paradigm', *Express Tribune*, 6 November 2011. <http://tribune.com.pk/story/288495/a-new-paradigm/?print==true>. Accessed on 11 November 2011.

⁷ *Economic Times*, 13 November 2011. http://articles.economicstimes.indiatimes.com/2011-09-18/news/30172113_1_india-asean-. Accessed on 13 November 2011.

⁸ Ravi Velloor, 'The island republic and the South Asian giant', *The Straits Times*, 20 November 2011.

⁹ Matthew Weigand, 'Korea , India sign cautious FTA' *Korea IT Times* 12 August 2009. <http://www.koreaitimes.com/story/4476/korea-india-sign-cautious-fta>. Accessed on 21 November 2011.

¹⁰ C.P. Ravindranathan, 'FTA with Japan holds promise', *Business Line* 21 June 2011. <http://www.thehindubusinessline.com/opinion/article2120935.ece?homepage=true>. Accessed on 23 November 2011.

China has emerged as a major driver of regional RTAs, despite ironically, having undergone 11 years of intense negotiations to join the WTO, which it did in 2001. It has since linked up with the ASEAN, and thereafter with many others but their thrust appears political rather than economic, and according to one analyst, as ‘less threatening to the world trade system than they appear’.¹¹ Indeed at the recent APEC Summit at Honolulu, Chinese President Hu Jintao actually endorsed WTO values, when, anticipating US President Barack Obama’s initiative for a trans Pacific mega pact, to which China was aloof, obviously for political reasons, he said: ‘We should uphold the multilateral trading regime and deepen regional integration.’¹² He actually wanted the Doha round to reap an ‘early harvest agreement within the year’, mainly for giving tariff-free and quota-free access to products of the least developed countries, or LDCs¹³ (This obviously has a political overtone as the LDCs are usually roundly ignored by the major RTAs).

The big story emerging out of Honolulu was the new free-trade agreement ‘spanning the Pacific’, called the Trans-Pacific Partnership (TPP)¹⁴. It involves Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, the US and Vietnam. A potential market of 500 million people of booming economies, accounting for 61 per cent of the total US goods export to the world, it describes itself as a ‘21st century agreement’ including such new issues as green technologies and the digital economy. If brought to fruition, it will dwarf the European Union. Ambitiously it aims to conclude negotiations by next July, significantly close to the US elections. Japan has said it is interested, but for a country that slaps 800 per cent tariff on rice to protect its farmers, it is difficult to see how, though not why, if the goal is political.

China, as we have seen, is not amused, nor Russia, and judging by their immediate reactions, they, particularly China, may see this as a ploy to ‘squeeze’ it out of Asian trading arrangements.¹⁵ A media reaction from China, reflected in the ‘People’s Daily’ was: ‘Using a new mechanism of cooperation to replace an existing one, will *seriously harm* [emphasis mine] the East Asian (economies) and the global economy.’¹⁶ The Indonesian President, Susilo Yudhoyono, with an eye on China, has inserted a modicum of circumspection: ‘New power centres are growing rapidly and power relations are changing and becoming more fluid.’¹⁷ The Chinese will need convincing that ‘it is not “a fight” but “an opportunity”¹⁸.

¹¹ Richard Pomfret, ‘Asian Regionalism: Threat to the WTO-based Trading System or Paper Tiger?’, *Vox* (22 June 2007). <http://voxeau.org/index.php?q=node/309>. Accessed on 27 September 2010.

¹² Reuters, 13 November 2011. <http://www.reuters.com/article/2011/11/12/us-apec-idUSTRE7AB12920111112>. Accessed on 13 November 2011.

¹³ *Business Times*, 14 November, 2011.

¹⁴ This expression, and the immediate following details, are taken from, *The Straits Times*, 14 November 2011.

¹⁵ *Financial Times*, 14 November 2011.

¹⁶ Cited in, Michael Richardson, ‘US must sell Trans-Pacific deal to Asia’, *The Straits Times*, 21 November 2011.

¹⁷ Cited in, David Pilling, ‘How America should adjust to the Pacific Century’, *Financial Times*, 17 November 2011.

There is no evidence to suggest that this is happening, or is about to happen. On the contrary, the reverse is more likely. Indeed irked, China is seeking to ‘counterbalance’ the TPP with a trilateral FTA of its own with Japan and South Korea!¹⁹ A major problem now may be a surfeit of RTAs, many with much unfinished business, and some seen as more worthwhile to pursue the laid-down goals of key ones like the integration of the ASEAN itself, in order to be able to compete with China.²⁰

From Coexistence to Coherence

The plethora of RTAs is not to deny the usefulness of the WTO even at these times. First, the WTO does uphold a set of global norms and values; second, it provides all members, strong and weak, large and small, a platform to deliberate on trade issues of interest to them; third, its trade policy review mechanism actually renders immense service, through peer reviews, to sharpen and hone the members’ trade policies; fourth, the theoretical acceptance of the principle that trade is linked to development is a positive global normative advance; fifth, the idea that uneven level field must be acknowledged in the market place is also novel and positive; and finally, the WTO does accord effective technical assistance to members that require it. So in the foreseeable future, even the most ardent proponents of RTAs would not negate the WTO, indeed would like them to co-exist.²¹

In fact, the WTO wants to do more. Its latest Report of 2011 clearly signals a desire to embrace the phenomena of RTAs and, indeed, move from coexistence to coherence. This ‘embracing [of] the irresistible’, as an analyst Peter Gallagher calls it, is wise.²² The RTAs push for much the same values as the WTO, and concepts such as facilitating the supply chains, qualification and accreditation of service providers or investment and competition policies hold similar (if not always same) interest for the WTOs. So deepening existing domains of global trade could be termed ‘WTO +’ and widening them to those it would like to cover, ‘WTO-X’, formulating appropriate agenda to incorporate them.²³ This accommodation of pragmatism with pristine theory would call for some innovative thinking, and WTO should be in possession of the intellectual wherewithal to muster the same. Also as a ‘rising’ Asia breaks new paths in the journey to reconstructing or contributing to a trading architecture more in line with its contemporary aspirations, one is reminded of a Spanish

¹⁸ Laura Meckler, ‘Obama Sets Asia Agenda of His Own’, *Wall Street Journal*, 21 November 2011.

¹⁹ *The Straits Times*, 23 November 2011.

²⁰ Raymond Atje and Pratiwi Kartika, ‘A Bumpy Road Toward ASEAN Economic Community 2015’, *The Global Economic Crisis: Implications for ASEAN*, (ISEAS Report No.10, Singapore), p 126..

²¹ See, Iftekhar Ahmed Chowdhury, ‘WTO and the RTAs: How the ‘Spaghetti-bowl’ Impacts on Global ‘Trade-Meal’, ISAS Working Paper No. 118, 6 December, 2010.

²² <http://petergallagher.com.au/index.php/site/article/wto-and-ptas>. Accessed on 12 November 2011.

²³ *Ibid.*

saying, that Henry Kissinger cited:²⁴ ‘Traveler, there are no roads. Roads are made by walking.’

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²⁴ Henry A. Kissinger, *Diplomacy* (New York: Simon & Schuster, 1994), p. 835.