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North, South, East, West: What's best? Modern RTA's and their Implications for the Stability of Trade Policy

by

Lucian Cernat and Sam Laird

Centre for Research in Economic Development and International Trade, University of Nottingham

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The Authors
Lucian Cernat and Sam Laird are economists, UNCTAD, Geneva. Sam Laird is also an External Fellow of CREDIT and Special Professor of International Economics at the University of Nottingham.

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Modern RTAs and their Implications for the Stability of Trade Policy

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Abstract
The objective of this paper was to assess the extent to which regional trade agreements (RTAs) could prevent protectionist 'backslidings' and contribute to the smooth functioning of the multilateral trading system. The paper examined a number of trade policy instruments (antidumping, subsidies and countervailing duties, safeguard measures, technical barriers to trade and standards, customs procedures and rules of origin) and trade-related policies (trade-related investment measures, competition policy, movement of labour), as well as dispute settlement mechanisms. The evidence suggests that although many RTAs have put in place various policy-stabilizing mechanisms, they are unevenly applied and 'post-modern', hidden protectionist 'backslidings' such as antidumping practices are still present even in advanced North-South or East-West RTAs.

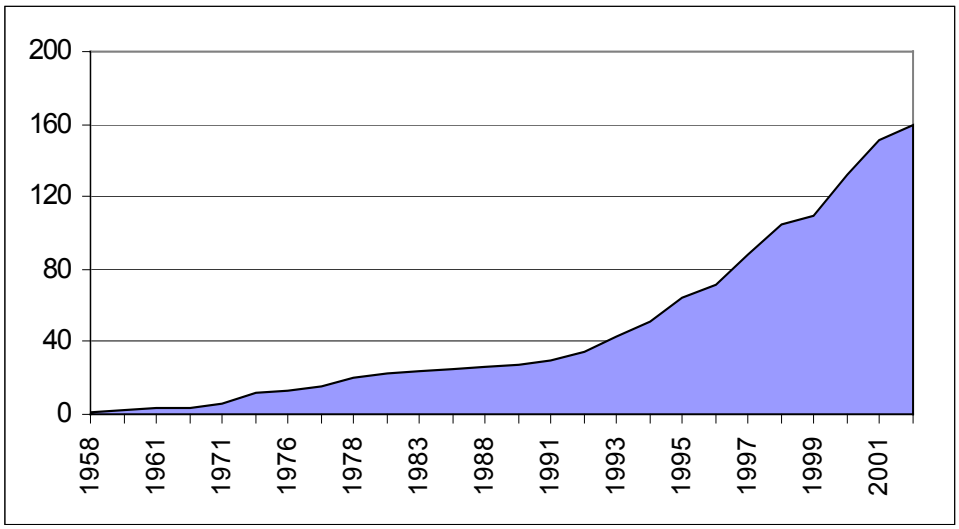
Outline
1. Introduction
2. The Complex Interdependence between Regionalism and Multilateralism
3. Deep Regional Integration and Multilateral Trade Rules: Specific Trade Instruments
4. RTAs as 'Building Blocks': North-North, South-South, or Mixed?
5. Conclusions

1. INTRODUCTION

In the late 1980s and early 1990s, in parallel to the GATT negotiations under the Uruguay Round, many countries entered into trade negotiations aimed at the formation, revitalisation or extension of regional trade agreements (RTAs). Some developed countries have consolidated their existing regional integration mechanisms going well beyond 'shallow integration', essentially limited to mutual tariff cuts. The EU Single Market of 1992 is a prime example of the new "deeper integration". Some countries, notably in Latin America, have revised moribund or ineffectual RTAs. Other countries in all regions have created new RTAs, or are currently involved in RTA formation. Most recently, RTAs have been initiated by countries that had traditionally been the main proponents of the multilateral approach under GATT (Japan, South Korea, Singapore and other countries in East Asia).

The integration process has progressed rapidly in many regions, especially in Europe and the Western Hemisphere. Regionalism, defined as both an increase in intra-regional trade flows and the number of regional trade agreements (RTAs) has intensified over the last decade (Figure 1). Currently the number of RTAs exceeds the number of WTO Members – many being party to a number of different RTAs in what Bhagwati calls a "spaghetti bowl" of trade relationships (The Economist, March 3rd 2001) - and the trend towards increased regionalism appears to be continuing. Among the early manifestations of this "new regionalism" were NAFTA, MERCOSUR, the "deepening" of EU integration through the Single Market program, the EMU and the "widening" of integration towards the East, all of which took place in a relatively short period. The countries in transition in Central and Eastern Europe have also adopted an active approach to regional integration, not only vis-à-vis the EU but also among themselves, reformulating their mutual relationships as market economies (cf. the old COMECON model).

Figure 1. Number of existing RTAs



Source: WTO.

Furthermore, the integration process has moved beyond the regional level to become inter-regional. New inter-continental integration projects with potentially significant impact on global trade and investment have been proliferating. APEC economies have agreed to achieve free and open trade and investment by 2010 (2020 in the case of developing countries) (UNESCAP, 1998). In the Western Hemisphere, the Free Trade Area of the Americas (FTAA), comprising 34 countries "from Alaska to Tierra del Fuego", is in the making, with negotiations to be completed no later than 2005 (Aninat, 1996; Devlin, Estevadeordal and Jorge, 1999). EU-induced regionalism has extended to countries and regions outside of Europe. The EU has plans and in some cases has already concluded free trade agreements with certain CIS (Commonwealth of Independent States) countries, with Mediterranean countries (including the EU-Turkey Customs Union), MERCOSUR, South Africa and Mexico. Outside the EU framework, other prominent cases of inter-continental RTAs involve various Latin American and Asian countries.

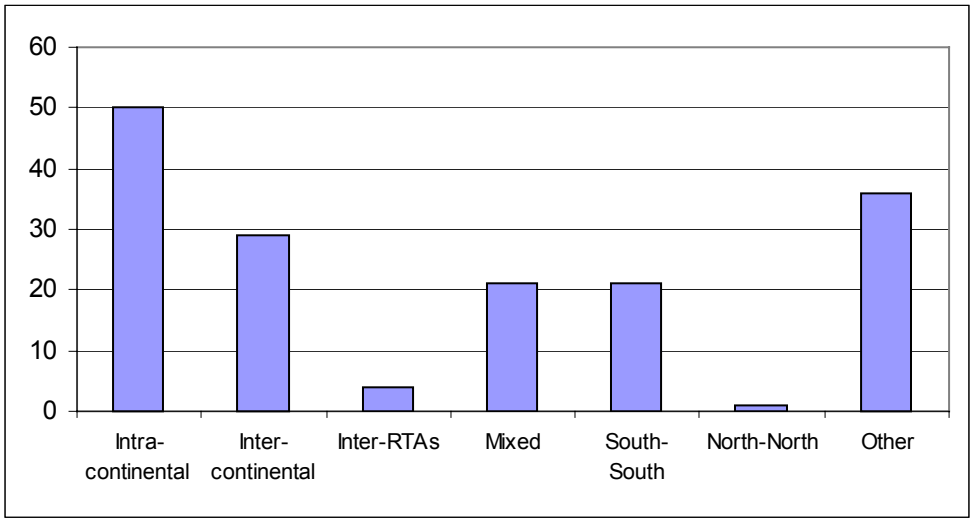
In parallel, regional integration agreements among developing countries have expanded, increased and in general gained new momentum. Impetus was to some extent provided by the dramatic liberalisation of import regimes in developing countries consequent to

structural adjustment programs (Drabek and Laird, 1998). In Latin America, MERCOSUR and the Andean Community have moved rapidly ahead with the implementation of their programs to liberalise mutual trade and establish custom unions. CARICOM has been revitalised. In Asia, ASEAN has accelerated the implementation of its free trade area in goods and started work on liberalising trade in services. In the Pacific, several countries have formed a free trade area within the Melanesian Spearhead Group and the Pacific Forum has agreed to form a free trade agreement. In Africa, several groupings have been engaged in major revisions and restructuring of integration such as UDEAC into CEMAC, and others are intensifying sub-regional integration such as SADC's adoption of its trade protocol in 2000 (calling for the formation of an FTA within 8 years), and the entry into force of the COMESA FTA in 2000.

Mixed RTAs (North-South RTAs) with reciprocal commitments between developed and developing countries are becoming more frequent in all regions. These include, notably, agreements with the United States and the EU as the “Northern” partner, but also include agreement with Australia, Canada, New Zealand and South Africa with developing countries in their regions.

Overall, are increasingly expanding to other regions and becoming more complex interregional integration systems with various grades and types of association (Figure 2).

Figure 2. Trends in RTA formation: RTAs at different stages of negotiations



Source: Cernat (2002).

Legend: **Intra-regional RTAs** refer to agreements between countries belonging to the same geographical region; **Inter-RTA agreements** refer to those trading arrangements between two or more existing RTAs; **Inter-continental RTAs** counts the number of new RTAs between countries situated on different continents; **Mixed RTAs** refer to agreements involving developing and developed countries, while **South-South** and **North-North** refer to developing-only and developed-only agreements, respectively. **Other** refers to RTAs involving transition economies.

The new dynamism in RTAs points to certain emerging results in the system of international trade relations. The creation and rapid expansion of RTAs seems set to remain a lasting feature of international economic relations. Some of the regional projects would combine substantial economic power and would exert a major impact on third countries and on the functioning of the multilateral trading system. In terms of the international trading system, the concern is that the proliferation of RTAs may lead to an erosion and possible fragmentation of the multilateral trading system into some kind of federal system composed of semi-autonomous 'stumbling' trading blocs. This concern has lead to debate over regionalism versus multilateralism, and whether the former is a "building block" or a "stumbling block" towards the latter. [1]

The evidence is mixed. RTA formation increases the interdependence between countries. The literature on economic interdependence points out that the effects of

1 For surveys of the literature on this debate, see Bhagwati and Panagariya (1996), Winters (1996) and Laird (1999). Other authors examining the issue of whether the formation of an regional arrangements leads to a

interdependence are sometimes contradicting: on one hand they enhance cooperation, but on the other hand they can increase tensions between partners. Transatlantic relations are probably the best example of interdependent economic actors engaged in both cooperative and conflictual relations.

This paper seeks to clarify whether RTAs contribute to the smooth functioning of the multilateral trading system, in particular to what extent RTAs can prevent protectionist 'backslidings'. The paper tries to identify several RTA-specific issues that are likely to enhance the functioning of the multilateral trading system, particularly in areas in which the WTO rules need to be strengthened. The remainder of this paper is organised as follows. Section 2 briefly summarises the debate about the interactions between multilateralism and regionalism. Section 3 elaborates on several trade policy instruments that have been used for protectionist purposes at both regional and multilateral level and analyses the ways in which RTAs and their deep integration commitments could complement and strengthen the WTO rules and disciplines. Section 4 compares various models of RTAs (in particular North-North, South-South, and mixed) and evaluates these models in terms of the extent to which they act as 'trade policy anchors' against protectionist backsliding. Some conclusions are offered in section 5.

2. THE COMPLEX INTERDEPENDENCE BETWEEN REGIONALISM AND MULTILATERALISM

Multilateral trading rules and rules developed within RTAs have mutually reacted during the last decades of their coexistence. On one hand, the multilateral rules have had a constraining effect (policy anchor) on regional arrangements, most obviously through the provisions of GATT Article XXIV, its post-Uruguay Round understanding, and GATS Article V. On the other hand, regional integration initiatives have also influenced the multilateral system in a number of ways, particularly in the establishment of rules in areas not yet covered by the WTO or in making clarifications about the operation of WTO rules. Thus, RTAs may act as *policy transfer mechanisms* towards the multilateral system. As a result of developments within RTAs, the WTO agenda has expanded, and new or more far-reaching rules have been introduced on trade-related issues along the

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higher or lower protection with respect to the outside countries, see Panagariya and Findlay (1996), Bagwell and Staiger (1993), Krishna (1998), and Levy (1997).

lines of RTA provisions. The areas of investment and competition policy are areas where RTAs have moved ahead of the WTO system, while developments on services sat the WTO level were influenced by progress in NAFTA and the EU.

As the subsequent analysis shows, the possibility of RTAs setting the pace on new rules or clarifications of existing rules is more likely on those issues where the WTO rules contain 'soft' provisions. Apparent 'backsliding' from multilateral commitments occurs for a number of reasons, including, importantly, the existence of loopholes in the regulatory framework. WTO provisions still provide a relatively wide degree of latitude for Members on the use of certain export- and import-related measures. Examples of such latitude on export-related measures include agricultural export subsidies. Similarly, there is latitude for the application of state aids and investment measures to exports of industrial products, both of which are being regulated under the WTO agreements. Examples of import-related legalised 'backsliding' include antidumping, countervailing and safeguard provisions.

However, while the application of certain WTO rules – other than the MFN principle - may appear to be strengthened in practice, there is no *a priori* reason to expect this. For example, GATT Article XXIV requirements for customs unions and FTAs shows no obligation to ensure that weak implementation of certain WTO provisions are better tackled under a regional agreement. Nor there is any obligation or recommendation that RTAs should be at the forefront of liberalization in those areas in which multilateral trade liberalization has failed so far to advance more rapidly. Yet, in some instances, a number of RTAs appear to fulfil (albeit sometimes partially) these requirements of being 'WTO plus'.

This does not mean RTAs are not *stumbling blocs* for the multilateral trading system. Under RTAs, the MFN principle is weakened, although it has been observed that in some instance the arrangements seem to stimulate investment and economic growth, pulling in even higher trade from third countries than prior to the agreement (Crawford and Laird, 2000). On the other hand, some arrangements, also intended to foster trade between partners, for example mutual recognition agreements (MRAs) on standards, for example, may operate to reinforce discrimination against third countries.

The WTO secretariat has conducted a number of studies aimed at assessing the extent to which regional trading arrangements have systemic implications on the multilateral trading rules. One such study (WT/REG/W/26) made an inventory of non-tariff provisions included in RTAs, in particular on quantitative restrictions, contingency instruments, rules on subsidies, technical barriers to trade, and standards. A previous study (WT/REG/W/8) looked in more detail at the existence and the actual wording of TBT provisions in a number of RTAs. However, both studies were descriptive and with few exceptions, did not attempt to gauge whether these provisions are 'WTO plus', mere duplication, or less ambitious than existing WTO rules.

To look more closely at the impact of regional trading arrangements on the functioning of the multilateral trading system, the following section will look at specific sectoral arrangements under particular RTAs that may be more or less favourable to WTO objectives and rules and whether the RTA provisions can act as policy-stabilizing mechanisms at multilateral level. The discussion will be centred on a number of specific RTAs, whose provisions make them relevant for the purpose of this analysis.

3. DEEP REGIONAL INTEGRATION AND MULTILATERAL TRADE RULES:

SPECIFIC TRADE INSTRUMENTS

In recent years, both multilateralism and regionalism evolved to steps towards integration that go beyond tariffs or non-tariff border measures. Deep integration, defined as 'beyond the border measures' (Lawrence, 1996; Mikesell, 1963), is becoming an essential feature of both globalisation and regionalisation, and has tempered our understanding of regionalism. Regionalism has moved far beyond pure trade/tariff or market integration in the form of free trade areas or customs unions. Integration has now become much more deeper, much more multifaceted and multi-sectoral, encompassing a wide range of economic and other political objectives (Bora and Findlay, 1996; Whalley, 1996). New RTAs place considerable emphasis on liberalisation of services, investments and labour markets, government procurement, strengthening of technological and scientific co-operation, environment, common competition policies or monetary and financial integration. These are among the distinguishing components of NAFTA, FTAA, APEC EU and its partnership

agreements, and several agreements among developing countries. Yet, whether the formation of an ambitious RTA covering all these issues will reduce the chances of trade policy backsliding at multilateral level is still unclear. Both the multilateral trading rules and regional agreements still contain a number of loopholes that may lead to the re-emergence of protectionist actions against RTA partners or third countries.

Apart from a number of obvious trade policy instruments that have been used for protectionist purposes both at multilateral and regional level (such as antidumping, safeguard measures, countervailing duties, technical barriers to trade, customs procedures and rules of origin), the subsequent discussion will also cover a number of trade-related issues such as investment, competition policy and labour mobility. The reason for including these issues in a discussion about regionalism and the potential for protectionist backsliding at multilateral level is that protectionism may occur not only through trade policy backsliding *per se* but also by enacting trade-related policies that restrict the movement of factors of production (capital and labour) or allowing private business anti-competitive practices that may impair the benefits expected from trade liberalization.

Lastly, dispute settlement procedures also deserve a special attention. For both traditional trade policy and trade-related policy instruments, policy backsliding can be avoided or deterred when effective dispute settlement mechanisms are in place either at multilateral or regional level.

The subsequent sections look at the experience of various RTAs with deeper integration measures with a view to determining the extent to which such RTAs have an influence on multilateral trade disciplines and whether these influences are positive or negative.

3.1. Antidumping

The elimination of antidumping measures in RTAs is an exception rather than a rule.[2] So far, only three North-North RTAs (EU, EEA and ANZCERTA) and two North-South

2 For an interpretation of GATT Article XXIV's requirement that RTAs eliminate 'other restrictive regulations of commerce', see for instance Mavroidis (1997). The crucial question is what regulations of commerce are actually deemed to be restrictive. However, it is argued that antidumping and countervailing duties are simply defensive instruments aimed to reduce the negative impact of other restrictive policies such as dumping or subsidies.

regional agreements (Canada-Chile and Canada-Costa Rica FTA) have eliminated antidumping among participants. In the case of MERCOSUR, the parties have discussed the idea of antidumping but economic difficulties have confronted the advancement of the agreement.

In the case of developing countries, several South-South RTAs have explicitly provided for the applicability of antidumping on trade among members. In the case of CARICOM, for instance, WTO rules have been explicitly included in the recent protocol signed in March 2000, which amends the original CARICOM treaty on matters related to competition policy, consumer protection, dumping and subsidies.[3]

Most regional agreements allow the use of antidumping measures among their members according to WTO rules. Antidumping provisions are preserved and used more often in North-South RTAs. In NAFTA for instance, antidumping and countervailing duties are still applicable, and have been used on mutual trade.

Table 1. Antidumping actions among certain RTA members

Regional agreement	**Countries**		**Number of antidumping actions**	
	Initiating	**Against**	**07.97-07.98 RTA member/Total**	**07.98- 07.99 RTA member/Total**
EU Agreements	EU	EU Associate countries	10/44	9/41
	The Czech Republic	EU countries	-	2/2
	Poland	Germany	-	½
Mercosur	Argentina	Brazil	3/8	5/15
NAFTA	US	Mexico		2/43
	Mexico	US	1/8	6/12
	US	Canada	2/28	-
	Canada	US	1/10	-

Source: WTO.

However, one particular NAFTA provision appears to provide for the exemption of Canada and Mexico from antidumping measures, countervailing duties or even safeguard measures by requiring that any NAFTA measure *specifically* name other

3 See for instance Article 30 of Protocol VIII amending the treaty establishing the Caribbean Community.

NAFTA parties before it applies to them (Kerr, 2001:1174). In other words, unless explicitly mentioned, both Canada and Mexico are by default excluded from such trade measures. (The specificity of antidumping measures – relating to individual countries or even firms - is quite different from safeguards that are general in nature).

The Europe Agreements also maintain both antidumping and safeguard measures as policy options between partners. Furthermore, other than in the cases where antidumping is specifically precluded, there is little evidence that RTAs contribute towards the elimination of antidumping cases among RTA members (Hoekman, 1998). In many cases where antidumping actions between RTA members are left in place, antidumping measures against RTA members account for a large share of the total antidumping measures adopted (Table 1).

3.2. Subsidies and countervailing duties

Several RTAs have gone beyond WTO disciplines in the area of subsidies. In both EU and the EEA, state-aids affecting trade flows are prohibited between members, although general available subsidies are permitted in principle. A similar approach has also been adopted by CEFTA, where all subsidies affecting trade flows have been eliminated in internal trade. Nevertheless, in the case of both the EEA and CEFTA, subsidies can be used according to WTO rules for agricultural products. ANZCERTA also includes disciplines on subsidies (Article 11) that are stronger than those contained in the WTO. All export subsidies were eliminated in internal trade by 1987 (WTO 2002c:5). Regarding domestic support, following the first five-year General Review of ANZCERTA in 1988, the two participants signed an Agreed Minute on Industry Assistance under which they agreed not to pay (from July 1990) production bounties or similar measures on goods exported to the other member and undertook to attempt to avoid the adoption of industry-specific measures (bounties, subsidies and other financial support) that have adverse effects on competition within the FTA.

Similarly to ANZCERTA, the Canada-Chile FTA eliminates the possibility of using export subsidies in the agricultural sector. Article C-14 of the Agreement stipulates that no member is allowed to maintain export subsidies in internal trade after January 1, 2003. This is also true for the Canada-Costa Rica FTA where export subsidies for agricultural goods have been eliminated since the entry into force of the agreement.

3.3. Safeguard measures

One rationale among developing countries in particular in entering into mixed agreements with their main developed trading partners is to open up these markets for sensitive products by removing tariff peaks or non-tariff barriers. The value of this improved market access is nevertheless reduced by other measures that remain in place among RTA members, especially safeguard measures.

The rules of the World Trade Organization recognize that sometimes imports, whether fairly or unfairly traded, can cause such harm to domestic industries that temporary restraints are warranted. And these rules include safeguard provisions for industries that have had substantial injury from imports. Some countries, for example Japan, Korea, India, the United States, European Union, Brazil have repeatedly used safeguards in recent years.

RTAs have dealt with safeguards in a variety of ways. Some RTAs apply the WTO or less stringent rules (CEFTA for instance), others have strengthened their applications (NAFTA, the EU-|Mexico FTA)[4], while few RTAs have abolished safeguards altogether on trade between members. Similarly to the EU on its internal trade, other agreements such as ANZCERTA, the agreement between New Zealand and Singapore on a Closer Economic Partnership (CEP), and MERCOSUR have eliminated safeguard measures.

There is some disagreement as to whether under the WTO rules RTAs should be allowed to apply safeguards, subject to certain conditions, only on non-members. Article 2, paragraph 2, of the Agreement on Safeguards states that safeguards should be applied to imports irrespective of their source. However, a footnote to paragraph 1 of the same article stipulates that 'nothing in this Agreement prejudges the interpretation of the relationship between Article XIX and paragraph 8 of Article XXIV of GATT 1994'. This issue arose in the *Argentina Footwear* case.[5] The crucial issue raised was exactly the relationship between Article XXIV, on one hand, and Article XIX of GATT and

4 Although the general application of safeguards is strengthened under NAFTA, the agreement provides for special safeguards on textile and clothing products.

5 Argentina – Safeguards Measures on Imports of Footwear, Report of the Panel (WT/DS121/R, 25/06/1999) and Report of the Appelate Body (WT/DS121/AB/R, 14/12/1999).

Article 2.2 of the Agreement on Safeguards, on the other.[6] Although the safeguards measures applied by Argentina on non-members only were found to violate the WTO rules, the Appellate Body indicated that no ruling was made on 'whether, as a general principle, a member of a customs union can exclude other members of that customs union from the application of a safeguard measure'.

A recent case involving discriminatory safeguards is the recent case of US safeguards on steel imports. The US announced that it decided to exclude its RTA partners (Canada, Mexico, Israel and Jordan) [7] and certain developing countries[8] from the steel safeguard measures.[9] Other regional arrangements do not exclude partners from global safeguard measures. Under the EEA for instance, despite the high level of integration and unlike the US under CUSFTA, the EU did not exclude the EFTA States from the safeguard measures intended to countervail the potential surge in imports as a result of US trade actions.[10]

Under the Canada-Chile Free Trade Agreement (CCFTA) bilateral imports are exempted from safeguard measures unless these imports contribute importantly to the serious injury of the domestic industry. The CCFTA establishes that when an exemption is not granted, the "...Party taking action... shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects..."(Art. F-02.6).[11]

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6 For a comprehensive discussion of this case, as well as a broader analysis of safeguards and regionalism, see Mathis (2002).

7 The exclusion of Canada is in accordance with Article 1102 of the CUSFTA, which provides for mutual exclusion from global safeguard actions under GATT Article XIX unless imports from the other Party were "substantial" and "contributing importantly" to the serious injury or threat thereof caused by increased imports. The CUSFTA standards in respect of emergency safeguard actions were essentially carried over into NAFTA.

8 In accordance with the Agreement on Safeguards, developing countries accounting for less than 3% of the US imports were also excluded from the safeguard measures.

9 This exclusion of RTA partners from the applicability of US steel safeguard measures has been challenged by Japan as a violation of the MFN principle (Article I of the GATT 1994 and Article 2.2 of the WTO Agreement on Safeguards) and by Korea as a violation of Article 2,3,4,5 of the WTO Agreement on Safeguards.

10 EFTA states protested against their inclusion under the EU measures and argued that the exclusion of products originating in the EEA states is permitted under the WTO, provided that such imports are also excluded from the injury determination, and provided such non-application is necessary under the free trade agreement. However, under the EEA, safeguards are permitted under Articles 112-114, which state that safeguard measures can be applied between EEA partners 'if serious economic, societal or environmental difficulties of a sectoral or regional nature liable to persist are arising'.

11 This provision was used by Chile on imports of four agricultural products (wheat, wheat flour, sugar and edible oils). However, Canada was excluded from the extended measure for sugar and vegetable oils, but not for

3.4. Technical barriers to trade (TBTs) and standards

The WTO Agreement on Technical Barriers encourages members to harmonise their technical regulations and use international standards in their trade. However, these provisions are watered down by several escape clauses that can be used in a discretionary way. One way in which several RTAs, both North-North and South-South types, went beyond the WTO rules was by providing for harmonization of standards and mutual recognition of national standards among RTA members. This is the case of the EU, EEA, and EFTA. One important element in the reduction of the negative impact of TBTs on trade flows consists of mutual recognition of conformity assessment. Such an agreement is sometimes concluded even without the framework of an RTA, as in the case of the agreement between the US and EU.

In other cases, even advanced RTAs maintain technical barriers and cumbersome standards that may act as a barrier to intra-regional trade flows, despite enhanced mechanisms for cooperation at regional level. Kerr (1997) brings detailed evidence that, in the case of NAFTA, regional integration is not necessarily a more efficient strategy to eliminate trade-distorting TBTs and health, sanitary and phytosanitary standards on agricultural products.

3.5. Trade facilitation

RTAs may provide for mutual recognition of formalities carried out by the competent authorities of the other parties. Several African RTAs have been instrumental in introducing new trade facilitation measures among members. For instance, ECOWAS introduced harmonised customs documents, a region-wide vehicle insurance scheme.[12] Similarly, SADC introduced several customs and trade facilitation initiatives at regional level such as the issuance of harmonised SADC customs documents. In addition, SADC members have agreed to eliminate cumbersome import and export licensing and permits, unnecessary import and export quotas, import bans and prohibitions. Efforts are being made to eliminate visa requirements and other custom-related trade barriers.[13]

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wheat or wheat flour. The safeguard for wheat and wheat flour was subsequently lifted following protests by Canada (based on information available at www.dfait-maeci.gc.ca).

12 Based on information available at www.ecowas.int.

13 Based on information available at http://www.sadcreview.com/.

The EFTA agreement provides for mutual recognition of inspections carried out and of documents certifying compliance with the requirements of the import country or equivalent requirements of the export country. ASEAN countries have concluded an agreement for the recognition of commercial vehicle inspection certificates for goods vehicles used for transit transport. MERCOSUR has established a series of agreements ensuring co-operation between customs authorities, including the 1993 Recife agreement for co-ordinating border controls, which establishes technical and operational measures to regulate the functioning of integrated border controls.[14]

3.6. Trade-related investment measures

The adoption of the WTO Agreement on Trade-Related Investment Measures brought several new disciplines in the multilateral trading system. In general, the new WTO rules on trade-related investment measures had been already implemented in a number of North-North RTAs. For instance, the provisions of the NAFTA concerning performance requirements apply to both investments of investors from NAFTA members and investors from third countries. However, even in the case of North-North RTAs, several exceptions to the WTO disciplines were still permitted. [15]

The TRIMs Agreement had a greater impact on developing countries, which for long maintained various forms of regulatory investment policies aimed (with more or less success) at fostering industrialization (Bora, Lloyd, and Pangestu, 2000). Such measures were particularly important in the automotive sector. Despite these new multilateral constraints on the policy options available for developing countries to regulate foreign investment, several regional agreements aim at fostering co-operation between members by establishing a special legal regime for the formation of a regional form of business enterprise.

For example, the Uniform Code on Andean Multinational Enterprises established by Decision 292 of the Commission of the Cartagena Agreement provides for the formation

14 Controls through a single, shared physical infrastructure in which the neighbouring countries' customs services operate side-by-side.

15 For instance, as the Canada-Auto Pact case has demonstrated, despite the prohibition of mandatory performance requirement, NAFTA did not exclude the maintenance of voluntary performance requirement associated with duty waivers. Such non-mandatory provisions were de facto deemed to be discriminatory.

of Andean Multinational Enterprises.[16] One of the conditions for the creation of such an enterprise is that capital contributions by national investors of two or more member countries must make up more than 60 per cent of the capital of the enterprise. Among the privileges which the Decision requires member countries to grant to such enterprises are national treatment with respect to government procurement, export incentives and taxation, the right to participate in economic sectors reserved for national companies, the right to open branches in any member country, and the right of free transfer of funds related to investments. Likewise, the Basic Agreement on the ASEAN Industrial Cooperation Scheme (AICO Scheme) was concluded by members of ASEAN in 1996 to promote joint manufacturing industrial activities between ASEAN-based companies.

Several African regional initiatives also contain provisions aimed at promoting intra-regional investment. The Treaty Establishing the African Economic Community (1991) and the Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA) (1993) include among their objectives the removal of obstacles to the free movement of capital and the right of residence and establishment. Finally, the Revised Treaty of the Economic Community of West African States (ECOWAS) (1993) includes among its objectives the establishment of a common market involving, inter alia, the removal of obstacles to the free movement of persons, goods, services and capital and obstacles to the right of residence and establishment (Article 3(2)). The Treaty Establishing the Economic and Monetary Union of West Africa (1996) provides for freedom to provide services in the territory of another member State and proscribes restrictions on movement of capital.

The lack of detailed information on the implementation of these South-South initiatives makes it difficult to estimate the actual impact of such ambitious provisions on investment flows among RTA members until reliable data become available.

3.7. Trade and competition policy

In contrast to dumping and subsidies, which are covered by multilateral WTO rules, no attempt has been made – since the abandonment of chapter V of the Havana Charter on restrictive business practices – to introduce general commitments on competition policy

16 This initiative resembles the EU initiative on the European Company Statute, which allows companies to be incorporated at European, as opposed to national, level.

at multilateral level, although there are competition policy aspects of the TRIPS Agreement and the GATS in particular.

However, several RTAs have gone beyond the WTO rules in promoting more far-reaching rules on trade and competition policy. Prime examples are the European Union and ANZCERTA who adopted two different integration approaches. In the European Union, the European Commission is the supranational authority that ensures that competition policy is enforced throughout the Union. The EEA also extended the EU competition policy to EFTA countries, with the European Commission and the European Surveillance Authority sharing the enforcement responsibilities on competition-related issues. As the EU Treaties, the EEA prohibits price fixing, abuse of dominant position, or any other practices that may affect trade between parties.[17]

Under ANZCERTA each country's competition authority and courts have a unique model of "overlapping jurisdiction" – whereby each competition authority may control the misuse of market power in the trans-Tasman market. The agreement provides for extensive investigatory assistance, the exchange of information (subject to rules of confidentiality) and co-ordinated enforcement. The experience of ANZCERTA is quite illustrative of the way an RTA can avoid the use or misuse of antidumping practices, a common 'backsliding' problem at multilateral level. Since the adoption of ANZCERTA, not a single case of trans-Tasman anti-competitive practices has been investigated by the competition authorities vested with their new regional enforcing powers. This stands in sharp contrast with the active use of antidumping investigations between Australia and New Zealand prior to ANZCERTA. The EEA and ANZCERTA have in common the elimination of antidumping rules and their replacement with regional rules on competition policy. The EEA is the only RTA concluded by the EU where antidumping and countervailing duties are eliminated and replaced by competition rules.

Not only North-North RTAs but also several North-South RTAs agreements are advancing the agenda on trade and competition policy. Two RTAs concluded by

17 The EEA agreement was preceded by a series of bilateral FTAs between the EC and EFTA countries. These 'first generation' agreements contained provisions on competition policy that relied on the Joint Committee for dealing on anti-competitive practices. These provisions were subsequently reproduced in many other agreements between the EU and other countries in the region, and between various candidate countries.

Canada (Canada-Chile and Canada-Costa Rica FTA) provide for a concrete framework for cooperation and consultation and enhancement of the effectiveness of enforcement activities by competition authorities. Although less ambitious than ANZCERTA and EEA, the Europe Agreements between the EU and candidate countries also contain provisions regarding anti-competitive practices. However, unlike ANZCERTA, the Europe Agreements state that candidate countries should harmonize their competition laws with those of the EU, and that each national competition authority will settle anti-competitive cases in accordance with national rules. For most of these countries, the Europe Agreements were a major incentive to adopt for the first time domestic competition laws and create appropriate institutional infrastructures. The FTA between Japan and Singapore, which calls for coordinated enforcement of competition policies, provides a similar example.

Among South-South RTAs, only a few initiatives have a regional institutional framework to deal with competition policies. This is to a large extent due to the fact that, in many developing countries, competition laws and authorities are non-existent or are underdeveloped. The Andean Community provides one notable exception among South-South RTAs. Similar to the EU approach, the Andean Community institutions also have supranational powers, as the Board of the Cartegena Agreement is assigned the responsibility to investigate alleged anti-competitive infringements, and its subsequent orders have direct legal effect in member countries. Competition law and policy is starting to be addressed more extensively in African sub-regional agreements. The Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA), for instance, prohibits in Article 55 “any agreement between undertakings or concerted practices which has as its objective or effect the prevention, restriction or distortion of competition within the Common Market”. Furthermore, COMESA contemplates formulating and implementing a regional competition policy which will harmonise existing national competition policies, or introduce them where they were absent, in the context of a transition to a full customs union (Musonda (2000). MERCOSUR also aims to introduce a regional approach to competition policy.

3.8. Trade in services and labour mobility

Several RTAs involving both developed and developing countries contain provisions not only on trade in goods but also on trade in services.[18] NAFTA, MERCOSUR, SADC, CARICOM, EU-Mexico FTA, all contain rules, disciplines and liberalization commitments on trade in services at regional level. Other regional integration arrangements, such as SAARC, have made little progress to include services trade on their agenda.[19]

In principle, WTO Members of a regional agreement in services should benefit at least from MFN treatment plus whatever is agreed regionally and notified as an MFN exemption. However, the extent to which the access offered by individual parties goes beyond their GATS commitments would need a case-by-case analysis. The GATS and most regional initiatives have taken a positive list and sectoral approach, nominating areas where commitments are made, while NAFTA has taken a negative list approach under which all areas are covered unless explicitly excluded. While proponents argue that the negative list approach encourages participants to take on greater commitments, there is no hard evidence of this. In practice, in the WTO and regional agreements, the initial coverage of services was largely confined to existing practice, and it will take time to assess which approach leads to a faster widening and deepening of commitments.

A key issue affecting trade across many services sectors is labour mobility. The experience of South-South RTAs with labour mobility is mixed. Some RTAs, like MERCOSUR for instance, follow closely the GATS model. Other RTAs have more ambitious goals. COMESA, for example, has "full labour mobility" as the agreed objective of the agreement (see Article 164 of the COMESA Treaty), although progress towards that objective appears to have been limited to date. The ultimate aim of SADC is to promote the free movement of goods and services within the region. However, there are currently no provisions for free movement of labour or service suppliers. ECOWAS' Market Integration Programme has achieved significant progress, among others, in the areas of free movement of persons, abolition of visas and entry permits, and introduction of harmonised immigration and emigration forms.

18 See the WTO website for a list of notified RTAs that contain provisions on services liberalization.

Since 1989 CARICOM agreed to eliminate work permits for CARICOM nationals. Labour mobility was further enhanced after the adoption of Protocol II in 1998. The agreement provides for free movement of university graduates, other professionals and skilled persons, and selected occupations as well as freedom of travel and exercise of a profession (i.e., elimination of passport requirements, facilitation of entry at immigration points, elimination of work permit requirements for CARICOM nationals). Furthermore, specific provisions require CARICOM member to ensure mutual recognition of diplomas, certificates and qualifications.

A similar mixed experience is found among North-North RTAs. The EU and EEA provide for full labour mobility. On the other hand, ANZCERTA does not cover general labour mobility but this is not needed, as, under the "Trans-Tasman Travel Arrangement", Australians and New Zealanders are free to live and work in each other's countries for an indefinite period. Like other North-South arrangements, NAFTA provides for a series of labour movement facilities. Chapter 16 of NAFTA facilitates movement of business persons. Access is basically limited to four higher skills categories: traders and investors, intra-company transferees, business visitors and professionals. The Canada-Chile Free Trade Agreement adopts a similar approach. While some agreements (e.g., EU) allow for general mobility of people and confer immigration rights, the majority of agreements provide only special access or facilitation of existing access within existing immigration arrangements. In most agreements, labour mobility does not over-ride general migration legislation and parties retain broad discretion to grant, refuse and administer residence permits and visas.

Such variety of labour movement provisions may be explained by a number of factors: economic disparity, geographical proximity and domestic labour market conditions. In those RTAs where labour movements are strong, market access for developing countries' workers are more difficult to the extent that developed countries maintain overall ceilings on access of foreign labour and immigration that are reserved primarily for nationals from member States of the RTA. Common rules and procedures for immigration within a large RTA may further tend to reduce access by developing countries' labour, if visa and immigration controls are extended to a larger number of

19 For a recent survey of regional liberalization of trade in services in East Asia and the Western Hemisphere, see, for instance, Nikomborirak and Stephenson (2001).

third countries and applied also by hitherto more liberal member States. On the other hand, tightening the application of labour standards within large RTAs may reduce international competitiveness of a member country.

3.9. Dispute settlements

RTAs have adopted two broad strategies to address bilateral trade disputes. One strategy is a legalistic, formal dispute settlement process, either in the form of judicial body (the European Court of Justice in the case of the EU) or through arbitration panels as in the case of NAFTA. NAFTA includes at least five distinct mechanisms for different issue areas: general disputes (Chapter 20), unfair trade laws (Chapter 19), investment (Chapter 11), and the side accords on labour and the environment. However, many RTAs do not have a legalistic dispute settlement mechanism. Instead, they rely on a more diplomatic mechanism. Trade disputes are referred to a joint body (often called the Joint Committee) to solve trade disputes between parties.

It is difficult to say which model is more appropriate to diffuse trade disputes. Information on disputes referred to joint committees is not readily available and therefore their efficiency or deterrent properties cannot be assessed. On the other hand, some RTAs that rely on joint committees rather than on formal legalistic (such as the Europe Agreements for instance) have so far avoided trade disputes at multilateral level. Unlike the Europe Agreements, other RTAs have not excluded the potential for acute trade tensions among their members, neither at multilateral nor at regional level. Probably the most prominent example is NAFTA where a number of disputes, like recent cases on sugar, trucking and US extra-territorial rules, could not be papered over by NAFTA members. Under NAFTA, Mexican trucks were supposed to be allowed to travel throughout the United States by Jan. 1, 2000, but union and safety groups have kept that from happening. Both countries have been arguing about a series of sweetener tariffs since Mexico imposed antidumping duties on corn syrup imports from the United States in 1997. The antidumping duties were not lifted until two WTO panels found Mexico's antidumping import duties on high fructose corn syrup from the United States in breach of multilateral rules. The tariffs came in retaliation for the United States' limit on the amount of tariff-free sugar imports from Mexico.

Another tension between NAFTA partners was induced by the Helms-Burton Act that, under the US extra-territorial law doctrine, threatens with sanctions such as possible refusal of visas and the exclusion of non-US nationals from US territory if they breach the unilateral trade restrictions imposed by the US on Cuba. Several WTO members argued that the Helms-Burton act infringes WTO rules. Similarly, both Canada and Mexico argue that the Act goes against several NAFTA provisions by threatening to deny NAFTA businessmen entry to the United States and by breaking investor-protection guarantees.

3.10. Rules of origin (ROOs)

The operation of rules of origin is one of the areas of greatest concern in RTAs, having considerable scope for trade diversion. Even today, the WTO has no provisions on the use of either preferential or non-preferential ROOs, and discussions continue to be blocked in this area. Accordingly, WTO Members are free to use a variety of methods for the determination of origin.[20] Some South-South RTAs, as in the case of COMESA, have adopted more liberal and simple rules of origin than North-North RTAs[21]. In many RTAs, rules of origin have become captive to special interest lobbies and are used as protectionist devices. Stringent rules of origin can have a similar effect on trade as high tariffs, if the effect is precluding producer to use the most efficient source for their inputs. For example, the rules of origin for apparel under NAFTA essentially forbid the use of imported fabrics, yarns and even some fibres in the manufacture of qualifying apparel.

The increased importance of rules of origin has determined certain producers to make use of specialized firms that give tailor-made advice on the right mix of inputs that qualify final products for the preferential regime.[22]

One notable exception to this tendency of complex rules of origin is provided by those rules of origin that provide for cumulation of origin between RTA partners and third countries. Some GSP schemes allow for cumulation of origin between beneficiary

20 See WTO (2002a) for a comprehensive survey of ROOs contained in more than 90 RTAs notified to the WTO.

21 For a description of the COMESA rules of origin, see in particular Rule 2 of Annex 1 - Protocol on the Rules of Origin for Products to be Traded between the Member States of the Common Market for Eastern and Southern Africa.

22 This is particularly true in the case of NAFTA were several companies offer online specialised services on how to fulfil the NAFTA ROOs requirements to interested producers.

countries, or between LDCs and non-LDCs that are part of regional integration initiatives. A large number of EU-generated RTAs have become part of the pan-European system of cumulation of origin, which essentially creates a wide free trade area with harmonized rules of origin.

ROOs are therefore an area where RTAs are again outpacing the WTO system, but it is difficult to argue that, as they are used, they are necessarily an advance on the system. Indeed, the diversity of practices suggests an urgent need for a multilateral agreement in this area.

4. RTAS AS 'BUILDING BLOCKS': NORTH-NORTH, SOUTH-SOUTH, OR MIXED?

The evidence surveyed above suggests that the approach taken by RTAs to trade rules is quite varied. Some RTAs have made clear steps towards trade liberalization beyond existing WTO rules.

The WTO examination process sheds some insights into the operation of a number of agreements, principally where a developed country is involved, that is, North-North, North-South and North-East (agreement between developed countries and economies in transition). This is because agreement between developing countries under the Enabling Clause are not subject to an examination process. This process and other published studies show that the application of deep integration provisions are most advanced in agreements involving developed countries, which are pushing their partners in these areas, although sometimes with longer transition periods (asymmetry). Such schemes are therefore the most important driving forces pushing forward the agenda at the multilateral level.

In contrast, as many authors have suggested, most RTAs among developing countries are still in the realm of shallow integration (understood as removal or reduction of border measures), with little progress towards the deeper integration even where this is envisaged in the agreements, e.g. in MERCOSUR. Even when the latter becomes a priority, often times, incomplete shallow integration limits the prospect of deeper integration. Consequently, it has been argued that the developing countries have not reaped the full potential advantages from integration in terms of export diversification,

increased international competitiveness, more efficient allocation of resources, or significant stimulation of production and investment in the region (Yeats, 1998; Foroutan, 1993; Nogues and Quintanilla, 1993). On the one hand, the lesser (more cautious) degree of implementation among developing countries is related to their economic situation, with sometimes large fluctuations in trade flows resulting from exchange rate movements and relative macroeconomic instability. On the other hand, their stage of development suggest the need for some flexibility or policy space in their trade and sectoral policies as adjustments to greater openness – whether in a regional context or more generally – often have initial negative consequences.

It has been suggested that integration would be fostered by greater use of common currencies (Rose, 2002). This could certainly reduce transactions costs for trade, irrespective of the formal nature of the trade partnership. However, substantial macro-economic stability and convergence vis-à-vis major trading partners are certainly priors to any adoption of a common currency. The targeting approach of the EU as a basis for the adoption of the euro is an example. The Asian crisis is also an example where, when economic fundamentals start to vary widely, locking into a dollar anchor – which is analogous although not identical to a common currency for trade – can lead to disastrous consequences.

Despite institutional shortcomings and other economic difficulties, the importance of economic integration among developing countries as a policy option for fostering development and overcoming the constraints of small domestic markets has been already recognised (Bhagwati and Panagariya, 1996; Schiff, 1996). Integration into the regional economy may also be seen as a 'stepping stone' to future integration into the world economy. However, a key question for developing and transition economies is the model or approach to follow in pursuing this gradualist approach to greater integration in the global economy.

One approach for developing and transition economies is to pursue integration among neighbours at equivalent levels of economic development, progressively undertaking liberalisation as their economies develop and deepening the integration process beyond the frontiers. This may bee seen as an intermediate step for developing countries

towards the full implementation of WTO commitments, balancing the lower benefits of fuller integration against the adjustment process.

Another option for developing and transition countries is to form or join "mixed' RTAs in partnership with a developed country, perhaps with different transition periods, but with both sides assuming basically similar obligations for the longer term. In principle, mixed groupings with major trading partners should provide improved stability of access to product and factor markets for developing countries than those available from sub-regional groupings with neighbouring developing countries as well as enhanced investment and growth (Whalley, 1996). The developed country partner may also provide finance or other support for its partners in such grouping, as in the case of the Europe and Euro-Med Agreements. Apart from enhanced market opportunities and investment flows, an agreement with a developed country is more likely to lead to deeper integration and a stronger legal and institutional framework for trade, benefiting national producers and traders as well as partners (World Bank, 2000). Under NAFTA, Mexico was able to expand both its trade and investment to the US and Canada in the first year of its membership in NAFTA, but locking in domestic reforms was a prime motivation from the Mexican side (GATT, 1993). This was also the case in the EU-Turkey customs union (Hartler and Laird, 1999). Cyprus and Malta also experienced the rapid expansion of their exports to the EU in the first years of their RTAs.

Apart from the legal analysis of actual RTA provisions and their consistency with WTO rules, another way of analysing the effects of South-South RTAs is to gauge their actual impact on trade flows among members, and between members and third countries: in the final analysis the multilateral system is not an end in itself but the means of promoting economic progress among Members (see Preamble to the WTO Agreement). A vast literature discusses the trade and welfare effects in great theoretical and empirical detail. One typical yardstick applied to any RTA is whether the overall effect is *trade creation* or *trade diversion* à la Viner. From this perspective, a large number of South-South RTAs do not seem to be more trade diverting than North-North RTAs. Cernat (2001), for instance, used a gravity model to estimate the impact of South-South RTAs on both intra-and extra-trade flows. Unlike widespread opinions and standard theoretical predictions, the empirical evidence suggests that several South-South RTAs (such as COMESA, ASEAN, CARICOM) are not trade diverting but trade creating, both with

regard to intra- and extra-RTA trade.[23] For instance, the empirical estimates suggest that two COMESA members traded in 1998 2.6 times as much as otherwise-similar countries. At the same time, trade between COMESA members and third countries increased by 25 percent as a result of COMESA formation (Cernat, 2001). What these findings suggest is that even though some of these South-South RTAs faced implementation problems and delays in liberalizing intra-regional trade, the formation of these RTAs succeeded in removing some 'invisible' trade barriers between members despite the absence of major tariff preferences. This may well be from the reduction of non-negligible transport costs, border formalities, technical or health standards and other measures that are captured by what is referred to as "trade facilitation" measures may also impose significant costs.[24] All these 'invisible' cost-increasing elements may all be reduced through the formation of a South-South RTA. Eliminating such trade barriers implies no welfare loss since there are no tariff revenues forgone (Baldwin, 1994).

Another form of "trade facilitation" effect of RTA formation in the case of African RTA is put forward by Glenday (1997). He argues that in theory RTAs can strengthen intra regional cooperation among African countries to promote intra-regional trade and to allow more efficient border controls through sharing of import documents, common control system should make circumvention less attractive (the Lafer concept of lower taxation increasing revenues). Such inter-governmental cooperation can also render corruption and red tape more difficult.

While these arguments assist in understanding the estimated results, two additional questions are raised by this explanation based on "invisible" trade costs. First, can RTAs be held accountable for this outcome? Second, do RTAs eliminate these trade barriers in a discriminatory manner, so as to explain the wedge between gross trade creation and diversion estimates? The answer to the first question can be found in the objectives of most South-South RTAs. Most of these trading arrangements involved regional cooperation in a number of areas with direct relevance for trade patterns: upgrading transport and communication, infra-structure, harmonization and

23 Similar results are reported by Frankel (1997) and Winters and Wang (1994) on ASEAN, Boisso and Ferrantino (1996) for CARICOM. Primo Braga, Safadi, and Yeats (1994) found positive trade creating effects for CACM.

24 Hoekman and Konan (1999) found compelling evidence of such "invisible" costs. Thus, according to them, only redundant testing and idiosyncratic standards alone imposed extra-costs from 5 per cent to 90 per cent of the value of traded goods.

simplification of custom procedures, trade facilitation measures for transit goods, etc. Such objectives and concrete initiatives have been carried out, more or less successfully by many of the South-South RTAs.

With regard to the second question, whether the elimination of such 'invisible' trade costs induces discrimination between RTA members and third countries is less straightforward. One can easily distinguish the complex set of regional initiatives aimed at fostering trade in discriminatory and non-discriminatory policies. Given the weak implementation record of most South-South RTAs, immediately after their formation tariff reductions on intra-RTA trade are far from universal. Yet, the RTA formation appears to reduce some of the non-tariff barriers on both intra-RTA trade and even on third country exports to the region.[25] One can imagine a number of other costs that affect differently intra- and extra-regional exports, whose removal will introduce an implicit differentiation in total trade costs. The overall effect will be a slightly larger reduction of trade barriers on intra-RTA trade (both tariff and non-tariff reduction) compared to non-members (only some 'invisible' non-tariff barriers reduced).

In sum, even though they are in most of the cases less ambitious in their achievements than North-North RTAs, several South-South RTAs could serve as 'building blocks' for more open trade in line with WTO objectives. Backsliding from multilateral commitments may still occur, but the existence of various forms of RTAs (North-North, South-South, or mixed) can act as regional stabilizers for trade policy formation and as a policy transfer mechanism from regional to multilateral level. Such regional policy transfer mechanism could advance the WTO agenda to include issues of specific concerns for developing countries. Such regional groupings could also contribute to a more effective participation of developing countries in multilateral negotiations through coordinated negotiation positions (as in the case of MERCOSUR on market access negotiations or SADC on services, for instance).

5. CONCLUSIONS

The objective of this paper was to address the questions as to whether RTAs contribute to the smooth functioning of the multilateral trading system, in particular to what extent

25 Hartler and Laird (1999) note that third parties benefited from the EU-Turkey customs union as the trade regime became more open and enforcement more predictable.

RTAs can prevent protectionist 'backslidings'. More specifically, the paper looked in detail at a number of trade policy instruments (antidumping, subsidies and countervailing duties, safeguard measures, technical barriers to trade and standards, customs procedures and rules of origin) and trade-related policies (trade-related investment measures, competition policy, movement of labour), as well as dispute settlement mechanisms in the context of regional agreements. We also looked at different models or configurations of RTAs to try to see how these complement the multilateral trade disciplines and avoid the use of 'soft' WTO rules for protectionist purposes.

As the evidence presented in this paper suggests, although several well-advanced North-North RTAs have put in place various policy-stabilizing mechanisms, they are unevenly applied across RTAs and across trade issues. Therefore, the risk of certain trade policy backsliding among RTA members through the use of antidumping, countervailing measures and TBTs still remains, in particular where the degree of integration is low. Another notable aspect of advanced North-North RTAs is that when the policy-stabilizing mechanisms do not apply to non-RTA members the potential for trade-diverting backsliding actions against third partners is greatly increased.

Even more uneven stabilizing capabilities can be found in South-South RTAs. With few exceptions, South-South RTAs are 'shallower' than their North-North counterparts. Furthermore, for those 'deep' integration schemes among developing countries, the implementation status does not yet match the ambitious objectives set out in the preambles of their RTA agreements. This is largely related to economic and institutional factors that have led to a rather cautious approach to market opening, as well as to the potential adjustment costs. Another aspect that may explain the implementation gap of certain South-South RTAs is that, unlike North-North or North-South RTAs, regional schemes among developing countries do not need to fulfil the rather strict requirements imposed by GATT Article XXIV on the design and implementation of regional agreements. South-South RTAs are usually notified at the WTO under the Enabling Clause, which offers a great deal of flexibility and leaves greater room for implementation gaps to RTA members in terms of the scope and pace of regional integration. However, unlike North-North RTAs, less-advanced South-South RTAs do not make large-scale use of ‘post-modern’ trade distorting tools such as antidumping and

countervailing duties neither against RTA partners nor against third countries. Nor do they make much use of dispute settlement mechanisms to challenge other countries when they become a target of such measures.

Compared to South-South RTAs, mixed RTAs have been praised by some authors for their potential 'lock-in effects', issues of implementation capacity, asymmetry, reciprocity and traditional concerns about particularly sensitive product sectors render the negotiation of mixed agreements difficult. Furthermore, not all mixed RTAs aim at producing a more level-playing field than the multilateral trading system. 'Post-modern', hidden protectionist trade instruments such as antidumping practices are still present even in advanced North-South or East-West RTAs, like the Europe Agreements. They become even more acute when potential developing partner countries have a large production capacity for sensitive products such as staple foods, fruit and vegetable products, clothing or textiles that are protected by tariff peaks and escalation or other non-tariff barriers in the developed market.[26]

Overall, despite the lack of detailed evidence on the operation of many agreements, our examination of the provisions, a reading of the WTO examination process and a range of studies suggest that RTAs have anticipated the WTO in a number of areas and continue to do so, particularly where there are lacunae in the regulatory framework or weak WTO provisions. There are cases, however, when multilateral trade negotiations have influenced the shape of regional integration schemes, in particular with regard to those issues that were brought recently on the WTO agenda.[27] In recent years, changes have been most marked in behind-the-borders measures – deeper integration – and current discussions on investment and competition policy indicate that this process is ongoing.

While there is an argument that such deeper integration is beneficial in increasing the security and predictability of trading conditions, some developing countries in particular feel that pressures to extend WTO rules is a strain on their capacity to absorb and implement as well as limiting the flexibility they have to pursue their own

26 See UNCTAD (2000) and Cernat, Laird and Turrini (2002) for detailed analyses of the tariff peaks and escalation faced by developing countries. On the persistence of tariff peaks on sensitive products in RTAs, see WTO (2002b).

27 For instance, the negotiation of the certain Europe Agreements between the EU and Central and East-European countries were influenced by the progress achieved in the Uruguay Round of multilateral negotiations.

developmental policies. The relatively slow pace of South-South agreements reflects this concern as well as concerns about adjustment costs in much the same way as many view trade liberalisation in general.

The scope and pace of South-South RTAs has led some commentators to favour the "North-South" model, in which a developed country or group of countries act as the anchor for an agreement. Apart from the improved market opportunities (and perhaps other assistance), this model may also be seen as a way of forcing the pace and expanding the scope of RTAs and ensuring that what is agreed is fully implemented. Some developing countries have themselves seen this as an advantage in locking in their own reforms.

While RTAs represent a weakening of the MFN principle in practice there is not much evidence from quantitative studies of serious trade diversion and there are cases where third countries seem to benefit. One major exception to this seems to be the application of rules of origin where there are currently no WTO disciplines, a gap that needs to be remedied.

To some extent the new initiatives within RTAs reflect impatience with the slow process of multilateral negotiations. Countries and businesses that want to move faster are able to do so within a regional framework. The pressure is then on multilateral trading system to move in these areas to reduce the scope for discrimination, and by and large the system has proved its capacity for further, gradual extension. However, the way in which further elaboration of the multilateral trading system takes place is critical. It could provide developing and transition countries with important advantages for defending their interests *vis-à-vis* partners with stronger bargaining power. It could also increase the pressures on them to take on new commitments for which they are not yet ready.

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