

Environment and Regional Trade Agreements

Summary in English

Multilateral trade rules provide the best guarantee for securing substantive gains from trade liberalisation for all WTO members. Nevertheless, WTO rules also allow the possibility of regional integration and bilateral agreements for members who wish to liberalise at a quicker pace. In this sense, regional trade agreements (RTAs) should be seen as a complement rather than an alternative to multilateral agreements.

RTAs have allowed groups of countries to negotiate rules and commitments that go beyond what was possible at the time multilaterally. In turn, some of these rules have paved the way for agreement in the WTO. Services, intellectual property, environment, investment, and competition policies are all issues that were raised in regional negotiations and later developed into agreements or topics of discussion in the WTO. On the other hand, there are concerns that the proliferation of RTAs could create problems of coherence and consistency in trade relations, put developing countries at a disadvantage when negotiating RTAs, and generally divert negotiating resources and energy from multilateral negotiations. In order to limit the problems and maximise the benefits of regionalism, it is important to promote transparency in RTAs and to ensure the consistency of RTAs with WTO rules.

Environment in RTAs

Over the last few years, the number of RTAs has significantly increased. RTAs have become so widespread that practically all WTO members are now parties to one or more of them. In the near future, if RTAs reportedly planned or already under negotiation are concluded, the total number of RTAs in force might soon approach 400.

While the purpose of many RTAs is to reduce tariffs, an increasing number of agreements also deal with other trade-related issues, such as labour and environment. Today, RTAs negotiated by most OECD members include some type of environmental provision.

The scope and depth of environmental provisions in RTAs varies significantly. Among OECD members, Canada, the European Union, New Zealand, and the United States have included the most comprehensive environmental provisions in recent RTAs. The agreements by the United States are unique in that they put trade and environmental issues on an equal footing. Among non-OECD countries, Chile's efforts to include environmental provisions in its trade agreements are particularly noteworthy.

In spite of these developments, the number of RTAs including significant environmental provisions remains small, and there is still much scepticism, especially among developing countries, toward dealing with environment in the context of trade agreements.

Key environmental provisions in RTAs

So far, the most ambitious agreements, from an environmental point of view, include a comprehensive environmental chapter, or are accompanied by an environmental side agreement, or both. At the other extreme are those agreements which deal with environmental issues only in the form of exception clauses to general trade obligations under the agreements. Between these two poles is a variety of more or less detailed approaches to environment.

Some countries consider environmental issues before entering into an agreement, by carrying out a prior assessment of its potential environmental impacts. A number of RTAs include provisions on environment in the body of the agreement, in paragraphs dealing mainly with environmental co-operation, or in detailed chapters dealing with a broad range of environmental issues. Other RTAs have an environmental side agreement. Some RTAs have both: general environmental issues are dealt with in the body of the agreement, while specific aspects – mainly environmental co-operation – are spelled out in more detail in a side agreement. A few RTAs, which did not originally include environmental provisions, have later been complemented by an environmental agreement.

Environmental elements typically found in many RTAs are environmental co-operation mechanisms. These range from broad arrangements, to co-operation in one specific area of special interest to the Parties. The areas of co-operation in different RTAs vary significantly, and depend on a range of factors, *e.g.* on whether the trade partners have comparable levels of development or not (in which case, co-operation often focuses on capacity building), or whether they have common borders.

Environmental standards also figure in a range of agreements, in various forms. The obligation for Parties' to enforce their own environmental laws is included mainly in agreements involving the United States and Canada. These agreements generally also include provisions on procedural guarantees in environmental matters, as well as different types of enforcement and dispute settlement mechanisms. A few RTAs refer more generally to the Parties' commitment to maintain high levels of environmental protection. Others, such as those recently negotiated by New Zealand, include references to the inappropriateness of lowering environmental standards. Some agreements also strive for harmonisation, for example, the MERCOSUR Framework Agreement for Environment, where Parties undertake to co-operate on the harmonisation of environmental standards.

Most RTAs contain clauses reiterating the compatibility between Parties' trade obligations and their right to adopt or maintain environmental regulations and standards. Some also include a reference to the compatibility between the agreement and multilateral or regional environmental agreements.

Negotiating environmental provisions in RTAs

The reasons for including provisions on environment in RTAs vary. For some countries, one of the primary reasons for including environmental provisions in an RTA is to contribute to the overarching goal of sustainable development. Ensuring a level playing

field among parties in the agreement is another key driver. Another motivation is to enhance co-operation in environmental matters of shared interest. Finally, some countries consider that including environmental issues in trade agreements provides an opportunity to pursue environmental objectives in a more efficient and rapid way than, for example, through multilateral environmental agreements.

Trade and environment debates have traditionally seen developing country negotiators cautious about incorporating environmental considerations into multilateral trade agreements. Similar concerns apply to the integration of environmental considerations into RTAs. Among the concerns are that environmental considerations will result in trade barriers or that their implementation will constitute an excessive burden in terms of financial and human resources.

For many countries involved in the negotiation of environmental provisions in a trade agreement, the first hurdles to overcome are often internal problems, including, *inter alia*, lack of motivation or opposition from higher levels of governments, lack of capacity to negotiate on environmental issues, and insufficient coordination between trade and environment ministries.

Asymmetries in power also play a major role. The size and economic weight of the country wishing to include environmental considerations in the agreement will help to influence the outcome of the discussion. Negotiators from countries with significant market power may have the leverage to resist pressures, but small and medium-sized countries may find it more difficult. On the other hand, the willingness to take a flexible and innovative approach to the negotiations can help overcome such difficulties.

One major difficulty encountered by some developing countries was the need to negotiate environmental chapters in RTAs while their own national environmental management system was in its infancy. Other difficulties are linked to geographical distance, differences in language, the weight of environmental issues on the agendas of the different governments, the level of negotiators' expertise on environmental issues, and available resources to adequately implement commitments under the agreement. Environmental co-operation arrangements can help address some of these difficulties.

In spite of the obstacles to including environmental issues in trade agreements, and the difficulties encountered by some developing countries when negotiating them, a number of developing countries have accepted the inclusion of strong environmental commitments in trade agreements signed with developed countries. However, at present, few trade agreements between developing countries include a reference to the environment.

Some key factors facilitate the negotiation of environmental considerations in RTAs. These include a strong political will to ensure that environmental issues are adequately included in the agreement. Where this will is reflected in a strong political mandate, or even in law, negotiators have a solid backing that supports maintaining strong positions in a negotiation. It is also important that the environmental commitments in the agreement be balanced and realistic and take account of the economic and political realities in the countries which are Parties to the agreement.

Benefits of environmental provisions in RTAs

From an environmental point of view, there are a number of potential benefits from including environmental considerations in RTAs, such as promoting mutual support of trade and environment policies, strengthening enforcement of environmental laws and

raising the level of environmental standards, establishing or reinforcing environmental co-operation, and enhancing public participation in environmental matters.

But there are additional benefits. For some countries, the negotiation of an RTA which included environmental commitments, was a driver for reform, or for accelerating internal environmental policy processes (e.g. the codification of scattered environmental legislation). Other positive outcomes have been capacity building, better co-operation among trade and environment officials, and enhanced regional cohesion in environmental matters.

Public participation in environmental matters

Until recently, trade negotiations were generally held behind closed doors, with no involvement of the public, nor even of officials from other ministries. On the other hand, in matters dealing with environment, public involvement has been stronger, and more common. Today, governments are increasingly using public participation and consultation processes in the negotiation and implementation of RTAs.

Public consultation is, however, not a general pattern in the negotiation or implementation of RTAs. Some countries engaged in RTAs are not democratic regimes, and keep public involvement in policy-making to a minimum level. Even among those that have a stable democratic system, many are not used to effectively involving the public in policy-making. Some countries, on the other hand, have the capacity to organise consultations that involve the public, but consider that this is an obstacle to smooth negotiation, or that it may delay the conclusion of a trade deal.

The increasing involvement of the public in the negotiation and implementation of RTAs is putting pressure on those governments which do not involve the public in general decision-making processes. This pressure can come from the RTA itself, as well as from civil society, which lobbies for similar approaches to public participation as those used in negotiations in other countries, including their trade partners.

Key conclusions

Countries are increasingly integrating trade and environmental issues in RTAs. Most of these agreements are very recent, and many countries have little experience with the actual implementation of environmental provisions in trade agreements. This is an on-going learning process and countries can greatly benefit from other countries' experience. Transparency and exchanges of experience are important to ensure that progress on environmental matters in RTAs eventually supports the multilateral trading system.

Dealing with environmental issues in RTAs is not a one-off exercise. It requires preparation, coordination among trade and environmental officials, setting of priorities, and reconciling conflicting views. Then, once a text is agreed on, continuous efforts are needed to ensure effective integration of trade and environmental issues throughout the life of the agreement. For developing countries, this effort often requires financial support and capacity building, either from the developed country trade partner or from other institutions, such as development co-operation agencies.

While RTAs have contributed to better integration of trade and environment at bilateral and regional levels, this progress is not yet visible in the multilateral arena. Indeed, it is striking that a number of countries have been prepared to incorporate

environmental provisions in RTAs, but are not prepared to countenance similar outcomes at the multilateral level.

With the current proliferation of RTAs, and the variety of environmental arrangements contained in them, some countries face the increasingly complex problem of managing various levels of environmental commitments and different types of environmental co-operation programmes under a range of RTAs. This problem may need further attention in the near future.

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