



ASSURING TRADE LIBERALIZATION AGREEMENTS ACHIEVE THEIR GOALS

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The impact of preferential trade agreements depends on their design and implementation. Gains cannot be taken for granted. When such agreements are designed to stimulate trade and bring net economic benefits to partners, effective implementation must minimize the number of excluded products, apply nonrestrictive rules of origin and, most importantly, strive for low trade barriers for non-members. In addition, agreements often involve the removal of non-tariff barriers, the liberalization of trade-in services, investment and intellectual property provisions, and mechanisms for conflict resolution. In order to ensure that preferential trade agreements fulfill the expectations of the public and private sectors, the above provisions must be properly implemented.

The term “free trade agreement,” which is often used to describe bilateral and multi-lateral trade liberalization agreements, is misleading. In most instances, the agreements actually call for “liberalized” or “preferential” trade. For ease of understanding, these agreements will be referred to as preferential trade agreements (PTAs).

Early PTAs were traditionally limited in scope to product import tariffs, and therefore left many other import restrictions in place. Current PTAs frequently include coverage of security requirements, labor and environmental issues, health and safety requirements, government procurement, standards regulations, processing fees, services, and standards conformance requirements. As the scope and coverage of PTAs has increased, so has the importance of compliance with their regulations.

For more information, see World Bank, Global Economic Prospects 2005: Trade, Regionalism and Development, November 2004:

<http://www.gfptt.org/Entities/ReferenceReadingProfile.aspx?id=27fb94e0-bf93-40ff-8de2-5ef4c06e4010>

The successful implementation of PTAs is often dependent on the design and scope of the agreement, and the monitoring and implementation processes. For example, not all PTAs are created for commercial

reasons; some are used as political and economic tools. While World Trade Organization (WTO) provisions require all PTAs to provide product coverage for the substantial part of the trade of such territory with other territories, many PTAs today maintain exclusions, tariff rate quotas, or seasonal restrictions for products that are of the most commercial value to one of the parties. As a result, the commercial expectations of the private sector are not always met.

Relevant examples include:

Chile-Korea PTA:

http://www.sice.oas.org/Trade/Chi-SKorea_e/ChiKoreaInd_e.asp

CARICOM – Colombia PTA, Annex III:

<http://www.sice.oas.org/trade/carican3a.asp>; and

EU-Mexico PTA:

http://europa.eu.int/comm/trade/issues/bilateral/countries/mexico/docs/en2_annex_1.pdf

With the emerging emphasis on increasing investment and removing non-tariff barriers, more PTAs are including provisions to cover investment, procurement, competition policy, economics, intellectual property, and other non-tariff issues. Many Regional Trade Agreements (RTAs) and the recent PTAs include provisions concerning standards – environmental, investment, customs clearance time, advance rulings – and similar customs trade facilitation



tation requirements.

For example, see *Regional Trade Agreements*, WTO:

http://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm

Chapter 5, *US-CAFTA FTA*; and other PTAs:

<http://www.sice.oas.org/tradee.asp>

The implementation of PTAs presents challenges for both the signatories and the traders who hope to benefit from the agreement. The traders, for example, must frequently ascertain conditions in markets where multiple agreements exist. In these cases, the transparency of the PTA is critical. Often, special training and education are needed to raise awareness of the multiple provisions, especially where there are differing rules of origin among the agreements.

For example, see the International Chamber of Commerce's (ICC) *Regional Trade Agreements and the multilateral trading system*, 2002;

and the current Green Paper of the European Commission on the future of preferential rules of origin as an example of some of the issue awareness needs:

http://europa.eu.int/comm/taxation_customs/resources/documents/origin_consultation_final.pdf

Types of Trade Liberalization Agreements

Trade liberalization agreements can be divided into three main categories: bilateral; regional (e.g., customs unions, ALADI, NAFTA); and multilateral (e.g., WTO). Preferential agreements can be unilaterally or asymmetrically applied (e.g., General System of Preferences for Developing Countries) or reciprocally applied (i.e., agreed upon symmetrical obligations and benefits).

The WTO and its General Agreement on Tariffs and Trade (GATT) represent a multilateral effort to create a universal framework of trade-related rights and obligations that should liberalize commercial trade and services. Regional and bilateral PTAs are permitted as exceptions to the Most Favored Nation principle requirements under WTO/GATT.

See GATT Article XXIV, RTA:

http://www.wto.org/english/docs_e/legal_e/10-24_e.htm

Negotiation and Implementation Considerations

Ease of Administration

When negotiating PTAs and determining the design, scope, and coverage of the agreement, parties must understand each other's relative capacity to administer and implement the provisions of the agreement. In cases where significant economic differences exist, applying a regional agreement unilaterally often presents a better solution than reciprocal agreements that exceed the administrative capacity of one party. Unilateral or asymmetrical application of preferences with a specified time period presents another alternative. This approach represents one attempt to increase the capacity of certain parties when needed to balance the faculties of the countries involved.

The European Union's Cotonou Agreement of 2000 for the Africa Caribbean and Pacific group of countries (ACP) provides one such example:

http://europa.eu.int/comm/development/body/cotonou/agreement_en.htm

Because a party's capacity frequently has a limiting effect on the level of coverage, larger countries must recognize that in order to include many of the non-tariff provisions, they must also increase the capacity of their trading partners. For example, the NAFTA environmental and labor provisions may not work in other countries that lack the legal basis and/or capacity to enforce environmental and labor standards. As a remedy that can be emulated in other PTAs, provisions for capacity development can be included as part of the agreement to assist parties in administration and implementation.

For an example of this provision, also included in other US FTAs, see *US-CAFTA Chapter 19, Section B*.

The European Union has taken a similar approach in its PTAs with less developed countries by providing direct assistance through its [trade assistance programs](#).

Another mechanism that facilitates administration and implementation of PTA provisions is the adoption and inclusion

of existing international conventions and agreements as the basis for the preferences. One example currently in use is intellectual property protection. Parties provide for the adoption of existing conventions and agreements as a means to implement IPR protection.

See Chapter 16 of *Chile-Korean PTA*:

http://www.sice.oas.org/Trade/ChileSKorea_e/Chap16_e.asp#CHAPTER%2016

The equivalency of import regulations (e.g., commodity classification systems, rules of origin regulations, product marking rules, etc.) also enables successful implementation of liberalization provisions. Examples of these requirements include the [US-Singapore](#) and the Chile-Korea PTAs, where adoption of the Customs Value Agreement, Harmonized System, alteration and repair provisions and standards for remanufactured goods are all included in the text of the agreement.

Preferential treatment based on Rules of Origin can decrease the commercial value of the agreement. If the rules are too complicated or require significant documentation, they can become a hindrance to trade rather than a facilitator. The costs to the trader of meeting the requirements may exceed the savings from the preference. This is particularly true when a trader is faced with many different rules.

For example, see the *American Electronics Association submission to USTR on FTAAs*:

http://www.aeanet.org/GovernmentAffairs/gaam0393_FTArooonftaasingjordanmay011of2.asp

Overlapping membership in agreements is becoming more common and creates different trade rules that apply to different agreement partners. This inconsistency can hamper trade flows and diminish competitive advantages.

The proliferation of agreements increases the risk of inconsistencies in the rules and procedures, which can give rise to regulatory confusion, distortion of regional markets, and severe implementation problems. This is further accentu-

ated when policy areas that are not regulated multilaterally are included (e.g., labor or broadcasting). The figure at the bottom of the page illustrates the problems this can create for individual countries and the traders within those countries. As the figure demonstrates, in the Eastern and Southern African region there are at least five overlapping agreements with many differing provisions. Successful implementation of these agreements requires significant training of both government officials and traders.

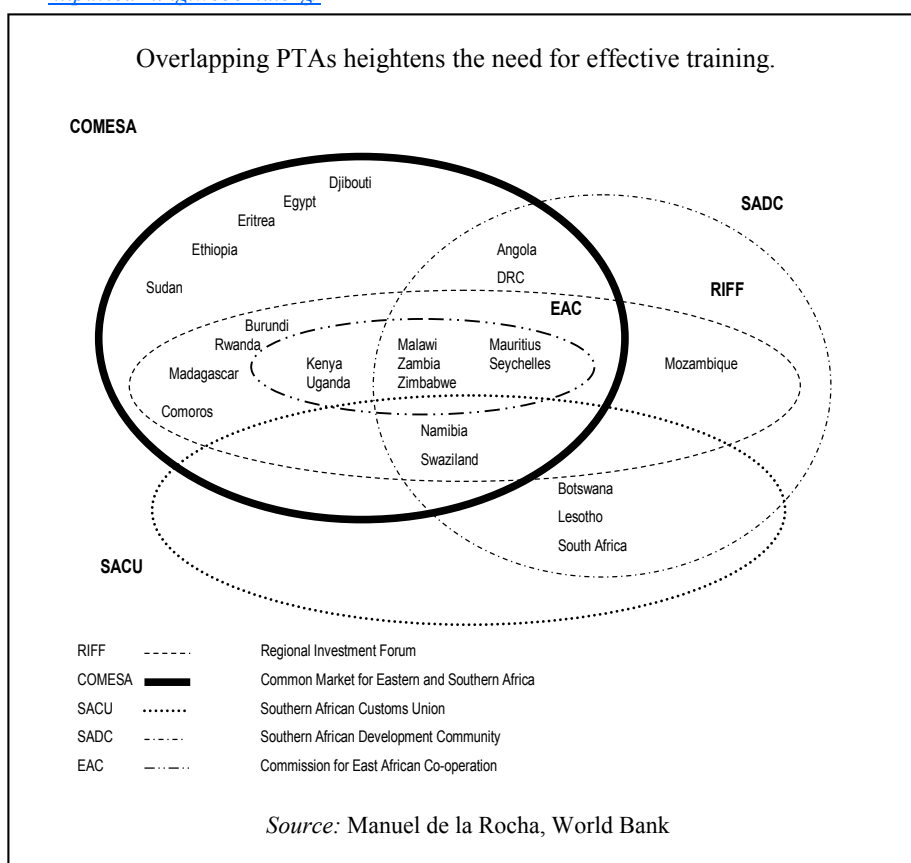
This training should include seminars, manuals, guidebooks, and hands-on experience; distance-learning techniques can aid in training a broader audience. It may be helpful for authorities to prepare lessons on CD or DVD and make them available to traders and government officials. Internet websites with frequently asked questions are another excellent means to reach a wide audience.

An example of a comprehensive website training source is the *Australian-US PTA*:

<http://www.dfat.gov.au/trade/negotiations/us.html>

The WCO offers online training courses:

<http://learning.wcoomd.org/>



Relative Economic Power

Although PTAs are designed to provide advantages to all parties of the agreement, the expected benefits may be undercut if the relative economic power of one of the parties causes distortions in resource allocation and investment diversion (e.g., import platform from third countries).

For more information, see “[Preparing for the Negotiation of PTAs with the EU: Preliminary Lessons from some Developing Countries.](#)”

Each agreement’s net economic impact depends on its own architecture and the depth of its trade liberalization and sectoral coverage. Some requirements that have been and can be included, other than import tariffs, include:

- ◆ National security concerns;
- ◆ Goods classification systems;
- ◆ System for determining value of goods;
- ◆ Intellectual property rights;
- ◆ Standards conformance testing;
- ◆ Consumer labeling;
- ◆ Government procurement;
- ◆ Services;
- ◆ Labor rights;
- ◆ Environmental standards; and
- ◆ Agreement administration by parties.

Geography

Another element to consider as part of the initial design of a PTA is the geographic proximity of the signatories. Studies show that those agreements with parties in contiguous geographic proximity have a greater opportunity for successful implementation. The early agreements between European countries that ultimately led to the creation of the European Community are examples of this. For obvious reasons, such as the lower cost of transportation, trade between neighboring countries is usually the most practical.

See Ludema, Rodney D.; Georgetown University, November 1998, “Why are Preferential Trade Agreements regional?.”

<http://econwpa.wustl.edu:8089/eps/it/papers/9903/9903002.pdf>

and Ludema, Rodney D.; Georgetown University, September 2000, “Increasing returns, Multina-

tional and Geography of Preferential Trade Agreements.”

<http://www.georgetown.edu/faculty/ludema/Ludema2.pdf>

Regional PTAs have generally created greater economic growth than the traditional bi-lateral PTA. For examples, see the recent World Bank Report, [Global Economic Prospects 2005: Trade, Regionalism and Development](#); November 2004.

Another geographical factor that escalates the success rate of PTAs is the use of integrated border management techniques and systems to facilitate cross-border trade, reducing costs and ensuring compliance with the PTA’s provisions (See GFP Note on *Integrated Border Management*). Simple changes in hours of operation for customs administrations to facilitate traders’ presentation of required documents can significantly improve the administration and implementation of PTA provisions. Yet another factor related to geography is the ease of travel for business representatives. One of the factors in the successful development of new business in Mexico as a result of NAFTA was the short travel time from Canada or the United States to visit a customer or plant compared to similar travel from Asia. Similarly, post-entry audits by customs and other compliance mechanisms are facilitated by short travel time.

Enforcement and Dispute Settlement Mechanisms

Monitoring

Agreements should also provide for periodic review of implementation and administration of the terms of the agreement (e.g., bilateral commissions and independent reviews, WTO trade reviews, etc.). One method that has been successfully pursued in many agreements is establishing an informal administrative procedure for consultation and resolution of issues short of a formal dispute tribunal.

Including a systematic monitoring mechanism for government agencies and private sector interests in the administrative provisions of a PTA provides a

strong mechanism for parties to raise implementation concerns. Some currently in use include the Canadian-Chile six month and annual review reports provided to the Administration Committee; the US National Trade Estimates Report process that requests comments from the private sector on the status of PTA implementation and removal of trade barriers; and the [European Union-Mexico Trade Agreement, Title VII, Articles 45 – 49](#).

One successful mechanism for monitoring the implementation of PTAs is the “Single Market Scoreboard” of the European Union. The EU uses this system to track the extent to which various directives have been integrated into national law along with the time that it takes and the amount of cooperation in the enforcement and issue resolution. http://www.europa.eu.int/comm/internal_market/score/docs/score13/score13-printed_en.pdf

Self-Enforcing Provisions

The most effective agreements, which provide for implementation that ensures enforcement of the liberalization provisions, are “self-enforcing.” With reciprocal symmetrical concessions and benefits, or if one party significantly benefits through unilateral liberalization, agreements are less likely to fall victim to disputes or implementation failures. Issues of language interpretation and unilateral obligations are reduced.

Several studies illustrate this development, including:

Fruend, Caroline; The World Bank, 2003; “Reciprocity in Free Trade Agreements:”

http://econ.worldbank.org/files/26994_wps3061.pdf

and Bagwell, Kyle and Staiger, Robert W, November 2004; “The Economic of the World Trading System:”

http://www.dallasfed.org/news/research/2004/04global_bagwell.pdf

Even with self-enforcing provisions, the design of the agreement can fail to meet the expectations of the parties. For example, if compliance with the rules of origin is too difficult, traders will not benefit from the preferences.

Amendments

Along with administrative provisions, there should be a mechanism for amending an agreement, especially when dealing with technical matters. An efficient amendment mechanism also allows an agreement to change with changing market conditions, manufacturing processes (for rules of origin), and regional developments.

One example is found in the Canada-Chile PTA, Article C-15 (see adjacent Case Study).

Dispute Settlement

Virtually all agreements include a dispute settlement mechanism. The more efficient PTAs include an informal administrative procedure in the Dispute Settlement Procedures, in addition to the more formal settlement bodies with panels and adjudication.

For example, see Szepesi, S. 2004. “Comparing EU free trade agreements : Dispute Settlement.” (ECDPM InBrief 6G). Maastricht : ECDPM:

Compatibility with multilateral agreements such as the WTO ensures the most effective implementation and administration of bilateral and regional PTAs. Most agreements now include “savings” clauses that reserve the parties’ WTO rights. One example of this is in Article 6 of the EC-Former Yugoslav Republic of Macedonia Agreement, which states, “The Agreement shall be fully compatible with the relevant WTO provisions, in particular Article XXIV of the GATT 1994 and Article V of the GATS.”

In the bilateral PTA, the relative economic power of the parties is crucial in obtaining fair dispute settlement. If one party to the agreement is significantly more developed than the other, it can refuse to implement any dispute settlement by a unilateral action that imposes its interpretation of the language of the agreement on the larger country. In such cases there is little the other party can do.

Case Study: Canada-Chile PTA Article C-15: Consultations and Committee on Trade in Goods and Rules of Origin

The Parties hereby establish a Committee on Trade in Goods and Rules of Origin, comprising representatives of each Party.

The Committee shall meet at least once each year, and at any other time on the request of either Party or the Commission, to ensure the effective implementation and administration of this Chapter, Chapter D, Chapter E and the Uniform Regulations. In this regard, the Committee shall:

(a) monitor the implementation and administration by the Parties of this Chapter, Chapter D, Chapter E and the Uniform Regulations to ensure their uniform addition to this interpretation;

(b) at the request of either party, review and endeavour to agree on, any proposed modification of or Chapter, Chapter D, Chapter E or the Uniform Regulations;

(c) recommend to the Commission any modification of or addition to this Chapter, Chapter D, Chapter E or the Uniform Regulations and to any other provision of this Agreement as may be required to conform with any change to the Harmonized System; and

(d) consider any other matter relating to the implementation and administration by the Parties of this Chapter, Chapter D, Chapter E and the Uniform Regulations referred to it by

- (i) a Party,
- (ii) the Customs Sub-Committee established under Article E-13, or
- (iii) the Sub-Committee on Agriculture established under paragraph 4.

If the Committee fails to resolve a matter referred to it pursuant to paragraph 2 (b) or (d) within 30 days of such referral, either Party may request a meeting of the Commission under Article N-07.

Each Party shall to the greatest extent practicable, take all necessary measures to implement any modification of or addition to this Agreement within 180 days of the date on which the Commission agrees on the modification or addition.

The Parties shall convene on the request of either Party a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties’ ports of entry.

Conclusion

The recent studies of the World Bank, OECD, WCO and UNECE seem to arrive at similar conclusions:

- ◆ The design and implementation strategy of the agreement determines positive outcome.
- ◆ Liberalization across all sectors, including non-tariff barriers such as customs formalities, provides the greatest trade gains and costs reductions.
- ◆ Regional and/or contiguous agreements seem to have the greatest impact on growth and economic development.
- ◆ Product standards, rules of origin, different product coverage in overlapping agreements, and the capacity of government agencies to administer can undermine the best intentions of the negotiators of an agreement.
- ◆ Including all stakeholders in the development, implementation, and performance monitoring processes ensures the highest degree of success in achieving the agreement's goals.

Additional Links and Resources

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- ◆ Imai, Kenichi and Moustapha Kamal Gueye. "Strategies: The Relationship Between the WTO and Regional Trade Agreements and Institutions on Trade in Asia." Institute for Global Environmental. <http://www.gets.org/pages/harmony/IGES.doc>.
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