

## **A Rules-based Trading System: Multilateral, Regional and Bilateral Developments: Opportunities and Challenges for Business and for South Africa**

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The current era of economic policy making is perhaps best described as one of regulatory reform; this applies both to national economies as well as to the international economy.

With the gathering momentum of the process of market and economic liberalisation, in the early 1990s, it was even more obvious that liberalisation was to be tempered by new forms of regulation, if market outcomes were to be enhanced.

In international trade, freer trade (fundamental WTO – World Trade Organisation - principle) does not mean ‘no trade barriers.’ The mid-1990s mark a watershed in international trade regulation and the institutional architecture of the international trading system. The WTO is established in 1995 (with South Africa a founding member) – fundamentally a negotiating forum to develop rules for international trade transactions. This member-driven organisation is the institutional anchor of the multilateral trading system. Trade agreements are negotiated within this multilateral forum, where nothing is agreed until all is agreed. It’s no wonder that it takes so long to negotiate trade agreements! However a rules-based system of international trade does have distinct advantages – the rules of the game provide a measure of certainty for importers and exporters, and if ‘good agreements’ have been negotiated, hold the potential to promote fundamental socio-economic objectives such as economic growth and poverty reduction. A ‘good agreement’ is however not the only prerequisite for this to happen, as we’ll discuss later. Another important development is that WTO negotiations and agreements extend well beyond the trade in goods – the WTO agenda has grown significantly to include services trade and intellectual property, for example.

The most recent Ministerial Conference of the Doha Round of Trade Negotiations took place in Cancun, Mexico. As has been well documented, the negotiations did not make much progress at all. At this meeting, the negotiations on agriculture took a key position – broadly speaking developing countries wanted especially the EU and the US to liberalise agriculture (the domestic subsidy issue being very important); developed countries wanted progress on the Singapore (new) issues such as government procurement, trade facilitation and competition. The new issues – agriculture stalemate was not resolved at Cancun, and it is only very recently that the members of the WTO have begun discussing agriculture and services again.

The mid-1990s also witness a substantive shift in north-south trade and more generally, economic relations. The European Union (EU) indicates that it will seek to replace its long-standing trade and aid relationship, formalised in a series of Lomé Conventions,

which provided for asymmetric trade preferences, by Economic Partnership Agreements (EPAs) which will be based on reciprocal trade preferences. The United States follows soon after with the Africa Growth and Opportunity Act (AGOA, a unilateral offer of preferential market access to qualifying countries for specified exports, but paves the way for the negotiation of free trade agreements with trading partners.

The developments led by the EU, and followed vigorously by the US to negotiate bilateral agreements (in the case of the EU, the agreement with South Africa goes beyond trade to include development provisions – the South Africa-EU Trade and Development Cooperation Agreement), have led to a complex network of rules governing international trade transactions.

Within the Southern African region, there is a revival or regionalism from the mid-1990s. South Africa joins the Southern African Development Community, and great expectations for this regional integration arrangement abound. The Southern African Customs Union (SACU) is temporarily out of the spotlight, and the new SACU Agreement takes 8 years to negotiate (it was concluded in October 2002).

As negotiations on the multilateral track in the WTO make slow progress, bilateral agreements surge ahead, in many cases into WTO-plus areas, where perhaps WTO agreements may not reach. South Africa (in fact SACU – as a result of the fact that South Africa is part of the customs union) is currently negotiating with several partners including the US and the European Free Trade Area (EFTA), and more negotiations are on the horizon.

The nature of the trade agreements being negotiated in the last decade also mark a significant change from traditional or tariff (and quota) barriers to non-tariff barriers of various kinds (technical barriers, standards...). Tariff liberalisation is thus accompanied by re-regulation. This has important implications in a number of respects. First, for governments, which negotiate trade agreements on behalf of business, the question arises as to what constitutes the best deal in trade negotiations. In the previous era this was simpler – lower tariffs were better for business (of course for government the question of tariff revenue was an issue).

Now the question is much more complex, what is the best deal or to what extent will a specific technical standard hinder or facilitate access to a specific market. Second, once an agreement is negotiated, implementation could be a major challenge for those countries that do not have the institutional capacity to ensure that standards are complied with, for example. Thus these new generation trade agreements impose significant capacity requirements especially on developing countries, and also on small business (which have to know the detail of the agreements, if they are to gain from the opportunities they may create). Fourth, a daunting challenge often faces trade negotiators when faced with tricky trade-offs, for example liberalisation of say services sectors for concessions in an area such as agriculture. These choices reflect the significant responsibility of government in the negotiations, and the importance of articulating national economic objectives, and determining priorities among these objectives. Difficult choices indeed!

The complexities of international trade negotiations have important implications for the functioning of the rules-based trading system. A rules-based system removes a fundamental asymmetry of a power-based system of international trade. This asymmetry is however replaced by two other asymmetries - the first as regards strategic capacity to identify negotiating priorities (through a trade policy making process), and to negotiate accordingly, and second capacity to implement trade agreements effectively. This capacity asymmetry is, for example glaring when it comes to implementation and the use of the safety valve in trade agreements – dispute resolution. African countries generally are notable by their lack of use of the WTO dispute settlement facility. Disputes to the WTO have to be brought by governments on behalf of business – capacity requirements in business and in government to make this work efficiently and equitably are enormous, and may be part of the explanation as to why African countries are not using this safety valve in the WTO.

The trade policy making process is critical to the identification of trade opportunities and challenges within the context of overall national economic policy objectives. Herein lies the importance of the interface between government and business (and other stakeholders). Business trades, but government makes policy (negotiating those trade-offs), and negotiates trade agreements to facilitate good business decisions. Business thus has an important role to play in identifying key partners with whom to negotiate trade agreements, and contributing to the discussion of what kind of agreements are to be negotiated. In addition, it is not only the lead government department, in the case of South Africa, the Department of Trade and Industry, that matters as far as trade is concerned.

Trade in services increasingly contributes to South Africa's trade performance, and this means that the government departments that are responsible for areas of economic activity such as telecommunications, energy, transportation and tourism, have to be involved in trade policy making, and trade negotiations. These departments have in the last decade been more occupied with domestic regulatory reform, and many of them do not have capacity in the areas of trade policy or trade law. This requires obviously that trade policy be coordinated with other areas of policy too.

A particular challenge, both in terms of the strategic phase of trade policy making and the implementation of trade agreements comes from the lack of trade law capacity. For effective implementation policy requires a legal framework – trade agreements are legally, enforceable agreements. Trade law capacity is scarce in developing countries, and in South Africa too. In trade agreements the legal detail matters – because the legal texts will be interpreted especially when disputes arise.

To conclude, outward economic orientation, with expectations of growth from trade predominates internationally. International trade, and the rules of the game of international trade therefore matter perhaps especially for developing countries with small domestic markets. It is possible that international trade agreements will offer significant opportunities for business, but trade agreements alone are not sufficient to ensure that business will benefit from international market opportunities or that trade will

promote growth, employment and poverty reduction. In brief, strategic capacity to develop trade policy within an overall national development strategy (requiring government to work with business and other stakeholders to develop that policy), to negotiate agreements consonant with these objectives, and the capacity to implement the agreements (by government and other organisations such as standards authorities) and by business to realise the opportunities contained in the agreements are all essential to trade success.