GRET

Professionals for Fair Development

Free Trade Agreements: The Other Face of Liberalization

What Latitude Do Developing Countries Have?

Created 30 years ago, GRET is a professional solidarity and international cooperation association.

We work to contribute to sustainable, fair development and alleviate poverty and structural inequalities. Our actions aim to increase the incomes of rural and urban populations, reduce their vulnerability, improve their access to quality infrastructures and services, and develop their ability to be heard.

The number of Free Trade Agreements (FTAs) between developed and developing countries has risen spectacularly since the start of the 2000s, while the negotiations have simultaneously reached a stalemate in the World Trade Organization (WTO). The WTO has been apprised of 158 FTAs[1] and 86 of these involve developed and developing countries but few involve the least developed countries (LDCs).

The liberalization implemented by these agreements tends to be more extensive than in the multilateral framework because it applies to areas still under negotiation at the WTO and to LDCs, who are not obliged to liberalize their trade. However, there is room for flexibility, and developing countries and LDCs can use this latitude to control the pace and scope of liberalization in the FTAs that they negotiate.

Article XXIV of GATT governs negotiations on FTAs involving at least one developed country. It stipulates that FTAs must cover substantially all trade and be implemented in a reasonable amount of time. The understanding on the Interpretation of Article XXIV adopted in 1994 specifies that a reasonable delay can only exceptionally exceed ten years. In the framework of the negotiation of economic partnership agreements (EPAs), the European Commission esteems that the transition period must not exceed twelve years and that the majority of trade should correspond to at least 90% of trade. An analysis of approximately forty FTAs shows that in practice interpretations are numerous, despite the understanding. The examples of FTAs in force that show particular flexibility in the interpretation of the article and that have not yet been the subject of complaints to the WTO are as many useful precedents to take into account when negotiating FTAs.

[1] *WTO database on Regional Trade Agreements, October 2009.*

A Long and Often Asymmetrical Transition Period

Numerous agreements (19 out of the 41 studied) have set liberalization implementation periods of more than ten years, five of them going as far as fifteen years. In regard to these last agreements, while most liberalization is done in ten years, extending the transition period makes it possible to adapt and upgrade particularly sensitive sectors. In addition, asymmetry in the transition period is a frequent flexibility between countries with different levels of development.

Flexibility in Function of Product Sensivity

The liberalization schedule often spreads out opening in function of how sensitive the products are. Moratoriums are sometimes set up so as to have additional adaptation periods. In some agreements, rendezvous clauses make it possible to negotiate in stages: in this case, the level of liberalization mentioned in the agreement only applies to the first phase, and may be much less than 80% of tariff lines.

The Pakistan-China Agreement

The first phase is relatively short (five years) and there is no deadline for the second phase, which must be negotiated later. While the agreement states that liberalization will cover at least 90% of products, the deadline for this is not specified because the deadline is the end of the second phase. For the first phase, it covers only 36.4% of China's tariff lines (44.4% of imports in value for 2004-06) and 35.4% of Pakistan's tariff lines (30.3% of imports in value).

Acronyms

- **EPA** ▸ *Economic Partnership Agreement*
- **FTA** ▸ *Free Trade Agreement*
- **GATT** ▸ *General Agreement on Tariffs and Trade*
- **LDCs** ▸ *Least Developed Countries*
- **WTO** ▸ *Least Developed Countries*

The EU-Tunisia Association Agreement (an exemple of a Euro-Med Agreement)

The liberalization schedule for industrial products is particularly complex: for a first list of products annexed to the agreement, liberalization is immediate; for a second list of products, liberalization is implemented over five years; for a third list, the transition period is twelve years; and for the last list of products, the most sensitive, liberalization will take place five years after the agreement has entered into force.

The Degree of Liberalization Is Not Always High

Opening 90% of trade, in value or in tariff lines, is not always applied. In 30% of the cases analyzed, the opening is less than 90%, and in 13% of cases it is less than 80%, with an imbalance between developing and developed countries.

The India-Singapore Agreement

India negotiated its liberalization based on its trade in value and not its tariff lines. In this way, it liberalized only 23.6% of its tariff lines accounting for 75% of its trade, allowing it to in time develop the sectors that it feels are priorities.

Special Treatment for the Agricultural Sector

Most agreements acknowledge the sensitive nature of the agricultural sector, notably for developing countries, and offer greater flexibility: less liberalization, longer transition periods, special safeguards. Some agreements partially or completely exclude agricultural products, which are covered by specific agreements (not notified to the WTO) or are the subject of more or less specific rendezvous clauses.

The European Union (EU)-Mexico Agreement

While the transition period for industrial products is 3 years and 7 years respectively for the EU and Mexico, it has been …/… extended to 10 years for agricultural products. Mexico liberalized only 29% of its tariff lines for agricultural products. Mexico has appended a list of agricultural products that were not been liberalized in this first phase. It was foreseen to liberalize these products in 2003 but this deadline has not been met so far.

Bilateral Safeguard Clauses

Various safeguard measures can be utilized, on a temporary basis, to correct the potential negative effects of liberalization: provisions for emerging industries, for food security (in certain interim EPAs), or for agricultural products. This last case is interesting for those developing countries that consolidated their customs duties at ceiling rates and therefore do not have access to the special safeguard clause of the WTO's agricultural agreement. However, these measures generally only apply during the transition period.

Other Possible Flexibilities

The following flexibilities can also be envisaged:

- more binding revision clauses linked to benchmarks (for instance, number of people living under the poverty threshold);
- exceptions to national treatment to apply domestic taxes on imported products;
- greater protection for imported products that receive subsidies;
- asymmetrical rules of origin that are more favorable to developing countries;
- development components as an integral part of FTAs.

In conclusion, it seems necessary to reexamine Article XXIV. Developing countries can be proactive in making proposals, notably by demanding access to all these flexibilities in FTAs negotiated with developed countries. The notion of asymmetry supports this, and these flexibilities are a way to stand up to liberalization beyond WTO obligations.

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  Following the identification of 158 FTAs in the WTO database on regional trade agreements, forty agreements for which the information was immediately available were analyzed.
- *The report is available on GRET's website: http://www.gret.org.*
- *The opinions expressed in the report are those of its authors.*
  Rolland J.-P., Lagandré D., Alpha A., Etude comparative des accords de libre échange impliquant des PED ou des PMA, *October 2009.*

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