



Economic and Social Council

Distr.: General
5 May 2011

Original: English

Economic and Social Commission for Asia and the Pacific

Committee on Trade and Investment

Second session

Bangkok, 27-29 July 2011

Item 9 of the provisional agenda

Moving multilateral and regional trade and investment cooperation forward

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Note by the secretariat

Summary

The ongoing recovery from the global economic crisis has shown that trade and investment remain important engines of growth. In this context, the Asia-Pacific region has continued to conclude regional trade agreements to foster trade and investment. Contemporary trade agreements, including those among developing economies, tend to expand coverage beyond liberalization of trade in goods to new areas, such as services trade, investment, protection of intellectual property rights, trade facilitation, competition policies and standards. It may be observed, however, that many of the commitments in these new areas remain shallow and do not contribute significantly to the creation of new trade, investment or economic activities in general. While some regional trade agreements contribute substantially to the liberalization of trade, they are sometimes considered to be partly responsible for the slow progress being made under the Doha Development Agenda. However, their proliferation is expected to continue, although at a slower rate, even with the successful conclusion of the Doha Round. Thus, initiatives are needed to address possible increases in trade costs if additional trade agreements would bring about even more differentiation and complexity in the regional trading environment.

The present document presents some current issues in the multilateral and regional trade and investment regimes of importance to developing countries, and some key areas for policy action, particularly regional cooperation. It stresses the importance of a successful conclusion of the Doha Development Agenda, as well as the need to strengthen regional trade agreements as forces of regional integration and building blocks of the multilateral trading system.

The Committee may wish to deliberate on these issues, particularly on the role of the secretariat in addressing them.

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I. Introduction

1. Asian and Pacific economies have largely recovered from the effects of the severe global economic and financial crisis which started in 2008. The rebound in exports and foreign direct investment inflows into the region, which started in mid-2009, continued until the fourth quarter of 2010, when exports began to show some signs of weakening. The nature of the recovery has demonstrated that trade and investment remain important drivers of economic growth and development in the region.

2. In this context, the Asian and Pacific region has continued to conclude regional trade agreements (RTAs). While some of these agreements contribute substantially to the liberalization of trade, they are sometimes considered to be partly responsible for the slow progress being made under the Doha Development Agenda.¹

3. A successful conclusion of the Doha Round would be important as it would not only create trade and investment opportunities for developing economies but also help preserve the multilateral trading system under the World Trade Organization (WTO). WTO has played an important role in safeguarding the liberal, transparent, predictable and stable rules of the multilateral trading system, as countries around the world, including those in Asia and the Pacific, might otherwise have been tempted to resort to protectionism in response to the crisis.

4. The present document draws on material contained in the forthcoming *Asia-Pacific Trade and Investment Report 2011*² and reviews the issues surrounding the proliferation of regional trade and investment agreements and their interaction with the multilateral trading system. It presents key policy options for economies in the region and makes proposals for the role of the ESCAP secretariat in this regard.

¹ See A/C.2/56/7, annex.

² ST/ESCAP/2596.

II. Asia and the Pacific continues to pursue regional trade and investment integration with variable results

A. The proliferation of regional trade agreements continues

5. Asian and Pacific economies have continued to enter into RTAs, including trade agreements with trading partners outside the region. According to the ESCAP secretariat's Asia-Pacific Trade and Investment Agreements Database (APTIAD), as of 1 May 2011, there were 123 RTAs in force involving at least one economy from the ESCAP region; that is five times more than the number of RTAs in force in 1995. Of the total number of RTAs in 2011, 91 were bilateral; the remainder were plurilateral (involving more than two economies), including trade agreements between a trading bloc and a single economy. In addition, more than 50 other RTAs were either being considered or in the process of negotiation.

6. Contemporary trade agreements, including those concluded among developing economies, have expanded coverage beyond liberalization of trade in goods and often include commitments and provisions in areas such as trade in services, investment, protection of intellectual property rights, trade facilitation, competition policies and standards. In fact, there is a trend away from traditional international investment agreements, such as bilateral investment treaties, towards the inclusion of investment chapters in RTAs (see section B below). However, in many cases, the commitments in these new areas remain relatively shallow and do not contribute significantly to the expansion of trade, investment and economic activities.

7. The pursuit of RTAs was not halted during the recent crisis and the immediate recovery period. As reported by WTO, between November 2008 and March 2011, 37 new RTAs entered into force, 15 of which were concluded among economies in the region and 4 others were concluded between an economy in the region and others outside the region.³

8. In terms of trade coverage of RTAs, the *Asia-Pacific Trade and Investment Report 2010*⁴ calculated that, on average, about 35 per cent of the total exports of Asian and Pacific economies which are parties to RTAs involves partners in those RTAs. This means that, for every dollar made from exports, only 35 cents is made from exports to economies which have joined the exporting economy in a regional trade agreement. In other words, more than two thirds of the exports of the region's economies are not covered by RTAs (mostly exports to the European Union and the United States of America).

9. The rapid proliferation of RTAs has led to a bewildering array of overlapping and sometimes conflicting commitments among economies, which are often signatories to multiple agreements with overlapping membership. Furthermore, the actual utilization of negotiated trade concessions under RTAs is not always very high and depends not only on

³ Turkey concluded five additional RTAs during this period. These data are from the WTO RTA database and refer only to those RTAs already notified to WTO. The database is available from: <http://rtais.wto.org>.

⁴ Economic and Social Commission for Asia and the Pacific, *Asia-Pacific Trade and Investment Report 2010: Recent Trends and Developments*. ST/ESCAP/2590. Available from: www.unescap.org/tid/publication/aptir2590.pdf.

the supply capacities of producers and traders, but also on the definition and complexity of the rules of origin, which differ among RTAs and are often cited by developing economies as amounting to significant non-tariff barriers. For instance, several surveys revealed that up to one third of responding firms in six Asia-Pacific economies believed that the rules of origin in RTAs signed by their respective Governments had increased the costs of production and conducting trade.⁵

10. While the expansion of membership in RTAs would, in theory, ensure larger benefits from trade and better distribution of those benefits, in practice it is not so easy to achieve. In fact, only 15 of the plurilateral trade agreements and 21 of the bilateral trade agreements involving a regional economy contain provisions on accession. Furthermore, even if accession provisions exist, they may apply only to designated countries, such as those located in a particular geographic area, and not necessarily to all economies in the Asia-Pacific region or the world. In this regard, there is a sharp difference between plurilateral and bilateral trade agreements: while two thirds of the plurilateral agreements restrict membership to economies from a specific geographic area or other kind of country group and/or with a particular level of development, none of the bilateral trade agreements contains such restrictions. However, all RTAs require the negotiation of the terms of accession with a new (potential) member. In practice, negotiations on accession of new members are proceeding in only three plurilateral trade agreements: Mongolia has been negotiating accession to the Asia-Pacific Trade Agreement (APTA) since 2010; Timor-Leste has applied to accede to the Association of Southeast Asian Nations (ASEAN), while Australia, Malaysia, Peru, the United States and Viet Nam are negotiating accession to the Trans-Pacific Partnership Agreement with a view to expanding its coverage to include new areas, such as financial services. In contrast, expansion of membership is not known to be under consideration for any of the bilateral agreements.

11. As the ESCAP secretariat is also the secretariat of APTA (see section IV below), it is opportune to make a few observations regarding this RTA. APTA continues to be a potential driver of regional integration in Asia and the Pacific, since its membership is open to all ESCAP developing economies and includes some of the region's largest and most dynamic economies, namely China, India and the Republic of Korea, apart from Bangladesh, the Lao People's Democratic Republic and Sri Lanka. APTA has relatively simple and flexible rules of origin which could be used as a template for common preferential rules of origin for the region as a whole. APTA also provides flexibilities and special tariff concessions for the least developed economies.

12. Over the past several years, APTA members have made significant progress in expanding the scope of their commitments, particularly through the adoption of framework agreements on investment (see also section III), services and trade facilitation and through consultations on non-tariff

⁵ For more details, see Economic and Social Commission for Asia and the Pacific, *Asia-Pacific Trade and Investment Report 2011 (ST/ESCAP/2596)*. The six surveyed economies comprise China, Japan, the Philippines, the Republic of Korea, Singapore and Thailand. See also Masahiro Kawai and Geneshan Wignaraja, *Asia FTAs: trends and challenges*, Asian Development Bank Institute Working Paper Series, No. 44 (Tokyo, ADB Institute, 2009).

measures. APTA members are also in the process of refining their rules of origin with a view to expanding the utilization of tariff concessions.

B. Regional investment cooperation is expanding

13. With the exception of the WTO Agreement on Trade-related Investment Measures (TRIMS), there is no global or multilateral agreement on investment.⁶ However, as noted above, provisions on investment promotion, protection, liberalization and cooperation have increasingly been included in regional and bilateral trade and economic partnership agreements while the number of international investment agreements is rising more slowly. It is estimated that at the end of May 2010, there would have been almost 2,800 bilateral investment treaties worldwide. About 50 per cent of them involve economies in Asia and the Pacific. In addition, of the approximately 170 RTAs in force, concluded or under negotiation that involve an ESCAP member, over 60 such RTAs have or are expected to have investment provisions. Most of these provisions refer to investment cooperation or contain stipulations very similar to those found in bilateral investment treaties with emphasis on investment promotion and protection. Only a few comprehensive agreements include provisions on investment liberalization, most notably the ASEAN Comprehensive Investment Agreement (ACIA)^{7,8}

14. ACIA is probably the most advanced regional investment agreement in force among developing countries anywhere in the world. It is the result of a consolidation and revision of the Framework Agreement on the ASEAN Investment Area and the ASEAN Agreement for the Promotion and Protection of Investments. ACIA has provisions for investment cooperation, promotion, liberalization and protection. In this RTA, investment is defined broadly and includes foreign portfolio investment. ACIA is innovative as it includes more comprehensive and clearer definitions of concepts and contains provisions for the settlement of disputes between States and investors that are among the most comprehensive found in any investment agreement.

15. In the area of investment, progress has also been made in the Asia-Pacific Trade Agreement. States parties to APTA have all signed the Framework Agreement on the Promotion, Protection and Liberalization of Investment in APTA Participating States, which is currently in the process of ratification. That Framework Agreement provides a mandate for the negotiation of an APTA agreement on the promotion and protection of investments and commits the States parties to the agreement to enter into negotiations to progressively improve their investment regime with a view to promoting freer investment among APTA members. These negotiations will commence when the ratification process has been completed. In the

⁶ Negotiations on a multilateral agreement on investment were launched in 1995 by the Organization for Economic Cooperation and Development (OECD); however, three years later the negotiations were abandoned. For more details, see the OECD Database of Documents related to this agreement. Available from: www1.oecd.org/daf/mai/index.htm.

⁷ www.aseansec.org/documents/FINAL-SIGNED-ACIA.pdf.

⁸ For more details on RTAs involving investment provisions, see Economic and Social Commission for Asia and the Pacific, *Asia-Pacific Trade and Investment Report 2011* (ST/ESCAP/2596).

meantime, those States are discussing the implementation modalities and time frames of the Framework Agreement's four schedules on: cooperation and facilitation; promotion and awareness; liberalization; and protection.

III. The multilateral trading system needs a reality check

16. The global economic crisis has prompted many countries to resort to protectionist measures despite pledging in various international forums not to do so. The role of WTO becomes indispensable in monitoring protectionist trends and advocating a role for trade in economic growth and recovery from the crisis. The multilateral trading system overseen by WTO is the only system that comprises a universal body of enforceable non-discriminatory rules governing international trade. This system of rules has enhanced the stability, transparency and predictability of international trade, and warrants support from all WTO members. Successfully concluding the Doha Round of multilateral trade negotiations would send a strong signal that the global economy remains open and committed to trade. It would also preserve the multilateral trading system and WTO, and prevent that organization from evolving into a litigation body only.

17. However, while WTO members remain committed to the conclusion of the Doha Round in 2011, positions remain far apart in various areas of the negotiations, in particular the area concerning non-agricultural market access. A recent proposal by the European Union has sought to break the stalemate, and efforts are under way to accelerate the conclusion of the Doha Round. Making this happen is the responsibility of all WTO members. Yet, as of early May 2011, there were no signs that WTO members were ready to compromise in order to move closer to successful completion of the Doha Round.

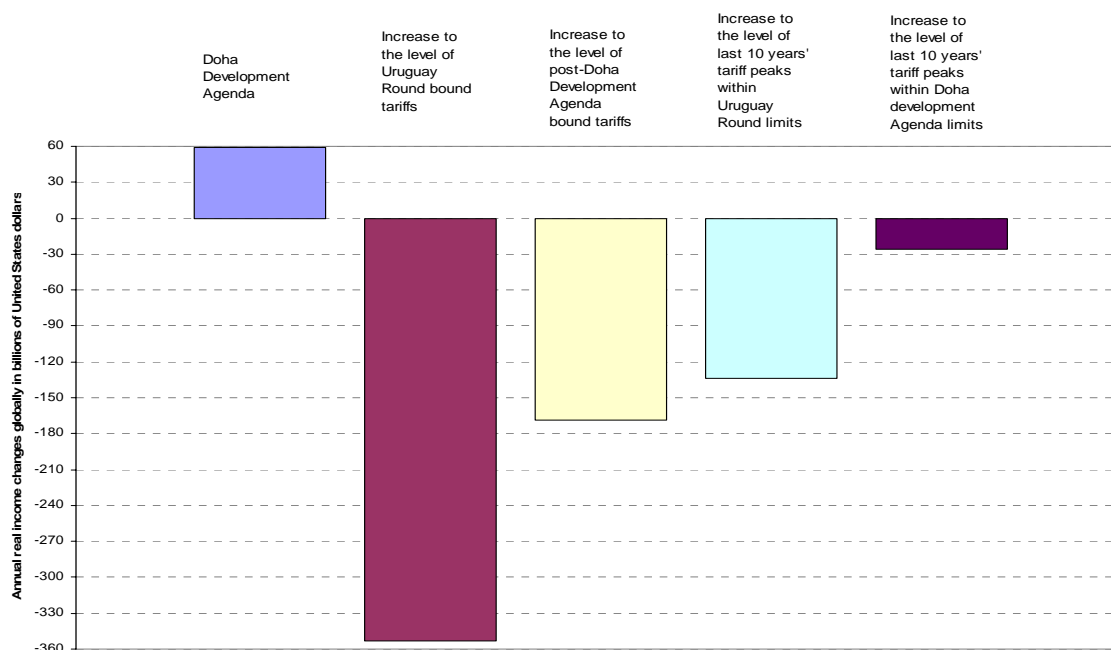
18. In the meantime, there have been numerous debates on the value of the package that has been negotiated so far in the Doha Round, as well as on the potential losses and negative implications for the multilateral trading system that would result if members are unable to conclude the Round successfully. A precise calculation of the gains to be realized from successful conclusion of the Doha Development Agenda – or the costs of a failed conclusion – is difficult to make as it would be based on many assumptions. Nonetheless, the estimated value of the direct gains, taking into account the possible expansion of exports as a result of enhanced market access, is about \$360 billion.⁹ While this amount may not look impressive when divided over time among 153 WTO members (154 when Vanuatu joins) or in per capita terms, it should be put into perspective. For instance, failure to conclude the Doha Round would lead to potential export losses twice the size of the current trade account balance of China with the rest of the world.¹⁰ Furthermore, the estimated real income losses would vary according to different scenarios for the level of protectionism that would follow the Doha Round's collapse. The figure below shows a comparison of

⁹ Antoine Bouët and David Laborde Debucquet, "The potential cost of a failed Doha Round", presentation at World Trade Organization, Geneva, 2 November 2010, based on a paper available from: www.ifpri.org/publication/potential-cost-failed-doha-round-0.

¹⁰ According to economic and financial indicators published in *The Economist* on 30 April 2011, the trade surplus of China in March 2011 for the latest 12-month period was \$169.3 billion.

some of these estimates. Very briefly, scenarios for developments in trade policies in case the Agenda is not concluded assume a return to the level of tariffs equal to: (a) the ceiling tariffs negotiated in the earlier Uruguay Round; (b) the maximum most-favoured nation tariff since 1995; or (c) the 2008 applied most-favoured nation or preferential applied tariff.

Figure
Potential costs of a failure of the Doha Development Agenda: sources of changes in global welfare



Source: Antoine Bouët and David Laborde Debutquet, "The Potential Cost of a failed Doha Round", IFPRI Discussion Paper 00886, July 2009, p. 16, table 4.

19. An important part of the package is trade in agricultural products. WTO and the process of multilateral trade negotiations have ensured that agricultural trade was placed on the negotiation agenda. This pressured a number of countries into reforming their agricultural policies, which has resulted in reduced distortions in the trade in farm products and better prospects for enhancing food security in developing countries.¹¹ Nevertheless, this sector remains sensitive, and no consensus on the level of tariffs, subsidies and other issues, such as the so-called safeguard mechanism, has been achieved so far.

IV. The role of ESCAP

20. ESCAP plays an important role in promoting intraregional trade and investment. Two modalities stand out with regard to the secretariat's promotion of intraregional trade in addition to trade facilitation, which is discussed in document E/ESCAP/CTI(2)/1: (a) the development of the analytical, normative and negotiation capacities of ESCAP members and associate members; and (b) the role of ESCAP as the secretariat of APTA.

¹¹ Kym Anderson, *Distortions to Agricultural Incentives: A Global Perspective, 1955-2007* (London, World Bank and Palgrave Macmillan, 2009).

21. With regard to item (a) above, the secretariat has continued to furnish technical assistance in the area of trade policy in cooperation with key partners, such as WTO, and other United Nations agencies, in particular the United Nations Conference on Trade and Development (UNCTAD). For this purpose, ESCAP organizes trade policy courses and specific training courses on WTO agreements and Doha Development Agenda issues, as well as regional policy dialogues involving Governments, the private sector, non-governmental organizations and other stakeholders. Various events were organized in 2010, including high-level consultations on the Doha Development Agenda. ESCAP and its partners also organized supplementary capacity-building programmes in the area of evidence-based trade policymaking. In all its activities, special attention was given to the least developed countries and landlocked developing countries. Countries which recently acceded to WTO (Cambodia, Nepal and Tonga) and those currently doing so (Azerbaijan, Bhutan, Kazakhstan, the Lao People's Democratic Republic and Vanuatu) have had access to these programmes during the accession negotiations as well as in the implementation phase.

22. The Asia-Pacific Research and Training Network on Trade (ARTNeT) deserves special mention. One third of the ARTNeT research programme has been dedicated to various issues related to regionalism, and it is planned that ARTNeT would continue contributing to the empirical exploration of the linkage between economic diversification and regional/bilateral trade agreements under phase III of the programme. Studies have already been undertaken on agricultural liberalization in the context of RTAs, liberalization of services and the role of RTAs in strengthening international production networks. Furthermore, through ARTNeT, special attention has been given to the formulation of policies which promote integration, with a focus on ASEAN, in view of its advanced stage of economic integration, and the Greater Mekong Subregion.

23. In 2010, 446 people were trained by ESCAP (in some cases in collaboration with other partners) on trade and investment issues, of whom about 25 per cent were women. The after-workshop evaluations of the training activities carried out under ARTNeT and the WTO/ESCAP Technical Assistance Programme revealed that 81 per cent of the participants felt that their capacity to design, negotiate and implement trade policies had increased as a result of these activities and that 94 per cent of participants were either satisfied or very satisfied with the overall outcome of the activities.

24. The Trade and Investment Division of the secretariat launched APTIAD in order to provide a useful tool for observers and stakeholders (government, researchers and policy analysts) to monitor and analyse the development of trade agreements. The online database comprises three platforms: (a) a trade agreements database; (b) interactive trade indicators; and (c) a glossary. The trade agreements database provides users with up-to-date, detailed descriptive information on the provisions of RTAs, including bilateral trade agreements that have been signed, are in force or are in the process of negotiation. Each agreement has links to: (a) the legal text of the agreement in English (where available); (b) other relevant sites; and (c) the

process of notification to and consideration by WTO, as laid out in the Transparency Mechanism for Regional Trade Agreements.¹²

25. In order to promote the functional harmonization of RTAs and the development of common frameworks, the database can be used in tracking and monitoring the performance of RTAs through the APTIAD Interactive Trade Indicators platform. This platform is designed to assist policymakers in calculating some of the most commonly used indicators related to the real side of an economy's trade profile. As of May 2011, the database covered over 170 agreements and contained over 20 trade indicators, including interactive indices and precalculated sets of indicators designed to assist analysts and policymakers in assessing the economic impacts and contributions of these agreements.

26. In addition to the above-mentioned modalities, the findings of the secretariat's analytical work and research are presented in the annual *Asia-Pacific Trade and Investment Report*. The latest issue is to be published in 2011.¹³

27. The Trade and Investment Division also furnishes secretariat services for APTA, including the preparation of background documents and analytical studies, as well as direct technical and logistical support for standing committees and ministerial councils of APTA. Mongolia has been provided with technical support in connection with its planned accession to the Agreement. In 2010, four of the six States parties to APTA ratified both the Framework Agreement on Trade Facilitation in APTA Participating States and the Framework Agreement on the Promotion, Protection and Liberalization of Investment in APTA Participating States. Throughout 2010, the secretariat continued to assist APTA members in the finalization of the fourth round of negotiations on preferential tariff concessions and in the conclusion, signing and ratification of the previously mentioned framework agreements.

28. In combining its analytical and normative functions, the secretariat will continue to provide ESCAP members and associate members with guidance and support when they are negotiating new RTAs or expanding existing RTAs to integrate provisions which would turn these agreements into instruments for enhancing inclusive and sustainable growth.

V. Issues for consideration by the Committee

29. The Committee may wish to deliberate on the following issues and on the role of the secretariat in this regard:

- (a) As the importance of concluding the Doha Round in a timely manner and adequately addressing the concerns of developing economies in

¹² The Transparency Mechanism and other multilateral rules pertaining to RTAs are explained in Mia Mikic, "Multilateral rules for regional trade agreements: past, present and future", in *Emerging Trade Issues for Policymakers in Developing Countries in Asia and the Pacific* (United Nations publication, Sales No. E.09.II.F.4), chap. 10, pp. 215-237. Available from: www.unescap.org/tid/publication/tipub2526_chap10.pdf. Furthermore, the relevant WTO webpage is available from: www.wto.org/english/tratop_e/region_e/trans_mecha_e.htm.

¹³ See note 2.

the region cannot be overemphasized, the active engagement and participation of all WTO members is necessary in this regard;

(b) Regional cooperation needs to be promoted to enhance intraregional trade and investment and to ensure that trade and investment contribute to inclusive and sustainable development;

(c) RTAs need strengthening in terms of their coverage of trade in goods, services and other areas, as well as the depth of commitment of the economies concerned, and membership in the RTAs needs to be expanded in order to maximize trade creation and promote their evolution into real and effective building blocks of the multilateral trading system;

(d) Modalities and common frameworks need to be developed to facilitate the functional and geographical consolidation of RTAs with a view to reducing the “noodle bowl” effect;

(e) APTA could play a potentially important role as the driver of innovative approaches to strengthen RTAs and regional economic integration in general. For this purpose, APTA needs to be further strengthened and its membership expanded;

(f) RTAs need to be developed in support of business-driven regional value chains;

(g) There is a need to strengthen aid for trade with a focus on the following areas: (i) building the capacity of developing countries in negotiating and implementing multilateral and regional trade agreements; (ii) building supply-side capacity for trade and investment; and (iii) enhancing modalities to strengthen regional cooperation in this area, including in the context of RTAs;

(h) There is a need to increase the relevance and contribution of existing ESCAP modalities for regional trade cooperation and analysis, such as the Asia-Pacific Trade and Investment Agreements Database, the Asia-Pacific Trade and Investment Review and the Asia-Pacific Research and Training Network on Trade.
