ASIA-PACIFIC
Insights from the region

AUSTRALIA AT A CROSSROADS
Good neighbour or stunting development?

As negotiations stall in the World Trade Organization (WTO), Australia and other developed countries are rushing to sign free trade agreements (FTAs) with a number of developing countries. Some developed countries such as the USA and Japan are using FTAs to obtain what they failed to get at the WTO due to the strengthening developing country alliances there. Australia can choose whether to follow the US model, or provide a fair go to countries trying to develop.

Bilateral versus multilateral agreements

There are a number of inherent problems with bilateral or regional free trade agreements compared to multilateral trade agreements such as the WTO. Bilateral agreements divert scarce negotiators, financial resources and technical expertise in developing countries away from multilateral negotiations to a web of simultaneous bilateral negotiations. Bilateral agreements between developed and developing countries tend to exacerbate the unequal bargaining power between the countries. At the WTO it is at least theoretically one vote per country, and developing countries have strength in numbers. Lastly, FTAs are currently only allowed under the WTO, if they eliminate duties on substantially all trade in goods. Apparently this has been interpreted by the European Union to mean that in any FTA 90% of the tariffs have to end up at zero, so the only concessions possible for developing countries are that they have longer implementation periods. There are presently proposals at the WTO by developing countries to amend this requirement to allow developing countries special treatment in FTAs so that they do not have to reduce their tariffs to zero for the reasons given below. Recognising that until this WTO provision is amended any FTA will be detrimental to them, African countries have refused to sign FTAs with Europe until this amendment is passed.

Australia and ASEAN

Australia is in the midst of FTA negotiations with the Association of Southeast Asian Nations (ASEAN), Malaysia (individually), China and the United Arab Emirates.

The proposed Australia–ASEAN-New Zealand FTA aims to eliminate barriers to goods, services and investment and be fully implemented within ten years. Rapid forced liberalisation of goods, services or investment can be highly problematic for developing countries. Three members of ASEAN, Burma, Cambodia and Laos are still officially classified as 'least developed'. Both developing and least developed countries get special consideration at the WTO because of their poverty and lack of development. If these FTAs are negotiated under the current WTO requirement to eliminate duties on substantially all trade in goods, the only concessions to help producers in developing and least developed countries adjust to the new regime of no tariff protection will be longer phase-in periods. This means that only allowing a 10-year implementation period for ASEAN countries to develop to the level where their industries can compete against Australia's is particularly drastic and unfair. Given that the US beef industry claimed that it needed 18 years to adjust to competition against Australia (and was granted this concession by Australia), least developed countries should be given more than a mere 10 years to adjust.

Industrial tariffs

The content of the FTAs Australia agrees to can have potentially far-reaching consequences for its developing country partners. This is because as countries industrialise there are a number of important tools that their governments need to be able to use. According to many development economists, these tools include the ability to support domestic infant industries by sheltering them behind tariff and other barriers and supporting them through giving them preference over foreign suppliers in government purchasing. It is widely acknowledged that Australia, countries in East Asia and most other industrialised countries used such policies until their industries were strong enough and large enough to be able to compete internationally. Being arm-twisted into rapid liberalisation (lowering of tariffs) in FTAs has led to import surges in many developing countries with adverse effects on their domestic industrial and agricultural sectors, balance of payments and debt position. The UK government and the G8 have recently recognised the potential problems with liberalisation for developing countries.

Export of services and free trade agreements

There are two main problems with including services in FTAs. Developing countries have less capacity to export services and so do not benefit from services liberalisation in industrialised countries and their own services sectors are vulnerable if they are required to liberalise.

Developed countries generally have much greater capacity to export services (such as banking, insurance, telecommunications, public services, energy, water, postal services and professional services) than developing countries. According to the United Nations Conference on Trade and Development, this is because developing countries lack the human resources and technology to ensure that professional and quality standards are met, have poor telecommunications infrastructure, insufficient financial capacity and an inability to offer a package of services. By contrast, developed countries have huge firms (80% of the tourism market belongs to three companies), with access to worldwide networks, vertical integration and strategic alliances which restrict competition and provide barriers to entry to the small and medium-sized companies from developing countries. The exception is the movement of people mode of services where people temporarily travel to another country to work, for example in the construction industry. Developing countries, due to their lower wage costs, have an advantage in this mode, but developed countries rarely liberalise this sector to allow foreign workers to enter.

Developing countries managed to ensure that services liberalisation at the WTO is based on the 'positive-list' approach where countries list the sectors they want to liberalise. However developed countries in FTAs often push for a 'negative-list' approach where every sector is liberalised unless it is specifically listed as an exception. This method is particularly dangerous for developing countries which may have been unable to measure the likely impact of services liberalisation. Without the information to make an informed decision, developing countries are locked into liberalising certain sectors which they cannot change if it turns out to have a negative impact, or circumstances change. If there are benefits to be gained from services liberalisation, developing countries should be allowed to liberalise autonomously, without binding commitments, so that they can reverse the decision if it has negative effects without having to pay compensation.

Forced liberalisation of services sectors may have a number of negative effects on developing countries. For example, it is now generally accepted that the premature liberalisation of the finance sectors in developing countries has been a major factor behind recent financial crises as they have not been permitted to have the capital controls and other measures to prevent or lessen rapid flights of capital which cause financial crises. Depending on their provisions, FTAs may make it more difficult for developing countries to provide public services. Allowing foreign service providers to provide public services will probably result in them targeting the profitable sectors or high income earners, leaving the developing country government with less revenue to provide the less profitable services. In addition, as described above for the goods sector, including services in FTAs prevents developing countries from giving domestic service companies the preferential treatment that they need to grow and develop. Furthermore, an influx of foreign service providers causes a significant net foreign exchange loss as the nature of services is that most of their output is consumed in the developing country so it is not earning foreign exchange, but the profits made in the developing country are repatriated out to the home developed country.

Investment

Developing countries have also fought against international rules on investment at the Multilateral Agreement on Investment (MAI) and the WTO only to find they are facing the same demands in FTAs. The usual investment provisions sought by developed countries in FTAs define investments very broadly (including, eg, patents) and remove the ability to impose a number of requirements that promote development such as requiring investors to:

- invest in underdeveloped areas or industries
- hire local staff (including affirmative action for a particular sector of society)
- use local materials
- export enough to balance imported inputs
- reinvest profits in the developing country etc.

It was policies such as these which helped countries such as South Korea and Taiwan develop so quickly. An important example is that Malaysia's ability to use the capital controls which helped it weather the 1997 Asian financial crisis would be greatly undermined by the investment provisions usually required by FTAs. Of course some of these measures are already prohibited under the WTO, but not all FTA partners are WTO members yet (eg, Laos, Vietnam) and so they should still have the freedom to use all of these measures. Furthermore, the expropriation provisions of investment chapters of FTAs make it very difficult for governments to pass legislation without affecting investments as they are so broadly defined. The ability for investors to sue the state under many FTAs also exposes governments to considerable liability for implementing ordinary government policies such as pollution limitations, as the North American Free Trade Agreement cases have shown.

Intellectual property

Another commonly used development path was to delay intellectual property protection until a late stage in development. This was used by many European countries and Japan, Korea and Taiwan are famous for their industrial development on the basis of copying inventions as they had no effective patent system. This approach has largely been cut off on the basis of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which sets high minimum standards of intellectual property protection for WTO Members. However some FTAs, particularly those involving the USA, are including intellectual property chapters in which even higher standards of intellectual property protection (TRIPS+) are sought. This further decreases options for industrial development, increases the price of medicines and reduces access to the knowledge needed to develop. Australia should not be following the US and requiring TRIPS+ standards in its FTAs.

Conclusions

The debate in Australia over the Australia–US FTA shows the concern about the impact of FTAs, even between two developed countries. The challenges posed by these bilateral agreements are greatly multiplied for developing countries. To develop successfully, developing countries need the space to choose the most appropriate policies for their stage of development. Locking them into inappropriate policies too early can be devastating. If Australia wishes to consolidate, rather than undermine, the good work it is doing through tsunami relief and other aid, any FTAs it signs should support development.

SANYA REID SMITH is a lawyer with Third World Network (an international NGO based in Malaysia).

email: twnkl@po.jaring.my