

# Multilateralizing Asian Regionalism

## Regionalism: Challenges for the WTO

Patrick Low  
WTO Secretariat

ADB/HEID Conference  
Tokyo, 18-19 September 2008

The views expressed in this paper are the views of the author and do not necessarily reflect the views or policies of the Asian Development Bank Institute (ADBI), the Asian Development Bank (ADB), its Board of Directors, or the governments they represent. ADBI does not guarantee the accuracy of the data included in this paper and accepts no responsibility for any consequences of their use. Terminology used may not necessarily be consistent with ADB official terms.

# Main Elements

- Multilateralism and regionalism compared
- GATT/WTO law and practice on regionalism
- Options for convergence
- A role for soft law?

# Multilateralism and Regionalism Compared

- Not substitutes, both supply unique attributes
- Parallel universes needing better connections
- Downsides of regionalism, although indeterminate welfare analytics and global governance considerations
- Preferentialism and trade costs
- Challenges for multilateralism progress, legitimacy and difficulties with reciprocity
- Recent work
  - Ornelas (Grossman-Helpman, elusive free trade, complementarity between RTAs and multilateral opening)
  - Estevadeordal, Freund and Ornelas (empirical validation)
  - Limao (opposite conclusion, but non-trade bargains)

# GATT/WTO Law and Practice

## **The Law:**

- Loopholes and a lack of specificity
- Contested interpretations
- Limited influence on the design and content of RTAs
- Sparse, permissive jurisprudence

## **Practice:**

- Virtually no decisions on conformity
- Confusion between law and politics

# GATT/WTO Law and Practice (cont)

## **Gaps in the rules:**

- Nothing on preferential rules of origin
- No provisions for agriculture-specific measures (e.g. TRQs)
- Lack of clarity on application of contingency measures

## **Definitional problems:**

- “Substantially all trade”
- “No more trade restrictive”
- Interim agreements

# GATT/WTO Law and Practice (cont)

Arguments about role of dispute settlement:

- Judicial review rather than dispute settlement for “balance”
- Appeal to customary law
- This is about politics not law
- If GATT/WTO has not disapproved of RTAs they should be assumed to conform
- Co-existence is the ticket for WTO survival

# From the Legal to the Procedural

- Historic tension: information – political conversation – compliance imperative (substantive rules)
- *De facto* a dysfunctional mix
- The 2006 Transparency Mechanism
  - Early announcement
  - Factual only, no basis for dispute settlement
  - A “consideration” not an “examination”

# Options for Convergence

- Abandon regionalism
- Multilateralize regionalism
- Liberalize multilaterally
- Fix the WTO law
- Adopt soft WTO law

# Soft Law Options

- Definitions of soft law
- Codes of good practice (APEC, Plummer)
- Soft law as:
  - An end: sound governance or mushy compromise? Depends on power relations; distributional impact; pre-existing homogeneity; implementation costs
  - A means to an end, namely the reform of hard law

# Potential Problems with Soft Law

- Soft law and hard law can become antagonistic – soft is harder and hard is softer
- Underlying perceptions and objectives – soft law cannot be anchor-free
- If soft law is intended to be a road to hard law, how do you engineer the transition?

# Putting the WTO Back on the Stage

## **A three-phase process**

- A strengthened Transparency Mechanism
- The evolution of soft law – codes of good practice with monitoring, evaluation and a degree of accountability
- Negotiation of a new, more solid and legitimized hard law structure

The time this would take depends in part on the process of multilateralization emanating from the RTA side