

## **This Thing Called FTAs**

---

---

JEREMY I. GATDULA\*

---

---

Free trade areas (along with customs unions and regional trading arrangements) are very much in discussion nowadays not only due to the proliferation of the same but also the very visibility in which they are formed. Much has to do with the fluid situation in which the international environment finds itself in. Thus, unlike before, the political or diplomatic aspect in the creation of FTAs have become more prominent in recent times and this may perhaps have been exacerbated by the perceived inertia that seems to be afflicting the multilateral trading system. In any event, it is a fact that free trade agreements are increasing in number.

According to the 2002 annual report by WTO Director-General Panitchpakdi, some 250 regional trading arrangements have been notified to the WTO as of June 2002, with an estimated 300 such arrangements potentially coming into force by 2005. According to one study, there are very few countries that do not belong to any formal regional trading arrangement and “if APEC is counted as a planned regional trading arrangement then virtually all countries may be indeed considered to belong to at least one such arrangement”. So indeed, free trade areas, customs unions, or regional trading arrangements are a significant part of the international trading landscape.

However, this “significant part” of the landscape is fraught with issues and concerns. Most notable of which is the nature of free trade areas itself. FTAs are essentially discriminatory in nature and serve as an exception to the most favored nation principle of the multilateral trading system. Thus, the concern that FTAs may create trade diversion, that is, the shifting of discrimination – which should have been mitigated along with the reduction in trade barriers – between sources of supplies, such as the displacement by an FTA member country of lower cost imports from countries not a part of that FTA.

Also, despite the fact that indeed Article XXIV of GATT 1994 provides for the creation of FTAs and customs unions, the same provides for certain elements that itself has become a source of questions as well. As an example, a free trade area is defined as a group of two or more countries in which duties and other trade-restrictive regulations are eliminated on substantially all the trade between these countries. Here, the issue regarding the meaning of “substantially all the

---

\* Professorial Lecturer on International Trade Law, Arellano University School of Law

trade” is obvious. Such concerns are not merely academic in nature and precisely it is these issues that have been raised with regard to the impending free trade arrangement between China and Hong Kong.

The other problem with regard to FTAs is that their very number provides an increasingly complex international trading system. Considering that there have been concerns raised regarding the capacity of the Philippines to keep up with its multilateral trading commitments, this obviously would be multiplied in view of the proliferation of FTAs because not only would the country have to keep track of its own membership commitments but also, for purposes of keeping Philippine competitiveness, keep track of the arrangements of which the Philippines is not a part of but has been entered into by other countries.

Furthermore, by relying on the benefits of FTAs, certain rules would be needed to protect the existence of such benefits. Most Significant among these rules would be that pertaining to the rules of origin. Rules of origin, to put it summarily, are those rules that distinguish the product of a non-FTA member from an FTA member. These rules are quite complex and clearly quite important, having an immediate and substantial effect on the bottomline of companies that deal in international trade. Consequently, the greater the number of FTAs that a country is a part of, the greater the number of rules of origin that has to be monitored.

Another complex issue would be the overlapping jurisdictions had by the different dispute settlement systems in place between the multilateral trading system and the different FTAs. To take as an example, in one study, it was found that by looking at the provisions of the WTO and that of the AFTA, the chances of overlap are quite high to the point of blurring the actual proper avenue for settling disputes. This in turn could lead to possibilities of extended disputes or of forum shopping.

Finally, it must be considered that at this point, negotiations on trade do not necessarily need to focus on the lowering of tariffs. One simple reason being is that the tariffs are quite low enough already. However, when thinking about FTAs, this fact is sometimes overlooked and there are indeed other equally important and perhaps more complicated issues that need to be investigated. Among them would be those pertaining to market access, the possibility of problems turning up due to inadequate or faulty trade facilitation (such as complicated or ambiguous customs procedures), sanitary and phytosanitary measures, technical barriers to trade, and perhaps the issue of smuggling.

However, it must indeed be said that there are also indications that FTAs do bring benefits, whether it be the promotion of greater trade liberalization and the access to preferential markets. The creation of beneficial trade arrangements is

certainly quicker if one is dealing with only 5 or 10 countries as compared to the, say, 146 Members of the WTO. The dangers of trade diversion furthermore seem to have met with considerable doubt among a substantial number of economists studying the matter. Along with this, it must be said, is that even for those who advocate the multilateral trading system over the bilateral or regional, studies seem to indicate as well that the proliferation of FTAs have not, as of yet, brought about damage to or mitigated the supposed benefits of the multilateral trading system. There is also of course the avoidance of the concern of being left out of a preferential trading arrangement. Besides, these is this point, sometimes overlooked, that even despite the adherence of most countries to a multilateral trading system (evidenced by the growing number of WTO Members), most of the trade being done in the world is still regional in nature.

The point therefore being made here is that with regard to formulating a policy or view with regard to FTA's, there is the clear certainty of the need for greater information regarding the environment that surrounds it. For the moment, a certain degree of caution would perhaps be justifiable under the circumstances when even exploring the idea of possible bilateral or regional trading arrangements precisely because there are no categorical indications regarding the direction, benefits, and risks that are concomitant with FTA's. Consequently, in confronting the reservations raised with regard to FTA's, we find ourselves again reiterating the very same issue that pervades overall Philippine trade policy and that is the seeming need for a re-evaluation of the way we engage the international trading system.

The government must continue and expand on its efforts to better communicate, consult, and integrate the concerns of the private sector. The thing is, trade policy and trade negotiations obviously do not have as their objective the advocacy of a certain philosophy but rather the betterment of the citizenry of which the business sector is a significant part of. There should be greater accessibility to information pertaining to trade, whether it be relating to data, policy, to commitments already made, or to movements in international bodies that may result in the formulation of new trade rules. There should be the institutionalization of private and public sector consultation in matters pertaining to trade. Finally, the Government is encouraged to exhibit greater patience in further explaining the intricacies of the trading system to the ordinary Filipino, to encourage and welcome greater discussion and debate, and gather consensus (with emphasis on the word "consensus") as is reasonably possible in moving forward.

On the other hand, the business sector, the consumer groups, the academe, and all the other members of the private sector are encouraged to exert greater effort in informing themselves of the rules and regulations that surround international trade. Inasmuch as the government is being encouraged to be more

transparent in our trade policy matters, then should the private sector reciprocate by engaging government with a more constructive and intellectual discussion of the matters pertaining to trade. They should familiarize themselves with the ongoing calendar of trade negotiations (these are information that are easily seen in the internet) and work constructively with government in ensuring that they have the necessary information to agree to rules that would benefit Philippine business (examples of these would be the current negotiations for ASEAN rules of origin and also the various areas FTAs that are being proposed or negotiated). The private sector should take the initiative in gathering information, formulating practicable options, supply the intellectual database to underpin our trade policy, and finally, to ensure that our negotiations get the best possible information with regard to desired markets, threats to present market share, and barriers to trade.

In the end, trade policy – whether it be in relation to bilateral, regional, or multilateral trade – is the responsibility and keep of every Filipino. The success or failure of our trade policy is not a reflection on government nor on the private sector but on the Philippines. That is why we have to uphold the attitude of working together for our own success.