Regional Trading Agreements: Need for a Coherent Policy Framework for India’s Negotiating Strategy

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I. INTRODUCTION

The world has always been placed in a web of fairly complex trade relations. The reason the current scenario is more interesting and challenging is because of the existence of multiple agreements prescribing rights and obligations intersecting with each other. On the one hand, we have the World Trade Organization’s (WTO) fairly well-established rules of engagement for increasingly liberalized multilateral trade. On the other hand, despite the WTO’s multilateral framework, there has also been a proliferation of preferential trade agreements involving partial reduction of trade barriers between two or more parties, also referred to as Regional Trade Agreements (RTAs).¹

Several new visually descriptive phrases have emerged in trade linguistics to describe RTAs, such as “spaghetti bowl,” “noodle bowl,” and more recently, “termites in the trading system.”² The essential point being conveyed through these terms, as summarized in a recent publication from the World Trade Organization, is that the proliferation of RTAs has created an array of criss-crossing arrangements, “with little attention to coherence among agreements or to the implications of so many regimes for trade costs, efficiency, and the conditions of competition in global markets.”³

In terms of statistics, during the period 1948-1994, the General Agreement on Tariffs and Trade (GATT), which was the WTO’s pred-

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¹ This article will use the term RTAs in a general sense, while acknowledging that many RTAs are not “regional.” Examples of RTAs that are not “regional” include United States-Australia, United States-South Korea, European Union-Mexico, China-Chile.

² Jagdish Bhagwati, Termites in the Trading System: How Preferential Agreements Undermine Free Trade (2008). The term “spaghetti bowl” is also attributed to Professor Bhagwati in his earlier writings.

ecessor, received 124 notifications of RTAs, of which about five were active at the time of the creation of the WTO. The WTO was established in January 1995. It is estimated that as of December 2008, there were around 230 RTAs in force, and a total of 421 RTAs had been notified to the GATT/WTO.\(^4\)

The WTO acknowledges that the effects of RTAs on global trade liberalization and economic growth are not clear given that the regional economic impact of RTAs is ex ante inherently ambiguous.\(^5\) There have been several articles, and at least three major studies, which have dealt with the issue of RTAs: the Sutherland report in 2004,\(^6\) the report of the Warwick Commission in 2007,\(^7\) and the WTO’s World Trade Report in 2003. While these reports highlight the fact that there are several concerns regarding RTAs, they do not definitively address the legal and economic impact of RTAs. In fact, the strongest statement in this regard can perhaps be attributed to WTO Director-General Pascal Lamy, who, during his opening speech at a conference entitled “Multilateralising Regionalism” in Geneva in September 2007, highlighted several concerns about the proliferation of RTAs, especially “concern about incoherence, confusion, exponential increase of costs for business, unpredictability and even unfairness in trade relations.”\(^8\)

India has participated in the multilateral trading system since 1948, as a member of the GATT. At the same time, as with most other countries, India has also been a significant player in the RTA landscape, with a list of twelve concluded RTAs with varying degrees of coverage, at least eleven more under various stages of negotiation, and several “framework” agreements, which provide the basis for future negotiations.\(^9\) However, India’s negotiating agenda is not backed

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\(^9\) For a list of RTAs under negotiation and their current status, see Dept’ of Commerce, Ministry of Commerce & Indus., Gov’t of India, Trade Agreements, http://www.commerce.nic.in/trade/international_ta.asp?id=2&trade=1 (last visited Apr. 15, 2009).
by any clear strategy or policy framework on its approach towards multilateral or regional approaches to trade. In the absence of such a framework, or at least coordination between approaches, there is an inherent risk that India may not be in a position to leverage the benefits of trade effectively.

This Article has three basic objectives. First, it seeks to explain the basic challenges that the rapid proliferation of RTAs presents for the multilateral trading system. Second, it tracks briefly India's engagement in RTAs and the direction it seems to be taking with reference to RTAs. Finally, it attempts to draw a checklist of issues that need to be considered for the development of a coherent policy framework for India's trade negotiations.

II. RTAS: THE CHALLENGES

To set the context briefly, one of the cornerstone principles of the WTO system is the principle of "Most-Favoured Nation" (MFN) treatment. MFN is a principle of non-discrimination that essentially means that countries cannot normally discriminate between their trading partners, and that any "favourable" treatment granted to one trading partner should be equally extended to all other WTO Members. RTAs are, by their very nature, discriminatory: They are a departure from the MFN principle, since members of an RTA provide each other more favourable treatment than they provide to non-members.

A. WTO and RTAs

The WTO envisages the possibility of deviation from the MFN principle through the formation of RTAs relating to both goods and services, provided certain conditions are satisfied. The GATT dealing with trade in goods, and the General Agreement on Trade in Services (GATS) — two of the core agreements of the WTO — envisage RTAs as an exception. But, as pointed out in recent reports, the frequent use of the RTA exceptions under the GATT and the GATS is almost making MFN seem the exception, rather than the rule.\(^\text{10}\)

Article XXIV.5 of the GATT recognizes that preferential arrangements can be set up as a special exception, provided (a) duties and other trade regulations of commerce are reduced or removed on substantially all trade in the group, and (b) the RTA does not raise the overall level of protection vis-à-vis other WTO members. Similarly,

\(^{10}\) First Warwick Comm'n, supra note 7, at 50; see also The Future of the WTO, supra note 6, at 19 (suggesting use of the term "Least Favoured Nation Treatment" to define the norm, as opposed to "Most-Favoured Nation Treatment").
Article V of the GATS provides for economic integration agreements in services, provided such agreements have substantial sectoral coverage, in terms of number of sectors, volume of trade affected, and modes of supply. Article V also mandates that there should not be exclusion of any mode of supply of services.

Apart from the aforementioned provisions under the GATT and the GATS, developing countries have access to another avenue for entering into RTAs, the “Enabling Clause.” Officially called the “Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries,” the Enabling Clause is a decision adopted under GATT in 1979 and enables developed members to give differential and more favorable treatment to developing countries. This continues to apply under the WTO system. Paragraph 2(c) of the Enabling Clause permits preferential arrangements among developing countries in goods trade.

Despite the GATT and GATS rules on RTAs, there continues to be legal uncertainty on application of these rules. The jurisprudence on the interpretation of Article XXIV.5 of the GATT and Article V of the GATS is not clear. Uncertainty exists on the interpretation of the phrase “substantially all trade.” A separate Understanding on the Interpretation of Article XXIV of GATT 1994 was concluded as part of the WTO Agreements in 1994. It attempted to address the manner in which the general incidence of duties and other regulations of commerce applicable before and after the formation of a RTA would be evaluated. However, as noted in recent WTO discussion papers on this issue, the 1994 Understanding did not provide any substantive clarification or interpretation of the essential requirements contained in Article XXIV on RTAs,11 and existing WTO rules on RTAs have proved throughout the years to be ill-equipped to deal with the realities of RTAs.12

As part of the WTO’s Doha Round, members of the Negotiating Group on Rules are mandated to improve the rules around Article XXIV of the GATT, in particular, in relation to the phrase “substantially all trade.” Progress on this aspect, however, has been slow. In

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12 Jo-Ann Crawford & Roberto V. Fiorentino, The Changing Landscape of Regional Trade Agreements 19 (World Trade Org., Discussion Paper No. 8, 2005), available at http://www.wto.org/english/res_e/booksp_e/discussion_papers8_e.pdf. The authors point out that the rules, which require RTAs to be transparent and to provide for deep internal trade liberalization and neutrality vis-à-vis non-parties trade, have been subject to diverging interpretations for nearly half a century. The authors further contend that these rules thus opened the door to a situation of great ambiguity with respect to the relationship between RTAs and the multilateral trading system.
the absence of clarity in interpreting what would constitute "substantially all trade," there is no concrete theoretical, policy, or legal framework that can enable countries to assess and measure the impact of RTAs into which they enter. There are controversies on issues such as rules of origin under RTAs, arising from the absence of WTO rules on this aspect.\textsuperscript{13} There is also no jurisprudence on how discrepancies between existing WTO rules and those contained in RTAs should be resolved.

The problem is as much lack of legal clarity as it is lack of political will and lack of institutional capability to deal with the "reality" of RTAs. The lack of political will stems from the fact that in a world where practically every WTO member is engaged in negotiation of multiple RTAs, each would be hesitant to raise questions about the scope of another member's RTA and its WTO compatibility. As pointed out in the Sutherland Report, there are too many WTO members with interests in their own RTAs for a critical review of an RTA's provisions to take place or a consensus on their WTO conformity to be ascertained.\textsuperscript{14}

The lack of political will among the WTO members is also directly responsible for the lack of institutional capability within the WTO to ensure that RTAs are WTO compatible. The Committee on Regional Trade Agreements (CRTA) is the WTO committee charged with oversight over RTAs. WTO members have reporting obligations to the CRTA, and the CRTA is required to assess adherence to the principles of the GATT and the GATS requirements for justifying RTAs and ensure adequate surveillance of RTAs.\textsuperscript{15} The WTO, however, has remained "a passive observer,"\textsuperscript{16} not really closely monitoring the impact of RTAs. Several legal and political limitations also undermine the CRTA's ability to effectively discharge its responsibilities.\textsuperscript{17}

In view of the legal, political, and institutional limitations highlighted above, there is no specific framework on the basis of which countries can undertake an assessment of the overall measurable impact of such RTAs. The impact of the absence of such a framework

\textsuperscript{13} \textit{Id.}

\textsuperscript{14} The Future of the WTO, supra note 6, at 22.

\textsuperscript{15} The WTO General Council attempted to strengthen the transparency mechanism for RTAs in 2006. See, General Council, Transparency Mechanism for Regional Trade Agreements: Decision of 14 December 2006, WT/L/671 (Dec. 18, 2006).

\textsuperscript{16} Baldwin & Low, supra note 3, at 3.

\textsuperscript{17} See, e.g., Crawford & Fiorentino, supra note 12, at 19. The authors explain that the CRTA's limitations stem from various political and legal difficulties, most of which were inherited from the GATT years.
can perhaps be better understood in the following section which discusses some of the major consequences of RTAs.

B. What Are the Concerns with Regard to RTAs?

1. Trade Diversion

This is one of the simplest consequences of an RTA. As explained earlier, an RTA hinges around deviation from the MFN principle by sanctioning discrimination against non-members to the RTA. In the process of enhancing trade between members, the inherent consequence of an RTA is that it diverts trade from more competitively priced non-members. The overall impact of this could be a threat to balanced development of world trade.

2. Complex and Multiple Tests for Rules of Origin

Central to the issue of whether a product should be given preferential treatment under an FTA is the question of rules to determine actual origin of a product. This has been an increasingly challenging process for RTAs, which often provide for detailed rules for determining percentage requirements for “local content,” to make a product eligible for being certified as originating from a particular destination. In an increasingly globalized world where businesses often source raw materials and services from different parts of the world, rules of origin can often become chaotic and challenging, and spin off effects in terms of reducing trade with non-members. Rules of origin also tend to vary between members and non-members across different RTAs by the same country. Another interesting analysis of rules of origin is that documentation requirements are often so cumbersome and complex that importers may sometimes find it economical to pay the tariff rather than undertake the complex documentation to avail themselves of the preferential tariff.

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18 For example, the North American Free Trade Agreement (NAFTA) concluded between the United States, Canada, and Mexico requires that a certain percentage of the imported product should be of local origin from any of the NAFTA countries. This essentially acts as a disincentive for Mexico to import fabric from India, since a finished product comprising such fabric would not qualify for preferential treatment for imports into the United States under NAFTA. See North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993).

19 The conflicts and arbitrariness in Rules of Origin among RTAs is discussed in Bhagwati, supra note 2.

3. Regulatory Incursions by Developed Countries

The overall mandate that was envisaged under Article XXIV.5 of the GATT and Article V of the GATS was clearly that RTAs can be entered into by WTO members when they involve deeper integration of areas already covered under the WTO Agreements, such as deeper cuts in tariffs and greater liberalization of service sectors. They are silent on incursions into new areas not addressed within the WTO framework. RTAs, however, have made frequent incursions into several newer policy areas, which are often not related to trade. These are exemplified in RTAs driven by the United States and the European Union, whose scope frequently cover policy areas such as labour, environment, competition, investment, capital movement, and various TRIPS-plus provisions in relation to intellectual property. One of the main concerns about this expanding scope and reach of RTAs is that the European Commission and the United States are effectively using the RTA approach as a tool to export their own regulatory approaches to RTA partners, especially when attempts to push similar issues at the multilateral level have not succeeded.

4. Threats to Multilateral Negotiations

Another big criticism of RTAs is that they could undermine multilateral negotiations and make countries less likely to agree to further liberalization at the WTO. RTAs have the effect of reducing the incentives for negotiating multilateral agreements. One of the most prominent critics of regionalism, Professor Jagdish Bhagwati, explains in his latest work that regional deals make countries less likely to agree to multilateral tariff reductions, since the value of the preferential situation under an RTA negotiation hinges on how high the multilateral tariff is.  

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22 For an excellent discussion on “WTO-plus” and “WTO-extra” areas covered under RTAs, see Henrik Horn, Petros C. Mavroidis & André Sapir, Beyond the WTO? An Anatomy of E.U. and U.S. Preferential Trade Agreements (2009), available at http://www.policypointers.org/Page/View/6833; see also Bhagwati, supra note 2, at 83-85 (discussing elements of coercion often used by the U.S.T.R. to ensure developing countries enter into RTAs with the United States).

23 Bhagwati, supra note 2, at 88. This has also been empirically demonstrated in an analysis of U.S. trade policy, with the finding that the United States was slower to reduce MPN tariffs, wherever this would remove the incentive for its RTA partners. See Nuno Limão,
5. Dilution of Bargaining Power of Developing Countries

The fact that countries such as India, China, Brazil, and many other developing and least developed countries collaborated and often took common positions, has played an important role in ensuring the strength of their collective bargaining positions at the multilateral level.\(^\text{24}\) There is a concern that it may not be possible to take such strong positions in bilateral negotiations. This is reflected, for instance, in the gradual spread of RTAs covering areas such as TRIPS-plus intellectual property rights standards, labour and environmental standards, and competition policy related issues, which have otherwise been opposed by developing countries in multilateral negotiations.

III. INDIA AND RTAS

In the South Asian region, India has been the main focus of RTA activities. India's most comprehensive RTA so far has been the Comprehensive Economic Cooperation Agreement (CECA) with Singapore, signed on June 29, 2005. With its counterparts in the South Asian Association for Regional Cooperation (SAARC), India has concluded the South Asian Free Trade Agreement (SAFTA), which is an agreement focusing only on preferential trade in goods. India and Sri Lanka also have a separate free trade agreement focusing on trade in goods. Furthermore, India is negotiating an agreement for economic cooperation involving Bangladesh, India, Myanmar, Sri Lanka, and Thailand (also called the BIMSTEC agreement), and has concluded framework agreements with the MERCOSUR, Gulf Cooperation Council (GCC), South African Customs Union (SACU), and Chile.

The CECA with Singapore was a landmark for India, since it is the first comprehensive agreement covering a wide range of issues with a significant trading partner. The scope of CECA includes trade in goods and services, an agreement on investment, mutual recognition agreements on testing and certification of products in certain specified sectors, cooperation agreements in areas such as e-commerce, media, and intellectual property, and commitments to facili-

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tate mutual recognition agreements for movement of professionals. Several of these elements achieved progress beyond WTO commitments of both countries.

Since the conclusion of the CECA with Singapore, India has been negotiating agreements of similar comprehensive scope with other key trading partners, such as ASEAN, Japan, and South Korea. CECAs with South Korea and Japan are at a fairly advanced stage of negotiations. The trade in goods agreement with ASEAN has been formalized and is awaiting signature, whereas negotiations on services and investment are expected to conclude by the end of the year. India’s negotiations for a Trade and Investment Agreement (TIA) with the EU has also been in progress for the past two years. Moreover, India has entered into TIA negotiations with the European Free Trade Area (EFTA).

A. Nature of Deviations in RTAs from India’s Multilateral Stand

1. Trade and Investment

The biggest deviation from India’s multilateral position is evidenced in the detailed chapter in the CECA on investment focusing on protection of investments and investors. Trade and investment is often referred to as one of the “Singapore Issues,” along with trade and competition, government procurement, and trade facilitation, which were brought into the WTO agenda at the Singapore Ministerial Conference in 1996 and were later built into the Doha Agenda for WTO negotiations. India opposed including investment, competition, and government procurement in the WTO negotiations. These three areas were dropped from the Doha Agenda in 2004.

The provisions of the India-Singapore CECA’s chapter on investment mirror the approach taken under the North American Free Trade Agreement (NAFTA). Its main focus is on protection of investors and investment and commitments for liberalized market access in most sectors. A significant feature of the investment chapter is that it is the only chapter under the trade agreement that provides private persons from either country the option to challenge regulatory or policy decisions having an impact on their investment in the other country. In respect of all other areas, the CECA mandates only state-to-state disputes.

The investment framework under the CECA needs to be viewed against the backdrop of India’s autonomous foreign direct investment

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(FDI) policy and regulatory framework, which has been substantially liberalized over the years. In fact, there are very few sectors in which foreign investment is restricted,²⁶ the reasons for which are rooted in public interest, public health, and national security related concerns, as opposed to protectionist reasons in favour of the domestic industry.

However, the existing legal framework in India allows the government and the legislature sovereign space for regulatory interventions, applicable equally to domestic and foreign investors, for any public policy related concern, which could range from environmental regulations or land related rights, or protection of small-scale sectors, to foreign exchange related norms. The main concern with a chapter on investment in a trade agreement, as reflected in the investment chapter under the Singapore CECA, is that it could have potential implications in terms of curbing the space for regulatory and policy interventions.

2. Trade and Environment; Trade and Human Rights?

In the context of the ongoing negotiations with the EU for a TIA, trade and environment, and trade and human rights related linkages could potentially be a challenge. The EU Parliament has passed a resolution that emphasizes the need for any potential RTA with India to include commitments on human rights, social and environmental standards, and sustainable development.²⁷

Consistent with its stand at the multilateral level that environment and human rights are "non-trade" issues, and should not be part of the multilateral negotiating agenda, the Indian Government officials have reportedly maintained that such provisions would not be acceptable.²⁸ Whether or not these provisions find their way into the negotiating text will determine the extent to which India's stand is vindicated. This will also have implications for any future trade negotiations, whether bilateral with countries such as the United States, as well as in multilateral negotiations.

²⁶ Prohibited sectors for foreign investment include (i) Gambling and Betting, (ii) Lottery Business, (iii) Atomic Energy, and (iv) Retail Trading (except for single-brand retail). In a few other sensitive sectors such as tobacco manufacture, and manufacture of electronic and aerospace equipment, prior approval from the Central Government is a pre-requisite. Sectoral caps for investment are applicable in sectors such as telecom, insurance, and banking. However, these have been substantially liberalized in the past few years.
B. RTAs: How Much is India “Benefiting” from Its RTAs?

Countries enter into RTAs with the specific aim of obtaining greater and more liberal market access, and India’s case is no different. However, as explained earlier, there is no specific assessment framework based on which countries can analyze the benefits and costs of entering into an RTA, and questions and concerns remain on the exact measurable benefits RTAs would bring.

A recent study in respect of the India-Sri Lanka agreement, (which has been in force since 2000), points towards “modest” trade creation, with the caveat that greater passage of time is required for statistically more significant results.\(^{29}\) No specific analysis seems to have been undertaken in respect of whether there has been trade diversion or impact on neighboring countries. Specific analysis of this agreement in the context of the recently concluded South Asian Free Trade Agreement has also yet to be done.\(^{30}\)

Both the India-Sri Lanka FTA and SAFTA focus only on trade in goods. As mentioned earlier, the India-Singapore CECA, which entered into force in August 2005, is the most comprehensive in terms of its scope which spans goods, services, and investment. One of its main achievements is believed to be the opening up of the financial services turf in both countries by the Reserve Bank of India (RBI) and the Monetary Authority of Singapore (MAS).\(^{31}\) In the aftermath of this development, media stories have primarily focused on the “benefits” that have emerged out of the India-Singapore CECA, particularly the significant trade increase (by almost thirty percent) between the two countries. However, questions remain about how much such increase can be directly attributed to the CECA, since Indian exports to Singapore had seen a significant increase in the period immediately preceding the CECA phase as well.


\(^{30}\) The South Asian Free Trade Agreement (SAFTA) was concluded in 2006 between members of the South Asian Association for Regional Cooperation (SAARC), comprising of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. SAFTA replaced the earlier South Asian Preferential Trade Agreement among the SAARC members.

\(^{31}\) Both countries dithered as to which would first grant the coveted qualified full banking (QFB) license for one or more of the other’s banks. The problem was resolved with a simultaneous gesture by both RBI and MAS. RBI has allowed DBS Bank Ltd, the largest bank in Singapore in terms of assets, to open eight new branches across India, and has also allowed Singapore’s United Overseas Bank Ltd. (UOB) to open one branch in India. MAS, on its part, has offered the QFB status to State Bank of India, which will enable the latter to raise retail deposits and to open twenty-five centres in Singapore, including ATMs and point-of-sales operations.
With regard to FDI from Singapore, there has been an upward movement: from $275 million U.S. in 2005-06, FDI inflows from Singapore jumped to $578 million U.S. in 2006-07, making Singapore the sixth largest FDI investor in India.\(^{32}\) How much of this can be attributed to the CECA, and how much to the general liberalized climate for investment under India’s FDI policies, however, has not been determined. The presence of Indian companies in Singapore has been reportedly growing at the rate of ten percent per year.\(^{33}\)

There are certain other critical aspects of the India-Singapore CECA that have not yielded results as expected. One aspect on which Indian negotiators had high expectations were the provisions of the CECA mandating both Mutual Recognition Agreements (MRAs) for enabling free movement of skilled professionals between the two countries. The cross-border movement of natural persons has a central role in initiating and supporting trade and investments in goods and services, and India, with the presence of highly skilled professionals in different disciplines, is believed to have a natural advantage in this area. However, it has also remained a fairly controversial area both under the WTO regime and under bilateral trade agreements such as the CECA. MRAs typically provide for recognition of qualifications and licensing criteria required for the practice of a profession. MRAs are very important to ensure that an Indian accountant or architect or doctor, for instance, can practice her profession freely in Singapore, without having the additional burden of re-qualifying in Singapore. The CECA provided for negotiation of MRAs between India and Singapore to further liberalize and to recognize each other's educational and professional qualifications pertaining to the fields of accounting and auditing, architecture, medicine, dentistry, and nursing. No substantive progress has however been achieved on this aspect.

MRAs are controversial and difficult to negotiate. One of Singapore's disagreements, for instance, has been that they can recognize qualifications only from top-tier Indian institutions, but not from all. Which specific institutions and who should decide the ranking, have been some of the more practical issues yet to be resolved.

Benefits in services liberalization and negotiation of non-tariff barriers are also expected to be challenging aspects of negotiations with other trading partners, including EU, ASEAN, South Korea, and Japan, because of lack of a clear framework for assessing measurable benefits and outcomes of these negotiations.


\(^{33}\) Id.
IV. NEED FOR AN RTA ASSESSMENT FRAMEWORK

India has been emerging as a significant player in multilateral trade negotiations. India has also benefited significantly from the multilateral trading system, both in terms of volume of trade and revenues from it, as well as by emerging as a significant voice in formulation of international trade policy through its active participation and submissions at different WTO committees, and its significant leadership during the Doha round discussions in mid-2008.\textsuperscript{34} India has also taken an active part in dispute settlement at the WTO, as a complainant, respondent, as well as third party in several important decisions. In fact, the first and only WTO decision to date on Article XXIV relating to the regulatory requirements for RTAs was initiated by India against Turkey's quantitative restrictions on imports of textiles from India. India's complaint that Turkey's actions were not consistent with WTO principles was upheld by the WTO's Dispute Settlement Body.\textsuperscript{35}

At the same time, India has also been engaged in multiple RTA negotiations with both developed and developing country trading partners. As explained above, its most comprehensive agreement so far has been with Singapore, in which it has made its first foray beyond the subject matters covered by WTO agreements, through fairly extensive commitments on investment. Its agreements with Japan, South Korea, ASEAN, EFTA, and the EU are also likely to take a similar comprehensive approach.

India, as is the case with many other countries, does not yet have a coherent policy framework or strategy for its engagement in trade agreements. In view of the significant risks of RTAs and their potential threat to the multilateral system as outlined in Part I of this Article, it is important for India to develop a clear and well-articulated strategy for its external trade policy, in order to avoid conflicting positions or allowing inadvertent incursions into its sovereign policy space. This is important in order to maintain consistency and coherence in its approaches at the multilateral and bilateral/regional levels.

The broad elements of such a framework would include the following:

\textsuperscript{34} See, e.g., supra note 24 and accompanying text.
\textsuperscript{35} Appellate Body Report, \textit{Turkey — Restrictions on Imports of Textile and Clothing Products}, WT/DS34/AB/R (Oct. 22, 1999). Turkey had argued that its quantitative restrictions on imports from India were justified under GATT Article XXIV based on its formation of a customs union with the European Communities. The WTO Appellate Body held that the quantitative restrictions were not justified under the Article XXIV, since they did not comply with the requirements for ensuring that the formation of a customs union should not raise barriers against non-members.
(a) A clear set of objectives in terms of areas and sectors where India is willing to allow for market access (both in goods and services), over and above that committed under the WTO. While this will need to be customized in negotiations with specific trading partners, it is important to have a set of internal policy parameters.

(b) Nature of commitments in the RTA that go beyond WTO commitments, and analytical tools to assess the economic impact of the expansive liberalization being undertaken. In respect of tariff reductions, such tools would need to assess the potential impact on trade creation as well as trade diversion. In terms of commitments in areas such as services, non-tariff related matters, such as trade facilitation and intellectual property rights, such tools for measurement are as yet not available in economic literature. These are aspects that would need to be considered and clear parameters for assessment would need to be identified. In respect of trade in services, for example, actual conclusion of MRAs could be potential factors for measuring achievements and benefits under an RTA.

(c) Nature of areas covered in the RTA that go beyond areas covered by WTO agreements, such as investment, competition policy, and intellectual property rights, and possibly even issues such as environment and human rights, would need to be clearly assessed in terms of the potential economic costs for undertaking obligations in these areas, as well as the perceived gains from these obligations. The potential restrictions on regulatory space through onerous obligations on investment-related issues would need to be addressed. Clarity on the theoretical basis and rationale for including non-trade concerns such as the environment and human rights in trade agreements will also need to be addressed.

(d) Legal impact and enforceability of the provisions of an RTA, including through domestic legislative changes, is another aspect that should be examined.

(e) A clear delineation of multiple rules of origin, and rationalization of the same in order to ease burdens on Indian exporters, is also a critical element that would need to be considered as an important component of the trade policy and negotiation strategy.
(f) A framework for regular monitoring and impact assessment of RTAs is also important. This will enable appropriate interventions at the review meetings and phased negotiations of RTAs, as well as serve as important learning tools for negotiation of future RTAs.

(g) India also needs to play a more active role at the WTO’s CRTA. As explained earlier, most countries seem fearful of stronger CRTA scrutiny of WTO compatibility of RTAs because of the potential impact and scrutiny of their own RTAs. However, such a rationale is self-defeating in the long-run. One of the biggest achievements of the WTO framework is its rule-based system with clear and consistent rules governing most areas of trade relations. The same needs to be evolved in the actual implementation of Article XXIV of GATT and Article V of GATS in relation to assessing WTO compatibility of RTAs. This would involve clear criteria and parameters for assessment of whether an RTA involves “substantially all trade” between the RTA parties, and its impact on non-parties.

(h) Most importantly, investment in adequate resources for constituting a strong trade negotiating team is necessary. Overburdened government officials multi-tasking between multiple RTAs and multilateral negotiations is not sustainable in the long-run. A permanent advisory body should be considered, comprising government officials, economists, and legal experts, who can ensure continuity, consistency, and coherence among the various negotiations.

The underlying emphasis of any trade negotiation strategy is whether the particular negotiation of a multilateral or a bilateral/regional agreement holds not just short-term, but also long-term gains for India. A clear and consistent framework would enable India to consolidate and play a stronger role in international trade relations.