

**SUBMISSION ON REGIONAL TRADE AGREEMENTS BY
THE SEPARATE CUSTOMS TERRITORY OF
TAIWAN, PENGHU, KINMEN AND MATSU**

Paper by the Separate Custom Territory of Taiwan,
Penghu, Kinmen and Matsu

The following submission, dated 7 June 2005, is being circulated at the request of the Delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

**STRENGTHENING THE MULTILATERAL TRADING SYSTEM VIA OPEN REGIONALISM:
PROPOSAL FOR REGIONAL TRADE AGREEMENTS TO CONTAIN
AN ACCESSION CLAUSE FOR NON-PARTIES**

Paper by the Separate Customs Territory of Taiwan,
Penghu, Kinmen and Matsu

1. In this paper, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu proposes that new provisions be added to Article XXIV of GATT 1994 and Article V of GATS requiring parties to an RTA to allow another interested WTO Member to negotiate in good faith the terms of its accession to the RTA.

**I. PROBLEMS OF CURRENT REGIONAL TRADE AGREEMENTS UNDER THE
WORLD TRADE ORGANIZATION**

2. The basic difference between the multilateral system under the World Trade Organization (WTO) and RTAs is that the multilateral trading system requires non-discrimination among its members, while RTAs discriminate against goods, services and service-suppliers from non-parties.

3. There may be an economic and other justification for RTAs to deviate from the fundamental principle of most-favoured-nation (MFN) treatment under Article I of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article II of the General Agreement on Trade in Services (GATS). But the WTO allows the existence of RTAs on the strict condition that they must be trade creating, not trade diverting. Therefore, the justification for RTAs should be scrutinized against the primary goal of supporting the multilateral trading framework, to make sure that RTAs are used solely to advance trade liberalization, and not as a means to undermine MFN treatment indefinitely.

4. Unfortunately, the lack of effective multilateral supervision to date simply serves to demonstrate that the terms and conditions as specified under Article XXIV of GATT 1994 and Article V of GATS are not clear enough. They have not been playing the supervisory role, because they are not strictly observed or adhered to by WTO Members.

5. On the experience of more than half a century under the GATT and the WTO framework, there appears to be no appropriate approach or practical way in which more effective examination and supervision of RTAs can be required, nor indeed any expectation that there can be greater adherence to the relevant rules governing RTAs. This situation exists because of the inherently defective procedural and substantial provisions under the WTO framework governing RTAs and the fundamental discriminatory nature of RTAs.

6. If we continue the current approach of refining some concepts relating to RTA consistency issues without dealing with the fundamental discriminatory aspects of RTAs themselves, the inherent defects will continue to undermine the stability and development of our multilateral trading system. Even if there could be improvement or clarification of the grey areas in the RTA regulations, and even if the procedural provisions are improved to accelerate the examination process, the fundamental problem arising from the discriminatory nature of RTAs will still remain. Added to that, it would not be easy to arrive at a crystal-clear meaning of relevant provisions, and to find a solution to allow the expedited examination of RTAs.

7. In light of the above, we propose new provisions for adoption in Article XXIV of the GATT 1994 and Article V of GATS, requiring parties of RTAs to provide an accession clause for third-party members, which would expand the reach of RTAs and thereby promote broader, more inclusive and comprehensive trade liberalization.

II. A POSITIVE MOVE TO BALANCE MULTILATERALISM AND REGIONALISM

8. We propose that the WTO obliges its Members to afford adequate opportunity to non-parties to accede to their RTAs. This approach would allow a third party to accede to the RTAs under certain reasonable conditions, and the original parties to the RTAs would have to extend in good faith their preferential treatments to newcomers once they have completed the accession process. Permitting third parties to accede to RTAs would minimize discrimination, as well as ensure that RTAs promote trade liberalization rather than thwart it.

9. It is worth mentioning that, in our proposal, third parties will not be granted automatic accession to RTAs. However, the original parties to the RTAs will be required to afford third parties, in good faith, adequate opportunity to negotiate individual terms of accession to the RTAs, and at the same time the third parties seeking accession will be required to commit themselves to reach the same level of trade liberalization as embedded in the RTAs they seek to enter.

III. EXAMPLES OF THIRD PARTY ACCESSION TO BILATERAL OR REGIONAL TRADE AGREEMENTS

A. THE APEC BEST PRACTICES FOR RTAS AND FTAS

10. In November last year, the Asia-Pacific Economic Cooperation (APEC) Annual Ministerial Meeting held in Santiago, Chile, endorsed a three-stage initiative to strengthen the role of RTAs and FTAs, including an overall APEC policy response to its stakeholders, a set of clear transparency measures and a capacity building programme. The "APEC Best Practices for RTAs and FTAs" are adopted to set high standards for RTAs and FTAs in the region, to ensure that RTAs and FTAs will contribute to achieving Bogor Goals, and that they are consistent with WTO disciplines as well.

11. One of the principles declared in the "Best Practices" targets specifically the issue of third-party accession. It requires the APEC RTAs and FTAs to be "open to the possibility for accession of third parties on negotiated terms and conditions," and it considers such an arrangement as "consistent with APEC's philosophy of open regionalism and as a way to contribute to the momentum for liberalization throughout the APEC region." The APEC Meeting of Ministers

Responsible for Trade held in Jeju, Korea on 2 and 3 June of this year, further agreed to forward the "Best Practices" to the WTO Rules Negotiating Group for reference, as part of the substantial contribution made by APEC to the DDA negotiations.

12. It is the basic principle of the GATT, and the conviction of APEC member economies that RTAs, if properly constructed, can be genuine building blocks of multilateralism. An accession clause for third parties to RTAs would no doubt establish the proper construction of RTAs in order to maintain and further enhance our multilateral trading system under the WTO. This principle should be of interest to all WTO Members, quite apart from just those in the Asia-Pacific region, and certainly its usefulness and appropriateness for APEC member economies should also be of important reference for other WTO Members.

B. STATE PRACTICES: NAFTA, THE PACIFIC-FOUR AND BEYOND

13. Many free trade agreements concluded among APEC member economies do include accession clause for third parties.

14. Paragraphs 1 & 2, Article 24 of the Closer Economic Partnership Agreement between Australia and New Zealand provides that "[t]he Member States may agree to the association of any other State with this Agreement," and "[t]he terms of such association shall be negotiated between the Member States and other States."

15. Article 2204 of NAFTA provides that "[a]ny country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Commission and following approval in accordance with the applicable legal procedures of each country."

16. Article 23.1 of the Free Trade Agreement between Australia and the United States, and Article 21.6 of the Free Trade Agreement between Singapore and the United States also accord similar arrangements.

17. Most recently, the conclusion of the "Trans Pacific Strategic Economic Partnership" (also known as "Pacific Four"), Free Trade Agreement between Brunei Darussalam, Chile, New Zealand and Singapore was announced at the APEC Meeting of Ministers Responsible for Trade, in Jeju, Korea. This Agreement is often cited as a good example of RTA extension by third party accession.

18. Recent negotiations conducted by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu with other WTO Members have taken note of this development and include a similar clause for third party accession in the draft text. We call upon all WTO Members to reflect further on this, and to consider making it standard practice by way of a new RTA discipline to be added to the relevant part of our agreement in the Rules negotiations.

IV. PROPOSED PROVISIONS

19. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu would like to propose the following provisions for the application and interpretation of Article XXIV of GATT 1994 and Article V of the GATS.

- "An RTA shall be open for accession by other WTO Members, on terms to be agreed between the original parties of the RTA and the interested WTO Members."
- "WTO Members not parties to the RTA may indicate their intention to accede to such RTA to the parties in writing. The parties of the RTA shall respond sympathetically

to such requests, and accord in good faith adequate opportunities for other interested WTO Members to negotiate the terms of their accession.”

- “Requests, replies, progress and results of subsequent negotiations conducted in accordance with previous provisions shall be notified to the Committee on Regional Trade Agreements in a timely manner.”

V. CONCLUSION

20. This proposal seeks to balance the principle of non-discrimination with the current practices of WTO Members to enter into preferential arrangements through RTAs. This proposal also seeks to ensure that the WTO multilateral framework be maintained and further enhanced through constructive application of RTAs containing an accession clause for third parties.

21. We hope that, with this proposal, the different interests derived from multilateralism and regionalism can be better reconciled, better coordinated and more mutually supportive of each other, without the need to sacrifice the future of our multilateral trading system that is rooted so deeply in the principle of non-discriminatory MFN treatment.
