

The landscape of regional trade agreements and WTO surveillance

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1 Introductory remarks¹

Regional trade agreements (RTAs) have become so prominent in recent years that they permeate much of the discourse on international trade. The current scale of RTA proliferation is unprecedented both in quantitative and qualitative terms. A bewildering range of geographical configurations and varying policy content characterize the new agreements. This trend is likely to continue. The embrace of RTAs by virtually every trading nation carries systemic implications for the multilateral trading system, most notably through increased discrimination and complexity in trade relations and by undermining the transparency and predictability of trade relations.

Trends in the establishment and development of RTAs and the role of the WTO in relation to regionalism are the subject matter of this chapter. In the first section we look at the changing global landscape of RTAs. The aim is twofold: to provide an update of RTA developments and to draw out the main trends and characteristics of RTA proliferation through the inclusion of quantitative and qualitative indicators. The focus of the second section is on the role and functions of the WTO in respect of RTAs. Here we provide a historical account of the relationship between RTAs and the GATT/WTO and we look at how this

¹ This chapter has been prepared under the authors' own responsibility and without prejudice to the positions of WTO members and to their rights and obligations under the WTO Agreement. Figures, tables and geographical groupings included in this chapter do not imply any judgement on the part of the WTO as to the legal status or frontier of any territory. The authors are indebted to Clemens Boonekamp, Patrick Low, Rohini Acharya and colleagues in the Regional Trade Agreements Section of the Trade Policies Review Division for their helpful comments and suggestions on a previous draft.

relationship has evolved, in particular as a result of the Doha Development Agenda (DDA) negotiations on WTO rules and procedures in respect of RTAs. We conclude by providing a detailed overview of the new Transparency Mechanism for RTAs and offer some thoughts on the functioning of this Mechanism.

2 A kaleidoscope of regional trade agreements

Unless otherwise stated, the data presented here take account of all bilateral, regional, and plurilateral trade agreements of a preferential reciprocal nature that have been notified to the GATT/WTO. The primary focus is on free trade areas (FTAs) and customs unions (CUs) in the area of trade in goods, and economic integration agreements (EIAs) in the area of trade in services. Details on partial scope arrangements have been included where possible.² This part of the chapter draws heavily on previous surveys by the authors.³

The main trends and characteristics of RTAs

RTAs are not new as a concept and several integration schemes can be traced back to well before the establishment of the GATT. However, while past waves of regionalism were centred on a few RTAs, regionally based and limited to a handful of countries, today all but one WTO member (Mongolia) are engaged in negotiations of multiple RTAs with a variety of partners at the regional and extra-regional level. The growth and development of RTAs today is fast-paced, complex and global, and mapping RTAs has become an increasingly difficult task.

² The information gathered in this study is based on notifications to the WTO, RTA documentation submitted to the Committee on Regional Trade Agreements (CRTA), WTO accession documents, Trade Policy Reviews and other public sources. In this sense the information may not be exhaustive, since while it is possible to account accurately for all notified RTAs, for the non-notified RTAs, agreements under negotiation and those being proposed, information is often scarce or inconclusive.

³ This chapter reproduces in part, updates and expands a previous survey by the authors, R. Fiorentino, L. Verdeja and C. Toqueboeuf (2007), 'The Changing Landscape of Regional Trade Agreements: 2006 Update', WTO Discussion Paper No. 12. This is itself an update of an earlier WTO Discussion Paper, J. Crawford and R. Fiorentino (2005), 'The Changing Landscape of Regional Trade Agreements', WTO Discussion Paper No. 8.

Quantifying the proliferation of RTAs

The most obvious trend observed over the last fifteen years is the ever-increasing number of RTAs. Between January and December 2007 a further eighteen notifications of RTAs were made to the WTO, raising the total number of notified RTAs in force to 197. A large number of other agreements are at different levels of implementation though not yet notified, under negotiation or at the proposal stage.

WTO statistics tend to overstate the total number of RTAs since they are based on notification requirements that do not reflect the physical number of RTAs.⁴ On the other hand, to focus on the ‘actual’ number of agreements results in non-exhaustive and inaccurate figures since it is practically impossible to verify data for the many RTAs that have either not yet been notified or are at different phases of implementation. Irrespective of the methodology, however, the degree of RTA proliferation is not difficult to discern. The following three figures substantiate this observation.

Figure 2.1 lists the total number of RTAs notified over time to the GATT/WTO. As of December 2007 the figure was 386 RTAs, of which 197 are currently in force. We should note that a net reduction in the total number of RTAs does not necessarily imply a reduction in the global volume of preferential trade nor a decline in the trend of RTA expansion. Indeed, the two significant drops in the total number of RTAs shown in Figure 2.1 are both due to the consolidation of RTA networks in the European region – the first in 2004 resulting from the enlargement of the European Communities (EC) from fifteen to twenty-five members and the corresponding repeal of sixty-five RTAs, and the second in 2007 resulting from the EC enlargement to twenty-seven members and the consolidation of the RTA network among countries of the Balkans in an enlarged CEFTA.⁵ Thus the net reduction in the total number of RTAs in Figure 2.1 must be read as an expansion of existing RTAs rather than a slowdown in the trend of RTA formation.

⁴ RTA notifications to the WTO include those made under GATT Article XXIV, GATS Article V, the Enabling Clause, as well as accessions to existing RTAs; it should be noted that the notification requirements contained in WTO provisions require that RTAs covering trade in goods and services be notified separately. For a complete list of RTAs notified and in force to the GATT/WTO see www.wto.org/english/tratop_e/region_e/regfac_e.htm.

⁵ See the section in this chapter on Europe for further explanation, and the list of acronyms in Table 2.2.



Figure 2.1 All RTAs notified to the GATT/WTO (1948–2007) by year of entry into force

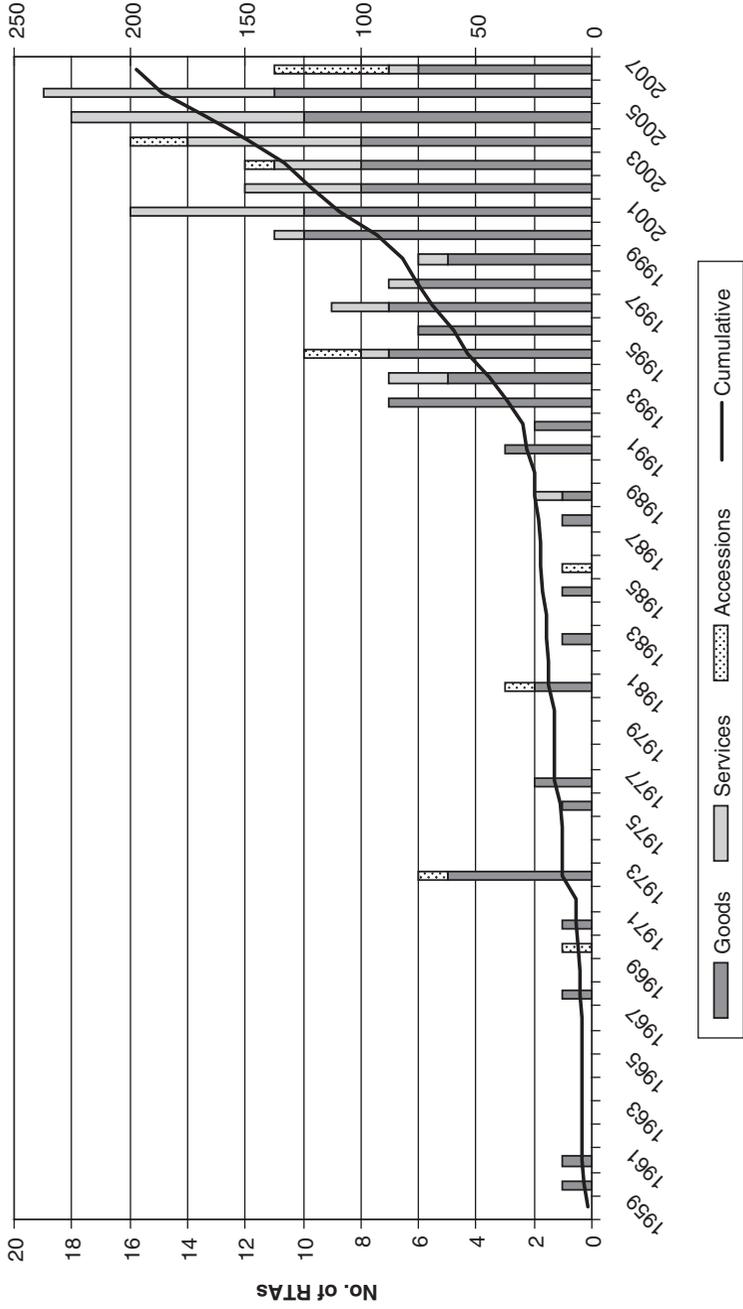


Figure 2.2 RTAs notified to the GATT/WTO (1948–2007) in force, by year of entry into force

Figure 2.2 breaks down the number of RTAs notified and in force by type of notification, thus allowing us to differentiate between the number of actual agreements and RTA notifications.⁶ Out of the total, 138 RTAs cover trade in goods, 47 cover trade in services, and the remaining 12 are accessions to existing RTAs, involving either goods or services. The relevance of EIAs has continued to grow in 2007, currently representing 25 per cent of total notifications of RTAs. Their significance is likely to increase further in the future if we consider that approximately 70 per cent of the RTAs being negotiated contain provisions on trade in services.

Figure 2.3 looks at RTA proliferation on a chronological basis by differentiating between two time periods, the GATT and the WTO years. The latter is the period we associate with the current wave of RTAs, and indeed the figure indicates a large increase in RTA activity over this period. Of the total number of RTAs notified to the GATT/WTO up to December 2007, 124 agreements were notified during the GATT years and 262 during the WTO years, corresponding to an annual average RTA notification rate of twenty for the WTO years compared to less than three during the four and half decades of the GATT. Also significant is the fact that of the RTAs notified to the GATT, only thirty-one remain in force today, reflecting in most cases the evolution over time of the agreements themselves, as they were superseded by new ones between the same signatories (most often with deeper integration), or by their consolidation into wider groupings.

Taken together, Figures 2.1, 2.2 and 2.3 leave us in no doubt as to the unprecedented scale of RTA expansion since the early 1990s. The magnitude of the phenomenon is even more significant if we consider the number of RTAs in force but not yet notified (approximately seventy), those signed but not yet in force (approximately thirty), and the RTAs currently being negotiated (approximately seventy). If all of these agreements are implemented by 2010 we will be looking at a global landscape of 350 or more agreements.⁷

⁶ The total number of notified RTAs in force minus EIAs in services and accessions to existing RTAs gives us the number of physical agreements, i.e. 138 agreements.

⁷ Not every RTA under negotiation will automatically increase the number of RTAs in force, given that some will supersede or expand existing RTAs. It should be noted that the conclusion of these agreements may actually result in a net reduction in terms of the total number of RTAs in force due to the consolidation effect that some of these agreements may have. Besides the case of the EC enlargement mentioned earlier, this pattern may also be observed in Latin America where FTAs currently under negotiation should replace and consolidate a myriad of bilateral partial scope agreements.

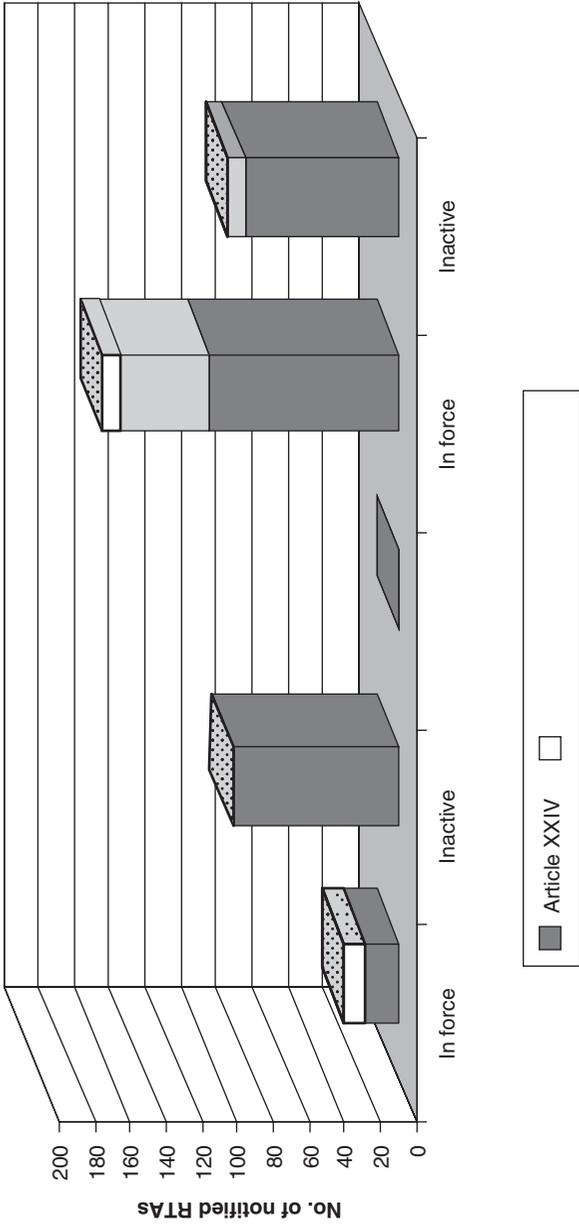


Table 2.1. *Notified RTAs in goods and services by date of entry into force and type of partner, as of December 2007*

| Year range | Developed only | | Developed-Developing | | Developing only | | Total | |
|--------------|----------------|----------|----------------------|-----------|-----------------|-----------|------------|-----------|
| | Goods | Services | Goods | Services | Goods | Services | Goods | Services |
| 1958-1964 | 2 | 1 | | | 1 | | 3 | 1 |
| 1965-1969 | | | | | 1 | | 1 | 0 |
| 1970-1974 | 5 | | 1 | | 2 | | 8 | 0 |
| 1975-1979 | | | 2 | | 1 | | 3 | 0 |
| 1980-1984 | 2 | | 1 | | 1 | | 4 | 0 |
| 1985-1989 | 1 | 1 | 1 | | 2 | | 4 | 1 |
| 1990-1994 | 7 | 1 | 3 | 1 | 7 | | 17 | 2 |
| 1995-1999 | 16 | 1 | 7 | 1 | 7 | 4 | 30 | 6 |
| 2000-2003 | 2 | 1 | 19 | 7 | 18 | 6 | 39 | 14 |
| 2004-2007 | 3 | 3 | 20 | 15 | 15 | 8 | 38 | 26 |
| Total | 38 | 8 | 54 | 24 | 55 | 18 | 147 | 50 |
| | 46 | | 78 | | 73 | | 197 | |

Qualifying the proliferation of RTAs

The second trend discernable from the current wave of RTAs relates to the geopolitics of such agreements and more precisely to the choice of preferential partners. RTAs appear to be changing established patterns of trade both in terms of choice of partners and the regimes governing such trade. RTA dynamics over the last fifteen years point to an increase in North–South RTAs and their gradual replacement of long-established non-reciprocal systems of preferences, and more recently to an increasing number of South–South RTAs – a development that appears to be tied to the emergence of several major RTA hubs in the developing world. Table 2.1 shows a breakdown of RTAs notified and in force by type of partner on a chronological basis. This may be an indication of evolving trade patterns, although further empirical research is needed to substantiate any claims along these lines.

Table 2.1 reveals significant trends. The major clusters of RTAs are North–South and South–South RTAs, each accounting for 37 per cent of the total number of notified RTAs in goods (see Figure 2.4). Significantly, most of the agreements falling under these two categories are recent; as shown in Table 2.1, of the fifty-four North–South RTAs and the fifty-five South–South RTAs, forty-six and forty agreements respectively date to 1995 or later. These two clusters combined represent over 80 per cent of the total number of agreements that have entered into force since 1995. These agreements are therefore the backbone of today’s RTA proliferation and are likely to remain so if we consider that 97 per cent of the RTAs in the making fall under these two categories (see Figure 2.5).

These developments are significant in a number of ways. With respect to the North–South cluster, the forging of such agreements implies, for most developing country partners, foregoing non-reciprocal systems of preferences under schemes like the Generalized System of Preferences (GSP) and other unilateral initiatives covered by WTO waivers in favour of reciprocal trade regimes. This is required by the WTO provisions applying to RTAs.⁸ For those developing countries benefiting from WTO waivers, such as the one covering the Cotonou Agreement, this

⁸ Given that the legal cover of the Enabling Clause only applies to preferential agreements concluded among developing countries, RTAs in goods involving developed and developing WTO members may only fall under GATT Article XXIV and therefore are subject to the requirements contained therein.

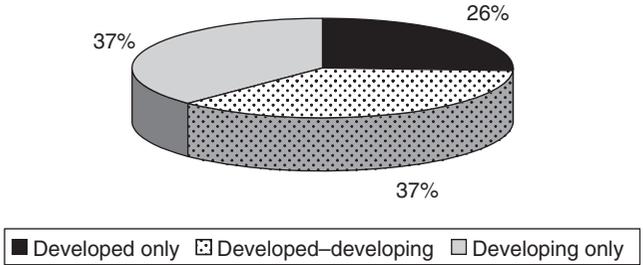


Figure 2.4 Notified RTAs (goods) in force by type of partner, as of December 2007

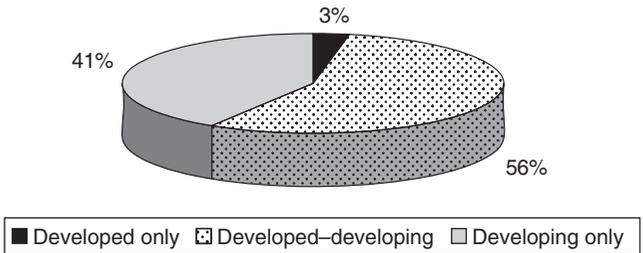


Figure 2.5 RTAs signed and under negotiation by type of partner, as of December 2007

transition is in part driven by compatibility requirements with WTO rules. In other cases the choice is based on a conscious trade policy strategy underpinned by domestic reforms and trade liberalization at the bilateral and multilateral level. Regardless of the motivations, the point is that, through RTAs, the nature of North–South trade relations appears to be evolving towards a framework of reciprocity with relatively ambitious scope in trade policy coverage. In this respect it is interesting to note that approximately half of the notified North–South RTAs provide for the liberalization of trade in services and most of the others foresee the negotiation of a services chapter in the future.

Another significant development is the rapid emergence of a South–South cluster of RTAs which is substantially different from the early agreements falling under this category. The latter typically consisted of plurilateral integration initiatives at the regional level, often with limited trade coverage (i.e. partial scope agreements); most RTA groupings in

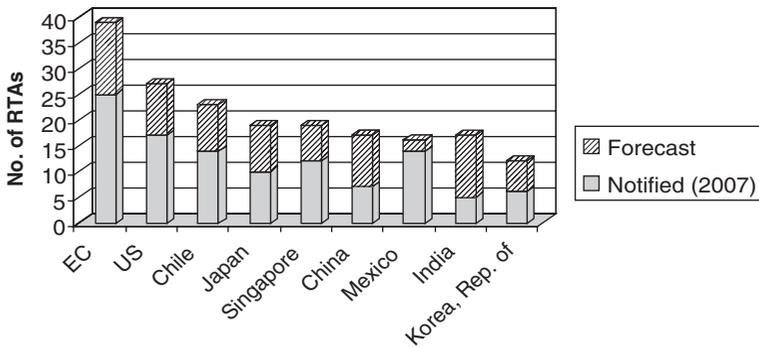


Figure 2.6 Number of RTAs in force, signed and under negotiation by selected countries

Africa and Latin America can be placed here. Recent RTAs, however, suggest a departure from past practice, with the emergence of comprehensive agreements (several RTAs include a services chapter), often on a bilateral basis and in several cases not geographically bound – RTAs such as Republic of Korea–Chile, India–Singapore, and Chile–China are good examples. The trade policy scope of these agreements and the fact that several of them have been notified under Article XXIV of the GATT 1994 (and Article V of the GATS where it applies) points to a growing interest in South–South trade and a readiness by some of these countries to commit to comprehensive trade liberalization, albeit on a gradual basis and with a selected number of partners.

Also related to these clusters is the emergence of several RTA hubs. While in Europe and North America these are well established (i.e. the European Communities and the United States), in other continents, and especially in the Asia-Pacific region, the competition for RTA ‘shopping’ appears to be wide open. Figure 2.6 lists current and future RTAs for selected WTO members.

A third trend which is closely related to the geopolitics of RTAs referred to above is the increasing number of cross-regional agreements. These represent the most distinctive feature of the current proliferation of RTAs since they suggest a shift from the traditional concept of regional integration among neighbouring countries – a core element of previous RTAs waves – to preferential partnerships driven by strategic political and economic considerations that are to a large extent unrelated to regional dynamics. Figure 2.7 shows the scale of this development. While 44 per cent of the RTAs notified and in force are

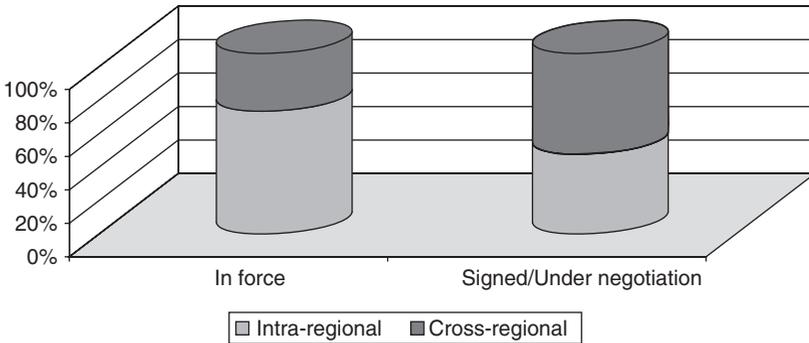


Figure 2.7 Cross-regional RTAs, as percentage of total RTAs, and intra-regional, as of December 2007

cross-regional, this figure increases to 67 per cent for the agreements signed and under negotiation.⁹

The trend towards cross-regional RTAs raises some interesting questions and makes us ponder to what extent the premise of RTA formation among ‘natural’ trading partners still applies. The data in the figure would confirm that RTAs have traditionally been agreed among geographically contiguous countries with already well-established trading patterns; prime examples include the NAFTA in North America, the EC and EFTA in Europe, ASEAN and SAFTA in Asia, UEMOA, SADC and SACU in sub-Saharan African, and CARICOM, the CACM and MERCOSUR in South and Central America and the Caribbean.¹⁰ All of these, as well as most of the other existing regional groupings, have their origins in former waves of regionalism and to this day efforts are ongoing to deepen and strengthen intra-regional integration.

Thus, cross-regional RTAs could be seen as a drive to look further afield once more local regional prospects have been exhausted. This impression is borne out by some of the other RTA indicators explored below, which reveal a predominance of bilateral as opposed to plurilateral

⁹ The definition of geographical groupings in this chapter reflects that used in the WTO International Trade Statistics Report (2007). Accordingly the term ‘cross-regional’ refers to those RTAs concluded among countries from the following regions: North America, South and Central America and the Caribbean, Europe, the Commonwealth of Independent States (CIS), Africa, the Middle East, and Asia. For the list of countries falling under each of these regions, see WTO International Trade Statistics Report (2007).

¹⁰ For the full title and membership to these and other RTAs referred to in this chapter see the list of acronyms in Table 2.2.

initiatives. The former are typically FTAs as opposed to the more cumbersome and regionally based customs unions. However, the sharp increase in the number of cross-regional RTAs may also indicate a shift from regional priorities due to frustration in several cases at the slow pace of existing regional integration initiatives. Indeed, with the exception of Europe where the process of integration is firmly rooted in the EC, all other regions manifest growing asymmetries between regional integration processes and the scope and depth of the cross-regional RTAs to which individual countries are parties. This is especially the case with regional integration schemes among developing countries, since these are often less comprehensive in terms of trade liberalization and coverage of trade-related areas than those found in cross-regional, and particularly North–South, RTAs. In this sense and perhaps as a further facet of globalization, RTAs have broadened their *raison d'être* and are being used as tools to overcome regional constraints and open new trade opportunities in the global market.

Another significant aspect of this proliferation is the evolving configuration of RTAs. Figure 2.8 indicates a decreasing propensity for plurilateral RTAs and a net increase in the number of bilateral RTAs. With a few exceptions, the bulk of RTAs in the making are based on bilateral RTA configurations rather than plurilateral RTAs. Bilateral agreements account for 76 per cent of all RTAs notified and in force, and 93 per cent of those signed and under negotiation.¹¹

This preponderance of bilateral configurations has several explanations. From a geopolitical perspective, the opportunities for region-wide RTAs are fewer, since, as argued earlier, many of these agreements have already been established during past waves of regionalism. New initiatives either revamp existing regional schemes (i.e. SAPTA to SAFTA) or consolidate such schemes into broader integration arrangements. Another reason for an increase in bilateral RTAs is the apparent shift from using RTAs as instruments of regional integration to vehicles for strategic market access. The latter tendency strengthens the drive for bilateral RTAs, especially in the case of cross-regional RTAs.¹² Finally,

¹¹ Bilateral agreements may include more than two countries when one of them is itself an RTA (e.g. EC (27)–Turkey (1) is a two-party RTA comprising twenty-eight countries). A plurilateral agreement refers to an RTA in which the constituent parties exceed two countries (e.g. EFTA, MERCOSUR, AFTA, SADC).

¹² The majority of cross-regional RTAs are bilateral agreements, i.e. two parties (see note 13). One exception is the Trans-Pacific Strategic Economic Partnership (SEP-4) between Brunei, Chile, New Zealand and Singapore.

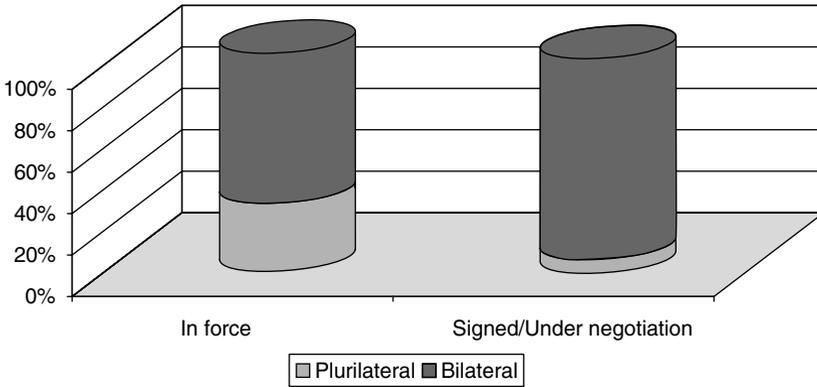


Figure 2.8 RTA configurations as of December 2007

some cross-regional RTAs can best be understood in predominantly political terms, but this aspect of preferential trade arrangements is beyond the analytical reach of the present chapter.

A related development is the emergence of atypical RTA configurations. The simple bilateral (i.e. two countries) and plurilateral configurations are being supplemented by agreements in which one of the parties is itself an RTA. Such agreements have been in the making for some time and their number is increasing. Another emerging pattern involves bilateral RTAs where each party is a distinct RTA. The advent of such agreements points to a consolidation of established trading relationships. But the fact that several such agreements have been under negotiation for numerous years and that none, thus far, has entered into force underscores the complexity of such negotiations.¹³

Another characteristic of the proliferation of RTAs is revealed by distinguishing among FTAs, CUs and partial scope agreements. Figure 2.9 categorizes RTAs in force along these lines and Figure 2.10 focuses on RTAs signed or under negotiation but not yet in force and/or notified to the WTO. The data show that FTAs account for 82 per cent of all

¹³ Examples include EC–MERCOSUR, EC–GCC. Prospective ones may include EC–ASEAN and EC–CAN. One such agreement between EFTA and SACU was signed between late June and early July 2006, but according to available information is not yet in force. Another such agreement is the one between SACU and MERCOSUR, which was signed in December 2004; however, the limited scope of the agreement prompted a reopening of negotiations, which are currently underway.

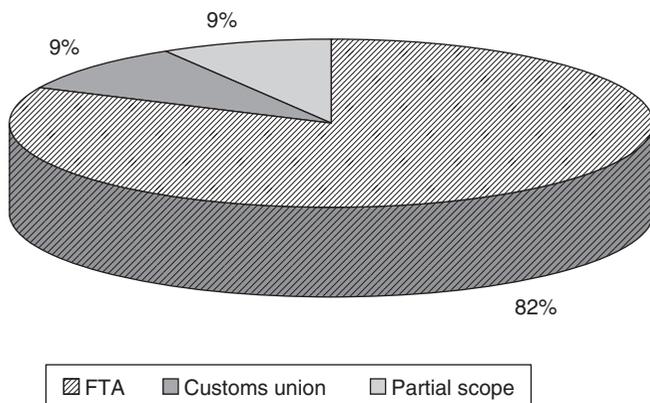


Figure 2.9 Notified RTAs in force as of December 2007, by type of agreement

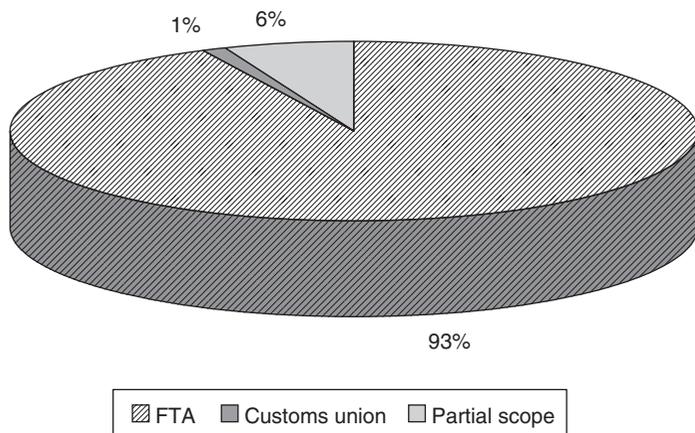


Figure 2.10 RTAs signed and under negotiation as of December 2007, by type of agreement

RTAs notified and in force, while partial scope agreements and CUs each account for 9 per cent. Of the projected RTAs, 93 per cent are intended to be FTAs, 6 per cent partial scope agreements and only 1 per cent CUs.

The preference for FTAs is a reflection of the defining characteristics of the current RTA race. Key attributes of the proliferation appear to be speed, flexibility and selectivity, and the FTA is, in most cases, the configuration that best meets these needs. Although the negotiation of

an FTA may take years to conclude,¹⁴ evidence suggests that the time from the launching of negotiations to their conclusion has been shrinking in recent years, especially for agreements among like-minded countries.¹⁵

Customs unions involve a higher degree of commitment and coordination, not least because of the establishment of a common external trade policy as opposed to reliance on rules of origin that define the preferential trading area. In addition, CUs often aspire to reach beyond the realm of trade, to include such features as political integration, economic and monetary union, and supranational institutions. Moreover, to the best of our knowledge, all CUs are among contiguous countries. Finally, while the parties to an FTA have, in principle, full flexibility with regard to their individual choice of future FTA partners,¹⁶ participation in a CU, if played by the rules, limits the individual parties' choice of future RTA partners, since a proper functioning of the union requires that any agreement with a third party includes the CU as a whole.¹⁷ In the current trading climate of demand for flexible and speedy RTAs, the preference for FTAs over CUs is easily explained.¹⁸

¹⁴ An example of protracted negotiations is the FTA between the EC and MERCOSUR which has not yet been concluded after ten years. It should also be noted that these are complex negotiations involving two CUs.

¹⁵ A case in point is the FTA between the EFTA states and the Republic of Korea which took one year to negotiate after only four rounds of negotiations.

¹⁶ Some limitations may apply in the form of an MFN clause whereby parties to the agreement commit to extending to each other any more favourable treatment that they may grant to a third party in a future agreement. Some geographically bound FTAs also show a propensity to negotiate agreements with common parties. Examples would include the EFTA states, Australia and New Zealand and ASEAN members. However, we should be careful in making any generalizations since many other agreements do not contain such features.

¹⁷ The requirement in a CU of a common external tariff and harmonization of the parties' commercial policies does not in principle allow a 'go alone' policy whereby one party negotiates a preferential agreement with a third party. Such a situation would disrupt the functioning of the CU, since products from the third party could enter the union at a preferential rate through the bilateral RTA, implying a loss of tariff revenues for the other members of the union. Examples of such a situation include SACU (the FTA between the EC and South Africa) and the GCC (the FTA between the United States and Bahrain).

¹⁸ It is interesting to note that the current predominance of FTAs over CUs does not appear to reflect the original spirit of the multilateral trading rules. A perusal of the drafting history of Article XXIV of the GATT (which contains the legal provisions for the conclusion of FTAs, CUs and interim agreements leading to the formation of FTAs or CUs) reveals that it was not until the Havana Charter that provisions for the formation of FTAs were included in what became GATT Article XXIV. The previous charters only spoke of CUs and interim agreements leading to the formation of CUs.

As for partial scope agreements, their limited trade coverage, poor implementation record, and limitations with respect to the choice of partners due to WTO rules,¹⁹ makes them less attractive to countries that are committed to comprehensive trade liberalization. Nevertheless, we may see a slight increase in the number of partial scope agreements due to a novel approach to RTAs being employed by several large developing countries in South–South agreements. Several of these agreements are based on a staged approach to trade liberalization whereby a framework agreement is signed that entails as a first step the conclusion of a partial scope agreement, often accompanied by an ‘early harvest programme’, and as a second step a commitment to future FTA negotiations.²⁰

The global landscape of RTAs: state of play and future developments

The proliferation of RTAs can be associated with a combination of geopolitical developments dating back to the late 1980s and early 1990s. The most important include multilateral and regional dynamics as well as individual countries’ policy choices. At the multilateral level, the protracted Uruguay Round (1986–94) had prompted several countries to pursue preferential deals as an insurance against an eventual failure of the multilateral trade negotiations. At the regional level the fragmentation of the former Soviet Union and the disbanding of the Council for Mutual Economic Assistance (COMECON) generated a new cluster of RTAs between transition economies and the EC and EFTA states as well

This suggests that the perception of regional economic integration, and the means to achieve it that the drafters of Article XXIV had in mind, were not likely to be along the lines of the proliferation of FTAs that we are witnessing today. It is also interesting to speculate how different the current landscape of RTAs would be if the provisions of GATT Article XXIV only applied to CUs with no related provision for the formation of FTAs.

¹⁹ Under the WTO, the only legal provision applicable to a North–South RTA covering trade in goods is Article XXIV of the GATT 1994. This provision provides among other requirements a comprehensive trade liberalization schedule based on tariff elimination. Partial scope agreements providing for reduction and/or elimination of duties on a limited number of products are unlikely to be found compatible with such provision. Partial scope agreements are allowed under paragraph 2(c) of the Enabling Clause; however, the recourse to such a provision is only available to developing country members.

²⁰ Examples of such agreements include the recently notified China–ASEAN agreement and many of the RTAs being negotiated by India.

as among transition economies themselves.²¹ At the country level, the predominance of Europe in RTAs began to be challenged by the RTA policy of countries that had traditionally been less enthusiastic about such preferential agreements. In the 1990s we saw the establishment of NAFTA, MERCOSUR and AFTA which had a domino effect on other countries' decisions to pursue RTAs. We also saw the emergence of a policy of 'additive regionalism' whereby countries such as Chile, Mexico and Singapore began to forge preferential relationships with their major trading partners. Albeit sporadic in their manifestation, these combined developments have sowed the seeds for the surge in RTAs that we are witnessing today.

More significantly, this process of action–reaction, whereby the creation of discriminatory arrangements by one country is matched by an equal reaction (often defensive) by other countries, seems to have become irreversible, almost as if RTA proliferation has reached a critical point from which there is no turning back. These layers of discriminatory treatment have flourished under a multilateral framework of laws and regulations (GATT and now WTO) that is underpinned by the fundamental principle of non-discrimination. While the propensity to enter into RTAs may increase at times when the WTO is not making much progress on the multilateral agenda, a question beyond the scope of this chapter is whether regional or selective approaches to trade relations are simply an inevitable accompaniment of multilateralism in an increasingly globalized world. The sections below map developments in regionalism in different areas of the world.

Europe

Europe is the region with the largest number of RTAs, accounting for a large share of the agreements in force and notified to the WTO. The main regional groupings are the EC and the EFTA states. South-eastern Europe has recently become the third European trading group, having consolidated the network of bilateral FTAs negotiated under the auspices of the Stability Pact into a plurilateral agreement termed CEFTA plus.²² Existing ties between this sub-region and the EC are being

²¹ Transition economies include the countries of the former Soviet Union, Eastern and Central Europe, the Baltic States and the Balkans.

²² The official name of the agreement is the 'Agreement on Amendment of and Accession to the Central European Free Trade Agreement (CEFTA 2006)'; (see list of acronyms in Table 2.2 for membership of the agreement).

further institutionalized. EC accession negotiations are continuing with Croatia and Turkey,²³ and a Stability and Association Agreement (SAA) between the EC and Serbia and Montenegro is in progress.²⁴ The year 2007 saw further consolidation of the existing intra-European RTA networks. In addition to the CEFTA plus, the other major event was the enlargement of the EC from twenty-five to twenty-seven members with the accession of Romania and Bulgaria.²⁵ Future intra-European RTA initiatives will include FTA negotiations between the EC and Ukraine, once the latter has acceded to the WTO.

In the Mediterranean basin, the EC and its Mediterranean partners are working towards the establishment of a Euro-Mediterranean FTA by 2010. This is set to become one of the world's biggest marketplaces, grouping as many as forty countries (including the EFTA) under a free trade area.²⁶ The EC has so far signed EuroMed Association Agreements with all the Mediterranean partners,²⁷ and the EFTA states and Turkey, by virtue of their association with the EC, are following suit.²⁸ The EuroMed FTA, once completed, will provide for diagonal cumulation of origin among the EC, the EFTA states, Turkey, the Faroe Islands and the Mediterranean countries; a PanEuroMed Protocol on cumulation of origin has been adopted for this purpose. Other EC initiatives under the EuroMed framework include liberalization of trade in services and investment,²⁹ deepening agricultural liberalization, regulatory convergence, and a strengthening of the legal and institutional framework.

²³ The Former Yugoslav Republic of Macedonia (FYROM) is also a candidate country, but accession negotiations have yet to begin.

²⁴ In the sub-region, the EC has SAAs with Albania, Croatia, FYROM and Montenegro, and it is negotiating one with Bosnia-Herzegovina.

²⁵ As a result of these two consolidations, thirty-five notified RTAs have been repealed, which explains the net reduction in total number of notified RTAs registered in 2007. See WTO Documents WT/REG/GEN/N/5 for CEFTA and WT/REG/GEN/N/4 for EC enlargement.

²⁶ The Mediterranean partners are Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey.

²⁷ The Association Agreement with Syria has yet to enter into force.

²⁸ The EFTA states have FTAs with all the EuroMed partners except Algeria (although FTA negotiations were launched in November 2007) and Syria. As for Turkey, it has FTAs with all the EuroMed partners except Algeria, Jordan and Lebanon, with whom it is currently negotiating.

²⁹ At the sixth EuroMed Trade Ministerial Conference in October 2007, Israel, Morocco and Jordan accepted the EC's invitation to launch services negotiations.

Beyond its immediate neighbourhood, the EC has ongoing FTA negotiations with MERCOSUR and the GCC. In 2007, the European Commission was given a negotiating mandate for a new generation of FTAs with the Republic of Korea, India and ASEAN. Negotiations with each of these parties were launched between May and June 2007. As for the much talked-about EC–ACP Economic Partnership Agreements (EPAs),³⁰ the EC had to downscale its ambition for comprehensive EPAs by 31 December 2007 and settle for interim market access arrangements designed primarily to safeguard Cotonou trade preferences for non-LDCs in the absence of the WTO waiver. On 20 December 2007, the EC adopted a market access regulation to grant duty- and quota-free access to the EC market for ACP countries from 1 January 2008, with transition periods for sugar and rice. This applies to those ACP countries that have concluded negotiations on agreements establishing or leading to the establishment of EPAs.³¹ Countries that have neither initialled an agreement nor have access to the Everything But Arms (EBA) regime for LDCs are expected to export to the EC under the GSP regime.³²

As for the EFTA states, in 2007 they successfully concluded nine years of FTA negotiations with Canada, and launched FTA negotiations with Colombia and Peru in addition to the ongoing negotiations with the GCC and Thailand. An FTA with India also seems to be on the agenda. An interesting development in 2007 was Switzerland's decision to break ranks with its EFTA partners and launch negotiations for a comprehensive economic partnership agreement with Japan, which is Switzerland's third-largest trading partner after the EC and the United States.

The Americas

The western hemisphere continued to be a major zone of RTA activity in 2007. The United States has concluded and implemented ten FTAs

³⁰ The EC is negotiating with seven different groups of ACP countries: ECOWAS plus Mauritania; CEMAC plus DRC and Sao Tomé and Príncipe; the East African Community (EAC); East and Southern Africa (ESA); the SADC group; the CARIFORUM (CARICOM plus Dominican Republic) and the Pacific Islands.

³¹ At the current state of negotiations, the Caribbean is the only region that has initialled a full EPA covering both goods and services. See http://ec.europa.eu/trade/issues/bilateral/regions/acp/index_en.htm for further information on the EPA process and status.

³² As of 20 December 2007, these are Nigeria, Republic of the Congo, Gabon, and the following Pacific countries: Cook Islands, Federated States of Micronesia, Nauru, Niue, Palau, Marshall Islands and Tonga. South Africa will export under the Trade, Development and Cooperation Agreement (TDCA).

since 2004 and its RTA network is further expanding.³³ The United States is reputedly negotiating FTAs with Malaysia, Thailand, SACU and the United Arab Emirates.³⁴ It has an FTA with Oman which is pending implementation and four more pending congressional approval. These are the FTAs with Peru, Colombia, Panama and the Republic of Korea.³⁵ Canada, like the United States, has intensified its focus on RTAs in recent years.³⁶ The year 2007 saw the conclusion of longstanding FTA negotiations with the EFTA states and the launch of FTA negotiations with Colombia, Peru and the Dominican Republic. These are in addition to its ongoing FTA negotiations with the Central America Four,³⁷ Singapore and the Republic of Korea. A feasibility study is underway for an FTA with Jordan.

Mexico's participation in RTAs is longstanding and the country currently has twelve FTAs covering forty-six preferential partners (counting EC-27 and EFTA-4) across the Americas, Asia and Europe.³⁸ With a view to expanding its RTA network further, Mexico is currently negotiating FTAs with the Republic of Korea and with Singapore.

The RTA landscape in Central and Latin America is a prime example of a spaghetti bowl of preferential agreements. The region has four CUs at various stages of implementation (CACM in Central America, CARICOM in the Caribbean, CAN and MERCOSUR in Latin America), a Latin America integration framework (LAIA/ALADI) which aims at a region-wide common market,³⁹ and a myriad of bilateral agreements with intra-regional and extra-regional partners. In Central America the members of CACM, in addition to their CUs, have concluded FTAs with Chile, Mexico and the United States, and are negotiating with Canada and Panama. As for Panama, it has FTAs in force with Singapore and

³³ These are FTAs with Chile, Singapore, Australia, Morocco, CAFTA-DR (see list of acronyms in Table 2.2 – the agreement has not yet entered into force for Costa Rica) and Bahrain. Furthermore, the United States has earlier FTAs with Israel and Jordan and with Canada and Mexico as a party to the NAFTA.

³⁴ The FTA negotiations with Ecuador have been suspended for the time being.

³⁵ All of these FTAs have been amended by including provisions on labour, the environment, and other trade matters to reflect the bipartisan trade agreement reached in May 2007 between the Administration and the Congressional leadership.

³⁶ To date, Canada has relatively few RTAs. These are with Costa Rica, Chile, Israel and the United States and Mexico as a party to NAFTA.

³⁷ El Salvador, Guatemala, Honduras, Nicaragua.

³⁸ In addition, Mexico is a party to the LAIA, the GSTP and the PTN.

³⁹ ALADI has twelve members (see list of acronyms in Table 2.2). ALADI promotes trade liberalization through regional and partial scope agreements.

Chinese Taipei, has signed FTAs with the United States and with Chile, and is considering an FTA with MERCOSUR. In the Caribbean, in addition to its FTAs with Costa Rica and the Dominican Republic, CARICOM is negotiating an FTA with Canada and is considering a further one with MERCOSUR.

Further south, the Andean Community members, while working as a group towards an FTA with MERCOSUR, are pursuing several other FTAs on an individual basis. Peru has signed FTAs with the United States, Chile and Thailand,⁴⁰ and is negotiating FTAs with Canada, China, the EFTA states and Singapore. Colombia, for its part, has signed FTAs with Chile and the United States and is negotiating with EFTA. Ecuador is negotiating an FTA with Chile. MERCOSUR has signed several framework agreements aimed at the establishment of FTAs, but to date they do not appear to have led to any concrete outcome.⁴¹ MERCOSUR's only ongoing FTA negotiation is with the EC. In 2007, Chile notified FTAs with Japan and China, and with New Zealand, Brunei and Singapore as parties to the Trans-Pacific Strategic Economic Partnership (SEP-4). It approved its partial scope agreement with India, launched FTA negotiations with Australia and Malaysia, and concluded a feasibility study for an FTA with Turkey, while the FTA negotiation with Thailand is ongoing.⁴²

Asia-Pacific

Countries in the Asia-Pacific region are consolidating their drive towards regionalism at an accelerated pace. Historical reservations about RTAs have long gone and a network of regional and cross-regional RTAs is clearly emerging. Notwithstanding the existence of sub-regional groupings,⁴³ most of the RTAs being created are bilateral, with some instances of collective RTA negotiations, mainly involving ASEAN. As a result, overlapping memberships are on the increase and so is

⁴⁰ Peru and Thailand have signed an early harvest agreement with a view to signing a fully fledged FTA.

⁴¹ The countries concerned are Egypt (2004), the GCC (2005), India (2004), Morocco (2004) and SACU. MERCOSUR has engaged in negotiations with SACU, but it appears that the last round was held in 2006.

⁴² In addition, Chile has FTAs with CACM, Canada, the EFTA states, the EC, Republic of Korea, Mexico and the United States. It has several more RTAs under the ALADI framework.

⁴³ In Asia these include ASEAN, APTA (formerly the Bangkok Agreement), and the South Asian Association for Regional Cooperation (SAARC). In the Pacific they include the CER between Australia and New Zealand, and the Pacific Islands Forum.

the complexity of intra-regional trade relations.⁴⁴ Rationalization of these bilateral relationships into region-wide integration schemes is, however, on the agenda, with several initiatives being either pursued (ASEAN+3)⁴⁵ or suggested.⁴⁶

East Asia features some of the most notable RTA developments in recent years. Japan is a newcomer on the RTA scene, having notified its first FTA in late 2002. Since then it has notified five FTAs, signed two and is negotiating a further eight. In 2007 alone, Japan launched FTA negotiations with Australia, India, Switzerland and Viet Nam.⁴⁷ The Republic of Korea has not been idle either, having signed a major FTA with the United States in 2007, and launched FTA negotiations with the EC and feasibility studies for FTAs with Australia, China, MERCOSUR and New Zealand.⁴⁸ As for China, it has notified five FTAs since 2003 and has recently concluded one with Pakistan. Furthermore, it has ongoing FTA negotiations with five partners and is considering two more with India and the Republic of Korea.⁴⁹ Chinese Taipei is also further expanding its FTA network, having signed FTAs with several Central America countries.⁵⁰

South-East Asia is also proving to be a major RTA negotiating theatre both at the regional and extra-regional level. ASEAN members are working towards the creation of an East Asian Economic Community by 2015, which aims to form a single market with the progressive

⁴⁴ Examples include APTA and BIMSTEC (Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand), both of which include countries that are members of ASEAN and SAFTA.

⁴⁵ The ASEAN + China, Republic of Korea and Japan process was institutionalized in 1999 at the ASEAN+3 Summit held in Manila. The process aims to strengthen and deepen East Asian cooperation and foresees the establishment of a region-wide FTA. In this regard, ASEAN has already concluded an FTA with China and is negotiating one with Japan and one with the Republic of Korea.

⁴⁶ Japan has proposed a Comprehensive Economic Partnership for East Asia (CEPEA) which adds India, Australia and New Zealand to ASEAN+3. A similar proposal has been made by India under the name of the 'Pan-Asia Free Trade Area'.

⁴⁷ Japan has FTAs with Chile, Malaysia, Mexico, Singapore and Thailand, two signed FTAs with Brunei and the Philippines, and ongoing FTA negotiations with ASEAN, the GCC, Republic of Korea, and Indonesia, in addition to those mentioned above.

⁴⁸ In addition the Republic of Korea has FTAs with Chile, the EFTA states and Singapore and ongoing FTA negotiations with ASEAN, Canada, India, Japan, and Mexico.

⁴⁹ China is a member of APTA and it has FTAs with Hong Kong, China; Macao, China; ASEAN; Chile; and Pakistan. It is negotiating FTAs with the GCC, Singapore, Australia, New Zealand and Iceland.

⁵⁰ These are El Salvador, Honduras, Guatemala, Nicaragua and Panama.

elimination of tariff and non-tariff barriers, liberalization of services and investment, and free movement of professionals. In addition, ASEAN is negotiating FTAs with its major trading partners. Besides its notified agreement with China, FTA negotiations are under way with Australia, New Zealand, the Republic of Korea, Japan, India and the EC. At the same time, some ASEAN members are further pursuing their own bilateral initiatives. Singapore is party to eleven FTAs and is negotiating a further seven.⁵¹ Malaysia has an FTA with Japan and a partial scope agreement with Pakistan; it is negotiating with Australia, New Zealand and the United States, and is conducting a feasibility study with India. As for Thailand, in addition to its FTAs with Australia, New Zealand and Japan, it is negotiating FTAs with Bahrain, the EFTA states, India, Peru and the United States, and is considering several others.⁵²

In South Asia, RTA initiatives have traditionally been limited to the region's immediate neighbourhood in the form of SAFTA and a few partial scope agreements. In recent years, however, Pakistan, and in particular India, have embarked on ambitious RTA programmes aimed at concluding preferential agreements with their major trading partners.⁵³ India has to date notified two FTAs, one with Sri Lanka and more recently one with Singapore. Furthermore, India has concluded RTAs with Afghanistan, Chile, MERCOSUR, SACU and Thailand. It is negotiating with ASEAN, the EC, the GCC, the Republic of Korea and Japan, and it is considering RTAs with Australia, China, EFTA, Malaysia and New Zealand. By the end of December 2007 Pakistan had not notified any RTAs, but it has partial scope agreements with Mauritius and Sri Lanka and has signed FTAs with China, and more recently with Malaysia. Pakistan is negotiating RTAs with the GCC, Indonesia, MERCOSUR and Singapore, and is considering several others.

Turning to the Pacific, the main RTA actors here are Australia and New Zealand. Besides their Closer Economic Relations Agreement of 1983, both countries have reacted to the global spread of RTAs by negotiating their own. Australia has FTAs with Singapore, Thailand and

⁵¹ Singapore is a member of ASEAN and a party to the GSTP. It has FTAs with Australia, EFTA, Japan, Jordan, Republic of Korea, India, New Zealand, Panama, the Trans-Pacific SEP and the United States, and it is also negotiating FTAs with Canada, China, the GCC, Mexico, Pakistan, Peru and the Ukraine.

⁵² The negotiations with India and Peru provide for an 'early harvest'.

⁵³ In the case of India and Pakistan, several of the agreements concluded by them appear to be partial scope agreements and not necessarily FTAs.

the United States, and ongoing negotiations of six FTAs, with three more at a proposal stage.⁵⁴ New Zealand has FTAs with Singapore and Thailand and is a party to the Trans-Pacific SEP. It is also engaged in five FTA negotiations and is considering two more.⁵⁵ As for the Pacific islands, besides their PICTA FTA,⁵⁶ they are all engaged in negotiating an EPA with the EC. However, to date it appears that only Papua New Guinea and Fiji (out of fourteen island countries) have initialled the agreement.

Central Asia

Integration initiatives in Central Asia have been mainly directed at re-establishing the economic links that existed before the fall of the communist bloc. However, most early attempts to reproduce those links through plurilateral initiatives (i.e. the CIS FTA) have not materialized and although the CIS institutional framework is still present, preferential liberalization has been achieved through an overlapping network of bilateral agreements and other plurilateral initiatives. The latter include the Single Economic Space between Belarus, Kazakhstan, Russia, and Ukraine, the EurAsian Economic Community between Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan,⁵⁷ and the Central Asian Cooperation Organization, whose members are Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan.⁵⁸ Other regional organizations include ECO,⁵⁹ whose members, among other initiatives, signed the ECO trade agreement (ECOTA) in 2003 providing for tariff reductions, and agreed in 2005 on the common objective of forming an FTA in the future.⁶⁰

⁵⁴ Australia is negotiating with ASEAN, Chile, China, the GCC, Japan and Malaysia and is undertaking feasibility studies with Republic of Korea, India and Indonesia.

⁵⁵ Its FTA negotiations include ASEAN; China; the GCC; Hong Kong, China; and Malaysia and it is considering FTAs with the Republic of Korea and India.

⁵⁶ Pacific Island Countries Trade Agreement (PICTA).

⁵⁷ The EAEC emerged from a CU between Russia, Belarus and Kazakhstan with the later accession of Kyrgyzstan and Tajikistan. Ukraine and Moldova have been granted the status of observers.

⁵⁸ CACO replaces the Central Asia Economic Union, which was composed of Kazakhstan, Kyrgyzstan and Uzbekistan. When Tajikistan joined in 1998, it was renamed the Central Asian Economic Cooperation. Its final name, CACO, was adopted in 2002, and Russia joined the group in 2004.

⁵⁹ ECO, which was founded originally in 1985 by Iran, Pakistan and Turkey, was later joined by Afghanistan, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

⁶⁰ ECO Vision 2015.

North Africa and the Middle East

The most significant developments in North Africa and the Middle East include the Agadir Agreement between Egypt, Jordan, Morocco and Tunisia, which entered into force in 2007, the Pan-Arab FTA notified to the WTO in 2007, and the GCC which has established itself as a customs union. Besides these regionally based initiatives, several countries in the region are developing closer links with Europe as part of the EuroMed process. Some countries have also begun looking further afield for market access opportunities. Examples include Jordan's FTAs with Singapore and the United States, as well as the one under consideration with Canada. More significant, however, is the impressive RTA agenda of the GCC, which is currently negotiating ten FTAs with key trading partners around the world.⁶¹

Sub-Saharan Africa

Among all regions of the world, Sub-Saharan Africa has focused most on the traditional concept of regional integration based on far-reaching economic and political integration among geographically contiguous countries.⁶² The ambitious goals of most African RTAs (CUs, common markets and economic and monetary unions), their low level of intra-regional trade, poor implementation of several agreements, and overlapping memberships tend to underline the dominant role played by regional politics in the design of the region's RTAs. Sub-Saharan intra-regional dynamics have become intimately intertwined with extra-regional preferential trade relations. These have been based, until recently, on non-reciprocal preferences under schemes such as the GSP, the African Growth Opportunity Act (AGOA), and the EC-ACP programmes. Most countries in the continent benefit from such preferential schemes, the exception being countries in North Africa and South Africa, which have forgone unilateral preferences for reciprocal RTAs with partners in Europe – and more recently in the western hemisphere, Asia-Pacific

⁶¹ These include: Australia, China, EFTA, the EC, Japan, India, New Zealand, Pakistan, Singapore and Turkey. With respect to the United States, negotiations are being conducted on a country-by-country basis rather than as a customs union. So far, Bahrain and Oman have concluded FTAs with the United States, while the UAE is negotiating one.

⁶² The Sub-Saharan region contains eight major regional integration schemes all with ambitious integration objectives: six of these aim to become economic unions (CEMAC, EAC, ECCAS, ECOWAS, SADC, UEMOA); one a common market (COMESA); and one a CU (SACU).

and the Middle East. The shift to reciprocal preferences is being extended to most Sub-Saharan countries, with the EPAs replacing the long-standing unilateral preferences granted by the EC under its ACP policy.

The EPA process has taken centre stage in African RTA developments in recent years and it is likely to affect significantly intra-RTA dynamics. The EPA process is supposed to build upon and strengthen existing regional integration arrangements. While this may be the case in Western and Central Africa, where negotiations are taking place with the ECOWAS and CEMAC configurations (with the sole inclusion of Mauritania in ECOWAS and Sao Tomé and Príncipe and the Democratic Republic of Congo in CEMAC),⁶³ it may not be so apparent in Eastern and Southern Africa where the EPA negotiations foresee three configurations (Eastern and Southern Africa (ESA), the East African Community (EAC) and SADC 'minus'), with members from four distinct regional integration schemes.⁶⁴ Considering that each of these RTAs is already a customs union (EAC and SACU), or planning to become one (SADC and COMESA), it is expected that the ESA and SADC EPAs may face compatibility challenges with the integration agendas of the existing RTAs.⁶⁵ Nevertheless, the countries of Eastern and Southern Africa (with a few exceptions) have initialled EPAs, while no regional interim agreement had been reached by the end of 2007 with either ECOWAS or the CEMAC EPAs.

3 RTAs and the WTO: an ill-defined relationship

RTAs and the WTO share the common objective of trade liberalization. The former are discriminatory in intent, the latter is not. The pursuance of similar objectives through different approaches has created a lack of definitional clarity in terms of where regional agreements stand in relation to the WTO. This lack of clarity has become a more significant

⁶³ The UEMOA has been a functioning monetary union since 1994; the ECOWAS, comprising all UEMOA members plus other West African countries, has decided to merge with UEMOA. On 1 January 2005, ECOWAS launched the CET to become a CU, providing for three years of transition period.

⁶⁴ The COMESA, the SADC, the EAC and the SACU.

⁶⁵ Examples of overlapping or misaligned membership include SADC members Malawi, Mauritius, Zambia and Zimbabwe, which have chosen to negotiate with ESA; COMESA members Angola and Swaziland (the latter is also a SACU member) which have opted for the SADC EPA configuration; and South Africa as part of the SADC configuration, along with its existing FTA with the EC.

policy issue as regionalism has grown in importance. The GATT and now the WTO have seen a gradual erosion of the MFN principle over the years due to the emergence of several layers of preferential trade regimes. Much has been written about the motivations behind preferential trade agreements and it is beyond the scope of this chapter to review this literature. Another strand of the lengthy regionalism debate has involved the question of the legal compatibility of regional agreements with GATT/WTO obligations. In what follows, we shall focus not so much on this legal issue, but rather on the surveillance role of the WTO, with particular reference to the recent transparency decision taken in the context of the Doha Round negotiations.

GATT/WTO surveillance of RTAs: some history

The core GATT/WTO rules permitting departures from MFN in order to establish reciprocal preferential trading agreements are found in GATT Article XXIV for agreements in trade in goods, and in GATS Article V for agreements in the area of trade in services. The criteria are fundamentally three: (a) transparency, (b) a commitment to a substantial degree of free trade among the signatories, and (c) the avoidance of additional discrimination against non-party trade. Paragraph 2(c) of the 1979 Decision of the GATT Council on Differential and More Favourable Treatment (Enabling Clause) waives developing countries' obligations under GATT Article I (MFN) when concluding preferential arrangements among themselves. In practice, a limited degree of transparency has become the primary requirement attached to RTAs concluded under the Enabling Clause.

GATT Article XXIV provisions confronted their first real test with the notification in 1957 of the Treaty of Rome establishing the European Economic Community. The working group set up to consider the agreement could not reach a clear-cut conclusion with respect to the consistency of the agreement with the relevant GATT rules (GATT Article XXIV). In retrospect, the inconclusive nature of the deliberations on the establishment of the Treaty of Rome came to symbolize a continuing *de facto* recognition of the inoperability of the conditions contained in GATT Article XXIV. The subsequent examination of customs unions and free trade areas notified to the GATT did not yield any clearer assessments of full consistency with the rules,⁶⁶ and friction

⁶⁶ The only exception to this was the examination of the Czech Republic–Slovak Republic customs union.

arising between GATT members in these areas was largely dealt with in a pragmatic fashion. During the Uruguay Round, in an endeavour to clarify GATT Article XXIV, members agreed to the *Understanding on the Interpretation of Article XXIV of the GATT 1994* (the Understanding).⁶⁷ The Understanding sheds some light on certain issues (of a rather procedural nature), but it did not provide any substantive clarification or interpretation of the essential requirements contained in the Article.

The increase in the number of RTAs during the late 1980s and early 1990s was beginning to create administrative bottlenecks in the newly established WTO, since, according to GATT practice, a working group was established for each notified RTA mandated for examination. To deal with this situation, in February 1996, the Committee on Regional Trade Agreements (CRTA) was established with the mandate to verify the compliance of notified RTAs with the relevant WTO provisions and, among other things, to consider the systemic implications of such agreements and regional initiatives for the multilateral trading system. At the time of the launch of the Doha Round in November 2001, the CRTA had made no progress on its mandate of consistency assessment, owing to the endemic questions of interpretation of the provisions contained in Article XXIV of the GATT 1994.⁶⁸ Members had not been able to reach consensus on the format nor the substance of the reports on any of the examinations entrusted to the CRTA. Stalemate in that area had also resulted in little or no progress in the other areas falling under the CRTA mandate. Concerns over the increasing number of RTAs and a malfunctioning multilateral surveillance mechanism prompted ministers meeting at the Fourth Ministerial Conference in Doha in November 2001 to include negotiations on WTO rules and procedures applying to RTAs under the DDA.

DDA negotiations on WTO rules on RTAs

The Doha Ministerial Declaration contains two references to RTAs.⁶⁹ Paragraph 4 of the Preamble reaffirms members' commitment to the WTO as the unique forum for global trade rule-making and liberalization, while acknowledging the role that RTAs can play in promoting

⁶⁷ The Understanding is an integral part of the 'The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations'.

⁶⁸ Similar problems of interpretation apply to EIAs under GATS Article V.

⁶⁹ WTO Document WT/MIN(01)/DEC/1.

the liberalization and expansion of trade and in fostering development. The negotiating mandate is contained in Paragraph 29 of the Declaration, which calls for the clarification and improvement of the disciplines and procedures under existing WTO provisions applying to RTAs, taking due account of the developmental aspects of these agreements.

The mandate of the Declaration on RTAs, as well as its language, is significant in several ways. It should be noted that, with the exception of the Understanding, never before had the original GATT/WTO rules applying to RTAs been subject to multilateral negotiations. Their inclusion in the Doha negotiating mandate marked a shift by members from a position of denial to one of acknowledgement of a need to engage on the issue. The positive language of the mandate also denotes a shift from thinking of RTAs in terms of a dichotomy (the building v. stumbling blocks debate) to one of synergy, whereby the focus is on building the RTA/WTO relationship on a mutually beneficial basis.

Accordingly, the objective of these negotiations is to clarify and possibly improve the relevant RTA disciplines and procedures under existing WTO provisions with a view to resolving the impasse in the CRTA, exercising better control of RTA dynamics, and minimizing the risks to the integrity of the multilateral trading system associated with the proliferation of RTAs. Unlike other areas of the DDA negotiations, the substantive and procedural problems related to RTAs had been known for years. These are reflected in the inability of the CRTA to conduct the examination of the RTAs under its purview in accordance with its mandate,⁷⁰ and by the weak role played by the Committee on Trade and Development (CTD) in providing comprehensive information on RTAs notified under Paragraph 2(c) of the Enabling Clause. This facilitated the issue identification phase of the negotiations, which had been virtually completed by the end of 2002.⁷¹ Supported by a number of submissions, participants were quickly able to distinguish, as a working hypothesis, those issues that were more 'procedural' in nature from those that had a higher 'systemic' or 'legal' content.

From October 2002, the Negotiating Group on Rules primarily focused its work on procedural issues, which became known as 'RTA

⁷⁰ The CRTA is mandated, for individual RTAs, to (multilaterally) come out with an assessment of their consistency with the rules.

⁷¹ Upon request, the Secretariat circulated a background note summarizing the discussions held in the CRTA, TN/RL/W/8/Rev.1 of 1 August 2002 (*Compendium of Issues Related to Regional Trade Agreements*).

transparency'. By mid 2003, some submissions relating to 'systemic' issues had been tabled, though discussions remained rather academic in this area. In March 2004, the group resumed its work with discussions on RTA transparency and 'systemic' issues being held in parallel. A chairman's roadmap⁷² and submissions by some members served as a basis to engage the group in a more in-depth consideration of systemic questions. However, the debate only gained momentum from March 2005, once various specific proposals had been tabled by participants (Australia and the EC). Discussions on RTA transparency continued to evolve on the basis of informal notes by the group's chairman, and in July 2006 members reached a formal agreement on a Draft Decision on a Transparency Mechanism for Regional Trade Agreements. The Decision has been applied on a provisional basis since December 2006 while awaiting the conclusion of the Doha Round.⁷³

Meanwhile, discussions on systemic issues have made some progress. However, the scope of issues under consideration is wide, complex and politically charged. Discussions have focused on a core set of issues, in particular the clarification of the 'substantially all the trade' (SAT) concept, the length of transition periods, and the inclusion of special and differential (S&D) treatment provisions in Article XXIV of the GATT 1994. The elements of SAT that have attracted most of the group's attention are the pros and cons of SAT tests based on trade and tariff lines, their respective benchmarks, how to combine them, the level of HS⁷⁴ disaggregation for the calculations, the non-exclusion of 'major sectors', and the relationship of 'other restrictive regulations of commerce' (as well as preferential rules of origin) with SAT. Most technical elements have not yet been fully explored. With respect to the permitted transition period for RTAs, views diverge on the definition and scope of application of the 'exceptional cases' that would allow the parties to an RTA to go beyond the ten-year transition period mandated by the Understanding.

The issue of S&D treatment permeates all aspects of these discussions. The scope and extent of S&D to be included in Article XXIV of the GATT 1994 remains unclear and several members hold that the question should be addressed at a later stage of the negotiations, once the issues

⁷² *Roadmap for Discussions on RTAs' 'Systemic' Issues and Rev.1*, dated 26 April 2004 and 22 June 2004, respectively.

⁷³ General Council Decision of 14 December 2006; WTO Document WT/L/671.

⁷⁴ Harmonized Commodity Description and Coding System of tariff nomenclature.

of SAT and transition periods are clarified. However, the future of these discussions is uncertain as sharp differences remain. Some members are rather reluctant to negotiate on 'systemic' questions, having concerns over a potential dilution of existing RTA rules. Other members are seeking to modify RTA disciplines, though with different objectives, ranging from pure 'clarification' of some existing provisions (making them stricter, in principle) to added flexibility. Lack of formal negotiating submissions on these questions, combined with relatively slow progress in other negotiating areas has resulted in the group not meeting since February 2007. New impetus will be needed to move these questions forward.

The Transparency Mechanism for RTAs

The Decision on a Transparency Mechanism for Regional Trade Agreements (TM) has resulted in a number of important procedural changes in the treatment of RTAs within the WTO framework. The TM, which applies to all RTAs, whether notified under GATT Article XXIV, GATS Article V or the Enabling Clause, is being implemented on a provisional basis in accordance with Paragraph 47 of the Doha Ministerial Declaration, and will be replaced by a permanent mechanism to be adopted as part of the Doha Round of trade negotiations. An explanation of the key elements of the TM, together with an assessment of its first year of operation, is outlined below.

The TM introduces the concept of an early announcement for RTAs, either under negotiation or signed, but not yet in force. Members participating in RTA negotiations should provide basic information in the form of a press release or similar which is made available on the WTO website. Once the RTA has been signed, members are to convey information, such as the scope and date of signature, relevant contact points, and/or website addresses to the WTO. As of December 2007, early announcements of nine signed RTAs and twenty-four RTAs under negotiation had been received from members and posted on the WTO website.⁷⁵

The system of early announcements has increased the transparency of RTAs, allowing members and the public to make use of a centralized source of information on RTAs under negotiation or signed, but not

⁷⁵ See www.wto.org/english/tratop_e/region_e/early_announc_e.htm. RTAs notified subsequently are removed from this list.

yet in force. Nonetheless, only about a third of the RTAs under negotiation or already signed have been announced early to the WTO. Of roughly seventy RTAs currently under negotiation, twenty-four have been announced early. Likewise, of twenty-eight RTAs which have been signed, but are not yet in force, only nine were announced early. Clearly WTO members will need to make a greater effort to inform the Secretariat of ongoing RTA negotiations in order to render this information as comprehensive as possible.

The TM strengthens existing provisions on notification by stipulating that notification is to take place 'as early as possible . . . no later than directly following the parties' ratification of the RTA or any party's decision on application of the relevant parts of an agreement, and before the application of preferential treatment between the parties'. Of the twenty notifications of RTAs made during 2007, five were received before the RTA entered into force. By way of comparison, according to figures for 2006, nine of the twenty-five notifications were made before the RTA's entry into force. This suggests that there is still room for improvement and that while some members have made efforts to provide timely notification of their RTAs, others have yet fully to integrate the new obligations relating to notification.

Under the TM, the WTO Secretariat is charged with the preparation of a factual presentation of all notified RTAs covering trade in goods and/or services. The factual presentation, which replaces the standard format furnished by the parties to an RTA, is a detailed summary and contains data on the trade environment of the RTA parties, a description of the RTA's regulatory features, and details of the tariff, trade and regulatory liberalization envisaged over the transition period of the RTA. It is factual and is prepared on the Secretariat's own responsibility, in full consultation with the parties, and cannot be used as a basis for dispute settlement procedures or to create new rights and obligations for members.

The purpose of the factual presentation is to produce objective, homogeneous reports containing no value judgements which are used by members in their consideration of an RTA under review. Prior to the adoption of the TM, RTAs were transmitted to the CRTA for examination following the adoption of terms of reference by the Council for Trade in Goods (for RTAs notified under GATT Article XXIV) or the Council for Trade in Services (for RTAs notified under GATS Article V). The emphasis in the TM on 'consideration' rather than 'examination' stems from the fact that in the ten years of the CRTA's existence not a

single examination report of an RTA was approved by members. This was owing to various factors including differing interpretations of key provisions of the existing legal texts, members' inability (or, in some cases, unwillingness) to provide adequate statistics, and political difficulties stemming from the need to produce a consensual report acceptable to all members, including the RTA parties under review.

During 2007, a total of thirteen factual presentations were completed by the Secretariat, eleven of which were used as the basis for consideration of the relevant RTAs in the CRTA.⁷⁶ This number falls somewhat short of that envisaged in the work programme for the CRTA established in March 2007, and is caused by a number of factors, including delays in the receipt of statistical data from parties, data discrepancies in members' submissions, and delays in the receipt of comments from the parties. Most of these are teething problems which should be resolved as members become more familiar with the process and adept at producing the required statistical data. Members have expressed satisfaction with the operation of the TM so far, noting that the provision of consistent, timely and objective information in the factual presentation has increased the quality of information available and has aided the consideration process.

According to the TM, consideration of a notified RTA is to be concluded within one year of the date of notification of the RTA in a single formal meeting. Any additional exchange of information is to take place in written form. Given that, prior to the adoption of the TM, RTAs were often subject to multiple rounds of examination over a period of years, the adoption of the new Mechanism has greatly streamlined the CRTA's work.

With respect to subsequent notification and reporting, the TM supplants the largely dysfunctional RTA biennial reporting schedule by providing that the required notification of changes affecting the implementation or operation of an RTA should take place as soon as possible after changes occur.⁷⁷ At the end of the RTA's implementation period, the parties should submit a short written report on the realization of liberalization commitments in the RTA. During 2007,

⁷⁶ Details can be found at www.wto.org/english/tratop_e/region_e/trans_mecha_e.htm.

⁷⁷ The biennial reporting schedule applied only to those RTAs for which an examination report had been adopted during the GATT years. The majority of RTAs in force which have been notified since then were not subject to any reporting mechanism prior to the adoption of the TM.

notifications of changes on four RTAs were received and posted on the WTO website.⁷⁸ So far, no reports on the realization of liberalization commitments have been received.

Under the new Mechanism, the CRTA is the body responsible for RTAs notified under GATT Article XXIV or GATS Article V. RTAs notified under the Enabling Clause are the responsibility of the CTD, convening in a dedicated session. A number of RTAs have been considered in the CRTA under the TM during the first year of its operation. None has yet been considered in the CTD as the first notification of an RTA under the Enabling Clause was made in October 2007.⁷⁹ This RTA will be considered in the CTD during the course of 2008.

Prior to the adoption of the TM, notifications and terms of reference for the examination of RTAs were dealt with in different bodies.⁸⁰ RTAs notified under GATT Article XXIV were subject to mandatory examination, those under GATS Article V were subject to possible examination, while those under the Enabling Clause were not examined, but could be subject to consultations in the CTD, if requested by members. Under the TM, all RTAs are subject to consideration using a factual presentation prepared by the Secretariat. By streamlining the bodies responsible for the implementation of the Mechanism, procedural time lags should be reduced and the process of transparency enhanced.

RTAs for which the CRTA had already concluded the factual examination prior to the adoption of the TM are subject to a factual abstract prepared by the Secretariat.⁸¹ The factual abstract is a short summary (two or three pages) of an RTA with a description of its key elements. Factual abstracts are to be made publicly available on the WTO website. Of the sixty or so RTAs subject to the preparation of a factual abstract by the Secretariat, fifteen have been completed and posted on the WTO website.⁸² The rest are in preparation and will be made available shortly.

The Mechanism makes provision for the Secretariat to establish and maintain an updated electronic database on individual RTAs which is easily accessible to the public. The database, which will include relevant

⁷⁸ See www.wto.org/english/tratop_e/region_e/notif_changes_e.htm.

⁷⁹ The FTA between Turkey and Egypt.

⁸⁰ RTAs notified under GATT Article XXIV were notified to the Council for Trade in Goods, those under GATS Article V to the Council for Trade in Services and those under the Enabling Clause to the CTD.

⁸¹ The requirement of factual abstracts also applies to RTAs notified under the Enabling Clause.

⁸² See www.wto.org/english/tratop_e/region_e/factual_abstracts_e.htm.

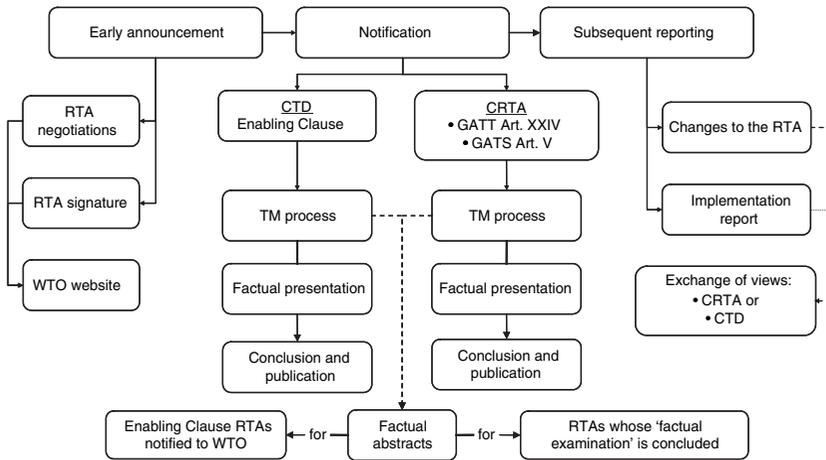


Figure 2.11 WTO process for RTAs according to the Decision on RTA Transparency

tariff- and trade-related information, and give access to all written material related to announced or notified RTAs available at the WTO, is currently under construction. Phase 1, which provides an ID card for each notified RTA, should be made public during the course of 2008.

Experience of the Transparency Mechanism thus far

The availability of factual presentations has reinvigorated the CRTA and members have expressed their satisfaction with the quality of information made available. Nonetheless, a few teething problems are evident. Some countries have had difficulty in providing the mandated data in the required format and in a timely fashion, and the quality of data submissions provided by members varies. The time periods foreseen in the Mechanism, particularly for comments from the parties to the first draft of the factual presentation and for members' questions and replies, have been deemed by members to be too short and have been lengthened.

Some other issues have arisen, such as the periodicity of data to be used in the factual presentation. The Mechanism makes it clear that the parties should provide import statistics for the most recent three years preceding the notification of the RTA and that the WTO Secretariat may also use data available from other sources. Nonetheless, some members are reluctant to sanction the use of post-entry-into-force data in the

factual presentation, as they fear a misinterpretation of the data. This issue needs to be discussed further among members.

With regard to future work, the Mechanism makes provision for members to review, and if necessary modify, the Decision in light of the experience gained from its provisional operation, and to replace it by a permanent mechanism adopted as part of the overall results of the Doha Round, in accordance with Paragraph 47 of the Doha Declaration. Members are also charged with reviewing the legal relationship between the Mechanism and relevant WTO provisions related to RTAs.

At the time of its adoption in December 2006, the Chair of the General Council noted that members intended to conduct an initial review of the Mechanism within one year. However, by the end of 2007 members considered that there had not yet been enough experience with the Mechanism to conduct a proper review and therefore postponed it to a later date.⁸³ Also pending is discussion on the legal relationship between the TM and the existing WTO provisions related to RTAs. For the moment, members have taken a pragmatic approach to the adoption of ad hoc procedural changes where necessary. It is clear that in the longer term efforts will need to be made to accommodate the Mechanism into the existing WTO legal framework on a more permanent basis.⁸⁴

⁸³ See the Report (2007) of the CRTA to the General Council, WTO Document WT/REG/18.

⁸⁴ See Tables 2.1A and 2.2A in the Appendix for a comparison between the Decision on RTA Transparency and the existing WTO provisions applying to RTAs.

Table 2.2 *List of acronyms of notified RTAs*

| Abbreviation | Full title | Member countries |
|--------------|---|--|
| AFTA | ASEAN Free Trade Area | Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam |
| APTA | Asia-Pacific Trade Agreement (Bangkok Agreement) | Bangladesh, China, India, Republic of Korea, Laos, Sri Lanka |
| ASEAN | Association of South East Asian Nations | Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam |
| CAN | Andean Community | Bolivia, Colombia, Ecuador, Peru, Venezuela |
| CARICOM | Caribbean Community and Common Market | Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Trinidad and Tobago, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Surinam |
| CACM | Central American Common Market | Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua |
| CAFTA-DR | Dominican Republic–Central America–United States | Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, United States |
| CEFTA | Central European Free Trade Agreement | Albania, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Montenegro, Serbia and United Nations Interim Administration Mission in Kosovo |
| CEMAC | Economic and Monetary Community of Central Africa | Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea, Gabon |
| CER | Closer Trade Relations Trade Agreement | Australia, New Zealand |

Table 2.2 (*cont.*)

| Abbreviation | Full title | Member countries |
|--------------|---|---|
| CIS | Commonwealth of Independent States | Azerbaijan, Armenia, Belarus, Georgia, Moldova, Kazakhstan, Russian Federation, Ukraine, Uzbekistan, Tajikistan, Kyrgyz Republic |
| COMESA | Common Market for Eastern and Southern Africa | Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda Zambia, Zimbabwe |
| EAC | East African Community | Kenya, Tanzania, Uganda |
| EAEC | Eurasian Economic Community | Belarus, Kazakhstan, Kyrgyz Republic, Russian Federation, Tajikistan |
| EC | European Communities | Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia Republic, Slovenia, Spain, Sweden, Netherlands, United Kingdom |
| ECO | Economic Cooperation Organization | Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyz Republic, Pakistan, Tajikistan, Turkey, Turkmenistan, Uzbekistan |
| ECOWAS | Economic Community of West African States | Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo |
| EEA | European Economic Area | EC, Iceland, Liechtenstein, Norway |
| EFTA | European Free Trade Association | Iceland, Liechtenstein, Norway, Switzerland |
| GCC | Gulf Cooperation Council | Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates |

Table 2.2 (cont.)

| Abbreviation | Full title | Member countries |
|--------------|--|--|
| GSTP | General System of Trade Preferences among Developing Countries | Algeria, Argentina, Bangladesh, Benin, Bolivia, Brazil, Cameroon, Chile, Colombia, Cuba, Democratic People's Republic of Korea, Ecuador, Egypt, Ghana, Guinea, Guyana, India, Indonesia, Islamic Republic of Iran, Iraq, Libya, Malaysia, Mexico, Morocco, Mozambique, Myanmar, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Republic of Korea, Romania, Singapore, Sri Lanka, Sudan, Thailand, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Venezuela, Viet Nam, Yugoslavia, Zimbabwe |
| LAIA/ALADI | Latin American Integration Association | Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay, Venezuela |
| MERCOSUR | Southern Common Market | Argentina, Brazil, Paraguay, Uruguay |
| MSG | Melanesian Spearhead Group | Fiji, Papua New Guinea, Solomon Islands, Vanuatu |
| NAFTA | North American Free Trade Agreement | Canada, Mexico, United States |
| OCT | Overseas Countries and Territories | Greenland, New Caledonia, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, Mayotte, Saint Pierre and Miquelon, Aruba, Netherlands Antilles, Anguilla, Cayman Islands, Falkland Islands, South Georgia and South Sandwich Islands, Montserrat, Pitcairn, Saint Helena, Ascension Island, Tristan da Cunha, Turks and Caicos Islands, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands |
| PAN-ARAB | Pan-Arab Free Trade Area | Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen |

Table 2.2 (*cont.*)

| Abbreviation | Full title | Member countries |
|-------------------|---|---|
| PATCRA | Papua New Guinea–Australia Trade and Commercial Relations Agreement | Australia, Papua New Guinea |
| PTN | Protocol Relating to Trade Negotiations among Developing Countries | Bangladesh, Brazil, Chile, Egypt, Israel, Mexico, Pakistan, Paraguay, Peru, Philippines, Republic of Korea, Romania, Tunisia, Turkey, Uruguay, Yugoslavia |
| SACU | Southern African Customs Union | Botswana, Lesotho, Namibia, South Africa, Swaziland |
| SADC | Southern African Development Community | Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe |
| SAPTA/SAFTA | South Asian Preferential (Free) Trade Arrangement | Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka |
| SPARTECA | South Pacific Regional Trade and Economic Cooperation Agreement | Australia, New Zealand, Cook Islands, Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu, Western Samoa |
| Trans-Pacific SEP | Trans-Pacific Strategic Economic Partnership | Brunei Darussalam, Chile, New Zealand, Singapore |
| TRIPARTITE | Tripartite Agreement | Egypt, India, Yugoslavia |
| UEMOA/WAEMU | West African Economic and Monetary Union | Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, Togo |

Appendix: Comparison between the ‘Transparency Mechanism for Regional Trade Agreements’ (WT/L/671) and existing WTO-related provisions

Table 2.1A. Transparency Mechanism and WTO-related provisions

| Transparency Mechanism | Related provisions in the WTO Agreements | | |
|---|---|--|--|
| | GATT XXIV & Understanding (U) | Enabling Clause | GATS V |
| <i>A. Early announcement:</i> | | | |
| a) “Members participating in new negotiations ... of an RTA shall endeavour to so inform the WTO.” | No equivalent provision | No equivalent provision | No equivalent provision |
| b) “Members parties to a newly signed RTA shall convey to the WTO ... information on the RTA ...” | | | |
| <i>B. Notification:</i> | | | |
| 3. “The ... notification of an RTA ... shall take place as early as possible. As a rule, it will occur no later than directly following the parties’ ratification of the RTA or any | XXIV:7(a) - “Any contracting party deciding to enter into [an RTA] shall promptly notify the Contracting Parties” | Para 4(a) - “Any contracting party taking action to introduce an arrangement ... shall ... notify the CONTRACTING PARTIES” | V:7(a) - “Members which are parties to [an RTA] shall promptly notify any such agreement ... to the Council for Trade in Services” |

Table 2.1A. (*cont.*)

| Related provisions in the WTO Agreements | | |
|--|---|--|
| Transparency Mechanism | GATT XXIV & Understanding (U) | GATS V |
| <p>party's decision on application of the relevant parts of an agreement, and before the application of preferential treatment between the parties."</p> <p>4. "In notifying their RTA, the parties shall specify under which provision(s) of the WTO agreements it is notified. They will also provide the full text of the RTA ... and any related schedules, annexes and protocols ..."</p> | <p>XXIV:7(a) - "Any contracting party deciding to enter into [an RTA] ... shall make available to [the Contracting Parties] such information regarding the proposed [RTA] as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate"</p> | <p>Para 4(a) - "Any contracting party taking action to introduce an arrangement ... shall ... furnish [the CONTRACTING PARTIES] with all the information they may deem appropriate relating to such action"</p> <p>V:7(a) - "Members which are parties to [an RTA] ... shall also make available to the Council such relevant information as may be requested by it"</p> |

Table 2.1A. (cont.)

| Transparency Mechanism | Related provisions in the WTO Agreements | | |
|--|--|-------------------------|-------------------------|
| | GATT XXIV & Understanding (U) | Enabling Clause | GATS V |
| C. <i>Procedures to enhance transparency</i> | | | |
| 6. “The consideration by Members of a notified RTA shall be normally concluded in a period not exceeding one year after the date of notification...” | No equivalent provision | No equivalent provision | No equivalent provision |
| 7. “To assist Members in their consideration of a notified RTA: | | | |
| a) the parties shall make available to the WTO Secretariat data as specified in the Annex ...; and | | | |
| b) the WTO Secretariat, on its own responsibility and in full consultation with the parties, shall prepare a factual presentation of the RTA.” | | | |

Table 2.1A. (cont.)

| Related provisions in the WTO Agreements | | |
|--|---|---|
| Transparency Mechanism | GATT XXIV & Understanding (U) | GATS V |
| 9. "The factual presentation ... shall be primarily based on the information provided by the parties; ... In preparing the factual presentation, the WTO Secretariat shall refrain from any value judgement." | | |
| <i>D. Subsequent notification and reporting</i> | | |
| 14. "The ... notification of changes affecting the implementation of an RTA, or the operation of an already implemented RTA, shall take place as soon as possible after the changes occur. Changes to be notified include, <i>inter alia</i> , modifications to the preferential treatment between the parties and to the RTA's disciplines ..." | XXIV:7(c) - "Any substantial change in the plan or schedule referred to in paragraph 5(c) shall be communicated to the Contracting Parties, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the [RTA]" | V:7(a) - "Members which are parties to [an RTA] shall promptly notify ... any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it." |
| | Para 4(a) - "Any contracting party ... subsequently taking action to introduce modification or withdrawal of the differential and more favourable treatment so provided shall ... notify the CONTRACTING PARTIES and furnish them with all the information they may deem appropriate relating to such action" | |

Table 2.1A. (cont.)

| | | Related provisions in the WTO Agreements | |
|---|---|--|--|
| Transparency Mechanism | GATT XXIV & Understanding (U) | Enabling Clause | GATS V |
| 15. "At the end of the RTA's implementation period, the parties shall submit to the WTO a short written report on the realization of the liberalization commitments in the RTA as originally notified." | U:9 - "Members parties to an interim agreement shall notify substantial changes in the plan and schedule included in that agreement to the [CTG] and, if so requested, the Council shall examine the changes" | | V:7(b) - "Members which are parties to any agreement ... which is implemented on the basis of a time-frame shall report periodically to the [CTS] on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary" |
| 16. "Upon request, the relevant WTO body shall provide an adequate opportunity for an exchange of views on the communications submitted under paragraphs 14 and 15." | U:11 - "... Any significant changes and/or developments in the [RTA] should be reported as they occur. - [RTAs] shall report periodically to the [CTG], as envisaged by the CONTRACTING PARTIES to GATT 1947 in their | | |

Table 2.1A. (*cont.*)

| Related provisions in the WTO Agreements | |
|--|---|
| Transparency Mechanism | GATS V |
| GATT XXIV & Understanding (U) | Enabling Clause |
| instruction to the GATT 1947 Council concerning reports on regional agreements (BISD 18S/38), on the operation of the relevant agreement ⁷ | GATS V |
| <i>E. Bodies entrusted</i> | |
| 18. "The ... ("CRTA") and the ... ("CTD") are instructed to implement this Transparency Mechanism ... The CRTA shall do so for RTAs falling under Article XXIV of GATT 1994 and Article V of GATS, while the CTD shall do so for RTAs falling under paragraph 2(c) of the Enabling Clause ..." | <i>Council for Trade in Goods and CRTA</i> |
| | <i>CTD</i> |
| | <i>Council for Trade in Services and CRTA</i> |

Table 2.1A. (cont.)

| Transparency Mechanism | Related provisions in the WTO Agreements | | |
|--|--|-------------------------|-------------------------|
| | GATT XXIV & Understanding (U) | Enabling Clause | GATS V |
| <i>F. Technical support for developing countries</i> | | | |
| 19. "Upon request, the WTO Secretariat shall provide technical support to developing country Members ... in the implementation of this Transparency Mechanism ..." | No equivalent provision | No equivalent provision | No equivalent provision |
| <i>G. Other provisions</i> | | | |
| 20. "Any Member may ... bring to the attention of the relevant WTO body information on any RTA that it considers ought to have been submitted to Members in the framework of this Transparency Mechanism." | No equivalent provision | No equivalent provision | No equivalent provision |

Table 2.2A. *WTO-related provisions and the Transparency Mechanism*

| Mandatory related provisions in the WTO Agreements | | | Transparency Mechanism |
|--|---|---|--|
| GATT & Understanding (U) | Enabling Clause | GATS | Related procedural practice |
| U:7 – “All notifications made under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of GATT 1994 and of paragraph 1 of this Understanding. The working party shall submit a report to the [CTG] on its findings in this regard.” | Para 4(b) - “Any contracting party taking action to introduce an arrangement ... shall ... afford adequate opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise” | V:7(a) – “... The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.” | All Three Provisions RTAs notified under GATT Article XXIV and GATS Article V are sent to the CRTA (those under Paragraph 2(c) of the Enabling Clause to the CTD) for consideration by Members. |