

## Introduction

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### Regional trade agreements: recent developments

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#### Overview

Regional trade agreements (RTAs) have increased rapidly in recent years and have become a key feature of trade policy for all WTO members. As at 15 October 2015, 265 RTAs had been notified to the WTO and were in force;<sup>1</sup> the estimate is that around a hundred RTAs are in force but have not been notified to the WTO, and that an equal number are currently being negotiated. In addition to increasing in number, modern RTAs are becoming more sophisticated in their content and coverage. Not only do most include market access commitments in goods and services, as well as accompanying provisions on rules of origin, trade remedies (anti-dumping, countervailing and safeguards), but, increasingly, provisions on investment, intellectual property rights, competition and labour and environment, are found in many RTAs notified to the WTO in recent years.

The changing structure of RTAs has raised questions about whether today's RTAs are creating new standards that are different from the WTO's existing rules and, if so, how the multilateral trading system should react to any growing divergence between its rules and rules created through RTAs. Before we are able to respond to such a question, a greater understanding of the provisions of RTAs is required so we can actually confirm that they are creating new standards and thereby diverging from the WTO rules.

Following a brief introduction to RTAs and their recent evolution, this introductory chapter looks in greater detail at the evidence emerging on RTA provisions.

<sup>1</sup> Of these RTAs, 137 include provisions on trade in goods and 127 on trade in goods and services, and 1 notification corresponds to trade in services.

## The recent evolution of RTAs

### *RTAs: definitions*

Various terms are used to describe preferential relationships between trading partners. Some use the term preferential trade agreements (PTAs), others free trade agreements (FTAs), while some countries use other terms such as “closer economic partnerships” or “closer economic relations”. The WTO itself bases its use of such terms on its rules on regional trade agreements: Article XXIV (on “Territorial Application – Frontier Traffic – Customs Unions and Free-trade Areas”) of the General Agreement on Tariffs and Trade (GATT) 1994, which uses two terms: free trade areas and customs unions (CUs).<sup>2</sup> In addition, the Enabling Clause (officially called the “Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries”, adopted under GATT in 1979) introduced the possibility of developing countries concluding agreements among themselves that cover a small share of the tariff, while with the inclusion of the General Agreement in Trade in Services (GATS), the term “economic integration agreements” (EIAs) was introduced to reflect agreements covering commitments in services.

The term “regional trade agreements” has been used in the GATT and the WTO to include all these kinds of agreements. The Committee on Regional Trade Agreements (CRTA) was created in 1996 specifically to examine RTAs and to study their systemic impact on the multilateral trading system. This book will therefore use the term regional trade agreements, or RTAs, rather than preferential trade agreements, to include all these agreements. Moreover, the term RTAs will include both bilateral and plurilateral agreements.

The WTO rules provide a legal framework for RTAs. They are Article XXIV of the GATT 1994, Article V of the GATS (on “Economic Integration”), paragraph 2(c) of the Enabling Clause<sup>3</sup> and, more recently, the Transparency Mechanism for Regional Trade Agreements. While the legal rules are described in Article XXIV and paragraph 2(c) of the

<sup>2</sup> A customs union ensures free trade among its constituent parties by eliminating tariffs and non-tariff barriers and maintains a common external tariff on imports from the rest of the world into the customs union.

<sup>3</sup> Paragraph 2(c) of the Enabling Clause states: “Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another.”

Enabling Clause, for RTAs which include provisions on trade in goods, GATS V covers RTAs with provisions on trade in services. The most recent instrument, the Transparency Mechanism, describes the process to be followed by members in the relevant WTO committees. It is this latter Decision to establish a Transparency Mechanism, which tasks the WTO Secretariat with the preparation of factual presentations on each notified RTA, that has enabled, to a large extent, the collection of the data and information that were used to prepare the chapters of this book. Box 1 provides details of what each provision covers.

#### BOX 1 RTA RULES IN THE WTO AGREEMENTS

Under WTO rules, all RTAs must be notified to the WTO under either Article XXIV of the GATT 1994 or paragraph 2(c) of the Enabling Clause for RTAs covering liberalization of trade in goods and Article V of the GATS for liberalization of trade in services. For RTAs liberalizing trade in goods, the Enabling Clause applies only to agreements among developing countries; agreements between developed countries and between developed and developing countries may only be notified under Article XXIV. For services, GATS Article V is the only option for all parties.

**Article XXIV of the GATT 1994 and its Understanding**<sup>1</sup> permits the formation of free trade areas or customs unions between members, provided that duties and other restrictive regulations of commerce between the parties are eliminated on substantially all the trade (Article XXIV:8) and that third-party neutrality is maintained, i.e. barriers vis-à-vis third parties are not on the whole higher than before the formation of the customs union or free trade area (Article XXIV:5). Additionally, customs unions have to apply substantially the same external trade regime. In that context, Article XXIV:6 sets out specific procedures to be followed if any party of a customs union breaches its WTO bindings as a result of the formation of the customs union. In such cases, procedures under Article XXVIII to renegotiate bindings must be followed and due account taken of reductions of duties on the same tariff line made by other parties to the customs union. Furthermore, if such compensatory adjustments are not sufficient, the customs union as a whole would offer compensation, including through reductions in duties on other tariff lines.

**Article V of the General Agreement on Trade in Services** permits the formation of economic integration agreements, provided that the agreement has substantial

<sup>1</sup> i.e. the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994 (see [https://www.wto.org/english/res\\_e/booksp\\_e/analytic\\_index\\_e/gatt1994\\_09\\_e.htm](https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_09_e.htm)). The Understanding clarified a number of Articles of Article XXIV of the GATT.

sectoral coverage, including all four modes of supply,<sup>2</sup> and it eliminates substantially all discrimination between the parties by eliminating existing discriminatory measures and/or prohibiting new or more discriminatory measures (Article V:1). The agreement to facilitate trade between the parties must not raise barriers towards non-parties (i.e. there must be neutrality vis-à-vis third parties) (Article V:4). In concluding an economic integration agreement, if a member intends to withdraw or modify a specific commitment in a manner inconsistent with its GATS schedule, it must give ninety days' notice in advance of the withdrawal and renegotiate its commitments.

**Paragraph 2(c) of the Enabling Clause** permits developing country members to enter into regional or global arrangements for the mutual reduction or elimination of tariffs, in accordance with criteria or conditions to be prescribed by members for the mutual reduction or elimination of non-tariff measures between themselves. Members dispute the extent to which the Enabling Clause covers customs unions among developing countries.

**General Council Decision on a Transparency Mechanism for Regional Trade Agreements:** clarifies procedures to be followed for the notification to the WTO and the consideration of RTAs. It clarifies that RTAs must be notified to the WTO no later than directly following ratification of the agreement, and before the provision of preferential treatment by the parties to each other (paragraph 3). It also requires that all RTAs, regardless of the provision(s) under which they are notified, must be subject to a transparency process, including the preparation of a factual presentation by the WTO, which forms the basis for consideration of the RTA by the relevant committee (the Committee on Regional Trade Agreements (CRTA) for RTAs notified under GATT Article XXIV and GATS Article V, and the Committee on Trade and Development (CTD) for RTAs notified under the Enabling Clause). The Mechanism also provides for the possibility of an “early announcement” of RTAs being negotiated or signed but not yet in force (whereby members participating in new negotiations aimed at the conclusion of an RTA inform the WTO Secretariat of such negotiations, and members which are parties to a newly signed RTA send information on the RTA to the WTO Secretariat); and for notification of subsequent changes to an agreement as well as of its full implementation.

The Mechanism is applied provisionally. Under paragraph 23, members are required to review and, if necessary, modify it and replace it with a permanent mechanism adopted as part of the overall results of the Doha Round of multilateral trade negotiations. The review was started by the Negotiating Group on Rules in December 2010 but has yet to be completed.

<sup>2</sup> i.e. “from the territory of one Member into the territory of any other Member”, “in the territory of one Member to the service consumer of any other Member”, “by a service supplier of one Member, through commercial presence in the territory of any other Member” and “by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member” (GATS Article I:2).

*Source:* Article XXIV of the GATT 1994; the Understanding on the Interpretation of Article XXIV of the GATT 1994; Article V of the General Agreement on Trade in Services; Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (Enabling Clause), GATT document L/4903, 28 November 1979; and Decision on a Transparency Mechanism for Regional Trade Agreements, WTO document WT/L/671, 14 December 2006.

### *Recent developments*

RTAs have always coexisted with the multilateral trading system. However, since the early 1990s in particular there has been a steady increase in RTAs entering into force (Figure 1). In fact, compared to the GATT years, when on average three RTAs were notified per year, since 1995, twenty-five RTAs on average have been notified per year (Figure 2). As of 15 October 2015, of the 265 RTAs notified and in force, 137 have provisions liberalizing trade in goods only, while 127 liberalize goods and services.<sup>4</sup> Moreover, we estimate that around a hundred additional RTAs are in force but have not yet been notified, and an equal number of RTA negotiations are taking place. The upward trend is therefore likely to continue for a few years at least. As a result, all WTO members, except Mongolia, currently have RTAs in force, and Mongolia will soon join the others, as it has concluded negotiations to join the Asia-Pacific Trade Agreement and recently signed a trade agreement with Japan.

The evolution of RTAs over time also shows that, increasingly, agreements are cross-regional and occur between developed and developing countries, although an important share of agreements today is between developing countries as well.

There have also been changes over time in the geographical distribution of RTAs. While RTAs were originally driven mainly by the European Union and the United States, today's RTAs, and especially negotiations, tend to be concentrated in the Asian region as well as in Europe. Judging from overall notifications, RTA activity is strongest in Europe (21 per cent of RTAs in force), with agreements with countries in Eastern Europe and around the Mediterranean basin as well as RTAs notified by the European Free Trade Association (EFTA); this is followed by East Asia (16 per cent), the Commonwealth of Independent States (CIS) region (11 per cent) and South America (11 per cent) (Figure 3). These regions also continue to be active in current RTA negotiations.

<sup>4</sup> One RTA was notified to the WTO as liberalizing trade in services only.

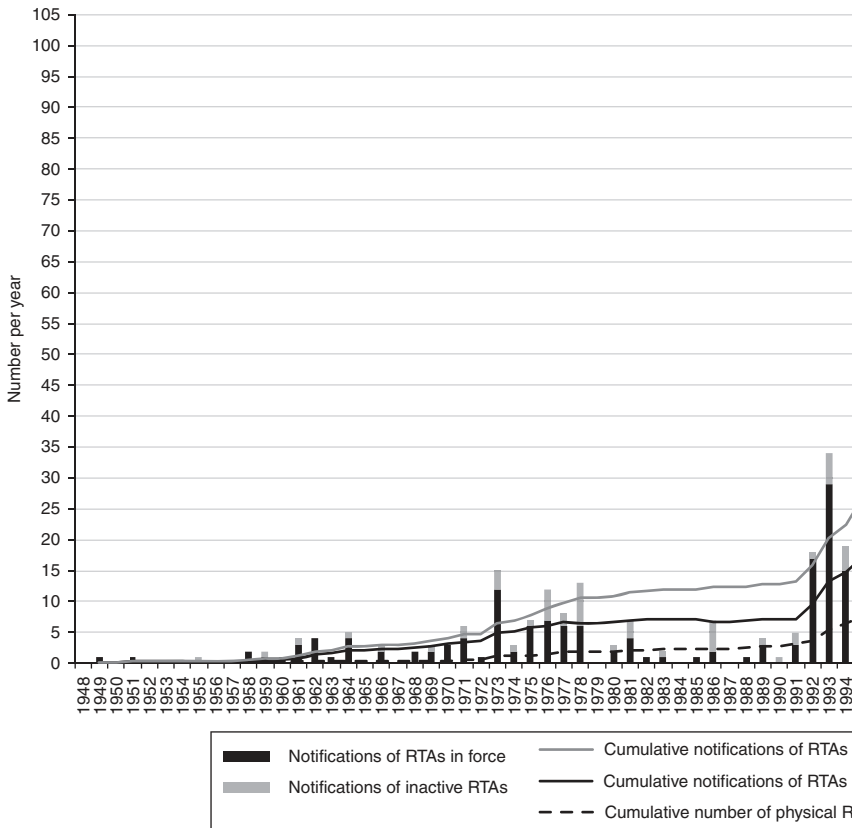


Figure 1 All RTAs notified to the GATT/WTO (1949–2015) by year of entry

INTRODUCTION - RTAS: RECENT DEVELOPMENTS

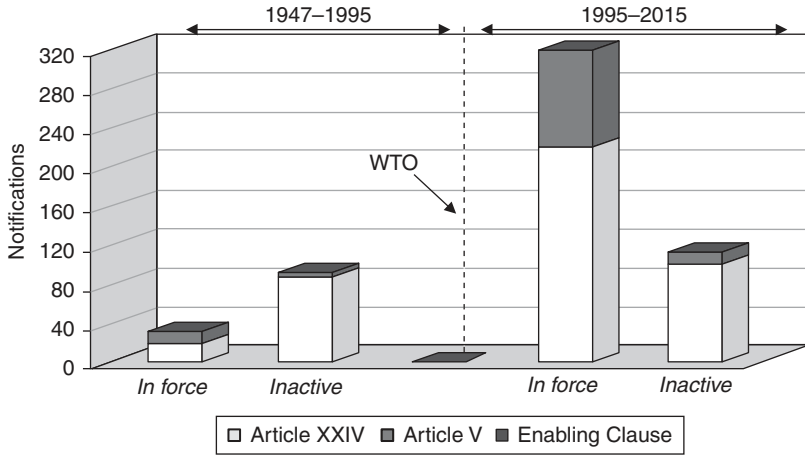


Figure 2 RTAs notified to the GATT and WTO by legal provision

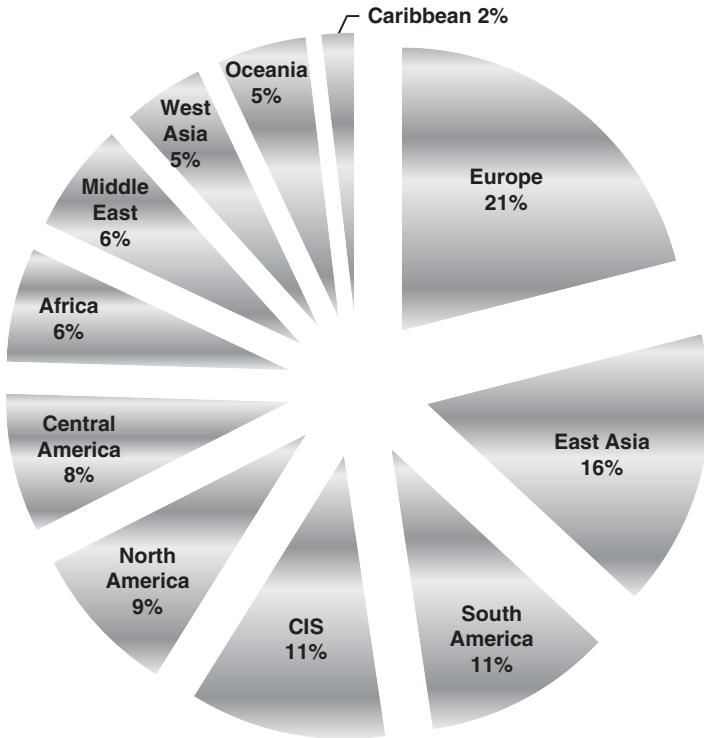


Figure 3 RTAs notified and in force up to 1 October 2015 (per cent by region)

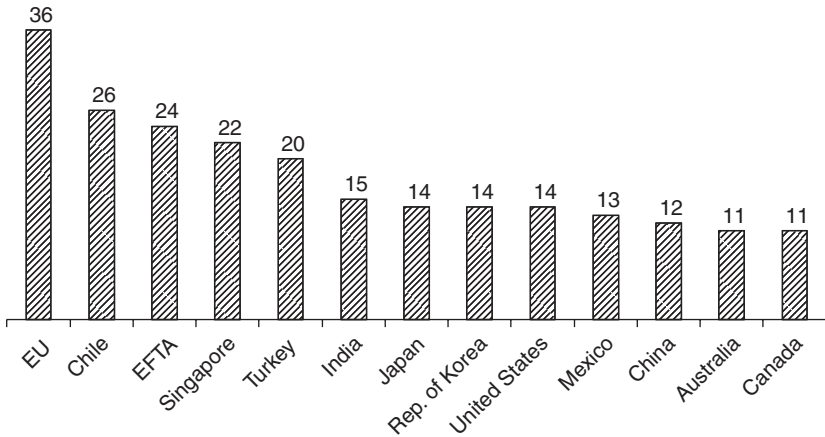


Figure 4 WTO members most active in RTAs, as of September 2015

The EU is the most active WTO member in terms of the number of RTAs it has negotiated. In Europe it is followed closely by the EFTA states and Turkey, in part due to their close economic relations with each other. In Asia, Singapore has the largest number of RTAs in force. However, others have been playing catch-up for a number of years, notably China, India, Japan and the Republic of Korea, while in Latin America, Chile has taken the lead in negotiating RTAs (Figure 4).

A number of explanations have been advanced for the sharp increase in RTAs in force and continued negotiations: the emergence of new trading patterns among Central and Eastern European states in the early 1990s; frustration among WTO members about the lack of progress in multilateral negotiations; the accession of new members to the WTO (with resulting notification obligations); the growing importance of services trade and negotiations of RTAs with services commitments; and, since 2000, the shift, particularly among Asian countries, in favour of RTAs. It has also been said that it is easier to negotiate with one trading partner and “regionally” rather than multilaterally.

While some have estimated that negotiation of an RTA lasts on average two and a half years, this figure hides a wide diversity of time frames: while some RTAs are negotiated within six months, others remain under negotiation for more than fifteen years. In such “regional” negotiations, issues that are more difficult to negotiate often tend to be left out.



The result is the emergence of a dense network of RTAs over time, with overlapping agreements among the same trading partners in several cases, leading to references such as a “spaghetti bowl” or “noodle bowl” of agreements. However, there are new trends in negotiating plurilateral agreements among several trading partners such as the Trans-Pacific Partnership (TPP), the Regional Comprehensive Economic Partnership (RCEP), the Tripartite Agreement and the Pacific Alliance, which may result in a change to the spaghetti bowl, especially if these agreements replace older bilateral agreements once negotiations are completed.

Specifically, some consolidation of rules may result from plurilateral agreements. For instance the TPP is, in fact an enlargement of an existing agreement (the Trans-Pacific Strategic Economic Partnership Agreement) between Brunei Darussalam, Chile, New Zealand and Singapore.<sup>5</sup> The TPP, when it comes into force, is expected to bring together a number of countries in the Asia-Pacific region.<sup>6</sup> Similarly the RCEP aims to bring together the members of the Association of Southeast Asian Nations (ASEAN), Australia, China, India, Japan, the Republic of Korea and New Zealand, while the Pacific Alliance consolidates bilateral relations between Chile, Colombia, Mexico and Peru. In Africa, the goal is to bring together three existing regional trade agreements (the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC)) to create the Tripartite Agreement, leading eventually to a continent-wide free trade agreement, while in the north of the continent attempts are being made to consolidate the Greater Arab Free Trade Area (GAFTA).

The extent to which such agreements, when concluded, will go towards reducing the spaghetti bowl effect will depend on whether the new agreements replace all or only key elements of older preferential trading relationships between the partners, or whether they are simply added to the older existing agreements.<sup>7</sup>

<sup>5</sup> The Transpacific SEP agreement was considered in the WTO’s Committee on Regional Trade Agreements (CRTA) on 18 and 19 September 2008 (more information on the agreement and its consideration can be found in the RTA Database ([rtais.wto.org](http://rtais.wto.org))).

<sup>6</sup> The TPP negotiations were concluded on 5 October 2015 between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam. However, already discussions are taking place with the Republic of Korea, which may become the thirteenth member of the TPP.

<sup>7</sup> In the case of the RCEP for instance the Guiding Principles and Objectives for Negotiating the RCEP states that “the ASEAN +1 FTAs and the bilateral/plurilateral FTAs between and among participating countries will continue to exist and no provision in the RCEP agreement will detract from the terms and conditions in these bilateral/plurilateral FTAs between and among the participating countries”.

### *RTAs and their changing structure*

As the number of RTAs has grown over time, the structure and coverage of RTAs has also changed and become broader, covering a larger number of issues, but also in the process covering these issues more deeply.

During the GATT years, most RTAs only contained tariff concessions, and other related provisions tended to confirm their GATT obligations and commitments. However, as tariff protection has fallen, either due to unilateral liberalization or multilateral negotiations, there is now a growing trend in RTAs to liberalize not just goods trade (and related provisions such as standards, sanitary and phytosanitary (SPS) measures and trade defence measures), but also trade in services and investment, and to include provisions on other “behind the border” issues. Most RTAs notified to the WTO today are complex, with long texts and annexes and detailed provisions on related rules such as customs procedures and trade facilitation, standards and trade defence measures, services and intellectual property. But they also increasingly include issues for which there are no WTO rules as yet, such as investment, competition, environment, labour and electronic commerce.

For instance, among RTAs notified to the WTO since 2000, some 55 per cent and 54 per cent, respectively, contain specific commitments in services and investment. Around 59 per cent of these agreements also have some form of provisions on competition policy, although there is great variation in commitments, while around 46 per cent of RTAs go beyond a simple affirmation of rights and obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and 46 per cent include commitments in government procurement. Other issues are less frequently included but are nevertheless also significant: 31 per cent have provisions on the environment, 23 per cent on electronic commerce and around 22 per cent on labour provisions (Figure 5). Trade facilitation, although perhaps not always as defined by the WTO Agreement on Trade Facilitation, is also a common feature of RTAs. Figure 6 also shows the evolution over time of some of these provisions in RTAs notified to the WTO and currently in force.

While there is clearly an increase in the number of RTAs that include these provisions, they can be misleading, as there is great variation among RTAs in the manner by which these provisions are treated.

As the chapters in this publication will show, for some issues, while commitments are made, RTAs do not go beyond the WTO rules but tend to reaffirm them. This is, for example, clearly demonstrated by the chapter on anti-dumping provisions. For others such as safeguards, SPS and