WORLD TRADE ORGANIZATION

INTER-AMERICAN DEVELOPMENT BANK
INTEGRATION AND REGIONAL PROGRAMS DEPARTMENT
INSTITUTE FOR THE INTEGRATION OF LATIN AMERICA
AND THE CARIBBEAN

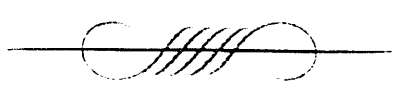
RESTRICTED

WTO/RTA(SEM) 2004/2

BACKGROUND DOCUMENTS

FOR THE

REGIONAL SEMINAR ON WORLD TRADE ORGANISATION AND THE REGIONAL TRADE AGREEMENTS (RTAs) FOR THE CARIBBEAN COUNTRIES



GEORGETOWN, GUYANA
28-30 SEPTEMBER 2004

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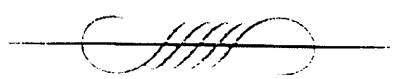
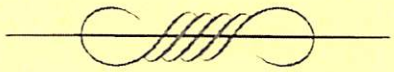
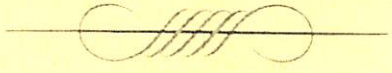


DOCUMENT I



JOB(03) 185 NEGOTIATING GROUP ON RULES: WORK OUTSTANDING AT THE CRTA



JOB(03)/185
Negotiating Group on Rules

1 September 2003

WORK OUTSTANDING AT THE CRTA

Background Note by the Secretariat

The Negotiating Group on Rules is currently exploring ways to enhance transparency of regional trade agreements (RTAs). One of the elements under consideration is the possibility of improving the procedures for the review of RTAs by WTO Members. The issue of how the backlog of work that presently exists at the Committee on Regional Trade Agreements (CRTA) should be dealt with, in the light of any such improved procedures, was raised in that context. The Group requested the Secretariat to prepare a synthesis of the situation at the CRTA, which could assist participants to examine that issue further.

The present note starts by recalling the work performed at the CRTA until now, with respect to the examinations that were mandated to it and, in particular, *vis-à-vis* the elaboration of reports on these examinations. A second section contains commented estimates of the work outstanding by mid-2004, which take into account both the number of RTAs under the purview of the CRTA and the level of information available. A few statistics on trade magnitudes involved in those different RTAs are also offered as quantitative indicators.

A. BACKGROUND

1. Soon after its establishment in 1996, the CRTA advanced considerably its examination work. By mid-1998, several agreements had undergone the "factual" examination stage,[1] and Members started deliberating on the format under which the CRTA would report on those examinations. Based on *early versions* drafted for some examination reports,[2] from early-1999 until 2001, the CRTA dedicated multiple rounds of open-ended informal consultations to shape a format for such reports. In particular, consultations concentrated on a few agreements examined, for which various versions of so-called "model" draft reports were developed, the last ones dated April 2001.[3]

2. At that juncture, the CRTA was pursuing a format for examination reports that would allow agreement by all Members of the totality of each report, including the consistency assessment. However, no consensus could be reached, and both the drafting of reports and consultations were suspended.

B. ESTIMATED WORKLOAD BY MID-2004[4]

3. As of today, the CRTA has concluded its "factual" work on 76 examinations mandated by the Council for Trade in Goods (70) and the Council for Trade in Services (6); but reports on these

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[1] The concept of "factual" examination was developed at that juncture, as meaning the exchange of written or oral (in formal CRTA meetings) questions and comments on a particular RTA.

[2] These *early versions* were structured in four parts (A. Background, B. Factual Record of the Examination, C. Outcome of the Examination in Accordance with the Terms of Reference and D. Conclusions)

[3] The latest version of these "model" draft reports consisted of three parts (I. Background, II. Examination, and III. Record and Findings of the Examination).

[4] Based on the notifications made as of 30 July 2003, that is without taking into account the work involved in future notifications of newly concluded RTAs.

examinations are pending. The number of examinations currently under "factual" review amounts to a further 62 (of which 20 in the area of trade in services).[5]

4. A first element to be considered when assessing the real size of the backlog in the CRTA is the impending enlargement of the EU. By 1 May 2004, the network of RTAs that each of the ten acceding countries had previously in place and notified to the GATT/WTO is due to cease to exist, given that each of them will become party to the RTAs concluded by the EC itself. The absorption of those networks into the EC's own RTA network would translate into a substantial reduction of the number of RTAs under the purview of the CRTA, and thus impact on the workload of the CRTA as follows:

AGREEMENTS UNDER EXAMINATION	Pending reports on examination	"Factual" examination under way or mandated but not started
Notified under GATT Art. XXIV		
Situation on 25 July 2003	70	41
After EU Enlargement	*25*	*35*
Notified under the Enabling Clause		
Situation on 25 July 2003	0	1
After EU Enlargement	*0*	*1*
Notified under GATS Art. V		
Situation on 25 July 2003	6	20
After EU Enlargement	*3*	*15*
TOTALS		
Situation on 25 July 2003	**76**	**62**
After EU Enlargement	***28***	***51***

5. The current 138 examinations under the purview of the CRTA would therefore be reduced to 79 once the foreseen EU enlargement to 25 countries is effective. Out of these 79 examinations, 28 have already undergone the "factual" examination phase at the CRTA, and are thus theoretically ready to be reported on; only three of these examinations relate to agreements in the area of trade in services.[6] The time elapsed since the notification of these examined agreements ranges from two to ten years, and that elapsed since the last CRTA meeting devoted to the "factual" examination ranges from one to six years. More than one-third of these agreements entered into force before 1995.[7]

6. The level of information gathered during these 28 "factual" examinations varies significantly, as well. Table 1 of the Annex shows these differences through the following five indicators:

- Number of pages containing information supplied under the Standard Format.
- Number of pages containing written questions and replies exchanged among Members.
- Number of pages of summary records reporting on the various rounds of "factual" examination held.
- Existence of general and detailed statistical data provided by the Parties.
- Existence of any draft examination reports.

7. For nine of these examinations, no Standard Format information is available (because not yet developed within the CRTA). However, in most of these cases, this is balanced by the existence of

[5] Includes also RTAs for which factual examination has been mandated but not yet started.

[6] Throughout this paper, the examination of the services component of an agreement is counted as a separate examination. The examination of the CEFTA, and accessions of Bulgaria and Romania, are considered here a single examination.

[7] See Annex, Table 1, for details.

written information under other formats, be it in question-and-reply (Q&R) documents or in the summary records of meetings (SRs). Also, for twelve out of 28 agreements, at least an *early version* of a draft examination report exists.

8. Of the 51 remaining agreements, 32 are technically under "factual" examination today, of which nine in the area of trade in services. The time elapsed since the notification of these agreements currently under examination ranges from one to eleven years, and that elapsed since the last CRTA meeting devoted to the "factual" examination ranges from zero to six years. Four of these agreements entered into force before 1995.

9. Both the stage reached in the examination process and the amount of information already available differ significantly among these 32 examinations, as indicated in Table 2 of the Annex. For all but one of the agreements in question, the parties provided Standard Format information.

10. On the remaining 19 agreements, "factual" examination is yet to be initiated by the CRTA, and no Standard Format information has been supplied until now. The dates of entry into force and notification of these agreements and the date scheduled for their first round of examination are as follows:

	Date(s) of entry into force	Date(s) of notification	First round of examination
Bulgaria/Israel (goods)	1-Jan-02	14-Apr-03	...
Canada/Costa Rica (goods)	1-Nov-02	17-Jan-03	...
CARICOM (services)	1-Jul-97	19-Feb-03	...
Chile/Costa Rica (goods)	15-Feb-02	14-May-02	Dec. 2003
(services)		24-May-02	Dec. 2003
EC/Croatia (goods)	1-Mar-02	20-Dec-02	Dec. 2003
EC/Jordan (goods)	1-May-02	20-Dec-02	Dec. 2003
EC/Palestinian Authority (goods)	1-Jul-97	30-Jun-97	...
EC/South Africa (goods)	1-Jan-00	14-Nov-00	Dec. 2003
EFTA (services)	1-Jun-02	3-Dec-02	Dec. 2003
EFTA/Croatia (goods)	1-Jan-02	22-Jan-02	Dec. 2003
EFTA/Jordan (goods)	1-Jan-02	22-Jan-02	Dec. 2003
EFTA/ Palestinian Authority (goods)	1-Jul-99	21-Sep-99	...
EFTA/Singapore (goods & services)	1-Jan-03	24-Jan-03	...
Japan/Singapore (goods & services)	30-Nov-02	14-Nov-02	Dec. 2003
US/Jordan (goods)	17-Dec-01	5-Mar-02	Dec. 2003
(services)		18-Oct-02	Dec. 2003

11. Annex Table 3 shows, for 47 of the 79 agreements referred to in paragraph 5 above, some available import data in trade in goods from the UNCTAD/WTO Trade Analysis System.[8] The base year used for the representation of data was 2001 (or 2000, if data for 2001 were not available). The first column shows the value of total imports between the RTA partners, while the second shows, for each of the partners, the share of their imports from the other in imports from the world. For the EC, the import volumes for EC-25, i.e. post anticipated enlargement, were used.

[8] Only RTAs covering trade in goods were included in Annex Table 3. Data for certain reporters, or whole RTAs, were not available.

ANNEX

TABLE 1 - AGREEMENTS FOR WHICH "FACTUAL" WORK HAS BEEN CONCLUDED

	Date(s) of entry into force	Date(s) of notification	Date of last formal meeting	Standard format [No. pages of text]	Questions & replies [No. pages of text]	Summary records of meetings [No. pages of text]	Available statistics provided by the Parties	Available draft examination reports
Bulgaria/FYROM (goods)	1-Jan-00	21-Jan-00	7-Jul-00	6	--	4	Bilateral imports by HS Chapter (1996-99).	NA
Canada/Israel (goods)	1-Jan-97	23-Jan-97	20-Jun-97	6	7	11	Bilateral imports (1994-96): by HS Chapter; for agriculture, duty-free & dutiable products at tariff line level (1994-96).	NA
Canada/Chile (goods)	5-Jul-97	26-Aug-97	24-Sep-98	10	8	18	Total imports and percentage growth for 1995-1997. Bilateral imports (1997) subject to elimination on entry into force, within 10 years, over 10 years, and not subject to elimination.. Tariff line detail for items not subject to tariff elimination or with phase out longer than 10 years.	NA
CEFTA, accessions of Romania, and Bulgaria (goods)	1-Mar-93 1-Jul-97 1-Jan-99	30-Jun-94 8-Jan-98 24-Mar-99	3-May-99	10	44[i]	31[ii]	For Romania: imports from CEFTA partners (1994-96) by HS Chapter; imports from CEFTA partners (1997) at duty-free, <MFN and MFN rates.	Model version
CER (services)	1-Jan-89	22-Nov-95	7-Jul-97	7	6	8	Australia: imports of total services (1992-95) by country; imports of selected services sectors (1992-1995) by country; level and % of total FDI in services industries (1991-95) by country.	Model version
EC/Andorra (goods)	1-Jul-91	25-Feb-98	22-Sep-99	5	5	6	EU exports to and imports from, extra-EU and Andorra (1993-97) by HS Section.	NA
EC/Bulgaria (goods)	31-Dec-93	23-Dec-94	19-Jun-97	NA	4[i]	8[ii]	EU total imports from Bulgaria (1989-1997); most important EU imports from Bulgaria (1997); EU imports from and exports to Bulgaria (1992-94) for total goods, agricultural goods and non-agricultural goods.	Early version
EC/Israel (goods)	1-Jun-00	7-Nov-00	4-Jun-02	6	--	4	EU exports to, and imports from, Israel and extra-EU (1997-2000) by HS Section.	NA
EC/Romania (goods)	1-May-93	23-Dec-94	19-Jun-97	NA	--[i]	8[ii]	EU total imports from Romania (1989-1997); most important EU imports from Romania (1997).	Early version
EC/Tunisia (goods)	1-Mar-98	23-Mar-99	3-Jul-01	6	19[iii]	21	EU exports to, and imports from Tunisia and extra-EU (1994-97) by HS Section.	NA

	Date(s) of entry into force	Date(s) of notification	Date of last formal meeting	Standard format [No. pages of text]	Questions & replies [No. pages of text]	Summary records of meetings [No. pages of text]	Available statistics provided by the Parties	Available draft examination reports
EC-15 (goods & services)	1-Jan-95	20-Jan-95	10-Jul-98	NA	59	56	Goods: % of trade duty-free, free of tariff quotas, and duty-free within 10 years, between EC-12 and 3 acceding countries. Services: none.	Early version
EFTA/ FYROM (goods)	1-Jan-01	31-Jan-01	19-Feb-02	7	5	6	EFTA imports from and exports to FYROM: Total (1997-2000); by selected commodities (1998-2002); at MFN, reduced, and zero duty rates by HS Chapter (2000).	NA
EFTA/Israel (goods)	1-Jan-93	1-Dec-92	17-Mar-97	[iv]	10	14	EFTA imports from and exports to Israel: total, by HS Section and by selected HS Chapter (1993-95); by sub Section of the FTA (1995).	Early version
EFTA/Morocco (goods)	1-Dec-99	20-Feb-00	3-Jul-01	9	5	9	EFTA imports from and exports to Morocco (1996-98): by selected commodities; by sub Section of the FTA at duty-free, reduced duty and MFN rates.	NA
EFTA/Romania (goods)	1-May-93	24-May-93	17-Mar-97	[iv]	16 [i]	17 [ii]	EFTA imports from and exports to Romania: total, by HS Section and by selected HS Chapter (1993-95); by sub Section of the FTA (1995).	Early version
EFTA/Bulgaria (goods)	1-Jul-93	30-Jun-93	17-Mar-97	[iv]	7 [i]	17 [ii]	EFTA imports from and exports to Bulgaria: total, by HS Section and by selected HS Chapter (1993-95); by sub Section of the FTA (1995).	Early version
Iceland/Faroe Isl. (goods)	1-Jul-93	23-Jan-96	21-Feb-97	6	--	4	Iceland 's total imports from and exports to the Faroe Isl. (1992-1996) by HS Section.	Early version
Kyrgyz Rep./Moldova (goods)	21-Nov-96	15-Jun-99	4-Jun-02	5	9	1[v]	Kyrgyz imports from and exports to Moldova (1997-99) by HS Chapter.	NA
NAFTA (goods & services)	1-Jan-94	1-Feb-93 1-Mar-95	24-Feb-97	NA	134	63	Goods: individual parties' imports from NAFTA partners (1994, 1996): total; imports by separate Annexes; % of trade duty-free. Services: none.	Model version
Norway/Faroe Isl. (goods)	1-Jul-93	13-Mar-96	21-Feb-97	6	--	4	Norway's total imports from and exports to the Faroe Isl. (1992-1996) by HS Chapter.	Early version
Romania/Moldova (goods)	1-Jan-95	24-Sep-97	24-Nov-98	5	--	7	Romania's exports to and imports from Moldova (1994-96) by HS Chapter.	NA
Switzerland/Faroe Isl. (goods)	1-Mar-95	8-Mar-96	21-Feb-97	5	--	4	Switzerland 's total imports from and exports to the Faroe Isl. (1992-1996) by HS Section.	Early version

	Date(s) of entry into force	Date(s) of notification	Date of last formal meeting	Standard format [No. pages of text]	Questions & replies [No. pages of text]	Summary records of meetings [No. pages of text]	Available statistics provided by the Parties	Available draft examination reports
Turkey/Bulgaria (goods)	1-Jan-99	4-May-99	7-Jul-00	6	3 [i]	9 [ii]	Bilateral imports (1996-99): by HS Chapter; total agricultural and industrial products at zero, <MFN and MFN duty rates.	NA
Turkey/FYROM (goods)	1-Sep-00	22-Jan-01	19-Feb-02	5	11	6	Bilateral imports by HS Chapter (1994-96). Turkey's imports from (1997-2000) and exports to (2000), FYROM: agricultural and industrial products at zero, <MFN and MFN duty.	NA
Turkey/Israel (goods)	1-May-97	18-May-98	1-Jul-99	7	2 [vi]	16	Bilateral imports: by HS Chapter (1997-2000); agricultural and industrial products at zero, <MFN and MFN duty rates(1995-97).	NA
Turkey/Romania (goods)	1-Feb-98	18-May-98	1-Jul-99	6	4 [i, vi]	16 [ii]	Bilateral imports: by HS Section (1995-97); agricultural and industrial products at zero, <MFN and MFN duty rates (1995-97).	NA

[i] See also relevant information in documents WT/REG/GEN/1 and Adds.1-2 (total of pages: 24).
[ii] See also relevant information in documents WT/REG/GEN/M/1-2-4 (total of pages: 40).
[iii] Some replies are still outstanding.
[iv] See also relevant information in documents WT/REG12-14-16/2 (total of pages: 11).
[v] See also relevant information in documents WT/REG/GEN/M/5-6-7 (total of pages: 20).
[vi] See also relevant information in documents WT/REG/GEN/2 and Corr.1/Rev.1 (total of pages: 4).

TABLE 2 - AGREEMENTS UNDER "FACTUAL" EXAMINATION

	Date(s) of entry into force	Date(s) of notification	Date of last formal meeting	Standard format [No. pages of text]	Questions & replies [No. pages of text]	Summary records of meetings [No. pages of text]	Available statistics provided by the Parties	*Comments*
Canada/Chile (services)	5-Jul-97	13-Nov-97	3-Jun-02	6	2	4	None.	*Q&R document circulated in Feb 03.*
Chile/Mexico (goods & services)	1-Aug-99	27-Feb-01 14-Mar-01	3-Apr-03	21	--	5	Goods: total bilateral imports (1998-2001). Services: Chilean FDI in Mexico (1995-2002).	*Replies to questions received due by end-Oct 03.*
CIS (goods)	30-Dec-94	1-Oct-99	3-Apr-03	9	6	-- [i, ii]	Kyrgyz imports from and exports to Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan (1997-99) by HS Chapter.	*Replies to questions received due by end-Oct 03.*
EC / Bulgaria (services)	1-Feb-95	25-Apr-97	12-Nov-02	5	--	5	None.	*Replies to questions received due since Jan 03.*
EC/Faroe Isl. (goods)	1-Jan-97	19-Feb-97	1-Oct-97	4	--	7	EU imports from and exports to Faroe Islands (1993-96) by HS Chapter.	*Delay requested by Parties in 97 (RTA being renegotiated).*
EC/FYROM (goods)	1-Jun-01	21-Nov-01	12-Nov-02	9	--	5	EU imports from FYROM and extra-EU (1998-2001) by HS Section; EU exports to FYROM and extra-EU (1997-2000) by HS Section; share of FYROM in total EU trade.	*Replies to questions received due since Jan 03.*
EC/Mexico (goods & services)	1-Jul-00 1-Mar-01	1-Aug-00 21-Jun-02	G:19-Feb-02 S:3-Apr-03	15	--	10	Goods: EU imports from and exports to Mexico and extra-EU (1997-2000) by HS Section; share of Mexico in total EU trade. Services: none	*G: Replies to questions received due since Jul 02.* *S. Replies to questions received due by end-Oct 03.*
EC/Morocco (goods)	1-Mar-00	8-Nov-00	3-Jun-02	7	--	6	EU imports from Morocco and extra-EU (1997-2000) by HS Section; EU exports to Morocco and extra-EU (1997-2000) by HS Section; share of Morocco in total EU trade.	*Replies to questions received due since July 02.*
EC / Romania (services)	1-Feb-95	9-Oct-96	12-Nov-02	5	--	5	None.	*Replies to questions received due since Jan 03.*
EC/Turkey (goods)	1-Jan-96	22-Dec-95	12-Oct-00	7	9 [iii]	32 [iv]	Bilateral imports (1992-94) at a tariff line level.	*Replies to US questions outstanding.* *General incidence calculations performed.*

	Date(s) of entry into force	Date(s) of notification	Date of last formal meeting	Standard format [No. pages of text]	Questions & replies [No. pages of text]	Summary records of meetings [No. pages of text]	Available statistics provided by the Parties	*Comments*
EFTA/Mexico (goods & services)	1-Jul-01	25-Jul-01	3-Apr-03	11	--	5	Goods: EFTA imports from and exports to Mexico: total (1997-2000); by selected HS commodities (1998-2002); at MFN, reduced and zero duty rates by HS Chapter (2000, 2002). Services: none.	*Replies to questions received due by end-Oct 03.*
European Economic Area (services)	1-Jan-94	10-Oct-96	12-Nov-02	5	5	3	None.	*Replies circulated in Apr 03.*
European Union (services)	1-Jan-58	10-Nov-95	24-Sep-98	10	3	17	Import and export of services from rest of the world and intra-EC(12) trade in services (1992-95) by services sector.	*Replies to questions received due since Jul 98.*
Georgia/Armenia (goods)	11-Nov-98	21-Feb-01	3-Apr-03	4	3	--[v]	Georgia's imports from Armenia (2000-02) at tariff line level; Georgia's imports from and exports to Armenia (1996-2001) at 4-digit HS level.	*Data recently circulated. Replies to questions received due by end-Oct 03.*
Georgia/Azerbaijan (goods)	10-Jul-96	21-Feb-01	3-Apr-03	4	3	--[v]	Georgia's imports from Azerbaijan (2000-02) at tariff line level; Georgia's imports from and exports to Azerbaijan (1995-2001) at 4-digit HS level.	*Data recently circulated. Replies to questions received due by end-Oct 03.*
Georgia/Kazakhstan (goods)	16-Jul-99	21-Feb-01	3-Apr-03	4	3	--[v]	Georgia's imports from Kazakhstan (2000-02) at tariff line level; Georgia's imports from and exports to Kazakhstan (1995-2001) at 4-digit HS level.	*Data recently circulated. Replies to questions received due by end-Oct 03.*
Georgia/Russian Fed. (goods)	10-May-94	21-Feb-01	3-Apr-03	4	5	--[v]	Georgia's imports from and exports to Russian Federation: at tariff line level (2000-02); at 4-digit HS level (1995-2001).	*Data recently circulated. Replies to questions received due by end-Oct 03.*
Georgia/Turkmenistan (goods)	1-Jan-00	21-Feb-01	3-Apr-03	3	3	--[v]	Georgia's imports from and exports to Turkmenistan (1995-2001) at 4-digit HS level.	*Replies to questions received due by end-Oct 03.*
Georgia/Ukraine (goods)	4-Jun-96	21-Feb-01	3-Apr-03	3	5	--[v]	Georgia's imports from and exports to Ukraine (1995-2001) at 4-digit HS level.	*Replies to questions received due by end-Oct 03.*
Israel/Mexico (goods)	1-Jul-00	27-Feb-01	3-Apr-03	6	--	3	Total bilateral imports (1997-2002).	*Replies to questions received due by end-Oct 03.*
Kyrgyz R./ Armenia (goods)	27-Oct-95	4-Jan-01	3-Apr-03	5	--	3[ii]	Kyrgyz imports from and exports to Armenia (1998-2000) by HS Chapter.	*Replies to questions received due by end-Oct 03.*
Kyrgyz R./Kazakhstan (goods)	11-Nov-95	29-Sep-99	3-Apr-03	5	9	--[i, ii]	Kyrgyz imports from and exports to Ukraine (1997-99) by HS Chapter.	*Replies to questions received due by end-Oct 03.*
Kyrgyz R./Russian Fed. (goods)	24-Apr-93	15-Jun-99	3-Apr-03	5	9	--[i, ii]	Kyrgyz imports from and exports to the Russian Federation (1997-99) by HS Chapter.	*Replies to questions received due by end-Oct 03.*

	Date(s) of entry into force	Date(s) of notification	Date of last formal meeting	Standard format [No. pages of text]	Questions & replies [No. pages of text]	Summary records of meetings [No. pages of text]	Available statistics provided by the Parties	*Comments*
Kyrgyz R./Ukraine (goods)	19-Jan-98	15-Jun-99	3-Apr-03	5	9	--[i,ii]	Kyrgyz imports from and exports to Ukraine (1997-99) by HS Chapter.	*Replies to questions received due by end-Oct 03.*
Kyrgyz R./Uzbekistan (goods)	20-Mar-98	15-Jun-99	3-Apr-03	5	9	--[i,ii]	Kyrgyz imports from and exports to Uzbekistan (1997-99) by HS Chapter.	*Replies to questions received due by end-Oct 03.*
Kyrgyz Rep., Russian Fed., Belarus, Kazakhstan, Tajikistan (goods)	8-Oct-97	6-Apr-99	3-Apr-03	8	8	--[i,ii]	Kyrgyz imports from and exports to Russian Fed., Belarus, Kazakhstan and Tajikistan (1997-99) by HS Chapter.	*Replies to questions received due by end-Oct 03.* *No data received for general incidence calculation.*
MERCOSUR (goods)	29-Nov-91	5-Mar-92	1-May-97	NA	128	45	None.	*General incidence calculation not yet performed (incomplete data).*
New Zealand/Singapore (goods & services)	1-Jan-01	4-Sep-01	12-Nov-02	10	5	7	Goods: bilateral imports (1999-2001) at 4-digit HS level. Services: imports of services by New Zealand and Singapore from the world (1998-2001) by service sector.	*Q&R document circulated in Feb 03.*

[i] See also relevant information in documents WT/REG/GEN/M/5-6-7 (total of pages: 20).
[ii] See also relevant information in document WT/REG/GEN/M/9 (total of pages: 4).
[iii] See also relevant information in documents WT/REG/GEN/1 and Adds.1-2 (total of pages: 24).
[iv] See also relevant information in documents WT/REG/GEN/M/1-2-4 (total of pages: 40).
[v] See also relevant information in documents WT/REG/GEN/M/8 and /10 (total of pages: 9).

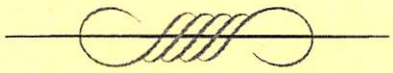
TABLE 3 - INTRA-TRADE (MERCHANDISE IMPORTS) FOR SELECTED AGREEMENTS UNDER THE PURVIEW OF THE CRTA [i]

	INTRA-TRADE (goods) in 2001	
	Value (Billion $)	Share of imports from partner(s) in total imports (%)
Bulgaria/FYROM	0.13	0.4 / 6.1
Bulgaria/Israel	0.04	0.2 / 0.1
Bulgaria/Romania (CEFTA)	0.38	3.6 / 1.0
Canada/Israel [2000]	0.74	0.2 / 1.0
Canada/Chile	0.84	0.2 / 2.6
Canada/Costa Rica	0.50	0.1 / 1.2
Chile/Costa Rica	0.06	0.0 / 0.9
Chile/Mexico	1.59	3.3 / 0.6
EC(25)/Andorra	0.93	0.0 / 84.8
EC(25)/Bulgaria	5.19	0.1 / 40.4
EC(25)/Croatia	7.52	0.1 / 54.1
EC(25)/Faroe Islands	n.a.	0.0 / n.a.
EC(25)/FYROM	1.37	0.0 / 45.5
EC(25)/Israel	23.12	0.4 / 38.2
EC(25)/Jordan	1.35	0.0 / 25.3
EC(25)/Mexico	22.71	0.3 / 8.3
EC(25)/Morocco	12.58	0.3 / 54.6
EC(25)/Romania	16.47	0.4 / 45.9
EC(25)/South Africa	21.05	0.6 / 31.4
EC(25)/Tunisia	10.66	0.3 / 52.0
EC(25)/Turkey	34.57	0.8 / 36.5
EFTA/Bulgaria [2000]	0.13	0.0 / 1.4
EFTA/Croatia	0.22	0.0 / 2.1
EFTA/FYROM	0.03	0.0 / 1.5
EFTA/Israel [2000]	2.36	0.0 / 5.6
EFTA/Jordan	0.06	0.0 / 1.2
EFTA/Mexico	1.16	0.1 / 0.5
EFTA/Morocco[2000]	0.21	0.1 / 1.2
EFTA/Romania	0.35	0.1 / 1.3
EFTA/Singapore	2.66	0.3 / 1.9
Georgia/Armenia [2000]	0.03	2.1 / 2.2
Georgia/Azerbaijan [2000]	0.07	8.5 / 0.9
Georgia/Kazakhstan [2000]	0.02	1.5 / 0.1
Georgia/Russian Federation [2000]	0.17	14.1 / 0.2
Georgia/Turkmenistan [2000]	0.05	2.0 / 0.6
Georgia/Ukraine [2000] [ii]	0.04	5.4 / n.a.
Israel/Mexico [2000]	0.32	0.1 / 0.2
Japan/Singapore	21.47	1.5 / 4.4
Argentina/Brazil/Paraguay/Uruguay (MERCOSUR)	15.80	29.1 / 12.6 / 55.1 / 44.1
Canada/Mexico/United States (NAFTA)	633.90	67.1 / 69.4/ 29.9
New Zealand/Singapore	0.49	1.8 / 0.2
Romania/Moldova	0.13	0.3 / 10.4
Turkey/Bulgaria	0.61	1.0 / 3.3
Turkey/ FYROM	0.05	0.0 / 2.7
Turkey/Israel	1.13	1.3 / 1.7
Turkey/Romania	0.86	1.2 / 2.4
United States/Jordan	0.64	0.0 / 8.1

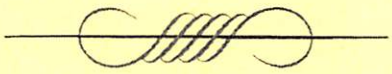
Source: UNCTAD/WTO International Trade Centre, *PC-TAS, 1997-2001*.

[i] Agreements deemed to remain in force after the 2004 EC enlargement and for which trade data are available.
[ii] No figures available for Ukraine.

DOCUMENT II



REGIONAL TRADE AGREEMENTS NOTIFIED TO THE GATT/WTO



Regional Trade Agreements Notified to the GATT/WTO and in Force

By date of entry into force

As of 18 August 2004

		GATT/WTO notification				Examination process	
Agreement	Date of entry into force	Date	Related provisions	Type of agreement	Document series	Status	Ref.
EC (Treaty of Rome)	1-Jan-58	10-Nov-95	GATS Art. V	Services agreement	WT/REG39 S/C/N/6	Under factual examination	...
EC (Treaty of Rome)	1-Jan-58	24-Apr-57	GATT Art. XXIV	Customs union	L/626	Report adopted	6S/70 & 109 29.11.57
EFTA (Stockholm Convention)	3-May-60	14-Nov-59	GATT Art. XXIV	Free trade agreement	WT/REG85	Report adopted	9S/70 04.06.60
CACM	12-Oct-61	24-Feb-61	GATT Art. XXIV	Customs union	WT/REG93	Report adopted	10S/98 23.11.61
TRIPARTITE	1-Apr-68	23-Feb-68	Enabling Clause	Preferential arrangement	L/2980 L/2980/Add.1	Report adopted	16S/83 14.11.68
EFTA accession of Iceland	1-Mar-70	30-Jan-70	GATT Art. XXIV	Accession to free trade agreement	L/3328 L/3328/Add.1	Report adopted	18S/174 29.09.70
EC — OCTs	1-Jan-71	14-Dec-70	GATT Art. XXIV	Free trade agreement	WT/REG106	Report adopted	18S/143 09.11.71
EC — Malta	1-Apr-71	24-Mar-71	GATT Art. XXIV	Customs union	WT/REG102	Report adopted	19S/90 29.05.72
EC — Switzerland and Liechtenstein	1-Jan-73	27-Oct-72	GATT Art. XXIV	Free trade agreement	WT/REG94	Report adopted	20S/196 19.10.73
EC accession of Denmark, Ireland and United Kingdom	1-Jan-73	7-Mar-72	GATT Art. XXIV	Accession to customs union	L/3677	Report adopted	C/M/107 11.07.75
PTN	11-Feb-73	9-Nov-71	Enabling Clause	Preferential arrangement	L/3598 18S/11	Examination not requested	...
EC — Iceland	1-Apr-73	24-Nov-72	GATT Art. XXIV	Free trade agreement	WT/REG95	Report adopted	20S/158 19.10.73
EC — Cyprus	1-Jun-73	13-Jun-73	GATT Art. XXIV	Customs union	WT/REG97	Report adopted	21S/94 21.06.74
EC — Norway	1-Jul-73	13-Jul-73	GATT Art. XXIV	Free trade agreement	WT/REG137	Report adopted	21S/83 28.03.74
CARICOM	1-Aug-73	14-Oct-74	GATT Art. XXIV	Customs union	WT/REG92	Report adopted	24S/68 02.03.77
Bangkok Agreement	17-Jun-76	2-Nov-76	Enabling Clause	Preferential arrangement	L/4418 L/4418/Corr.1	Report adopted	25S/109 14.03.78
EC — Algeria	1-Jul-76	28-Jul-76	GATT Art. XXIV	Free trade agreement	WT/REG105	Report adopted	24S/80 11.11.77
PATCRA	1-Feb-77	20-Dec-76	GATT Art. XXIV	Free trade agreement	L/4451 L/4451/Add.1	Report adopted	24S/63 11.11.77
EC — Egypt	1-Jul-77	15-Jul-77	GATT Art. XXIV	Free trade agreement	WT/REG98	Report adopted	25S/114 17.05.78
EC — Syria	1-Jul-77	15-Jul-77	GATT Art. XXIV	Free trade agreement	WT/REG104	Report adopted	25S/123 17.05.78
SPARTECA	1-Jan-81	20-Feb-81	Enabling Clause	Preferential arrangement	L/5100	Examination not requested	...
EC accession of Greece	1-Jan-81	24-Oct-79	GATT Art. XXIV	Accession to customs union	L4845	Report adopted	30S/168 09.03.83

		GATT/WTO notification				Examination process	
Agreement	Date of entry into force	Date	Related provisions	Type of agreement	Document series	Status	Ref.
LAIA	18-Mar-81	1-Jul-82	Enabling Clause	Preferential arrangement	L/5342	Examination not requested	...
CER	1-Jan-83	14-Apr-83	GATT Art. XXIV	Free trade agreement	WT/REG111	Report adopted	31S/170 02.10.84
United States — Israel	19-Aug-85	13-Sep-85	GATT Art. XXIV	Free trade agreement	L/5862 L/5862/Add.1	Report adopted	34S/58 14.05.87
EC accession of Portugal and Spain	1-Jan-86	11-Dec-85	GATT Art. XXIV	Accession to customs union	L/5936	Report adopted	35S/293 19.10.88
CAN	25-May-88	12-Oct-92	Enabling Clause	Preferential arrangement	L/6737	Examination not requested	...
CER	1-Jan-89	22-Nov-95	GATS Art. V	Services agreement	WT/REG40 S/C/N/7	Consultations on draft report	...
GSTP	19-Apr-89	25-Sep-89	Enabling Clause	Preferential arrangement	L/6564/Add.1	Examination not requested	...
Laos — Thailand	20-Jun-91	29-Nov-91	Enabling Clause	Preferential arrangement	L/6947	Examination not requested	
EC — Andorra	1-Jul-91	25-Feb-98	GATT Art. XXIV	Customs union	WT/REG53	Factual examination concluded	...
MERCOSUR	29-Nov-91	5-Mar-92	Enabling Clause	Customs union	WT/COMTD/1	Under factual examination	...
AFTA	28-Jan-92	30-Oct-92	Enabling Clause	Preferential arrangement	L/4581	Examination not requested	...
EC — Czech Republic	1-Mar-92	13-May-96	GATT Art. XXIV	Free trade agreement	WT/REG18	Factual examination concluded	...
EC — Slovak Republic	1-Mar-92	13-May-96	GATT Art. XXIV	Free trade agreement	WT/REG18	Factual examination concluded	...
EC — Hungary	1-Mar-92	3-Apr-92	GATT Art. XXIV	Free trade agreement	WT/REG18	Consultations on draft report	...
EC — Poland	1-Mar-92	3-Apr-92	GATT Art. XXIV	Free trade agreement	WT/REG18	Factual examination concluded	...
EFTA — Turkey	1-Apr-92	6-Mar-92	GATT Art. XXIV	Free trade agreement	WT/REG86	Report adopted	40S/48 17.12.93
EFTA — Czech Republic	1-Jul-92	3-Jul-92	GATT Art. XXIV	Free trade agreement	WT/REG87	Report adopted	41S/116 08.12.94
EFTA — Slovak Republic	1-Jul-92	3-Jul-92	GATT Art. XXIV	Free trade agreement	WT/REG88	Report adopted	41S/116 08.12.94
Czech Republic — Slovak Republic	1-Jan-93	30-Apr-93	GATT Art. XXIV	Customs union	WT/REG89	Report adopted	41S/112 04.10.94
EFTA — Israel	1-Jan-93	1-Dec-92	GATT Art. XXIV	Free trade agreement	WT/REG14	Factual examination concluded	...
CEFTA	1-Mar-93	30-Jun-94	GATT Art. XXIV	Free trade agreement	WT/REG11	Consultations on draft report	...
Armenia - Russian Federation	25-Mar-93	27-Jul-04	GATT Art. XXIV	Free trade agreement	WT/REG174	Examination not requested	...
Kyrgyz Republic — Russian Federation	24-Apr-93	15-Jun-99	GATT Art. XXIV	Free trade agreement	WT/REG73	Under factual examination	...
EC — Romania	1-May-93	23-Dec-94	GATT Art. XXIV	Free trade agreement	WT/REG2	Factual examination concluded	...
EFTA — Romania	1-May-93	24-May-93	GATT Art. XXIV	Free trade agreement	WT/REG16	Factual examination concluded	...

		GATT/WTO notification				Examination process	
Agreement	Date of entry into force	Date	Related provisions	Type of agreement	Document series	Status	Ref.
Faroe Islands — Norway	1-Jul-93	13-Mar-96	GATT Art. XXIV	Free trade agreement	WT/REG25	Factual examination concluded	...
Faroe Islands — Iceland	1-Jul-93	23-Jan-96	GATT Art. XXIV	Free trade agreement	WT/REG23	Factual examination concluded	...
EFTA — Bulgaria	1-Jul-93	30-Jun-93	GATT Art. XXIV	Free trade agreement	WT/REG12	Factual examination concluded	...
MSG	22-Jul-93	7-Oct-99	Enabling Clause	Preferential arrangement	WT/COMTD/N/9 WT/COMTD/21	Examination not requested	...
EFTA — Hungary	1-Oct-93	23-Dec-93	GATT Art. XXIV	Free trade agreement	WT/REG13	Consultations on draft report	...
EFTA — Poland	15-Nov-93	20-Oct-93	GATT Art. XXIV	Free trade agreement	WT/REG15	Factual examination concluded	...
EC — Bulgaria	31-Dec-93	23-Dec-94	GATT Art. XXIV	Free trade agreement	WT/REG1	Factual examination concluded	...
EEA	1-Jan-94	10-Oct-96	GATS Art. V	Services agreement	WT/REG138 S/C/N/28	Under factual examination	...
NAFTA	1-Jan-94	1-Feb-93	GATT Art. XXIV	Free trade agreement	WT/REG4	Consultations on draft report	...
EC — Hungary	1-Feb-94	27-Aug-96	GATS Art. V	Services agreement	WT/REG50 S/C/N/24	Consultations on draft report	...
EC — Poland	1-Feb-94	27-Aug-96	GATS Art. V	Services agreement	WT/REG51 S/C/N/25	Factual examination concluded	...
BAFTA	1-Apr-94	15-Jun-99	GATT Art. XXIV	Free trade agreement	WT/REG77	Factual examination concluded	...
NAFTA	1-Apr-94	1-Mar-95	GATS Art. V	Services agreement	WT/REG4 S/C/N/4	Consultations on draft report	...
Georgia — Russian Federation	10-May-94	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG118	Under factual examination	...
COMESA	8-Dec-94	29-Jun-95	Enabling Clause	Preferential arrangement	WT/COMTD/N/3	Examination not requested	...
CIS	30-Dec-94	1-Oct-99	GATT Art. XXIV	Free trade agreement	WT/REG82	Under factual examination	...
Romania — Moldova	1-Jan-95	24-Sep-97	GATT Art. XXIV	Free trade agreement	WT/REG44	Factual examination concluded	...
EC — Lithuania	1-Jan-95	26-Sep-95	GATT Art. XXIV	Free trade agreement	WT/REG9	Factual examination concluded	...
EC — Estonia	1-Jan-95	30-Jun-95	GATT Art. XXIV	Free trade agreement	WT/REG8	Factual examination concluded	...
EC — Latvia	1-Jan-95	30-Jun-95	GATT Art. XXIV	Free trade agreement	WT/REG7	Factual examination concluded	...
EC accession of Austria, Finland and Sweden	1-Jan-95	20-Jan-95	GATT Art. XXIV	Accession to customs union	WT/REG3 L/7614/Add.1	Consultations on draft report	...
EC accession of Austria, Finland and Sweden	1-Jan-95	20-Jan-95	GATS Art. V	Accession to services agreement	WT/REG3 S/C/N/6	Consultations on draft report	...
EC — Bulgaria	1-Feb-95	25-Apr-97	GATS Art. V	Services agreement	WT/REG1 S/C/N/55	Under factual examination	...
EC — Czech Republic	1-Feb-95	9-Oct-96	GATS Art. V	Services agreement	WT/REG139 S/C/N/26	Under factual examination	...
EC — Romania	1-Feb-95	9-Oct-96	GATS Art. V	Services agreement	WT/REG2 S/C/N/27	Under factual examination	...

		GATT/WTO notification				Examination process	
Agreement	Date of entry into force	Date	Related provisions	Type of agreement	Document series	Status	Ref.
EC — Slovak Republic	1-Feb-95	27-Aug-96	GATS Art. V	Services agreement	WT/REG52 S/C/N/23	Factual examination concluded	...
Faroe Islands — Switzerland	1-Mar-95	8-Mar-96	GATT Art. XXIV	Free trade agreement	WT/REG24	Factual examination concluded	...
EFTA — Slovenia	1-Jul-95	18-Oct-95	GATT Art. XXIV	Free trade agreement	WT/REG20	Factual examination concluded	...
Kyrgyz Republic — Armenia	27-Oct-95	4-Jan-01	GATT Art. XXIV	Free trade agreement	WT/REG114	Under factual examination	...
Kyrgyz Republic — Kazakhstan	11-Nov-95	29-Sep-99	GATT Art. XXIV	Free trade agreement	WT/REG81	Under factual examination	...
SAPTA	7-Dec-95	22-Sep-93	Enabling Clause	Preferential arrangement	WT/COMTD/10	Examination not requested	...
Armenia - Moldova	21-Dec-95	27-Jul-04	GATT Art. XXIV	Free trade agreement	WT/REG173	Examination not requested	...
CEFTA accession of Slovenia	1-Jan-96	8-Jan-98	GATT Art. XXIV	Accession to free trade agreement	WT/REG11	Consultations on draft report	...
EC — Turkey	1-Jan-96	22-Dec-95	GATT Art. XXIV	Customs union	WT/REG22	Under factual examination	...
Estonia — Ukraine	14-Mar-96	25-Jul-00	GATT Art. XXIV	Free trade agreement	WT/REG108	Factual examination concluded	...
EFTA — Estonia	1-Jun-96	25-Jul-96	GATT Art. XXIV	Free trade agreement	WT/REG28	Factual examination concluded	...
EFTA — Latvia	1-Jun-96	25-Jul-96	GATT Art. XXIV	Free trade agreement	WT/REG29	Factual examination concluded	...
Georgia — Ukraine	4-Jun-96	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG121	Under factual examination	...
Armenia - Turkmenistan	7-Jul-96	27-Jul-04	GATT Art. XXIV	Free trade agreement	WT/REG175	Examination not requested	...
Georgia — Azerbaijan	10-Jul-96	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG120	Under factual examination	...
Slovenia — Latvia	1-Aug-96	20-Feb-97	GATT Art. XXIV	Free trade agreement	WT/REG34	Factual examination concluded	...
EFTA — Lithuania	1-Aug-96	25-Jul-96	GATT Art. XXIV	Free trade agreement	WT/REG30	Factual examination concluded	...
Slovenia — Former Yugoslav Republic of Macedonia	1-Sep-96	20-Feb-97	GATT Art. XXIV	Free trade agreement	WT/REG36	Factual examination concluded	...
Kyrgyz Republic — Moldova	21-Nov-96	15-Jun-99	GATT Art. XXIV	Free trade agreement	WT/REG76	Factual examination concluded	...
Armenia - Ukraine	18-Dec-96	27-Jul-04	GATT Art. XXIV	Free trade agreement	WT/REG171	Examination not requested	...
Slovak Republic — Israel	1-Jan-97	30-Mar-98	GATT Art. XXIV	Free trade agreement	WT/REG57	Factual examination concluded	...
Poland — Lithuania	1-Jan-97	30-Dec-97	GATT Art. XXIV	Free trade agreement	WT/REG49	Factual examination concluded	...
Slovenia — Estonia	1-Jan-97	20-Feb-97	GATT Art. XXIV	Free trade agreement	WT/REG37	Factual examination concluded	...
EC — Faroe Islands	1-Jan-97	19-Feb-97	GATT Art. XXIV	Free trade agreement	WT/REG21	Under factual examination	...

		GATT/WTO notification				Examination process	
Agreement	Date of entry into force	Date	Related provisions	Type of agreement	Document series	Status	Ref.
Canada — Israel	1-Jan-97	23-Jan-97	GATT Art. XXIV	Free trade agreement	WT/REG31	Factual examination concluded	...
EC — Slovenia	1-Jan-97	11-Nov-96	GATT Art. XXIV	Free trade agreement	WT/REG32	Factual examination concluded	...
Slovenia — Lithuania	1-Mar-97	20-Feb-97	GATT Art. XXIV	Free trade agreement	WT/REG35	Factual examination concluded	...
Israel — Turkey	1-May-97	18-May-98	GATT Art. XXIV	Free trade agreement	WT/REG60	Factual examination concluded	...
CARICOM	1-Jul-97	19-Feb-03	GATS Art. V	Services agreement	WT/REG155 S/C/N/229	Factual examination not started	...
CEFTA accession of Romania	1-Jul-97	8-Jan-98	GATT Art. XXIV	Accession to free trade agreement	WT/REG11	Consultations on draft report	...
Slovak Republic — Latvia	1-Jul-97	14-Nov-97	GATT Art. XXIV	Free trade agreement	WT/REG47	Factual examination concluded	...
Slovak Republic — Lithuania	1-Jul-97	14-Nov-97	GATT Art. XXIV	Free trade agreement	WT/REG48	Factual examination concluded	...
Czech Republic — Latvia	1-Jul-97	13-Nov-97	GATT Art. XXIV	Free trade agreement	WT/REG45	Factual examination concluded	...
EC — Palestinian Authority	1-Jul-97	30-Jun-97	GATT Art. XXIV	Free trade agreement	WT/REG43	Factual examination not started	...
Canada — Chile	5-Jul-97	13-Nov-97	GATS Art. V	Services agreement	WT/REG38 S/C/N/65	Factual examination concluded	...
Canada — Chile	5-Jul-97	26-Aug-97	GATT Art. XXIV	Free trade agreement	WT/REG38	Factual examination concluded	...
Czech Republic — Lithuania	1-Sep-97	13-Nov-97	GATT Art. XXIV	Free trade agreement	WT/REG46	Factual examination concluded	...
EAEC	8-Oct-97	6-Apr-99	GATT Art. XXIV	Customs union	WT/REG71	Under factual examination	...
Czech Republic — Israel	1-Dec-97	30-Mar-98	GATT Art. XXIV	Free trade agreement	WT/REG56	Factual examination concluded	...
Slovenia — Croatia	1-Jan-98	25-Mar-98	GATT Art. XXIV	Free trade agreement	WT/REG55	Factual examination concluded	...
Kyrgyz Republic — Ukraine	19-Jan-98	15-Jun-99	GATT Art. XXIV	Free trade agreement	WT/REG74	Under factual examination	...
EC — Lithuania	1-Feb-98	11-Feb-02	GATS Art. V	Services agreement	WT/REG145 S/C/N/189	Under factual examination	...
EC — Estonia	1-Feb-98	11-Feb-02	GATS Art. V	Services agreement	WT/REG144 S/C/N/188	Under factual examination	...
Romania — Turkey	1-Feb-98	18-May-98	GATT Art. XXIV	Free trade agreement	WT/REG59	Factual examination concluded	...
Hungary — Israel	1-Feb-98	24-Mar-98	GATT Art. XXIV	Free trade agreement	WT/REG54	Factual examination concluded	...
Czech Republic — Estonia	12-Feb-98	3-Aug-98	GATT Art. XXIV	Free trade agreement	WT/REG62	Factual examination concluded	...
Slovak Republic — Estonia	12-Feb-98	3-Aug-98	GATT Art. XXIV	Free trade agreement	WT/REG63	Factual examination concluded	...
EC — Tunisia	1-Mar-98	23-Mar-99	GATT Art. XXIV	Free trade agreement	WT/REG69	Factual examination concluded	...
Poland — Israel	1-Mar-98	25-Feb-99	GATT Art. XXIV	Free trade agreement	WT/REG65	Factual examination concluded	...

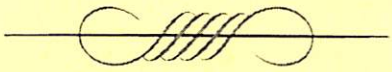
		GATT/WTO notification				Examination process	
Agreement	Date of entry into force	Date	Related provisions	Type of agreement	Document series	Status	Ref.
Kyrgyz Republic — Uzbekistan	20-Mar-98	15-Jun-99	GATT Art. XXIV	Free trade agreement	WT/REG75	Under factual examination	...
Slovenia — Israel	1-Sep-98	8-Mar-99	GATT Art. XXIV	Free trade agreement	WT/REG66	Factual examination concluded	...
Georgia — Armenia	11-Nov-98	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG119	Under factual examination	...
Estonia — Faroe Islands	1-Dec-98	26-Jan-99	GATT Art. XXIV	Free trade agreement	WT/REG64	Factual examination concluded	...
Bulgaria — Turkey	1-Jan-99	4-May-99	GATT Art. XXIV	Free trade agreement	WT/REG72	Factual examination concluded	...
CEFTA accession of Bulgaria	1-Jan-99	24-Mar-99	GATT Art. XXIV	Accession to free trade agreement	WT/REG11	Consultations on draft report	...
EC — Slovenia	1-Feb-99	11-Feb-02	GATS Art. V	Services agreement	WT/REG146 S/C/N/190	Under factual examination	...
EC — Latvia	1-Feb-99	11-Feb-02	GATS Art. V	Services agreement	WT/REG143 S/C/N/187	Under factual examination	...
Poland — Latvia	1-Jun-99	29-Sep-99	GATT Art. XXIV	Free trade agreement	WT/REG80	Factual examination concluded	...
Poland — Faroe Islands	1-Jun-99	18-Aug-99	GATT Art. XXIV	Free trade agreement	WT/REG78	Factual examination concluded	...
CEMAC	24-Jun-99	28-Sep-00	Enabling Clause	Preferential arrangement	WT/COMTD/N/13 WT/COMTD/24	Examination not requested	...
EFTA — Palestinian Authority	1-Jul-99	21-Sep-99	GATT Art. XXIV	Free trade agreement	WT/REG79	Factual examination not started	...
Georgia — Kazakhstan	16-Jul-99	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG123	Under factual examination	...
Chile — Mexico	1-Aug-99	14-Mar-01	GATS Art. V	Services agreement	WT/REG125 S/C/N/142	Factual examination concluded	...
Chile — Mexico	1-Aug-99	27-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG125	Factual examination concluded	...
EFTA — Morocco	1-Dec-99	20-Feb-00	GATT Art. XXIV	Free trade agreement	WT/REG91	Factual examination concluded	...
Georgia — Turkmenistan	1-Jan-00	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG122	Under factual examination	...
EC — South Africa	1-Jan-00	14-Nov-00	GATT Art. XXIV	Free trade agreement	WT/REG113	Factual examination not started	...
WAEMU/UEMOA	1-Jan-00	3-Feb-00	Enabling Clause	Preferential arrangement	WT/COMTD/N/11 WT/COMTD/23	Examination not requested	...
Bulgaria — Former Yugoslav Republic of Macedonia	1-Jan-00	21-Jan-00	GATT Art. XXIV	Free trade agreement	WT/REG90	Factual examination concluded	...
Hungary — Latvia	1-Jan-00	20-Dec-99	GATT Art. XXIV	Free trade agreement	WT/REG84	Factual examination concluded	...
EC — Morocco	1-Mar-00	8-Nov-00	GATT Art. XXIV	Free trade agreement	WT/REG112	Under factual examination	...
Hungary — Lithuania	1-Mar-00	20-Dec-99	GATT Art. XXIV	Free trade agreement	WT/REG83	Factual examination concluded	...

		GATT/WTO notification				Examination process	
Agreement	Date of entry into force	Date	Related provisions	Type of agreement	Document series	Status	Ref.
EC — Israel	1-Jun-00	7-Nov-00	GATT Art. XXIV	Free trade agreement	WT/REG110	Factual examination concluded	...
Mexico — Israel	1-Jul-00	27-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG124	Factual examination concluded	...
EC — Mexico	1-Jul-00	1-Aug-00	GATT Art. XXIV	Free trade agreement	WT/REG109	Under factual examination	...
EAC	7-Jul-00	11-Oct-00	Enabling Clause	Preferential arrangement	WT/COMTD/N/14 WT/COMTD/25	Examination not requested	...
SADC	1-Sep-00	9-Aug-04	GATT Art. XXIV	Free trade agreement	WT/REG176	Examination not requested	...
Turkey — Former Yugoslav Republic of Macedonia	1-Sep-00	22-Jan-01	GATT Art. XXIV	Free trade agreement	WT/REG115	Factual examination concluded	...
Croatia - Bosnia and Herzegovina	1-Jan-01	6-Oct-03	GATT Art. XXIV	Free trade agreement	WT/REG159	Factual examination not started	...
New Zealand - Singapore	1-Jan-01	4-Sep-01	GATT Art. XXIV	Free trade agreement	WT/REG127	Factual examination concluded	...
New Zealand - Singapore	1-Jan-01	4-Sep-01	GATS Art. V	Services agreement	WT/REG127 S/C/N/169	Under factual examination	...
EFTA — Former Yugoslav Republic of Macedonia	1-Jan-01	31-Jan-01	GATT Art. XXIV	Free trade agreement	WT/REG117	Factual examination concluded	...
EC — Mexico	1-Mar-01	21-Jun-02	GATS Art. V	Services agreement	WT/REG109 S/C/N/192	Under factual examination	...
Hungary — Estonia	1-Mar-01	4-Oct-01	GATT Art. XXIV	Free trade agreement	WT/REG128	Under factual examination	...
EC — FYROM	1-Jun-01	21-Nov-01	GATT Art. XXIV	Free trade agreement	WT/REG129	Under factual examination	...
EFTA - Mexico	1-Jul-01	25-Jul-01	GATT Art. XXIV	Free trade agreement	WT/REG126	Factual examination concluded	...
EFTA - Mexico	1-Jul-01	25-Jul-01	GATS Art. V	Services agreement	WT/REG126 S/C/N/166	Under factual examination	...
India — Sri Lanka	15-Dec-01	26-Jun-02	Enabling Clause	Free trade agreement	WT/COMTD/N/16	Examination not requested	...
United States — Jordan	17-Dec-01	18-Oct-02	GATS Art. V	Services agreement	WT/REG134 S/C/N/193	Factual examination not started	...
United States — Jordan	17-Dec-01	5-Mar-02	GATT Art. XXIV	Free trade agreement	WT/REG134	Factual examination not started	...
Armenia - Kazakhstan	25-Dec-01	27-Jul-04	GATT Art. XXIV	Free trade agreement	WT/REG172	Examination not requested	...
Bulgaria - Israel	1-Jan-02	14-Apr-03	GATT Art. XXIV	Free trade agreement	WT/REG150	Factual examination not started	...
Bulgaria - Estonia	1-Jan-02	25-Mar-03	GATT Art. XXIV	Free trade agreement	WT/REG149	Factual examination not started	...
EFTA — Jordan	1-Jan-02	22-Jan-02	GATT Art. XXIV	Free trade agreement	WT/REG133	Under factual examination	...
EFTA — Croatia	1-Jan-02	22-Jan-02	GATT Art. XXIV	Free trade agreement	WT/REG132	Under factual examination	...
Slovenia — Bosnia and Herzegovina	1-Jan-02	21-Jan-02	GATT Art. XXIV	Free trade agreement	WT/REG131	Factual examination not started	...

		GATT/WTO notification				Examination process	
Agreement	Date of entry into force	Date	Related provisions	Type of agreement	Document series	Status	Ref.
Chile — Costa Rica	15-Feb-02	24-May-02	GATS Art. V	Services agreement	WT/REG136 S/C/N/191	Under factual examination	...
Chile — Costa Rica	15-Feb-02	14-May-02	GATT Art. XXIV	Free trade agreement	WT/REG136	Under factual examination	...
Bulgaria - Lithuania	1-Mar-02	30-Apr-03	GATT Art. XXIV	Free trade agreement	WT/REG152	Factual examination not started	...
EC — Croatia	1-Mar-02	20-Dec-02	GATT Art. XXIV	Free trade agreement	WT/REG142	Factual examination not started	...
EC — Jordan	1-May-02	20-Dec-02	GATT Art. XXIV	Free trade agreement	WT/REG141	Factual examination not started	...
Chile - El Salvador	1-Jun-02	16-Feb-04	GATT Art. XXIV	Free trade agreement	WT/REG165	Factual examination not started	...
Chile - El Salvador	1-Jun-02	17-Mar-04	GATS Art. V	Services agreement	WT/REG165 S/C/N/299	Factual examination not started	...
EFTA	1-Jun-02	3-Dec-02	GATS Art. V	Services agreement	WT/REG154 S/C/N/207	Under factual examination	...
Canada — Costa Rica	1-Nov-02	17-Jan-03	GATT Art. XXIV	Free trade agreement	WT/REG147	Factual examination not started	...
Japan - Singapore	30-Nov-02	14-Nov-02	GATS Art. V	Services agreement	WT/REG140 S/C/N/206	Under factual examination	...
Japan - Singapore	30-Nov-02	14-Nov-02	GATT Art. XXIV	Free trade agreement	WT/REG140	Under factual examination	...
EFTA - Singapore	1-Jan-03	24-Jan-03	GATS Art. V	Services agreement	WT/REG148 S/C/N/226	Factual examination not started	...
EFTA - Singapore	1-Jan-03	24-Jan-03	GATT Art. XXIV	Free trade agreement	WT/REG148	Factual examination not started	...
EC - Chile	1-Feb-03	18-Feb-04	GATT Art. XXIV	Free trade agreement	WT/REG164	Factual examination not started	...
CEFTA accession of Croatia	1-Mar-03	3-Mar-04	GATT Art. XXIV	Accession to free trade agreement	WT/REG11	Factual examination not started	...
EC - Lebanon	1-Mar-03	4-Jun-03	GATT Art. XXIV	Free trade agreement	WT/REG153	Factual examination not started	...
Bulgaria - Latvia	1-Apr-03	8-Apr-03	GATT Art. XXIV	Free trade agreement	WT/REG151	Factual examination not started	...
Croatia - Albania	1-Jun-03	31-Mar-04	GATT Art. XXIV	Free trade agreement	WT/REG166	Factual examination not started	...
Turkey - Bosnia and Herzegovina	1-Jul-03	8-Sep-03	GATT Art. XXIV	Free trade agreement	WT/REG157	Factual examination not started	...
Turkey - Croatia	1-Jul-03	8-Sep-03	GATT Art. XXIV	Free trade agreement	WT/REG156	Factual examination not started	...
Singapore - Australia	28-Jul-03	1-Oct-03	GATS Art. V	Services agreement	WT/REG158 S/C/N/233	Factual examination not started	...
Singapore - Australia	28-Jul-03	1-Oct-03	GATT Art. XXIV	Free trade agreement	WT/REG158	Factual examination not started	...
Albania - Bulgaria	1-Sep-03	31-Mar-04	GATT Art. XXIV	Free trade agreement	WT/REG167	Factual examination not started	...
Albania - UNMIK (Kosovo)	1-Oct-03	8-Apr-04	GATT Art. XXIV	Free trade agreement	WT/REG168	Factual examination not started	...
China - Macao, China	1-Jan-04	12-Jan-04	GATT Art. XXIV	Free trade agreement	WT/REG163	Factual examination not started	...

		GATT/WTO notification				Examination process	
Agreement	Date of entry into force	Date	Related provisions	Type of agreement	Document series	Status	Ref.
China - Macao, China	1-Jan-04	12-Jan-04	GATS Art. V	Services agreement	WT/REG163 S/C/N/265	Factual examination not started	...
China - Hong Kong, Chi	1-Jan-04	12-Jan-04	GATT Art. XXIV	Free trade agreement	WT/REG162	Factual examination not started	...
China - Hong Kong, Chi	1-Jan-04	12-Jan-04	GATS Art. V	Services agreement	WT/REG162 S/C/N/264	Factual examination not started	...
United States - Singapore	1-Jan-04	19-Dec-03	GATT Art. XXIV	Free trade agreement	WT/REG161	Factual examination not started	...
United States - Singapore	1-Jan-04	19-Dec-03	GATS Art. V	Services agreement	WT/REG161 S/C/N/263	Factual examination not started	...
United States — Chile	1-Jan-04	19-Dec-03	GATT Art. XXIV	Free trade agreement	WT/REG160	Factual examination not started	...
United States — Chile	1-Jan-04	19-Dec-03	GATS Art. V	Services agreement	WT/REG160 S/C/N/262	Factual examination not started	...
Republic of Korea - Chile	1-Apr-04	19-Apr-04	GATT Art. XXIV	Free trade agreement	WT/REG169	Factual examination not started	...
Republic of Korea - Chile	1-Apr-04	19-Apr-04	GATS Art. V	Services agreement	WT/REG169 S/C/N/302	Factual examination not started	...
EU Enlargement	1-May-04	30-Apr-04	GATT Art. XXIV	Accession to customs union	WT/REG170	Factual examination not started	...
EU Enlargement	1-May-04	28-Apr-04	GATS Art. V	Accession to services agreement	WT/REG170 S/C/N/303	Factual examination not started	...
ECO	not available	22-Jul-92	Enabling Clause	Preferential arrangement	L/7047	Examination not requested	...
GCC	not available	11-Oct-84	Enabling Clause	Preferential arrangement	L/5676	Examination not requested	...

DOCUMENT III



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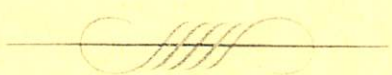
COMMITTEE ON TRADE AND DEVELOPMENT



WORLD TRADE ORGANIZATION

WT/COMTD/W/114
13 May 2003

(03-2521)

Committee on Trade and Development

LEGAL NOTE ON REGIONAL TRADE ARRANGEMENTS UNDER THE ENABLING CLAUSE

Note by the Secretariat[1]

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A. INTRODUCTION

1. This note aims to respond to a request[2] made by the Committee on Trade and Development (CTD) at its 44th regular Session for a legal analysis of the notification and other requirements for regional trade agreements or arrangements (RTAs) among developing countries under the Decision on *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing*

[1] This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

[2] See Document WT/COMTD/M/44.

Countries (hereinafter the Enabling Clause).[3] Thus, this note also examines the relationship between the provisions of the Enabling Clause and the mandates of the CTD and the Committee on Regional Trade Agreements (CRTA) relating to such RTAs.

2. The note begins with a discussion of the procedural requirements of the Enabling Clause relating to RTAs among developing countries and how they are currently implemented in the WTO. In particular, the note addresses "where" and "when" notification of such RTAs is to be made, as well as "where" and "when" consultations on, and reviews of, the notified RTAs are to take place. In this regard, the note discusses the mandates of the CTD and the CRTA, the WTO bodies with apparent responsibilities for ensuring compliance with these procedural requirements, and how these bodies have dealt with RTAs among developing countries. The note then examines the substantive legal requirements of the Enabling Clause for RTAs among developing countries. The note concludes with several general observations.

B. THE ENABLING CLAUSE, AND THE MANDATES OF THE CTD AND THE CRTA

3. The Enabling Clause contains a provision for the establishment of RTAs among developing countries. The preambular language begins with: "Notwithstanding the provisions of Article I of the General Agreement ...". The Enabling Clause therefore authorizes certain actions – such as the establishment of RTAs among developing countries – that are otherwise contrary to Article I of GATT.

4. It should be noted at the outset that the Enabling Clause only covers trade in goods; thus it provides legal justification only for the trade in goods aspects of RTAs among developing countries.

5. When invoked, the relevant provisions of the Enabling Clause could be viewed as *lex specialis* within WTO law, with respect to RTAs on goods between developing countries. Hence, it could be argued that, even if Article XXIV of GATT 1994 (which authorizes customs unions and free-trade areas under certain conditions) is not expressly mentioned or set aside in the first paragraph of the Enabling Clause (whereas Article I explicitly is), compliance with the provisions of the Enabling Clause would suffice to authorize RTAs among developing countries (otherwise inconsistent with Article I), even if the requirements of Article XXIV are not totally satisfied.

6. Paragraphs 1 and 2(c) of the Enabling Clause provide that:

> "1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.
>
> 2. The provisions of paragraph 1 apply, *inter alia*, to: (...)
>
> (c) Regional and global arrangements amongst less-developed countries for mutual reduction or elimination of tariffs, and according to conditions set down by CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from each other."

7. However, in order for RTAs among developing countries to qualify under those provisions, they must meet the notification and consultation requirements of paragraphs 4(a) and 4(b). According to paragraph 4:

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[3] See GATT Document L/4903.

> "Any contracting party taking action to introduce an arrangement...***shall***:
>
> (a) ***notify*** the CONTRACTING PARTIES and ***furnish*** them with ***all the information*** that they may deem appropriate relating to such action.
>
> (b) afford adequate opportunity for ***prompt consultations*** at the request of any interested party ***with respect to any difficulty or matter that may arise.*** The CONTRACTING PARTIES shall, if requested to do so by such contracting party, consult with all contracting parties concerned with respect to the matter with a view to reaching solutions satisfactory to all such contracting parties." (emphasis added)

8. The decision on the Enabling Clause, adopted by the CONTRACTING PARTIES in 1979, can be argued to be part of the GATT 1994, which, *inter alia*, includes "(iii) decisions on waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement; and (iv) other decisions of the CONTRACTING PARTIES to GATT 1947".[45]

9. Pursuant to Article 2 of the Explanatory Notes of the GATT 1994:

> "The references to "contracting party" in the provisions of GATT 1994 shall be deemed to read "Member". The references to "less-developed contracting party" and "developed contracting party" shall be deemed to read "developing country Member" and "developed country Member"."

10. The Enabling Clause requires that notifications be made to the CONTRACTING PARTIES, and that consultations be held by the CONTRACTING PARTIES when requested by a contracting party.

11. Article 2 of the Explanatory Notes of the GATT 1994 also provides that when the WTO Agreement itself does not specifically allocate functions to a WTO body, the Ministerial Conference shall do so:

> "The references to the CONTRACTING PARTIES acting jointly in Articles XV:1, XV:2, XV:8, XXXVIII and the Notes *Ad* Article XII and XVIII; and in the provisions on special exchange agreements in Articles XV:2, XV:3, XV:6, XV:7 and XV:9 of GATT 1994 shall be deemed to be references to the WTO. ***The other functions that the provisions of GATT 1994 assign to the CONTRACTING PARTIES acting jointly shall be allocated by the Ministerial Conference."*** (emphasis added)

12. Since the entry into force of the WTO in January 1995, the Ministerial Conference has not formally allocated any of the competence and functions relating to the administration of the Enabling Clause, including its provisions on RTAs, to any of the WTO bodies. It is worth noting that, contrary

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[4] Article 1(b) of the GATT 1994.

[5] Article XXV:1 of the GATT 1947 read as follows: "Representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the contracting parties acting jointly they are designated as the CONTRACTING PARTIES".

to the CTD in the WTO, the GATT 1947 CTD had been instructed to have the primary responsibility for supervising the implementation of the Enabling Clause.[6]

13. However, pursuant to Article IV:7 of the WTO Agreement, the Ministerial Conference established the CTD, whose mandate is to carry out the functions assigned to it by the WTO Agreement or by the Multilateral Trade Agreements, and any other functions assigned by the General Council. In this regard, paragraph 1 of the Decision of the General Council establishing the CTD instructed the CTD:

> "To serve as a focal point for consideration and coordination of work on development in the WTO and its relationship to development related activities in other multilateral agencies."[7]

14. More directly relevant to the present Note, paragraph 3 mandates the CTD:

> "To ***review periodically***, in consultation as appropriate with the relevant bodies of the WTO, the ***application of special provisions*** in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members, and in particular least-developed country Members, and report to the General Council for appropriate action". (emphasis added)

15. Since the Enabling Clause contains provisions relating to preferential treatment among and in favour of developing countries, it could be argued that the General Council envisaged some role for the CTD with respect to RTAs among developing countries. Moreover, as further discussed, pursuant to paragraph 4 of its terms of reference the CTD can also consider ***any questions*** arising from the application of any WTO provision in favour of developing countries.

16. Nevertheless, the CRTA, which was created after the entry into force of the WTO (in February 1996) and thus after the establishment of the CTD, has been given a broad mandate to examine RTAs. Specifically, paragraph 1(a) of the decision establishing the CRTA instructs it:

> "To carry out the examination of agreements in accordance with the procedures and terms of reference adopted by the Council for Trade in Goods, the Council for Trade in Services or the Committee on Trade and Development, as the case may be, and thereafter present its report to the relevant body for appropriate action."[8]

17. In light of the above, the WTO's procedural and substantive requirements for RTAs among developing country Members are discussed below on the basis of the wording of the Enabling Clause and the mandates of the CTD and CRTA. The purpose of this analysis is to explain and clarify the requirements, and to examine which WTO body has, or might have, responsibility for ensuring that such requirements are met by the developing country Members entering into such RTAs.

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[6] See BISD 26S/219-220, para. 1.2 and BISD 27S/48-49, paras. 2 and 4. Point 5.1.2 of the GATT Work programme gave the CTD the primary responsibility for the supervision of the Enabling Clause (see COM.TD/W/305).

[7] See Document WT/L/46.

[8] See Document WT/L/127.

C. PROCEDURAL REQUIREMENTS

1. Notification

(a) Relevant provisions of the Enabling Clause and the mandates of the CTD and the CRTA

18. It is clear that RTAs among developing countries must be notified to WTO Members. Paragraph 4(a) of the Enabling Clause provides that developing countries taking action to introduce an arrangement ***shall*** notify it to WTO members and furnish all the information deemed appropriate (see paragraph 7 above). This is also confirmed by the Preamble of the CRTA terms of reference (TORs) which refers to "*Having regard* to agreements which ***are required to be notified*** ... under ... the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; (...)" (emphasis added).[9]

19. The first question is **when** a notification is to be made. Paragraph 4 of the Enabling Clause refers only to the time when "[a]ny contracting party [is] taking action to introduce an arrangement". In the present context, this would seem to refer at the latest to the point in time when a developing country Member "takes action", and would therefore mean that an RTA among developing countries for which the Enabling Clause may be invoked, should be notified to the WTO Members by no later than its entry into force. There is no other reference in the Enabling Clause or in the mandates of the CTD or the CRTA as to when the notification to the WTO must take place.[10]

20. The Enabling Clause does not specify **where** the notification is to be made. The only requirement is that the RTA must be notified to the CONTRACTING PARTIES, i.e. to WTO Members (in either the General Council, the CTD, the CRTA or some other WTO body).

21. The fact that the CTD is mandated to serve as a focal point for consideration and coordination of work on development in the WTO would suggest that it should receive and consider all notifications relating to actions by developing country Members under the Enabling Clause, as has been the practice. However nothing would prevent a notification to the CRTA, although the mandate of the CRTA seems to imply that RTAs to be examined by the CRTA would have been notified to a relevant WTO body prior to the CRTA's examination.[11]

(b) The practice

22. As to **when** an RTA should be notified, it should be recalled that the CRTA, within point 1(c) of its TORs,[12] took note at its meeting of 2 May 1997 of a non-binding, voluntary Chairman's document on *Guidelines on Procedures to Facilitate and Improve the Examination Process.*[13] The following extracts, while not defining clearly the appropriate time for notification, are relevant as they relate to all RTAs notified to the WTO, independently of whether or not they will be examined in the CRTA:

> "1. With the aim of enhancing transparency and assisting the Committee in its work, WTO Members engaged in the process of establishing a RTA ***are invited to share with the Committee relevant information in the early stages of such a process, prior to making the formal notification.***

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[9] See Document WT/L/127.

[10] The reference to "periodic" review is directed to the work of the CTD, and not the countries making the notification.

[11] That point is currently being addressed in the context of the Negotiating Group on Rules.

[12] "(c) to develop, as appropriate, procedures to facilitate and improve the examination process;".

[13] See Document WT/REG/W/15.

> 2. Opportunity will be provided at meetings of the Committee, separately from the process of examination, for Members to seek information on RTAs that have not yet been notified. (...)
>
> I. Notification by the Parties
>
> "(...) 4. The Parties to a RTA should supply the relevant treaties or agreements to the Secretariat together with the text of the notification for circulation to Members as official WTO documents. After consideration by the relevant WTO body,[14] the terms of reference for the examination of a notified RTA, if any, are adopted by that body and the examination is referred to the Committee (...)" (emphasis added)

23. A number of RTAs currently in force have not yet been notified to the WTO despite improvements in the willingness of Members to do so in the recent past. In particular, preferential arrangements between developing countries tend to be more rarely notified than agreements between developed countries. A total of 19 RTAs notified under the Enabling Clause are currently in force, and the large majority of them were notified after their entry into force.

24. As to the issue of where RTAs justifiable under the Enabling Clause should be notified, in the absence of any decision by the Ministerial Conference to do otherwise, the WTO practice was inherited from the GATT 1947 system. The issue of notifications relating to Part IV had been discussed on several occasions within the GATT.[15] Although Part IV does not explicitly refer to RTAs among developing countries, but rather deals with preferential treatment granted by developed countries, at least one delegation notified preferential tariff treatment within the framework of the Latin American Free-Trade Association in accordance with the general principles of Part IV.[16] At its meeting of 17 March 1976, the issue of "Certain proposals relating to the formation of regional economic arrangements which were not eventually embodied in Part IV" was put forward in the work of the Committee on the Legal and Institutional Framework of GATT on the drafting of Part IV.[17] After 1971, the practice was that RTAs notified under the Enabling Clause be considered jointly with all other notifications (e.g. GSP) received during the year at the last meeting of the year of the CTD.[18]

25. In November 1995, in parallel to the work of the Working Group on Notification Obligations and Procedures (WGN), the Chairman of the CTD "recalled that the CTD was responsible for the notification requirements of Article XVIII:A, C and D, Part IV and the Enabling Clause. (...) Suggesting that the CTD address the notification requirements at its first meeting in 1996, he hoped the discussion would clarify which notification obligations were relevant to the CTD, and whether there was the need to have standard formats for notifications."[19] Although the consideration of "notification obligations" was tentatively scheduled for early 1996, the work programme had to be significantly adjusted in the light of Members' priorities in relation to the Singapore Ministerial Conference, and the issue was not discussed again by the CTD until its 44th Session on 7 March 2003.

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[14] The Council for Trade in Goods, the Council for Trade in Services or the Committee on Trade and Development, as the case may be.

[15] In 1965, the Committee adopted certain "reporting procedures" designed to elicit information on action taken by contracting parities in the context of Part IV. BISD, 13S/79.

[16] Such notification, distributed as COMT.TD/W/223, was made in the framework of the Latin American Free-Trade Association. See also COM.TD/227, paragraph 29.

[17] COM.TD/W/239 paragraphs 47 and 48.

[18] See also paragraph 45 of this Note.

[19] WT/COMTD/M/4, paragraph 55.

26. Despite that, two issues merit to be noted here. First, the section on RTAs of the *Technical Cooperation Handbook on Notification Requirements*[20] identifies the CTD as the body receiving notifications of RTAs under the Enabling Clause. However, the *Handbook* also states that it "does not constitute a legal interpretation of the notification obligations under the respective Agreement(s). It has been prepared by the Secretariat to assist Members in complying with their notification obligations". Second, at its meeting of 2 November 1998, the CTD adopted, as general guidelines, the procedures recommended by the CRTA for submission of information on RTAs under the Enabling Clause.[21]

27. Finally, in light of the above, all RTAs among developing countries notified under the Enabling Clause since the entry into force of the WTO have been circulated as CTD documents, in the document series WT/COMTD/N/-.

(c) Conclusion

28. Pursuant to the Enabling Clause, all RTAs between WTO developing countries must be notified to WTO Members, by no later than when they enter into force. In practice, the CTD has been the WTO body to receive and consider such notifications.

2. Consultations/review/examination

(a) Relevant provisions of the Enabling Clause

29. Paragraph 4(b) of the Enabling Clause requires that other Members be given "***adequate opportunity for prompt consultations*** on issues they deem appropriate on any difficulties that may arise" (emphasis added). If requested by any Member, parties to the RTA notified under the Enabling Clause must therefore consult with other Members on any matter raised in relation to their RTA. As to the issue of **when** such consultations are to take place, paragraph 4(b) of the Enabling Clause requires "promptness" in such consultations.

30. However, there is no provision in the Enabling Clause as to **where** such consultations are to be held.

31. Paragraph 9 of the Enabling Clause provides that:

> "The contracting parties will collaborate in arrangements for review of the operation of these provisions, bearing in mind the need for individual and joint efforts by contracting parties to meet the development needs of developing countries and the objectives of the General Agreement."

32. No decision has ever been adopted, either in the GATT, or in the WTO, regarding the review of arrangements under the Enabling Clause.

33. The issue again is whether such "consultations" should take place in the CTD or in the CRTA. One of the difficulties is that the mandate of the CTD does not refer to any type of "consultations" but provides that Members may "*review periodically*" the application or the use of special and differential treatment provisions in favour of developing country provisions.[22] In the CTD WTO Members are

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[20] Published in 1996, the Handbook was based on a Note by the Secretariat entitled *Notifications required from WTO Members under Agreements in Annex 1A of the WTO Agreement* (G/NOP/W/2/Rev.1), prepared to assist the work of the WGN.

[21] See WT/COMTD/16.

[22] Paras 3 and 4 of the CTD TORs at WT/L/46.

also entitled to "*consider any questions*" relating to the application or the use of special and differential treatment provisions in favour of developing countries.

34. At the same time, the mandate of the CRTA does not refer to consultations *per se* but provides for the "*examination*" by the CRTA (i.e. by WTO Members) of all RTAs among WTO Members transmitted to it by the relevant body, including those notified under the Enabling Clause.

35. As discussed below, both the CTD and the CRTA have somewhat similar powers with respect to RTAs notified under the Enabling Clause. Both bodies appear to have the power to undertake reviews/questions/examinations of such RTAs, and thus to hold consultations on the application of those RTAs. Both bodies would thus have the competence to hold the "consultations" referred to in the Enabling Clause. The power to "review" RTAs or to "consider" any questions on the application of RTAs, provided for in the TORs of the CTD, could be considered similar to the power "to examine" RTAs, provided for in the CRTA TORs.[23]

(i) The CTD mandate

36. Two provisions of the CTD mandate would seem to allow that body to hold consultations and review of an RTA among developing countries notified under the Enabling Clause.

37. The CTD's TORs include a "periodic review" clause (paragraph 3) which could be used to carry out the consultation requirement of the Enabling Clause. Paragraph 3 specifies that this "periodic review" be performed in consultation with the other relevant bodies:

> ***"To review periodically,*** in ***consultation as appropriate with the relevant bodies of the WTO,*** the application of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members, and in particular least-developed country Members, and report to the General Council for appropriate action." (emphasis added)

38. The reference to a "periodic" review could be read to mean "as and when the need arises".[24] To the extent that the CRTA is recognized as the specialized WTO body responsible to "consider the systemic implications of RTAs" (Paragraph 1(d) of the CRTA's TORs), it would appear to be the "appropriate body" of the WTO on reviews of RTAs.[25] If the CTD were to review RTA matters, it should do so in consultation with the CRTA. If the consultations concerning an RTA among developing countries are to be performed pursuant to its "periodic review" power, the CTD could do so in consultation with the CRTA.

39. It could also be argued that paragraph 4 of the CTD's TORs authorises consultations and review of any RTA among developing countries to be held in the CTD alone.

> "To consider ***any questions*** which may arise with regard to ***either the application or the use of special provisions*** in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members and report to the General Council for appropriate action." (emphasis added)

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[23] This seems to be confirmed by the fact that, for instance, the GATT 1994 Understanding on the Interpretation of Article XXIV (which is part of GATT 1994 and thus of the WTO Agreement) is entitled "***Review*** of Customs Union and Free-trade areas" while the terms of reference of the CRTA (implementing part of the said GATT Understanding on Article XXIV) refers to procedures for the "***examination*** of RTAs". Both terms review/examination would thus appear to have the same meaning.

[24] The word "periodic" may however also be understood to refer to discussions/reviews of an exclusively systemic nature.

[25] Although at the time of the adoption of the CTD TORs, the CRTA had not yet been created.

40. Thus, the wording of paragraph 4 allows the CTD to consider **any** question that any Member may have on a specific RTA notified under the Enabling Clause. It can therefore be argued that Members could use the CTD to ask questions of and consult with developing country Members forming a given RTA on any difficulty they may have, whether procedural or substantive, with the application of the RTA.

41. Therefore, it can be argued that when a Member asks questions or requests consultations in the CTD on any RTA among developing countries notified under the Enabling Clause, the notifying Members must proceed to consultations on the application of that RTA. Such consultations could include the consideration of questions relating to the information provided, or requested, on such RTA, as well as any other matter related thereto.

(ii) The CRTA mandate

42. The TORs of the CRTA, which also give it broad mandate to examine RTAs in general, (including any systemic issues relating to them), are set out below:

> *Having regard* to agreements which are required to be notified, as the case may be, under Article XXIV of the General Agreement on Tariffs and Trade (GATT) 1994, Article V of the General Agreement on Trade in Services or ***the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries***; (...)
>
> The General Council hereby *decides*:
>
> To establish a Committee on Regional Trade Agreements, open to all Members of the WTO, with the following terms of reference:
>
> (a) ***to carry out the examination of agreements*** in accordance with the procedures and terms of reference adopted by the Council for Trade in Goods, the Council for Trade in Services or the ***Committee on Trade and Development***, as the case may be, and thereafter present its report to the relevant body for appropriate action;
>
> (b) to develop, as appropriate, procedures to facilitate and improve the examination process; (...)
>
> (d) to consider the systemic implications of such agreements and regional initiatives for the multilateral trading system and the relationship between them, and make appropriate recommendations to the General Council; (...)". (emphasis added, footnotes omitted)

43. Thus, the CRTA can be reckoned as a specialized body to which WTO Members have delegated their power to examine, question, consult on and review RTAs pursuant to GATT Article XXIV, GATS Article V and the Enabling Clause.

44. At the same time, while consultations regarding the review and/or the examination of RTAs among developing countries can be held in the CRTA, it would seem that the CRTA should do so in accordance with the procedures and the TORs adopted by the CTD for that purpose. Such specific TORs could impose, for example, conditions, restrictions and time prescriptions for such an examination by the CRTA. The CTD TORs could, for example, also clearly specify that the examination by the CRTA is to be pursued with reference to the Enabling Clause only.

(b) The practice

45. We recall the practice of the Contracting Parties under GATT 1947 (within the CTD) with regard to RTAs under the Enabling Clause:

> "a representative of the Secretariat said that the Committee has not established detailed procedures for the examination of arrangements which were notified under the Enabling Clause. The Committee was given from the CONTRACTING PARTIES in 1980 the responsibility for supervising the operation of the Enabling Clause. Under this mandate the Committee had so far received a limited number of notifications on arrangements concluded in accordance with paragraph 2(c) of the Enabling Clause. The practice of the Committee so far had been to take note of these arrangements after having duly examined them and completed such examination. On that basis the Committee reported statements made in regard to such arrangements and any action taken in relation to them in its annual reports to the CONTRACTING PARTIES".[26]

46. On 2 November 1998, the WTO CTD adopted the recommendations by the CRTA to the CTD regarding the reporting on RTAs.[27] The practice of reviewing the implementation of Part IV and the Enabling Clause at specific meetings of the CTD was then discontinued. Notifications regarding RTAs justifiable under the Enabling Clause have since been put on the agenda of the meeting of the CTD following the date of the notification. Parties to such RTAs have made short and oral presentations of their RTAs, and other Members have, on occasions, asked questions. The parties have either responded immediately or at the following meeting of the Committee. The CTD has then proceeded to take note of the notification and the statements made by Members.

47. The practice of the CRTA in dealing with RTAs notified under the Enabling Clause has been limited to the case of the Common Market of the South (MERCOSUR), which originated before the establishment of the WTO. The MERCOSUR was notified in 1992 to the GATT 1947 CONTRACTING PARTIES under the Enabling Clause, and remains under that legal cover in the WTO. However, following informal consultations, GATT CONTRACTING PARTIES reached a compromise according to which MERCOSUR would be subject to an in-depth examination with *sui generis* TORs, as follows: "To examine the Southern Common Market Agreement (MERCOSUR) in the light of the relevant provisions of the Enabling Clause and of the GATT 1994, including Article XXIV, and to transmit a report and recommendations to the Committee on Trade and Development for submission to the General Council, with a copy of the report transmitted as well to the Council for Trade in Goods. The examination in the Working Party will be based on a complete

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[26] L/6605, adopted 4 December 1989, 36S/49, 57, para. 25. It is worth recalling that at the 37th Session of the Committee, held on 20 April 1979, delegations discussed the role of the CTD vis-à-vis the Enabling Clause. The Secretariat had prepared on note of the Future Work of the Committee for its 38th Session on 20 September 1979. This note contains a section on the Enabling Clause which states that: "It will be necessary for the CONTRACTING PARTIES to take action both with respect to the legal form of the Enabling Clause and with respect to the procedures contained therein for ensuring its effective implementation. In this connexion, it has been suggested that the Committee on Trade and Development would be the appropriate body for undertaking the review and consultation functions foreseen in certain parts of the text and that it examine appropriate arrangements for notification, consultation and review, including the establishment of subsidiary bodies as necessary." COM.TD/W/295, para. 4.

[27] See Document WT/COMTD/16.

notification and on written questions and answers."[28] Three rounds of examination of MERCOSUR have taken place in the CRTA up to now[29].

(c) Conclusion

48. If requested, WTO Members, parties to an RTA among developing countries to which the Enabling Clause might apply, are required to consult with other interested Members on the application of the RTA in question.

49. These consultations could cover any matter relating to the application of the RTA and could also include discussions on the statistical data to be provided by the parties to the RTA pursuant to the CTD Decision adopting the CRTA Guidelines.

50. The CTD could hold such consultations either under its "periodic review" power or its power to "consider any question relating to the application of special provisions for developing countries" , including the application of paragraph 2(c) of the Enabling Clause allowing, under certain conditions, the formation of RTAs among developing countries. If the CTD carries out such consultations within the framework of its "***periodic review***" power, it would seem appropriate for the CTD to conduct such a review in collaboration with the CRTA. If the CTD holds these consultations under its power to consider ***any questions*** relating to RTAs to which the Enabling Clause might apply, it could do without consulting other WTO bodies. We note that the CTD currently does not have any procedure with respect to how consultations on RTAs among developing countries are to be conducted.

51. At the same time, the mandate of the CRTA suggests that RTAs under the Enabling Clause notified and considered by the CTD should subsequently be examined by the CRTA, if the CTD's consultations/review/examination have not already been done. The CRTA would then have to carry out the examination according to substantive and/or procedural TORs established by the CTD. The CRTA should report on its examination to the CTD, as the relevant body generally responsible for the supervision of the Enabling Clause.

D. SUBSTANTIVE REQUIREMENTS

52. Paragraphs 2(c) and 3(a) of the Enabling Clause set forth the substantive requirements that must be met by RTAs among developing countries in order to be WTO consistent. Paragraph 2(c) reads as follows:

> "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". (emphasis added)

Paragraph 3(a) adds that such RTAs

> "***shall*** be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties". (emphasis added)

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[28] The original TORs referred to the relevant GATT 1947 bodies, and the examination was originally to be carried out in the context of a Working Party (WP). The WP met only once, in September 1995; the next round of examination of MERCOSUR, held in September 1996, was already carried out in the CRTA context.

[29] See documents WT/COMTD/1/Add.9, Add.10 and Add.12.

53. Pursuant to these requirements, a few legal comments can be offered on RTAs under the Enabling Clause. It would seem that :

(a) Such RTAs could provide merely for the "reduction" of tariffs between the parties and need not to lead to the "elimination" of trade restrictions, as is otherwise called for by Article XXIV:8 of GATT 1994.

(b) WTO Members have not to date adopted or prescribed any criteria or conditions for the reduction or elimination of non-tariff measures, foreseen in the Enabling Clause. It is thus an open question whether such RTAs may introduce discrimination on non-tariff measures (possibly contrary to the situation under Article XXIV, which, according to the Appellate Body in *Turkey – Textiles*[30] may authorize, at least conceptually, inconsistency with Article XI of GATT 1994).

(c) The Enabling Clause does not contain a specific requirement regarding the trade coverage of RTAs among developing countries, contrary to Article XXIV:8 of GATT 1994, which requires that RTAs cover "substantially all the trade".

(d) The use of the word "shall" in paragraph 3(a) of the Enabling Clause - "***Shall*** be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other Members" - seems to make it more stringent than paragraph 4 of Article XXIV of GATT 1994, which provides that Members "recognize that the purpose of a customs union or of a free-trade area ***should*** be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories." (emphasis added)

E. CONCLUSION

54. It is clear that any RTA among developing country Members to which the provisions of the Enabling Clause might apply must be notified to all other WTO Members. The WTO practice to date has been for such notifications to be made to and considered by the CTD.

55. Such RTAs must be notified no later than the date of their entry into force (and more precisely in all cases when developing country Members "take action to introduce" such an RTA).

56. The Enabling Clause sets forth both procedural and substantive requirements for such RTAs. These requirements must be fulfilled in order to ensure that the developing country Members parties to that RTA are in compliance with their WTO obligations, regardless of whether consultations or review or examination of a particular RTA are carried out in the CTD or the CRTA.

57. It would appear that the CTD is able to hold such consultations either under "its periodic review" power or its power to "consider any questions relating to the application of special provisions for developing countries". If the CTD carries out such consultations within the framework of its *periodic review* power, it would seem appropriate for the CTD to conduct such a review in collaboration with the CRTA. If the CTD holds these consultations under its power to consider *any questions* relating to RTAs to which the Enabling Clause might apply, it could do so without consulting other WTO bodies. Such consultations could take place on any matter relating to the application of the RTA in question, including on all information supplied to facilitate the

[30] Appellate Body Report *Turkey – Textiles* (WT/DS34/AB/R) at paras. 64-65.

consultations. However, no procedure currently exists in the CTD with respect to how consultations on RTAs to which the Enabling Clause might apply, are to be conducted.

58. If consultations of an RTA among developing countries to which the Enabling Clause might apply are to be conducted by the CRTA, they should be carried out according to the procedures and TORs provided to the CRTA by the CTD. Moreover, the CRTA should report to the CTD on the results of any work it carries out on a particular RTA notified under the Enabling Clause or to which the Enabling Clause might apply.

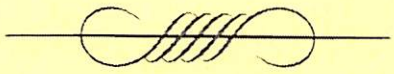
59. In practice, an increasing number of RTAs, including those among developing countries, contain preferential trade concessions in the area of services. Since the Enabling Clause only covers trade in goods, it would seem that the services aspects of an RTA among developing country Members should be notified to the Council on Trade in Services, pursuant to Article V of the GATS. The services aspects of the RTAs notified to the GATS Council would be referred to the CRTA for examination. Such examination may include, pursuant to Article V:2 of GATS, consideration of the relationship between the RTA and "a wider process of economic integration", which in turn may include consideration of the status of the integration process of trade in goods, as well as other institutional questions also relevant to the trade in goods aspects of an RTA among WTO developing countries Members.

60. This could suggest that it might be institutionally more efficient and legally more coherent for the CRTA to conduct the primary examination of all RTAs, without impairing Members' rights and obligations.

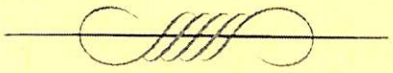
61. It is clear that any review of an RTA, wherever it occurs, must be performed according to the relevant applicable WTO law - Enabling Clause, GATT 1994 Article XXIV, or GATS Article V - that has been invoked to justify the WTO consistency of the RTA in question. Moreover, any review of an RTA notified under the Enabling Clause must be carried out in accordance with TORs and the procedures provided by the CTD.

62. As the CTD has overall responsibility for the operation of the Enabling Clause, the results of any examination of an RTA under the Enabling Clause that occurs in the CRTA would have to be reported to the CTD for appropriate action. The CTD has ultimate responsibility for reporting the results of any review, wherever it occurs, to the General Council, as and when necessary.

DOCUMENT IV



WT/REG/W/45
RULES OF ORIGIN REGIMES IN RTAS



WORLD TRADE ORGANIZATION

RESTRICTED

WT/REG/W/45
5 April 2002

(02-1781)

Committee on Regional Trade Agreements

RULES OF ORIGIN REGIMES IN REGIONAL TRADE AGREEMENTS

Background survey by the Secretariat

1. The Chairman of the Committee on Regional Trade Agreements, in his Guidelines on "Further Work on Systemic Issues" (document WT/REG/W/38, dated 20 June 2000), proposed that the Secretariat provide "the Committee with basic material for a detailed horizontal exploration of the treatment of various policy provisions or measures" in regional trade agreements (RTAs).

2. The Chairman's Guidelines specified that "Secretariat papers would consist of thematic surveys of RTA provisions, based on available information", and should have the objective of enabling "the Committee to identify patterns and, whenever appropriate, to compare RTA provisions across the RTA universe and *vis-à-vis* the relevant multilateral disciplines". The Guidelines also contained an illustrative list of themes which could be studied.

3. At the 26th Session of the Committee, the Secretariat was instructed to start a horizontal survey on the internal trade liberalization in RTAs, that is on coverage, rules of origin regimes, denial-of-benefits rules, as well as liberalization process and transitional provisions.

4. The present document presents the outcome of a survey conducted by the Secretariat on the rules of origin regimes of a number of RTAs which are presently in force and have been notified to the GATT/WTO. The survey was based on information available up to August 2001.

5. The survey aims at providing Members with as detailed information on RTA rules of origin regimes as allowed by data availability and the technical nature of the issues involved. Particular attention has been devoted to the definition of a general framework for comparison purposes.

RULES OF ORIGIN REGIMES IN REGIONAL TRADE AGREEMENTS

Background survey by the Secretariat

Highlights of the Survey

1. Rules of origin are a necessary part of regional trade agreements. But no single method for origin determination is applied within all agreements and to all products.
2. Various criteria for determining origin exist. Only in a few cases are rules of origin based on a single criterion; normally two or more criteria are combined. In addition, exceptions to and derogations from the general criteria – for example, differing tolerance or absorption rules in sensitive products – are manifold. In some cases these significantly modify what appears at first sight to be simple origin regimes.
3. Some rules of origin with a development-oriented focus are simple and liberal (e.g. COMESA). Other regimes containing multiple exceptions and tailor-made product provisions appear in themselves to act as potential barriers to trade.
4. Two major models of rules of origin currently exist: the "pan-European" (PANEURO)-model and the NAFTA-model of rules of origin, which differ significantly from each other. While variations within the PANEURO-model are very limited, significant differences apply in relation to the NAFTA-model of rules of origin (e.g. on the percentage of regional-content requirements and of tolerance rules, sector-specific exceptions).
5. Harmonization or "networking" of rules of origin should act as a positive force for the multilateral system and lead to greater integration of international trade. A balance needs therefore to be struck between simplicity and efficacy.

A. INTRODUCTORY REMARKS

1. Rules of origin are necessary to administer differentiated trade regimes.[1] They are used, *inter alia*, to ensure that products entering a country receive the correct import treatment, when this is differentiated among trading partners; to enforce trade-restrictive or contingency measures such as quotas or tariff quotas allocated among suppliers, or anti-dumping measures; and to manage public procurement policies.

2. The WTO Agreement on Rules of Origin establishes disciplines on rules of origin which "are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994" (Article 1.1), often referred to as "MFN rules of origin". Annex II to the Agreement contains Members' commitment to *inter alia* ensure transparent administration of the origin rules related to the implementation of their preferential schemes. Apart from the Declaration contained in that Annex, there are no multilaterally-agreed disciplines on such "preferential rules of origin".

3. Preferential origin regulations are deemed an essential element of all RTAs except fully implemented customs unions. Whenever parties grant each other preferential market access but have not (yet) harmonized their treatment for goods imported from third countries, determination of the origin of an imported good is needed to ascertain whether such a good is eligible for preferential treatment in the importing country. Origin rules may also be justified to prevent products from

[1] The definition of the origin of traded goods is also important for other purposes, e.g. for gathering trade statistics and for the application of labelling and marking requirements.

non-parties to an RTA to gain preferential access to the market through the party which maintains the lowest external import restriction (i.e. to avoid "trade deflection").[2]

4. The diversity of RTAs (or "RTA-families") results in a lack of uniformity in preferential rules of origin regimes world-wide.[3] As a corollary to the increased overlapping membership of RTAs or RTA-families, the coexistence of different origin rules in a single country is a frequent feature. The vast majority of RTAs presently in force, as well as those currently under negotiation, include origin requirements where product-specific rules of origin are often supplemented by other provisions which can either add to or diminish their flexibility.

5. In principle, RTA origin regimes are of a technical and objective nature; therefore, they cannot be considered as creating unnecessary obstacles to trade or as trade policy instruments *per se*. However, their often insufficient transparency and considerable complexity can generate important administrative and operational costs. Producers bear a significant burden in getting acquainted with them and meeting the requirements, especially when confronted with a multiplicity of rules of origin. For national customs authorities, additional costs are also associated with managing various rules of origin and verifying the accuracy of origin via certificates.[4]

6. The potentially restrictive distortive or disruptive trade effects of the formulation and application of preferential origin regimes have recently attracted the attention of economists as the scope and number of RTAs grows.[5] These have observed that preferential origin regulations are usually more stringent than MFN rules of origin, and the more so for products for which the margin of preference between the MFN and the preferential tariff is larger. They argue that this may alter substantially the level and effective structure of the preferences established and result in potential inefficiencies in the allocation of resources among the preference-receiving trading partners;[6] it may also increase the possibility of trade (or investment) diversion.[7]

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[2] Not only MFN duty rates applied by the countries participating in a given preferential arrangement will usually not be the same, but each of these countries may also participate in separate arrangements with third countries under different preferential conditions.

[3] Mention should be made here of the "pan-European" (PANEURO) system of rules of origin, applied to preferential relations between the European Community (EC), the EFTA States and the Central and East European countries, within a network of free-trade agreements. PANEURO provides for the application of a single set of rules of origin and of diagonal cumulation of origin. This system is also used by the participating countries as a basis ("PANEURO- model") for most of the other RTAs they have concluded worldwide.

[4] Some RTAs provide for trade facilitation measures which tend to minimize certification and verification costs.

[5] See, in particular, Garay, L.G. and Estevadeordal, A. "Protection, Preferential Tariff Elimination and Rules of Origin in the Americas", *Integration and Trade*, N. 0, pp. 2-23; LaNasa III, J.A, "An Evaluation of the Uses and Importance of Rules of Origin, and the Effectiveness of the Uruguay Round's Agreement on Rules of Origin in Harmonizing and Regulating Them", *Harvard Jean Monnet Working Paper* No. 1/96.

[6] In an extreme illustrative scenario, the elimination of trade-restrictive measures (such as tariffs and quantitative restrictions) could be counteracted by rules of origin to such an extent that there would be a *de facto* nullification of the trade liberalization provided under the RTA (that has been mentioned by LaNasa III). In such a case, the costs incurred for the final product to be granted originating status would not be compensated by the benefits derived from the use of the preference, either because the margin of preference would be not significant, or because the market would not be big enough, or because the product would be exported to a number of countries with differing rules of origin. Origin rules would then have the same effect as a trade barrier protecting domestic production of final goods.

[7] The increasing importance of rules of origin may eventually lead certain producers to consider them as a factor of production *per se* that would be analyzed in the same manner as the availability and cost of inputs, labour costs, infrastructure, etc. In that sense, rules of origin can influence investment decisions, both with respect to sourcing of various inputs and location of production and result in producers increasing both inputs and processing within a preferential area at the expense of third parties that would otherwise have a comparative advantage.

B. RTA PROVISIONS RELATED TO THE DETERMINATION OF ORIGIN

7. When a product is wholly obtained in one of the parties to an RTA, the country of origin of such product is generally evident. However, such a situation, though still applying mainly to a number of agricultural and mining products, has grown to be exceptional in modern trade. Technological change and the globalization of production have resulted in greater specialization within manufacturing processes and increasingly geographically separated stages of production. Today, a traded product usually incorporates imported inputs or has undergone part of its processing outside the exporting country; the determination of the origin of the product is thus less obvious. Rules of origin have become increasingly complex in order to take account of this phenomenon.

8. The main proposition underlying origin determination is that the country of origin is the last country where a substantial transformation took place.[8] Three main methods (which may also be combined) are used to establish whether such substantial transformation occurred:

- Under the *change in tariff heading method* (CTH, or CTC for change in tariff classification), origin is granted if, after transformation of one or several imported inputs in the exporting (originating) country, the processed product exported falls under a different heading of the customs nomenclature than that under which the imported inputs were classified. Normally, such origin assessment is done on the basis of the headings of the Harmonized System (HS) – i.e. at the four digit level.

- Under the *percentage criterion method*, the substantial transformation requirement is expressed in terms of either (i) a minimum percentage of value that must have been added in the exporting country, or (ii) a maximum percentage of value accounted for by imports. If the prescribed percentage is either not reached or exceeded, the process which the product has undergone in the exporting country is not deemed to represent a substantial transformation; the product will then not be eligible for preferential treatment when entering the market of other RTA parties.
  The percentage criterion may be formulated in terms of *import content* (MC), imposing a ceiling on the value or quantity of imported parts and materials allowable for the goods to be considered as originating; *domestic content* (DC), requiring a minimum percentage of domestic value-added (or regional value-added if cumulation applies) for conferring origin; or the *value of parts*, which provides that originating status is granted for products meeting a minimum percentage of originating parts out of the total.

  The basis on which the percentage is to be calculated, and in particular the question of how originating/non-originating materials are valued, constitutes an important element in the modalities of application of this method, as well as in its potential effects. Valuation of non-originating materials may be based on ex-works, f.o.b., c.i.f. or into-factory prices, each basis providing for a different allocation of originating/non-originating costs and leading, in ascending order, to higher import prices.[9] Domestic materials are usually valued on an into-factory basis (i.e. as delivered). These various ways of valuing materials may add to producers' uncertainty, but also increase the restrictiveness of the basic origin rule itself.

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[8] "Sufficient working or processing" is a comparable concept used in this context.

[9] A product valued *ex-works* (at the moment it leaves the factory) includes the cost of all the materials used minus any internal taxes which may be repaid when the product is exported. In a f.o.b. valuation the costs of ocean freight and insurance are also treated as originating. In a c.i.f. valuation, originating costs also include all costs incurred after the imported material has crossed the border (customs duties, inland freight in the importing country). For example, in the case of an import-content origin rule that would allow valuation on any basis, the value of non-originating material allowed would be the highest in the case of the into-factory basis and the lowest in the case of the ex-works basis.

- The *technical test method* is based on manufacturing or processing operations. It prescribes certain production or sourcing requirements that may (positive test) or may not (negative test) confer originating status. Sourcing requirements may place a number of restrictions on the inputs – either by establishing an obligatory input (a particular input must be originating) or by specifying restrictions on non-originating inputs (e.g., a maximum value for a certain non-originating material).

9. Given the wide use of the HS throughout the world, the CTH method offers the possibility of a uniform determination of origin, and it limits administrative discretion.[10] However, the HS was not designed to serve the purpose of conferring origin; its basic aim is commodity classification and statistics. A simple change in tariff heading may therefore not be an adequate measure for fulfilment of the substantial transformation requirement; conversely, certain substantial transformations may not entail a change in tariff heading.

10. Problems put forward in relation to the use of the percentage criterion in origin determination mainly derive from the complexity of the origin rules and from the costs associated with compliance and verification operations, which require sophisticated accounting systems. From an economic viewpoint, two main flaws of the method have been identified. First, it tends to penalize low-cost, efficient production operations where labour or assembly costs are lower than in high cost inefficient facilities. Second, its restrictiveness is highly sensitive to changes in factors determining differential production costs among countries, such as relative exchange rates, wages, or raw material prices.[11]

11. The technical test is the best option to deal with specific situations and allows producers to know from the outset the origin of the final product. However, it also has recognized limitations. First, to prepare and keep up-to-date an inventory of production processes is a difficult and costly task. Second, it may open the door to abuse by domestic producers, since these are in the best position for supplying information concerning the technical requirements and thus have greater latitude for protecting their own interests. Third, in cases where a negative test would apply, a very difficult situation would arise if a definition only existed for the processes which did not confer originating status without mentioning which conferred it.[12]

12. In sum, there is no fully satisfactory methodology for origin determination, applicable to all products and serving all purposes. Rules of origin architects have a panoply of methods and sub-methods at their disposal when setting the origin rules in RTAs, and tend to make full use of these possibilities. Thus, in practice, RTA rules of origin combine the various methods to create almost unique rules of origin systems in each case.

13. While the method used for conferring origin to a product constitutes the central element of an RTA origin regime, another important element is the extent of cumulation, if any, provided.

14. RTA cumulation provisions set the conditions under which inputs imported from certain sources may be counted as domestically supplied in the (preference-receiving) exporting country. There are three possible types of cumulation. When *bilateral cumulation* is provided, materials supplied by any of the parties to the RTA will be reckoned "domestic". If *diagonal cumulation* is possible, materials supplied by specific countries not members of a given RTA may be counted, under certain conditions, as "domestic". Under *full cumulation* provisions, the whole preferential area

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[10] This may explain why this method has been retained as the first-level criterion in the development of MFN rules of origin.

[11] See Garay, L.G. and Estevadeordal, *op.cit.*5, LaNasa III, *op.cit.*5, and. Vermulst, E.A, "Rules of Origin as Commercial Policy Instruments? – Revisited", in *Rules of Origin in International Trade*, Edited by E. Vermulst, P. Waer and J. Bourgeois, The University of Michigan Press, 1994.

[12] This is not a common feature in RTAs, where negative tests are generally used in conjunction with other tests for clarification reasons or when supplementary information is needed.

created by an RTA will be considered as one single territory, and thus any working or processing operations done within the area will count towards the determination of origin.[13]

15. Cumulation rules are in practice a derogation to the basic origin requirement that only products wholly obtained or having undergone a substantial transformation in the exporting RTA party will benefit from the preferential treatment granted by the importing RTA party. When cumulation of origin is possible, the degree of processing which is required to take place in the exporting RTA party for a product gaining originating status will vary according to whether imported materials have been supplied by countries benefitting from the cumulation or not.

16. The common origin requirement defining substantial transformation will have to be fully met when imported materials are provided by countries not included in the cumulation system. If these same materials come from a cumulation benefitting country, the granting of origin would not require substantial transformation but would rather be based on other, less strict requirements – e.g. a transformation that goes simply beyond minimal operations (i.e. operations or processes that do not by themselves confer origin to a good, also refered to as insufficient processing or *de minimis* operations)[14] or the granting of origin to the cumulation benefitting country which accounts for the higher value-added in final product.

17. Three other concepts, which may appear under different forms in various RTAs, have a bearing in shaping the cumulation rules:

- The *absorption/takeover principle* is of relevance for intermediate materials; it means that when a non-originating material acquires originating status by meeting the corresponding processing requirement, this material is considered to be 100 per cent originating once incorporated into a final product.

- Through the application of the *tracing test* concept, all processing done in countries participating in a cumulation system counts towards the granting of origin. This concept, which normally surfaces where full cumulation applies, may be seen as diametrically opposite to the absorption principle: when a non-originating material fails to acquire originating status after being processed, the input does not become 100 per cent non-originating; rather, the value of originating materials and processing still count towards the determination of origin of the final product.

- A *tolerance rule* found in certain origin regimes allows the use of materials supplied by non-cumulation-beneficiary countries that would otherwise not be accepted; it is usually expressed as a maximum percentage of non-originating materials. This tolerance rule, however, does not act as a lowering of the limitation imposed on the use of non-originating materials.[15]

18. Duty *drawback* provisions are also related to origin considerations in the context of RTAs, and are present in a number of RTAs. Duty drawback allows that tariffs due on non-originating products incorporated in a final product be either waived or paid back once the final product acquires originating status. Traditionally, duty drawback has been presented as providing a cost advantage for those RTA-based producers which export to another country within the preferential area, as compared

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[13] See Annex 1 for examples on how these types of cumulation apply.

[14] Those minimal operations, normally presented as negative tests, relate basically to maintenance and assembly. In the context of the work on non-preferential rules of origin, a harmonized list of such operations has been developed for whole obtained goods; it includes "(i) ensuring preservation of goods in good condition for the purposes of transport or storage; (ii) facilitating shipment or transportation; (iii) packaging or presenting goods for sale. (see G/RO/45/Rev.1)".

[15] I.e. the "tolerated" non-originating material will also be included in import content calculations.

to producers selling in their own domestic market.[16] Recent research has pointed out that duty drawback can also have a protectionist effect, because it may reduce the interest of producers for lobbying against protection of intermediate products.[17]

19. Some RTAs contain a no-drawback rule. This certainly restores equal treatment between the production for domestic markets and for exportation, but, in the presence of a cumulation system, may also affect the sourcing of materials, shifting it from third countries to countries participating in the cumulation system, and thus contribute to trade diversion.

20. Finally, RTAs may have provisions on *territoriality*, relating to the treatment provided to originating products which temporarily leave the cumulation area. These provisions are particularly relevant for defining whether any processing can take place outside the cumulation territory without the product losing its originating status.

C. SURVEY OF RTA RULES OF ORIGIN REGIMES

21. This survey on rules of origin regimes has been conducted on 93 RTAs which were in force in March 2001. Of that total, 87 RTAs were notified to the GATT/WTO under GATT Article XXIV (2 customs unions and 85 free-trade areas); the remaining six RTAs were notified under the provisions of the Enabling Clause (four customs unions and two preferential agreements). A list of the RTAs included in the survey is found in Annex 2 to this document.

22. The PANEURO system deserves a special mention from the outset, since parties to 50 of the RTAs surveyed here have adopted virtually uniform rules of origin protocols based on the PANEURO standard; given the importance of that System in the present context, an overview of its main features is given in Annex 3. Rules of origin of the North American Free Trade Agreement (NAFTA) are the basis for the rules applied in other three RTAs; Annex 4 contains a summary of the basic features of the NAFTA rules of origin regime.

23. Detailed results of the survey have been organized so as to deal with the different issues identified in Part B above, which compose the framework of RTA rules of origin regimes. As far as possible, results are shown in a tabular format, to facilitate comparisons. The tables below present the aggregate results of the survey; details at the level of individual agreements can be found in Annex 5.

24. The issues investigated fall into two broad categories: (i) the requirements contained in the product-specific origin rules (i.e. the "general rules of origin"); and (ii) the provisions supplementing or modifying these requirements, such as the cumulation rules.

1. General Criteria of Rules of Origin[18]

25. As can be seen from Table 1, all the three methods for conferring origin are widely used in RTAs, with the CTH method being the most common one, present in 89 of the 93 RTAs examined. Another salient feature is that normally, at least two methods for conferring origin coexist at similar levels of importance, working as complementary methods.[19] That pragmatic approach seems to be a response to the shortcomings inherent to each particular method, as explained previously. While the CTH and percentage methods are generally spread across all HS Chapters, the technical test (TT) applies more in relation to industrial products, including textiles.

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[16] Given that customs duties would have to be paid on intermediate goods used in the production of goods for domestic consumption but would be waived if goods are for export.

[17] Cardot, O., de Melo, J. and Olarreaga, M. *Can Duty Drawback Have a Protectionist Bias?*, World Bank Policy Research Working Paper no. 2523 (The World Bank, January 2001).

[18] The figures on the tables do not add because RTAs may have more than one general method for conferring origin or more than one type of exception.

[19] In the case of European agreements, all the three methods coexist.

26. A common feature of all RTAs using the CTH method is that the substantial transformation operates at the HS heading level (i.e. 4 digit). However, also common to all the RTAs using that method is that in specific cases the CTH rule allows the use of materials classified under the same heading of the customs nomenclature (a "soft" CTH test); in many instances, that exception is either subject to limitations on the maximum value of those materials or to a change of tariff classification at the level of HS sub-headings.[20] In the case of NAFTA and similar agreements, the change in tariff classification may also specify a change in tariff classification at the level of HS chapters.[21]

Table 1 – Frequency of Various General Criteria and Tolerance Rules

RTAs	Criterion						Tolerance Rule
	CTH	Percentage[22]				TT	
		Total	MC	DC	VP		
Customs unions (6)	6	2	2 (40%-60%)	2 (35%-60%)	-	-	3
FTAs and other preferential RTAs (87)	83	75	68 (60%-30%)	7 (60%-25%)	67	74	85

27. With regards to the percentage criteria, the import content method is much more frequent than the domestic content method in the universe of RTAs surveyed here, due to the fact that the PANEURO is based on it. The value of parts test is used only in agreements involving European countries. On average, it could be said that a threshold on domestic content varying from 40-60 per cent tends to be normal, as well as its equivalent of 60-40 per cent on import content. Cases which differ significantly from that norm can be easily identified in Annex 5B. Among these, it is worth noting the more liberal rules of origin requirements found in the Canada-Chile FTA - domestic content of 25-35 per cent depending on the method used for calculation - and in the Common Market for Eastern and Southern Africa (COMESA) - 35 per cent domestic content. As shown in Chart 1, the case of the Canada-Chile FTA stands out as containing particularly low regional content thresholds among the four "NAFTA-like" agreements.

28. The technical test criterion is used as a general method for conferring origin in a majority of the RTAs surveyed (74 out of 93),[23] in particular in the most recently concluded ones. This method is widely used in sectors such as textiles and chemicals and in all the cases analysed, positive tests are used – with the exception of minimal operations which do not confer origin. In some cases, the substantial transformation requirements are such that, in addition to the fulfilment of other basic criteria, three RTAs also require that the last process of manufacture take place in one of the RTA parties.[24]

[20] While in the case of European agreements limitations on the value of material generally apply, in the case of NAFTA and NAFTA-like agreements, generally changes at the level of subheading are required.

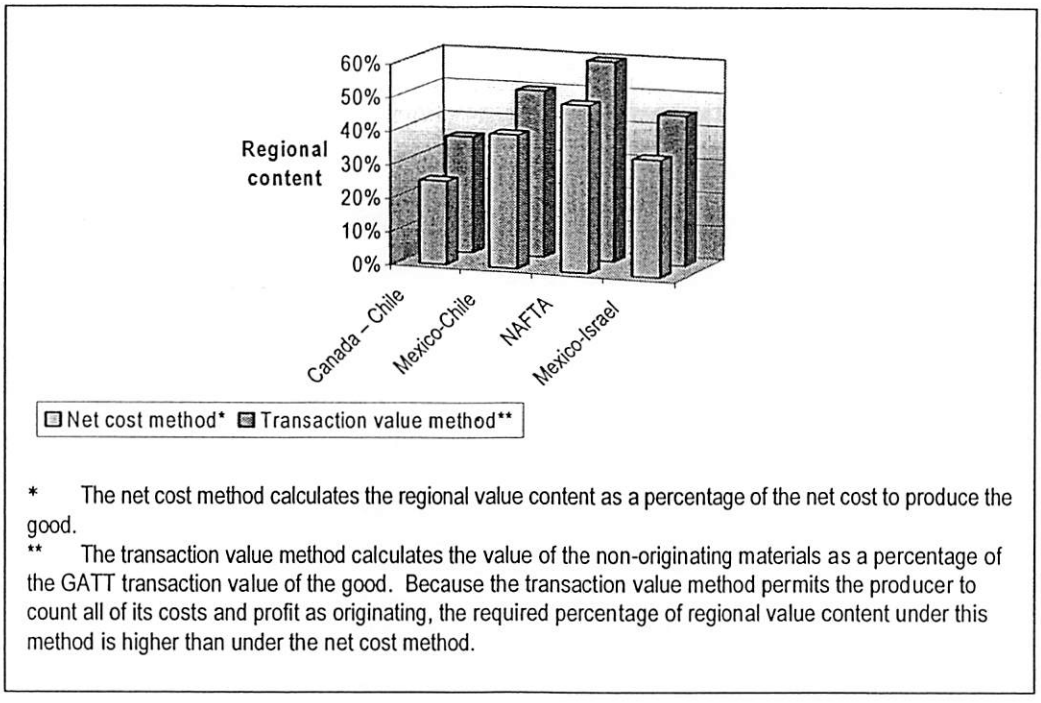
[21] In their research, Garay, L.G. and Estevadeordal, *op.cit.*5, indicated that for the NAFTA agreement, the use of the CTC method exclusively applies at the level of chapters, headings and sub-headings for around respectively 24 per cent, 9 per cent and 12 per cent of tariff lines.

[22] The maximum and minimum percentages applying to the criterion are indicated in brackets

[23] The technical test is also used, as a "secondary" or exceptional rule, in 16 other RTAs.

[24] For details, see Annex 5A.

Chart 1 - Regional Content Thresholds in the NAFTA Family of RTAs



* The net cost method calculates the regional value content as a percentage of the net cost to produce the good.

** The transaction value method calculates the value of the non-originating materials as a percentage of the GATT transaction value of the good. Because the transaction value method permits the producer to count all of its costs and profit as originating, the required percentage of regional value content under this method is higher than under the net cost method.

2. Supplementary Provisions of Rules of Origin Regimes

29. Tolerance rules (see paragraph 17 above) seem to be very frequently included in RTAs: they are found in 88 out of 93 RTAs surveyed. Generally, tolerance rules are expressed as a percentage of the value of the final product. Among the RTAs considered here, the tolerance allowed corresponds to between 2 and 15 per cent of (otherwise not accepted) non-originating materials. Chart 2 shows the percentages of value attached to tolerance rules in a number of RTAs, as well as those provided for in the PANEURO.

30. Tolerance rules applicable to the textile sector are usually different than those applying to other sectors:[25]

- in most surveyed RTAs (84), the tolerance represents the maximum weight (instead of value) of non-originating materials;
- in some instances, the tolerance rule remains based on the value of the final product but the threshold for non-originating materials is lower (72 RTAs);
- in the case of two RTAs, tolerance rules do not apply to textiles; and
- there are twelve RTAs in which tolerance rules only apply to the textiles sector.

By contrast, for the agricultural sector (another sensitive sector), exceptions to the general tolerance rules exist only in six RTAs.[26]

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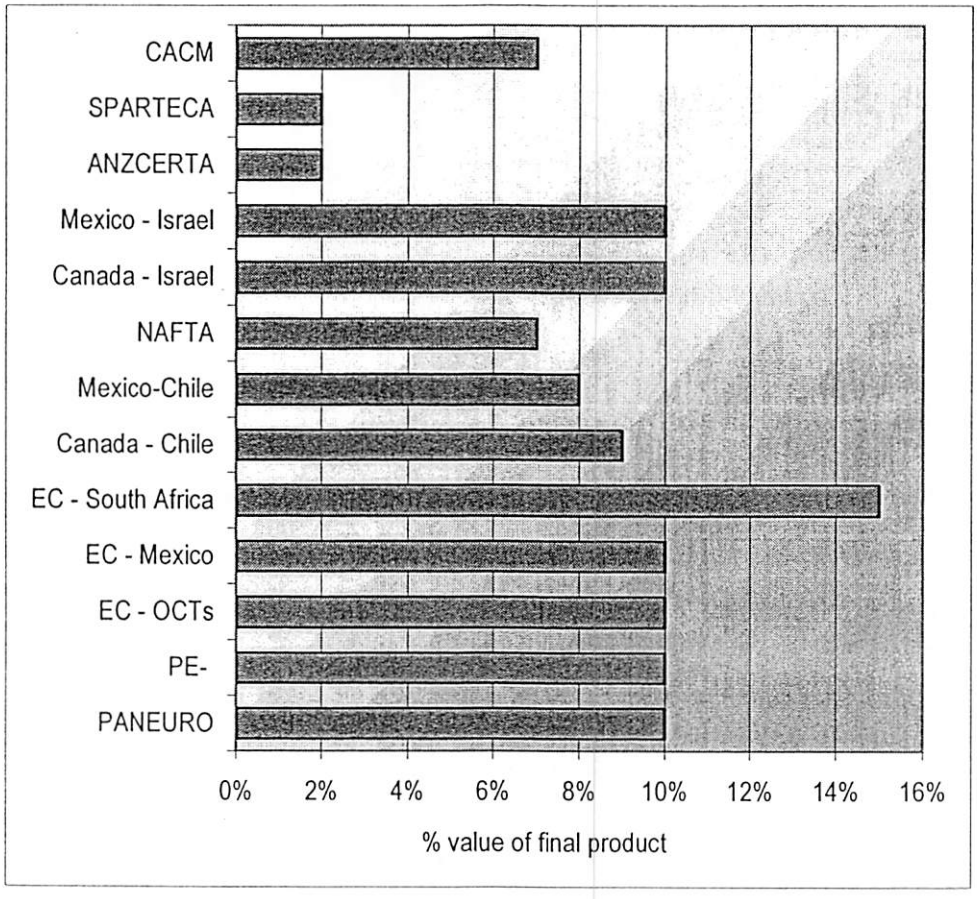
[25] These exceptions may coexist in individual RTAs, with different exceptional rules applying to different textile products.

[26] Of relevance here is the fact that, for most of these RTAs, agriculture is fully integrated into trade liberalization. This is not the norm, since, contrary to textiles, which are covered by all RTAs, trade in agricultural products is far from benefitting from such liberalization. This may provide a partial explanation for the identified different treatment.

Chart 2 - Type of General Tolerance Rules in Selected RTAs



31. Table 2 presents a synthesis of the different types of cumulation provisions which are present in the 93 RTAs considered in this survey. All of them provide for bilateral cumulation. The frequency of diagonal cumulation is relatively high, in particular in RTAs involving European countries (given that the PANEURO uses diagonal cumulation). Full cumulation is a rare feature in RTAs (only in eight cases); again, it appears mainly in RTAs involving European countries (six RTAs).[27, 28]

32. Apart from the PANEURO, diagonal cumulation also exists in a number of RTAs: those between the EC and the Maghreb countries (cumulation among Tunisia, Morocco and Algeria),[29] the

[27] The application, at a later stage, of full cumulation amongst all PANEURO parties has been discussed.

[28] In one of these RTAs - i.e. the European Communities (EC)-South Africa - the "single territory" concept embodied in the full cumulation applies *vis-à-vis* countries which are, jointly with South Africa, parties to the Southern Africa Customs Union (SACU). While for all of these eight cases the tracing test also applies, it should be noted that its implementation differs from one RTA to another. This is explained in relevant footnotes in Annex 5D.

[29] The cumulation applies only when identical rules of origin apply. Thus, cumulation remains possible for any products which have identical rules of origin subject to the provisions contained in the RTAs presently in force (i.e. Euro-Mediterranean Agreements for Morocco and Tunisia, and Co-operation Agreement for Algeria). It is the intention of the EC to introduce in the Euro-Mediterranean zone the same type of cumulation as the one applicable in the PANEURO area, and under similar criteria. However, no cumulation is foreseen between countries of the Euro-Mediterranean and those of the PANEURO area.

Overseas Countries and Territories (OCTs) and South Africa (in both cases cumulation with ACP countries); between the European Free Trade Association States (EFTA) and Morocco (cumulation with Tunisia once its agreement with EFTA will be concluded); between Estonia and Ukraine (cumulation with Latvia, Lithuania and the EC); and between Canada and Israel (cumulation with the United States) – the only RTA providing for diagonal cumulation which does not involve a European country.

Table 2 – Frequency of Cumulation Provisions

RTAs	Type of Cumulation			Absorption Principle	Tracing Test
	Bilateral	Diagonal	Full		
Customs unions (6)	6	0	0	2	-
FTAs and other preferential RTAs (87)	87	58	8	81	8

33. In some of the cases analysed (eight RTAs), cumulation provisions are accompanied by restrictions. In two cases (EC-Algeria and EC-OCTs), the restriction relates to the fact that the diagonal cumulation is non-reciprocal and the inputs from eligible third-parties cannot be cumulated with EC products. Other restrictions identified consist of:

(a) setting a maximum value to the cumulation (United States-Israel FTA, in which bilateral cumulation is allowed only up to a maximum of 15 per cent of the value of the final product);

(b) fixing a minimum value for the transformation once cumulation applies (the South Pacific Regional Trade and Economic Cooperation Agreement, SPARTECA, in which products from the South Pacific Islands which cumulate with Australia's inputs and are exported into New Zealand have to have a minimum of 25 per cent of South-Pacific-Island content);[30] or

(c) modifying the general criteria for the rules of origin (in four NAFTA-model RTAs, whereby if bilateral cumulation is used, the calculation of the regional value content of the good can only be made on the basis of the net cost method, and not under the transaction value method).

34. Among WTO Members, views are divided on how diagonal cumulation schemes under preferential rules of origin regimes affect the multilateral trading system. While for some Members such schemes reduce barriers and facilitate trade among participating economies by a simplification and harmonization of customs procedures, for others diagonal cumulation extends the preferential nature of any individual RTA to parties to other RTAs, without any legal basis, and introduce another layer of discrimination, since some third parties to the original RTA – those participating in the diagonal cumulation scheme – benefit from preferential treatment, while other third parties – those not participating in the scheme – are not eligible

35. In the vast majority of the RTAs examined, the absorption principle (see paragraph 17 above) is either an integral part of the cumulation systems (83 RTAs) or does apply as an exception (seven RTAs).[31] At the same time, however, in two RTAs (NAFTA and the Southern Common Market, MERCOSUR), the generally applied absorption principle does not apply to the automotive sector.[32] In two other cases (Australia-New Zealand Closer Economic Relations Trade Agreement

[30] This is the counterpart of (a).

[31] Information on that is not available for two of the RTAs surveyed here.

[32] The significance of that exception is relatively high, given the importance of intermediate materials in that sector.

(ANZCERTA) and SPARTECA), the absorption principle only applies if certain origin requirements concerning the intermediate materials are fulfilled.

36. A number of RTAs provide for a no-drawback rule – 63 out of 93. Again, that derives mainly from the introduction of the no-drawback rule into the PANEURO at the time of its extension to diagonal cumulation. The no-drawback rule is also part of a number of European RTAs which have rules of origin similar to the PANEURO; in some of these cases (six out of eleven), the introduction of such rule benefits from a transition period varying from three months to three years from the entry into force of the agreement.

37. In the NAFTA, the drawback system has been replaced with a system that provides for the refund of the lesser of the amount of duties paid on imported goods and the amount of duties paid on exports of that good, or another good manufactured from that good, to another NAFTA Party. In other RTAs, that is those not involving European countries or the NAFTA, drawback is generalized, though a few exceptions apply:

- in MERCOSUR, a no-drawback rule applies *vis-à-vis* imports of intermediate automotive products by Argentina and Brazil if the final product is exported within MERCOSUR;
- in the Caribbean Community and Common Market (CARICOM), a member State may refuse to accept as eligible for preferential treatment goods in relation to which drawback is claimed. That same rule will apply in COMESA at the end of a ten year transition period (i.e. end 2004).

38. As regards provisions on territoriality, 62 RTAs allow a next-to-final product to be subject to some processing outside the cumulation area without losing its originating status. That is another typical provision of the PANEURO, which also applies to other nine RTAs involving European countries and three RTAs in the Americas.

39. The accepted outward processing is normally limited by the establishment of a maximum value-added that can be acquired outside the cumulation area (normally 10 per cent). However, a further and major limitation applies to such authorized outward-processing in European RTAs – namely, the provision does not apply to textiles and clothing.[33]

40. In other RTAs which do not tolerate outward processing, originating status is kept when there is direct transportation between parties to the agreement, or when a product in transit through the territory of third-parties has not been submitted to operations other than loading, reloading or operations to preserve it in good conditions.[34]

[33] A sector where outward-processing tends to be of very common use.

[34] In the case of some RTAs, and in particular all of the European type, customs supervision is required during transhipment or temporary warehousing.

Table 3 – Conditions under which Outward Processing is Accepted

RTAs	Outward processing accepted and limitations
PANEURO (50)	Maximum value of value-added (VA): 10% (ex-works); not applicable to textiles and clothing; the next-to-final product has to be already originating, and that without taking into account the tolerance rule.
PE-, of which: PE- (9)[a]	Maximum value of VA: 10% (ex-works); not applicable to textiles and clothing; the next-to-final product has to be already originating, and that without taking into account the tolerance rule.
Canada – Israel	Only for minor processing in cumulation area. Other processing may be authorized on certain goods upon agreement by Parties.
Mexico-Israel	Maximum value of VA: 10% (f.o.b); only minimal operations; benefitting product/sectors to be identified.
CARICOM[b]	Maximum value of non-originating material: 65%/80% of cost of the processing[c]

[a] Only available in the following RTAs: EC-Israel, Czech Rep.-Israel, Slovak Rep.-Israel, Hungary-Israel, Slovenia-Israel, Turkey-Israel, EFTA-Palestinian Authority, EFTA-FYROM, Bulgaria-FYROM.
[b] The rule does not refer to processing outside the zone, but rather to a processing (defined as covering the "repair, renovation or improvement" of a good) done in a CARICOM member State using non-originating material in the context of a re-importation transaction.
[c] 65 per cent applies to CARICOM's more developed countries (i.e. Barbados, Guyana, Jamaica, Suriname and Trinidad and Tobago) and 80 per cent for its less developed countries (all other members except Bahamas).

3. Exceptions to Rules of Origin Regimes

41. Among exceptions to the rules of origin regimes, those referring to the general criteria for the origin rules are the most frequent ones, though there may be also exceptional rules on tolerance, cumulation or absorption in some RTAs.

42. Exceptions *vis-à-vis* the criteria themselves have been found in 23 RTAs. Their main characteristics are summarized in Table 4.

43. Points of interest in Table 4 include the following:

- In the case of COMESA, the general domestic content requirement of 35 per cent is lowered to 25 per cent in cases of "goods of particular importance to the economic development" of Member States. Other cases where the exceptions involve a more liberal content requirement relate to some products under MERCOSUR's automotive regime[35] and the textiles products imported into New Zealand under SPARTECA.
- Rules of origin in the automotive and textiles sector provide in many cases for a number of exceptions to the general rules of origin regime.

[35] i.e. automotive products from Uruguay and new models produced in Argentina, Brazil and Uruguay. However, other exceptions applying to the automotive sector, and in particular the absence of absorption principle, go in the sense of a more restrictive rules of origin regime.

Table 4 – Exceptions to the General Criteria[36]

RTAs	Use of different criterion	Different percentage		Other
		More restrictive	Less restrictive	
Customs unions (5):	4	-	2	1
sector-specific	1[a]	-	1[a]	1[k]
due to inadequacy of	2[b]	-	-	-
criteria	1[c]	-	1[d]	-
for other reasons				
FTAs and other preferential RTAs (18):	13	2	1	4
sector-specific	2[e]	2[f]	1[g]	2[h]
due to inadequacy of	11[i]	-	-	-
criteria	-	-	-	4[j]
for other reasons				

[a] MERCOSUR.
[b] EC-Cyprus, EC-Malta (customs unions not yet achieved.)
[c] Central American Common Market, (CACM).
[d] COMESA
[e] Canada-Israel, Asean Free-trade Area (AFTA).
[f] Canada-Chile, NAFTA.
[g] SPARTECA.
[h] Canada-Chile and NAFTA: in the automotive sector, the calculation of the regional value content can only be made on the basis of the net cost method (and not also under the transaction value method). Further, under NAFTA, no absorption rules for the automotive sector.
[i] EC-Morocco, EC-Tunisia, EC-Algeria, EC-Egypt, EC-Jordan, EC-Lebanon, EC-OCTs, EC-Syria, EFTA-Israel, EFTA-Morocco, Estonia-Ukraine
[j] Canada-Chile, Mexico-Chile, NAFTA, Mexico-Israel. The calculation of the regional value content can only be made on the basis of the net cost method.
[k] MERCOSUR. No absorption rules for the automotive sector.

[36] The PANEURO, and other PANEURO-like rules of origin regimes have not been taken into account in that table given that they are by definition product-specific. The general exceptions to these regimes apply mainly *vis-à-vis* the tolerance rules.

Annex 1

Examples of Cumulation Types

Countries A, B and C have bilateral FTAs with each other, but they are not parties to a single agreement. Countries D, E and F are parties to a single FTA, and each of them has bilateral FTAs with countries A, B and C. Country G has no agreement with any of the other countries.

Example 1

A table is produced in country A using wood from country B and glass from the country C. Subsequently the table is exported to country C.

Under the FTA between A and C, the application of the bilateral cumulation will mean that the glass is originating. If diagonal cumulation exists among those three countries, the wood will also be originating even if B is not a party to that FTA. The table will thus be granted originating status and will receive preferential treatment when entering C. If only bilateral cumulation exists, the table will only be originating if substantial transformation takes place in country A.

Example 2

A lamp is produced in D using some imported materials. The rules of origin, which provide for diagonal cumulation among countries A, B, C, D, E and F, require only more than minimal operations on materials from the cumulation area but substantial transformation from outside the cumulation area.

If all imported materials are from a country benefiting from diagonal cumulation (e.g. from A or E), the lamp will be originating. Normally, the lamp will acquire origin from D if the transformation held therein goes beyond a minimal operation (e.g. if the lamp is assembled and painted in D). If that is not the case, the final origin will depend on the detailed rules applied in the cumulation system. But in all cases it will be *originating*. However, if the lamp also makes use of non-originating materials, then the relevant requirement for substantial transformation will have to be met for the lamp to be originating.

Example 3

A bike is manufactured in D with the following breakdown of ex-works price:

- **country G parts: 15 per cent**
- **assembly done in country E: 30 per cent (of which 40 per cent from G and 60 per cent of value-added in E)**
- **country D origin parts, labour and other costs (i.e. value-added in D): 55 per cent[1]**

Substantial transformation requirements apply given that non-originating materials are used in the final product. The specific requirement applying to bikes is: "the value of all the imported materials used does not exceed 30 per cent of the ex-works price of the product":

If the FTA between D, E and F provides for diagonal cumulation:

Supposing that the substantial transformation rule is such that the assembly done in E is determined as originating in country G, when determining whether the bike originates in D, the following would result: the bike would have in total 45 per cent of parts from G and thus be above the 30 per cent ceiling.

Therefore, *the bike would not be granted originating status.*

If the FTA between D, E and F provides for full cumulation (all of its countries count as a single territory and thus only the origin of the bike is to be determined), the following applies:

parts from G in the bike: 15 per cent + (40 per cent of 30 per cent) = 27 per cent
parts from E in the bike: 60 per cent of 30 per cent = 18 per cent
value-added in D: 55 per cent

The non-originating parts from G are below the 30 per cent ceiling and *the bike is originating*

Annex 2

List of RTAs Included in the Survey[1] [2]

Agreements notified under Article XXIV (87)

Euro-Mediterranean Region	
EC - Cyprus	**EC - Malta**
EC - Bulgaria (PANEURO)	EC - Czech Republic (PANEURO)
EC - Estonia (PANEURO)	European Economic Area, EEA (PANEURO)
EC - Hungary (PANEURO)	EC – Iceland (PANEURO)
EC - Latvia (PANEURO)	EC – Lithuania (PANEURO)
EC - Norway (PANEURO)	EC – Poland (PANEURO)
EC - Romania (PANEURO)	EC – Slovak Republic (PANEURO)
EC - Slovenia (PANEURO)	EC – Switzerland (PANEURO)
EC - Israel Euro-Mediterranean Agreement (PE-)	EC – Morocco Euro-Mediterranean Agreement
EC - Palestinian Authority Euro-Mediterranean Agreement (PE-)	EC – Tunisia Euro-Mediterranean Agreement
EC - Algeria Co-operation Agreement	EC – Egypt Co-operation Agreement
EC - Jordan Co-operation Agreement	EC – Lebanon Co-operation Agreement
EC - OCTs	EC – Syria Co-operation Agreement
EC - Faroe Islands (PE-)	European Free Trade Association, EFTA (PANEURO)
EFTA States - Bulgaria (PANEURO)	EFTA States - Czech Republic (PANEURO)
EFTA States - Estonia (PANEURO)	EFTA States - FYROM (PE-)
EFTA States - Hungary (PANEURO)	EFTA States - Israel
EFTA States - Latvia (PANEURO)	EFTA States - Lithuania (PANEURO)
EFTA States - Morocco	EFTA States - Palestinian Authority (PE-)
EFTA States - Poland (PANEURO)	EFTA States - Romania (PANEURO)
EFTA States - Slovak Republic (PANEURO)	EFTA States - Slovenia (PANEURO)
EFTA States - Turkey (PANEURO)	Central European Free-Trade Area, CEFTA (PANEURO)
Bulgaria - FYROM (PE-)	Bulgaria - Turkey (PANEURO)
Czech Republic - Estonia (PANEURO)	Czech Republic - Israel (PE-)
Czech Republic - Latvia (PANEURO)	Czech Republic - Lithuania (PANEURO)
Czech Rep.-Turkey (PANEURO)	Hungary - Latvia (PANEURO)
Hungary - Lithuania (PANEURO)	Hungary - Israel (PE-)
Hungary - Turkey (PANEURO)	Poland - Israel (PE-)
Poland - Latvia (PANEURO)	Poland - Lithuania (PANEURO)
Poland - Turkey (PANEURO)	Romania - Turkey (PANEURO)
Slovak Republic - Estonia (PANEURO)	Slovak Republic - Israel (PE-)
Slovak Republic - Latvia (PANEURO)	Slovak Republic - Lithuania (PANEURO)
Slovak Rep.-Turkey (PANEURO)	Slovenia - Croatia (PE-)
Slovenia - Estonia (PANEURO)	Slovenia - FYROM(PE-)
Slovenia - Israel (PE-)	Slovenia - Latvia (PANEURO)
Slovenia - Lithuania (PANEURO)	Turkey - Estonia (PANEURO)
Turkey – FYROM (PE-)	Turkey - Israel (PE-)
Turkey - Latvia (PANEURO)	Turkey - Lithuania (PANEURO)
Estonia - Latvia - Lithuania (PANEURO)	Estonia - Ukraine

[1] Agreements in bold are customs unions.

[2] The abbreviation "PE-" has been used to refer to those rules of origin similar to the PANEURO, including practically identical product-specific working or processing requirements to those of the PANEURO, but which differ from the PANEURO regulations on cumulation provisions and/or territoriality/drawback provisions.

Americas	
Canada - Chile	NAFTA
Mexico - Chile	
Oceania	
ANZCERTA	
Cross-regional	
EC - Mexico	Mexico - Israel
EC - South Africa	United States - Israel
Canada - Israel	

Agreements notified under the Enabling Clause (6)

AFTA – Asean Free Trade Area
CACM – Central American Common Market
CARICOM
COMESA
MERCOSUR
SPARTECA

Annex 3

Short Description of the Pan-European System of Cumulation of Origin

Since the beginning of 1997 rules of origin based on the concept of pan-European cumulation have been applied in a number of Free Trade Agreements (FTAs) within Europe.[1] Through these provisions on cumulation of origin, separate free trade areas established under a number of FTAs have been merged into a Europe-wide network. The three basic aspects of the system are: (i) semi-finished material originating in any country of the system and which are further processed or assembled in any other partner country may always be considered as originating products; (ii) originating products can be traded between any of the countries involved in the system; (iii) the introduction of a tolerance rule for third country materials.

Advantages of the system of cumulation of origin for producers and traders include: (i) the simplification of customs procedures (once a product has been given "European origin" there is no need for the origin to be verified again), (ii) more freedom in using input material or deciding in which country to invest their production facilities,

While in practice only one cumulation system applies, a complete harmonization of all the ROO Protocols has not been possible and at least three types of Protocols co-exist: one applying to the EEA and providing for full cumulation, one that applies to trade among EFTA countries and the other which applies for the rest of the FTAs covered by the system.

General requirements

Originating products are defined in accordance to two basic requirements:

- Products wholly obtained in the EC, EEA or another partner country (hereinafter the "participating countries") are originating[2]

  For products not wholly obtained, originating status is granted if the imported material have undergone sufficient working or processing in one of the participating countries.[3] Annex II to the ROO Protocol contains, for each tariff heading, an harmonized list of working or processing required to be carried out on non-originating materials in order for the manufactured product to be granted originating status.

- The list of working or processing required makes use of all of the criteria described above for conferring origin, in many cases requires the fulfilment of more than a single criterion. For products classified under Chapters 28, 29, 31-39, 84-91, 94, an alternative criteria is also provided, which in all cases provides for a import content test.[4]

The cumulation rules

The Pan-European system of cumulation provides for bilateral and diagonal cumulation (full cumulation applies in the case of the EEA). It works as if semi-finished materials imported from any

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[1] Since that date, a number of amendments have been made to the relevant Protocol "concerning the definition of the concept of 'originating products' and methods of administrative cooperation". This note takes into account amendment made up to December 2000 which have entered into force up to 1 January 2001.

[2] Whole obtained products are defined in Article 4 or 5 of the Protocols and are generally agricultural, fisheries or mining products.

[3] The cumulation rules soften that requirement, as explained below.

[4] In cases where the first method also provides for a import content limitation, the alternative criteria always provides for a lower limit of non-originating products.

of the participating countries (EC(15) as a whole plus 15 countries)[5] and incorporated in a final product were of domestic origin, and that without any limitation.

In practice, the cumulation rules waive the sufficient working or processing requirement with originating status being granted once the working or processing carried out in a particular participating country is simply beyond certain specified *de minimis* operations. Even if the transformation is not beyond *de minimis*, origin can still be granted to that particular country provided the value-added there is greater than the value of the materials used originating in any one of the other participating countries. If that is not the case, the final product will be originating from the country which accounts for the highest value of originating materials used in the final manufacture.

The full cumulation provided for in the EEA modifies a few aspects of the provisions explained above. First, in the context of the Agreement, products are of EEA origin; origin is no more considered in relation to any individual party to the EEA). Second, and more importantly, the processing requirements do not apply to each of the EEA partners individually but to the area as whole, which means that processing could be combined in different partners for a final EEA origin. It is also important to note that the value added of all processing accounts for the final determination of origin, including those which are *de minimis* and all those processing made on non-originating material (the "tracing test").

At present, 50 RTAs in Europe apply the System. These are specified in Annex 2 (PANEURO).

The countries participating in the System are the following:

EC(15) as a whole

Bulgaria
Czech Republic
Estonia
Hungary
Iceland
Latvia
Liechtenstein
Lithuania
Norway
Poland
Romania
Slovak Republic
Slovenia
Switzerland
Turkey

[5] The Spanish autonomous territories of Ceuta & Melilla and Andorra, and San Marino are also involved in the system through special provisions or Joint Declarations.

Annex 4

Short Description of the NAFTA Rules of Origin[1]

The NAFTA defines originating goods in four ways:

- goods wholly obtained or produced in the NAFTA region;

- goods produced in the NAFTA region wholly from originating materials;

- goods meeting the Annex 401 origin rule. These are commonly called specific rules of origin, and are based on a change in tariff classification, a regional value content requirement, or both.

  The regional value content can be calculated on the basis of the transaction value method or the net cost method. Usually, the exporter or producer can choose between either method. However, there are a number of situations where the exporter or producer cannot use the transaction value method;[2] the producer can also revert to the net cost method if using the transaction value method is unfavourable. The transaction value method calculates the value of the non-originating materials as a percentage of the GATT transaction value of the good, which is the total price paid for the good, with certain adjustments for packing and other items. Because the transaction value method permits the producer to count all of its costs and profit as territorial, the required percentage of regional value content under this method is higher than under the net cost method.

  The net cost method calculates the regional value content as a percentage of the net cost to produce the good. Net cost represents the costs incurred by the producer minus expenses for sales promotion (including marketing and after-sales service), royalties, shipping and packing costs, and non-allowable interest costs.

- under two very specific circumstances, unassembled goods and goods classified with their parts not meeting the Annex 401 rule of origin but contain 60 per cent of regional value content using the transaction method (50 per cent using the net cost method).

A good that does not meet these requirements may, in some cases, qualify as originating by using the additional options described below:

- A producer may designate as an intermediate material any self-produced, originating material used in the production of a final good. As long as that material qualifies as an originating one, its entire value can be treated as originating to determine the regional value content of the finished good. This provision covers all goods and materials except automotive goods and engines and gearboxes.

- Accumulation (cumulation provisions) - allows the producer or exporter of goods to choose to include as part of the goods' regional value content any regional value added by suppliers of non-originating materials used to produce the final goods. A number of restrictions are attached to the use of this provision.

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[1] Extracted in full from the *Trilateral Customs Guide to NAFTA*, Canada Customs and Revenue Agency, at http://www.ccra-adrc.gc.ca/tax/business/smallbusiness/c124-e.html.

[2] There is no transaction value, in cases of some related-party transactions, for certain motor vehicles and parts, when a producer is accumulating regional value content, and when determining the regional value content for designated intermediate materials.

- *De minimis* (tolerance rule) - allows goods to qualify as originating even if not all of the non-originating materials undergo the required CTC, as long as such materials are not more than a certain percentage (7 per cent in most cases) of the transaction value of the goods adjusted to a free-on-board (F.O.B.) basis or, in some cases, of the total cost of the goods. Where the rule of origin contains a requirement for a minimum regional value content, the calculation of that content is waived if the value of all non-originating materials used in the production of the goods is not more than the specified *de minimis* amount.

Annex 5

GENERAL NOTES:

1. Customs unions and interim agreements leading to a customs union are presented in bold (the customs unions between EC-Cyprus and EC-Malta have not been achieved).
2. The abbreviation "PE-" has been used to refer to those rules of origin similar to the PANEURO, including identical product-specific working or processing requirements to those of the PANEURO, but which differ from the PANEURO regulations on cumulation provisions and/or territoriality/drawback provisions.
3. In the case of MERCOSUR, the rules of origin apply only for products outside the customs union – i.e. those products which are exempted from the Common External Tariff (CET) of MERCOSUR and to products that have parts exempted from the CET representing at least 40 percent of the value (f.o.b.) of the final product.

Legend:

n.ap. - not applicable.
n.av. – information not available
VA - value-added
MC - import content
DC - domestic content

A. General Criteria of the Rules of Origin

RTAs	Criterion			Tolerance Rule	
	CTH	Percentage	Technical test	Limitation (% of value)	Exceptions
EC - Cyprus Association	√			Textiles: 10%[1]	
EC - Malta Association	√			Textiles: 10%[1]	
PANEURO (50)	√	√	√	10% ex-works	Textiles: 10%[1]-8%[2]
PE- (15)	√	√	√	10% ex-works	Textiles: 10%[1]-8%[2]
EC - Morocco EuroMed.	√			Textile: 10%[1,2]	
EC - Tunisia EuroMed.	√			Textile: 10%[1,2]	
EC - Algeria Co-operation	√			Textiles: 10%[1]	
EC- Egypt Co-operation	√			Textiles: 10%[1]	
EC- Jordan Co-operation	√			Textiles: 10%[1]	
EC- Lebanon Co-operation	√			Textiles: 10%[1]	
EC - OCTs	√			10% ex-works	Textiles: 10%[1,3]
EC- Syria Co-operation	√			Textiles: 10%[1]	
EC - Mexico	√	√	√	10% ex-works	Textiles: 8%[1,2]
EC - South Africa	√	√	√	15% ex-works	Textiles: 10%[1]-8%[2] few agricultural: 10%
EFTA – Israel	√			Textile: 10%[1,2]	
EFTA – Morocco	√			Textile: 10%[1,2]	
Estonia-Ukraine	√			Textile: 10%[1,2]	

[1] This tolerance rule only applies to textile products composed of at least two basic textile materials. Further, generally the tolerance represents the maximum weight (instead of maximum value) of non-originating basic textile material *vis-à-vis* the total weight of all basic textile material.

[2] For certain textile products, a tolerance rule of 8 per cent of the ex-works price of the product applies, provided there is a change in tariff heading.

[3] For certain textile products, a tolerance rule of 10 per cent of the ex-works price of the product applies, provided there is a change in tariff heading.

RTAs	Criterion			Tolerance Rule	
	CTH	Percentage	Technical test	Limitation (% of value)	Exceptions
Canada - Chile	√	√	√[4]	9%[5]	Textiles: 9%[6] Agricultural[7], few industrial prod
Mexico-Chile	√	√	√[4]	8%[5]	Textiles: none Agricultural[7], few industrial prod.
NAFTA	√	√	√[4]	7%[5]	Textiles: 7%[6] Agricultural[7], few industrial prod.
Canada - Israel	√			10%[5]	Textiles: none Agricultural[7], few industrial prod.
Mexico - Israel	√	√	√[4]	10%[5]	Textiles: 7%[6] Agricultural[7], few industrial prod.
United States-Israel		√		No	
ANZCERTA		√	√[8]	2%[9]	
SPARTECA		√	√[10]	2%[9]	
AFTA		√	√[11]	No	
CACM	√			7%	Textiles[12]
CARICOM	√			n.av.	
COMESA	√	√		No	
MERCOSUR	√	√		No	

B. Rules of Origin based on the Percentage Criterion

RTAs	General criterion and limitations			Basis for calculation			
	Import content	Domestic content	Value of parts	c.i.f.	f.o.b.	Ex-works	Cost prod.[13]
PANEURO (50)	√ 50%-40% - 30%[14]		√			√	
PE- (15)	√ 50%-40%-30%[14]		√			√	

[4] Used in fewer tariff items than the other two methods.

[5] *Vis-à-vis* the transaction value of the good adjusted to a f.o.b. basis (or under certain defined circumstances, *vis-à-vis* the total cost of the good).

[6] The tolerance rule represents the maximum weight (and not the maximum value) of non-originating fibers and yarns *vis-à-vis* the total weight of the material.

[7] In the majority of cases, the exception related to the fact that the tolerance is applied only if the non-originating material is from a different subheading than the final good.

[8] The test - which is in fact a "geographical" test - requires that the last process of manufacture (excluding minimal operations) be performed in either Australia or New Zealand.

[9] The tolerance rule, which applies to unforeseen circumstances, is subject to approval and is of a temporary nature (thus it is not a *de facto* lowering of the limitation).

[10] The test requires that the last process of manufacture (excluding minimal operations) be performed in South Pacific Islands.

[11] The test requires that the last process of manufacture be performed in exporting ASEAN member State.

[12] For textile products, the tolerance rule applies with respect to the total weight of basic textile material.

[13] Similar to ex-works but excluding direct labour and manufacturing overheads (e.g. profit).

[14] Other percentages also appear at a lesser frequency.

RTAs	General criterion and limitations			Basis for calculation			
	Import content	Domestic content	Value of parts	c.i.f.	f.o.b.	Ex-works	Cost prod.[13]
EC - Mexico	√ 50%-40%-30%[14]		√			√	
EC – South Africa	√ 50%-40%-30%[14]		√			√	
Canada – Chile		√[15] 35%-25%			√ 35%		√ 25%
Mexico-Chile		√[15] 50%-40%			√ 50%		√ 40%
NAFTA		√[15] 60%-50%			√ 60%		√ 50%
Mexico-Israel		√[15] 45%-35%			√ 45%		√ 35%
United States-Israel		√ 35%				√	
ANZCERTA		√ 50%[16]				√[17]	
SPARTECA		√ 50%[16]				√[17]	
AFTA	√ 60%				√		
CACM	n.av.						
CARICOM	n.av.						
COMESA	√ 60%	√ 35%		√[18]			
MERCOSUR	√ 40%	√ 60%			√		

C. Rules of Origin based on CTH and Technical Test Criterion

RTAs	CTH criterion		Technical test			
	Definition of heading	Soft CTH	Type (P/N)	Manufact. required	Obligatory input	Other restr. on input
EC - Cyprus Association	4	√	n.ap.			
EC - Malta Association	4	√	n.ap.			
PANEURO	4	√	P	√	√	√
PE- (15)	4	√	P	√	√	√
EC - Morocco EuroMed.	4	√	n.ap.			
EC - Tunisia EuroMed.	4	√	n.ap.			
EC - Algeria Co-operation	4	√	n.ap.			
EC- Egypt Co-operation	4	√	n.ap.			
EC- Jordan Co-operation	4	√	n.ap.			
EC- Lebanon Co-operation	4	√	n.ap.			
EC - OCTs	4	√	n.ap.			

[15] Higher threshold based on the transaction value method (adjusted to a f.o.b. basis), lower threshold based on the net cost method.

[16] The domestic content requires that at least 50 per cent of the cost of manufacture consist of "qualifying expenditure". The definition of qualifying expenditure is different for each Party to the Agreement.

[17] Factory cost – i.e. similar to cost of production but including some (but not all) labour and manufacturing overheads.

[18] C.i.f. less the amount of any transport costs incurred in transit through other COMESA member States.

RTAs	CTH criterion		Technical test			
	Definition of heading	Soft CTH	Type (P/N)	Manufact. required	Obligatory input	Other restr. on input
EC- Syria Co-operation	4	√	n.ap.			
EC – Mexico	4	√	P	√	√	√
EC – South Africa	4	√	P	√	√	√
EFTA – Israel	4	√	n.ap.			
EFTA – Morocco	4	√	n.ap.			
Estonia-Ukraine	4	√	n.ap.			
Canada – Chile	4	√	P	√	√	
Mexico-Chile	4	√	P	√	√	
NAFTA	4	√	P	√	√	
Canada – Israel	4	√	n.ap.			
Mexico-Israel	4	√	P	√	√	
CACM	4	√	n.ap.			
CARICOM	n.av.		n.ap.			
COMESA	4					
MERCOSUR	4	No				

D. Cumulation Provisions of Rules of Origin

RTAs	Type			Processing under cumulation	Absorption principle	Tracing test
	Bilateral	Diagonal	Full			
EC - Cyprus Association	√			more than minimal	No[19]	
EC - Malta Association	√			more than minimal	No[19]	
PANEURO, of which:						
EEA	√	√ (PE)	√	more than minimal , or any under full cumul.	√	√
Other PANEURO (49)	√	√		more than minimal	√	
PE- (15)	√			more than minimal	√	
EC - Morocco EuroMed. [20]	√	√ (Algeria, Tunisia)	√	more than minimal for cumul. of materials; any for cumul. of processing (full)	√	√
EC - Tunisia EuroMed. [20]	√	√ (Algeria, Morocco)	√	more than minimal for cumul. of materials; any for cumul. of processing (full)	√	√

[19] However, the absorption principle applies to some of the products listed in Annex 5A which have to meet specific requirements (instead of the general CTH requirement).

[20] The diagonal cumulation applies only when identical rules of origin apply. Thus, cumulation remains possible for any products which have identical rules of origin subject to the provisions contained in the agreements presently in force - i.e. Euro-Mediterranean Agreements for Morocco and Tunisia, and Co-operation Agreement for Algeria. Finally, under full cumulation, while the cumulation of materials require more than minimal operations, the cumulation of processing only applies if the product undergoes subsequent processing in either Parties to the Agreement.

RTAs	Type			Processing under cumulation	Absorption principle	Tracing test
	Bilateral	Diagonal	Full			
EC - Algeria Co-operation[20]	√	√ (Morocco, Tunisia)[21]	√	more than minimal for cumul. of materials; any for cumul. of processing (full)	No[19]	√
EC- Egypt Co-operation	√			more than minimal	No[19]	
EC- Jordan Co-operation	√			more than minimal	No[19]	
EC- Lebanon Co-operation	√			more than minimal	No[19]	
EC - OCTs	√	√ (ACP)[21]	√	any	√	√
EC- Syria Co-operation	√			more than minimal	No[19]	
EC - Mexico	√			more than minimal	√	
EC - South Africa	√	√ (ACP)	√[22]	more than minimal	√	√[22]
EFTA – Israel	√			more than minimal	√	
EFTA – Morocco	√	√ (Tunisia)[23]		more than minimal	√	
Estonia-Ukraine	√	√ (Lithuania, Latvia, EC)		more than minimal	√	
Canada – Chile	√[24]			any	√	
Mexico-Chile	√[24]			any	√	
NAFTA	√[24]			any	√ except for automotive	
Canada – Israel	√	√ (US)		any	√	
Mexico-Israel	√[24]			any	√	
United States-Israel	√[25]			more than minimal	√	
ANZCERTA	√		√	any	√[26]	√[26]
SPARTECA	√[27]		√	any	√[28]	√[28]
AFTA	√					√[29]

[21] Non-reciprocal diagonal cumulation – i.e. Algeria can cumulate with inputs from Morocco and Tunisia, PTOM can cumulate while with inputs from ACP, but such cumulation does not apply for products from the EC.

[22] Within SACU countries only.

[23] Cumulation with Tunisia will take place only once relevant Euro-Mediterranean Agreements will be concluded.

[24] If the producer/exporter make use of the bilateral cumulation, the domestic content of the good (i.e. the "regional value content") can only be calculated on the basis of the net cost method.

[25] Cumulation is allowed only up to a maximum of 15 per cent of the value of the final product.

[26] If the last process of manufacture (excluding minimal operations) is not performed in Australia or New Zealand, the absorption principle/tracing test does not apply and the input will be considered 100 per cent imported. Further, the tracing test calculated differently in Australia and New Zealand. Also,

[27] In the case of products from the South Pacific Islands being exported into New Zealand which cumulate with Australia's inputs, a minimum of 25 per cent of South Pacific Islands "qualifying expenditure" is necessary.

[28] In the case of imports into New Zealand, the absorption principle/tracing test do not apply for materials imported from Australia which are not of ANZCERTA origin; in that case, the input will be considered as imported.

RTAs	Type			Processing under cumulation	Absorption principle	Tracing test
	Bilateral	Diagonal	Full			
CACM	√				n.av.	
CARICOM	√			any	n.av.	
COMESA	√			any	√	
MERCOSUR	√			any	√ except for automotive	

E. Exceptions to the General Criteria of the Rules of Origin

RTAs	Criterion for exceptions			Sector-specific
	CTH	Percentage	Technical test	
EC - Cyprus Association		√ (MC-40%[30], VP)	√	
EC - Malta Association		√ (MC-40%[30], VP)	√	
EC - Morocco EuroMed.		√ (MC-40%[30], VP)	√	
EC - Tunisia EuroMed.		√ (MC-40%[30], VP)	√	
EC - Algeria Co-operation		√ (MC-40%[30], VP)	√	
EC- Egypt Co-operation		√ (MC-40%[30], VP)	√	
EC- Jordan Co-operation		√ (MC-40%[30], VP)	√	
EC- Lebanon Co-operation		√ (MC-40%[30], VP)	√	
EC - OCTs		√ (MC-40%[30], VP)	√	
EC- Syria Co-operation		√ (MC-40%[30], VP)	√	
EFTA – Israel		√ (MC-40%[30], VP)	√	
EFTA – Morocco		√ (MC-40%[30], VP)	√	
Estonia-Ukraine		√ (MC-40%[30], VP)	√	
Canada – Chile		√[31,32]		Yes (auto)
Mexico-Chile		√[32]		
NAFTA		√[31, 32]		Yes (auto)[33]
Canada – Israel			√	Yes (textiles, machinery & mechanical)
Mexico-Israel		√[32]		
SPARTECA		√ (DC, 45%)		Yes (textiles imported into NZ)

[29] In this case, the tracing test - which applies without full cumulation – may "compensate" the absence of the absorption principle.

[30] Various other percentages (mainly 50 per cent) appear at a lesser frequency.

[31] Higher regional content requirements for automotive goods on the net cost method - which is the only method accepted for such calculations on these goods (30 per cent - instead of 25 per cent - for Canada-Chile, and between 55 per cent and 62.5 per cent - instead of 50 per cent - for NAFTA).

[32] Under certain circumstances, only the net cost method can be used for calculating the regional content (e.g. use of cumulation provisions, sales to related persons, goods which are intermediate materials).

[33] Absorption rules do not apply to the sector concerned (automotive sector).

RTAs	Criterion for exceptions			Sector-specific
	CTH	Percentage	Technical test	
AFTA			√[34]	Yes (textiles)
CACM		√ (DC)		
CARICOM	n.av.			
COMESA		√ (DC, 25%)[35]		
MERCOSUR		√ (DC, 33%-60% for certain automotive)[36]	√	Yes (dairy, chemicals, steel, auto[33])

F. Drawback provisions

RTAs	Allow for drawback[37]	No-drawback		Drawback not mentioned
		Rule	Derogation[38]	
EC - Cyprus Association				√
EC - Malta Association				√
PANEURO (50)		√		
PE-, of which: PE- (11)[39] PE- (4)[40]		√ (11)	√ (6)[41]	√
EC - Morocco EuroMed.				√
EC - Tunisia EuroMed.				√
EC - Algeria Co-operation				√
EC- Egypt Co-operation				√
EC- Jordan Co-operation				√
EC- Lebanon Co-operation				√
EC - OCTs				√
EC- Syria Co-operation				√
EC - Mexico		√	2 years	
EC - South Africa				√
EFTA – Israel				√

[34] These are alternative rules to the general rules, which can still be used for textiles.

[35] That lower threshold (25 per cent instead of usual 35 per cent) applies to "goods of particular importance to the economic development" of COMESA member States. These goods are included in a list agreed by the COMESA Council of the Common Market.

[36] Lower regional content requirements apply for automotive products from Uruguay and new models produced in Argentina, Brazil and Uruguay.

[37] Either explicitly mentioned in the Agreement or as a general practice of the countries involved.

[38] Time-period from the entry into force of the agreement.

[39] EC-Faroe Islands, EC-Palestinian Authority, EC-Israel, Czech Rep.-Israel, Slovak Rep.-Israel, Turkey-Israel, Slovenia-Israel, EFTA-Palestinian Authority, EFTA-FYROM, Bulgaria-FYROM, Turkey-FYROM.

[40] Hungary-Israel, Poland-Israel, Slovenia-Croatia, Slovenia-FYROM.

[41] EC-Palestinian Authority (2 years), EFTA-Palestinian Authority ($2^{1/2}$ years), EFTA-FYROM (3 years), Bulgaria-FYROM (1 year), Turkey-FYROM (3 months), Israel-Slovenia (2 years).

RTAs	Allow for drawback[37]	No-drawback		Drawback not mentioned
		Rule	Derogation[38]	
EFTA – Morocco				√
Estonia-Ukraine				√
Canada – Chile	√			
Mexico-Chile	√			√
NAFTA[42]		√	2 y. (Canada, US), 7 y. (Mex.)	
Canada – Israel	√			√
Mexico-Israel	√			√
United States-Israel	√			
ANZCERTA	√			
SPARTECA	√			
AFTA	√			
CACM	√			
CARICOM	√[43]			
COMESA	√[44]			
MERCOSUR	√	√[45]		

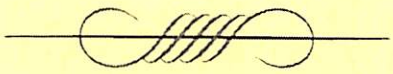
[42] The drawback and duty deferral programs on products imported, processed and then exported into another NAFTA Party have been replaced with a new system that provides for the refund of the lesser of the amount of duties paid on imported goods and the amount of duties paid on exports of that good, or another good manufactured from that good, to another NAFTA Party. This new system is being applied to Canada-US trade since 1.1.96, and to Canada-Mexico and Mexico-US trade since 1.1 01. Few exceptions to that apply.

[43] A CARICOM member State may refuse to accept as eligible for preferential treatment goods in relation to which drawback is claimed.

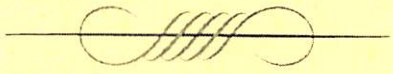
[44] At the end of the ten year transition period (i.e. end 2004), COMESA member States may refuse to accept as eligible for preferential treatment goods in relation to which drawback is claimed.

[45] The "no-drawback" rule applies only to imports of automotive products by Argentina and Brazil if the final product is exported to one of the MERCOSUR Parties.

DOCUMENT V



THE CHANGING LANDSCAPE OF RTAS



WORLD TRADE ORGANIZATION
ORGANISATION MONDIALE DU COMMERCE
ORGANIZACIÓN MUNDIAL DEL COMERCIO

DOHA DEVELOPMENT AGENDA
WTO OMC

THE CHANGING LANDSCAPE OF RTAS

Regional Trade Agreements Section
Trade Policies Review Division
WTO Secretariat

prepared for the

SEMINAR ON
REGIONAL TRADE AGREEMENTS AND THE WTO
WTO Secretariat, Geneva, 14 November 2003

A. INTRODUCTORY REMARKS[1]

1. The drive towards the conclusion of regional trade agreements (RTAs) which gathered pace in the 1990s continues unabated. As of October 2003, all 146 WTO Members, with the exception of Mongolia, currently participate in or are actively negotiating RTAs. The period following the launch of the Doha Development Agenda (DDA) in November 2001 has been one of the most prolific in terms of notifications of RTAs: during this two year period a total of 33 RTAs have been notified to the WTO, of which 21 cover trade in goods, and 12 cover trade in services. In 2003 alone, 12 RTAs have been signed, negotiations have started on 9 new RTAs, and 13 have been proposed.[2]

2. Over the past five years many WTO Members traditionally favouring MFN liberalization – among them Australia; New Zealand; Japan; Singapore; Korea; Hong Kong, China; China; and Chinese Taipei – have added the regional card to their trade policy repertoire and appear to be making up for lost time by energetically seeking RTA partners. While the greatest concentration of RTAs is in the Euro Mediterranean region where over 100 RTAs are currently in force, the main focus of RTA activity has shifted away from Europe towards Asia-Pacific, where APEC countries, in particular, are engaged in negotiating RTAs either between themselves or with other cross-regional partners. Increasingly, the conclusion of RTAs is connected to countries' broader policy aims, and include political and security considerations as well as economics.

3. The objective of this paper is to picture the evolving landscape of RTAs as of October 2003 and to provide a brief update on recent developments, trends and directions. Four broad themes are explored: RTAs' kaleidoscope looks at main trends and characteristics of RTAs, both in force, under negotiation and at the proposal stage; motivations and outcome explores some of the underlying reasons why countries engage in RTAs, together with their effects on third parties and the multilateral system as a whole; a third section looks at the increasingly complex mechanisms created by RTAs, in particular with regard to rules of origin and bilateral relations and attempts to describe how RTAs can best be synthesised with the multilateral trading system; lastly, there is a brief description of RTAs within the WTO context with the status of ongoing negotiations on RTAs' rules.

4. Unless otherwise stated, the statistics offered in this paper take account of all bilateral, regional, and plurilateral trade agreements of a preferential reciprocal nature, and include RTAs which have been notified to the GATT/WTO as well as those which have not (or not yet) been notified, without any distinction. The primary focus is on free-trade areas (FTAs) and customs unions (CUs) in the area of goods and economic integration agreements (EIAs) in the area of services; details on partial scope arrangements have been included, where possible.

B. RTAS' KALEIDOSCOPE

5. Before moving on to the typology of RTAs and a regional breakdown of RTA activity, a word of caution in interpreting the figures. While we focus on the presentation of numbers of RTAs, in force, signed, under negotiation etc., it is important not to lose sight of the fact that it is not necessarily the number of RTAs in which a country participates that is of global significance, but the proportion of world trade that such RTAs cover. For example, while the United States participates in only three of the some 180 FTAs notified to the WTO as of October 2003, the size and importance of the U.S. economy mean that these FTAs account for a significant share of world trade: in 2002, intra-

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[1] This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO Agreement.

[2] The information gathered in this study is based on notifications to the WTO, reports on the operation of agreements and standard formats on information of RTAs submitted to the CRTA, WTO accession documents, Trade Policy Reports, and other public sources such as press clippings, web sites, and publications of other organizations. In this sense the information may not be exhaustive since while it is possible to account accurately for all notified RTAs, this is not the case for the non-notified RTAs, agreements under negotiation and those being proposed where the information is often scarce or vague.

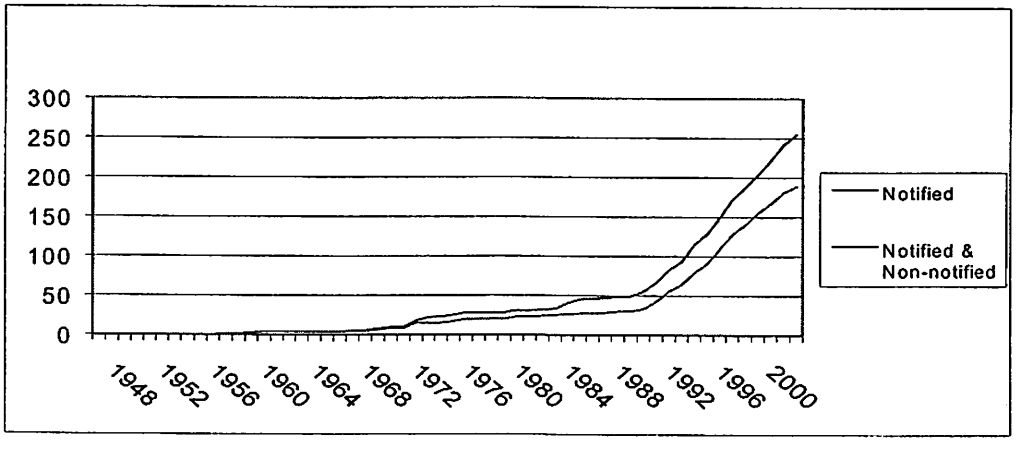
NAFTA merchandise imports accounted for 9% of world imports, while intra-NAFTA merchandise exports accounted for 10% of world exports.

(i) Main trends and characteristics

6. In late 2003 three trends are apparent: first, countries traditionally reliant on multilateral liberalization, the "late-comers" to Article XXIV, are increasingly turning to RTAs; second, those countries which have been engaged in RTAs for some time are increasingly looking further afield and seeking cross-regional or cross-continental partners; third, mega-blocks such as the FTAA or the Euro-Mediterranean FTA, which link large numbers of countries in a continent-wide grouping, are under negotiation.

7. Compared to previous decades, the proliferation of RTAs during the last ten years has taken place at an unprecedented rate. As of October 2003, 285 RTAs have been notified to the GATT/WTO: of these, 189 are currently in force and a further 60 are estimated to be operational, although not yet notified.[3] Of the 124 RTAs notified during the GATT years, only 48 remain today in force, reflecting in most cases the evolution over time of the agreements themselves, as they were superseded by more modern ones between the same signatories (usually going deeper in integration), or by their consolidation into wider groupings. Since 1 January 1995 alone, 149 new RTAs have been notified to the WTO, with an average of 15 notifications every year, compared with an annual average of less than three during the four and half decades of the GATT (see **Chart 1**).[4] In part, the increase in notifications is a reflection of increased WTO membership and new notification obligations.[5] But, this apart, it is obvious that the rate of growth of RTAs is continuing unabated.

Chart 1 - RTAs notified to the GATT/WTO (1948-2003) and non-notified RTAs, cumulative, in force



8. Of the 215 RTAs[6] which are currently in force,[7] 152 are intended to be free trade areas and 14 are, or have the goal of becoming, customs unions. The remaining 49 are partial scope agreements. If

[3] Notifications of RTAs to the GATT/WTO include those made under GATT Article XXIV, GATS Article V, and the Enabling Clause, including accessions to existing RTAs.

[4] Included in this number are notifications 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; see http://www.wto.org/english/tratop_e/region_e/region_e.htm for a complete list of RTAs notified to the GATT/WTO and in force.

[5] Since the establishment of the WTO, Members are required to notify EIAs in services.

[6] This number does not take into account the 9 accessions to existing RTAs, nor does it count the 27 notified EIAs, extending the scope of previously notified goods agreements to trade in services.

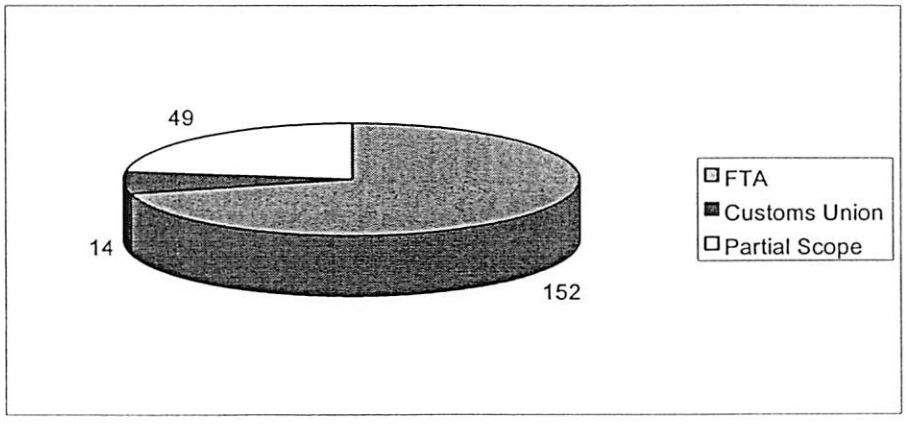
[7] By "proposed" it is meant an interest or commitment to enter negotiations on a given RTA which is supported by an official declaration and does not include the many "talks" on possible RTAs.

the 60 RTAs currently under negotiation and the 30 in a proposal stage are concluded, by 2007 the number of RTAs in force will have surpassed 300. [8]

9. Regional trade agreements differ considerably in scope, varying from the exchange of preferences on a limited range of products between two or more countries, to include various trade-related provisions going beyond traditional tariff reduction or elimination. For the most part, partial scope agreements concern RTAs concluded among developing countries. RTAs among developed countries tend to be more far-reaching reflecting, among other developments, decreasing tariff levels in OECD countries for most non-agricultural goods. The new generation of RTAs tend to go far beyond traditional tariff-cutting exercises and often include rules on investment, competition, environment and labour which are beyond the scope of existing multilateral rules. In these and other ways, many of the new RTAs are anticipating the evolution of the GATT/WTO system.

10. **Chart 3** shows a typology of RTAs in force as of October 2003. The most common category is the free trade agreement (FTA) which accounts for 70 per cent of all RTAs. Partial scope agreements and customs union agreements account for 23 and 7 per cent, respectively. Twenty-seven of the RTAs identified (25 FTAs and 2 customs unions), or roughly 10 per cent, contain commitments on trade in services and goods.

Chart 3 – RTAs in force, as of October 2003, by type of agreement



The trend towards the conclusion of FTAs, which require a lesser degree of policy coordination among the parties and are faster to conclude, has intensified in recent years. In an FTA each party maintains its own trade policy *vis-à-vis* third parties. Customs unions, which provide for the establishment of a common external tariff and harmonization of trade policy, take a long time to negotiate and have (often) long implementation phases.

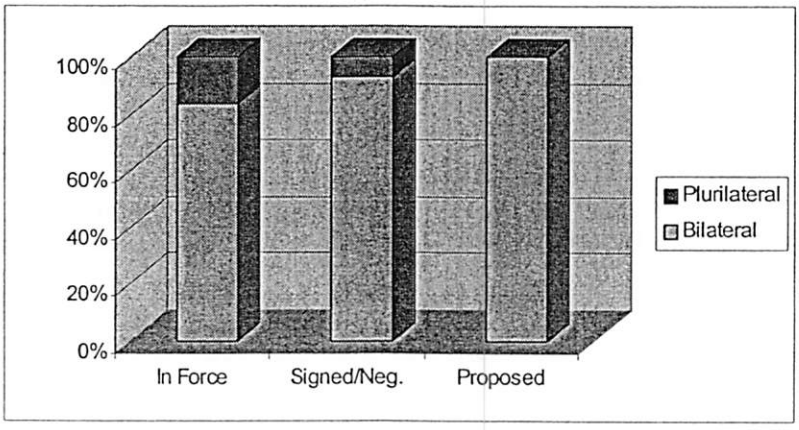
11. The configuration of RTAs is diverse and becoming more complex with overlapping RTAs and networks of RTAs spanning within and across continents at the regional and sub-regional levels.[9] The simplest configuration is a bilateral agreement formed between two parties. These account for

[8] Not every RTA under negotiation will automatically increase the number of RTAs in force, given the fact 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 where the accession of 10 new countries will repeal approximately 60 existing RTAs, the same pattern could also be observed in Latin America where FTAs currently under negotiation should replace and consolidate a myriad of bilateral partial scope agreements. The reduction in the number of RTAs due to consolidation does not, however, necessarily correlate to a reduction in the volume of preferential trade.

[9] RTAs are increasingly concluded among geographically non-contiguous countries. The term "regional" may be a convenient short-cut, but can be seen as an incongruity to describe the plethora of cross-regional preferential agreements linking countries around the globe.

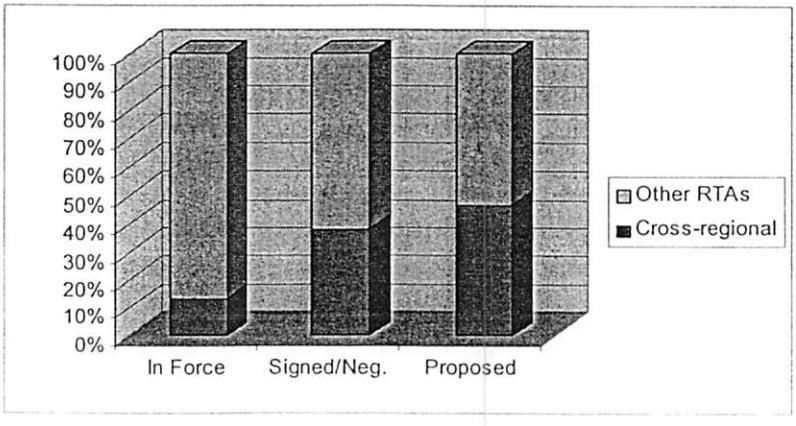
roughly 80 per cent of all RTAs in force and for almost 90 per cent of those under negotiation.[10] More complex are plurilateral RTAs and those agreements in which one of the parties is an RTA itself; the latter account for approximately 20 per cent of the RTAs currently in force (see **Chart 4**). The most noteworthy development expected in the next five years, which reflects the growing consolidation of established trading relationships, is the emergence of a new category of agreement, namely RTAs where each party is a distinct RTA itself.[11] The fact that several such RTAs have been under negotiation for some time, but that none, thus far, has been concluded suggests that such RTAs are complex to negotiate.

Chart 4 – RTAs' configuration, as of October 2003



12. Traditionally, RTA formation occurred between so-called "natural" trading partners, geographically contiguous countries with already well-established trading patterns. Australia and New Zealand, the NAFTA countries, the EC, EFTA, and CEFTA provide good examples. Indeed, most countries sign their first RTA with one or several neighbouring or regional partners. South-east Asian countries' participation in ASEAN, sub-Saharan African groupings such as CEMAC or SACU, or the Western Hemisphere groupings of CARICOM, the CACM and MERCOSUR are all prime examples. However, once a country has exhausted its strictly regional prospects, it may begin to look further afield for preferential partners. The EC and EFTA are leading this trend, with countries in North and Latin America increasingly following suit.[12] Similar agreements are in the pipeline for a number of countries (see **Chart 5**).

Chart 5 – Cross-Regional RTAs, as a percentage of total RTAs as of October 2003



[10] Bilateral agreements may include more than two countries when one of them is an RTA itself (e.g. EC (15) – Turkey (1) is an RTA comprising 16 countries). A plurilateral agreement refers to an RTA in which the constituent parties exceed two countries (e.g., EFTA, CAN, MERCOSUR, etc.).

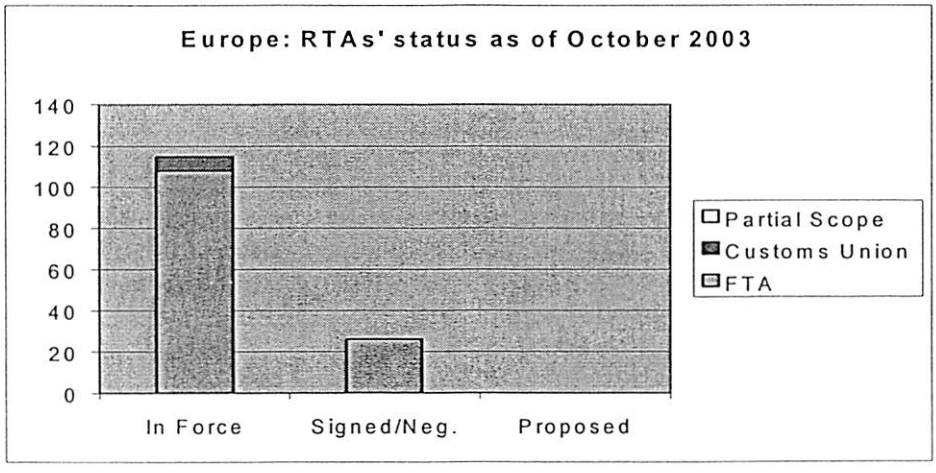
[11] Examples include EC-MERCOSUR, CARICOM-CACM, SACU-SADC, to mention some.

[12] One example is Mexico: being part of NAFTA, it has recently concluded an RTA with the EC.

13. Of the 146 WTO Members, 65 are currently engaged in, or are negotiating RTAs with cross-regional partners. **Map 1** shows all cross-regional RTAs which are in force since 2001, together with those under negotiation.

(ii) Regional and cross-regional developments

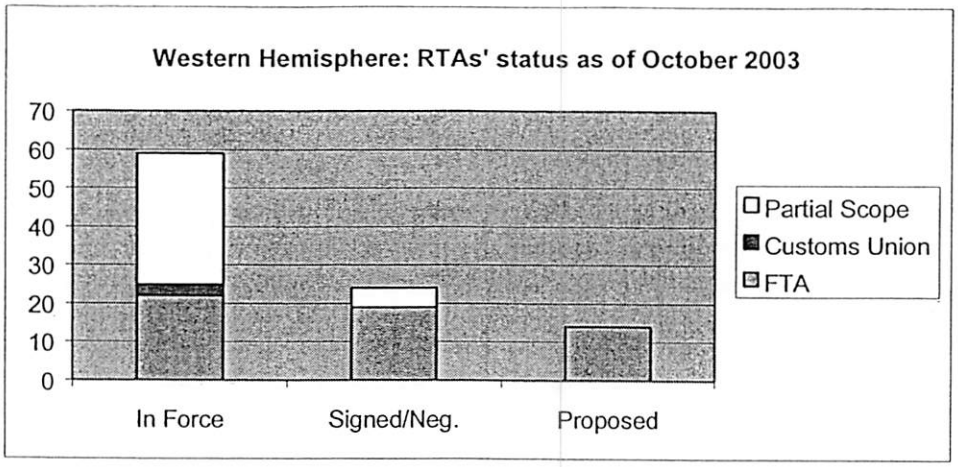
14. The greatest concentration of RTAs is in **Europe** where over 100 RTAs are in force.[13] The EC and EFTA are the main continental hubs sharing similar networks of RTAs. The central European countries, the Baltic states and Turkey have concluded or are negotiating similar agreements as part of their integration with the EC. The EC has indicated that it will not negotiate any more RTAs during the Doha Round and, with the exception of the ongoing negotiations with the ACP countries described below, has currently no definitive proposals for new RTAs (See Chart below). Two major developments are expected in the next few years with regard to the EC's RTAs. The first relates to the enlargement to EC(25) scheduled for May 2004 which, in addition to adding ten new members to the EC, will result in a consolidation of over 60 RTAs which will cease to exist once the acceding members become party to the EC's existing RTA network.



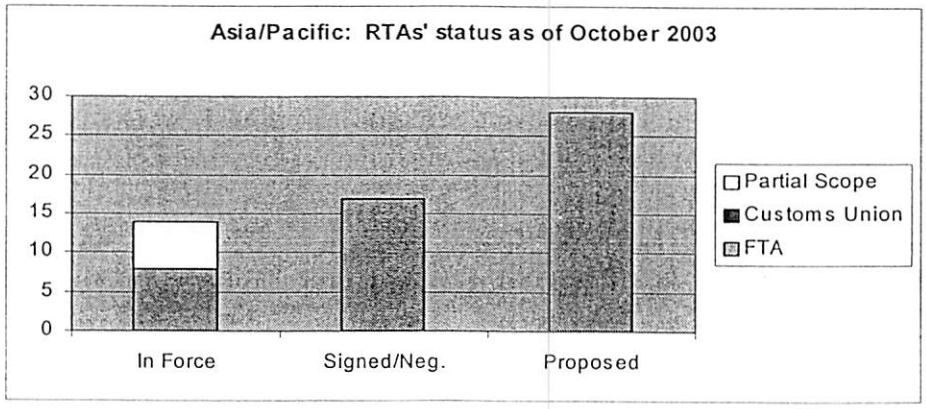
15. **Map 2** shows the network of RTAs expected to be in force for EC(25). The other significant development for the EC is the negotiation of the reciprocal Economic Partnership Agreements (EPAs) to replace the existing Cotonou Agreement. Negotiations between the EC and the 77 ACP countries began in September 2002 and are scheduled for completion by 2008. Other intense RTA activity in Europe centres on the Stability Pact countries which have established a network of around 30 bilateral RTAs with the longer term intention of creating a free-trade area between them.

16. In the **Western Hemisphere** the process of regional integration has been intensifying rapidly in recent years with networks of bilateral and plurilateral RTAs being established both at the regional and sub-regional level. The goal of this process of integration is the establishment of a continental-wide Free Trade Area of the Americas (FTAA), encompassing 34 countries by January 2005. One of the other most significant developments in this region is the shift in the United States' stance towards RTAs; it is currently pursing an active RTA agenda, both regionally and further afield, thus catching up with countries such as Canada, Chile and Mexico. The United States is currently party to three RTAs and has a further 14 under negotiation or discussion. At the plurilateral level, MERCOSUR is engaged in trade negotiations with neighbouring countries as well as with the EC.

[13] A substantial number of these RTAs are cross-regional involving mainly countries from North Africa and the Middle East as part of the Barcelona process which aims at establishing a Euro-Mediterranean free-trade area by 2010.



17. **Asia-Pacific** is the region where the shift towards bilateral and regional trade initiatives has been most marked. This is particularly the case with the countries of East and South East Asia, which although traditionally favouring trade liberalization under a multilateral framework, have recently become increasingly linked through bilateral RTAs both in the region and further afield. Singapore has been leading the way. However countries such as China; Hong Kong, China; Japan; Korea; and Thailand are also succumbing to the lure of preferential trade liberalization. At the plurilateral level, the only working initiative aimed at preferential trade liberalization is the Association of South East Asian Nations (ASEAN).[14] While deepening intra-trade integration, ASEAN members are also looking at forging RTAs with other regional partners, such as China, CER members (Australia and New Zealand), India, Japan and Korea. Concrete steps in this direction have already been taken with the signing of a framework agreement with China in November 2002 which commits the two sides to begin negotiations in 2003 to create what would become one of the world's largest FTAs. A similar framework agreement was signed with India in October 2003.

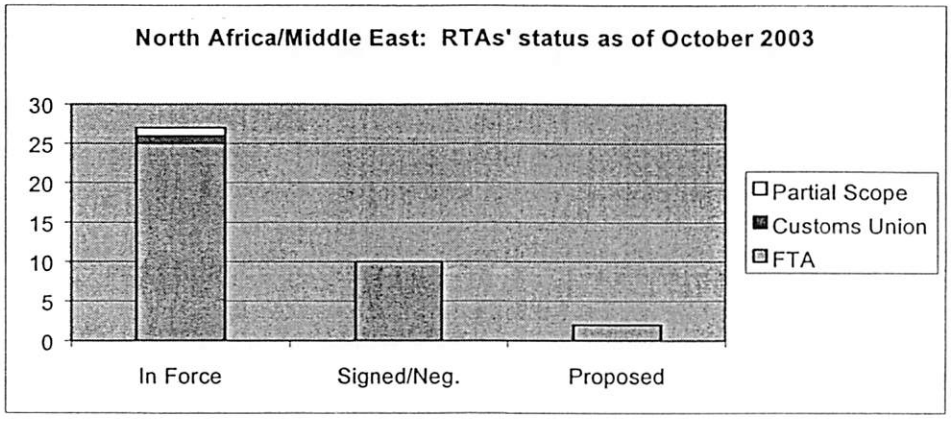


18. The 21 members of APEC, which span the Asia-Pacific region have been among the most active in concluding and negotiating RTAs in recent years. **Map 3** shows the RTAs currently in force for each APEC member, together with those being negotiated or proposed. Trade liberalization moves within the APEC framework was traditionally anchored on the principle of "open regionalism" whereby tariff reductions applied to both APEC members and non-APEC members on a non-discriminatory basis. However, in October 2003, APEC Leaders agreed to advance free trade in a coordinated manner within multilateral, regional and bilateral frameworks, to make them complementary and mutually reinforcing. This appears to be tacit recognition of the difficulty in

[14] Brunei Darussalam (1987), Cambodia (1999), Indonesia, Laos (1997), Malaysia, Myanmar (1997), The Philippines, Singapore, Thailand, Vietnam (1995)

adhering to the principle of open regionalism in the face of the current trend among APEC members towards the negotiation of bilateral trade agreements.

19. In **North Africa** and the **Middle East**, Algeria, Tunisia, Morocco, Egypt, Israel, Jordan, Lebanon, the Palestinian Authority, and Syria are strengthening their ties with the EC through the negotiation of second-generation bilateral RTAs based on reciprocal exchange of preferences as part of the "Euro-Mediterranean Partnership" which is aimed at establishing a free-trade area by 2010. Similar agreements have been concluded or are being negotiated between these countries and the EFTA States. Together, these agreements account for the majority of the RTAs in force or under negotiation in the region.



At the same time, the countries of North Africa are participating in various other regional trade initiatives both in Africa and the Middle East, such as the recent effort launched by the Arab League to establish an Arab Free Trade Area by 2007.[15] For their part, Gulf Cooperation Council (GCC) countries have made progress towards the establishment of the customs union, and are continuing discussions with the EC on the negotiation of an RTA.

20. In **Sub-Sahara Africa**, regional initiatives such as WAEMU,[16] CEMAC,[17] COMESA[18] and the SADC[19] aim to establish free-trade areas or customs unions. Overall the regional integration process is gaining depth, although progress is uneven and far from certain due to implementation problems arising from the complex web of overlapping RTA membership. South Africa has been active at the cross-regional level, with the conclusion of an FTA with the EC, and is exploring the possibility of similar RTAs with other countries. Africa-wide integration initiatives remain in place with the African Economic Community (AEC)[20], aiming to establish an African Economic and Monetary Union by 2028. Countries participating in overlapping RTAs are likely to come under increasing pressure to consolidate their membership through the EPAs currently under negotiation between the EC and the ACP countries. One of the major objectives of this new strategy is to foster

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[15] Gulf Cooperation Council members (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates) plus Jordan, Tunisia, Egypt, Sudan, Syria, Somalia, Iraq, Palestine, Lebanon, Libya, Morocco, Yemen.

[16] West African Economic and Monetary Union: Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, Togo

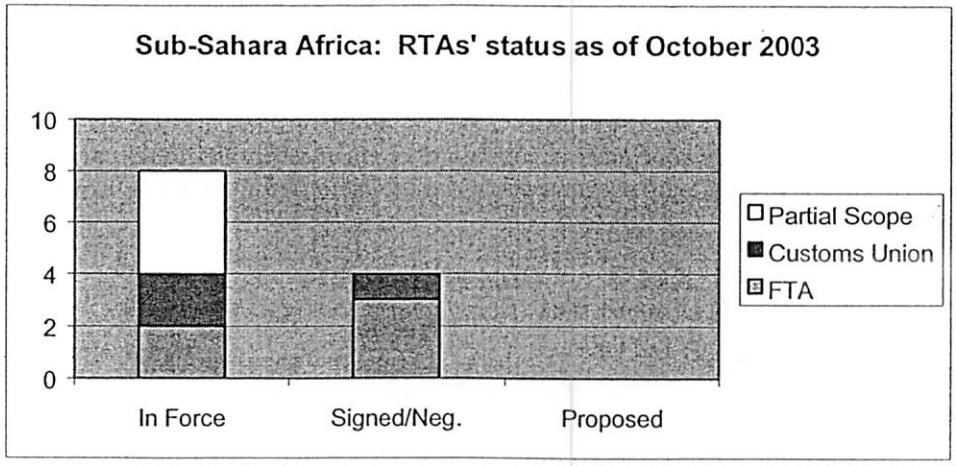
[17] Central African Economic and Monetary Community: Cameroon, Central African Republic, Congo, Equatorial Guinea, Gabon, Chad

[18] 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 and Zimbabwe.

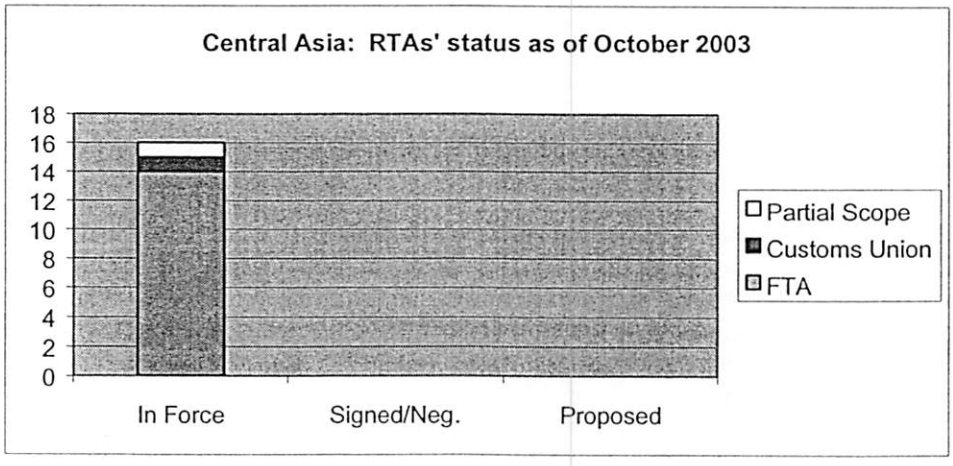
[19] South African Development Community

[20] SADC, COMESA, ECOWAS, CEEAC and the Arab Maghreb Union, have been designated as pillars of the AEC.

regional integration among the ACP countries by establishing EPAs with groupings already engaged in a regional integration process.



21. In **Central Asia**, the regional structures pertaining to the Soviet era have been replaced by RTAs among the countries of the former USSR, as well as with their neighbours. In addition to the CIS free trade agreement and a customs union agreement (between the Kyrgyz Republic, the Russian Federation, Belarus, Kazakhstan and Tajikistan), a large number of bilateral agreements have been concluded.[21] By 2007 some consolidation of the current bilateral RTAs is expected.



C. MOTIVATIONS AND OUTCOME

22. The formation of RTAs is driven by a variety of factors which include economic, political and security considerations. As noted in the 2003 World Trade Report[22], the conclusion of RTAs may be driven by the search for access to larger markets, which might be easier to engineer at the regional or bilateral level, particularly in the absence of a willingness among WTO Members to liberalize further on a multilateral basis. In this sense the setback of negotiations at Cancun apparently precipitated the forging of more regional partnerships; some countries argue that their participation in RTAs provides a competitive spur to liberalization at the multilateral level by promoting trade liberalization on multiple fronts, while others may increasingly be drawn into RTAs for defensive reasons, as a means of maintaining market access opportunities in the absence of MFN-driven liberalization.

[21] Details on RTAs under discussion or negotiation in this region were not available.
[22] World Trade Report, WTO (2003)

23. RTAs can also be used by some countries as a vehicle for promoting deeper integration of their economies than is presently available through the WTO, particularly for issues which are not fully dealt with multilaterally, such as investment, competition, trade in services, environment and labour standards. Particularly as regards trade in services, preferential access may confer long term advantages in a market and may enable a supplier to steal an irreversible march on the competition. Discriminatory liberalization might also be attractive for countries which seek to reap gains from trade in product areas where they cannot compete internationally. Smaller countries particularly would see RTAs as a defensive necessity, while even larger economies may turn to RTAs to avoid being left out in the cold. Membership in RTAs can provide a means of securing foreign direct investment, particularly for a country with low labour costs which has preferential access to a larger, more developed market. The case of Mexico's FDI inflows in the wake of its membership in the NAFTA is a case in point. Developing countries, in particular, might be willing to forego the benefits conferred by GSP programmes and instead commit themselves to signing reciprocal RTAs with developed countries in order to secure access to their markets; such a strategy is usually deemed to have strong signalling effects and act as a pull for foreign investment. Thus, RTAs may perform a sort of dual locking function, locking out competition and locking in investment.

24. Political considerations are also reported to be key to the decision to foster regional trading arrangements. Governments seek to consolidate peace and increase regional security with their RTA partners, or to increase their bargaining power in multilateral negotiations by securing commitment first on a regional basis, or as a means to demonstrate good governance and to prevent backsliding on political and economic reforms. They may also be used by larger countries to forge new geopolitical alliances and cement diplomatic ties, thus ensuring or rewarding political support by providing increased discriminatory access to a larger market. Increasingly, the choice of RTA partners appears to be based on political and security concerns, thus potentially undermining or diluting the economic rationale which might be used in support of participation in RTAs.

25. The effects of RTAs on the parties and on the multilateral trading system as a whole are manifold. Advocates of RTAs cite the gains to be had from economies of scale, competition and the attraction of foreign direct investment. Although liberalization through RTAs is generally held to be a second-best option, it may be the only option if there is resistance to liberalization at the multilateral level. RTAs can be laboratories for change and innovation and may provide guidance for the adoption of new trade disciplines at the multilateral level. Some would argue that the negotiation of multiple agreements provides countries with valuable negotiating skills.

26. However, there is ample evidence to suggest that the negotiation and administration of multiple agreements strains the institutional capacity of even the largest countries and may dampen enthusiasm for liberalization at the multilateral level. RTAs create vested interests determined to avoid the dilution of preferential margins, while labyrinthine rules of origin make international trade more costly and complex. Moreover, RTAs may pose a threat to a balanced development of world trade through increased trade and investment diversion, particularly if liberalization on a preferential basis is not accompanied by concurrent MFN liberalization. Finally, the weakest countries may find themselves marginalized.

D. AN INCREASINGLY COMPLEX WORLD

(i) Rules of Origin

27. Rules of origin (ROOs) are an inherent feature of FTAs (where each country maintains its own tariff structure *vis-à-vis* third parties) as a means of determining whether goods are eligible for preferential treatment in the importing country and to prevent "trade deflection", i.e. the transhipment of products from non-parties to an RTA through a low-tariff RTA-party to one which maintains higher tariffs. ROOs are also frequently used in customs unions, particularly as a transitional measure.

28. With the exception of the pan-European system of cumulation of origin which harmonizes the rules of origin of some 30 RTAs signed by the EC, EFTA, the countries of Central Europe and the Baltic states, most other FTAs in force have their own distinct origin regime. The complexity of these regimes vary: some are based on a general rule applicable across the board for all tariff items; others contain multiple rules depending on the product in question. Often rules of origin fall into distinct families or groups, though each has its own idiosyncrasies. A country's membership in different RTAs each with its own set of rules of origin may require exporters to tailor their products in accordance with a daunting array of product-specific criteria in order to qualify for preferential treatment in different markets. Studies have shown that exporters may choose to forgo the preferential rates offered under an RTA, if the margin of preference is not large enough to offset the administrative burden of complying with the rules.[23] This may have particular resonance in RTAs concluded between developed and developing countries, or between low and high tariff countries. Although the exporter facing the low MFN tariff may forego preferential treatment, the exporter exporting to the market where higher MFN tariffs exist has a greater incentive to comply with origin rules to secure the higher preference margin.

29. A recent study "Rules of Origin: A World Map" gives an indication of the type, effects and relative complexity of ROOs regimes used in RTAs around the world.[24] The restrictiveness of product-specific ROOs used in various rules of origin regimes are measured using an indicator of how demanding rules of origin can be for exporters. The authors find that, in general, ROOs in preferential regimes tend to be more restrictive than non-preferential rules; rules for agricultural products and textiles tend to be more restrictive than for other sectors, which may reflect the sensitivity of these sectors. The authors argue that the harmonization of preferential ROOs regimes could enable the convergence towards a single global preferential ROOs regime, thus considerably simplifying the complex web of rules in operation today.

(ii) Bilateral Preferential Relationships

30. As noted above, the current trend towards the conclusion of bilateral FTAs, rather than customs unions, has led to an ever-increasing number of criss-crossing and overlapping FTAs, each with its own tariff liberalization schedules and distinct rules of origin regime. If the parties to an RTA adopt a "big bang" approach and liberalize all tariffs on all products on the date of entry into force of an agreement, there would be no need to negotiate tariff liberalization schedules. However, this is rarely the case. In general, RTAs contain a timetable for the progressive reduction of duties on a bilateral basis. Tariff liberalization schedules may be asymmetric, allowing one country a longer transition period to implement tariff reductions; most countries negotiate longer implementation periods or exclusions for their most sensitive products.

31. The number of tariff liberalization schedules negotiated and administered within a given RTA depends on the number of signatories. While the parties to a bilateral RTA each negotiate a liberalization schedule, the number of schedules or bilateral preferential relationships has the potential to increase dramatically when three or more countries are involved in a single RTA. For example, the NAFTA which has three parties gives rise to six bilateral preferential relationships, while the CEFTA which has 8 parties gives rise to 56.[25] While it is possible that each party in a plurilateral RTA grants harmonized tariff treatment on imports of all goods from all its plurilateral partners, this is not often the case, at least during the transitional period. [26]

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[23] See Danielle Goldfarb, "The Road to a Canada-U.S. Customs Union", C.D. Howe Institute, No. 184, June 2003, pp. 7-13, available at http://www.cdhowe.org.

[24] Estevadeordal Antoni, and Kati Suominen, "Rules of Origin: A World Map", Preliminary Draft, April 2003

[25] Potential bilateral relationships are calculated as follows: p * (p-1), where p is the number of parties in the RTA.

[26] Due to the fact that within a plurilateral RTA each party may have a different schedule for the progressive liberalisation of imports from each trading partner. Separate schedules are often maintained if each

32. A survey of the 215 RTAs covering trade in goods and services in force in October 2003 shows that such RTAs give rise to some 2317 bilateral preferential relationships.[27] This indicates the potential complexity inherent in a criss-crossing web of preferential agreements and the magnitude of the resources required to negotiate and administer the preferential relationships that arise from them.

(iii) Synthesizing RTAs with the Multilateral System

33. The economic impact of an RTA depends on its particular architecture, the trading impact of the parties involved, and the degree of liberalization undertaken, particularly with regard to sensitive sectors. It is notoriously difficult to assess the trade creation and diversion effects for a single RTA (and over 200 are in effect today); the empirical evidence on the subject remains ambiguous. Given the wide variety of motives that induce countries to pursue the regional path, RTAs are likely to remain popular no matter how well the multilateral system functions. The most important challenge is to seek ways to maximize their compatibility with the WTO while minimizing their negative effects.

34. The adoption of certain principles in RTAs could help to consolidate and build upon the benefits of preferential trade agreements and promote a more effective multilateral system. The first would be for countries to engage only in regional commitments which they would be willing, sooner or later, to extend to the multilateral setting. Countries could signal their willingness to do so by concurrently lowering MFN tariffs alongside preferential tariffs, thus reducing the likelihood of trade and investment diversion. An even bolder move would be to move towards the across-the-board elimination of duties on industrial products at an MFN level. Not only would this stimulate competition, it would also eliminate the need for preferential rules of origin in these products. Second, countries could promote the principle of transparency by ensuring that comprehensive information on tariffs, regulations, and rules of origin of their RTAs is publicly and easily available and that all such RTAs are notified to the WTO in a timely fashion. Third, by agreeing to a consultative system to map and monitor RTAs and by redefining, where necessary, the rules applicable to RTAs, a more effective link might be forged between regionalism and multilateralism.

E. RTAS AND THE WTO

35. The WTO rules on RTAs date back to GATT 1947. Article XXIV of GATT, complemented by its Understanding negotiated during the Uruguay Round, provide the legal foundation for RTAs in the area of trade in goods. The Enabling Clause adopted in 1979 provides for the mutual reduction of tariffs on trade in goods among developing countries. Rules covering trade in services in RTAs, negotiated during the Uruguay Round, are set out in Article V of the GATS.

36. Meeting at the Fourth Ministerial Conference in Doha, WTO Members recognized that RTAs can play an important role in promoting trade liberalization and in fostering economic development, and stressed the need for a harmonious relationship between the multilateral and regional processes. On this basis, Ministers agreed to launch negotiations aimed at clarifying and improving the disciplines and procedures under the existing WTO provisions applying to RTAs, by taking due account of the developmental aspects of these agreements. WTO rules on RTAs, long the subject of differing interpretations among WTO Members, are currently subject to review.

37. There is an urgent need to conduct such negotiations. Existing WTO rules on RTAs have proved throughout the years to be ill-equipped to deal with the realities of RTAs.[28] In practice, the

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importing party maintains exclusions for sensitive products by partner, or treats certain goods differently, which is frequently the case for agricultural products.

[27] The following RTAs were not included in the calculation: LAIA, EC-OCTs, PTN, GSTP and the Arab Free Trade Area.

[28] The rules, which require RTAs to be transparent and to provide for deep internal trade liberalization and neutrality *vis-à-vis* non-parties trade, have been subject to diverging interpretations for nearly half a century,

task of verifying the WTO compliance of RTAs notified under GATT Article XXIV and GATS Article V is entrusted to the Committee on Regional Trade Agreements (CRTA).[29] This body, however, has enjoyed little success so far in assessing the consistency of the more than 180 RTAs notified to the WTO, due to various political and legal difficulties, most of which were inherited from the GATT years. One problem derives from the possible links between any CRTA consistency judgement and the dispute settlement process. Also, there are long-standing controversies about the interpretation of the WTO provisions against which RTAs are assessed, and institutional problems arising from either the absence of WTO rules (e.g., on preferential rules of origin), or from troublesome discrepancies between existing WTO rules and those contained in some existing RTAs. The CRTA has also been unable to carry out effectively its functions of review and oversight of the implementation of RTAs.

38. The current negotiations on RTAs have been conducted on two tracks. First priority has been given to transparency issues which are, by nature, less contentious than the systemic issues. Discussions have been fruitful and although no "early harvest" on transparency issues was achieved in time for the Cancun Ministerial, negotiations for a (provisional) application of renewed RTAs' surveillance mechanisms are considerably advanced. Such mechanisms would lend more precision to the notification procedures applied to RTAs and might involve an enhanced role for the Secretariat in elaborating a factual presentation on each RTA notified by WTO Members.

39. Informal discussions on RTA systemic issues began in late June, following submission of specific proposals by several delegations. The scope of issues under consideration is wide; the fact that clarifying or improving WTO rules on RTAs relates to several other regulatory areas under negotiation adds to the complexity. Nonetheless, it is hoped that WTO Members will be able to address these issues and lay the foundation for the redefinition of a more sustainable relationship between RTAs and the multilateral trading system.

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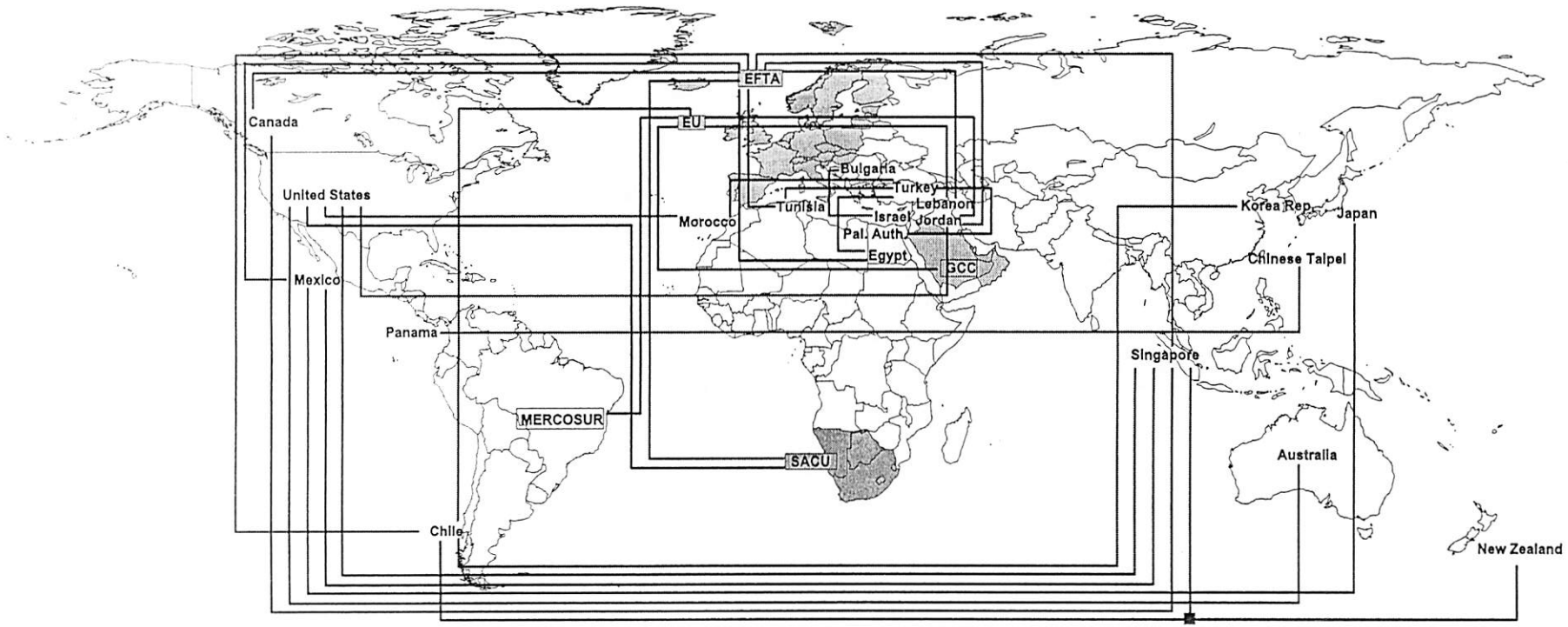
and opened the door to a situation of great ambiguity with respect to the relationship between RTAs and the multilateral trading system.

[29] The CRTA was established in 1996, in particular (a) to oversee, under a single framework, all regional trade agreements, and (b) to consider the implications of such agreements and regional initiatives for the multilateral trading system and the relationship between them.

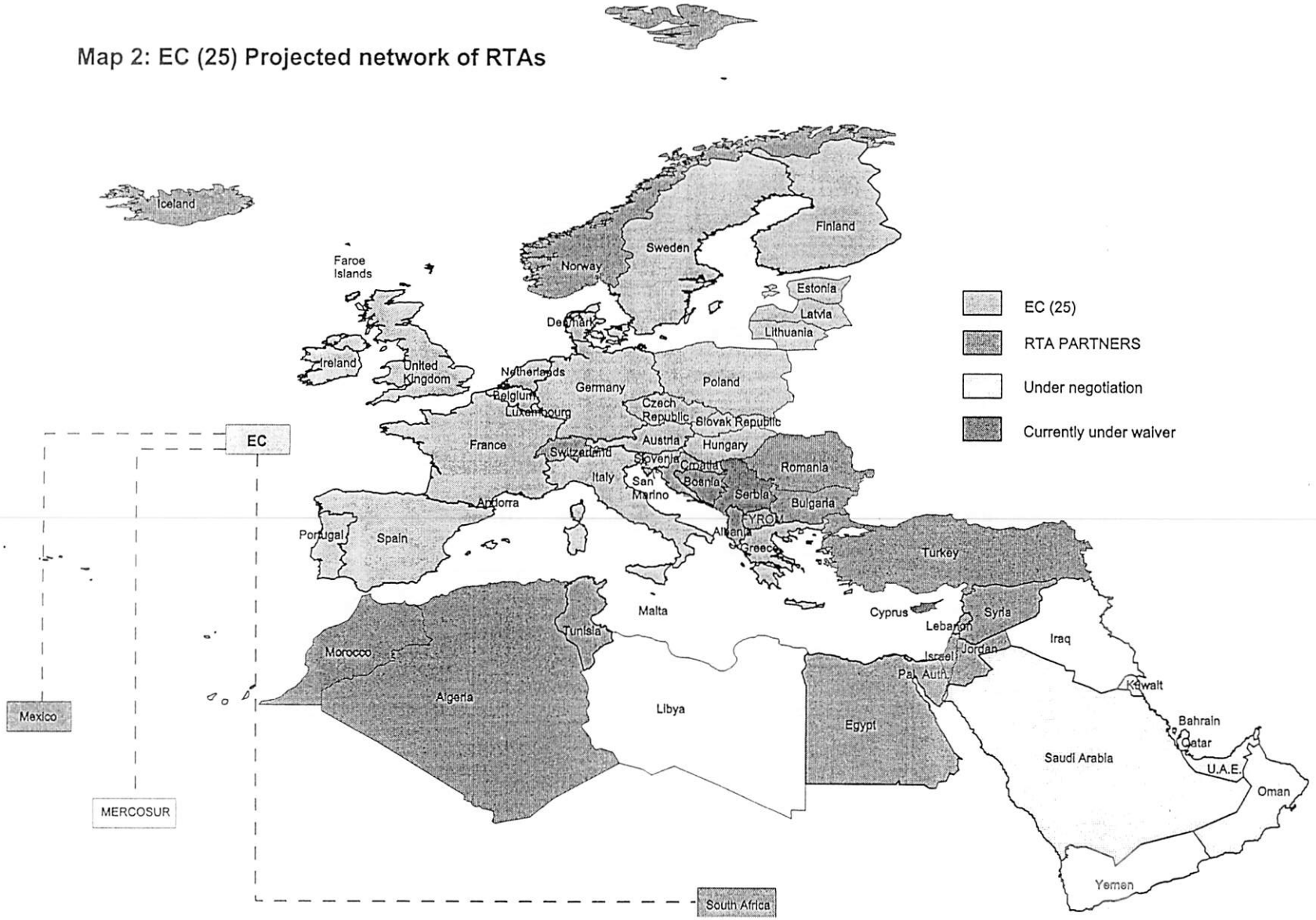
Map 1: Cross Regional RTAs recently concluded or under negotiation (2003)



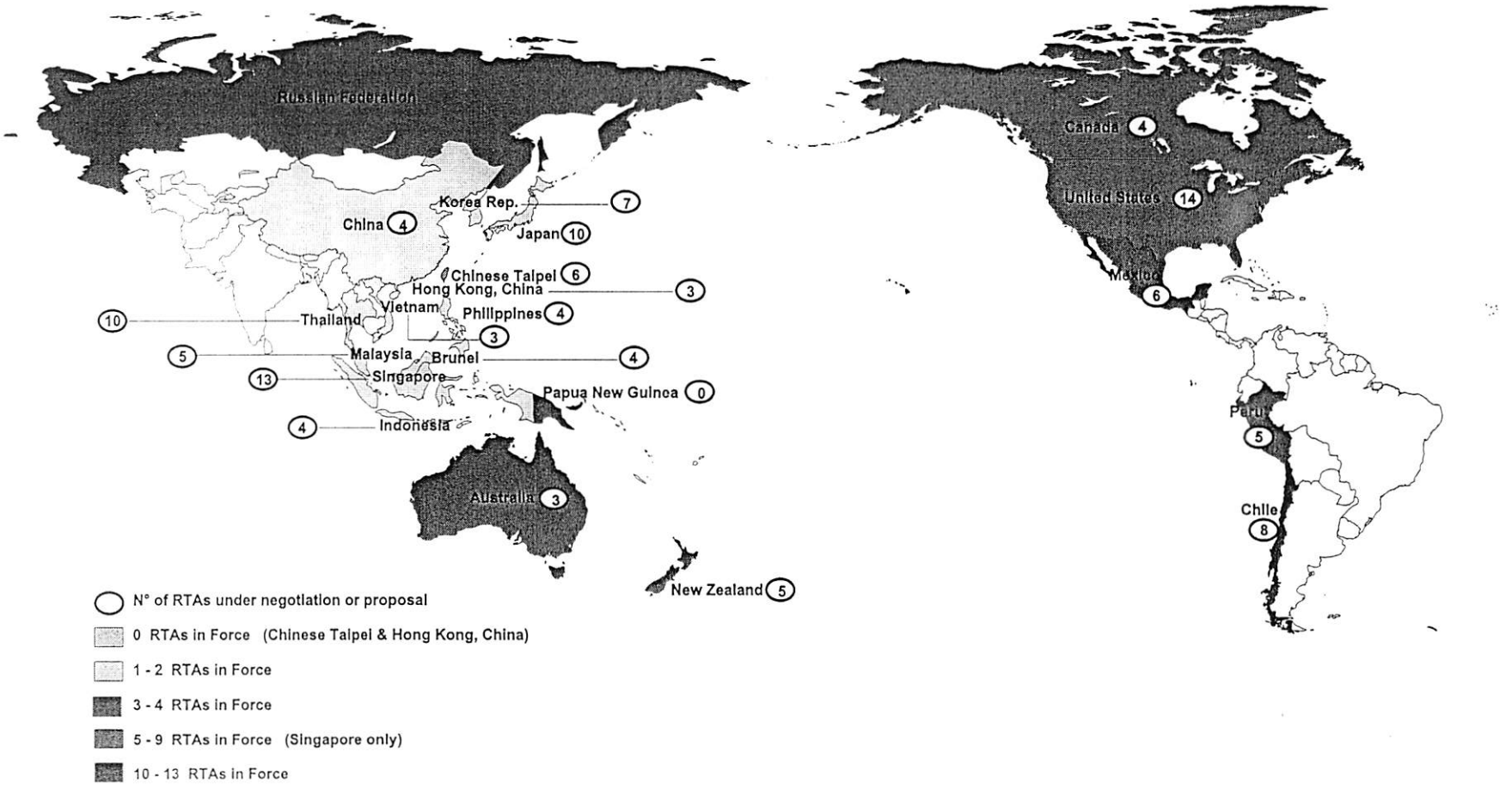
RTAs recently concluded (entered into force in 2001 or after)

RTAs under negotiation & signed

Map 2: EC (25) Projected network of RTAs

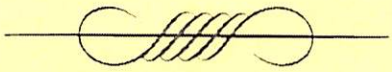


Map 3: APEC Members' RTAs in force, under negotiation or proposal As of October 2003

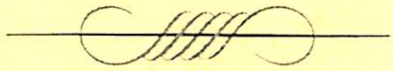


Note: the RTAs under negotiation by the Russian Federation are not shown.

DOCUMENT VI



TN/RL/W/B REV 1 COMPENDIUM OF ISSUES RELATED TO RTA



WORLD TRADE ORGANIZATION

TN/RL/W/8/Rev.1
1 August 2002

(02-4246)

Negotiating Group on Rules

Original: English

COMPENDIUM OF ISSUES RELATED TO REGIONAL TRADE AGREEMENTS

Background Note by the Secretariat

Revision*

The Negotiating Group on Rules, at its meeting of 8 May 2002, requested the Secretariat to prepare a background note which could assist delegations in the preparation of submissions and proposals in the context of paragraph 29 of the Doha Ministerial Declaration.[1]

The present note provides a compendium of issues related to regional trade agreements (RTAs) that have been generated by work within the Committee on Regional Trade Agreements (CRTA) and discussions in other WTO Bodies, from 1996 to date.[2] Mention is also made to relevant findings in WTO panel and Appellate Body reports.

A structured checklist of issues is presented in Part I, to facilitate consideration. A more extended guidebook to the issues is found in Part II, including background information, as well as any comments or suggestions made on the subject.

Most of the issues summarized below refer specifically to the application or interpretation of existing WTO provisions applying to RTAs.[3] Other issues are of a conceptual nature, interrogating the relationship between the multilateral and RTA approaches, or are associated to RTA characteristics highlighted by recent developments and not explicitly or fully covered by existing WTO provisions.

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* The revision concerns only footnote 2.

[1] «We also agree to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements. »

[2] This document offers a short summary of an extensive debate held mainly in the Committee on Regional Trade Agreements. A more comprehensive, though somewhat outdated, account can be found in the document WT/REG/W/37, entitled *Synopsis of "Systemic" Issues Related to Regional Trade Agreements*, of 2 March 2000.

[3] See Annex for a brief account on these provisions.

PART I

CHECKLIST OF ISSUES RELATED TO RTAS

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VI. INTERPRETATION OF PARTICULAR WORDING CONTAINED IN GATS ARTICLE V

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VI.3.1 Footnote to paragraph 1(a): nature and aim of its parameters

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PART II

COMPENDIUM OF ISSUES RELATED TO RTAS

I. WTO BASIC TRANSPARENCY REQUIREMENTS ON RTAS

A. NOTIFICATION

1. I.1.1 Definition of a time-frame for notification

1. The time at which an RTA should be notified by Members is not precisely formulated nor homogeneously expressed in WTO rules, as reflected in the provisions reproduced in the Annex. In practice, many RTAs are notified when their texts have already been sealed or even when the RTA is already in force, and it has been argued that this restrains the effectiveness of the ensuing examination process. It has been suggested that the terms «shall promptly notify» and «deciding to enter» in GATT Article XXIV:7(a) should be interpreted to mean that the notification and submission of information should take place, at least, before the entry into force of the RTA. Conversely, it has been observed that a case-by-case approach is more appropriate to take into account the complexity of issues surrounding RTAs, in particular the political and legal difficulties related to notifying an RTA prior to its ratification.

2. Determination of a specific time-frame for implementation of the «prompt notification» requirement in GATS ArticleV:7(a) has also been called for. A time-frame of «at least 90 days advance notice» (such as that stipulated under GATS Article V:5) has been suggested.

2. I.1.2 Dealing with non-notified RTAs

3. A number of RTAs currently in force have not been notified to the WTO, in particular preferential arrangements between developing countries. This is often cited as hindering any comprehensive and precise evaluation of the RTA phenomenon *vis-à-vis* the multilateral trading system. The current practice of raising questions about non-notified RTAs during WTO meetings has been considered insufficient as a means of gathering adequate information. It has been suggested that the possibility of counter-notification of RTAs be provided for.

B. PROVISION OF INFORMATION

1. I.2.1 RTA trade statistics to be made available

4. The quantity and quality of statistics requested from RTA parties has been highlighted in the context of the examination of RTAs under GATT Article XXIV.

5. It has been argued that full statistical information on trade is needed to conduct an RTA examination. It has been pointed out that major difficulties exist in cases where available statistics cover only a period prior to the RTA entry into force or the very first years(s) following its entry into force, in particular where significant transition periods are foreseen.[4] Conversely, it has been

[4] It has been suggested that trade statistics should be provided for the years prior to, and following the, RTA's entry into force, as well as in the context of biennial reports. More specifically, they should be separated into agricultural and industrial products and should indicate, both in terms of trade flows and tariff lines, the percentage of the trade facing MFN, less-than-MFN and duty-free rates.

observed that statistics are sometimes hard to obtain and may even prove misleading, given the dynamics of the economic integration.

6. A recurrent question has been whether trade statistical data should also be made available on a tariff-line basis (i.e. not only on actual trade flows).[5] This has raised legal controversy in the context of the assessment of individual RTAs' compatibility with the «substantially all the trade» requirement under GATT Article XXIV:8. (On this requirement, see Section V.1.1)

2. I.2.2 Other information to be made available

7. Detailed economic statistics have been considered necessary to facilitate the follow-up of the evolution of trade patterns and economic adjustments in RTA parties. Further, it has been suggested that parties to a given RTA should provide statistical information on trade they conducted under other preferential schemes, on the grounds that data on "overlapping" preferential arrangements is vital to understanding the relationship between RTAs and the multilateral trading system.

8. Discussions within the CRTA on how the provision of timely and accurate initial information on individual RTAs could be facilitated and standardized led its Chairman to establish non-binding guidelines in the form of standard formats.[6] Since 1996-1997, parties to all notified RTAs have submitted initial information on the respective RTA under those formats.

C. REPORTING OBLIGATIONS

9. With respect to periodic reporting on RTAs notified under GATT Article XXIV, an area closely linked to CRTA's work, feedback of WTO Membership at large on the operation of RTAs is deficient, despite efforts made to systematise the information furnished.

1. I.3.1 Biennial reporting on the implementation of customs unions and free-trade areas

10. In accordance with its terms of reference, the CRTA has revived the requirement for submission of biennial reports by adopting recommendations to its parent bodies on how the required reporting on the operation of RTAs should be carried out.[7] Subsequently, calendars for the submission of biennial reports have been periodically issued by the Secretariat. While adherence to the first of such calendar has been relatively high, few biennial reports are still due for the 1999 calendar and the 2001 calendar.

11. Regarding objectives, Members have agreed that such reports «will serve to enhance transparency on how regional trade agreements are proceeding and as an input to the Committee's

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[5] On the basis of a Secretariat's survey on *Coverage, Liberalization Process and Transitional Provisions in Regional Trade Agreements* (WT/REG/W/46), it has been noted that RTAs analysis by trade flows tend to overestimate product coverage in comparison with tariff line analysis.

[6] Standard Format for Information on Regional Trade Agreements (WT/REG/W/6) and Standard Format for Information on Economic Integration Agreements on Services (WT/REG/W/14).

[7] On the basis of recommendations adopted by the CRTA on 20 February 1998 (respectively WT/REG/4, WT/REG/5 and WT/REG/6) and sent to the Council for Trade in Goods (CTG), the Council for Trade in Services (CTS) and the Committee on Trade and Development (CTD), these bodies acted upon them in late November 1998 and invited parties to RTAs to elaborate periodic reports using, as far as possible, a Standard Format presentation (documents G/L/286, S/C/W/92 and WT/COMTD/16, respectively).

[CRTA] work under item 1(d) of its terms of reference»[8] (i.e. the "systemic issues"), as stated in paragraph 1 of document G/L/286.

2. I.3.2 Reporting requirements for RTAs in the area of trade in services

12. GATS Article V:7(b) requires the parties to an RTA implemented on the basis of a time-frame to «report periodically» to the Council for Trade in Services (CTS) on its implementation. In that context, it has been proposed that periodic reporting should be extended to all economic integration agreements (EIAs), whether or not implemented in stages. It has been noted however that this would require a renegotiation of GATS provisions.

II. MULTILATERAL SURVEILLANCE MECHANISMS FOR RTAS

13. RTAs notified to the WTO are subject to surveillance in various Bodies, at various levels of depth and complexity, depending upon which provision the notifying Member avails itself of . On 6 February 1996, the General Council established the CRTA, partly with the aim of rationalizing RTA-related procedures contained in different WTO provisions. The Committee's terms of reference thus includes the examination of any notified RTA, if/as mandated by the relevant WTO body - an examination which had been until then the prerogative of separate *ad hoc* working parties. WTO Members also entrusted the CRTA with the additional task of considering RTAs' broader, systemic implications.[9]

A. HOMOGENEITY OF SURVEILLANCE REQUIREMENTS

14. There have been claims of inadequate WTO surveillance of RTAs concluded among developing countries, in particular because these do not usually undergo examination, even when they take the form of free-trade areas (FTAs), customs unions or interim agreements leading to a customs union or a FTA (hereinafter, interim agreements). However, the *Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries* (hereinafter, the Enabling Clause), under which provisions such RTAs have traditionally been notified, irrespective of their nature, does not foresee any such examination.

15. The suggestion has been made that all RTAs (i.e. those notified under Article XXIV of the GATT 1994, the Enabling Clause and Article V of the GATS) should be notified to a single body, namely the CRTA, which would adopt the terms of reference for the examination, as appropriate. It has been noted however that this would require changes to existing legal provisions.

B. ADEQUACY OF THE EXAMINATION PROCESS

16. CRTA experience has underscored that the two intertwined purposes of RTA examinations - that is, gathering information about a given RTA and judging whether this RTA complies with the relevant legal criteria - form a problematic tandem. For several reasons, in particular because of Members' divergent understanding of the criteria contained in the rules themselves, the examination mechanism has persistently failed to serve these purposes adequately in the last four decades or so.

17. After the establishment of the WTO, increasing calls for, and efforts towards, RTAs transparency were partly checked by rising "dispute-settlement awareness". As a result, CRTA efforts towards improving examination procedures did not prevent the examination mechanism to be brought

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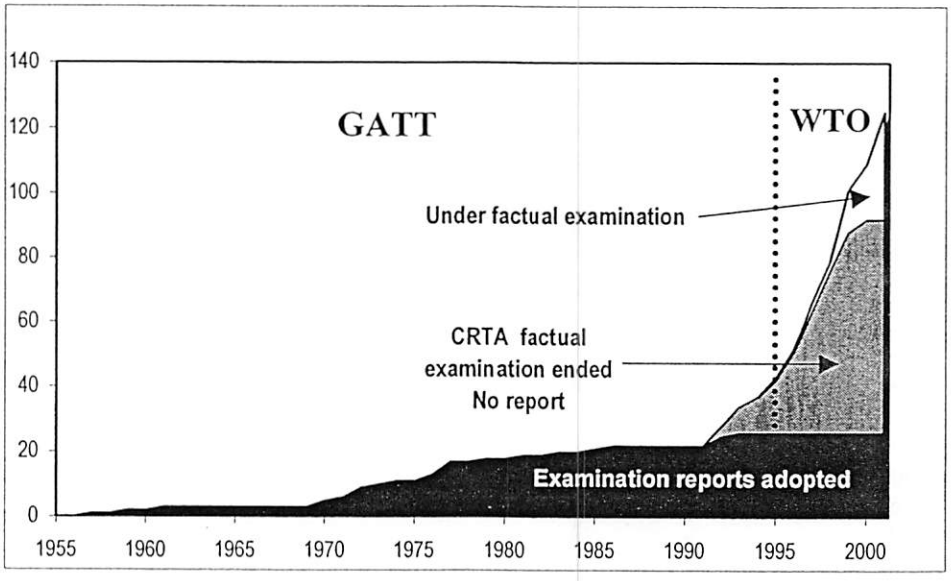
[8] The contribution to the systemic debate is also referred to in the procedures related to reporting on agreements submitted to both the CTS and the CTD.

[9] The decision to establish the CRTA, with its terms of reference, is contained in document WT/L/127.

to near-paralysis *vis-à-vis* its two basic objectives, while there has been a plethora of RTA notifications.

18. The chart below illustrates this impasse. For clarity reasons, it is based only on a subset of all RTAs notified to the GATT/WTO: those RTAs notified under GATT Article XXIV and known to be still in force on 31 January 2002.[10]

Status *vis-à-vis* the examination process of RTAs notified to the GATT/WTO under GATT Art. XXIV and in force on 31 January 2002
(Cumulative figures)



19. It is notable above that examination reports have only been adopted for those existing RTAs which were notified to the GATT and examined before the establishment of the WTO. In practice, the examination of RTAs notified between 1991 and 1994 only took off in 1996, within the CRTA. On none of these, nor on any of the RTAs notified since 1995, has it been possible to reach consensus on the format and language of the examination reports, despite the fact that, in most cases, the CRTA was able to put an end to the factual steps of the examination process. This notwithstanding that draft texts on examination reports for a few RTAs have been under informal consultations during the last four years, in an effort to reach a common approach.

20. This deadlock can be explained by the "dispute-settlement awareness" mentioned above, in particular in the current situation of absence of an agreed relationship between reports on the examination and dispute settlement cases: Members seem reluctant to provide information or agree to conclusions that could later be used or interpreted by a dispute settlement panel.[11] It has been noted that a further negative consequence of this deadlock is that WTO litigation may replace multilateral examination of an RTA (see section II.3.2).

[10] Out of a total of 250 notifications, 168 RTAs remain in force today. About 30 of these were notified under the Enabling Clause or GATS Article V.

[11] A suggestion that the examination of RTA consistency be left to the CRTA alone has been rejected.

21. Suggestions have been made on how to improve the situation, in particular by emphasizing the transparency aspects of the examination mandate.[12]

C. SUITABILITY OF THE MULTILATERAL ASSESSMENT OF RTA CONSISTENCY

22. The requirement for a multilateral consistency assessment of certain notified RTAs is contained in the provisions themselves, sometimes explicitly, as in GATS Article 7(a), sometimes implicitly, as in paragraph 7 of the *Understanding on the Interpretation of Article XXIV of the GATT 1994* (hereinafter, the 1994 Understanding) (see Annex). The meaning of "consistency" is also defined in paragraph 1 of the 1994 Understanding with respect to RTAs notified under Article XXIV.

23. Interrogations in this context mainly derive from the fact that only one of the examination reports adopted to date stated clearly that the RTA was found fully compatible with the relevant GATT rules, and that the examination process has not been able to deliver any kind of examination report in more than seven years.

1. II.3.1 Legal standing of RTAs *vis-à-vis* WTO rules

24. It has been argued that an RTA can be considered as tolerated or deemed compatible by the WTO in the absence of clear consistency conclusions being spelled out in the report on its examination, or when no such examination report exists.[13] Conversely, it has been argued that the legal status of RTAs in the WTO can also be considered as remaining unclear, the rights of WTO Members under dispute settlement procedures being preserved in any event.

25. In the dispute *Turkey –Restrictions on Imports of Textile and Clothing Products* (hereinafter *Turkey – Textiles*) case, the Panel examined an argument put forward along the same lines as in paragraph 24 above. The Panel agreed with the findings of the GATT Panel in *EEC - Imports from Hong Kong,* which had rejected a similar argument put forward by the European Communities (EC), stating that «... it would be erroneous to interpret the fact that a measure had not been subject to Article XXIII over a number of years, as tantamount to its tacit acceptance by contracting parties».[14]

2. II.3.2 Panel's jurisdiction to assess compatibility of RTAs

26. While WTO rules provide for a multilateral assessment of the consistency of an RTA with the rules, the possibility of recourse to dispute settlement is explicitly referred to in paragraph 12 of the Understanding:

> «Dispute Settlement
>
> 12. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of those provisions of Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free-trade area. »

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[12] It has been suggested that examinations be carried out on the basis of a prior factual analysis of the RTA by the Secretariat. That, it has been argued, would set all Members on an equal footing and increase their understanding of the functioning of the agreements.

[13] The examination, which is a multilateral function (i.e. by the WTO Membership), should in principle include an assessment of the consistency of the examined RTA *vis-à-vis* relevant WTO rules. See a more detailed description in the Annex.

[14] Panel Report on *EEC – Quantitative Restrictions against Imports of certain Products from Hong Kong*, adopted on 12 July 1983 (BISD 30S/129), para. 28, and Panel Report on *Turkey- Textiles*, adopted on 19 November 1999 (WT/DS34/R), paras. 9.172-174.

27. With reference to the question of a panel's jurisdiction to assess the compatibility of RTAs, the Appellate Body, in the *Turkey – Textiles* case, stated:

> «59. We would expect a panel, when examining such a measure [taken by a party to a customs union], to require a party to establish that both of these conditions [the customs union fully meets the requirements of XXIV:8(a) and 5(a) and that without such measure that customs union could not be formed] have been fulfilled. It may not always be possible to determine whether the second of the two conditions has been fulfilled without initially determining whether the first condition has been fulfilled. In other words, it may not always be possible to determine whether not applying a measure would prevent the formation of a customs union without first determining whether there *is* a customs union. In this case, the Panel simply assumed, for the sake of argument, that the first of these two conditions was met and focused its attention on the second condition.
>
> 60. More specifically, with respect to the first condition, the Panel, in this case, did not address the question of whether the regional trade arrangement between Turkey and the European Communities is, in fact, a "customs union" which meets the requirements of paragraphs 8(a) and 5(a) of Article XXIV. The Panel maintained that "it is arguable" that panels do not have jurisdiction to assess the overall compatibility of a customs union with the requirements of Article XXIV. We are not called upon in this appeal to address this issue, but we note in this respect our ruling in *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products* on the jurisdiction of panels to review the justification of balance-of-payments restrictions under Article XVIII:B of the GATT 1994. The Panel also considered that, on the basis of the principle of judicial economy, it was not necessary to assess the compatibility of the regional trade arrangement between Turkey and the European Communities with Article XXIV in order to address the claims of India. Based on this reasoning, the Panel assumed *arguendo* that the arrangement between Turkey and the European Communities is compatible with the requirements of Article XXIV:8(a) and 5(a) and limited its examination to the question of whether Turkey was permitted to introduce the quantitative restrictions at issue. The assumption by the Panel that the agreement between Turkey and the European Communities is a "customs union" within the meaning of Article XXIV was not appealed. Therefore, the issue of whether this arrangement meets the requirements of paragraphs 8(a) and 5(a) of Article XXIV is not before us.» (footnotes omitted)[15]

3. II.3.3 Burden of proof

28. In the *Turkey – Textiles* case, the Panel recalled the well-established WTO rules on burden of proof, whereby «... (b) it is for the party invoking an exception or an affirmative defense to prove that the conditions contained therein are met and ... (c) it is for the party asserting a fact to prove it», noting a third party's argument that «since Article XXIV was an exception invoked by Turkey, it was for Turkey to bear the burden of proof».[16] In the same case, the Appellate Body stated:

> «[w]e would expect a panel, when examining such a measure [taken by a party to a customs union], to require *a party* to establish that both of these conditions [the customs union fully meets the requirements of XXIV:8(a) and 5(a) and that without such measure that customs union could not be formed] have been fulfilled» (emphasis added) [17]

4. II.3.4 WTO legal standing of parties to RTAs

29. While the status of a WTO Member remains unchanged by the mere fact that it becomes party to an FTA, the legal standing of WTO Members which become parties to a customs union seems less clear. The question is whether in the latter case WTO obligations continue to subsist and operate at the level of the original customs territories. It has been argued that a new legal entity is created when

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[15] Appellate Body Report, adopted on 19 November 1999 (WT/DS34/AB/R), paras. 59-60.
[16] WT/DS34/R, paras. 9.57 and 9.58.
[17] WT/DS34/AB/R, para. 59. (See also paragraph 32 below.)

customs territories form a customs union, on the ground that a new commercial policy *vis-à-vis* third countries is then to be established.

30. In the *Turkey – Textiles* case, the Panel did not agree with the argument that a WTO right pertaining to a constituent member prior to the formation of a customs union could be "passed" or "extended" to other constituent members. The Panel noted that:

> «... even if the formation of a customs union may be the occasion for the constituent member(s) to adopt, to the greatest extent possible, similar policies, the specific circumstances which serve as the legal basis for one Member's exercise of such a specific right cannot suddenly be considered to exist for the other constituent members. We also consider that the right of Members to form a customs union is to be exercised in such a way so as to ensure that the WTO rights and obligations of third country Members (and the constituent Members) are respected, consistent with the primacy of the WTO, as reiterated in the Singapore Declaration».[18]

III. RELATIONSHIP BETWEEN RTA-SPECIFIC WTO DISCIPLINES AND OTHER WTO RULES

A. ARTICLE XXIV* AND THE ENABLING CLAUSE WITHIN GATT 1994 AND THE WTO AGREEMENT[19]

31. The major question is whether Article XXIV should be considered as a derogation from the MFN obligation (Article I of the GATT) only, or from other GATT provisions as well. Historically, both views have co-existed in the Membership.

32. In the *Turkey – Textiles* case, the Appellate Body found that:

> «Article XXIV may justify a measure which is inconsistent with certain other GATT provisions. However, in a case involving the formation of a customs union, this "defence" is available only when two conditions are fulfilled. First, the party claiming the benefit of this defence must demonstrate that the measure at issue is introduced upon the formation of a customs union that fully meets the requirements of sub-paragraphs 8(a) and 5(a) of Article XXIV. And, second, that party must demonstrate that the formation of that customs union would be prevented if it were not allowed to introduce the measure at issue. Again, *both* these conditions must be met to have the benefit of the defence under Article XXIV.»[20]

33. It has been noted that the granting of waivers for preferential trading agreements concluded between developing and developed countries has faced difficulties in the recent past. In that context, it has been argued that given the significant role played by them, and in accordance with the Doha Ministerial Declaration, negotiations should take into account the developmental aspects of RTAs so that any new rules on RTAs protect the interests of developing and least-developed countries.

B. LINKS BETWEEN GATT ARTICLE XXIV* PROVISIONS AND THE RULES CONTAINED IN OTHER WTO AGREEMENTS IN THE AREA OF GOODS

34. There is no agreed definition of the expression «other [than duties] regulations of commerce» as used in GATT Article XXIV:5. In turn, only in one instance the Agreements concluded in 1994 on non-tariff matters in the goods area refer specifically to RTAs (that is, in footnote 1 to Article 2.1 of the Agreement on Safeguards). At the same time as multilateral non-tariff trade-policy disciplines

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[18] WT/DS34/R, paras. 9.183-184 .

[19] Hereinafter, any reference to Article XXIV* (with an asterisk) includes the provisions contained in the 1994 Understanding, unless otherwise specified.

[20] WT/DS34/AB/R, para. 58. That reversed the Panel finding that Article XXIV did not authorize a departure from GATT/WTO obligations other than Article I of the GATT (WT/DS34/R, paras. 9.186-9.188).

were developing well beyond the original GATT rules, Article XXIV provisions with respect to these matters have thus remained static, and their relationship with the new disciplines undefined.

35. That issue surfaced again in the Council for Trade in Goods (CTG), at the time of adoption of the terms of reference for the examination of the first RTA notified to the WTO.[21] The terminology of such examination mandate would normally refer only to the GATT 1994: «to examine, in light of the relevant provisions of the GATT 1994 ...», without specifying whether the examination might also be carried out against the background of all WTO Agreements relating to trade in goods. It was then decided to expand those terms of reference through an understanding, whereby Members have:

> «... the mandate to examine the incidence and restrictiveness of all duties and regulations of commerce, in particular those governed by the provisions of the Agreements contained in Annex 1A of the WTO Agreement ... [but] that the purpose of an examination in the light of paragraph 5(a) of Article XXIV would not be to determine whether each individual duty or regulation existing or introduced on the occasion of the formation of a customs union is consistent with all provisions of the WTO Agreement; it would be to ascertain whether on the whole the general incidence of the duties and other regulations of commerce has increased or become more restrictive. Accordingly, although the Working Party would conduct its examination in light of the relevant provisions of the Agreements contained in Annex 1A of the WTO Agreement, the conclusions of the Report of the Working Party would be confined to reporting on consistency with the provisions of Article XXIV».[22]

These terms of reference (including the above understanding) became standard for all subsequent examinations of RTAs notified under GATT Article XXIV.

1. III.2.1 Agreement on Textiles and Clothing (ATC)

36. In the *Turkey – Textiles* case, the Appellate Body noted that:

> «The chapeau of paragraph 5 [of Article XXIV] refers only to the provisions of the GATT 1994. It does not refer to the provisions of the *ATC*. However, Article 2.4 of the *ATC* provides that "[n]o new restrictions ... shall be introduced except under the provisions of this Agreement or relevant GATT 1994 provisions. In this way, Article XXIV of the GATT 1994 is incorporated in the *ATC* and may be invoked as a defence to a claim of inconsistency with Article 2.4 of the *ATC*, provided that the conditions set forth in Article XXIV for the availability of this defence are met.»[23]

2. III.2.2 Agreement on Safeguards

37. Relevant Appellate Body findings in the *Turkey – Textiles* case were reflected as follows in the Report of the Panel on the dispute *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities* (hereinafter *US – Wheat Gluten*):

> «Furthermore, we understand that Article XXIV of the GATT 1994 may provide a defence to a claim of violation of a provision of the GATT 1994, and may also provide a defence to a claim of inconsistency with a provision of another covered agreement if it is somehow incorporated into that provision or agreement» (footnotes omitted).[24]

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[21] The enlargement of the EC to include Austria, Finland and Sweden.
[22] See WT/REG3/1. This same understanding applies *mutatis mutandis* to FTAs.
[23] WT/DS34/AB/R, footnote 13 to para. 45.
[24] Panel Report on *US – Wheat Gluten*, adopted on 19 January 2001 (WT/DS166/R), para. 8.180.

However, the Panel did not examine whether Article XXIV of the GATT 1994 might provide a defence to a violation of a provision of the Agreement on Safeguards, given that such argument had not been presented by the United States.[25]

38. Another issue refers to the lack of a multilaterally agreed methodology on how should safeguard measures already in place within a customs union be applied by acceding parties.[26]

3. III.2.3 Other WTO Agreements

39. The Agreement on Agriculture does not specify how should individual Members' reduction commitments on domestic support and export subsidies be translated into common commitments when a customs union is established or enlarged.

40. The Agreement on Rules of Origin does not contain disciplines on non-preferential rules of origin. No multilaterally agreed guidelines exist, apart from the Common Declaration with Regard to Preferential Rules of Origin annexed to the Agreement, which might be used in dealing with issues raised with respect to RTA rules of origin.[27] (See Section V.3.1)

C. ARTICLE V WITHIN THE GATS (AND ITS ANNEXES)

41. One major issue is the precise scope of the exemption for EIAs provided by Article V and in particular whether Article V allows departures from any other obligations than the MFN. It has also been argued that if that was the case, derogation from the other key principles of the GATS - such as transparency, fair administration of domestic regulations and emergency safeguards - should not be allowed.

1. III.3.1 Links between EIAs' trade liberalization requirements and GATS "exempted" services sectors/modes of supply or GATS provisions subject to further negotiations

42. One issue refers to whether an EIA can exclude from its coverage sectors or modes of supply which are not subject to the GATS disciplines, either in its totality - such as services supplied in the exercise of governmental authority - or partially - e.g. transport sector or certain Mode 4 aspects. If that is not possible, the question remains on the extent of the coverage required on such sectors for the EIA to be consistent.

43. Another issue relates to how to interpret Article V:1(b) requirements to eliminate discriminatory measures on intra-trade in view of further negotiations contemplated under various GATS Articles and Annexes.

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[25] While the United States argued that Article XXIV of the GATT 1994 would provide it with a defence to a violation of Article XIX of the GATT 1994, it stated in the Panel proceedings its understanding that "Article XXIV provides neither an exception nor a derogation to the provisions of the Safeguards Agreement". See WT/DS166/R, para. 8.181.

[26] This can also refer to anti-dumping measures.

[27] The preamble to the Agreement recognizes that clear and predictable rules of origin and their application facilitates the flow of international trade, and states the desirability that rules of origin themselves do not create unnecessary obstacles to trade. The Common Declaration provides disciplines for preferential rules of origin; in particular, Article 3(c) requires that laws and regulations relating to them be published "as if they were subject to, and in accordance with, the provisions of Article X of GATT 1994".

2. III.3.2 Relationship between national jurisprudence and the GATS

44. One issue relates to the application of the "grandfathering concept" to EIAs.[28] The view has been expressed that provisions under an EIA that had been drafted prior to the GATS would need to be updated in accordance with the GATS. Such amendments could be required in cases where national jurisprudence conflicted with existing GATS rules, and possibly also in the event of future modifications of GATS rules.[29]

IV. INTERDEPENDENCE OF RTA-SPECIFIC WTO DISCIPLINES

A. LINKS AMONG PROVISIONS WITHIN GATT ARTICLE XXIV*

1. IV.1.1 Significance of the provisions of paragraph 4

45. A recurrent general question has been whether paragraph 4 of Article XXIV contains additional requirements to those specified in paragraphs 5-8 or should be viewed as merely introducing these provisions.[30] In this respect, the Appellate Body Report in the *Turkey – Textiles* case stated that:

> «Paragraph 4 contains purposive, and not operative, language. It does not set forth a separate obligation itself but, rather, sets forth the overriding and pervasive purpose for Article XXIV which is manifested in operative language in the specific obligations that are found elsewhere in Article XXIV».[31]

46. Within this general setting, it has been questioned whether RTA parties are required not to increase the barriers overall or rather not to raise any barrier, with reference to the phrase «not to raise barriers» towards third parties in paragraph 4 and the corresponding concept in paragraph 5(a). In the *Turkey – Textiles* case, the Panel found that:

> «What paragraph 5(a) provides, in short, is that the effects of the resulting trade measures and policies of the new regional agreement shall not be more trade restrictive, overall, than were the constituent countries' previous trade policies» and that paragraph 5(a) provided for an «"economic" test» for assessing compatibility.[32]

Both these findings were shared by the Appellate Body, which added that «the text of the chapeau of paragraph 5 should be interpreted in its context», and identified paragraph 4 as an import element in that context. This led the Appellate Body to state:

> «According to paragraph 4, the purpose of a customs union is "to facilitate trade" between the constituent members and "not to raise barriers to the trade" with third countries. This objective demands that a balance be struck by the constituent members of a customs union. A customs union should facilitate trade within the customs union, but it should *not* do so in a way that raises barriers to trade with third countries.»[33]

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[28] The question of grandfathering, or conversely the retroactive application of new rules, has also been raised in the context of RTAs in the goods area.

[29] Article V:7 requires the notification of all EIAs in force, including those signed before the entry into force of the GATS. Thus, at least in the case of notification under the GATS, grandfathering does not exist.

[30] Reaffirmed in the fifth paragraph of the Preamble to the 1994 Understanding.

[31] WT/DS34/AB/R, para. 57.

[32] WT/DS34/R, para. 9.121.

[33] WT/DS34/AB/R, paras. 55-56.

2. IV.1.2 Relative precedence of paragraphs 4-5 provisions and those found in paragraph 8

47. This issue has been raised in particular with respect to the possible impact of compliance with the requirement concerning common trade policy in a customs union contained in paragraph 8(a)(ii); more generally, it refers to cases where a measure ostensibly taken within an RTA to facilitate intra-trade would have a trade-restrictive effect on third parties.

48. It has been argued that, in such a situation, consistency should be measured not only against the criteria contained in paragraph 8 and then in paragraph 5, but also against the principles contained in the last sentence of paragraph 4.

49. Some findings of the Panel and the Appellate Body in the *Turkey – Textiles* case, such as those reported in paragraphs 45-46, may shed light on that issue.

3. IV.1.3 Parallelism between provisions applying to customs unions and those applying to FTAs

50. Paragraph 5 provides for an assessment of the conditions of third countries' access to the markets of the parties to an RTA, before and after the formation of the relevant RTA. The basis for such an assessment is found in subparagraph (a) for customs unions and in subparagraph (b) for FTAs. While language therein is largely symmetrical, it contains some differences:

- subparagraph 5(a) states that the duties and other regulations of commerce «imposed» by a customs union are to be compared to those «applicable» by its parties prior to the institution of the union; paragraph 2 of the 1994 Understanding clarifies the meaning of these expressions with respect to duties, by specifying that, in the context of the general incidence calculation, «... the duties and charges to be taken into consideration shall be the applied rates of duty».
- subparagraph 5(b) provides that the corresponding comparison for FTAs should be based on the duties and other regulations of commerce «maintained in each of the constituent territories and applicable at the formation» of the FTA and those previously «existing in the same constituent territories». Such differences in wording shed doubts on whether «applicable» duties for FTAs refer to <u>bound</u> rates or to <u>applied</u> rates.

51. It has been argued that a consistent interpretation of paragraph 5 would require that duties «applicable» by FTA parties refer to <u>applied</u> rates just like in the case of a customs union (see Section V.3.3 for a related question). Some findings of both the Panel and the Appellate Body in the *Turkey – Textiles* case are also relevant in this respect (see paragraph 46 above).

52. Another issue raised relates to the definition of the expression «other regulations of commerce» itself. It has been observed that, under Article XXIV:5, it might have a wider scope for FTAs than for customs unions, especially if, as it has been argued sometimes, FTA rules of origin should be considered as a regulation of commerce in that context. (see Section V.3.1)

4. IV.1.4 Congruity of provisions in paragraph 8 with those contained in paragraph 5

53. Paragraph 8 provides for the minimum parameters which parties to a customs union or FTA must meet in shaping their internal trade relations, whereas paragraph 5 governs external relations.[34]

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[34] Paragraph 8(a)(ii), which deals with harmonization of the external trade regime in a customs union, is less unambiguously "internal" in this respect.

54. It has been pointed out that RTAs, in complying with paragraph 8 disciplines to achieve internal trade liberalization, in particular in the area of «other restrictive regulations of commerce», might raise barriers to the trade of third parties, in contradiction with paragraph 5 requirements. The application or harmonization of standards (both technical barriers to trade and sanitary and phytosanitary measures), as well as the introduction and enforcement of competition law, have been cited as possible fields where this could apply; hence the need to analyze the intent and application of the «other restrictive regulations of commerce» in operation in RTAs.

5. IV.1.5 Relevance of provisions applicable to RTAs implemented by stages

55. In the GATT/WTO history, though most customs unions or FTAs have been, at least in part, implemented by stages, very few have expressly been notified as «interim agreements». As a consequence, many of the detailed provisions specifically devoted to this type of RTA, both in Article XXIV and in the 1994 Understanding, have practically become redundant.[35]

56. In that context, it has been noted that multilateral surveillance of RTAs would be increased if interim agreements were notified under Article XXIV:5(c) of the GATT 1994, so that existing requirements on the plan and schedule for an interim agreement could be better monitored and, if required, recommendations on in particular «... the proposed time-frame and on measures required to complete the formation of the customs union or free-trade area» (paragraph 8 of the 1994 Understanding)) could be made by Members, and further review of the agreement foreseen.

57. Unclear issues related to transition periods have however been highlighted in examinations of RTAs notified under Article XXIV, though in isolation from other disciplines for interim agreements:

- Could RTA parties apply a longer (than 10 years) transition period to some products instead of excluding them from the scope of the agreement straightaway?
- What should be expected as a «full explanation» by parties to an interim agreement with transitional periods longer than 10 years?
- When should interim agreements fulfil the requirements spelled out in paragraphs 5 and 8: at the time of entry into force of the interim agreement or when the RTA has been fully implemented?[36]
- Should consideration of the «other restrictive regulations of commerce» (paragraph 8) and the «other regulations of commerce» (paragraph 5) be different in fully implemented RTAs and interim agreements?[37]

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[35] Paras. 5(c), 7(b) and 7(c) of GATT Article XXIV and paras. 3 and 8-10 of the 1994 Understanding deal with interim agreements.

[36] It has been argued that paragraph 8 requirements (in particular with respect to «substantially all the trade») should apply only at the end of the transition period, while those of paragraph 5 should apply both during and at the end of the transition period

[37] It has been noted that certain trade policy measures were needed only for the management of the transitional process and could therefore be applied in the context of interim agreements but not in fully implemented customs unions or FTAs.

B. LINKS AMONG PROVISIONS WITHIN GATS ARTICLE V

1. IV.2.1 Relationship between the tests on «substantial sectoral coverage» and on «substantially all discrimination»

58. One view is that if a sector meets the test of Article V:1(b), it should be considered also to be covered for purposes of Article V:1(a); conversely, the sector would be considered as not covered if it did not satisfy the requirements under Article V:1(b).

59. Another view is that the two tests are separate and that a sector need not meet the requirements of Article V:1(b) in order to be considered as covered for purposes of Article V:1(a); Article V:1(a) would determine the proportion of sectors or subsectors subject to liberalization, while Article V:1(b) would determine whether discriminatory measures maintained in service sectors or modes of supply are acceptable.

2. IV.2.2 Relationship between establishment requirements and the test on «substantial sectoral coverage»

60. The question has been raised on whether a requirement for foreign suppliers to establish themselves in local jurisdiction before they be allowed to sell services to local consumers amounted to an *a priori* exclusion of cross-border trade in these services. If that was considered a violation of the requirements of footnote 1 to Article V:1(a), the questions has been posed on how that situation would be viewed in cases where individual sub-national governments impose an establishment requirement for inter-state trade within that country.

3. IV.2.3 Relationship between the flexibility provided to EIAs involving developing countries and various GATS requirements

61. Subparagraph 3(b) states that notwithstanding paragraph 6, in the case of an EIA involving only developing countries, «more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.» The issue is whether the more favourable treatment should be limited by the requirements of Article V:4 so that the «overall level of barriers» in each sector and subsector is not raised.

4. IV.2.4 Compensation negotiations under paragraph 5 and its possible application to modifications in MFN exemptions

62. Paragraph 5 requires a party to an EIA to provide at least 90 days advance notice of any modification or withdrawal of a specific commitment that was inconsistent with the terms and conditions set out in its Schedule and stipulates that «the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply».

63. Though Article V:5 relates to compensation to third parties only in the context of specific commitments, an issue emerged on the possibility of providing compensation for the extension of MFN exemptions by a customs union to its area of enlargement.

64. It has been suggested that such extended MFN exemptions qualify as new measures, with the relevant provisions being those contained in the Annex on Article II Exemptions and in Article IX of the WTO Agreement. MFN exemptions and specific commitments were completely different issues and legal provisions dealing with the latter could not be used for modifications in the former.

65. Conversely, it has been suggested that the automatic extension of an MFN exemption implies that third countries would not benefit from the same access to the markets of acceding parties: that

situation could be assimilated to the one where commitments undertaken are modified or withdrawn. Thus, compensation according to the Article XXI route, as provided for in Article V:5, would be applicable. (see Section VI.3.6)

V. INTERPRETATION OF PARTICULAR WORDING CONTAINED IN GATT ARTICLE XXIV

A. MEANING OF «SUBSTANTIALLY»

66. The word «substantially» is found three times in the provisions of paragraph 8, where it is defined what should be understood by «customs union» and by «free-trade area».

1. V.1.1 Paragraph 8(a)(i) and 8(b): «substantially all the trade»[38]

67. In a customs union, according to paragraph (a)(i), duties and, apart from permissible exceptions,[39] other restrictive regulations of commerce should be «eliminated» with respect to «substantially all the trade» between the parties «or at least ... substantially all the trade» in originating products. A similar requirement is contained in paragraph (b) for FTAs: that such elimination be made on «substantially all the trade» in originating products.

68. Despite the inclusion of the fourth paragraph in the Preamble to the 1994 Understanding,[40] the interpretation of that expression has remained contentious. Two approaches, not mutually exclusive, are typical in that respect:

- A quantitative approach favours the definition of a statistical benchmark, such as a certain percentage of the trade between RTA parties, to indicate that the coverage of a given RTA fulfils the requirement.
- A qualitative approach sees the requirement as meaning that no sector (or at least no major sector) is to be kept out of intra-RTA trade liberalization; this approach aims at preventing the exclusion from RTA liberalization of any sector where the restrictive policies in place before the formation of the RTA hindered trade, which could be well the case if a quantitative approach was used.

69. Apart from calls aiming at defining RTAs' coverage as meaning that all sectors should be included, it has been suggested that the above two approaches could be bridged or complemented by:

- characterizing an RTA's product coverage not only in terms of trade flows but also in terms of a certain percentage of tariff lines;[41]
- as a refinement to the quantitative approach, calculating the percentage of trade between the parties carried out under RTA rules of origin; and/or
- exploring whether footnote 1 to GATS Article V provides a basis for some clarification of the «substantially all the trade» concept.[42]

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[38] Often also referred to as an RTA's "product coverage".

[39] «... (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) ...».

[40] «*Recognizing* also that such contribution ... if any major sector of trade is excluded».

[41] A threshold has also been proposed at 95 per cent of all HS tariff lines at the six-digit level, to be complemented by an assessment of prospective trade flows at various stages of implementation of the RTA, thereby allowing the incorporation of cases where trade is initially concentrated in relatively few products.

[42] In referring to the need for EIAs to have substantial sectoral coverage, this footnote reads: «This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply».

2. V.1.2 Paragraph 8(a)(ii): «substantially the same duties and other regulations of commerce»[43]

70. Paragraph 8(a)(ii) requires parties to a customs union to apply «substantially the same duties and other regulations of commerce» *vis-à-vis* third parties, i.e. provides from a certain harmonization of the external trade regime of the constituent members of a customs union.

71. Concerning the extent of harmonization required, in the *Turkey – Textiles* case, the Panel found that the flexibility provided for in paragraph 8(a) by the existence of the word «substantially» meant that:

> «... a situation where constituent members have "comparable" trade regulations having similar effects with respect to the trade with third countries, would generally meet the qualitative dimension of the requirements of sub-paragraph 8(a)(ii)», and that Members were allowed to form a customs union «... where one constituent member is entitled to impose quantitative restrictions under a special transitional regime and the other constituent member is not.»[44]

While agreeing with the Panel that the phrase «substantially the same» in paragraph 8(a)(ii) offered a certain degree of flexibility to the constituent members of a customs union in the creation of a common commercial policy, the Appellate Body disagreed with the Panel in that the limits established by such flexibility meant that "comparable" trade regulations having similar effects with respect to the trade with third countries would meet the standard of sub-paragraph 8(a)(ii). Rather, it concluded that a higher degree of "sameness" was required.[45]

72. With respect to the related question of whether otherwise GATT-inconsistent measures could be harmonized under the legal cover of Article XXIV, reference is made to the Appellate Body findings in the *Turkey – Textiles* case, as reflected in paragraph 32 above.

B. SCOPE OF THE BRACKETED EXCEPTIONS IN PARAGRAPH 8: APPLICATION OF GLOBAL SAFEGUARDS TO RTA PARTNERS

73. The expression «other restrictive regulations of commerce», which is found twice in paragraph 8 has never been positively defined in the GATT/WTO.[46] Most interrogations in this respect are linked to the list of permitted exceptions to the internal elimination of «other restrictive regulations of commerce» in customs unions and FTAs, as contained in paragraph 8(a)(i) and 8(b), respectively.

74. The fact that neither GATT Article XIX nor Article VI are cited in that list has given rise to the general question of whether safeguard and anti-dumping measures should be considered as «other restrictive regulations of commerce» or not.

75. A more specific issue in this respect is the significance of the non-inclusion of Article XIX among the exceptions for WTO Members' rights and obligations, and its effects on the conditions of application of global safeguards to RTA parties.[47] Traditionally, that non-inclusion has been approached from three distinct, and mutually exclusive, viewpoints:

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[43] Often also referred to as an RTA's "product coverage".

[44] WT/DS34/R, para. 9.151.

[45] WT/DS34/AB/R, paras. 49-50.

[46] Neither has the expression «other regulations of commerce» in paragraph 5 and paragraph 8(a)(ii).

[47] Only a few agreements explicitly allow for the exclusion of RTA partners from a global safeguard action; in other agreements, this exemption is implicit.

- It remains an obligation to apply global safeguards MFN, including to RTA partners; the bracketed list of exceptions being purely illustrative and Article XXIV not waiving the basic MFN principle for safeguard measures.
- It is permitted to apply safeguard measures to RTA partners, though only in some cases, as supported by the international law on multilateral treaties whereby RTA parties are entitled to vary their rights and obligations between themselves, provided they do so in a manner that does not abridge the rights of third parties.[48]
- It is forbidden to apply global safeguard measures to RTA partners, since to consider the list of allowed «other regulations of commerce» as exhaustive conforms with common practice in cases of derogations from general principles.[49]

76. Rulings by panels and the Appellate Body on WTO disputes concerning the application of safeguard measures have not given a definite response to the basic question above, i.e. whether exempting parties to a given RTA from a global safeguard measure was WTO-consistent. On the contrary, in the dispute *Argentina – Safeguard Measures on Imports of Footwear (*hereinafter *Argentina – Footwear (EC))*, the Appellate Body specifically stated the following:

> «... we wish to underscore that, as the issue is not raised in this appeal, we make no ruling on whether, as a general principle, a member of a customs union can exclude other members of that customs union from the application of a safeguard measure.»[50]

In the dispute *US – Wheat Gluten*, the Panel maintained that same approach, later agreed upon by the Appellate Body,[51] by stating:

> «We do not believe that we have been asked to rule, and consequently make no ruling, on whether or not, as a general principle, a member of a free trade area can exclude imports from other members of that free trade area from the application of a safeguard measure.»[52]

In the more recent dispute *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea (*hereinafter *US – Line Pipe)*, in reversing the Panel's finding that:

> «... the United States is entitled to rely on Article XXIV as a defence to Korea's claims under Articles I, XIII and XIX of GATT 1994, and Article 2.2 of the Safeguards Agreement, regarding the exclusion of imports from Canada and Mexico from the scope of the line pipe measure»,[53]

the Appellate Body re-stated:

> «We need not, and so do not, rule on the question whether Article XXIV of the GATT 1994 permits exempting imports originating in a partner of a free-trade area from a measure in departure from Article 2.2 of the *Agreement on Safeguards*.»[54]

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[48] The flexibility embodied in that interpretation itself creates new interrogations concerning the possible exclusion of RTA parties from the application of safeguards, such as (i) whether a party would be allowed to exempt its partners from a global safeguard action depending on whether their imports accounted or not for a "substantial share" of total imports and contributed to "serious injury"; (ii) whether safeguards could be imposed on intra-trade only if determination was made that the injury was due to the reduction of duties contemplated in the RTA.

[49] Such prohibition would however not apply during the transition period.

[50] Appellate Body Report on *Argentina – Footwear (EC)*, adopted 12 January 2000 (WT/DS121/AB/R), para. 113.

[51] Appellate Body Report on *US – Wheat Gluten*, adopted on 19 January 2001 (WT/DS166/AB/R), para. 99.

[52] WT/DS166/R, para. 8.183.

[53] Panel Report on *US – Line Pipe*, adopted on 8 March 2002 (WT/DS202/R), para. 7.167.

[54] WT/DS202/AB/R, para. 198.

77. However, while inconclusive on the issue of the imposition or maintenance of safeguard measures between the constituent territories of a customs union or of a free-trade area in relation to Article XXIV, Panel and Appellate Body findings have stressed the need for a parallelism between the scope of a safeguard investigation and the scope of the application of safeguard measures.

C. OTHER ISSUES

1. V.3.1 The qualification of RTA rules of origin as «other regulations of commerce»

78. RTA provisions on rules of origin have raised a number of issues. On the question of whether RTA rules of origin constitute an «other regulations of commerce» (ORCs) under Article XXIV:5, distinct interpretations subsist:

- RTA origin rules constitute an ORC.[55]
- RTA origin rules do not constitute an ORC, given that by definition they do not affect trade with third parties.
- A case-by-case examination of the preferential rules of origin in RTAs is needed. That examination would clearly indicate whether these rules had restrictive effects on the trade *vis-à-vis* third parties.

79. Apart from this "definition" question, discussions on RTA provisions on origin rules also raised a number of technical issues. One question relates to whether it is appropriate to compare the rules of origin of a new RTA with those of an earlier RTA with overlapping membership which it superseded. Another issue is whether diagonal cumulation schemes contravene WTO rules, as they favour certain third-parties to a particular RTA, while discriminating against the rest.[56]

80. More recently, it has been noted that a harmonization of RTA rules of origin might be desirable in the long run.[57] However, it has been argued that this might not be workable given that those rules derived from production and trade structures in place between the RTAs parties.[58]

2. V.3.2 Non-zero preferential tariff rates

81. The question of the application of preferential tariffs lower than the MFN rates but higher than zero has been raised. It has been argued that such tariffs should be assessed in the context of paragraph 8, and while they fall short of having been eliminated, they contribute to the objective of facilitating trade and may in certain instances represent a first step towards an possible elimination of the duty at a later stage. It has also been noted that the requirement to eliminate duties apply to «substantially all the trade», and that Article XXIV is silent on the treatment of such "non-substantial" part of intra-trade.

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[55] It has been suggested that rules of origin play a similar role in a FTA as the one played by a common external tariff in a customs union.

[56] Under diagonal cumulation, materials supplied by specific countries not parties of a given RTA may be counted, under certain conditions, as originating from the RTA.

[57] This view was expressed in the context of the debate held on a recent Secretariat's survey on *Rules of Origin Regimes in Regional Trade Agreements* (WT/REG/W/45). That suggestion had also been made in the context of Uruguay Round negotiations.

[58] For some, that "tailor made" nature of RTA rules of origin generally resulted in more stringent than MFN rules of origin and seemed to be contrary to the objective of enhancing and facilitating trade between RTA parties. In that context, these origin rules could create obstacles on intra-trade; further, they would also create obstacles on trade with third parties given that stringent rules of origin tended to render more difficult the transformation of their materials into products originating within the RTA.

82. Conversely, it has been argued that non-zero preferential tariff rates could not be justified under paragraph 8 which require their elimination, and not their reduction, but rather that they should be assessed in light of paragraph 5(b) as they amount to the raising of barriers *vis-à-vis* the trade with third parties.

83. An intermediate interpretation has been that the requirement for such elimination would apply at the end of the transition period, and that in between such non-zero preferential tariffs should be allowed as they amounted to a staged implementation of the elimination requirement. (see Section IV.1.5.)

3. V.3.3 Compensation for negative effects on third parties upon the formation/enlargement of an RTA

84. The need for elaborating disciplines aimed at ensuring that third parties are compensated for possible negative effects brought by the creation or enlargement of an RTA has been raised. Disagreement remains on whether existing provisions allow for such a request, and further on whether these would not go beyond the existing negotiating mandate.

VI. INTERPRETATION OF PARTICULAR WORDING CONTAINED IN GATS ARTICLE V

A. MEANING OF «SUBSTANTIAL» AND «SUBSTANTIALLY»

1. VI.1.1 Paragraph 1(a): «substantial sectoral coverage»

85. Article V:1(a) provides that an EIA must have «substantial sectoral coverage» of the trade in services among the Parties. The footnote to the provision states that this expression should be «understood in terms of number of sectors, volume of trade affected and modes of supply». The footnote also provides that an EIA may not *a priori* exclude any of the four modes of supply. The main question that remains to be solved is the extent of liberalization needed for an EIA to meet the «substantial sectoral coverage» test.

86. Regarding the coverage of sectors, two approaches co-exist:[59]

- Not all sectors must be covered under an EIA.
- The flexibility provided by the word «substantial» does not allow for the exclusion of a sector from an EIA. That has also been modulated by a suggestion that the exclusion of essential services (those which serve as infrastructure for economic activity, such as transportation) could not be possible and that the exclusion of major service sectors needed to be considered in conjunction with the modes of supply and the volume of trade involved.

87. Regarding the coverage of modes of supply, it has been argued that an EIA must include all modes of supply in order to comply with subparagraph 1(a) requirements; in particular, no EIA should *a priori* exclude investment and labour mobility in the sense of Modes 3 and 4.

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[59] A number of more detailed questions have also been raised, namely (i) how to determine whether all sectors have been covered or not; (ii) how to calculate the volume of trade affected when a sector is less than fully liberalized; (iii) whether the calculation should only include that portion of trade in a sector that has been completely liberalized by the provisions of the EIA; (iv) if the setting of a percentage target could be feasible for examining the coverage of an EIA, whether it would be more appropriate to have a percentage target for the volume of services trade covered or of domestic services activity covered; and (v) how would the "absence or elimination of substantially all discrimination" and the list of excepted measures under Article V:1(b) affect the percentage targets that might be set.

88. Brief and inconclusive discussions were held on the adequate degree of detail of the examination, i.e. whether it should it take place on a sector-by-sector, subsector-by-subsector or on a completely disaggregated basis, has been briefly addressed. The lack of detailed data on services trade and the fact that footnote 1 to subparagraph 1(a) lists the number of sectors covered by an EIA as one of the three separate factors to be examined in evaluating sectoral coverage have been presented as arguments favouring a sector-by-sector examination.

89. The unavailability of reliable data on trade in services has been highlighted. It has been suggested that data on domestic economic activities could be used instead, with the statistics on the size of the domestic market of services sectors concerned or their contribution to GDP being used to determine the coverage of sectors. Further, it has been suggested that it was pointless to pursue the idea of percentages of sectors/trade excluded, but that an attempt should be made to define the volume of trade affected.

2. VI.1.2 Paragraph 1(b): «substantially all discrimination»

90. The extent to which discriminatory measures should be allowed to exist in an EIA without breaching its consistency with Article V:I(b)[60] is a debatable issue, although it is clear that those permissible discriminatory measures would be directly influenced by a definition of the scope of the list of exceptions in Article V:1(b) as well as the applicability of the «and/or» language in the context of provisions (i) and (ii). It has also been noted that the unavailability of detailed data on trade in services makes it difficult to arrive at a percentage-type test for quantitatively measuring «substantially all discrimination», which in turn should point towards a case-by-case examination of each agreement.

B. SCOPE OF THE BRACKETED EXCEPTIONS OF TRADE RESTRICTIVE MEASURES

91. It has been argued that the list of exceptions allowing the maintenance of certain discriminatory measures is not exhaustive.[61] Expansion of the list of exceptions has been considered permissible on the basis of the Preamble to the GATS, which refers to «the rights of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives»; however, what is covered in the national treatment clause should not be added to the list.

92. Two interpretations of the application of emergency safeguards among parties to an EIA co-exist:

- Article X should be added to the listed exceptions so that safeguard measures can be applied on a MFN basis to parties to a EIA and third countries alike and thus be in line with the principle provided for in Article X:1, i.e. that safeguard measures have to be based on the principle of non-discrimination.
- Safeguard measures should not be applied among EIA parties, as they act against comparative advantage, which is in fact a very important benefit of integration agreements.

93. In addition to that safeguard issue, the possible illustrative nature the list of exceptions also raises the question of what other types of discriminatory measures (besides those enumerated in the

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[60] It has been suggested that the meaning of the term "substantially all" in GATT Article XXIV:8 might provide a hint as to the same term meant in GATS Article V:1(b).

[61] Discriminatory measures authorized are those imposed under Articles XI (Payments and Transfers), XII (Restrictions to Safeguard the Balance of Payments), XIV (General Exceptions) and XIV *bis* (Security Exceptions).

list) should be considered as legitimate exceptions from the requirement in Article V:1(b) for the «absence or elimination of substantially all discrimination».

C. OTHER ISSUES

1. VI.3.1 Footnote to paragraph 1(a): nature and aim of its parameters

94. Concerning the parameters in the footnote, the question has been raised on whether they should be viewed as providing a basis for assigning weights to the sectors liberalized or as establishing three separate factors to be considered in making an overall judgement. Also, it has been argued that it is not clear whether parameters additional to those listed in the footnote might also be involved in examining the sectoral coverage of an agreement.

2. VI.3.2 Paragraph 1(b): Meaning of the «and/or» wording

95. Subparagraph 1(b) requires that an EIA should provide for «the absence or elimination of substantially all discrimination in the sense of Article XVII» through (i) elimination of existing discriminatory measures, and/or (ii) prohibition of new or more discriminatory measures, with certain listed exceptions. The provisions under this clause should be implemented either at the entry into force of the Agreement or on the basis of «a reasonable time-frame». Different views co-exist on the interpretation of «and/or» wording:

- The «or» allows the parties to choose between provisions (i) and (ii), i.e. the elimination of existing discriminatory measures or alternatively the use of a standstill.
- In cases where no discrimination exists at the time of entry into force of the agreement or where remaining discriminatory measures do not exceed the level required to satisfy the «substantially all discrimination» requirement, only (ii) would apply. In cases where such discrimination remains beyond that level, (i) would be applicable and the applicability of (ii) would depend on the extent to which the discriminatory measures are eliminated under (i).
- Both (i) and (ii) are applicable, and that attention should be given to the paragraph 1(b) as a whole. Paragraphs (i) and (ii) are options to be judged as appropriate against the circumstances of the sector being considered, not as alternatives to be freely chosen by the parties.
- The «and/or» provision should be looked at in conjunction with the objective underlined in the chapeau of paragraph V:1(b), which provides that «the absence or elimination» of substantially all discrimination be exercised in the sense of Article XVII of the GATS.

3. VI.3.3 Paragraph 1(b): Definition of the «reasonable time-frame» provision

96. Regarding the time-frame itself, it could be interpreted to mean a ten-year limit (in parallel to the GATT Article XXIV:5(c), a five-year limit, or any time-frame limit to be applied on a case-by-case basis (rather than being formally defined).

97. A related issue has been whether a gradual and selected extension (i.e. to some sectors only) of certain key GATS obligations (such as national treatment) over time could be regarded as being in breach of both Articles V and XVII in terms of pace and coverage.

4. VI.3.4 Paragraph 2: Meaning of «a wider process of economic integration»

98. Paragraph 2 states that the evaluation of an agreement's consistency with Article V:1(b) may also take into account its relationship to «a wider process of economic integration or trade

liberalization» among the parties to the agreement, which has raised two issues, namely the interpretation of «a wider process of economic integration» and the relationship between the compliance of an agreement with Article V and the existence of such a process.

99. It has been argued that «wider process of economic integration» could be construed as one involving the elimination of barriers to trade not only in services but also in goods,[62] as well as the integration of government regulatory measures (through harmonization or mutual recognition) among the parties.

100. In the presence of such a «wider process of economic integration», two views have been advanced as to its meaning in terms of RTA consistency assessment: either the threshold of permissible discriminatory measures could be lower, or the time-frame for a parallel liberalization of trade in goods could affect the «reasonable time-frame» for liberalization of trade in services.

5. VI.3.5 Paragraph 3: Scope of the flexibility allowed to agreements involving developing countries

101. Subparagraph V:3(a) allows «flexibility» to the parties to an agreement that involves developing country Members in meeting the conditions of paragraph 1 (particularly with respect to subparagraph (b)). This flexibility is to be granted «in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors».

102. The main issue is whether such flexibility should be clearly defined. In particular, doubts remain on the following:

- whether the flexibility applies to both the requirements for «absence or elimination of substantially all discrimination» and for their elimination within a «reasonable time-frame»;
- whether the flexibility provided for meeting the requirements for «substantial sectoral coverage» under Article V:1(a) is limited by the emphasis on Article V:1(b) requirements, and if so, how much;
- whether, in the case of an agreement comprising both developed and developing country Members, flexibility would be extended to the services regimes of countries other than developing countries «in accordance with the level of development of the countries concerned».

103. Subparagraph 3(b) provides that, notwithstanding paragraph 6, in the case of an agreement involving only developing countries, «more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.» It has been suggested that some limitations and/or conditions may be attached to that provision (e.g., by reserving more favourable treatment to enterprises that are not globally competitive). It has been noted that favourable treatment under Article V:3(b) should be interpreted in conjunction with Article V:3(a), which modulates the preferential treatment in accordance with the level of development of the countries and their competitiveness in trade in services.

6. VI.3.6 Paragraph:4: Methodology to assess an EIA's trade effects *vis-à-vis* third parties

104. Paragraph 4 stipulates that parties must ensure that the agreement does not «raise the overall level of barriers» to trade in services with respect to third parties «within the respective sectors or subsectors compared to the level applicable prior to such an agreement».

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[62] That argument finds support in the drafting history of the paragraph.

105. Identifying the appropriate method for determining the change in the «overall barriers to trade» in services against third parties remains the primary concern with regard to this provision. Differences in regulatory mechanisms across countries and the absence of detailed trade data on services impede a significant evaluation of the level of barriers in effect before the establishment of the RTA.

106. It has been observed that although, in theory, all barriers could be converted into tariff equivalents in order to arrive at an average tariff for the parties, in practice, such an exercise would encounter significant data and methodological problems. Another approach would be to prevent any reduction of either the level, or growth, of trade in any sector or subsector below a historical trend.[63]

107. The discussion on how greater economic integration among the parties could impact third party trade has drawn attention to one particular situation: the extension of MFN exemptions by a customs union to its area of enlargement. More specifically, this situation raises three different questions, namely how to classify such exemptions, how to deal with their trade effects, and the legal procedures involved. (see Section IV.2.4.)

108. Regarding the classification issue, the extension of an MFN exemption to an enlarged area has been viewed either as a simple change in the geographic scope of the exemption or, alternatively, as a new exemption. It has been argued that an exemption of an entirely different character to the original one had been created and that acceding parties remain Members of the WTO in their own right so that any changes to their schedules would count as a new measure. The classification of such measures as "new" or, alternatively, "unchanged" MFN exemptions would affect the legal procedures involved.

109. Regarding the trade effects of the extension of an MFN exemption, it has been suggested that it was irrelevant to address the question of whether overall barriers to trade had been raised as a result, given that such situation had to be dealt with under different legal provisions. Conversely, it has been argued that, as a first step, there was a need to examine whether barriers had been raised and, if so, an overall evaluation of the situation should be made.[64]

110. Other questions yet to be discussed with regard to this provision are the following:

- Under what circumstances can an EIA entail changes to the level of barriers to trade in services with Members outside the EIA?
- Are these changes related to some forms of harmonization/alignment among members to the EIA as to their respective treatments of third parties, in a way similar to that envisaged in the external trade regime of customs unions for goods?
- Does this relate also to the concept of a «wider process of economic integration»?
- What does the existence of «a wider process of economic integration» imply for the «overall level of barriers» against third parties?

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[63] In cases where data on trade in services is unavailable the changes in the volume of trade could be measured by data on domestic economic activities. Otherwise, data from e.g. balance of payments, stocks of foreign direct investment and domestic industries could be used for purposes of evaluating the level of barriers.

[64] Namely, the negative effects of the extended MFN exemption would have to be balanced with the trade facilitation brought to all WTO Members by the enlargement of a customs union in terms of a larger market and a single regulatory regime.

7. VI.3.7 Paragraph 6: Definition of «substantive business operations»

111. Paragraph 6 provides that a third-party service supplier, legally recognised as a juridical person by an RTA party, is entitled to equivalent treatment granted within the agreement, provided that it engages in «substantive business operations» in the territory of the parties to that agreement.[65]

112. The main issue in this respect is the need to balance the requirements attached to «substantive business operations», so that they do not undermine the entitlement of third party suppliers to the same benefits as those of the parties while preventing the granting of equivalent treatment to non-established firms, or to firms which do not participate substantively in commercial transactions. The term «business operations» has been considered to cover production, distribution, marketing, sale and delivery of a service, as provided for in Article XXVIII:(b). Disagreement subsists on whether third-party suppliers are entitled to a treatment equivalent to that granted to the parties in cases (i) where only a branch (instead of a head office) has been established in a party to the agreement, and (ii) where no, or only minimal, trade takes place with the other RTA partners.

113. Doubts still remain on whether the term «substantive business operations» is meant to distinguish a service supplier producing services from one selling services; or a service supplier actively producing and/or selling services from one which is merely legally established but without as yet any production and sales activities; or yet between service supplies who may be "carrying on" a service (without being formally established) from those who are properly legally established.

VII. INTERACTION BETWEEN REGIONAL TRADE AGREEMENTS AND THE MULTILATERAL TRADING SYSTEM

A. THE BUILDING BLOCK/STUMBLING-BLOCK DEBATE

114. In the traditional, conceptual debate on "regionalism vs. multilateralism", it has been argued that RTAs, by moving generally at a faster pace than the MTS and sharing its goals, represent a way of strengthening the latter.[66,67] The positive effects of RTAs on the integration of developing countries in the world economy are also usually noted.

115. These views have been contested on the grounds of the fundamental changes observed in the geographical scale and trade-policy scope of the RTA process. It has been argued that the impact of these changes, coupled with the lack of flexible accession provisions in many RTAs hampers their effectiveness in contributing to the growth of world trade and the traditional synergies between the RTA and multilateral processes.

B. OVERLAPPING AND NETWORKS OF RTAS

116. It has been observed that overlapping RTA membership[68] impacts on trade and investment patterns; increases the complexity of RTAs, and magnifies negative effects on trade of complex and varying methods of determining regional content through preferential rules of origin. In addition, it

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[65] The concept of «substantive business operations» in services is equivalent to the rules of origin requirements in the goods area.

[66] This view is expressed in *Regionalism and the World Trading System*, WTO Secretariat, 1995.

[67] A study by the WTO Secretariat showed that there had been a definite trend toward broader as well as faster market access liberalisation of non-tariff measures in RTAs, in parallel to developments in the MTS (*Inventory of Non-Tariff Provisions in Regional Trade Agreements*, WT/REG/W/26, para. 32).

[68] Membership to RTAs overlaps when individual countries participate in various distinct bilateral or plurilateral RTAs.

has been argued that when diagonal cumulation is applied within a RTA network,[69] the preferential nature of any individual RTA is extended to parties to other RTAs, without any legal basis; furthermore, such treatment is discriminatory, since some third parties to the original RTA – those participating in the diagonal cumulation scheme – benefit from preferential treatment, while other third parties – those not participating in the scheme – are not eligible.

117. Conversely, it has been argued that the constitution of RTA networks acts as a positive force for the multilateral system. Parties to individual RTAs within a network move toward the harmonization of rules of origin with the view to greater integration. Diagonal cumulation schemes under preferential rules of origin regimes reduce barriers and facilitate trade among participating economies, by simplifying and harmonizing customs procedures.

C. EFFECTS OF THE EXTENSION OF TRADE POLICY AREAS REGULATED THROUGH RTAS

1. VII.3.1 Trade regulatory process

118. It has been argued that the current trend towards the creation of self-contained regional legal frameworks within RTAs is likely to lead to a progressive erosion of the multilateral legal framework. While the impact of regional trade policy disciplines differing from those under the WTO Agreements is practically impossible to jauge, it has been observed that their development could lead to Members forgoing some of their WTO rights when becoming parties to an RTA. An example cited in this context is the fact that some RTAs provide for the use of competition or anti-trust policy measures in intra-trade, in cases where anti-dumping measures would apply to third parties. It has been argued that the maintenance of a dual system (of anti-dumping duties for third parties and competition policy among RTA parties) can create distortions where different criteria and conditions apply to the invocation of such measures.

119. Conversely, the potential benefits to be gathered from the development and application of trade disciplines in individual RTAs or RTA networks have been highlighted, in particular their potential contribution to further multilateral liberalization.[70] There is wide recognition, however, that there is a need to find ways to coordinate different approaches to particular problem areas or trade disciplines developed regionally, so that they interact positively with the progress of multilateral disciplines in those areas. Contingency protection instruments,[71] technical barriers to trade and sanitary and phytosanitary measures have been identified as areas to be considered in this respect, given the potential impact of such measures on third-party trade.

2. VII.3.2 Dispute settlement

120. Another area of growing concern refers to the effects of the dispute settlement provisions contained in "new generation" RTAs, which could build jurisprudence conflicting with that of the WTO. This issue has raised in particular with respect to RTA clauses providing that, in the event of inconsistency, RTA rules prevail over WTO rules. It has been argued that this could result in a diminution of the rights that the parties had under the WTO in relation to their trade with one another. It has however been noted that such situation was not contemplated in the language calling for RTA rules to prevail in the event of inconsistency; that language was geared toward situations in which the RTA provisions went beyond WTO disciplines.

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[69] RTA networks are clusters of RTAs, each with similar, if not identical, trade policy disciplines, developed in parallel.

[70] This reflects the "laboratory" role of RTAs.

[71] For a review of contingency instruments as provided for in a number of RTAs, see WT/REG/W/26, Annex VI, paras. 39-53.

121. Also, the argument that parallel dispute settlement procedures could nullify or impair WTO rights of third parties has been contested on the grounds that such procedures concerned trade between the parties and not trade with third parties.

ANNEX

A Brief Account of GATT/WTO Rules and Procedures on RTAs

WTO provisions governing Members' participation in customs unions, free-trade areas (FTAs), and interim agreements are contained in paragraphs 4-11 of *GATT Article XXIV*. During the Uruguay Round, a number of provisions contained in the original Article XXIV, drafted in 1947, were clarified or interpreted, as contained in paragraphs 1-12 of the 1994 Understanding.

Rules with respect to reciprocal (tariff and non-tariff) preferential arrangements on trade in goods among developing countries are found in paragraphs 1, 2(c), 3(a & b) and 4 of the *Enabling Clause.*

GATS Article V lays down the rules governing economic integration agreements in the area of trade in services, including those implemented in stages.

Notification requirements

WTO Members are required to notify the RTAs they conclude:

«Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement ... shall promptly notify ...» [GATT Article XXIV:7(a)]

«Any contracting party taking action to introduce an arrangement ... shall: (a) notify ...» [Paragraph 4(a) of the Enabling Clause]

«Members which are parties to any agreement referred to in paragraph 1 shall promptly notify ...» [GATS Article V:7(a)]

Provision of information

Members are required to submit information on their agreements:

«Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement ... shall make available to [the CONTRACTING PARTIES] such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.» [GATT Article XXIV:7(a)]

«Any contracting party taking action to introduce an arrangement ... shall: (a) ... furnish [the CONTRACTING PARTIES] with all the information they may deem appropriate relating to such action.» [Paragraph 4(a) of the Enabling Clause]

«Members which are parties to any agreement referred to in paragraph 1 ... shall also make available to the Council [for Trade in Services] such relevant information as may be requested by it.» [GATS Article V:7(a)]

These legal texts do not characterize what the information to be provided to the WTO by RTA participant Members should encompass.

Periodic reporting

Periodic reporting on the operation of customs unions and FTAs was introduced by the GATT Council in 1971. During several years thereafter, reports of varying comprehensiveness were submitted and considered by the Council, though generally not attracting much attention. The 1994 Understanding, in its paragraph 11, reiterated the obligation of providing such biennial reports.

However, no existing record details the objectives pursued in 1971, and no further explanation was provided in the 1994 Understanding.

Multilateral surveillance

RTAs notified to the WTO are subject to surveillance in various Bodies, at various levels of depth and complexity, depending upon which provision the notifying Member avails itself of:

- No GATT 1947 provision did textually refer to any kind of "examination" or "review" of notified RTAs. As noted above, Article XXIV:7(a) foresees that Members will need information «to make such reports an recommendations ... as they may deem appropriate», and requires RTA parties to make such information available to them. A practice has been developed of mandating a working party to «examine in the light of the relevant provisions of the GATT» each RTA notified under Article XXIV, and to «report thereon».[72] In the WTO context, paragraph 7 of the 1994 Understanding clarified that all RTAs notified under GATT Article XXIV shall be «examined ... in light of the relevant provisions of GATT 1994 and paragraph 1 of this Understanding» and that a report shall be submitted to the CTG with «findings in this regard».[73] The 1994 Understanding also restated a neglected GATT procedure relating the periodic reporting on the operation of RTAs covered under Article XXIV.
- The Enabling Clause (paragraph 4(b)) envisions the possibility of bilateral or multilateral consultations in the case of RTAs among developing countries in the area of trade in goods.
- As to RTAs in the area of trade in services, the wording of GATS Article V:7(a) makes it clear that, whenever so decided by the Council for Trade in Services (CTS), an individual EIA will undergo examination with the aim «to report ... on its consistency» with GATS Article V.[74]

RTA examination procedures under the GATT

For RTA seeking legal cover under Article XXIV of the GATT 1947, the process consisted of the following steps:

- The notification of an agreement (of which the text was also made available) was considered by the Council, which mandated the examination to a working party and invited contracting parties to ask written questions to the parties and these to reply to them, also in writing.
- Once a formal document was produced with all these questions and replies, the working party began its work.
- Working party meetings (usually with the participation of parties' experts from capitals) comprised a further exchange of questions and replies, political statements and legal comments. Sometimes, the parties submitted further information in writing (usually, statistics). This information was in some cases reproduced in a formal document.
- The working party's report on the examination, once agreed, was transmitted to the Council, for adoption.

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[72] This was the standard text in the terms of reference of GATT working parties.

[73] Today, similar language is found in the standard terms of reference for the examination of individual RTAs notified under GATT 1994.

[74] This is also reflected in the corresponding terms of reference for the examination.

The process was confidential, internal to the working party, except for the documents produced and the agreed report. There were no minutes of the debates. Interested contracting parties had to request membership in each working party; in general, only a few contracting parties (and usually the same) were active in RTA-related working parties.

Within those common procedures, each working party decided on its methods of work and these varied. The format of working party reports reflected those differences: some favoured a more descriptive approach of the work done, mixing factual information and judgments on consistency, while others had a more structured approach in line with Article XXIV provisions/requirements. Although, in most cases, working party conclusions merely recorded divergent views on the assessment of the RTA's full compatibility with the rules (usually by summarizing elements detailed in previous sections), these could take up a single paragraph or a whole section.

Current RTA examination procedures

Today, the process through which RTAs are dealt with after its notification and distribution of its text has changed, partly because of developments in WTO rules and partly as a consequence of the creation of the CRTA and the procedures developed therein:

- The notification of an agreement (together with its text) is considered by the CTG (if notified under GATT Article XXIV), the CTS (if notified under GATS Article V) or the Committee on Trade and Development, if notified under the Enabling Clause). If examination of the agreement is needed, the relevant body adopts the terms of reference for the examination and transfers the examination task to the CRTA. [75]
- The parties to the RTA are invited to submit preliminary information on the agreement in the form of a Standard Format, which is published as a formal document. This is the initial step of what is called the "factual" examination.
- During (at least one or two) CRTA regular sessions, there is an exchange of oral questions and replies on the examined RTA, as well as more general statements by the parties and other Members. Detailed minutes are produced on each meeting devoted to the RTA examination, and published as formal documents.
- Between each of those meetings, usually a round of additional written questions and replies takes place. These are also published as a formal document.
- Once the CRTA feels that the factual part of the examination has concluded, the Secretariat is requested to draft a report on the examination, as the basis for consultations among Members (in open-ended informal CRTA meetings.
- The consensual CRTA report on a given agreement would then be sent to the WTO body which had mandated the examination, for adoption.

Information supplied by the parties, as well as questions and replies exchanged among Members in writing are issued as official, restricted WTO documents and, later, derestricted.[76] The same applies to proceedings of formal examination debates, where Members are identified in their interventions. The CRTA formal sessions are open to Members and observers, and consultations on draft reports are held as informal CRTA meetings (open to all Members).

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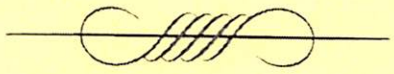
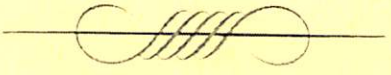
[75] In the case of services agreements and those notified under the Enabling Clause, examination is not automatic but should be decided by Members. To date, decision to submit RTAs to examination was taken for all EIAs notified and already considered by the CTS, and for a single RTA notified under the Enabling Clause.

[76] The Standard Format is circulated as an unrestricted document.

DOCUMENT VII



COMMITTEE ON REGIONAL TRADE AGREEMENTS (ARTBK)



COMMITTEE ON REGIONAL TRADE AGREEMENTS

LEGAL TEXTS

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TEXT OF ARTICLE XXIV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Article XXIV

Territorial Application -- Frontier Traffic -- Customs Unions and Free-trade Areas

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; *Provided* that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.

2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

3. The provisions of this Agreement shall not be construed to prevent:

(*a*) Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;

(*b*) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:

(*a*) with respect to a customs union, or an interim agreement leading to the formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(*b*) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same

constituent territories prior to the formation of the free-trade area, or interim agreement, as the case may be; and

(*c*) any interim agreement referred to in sub-paragraphs (*a*) and (*b*) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of sub-paragraph 5 (*a*), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reductions brought about in the corresponding duty of the other constituents of the union.

7. (*a*) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(*b*) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (a), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

(*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 customs union or of the free-trade area.

8. For the purposes of this Agreement:

(*a*) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(*b*) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article 1 shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected.* This procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8 (*a*)(i) and paragraph 8 (*b*).

10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.*

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territory.

TEXT OF ARTICLE XXIV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Interpretative Note *Ad* Article XXIV from Annex I

Paragraph 9

It is understood that the provisions of Article I would require that, when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty is re-exported to the territory of another member of such union or area, the latter member should collect a duty equal to the difference between the duty already paid and any higher duty that would be payable if the product were being imported directly into its territory.

Paragraph 11

Measures adopted by India and Pakistan in order to carry out definitive trade arrangements between them, once they have been agreed upon, might depart from particular provisions of this Agreement, but these measures would in general be consistent with the objectives of the Agreement.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members,

Having regard to the provisions of Article XXIV of GATT 1994;

Recognizing that customs unions and free trade areas have greatly increased in number and importance since the establishment of GATT 1947 and today cover a significant proportion of world trade;

Recognizing the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements;

Recognizing also that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded;

Reaffirming that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other Members;

Convinced also of the need to reinforce the effectiveness of the role of the Council for Trade in Goods in reviewing agreements notified under Article XXIV, by clarifying the criteria and procedures for the assessment of new or enlarged agreements, and improving the transparency of all Article XXIV agreements;

Recognizing the need for a common understanding of the obligations of Members under paragraph 12 of Article XXIV;

Hereby *agree* as follows:

1. Customs unions, free-trade areas, and interim agreements leading to the formation of a customs union or free-trade area, to be consistent with Article XXIV, must satisfy, *inter alia*, the provisions of paragraphs 5, 6, 7 and 8 of that Article.

Article XXIV:5

2. The evaluation under paragraph 5(a) of Article XXIV of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff-line basis and in values and quantities, broken down by WTO country of origin. The Secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognized that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required.

3. The "reasonable length of time" referred to in paragraph 5(c) of Article XXIV should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe

that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period.

Article XXIV:6

4. Paragraph 6 of Article XXIV establishes the procedure to be followed when a Member forming a customs union proposes to increase a bound rate of duty. In this regard Members reaffirm that the procedure set forth in Article XXVIII, as elaborated in the guidelines adopted on 10 November 1980 (BISD 27S/26-28) and in the Understanding on the Interpretation of Article XXVIII of GATT 1994, must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union.

5. These negotiations will be entered into in good faith with a view to achieving mutually satisfactory compensatory adjustment. In such negotiations, as required by paragraph 6 of Article XXIV, due account shall be taken of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation. Should such reductions not be sufficient to provide the necessary compensatory adjustment, the customs union would offer compensation, which may take the form of reductions of duties on other tariff lines. Such an offer shall be taken into consideration by the Members having negotiating rights in the binding being modified or withdrawn. Should the compensatory adjustment remain unacceptable, negotiations should be continued. Where, despite such efforts, agreement in negotiations on compensatory adjustment under Article XXVIII as elaborated by the Understanding on the Interpretation of Article XXVIII of GATT 1994 cannot be reached within a reasonable period from the initiation of negotiations, the customs union shall, nevertheless, be free to modify or withdraw the concessions; affected Members shall then be free to withdraw substantially equivalent concessions in accordance with Article XXVIII.

6. GATT 1994 imposes no obligation on Members benefiting from a reduction of duties consequent upon the formation of a customs union, or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its constituents.

Review of Customs Unions and Free-Trade Areas

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 Council for Trade in Goods on its findings in this regard. The Council for Trade in Goods may make such recommendations to Members as it deems appropriate.

8. In regard to interim agreements, the working party may in its report make appropriate recommendations on the proposed time-frame and on measures required to complete the formation of the customs union or free-trade area. It may if necessary provide for further review of the agreement.

9. Members parties to an interim agreement shall notify substantial changes in the plan and schedule included in that agreement to the Council for Trade in Goods and, if so requested, the Council shall examine the changes.

10. Should an interim agreement notified under paragraph 7(a) of Article XXIV not include a plan and schedule, contrary to paragraph 5(c) of Article XXIV, the working party shall in its report recommend such a plan and schedule. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations. Provision shall be made for subsequent review of the implementation of the recommendations.

11. Customs unions and constituents of free-trade areas shall report periodically to the Council for Trade in Goods, as envisaged by the CONTRACTING PARTIES to GATT 1947 in their instruction to the GATT 1947 Council concerning reports on regional agreements (BISD 18S/38), on the operation of the relevant agreement. Any significant changes and/or developments in the agreements should be reported as they occur.

Dispute Settlement

12. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of those provisions of Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free-trade area.

Article XXIV:12

13. Each Member is fully responsible under GATT 1994 for the observance of all provisions of GATT 1994, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.

14. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked in respect of measures affecting its observance taken by regional or local governments or authorities within the territory of a Member. When the Dispute Settlement Body has ruled that a provision of GATT 1994 has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

15. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of GATT 1994 taken within the territory of the former.

DIFFERENTIAL AND MORE FAVOURABLE TREATMENT RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES (Enabling Clause)

Decision of 28 November 1979
(L/4903)

Following negotiations within the framework of the Multilateral Trade Negotiations, the CONTRACTING PARTIES *decide* as follows:

1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries[1], without according such treatment to other contracting parties.

2. The provisions of paragraph 1 apply to the following:[2]

(a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences,[3]

(b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;

(c) 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;

(d) Special treatment on the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.

3. Any differential and more favourable treatment provided under this clause:

(a) shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties;

(b) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

(c) shall in the case of such treatment accorded by developed contracting parties to developing countries be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries.

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[1] The words "developing countries" as used in this text are to be understood to refer also to developing territories.

[2] It would remain open for the CONTRACTING PARTIES to consider on an *ad hoc* basis under the GATT provisions for joint action any proposals for differential and more favourable treatment not falling within the scope of this paragraph.

[3] As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of "generalized, non-reciprocal and non discriminatory preferences beneficial to the developing countries" (BISD 18S/24).

4. Any contracting party taking action to introduce an arrangement pursuant to paragraphs 1, 2 and 3 above or subsequently taking action to introduce modification or withdrawal of the differential and more favourable treatment so provided shall:[4]

(a) notify the CONTRACTING PARTIES and furnish them with all the information they may deem appropriate relating to such action;

(b) afford adequate opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise. The CONTRACTING PARTIES shall, if requested to do so by such contracting party, consult with all contracting parties concerned with respect to the matter with a view to reaching solutions satisfactory to all such contracting parties.

5. The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.

6. Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems.

7. The concessions and contributions made and the obligations assumed by developed and less-developed contracting parties under the provisions of the General Agreement should promote the basic objectives of the Agreement, including those embodied in the Preamble and in Article XXXVI. Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.

8. Particular account shall be taken of the serious difficulty of the least-developed countries in making concessions and contributions in view of their special economic situation and their development, financial and trade needs.

9. The contracting parties will collaborate in arrangements for review of the operation of these provisions, bearing in mind the need for individual and joint efforts by contracting parties to meet the development needs of developing countries and the objectives of the General Agreement.

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[4]Nothing in these provisions shall affect the rights of contracting parties under the General Agreement.

TEXT OF ARTICLE V OF THE GENERAL AGREEMENT ON TRADE IN SERVICES

Article V

Economic Integration

1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

(a) has substantial sectoral coverage[5], and

(b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:

(i) elimination of existing discriminatory measures, and/or

(ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.

(b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

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[5] This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

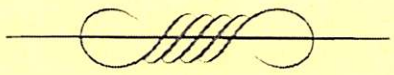
7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. 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.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary.

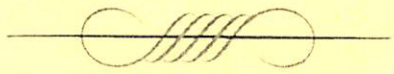
(c) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

DOCUMENT VIII



ACRONYMNS

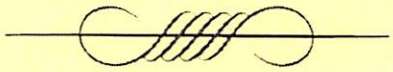


AFTA	ASEAN Free Trade Area	Brunei Darussalam Cambodia Indonesia Laos Malaysia Myanmar Philippines Singapore Thailand Vietnam
ASEAN	Association of South East Asian Nations	Brunei Darussalam Cambodia Indonesia Laos Malaysia Myanmar Philippines Singapore Thailand Vietnam
BAFTA	Baltic Free-Trade Area	Estonia Latvia Lithuania
BANGKOK	Bangkok Agreement	Bangladesh China India Republic of Korea Laos Sri Lanka
CAN	Andean Community	Bolivia Colombia Ecuador Peru Venezuela
CARICOM	Caribbean Community and Common Market	Antigua & Barbuda Bahamas Barbados Belize Dominica Grenada Guyana Haiti Jamaica Monserrat Trinidad & Tobago St. Kitts & Nevis St. Lucia St. Vincent & the Grenadines Surinam
CACM	Central American Common Market	Costa Rica El Salvador Guatemala Honduras Nicaragua
CEFTA	Central European Free Trade Agreement	Bulgaria Croatia Czech Republic Hungary Poland Romania Slovak Republic Slovenia
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
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

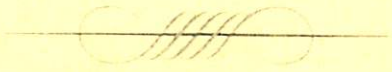
EC	European Communities	Austria Belgium Cyprus Czech Republic Denmark Estonia Finland France Germany Greece Hungary Ireland Italy Latvia Lithuania Luxembourg Malta Poland Portugal Slovak Republic Slovenia Spain Sweden The Netherlands United Kingdom
ECO	Economic Cooperation Organization	Afghanistan Azerbaijan Iran Kazakhstan Kyrgyz Republic Pakistan Tajikistan Turkey Turkmenistan Uzbekistan
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
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
LAIA	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 Mon

PATCRA	Agreement on Trade and Commercial Relations between the Goverment of Australia and the Government of Papua New Guinea	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
SADC	Southern African Development Community	Angola Botswana Lesotho Malawi Mauritius Mozambique Namibia South Africa Swaziland Tanzania Zambia Zimbabwe
SAPTA	South Asian Preferential 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
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

DOCUMENT IX



NOTIFICATIONS OF RTAS IN FORCE TO GATT/WTO AND THE EXAMINATION PROCESS



As of 18 August 2004

NOTIFICATIONS OF RTAs IN FORCE TO GATT/WTO			
	Accessions	New RTAs	Total
GATT Art. XXIV (FTA)	5	134	139
GATT Art. XXIV (CU)	5	9	14
Enabling Clause	0	19	19
GATS Art. V	2	32	34
Total	12	194	206

EXAMINATION PROCESS				
	WTO provision			
Status	Enabling Clause	GATS Art. V	GATT Art. XXIV	Grand Total
Examination not requested	16	0	6	22
Factual examination not started	0	11	30	41
Under factual examination	1	15	23	39
Factual examination concluded	0	4	62	66
Consultations on draft report	0	4	8	12
Report adopted	2	0	24	26
Grand Total	19	34	153	206