



**MARKHUB**

**Macao Regional Knowledge Hub**  
Working Papers, No. 19, January 2009

# **Multilateral rules for regional trade Agreements: past, present and future**

by

Mia Mikic\*

---

\* Author is an Economic Affairs Officer at the United Nations Economic and Social Commission for Asia and the Pacific, Bangkok, Thailand. The views presented in this paper are those of the author and do not necessarily reflect the views of the United Nations, its members or the Macao University of Science and Technology or partners. This paper is also published as chapter 10 in ESCAP (2008) *Emerging trade issues for the policymakers in developing countries Asia and the Pacific*, UN and ESCAP. The author may be contacted at [mikic@un.org](mailto:mikic@un.org)



# MULTILATERAL RULES FOR REGIONAL TRADE AGREEMENTS: PAST, PRESENT AND FUTURE<sup>1</sup>

*By Mia Mikic*

## Introduction

Multilateral rules for international trade were created with the objectives of securing market access for the post-war recovering economies and supporting their continued growth. Following the introduction of these rules in 1947 as the General Agreement on Tariffs and Trade (GATT), it became clear that those countries with easier access to other countries' markets were able to grow faster. This was probably the main reason why more and more of independent States accepted the trade disciplines, despite the fact that the rules limited their freedom to make unilateral decisions about trade (thus leaving them with narrower policymaking space).

During the past six decades, these countries have relied on regular multilateral trade negotiation rounds to further trade liberalization. Each one of the eight trade rounds held during that period contributed to the extension of the coverage of original rules and added new ones. In short, the multilateral trading system (MTS) evolved from the set of rules now known as GATT 1947 to a more complex system, including the establishment of the World Trade Organization (WTO) in 1995. The ninth round, entitled the Doha Development Agenda, began in 2001 but encountered progressively more complex problems; it struggled through a temporary suspension lasting several months in 2006-2007 to reach its current status, described as "an impasse of uncertain duration".

Meantime, those MTS members who were keen to embark on faster and/or deeper trade liberalization moved both unilaterally and regionally to achieve that goal. While unilateral liberalization might have gradually lost its appeal, bilateral and regional trade agreements drew the most attention by trade policymakers in many countries (figure 1). In turn, the proliferation of regional trade agreements (RTAs)<sup>2</sup> has been blamed for problems in ongoing negotiations under the Doha Development Agenda and for the weakening of the multilateral trading system. This argument has roots in the old debate on whether RTAs play a role as stumbling blocks or stepping stones to multilateral trade liberalization and MTS.<sup>3</sup> From the debate and more recent anecdotal evidence, RTAs appear to be

---

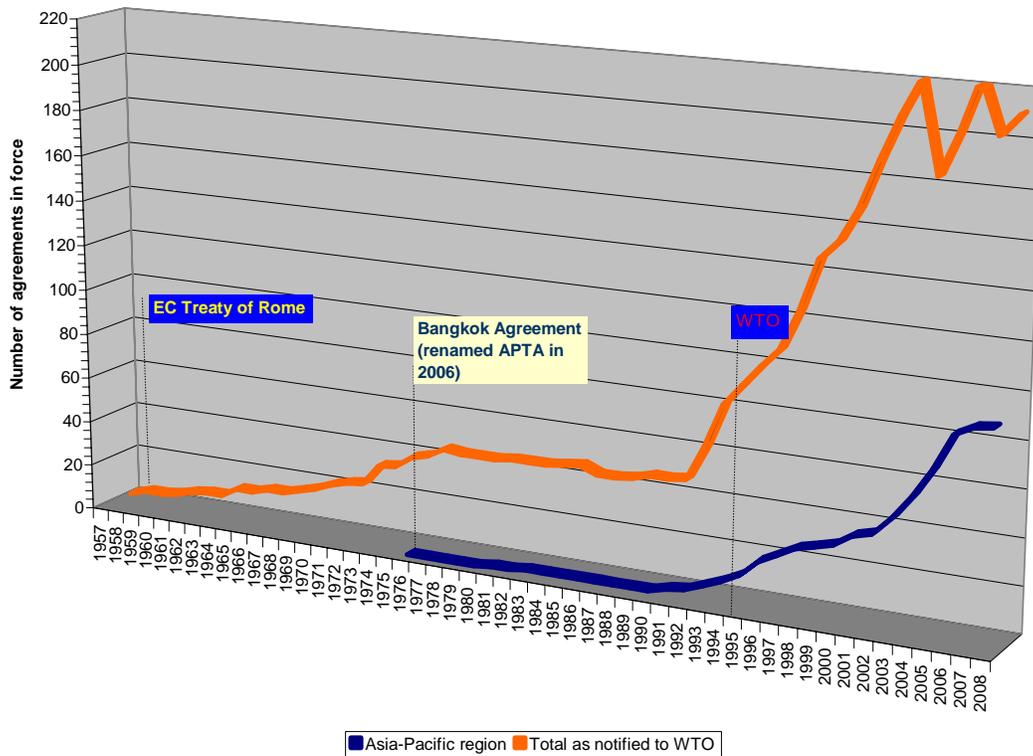
<sup>1</sup> A different version of this paper was presented at the WTO Public Forum 2007 on "How can the WTO help harness globalization?" in Session 37, "The challenge of coherence", on 5 October 2007. The author is grateful to co-panelist Diana Tussie, Debra Steger, Welber Barral, Ahmed Ghoneim, Vivianne Ventura Dias and Ann Weston, and participants in the session for useful comments. Financial support from the Latin American Trade Network and the International Development Research Centre for participation in the WTO Public Forum 2007 is gratefully acknowledged.

<sup>2</sup> To prevent confusion in terminology, the author has followed the terminology used in GATT/WTO texts, that is, regional trade agreements, to describe all trade agreements deviating from the most-favoured nation principle. However, the author agrees with those commentators who argue that most of today's trade agreements are not "regional" in their geographical scope, and that a more fitting term for these agreements would be preferential trade agreements (cf Bhagwati, 2008).

<sup>3</sup> See Bhagwati, 1992 and 2008 for early discussions and for his most recent views. See also Baldwin, 2008, for a synthesis and critique of theoretical literature.

undermining the two fundamental components necessary for a survival of multilateralism in trade – reciprocity and non-discrimination.

**Figure 1. Proliferation of RTAs**



*Source:* WTO for the total number of agreements ([www.wto.org](http://www.wto.org)); and Asia-Pacific Trade and Investment Agreements Database (APTIAD) for the Asian and Pacific region ([www.unescap.org/tid/aptiad](http://www.unescap.org/tid/aptiad)).

*Note:* Total includes only agreements that have been notified to WTO, while Asia-Pacific includes some agreements that are in force but have not yet been notified.

The potential of RTAs to adversely affect multilateral liberalization did not escape the attention of the drafters of the original rules on MTS. Given the non-discrimination principle, one would expect that any form of the discriminative extension of preferences (which is what RTAs do) would have been explicitly outlawed by MTS. Instead, the GATT 1947 text allowed for discriminative liberalization by including the rules on RTAs.<sup>4</sup>

This chapter explores how the former (GATT) and current (WTO) multilateral trading system have been handling the rules on RTAs over time and with the change of the

<sup>4</sup> Sample of literature elaborating on theoretical and historical context for this outcome includes Mathis, 2002, Chase, 2006, and Jackson, 1997. See also section A of this chapter.

multilateral liberalization agendas, and how the monitoring and evaluation set by those rules have been working. The chapter is structured as follows. Section A reviews the ideas of reciprocity and non-discrimination as the two fundamental principles of MTS. Section B explores the rules on RTAs that were originally set and that evolved in the pre-WTO period. The implementation of those rules is also reviewed through available data. Section C covers the period of the Doha Development Agenda as well as the intended and achieved negotiations on rules on RTAs based on Doha declaration. The new Transparency Mechanism on RTAs, one of the rare tangible outputs of the Round so far, is analysed in detail in terms of its characteristics and experience with its application is summarized ahead of the formal review due in the WTO in October 2008. Section D looks into the situation in the Asian and the Pacific region with regard to notification and the WTO consideration process. Section E looks into reasons for reliance on RTAs and recommends persisting with the achieved improvements through the Transparency Mechanism even if the Doha Round remains in a longer or permanent impasse.

### **A. On reciprocity and non-discrimination**

While unilateral trade liberalization has occupied a pedestal in orthodox trade theory, political economy literature on trade has been pointing to reasons why this path would be difficult to pursue in practice. As with any trade reform, unilateral trade liberalization creates losers and winners. However, in unilateral cases these losers cannot be compensated through gains captured by reciprocal liberalization taking place in a country's trading partners, but only by transfers from domestic winners. Another obvious reason for reluctance is a loss of tariff revenue for small and developing countries and, again, in unilateral liberalization there is no external source for compensation of that loss.<sup>5</sup>

Consequently, trade liberalization that is based on contingent and equivalent exchange of trade concessions (that is, full reciprocity) is seen as necessary to break any political economy type of resistance. Obviously, there are situations in which the reciprocity condition may be satisfied without an equivalent exchange of direct trade concessions when benefits in other than trade areas are to be achieved through agreements. It is also possible for reciprocity to be waived and concessions to be extended in a non-reciprocal way as demonstrated through various schemes extended to a number of developing and least developed countries.

When reciprocity is the basis for the exchange of trade concessions, it matters if they are extended (fully or otherwise) to all or only some of the trading partners. Countries receiving lesser or no preferences tend to feel discriminated against. Unequal exchange of preferences among trading partners may often result in repeated renegotiations of tariffs to

---

<sup>5</sup> Notwithstanding those theoretical arguments (and received wisdom), the World Bank (2007) claimed that some 65 per cent of applied tariff liberalization on manufactures in developing countries between 1983 and 2003 were associated with unilateral liberalization while only about 25 per cent was the outcome of multilateral agreements, leaving about 10 per cent for RTAs. However, during the observed period, developing countries were hardly involved in RTAs; a number of them joined MTS during the latter part of that period and gained a longer transition period. For these and other reasons related to measurement problems, perhaps the role of unilateral liberalization has been overestimated. See also Evenett (2008).

remove perceived discrimination, or even in trade (and other) wars. It is for this reason that the founders of GATT installed the most-favoured nation (MFN) treatment as the fundamental principle of the multilateral trading system. MFN ensures that concessions given by any member of the then GATT to any country are extended to other members.<sup>6</sup> Obviously, MFN treatment could still be seen as having a discriminatory impact since it allows less favourable treatment of non-members. However, with the six-fold increase in MTS membership, trade concessions under MFN today theoretically apply to all countries that feature in world trade, as some members also unilaterally and on a non-reciprocal basis extend MFN treatment to selected non-members. The fact, however, is that the parallel rise in a number of trade agreements and other preferential arrangements in effect have made MFN an exception,<sup>7</sup> and most of the world trade today appears to be preferential trade of one type or another.<sup>8</sup>

## **B. From GATT to WTO – evolution of rules on RTAs**

The existence of the MFN clause meant that RTAs would constitute a straightforward violation of non-discrimination principle if it were not for other rules allowing this derogation. As mentioned above, these rules embodied in Article XXIV of GATT (1947) were an inherent part of the original MTS.

The value of both the MFN principle and discriminatory preferences were recognized during the drafting of the Havana Charter (which was turned into the GATT 1947 text) by then participating States. According to WTO (2007), GATT Article I:2 was to provide assurances that only the existing preferences (that is, the British imperial system) would be continued under the condition that no new preferences would be extended, thereby ensuring non-discrimination. However, the text also included Article XXIV that provided an exception from the MFN principle. Before discussing the contents of this Article, a quick reference to its coming into being reveals some interesting details on the negotiating interests of the MTS founders.

There are at least three complementary explanations for the appearance of Article XXIV. One explanation is that in order to ensure support for the Havana Charter from a wider group of developing countries (and not only those covered by the British imperial system), the rules needed to allow the possibility of establishing free trade areas (*ibid*, 305). Another explanation is that the United States of America, despite its reluctance to allow for exceptions to MFN, accepted Article XXIV in order to promote the European integration, which was deemed essential for future stability and peace in Europe (Bhagwati, 1991). Finally, the third explanation was provided by Chase (2006), who

---

<sup>6</sup> “(...) any advantage, favour, privilege, or immunity granted by such country to any product originating in any other country shall be accorded immediately and unconditionally to a like product originating in the territories of all other contracting parties”, GATT Article I. Note that “contracting parties” in the original (1947) text of GATT is replaced by “Members” in the 1994 version.

<sup>7</sup> The Sutherland Report (WTO, 2004) suggests that MFN could be “...defined as LFN (least-favoured nation treatment)”, p. 19.

<sup>8</sup> According to Grether and Olarreaga (1998), 42 per cent of world trade in 1993-1997 was preferential; the share is as high as 70 per cent for Western Europe, and as low as 4 per cent for Asia and Oceania. Crawford and Fiorentino (2005) estimated that preferential trade comprised 90 per cent of some countries’ trade.

argued that the United States, a seemingly strong defendant of non-discrimination, introduced Article XXIV to accommodate a possible United States-Canada free trade agreement, which was at that time negotiated secretly (and never ratified, as was not the Havana Charter).<sup>9</sup> Obviously, various parties were interested in preserving a “carve out” in MFN treatment of the future multilateral trading system by allowing regional liberalization in the interests of free trade being used as an engine of growth.<sup>10</sup>

### 1. Article XXIV of GATT 1947

Article XXIV exempted countries that are forming agreements, such as customs unions, free trade areas and interim agreements, from applying the MFN clause if those countries met the following conditions:

- (a) A neutrality requirement by which regional integration should not result in barriers towards third parties being raised relative to those prevailing before the formation of the RTA (Article XXIV:5 (a) and (b));<sup>11</sup>
- (b) A transparency requirement by which the information on the formation of regional integration was required to be promptly notified to other parties “to enable them to make such reports and recommendations to contracting parties as they may deem appropriate” (Article XIX:7 (a));
- (c) A requirement of commitment to deep integration by which regional integration should eliminate duties and other restrictive regulations of commerce in substantially all trade within a reasonable length of time (Article XXIV:8);
- (d) A compensation requirement in the case of an increase in duties due to the formation of regional integration and which is inconsistent with Article II. In such cases, the compensatory adjustment set in Article XXVIII would apply (Article XXIV:6).

While Article XXIV did not include specific clauses on surveillance and enforcement of the above listed requirements, it did envisage parties having an opportunity to influence the process of formation and development of RTAs. Subparagraph 7(b) states that:

“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 subparagraph (a), the CONTRACTING

---

<sup>9</sup> WTO 2007, page 305, footnote 300 reports that “Canada rejected the proposed agreement of 1948”.

<sup>10</sup> According to Article XXIV: 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.”

<sup>11</sup> In addition to XXIV:5 (a) for customs unions and (b) for free trade areas, (c) prescribed that interim agreements “shall include a plan and schedule for the formation of such customs union or of such free trade areas within a reasonable length of time.”

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.”

However, perhaps confirming the interest of parties in engaging in regional integration in future, paragraph 10 allows that:

“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.”

## **2. Enabling Clause 1979**

The view that coexistence of discriminatory and MFN tracks to trade liberalization positively contributes to global free trade, and the realization that developing countries need to be integrated into the global trade in the spirit of less than full reciprocity, led to broadening of the disciplines on RTAs in GATT.

During the Tokyo Round (1973-1979), the GATT Council Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (known as the Enabling Clause) was adopted. This clause legalized partial trade preferences among developing countries and non-reciprocal partial preferences by developed to developing countries. Onguglo (2000) and WTO (2007)<sup>12</sup> explained that the Enabling Clause expected an RTA:

- (a) To be designed to facilitate and promote trade for members and not increase barriers or create undue difficulties for trade of third countries;
- (b) To not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a MFN basis;<sup>13</sup>
- (c) Between a developed and a developing country to be designed so as to respond positively to the development, financial and trade needs of developing countries.

The only real requirement from Article XXIV remained in terms of notification (paragraphs 4a and 4b), including a provision of adequate opportunity for prompt consultations at the request of any interested party.

---

<sup>12</sup> See footnote 301, page 305.

<sup>13</sup> Limão (2006) provided a comparison of the Enabling Clause and Article XXIV on requirements on preferences. According to Limão, the Enabling Clause was more restrictive as it required that preferences “shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a MFN basis”. Limão showed that the United States and European Union GSP impede their multilateral liberalization under MFN.

### **3. Article V of GATS 1995**

Uruguay Round agreements (negotiated from 1986 to 1994) that broadened the MTS coverage to, inter alia, services trade also added another dimension of exemption from the non-discrimination principle – Article V of the General Agreement on Trade in Services (GATS). According to this Article, member countries can form RTAs in services provided that:

- (a) They have substantial sectoral coverage (GATS Article V.1 (a));
- (b) No provisions a priori exclude any mode of supply (footnote to GATS Article V.1 (a));
- (c) They eliminate substantially all discrimination in the sense of providing national treatment within a reasonable time frame (as defined by GATS Article V.1 (b)).

The first of these conditions is to be met in terms of the number of sectors, volume of trade affected and modes of supply. In order to meet this condition, the agreement should not provide for a priori exclusion of any of four modes of supply. The third condition is to be met by removing existing measures that discriminate against trade agreement partners and prohibiting any new discriminatory measures except those related to short-term balance of payments difficulties (Article XII), general exceptions related to public morals, human, animal or plant life or health, and so on (Article XIV) and security exceptions (Article XIV bis). Notification requirements are given in GATS Article V:7.

### **4. Waiver clause**

In addition to the three derogation avenues explored above, GATT Article XXV:5 allows, under exceptional circumstances, members while acting jointly to waive an obligation, including MFN, imposed upon another member. In other words, if some members are unable to meet criteria stipulated in GATT Article XXIV or the Enabling Clause, they are able to invoke this Article to be granted a special waiver. Onguglo (2000) provided examples from early and later GATT history when this waiver was used.<sup>14</sup> Of 28 waivers granted, the majority were related to non-reciprocal preferences granted to developing countries by a developed one.<sup>15</sup> The scope for seeking waivers was significantly reduced with the Uruguay Round Agreements (see next section for further details).

### **5. Examination process and lessons learnt**

---

<sup>14</sup> For example, a waiver for the European Coal and Steel Community for the free trade agreement on coal and steel in 1952, and Canada-United States automotive pact in 1965.

<sup>15</sup> For example, granted to Papua New Guinea by Australia in 1953, the Caribbean Basis by Canada in 1968 and the United States in 1985, and the most controversial waiver sought by the European Union for the Fourth Lomé Convention.

As discussed above, the deviations and waivers from MFN treatment were conditional. Requirements to be met by RTAs meant that there was an implied intention to “test” or “examine” whether members’ policies complied with the rules. Presumably this was to prevent harmful impact of RTA policies on other parties in the MTS (Article XXIV: 7(b) and 10; as discussed above). As one of the MTS principles, parties have been required to be transparent about their policies that might adversely affect their trading partners. Transparency has required notification about changes of market access policies, including the preferential concessions under RTAs. However, Article XXIV and other non-discrimination principle waivers were not very precise in terms of the requirements to meet, either in terms of consequences in the case of non-compliance or in terms of the examination process. In fact, within GATT 1947, no provisions specifically talked about examination of the notified RTAs.

As discussed above, Article XXIV:7(a) implied that information supplied by members would be “to enable them to make such reports and recommendations to contracting parties as they deem appropriate”, thus making provision of this information mandatory. This intention was probably why a practice was established to form working parties (groups) with mandates to examine every notified RTA and to report on their compliance with the relevant provision of GATT.

However working groups that operated during the GATT 1947 era faced many problems. WTO (2007) revealed that the first test of the RTA rules arrived early in GATT history, with the notification of the EEC-Association of Overseas Countries and Territories (p. 305) when the Working Group established to consider it was unable to unambiguously decide on its consistency with Article XXIV. Problems with unclear language in Article XXIV (and later waivers) were encountered by the Working Group; in particular, “substantially all trade” or “other restrictive regulation of commerce” with regard to the extent of preferences within the RTA continued to rule this area of MTS. As a result, no decision was made on subsequently notified/examined RTAs with regard to their compliance with the disciplines. Despite a relatively steady flow of notifications to GATT, there were no clear-cut decisions on an RTA “passing” the consistency test or being in breach of the rules. In fact, only the Czech Republic-Slovak Republic Customs Union was declared as being consistent with the provisions of Article XXIV (WTO, 2007<sup>16</sup>).

Srinivasan (2007), citing WTO (1995), reported that during the period of GATT 1947 (from 1947 to 1994), 98 agreements were notified under Article XXIV, and an additional 11 under the Enabling Clause. Working parties were established for these notified agreements. By end of 1994, 15 working parties had not completed their examination and another five had not produced a report for other reasons, leaving only 69 that had submitted reports. Of those 69, only six reports explicitly acknowledged conformity of RTAs with Article XXIV.<sup>17</sup> In 1995, only two of those six agreements were still active.

---

<sup>16</sup> See footnote 304, page 306.

<sup>17</sup> However, of the six RTAs reported to be in conformity with Article XXIV, there was only one agreement, the Czech-Slovak Customs Union, on which members were able to build a consensus on the conformity of the RTA with the GATT provisions.

As part of the Uruguay Round negotiations, an attempt was made to eliminate ambiguity in the language of Article XXIV of GATT and the Enabling Clause (as well as Article V of GATS designed in the Round). An Understanding on the Interpretation of Article XXIV of GATT 1994 was an attempt to explain key obligations such as “reasonable length of time” and “barriers towards third parties”.

The Understanding thus introduced the following clarifications in relation to those two requirements:<sup>18</sup>

- (a) Regarding reasonable time, the period “should exceed 10 years only in exceptional cases”;
- (b) Weighted average applied tariffs were to be used to determine whether an RTA raised barriers to third-country trade.

However, despite its name, the Understanding did not contribute much to the clarification of requirements on “substantially all trade” or on the interpretation of other non-procedural rules.

As figure 1 shows, the second wave of RTA proliferation coincided with the end of Uruguay Round, which was somewhat ironic as expectations were that the establishment of WTO would lead to more, rather than less, convergence in the global trading system. As the existent consistency examination mechanism had proven inadequate, the WTO General Council established the Committee on Regional Trade Agreements (CRTA) in 1996. The main purpose of CRTA is twofold: (a) to ensure transparency of RTAs; and (b) to provide an opportunity for WTO members to evaluate the consistency of RTAs with the WTO rules.<sup>19</sup>

More structure was introduced by CRTA into the examination process of notified RTAs. Agreements to be notified under Article XXIV to the Council for Trade in Goods include free trade agreements and customs unions. (Such agreements are typically made between developed countries or have at least one developed country as a member.) These agreements are directed to CRTA for examination.

Agreements that are negotiated between developing countries and are to be notified under the Enabling Clause are labelled as “partial scope agreements” and notification is directed to the Committee on Trade and Development (CTD). It is accepted that, in principle, the examination process of these agreements will not go through the same scrutiny as the ones going through CRTA.

Finally, agreements on trade in services are called “economic integration agreements” and are notified under Article V of GATS to the Council for Trade in

---

<sup>18</sup> In addition to the Understanding on Article XXIV, clarifications of rules relevant to RTAs were issued on anti-dumping (Article 4.3), subsidies (Article 16.4), safeguards (Article 2.1, footnote) and rules of origin (Annex II).

<sup>19</sup> See [www.wto.org/english/tratop\\_e/region\\_e/regcom\\_e.htm](http://www.wto.org/english/tratop_e/region_e/regcom_e.htm) for more details about the examination process.

Services for all members. The notification process may involve an examination process by CRTA, but in the case of services an examination is not mandatory.

It was envisaged that after the examination of an RTA by CRTA, a report and recommendations would be submitted to the Council for Trade in Goods/Services after which a positive concluding report would hopefully be forthcoming. After this initial report, the RTA members were expected to submit biennial reports. According to the WTO online database on these reports, during 2000-2006 a total of 47 reports were submitted. Inspection of the records shows that the same group of members had been submitting these reports during that period.<sup>20</sup> Members expressed concern in connection with costs, possible duplication and overlap with the TPRM reporting, confusion with the objectives of transparency versus examination, and linkages to the dispute settlement mechanism.

In the end, little improvement was achieved and many of the agreements subsequently negotiated still included important sector exceptions (for example, agriculture) instead of covering “substantially all trade”. Many of the RTAs continued to embody rules of origin that served as a protectionist shield against third countries’ trade and investment (in contrast to the requirement of Article XXIV). Moreover, while examinations were extensive, no examination process was completed after CRTA was put in place due to a lack of consensus. WTO (2001) describes the situation at the time:

“However, WTO does not have rules and procedures for examining RTAs that function adequately. To date, 220 RTAs have been notified to GATT/WTO, and the Committee on Regional Trade Agreements has proceeded to the examination of notified agreements, with a total of 86 RTAs still under examination at the end of 2000. The Committee has completed the factual examination of 60 RTAs, whose draft examination reports are in various stages of consultation and finalization. In addition to facing a heavy backlog of agreements under examination, the Committee has been unable to finalize any reports due to a lack of consensus among the WTO members, demonstrating that the unsatisfactory experience of the GATT process on examining RTAs continues to be the same in WTO.”

In summary, the rules on RTAs that existed in GATT and after the establishment of WTO did not bring much discipline into the area, and thus were unable to slow down or reverse the proliferation of RTAs. One agreement after another was negotiated outside the scope of intended rules and contrary to the spirit of the non-discrimination principle, but no action was taken. The examination process had no enforcement muscle. In practice, the examination process was never linked to dispute settlement,<sup>21</sup> but a theoretical possibility

---

<sup>20</sup> For example, ANZCERTA, EFTA, EC cooperation and association agreements, the Czech-Slovak Customs Union, Central American Economic Integration, and the United States-Israel agreement.

<sup>21</sup> However, there were a few dispute settlement cases involving RTAs. Examples include the Turkey Restrictions on Imports of Textile and Clothing Products in connection with Turkey joining a Customs Union with the European Union (DS34), and the more widely-known case in connection with the Fourth Lomé Convention and European Union restrictions on banana imports (DS27).

that the opinion from an examination could be used to build a dispute case had an adverse impact on the ability to eliminate political and legal difficulties, and on reaching unanimous decisions in the process. The peer pressure that CRTA was intended to build to influence changes in the dynamics and form of RTAs did not amount to much.

### **C. Doha Development Agenda and rules on RTAs**

In the Doha Ministerial Declaration, 2001, paragraph 29 refers to the need for “clarifying and improving disciplines and procedures under existing WTO provisions applying to regional trade agreements” while emphasizing the developmental aspects of RTAs. The objective for including RTA provisions in the Doha Development Agenda (DDA) agenda was not only to improve the weak operation of CRTA, but also to obtain better control over proliferation and their systemic implication for MTS.

The Negotiating Group on Rules (NGR) set a two-track programme for its work on the DDA:

- (a) Issues of systemic (substantive) nature;
- (b) Issues of a procedural nature with a focus on:
  - (i) Improving transparency with respect to RTAs; and
  - (ii) Improving procedures for the consideration/surveillance of RTAs by WTO.

#### **1. Systemic issues**

Given the long history of what many consider to be weak global governance over RTAs as well as the clear willingness of members to continue, even enhance, the use of a regional track of liberalization, the systemic issues presented themselves as crucial for both MTS and its development aspects. Work on these issues was divided into several categories:

- (a) Issues related to the interpretation of the existent disciplines under Article XXIV of GATT and Article V of GATS;
- (b) Issues related to coherence between the existent RTAs rules, and between those rules and other disciplines in the WTO agreements;
- (c) Issues related to potential institutional tensions and potential conflict between RTAs and MTS;
- (d) Identification of the “developmental aspects” of RTAs and how to best reflect these aspects in RTAs rules in WTO.

Negotiation proposals were submitted, both by developed and developing country members, which covered a wide and complex set of issues (table 1). Discussions of these issues were additionally complicated by the fact that progress in some other areas of DDA negotiations were required to move on some of these issues. Proposals dealing with the interpretation of existing substantive disciplines were more focused on goods trade than on services trade. Much effort was directed towards a provision defining “substantially all trade”, “major sectors” and “other restrictive regulations of commerce” (in particular, their

relationship to rules of origin in the RTAs). Some proposals (for example, from Japan and the European Union) were aimed at developing methodologies for assessing the concept of “substantially all trade”.

Another aspect of RTA rules of great importance refers to the issue of “transition period”. Members were unable to reach a common position on (a) the maximum length of transition to be allowed and for which RTAs, (b) what should be the relationship between “transition period” and provisions on “substantially all trade”, or (c) exceptional cases to be used in connection with invoking “transition period”.

Finally, with regard to the developmental aspects stressed in the Doha Declaration, members considered Special and Differential Treatment within Article XXIV of GATT (1994) as well as on the scope of the application of such treatment. As reported in WTO (2004), the NGR also considered the question of “grandfathering” existing RTAs and retroactive application of any new rules, but it has been generally held that no useful outcome could be achieved on that issue until the negotiations had progressed significantly. At the Ministerial meeting in 2005, ministers requested the NGR “to intensify its efforts to reach appropriate outcomes on RTA systemic questions by the end of 2006”. During the course of 2006, discussions continued to consider proposals submitted by participants on, among other matters, “substantially all the trade”, “length of RTA transition periods” and “RTA development dimensions”. Notwithstanding the highly technical discussions held on these issues, the debate has remained exploratory in nature and severe differences persist on the scope and substance of these specific negotiations. To date, no text-based submissions to advance the process have been made (WTO, 2007).

**Table 1. List of proposals on systemic rules on RTAs**

<b>Proposal by</b>	<b>Document TN/RL/W/-</b>	<b>Year</b>
WTO Secretariat	8/Rev.1	
Australia	2,15	2002
EC	14	2002
Chile	16	2002
Turkey	32	2002
Least-developed countries	TN/TD/W/4 & Add.1	2002
African Group	TN/CTD/W/3/Rev.2	2002
India	114	2003
Republic of Korea	116	2003
Australia, New Zealand, Republic of Korea, Chile and Hong Kong, China	117	2003
Chile	151,152,163	2004
ACP Group	155	2004
Turkey	167	2004
Australia	173/Rev.1, 180	2005
European Communities	179	205
Taiwan Province of China	182, 186	2005
China	185	2005

Chile, Republic of Korea	187	2005
Japan	190	2005

*Source:* Compiled from Boonekamp, 2007 and the WTO website.

## 2. Transparency Mechanism on RTAs

In contrast to attempts to negotiate on new interpretation or new multilateral disciplines on RTAs, negotiations on procedural issues under the Doha Round surprisingly produced a tangible result. On 14 December 2006, the WTO General Council established a Transparency Mechanism for Regional Trade Agreements (hereafter TM), which is being implemented on a provisional basis (pending completion of the DDA as requested by single undertaking).

The main features of TM, agreed upon in the NGR, include (see also Agency for International Trade Information and Cooperation, 2007):

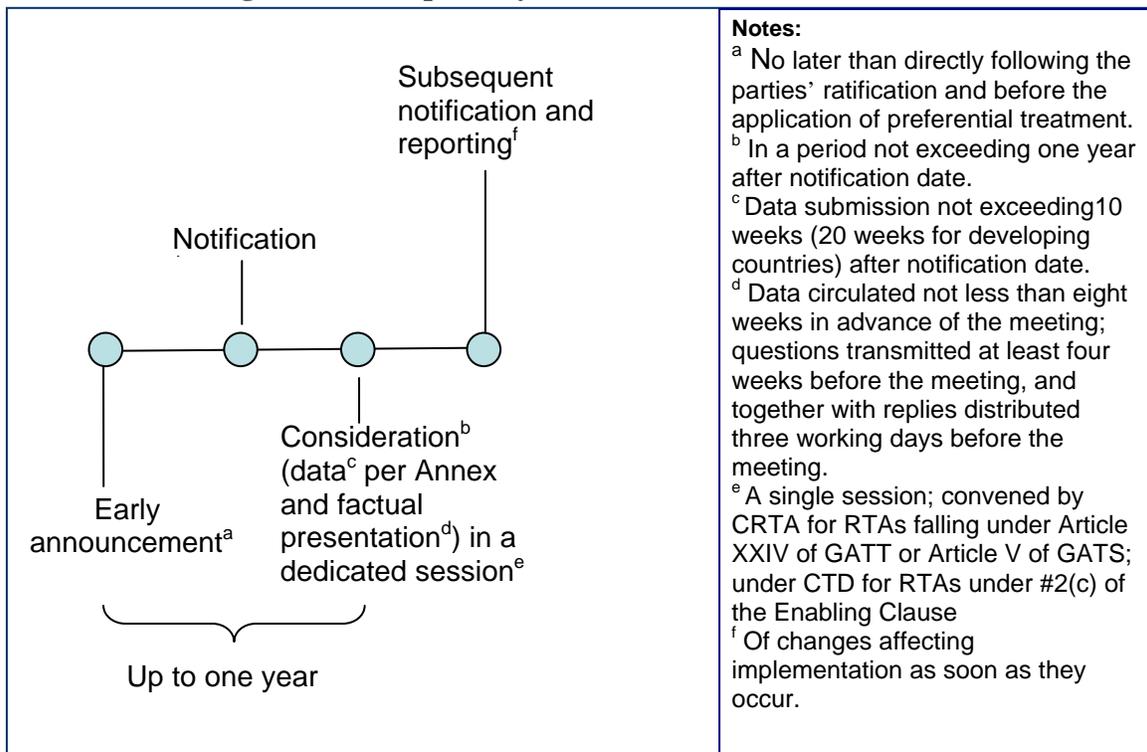
- The early announcement of any RTA;
- Guidelines regarding the notification of RTAs;
- Responsibility of the Secretariat, in full consultation with the parties, for preparing a factual presentation of RTAs to assist members in their consideration of a notified RTA;
- Timeframes associated with the consideration of RTAs (see figure 2);
- Provisions regarding subsequent notification and reporting of notified RTAs;
- Technical support for developing countries;
- The distribution of work between CRTA (which is entrusted to implement the mechanism vis-à-vis RTAs falling under Article XXIV of GATT 1994 and Article V of GATS) and CTD (which is entrusted to do the same for RTAs falling under the Enabling Clause).

Given its provisional basis, the Decision foresees that members are to review, and if necessary modify, the decision and replace it with a permanent mechanism adopted as part of the overall results of the Doha Round. The first review was scheduled for December 2007 but at the WTO General Council meeting in 2007 it was concluded that the initial review was not possible due to limited experience with the mechanism. Instead, it was proposed that an informal meeting of the NGR was to be organized in early October 2008 to kick-start consultation on the functioning of TM.

Some commentators view the Decision on TM as “too little, too late”, because “[I]t by no means addresses the fundamental concerns about the CRTA process expressed in the annual reports to WTO” (Srinivasan, 2007). Even as a modest step, given the importance of transparency in the totality of MTS, by facilitating more order in the RTA notification and consideration process, TM should be seen as a welcome addition to the WTO disciplines. In particular, it shifts some of the responsibility in this process to the WTO Secretariat, thus enhancing, albeit in a small way, its “surveillance” role. The Secretariat is now tasked with providing information (only facts and no opinions) on

RTAs via factual abstracts and reports.<sup>22</sup> Furthermore, the Secretariat has a mandate to build an electronic database with tariffs and other information on notified agreements (paragraph 21 of the Decision). While no part of the information can be used in building dispute settlement cases, it is hoped that these improvements in the transparency on RTAs will serve as moral persuasion towards making future RTAs more consistent with all WTO disciplines. Most importantly, “time consistent, homogeneous and objective information on the RTAs notified to WTO” (WTO, 2006) will contribute to the provision of public information on RTAs.<sup>23</sup> Such access is the first step towards understanding the drive for continued proliferation of RTAs, their systemic linkages with MTS and, hopefully, will provide an insight into how lessons from RTAs can be used in revisions of MTS.

**Figure 2. Transparency mechanism for RTA – timeline**



Source: Author's representation of TM.

### (C) Experience with notification and consideration process

TM is being implemented by CRTA and CTD. Tables 2 to 4 summarize the status of notification and implementation of TM. As of mid-July 2008,<sup>24</sup> CRTA had considered

<sup>22</sup> This role of the Secretariat has been undertaken on a provisional and voluntary basis since September 2004 (WTO, 2006).

<sup>23</sup> Through, for example, the Asia-Pacific Trade and Investment Agreements Database at [www.unescap.org/tid/aptiad](http://www.unescap.org/tid/aptiad).

<sup>24</sup> As indicated in the Chairman's Report to the Trade Negotiations Committee (TN/RL/22), WTO, 17 July 2008.

17 RTAs while CTD<sup>25</sup> had not had considered any RTAs because no new RTAs had been notified under the Enabling Clause.

During 2007-2008, 24 RTAs have been notified but 35 RTAs have become “inactive” (mostly due to European Union expansion), resulting in a decline in the overall total from 224 to 213 of all notified RTAs now in force (table 2).<sup>26</sup> TM introduces a novel idea of “early announcement” as an incentive to members to submit advance information on RTAs they have yet to conclude or ratify, in order to allow other members to react if necessary. Table 3 shows the achievements in that area up to August 2008. Members of six agreements that were already signed and of 25 RTAs under negotiation provided advance information (most of them in electronic format with a relevant URL) on their intentions in these preferential negotiations. However, none of them would qualify for notification under the Enabling Clause.

**Table 2. Notifications to WTO (as of 10 August 2008)**

Notifications to GATT/WTO of RTAs in force			
	Accessions	New RTAs	Total
GATT Art. XXIV (FTA)	2	116	118
GATT Art. XXIV (CU)	6	7	13
Enabling Clause	1	25	26
GATS Art. V	3	53	56
<b>Total</b>	<b>12</b>	<b>201</b>	<b>213</b>

Source: WTO data accessed at [www.wto.org/english/tratop\\_e/region\\_e/regfac\\_e.htm](http://www.wto.org/english/tratop_e/region_e/regfac_e.htm).

Notes: FTA = free trade area; CU = customs union.

**Table 3. Early announcements (as of 1 August 2008)**

Signed	Date
Canada-EFTA	26 January 2008
United States-Peru Trade Promotion Agreement	12 April 2006
United States-Panama	28 June 2007
United States-Oman	19 January 2006
Republic of Korea-United States	30 June 2007
Japan-Philippines	9 September 2006
Under negotiation	Date
Canada-Jordan	20 February 2008
Australia-Malaysia	19 May 2005
Australia-Gulf Cooperation Council	30 July 2007

<sup>25</sup> As indicated in the Note on the Sixty-Ninth Session of CTD on 5 May 2008 (WT/COMTD/M/69), WTO, 17 June 2008, the first two RTAs to be considered after being notified under the Enabling Clause were the Egypt-Turkey Agreement and the Gulf Cooperation Council Customs Union. The Pakistan-Malaysia Agreement part on goods, already notified under the Enabling Clause, is supposed to be considered in March 2009.

<sup>26</sup> As discussed in section D, RTAs are in force that have not yet been notified to WTO.

Australia-China	23 May 2005
Australia-Chile	7 August 2007
European Community-India	28 June 2007
Canada-CARICOM	19 July 2007
Canada-Dominican Republic	7 June 2007
Canada-Colombia-Peru	7 June 2007
Canada-El Salvador -Guatemala-Honduras - Nicaragua	21 November 2001
Canada-Singapore	21 October 2001
Republic of Korea-Mexico	7 February 2006
Republic of Korea-India	7 February 2006
Republic of Korea-European Communities	6 May 2007
Republic of Korea-Canada	15 July 2005
Republic of Korea-ASEAN	30 November 2004
Japan-Viet Nam	1 January 2007
Japan-Republic of Korea	1 December 2003
Japan-India	1 January 2007
Japan-GCC	1 September 2006
Japan-Australia	1 April 2007
Japan-ASEAN	1 April 2005
EFTA-Colombia	4 June 2007
EFTA-Peru	4 June 2007
Japan-Switzerland	14 May 2007

Table 4 records the progress in terms of the consideration or review process. Eight RTAs that have been notified under the Enabling Clause are not included in the review process, while others are at different stages of that process; the review of 18 RTAs (less than 9 per cent of RTAs to be reviewed) was completed as reports for those RTAs were adopted (between 1957 and 1993). The remaining RTAs fall into two categories: (a) one for which factual abstracts are to be prepared (75 RTAs; 36 per cent), and (b) the other for which the WTO Secretariat is due to prepare factual presentations (112 RTAs; 55 per cent). The difference between factual abstract and factual presentation concerns the date by which a respective RTA was to be examined and the notification category. Factual abstracts (FA) were to be prepared for all RTAs notified under the Enabling Clause and those RTAs for which CRTA had completed a “factual examination” by 31 December 2006 (Article 22(b)). In the case of notified RTAs for which factual examinations had not been completed by that date, the WTO Secretariat was mandated to prepare factual presentations (FP) as per TM.

**Table 4. Record of consideration process (as of August 2008)**

Status	Enabling Clause	GATS Article V	GATT Article XXIV	Total
FP to be done	4	20	29	53
FP on hold	2	5	27	34
FP distributed	0	10	15	25
FA in preparation	11	21	24	56
FA distributed	0	0	19	19
Report adopted	1	0	17	18
No report	8	0	0	8
<b>Grand Total</b>	<b>26</b>	<b>56</b>	<b>131</b>	<b>213</b>

Source: Online WTO data accessed at [www.wto.org/english/tratop\\_e/region\\_e/regfac\\_e.htm](http://www.wto.org/english/tratop_e/region_e/regfac_e.htm).

Note: FP – factual presentation; FA – factual abstract.

#### D. Asia-Pacific RTAs: notification and consideration

As shown in figure, economies in the Asian and the Pacific region are not lagging behind the rest of the world in pursuing RTAs as the avenue for expanding trade and other relations with other economies. According to APTIAD (the ESCAP database that tracks RTAs in the Asian and Pacific region), there were 97 RTAs in force and another 37 under formal negotiation as of August 2008.<sup>27</sup> Table 5 and figure 3 show some additional details on notifications and the consideration process for the Asia-Pacific agreements.

Almost three quarters of the active Asia-Pacific RTAs have been notified to WTO, and a clear majority of those RTAs were notified under GATT Article XXIV and/or GATS Article V. Less than one fifth of all the notified agreements, the majority of which were between more than two countries, were notified under the Enabling Clause.

**Table 5. Status of notification and consideration of RTAs from the Asian and Pacific region**

Category	Total	BTA	Plurilateral	Global
<b>In force</b>	<b>97</b>	<b>67</b>	<b>29</b>	<b>1</b>
Memo: FA and/or FP done	19	17	2	0
<b>Under negotiation</b>	<b>30</b>	<b>26</b>	<b>4</b>	<b>0</b>
Memo: EA	18	12	6	0
<b>Pending ratification</b>	<b>10</b>	<b>7</b>	<b>3</b>	<b>0</b>
Memo: EA	2	2	0	0
<b>Total notified</b>	<b>71</b>	<b>54</b>	<b>16</b>	<b>1</b>
Notified as GATT XXIV	37	32	5	0
Notified as GATS V (and GATT XXIV)*	22	19	3	0

<sup>27</sup> A caveat is needed here in terms of counting RTAs. The WTO database counts notifications and thus ends up counting agreements between the same two countries notified under GATT Article XXIV and GATS Article V as **two** agreements, whereas APTIAD counts it as one agreement. In other words, of the 213 notified agreements in the WTO database, 99 would be attributed to the Asian and Pacific region (as defined by ESCAP).

Notified as Enabling Clause	12	3	8	1
<b>Not notified (but in force)</b>	<b>26</b>	<b>13</b>	<b>13</b>	<b>0</b>

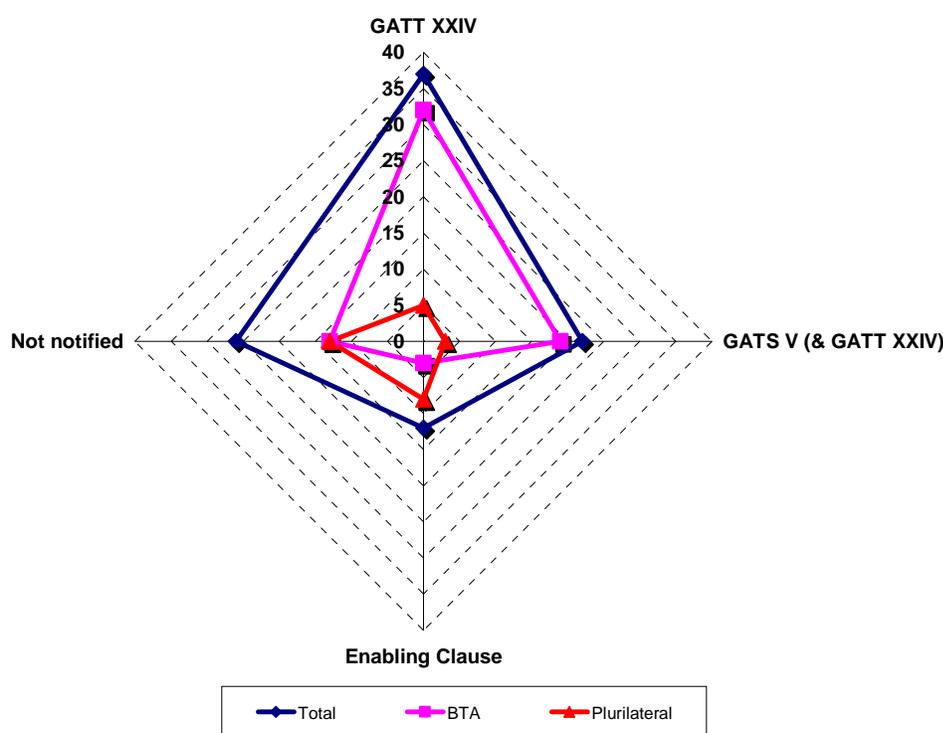
Source: APTIAD, 2008 ([www.unescap.org/tid/aptiad](http://www.unescap.org/tid/aptiad)) for number and notification of the agreements; WTO, 2008 for the number of FAs and FPs.

Note: FP – factual presentation; FA – factual abstract.

\* Including one bilateral agreement notified under GATS V and Enabling Clause.

Even though a quarter of all agreements in force have still to be notified, it is important to note that only six of those 26 agreements are dated prior to 2000 and that 10 have been in force since 2005. In addition, of 30 agreements under active negotiation, already 17 submitted advance information for use by other members through CRTA.<sup>28</sup>

**Figure 3. Notification and type of agreements: Asia and the Pacific**



Source: APTIAD, 2008.

For completeness in reporting on the implementation of TM by economies in the Asian and Pacific region, it should be noted that by August 2008 there were seven notifications of changes made to currently active RTAs (see also footnote f in figure 2). All seven were made for the RTAs in the Asian and Pacific region. One involves just a change of the agreement name, from Bangkok Agreement to Asia-Pacific Trade Agreement (APTA), while the other six notifications concern changes in the content of the respective RTAs.

<sup>28</sup> According to WTO website accessed on 24 September 2008 at [http://www.wto.org/english/tratop\\_e/region\\_e/early\\_announc\\_e.xls](http://www.wto.org/english/tratop_e/region_e/early_announc_e.xls)

## **E. Looking to the future**

One of the often posed questions in the area of multilateral versus regional trade liberalization is that which Pascal Lamy recently repeated: “Why are so many countries ready to accept rules and disciplines at the bilateral level that they are not prepared to accept at the multilateral level?” (Lamy, 2007). He also offered three standard explanations: (a) RTAs are quicker to negotiate and conclude; (b) RTAs allow WTO-plus deals that are not covered by multilateral disciplines, which is attractive to members wanting to proceed deeper than the WTO level of integration; and (c) RTAs extend themselves to political and geopolitical considerations.

However, empirical evidence from the Asian and the Pacific does not provide much support for these explanations. The RTAs in this region that are WTO-plus take a relatively long time to negotiate and ratify, even when they are just between two willing partners. Many of the agreements that are signed have no significant WTO-plus features and/or have relatively long transition periods. Then again, saying that RTAs are WTO-plus is just repeating the question, not answering it, because if some of the RTAs are WTO-plus they then cut into policy space that is the prime objective of what is supposed to be enhanced in the current DDA. Therefore, increasingly, we rationalize pursuit by countries of RTAs by geopolitical benefits, which of course must be classed as “second-best”. The geopolitical objectives should be pursued by foreign policies, not trade policies. Notwithstanding that, experience from the region shows that it is indeed a combination of geopolitical and economic reasons that appears to be winning this popularity contest for RTAs.

The truth also is that, in many cases, RTAs do not lead to significant increases in mutual exports, at least not under the negotiated preferences and not symmetrically across members. For example, it is estimated that in arguably the most advanced trade agreement in the Asian and the Pacific region, the ASEAN Free Trade Area (AFTA), no more than 30 per cent of exports among the members used AFTA CEPT. In the case of the bilateral free trade agreement between India and Sri Lanka, India has increased its exports to Sri Lanka much more than its imports from Sri Lanka. This leads to considering the other obstacles to increasing exports by countries; often these obstacles are related not to trade policies but to domestic constraints, macroeconomic policies, the functioning of various markets, the availability of necessary resources or the quality of governance and institutions. Evenett (2006) showed that even in the case of the European Union, there were key domestic constraints that prevented European firms from being competitive enough to export to various Asian partners. By removing these domestic obstacles and by increasing competitiveness, Evenett showed that European Union exports would increase by 40-240 per cent without any changes in import policies of the partners.

Obviously, RTAs will not disappear nor most probably will the reliance of countries on them weaken. Thus work on strengthening the rules, including transparency, needs to be continued. The Transparency Mechanism, discussed in this chapter as being the best improvement in transparency and procedural issues achieved under the MTS in its long history, will hopefully remain as the operational rule despite the final outcome of the

DDA. It would be disappointing if members waste this opportunity to clear the backlog in providing minimum but comparable information across all the RTAs. Once there is open access, comparable information and data on RTAs, they can be used for more and better analyses of the effects of those agreements on their members, third countries and the MTS itself. The results of such analyses should lead to the reconsideration of national policies on RTAs and thus, hopefully, inspire better multilateral rules for RTAs.

## References

- APTIAD, 2008. Trade Agreements Database, in Asia-Pacific Trade and Investment Agreements Database at [www.unescap.org/tid/aptiad](http://www.unescap.org/tid/aptiad).
- Agency for International Trade Information and Cooperation 2007. “A Transparency Mechanism for regional trade agreements – background note”, 27 August 2007 (mimeograph). Geneva.
- Baldwin, R.E., 2008. “Big-Think Regionalism: A Critical Survey”, *National Bureau of Economic Research (NBER) Working Paper* No 14056, June
- Bhagwati, J., 2008. *Termites in the Trading System*, Oxford University Press.
- , 1992. “Regionalism versus multilateralism”, *World Economy*, vol. 15, No. 5; pp. 535-555.
- , 1991. *The World Trading System at Risk*. MIT Press, Cambridge, Massachusetts.
- Boonekamp, C., 2007. “DDA negotiations on RTA rules”, WTO/ESCAP High-level consultations on DDA, Denpasar, Indonesia (mimeograph).
- Chase, K., 2006. “Multilateralism compromised: The mysterious origin of GATT Article XXIV”, *World Trade Review*, vol.5, No1; pp.1-30.
- Crawford, J. and R. Fiorentino, 2005. “The changing landscape of regional trade agreements”, WTO discussion paper No. 8. Geneva.
- Evenett, S., 2008. “The Doha Round impasse and its potential resolution: A straightforward graphical account”, presentation made at Trade and Investment Division Seminar, ESCAP, Bangkok, 22 August 2008 (mimeograph).
- Evenett, S., 2006. “Global Europe: An initial assessment of the European Commission’s new trade policy”, *Swiss Review of International Economic Relations*, pp. 377-402.
- Grether, J. M. and M. Olarreaga, 1998. “Preferential and non-preferential trade flows in world trade”, WTO staff working paper ERAD-98-10.
- Jackson, J., 1997. *The World Trading System* (second edition). MIT Press, Cambridge, Massachusetts.
- Lamy, P., 2007. “Saving Doha and delivering on development”, presentation at the International Seminar, New Delhi, 12 March 2007. Available at [www.wto.org/english/news\\_e/sppl\\_e/sppl56\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl56_e.htm).
- Limão, N., 2006. “Preferential trade agreements as stumbling blocks for multilateral trade liberalization: Evidence for the United States”, *American Economic Review*, vol. 96, No.3; pp. 896-914.
- Mathis, J.H., 2002. *Regional Trade Agreements in the GATT/WTO: Article XXIV and the Internal Trade Requirement*, The Hague: T.M.C. Asser press.
- Onguglo, B., 2000. “Issues concerning the notification of regional trade agreements to the World Trade Organization”, paper presented to the 2000 APEC Economic Outlook Symposium, 24-25 July 2000, Manila.
- Srinivasan, T. N., 2007. “Saving Doha or saving the WTO?” (mimeograph) accessed <http://www.icrier.org/pdf/28march/28March07Afternoonday1/TN%20Srinivasan%20Saving%20Doha%20or%20Saving%20the%20WTO%2020Mar07%201201pm.doc>

World Bank, 2007. “Aid for trade: Harnessing the global economy for economic development”, paper prepared for the Development Committee, World Bank Annual Meeting, 2007. Washington, D.C.

WTO, 2007. *World Trade Report 2007*. Geneva.

———, 2006. “The changing landscape of regional trade agreements – Update 2006”, WTO discussion paper No. 12. Geneva.

———, 2004. *The Future of the WTO: Addressing Institutional Challenges in the New Millennium* (The Sutherland Report), WTO Consultative Board. Geneva.

———, 2001. *World Annual Report 2001*, WTO, Geneva.

———, 1995. *Regionalism and the World Trading System*. Geneva.

The Macao Regional Knowledge Hub (MARKHUB), with the sponsorship of the Government of Macao Special Administrative Region, supports region-specific research and enhanced sharing of regional experiences in trade and trade policy related areas. The working paper series –MARKePAPERS– disseminates the findings of work in progress to encourage the exchange of ideas about trade issues. An objective of the series is to get the findings out quickly, even if the presentations are less than fully polished. MARKePAPERS are available online at: <http://www.unescap.org/tid/artnet/markhub/>. All material in the working papers may be freely quoted or reprinted, but acknowledgment is requested, together with a copy of the publication containing the quotation or reprint. The use of the working papers for any commercial purpose, including resale, is prohibited.

