Transparent Regional Integration

A Study of the WTO Surveillance of Regional Trade Agreements

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Abstract

This study is an assessment of the functioning of the three year old Transparency Mechanism. The mechanism has a surveiling role in the WTO of the Regional Trade Agreements (RTA). Formation of RTAs has been increasing rapidly during the latest twenty years, causing a tension in the multilateral trading system. RTAs give more preferable treatment to parties within the agreement than to trading partners outside of the RTA, which clearly violates the principle of non-discrimination. Preferable treatment also has damaging effects on non-members due to trade diversion as trade shifts from low-cost producers in third countries to trade within the RTA.

RTAs have for a long time had an unclear relation to the world trading system and the matter of RTAs have for the first time been included in the multilateral trade negotiations (MTN) as part of the Doha Development Agenda (DDA). MTNs on regional integration have so far adopted the Transparency Mechanism. The TM has managed to increase transparency by establishing the procedure of early announcements of negotiations on RTAs. However the provision of notifications need to be enforced so that members provide neccessary data before an agreement enters into force. The TM could further improve the transparency for regional Rules of Origin (ROO).

Keywords: Transparency Mechanism, Article XXIV, trade diversion, regional trade agreements.

Abbreviations

CRTA	Committee on Regional Trade Agreements
CTD	Council on Trade and Development
CTG	Council for Trade in Goods
CTS	Council for Trade in Services
CU	Customs Union
DDA	Doha Development Agenda
EC	European Community
EFTA	European Free Trade Association
EIA	Economic Integration Agreement
EU	European Union
FTA	Free Trade Area/Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ITO	International Trade Organization
MFN	Most Favoured Nation
MTA	Multilateral Trade Area
MTN	Multilateral Trade Negotiations
MTS	Multilateral Trading System
NAFTA	North American Free Trade Agreement
PTA	Preferential Trade Agreement
RIA	Regional Integration Area
ROO	Rules of Origin
RTA	Regional Trade Agreement
TM	Transparency Mechanism
TRIMs	Trade Related Investment Measures
WTO	World Trade Organization

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1 Introduction

"This decision will help break the current logjam in the WTO on regional trade agreements. This is an important step towards ensuring that regional trade agreements become building blocks, not stumbling blocks to world trade. It is important to note as well that this breakthrough comes at a critical juncture in our broader Doha round negotiations."

- Pascal Lamy, 10 July 2006[1]

With multilateral trade negotiations (MTNs) in a stall as the Doha round has entered its ninth year of negotiation, nine years during which 122 new Regional Trade Agreements (RTAs)[2] have entered into force, it is not an overstatement to say that regionalism dominates international trade. RTAs are exceptions from the Most Favored Nation (MFN) clause, which is the central principle of the GATT and the WTO. The principle states that no discrimination is to take place in the global trading system, and that preferential tariff concessions given to one trading partner must be extended to all the other parties. Regional Trade Agreements (RTAs) clearly violate this principle but are made legal under Article XXIV. Agreements must satisfy three criteria and the requirement of transparency is one of them.

Throughout the GATT/WTO history a definitional clarity of RTAs' compatibility with the most basic principles of the Multilateral Trading System (MTS) has been missing. It was first in the Doha Development Agenda (DDA) that RTAs were included in the negotiating mandate and members reached an agreement to establish a Transparency Mechanism (TM) in 2006. The TM, which was implemented on a provisional basis, introduces the functions of early

[1]Pascal Lamy is the current Director-General of the WTO appointed in 1995 and reappointed in september 2009 for a second four-year term. Quote from from WTO webpage.
[2]Throughout this paper I will use the term Regional Trade Agreements as a generic descriptor as it is also the denomination used by the WTO. Often Preferential Trade Agreements is used, for instance by economists, such as Jagdish Bhagwati, who argue that there often is not anything regional about these agreements since they are formed cross-regionally (Bhagwati, Preface xi).

announcement and sharpens the rules of notification. How does the mechanism function? And why was this surveillance role needed in the WTO in the first place? And has the TM succeeded to increase the transparency of RTAs? One recurrent question in the literature and in the debates is whether regional agreements are building blocks or stumbling blocks to multilateral negotiations, that is whether the RTAs can lead to multilateral freeing of trade or whether they are hindering the multilateral negotiations. Some have argued that the inclusion of the issue of RTAs in the DDA, which so far has resulted in the decision on a Transparency Mechanism, in itself marks a shift towards regarding the relationship between RTAs and MTNs in terms of synergy and mutual benefits. If the TM is working rather well, would there be a point in adopting the mechanism on a permanent basis even outside a final Doha agreement?

1.1 Purpose

The purpose of this essay is to assess the functioning of the Transparency Mechanism within the WTO. Therefore I need to know the background that has led to this decision, starting with the history of RTAs within the GATT/WTO framework and the Article XXIV of the GATT which sets the rules for regional integration. I also intend to clarify the economic theory of regional integration. My main question of research is to what extent the TM has increased the transparency for RTAs.

1.2 Method and Material

In this qualitative assessment it is my intention to use the database of RTAs as well as relevant reports and documents to be found on the WTO webpage. Second-hand material is found in the literature on regional integration and the very thin field covering the TM. First hand material is drawn from reports from the Committee on Regional Trade Agreements (CRTA) covering the years during which the TM has been in place.

1.3 Disposition

In chapter two I will present the background of regional integration. By explaining the most fundamental principle on which the GATT /WTO is founded and the reasons why regionalisation has been criticized the reader will be given a notion of the problematic issue. Section three thereafter deals with the Transparency Mechanism, its functionings and the developments leading up to its implementation. Finally the analysis tries to assess whether the TM has succeeded to increase transparency after which my concluding remarks follow.

2 Regional Integration

Regional integration refers to countries' decisions to form Free Trade Areas (FTAs) or Customs Unions (CUs).[3] FTAs are the type of trade blocs where internal barriers are removed but each party maintains its own external trade policy. A CU on the other hand establishes a common external tariff and a trade policy in trade with third countries. These agreements have often been formed between geographically contiguous countries but an increasing number of RTAs are signed cross-regionally. Many reasons lie behind the rapid increase of RTAs but the biggest proliferation is marked by the end of the Cold War.

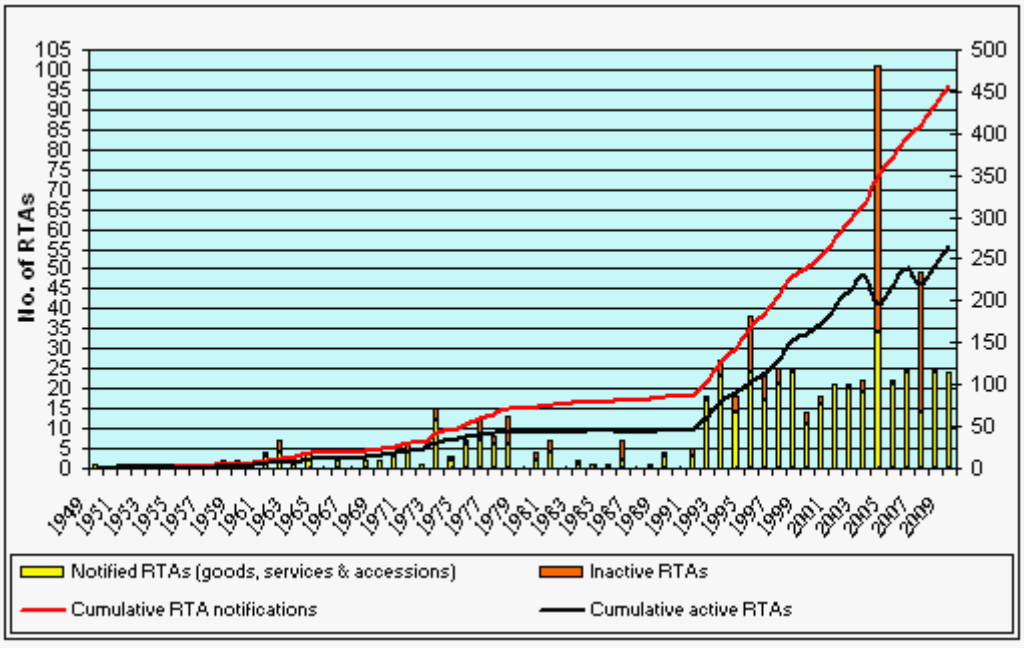
Up until February 2010, 462 RTAs had been notified to the GATT/WTO, out of which 271 were in force (WTO RTA Gateway). According to the WTO the total number of agreements will be 400 in 2010 when all those agreements which are not yet in force but are to be implemented during this year and when agreements in force but not yet notified, are taken into account (Speech DG Pascal Lamy, October 2006).

As pointed out in by Crawford, Fiorentino and Verdeja (2006), not only the number of agreements is significant in the move towards an RTA dominated trading system, but perhaps what matters even more is the volume of world trade covered through these RTAs (Crawford – Fiorentino - Verdeja, 2006:3). This point is interesting since a large number of notifications to the WTO concern the expansion of already existing RTAs, that is they tend to expand and include more members and therefore also constitute a larger trading volume. Another way to look at this is to reverse the question and look at how much trade is subject to MFN tariffs. The EU for instance, granted only nine WTO members MFN treatment in 2002 (Trade Policy Review: Press Release). These countries were Australia, Canada, Chinese Taipei, Hong Kong, China, Japan, the Republic of Korea, New Zealand, Singapore, and the United States, and accounted for some

[3] Agreements that contain only trade in services are called Economic Integration Agreements (EIA). Preferential Trade Agreements and partial scope agreements are also commonly occuring in the terminology. I will use RTAs throughout the paper.

45 % of EU's merchandise imports in 2001. Since then the EU has gone from 15 members to 27, thereby further expanding its membership and the volume of trade covered. The EU has also announced negotiations with Canada and the Republic of Korea which will result in preferential trade agreements and move them from the group of contries subject to MFN tariffs (WTO RTA Database).

Figure 1: RTAs notified to the GATT/WTO 1948-2009



Source: WTO Secretariat

The benefits of RTAs versus MTAs lie in the easier negotiation process, the greater possibility of finding solutions which can increase the utility of the contracting partners. Of all RTAs, FTAs account for over 90% while less then 10% of the agreements are CUs (WTO RTA Gateway). This even further confirms the preference for speed and flexibility since FTAs better match these characteristics (Crawford – Fiorentino – Verdeja, 2006:6). RTAs can further include issues which would never be included in the MTNs, for example the EU tends to include issues such as Trade Related Investment Measures (TRIMs), competition policy, and government procurement. These issues are referred to as the Singapore issues and were excluded from the MTNs in the Doha negotiation round.

The proliferation of RTAs is partly an effect of an increase in WTO memberships and stricter notification requirements (Crawford – Fiorentino - Verdeja, 2006:5). But the underlying reasons are found in the course of events

during the late eighties which lead to an increase of RTAs in the beginning of the nineties, seen in the ascending curve above. The lengthy negotiations of the Uruguay round (1986-1994) caused the formation of many RTAs as an insurance against a failure of the MTNs. This can also be the explanation behind the continuous increase of RTAs during the latest years of the Doha round when the MTNs have protracted even further, which for instance is commonly cited by developing countries (Bhagwati, 2006:43). As the former Soviet Union fragmented, RTAs were formed between transition economies and the EU, the EFTA and amongst the former Soviet Republics. During this period there was also a change of opinion amongst countries which had earlier been sceptical towards regionalization, like the United States. The U.S., which had a leading role in the GATT, had up to this point cherished non-discriminination and rejected RTAs, with the only exception beeing the European Community (EC). Integration in Europe was from an American point of view regarded as a "bulwark" against Soviet Union (Bhagwati, 2008:31). The U.S. however changed position when signing the Canada-United States FTA in 1988, which was superseded by NAFTA in 1994.

The proliferation has thereafter exploded as RTAs are formed in an "actionreaction" process when countries react to the formation of one discriminatory agreement and the risk of trade diversion by forming another discriminatory agreement and also, as described by Baldwin's Domino theory of regionalisation, RTAs have a knock-on impact as non-members will be more prone to seek membership (Crawford – Fiorentino - Verdeja, 2006:13, Baldwin, 2006:1467).

2.1 The MFN Principle

Article I of the GATT treaty contains the most fundamental principle of the world trading system, the principle of non-discrimination, also referred to as the Most Favoured Nation Clause. The purpose of the principle is to make sure that the most favourable tariffs in the trading system are extended to all members of the WTO. One country or a group of countries should not be able to enjoy more preferable treatment than any other contracting party, unless the preferences are established in a FTA or a CU in line with the provisions of the Article XXIV.

The background to the primacy of the MFN principle as well as the design of the GATT itself, are found in the world economic breakdown with tariff escalations and protectionism of the 1930s depression. In 1948 the GATT and its first Article (amongst several others of course) was signed to provide “rules” and “bindings” which in the future could avoid the raising trade barriers. Through rounds members would negotiate on binding tariff levels which over the years have brought trade barriers, in comparison to pre-GATT, to “negligible levels” (Bhagwati, 2006:9). When negotiations reach decisions to open up markets or lowering trade barriers, these should immediately and unconditionally be extended to all trading parties. Exceptions are however allowed and these are regulated in Article XXIV of the GATT, Article V of the General Agreement on Trade in Services (GATS) and in the Enabling Clause concerning trade between developing countries.

The MFN obligation is an assurance of efficient resource allocation as the principle provides the possibility to trade with the most cost-efficient and low-cost producer in the world. The MFN clause provides support for smaller countries which lack negotiating power and capacities to get access to larger markets (Altenberg, 1996:24).

Snape argues that “the major innovation of the GATT was to incorporate unconditional MFN into a multinational framework” (Snape, 1993:276). He describes the history of the MFN clause in trade agreements where agreements before the GATT had included MFN but on a conditional basis. This implied that a concession made to one member of the treaty was extended to other members only after they had made reciprocal trade concessions. Unconditionality can be seen as an “insurance” against being deprived of already received benefits and the concessions a party must make are a payment for the possibility of further benefits in the future as preferences given to some must be extended to all partners (Snape, 1993:277). On the other hand unconditionality can be seen as damaging trade liberalization due to the possibility of free riding. Some parties might see the opportunity of receiving the benefits without paying the price themselves and thereby undermine negotiations (Snape, 1993:279). Snape further notes that had it not been for the unconditionality in Article I, discriminating preferences would have been allowed and there would be no need to make exceptions legal under the Article XXIV (Snape, 1993:281).

2.2 Trade Creation and Diversion

Multilateral trade and its fundamental principles and goals are undermined by regional integration. The key economic implications of regionalism are the effects of trade creation and trade diversion. Within a Free Trade Area or a Customs Union, countries will benefit from trade creation. But the trade agreement will most certainly have negative effects on third parties due to trade diversion which hurts earlier trading partners that are now outside of the regional agreement. It will also have negative effects on welfare within the trade area. This theoretical discussion is based on Viner's work on the effects of customs unions and his distinction between "Trade Creation" and "Trade Diversion". His discussion on the trade creating and trade diverting effects can be extended to FTAs as well.

Trade creation as denominated in Viner's work, describes the shift of production within the trade area as high-cost domestic production is replaced by lower-cost production in another country within the area. The domestic production is no longer protected by tariffs and trade is thereby created as trade between the partners increase. Less efficient production in one of the member countries is replaced by more efficient production in other member countries.

Trade diversion is the term which describes how trade shifts from producers outside the regional trading area to trade between partners within the area. Before integration, members imported from the most low-cost producers in a third country. As tariffs are removed between the signatories of an agreement, relatively high-cost production in the member countries is made competitive and commodities are now imported from within the region instead (Viner, 1950:43).

Viner also stated that a Customs Union must meet certain conditions, which inluded; complete elimination of tariffs between members, a uniform external tariff as well as distribution of tariff revenues between members (Viner, 1950:5). The net effect of the Vinerian trade effects on the RTA could be positive if trade creation is larger than trade diversion. If trade creation is larger members within the RTA benefit whereas the third parties would loose. In the longer run, Viner argued that the outside world could gain due to diffusion of the "increased prosperity" within the area. Where trade diversion is dominant, members of the RTA loose and the overall effect on world welfare i negative (Viner, 1950:44). The production shift due to trade diversion will have visible negative effects on

the third party, but will also have negative impacts on the countries forming an agreement as parties to an RTA now buy their goods from other member countries, the induced higher cost imports will result in terms of trade losses (Bhagwati, 2008:50). Further negative welfare effects are found in the loss of tariff revenue. As trade between members is no longer subject to tariffs, the size of the former tariff revenues can outweigh the potential gains from trade creation (Bhagwati – Greenaway – Panagariya, 1998:1130).

The welfare effects of the formation of RTAs have been widely discussed in the trade literature. Some contributors to the debate have argued that regional integration agreements could always improve the welfare of members without hurting outsiders. This theory was brought forward by Kemp and Wan who based their arguments on the idea that trade between the members and the rest of the world could "freeze" at pre-integration levels (McMillan, 1993:293). The model however is "not a good description of how integration works in practice" (McMillan, 1993:294).

When discussing the effects first presented by Viner, it is easy to stop at the analysis of tariff barriers. As stated above, multilateral negotiation rounds have managed to bring tariff levels down to "negligible levels" in comparison to pre-GATT levels. This fact has spurred arguments that the risk of trade diversion is low (Bhagwati – Greenaway – Panagariya, 1998:1130). Even though tariff levels could still be reduced there are other protectionistic measures besides tariffs and external trade barriers which have trade diverting effects and must be taken into consideration. The problem of trade diversion can for instance be aggravated due to "systemic implications" of RTAs caused by the so-called Rules of Origin (ROO). When countries join FTAs rules of origin must be established to identify where a certain commodity originates so that correct tariff rates can be applied in order to avoid trade deflection. Otherwise there is a risk that goods enter in the country with the lowest tariffs and thereafter is exported to the rest of the area. Problems arise in the complicated and arbitrary process when rules need be specified and further when the origin of products must be established (Bhagwati – Greenaway – Panagariya, 1998:1138). Bhagwati, Greenaway and Panagariya argue that the problem is not restricted to FTAs as arbitrary definitions also occur in CUs (Bhagwati – Greenaway – Panagariya, 1998:1138). If a Japanese car is produced in one of the member countries of the EU, should it have free access to

the rest of the internal market or should it be treated as a Japanese car and pay the external tariff? Rules can require a certain amount of inputs to be from a certain country or for instance a certain amount of value that must be added to the imported good before export. ROO increase transaction costs, as they imply administrative costs and production costs, as well as they increase protectionism (Bhagwati – Greenaway – Panagariya, 1998:1139). In Bhagwati's words this will lead to a "Spaghetti bowl" as the ROO varies between members and outsiders, across products and across RTAs thereby creating a chaotic trading system (Bhagwati, 2008:61). This effect is easily illustrated in the figure below where the different lines represent different trade agreements the EU has with its trading partners.

Figure 3: The European Spaghetti bowl

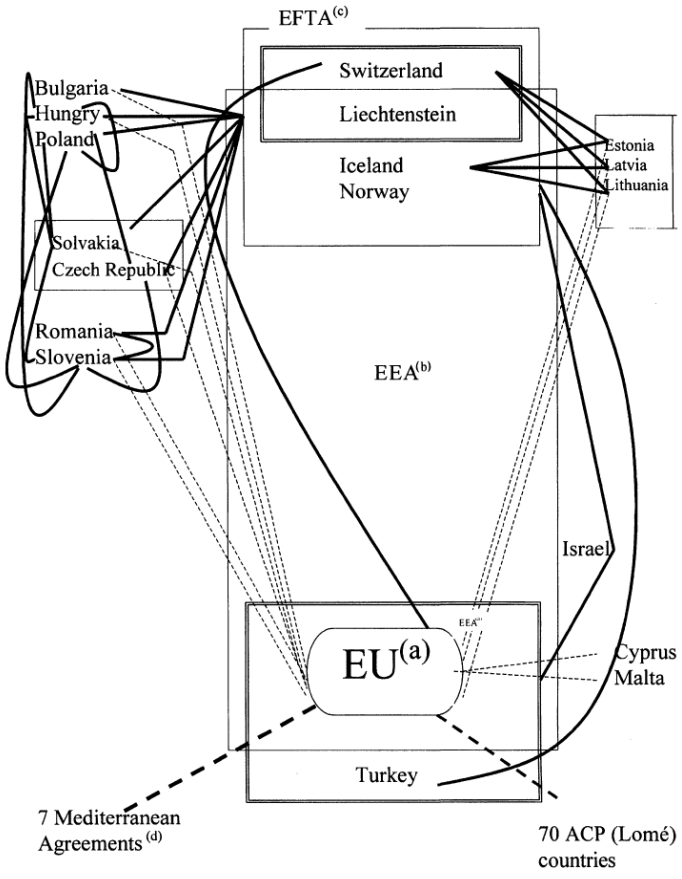


Fig. 3. *The European Spagetti Bowl*

Source: Bhagwati, Greenaway and Panagariya, 1998.

2.3 Article XXIV

Article XXIV was established to avoid additional discrimination and minimize the negative effects of trade diversion. The different conditions have been criticized for being vague and during the GATT/WTO history, a clarification of RTAs compatibility with the most basic principles of the Multilateral Trading System (MTS) has been missing. Article XXIV, also referred to as the 'exception Article' of the GATT (Snape, 1993:273) as it constitutes the loophole through which many RTAs have been able to avoid the obligation of non-discrimination, provides the following main criteria;

- "duties...in respect of trade ith contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than...prior to the formation" (§ 5A+5B)
- "duties and other restrictive regulations of commerce...are eliminated with respect to substantially all the trade between the constituent territories of the union" (§ 8)
- "any...agreement...shall include a plan and schedule for the formation of...a customs union or...free trade agreement within a reasonable length of time" (§ 5C)

The same rules apply to RTAs established under the GATS whereas RTAs concluded under the Enabling Clause need only accomplish "a limited degree of transparency" (Fiorentino, Crawford, Toqueboef, 2008:55).

The purpose of such RTAs are as stated in paragraph 4 of the GATT Article XXIV, which was reaffirmed in the Understanding on the interpretation of Article XXIV, to *"facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories"*. In the understanding, the members further expressed their conviction of the need for improvement of the transparency.

Provisions allowing for the formation of FTAs were not at first included in the Article, which prior to the failure of the Havana Charter referred only to customs unions and interim agreements leading to CUs (Crawford & Fiorentino, 2005:4). The intention of the Havana charter was to set up the International Trade

Organization (ITO), which would have incorporated the already signed GATT, as the third institution of the Bretton Woods system (Bahgwati, 2008:8 & 19). U.S. negotiators, which had been its strongest advocates as well guardians of the MFN principle, had designed the original requirements so that exceptions were extended only to those RTAs that would adopt a common external tariff (Bhagwati, 2008:19). When the U.S. Senate rejected the bill, the Havanna charter and the ITO did not fall through. According to thorough examinations of the archives, the relaxations of the original conditions had however started with the U.S. abandoning its requirement of an external tariff, in order to accommodate a secret FTA with Canada (Chase, 2006:3). Snape describes the formation of the GATT as an establishment of a "club membership" to achieve a public good and argues that the exceptions to the non-discrimination rule was necessary to create a large membership (Snape, 1993:284). He further states that had the provision of the Article been enforced more strictly the EC would have left the club (Snape, 1993:285). The "emasculation" of Article XXIV requirements have in the words of Bhagwati enabled bureaucrats to "walk horses, if not elephants, through the ambiguities" of the Article (Bhagwati, 2008:22). So let us therefore return to the ambiguities for a second.

The requirement stating that additional discrimination should not be made towards third parties, was intended to minimize the trade diverting effects of RTAs. This part of the Article was for a long time criticized for its vagueness as the formulation in paragraph 5 (a) said that barriers on the "whole" should not be raised. Further, the requirements of a removal of barriers on "substantially all trade" between members of an RTA (paragraph 5 (b)) as well as an requirement to liberalise trade within "a reasonable length of time"(paragraph 5 (c)), have been considered weak formulations. Even though clarifications were made on this part during the end of the Uruguay Round as members agreed on the Understanding on the Interpretation of Article XXIV of the GATT 1994[4], where changes in paragraph 5 (a) and (c) state that the secretariat should calculate weighted average

[4] In *the Understandning on the Interpretation of Article XXIV of the GATT 1994* progress was made as members agreed that the secretariat should calculate weighted average tariff rates and that the time limit should not exceed ten years. http://www.wto.org/english/docs_e/legal_e/10-24.pdf

tariff rates, and that the time limit should not exceed ten years, risks of trade diversion are not eliminated.

When it comes to clarification of the requirement of liberalising “substantially all trade” and other “systemic issues” discussions in the Negotiating Group on Rules are not finalized due to the discussions complexity and political charge (Fiorentino, Crawford, Toqueboef, 2008:55). Both the original Article XXIV of the GATT as well as its amendments in 1994, do not explicitly address the issue of rules of origin. The paragraphs 5 (a & b) of the Understanding do however refer to “other regulations of commerce” which could comprise ROO. In the Understanding from 1994, members recognize that since quantifying these “other regulations” will be difficult, assessment of these “measures, regulation, product covered and trade flows affected” may require special exmination. To summarize, the alarming issue is not explicitly addressed in the Article XXIV whereas the Annex of GATT 1994 includes an agreement on ROO. The agreement states the aim of a long-term harmonization of ROO, ROO under preferential trade exempted (WTO Legal texts).

3 The Transparency Mechanism

Even though few regional trade agreements existed when the GATT treaty was signed in 1947 and the MFN principle was given its fundamental position in Article I, the treaty included Article XXIV to allow for such discriminating arrangements. As long as the three main criteria were met, a CU or FTA was considered consistent with GATT rules. It was however first ten years later, when the European Economic Community was established in 1957, that the operability of the Article was truly tested. A working group which was set up to examine the agreement could not reach a clear decision on whether the EEC was compatible with the GATT rules or not (Fiorentino, Crawford & Toqueboeuf, 2009:55). Throughout the GATT/WTO history only one RTA has been determined to satisfy Article XXIV[5] and none has been deemed incompatible (Chase, 2006:2).

Later on as a result of the Uruguay Round, members could in 1994 agree on some issues concerning the vagueness of Article XXIV even though no "substantive clarification" was made (Fiorentino, Crawford & Toqueboeuf, 2009:56). There clearly was a need for a surveillance instrument to reach "definitional clarity" on the relationship between RIAs and the GATT, a concern which became more apparent when the ad hoc working groups no longer were an administrative solution to handling the increasing number of RIAs in the early 1990s. In the Understanding members also emphasized the need for improvement of transparency. Increased transparency would benefit the organization not least from extending as much information possible to criticizers of the WTO. It would further have the potential of reducing uncertainties related to trade policy as well as it could reduce the pressure on the dispute settlement panel (DSP) (Hoekman - Kostecki, 2001:35).

Several authors portray RTAs as stumbling blocks to multilateral free trade, and by reffering to them as a 'pox', or as 'termites in the system', have called

[5] This was the agreement to form a Customs Union between the Czeck and Slovak Reublics as the countries became independent in 1993.

code red as the WTO is at risk (see Bhagwati, Bhagwati - Greenaway – Panagariya & Baldwin). The WTO, by Baldwin described as an 'innocent bystander' during the proliferation of RTAs (Baldwin, 2006:1508), could perhaps untangle the "spaghetti bowl" with some help from the Transparency Mechanism.

3.1 The Need for Transparency

In 1996 the Council on Regional Trade Agreements (CRTA) was established to examine RTAs and their compliance with the WTO provisions. This had earlier been administrated by ad hoc working groups but the ever increasing number of RTAs had created bottlenecks. Blackhurst and Henderson add to the critique of the working groups by pointing out that since decisions of the working groups were taken by consensus and the fact that the RTA under examination was already in force, the working parties which included all the signatories of the RTA to be examined, would not reject or demand any changes (Blackhurst & Henderson, 1993:427).

The examinations, to be done by the established CRTA, included presenting a report on the agreement in question to the relevant instance; the Council for Trade in Goods (CTG), the Council for Trade in Sevices (CTS), or the Committee on Trade and Development (CTD). The CRTA was also given the mandate to consider implications of regional integration for the MTS (Fiorentino, Crawford and Toqueboeuf, 2009:56). The CRTA however had difficulties handling its "functions of review and oversight of the implementation of RTA" (Crawford & Fiorentino, 2005:19). Further problems in assessing the consistency of RTAs did arise due to heritage from the GATT where question marks still existed concerning links to dispute settlement, controversies on interpretation of Article XXIV, as well as the absence of rules on rules of origin on ROOs (ibid).

Even though prior methods of examination have been found inadequate the role of surveillance has been considered useful, even in an ex post fashion. It is highly unlikely that examinations which take place after an agreement's entry into force will change the agreements and their contents, but signatories to a RTA knowing that they will be examined might be inclined to comply with the rules (Blackhurst & Henderson, 1993:428).

In the Doha Declaration, which started the trade negotiating round in 2001, members agreed to negotiate on the interpretation of the conditions in Article XXIV. The negotiating mandate is given in paragraph 29 of the declaration, where members aim 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"* (WTO web page, Ministerial Declaration Doha). Fiorentino, Crawford and Toqueboeuf argue that the inclusion of RTAs in the Declaration was a shift from "denial" to "acknowledgement" of the importance to discuss the issue in multilateral negotiations. They further mean that the positive formulation represents a new view of the RTA/WTO relationship as a move towards "synergy", with focus on a "mutually beneficial basis" (Fiorentino, Crawford & Toqueboeuf, 2009:57).

The problem of consensus mentioned earlier existed also for the CRTA as it failed in finalizing the examination reports. WTO mentions that no examination report was finished after 1995 due to lack of consensus (WTO, Work of the CRTA). The WTO further recognizes the risk of "regulatory confusion, distortion of regional markets, and severe implementation problems" as RTAs continue to increase in number and in the number of policy areas included (WTO, A note of Caution).

3.2 The Transparency Mechanism

In July 2006 members of the WTO signed a Draft Decision on a Transparency Mechanism for RTAs which was established on 14 December 2006. The TM has since been implemented on a provisional basis and is to be replaced by a permanent mechanism at the conclusion of the Doha Round. The TM covers all RTAs, whether negotiated under Article XXIV of the GATT, Article V of the GATS or the Enabling Clause. Members taking part in such negotiations must inform the WTO Secretariat of the negotiations at an early stage. This procedure which is one part of the TM, is called 'Early Announcement' and must take place once an RTA is negotiated or signed but not yet in force. The information to the Secretariat should contain name, scope, the date of signature, the timetable for its entry into force, contact points, website address and other available information

which then is posted on the WTO website. (Decision on Transparency Mechanism for RTAs)

Before or at the ratification of an agreement and most importantly before the implementation of preferential treatment, the parties to the RTA must notify the agreement to the WTO. In their notification the parties shall also specify under which provisions the RTA is notified and provide the text of the agreement and related documents, all of which should be submitted in an electronic format. The parties must also make data available as soon as possible, normally within a period of ten weeks (or 20 weeks if the RTA is formed between developing countries) after the date of notification, which will help the other members in their consideration of each notified RTA. Data shall include each party's tariff concessions under the agreement, the parties MFN-duties before and after the entry into force of the agreement and import statistics for the three years preceding the notification. The parties to RTA must also submit information on product specific preferential rules of origin.

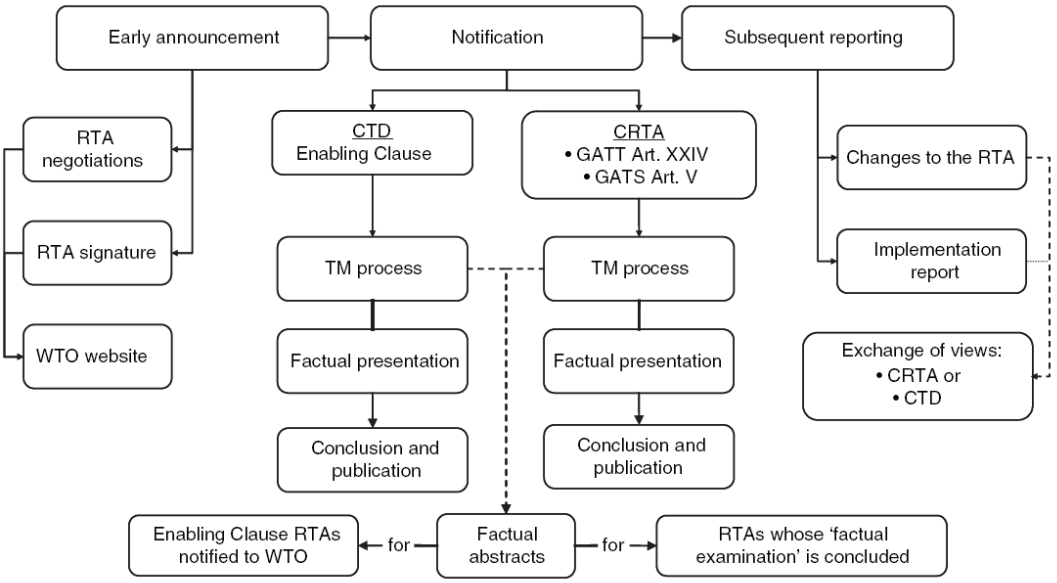
The TM places responsibility on the Secretariat to prepare factual presentations of the notified RTAs which consist of information on the RTA parties' trade relations, the agreement's regulatory features as well as liberalizations to be expected during the transition period. These factual presentations provide an objective report for the members to use in their considerations. The WTO Secretariat also sets a timetable for the consideration period, normally concluded by the members within one year after the notification. (WTO Transparency Mechanism). The timetable as well as the final presentations are made in consultation with the contracting parties who are able to post their comments which are then included in the version circulated to the members.

Thereafter members are given the opportunity to pose written questions concerning the RTA in consideration and these are together with the replies from the contracting parties distributed to all WTO members at least three days before the process is finished. The consideration period is finalised in one single formal meeting which is held in the CRTA if the RTA falls under GATT Article XXIV or GATS Article V, and in the CTD if notifications fall under the enabling clause. The proposed timeline for the whole process is 35/45 weeks depending on the character of the RTA.

If any changes occur which affect the implementation or the operation of an implemented RTA, this should be notified as soon as the change occurs with a formal summary of the changes and any related texts and protocols. When an RTA's implementation is completed a written report on the realization of liberalization commitments as stated in the original notification, shall be submitted to the WTO.

The TM further commands that members are to review the mechanism and modify it if needed in order to adopt a permanent mechanism at the conclusion of the Doha Round. At the adoption of the TM in 2006 members intended to conduct an initial review within one year (Crawford – Fiorentino – Toqueboeuf, 2009:64).

Figure 3: WTO Process for RTAs according to the decision on RTA Transparency



Source: Fiorentino, Crawford & Toqueboeuf 2008

3.3 Analysis

Has the transparency increased?

The introduction of the concept Early announcement has increased transparency since it provides information on RTAs which are under negotiation but are not yet in force. According to the results presented by Fiorentino, Crawford and Toqueboeuf only twenty-four out of roughly seventy RTAs then under negotiation had been announced early (Crawford – Fiorentinio – Toqueboeuf, 2008:60). Out

of the twenty-eight agreements that had been signed but were not in force only nine had been announced early. They further argue that the TM has ”greatly streamlined the CRTA’s work” and that members so far were satisfied with its operation and had pointed to the mechanism’s qualities of providing “consistent, timely and objective information” which was helpful during the consideration process. They do however note difficulties concerning some countries problems of providing the data required in a correct format and time period (Fiorentino, Crawford & Toqueboeuf, 2009:63).

In the Report (2009) by the CRTA to the General Council, of all 50 early announcements that had been made at that point, 35 of them were announced under negotiation and 15 after the date of signature. Members have in other words been rather good at satisfying this condition of the TM and tend to announce the RTA before signature. And the TM has thereby managed to increase transparency by establishing this part of the mechanism.

According to the database, out of the 41 agreements which have entered into force after the establishment of the TM in 2006, notifications for 25 of these were made after the RTAs entry into force (WTO RTA Database). This implies that members still have difficulties in providing the correct information as required by the procedure of notification. This is also confirmed by the CRTA which during the years of the TM has experienced delays in the submitting of data (CRTA reports 2007, 2008 and 2009). Since the TM states that notification should take place “no later than the parties’ ratification of the RTA” and before the agreement enters into force, this points to a deficiency of the mechanism.

Since the establishment of the TM, 72 RTAs have been considered.[6] However 99 agreements, for which the factual presentation is either under preparation or on hold, remain to be considered.

The WTO Secretariat has, as provided for in paragraph 21 of the TM, succeeded to establish a database, which became available on the WTO website in January 2009. There it is possible to search all RTAs in force, all early announcements or search the database by criteria or country.

[6] 68 of these were notified under GATT XXIV or GATS V and therefore considered in the CRTA, four fell under the Enabling clause and were considered in the CTD (Figures on RTAs notified and in force).

Paragraph 22 of the TM states that the Secretariat is responsible for preparing a factual abstract for all those RTAs for which the CRTA concluded the factual examination by 31 December 2006, plus for the RTAs notified under the Enabling Clause. In March 2010, 51 factual abstracts had been prepared and posted on the WTO database and 24 are still in preparation.

The CRTA has according to its own evaluation made "considerable progress" but still experiences difficulties in keeping up with the work programme, mostly due to the fact that parties are slow in providing statistical data and handing in their comments. Also there is a discrepancy in the data brought forward by members. These defects in the process are recurrent in the reports from the CRTA to the General Council during the three years the TM has been in place but the CRTA, which is responsible for the implementation of the TM, reports that this is something which it is working to improve together with the WTO members.

As is apparent from the latest CRTA report, no reports have yet been submitted on the realization of liberalization commitments in an RTA. This is more a sign of how slow the implementation of an agreement is. The maximum period for implementing an agreement is as 10 years, which may only be exceeded in exceptional cases.

Even though the mechanism operates under certain defects, such as discrepancies in the data from the parties, and information handed in late, one must take into consideration that the TM has only been in place for three years. Compared to the period between 1995 and 2006 under which no factual examination was concluded, which was the old procedure, 72 factual presentations have been considered during three years.

Table 1: RTAs in force sorted by status in the WTO Consideration process:

	Enabling Clause	GATS Art. V	GATT Art. XXIV	**Grand Total**
Factual Presentation in preparation	5	26	65	96
Factual Presentation on hold	0	3	0	3
Factual Presentation distributed	4	26	42	72
Factual Abstract in preparation	8	6	10	24
Factual Abstract distributed	3	15	33	51
Report adopted	1	0	17	18
No report	8	0	0	8
Grand total	29	76	167	**272**

Source: WTO Summary tables

The Transparency mechanism has in my opinion managed to increase transparency. This is primarily due to the fact that members have adapted rather well to the system of early announcements. The method can thereby spread information to other members on the agreements which will soon enter into force, and this can decrease uncertainties within the trading system. On the other hand the TM has not succeeded in the enforcement of the system of notification since a majority of the notifications are made after entry into force.

The database established constitutes a large source of information available to the user who can collect data and draw conclusions on issues concerning RTAs and their proliferation. Hopefully the transparency enabled through this part of the mechanism can bring further research and analysis on regional integration and its relation to the multilateral trading system.

According to Fiorentino, Crawford and Toqueboeuf, a review of the mechanism had not been made by the end of 2007 since members considered they had not had enough experience with the Mechanism (Fiorentino – Crawford - Toqueboeuf, 2009:64). A review by the members has to my knowledge still not been made.

4 Summary and conclusions

The Transparency Mechanism has managed to increase the transparency of RTAs since it has established a new mechanism which requires members to announce negotiations on RTAs at an early stage. Members have adopted rather well to this part of the mechanism. However the provisions concerning notifications need to be enforced so that members provide the full information on the agreement before entry into force. A thorough review should be done even if the Doha round is further prolonged.

In my opinion the fact that the TM inludes the issue of ROO for RTAs could have further benefits for the work on harmonization of ROO. The mechanism could increase transparency on the ROO that arise due to regional integration and lead to important research on their damaging effects on multilateral trade. If the TM was adopted on an permanent basis outside a final Doha agreement, the Doha Round could be prolonged and might reach a dead-end, a well-functioning and enhanced TM could have an important surveiling role bringing transparency to regionalization within the world trading system.

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