

RTA proliferation

Dr Rafael Leal-Arcas

Proliferation of Regional Trade Agreements: Complementing or Supplanting Multilateralism?

Dr Rafael Leal-Arcas[♦]

Abstract

With the creation of the World Trade Organization (“WTO”) in 1995, the pyramidal design of the international trading system placed multilateralism at the top of the pyramid, regionalism/bilateralism in the middle, and the domestic trade and economic policies of WTO Member States at the bottom of the pyramid. This article questions whether this vertical structure is still the case today, given the tremendous proliferation of regional trade agreements (“RTAs”) in recent years and the fact that the WTO is losing its centrality in the international trading system. The thesis of this article is that the multilateral trading system’s single undertaking is no longer feasible, hence affirming RTA proliferation as the modus operandi for trade liberalization. This article also argues that RTA proliferation implies the erosion of the WTO law principle of non-discrimination, which endangers the multilateral trading system. RTAs can help countries integrate into the multilateral trading system, but are also a fundamental departure from the principle of non-discrimination. This raises the question of whether RTAs are a building block for further multilateral liberalization or a stumbling block.

After an overview of RTAs, the article discusses the WTO rules that deal with RTAs (GATT Article XXIV, the Enabling Clause, and GATS Article V), the main trends identified in RTAs, the economic and political reasons why WTO Members engage in RTAs so frequently, as well as the positive and negative effects of regionalism on multilateralism. By doing so, the article investigates whether it is RTAs or multilateralism that is the center of gravity of the international trading system, or whether we have a symbiosis between the two and, if not, how we can get there.

The article concludes that the proliferation of RTAs implies the erosion of the principle of non-discrimination and wonders whether this means the beginning of the end of multilateralism. It also concludes that the single undertaking is no longer feasible and suggests variable geometry and sectoral agreements as the way forward in the multilateral trading system. Moreover, it concludes that bilateral and regional deals do not come close to matching the economic impact

[♦] Senior Lecturer in International Economic Law & European Union Law, and Deputy Director of Graduate Studies, Queen Mary University of London (Centre for Commercial Law Studies), United Kingdom. PhD (European University Institute, Florence); JSM (Stanford Law School); LLM (Columbia Law School); M.Phil. (London School of Economics and Political Science); BA, JD (Granada University). Member of the Madrid Bar. Author of the books *International Trade and Investment Law: Multilateral, Regional and Bilateral Governance* (Edward Elgar, 2010) and *Theory and practice of EC External Trade Law and Policy* (Cameron May, 2008). Contact: r.leal-arcas@qmul.ac.uk. This article was presented at the 10th Annual WTO Conference, London, May 19–20 2010.

of agreeing to a global deal. Therefore, RTAs can complement but not supplant multilateralism.

Contents

Abstract	1
I. Introduction	2
II. Overview of RTAs	4
III. The Mandate of Regional Integration.....	8
A. GATT Article XXIV (Customs Unions and Free-Trade Areas).....	8
B. The Enabling Clause.....	11
1) Generalized System of Preferences (GSP)	13
2) Special and Differential Treatment with Respect to Non-tariff Measures	13
3) Regional Arrangements between Developing Countries	13
4) Special Treatment for Least-developed Countries.....	14
C. GATS Article V (economic integration).....	14
IV. Main Trends in RTAs	15
A. From MFN Liberalization to RTA.....	17
B. Geographical Shift.....	19
C. Cross-regional RTAs	21
D. Mega-bloc RTAs	22
V. Motivations for RTA Conclusion	28
VI. Effects of Regionalism on Multilateralism.....	31
VII. Conclusion.....	36

I. INTRODUCTION

With the creation of the World Trade Organization (WTO) in 1995, the pyramidal design of the international trading system placed multilateralism at the top of the pyramid, regionalism/bilateralism in the middle, and the domestic trade and economic policies of WTO Member States at the bottom of the pyramid. This article questions whether this vertical structure is still the case today, given the tremendous proliferation of regional trade agreements (RTAs) in recent years and the fact that the WTO is losing its centrality in the international trading

system.¹ The thesis of this article is that the multilateral trading system's single undertaking² is no longer feasible because the WTO has more Members than ever (and WTO membership is an ongoing process, with more Members to come in the near future) and covers more topics than ever, which, in turn, are more complex than ever.³ This explains RTA proliferation as the *modus operandi* for trade liberalization. This article also argues that RTA proliferation implies the erosion of the WTO law principle of non-discrimination and endangers the multilateral trading system. RTAs can help countries integrate into the multilateral trading system, but are also a fundamental departure from the principle of non-discrimination. This raises the question of whether RTAs are a building block for further multilateral liberalization or a stumbling block.⁴

This article is divided into seven sections. After the introduction in Section I, Section II provides an overview of RTAs. Section III discusses the WTO rules that deal with RTAs (Article XXIV of the General Agreement on Tariffs and Trade ("GATT"), the 1979 GATT decision on differential and more favorable treatment, reciprocity and fuller participation of developing countries (that is, the so-called Enabling Clause), and Article V of the General Agreement on Trade in Services ("GATS")). Section IV focuses on the main trends identified in RTAs, whereas Section V deals with the economic and political reasons why WTO Members engage in RTAs so frequently, and Section VI analyzes the positive and negative effects of regionalism on multilateralism. By doing so, this article investigates whether RTAs or multilateralism is the

¹ See, for example, *Everybody's Doing It*, *The Economist* (Feb 26, 2004).

² Single undertaking is a provision that requires countries to accept all the agreements reached during a round of multilateral trade negotiations as a single package, as opposed to on a case-by-case basis. It basically means that nothing is agreed until everything is agreed. [Citation for this?]

³ If ultimately successful, the Doha Round, as of 2010 with 153 countries at the negotiating table, would be the ninth Round since the Second World War. The previous rounds were, in chronological order: Geneva Round (1948), with 23 countries; Ancey Round (1949), with 13 countries; Torquay Round (1951), with 38 countries; Fourth Round (1956), with 26 countries; Dillon Round (1962), with 26 countries; Kennedy Round (1967), with 62 countries; Tokyo Round (1979), with 102 countries; and Uruguay Round (1994), with 123 countries.

⁴ For further analysis on the link between regionalism and multilateralism, see generally Sungjoon Cho, *Breaking the Barrier between Regionalism and Multilateralism: A New Perspective on Trade Regionalism*, 42 *Harv Intl LJ* 419 (2001).

center of gravity of the international trading system, or whether we have a symbiosis between regionalism and multilateralism and, if not, how we can get there. In Section VII, the paper concludes that the proliferation of RTAs implies the erosion of the WTO law principle of non-discrimination and wonders whether this means the beginning of the end of multilateralism.⁵

II. OVERVIEW OF RTAS

Regional trade agreements have a general and a specific meaning. The general meaning is that RTAs may be agreements concluded between countries not necessarily located in the same geographical region. The specific meaning is that the parties to an RTA offer to each other, by definition, more favorable treatment in trade matters than ~~they do~~ to the rest of the world, including WTO Members.

Bilateral trade agreements and regional attempts at economic integration are facts that cannot be wished away, even though they complicate the rules that govern international trade. RTAs have become a distinctive feature of the international trading landscape. As a result, more and more international trade is covered by such preferential deals, ~~to the extent that one~~ response to those who wonders whether RTAs are becoming the norm rather than the exception.⁶ Many RTAs contain obligations that go beyond existing multilateral commitments (that is, the so-called WTO plus⁷), whereas other RTAs deal with areas not yet included in the WTO agenda,

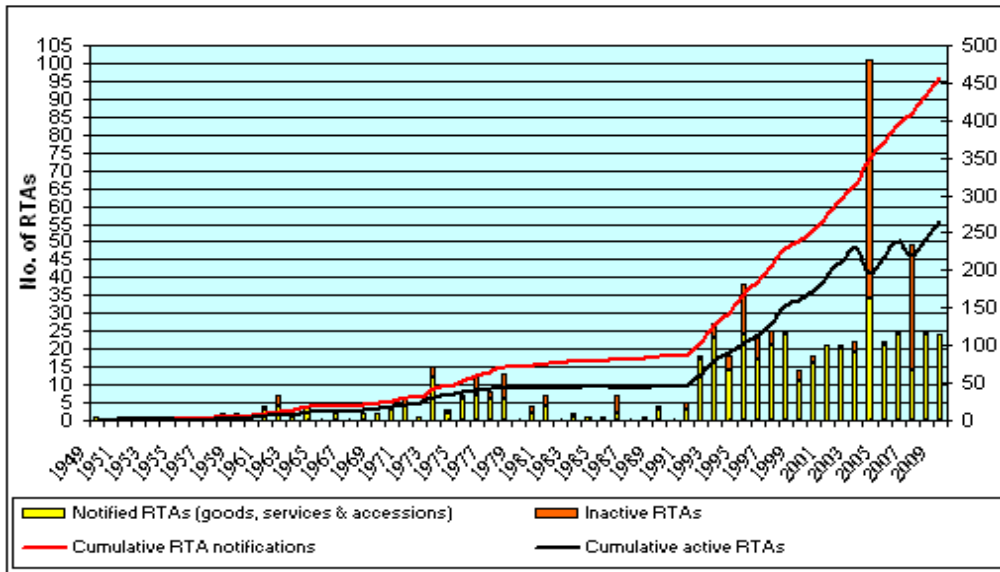
⁵ See Peter Sutherland, *Political Challenges to the World Trading System*, in Ernst-Ulrich Petersmann, ed, *Reforming the World Trading System: Legitimacy, Efficiency and Democratic Governance* 42 (Oxford 2005); Kenneth W. Dam, *Cordell Hull, Reciprocity and the WTO*, in Ernst-Ulrich Petersmann, ed, *Reforming the World Trading System: Legitimacy, Efficiency and Democratic Governance* 90 (Oxford 2005).

⁶ See Chapter II and recommendations from Report by the Consultative Board to the Director-General, *The Future of the WTO: Addressing Institutional Challenges in the New Millennium*, World Trade Organization (2004), online at http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.htm (visited Oct 8, 2010).

⁷ The term *WTO plus* is used especially for provisions in FTAs and other economic cooperation agreements that go beyond the WTO framework of rules. For example, an agreement may contain provisions on competition policy. Although this expression is often used with great conviction, one may wonder whether an FTA is worth doing if it does not go beyond the WTO framework of rules. See Walter Goode, *Dictionary of Trade Policy Terms* 488 (Cambridge 5th ed 2007).

such as investment and competition policies, as well as labor and environmental issues.⁸ The drive toward the conclusion of RTAs continues to be very prominent (see figure 1).

Figure 1: Evolution of RTAs in the world (1948-2009)



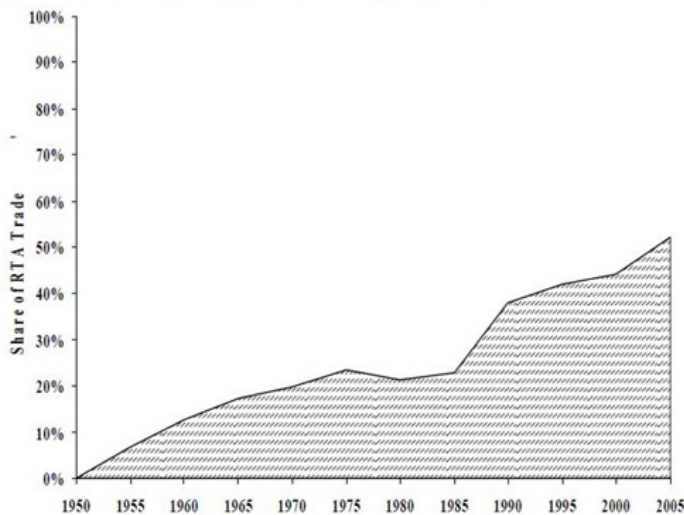
Source: WTO Secretariat

If one examines the share of international trade occurring under RTAs, one notes that already in 2005, around 50 percent of world trade came from RTAs, which demonstrates the quantitative relevance of RTAs in the international trading system (see figure 2). There are three types of RTAs: customs unions (CUs); free-trade agreements (FTAs); and preferential trade agreements

⁸ Ghosh and Yamarik have studied the impact of RTAs on the environment. They found that membership in an RTA reduces the amount of environmental damage by increasing the volume of trade and raising per capita income. They did not, however, find that RTAs directly impact the environment. These results suggest that the recent surge of regional trading arrangements will not increase the amount of pollution, but in fact may help the environment. See Sucharita Ghosh and Steven Yamarik, *Do Regional Trading Arrangements Harm the Environment? An Analysis of 162 Countries in 1990*, Applied Econometrics & Intl Development, Vol 6 No 2 (2006).

(“PTAs”). Already in the GATT era, there were 123 RTAs notified.⁹ Since the WTO’s creation in 1995, over 300 additional RTAs have been notified to the WTO Secretariat, of which about 90 percent are FTAs and around the remaining 10 percent are CUs.¹⁰ As of October 15, 2009, 457 regional trade agreements had been notified to the WTO, 266 of which are currently in force.¹¹

Figure 2. Share of International Trade Occurring under RTAs



RTAs can help countries integrate into the multilateral trading system, but at the same time they are a fundamental departure from the WTO principle of non-discrimination that obliges WTO Members to grant unconditionally to each other any benefit, favor, privilege, or immunity

Comment [VN1]: New paragraph? YES

⁹ See *Regional Trade Agreements* (World Trade Organization 2010), available online at http://www.wto.org/english/tratop_e/region_e/region_e.htm (visited Sept 30, 2010).

¹⁰ Id.

¹¹ [World Trade Organization, Report of the Committee on Regional Trade Agreements to the General Council, World Trade Organization \(Oct 16, 2009\) WT/Reg/20 at 1, ¶ 4 \(2009\).](#)

affecting customs duties, charges, rules, and procedures that they give to products originating in or destined for any other Member country. So RTAs are a fundamental departure from the WTO principle of non-discrimination because, by definition, they provide preferential treatment to the parties to the agreement.¹² This means that a WTO Member would be in breach of its WTO obligations if it were to grant preferential treatment to products originating only from a selected group of countries. However, the WTO does allow its Members to enter into RTAs under three basic rules: (1) GATT Article XXIV:4-10,¹³ (2) the Enabling Clause,¹⁴ and (3) GATS Article V.¹⁵ Therefore, the question is whether RTAs are a building block for further multilateral liberalization (one of the fundamental principles of WTO law) or a stumbling block.¹³

All WTO Members except for Mongolia participate in at least one RTA. The composition of RTAs can be bilateral, plurilateral, or arrangements in which one or more of the parties to the agreement is an RTA itself, such as the European Community-Mexico FTA¹⁴ or the European Community-CARIFORUM¹⁵ Economic Partnership Agreement.¹⁶ This last RTA, the EC-CARIFORUM Economic Partnership Agreement, is a pioneering agreement in the international trading system. It is the first genuinely comprehensive North-South trade agreement that

Comment [KS2]: Maroonbook specifies that commas, not semi-colons, should be used. I AGREE

Comment [KS3]: This may just be because I'm unfamiliar with RTAs, but please verify that you mean to say that a party is actually an RTA. Does this mean that the RTA is the "party", in the sense that the parties (states) to that RTA make up this "party"? Please confirm that you intend this language. IT IS CORRECT AS IT IS. THE EU (OR EC AS IT WAS CALLED THEN) IS AN RTA ITSELF BUT HAS ALSO CONCLUDED RTAS WITH OTHER PARTIES, I.E. WITH MEXICO.

¹² General Agreement on Tariffs and Trade (1947), art I, 61 Stat A-11, TIAS 1700, 55 UN Treaty Ser 194_ (1947) (hereinafter "GATT").

¹³ See generally Richard Baldwin and Patrick Low, eds, *Multilateralizing Regionalism: Challenges for the Global Trading System* (Cambridge 2009).

¹⁴ EC-Mexico Joint Council, *Free Trade Agreement Between the European Communities and Mexico* (Mar 23, 2000).

¹⁵ The CARIFORUM (Caribbean Forum of African, Caribbean and Pacific States ("CARIFORUM")) is a regional grouping of fifteen Caribbean countries: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Christopher and Nevis, Surinam, and Trinidad and Tobago.

¹⁶ *European Union-Caribbean Economic Partnership Agreement* (European Communities 2006), available online at http://www.delbrb.ec.europa.eu/en/epa/epa_docs/epa_2006_EU-CARIFORUM_EPA_Brochure.pdf (visited Sept 30, 2010).

promotes sustainable development, builds a regional market among developing countries, and helps eliminate poverty.¹⁷

In 1996, the WTO's General Council established the Committee on Regional Trade Agreements (~~"CRTA"~~).¹⁸ The CRTA's main duties are: (1) to examine RTAs; (2) to consider how the reporting on the operation of agreements should be carried out and make recommendations in this regard; (3); to develop procedures to facilitate and improve the examination process; and (4) to provide a forum for the consideration of the systemic implications of RTAs, regional initiatives for the multilateral trading system, and the relationship between them.

III. THE MANDATE OF REGIONAL INTEGRATION

Suffice it to say that RTAs are an exception to the most-favored nation (~~"MFN"~~) rule of non-discrimination.¹⁹ Nevertheless, they are WTO-consistent as exemplified by GATT Article XXIV,²⁰ the Enabling Clause, and GATS Article V. Below I provide an analysis of each of the three rules in the WTO law dealing with RTAs.

A. GATT ARTICLE XXIV (CUSTOMS UNIONS AND FREE-TRADE AREAS)

It is largely accepted that GATT Article XXIV, which regulates regional trade agreements, lacks clarity. There have been several attempts to clarify it and, although an Understanding on the Interpretation of GATT Article XXIV (~~"the Understanding"~~) has been

¹⁷ For further information on Economic Partnership Agreements, see *Economic partnerships* (European Commission 2010), [available](http://ec.europa.eu/trade/wider-agenda/development/economic-partnerships/) online at <http://ec.europa.eu/trade/wider-agenda/development/economic-partnerships/> (visited Sept 30, 2010).

¹⁸ For the CRTA's terms of reference, see [World Trade Organization, Committee on Regional Trade Agreements Decision of 6 February 1996](#), [World Trade Organization \(Feb 7, 1996\)](#) WTO Doc No WT/L/127 (Feb 7, 1996).

¹⁹ GATT, art I (cited in note 12).

²⁰ Note that when it comes to disputes settlement, the existence and nature of the dispute settlement provisions in many RTAs may raise questions about their consistency with the WTO, particularly DSU Article 23. For further detail, see generally Jennifer Hillman, *Conflicts between Dispute Settlement Mechanisms in Regional Trade Agreements and the WTO—What Should the WTO Do?*, 42 Cornell Intl L J 193 (2009).

reached,²¹ questions remain. Arguably, the Understanding brings significant clarification of the text of GATT Article XXIV through legislative action only to the *internal* trade requirement in relation to customs unions.²²

The basic principle of GATT Article XXIV is the deepening of the process of economic integration through the elimination of barriers to trade within the CU or FTA in question.²³ This is so, provided it does not raise barriers to trade for third countries. GATT Article XXIV requires that duties be eliminated on “substantially all the trade”²⁴ between the parties of a customs union²⁵ or free-trade area,²⁶ or at least with respect to substantially all the trade in products originating in such territories. To qualify as a customs union, its members should apply

²¹ [World Trade Organization, Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994](#), [World Trade Organization](#) (1994), available online at http://www.wto.org/english/docs_e/legal_e/10-24_e.htm (visited Oct 8, 2010).

²² See Petros C. Mavroidis, *If I Don't Do It, Somebody Else Will (Or Won't): Testing the Compliance of Preferential Trade Agreements With the Multilateral Rules*, 40 *J of World Trade* 187 (2006).

²³ GATT, art 24XXIV:4 (cited in note 12).

²⁴ GATT, art XXIV24:8 (cited in note 12). Regarding the locution, “substantially all the trade,” there is neither an agreed definition of the percentage of trade to be covered by a WTO-consistent agreement nor common criteria against which the exclusion of a particular sector from the agreement could be assessed. For more information, see [consider World Trade Organization, Submission on Regional Trade Agreements by Australia, World Trade Organization \(Mar 3, 2005\)](#)–WTO Doc No TN/RL/W/173/Rev.1 (Mar 3, 2005); [World Trade Organization, Submission on Regional Trade Agreements by Australia World Trade Organization \(May 13, 2005\)](#)–TN/RL/W/180 (May 13, 2005); [World Trade Organization, Submission on Regional Trade Agreements by the European Communities, World Trade Organization \(May 12, 2005\)](#)–WTO Doc No TN/RL/W/179 (May 12, 2005); [World Trade Organization, Submission on Regional Trade Agreements by China, World Trade Organization \(July 22, 2005\)](#)–WTO Doc No TN/RL/W/185 (July 22, 2005); and [World Trade Organization, Submission on Regional Trade Agreements by Japan, World Trade Organization \(Oct 28, 2005\)](#)–WTO Doc No TN/RL/W/190 (Oct 28, 2005).

²⁵ GATT, art 24XXIV:8(a) (cited in note 12) defines a customs union as “the substitution of a single customs territory for two or more customs territories, so that duties and other restrictive regulations of commerce [...] are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories.” GATT, art 24XXIV:2 (cited in note 12) defines a customs territory as “any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.”

²⁶ GATT, art 24XXIV:8(b) (cited in note 12) defines a free-trade area as “a group of two or more customs territories in which the duties and other restrictive regulations of commerce [...] are eliminated on substantially all the trade between the constituent territories in products originating in such territories.” [So a free-trade area means](#) a group of countries that have removed barriers to trade among them—barriers such as import tariffs and quotas. Several free-trade areas have been established around the world: Mercosur in South America, NAFTA in North America, CAFTA in Central America, ASEAN in South-East Asia, and EFTA in Europe, for example. The European Union (EU) is also a free-trade area, but it is much more than that, because it is built on a process of economic and political integration, with joint decision-taking in many policy areas. Not everyone agrees with the creation of free-trade areas. For an analysis in the global context, see Frank A. Haight, *The Customs Union and Free-Trade Area exceptions in GATT: A Reappraisal*, 6 *J of World Trade* L 3912 (1972).

“substantially the same duties and other regulations of commerce”²⁷ to trade with non-members of the customs union. This condition implies a common external tariff and trade policy.

An exception is made for developing countries. GATT Article XXIV applies under certain conditions, which appear in paragraph 5. GATT Article XXIV is a violation of the MFN principle, classified as a regional integration exception to WTO law, which allows WTO Members to adopt measures taken in the context of the pursuit of regional economic integration.²⁸

A number of elements of Article XXIV are unclear and therefore allow for divergent interpretations of its disciplines.²⁹ For example, there are two different views on the relationship between Article XXIV and other WTO provisions: (1) that Article XXIV should be considered as a derogation only from GATT Article I, which means that parties to RTAs must abide by all other WTO provisions; and (2) that Article XXIV should be considered as a derogation from all the provisions of the WTO and not just from the MFN principle.³⁰

As for the relationship between paragraph 4 of Article XXIV and other provisions in Article XXIV, one interpretation is that paragraph 4 is just a general principle that summarizes the criteria which must be met for a customs union or free-trade area to be WTO-consistent. This

²⁷ GATT, art 24XXIV:8(a)(ii) (cited in note 12). Regarding the locution “other regulations of commerce,” there is no commonly agreed definition of its scope. For example, it is not clear whether this locution includes rules of origin. Some commentators argue that the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994 clarifies the issue of “the general incidence of duties and ORCs [other regulations of commerce].” See, for example, Jo-Ann Crawford and Sam Laird, *Regional Trade Agreements and the WTO*, 12 N Am J of Econ and Fin 193 (2001).

²⁸ See John McMillan, *Does Regional Integration Foster Open Trade? Economic Theory and GATT’s Article XXIV*, in Kym Anderson and Richard Blackhurst, eds, *Regional Integration and the Global Trading System* 292 (Harvester Wheatsheaf 1993).

²⁹ For an overview of systemic issues related to GATT Article XXIV, see [World Trade Organization, Synopsis of “Systemic” Issues Related to Regional Trade Agreements, World Trade Organization \(Mar 2, 2000\)](#) WTO Doc No WT/REG/W/37 (Mar 2, 2000); and [World Trade Organization, Compendium of Issues Related to Regional Trade Agreements, World Trade Organization \(Aug 1, 2002\)](#) WTO Doc No TN/RL/W/8/Rev.1 (Aug 1, 2002).

³⁰ The Appellate Body report on *Turkey-Textiles* states that “Article XXIV may justify a measure which is inconsistent with certain other GATT provisions” provided very specific conditions are fulfilled. World Trade Organization, Report of the Appellate Body, *Turkey-Restrictions on Imports of Textile and Clothing Products*, ¶ 58, WTO Doc No WT/DS34/AB/R (Oct 22, 1999).

basically means that RTAs which fulfill the requirements of paragraphs 5 to 9 of GATT Article XXIV are *ipso facto* WTO-consistent. The other main interpretation is that paragraph 4 is an additional requirement to those of paragraphs 5 to 9, and must also be satisfied.³¹

Moreover, on the relationship between Article XXIV:8 and GATT Article XIX, it is pertinent to note that Article XXIV:8(a)(i) and (b) both indicate that the obligation to eliminate duties and other restrictive regulations of commerce with respect to substantially all the trade between the constituent territories of a customs union or free-trade area does not extend to trade-restrictive measures permitted under certain GATT Articles (XI, XII, XIII, XV, and XX).³² It remains unclear whether this list is exhaustive or just illustrative.³³ The fact that GATT Article XIX is not mentioned as one of the exceptions in Article XXIV:8 may be interpreted to mean that, where a party to a customs union or free-trade area takes Article XIX safeguard action, it is entitled to exempt imports from partners in the customs union or free-trade area from the application of such trade-restrictive measures.³⁴

Comment [JG4]: Unable to find source for fn 33. It is on file with me

B. THE ENABLING CLAUSE

One of the outcomes of the Tokyo Round, the so-called the Enabling Clause—the 1979 GATT decision on differential and more favorable treatment, reciprocity, and fuller participation

³¹ In *Turkey-Textiles*, the Appellate Body report states that Article XXIV:4 “does not set forth a separate obligation itself but, rather, sets forth the overriding and pervasive purpose for Article XXIV which is manifested in operative language in the specific obligations that are found elsewhere in Article XXIV.” [World Trade Organization, *Turkey-Restrictions*Id at ¶ 57 \(cited in note 30\).](#)

³² Arguably, regulatory barriers are the main obstacles to trade. See Keith E. Maskus and John S. Wilson, eds, *Quantifying the Impact of Technical Barriers to Trade: Can it be done?* (Michigan 2001). As for what happens to restrictive or higher measures which come into practice after the formation of a given RTA, see [Joost Pauwelyn, *The Puzzle of WTO Safeguards and Regional Trade Agreements*, 7 J of Intl Econ L 109, 131–38 \(2004\);](#) ~~and~~ [Raj Bhala, *The Forgotten Mercy: GATT Article XXIV:11 and Trade on the Subcontinent*, New Zealand L Rev 301 \(2002\);](#) ~~and~~ [Joost Pauwelyn, *The Puzzle of WTO Safeguards and Regional Trade Agreements*, 7 J of Intl Econ L 109, 131–38 \(2004\).](#)

³³ See Joel P. Trachtman, *Toward Open Recognition? Standardization and Regional Integration under Article XXIV of GATT*, 6 J of Intl Econ L 459, 477 (2003).

³⁴ See [World Trade Organization—Institute for Training and Technical Cooperation, “Regionalism,” Geneva: WTO Secretariat, 2008, pp. 7-8. \[UNABLE TO FIND SOURCE\]](#)

of developing countries—is another WTO rule that deals with regional trade agreements. In terms of applying the Enabling Clause, paragraph 2(c) states that developing countries may establish regional or global preferential arrangements for the mutual reduction or elimination of tariffs and, in accordance with criteria and conditions that may be prescribed by WTO Members, for the mutual reduction or elimination of non-tariff measures.

Before the Enabling Clause can be successfully invoked, certain conditions must be fulfilled, however. The deviation from the MFN obligation of GATT Article I:1 is allowed only when, and to the extent that, the conditions set out in paragraphs 3 and 4 of the Enabling Clause are met.

Paragraph 3 of the Enabling Clause spells out two substantive requirements applicable to RTAs. First, RTAs “shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties” for the trade of any other WTO Member. Second, RTAs “shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favored-nation basis.” These two requirements are more flexible than those in Article XXIV, given that, for example, regarding trade liberalization among the parties, they permit the exchange of preferences on a sub-set of products as well as the partial reduction, rather than the elimination, of trade barriers.

Paragraph 4 of the Enabling Clause provides for the notification of RTAs and of any modification thereto, the submission of appropriate information, and the possibility of consultations with WTO Members.

The Enabling Clause can be divided into four categories: (1) the Generalized System of Preferences;²³ (2) the special and differential treatment with respect to non-tariff measures;²⁴ (3)

regional arrangements between developing countries; and (4) special treatment for least-developed countries.

1. Generalized System of Preferences (GSP)

The Preamble to the WTO Agreement states that “there is a need for positive efforts designed to ensure that developing countries secure a share in the growth in international trade commensurate with the needs of their economic development.” Almost all WTO agreements provide for special and differential treatment provisions for developing-country Members to facilitate their integration into the world trading system. An example of a special and differential treatment provision is the Generalized System of Preferences (“GSP”). The GSP is a mechanism used by certain developed countries to provide preferential tariff treatment to products from developing countries. These are unilateral measures and consist of the elimination or reduction of access barriers on products from developing countries. The GSP mechanism is a violation of the MFN principle.

2. Special and Differential Treatment with Respect to Non-tariff Measures

Another category of the Enabling Clause refers to the special and differential treatment with respect to non-tariff measures for products from developing countries. Unlike the GSP, these are measures negotiated multilaterally in the WTO context. The idea is the elimination or reduction of barriers on products from developing countries. The special and differential (S&D) treatment with respect to non-tariff measures is a violation of the MFN principle.

3. Regional Arrangements between Developing Countries

The third category of the Enabling Clause is regional arrangements between developing countries (and not between developed and developing countries, as is the case of the first two

categories of the Enabling Clause mentioned above) about tariff and/or non-tariff preferences. These arrangements may also be regional agreements outside the WTO membership, such as the Russia-Ukraine FTA.³⁵ The aim is the elimination or reduction of access barriers on products from developing countries within the same region, and it is a violation of the MFN principle.

4. Special Treatment for Least-developed Countries.

This category of the Enabling Clause is an additional special and differential treatment for the least-developed countries (LDCs). These are measures negotiated multilaterally, whose aim is the elimination or reduction of access barriers on products from LDCs. Such measures are also violations of the MFN principle.

C. GATS ARTICLE V (ECONOMIC INTEGRATION)

Regarding trade in services, Article V:4 states the basic principle whereby any agreement liberalizing trade in services must be designated to “facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.”

Article V:1(a) states the conditions that a regional economic integration agreement should provide for substantial sectoral coverage in terms of number of sectors, volume of trade, and modes of supply. There should be no *a priori* exclusion of any mode of supply. Moreover, GATS Article V:1(b) adds that regional or bilateral agreements liberalizing trade in services should provide for “the absence or elimination of substantially all discrimination” between or

³⁵ For further information on the Russia-Ukraine FTA, see, [World Trade Organization, Regional Trade Agreements Information System, online at http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?enc=KGX6+Y689oLHj5hwDR+2y224Vc8nZE6dvLuWA+VfURg=](http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?enc=KGX6+Y689oLHj5hwDR+2y224Vc8nZE6dvLuWA+VfURg=) (visited Oct 23, 2010).

among the parties to the GATS through the elimination of existing discriminatory measures and/or the prohibition of new discriminatory measures. Furthermore, Article V:4 stipulates that an agreement should not lead to the erection of new barriers within the regional economic zone.

Article V:2 and 3 provide some flexibility in evaluating whether all conditions by a given economic integration agreement are met. Paragraph 2 introduces flexibility by taking into account the “wider process of economic integration or trade liberalization among the countries concerned.” Paragraph 3 provides flexibility for economic integration agreements involving developing countries. This flexibility applies to the requirements contained in paragraph 1, in particular with respect to the absence or elimination of substantially all discrimination between the parties.

As in the case of GATT Article XXIV, GATS Article V is a violation of the MFN principle, classified as a regional integration exception to WTO law, which allows WTO Members to adopt measures taken in the context of the pursuit of regional economic integration.³⁶

IV. MAIN TRENDS IN RTAS

RTAs between countries at different stages of development have become commonplace, as have attempts to form region-wide economic areas, an objective that figures prominently in East Asian countries’ trade strategies. In this sense, it has been argued that China’s trade policy

Comment [JG5]: INTERNAL NOTE: Discuss citing to this site, since it is a forthcoming article, much as we’re considering doing with Posner/Dixon and with Lister. [Here it is:](http://jiel.oxfordjournals.org/content/early/2010/09/07/jiel.jgq021.full) <http://jiel.oxfordjournals.org/content/early/2010/09/07/jiel.jgq021.full>

³⁶ For further information on RTAs in the context of the GATS, see [Rudolf Adong and Peter Morrison](#), “Less than the GATS: ‘Negative Preferences’ in Regional Services Agreements,” *J Intl Econ L*, 2010, first published online on September 7, September 2010. [\[Unable to locate source\]](#)

strategy is the creation of a powerful Asian trading bloc, given China's strong position in Asia³⁷ and how difficult it is to move forward multilaterally.³⁸

If multilateral trade continues to weaken, and given that there are already many common Asian values in the region, there is a very high likelihood for an East Asia Free Trade Area³⁹ of a like-minded group of countries⁴⁰ led by China acting as the *prima donna* or *prima inter pares*⁴¹ within the next decade as part of China's strategy of promoting regional identity.⁴² Should this materialize, one could envisage a tripolar global trade regime with a new Asian pole to counteract the already existing power centers in the EU and the US. Moreover, it would most likely mean further deterioration of the multilateral trading system.⁴³ From a broader perspective, China's grand strategy is arguably about multi-polarity,⁴⁴ the acquisition of more power on the

³⁷ C. Fred Bergsten, et al, *China's Rise: Challenges and Opportunities* 16 (Peterson Institute for International Economics & Center for Strategic and International Studies 2008).

³⁸ On China and international trade, see [generally](#) Deborah Z. Cass, Brett G. Williams, and George R. Barker, eds, *China and the World Trading System: Entering the New Millennium* (Cambridge 2003); Xin Zhang, *International Trade Regulation in China: Law and Policy* (Hart 2006); Rafael Leal-Arcas, *China's Attitude to Multilateralism in International Economic Law and Governance: Challenges for the World Trading System*, 11 J of World Investment & Trade 259 (2010).

³⁹ Shujiro Urata, *Towards an East Asia Free Trade Area*, [Policy Insights](#) (Organisation for Economic Co-operation and Development Development Centre 2004), online at <http://www.oecd.org/dataoecd/36/55/31098183.pdf> (visited Oct 8, 2010).

⁴⁰ Here, I am referring to China, Japan, South Korea, and Vietnam.

⁴¹ On East and South Asian regionalism, see JiangYu Wang, *China, India, and Regional Economic Integration in Asia*, 10 Singapore [Yearbook-YB](#) of Intl L 269 (2006); Masahiro Kawai, [M. & Ganesha Wignaraja, G. Asian FTAs: Trends and Challenges](#) (Asian Development Bank Institute Working Paper, No. 144, Series August 2009), online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1480508 (visited Oct 8, 2010).

⁴² C. Fred Bergsten, F., *China's Challenge to the Global Economic Order*, in Bergsten, F., Freeman, C., Lardy, N. & Mitchell, D. *China's Rise: Challenges and Opportunities*, Peterson Institute for International Economics & Center for Strategic and International Studies, Washington, DC, 2008, p. 16. Bergsten, *China's Rise* at 16 [supra note](#) (cited in [note 37](#) [36](#)), at 16

⁴³ According to Francis Snyder, China's policy towards regional trade agreements will have a major impact on the international trading system, the debate about regionalism and multilateralism, and the policy of the WTO concerning RTAs. See Francis Snyder, *China, Regional Trade Agreements and WTO Law*, 43 J of World Trade 1 (2009); Francis Snyder, *The EU, the WTO and China: Legal Pluralism and International Trade Regulation* (Hart 2010).

⁴⁴ On multi-polarity in the world trading system, see [Amrita Narlikar and Brendan Wickers, eds, Leadership and Change in the Multilateral Trading System, Dordrecht: Republic of Letters, \(Martinus Nijhoff 2009\).](#)

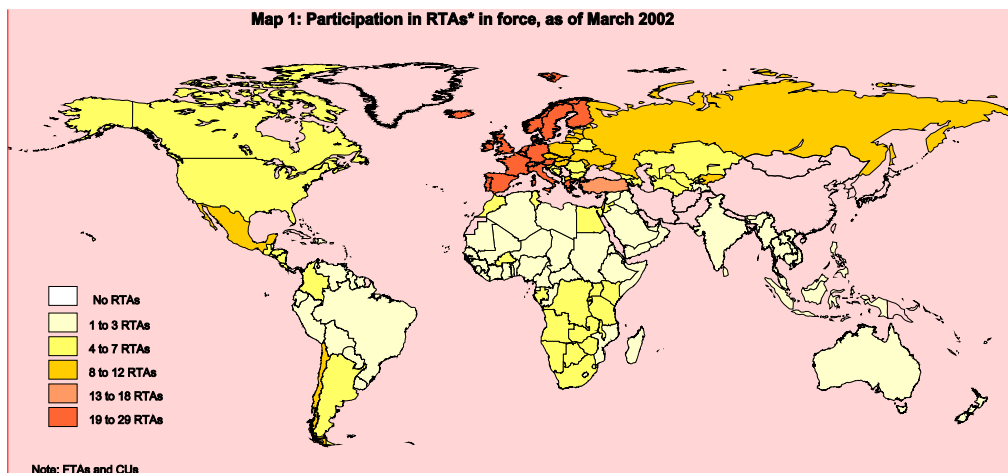
world stage, the protection of the Chinese national interest, and independence within interdependence.⁴⁵

There are four main trends identified in RTAs: (1a) from MFN liberalization to RTAs; (2b) a geographical shift to the Asia-Pacific region; (3e) cross-regional RTAs; and (4d) mega-bloc RTAs.

Comment [KS6]: Updated with Arabic numerals to keep consistent with numbering convention throughout rest of article.

A. FROM MFN LIBERALIZATION TO RTA

WTO Members that traditionally favored MFN liberalization are increasingly being drawn into RTAs. An example is Europe where, as of March 2010, almost one hundred RTAs were in force (see map 1).

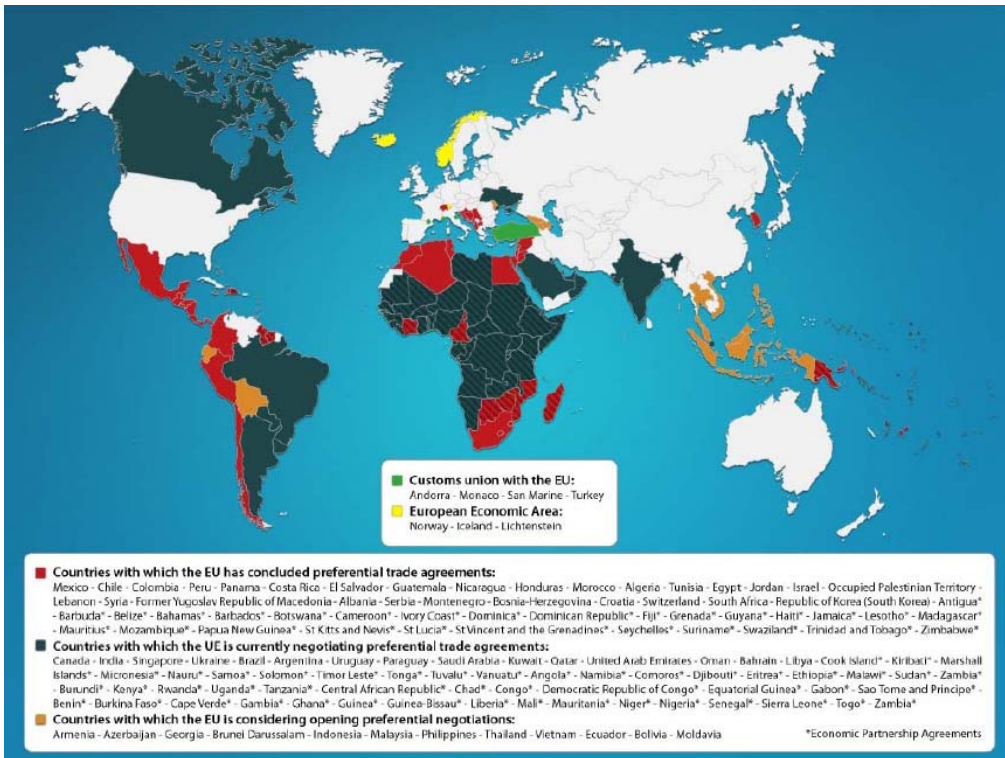


Comment [VN7]: Professor, as a precautionary measure, we ask you to confirm that you are the owner or licensee of the copyright for this photo as well as the other figures used in this paper or that the photo is in the public domain. Also we would also ask that there be source for each map.

⁴⁵ On China's position in the multilateral trading system, see [Rafael Leal-Arcas, R. "China's Attitude to Multilateralism in International Economic Law and Governance: Challenges for the World Trading System," *Journal of World Investment Inv and Trade*, 279, 279-273, Vol 11, No 2, \(2010\), pp. 259-273.](#)

Regarding the EU's RTAs, map 2 illustrates: (1a) countries with which the EU has concluded preferential trade agreements; (2b) countries with which the EU is currently negotiating preferential trade agreements; and (3e) countries with which the EU is considering opening preferential negotiations.

Map 2: The EU's RTAs



Source: Directorate General for Trade, European Commission

B. GEOGRAPHICAL SHIFT

1995 marked the year of entry into force of the Marrakesh Agreement Establishing the WTO (WTO Agreement).⁴⁶ Since then, the traditional trade actors—namely, the ~~United States~~, Japan, the ~~European Union~~, and Canada, commonly known as the original Quad⁴⁷—have retained much of their leading roles in the economic and political scene. While their influence on world affairs is irrefutable, over the years their dominance has waned. Since 1995, the world has undergone major geopolitical changes and has witnessed the rise of new state actors who have asserted their own role in shaping the world’s economic and political environment. Today, developing countries constitute two thirds of the WTO’s membership. The introduction of the “development” dimension of the Doha Round clearly attests to a growing awareness of the ascendancy of developing and least-developed countries in recent years. Alongside developed countries, a number of fast-growing developing economies have acquired significant influence in international trade relations—namely, Brazil, Russia, India, and China, commonly known as the BRIC countries.⁴⁸

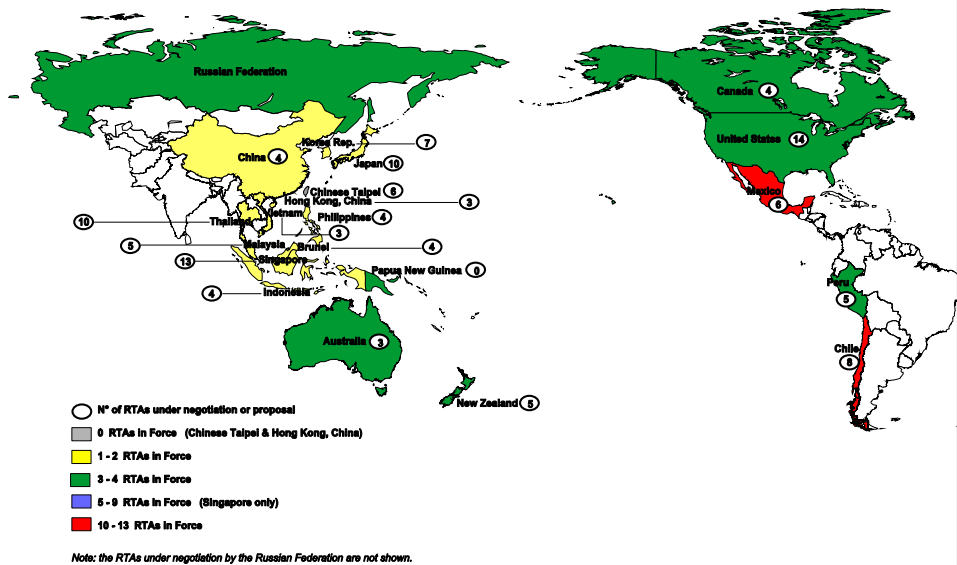
⁴⁶ The official version of the WTO Agreement and its Annexes is published by the WTO and Cambridge University Press as [World Trade Organization, *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* \(Cambridge 2000\)](#).

⁴⁷ The Quadrilateral Trade Ministers' Meeting (“Quad”), an informal forum created in 1982 to explore major trade and investment issues, has been an important consultative mechanism. The Quad trade ministers from Canada, Japan, the EU, and the US would meet twice a year. One purpose of the original Quad was to see how key trade and investment matters could be moved forward. It was instrumental in achieving significant progress leading to the successful conclusion of the Uruguay Round of multilateral trade negotiations. Today, though, the new Quad is composed of the EU, the US, the agriculture G-20 (a group of developing countries led by Brazil), and the G-90 (representing mostly very poor countries in Africa, Asia, and the Caribbean). [\[source?\]](#)

⁴⁸ For a very detailed analysis of the BRIC countries in the world trading system, see Rafael Leal-Arcas, *International Trade and Investment Law: Multilateral, Regional and Bilateral Governance* (Edward Elgar 2010).

Although most RTAs were traditionally in Europe, the largest concentration of RTAs has shifted away from Europe toward the Asia-Pacific region in the last few years,⁴⁹ where Asia-Pacific Economic Cooperation (APEC) Members, in particular, have been among the most active participants in RTAs (see map 3). One wonders whether the geopolitical shift of power in international politics has influenced the decision-making process at the WTO.

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



Source: WTO Secretariat

⁴⁹ See, for example, Christopher Findlay and Shujiro Urata, eds, *Free Trade Agreements in the Asia Pacific* (World Scientific 2009), who argue that FTAs have proliferated in East Asia as regional economies rush to catch up with the rest of the world—but what difference do FTAs make? The book answers that question by providing an up-to-date assessment of the quality and impact of FTAs in the region and presents a contemporary analysis and insights into the evolution of recent FTAs.

The following chart demonstrates that most RTAs are now concluded between developing countries:

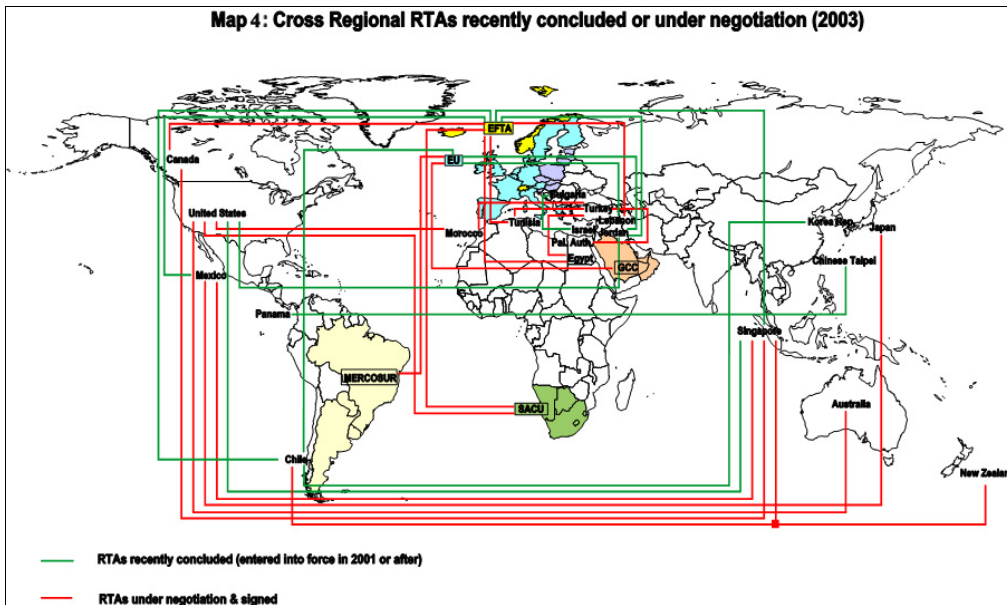
RTAs notified to the WTO by type as of March 2007

	FTA, PTA	Customs unions	Services RTAs	Share
South-South	76	5	16	50%
North-South	44	1	20	34%
North-North	15	8	8	16%
Total	135	14	44	100%

Formatted Table

C. CROSS-REGIONAL RTAs

WTO Members that have been engaged in intra-regional RTAs for some time are now looking further afield for cross-regional partners (see map 4). This is a growing phenomenon in international trade law. By way of illustration, of the proposed RTAs as of 2005, 60 percent were cross-regional RTAs.



Source: WTO Secretariat

D. MEGA-BLOC RTAS

Another recent trend in RTAs is the conclusion, or negotiation toward the conclusion, of mega-bloc RTAs. An illustration of this trend is the FTA between China and the Association of South East Asian Nations (ASEAN), the largest FTA in the world by population coverage, with nearly two billion people. This FTA is an example of China’s strategy to shape a new regional structure of economic and political cooperation.⁵⁰ This has partly been triggered by the fact that Americans have left the region and it is seen as an opportunity for China’s market access.

China-ASEAN cooperation has brought a new type of intra-Asian regional cooperation with China, which reflects China’s commitment to good-neighbor diplomacy. In November

Comment [KS8]: Is it China that sees it as an opportunity? IF so, then suggest changing to: "...and China sees an opportunity for market access/growth". Alternatively, if it is China and ASEAN that sees it as an opportunity for China’s market access, then I would also update it to reflect that, since it doesn’t seem obvious that ASEAN would be acting just for China’s market benefit.

⁵⁰ On new regionalism in Asia, see Rahul Sen, *New Regionalism in Asia: A Comparative Analysis of Emerging Regional and Bilateral Trading Agreements involving ASEAN, China and India*, 40 *J of World Trade* 553 (2006).

2001, China and ASEAN began negotiations to set up a free-trade area. In 2002, a framework agreement for the planned free-trade area was signed. The new Asian regionalism stimulated by the China-ASEAN free-trade agreement would dominate the future economic landscape of Asia, although doubts remain as to whether the deal will have real teeth, given that there is no rigorous mechanism for settling disputes.⁵¹ This China-ASEAN FTA took effect for China and six ASEAN countries (Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand) in January 2010, thereby eliminating barriers to investment and tariffs to trade on 90 percent of products, and will expand to the remaining four ASEAN countries (Myanmar, Cambodia, Laos, and Vietnam) by 2015.⁵² The goal behind all these efforts is, *inter alia*, to facilitate water transport along the Upper Lancang/Mekong River covering China, Myanmar, Laos, Thailand, and Vietnam, as well as rail and road links between Yunnan Province of China and Chiang Rai in Thailand.⁵³

Other examples of China's interest in Asian regionalism ~~are the facts that~~ include China signing a bilateral FTA with Singapore⁵⁴ in October 2008, ~~and~~ investment agreements with the Philippines, harmonizing food safety standards with Thailand (to facilitate agricultural trade), and concluding many agreements with the Mekong Delta countries (China, Cambodia, Laos, Myanmar, Thailand, and Vietnam). Politics around the various agreements between China and ASEAN (whether as a bloc or its Member States individually) are delicate, as ASEAN

⁵¹ The development of infrastructure also within China has been a key focus for the Chinese government in its economic development initiatives. See [KPMG, *Infrastructure in China: Foundation for Growth* \(KPMG Sept 2009\), online at http://www.kpmg.com/hk/en/virtual_library/Property_Infrastructure/Infrastructure_in_China.pdf](http://www.kpmg.com/hk/en/virtual_library/Property_Infrastructure/Infrastructure_in_China.pdf) (visited Oct 8, 2010).

⁵² [Bilaterals.org](http://www.bilaterals.org), *China-ASEAN* (April Bilaterals.org 2009), online at <http://www.bilaterals.org/spip.php?rubrique95> (visited Sept 30, 2010).

⁵³ [Asian Development Bank](http://www.adb.org), *Greater Mekong Subregion Flagship Initiative: North-South Economic Corridor* (Asian Development Bank June 26, 2005), online at <http://www.adb.org/GMS/Projects/1-flagship-summary-north-south.pdf> (visited Oct 8, 2010).

⁵⁴ [WTO document WT/REG262/N/1](http://www.wto.org) (March 4, 2009) ("[Sino-Singaporean Free Trade Agreement](http://www.wto.org)"). [WT/REG262](http://www.wto.org).

Member States want to avoid China's domination, ~~while-but~~ at the same time building their economies by interacting with China.⁵⁵

Another example of a mega-bloc RTA is the Mercosur-India PTA. Moreover, the EU-ASEAN RTA was initially meant to be an inter-regional RTA. However, Myanmar (one of the ten ASEAN Member States) was and continues to be in violation of human rights, which made the Europeans stop the inter-regional negotiations. Instead, the European Commission is conducting bilateral negotiations with individual Member States of ASEAN. EU-Singapore FTA negotiations are currently underway, and Vietnam has shown an interest in starting technical negotiations with the European Commission for the conclusion of an RTA.⁵⁶

A further example of a mega-bloc RTA under negotiation is the EU-India FTA. According to a communication of the European Commission, "the focus of [EU-India] relations has shifted from trade to wider political issues."⁵⁷ However, trade continues to play a major role between the two parties. EU trade with India has more than doubled since 2000. India has significantly increased its number of trade diplomats in recent years, which shows its commitment to the world trading system.⁵⁸ The EU and India hope to increase their trade in both goods and services through negotiations for a free-trade agreement. The negotiations over an EU-India FTA, whose parameters were set out in the report of the EU-India High Level Trade Group,⁵⁹ commenced in June 2007.⁶⁰ Parallel negotiations between the EU and India also include

Comment [IP9]: I'm a bit confused about the placement of this sentence; my impression is Mercosur-India PTA is not related to anything else in this paragraph, whereas every other paragraph in this subsection is devoted to different trade agreements. Perhaps another paragraph dedicated to this topic?

⁵⁵ [Bilaterals.org](#), *China-ASEAN* (cited in *supra*-note 5249).

⁵⁶ ~~Europa~~, *EU and Vietnam to Launch Free Trade Negotiations* (Mar 3, Europa 2010), online at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/219> (visited Sept 30, 2010).

⁵⁷ ~~European Commission~~, *An EU-India Strategic Partnership* (Commission of the European Communities June 16, 2004), online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0430:FIN:EN:PDF> (visited Oct 8, 2010).

⁵⁸ For an overview of India's recent impressive performance in world affairs, see *The Rise of India*, 85 Foreign Affairs 1, 1-56 (July/Aug 2006).

⁵⁹ ~~European Commission~~, *Report of the EU-India High Level Trade Group to the EU-India Summit* (European Commission Oct 13, 2006), online at http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_130306.pdf (visited Oct 8, 2010).

a maritime agreement, since maritime transport accounts for 53 percent of the total transportation transactions and is unequivocally the major mode of transportation.⁶¹ The main framework for trade dialogue between the EU and India is, nevertheless, the WTO. At the bilateral level, there is an India-EU Strategic Partnership⁶² as well as its Joint Action Plan,⁶³ which outlines commitments to reciprocally tackle existing barriers to trade and increase bilateral trade flows.⁶⁴

The potential EU-India FTA has been progressing increasingly slowly for some months, but continues to represent a major opportunity for European firms.⁶⁵ There are still some key barriers to doing business in India and national treatment⁶⁶ concerns, which European companies

⁶⁰ For further information on this, see Jim Rollo, *Spice Route to Europe? Prospects for an India-EU Free Trade Area* (Oet-Chatham House 2007), online at http://www.chathamhouse.org.uk/files/10167_bp1007euindia.pdf (visited Oct 8, 2010); See also Michael Gasiorek et al., *Centre for the Analysis of Regional Integration at Sussex and CUTS International, Qualitative Analysis of a potential Free Trade Agreement between the European Union and India* (Centre for the Analysis of Regional Integration at Sussex and CUTS International, 2007) *Theory and Practice of EC External Trade Law and Policy*, online at <http://www.cuts-citee.org/pdf/EU-IndiaStudyAnnex3May01.pdf> (visited Oct 8, 2010).

⁶¹ European Commission, Eurostat (European Commission 2010), online at <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/> (visited Sept 30, 2010).

⁶² European Commission, *An EU-India Strategic Partnership* (cited in note 57⁵⁷⁴) supra note 53.

⁶³ European Commission, *The India-EU Strategic Partnership: Joint Action Plan* (Sept 7, European Commission 2005), online at http://www.ceas.europa.eu/india/docs/joint_action_plan_060905_en.pdf (visited Oct 8, 2010).

⁶⁴ For an analysis of technical barriers to trade in the WTO context, see Rudiger Wolfrum, Peter-Tobias Stoll, and Anja Seibert-Fohr, eds, *WTO-Technical Barriers and SPS Measures* (Martinus Nijhoff 2007).

⁶⁵ See *Global Analysis Report for the EU-India TSIA* (Ecorys 2008), online at http://trade.ec.europa.eu/doclib/docs/2008/may/tradoc_138968.pdf (visited Oct 8, 2010).

⁶⁶ In GATT/WTO law, national treatment is the principle of giving others the same treatment as one's own nationals. In other words, WTO Members must treat domestic and foreign goods, services and/or investors in the same manner for regulatory, tax, and other purposes. The treatment must be either formally identical or formally different, so long as it is no less favorable. The treatment is considered less favorable if it modifies the conditions of competition in favor of the services or services suppliers of the WTO Member. It is also referred to as "non-discriminatory" treatment. GATT Article III requires that imports be treated no less favorably than the same or similar domestically produced goods once they have passed customs. GATS Article XVII and TRIPS Article 3 also deal with national treatment for services and intellectual property protection. General Agreement on Trade in Services, art XVII, 1869 UNTS 183, 33 I-L-M. 1167 (1994) (hereinafter "GATS"); Agreement on Trade-Related Aspects of Intellectual Property Rights, art 3, 1869 UNTS 299, 33 ILM 1197 (1994) (hereinafter "TRIPS"). GATS "national treatment" rule (Article XVII) not only prohibits treating foreign firms differently than domestic firms (non-discrimination), but it goes further to prohibit anything a government does that modifies the "conditions of competition" in favor of local service suppliers. While GATS proponents say the treaty is geared toward simply ensuring non-discriminatory treatment of domestic service providers and foreign providers, the problem is that the same non-discriminatory regulations—those that apply even-handedly to both foreign and local companies—could still be considered a violation of the national treatment rule. For instance, in the construction sector, the WTO Secretariat has said that even if the same controls on land use, building regulations, and building permits are applied to domestic and foreign service suppliers, "they may be found to be more onerous to foreign suppliers." [SOURCE?] Thus, permits, subsidies, and specific perks, such as road access, that are granted to one service provider, but not

wish to overcome.⁶⁷ In fact, in 2008 the World Bank ranked India 120 (out of 181 economies) in terms of ~~the~~ “ease of doing business.”⁶⁸ This difficulty of doing business with India is the case with telecoms and courier services, the latter being a service where India has not yet made any offers or commitments within the GATS. Several sectors, including maritime transportation, construction, and telecommunications, require the approval of the Foreign Investment Promotion Board⁶⁹ prior to establishment in India. In distribution services, where the EU has taken a leading role in advocating the liberalization of market access, there are currently no retail commitments, and in some sectors, including express delivery, draft legislation currently threatens existing market access.

Another example of a potential mega-bloc RTA is the EU-Mercosur FTA. Since 2000, the EU and Mercosur have been in the process of negotiating a bi-regional Association Agreement,⁷⁰ including a free-trade area. This will be the backbone of future bilateral trade relations.⁷¹ Substantial progress in the trade chapter of the agreement allowed both parties to realistically envisage a conclusion of negotiations by the end of October 2004. However, on 20 October 20, 2004, at a Mercosur-EU trade negotiators meeting at the ministerial level in Lisbon, trade ministers concurred that the offers on the table did not reach the degree of ambition that both parties expected from this agreement and decided to give negotiations more time. Following

Comment [KS10]: Is there a reason it is “Mercosur-EU” here, where it is “EU-Mercosur” elsewhere?

another, could be considered a trade barrier for altering the conditions of competition between foreign and domestic service suppliers.

⁶⁷ See International Financial Services London, “EU-India talks, IFSL to consult on City views,” [online](http://bit.ly/aqMqW5) at <http://bit.ly/aqMqW5> (visited Nov 8, 2010). [Cannot locate source]

⁶⁸ See ~~The World Bank, Doing Business~~, (World Bank 2010), [online](http://www.doingbusiness.org/ExploreEconomies/?economyid=89) at <http://www.doingbusiness.org/ExploreEconomies/?economyid=89> (Sept 30, 2010).

⁶⁹ The Foreign Investment Promotion Board is the only governmental Indian agency dealing with matters relating to foreign direct investment (FDI) as well as promoting investment into the country. Its objective is to promote FDI into India undertaking investment promotion activities in India and abroad by facilitating investment in the country through international companies, non-resident Indians, and other foreign investors. [source?]

⁷⁰ For an overview of association agreements concluded by the European Communities with third parties, see Rafael Leal-Arcas, *Theory and Practice of EC External Trade Law and Policy* 282–88 (Cameron May 2008).

⁷¹ On the bilateral relations between the EU and Mercosur, see [generally](#) Mahrukh Doctor, *Why Bother With Inter-Regionalism? Negotiations for a European Union-Mercosur Agreement*, 45 J of Common Mkt Stud 281 (2007).

a number of technical contacts in 2005 to discuss ways to re-engage the process, trade ministers met again on 2-September 2, 2005 to discuss a way forward.⁷²

In 2005, Brazil represented 80 percent of Mercosur's GDP and is critical to Mercosur's further integration.⁷³ In my opinion, in addition to Brazil's interest in the EU's agricultural liberalization, this intra-Mercosur disparity is one of the reasons why the EU-Mercosur negotiations for the conclusion of a bi-regional Association Agreement, including a free-trade area, which began in April 2000, have not been successful. At the South American end, there is a tremendous imbalance of power within Mercosur; Brazil is an enormous market of 190 million people, whereas the Uruguayan market—the smallest in Mercosur—is of insignificant interest to Brazil, with a total population of 3.5 million people. This market asymmetry makes Mercosur's search for a common position vis-à-vis the EU very difficult. Another reason that which has complicated Brazil's efforts to negotiate trade agreements with third parties is Mercosur's multiple tariffs policy on imports, which impedes the free flow of goods within the Mercosur's Members States. Imports into Mercosur are subject to the Mercosur common external tariff when they enter any Mercosur Member State and again if they are re-exported to another Mercosur Member State. The EU has explicitly stated that if Mercosur wishes to negotiate an FTA with the EU, the multiple tariffs policy on imports must be eliminated.⁷⁴ In 2010, the bilateral inter-regional negotiations were resumed.

There are also mega-bloc RTAs under consideration, such as ASEAN + 3⁷⁵ and ASEAN + 6.⁷⁶

⁷² European Commission, *Mercosur* (European Commission 2010), online at http://ec.europa.eu/trade/issues/bilateral/regions/mercosur/index_en.htm#top (visited Sept 30, 2010).

⁷³ World Bank, *World Development Indicators* (World Bank 2010), online at <http://data.worldbank.org/data-catalog/world-development-indicators> (visited Sept 30, 2010).

⁷⁴ BNA WTO Reporter, "Paraguay Blocks Brazilian Proposal to End Mercosur's Multiple Import Tariffs," *Daily Rep Exec* (BNA) No 242, at A-3 (17-Dec 17, ember-2008), No. 242. [\[unable to find source\]](#)

⁷⁵ ASEAN + 3 is comprised of ASEAN plus China, Japan, and South Korea.

Comment [JG11]: Unable to locate source for fn 71. BNA updates its news on a daily basis. Perhaps the news of Dec 2008 is off line by now. KS: Following up on locating this source.

V. MOTIVATIONS FOR RTA CONCLUSION

The world economy is currently striving to recover from its deepest economic crisis since the 1930s. The 2008 economic crisis led to an unprecedented contraction in trade flows that stands in contrast to the process of economic integration and the significant expansion of trade experienced since World War II. This expansion was partly driven by the process of globalization that rested on increased economic interdependence among nations, which was stimulated by a combination of technological advances, economic policy reforms, and geopolitical changes. The new geopolitical environment and the 2008 financial crisis are factors that have affected international trade in different ways. The development of new technologies has also contributed towards shaping international trade by changing the way business is conducted and the way people interact. The rapid development of technology has generated both new challenges and new opportunities for economic agents worldwide. WTO Director-General Pascal Lamy recently said that “it now costs less to ship a container from Marseille to Shanghai—half way around the world—than to move it from Marseille to Avignon—100 kilometers away. A phone call to Los Angeles [from Europe] is as inexpensive as a phone call next door.”⁷⁷ What are then the main economic, political, and technological factors shaping world trade? What is the potential of technological progress and innovation for improving the trading position of the poorest countries? What is the role of the WTO rules-based multilateral system in contributing to the global economic recovery? Might these be reasons why countries engage in RTAs so frequently?⁷⁸

Comment [VN12]: relied?

⁷⁶ ASEAN + 6 is comprised of ASEAN plus China, Japan, South Korea, India, New Zealand, and Australia.

⁷⁷ [Director-General Pascal Lamy, P. “The Doha Round marks a transition from the old governance of the old trade order to the new governance of a new trade order,” Speech at World Trade Institute in Bern \(Oct 1, 2010\)+ October 2010, online at \[http://www.wto.org/english/news_e/sppl_e/sppl173_e.htm\]\(http://www.wto.org/english/news_e/sppl_e/sppl173_e.htm\) \(visited Oct 23, 2010\).](#)

⁷⁸ For an analysis of why countries engage so frequently in RTAs and the relation of RTAs to multilateral negotiations at the WTO, see [Ross P. Buckley, R., Vai Io Lo, V. and Laurence Boulle, L., \(eds.\) Challenges to](#)

There are both economic and political reasons why countries engage in RTAs so frequently. One of the economic reasons for the conclusion of RTAs is that countries are in constant search for larger markets since they feel the pressure of competitive regional liberalization. The negotiations of Economic Partnership Agreements (EPAs)⁷⁹ between the African, Caribbean and Pacific (ACP)⁸⁰ countries and the EU are of particular relevance in this process, not least because of their importance for LDCs. EPAs have been negotiated with ACP regions engaged in a regional economic integration process. EPAs are thus intended to consolidate regional integration initiatives within the ACP. They are also aimed at providing an open, transparent, and predictable framework for goods and services to circulate freely, thus increasing the competitiveness of the ACP and ultimately facilitating the transition toward their full participation in a liberalizing world economy—thereby complementing any initiative taken in the multilateral context.⁸¹ Formal negotiations started in September 2002 and EPAs entered into force on ~~1~~January 1, 2008.

Moreover, deeper integration is always much easier at the regional level than it is at the multilateral level. Furthermore, as we know from previous experience, multilateral negotiations

Multilateral Trade: The Impact of Bilateral, Preferential and Regional Agreements (~~The Hague~~: Kluwer Law International 2008).

⁷⁹ Economic partnership agreements are bilateral or plurilateral agreements. The content of such agreements varies greatly. Some merely promote voluntary economic cooperation between the partners. Others are proper free-trade agreements. See Goode, *Dictionary of Trade Policy Terms* at 145 (cited in note 5).

⁸⁰ The African, Caribbean and Pacific countries (“ACP”) Group was formed when the first Lomé Convention was signed with the European Economic Community in 1975. In 2002, it encompassed seventy-eight states (forty-eight African states, sixteen Caribbean states, and fourteen Pacific states), which all had preferential trading relation with the European Community. [\[source?\]](#)

⁸¹ Not everyone is of the view that Economic Partnership Agreements are fair or beneficial for ACP countries. See Ronald Sanders, *A New Colonialism? EU Trade Demands and ACP Countries* (*Huntington News* June 16, 2007), [available](http://www.huntingtonnews.net/columns/070616-sanders-columnseutrade.html) online at <http://www.huntingtonnews.net/columns/070616-sanders-columnseutrade.html> (visited Sept 30, 2010); Paul Orengho, *East Africa: EPA Controversy Continues* (*Trade Law Centre for Southern Africa* May 29, 2007), [available](#) online at http://www.tralac.org/cgi-bin/giga.cgi?cmd=cause_dir_news_item&news_id=42646&cause_id=1694 (visited Sept 30, 2010).

can take a very long time and are very complex, whereas RTAs move much faster.⁸² Despite repeated statements of support and of engagement, WTO Members seem incapable of marshalling the policies and political will needed to move the multilateral trade agenda forward. A worrying leadership vacuum has opened that has so far proven difficult to fill. A very good example is the Doha Round of multilateral trade negotiations, which started in November 2001 in the Qatari capital. Trade powers want to gain greater access to one another's markets but, at the same time, have struggled to lower their own trade barriers.⁸³ At the G8 Summit in Muskoka in June 2010, world leaders dropped a commitment to complete the troubled Doha Round in 2010 and vowed to push forward on bilateral and regional trade talks until a multilateral deal could be done.⁸⁴ This decision demonstrates that bilateralism/regionalism is the natural consequence of failed or troubled multilateralism.⁸⁵ This decision to move forward

Comment [KS13]: Suggest "finalized" or "negotiated" rather than "done".

⁸² On the issue that decision-making in the WTO has become ever more difficult as the number of WTO Members rises and the range of issues tackled broadens, see Patrick Low, *WTO Decision-making for the Future* (Sept 47-World Trade Organization 2009), [online at http://www.wto.org/english/res_e/statist_e/tait_sept09_e/tait_sept09_e.htm](http://www.wto.org/english/res_e/statist_e/tait_sept09_e/tait_sept09_e.htm) (visited Oct 8, 2010).

⁸³ David Ljunggren, *G20 leaders drop Doha target, see smaller deals* (Reuters June 26, 2010), [online at http://www.reuters.com/article/idUSTRE65P27P20100627](http://www.reuters.com/article/idUSTRE65P27P20100627) (visited Sept 30, 2010).

⁸⁴ See *Muskoka G8, 2010 G8 Summit Muskoka Declaration: Recovery and New Beginnings* (G8 Information Centre 2010), [available online at http://webeache.googleusercontent.com/search?q=cache:http://www.g8.utoronto.ca/summit/2010muskoka/communique.html](http://webeache.googleusercontent.com/search?q=cache:http://www.g8.utoronto.ca/summit/2010muskoka/communique.html) (visited Sept 30, 2010).

⁸⁵ On the dilemma of bilateralism versus multilateralism, see Guido Glania and Jurgen Matthes, *Multilateralism or Regionalism? Trade Policy Options for the European Union* (Centre for European Policy Studies 2005). However, see views by Dahrendorf in the context of intellectual property protection, arguing that the strategy of forum-shifting suggests that bilateralism/regionalism and multilateralism alternate and will continue to do so. Despite alternation of *fora*, it is acknowledged that WTO law efficiency will suffer from the proliferation of preferential trade agreements ("PTAs"). Anke Dahrendorf, *Global Proliferation of Bilateral and Regional Trade Agreements: A Threat for the World Trade Organization and/or for Developing Countries?* (Maastricht Working Papers: Faculty of Law 2009), [online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1382820](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1382820) (visited Oct 8, 2010). See also Rafael Leal-Arcas, *The Resumption of the Doha Round and the Future of Services Trade*, 29 *Loy LA Intl & Comp L J* 339, 409-15 (2007). It is therefore necessary to investigate further what the possibilities are to mitigate the negative effects of PTAs for the multilateral system. For example, some examples include the use of the WTO dispute settlement mechanism as a venue for resolving RTAs disputes and the development of a body of common law on RTAs. See generally Henry Gao and C.L. Lim, *Saving the WTO From the Risk of Irrelevance: The WTO Dispute Settlement Mechanism as a 'Common Good' for RTA Disputes*, 11 *J of Intl Econ L* 899 (2008).

bilaterally/regionally certainly has dangerous repercussions for weak economies.⁸⁶ Assuming that the Doha Round will be concluded in 2011, it will then take another four years to ratify the multilateral agreements that will come out of the Round, which means that it will have taken at least fourteen years for these new multilateral agreements to see the light of day.

~~Regarding the~~ There are several political reasons for countries to engage in RTAs: they ensure or reward political support; regulatory cooperation is easier regionally than it is multilaterally; there is less scope for free riding on the MFN principle; and there are always geopolitical as well as security interests for the conclusion of RTAs. Thus, while most countries continue to formally declare their commitment to the successful conclusion of the Doha Round—which would contribute toward enhancing market access and strengthening the rules-based multilateral trading system—for many countries, bilateral deals have taken precedence and their engagement at the multilateral level is becoming little more than just a theoretical proposition. The emergence of rapidly growing economies and new forms of South-South relations, as illustrated by the case of China in Africa, further complicates the equation and renders the need for empirical research, information, and dialogues in this area even more acute.

VI. EFFECTS OF REGIONALISM ON MULTILATERALISM

The effects of RTAs on the multilateral trading system remain unclear, as is their impact on trade and sustainable development. While preferential deals can contribute to strengthening regional integration,⁸⁷ some RTAs have generated negative effects on regional integration

⁸⁶ Trakman, however, claims that bilateralism can actually help developing countries in the world trading system. See Leon Trakman, *The Proliferation of Free Trade Agreements: Bane or Beauty?*, 42(2) *Journal of World Trade* Vol 42, No 2, 367, 384-388 (-pp- 367-388, 2008).

⁸⁷ For an analysis of RTA proliferation from the perspective of non-state actors, see Ann Capling, A. and Patrick Low, P. eds, *Governments, Non-State Actors and Trade Policy-Making: Negotiating Preferentially or Multilaterally?* (Cambridge University Press, 2010).

schemes, as was the case of the Andean Community-US RTA⁸⁸ ~~and~~ certain Economic Partnership Agreements (“EPAs”) signed with individual countries and not with the region as a whole.

The effects of RTAs on the multilateral trading system are manifold. One of the positive effects is that RTAs allow for greater efficiency gains thanks to the elimination of barriers to trade, which is key to achieving economies of scale.⁸⁹ RTAs are also laboratories for change (a very good example being that of the ~~European Union (EU)~~, whose transformation since its inception in the 1950s has been absolutely remarkable⁹⁰). In addition, RTAs provide competition and attract foreign direct investment (“FDI”). An example of this last point is Spain in the case of the EU, or Mexico in the case of the North American Free Trade Agreement (“NAFTA”).⁹¹ In both cases, Spain and Mexico benefited very much from FDI thanks to the EU and NAFTA, respectively.

However, there are also negative effects of RTAs on the multilateral trading system. There is less enthusiasm for multilateral trade negotiations (like that of the Doha Round) when regionalism is doing well, which is currently the case. The current proliferation of RTAs also

⁸⁸ ~~Comunidad Andina, CAN Acts, Declarations and Agreements~~ (Comunidad Andina 2010), online at <http://www.comunidadandina.org/ingles/documentos/documents/ActEEUU.htm> (visited Sept 30, 2010).

⁸⁹ ~~Jo-Ann Crawford and Sam Laird, Regional Trade Agreements and the WTO~~, CREDIT Research Paper, No. 00/3 at p. 4 (2000) online at <http://www.tradeobservatory.org/library.cfm?refID=25329> (visited Nov 8, 2010). ~~Unable to find source~~

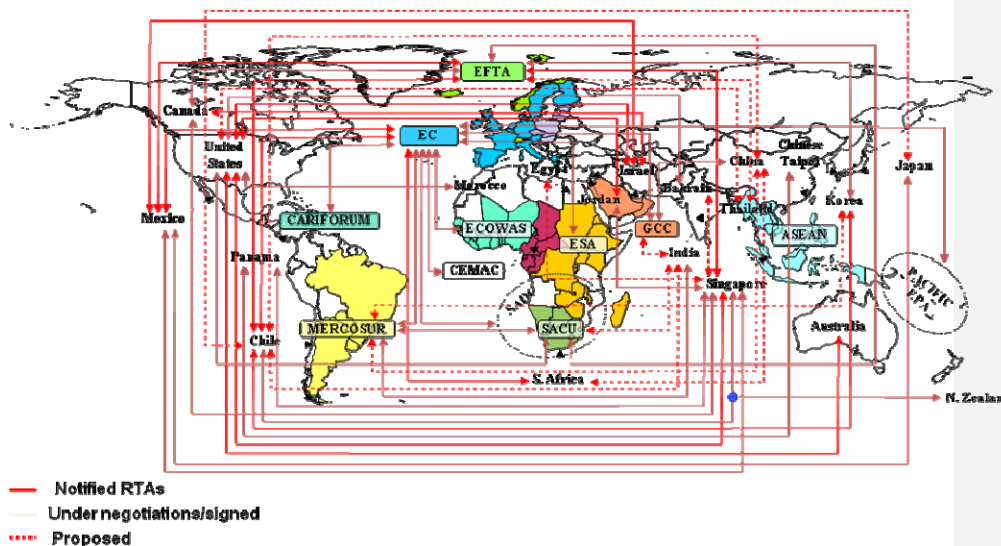
⁹⁰ For a historical account of the impact of the European integration project on the drafting of GATT Article XXIV, particularly the views expressed by the US, see Kerry Chase, *Multilateralism Compromised: The Mysterious Origins of GATT Article XXIV*, 5 World Trade Rev 1 (2006).

⁹¹ The North American Free Trade Agreement (“NAFTA”) was a radical experiment in rapid deregulation of trade and investment among the US, Mexico, and Canada. Since 1995, NAFTA has been considered the symbol of the failed corporate globalization model, because its results for most people in all three countries have been negative: real wages are lower and millions of jobs have been lost; farm income is down and farm bankruptcies are up; environmental and health conditions along the US-Mexico border have declined; and a series of environmental and other public interest standards have been attacked under NAFTA. NAFTA’s agricultural provisions have been so extreme that Mexican family farmers are demanding a re-negotiation or nullification of the treaty, after its first phase of initial implementation led to the displacement of millions of Mexican farmers. See Lori Wallach, *Public Citizen Pocket Trade Lawyer: The Alphabet Soup of Globalization* (Public Citizen’s ~~Global Trade Watch~~ 2005), online at <http://www.citizen.org/publications/publicationredirect.cfm?ID=7408> (visited Oct 8, 2010).

creates ~~re is also~~ less transparency ~~in~~ the multilateral trading system and rules (that is, the so-called spaghetti bowl, as can be seen in map 5 below) ~~with the current proliferation of RTAs,~~ because it is not clear who is doing what with whom, given that everyone is concluding RTAs with everyone.⁹² This lower level of transparency in the multilateral trading rules results in traders being subject to multiple, sometimes conflicting, requirements.

Comment [KS14]: Suggest making this change to make clear that the proliferation of RTAs creates less transparency because of how many are out there. Your formulation was a bit less clear.

Map 5: The spaghetti bowl phenomenon (February 2005)



⁹² Much literature has argued that RTA proliferation may undermine the multilateral trading system. See, for example, Jagdish Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (Oxford 2008); Baldwin and Low, *Multilateralizing Regionalism* (cited in note 1342); Richard Baldwin, *Multilateralizing Regionalism: Spaghetti Bowls as Building Blocks on the Path to Global Free Trade*, 29 *The World Economy* 1451 (2006); Henrik Horn, Petros C. Mavroidis, and Andre Sapir, *Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements* (Bruegel Blueprint Series 2009), [available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1411066](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1411066) (visited Oct 8, 2010); Jennifer Hillman, *Saving Multilateralism: Renovating the House of Global Economic Governance for the 21st Century* (The German Marshall Fund of the United States 2010), [available online at http://www.gmfus.org/brusselsforum/2010/docs/BF2010-Paper-Hillman.pdf](http://www.gmfus.org/brusselsforum/2010/docs/BF2010-Paper-Hillman.pdf) (visited Oct 8, 2010).

Trade and investment diversion could be another negative effect of RTAs on the multilateral trading system. However, some scholars argue that regional trade liberalization may create (rather than divert) significant economic growth within a region, which can, in turn, generate more trade with the rest of the world.⁹³ That said, economic studies of FTAs have shown that the trade-creation effects may often be smaller than the trade-diversion effects, given that trade between the participants replaces trade between the participants and non-participants. It seems, therefore, that it is not clear whether RTAs create or divert trade.⁹⁴

Another effect of RTAs is arguably that the weakest countries tend to be left out. Furthermore, there is a risk of polarization of ~~in~~ the international trading system with the tremendous proliferation of RTAs currently taking place. ~~In this sense~~ As such, four large regions appear to emerge as a result of RTA proliferation: (1) the European RTA network,⁹⁵ (2) the Western hemisphere RTA network (NAFTA, Mercosur,⁹⁶ the Andean Community,⁹⁷ the Caribbean Community (CARICOM ~~aricom~~),⁹⁸ (3) the Asia-Pacific RTA network,⁹⁹ and (4) the African RTA network.

Comment [IP15]: Capitalized it to make it consistent w/ footnote.

⁹³ Peter van den Bossche, *The Law and Policy of the World Trade Organization: Text, Cases and Materials* 696 (Cambridge 2nd ed 2008).

⁹⁴ See, for example, the views expressed in the Report by the Consultative Board to the Director-General (cited in note supra note 66).

⁹⁵ Assessing the compatibility of the Treaty of Rome with the requirements of GATT Article XXIV was politically complicated. See Armin von Bogdandy and Tilman Makatsch, *Collision, Co-existence or Co-operation? Prospects for the Relationship between WTO Law and European Union Law*, in Grainne De Búrca and Joanne Scott, eds, *The EU and the WTO: Legal and Constitutional Issues* 131, 137 (Hart 2001).

⁹⁶ MERCOSUR stands for Mercado Común del Sur (Common Market of the Southern Cone) and is composed of Brazil, Argentina, Paraguay, and Uruguay. On December 9, 2005, Venezuela was accepted as a new member, but not scheduled to be made official until later. It was founded in 1991 by the Treaty of Asunción, which was later amended and updated by the 1994 Treaty of Ouro Preto (December 17, 1994). Its purpose is to promote free trade and the fluid movement of goods, peoples, and currency. [source?]

⁹⁷ The Andean Community is a trade bloc comprised ~~of it~~, until recently, five South American countries: Venezuela, Colombia, Peru, Ecuador, and Bolivia. In 2006, Venezuela announced its withdrawal, reducing the Andean Community to four Member States. The trade bloc was called the Andean Pact until 1996, and came into existence with the signing of the Cartagena Agreement in 1969. Its headquarters are located in Lima, Peru. [source?]

⁹⁸ The Caribbean Community ("CARICOM") is a regional grouping of fifteen Caribbean countries: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Christopher and Nevis, Surinam, and Trinidad and Tobago.

All of this said, multilateralism and regionalism/bilateralism are not mutually exclusive. As a matter of fact, several countries in different regions of the world work intensively on regional treaties about integrating regional markets and free trade. The EU is one example. Even though European countries have worked for ~~a~~ European integration in several areas, such as market integration, for more than ~~50~~ fifty years, European countries—with the European Community on the sideline with wide influence in the GATT and now the EU as a Member of the WTO—have worked to improve the multilateral system.¹⁰⁰

In the case of Africa, there is the African Economic Community (~~“AEC”~~),¹⁰¹ and in South America, there is the Union of South American Nations (Unión de Naciones Suramericanas—~~“UNASUR”~~),¹⁰² the Andean Community, and Mercosur. Those organizations all work for a deeper integration of regional markets, but the various countries that belong to these regional organizations are making serious efforts on the multilateral level; as well. ~~Alt~~Though ~~(~~The Doha Round has been quite challenging, making only slow progress since ~~the beginning~~its inception. ~~However,~~ ~~but~~ it must be noted ~~that that in the Doha Round,~~ several agreements are being negotiated, and 153 WTO Members, all with different interests, are taking part in these multilateral negotiations. Looking historically at the GATT/WTO, the number of multilateral agreements has increased, even though regional agreements have been concluded by GATT/WTO Members.

⁹⁹ On the new trend of bilateralism and RTAs in the Asia-Pacific region, see John Ravenhill, *The New Bilateralism in the Asia Pacific*, 24 *Third World Quarterly* Q 299 (2003) (arguing that this new interest in bilateralism is explained by: an increasing awareness of the weakness of existing regional institutions and initiatives; perceptions of positive demonstration effects from regional agreements elsewhere; and changing configurations of domestic economic interests).

¹⁰⁰ For an overview of the EU in the world trading system, see generally Leal-Arcas, *Theory and Practice of EC External Trade Law and Policy* (cited in note 70~~66~~); Rafael Leal-Arcas, *50 Years of Trade Policy: Good Enough or as Good as it Gets?*, 15 *Irish J of European L* 157 (2008).

¹⁰¹ For more information, see ~~Economic Commission for Africa, Abuja Treaty~~ (Economic Commission for Africa, June 3, 1991), available online at ~~<~~http://www.uneca.org/itca/ariportal/abuja.htm~~>~~ (visited Sept 30, 2010).

¹⁰² For more information, see ~~Comunidad Andina, South American Community Nations~~ (Comunidad Andina 2010), available online at ~~<~~http://www.comunidadandina.org/ingles/sudamerican.htm~~>~~ (visited Sept 30, 2010).

One possible way to bridge the gap between multilateralism and regionalism/bilateralism is by making more use of plurilateral agreements,¹⁰³ which allow smaller groups of WTO Members to move forward, outside the single undertaking, on issues important to them. An example of a successful plurilateral agreement is the 1996 Information Technology Agreement—dependent on a critical (but not universal) mass of signatories. Another example is the plurilateral Government Procurement Agreement,¹⁰⁴ which is one of the most relevant agreements in the WTO today, with potential for membership expansion.

Comment [VN16]: important?

VII. CONCLUSION

One wonders whether RTAs are the center of gravity ~~in~~ the international trading system, whether the multilateral trading system is the center of gravity, or whether we have a symbiosis between regionalism and multilateralism in the international trading system and, if not, how we can get there given that they coexist. RTAs might certainly allow developing countries to secure preferential treatment *vis-à-vis* their competitors. An example is the European Community-Mexico RTA, whereby the Europeans provide preferential treatment to Mexico.¹⁰⁵ This may provoke the Brazilians to try to conclude an RTA with the EU in order to obtain preferential treatment from the Europeans.

¹⁰³ For further details on plurilateralism, see [Raphael Leal-Arcas, ~~R~~ International Trade and Investment Law: Multilateral, Regional and Bilateral Governance 63–68](#), (Cheltenham: Edward Elgar, 2010), pp. 63–68.

¹⁰⁴ An agreement on Government Procurement was first negotiated during the Tokyo Round and entered into force on 1 January 1981. The present agreement and commitments were negotiated in the Uruguay Round. The new agreement took effect on 1 January 1996. This is a plurilateral agreement—only some countries (Members of the WTO) are parties to the agreement. Its purpose is to open up as much of the government procurement business as possible to international competition. [\[source?\]](#) It is responsible for improving the transparency of the government procurement laws, regulations, procedures and practices. It also has to ensure that these laws do not protect domestic products or suppliers, or discriminate against foreign products or suppliers.

¹⁰⁵ For further information on the EC-Mexico RTA, see *Regional Trade Agreements Information System* (World Trade Organization 2010), [available](#) online at <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspxxx> (visited Sept 30, 2010).

RTA partners make concessions that they would not extend to other WTO Members in multilateral trade negotiations, because coming to an agreement regionally is easier than multilaterally. A good example is the US-Singapore FTA, which includes clauses on competition, thereby going beyond the WTO agenda. However, the US found it very difficult to make concessions to India on agriculture in the multilateral context as evidenced by the July 2008 WTO mini-ministerial conference. RTAs nevertheless have limitations, such as the fact that RTA negotiations tend to be asymmetrical. This asymmetry often results in imbalanced deals, such as the case between Mexico and the US in the context of NAFTA.

This article concludes that the proliferation of RTAs implies the erosion of the WTO law principle of non-discrimination and wonders whether this means the beginning of the end ~~for of~~ multilateralism. It also concludes that the single undertaking—which seems too ambitious in today's multilateral trading system—is no longer feasible because the WTO has more Members than ever (and WTO membership is an ongoing process, with more Members to come in the near future) and covers more topics than ever, which are more complex than ever. As an alternative, this paper suggests variable geometry (that is, the idea that only a few WTO Members will benefit from plurilateral agreements on several topics on the agenda) and sectoral agreements (that is, all WTO Members participate in negotiations and benefit from the agreed outcomes, but only one topic is discussed at a time, as was the case of the WTO Telecoms Agreement) as ~~the a~~ way forward to unblock the multilateral trading system. The variable-geometry approach has the advantage of removing the current frustration at the WTO negotiating table—and sometimes violent protests organized by civil society—with its slow negotiating pace. However, one disadvantage is that developing countries at the WTO might feel marginalized ~~at the WTO~~.

In relation to the Doha Round—or any round, for that matter—there is a need for serious political will if we want it to succeed. It is evident that ~~currently~~ there is currently an institutional fatigue. This article therefore proposes a Doha-light option—lowering the expectations of the Doha Round. This translates into less market opening for agricultural products. Nevertheless, it should be made clear that the big trade challenges of today, whether climate change or energy resource scarcity, cannot be solved without multilateralism. Bilateral and regional agreements offer no substitute for global rule-making and coherent governance of a globalized economy. Moreover, bilateral and regional deals do not come close to matching the economic impact of agreeing to a global deal. ~~Therefore, So~~ RTAs can be a complement but not an alternative to multilateralism.

Formatted: Not Highlight

Formatted: Not Highlight