



# International Journal of Sciences: Basic and Applied Research (IJSBAR)

ISSN 2307-4531  
(Print & Online)

<http://gssrr.org/index.php?journal=JournalOfBasicAndApplied>



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## Assessing the Evolution of GATT/WTO Structures Designed to Regulate the Growth and Functioning of Regional Trade Agreements (RTAs)

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### Abstract

Regional Trade Agreements (RTA) are entered into by countries to provide more favourable trading terms amongst member countries. Certain countries in a particular region may decide to go into such agreements so that they can allow for more favourable trading terms other than the trade terms enjoyed under World Trade Organization (WTO). These RTAs emerged from the WTO as immediate aftermath of the Cancun failure, which led major players in the WTO system to suggested that in order to make progress, they would turn to the negotiation of regional trade agreements in lieu of pursuing talks in the WTO multilateral system. The WTO seeks to ensure that the RTAs are successful by putting in place some structures in the form of procedural systems to follow in order to adopt and implement the RTAs. Notable among these systems is the notification of the RTA by member countries to the WTO. Whether these systems are working towards the achievement of the RTAs' objectives is a questions of fact which this paper seeks to explore.

**Keywords:** World Trade Organization; Regional Trade Agreements; General Agreement on Tariffs and Trade; Round of Trade Talks; Plurilateral Agreements.

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## **1. Introduction**

The World Trade Organization (WTO), the successor of the General Agreement on Tariffs and Trade (GATT) was generally established after the Uruguay Round of Trade Talks in 1994 to supervise and liberalized world trade through the use of rules of trade between nations at a global or near-global level. The WTO was founded on negotiations between nations and as a result, everything that the WTO does is based on negotiations. The WTO can be looked at from different angles. Author [18] asserts that the WTO can be looked at as an organization for liberalizing trade, as a forum for governments to negotiate trade agreements and most importantly as a place for nations to settle trade disputes concerning trade among themselves.

These RTAs emerged from the WTO as immediate aftermath of the Cancun failure, which led major players in the WTO system to suggested that in order to make progress, they would turn to the negotiation of Regional Trade Agreements in lieu of pursuing talks in the WTO multilateral system. The WTO plays the role as the basis of the multilateral trading system and seeks to improve and strengthen rules designed to promote the expansion of international trade. It is responsible for negotiating and implementing new trade agreements and is in charge of policing member countries' adherence to all the WTO Agreements [8].

The WTO dwells on some basic principles which guides its operations. Some of these principles include non-discrimination principle, security and predictability of market access, increasing the participation of developing countries in the multilateral trading system, fair trade and subsidization as well as transparency [7]. Right from its inception as GATT down to the current WTO, it has played the above mentioned roles and still plays the roles to ensure smooth trading system among nations. The main objectives of the WTO include raising living standards of nations, ensuring full employment, and expanding trade in goods and services in accordance with the objective of sustainable development.

The objectives of the WTO are achieved through numerous channels and notable amongst them is the formulation of regional trade agreements. The WTO has structures which are designed to regulate the growth and functioning of Regional Trade Agreements. These structures mainly ensure that there are minimized disagreements between nations in international trade. Countries have the right to engage in regional trade agreements which are expected to provide further and better trade agreements to facilitate international trade. It is expected that once these structure are firmly in place, the disagreements between nations would be minimized but that seems not to be the case. The critics of the WTO often attributes these disagreements to trade patterns, specifically on RTAs attack on the most-favored-nation principle; one of the bedrocks of the movement to liberalize world trade [7].

This paper draws motivation from the criticisms of the WTO's regulations of the RTAs and seeks to trace and analyze the evolution of GATT/WTO structures designed to regulate the growth and functioning of Regional Trade Agreements. It begins by tracing the historical developments of the GATT/WTO, continue to tracing the history, growth and functioning of the RTA, analyses the GATT Structures designed to regulate the growth and functioning of the RTA and then concludes by drawing inference from the historical and modern happenings concerning the area of study.

## **2. The evolution of GATT/WTO**

The WTO is the successor of General Agreement on Tariffs and Trade (GATT). GATT existed for so long as the major supervisory body of trade amongst nations before the birth of the WTO. In the 1940s, GATT was a club whose membership grew substantially to include the most prominent countries in the world like the United States. The United States became a member of GATT under its Protocol Provisional Application which made the provisions of GATT applicable to the US only when they do not contradict US's existing legislation.

GATT members benefited from being part of GATT due to the trade liberalization under the GATT which made it possible for countries to trade with each other without much difficulty and as a result led to cheaper cost of goods for consumers. But this also brought in the issue of dumping as some countries which were considered the most powerful (Hegemonic powers) used the less powerful nations as their dumping grounds. Not only that, the issue of local manufacturers losing their share of the local market also created problems as foreign manufacturers were competing with them keenly which even led to loss of job opportunities for some local manufacturers.

GATT offered enormous benefits to its members and as a result led to an expansion of its growth and development. Consequently, GATT organized several Round of Trade Talks which eventually led to the establishment of the WTO at the end of the Uruguay Round of Trade Talks in 1994. The WTO's agreements represents countries voluntary commitments negotiated with each other since 1947. The WTO came to broaden the purview of GATT to include subsidies, intellectual property, food and safety as well as most importantly, dispute settlement.

Despite debuting too little fanfare under the General Agreement on Tariffs and Trade (GATT), dispute settlement under the World Trade Organization (WTO) has been called the "backbone of the multilateral trading system [4]." According to author in [4] whereas GATT dispute settlement could scarcely have seemed more flawed, the WTO's Dispute Settlement Understanding (DSU) is widely touted for boosting confidence in an increasingly rules-based global economy.

## **3. Evolution and Functioning of Regional Trade Agreement**

In the WTO, RTAs are defined as reciprocal trade agreements between two or more partners. They include free trade agreements and customs unions. Regional Trade Agreements have been forged for centuries as posited by author [19]. The first modern-day regional trade agreements were launched in the late 1950's but it chucked major successes in the 1990s. The wave started with the formation of sub-regional pacts, such as Southern Common Market (MERCOSUR) forged in 1991 between Argentina, Brazil, Paraguay, and Uruguay; the consolidation of the European Union, including the launch of the Single Market in 1993, and deepening the Association of Southeast Asian Nations (ASEAN) throughout the 1990s, and, perhaps most notably, the 1994 formation of the North American Free Trade Agreement (NAFTA) among the United States, Canada and Mexico.

Up until the 1990s, reticent to form preferential agreements, the United States had become one of the most prolific integrators, signing 14 agreements in little over a decade with partners in the Americas, Asia, and the Middle East, and currently pursuing the rather ambitious Trans-Pacific Partnership agreement with several Pacific Border nations. Other predominantly keen integrators include Mexico, Chile, Peru, Singapore, Canada, and the European Union. Not only have integration schemes swelled; their content has become more complex and encompassing. Most agreements go beyond market access in goods to address trade in services and so-called behind-the-border issues, such as investment, intellectual property rights, competition policy, government procurement, and e-commerce. RTAs come in many flavors, but they also have clustered into distinct “families”, particularly around key trading nations such as the United States, European Union, and Singapore. US agreements and the many agreements tailored after them in the Americas are particularly encircling, as are EU’s agreements. Some sub-regional agreement, from macroeconomic cooperation to labor mobility and coordination of members’ positions in multilateral trade negotiations, have been of particular concern in the development of RTAs.

Regional trade agreements (RTAs) have since its inception become increasingly predominant. According to the official website of the WTO, as of 7 April 2015, some 612 notifications of RTAs (counting goods, services and accessions separately) had been received by the GATT/WTO. Out of these, 406 notification of RTAs were in force. These WTO Figureures correspond to 449 physical RTAs (counting goods, services and accessions together), of which 262 are currently in force. What all RTAs in the WTO have in common is that they serve as reciprocal trade agreements between two or more member countries. Many WTO Members continue to be involved in new RTA negotiations, which are mostly bilateral. However a recent development has been negotiations among several WTO Members.

Examples of such agreements includes negotiations in the Asia-Pacific Region for a Trans-Pacific Partnership (TPP) Agreement, currently between 12 parties; in Asia between ASEAN members and six other WTO Members with which ASEAN has agreements in force (the Regional Comprehensive Partnership Agreement, RCEP); the Pacific Alliance in Latin America currently between Chile, Colombia, Mexico and Peru; and the Tripartite Agreement between parties to COMESA, EAC and SADC in Africa. Such plurilateral agreements, once in force, have the potential to reduce the spaghetti bowl of RTAs especially if they supersede existing bilateral agreements and develop common rules (such as for rules of origin) to be applied by all the parties to the agreement as opined by authors in [4]; [8] and [18].

### ***3.1. Evolution of Regional Trade Agreements in the world, 1948-2015***

The following Chart shows a graphical representation of all RTAs notified to the GATT/WTO (1948-2015), including inactive RTAs, by year of entry into force.

## **4. Structures of GATT/WTO to Regulate RTA**

The WTO regulates the RTAs through structures put in place by the WTO which are mainly the rules and procedures put in place by the WTO to check that all RTAs conform to these procedures and rules. The WTO

also receives notifications from WTO members regarding Preferential Trade Arrangements (PTAs). In the WTO, PTAs are unilateral trade preferences. WTO members (as, previously, GATT contracting parties) are bound to notify the WTO of all the regional trade agreements (RTAs) in which they participate. Nearly all of the WTO's Members have notified participation in one or more RTAs (some Members are party to twenty or more).

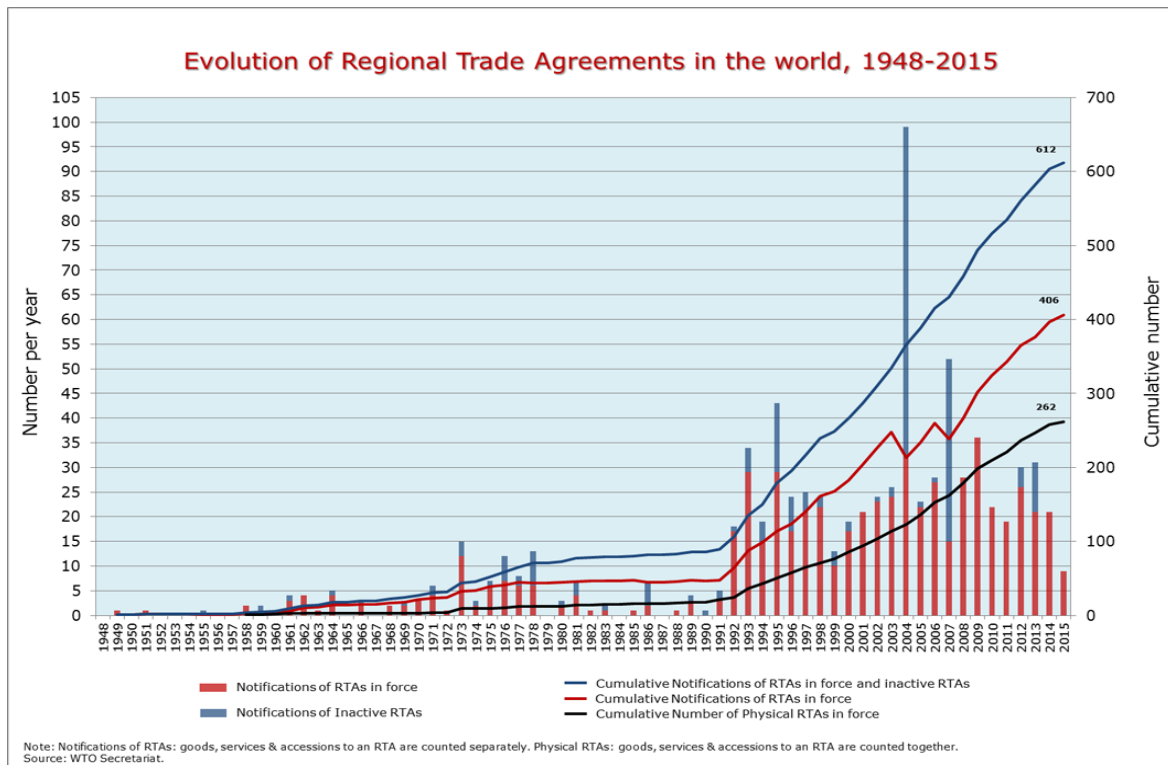


Figure 1: first graph

Notifications may also refer to the accession of new parties to an agreement that already exists, e.g. the notification of the accession of Croatia to the European Union Customs Union. As well known, the WTO was set up to liberalize international trade on the principle of non-discrimination and to eliminate trade barriers through multilateral negotiations. It has contributed to expanding world trade and is expected to do more if the current multilateral negotiations are completed [15]. Some 421 RTAs have been notified to the GATT/WTO up to December 2008. If we take into account RTAs which are in force but have not been notified, those signed but not yet in force, those currently being negotiated, and those in the proposal stage.

#### 4.1. WTO rules: Regional Trade Agreements

WTO rules stipulate that regional trade agreements have to meet certain conditions. Nevertheless, interpreting the wording of these rules have proved controversial, even though they serve as the central element in the work of the Regional Trade Agreements Committee [20]. As a result, the WTO reports that since 1995, the committee has failed to complete its assessments of whether individual trade agreements conform to WTO provisions. This is now an important challenge, particularly when nearly all member governments are parties to regional agreements, are negotiating them, or are considering negotiating them. In the Doha Declaration, members

agreed to negotiate a solution, giving due regard to the role that these agreements can play in fostering development.

The declaration mandates negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations takes into account the developmental aspects of regional trade agreements. These negotiations fell into the general timetable established for virtually all negotiations under the Doha Declaration. The 2003 Fifth Ministerial Conference in Mexico was intended to take stock of progress, provide any necessary political guidance, and take decisions as necessary.

#### ***4.2. Procedures to implement the transparency mechanism on RTAs***

The committee on regional trade agreements came up with the transparency mechanism for regional trade agreements decision on 14 December 2006, with reference number WT/I/671. This transparency mechanism specifies the procedure for RTAs regulation by the WTO as follows:

- **Early announcement**

Members participating in new negotiations are required to inform the WTO Secretariat of such negotiations. Members which are parties to a newly signed RTA are also required to send to the Secretariat information on the RTA, including its official name, scope, date of signature, any foreseen timetable for its entry into force or provisional application, relevant contact points and/or website addresses, and any other relevant unrestricted information. The WTO encourages members to submit information on new negotiations or newly signed RTAs in electronic form for the Secretariat to post the information so provided to the WTO website and periodically provide Members with a synopsis.

- **Notification**

Members of RTAs are encouraged by the WTO to do the notification of an RTA as early as possible, not later than the parties' ratification of the RTA or any party's decision on the application of the relevant parts of an agreement and before the application of preferential treatment between the parties. Parties should specify under which provision(s) of the WTO agreements the RTA is notified and provide the full text and any related schedules, annexes and protocols, in one of the WTO's official languages. The WTO prefers electronic format for these submissions, where possible. The Committee on Regional Trade Agreements (CRTA) is responsible for implementing the Transparency Mechanism (TM) with regard to RTAs falling under GATT Article XXIV and GATS Article V. The Committee on Trade and Development, convening in dedicated session, will implement the decision with regard to notifications falling under the Enabling Clause.

- **Procedures to enhance transparency**

The consideration by Members of a notified RTA shall be normally concluded within one year after the date of

notification. The WTO Secretariat will draw up a precise timetable for the consideration of the RTA in consultation with the parties at the time of the notification. Parties to an RTA shall make data (described in detail in the Annex to the Transparency Decision) available to the Secretariat, if possible in electronic format, as soon as possible, but normally within a period of ten weeks (or 20 weeks in the case of RTAs involving only developing countries) after the date of notification of the agreement.

As a rule, a single formal meeting will be devoted to the consideration of each notified RTA; any additional exchange of information should take place in written form. The WTO Secretariat's factual presentation, as well as any additional information submitted by the parties, is to be circulated in all WTO official languages not less than eight weeks in advance of the relevant CRTA meeting. Members' written questions or comments on the RTA under consideration are to be transmitted to the parties through the Secretariat at least four weeks before the CRTA meeting and will be distributed, together with the replies, to all Members at least three working days before the meeting.

- **Subsequent notification and reporting**

Any changes affecting the implementation of an RTA, or the operation of an already implemented RTA, should be notified to the WTO as soon as possible after changes occur. The parties should provide a summary of the changes made, as well as any related texts, schedules, annexes and protocols, in one of the WTO official languages and, if available, in electronic format. At the end of the RTA's implementation period, the parties shall submit to the WTO a short written report on the realization of liberalization commitments in the RTA as originally notified.

- **Preparation of factual abstracts**

Article 22(b) of the Transparency Mechanism calls for a factual abstract to be prepared by the Secretariat to present the features of RTAs for which the CRTA has concluded the "factual examination" by 31 December 2006.

#### **4.3. Review and oversight of RTAs by WTO members**

Article XXIV paragraph 7 requires that parties deciding to enter an RTA must "promptly notify" the WTO of that agreement and make such information available as will enable the WTO to make such reports or recommendations in respect of the RTA as may be appropriate [7, 8]. In addition, periodic reporting on the operation of RTAs is also required. Traditionally, RTAs notified under GATT were examined by an ad hoc working party established for that purpose [8]. Early on, the WTO changed that procedure through the creation of a Committee on Regional Trade Agreements, whose charge was to examine all RTAs. Unfortunately, because of the consensus requirements for decisions in WTO/GATT and the imprecision in the definition of several key terms for applying the requirements of Article XXIV, the GATT working parties and the new WTO committee have been incapable of reaching any conclusions in respect of RTAs that have been reviewed by them.<sup>29</sup> While hope springs eternal, it is not clear that the situation will soon change, which has raised the question of whether it would be possible to control use of RTAs through dispute settlement.

The WTO Report lists four reasons why RTAs may be hostile to the multilateral trading system. First author [7] claims that some trade diversion will occur because of the complexity of typical RTA rules of origin. From the non-economic perspective, the complexity of these rules raises compliance costs in the multilateral system. It has often been noted that the complexity of administrative rules in RTAs often leads traders to forego benefits under an RTA, such that a significant amount of trade under preferential arrangements does not benefit from available preferences. This argument, however, mainly suggests that entry into RTAs, particularly complex networks of RTAs with varying rules of origin, may not make good policy sense. It does not necessarily follow that this complexity will hinder development of the multilateral system. Indeed, the simplicity of the multilateral system is highlighted in comparison.

The second problem raised by the WTO Report concerns transparency [7, 4]. For the most part, this is due to the administrative complexities. Divergent rules may not only undermine multilateral rules, they may make multilateral rules more difficult to negotiate in the long run, as each participant may prefer its own rules.

The third problem seen in the WTO Report is that RTAs may slow down multilateral liberalization because groups in a country desiring liberalization may be largely satisfied with that achieved in RTAs, while those in sectors wanting protection may be able to gain exclusion from the RTA. Thus pressures for multilateral liberalization will be undermined, and opposition will remain as strong. In addition, it is feared that the creation of preferences will inevitably create lobbies for their retention as asserted by author [8].

The last but not least, concerns the detraction of negotiation of RTAs from the multilateral negotiations simply because of the limited resources available to many countries as emphasized by author [7].

## **5. Conclusion**

Looking at all the procedures that the WTO has put in place to regulate the RTAs, it is worth noting that the WTO in performing its duties as the main regulator for international trade does so to ensure that all the RTAs are relatively well implemented. According to author [8], the RTA inevitably emerged from the WTO as some form of internal agreements between nations concerning how trading amongst themselves should be conducted. That is, in the immediate aftermath of the Cancun failure, major players in the WTO system suggested that, if necessary, to make progress, they would turn to the negotiation of regional trade agreements in lieu of pursuing talks in the WTO multilateral system.

The completion of the Uruguay Round of Multilateral Trade Negotiations coincided with the development of a worldwide trend towards increased regionalism, as witnessed by the conclusion of North American Free Trade Agreement (NAFTA) [12]. In a survey of the theoretical and empirical literature on regionalism, conducted by authors in [10], they concluded that although countries should approach regionalism with care, to date RTAs have been more of a blessing than a burden for the multilateral trading system. Under an RTA, tariffs fall on imports from the other members of the agreement, but they need not change on imports from non-members. As a result, RTAs imply both trade liberalization and trade discrimination as postulated by authors in [10]. This attest to the fact that aside the WTO which seek to bring about equal trading rights among members, member



countries are at liberty to enter into regional agreements which will somehow give members involved, more access to each other than they would have only under the WTO. The RTAs have therefore made trading among countries more favourable and more economical.

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