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Trade Facilitation in Regional Trade Agreements

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Abstract

This paper aims to identify recent trends and patterns of Customs-related trade facilitation measures that a Regional Trade Agreement (RTA) may provide. Trade facilitation measures of RTAs have been the subject of much review, reflecting the growing interest in this topic. This paper builds on the current compendium of analysis available, and contributes four major added values. First, it covers a substantial number of measures in a number of RTAs in order to paint a comprehensive picture of recent trends and patterns. Second, this paper adopts an innovative approach, presupposing that a party to a particular RTA possesses sufficient legal and administrative capacity to implement a measure if the party was committed to the measure in at least one RTA. Third, this paper considers implications of TF measures of RTAs on Customs administrations and WCO activities. One of the conclusions is that their impact on Customs administrations would be relatively minimal as long as they are aligned with international standards. Fourth, this paper outlines potential areas meriting further analysis, taking into account its findings and implications.

Key words

Trade Facilitation, Regional Trade Agreement, WTO Agreement on Trade Facilitation

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1. Introduction

Trade facilitation (hereinafter referred to as “TF”) is increasingly accorded a high priority in the Customs community in today’s interconnected world and trade supply chain environment. Nevertheless, Customs administrations remain responsible for regulatory requirements such as collecting duties and taxes on trade, ensuring trade security, and protecting domestic society. The effective enforcement and facilitation of cross-border trade are not mutually exclusive concepts and can be achieved simultaneously. From a Customs’ perspective, TF is generally interpreted as the facilitation of legitimate trade while ensuring regulatory controls on trade. In practical terms, it may be defined as the simplification, harmonization, standardization and modernization of border procedures, although there is no unequivocal definition (Grainger, 2008).

The enactment of domestic laws and regulations is one of the practical means at a Customs administration’s disposal to implement TF measures. In addition to such domestic efforts, many governments increasingly consider that trade procedures in trading partner countries should be simplified, harmonized, standardized and modernized to the same extent. Export opportunities for traders may be jeopardized if border procedures in transit and destination countries are inefficient. Furthermore, it is widely recognized that international efforts such as cross-border cooperation, coordination and collaboration between Customs administrations are needed to ensure efficient trade supply chains. It is incumbent on Customs administrations to consider global solutions for such global issues.

To this end, many governments are in favour of international legal or cooperative frameworks. At the multilateral level, the WTO system has stipulated trade facilitation measures such as Article V, VIII and X of the GATT. In addition, the WTO Agreement on Trade Facilitation (WTO ATF) was agreed in December 2013.¹ The WCO has developed and promoted a variety of international instruments and tools to simplify and harmonize Customs procedures such as the Revised Kyoto Convention (RKC).² The WCO has also supported Members in their Customs reforms and modernization efforts through technical assistance and capacity building programs in accordance with Members’ needs and priorities.

At the regional and bilateral level, a number of TF initiatives have also been undertaken. TF constitutes an important part of the agenda of the Asia-Pacific Economic Cooperation (APEC) although its definition and scope is quite broad.³ A bilateral or regional transit agreement is another form by which a robust transit system may be internationally established (Yasui, 2013). Furthermore, recent Regional Trade Agreements (RTAs) have incorporated many articles for TF measures, partly because many governments have recognized that benefits arising from preferential tariffs of an RTA could be impacted by unnecessary costs and delays at borders (Moisé, 2003). More importantly, TF is increasingly considered critical to boosting intra-regional trade and promoting economic regional integration (WCO PSCG, 2013, and World Bank, 2012) and to attracting foreign direct investment (Engman, 2005).

Within this context, this paper aims to identify recent trends and patterns of TF measures that an RTA may provide. The second section provides a succinct analysis of relevant papers in the past, and the third section determines the scope of RTAs, countries

¹ The WTO ATF is expected to be legally adopted in mid-2014, and will take effect for the Members that have accepted it upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance (WTO, 2013).

² The RKC is formally referred to “*The International Convention on the Simplification and Harmonization of Customs procedures (as amended)*”, and took effect in 2006. Further information on the RKC is available at: www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new.aspx

³ In the APEC, for example, e-commerce and business mobility constitute a part of TF measures (APEC, 2007).

and economies (hereinafter referred to as “parties”), and TF measures covered in this paper. The methodology chosen for this paper is also discussed. The fourth section addresses key findings, and the fifth section considers implications on Customs administrations and WCO activities. The sixth section suggests potential areas to be meriting further analysis, taking into account the findings and implications in former sections, and the seventh section entails conclusions of this paper.

2. Literature review

TF measures of RTAs have been the subject of much review, reflecting the growing interest in this topic. For example, Estevadeordal, et al. (2009) analyzed certain TF measures when reviewing market access articles of 50 RTAs. Bin (2008) identified that Customs procedures and cooperation, amongst others, constituted a core element in TF measures of 34 RTAs in Asia and Pacific. Duval (2011) conducted a comparative analysis between TF measures of 6 Asian RTAs and the negotiating texts of the WTO ATF. Furthermore, Moisé (2002) contended that most TF measures of RTAs would benefit both parties and non-parties. Examining RTAs in Asia and Pacific, Hamanaka, et al. (2010) suggested non-discriminatory application of the TF measures that have discriminatory effects on non-parties. Kondo, et al. (2013) reviewed the similarities and differences in TF measures among 43 RTAs that Japan and its negotiating parties had concluded.

It should be noted that TF measures are not an essential component of RTAs. Estevadeordal, et al (2009, p.148) pointed out four value-added elements that an RTA could entail if it incorporated TF measures, as reproduced below.

- 1) *RTA provisions are binding and enforceable via the RTA’s dispute settlement mechanism,*
- 2) *RTAs serve as a training ground: they can provide a head-start for the members to absorb and implement the multilateral customs and trade-facilitation instruments,*
- 3) *Given that customs procedure and trade-facilitation disciplines are relatively similar across RTAs, RTAs can facilitate and accelerate convergence in these disciplines around the world, and*
- 4) *to the extent that RTAs streamline customs procedures and facilitate trade, they are inherently good for the multilateral trading system: the resulting lowered trade costs boost trade with all trade partners.*

3. Scope and methodology

3.1 Agreements in scope

This paper primarily reviewed the legal texts of RTAs for trade in goods that were notified as in force to the GATT/WTO. They are accessible through the WTO RTA Database.⁴ According to the Database, 247 RTAs for trade in goods physically existed as of the end of 2013. To identify recent trends and patterns of RTA TF measures, this paper focused on the RTAs that entered into force between January 2003 and December 2013. As a result, 145 RTAs qualified, which covered 116 parties when the 28 EU member states were counted as one. The list of the RTAs reviewed in this paper appears as Annex to this paper.

⁴ The WTO RTA Database, available at: <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>, accessed on 27 February 2014.

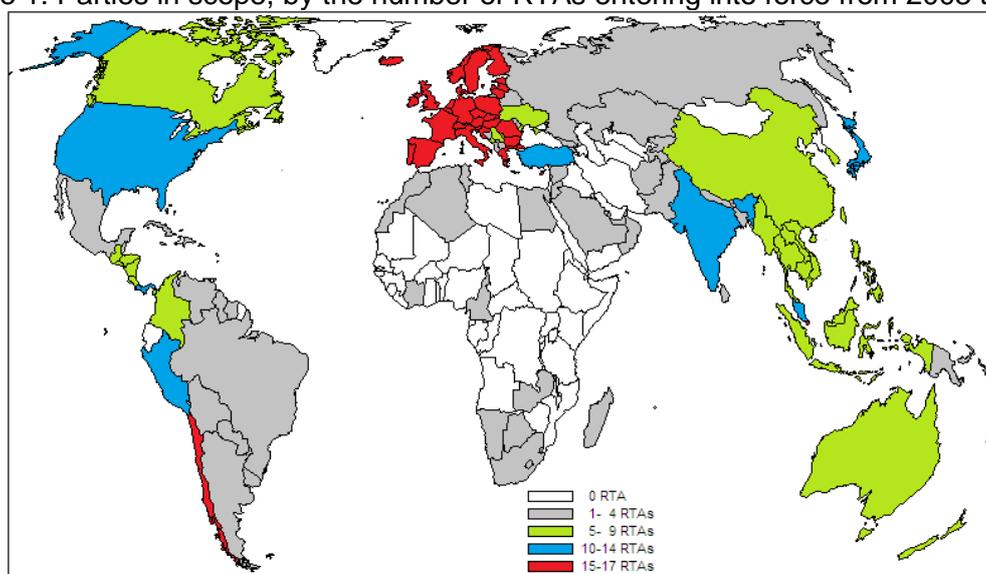
The WTO RTA Database defines three types of RTAs; Free Trade Agreements (FTAs), Customs Unions, and Partial Scope Agreements (PSAs). An FTA eliminates tariffs on merchandise trade between parties, but with the addition of other elements such as trade in services, it may be called an Economic Partnership Agreement (EPA). A Customs Union substitutes a single Customs territory for two or more Customs territories. It establishes a set of common external tariffs on trade with non-parties, and eliminates tariffs on trade between parties. It is distinguished from an FTA which allows different tariffs on trade with non-parties. While they are respectively defined in Article XXIV of the GATT, a PSA is not legally defined by the WTO Agreements. It generally covers limited goods for preferential tariff treatment, and is normally notified to the WTO in accordance with the Enabling Clause.⁵

The FTAs were the most common among the three types, accounting for 94 percent of the RTAs reviewed in this paper. Conversely, this paper only covered two Customs Union agreements and six PSAs. For convenience, the term “RTA” is used to indicate any type of agreements in this paper, or otherwise specifically mentioned. 74 percent of the RTAs were bilateral.⁶ According to the definitions used in a WTO Report (WTO, 2011), 52 percent of the RTAs were between developing parties, and 46 percent were between developed and developing parties.

3.2 Parties in scope

The 116 parties covered by the RTAs reviewed in this paper comprised of 10 developed parties, 93 developing parties and 13 Least Developed Countries (LDCs), as illustrated in Figure 1. Chile is the most active party recording 17 RTAs from 2003 to 2013. The EU, Singapore, Iceland and Switzerland⁷ concluded 16 RTAs respectively in the same period. It is followed by Norway and Lichtenstein with 15 RTAs; Turkey with 14 RTAs; Japan, Panama and Peru with 12 RTAs; India, Malaysia and the United States with 11 RTAs; and China and Korea with 9 RTAs. Geographically speaking, this paper covered many parties in Europe, Asia and Pacific, and America, but only a few in Africa where many Customs Union agreements entered into force prior to 2003.

Figure 1: Parties in scope, by the number of RTAs entering into force from 2003 to 2013



(Source) Author, based on the WTO RTA Database

⁵ The Enabling Clause is officially called the “Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries”, adopted by the GATT in 1979.

⁶ In the case where the 28 EU members states are counted as one party

⁷ Iceland and Switzerland have respectively concluded 15 out of 16 RTAs as the states of the EFTA (European Free Trade Association). Other EFTA states are Norway and Lichtenstein.

3.3 Measures in scope

This paper focused exclusively on Customs-related TF measures. Other measures such as those related to standards, technical barriers and the movement of natural persons were outside of its remit. It also excluded measures regarding preferential rules of origin, unless otherwise specifically mentioned.

This paper selected 43 Customs-related TF measures across seven areas as indicated in Table 1, taking into account the agreed texts of the WTO ATF (WTO, 2013), relevant past papers, and the legal texts of the RTAs reviewed in this paper. The measures in Table 1 collectively covered a substantial part of the Customs-related TF measures that an RTA has provided, although they are not exhaustive.

Table 1: Trade facilitation measures in scope

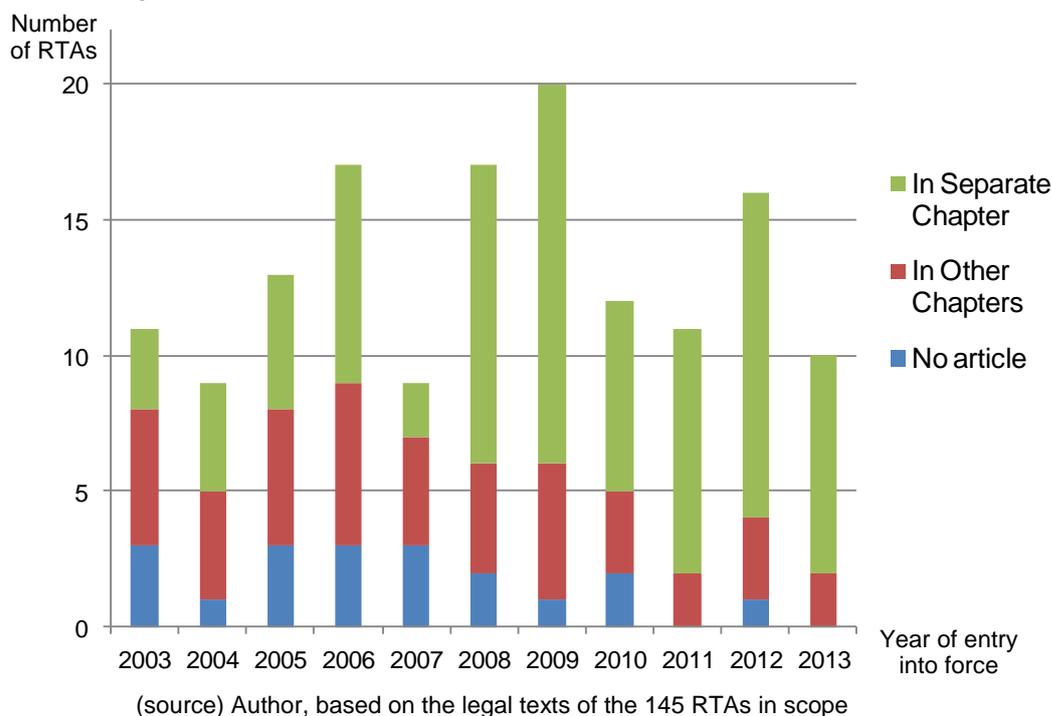
Areas	Trade Facilitation Measures
Transparency and predictability	1. Publication of laws and regulations (GATT Article X)
	2. Internet publication (option or mandatory)
	3. Internet publication (mandatory)
	4. Enquiry points
	5. Cooperation or consultation with the business communities
	6. Prior publication
	7. Prior consultation
	8. Advance rulings regarding origin of goods (Agreement on Rules of Origin)
	9. Advance rulings regarding tariff classification
	10. Advance rulings regarding Customs valuation
	11. Appeal procedures (GATT Article X)
	12. Administrative appeal procedures (mandatory)
	13. Uniform, impartial and transparent Customs procedures (GATT Article X)
Disciplines on fees and charges	14. Elimination or limitation of a fee or charge
	15. Prohibition of consular transaction requirements
	16. Administrative penalties (mandatory)
Release and clearance of goods	17. Pre-arrival processing
	18. Separation of release from final duty payment
	19. Release of goods at arrival points without transfer to other facilities
	20. Risk management
	21. Post-clearance audit (PCA)
	22. Release of goods within 48 hours of arrival
	23. Authorized Economic Operator (AEO)
	24. Separate expedited procedures for express shipments
Border agency cooperation	25. Border agency cooperation
Formalities and documentation requirements	26. Simplified Customs procedures (GATT Article VIII)
	27. Periodical review of Customs procedures
	28. Use of international standards for Customs procedures
	29. Use of information technology
	30. Use of international standards for IT application
	31. Use of WCO Data Model
	32. Single window (SW)
	33. Prohibition of pre-shipment inspection (PSI)
	34. Prohibition of mandatory use of Customs brokers
Transit and temporary admission	35. Freedom of transit (GATT Article V)
	36. Facilitation of transit procedures
	37. Temporary admission
Customs cooperation	38. Notification of Customs laws and regulations, or their changes
	39. Sharing of information on best practices or Customs techniques
	40. Exchange of information for Customs Mutual Administrative Assistance (CMAA)
	41. Technical assistance and capacity building
	42. Cooperation for regional integration
	43. Cooperation in international fora

4. Key findings

4.1 General observations

Among the 145 RTAs reviewed in this paper, 126 contained articles for one or more measures in Table 1. More interestingly, 83 established a separate Customs (or trade facilitation) chapter, section, annex, or appendix, etc. for these articles, while 43 contained a few articles in other chapters such as trade in goods, rules of origin, or economic cooperation. The trend of establishing a Customs chapter, or something akin to a Customs chapter, was frequently observed in the RTAs recently entering into force (Figure 2).

Figure 2: Number of RTAs with one or more trade facilitation measures



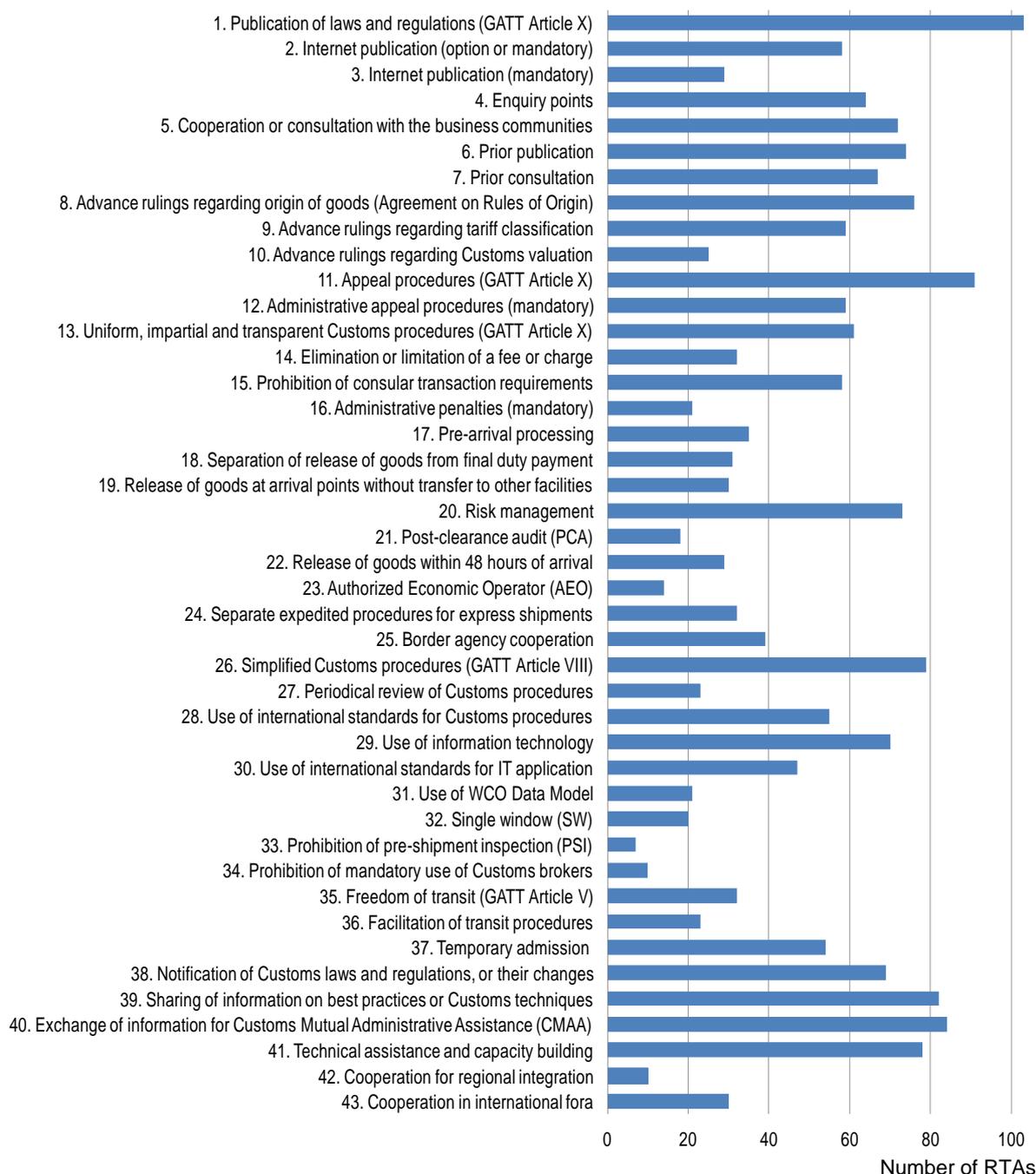
It seemed that the RTAs recently entering into force contained articles for more TF measures in Table 1. This is true for the majority of parties covered in this paper. Taking Turkey as an example, no, or in some instances one, measure in Table 1 was incorporated in the RTAs that it concluded before 2013. In the Agreement between Korea and Turkey which took effect in April 2013, the situation changed significantly as the Agreement contained 31 out of the 43 measures in Table 1. As for the RTAs to which the EU is a party, six measures in Table 1 were observed on average in those in force before November 2008, while 23 measures in those in force afterwards. Switzerland recorded only one measure on average in its RTAs in force before 2009, but 22 in those that took effect in and after 2009.

This trend occurred particularly in the period after 2008 which coincides with a time when the WTO TF negotiations progressed slowly. The WTO negotiations were launched as part of the Doha Development Agenda in 2004, suspended in 2006, and resumed in 2007. Although they were concluded in December 2013, it can be reasonably assumed that many governments tended to implement certain TF measures negotiated at the WTO in bilateral or regional domains prior to a conclusion of the multilateral negotiations, considering it generally easier and faster to agree on such measures with a smaller number of like-minded parties at the bilateral or regional level.

4.2 Trade facilitation measures in RTAs

Figure 3 indicates the number of RTAs which provided each of the 43 measures in Table 1. Certain measures were more frequently committed to than others. For example, many RTAs reconfirmed the provisions of Articles V, VIII and X of the GATT as well as Agreement on Rules of Origin (ARO). In addition, the measures in the areas of transparency and predictability as well as Customs cooperation in Table 1 were more frequently observed than others. Furthermore, risk management and the use of IT were frequently noted, amongst others.

Figure 3: Number of RTAs for respective trade facilitation measures



(Source) Author, based on the legal texts of the 145 RTAs in scope

Regarding the legal texts of the RTAs reviewed in this paper, it was found that their descriptions matched strongly with the corresponding articles of the WTO ATF in some cases. Accordingly, certain similarities or patterns emerged in the text descriptions of the RTAs. This can be attributed to the fact that they were substantively influenced by the negotiating texts for the WTO ATF. This may also be attributed to negotiation practices, that is, it is common for a party to propose a text at the negotiations based on the text of the RTAs that it previously concluded. A party would normally prefer to have relatively similar text descriptions for TF measures to ensure consistency throughout its RTAs. The United States, the EU, and Japan can be cited as examples in this context.

Furthermore, the text descriptions were often used by the other partner parties as a basis for negotiations of their subsequent RTAs. For example, Peru and Panama respectively concluded an RTA with the United States. In the Agreement between Panama and Peru, many TF measures were described in a similar way as the RTAs previously concluded with the United States.

It was also found that the measures in the area of Customs cooperation in Table 1 were effective only between the parties but not with non-parties. On the other hand, other TF measures in Table 1 were sometimes described to be effective for non-parties on a non-discriminatory basis. Internet publication and enquiry points were typical examples. In this case, non-parties may also benefit as a 'free rider' of the measures implemented by parties to RTAs.

In reality, it is not practical for a Customs administration to identify the goods or persons that are eligible for a measure, as significant financial resources and time are required to manage the system and allow for such differentiation. Technically speaking, all TF measures in Table 1, except the measures for Customs cooperation, are applicable on a non-discriminatory basis in accordance with domestic laws and regulations in order to comply with different international requirements to which a party is committed.⁸

There are several limitations to keep in mind when attempting to identify recent trends and patterns of TF measures of RTAs. First, the information on the number of RTAs for the respective TF measures, as indicated in Figure 3, was heavily influenced by the parties that were actively engaged in concluding RTAs in the last decade. The most active parties were Chile, the four EFTA states, the EU, Singapore, Turkey, Japan, Panama, Peru, India, Malaysia, the United States, Korea and China, amongst others. The RTAs in which these 16 parties were involved collectively amounted to 120 out of the 145 RTAs reviewed in this paper, the implication being that a small number of parties dominated a substantial portion of the information regarding the respective TF measures in Figure 3.

Second, the number of RTAs partaking in the respective TF measures, as indicated in Figure 3, was potentially underestimated in terms of the parties' legal and administrative capacity. In the RTAs reviewed in this paper, not all WTO Members reconfirmed the provisions of the GATT or the WTO ARO in RTAs, although they comply with them as WTO Members. It is a fact that all parties were committed to different measures in different RTAs depending on its negotiating parties. To illustrate this differentiation, Table 2 represents the number of RTAs committed by Chile, the EU, Switzerland, Japan, Panama, Peru, the United States and Korea to the respective measures in Table 1.

⁸ For example, Canada is obliged to issue advance rulings for tariff classification within 150 days from application in the Agreement with Peru, and within 120 days in the Agreement with Colombia or Panama. The Canada Border Services Agency (CBSA) is required to issue advance rulings for tariff classification within 120 days from application, irrespective of origin of goods, in accordance with paragraph 43.1(1)(c) of the Customs Act. Further information is available at: www.cbsa-asfc.gc.ca/import/ar-da/menu-eng.html, accessed on 27 February 2014.

Table 2: Number of RTAs committed by selected parties to trade facilitation measures

Selected parties	Chile	EU	Switzerland	Japan	Panama	Peru	United States	Korea
Trade facilitation measures								
Number of RTAs concluded by selected parties	17	16	16	12	12	12	11	9
1. Publication of laws and regulations (GATT Article X)	16	8	12	12	12	12	11	9
2. Internet publication (option or mandatory)	10	8	7	1	6	8	11	5
3. Internet publication (mandatory)	6	0	1	0	4	6	10	2
4. Enquiry points	9	1	8	11	4	10	11	6
5. Cooperation or consultation with the business communities	14	8	9	11	5	8	11	6
6. Prior publication	14	8	8	11	6	9	11	6
7. Prior consultation	14	8	6	8	5	8	11	6
8. Advance rulings regarding origin of goods (Agreement on Rules of Origin)	12	7	8	4	12	12	11	7
9. Advance rulings regarding tariff classification	9	7	7	2	5	12	11	6
10. Advance rulings regarding Customs valuation	4	0	1	2	2	5	11	3
11. Appeal procedures (GATT Article X)	14	8	8	11	12	12	11	8
12. Administrative appeal procedures (mandatory)	11	0	2	8	10	10	11	6
13. Uniform, impartial and transparent Customs procedures (GATT Article X)	5	8	7	11	4	7	2	5
14. Elimination or limitation of a fee or charge	2	7	5	0	9	2	10	5
15. Prohibition of consular transaction requirements	10	6	7	1	10	11	10	3
16. Administrative penalties (mandatory)	6	0	0	0	3	4	11	1
17. Pre-arrival processing	5	2	6	1	4	8	6	5
18. Separation of release from final duty payment	4	2	8	0	2	6	11	5
19. Release of goods at arrival points without transfer to other facilities	7	1	0	1	3	8	11	5
20. Risk management	9	7	9	10	6	11	11	6
21. Post-clearance audit (PCA)	1	7	5	0	2	2	0	2
22. Release of goods within 48 hours of arrival	6	0	0	0	3	7	11	2
23. Authorized Economic Operator (AEO)	0	4	5	1	1	4	0	2
24. Separate expedited procedures for express shipments	5	0	0	0	4	8	11	3
25. Border agency cooperation	3	8	9	10	2	6	0	5
26. Simplified Customs procedures (GATT Article VIII)	10	8	9	12	6	10	9	6
27. Periodical review of Customs procedures	3	7	0	0	2	4	0	1
28. Use of international standards for Customs procedures	5	8	9	12	3	6	0	5
29. Use of information technology	9	7	9	11	6	11	9	6
30. Use of international standards for IT application	8	7	0	0	5	9	9	5
31. Use of WCO Data Model	2	6	0	0	2	5	5	3
32. Single window (SW)	2	2	0	0	2	6	0	2
33. Prohibition of pre-shipment inspection (PSI)	1	6	0	0	1	1	0	2
34. Prohibition of mandatory use of Customs brokers	0	3	5	0	0	0	0	2
35. Freedom of transit (GATT Article V)	1	13	1	7	2	3	0	2
36. Facilitation of transit procedures	1	13	1	3	1	1	0	2
37. Temporary admission	8	0	3	4	11	8	11	5
38. Notification of Customs laws and regulations, or their changes	14	6	0	1	11	10	11	6
39. Sharing of information on best practices or Customs techniques	12	6	10	10	11	10	0	7
40. Exchange of information for Customs Mutual Administrative Assistance (CMAA)	11	15	4	9	11	10	11	5
41. Technical assistance and capacity building	11	15	7	10	10	9	10	9
42. Cooperation for regional integration	0	9	0	0	1	1	0	1
43. Cooperation in international fora	2	6	9	9	1	4	0	3

(source) Author, based on the legal texts of the 145 RTAs in scope

Table 2 clearly demonstrated a tendency for a party to have a preference for certain TF measures in the RTAs reviewed in this paper. For example, the United States incorporated articles for advance ruling and separate expedited procedures for express shipments, amongst others, throughout their 11 RTAs. On the other hand, several parties

such as Chile, Panama and Peru never accepted an article aiming to prohibit the mandatory use of Customs brokers in the RTAs to which they are parties.

It seems that Korea was in a position to accept all TF measures in Table 1. However, it was committed to separate expedited procedures for express shipments in its RTA with the United States but not in its RTA with the EU. It was committed to a single window system in its RTA with the EU but not in its RTA with the United States. Therefore, a party is not always committed to TF measures in Table 1 in RTAs, even if the party has the abilities to implement the measures.

It is also interesting to note a positive correlation between the parties who proposed the measures at the WTO TF negotiations and those who preferred the measures in the RTAs reviewed in this paper. At the WTO TF negotiations, for example, the United States proposed internet publication, advance rulings, and express shipments, prohibition of consular transaction requirements, amongst others (WTO, 2009). The European Communities (EC) proposed authorized operators, prohibition of the use of preshipment inspection (PSI), and prohibition of the mandatory use of Customs brokers, etc. Japan also proposed enquiry points, prior publication, prior consultation, administrative appeal procedures and so forth. The positive correlation may support an argument that the parties tended to promote their favoured TF measures in bilateral or regional domains.

Third, the number of RTAs for the respective TF measures, as indicated in Figure 3, was potentially overestimated in terms of implementation. An RTA sometimes established a transition period to implement specific TF measures. In addition, the articles in the RTAs were often described with best endeavour language or in aspirational terms such as “*where possible*”. The implication is that the measures were not always implemented immediately after the RTA enters into force.

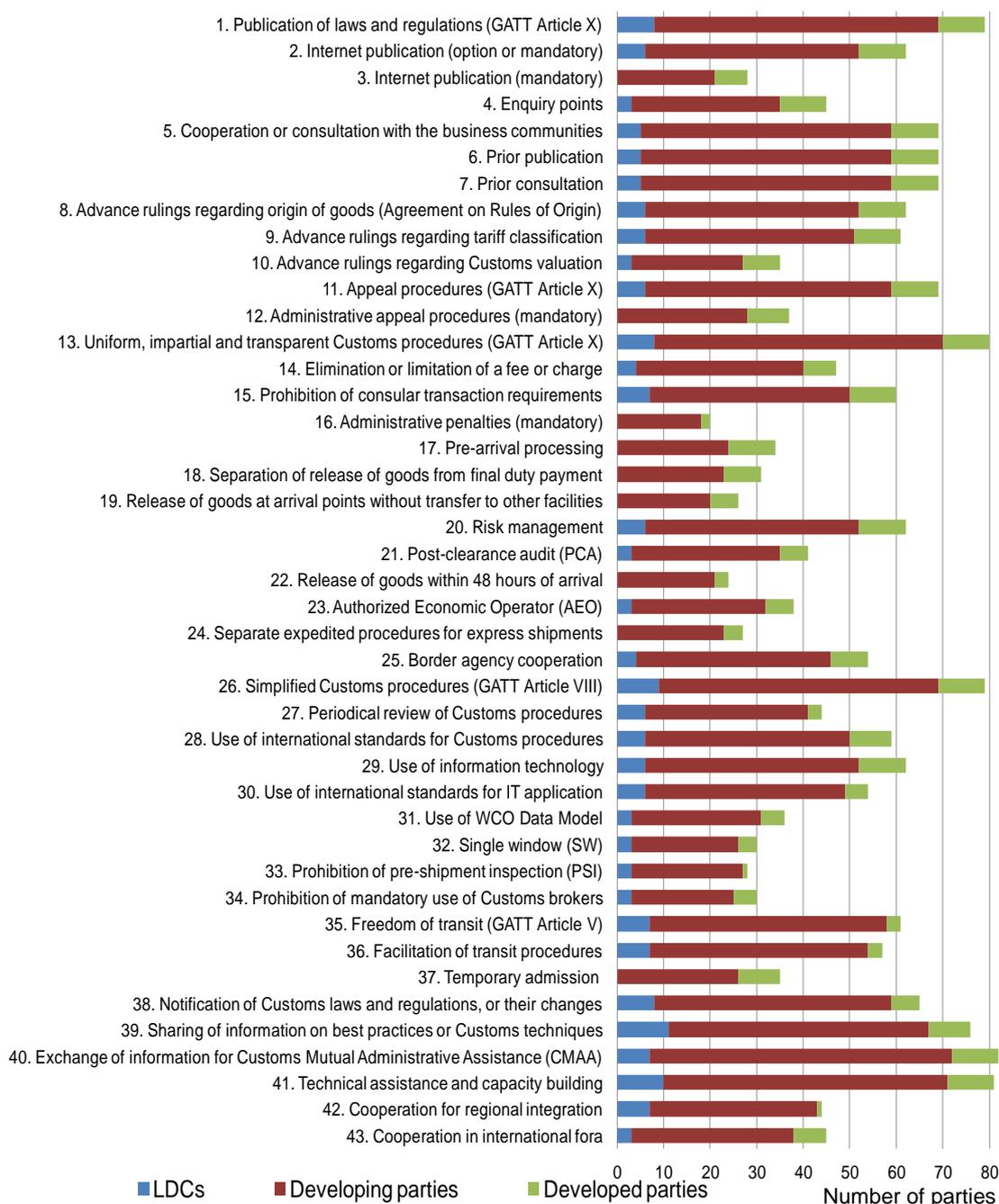
In summary, this section described the current state of play regarding trends and patterns of TF measures of RTAs in force from 2003 to 2013. However, several limitations were also noted when attempting to identify the trends and patterns solely based on the information regarding the number of RTAs providing the respective TF measures.

4.3 Trade facilitation measures committed by parties

To overcome part of the limitations in the former section, this section adopted an innovative approach, presupposing that a party possessed sufficient legal and administrative capacity to implement the measure if the party was committed to the measure in at least one RTA. This approach is expected to lessen an excessive reliance on the parties that were actively engaged in the RTAs, as the parties are equally treated regardless of the number of RTAs that they concluded.

Figure 4 indicates the number of parties who were committed to each of the 43 measures in Table 1 in at least one RTA. Figure 4 illustrates that exchange of information for Customs Mutual Administrative Assistance (CMAA) was the most frequently observed, committed to by 82 out of the 116 parties, including developing parties and LDCs. In general, the parties committed themselves to more measures in the areas of transparency and predictability as well as Customs cooperation than other areas in Table 1. Furthermore, risk management, the use of information technology, the use of international standards for Customs procedures and the prohibition of consular transaction requirements were recorded in the commitments of more than half of the parties in scope.

Figure 4: Number of parties committed to respective trade facilitation measures



(source) Author, based on the legal texts of the 145 RTAs in scope

Table 3 preliminarily indicates the categories of the 43 measures in Table 1 according to the frequency of parties' commitment based on the information in Figure 4. One of the interpretations of Table 3 is that it might represent the level of difficulty in international commitment or implementation of the respective TF measures in Table 1 to some extent. It is a fact that those measures in the column "Measures committed by more than half of the parties in RTAs" were internationally committed by a majority of parties covered in this paper, and have most likely been implemented. It can be considered, therefore, that it is easier for parties to implement such measures than other measures. Conversely, the measures to which fewer parties were committed can be regarded as ones which entail difficulties with regards implementation.

Table 3: Categorization of trade facilitation measures

Area	Reconfirmation of GATT and ARO provisions in RTAs	Measures committed by more than half of the parties in RTAs	Measures committed by the parties in-between in RTAs	Measures committed by fewer than one third of the parties in RTAs
Transparency and predictability	<ul style="list-style-type: none"> • Publication of laws and regulations • Appeal procedures • Uniform, impartial and transparent Customs procedures • Advance rulings (origin) 	<ul style="list-style-type: none"> • Internet publication (option) • Cooperation or consultation with the business community • Prior publication • Prior consultation • Advance rulings (classification) 	<ul style="list-style-type: none"> • Enquiry points 	<ul style="list-style-type: none"> • Internet publication (mandatory) • Administrative appeal procedures (mandatory) • Advance rulings (valuation)
Disciplines on fees and charges	-	<ul style="list-style-type: none"> • Prohibition of consular transaction requirements 	<ul style="list-style-type: none"> • Elimination or limitation of a fee or charge 	<ul style="list-style-type: none"> • Administrative penalties (mandatory)
Release and clearance of goods	-	<ul style="list-style-type: none"> • Risk management 	<ul style="list-style-type: none"> • PCA 	<ul style="list-style-type: none"> • Pre-arrival processing • Separation of release from final duty payment • Release at arrival points without transfer to other facilities • Release within 48 hours of arrival • AEO • Separate expedited procedures for express shipments
Border agency cooperation	-	-	<ul style="list-style-type: none"> • Border agency cooperation 	-
Formalities and documentation requirements	<ul style="list-style-type: none"> • Simplified Customs procedures 	<ul style="list-style-type: none"> • Use of international standards for Customs procedures • Use of information technology 	<ul style="list-style-type: none"> • Periodical review of Customs procedures • Use of international standards for IT application 	<ul style="list-style-type: none"> • Prohibition of PSI • Prohibition of mandatory use of Customs brokers • SW • Use of WCO Data Model
Transit and temporary	<ul style="list-style-type: none"> • Freedom of transit 	-	<ul style="list-style-type: none"> • Facilitation of transit procedures 	<ul style="list-style-type: none"> • Temporary admission
Customs cooperation	-	<ul style="list-style-type: none"> • Notification of Customs laws and regulations, or their changes • Sharing of information on best practices or Customs techniques • Exchange of information for CMAA • Technical assistance and capacity building 	<ul style="list-style-type: none"> • Cooperation for regional integration • Cooperation in international fora 	-

It appears that this second interpretation corresponds with anecdotal evidence and experiences shared by WCO Members. To cite examples, information technology and good border agency cooperation are fundamental prerequisites to the establishment of a functional single window system (Choi, 2011). In this regard, it was reported that quite a number of Customs administrations have already managed automated clearance systems (WCO, 2013).⁹ A sound risk management system forms a basis of a post-clearance audit or pre-arrival processing system in particular. While many Customs administrations are managing advance rulings regarding the origin of goods and tariff classification, a limited number of Customs administrations have successfully introduced advance rulings regarding Customs valuation (WCO, 2008a).

5. Implications on Customs administrations and WCO activities

A preliminary analysis revealed that a majority of TF measures in Table 1 in the RTAs reviewed in this paper were substantively compatible with WCO legal instruments, although their text descriptions were not always identical.¹⁰ Publication of laws and regulations, risk management, and prohibition of mandatory use of Customs brokers were among those examples. Moreover, more than half of the parties were committed to using international standards for Customs procedures or an IT application, sometimes by directly referring to the WCO instruments and tools such as the RKC, the Immediate Release Guidelines, and the Data Model.

In other cases, an RTA provided TF measures beyond WCO instruments and tools. It is natural for a party to favour more detailed rules in a bilateral framework than in a multilateral one. For example, several parties were committed to releasing goods within 48 hours after arrival in normal circumstances, or issuing advance rulings within 30 days after application if it is equipped with all necessary information. No WCO legal instrument confers such rules at this stage. To cite another example, there is no WCO instrument and tool to prohibit the use of pre-shipment inspection services, although the WCO has encouraged Members to build up the Customs capacity to a sufficient level to ensure that they can discharge Customs functions autonomously (WCO, 2003; 2008b; 2014). Although those measures appear unique to certain RTAs at this stage, it can be said that they are based on the existing WCO instruments and tools or in line with current WCO policy and strategy.

The implementation of TF measures of RTAs aligned with international standards including those developed by the WCO on trade between parties as well as trade with non-parties is highly encouraged and indeed has proven its efficacy. It would cause substantial administrative burdens and financial resources for a party to attempt to develop and implement regional standards only for trade with other parties of an RTA. The WCO has assisted Members with Customs reforms and modernization in line with WCO's international standards for many years. As a result, Customs performance has been significantly improved (World Bank, 2010), and many Customs administrations have already implemented such measures in an effort to comply with the international standards. It can be assumed, therefore, that the impact of implementing TF measures of RTAs on Customs administrations would be relatively minimal as long as they are aligned with international standards.

The TF measures in Table 1 of the RTAs reviewed in this paper are in most cases compatible with the WCO instruments and tools, and sometimes go beyond them but are built on or in line with the WCO policy and strategy. WCO activities and efforts undertaken

⁹ A WCO report (WCO, 2013) indicates that 155 out of the 179 WCO Members are currently managing automated clearance systems.

¹⁰ Analytical work to assess the compatibility between RTAs and WCO instruments and tools is underway.

so far to assist Customs reforms and modernization of Members have already supported, and will continue to support, the implementation of the RTAs, and thus effectively promote the regional economic integration that the RTAs aim to achieve.

Another possible implication is that the information regarding the respective parties' commitment to respective measures in at least one RTA, as indicated in Figure 4 and Table 3, might indicate a party's readiness or capacity to implement respective TF measures. Many parties, including developing parties and LDCs, were committed to implementing, or have already implemented, many TF measures on a most-favoured nation basis. It can be surmised therefore that such parties possess the capacity to implement the measures at the multilateral level. Thus, the information could be used to identify the individual parties' needs and priorities for future technical assistance and capacity building programs for Customs reforms and modernization that the WCO may deliver.

6. Future work

Taking into account the findings and implications in former sections, this section considered future work on this topic, in addition to analytical work to assess the compatibility between RTAs and WCO instruments and tools. First of all, it is suggested that trends and patterns of TF measures in Customs Union systems should be separately reviewed using a different methodology. This paper covered two Customs Union agreements, and found only a few TF measures in Table 1 in their legal texts. This is most likely due to the fact that the measures are normally accounted for in common Customs Codes or regulations that were never notified to the WTO. An examination of the legal texts of Customs Union agreements notified to the WTO seems therefore ineffective. Considering that a Customs Union agreement could involve a significant and multidimensional impact on Customs administrations compared with an FTA (Yasui, 2014), separate research on trends and patterns of TF measures within Customs Union systems would be advisable.

In addition, it is recommended to review the compatibility of RTAs *vis-à-vis* the WTO ATF. At a preliminary glance, similarities can be observed between them. Nevertheless, a thorough analysis of the legal texts of RTAs and the WTO ATF would be advisable once the legal texts of the WTO ATF are fixed in mid-2014. This work may include an assessment using case studies, for example, on how a Customs administration is actually implementing TF measures in order to comply with the requirements of both the WTO ATF and its RTAs.¹¹

Furthermore, it is interesting to study the implications of the WTO TFA on future RTAs including Mega-FTAs.¹² It is also interesting to look into the practical implications of the existing RTAs on the WTO ATF implementation. The innovative approach adopted in this paper, supposing that a party possesses sufficient implementation capacity for TF measures at the multilateral level to the extent that it is committed to them at the bilateral or regional level, might produce a useful indicator to measure the capacity of developing WCO Members and LDC Members, or to identify their needs and priorities for future technical assistance and capacity building programs in order to implement the WTO ATF.¹³

¹¹ For example, the WTO ATF allows its Members to choose adopting or maintaining expedited release procedures: 1) only for the persons who qualify certain criteria or 2) for everybody (WTO, 2013), while certain RTAs require its parties to adopt or maintain separate expedited Customs procedures for express shipments. In this case, it is most likely for the parties to choose adopting or maintaining separate expedited release procedures to meet the both obligations. Nevertheless, it should be examined through sharing of national practices and case studies.

¹² Negotiations are currently underway between the EU and the United States for Transatlantic Trade and Investment Partnership (TTIP); between the EU and Japan; and among 12 countries including Japan and the United States for the Trans-Pacific Partnership (TPP).

¹³ Developing countries and LDCs are required to designate the measures of Section I of the WTO ATF into three categories, namely: Category A for immediate implementation upon entry into force of the Agreement); Category

7. Conclusions

This paper builds on the current compendium of analysis available, and contributes four major added values. First, it covered a substantial number of Customs-related TF measures in a number of RTAs in order to paint a comprehensive picture of recent trends and patterns. In addition to the reconfirmation of provisions of the GATT and the WTO ARO, it found that the measures in the areas of transparency and predictability as well as Customs cooperation were frequently observed in the RTAs revised in this paper. It also identified articles that a party preferred, accepted, or never accepted in RTAs. Furthermore, it found that an RTA recently concluded more than likely incorporated more TF measures than before; their text descriptions were increasingly converged in several patterns, and most of them were or could be practically non-discriminately effective for non-parties.

Second, this paper adopted an innovative approach in order to identify trends and patterns of TF measures that an RTA may provide, presupposing that a party to a particular RTA possessed sufficient legal and administrative capacity to implement a measure if the party was committed to the measure in at least one RTA. The results and implications of this approach could help to paint a more holistic picture of the difficulties encountered in implementing the respective measures. This approach has also demonstrated its effectiveness as its results generally correspond to anecdotal evidence and experiences.

Third, this paper considered implications of TF measures of RTAs on Customs administrations and WCO activities. It concluded that their impact on Customs administrations would be relatively minimal as long as they are aligned with international standards on trade between parties of RTAs as well as trade with non-parties. It also contested that the activities undertaken by the WCO so far in the area of Customs reforms and modernization would effectively promote regional economic integration. In addition, the information regarding that the parties' commitment to the respective measures of RTAs might be used for identifying their needs and priorities for future technical assistance and capacity building programs for Customs reforms and modernization that the WCO may deliver.

Fourth, this paper outlined potential areas to be further explored, taking into account its findings and implications. In addition to analytical work regarding the compatibility of RTAs with the gamut of WCO tools and instruments available, this paper suggested research work to explore trends and patterns of TF measures in Customs Union systems; analytical work for the compatibility of RTAs *vis-à-vis* the WTO ATF; and studies on the implications of the WTO ATF on future RTAs as well as the implications of the existing RTAs on the future WTO ATF implementation.

B for implementation after a transitional period of time); and Category C for implementation after acquiring implementation capacity through technical assistance and capacity building (WTO, 2013).

**A list of 145 RTAs for review
(Entry into force from January 2003 to December 2013)**

No.	Regional Trade Agreements (RTAs)	Entry into force	Bilateral or Plurilateral*	Type**	Composition of parties***
1	EFTA - Singapore	1-Jan-03	Plurilateral	FTA	Developed-Developing
2	Gulf Cooperation Council (GCC)	1-Jan-03	Plurilateral	CU	Developing
3	EU - Chile	1-Feb-03	Bilateral	FTA	Developed-Developing
4	EU - Lebanon	1-Mar-03	Bilateral	FTA	Developed-Developing
5	Panama - El Salvador (Panama - Central America)	11-Apr-03	Bilateral	FTA	Developing
6	Pacific Island Countries Trade Agreement (PICTA)	13-Apr-03	Plurilateral	FTA	Developing
7	India - Afghanistan	13-May-03	Bilateral	PSA	Developing
8	China - Hong Kong, China	29-Jun-03	Bilateral	FTA	Developing
9	Turkey - Bosnia and Herzegovina	1-Jul-03	Bilateral	FTA	Developing
10	Singapore - Australia	28-Jul-03	Bilateral	FTA	Developed-Developing
11	China - Macao, China	17-Oct-03	Bilateral	FTA	Developing
12	US - Singapore	1-Jan-04	Bilateral	FTA	Developed-Developing
13	US - Chile	1-Jan-04	Bilateral	FTA	Developed-Developing
14	Panama - Chinese Taipei	1-Jan-04	Bilateral	FTA	Developing
15	Korea, Republic of - Chile	1-Apr-04	Bilateral	FTA	Developing
16	Common Economic Zone (CEZ)	20-May-04	Plurilateral	FTA	Developing
17	EU - Egypt	1-Jun-04	Bilateral	FTA	Developed-Developing
18	Mexico - Uruguay	15-Jul-04	Bilateral	FTA	Developing
19	Southern African Customs Union (SACU)	15-Jul-04	Plurilateral	CU	Developing
20	EFTA - Chile	1-Dec-04	Plurilateral	FTA	Developed-Developing
21	ASEAN - China	1-Jan-05	Plurilateral	PSA	Developing
22	Thailand - Australia	1-Jan-05	Bilateral	FTA	Developed-Developing
23	US - Australia	1-Jan-05	Bilateral	FTA	Developed
24	Japan - Mexico	1-Apr-05	Bilateral	FTA	Developed-Developing
25	Ukraine - Moldova	19-May-05	Bilateral	FTA	Developing
26	Turkey - Palestinian Authority	1-Jun-05	Bilateral	FTA	Developing
27	EFTA - Tunisia	1-Jun-05	Bilateral	FTA	Developed-Developing
28	Pakistan - Sri Lanka	12-Jun-05	Bilateral	FTA	Developing
29	Thailand - New Zealand	1-Jul-05	Bilateral	FTA	Developed-Developing
30	Turkey - Tunisia	1-Jul-05	Bilateral	FTA	Developing
31	India - Singapore	1-Aug-05	Bilateral	FTA	Developing
32	Jordan - Singapore	22-Aug-05	Bilateral	FTA	Developing
33	EU - Algeria	1-Sep-05	Bilateral	FTA	Developed-Developing
34	Turkey - Morocco	1-Jan-06	Bilateral	FTA	Developing
35	US - Morocco	1-Jan-06	Bilateral	FTA	Developed-Developing
36	South Asian Free Trade Agreement (SAFTA)	1-Jan-06	Plurilateral	FTA	Developing
37	Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR)	1-Mar-06	Plurilateral	FTA	Developed-Developing
38	Korea, Republic of - Singapore	2-Mar-06	Bilateral	FTA	Developing
39	Trans-Pacific Strategic Economic Partnership	28-May-06	Plurilateral	FTA	Developed-Developing
40	Russian Federation - Serbia	3-Jun-06	Bilateral	FTA	Developing
41	Guatemala - Chinese Taipei	1-Jul-06	Bilateral	FTA	Developing
42	Japan - Malaysia	13-Jul-06	Bilateral	FTA	Developed-Developing
43	Panama - Singapore	24-Jul-06	Bilateral	FTA	Developing
44	India - Bhutan	29-Jul-06	Bilateral	FTA	Developing
45	US - Bahrain	1-Aug-06	Bilateral	FTA	Developed-Developing
46	EFTA - Korea, Republic of	1-Sep-06	Plurilateral	FTA	Developed-Developing
47	Chile - China	1-Oct-06	Bilateral	FTA	Developing
48	Iceland - Faroe Islands	1-Nov-06	Bilateral	FTA	Developed
49	Ukraine - Belarus	11-Nov-06	Bilateral	FTA	Developing
50	EU - Albania	1-Dec-06	Bilateral	FTA	Developed-Developing

No.	Regional Trade Agreements (RTAs)	Entry into force	Bilateral or Plurilateral*	Type**	Composition of parties***
51	Turkey - Syria	1-Jan-07	Bilateral	FTA	Developing
52	EFTA - Lebanon	1-Jan-07	Plurilateral	FTA	Developed-Developing
53	Egypt - Turkey	1-Mar-07	Bilateral	FTA	Developing
54	Central European Free Trade Agreement (CEFTA) 2006	1-May-07	Plurilateral	FTA	Developing
55	Pakistan - China	1-Jul-07	Bilateral	FTA	Developing
56	EFTA - Egypt	1-Aug-07	Plurilateral	FTA	Developed-Developing
57	Chile - India	17-Aug-07	Bilateral	PSA	Developing
58	Chile - Japan	3-Sep-07	Bilateral	FTA	Developed-Developing
59	Japan - Thailand	1-Nov-07	Bilateral	FTA	Developed-Developing
60	EU - Montenegro	1-Jan-08	Bilateral	FTA	Developed-Developing
61	Pakistan - Malaysia	1-Jan-08	Bilateral	FTA	Developing
62	Nicaragua - Chinese Taipei	1-Jan-08	Bilateral	FTA	Developing
63	Honduras - El Salvador - Chinese Taipei	1-Mar-08	Plurilateral	FTA	Developing
64	Panama - Chile	7-Mar-08	Bilateral	FTA	Developing
65	Turkey - Albania	1-May-08	Bilateral	FTA	Developing
66	EFTA - SACU	1-May-08	Plurilateral	FTA	Developed-Developing
67	Japan - Indonesia	1-Jul-08	Bilateral	FTA	Developed-Developing
68	EU - Bosnia and Herzegovina	1-Jul-08	Bilateral	FTA	Developed-Developing
69	Chile - Honduras (Chile - Central America)	19-Jul-08	Bilateral	FTA	Developing
70	Brunei Darussalam - Japan	31-Jul-08	Bilateral	FTA	Developed-Developing
71	China - New Zealand	1-Oct-08	Bilateral	FTA	Developed-Developing
72	EU - CARIFORUM States EPA	1-Nov-08	Plurilateral	FTA	Developed-Developing
73	Turkey - Georgia	1-Nov-08	Bilateral	FTA	Developing
74	Panama - Costa Rica (Panama - Central America)	23-Nov-08	Bilateral	FTA	Developing
75	ASEAN - Japan	1-Dec-08	Plurilateral	FTA	Developed-Developing
76	Japan - Philippines	11-Dec-08	Bilateral	FTA	Developed-Developing
77	US - Oman	1-Jan-09	Bilateral	FTA	Developed-Developing
78	China - Singapore	1-Jan-09	Bilateral	FTA	Developing
79	EU - Côte d'Ivoire	1-Jan-09	Bilateral	FTA	Developed-Developing
80	Panama - Honduras (Panama - Central America)	9-Jan-09	Bilateral	FTA	Developing
81	US - Peru	1-Feb-09	Bilateral	FTA	Developed-Developing
82	Peru - Chile	1-Mar-09	Bilateral	FTA	Developing
83	Australia - Chile	6-Mar-09	Bilateral	FTA	Developed-Developing
84	Chile - Colombia	8-May-09	Bilateral	FTA	Developing
85	MERCOSUR - India	1-Jun-09	Plurilateral	PSA	Developing
86	Panama - Guatemala (Panama - Central America)	20-Jun-09	Bilateral	FTA	Developing
87	EFTA - Canada	1-Jul-09	Plurilateral	FTA	Developed
88	Peru - Singapore	1-Aug-09	Bilateral	FTA	Developing
89	Canada - Peru	1-Aug-09	Bilateral	FTA	Developed-Developing
90	Japan - Switzerland	1-Sep-09	Bilateral	FTA	Developed
91	Japan - Viet Nam	1-Oct-09	Bilateral	FTA	Developed-Developing
92	EU - Cameroon	1-Oct-09	Bilateral	FTA	Developed-Developing
93	India - Nepal	27-Oct-09	Bilateral	PSA	Developing
94	Colombia - Northern Triangle (El Salvador, Guatemala, Honduras)	12-Nov-09	Plurilateral	FTA	Developing
95	Panama - Nicaragua (Panama - Central America)	21-Nov-09	Bilateral	FTA	Developing
96	EU - Papua New Guinea / Fiji	20-Dec-09	Plurilateral	FTA	Developed-Developing
97	ASEAN - Korea, Republic of	1-Jan-10	Plurilateral	FTA	Developing
98	ASEAN - Australia - New Zealand	1-Jan-10	Plurilateral	FTA	Developed-Developing
99	ASEAN - India	1-Jan-10	Plurilateral	FTA	Developing
100	Korea, Republic of - India	1-Jan-10	Bilateral	FTA	Developing
101	EU - Serbia	1-Feb-10	Bilateral	FTA	Developed-Developing
102	Peru - China	1-Mar-10	Bilateral	FTA	Developing
103	Turkey - Montenegro	1-Mar-10	Bilateral	FTA	Developing

No.	Regional Trade Agreements (RTAs)	Entry into force	Bilateral or Plurilateral*	Type**	Composition of parties***
104	Chile - Guatemala (Chile - Central America)	23-Mar-10	Bilateral	FTA	Developing
105	New Zealand - Malaysia	1-Aug-10	Bilateral	FTA	Developed-Developing
106	Turkey - Serbia	1-Sep-10	Bilateral	FTA	Developing
107	EFTA - Serbia	1-Oct-10	Plurilateral	FTA	Developed-Developing
108	EFTA - Albania	1-Nov-10	Plurilateral	FTA	Developed-Developing
109	Hong Kong, China - New Zealand	1-Jan-11	Bilateral	FTA	Developed-Developing
110	Turkey - Jordan	1-Mar-11	Bilateral	FTA	Developing
111	Turkey - Chile	1-Mar-11	Bilateral	FTA	Developing
112	EU - Korea, Republic of	1-Jul-11	Bilateral	FTA	Developed-Developing
113	EFTA - Colombia	1-Jul-11	Plurilateral	FTA	Developed-Developing
114	EFTA - Peru	1-Jul-11	Plurilateral	FTA	Developed-Developing
115	India - Malaysia	1-Jul-11	Bilateral	FTA	Developing
116	India - Japan	1-Aug-11	Bilateral	FTA	Developed-Developing
117	Peru - Korea, Republic of	1-Aug-11	Bilateral	FTA	Developing
118	China - Costa Rica	1-Aug-11	Bilateral	FTA	Developing
119	Canada - Colombia	15-Aug-11	Bilateral	FTA	Developed-Developing
120	Peru - Mexico	1-Feb-12	Bilateral	FTA	Developing
121	Chile - Malaysia	25-Feb-12	Bilateral	FTA	Developing
122	Japan - Peru	1-Mar-12	Bilateral	FTA	Developed-Developing
123	Korea, Republic of - US	15-Mar-12	Bilateral	FTA	Developed-Developing
124	Panama - Peru	1-May-12	Bilateral	FTA	Developing
125	EU - Eastern and Southern Africa States Interim EPA	14-May-12	Plurilateral	FTA	Developed-Developing
126	US - Colombia	15-May-12	Bilateral	FTA	Developed-Developing
127	EFTA - Ukraine	1-Jun-12	Plurilateral	FTA	Developed-Developing
128	Cuba - El Salvador	1-Aug-12	Bilateral	PSA	Developing
129	EFTA - Montenegro	1-Sep-12	Plurilateral	FTA	Developed-Developing
130	Mexico - Central America	1-Sep-12	Plurilateral	FTA	Developing
131	Treaty on a Free Trade Area between members of the Commonwealth of Independent States (CIS)	20-Sep-12	Plurilateral	FTA	Developing
132	Canada - Jordan	1-Oct-12	Bilateral	FTA	Developed-Developing
133	EFTA - Hong Kong, China	1-Oct-12	Plurilateral	FTA	Developed-Developing
134	Chile - Nicaragua (Chile - Central America)	19-Oct-12	Bilateral	FTA	Developing
135	US - Panama	31-Oct-12	Bilateral	FTA	Developed-Developing
136	Malaysia - Australia	1-Jan-13	Bilateral	FTA	Developed-Developing
137	Ukraine - Montenegro	1-Jan-13	Bilateral	FTA	Developing
138	EU-Peru-Colombia	1-Mar-13	Plurilateral	FTA	Developed-Developing
139	Canada - Panama	1-Apr-13	Bilateral	FTA	Developed-Developing
140	Korea, Republic of - Turkey	1-May-13	Bilateral	FTA	Developing
141	Costa Rica - Peru	1-Jun-13	Bilateral	FTA	Developing
142	Turkey - Mauritius	1-Jun-13	Bilateral	FTA	Developing
143	Costa Rica - Singapore	1-Jul-13	Bilateral	FTA	Developing
144	EU - Central America	1-Aug-13	Plurilateral	FTA	Developed-Developing
145	New Zealand - Chinese Taipei	1-Dec-13	Bilateral	FTA	Developed-Developing

* The EU is counted as one party.

** FTA, CU and PSA mean Free Trade Agreement, Customs Union, and Partial Scope Agreement, respectively.

*** In accordance with definitions of "developed" and "developing" used in the WTO report (WTO, 2012)

(source) Author, based on the WTO RTA Database (<http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>) and WTO (2012), accessed on 27 February 2014

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