# 1 ARTICLE XXIV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

## 1.1 Text of Article XXIV

***Article XXIV***

*Territorial Application - Frontier Traffic - Customs Unions and Free-trade Areas*

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; *Provided* that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.

2. For the purposes of this Agreement a customs territory shall be understood to mean 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.

3. The provisions of this Agreement shall not be construed to prevent:

(*a*) Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;

(*b*) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:

(*a*) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(*b*) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and

(*c*) any interim agreement referred to in subparagraphs (*a*) and (*b*) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of subparagraph 5 (*a*), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.

7. (*a*) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(*b*) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of subparagraph (*a*), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

(*c*) Any substantial change in the plan or schedule referred to in paragraph 5 (*c*) shall be communicated to the CONTRACTING PARTIES, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. For the purposes of this Agreement:

(*a*) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) 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, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(*b*) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article I shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected.* This procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8 (*a*)(i) and paragraph 8 (*b*).

10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.*

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.

## 1.2 Text of note *ad* Article XXIV

***Ad Article XXIV***

*Paragraph 9*

It is understood that the provisions of Article I would require that, when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty is re-exported to the territory of another member of such union or area, the latter member should collect a duty equal to the difference between the duty already paid and any higher duty that would be payable if the product were being imported directly into its territory.

*Paragraph 11*

Measures adopted by India and Pakistan in order to carry out definitive trade arrangements between them, once they have been agreed upon, might depart from

particular provisions of this Agreement, but these measures would in general be consistent with the objectives of the Agreement.

### 1.3 Text of the Understanding on the Interpretation of Article XXIV of the GATT 1994

*Members,*

*Having regard* to the provisions of Article XXIV of GATT 1994;

*Recognizing* that customs unions and free trade areas have greatly increased in number and importance since the establishment of GATT 1947 and today cover a significant proportion of world trade;

*Recognizing* the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements;

*Recognizing* also that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded;

*Reaffirming* that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other Members;

*Convinced* also of the need to reinforce the effectiveness of the role of the Council for Trade in Goods in reviewing agreements notified under Article XXIV, by clarifying the criteria and procedures for the assessment of new or enlarged agreements, and improving the transparency of all Article XXIV agreements;

*Recognizing* the need for a common understanding of the obligations of Members under paragraph 12 of Article XXIV;

Hereby *agree* as follows:

1. Customs unions, free-trade areas, and interim agreements leading to the formation of a customs union or free-trade area, to be consistent with Article XXIV, must satisfy, *inter alia*, the provisions of paragraphs 5, 6, 7 and 8 of that Article.

*Article XXIV:5*

2. The evaluation under paragraph 5(a) of Article XXIV of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff-line basis and in values and quantities, broken down by WTO country of origin. The Secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognized that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required.

3. The "reasonable length of time" referred to in paragraph 5(c) of Article XXIV should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period.

*Article XXIV:6*

4. Paragraph 6 of Article XXIV establishes the procedure to be followed when a Member forming a customs union proposes to increase a bound rate of duty. In this regard Members reaffirm that the procedure set forth in Article XXVIII, as elaborated in the guidelines adopted on 10 November 1980 (BISD 27S/26-28) and in the Understanding on the Interpretation of Article XXVIII of GATT 1994, must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union.

5. These negotiations will be entered into in good faith with a view to achieving mutually satisfactory compensatory adjustment. In such negotiations, as required by paragraph 6 of Article XXIV, due account shall be taken of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation. Should such reductions not be sufficient to provide the necessary compensatory adjustment, the customs union would offer compensation, which may take the form of reductions of duties on other tariff lines. Such an offer shall be taken into consideration by the Members having negotiating rights in the binding being modified or withdrawn. Should the compensatory adjustment remain unacceptable, negotiations should be continued. Where, despite such efforts, agreement in negotiations on compensatory adjustment under Article XXVIII as elaborated by the Understanding on the Interpretation of Article XXVIII of GATT 1994 cannot be reached within a reasonable period from the initiation of negotiations, the customs union shall, nevertheless, be free to modify or withdraw the concessions; affected Members shall then be free to withdraw substantially equivalent concessions in accordance with Article XXVIII.

6. GATT 1994 imposes no obligation on Members benefiting from a reduction of duties consequent upon the formation of a customs union, or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its constituents.

*Review of Customs Unions and Free-Trade Areas*

7. All notifications made under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of GATT 1994 and of paragraph 1 of this Understanding. The working party shall submit a report to the Council for Trade in Goods on its findings in this regard. The Council for Trade in Goods may make such recommendations to Members as it deems appropriate.

8. In regard to interim agreements, the working party may in its report make appropriate recommendations on the proposed time-frame and on measures required to complete the formation of the customs union or free-trade area. It may if necessary provide for further review of the agreement.

9. Members parties to an interim agreement shall notify substantial changes in the plan and schedule included in that agreement to the Council for Trade in Goods and, if so requested, the Council shall examine the changes.

10. Should an interim agreement notified under paragraph 7(a) of Article XXIV not include a plan and schedule, contrary to paragraph 5(c) of Article XXIV, the working party shall in its report recommend such a plan and schedule. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations. Provision shall be made for subsequent review of the implementation of the recommendations.

11. Customs unions and constituents of free-trade areas shall report periodically to the Council for Trade in Goods, as envisaged by the CONTRACTING PARTIES to GATT 1947 in their instruction to the GATT 1947 Council concerning reports on regional agreements (BISD 18S/38), on the operation of the relevant agreement. Any significant changes and/or developments in the agreements should be reported as they occur.

*Dispute Settlement*

12. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from

the application of those provisions of Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free-trade area.

*Article XXIV:12*

13. Each Member is fully responsible under GATT 1994 for the observance of all provisions of GATT 1994, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.

14. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked in respect of measures affecting its observance taken by regional or local governments or authorities within the territory of a Member. When the Dispute Settlement Body has ruled that a provision of GATT 1994 has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

15. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of GATT 1994 taken within the territory of the former.

### 1.4 Text of the transparency mechanism for regional trade agreements[1]

The General Council,

*Having regard* to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement");

*Conducting* the functions of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

*Noting* that trade agreements of a mutually preferential nature ("regional trade agreements" or "RTAs") have greatly increased in number and have become an important element in Members' trade policies and developmental strategies;

*Convinced* that enhancing transparency in, and understanding of, RTAs and their effects is of systemic interest and will be of benefit to all Members;

*Having regard also* to the transparency provisions of Article XXIV of GATT 1994, the Understanding on the Interpretation of Article XXIV of GATT 1994 ("GATT Understanding"), Article V of GATS and the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries ("Enabling Clause");

*Recognizing* the resource and technical constraints of developing country Members;

*Recalling* that in the negotiations pursued under the terms of the Doha Ministerial Declaration[1], in accordance with paragraph 47 of that Declaration, agreements reached at an early stage may be implemented on a provisional basis;

(*footnote original*) [1] WT/MIN(01)/DEC/1.

Decides:

*A. Early Announcement*

[1] WT/L/671.

1. Without prejudging the substance and the timing of the notification required under Article XXIV of the GATT 1994, Article V of the GATS or the Enabling Clause, nor affecting Members' rights and obligations under the WTO agreements in any way:

(a) Members participating in new negotiations aimed at the conclusion of an RTA shall endeavour to so inform the WTO.

(b) Members parties to a newly signed RTA shall convey to the WTO, in so far as and when it is publicly available, information on the RTA, including its official name, scope and 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.

2. The information referred to in paragraph 1 above is to be forwarded to the WTO Secretariat, which will post it on the WTO website and will periodically provide Members with a synopsis of the communications received.

*B. Notification*

3. The required notification of an RTA by Members that are party to it shall take place as early as possible. As a rule, it will occur no later than directly following the parties' ratification of the RTA or any party's decision on application of the relevant parts of an agreement, and before the application of preferential treatment between the parties.

4. In notifying their RTA, the parties shall specify under which provision(s) of the WTO agreements it is notified. They will also provide the full text of the RTA (or those parts they have decided to apply) and any related schedules, annexes and protocols, in one of the WTO official languages; if available, these shall also be submitted in an electronically exploitable format. Reference to related official Internet links shall also be supplied.

*C. Procedures to Enhance Transparency*

5. Upon notification, and without affecting Members' rights and obligations under the WTO agreements under which it has been notified, the RTA shall be considered by Members under the procedures established in paragraphs 6 to 13 below.

6. The consideration by Members of a notified RTA shall be normally concluded in a period not exceeding one year after the date of notification. A precise timetable for the consideration of the RTA shall be drawn by the WTO Secretariat in consultation with the parties at the time of the notification.

7. To assist Members in their consideration of a notified RTA:

(a) the parties shall make available to the WTO Secretariat data as specified in the Annex, if possible in an electronically exploitable format; and

(b) the WTO Secretariat, on its own responsibility and in full consultation with the parties, shall prepare a factual presentation of the RTA.

8. The data referred to in paragraph 7(a) shall be made available as soon as possible. Normally, the timing of the data submission shall not exceed ten weeks – or 20 weeks in the case of RTAs involving only developing countries – after the date of notification of the agreement.

9. The factual presentation provided for in paragraph 7(b) shall be primarily based on the information provided by the parties; if necessary, the WTO Secretariat may also use data available from other sources, taking into account the views of the parties in furtherance of factual accuracy. In preparing the factual presentation, the WTO Secretariat shall refrain from any value judgement.

10. The WTO Secretariat's factual presentation shall not be used as a basis for dispute settlement procedures or to create new rights and obligations for Members.

11. As a rule, a single formal meeting will be devoted to consider each notified RTA; any additional exchange of information should take place in written form.

12. The WTO Secretariat's factual presentation, as well as any additional information submitted by the parties, shall be circulated in all WTO official languages not less than eight weeks in advance of the meeting devoted to the consideration of the RTA. Members' written questions or comments on the RTA under consideration shall be transmitted to the parties through the WTO Secretariat at least four weeks before the corresponding meeting; they shall be distributed, together with replies, to all Members at least three working days before the corresponding meeting.

13. All written material submitted, as well as the minutes of the meeting devoted to the consideration of a notified agreement will be promptly circulated in all WTO official languages and made available on the WTO website.

*D. Subsequent Notification and Reporting*

14. The required notification of changes affecting the implementation of an RTA, or the operation of an already implemented RTA, shall take place as soon as possible after the changes occur. Changes to be notified include, *inter alia*, modifications to the preferential treatment between the parties and to the RTA's disciplines. The parties shall 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 electronically exploitable format.[2]

(*footnote original*) [2] In their notification, Members may refer to official Internet links related to the agreement where the relevant information can be consulted in full, in one of the WTO official languages.

15. At the end of the RTA's implementation period, the parties shall submit to the WTO a short written report on the realization of the liberalization commitments in the RTA as originally notified.

16. Upon request, the relevant WTO body shall provide an adequate opportunity for an exchange of views on the communications submitted under paragraphs 14 and 15.

17. The communications submitted under paragraphs 14 and 15 will be promptly made available on the WTO website and a synopsis will be periodically circulated by the WTO Secretariat to Members.

*E. Bodies Entrusted with the Implementation of the Mechanism*

18. The Committee on Regional Trade Agreements ("CRTA") and the Committee on Trade and Development ("CTD") are instructed to implement this Transparency Mechanism.[3] The CRTA shall do so for RTAs falling under Article XXIV of GATT 1994 and Article V of GATS, while the CTD shall do so for RTAs falling under paragraph 2(c) of the Enabling Clause. For purposes of performing the functions established under this Mechanism, the CTD shall convene in dedicated session.

(*footnote original*) [3] The Director-General is invited to ensure consistency in the preparation of the WTO Secretariat factual presentations for the different types of RTAs, taking into account the variations in data provided by different Members.

*F. Technical Support for Developing Countries*

19. Upon request, the WTO Secretariat shall provide technical support to developing country Members, and especially least-developed countries, in the implementation of this Transparency Mechanism, in particular – but not limited to - with respect to the preparation of RTA-related data and other information to be submitted to the WTO Secretariat.

*G. Other Provisions*

20. Any Member may, at any time, bring to the attention of the relevant WTO body information on any RTA that it considers ought to have been submitted to Members in the framework of this Transparency Mechanism.

21. The WTO Secretariat shall establish and maintain an updated electronic database on individual RTAs. This database shall include relevant tariff and trade-related information, and give access to all written material related to announced or notified RTAs available at the WTO. The RTA database should be structured so as to be easily accessible to the public.

*H. Provisional Application of the Transparency Mechanism*

22. This Decision shall apply, on a provisional basis, to all RTAs. With respect to RTAs already notified under the relevant WTO transparency provisions and in force, this Decision shall apply as follows:

(a) RTAs for which a working party report has been adopted by the GATT Council and those RTAs notified to the GATT under the Enabling Clause will be subject to the procedures under Sections D to G above.

(b) RTAs for which the CRTA has concluded the "factual examination" prior to the adoption of this Decision and those for which the "factual examination" will have been concluded by 31 December 2006, and RTAs notified to the WTO under the Enabling Clause will be subject to the procedures under Sections D to G above. In addition, for each of these RTAs, the WTO Secretariat shall prepare a factual abstract presenting the features of the agreement.

(c) Any RTA notified prior to the adoption of this Decision and not referred to in subparagraphs (a) or (b) will be subject to the procedures under Sections C to G above.

*I. Reappraisal of the Mechanism*

23. Members will review, and if necessary modify, this Decision, in light of the experience gained from its provisional operation, and replace it by a permanent mechanism adopted as part of the overall results of the Round, in accordance with paragraph 47 of the Doha Declaration. Members will also review the legal relationship between this Mechanism and relevant WTO provisions related to RTAs.

## ANNEX

### *Submission of Data by RTA Parties*

1. RTA parties shall not be expected to make available the information required below if the corresponding data has already been submitted to the Integrated Data Base (IDB),[4] or has otherwise been provided to the Secretariat in an adequate format.[5]

(*footnote original*) [4] Trade and tariff data submissions in the context of an RTA notification can subsequently be included in the IDB, provided that their key features are appropriate. In this respect, see document G/MA/IDB/W/6 (dated 15 June 2000) for the Guidelines for Supplying PC IDB Submissions and documents G/MA/115 (dated 17 June 2002) and G/MA/115/Add.5 (dated 13 January 2005) for WTO Policy regarding the dissemination of IDB data.

(*footnote original*) [5] Data submissions can be furnished in PC database formats, spreadsheet formats, or text-delimited formats; the use of word-processing formats should be avoided, if possible.

2. For the goods aspects in RTAs, the parties shall submit the following data, at the tariff-line level:[6]

(*footnote original*) [6] References to "tariff-line level" shall be understood to mean the detailed breakdown of the national customs nomenclature (HS codes with, for example, 8, 10 or more digits). It is crucial that all data elements supplied use the same national customs nomenclature or are associated with corresponding conversion tables.

(a) Tariff concessions under the agreement:

(i) a full listing of each party's preferential duties applied in the year of entry into force of the agreement; and

(ii) when the agreement is to be implemented by stages, a full listing of each party's preferential duties to be applied over the transition period.

(b) MFN duty rates:

(i) a full tariff listing of each RTA party's MFN duties applied on the year of entry into force of the agreement;[7] and

(*footnote original*) [7] In the case of a customs union, the MFN applied common external tariff.

(ii) a full tariff listing of each RTA party's MFN duties applied on the year preceding the entry into force of the agreement.

(c) Where applicable, other data (e.g., preferential margins, tariff-rate quotas, seasonal restrictions, special safeguards and, if available, *ad valorem* equivalents for non-*ad valorem* duties).

(d) Product-specific preferential rules of origin as defined in the agreement.

(e) Import statistics, for the most recent three years preceding the notification for which they are available:

(i) each party's imports from each of the other parties, in value; and

(ii) each party's imports from the rest of the world, broken down by country of origin, in value.

3. For the services aspects in RTAs, the parties shall submit the following data, if available, for the three most recent years preceding the notification: trade or balance of payments statistics (by services sector/subsector and partner), gross domestic product data or production statistics (by services sector/subsector), and relevant statistics on foreign direct investment and on movement of natural persons (by country and, if possible, by services sector/subsector).

4. For RTAs involving only developing countries, in particular when these comprise least-developed countries, the data requirements specified above will take into account the technical constraints of the parties to the agreement.

### 1.5 Territorial application

1. On the practice during the General Agreement on Tariffs and Trade (GATT) in respect of territorial application, customs territories and frontier traffic, see the document on Article XXIV of the General Agreement on Tariffs and Trade 1947 (GATT 1947) (GATT Analytical Index, pages 794-796 and 917-919).

### 1.6 Regional trade agreements

#### 1.6.1 Committee on Regional Trade Agreements

2. Pursuant to Article IV:7 of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), on 6 February 1996, the General Council decided to establish the Committee on Regional Trade Agreements (Committee on RTAs).[2] With respect to the establishment of the Committee, its rules of procedure and activities, including reports to the General Council, see the section on the Committee on Regional Trade Agreements in the document on Article IV of the WTO Agreement (Practice).[3]

#### 1.6.2 Regional trade agreements under the Enabling Clause

3. In 1979, the GATT Council adopted the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (the "Enabling Clause")[4] to waive Article I of the GATT 1947 for certain arrangements, with respect to, *inter alia*, "[r]egional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs". Regarding the Enabling Clause and regional trade agreements (RTAs) notified under the Enabling Clause, see the document on Article I of the General Agreement on Tariffs and Trade 1994 (GATT 1994) (Practice) and Section on the Committee on Trade and Development in the document on Article IV of the WTO Agreement (Practice).

### 1.7 Article XXIV:6 Modification or withdrawal of tariff concessions

4. Article XXIV:6 of the GATT 1994, as interpreted by the Understanding on the Interpretation of Article XXVIII of GATT 1994, provides that when a WTO Member forming a customs union proposes to increase a bound rate of duty, it shall commence the "procedure set forth in Article XXVIII, as elaborated in the guidelines adopted on 10 November 1980 (BISD 27S/26-28) and in the Understanding on the Interpretation of Article XXVIII of GATT 1994" before tariff concessions are modified or withdrawn.[5] Nine Article XXVIII renegotiations have resulted from the invocation of Article XXIV:6 of the GATT 1994.[6]

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[2] WT/GC/M/10, para. 11. The decision can be found in WT/L/127.
[3] WT/REG/M/2, para. 11. The text of the rules of procedures can be found in WT/REG/1. See also WT/REG/M/2, para. 12.
[4] *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*, Decision of the GATT 1947 CONTRACTING PARTIES of 28 November 1979.
[5] Paragraph 4 of the Understanding on the Interpretation of Article XXIV, reproduced in section 1.3 above.
[6] Renegotiations by Armenia, Gabon, Haiti, the Kyrgyz Republic and Suriname, as well as the four enlargements of the European Union. See G/MA/W/123/Rev.8.

## 1.8 Article XXIV:7

### 1.8.1 "Any contracting party ... shall promptly notify the CONTRACTING PARTIES"

5. At its 44th Session on 13 October 2006, the Committee on RTAs adopted a common and simplified notification format for RTAs and agreed to recommend it to the relevant bodies. The Council for Trade in Goods adopted such a format at its meeting of 19 March 2007.[7] At its 84th Session, the Committee on RTAs discussed the key features of the notification format for RTAs.[8]

6. As of 31 December 2021, 353 RTAs notified to the GATT/WTO were in force. These correspond to 572 notifications by WTO members, counting goods, services and accessions separately.[9] 322 of the 572 notifications have been made under Article XXIV of the GATT 1947 or the GATT 1994, 61 under the Enabling Clause (see paragraph 3 above), and 189 under Article V of the General Agreement on Trade in Services (GATS).[10] For a complete list of these RTAs, see table 1 at the end of the document on Article IV of the WTO Agreement (Practice).

7. The unusually large increase in the number of RTAs in force in 2021 as compared to 2020 (305 RTAs in force) concerned 38 RTAs concluded by the United Kingdom following its withdrawal from the European Union and the termination of a transition period lasting until 31 December 2020. In February 2021, the European Union and the United Kingdom made a notification regarding related inactive agreements.[11]

### 1.8.2 Examination and consideration of agreements

#### 1.8.2.1 Working parties

8. Up to the establishment of the Committee on RTAs in February 1996, the examination of RTAs in accordance with Article XXIV:7 of the GATT 1994 and of the Understanding on the Interpretation of Article XXIV of the GATT 1994 was carried out by individual working parties.

9. As of the entry into force of the WTO, 14 GATT working parties were examining regional trade agreements.[12] The Decision on Avoidance of Procedural and Institutional Duplication, adopted by the General Council on 31 January 1995, required these GATT working parties to coordinate their activities and meetings with WTO working parties that examined the same regional agreement or arrangement.[13] At its meeting on 11 July 1995, the General Council modified the terms of reference for the working parties established under the GATT 1947 so that agreements would be examined in the light of the relevant provisions of the GATT 1994, and that examination reports would be submitted to the Council for Trade in Goods.[14] Similarly, the Committee on Trade and Development modified the terms of reference for the examination of the Southern Common Market (Mercado Común del Sur, or MERCOSUR) at its meeting on 14 September 1995, so that the examination would be carried out in the light of the relevant provisions of the Enabling Clause and the GATT 1994, including Article XXIV. That decision stated that the examination report would be transmitted to the Committee on Trade and Development for submission to the General Council, with a copy of the report transmitted as well to the Council for Trade in Goods.[15]

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[7] The notification format is circulated in document G/L/834. See also WT/REG/M/44, paras. 17-19; and G/C/M/88, paras. 1.1-1.3.

[8] WT/REG/M/84, paras. 1.38-1.52.

[9] 198 RTAs previously notified (under 218 notifications) were no more in force by 31 December 2021.

[10] Source: RTA Database available on the WTO website at http://rtais.wto.org.

[11] WT/REG/GEN/N/10.

[12] Working Parties established to examine the following 14 regional trade agreements: Interim Agreements between the European Communities and the Czech Republic, Slovak Republic, Hungary and Poland (in one single WP); Free-Trade Agreements between the EFTA States and Israel, Romania, Bulgaria, Poland and Hungary; Free-Trade Agreements between Switzerland and Estonia, Latvia and Lithuania; MERCOSUR; the Central European Free-Trade Agreement; the North American Free-Trade Agreement; and the Free-Trade Agreements between Slovenia and the Czech Republic and the Slovak Republic.

[13] WT/L/29, paras. 2-4.

[14] WT/GC/M/5, item 11.

[15] WT/COMTD/M/3.

10. From January 1995 to February 1996, 12 additional GATT working parties were established by either the Council for Trade in Goods or the Council for Trade in Services.[16]

11. The first such working party, on Enlargement of the European Communities (Accession of Austria, Finland and Sweden), was established by the Council for Trade in Goods on 20 February 1995, along with an understanding read out by the Chairman at that meeting, as follows:

> "According to the Understanding on the Interpretation of Article XXIV of the GATT 1994 'all notifications under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of the GATT 1994 and of paragraph 1 of this Understanding'. Paragraph 1 of the Understanding confirms that agreements leading to a customs union must satisfy, inter alia, the provisions of paragraphs 5, 6, 7 and 8 of Article XXIV. Similarly, the entire Schedules of concessions and commitments attached to the Marrakesh Protocol will be examined by the Working Party.
>
> According to paragraph 5(a) of Article XXIV, the duties and other regulations of commerce affecting trade with WTO Members not participating in the customs union 'shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce' applicable prior to the formation of the union. This implies that a working party established to examine a notification under paragraph 7(a) of Article XXIV has the mandate to examine the incidence and restrictiveness of all duties and regulations of commerce, in particular those governed by the provisions of the Agreements contained in Annex 1A of the WTO Agreement.
>
> However, it should be kept in mind that the purpose of an examination in the light of paragraph 5(a) of Article XXIV would not be to determine whether each individual duty or regulation existing or introduced on the occasion of the formation of a customs union is consistent with all provisions of the WTO Agreement; it would be to ascertain whether on the whole the general incidence of the duties and other regulations of commerce has increased or become more restrictive. Accordingly, although the Working Party would conduct its examination in light of the relevant provisions of the Agreements contained in Annex 1A of the WTO Agreement, the conclusions of the Report of the Working Party would be confined to reporting on consistency with the provisions of Article XXIV.
>
> On the occasion of the formation of a customs union a measure might be taken whose legal status under the WTO Agreement is not directly related to or does not depend on the consistency of the formation of the customs union with Article XXIV as such. The examination of incidence and restrictiveness of such a measure by a working party established under Article XXIV would not prevent any WTO Member from raising the question of the consistency of that measure in another WTO body competent to examine that issue, nor does the present arrangement prejudice the rights and obligations of any WTO Member under the WTO agreements.
>
> I understand that it is expected that the Working Party should coordinate its working schedule with that of any other working party that may be established to examine the enlargement according to the relevant procedures of the WTO Agreement."[17]

12. Up to the adoption of the Transparency Mechanism for RTAs in December 2006, the terms of reference agreed in 1995[18] and the Chairman's understanding have been standard for the examination of all regional trade agreements notified under Article XXIV of the GATT 1994. Since

[16] The Council for Trade in Goods established ten Working Parties to examine the following agreements: European Communities and Bulgaria, Estonia, Faroe Islands, Latvia, Lithuania, Romania and Turkey; Enlargement of the European Communities (EC-15); Hungary-Slovenia; and EFTA-Slovenia. The Council for Trade in Services established two Working Parties to examine the North American Free-Trade Agreement and the Enlargement of the European Communities. See WT/GC/W/125 and G/L/134.

[17] G/C/M/1, paras 7.1-7.12, and WT/REG3/1.

[18] Terms of reference: "to examine, in light of the relevant provisions of the GATT 1994, the [name of RTA] and to submit a report to the Council for Trade in Goods".

that time, a regional trade agreement is "considered" by Members. Examination on the basis of "terms of reference" is not performed anymore.

#### 1.8.2.2 Committee on Regional Trade Agreements

13. On 6 February 1996, the General Council established the Committee on RTAs.[19] Under its terms of reference, the Committee is mandated, *inter alia*, to carry out the examination of agreements in accordance with the procedures and terms of reference adopted by the Council for Trade in Goods, the Council for Trade in Services, and the Committee on Trade and Development, as the case may be, including of those agreements for which the examination was being carried out in working parties established prior to its establishment.[20] Regarding the establishment, terms of reference and rules of procedure of the Committee on RTAs, see the document on Article IV of the WTO Agreement (Practice).

14. For the period between the Committee's establishment and the adoption in December 2006 of the Transparency Mechanism for Regional Trade Agreements, the Committee had completed the factual examination of a total of 66 agreements: 45 in trade in goods and 21 in trade in services.[21] No report on the examination of any of these agreements has ever been agreed upon in the Committee for subsequent transmission to the Council for Trade in Goods. The Transparency Mechanism makes no reference to examination reports.

15. During 2004, the Committee on RTAs was notified that 65 RTAs previously in force and notified to the GATT/WTO had been terminated as a consequence of the enlargement of the European Union to include ten new member States on 1 May 2004.[22] The Committee on RTAs was also notified that the ten acceding countries had become, or were in the process of becoming, parties to European Communities' free trade agreements and customs unions with third parties. On 11 November 2004, the Committee agreed to terminate the examination process for these agreements.[23] Similarly, the Committee was notified in 2007 that 20 RTAs previously in force and notified to the GATT/WTO had been terminated as a consequence of the enlargement of the European Union to include two new member States on 1 January 2007.[24] Also during 2007, the Committee on RTAs was notified that 13 bilateral free trade agreements previously in force and notified to the WTO had been terminated upon entry into force of the Agreement on Amendment of and Accession to the CEFTA.[25]

16. In the period from 2004 to 2009, the Committee on RTAs conducted a series of informal consultations regarding the examination of regional trade agreements concluded by WTO Members with non-Members. As from 2005, in practical terms, the examination of these RTAs had been put on hold, pending a solution to whether the examination of RTAs involving non-Members should be deferred until these countries had become WTO Members. These consultations were re-opened in late 2008, and on 4 March 2009 the Committee on Regional Trade Agreements agreed to begin considering RTAs involving non-Members under the Transparency Mechanism's procedures.[26] RTAs notified since 14 December 2006, including future notifications, were to be taken up before the others—taking into account practical considerations such as the availability of data and the Secretariat's established work programme. The Committee clarified that the consideration of such agreements did not have any implication for the views or positions of any Member with respect to the consistency of that RTA with the WTO rules and was without prejudice to the rights and obligations of Members under the WTO Agreements, as clearly stated in paragraphs 1 and 5 of the Transparency Mechanism Decision.[27]

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[19] WT/GC/M/10, Section 11.
[20] WT/L/127, para. 1(a) and footnote 2.
[21] RTAs terminated upon the enlargement of the European Union on 1 May 2004 and 1 January 2007 are excluded from the figures contained in this paragraph.
[22] See WT/REG/GEN/N/2 and WT/REG/GEN/N/3.
[23] WT/REG/M/38.
[24] See WT/REG/GEN/N/4.
[25] See WT/REG/GEN/N/5.
[26] WT/REG/14, para. 9, WT/REG/19, para.12, WT/REG/M/50, paras. 6 and 13 and WT/REG/M/51, paras. 9, 14, 15 and 24. A list of those RTAs is included in document WT/REG/19, attachment 2.
[27] WT/REG/M/52, in particular paragraphs 5 and 6. The Committee on Trade and Development agreed later on to follow the same procedures as the Committee on RTAs.

17. Procedures for the examination of RTAs were significantly modified with the adoption of the December 2006 Transparency Mechanism for RTAs. In particular, the WTO Secretariat is to prepare a factual presentation of each notified RTA to assist Members in their consideration of an RTAs.

18. Concerning the operation of the Transparency Mechanism as well as the procedures for the examination and consideration of RTAs, see the Section on the Committee on Regional Trade Agreements in the document on Article IV of the WTO Agreement (Practice).

#### 1.8.2.3 Reference to GATT practice

19. Regarding the GATT practice on the examination of agreements, see the document on Article XXIV of the GATT 1947 (GATT Analytical Index, pages 814-815).

### 1.9 Understanding on the Interpretation of Article XXIV of the GATT 1994

#### 1.9.1 Reporting requirements in accordance with paragraphs 9 and 11 of the Understanding

20. In November 1998, the Council for Trade in Goods approved recommendations adopted by the Committee on RTAs with respect to the required reporting on the operation of regional trade agreements, significant changes and/or developments in the agreements, and substantial changes in the plan and schedule of interim agreements.[28]

21. Schedules for the submission of biennial reports were presented to the Committee on RTAs in December 1998, February 2001, and December 2003.[29] The Committee on RTAs agreed to postpone the 2006 schedule for submission of biennial reports pending the outcome of the discussions that led to the Transparency Mechanism.[30] Since 2006, biennial reports have been *de facto* superseded by relevant reporting requirements provided for in the Transparency Mechanism.

### 1.10 Transparency Mechanism for Regional Trade Agreements

22. On 14 December 2006, the General Council established on a provisional basis a new Transparency Mechanism for RTAs. This mechanism applies to agreements notified under Article XXIV of the GATT 1994, Article V of the GATS and paragraph 2(c) of the Enabling Clause. Concerning the operation of the Transparency Mechanism, see the section on the Committee on Regional Trade Agreements in the document on Article IV of the WTO Agreement (Practice).

23. At its 89th Session on 19 June 2018, the Committee on RTAs adopted a template for notifying changes to an existing RTA under paragraph 14 of the Transparency Mechanism, and agreed to recommend it to the relevant bodies.[31] The Council for Trade in Goods adopted this template at its meeting on 12 November 2018.[32]

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[28] G/L/286; text of adopted recommendation, WT/REG/6.
[29] WT/REG/W/33, WT/REG/W/42, and WT/REG/W/48, respectively. The lists of the reports submitted are contained in the Committee's annual reports, WT/REG/9, 11, and 14. At its meeting of 12-13 November 2002, the Committee on RTAs decided to shift from 2003 to 2004 the next submission of biennial reports (WT/REG/M/33, para. 9).
[30] WT/REG/M/41, para. 7 and WT/REG/M/43, para. 14.
[31] The template is circulated in document WT/REG/28. See also WT/REG/M/89, paras. 1.35-1.37.
[32] The template is circulated in document G/L/1295. See also G/L/1282, paras. 12.1-12.2.