



**WTO OMC**

REGIONAL TRADE AGREEMENTS AND THE MULTILATERAL TRADING SYSTEM

PREPARED BY THE WORLD TRADE ORGANIZATION

DISCUSSION PAPER FOR THE G20

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AND INCLUDING A SPECIFIC SECTION BY THE WORLD BANK ON THE POTENTIAL IMPLICATIONS FOR  
DEVELOPING COUNTRIES OUTSIDE THE G-20 OF G-20 RTAs

This paper has been prepared for discussion purposes at the request of the Turkish Presidency. It is not an official communication from the WTO and in no way presumes to represent the views of WTO members, either collectively or individually.



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## INTRODUCTION

Regional trade agreements (RTAs) which provide for the exchange of reciprocal preferences among their members have become an important part of the global landscape of international trade.<sup>1</sup> Most of them build upon commitments that have been agreed in the context of the multilateral trading system and therefore provide additional preferential treatment to RTA partners than that provided on an MFN basis to all other WTO Members. By end 2014, 258 RTAs that are currently in force had been notified to the WTO. This figure is however an understatement because there are a number of other RTAs in force that have yet to be notified. In addition, new negotiations are under way suggesting that the current upward trend in RTAs is likely to continue.

It should be pointed out that RTAs have always co-existed with the multilateral trading system and the WTO rules permit the formation of RTAs under certain conditions. Nevertheless, the recent growth in RTAs as well as their increasing scope has raised a number of questions about their impact on the multilateral trading system and the rules that WTO Members trade under.

This paper, which was requested by the 2015 G20 Presidency, will examine RTAs in force and notified to the WTO involving G20 economies up to the end of 2014. It will aim to identify:

- RTAs involving the G20 economies in force and those being negotiated;
- What provisions are included in G20 RTAs;
- Whether the issues they cover are also covered by the WTO Agreements;
- To what extent RTA provisions differ from WTO provisions or introduce new provisions that are not covered by the WTO Agreements; and
- Potential implications for developing countries outside the G20, of G20 RTAs, and strategies to maximize the gains and offset any risks.

The objective will be to reach a better understanding of how far provisions diverge from RTA to RTA and from WTO provisions and the extent to which they can be made complementary to their corresponding WTO provisions or, if they are not part of the WTO agreements, whether they can still complement the principles of the multilateral trading system.

The study is based on all RTAs involving G20 economies notified to the WTO by 31 December 2014.<sup>2</sup> Section One provides an overview of the global landscape of RTAs up to the end of 2014. Section Two focuses more specifically on RTAs involving the G20 economies. The first part of Section Two provides the landscape of such RTAs. The second part provides a general analysis of RTA provisions, including those which are the same as or different from WTO rules and those for which there are as yet no WTO rules. Section Three focuses more specifically on RTA provisions that go beyond existing WTO rules and provisions for which there are no WTO rules. The concluding section tries to draw some implications for the relationship between RTAs and the multilateral trading system and where there may be potential for greater cooperation between the G20 economies and at the multilateral level. Section Four provides some general observations on the potential implications of G20 RTAs for non-G20 developing countries, as well as offering some policy responses for consideration by G20 economies. Finally, an annex provides greater detail on coverage of trade, tariffs and other provisions in RTAs, by G20 economy.

While much of the paper is based on recent work done by the WTO Secretariat, and data gathered through the WTO's Transparency Mechanism for RTAs for this study, other published sources

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<sup>1</sup> For goods, RTAs include free trade agreements, customs unions, partial scope agreements (liberalizing only a few sectors or tariff lines). Economic integration agreements provide for the liberalization of services trade among preferential partners.

<sup>2</sup> This includes RTAs among G20 economies and agreements between G20 and non-G20 economies. The study treats the European Union (EU) as one, bearing in mind that France, Germany, Italy, the United Kingdom, and the EU itself are members of the G20.

especially from international organizations which have been looking closely at this issue, such as the OECD, World Bank and UNCTAD, have also been used.

## SECTION ONE: A BROAD OVERVIEW OF RTAS

1.1. By the end of December 2014, 258 regional trade agreements (RTAs) had been notified to the WTO.<sup>3</sup> In addition, the WTO Secretariat estimates that there are another 100 or so RTAs that are in force but have not been notified. Notifications of RTAs to the WTO are a requirement for all WTO Members. The notification must be made once the RTA is signed and ratified by the Member but before any preferential treatment is provided to the RTA partner. Box 1 below provides a brief overview of WTO rules on RTAs.

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<sup>3</sup> These correspond to 397 notifications, of which 233 were made under Article XXIV of GATT 1994, 127 under GATS V and 37 under the Enabling Clause (including 2 agreements involving the G20 whose goods aspects are notified under both GATT Article XXIV and the Enabling Clause).

#### Box 1: RTA rules in the WTO Agreements

Under WTO rules, all RTAs must be notified to the WTO under either Article XXIV of the GATT 1994 or paragraph 2(c) of the Enabling Clause for RTAs covering liberalization in goods and Article V of the General Agreement on Trade in Services for liberalization in services. For RTAs liberalizing trade in goods, the Enabling Clause applies only to agreements among developing countries; agreements between developed countries and between developed and developing countries may only be notified under Article XXIV. For services, GATS Article V is the only option for all parties.

Article XXIV of the GATT 1994 and its Understanding permits the formation of free trade areas or customs unions between Members provided that duties and other restrictive regulations of commerce between the parties are eliminated on substantially all the trade (Article XXIV:8) and that third party neutrality is maintained, i.e. barriers vis-a-vis third parties are not on the whole higher than before the formation of the customs union or free trade area (Article XXIV:5). Additionally, customs unions have to apply substantially the same external trade regime. In that context, Article XXIV:6 sets out specific procedures to be followed if any of the parties of a customs union breaches its WTO bindings as a result of the formation of the customs union. In such cases, procedures under Article XXVIII to renegotiate bindings must be followed and due account be taken of reductions of duties on the same tariff line made by other parties to the customs union. Furthermore, if such compensatory adjustments are not sufficient, the customs union as a whole would offer compensation including through reductions in duties on other tariff lines.

Article V of the General Agreement on Trade in Services permits the formation of economic integration agreements provided that the agreement has substantial sectoral coverage, including all four modes of supply, and eliminates substantially all discrimination between the parties through elimination of existing discriminatory measures and/or prohibition of new or more discriminatory measures (Article V:1). The Agreement is to facilitate trade between the parties shall not raise barriers towards non-parties (neutrality vis-à-vis third parties) (Article V:4). In concluding an economic integration agreement if a Member intends to withdraw or modify a specific commitment inconsistently with its GATS Schedule it shall give 90 days notice in advance of the withdrawal and renegotiate its commitments.

Paragraph 2(c) of the Enabling Clause permits developing country Members to enter into regional or global arrangements for the mutual reduction or elimination of tariffs and in accordance with criteria or conditions to be prescribed by Members for the mutual reduction or elimination of non-tariff measures between themselves. Members dispute the extent to which the Enabling Clause covers customs unions among developing countries.

General Council Decision on a Transparency Mechanism for Regional Trade Agreements: clarifies procedures to be followed for notifications and consideration of RTAs. It clarifies that RTAs must be notified no later than directly following ratification of the agreement and before the provision of preferential treatment by the parties to each other (paragraph 3). It also requires that all RTAs regardless of the provision(s) they are notified under, must be subject to a transparency process including the preparation of a factual presentation by the WTO which forms the basis of a consideration of the RTA by the relevant Committee (Committee on Regional Trade Agreements (CRTA) for RTAs notified under GATT Article XXIV and GATS Article V and the Committee on Trade and Development (CTD) for RTAs notified under the Enabling Clause). The Mechanism also provides for the possibility of an "early announcement" of RTAs being negotiated or signed but not yet in force; and for notification of subsequent changes to an agreement as well as once the agreement is fully implemented.

The Mechanism is applied provisionally. Under paragraph 23 Members are required to review and, if necessary, modify it and replace it by a permanent Mechanism adopted as part of the overall results of the Doha Round of multilateral trade negotiations. The review was started by the Negotiating Group on Rules in December 2010 but has yet to be completed mainly due to the issue of 3 RTAs (all involving G20 economies) notified under both the Enabling Clause and Article XXIV of the GATT 1994.

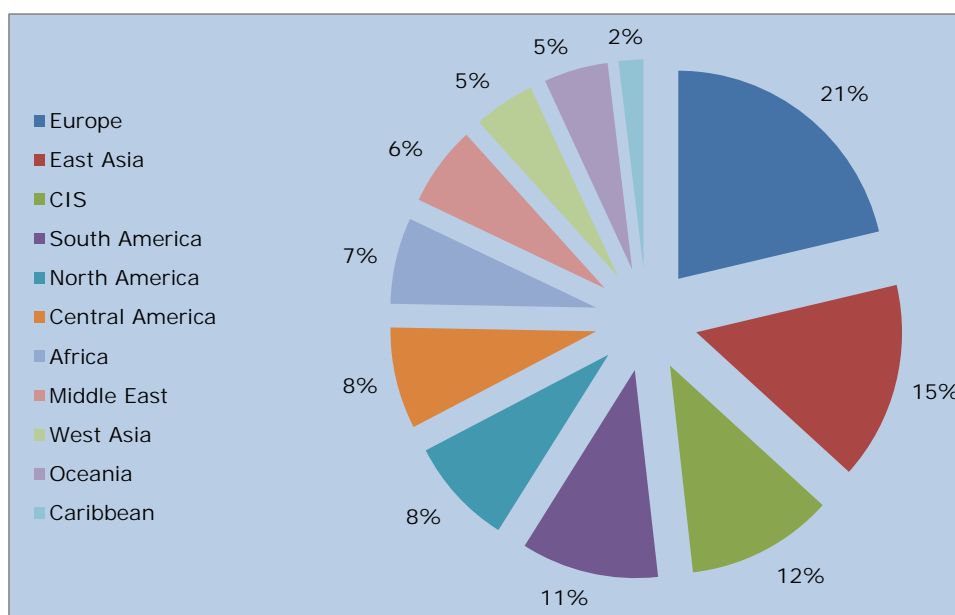
1.2. A majority of the agreements that have been notified to the WTO are bilateral agreements, involving only two parties.<sup>4</sup> In addition, a majority of them are between developed and developing countries or between developing countries only.

1.3. Judging from overall notifications, RTA activity is strongest in Europe (21% of RTAs in force), with agreements with countries in Eastern Europe and around the Mediterranean basin as well as RTAs notified by the European Free Trade Area (EFTA); this is followed by East Asia (15%), the Commonwealth of Independent States (CIS) region (12%) and South America (11%) (Chart 1). These regions also continue to be active in current RTA negotiations.

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<sup>4</sup> Where one RTA party comprises a customs union or a group (eg EFTA), it is counted as a single RTA. Hence the agreement between EFTA and Chile for instance would be counted as a bilateral agreement.

Chart 1: RTAs by Region (All notified RTAs, as of Dec 2014)

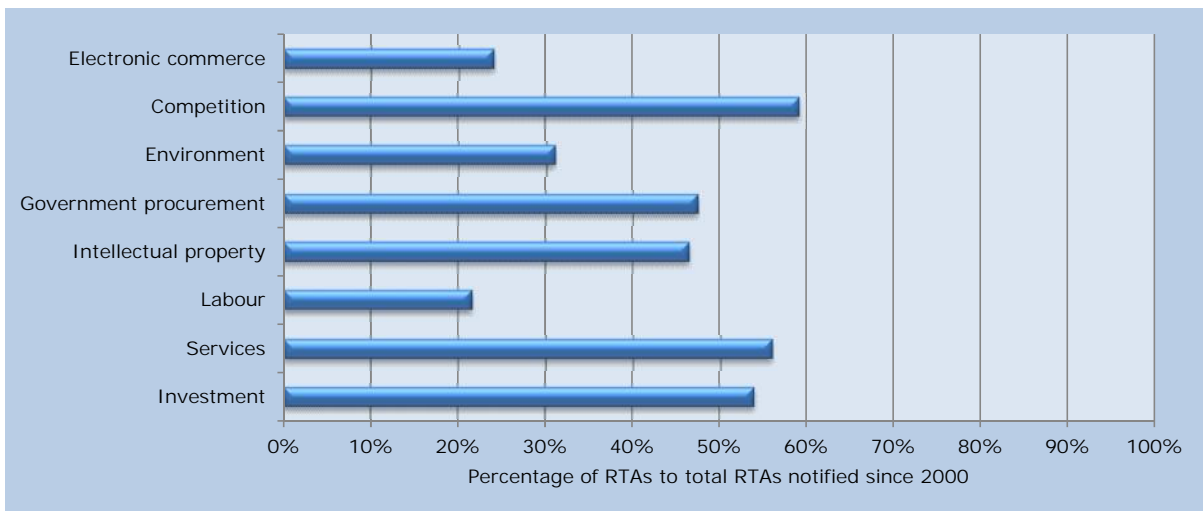


1.4. Since the early 1990s there has been a sharp increase in the number of notifications and the upward trend has continued since then. A number of explanations have been advanced for this increase: the emergence of new trading patterns among Central and Eastern European states in the early 1990s; frustration among WTO Members about the lack of progress in multilateral negotiations; accession of new Members to the WTO (with resultant notification obligations); the growing importance of services trade and negotiations of RTAs with services commitments; and, since 2000, the shift particularly among Asian countries in favour of preferential trading regimes. It has also been said that it is easier to negotiate "regionally". While reality shows that negotiation of an RTA lasts on average two and a half years, this figure hides a wide diversity in timeframes: while some RTAs were negotiated within six months, others are under negotiation for more than 15 years. Besides, in such "regional" negotiations, issues that are more difficult to negotiate tend to be left out.

1.5. Given current negotiations, the Secretariat estimates that this trend will continue for the next few years at least. There are, however, interesting developments in these negotiations. While the majority of RTAs being negotiated are bilateral, i.e. between two parties only, there are several that are plurilateral and aim to consolidate market access and other provisions already negotiated in the existing bilateral agreements of the parties.

1.6. The composition of RTAs notified to the WTO has also changed over time. In particular, as tariff protection declines either due to unilateral decisions or multilateral negotiations, there is a growing trend for RTAs to not just liberalize goods trade (including related provisions such as rules of origin, standards and SPS measures, and trade defence measures) but also to liberalize services, investment and cover other issues such as intellectual property rights, government procurement, competition policy and in some cases environment and labour standards. Increasingly also RTAs include detailed dispute settlement mechanisms although the extent to which they are used is not clear. These "behind the border" measures are becoming increasingly prominent in RTAs. In the case of RTAs notified to the WTO since 2000 for instance, as depicted in Chart 2, over half, 56%, contain provisions on goods and services, 54% on investment, 47% on intellectual property rights that go beyond WTO commitments, 59% on competition and 47% on government procurement provisions often involving both parties and non-parties of the WTO Government Procurement Agreement (GPA). A smaller but nevertheless significant number of RTAs also have provisions on electronic commerce (24%), environment (31%) and labour (22%).

Chart 2: Key topics covered by RTAs (all RTAs notified since 2000)



1.7. Thus, the scope of RTAs seems to be growing to include not just barriers to trade at the border but also increasingly behind the border measures that could impact trade. It is not clear from a simple count of the number of agreements containing such behind the border issues, however, whether the measures have become deeper over time. In any case, such proliferation of RTAs is increasing the complexity of the rules-based trade environment, with the risk of hindering their full implementation and reducing benefits they could brought to businesses, consumers and workers, as recently underlined by the B20.<sup>5</sup> Responding to such risks, the 2014 G20 Leaders' Communiqué noted that "To help business make best use of trade agreements, we will work to ensure our bilateral, regional and plurilateral agreements complement one another, are transparent and contribute to a stronger multilateral trading system under WTO rules."<sup>6</sup>

1.8. The next section will attempt to present the depth of RTA provisions over time, concentrating only on RTAs involving G20 economies.

## SECTION TWO: G20 RTAS

### 2.1 An overview of RTAs involving G20 economies

2.1. Almost 65% of RTAs in force that have been notified to the WTO up to end December 2014 involve at least one G20 economy, with each G20 economy being involved on average in around 12 RTAs (ranging from 2 for Saudi Arabia to 38 for the EU members), including with their largest markets.<sup>7</sup> Most of the G20's RTAs are with non-G20 economies, with only 5% of the notified RTAs being only between G20 economies. Chart 3 below shows the recent growth in RTAs involving G20 economies compared to the overall growth in RTAs as notified to the WTO.

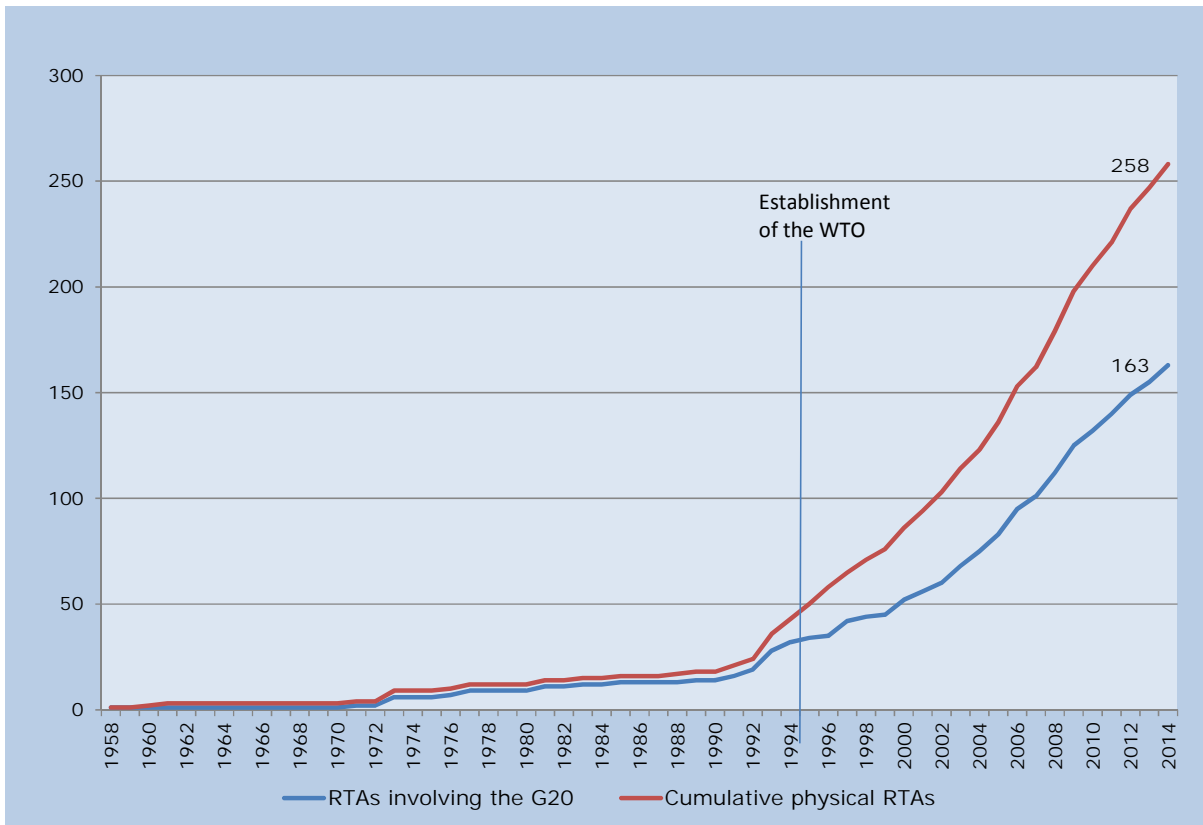
<sup>5</sup> B20 (2014). The B20 highlights that "PTAs are not always fully utilised by businesses due to unnecessary internal complexity of agreements and external inconsistency between agreements", and recommends that "[To promote free movement across borders, G20 governments should:] Ensure preferential trade agreements (PTAs) realise better business outcomes by consulting with business, improving transparency and consistency and addressing emerging trade issues."

<sup>6</sup> G20 (2014).

<sup>7</sup> The RTAs of the EU members of the G20 as well as the EU, are counted only once.

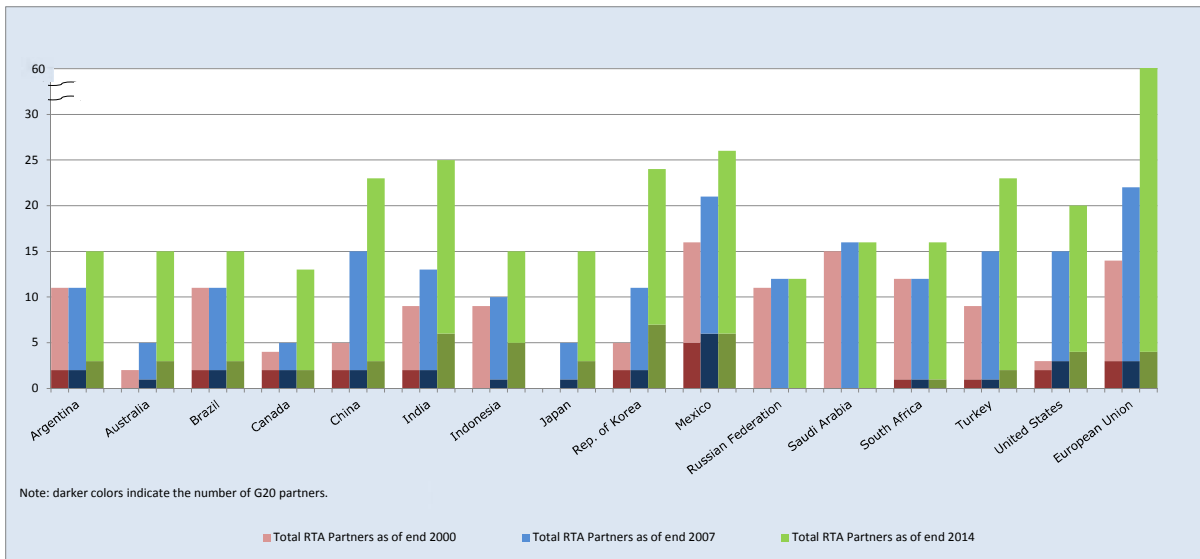


Chart 3: Evolution of RTAs notified and in force: total and G20



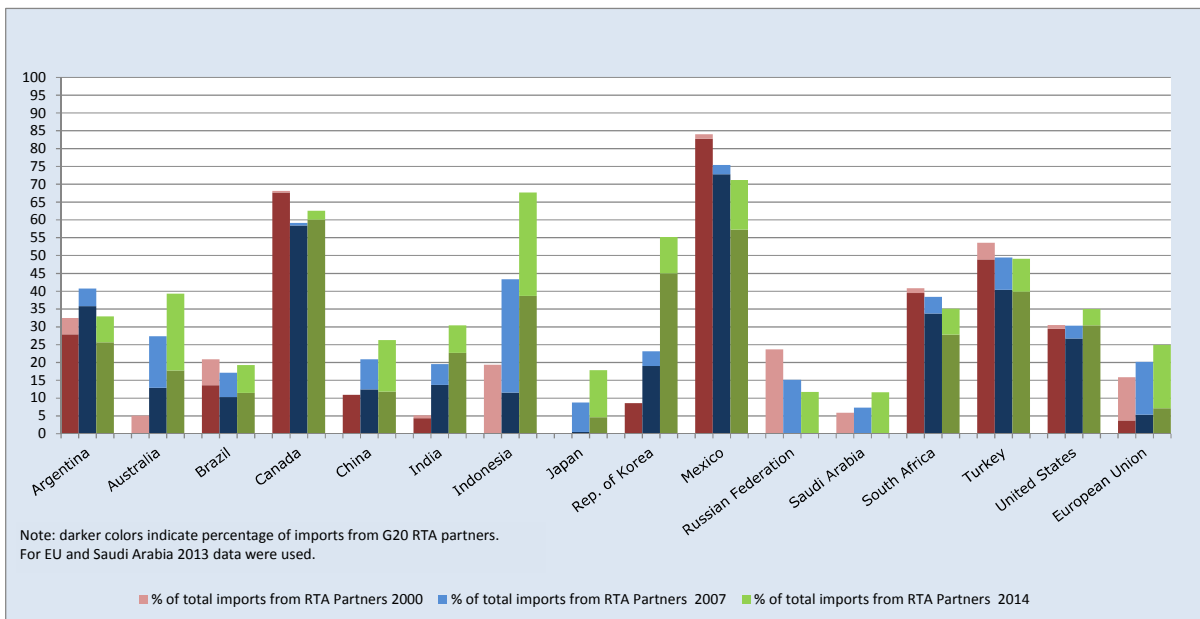
2.2. As indicated above, however, in addition to notified RTAs, several RTAs that are in force have not been notified to the WTO and a number of RTA negotiations are under way. In terms of the number of RTA partners of the G20 including both notified and non-notified RTAs in force, Chart 4 below shows the evolution since 2000. In particular, there has been a significant increase in the number of RTA partners for the EU (from 14 in 2000 to 59 by end 2014). There have also been considerable increases for the Republic of Korea (from 5 in 2000 to 24 in 2014), China (from 5 to 23), Japan (from none to 15) and India (from 9 to 25). In comparison, there has been almost no change in the number of Saudi Arabia's RTA partners (15 in 2000 to 16 in 2014) and a small increase for Argentina and Brazil (from 11 in 2000 to 15 in 2014). The Chart also shows that the increase in number of RTA partners has come mainly from RTAs with non G20 partners. The Russian Federation and Saudi Arabia have no RTAs with other G20 economies, though the latter is currently negotiating, jointly with its GCC partners, RTAs with five G20 economies.

Chart 4: Cumulative number of RTA Partners (RTAs in force, notified and not notified)



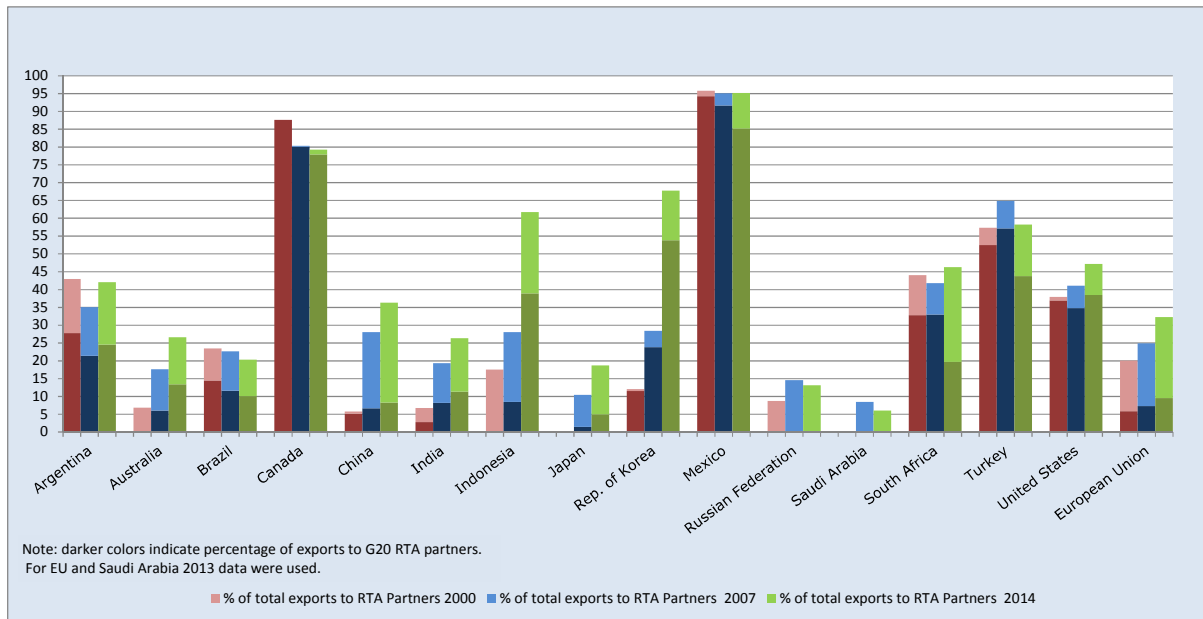
2.3. While the number of RTAs and RTA partners has been generally increasing over time, trends in merchandise trade of the G20 show a mixed picture in terms of trade covered by RTAs (in the absence of data on trade under preferences, total bilateral imports and exports have been used as a proxy). Charts 5 and 6 show that while for some G20 economies imports and exports with RTA partners have risen since 2000, notably for Australia, China, India, Indonesia, Japan, the Republic of Korea, and to a lesser extent for the EU and the United States, it has actually declined for Brazil, Canada, Mexico, and to some extent for South Africa and Turkey.<sup>8</sup> The share of trade (both imports and exports) from other G20 economies is also more important for some (Canada, Mexico and South Africa, whose G20 RTAs include their largest trading partners) than for others (the Russian Federation and Saudi Arabia) who do not currently have RTAs with G20 economies. These figures only include trends in merchandise trade. The picture may change if data on trade in services were included; unfortunately data on bilateral services trade is not easily available.

Chart 5: Percentage share of merchandise imports (RTAs in force, notified and not notified)



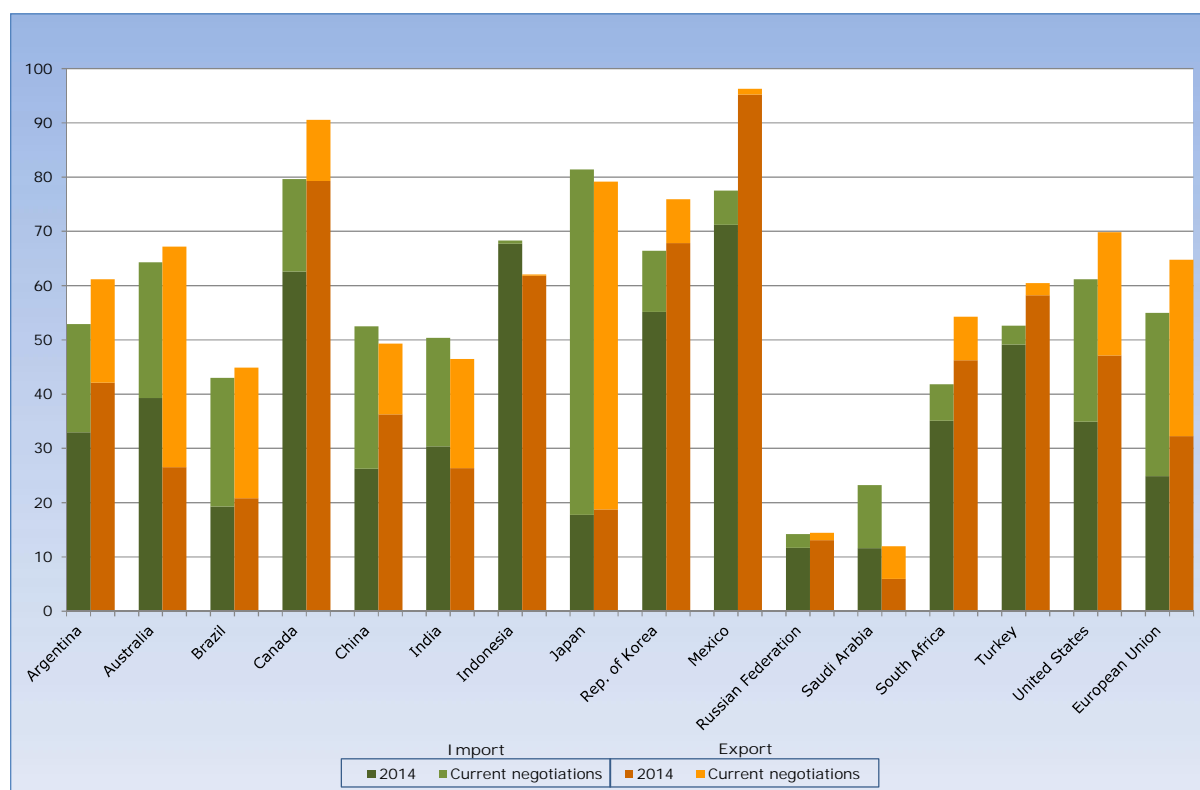
<sup>8</sup> Note that statistics presented on trade volumes do not include EU intra-trade.

Chart 6: Percentage share of merchandise exports (RTAs in force, notified and not notified)



2.4. In addition to existing RTAs notified by G20 economies, the WTO Secretariat estimates that on average each economy is currently involved in around 8 RTA negotiations, some of which, notably the TPP, RCEP, Pacific Alliance, MERCOSUR-EU and the EAEU are plurilateral negotiations, involving several G20 and non-G20 economies. Although not enough information is available on these negotiations to make an assessment of how far they will go in liberalizing trade between their parties, they are interesting in that they have the potential to consolidate existing bilateral relationships into a larger plurilateral agreement. Potentially, this could reduce some of the complexities associated with many different bilateral relationships (such as multiple rules of origin) which are a disincentive for the development of value chains. Once negotiations are completed and the agreements enter into force, the amount of preferential trade between these trading partners will also increase. Again, while the share of preferential trade out of total trade is not available, Chart 7 shows the potential impact of these negotiations on G20 trade once the agreements are completed. For a number of G20 economies the impact of these RTAs will be significant. For instance, for Japan, around 80% of its trade would be with RTA partners once current negotiations are complete and agreements come into force (compared to less than 20% currently); and for Australia, Brazil and the EU trade volumes with RTA partners would double or more. Once again, only merchandise trade is reported as bilateral services trade data are not readily available.

Chart 7 : Share of merchandise trade with current and potential RTA partners (including RTAs being negotiated)



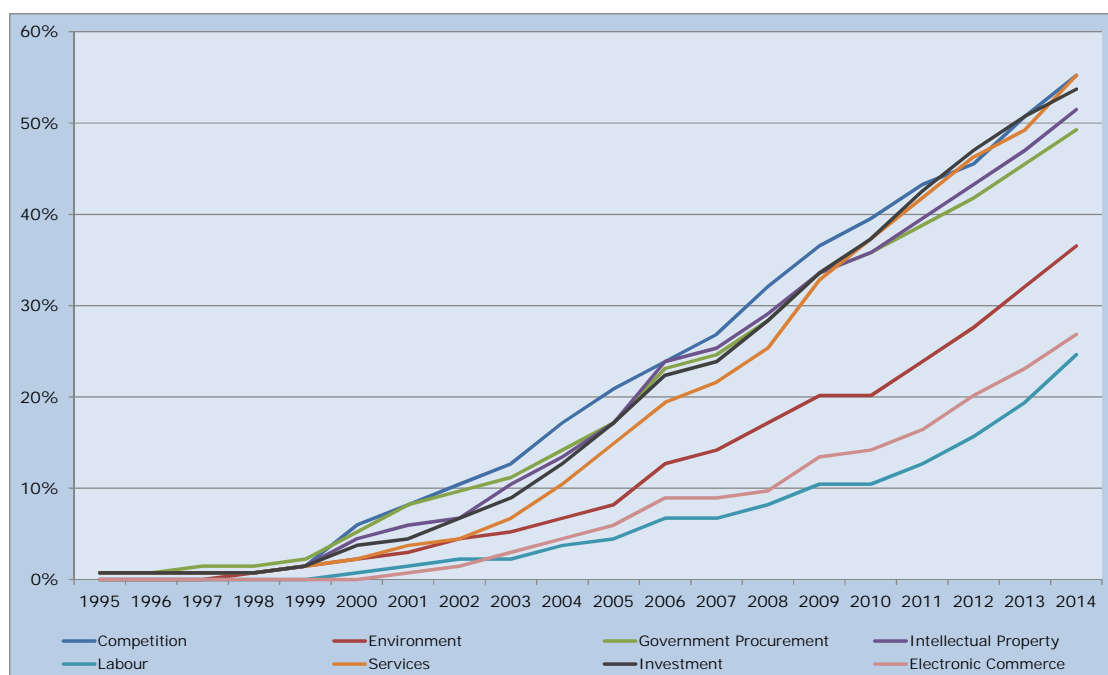
## 2.2 Key provisions in RTAs

2.5. Having identified G20 RTAs and their trade with key RTA partners, the next three subsections take a closer look at the provisions contained in these RTAs. All RTAs notified to the WTO, including those by the G20 economies, include liberalization commitments in goods, based either on a few tariff lines or a more significant share of the tariff. The negotiation of tariff concessions within RTAs are typically based on applied not bound rates. Over time, however, it has become more common for G20 economies to negotiate and notify RTAs that cover goods but also services liberalization commitments and other issues. Around half of all RTAs involving G20 economies are notified as including both goods and services provisions. Since 2000 the share of G20 agreements notified involving goods and services has risen to around 55%, and since 2010 to 60%. Saudi Arabia, South Africa and Turkey have RTAs which provide preferences only in goods, with the remaining G20 economies all having notified RTAs with goods and services provisions.

2.6. Like the general trend, the RTAs involving G20 economies have become more ambitious over time. For instance 54% of G20 agreements notified since 2000 include provisions in investment, 52% in intellectual property rights that go beyond the parties' TRIPS commitments, 55% have competition provisions, 49% government procurement commitments and 27% electronic commerce, while 37% and 25% have environment and labour provisions. The evolution of these provisions in RTAs notified to the WTO since 2000 are shown in Chart 8 below.<sup>9</sup> Further details by G20 economy are provided in the Annex.

<sup>9</sup> The chart provides information by the date of entry into force of the RTA. It goes back to 1995 because some of the agreements notified since 2000 had already entered into force in 1995.

Chart 8: Evolution of Provisions in G20 RTAs (RTAs in force, notified since 2000)



2.7. Not all of these provisions are likely to have the same kind of interaction with or impact on the multilateral trading system. The provisions could be divided into three broad areas: first, there are provisions for which there are WTO rules but for which RTA texts do not go beyond existing WTO commitments: they either repeat the WTO provision in the RTA text or make the WTO provision part of the RTA text or are simply silent with regard to that particular provision. In such cases one could conclude that with regard to that provision, the particular RTA does not diverge from the multilateral rules. A second case is when an RTA provision clearly is different from that in the WTO rules. The most obvious example which covers all RTAs is that of tariff preferences which by providing additional market access to an RTA partner, diverge from conditions that are available to other WTO Members. Finally, a third category is that of issues for which there are no WTO provisions. For instance, any provisions on competition would diverge from the WTO rules as the WTO does not have rules on competition.

### 2.2.1 Provisions that maintain WTO standards

2.8. This section identifies two instances where provisions in RTAs maintain the standards currently set by WTO provisions. First, where WTO provisions are repeated verbatim or incorporated into RTA texts, confirming that the parties to the RTA maintain their rights and obligations with regard to that provision under the WTO Agreements. A second case, however, is when there are certain provisions for which there are WTO rules, which are not mentioned explicitly in RTA texts. The assumption is that in such cases, the parties, where they are WTO Members, nevertheless maintain their WTO rights and obligations.<sup>10</sup>

2.9. Recent work by the WTO on anti-dumping found that 75.1% of RTAs involving the G20 simply reaffirm existing rights and obligations or substantially replicate the language of the WTO Agreement.<sup>11</sup> Another 17.4% of RTAs do not explicitly refer to anti-dumping in the text of the agreement suggesting that for them the status quo of WTO rights and obligations remains. This means that for almost 93% of RTAs to which G20 economies are party, the WTO anti-dumping rights and obligations are not substantially modified by anti-dumping regimes established in their RTAs. With regard to the remaining 7.5% of RTAs, the parties agree to limit their WTO rights to take anti-dumping measures on products originating in their RTA partners. In 10 agreements the

<sup>10</sup> Assumption based on responses to questions raised by WTO Members in the context of consideration of RTAs in the WTO's CRTA. In the case where a key provision is missing in the RTA text and the Members have WTO commitments, the response has inevitably been that the parties adhere to their WTO commitments.

<sup>11</sup> Rey, J.D. (2012).

RTA explicitly or implicitly prohibits the use of anti-dumping measures on imports from RTA partners. Of these, seven agreements explicitly prohibit the use of anti-dumping between the parties to the RTA, and make changes to procedures, including to address situations of alleged dumping; while three others also prohibit the use of anti-dumping between RTA parties and do not make any procedural changes. Finally, for two agreements that are customs unions, it is assumed that the use of anti-dumping by the parties to the customs union against each other's products are prohibited. These findings have been confirmed by a study based on all RTAs notified to the WTO which concludes that: (i) the establishment of preferential anti-dumping regimes by RTAs does not generally result in fundamental changes either in the legal framework and the general pattern of anti-dumping actions taken by the parties; while (ii) deep integration such as through the formation of customs unions (such as the EU) or deep FTAs (such as that between Australia and New Zealand) results in substantial change in the anti-dumping patterns of RTA parties.

2.10. For SPS and TBT also, relatively few substantive differences are found in RTAs from the WTO Agreements. Whenever these exist, they tend to be different procedures, reporting or notification requirements, or the possibility of mutual recognition agreements. In TBT for instance current work being done by the WTO finds that around three-quarters of G20 RTAs include provisions on TBT. Most RTAs that have no TBT provisions were notified before 2000. However, in general, TBT provisions in these agreements simply reaffirm the parties' rights and obligations under the WTO TBT Agreement. A small number of cases introduce new provisions, including on coverage, MRAs, labeling and marking or stronger commitments in the areas of harmonization and equivalence. In terms of coverage, about half of the G20 RTAs cover standards, technical regulations and conformity assessment, and a minority also cover metrology (15 RTAs). Very few RTAs (6%) do not cover conformity assessment procedures (mainly RTAs involving Turkey), 2% cover technical regulations and conformity assessment procedures or conformity assessment procedures only. Moreover, only 2% of the G20 RTAs cover TBT with respect to services (4 RTAs).<sup>12</sup>

2.11. There are also certain patterns that emerge from the RTAs of G20 economies. For instance in some of the EU agreements notably with its eastern European partners (7% of G20 RTAs), commitments to harmonize technical regulations and conformity assessment procedures are included; however, as on other issues, these RTAs are different from most others in that they relate to approximation of laws with those of the EU. Only 2% of G20 RTAs include commitments to accept as equivalent the technical regulations of the other Party. Similarly a small number of RTAs (mainly those of Japan and the Republic of Korea) include commitments to accept conformity assessment procedures undertaken in the territory of the other Party. In 23% of the G20 RTAs the Parties are encouraged to enter negotiations on MRAs (mainly those of China and India).<sup>13</sup>

2.12. In some cases the Parties have also included sector-specific provisions in their RTAs, such as for medical and pharmaceutical products, electrical and electronic products, motor vehicles, telecommunications and food products. These provisions refer for instance to registration procedures in the case of pharmaceutical products; to the promotion of regulatory convergence in automotive; to guidelines or negotiations on the recognition of conformity assessment results; and to cooperation. These RTAs involve mainly the Republic of Korea, Japan, the EU and India. Finally, in the area of dispute settlement, only a minority of RTAs provide for formal dispute settlement proceedings that are specific to TBT issues. These RTAs involve mainly Japan and Mexico.

2.13. A recent paper by the OECD that looked in detail at 82 agreements confirmed that for these agreements that are spread out across all regions and involving both developed and developing countries, a majority do not include provisions that are stricter than those under the WTO TBT Agreement as a whole; nevertheless, more far reaching standards are found in RTAs mainly in relation to the acceptance of technical regulations as equivalent and mutual recognition of conformity assessment procedures and bodies.<sup>14</sup>

2.14. The results of ongoing research at the WTO, which covers a much larger sample of agreements notified up to the end of 2014, suggests that very few RTAs make the harmonization of technical regulations a goal of the RTA (mostly the EU agreements which intend to lead to

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<sup>12</sup> Taking the full sample, only 6 covered also services.

<sup>13</sup> WTO research in progress.

<sup>14</sup> Lesser, C. (2007).

accession to the EU of the RTA partner, or other customs unions such as Turkey-EU). A larger number of RTAs commit to make technical regulations of the parties compatible where possible, including RTAs involving Mexico, the Republic of Korea and the EU, while an even larger number "encourage" harmonization of technical regulations between the parties. Equivalence of technical regulations<sup>15</sup> is accepted by a very small number of RTAs, mostly involving some Latin American countries, the Republic of Korea, and the EU, as well as the NAFTA. In the case of some RTAs (e.g. EU-Korea and Australia-Singapore), sector-specific equivalence is recognized (food products in Australia-Singapore and the automotive sector in EU-Korea with the latter also providing for harmonization of technical regulations with international standards). With regard to conformity assessment, the results are similar with a small number of RTAs providing for harmonization of such procedures among RTA parties (mostly agreements between the EU and candidates for accession as well as other customs unions). Mutual recognition of conformity assessment procedures are, however, provided for in only a handful of agreements, in several cases covering specific sectors (electrical and electronic products, telecommunications and food products).

2.15. For SPS, current work being done by the WTO Secretariat suggests that as for TBT, SPS measures in RTAs have become more common over time, although relatively few go beyond the WTO SPS Agreement. The majority of agreements notified to the WTO up to the end of 2014 contain general exceptions similar to Article XX(B) of the GATT. Just over two-thirds of the agreements notified contain some form of SPS-specific provisions and about a fifth contain a dedicated SPS chapter. Of these RTAs some include obligations that go beyond the SPS Agreement but these extended provisions vary by agreement. Of the RTAs that contained substantive SPS provisions, 42% contain references to harmonization of SPS provisions between the parties, although 92% of these agreements do not go beyond the SPS Agreement. Around 38% of RTAs containing provisions on SPS provide for equivalence of standards, although only 19 agreements go beyond the SPS Agreement. SPS provisions in RTAs appear to go further on certain issues such as regional conditions, and transparency. Around 31% of RTAs contained provisions on adaptation to regional conditions. Of these almost three quarters went beyond the SPS Agreement. Some 40% of RTAs with SPS provisions include transparency provisions, the majority of which go beyond the transparency measures in the SPS Agreement. However, many of the SPS provisions are not subject to dispute settlement procedures in RTAs: a paper by the WTO Secretariat which looked at all RTAs notified up to end 2012 found that RTAs carved SPS out of dispute settlement in around 33% of cases which use the ad hoc adjudicative tribunal model of dispute settlement (see a more detailed discussion of dispute settlement below).<sup>16</sup>

2.16. In the area of safeguards, a WTO Staff Working Paper found that almost half of all RTAs notified until the end of 2012 had no provisions on safeguards in their legal texts. However, since WTO Members have legal obligations under Article XIX of the GATT and the WTO Safeguards Agreement, it could be assumed that they are bound by those legal obligations and therefore apply multilateral rules vis-a-vis their RTA partners.<sup>17</sup> A small number of RTAs prohibit the use of bilateral safeguards among their parties, while others provide for imports from the RTA partner to be excluded from the application of a global safeguard, under certain conditions. The remainder introduce changes on safeguards, but many of these are procedural and it is hard to find any particular trends by country or over time in these provisions.

2.17. While rules of origin in goods are frequently mentioned as a source of divergence, they are also used in services agreements (expressed in terms of denial of benefits). They generally require service providers or companies to be constituted under the laws of one of the parties and to have substantive business operations in the territory of the party. The majority of RTAs use substantive business operations as in GATS Article V.6., without defining them more specifically.<sup>18</sup>

2.18. On intellectual property rights, while there are a number of RTAs that introduce rules that go beyond commitments under the TRIPS Agreement, around 45% of agreements examined in a

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<sup>15</sup> Article 2.7 of the WTO Agreement on Technical Barriers to Trade states that "Members will give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations".

<sup>16</sup> Chase, C. et.al. (2013).

<sup>17</sup> Crawford, J.-A., J. McKeag and J.Tolstova, 2013.

<sup>18</sup> Latrille, P. and J. Lee (2012) found that of all RTAs notified to the WTO up to the end of 2010, 80% followed the language in Article V.6 on substantive business operations.

recent paper by the WTO reaffirm parties' existing rights and obligations. For agreements involving the G20 around half go beyond the TRIPS Agreement although not all these reflect changes in legislation, some could also be procedural changes, adhering to international IPR conventions, improved enforcement, cooperation etc. Many agreements also contain commitments on national and MFN treatment suggesting that even if commitments go beyond the TRIPS Agreement they are provided also to other WTO Members (see Section Three).

2.19. Thus for some provisions there appears to be little significant divergence from multilateral commitments which continue to remain the preferred international standard for most G20 economies. In other cases even where commitments go beyond the WTO Agreements, many agreements contain explicit commitments to provide national and MFN treatment. The next two sub-sections look at where there is divergence between RTAs and the multilateral trading system and the introduction of issues in RTAs for which there are no WTO rules.

### 2.2.2 Commitments and provisions that differ from WTO standards

2.20. The main reason for negotiating and signing RTAs is to provide additional preferences to the RTA partner compared to what is available at the MFN level for all other WTO Members. This is clearest in the provision of additional market access through lower preferential tariffs and additional sectoral commitments in services. In the case of market access in goods typically an RTA partner will commit to eliminating or reducing applied MFN tariffs on the basis of a margin of preference for the other party. Depending on the terms of the RTA this commitment could be implemented immediately upon entry into force of the agreement or over a period of time (transition period), depending on the sensitivity of the product.

2.21. For services, additional sectoral commitments could be made or existing commitments deepened for the RTA partner and/or restrictions scheduled under the GATS could be reduced or eliminated. Both goods and services liberalization are usually accompanied by additional rules (such as exceptions, SPS and TBT provisions, safeguards etc.) which would also have an implication for whether the overall effect of the RTA is liberalizing or not. In this section we look at such market access provisions but also other provisions that are included in RTAs which differ from WTO standards or those provided on an MFN basis by the parties.

#### 2.2.2.1 Trade liberalization in goods and services

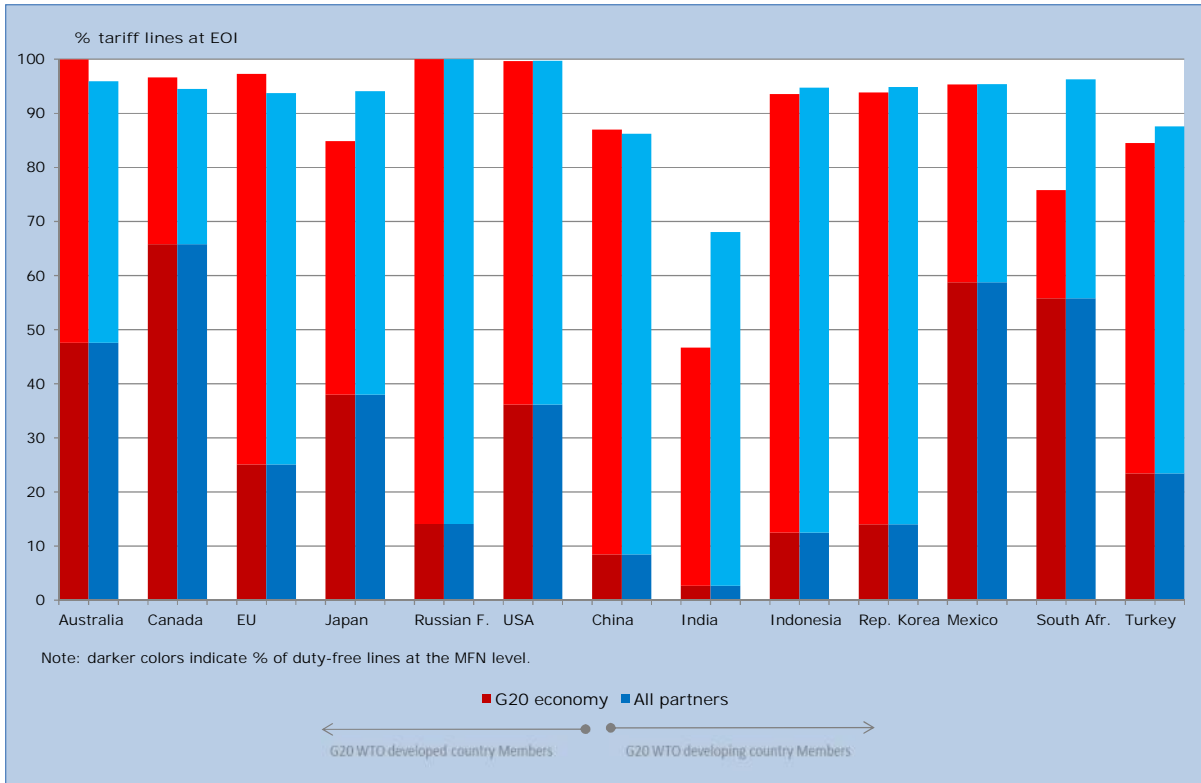
2.22. All the G20 RTAs that were notified to the WTO by the end of 2014 liberalize trade in goods and therefore eliminate all or part of the tariff on a preferential basis. However, there is a great variation in the share of the tariff liberalized, sometimes for the same G20 economy with different trading partners, the transition period over which liberalization takes place, and the percentage of MFN duty-free lines which serves as the starting point for liberalization. Chart 9 below shows average liberalization by G20 economies ranging from 47% for India to 100% or almost so for the Russian Federation, the United States and, in the case of Australia, for its G20 RTAs. It should be noted, however, that Chart 9 as well as Chart 10 are based on those Agreements which have undergone the RTA's Transparency Mechanism.<sup>19</sup> That may bias the results by showing more liberal RTAs regime overall than the reality, because RTAs that have undergone the Transparency Mechanism are generally more recent RTAs which tend to liberalize further than older agreements.

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<sup>19</sup> 67 G20 RTAs, out of 163, were subject to the Transparency Mechanism (TM). None of the RTAs of Argentina, Brazil, Saudi Arabia or Russian Federation have been subject to the TM. Agreements concluded by the latter have nevertheless been included in Charts 9 and 10 because relevant information is available in the WTO Secretariat.

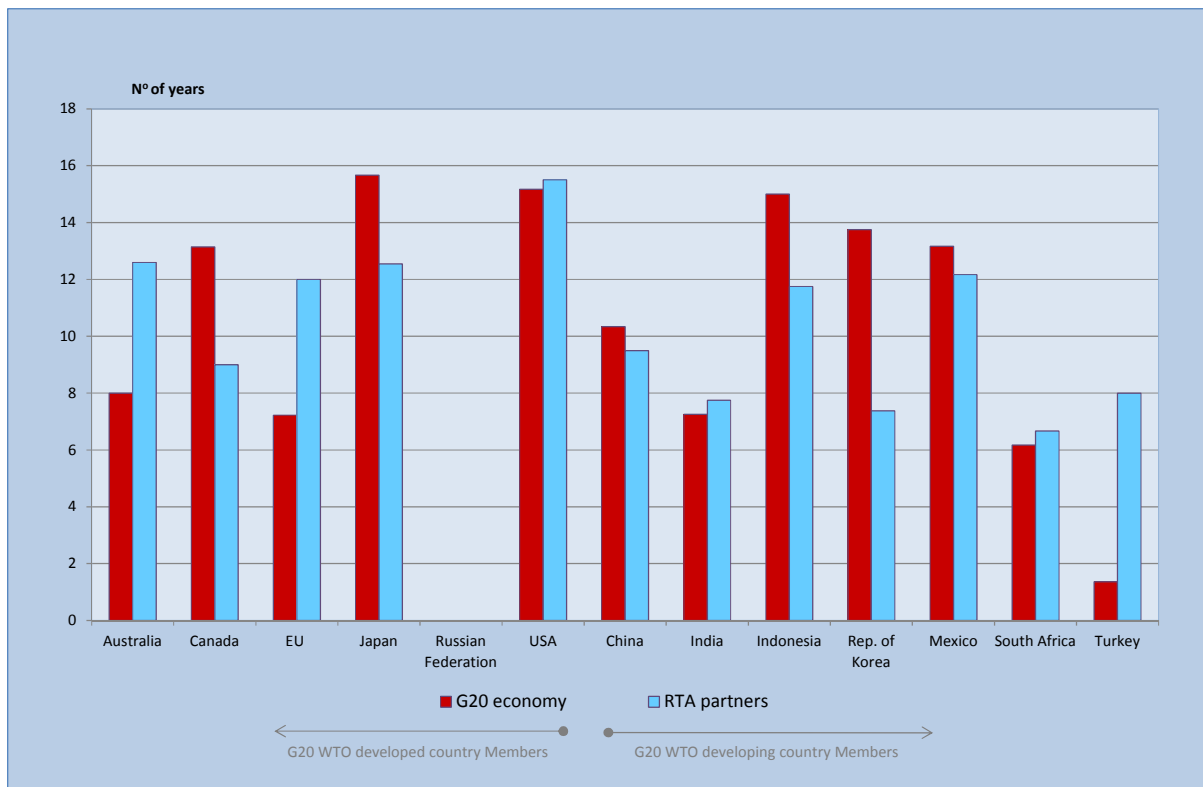


Chart 9: G20 RTAs: Average liberalization at the end of implementation



2.23. Chart 10 shows the average implementation period for the G20 economy in its RTAs which ranges from immediate for the Russian Federation and one year for Turkey to 16 years for Japan. No data are available for RTAs involving Argentina, Brazil and Saudi Arabia. The commitments made by G20 members and general RTA commitments are discussed further in Section Three.

Chart 10: G20 RTAs: Average length of the implementation period



2.24. The overall commitments to liberalize, nevertheless, conceal tariffs that are not liberalized in many RTAs. Although the tariffs that are not liberalized vary for G20 economies, they are especially common in sensitive sectors such as agriculture and processed food, and to a lesser extent in textiles and clothing and motor vehicles.

2.25. Market access in services is more difficult to analyse in part because the analysis is based on commitments (GATS and RTAs) rather than actual access. It is also complex because the approach followed in RTAs is often based on a negative list for which an exact comparison with GATS commitments made on the basis of a positive listing is not always possible. The difference between the two is that while the positive list approach lists all sectors and commitments and reservations in a positive list, the negative list only lists limitations, the assumption being that everything else that is not on the list is liberalized. The remainder follow either a mixed list approach combining elements or both or belong to the EU family of agreements which have different objectives (such as enlargement) than only market access.

### 2.2.2.2 WTO-related provisions

2.26. In addition to liberalization commitments, most RTAs are accompanied by disciplines which have an impact on market access. These include rules of origin for both goods and services, trade defence measures, trade facilitation, SPS and TBT measures and services rules.

2.27. Rules of origin are a key feature of RTAs. Their inclusion is important to ensure that trade deflection in goods does not occur; although also included in rules in services, they are less significant. RTAs today tend to use a combination of rules, including a change in tariff classification (at the heading or sub-heading level), value added and processing requirements. Product specific rules are becoming increasingly common, with the Annex on such rules running into hundreds of pages. While they are used ostensibly to avoid trade deflection and free riding by third parties, recent research by the WTO Secretariat raises the possibility that they are increasingly becoming economic, political and trade instruments to manage trade between RTA partners.<sup>20</sup> Rules of origin

<sup>20</sup> Donner Abreu, M. (2013).

should be analysed in conjunction with tariff elimination aspects of RTAs in order to provide a complete picture as stringent rules of origin can negate the benefits of tariff elimination if, for instance, local content requirements are too high.

2.28. With regard to rules of origin in services trade, as pointed out in the previous sub-section there are fewer divergences, with the majority (80%) of RTAs using substantive business operations as in GATS Article V.6 without further defining them. In services rules, most of the RTAs involving the G20 economies follow one of two approaches: a GATS type positive list approach (around 47% of G20 RTAs follow this approach) or a negative list approach based on the model first identified and subsequently followed by the North American Free Trade Agreement (NAFTA), which is followed by around 37% of G20 RTAs.

2.29. The architecture of an agreement based on a negative list is different from the GATS type approach in that it contains distinct chapters on cross border trade in services which covers three modes of supply: modes 1, 2 and 4, while a separate chapter on investment covers mode 3. The NAFTA model of commitments can be further subdivided into two slightly different approaches, the difference being stricter market access commitments in the second of the two approaches which has been followed by more recent RTAs in this group. Finally, there is a third "residual" category which includes RTAs that use a hybrid approach (positive and negative listing) such as the EU agreements (sometimes followed by EFTA as well) especially with its neighbourhood. The goal of these agreements is more geared towards harmonization and integration of these economies with that of the EU as many are potential candidates for accession to the EU. Some provisions in the EU agreements for instance on employment and temporary movement of persons therefore go much further than the GATS or NAFTA type agreements.

2.30. While there are differences in preference for positive and negative lists for scheduling commitments, this does not necessarily suggest that the obligations are particularly deeper for one or the other. Rather unexpectedly, in fact, Members do not appear to have taken advantage in their RTAs to create new obligations that go significantly beyond the GATS. They have also not used their RTAs to introduce or strengthen issues that are currently being discussed in the WTO such as safeguards, domestic regulations and subsidies.

### 2.2.3 Other issues

2.31. Increasingly, a number of provisions for which there are no legal disciplines in the WTO are appearing in RTAs. As identified above, these include investment, and competition, environment, labour and electronic commerce.

2.32. Among the G20 economies investment is included in the RTAs of all but the Russian Federation's bilateral agreements with its CIS partners; it should be noted, however, that several economies have chosen to negotiate separate bilateral investment treaties (BITS) which although not reflected in their RTAs would suggest that they have agreed preferential investment disciplines. Because the BITS are not notified to the WTO, the information on investment is not complete. Competition policy, whether as a separate chapter or article in an RTA is also present in the RTAs of a majority of G20 economies although more so in the RTAs of developed than developing G20 members. Like for investment, the Russian Federation has competition provisions in the EAEU Treaty but not in its bilateral agreements with its CIS partners.

2.33. Fewer G20 RTAs include provisions on electronic commerce, environment and labour than for the previous two issues. Provisions in all three areas are mostly found in the RTAs of developed G20 economies, with the latter two provisions found especially in RTAs with developing country partners. There are nevertheless a few developing G20 economies, notably Mexico and the Republic of Korea, that also include provisions on electronic commerce in some of their RTAs, while the Republic of Korea also includes environment and labour provisions in some of its RTAs with other developing countries.

2.34. Thus, as would be expected, it is the developed economies of the G20 that have taken the lead in including such "new" issues in their RTAs. To the extent that they have RTAs with developing countries, these provisions have been included in those RTAs. However, more recently, G20 developing economies have also started to include such issues in their RTAs, especially investment and competition, and to a lesser extent environment, labour and e-commerce.

## SECTION THREE: RTAS AND THE MULTILATERAL TRADING SYSTEM

3.1. For some issues identified above, the overall trend in RTAs is to maintain the status quo under multilateral rules. However, as also indicated above, for several other issues RTAs are moving away from multilateral rules and developing standards of their own. Moreover, many RTAs include issues that are not yet covered by the multilateral rules. This section will take a more detailed look at last two categories discussed above: provisions which differ from WTO provisions and provisions for which there are no WTO disciplines. The objective will be to see to what extent these provisions go beyond the WTO and whether there are any trends that can be identified such as which G20 economies tend to use such provisions.

### 3.1 Provisions that go beyond existing WTO commitments and rules

3.2. There are several provisions in RTAs that have the potential to go beyond WTO rules. As shown in Chart 9 above, in general, RTAs liberalize a greater number of tariff lines in bilateral trade than in multilateral trade. However, the overall trend masks sectors in which tariff liberalization does not occur, particularly in the case of sensitive products, as depicted in Chart 11. Information included in Chart 11 is however subject to some caveats: (i) it refers to 66 G20 RTAs for which the Secretariat has preferential tariff data,<sup>21</sup> out of a total of 163 G20 agreements notified to the WTO and in force,<sup>22</sup> (ii) the Chart, which provides an average of the share of lines remaining dutiable by HS Section of each G20 economy, does not include seven Agreements for which there are no products remaining dutiable for G20 economies;<sup>23</sup> and (iii) some Agreements involving India and Turkey are notified under the Enabling Clause which do not require liberalizing "substantially all the trade".<sup>24</sup> More generally, the information therein is limited to tariffs and does not address other issues such as subsidies to agriculture and non-tariff barriers. Also, as it is the case for Chart 9, the possible bias for showing more liberal RTAs regime overall than the reality also applies to Chart 11.

3.3. An analysis of G20 RTAs for which the Secretariat has preferential tariff data shows that tariffs that are not liberalized at the end of implementation of RTAs are especially prominent for agricultural products of HS Sections I to IV, namely live animals and animal products; vegetable products; animals or vegetable fats, waxes and prepared edible fats; and prepared foods, beverages, tobacco and substitutes. These products remain protected by most G20 economies for which data is available, with the exception of Australia - which fully liberalize agricultural products - and vegetables which are also fully liberalized in the United States Agreements. The most sensitive groups of agricultural products are meat, dairy products, animal and vegetable fats, sugar as well as preparations of cereals.

3.4. Other products for which fewer tariffs are liberalized include textiles and footwear (HS XI and XII) and to a slightly lesser extent vehicles (HS XVII) as well as arms (HS XIX). Protection for textiles is high in South Africa and India, and for footwear in India, Japan and South Africa; vehicles tend to remain protected by India, China, Mexico and South Africa. In addition, there are particular sensitivities by G20 economy. This would suggest that while in general RTAs are successful in liberalizing tariffs further, they have been relatively unsuccessful in tackling sensitive sectors. Given the sensitivity of these sectors, further liberalization may be best addressed in the multilateral context.

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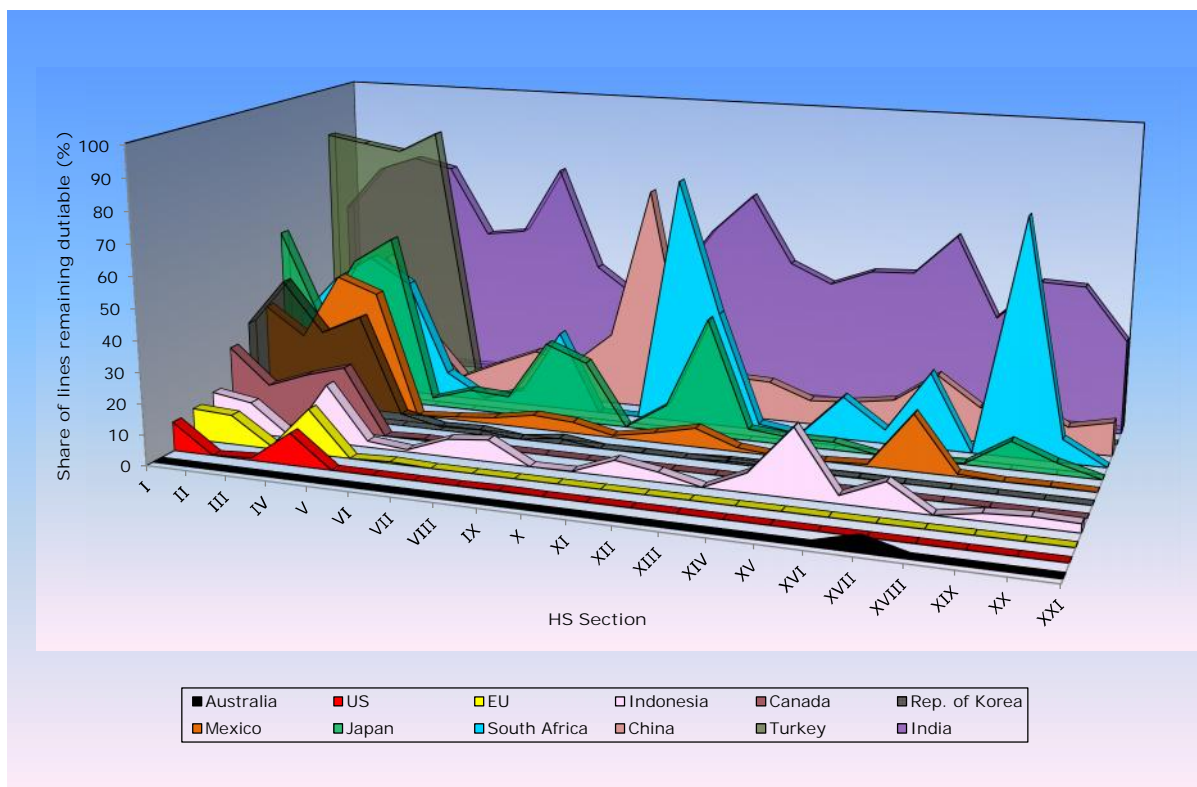
<sup>21</sup> Those that have undergone the WTO's TM and for which data at such level of detail is available.

<sup>22</sup> The ratio of Agreements considered out of the total number of agreements vary for each G20 economy: none for Argentina, Brazil, Saudi Arabia and Russian Federation; all RTAs of Japan; half of Australia's and South Africa's RTAs. For the remainder, between one-fourth of RTAs of Indonesia, EU, Mexico, India, and the United States, and between half and two-thirds of RTAs of Canada, China, Turkey and Republic of Korea.

<sup>23</sup> Namely Australia-Chile, Australia-Malaysia, Australia-Thailand, the Southern African Customs Union (SACU), US-Bahrain, US-Morocco and US-Oman.

<sup>24</sup> The following RTAs notified under the Enabling Clause were included: India-Malaysia, Chile-India and Egypt-Turkey.

Chart 11: Percentage of products remaining dutiable at the end of implementation (by HS Section)



Notes:

Only Agreements with data in the RTA database are included.

No data on Agreements with Argentina, Brazil, Saudi Arabia and Russian Federation.

Seven Agreements for which there are no products remaining dutiable for G20 economies are also excluded from the Chart. These are: Australia-Chile, Australia-Malaysia, Australia-Thailand, SACU, US-Bahrain, US-Morocco and US-Oman.

Source: WTO RTA database.

3.5. Another instrument to provide limited market access is tariff rate quotas (TRQs). These are especially used in sensitive agricultural sectors and provide limited market access based on negotiated annual quota quantities which may or may not be increased and/or phased out over time. For instance, Turkey's RTAs, while generally excluding agricultural products from liberalization, tend to provide limited market access through TRQs. While some RTAs set new TRQs, in general they tend to provide additional market access to products already listed under WTO TRQs. Special agricultural safeguards are also used in a more limited number of RTAs and most agreements agree to phase them out after a transition period.

3.6. In services, as in goods, additional market access commitments are usually negotiated through regional trade agreements. In trade in goods, additional liberalization is compared to applied MFN or other tariffs, while in services, improvements in market access are compared to GATS commitments. Improvements in market access would include both improvements in sectors in which the parties already have GATS commitments as well as any new sectors scheduled in their RTAs for which they have no GATS commitments. The first of these is difficult to measure especially given the inherent difficulty and subjective nature of comparing negative list commitments with positive list commitments of Members in the GATS. Nevertheless, an analysis of additional sub-sectoral commitments made in RTAs by G20 economies shows an improvement in G20 RTAs in general (Table 1 below). As for goods, there are wide variations among G20 members and in several cases RTAs negotiated by the same Member differ quite widely in terms of new sectoral services commitments. In general, Canada and the United States tend to increase their sectoral commitments to include the same number of sectors in their RTAs, while Australia, the EU, Japan and the Republic of Korea show some variations. Both India and Mexico have doubled the number of sectors in which they have made commitments although from a very different GATS base (37 sectors for India and 77 for Mexico).

Table 1: Additional sectoral commitments by G20 economies in their RTAs

G20 Member/RTA	Sectoral Commitments		G20 Member/RTA	Sectoral Commitments	
	GATS	RTA		GATS	RTA
Argentina	63		Japan	109	
MERCOSUR		77	Japan-Indonesia		157
Australia	103		Japan-Brunei		146
ASEAN-Australia-New Zealand		109	Japan-Chile		150
Australia-Chile		148	Japan-India		127
Australia-Malaysia		110	Japan-Indonesia		156
Australia-Singapore		147	Japan-Malaysia		136
Australia-Thailand		104	Japan-Peru		146
U.S.-Australia		157	Japan-Philippines		145
Korea-Australia		144	Japan-Singapore		136
Brazil	44		Japan-Switzerland		143
MERCOSUR		70	Japan-Thailand		141
Canada	101		Japan-Vietnam		118
Canada-Chile		150	Mexico-Japan		124
Canada-Colombia		150	Korea, Republic of	96	
Canada-Panama		150	EU-Korea		120
Canada-Peru		150	ASEAN-Korea		116
NAFTA		146	EFTA-Korea		109
China	92		India-Korea		105
ASEAN-China		98	Korea-Australia		119
China-Hong Kong, China		137	Korea-Chile		135
China-Macau, China		142	Korea-Peru		137
China-New Zealand		94	Korea-U.S.		149
China-Chile		96	Singapore-Korea		134
China-Costa Rica		76	Mexico	77	
China-Iceland		92	Mexico-Central America		158
China-Pakistan		110	Mexico-Chile		134
China-Peru		95	Mexico-Colombia		151
China-Singapore		94	Mexico-Japan		132
China-Switzerland		91	Mexico-Peru		157
European Union	114		NAFTA		153
EU-Central America		141	Russian Federation	125	
EU-Cariforum		140	EAEU		n.a.
EU-Colombia, Peru		141	United States	110	
EU-Georgia		159	Australia-U.S.		152
EU-Korea		143	CAFTA-DR		152
EU-Moldova		159	Korea-U.S.		152
EU-Ukraine		159	NAFTA		152
EU-Chile		124	U.S.-Bahrain		158
India	37		US-Chile		152
India-Korea		82	US-Colombia		152
India-Malaysia		64	US-Jordan		106
India-Singapore		85	US-Morocco		152
Japan-India		97	US-Oman		152
Indonesia	45		US-Panama		152
ASEAN-Australia-New Zealand		56	US-Peru		152
ASEAN-China		47	US-Singapore		152
ASEAN-Korea		58			
Japan-Indonesia		61			

Note: G20 economies that are Member States of the EU are included under EU RTAs. G20 economies with no services RTAs are not included in the table. In addition where G20 economies have RTAs that include services some have not been included either because there are no specific commitments (eg. EFTA-Mexico, EU-Mexico, Mexico-Uruguay or the EAEU) or where services commitments are made in the form of generic national treatment obligations (e.g. Australia-New Zealand or the EU agreements that call for an approximation of legislation, e.g. EU, EEA, EU-Albania, EU-FYROM, EU-Serbia).

Source: WTO Secretariat based on the I-TIP Services Database, GATS Schedules of Specific Commitments and RTA texts and annexes.

3.7. More generally, research by the WTO Secretariat in 2011 suggested that services commitments in RTAs for all WTO Members tend to go beyond their GATS commitments in over 40% of services sub-sectors including through the introduction of new sub-sectors for which these

Members have no GATS commitments.<sup>25</sup> As in goods, there are divergences between sectors and modes of supply in services liberalization. Research by the OECD suggests that generally the levels of commitments are fewer in modes 1 and 2 but involve new sectors, while modes 3 and 4 improve commitments in a greater number of sub-sectors.<sup>26</sup> The study also found that significant additional commitments in market access have been made in RTAs across all sectors, with the highest level of commitments found especially in distribution services, business services and tourism, while health related, social services, financial services and transport were at the lower end. There remains nevertheless considerable heterogeneity of commitments in services across RTAs. A large number of RTAs also tend to exclude either entirely or from the Chapter dealing specifically with the service, three sectors: air transport, maritime cabotage services and financial services (fewer with respect to the last sector). A number of RTAs also exclude subsidy disciplines and other forms of financial support.<sup>27</sup>

3.8. Despite the divergences the OECD study also found similarities in the commitments made by key Members: among OECD economies, Australia, Canada, the EU and the United States have the highest share of similar commitments in their RTAs.

3.9. Issues related to market access in goods include rules of origin that are aimed at preventing trade deflection through third parties. They are more important in goods trade than in services trade, although they are also present in RTAs in services. RTAs today tend to use a combination of rules including a change in tariff classification (most commonly at the heading level), value added and processing requirements, with product specific rules of origin becoming more common and extensive in RTAs. Rules of origin are particularly complex in agriculture and in textiles and clothing.

3.10. While it is true that rules of origin are becoming increasingly complex, a picture of hubs and spokes is emerging showing common rules or "families" of rules of origin. Research on rules of origin carried out by the WTO Secretariat for instance shows 3 distinct families or hubs based around the European Union, NAFTA or intra-Americas agreements and agreements negotiated by the CIS countries,<sup>28</sup> while no clear model can be associated with the Asia-Pacific region. The EU agreements in particular allow extension of preferences to non RTA parties by permitting cumulation of origin. The Pan-European-Mediterranean diagonal cumulation regime for instance permits cumulation with the 42 participants of this rules of origin regime. The EU, along with EFTA also permits diagonal cumulation with Western Balkan countries. Two particularities of the NAFTA-type rules of origin include alternative rules of origin based on different value-added requirements, depending on whether the net-cost or the transaction value method is used, and a more extensive use of the full cumulation principle. As for CIS, particularities involve the absence of tolerance rules allowing de minimis inputs from third parties and a CIS-residency requirement.

3.11. In addition to diagonal cumulation, and as production networks evolve, new ways are being found, including through rules of origin, to integrate production in third parties into RTAs. This includes authorizing outward processing in the RTAs rules so that certain activities can take place in third countries under strict conditions, while maintaining the origin status of the final product. Such hubs have developed for instance around the EU, Singapore and the Republic of Korea.

3.12. Trade facilitation provisions, depending on how they are defined, are found in almost all RTAs notified to the WTO by the G20 but are quite disparate, ranging from customs procedures aimed principally at ensuring the implementation of preferences under RTAs including rules of origin and customs procedures, to measures specifically aimed at facilitating trade such as transparency, advance rulings and details of fees and formalities.

3.13. There has been an evolution over time, with many more recent RTAs including a separate and extensive Chapter on trade facilitation that includes not just customs procedures but details on the three articles covered by the WTO's Trade Facilitation Agreement (Articles V, VIII and X of

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<sup>25</sup> Roy, M., 2011.

<sup>26</sup> Miroudot, S. J. Sauvage and M. Sudreau (2010).

<sup>27</sup> The OECD paper found this to be the case for 71% in a sample of 66 RTAs.

<sup>28</sup> Donner Abreu, M., 2013.

the GATT 1994).<sup>29</sup> Another key influencing factor appears to be the launch of WTO negotiations on Trade Facilitation in 2004; most RTAs negotiated since then appear to have provisions on trade facilitation. In addition many of the issues being included in trade facilitation chapters since the launch of negotiations in Geneva tend to be similar to those negotiated in the WTO. Furthermore, as one would expect, the issues included in G20 RTAs are issues which were also favoured by the G20 members in the negotiations leading up to the Agreement on Trade Facilitation: online publication, expedited shipments, penalties and consularization for the United States, simplification of procedures, authorized exporters and use of international standards for the European Union, and appeal provisions for Japan.<sup>30</sup> In addition, for other G20 members, transparency, cooperation, fees and formalities are increasingly included under the chapter on customs procedures and/or trade facilitation. In a large number of cases institutional mechanisms such as Committees or sub-Committees are also established by RTAs to review rules and implementation.

3.14. There are, nevertheless, considerable differences between G20 members in their approach to these issues. With regard to cooperation for instance some agreements limit it to cooperation to provide technical assistance or build capacity, while others agree to cooperate on trade facilitation measures in international fora so as to improve transparency or trade facilitation measures. While a large number of RTAs commit the parties to publishing information on legislation and proposed laws on the internet, a relatively small number of them allow prior public comment by interested parties. Over a third of G20 RTAs include provisions on advance rulings, most of them related specifically to rules of origin, but some also include advance rulings of tariff classification, or customs valuation. The level of detail on advance rulings also varies considerably between agreements.

3.15. As noted by a WTO Secretariat Staff Working Paper, while most RTAs include issues covered by the WTO Agreement on Trade Facilitation, very few come close to covering the whole range of issues in the WTO Agreement.<sup>31</sup> Many of the RTAs concluded after 2004 contain facilitation measures that were effectively developed in the WTO. On the other hand, the paper also notes that some RTAs also go considerably beyond the Trade Facilitation Agreement.<sup>32</sup> However, the special and differential treatment and technical assistance and capacity building provisions in RTAs tend to be weaker than those provided for under the WTO Agreement and binding dispute settlement provisions in RTAs for TF issues are rare.

3.16. Another issue covered by the WTO agreements that is increasingly found in RTAs is intellectual property rights. Very often reference to intellectual property rights in RTAs appears as a reaffirmation of the RTA partners' rights and obligations under the TRIPS Agreement. However, in around 52% of G20 RTAs at the end of 2014 the section on intellectual property rights went beyond a reaffirmation of the TRIPS Agreement even if simply to add more precision to commitments. There is great variation in the extent to which agreements go beyond the TRIPS Agreement, ranging from improved cooperation or technical assistance including for enforcement of TRIPS commitments, to agreement to join international treaties under WIPO and agreements on intellectual property rights, to making amendments to domestic legislation on intellectual property. In general, developed members of the G20 tend to have more extensive chapters or sections on intellectual property rights in their RTAs, while agreements among developing countries tend to reflect commitments under the TRIPS Agreement. For instance RTAs negotiated by the European Union tend to have an extensive section on geographical indications, reflecting the EU position in the current DDA negotiations as well. The United States also has an extensive chapter in its RTAs although more emphasis is placed on increased protection for copyright, trademarks and on improved enforcement. The EAEU Agreement between Armenia, Belarus, Kazakhstan and the Russian Federation also provides longer protection for trademarks and creates an "appellation of origin" for EAEU products.

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<sup>29</sup> Neufeld, whose paper is based on all RTAs notified to the WTO up to end June 2013, suggests that trade facilitation began to feature in RTAs negotiated in the 1980s and has become a more prominent feature of RTAs since the 1990s (Neufeld, N. 2014).

<sup>30</sup> Neufeld, N., 2014.

<sup>31</sup> The exceptions noted by the paper included EU-Korea, EFTA-Ukraine, EFTA-Albania and EU-Colombia, Peru (Neufeld, N. 2014).

<sup>32</sup> Issues identified in the paper include concrete release times for goods, more specific and detailed provisions on appeals and rights of review. In addition, as noted above, the section on trade facilitation in RTAs tends to be broader than the Agreement on Trade Facilitation.



3.17. Such protection is not only confined to developed G20 members. Some developing G20 economies also consistently include GIs in their RTAs (notably Mexico, and G20 RTAs involving Chile). Developing countries also have other interests with respect to IPRs and these are also reflected in their agreements. For instance in a number of agreements involving developing countries, G20 members have made commitments with regard to biological diversity and traditional rights (e.g. China-Costa Rica, EU-Colombia, Peru; Japan-Indonesia, Japan-Peru, Peru-China).

3.18. Recent research by the WTO Secretariat has confirmed the emergence of a hub and spoke system with the largest systems grouped around the United States, the European Union, EFTA but also Japan, Mexico and Chile as the WTO Members most active in negotiating RTAs and also including IPR provisions in them.<sup>33</sup>

3.19. Several RTAs explicitly make a commitment to provide MFN and national treatment in the IP Chapter. However, it should be noted that while the GATT through Article XXIV and the GATS through Article V allow Members to take an exception to MFN treatment when negotiating RTAs, the TRIPS Agreement does not have a similar general provision.<sup>34</sup> The assumption from this would be that RTA parties that are Members of the WTO would have to provide national and MFN treatment to nationals of other Members even where these might result in higher protection than is currently provided under the TRIPS Agreement, including through RTAs. In that sense, RTA commitments would be extended to all other WTO Members.

3.20. With regard to Government procurement, among the G20, Canada, France, Germany, the European Union, Italy, Japan, the Republic of Korea, the United Kingdom and the United States are parties to the WTO Agreement on Government Procurement (GPA); Argentina, Australia, China, India, Indonesia, the Russian Federation, Saudi Arabia, and Turkey are observers, with China negotiating accession to the GPA. Brazil, Mexico and South Africa are neither parties nor observers.

3.21. With regard to RTAs involving the G20, almost 50% of all G20 agreements in force and notified to the WTO up to end 2014 include provisions on Government procurement. Of these RTAs around 75% involve at least one G20 GPA party and 15% are between GPA parties. Among the G20 GPA parties, the developed economies tend more than the others to include procurement provisions in all or most of their RTAs notified since 2000. Nevertheless, the level of their commitments in terms of the total number of entities covered remains largely unchanged from their overall GPA commitments. Thresholds scheduled under the GPA, however, are lowered in some cases, notably by the Republic of Korea in some of its RTAs (e.g. with Chile, Singapore, and U.S.), U.S. (e.g. with the Republic of Korea, Australia, Morocco) and Canada (e.g. with Colombia, Panama). Mexico which is not a GPA party tends to base its thresholds on the NAFTA. To the extent that thresholds are lowered therefore, the GPA parties offer additional preferences to their non-GPA RTA partners.

3.22. For agreements between GPA parties, in general there are no additional commitments provided, as the vast majority maintain their GPA commitments in the RTA including the entities covered and the thresholds scheduled under the GPA.

3.23. It is, however, interesting to see to what extent non-GPA parties make commitments in their RTAs with GPA parties. Among the G20 agreements examined for this study, around 57% are with non-GPA parties (including observers to the GPA). Of these a small number include rendezvous clauses (e.g. EFTA-SACU) or no specific commitments (e.g. EU-Egypt, EU-Jordan, India-Japan, India-Korea, Japan-Indonesia, Japan-Philippines) but a significant share include firm commitments including thresholds and covered entities. In some cases the commitments are quite extensive including lists of central and regional entities covered as well as thresholds for procurement of goods, services and construction services.

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<sup>33</sup> Valdes, R. and M. McCann (2014).

<sup>34</sup> Articles 3 and 4 respectively of the TRIPS Agreement require Members of the WTO to provide each other national and MFN treatment with respect to intellectual property rights, subject to the exceptions indicated by these two Articles.

3.24. In terms of other trends, for some G20 economies government procurement commitments in their RTAs have become somewhat more detailed over time. For instance Japan's more recent RTAs for instance with Peru includes more substantive rules although in general like for its other RTAs, Japan makes no new commitments compared to its GPA commitments in its RTAs. Many of Japan's RTAs also include the creation of sub-committees to consult and expand the parties commitments on government procurement.

3.25. Thus for the vast majority of RTAs, it would appear that while GPA parties do not make any additional commitments in their RTAs, they do use their RTAs to obtain more commitments from their non-GPA partners.

3.26. Dispute settlement is another issue that cuts across and is widespread across all RTAs in force and notified to the WTO. Previous work on dispute settlement provisions in RTAs has identified three kinds of distinct models or approaches: the political or diplomatic model, the ad hoc panel model and the standing tribunal.<sup>35</sup> Over the years a large number of RTAs have moved towards using the ad hoc panel model; the standing tribunal model is used among a small number of cases, principally customs unions, but the use of the political model has declined. Among the G20 economies, around 76% of agreements use the ad hoc panel model, while 22% and 3% respectively use the political model and standing tribunal models respectively. The standing tribunal is used by the EU and the EAEU and related agreements such as the CIS Agreement and the customs union between Belarus, Kazakhstan and the Russian Federation which is the precursor to the EAEU, while the political model appears to be preferred by the older agreements involving the Russian Federation and its CIS partners, India and Turkey for some of their agreements and China with Hong Kong, China and Macao, China.

3.27. While it is clear that most RTAs today include dispute settlement provisions, some of them quite extensive, frequently certainly RTA provisions are carved out of the dispute settlement chapter. Recent research by the WTO Secretariat for instance shows that issues for which there are WTO provisions such as SPS, TBT, and trade remedies are frequently excluded from dispute settlement provisions. This seems to suggest a preference for the WTO's DSU to resolve disputes even with RTA partners. Issues for which the WTO has no disciplines such as competition, environment and labour are also frequently excluded from the dispute settlement provisions of the RTAs which have rules on them. Furthermore, little is known about the extent to which these provisions are actually used, with anecdotal evidence suggesting there are few cases and when there are, there appears to be a preference to tackle them through the WTO's DSU. One innovation found in some RTAs (particularly those involving the United States) is the provision of financial compensation by a responding party as an alternative to the suspension of concessions by the complaining party.

## 3.2 Other issues

3.28. The new issues identified above that are increasingly prominent in RTAs are investment, competition, government procurement (for those who are not party to the WTO's GPA), electronic commerce, labour and environment.

3.29. Investment provisions, as mentioned above, are often included in RTAs which contain commitments in both goods and services. As chart 8 above showed there has been a clear increase in the number of RTAs that include such provisions over time from less than 5% of G20 RTAs in 2000 to 54% at the end of 2014. Investment provisions are a standard feature of RTAs involving developed economies, but are now becoming increasingly common in RTAs between developing economies.

3.30. It should be noted that commitments in investment are frequently made in Bilateral Investment treaties (BITs) that are not notified to the WTO as they are not RTAs so this figure is probably an underestimate. Certain WTO rules touch upon investment, notably the General Agreement on Trade in Services (GATS), through mode 3 which covers commercial presence, and the Trade-related Investment Measures (TRIMS) Agreement, which restricts the use of trade related investment measures that restrict imports through quantitative restrictions and which does

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<sup>35</sup> See for example Chase et. al.

not provide national treatment.<sup>36</sup> However, investment as such is not covered by the WTO Agreements.

3.31. There has been significant convergence in the last decade on investment provisions. Obviously, agreements will vary in terms of details of the legal drafting, but 'investment protection' obligations on expropriation, minimum standard of treatment, and transfers are now typically found in investment chapters of RTAs. Most agreements use a broad definition of investment that encompasses any type of asset. This can be accompanied by an investor-state dispute settlement (ISDS) mechanism which provides investors with the possibility to go to international arbitration and seek monetary compensation arising as a result of a breach of the investment provisions.

3.32. A key difference between agreements relate to the scheduling modalities used in relation to the liberalization obligations. The dominant model is that of a negative-list approach. This was first used in the NAFTA, which contained a chapter on cross-border trade in services that covers modes 1, 2 and 4, and a chapter that covers investment in all sectors. In such agreements, the obligations of the investment chapter on national treatment, but also MFN, performance requirements, and senior management and boards of directors apply fully to all sectors, unless provided otherwise in reservations that are listed in annexes of non-conforming measures. This contrasts with the positive-list approach of the GATS, whereby the national treatment and market access obligations only apply to sectors listed in a schedule and subject to limitations inscribed. In a negative-list agreement, if something is not listed, full commitments are undertaken, while in a positive-list agreement this means that no commitments are undertaken.

3.33. Negative-list agreements typically contain two annexes of non-conforming measures, one that lists existing non-conforming measures and binds the applied level of openness, and a second annex where Parties can inscribe reservations allowing them to maintain or adopt new non-conforming measures in the future.

3.34. In the last decade or so, negative-list agreements have further evolved: in addition to the approach described above, these RTAs include a market access obligation modelled on the GATS that applies not only to modes 1, 2 and 4, but also to commercial presence in services sectors.

3.35. Negative list agreements are preferred by the United States, Canada, several Latin American countries, as well as such others such as Japan, Korea and Singapore. In certain other countries, disciplines on investment in RTAs are more limited, with provisions limited to GATS-type chapters on trade in services, and few provisions on investment, sometimes limited to post-establishment like in most BITs. However, that is now changing as many developing countries are venturing beyond such approaches, e.g., China, India or some ASEAN countries.

3.36. The European Union, for its part, has taken a somewhat different approach to investment in its RTAs. In a number of its recent RTAs (e.g., with Colombia, Peru, Central America, CARIFORUM), it has followed an approach whereby commitments were undertaken for investment in all sectors on the basis of a GATS-type positive-list approach. Investment was defined more narrowly than in other investment agreements to cover 'commercial presence'.

3.37. Competition policy provisions were found in around 55% of G20 economies' RTAs at the end of 2014, compared to less than 5% in 2000. This is likely to understate the growing importance of competition in RTAs as competition provisions are frequently found outside the competition chapter and can refer to sector specific competition policies, such as in telecommunications; such sector specific provisions are not included in the figure above.

3.38. The majority of G20 economies include competition issues in their RTAs.<sup>37</sup> Other key trends that can be identified is that competition rules are most detailed in RTAs involving the developed

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<sup>36</sup> The TRIMS Agreement envisaged all inconsistent measures being notified and eliminated within 2 years by developed Members, 5 years by developing Members and 7 years for least-developed Members of the WTO. An illustrative list of inconsistent measures is annexed to the Agreement.

<sup>37</sup> Among the G20 members who are also members of MERCOSUR (Argentina and Brazil), only Brazil has ratified the MERCOSUR Protocol on Defence of Competition (CCM Decision N° 18/96), signed on 17.12.96 and in force for Brazil since 8 September 2000.

economies of the G20. While the general objective of the competition section or chapter in RTAs is to proscribe anti-competitive behaviour, the RTAs involving the developed economies tend to be more detailed in describing and defining anti-competitive behaviour and the relationship of the competition chapter to designated monopolies.

3.39. However, in general, the competition section or chapter is carved out from the dispute settlement mechanism of the RTA so the commitments cannot be enforced through the dispute settlement mechanism of the agreement; the anti-competitive behaviour is nevertheless subject to domestic law and in a number of cases mechanisms are set up to permit consultations between the parties to resolve issues. There are a few exceptions, notably some of the agreements involving Canada and the United States, for instance that subject designated monopolies and state enterprises to the dispute settlement mechanism of the agreement. Since the WTO does not have rules on competition either, competition provisions in RTAs are therefore generally not subject to DSU procedures in the multilateral trading system either. The tendency for RTAs to exclude competition from the dispute settlement mechanism was confirmed in a previous study done in 2013 by the WTO Secretariat which confirmed that out of 147 agreements that used the ad hoc tribunal model for dispute settlement, competition was excluded in around 46% of cases.<sup>38</sup>

3.40. The agreements of some G-20 economies tend to have common approaches, for instance RTAs involving the United States and Canada tend to follow an approach which closely follows the NAFTA chapter on competition. Although less ambitious and detailed, Japan also follows a common approach in a number of its RTAs. The agreements of the United States also tend to have strong competition elements in other chapters, notably telecommunications, government procurement and investment. Competition provisions in agreements negotiated by other NAFTA partners tend also to be related to agreements negotiated by the United States. In comparison, Japan's and the Republic of Korea's RTAs, while also proscribing anti-competitive behaviour, place more emphasis on cooperation with RTA partners and reliance on domestic policies for enforcement. In some cases, RTAs also develop mechanisms to ensure cooperation between the parties on enforcement. Reference is also made to the provision to technical assistance and regular interaction between the parties' respective competition authorities to ensure effective enforcement. The EU's agreements with eastern European countries and potential candidates for accession are notably different in that they refer to approximation to EU competition policies and the RTA is also used to lend greater transparency and discipline to State Aid schemes.

3.41. Environment provisions<sup>39</sup> are increasingly appearing in the RTAs especially of the developed economies of the G20 (Australia, Canada, the EU, Japan and the United States) and to the extent that they have RTAs with developing members of the G20, those RTAs have environment provisions. Developing members such as India, Korea, Mexico, and Turkey also have environment provisions in some of their RTAs. From less than 3% of RTAs in 2000, environment provisions were found in around 37% of RTAs by the end of 2014. Not all RTAs have extensive chapters or provisions and some G20 economies (notably Canada) appear to have a preference to sign separate Environment Agreements along with the text of the RTA with their trading partners (a notable exception is Canada-Korea which has a chapter on the Environment). Where there are chapters or such side agreements, however, they tend to use similar language or a template approach in the RTAs of these economies.

3.42. The most common feature of the environment chapter or section is a commitment by the parties to ensure that their domestic environment laws are not used for protectionist purposes and also that environmental standards are not lowered to attract investment. This kind of commitment is found even in RTAs without extensive environment provisions. In many of these RTAs the parties agree to adhere to international environmental standards. As for the case of many other "new" issues, however, environmental provisions in RTAs are more often than not carved out of dispute settlement mechanisms. Dispute settlement is permitted in a relatively small number of RTAs. However, a number of agreements nevertheless allow for mechanisms to hold consultations between the parties to resolve disagreements but stop short at permitting the use of the dispute settlement mechanism; this includes direct consultations through Committees or sub-Committees

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<sup>38</sup> Chase, C. et. Al. (2013).

<sup>39</sup> Most RTAs also include protection of the environment as one of the reasons for maintaining general exceptions to the Agreement (as in GATT Article XX). These have not been included here. The analysis relates to specific sections, chapters or side letters that deal specifically with the environment.

or a request to establish an Expert Committee which functions under the RTA's dispute settlement procedures. Almost a third of the Agreements examined involving the G20 economies established Committees or sub-committees or envisaged the creation of a sub-committee under the RTA's institutional mechanisms. In a number of cases where no such institutional mechanism was envisaged, the Agreement nevertheless provides for cooperation between the parties to ensure that environmental standards are maintained.

3.43. Labour provisions are found in around 25% of the G20's RTAs at end 2014, compared to under 1% in 2000. As for provisions relating to the environment, labour provisions are mainly found in the RTAs of G20 developed economies with other developing economies. As is the case for environment provisions, certain G20 members, notably Canada appear to have a preference to sign separate Labour Cooperation Agreements with their RTA partners, and both Canada and the US tend to use common language in their RTAs.

3.44. Like environment provisions in RTAs a common feature of all RTAs containing labour provisions is that they agree that it is inappropriate to lower or weaken labour standards and laws to encourage trade. Most RTAs also make reference to the ILO principles and the parties strive to protect these principles in their domestic laws. These provisions generally tend to be carved out of the dispute settlement chapter although the United States tends to subject labour provisions to dispute settlement in its agreements.

3.45. Electronic commerce provisions were included in 27% of the G20 RTAs examined in this paper. In 2000 there were no explicit references to electronic commerce in notified G20 RTAs. As for other new provisions, provisions on electronic commerce are found more in RTAs negotiated by developed members of the G20, notably, Australia, Canada, EU, Japan and the United States. Moreover, a number of their RTAs tend to use similar language and make similar commitments in the electronic commerce chapter. In addition, some agreements involving only developing Members such as Mexico-Central America, also have provisions on electronic commerce. Absent from this list are G20 developing economies such as Argentina, Brazil, India, South Africa.

3.46. Almost all G20 RTAs declare a moratorium on applying customs duties on products that are traded electronically, reflecting the agreement in the WTO Work Programme on Electronic Commerce.<sup>40</sup> While some members further clarify that they extend this commitment to charges other than customs duties, others maintain their rights to charge local taxes. The definition of electronic commerce remains a point of difference between Members with some such as the EU consistently defining electronic commerce as services, while others do not venture into a specific definition. The WTO's Work Programme on Electronic Commerce defines electronic commerce as "the production, distribution, marketing, sale or delivery of goods and services by electronic means".

3.47. Encouraging transparency through the exchange or publication of all measures of general application, and ensuring consumer protection against fraudulent practices are other issues found across a number of agreements that contain provisions on electronic commerce. A number of agreements also agree that regulations on electronic commerce should not form an unnecessary regulatory barrier to trade.

## SECTION FOUR: IMPLICATIONS FOR NON-G-20 DEVELOPING COUNTRIES<sup>41</sup>

### 4.1 Implications for non-G20 developing countries of G20 preferential trade agreements

4.1. This section examines the implications for developing countries outside the G20 of regional trade agreements (RTAs) concluded between G20 members. Developing countries outside the G20 are a diverse group, making it very challenging to generalize about effects of G20 RTAs on them. Numerous variations like level of development, trading partners, export and import profile, and whether the country has existing RTAs with G20 members will affect the extent and manner in which each developing country is affected by RTAs among G20 members.

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<sup>40</sup> The WTO's Work Programme on Electronic Commerce is implemented in the Councils for Trade in Goods, Trade in Services and TRIPS, as well as the Committee for Trade and Development.

<sup>41</sup> Preparation of this section was led by the World Bank Group

4.2. Taking these limitations into account, this section aims to provide some general observations about potential benefits and risks generated by RTAs between G20 members, as a starting point for further detailed exploration and discussion of the extent to which these risks and benefits apply, and what strategies could be employed to address them.

#### 4.2 How are G20 RTAs likely to have different effects on non-participating developing countries, compared with RTAs in general?

4.3. The likely different effects of RTA G20s compared with RTAs in general underpin the rationale for looking at this issue in the G20. What is different about RTAs negotiated by G20 members? First, because of the size of their economies and their importance in international trade, RTAs agreed by G20 countries are likely to have a significant impact on international trade at a systemic level. While a number of G20 members are themselves developing countries, their size and prominence in international trade underlines the importance of understanding the impact of their policy decisions through RTAs on smaller developing countries. Second, G20 members are in general the key trading partners not just for others in the G20, but for those outside the G20, generating a higher potential for trade diversion. Even where this is not the case, exports to G20 countries, or inputs imported from G20 countries to increase productivity, are likely to be an important feature of the development of most, if not all, developing countries. Also, because many G20 countries offer tariff preferences to developing countries, this raises the potential for preference erosion.

4.4. This section includes a number of generalizations, intended to summarize existing research, and as a starting point for further analysis and policy discussion. The observations are by necessity general: in reality the RTAs negotiated by G20 countries are heterogeneous, with varying degrees of tariff liberalization and “deep” integration through cooperation on regulatory and other non-tariff matters. Another important caveat is that G20 members have also concluded RTAs with non-G20 developing countries, further complicating the effects discussed in this section.

##### 4.2.2 Potential benefits

4.5. In a number of areas G20 RTAs have potentially positive effects on non-G20 developing country outsiders. In general, these positive effects are likely to occur where the policy changes brought about by an RTA among G20 countries applies on a non-discriminatory basis – in other words, that either by design or in practical reality there is no way of confining the positive, trade-liberalizing effects of an RTA only to the other RTA partner/s.

4.6. First, deeper economic integration among G20 countries can stimulate global GDP growth, with spillover effects for developing countries outside the G20. As G20 members are major sources of world demand the effects through this path are potentially very significant. Since the 2008-09 crisis, discussions in the G20 have increasingly focused on structural reform - including through trade policy - as a way of re-energizing global growth, complementing fiscal and monetary stimulus. The commitments taken by G20 Leaders in 2014 at the Brisbane Summit feature numerous trade-related actions, with the intention of stimulating global growth. Many of these may be implemented through RTAs, as well as unilateral reform and through the WTO.

4.7. Second, liberalization in services trade can often be non-discriminatory in effect. Barriers to services trade removed through RTAs are often regulatory issues – removing these regulatory barriers and applying the new regime only to an RTA partner is generally not sought because it introduces additional regulatory complexity, undermining the efficiency-increasing objective of liberalization. Even where discriminatory treatment against non-RTA partners exists in law, it may not be implemented in practice. Rules of origin in services aspects of RTAs are also generally liberal. There are exceptions to this and it is possible that services liberalization can have discriminatory effects. Some forms of liberalization in services are easier to apply only to the RTA partner – for example, movement of natural persons, foreign equity restrictions, or foreign director investment screening. Nevertheless, the general impact of services liberalization through G20 RTAs is likely to generate more openings for those developing countries outside the G20, rather than leading to greater restrictions.

4.8. Third, other largely “domestic” policy reforms brought about through RTAs among G20 partners are likely to have benefits for those developing countries outside these G20 RTAs. This

includes reforms to competition, intellectual property protection, transparency, or anti-corruption. In a similar way to services commitments, policy changes brought about by G20 RTAs in these areas involve changes to the way in which the domestic economy operates, and are likely to confer benefits for non-G20 developing country trading partners. For example, reforms to increase transparency of trade-related policies would bring benefits to all firms seeking to better understand the policy regime, not just those based in the G20 RTA partner. To take another example, strengthening competition legislation and the role of competition authorities in a G20 RTA partner gives additional rights to firms not only of the other RTA partner/s, but all firms operating in that country, including those from non-G20 developing countries.

4.9. Fourth, to the extent that liberalization through RTAs between G20 members increases competition and leads to more efficiency in their economies in a non-discriminatory manner, this is likely to have positive spillover effects on non-G20 developing countries trading with those in the G20, by lowering overall trade transaction costs. This is particularly true in services. For example, if an RTA generates greater competition in the transport and logistics sector in a major G20 country, lowering the transaction costs for firms seeking to export to that country, these benefits will be felt through lower costs for traders in non-G20 developing countries as well. Similarly, reforms to trade facilitation through G20 RTAs – complementing implementation of the WTO Trade Facilitation Agreement – lower trade costs in ways that benefit exporters and importers in G20 developing countries as well as the participants in the RTA.

4.10. Finally, economic integration through G20 RTAs can also serve as a “laboratory” for reform that can be applied more widely<sup>42</sup>. The character of economic integration has changed substantially in recent decades – being at the frontier of this process implies an uncertainty about the impacts, with associated risks. Non-G20 developing countries can in principle assess the impacts of certain approaches to economic integration pursued through RTAs among G20 members and then adopt those that have been most effective. Over time the approaches that were once seen as at the frontier of policy-making can become more widespread. Arguably, this was the case for the WTO Trade Facilitation Agreement, for example, which after becoming an increasingly central feature of RTAs and efforts to lower trade costs more widely, was seen as acceptable to all WTO Members, resulting in a negotiated deal. In general, the extent to which RTAs can serve as a “laboratory” rests largely on being able to assess the impacts of what has been implemented through RTAs, which requires transparency and greater analytical efforts, potentially with the support of international organizations (see below).

#### 4.2.3 Potential risks

4.11. A number of potential risks of economic integration through RTAs – compared in theory with liberalization through the WTO alone – need to be considered in terms of the economic impact on non-G20 developing countries.

4.12. The most commonly discussed impact of RTAs on non-participants is through trade diversion and preference erosion, brought about by the lowering of tariffs among RTA partners. The former occurs when a lowering of tariffs among RTA partners favors less economically efficient producers than would otherwise have been the case. The latter is when lower tariffs among RTA partners result in non-participant developing countries losing the competitive advantage through preferential market access schemes, like those a number of G20 countries maintain for Least Developed Countries (DFQF).

4.13. The strength of these effects is reduced when the initial tariffs among the RTA partners are lower. On average, G20 tariffs are low so the prospects for trade diversion and preference erosion are limited, although there are tariff peaks in some sectors (for example textiles, and agriculture) where the effects are likely to be stronger.

4.14. Preference erosion on specific products of concern is still possible for non-G20 developing countries. Given that LDC exports in particular are often highly concentrated in a narrow range of products, the impact of a loss of competitiveness in one of these products through preference erosion may be stronger than a relatively small change in tariff margin of preference might imply. This needs to be taken into account.

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<sup>42</sup> These have also been termed “learning effects”, Hoekman 2015

4.15. Rules of origin also affect trade diversion through RTAs. Rules of origin affect the extent to which traders in an RTA member can take advantage of any preferential market access offered by the RTA. Although they are often seen as a cause of increasing systemic complexity (the “spaghetti bowl” phenomenon) the effects on non-G20 developing countries of the rules of origin set are likely to be mixed, depending on the degree of tariff liberalization compared with MFN rates, and the degree to which the G20 parties have RTAs with non-G20 countries.

4.16. If a G20 RTA leads to significantly lower tariffs than those available to non-participants, and restrictive rules of origin are put in place for the utilization of these tariffs, this generates risks for the non-participants. This could be offset with more liberal rules of origin, e.g. those that allow for cumulation (see below) but this is unlikely to have widespread effects unless the rules of origin are made so liberal as to allow for significant sourcing from non-G20 developing countries, while still allowing the RTA participant to use the preferential tariff rate.

4.17. Rules of origin are an important systemic issue and generate costs for firms, with evidence that many firms opt to use an MFN rather than preferential tariff, because of the compliance costs involved. However, the risks generated through restrictive ROOs used in G20 RTAs are more likely to relate primarily to the extent to which tariff liberalization through these RTAs results in trade diversion on products of importance for non-G20 developing countries.

4.18. The potential introduction through RTAs of new regulatory standards not found in the WTO disciplines is often identified as a risk for small developing countries outside the G20. Although this is not true of all G20 RTAs, a number include so-called “21<sup>st</sup> century issues” not covered by existing WTO disciplines, encompassing wide-ranging regulatory issues seen as affecting some of the dominant contemporary trade trends, for example trade through global value chains. To the extent that RTAs among G20 countries result in standards that are likely to apply to any trading partner with them (including non-G20 developing countries) this could have important consequences on non-participants. This requires careful analysis and the potential implications are likely to be mixed and vary greatly depending on specific approaches taken through RTAs.

4.19. Some potential benefits for non-G20 developing countries exist through regulatory changes brought about through some G20 RTAs (e.g. in transparency or competition, as discussed above). The main issue of relevance for G20 considerations on the implications of their RTAs on non-participating developing countries is the extent to which RTAs result in reduced compliance costs for outsiders. RTAs normally results in mutual recognition of other parties’ standards, rather than negotiating new, harmonized standards<sup>43</sup>. If this results in a situation where exporters from outside the RTA are required to comply with only one standard, rather than each RTA party’s standard, this could lead to reduced compliance costs.

4.20. The relationship between RTAs and global and regional value chain trade presents another risk. There is some evidence that integration through RTAs – when it includes “deep” regulatory and other cooperation beyond tariff liberalization – stimulates GVCs-related trade<sup>44</sup>. The effect of G20 RTAs on non-G20 developing countries here is likely to be mixed. For those non-G20 countries that are party to RTAs with G20 countries, particularly when these RTAs involve “deep” integration measures, they may be more likely to be part of GVC-related trade. Those that are not involved in such agreements with G20 members may find themselves increasingly isolated from GVC-related trade, unless they are able to join these RTAs.

4.21. Finally, a key risk often identified is a systemic one – that RTAs negotiated by G20 countries undermine the relevance of the multilateral trading system, thereby harming non-G20 developing countries. The WTO is of critical importance for small developing countries and for the global economy as a whole. The multilateral framework of the WTO gives even the smallest developing country Members a voice in setting trade rules. As assessing the risks to the system involves hypothetical scenarios about different approaches it cannot be evaluated thoroughly within the limitations of this paper. However, the delivery of a multilateral Trade Facilitation Agreement, along with other decisions, in December 2013 – following active negotiation and conclusion of RTAs by G20 countries – suggests that it is possible to deliver results in both contexts. Maintaining the long-term relevance of the WTO by delivering such results in a multilateral context is of great

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<sup>43</sup> Messerlin 2015

<sup>44</sup> WTO 2011



importance. Further work to monitor the coverage and implementation of RTAs, with an eye to understanding the future potential for “multilateralizing” certain provisions, should WTO Members determine that is an effective path, would also be helpful.

### 4.3 Strategies to offset risks

4.22. More thorough evaluation of the potential risks generated by G20 RTAs for non-G20 developing countries needs to be the starting point for designing strategies to offset any risks generated. As the preceding discussion demonstrates, it is hard to generalize about the risks that exist, and they vary depending on the nature of the RTA and non-G20 developing country or countries in question.

4.23. To improve the analytical base for policy-making, one useful step would be for G20 members to conduct and publish evaluations of the impact of their RTAs on third parties, with a focus on the most vulnerable non-G20 developing countries. This would facilitate an open discussion about the costs and benefits involved. This could be underpinned by a more intensive effort by international organizations and other partners to help build understanding of the issues involved, drawing upon the technical expertise of various organizations in specific areas to provide a platform for increased dialogue on these issues.

4.24. This aside, some general strategies are likely to be relevant in offsetting any risks generated by G20 RTAs on non-G20 developing countries.

4.25. First, as noted in the previous section, leadership by G20 members in the WTO would be a highly effective strategy to offset the potential risks identified above. Ensuring the WTO remains relevant as a negotiating forum and delivers results that lower trade costs among all Members is of great importance. The Bali WTO Ministerial Conference helped generate momentum. Ensuring that the post-Bali effort to develop a work program for concluding remaining elements of the Doha Round bears fruit would affirm the importance of the multilateral system and would help address many of the perceived systemic risks of G20 RTAs.

4.26. Second, strategies could be pursued that increase the inclusiveness of G20 RTAs by opening and facilitating participation by new participants. In many cases this is likely to be a long-term objective, but potential fragmentation of the trading system would be reduced by opening participation in G20 RTAs to non-G20 developing countries, coupled with assistance to help them comply with the RTA provisions where relevant. Although the extent to which it is relevant to non-G20 developing countries that are not party to RTAs with G20 countries may be limited, the use of more liberal rules of origin (for example, diagonal cumulation, to allow sourcing from more countries while still qualifying for preferential tariff rates) could also help increase the inclusiveness of G20 RTAs and reduce trade diversion.

4.27. Third, approaches that maximize the potential for non-G20 developing countries to comply with standards set through G20 RTAs could have a positive impact. As discussed above, many RTAs – including those involving G20 members – incorporate forms of mutual recognition of regulatory standards across the parties. Extending this principle to non-participating developing countries could lower the costs of compliance and improve the competitiveness of firms in non-G20 developing countries. For example, if a subset of G20 members decide through an RTA that the standards existing in one of their economies mean they meet the standards set in the others, non-participating exporters could also be judged to meet all participants’ standards if they meet only one. This could have significant positive effects on the competitiveness of non-participants in the RTA by reducing the number of regulatory standards that their traders need to comply with in exporting to key G20 markets.

4.28. Fourth, Aid for Trade has a critical role in managing potential risks on non-G20 developing countries. This can be based on four approaches. The first would be in building competitiveness in existing and new goods and services to offset any erosion of competitiveness brought about through G20 RTAs, and helping ease adjustment pressures cause by preference erosion. The second would be in helping non-G20 developing countries take advantage of opportunities opened up through non-discriminatory liberalization through G20 RTAs, with services trade likely to be a fruitful area of focus. The third would be using Aid for Trade to lower trade costs faced by non-G20 developing countries in general. Although trade costs have fallen in recent decades, they have

fallen more slowly for lower- than higher-income countries. Addressing the sources of these costs would help make non-G20 developing countries more competitive, regardless of developments underway in G20 RTAs. Fourth, Aid for Trade could be used to help achieve compliance with any standards established through G20 RTAs (as well as existing standards).

4.29. Finally, where the analysis of the potential impact of G20 RTAs identifies risks of preference erosion on specific products of importance for non-G20 developing countries – especially the poorest – preferential market access schemes could be adjusted to help offset this, including either deeper tariff preferences, preferences on a wider range of products, or both. The extent to which rules of origin limit preference utilization should also be considered. Although tariffs may no longer be the leading source of trade costs, they can be an important determinant of the competitiveness of particular suppliers. In general, the regular review of preferential market access schemes and their utilization would support a wider effort by G20 members to understand the impact of their trade policies, including through RTAs, on non-G20 developing countries.

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## 5 SOME PRELIMINARY CONCLUSIONS

5.1. The survey of RTAs involving the G20 economies suggests that while in general RTAs provide preferential treatment among the parties, thereby discriminating against third parties, there are reasons to believe that in some areas that divergence is less marked.

5.2. The issues which suggest greater divergence between RTAs and the multilateral trading system are well known and include market access in goods and services. However, in the rules making area, the evidence is less clear, especially given that rules are being created in RTAs in areas outside the WTO's mandate. For some provisions such as anti-dumping, there appears to be practically no divergence, with most Members opting for maintaining their rights and obligations under the WTO rules. For others like SPS and TBT provisions, there is some divergence but it may only be for a selected number of issues and countries. With regard to market access in both goods and services, there is probably quite a bit of divergence. However, as MFN tariffs are further reduced, there is less room for reducing remaining tariffs. The evidence also suggests that in a number of sensitive areas, moreover, RTAs have not been all that successful in reducing tariffs from the MFN level and that some issues, such as agricultural subsidies, are best tackled at the multilateral level. In the case of provisions for which there are no WTO rules as yet, rules developed in RTAs may provide helpful input to the development of future multilateral rules.

5.3. First, for some issues covered by RTAs, the multilateral rules remain the common standard and little attempt appears to have been made in RTAs to introduce new standards, given that multilateral action is already effective. Such issues identified by the paper include anti-dumping, and to a lesser extent, SPS and TBT and safeguards. In anti-dumping, it appears generally that in many cases the RTA simply reiterates the parties' rights and obligations under the WTO Agreements, and accordingly relevant disputes tend to be brought to the WTO dispute settlement. As for the widely used behind the border measures, such as SPS and TBT, while in general terms the majority of existing RTAs have achieved procedural improvements - in particular regarding transparency - they have been much less successful in going beyond the WTO rules.

5.4. Second, even in RTAs which diverge from the multilateral trading system and its commitments and rules, a number of common approaches have been identified. In the case of services and investment rules and for rules of origin, for instance, there are distinct approaches that are followed by different groups of countries, often based on geographic regions. In services and investment the NAFTA based negative approach to services and investment liberalization contrasts with the GATS based positive list approach which is followed by a different group of countries. While liberalization in these agreements is of course based on the market access considerations of the RTA partners, the architecture of the agreements remains the same or similar to others who follow the same approach (either NAFTA based or GATS based).

5.5. In rules of origin similarly, a large number of agreements tend to use either a NAFTA approach or belong to the EU family of agreements. In the approach to competition policy also there are families of agreements, each with a similar architecture and common approach to the inclusion of competition provisions in RTAs. Agreements negotiated by the United States for instance tend to concentrate more on horizontal principles of transparency, procedural fairness and non-discrimination as well as strong competition elements in sectoral chapters. Competition provisions in other NAFTA party agreements also tend to follow this approach. Agreements negotiated by the EU are based around a specific competition policy chapter but do not generally include competition elsewhere.

5.6. Dispute settlement is another area where a common approach is followed by a number of countries. Over time the dispute settlement chapters or provisions in RTAs have become more detailed and sophisticated. There has also over time been a distinct move away from dispute settlement mechanisms based on a political model which used diplomacy and consultations to settle disputes to an ad hoc tribunal model which provides an automatic right of access to third party adjudication through an adjudicator appointed to resolve the dispute. There also appears to be a strong geographic preference for these models. In the Americas there is a preference for the ad hoc adjudicative model which is also the case for Europe (except Turkey which tends to prefer the political model). The CIS also tends to use the political model except for its more recent agreements based around the EAEU which use a standing tribunal. In Asia there is a preference for using the political model especially in intra-regional RTAs in West Asia, while all other Asian RTAs (except China's agreements with Hong Kong China and Macau China) use the ad hoc adjudicative

model. The GCC uses the political model. Finally, South Africa tends to also use the ad hoc adjudicative model.

5.7. Third, certain features of RTAs may lend themselves more easily to be extended to third parties. These include, in the area of rules of origin, diagonal cumulation, tolerance rules and outward processing schemes. More generally, several agreements contain MFN and accession clauses which suggest they may be more open to extension to third parties. With regard to cumulation, the Pan-European-Mediterranean area provides a common set of rules of origin which applies to all 42 parties linked to the European Union through RTAs. The EU and EFTA also permit diagonal cumulation with the Western Balkan countries. Such rules can attenuate the complexity of modern rules of origin and permit the development of regional value chains and production networks. Current efforts to consolidate bilateral preferential relations for example through the Trans-Pacific Partnership Agreement and the Regional Comprehensive Partnership Agreement or the Pacific Alliance for instance provide an opportunity to permit cumulation among all the parties to the Agreement once they are negotiated.

5.8. Tolerance and de minimus rules are included in rules of origin i.e. products with content from third parties are nevertheless accepted as meeting the rules of origin requirements if such content is below a certain threshold. The thresholds are usually different: 10% for the Pan-euro-Med region, 7% in NAFTA, except for cigarettes and cigars, which have a threshold of 9%. Other RTAs of the NAFTA family have a threshold between 7% and 9%. Other RTAs are generally within the range of 8% to 10%, with notable exceptions being the much lower limitation of the Pacific Islands Trade Agreement (2%), and the much higher threshold of 15% applied to the EU-South Africa RTA as well as those with ACP countries. It would make sense to harmonize these rules, given especially that in most cases there are small differences between the tolerance thresholds.

5.9. Finally, in the area of rule-making, where new provisions such as competition, environment, labour are being introduced, many of these issues lend themselves on a practical basis to non-discrimination. If new competition legislation is passed by a country as a result of a commitment made in an RTA for instance, it would be impractical to restrict its application only to the RTA partners. Furthermore, in the area of intellectual property rights, the TRIPS Agreement does not permit a GATT Article XXIV type derogation and therefore all changes to IP legislation made as a result of an RTA must be extended to all WTO Members on an MFN basis.

5.10. Thus, while there are divergences both between RTA rules and commitments and vis-à-vis the multilateral trading system, the divergences are smaller in some cases than one would expect. In some cases such as anti-dumping, safeguards, SPS and TBT provisions many RTAs tend to follow WTO rules and so for those provisions there are fewer divergences with WTO rules. In market access in goods, RTAs do go beyond what Members provide each other on an MFN basis, but for sensitive products, RTAs have tended not to make a difference and trade for these products continues to occur on an MFN basis.

5.11. Differences between RTAs may also be fewer than one would have expected. Certain Members tend to follow the same approach in all their RTAs regardless of who their RTA partners are. With certain Members following the same general architecture in their RTAs moreover, certain groups or families of RTAs have developed with similar rules.

5.12. Nevertheless, it is clear that differences exist and G20 Members could cooperate on a number of issues to make RTA rules clearer and more beneficial to traders. Some, such as rules of origin, have been identified above where cumulation, and de minimus rules could be used to make rules of origin more inclusive; special treatment could also be provided to least-developed countries. Others include enlarging existing RTAs or using MFN provisions to extend the same preferences to third parties. However, certain issues, such as sensitive products and subsidies, have so far not been tackled in RTAs and these and will need to be addressed on a more collective, global basis.

5.13. The implications of G20 RTAs for developing countries outside the G20 is a complex issue. The impact is likely to be mixed, depending on a range of factors including the trade profile and individual characteristics of each developing country outside the G20, as well as the nature of each G20 RTA. However, there are some areas where liberalisation through RTAs among G20 members is likely to have a largely positive effect on developing countries outside the G20. First, by

stimulating global growth, integration through G20 RTAs has important positive effects on the global economy, generating new growth opportunities for others. Also, to the extent that G20 RTAs result in lower trade transaction costs for all trading partners, this can have widespread benefits. In general this includes forms of liberalization or regulatory change that bring essentially non-discriminatory benefits, such as services liberalization, competition reform, improvements in transparency, and trade facilitation (among others). On the other hand, some potential risks exist. Preference erosion is one concern, along with trade diversion. Although tariffs are relatively low already among G20 economies, even small changes on products of importance can have a significant impact on individual non-G20 developing countries.

5.14. The brief survey of potential implications of G20 RTAs for non-G20 developing countries provided in this report suggests a number of possible responses by G20 members. First among these is the value of leadership by G20 members in delivering results in the WTO. Greater assessments of the impact of G20 RTAs on developing countries outside these agreements would also make a positive contribution. Where potential negative impacts exist, Aid for Trade has a role in offsetting them, and in building competitiveness to take advantage of market opportunities, including those brought about by “non-discriminatory” changes in openness through G20 RTAs. The importance of preferential market access schemes, and the impact of changes in competitiveness brought about by G20 RTAs, also need to be taken into account.

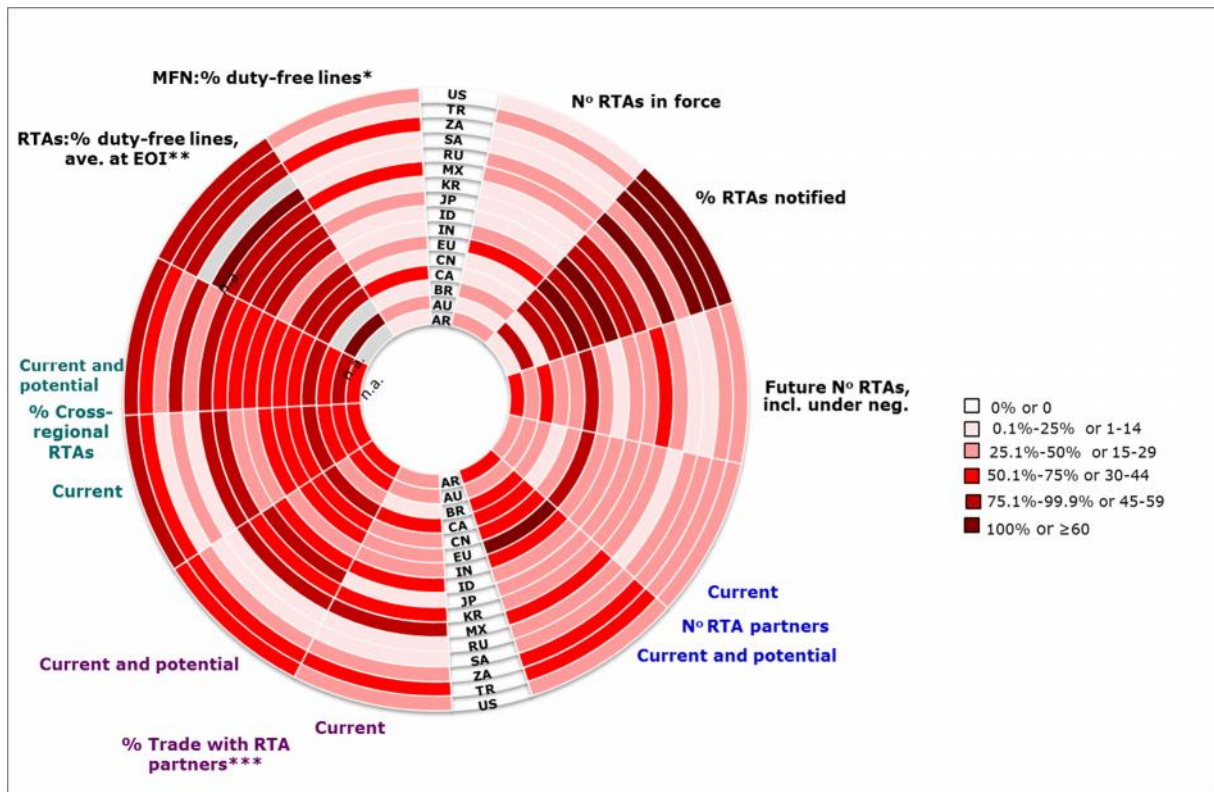
## ANNEX

### G20 RTAS

A.1. The Charts below provide additional details on RTAs involving G20 economies and notified to the WTO up to end 2014. The first chart provides information by G20 economy of the number of RTAs in force and notified, and the number under negotiation; current RTA partner and potential RTA partners once current negotiations are complete; as well as information on the share of lines that are duty free on an MFN basis and in their RTAs. The second chart provides information on selected provisions contained in the RTAs of G20 economies.

A.2. In general the darker the colour the greater the share of that provision in that G20 members' RTAs. Thus the G20 economies with the largest shares of duty free tariff lines on an MFN basis include Canada, Mexico and South Africa (between 50% and 75%) but the G20 economies that commit to liberalize the largest shares of their tariffs in their RTAs include Australia and Russian Federation (99.97% and 100% respectively) followed by the United States, the EU, Canada, and Mexico.

Chart A1: G20 RTAs in force and under negotiation: Some figures



n.a. Not available.

\* 2014 data, except for Saudi Arabia and EU for which 2013 data is used instead.

\*\* For RTAs notified and for which an FP is available.

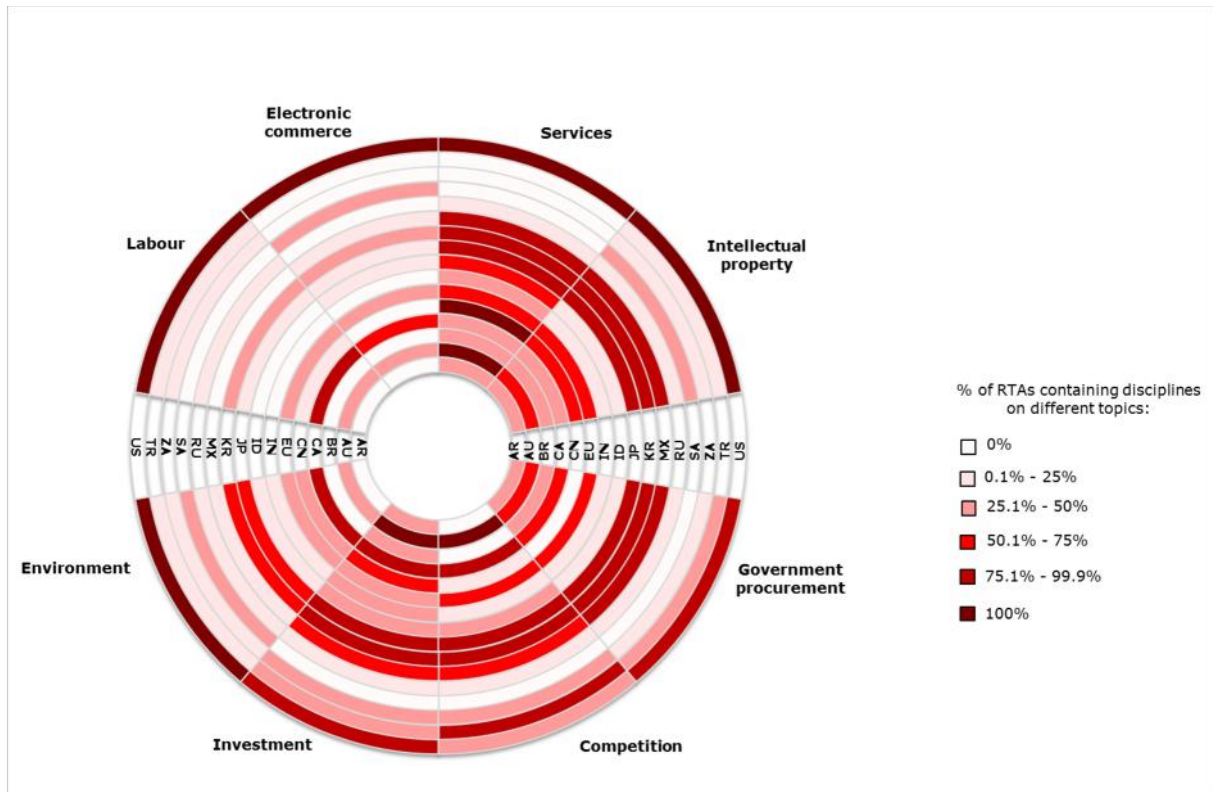
\*\*\* Includes only trade in goods data. Data for 2014, except for Russian Federation (2012) and Turkey (2013).

Source: WTO-IDB, TPR and RTA databases.

A.3. Chart A2 below shows the main topics covered in this paper and the extent to which they are included in each G20 economy's RTAs. Once again, the darker the colour, the greater the number of RTAs that contain that particular provision. As discussed in the paper, services and investment are the two most widely covered provisions in G20 RTAs. Some of the issues are more prevalent in

the RTAs of certain economies. For instance the United States includes all these provisions in the majority of its RTAs, while the EU also includes them but not in all its RTAs. Developing economies of the G20 tend to include certain issues notably environment, labour, electronic commerce more sparingly in their RTAs, unless they are with a developed economy.

Chart A2: Selected topics in G20 RTAs notified since 2000  
(%, by G20 economy)



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