

Committee on Regional Trade Agreements

INVENTORY OF NON-TARIFF PROVISIONS
IN REGIONAL TRADE AGREEMENTS

Background Note by the Secretariat

1. The Committee on Regional Trade Agreements (the Committee) requested on 20 February 1998 that the Secretariat compile an inventory of provisions, other than those related to tariffs, governing trade in goods within regional trade agreements (RTAs) notified to the GATT/WTO. This inventory was to be without prejudice to Members' interpretations of the issues involved. It would serve as an input for the Committee's horizontal approach to its consideration of item 1(d) of its terms of reference.

2. This Note contains the results of initial research by the Secretariat in response to the Committee's request. Though the purpose of the Note is to offer an overview of non-tariff provisions in RTAs, the most salient features of these provisions have been highlighted for the benefit of Members and, if appropriate, for further consideration at a later stage. Assumptions and parameters used in defining the scope of the inventory and in shaping the presentation of the information are described below.

3. The inventory of non-tariff provisions is based on information extracted from a total of 69 agreements notified to the GATT/WTO and, in principle, currently in force. The information is presented in an aggregate form, i.e. without identification of individual agreements. However, the 69 RTAs have been grouped according to a few descriptive parameters, whenever it was deemed to add information on the existence of trends, recurrent features or patterns. These parameters refer to:

- whether an agreement concerns a customs union or a free-trade area (irrespective of the existence of a transition period);
- whether the agreements were signed before or after 1990 (as a rough indication of whether they were contemporary to the GATT or the WTO);¹
- whether the agreements pertained to a particular geographical region (in this context, free-trade areas entered into by European countries have been singled out); and
- whether the agreements had two or more parties.

The table below presents the data on which this study is based, arranged according to the different parameters used.

¹The 1990 benchmark has been applied with flexibility so as not to distort results. Any differences from the general criterion are noted.

	All RTAs	Plurilateral RTAs	Bilateral RTAs		
			Total	Where at least one party is itself an RTA	Other
RTAs	69	9	60	38	22
Pre-1990 RTAs	19	4	15	12	3
Post-1990 RTAs	50	5	45	26	19
Customs unions	10	5	5	4	1
<i>Pre-1990 customs unions</i>	5	3	2	2	-
<i>Post-1990 customs unions</i>	5	2	3	2	1
FTAs	59	4	55	34	21
<i>Pre-1990 FTAs</i>	14	1	13	10	3
<i>of which: European</i>	11	1	10	10	-
<i>Post-1990 FTAs</i>	45	3	42	24	18
<i>of which: European</i>	41	1	40	24	16

4. The compilation covers all main types of non-tariff provisions found in the texts of the agreements and, where possible, in annexes, protocols or other related legal texts, with the exception of best-effort or unspecific provisions. Instances where the status of some provisions was unclear are signalled in the relevant context.

5. RTAs' non-tariff provisions are organized under eight general headings:

- I. Scope
- II. Institutional and procedural provisions
- III. General and security exceptions
- IV. Rules on quantitative restrictions
- V. Rules on subsidies/state aid
- VI. Contingency instruments
- VII. Standards
- VIII. Other provisions related to trade in goods

6. To facilitate the analysis of similarities and differences among RTAs, sub-categories of provisions were devised within these general headings. The information was further refined by classifying the provisions according to detailed characteristics or conditions foreseen for the application of the relevant trade instruments. Whenever possible, criteria contained in WTO provisions were used as the basis for those classifications.

7. Information categorized in line with the breakdown in paragraph 5 above is organized in annexes to this Note whose numbers correspond to the general headings delineated. Data are presented in the form of statistical frequency tables.

ANNEX IScope

8. All RTAs define their coverage in terms of the products or economic sectors to which other, trade-specific provisions apply. Table I.1 offers an overall picture of readily available information on the categories of products covered by RTAs, in terms of broad sectors. Only a small number of RTAs cover all products, and relatively fewer still in the most recent period. Post-1990 RTAs typically cover a varying number of products in the agricultural sector, in addition to all industrial products.

Table I.1 - Sectoral coverage

	With comprehensive coverage	Without comprehensive coverage	
		All industrial products and selected agricultural products	All industrial products only
RTAs	13	54	2
Customs unions	6	4	-
<i>Pre-1990 customs unions</i>	3	2	-
<i>Post-1990 customs unions</i>	3	2	-
FTAs	7	50	2
<i>Pre-1990 FTAs</i>	3	9	2
<i>Post-1990 FTAs</i>	4	41	-

9. The preferential treatment provided for in RTAs is further affected by the fact that it is normally granted only to products originating in the parties to the agreement. Rules of origin are therefore a significant element in characterizing the scope of RTAs, especially since nearly all RTAs studied, including customs unions, contain provisions, sometimes quite detailed, on how origin should be determined.²

10. As a general concept, the country of origin for a product with inputs from more than one country is the one country where the last substantial transformation took place. Three main methods are used to establish whether a substantial transformation occurred. First, there is the change-in-tariff-classification method, where origin is granted if, after transformation, the product is classified under a different customs nomenclature heading than before.³ Second, there is the value-added criterion, where a specified

²WTO disciplines on rules of origin for preferential regimes are found in the Common Declaration With Regard to Preferential Rules of Origin, annexed to the Agreement on Rules of Origin.

³Harmonized rules of origin, currently being developed for m.f.n. trade, will, as far as possible, be based on this criterion.

percentage of value added in the last production process is necessary to confer an originating status.⁴ And, third, there is the method through technical test.⁵

11. Table I.2 shows a breakdown of the RTAs analyzed in this study according to the methods for origin determination contained in their provisions. In most cases, the basic, general rule for conferring origin is a technical test or a change in tariff nomenclature, with the former gaining prominence in the more recent years. The value-added criterion is more frequent when additional criteria are provided for in RTAs, to further refine the general rule or, in some cases, to be used as exceptional rules specific to some products or sectors.

Table I.2 - Rules of origin: methods⁶

	With provisions on rules of origin	Methods used for origin determination					
		General rule			Additional criteria		
		Change in tariff heading	Value added	Technical test	Change in tariff heading	Value added	Technical test
RTAs	66	22	7	37	38	59	23
Customs unions (CUs)	8	4	3	1	2	5	4
<i>Pre-1990 CUs</i>	3	2	1	-	1	2	3
<i>Post-1990 CUs (a)</i>	5	2	2	1	1	3	1
FTAs	58	18	4	36	36	54	19
<i>Pre-1990 FTAs</i>	11	8	3	-	-	8	8
<i>of which: European</i>	8	8	-	-	-	8	8
<i>Post-1990 FTAs (b)</i>	47	10	1	36	36	46	11
<i>of which: European</i>	42	7	-	36	36	43	7
(a) Including one customs union concluded before 1990 where rules of origin were modified after that date.							
(b) Including three FTAs concluded before 1990 where rules of origin were modified after that date.							

12. Rules of origin may also be supplemented by a "cumulation clause", whereby imported inputs from certain countries are counted as domestic ones. In RTAs, two types of cumulation are found: bilateral cumulation, where inputs from any of the parties is considered domestic, and diagonal

⁴Measurement may be based on import content, which imposes a ceiling on the use of imported parts and material; domestic content, which requires a minimum percentage of local value-added; or value of parts, which requires a minimum percentage of the total value of parts.

⁵The technical test can either be a positive test, whereby those production or sourcing requirements which confer origin are specified, or a negative one, whereby production or sourcing processes that do not confer originating status are specified.

⁶One post-1990 FTA has been excluded from this analysis, since no detailed information was available.

cumulation, where inputs from certain third-parties are also considered domestic.⁷ Table I.3 shows that RTAs generally contain provisions allowing bilateral cumulation. The possibility of diagonal cumulation has been included in most RTAs, though it remained marginal in agreements signed before 1990.

Table I.3 - Rules of origin: cumulation

	Providing for possibility of cumulation (a)	
	Bilateral only	Bilateral and diagonal
RTAs	21	43
Customs unions	6	1
<i>Pre-1990 customs unions</i>	3	-
<i>Post-1990 customs unions (b)</i>	3	1
FTAs	15	42
<i>Pre-1990 FTAs</i>	7	3
<i>Post-1990 FTAs (c)</i>	8	39
(a), (b) and (c) See corresponding notes in Table I.2.		

⁷Diagonal cumulation normally exists in the context of a network ("hub-and-spokes") of RTAs.

ANNEX II

Institutional and Procedural Provisions

Section II.1 - Institutional Structure

13. RTAs provide for institutional arrangements with differing levels of structure and function. Virtually all RTAs studied contain provisions for coordination between the parties' own specialized (administrative) bodies, to deal with areas such as customs administration, etc. In addition, as evidenced in Table II.1, the vast majority establish an overarching institutional body to facilitate implementation of the agreement's span of provisions and, in many cases, to consider whether the parties should go deeper in their economic relations.

14. These overarching institutional bodies have been categorized as to whether they are charged with largely procedural functions (e.g., convening meetings), whether they can grant a slow-down in liberalization (e.g., authorizing safeguards), or whether they can mandate further liberalization (e.g., deciding to increase harmonization). The incidence of RTAs endowing their institutional body with legal personality is also indicated in Table II.1.

Table II.1 - Institutional structure

	Providing for an overarching institutional body	Authority of the body			
		Procedural	Can grant slow-down	Can change scope/terms	Have legal capacity
RTAs	66	13	41	12	5
Customs unions	10	2	3	5	4
<i>Pre-1990 customs unions</i>	5	2	1	2	2
<i>Post-1990 customs unions</i>	5	-	2	3	2
FTAs	56	11	38	7	1
<i>Pre-1990 FTAs</i>	12	8	4	-	1
<i>Post-1990 FTAs</i>	44	3	34	1	-

Section II.2 - Dispute Settlement Provisions

15. All but one of the RTAs studied provide for consultations between the parties to address concerns.⁸ Table II.2 presents some detailed information on RTAs which provide for more complex forms of dispute settlement.

⁸In two RTAs, consultations are cast only in general terms rather than in relation to disagreement over interpretation or application of the agreement.

Table II.2 - Dispute settlement

	Providing for a process for authorizing retaliation		Providing for an optional binding process	
	Pre-1990	Post-1990	Pre-1990	Post-1990
RTAs	10	40	6	26
Customs unions	-	-	3	5
FTAs	10	40	3	21

16. At the level of "providing a process for authorizing retaliation", the institutionalized process is still generally consultative, though there is the possibility of a formal decision being issued from the relevant body. A most conspicuous feature is that customs unions, though providing binding dispute settlement procedures, do not contain the step of a defined body authorizing parties to take measures in response to a partner's failure to fulfil obligations (retaliation), whereas a majority of FTAs, whether providing for an additional binding mechanism or not, include this process for authorizing retaliation.

17. In almost half of the RTAs analyzed, more elaborate dispute settlement mechanisms are provided for, where parties are granted the option of resorting to a (in part automatic) process which affords a binding decision if set in motion. In the vast majority of cases, this binding decision may be taken by a panel of arbitrators, though in some instances it may be taken by the overarching institutional body. The incidence of these elaborate, binding procedures is much higher in the most recent RTAs, and the trend seems more prevalent in customs unions, as all of those signed after 1990 allow for binding dispute settlement.

18. In looking at "choice of forum" provisions in RTAs, four RTAs explicitly allow a dispute to be brought before either the RTA mechanism or the GATT/WTO process. However, it should be noted that, while providing this option, each of these agreements indicates that the "choice of law" is for the RTA provisions to prevail in the event of an inconsistency between the sets of rules.

Section II.3 - Provisions on the Approximation or Harmonization of Laws

19. In line with the rationale leading to the formation of a customs union, all customs unions in the horizontal comparison contain provisions on harmonization or approximation of economic or trade legislation, as shown in Table II.3.

Table II.3 - Approximation of laws

	With provisions for approximation of legislation	
	on a broad range of economic policies	limited to trade-related matters
RTAs	8	14
Pre-1990 RTAs	1	5
Post-1990 RTAs	7	9
Customs unions	2	8
FTAs	6	6

20. It is notable that such provisions are also present in a number of FTAs, but not surprising that this phenomenon coincides with those cases in which one party is itself an RTA, and a stated objective is accession of the other party into it. The degree of approximation foreseen in such provisions in FTAs has heightened in recent years, so that it often extends beyond trade legislation to encompass a broad range of other policies (e.g., company law or protection of workers at the workplace).

Section II.4 - Provisions on Accession and on Participation in Other RTAs

21. Accession provisions in RTAs may be viewed from a traditional perspective, as relating to the possibility granted to third-parties to become parties to the agreement. The concept may also be broadened, to cover cases in which one of the parties to a given agreement is itself a previously established RTA and the agreement provides for cases when third-parties accede to that RTA.⁹ Available information on accession provisions in RTAs has been grouped in Table II.4, according to these two notions.

Table II.4 - Accession

	Providing for third-party accession to the agreement itself			Providing for accession to the RTA party to the agreement		
	Total	Pre-1990	Post-1990	Total	Pre-1990	Post-1990
RTAs	9	4	5	25	2	23
Customs unions	5	3	2	-	-	-
FTAs	4	1	3	25	2	23

22. The fact that, out of 69 RTAs considered, only nine permit third-party accession to the agreement itself is to be seen against the number of plurilateral RTAs studied. Bilateral RTAs generally do not propose the third-country-accession option. Of those nine RTAs, four are open to any third-party (pending approval), while others introduce regional/geographical qualifications to accession.

23. Likewise, a large number of post-1990 FTAs carry provisions referring to accession to the party to the agreement which is itself an RTA.¹⁰ These provisions either presume automatic accession to the larger RTA, while requiring consideration for the other parties' interests, or call for a decision to be taken in the context of the larger RTA as to that additional country's participation.

24. Most RTAs provide for parties' participation in other RTAs.¹¹ In at least one case, parties are even required to conclude trade agreements with other countries. Table II.5 shows the different conditions which agreements set out for parties concluding other agreements. The most commonly found rules are those which stipulate that such agreements should not have a negative impact on the RTA itself (in particular with respect to the implementation of rules of origin) and that parties should be consulted. Only three of the RTAs studied foresee that parties entering other agreements should

⁹Although theoretically there could be references to both types of accessions, none of the RTAs studied contain the two together.

¹⁰It is worth noting in this context that a total of 24 post-1990 FTAs are comprised of one country plus a group of countries which already constitute an RTA among themselves.

¹¹In some RTAs, such participation is not explicitly provided for but nevertheless implicit in the language of certain provisions.

compensate their RTA partners or extend new preferences to them. In one instance, participation to another agreement is conditioned on WTO compliance.

Table II.5 - Participation in other RTAs

	Allowing parties' participation in other RTAs	Conditions for parties' participation in other RTAs			
		No negative effects	Compensation or extension of preferences	Consultations if there is an impact	Other
RTAs	63	35	3	20	5
Customs unions	6	3	2	-	1
<i>Pre-1990 customs unions</i>	<i>3</i>	<i>2</i>	<i>-</i>	<i>-</i>	<i>1</i>
<i>Post-1990 customs unions</i>	<i>3</i>	<i>1</i>	<i>2</i>	<i>-</i>	<i>-</i>
FTAs	56	32	1	20	3
<i>Pre-1990 FTAs</i>	<i>13</i>	<i>3</i>	<i>-</i>	<i>9</i>	<i>1</i>
<i>Post-1990 FTAs</i>	<i>44</i>	<i>29</i>	<i>1</i>	<i>11</i>	<i>2</i>

ANNEX III

General and Security Exceptions

25. Virtually all (68 out of a total of 69) RTAs contain general and security exceptions applicable to the trade among the parties. Typically, these provisions in RTAs are similar, but rarely identical, to those contained in the GATT.¹²

26. Practically all European RTAs include in their general exceptions all Article XX-type exceptions except those relating to prison labour, commodity agreements, essential quantities during price stabilization and short supply. Many of these agreements include among their general exceptions prohibitions or restrictions "justified on grounds of ... public policy or public security",¹³ and some of them add the environment to the provision permitting the protection of human, animal or plant life or health.

27. Non-European RTAs often include a slightly wider range of Article XX exceptions, including exceptions necessary "to prevent or relieve critical shortages of foodstuffs or other essential goods" and concerning prison labour or intergovernmental commodity agreements. Four non-European FTAs incorporate an exact copy of the Article XX provisions; three of these RTAs carry an understanding on the interpretation of some of the GATT provisions to cover environmental measures.

28. With respect to security exceptions, only one RTA (a relatively early one) directly incorporates the whole of Article XXI, while most others select components and draw extensively on their language. RTA provisions often correspond to Article XXI components relating to the disclosure of information; traffic in goods and materials for supplying a military establishment¹⁴; and action "taken in time of war" or other emergency in international relations (often referred to as "serious international tension"). The Article XXI provision on "obligations under the United Nations Charter for the maintenance of international peace and security" has often been drafted more generically in RTAs.

29. Common derivatives of the Article XXI exception "relating to fissionable materials or the materials from which they are derived" are RTA exceptions relating to the non-proliferation of biological, chemical or nuclear weapons, or to the control of dual-use products. Differences in this qualification of essential security interests may in large part be due to related developments in international commitments and technology.

30. Other security exceptions appearing in some of the RTAs studied permit restrictions "in the event of serious internal disturbances affecting the maintenance of law and order" or "necessary for the prevention of disorder or crime".

¹²WTO Members are allowed to adopt or enforce trade measures in cases governed by GATT Articles XX (General Exceptions) and XXI (Security Exceptions).

¹³Among these agreements are six which do not otherwise contain security exceptions; in this respect, an exception for "public policy or public security" might be construed as a security exception.

¹⁴Some RTAs broaden the language on military supplies to include "research, development or production indispensable for defence purposes".

ANNEX IV**Rules on Quantitative Restrictions**

31. RTAs generally have provisions dealing with quantitative restrictions (QRs) on trade among the parties; provisions are usually separate for QRs on imports and exports. Typically, these provisions call for the abolition of QRs at the RTAs' date of entry into force, or for their progressive elimination over a period of time. They apply to all products or only to the subset of industrial products; specific QRs on agricultural imports, often dealt with in separate bilateral agreements or protocols, are not included in this part of the analysis. Some RTAs provide that QRs, while in principle eliminated, may remain in a few selected products; numbers in brackets in tables in this Annex refer to the number of RTAs which contain such exceptions.

Table IV.1 - Treatment of QRs on Imports

	QRs abolished at date of entry into force		Progressive elimination of QRs on industrial goods	Parties retain the right to impose new QRs on imports (a)
	on all goods	on industrial goods only		
RTAs	12	14(5)	23(8)	12
Customs unions	4	1	2(1)	3
<i>Pre-1990 customs unions</i>	2	-	1	3
<i>Post-1990 customs unions</i>	2	1	1	-
FTAs	8	13(5)	21(7)	9
<i>Pre-1990 FTAs</i>	-	-	4	9
<i>Post-1990 FTAs</i>	8	13	17	-
(a) Unless an agreement specifically states that parties may not impose new QRs, it is assumed that they retain this right.				

32. Data in Table IV.1 show a definite trend towards broader as well as faster market access liberalisation in recent years in intra-RTA trade in relation to QRs on imports. RTAs signed in the 1990s provide for outright abolition of QRs on imports of all goods (i.e. both agricultural and industrial products) much more often than earlier RTAs. None of the post-1990 agreements permit parties to retain the right to impose new QRs on imports. Sixty-five per cent of pre-1990 RTAs do not provide for the elimination of QRs (even for industrial imports on a gradual basis), while only 14 per cent of post-1990 RTAs share that characteristic. Also, the proportion of agreements providing for the abolition of QRs on either all products or only industrial products at the date of entry into force nears 50 per cent for post-1990 RTAs but only 10 per cent for those in the earlier period.

33. Compared to FTAs, customs unions tend to favour a faster liberalisation of import QRs. Not only is there a larger proportion of customs unions providing for abolition of QRs at the entry into force of the agreement, but also, when a gradual elimination is foreseen, the time-frame is shorter for customs unions than for FTAs, as demonstrated in Table IV.2. Ten years appears to be the most common time-period for the progressive elimination of QRs on imports of industrial goods in FTAs, often corresponding to the transition period.

Table IV.2 - Timeframes for Elimination of QRs on Imports of Industrial Goods¹⁵

	Progressive elimination of QRs on industrial goods	QRs abolished, in principle,		
		within 5 years of date of signature	within 10 years of date of signature	after 10 years or more
RTAs	23(8)	6(1)	14(7)	3
Pre-1990 RTAs	5(1)	1	3(1)	1
Post-1990 RTAs	18(7)	5	11(6)	2
Customs unions	2(1)	1(1)		1
FTAs	21(7)	5	14(7)	2

34. With respect to the use of QRs on exports on intra-RTA trade, the pattern evidenced in Table IV.3 is in many respects similar to that shown in Table VI.1 (QRs on imports), in particular in the case of customs unions. Likewise, there is a trend towards faster trade liberalisation in the post-1990 period.

Table IV.3 - Treatment of QRs on Exports

	QRs abolished at date of entry into force		Progressive elimination of QRs on industrial goods	Parties retain the right to impose new QRs on exports (a)
	on all goods	on industrial goods only		
RTAs	7	25(14)	17(6)	16
Customs unions	4	1(1)	2	3
<i>Pre-1990 customs unions</i>	1	-	1	3
<i>Post-1990 customs unions</i>	3	1	1	
FTAs (b)	3	24(13)	15(6)	13
<i>Pre-1990 FTAs</i>	1	-	2	11
<i>Post-1990 FTAs</i>	2	24(13)	13(6)	2

(a) Unless an agreement specifically states that parties may not impose new QRs, it is assumed that they retain this right.

(b) Two FTAs which do not contain details on export QRs and two other FTAs for which annexes and protocols were missing, have not been included in this level of analysis.

35. A few distinctive features are however worth noting. First, the share of RTAs providing for an abolition of export QRs on all products remained practically unchanged after 1990. Second, FTAs show a marked predilection for the abolition of export QRs on industrial products at the date of entry into force. Third, more often than in the case of import QRs, FTAs do maintain QRs on exports of some industrial products even after general elimination. Fourth, in two instances, parties to post-1990 FTAs are still allowed to introduce new QRs on exports.

¹⁵Files for four of the agreements were missing annexes and protocols and thus were not included at this level of analysis.

36. For those RTAs which call for a progressive elimination of QRs on exports of industrial goods, Table IV.4 indicates that a shorter time period than in the case of import QRs is provided for elimination. In only one case was no timetable specified for such elimination.

Table IV.4 - Timeframes for Elimination of QRs on Exports of Industrial Goods

	Progressive elimination of QRs on industrial goods	QRs abolished, in principle, within 5 years of date of signature	Unspecified timeframe
RTAs	17(6)	16(6)	1
Pre-1990 RTAs	3	3	1
Post-1990 RTAs	14(6)	13(6)	-
Customs unions	2	2	-
FTAs	15(6)	14(6)	1

ANNEX V

Rules on Subsidies/State Aid

37. As evidenced by data in Table V, a majority of the RTAs studied, and practically all those signed after 1990, contain provisions on subsidies (sometimes labelled "state aid"). State aid to the agricultural sector is most often dealt with separately in RTAs, as it is the case in the multilateral context.¹⁶ This can be seen in the high incidence of RTAs providing sector-specific rules on subsidies, which typically apply to the agricultural sector and, in some instances, to fisheries products.

Table V - Subsidies/state aid

	Including provisions on subsidies/state aid			Allowing for sector-specific rules
	Total	With a general rule only	With a general rule and rules on export subsidies	
RTAs	55	47	8	47
Customs unions	7	4	3	4
<i>Pre-1990 customs unions</i>	3	1	2	2
<i>Post-1990 customs unions</i>	4	3	1	2
FTAs	48	43	5	43
<i>Pre-1990 FTAs</i>	4	2	3	2
<i>Post-1990 FTAs</i>	44	41	2	41
<i>of which: European</i>	39	39	-	39

38. RTA provisions on subsidies/state aid are usually cast in general terms, stating that aid which distorts or threatens to distort competition is not compatible with obligations under the agreement.¹⁷ Only a few RTAs provide detail on subsidies which they expressly permit. Eight RTAs contain provisions expressly dealing with export subsidies; these provisions generally refer to the prohibition of export subsidies or to subsidized trade in agricultural products and stipulate a (phased) elimination of subsidies.¹⁸

¹⁶The WTO contains two sets of rules concerning subsidies; those related to industrial products are found in the Agreement on Subsidies and Countervailing Measures, while those related to agricultural products are spelled out in the Agreement on Agriculture.

¹⁷Remedies available to RTA parties are spelled out in separate provisions. (See Annex VI.)

¹⁸A few RTAs which specify those subsidies permitted or to be abolished, do so in a way which closely corresponds to the categories spelled out in the Agreement on Subsidies and Countervailing Measures.

ANNEX VI**Contingency Instruments****Section VI.1 - Safeguard Provisions**

39. RTAs often provide for the use of safeguard measures, either of a general or a specific nature, to deal with emergency situations and with balance-of-payments (BOP), structural adjustment or agricultural problems. Table VI.1 offers an overview of the types of safeguards contemplated in RTAs.

40. Emergency safeguards (i.e. GATT Article XIX-type actions) are found in practically all agreements. Provisions granting the possibility of RTA parties taking measures when external payments conditions deteriorate are also present in most RTAs, this being more frequent in FTAs. Among the 60 RTAs providing for BOP safeguards, 44 also allow the imposition of restrictions to deal with structural adjustment or infant industry cases. After 1990, structural adjustment provisions become more frequent in RTAs. In only one-third of all RTAs considered may parties have recourse to safeguard measures in relation to agricultural trade; this recourse is offered to one-half of post-1990 FTAs. Features specific to each type of safeguard provision in RTAs are described below.

Table VI.1 - Safeguard provisions¹⁹

	Emergency	BOP	Structural adjustment	Agriculture
RTAs	68(6)	60	44	24(1)
Customs unions (a)	9 (2)	4	1	1(1)
<i>Pre-1990 customs unions (a)</i>	<i>5 (1)</i>	<i>3</i>	<i>-</i>	<i>1(1)</i>
<i>Post-1990 customs unions</i>	<i>4(1)</i>	<i>1</i>	<i>1</i>	
FTAs	59 (4)	56	43	23
<i>Pre-1990 FTAs</i>	<i>14 (1)</i>	<i>13</i>	<i>10</i>	<i>1</i>
<i>Post-1990 FTAs</i>	<i>45 (3)</i>	<i>43</i>	<i>33</i>	<i>22</i>
(a) Includes one agreement which, although being signed after 1990, makes use of safeguard provisions agreed upon in a pre-1990 agreement.				

41. Relevant GATT/WTO rules provide for the emergency safeguards mechanism to be used in specific triggering circumstances (such as increased imports), which are further defined by a few criteria to assess their effects (basically, that such increased imports cause or threaten to cause serious injury to the competing domestic industry).²⁰ The imposition of safeguard measures is also regulated in the WTO. When seen against the multilateral framework, the array of reasons provided for in RTAs for invoking emergency safeguards among parties is particularly wide, as evidenced in Table VI.2.

¹⁹Numbers in brackets refer to RTAs with safeguard provisions applying only during the transition period.

²⁰Article XIX of GATT 1994 and the Agreement on Safeguards.

Table VI.2 - Emergency safeguards: conditions for invocation

Conditions		Customs unions		FTAs			
		Pre-1990	Post-1990	Pre-1990		Post-1990	
				European	Other	European	Other
Trigger	Unforeseen rise in imports	-	-	-	-	1	1
	Rise in imports	1	2	2	3	39	4
Criteria	Injury or threat thereof	-	2	-	-	-	-
	Serious injury or threat thereof	-	1	-	-	39	3
	Substantial cause of serious injury or threat thereof	-	-	-	1	-	3
	Serious disturbances in the economy	3	1	10	-	39	-
	Serious deterioration in economic situation of a region	2	-	10	-	39	-
	Serious detriment or threat thereof	-	-	2	-	1	-
	Threat to the external financial stability	3	-	1	-	-	-
	Trade deflection	1	1	2	1	1	-
	Other	2	1	1	-	1	-
	Summary:						
	--RTAs with 1 criterion	2	2	1	2	1	4
	--RTAs with 2 optional criteria	-	2	7	1	-	-
	--RTAs with 3 optional criteria	3	-	1	-	39	-
	--RTAs with 4 optional criteria	-	-	2	-	1	-
Expressly linked to RTA concessions		2	3	2	3	2	4
PRO MEMORIA:							
RTAs providing for emergency safeguards		5	4	11	3	41	4

42. In nearly all RTAs increased imports of a product may trigger an emergency safeguard mechanism. With respect to the criteria provided for in RTAs for the assessment of the domestic effects of the rise in imports, the majority of RTAs offer parties the possibility of taking safeguard action under more than a single criterion; this is particularly the case in European RTAs and in those concluded more recently. Also, at least some of the criteria defined in RTAs are less stringent than those encountered in the multilateral context. Furthermore, RTAs in general do not specify whether the invocation of an emergency is to be linked to concessions granted in the agreement; in some RTAs where such link exists, it only applies to cases in which certain of the optional criteria are invoked.

43. RTAs do not generally detail in their texts either the procedures to be followed by parties when invoking a safeguard action or rules for the imposition of the resulting trade-restrictive measures. Typically, RTAs provide for prior consultation and notification and state a preference for measures which least distort the functioning of the RTA. Only a few RTAs include parameters for the application of safeguard measures, e.g., by establishing a link to prevailing GATT disciplines or specifically mentioning which measures are allowed, as shown in Table VI.3.

44. Table VI.3 also presents available information on the number of RTAs which contain provisions on whether, and if so how, m.f.n. emergency safeguards are applied among parties.²¹

Table VI.3 - Emergency safeguards: application of measures

	With provisions on emergency safeguards	With specific link to GATT rules	With specific mention of measures authorized	With specific mention of exclusion of parties from m.f.n. safeguards
RTAs	68	5	7	8
Customs unions	9	-	2(CC)	2
FTAs	59	5	5	6
<i>European</i>	52	1	-	3
<i>Other</i>	7	4	2(SC) / 3(DI)	3
CC = compensatory charge. SC = suspension of concessions. DI = duty increase or suspension of further reduction of duty.				

45. Most RTAs contain provisions on BOP safeguards, granting to parties the possibility of imposing trade-restrictive measures when problems occur in their external payments situation, under circumstances similar to those provided for in the WTO.²² However, as evidenced in Table VI.4, the corresponding provisions do not usually elaborate on the measures which might be authorized under such actions.

Table VI.4 - BOP safeguards: type of measures

	With BOP safeguard provisions	Type of measures				
		QRs only	QRs or tariffs	Import surcharge/ deposit, QRs	Preference given to price-based measures	Not specified
RTAs	60	3	1	2	5	49
Customs unions	4	1	-	-	-	3
FTAs	56	2	1	2	5	46

46. Structural adjustment safeguards also include development-related safeguards.²³ In RTAs, such safeguards concern sectors undergoing restructuring or facing serious difficulties. They are generally provided for when one or more of the parties is a developing country or a country whose economy

²¹It should be noted in this respect that the matter is normally not codified in the text of the RTAs but relates to the *modus operandis* of the parties themselves.

²²See GATT Articles XII and XVIII:B and the Understanding on Balance-of-Payments Provisions of the GATT 1994.

²³Though structural adjustment safeguards are not defined, as such, in the GATT 1994, development-related safeguards are provided for in Article XVIII:A and XVIII:C and in the 1979 Decision on Safeguard Action for Development Purposes.

is in transition and are only available to those parties. As shown in Table VI.5, in three-quarters of RTAs with structural adjustment or development provisions, there is a "sunset clause", i.e. the parties forfeit the right to use these provisions after a certain time period (typically the end of the transition period); the introduction of such a "sunset clause" is a feature found mainly in post-1990 RTAs. Also noteworthy is the fact that many RTAs establish that, when applying these safeguard measures, a defined margin of preference should be maintained among the parties.

Table VI.5 - Structural adjustment safeguards

	With provisions on structural adjustment safeguards	Conditions			Type of measures, when specified		Maximum length of measures, when specified	
		Available to all parties	Sunset clause	Requiring maintenance of margin of preference	Tariffs only	Tariffs or QRs	2-4 years	5 years
RTAs	44	15	32	31	34	9	13	19
Customs unions	1	1	-	-	-	1	-	-
FTAs	43	14	32	31	34	8	13	19
<i>of which: European</i>	<i>41</i>	<i>13</i>	<i>31</i>	<i>31</i>	<i>33</i>	<i>8</i>	<i>13</i>	<i>19</i>

47. A majority of RTAs specify the type of measures permitted when a safeguard action is invoked for structural adjustment or development reasons, in contrast with the general feature noted in paragraph 8 above in relation to BOP safeguards. The measure envisaged for such action is typically an increase in tariffs for a period of five years or less. The imposition of QRs is only permitted in RTAs concluded before 1990.

48. The inclusion of agricultural safeguard provisions in RTAs appears to be an extension of emergency safeguards specifically designed to fit agricultural market characteristics. Table VI.6 presents an overview of the conditions attached to the invocation of these safeguards in RTAs, as well as the types of measures authorized. Unlike the case of emergency safeguards, agricultural safeguards in RTAs are not dependent upon increased imports of a particular agricultural product, and it is generally specified that such actions should be linked to concessions granted in the agreement. As evidenced in the table, "serious disturbance" to the importing party's market constitutes the main triggering mechanism provided for and defence measures are not specified.

Table VI.6 - Agricultural Safeguards

	With agricultural safeguard provisions	Conditions		Type of measure				Specifically linked to concessions
		Serious disturbance	Other (a)	QRs (b)	Minimum prices	Tariff quotas	Other (a)	
RTAs	24	21	3	1	1	1	21	22
Customs unions	1(c)	-	1	-	1	-	-	1
FTAs	23	21	2	1	-	1	21	21
<i>of which: European</i>	<i>22</i>	<i>21</i>	<i>1</i>	<i>1</i>	<i>-</i>	<i>-</i>	<i>21</i>	<i>20</i>
(a) Including unspecified.								
(b) QRs or equivalent measures.								
(c) Only valid until the end of the transition period.								

Section VI.2: Anti-dumping and Countervailing Provisions

49. As shown in Table VI.7, a majority of RTAs contain provisions permitting the application of anti-dumping (AD) duties in intra-trade, though the proportion is higher for FTAs than for customs unions.

Table VI.7 - Anti-dumping duties

	Parties may take AD action in intra-trade	Specific reference to GATT/WTO definition of dumping	Specific reference to GATT Article VI for protective measures	Consultations and/or referral to over-arching institutional body prior to adopting measures
RTAs	62	39	52	53
Customs unions (a)	8(2)	2	4	4
<i>Pre-1990 customs unions</i>	<i>4</i>	<i>-</i>	<i>2</i>	<i>3</i>
<i>Post-1990 customs unions</i>	<i>4</i>	<i>2</i>	<i>2</i>	<i>1</i>
FTAs	56	37	48	49
<i>Pre-1990 FTAs</i>	<i>14</i>	<i>-</i>	<i>9</i>	<i>13</i>
<i>Post-1990 FTAs</i>	<i>42</i>	<i>37</i>	<i>39</i>	<i>36</i>
(a) Numbers in brackets refers to RTAs allowing anti-dumping measures only during a transition period.				

50. More than half of the RTAs having anti-dumping provisions make specific reference to the GATT/WTO definition of dumping; there is a clear tendency towards this in the post-1990 agreements.²⁴ A greater proportion of RTAs require that appropriate measures to counteract dumping are to be taken in accordance with the relevant GATT/WTO rules. Specific reference to the relevant GATT/WTO

²⁴In the WTO, the application of AD duties is governed by GATT Article VI and the Agreement on Implementation of Article VI of the GATT 1994.

rules (for both the definition of dumping and the protective measures to be taken) is much more prevalent in FTAs than in customs unions.

51. Notably, a high proportion (almost four-fifths) of RTAs having anti-dumping provisions call for consultations between parties and/or referral to their overarching institutional bodies with a view of finding a solution prior to the adoption of protective measures. Where the anti-dumping case is referred to the higher body, there is typically a minimum period specified for deliberations (which varies between 30 days and 3 months). Only after expiration of this period may the parties adopt the necessary protective measures, if no decision has been reached.²⁵ The requirement for consultations and/or the involvement of the overarching institutional body prior to the adoption of protective measures may act as a sort of safety valve in anti-dumping cases within RTAs.

52. A majority of RTAs contain provisions permitting the application of countervailing (CV) measures in intra-trade, with roughly the same proportion of customs unions and FTAs (see Table VI.8).²⁶ Consultations and/or referral to the RTAs' overarching institutional body prior to adopting countervailing measures is much more common in FTAs than in customs unions, and more prevalent in the post-1990 RTAs than those signed before 1990. Notably, a higher proportion of RTAs require consultations or referrals before the adoption of AD duties than of CV measures.

Table VI.8 - Countervailing measures

	Countervailing duties permitted in intra-trade	Consultations and/or referral to overarching institutional body prior to adopting measures
RTAs	64	46
Customs unions	9	1
<i>Pre-1990 customs unions</i>	5	-
<i>Post-1990 customs unions</i>	4	1
FTAs	55	45
<i>Pre-1990 FTAs</i>	12	4
<i>Post-1990 FTAs</i>	43	41

53. The criteria employed in RTAs for the invocation of countervailing duties are much wider than those permitted under the multilateral framework.²⁷ Nonetheless, there does seem to be a trend towards adoption of the WTO language in some of the post-1990 FTAs.

²⁵Not categorized here, but worthy of note, is that a number of RTAs contain provisions allowing immediate imposition of anti-dumping duties in exceptional circumstances. This is not permitted under WTO rules.

²⁶The application of CV duties is governed by the WTO Agreement on Subsidies and Countervailing Measures.

²⁷GATT Article VI provides for the imposition of countervailing duties in cases where subsidised products "cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry". The WTO Agreement on Subsidies and Countervailing Measures describes three types of adverse effects where actionable subsidies are permitted: i) injury to the domestic industry of another Member ii) nullification or impairment of benefits and iii) serious prejudice to the interests of another Member.

Table VI.11 - Criteria for invocation of countervailing duties

Criteria	Customs unions		FTAs			
	Pre-1990	Post-1990	Pre-1990		Post-1990	
			European	Other	European	Other
Incompatibility, i.e. distorts or threatens to distort competition	1	1	3	-	14	-
Causes or threatens to cause serious prejudice	-	1	-	-	23	-
Material injury or threat thereof	1	1	1	2	-	-
Causes or threatens to cause serious injury	-	-	-	-	1	-
Jeopardize or threaten to jeopardize production	1	-	-	-	-	-
Not specified; but should respect GATT Article VI or WTO Agreement	-	-	9	-	-	1
Not specified; but should respect domestic CVD law	-	-	-	-	-	1
Unspecified	-	1	-	-	1	1

ANNEX VII**Standards**

54. RTA provisions related to technical regulations and standards (TBT) and to sanitary and phytosanitary measures (SPS) have been distinguished from the outset. Similarities in their treatment in RTAs provides however the rationale for keeping their analysis under a common heading.²⁸

55. Table VII.1 shows that, while two-thirds of the RTAs studied contain provisions on TBT, only roughly one-third of them also provide for SPS. The frequency of both such provisions has markedly increased in the post-1990 period, in particular in FTAs.

Table VII.1 - TBT/SPS provisions²⁹

	With provisions on TBT only	With provisions on both TBT and SPS
RTAs	21	21
Customs unions	3	2
<i>Pre-1990 customs unions</i>	<i>1</i>	<i>1</i>
<i>Post-1990 customs unions</i>	<i>2</i>	<i>1</i>
FTAs	18	19
<i>Pre-1990 FTAs</i>	<i>2</i>	<i>-</i>
<i>Post-1990 FTAs</i>	<i>16</i>	<i>19</i>

56. RTA provisions on TBT or SPS may stipulate that parties should exchange information on their standards, in particular through draft regulations (transparency); that, at the time of the signature of the RTA or in the future, they should accept their partners' results of conformity assessment procedures or to consider as equivalent their partners' TBT or SPS measures (mutual recognition); or that parties to RTAs should harmonize their TBT or SPS measures (harmonization). Available information on the TBT and SPS provisions contained in the RTAs studied is presented in Tables VII.2 and VII.3, according to this taxonomy.

57. Data show that, while transparency provisions are a common feature in TBT provisions in RTAs, for SPS measures the higher score is obtained in harmonization provisions. The figures also indicate that, when it comes to trade facilitation in the areas of TBT and SPS measures, RTAs give preference to the harmonization of their measures instead of their mutual recognition.

58. Specific reference to WTO rules is found only in few RTAs. In some instances, parties to the RTA expressly agree that their intra-trade disciplines will, in these areas, be governed by the relevant WTO provisions.

²⁸WTO provisions on TBT and SPS are found in the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures, respectively.

²⁹Figures take into account only provisions incorporated in the text of RTAs, therefore excluding the situations where TBT or SPS provisions were the object of other instruments, signed by the same parties, either in parallel to the agreement or as an addition to it.

Table VII.2 - TBT provisions

	With TBT provisions	Providing for transparency	Providing for mutual recognition	Providing for harmonization	Specifically referring to WTO rules
RTAs	42	25	9	15	10
Customs unions	5	2	3	5	-
FTAs	37	23	6	10	10
<i>of which: European</i>	35	22	5	8	7

Table VII.3 - SPS provisions

	With SPS provisions	With provisions on transparency	With provisions on mutual recognition	With provisions on harmonization	RTAs specifically referring to WTO rules
RTAs	21	3	3	17	5
Customs unions	2	1	1	2	1
FTAs	19	2	2	15	4
<i>of which: European</i>	18	1	1	14	1

ANNEX VIII**Other Provisions Related to Trade in Goods**

59. RTAs often contain other provisions which are related to the trade in goods. This annex concentrates on three of these, i.e. internal taxation, payments, and state monopolies.³⁰

60. As shown in Table VIII, the majority of the RTAs studied, irrespective of whether they concern customs unions or FTAs and their date of signature, contain a provision preventing parties from using internal taxation to create price discrimination between domestic and imported products.

61. Also, in recognition of the fact that exchange restrictions may act as a barrier to trade, a large number of RTAs contain provisions specifying that the payment of goods should be free from restrictions. A few agreements permit a phased implementation of these provisions, typically over the transition period. Temporary exceptions to the rule granting freedom from exchange restrictions are allowed in a significant number of RTAs, usually in connection with the granting or taking up of short and medium-term credits.

Table VIII - Internal taxation, payments and state monopolies

	With provision preventing discrimination in internal taxation	With provisions on payments		With provisions to prevent discrimination by state monopolies (a)
		prohibiting restrictions (a)	permitting temporary exceptions	
RTAs	63	56(7)	21	49(26)
Customs unions	8	6(1)	-	4(2)
<i>Pre-1990 customs unions</i>	4	5(1)	-	2(1)
<i>Post-1990 customs unions</i>	4	1	-	2(1)
FTAs	55	50(6)	21	45(24)
<i>Pre-1990 FTAs</i>	12	11	-	3(1)
<i>Post-1990 FTAs</i>	43	39(6)	21	42(23)
(a) The number of RTAs allowing for a phased elimination of restrictions are shown in brackets.				

62. Though less frequently than in the case of either internal taxation or payments, a number of RTAs contain specific provisions preventing state monopolies from engaging in discriminatory practices, in many instances allowing for the phased implementation of these rules over the transition period of the agreement. State-monopolies provisions are particularly present in the most recent FTAs.

³⁰In the WTO realm, national treatment on internal taxation and regulations is governed by GATT Article III; payments provisions are found in Article I and, specifically, in Article XV; and disciplines relating to state monopolies are contained in Article XVII.