

III. RTAS AND THE WTO: A TROUBLESOME RELATIONSHIP

RTAs and the WTO share the common objective of trade liberalization; the former is discriminatory the latter is not. The pursuance of similar objectives but according to different approaches creates inevitably some tension in this relationship. The GATT and now the WTO have seen over the years a gradual erosion of the MFN principle due to the emergence of several layers of preferential trade regimes. Some of them (e.g. GSP) were introduced to account for the different levels of development among the Members, others (RTAs) were provided since the inception of the GATT to allow like minded Members willing to liberalize trade faster and deeper not to be held back by slow progress at the multilateral level. Considering that MFN liberalization is proving increasingly hard to attain and that certain trade policy areas that have become of crucial importance to several Members are excluded from the multilateral agenda,⁵⁸ the appeal for RTAs becomes inescapable; these allow Members to single out trade liberalization with specific markets; they involve less burdensome negotiations than those at the WTO, especially if among like-minded parties; and they allow the parties to such agreements to trade according to custom-built regulatory aspects and trade policy disciplines.

The growing appeal for RTAs has implications for the MTS. First, the benefits that RTAs could bring to multilateral trade liberalization are based on the assumption that preferential concessions will at some point be extended at the MFN level; unfortunately this concept of open regionalism is not applied in practice since it is rare, if not unheard of, for countries to extend on a MFN basis their RTA preferences unless as part of a multilateral round of trade negotiations. Concerns over the preservation of preferential margins carries systemic risks for the multilateral trading system since they may create resistance to further MFN trade liberalisation. Second, the lack of specificity in the relevant WTO rules on the do's and don'ts of RTAs gives Members significant leeway in the design of such agreements. As a result, RTAs rarely address comprehensively sensitive sectors such as agriculture; in the first place because certain issues such as domestic

support in agriculture cannot be dealt vis-à-vis a selective number of preferential partners and, second, because domestic lobbies resistant to the multilateral liberalization of such sectors will do so also at the bilateral level. As for regulatory aspects, this flexibility is creating a maze of different regulatory regimes that undermine the principles of transparency and predictability in trade relations.

The tension in the RTA-WTO relationship has extensive ramifications and may pose a threat to a balanced development of world trade through increased trade and investment diversion, particularly if liberalization on a preferential basis is not accompanied by concurrent MFN liberalization; it also poses a threat to the business community and to the global production system on which it operates by raising costs through regulatory complexity and shifting production from comparative advantage to “competitive preferences”. Such ramifications are of systemic importance and deserve to be explored through more rigorous empirical research. This last section addresses these issues from an institutional perspective by presenting an overview of what WTO Members are doing to address these concerns in order to ensure that the different layers of trade preferences work for the MTS and not against it.

GATT/WTO surveillance of RTAs: some history

In 1947, the coexistence of preferential and multilateral (i.e. GATT MFN) tracks to trade liberalization was viewed as ultimately positive in international trade relations. The then prevailing perception was that genuine regional initiatives promoting extensive trade liberalization among sub-sets of the Members could be congruent with multilaterally-agreed trade liberalization and could contribute to the development of global trade and of the MTS. Thus, from the inception of the GATT, Members have been allowed to further the market access they have bound in the GATT by concluding RTAs, albeit subject to a certain number of criteria. These are contained, in particular, in GATT Article XXIV, for agreements in trade in goods, and in GATS Article V, for agreements in the area of trade in

⁵⁸ These include government procurement, competition policy and investment among others.

services. The criteria are fundamentally three: (a) transparency, (b) commitment to deep intra-region trade liberalization, and (c) neutrality *vis-à-vis* non-parties' trade. Paragraph 2(c) of the 1979 Decision of the GATT Council on Differential and More Favourable Treatment (Enabling Clause) waives developing countries' obligations under GATT Article I (MFN) when concluding preferential arrangements among themselves. In practice, a limited degree of transparency is the only requirement attached to RTAs concluded under the Enabling Clause.

GATT Article XXIV provisions confronted their first real test with the notification of the Treaty of Rome in 1957. The Working Group that had been set up to consider the agreement could not reach a clear-cut conclusion with respect to the consistency of the agreement with the GATT relevant rules (GATT Article XXIV); a first major crisis in the GATT was avoided, however, thanks to the launching of a round of MFN negotiations.⁵⁹ A weakness had however been introduced in the multilateral legal framework with a *de facto* recognition of the inoperability of the conditions contained in GATT Article XXIV. The examination of CUs and free-trade areas subsequently notified to the GATT did not either lead to any clear assessments of full consistency with the rules,⁶⁰ and frictions arising between GATT Members in these areas were dealt with pragmatically. During the Uruguay Round, in an endeavour to clarify GATT Article XXIV, Members came up with the Understanding on the Interpretation of Article XXIV of the GATT 1994; the Understanding sheds some light on certain issues (of a rather procedural nature), however, it did not provide any substantive clarification or interpretation of the essential requirements contained in the Article.

The increase in the number of RTAs during the late 1980s and early 90s was beginning to create administrative bottlenecks in the newly established WTO since, according to the GATT practices, a working group was established for each notified RTA mandated for examination. To deal with this situation, in February 1996, the Committee on Regional Trade Agreements

(CRTA) was established with the mandate to verify the compliance of notified RTAs with the relevant WTO provisions and, among others, to consider the systemic implications of such agreements and regional initiatives for the MTS and the relationship between them. At the time of the launch of the Doha Round in November 2001 the CRTA had made no further progress on its mandate of consistency assessment due to the endemic questions of interpretation of the provisions contained in Article XXIV of the GATT 1994.⁶¹ Members had not been able to reach consensus on the format nor the substance of the reports on any of the examinations entrusted to the CRTA. Stalemate in that area had also resulted in little or no progress in the other areas falling under the CRTA mandate. Concerns over the increasing number of RTAs and a malfunctioning multilateral surveillance mechanism prompted Ministers meeting at the Fourth Ministerial Conference in Doha in November 2001 to include RTA rules under the Doha Development Agenda (DDA).

DDA negotiations on WTO rules on RTAs

In the Doha Ministerial Declaration, WTO Members recognize that RTAs can play an important role in promoting trade liberalization and in fostering economic development, and stress the need for a harmonious relationship between the multilateral and regional processes. On this basis, Ministers agreed to launch negotiations aimed at clarifying and improving the relevant disciplines and procedures under existing WTO provisions with a view to resolving the impasse in the CRTA, exercising better control of RTAs dynamics, and minimizing the risks related to the proliferation of RTAs.

The negotiations on RTAs have been conducted on two tracks: issues of “procedural” nature, and “systemic” or “legal” issues of a more substantive nature. Negotiations on the latter have made some progress, however, the scope of issues under consideration is wide and complex; the fact that clarifying or improving WTO rules on RTAs relates to several other regulatory areas under negotiation adds to the complexity. Negotiations

⁵⁹ Dillon Round

⁶⁰ The only exception being the Czech Republic-Slovak Republic CU.

⁶¹ Similar problems of interpretation apply to EIAs under GATS Article V.

on procedural issues which are, by nature, less contentious have instead been very fruitful with Members reaching a formal agreement on a Draft Decision on a *Transparency Mechanism for Regional Trade Agreements* in July 2006. The Decision was applied on a provisional basis in December 2006 while awaiting the conclusion of the Doha Round.⁶²

The Decision is informed by the need for greater transparency on RTAs and it aims to *revitalize* the CRTA and thereby improve the WTO oversight of RTAs. It applies to all RTAs, including those notified under the Enabling Clause and it provides for the following main elements: procedure for the early announcement of RTAs; a timeframe for notification; the type of information to be submitted by the parties; a Secretariat's factual presentation⁶³ - in effect, a TPR-type review of RTAs; a change from the currently required - but *unattainable* - collective assessment of RTAs' consistency to individual Members' assessment (with dispute settlement being a final resort on consistency); and streamlined procedures for RTAs' subsequent notifications and reporting.

The application of such a Decision will provide in due time consistent, homogenous and objective information on the RTAs notified to the WTO, making the latter the primary source of public information on such issues. Transparency is the first step in unravelling the global puzzle of preferential trade relations; such an understanding will help businesses navigate through the maze of preferential regulatory regimes in place today and help civil society make informed choices about these agreements; last but not least it will equip Members with the necessary tools to better address the systemic relationship between RTAs and the multilateral trading system.

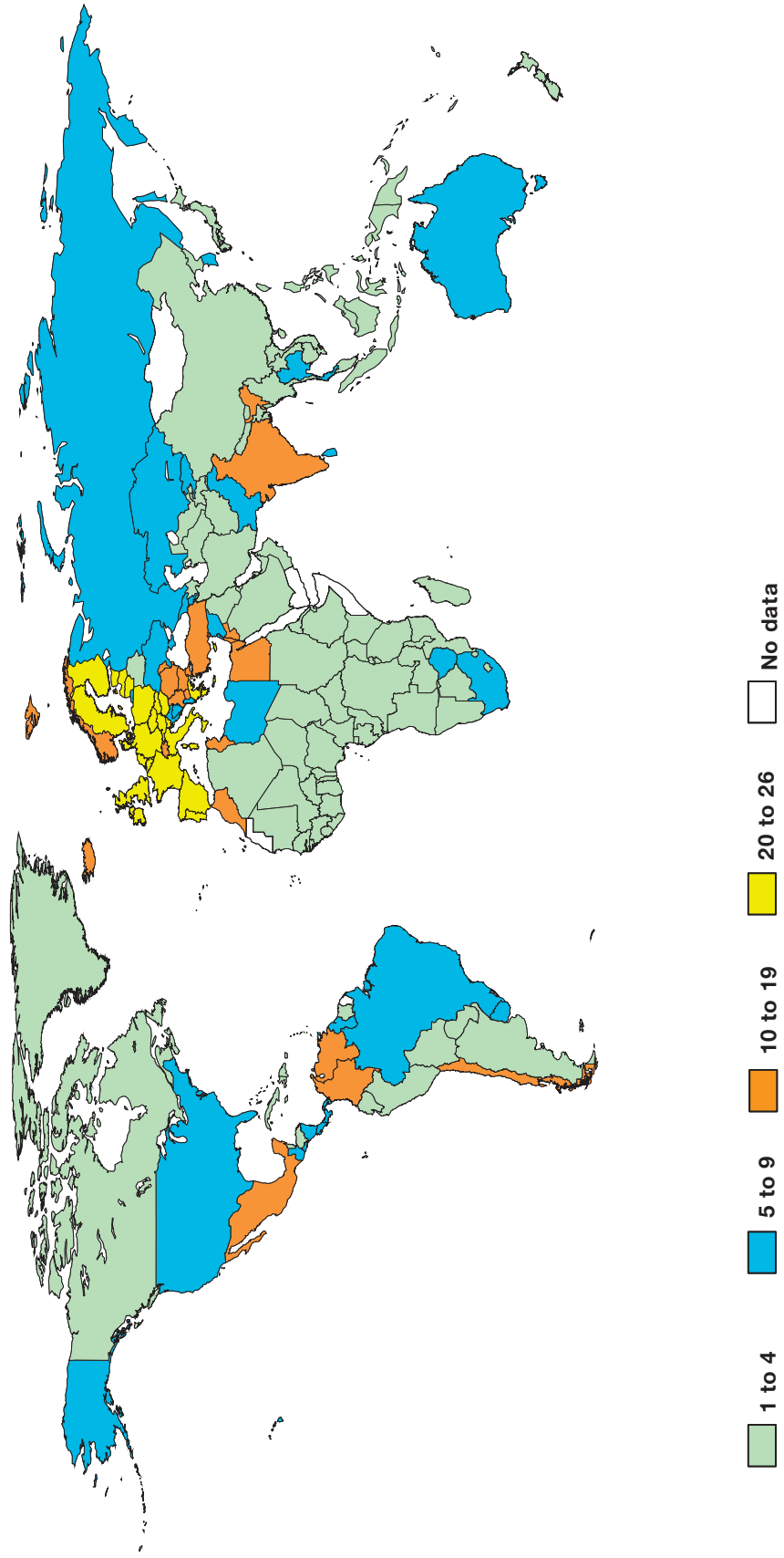
⁶² General Council Decision of 14th December 2006; WTO Document WT/L/671

⁶³ Since September 2004, this element has become operational in the CRTA, on a provisional and voluntary basis. For an example of factual presentation see WTO Document WT/REG169/3.

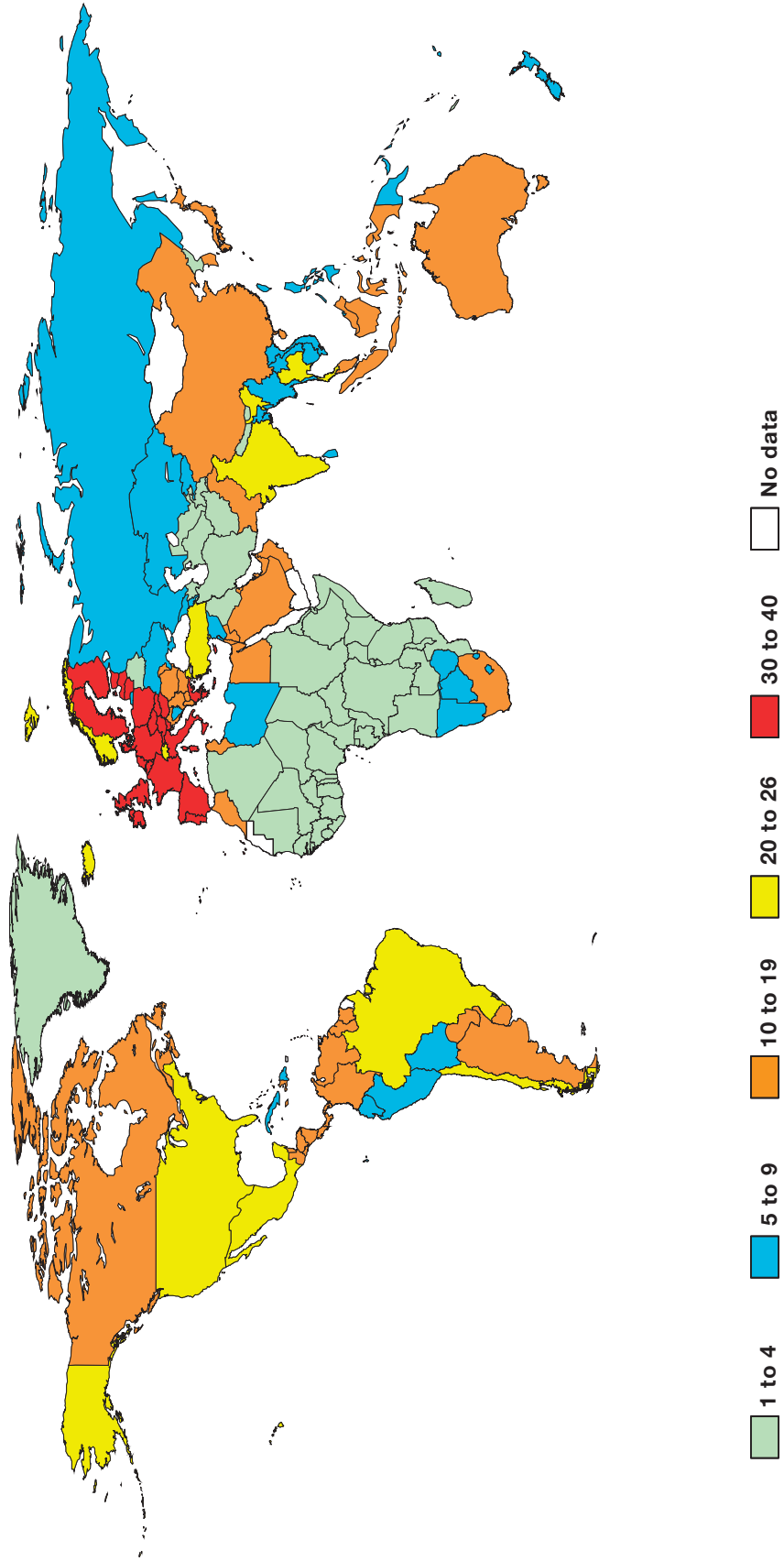
The following Maps A through F provide for further illustration of participation and projected participation in RTAs for both Goods and Services, for cross regional RTAs and establishment of regional trading blocks.

Map A

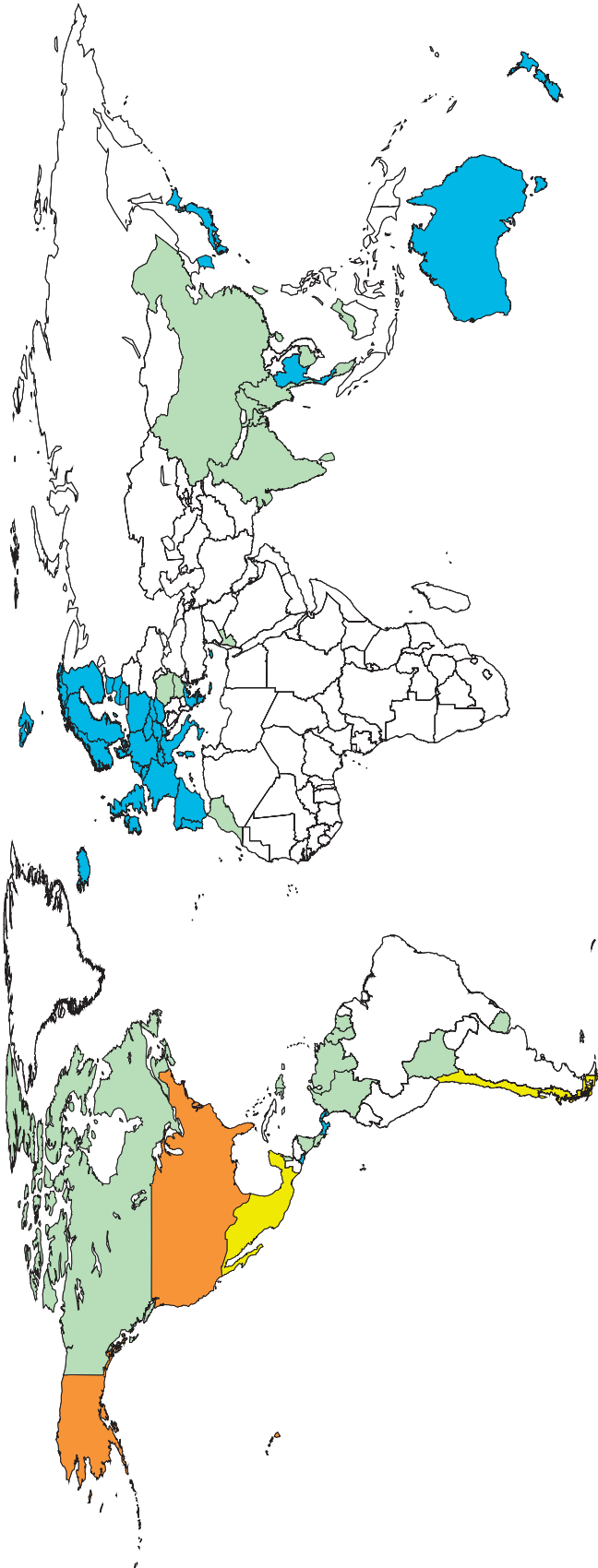
Participation in RTAs as of December 2006 (Goods)



Map B
Projected Participation in RTAs (Goods)



Map C



1 to 2

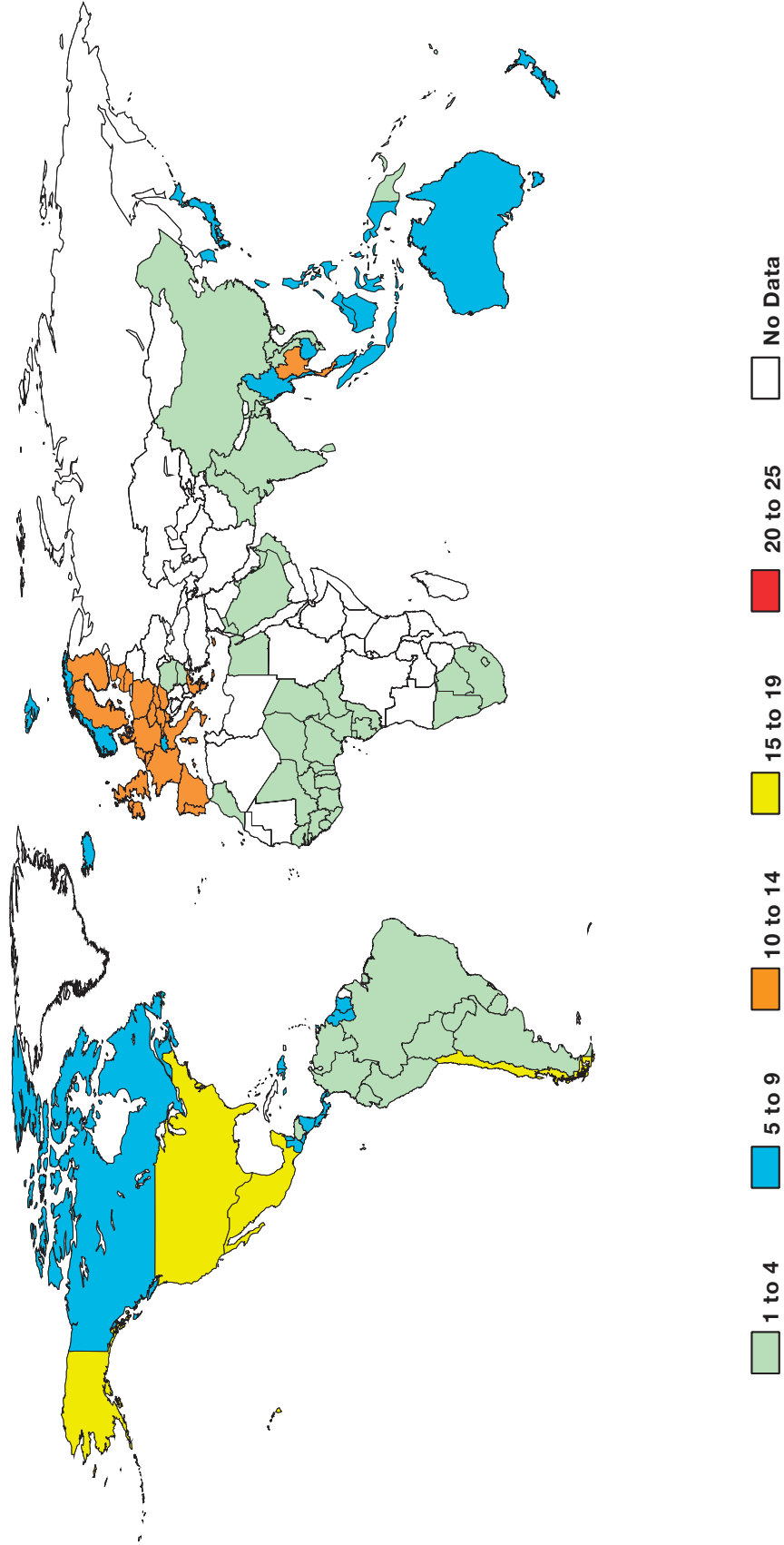
3 to 5

6 to 8

9 to 13

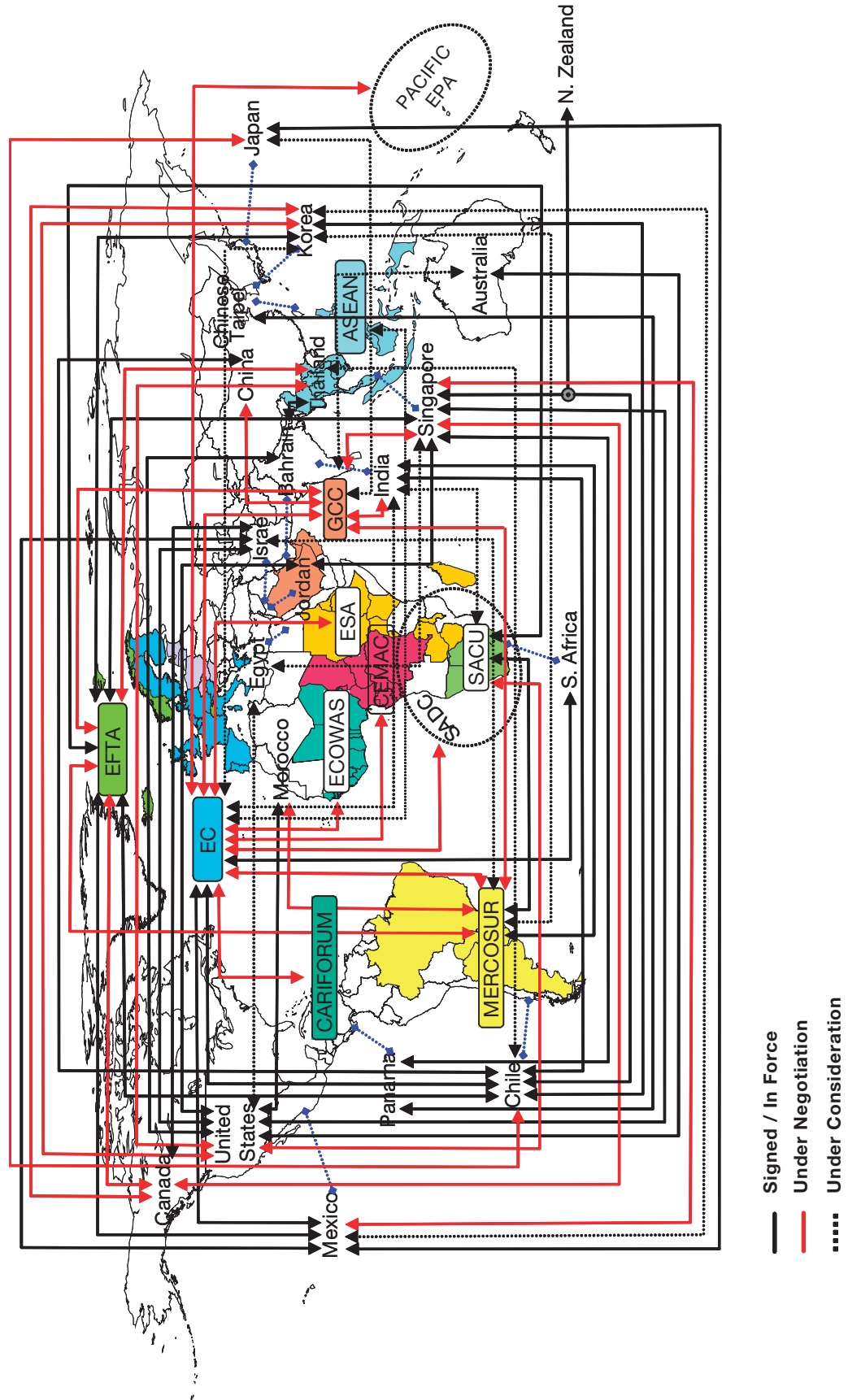
☐ No data

Map D
Projected Participation in RTAs (Services)

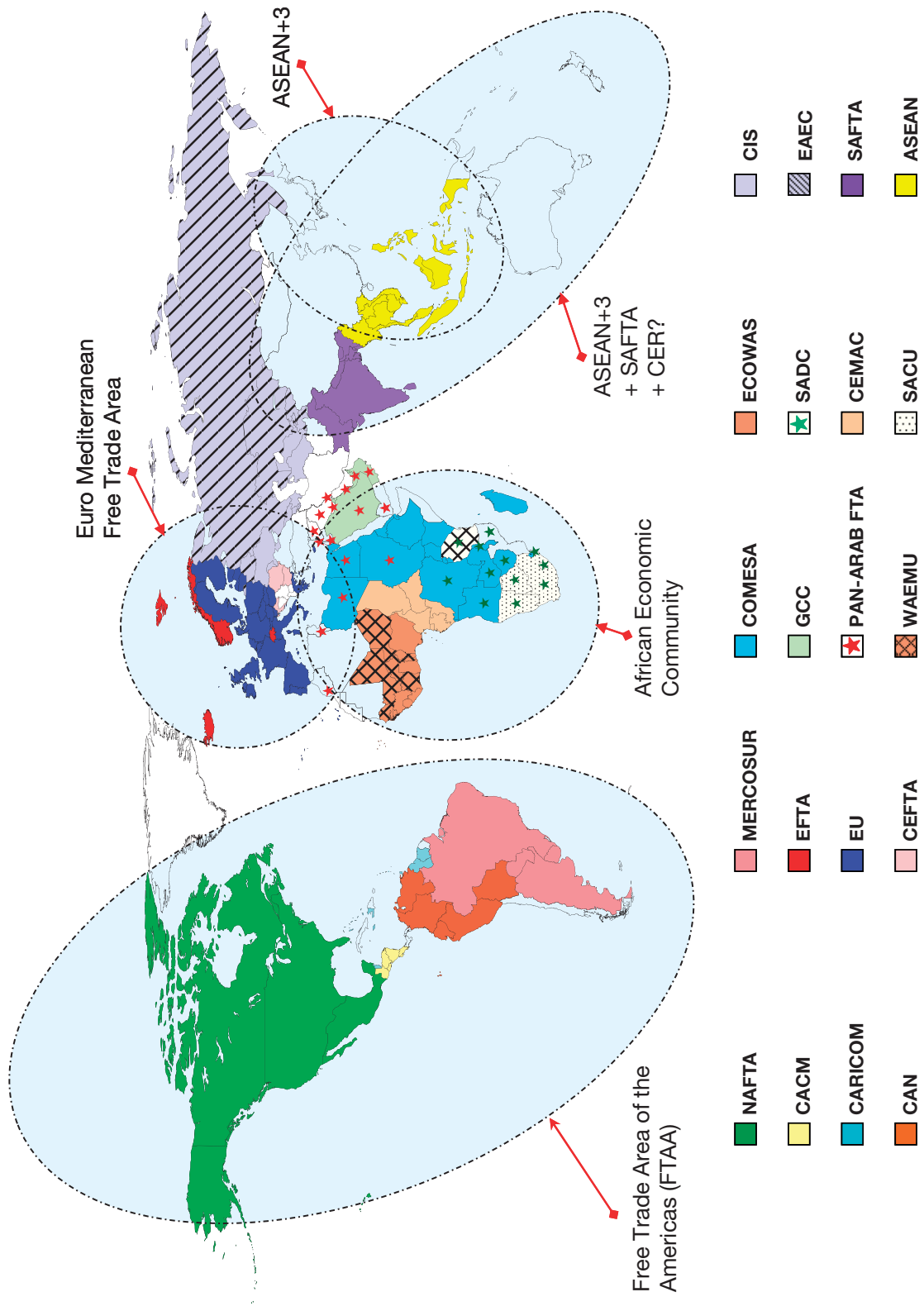


Map E

Cross Regional RTAs as of December 2006



Map F
Establishment of Regional Trading Blocks



IV. LIST OF ACRONYMS OF NOTIFIED RTAS

ABBREVIATION	FULL TITLE	MEMBER COUNTRIES
AFTA	ASEAN Free Trade Area	Brunei Darussalam Cambodia Indonesia Laos Malaysia Myanmar Philippines Singapore Thailand Vietnam
ASEAN	Association of South East Asian Nations	Brunei Darussalam Cambodia Indonesia Laos Malaysia Myanmar Philippines Singapore Thailand Vietnam
BANGKOK	Bangkok Agreement	Bangladesh China India Republic of Korea Laos Sri Lanka
CAN	Andean Community	Bolivia Colombia Ecuador Peru Venezuela
CARICOM	Caribbean Community and Common Market	Antigua & Barbuda Bahamas Barbados Belize Dominica Grenada Guyana Haiti Jamaica Monserrat Trinidad & Tobago St. Kitts & Nevis St. Lucia St. Vincent & the Grenadines Surinam
CACM	Central American Common Market	Costa Rica El Salvador Guatemala Honduras Nicaragua
CEFTA	Central European Free Trade Agreement	Bulgaria Croatia Romania
CEMAC	Economic and Monetary Community of Central Africa	Cameroon Central African Republic Chad Congo Equatorial Guinea Gabon
CER	Closer Trade Relations Trade Agreement	Australia New Zealand
CIS	Commonwealth of Independent States	Azerbaijan Armenia Belarus Georgia Moldova Kazakhstan Russian Federation Ukraine Uzbekistan Tajikistan Kyrgyz Republic
COMESA	Common Market for Eastern and Southern Africa	Angola Burundi Comoros Democratic Republic of Congo Djibouti Egypt Eritrea Ethiopia Kenya Madagascar Malawi Mauritius Namibia Rwanda Seychelles Sudan Swaziland Uganda Zambia Zimbabwe
EAC	East African Community	Kenya Tanzania Uganda
EAEC	Eurasian Economic Community	Belarus Kazakhstan Kyrgyz Republic Russian Federation Tajikistan
EC	European Communities	Austria Belgium Cyprus Czech Republic Denmark Estonia Finland France Germany Greece Hungary Ireland Italy Latvia Lithuania Luxembourg Malta Poland Portugal Slovak Republic Slovenia Spain Sweden The Netherlands United Kingdom
ECO	Economic Cooperation Organization	Afghanistan Azerbaijan Iran Kazakhstan Kyrgyz Republic Pakistan Tajikistan Turkey Turkmenistan Uzbekistan
ECOWAS	Economic Community of West African States	Benin Burkina Faso Cape Verde Cote d'Ivoire The Gambia Ghana Guinea Guinea-Bissau Liberia Mali Niger Nigeria Senegal Sierra Leone Togo
EEA	European Economic Area	EC Iceland Liechtenstein Norway
EFTA	European Free Trade Association	Iceland Liechtenstein Norway Switzerland
GCC	Gulf Cooperation Council	Bahrain Kuwait Oman Qatar Saudi Arabia United Arab Emirates
GSTP	General System of Trade Preferences among Developing Countries	Algeria Argentina Bangladesh Benin Bolivia Brazil Cameroon Chile Colombia Cuba Democratic People's Republic of Korea Ecuador Egypt Ghana Guinea Guyana India Indonesia Islamic Republic of Iran Iraq Libya Malaysia Mexico Morocco Mozambique Myanmar Nicaragua Nigeria Pakistan Peru Philippines Republic of Korea Romania Singapore Sri Lanka Sudan Thailand Trinidad and Tobago Tunisia United Republic of Tanzania Venezuela Vietnam Yugoslavia Zimbabwe
LAIA	Latin American Integration Association	Argentina Bolivia Brazil Chile Colombia Cuba Ecuador Mexico Paraguay Peru Uruguay Venezuela
MERCOSUR	Southern Common Market	Argentina Brazil Paraguay Uruguay
MSG	Melanesian Spearhead Group	Fiji Papua New Guinea Solomon Islands Vanuatu
NAFTA	North American Free Trade Agreement	Canada Mexico United States
OCT	Overseas Countries and Territories	Greenland New Caledonia French Polynesia French Southern and Antarctic Territories Wallis and Futuna Islands Mayotte Saint Pierre and Miquelon Aruba Netherlands Antilles Anguilla Cayman Islands Falkland Islands South Georgia and South Sandwich Islands Montserrat Pitcairn Saint Helena Ascension Island Tristan da Cunha Turks and Caicos Islands British Antarctic Territory British Indian Ocean Territory British Virgin Islands
PAN-ARAB	Pan-Arab Free Trade Area	Bahrain Egypt Iraq Jordan Kuwait Lebanon Libya Morocco Oman Qatar Saudi Arabia Sudan Syria Tunisia United Arab Emirates Yemen

ABBREVIATION	FULL TITLE	MEMBER COUNTRIES
PATCRA	Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea	Australia, Papua New Guinea
PTN	Protocol relating to Trade Negotiations among Developing Countries	Bangladesh Brazil Chile Egypt Israel Mexico Pakistan Paraguay Peru Philippines Republic of Korea Romania Tunisia Turkey Uruguay Yugoslavia
SADC	Southern African Development Community	Angola Botswana Lesotho Malawi Mauritius Mozambique Namibia South Africa Swaziland Tanzania Zambia Zimbabwe
SAPTA	South Asian Preferential Trade Arrangement	Bangladesh Bhutan India Maldives Nepal Pakistan Sri Lanka
SPARTECA	South Pacific Regional Trade and Economic Cooperation Agreement	Australia New Zealand Cook Islands Fiji Kiribati Marshall Islands Micronesia Nauru Niue Papua New Guinea Solomon Islands Tonga Tuvalu Vanuatu Western Samoa
TRIPARTITE	Tripartite Agreement	Egypt India Yugoslavia
UEMOA / WAEMU	West African Economic and Monetary Union	Benin Burkina Faso Côte d'Ivoire Guinea Bissau Mali Niger Senegal Togo

