STUDY OF NON-NOTIFIED TRADE AGREEMENTS TO THE WORLD TRADE ORGANIZATION: THE CASE OF ASIA AND THE PACIFIC REGION

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NO. 132

May 2014

ADB WORKING PAPER SERIES ON REGIONAL ECONOMIC INTEGRATION

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ADB Working Paper Series on Regional Economic Integration

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No. 132 | May 2014

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May 2014
Publication Stock No. WPS146549

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Abstract

"Cast light and evil will go away." This is the basic idea of the transparency exercise of regional trade agreements (RTAs) at the World Trade Organization (WTO). Information sharing on RTAs is critically important because monitoring is impossible without it. In order for us to see not only good but also evil RTAs, a light called "notification requirement" should reach them. In reality, however, it is too optimistic to assume that the light reaches all RTAs. There seem to be many ghosts living in the dark; no information on ghosts can be shared and none can confirm if they are really ghosts. This paper attempts to reveal those RTAs upon which the WTO fails to shed the light of the transparency exercise. While many studies have pointed out that there are many non-notified RTAs as a reservation in conducting analysis of RTAs, this is the first scholarly attempt to identify the comprehensive picture of non-notified RTAs, with an emphasis on the Asia and the Pacific. Because information on all RTAs notified to the WTO is included in the WTO RTA Database, gathering information on non-notified trade agreements is the key to understanding the universe of trade agreements.

Keywords: non-notified RTAs; transparency, Committee on Regional Trade Agreements (CRTA); notification, World Trade Organization (WTO); systemic issues

JEL Classification: F15, F53

1. Introduction

"Cast light and evil will go away." This is the basic idea of the transparency exercise of Regional Trade Agreements (RTAs) at the World Trade Organization (WTO) (Crawford and Lim 2011). Put simply, an enhanced monitoring system of RTAs at the WTO is expected to lead to the enhancement of the quality of RTAs and the elimination of low-quality agreements through peer pressure among WTO members. The effective functioning of the monitoring exercise requires two conditions: (i) a shared understanding of "good" RTAs and (ii) shared information on RTAs. Information sharing is critically important because monitoring is impossible without it. The exchange of views based on shared information is necessary so that WTO members can eventually share a common understanding of good RTAs.

In order for us to see not only good but also evil RTAs, the light called "notification requirement" should reach them. In reality, however, it is too optimistic to assume that the light reaches all RTAs. There seem to be many ghosts living in the dark; no information on ghosts can be shared and none can confirm if they are really ghosts. This paper attempts to reveal those RTAs upon which the WTO fails to shed the light of the transparency exercise. Because information on all notified RTAs is available at the WTO RTA Database, gathering information on non-notified RTAs is the key to understanding the universe of RTAs.

This paper is structured as follows. The next section briefly reviews the existing literature on non-notified RTAs. Section 3 clarifies the meaning of terms such as agreements, trade, non-notified, and Asia and the Pacific, which are critical terms in setting the analytical scope of this paper. Section 4 explains the methodology and information sources used to find non-notified trade agreements. Section 5 investigates non-notified trade agreements in the Asia and the Pacific. It also considers possible reasons why they are not notified to the WTO by the contracting parties. Section 6 proposes methods to enhance the WTO's ability to monitor RTAs. The final section concludes with a summary.

2. Brief Review of the Literature on Non-Notified RTAs

Many studies that attempt to depict the landscape of RTAs have pointed out that there are many non-notified RTAs. It is a common practice to include a reservation in conducting the research of RTAs that the information on non-notified agreement is far from comprehensive (Fiorentino, Verdeja, and Toqueboeuf 2007; p. 1). Many authors state that there is no single source of non-notified RTAs, and that various sources are needed to identify non-notified agreements (Cernat 2005, p. 18).

Economic studies, especially those attempting to asses the difference in economic impact between notified and non-notified RTAs, try to find as many non-notified agreements as possible by using various sources (Grant and Parmeter 2008). However, these studies usually do not distinguish non-notified RTAs that fall under the WTO's notification requirement (non-notified RTAs in a narrow sense) and RTAs that are outside the notification requirement,

because their primary focus is on the economic impact of various types of RTAs and not the legal debates on notification requirements.

It seems certain that the information the WTO Secretariat has regarding non-notified RTAs (WTO 2011, p. 130), which has been used by many researchers as an important source of non-notified RTAs, is becoming increasingly substantial.[1] However, it is still accurate to consider that the entire picture of non-notified RTAs has not yet been fully identified. No existing studies discuss the issue in an extensive manner, unlike notified RTAs. This is the first scholarly attempt to identify the comprehensive picture of non-notified RTAs, with an emphasis on Asia and the Pacific.

3. Conceptualizing Agreements in Asia and the Pacific on Trade without Notification

Defining non-notified RTAs is not an easy task. This is because both the General Agreement on Tariffs and Trade (GATT) Article XXIV and the Enabling Clause (and supplementary provisions) set conditions to be met by RTAs rather than defining RTAs. From the WTO perspective, there is no need to define RTAs. The most-favored nation (MFN) is a critically important principle and the violation of this principle is allowed only when the conditions are satisfied. It does not matter whether a scheme that violates the MFN is operated under an RTA or not. The point is that such a scheme is not allowed unless it satisfies the conditions. In this regard, it is interesting to note that Article XXIV uses the term free trade area, not free trade agreement. However, finding the instances where the MFN principle is violated without satisfying the conditions is not easy. Thus, in this study, we will limit the scope of our analysis to agreements that may violate MFN (we will not try to find a scheme for a free trade area without agreement).

There are two types of requirements to be satisfied by RTAs: (i) substantive requirements and (ii) procedural requirements, including notification. There may be consensus that trade agreements that satisfy substantive requirements, but not procedural (notification) requirements, should be regarded as non-notified RTAs. However, there is a possibility that a trade agreement satisfies neither substantive nor procedural requirements. It is inappropriate to consider them as non-RTAs, just because they do not satisfy substantive requirements. Such agreements should be classified as non-notified RTAs (even if they do not satisfy substantive requirements).[2] Thus, we need to consider the positive definition of RTAs, going beyond the conditions to be satisfied by RTAs.

However, in tackling the non-notification issue, we will consider trade agreement to be defined broadly, rather than RTAs whose precise definition is technically complicated. This is because the main purpose of this exercise is to find non-notified agreements that can be considered

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[1] For recent discussions at the WTO of non-notified RTAs, see WTO Document WT/REG/M/69.

[2] For example, agreement between two developed countries that liberalized only 10% of their bilateral trade does not seem to satisfy conditions in GATT Article XXIV. If we consider such an agreement as being non-RTA, we cannot conduct meaningful research because the majority of non-notified RTAs would be classified as non-RTAs.

RTAs to the extent possible, going beyond a very technical argument on whether a certain trade agreement should be regarded as an RTA against certain conditions on a case-by-case basis. Thus, it may be argued that a trade agreement as defined in this study does not refer exclusively to RTAs, and that this study includes trade agreements other than RTAs as well. However, since one of the fundamental systemic issues of the trade agreement exercise is the enhancement of transparency, having a generic and broad definition of trade agreement is justifiable. The information on any type of trade agreement should be shared among WTO members so that a fruitful discussion on systemic issues of trade agreements, including the discussion on whether a certain trade agreement is an RTA or not, can be held.

Here, we will consider four elements in turn: (i) agreement; (ii) Asia and the Pacific; (iii) trade; and (iv) notification requirements.

3.1 The Meaning of Agreements

First of all, we should ask what is the exact meaning of agreements. This sounds like a stupid question, but in fact it is a critically important issue in searching for non-notified trade agreements. This is because there is a possibility that contracting parties do not notify the WTO of what they sign because they do not consider it to be an agreement. Since what we will discuss is an agreement that binds government trade policies, an agreement seems to be similar to a treaty, which is defined as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation" by the 1969 Vienna Convention on the Law of Treaties (Article 2).

However, there is a further problem related to the meaning of states, which are the contracting party of treaties. For example, there is an existing agreement based on which a customs union between the European Union (EU) and Andorra is formed. Is this a treaty? Some may argue that this is not a treaty because it is difficult to regard Andorra as a fully independent sovereign state. Likewise, New Caledonia (*Nouvelle-Calédonie*), which is a dependent overseas territory of France, is a contracting party of RTAs such as the Pacific Islands Forum (PIF). If New Caledonia signs a similar document with France, then, would that be a treaty? It is beyond the scope of this research to define which states can be a signatory to treaties. Moreover, in the context of this research, it should be noted that a territory that is not usually regarded as a state, such as Hong Kong, China, can still have WTO membership and sign agreements based on WTO laws. Thus, an attempt to define states in a generic manner does not seem to be useful for the immediate purposes of this study.

The scope of agreements in this study is international agreements between or among two or more parties[3] that involve at least one WTO, United Nations, or ADB member as its signatory. (For the exhaustive list of members of these institutions in Asia and the Pacific, see the next section and Appendix 1). Thus, if there were a document signed between France and New Caledonia, it would be regarded as an agreement based on the conditions set forth in this

[3] Note that an agreement is usually signed by more than two parties, while an arrangement can be a unilateral action that becomes effective without the signature of the other partner(s).

paper. (However, it would not be regarded as an agreement in Asia and the Pacific, because it does not involve Asia and the Pacific entities defined later). This paper makes such a broad scope with respect to an agreement because our research attempt is to find possible non-notified trade agreements to the extent possible. However, this definition excludes a possible document signed between, for example, Palestine and Kosovo since neither has a membership at the WTO, UN, or ADB.[4] I will leave experts with the task of elaborating the meaning of agreements from the perspective of a treaty-making power, which may be able to provide us with a more generic definition of the term. Thus, there is a possibility that what we regard as a non-notified trade agreement in this study will be later found as a non-agreement by legal experts.[5]

Finally, agreements include framework agreements. It is wrong if one considers that framework agreements are different from final agreements. The question is whether an agreement defines trade treatment between parties and how it is called is not an issue (for the further discussion on framework agreements, see Section 3.4).

3.2 The Meaning of Asia and the Pacific

It is important to set a clear geographical scope for the Asia and the Pacific region. As has already been discussed, the term agreement in this study means an international agreement that involves at least one member of the WTO, UN, or ADB as its signatory. Thus, rather than defining the Asia and the Pacific region, it is more helpful to list all Asia and the Pacific entities that have membership in at least one of the WTO, UN, or ADB, and then regard an agreement that involves at least one such Asia and the Pacific entity as an Asia and the Pacific agreement.

In the case of the UN, we consider regional members of ESCAP as Asia and the Pacific entities,[6] except Turkey and the Russian Federation. In the case of ADB, we consider its regional members as Asia and the Pacific entities. In the case of WTO membership, which does not have a regional concept, in addition to WTO members that have regional membership in ADB and/or ESCAP, one entity below is regarded as an Asia and the Pacific WTO entity: Macao, China (Macao, China has WTO membership, but no membership in either ESCAP or ADB). In short, we consider entities that have regional membership in ADB and/or ESCAP (excluding Turkey and the Russian Federation) and Macao, China as Asia-Pacific entities. (Appendix 1 includes a list of all Asia and the Pacific entities).

Since we provide an exhaustive list of Asia and the Pacific entities in Appendix 1, providing illustrative examples of the Asia and the Pacific parties not included in the Appendix seems

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[4] This simple definition may be problematic. Given this definition, a document signed between Palestine and Egypt and that between Kosovo and the EU are regarded as agreements. This implies that Palestine and Kosovo have treaty making powers. Then, the document between Palestine and Kosovo should be regarded as an "agreement" in terms of treaty-making power.

[5] There is also a possibility that more non-notified trade agreements can be found if a generic definition provided by experts would have a wider scope than our definition of agreement in this paper.

[6] Associate members of ESCAP are excluded because they are not UN members. These include American Samoa; Cook Islands; French Polynesia; Guam; Hong Kong, China; New Caledonia; Niue; Northern Mariana Islands; and Macao, China. Among them, Cook Islands has ADB membership; Hong Kong, China has WTO and ADB membership; and Macao, China has WTO membership.

useful. Below are the parties that can be regarded as being located in the Asia and the Pacific that have neither WTO, UN, nor ADB membership: American Samoa, French Polynesia, Guam, New Caledonia, Niue, and the Northern Mariana Islands. Thus, a document signed between New Caledonia and Niue is not considered an agreement in this study. A document signed between the US and American Samoa is regarded as an agreement because it includes the US, which has membership in the WTO, UN, and ADB. However, this example is not regarded as an Asia and the Pacific agreement because it does not include an Asia and the Pacific entity listed in Appendix 1.

An agreement in Asia and the Pacific means that it includes at least one entity listed in Appendix 1. Thus, a cross-regional agreement that includes an Asia and the Pacific entity as well as an entity outside the Asia and the Pacific region is regarded as an agreement in (but not within) Asia and the Pacific. The scope of the analysis of this paper is trade agreements in Asia and the Pacific.

3.3 The Meaning of Trade

There are several trade-related items that can be included in an agreement. Three main components relating to trade are: (i) tariffs, (ii) non-tariff barriers (NTBs), and (iii) trade promotion activities. The first two concern the reduction of man-made barrier relating to trade, while the final one is a more proactive action to increase trade, not just reducing policy-oriented barriers, such as the organization of trade exhibitions.

An agreement on trade in this study means an agreement on tariffs[7] that is generally imposed on traded goods[8] and is favorable to partners.[9] An agreement on tariffs favorable to partners means an agreement that gives or could give partner(s) tariff treatment that is more favorable than MFN. Note that the concept of MFN is not applicable to non-WTO members and, therefore, they cannot give partner(s) tariff treatment that is more favorable than MFN. This

[7] A trade agreement should cover trade between members in a general manner, not only particular types of trade. This means that agreement between two or more members that renders favorable tariff treatment to products produced in a specific area in the partner member countries, such as special economic zone (SEZ), is not regarded as a trade agreement. There are more appropriate WTO disciplines to regulate such agreements, such as GATT Article I (MFN) and the Agreement on Subsidies and Countervailing Measures (SCM) than GATT Article XXIV or the Enabling Clause. However, the argument that SEZ should be based on the MFN principle and SCM implicitly assumes that the creation of SEZ is a unilateral action. Theoretically, it is not impossible to argue that such an agreement on preferential tariff treatment for SEZ is a trade agreement that does not satisfy conditions and is not notified to WTO. It is only for practical reasons that this paper does not consider it as a trade agreement: No WTO member has so far notified an agreement on tariffs for SEZ to WTO under GATT Article XXIV or the Enabling Clause.

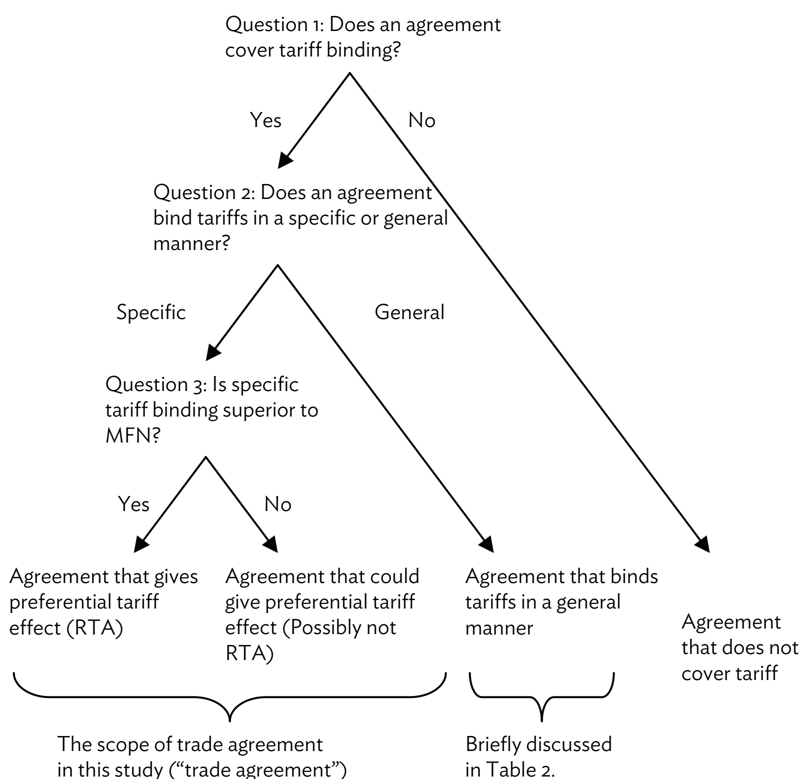
[8] An agreement that gives preferential tariff treatment for the textile sector only is not consider as a trade agreement because bilateral textile agreements have been governed by Article 4 of Multi-Fiber Agreement (MFA) and Article 2 of Agreement on Textile and Clothing.

[9] A services trade agreement per se does not fall under the scope of trade agreement in this study, though there seems to be many non-notified services trade agreements. Many non-notified RTAs that have services chapters, such as the Lao People's Democratic Republic–United States bilateral trade agreement, can be said to be non-notified services agreements. The ASEAN Framework Agreement on Services (AFAS), which cover only services trade, has not been notified under GATS Article V, either.

means that tariff treatment that is more favorable than MFN can be given only by WTO members.

When an agreement covers tariff ("yes" to Question 1), there are two possible manners in which tariffs are bound: specific and general (Question 2) (Figure 1). A typical example of an agreement that states the tariff treatment in a general manner is an agreement between a WTO member and non-WTO member. In such cases, MFN (normal trade treatment) is usually given by a WTO member to a non-WTO member,[10] hence they hardly violate MFN. There may be other ways of binding tariff levels in a general manner, but it seems difficult for an agreement that binds tariffs in a general manner to give preferential treatment better than MFN to partners.

Figure 1: Scope of Trade Agreements in this Study: Treatment of Tariffs



MFN = most favored nation, RTA = regional trade agreement.

Source: Author's illustration.

[10] For example, see the India–Mongolia Agreement on Trade and Economic Cooperation Article 2, which states "the contracting Parties shall accord to each other the most-favored-nation treatment in respect of customs duties and all other taxes on imports and exports and the methods of levying such duties and taxes." Available at http://commerce.nic.in/trade/mongolio.pdf.

If the answer to Question 2 is "specific", such an agreement (an agreement that binds tariff in a specific manner) offers or could offer treatment more favorable than MFN to the partner. A typical example of an agreement that binds tariffs in a specific manner is one that has a tariff schedule.[11]

We will not examine whether the bound tariff at a specific level under a trade agreement is superior to MFN or not; that is, we will not examine Question 3 in Figure 1. In other words, any multilateralism-plus element that an FTA has is not the major concern. Thus, even if the tariff schedule attached to an agreement is a mere "copy and paste" of its tariff schedule submitted to WTO, we regard such an agreement as a trade agreement, which is the focus of this study.[12] So long as an agreement binds tariffs at a certain level in a specific manner (the answer to Question 2 is "specific"), even if the specified level of tariff treatment under the agreement is not necessarily more favorable than MFN at a particular point in time, including the time when the agreement comes into force, and such a level is unchanged (the answer to Question 3 is "no"), it could someday give partner(s) treatment that is more favorable than MFN. This is because the absolute level of MFN treatment can be changed at the WTO (with appropriate compensation). Even without a change in the level of MFN, it could give preferential treatment if trade remedy measures are exercised without the application to trade with partners of such an agreement. Thus, so long as an agreement ensures a specific level of tariff treatment, such an agreement can be regarded as one with favorable tariff treatment. There may be a counter-argument that some of the non-notified trade agreements found in this study do not fall under the scope of RTAs because they do not entail immediate violation of MFN. However, from a third-party's perspective, it is not easy to always assess if a certain agreement actually gives more favorable treatment than MFN, and thus an attempt to find trade agreements that could violate MFN is an important exercise from a policy perspective. As we will discuss in Section 6, the transparency of trade agreements that may not be RTAs should be enhanced, in addition to the technical discussions on the definition of RTAs.

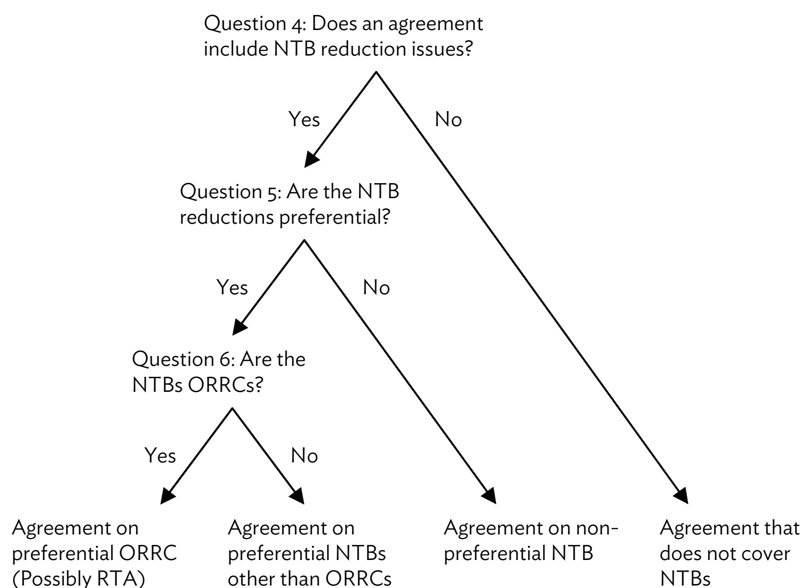
If we regard trade agreements as tariff agreements, this in turn means that trade-related agreements that do not involve tariff issues are not treated as trade agreements (Figure 2). Some WTO law experts may argue that limiting trade agreement to an agreement on tariffs is problematic because some non-tariff issues are other restrictive regulations of commerce (ORRCs) to be banned under RTAs (Irish 2008). GATT Article XXIV says that duties and ORRCs between members should be eliminated. In other words, a WTO-consistent agreement should cover both tariffs and ORRCs. If we consider trade agreements as tariff agreements, only an agreement that covers tariffs and ORRCs or that covers only tariffs can be captured, and an agreement that covers only ORRCs is excluded from the analysis. This may be a serious problem because a preferential agreement that covers only tariffs and that covers only ORRCs should be treated equally because both may equally violate GATT Article XXIV. However, we do not include agreements covering only ORRCs in our analysis for three practical reasons: (i) it is unclear if a preferential ORRC agreement without preferential tariff

[11] Another possible form of a binding tariff at a specific level is an agreement that states a tariff will not become higher in future than the existing tariff.

[12] In the case of services, a country's regional commitment is sometimes the "copy and paste" of its General Agreement on Trade in Services (GATS) commitment, which means that there are no multilateralism-plus (GATS-plus) elements.

effects should be regarded as an RTA, (ii) it is not easy to define the scope of ORRCs,[13] and (iii) it is not easy to assess preferences in the field of ORRCs.[14] Thus, some ORRC specialists may find preferential agreements on ORRCs that are not analyzed in this study are, in fact, non-notified trade agreements.

Figure 2: Treatment of NTBs and ORRCs under Agreements



NTB = non–tariff barriers, ORRC = other restrictive regulations of commerce, RTA = regional trade agreement.

Source: Author's illustration.

The discussion above to set the scope of trade agreement in this study can be summarized as follows. Question 2 ("Does an agreement bind tariffs in a specific or general manner?") is the core question. As far as the answer is "specific", those agreements are regarded as trade agreements, which are the focus of the study, irrespective of the answer to Question 3 ("Is specific tariff binding superior to MFN?"), though some may argue that an agreement should not be regarded as an RTA when the answer to Question 3 is "no." An agreement that covers general tariff treatment (the answer to Question 2 is "general") does not fall under the principal scope of this study, but will be briefly discussed in Section 5.1. There is another set of

[13] The chairman of the WTO Committee on Regional Trade Agreements (CRTA) submitted a note on the standard format for information on regional trade agreements in 1999 (WT/REG/W/6). This note illustrates nine areas of ORRCs: (i) import restrictions: duties and charges, quantitative restrictions, common external tariffs; (ii) export restrictions: duties and charges, quantitative restrictions; (iii) rules of origin; (iv) standards: technical barriers to trade, sanitary and phytosanitary measures; (v) safeguards; (vi) anti-dumping and countervailing measures; (vii) subsidies and state-aid; (viii) sector-specific provisions; and (ix) other: cooperation in customs administration, import licensing and customs evaluation in cases where they differ from those applied on an MFN basis.

[14] For a preliminary analysis of preferential and discriminatory effects of regional trade facilitation, see Hamanaka et al. (2010).

questions regarding NTBs to assess the preference of agreements (Questions 4, 5, and 6). This study does not go into the detailed analysis of NTBs, though some may argue that a certain type of agreement that covers NTB (when the answer to Question 6 is "yes") could be regarded as an RTA.

We do not go into a technical discussion of reciprocity of agreement.[15] The exchange of more favorable tariff treatment than MFN is not required for an agreement to qualify as a trade agreement in this study. Provided that an agreement binds the tariffs of a contracting party that has a WTO membership in a specific manner, we will regard it as a trade agreement, irrespective of the partner's tariff treatment. This is because even if an agreement is nonreciprocal, one that entails (or could entail) the violation of MFN by a WTO member is noteworthy. There are two possibilities. First, if the RTA partners are non-WTO members, their violation of MFN cannot be assessed from the beginning, as discussed above. Second, if the partners are WTO members, a nonreciprocal agreement is not allowed in the first place, but if such exists, those should be revealed in this study rather than putting them outside the analysis. In addition, one should note that even an arrangement[16] that gives tariff treatment more favorable than MFN in a nonreciprocal manner should be notified to WTO as a preferential trade arrangement (PTA).[17] The transparency of a PTA is enhanced by the Transparency Mechanism based on the General Council Decision on 14 December 2010. An exhaustive list of 26 PTAs notified to the WTO is provided in Appendix 2.

3.4. The Meaning of Non-Notified

It is critically important to understand the notification requirement to be able to identify non-notified trade agreements. In order to avoid confusion, we will introduce the concept of "agreements without notification," which has two subcategories: (i) non-notified agreements and (ii) agreements outside notification requirements. "Non-notified" implies that there is a notification requirement. But if there is no notification requirement, such an agreement is not a non-notified agreement but rather an agreement outside notification requirements.

As discussed above, WTO agreements state that trade agreements that satisfy various conditions can be created. There are mainly three possibilities. The first is RTAs based on GATT Article XXIV. When trade agreements include a developed country, they should be based on GATT Article XXIV. Second, is trade agreements based on the Enabling Clause Paragraph 2. When an RTA includes only developing countries, the Enabling Clause can be used. Finally, there are various types of preferential trade arrangements that are based either on Paragraph 1, 3, or 4 of the Enabling Clause. The notification requirements of those arrangements had been very ambiguous, but the General Council Decision on 14 December 2010 made them clearer.

[15] Above all, because we defined an agreement as an international agreement signed by two or more parties, it is reasonable to assume that there are some obligations on all contracting parties. But there is also a possibility where favorable tariff treatment and non-tariff issues are exchanged.

[16] An arrangement is a unilateral action that does not require the signature of the partner party.

[17] Note that the term PTA is used at WTO to refer to preferential trade arrangement, not preferential trade agreement.

Two parameters of trade agreements are critically important in considering notification requirements. The first parameter is the WTO membership of the contracting parties of trade agreements. There is a consensus that when WTO members sign a trade agreement among themselves, it should be notified to the WTO. It also seems true that there is no notification requirement if trade agreements include only non-WTO members. The question is the case of trade agreements that involve both WTO members and nonmembers. Choi (2005) makes a convincing argument that an agreement between WTO members and nonmembers is not allowed from the beginning. However, WTO members agreed to include such agreements under the transparency exercise without repeating an endless debate on their legal relevancy. Thus, unless all members of a trade agreement are non-WTO members, there is a notification requirement; that is, an agreement between a WTO member and non-member should be notified.

The second parameter is the stages of RTAs. Notification requirements stipulated in GATT Article XXIV and the Enabling Clause are very ambiguous.[18] In the 14 December 2006 Decision at the General Council,[19] it was clarified that notification should be submitted before (i) ratification of the agreement, (ii) a decision on application of the relevant parts of an agreement, and (iii) application of preferential treatment between parties. For the purpose of this paper, the term "enforced RTAs" will be used to capture the three subcategories. Regarding the first subcategory, it is unclear when the notification should be submitted: when an agreement is ratified by one contracting party or all contracting parties? In the case of plurilateral agreements, there is a case in which multiple members' (but not all members') ratification is necessary so that the agreement comes into force. However, in this study, we will not go into the technical details of the relationship between ratification and entry into force, and consider that an agreement ratified by one party should be notified. This is because of the languages used in the Decision (it uses the term "ratification" rather than "entry into force").

In addition, early announcement was included. There are two types of early announcement. First, WTO members are encouraged to inform the WTO regarding negotiations on an RTA (best-endeavor requirement). Second, when an RTA is signed, it should be conveyed to the WTO. In order to avoid confusion, the term "non-early announced RTAs" will be used to refer to an RTA signed and that is expected to be announced but has not yet been announced. In short, for RTAs to be regarded as non-notified RTAs, they should satisfy the following two conditions: (i) include at least one WTO member; (ii) be under enforcement (Table 1).

[18] GATT Article XXIV simply calls for "prompt notification" without specifying a period, unlike GATS Article V.
[19] WTO Document WT/L/671.

Table 1: Classification of Agreements without Notification

Membership Status	Agreements that do not include WTO members	Agreements that include at least one WTO member
Signed Agreements before enforcement	Agreements outside notification requirement	Non-Early announced agreements (Agreements outside notification requirements)
Signed Agreements after enforcement	Agreements outside notification requirement	Non-Notified Agreements

WTO = World Trade Organization.

Source: Author's compilation.

One tricky problem is the nature of the text signed by the concerned parties. It is sometimes a framework agreement, not the agreement itself, that is signed and tariff reduction is implemented based on the framework agreement. In this case, tariff reduction is implemented without the signing of an agreement itself. It should be noted that the absence of a signed agreement does not justify the absence of notification, if tariff reduction is already being implemented.[20]

4. Methodology and Information Source

There is no straightforward method to identifying non-notified trade agreements. All notified trade agreements and arrangements are included in the two databases maintained by the WTO Secretariat:

- WTO Regional Trade Agreement Database (RTA-IS)
- WTO Preferential Trade Arrangement Database

While WTO gathers some information on non-notified trade agreements in compiling factual presentations, it is still accurate to consider that their information is far from exhaustive. (For details of the WTO's factual presentation reports, see Section 5.2). Thus, we need to go through a tedious exercise to find non-notified trade agreements. There are several databases on trade agreements. Below are the illustrative ones, which are also used in this study:

- World Bank Global Preferential Trade Agreements Database
- McGill University Preferential and Regional Trade Agreements Database
- ADB ARIC FTA Database
- UNESCAP Asia and the Pacific Trade and Investment Agreements Database

[20] Note that notification should be submitted before: (i) ratification of the agreement; (ii) a decision on application of the relevant parts of an agreement; (iii) application of preferential treatment between parties. The third scenario states "application of preferential treatment between parties" and not "application of preferential treatment under agreement." Thus, implementation of tariff reduction without the signing of an agreement itself does not justify non-notification.

The first two cover trade agreements all over the world, while the latter two cover trade agreements in the Asia and the Pacific region. Each database cites information from the others. Only the World Bank Database and ESCAP Database include the classification on "non-notified" agreement in an explicit manner, which makes it possible for users to search out non-notified agreements. The other two databases also include non-notified agreements, but we cannot download the list of non-notified agreements from them. By comparing agreements included in those database against agreements included in the WTO database, we can identify which agreements are non-notified ones.

Various information sources on trade agreements, not necessarily databases, such as the "Bilaterals.org" website should be also examined to find non-notified agreements.[21] In addition, more random types of research such as internet searches using keywords such as "non-notified" and "trade agreement" are also conducted.

If any agreement relating to trade that is not included in the WTO database is found, the text of such agreement should be checked to assess if it qualifies as a trade agreement as defined in Section 3.

5. Investigation of Non-Notified Trade Agreements in Asia and the Pacific

5.1 Agreements that Bind Tariffs in a General Manner

Agreements that do not ensure a certain level of tariff treatment in a specific manner are outside the scope of a trade agreement as defined in Section 3.3. Because there is no specific tariff binding effect, those agreements do not (and will not) violate the MFN principle as far as tariffs are concerned and it is unlikely that they are deemed RTAs.[22] An agreement that binds tariffs in a general manner often mention MFN or normal trade relations without specifying a certain level of bound tariff, but also often cover NTBs and trade promotion activities.

However, finding agreements that bind tariffs in a general manner and do not have specific tariff binding effects seems to be an interesting exercise in light of the focus of this study (notification), irrespective of the relation between those agreements and trade agreements as defined in this study. Table 2 includes agreements that do not bind tariffs at a certain level in a specific manner, were signed by Asia and the Pacific entities, and are without WTO notification. (Note that they are outside the notification requirement, and are not non-notified agreements.)

[21] http://www.bilaterals.org/?lang=en

[22] However, there is a possibility that those agreements entails preferential ORRCs. In this case, agreements can possibly be regarded as RTAs. See Figure 2.

Table 2: Illustrative Examples of Agreements Binding Tariffs in a General Manner

	Year Signed	Year Enforced
India–Bangladesh Trade Agreement	1980	1981
India–Maldives Trade Agreement	1981	1981
India–PRC Trade Agreement	1985	1985
Armenia–Cyprus Trade Agreement	1995	1996
Armenia–Iran Trade Agreement	1995	1997
Armenia–Switzerland Trade Agreement	1995	1997
EU–Kazakhstan Partnership and Cooperation Agreement	1995	1999
EU–Kyrgyz Republic Partnership and Cooperation Agreement	1995	1999
EU–Uzbekistan Partnership and Cooperation Agreement	1996	1999
Armenia-Canada Agreement on Trade and Commerce	1997	1999
EU–Turkmenistan Partnership and Cooperation Agreement	1998	not yet
Armenia-Estonia Agreement on Trade and Economic Relations	2002	2002
EU–Tajikistan Partnership and Cooperation Agreement	2004	2010

EU = European Union, PRC = People's Republic of China.

Source: Author's compilation.

5.2 Non-Notified Trade Agreements in Asia and the Pacific

With regard to non-notified trade agreements, under the Transparency Mechanism for RTAs established by the 14 December 2006 Decision, the WTO Secretariat prepares factual presentations of notified RTAs (Paragraph 7). While the factual presentations are for each RTA newly notified, what is interesting is that the factual presentation reports usually have a section on relationship with other agreements concluded by the parties that include a table of other trade agreements concluded by the parties of the newly notified RTA. Interestingly, the table includes both notified and non-notified RTAs. The WTO Secretariat compiles the list of non-notified RTAs, using the information in factual presentations. For example, the document shows that the Secretariat in July 2013 listed 53 RTAs that were not notified to the WTO but have appeared in factual presentations.[23] Except for one agreement that covers only services, among members of the Andean Community that entered into force in 2006,[24] all of these agreements cover goods or goods and services. (Note that the scope of this study is limited to non-notified goods agreements because trade agreement is defined as an agreement on tariffs.) The exhaustive list of non-notified 53 RTA in the factual presentations is provided in Table 3, which includes five RTAs that involve an Asia and the Pacific entity: (i) PRC–

[23] WTO Document WT/REG/W/73.

[24] The goods component of the Andean Community RTA that came into force in 1988 has been notified to the WTO under the Enabling Clause.

Taipei,China; (ii) Georgia–Ukraine–Azerbaijan–Moldova; (iii) Pakistan–Iran; (iv) Pakistan–Mauritius; and (v) Peru–Thailand.

Table 3: 53 Non-Notified RTAs in WTO Factual Presentations

	RTA	Entry into Force	Coverage
1	African Economic Community (AEC)	not provided	Goods
2	Agadir (Egypt, Jordan, Morocco, Tunisia)	06/07/06	Goods
3	Andean Community	14/12/06	Services
4	Botswana–Malawi	1956	Goods
5	Botswana–Zimbabwe	1956; 1988	Goods
6	People's Republic of China–Taipei,China	12/09/10	Goods and Services
7	Colombia–CARICOM	01/01/95	Goods
8	Colombia–Panama	01/01/95	Goods
9	Community of Sahel-Saharan States (CEN-SAD)	not provided	Goods
10	Costa Rica–Venezuela	27/07/94	Goods
11	Costa Rica-CARICOM	15/11/05	Goods and Services
12	El Salvador–Venezuela	09/07/86	Goods
13	Georgia, Ukraine, Azerbaijan, Moldova (GUAM)	10/12/03	Goods
14	Guatemala–Venezuela	10/04/86	Goods
15	Guatemala–Cuba	18/05/01	Goods
16	Honduras–Venezuela	22/09/86	Goods
17	Jordan–Israel	19/04/96	Goods
18	Mexico–Central America	01/01/13	Goods and Services
19	Mexico–Panama	01/05/83	Goods
20	Namibia–Zimbabwe	not provided	Goods
21	Nicaragua–Venezuela	18/01/74	Goods
22	Pakistan–Iran	01/10/06	Goods
23	Pakistan–Mauritius	30/11/07	Goods
24	Panama–Dominican Republic	08/06/87	Goods
25	Peru–Thailand	31/12/11	Goods
26	Tunisia–Iraq	31/12/99	Goods
27	Tunisia–Libya	19/02/02	Goods
28	Tunisia–Morocco	16/03/99	Goods
Agreements under the LAIA Framework			
29	Chile–Argentina	02/08/91	Goods
30	Chile–Venezuela	02/04/93	Goods
31	Chile–Cuba	27/06/08	Goods
32	Chile–Ecuador	25/01/10	Goods

Table 3: *Continued*

	RTA	Entry into Force	Coverage
33	Chile–Bolivia	06/04/93	Goods
34	Colombia–Cuba	10/07/01	Goods
35	LAIA—Accession of Panama	10/05/12	Goods
36	LAIA—Cultural Goods		Goods
37	LAIA—Seeds		Goods
38	LAIA—Preferences in favor of Bolivia		Goods
39	LAIA—Preferences in favor of Ecuador		Goods
40	LAIA—Preferences in favor of Paraguay		Goods
41	MERCOSUR–Andean Community	05/01/05	Goods
42	MERCOSUR–Chile	01/10/96	Goods
43	MERCOSUR–Cuba	02/07/07	Goods
44	MERCOSUR–Mexico	05/01/06	Goods
45	MERCOSUR–Peru	01/01/06	Goods
46	MERCOSUR–Bolivia	28/02/97	Goods
47	Mexico–Argentina	24/04/86	Goods
48	Mexico–Brazil	28/02/01	Goods
49	Mexico–Cuba	01/01/89	Goods
50	Mexico–Ecuador	06/08/87	Goods
51	Mexico–Paraguay	01/07/84	Goods
52	Mexico–Bolivia	07/06/10	Goods
53	Peru–Cuba	09/03/01	Goods

LAIA = Latin American Integration Association, MERCOSUR = (Common Market of the South) composed of Argentina, Brazil, Paraguay and Uruguay.

Note: Botswana–Zimbabwe was originally signed in 1956 and amended in 1988.
Source: WTO document WT/REG/W/73.

The question is whether the list of RTAs prepared by the WTO Secretariat based on the information included in factual presentations on newly notified FTAs is exhaustive; this is unlikely.[25] The Transparency Mechanism states "the WTO Secretariat, on its own responsibility and in full consultation with the parties, shall prepare a factual presentation of the RTA" (Paragraph 7 [b]). If a WTO member strongly insists that an agreement it has signed is not an RTA, it may be difficult for the WTO Secretariat to include such an agreement in the factual presentation as a non-notified RTA.

It seems there are many trade agreements (as defined in Section 2.3) without WTO notification in Asia and the Pacific: at least 40 trade agreements that are already signed but without notification submitted to the WTO (Table 4). However, it is wrong to consider that all

[25] For example, in the case of services, the ASEAN Framework Agreement on Services (AFAS) is not included in this list.

of them are non-notified trade agreements. Only trade agreements that are enforced and include at least one WTO member are subject to notification requirement, as discussed already. The majority of the trade agreements without notification are trade agreements that are not in force (outside the notification requirement).

However, based on the author's investigation, there seems to be more than 20 trade agreements in Asia and the Pacific that have not been notified to the WTO, including the five RTAs identified in the factual presentation reports. These are included in Table 4 in the Non-Notified column, but there may be more non-notified trade agreements that have not been identified by this research. Thus, the list is not exhaustive. The Compact of Free Association (CFA) signed by the US with three Pacific countries (e.g., Palau) includes specific tariff treatment rendered by the US to the partners.[26] The United States' (US) Bilateral Trade Agreements (BTAs) with Viet Nam and the Lao People's Democratic Republic (Lao PDR) include specific tariff treatment rendered by Viet Nam and Lao People's Democratic Republic to the US.[27] (Note that both countries are now WTO members). It seems that there are several BTAs that include Pacific island countries. Fiji has a full reciprocal BTA with several partners (e.g., Australia, the PRC, Papua New Guinea, and Vanuatu)[28] that ensure market access through the free flow of goods, according to the Fiji Ministry of Foreign Affairs.[29] While the texts of the majority of Fiji's BTAs are unavailable, it seems clear that a certain level of tariff treatment is bound by the BTAs.[30] Several trade agreements that involve West Asian countries (e.g., Iran and Pakistan), such as the Pakistan–Iran Preferential Trade Agreement, ECOTA,[31] and the Preferential Tariff Arrangement–Group of Eight Developing Countries (PTA–D8)[32] are not notified either.

[26] For the tariff treatment rendered by the US to Palau, see Title TWO (Economic Relations) Article IV (Trade) of the US-Palau CFA. Available at http://166.122.164.43/archive/special/COFA_PALAU.PDF

[27] For the tariff treatment rendered by Viet Nam to the US under the BTA, see Annex E and F of the US–Viet Nam BTA. Available at http://www.usvtc.org/trade/bta/text/

[28] Australia's South Pacific Regional Trade and Economic Cooperation Agreement (TECA) is notified to the WTO as a PTA, which is a unilateral arrangement. The absence of notification of the Fiji–Australia TECA could be because of this notified PTA. However, given that the Fiji–Australia BTA is reciprocal, the PTA notification by Australia does seem to be sufficient.

[29] http://www.foreignaffairs.gov.fj/trade-policy/fiji-s-trade-policy/bilateral-trade-relations

[30] At least a certain level of tariffs rendered by the PRC to Fiji is bound in the BTA. For details, see the website of the Embassy of Fiji in Beijing. Available at http://bio-visa.com/program/com/fiji/index.php?file=detail.php&nowdir=id=864&detail=1). However, the text of the agreement does not seem to be accessible.

[31] Economic Cooperation Organization (ECO) was established by Iran, Pakistan, and Turkey in 1985, and the preferential tariff protocol among the three members was signed in 1991 and notified to WTO. ECO expanded to accept seven new members in 1992: Afghanistan, Azerbaijan, Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan. A trade agreement among the 10 ECO members called the Economic Cooperation Organization Trade Agreement (ECOTA) was signed in 2003. It is possible to regard ECOTA as a successor of the ECO protocol, but ECOTA should be notified to WTO separately, unless the change in membership of ECO protocol is notified to the WTO because the substantial change in agreement, including the accession of new members, should be notified. For the details of ECO and ECOTA see Hamanaka (2012, p. 18).

[32] PTA-D8 includes: Bangladesh, Egypt, Indonesia, Iran, Malaysia, Nigeria, Pakistan and Turkey.

Table 4: Trade Agreements in Asia and the Pacific Signed without Notification
(Illustrative)

Agreements	Year Signed	Year Enforced	WTO Membership
US–Federated States of Micronesia CFA	1986	1994	US (1948)
Tajikistan–Armenia FTA	1994	not yet	Tajikistan (2013); Armenia (2003)
Azerbaijan–Moldova FTA	1995	not yet	Moldova (2001)
Uzbekistan–Georgia FTA	1995	not yet	Georgia (2000)
Uzbekistan–Moldova FTA	1995	not yet	Moldova (2001)
Azerbaijan–Turkmenistan FTA	1996	not yet	None
Azerbaijan–Uzbekistan FTA	1996	not yet	None
Tajikistan–Kyrgyz Republic FTA	1996	not yet	Tajikistan (2013); Kyrgyz Republic (1998)
Tajikistan–Uzbekistan FTA	1996	not yet	Tajikistan (2013)
PNG–Fiji BTA	1996	1996	PNG (1996); Fiji (1996)
Azerbaijan–Kazakhstan FTA	1997	not yet	None
Uzbekistan–Kazakhstan FTA	1997	not yet	None
Fiji–PRC BTA	1997	1997	Fiji (1996); PRC (2001)
Tajikistan–Belarus FTA	1998	not yet	Tajikistan (2013)
Fiji–Vanuatu BTA	1998	1998	Fiji (1996); Vanuatu (2012)
Fiji–Australia TECA	1999	1999	Fiji (1996); Australia (1948)
US–Viet Nam BTA	2000	2001	US (1948), Viet Nam (2007)
Georgia, Ukraine, Azerbaijan, Moldova FTA	2002	2006	Georgia (2000); Ukraine (2008); Moldova (2001)
ECOTA	2003	2004	Pakistan (1948) etc.
PRC–Thailand FTA	2003	2003	PRC (2001); Thailand (1982)
US–Marshall Islands CFA	2003	2004	US (1948)
US–Micronesia CFA	2003	2004	US (1948)
Pakistan–Mauritius PTA	2003	2007	Pakistan (1948); Mauritius (1970)
Sri Lanka–Iran PTA	2004	not yet	Sri Lanka (1948)
US–Lao PDR BTA	2004	2005	US (1948), Lao PDR (2013)
Pakistan–Iran PTA	2004	2006	Pakistan (1948)
PTA-D8	2006	2011	Pakistan (1948)
GCC–Singapore FTA	2008	2013	Singapore (1973)
Singapore–Bahrain FTA	2008	not yet	Singapore (1973); Bahrain (1993)
PRC–Taipei,China ECFA	2010	2010	PRC (2001); Taipei,China (2001)
Chile–Viet Nam FTA	2011	2012	Chile (1949); Viet Nam (2007)
Pakistan–Indonesia FTA	2012	2013	Pakistan (1948); Indonesia (1950)
Hong Kong, China–Chile FTA	2012	not yet	Hong Kong, China (1986); Chile (1949)

Table 4: *Continued*

Agreements	Year Signed	Year Enforced	WTO Membership
Republic of Korea–Colombia FTA	2012	not yet	Republic of Korea (1967); Colombia (1981)
PRC–Iceland FTA	2013	not yet	PRC(2001); Iceland (1968)
Thailand–Chile FTA	2013	not yet	Thailand (1982); Chile (1949)
India–Thailand FTA	not yet FA: 2003	2004	India (1948), Thailand (1982)
Thailand–Peru FTA	Not yet FA: 2003 EH: 2005	2011	Thailand (1982); Peru (1951)

BTA = bilateral trade agreement, CFA = Compact of Free Association, EH = Early Harvest Agreement (Program). ECOTA = Economic Cooperation Organisation Trade Agreement, FA = framework agreement, FTA = free trade agreement, GCC = Gulf Cooperation Council, ECFA = Economic Cooperation Framework Agreement, Lao PDR = Lao People's Democratic Republic, PNG = Papua New Guinea, PRC = People's Republic of China, PTA = preferential trade agreement, PTA-D8 = Preferential Tariff Arrangement-Group of Eight Developing Countries, TECA = Trade and Economic Cooperation Agreement, US = United States.
Note: In the non-notified column, X refers to a non-notified agreement and X* to a non-notified agreement that is included in the factual presentation reports.

Source: Author's compilation.

One may find that the number of non-notified trade agreements is limited, despite the widely held perception that there are so many non-notified RTAs in Asia. One of the reasons is that there are many trade agreements outside the notification requirement. In this context, the case of Central Asia is notable. While it is widely said that trade agreements signed by Central Asian countries are not notified, we need to be very precise to make this type of claim. This is because the majority of Central Asian countries and the Russian Federation are not (or have only recently become) WTO members, and/or some agreements between/among them are not implemented. Some RTAs that have been implemented were not notified to the WTO because their members are not a WTO member (i.e., outside the notification requirement). Soon after one of the members of an RTA obtains WTO membership, those RTAs are notified. For example, the trilateral Customs Union of Belarus, Kazakhstan, and Russia (signed in 1995; in force in 1997) was notified to the WTO in 2012, when one of the contracting parties (Russia) became a WTO member. (It seems that all trade agreements involving the Russian Federation were notified in 2012). Some Central Asian RTAs have been signed but not implemented, and hence are outside the notification requirement. For example, the the Kyrgyz Republic–Tajikistan FTA was signed in 1996 without implementation (both countries have WTO Membership). What is interesting is that many agreements stopped being implemented when the agreement came into force. For example, the Common Economic Zone (CEZ) that involves Belarus, Kazakhstan, Russia, and Ukraine (signed in 2003; in force in 2004) stopped the implementation in 2004, but nonetheless notified to WTO in 2008. Appendix 3 depicts the situation of a "spaghetti bowl" of bilateral RTAs within the Central Asian region. This matrix includes all bilateral RTAs within the subregion, both with and without notification. It seems that all Central Asian bilateral RTAs that include WTO members and that have been enforced are now notified.

5.3 Speculation on Possible Reasons for Non-Notification

While it is difficult to identify the exact reasons why some trade agreements are not notified, several inferences can be made. This section will try to consider possible reasons why some agreements are not notified by identifying four commonalities that such non-notified trade agreements share.

First, there is a possibility that contracting parties do not consider what they signed to be an agreement, mainly because of the ambiguous status of sovereignty, especially the independence of diplomatic policies. Agreements between the PRC and Taipei,China seem to be an example of this. Interestingly, the PRC's trade agreements with Hong Kong, China and Macao, China are notified to the WTO. The United States agreements with the Marshall Islands, the Federated States of Micronesia, and Palau may fall under this category, too.

Second, agreements between WTO members and nonmembers (at the time of signing) tend to be non-notified. As we already saw, agreements between WTO members and nonmembers should be notified. Rather, perhaps the reciprocal nature of those agreements is not identical to an RTA between WTO members.[33] There may be plausible reasons why those are not notified. From a contracting party's perspective, it may be clear that there is no violation of MFN, though this is not obvious to third parties. Examples that may fall under this category include US agreements with Viet Nam and the Lao PDR that were signed before Viet Nam and the Lao PDR WTO membership. The Fiji–PRC BTA is another example that was signed before the PRC's entry into WTO. It is interesting to note that those agreements are called BTA and not FTA.

Third, trade agreements that have a limited scope in terms of product coverage tend to be non-notified. Interestingly, these often include "preferential trade agreement" in the name of the agreement. The Sri Lanka–Pakistan Preferential Trade Agreement, Pakistan–Iran Preferential Trade Agreement, and Pakistan–Mauritius Preferential Trade Agreement are examples. Under the Enabling Clause, a partial scope agreement is allowed but these should be notified.

Finally, agreements that are partially implemented based on a signed framework agreement, without the signing of the agreement itself, tend to be non-notified. India–Thailand FTA and Thailand–Peru FTA seem to be partially implemented based on a framework agreement. However, as discussed, the absence of a signed agreement does not seem to justify the absence of notification, provided that tariff concessions are being implemented.

One interesting issue relating to this is that the agreement between the People's Republic of China and Taipei,China uses the name "Framework Agreement" for the RTA itself, which implies an interim agreement, though the exact intention of using such a name is uncertain.

[33] There is a plausible argument that violation of MFN in signing RTAs between WTO members and non-members is not justifiable (Choi 2005). There is a possibility that the contracting parties of such RTAs do not notify their RTAs because of this problem.

6. Methods to Enhance the Monitoring Function of CRTA

The discussion above leads to some concrete suggestions regarding the reform of transparency exercise of RTAs at the WTO. Unless a trade agreement is included in the WTO's RTA Database (and PTA Database), it is extremely difficult to obtain information about it. Without the text of the agreement, we cannot find the details of a particular trade agreement, including preferential tariff treatment. This makes it difficult for third parties to assess whether such a trade agreement is an RTA or not from their standpoint.

Accordingly, information availability for trade agreements that could be categorized as trade agreements that are similar to RTAs should be enhanced. While the transparency of trade agreements that are regarded as an RTA by the contracting parties has been enhanced, the transparency of trade agreements that are not regarded as an RTA by the contracting parties remains unsatisfactory. It does not seem to be a fruitful discussion if a trade agreement that ensures certain trade treatment is an RTA or not from the transparency perspective. There may be a plausible reason why the contracting parties consider their trade agreement as not being an RTA, which is justifiable under the WTO legal system. However, such a reason may not be clear for non-parties.

In this regard, the report of factual presentation of RTAs, especially its section on relation with other agreements, made a small but important step in this direction. It is interesting that the tile of the section in the factual presentation reports use relationship with other agreements and not relationship with other RTAs. This implies that agreements that are not usually regarded as RTAs can be covered in the section. It is expected that a more comprehensive list of agreements that relate to trade should be covered in factual presentations in the future.

In order to advance further, perhaps the Committee on Regional Trade Agreements (CRTA) should have a dedicated session in which WTO members can freely discuss other WTO members' trade agreements that may not be categorized as RTAs. If the WTO Secretariat compiles the list of trade agreements discussed in such a session, without prejudging whether they are RTAs or not, this could significantly contribute to the transparency of trade agreements.

7. Conclusion

The data on non-notified trade agreements to the WTO has been fragmented. While our knowledge of non-notified trade agreements to the WTO is improving, particularly because of the factual presentation reports on newly notified RTAs that also include the section on other trade agreements signed by the contracting party, a comprehensive picture of non-notified agreements still does not exist. Unless RTAs are notified to the WTO and its data is included in the WTO database maintained by the WTO Secretariat, it is not easy to know the details of agreements. This makes us difficult to even assess if non-notified trade agreements are RTAs or not, because there are various types of agreement that cover trade and tariff issues.

Above all, it is not easy to define RTAs and assess whether a certain agreement entails tariff treatment more favorable than MFN. Doing so on a case-by-case basis is an extremely time-consuming task. Thus, in this paper, we define trade agreement very broadly: an agreement that entails or could entail tariff treatment more favorable than MFN. Thus, trade agreements in this study may include non-RTA trade agreements; that is, trade agreements other than RTAs. Only trade agreements in force that include WTO members are subject to the notification requirement and only such agreements should be regarded as non-notified agreements.

Two important findings can be summarized. First, there are many trade agreements in Asia and the Pacific without WTO notification, but many of them are outside the notification requirement. Many Central Asian trade agreements were outside the notification requirement (rather than non-notified agreements) because they were not WTO members. Several Central Asian trade agreements were not implemented, which means they are not subject to notification requirements either. But recently, as more Central Asian countries become WTO members, almost all trade agreements are being notified to WTO. (The majority of Central Asian agreements that are not notified are agreements that have not been implemented.) Second, there are many (at least 20) trade agreements in Asia and the Pacific that are not notified. While it is not easy to identify the reasons for non-notification, several considerations can be made based on the commonality of non-notified agreements. There is a possibility that contracting parties do not think what they sign as agreements because of the ambiguous status of sovereignty. An agreement between a WTO member and non-member tends to be non-notified, perhaps because tariff concessions are not superior to MFN. Agreements with limited scope (partial scope agreements) and tariff reduction without an agreement signed (but with a signed framework) tend to be non-notified too.

There may be plausible reasons that trade agreements are not notified from a contracting party's perspective. However, such reasons are not obvious to third parties. Moreover, given limited information on non-notified trade agreements, it is not easy for third parties to assess whether those agreements are agreements to be notified. Thus, information availability of trade agreements that may not be categorized as RTAs should be enhanced. While the transparency of trade agreements that are regarded as RTAs by the contracting parties has been enhanced, trade agreements that are not regarded as RTAs remain unsatisfactory. For this purpose, WTO CRTA should have a dedicated session wherein WTO members can freely discuss other WTO members' trade agreements that may not be categorized as RTAs, without prejudging whether they are RTAs or not. The enhancement of trade agreements is the important issue, not the legal debates over whether a certain agreement is an RTA or not, or if it entails an immediate MFN violation.

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Databases

ADB ARIC FTA Database: http://aric.adb.org/fta (9 May 2014)

McGill University Preferential and Regional Trade Agreements Database: http://ptas. mcgill.ca/ (9 May 2014)

UNESCAP Asia and the Pacific Trade and Investment Agreements Database: http://www. unescap.org/tid/aptiad/agg_db.aspx (9 May 2014)

World Bank Global Preferential Trade Agreements Database: http://wits.worldbank. org/gptad/ (9 May 2014)

WTO RTA Database: http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx (9 May 2014)

WTO PTA Database: http://ptadb.wto.org/?lang=1 (9 May 2014)

Appendix 1: Asia and the Pacific Entities (Exhaustive) and International Membership

	ADB (Regional Member)	ESCAP (Regional Member)	WTO
Afghanistan	X	X	(X)
Armenia	X	X	X
Australia	X	X	X
Azerbaijan	X	X	(X)
Bangladesh	X	X	X
Bhutan	X	X	(X)
Brunei Darussalam	X	X	X
Cambodia	X	X	X
China, People's Republic of	X	X	X
Cook Islands	X		
Fiji	X	X	X
Georgia	X	X	X
Hong Kong, China	X		X
India	X	X	X
Indonesia	X	X	X
Iran (Islamic Republic of)		X	(X)
Japan	X	X	X
Kazakhstan	X	X	(X)
Kiribati	X	X	
Korea, Republic of	X	X	X
Korea (Democratic People's Republic of)		X	
Kyrgyz Republic	X	X	X
Lao People's Democratic Republic	X	X	X
Macao, China			X
Malaysia	X	X	X
Maldives	X	X	X
Marshall Islands	X	X	
Micronesia, Federated States of	X	X	
Mongolia	X	X	X
Myanmar	X	X	X
Nauru	X	X	
Nepal	X	X	X
New Zealand	X	X	X
Pakistan	X	X	X
Palau	X	X	
Papua New Guinea	X	X	X
Philippines	X	X	X

Appendix 1: *Continued*

	ADB (Regional Member)	ESCAP (Regional Member)	WTO
Samoa	X	X	(X)
Singapore	X	X	X
Solomon Islands	X	X	X
Sri Lanka	X	X	X
Taipei,China	X		X
Tajikistan	X	X	X
Thailand	X	X	X
Timor-Leste	X	X	
Tonga	X	X	(X)
Turkmenistan	X	X	
Tuvalu	X	X	
Uzbekistan	X	X	(X)
Vanuatu	X	X	(X)
Viet Nam	X	X	X

Note: In the WTO column, (X) means under the accession process.

Source: Author's compilation.

Appendix 2: Preferential Trade Arrangements Notified to World Trade Organization (Exhaustive)

Name	Type	Provider(s)	Entry into Force
Generalized System of Preferences—Australia	GSP	Australia	1/1/1974
Generalized System of Preferences—Canada	GSP	Canada	7/1/1974
Generalized System of Preferences—European Union	GSP	European Union	7/1/1971
Generalized System of Preferences—Iceland	GSP	Iceland	1/29/2002
Generalized System of Preferences—Japan	GSP	Japan	8/1/1971
Generalized System of Preferences—New Zealand	GSP	New Zealand	1/1/1972
Generalized System of Preferences—Norway	GSP	Norway	10/1/1971
Generalized System of Preferences—Russian Federation, Belarus, Kazakhstan	GSP	Belarus; Kazakhstan; Russian Federation	1/1/2010
Generalized System of Preferences—Switzerland	GSP	Switzerland	3/1/1972
Generalized System of Preferences—Turkey	GSP	Turkey	1/1/2002
Generalized System of Preferences—United States	GSP	United States	1/1/1976
Duty-Free Tariff Preference Scheme for LDCs	LDC-specific	India	8/13/2008
Duty-free treatment for African LDCs—Morocco	LDC-specific	Morocco	1/1/2001
Duty-free treatment for LDCs—the People's Republic of China	LDC-specific	People's Republic of China	7/1/2010
Duty-free treatment for LDCs–Taipei,China	LDC-specific	Taipei,China	12/17/2003
Duty-free treatment for LDCs–Kyrgyz Republic	LDC-specific	Kyrgyz Republic	
Preferential Tariff for LDCs–Republic of Korea	LDC-specific	Korea, Republic of	1/1/2000
African Growth and Opportunity Act	Other PTAs	United States	5/18/2000
Andean Trade Preference Act	Other PTAs	United States	12/4/1991
Caribbean Basin Economic Recovery Act	Other PTAs	United States	1/1/1984
Commonwealth Caribbean Countries Tariff	Other PTAs	Canada	6/15/1986
Former Trust Territory of the Pacific Islands	Other PTAs	United States	9/8/1948
South Pacific Regional Trade and Economic Cooperation Agreement	Other PTAs	Australia; New Zealand	1/1/1981
Trade preferences for countries of the Western Balkans	Other PTAs	European Union	12/1/2000
Trade preferences for Pakistan	Other PTAs	European Union	11/15/2012
Trade preferences for the Republic of Moldova	Other PTAs	European Union	1/21/2008

Note: GSP= generalized system of preferences, LDC = least developed countries, PTA = preferential trade arrangement.

Source: http://ptadb.wto.org/ptaList.aspx

Appendix 3: The Matrix of Spaghetti Bowl of Trade Agreements in Central Asia

	Kyrgyz Rep. (1998)	Georgia (2000)	Moldova (2001)	Armenia (2003)	Ukraine (2008)	Russia (2012)	Tajikistan (2013)	Azerbaijan (No)	Belarus (No)	Kazakhstan (No)	Turkmenistan (No)
Georgia (2000)											
Moldova (2001)	S: 1995 E: 1996 N: 1999 F: 1996										
Armenia (2003)	S: 1994 E: 1995 N: 2000 F: 1995	S: 1995 E: 1998 N: 2001 F: 1998	S: 1993 E: 1995 N: 2004 F: 1995								
Ukraine (2008)	S: 1995 E: 1998 N: 1999 F: 1998	S: 1995 E: 1996 N: 2001 F: 1996		S: 1994 E: 1996 N: 2004 F: 1996							
Russia (2012)	S: 1992 E: 1993 N: 1999 F: 1993	S: 1994 E: 1994 N: 2001 F: 1994		S: 1992 E: 1993 N: 2004 F: 1993							
Tajikistan (2013)	S: 1996			S: 1994	S: 2001 E: 2002 N: 2008 F: 2002	S: 1992 E: 1993 N: 2012					
Azerbaijan (No)		S: 1996 E: 1996 N: 2001 F: 1996	S: 1995		S: 1995 E: 1996 N: 2008 F: 1996	S: 1992 E: 1993 N: 2012					
Belarus (No)							S: 1998				

Appendix 3: *Continued*

	Kyrgyz Rep. (1998)	Georgia (2000)	Moldova (2001)	Armenia (2003)	Ukraine (2008)	Russia (2012)	Tajikistan (2013)	Azerbaijan (No)	Belarus (No)	Kazakhstan (No)	Turkmenistan (No)
Kazakhstan (No)	S: 1995 E: 1995 N: 1999 F: 1995	S: 1997 E: 1999 N: 2001 F: 1999		S: 1999 E: 2001 N: 2004 F: 2001		S: 1992 E: 1993 N: 2012		S:1997			
Turkmenistan (No)		S: 1996 E: 2000 N: 2001 F: 2000		S: 1995 E: 1996 N: 2004 F: 1996	S: 1994 E: 1995 N: 2008 F: 1995			S: 1996			
Uzbekistan (No)	S: 1996 E: 1998 N: 1999 F: 1998	S: 1995	S: 1995		S: 1994 E: 1996 N: 2008 F: 1996	S: 1992 E: 1993 N: 2013	S: 1996	S: 1996		S: 1996	

Kyrgyz Rep. = the Kyrgyz Republic, Russia = the Russian Federation.
Note: S refers to the year when FTA was signed; E refers to the year when FTA came into force; N refers to the year when notification was submitted to WTO; F refers to the year when FTA implementation was finished. The numbers in parenthesis are the year when the country obtained WTO membership. (“No” means that the country still does not have WTO membership).

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Printed in the Philippines