

Distr.: Restricted
10 September 2014

English only

Trade and Development Board

Sixty-first session

Geneva, 15–26 September 2014

Item 7 of the provisional agenda

Evolution of the international trading system and its trends from a development perspective

Regional trade agreements: Coverage of trade in agricultural goods

Introduction

1. Progress in the Doha Round negotiations on the central issue of further reforming agricultural trade under article 20 of the World Trade Organization (WTO) Agreement on Agriculture has so far remained elusive. The agriculture component of the Bali Package adopted at the Ninth WTO Ministerial Conference in December 2013 included the following: a temporary peace clause for existing food-stockholding programmes relating to traditional staple crops, rules for tariff-rate quota administration when the quota is persistently underfilled, political commitments to continue reducing export subsidies and measures that have an equivalent effect, continuing negotiations and enhanced transparency and monitoring on cotton, and clarification that land reform and rural livelihood security programmes are considered non-trade-distorting general services.¹ Intensive efforts were also planned for the development of a work programme on the outstanding Doha Round issues by the end of 2014. However, the lack of agreement within the General Council at the end of July 2014 placed all of these issues in considerable doubt.

2. In the meantime, the trend towards the conclusion of regional trade agreements (RTAs) continues unabated. By 2013, each developed country had preferential access to an average of 23 countries, a sharp increase from just 8 in 2002 and much higher on average than developing countries, although the number of developing countries with preferential market access is on the rise.² This may lead to issues of coherence. It has been argued that, while the establishment of systems of “hub-and-spoke” bilateral agreements by the United States of America, Japan and the European Union would mitigate conflicts, “spoke countries” having RTAs with more than one of these parties would face particular

¹ WTO, Bali Ministerial Declaration, WT/MIN(13)/DEC/W/1/Rev.1, 7 December 2013.

² See UNCTAD, 2013, *Key Statistics and Trends in Trade Policy* (Geneva, United Nations publication).

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problems.³ On the other hand, North–South RTAs have been concluded by other developed countries, such as Canada and Switzerland. In some trade policy areas, these RTAs may be useful for future multilateralization, for example, in the area of export duties and export restrictions in general.

3. Counting goods, services and accessions separately, some 585 notifications of RTAs had been received as of 15 June 2014 by the General Agreement on Tariffs and Trade (GATT) and WTO, 379 of which were in force.⁴ Current RTA negotiations often aim at the so-called “high-standard” integration through WTO+ or WTO-X provisions on behind-the-border regulatory measures in several areas.⁵

4. RTA negotiations also involve parties accounting for major shares of world trade and/or major trading countries, the so-called mega-RTAs. As yet, there remains much uncertainty regarding the eventual outcome of the three ongoing mega-RTA negotiations, including the Trans-Atlantic Trade and Investment Partnership (TTIP) between the United States and the European Union, the Trans-Pacific Partnership Agreement (TPP)⁶ and the Regional Comprehensive Economic Partnership.⁷ It has been argued that such mega-RTAs aim at constituting alternatives to multilateral liberalization and updating trade rules, while enabling participants to avoid marginalization,⁸ which is considered too costly by many developing countries, and could enhance coherence by promoting further multilateral negotiations at WTO for improved trade rules, trade liberalization and deeper economic integration.⁹

5. On the other hand, doubts have been expressed as to whether the TPP and TTIP negotiations would fit in with each other and other RTA negotiations, particularly the Regional Comprehensive Economic Partnership, or how well they would promote global trade liberalization and multilateral convergence – given that they avoid addressing agricultural subsidies and other global challenges and lock in regulatory divergences, thus making it harder to eventually come back to WTO.¹⁰ It has been suggested that these negotiations involve discriminatory market-distorting trade-offs of preferential market

³ See R Baldwin, 2013, Global supply chains: Why they emerged, why they matter, and where they are going, in *Global Value Chains in a Changing World*, DK Elms and P Low, eds. (Geneva, Fung Global Institute, Nanyang Technological University and WTO).

⁴ http://www.wto.org/english/tratop_e/region_e/region_e.htm (accessed 4 September 2014).

⁵ WTO+ provisions concern areas subject to some form of commitment in WTO agreements. They reconfirm existing commitments and include additional obligations. WTO-X provisions cover areas outside the current mandate of WTO. See WTO, 2011, *World Trade Report 2011: The WTO and Preferential Trade Agreements – From Co-existence to Coherence*, Geneva, Switzerland, p. 128.

⁶ Participants in these negotiations include Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam. Other Asian countries have expressed interest in joining. The TPP is regarded as a stepping stone toward a broader, region-wide Free Trade Area of the Asia-Pacific.

⁷ Participants in these negotiations include members of the Association of Southeast Asian Nations (ASEAN): Australia, China, India, Japan, New Zealand and the Republic of Korea.

⁸ See D Pilling and S Donnan, Trans-Pacific Partnership: Ocean’s twelve, *Financial Times*, 22 September 2013, available at <http://www.ft.com/cms/s/0/8c253c5c-2056-11e3-b8c6-00144feab7de.html#axzz3CQdoO4iI> (accessed 5 September 2014).

⁹ See L Cernat, TPP, TTIP and multilateralism: Stepping stones or oceans apart? *VOX*, 8 November 2013, available at <http://www.voxeu.org/article/bilateral-renaissance-or-multilateralism> (accessed 5 September 2014).

¹⁰ P Lamy, Looking back, moving forward, 29 July 2013, available at <http://www.voxeu.org/article/looking-back-moving-forward> (accessed 5 September 2014).

access.¹¹ In any event, it can be expected that the provisions of these mega-RTAs, if and when concluded, would significantly reflect the provisions of some recent RTAs already concluded by mega-RTA parties that have substantial bargaining power.

6. The above-mentioned trends highlight the need for a content analysis of the provisions in a selection of typical North–South RTAs, highlighting their “WTO+” or “WTO-X” provisions or identifying their similarities to provisions of the WTO agreements. This would serve to promote transparency and could facilitate efforts undertaken to enhance complementarity and coherence within the international trading system. Such an analysis would be particularly useful with respect to RTA provisions on agriculture and agricultural trade, given the importance of this subject for a meaningful conclusion of both the Doha Round and the post-2015 development agenda.

7. As a complement to the note by the UNCTAD secretariat, “Evolution of the international trading system and its trends from a development perspective” (TD/B/61/2), the present paper examines the WTO+ provisions relevant to agricultural trade in a sample of nine recent North–South RTAs (annex). These include two RTAs each concluded by the European Union, Japan and the United States with countries in different regions, and one RTA each concluded by Australia, Canada and Switzerland, as well as by Chile (a developing country which has particularly concluded many RTAs).

8. This paper covers provisions relating to trade in goods in general – which would cover trade in agricultural products – and those dealing specifically with agriculture and trade in agricultural products. The types of provisions dealt with here are mostly rule-making, namely safeguards, including special agricultural safeguards and generic safeguard provisions specifically referring to agricultural products, domestic support to agriculture, export subsidies, export prohibitions and restrictions, export duties and institutional provisions on agriculture and agricultural trade. The analysis brings out the normative power of the rights and obligations provided for, in light of the strength of the basic obligations and of any caveats, provisos, derogations or exclusions.

9. Given their complexity, the provisions in these RTAs relating to tariffs and tariff-rate quotas on agricultural products or specific regimes applicable to individual agricultural products are not analysed here. In this regard it may be noted that a survey of 65 RTAs found that, upon their entry into force, considerably less initial liberalization took place with respect to agricultural products than with industrial products, and there was also less liberalization by the end of the implementation periods.¹² While provisions on sanitary and phytosanitary regulations, technical barriers to trade or rules of origin are of central relevance to agricultural trade, they are not covered here either so as to keep the analysis simple and illustrative. Further analysis to look into all such provisions within these RTAs would be required.¹³

¹¹ Pascal Lamy questions US-led regional trade talks, *Financial Times*, 18 July 2013 (available at <http://www.ft.com>, accessed 5 September 2014).

¹² See JA Crawford, Market access provisions on trade in goods in regional trade agreements, WTO Staff Working Paper ERSD-2012-20, 31 October 2012.

¹³ An examination of the treatment of agriculture in over 50 RTAs of Latin American, Asia–Pacific and African countries with respect to market access, subsidies, trade remedies, and requirements relating to sanitary and phytosanitary issues and technical barriers to trade, in comparison with WTO requirements, is made in L Fulponi, M Shearer and J Almeida, 2011, Regional trade agreements – Treatment of agriculture, OECD Food, Agriculture and Fisheries Working Papers, No. 44, OECD Publishing.

I. Safeguards

10. Special safeguard measures against imports of agricultural products differ from generic safeguards with respect to triggering factors and the absence of a requirement for serious injury. Article 5 of the WTO Agreement on Agriculture allows WTO Members to invoke special safeguards for tariffed agricultural products in the Uruguay Round, provided a special reservation was made against the products concerned in that Member's schedule at the time of signing the Agreement. An additional tariff may be imposed where there is either a specified surge in imports (a volume trigger, in which case the higher duties should only apply until the end of that year), or a fall of the import price for an individual shipment below a specified reference price (a price trigger, in which case the additional duty should only be on that shipment). The additional duties cannot exceed one third of the level of the existing ordinary duty; they cannot be applied to imports taking place within tariff-rate quotas, or be simultaneously applied with emergency action on imports (under article XIX of GATT 1994) or generic safeguards (under the WTO Agreement on Safeguards).

11. None of the nine RTAs analysed in this paper (see annex) contain special safeguard provisions relating to agricultural products. Moreover, the ASEAN–Australia–New Zealand Free Trade Agreement and the RTAs concluded between the European Union and the Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM); Japan and Chile; and Japan and Viet Nam specifically provide that each party retains its rights and obligations under article XIX of GATT 1994, the Agreement on Safeguards and article 5 of the Agreement on Agriculture. In contrast, those agreements entered into by Canada and Colombia, Japan and Chile, Switzerland and China, the United States and Oman, and the United States and Panama contain general provisions confirming the parties' rights and obligations under the WTO Agreement,¹⁴ other agreements negotiated under it and, in general, other agreements between the parties.¹⁵

12. However, some of the RTAs analysed depart somewhat from WTO provisions with respect to the conditions, timing and modalities for recourse to safeguards against the imports of agricultural products. For example, the reservation of WTO rights in article 24 of the RTA concluded between the European Union and CARIFORUM is subject, "in the light of the overall development objectives of this Agreement and the small size of the economies of the CARIFORUM States", to an exclusion of CARIFORUM imports from European Union measures taken under these WTO provisions for five years from the date of entry into force of this RTA, which may be extended if agreed. Article 25 dealing with generic safeguards goes on to provide that, notwithstanding article 24, a party may, after having examined alternative solutions, apply safeguards of limited duration where a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause, *inter alia*, "disturbances in the markets of like or directly

¹⁴ Refers to the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

¹⁵ See the following RTAs: ASEAN–Australia–New Zealand Free Trade Agreement, chapter 7, article 9; Economic Partnership Agreement between the European Community and its member States and the CARIFORUM States, article 24; Agreement between Japan and the Republic of Chile for a Strategic Economic Partnership, articles 3 and 22 (d); Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership Agreement, articles 9 and 20.1; Canada–Colombia Free Trade Agreement, article 102; Free Trade Agreement between the Swiss Confederation and China, article 1.3.1; Agreement between the Government of the United States of America and Government of the Sultanate of Oman on the Establishment of a Free Trade Area, article 1.2; and United States–Panama Trade Promotion Agreement, article 1.3.

competitive agricultural products⁽¹⁾ or in the mechanisms regulating those markets.

⁽¹⁾ For the purpose of this Article agricultural products are those covered by Annex I of the WTO Agreement on Agriculture.”

13. Notification to and examination by the CARIFORUM–European Community Trade and Development Committee are normally needed before recourse may be made to such generic safeguards, while action may provisionally be undertaken without such consultations where exceptional circumstances require immediate action.¹⁶ The following measures may be taken:

- (a) Suspension of further customs duty reduction;
- (b) Increase in the customs duty to a level no higher than the most-favoured nation (MFN) rate;
- (c) Introduction of tariff-rate quotas on the product concerned.

14. These measures may be taken for two years at a time and extended for a further two years. Both articles 24 and 25 are excluded from WTO dispute settlement.

15. Similarly, the Agreement on Trade, Development and Cooperation between the European Union and South Africa in article 16 provides that if, given the particular sensitivity of the agricultural markets, agricultural imports originating in one party cause or threaten to cause a serious disturbance to the markets in the other party, the Cooperation Council shall immediately consider the matter to find an appropriate solution. Pending its decision, the affected party may take provisional measures where exceptional circumstances require immediate action, taking into account the interests of both parties. Furthermore, article 24 allows safeguards to be applied under the conditions provided for in the WTO Agreement on Safeguards or the Agreement on Agriculture, upon importation of any product in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products. Article 24 also provides for the possibility of surveillance of safeguard measures by the European Union (limited to the European Union regions concerned) or by South Africa where any product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the European Union’s outermost regions or States of the Southern African Customs Union, respectively. In all article 24 cases, the procedures laid down in article 26 (relating to notification and examination by the Cooperation Council) have to be followed, while precautionary measures may still be applied where exceptional circumstances require immediate action.¹⁷

16. Under the Canada–Colombia Free Trade Agreement (article 217), Colombia reserves the right to invoke special safeguard measures if there is a trigger volume for some agricultural products listed in the special annex to the Agreement, under conditions similar

¹⁶ For a maximum period of 180 days for most European Union measures and 200 days for CARIFORUM State measures (or for European Union measures limited to the territory of its outermost regions).

¹⁷ Moreover, under article 20, the parties may have regular consultations in the Council on the strategy and practical modalities of their respective agricultural policies and, if either party, in pursuit of these policies, considers it necessary to amend the arrangements laid down in this RTA, it will notify the Council, which will decide on the requested modification. In applying this, if either party amends the arrangements made by this RTA for agricultural products, it shall make adjustments to be agreed on by the Council so as to maintain the concessions on imports originating in the other party at an equivalent level to that provided for in the RTA.

to article 5 of the Agreement on Agriculture.¹⁸ Duties cannot exceed the lesser of the applied MFN tariff rate or the base rate set out in Colombia's schedules, and the measure must expire at the end of the tariff liberalization period.

17. Although the parties to the United States–Panama RTA affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which they are party (article 1.3.1), this RTA also provides that neither party may apply any safeguard duty pursuant to the Agreement on Agriculture or its successor provisions on an agricultural good (article 3.17). However, special agricultural safeguards may be applied by either party on a volume trigger with respect to agricultural goods they have listed in the RTA, except on goods already subject to duty-free treatment, listed for tariff elimination or subject to tariff-rate quotas. While most of the conditions relating to agricultural safeguard measures in this RTA are similar to those provided in the Agreement on Agriculture, there are differences with respect to volume trigger levels, which vary according to the product, and the rates of additional duties (total duties cannot exceed the lowest of the base rate of duty in the parties' schedules or applied MFN rate).

II. Domestic support

18. The Agreement on Agriculture established a method known as the aggregate measurement of support for Members to calculate the total trade-distorting domestic support provided to domestic producers in a year and to agree to specified reduction commitments between 1995 and 2000 (2004 for developing countries). Domestic support policies with minimal impact on trade (green box measures mostly in the form of decoupled income support) were excluded from reduction commitments if provided through a publicly funded government programme that does not involve transfers from consumers or provide price support to producers. Other policies not included in reduction commitments include direct payments under production-limiting programmes, certain government-assistance measures to encourage agricultural and rural development in developing countries and de minimis support.

19. None of the RTAs analysed in this paper include additional substantive provisions for limiting domestic support to agriculture. On the other hand, article 27 of the European Union–CARIFORUM RTA on national treatment on internal taxation and regulation provides that its provisions “shall not prevent the payment of subsidies exclusively to national producers, including payments to national producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products”.

20. The Canada–Colombia RTA provides for consultations if either party maintains, introduces or re-introduces a domestic support measure that the other party considers to distort bilateral trade covered by this RTA, with a view to avoiding nullification and impairment on the concessions granted under this RTA (article 216). The parties also undertake to cooperate in the WTO agricultural negotiations to achieve a substantial reduction of production and trade-distorting domestic support measures for agricultural goods.

¹⁸ Covering beef, variety meats and beans.

III. Export subsidies

21. The Agreement on Agriculture prohibits export subsidies on agricultural products, classified in annex 1 to the Agreement, unless the subsidies are specified in the list of commitments of a WTO member. Where subsidies are listed, WTO members, except for least developed countries, have to make phased reduction commitments regarding both subsidy amounts and quantities of exports receiving subsidies, as specified in their schedules.

22. Under the RTAs concluded by Japan and Viet Nam (article 18) and Japan and Chile (article 17), the parties simply agree not to introduce or maintain any export subsidies on any agricultural good listed in annex 1 to the Agreement on Agriculture. The European Union–CARIFORUM RTA, which also applies to export subsidies, provides for asymmetric obligations in this regard: Article 28 requires a standstill by signatory CARIFORUM States on subsidy increases or new subsidies on agricultural products destined for European Union territory, while requiring phasing out by the European Union of all existing export subsidies for exportation to CARIFORUM States of agricultural products for which the latter have committed to eliminate customs duties (the modalities of this phasing out are to be decided by the Trade and Development Committee under this Agreement). This article is without prejudice to the application by the CARIFORUM States of the provisions of the WTO Agreement on Subsidies and Countervailing Measures relating to special and differential treatment for developing countries.

23. The other RTAs analysed herein do not limit themselves to annex 1 agricultural products. Under the ASEAN–Australia–New Zealand Free Trade Agreement, each party agrees, consistent with its WTO rights and obligations, to eliminate and not to reintroduce any forms of export subsidies for agricultural goods destined for the other parties (chapter 2, article 3). The Canada–Colombia RTA contains a similar provision (article 214),¹⁹ while going on to specify that, if either party does apply such a subsidy, it shall upon request consult with the other party to agree on countervailing measures by either party and, failing agreement, the importing party may adopt countervailing measures, including an increase in the rate of duty on such imports to the applied MFN tariff rate. The parties agree to work together toward an agreement in the WTO to eliminate and avoid the reintroduction of agricultural export subsidies in any form.

24. Similarly, under both the United States–Oman RTA (article 2.11) and the United States–Panama RTA (article 3.15), the parties agree not to introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.²⁰ However, both RTAs go on to provide that, where an exporting party considers that a non-party is exporting an agricultural good to the territory of the other party with the benefit of export subsidies, the importing party shall, upon request of the exporting party, consult with the latter to agree on measures the importing party may adopt to counter the effect of such subsidized imports. If the importing party adopts the agreed measures, which shall be consistent with the WTO Agreement, the exporting party shall refrain from applying the export subsidy to exports of this good to the importing party's territory.

¹⁹ While there is no reference to WTO rights and obligations in this article, the general confirmation of the parties' WTO rights and obligations in article 102 of the Canada–Colombia RTA would be applicable.

²⁰ This would also be subject to the above-mentioned general affirmation of the parties' existing rights and obligations with respect to each other under the WTO Agreement and other agreements.

25. The United States–Panama RTA also includes a mechanism for counterbalancing such exports subsidized by a third party – it provides that, if the importing party does not adopt the agreed measures, the exporting party may apply an export subsidy on its exports of the good to the territory of the importing party only to the extent necessary to counter the trade-distorting effect of subsidized exports of the good from the non-party to the importing party’s territory, among other measures. This RTA further provides that the parties shall work together towards agreements in WTO to eliminate and prevent the reintroduction in any form of export subsidies (article 3.15) and to eliminate any special financing granted to State-trading enterprises that export for sale a significant share of their country’s total exports of an agricultural good (article 3.16).

26. The European Union–South Africa RTA makes no specific reference to agricultural export subsidies. It is unclear whether export subsidies for agricultural products could fall under its provisions relating to public aid in general (articles 41–44), which provide for consultations with respect to public aid that favours certain firms or the production of certain goods, distorts or threatens to distort competition and does not support specific public policy objectives of either party, insofar as it may affect trade between the parties, where it causes or threatens to cause serious prejudice to the interests of the other party or material injury to its domestic industry.

27. Similarly, the Switzerland–China RTA makes no specific reference to agricultural export subsidies, as it does with respect to export subsidies on trade in goods in general – while article 1.3.1. confirming the parties’ rights and obligations under the WTO Agreement, other agreements negotiated under it and any other international agreement to which they are parties, general provisions would be applicable.

IV. Export prohibitions and restrictions

28. Article XI of GATT 1994 forbids export prohibitions and restrictions other than duties, taxes or other charges – this is applicable to all trade in goods. There is an exception for export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party. Further exceptions are allowed (unless constituting a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade) under article XX (i) for measures concerning exports of domestic raw materials for processing industries, and article XX (j) for measures essential to the distribution of products in general or in local short supply.²¹ Article 12 of the Agreement on Agriculture also requires that due consideration be given to the effects of such prohibitions or restrictions on importing members’ food security and provides for advance notification and consultations upon request with any WTO Member having a substantial interest as an importer; however, developing countries are exempted from these requirements unless the developing countries concerned are restricting exports of specific foodstuffs for which they are net-food exporters

29. The ASEAN–Australia–New Zealand Free Trade Agreement forbids export prohibitions and quantitative restrictions of goods destined for the territory of any other party, except in accordance with its WTO rights and obligations or this RTA, and

²¹ Article XXI of GATT 1994, which provides that it should not be construed to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests on specific grounds, could also be relevant to prohibitions and restrictions on exports of agricultural products.

incorporates articles XI and XX of GATT 1994 into the RTA *mutatis mutandis* (chapter 2, article 7 and chapter 15, article 1, respectively). Articles 207 and 2201 of the Canada–Colombia RTA contain similar prohibitions and incorporation of articles XI and XX of GATT 1994, respectively. Article 207 of the RTA further provides that the parties understand that the GATT 1994 rights and obligations thereby incorporated prohibit them from adopting or maintaining voluntary export restraints inconsistent with the relevant WTO articles,²² except for some measures set out in annex 202 (Exceptions to National Treatment and Import and Export Restrictions) – which *inter alia*, lists controls on exports of coffee by Colombia and unprocessed fish by Canada. However, there is an anti-circumvention exception – if a party adopts or maintains a prohibition or restriction on exportation to a non-party to this RTA, it can limit or prohibit the importation from the territory of the other party of this good of that non-party, or require as a condition of exporting such good of the party to the territory of the other party, that the good not be re-exported to the non-party without being consumed in the territory of the other party. If a party adopts or maintains a prohibition or restriction on the importation of a good from a non-party, consultations must be held between the parties upon the request of either party on how to avoid undue interference with or distortion of pricing, marketing or distribution arrangements in the other party.

30. Articles 2.8 and 21.1 of the United States–Oman RTA and articles 3.8 and 21.1 of the United States–Panama RTA contain similar provisions of the Canada–Colombia RTA, while providing for some exceptions, including actions authorized by the WTO Dispute Settlement Body. The United States–Panama RTA also provides that the parties shall work together towards an agreement on export-State-trading enterprises in WTO that eliminates any restrictions on the right to export (article 3.16).

31. Article 18 of the Japan–Chile RTA forbids export prohibitions and quantitative restrictions for exports of any good destined to the other party inconsistent with obligations under article XI of GATT 1994. Under article 19 of the Japan–Viet Nam RTA, stipulations concerning export prohibitions are less explicit: it provides that each party shall not introduce or maintain any non-tariff measures on the exportation or sale for exports of any good destined for the other party that are inconsistent with its WTO obligations. It shall ensure transparency of non-tariff measures that are permitted, including quantitative restrictions, and ensure full compliance with WTO obligations to minimize possible distortions to trade. Both RTAs (in article 192 of the Japan–Chile RTA and article 8 of the Japan–Viet Nam RTA) incorporate article XX of GATT 1994 *mutatis mutandis* for the purposes of several chapters of these RTAs, including their chapters dealing with export prohibitions and quantitative restrictions.

32. Article 26 of the European Union–CARIFORUM RTA and article 19 of the European Union–South Africa RTA similarly forbid and impose standstills with respect to export prohibitions and restrictions, while the European Union–CARIFORUM RTA provides that this is without prejudice to the provisions of article 23 on anti-dumping and countervailing measures and article 24 on multilateral safeguards. Both RTAs have general exception clauses (article 224 of the European Union–CARIFORUM RTA and article 27 of the European Union–South Africa RTA), but these exceptions differ from those in articles XX (i) and article XX (j) of GATT 1994 in terms of language and terms used.

²² Article VI of the GATT 1994 (as implemented under article 8.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994) and article 18 of the Agreement on Subsidies and Countervailing Measures.

V. Export duties

33. The WTO agreements do not deal specifically with export duties, beyond providing in GATT 1994 article I that all customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all matters referred to in paragraphs 2 and 4 of article III of GATT 1994, “any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties” (unconditional MFN clause). Article 5 of the ASEAN–Australia–New Zealand Free Trade Agreement, which explicitly requires consistency with rights and obligations under GATT 1994, and article 70 of the European Union–CARIFORUM RTA have a similar approach.

34. Article 210 of the Canada–Colombia RTA, article 2.10 of the United States–Oman RTA and article 3.11 of the United States–Panama RTA provide that neither party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other party, unless also adopted or maintained on the good when destined for domestic consumption.²³

35. Article 19 of the European Union–South Africa RTA is less far reaching, imposing a standstill with respect to increases upon existing customs duties on imports or exports or charges having equivalent effect or the introduction of new such duties or charges in trade between the parties. In contrast, the Japan–Viet Nam RTA is silent on these questions.

VI. Institutional provisions

36. While all the RTAs analysed make provision for cooperation among the parties, only some specifically mention cooperation on agriculture. Under article 111 of the Japan–Viet Nam RTA, the parties agree to cooperate at the governmental level and facilitate cooperation involving entities other than governments, in a number of fields, including agriculture, forestry, and fisheries. Under article 13.3 and 13.7 of the Switzerland–China RTA, the parties agree to cooperate on agriculture and other areas and to agree on a work programme specifying the methods and contents of this cooperation.

37. Under article 39, chapter 5 (Agriculture and fisheries) of the European Union–CARIFORUM RTA, the CARIFORUM States commit themselves to adopting and implementing policies and institutional reforms to enable and facilitate achievement of the objectives of the chapter, which include sustainable development and the eradication of poverty in CARIFORUM States; the smooth and gradual integration of their economies into the global economy; and increasing the competitiveness of production, processing and trade in agricultural and fishery products in both traditional and non-traditional sectors between the parties, consistent with the sustainable management of natural resources. Under article 40, where compliance with this Agreement leads to problems with the availability of, or access to, foodstuffs or other products essential to ensure food security of a signatory CARIFORUM State and thus gives rise major difficulties, it may take appropriate measures, in accordance with procedures set out in article 25. This is subject to prior notification to and examination by the Trade and Development Committee, with a

²³ With an exception for the export of coffee and emeralds by Colombia to Canada.

possibility for provisional action without consultations where exceptional circumstances require immediate action. Article 41 provides for exchange of information and consultation in areas such as agriculture production; consumption and trade; market developments; promotion of investment, including small-scale activities; policies, laws and regulations; policy and institutional changes needed to transform the sector and pursue regional integration; new technologies; and measures related to quality for agricultural and fisheries products. Article 42 provides for prior consultations on trade policy developments impacting on the competitive positions of traditional agricultural products (including bananas, rum, rice and sugar) in the European Union market. It states that the European Union shall endeavour to maintain significant preferential access within the multilateral trading system for CARIFORUM products as long as feasible and to ensure that any unavoidable reduction in preference is phased out as long as possible. Under article 43, the parties agree to cooperate by improving competitiveness of potentially viable production; developing export-marketing capabilities; complying with quality standards; promoting private investment and public-private partnerships; enhancing the ability to comply with technical, health and quality standards for fish and fish products; and strengthening capacity-building and dialogue.

VII. Conclusions

38. The analysis in this paper suggests that, in comparison with WTO provisions, limited progress has been made in some of the RTAs analysed with respect to several rule-making areas, including agricultural safeguards, export subsidies and export duties (see table). However, all nine RTAs do not include any measures affecting domestic support in agriculture. This is perhaps understandable, given the difficulties of reducing domestic support only for agricultural products destined for exportation to RTA partners and possible reluctance to weaken negotiating positions on this issue in the ongoing Doha Round.²⁴

39. It is still an open question as to how RTAs can complement the multilateral trading system or provide guidance towards appropriate solutions to the key outstanding issues in the Doha Round negotiations on agriculture – which include a reduction in tariffs and domestic support and the elimination of export subsidies – and beyond these negotiations. This may consequently limit the overall potential of RTAs for promoting convergent and development-oriented trade liberalization in agriculture. However, there are interesting provisions with respect to dialogue and institutional cooperation, for example, in the European Union-CARIFORUM and Canada-Colombia RTAs, which could be further studied with a view to examining their relevance to any soft multilateral processes of dialogue and cooperation on agriculture, agricultural trade and food security established within the framework of the post-2015 development agenda.

²⁴ See Fulponi, *op. cit.*

Table
Summary of analysed RTAs regarding agriculture: WTO+ and WTOx provisions

<i>WTO+ WTOx provisions</i>	<i>Safeguards</i>	<i>Domestic support</i>	<i>Export subsidies</i>	<i>Export prohibitions and restrictions</i>	<i>Export duties</i>
<i>Regional trade agreements (Entry into force)</i>					
European Union–South Africa (2004)	No, but variations with the Agreement on Agriculture	No	No	No	No
United States–Oman (2009)	No	No	Yes	Yes	Yes
Japan–Chile (2007)	No	No	Yes		
United States–Panama (2012)	Yes	No	Yes	Yes	Yes
European Union–CARIFORUM States (2008)	No, but variations with the Agreement on Agriculture	No	Yes	No	No
Canada–Colombia (2011)	Yes	No	Yes	Yes	Yes
Japan–Viet Nam (2009)	No	No	Yes	No	No
ASEAN–Australia–New Zealand (2010–2012)	No	No	Yes	No	No
China–Switzerland (2014)	No	No	No	No	No

Source: UNCTAD secretariat adapted from the relevant legal texts of RTAs.

Annex

Regional trade agreements covered in TD/B/61/CRP.2

- Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, done at Pretoria on 11 October 1999, entry into force 1 May 2004. Available at http://eur-lex.europa.eu/resource.html?uri=cellar:df28bbd2-29f1-4cea-86ab-81d81c47903b.0004.02/DOC_3&format=PDF (accessed 10 September 2014).
- Agreement between the Government of the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area, done at Washington, D.C. on 19 January 2006, entry into force 1 January 2009. Available at <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=182> (accessed 10 September 2014).
- Agreement between Japan and the Republic of Chile for a Strategic Economic Partnership, done at Tokyo on 27 March 2007, entry into force 3 September 2007. Available at <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=3> (accessed 10 September 2014).
- United States–Panama Trade Promotion Agreement, done at Washington, D.C. on 28 June 2007, entry into force 31 October 2012. Available at <http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=181> (accessed 10 September 2014).
- Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, done at Bridgetown on 15 October 2008, entry into force 1 November 2008. Available at <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=605> (accessed 10 September 2014).
- Canada–Colombia Free Trade Agreement, signed at Lima on 21 November 2008, entry into force 15 August 2011. Available at <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=162> (accessed 10 September 2014).
- Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership, done at Tokyo on 25 December 2008, entry into force 1 October 2009. Available at <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=170> (accessed 10 September 2014).
- Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area, done at Cha-am, Phetchaburi, Thailand on 27 February 2009, entry into force 1 January 2010 for Australia, Brunei Darussalam, Malaysia, Myanmar, New Zealand, the Philippines, Singapore and Viet Nam; 12 March 2010 for Thailand; 1 January 2011 for the Lao People’s Democratic Republic; 4 January 2011 for Cambodia; 10 January 2012 for Indonesia. Available at <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=437> (accessed 10 September 2014).
- Free Trade Agreement between the Swiss Confederation and the People’s Republic of China, done at Beijing on 6 July 2013. Entry into force on 1 July 2014. Available at <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=635> (accessed 10 September 2014).