World Trade Review (2009), 8: 2, 339–350 Printed in the United Kingdom
© *Lorand Bartels* doi:10.1017/S1474745609004285

'Interim agreements' under Article XXIV GATT

LORAND BARTELS*

Trinity Hall, University of Cambridge

Abstract: This note looks at the WTO rules and procedures applicable to the implementation period of regional trade agreements on trade in goods. In addition, it highlights some differences between law and practice and explores the implications of these divergences. Where the GATT and subsequent instruments draw a distinction between 'full' regional trade agreements and 'interim' agreements, in practice all agreements are notified as 'full' agreements with an implementation period. It analyses the possibility that this deviation from the law, now sanctioned in the 2006 Transparency Decision, might have some practical implications for the regulation of regional trade agreements in the WTO.

1. Introduction

Much of the writing on regional trade agreements and their regulation in the WTO has focused on the conditions applicable to fully fledged agreements. This note discusses the law and – somewhat divergently – recent WTO practice on 'interim' regional trade agreements. It begins by outlining the difference between interim agreements and 'full' regional trade agreements. It then considers the WTO practice of notifying 'full' regional trade agreements with an implementation period (i.e. *de facto* interim agreements) rather than *de jure* interim agreements. Finally, it looks at the conditions applicable *de jure* to interim agreements and *de facto* to 'full' regional trade agreements.

2. Distinctions between free trade areas and interim agreements under the GATT

2.1 Definitions

Article XXIV and the Understanding on the Interpretation of Article XXIV GATT distinguish between regional trade agreements and interim agreements leading to the formation of a free trade area. Article XXIV:8 defines a free trade area as one in which 'duties and other restrictive regulations of commerce … *are* eliminated

* Email: lab53@cam.ac.uk

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

on substantially all the trade between the constituent territories in products originating in such territories' (emphasis added). This may be contrasted with the reference in Article XXIV:5 to 'an interim agreement necessary for the formation of … a free-trade area'.

This clearly implies that only agreements which have already been implemented are 'full' regional trade agreements within the meaning of Article XXIV:8. An agreement that does not yet meet this definition but merely includes an implementation period is, formally speaking, an 'interim agreement' leading to a regional trade agreement. (Section 3 below discusses the practice of treating interim agreements as 'full' regional trade agreements including an implementation period).

There are also some discrepancies in the terminology used to refer to interim agreements. The Chapeau of Article XXIV:5 refers to 'an interim agreement *necessary* for the formation of a customs union or of a free-trade area' (emphasis added). By contrast, Article XXIV:5(a) and (b), Article XXIV:7(a) and paragraphs 1 and 12 of the Understanding refer to 'an interim agreement *leading to* 'the formation of a regional trade agreement' (emphasis added). Conceivably, this could be seen as reflecting a difference in the degree of causal link between the interim and full agreements. However, in practice this terminological difference appears to be irrelevant.

2.2 *External condition*

Article XXIV:5(a) and (b) provides that duties and other restrictive regulations of commerce may not be higher on the adoption of a regional trade agreement or interim agreement leading to a free trade agreement than before the adoption of such agreements. This condition applies equally to both types of agreement, and it applies as of the date that the agreements are concluded. As far as this external requirement is concerned, there is no difference between 'full' agreements and interim agreements.[1]

2.3 *Internal condition*

By contrast, there is a difference between interim and full agreements as far as the requirement of internal trade liberalization is concerned. According to Article XXIV:5(c), an interim agreement must include 'a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time'. Paragraph 3 of the Understanding states that:

> the 'reasonable length of time' referred to in paragraph 5(c) of Article XXIV should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall

1 See WTO Committee on Regional Trade Agreements, *Synopsis of 'Systemic' Issues Related to Regional Trade Agreements – Note by the Secretariat*, WT/REG/W/37, 2 March 2000, para. 48 subpara. (c).

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

> provide a full explanation to the Council for Trade in Goods of the need for a longer period.

There is no such requirement for 'full' regional trade agreements for the obvious reason that, as mentioned, these are formally presumed already to provide for liberalization on substantially all the trade between the parties. On the other hand, as discussed in Section 3, the practice has been to treat interim agreements as 'full' regional trade agreements for notification and review purposes, while still *de facto* applying these conditions to these 'full' agreements.

2.4 *Review by WTO Members*

Another difference between interim and 'full' agreements concerns the degree of control exercised by WTO Members over the notified agreements.

The text

The basic requirement to notify a regional trade agreement is set out in Article XXIV:7(a), which states that:

> Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

This is elaborated in paragraph 7 of the Understanding which states that:

> All notifications made under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of GATT 1994 and of paragraph 1 of this Understanding. The working party shall submit a report to the Council for Trade in Goods on its findings in this regard. The Council for Trade in Goods may make such recommendations to Members as it deems appropriate.

The degree of control exercised by WTO Members over notified 'full' agreements is rather vague. As the two paragraphs just quoted indicate, the Council for Trade in Goods may make 'appropriate' recommendations to Members, which would include the parties to the agreement. There is no obligation to accept these recommendations. On the other hand, as the Appellate Body has made clear, this does not preclude recourse to dispute settlement proceedings on the question of the overall legality of the agreement.[2]

This is quite different in the case of interim agreements. According to Article XXIV:7(b), if WTO Members find that a notified interim agreement 'is not likely to result in the formation of a customs union or of a free-trade area within the

2 WTO Appellate Body Report, *Turkey – Textiles*, WT/DS34/AB/R, adopted 19 November 1999, paras. 360 and 369.

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

period contemplated by the parties to the agreement or that such period is not a reasonable one', they may make recommendations to this effect. In this event, the parties to the agreement are under an obligation 'not [to] maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.'

These obligations are reinforced and elaborated in the Understanding. Paragraph 8 of the Understanding states that 'the working party may in its report make appropriate recommendations on the proposed time-frame and on measures required to complete the formation of the customs union or free-trade area. It may if necessary provide for further review of the agreement.' Paragraph 10 adds a new set of obligations. First, it obliges the working party to recommend a plan and schedule if, contrary to Article XXIV:5(c), the parties have not included one in an interim agreement. Second, it obliges the parties not to 'maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations'.

Recent developments

As mentioned, this system has changed substantially in recent years. First, on 6 February 1996 a Committee on Regional Trade Agreements (CRTA) was established with the function, inter alia, of performing the examination of regional trade agreements previously undertaken by *ad hoc* working parties.[3] This function includes the presentation of a report to the relevant body (the Council for Trade in Goods, Council for Trade in Services or Committee on Trade and Development) 'for appropriate action'. Decisions of the CRTA are to be reached by consensus, failing which the issue is to be referred to the appropriate higher body.[4]

Due to the ineffectiveness of this mechanism, at the end of 2006 the WTO General Council adopted a Decision on a Transparency Mechanism for Regional Trade Agreements, which substantially modified the notification and examination procedure for regional trade agreements (as discussed below in Section 3, the Decision makes no distinction between interim and 'full' regional trade agreements with an implementation period).[5]

There are various points to note about the Transparency Decision. Most importantly, the parties are now under a specific obligation to provide the Secretariat with detailed and specified data on the agreement within 10 weeks (20 weeks for developing countries) of notification,[6] which must be no later than ratification or,

3 General Council, Committee on Regional Trade Agreements, Decision of 6 February 1996, WT/L/127, 7 February 1996.

4 Rule 33, as modified, of the Rules of Procedure for Meetings of the Committee on Regional Trade Agreements adopted by the Committee on Regional Trade Agreements on 2 July 1996, WT/REG/1, 14 August 1996.

5 General Council, Decision on a Transparency Mechanism for Regional Trade Agreements of 16 December 2006, WT/L/671, 18 December 2006. This Decision is applied on a provisional basis until the conclusion of the Doha Round: see para. 22 and para. 23.

6 Ibid., para. 7(a).

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

if earlier, decision on provisional application of the agreement and prior to its implementation.[7] This data must include the following:

For the goods aspects in RTAs … at the tariff-line level:

(a) Tariff concessions under the agreement:

(i) a full listing of each party's preferential duties applied in the year of entry into force of the agreement; and

(ii) *when the agreement is to be implemented by stages, a full listing of each party's preferential duties to be applied over the transition period.*[8]

The second point is that the role of the Secretariat is enhanced, and the role of the CRTA diminished. The Secretariat prepares a factual report based primarily (but not exclusively) on this information,[9] while the CRTA no longer produces a report and recommendations on the agreement, as foreseen in its original terms of reference, but now does no more than hold a single meeting, based on written questions submitted earlier, at which the agreement is 'considered'.[10]

Despite the CRTA terms of reference, therefore, a formal review is therefore no longer undertaken by the CRTA on the compatibility of a regional trade agreement with Article XXIV GATT. In practice, this shifts the onus for any challenge to a regional trade agreement to dispute settlement.

3. Practice: treatment of interim agreements as 'full' agreements

Until the mid-1990s, the GATT Contracting Parties generally observed the distinction between interim and full free trade agreements and customs unions in their notifications of these agreements.[11] There were some anomalies. For example, the 1985 agreement providing for the accession of Portugal and Spain to the EC was notified as a full customs union, even though it was only to be fully implemented after ten years.[12] In response to an objection that the agreement was an interim agreement and that in accordance with Article XXIV:7(b) the parties should not put the agreement into force, the EC stated that the agreement 'was a definitive agreement providing for the establishment of a full customs union at the end of a transitional period. In his view, the requirements of Article XXIV:8(a) would be largely fulfilled after seven years and totally achieved, even for sensitive products, after 10 years.' Despite this, the European Communities 'acknowledged the right of the Working Party to make recommendations'.[13]

7 Ibid., para. 3.

8 Ibid., Annex, para. 2 (emphasis added).

9 Ibid., para. 7(b).

10 Ibid., paras. 11 and 12.

11 A list is available in WTO, *Analytical Index* (Geneva: WTO, 1995), at 858 ff.

12 Accession of Portugal and Spain to the European Communities – Report of the Working Party adopted on 19–20 October 1988, GATT Doc L/6405, BISD 35S/293-321, June 1989.

13 Ibid., para. 34.

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

As mentioned, the formal rules and the distinctions between interim and full customs unions and free trade agreements were strengthened by the Understanding. Paradoxically, however, it seems that the adoption of this Understanding has had precisely the opposite effect to that which was intended: since 1995, not one of the around 300 agreements notified to the CRTA has been notified as an interim agreement.[14] This is despite the fact that virtually none of these agreements formally meets the requirements of a full customs union or free trade area.

There has been little commentary within or outside the WTO on the systemic implications of this practice.[15] Indeed, this practice might be considered to have been accepted by the Transparency Decision, which entirely omits any mention of 'interim agreements', and speaks solely of ordinary customs unions and free trade areas.[16] The Decision provides that the parties to such agreements must submit data, including, '*when the agreement is to be implemented by stages*, a full listing of each party's preferential duties to be applied over the transition period'.[17]

In practice, WTO Members apply *de facto* to notified 'full' agreements those conditions that are *de jure* only applicable to interim agreements. For example, the US—Chile free trade agreement was notified as 'establish[ing] a free-trade area within the meaning of Article XXIV of the GATT'.[18] In the course of examining this agreement, the EC asked 'the United States to explain the reasons for making use of the possibility under the WTO rules to go beyond a 10 year transition period "only in exceptional cases"'.[19] Likewise, the EC described the EC–Chile interim agreement as a 'fully fledged FTA', even though 'the entry into force and the ten year transition period were incorporated in the entire Agreement'[20] and Bulgaria made a similar argument in response to a question concerning the Bulgaria-FYROM free trade agreement.[21]

14 According to the WTO's table of regional trade agreements notified since 1995, not a single agreement has been notified as an 'interim agreement'. See WTO, Regional Trade Agreements Notified to the GATT/WTO and in Force, available at www.wto.org/english/tratop_e/region_e/type_e.xls.

15 The issue is mentioned, though not discussed, in CRTA, *Synopsis of 'Systemic' Issues Related to Regional Trade Agreements – Note by the Secretariat*, above at n. 1, para. 46. An exception (interestingly, given its practice) was an observation by the EC that the distinction between interim and full agreements reflected 'an important protection for the rights of third parties during the transition period, as the neutrality, or equality of opportunity, should apply to preserve third-party interests'. See CRTA, Note on the Meetings of 27 November and 4–5 December 1997, WT/REG/M/15, 13 January 1998, remarks by EC, para. 36, supported by Argentina, para. 37.

16 See above at n. 5.

17 Ibid., Annex, para. 2(a)(ii) (emphasis added). Formally speaking, this definition of customs union and free trade area is inconsistent with the definition given in Article XXIV:8.

18 CRTA, Free Trade Agreement between the United States and Chile – Notification from the Parties WT/REG160/N/1, S/C/N/262, 19 December 2003.

19 CRTA, Examination of the Free Trade Agreement between the United States and Chile, Goods and Services – Note on the Meeting of 17 February 2005, WT/REG160/M/1, 14 March 2005.

20 CRTA, Examination of the Interim Agreement between the EC and Chile – Note on the Meeting of 28 July 2005, WT/REG164/M/1, 6 October 2005, para. 10.

21 CRTA, Examination of the Free Trade Agreement between Bulgaria and the Former Yugoslav Republic of Macedonia, WT/REG90/M/1, 10 August 2000, para. 7.

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

In sum, WTO Members apply the same substantive conditions, at least as far as implementation periods are concerned, to notified 'full' customs unions and free trade agreements as would (and should) be applied to interim agreements. The main reason for this practice is the circumvention of any possibility of recommendations by the WTO Council on Trade in Goods, which would be binding on the parties under Article XXIV:7(b) and the Understanding. Whether this practice, as reflected in the Transparency Decision, is *ultra vires*, is an open question.

4. Conditions applicable to notified agreements

As mentioned above, Article XXIV:7 GATT and the Understanding require notified interim agreements to include a plan and schedule stating how the agreement will lead to a regional trade agreement, within the meaning of Article XXIV:8, within a 'reasonable length of time'. More specifically, the Transparency Decision now also obliges the parties to provide 'a full listing of each party's preferential duties to be applied over the transition period'. The transition period is understood not to exceed the 'reasonable length of time' set out in the Understanding.

Whether or not the agreement is notified as an interim or a 'full' regional trade agreement, it is clear that, at least by the end of the transitional period, the agreement must liberalize 'substantially all the trade' between the parties. The meaning of the 'substantially all the trade' requirement is notoriously contested. In *Turkey – Textiles* the Appellate Body said (not very helpfully) that:

> Neither the GATT CONTRACTING PARTIES nor the WTO Members have ever reached an agreement on the interpretation of the term 'substantially' in this provision. It is clear, though, that 'substantially all the trade' is not the same as all the trade, and also that 'substantially all the trade' is something considerably more than merely some of the trade.[22]

Much has been written on this issue, which is somewhat outside the scope of the present paper. The key point however is that regardless of how the 'substantially all the trade' requirement is defined, trade barriers on this amount of trade between the parties must be eliminated by the end of the transition period, defined in terms of a 'reasonable length of time'. The following sections discuss the definition of this term and the conditions imposed on parties to a regional trade agreement during this transition period.

22 See above at n. 2, para. 48.

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

4.1 *Reasonable length of time*

Paragraph 3 of the Understanding states that:

> the 'reasonable length of time' referred to in paragraph 5(c) of Article XXIV should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period.

Practice indicates that is relatively common for the implementation period to stretch to 12 years, and in some cases further. Thus, even though beef currently makes up 14% of Australia's exports to the US, the Australia–US free trade agreement only fully eliminates US barriers to Australian beef exports after 18 years, and even then the US is permitted a price-based safeguard mechanism.[23] Naturally, the mere fact that such 'exceptional cases' have been invoked does not mean that these are legal.

Also relevant is the fact that WTO Members have not taken especially seriously their obligation to 'provide a full explanation of the need for a longer period'. For example, in the examination of the EC–Jordan free trade agreement, Jordan responded to a question on this point by saying simply that 'both Parties had agreed that Jordan would need twelve years in order to provide the needed time to improve the competitiveness of Jordan's economic sectors and allow national exporters to adjust to the new requirements'.[24] Somewhat more fully, but no less helpfully, the US responded to two written questions concerning the US–Chile free trade agreement as follows:

> All products that are contained in the 12-year transition period are subject to tariff reductions during that transition period. This means that by year ten, there are significant tariff reductions for every one of the items that is in the 12-year category. Rather than simply stop the tariff liberalization process at that point, the United States and Chile agreed that it would be preferable to take two extra years to achieve complete liberalization of all agricultural products. Both countries believe complete liberalization of all agricultural products is a considerable achievement, particularly given the partial treatment on agriculture contained in many other FTAs. The products included in the 12-year staging category were determined through negotiation.[25]
>
> Neither GATT Article XXIV nor the 1994 Understanding on Article XXIV *require* that transition periods be limited to ten years. Article XXIV does require, however, that the agreement eliminate tariffs on *substantially all the trade*. Focusing, therefore, on that requirement, the Parties worked to negotiate as

23 CRTA, Free Trade Agreement between the United States and Australia – Questions and Replies, Revision, WT/REG184/5/Rev. 1, September 2007, pp. 2–3.

24 CRTA, Examination of the European Communities–Jordan Euro-Mediterranean Agreement – Note on the Meeting of 29 March 2004, WT/REG141/M/1, 28 April 2004, para. 8.

25 CRTA, Free Trade Agreement between the United States and Chile – Questions and Replies, WT/REG160/5, 1 August 2005, pp. 2–3.

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

> comprehensive an agreement as possible. In the process of those negotiations, however, it became clear to each Party that a limited number of agricultural products were particularly sensitive, and hence would require longer transition periods. The relevant products were of particular importance to the U.S. or Chilean economies, sensitive to import competition, and mutually agreed upon. As a result of the negotiations, the Parties decided to extend the transition period, but in the end, to include sugar and the other import sensitive products in the liberalization process.[26]

In a meeting on the same agreement the US also said that 'the reason for the twelve-year transition period was the commitment to cover every tariff line and eliminate every tariff and TRQ on all trade between the US and Chile'.[27]

If it is impossible to give a legal answer to the meaning of the term 'exceptional case', at least some potential arguments might be advanced to justify a longer than normal transitional period. Practice indicates that some countries refer to the sensitivity of product sectors, and it would in addition be strongly arguable that the overall development status of a party to an agreement would be relevant. One would be able to draw on the WTO Preamble and Part IV of GATT in support.

4.2 The plan and schedule

As mentioned, in principle an interim regional trade agreement must include a plan and schedule setting out how a full free trade agreement will be achieved by the end of the transition period, or one will be imposed on the parties. It was also mentioned that practice, now codified in the 2006 Transparency Decision, has been for agreements to be notified as 'full' regional trade agreements precisely to avoid this eventuality, while the conditions formally applicable to interim agreements are now *de facto* applied to 'full' regional trade agreements with a transition period.

This practice leaves unresolved one important question, which is the degree of specificity that is required in a plan and schedule. On an ordinary reading of this term, one would have to conclude that a 'plan and schedule' must set out precisely which products are to be liberalized, by how much, and when. This is also the interpretation adopted in the Transparency Decision, which requires the parties to provide this information to enable the Secretariat to issue a factual report on the agreement.

Accordingly, in its factual reports under this Decision, the Secretariat's practice has been to discount as irrelevant to the calculation of 'substantially all the trade' any sector falling under an 'evolutionary' clause promising merely the possibility of future trade liberalization in that sector. This may be seen in its treatment of the

26 CRTA, Free Trade Agreement between the United States and Chile – Questions and Replies, WT/REG160/6, 17 March 2006, p. 2.

27 CRTA, Examination of Free Trade Agreement between the United States and Chile – Goods and Services – Note on the Meeting of 17 February 2005, WT/REG160/M/1, 14 March 2005, para. 9.

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

trade protocol to the Southern African Development Community (SADC), which contains provisions providing for a future review of the possibility of full reciprocal liberalization in sugar after 2012, depending on conditions prevailing in the world sugar market then prevailing.[28] The Secretariat considered that this was insufficiently precise to include sugar in the calculation of substantially all the trade under the agreement. Thus, the Secretariat's factual report on the agreement marks sugar as 'E' (excluded) in its assessment of the degree of trade liberalization undertaken in the agreement.[29]

A further question concerns the legal significance of a plan and schedule. On this, the relevant norm is Article XXIV:7(b), which sets out the following test for the adequacy of a plan and schedule:

> if the CONTRACTING PARTIES find that such agreement *is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties* to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement (emphasis added).

According to this provision, the purpose of including a plan and schedule in a notified agreement is therefore merely instrumental: it is to enable the WTO Members to determine whether or not the agreement *is likely* to liberalize trade to a sufficient degree within a reasonable transitional period (the length of which is a separate issue). Article XXIV:7(b) gives WTO Members the power to make recommendations if they are not so convinced, but it does not make it a fixed obligation to provide a plan and schedule.

In this respect, the Understanding is more rigid. Paragraph 10 requires a working party (now the CRTA) to impose a plan and schedule if one is not included in the notified agreement. Given that, as noted above, the definition of plan and schedule implies specificity as to products, degree of liberalization and timetable, this amounts to a significant modification to Article XXIV:7(b). Read strictly, it would remove the discretion of WTO Members to approve a regional trade agreement (or interim agreement) that does *not* include a detailed plan and schedule.

4.3 Asymmetry during the transitional period

The rules applicable to interim agreements (and *de facto* to 'full' free trade agreements with an implementation period) also have implications for the possibility of asymmetrical trade liberalization, especially in a regional trade agreement between developed and developing countries. The question of asymmetry is usually analysed in the static context of the meaning of 'substantially all the trade'

28 See CRTA, Factual Presentation – Protocol on Trade in the Southern African Development Community (SADC) – Report by the Secretariat, WT/REG176/4, 12 March 2007, para. 57.

29 Ibid., Table A.2.

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

between the parties under Article XXIV:8.[30] However, especially with a lengthy transitional period, an equally important question is the extent to which asymmetry is permitted *during* the transitional period. In this respect, it is again important that Article XXIV:7 and the Understanding place no conditions at all on the form of a regional trade agreement during the transitional period. As mentioned, the only condition is that the CRTA finds that it is likely that the agreement will meet the terms of Article XXIV:8 at the end of the transitional period. The mere fact that there is asymmetry, especially when on one side trade is already fully liberalized, is no grounds for finding that such a result is not likely. In sum, asymmetrical trade liberalization is perfectly legitimate during the transitional period.

Together with the above suggestion that, based on law and practice, the transitional period for interim agreements to which developing countries are party may substantially exceed the normal 10 year period, and the fact that the WTO no longer exercises its powers to impose a plan and schedule on parties to an interim agreement, this means that 'interim' agreements between developed and developing countries are effectively immune from the strictures of Article XXIV for a substantial period of time, both in terms of political review and dispute settlement. This is a conclusion of some significance for the EU's Economic Partnership Agreements.

5. Conclusion

Most of the discussion of WTO regulation of regional trade agreements has focused on the substantive requirements of fully fledged agreements. This brief note has looked instead at the rules governing 'interim' regional trade agreements leading up to fully fledged agreements. In fact, there are virtually no rules on this point, the matter being left up to the discretion of the relevant WTO organs (primarily the Council for Trade in Goods). Formally, what is required is that WTO Members be satisfied that a notified interim agreement will indeed lead to a fully fledged agreement within a reasonable length of time; otherwise, they may make binding recommendations to ensure that this will happen. But even this control has proved too much for WTO Members. Notwithstanding the reinforcement of these conditions in the Understanding on Article XXIV, WTO Members have evolved a practice, now seemingly endorsed by the 2006 Transparency Decision, of notifying *de facto* interim agreements as *de jure* 'full' regional trade agreements with an implementation period. The effect – and doubtless the purpose – of this practice is to circumvent the few possibilities of controlling interim regional trade agreements

30 A comprehensive discussion is provided in Bonapas Onguglo and Taisuke Ito, 'In Defence of the ACP Submission on Special and Differential Treatment in GATT Article XXIV', ECDPM Discussion Paper 67 (Maastricht: European Centre for Development Policy Management, 2005), available at www.ecdpm.org/dp67.

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press

prior to their completion. This may well prove counterproductive, as the reduction of the possibility of resolving a matter within a political forum necessarily increases the chance that aggrieved WTO Members will invoke dispute settlement proceedings to enforce compliance with Article XXIV GATT.[31] On the other hand, such proceedings can only take once a full regional trade agreement is established, which on current practice exceeds the 'normal' 10 year period even for agreements involving developed countries, and could arguably exceed this period substantially for agreements involving developing or least developed countries.

31 For a recent argument that dispute settlement on the WTO-legality of regional trade agreements would risk 'constitutional overstretch', see Youri Devuyst and Asja Serdarevic, 'The World Trade Organization and Regional Trade Agreements: Bridging the Constitutional Credibility Gap' (2007) 18 *Duke Journal of Comparative and International Law* 1.

https://doi.org/10.1017/S1474745609004285 Published online by Cambridge University Press