

**“SUBSTANTIALLY ALL TRADE”: WHICH DEFINITIONS ARE  
FULFILLED IN PRACTICE?  
AN EMPIRICAL INVESTIGATION**

**A REPORT FOR THE COMMONWEALTH SECRETARIAT**

Robert Scollay  
APEC Study Centre  
University of Auckland  
New Zealand

Roman Grynberg  
Director, Trade Division,  
Commonwealth Secretariat

**15 August 2005**

## Table of Contents

<b>Executive Summary</b>	<b>2</b>
<b>1. Background</b>	<b>3</b>
1.1. The Requirement for Coverage of “Substantially All Trade” (SAT)	<b>3</b>
1.2. Coverage of SAT within a “Reasonable Period of Time”	<b>8</b>
1.3. SAT as an Economic Issue	<b>8</b>
1.4. SAT as a Negotiating Issue	<b>9</b>
<b>2. Purpose and Scope of the Study</b>	<b>10</b>
2.1. Focus of the Study: How is the SAT Requirement Applied in Practice?	<b>10</b>
2.2. Method	<b>10</b>
2.3. Agreements Covered	<b>11</b>
<b>3. Preview of Findings</b>	<b>13</b>
3.1. Implementation Period	<b>13</b>
3.2. Tariff Elimination within the Implementation Period	<b>13</b>
3.3. Measures Accompanying or Substituting for Tariff Elimination	<b>14</b>
<b>4. Analysis on the Basis of Sectoral Coverage</b>	<b>15</b>
4.1. EU Association Agreement with the Czech Republic	<b>15</b>
4.2. EU Association Agreement with Lithuania	<b>15</b>
4.3. EU Euro-Mediterranean Agreement with Morocco	<b>16</b>
<b>5. Analysis on Basis of Coverage by Tariff Lines</b>	<b>17</b>
5.1. Summary of Findings	<b>17</b>
5.2. Implications for Definition of SAT Based on Coverage by Tariff Lines	<b>19</b>
<b>6. Analysis on Basis of Percentage of Trade Covered</b>	<b>20</b>
<b>7. Conclusions</b>	<b>24</b>
<b>References</b>	<b>25</b>
<b>Annex I: Liberalisation Commitments of Members of Selected FTAs: Percentage of Imports from Partners Subject to Exclusions, Restrictions or Conditions and/or Liberalisation Timetables Extending Beyond 10 Years</b>	<b>26</b>
<b>Annex II: Selected FTAs: Summary of Provisions Liberalising Trade in Goods</b>	<b>34</b>

## Executive Summary

### *Background*

GATT Article XXIV sets out a notoriously imprecise set of conditions under which free trade areas and customs unions are to be accepted as consistent with members' obligations under the WTO Agreements. One of the most disputed elements is the phrase "substantially all trade" (SAT) which appears in the requirement that "duties and other restrictive regulations of commerce...are eliminated on substantially all the trade in products originating" in the partners.

The inability of WTO members to agree on a definition of SAT means that members negotiating free trade agreements (FTAs) have no certainty as to extent to which products can be excluded from the liberalisation provisions of the agreement while remaining in conformity with their WTO obligations. There is also uncertainty over whether measures such as special safeguards and bilateral emergency actions are covered by the requirement to eliminate "restrictive regulations of commerce" as well as duties.

Further uncertainty arises from the requirement in paragraph 5(c) Article XXIV that is generally understood to mean that new agreements should provide for fulfilment of the conditions for a WTO-consistent FTA or customs union within a "reasonable period of time". The 1994 Understanding on Interpretation of Article XXIV states that the "reasonable length of time"... "should exceed 10 years only in exceptional cases". There is however no guidance as to what constitutes an "exceptional case", and the relation between the SAT requirement and the provision on "reasonable period of time" consequently remains unclear. There is a view among WTO members that transition periods exceeding 10 years do not breach the "reasonable period of time" requirement provided that coverage of SAT is achieved within the 10 year period. There is less clarity as to whether and under what conditions fulfilment SAT over a period exceeding 10 years can be regarded as consistent with the Article XXIV requirement.

Developing countries have flexibility under the Enabling Clause of 1979 to conclude agreements with other developing countries that do not fully meet the requirements of Article XXIV, including the SAT requirement. Article XXIV on the hand is applicable to any agreement in which at least one of the partners is a developed country. The issue of how SAT should be interpreted has become increasingly important to developing countries as more and more of them enter into negotiations for RTAs with developed country partners.

### *Scope of the Study*

This study analyses the product coverage of a range of existing FTAs, with a view to assessing current practice in relation to product coverage against proposed definitions of SAT that are based either on the percentage of tariff lines or the percentage of trade between the partners covered by the agreement. A threshold of 95% of HS tariff items at the 6-digit level has been proposed by Australia for a definition based on the percentage of tariff lines. Percentages commonly suggested for a definition based on percentage of

trade between the parties have included 90%, 85% and 80%. One of the purposes of the study is to identify precedents that may be used by developing countries in their FTA negotiations with developed countries.

The majority of the agreements covered are between developed and developing countries, including representative agreements involving the European Union and the United States. The study also includes a notable recent examples of an FTA between developed country partners, namely the Australia-US FTA.

### *Conclusions of Analysis Based on Coverage By Tariff Lines*

Fifteen agreements were analysed on the basis of percentage of tariff lines covered.

If the SAT requirement must be met within the first ten years of the implementation period, and if SAT is defined as inclusion of 95% of the combined tariff lines of both partners, then the Singapore-Japan, EU-South Africa and Canada-Costa Rica FTAs fail to meet this definition. If the 95% definition is applied to each member on an individual basis, then non-compliance in each of these agreements is limited to Japan, South Africa and Costa Rica respectively.

If the definition is relaxed to 90% of the combined tariff lines of both partners, then only the EU-South Africa FTA fails to meet this definition. If the 90% definition is applied to each member on an individual basis, then South Africa in the EU-South Africa FTA and Costa Rica in the Canada-Costa Rica FTA still remain short of compliance with this definition.

If no time limit is imposed for meeting the SAT requirement, only the Singapore-Japan FTA on a combined basis, and within that FTA Japan on an individual basis, fail to meet SAT defined as 95% of tariff lines. A definition based on 90% of tariff lines would however be met on both bases even in this agreement. Thus none of the agreements analysed would fail to comply with SAT defined as 90% of tariff lines.

It is noticeable that the percentage of tariff lines covered by “other measures” is quite small in most of the agreements analysed. Exceptions to this statement are Canada’s agreements with Chile and Costa Rica.

### *Conclusions of Analysis Based on Percentage of Trade Covered*

Eighteen agreements were analysed on the basis of percentage of trade covered. The analysis was carried out for the three years prior to entry into force of the agreement, or for the period nearest to meeting this criterion for which data was available. Comtrade data at the HS 6-digit level was used. Trade coverage was analysed separately for each partner in the agreement.

Compared to analysis based on percentages of tariff lines, analysis of agreements on the basis of percentages of trade covered indicates considerably more diversity, both in the percentages of trade on which tariffs are not fully eliminated and in the percentage of trade covered by “other measures” during the period in which tariffs are being eliminated.

If the analysis is restricted to the elimination of tariffs, and if no restriction is placed on the length of the transition period within which liberalisation must be accomplished, only two cases were found where a party to the agreement excluded from full tariff elimination more than 10% of imports from its partner. The two cases are Morocco in the EU-Morocco FTA and Chile in the Canada-Chile FTA. There are four further cases of a party excluding between 4% and 10% of imports from its partner. There are also many cases where the exclusions amount to 0%-1% of imports from the partner.

As might be expected, the percentage of trade on which tariffs are not fully eliminated within 10 years is much higher in some agreements. There are five cases in which a party maintains some tariffs after 10 years on between 15% and 33% of imports from its partner: South Africa in the EU-South Africa FTA, Thailand in the Thailand-New Zealand FTA, Morocco in the EU-Morocco FTA, Chile in the Korea-Chile FTA, and USA in the Australia-US FTA. In a further three cases some tariffs remain after 10 years on 5%-6% of imports from the partner, but there are also cases where the percentage of trade remaining subject to some tariffs after 10 years is negligible or zero.

There is also a noticeable tendency for agreements with a low percentage of trade not subject to tariff elimination to exhibit relatively high percentages of trade subject to by “other measures” during the period in which tariffs are being eliminated than in the percentage of tariff lines covered by such measures. Cases of a party subjecting particularly high percentages of imports from the partner to “other measures” include Thailand in the Thailand-New Zealand FTA, both parties in the Canada-Costa Rica FTA, the USA in the Australia-US FTA, and the EU in the EU-Morocco FTA. In the EU-South Africa decisions on the tariff treatment of products accounting for a significant percentage of trade are either deferred or made conditional on other actions by one of the parties.

The “other measures” often remain in effect for periods exceeding ten years, but generally terminate by the time that tariffs are eliminated. This is not the case however in some agreements, notably in the Australia-US FTA.

In agreements between developed and developing countries it is not always the case that the developing country partner has the higher percentage of imports from the partner accounted for by tariff elimination schedules extending beyond ten years and/or subject to “other measures”. It is also notable that in the one agreement between developed country partners analysed, one of the partners has a particularly large share of imports from the partner treated in these ways.

## *Conclusions*

A definition of SAT based on coverage of 95% of tariff lines at the 6-digit level would pose difficulties for relatively few of the agreements analysed, especially if no time limit is imposed for fulfilment of the SAT requirement. Many agreements would meet this definition without difficulty. The percentage of tariff lines subject to “other measures” is also relatively low.

A definition of SAT based on coverage of 90% of trade could pose difficulties for a slightly higher proportion of agreements, especially if there is a requirement for SAT to be met within 10 years, though there are also many agreements that would meet this definition without difficulty. Definitions of SAT based on coverage of 85% or 80% of trade would not pose problems if no time limit is set for the satisfaction of the SAT requirement, but could pose problems for some (but not many) agreements if the SAT requirement had to be satisfied within 10 years.

It also appears that there are several cases where eventual elimination of tariffs on all trade, or a very high percentage of trade, is associated with a relatively high percentage of trade subject to “other measures” during the period when tariffs are being eliminated, or in some cases continuing to operate even after the tariff elimination commitments have been implemented.

A tentative conclusion might therefore be that the exclusion of sensitive products from agreements can often be achieved by the exclusion and/or subjecting to “other measures” of a relatively small percentage of tariff lines. The percentage of trade accounted for by the sensitive products may sometimes (but not always) be somewhat higher, however. This leads in some agreements to exclusion of a higher percentage of trade from the tariff elimination provisions, especially within the first 10 years of the agreement, and/or to sometimes quite high percentages of trade subject during the transition period to “other measures” designed to minimise or reduce the competitive pressures faced during that period by domestic producers of the sensitive products.

## **“Substantially All Trade”: Which Definitions are Fulfilled in Practice? An Empirical Investigation**

### **1. Background**

#### *1.1. The Requirement for Coverage of “Substantially All Trade” (SAT)*

GATT Article XXIV sets out the conditions under which free trade areas and customs unions are to be accepted as consistent with members’ obligations under the WTO Agreements. The specification of these conditions is notoriously imprecise, and has led to endless arguments between GATT and subsequently WTO members over whether particular agreements for the establishment of a free trade area or customs union do or do not comply with the provisions of Article XXIV.

One of the most disputed elements of GATT Article XXIV is the phrase “substantially all trade” (SAT). This phrase appears in Clause 8 of Article XXIV, which defines the meaning of the terms “customs union” and “free trade area” for the purposes of Article XXIV. Article XXIV.8(a) (i) states that a customs union must satisfy the condition that “duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories”. In Article XXIV.8(b) almost identical language is used to stipulate that a free trade area must satisfy the condition that “duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories”.

These provisions are thus intended to delineate the extent to which certain products may be excluded from the provisions of a customs union or free trade area. However the members of the WTO and its predecessor, the GATT, have never been able to reach agreement on the precise meaning of SAT. WTO (2000) notes that “lack of consensus on the meaning of SAT has repeatedly led examinations of RTAs to an impasse”. In an attempt to clear up ambiguities in the interpretation of Article XXIV members in 1994 adopted an “Understanding on the Interpretation of Article XXIV”. This understanding does little however to resolve the debate over the interpretation of SAT. The only relevant reference is the recognition in the preamble to the Understanding that the “contribution” of customs unions and free trade areas” to the “expansion of world trade” is “diminished if any major sector of trade is excluded”. This obviously falls far short of providing a precise definition of SAT.

WTO (2000) also record the main competing approaches to the interpretation of SAT that have been put forward by GATT and WTO members over the years. Two main generic approaches are distinguished:

- (a) a quantitative approach, using some kind of “statistical benchmark, such as a certain percentage of trade between the parties”. Percentages commonly suggested in this context are 90%, 85%, and 80%. A key objection to this approach is that it would not preclude the exclusion of entire sectors in cases where trade in that sector had hitherto been prevented by prohibitive trade barriers.
- (b) A “qualitative approach, according to which the SAT requirement means that no sector (or at least no major sector) was to be kept out of intra-RTA trade liberalization. This approach attempts to overcome the objection to the quantitative approach outlined above. One obvious difficulty is that the definition of “sector” might also be the subject of debate. It might also be questioned whether the inclusion of a very minor component of a major sector would be deemed to satisfy this definition.

Four further approaches to the definition of SAT have been suggested as possible ways to clear up the ambiguity:

- (a) a definition of product coverage “in terms of a certain percentage of tariff lines”. Australia suggested using a threshold of 95% of all HS tariff lines at the six-digit level.
- (b) a definition based on calculation of the percentage of trade between the RTA parties that is carried out under the preferential rules of origin applying within the arrangement.
- (c) a definition stating that all sectors should be included
- (d) a definition along the lines suggested by footnote 1 of GATS Article V, precluding the *a priori* exclusion of any sector.

A further issue relevant to definitions of SAT based on the percentage of trade covered is whether it is appropriate to calculate SAT as a percentage of the trade existing at the time the agreement enters into force, when the pattern of trade will be influenced by the existing pattern of trade barriers between the parties, or whether it should be calculated as a percentage of the trade that would exist once the barriers are removed. In a sense this question is of largely academic interest, because it is unlikely that WTO members would ever agree on a basis for estimating the amount of trade that would occur in the absence of restrictions.

Nevertheless the issue is potentially of considerable practical importance, in cases where prohibitive or near-prohibitive tariffs or quantitative restrictions are seriously inhibiting a potential trade in “sensitive” products that might be expected to be very substantial in the absence of trade barriers. In such cases the party concerned to insulate its “sensitive” products might be able to do so while claiming that only a minimal percentage of the existing trade is affected by the exclusion, yet the potential trade that is being excluded

might be very substantial, possibly to the extent of being one of the major traded items between the parties. Definitions of SAT based on the percentage of tariff lines might also be unable to prevent the exclusion of such “sensitive” products, if the products concerned are covered in a very few tariff lines.

Another question concerns the range of restrictions other than tariffs that need to be removed. The exception for “necessary” measures permitted under Articles XI, XII, XIII, XIV, XV refers to cases where the use of quantitative restrictions may be permissible under the articles cited, while the reference to Article XX relates to the usual exceptions for reasons such as health, public safety, public morals and national security. There may however be argument as to whether provisions for contingency measures such as special safeguards and bilateral emergency actions fall into the category of permitted measures, or whether they come under the definition of “other restrictive regulations of commerce”.

A further consideration that should be noted is that the “Enabling Clause” provides significantly greater flexibility in the case of customs unions or free trade areas between developing countries. Thus the SAT requirement of Article XXIV can be regarded as mandatory only in the case of customs unions and free trade areas in which at least one of the partners is a developed country.

### 1.2. Coverage of SAT within a “Reasonable Period of Time”

It can be noted also at this stage that the interpretation of SAT might need to be considered in relation to the requirement of Article XXIV.5. (c) requiring a “plan and schedule for the formation of....a customs union or....free trade area within a reasonable period of time”. This highlights the question of whether the SAT requirement applies at the entry into force of the arrangement, or only after the arrangement has been fully implemented. The latter interpretation seems clearly to be the most reasonable and is accepted as such by WTO members, but it raises further questions, first as to what constitutes a “reasonable period of time”, and second as to whether the elimination of barriers scheduled for beyond the “reasonable period of time” should be counted towards the fulfilment of the SAT requirement. The 1994 Understanding states that the “reasonable length of time”...“should exceed 10 years only in exceptional cases”, but fails to provide any guidance as to the definition of “exceptional cases”. WTO (2000) notes a view that the requirement is met provided that coverage of SAT is achieved within the ten year period, even if the transition period extends beyond ten years for some products.

### 1.3. SAT as an Economic Issue

The economic rationale for the SAT requirement is not altogether clear. Laird (1999) notes that exclusion of products in which at least one of the parties is internationally competitive will indeed reduce the scope for trade creation, thus limiting the potential welfare gains from the agreement. On the other hand, exclusion of products in which both parties are internationally uncompetitive will limit the potential for trade diversion,

and could therefore be welfare enhancing. It is not difficult however to conceive of situations where inclusion of “sensitive products” could be trade diverting even if one party is an internationally competitive producer. If the protected market is shared between several internationally competitive suppliers, the supplier that secures preferential access through a PTA may be able to displace the other competitive suppliers from the market, to their obvious detriment. Even if the preferred partner is unable to supply the entire market, the result may be some trade diversion combined with a welfare loss for the importing partner that is not offset by the gain to the exporting partner, as Panagariya (1999) points out. Frankel (1997) has a model in which the optimal result is obtained by partial liberalisation within successively larger preferential groupings, until free trade is attained at the final stage of expansion when all countries become members of the group.

Less optimistic arguments are put forward by those such as Andriamananjara (1999), who highlight the way that preferential liberalisation may create disincentives for multilateral liberalisation. Another concern is that the greater the ease with which “sensitive” sectors can be excluded from PTAs, the more countries with a considerable number of “sensitive” sectors that they wish to protect may be attracted to preferential liberalisation rather than multilateral liberalisation. This line of argument suggests that a loose interpretation of SAT could be very damaging for the multilateral trading system.

#### 1.4. SAT as a Negotiating Issue

Regardless of the economics of SAT, the issue of how SAT should be interpreted has become increasingly important to developing countries as more and more of them enter into negotiations for RTAs with developed country partners. In some cases these negotiations are their first encounter with SAT and other requirements of GATT Article XXIV, since earlier agreements with developing country partners have been notified under the Enabling Clause of 1979.

The extent of product coverage will often be a negotiating issue in these “North-South” RTAs. Developing countries will often wish to exclude some traded items from these agreements, either for revenue protection reasons or because of sensitivities attached to particular industries or sectors. They may also wish to limit the scope for their developed country partners to exclude products that are of export interest to themselves. Lack of clarity over the interpretation of Article XXIV means that developing countries lack certainty as to the conditions that should be satisfied in order to fulfil the SAT requirement, and therefore as to what negotiating positions can reasonably and legitimately be adopted on this issue.

## **2. Purpose and Scope of the Study**

### *2.1. Focus of the Study: How is the SAT Requirement Applied in Practice?*

This study analyses the product coverage of a range of existing regional trading arrangements, with a view to assessing current practice in relation to product coverage against the possible definitions of SAT. Product coverage of each agreement is analysed in terms of the percentage of tariff lines of the parties that is covered and, for selected agreements, against the percentage of trade between the parties that is covered. Comparison with the relevant proposed definition of SAT allows identification of which definition or definitions of SAT are implicitly being met in each case. One purpose of the study is to investigate whether such assessments offer any useful precedents which might be relied upon by developing countries in their negotiations with developed country partners.

### *2.2. Method*

For this study some eighteen agreements were analysed. For fifteen of these agreements, the several thousand tariff lines covered by each agreement were grouped according to the relevant applicable provisions of the agreement. The applicable provisions included those relating to tariffs, including whether tariffs are eliminated and the time period over which elimination is to occur, as well as other provisions that might be classified under the heading of “other restrictions of commerce”. The percentage of tariff lines in each category was then calculated, and on the basis of these calculations an assessment was made of the coverage of the agreements against definitions of SAT based on percentages of tariff lines.

For three EU agreements, the EU-Czech Republic, EU-Lithuania, and EU-Morocco Association Agreements, the coverage of the agreements are analysed on a sectoral basis.

Trade data for each agreement was obtained at the HS 6-digit level, using Comtrade and Eurostat data, so that the percentage of trade accounted for by the tariff lines covered by various provisions of the agreements could be calculated. This allowed assessment of coverage against definitions of SAT based on percentages of trade covered. Trade figures were taken for the three years before each agreement entered into force, or for the nearest years for which data was readily available in a suitable format. For agreements that have been in force for some time, trade figures were also taken for the most recent three year period for which data is available. A degree of approximation is inevitably involved, since in some cases more than one provision is found to be applicable to a group of products defined by a single 6-digit category<sup>1</sup>. In some cases too there was not a

---

<sup>1</sup> Following WTO (2005), where a product at the 6-digit level is subdivided into 8- or 10-digit items to which different liberalisation periods apply, the longest liberalisation period is used. This has the effect of understating somewhat the pace of liberalisation.

complete match between the HS codes found in the agreement and those found in the Comtrade or Eurostat data.<sup>2</sup>

### 2.3. Agreements Covered

The majority of the agreements covered are between developed and developing countries, including representative agreements involving the European Union and the United States. The study also includes a notable recent example of an FTA between developed country partners, namely the Australia-US FTA<sup>3</sup>.

In the 1990s the European Union entered into free trade agreements with several Central and European Countries (CEECs) and with the three Baltic states. The majority of these “Europe Agreements” have been superseded by the admission of the partner country to full membership of the European Union in April 2004. For purposes of this study the EU’s agreements with the Czech Republic and Lithuania are selected as representative of these Europe Agreements. Generally agreements with the CEECs followed a similar pattern, as did agreements with the Baltic states.

The European Union also has a long history of free trade arrangements with Mediterranean countries. In the last ten years earlier agreements have been superseded by a new generation of “Euro-Mediterranean Agreements, designed to be WTO-compatible and to be a step towards fulfilment of the goals of the Barcelona Declaration. In this study the European Union’s free trade agreement with Morocco is selected as representative of these Euro-Mediterranean Agreements.

In more recent times the European Union has begun to extend its network of free trade agreements to encompass more geographically remote partners, such as Mexico, South Africa, and Chile. The EU-South Africa and EU-Chile FTAs are included as case studies in this study.

The United States involvement in FTAs began with the US-Israel FTA, and was followed by negotiation of a bilateral FTA with Canada, subsequently widened to include Mexico in a trilateral agreement, the NAFTA. More recently it has embarked aggressively on the negotiation of FTAs with a wider range of partners, in line with its recently adopted strategy of “competitive liberalisation”. These agreements involve developing country partners in the Middle East and Latin America, such as Jordan, Morocco, Bahrain, Singapore, Chile, and the Central American and Andean countries. Completed agreements with Jordan and Chile are included here as representative case studies of these agreements. Chile and Costa Rica in Latin America have also concluded FTAs with Canada, and both of these agreements are also included, as is the agreement between Mexico and Chile. Trade data for the Korea-Chile FTA is also included. The U.S. has

---

<sup>2</sup> Treatment of trade under Comtrade item codes without a matching code in the agreement had to be classified as indeterminate.

<sup>3</sup> Singapore continues to classify itself as a developing country for WTO purposes, even though its per capita income exceeds that of several developed countries.

also concluded an FTAs with Australia, a developed economy in the Asia-Pacific region, and this agreement also is included in the study.

Singapore has also concluded FTAs with several other partners in the Asia-Pacific region, including Japan, Australia and New Zealand, and all three of these agreements are included. The separate FTAs concluded by Australia and New Zealand with Thailand are also included, as is the agreement between Hong Kong and China.

The full list of agreements covered by the study is thus

- U.S. - Chile
- U.S. - Jordan
- U.S. - Australia
- U.S. – Singapore
- Singapore – Japan
- Singapore – Australia
- Singapore – New Zealand
- Thailand – Australia
- Thailand – New Zealand
- Korea-Chile
- Canada – Costa Rica
- Canada – Chile
- Mexico – Chile
- E.U. – Chile
- E.U. – South Africa
- E.U. – Morocco
- E.U. – Czech Republic
- E.U. – Lithuania

### **3. Preview of Findings**

It turns out that there is great diversity among the agreements included as case studies, across a number of dimensions, including proportion of products covered by the liberalisation provisions, the period over which the liberalisation periods are implemented, and the extent to which provisions for tariff elimination are qualified by other provisions.

#### **3.1. Implementation Period**

At one end of the spectrum the Singapore – Australia and Singapore – New Zealand FTAs provide for immediate free trade in all goods. At the other end of the spectrum both the Thailand – Australia and Thailand – New Zealand FTAs provide implementation periods for Thailand stretching over 20 years.

Eight of the FTAs covered in the study include implementation periods extending beyond ten years:

- Thailand – Australia: 20 years (for Thailand only)
- Thailand – New Zealand: 20 years (for Thailand only)
- U.S. – Australia: 18 years (for U.S. only)
- Canada – Chile: 18 years (for Chile only)
- Canada – Costa Rica: 15 years (for Costa Rica only)
- U.S. – Chile: 12 years (for both parties)
- E.U. – South Africa: 12 years (for South Africa only)
- E.U. – Morocco: 12 years (for Morocco only)
- Korea – Chile 16 years

A further eight FTAs have extended implementation periods of ten years or less:

- Japan – Singapore
- U.S. – Singapore
- U.S. – Jordan
- Mexico – Chile
- EU – Chile
- EU – Lithuania
- EU – Czech Republic

#### **3.2. Tariff Elimination within the Implementation Period**

The profile of tariff elimination differs markedly across the implementation periods. Among the FTAs with implementation periods of more than ten years, only in the EU - South Africa and Canada-Costa Rica FTAs are tariffs eliminated after the tenth year on more than 5% of the tariff lines.

The EU -South Africa and Canada-Costa Rica FTAs are also among those with the highest percentage of tariff lines excluded from tariff elimination. Some of the FTAs with implementation periods of ten years or less however have higher percentages of

excluded tariff lines. The EU-Morocco, EU-Czech Republic and EU-Lithuania FTAs each exclude significant parts of the agricultural sector from complete tariff elimination, and the Singapore-Japan FTA has an overall exclusion of over 5% of tariff lines, all due to Japan, which excludes almost 10% of its tariff lines. Of the other FTAs covered by the study, only the Canada-Chile, US-Chile, and US-Australia FTAs have an overall (combined) exclusion of more than 1% of tariff lines.

### 3.3. Measures Accompanying or Substituting for Tariff Elimination

Exclusion from tariff elimination is not however the only way to protect the position of sensitive industries. A number of FTAs contain provision for Bilateral Emergency Actions (BEAs) or Special Safeguard (SSG) mechanisms. The BEAs generally involve a requirement for an investigation to demonstrate significant damage to the importing party's domestic industry, and in that sense are similar to safeguard action under the WTO Agreement on Safeguards, but differ from the latter in being confined to the bilateral trade of the members of the FTA. SSG mechanisms normally operate on the basis of a price trigger or quantity trigger, whereby they can be automatically applied if the price falls below a certain level (price trigger) or imports from the partner increase beyond a certain level (quantity trigger).

Where BEAs are found in FTAs, they may in some cases be available only during the implementation period while in other cases they may remain available after tariffs have been eliminated on the products concerned, so that they constitute a residual line of defence for the local producers. SSGs are generally phased out over the implementation period, during which they serve as an additional protective mechanism, as in the case of the Thailand-Australia and Thailand-New Zealand FTAs. In the case of the US-Australia FTA however the SSG mechanism applicable to beef and certain other agricultural products continues to be available after the end of the implementation period.

In many cases tariff elimination provisions are combined with quantitative restrictions. Tariff rate quotas (TRQs) are used in some cases to provide a degree of duty free access, often on an increasing basis, during the implementation period. Typically the quantitative restriction ceases to apply at or before the end of the implementation period, although this is not always the case. In the US-Australia FTA for example, Australian exports of some dairy products continue to be subject to TRQ restrictions beyond the end of the implementation period, with the agreement providing for continued expansion of the quota into the indefinite future.

Another measure, this time with a liberalising effect that is found in some agreements is the tariff preference level (TPL). TPLs are found for example in the Canada-Chile and Canada-Costa Rica agreements, where they are applied to certain textile and clothing products. They provide access at preferential rates of duty for specified quantities of non-originating products that fail to meet one of the requirements for originating goods (normally a requirement relating to the origin of the yarn or cloth used in production) provided other requirements for originating goods are met.

#### **4. Analysis on the Basis of Sectoral Coverage**

Three agreements involving the EU were analysed on the basis of their sectoral coverage: the association agreements with the Czech Republic, Lithuania and Morocco.

##### *4.1. EU Association Agreement with the Czech Republic*

In this agreement tariffs and quantitative restrictions on trade in industrial products, including ECSC coal and steel products, but excluding textile and clothing products, are eliminated in accordance with a number of different timetables, all of which were scheduled for completion within the ten-year transitional period laid down in the WTO “Understanding”.

In the case of textile and clothing products, a special protocol (Protocol 1) provides for the progressive elimination of tariffs on bilateral trade, but for the retention of existing quantitative restrictions.

In the case of agricultural products, the agreement specifies three ranges of products for which the EU committed to reduce import levies but maintain tariff rate quotas on imports from the Czech Republic. There is also an arrangement for maintenance of minimum import prices on imports of certain soft fruits for processing from the Czech Republic. The Czech Republic offered concessions to the EU on 148 agricultural products classified at the 8-digit level. Of these, 36 are subject to zero duty and are unrestricted as to quantity. The remaining products on which concessions are offered remain subject to import duties and/or quantitative restrictions. Both the EU and Czech Republic also retain the right to levy tariffs on the “agricultural component” of certain industrial products, in order to take account of cost differences in agricultural inputs.

The following is a summary of the products on which the agreement does not provide for the elimination of all duties and other restrictive regulations of commerce:

- textile and clothing products
- all agricultural products imported from the Czech Republic into the EU, and most agricultural products imported from the EU into the Czech Republic.
- Industrial products subject to tariffs being levied on their “agricultural component”.

##### *4.2. EU Association Agreement with Lithuania*

The approach to product coverage in the EU-Lithuania Agreement is similar to that in the agreement with the Czech Republic. Barriers to trade in industrial products other than textiles and clothing are completely eliminated over a relatively short period. Barriers to trade in agricultural and textile and clothing products on the other hand are reduced but for the most part not completely eliminated. Quantitative restrictions on most agricultural imports are however for the most part eliminated. As in the Czech Republic agreement,

both parties retain the right to levy tariffs on the “agricultural component” of certain industrial products.

#### 4.3. EU Euro-Mediterranean Agreement with Morocco

The EU’s Agreement provides for the implementation over a twelve year period of essentially free trade in industrial products. Industrial products are defined more widely than in some earlier agreements, to exclude only those products covered in Annex II of the Treaty of Rome. As in other agreements there is provision for levy of duties by both the EU and Morocco on the “agricultural component” in a specified list of industrial products; most of the products listed are in fact processed foods from HS Chapters 1-24 and would have been counted as agricultural products for example in the EU-Czech Republic Agreement. With this exception the EU undertakes complete elimination of tariffs and quantitative restrictions on imports of industrial products from Morocco. Morocco undertakes to eliminate these barriers over periods that range up to 12 years for some products, and also to eliminate the reference price system applying to some 600 industrial products. There are also provisions for Morocco to temporarily suspend its obligations for a range of reasons that include infant industry considerations. These provisions are available only during the implementation period. A short list of some 50 industrial products are excluded from Morocco’s commitments on industrial products for the time being.

Liberalisation of agricultural products, and also fisheries products, is approached on a positive list basis. The EU undertakes commitments on some 176 agricultural products, mostly fruit, vegetables and fruit juices. The commitments involve reductions or elimination of tariffs, with tariff rate quotas continuing to apply in many cases where tariffs are eliminated. In some of these cases reference quantities are noted, with the EU having the right to impose tariff rate quotas if these reference quantities are exceeded. Fresh tomatoes and some other vegetables are subject to agreed entry prices, with the EU having the right to impose duties if prices fall below these levels. The EU also commits to duty free entry for imports from Morocco of some 30 fisheries products, and a tariff rate quota on sardines. Morocco’s makes commitments to tariff reductions and/or tariff rate quotas on some 50 agricultural products imported from the EU; in no case do these commitments require elimination of tariffs.

## **5. Analysis on the Basis of Coverage By Tariff Line**

### **5.1. Summary of Analysis**

Information on the tariff line coverage of fourteen FTAs covered in the study is summarised in Tables 1A and 1B.

**Table 1A: Coverage of Tariff Elimination Provisions in Selected FTAs  
(Percentage of Tariff Lines)**

	<b>Immediate duty free</b>	<b>Immediate duty free subject to other measures</b>	<b>Duty free in &lt;10 years</b>	<b>Duty free in &lt;10 years subject to other measures</b>	<b>Duty free in &gt;10 years</b>	<b>Duty free in &gt;10 years subject to other measures</b>	<b>Excluded</b>
<b>NZ-Singapore</b>							
NZ	100.0%						
Singapore	100.0%						
Combined	100.0%						
<b>Australia-Singapore</b>							
Australia	100.0%						
Singapore	100.0%						
Combined	100.0%						
<b>Thailand-Australia</b>							
Thailand	49.1%		49.9%	0.2%		0.9%	0.0%
Australia	82.2%		16.6%	0.0%		0.0%	0.0%
Combined	65.5%		33.3%	0.1%		0.4%	0.0%
<b>Thailand -NZ</b>							
Thailand	53.9%		45.3%	0.2%		0.6%	0.0%
New Zealand	79.5%		20.5%	0.0%		0.0%	0.0%
Combined	68.5%		31.2%	0.1%		0.3%	0.0%
<b>Singapore-US</b>							
Singapore	100.0%		0.0%	0.0%			0.0%
US	78.8%		19.4%	1.8%			0.0%
Combined	89.4%		9.7%	0.9%			0.0%
<b>US-Chile</b>							
US	93.3%		3.9%	0.2%	0.3%	2.1%	0.1%
Chile	89.6%		7.6%	0.2%	1.2%	1.2%	0.1%
Combined	92.0%		5.3%	0.2%	0.6%	1.7%	0.1%
<b>EU-Chile</b>							
EU	90.1%		9.0%				0.9%
Chile	98.2%		1.6%				0.1%
Combined	94.2%		5.3%				0.5%

Information was also obtained on the Hong Kong – China Closer Economic Partnership Agreement (CEPA), although this is not in a format easily adaptable to these tables. In the Hong Kong – China CEPA, Hong Kong undertakes to provide duty free entry for all imports from China, while China undertakes to provide duty free treatment immediately

for imports from Hong Kong of 7,381 tariff items, with duty free treatment of all remaining items to be introduced on 1 January 2006.

**Table 1B: Coverage of Tariff Elimination Provisions in Selected FTAs  
(Percentage of Tariff Lines)**

	Immediate duty free	Immediate duty free subject to other measures	Duty free in <10 years	Duty free in <10 years subject to other measures	Duty free in >10 years	Duty free in >10 years subject to other measures	Excluded
<b>Singapore-Japan</b>							
Singapore	100.0%		0.0%				0.0%
Japan	90.7%		0.1%				9.2%
Combined	94.4%		0.1%				5.5%
<b>EU-South Africa</b>							
EU	58.3%		37.2%	3.2%	0.0%		1.4%
South Africa	44.5%		30.5%	0.0%	20.7%		4.3%
Combined	51.4%		33.9%	1.6%	10.4%		2.8%
<b>Canada-Costa Rica</b>							
Canada	78.1%	8.2%	1.6%	10.2%	0.0%	0.0%	1.9%
Costa Rica	61.3%	3.4%	7.5%	11.3%	14.1%	0.5%	2.0%
Combined	70.9%	6.1%	4.1%	10.7%	6.0%	0.2%	1.9%
<b>Canada-Chile</b>							
Canada	83.6%	1.4%	2.7%	11.2%			1.1%
Chile	72.2%	0.0%	10.2%	14.9%	0.1%	0.1%	2.4%
Combined	78.9%	0.8%	5.8%	12.7%	0.1%	0.0%	1.7%
<b>US-Australia</b>							
Australia	86.7%		13.3%		0.0%	0.0%	0.0%
US	81.5%		14.7%		0.8%	1.0%	1.9%
Combined	83.5%		14.2%		0.5%	0.6%	1.2%
<b>Mexico-Chile</b>							
Mexico			99.2%				0.8%
Chile			98.3%				1.7%
Combined			98.9%				1.1%
<b>US-Jordan*</b>							
US	40.7%		61.4%	1.8%			0.3%
Jordan	22.9%		76.8%	0.0%			0.3%
Combined	33.5%		67.6%	1.1%			0.3%

\* excludes 614 tariff lines and 742 lines being liberalised by the US and Jordan respectively in line with their WTO Schedules

The “other measures” referred to in the table comprise a range of different measures, including BEAs, SSGs, and TRQs. The meaning of “exclusion” also varies. In some cases it means that tariffs remain at their original level, in other cases it means that tariffs are reduced but not eliminated, and in others again it means that the products concerned remain subject to a TRQ after the end of the implementation period. Products which remain subject to SSG provisions after tariffs and quantitative restrictions are fully eliminated are not included in the “Exclusions” column. There are also cases where decisions were left pending on tariff elimination for a substantial number of tariff lines.

In some cases the agreement specifies that a decision should be taken within a specific timeframe. In some cases tariff elimination by one party is conditional on specific actions by the other party. Full details of these variations for each agreement are provided in Annex 1.

It is clear from the two tables that the rate of liberalisation between the two parties is generally asymmetric in these agreements. Understandably, in an FTA between a developed and developing country the developed country almost invariably eliminates tariffs more rapidly than the developing country, although the margin is less pronounced in agreements involving Chile, and in fact in its FTA with the EU Chile has a higher percentage of tariff lines immediately duty free than the EU. Unsurprisingly, tariff elimination by the US and Japan lag behind that of Singapore in their agreements with that country. Australia moves a little more quickly than the US to eliminate tariffs in the US-Australia FTA. Similar asymmetries are typically observed in the percentage of tariff lines excluded from tariff elimination.

### 5.2. Implications for Definitions of SAT Based on Coverage By Tariff Lines

If the SAT requirement must be met within the first ten years of the implementation period, and if SAT is defined as inclusion of 95% of the combined tariff lines of both partners, then the Singapore-Japan, EU-South Africa and Canada-Costa Rica FTAs fail to meet this definition. If the 95% definition is applied to each member on an individual basis, then non-compliance in each of these agreements is limited to Japan, South Africa and Costa Rica respectively.

If the definition is relaxed to 90% of the combined tariff lines of both partners, then only the EU-South Africa FTA fails to meet this definition. If the 90% definition is applied to each member on an individual basis, then South Africa in the EU-South Africa FTA and Costa Rica in the Canada-Costa Rica FTA still remain short of compliance with this definition.

If no time limit is imposed for meeting the SAT requirement, only the Singapore-Japan FTA on a combined basis, and within that FTA Japan on an individual basis, fail to meet SAT defined as 95% of tariff lines. A definition based on 90% of tariff lines would however be met on both bases even in this agreement.

It is noticeable that the percentage of tariff lines covered by “other measures” is quite small in most of the agreements analysed. Exceptions to this statement are Canada’s agreements with Chile and Costa Rica.

## **6. Analysis on the Basis of Percentage of Trade Covered**

Analysis of the trade coverage the agreements covered by this study is summarised in Annex I. In addition to percentages of trade covered by exclusions from each agreement the summary also highlights the percentages of trade affected by various restrictions, contingency measures and conditionalities, as well as the cases where the liberalisation period exceeds 10 years.

Compared to analysis based on percentages of tariff lines, analysis of agreements on the basis of percentages of trade covered indicates considerably more diversity, both in the percentages of trade on which tariffs are not fully eliminated and in the percentage of trade covered by “other measures” during the period in which tariffs are being eliminated.

The Singapore agreements with New Zealand, Australia, USA and Japan stand out for the lack of exclusions and lack of extended of extended liberalisation timetables or measures that qualify the extent of liberalisation. The Singapore-Japan EPA is the only one of these agreements where some products are excluded from liberalisation, with the exclusions covering 2.61% of Japan’s imports from Singapore.

In other agreements there appears to be a trade-off between the avoidance of exclusions and the use of extended liberalisation periods and various types of restrictions and contingency measures. Thus there are no permanent exclusions in the Australia-Thailand, New Zealand-Thailand or US-Chile agreements. But in each case the percentage of trade subject to TRQs, special safeguard measures or bilateral emergency actions is significant. In the case of the two agreements involving Thailand, the two developed country partners, Australia and New Zealand fully liberalise all imports from Thailand within the ten year period. In Thailand’s case sensitive agricultural imports are subject in some cases to a longer liberalisation period of 20 years. TRQs and special safeguard measures also apply to these imports, and to some sensitive imports that are liberalised within the 10 year period. In the Thailand – New Zealand FTA 25% of Thailand’s imports are subject to the longer liberalisation period, while over 38% of imports are subject to TRQs or special safeguards during the liberalisation period, including 31% of imports that are liberalised within 10 years. There is similar treatment of sensitive products in the Thailand-Australia FTA, although the percentages of trade affected are much smaller. In the US-Chile FTA by contrast it is mainly US imports from Chile, the developing country partner in the agreement that are treated as sensitive. Only 0.55% of Chilean imports from the USA are subject to liberalisation periods exceeding 10 years, while over 3% of US imports from Chile are similarly treated. Over 15% of US imports from Chile are subject to TRQs or trigger price mechanisms during the liberalisation period. In this agreement also an ingenious stratagem is employed to avoid excluding sugar from the agreement, where access is available for each partner in the other partner’s market if that partner becomes a net exporter of sugar - a situation which is almost certain not to occur in the foreseeable future. Thus it is clear that the partners were concerned to create an agreement in which it could be claimed that all trade is eventually liberalised in a formal legal sense.

The Mexico-Chile and EU-Chile agreements are also cases where there is very little trade covered by permanent exclusions or other exceptional measures. In both cases less than 1% of trade is excluded, or subject to extended liberalisation periods or restrictions during the liberalisation period.

In the two agreements involving Canada there is less concern with avoiding exclusions. In the Canada-Chile FTA, over 10% of Chilean imports from Canada and 0.16% of Canadian imports from Chile are excluded altogether from liberalisation, with just under 5% of Chilean imports from Canada subject to liberalisation periods longer than 10 years. Smaller percentages of imports of both partners are subject to TRQs or bilateral emergency actions during the liberalisation period. In the Canada-Costa Rica FTA no Canadian imports and only just under 2% of Costa Rica imports from Canada are excluded from liberalisation, while just over 5% of Costa Rica imports are subject to liberalisation periods longer than 10 years. A higher percentage of imports, approaching 10% for both partners, is subject to TRQs or bilateral emergency actions during the liberalisation period.

The Australia-USA FTA and the Korea-Chile FTA are two agreements in which agriculture caused major problems, but which contrast with each other in the way that these problems are reflected in the trade coverage of the agreement. In the Korea-Chile case, Korean agricultural imports from Chile for the most part face prohibitive barriers, and these were only slightly relaxed by the FTA, so that imports accounting for 0.01% of total Korean imports from Chile are liberalised over a 10 year period, while measures to apply to agricultural products accounting for just under 0.1% of Korean imports are left to be decided after the conclusion of the WTO's DDA negotiations. A tiny fraction of these, accounting for 0.01% of Korean imports from Chile gain access via TRQs in the meantime. On the Chilean side 4% of imports from Korea are excluded altogether from liberalisation, and 20% of imports are liberalised over a period that exceeds 10 years

In the case of Australia and the US, agricultural products already accounted for a substantial share of US imports from Australia, especially beef, dairy and sugar under TRQ arrangements scheduled under the WTO Agreement on Agriculture. Further liberalisation of these imports was problematic however. Sugar, accounting for 0.56% of US imports from Australia but with the potential to achieve a much larger share, is excluded altogether. In the case of beef, accounting for almost 14% of US imports from Australia, in-quota tariffs are reduced to zero, and TRQs are expanded over an 18 year period, after which imports are no longer subjected to quantitative restrictions but continue to be subject to special safeguard provisions. Dairy products are subject to similar arrangements over a 17 year period, but instead of being completely abolished at the end of that period the TRQs are then expanded continuously into the indefinite future. Other agricultural products accounting for much smaller shares of US imports from Australia are also subject to exclusion, or longer liberalisation periods combined with special safeguard measures during the liberalisation period. On Australia's side there are no exclusions or products subject to liberalisation periods exceeding 10 years, with textile and clothing products subject to bilateral emergency actions accounting for less than 1% of Australian imports from the US. US imports of textile and clothing products are also

subject to bilateral emergency actions, but account for only a very small share of US imports from Australia.

The US-Jordan FTA contains unusual provisions whereby a substantial share of trade between the parties is to be liberalised “in accordance with their WTO commitments.” These provisions apply to 35% of Jordanian imports from the US and 28% of US imports from Jordan. Products excluded from liberalisation account for to 9% of Jordanian imports from the US and 5% of US imports from Jordan.

Apart from the EU-Chile FTA, FTAs involving the EU covered by the study tend to exhibit a higher share of trade covered by exclusions or various types of special provisions. In the EU – South Africa FTA, on the South African side, products for which tariff elimination is spread over 12 years account for over 32% of South African imports from the EU, and a further 12.8% of imports is accounted for by products for which no decision regarding tariff elimination was initially taken. On the EU side, over 2.5% of imports from South Africa are accounted for by products that are excluded from the agreement, or for which no decision on tariff elimination was initially taken. A further 10.6% of imports from South Africa are accounted for by products for which liberalisation remains conditional on other decisions or actions, or which are subject to delayed implementation of tariff elimination provisions.

In the EU agreements with the Czech Republic and Lithuania, a high percentage of EU imports – over 20% in each case – is subject to TRQs. In the EU-Morocco agreement, agricultural products accounting for almost 13% of EU imports from Morocco and 5% of Moroccan imports from the EU are only partially liberalised, while over 20% of Moroccan imports from the EU are liberalised over a period exceeding 10 years.

When the agreements covered by this study are measured against possible definitions of SAT, it turns out that there are very few cases where products remaining excluded at the end of the liberalisation period account for more than 10% of trade. The table below summarises the exclusions, including cases where imports are only partly liberalised.

<b><u>Agreement</u></b>	<b><u>ImportingPartner</u></b>	<b><u>% of Imports from Partner Excluded</u></b>
EU-Morocco	Morocco	12.74%
Canada-Chile	Chile	10.52%
US-Jordan	Jordan	9.33%
US-Jordan	USA	5.30%
Morocco	EU-Morocco	5.19%
Korea-Chile	Chile	4.01%
Japan-Singapore	Japan	2.61%
Canada-Costa Rica	Costa Rica	1.82%
EU-South Africa	EU	1.77%
Australia-USA	USA	0.82%
EU-Chile	EU	0.38%
EU-Czech Republic	EU	0.28%

Canada-Chile	Canada	0.16%
Korea-Chile	Korea	0.09%
EU-Chile	Chile	0.03%
Mexico-Chile	Mexico	0.01%

In addition to these exclusion there are other provisions that might arguable be treated as exclusions. The EU's TRQs in its agreements with the Czech Republic and Lithuania are cases in point. Cases where decisions on liberalisation are deferred might also fall into this category, for example the 12.81% of South African imports from the EU and 0.79% of EU imports from South Africa in the EU-South Africa FTA and the 0.9% of Korean imports from Chile in the Korea-Chile FTA on which decisions are deferred until the end of the DDA negotiations. There are also cases where liberalisation commitments are conditional on actions by the other partner, or where it is not clear whether full liberalisation has been agreed, as in the case of EU imports from South Africa on which the commencement of liberalisation has been deferred. TRQs, special safeguards and bilateral emergency actions are generally only available during the liberalisation period, although there are some cases where it appears that the availability of bilateral emergency actions is envisaged as being permanent. There could also be a question whether the treatment of beef and dairy products in the Australia-US FTA, accounting for 13.82% and 0.57% respectively of US imports from Australia, should be treated as permanent exclusions, given that beef imports continue to be subject to special safeguard action after the end of the 18 year liberalisation period, while in the case of dairy products the TRQs are never formally abolished, but rather made subject to continuous expansion beyond the end of the liberalisation period.

Extensions of liberalisation over periods exceeding 10 years are relatively common. Percentages of trade for which the liberalisation timetable extends over more than 10 years are summarised below:

<u>Agreement</u>	<u>Importing Partner</u>	<u>% of Imports from Partner Liberalised over Periods Exceeding 10 Years</u>
EU-South Africa	South Africa	32.40%
Thailand-New Zealand	Thailand	25.89%
EU-Morocco	Morocco	21.63%
Korea-Chile	Chile	20.80%
Australia-US	USA	15.57%
Canada-Chile	Chile	5.97%
Thailand-Australia	Thailand	5.42%
Canada-Costa Rica	Costa Rica	5.32%
USA-Chile	USA	2.94%
USA-Chile	Chile	0.55%
US-Singapore	USA	0.01%
Korea-Chile	Korea	0.01%

## **7. Conclusions**

A definition of SAT based on coverage of 95% of tariff lines at the 6-digit level would pose difficulties for relatively few of the agreements analysed, especially if no time limit is imposed for fulfilment of the SAT requirement. Many agreements would meet this definition without difficulty. The percentage of tariff lines subject to “other measures” is also relatively low.

A definition of SAT based on coverage of 90% of trade could pose difficulties for a slightly higher proportion of agreements, especially if there is a requirement for SAT to be met within 10 years, though there are also many agreements that would meet this definition without difficulty. Definitions of SAT based on coverage of 85% or 80% would not pose problems if no time limit is set for the satisfaction of the SAT requirement, but could pose problems for some (but not many) agreements if the SAT requirement had to be satisfied within 10 years.

It also appears that there are several cases where eventual elimination of tariffs on all trade, or a very high percentage of trade, is associated with a relatively high percentage of trade subject to “other measures” during the period when tariffs are being eliminated, or in some cases continuing to operate even after the tariff elimination commitments have been implemented.

A tentative conclusion might therefore be that the exclusion of sensitive products from agreements can often be achieved by the exclusion and/or subjecting to “other measures” of a relatively small percentage of tariff lines. The percentage of trade accounted for by the sensitive products may sometimes (but not always) be somewhat higher, however. This leads in some agreements to exclusion of a higher percentage of trade from the tariff elimination provisions, especially within the first 10 years of the agreement, and/or to sometimes quite high percentages of trade subject during the transition period to “other measures” designed to minimise or reduce the competitive pressures faced during that period by domestic producers of the sensitive products. It should also be remembered that the recorded trade in sensitive products before the agreement enters into force will be very low or even non-existent if there are prohibitive trade barriers on the sensitive products.

## **References**

- Andriamananjara, S., 1999. "On the Size and Number of Regional Integration Arrangements. A Political Economy Model," World Bank - Country Economics Department, Working Paper 2117, 1999
- Frankel, J.A. (1997), Regional Trading Blocks in the World Economic System, Institute of International Economics, Washington D.C.
- Laird, S. (1999), "Regional Trade Agreements: Dangerous Liaisons? *World Economy* 22, 1179-1200
- Panagariya, A. (1999), "The Regionalism Debate: An Overview", *World Economy* 22, 477-51
- WTO Secretariat (2002), Compendium of Issues Related to Regional Trade Agreements (WTO, Geneva, Document TN/RL/W/8/Rev.1)
- WTO Secretariat (2005), Factual Presentation: Free Trade Agreement Between the Republic of Korea and Chile (Goods): Report by the Secretariat (WTO, Geneva, Document WT/REG169/3)

**ANNEX I**  
**LIBERALISATION COMMITMENTS OF MEMBERS OF SELECTED FTAs:**  
**% OF IMPORTS FROM PARTNERS SUBJECT TO EXCLUSIONS,**  
**RESTRICTIONS OR CONDITIONS AND/OR LIBERALISATION**  
**TIMETABLES EXCEEDING TEN YEARS**  
**(based on years shown for each FTA)**

**1. Singapore – New Zealand (1998-2000)**

**New Zealand**

None

**Singapore**

None

**2. Singapore - Australia (2000-2002)**

**Australia**

None

**Singapore**

None

**3. Singapore - Japan (1999-2001)**

**Singapore**

None

**Japan**

Products excluded from the agreement 2.61%

**4. Singapore – USA (2001-2003)**

**Singapore**

None

## USA

Liberalised over period exceeding 10 years, with TRQ applicable during liberalisation period	0.01%
----------------------------------------------------------------------------------------------	-------

### 5. USA - Chile (2001-2003)

#### Chile

Liberalised over period exceeding 10 years	0.55%
--------------------------------------------	-------

#### USA

Liberalised within 10 years, subject TRQ or trigger price mechanism during the liberalisation period	12.35%
Liberalised over period exceeding 10 years	0.09%
Liberalised over period exceeding 10 years, with TRQ or trigger price mechanism applicable during the liberalisation period	2.85%

### 6. Canada-Chile (1997-1999)

#### Canada

Liberalised within 10 years, with provision for Bilateral Emergency Action (BEA)	3.45%
Never liberalised	0.16%

#### Chile

Liberalised within 10 years, with provision for Bilateral Emergency Action (BEA) or subject to TRQs during the liberalisation period	1.82%
Liberalised over period exceeding 10 years	4.52%
Liberalised over period exceeding 10 years, subject to TRQs during the liberalisation period	2.45%
Never liberalised	10.52%

## **7. Canada – Costa Rica (1999-2001)**

### **Canada**

Liberalised within 10 years, with provision for Bilateral Emergency Action (BEA)	9.89%
-------------------------------------------------------------------------------------	-------

### **Costa Rica**

Liberalised within 10 years, with provision for Bilateral Emergency Action (BEA) or subject to TRQs during the liberalisation period	8.78%
--------------------------------------------------------------------------------------------------------------------------------------------	-------

Liberalised over period exceeding 10 years	5.26%
--------------------------------------------	-------

Liberalised over period exceeding 10 years, with provision for Bilateral Emergency Action (BEA) or subject to TRQs during the liberalisation period	0.06%
-----------------------------------------------------------------------------------------------------------------------------------------------------------	-------

Never liberalised	1.82%
-------------------	-------

## **8. USA – Australia (2001-2003)**

### **Australia**

Liberalised within 10 years, with provision for Bilateral Emergency Action (BEA)	0.85%
-------------------------------------------------------------------------------------	-------

### **USA**

Liberalised within 10 years, with provision for Bilateral Emergency Action (BEA)	0.12%
-------------------------------------------------------------------------------------	-------

Liberalised over period exceeding 10 years	1.13%
--------------------------------------------	-------

Beef: liberalised over 18 years with permanent provision for SSG	13.82%
------------------------------------------------------------------	--------

Dairy: partial liberalisation over 17 years followed by continuous expansion of TRQs	0.57%
-----------------------------------------------------------------------------------------	-------

Other products liberalised over period exceeding 10 years, with provision for SSG	0.05%
--------------------------------------------------------------------------------------	-------

Sugar: never liberalised	0.56%
--------------------------	-------

Other products never liberalised	0.26%
----------------------------------	-------

#### **9. USA – Jordan (1998-2000)**

##### **USA**

Liberalised in accordance with WTO commitments	27.88%
------------------------------------------------	--------

Subject to TRQs	0.26%
-----------------	-------

Excluded	5.30%
----------	-------

##### **Jordan**

Liberalised in accordance with WTO commitments	35.59%
------------------------------------------------	--------

Excluded	9.33%
----------	-------

#### **10. Australia - Thailand (2001-2003)**

##### **Australia**

None

##### **Thailand**

Liberalised within 10 years, with provision for SSG during liberalisation period	1.35%
----------------------------------------------------------------------------------	-------

Liberalised over period exceeding 10 years	0.01%
--------------------------------------------	-------

Liberalised over period exceeding 10 years, subject to TRQ during the liberalisation period	2.45%
---------------------------------------------------------------------------------------------	-------

Liberalised over period exceeding 10 years, with provision for SSG during the liberalisation period	2.96%
-----------------------------------------------------------------------------------------------------	-------

#### **11. New Zealand - Thailand (2002-2004)**

##### **New Zealand**

None

### **Thailand**

Liberalised within 10 years, subject to TRQ during liberalisation period	31.15%
Liberalised over period exceeding 10 years	18.75%
Liberalised over period exceeding 10 years subject to TRQ during the liberalisation period	7.14%

## **12. Mexico - Chile**

### **Mexico**

Liberalised within 10 years, subject to TRQ during liberalisation period	0.01%
Restrictions permitted	0.03%

### **Chile**

Liberalised within 10 years, subject to TRQ during liberalisation period	0.67%
--------------------------------------------------------------------------	-------

## **13. Korea- Chile**

### **Korea**

Liberalisation over a period exceeding 10 years	0.01%
Liberalisation measures to be agreed following conclusion of DDA negotiations	0.08%
Liberalisation measures to be agreed following conclusion of DDA Negotiations, with TRQs applicable meantime	0.01%

### **Chile**

Liberalisation over a period exceeding 10 years	20.80%
Never liberalised	4.01%

#### **14. EU - Chile**

##### **Chile**

Quota restrictions remain 0.03%

##### **EU**

Quota restrictions remain 0.38%

#### **15. EU – South Africa**

##### **South Africa**

Liberalisation over a period exceeding 10 years 32.40%

Decision pending 12.81%

##### **EU**

Excluded 1.77%

Decision pending 0.79%

Conditional liberalisation 9.36%

Liberalisation to commence in Year 4 0.36%

Liberalisation to commence in Year 10 0.90%

#### **16. EU – Czech Republic (1993-1994)**

##### **Czech Republic**

None

##### **EU**

Partial tariff removal within 10 years, with transitional quotas 0.08%

Partial tariff reduction within 10 years 0.14%

TRQs 21.17%

Complete exclusion	0.06%
--------------------	-------

#### **17. EU - Lithuania (1997-1999)**

##### **Lithuania**

None

##### **EU**

Partial liberalisation	0.01%
Conditional suspension of duties	2.97%
TRQs	21.03%

#### **18. EU - Morocco (1997-1999)**

##### **Morocco**

Retention of agricultural component in industrial tariffs	0.05%
Reference prices retained, subject to later decision by Association Council	1.61%
Liberalisation over a period exceeding 12 years	21.63%
Partial liberalisation of agricultural products	5.14%

##### **EU**

Retention of agricultural component in industrial tariffs	0.18%
Partial elimination of quantitative restrictions on agricultural imports from Morocco	12.58%

**ANNEX 1I: SELECTED FTAs**  
**SUMMARY OF PROVISIONS LIBERALISING TRADE IN GOODS**

**1. Singapore – New Zealand**

All but 4 tariff items already duty-free on the Singapore side. Remaining items became duty free on entry into force of the agreement. In New Zealand's case 52% of items were already duty free and the remaining 48% became duty free on entry into force of the agreement.

**2. Singapore - Australia**

On the Singapore side the handful of items not already duty free became duty free on entry into force of the agreement. In New Zealand's case 46% of items were already duty free and the remaining 54% became duty free on entry into force of the agreement.

**3. Thailand – Australia**

On Australia's side 83% of items were already duty free or became duty free on entry into force of the agreement. The remaining 17% of items are scheduled to become duty free within 10 years of entry into force.

On the Thai side 49% % of items were already duty free or became duty free on entry into force of the agreement, and a further 50% of items are scheduled to become duty free within 10 years of entry into force. Ten of these items are also subject to SSG provisions. The remaining 1% of items are scheduled to become duty free over periods ranging from 15 to 20 years, and all but one of these items are also subject to SSG and/or TRQ provisions during the implementation period.

**4. Thailand – New Zealand**

On New Zealand's side 80% of items were already duty free or became duty free on entry into force of the agreement. The remaining 20% of items are scheduled to become duty free within 10 years of entry into force.

On the Thai side 54% % of items were already duty free or became duty free on entry into force of the agreement, and a further 45% of items are scheduled to become duty free within 10 years of entry into force. Ten of these items are also subject to SSG provisions. The remaining 1% of items are scheduled to become duty free over periods ranging from 15 to 20 years, and all of these items are also subject to SSG and/or TRQ provisions during the implementation period.

**5. Singapore – U.S. FTA**

On the Singapore side the handful of items not already duty free became duty free on entry into force of the agreement. In the U.S. case 79% of items were already duty free or became duty free on entry into force of the agreement. The remaining 21% are scheduled for tariff elimination over periods of 4-10 years, and of these 2% are also subject to TRQs during the implementation period.

## **6. U.S. - Chile**

In the US case, over 93% of items were already duty free or became duty free on entry into force of the agreement. A further 4.1% of items are subject to tariff elimination over periods ranging from 2 to 10 years. Of these 0.2% are subject to a quantity trigger. 2.4% of items are due for tariff elimination over 12 years and the majority of these (2.1%) are also subject to TRQs and/or quantity triggers during the implementation period. Sugar and sugar-containing products will not be fully liberalised at the end of the implementation period.

Chile has almost 90% of products already duty free or duty-free on entry into force. A further 7.8% of items are due for tariff elimination within 10 years, and of these 0.2% are also subject to TRQs during the implementation period. 2.4% of items are due for tariff elimination over 12 years, and half of these are also subject to trigger price provisions. As in the US case sugar and sugar-containing products will not be fully liberalised at the end of the implementation period.

## **7. EU-Chile**

The EU-Chile FTA is embedded in a comprehensive association agreement covering a wide range of areas of economic and political cooperation.

A positive list approach is taken to industrial, agricultural and fisheries products. Commitments for each category of products are expressed with reference to a very extensive product list that each party has annexed to the Agreement. Both parties' lists utilise the Harmonised System rather than the EU's common nomenclature.

For each product the commitments are shown. Products for which no commitments are made are also listed and it is thus straightforward to identify the exceptions, such as dairy products.

In the case of industrial products, EU tariffs are reduced to zero over varying periods of zero to three years, while for Chile the corresponding period is zero to 5 years.

For agriculture the period over which the reduction to zero is to take place ranges from zero to 10 years for both parties. The EU also lists a number of agricultural products as being subject to one or more of the following conditions.

- Tariff rate quotas, expanding over time
- For products subject to both ad valorem and specific duties, phase out of the ad valorem duty only, leaving the specific duty intact.
- For certain processed foods, the tariff is reduced to 50% of the MFN rate rather than being eliminated.
- No concessions for some products

The EU also has provision for seasonal variations in the tariffs applied to some fruit and vegetable products.

Chile also has a somewhat shorter list of products that remain subject to tariff rate quotas.

In the case of fisheries products, the EU's tariffs are phased out over zero to ten years, while Chile's tariffs go to zero immediately. Both partners have lists of fisheries products that remain subject to tariff rate quotas.

## **8. Singapore – Japan FTA**

As usual, on the Singapore side the handful of items not already duty free became duty free on entry into force of the agreement. In Japan's case just under 91% of items are either already duty free or become duty free on entry into force of the agreement, and a further 0.1% of items become duty free within 10 years. However 9.2% of Japan's tariff items are not covered by the provisions of the agreement.

## **9. EU – South Africa FTA**

The EU-South Africa FTA adopts a negative list approach to both industrial and agricultural products. The EU and South Africa each commit to phase out tariffs on the majority of industrial products over periods ranging up to 10 years and 12 years respectively. In the EU's case there is a short list of exceptions to be reviewed after 5 years with a view to possible removal of tariffs. In South Africa's case commitments to reduce rather than eliminate tariffs are made in large parts of the textile and clothing sector, and also in the footwear and leather, motor vehicle and tyre sectors. A rather lengthier list of exceptions than in the case of the EU envisages a review after 5 years with a view to possible removal or reduction in tariffs; this provision applies to a significant number of products in the categories of fuel, chemicals, textile yarns and motor vehicle components.

In the case of agricultural products, the EU and South Africa again commit to the abolition of tariffs on a range of products over 10 and 12 years respectively, and for each country there are then lists of exceptions.

The EU has a lengthy exception list of processed agricultural products, including some dairy products, sugar products and other confectionery, biscuits, breads and prepared

foods, which are to be reviewed later for possible subsequent liberalisation. Similar provision applies to some unprocessed and semi-processed foods, including live animals, dairy products and cereals. There is also a list of products for which only tariff reductions rather than tariff elimination are committed, including some wines and fruit juices, and a further group of products for which no commitments are made, including cheese and some wines. There is also a substantial list of fisheries products for which commitments are made to tariff reductions and/or tariff rate quotas.

On the South African side there is also an exception list, including meat products, dairy products, cereals, sugar, ice cream and flax, which are to be reviewed later with a view to eventual liberalisation, and another exception list of fisheries products which South Africa has indicated it will consider liberalising if the EU is likewise willing to liberalise the same products.

## **10. Canada –Costa Rica FTA**

Canada: 78% of items either already duty free or become duty free on entry into force. For a further 1.9% of items immediate duty free status is conditional on certain policy actions by Costa Rica, while a further 6.3% are duty free immediately (in some cases conditionally) but subject to BEAs (with TPLs available in the majority of cases). A further 11.8% of items are scheduled for liberalisation within 10 years, of which 10.8% are also subject to BEAs and/or TPLs, and just under 2% of items are excluded from tariff elimination.

Costa Rica: 61.3% of items either already duty free or become duty free on entry into force, with a further 3.4% duty free immediately but also subject to BEAs or TPLs. Products subject to tariff elimination comprise 18.8% of tariff items, and of these 11.3% are also subject to BEAs and/or TPLs. Products subject to tariff elimination over 15 years comprise 11.8% of tariff items and of these only 0.5% are subject to BEAs and/or TPLs. 2% of products are excluded from tariff elimination.

## **11. Canada – Chile FTA**

Canada: 85% of items already duty free or become duty free on entry into force. Of these 1.4% are subject to bilateral emergency actions and TPLs are available in 0.6% of the cases. A further 13% of items are scheduled for liberalisation within 6 years, of which just over 10% are subject to BEAs, with TPLs available for just over 9%. A further 1% of items are to be liberalised within 6 years subject to certain policy actions by Chile. Just over 1% of items are completely excluded from liberalisation.

Chile: 72.2% of items already duty free or become duty free on entry into force. Just over 25% of items are scheduled for liberalisation over periods ranging from 2 years to 10 years, of which 14.7% are subject to BEAs (with TPLs available in 12.8% of cases) and 0.2% are subject to TRQs. 1.3% of items are completely excluded from liberalisation and 1.2% are subject to textile provisions; half of the latter are also subject

to TRQs. The agreement also permits Chile to maintain its price band system although this provision may have been overtaken by a WTO dispute ruling.

## **12. Korea - Chile**

Korea: 87% of items are duty-free on entry into force of the agreement, while a further 9% of items are fully liberalised over periods of 5,7,9 or 10 years. The remaining 4% of items are all agricultural products. Of these a very small percentage (0.1%) are liberalised over 16 years, while a further 0.2% of items (comprising apples, pears, and various forms of rice) are completely excluded. A decision on how the remaining items (just over 3.5%) are to be treated under the agreement has been deferred until the conclusion of the WTO's DDA negotiations.

Chile: Just under 42% of items are duty free on entry into force of the agreement, with a further 54.5% of items fully liberalised over periods of 5 or 10 years. Of the remaining 3.5% of items, just under 1% (mainly agricultural products, and some home appliances) are completely excluded, while 2.5% of items are liberalised over 13 years.

## **13. Australia-US**

Australia: 86.7% of items are duty free on entry into force of the agreement, and the remaining 13.3% of items are fully liberalised over periods of 5 or 10 years. Textile and apparel products comprising just under 13% of items may be subject to Bilateral Emergency Actions.

USA: 81.5% of items are duty free on entry into force of the agreement and a further 14.8% of items are liberalised over 5 or 10 years. Textile and apparel products comprising 10.75% of items may be subject to Bilateral Emergency Actions.

A further 1.8% of items are liberalised over an 18 year period. Of these, 0.9% of items, comprising various types of beef and some produce items, are subject to increasing TRQs over the 18 year period, with the in-quota tariff being zero. The quantitative restriction on duty-free imports is removed at the end of the 18 year period. Beef (0.67% of items) and some produce items (0.15% of items) remain subject to special safeguard provisions beyond the 18 year period i.e. indefinitely. Dairy products, comprising just over 1% of items are also subject to increasing TRQs and zero in-quota tariffs. The TRQ quantities are specified for the first 17 years, and thereafter expand at a constant percentage rate (compounded). A further 0.8% of items, including sugar, are completely excluded from the agreement.

## **14. US-Jordan**

The US-Jordan contains unusual provisions whereby the commitments of both parties for a substantial proportion of items are expressed as a commitment to liberalise "in

accordance with WTO commitments”. A significant percentage of the items treated in this way appear to have been already duty free at the entry into force of the agreement, although they may have been subject to other types of restriction, such as quotas in the case of textiles and clothing items.

Jordan: 68.8% of items are liberalised over periods of 2, 4, 5 or 10 years, while a small proportion of items (0.24%) are only partially liberalised. The remaining 30.9% of items (including some agricultural, pharmaceutical, textile and machinery products) are “liberalised in accordance with WTO commitments”. Of these, 10.4% of items appear to have been subject to a positive tariff at the time of entry into force of the agreement.

USA: 2.33% of items are duty free on entry into force of the agreement, while just over 54% of items are liberalised over periods of 2,4,5 or 10 years. Of these, 1.5% of items are subject to TRQs during the 10 year period. A small proportion of items (0.22%) are only partially liberalised. 34.3% of items are “liberalised in accordance with WTO commitments”. Of these, 5.5% of items appear to have been subject to a positive tariff at the time of entry into force of the agreement. A further 9% of items are not mentioned in the agreement.

## **15. Mexico - Chile**

Almost all items (over 99% for Mexico and over 98% for Chile) are liberalised within 10 years. Each country retains the right to maintain restrictions on a small number of items (less than 100 in each case).