OECD*publishing*

Please cite this paper as:

Lejárraga, I. (2013-06-26), “Multilateralising Regionalism: Strengthening Transparency Disciplines in Trade”, *OECD Trade Policy Papers*, No. 152, OECD Publishing, Paris.
http://dx.doi.org/10.1787/5k44t7k99xzq-en

OECD Trade Policy Papers No. 152

Multilateralising Regionalism

STRENGTHENING TRANSPARENCY DISCIPLINES IN TRADE

Iza Lejárraga

OECD

OECD TRADE POLICY PAPERS

The OECD Trade Policy Paper series is designed to make available to a wide readership selected studies by OECD staff or by outside consultants. This series continues that originally entitled OECD Trade Policy Working Papers.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries, and to the name of any territory, city or area.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

This document has been declassified on the responsibility of the Working Party of the Trade Committee under the OECD reference number TAD/TC/WP(2011)28/FINAL.

Comments on the series are welcome and should be sent to tad.contact@oecd.org.

OECD TRADE POLICY PAPERS

are published on www.oecd.org/trade

© OECD (2013)

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for commercial use and translation rights should be submitted to *rights@oecd.org*.

Abstract

MULTILATERALISING REGIONALISM: STRENGTHENING TRANSPARENCY DISCIPLINES IN TRADE

Countries embarking on trade negotiations are not only seeking increased market access, but also, reduced market opacity. This study distils the most progressive practices for promoting regulatory transparency in over one hundred regional trade agreements (RTAs) concluded by OECD and large emerging economies over the last decade. While there is a lively discussion on strengthening transparency in the World Trade Organization (WTO), scant attention has been paid to the evolution of corresponding disciplines in RTAs. And yet, this study finds that RTAs can be credited for introducing instruments that not only deepen existing multilateral transparency commitments ("WTO-plus"), but expand them to new areas that do not have precedents in WTO agreements ("WTO-beyond"). In particular, the paper illuminates a number of options that may be useful for policy-makers to consider in their efforts to reinforce transparency and predictability in international trade policy. Most of the transparency mechanisms identified are being applied on a non-discriminatory basis, since they are often non-excludable and non-exhaustible. The implication is that, although WTO-plus transparency measures may be *de jure* preferential by virtue of being inscribed in an RTA, they are *de facto* being extended on a most-favoured nation (MFN) basis. Moreover, there is a considerable level of homogeneity in WTO-plus transparency provisions across a critical mass of RTAs, which may facilitate convergence and adoption at the multilateral level.

Keywords: transparency, trade, regulatory cooperation, regional trade agreements, RTAs, free trade agreements, FTAs, preferential trade agreements, PTAs, multilateralising regionalism, World Trade Organization, WTO, anti-corruption, anti-bribery.

***JEL classification*:** F1, F10, F13, F15

Acknowledgements

The author wishes to thank Pierre Latrille and Juneyoug Lee for coordinating useful consultations with relevant departments across the WTO Secretariat. The author also thanks Robert Wolfe and Antonia Carzaniga for constructive comments, as well as Frank van Tongeren and Barbara Fliess for valuable discussions in the course of this work. For research assistance, the author is grateful to Lucilla Bruni and Humberto López Rizzo.

Table of contents

Executive Summary 5

I. Introduction: Growing role of transparency in trade policy 8

II. Transparency and trade performance: Overview of the literature....................10
- A. Transparency reduces search costs....................10
- B. Transparency strengthens institutions....................11
- C. Transparency improves trade relations....................12

III. Typology of transparency in trade treaties....................13
- A. Publication of information: Availability, accessibility and inferability 15
- B. Participation in decision-making: Openness, inclusiveness and influence....................16
- C. Predictability: Review and appeal, enforcement of rules and co-operation 17
- D. Fighting corruption and bribery 17

IV. Anatomy of WTO-plus provisions in RTAs....................18
- A. Sample of RTAs....................18
- B. "Deep" provisions on transparency 21
- C. Likelihood of implementation: legal binding of WTO-plus provisions 23

V. Emerging approaches to promote transparency: Illustrations from RTAs....................24
- A. Transparency as a core objective of RTAs: an end in itself....................25
- B. Horizontalising transparency: streamlining requirements across sectors and measures....................25
- C. Operational specificity in transparency: What, how, when, by whom, for whom 27
- D. Aid-for-Transparency: Co-operation and capacity building 32
- E. New frontiers in transparency co-operation: Combating corruption 35

VI. Conclusions and future work 37

References....................40

Annex A – List of RTAs and General Transparency Measures....................42

Annex B – Capacity building and implementation assessment of APEC transparency standards....................46

Tables

Table 1. Unbundling transparency: definition and measurement 14
Table 2. Transparency in preambles of RTAs....................25
Table 3. Illustration of WTO-plus: Publication requirements for services....................30
Table 4. Illustrative examples of co-operation on transparency....................35
Table B.1. APEC Assessment of Capacity Buildings Needs for Transparency....................46
Table B.2. Assessment of Implementation of APEC Transparency Standards....................47

Figures

Figure 1. Effects of transparency on trade 12
Figure 2. Taxonomy of transparency in trade treaties 15
Figure 3. RTAs signed by OECD and major emerging economies, 2001-present 19
Figure 4. Average number of WTO-plus transparency provisions 22
Figure 5. Proportion of legally binding WTO-plus provisions 24
Figure 6. Frequency of Notifications under GATS Article III:3, 1995-2013 32
Figure 7. Anti-corruption measures in transparency chapter of FTAs of the United States 37

Boxes

Classification of RTA transparency provisions 20
South-South Co-operation on transparency: The Andean Community 34

Executive Summary

The interrelation between transparency and trade liberalization is at the heart of the global trading system. Codified in Article X of the original General Agreement on Tariffs and Trade (GATT 1947), multilateral rules have successively striven to foster greater transparency of measures affecting trade, so that the costs of such measures can be known to businesses, consumers and governments – and so that they can, to the maximum extent possible, be minimised. Without information on trade-related measures, it is difficult to bring them to bear on trade negotiations and unilateral policy reforms. The implication is that markets with greater information asymmetries are more likely to remain closed. Moreover, even when trade restrictions are removed, but key information required to trade with foreign markets remains costly to obtain or unpredictable, firms may not be able to take full advantage of open markets. Hence, lack of transparency can render potential market access opportunities form negotiated trade agreements unrealized.

Since the creation of the World Trade Organization (WTO), transparency has become increasingly prominent and central to its mandate. Some observers have noted that transparency has migrated from the periphery to the core of multilateral commitments, being reclassified from a "subsidiary" to a "substantive" obligation in recent WTO jurisprudence. In effect, as core trade barriers have come down in many markets, transparency and related procedural issues may be exerting greater influence in the ease with which traders can access markets for imports, exports and investment. The rising relevance of transparency goes hand-in-hand with the growing remit of the trade policy agenda: as governments increasingly seek to discipline a broad range of non-tariff, behind-the-border measures of a regulatory nature, instituting transparency across multiple domestic portfolios becomes a more complex undertaking. Accordingly, more sophisticated mechanisms for enhancing transparency may be called for.

This study aims to distil relevant practices for promoting transparency from regional trade agreements (RTAs) signed by OECD and major emerging economies. While there is a lively discussion on strengthening transparency in the WTO, scant attention has been paid to the evolution of corresponding disciplines in RTAs. And yet, transparency is a key dividend of regional trade negotiations. Recent RTAs can be credited for introducing instruments that not only deepen multilateral transparency procedures ("WTO-plus"), but expand them to new areas that do not have precedents in WTO agreements ("WTO-beyond"). Although there is no unique path to the acquisition of greater transparency, and RTAs vary in the breadth and depth of these commitments, regional approaches may illustrate potential good practices that could feed into reflections on fortifying transparency mechanisms in international trade policy.

Fostering transparency in trade: Emerging practices from RTAs

The importance that countries attach to transparency is often manifested in the preambles of RTAs. From a total of 124 RTAs reviewed in the study, 72 advance the promotion of transparency as one of the core objectives of the trade partnership. These allusions are noteworthy, considering that the preambles to GATT/WTO agreements are largely silent about transparency. Moreover, while WTO agreements generally conceive transparency as a means to expand trade, in RTAs transparency is often stated as an end in its own right, associated with broader aspirations of good economic governance. Of course, the elements in the preamble do not constitute legally bindings obligations, although they can be a source of legal interpretative guidance in disputes. They foreshadow the efforts to promote transparency in bilateral relations.

A novel feature in the architecture of RTAs is the inclusion of an over-arching, horizontal chapter on transparency. Comprehensive transparency chapters are contained in 53 RTAs, notably those signed by the Unites States, Canada, New Zealand and to a significant extent also those of Chile, Australia, the European Union and China. A transversal transparency mechanism governing all sectors and measures differs from the design of multilateral commitments, where transparency procedures are regulated separately for each sector, non-tariff measure and rule in different agreements. Arguably, many procedures (e.g., publication, public comment) may be applied transversally to all non-tariff measures, and streamlining these procedures may facilitate compliance. Equally important, a more centralized transparency system could also improve access and use of information by governments and economic operators. In most national jurisdictions, transparency procedures are stipulated in general administrative laws, so that a horizontal approach is consistent with domestic regimes.

Apart from horizontalising transparency, RTAs also deepen area-specific transparency standards. Overall, there is a higher incidence of transparency provisions in services-related chapters than in goods. This may be explained by a higher sensitivity of services trade to transparency: when not only goods, but also factors of production and consumers move to foreign markets, the need for information and predictability increases. It may also reflect the fact that transparency mechanisms under GATS are relatively weaker than for non-tariff measures in goods (TBT, SPS), so that RTAs may be compensating for issues such as limited notification activity under GATS. A high proportion of WTO-plus clauses in cross-border services are cast in best-endeavour terms, which may underscore the difficulties in instituting transparency in services, when multiple domestic regulatory portfolios are concerned.

A wide range of "WTO-plus" attributes strengthen administrative practices. In particular, RTAs add operational specificity to existing WTO commitments, namely by endowing publication and prior comment obligations with additional requirements, such as concrete timelines, "electronic transparency" (i.e., making regulations available on the internet), "English transparency" (i.e., providing translations of regulations) and written responses to public comments, among others. Beyond specifying the *modus operandi* of WTO requirements, RTAs institutionalize more direct and instantaneous two-way information channels to non-governmental stakeholders. As such, some obligations on notification and enquiry channels in RTAs are explicitly mandated to directly target the private sector and civil society. Similarly, there are provisions for national treatment in the ability of foreign stakeholders to participate in consultations and public comment procedures for relevant domestic regulations. Finally, RTAs strengthen transparency

commitments by providing co-operation and capacity building to facilitate the adoption of these transparency mechanisms and administrative procedures.

As for "WTO-beyond" measures, one of the most remarkable developments of transparency disciplines in RTAs is the incorporation of anti-corruption and anti-bribery measures. These provisions mandate the criminalization of corruption, sanctions and enforcement mechanisms for public and private agents, and whistleblower protection, among others. The links between transparency and corruption are evident: information asymmetries breed opportunities for discretionary behaviour, allowing agents to circumvent rules for personal profit. Although many multilateral rules can help reduce corruption and bribery, specific measures addressing these risks do not have precedents in existing WTO agreements. Hence, this represents a qualitatively different facet of transparency which is emerging in the regional agenda.

Multilateralising regionalism

Can regional transparency practices be diffused more widely at the multilateral level? Not all the above practices may be desirable, or feasible, to emulate at the WTO. Nevertheless, several considerations bode well for reflections on how RTAs may pave the way for greater transparency in international trade policy. Arguably, many WTO-plus mechanisms found in RTAs share the characteristics of public goods, since they are often non-excludable and non-exhaustible. Thus, it may not be viable, or practicable, to implement certain transparency measures (e.g. publication, public comment, anti-corruption) on a discriminatory basis. The implication is that many "deep" transparency provisions may be *de facto* applied on a most-favoured-nation basis, even if they are *de jure* preferential. Moreover, there is a high level of similarity across the WTO-plus clauses found in RTAs, which may facilitate convergence. Interestingly, the high levels of similarity across RTAs are not coincidental, but partly emanate from multilateral discussions: recommendations on transparency developed in various WTO Committees have often been adopted at the regional level and inscribed in the texts of RTAs. Therefore, there is an ongoing process of "regionalising multilateralism".

I. Introduction: Growing role of transparency in trade policy

Transparency is one of the fundamental principles of the global trading system. Codified in Article X of the General Agreement on Tariffs and Trade (GATT) in 1947, multilateral rules have striven to foster greater transparency of trade-related measures, so that the costs of such measures could be known to traders and governments, and could, to the extent possible, be minimised through successive negotiations. The process of acquiring information on trade-related policies is in itself a market entry cost for businesses. Additionally, information asymmetries create opportunities for discretionary behaviour and disguised protectionism, making the costs of trading not just higher, but also more unpredictable.

Since the creation of the World Trade Organization (WTO) in 1995, transparency has become increasingly important and central to its mandate. Some observers have noted that transparency and due process requirements have migrated from the periphery to the core of multilateral commitments, being reclassified from "subsidiary" to "substantive" obligations in the recent WTO jurisprudence (Ala'i, 2008). Over the last decade, there has been an increase of transparency-related claims in WTO panels and the Appellate Body, manifesting the importance that countries attach to these rights and obligations. The prominent role of transparency suggests that liberalization of barriers to trade is in large part only meaningful to the extent that such reforms are accompanied by actions to promote transparency

The growing prominence of Article X-related clauses goes hand-in-hand with the expansion of the trade agenda to behind-the-border measures, which necessitate higher degrees of regulatory transparency. In effect, the Tokyo Round (1973-79), which first brought non-tariff measures into the purview of trade negotiations, heightened the realization that addressing more subtle, potentially opaque forms of non-tariff measures would require greater doses of transparency. As such, Tokyo Round agreements introduced new transparency mechanisms, such as the opportunity for comment, which was spearheaded in the Standards Code (1980) and replicated in subsequent WTO agreements, including on Technical Barriers to Trade (TBTs Agreement) and Sanitary and Phytosanitary Measures (SPS Agreement). The Trade Policy Review Mechanism crystallized the WTO transparency function in trade policy-making.

The increasing expansion of the trade agenda to measures behind the borders will continue to pose copious demands for greater transparency. In particular, the growing role of services trade and the global unbundling of production have intensified regulatory demands for increased transparency. When not only goods, but also factors of production and consumers, move to foreign markets, the needs for information, influence and predictability in the domestic "rules of the game" become all the more important. Accordingly, transparency provisions call for more sophisticated mechanisms than those initially conceived to ensure transparency of border trade policies.

While there is a lively discussion on strengthening transparency in the WTO, scant attention has been paid to corresponding disciplines in regional trade agreements (RTAs). And yet, the "deep integration" agenda under the new generation of RTAs has brought noteworthy transparency-promoting and institution-building efforts. Regional negotiations can be credited for engineering novel mechanisms for promoting transparency that deepen existing multilateral commitments ("WTO-plus"), or expand them to new areas not currently covered under the WTO agreements ("WTO-beyond"). Countries embarking in regional negotiations are not only seeking to increase market

access through the liberalization of measures, but equally importantly, through greater transparency, openness and predictability of such measures. In effect, reducing market opacity is in and of itself a form of expanding market access.

Transparency can be a lubricant for international trade flows. Without information on the market, it is difficult to accurately identify measures that affect trade in the first place, and assess their net benefits or costs. Greater transparency is important to sensitize government, consumers and producers of non-tariff measures and bring them to bear in trade negotiations and unilateral trade policies. The implication is that markets with greater information asymmetries are more likely to remain closed. Even when barriers are removed, but complete information is not available to economic actors, entrepreneurs will likely not be able to take full advantage of new market opportunities created. Hence, market openness without market visibility may render potential trade opportunities unrealized. Finally, transparency facilitates compliance and monitoring, which are essential ingredients to the utility and credibility of a rules-based trading system.

The aim of this paper is to take stock of transparency instruments in recent RTAs, with a view to distilling novel practices that could illuminate options for designing effective transparency mechanisms in trade policy. To our knowledge, despite the voluminous research on WTO-plus disciplines in regional trade agreements, there has not been a systematic review of transparency as a cross-cutting issue in RTAs. The present exercise aims to fill that void in order to endow negotiators and policy-makers with a stocktaking of "WTO-plus" regional practices that could feed into the reflections on how to strengthen transparency disciplines, both at the regional and the multilateral levels. Indeed, some of the WTO-plus practices emanate from discussions that were raised at the WTO and institutionalized in regional accords.

A large sample of 124 RTAs signed by OECD and five emerging economies (Brazil, China, India, Indonesia and South Africa) from 2001 to the time of writing are reviewed in this stock-taking. It should be noted that the analysis is based on the legal texts of the agreements, and does not evaluate the implementation of transparency provisions. Still, given that most RTAs in this sample involve countries with relatively mature administrative systems and capacities, it may be reasonable to assume that these measures are generally being implemented. The majority of transparency commitments inscribed in these RTAs generate binding obligations subject to dispute settlement procedures.

Another motivation for looking at transparency provisions in RTAs is that, by the inherent nature of these mechanisms, they may be less likely to introduce preferences. Transparency shares the characteristics of public goods, in that it is largely non-excludable and non-exhaustible. Many WTO-plus commitments, such as publication on websites, public comment procedures and anti-corruption measures, may be hard to apply in practice on a discriminatory basis, as one cannot easily exclude non-parties to the RTA. As a result, many transparency provisions in RTAs may be *de facto* extended on a most-favoured nation basis, even if they are *de jure* preferential by virtue of being inscribed in an RTA. In this regard, RTAs can be "building blocks" towards greater levels of transparency in trade relations.

The report is structured in four parts. The next section describes the channels through which transparency affects trade performance, reviewing the relevant literature. Section III discusses the definition of transparency and develops a typology of the main elements that comprise the current trade policy agenda on transparency. After describing the sample of RTAs, Section IV presents the analysis of transparency provisions, benchmarking them to corresponding WTO commitments and assessing their

enforceability. Section V distils some of the key emerging practices that could illuminate options for strengthening transparency procedures in trade policy, both at the regional and multilateral levels. The conclusions provide some reflections for 'multilateralising regionalism' and point to unanswered questions that could merit attention in future work.

II. Transparency and trade performance: Overview of the literature

The relationship between transparency and trade is somewhat of an unchartered territory. The problems stemming from information asymmetries have been avidly pursued in economic research (e.g., Akerlof,1970; Spence, 1974; Stiglitz, 1974), and have stirred lively debates in monetary policy and other areas, but have remained strikingly under-analysed in the trade literature. The burgeoning evidence on the transparency-trade nexus is found in three streams of work, namely addressing market-specific entry/exit costs, institutions, and the political economy of trade relations. Without being exhaustive, each of these distinct but inter-related channels of influence are reviewed below in turn.

A. Transparency reduces search costs

Rauch (1999) and Rauch and Watson (2003) show that learning about foreign markets is an expensive and complex venture. In effect, the act of exporting entails a costly process of discovering a market. In order to export, a firm must amass a wide range of information on regulatory requirements that it needs to comply with. This search is costly, and often involves hiring technical consultants who can identify and decipher relevant regulations and their compliance costs. Market discovery costs factor into the calculations of a firm's expected profitability and influence its decision to trade.

The economic effects of opacity can be conceived as a market- entry cost. On this logic, a study by the OECD (2009) develops a theoretical framework which conceptualizes incomplete regulatory transparency as a fixed information cost. Low regulatory transparency obstructs market entry even when domestic regulations are not in and of themselves restricting market access. The study shows with varying scenarios how low transparency yields the same economic effects as protectionism, namely lowering competition and increasing costs for consumers in the domestic (non-transparent) market.

The framework in Rodrik et al. (2003) offers an additional wrinkle, underlining the imperfect appropriability characterizing discovery costs. Applying the same logic the authors develop, it can be argued that firms tend to under-invest in market search costs, in part because once they acquire information on foreign regulations, and discover that exporting to a specific market is profitable, they will induce other suppliers ("copy-cats") to free-ride on the revealed market information and start exporting. The firm that incurred the costs of acquiring information about a foreign market may not be able to fully internalize the returns. As a result, transparency is likely to be under-supplied in the market below socially optimal levels. This motivates the need for governments to subsidize the market search.

Although evidence on the magnitude of these costs is fragmentary, some estimates suggest they can count towards a non-trivial part of total production costs (OECD, 2007; 1997). The costs rise with regulatory heterogeneity, within the country (sub-national) or in various export markets. They may also be significantly higher in the case of services trade, which spans a wider array of domestic regulatory portfolios. Finally, these costs notably handicap small and medium-sized enterprises (SMEs) and firms in developing

countries which cannot incur in foreign market information costs, crippling their prospects to participate in international trade (OECD, undated).

Do firms with better access to information export more? Several studies support this contention. Freund and Weinhold (2004) examine the effects of the internet on trade flows of goods, positing that the internet reduces export costs for the firm by improving their information about foreign markets. With greater use of information technology, suppliers can find information about export markets at lower costs. The study finds empirical support for this theory, showing positive effects on trade growth.

In a similar vein, Rauch (1999) finds that firms with information available through kinship (e.g. Diaspora) ties in foreign markets register a better export performance than firms which do not have access to preferential channels of information. Roberts (1997) demonstrates in a seminal paper that the decision to export to Colombia hinges on the availability of information on the market. All in all, these studies suggest that, in order to export more, bridging the information gap matters.

B. Transparency strengthens institutions

Trade also expands when it is supported by good governance. Another source of trade costs is associated with weak institutions. Recent literature has vividly conjectured the relationship between institutions and trade performance. Transparency is subsumed in this literature, to the extent that it underpins the institutional variables—"quality of regulation," "government effectiveness," "enforcement of rules," "control of corruption," "voice and accountability". Kaufmann (2006) shows empirically that transparency results in more effective government agencies and reduces the frequency of bribery, among other proxies. Transparency is a key ingredient in attaining desirable institutional outcomes.

De Groot et al. (2004) find that institutional quality has positive and economically important effects on bilateral trade flows. Correspondingly, Anderson and Marcouiller (2002) show that corruption and imperfect contractual enforcement have a significantly adverse impact on trade volumes that equals or exceeds that of a tariff. Less conclusive evidence emerges from Redding and Venables (2003), where institutional indices do not emerge as a robust determinant of export flows. This ambiguity with the other cited studies may be explained by the different choice of index in the latter – specifically on property rights – whereas the others refer to broader expropriation risks. Another source of ambiguity in this body of work relates to the difficulties in disentangling institutional costs exclusively associated with trade.

A valuable perspective is that institutions influence the quality, and not just the quantity, of trade. Differences in institutional quality across countries can be an independent source of comparative advantage, considering that there are also differences in institutional intensiveness across industries and economic activities. On this view, Nunn (2007) demonstrates that countries with better institutions for contact enforcement specialize in more differentiated goods. When goods are highly differentiated, heterogeneous and highly specific, they depend more on more predictable institutions than the case of homogeneous goods with market prices. Controlling for other factor endowments, better institutional enforceability not only increases trade, but shifts its composition towards heterogeneous goods.

In a notable effort to isolate transparency from broader governance variables, Helble et al. (2009) construct importer and exporter transparency indices for APEC economies and assess empirically the impact of marginal improvements of transparency on trade

flows. The study finds that improvements in transparency would lead to substantial intra-regional trade gains within APEC, equal to or higher than further liberalization. The authors conclude that trade policy reform efforts should focus not only on the restrictiveness of measures, but just as important, on the transparency of trade measures.

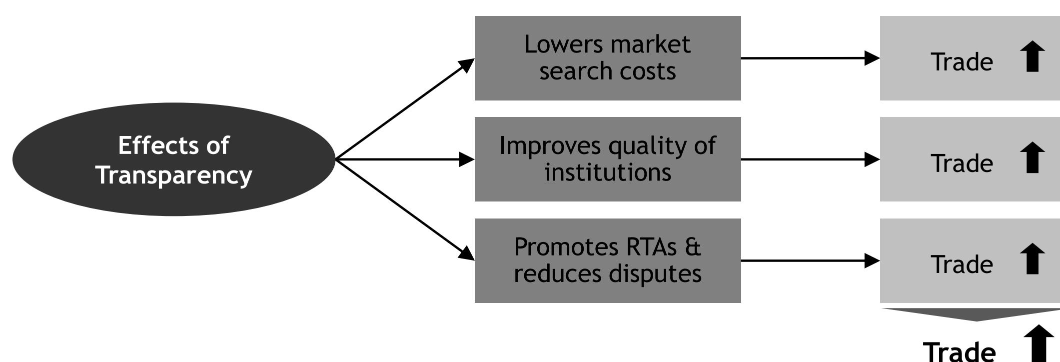
C. Transparency improves trade relations

Another channel of influence pertains to the role of transparency in the political economy of trade relations. A few recent studies have looked at the effects of transparency in fostering trade partnerships. Transparency greatly facilitates coordination, as well as better monitoring, enhancing trade ties among countries. Not surprisingly, more transparent countries enjoy greater technical assistance and co-operation, and are also more likely to be invited to form an RTA. On the contrary, non-transparency can be a source of trade costs via a higher incidence of disputes and retaliation.

Countries with higher endowments of transparency seem to receive more invitations to form RTAs. Specifically, Baccini (2008) shows that developing countries with stronger levels of transparency are more likely to enter into an agreement with the European Union. The author shows that in negotiating an RTA, the European Union is likely to target countries that have high political and economic transparency relative to other developing countries. This is partly because compliance can be better monitored among countries with more transparent institutions. Similarly, the study shows that there are a greater number of provisions for flexibility in those RTAs signed with more transparent countries. If the findings on the European Union’s trade relations are more generalisable, countries with more transparency can expect to be granted greater preferential market access. Moreover, they are likely to enjoy more flexibilities.

Conversely, lower levels of transparency leads to a greater incidence of trade disputes among countries. Ala’i (2008) shows that there has been an increase in the number of disputes that allege transparency claims in the WTO. That complainants increasingly invoke transparency obligations suggests that non-compliance with informational and due process requirements impairs trade flows. Tracing the legal interpretation of transparency provisions in trade jurisprudence, the study highlights that transparency has “emerged from obscurity”: from being considered “subsidiary” provisions to “substantive” ones creating fundamental obligations. Hence, violations to transparency among trading partners are increasingly a source of costly dispute proceedings.

Figure 1. Effects of transparency on trade



III. Typology of transparency in trade treaties

What do we mean by transparency in regional and multilateral trade relations? How does "the right to know" (Stiglitz, 1999), or the "opposite of secrecy" (Florini,1008), map onto trade policy levers? While the virtues of transparency are widely recognized in the trade policy agenda, the precise meaning of the norm remains elusive in practice. Ostry (1998) describes the term transparency as the "most opaque in the trade policy lexicon." Reflecting this sentiment, Kaufmann (2006) urges the need for "transparenting transparency" as a necessary step for measuring transparency and assessing its quality. In the absence of well-articulated, definitional parameters, Michener (2012) argues that the ambivalence of the term transparency is diminishing its analytical and policy utility.

Transparency has come to mean different things in different contexts. The GATT/WTO agreements have never specifically defined the norm, so that it can be subject to multiple uses. The WTO Glossary indicates that transparency is the "degree to which trade policies and practices, and the process by which they are established, are open and predictable." More specifically, the WTO Analytical Index (1995) closely links transparency to notifications. Indeed, the term transparency is generally associated with the process of notifications of trade-related measures across WTO agreements.

Other notions of transparency are used in the multilateral context. The term "internal transparency" generally refers to practices among WTO Members to exchange information on relevant measures. In addition, the term is also used to refer to the procedures governing the internal decision-making processes of the WTO, such as inclusion of all Members in the negotiations. At a different level, "external transparency" refers to the relations of the WTO with non-governmental organisations (NGOs) and other civil society groups. Hence, even within the WTO arena, there are different dimensions to the principle of transparency.

Table 1 displays several definitions and indicators that have been developed to measure transparency in trade and investment. Each of these indicators focuses on different facets of transparency, exemplifying a wide array of ingredients that are interrelated, yet distinct from one another. The connotations of transparency embedded in these indices relate to freedom of information (Islam, 2003), simplification of procedures (Helble et al., 2009), corruption (Transparency International), government policy-making (World Economic Forum) and the rule of law (Kaufmann, 2005). Some host variables on the quality of democracy, logistics performance and accountability to proxy transparency.

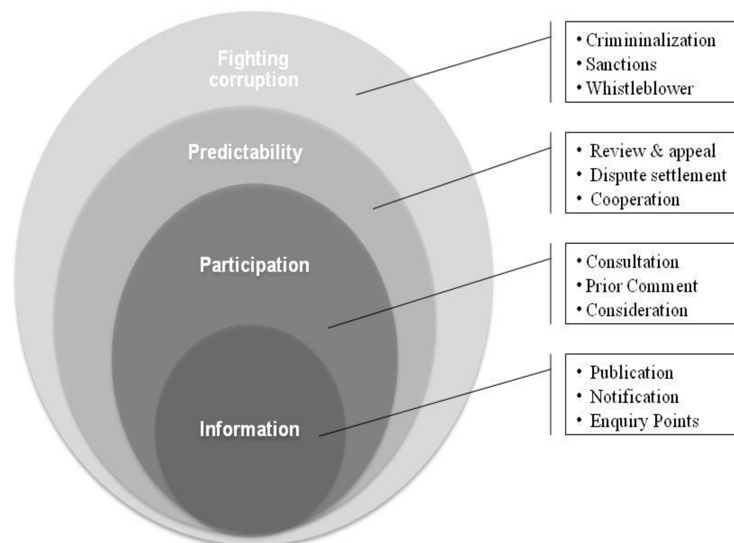
It is incumbent to "unbundle" the different components of transparency as they are more directly relevant to trade relations. One way to scope the trade policy parameters of transparency is to ask the question: What do governments negotiate when they negotiate transparency in trade treaties? What specific commitments are they undertaking, and what for? The answer to this question has evolved over time, given that different iterations of agreements both within the WTO and regional fora have created new facets to transparency. Ultimately, several spheres of policy action seem to emerge from the provisions, articles, and chapters denominated "transparency" in existing WTO agreements and RTAs. Within each of these spheres, RTAs have deepened and reinforced each dimension of trade-related transparency. Moreover, with the inclusion of certain types of measures (such as anti-corruption) in the transparency chapters of RTAs, regional agreements have also broadened the sphere of cooperation.

Table 1. "Unbundling" transparency: definition and measurement

Author (year)	Definition of Transparency	Indicator on Transparency
Ala'I (2008)	The degree to which information about official activity is made available to interested party.	---
Helble et. al (2009)	Predictability (reducing the cost of uncertainty) and simplification (reducing information costs) of procedures.	Exporter/Importer Transparency constructed from Logistics Performance Index, GCR, Doing Business
Hollyer et al (2011)	Level of government collection and dissemination of data.	Transparency Index based on country reporting/non-reporting of 172 variables on
Islam (2003)	Quality of information flows, i.e. how much information governments are willing to disclose.	Information Index based on existence of freedom of information laws; Transparency Index measuring frequency with which economic data are published.
Kaufmann (2005)	Increased flow of timely and reliable economic, social and political information, which is accessible to all relevant stakeholders.	Aggregate Transparency Index constructed from a wide range of variables on Economic, Institutional and Political Transparency.
Mitchell (1998)	Acquisition, analysis, and dissemination of regular, prompt, and accurate regime-relevant information	---
OECD (2002b)	Environment under which economic agents possess essential information about the environment in which they operate and search costs and information asymmetries do not pose an undue burden	---
Price Waterhouse Coopers (2002)	Opacity is defined as the lack of clear, accurate, formal, easily discernible and widely accepted practices.	Opacity Factor calculated by averaging components of corruption, legal system regulatory regime, government policies and accounting standards, based on survey.
Transparency International (www.transparency. org)	Characteristic of governments, companies, organisations and individuals of being open in the clear disclosure of information rules, plans, processes, and actions. Principle that allows those affected by administrative decisions, business transactions or charitable work to know not only the basic facts and figures but also the mechanisms and processes.	Corruption Perceptions Index (CPI) based on perceived levels of corruption, as determined by expert assessments and opinion surveys.
World Economic Forum (2010)	Ease of obtaining information about changes on government policies and regulations that affect the economic activities of businesses.	Transparency of Government Policy-Making based on perceived access to information from executive survey.
WTO Glossary (www.wto.org)	Degree to which trade policies and practices, and the process by which they are established, are open and predictable.	---

Figure 2 displays the different facets of transparency that have been negotiated in existing trade agreements. These include the core elements that exist in multilateral agreements, as well as new issues addressed in the transparency chapters of RTAs that deepen or broaden corresponding commitments in WTO agreements. Trade-related transparency can be grouped into four spheres of policy action: making relevant information available, opening decision-making processes to scrutiny from foreign stake-holders, fostering predictability and fairness in the applications of rules, and fighting corruption and bribery. Each of these elements is described below in turn.

Figure 2. Taxonomy of transparency in trade treaties



A. *Publication of information: Availability, accessibility and inferability*

The genesis of transparency in multilateral trade disciplines relates to the information function of governments. Article X of the General Agreement on Tariffs and Trade (GATT) (1947, remaining unchanged in GATT 1994) on the *Publication and Administration of Trade Regulations* instructs governments to supply information on regulations, via "prompt publication" or other available means. Complementing publication, multilateral agreements have furnished two additional mechanisms to promote the flow of information among trading partners: notification requirements and enquiry points. There are more than two hundred notification requirements dispersed in WTO agreements, and each main policy area provides for enquiry points.

In RTAs, countries have taken the spirit of Article X's informational functions and have tried to enhance the effectiveness of information disclosure. It is noteworthy that the main transparency mechanism of the WTO – notification – is hardly used in regional agreements. Enquiry points are provided for in RTAs, and in some cases are not confined to inter-ministerial exchanges between the countries, but are also explicitly mandated to respond to queries from the private sector and other interested parties.

The majority of specifications that have been depended in RTAs are aimed at ensuring a more effective delivery of information. In particular, the design of commitments on information disclosure provides operational details for the following questions:

- What information should be made available (e.g. lists of regulations, data)?
- Who should make the information be available, and to whom (e.g. industry)?
- When should it be made available (e.g. specific timeframe prior to entry into force)?
- How should such information be made available (e.g. website, translation, explanations)?
- For what purpose should it be made available (e.g. rationale for regulation)?

Underlying many of these specifications is the recognition that information should not just be available, but also accessible and inferable for governments, firms and other stakeholders to take advantage of it. Simply making information available – when it is not relevant, verifiable, accessible, timely or usable – may not contribute to enhancing the degree of transparency. Hence, RTAs strive to ensure that information disclosure is delimited, complete, easy to locate, and can be used by traders. Finally, some RTAs broaden both the suppliers and the recipients of information.

B. Participation in decision-making: Openness, inclusiveness and influence

The second wave of transparency in multilateral agreements was motivated by the realization that beyond making the rules of the game available, it was also important to encourage that the rule-making per se be open to participation and influence from interested parties. The Standards Code of the Tokyo Round broke new grounds on transparency by enabling interested stakeholders to scrutinize and provide input into the design of new technical regulations. While these practices were replicated in the TBT and SPS Agreements, stakeholder participation has not been uniformly institutionalized across all WTO agreements. In the case of services, for instance, the General Agreement on Trade in Services (GATS) does not contain procedures for opportunity for comments.

In many RTAs, procedures for more open and participatory decision-making are reinforced and applied horizontally across all sectors and measures covered by the agreement, including services. Generally, these provisions afford foreign parties an opportunity to provide feedback into domestic regulations that may affect their interests. Regional commitments introduce more specific operational details to ensure that the implementation of the public comment process delivers a meaningful vehicle for interested stakeholders to influence policy-making. The following considerations are addressed in some RTAs:

- Does the government articulate a policy objective for the proposed measure?
- To what extent is the process open to all stakeholders, including foreign parties?
- How much time is allowed for the public comment process?
- How are public comments taken into account by the decision-making authority?
- Is the public discussion process open (e.g. are public comments published)?

The emphasis of RTAs on participation and inclusiveness underscores the efforts in promoting a shared understanding of costs and benefits associated with domestic measures affecting trade, stimulating a discussion of whether social objectives are being pursued with the least trade restrictive policies. More broad-based participation may also

provide a counterweight to domestic sectional interests and enable governments to engage in negotiations and market opening reforms.

C. Predictability: Review and appeal, enforcement of rules and co-operation

The third sphere of transparency is to ensure predictability in the application and enforcement of trade-related rules. Article X and various WTO agreements provide recourse in the application and enforcement of rules, including a right to review and appeal administrative decisions to independent tribunals on matters subject to WTO provisions. The dispute settlement understanding (DSU) of the WTO plays an important role in safeguarding the predictability of the global trading systems.

With few exceptions, RTAs often do have strong and active dispute settlement mechanisms. Perhaps as a result, there is a greater reliance on other procedures to provide certainty that the rules will be adequately administered and enforced. Some of them include "soft" enforcement mechanisms, such as co-operation, peer review, or stocktaking via committee structures. The following issues are typically addressed in the design of regional instruments to infuse predictability?

- Do foreign parties have recourse to review and administrative action?
- Are commitments in the agreement subject to a dispute settlement mechanism?
- Are there other structures (committees, peer review system) to facilitate enforcement?
- Are there co-operation mechanisms (including with foreign counterparts) for implementation?

If the rules of the game are available and the rule-making process is legitimate, but the enforcement is not credible or predictable, that diminishes the utility of the first two dimensions of transparency. To a large extent, RTAs serve as legal bridges to provide certainty and predictability in bilateral trade exchanges, so that enforcement mechanisms – hard or soft – can play an important role. These also facilitate the implementation (and utility) of these agreements.

D. Fighting corruption and bribery

One of the most remarkable manifestations of how regional agreements have pushed the boundaries of the transparency agenda in trade is the inclusion of new commitments to fight corruption and bribery. Although many multilateral rules can contribute to dissuading bribery and corruption, obligations to combat corruption do not have precedents in the agreements of the WTO.

In a wide selection of RTAs, anti-corruption and anti-bribery commitments form an integral part of the transparency chapter. This trend started with the US-Morocco signed in 2004, which first introduced measures to fight corruption in a transparency chapter, and has subsequently extended to a significant number of regional agreements over the last decade. The main issues that are addressed in these provisions are aimed at encouraging compliance concerning the following questions:

- Does the country adhere or implement international conventions on anti-corruption/-bribery?
- Do laws or other national measures establish corruption as a criminal offence?

- Are there penalties and procedures to enforce criminal measures?
- Are enterprises liable to dissuasive non-criminal sanctions?
- Is there whistleblower protection for individuals who expose corruption?

That these measures are integrated into a chapter on transparency suggests that countries consider these measures an important tool to strengthen the trade policy transparency agenda, complementing the other three dimensions that also serve to reduce, but not forcefully combat, corruption. Corruption, including bribery, represents a "hidden tariff" which distorts resource allocations and creates inefficiencies. When tariffs are hidden, firm cannot incorporate them in the expected profitability calculation, and this uncertainty can be more trade-deterrent than the effects of visible trade costs.

IV. Anatomy of WTO-plus provisions in RTAs

This section surveys transparency provisions in RTAs signed by OECD and emerging economies, and benchmarks these obligations against corresponding commitments in WTO agreements. The aim of this exercise is to indentify in what areas, and through which instruments, RTAs have furthered multilateral transparency commitments. The analysis also assesses the legal enforceability of these "deep" provisions, in order to determine whether they generate legally enforceable obligations, or are rather cast in best-endeavour terms. Finally, consideration is given to the degree of similarity of these transparency commitments across RTAs. Arguably, "deep" transparency procedures that are homogeneous across RTAs and are enforced by the parties may be more conducive to multilateralisation.

The method for classifying RTA provisions according to their comparability to existing multilateral commitments and their level of enforceability is detailed in Box 1. The analysis surveys provisions aimed at fostering transparency in "behind-the-border" measures of a regulatory nature affecting trade in goods and services. It is important to underline that the analysis here is based on the legal texts of the agreements, and does not evaluate the implementation of transparency commitments. Still, given that most RTAs in this sample involve OECD and large emerging economies with adequate administrative capacities, it may be reasonable to assume that these measures are generally being implemented.

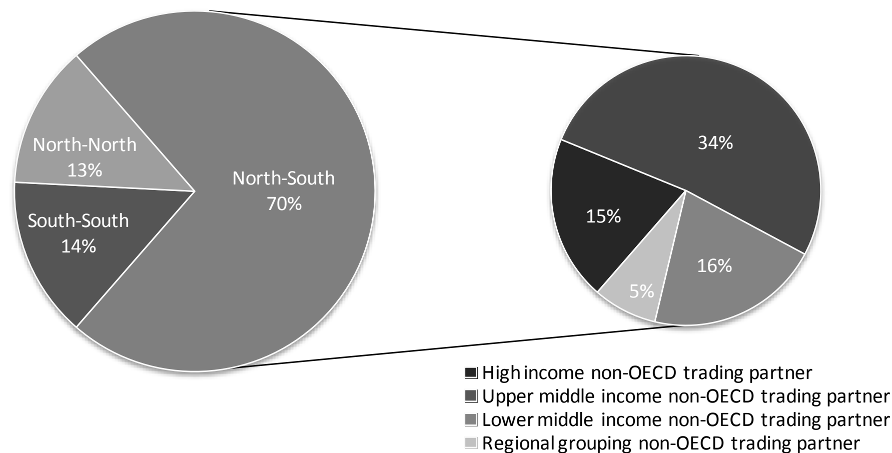
A. Sample of RTAs

The sample is composed of all RTAs signed by OECD countries and five major emerging economies (Brazil, China, India, Indonesia and South Africa) over the last decade. A total of 124 RTAs have been signed by OECD and these emerging economies since 2001, both among themselves and with other trading partners. The sample includes all RTAs that have been signed at the time of writing, even if the RTA has not yet entered into force or been notified to the WTO. The RTAs under review do not include customs unions (e.g. MERCOSUR), but do cover free trade agreements signed between a customs union and another party (e.g. MERCOSUR-Peru FTA). Otherwise, RTA is defined broadly to include all bilateral trade arrangements, including economic partnership agreements. Annex A contains a list of all the RTAs in the sample.

There is a large representation of over a hundred economies from all regions of the world in this sample. Over a third of the trading partners are high-income economies, while the remaining half are middle-income economies. Low-income economies are largely under-represented in the sample, and are generally part of a regional grouping (e.g. Myanmar or Cambodia in ASEAN, or Haiti in CARIFORUM) in these RTAs. That the sample is biased towards more affluent economies implies that the experiences from WTO-plus transparency practices emanating from these regional negotiations may not necessarily be generalisable to trading partners from lower-income economies. This, in turn, may have important considerations for "multilateralising" such commitments more widely among WTO Members.

Notwithstanding the low representation of low-income trading partners, most of the RTAs signed by OECD countries over the last decade are with non-OECD economies. As Figure 3 shows, 70% of RTAs are with non-OECD trading partners (hereafter, North-South) with high (15%) or upper middle income (16%) levels. About 13% of remaining RTAs are intra-OECD ("North-North"), while 14% pertain to a small but increasing trend of RTAs between emerging economies and other developing countries ("South-South" RTAs). Overall, however, most WTO-plus transparency mechanisms negotiated by OECD countries are taking place in a North-South context, suggesting that OECD administrative practices are being transmitted to middle-income and emerging economies.

Figure 3. RTAs signed by OECD and major emerging economies, 2001-present



Source: Compiled from regional trade agreements.

Box 1. Classification of RTA transparency provisions

Each transparency provision in an RTA can be classified according to three elements, namely (1) its comparability with corresponding WTO commitments, (2) its legal enforceability, and (3) its similarity with provisions in other RTAs. The criteria for each are briefly described below.

(1) *Benchmark with WTO transparency commitments*

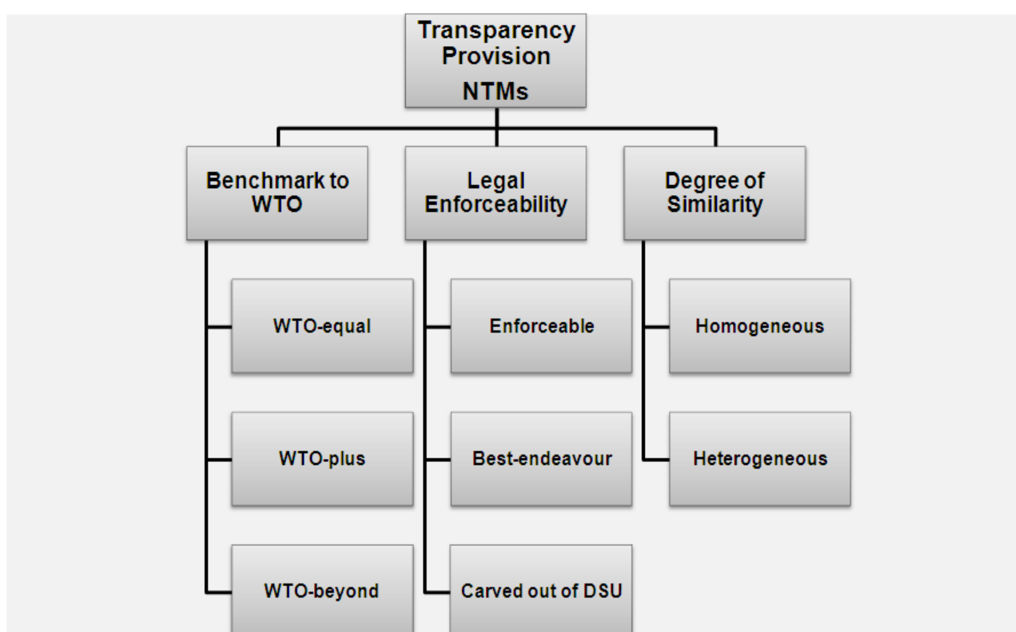
- **WTO-equal**: RTA provisions that are similar to existing transparency commitments in the WTO; includes cases where the RTA re-affirms or incorporates by reference WTO agreements
- **WTO-plus**: RTA provisions that mirror a corresponding obligation in a WTO agreement, but introduce new requirements or specifications that are not mandated in the WTO.
- **WTO-beyond**: RTA provisions that create new obligations or transparency instruments that do not exist in the WTO; these differ from WTO-plus in that they are qualitatively new.

(2) *Legal enforceability of provisions*

- **Best endeavour**: RTA provisions couched in best-endeavour terms, such as *may, should, recognise, to the extent* possible*/practicable, shall endeavour/strive/aim to, etc.*
- **Carved out of DSU**: RTA provisions that are in a chapter that is carved out of the dispute settlement chapter of the agreement
- **Enforceable**: RTA provisions that are firmly mandatory, such as *shall, commit, establish, etc.*

(2) *Degree of similarity*

- **Homogenous**: RTA provisions is similar to transparency requirements in the RTAs of another trading partner (same elements of WTO-plus or WTO-beyond)
- **Heterogeneous**: RTA provisions only exists in the RTAs of the trading partner



B. "Deep" provisions on transparency

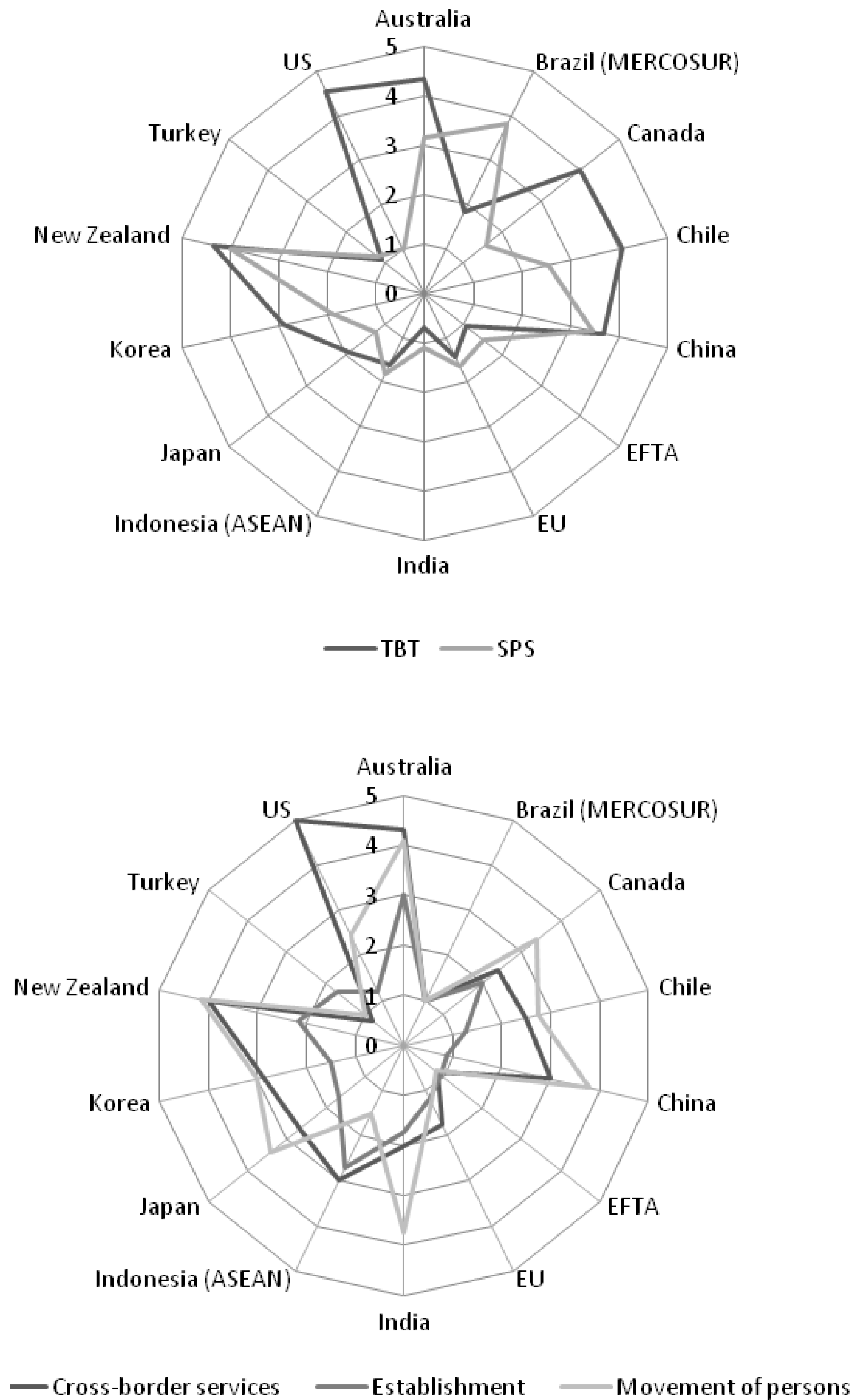
A wide array of specifications engineered in RTAs deepen multilateral commitments related to regulatory transparency. Following the classification described above, Figure 4 displays the average number of such WTO-plus commitments for regulatory transparency in trade in goods (i.e. TBT and SPS) and services (i.e., cross-border services, investment/establishment, and movement of natural persons).[1] As the figure shows, the spectrum of transparency obligations varies significantly across key OECD and major emerging economies. Interestingly, the depth of transparency commitments also varies across sectors and types of measures for the same trading partner.

Overall, the RTAs of the United States, Australia and New Zealand have the highest number of WTO-plus provisions for domestic regulatory transparency, pertaining both to goods and service trade measures. In addition, the RTAs of Canada, Chile and China also display ambitious levels of transparency commitments in their RTAs. In non-tariff measures affecting merchandise trade, WTO-plus clauses are mostly related to strengthening the operation of TBTs measures in the RTAs of the United States, Australia, Canada, Chile, New Zealand and China. From these, only the latter two countries, New Zealand and China, and to a less extent Australia, also incorporate a high number of WTO-plus specifications to strengthen the transparency of SPS measures in their RTAs. Although the bilateral agreements signed by MERCOSUR generally do not contain many WTO-plus transparency provisions, it is noteworthy that in the area of SPS these RTAs significantly strengthen mechanisms for transparency, reflecting the importance of agricultural trade for members of MERCOSUR.

In the case of transparency for measures related to trade in services, the United States, Australia, and New Zealand have the highest thresholds of transparency procedures for cross-border services trade, and the latter two also include WTO-plus procedures to facilitate the movement of business people. Indeed, one of the areas in which RTAs make important strides on transparency is in mode 4 (movement of natural persons). Revealingly, the RTAs of India and China have introduced a significant number of WTO-plus provisions in relation to the movement of people with their trading partners. The RTAs of Japan and ASEAN, which do not display WTO-plus transparency for merchandise trade, do in contrast have a significant coverage of WTO-plus transparency provisions related to cross-border trade, movement of people, and investment.

1. This count includes area-specific WTO-plus provisions on transparency in the chapters for TBT, SPS, cross-border services trade, investment/establishment/business environment and movement of natural persons. Chapters on establishment/investment/business environment apply only to services in some RTAs, but more generally to goods and services. For the purpose of this illustration, it is placed under services.

Figure 4. Average number of WTO-plus transparency provisions, 2001-12



One of the aspects masked in the overall averages is the evolution of transparency disciplines over time. In effect, RTAs signed prior to 2003 had isolated examples of WTO-plus transparency. The next two years (2003-04) saw an unprecedented development in the breadth and scope of transparency introduced in RTAs, a trend that was led by key agreements signed by the United States, Australia and Chile. Since then, there has been a steady increase in the adoption of transparency disciplines in RTAs, although this varies considerably across trading partners. A growing emphasis on transparency is evident in the RTAs of the European Union. Although "WTO-plus" transparency provisions were limited in most RTAs signed by the European Union over the course of the decade, in the last few years a comprehensive framework of disciplines on transparency and good governance have been consolidated in the bilateral partnerships of the European Union (notably, EU-Korea, EU-Central America and EU-Colombia-Peru FTAs). Hence, it is important to recognize the dynamic trends in recent RTAs and ongoing negotiations.

Finally, it should be underscored that RTAs without incidence of WTO-plus commitments embed all the transparency procedures provided for under WTO agreements (SPS Agreement, TBTs Agreement, GATS, etc.). In effect, no instances of WTO-minus were identified in the RTAs of OECD countries. All RTAs re-affirm the corresponding obligations from the WTO, and often state that the RTAs will be used to implement the transparency commitments of the WTO agreements.

C. Likelihood of implementation: legal binding of WTO-plus provisions

A common perception is that transparency may be preached, but not practiced: Are the WTO-plus transparency commitments identified above likely to be implemented? Although the analysis does not survey actual implementation, it examines the legal profile of WTO-plus provisions to assess how committed countries are to the transparency undertakings they have negotiated in their RTAs. If countries are only weakly committed, or if WTO-plus provisions cannot be appropriately enforced, their implementation may remain uncertain. The legal binding of commitments thus signals the degree of latitude countries are willing to tolerate in the compliance of these transparency requirements.

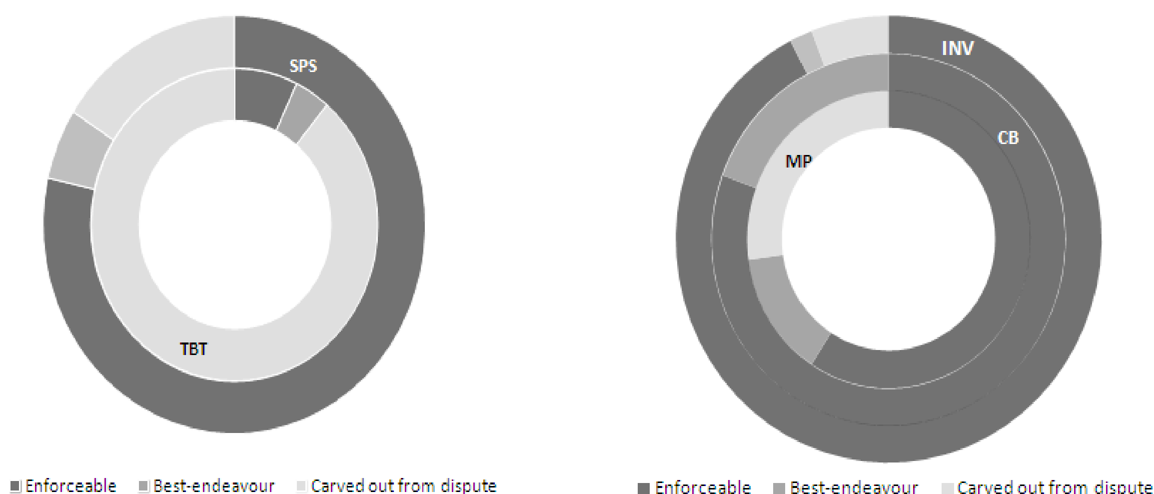
In order to assess the legal profile of regional transparency instruments, we evaluate whether the WTO-plus provisions identified above are cast in best-endeavour terms or on firmer mandatory grounds. Furthermore, we record whether the chapter is carved out from the dispute settlement chapter of the RTA, in which case non-compliance with the WTO-plus commitment cannot be invoked by a complainant in a dispute settlement proceeding. Implementation of best-endeavour transparency rests on the capabilities of each country, and hence implementation may be less predictable. That said, less binding WTO-plus commitments should not be construed as implying lack of intent on the part of the countries to implement such procedures. In many cases, best-endeavour provisions can be just as effective as firmer legal obligations.

Figure 5 shows the proportion of legally enforceable WTO-plus transparency provisions in the sample of RTAs, both for non-tariff measures in goods (including agricultural goods) and services. Most of the transparency mechanisms for SPS measures create obligations that can be invoked by a trading partner under the dispute mechanisms of the RTA, and countries are therefore legally bound by the stronger transparency commitments. In contrast, a great number of TBT provisions are carved out from dispute proceedings, and cannot be legally enforced through the trade treaty. That countries consider enforcement a priority for SPS may be explained by the health-related risks

associated with non-compliance: failure to provide information on SPS risks can have dire consequences for health and life, whereas the costs of non-transparency in TBTs are of a different order.

In the case of services, transparency provisions related to commercial presence have the highest degree of enforceability. Similar to SPS, this partly reflects the higher costs associated with non-transparency in investment: once a firm is established in a foreign market, it is difficult and costly to pull out, given the high (sunk) start-up costs. Hence, having adequate and complete information about regulatory practices, and ensuring their predictability, is of paramount importance. Cross border services provisions for transparency have the highest incidence of best-endeavour; the hesitancy of countries to firmly commit to ambitious transparency obligations may reflect the practical difficulties in instituting effective transparency when multiple regulatory portfolios are involved. Finally, transparency is greatly strengthened for measures on the movement of people, but concomitantly carved out of dispute settlement procedures, given the national sensitivities involved with the influx of temporary labour.

Figure 5. Proportion of legally binding WTO-plus provisions



Note: CB refers to cross-border services trade, INV to investment, and MP to movement of natural persons.
Source: Compiled from the texts of regional trade agreements.

V. Emerging approaches to promote transparency: Illustrations from RTAs

There is no unique path to promoting transparency in trade relations. Regional agreements display a wide array of approaches that can provide common grounds for working towards a more transparent and predictable trading environment. These approaches are not mutually exclusive, and many countries deploy several of these elements in the architecture of their agreements, so that they are likely to be reinforcing. *A priori*, there is no reason to believe that any particular approach is more effective than the other, and there are certainly other unexploited possibilities for embedding the transparency agenda in a trade agreement. Nevertheless, the illustrations below point to several approaches that appear to have been effective in countries' efforts to instil transparency more systematically in bilateral trade relations.

A. *Transparency as a core objective of RTAs: an end in itself*

In any treaty, a first point of reference that unveils the motives and objectives of the agreement is generally enshrined in the preamble. The objectives put forward at the outset of the agreement provide a roadmap to the RTA, setting the main targets that are to be accomplished. The explicit intents contained in the preamble or statement of objectives do not constitute legally binding obligations, although they can be used as a source of interpretative guidance for dispute settlement proceedings. In any case, these objectives colour the agreement and foreshadow the main undertakings of its obligations.

There is a growing tendency in recent RTAs to incorporate transparency as one of the core objectives of the trade agreement. From the RTAs surveyed, a total of 72 agreements advance the promotion of transparency as one of the motives and objectives of the agreement. Moreover, transparency is not conceived as means to an end (i.e. to increase trade), but as an end in its own right. These allusions are noteworthy, considering that the preamble to the GATT is silent about transparency, as are the TBT and SPS preambles, whereas GATS only tangentially makes reference to the role of transparency in expanding trade. Table 2 presents some of the formulations in the preambles to the RTAs.

Table 2. Transparency in preambles of RTAs

Agreement	Preamble to Treaty
GATT, SPS, TBT	**No reference to transparency**
GATS	**Wishing to establish a multilateral framework or principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalisation**
Australia – Chile FTA	Promote a predictable, transparent, and consistent business environment that will assist enterprises to plan effectively and use resources efficiently
Chile-Colombia FTA	The importance to co-operate in the prevention and fight against practices of corruption
Hong-Kong, China-New Zealand CEPA	Conscious that a clearly established and transparent framework of rules for trade in goods and services and for investment will provide confidence and certainty to their businesses to take investment and planning decisions, lead to a more effective use of resources and increase capacity to contribute to economic development and prosperity through international exchanges and the promotion of closer links with other economies, especially in the APEC Region.
Korea-EU FTA	Resolved to promote transparency as regards all relevant interested parties, including the private sector and civil society organisations;
New Zealand-Malaysia FTA	Recognising the significance of good governance and the need for a predictable, transparent and consistent business environment to enable businesses to conduct transactions freely, and use resources efficiently and take investment and planning decisions with certainty.
US-Peru FTA	Promote transparency and prevent and combat corruption, including bribery, international trade and investment.

Source: Compiled from the texts of multilateral and regional agreements.

As noted above, these preambles cast transparency in a different light than in multilateral accords. Generally, when transparency is mentioned in the agreements of the GATT/WTO, it is portrayed as a means to expand trade flows, or as a means for implementing multilateral trade rules, rather than a goal in its own right. To a large extent, transparency in the WTO, akin to the principles of non-discrimination, is

conceived as a norm through which to apply the rules of the multilateral trading system, with the aim of mitigating instances of disguised protectionism and expanding trade. Transparency, then, is a means to an end: a norm to apply the multilateral rules, and through them, expand trade.

The preambles to RTAs endorse the objective of transparency much more broadly and proactively. Transparency is no longer described as a norm to follow in the application of trade commitments between the parties, but more broadly, as a feature of the business environment that will enhance the competitiveness of firms. In this vein, the benefits of transparency alluded to in RTAs relate to the more efficient use of resources and better investment decisions by economic agents. Moreover, the concept of transparency couched in RTA preambles is at times linked to broader aspirations of good governance, such as espousing values of democracy. Finally, whereas the notion of transparency in the WTO is largely circumscribed to inter-governmental exchanges, RTAs preambles cast transparency in a more inclusive light, with explicit references to the private sector as well as civil society organisations.

B. Horizontalising transparency: streamlining requirements across sectors and measures

Transparency permeates all the policy areas covered by a trade agreement. By its inherent nature, transparency is a horizontal discipline, in the sense that it is common to all sectors, measures and rules addressed in the trade relation. For instance, the obligation for publication of domestic trade-related regulations is largely similar for agricultural, industrial, or services sectors, albeit each may have some particularities of their own. Similarly, a public comment procedure, or an administrative review and appeal mechanism, often entails the same institutional procedures regardless of the type of non-tariff measure and sector it may apply to. Hence, there is a case for more broadly horizontalising transparency obligations across the RTA, while at the same time leaving room for addressing sector and measure specificities.

A novel feature in the architecture of RTAs is precisely the inclusion of a separate, horizontal chapter on transparency. A total of 53 RTAs signed by OECD and major emerging economies contain a transparency chapter which governs all sectors and areas covered in the trade agreement. This approach prevails in the RTAs of the Unites States, New Zealand, and Canada, and it has also been increasingly deployed in the RTAs of Chile, Australia, China, Korea and the European Union. The general transparency procedures in these chapters are then complemented with area-specific transparency requirements in individual chapters. Having a streamlined procedure may facilitate the supply of transparency, since it is easier for governments to keep track of these requirements, and may enable them to pool institutional resources and create synergies in their delivery. Moreover, a more centralized transparency system may also facilitate the use of the information and procedures by economic operators.

This approach takes a departure from the way transparency in which transparency obligations are inter-woven into the global trading system. In the WTO framework, there is no single provision or set of provisions that hosts transparency obligations for all sectors and trade policy areas. Instead, most transparency requirements are addressed in each separate agreement (TBT, SPS, GATS, GATT, etc.). For instance, the opportunity for comment is regulated differently, or not obligated, depending on the measure or sector. On the one hand, the WTO approach has the advantage of tailoring requirements to the specificities of each sector and area. For instance, the administration of notification

or enquiry points may well benefit from an area specific-approach (e.g. if different enquiry points are required for different technical competencies). On the other hand, having multiple transparency requirements and procedures for each sector and policy area can render compliance more cumbersome and costly.

Another consideration is that in most national jurisdictions, transparency requirements are stipulated in horizontal laws, namely in administrative laws which govern the procedures for adopting new regulations in all sectors. Again, there may also be sector-specific laws complementing the administrative law, but the broad parameters for publication, public comments procedures, review and appeal, and similar procedures are generally encapsulated in horizontal national laws.

C. Operational specificity in transparency: What, how, when, by whom, for whom

Apart from engineering an over-arching, horizontal framework for transparency, RTAs strengthen multilateral transparency by endowing provisions with greater operational specificity. In other words: What need to be made transparent, how, and when? Who should supply transparency, and who should it be targeted to? One positive contribution of RTAs is the stipulation of more precise terms to these questions for implementing transparency obligations. Hence, regional provisions get the spirit of broadly delineated transparency articles and add critical parameters along these questions that may render the implementation of these procedures more clear and effective. Since these parameters are relatively less delineated in the WTO agreements for measures affecting goods (e.g. TBT and SPS Agreements) than services, there is a greater incidence of WTO-plus in services-related chapters.

In terms of the first question, RTAs broaden and clarify the scope of measures subject to transparency obligations: they help answer the question, what measures that "significantly affect trade" need to be published or notified? In the case TBT and SPS, the scope of such measures under RTAs is often broader, encompassing measures even when they follow international standards and may not directly affect trade. For instance, there are greater informational exchanges on the inspection of consignments, with justifications and recommendation issued to the exporter in the case of con-compliant consignments. Specific transparency obligations also arise with respect to commercialization practices for pharmaceuticals, cosmetics, and other products, which are not subject to specific transparency procedures under TBT and SPS Agreements. Overall, countries demand more information from their regional trading partners than what is subject to the transparency requirements under the WTO agreements. Some RTAs highlight that the provision of information needs to be digestible, so that if the law or regulation is too long or complex, countries are required to provide a summary or accompanying explanatory materials.

With regards to transparency in services, RTAs typically list, without being exhaustive, key measures that need to be published or notified, such as taxation measures, licensing authorization criteria, data on the granting of temporary entry, subsidies and donations or other transfers, among others. The specification of measures that must be rendered transparent can be seen to help generate a shared understanding of what constitutes the scope of "relevant measures of general application pertaining to or affecting the operation of the agreement" (GATS Art III). One of the issues that has been hypothesized to explain the under-performance of notification requirements under GATS is the possible lack of precise understanding on what exactly needs to be notified.

Crucially, under GATS only measures that affect commitments need to be notified, whereas some RTAs indicate that measures should be notified whether or not they relate to sectors and measures scheduled under commitments. Another observation is that RTAs scheduled with a negative list tend to display higher levels of transparency commitments, so that the process of disclosing non-conforming measures may have synergies in the overall transparency coverage.

Another element that is better specified in many RTAs is the timing of transparency requirements. Under the GATS, publication is to be "prompt", but this can well coincide with the enactment of the measure; RTAs services chapters, on the other hand, specify more concrete timelines for publication, generally 30-90 days prior to entry into force, underlining the importance of advance notice and publication to enable market players to adapt to changes in regulations. In the case of SPS and TBT, what constitutes "a reasonable period of time" is also specified in the transparency provisions of RTAs, often following the recommended timelines stipulated by the corresponding WTO Committees (e.g. at least 60 days prior to enactment, as per the WTO TBT Committee).

In terms of how things should be made transparent, RTAs also impose obligations on "electronic-transparency" (i.e. making regulations available on the internet) and, where appropriate, on "English-transparency" (i.e. providing translations of regulations or summaries of those regulations). These obligations do not appear in WTO agreements, although the use of electronic notifications and the dissemination of available translations of laws and regulations are encouraged under recommended procedures issued by the SPS and TBT Committees. Furthermore, some RTAs include provisions to ensure that information be delivered to foreign parties at no cost, or that the fees charged do not represent any impediment or source of discrimination, so that there are no de facto preferences on the basis of the cost of acquiring information. These provisions make the supply of information more modern and effective, facilitating the ability of foreign parties to access and make use of relevant information, on terms that are no less favourable than those available for domestic producers.

The specifications noted above on "what, when, how" resonate with discussions, submissions, and guidelines on improving transparency that have been developed by various WTO Committees. Interestingly, where there have been discussions under the WTO on clarifying the implementation of transparency requirements, RTAs have taken on board such recommendations developed in WTO Committees and inscribed them legally in their RTAs. Hence, there is a process of "regionalising multilateralisation," whereby countries' deliberations in WTO Committees are locked into their RTAs. Accordingly, many of the WTO-plus provisions on transparency in SPS emanate from recommended procedures for implementing the transparency obligations issues by the SPS Committee.[2] Similarly, many of the WTO-plus provisions for TBTs stem from the recommendations of the TBT Committee. In contrast, this pattern is not replicated in the case of services, given that there have not been recommendations issued under the Council of Trade in Services on how to implement the transparency provisions under GATS.

Perhaps the most innovative facet of transparency specifications in RTAs relates to the question: who should be the receiver or demander of trade-related transparency, and

2. See *How to Apply the Transparency Provisions of the SPS Agreement*, WTO, September 2002. A number of recommendations made in this report have been adopted in the commitments of RTAs.

who the supplier? In regards to both of these questions, RTAs portray a more pro-active and explicit outreach to the private sector, which features more explicitly as a direct recipient (and source) of relevant information. In particular, the private sector features as a key target of transparency mechanisms. Whereas under TBT/SPS and GATS the notification process is from one member to another member ("state-to-state") through the WTO Secretariat, RTAs introduce procedures that provide the private sector with more direct and instantaneous information. In some RTAs, a party directly notifies the industry in the territory of the other party ("state-to-private" notifications). Moreover, the enquiry points in many RTAs are explicitly mandated to respond to queries from businesses and other interested stakeholders in the other party. This is a notable improvement to the enquiry point mechanism in the TBT/SPS and GATS agreements, whereby established enquiry points only have the legal obligation to respond to queries from relevant governmental bodies in a foreign country. Some of the mechanisms established under RTAs are explicitly aimed to facilitate interaction and dialogue between suppliers of the two parties, whereas in the WTO the exchanges of information facilitated are generally among governmental bodies or regulators.

A final pillar of WTO-plus transparency in RTAs regards the public comment mechanism, prodding countries to institutionalize an informed discussion on the cost and benefits of regulations. In the same vein, the outreach of this mechanism is explicitly enlarged to include participation of foreign governments, economic operators, and interested parties who receive national treatment in the consultation of domestic procedures. Many RTAs stipulate the need to provide a rationale for new regulations, submit drafts of new measures to scrutiny through a public enquiry, and disclose information on the comments received and how they were taken into account. Moreover, they require that each party allows governments, economic operators, and other interested stakeholders of the other party to participate in the development of new measures and regulations on terms no less favourable than those accorded to its own domestic stakeholders. While such practices are encouraged in multilateral discussions, RTAs institutionalize these procedures by creating legally binding obligations.

One of the areas where transparency requirements may be vitally important is in services trade. The regulatory nature of its barriers heightens the importance of transparency in domestic policies. The preamble to the General Agreements on Trade in Services (GATS) recognizes the importance of expanding services trade "under conditions of transparency", and a number of its provisions aim to promote this objective. Stephenson and Yi (2002) note that many impediments that services providers encounter tend to be inherently non-transparent, so that tools for clarifying requirements for operating in a given market are essential for facilitating services trade.

Notwithstanding its importance, multilateral transparency commitments under GATS have remained relatively weaker than corresponding procedures for non-tariff measures in goods, such as those provided under the TBTs and SPS Agreements. The scope of the transparency requirements for services is more limited than for goods: for instance, the opportunity for comment is not mandatory across services, and is only provided for in best-endeavour form for the consultancy sector under the Disciplines on Domestic Regulation in the Accountancy Sector. In effect, RTAs have adopted some of the elements from TBT and SPS agreements to fortify transparency requirements for cross-border services. Table 3 displays examples of GATS-plus requirements that are typically found in comprehensive RTAs, notably with respect to the core obligations to publish and to institute a public comment procedure.

As can be seen, one of the ways in which services transparency disciplines are strengthened in RTAs is notably by enhancing *ex ante* transparency. In particular, services chapters in comprehensive RTAs incorporate obligations of prior notification to allow for comments and consultations before the adoption of a new law or regulation. The parties that can participate in these procedures include interested persons from third countries that are not party to an RTA. Moreover, the obligations provide that regulators show (generally in writing) how the comments received have been taken into consideration at the time of adoption of new legislation. Finally, there is an emphasis on making explicit the rationale for new laws or administrative decisions, which further contributes to improving the legitimacy, predictability and optimality of services sector regulations. Prior notification and consultation requirements can improve not only the visibility of regulations, but also, the quality of new regulations governing services.

Table 3. Illustration of WTO-plus transparency requirements for services

	GATS Elements	GATS+ Elements in RTAs
What information needs to be published?	Relevant measures of general application pertaining to or affecting the operation of GATS (Art III:1) International agreements pertaining to or affecting trade in services (Art III:1)	Any measure by a country, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form Regulations include regulations establishing or applying to licensing authorisation or criteria Measures cover taxation Measures by central, regional or local governments are explicitly included Applies to non-governmental bodies in the exercise of powers delegated by central, regional, or local governments/authorities List of existing measures (and their legal sources) that are not consistent with MA, NT, or other commitments Information of the policy rationale of a measure, particularly a new measure
When and how does it need to be published?	Promptly and, except in emergency situations, at the latest by the time of their entry into force (Art III:1) Where publication as referred above is not practicable, such information shall be made otherwise publicly available (Art III:2)	Allow reasonable period between publication of final regulations and their effective date Make the measures and international agreements available on the internet Upon request, provide in the English language the information on its laws and regulations and any amendment
Is there a procedure for prior comments?	Not mandatory under GATS	Provide opportunity for comment and give consideration to such comments, prior to the adoption of measures At the time it adopts final regulations shall address in writing substantive comments addressed from interested persons If does not provide opportunity to comment, address the reasons for not doing so in writing

Source: Compiled from the texts of multilateral and regional agreements.

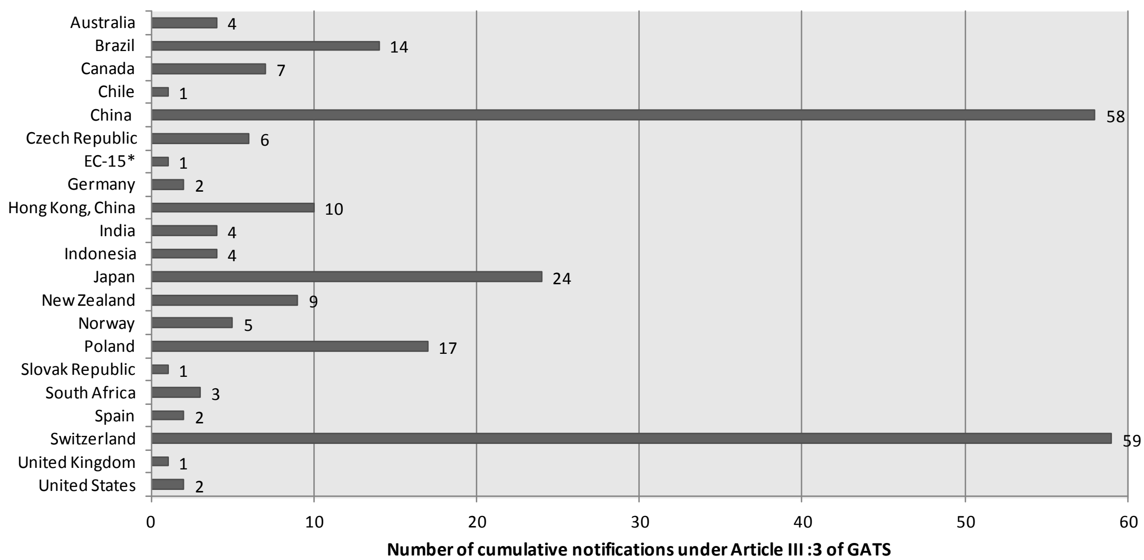
By contrast, transparency obligations under GATS tend to focus on procedures ex-post—that is, after a new measure has been adopted. In particular, the cornerstone of transparency under GATS relates to notification requirements. According to Article III:3, Members "shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this agreement." Any measure that significantly affects trade in committed services sectors, regardless of whether the measure is schedulable under GATS, should be notified under Article III:3. Almost five hundred notifications have been received from 64 countries that are Members to the WTO. Complementing this, Article III:5 provides for a process of counter-notification, by which countries may notify the Council for Trade in Services of any measure maintained by another WTO Member which affects the operations of the GATS agreement. Only one WTO member – Norway—has made such a notification to date.

Figure 6 reports the level of notifications under GATS Art III:3 made by OECD and selected emerging economies over the period from 1995 to the time of writing. [3] As can be seen, there is considerable variation in the number of notifications submitted. The countries that have submitted the greatest number of notifications are Switzerland and China, with more than 50 notifications. Furthermore, Japan, Poland and Brazil have submitted more than 10 notifications over the period 1995-2013. At the other end, some OECD countries have only submitted one or two notifications since the establishment of the WTO. It is difficult to draw any conclusions from the level of notifications of individual Members, as some countries may not have measures to notify that affects trade in their committed services sectors. To some extent, the level of notifications might depend on the reforms undertaken in the areas scheduled; hence, a greater number of notifications might reflect a greater number of reforms in measures and sectors inscribed in GATS schedules. For this reason, it is difficult to make inferences from this record.

Notwithstanding, it seems that the overall level of informational exchanges on regulatory measures affecting services trade is relatively low. Hence, the provision of information on relevant measures that the multilateral notifications system is delivering to governments and firms may be incomplete. One approach that may be able to enhance the informational exchanges via GATS Art. III is to add greater specificity to the types of measures that should be systematically notified. The range of policy measures that could significantly affect trade in services is very broad, and can at times be difficult to discern. Moreover, many of such measures may be governed at the sub-federal level, which may contribute to the lack of clarity in discerning what measures should be notified. Without providing exhaustive lists, many RTAs do offer illustrative indications of certain types of measures that should be notified, specifying also level of governance at which regulations need to be notified.

3. Other notifications are provided for under Article V (Economic Integration and Article) VII (Recognition). RTAs are regularly notified under Article V, while there have been 51 notifications from 35 Members under Art VII:4. No notifications have been submitted under Article VIII (Monopolies and Exclusive Services Suppliers), Article X Emergency Safeguard Measures or Article XII (Restrictions to Safeguard the Balance of Payments). One notification was made pursuant to Article XIV on the Security Exception.

Figure 6. Frequency of Notifications under GATS Article III:3, 1995-2013



Note: The data collects notification from January 1995 to the time of writing (March 2013.) * EC-15 refers to Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom.

Source: Compiled from documents of the World Trade Organization (WTO), S/C/N*

D. Aid-for-Transparency: Co-operation and capacity building

While many countries see the value in endorsing comprehensive transparency commitments, they also face capacity constraints that may prevent them from adopting more sophisticated procedures. Operationalising WTO-plus transparency commitments can pose additional administrative and financial burdens. In some contexts, instituting more open and participatory processes requires a change of mindset on the part of domestic regulators. Many RTAs, particularly those involving less developed trading partners, as well as countries with less mature institutional structures, emphasize the need for technical assistance. Hence, incorporating aid-for-transparency as a component of wider regional and international trade capacity-building may facilitate the adoption of more effective transparency mechanisms.

In this context, the emergence of transparency as one of the pillars of trade-related cooperation is a prominent feature in many RTAs. With few exceptions, transparency obligations have received relatively little attention in multilateral cooperation, including Aid-for-Trade programmes, in part because they are considered "soft" commitments, and in part because they do not entail large infrastructural developments. Admittedly, information technology renders dissemination of information and other transparency investments less costly. Notwithstanding, collecting regulatory data can be challenging to coordinate and institutionalize, and many countries may not have the legal and cultural traditions of instituting WTO-plus regulatory-making practices.

Reflecting these constraints, some RTAs contain clauses for asymmetrical treatment in relation to WTO-plus commitments on transparency. For instance, in the FTAs of Chile with Peru and Panama, parties emphasise that in implementing WTO-plus mechanisms to respond to inquiries, they may need to devise procedures that are appropriate to small administrations, as well as take into consideration budgetary and other limitations. These provisions serve as a reminder that transparency is costly

(financially, administratively, politically), and negotiating far-reaching transparency commitments may need to address the resource implications associated with the implementation of such obligations.

In other regional fora, there is a more comprehensive approach to building capacity on transparency. A case in point is APEC, where a process of identifying technical assistance needs is coupled with an assessment of the implementation of transparency procedures. A total of 15 APEC economies have completed a needs assessment to enhance transparency across a wide range of trade policy areas, including business mobility, competition policy, services and investment. These assessments serve as the basis for designing well-targeted, demand-driven capacity building programmes related to transparency. In addition, each country submits a report assessing the extent to which regional transparency standards have been mainstreamed into national administrations. With the exception of one country, all APEC economies have submitted a self-assessment of the implementation of regional transparency standards at the national level. Although this monitoring process is based on self-diagnostics and self-assessments, it provides a vehicle for peer reviewing, sharing best practices, and anchoring implementation domestically.

An overview of the main capacity constraints and implementation assessments in APEC economies is synthesized in Annex B. While some capacity building requests are specific to a trade policy area, the majority of the technical assistance needs identified by countries are transversal in nature. Firstly, many countries call for the need to expand and upgrade the information and communication technology infrastructure, in order to be able to deploy the latest tools and management information systems. Pooling resources across countries to develop and maintain joint databases among national agencies is proposed in some areas. Second, many requests relate to the training of officers in the use of new technological tools as well as in a range of relevant procedures, including centralizing and harmonizing information, conducting inspections, and handling queries from trading partners, investors and the public at large. Moreover, the assessments reflect the need to build English language capacity, which is essential for supplying transparency to foreign parties. A third strand of requests points to the need of enhancing the administrative laws that regulate transparency procedures at the national level. In this regard, sharing best practices on laws and institutional frameworks for transparency is identified as useful cooperation. Finally, the country profiles recognize that there is a need to create awareness about open and participatory procedures across regulatory bodies and sensitize governments about the net benefits of transparency.

One of the interesting features of regional transparency-related cooperation is the effort to incorporate the private sector, both as a receiver and as a supplier of transparency. Targeting businesses is a refreshing complement to most existing technical assistance efforts that are largely designed for government agencies. For instance, multilateral technical assistance activities generally focus on training designated government contact points on notification and other WTO transparency obligations. In many RTAs, capacity building also aims to support enterprises with the identification and supply of relevant information. Indeed, the difficulty for many businesses in acquiring knowledge about foreign market opportunities may be one of the main obstacles hindering international trade. Some regional co-operation provisions also cite the development of private-public joint information systems, engaging the private sector in the scope of measures that are relevant to disseminate among governments and traders. This is notably important due to the increasing role that private standards play in international business.

Box 2. South-South Co-operation on Transparency: The Andean Community

In recent years, transparency has been at the forefront of reform efforts in the Andean Community of Nations (CAN). Despite differences in the administrative capacities of its permanent Members countries (Bolivia, Colombia, Ecuador, Peru), regional cooperation has led to the establishment of new disciplines and procedures that aim to enhance the level of transparency and predictability in trade. Regional efforts have revolved around three main spheres of action: strengthening information and communication channels, promoting mechanisms for dialogue and public participation in regulatory procedures, and establishing effective institutions that can criminalize, sanction and combat corruption and bribery. These initiatives have advanced amendments to national laws governing transparency as well as the establishment of new institutions and administrative bodies charged with the implementation of these procedures. The WTO's Trade Policy Reviews have noted the actions taken by individual CAN countries to improve and institutionalize transparency procedures, and to reduce the scope for administrative discretion and corruption.

SIRT: An Internet Platform for Notifications and Public Comments

An important platform for promoting transparency in the regulations of CAN permanent Members has been the Sistema de Información de Notificación y Reglamentación Técnica (Information System of Notifications and Technical Regulations, known as SIRT). In 2005, Decision 216 mandated the establishment of SIRT in response to "the need to provide greater transparency and participation to businessmen and regulators of the Andean countries, as well as the public in general." It also recognized the importance for both regional Members as well as extra-regional trading partners to be informed with sufficient anticipation of new trade-related technical regulations and relevant procedures being introduced. Finally, it emphasized the importance of introducing electronic tools and internet-based platforms to enhance the effectiveness of regional information management systems.

The SIRT has created an internet-based information system for notifications and public comments. To avoid duplication with WTO notifications, it deploys where applicable the same WTO notification forms, thereby exploiting synergies with multilateral procedures and enhancing the timeliness and quality of Andean countries' compliance with WTO notifications. An innovative feature of SIRT is that the notifications are sent by e-mail to businesses and interested parties—not just to contact points in governments. In effect, any interested party, including foreign firms and governments, can subscribe to notifications in specific sectors and types of measures of interest to them. The platform also serves to channel public comment procedures, and all draft regulations from CAN Members are published through this web portal, with information on deadlines for reception of comments. Since the SIRT website is not password-protected, it is generating regulatory transparency for intra-regional and extra-regional trading partners alike.

Andean Observatory of Transparency and Fight against Corruption

At the initiative of the Andean Parliament, in 2011 CAN permanent Members established the Andean Observatory on Transparency and Fight against Corruption to promote work on the harmonization of relevant legislation, the preparation of a system of indicators for measuring levels of corruption and management of transparency, and the implementation of a common system of penalties. The Observatory also promotes the adherence of international standards to which CAN Members have subscribed to, notably the 1996 Inter American Convention against Corruption and the 2003 United Nations Convention against Corruption. Only one CAN permanent member, Colombia, is a recent signatory of the 1999 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Although the programme of the Observatory is still in an embryonic stage, countries have developed Country Corruption Risks as a preliminary diagnostic tool to guide individual member action plans. In addition, countries are establishing a system for the divulgation of a registry of enterprises and businessmen involved in acts of corruption and the sanctions applied.

Multi-Party Dispute Settlement Procedure

At the time of writing, there have been over 380 cases under the dispute settlement mechanism of the Andean Community, a third of which register complaints about non-transparency in the application of non-tariff measures, granting of licenses, and other procedural issues. The dispute settlement mechanism has several unique features. First, the General Secretariat of the Andean Community has a legal personality endowed with the power to monitor and submit complaints against Member countries, and in practice files over half of total non-compliance cases against countries. Second, natural and legal persons can directly submit complaints against CAN member countries. Finally, cases can be brought among private citizens for anti-competitive practices. These private citizens can be foreign investors or companies, which can bring complaints against both public institutions as well as other companies within the CAN region. Cases brought directly by the private sector represent 15% of total disputes, and have increased in recent years. Among these, firms from non-Member countries of the Andean Community have filed complaints.

Importantly, some co-operation provisions are directed specifically to small and medium-sized enterprises (SMEs), who face the largest constraints in obtaining information about foreign markets. There is increasing recognition that SMEs need to take greater advantage of RTAs, and information channels is a key tool to achieve this goal. These provisions mandate parties to institute procedures to furnish SMEs with published regulations and documents, to facilitate their access to information on quality product standards, disseminate best practices in meeting international standards, and provide them with general market information to create investment opportunities. Similarly, there are provisions aimed at ensuring that national administrative procedures are easily accessible by SMEs, so that they can take advantage of open and participative administrative processes, including the right to appeal. Finally, some RTAs cooperation provisions promote the use of English as well as the adoption ICT tools for SMEs; this allows small enterprises to take greater advantage of web-based and electronic transparency procedures.

Table 4 illustrates some of the transparency-related co-operation initiatives in EU agreements. It should be noted that co-operation is not confined to North-South partnerships, but also emerges in RTAs with other OECD countries. For instance, in the recent EU-Korea FTA, under the co-operation chapter, both countries endeavour to co-operate in order to develop "effective mechanisms for communicating with the trade and business communities." Once again, the outreach to stakeholders is much broader, and transparency is not solely — or primarily — associated with inter-governmental exchanges.

Table 4. Illustrative examples of co-operation on transparency

Agreement	Co-operation Measures to Promote Transparency
EU-Albania	The Parties shall co-operate on fighting and preventing criminal and illegal activities, such as: corruption, both in the private and public sector, in particular linked to non-transparent administrative practices
EU-Montenegro	Co-operation shall aim at ensuring the development of an efficient and accountable public administration in Montenegro. Co-operation in this area shall mainly focus on institution building, including the development and implementation of transparent and impartial recruitment procedures Co-operation shall also be geared to enhancing transparency and fighting corruption, and to include exchange of information with the Member States in an effort to facilitate the enforcement of measures preventing tax fraud, evasion and avoidance
EU-CARIFORUM	The Parties agree to co-operate, including by providing support for technical assistance, training and capacity building in, inter alia, the following areas: Improving the ability of service suppliers of the Signatory CARIFORUM States to gather information on and to meet regulations and standards of the EC Party at European Community, national and sub-national levels;
EU-Central America	The Parties agree that cooperation shall actively support governments through actions aimed at, in particular: respecting the rule of law; guaranteeing the separation of powers; guaranteeing an independent and efficient judicial system; promoting transparent, accountable, efficient, stable and democratic institutions; promoting policies to guarantee accountability and transparent management; fighting against corruption; reinforcing good and transparent governance at national, regional and local levels; establishing and maintaining clear decision making procedures by public authorities at all levels; supporting the participation of civil society.

Source: Compiled from the texts of regional trade agreements.

E. New frontiers in transparency co-operation: Combating corruption

One of the most remarkable elements of transparency disciplines in RTAs is the incorporation of anti-corruption and anti-bribery measures as part of the trade agreement. Countries recognize that corruption, including bribery, distorts resource allocations, undermines fair competition, and impedes the rule of law. The links between transparency and corruption are evident: reducing information asymmetries, as well as enhancing the enforceability and accountability of regulations, minimizes the opportunities for discretionary behaviour for personal gain and profit. Having mechanisms against bribery and corruption provides firms with greater confidence that they will be able to compete in foreign markets and that they will receive fair and consistent treatment from government officials and institutions.

There is widespread recognition that global problems of corruption can impair the benefits of negotiated trade agreements. Notwithstanding, the multilateral trading regime has no substantive rules addressing corruption and bribery in trade relations. Admittedly, there are numerous legal provisions across various WTO agreements that offer support to traders facing corrupt administrators, but they do not address these risks directly. Thus, while recognizing that WTO agreements can help reduce corruption and promote good governance, these issues are not under the purview of the WTO. This explains the classification of these provisions as “WTO-beyond,” since they depart qualitatively from the current mandate of the WTO to new undertakings that do not have precedents in multilateral trade relations.

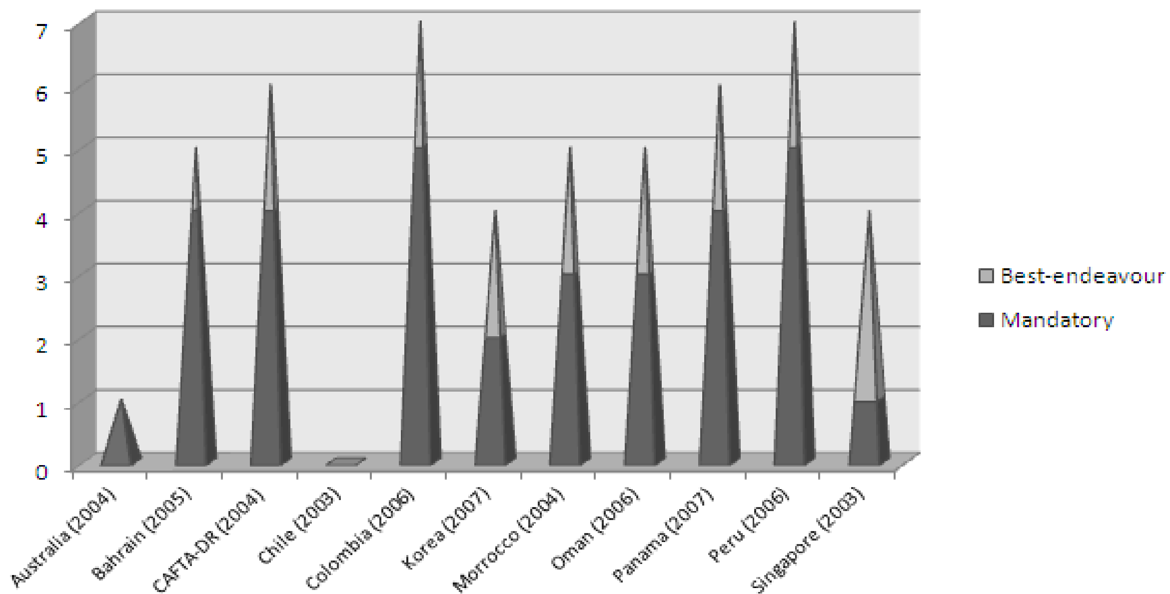
Anti-corruption measures are an integral element of the transparency chapters in the RTAs of the United States and Canada, which contain the most far-reaching and comprehensive anti-corruption and anti-bribery disciplines. In recent years, the trade agreements of the European Union have also embedded the fight against corruption and bribery as one of the key elements of bilateral co-operation. Numerous other countries, including Japan, Chile, Korea and EFTA, similarly include provisions in their RTAs recognising the importance of corruption and endeavouring to address these problems, but are more general in their formulation. In such statements, countries pledge to fight and prevent corruption, including bribery, in international trade and investment. In this effort, countries often agree to work jointly to support international initiatives on anti-corruption. Many agreements reaffirm the commitments to implement anti-corruption measures ratified under relevant multilateral and regional conventions.

Anti-corruption disciplines in some of the most ambitious RTAs, notably those of the United States and Canada, represent best international practices. The provisions of these RTAs obligate countries to adopt or maintain laws establishing corruption as a criminal offence. In furtherance of these obligations, countries commit to institute appropriate penalties and procedures to punish and enforce criminal measures associated with bribery and corruption. In addition, the provisions encourage the adoption of measures to protect those persons who report acts of corruption and bribery (known as “whistleblower” rules). Finally, in the event that under the legal system of a country, criminal responsibility is not applicable to enterprises, these provisions strive to ensure that enterprises be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for such offenses.

Figure 7 displays anti-corruption measures contained in the transparency chapters of the FTAs signed by the United States, distinguishing between those measures that are best-endeavour and those cast as stronger commitments. The variation between the levels of commitments across FTAs partly reflects how anti-corruption measures have become

more comprehensive over time. The first FTAs with Singapore and Australia, signed in 2003 and early 2004, contain minimal provisions on anti-corruption in the transparency chapters, while the FTA with Chile, also signed in mid-2003, includes anti-corruption measures under government procurement, but not in the transparency chapter. FTAs starting with Morocco and DR-CAFTA (signed later in 2004) all display significantly stronger commitments that apply more broadly and appear in the transparency chapters. Each of these latter FTAs contains measures on whistleblower protection, and in the more recent FTA with Korea such whistleblower measures are rendered mandatory. More recent FTAs (e.g. with Colombia, Peru and Panama) introduce measures providing for non-criminal sanctions for enterprises that cannot be punished criminally.

Figure 7. Anti-corruption measures in FTAs of the United States



Source: Compiled from texts of the Free Trade Agreements (FTAs).

VI. Conclusions and future work

Regional trade agreements have broken new grounds by featuring new obligations aimed at enhancing transparency. When trade policy measures are known and understood by economic operators, they become less trade-impeding by virtue of palliating a range of information asymmetries. Similarly, transparency minimizes a range of "hidden taxes" that are associated with corruption and bribery. Moreover, public scrutiny over trade policies helps arrest the use of non-tariff measures as disguised form of protectionism, making them liable to reform and liberalisation. Hence, making policies and their enforcement procedures visible reduced the costs and uncertainty associated with foreign trade.

The returns to transparency may not just be in the form of higher trade flows, but more importantly, in better economic and trade policies. When trade policy-making becomes open and participatory, it generates an informed debate of the trade-offs involved, assessing the extent to which the welfare effects from non-tariff measures compensates the efficiency losses introduced by such distortions. The involvement of

interested stakeholders, including foreign parties, in decision-making increases the chances that regulations will ultimately meet the needs of markets and consumers.

Regional transparency is WTO-plus

Recent RTAs can be credited for introducing a broad range of instruments to strengthen transparency, both *ex ante* (during the decision-making process) and *ex post* (during the implementation of measures). The inclusion of novel transparency disciplines notably emerged in the agreements of the United States, and was subsequently adopted in the RTAs of Canada, Chile, New Zealand and Australia. These RTAs made important dents in endowing existing transparency commitments with operational specificity, as well as in introducing new components –such as anti-corruption – into the sphere of cooperation related to transparency. The evolution of transparency disciplines is an ongoing and dynamic trend, as exemplified in recently concluded agreements by major OECD and emerging economies (e.g. European Union, Korea, China) that have pushed the envelope further on transparency.

A higher degree of mutual understanding and trust developed in bilateral trade relations may facilitate the adoption of new transparency disciplines. Furthermore, the operationalisation of transparency mechanisms may be easier in a regional or bilateral context, where resources can be pooled, co-operation to help institutionalize transparency can be developed, and specific circumstances related to local administrative cultures and legal systems can be better addressed. Indeed, cooperation and capacity building programmes for transparency are integrated in some RTAs, and local specificities are also reflected in certain provisions. Moreover, some transparency provisions are not tied to dispute settlement procedures, so that it may be safer for countries to uncover information on their measures. A parcel of deep transparency provisions are cast in best-endeavour clauses, which may also make it more palatable for countries to undertake these commitments.

Multilateralising regionalism

Can emerging regional WTO-plus transparency practices be diffused more globally? A relevant consideration is that many transparency commitments found in RTAs tend to share the characteristic of a public good, in that they are non-excludable and non-exhaustible. The implication is that most of the trade policy transparency that is being supplied through regional fora is not being supplied on a discriminatory basis, but benefitting non-Partite to the RTA as well. Hence, transparency provisions in RTAs are already *de facto* extended on a most-favoured nation basis, even if they may be *de jure* considered preferential by virtue of being inscribed in an RTA. The implication is that once a country has already implemented in transparency obligations in one trade agreements, extending these provisions to new trading partners in other regional or multilateral fora is likely to entail low marginal costs. This would also help countries integrate provisions for these mechanisms in subsequent RTAs.

Moreover, many WTO-plus provisions on transparency are highly similar across the RTAs of various trading partners, facilitating more widespread convergence. Interestingly, the level of similarity among WTO-plus transparency commitments in RTAs is suggestive of synergies between the multilateral and regional transparency agenda. Many of the WTO-plus commitments found in RTAs have emanated from discussions and recommendations from various WTO Committees on how to enhance the transparency procedures of multilateral agreements. For instance, a parcel of the WTO-

plus specifications for transparency in SPSs and TBTs are reflected in the recommendations on applying transparency by the WTO Secretariat. These procedures and best practices have been discussed at the WTO and inscribed legally in the texts of RTAs: Hence, there is an ongoing process of "regionalising multilateralism." More active discussions on transparency in other areas of the WTO might yield a similar dynamic. This process, in turn, guards consistency of regional measures with the WTO measures and prevents a "spaghetti bowl" effect of different, overlapping transparency regimes across RTAs.

Further questions

A number of inter-related questions merit attention in future work. First, this report has only taken stock of commitments negotiated in RTAs, and it would be useful to learn more about the experiences implementing and operationalising these WTO-plus mechanisms. Second, it is important to acknowledge that higher thresholds of transparency may entail greater administrative costs. Although most countries recognize the gains of transparency, it may generate financial, administrative and political burdens which have not been assessed in this study. Finally, this survey has only examined RTAs among high and middle-income economies, and care needs to be taken when considering whether the application of these WTO-plus practices would be effective in low-income economies with less mature governance structures. The applicability of WTO-plus practices to developing economies has implications for whether the regional transparency agenda could lead to multilateralisation.

References

Ala'i, P. (2008), "From the Periphery to the Center? The Evolving WTO Jurisprudence on Transparency and Good Governance", *Journal of International Economic Law*, Vol. 11, Issue 4, pp. 779-802.

Anderson, James, and Douglas Marcouiller. 2002. "Insecurity and the Pattern of Trade: An Empirical Investigation." *Review of Economics and Statistics*, 84(2), pp. 342-52.

Anderson, James, and Eric Van Wincoop. 2003. "Gravity with Gravitas: A Solution to the Border Puzzle." *American Economic Review*, 93(1), pp. 170-92.

Anderson, J. and D. Marcouiller (2000), "Insecurity and the Pattern of Trade: An Empirical Investigation", NBER Working Paper No. 7000.

Baccini (2008), "Cheap Talks and Transparency: Explaining the Bilateral Trade Agreements with the EU."

Biukovik, L. (2008), "Selective Adaptation of WTO Transparency Norms and Local Practices in China and Japan", *Journal of International Economic Law*, Vol. 11, Issue 4, pp. 803-825.

Chaynes, A. and A. Handler Chaynes (1995), *The New Sovereignty: Compliance with International Regulatory Agreements,* Harvard University Press, Cambridge

De Groot, Henri, Gert-Jan Linders, Piet Rietveld, and Uma Subramanian (2004). "The Institutional Determinants of Bilateral Trade Patterns." *Kyklos*, 57(1), pp. 103-123.

Deighton-Smith (2004), "Regulatory Transparecy in OECD Countries: Overview, Trends and Challenges", *Australian Journal of Public Administration*, 63(1), pp. 66-73, March 2004, Australia.

Delimatsis, P. (2007), "Transparency and Domestic Regulations in Services," *International Trade in Services and Domestic Regulations:*

Florini, A. (1998), "The End of Secrecy", *Foreign Policy*, Summer, 1998, pp. 50-63.

Islam, Roumeen (2003), *Do More Transparent Governments Govern Better?* World Bank Policy Research Working Paper No. 3077, 1-41, Washington DC.

Francois, J (2001), "Trade Policy Transparency and Investor Confidence: Some Implications for an Effective Trade Policy Review Mechanism," *Review of International Economics*, Vol. 9, Issue 2, pp. 303-16.

Freund, C. and D. Winhold (2004), "The Effect of the Internet on International Trade", *Journal of International Economics*, No. 62, pp. 171-89.

Helble, M., B. Shepherd and S. Wilson (2008), "Transparency & Trade Facilitation in the Asia Pacific: Estimating the Gains from Reform", Mimeo, World Bank Development Research Group.

IMF (1999), *Code of Good Practices on Transparency in Monetary and Financial Policies*, available at www.imf.org.

Kaufmann D. (2006). "Transparenting Transparency: Initial Empirics and Policy Applications," MPRA Paper 8188.

Kerr, W. (2008), "Trade Agreements: The Important Role of Transparency", *The Estey Centre Journal of International Law and Trade Policy*, Vol. 9, No.1.

Mitchell, R. (1998), "Sources of Transparency: Information Systems in International Regimes", *International Studies Quarterly*, Vol 42, pp. 109-130

Nunn, N. (2007), "Relationship-Specificity, Incomplete Contracts, and the Pattern of Trade." *Quarterly Journal of Economics*, 122(2), pp. 569-600.

OECD (1983), *Transparency for Positive Adjustment*, Paris, OECD Secretariat.

OECD (2001), *Trade in Services: Negotiating Issues and Approaches*, Paris, OECD Secretariat.

OECD (2002a), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, OECD Secretariat, Paris.

OECD (2002b), *Foreign Direct Investment for Development – Maximising Befits, Minimising Costs*, OECD Secretariat, Paris.

OECD (2003a), Public Sector Transparency and the International Investor, Paris.

OECD (2010), "Transparency Mechanisms and Non-tariff Measures: Case Studies", OECD Trade Policy Working Papers, No. 111, Paris: OECD.

OECD (2012a), "Multilateralising Regionalism: Disciplines on Export Restriction in Regional Trade Agreements," OECD Trade Policy Working Paper No. 139, Paris: OECD.

OECD (2012b), "Export Restrictions: Benefits of Transparency and Good Practices,"OECD Trade Policy Paper No. 146, Paris: OECD.

OECD (undated), "Small Businesses, Job Creation and Growth: Facts, Obstacles and Best Practices.

Ostry, S. (1998), "China and the WTO: The Transparency Issue," *UCLA Journal of International Law and Foreign Affairs,* Vol. 1, Issue 2

PriceWaterhouseCoopers (2002), "Opacity Index," at www.opacityindex.com

Rauch, James E. (1999). "Networks Versus Markets in International Trade." *Journal of International Economics*, 48(1), 7-35.

Rauch J. and Watson M. (2003). "Starting small in an unfamiliar environment." *International Journal of Industrial Organization*, 21(7), pp. 1021-42.

Roberts, Mark E., and James R. Tybout (1997), "The Decision to Export in Colombia: An Empirical Model of Entry with Sunk Costs", *American Economic Review*, Vol. 87, No. 4, pp. 545-64.

Rodrik, D. and Hausmann R (2003). "Economic Development As Self-Discovery," *Journal of Development Economics*, Vol. 72, pp. 603-33.

Sauvé, P. (2006), "Adding Value at the Periphery: Aiming for GATS+ Advances in Regional Agreements on Services," NCCR Working Paper.

Stephenson, S. and S. Yi (2002). *Transparency in Regulation of Services*, paper submitted for PECC Trade Forum Meeting in Lima, Peru, 17-19 May 2002.

Stiglitz, J. (1999), "On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life", *Oxford Amnesty Lecture*, 13-15.

Walkenhorst, P. and B. Fliess (2003), "Non-Tariff Measures Affecting EU Exports: Evidence From a Complaints-Inventory", *OECD Economics Department Working Papers*, No. 373, OECD Publishing.

Wolfe, R. (2013), "Letting the sun shine in at the WTO: How transparency brings the trading system to life," World Trade Organization, Staff Working Paper ERSD-2013-03, March 2013.

WTO (1995), Analytical Index, *Guide to GATT Law and Practice*.

Annex A.

List of RTAs and General Transparency Measures

Regional Trade Agreement	Date of signature	Date of entry into force	Preambles addressing transparency	General principles on transparency	Chapter on transparency	Provisions on cooperation for transparency	Provisions on anti-corruption & anti-bribery
ASEAN-Australia-New Zealand FTA	27 February 2010	01 January 2010				x	
ASEAN-China FTA	14 January 2007	01 January 2005 (G) 01 July 2007 (S)		x			
ASEAN-India FTA	13 August 2009	01 January 2010		x			
ASEAN-Japan EPA	26 March 2008	01 December 2008		x			
ASEAN-Korea FTA	21 November 2008	01 January 2010 (G) 01 May 2009 (S)		x			
Australia-Chile FTA	30 July 2008	06 March 2009	x		x	x	x
Australia-Malaysia FTA	22 May 2012		x		x		
Australia-Singapore FTA	17 February 2003	28 July 2003	x	x		x	
Australia-Thailand FTA	05 July 2004	28 July 2003	x		x		
Australia-US FTA	18 May 2004	01 January 2005	x	x	x		x
Canada-Colombia FTA	12 November 2008	15 August 2011	x		x	x	x
Canada-Costa Rica FTA	23 April 2001	01 November 2002	x	x	x		
Canada-EFTA	26 January 2008	01 July 2009	x				
Canada-Jordan FTA	28 June 2009		x		x	x	x
Canada-Panama FTA	14 May 2010		x		x	x	x
Canada-Peru FTA	29 May 2008	01 August 2009	x		x	x	x
Chile-China FTA	18 November 2005	01 October 2006(G) 1 August 2010(S)	x		x	x	
Chile-Colombia FTA	27 November 2006	08 May 2009	x		x	x	x
Chile-Ecuador ECA	10 March 2008		x	x	x		
Chile-EFTA	26 June 2003	01 December 2004	x				
Chile-Japan EPA	27 March 2007	03 September 2007		x			
Chile-Korea FTA	01 February 2003		x	x	x		
Chile-Malaysia	13 November 2010	18 April 2012			x		
Chile-New Zealand-Singapurer-Brunei Darussalam (P-4)	18 July 2005	08 October 2006	x		x		x
Chile-Panama FTA	27 June 2006	07 March 2008	x		x		
Chile-Peru FTA	22 August 2006	01 March 2009	x		x		
Chile-Turkey FTA	14 July 2009	01 March 2011		x	x	x	
Chile-US FTA	06 June 2003	01 January 2004	x	x	x		x
China-Costa Rica FTA	08 April 2010	01 August 2011	x	x	x	x	
China-Hong Kong CEPA	29 June 2003	29 June 2003				x	
China-Macao CEPA	17 October 2003	17 October 2003					
China-Pakistan FTA	21 February 2009	01 July 2007(G) 10 August 2009(S)	x		x		

Regional Trade Agreement	Date of signature	Date of entry into force	Preambles addressing transparency	General principles on transparency	Chapter on transparency	Provisions on cooperation for transparency	Provisions on anti-corruption & anti-bribery
China-Peru FTA	28 April 2009	01 March 2010	x		x		
China-Singapore FTA	23 October 2008	01 January 2009	x	x			
EFTA-Albania FTA	17 December 2009	01 November 2010	x	x			x
EFTA-Colombia FTA	25 November 2008	01 July 2011	x		x	x	x
EFTA-Croatia FTA	21 June 2001	01 January 2002					
EFTA-Egypt FTA	27 January 2007	01 August 2007	x				
EFTA-GCC FTA	22 June 2009			x			
EFTA-Hong Kong, China	21 June 2011		x				x
EFTA-Jordan FTA	21 June 2001	01 September 2002					
EFTA-Korea FTA	15 February 2005	01 September 2006	x				
EFTA-Lebanon FTA	24 June 2004	01 January 2007	x				
EFTA-Montenegro	14 November 2011						x
EFTA-Peru FTA	14 July 2010	01 July 2011	x			x	x
EFTA-SACU FTA	26 June 2006	01 May 2008	x				
EFTA-Serbia FTA	17 December 2009	01 October 2010	x	x			x
EFTA-Singapore FTA	26 June 2002	01 January 2003		x			
EFTA-Tunisia FTA	17 December 2004	01 January 2005					
EFTA-Ukraine FTA	24 June 2010	01 June 2012	x	x			x
EU-Albania SAA	12 June 2006	01 December 2006(G) 01 April 2009(S)		x		x	x
EU-Algeria AA	22 April 2002	01 September 2005	x	x		x	
EU-Bosnia and Herzegovina FTA	16 June 2008	01 July 2008					
EU-Cameroon FTA	15 January 2009	01 October 2009	x		x		x
EU-CARIFORUM EPA	15 October 2008	01 October 2008	x			x	x
EU-Central America FTA	29 June 2012		x	x	x	x	x
EU-Chile AA	18 November 2002	01 February 2003(G) 01 March 2005(S)	x		x	x	
EU-Colombia-Peru FTA	26 June 2012				x	x	x
EU-Côte d'Ivoire FTA	26 November 2008	01 January 2009	x				x
EU-Croatia SAA	29 October 2001	01 March 2005(G) 01 February 2005(S)		x		x	x
EU-Egypt FTA	25 June 2001	01 June 2004					
EU-Jordan AA	01 May 2002						
EU-Korea FTA	06 October 2010	01 July 2011	x		x	x	
EU-Macedonia SAA	09 April 2001	01 June 2001(G) 01 April 2004(S)	x	x			
EU-Montenegro SAA	15 October 2007	01 January 2008(G) 01 May 2010(S)	x			x	x
EU-Papua New Guinea – Fiji Interim EPA	30 July 2009	20 December 2009					
EU-Serbia FTA	29 April 2008	01 February 2010					
India-Afghanistan FTA	06 March 2003	13 May 2003		x			
India-Bhutan FTA	28 July 2006	29 July 2006					
India-Malaysia CECA	18 February 2011	01 July 2011	x		x		

Regional Trade Agreement	Date of signature	Date of entry into force	Preambles addressing transparency	General principles on transparency	Chapter on transparency	Provisions on cooperation for transparency	Provisions on anti-corruption & anti-bribery
India-Nepal Trade Treaty	27 October 2009	27 October 2009					
India-Singapore CECA	29 June 2005	01 August 2005		x			
Japan-Brunei Darussalam EPA	18 June 2007	31 July 2008		x			
Japan-India EPA	16 February 2011	01 August 2011	x				x
Japan-Indonesia EPA	20 August 2007			x		x	x
Japan-Malaysia EPA	13 December 2005	13 July 2006		x		x	
Japan-Mexico EPA	17 November 2004	01 April 2005				x	
Japan-Peru EPA	31 May 2011	01 March 2012	x			x	x
Japan-Philippines EPA	09 September 2006	11 December 2008	x	x			x
Japan-Singapore EPA	13 January 2002	30 November 2002		x			
Japan-Switzerland EPA	19 February 2009	01 September 2009		x			
Japan-Thailand EPA	03 April 2007	01 November 2007	x	x			x
Japan-Vietnam EPA	25 December 2008	01 October 2009		x			
Korea-India CEPA	07 August 2009	01 January 2010	x	x			
Korea-Peru FTA	14 November 2010	01 August 2011	x		x		x
Korea-Singapore FTA	04 April 2005	02 March 2006	x		x	x	
Korea-Turkey FTA	01 August 2012		x		x		
Korea-US FTA	20 July 2007	01 March 2006	x	x	x	x	x
MERCOSUR-Andean Community FTA	18 October 2004		x			x	
MERCOSUR-Egypt FTA	02 August 2010				x		
MERCOSUR-India PTA	25 January 2004	01 August 2009					
MERCOSUR-Israel FTA	18 December 2007		x		x	x	
MERCOSUR-Palestinian Authority FTA	21 December 2011						
MERCOSUR-Peru FTA	30 November 2005		x	x	x		
Mexico-Bolivia FTA	17 May 2010	07 May 2010	x		x		
Mexico-Central America FTA	22 November 2011		x	x	x		
Mexico-Peru FTA	06 April 2011	01 February 2012	x		x		
Mexico-Uruguay FTA	15 November 2003	15 July 2004	x		x		
New Zealand-China FTA	07 April 2008	01 October 2008			x	x	
New Zealand-Hong Kong CEPA	29 March 2010	01 January 2011	x	x	x	x	x
New Zealand-Malaysia FTA	26 October 2009	01 August 2010	x		x	x	
New Zealand-Thailand CEPA	19 April 2005	01 January 2011	x		x	x	
Trans-Pacific EPA	18 July 2005	28 May 2006	x	x	x		x
Turkey-Albania FTA	22 December 2006	01 May 2008					
Turkey-Bosnia and Herzegovina FTA	03 July 2002	01 July 2003					
Turkey-Croatia FTA	13 March 2002	01 July 2003					
Turkey-Egypt FTA	27 December 2005	01 March 2007					
Turkey-Georgia FTA	21 November 2007	01 October 2008					
Turkey-Jordan FTA	01 December 2009	01 March 2011					
Turkey-Lebanon FTA	24 November 2010						

Regional Trade Agreement	Date of signature	Date of entry into force	Preambles addressing transparency	General principles on transparency	Chapter on transparency	Provisions on cooperation for transparency	Provisions on anti-corruption & anti-bribery
Turkey-Mauritius FTA	09 September 2011						
Turkey-Montenegro FTA	26 November 2008	01 March 2010					
Turkey-Morocco FTA	07 April 2004	01 January 2006					
Turkey-Serbia FTA	01 June 2009	01 September 2010					
Turkey-Syria AA	23 December 2004	01 January 2007					
Turkey-Tunisia FTA	25 November 2004	01 July 2005					
US-Bahrain FTA	14 September 2005	01 August 2006	x	x	x		x
US-Colombia FTA	22 November 2006	15 May 2012	x	x	x	x	x
US-DR-Central America FTA	05 August 2004	01 March 2006	x	x	x	x	x
US-Morocco FTA	15 June 2004	01 January 2006	x	x	x		x
US-Oman FTA	19 January 2006	01 January 2009	x	x	x		x
US-Panama FTA	28 June 2007		x	x	x	x	x
US-Peru FTA	12 April 2006	01 February 2009	x	x	x	x	x
US-Singapore FTA	06 May 2003	01 January 2004	x	x	x		x

Source: Compiled from texts of regional trade agreements (RTAs).

Annex B.

Capacity Building and Implementation Assessment of APEC Transparency Standards

Table B.1. APEC Assessment of Capacity Buildings Needs for Transparency

Areas	Capacity-building requests from APEC countries
General transparency	• Improvement of laws and administrative systems for transparency. • Expansion of infrastructure in information technology • Creation & maintenance of internet-sites in foreign languages (e.g. English).
Business mobility	• Improvement of technological tools and training of officers in detecting and handling fraudulent documents during inspection and arrival of persons. • Training of officers on codes of conduct standards worldwide. • Building English capacity in National Immigration Agencies to enable institutions to better engage in international communications. • Connecting websites of immigration departments & consulates of APEC members so that business community can have better, centralized information on procedures • Harmonize immigration forms across agencies within countries as well as across Member countries, and render the forms more user-friendly
Competition Policy	• Capacity building on approaches & detailed steps to ensure that transparency and parties' right to be heard is integrated in competition law and enforcement • Assistance on laws, institutional frameworks and technology for competition • Training of judges in the adjudication of competition-related cases
Customs Procedures	• Technical assistance required to introduce advance rulings • Sharing of practices and legislative processes in other economies
Intellectual Property Rights	• Pool of database among regional enforcement agencies in IPR • Public awareness on the importance trade-marks e-filling, copyright enforcement, and patent protection for SMEs, industry and University • Advanced and sustained training of examiners, hearing officers and other officials • Enhancement of communication technology infrastructure and marketing on IP • Facilitate exchange of information, experiences, best practices skills and consolidation of resources and logistics in organizing IP-related activities
Services & Investment	• Capacity building programme related to setting up online application and database systems for foreign services suppliers • Website design and identifying computer software most relevant for use. • Updated or more technologically sound management information system • Management approval regarding the handling of information for release through the virtual data room. • Designation, orientation and training of focal/point persons to handle public information and queries • Orientation, collaboration assistance and support from the agency's media relations, public information and information bureaus. • Additional manpower to handle queries from investors at real time
Standards & Conformance	• Learn more from other countries on how to do effective and efficient cost/benefit analysis and legal impact assessment before initiating legislative proposals. • Training on benchmark of the management/technical side for handling notification and enquiries as well as information management for notification and enquiries. • Awareness on notification obligations of regulatory bodies

Source: Compiled from individual country assessments of APEC economies implementation of transparency standards (www.apec.org/Groups/Committee-on-Trade-and-Investment/APEC-Transparency-Standards.aspx).

Table B.2. Assessment of Implementation of APEC Transparency Standards

	General Transparency	Business Mobility	Competition Policy	Customers Procedures	Intellectual Property	Investment	Market Access	Services	Standards and Conformance	Government Procurement
Australia	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Light grey	Dark grey	Dark grey	Dark grey
Brunei Darussalam		Dark grey			Light grey				Light grey	
Canada	Dark grey	Light grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey
Chile	Light grey			Light grey	Dark grey	Dark grey	Light grey	Light grey	Light grey	Light grey
China	Light grey	Light grey	Dark grey	Light grey	Light grey	Dark grey	Light grey	Dark grey	Light grey	Dark grey
Hong Kong, China	Dark grey	Dark grey	Dark grey	Light grey	Dark grey	Light grey	Dark grey	Dark grey	Dark grey	Dark grey
Indonesia		Dark grey	Light grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Light grey
Japan	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Light grey	Dark grey	Dark grey	Dark grey	Dark grey
Korea	Light grey	Dark grey	Light grey	Light grey	Light grey	Light grey	Light grey	Dark grey	Light grey	Light grey
Malaysia			Light grey	Light grey	Light grey					
Mexico		Light grey	Light grey	Light grey	Light grey	Light grey	Light grey	Light grey		Light grey
New Zealand	Dark grey	Dark grey	Dark grey	Light grey	Dark grey	Dark grey	Dark grey	Dark grey	Light grey	Light grey
Papua New Guinea										
Peru	Dark grey	Light grey	Light grey	Light grey	Light grey	Dark grey	Light grey	Light grey	Light grey	Light grey
Philippines	Dark grey	Light grey	Dark grey	Light grey	Light grey	Light grey	Light grey	Light grey	Dark grey	Light grey
Russia	Dark grey									
Singapore	Light grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey	Dark grey
Chinese Taipei	Dark grey	Dark grey	Dark grey	Light grey	Dark grey	Dark grey	Dark grey	Dark grey	Light grey	Dark grey
Thailand	Dark grey	Light grey	Dark grey	Light grey	Dark grey	Light grey	Light grey	Light grey	Light grey	Light grey
United States	Dark grey	Light grey	Dark grey	Dark grey	Dark grey	Light grey	Light grey	Light grey	Light grey	Dark grey
Viet Nam	Light grey	Light grey	Dark grey	Light grey	Light grey					Light grey

Note: Items shaded in dark grey denote that the APEC Transparency Standards in that area have been fully implemented at the national level; lighter grey indicates that the Transparency Standards have been partially implemented domestically. A non-shaded item indicates that the country in question has not submitted an assessment on the implementation of Transparency Standards or has submitted an assessment reflecting that enforcement is still pending in that area. This overview is based on APEC Members' self-reporting; the latest available reports date from 2007, so it should be noted that countries may have implemented remaining standards but not updated their assessments or not made them available in the APEC site. *Source:* Compiled from individual country assessments of APEC economies implementation of transparency standards.