

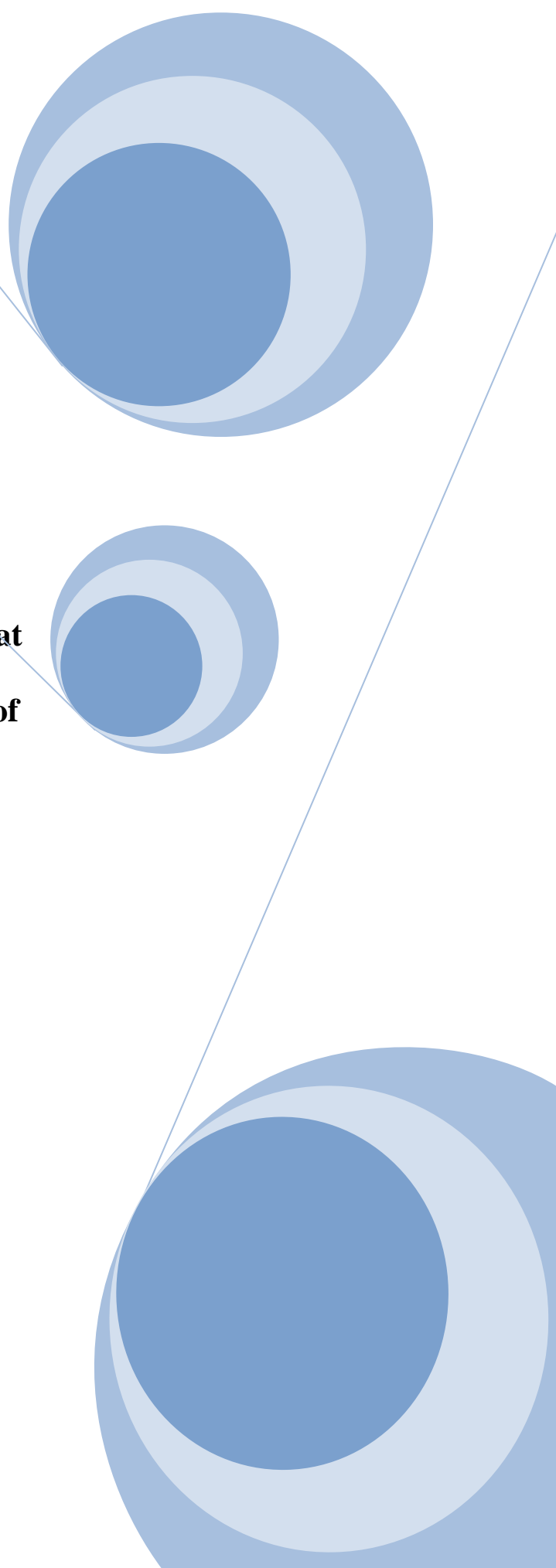
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Multilateralism or Regionalism; What
Can Be Done About the Proliferation of
Regional Trading Agreements?

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**Multilateralism or Regionalism; what
can be done about the proliferation of
regional trading agreements?**

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Abstract

Regional trading agreements are treaties entered into by states.¹ States enter into regional trading agreements for different reasons some of which are economic, political and security reasons. Regional trading agreements (herein after RTAs) have been successful in achieving trade liberalization at a much faster speed than the World Trade Organization (herein after WTO).² The most notable example of RTAs is the European Communities that has been successful to liberalize both trade in goods and services.

Members of those Regional Trading Agreements create rules of origin. Rules of origin are important in allocating the appropriate duty for imported goods. They tell the customs officer where those goods come from. If they come from a country which has a trading agreement with the importing state then the product will receive preferential treatment. The problem at the moment is that there are over four hundred Regional Trading Agreements in the world today. This proliferation of Regional Trading Agreements resulted into a lot of crisscrossing and very complicated rule of origin. The main purpose of this paper is to analyze the different possible solutions for the proliferation of Regional Trading Agreements and to propose the most realistic solution to the problem.

To perform this task the paper will be divided into three parts. The paper relied both on direct and indirect research methodologies to answer the questions posed by the

¹ The word regional trading agreement doesn't have any geographical connotation. It can be a trade agreement between countries in different continents without any geographical boundary links.

² The World Trade Organization is a multilateral trading system that came into existence in January 1995. Some pose the argument if the WTO is at all multilateral by saying Russia and Ukraine are not even members of the WTO. However, as of July 23, 2008 the WTO has 153 members and 30 more on observer status. Full list of countries and country specific reports available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm accessed on 02/10/2009.

research paper. The first part deals with the legal and historical background of RTAs. It answers question of why states enter into RTAs and what is the legal basis for the formation of RTAs. The second part deals with proliferation of RTAs. It answers question like are RTAs stumbling blocks or building blocks to the multilateral trading system. It also describes the causes of proliferation of RTAs and the possible solutions. The third part deals with the conclusions and recommendations. It tells the reader the overall conclusion of the paper and the best solution proposed.

Table of Contents

Abstract	2
Historical and Legal Background of Regional Trading Agreements	5
Introduction	5
Drafting History.....	6
Formation of Regional Trading Agreements	7
Customs Union and Free Trade Agreements	8
Conclusion	9
Proliferation of Regional Trading Agreements.....	10
Stumbling blocks or building blocks.....	10
Harmonization of Regional Trading Agreements	13
WTO- Dispute Settlement Body	15
Conclusions and Recommendations.....	18
Bibliography.....	19

PART I- Historical and legal background of Regional trading agreements under the WTO

1.1. Introduction

The whole purpose of the WTO is to lower tariff and non tariff barriers.³ “We know since Adam Smith the best way to do it is unilaterally and we also know from political economy that countries have hard time to do it unilaterally...”⁴ Countries enter into multilateral trading agreements such as the WTO and various RTAs because they are afraid to lower tariffs and non tariff barriers unilaterally.⁵ They cooperate to liberalize trade in an effort to constrain or eliminate restrictions on trade.

RTAs achieve trade liberalization at a much faster speed and cover areas that are not yet covered by the WTO.⁶ Some countries enter into RTAs for political reasons. “International cooperation is not about the elimination of economic externalities only but also political externalities.”⁷ For instance, the African Caribbean Pacific (herein after ACP) and European Union Economic partnership agreement is an example of trade agreement based on political

³ The WTO has been working to lower tariffs and non tariff barriers through its successive negotiations. For instance, Article II and art XI of GATT requires states to bind their tariffs and prohibits quantitative restrictions.

⁴ Garry Hofbuer from Peterson Institute of International Economics at Washington DC, WTO public forum 2007, http://www.wto.org/english/forums_e/debates_e/debate3_e.htm accessed on 10/11/2008.

⁵ The GATT has substantially lowered tariffs and non-tariff barriers through the successive rounds it has passed. For instance, “While postwar tariffs averaged some 40 percent in industrial goods, MFN tariffs among industrialized countries will be down from 6.3 percent (Tokyo Round) to an average of 3.8 upon implementation of the Uruguay Round.” Thomas Cottier, *The Challenge of WTO Law: Collected Essays*, Cameron May Ltd, 2007, at 513.

⁶ Gary Hofbuer, *Supra* note 2.

⁷ Alexander Keck *et al*, “Indisputably Essential: The Economics of Dispute Settlement Institutions in Trade Agreements”, World Trade Organization Economic Research and Statistics Division, September 2007 at 7.

reasons. The agreement covers ACP countries that were former colonies of European Union.⁸ Some regional trade agreements are also driven by economic reasons. Countries enter into RTAs to eliminate constraints on trade. Trade protection by one country can affect the benefits of another state.⁹

1.2. Drafting History

The drafting history of article XXIV of GATT dates back to the International Trade Organization.¹⁰ “The provisions in the Havana Charter on economic integration arrangements differed considerably from the corresponding provisions in previous drafts of the Charter.”¹¹ Unlike the previous drafts that only recognized the establishment of customs unions the Havana Charter incorporated a provision for the formation of Free Trade Agreements. In the previous drafts Free Trade Agreements were allowed as an interim agreement that lead to customs unions. This regional trading arrangements provision was adopted in GATT-1947 and later on in the WTO through the Uruguay Round.

⁸ Informal discussion with Maria Fariello, EU lawyer in Eritrea, January 19, 2009, at about 9:00 p.m. We were discussing why the African countries agreed to join the Cotonou Agreement (ACP-EU) agreement and she told me that some countries join regional trading agreements for the compensation package offered by the developed countries. *See also* Oliver Cadot *et al.*, ‘Can Bilateralism Ease the Pains of Multilateral Trade Liberalization?’ World Trade Organization-Economic Research Analysis Division, June 1998. In this article the authors analyzed the impact of compensation package in regional trading agreements and concluded that regional trading agreements with compensation package tend to be more successful.

⁹ For instance, if country A prohibits entry for goods produced in country B, the welfare of country B is affected by protectionist restrictions imposed by country A. If the goods manufactured in country B are produced by imports from country C, the protectionist measures of country A can affect also country C.

¹⁰ The International Trade Organization was an organization (herein after ITO) that was intended to be established in the Breton Woods Agreement at the same time with the World Bank and the International Monetary Fund. Some attribute the failure of the establishment of the ITO to the United States Congress and President Truman. That is to say because US, the largest economy, did not ratify the charter establishing the ITO it was doomed to failure. Then certain countries entered into a provisional agreement, GATT that led to the WTO. For a brief explanation of the failure of the ITO and the Havana Charter refer to Julio Lacarte Muro’s interview with the Keith Rockwell (WTO spokesperson) about how the trading system evolved available at http://www.wto.org/english/forums_e/debates_e/interview1_e.htm accessed on January 10,2009.

¹¹ Multilateral Trade Negotiations – Uruguay Round, 11 August, 1987. Note by the Secretariat on Article XXIV, at 7.

1.3 Formation of Regional Trading Agreements

The first wave of regional trading agreements was primarily North-North and South-South Agreements.¹² “North- South arrangements appeared during the 1980s.”¹³ When a WTO member enters into a regional trading agreement it departs from the main pillars of non-discrimination.¹⁴ However, Article XXIV of General Agreement on Tariff and Trade (herein after, GATT), article V of General Agreement on Trade in Services (herein after GATS) and the Enabling clause¹⁵ allow member countries to enter into regional trading agreements. Since the wording and terminologies of article XXIV of GATT and article V of GATS are similar; for the purpose of this study we will just deal with article XXIV of GATT. Since the number of regional trading agreements notified under the Enabling clause is so small the study will not deal with it.

¹² Oliver Cadot *et al*, ‘Can Bilateralism Ease the Pains of Multilateral Trade Liberalization?’ World Trade Organization- Economic Research Analysis Division, June 1998, at 6. North-North agreements means regional trading agreements among developed countries and likewise South-South means the once entered among developing countries. It was also generally thought that the North-North agreements are successful as compared with the South-South agreements.

¹³ *Id*. Note that Art V of GATS allows for Special and differential treatment for developing countries in regional trading agreements unlike article XXIV of GATT. In the current Doha Negotiation the ACP countries submitted a proposal to amend article XXIV(8) of GATT to allow the S and D treatment for developing countries. In an in depth study of regional trading agreements and their implication for developing countries, UNCTAD concluded that developing countries should proceed carefully with regard to North-South regional trading agreements. The study concluded that North-South agreements tend to ignore the development perspective. The GATT rules require reciprocity in North-South agreements and erode preferences. The developed countries tend to ask for WTO plus standard due to the unbalanced negotiating power between developed and developing countries.

¹⁴ The relevant non-discrimination principles of the WTO are the National treatment (Article I) and the Most Favored Nation Treatment (Article III). The main principle of Article I is that member states are not allowed to discriminate imported goods from locally produced good once they are inside the border. Article III of the GATT enumerates the Most Favored Nation Treatment which basically means that countries are not allowed to discriminate among other WTO member trading partners.

¹⁵ The Enabling Clause (i.e., the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries) also allows the formation of Regional Trading Agreements among developing countries without the requirement of non-reciprocity. For further explanation of the enabling clause and the full text of the clause refer to, http://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm , accessed on March 13, 2009.

1.4 Customs Unions and Free Trade Areas

Article XXIV of GATT allows the formation of Customs Unions and Free Trade Areas. According to Article XXIV (8(a)) a Customs Union “... shall be understood to mean the substitution of a single customs territory for two or more customs territories.”¹⁶ Members of a Customs Union are mandated to have a ‘substantially the same’ customs policy against other states that are not members of the customs union.¹⁷ Whereas a Free Trade Agreement mandates members to open up ‘substantially all trade’ amongst themselves as defined in Article XXIV (8(b)) and it does not require the existence of common customs policy towards nonmembers.

Scholars have debated the interpretation of article XXIV of GATT. There are different issues that can be raised with the interpretation of Article XXIV. For the purpose of this study we are just focusing on ‘substantially all trade.’ The reason we are discussing this particular issue is because it will be relevant to our discussion in part two and three of this paper.

¹⁶ Article XXIV (8) states,

“For the purposes of this Agreement:

- (a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that
 - (i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,
 - (ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union...”

¹⁷ The Appellate Body in the Turkey-Textiles case said ‘substantially all’ under article XXIV (8(a)) doesn’t mean all.

Past discussions in the GATT indicate that the term ‘substantially all’ has both qualitative and quantitative aspects. “Regarding the quantitative aspect, it has been suggested that a general figure could be fixed for the percentage of volume of liberalized trade within a free trade area which should be considered as meeting the ‘substantially all ...’ requirement.”¹⁸ However, arguments were raised how inappropriate it would be to measure trade liberalization just in quantitative measurements. The qualitative aspect of the ‘substantially all’ requirement is that the regional trade agreement should not exclude a particular sector or industry from the liberalization activity. The EU subscribes to this view and fixed that 80% of the volume of the trade should be included.¹⁹

1.4 Conclusion

Regional trade agreements achieve trade liberalization at a much faster speed. States enter into regional trading agreements both for political and economic reasons. When states enter into regional trading agreements Art XXIV of GATT requires that they liberalize ‘substantially all trade’ between them. The criteria for determining the substantially all requirement is both qualitative and quantitative aspects.

¹⁸ *Id.*

¹⁹ Thomas Cottier, *The Challenge of WTO Law: Collected Essays*, Cameron May Ltd., 2007, at 517.

Part II – Proliferation of Regional Trading Agreements

2.1. Stumbling blocks or Building blocks

Regionalism and multilateralism are complementary.²⁰ “While we may see them as competing legal approaches, in a combination they assist in the process of dismantling of trade barriers.”²¹ The WTO rules are constitutional frame work of rights and obligations of member countries in international trade. “The rules of GATT Article XXIV, GATS Article V and the Enabling Clause could be interpreted as setting the multilateral constitutional limits within which RTAs can maneuver.”²² The formation of regional trading arrangements is an exception to the general principles of WTO.²³ That is to say, states are allowed to enter into RTAs as long as those agreements are consistent with the existent WTO rules.

The problem at the moment is that there are more than 400 regional trading agreements.

²⁴ Each regional arrangement is unique. The working provision of the arrangement and the

²⁰ The argument of whether regional trading agreements are stumbling blocks or building blocks in the multilateral trading system revolves over the idea of the impact of the formation of regional trading agreements. Regional trade agreements can create trade to the contracting parties and it can also create trade diversion to non members of the agreement. Trade creation is in a sense that regional trading agreements tend to create access to bigger market among contracting parties. It diverts trade for non-members in a sense that it gives preference in the form of reduction of tax value for members of the regional trading agreement. “WTO rules are an attempt to encourage trade creation, and to avoid diversion.” Thomas Cottier, *The Challenges of WTO Law: Collected Essays*, Cameron May Ltd, 2007, at 516. The WTO rules try to avoid trade diversion by including the ‘substantially all requirement we discussed in first part of this paper.’

²¹ Thomas Cottier, *Supra* note 19 at 514.

²² Youri Devouyst *et al*, *The World Trade Organization and Regional Trading agreements: Bridging the Constitutionality Gap*, *Duke Journal of Comparative and International Law*, Vol 18.1, 2007 at 4.

²³ Peter Van Den Bossche, *The law and Policy of World Trade Organization: Text, Cases and Materials*, Cambridge University Press, 2005, at 650.

²⁴ Out of those 400 regional trading agreements only 227 are in force. For a complete list of Regional Trading Agreements and their legal basis see <http://rtais.wto.org/UI/publicPreDefRepByWTOLegalCover> accessed on 02/10/2009.

reasons for forming the regional integration differs from one to the other. Regional trading agreements offer preferential treatment to members of the regional integration in violation of the Non-discrimination principles of the WTO.²⁵ To administer the preferential treatment effectively, to exclude products exported from non-member, the members of the regional trading agreement craft rules of origin. This results into a lot of crisscrossing resulting into the ‘spaghetti bowl’ problem.²⁶

One of the causes of the proliferation of regional trading agreements is the stalemate situation in the multilateral trading system as it goes between rounds.²⁷ For instance, “in the period 1948-1994, the GATT received 124 notifications of RTAs (relating to trade in goods), and since the creation of the WTO in 1995, almost 300 additional arrangements covering trade in goods or services have been notified.”²⁸

The surge in regional trading agreements could also be driven by search for access to larger markets in the absence of a willingness among WTO members to liberalize trade further. Henry Gao²⁹ and C. L. Lim³⁰ believe that the existence of the WTO is being eclipsed into irrelevance with the unabated surge in Regional Trading agreements.³¹ At this moment this

²⁵ See *Supra* note 13 for explanation of the non-discrimination principles of the WTO.

²⁶ Jagdish Bhagwati, *Termites in the Trading System*, Oxford University Press, 2008, at 120.

²⁷ Jagdish Bhagwati, Professor Columbia University, *Supra* note 2.

²⁸ Regional Trading Agreements, Facts and Figures, http://www.wto.org/english/tratop_e/region_e/regfac_e.htm. Almost all WTO members are parties to one or more regional trading arrangement and some are members to more than twenty regional trading agreements.

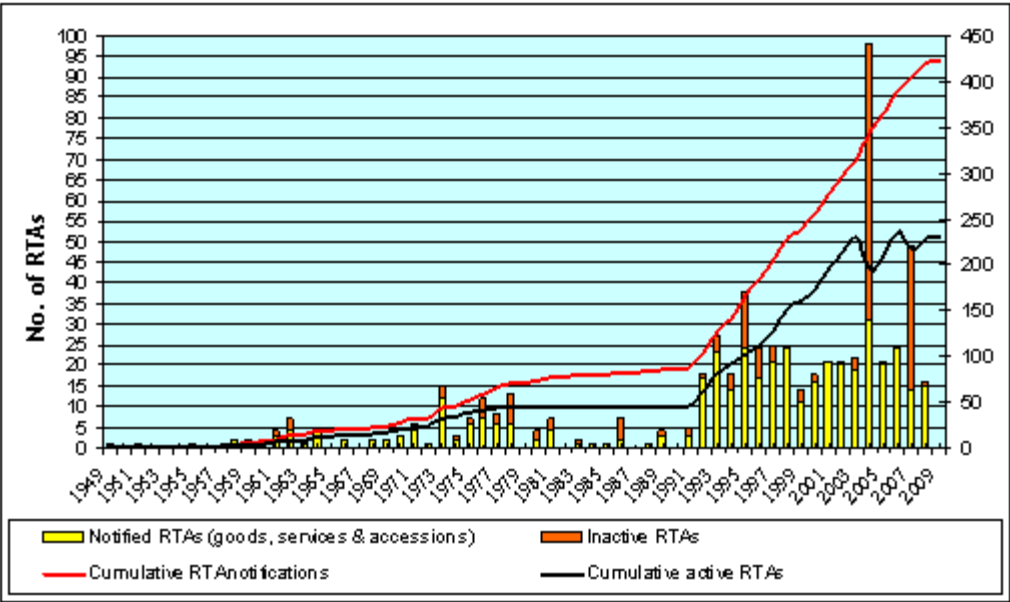
²⁹ Henry Gao is Associate Professor, School of Law, Singapore Management University.

³⁰ C.L. Lim is Associate Dean for Academic Affairs and Professor of Law, the University of Hong Kong

³¹ Henry Gao *et al*, “Saving the WTO from the risk of irrelevance, the WTO Dispute Settlement Mechanism as a ‘common good’ for RTA dispute”, *Journal of International Economic Law* 11(4), Advance Access publication 30 October 2008, at 899.

Thomas Cottier argued that preferential agreements have a limited impact on the global trading system. “The lack of supranational structures in many other multilateral agreements inherently limits a process of liberalization much

might be an overstatement as we see the WTO’s successes but if no action is taken to harmonize those regional trading agreements it is inevitable that it will be eclipsed into irrelevance. At present a huge portion of world trade goes through those regional trading arrangements which deny the Most Favored Nation Treatment to other WTO members.³² The surge in regional trading agreements also created very complicated rules of origin. Hence the need for harmonization of regional trading agreements becomes necessary.



This chart shows all RTAs notified to the GATT/WTO (1994-2008).³³

beyond the dismantling of traditional barriers.” *Supra* note 19 at 514. In his argument he says that the MFN tariff rate in GATT has been substantially reduced by the successive rounds. He also raises a point saying that most preferential trade agreements other than the EEC and NAFTA do not liberalize trade in agriculture. Thirdly he argues with the reduction of tariffs and quantitative restriction, countervailing duties and other non-tariff barriers have become important. He also argues that there is a political limit to what preferential agreements can achieve.

³² Jagdish Bhagwati, *Supra* note 4. See *Supra* note 14 for a brief explanation of the Most Favored Nation Treatment under the WTO.

³³ This chart is taken from http://www.wto.org/english/tratop_e/region_e/regfac_e.htm, accessed on March 19, 2009. When looking at this chart note the important dates for analyzing the chart. The Doha Negotiation Round of November 2001 and the rise of notified regional trading agreements especially after the Cancun failure in 2003.

In the next part of this paper we will discuss the various options that WTO members can adopt to solve the problem of proliferation of regional trading agreements.

2.2. Harmonization of Regional Trading Agreements

A number of proposals have been presented for the harmonization of regional trading agreements after the coming into effect of the Uruguay Round. “One proposal was that the creation of preferential trade agreements requires tariff reductions with third members.”³⁴ Another proposal submitted was to guarantee a level of trade with third parties. None of those proposals materialized.

The best tactic to approach the surge in regional trading agreements is to reduce all trade barriers to zero at the multilateral level. Reducing trade barriers at the multilateral level will render regional trading agreements ineffective. However, this option does not seem plausible for three reasons:

1. The membership of the WTO is so big that countries might not choose to liberalize trade for their enemies which could be members of the WTO. As we saw in the first part of the paper countries enter into regional trading agreements not only for economic reasons but also for political and security reasons.
2. Members of the various regional trading agreements might not agree to lower trade barriers at the WTO level to zero in order to protect the benefits they are reaping from those RTAs.
3. RTAs might cover sectors not yet under the WTO.

³⁴ Thomas Cottier, *Supra* note 19 at 519.

The second best option for the harmonization of RTAs is to strengthen the WTO's monitoring system of RTAs, with the 2006 rules on transparency being the most recent example.³⁵ The critique against this approach is that the WTO committee on trade has been plagued by ineffectiveness due to the consensus ruling making procedure of the WTO.

The third best option for the harmonization of RTAs is to draft 'best practice' RTA at the multilateral level.³⁶ The idea is if countries adopt the model RTA when they enter into RTAs then it will result into harmonization of regional trading agreements and it will also lead into the development of common law³⁷ of RTAs. However, it can also lead to further fragmentation as states take and customize the model RTA to their particular need and concerns.

The third option would be to harmonize the existent rules of origin. The proliferation of regional trading agreements created very complicated rules of origin on identical products. "With the exception of the pan-European system of cumulation of origin which harmonizes the rules of origin of some 30 Regional Trading Agreements ..., most other Free Trade Agreements in force have their own distinct origin regime."³⁸ This added with the different tariff rates results into crisscrossing of preferences creating the spaghetti bowl problem.³⁹ "Rules of origin are

³⁵ The 2006 rules on transparency deal with the notification of Regional Trading Agreements to the WTO. Regional Trading agreements formed under GATT art XXIV and GATS art V are administered by the Committee on Regional Trading agreements. For further discussion of the transparency rule refer to http://www.wto.org/english/tratop_e/region_e/trans_mecha_e.htm accessed on 02/10/2009.

³⁶ Henry Gao *et al*, *Supra* note 31.

³⁷ The term common law here is not here used as in the common law legal system. Here it is used to mean the same or similar law.

³⁸ Regional Trade Agreements Section *et al*, *The Challenging Landscape of RTAs*, presented at the seminar on Regional Trade Agreements and the WTO, WTO Secretariat, Geneva, 14 November 2003, pp 11.

³⁹ Jagdish Bhagwati, *Supra* note 26.

intentionally designed as devices to deny non RTA members preferences, it is doubtful whether WTO member countries would be willing to get rid of these carefully crafted devices.”⁴⁰

In the next section we will discuss the WTO dispute settlement body as a means for the harmonization of RTAs. At this moment the harmonization of RTAs through the WTO dispute settlement body seems the most realistic solution to the proliferation of RTAs.

2.3. WTO Dispute Settlement Body

Before the Uruguay Round, when an RTA is challenged for its consistency with article XXIV of GATT, the power to make recommendations was exclusively vested in the contracting states.⁴¹ During the Uruguay Round this has changed. “The Understanding on the interpretation of article XXIV of the GATT extends the jurisdiction of panels to include review of preferential trade agreements.”⁴²

Regional trading agreements are contracts entered into between states. Regional trading agreements can be effective if the parties exert political will to abide by the terms of their agreement and if it has an effective dispute settlement mechanism in case a dispute arises. Regional trading agreements are enforceable if the agreement is observable, verifiable and

⁴⁰ Henry Gao *et al*, *Supra* note 31 at 4.

⁴¹ Article XXIV (7(a)) states, “Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.”

⁴² Thomas Cottier, *Supra* note 19 at 519- 520. Article 12 explicitly states that: “the provisions of Article XXII and XIII of GATT 1994, as elaborated and applied by the Settlement Understanding may be invoked with respect to any matter arising from the application of those provisions of Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free trade area.” Thomas Cottier, *Supra* note 19 at 519- 520.

quantifiable.⁴³ Observability is the obligations of the parties set out in the agreement should be something that can be done.⁴⁴ When we say verifiable, it means that it should be something that can be within the terms of the regional trade agreement.⁴⁵ Quantifiability deals with the assessment of damages in case of breach of the agreement.⁴⁶

To analyze if the WTO dispute settlement mechanism can be a solution for the harmonization of regional trading agreements we should first consider the following issues. The first thing to consider is the issue of jurisdiction. That is to say will the WTO dispute settlement body have jurisdiction over RTA disputes? As we discussed in the previous section some RTAs cover areas that are not yet covered by the WTO. For instance, when it comes to disputes dealing with Article 11 of NAFTA⁴⁷ the WTO dispute settlement body will not have jurisdiction.

The second issue to analyze is what happens when RTA has an overlapping obligation with the WTO.⁴⁸ For instance, almost all RTAs impose the National Treatment obligation.⁴⁹ In such, cases the WTO dispute settlement body will have jurisdiction.

⁴³ Alexander Keck, *Supra* note 7, at 7.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ NAFTA is a free trade agreement between US, Canada and Mexico. Even though article 20 of NAFTA stipulates that a NAFTA member can pursue its rights both under the NAFTA and WTO law when it comes to investor state claims (Article 11 of NAFTA deals with investor-state claims.) the WTO dispute settlement body does not have jurisdiction. For further discussion of the overlapping obligations under NAFTA and WTO law the Appellate Body Report on Mexico-Tax measures on Soft Drinks and other Beverages. In this case the US blocked the establishment of a panel under NAFTA and brought a claim against Mexico under the WTO dispute settlement body for violation of the national treatment principle. In this case the jurisdiction of the WTO dispute settlement body was not challenged by Mexico. Instead, Mexico was arguing that the Panel should have declined to exercise its jurisdiction. The appellate body rejected Mexico's argument and concluded that there is no legal impediment that precludes the Panel from exercising jurisdiction. John H. Jackson *et al*, *Legal Problems of International Economic Relations*, 5th ed. Thomson West, 2008, at 517 -520.

⁴⁸ MERCOSUR is a customs union between Argentina, Brazil, Paraguay and Uruguay, and Venezuela. A MERCOSUR member can bring a case both in the MERCOSUR dispute settlement forum and the WTO forum. Brazil brought a complaint against Argentina in the MERCOSUR dispute settlement body and lost. Later on Brazil brought the complaint to the WTO dispute settlement body. The panel entertained the case and rejected it Res-

The third issue to analyze is what happens when RTA has provisions that are contrary to the WTO rules. In such instance, the WTO dispute settlement body will have jurisdiction over the issue.⁵⁰ The interpretation of ‘substantially all trade’ under article XXIV can be a major issue to challenge the inconsistency of RTAs with the WTO rules. When the WTO dispute settlement body examines a regional trading agreement and found it to be inconsistent with the WTO rules, it doesn’t make the agreement null and void but rather gives third parties the right to bring their claim.

Judicata and *estoppel* can be applied here. John H. Jackson et al, Legal Problems of International Economic Relations, 5th ed. Thomson West, 2008, at 517.

⁴⁹ For an explanation of national Treatment under refer to *Supra* note 14.

⁵⁰ In Turkey Textiles case the WTO dispute settlement panel found, that Turkey’s violation of GATT Art. XI and XII are not justified by GATT article XXIV. In this case the Appellate Body agreed with the conclusion of the panel even though it was for a different reason. For a brief discussion of the Turkey Textiles case refer to Michael J. Trebilcock *et al*, The regulation of International Trade, 3rd ed, Routledge, 2005, at 197.

Part III- Conclusions and Recommendations

Regional trading agreements are here to stay. They have been successful to achieve greater economic and political integration in the world. Case in point the European Union is the best example of deeper integration. However, they have proliferated in such an enormous amount that they have created a lot of crisscrossing and different rules of origin. Hence, the need for harmonizing them is a timely call.

The most realistic way to harmonize regional trading agreements is through the WTO dispute settlement body. The WTO dispute settlement body has a well developed jurisprudence of over 50 years and has been effective. States should opt for a choice of forum of the WTO dispute settlement body when they enter into RTAs. If the WTO dispute settlement body started handling RTA disputes at the end we will have a common jurisprudence or law of RTAs. This eventually will lead to the harmonization of RTAs. However, the monitoring and transparency requirements that are administered by the committee on regional trading agreements should also be enhanced side by side.

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