
Regional Trade Agreements in the WTO System: Potential Issues and Solutions

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In the international trading system today, regional trade agreements, referring to reciprocal trade agreements between two or more countries providing exclusive trade preferences, govern not only the trade relations among the parties to the RTAs, but also form additional sets of trade disciplines. These agreements exist parallel to the multilateral trading system under the auspices of the World Trade Organization. The GATT/WTO rules authorize RTAs under certain conditions; thus on the surface, RTAs appear to be a legitimate part of the WTO system. However, in substance, the preferential terms of trade in RTAs are essentially in conflict with the most important principle of the WTO system, the most-favored-nation treatment. The current proliferation of RTAs thus makes exclusive RTA preferences, which are supposedly an exception to the MFN principle, a rule rather than an exception. This article examines GATT/WTO rules on RTAs, addresses the potential conflict between RTAs and the WTO system with potential solutions, and analyzes RTAs from the development perspective.

Keywords

Regional Trade Agreements, Multilateral Trading System, World Trade Organization, Developing Countries.

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I. Introduction

Regional trade agreements (“RTAs”) are reciprocal trade agreements between two or more countries that constitute a salient feature of the international trading system today. RTAs have been rapidly proliferated since 1990, from 27 RTAs reported to the WTO in 1990 to 612 as of April 2015.¹ RTAs are essentially important in the current international trading system because the terms of RTAs govern not only the trade relations among the participating countries as intended, but also form additional sets of trade disciplines that exist parallel to the multilateral trading system prescribed by the World Trade Organization (“WTO”). The WTO Member Countries (hereinafter Members) have to deal with the legal disciplines of the WTO and those of RTAs at the same time. As every WTO signatory is a member of one or more RTAs, a majority portion of world trade,² which is subject to the legal disciplines of the WTO, is also governed by the terms of RTAs.

On the surface, RTAs appear to be a legitimate part or sub-set of the WTO system, rather than a separate trade regime or separate set of trade disciplines because the GATT/WTO rules authorize RTAs subject to certain conditions.³ In substance, however, the preferential terms of trade (trade preference) in RTAs are inherently in conflict with the most important principle of the WTO system, the most-favored-nation (“MFN”) treatment. The proliferation of RTAs has indeed made trade preferences afforded by RTAs, which are supposedly an exception to the MFN principle, a rule rather than an exception.⁴ This causes a significant systematic issue for the multilateral trading system (“MTS”) whose main purpose is to develop an

¹ WTO, Regional Trade Agreements, available at https://www.wto.org/english/tratop_e/region_e/region_e.htm (last visited on July 2, 2015). Of these, 426 notifications were made under GATT Article XXIV; 39 under the Enabling Clause; and 147 under Article V of the GATS. These notifications counted goods and services separately; thus the figure corresponds to 449 physical RTAs (counting goods, services and accessions together), of which 262 are currently in force.

² According to the OECD, RTAs cover more than half of international trade and operate alongside multilateral agreements under the WTO. See OECD, Regional Trade Agreements, available at <http://www.oecd.org/tad/benefitlib/regionaltradeagreements.htm> (last visited on Sept. 27, 2015).

³ GATT art. XXIV and GATS art. V. See the official website of the WTO, available at https://www.wto.org/english/docs_e/legal_e/legal_e.htm (last visited on July 2, 2015).

⁴ Renato Ruggiero, the former director-general of the WTO, warned against the proliferation of preferential trading groups under this exception, stating that: “With the proliferation of regional groupings, the exception could become the rule, and this would risk changing completely the nature of the system.” See *Regional initiatives should aim for a free Global Market*, says Ruggiero, WTO PRESS RELEASE (Apr. 24, 1996), available at https://www.wto.org/english/news_e/pres96_e/pr046_e.htm (last visited on July 9, 2015).