Regionalism in the Globalized World

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Regional arrangements serve as a choice to maintain special relations between those countries that are geographically related, have close economic exchanges, share similar culture and tradition and are without historic problems. The development of the last few decades has resulted in multilateral organizations and regional arrangements coexisting with overlapping memberships. The history of the GATT has demonstrated this point sufficiently and so has the WTO. After the establishment of the WTO, more and more regional arrangements have been established, which include not only free-trade areas and customs unions but also bilateral closer partnership arrangements covering economic, trade and investment sectors. Such bilateral closer partnership arrangements have been established by countries sharing the same borders as well as those situated apart from each other.

Like multilateral organizations, regional arrangements are also result of the increasing economic interdependence of the international community. The principal differences between contemporary regional arrangements and those established earlier lie in the form and mode of cooperation and the nature and degree of interdependence among the members. In a broad sense, however, both contemporary and traditional regional arrangements are commensurate with the development of economic globalization. The difference between regional arrangements and multilateral organizations is mostly in the number of constituent members, although the degree or nature of cooperation or integration among members is also an important distinction.

I. The GATT/WTO Mechanism

The WTO provisions on regional arrangements include Article 24 of the GATT and Article 5.7 of the GATS. Article 24 of the GATT constitutes the main basis for regional arrangements. Article 24.4 stipulates that “the Contracting Parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories”.

This provision implies the potential positive effect of regional arrangements on the liberalization of trade. The fact that customs unions and free trade areas established since the coming into force of the GATT now "cover a significant proportion of world trade"[1] proves the usefulness of the regional arrangements. Therefore, at the Uruguay Round, the negotiating parties agreed that closer regional economic integration would contribute to the expansion of world trade. The negotiating parties also realized the need to reinforce the supervision by the WTO over the establishment of regional arrangements.[2] From the above provisions, the WTO is not to stop or prevent the creation of regional arrangements. At the same time, it will strengthen the mechanism for monitoring the regional arrangements, e.g., notification system.

Based on the general support by the WTO, the Chapeau of Article 24.5 of GATT provides that "the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area", provided:

a. with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;
b. with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and
c. any interim agreement referred to in subparagraphs (*a*) and (*b*) shall include a plan and schedule for the formation of such a customs union or of such a

[1] See the Preamble of the Understanding on the Interpretation of Article 24 of the General Agreement on Tariffs and Trade 1994.

[2] *Id.*

free-trade area within a reasonable length of time.

In other words, the WTO Members may establish regional arrangements such as customs unions or free-trade areas insofar as the above requirements are satisfied. The most important obligation is that the duties and regulations applied by a constituent member of a regional arrangement may not "on the whole be higher or more restrictive than" those before the formation of the regional arrangement. The Understanding on the Interpretation of Article 24 of the GATT 1994 further provides for the evaluation of such duties and regulations. It states that the evaluation shall "be based upon an overall assessment of weighted average tariff rates and of customs duties collected",[3] i.e., "on import statistics for a previous representative period to be supplied by the customs union, on a tariff-line basis and in values and quantities, broken down by WTO country of origin".[4] Compared with the original GATT, the WTO mechanism provides more concrete and specific standards on the evaluation of the possible effects of a regional arrangement on other WTO Members.[5]

As discussed earlier, the establishment of a regional arrangement is for the liberalization of international trade. Article 24.8(a) of the GATT stipulates that a customs union must aim at deducting or eliminating duties or other restrictions on commerce among the constituent parties thereof. In addition, such "duties and other restrictive regulations of commerce 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". With regard to the relationship between the constituent members and third parities, Article 24.8(a)(ii) provides that "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". Article 24.8(b) also requires the constituent members to eliminate "the duties and other restrictive regulations of commerce" "on substantially all the trade between the constituent territories in products originating in such territories". A free-trade area is a more mature mode of economic integration than a customs union. The

[3] The Understanding on the Interpretation of Article 24 of the General Agreement on Tariffs and Trade 1994, Article 24.5.

[4] *Id*.

[5] For instance, in the process of assessment, the Secretariat of the WTO will compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. In cases where quantification and aggregation of the overall effects that other regulations of commerce may have are difficult, "the examination of individual measures, regulations, products covered and trade flows affected may be required". *Id*.

obligations of the contracting parties of free-trade areas to third parties are much more restrictive than "applying substantially the same duties and other restrictive regulations of commerce" as in the case of customs unions. The MFN enjoyed by the WTO Members, however, "shall not be affected by the formation of a customs union or of a free-trade area".[6] That is to say, whilst a constituent member's tariffs and other restrictions may be eliminated or reduced as a result of the formation of a regional arrangement, no reciprocity from other WTO Members may be required.[7]

Where a Member is affected by the formation of a regional arrangement, e.g., by increase of tariffs or other duties, it may resort to the procedures for eliminating the adverse effects such as making the regional arrangement in question to lower the customs duties or adjusting its own obligations towards the regional arrangement. The procedures for adjustment of obligations are stipulated in Article 28 of the GATT. The Understanding on the Interpretation of Article 24 of the GATT 1994 prescribes that such procedures should commence "before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union".[8] The parties concerned must conduct their negotiations in "good faith with a view to achieving mutually satisfactory compensatory adjustment". The basis of such negotiations should be the "reductions of duties on the same tariff line made by other constituents of the customs union upon its formation". The purpose is that in case the reductions of duties by other constituent members can compensate the loss suffered by the non-constituent member, no compensatory adjustment should be made by the latter. Nevertheless, "should such reductions not be sufficient to provide the necessary compensatory adjustment, the customs union would offer compensation, which may take the form of reductions of duties on other tariff lines. Such an offer shall be taken into consideration by the Members having negotiating rights in the binding being modified or withdrawn. Should the compensatory adjustment remain unacceptable, negotiations should be continued."[9] Where, despite all such efforts by the parties concerned, no agreement

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[6] Article 24.9(b) provides that "the procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8(*a*)(i) and paragraph 8(*b*)."

[7] The Understanding on the Interpretation of Article 24 of the General Agreement on Tariffs and Trade 1994 specifically states that the WTO Members benefiting from a reduction of duties consequent upon the formation of a regional arrangement have no obligation to provide compensatory adjustment to its constituents.

[8] The Understanding on the Interpretation of Article 24 of the General Agreement on Tariffs and Trade 1994, Article 24.6.

[9] *Id.*

compensatory adjustment can be reached, both sides may decide to modify or withdraw their respective concessions in accordance with Article 28 of the GATT.

Article 24.5(a) makes a reference to interim agreements for formation of customs unions or free trade areas. Once the concerned Members have decided to form a regional arrangement, they must notify the WTO of their intention together with such interim agreement.[10] Thereupon, other Members will have an opportunity to consider whether or not the said agreement is "likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one".[11] From this provision, it is clear that what other WTO Members can do is limited to making recommendations for amending the agreement. The effort by any Member to form a regional arrangement may therefore not be stopped. It is equally important that although other Members are not in a position to stop the establishment of a regional arrangement, the Members concerned "shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations".[12] Accordingly the Members which decide to form a regional arrangement, under the circumstance, may either accept the recommendations of other Members or not enforce the agreement. In this respect, the recommendations of the WTO Members have the binding force. In addition, "any substantial change in the plan or schedule" stipulated in the agreement must also be notified to the WTO which may trigger further consultation. So far, the WTO has not refused to adopt any agreement for creating regional arrangements.[13]

As a copy of Article 24 of the GATT, in addition to what was discussed above, Article 5 of the GATS allows the WTO Members to participate in any agreement to achieve full integration of the labour markets.[14] Therefore, under the GATS, Members may deviate from the MFN principle by integrating their labour markets. Article 7 of the GATS contains flexible provisions on recognizing qualifications of service suppliers of other Members. [15] In brief, where two or more

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[10] Article 24.7(a) of the GATT.

[11] Article 24.7(b) of the GATT.

[12] *Id.*

[13] See Appendix I to this chapter "Regional Trade Agreements Notified to the GATT/WTO and in Force" prepared by the Secretariat of the WTO.

[14] Any Member intending to participate in such agreement must assure that the agreement concerned must "exempts citizens of parties to the agreement from requirements concerning residency and work permits" and notify the Council for Trade in Services of the contents of the agreement.

[15] Article 7 of the GATS provides:

(1). For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the

Members established a regional arrangement that covers service trade, more favorable treatments regarding the reorganization of qualifications may be offered to service suppliers from the constituent members.

II. The Practice of GATT and WTO

In the era of the GATT, the customs unions and free-trade areas were set up in accordance with Article 24. As Article 24 contains only general principles, different views regarding its interpretation are unavoidable. This was also due to the lack of a compulsory dispute resolution mechanism of the GATT. At the same time, every regional arrangement involves complicated factors. As a result, to determine whether a given regional arrangement is consistent with the GATT is not merely a legal issue, international politics also have a role to play. For example, Article 24 (5) requires that "the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parities to a customs union shall not on the whole be higher or more restrictive" than those prior to the formation of such union. Yet, in practice, it happens that a contracting party needs to increase such duties upon formation of a customs union in order to align with the duties of other constituent members. Generally speaking, the main objective for establishing a customs union and free-trade area is to promote trade liberalization. It may be the case, however, that an economic integration within a customs union or a free-trade area is at the cost of putting the third parties in a disadvantageous competitive position. If so, does it constitute a violation of Article 24 of the GATT?[16]

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authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

(2). A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Member's territory should be recognized.

(3). A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

[16] That was the case when Spain and Portugal joined the EC. A related issue is that in the old GATT,

Before the establishment of the WTO, the GATT was faced with the issue of consistency of regional arrangements with Article 24. For instance, in 1960, seven countries which were not members of the EEC entered into an agreement known as the Stockholm Convention to establish the European Free Trade Association ("EFTA"). Under the Convention, the elimination of trade barriers by the member states of the EFTA was not applicable to agricultural trade. Consequently, a Working Party was set up to review the consistency of the EFTA with the GATT. [17]

The issues that the Working Party faced were: (1) whether the establishment of the European Free Trade Association was consistent with the requirement that a customs union or free trade area must eliminate duties or restrictive regulations on substantially all trade, and (2) whether the exclusion of agricultural trade was consistent with Article 24. The member states of the Stockholm Convention argued that when considering the consistency of a customs union or free trade area, the percentage of trade freed was not the only factor to be taken into account.

The Working Party found the Stockholm Convention to be in violation of the spirit of the GATT as its provisions on the elimination of duties were not applicable to agricultural trade. A total exclusion of agricultural trade from free trade made it unable to cover substantially all the trade. It also pointed out that "substantially all the trade" should include both the quantitative and qualitative aspects. The member states of the Stockholm Convention agreed with the quantitative and qualitative approach taken by the Working Party. They argued, however, that "insofar as it was relevant to consider the qualitative as well as the quantitative aspect, it would be appropriate to look at the consistency of the Convention with Article XXIV.8(b) from a broader point of view and to take account of the fact that the agricultural agreements did facilitate the expansion of trade in agricultural products even though some of the provisions did not require the elimination of the barriers to trade."[18] They also argued that 90% of the total trade between them was freed from barriers. Some members of the Working Party had great difficulties to accept the views of the member states of the Stockholm Convention. In their view, it was unacceptable to exclude a whole economic sector out of the free trade and as the entire agricultural trade among the members states was not freed, even if the freeing of 90% of their total trade could not satisfy the requirement of "substantially all the trade".[19] As the Working Party failed to reach any consensus on whether the Stockholm Convention was consistent with

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there was no explicit standards for assessing whether the formation of a trade union or free-trade area was inconsistent with Article 24.

[17] The Working Party Report was adopted 4 June 1960. GATT, 9th Supp. BISD 70 (1961).

[18] *Id*., para. 49.

[19] *Id*., para. 58.

Article 24 of the GATT, it recommended the CONTRACTING PARTIES to postpone any action on the Convention and to include the question on the agenda of its 17th session. This was to give the GATT contracting parties time to reflect on the points discussed by the Working Party including whether the member states of the Stockholm Convention should seek for waiver according to Article 24.10 of the GATT.

The GATT had also examined the relationship among the contracting parties of the Yaounde Convention[20] under which 18 African countries established free trade areas with the EEC members individually.[21] The Yaounde Convention provided that the EEC should not impose any restrictions on the imports from the African members, while the latter might, according to their needs of economic development or industrialization or for the sake of increasing fiscal income, levy duties or impose other restrictions on the imports from the former. Then, does the arrangement violate Article 24 of the GATT? A member of the Working Party said that "the fact that the various free trade areas were institutionally linked together and that they were controlled from outside in the sense that each of them were subject to the influence of the 17 others gave rise to certain doubts about their legal identify which was a prerequisite" under Article 24 of the GATT.[22] The other issue was that the provisions permitting the non-EEC member parties to the Convention to introduce customs duties and other restrictions would result in so many exceptions to the requirement of Article 24 that a free trade area should cover "substantially all the trade". The representatives of the parties to the Yaounde Convention argued that the non-EEC member contracting parties had just started the industrialization and their production would aim at the local market rather than the foreign markets. With regard to the non-reciprocity issue, the representatives argued that Article 24 did not require a free trade area to be based on reciprocity; it only required elimination of trade barriers. In addition, Part IV of the GATT did not aim at modifying Article 24 in any respect, the representatives continued, and as a result, Article 24 should not be interpreted as to prevent the establishment of free trade areas between countries at different levels of economic development.

In June 1982, the United States requested the GATT to review the favourable treatment granted by the EC to the oranges from the Mediterranean countries.[23] The

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[20] The full title of the Yaounde Convention is European Economic Community – Association Agreements with African and Malagasy States and Overseas Countries and Territories, which was replaced by the Lome Convention entered into between the European Community and 46 African, Caribbean and Pacific Island (ACP) countries.

[21] The Working Party Report was adopted on 4 April 1966. See GATT, 14th Supp. BISD 100-106 (1966).

[22] *Id*., para. 4.

[23] GATT Activities, 1983, P. 54

United States stated that the EC measures had an adverse effect on its exports and requested for establishing a Panel. The EC argued that granting of more favourable treatment to the imports from the Mediterranean countries was in accordance with its contracting obligations which were based on Article 24 of the GATT on establishment of free trade areas. It also argued that, although the contracting parties to the GATT could raise inquiries or make suggestions on whether a given agreement had satisfied the requirements for setting up a free-trade area, no contracting parties had ever raised any questions to the EC according to the Article.

Since the establishment of the WTO, the most well-known interpretation with regard to regional arrangement is the case of Turkey-Restrictions on Imports of Textile and Clothing Products.[24] The facts of the case are as follows:

> On 12 September 1963, Turkey and the Council and member States of the EEC signed the Ankara Agreement, by which Turkey entered into an Association with the EEC. An *Additional Protocol* and *Interim Agreement* were singed in 1970 and 1971 respectively which provided for an extended transitional period running over 22 years to establish a customs union. According to the agreements, the EC were to abolish all duties and quantitative restrictions on imports of industrial products from Turkey as from September 1971, while because of the disparity in levels of development between the parties, Turkey was to eliminate its duties gradually over the 22-year transitional period.
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> Supplementary Protocols to the *Ankara Agreement* (and *Interim Agreement*) were also concluded in 1973 between Turkey and the EC which provided that starting from 1973, Turkey would embark on the gradual alignment of its customs duties to the EC Common Customs Tariff ("CCT"). The effort made by Turkey and the EC to establish a customs union was interrupted during the oil shocks of 1973 and 1979, however.
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> In 1988, Turkey and the EC resumed the negotiation. On 6 March 1995, the Association Council adopted Decision 1/95 to set out the modalities for the final phase of the Association between Turkey and the EC. Article 12(2) of the Decision provided that according to Article 24 of GATT, since the enforcement of the Decision, Turkey should apply substantially the same commercial policy as those of the EC in textile area including the textile and clothing products agreement or arrangement. Later on, the EC submitted the Decision 1/95 to the

[24] Turkey-Restrictions on Imports of Textile and Clothing Products-Report of the Panel, WT/DS34/R (hereinafter “Turkey – Textile, Panel Report”).

European Parliament for approval.

On 22 December 1995, the Association Council formally adopted Decision 1/95. Decision 2/95 was also adopted which defined the coverage of products for temporary exception from Turkey's application of the CCT in respect of third countries.

On 29 January 1996, the Council for Trade in Goods passed the *Terms of Reference to Review the Customs Union between Turkey and the European Community* which was the standard terms of reference of the Committee on Regional Trade Agreements.

On 13 February 1996, Decisions of 1/95 and 2/95 of the Turkey-EC Association Council were distributed by the Goods Council to each WTO Member. On 30 October 1996, Turkey and the EC submitted preliminary materials about the final stage of the formation of the Customs Union according to the *Standard Format for Information on Regional Trade Agreements*. On 24 November 1997, they submitted detailed materials about quantitative restrictions imposed by Turkey on importing textile and clothing products from other WTO Members upon the formation of the Customs Union. Before the Panel examined the disputes between India and Turkey, the Committee on Regional Trade Agreements had reviewed the materials provided by Turkey-EC Customs Union twice.

In order to implement Decisions 1/95 and 2/95 of the Association Council, since 1 January 1996, Turkey started to apply quantitative restrictions on 19 categories of textile and clothing products exported from India which claimed that those quantitative restrictive measures violated the GATT and the *Agreement on Textile and Clothing*. Accordingly, it requested for consultation with Turkey on 21 March 1996. As they did not reach any agreement, on 2 February 1998, India requested the DSB to establish a Panel to examine the matter. The Panel was established on 13 March 1998 and released its Report on 31 May 1999.

The main legal issue of the Turkey-Textile was whether the import restrictions imposed by Turkey violated Article 11 and 13 of the GATT. [25] Turkey invoked Article 24 as its defense. India argued that according to the practice of the

[25] India also claimed that the measures taken by Turkey were inconsistent with Article 2.4 of the Agreement on Textile and Clothing, because they were non-permissible “new barriers” thereunder. Turkey however did not address this issue.

WTO, the party which invoked an exceptional provision should bear the burden to prove that the conditions for invoking the exception were met.[26] It also maintained that the doubt was not cast on whether the Turkey-EC customs union had satisfied the requirements of Article 24 but whether it was authorized to impose or increase, on the occasion of the formation of the customs union, restrictive measures inconsistent with Article 11 of the GATT.[27]

Turkey argued that in the context of Article 24.4 and 24.5, the provisions of the GATT did not prevent the imposition of a regulation of commerce at the institution of a customs union, as long as on the whole it was not more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of the customs union, or else Article 24 would become meaningless. [28] Another argument of Turkey was that Article 24, being part of Part III of the GATT, was different from those substantial provisions, including Part II of the GATT which contained exceptions. Therefore, Article 24 should not be regarded as an exception. [29]

With regard to the imposition of restrictions on import from India, Turkey claimed that its measures were based on the agreement with the EC for establishing the Customs Union, and that the EC also imposed restrictions on 19 categories of textile and clothing from India, thus, the measures were of the Turkey-EC Customs Union. The Panel noted, however, that the import restrictions of the EC were authorized by the EC Council, whilst the Turkey-EC customs union agreement did not have any legislative body. Although the *Ankara Agreement* provided that the Association Council should have the power to take decisions, as there was no compulsory implementing body, Turkey and the EC acted independently.[30] In addition, the Panel found that the rights and obligations under the WTO could only be exercised and assumed by its Members; as the Turkey-EC customs union was not a WTO Member, the Turkey's import restrictions should be regarded as its own measures. [31]Finally, the Panel concluded that the quantitative restrictions of Turkey were inconsistent with the provisions of Articles 11 and 13 of the GATT on quantitative restrictions and non-discriminative application of quantitative restrictions respectively, and consequently inconsistent with those of Article 2.4 of the *Agreement on Textile and Clothing* which prohibited Members from introducing new trade

[26] Turkey – Textile, Panel Report, para. 6.18.

[27] Turkey – Textile, Panel Report, para. 6.30.

[28] Turkey – Textile, Panel Report, para. 6.33.

[29] Turkey – Textile, Panel Report, para. 6.37.

[30] Turkey – Textile, Panel Report, para. 9.40.

[31] Turkey – Textile, Panel Report, para. 9.41.

barriers. On 26 July 1999, Turkey appealed Panel Report to the Appellate Body. The Appellate Body Report was publicized on 22 October 1999. [32]

The Appellate Body pointed out that whether the Turkey's defence was justified depended on the interpretation of Article 24.5. For that, the Appellate Body considered it was important to analyze the chapeau of paragraph 5 of Article 24 under which the WTO Members must not be prevented from establishing customs unions. Therefore, under certain circumstances, it was justified to adopt measures inconsistent with certain other provisions of the GATT for the sake of the formation of customs union which could be invoked as a possible "defence" to claims of violation of the GATT provisions. In order to invoke Article 24.5, two conditions must be met: (1) the measure at issue was introduced upon the formation of a customs union, and (2) the formation of that customs union would be prevented if it were not allowed to introduce the measure.[33] The second condition is the so-called "necessity" standard. According to this standard, only when a measure is indispensable for the formation of a regional arrangement, could it be used as a defense. The purpose is to balance the internal and external interests of the regional arrangement.

One of the conditions for setting up customs unions is that "duties and other restrictive regulations of commerce 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". The Appellate Body found that although neither the Contracting Parties of the former GATT nor the WTO Members had had any agreement on the interpretation of the term "substantially all the trade", it was clear that the term did not refer to all the trade but "something considerably more than merely some of the trade".[34] In other words, in the view of the Appellate Body, under sub-paragraph 8(a)(1), the constituent members of a customs union may enjoy some flexibility in liberalizing internal trade, provided that the restrictive regulations are otherwise permitted under Articles 11 through 15 and under Article 20 of the GATT. As for the third parties, the constituent members of a customs union are "required to apply a common external trade regime, relating to both duties and other regulations of commerce".[35] This however, does not mean that each constituent member of a customs union must adopt and enforce the "same duties and other regulations of commerce as those of other members with respect to trade with

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[32] Turkey-Restrictions on Imports of Textile and Clothing Products-Report of the Appellate Body, WT/DS34/AB/R (hereinafter "Turkey-Textile, Appellate Body Report").

[33] Turkey-Textile, Appellate Body Report, p. 16-17.

[34] *Id.*, p. 18.

[35] *Id.*, p. 19.

third countries."[36] They just need to apply substantially the same duties and other regulations.[37] The Appellate Body disagreed with the Panel on the latter's view that "comparable trade regulations having similar effects with respect to the trade with third countries, would generally meet the qualitative dimension of the requirements of sub-paragraph 8(a)(ii)". [38] In its view, as the word "substantially" qualifies the words "the same", "something closely approximating sameness", a higher degree of "sameness" than "comparable trade regulations having similar effects" is required.[39]

Article 24.5(a) requires that the duties and other regulations on commerce applied by the constituent members after the formation of the customs union must not on the whole be stricter than the general incidence of the duties applied by each of the constituent members before the formation of the customs union. With respect to this issue, paragraph 2 of the *Understanding on Article 24* of the GATT provides that the evaluation of the general incidence of the duties "shall … be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union."[40] The Appellate Body also pointed out that as the chapeau of Article 24.5 began with the word "accordingly", it must be read together with Article 24.4 for it immediately preceded the chapeau. The purpose of Article 24.4 is to facilitate trade between the constituent members of a customs union, whilst at the same time not to raise barriers to the trade with third parties. The *Understanding on Article 24* on the one hand reaffirms the purpose of Article 24.5 and on the other hand, requires the constituent members "to the greatest possible extent" not to create adverse affects on their trade with other Members. In other words, the interpretation of Article 24 should balance the need for trade liberalization within a regional arrangement and its possible adverse effect on the non-constituent countries.

Having analyzed Article 24.5, the Appellate Body held that if Turkey wished to invoke the provision as defence, it must prove that it had satisfied the two requirements discussed above. Also whether the second requirement is met may depend on the satisfaction of the first one. Regarding the first requirement that is "the party claiming the benefit of this defence must demonstrate that the measure at issue

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[36] *Id.*

[37] In this respect, the Appellate Body was in complete agreement with the Panel that the ordinary meaning of the term "substantially" in the context of sub-paragraph 8(a) referred to both qualitative and quantitative components, but more emphasis should be put on the quantitative aspects. See Turkey-Textile, Appellate Body Report, p. 19.

[38] Turkey-Textile, Appellate Body Report, p. 20.

[39] *Id.*, p. 19-20.

[40] *Id.*, p. 21.

is introduced upon the formation of a customs union that fully meets the requirements"[41] for such a customs union under Article 24, the Panel assumed that the regional arrangement established between Turkey and the EU was a customs union and the measures concerned were introduced upon the formation of it. Since neither party appealed on this issue, there was no need for the Appellate Body to make a finding.

As to the second requirement, the Appellate Body found that Turkey had not fulfilled the second conditions. Turkey asserted that without it having adopted the restrictive measures on the imports from India, the EC would have "excluded these products from free trade within the Turkey/EC customs union" and in which case the customs union between Turkey and EC would have been prevented from being established. Under the circumstance, in Turkey's view, the second condition was met. The Appellate Body pointed out however that Turkey could have applied the rules of origin to achieve the same purpose, by which the textile and clothing products originating in Turkey could still enjoy free access to the EC but without creating adverse effects on the trade with third countries such as India. This conclusion was also in response to Turkey's assertion that if it were not allowed to impose the restrictions on textile and clothing imports, 40 percent of its total exports to the EC would be excluded from the customs union which was not consistent with the requirements of Article 24.8(a)(i) of the GATT that a customs union must involve "substantially all the trade".

Although the Appellate Body and the Panel analyzed the issues from different approaches, the result was the same. Yet, according to the Appellate Body, the Panel should have examined the chapeau of Article 24.5 before dealing with Article 24.5(a) and Article 24.8(a). It believed that only by doing so, would Article 24 be understood and implemented properly.

Another issue Turkey-Textile was interpretation of "other restrictive regulations of commerce" and "other regulations of commerce". Both Article 24.5 and Article 24.8 use the term "other regulations of commerce" in respect of the relationship between the participants of a regional arrangement and third parties. At the same time, the term "other restrictive regulations of commerce" appears in Article 24.8(a)(i) regarding the internal economic integration of a regional arrangement. Does the two terms have different meanings? The Panel of the Turkey-Textile found that "While there is no agreed definition between Members as to the scope of this concept of 'other regulations of commerce', for our purposes, it is clear that this concept includes quantitative restrictions. More broadly, the ordinary meaning of the terms 'other regulations of commerce' could be understood to include any regulation having

[41] *Id.*, p. 23.

an impact on trade (such as measures in the fields covered by WTO rules, e.g. sanitary and phytosanitary, customs valuation, anti-dumping, technical barriers to trade; as well as any other trade-related domestic regulation, e.g. environmental standards, export credit schemes). Given the dynamic nature of regional trade agreements, we consider that this is an evolving concept."[42] Could "other regulations of commerce" have restrictive effects on trade? If so, why does Article 24.8 which deals with the internal relations of customs unions and free trade areas use the term "other restrictive regulations of commerce"? It seems that Article 24.5 which is concerned with the external relations of a customs union or a free trade area encourages the constituent members to adopt unified rules on trade with non-members, whilst Article 24.8 requires the customs unions and free trade areas to abolish the restrictive regulations and measures among the constituent members. At the same time, "Other regulations of commerce" may also have restrictive effects on trade with non-members. Otherwise there would be no need for Article 24.5 to stipulate "shall not be higher or more restrictive" in respect of the trade relationship between constituent members of a regional arrangement and third parties. Therefore, without doubt, "other regulations of commerce" should include "other restrictive regulations of commerce". It also means that the constituent members of a regional arrangement may, after the formation of the regional arrangement, maintain regulations having a restrictive effect on trade, such as sanitary and phytosanitary measures and technical trade barriers. As that is the case, the implementation of Article 24, being an exception to the MFN principle, may involve the interpretation of other agreements under the WTO.

Where a regional arrangement authorizes its constituent members to adopt laws, rules or standards inconsistent with the agreements of the WTO, should such agreements or Article 24 of the GATT be applied? It is undeniable that the WTO case law tends to adhere to the principle of interpreting different agreements in a non-conflicting manner, unless a measure is clearly prohibited by one agreement but explicitly authorized by another.[43] Such interpreting principle is based on the single undertaking under the WTO, i.e., every Member must give effect to all the agreements of the WTO.[44] In other words, all the Members have the duty to carry out all the obligations and may not use one obligation to offset an obligation or use one

[42] Turkey-Textile, Panel Report, p. 9.120

[43] The DSB has reconfirmed this principle in many cases, e.g. the EU Bananas, Canadian Periodicals, etc.

[44] This principle has also been restated in many cases such as the Korean Milk Products Safeguard Measures.

agreement to offset the effect of another agreement. This however may not be able to resolve all the potential conflicts? For example, Article 2.3 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* provides that "Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade." Suppose a regional arrangement imposes unreasonable discriminative measures on the products from third parties, should the formation of the regional arrangement be considered inconsistent with the WTO Agreement? Article 4 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* authorizes the WTO Members "to enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures". [45] Article 2.6 of the *Agreement on Technical Barriers to Trade* provides that "with a view to harmonizing technical regulations on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations"; whilst Article 2.2 provides that "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade". The coordination of the implementation of the various agreements under the WTO is a urgent issue facing the multilateral organization.

For the purpose of implementing the WTO Agreement, harmonization of the various agreements such as Article 24 of the GATT and other Multilateral Trade Agreements is absolutely necessary. Yet what standards and tests should be applied? Insofar as regional arrangements are concerned, no matter which agreement or provision should prevail, it is important that the restrictive measures are introduced upon the formation of a regional arrangement and that they have satisfied the "necessity" requirement. In addition, where a measure has adverse effect on other Members, even the "necessity" requirement is met, alternate measures must be considered and only after the determination of non-availability of any alternative measure, would the measure in question be enforced. In other words, the WTO Members have an obligation to ensure that whatever measures they may need to introduce as a result of establishing a regional arrangement, they must the ones having

[45] Taking into consideration that phytosanitary and sanitary measures have become a form of non-tariff barriers, the WTO Members may, by establishing regional arrangements, give the constituent members more preferential treatment and effectively evade their obligations under the WTO.

least adverse impact on other Members. This is out of the consideration of balancing the interests of all the parties concerned.

Very often, the formation of a regional arrangement is not as simple as tariff reduction. For instance, country A and country B have reached an agreement to establish a regional arrangement which requires the uniformity of regulations on commerce. Where country A has higher quarantine and technical standards than those of country B, which has helped its exports and curbed imports, after the formation of the regional arrangement, country B adopts the standards of country A, which then become the standards of the regional arrangement. Would this kind of arrangement violate the "not higher or more restrictive" provision under Article 24.5 of the GATT? As far as country B is concerned, with raising the quarantine and technical standards, more restrictive requirements compared with those existing before have been introduced which will certainly have adverse effects on its imports from third parties. On its surface, this may be considered as inconsistent with Article 24 of the GATT. Country B would have the right to raise quarantine and technical standards unilaterally as an individual WTO Member. Yet, by joining or forming a regional arrangement, country B has lost its right. Is this the intention of the grandfathers of the WTO? Or as an alternative, should the WTO Members be told that they should raise the quarantine, technical, product, safety, etc. standards before joining a regional arrangement if they have to do so after becoming part of the regional arrangement? These issues are unresolved but cannot be avoided. Perhaps this again demonstrates the importance of the DSB.

III. Characteristics of Contemporary Regional Arrangements

After the GATT came into being, many regional arrangements, such as customs unions and free-trade areas, were established. The EEC, ASEAN and NAFTA are the important ones among them. One of the characteristics of regional arrangements is to provide more favourable treatment to the constituent members. As such, the establishment of regional arrangements may not be in compliance with the economic theory of comparative advantage. It also creates uncertainty to the multilateral trade system of the WTO. Economists hold different views on the issue: some considering that regional arrangements lead to trade creation or expansion of trade by efficient producers within their respective regional arrangement, whilst others regarding the consequence of regional arrangement as trade diversion, i.e., shifting trade with efficient producers from outside the arrangement to the inefficient suppliers of within the arrangement.[46] Regardless what the economists think about the regional

[46] See T. Scitovsky, *Economic Theory and Western European Integration*, 1958, B. Balassa, *The Theory*

arrangements, the number of such arrangements as well as the volume of intra-arrangement trade have grown at astonishing pace. According to a survey conducted by the GATT, although the volume of international trade in the period of 1955-1974 (taking into consideration of the effect of inflation) had risen, the proportion of imported goods enjoying the MFN treatment had declined.[47] The report showed that, the volume of trade increased under the preferential tariffs arrangement was much higher than the increase in the total volume of world trade. During the said period, the EC imports grew at a rapid pace while imports from non-EC Member countries dropped significantly. For example, in the 15-year period from 1955 to 1970, the share of the US exports in the total volume of the EC imports dropped from 11.1% to 9.5%. In other words, owing to the preferential arrangement among the EC countries, the influence of the United States as a trading partner of the EC diminished. It also forcefully explained the reason why the United States expressed such keen concern on the EC membership application of Portugal and Spain in the mid 1980s.[48] At that time, in view of the continued expansion of the EC, the official position of the United States was supportive but in fact it was very worried because after Spain and Portugal became EC Members, other EC Members (the competitors of the United States) would have competitive advantages, in turn the US export to Portugal and Spain amounting to US$3.45 billion might go down.[49] Moreover, as the EC was implementing the common agricultural policy and common tariff policy, the United States had to pay higher tariffs to Spain and Portugal. Originally, the United States paid 11% tariffs on its exports to Spain and Portugal. After their entry into the EC, in accordance with the common tariff policy, the tariffs of the two countries rose to 20-90%.[50] The United States suffered a loss of US$0.4 billion as a result. As a matter of fact, both the United States and officials from the EC common market said that the expansion of the EC would increase the tariffs of the EC; the United States then had to pay US$3 billion tariffs additionally.[51]

Why then does the GATT still treat it as an exception to the MFN principle

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of Economic Integration, 1961, J. Vanek, "General Equilibrium of International Discrimination: The Case of Customs Unions", *Harvard Economic Studies*, Vol. CXXIII (1965).

[47] See the Report of the US Customs Department to the Finance Committee and International Trade Committee of the House of Representatives, Collection of Documents of the Customs Department, Vol 665 (1974), p. 110.

[48] Spain and Portugal became EC Members on 1 January 1986.

[49] See Asian Wall Street Journal, 17 April 1985, p. 4.

[50] *Id*.

[51] *Id*. The expansion of the EC membership increased their subsidies to agriculture while the deficit of the EC definitely forced them to rely on raising import tariffs to offset the loss.

even though the regional trade arrangements had such an adverse effect on non-members? It is generally believed that any increase in free trade areas or expansion of tariff unions will ultimately lead to international trade liberalization which is consistent with the fundamental principles and objectives of the GATT. It is submitted that while recognizing the positive contribution of regional arrangements to international trade liberalization, due attention should be paid to their accompanied adverse impact on world trade because all the free trade areas and tariff unions aim at providing more privileges to their members. Suppose Country A and Country B belong to a free trade area, the formation of the free trade area between them only means the elimination or reduction of the tariffs or other trade restrictions between them. Although the free trade area is beneficial to Country A and Country B in trade and commerce, it also affects the transactions between these two countries with third countries. In this respect, free trade area is not only contrary to the general MFN principle but may also, to a certain extent, affect the development and liberalization of the world trade. Some countries also use the establishment of regional arrangements as a means to promote multilateral trade negotiations. In early 1985, the United States declared that if a new round of multilateral trade negotiation could not begin by 1986, it would form a free trade area with Canada and to sign bilateral trade agreements with other countries. Arthur Dunkel, the former GATT Director-General of GATT, said that he was surprised at the establishment of a free trade area between the United States and Canada because such an act might draw the whole world into repeating the mistakes of the 1930s.[52] He said that during the Great Depression in the 1930s, the whole world supported the policy of protectionism, bilateral trade agreements and discriminatory privileges. Exclusionary bilateral treaty negotiations were prejudicial to the interests of the international community. They only served as a model for other countries and would result in politicization of trade relations.[53] This is so because the discriminatory treatment of regional arrangements may face the retaliatory actions of other countries which may ultimately lead to a global trade war. After the failure of Cancun Ministerial Conference was declared, the United States again threatened to resort to bilateral approaches. Its trade representative Robert B. Zoellick openly stated that the United States has a long list of countries which were interested in bilateral arrangements.[54]

After the establishment of the WTO, the formation of regional arrangements has not stopped or slowed down. There is every sign that more and more regional

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[52] See Asian Wall Street Journal, 21 May 1985, p2.

[53] *Id.*

[54] This Authour, as Chairman of the Hong Kong WTO Research Institute, attended the Cancun Ministerial Conference. When Ambassador Zoellick made the statement, this Authour was there.

arrangements may be created continuously. As Appendix I of this chapter shows, prior to the establishment of the WTO, there were 71 regional arrangements including customs unions, free-trade areas and free-trade agreements notified to the GATT. On average, about 1.5 regional arrangements were reported to the GATT per year during its 47 year history. By May 2004, less than 10 years after the creation of the WTO, 143 new regional arrangements came into effect, about 15 per year.[55] Among them, 4 are customs unions, 4 are preferential arrangements, 27 are service agreements and 108 are free-trade agreements. With 215 regional arrangements notified to the WTO by May 2004, it is likely that the total number of regional arrangement will continue to grow, although it may not reach 320 by 2007.[56]

Geographically, the EU is situated in the most important position of Europe. The EU's eastward and southward expansion will make all the peripheral countries absorbed. The most important regional arrangement of the western globe is the NAFTA. As to be discussed later, it is only a matter of time before the NAFTA expands southward to cover the entire America.

Asia is the region where the development of regional arrangements is slow. The reason for it is multifold. In the first place, most of the Asian economies are developing countries. Secondly, these countries have diversified cultures and traditions as well as historical difficulties. Although the Asia-Pacific Economic Cooperation (APEC) has been gradually developed to cover harmonization of trade and investment policy of the member countries, it still has a long way to go before becoming a regional arrangement in true sense. The open membership itself makes it very difficult to act in a coordinated way.

Several regional arrangements have also been established in Africa and Central Asia. The agreement on free-trade and customs union entered into between Russia, Kirghizia, White Russia, Kazakstan and Tajikistan is most prominent in Central Asia. Another one which was notified to the WTO by Georgia in 2001 involves Armenia, Azerbaijian , Kazakstan, Turkumenistan, Ukraine and Russia. The African regional arrangements include West African Economic and Monetary Union, Central African Economic and Monetary Community, Common Market for Eastern and Southern Africa, South African Development Community and South African Customs Union. The African Economic Community remains the largest regional arrangement in Africa. It has proposed to establish the African Economic and

[55] See Appendix I of this chapter.

[56] Regional Trade Agreements Section of the WTO Secretariat, "Regional Trade Integration in the Transitional Period ", Paper Submitted to the Seminar on Regionalism and the WTO held by the WTO Secretariat on 28 April 2002. It was estimated by the Regional Trade Agreements Section of the WTO Secretariat the regional arrangements would actually amount to 320 by 2007.

Monetary Union and the African Union in 2028.[57] Another development in Africa is the transcontinental regional arrangements with Europe through economic partnership agreements.

A characteristic of regional arrangements is that most of them cover investment, competition, standards and trade facilitations, the so-called Singapore issues.[58] The more integrated a regional arrangement is, the closer the cooperation among the parties is in relation to the above areas. The EU which has the features of quasi-federation is certainly an apotheosis in this aspect. The EU has specific regulations on movement of labour, capital and services, competition law and policy, trade related antitrust law, cooperation between the antitrust organizations and unified antitrust rules.[59] The NAFTA also has provisions on investment[60] providing for national treatment to foreign investors and MFN in aspects of setting up and acquiring enterprises, increasing investment, investment management and asset disposals. Such provisions can also be found in the regional arrangements established between the NAFTA members and other countries. For instance, both the Canada-Chile Free-Trade Agreement[61] and Mexico-Singapore Free-Trade Agreement[62] contain similar provisions. In addition, the Andes Pact countries have also harmonized their laws and policies on foreign direct investment including setting up and acquisition of business enterprises.[63] The Basic Agreement on the Association of South East Asian Nations (ASEAN) Industrial Cooperation Scheme reached by the ASEAN is also to encourage

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[57] The African Economic Community with 53 member countries was established in July 2002 and is another important regional arrangement by sovereign states after the EU. See "Three Completing Relations, Coexistence of Challenges and Opportunities, Discussion on International Condition by General Xiong Guangkai ", *Zhong Guo Ren*, January 2003, p. 55.

[58] Singapore issues are those on the agenda of the WTO Ministerial Conference held in Singapore in 1997. They include international investment, government procurement, transparency and competition law and policy, which were also issues of negotiation at the Cancun Ministerial Conference in 2003. Due to serious differences of the negotiating parties, no agreement was reached.

[59] For an analysis on the integration of regional agreements, see Dean Spinanger, "RTAs and Contingent Protection: Are Antidumping Measures (ADMs) Really an Issue? ", Paper submitted to the WTO Regional Seminar on Regionalism and the Multilateral Trading System held on 26 April 2002.

[60] For the provisions on investment of NAFTA, see Chapter 11. There have been several disputes concerning chapter 11 in the last few years, most of which are related to the treatment of foreign investment and foreign investors.

[61] The Free-trade Agreement between Canada and Chile was singed in 1997.

[62] The Free-trade Agreement between Mexico and Singapore was singed in 2000.

[63] For details, see Uniform Code on Andean Multinational Enterprises which was based on the Decision 292 adopted by the Commission of the Cartegena Agreement.

mutual investment among the member countries.

Many regional arrangements have brought the antidumping laws and policies of the member countries under the umbrella of the unified competition law. The reason is that antidumping laws have the effect of protecting domestic enterprises and discriminating against foreign investors, whilst competition laws are to protect competition without discrimination against foreign investors. In addition, antidumping lawsuits may only be brought by the local administrative authorities and domestic industries. In contrast, actions concerning competition law may be initiated by both enterprises and individuals. Moreover, as far as competition law is concerned, there are standardized review authorities[64] and injury standards and tests for malicious price adjustment. [65] In a word, the competition law can be managed in accordance with the rule of law system.

The trend is that more and more regional arrangements coordinate their competition laws by incorporating antidumping regulations. Under some regional arrangements, members have the obligation to adopt necessary measures for unifying their laws and policies; still others require their members to harmonize their laws and policies. The NAFTA belongs to the latter, while the EU belongs to the former. Specific provisions on competition laws are also found in the free-trade agreements between the EU and Mediterranean countries. The Australia-New Zealand Closer Economic Relations Trade Agreement provides that neither country will initiate antidumping lawsuits against the imports from the other party. At the same time, it stipulates that judges of one party will set in the court of another to hear cases concerning competition law and policies. The Japan-Singapore Economic Partnership Agreement encourages the parties to extend their cooperation to competition law. Such flexible arrangement caters to Singapore's lack of competition law. At the moment, apart from the Canada-Chile Free-Trade Area Agreement, the Mainland-Hong Kong Closer Economic Partnership Arrangement is the only regional arrangement which provides for non-application of antidumping law without incorporating such issues into the competition law.

The cooperation within a regional arrangement in the aspects of trade facilitation is not uncommon. The basic models of cooperation in trade facilitation include enhancing the transparency of laws and regulations and adhering strictly to due process. Some regional arrangements, such as the ASEAN, require their members to publicize laws and regulations and set up inquiry points for foreign investors. Some others provide that the members should make their laws and regulations accessible in

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[64] Since the court must follow the formal procedures when hearing a case and the trails are conducted openly, it always carry more authority than other organizations.

[65] See Spinanger, *op cit*, table 8.

the internet.[66] Provisions on harmonization of procedures, standards and reduction of unnecessary trade barriers are also part of trade facilitation.

Another characteristic of the contemporary regional arrangements is the parallel development of multilateral and bilateral agreements. At the same time, bilateral arrangements may involve different geographical regions with overlapping memberships. For example, as the negotiation to establish China-ASEAN free-trade area is going on, some of the negotiating parties negotiate on bilateral free-trade agreements, including the Australia-New Zealand Closer Economic Relations Trade Agreement, New Zealand-Hong Kong Closer Economic Partnership Agreement, United States-Singapore Free-Trade Area Arrangement, Japan-Singapore Free-Trade Agreement and Mainland-Hong Kong Closer Economic Partnership Arrangement, etc.

Having entered the new century, some regional arrangements with participation of developing countries manage to offer, on unilateral basis, favourable treatment to the developing country members by invoking the WTO exemption clauses. Such arrangements include United States-Caribbean Basin Economic Recovery Act, the CARIBCAN entered into by Canada and 18 Caribbean countries, the Fourth Lome Convention between EU and 77 African countries and the agreements singed by Caribbean and Asian Pacific countries. However, the latest trend is that all the contemporary regional arrangements are based on the principle or reciprocity regardless whether the constituent members are developed or developing countries. In this aspect, the regional arrangements between the EU and African, the Mediterranean and Asia-Pacific countries are typical examples.

IV. Prospect of Regional Arrangements

As early as 1994, the leaders of American countries started the discussion on establishing the American free trade area. On 20 November 2003, 34 American countries including the United States, Canada and Brazil reviewed the proposal on American Free-Trade Area ("AFTA") by the United States and Brazil. It was reported that the participants reached consensus on AFTA. The signing of the CAFTA-DR agreement is an important achievement for the final goal of AFTA.[67]

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[66] The American Free-trade Agreement presently under negotiation contains such provisions.

[67] The CAFTA-DR agreement was signed by the United States, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua on 2 August 2005. On the day of signing the agreement, the US Trade Representative, Bob Portman, said the agreement had created "an alliance for fair trade and [would] promote security and stability in our region. This [was] a win-win agreement that benefit[ed] American workers with greater access to important markets, and our trading partners with

While the United States moving southward, the EU is expanding eastward. The 2004 increase of membership from 15 to 25 is only part of the huge enterprise. The increase in EU's membership may result in decrease of the total number of regional arrangements. The total number of constituent members of such arrangements will increase as well. At the same time, this will also enhance the economic integration in Europe. In the end, the whole Mediterranean region may be integrated into the EU. One may wonder why the EU's expansion schedule coincides with the United States' southward march. They also have something else in common, i.e., both involving resources and markets.

The Asia-Pacific region is also a focus of regional arrangements, as it has huge potential for economic development. As early as the end of last century, many thought 21st century would be the century of Asia. The breakout of the Asian financial crisis quenched the hope of many. The remarkable economic performance of China, however, re-lighted up the aspiration of fast development in Asia-Pacific region. It also speeded up the economic integration in the region. In the ASEAN summit in 2001 in Brunei, Zhu Rongji, then premier of China announced the plan to establish the China-ASEAN Free Trade Area by 2020, which will be the largest free trade area in the world.[68] At the High-Level Policy Seminar on FDI in Services and Competitiveness in Asia, a number of delegates from ASEAN countries called for accelerating the steps for establishing China-ASEAN Free Trade Area and to push forward the date of complete free trade to 2010.[69] The proposal won general support of the participants as many believed that the fast economic development would benefit the Asia-Pacific region.[70] In 2004, Chinese Premier Wen Jiabao and the leaders of ASEAN countries signed "Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China"

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new economic opportunities". See www.ustr.gov/Document_Library/Press_Releases/2005/August.

[68] This summit included the 10 ASEAN countries(Indonesia, Malaysia, Burma, The Philippines, Singapore, Thailand, Brunei, Vietnam, Laos and Cambodia), China, Japan and India. At first, Korea was also positive about the summit. In the end, India replaced Korea at the summit.

[69] The High-Level Policy Seminar on FDI in Services and Competitiveness in Asia organized by the United Nations Conference on Trade and Development and Association of South East Asian Nations at Kyoto, Japan, on 2-4 March 2004. Apart from the officials from ASEAN, Japan and Indian, participants to the seminar also included representatives from the UNCATD and the World Bank. This author was honored to be invited to deliver a talk at the seminar. Some ASEAN delegates proposed to accelerate the process for the China-ASEAN Free Trade Area.

[70] China now is the largest host for foreign investment within the region and has attracted more than two thirds of foreign direct investment. See "The Economic and Political Meanings of the Proposed China-ASEAN Free Trade Area", *China Times*, (Taiwan), 5 November 2001.

in Vientiane, capital of Laos. The Agreement stipulates that starting from 1 July 2005, China and ASEAN will gradually reduce or eliminate tariffs of 7,000 products. By 2010, China and ASEAN members such as Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand should mutually reduce tariff of most products to zero, while for Burma, Cambodia, Laos and Vietnam, it should be 2015. In other words, by 2010. No matter how other people view the incentives and background for the China-ASEAN Free Trade Area, an undeniable fact is that the establishment of the free trade area is already in process and once established, may expand to the East Asia or even South Asia. This is probably the reason why the world eyes Asia with much interest.

With more and more attention being attracted from the rest of the world, Asia will become unavoidably the centre of competition. After the completion by the United States of its plan to move south and by EU of its expansion to the east and south, the world will become two polarized and it will be time to move to Asia wholeheartedly. The free-trade agreements, which were singed between the United States and Japan and Singapore are part of the United States' strategy in the Asia-Pacific region. Apparently the EU has decided to start with south Asia, in particular India. The European Commission took a decision to strengthen EU's economic partnership with India by cooperating in economy, trade, investment, industrial policy, government management, competition policy, environment protection, development of an information society, transportation, energy, biology and outer space on 6 June 2004.[71] Within one month of its successful increase of membership, the EU took another big step. It clearly evidences EU's determination to enter the Asian market.

The rapid development of regional arrangements brings to the international community both benefits and adverse effects. Comprehensive regional arrangements play an important role in promoting economic integration in coverage and degree. Some problems that cannot be settled at the multilateral level may be resolved within the regional arrangements. Environmental protection and agricultural trade may serve as trying cases. In this regard, regional arrangements complement and supplement multilateral systems. At the same time, comprehensive regional arrangements will cause discrepancies of and conflicts with the norms and standards of multilateral regimes. Given that some countries are participants in several regional arrangements, this may lead to more difficulties for implementing the related regional agreements as well as international undertakings. The solution of such potential issues will most probably depend on the operation of the multilateral mechanisms.

The WTO membership now covers almost all the countries in the world. Any regional arrangement, with the exception of some bilateral agreements, will

[71] see http://europa.eu.int/comm./enternal_relations/India/News, visited on 10 July 2004

involve one or more WTO Members. As the WTO Members have an obligation to notify their participation in regional arrangements, the WTO should have an opportunity to review regional arrangements concerned to decide whether it is consistent with the WTO Agreement. Nevertheless, up till now, the WTO has been widely criticized for lacking an efficient review mechanism of regional arrangements, although there are political and legal causes for it. From the political point of view, the Committee on Regional Trade Agreement of the WTO is responsible for the review of regional arrangements. The members of the Committee, when conducting a review, however, are likely to be influenced by the political viewpoints of their respect governments. As a result, strong political concerns are always reflected in the Committee work which is not conducive to the professional and efficient handling of regional arrangements. Regarding the legal aspect, the WTO provisions on regional arrangements are still vague in many aspects. The Committee on Regional Trade Agreement is not authorized for interpreting the WTO Agreement; whenever an issue is uncertain or politically thorny, it is likely to postpone it intentionally or unintentionally with the hope that the Member concerned would take the matter to the DSB for settlement. With the growth of this pattern, the DSB will gradually take the place of the multilateral review mechanism under the WTO. It was precisely out of these concerns, at the Doha Ministerial Conference, Members on the one hand acknowledged the positive role of regional arrangements in promoting free trade and on the other hand, emphasized the need to harmonize regional and multilateral arrangements. The Members also negotiated on how to define and improve the disciplines and procedures relating to regional arrangements. The failure of the Cancun Conference shows that it will take some time before the decisions of the Doha Ministerial Conference are implemented. The creation of regional arrangements has not slowed down because of the failure of the Cancun Conference and will continue to develop at an accelerated rate. This is so because the very nature of regional arrangement is to enable some Members to have access to more free trade first; any slow down of multilateral negotiations will give rejuvenating force to regional arrangements. In the end, those who are unsuccessful with bilateral or regional arrangements will lose the bargaining power at the multilateral level.