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Regional Trade Agreements with Non-WTO Members and the Most-Favoured-Nation Treatment Obligation: Are They Compatible?

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Conclusion of regional trade agreements (RTAs) allows the parties to eliminate customs duties and other restrictions on trade between themselves, but necessarily results in violation of the most-favoured-nation (MFN) treatment obligation. Whereas both the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS) justify this violation if all the parties to an RTA are WTO members, the question is less clear if the RTA is entered into with non-WTO members. This article analyzes the compatibility of RTAs involving non-WTO members with MFN treatment and explores ways to foster economic integration without jeopardizing the legitimacy of RTAs concluded with non-WTO members.

Keywords: General Agreement on Tariffs and Trade, most-favoured-nation treatment, non-WTO members, regional trade agreements

Introduction

The number of regional trade agreements (RTAs)¹ has been growing rapidly over the past two decades. Some 583 RTAs have been notified, and out of these some 377 currently are in force.² The main characteristic of any RTA is that it allows the parties to eliminate trade barriers between themselves and thus to offer each other more favourable treatment in trade matters than the parties offer to their other trading partners.³

In general, discriminatory treatment of different trade partners that are World Trade Organization (WTO) members would be inconsistent with the most-favoured-nation (MFN) treatment obligation. On the one hand, the MFN treatment obligation is a fundamental principle of WTO law. The General Agreement on Tariffs and Trade (GATT) requires that any favour or advantage granted by a WTO member “to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other [WTO members].”⁴ Similarly, the General Agreement on Trade in Services (GATS) prescribes that each WTO member “shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.”⁵

On the other hand, upon conclusion of an RTA liberalizing trade in goods, the parties must eliminate the duties and other restrictions of commerce with respect to “substantially all the trade” between themselves.⁶ Analogously, while liberalizing trade in services, the parties must conclude an RTA that “has substantial sectoral coverage” and provides for “the absence or elimination of substantially all discrimination.”⁷ In both cases elimination of trade barriers is effective only between the parties to the RTA, whereas tariffs and other restrictions of commerce remain in place with respect to third party countries.

Nevertheless, WTO law allows conclusion of RTAs. In particular, Article XXIV:5 GATT expressly states that provisions of the GATT “shall not prevent, as between the territories of contracting parties,” the formation of an FTA or a CU, or the adoption of an interim agreement necessary for the formation of an FTA or a CU. Also, Article V:1 GATS provides that the GATS “shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement.”

Thus, if all parties to an RTA are WTO members, then conclusion of the RTA is permitted under Article XXIV GATT and Article V GATS as an exception to the MFN treatment obligation.⁸ Similarly, if none of the parties to an RTA is a WTO member,

there is no violation of the WTO law, as non-WTO members are not bound by the WTO agreements.

However, some practical questions arise with respect to RTAs to which one or several parties are non-WTO members. Do RTAs between WTO members and non-WTO members violate the MFN treatment obligation and, if so, is such violation justified under Article XXIV:5 GATT and Article V:1 GATS? May RTAs with non-WTO members be approved under Article XXIV:10 GATT? Is the situation different if the non-WTO members are developing countries? And are RTAs with non-WTO members still an exception or rather a norm in international trade relations?

Widespread membership of the WTO has effectively lowered the importance of these issues.⁹ However, they still need to be considered with respect to economic integration in Africa, the Middle East, the Pacific region, as well as successor states to the former USSR and Socialist Federal Republic of Yugoslavia (SFRY). In particular, there are several economies in Africa that are not WTO members: Algeria, Comoros, Equatorial Guinea, Ethiopia, Republic of Liberia, Libya, Sao Tomé and Príncipe, Seychelles, and Sudan are WTO observer governments, whereas Eritrea, Somalia, and South Sudan are neither members nor observers.¹⁰ Of the Middle Eastern states, Iran, Iraq, Lebanese Republic, Syrian Arab Republic, and Yemen have observer status at the WTO. In the Pacific region, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Timor-Leste, and Tuvalu are neither members nor observers. Also, among the former USSR states, Azerbaijan, Belarus, Kazakhstan, and Uzbekistan are observer governments at the WTO, whereas Turkmenistan is neither a member nor an observer. Furthermore, former SFRY states Bosnia and Herzegovina and Serbia are currently WTO observers. Thus, WTO membership status becomes relevant for the conclusion of RTAs and further economic integration in the aforementioned areas.

This article shows, first, that RTAs with non-WTO members violate the MFN treatment obligation. Then, it suggests that RTAs liberalizing trade in goods with non-WTO members might not be justified under Article XXIV:5 GATT, but may be approved under Article XXIV:10 GATT. Next, the article argues that RTAs with non-WTO members liberalizing trade in services are covered by Article V:1 GATS. Then, it analyzes the particularities of entering into RTAs with non-WTO members that are developing countries. Lastly, the article gives an overview of the most recent developments in the conclusion of RTAs with non-WTO members, and offers possible ways to confer legitimacy upon such RTAs.

RTAs between WTO Members and Non-WTO Members: A Violation of MFN Treatment Obligation?

Both the GATT and the GATS contain non-discrimination provisions which provide for MFN treatment. In particular, Article I:1 GATT prohibits WTO members from discriminating between like products originating in or destined for different countries.¹¹ Similarly, Article II:1 GATS prohibits WTO members from discriminating between like services and service suppliers from different countries.¹² In other words, any favourable treatment that a WTO member accords to a country-recipient shall be immediately and unconditionally accorded to any and all other WTO members.

Neither the GATT nor the GATS requires the recipient of the favourable treatment to be a WTO member; thus, favourable treatment accorded by a WTO member to a non-WTO member is subject to the MFN treatment obligation.¹³ Article I:1 GATT refers to the treatment accorded by “any contracting party” (the WTO member) to any product originating in or destined for “any other country”. Similarly, Article II:1 GATS applies to the measures that a “Member” (a WTO member) accords to services and service suppliers of “any other country”. The use of the term “other country” instead of the term “other contracting party” or “Member”, and simultaneous use of both these terms within one sentence, lead to the conclusion that the term “any other country” has a different meaning than the term “any contracting party” or “Member”. Accordingly, the conclusion is that the term “any other country” refers to any third country irrespective of its WTO membership. Therefore, the WTO member would violate the MFN treatment obligation if it were to accord to non-WTO member(s) more favourable treatment than it accords to other WTO members.¹⁴ In summary, conclusion of an RTA between WTO member(s) and non-WTO member(s) results in breach of the MFN treatment obligation by WTO member(s) that are parties to the RTA.

Is Article XXIV:5 GATT Applicable to RTAs between WTO Members and Non-WTO Members?

Once it is established that violation of the MFN treatment obligation occurs upon conclusion of an RTA between WTO member(s) and non-WTO member(s), the question is whether Article XXIV:5 GATT justifies the violation.

One of the early cases illustrative for this question took place in 1948 during the Havana Conference. France made acceptance of the text of Article XXIV:5 GATT contingent upon receiving a waiver of one of the obligations under Article XXIV:5 GATT so that France could form a customs union with Italy (a non-GATT contracting party at that time).¹⁵ This shows that GATT contracting parties deemed conclusion of RTAs with non-GATT contracting parties to be in violation of the MFN treatment

obligation; otherwise, there would have been no reason for France to request a waiver before forming a customs union with Italy.¹⁶

Subsequently, working party reports evaluating RTAs recorded different views as to whether Article XXIV:5 GATT is applicable to RTAs involving non-GATT contracting parties.¹⁷

On the one hand, some of the GATT contracting parties expressed the view that violation of the MFN treatment obligation that results from conclusion of an RTA cannot be justified under Article XXIV:5 GATT if some of the parties to the RTA are non-GATT contracting parties. Instead, the parties to such RTAs should seek approval under Article XXIV:10 GATT. In its pertinent part, the Report of the Working Party on the European Free Trade Association (EFTA) – Review of the Stockholm Convention recorded the following:

It was stated by certain members of the Working Party that they had, so far, the greatest difficulty in accepting the contention of the Member States and that, even if Article XXIV were applicable, they could not see how the CONTRACTING PARTIES could consider the Convention under any provisions other than paragraph 10 of that Article, if only because all parties to the Convention were not contracting parties to the GATT as defined in Article XXXII.¹⁸

Similarly, while reviewing conformity of the Montevideo Treaty with Article XXIV GATT, the Working Party on the Latin American Free Trade Area (LAFTA) recorded that “[d]oubts were expressed [...] in view of the fact that some Member States were not contracting parties to the General Agreement.”¹⁹

Likewise, the Report by the Working Party on Arab Common Market noted that “[q]uestions were so raised as to the conformity with Article XXIV of the Instruments and Decisions” on formation of the Arab Common Market, “because some of the parties to these Instruments and Decisions were not contracting parties to the GATT.”²⁰

Furthermore, the Report by the Working Party on the UK/Ireland FTA Agreement implied that Article XXIV GATT is applicable only to RTAs between GATT contracting parties.²¹ GATT contracting parties acknowledged that Ireland was not at that moment bound by the provisions of the GATT, welcomed “the intention of the Government of Ireland to accede to it”, and noted that “the contracting parties may wish to re-examine certain questions relating to the Free-Trade Area Agreement in the light of the negotiations for Ireland’s accession.”²²

Also, it is worth noting the 1993 Report of the Panel on *EC – Bananas I*²³, where the panel concluded that legal justification for GATT contracting parties according

preferential treatment to non-GATT contracting parties “could not emerge from an application of Article XXIV.”²⁴

The 1994 Report of the Panel on *EC – Bananas II*²⁵ voiced this view with even greater clarity:

The Panel observed that Article XXIV:5 covers the formation of free trade areas only “as between the territories of contracting parties”, while the Lomé Convention included many noncontracting parties. The text of Article XXIV:5 makes it clear that a free-trade agreement with a country that is not a contracting party [...] cannot justify infringements of the rights of third contracting parties to most-favoured-nation treatment pursuant to Article I.²⁶

On the other hand, the view has been expressed that the Article XXIV:5 GATT exception to the MFN treatment obligation is not limited to RTAs where all the parties are contracting parties to the GATT. Such interpretation seemed to be “less painful” than requiring a non-GATT contracting party to enter into the GATT prior to joining an RTA with GATT contracting parties.²⁷

In particular, the Report of the Working Party on the Agreements of Association between the European Economic Community and Tunisia and Morocco noted the following:

The representative of the parties to the agreements recalled that in other previous cases, notably in the cases of EFTA and LAFTA, some participants in those free-trade areas were not at that time contracting parties and some of them were still not. Accordingly, it had been shown in practice that the concept “territories of contracting parties” had not been interpreted as restricting the applicability of paragraph 5.²⁸

However, compliance of the EFTA and the LAFTA with the GATT may not be concluded merely from the fact that the GATT working party did not declare them non-compliant, because reports of the working party only noted the comments made by the GATT contracting parties and did not make any conclusions with respect to their substance.²⁹

Also, the issue of RTAs involving non-GATT contracting parties was discussed in the 1985 GATT Panel Report on *EC – Citrus Products*. The panel did not agree with the U.S. argument that RTAs involving non-GATT contracting parties can only be considered under Article XXIV:10 GATT, and noted that GATT contracting parties had already considered several such RTAs, including the EFTA, the LAFTA, the Arab Common Market, and the UK/Ireland FTA, under Article XXIV:7(b) GATT.³⁰

This finding is questionable for at least two reasons: first, the concern over non-GATT contracting parties being parties to the RTAs was raised by a significant number of the GATT contracting parties, and thus the reports of the working party do

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not contain any unanimous conclusion on this matter, and, second, the reports indeed implied that this issue may be resolved through the approval procedure under Article XXIV:10 GATT.³¹

In summary, the GATT working party and panel reports have not reached a clear conclusion with respect to the legal consequences of entering into RTAs with non-GATT contracting parties. However, throughout the past decades the GATT contracting parties at least several times have expressed their concerns that conclusion of an RTA with a non-GATT contracting party may lead to violation of the MFN treatment obligation that is not justifiable under Article XXIV:5 GATT.

May RTAs between WTO Members and Non-WTO Members Be Approved under Article XXIV:10 GATT?

Assuming that RTAs between WTO members and non-WTO members result in violation of the MFN treatment obligation that is not justified under Article XXIV:5 GATT, the question is whether such RTAs may be approved under Article XXIV:10 GATT.

Article XXIV:10 GATT provides that GATT contracting parties may “by a two-thirds majority” approve proposals for RTAs “which do not fully comply” with the requirements of paragraphs 5 to 9 of Article XXIV GATT. Indeed, RTAs involving non-GATT contracting parties have been approved under Article XXIV:10 of the GATT on two occasions: first, the Free-Trade Area Treaty between Nicaragua and El Salvador was approved on October 25, 1951,³² and, second, Nicaragua joining the Central American Free-Trade Area was approved on November 13, 1956.³³ In both situations GATT contracting parties exercised the “approval and control” mechanism: the aforementioned RTAs were approved subject to regular reporting and review so that the approval may be revoked if the data reported suggests the failure to maintain an FTA in the sense of Article XXIV GATT.³⁴

Also, the Report of the Working Party on the Agreements of Association between the European Economic Community and Tunisia and Morocco recorded the position of one of the delegations that Article XXIV:5 GATT does not cover RTAs with non-GATT contracting parties:

Attention was drawn by this delegation to the Havana Reports on Article 44 of the Charter, and in particular to paragraph 6 which corresponds to paragraph 10 of Article XXIV. It was understood that this paragraph “will enable the Organization to approve the establishment of customs unions and free-trade areas which include non-members”.³⁵

Moreover, in the *EC – Citrus Products* dispute the U.S. government argued that Article XXIV:7(b) applies only to interim agreements among GATT contracting

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parties, and hence agreements with non-GATT contracting parties “were rather subject to the procedures of Article XXIV:10 which required a two-thirds majority approval.”³⁶

As a conclusion, the approval procedures embodied in Article XXIV:10 GATT may, and have been previously used to, legitimize RTAs involving non-WTO members.

Is Article V:1 GATS Applicable to RTAs between WTO Members and Non-WTO Members?

To analyze whether the GATS allows conclusion of RTAs with non-WTO members, recourse to textual interpretation of the GATS is necessary. Whereas Article XXIV:5 of the GATT speaks of RTAs “between the territories of *contracting parties*” (emphasis added), Article V:1 of the GATS refers to RTAs “liberalizing trade in services between or among *the parties to such an agreement*” (emphasis added). Furthermore, Article V of the GATS does not provide for an approval procedure similar to the one envisaged in Article XXIV:10 of the GATT. Therefore, textual interpretation of Article V of the GATS leads to the conclusion that RTAs liberalizing trade in services enjoy the benefits of justification of violation of the MFN treatment obligation even if one (or several) parties to such an RTA is a non-WTO member.³⁷

Thus, it may be an option for WTO members to enter into RTAs with non-WTO members, especially those that are unlikely to become WTO members in the near future (for instance, Eritrea, North Korea, or Turkmenistan), liberalizing trade in services rather than goods.³⁸

RTAs Involving Developing Countries – A Different Story?

WTO law provides for special and differential treatment of developing-country WTO members.³⁹ As an exception to the MFN treatment obligation, WTO members may accord “more favourable treatment *to developing countries*, without according such treatment to other contracting parties.”⁴⁰

Such favourable treatment includes, in particular, RTAs “entered into *amongst less-developed contracting parties* for the mutual reduction or elimination of tariffs.”⁴¹ However, textual interpretation of this provision leads to the conclusion that more favourable treatment may only be accorded if all parties to the RTA are both (1) developing countries (“amongst less-developed [...] parties”) and (2) WTO members (“among [...] contracting parties”).⁴² In other words, even if all parties to the RTA are developing countries, the violation of the MFN treatment obligation which

occurs upon conclusion of the RTA involving non-WTO member(s) may not be justified under this provision.

Nevertheless, some authors argue that RTAs with non-WTO members, if the non-WTO member is one of the least developed countries, may be legitimate under paragraph 2:d) of the Enabling Clause,⁴³ which allows “[s]pecial treatment *on the least developed among the developing countries* in the context of any general or specific measures in favour of developing countries” (*emphasis added*). Indeed, many non-WTO members, in particular, Afghanistan, Algeria, Bhutan, Comoros, Equatorial Guinea, Eritrea, Ethiopia, Kiribati, Liberia, Sao Tomé & Príncipe, Somalia, Sudan, Timor-Leste, Tuvalu, and Yemen, are the least developed countries.⁴⁴ Thus, practical application of such an interpretation would bring legitimacy to and foster conclusion of RTAs with non-WTO members that are the least developed countries.

Are RTAs with Non-WTO Members a Rule or an Exception?

The issue of legitimacy of RTAs with non-WTO members has never been formally settled, but, in practice, the political and economic driving forces behind the RTAs have been stronger than the WTO membership of Article XXIV:5 GATT.⁴⁵ Also, the “approval and control” mechanism of Article XXIV:10 GATT has been continuously losing its practical importance so that conclusion of RTAs with non-GATT contracting parties (non-WTO members) would no longer be an exception, and GATT working parties would apply to such RTAs the normal review procedure under Article XXIV:7 rather than Article XXIV:10 GATT.⁴⁶ For instance, the non-WTO member status of Estonia, Latvia, and Lithuania played little part in the evaluation of their interim agreements with the EC, as the only relevant note on this issue stated that “[t]he representative of Japan said that, despite the fact that Latvia, Estonia and Lithuania were not Members of the WTO, his delegation expected them to respect the obligations of GATT Article XXIV and GATS Article V.”⁴⁷

However, from time to time WTO members have expressed different views with respect to the review of RTAs with non-WTO members. In particular, during the meeting of the Committee on Regional Trade Agreements (CRTA) on 7-8 October 2004, the question arose whether examination of RTAs involving non-WTO members should be deferred until these countries gain WTO membership. One position was that deferral would be the most efficient way to address the situation, given the large number of RTAs under review and resource constraints. The other view was that examination should be pursued, because transparency requirements applied as well to RTAs with non-WTO members and “deferral might send a negative message *vis-à-vis* transparency, in particular regarding the notification of such type of RTAs.”⁴⁸

Indeed, as a result of the differences in views on the legal status of RTAs with non-WTO members, consideration of RTAs with non-WTO members had been on hold for several years. Eventually, in 2009, it was agreed to start considering RTAs involving non-WTO members under the provisions of the WTO Transparency Mechanism.⁴⁹ This would be without prejudice to the WTO members' views as to the consistency of these RTAs with the WTO rules, and RTAs notified since 14 December 2006 (including future notifications) would be considered before the others.⁵⁰

As of September 2013, factual presentations on 32 more RTAs with non-WTO members had to be prepared.⁵¹ The RTAs with non-WTO members currently under consideration include EU-Bosnia Herzegovina, EU-San Marino, EFTA-Lebanon, Turkey-Syria, CEFTA Enlargement, Ukraine-Azerbaijan, Ukraine-Turkmenistan, Ukraine-Uzbekistan, the Common Economic Zone, Russian Federation-Azerbaijan, Russian Federation-Serbia, Russian Federation-Belarus-Kazakhstan, Russian Federation-Turkmenistan, Russian Federation-Uzbekistan, and EU-ESA, all goods, EU-CARIFORUM, and Iceland-Faeroe Islands, goods and services.⁵²

Nevertheless, confusion with respect to the significance of WTO membership as it pertains to the validity of RTAs continues, and fuels the WTO credibility gap.⁵³ For instance, during consideration of the FTA between Turkey and Serbia, the U.S. representative noted that Article XXIV GATT applies “strictly between two or more Members”, and, because Serbia is not a WTO member, “absolute MFN obligations applied.”⁵⁴ However, taking into account Serbia's application for WTO membership, the United States “considered it might be helpful to draw attention to the ways in which the [Turkey-Serbia] Agreement would need to be changed in order to meet the requirements under Article XXIV [GATT].”⁵⁵

Thus, some authoritative interpretation of Article XXIV:5 GATT is necessary. One possible interpretation would be that RTAs with non-WTO members have the same legal status as those concluded between WTO members only. Another approach would be to acknowledge that the GATT intended RTAs to be entered into by the GATT contracting parties and, therefore, if the WTO member wishes to conclude an RTA with a non-WTO member(s), it should (1) provide the CRTA with a comprehensive explanation for conclusion of an RTA with a non-WTO member(s), and (2) provide technical assistance to the non-WTO member(s) in order to bring the non-member(s) towards WTO membership.⁵⁶

Conclusions

Through conclusion of RTAs, two or several WTO members may agree upon further economic integration and eliminate customs duties and other restrictions on trade

between themselves without violating the MFN treatment obligation. However, when a WTO member enters into an RTA with a non-WTO member(s), the question of compliance with WTO law comes into play.

The GATT contracting parties, and subsequently the WTO member states, have failed to reach a conclusion and to offer a single authoritative interpretation of Article XXIV:5 GATT, which allows conclusion of RTAs “as between the territories of contracting parties.”

In spite of continuous growth of the WTO membership, a significant number of countries in Africa, the Middle East, and the Pacific region, as well as some successor states to the former USSR and SFRY, remain non-WTO members. Therefore, the possibility of further economic integration through conclusion of RTAs in these regions is questionable due to possible concerns over compliance with WTO law.

There are several possible ways to remedy this situation. The first one is to amend Article XXIV GATT so as to expressly authorize the conclusion of RTAs with non-WTO members. However, this option is hardly feasible, taking into account the necessary number of votes and ratifications by the WTO member states.

Alternatively, a WTO member willing to enter into an RTA with a non-WTO member may go through the Article XXIV:10 GATT approval procedure. Taking into account that this procedure has been used only twice in the history of the GATT, and a significant number of votes is required, this option also seems to be hardly applicable.

Also, a WTO member may encourage, in particular through technical assistance, other parties to the RTA to acquire WTO membership, thus satisfying the Article XXIV:5 GATT requirement. Another possible solution would be to conclude first an RTA liberalizing trade in services, as Article V:1 GATS does not contain a WTO membership requirement, and then extend the scope of the RTA to trade in goods once WTO membership status is acquired.

In summary, whereas the question remains unsettled whether RTAs involving non-WTO members enjoy the same legal status as those involving only WTO members, there are a number of ways to ensure compliance of an RTA with WTO law and thus to ensure the credibility of the WTO in general.

Endnotes

¹ In this article the term “regional trade agreement” means any free trade area (FTA) agreement, customs union (CU) agreement, or any interim agreement leading to formation of an FTA or a CU.

² World Trade Organization, *Regional Trade Agreements*, http://www.wto.org/english/tratop_e/region_e/region_e.htm (visited on 31 January 2014).

³ PETER VAN DEN BOSSCHE, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION. TEXT, CASES AND MATERIALS* 650 (2005).

⁴ General Agreement on Tariffs and Trade, as amended and in force on 1 January 1995, 55 U.N.T.S. 187, Article I:1.

⁵ General Agreement on Trade in Services, as in force on 1 January 1995, 33 I.L.M. 44, Article II:1.

⁶ Article XXIV:8 GATT.

⁷ Article V:1 GATS.

⁸ Won-Mog Choi, *Legal Problems of Making Regional Trade Agreements with Non-WTO-Member States*, 8(4) JOURNAL OF INTERNATIONAL ECONOMIC LAW 825–860, 830 (2005); VAN DEN BOSSCHE, *supra* note 3 at 650.

⁹ Sungjoon Cho, *Breaking the Barrier Between Regionalism and Multilateralism: A New Perspective on Trade Regionalism*, 42(2) HARVARD INTERNATIONAL LAW JOURNAL 419–466, 440 (2001); Won-Mog Choi, *Regional Economic Integration in East Asia: Prospect and Jurisprudence*, 6(1) JOURNAL OF INTERNATIONAL ECONOMIC LAW 49–77, 74 (2003).

¹⁰ World Trade Organization, *Understanding the WTO: The Organization. Members and Observers*, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (visited on 31 January 2014).

¹¹ VAN DEN BOSSCHE, *supra* note 3 at 310; WTO Appellate Body Report, *Canada – Certain Measures Affecting the Automotive Industry (Canada – Autos)*, WT/DS139/AB/R, WT/DS142/AB/R, adopted on 19 June 2000, para. 84.

¹² VAN DEN BOSSCHE, *supra* note 3 at 318.

¹³ Choi, *supra* note 9 at 73; Choi, *supra* note 8 at 831–833; Sherzod Shadikhodjaev, *Trade Integration in the CIS Region: A Thorny Path towards a Customs Union*, 12(3) JOURNAL OF INTERNATIONAL ECONOMIC LAW 555–578, 569 (2009).

¹⁴ Choi, *supra* note 8 at 831, 833.

¹⁵ GATT ANALYTICAL INDEX - GUIDE TO GATT LAW AND PRACTICE, 798 (1995); Cho, *supra* note 9 at 440.

¹⁶ Choi, *supra* note 8 at 838.

¹⁷ GATT ANALYTICAL INDEX - GUIDE TO GATT LAW AND PRACTICE, 798 (1995); Cho, *supra* note 9 at 440; Youri Devuyt & Asja Serdarevic, *The World Trade Organization and Regional Trade Agreements: Bridging the Constitutional Credibility Gap*, 18:1 DUKE JOURNAL OF COMPARATIVE AND INTERNATIONAL LAW 1–75, 21 (2007).

¹⁸ Report of the Working Party on the European Free Trade Association, L/1235, adopted on 4 June 1960, B.I.S.D. 9S/20, para. 58.

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- ¹⁹ Report of the Working Party on the Latin American Free Trade Area, L/1364, adopted on 18 November 1960, B.I.S.D. 9S/21, para. 31.
- ²⁰ Report by the Working Party on Arab Common Market, L/2518, adopted on 29 November 1965, B.I.S.D. 14S/20, para. 11.
- ²¹ Choi, *supra* note 8 at 836.
- ²² Report by the Working Party – United Kingdom/Ireland Free Trade Area Agreement, L/2633, adopted on 4 April 1966, B.I.S.D. 14S/23, para. 28.
- ²³ Report of the Panel, EEC – Member States’ Import Regimes for Bananas, DS32/R, dated 3 June 1993 (unadopted), paras. 364-372.
- ²⁴ *Id.*, para. 372.
- ²⁵ Report of the Panel, EEC – Import Regime for Bananas, DS38/R, dated 11 February 1994 (unadopted), paras. 156-164
- ²⁶ *Id.*, para. 163.
- ²⁷ Cho, *supra* note 9 at 440; Choi, *supra* note 9 at 73.
- ²⁸ Report of the Working Party on the Agreements of Association between the European Economic Community and Tunisia and Morocco, L/3379, adopted on 29 September 1970, B.I.S.D. 18S/149, para. 16.
- ²⁹ Choi, *supra* note 8 at 834–835.
- ³⁰ GATT Panel Report, *European Community – Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region (EC – Citrus Products)*, L/5776 (unadopted), para. 4.9.
- ³¹ Choi, *supra* note 8 at 835.
- ³² Decision of 25 October 1951 on Free-Trade Area Treaty between Nicaragua and El Salvador, B.I.S.D. II/30.
- ³³ Decision of 13 November 1956 on participation of Nicaragua in the Central American Free-Trade Area, B.I.S.D. 5S/29.
- ³⁴ Choi, *supra* note 8 at 839–840; Shadikhodjaev, *supra* note 13 at 569.
- ³⁵ Report of the Working Party on the Agreements of Association between the European Economic Community and Tunisia and Morocco, L/3379, adopted on 29 September 1970, B.I.S.D. 18S/149, para. 16.
- ³⁶ GATT Panel Report, *European Community – Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region (EC – Citrus Products)*, L/5776 (unadopted), para. 3.14.
- ³⁷ Choi, *supra* note 9 at 74; Choi, *supra* note 8 at 844–847.
- ³⁸ Choi, *supra* note 9 at 75.
- ³⁹ VAN DEN BOSSCHE, *supra* note 3 at 676.
- ⁴⁰ Decision of 28 November 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries, L/4903 (Enabling Clause). (*emphasis added*), para. 1.
- ⁴¹ Enabling Clause, para. 2:c) (*emphasis added*).
- ⁴² Choi, *supra* note 9 at 75–76; Choi, *supra* note 8 at 852.
- ⁴³ Choi, *supra* note 8 at 853–856.
- ⁴⁴ United Nations Conference on Trade and Development, UN List of Least Developed Countries, <http://unctad.org/en/pages/aldc/Least%20Developed%20Countries/UN-list-of-Least-Developed-Countries.aspx> (visited 31 January 2014).

⁴⁵ Devuyst and Serdarevic, *supra* note 17 at 22.

⁴⁶ Choi, *supra* note 8 at 840–841.

⁴⁷ WTO, Committee on Regional Trade Agreements, Examination of the Interim Agreements between the European Communities and the Czech Republic, Slovak Republic, Hungary, Poland, Bulgaria and Romania and the Free Trade Agreements between the European Communities and Estonia, Latvia and Lithuania, Note on the Meeting of 19 June 1997, WT/REG1/M/2, WT/REG2/M/2, WT/REG7/M/2, WT/REG8/M/2, WT/REG9/M/2, WT/REG18/M/2 (3 October 1997); Choi, *supra* note 8 at 841.

⁴⁸ WTO, Committee on Regional Trade Agreements, Note on the Meeting of 7-8 October 2004, WT/REG/M/37 (20 October 2004), para. 5.

⁴⁹ WTO, Committee on Regional Trade Agreements, Note on the Meeting of 4 March 2009, WT/REG/M/52 (10 March 2009), paras. 3-5.

⁵⁰ *Id.*

⁵¹ WTO, Committee on Regional Trade Agreements, Note on the Meeting of 17-18 September 2013, WT/REG/M/70 (4 October 2013), para. 2.2.

⁵² *Id.* at para. 2.5.

⁵³ Devuyst and Serdarevic, *supra* note 17 at 23.

⁵⁴ WTO, Committee on Regional Trade Agreements, *Consideration of the Free Trade Agreement between Turkey and Serbia, Goods*, Note on the Meeting of 22 September 2011, WT/REG288/M/1 (4 November 2011), para. 8.

⁵⁵ *Id.*

⁵⁶ Devuyst and Serdarevic, *supra* note 17 at 23.