REGIONAL TRADE AGREEMENTS AND WTO: A LEGAL STUDY

Dissertation submitted to the Jawaharlal Nehru University in partial fulfillment of the requirements for the award of the Degree of

MASTER OF PHILOSOPHY

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CERTIFICATE

This is to certify that the dissertation entitled **REGIONAL TRADE AGREEMENTS AND WTO: A LEGAL STUDY** submitted by me in partial fulfillment of the requirements for the award of the degree of **MASTER OF PHILOSOPHY** is my own work and has not been previously submitted for the award of any other degree of this or any other university.

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TABLE OF CONTENTS

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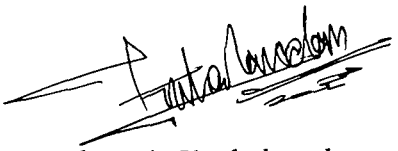

Mathew A. Kuzhalanadan

List of Abbreviations Used

ACP	:	African-Caribbean-Pacific
AFAS	:	Asian Framework Agreement on Services
AFTA	:	ASEAN Free Trade Area
AGOA	:	Africa Growth and Opportunity Act
APEC	:	Asia Pacific Economic Co-operation
ASA	:	Association of Southeast Asia
ASEAN	:	Association of South East Asian Nations
BENELUX	:	Belgium Netherlands and Luxembourg Customs Union
BIMSTEC	:	Bay of Bengal Initiative for Multi Sectoral Technical and Economic Co-operation
BISC	:	Basic Instruments and Selected Documents
BTA	:	Bilateral Trade Agreements
CACM	:	Central American Common Market
CAFTA	:	Central American Free Trade Agreement
CARICOM	:	Caribbean Common Market
CARIFTA	:	Caribbean Free Trade Area
CBI	:	Caribbean Basin Initiative
CEAO	:	West African Economic Union
CECA	:	Comprehensive Economic Co-operation Agreement
CECPA	:	Comprehensive Economic Co-operation and Partnership and Agreement
CEEC	:	Central and East European Countries
CEPA	:	Comprehensive Economic Partnership Agreement
CTH	:	Change of Tariff Heading
CU	:	Customs Union
EC	:	European Community
ECSC	:	European Coal and Steel Community
EEC	:	European Economic Community
EFTA	:	European Free Trade Area
EU	:	European Union

Euratom	:	European Atomic Energy Community
FTA	:	Free Trade Agreement
GATS	:	General Agreement on Trade in Services
GATT	:	General Agreement on Tariff and Trade
GCC	:	Gulf Co-operation Council
GDP	:	Gross Domestic Product
GSP	:	Generalized System of Preferences
GSTP	:	Generalized System of Trade Preferences
IBSA	:	India-Brazil-South Africa initiative
ICTSD	:	International Centre for Trade and Sustainable Development
IIPA	:	Indian Institute of Public Administration
ILM	:	International Legal Materials
IMF	:	International Monetary Fund
IOARC	:	Indian Ocean Association for Regional Cooperation
IP	:	Intellectual Property
IPR	:	Intellectual Property Rights
ISFTA	:	Indo-Sri Lanka Free Trade Agreement
ITO	:	International Trade Organization
JSG	:	Joint Study Group
JWG	:	Joint Working Group
LAFTA	:	Latin American Free Trade Association
LAIA	:	Latin American Integration Association
LDC	:	Least Developing Countries
MEA	:	Mutual Economic Assistance
MERCOUSER	:	Southern Core Common Market
MFN	:	Most Favourable Nation
MoU	:	Memorandum of Understanding
MRA	:	Mutual Recognition Agreements
NAFTA	:	North American Free Trade Agreement
NGO	:	Non Government Organization
PTA	:	Preferential Trade Agreement

QR	:	Quantitative Restriction
RTA	:	Regional Trade Agreement
SAARC	:	South Asian Association for Regional Co-operation
SACU	:	South African Customs Union
SAEU	:	South Asian Economic Union
SADCC	:	South African Development Co-operation Conference
SAFTA	:	SAARC Free Trade Agreement
SAPTA	:	South Asian Preferential Trade Agreement
TCRO	:	Technical Committee on Rules of Origin
TRIMS	:	Trade Related Investment Measures
TRIPS	:	Trade Related aspects of Intellectual Property Rights
UK	:	United Kingdom
UNCTAD	:	United Nations Conference on Trade and Development
UNTS	:	United Nations Treaty Series
UPOV	:	International Convention for the Protection of New Varieties of Plants
US	:	United States
WTO	:	World Trade Organization

CHAPTER I

INTRODUCTION

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INTRODUCTION

I.1. Introduction

The process of international trade liberalization and economic cooperation has come a long way since the Bretton Woods Conference in 1944.[1] The manifestation of an institutional framework to regulate the trade flows was the underlying ideal of trade negotiations, since then. The reduction in tariff and non-tariff protective measures in order to further free trade and fair competition, in an attempt towards progressive trade liberalization, was undertaken under the General Agreement on Tariff and Trade (hereinafter referred to as GATT, 1947),[2] but with a weaker institutional basis. The Uruguay Round trade negotiations however, extended much beyond the scope of original GATT to new areas like services and intellectual property rights, and conducted negotiations at a single undertaking on all the issues considered; the mandate of the negotiating states being to extend the concessions to other participants in one area in order to achieve their goal in another.[3] The final result was the creation of a new organization to oversee and coordinate the functioning of the multilateral trading system. The new institutional structure to the post- Uruguay Round world trading system was envisaged under the World Trade Organization (WTO). As indicated in the Preamble, the WTO Agreement creates an entirely new international organization to administer "an integrated, more viable and durable multilateral trading system encompassing the GATT, the results of past liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations."[4]

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[1] In 1944, the representatives of 44 nations met I Bretton Woods, New Hampshire, US, to discuss the major international economic problems including reconstruction of economies ravaged by the War, and to evolve practical solutions for them. The Bretton Woods Conference proposed the setting up of the International Monetary Fund (IMF), International Bank for Reconstruction and Development (IBRD) and International Trade Organization (ITO), of which ITO did not materialize.

[2] GATT Final Act 1947, Geneva, 55 UNTS 194 (1947); the GATT/ WTO Agreement in 33 ILM 1125 (1994).

[3] John Croome, *Understanding the Uruguay Round Agreements* (The Hague: Kluwer, 1999), pp. 118-21 at pp. 1-3.

[4] WTO Agreement, n. 2, Preamble, Paragraph 4.

The fundamental principle regulating trade patterns under the GATT and its successor WTO is the principle of unconditional[5] non-discrimination enunciated in Article I (General Most Favored Nation Treatment or MFN).[6] As a rule basic to the whole edifice of the international trading system, it requires that if one signatory state grants to another country "more favourable treatment", it must immediately and unconditionally give the same treatment to the imports from all other signatories. In other words, all GATT/ WTO members are entitled to receive the most favourable treatment given by any member; they are entitled not to be discriminated against.[7] The high sounding ideal of MFN found a number of exceptions within the GATT itself. Most of the exceptions are allowed out of certain compulsions at the negotiating stage and was under the impression as well as understanding that recourse to these exceptions shall not be so frequent and consequential so as to undermine the principle of MFN. The most important GATT exception to MFN is found in provisions for customs union and free trade areas under Article XXIV of GATT.[8] In the beginning itself the GATT 'grandfathered' a number of preferential trade systems which were in existence at the time. Thus, the multilateral framework envisages within itself the exemption for Regional Trading Arrangements.

I.2. Conceptualizing Regionalism

It is understood that regionalism was a widespread phenomenon even before the emergence of multilateral trading system. For reasons, both economic and political the emergence of regional groupings was common, the reasons varying from creating strategic alliances to enhancing political and economic clout in the international scenario. The best known and most successful of the Regional Agreements are the

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[5] The MFN clause in the international treaties took conditional or unconditional forms. The unconditional MFN obligated a treaty signatory to extend to the other signatories all the trade concessions granted to third countries without any reservation. The conditional MFN granted signatories the opportunity to enjoy the same treatment as third country provided it offered the same compensation as the other country had given to obtain a favored treatment.

[6] Article 1 of GATT; See, GATT Legal Text, n. 2.

[7] The MFN obligation applies to customs duties and charges of any kind connected with importing and exporting, as well as to internal taxes and charges, and to all the rules by which such duties, taxes and charges are applied.

[8] See, Annex I.

European Communities and the North American Free Trade Agreement. Most of the regional and bilateral arrangements commonly focused on the principle of preferential treatment for certain trading partners; the economic analysis of economic regionalism focusing on the welfare effect of preferential arrangements. Often it is remarked[9] that the widespread participation in regionalism is paradoxical in two ways. First, countries that have liberalized trade through the GATT/ WTO would seemingly not have much to gain through regional trade liberalization. Second, there is a policy tension between participation in regional trade arrangements and the GATT/ WTO because regionalism involves preferential treatment, which is, in principle inimical to WTO.

Presently, more than 90% of WTO members are party to one or more Regional Trade Agreements (hereinafter referred to as RTAs). The proliferation of RTAs since early 1990's continues still unabated. Over 170 RTAs are currently in force. An additional 70 are estimated to be operational although not yet notified. If the RTAs reportedly planned or already under negotiation are concluded, the total number of RTAs may well cross 300.[10] This proliferation and unprecedented growth of RTAs point to the increased importance and significance of RTAs in the present day international trade. In the course of time, the very nature and scope of RTAs have undergone tremendous change and modern RTAs have attained a very different and distinctive face in their formation and operation.

The coverage and depth of preferential treatment varies from one RTA to another. Modern RTAs are not that exclusively linking the most developed economies, but tends to go far beyond tariff-cutting exercises. They provide for increasingly complex regulations governing intra-trade and they often also provide for preferential regulatory framework for mutual service. The most sophisticated RTAs go beyond traditional trade policy mechanisms to include regional rules on investment, competition, environment, labour and many other WTO plus standards.

The proliferation of RTAs, especially as their scope broaden to include policy areas not regulated multilaterally increases the risk of inconsistencies in the rules and procedures among RTAs themselves and between RTAs and the multilateral frame

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[9] See generally, Mitsuo Matsushita et al., *the World Trade Organization: Law, Practice and Policy* (New York: Oxford University Press, 2003).

[10] All data indicated are from www.wto.org last accessed on 20th July, 2006.

work. This is likely to give rise to regulatory confusion, distortion of regional markets and severe implementation problems. Hence in this context the study on the WTO consistency of the modern day RTAs assume importance.

I.3. Provisions for Regional Arrangements under GATT/ WTO

The GATT which set forth non-preferential and non-discriminatory principles based on the ethos of globalization and multilateralism, provided exception for regionalism or RTAs. Regionalism was permitted only to the extend it complied with the provisions of Article XXIV of GATT. It provided for customs unions, free trade areas and interim arrangements for customs unions and free trade areas.[11] Another provision for regionalism is under the Enabling clause of the Tokyo Round of the Multilateral Trade Negotiations in 1979. The Enabling clause provides exemption for developing countries from many GATT obligations and allows them to engage in preferential treatment among themselves and also to receive preferential treatment by developing countries. Compared to Article XXIV, the exemption under GATT Enabling clause provision is less widely used by countries to deviate from the MFN obligation.[12] An analysis of the nature and scope of both the provisions require a more comprehensive study and hence the present study is limited to the various aspects of the Trading Arrangements between countries under the purview of Article XXIV.

Besides Article XXIV, Article V of the General Agreement on Trade in Services (GATS) also provides for a similar clause which allows for exception to regional arrangement. GATT Article XXIV is limited by its exclusive focus on trade in goods. Despite the fact that the contemporary trade involves both goods and services, the later category lies beyond the scope of Article XXIV. In this context, the significance of Article V of the General Agreement on Trade in Services (GATS) featuring several provisions for economic integration comes to the forefront. However, the discipline for GATS arrangements lacks clarity.[13]

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[11] See detailed discussion in Chapter III.

[12] This is evident from the number of trading arrangements eligible for exemption under the enabling clause and under Article XXIV listed in the WTO. As of 30th September 2005, out of the 330 RTAs notified to the GATT, only 22 were under the Enabling Clause.

[13] As of 30th September, 2005, only 39 RTAs were notified to the WTO under Article V of GATS, as against 273 notified under Article XXIV of GATT.

I.4. Statement of the Problem

The tension between the multilateralism ethos and the allowance for regionalism as an exception under Article XXIV continues even after the establishment of WTO. GATT Article XXIV has its own inherent limitation and inadequacies in comprehensively addressing the possible existence and regulation of RTAs under the broader framework of multilateral trading system. To be precise the GATT Article XXIV failed to work in a legal way as it lacked legal discipline.[14] Further, the GATT panels failed to interpret the nebulous text of Article XXIV in a consistent manner. At the same time, the GATT contracting parties had managed to utilize the provisions in self-serving ways. In this legal vacuum the RTAs/ FTAs mushroomed, in effect abusing or misusing the legal provision under Article XXIV of GATT.

There are other inherent flaws apart from the legal discipline that would continue to play havoc to the global trading system, if left unaddressed. Article XXIV was designed to address the formation rather than operation of RTAs. While the text of Article XXIV provides for the establishment of RTAs it is regrettably silent on critically important issues pertaining to operational relationships between RTAs and the WTO. Defects of this nature render Article XXIV incapable of dealing with certain realities - that a large number RTAs do exist, that the RTAs are very much institutionalized and sophisticated and that they have particular roles to play in the global trading system. The effectiveness of Article XXIV is of increased importance and interest at a time when, countries are very much eager pushing their trade agendas through the channel of RTAs in the global trade.

The RTAs are being used as trade bodies to push and promote many WTO Plus agendas. The earlier trend of RTAs confining among developed nations has changed and the modern RTAs extend and flourish between and among the developed and developing countries in a wide and varied fashion. In this context RTAs are being widely used by major developed countries to obtain concessions from developing countries that they are unable to get through negotiations in the WTO. Many such "WTO-Plus" obligations that are rejected in the multilateral forum were thus promoted and practiced through RTAs. Many of the recently concluded RTAs contain numerous provisions that remove the flexibilities available to developing countries in the existing

[14] See detailed discussion in Chapter III.

WTO rules to choose between different policies. The closure or narrowing of such 'policy space' would seriously restrict the ability of the governments to make use of policy options and instruments in many areas.

A review of the recently concluded RTAs would explicitly project that they contain many issues, provisions and rules that went far beyond what the WTO obliges the developing countries to undertake. For example, in most bilateral agreements signed between the US and developing countries, there are rules on investment, government procurement and competition policy. The RTAs thus, overturns the architecture of the WTO's services agreement and reduces the flexibilities for developing countries to choose whether or not to liberalize particular sectors, and if so, at what level and pace. Developing countries had fought for this flexible structure during the Uruguay Round and were still defending it strongly at the WTO in the face of pressures, but some countries were ceding the hard won policy spaces in the RTAs. The developed countries are making use of RTAs as the convenient forum to get the developing countries to take on the TRIPS- Plus and similar other obligations.[15]

In this context the most frequently asked question in this issue is *whether regional groups help or hinder WTO's multilateral trading system.* There are divergent views on the same. RTAs can complement the multilateral trading system. But by their very nature RTAs are discriminatory; they are a departure from the MFN principle, a corner stone of the multilateral trading system. The desirability of RTAs has to be discussed against the backdrop of the multilateral trading system based on an analysis of the "*trade creation*" and "*trade diversion*' effect of RTAs with respect to multilateral trading system. The effect of RTAs on the global trade liberalization and economic growth are not still clear, as the regional economic impact of RTAs is not yet predictable. The latest debate as to the desirability of RTAs now focus not only on the question of whether they result in trade creation or trade diversion but also on the question of whether these regional bocks deviate or surpass the existing and ongoing multilateral trade liberalization.

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[15] In recent RTAs with the US the developing countries are obliged to sign on many of the WIPO treaties, thus requiring them to take on TRIPS-Plus standards of intellectual property. For a detailed discussion see, Chapter IV.

I.5. Key Legal Issues Addressed

The present study seeks to address the following issues as fundamental:

- In view of the proliferation of RTAs and its increased role in the global trade, is there a need for regulation and harmonization of regional and global trade so as to reduce the conflicts and to make it complementary to each other?
- Whether the existing legal framework of Article XXIV under GATT/WTO is inadequate in dealing with the various aspects of existence and operation of regionalism in trade in a multilateral trading system?
- Whether the argument for global trading system requiring a new legal discipline capable of managing the operational phase of a large number of trading units, from the WTO to the various RTAs, coexisting and interacting in a pluralistic and federalist fashion holds well? Is it emergent for the global trading community to develop a new legal perspective: one that relocates RTAs and the WTO to a common legal terrain?

I.6. Methodology of the Study

The present study relies on the primary and secondary sources available on the subject. The primary sources include the relevant legal texts like GATT 1994, WTO Agreement and the covered agreements and the decisions of the GATT/ WTO Dispute Settlement bodies. It combines both the historical and analytical methods to study the issues relevant for the present study.

I.7. Scope and Objective of the Study

1. To analyze the historical evolution and background of trade regionalism and the emergence of the present day regional economic integration in the global trade.
2. To look into the ongoing debate on multilateralism versus regionalism confining to the specific areas of conflicts and compatibility between the WTO and RTAs.
3. To examine the legal discipline for RTAs under the GATT and WTO framework in the light of legislative understanding and judicial interpretations.
4. To identify and explore the areas in RTAs deviating or surpassing (WTO plus) the existing multilateral trading system with the help of case studies.
5. To briefly examine the Indian approach to RTAs with special reference to India's

regional trade practices.

6. To examine whether a new legal mechanism under the WTO system to regulate RTAs/ FTAs is viable.

I.8. Outline of the Study

The study is divided into six chapters. Chapter I attempts to locate the issue of regionalism in the multilateral trade regime and to conceptualize the issues involved. An enumeration of the relevant provisions considered in the study is provided. Further a brief statement of the problems addressed and an overview of the legal issues under consideration is attempted.

In discussing the debate on the desirability of Regionalism in trade against the backdrop of multilateralism enunciating the views of different scholars, Chapter II gives a historical sketch of the evolution of regionalism. It begins from a broader understanding of the issue through a discussion on the various theories of trade regionalism, and considers the WTO position on the issue. This chapter intends to discuss the ongoing debate on the *building bloc* and *stumbling bloc* effects of RTAs in trade liberalization.

Chapter III explains the legal discipline under Article XXIV of GATT by discussing the key provisions and its application. It examines the legislative attempt under WTO through the Understanding on the Interpretation of Article XXIV of GATT 1994, which was aimed at clarifying the legal text of Article XXIV. Further it proceeds to discuss the WTO Panel and Appellate Body Reports to understand the judicial interpretation. While discussing the limitations of Article XXIV in regulating regional trade, the need for strengthening the existing legal framework and suggestions for the reform of Article XXIV are attempted.

Chapter IV reflects on the various contentious and pertinent issues in RTAs. The Chapter briefly analyses the mechanism of Rules of Origin issue which is the chief instrument for the regulation of trade flows in the regional arrangements. The US and EU practice on origin rules in their respective preferential trade arrangements provides a clear understanding of the issue. Further, the Chapter discusses the various other WTO-Plus issues in modern RTAs with special reference to the TRIPS-Plus issues and the EU and US practice on the same. The Chapter also briefly considers the issues like

investment, services, labour and environmental standards and the impact of these issues for developing countries.

Chapter V enumerates the Indian approach towards regionalism in trade and analyses the various Regional, Sub-regional and Bilateral trading arrangements entered into by India. It further attempts to make an analysis of the possible impact of RTAs on the Indian economy, its trade and commerce.

Chapter VI provides a summary of the conclusions arrived at on the various issues addressed in the study undertaken. It gives a brief outline of the latest developments on regionalism at the WTO, especially the new transparency mechanism for RTAs, as declared in July 2006.

CHAPTER II

EMERGING REGIONALISM AND GLOBAL TRADING SYSTEM

CHAPTER II

EMERGING REGIONALISM AND GLOBAL TRADING SYSTEM

II.1. Introduction

In a world with innumerable diversities, divided and sub divided according to geographical features, regionalism is a natural path of human civilization. In an era of globalization it is obvious that regionalism also precipitate as a by product and as an anti-thesis to the theory of globalization. According to some, the phenomenon of regionalism and the tension between the notions of regionalism and universalism is not only prevalent in trade but it reflects in political, social and cultural globalization.[1] Regionalism continues to influence every aspect of human life from culture to politics and to the economy. The impact of regionalism in international trade and economics is much pronounced and it deserves serious attention in the context of rapid globalization and integration of global market and economy. This chapter intends to look into the regionalism in trade, its evolution and impact on the multilateral trading system.

II.2. Theory on Regionalism

The reasons for regionalism or the theory behind the formation of regional groupings, as expressed by eminent scholars,[2] are many. Even then, the important driving force for countries for the formation of regional groups in trade is largely found in reasons both political and economic.

II.2.1. Political Basis

Political scientists have attempted to theorize the motivation behind the formation of regional arrangements, from different perspectives.[3] Functionalists[4] argue

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[1] See generally, Christoph Schruer, "Regionalism v. Universalism", *European Journal of International Law*, vol. 6, 1995, pp. 477-499; for comprehensive studies on regionalism see the works of B. Andemicael (1979) and W. Lang (1982).

[2] Edward D. Mansfield and Helen V. Milner (1997); Ernest B. Haas (1958); David Mitrany (1943) and a host of other scholars have propounded various theories on the origin of regionalism.

[3] See generally, David Mitrany, *A Working Peace System* (Chicago: Quadrangle Books, 1960), pp. 25-99, and 149-213.

that governments establish Regional Trade Agreements (hereinafter referred to as RTAs) in response to various functional demands from domestic quarters to enhance the economic welfare. Addressing these functional needs, RTAs gather necessary support from domestic constituencies and other groups, which enables for further integration. Another prominent political explanation for the formation of RTAs is the theory of 'constructivism' which argues that, above the functional and economic reasons, it is strong communal interest such as collective security which plays part in the formation of RTAs. This theory finds little acceptance among scholars.[5] The widely accepted view is that the key motivations behind the regionalism in trade are political and economical. Another set of political philosophers[6] highlight the power relations in international politics to explain the formations of RTAs. According to this view the political alliance influences the pattern of international trade and similarly that, the alliance reflects in the formations of RTAs. It is important to keep in mind that particular theoretical approach is appropriate to particular circumstance. Hence it is difficult to subscribe to a single view and reject the rest.

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[4] The functionalist school of international cooperation emerged in the post-war era as a response to the Realist School of thought which views that, due to the structure of the international system and the motivations of actors within that system, deep cooperation and integration among states is impossible. Adherents to the functionalist school of international cooperation argue that a limited, narrowly focused approach to cooperation will ultimately lead to more broadly defined cooperation in other important policy areas. Then cooperation in a seemingly technical issue area is carefully planned by technocrats and overseen by a supranational governing body, functionalists believe that the result will inevitably be deeper integration among the participating states. In other words, rather than attempting to coordinate directly on major policy areas (such as defense or security policy), states should first attempt to bridge the 'cooperative gap' by concentrating their efforts on cooperation in a non-controversial field. For the functionalist, narrowly tailored cooperation is seen as a means to a more beneficial, politically motivated end. Mitrany: 1966, Lindberg and Scheingold: 1971 are some of the functionalists and Nye: 1971, Rosamond: 2000 are regarded as neo-functionalists. Kenneth W. Abbott and Duncan Snidal, "Why States Act Through Formal International Organizations", *The Journal of Conflict Resolution,* vol. 42, no. 1, 1998, pp. 3-32; Leon N. Lindberg and Stewart A. Scheingold, *Regional Integration: Theory and Research* (Cambridge: Massachusetts, 1971); Joseph S. Nye, *Peace In Parts (*Little: Brown University Press, 1971); Ben Rosamond, *Theories of European Integration. (US:* Palgrave, 2000). See, Robert Moore, "Redefining Success: A Functionalist Approach to the Construction of Regional Trade Associations in Sub-Saharan Africa", *The University of Michigan Student Journal of Political Studies,* vol. II, no. 4, winter 2005, pp. 65-99.

[5] See generally the views of Charles A. Kupchan (1997) in "Regionalizing Europe's Security" in Edward D. Mansfield and Helen V. Milner (ed.), *Political Economy of Regionalism* (1997).

[6] See generally the views of political philosophers like Edward D. Mansfield (1997); Helen V. Milner(1997); Kenneth N. Waltz (1979); Joseph M. Grieco (1988); Robert Gilpin (1975); Stephen D. Krasner (1976), etc.

II.2.2. Economic Basis

Some economists argue that the geographical or regional concentration of trade is attributable to the "natural factor of geographical proximity." Other economists reject this natural factor explanation and instead focus on the "artificial factor of preferential trade policy" of nations. These divergent views[7] on the source of trade regionalism among economists also lead to different positions regarding the desirability of RTAs.[8]

The Proximity School economists [9] contend that distance and resultant transportation costs create natural trading blocs. Strong empirical confirmation of this thesis can be found in the special trading arrangements that exist between United States and Canada, and within Europe.[10] An interesting branch of this position is the "gravity model," which posits that trade between two countries is proportional to the volume of their Gross Domestic Product (GDP) and inversely related to the distance between them.[11] In other words trade increase with decrease in distance and is directly related to the GDP of countries. In a close analysis of the trends in RTAs, it can be found that the distance or geographical proximity alone is not the key criteria in the formation of RTAs. Instead of this proximity, Jagdish Bhagwati,[12] finds reasons for the formation of RTAs in the discriminatory (preferential) trade policies, that is, the trade policies play a crucial role in the trade concentration in RTAs.[13] It can thus be found that there are different opinions among scholars regarding the origin and reasons of trade regionalism. Contrasting views, political as well as economic, points to the reality that the manifestations of trade regionalism are neither uniform nor so simple. With regard to

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[7] See, the views of Jeffrey A. Frankel (1997) and Fritz Machlup (1977).

[8] Sungjoon Cho, "Breaking the Barriers between Regionalism and Multilateralism: a New Perspective on Trade Regionalism", *Harvard International Law Journal*, vol. 42, No. 2, 2001 at p. 425.

[9] According to Proximity School, reducing transportation costs boosts trade volume and welfare. Yet, the distance between member countries should not be so close as to make a bloc meaningless, ("supernatural" trading bloc), not so far that the costs of forming the bloc overwrites the benefits ("unnatural" trading bloc) as cited in Cho, n. 8, at p.425.

[10] *Ibid.*

[11] *Ibid*, at p. 425.

[12] Jagdish Bhagwati, "Regionalism and Multilateralism", *World Economy*, vol. 15, 1992, pp. 532-48, at p. 534.

[13] *Ibid* at p. 534 and pp. 544-45.

the existing circumstances, the reasons for the formation of RTAs tend to vary from RTA to RTA. So it is not logical to conclude on a single theory either political or economic in defining the root cause of the formation of RTAs.

II.2.3. Legal Basis

There existed a number of preferential trade arrangements[14] between countries well before the inception of GATT which intended to establish a non preferential, non discriminatory trade system. Contracting parties were not willing to give up these preferential arrangements which were in existence since long time. This necessitated the drafters of the GATT to provide a legal framework to encompass the existing systems within the GATT. Hence, a number of proposals for providing exception for regional trade arrangements came up in the Preparatory Conferences.[15] Though not all the proposals in this regard were accepted, the Geneva draft ITO and the original GATT incorporated clauses allowing exception for regional arrangements.[16] Hence the ITO draft Charter Article on regional exceptions was incorporated into the GATT Final Act.[17] Exemption for regional arrangements under GATT was necessary to avoid the legal conflict arising out of obligations under regional and multilateral agreements.[18] The purpose of the provision was to exempt the existing arrangements from the GATT obligations. It had never foreseen the possible proliferation of regional and other preferential arrangements that would have emerged later.

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[14] It consisted mostly the Common Wealth Preferences. The growth of commerce in the fifteenth and sixteenth centuries is attributed to the network of trade relationships between European countries through a variety of trade treaties, particularly in Friendship, Commerce and Navigation Treaties.

[15] John H. Jackson, *World Trade and the Law of the GATT* (New York: Bobbs-Merril Company INC, 1969) at p. 577.

[16] See, GATT Final Act 1947 (hereinafter referred to as GATT 1947), Geneva 55 UNTS 194.

[17] See Special Protocol relating to Article XXIV of the GATT, 1948 (Agreement No. 7 in Appendix C, GATT 1947) which came into force on 7th June, 1948, UNTS 62/56, as well as the discussion in GATT Docs. GATT 21, GATT/1/23, 1948.

[18] Originally the regional agreements were entered into by group of countries which have agreed to reduce trade barriers among themselves. It favours trade from within the group and discriminate against the trade flow from non-member countries. This departure from MFN was permitted by Article XXIV of GATT. For detailed discussion, see Chapter III.

II.3. Regionalism: a Historical Sketch

The concept or practice of regionalism is not a new phenomenon. The history of RTAs[19] can be traced backed to 1660s. Though not organized into any determinable form and deficient of the present day characteristics of RTAs, regionalism was well identified in ancient days. The first form of regionalism was found in Europe. Hence, regionalism is considered as a European invention.[20] In 1660, about twelve provinces in the Paris basin (cinq grosses fermes) erected a common tariff wall. During 1700s and 1900s, that is, in the colonial era, many European powers had preferential trade arrangements with each others' empires.[21] One of the earliest manifestations of a regionalism or regional trade alliance bearing the essential features of contemporary RTAs was the German Zollverein.[22] The Customs Union formed in 1834 functioned as an important catalyst for a united Germany later in the century. After the political and economic turbulence as a consequence of the World Wars in the first half of the twentieth century, a Customs Union was created in 1947 among Belgium, Netherlands and Luxembourg (hereinafter referred to as, BENELUX), followed by the Treaty of Rome that created the landmark European Economic Community (hereinafter referred to as EEC) in 1957. Thereafter, EEC continued to expand its linkages to the east as well as to the Mediterranean in the South.[23] In the 1950s, with the approval of the United

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[19] Murray Gibbs and Swarnim Wagle, *the Great Maze: Regional and Bilateral Free Trade Agreements in Asia: Trends, Characteristics, and Implications for Human Development* UNDP Policy Paper (Colombo: UNDP, December 2005), pp. 18-53.

[20] *Ibid*, at p. 18.

[21] *Ibid,* at p. 18.

[22] German Zollverein (1834-1870) was a customs union established to eliminate tariff barriers which were inhibiting trade among the numerous states of the German Confederation. In 1880, Prussia abolished internal customs and formed a North German Zollverein which in 1834 became the German Zollverein after merging with two similar unions, the South German Zollverein and the Central German Trade Union, both founded in 1828. A rival customs union, the Steuerverein of Central Germany was also organized in 1834. A series of treaties (1851-54) joined it to the Zollverein which then comprised nearly all the German States except Austria, the two Mecklenburgs and the Hanseatic towns. Prussia, despite the insistence of several states, was unwilling to admit Austria to the Union, but the two countries negotiated a separate tariff treaty. For more discussion see, studies by J. R. Mac Donald (1903, reprinted 1972); W.O. Henderson (2nd ed., 1959) and E. N. Rousssakis (1968). See, http://encylopedia.com/html/z/zollvere.asp last visited on 21st February, 2006.

[23] See, n. 19 at p. 18.

States, the European Community[24] (hereinafter referred to as EC) emerged onto the international scenario, ushering in a new wave of regionalism.

In the 1960s what was termed as the 'First Regionalism' flourished across the world.[25] First Regionalism neglected or perhaps misunderstood the economic aspects of their operation as they were motivated principally by political considerations. In other words, the driving force for the First Regionalism was political considerations and motives rather than the economic benefits and other aspects involved. As a result of this attitude and approach the trade generating effect of these regional blocs were very limited. Though some of these regional efforts achieved the desired object, the First Regionalism largely failed in integrating economies or generating large volumes of trade.

The 'Second Regionalism'[26] emerged much later, in the late eighties and early nineties, reaching its apex with the launch and completion of the Uruguay Round of GATT negotiations. The Second Regionalism, which was unprecedented in its intensity, gave rise to the emergence of strong regional trading blocs across the globe. This strong emergence was represented by powerful regional trade blocs such as the North American Free Trade Agreement (hereinafter referred to as NAFTA)[27], the Southern Core Common Market (hereinafter referred to as Mercosur)[28], the Asia Pacific Economic Co-operation (hereinafter referred to as APEC)[29] and Association of South

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[24] Before 1991, the EC was a term applied collectively to three different international legal entities. These three legal entities were the European Coal and Steel Communities (ECSC), formed by the Treaty of Paris in 1951; the European Atomic Energy Community (Euratom), formed by the Treaty of Rome in 1957 and the European Economic Community (EEC) formed by a second Treaty of Rome in 1957. Of the three the EEC came to occupy a dominant position. Since the 1993 Maastricht Treaty, European Integration has been based on a different legal identity, the European Union (EU). For more discussion see, Jo Shaw, "*Law of European Union*" (2nd ed., 1996) cited in Cho, n. 8, at p. 426.

[25] For an elaborate discussion, see Jagdish Bhagwati's works on regionalism especially, *World Trading System at Risk* (UK: Harvester Wheatsheet, 1991), pp. 58-79 at p. 72.

[26] *Ibid.*

[27] 32 International Legal Materials (ILM) 289 (1993).

[28] See, http://www.mercosur.int/msweb as accessed on 15th July, 2006.

[29] See, http://www.apec.org accessed on 15th June, 2006.

East Asian Nations (hereinafter referred to as ASEAN) [30] among others. Such proliferation of RTAs still continues unabated.[31]

In the 1960s and 1970s, numerous attempts to promote regional trade arrangements faltered. The Central American Common Market (CACM) [32], the Andeans Pact,[33] and a number of other efforts for regional integration through regional agreements between African countries failed to achieve desired intra regional liberalization and economic integration. The efforts towards regionalism gathered pace during the Uruguay Round negotiations in the 1980s and 1990s, despite such an experience. During the four year period between 1990 and 1994, no fewer than 33 new regional integration arrangements were notified to the GATT, [34] and many other existing regional arrangements were deepened and widened. The collapse of the Communist Council for Mutual Economic Assistance (hereinafter referred to as MEA) in the Eastern and Central Europe in 1991 was an additional incentive for the expansion of regional integration in Europe.[35] This surge of regionalism made the Uruguay Round negotiations very difficult and contributed to its compromise outcome. [36] The establishment of WTO in place of GATT[37] was hailed as a great success and proof that

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[30] See, http://www.aseansec.org/15528.htm accessed on 15th June, 2006.

[31] A number of Free Trade Agreements are under negotiations and many are in pipeline. The trend is likely to continue. For details see, http://www.wto.org/english/tratop_e/region_e/regfac_e.htm accessed on 15th June, 2006. Also see, Annex III for a list of RTAs notified to GATT/ WTO as on 15th June, 2006.

[32] CACM was established in 1960 as an economic trade organization of five Central American countries of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, but it collapsed in 1969 due to conflict between Honduras and El Salvador, and was reinstated in 1991. It was made redundant by the Free Trade Areas of Americas and DR-CAFTA in 2005.

[33] The Andean Pact was originally founded in 1969 by Bolivia, Chile, Colombia, Ecuador and Peru. Venezuela which had joined in 1976 withdrew in 2006 alleging that the FTA signed by Colombia and Peru with US caused irreparable injury to the Pact. The Andean Community together with Mercosur comprises two main trading blocs of the South America.

[34] WTO Working Paper, *Regionalism and World Trading System* (Geneva: WTO, 1995).

[35] W. Michalak and R. Gibbs, "Trading Blocs and Multilateralism in the World Economy", *Annals of the Association of American Geographers*, vol. 87, no. 2, 1997, pp. 264-79 at p. 266.

[36] *Ibid.*

[37] GATT Final Act 1947 (hereinafter referred to as GATT 1947), Geneva, 55 UNTS 194, 1947, Article XXIV, at p. 264. For WTO Legal Text, see, *The Results of the Uruguay Round of Multilateral Trade Negotiations: the Legal Texts* (Geneva: WTO, 1995). Also, 33 ILM 1125 (1994). GATT was replaced by WTO on 1st January, 2005. GATT 1994 which is annexed to the Marrakesh Agreement establishing the

multilateralism was alive and well, serious doubts remain over its ability to resolve trade disputes and to achieve the goal of global free trade.[38]

II.4. Regional Co-operation among Developing Countries

Since the multilateral trade and investment flows were biased in favour of the developed nations in the North, collective self-reliance through greater South-South co-operation was considered an important means of reducing the dependence of developing countries on the global economic and political regime dominated by the industrialized countries. It was, therefore, not surprising to see continuing experimentation by developing-country governments with a number of regional arrangements formed between the sixties and the eighties.[39] Among developing countries, in particular, regionalism was a response to growing protectionist tendencies by the European Union (hereinafter referred to as EU), NAFTA and the major markets of Japan and the United States. As a result most regions had witnessed the formation of one or more regional grouping during the past four or five decades. In this context the trends in the different developing country continents is examined hereunder.

II.4.1. Africa

In the trade history of the African continent we can find a large number of groupings which have attempted economic integration. One of the earliest Customs Unions among developing countries was the East-African Community of Kenya,

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World Trade Organization (hereinafter, WTO Agreement) consists of the provisions in GATT 1947 within it.

[38] R. C. Hine, "Mini-symposium: Translantic Trade Relations after Uruguay Round", *World Economy*, vol. 16, 1993, pp. 533-36; R. Ruggiero, "Growing Complexity in International Economic Relations Demands Broadening and Deepening of Multilateral Trading System", *WTO Director General Press Release* 25, 16th October, 1995 as cited in W. Michalak and R. Gibbs, n. 35, at p. 266.

[39] The Association of Southeast Asia (ASA, 1961), the Association of South-East Asian Nations (ASEAN, 1967), the Southern African Development Coordination Conference (SADCC, 1979), the East African Community (1967), the Preferential Trade Area for Eastern and Southern Africa (1981), the Gulf Cooperation Council (1981), the Central American Common Market (1960), the Latin American Free Trade Association (LAFTA, 1960), the Andean Pact (1969) and the Caribbean Common Market (CARICOM, 1973) are some of the examples of early attempts for regional cooperation among developing countries.

Tanzania and Uganda.[40] The East African Community had common external tariffs, free trade within the area, common customs and income tax administrations, common currency and common communication services. The former French Colonies in West Africa also made similar attempts to form regional blocs in trade. The countries of the former French Equatorial Africa namely, Congo (Brazzaville), Central African Republic, Chad, Cameroon and Gabon formed a Customs Union in January 1966,[41] the Customs union was more strictly defined and far reaching than any other grouping in Africa.[42] Another African grouping was the West African Economic Union (hereinafter referred to as CEAO). This regional arrangement was formed in 1973 by virtue of Treaty of Abidjan. This group consisted of Burkina, Faso, Cote d' Loire, Mali, Mauritania, Niger and Senegal, which were part of the former French Western Africa.[43] Benin became a member in 1984. The South African Customs Union (hereinafter referred to as SACU), established in 1910 is one of the oldest customs unions, and the Free Trade Agreement (hereinafter referred to as FTA) of the SACU members, Botswana, Lesotho, Namibia, South Africa and Swaziland with the United States in 2002 led to the creation of a South African Customs Union Free Trade Area. More recently, US initiative of the African Growth and Opportunity Act contains a comprehensive framework for commercial co-operation.[44]

II.4.2. Asia

The first trace of regionalism in trade in Asia precipitated as a reaction to the emergence of the common market in Europe and Latin America, was the Association of

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[40] The origin of the East African Community was in 1917 when free trade between Uganda and Kenya was established. Tanganyika, the third member of the Community joined gradually between 1922 and 1927. The Community had unequal partners with Kenya being far more developed then Tanganyika (Tanzania) and Uganda. There were ideological, political and economic differences between Kenya and the other partners which ultimately resulted in the break up of the Community in 1977. See, Okigbo (1967) cited in A. S. Bhalla and P. Bhalla, *Regional Blocs: Building Blocs or Stumbling Blocs?* (UK: Macmillan, 1997), at p. 2.

[41] As former French colonies, they had special trading relationships with France and to a lesser extent the EEC countries. These countries continued to enjoy preferential treatment even after they introduced a common external tariff against third parties.

[42] Okigbo (1967) cited in A. S. Bhalla and P. Bhalla, n. 40, at p. 4.

[43] A. S. Bhalla and P. Bhalla, n. 40, at p. 4.

[44] See, discussion in Chapter IV.

Southeast Asia (ASA).[45] Malaysia, Thailand and Philippines were the countries which established this grouping. Meanwhile, the creation of a Malaysian Common Market including Malaya, Singapore, Sabah and Sarawak in 1963 amounted to a miniature economic union within the proposed bigger common market of ASA partners.[46] The ASA was followed by ASEAN[47] formed by Singapore, Thailand, Indonesia, Malaysia and Philippines.[48] Though the economic co-operation within the ASEAN has been rather slow, the recent initiatives have added pace for the progressive integration of ASEAN in the region.[49] The regional groupings of the South Asian nations i.e. SAARC (South Asian Association for Regional Co-operation)[50] was formed among India, Pakistan, Bangladesh, Sri Lanka, Nepal and Bhutan on December 8, 1985. The presence of ASEAN and SAARC had brought Asia to the new era of regionalism.

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[45] Progress towards the achievement of the declared goals of ASA remained very slow largely due to strained political relations between the ASA partners especially between Malaysia and Philippines. The political tensions between the two countries over Sabah finally led to the collapse of ASA in 1964.

[46] A. S. Bhalla and P. Bhalla, n. 40, at p. 5.

[47] The Association of Southeast Asian Nations or ASEAN was established on 8 August 1967 in Bangkok by the five original Member Countries, namely, Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei Darussalam joined on 8 January 1984, Vietnam on 28 July 1995, Laos and Myanmar on 23 July 1997, and Cambodia on 30 April 1999. The ASEAN region has a population of about 500 million, a total area of 4.5 million square kilometers, a combined gross domestic product of US$737 billion, and a total trade of US$ 720 billion. See, http://www.aseansec.org/15528.htm as accessed on 5th June, 2006.

[48] Brunei joined in 1984 and Vietnam in 1995.

[49] The ASEAN Free Trade Area or AFTA is now in place. As of 1 January 2005, tariffs on about 99% of the products in the Inclusion List of the ASEAN-6 have been reduced to the 0-5% tariff range. The average tariff for ASEAN-6 is now down to 2% from 12.76% in 1993 when AFTA began. See, http://www.aseansec.org/17527.htm as accessed on 5th June, 2006.

[50] The South Asian Association for Regional Cooperation (SAARC) was established when its Charter was formally adopted on December 8, 1985 by the Heads of State or Government of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. SAARC provides a platform for the peoples of South Asia to work together in a spirit of friendship, trust and understanding. It aims to accelerate the process of economic and social development in Member States. The Agreement on SAARC Preferential Trading Arrangement (SAPTA) was signed in 1993 and four rounds of trade negotiations have been concluded. With the objective of moving towards a South Asian Economic Union (SAEU), the Agreement on South Asian Free Trade Area (SAFTA) was signed during the Twelfth Summit in Islamabad in January 2004. SAFTA will enter into force from January 2006. See, http://www.saarc-sec.org as accessed on 5th June, 2006.

II.4.3. Latin America and Caribbean

Regional economic integration in Latin and Central America dates back to 1960 when both the Latin American Free Trade Association (hereinafter referred to as LAFTA)[51] and the Central American Common Market[52] were established. These were some of the earliest efforts in forming regional groups in this region. Later, the Andean Pact[53] came in 1969, which consisted of Bolivia, Chile, Columbia, Ecuador, Peru and Venezuela.[54] The Caribbean Common Market (CARICOM) consisting of Jamaica, Trinidad and Tobago, Barbados and Guyana was established in 1973.[55] Subsequently, Antigua and Barbuda, the Bahamas, Belize, Dominica, Grenada, Montserrat, St. Christopher-Nieves, St. Lucia and St. Vincent joined CARICOM.[56]

II.4.4. Middle East

The Arab Common Market and the Arab Maghreb Union established in the sixties were the two notable efforts for regional co-operation in the Gulf region which were not implemented. The successful and the more encouraging example of regional co-operation in trade in the region is the Gulf Co-operation Council (GCC), formed in 1981.[57] Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates were the countries who established the GCC. Earlier attempts for regional integration

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[51] The Latin American Free Trade Association (LAFTA) consisted of Argentina, Brazil, Chile, Mexico, Paraguay, Peru and Uruguay. The original treaty provided for the creation of a free trade area to expand intra regional trade and the promotion of industrial integration. In 1980, after 20 years of existence, LAFTA was replaced by the Latin American Integration Association (LAIA) formed by the Treaty of Montevideo.

[52] See, n. 32.

[53] See, n. 33.

[54] Chile left the Pact in 1976. Venezuela left the Pact in 2006.

[55] A. S. Bhalla and P. Bhalla, n. 40, at p. 7.

[56] A. S. Bhalla and P. Bhalla, n. 40, at p. 7. In 1968 several Caribbean countries launched their own integration system, the Caribbean Free Trade Area (CARIFTA). In 1973 CARIFTA was replaced by the Caribbean Community and Common Market (CARICOM). CARICOM never came close to a common market, in part because the individual islands relied heavily on tariff revenue; in part because the trade between them was extremely limited.

[57] A. S. Bhalla and P. Bhalla, n. 40, at p. 7.

had failed largely because of the political conflicts existing in the region. Efforts and initiatives are being taken recently for achieving more integration in this region.

II.4.5. EU and US in Regional Trade

EU and United States were the two key players in the unprecedented proliferation of trade regionalism. Of the 87 notifications of FTAs to the WTO between 1990 and 2002, only 13 had no European partner.[58] The US was one of the strong defenders of the GATT MFN Clause in the multilateral trade framework. Yet, the US had adopted a benevolent attitude to European integration. A major shift in the US trade policy occurred with the adoption of US Trade and Tariff Act, 1984 which provided the Administration with the authority to enter into FTAs.[59] In 1988 the US entered into an FTA with Canada, its largest trading partner. This agreement was subsequently widened to include Mexico and form the North American Free Trade Agreement (NAFTA).[60] Thereafter, the US entered into numerous bilateral, regional and Free Trade Agreements with both developed and developing countries.[61] Recently, in July 2005 the US House of Representatives approved the Central America FTA (hereinafter referred to as CAFTA) which intended to eliminate trade barriers among the US and 6 other parties- Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Dominican Republic.[62] Thus, it can be seen that the regionalization of trade is a continuing phenomenon in the global trade and its impact on the multilateral trade liberalization process is enormous and always a matter of concern for economists and other scholars.

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[58] UNDP Policy Paper: December 2005, Murray Gibbs and Swarnim Wagle, n. 19, at p. 18.

[59] *Ibid*, at pp. 18-19.

[60] See, n. 27.

[61] See more discussion on US FTAs in Chapter IV.

[62] See, John R. Crook (ed.), "US Congress Approves Central American Free Trade Agreement", *American Journal of International Law*, vol. 99, no. 4, 2005, pp. 911-12.

II.5. Dynamic Time Path Question[63]

The structure of world trading system- its volume and direction- was altered very significantly by a number of persistent, inter-related, medium to long term global trends. One of the major trends that influenced the global trade substantially was the growing importance and rapid proliferation of regional trading blocs. Although there are still economists, political scientists and scholars from other disciplines[64] who discount the significance of regionalism and regional trading blocs, the fact remains that by the time the WTO was created, nearly all its members had notified GATT that they were parties to at least one regional integration agreement. If the Asia Pacific Economic Co-operation (APEC) announced objective (November 1995) of achieving free trade by 2020 is formalized, all WTO members including Hong Kong and Japan will be parties to one or more trading blocs. The graph below shows the explicit and high paced growth of RTAs in the last decade.[65] There are 334 RTAs notified to GATT/ WTO as of September 30, 2005.[66] Of these, 273 agreements were notified under GATT Article 24;[67] 22 under the Enabling Clause[68] and 39 under GATS Article V[69]. Of the above 183 are currently in force.

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[63] See, Jagdish Bhagwati (1993).

[64] See for example the views of S. Corbridge and J. A. Agnew in *Mastering Space: Hegemony, Territory, and International Political Economy* (New York: Routledge, 1995)

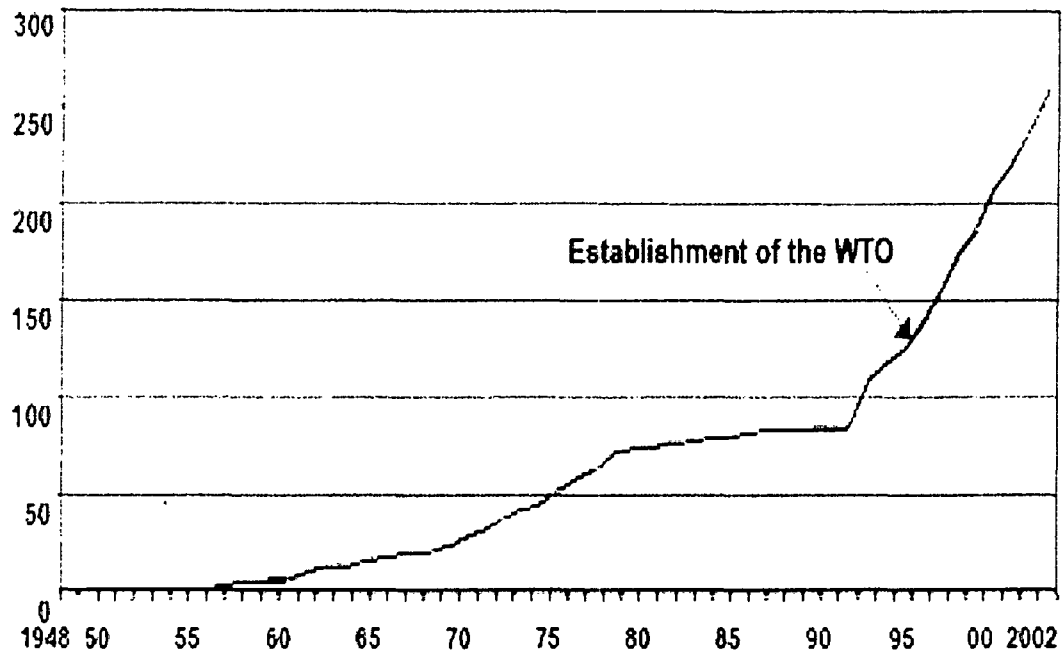
[65] Source: WTO Website: www.wto.org as last accessed on 14th July, 2005.

[66] See, Annex III for the list of RTAs notified to GATT/ WTO.

[67] See, Annex I for the text of Article XXIV.

[68] *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*, Decision of the GATT CONTRACTING PARTIES of 28 November 1979.

[69] General Agreement on Trade in Services (GATS), 1994, Annex IB of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, *The Results of the Uruguay Round of Multilateral Trade Negotiations: the Legal* Texts, n. 37, at pp. 327-64.



Source: WTO Secretariat: available at http://www.wto.org/english/tratop_e/region_e/regfac_e.htm

This empirical evidence thus makes a strong case for regionalism as one of the most influential factors determining world trade flows. To what extent these regional trade flows represent a fundamental restructuring of the world economy is the key question yet to be addressed. The central question on the debate has to do with the consequences of regionalism for global free trade. It can be found that there is no straight forward and universally acceptable answer for this question that is one of the oldest and most contentious issues in economics and related disciplines. The debate on the desirability of RTAs and its effects in the multilateral trading system has different dimensions and scholars have attempted to raise and pose this 'dynamic time path question'[70] from different perspectives and aspects. Hence it is important to look into different formulations of the debate.

One of the important issues dominating the debate in the context of the world trading pattern is that what will be the effect of RTAs on multilateral trading system. The question further expands, as Malati Angol[71] puts it, "will the trade be open and free at global/multilateral level with an outward global orientation? Or will it be fragmented

[70] See generally the views of Jagdish Bhagwati, n. 12.

[71] Malati Angol, "Growth of Regional Trading Blocs and Multilateral Trading System", *Foreign Trade Review*, vol. 26, no. 4, 1992, pp. 297-311, at p. 297.

into regional blocs with inward focus and managed imports? Will the trade decisions be taken in the world fora, in the global context or at regional levels in the context of each region? The whole issue ultimately boils down to: Is the trading system moving away from or towards multilateralism?"[72]

The above debate on the effects of regionalism and trading blocs on world economy in economics, political science, law, international relations, sociology and other related subjects is vigorous and often controversial. The question at the heart of this debate is that, do trading blocs promote ultimate goal of GATT and WTO i.e. whether regional trading blocs are impediments in achieving global free trade. This basic question was devised and posed by Bhagwati in his classic work *World Trading System at Risk.*[73]

Another way of addressing the question is by assessing the time path norm to reach a global free trading equilibrium. Thus if it is examined that "is regionalism quicker?" the answer is affirmative, if one can show that a time path, based on some version of regionalism minimizes the time to global free trade among all other feasible time paths to the same goal, including the one based on multilateralism.[74] Another aspect in this interaction between the regionalism and multilateralism is the independence and interdependence between the both. Interdependence could arise in two senses. First, the pursuit of regionalism could trigger and ease the pursuit of multilateralism. Second, the outcomes, if this option is pursued in regionalism, might influence that in multilateralism.

Many views are expressed on the impact of regional trading blocs on the world trading system. One view [75] considers regional trading arrangements as "stumbling blocs" to the continuation of the open trading system at global level, the concept of multilateralism. Another view[76] looks at regional liberalization as "building blocs' for

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[72] *Ibid*, at p. 297.

[73] Jagdish Bhagwati, *World Trading System at Risk* (UK: Harvester Wheatsheet, 1991), pp. 58-79 at p. 72.

[74] T. N. Srinivasan, "Regionalism and the WTO: Is Non-discrimination Passé?" in Anne O. Krueger (ed.) *the WTO as an International Organization* (Chicago: Chicago University Press, 1999), pp. 329-49 at p. 337.

[75] See generally the views of Bhagwati (1991), Panagariya (1991), Srinivasan (1999) etc.

[76] See generally, the views of Summers (1991), Krugman (1993), Zahrnt (2005).

multilateral trading arrangements, eventually leading to an open trade regime at global level. Some scholars[77] refuse both these views and observe that, given the diversity among the RTAs and the members, universalistic arguments are tenuous and illogical. These scholars emphasize on the need for theoretically guided empirical analysis that explore the conditional effects of individual RTAs, to assess its impact on multilateral trade liberalization.

II.6. Defining the Terms

Before proceeding to the debate on *Regionalism versus Multilateralism* it is pertinent to look into the basic definitions of the terms. The definition for the terms vary in different contexts, that is, a universal definition for the terms *Regionalism* and *Multilateralism* may not be fitting in the context of international trade. Both these terms are widely used in international politics and economics. The studies on International Organizations also largely use the terms in explaining various features and theories. Here we look into the definition of the terms in the context of the international treaty.

Scholars like Winters, Jackson and Bhagwati had recognized serious problems in defining the terms "regionalism" and "multilateralism." Winters defined regionalism as preferential reduction of trade barriers among a subset of countries that might, but need not, be geographically contiguous.[78] He viewed regionalism as "any policy designed to reduce trade barriers between a subset of countries regardless of whether those countries are actually contiguous or even close to each other."[79] He considered multilateralism as characteristic of the world economy or world economic system.[80] According to him, multilateralism is a "positive function of

a) the degree to which discrimination is absent- perhaps the proportion of trade partners that receive identical treatment; and

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[77] See, the discussions by Jackson (1997), Zahrnt (2005), Cho (2001) etc. For details, see discussions on Regionalism versus Multilateralism below.

[78] Alan L. Winters, "Regionalism versus Multilateralism", *World Bank Policy Research Papers*, Series No. 1687, 1996.

[79] Winters as cited in Sir Hans Singer, Neelam bar Hatte and Rameshwar Tandon (ed.), *Regional Trading Arrangement* (New Delhi: IBR Publishing Co., 2003) at p. 283.

[80] *Ibid*, at p. 286.

b) the extent to which the country's trading regime approximates free trade."[81]

Here the emphasis presumably, is on the fact that preferences are restricted to a subset and not extended to the whole set of countries of the world trading system. According to this definition, discrimination in liberalization is the essential feature of regionalism. Hence, if multilateralism is to be viewed as the anti thesis of regional discrimination, then it has to be defined as a non discriminatory reduction of trade barriers. Here, the problem is that in such an event, the unilateral reduction of trade barriers by one or more countries on a non discriminatory basis will also be deemed as multilateralism. Jackson provided a comprehensive definition for multilateralism. According to Jackson, multilateralism is an approach to international trade and other relations which recognizes and values the interactions of a number, often a large number of nation states.[82] It recognizes the damages of organizing relations with foreign nations on bilateral grounds, dealing with them one by one. MFN on the other hand, is a standard of equal treatment of foreign nations.[83]

Thus, non discrimination and multilateralism are the fundamental objectives of global free trade. The Charter of the WTO[84] is of course a Constitution that enunciated the rules of the game. This included international trade in goods and services as well as trade-related investment measures and intellectual property rights. Many more disciplines were expected to be brought under the framework of WTO. WTO also had the mechanism for settlement of disputes among countries to ensure the observance of the rule. The fundamental objective of WTO was global trading (and previously investment also) system that is free of policy-related barriers to flow of goods, services and capital between countries.[85] In other words, the main objective of WTO was to facilitate free international trade, flow of goods and capital without trade as well as non trade barriers. T. N. Srinivasan further observed that this is not the ultimate objective,

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[81] *Ibid.*

[82] John H. Jackson, *World Trading System* (Cambridge: MIT Press, 1997), at p. 158.

[83] *Ibid.*

[84] See, n. 37.

[85] T. N. Srinivasan, n. 74 at p. 335.

but global welfare. He viewed the global trading system as an instrument for the efficient allocation of resources through unimpeded trade in competitive market.[86]

One of the most significant developments in the world economy since the Bretton Woods Conference in 1944 had been the emergence of a number of Regional Trading Arrangements. Preferential treatment in trade and PTAs existed among nations even well before this.[87] Over the years these regional trade arrangements had graduated to continental trading blocs. The EU, NAFTA and the slowly emerging Asian trade bloc (ASEAN etc.) occupied an increasingly prominent role in the creation of continental trade blocs and casts serious doubts on the robustness of the concept of globalization and multilateralism. According to a number of economists and political scientists, [88]commitment to the multilateral framework underpinning globalization is weakening. [89] Krueger observed that even after the successful conclusion of the Uruguay Rounds and new provisions contained in the WTO, the trading blocs are capable of dividing world markets into exclusive and potentially hostile camps through unilateral protectionist trade policies.[90]

With the powerful re-emergence and unprecedented proliferation of RTAs towards the end of the 20th century, attempts were made from various quarters and disciplines to study the impact of regionalism in trade. This opened the wide room of debate on the effects of regionalism on multilateralism. The debate is polarized. On one side, an influential group of economists and political scientists[91] argued that regional trading blocs, by the very fact of their existence, threaten the spirit of multilateral trade liberalization. On the other side are those who argue that the regional trade blocs contribute to the freeing of world trade. There are scholars who hold yet another view

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[86] *Ibid.*

[87] See, the historical evolution of RTAs discussed above.

[88] Preg 1989; Belous and Hirtley 1990; Bhagwati 1990, 1991, 1992; Schott 1990.

[89] W. Michalak and R. Gibbs, n. 35, at p. 264.

[90] *Ibid.*

[91] See, n. 75 and 76. For details, see discussion below.

that impact of RTAs on the multilateral trading system depends on the nature and characteristics of each individual RTA.[92]

II.7. Regionalism versus Multilateralism

The popular perception of regional trading bloc is one of the discriminatory regional organizations in nature whose principal role is to advance the common economic agenda of member countries by protecting domestic markets from foreign competition.[93] According to this interpretation, the trading blocs are regarded as a direct threat to multilateralism and to the goal of free trade established by GATT/WTO. In this sense, the international framework embodied by the Bretton Woods Instruments which create GATT/WTO, International Monetary Fund (hereinafter referred to as IMF) and World Bank has been, or is in the process of being replaced by a more restricted and limited trade liberalization in the framework of regionalism. This eventually lead to the decline of commitment to multilateralism which in turn may result in the break up of the global trading system gradually and promote protectionist trading blocs whose competing geo economies' objectives could lead to global crisis. In the emerging scenario of continental concentration of regional trade, the principal trading blocs- NAFTA (perhaps extended to Latin America), the EU (including East-Central Europe), and the emerging Asian bloc (including Japan) centering on both India and China will become the triad or dominant actors in future economic conflict and trade conflicts, while the rest of the world will become increasingly isolated.[94] One economist noted that "given the inevitable trade frictions that will arise between large regional trade blocs- with those left outside, such as the East Asian newly industrializing countries and Japan trying to form their own defensive blocs- the whole multilateral trading system built up since the Second World War could unravel."[95] However, till now the

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[92] See, discussion below.

[93] Jagdish Bhagwati, "*Multilateralism at Risk: the Seventh Harry G. Johnson Lecture*" (Princeton: Princeton University Press, 1990) as cited W. Michalak and R. Gibbs, n. 35, at p. 265.

[94] *Ibid*, Michalak and Gibbs, at p. 265.

[95] D. Lal, "Trade Blocs and Multilateral Free Trade", *Journal of Common Market Studies*, vol. 31, 1993, at p. 350.

impact of regionalism on multilateralism is not exactly or precisely appraised. Divergent views expressed by scholars in different descriptions are examined hereunder.

II.7.1. Conventional Debate

Even after the allowance of trading blocs under Article XXIV of GATT, the overall level of tariffs had been lowered significantly since the inception of the GATT. This fact enabled supporters of trading blocs to argue that regionalism, if properly managed and supervised, can foster the process of multilateral trade liberalization.[96] It is interesting to note that there is hardly any hypothesis outrightly rejecting either regionalism or multilateralism. Hence the pertinent question here is, to what extent regionalism promotes or erodes trade liberalization. The concept of trade creation and trade diversion though enunciated more than fifty years back, the arguments of the Canadian economist and scholar Jacob Viner[97] found a universal acceptance among the scholars of international trade.[98] Viner provided a more or less definitive analysis of the trading bloc issue.[99] In precise words, according to Viner, a preferential trading arrangement promoted 'trade creation' when a country's more expensive domestic production is replaced by cheaper products from a participating country. Greater domestic consumption generated additional trade and welfare in the process. Conversely, 'trade diversion' occurred when imports of inexpensively manufactured goods from non member countries were replaced by more expensive imports from participating countries.[100] The resulting increase in intra regional trade took place at the direct expense of imports from outside the bloc; hence trade diversion reduced or, at best did not increase global welfare in this scenario.[101] To put in other words, regional

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[96] C.M. Aho, "American and the Pacific Century: Trade Conflict or Cooperation?", *International Affairs*, vol. 69, 1993, pp. 19-37 at p. 19.

[97] Jacob Viner (1892-1970) in his book "*The Customs Union Issue*" introduces the distinction between the trade creating and the trade diverting effects of Customs Unions.

[98] A. Tovias, "A Survey of the Theory of Economic Integration," *Journal of European Integration*, vol. 15, 1991, pp. 5-23 as cited in W. Michalak and R. Gibbs, n. 35, at p. 268.

[99] See, Viner Jacob, *The Customs Union Issue*, (New York: Carnegie Endowment for World Peace, 1950).

[100] W. Michalak and R. Gibbs, see n. 35, at p. 268.

[101] *Ibid.*

trade bloc promoted global trade liberalization when it promoted trade creation, and hindered global trade liberalization when it created trade diversion. With the emergence and re-emergence of regionalism in sixties and, later in the eighties, the debate has grown more complex. Jackson took a double sided view and approach in analyzing the impact of regionalism on global trade liberalization. According to him,[102] trading blocs can actually promote global free trade if the MFN principle is applied.

Scholars[103] observed that regional trade arrangements can serve as stepping stones for building political support and strengthening the will for negotiating free trade worldwide. Summers and Krugman further observed that trading blocs merely formalize the already existing trade practice of geographical proximate countries or in other words "natural partners" that are expected and bound to trade with each other more than with distant or "unnatural" partners.[104] It is observed by some scholars that a universalistic approach towards all kind of regional groupings is not desirable. In his classic work on the charter of International Trade Organization (hereinafter referred to as ITO)[105], Wilcox noted logical inconsistency in using the same yardstick for all kind of regional trade arrangements. He emphasized the difference between the impact of a Customs Union and a Preferential Trading Arrangement (hereinafter referred to as PTAs) in multilateral trade liberalization.[106] He explained the view in favour of Customs Union as follows;

> A customs union creates a wider trading area, removes obstacles to competition, makes possible a more economic allocation of resources, and thus operates to increase

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[102] John H. Jackson, "Regional Trade Blocs and the GATT," *World Economy*, vol. 16, 1993, pp. 121-30 at p. 121.

[103] See views of Lawrence Summers (1991) and Paul Krugman (1993). R. Z. Lawrence, "Emerging Regional Agreements: Building Blocs or Stumbling Blocs?" in R. O' Brian (ed.), *Finance and the International Economy* (Oxford: Oxford University Press, 1991) at p. 155-71; Summers, "Regionalism and the World Trading System" in *Federal Reserve Bank Policy Implication of Trade and Currency Zones* (Kansas City: Federal Reserve Bank, 1991) at pp. 295-302; Krugman ,"The Narrow and Broad Arguments for Free Trade", *American Economic Review*, vol. 83, 1993, pp. 362-66 as cited in Michalak and Gibbs, n. 35, at p. 268.

[104] *Ibid.*

[105] Clair Wilcox, *a Charter for World Trade* (New York: Macmillan, 1949).

[106] *Ibid*, at p. 70.

production and raises planes of living. A preferential system on the other hand, retains internal barriers, obstructs economy in production, and restrains the growth of income and demand. It is set up for the purpose of conferring a privilege on producers within the system and imposing a handicap on external competitors. A customs union is conducive to the expansion of trade on a basis of multilateralism and non discrimination; a preferential system is not.[107]

The thrust of Wilcox's argument favouring Customs Union was out of the belief that any expansion of area within which all trade is free of barriers is desirable in the sense of improving welfare of one or more of its members while hurting no other country, as long as barriers to trade in the countries outside the area are not raised.[108]

Summers took a positive outlook towards regionalism. He explained his view by stating that "economist should maintain a strong but rebutable, presumption in favor of all liberal reductions in trade barriers, whether they are multi-, uni-, bi-, tri-, plurilateral. Global liberalization may be best, but regional liberalization is very likely to be good."[109] In this context, Barfield[110] observed that, "Summers and other proponents of regionalism base their case on a belief that total trade creation will out weigh trade diversion in most cases, that the multilateral process is too slow to produce substantial progress toward further trade liberalization, and that regional free trade arrangements will allow some nations to speed up liberalization and ultimately produce a self-reinforcing process toward more open markets."[111]

Krugman[112] and several others have contended that countries that trade with each other in larger volume than with other nations are "natural" trading partners and

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[107] Clair Wilcox, n. 105, at p. 70 as cited by T. N. Srinivasan, n. 74 at p. 330.

[108] T. N. Srinivasan, *ibid*, at p. 331.

[109] Summers, n. 103 at pp. 295-302 cited in T. N. Srinivasan, *ibid*, at p. 336.

[110] C. Barfield, "Regionalism and US Trade Policy" in Jagdish Bhagwati and Arvind Panagariya (ed.), *Economics of Preferential Trade Arrangements* (Washington DC: AEI Press, 1996).

[111] See, Barfield, *ibid*, as cited in T. N. Srinivasan, n. 74 at p. 336-37.

[112] Paul Krugman, "Is Bilateralism Bad?" in Elhanan Helpman and Assaf Razin (ed.), *International Trade and Trade Policy* (Cambridge: MIT Press, 1991).

hence that PTAs, among them are likely to be welfare enhancing.[113] A related assertion is that regional PTAs are likely to improve welfare by minimizing transport costs.[114]

Winters,[115] referred to many scholars who argued that the creation of the European Economic Community (EEC), that is, regionalism, led directly to the Dillon and Kennedy Rounds of multilateral trade negotiation.[116] It is also argued by some, though denied by others, that the Seattle APEC Summit in November 1993 was perceived by the EU as a threat by the United States to go the route of regionalism and spurred it to compromise enough in those areas where it differed from the United States for the Uruguay Round negotiations to be successfully concluded in December 1993. Though Winters gave these references, he did not share the view; instead he concluded after an analysis of the empirical evidence that "regrettably it seems as ambiguous as the theory, at least (so) far as the issues of current policy are concerned."[117] Thus, neither theory nor evidence provides a robust guide to the choice between regionalism and multilateralism. A similar view is shared by Bagwell and Staiger by observing that "our analysis suggests that the consequences of regional arrangements for multilateral tariff cooperation need not be clear cut: effects exist under which regional agreements complement multilateral liberalization efforts, and effects also exist under which regional agreements undermine the multilateral liberalization process"[118]

Bhagwati observed that the current rise and proliferation of regionalism is likely to endure and gain strength. He finds reason for the same in the changed attitude of key players EU and especially United States towards Article XXIV of GATT. It is argued that there is a major shift in the balance of force towards regionalism.[119] So far, this

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[113] Krugman, *ibid* and Krugman, "The Move towards Free Trade Zones" in *Policy Implications of Trade and Currency Zones* (Kansas City: Federal Reserve Bank of Kansas City, 1991) as cited in T. N. Srinivasan, n. 74 at pp. 338-39.

[114] *Ibid.*

[115] Alan L. Winters, n. 78.

[116] *Ibid*, as cited in T. N. Srinivasan, n. 74, at pp. 337-38.

[117] *Ibid.*

[118] Kyle Bagwell and Robert W. Staiger, "Regionalism and Multilateral Tariff Co-operation," *Columbia University Manuscript*, 1996 as cited in T. N. Srinivasan, n. 74, at pp. 359.

[119] He observes that, this shift has taken place in the context of a growing perception in the American Congress that the GATT is inadequate and the "regional card should be played" as a threat to those who

observation is proved correct in the wake of American urge to enter into more regional arrangements around the globe.[120]

In the context of changed policy and strategy of US towards regionalism, it is pointed out that, regionalism would be America's new weapon if GATT/ WTO were not amended and bent to American demands for reconstitution and reform, and combined with actual resort to regional arrangements, it will produce the negative perception that regionalism is anti ethical to the GATT and that proliferation of Article XXIV sanctioned free trade areas is somehow the nemesis of the GATT/WTO.[121]

II.7.2. Positive Aspects

The debate is not one sided, there are views and arguments which favours regionalism or which considers regionalism as 'stepping stones' or 'building blocs' in multilateral trade liberalization. One of the widely received arguments in favour of RTAs is their experimental or laboratory effect vis-à-vis multilateral trade liberalization.[122] As of 1st January 2006, WTO has 149 members[123] which indicate that negotiation processes will be slow and cumbersome especially when it comes to new areas such as services, information technology, government procurement, investment, etc. In this context negotiation among a smaller number of regional participants is likely to produce better results, that too in less time. [124] Further more, once agreements are adopted and implemented at a regional level, the experience and lessons gained through trial and error will serve as a knowledge base.[125] This knowledge base, in turn

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will not move fast enough to change the GATT to suit America's desires and interests. Since the process of change at the GATT is necessarily going to be slower that American impatience would dictate, the regional card is likely to be played again and again reinforcing the American shift in policy. Jagdish Bhagwati, n. 73, at pp. 58-79 at p. 72.

[120] *Ibid.*

[121] J. Bhagwati, n. 73, at p. 74.

[122] Sungjoon Cho, n. 8 at p. 432.

[123] See, www.wto.org, last accessed on 14th July, 2006.

[124] Bhagwati refutes this view. See, discussion below.

[125] C. Fred Bergsten, "Open Regionalism," *World Economy*, vol. 20, 1997, pp. 530-54 at p. 545 and p. 548.

will serve as a valuable foundation on which subsequent multilateral agreements can be built. From an internal point of view, a process such as this often serves to educate government officials, helping them to adapt to new practices of trade liberalization and enabling them to move on to a multilaterally binding track. From an external point of view, RTAs can "ratchet up" multilateral liberalization process by creating an incentive for other regions or countries to emulate successful initiatives.[126] In summing up the above arguments, it is worth quoting Jackson that 'RTAs tend to provide test laboratories for the multilateral trading system.'[127] In support of this view it can be found that most countries involved in RTAs are also active and committed participants in the WTO.[128] Some scholars observed that in long term, intra-regional trade becomes relatively less significant vis-à-vis inter regional trade.[129] Others offer detailed evidence regarding the success of regional agreements for global trade liberalization: contributions from NAFTA and the EU to the WTO.[130] Some scholars emphasize that RTAs often "lock in" previous liberalization records or reforms in a manner that prevents subsequent backsliding. In this context, a plausible argument for NAFTA was that it locked in Mexican reforms so that future political authority in Mexico could not reverse them.[131] While scholars favouring RTAs argued this as a positive aspect of regionalism, some others terms it as hegemony of major economic powers such as United States to use the formation of RTAs to extract far superior terms in negotiations

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[126] *Ibid.*

[127] John H. Jackson, n. 102, at p. 121.

[128] Gary Sampson, "Regional Trading Arrangements and the Multilateral Trading System' in Till Geiger and Dennis Kennedy (ed.) *Regional Trade Blocs, Multilateralism and GATT: Complementary Paths to Free Trade* at p. 17 as cited in Sungjoon Cho, n. 8, at p. 433.

[129] *Ibid.*

[130] C. Fred Bergsten, "Globalizing Free Trade: A Vision for the Early 21st Century," *Foreign Affairs*, vol. 75, 1996, at p. 105, 110. See also, Valentin Zahrnt, "How Regionalization can be a Pillar of a More Effective World Trade Organization", *Journal of World Trade*, vol. 39, no. 4, 2005, pp. 671-99 at pp. 684-86.

[131] Jeffrey A. Frankel, *Regional Trading Blocs in the World Economic System* (Washington: Institute for International Economics, 1997) as cited in Sungjoon Cho, n. 8, at p. 434.

with less powerful participants;[132] empirical confirmation of this 'hegemonic strategy' in trade talks on intellectual property rights between the United States and Mexico.[133]

Favouring the trend of Regionalism, Valentin Zahrnt argued that 'deep integration can better and faster be attained on a regional level with smaller and more homogeneous membership. He further argued that deep regional integration can be contributory for the effective functioning of the WTO.'[134] In support of this view, he observed that regionalism extends the zone of agreement in WTO negotiations. It offered a cope with the complexity of WTO negotiations as it reduces the number of participants and fewer policy proposals which are conducive for a deeper integration. Further, overlapping free trade areas which created webs of free-trade agreements reduce the risk of participating in WTO.[135]

Rejecting all the views favouring regionalism, Bhagwati, 'perhaps the most out spoken critic of regionalism'[136] argues that the recent proliferation of trading blocs signals the breakdown of multilateralism, at least as the first best options.[137] Even rejecting the new concept of 'open regionalism'[138] he found that

> (t)he popular argument that free trade agreements at least where led by the United States, will be of the "open regionalism" variety so that, with steadily increasing members, we shall arrive at full multilateralism... is naïve for several reasons. Free

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[132] J. Bhagwati, *a Stream of Windows: Unsettling Reflection on Trade, Immigration and Democracy* (Cambridge: MIT Press, 1999), at p. 309.

[133] *Ibid.*

[134] Valentin Zahrnt, n. 130, at p. 695.

[135] *Ibid*, at p. 695 and 696.

[136] W. Michalak and R. Gibbs, n. 35 at p. 269.

[137] J. Bhagwati, "Regionalism and Multilateralism: an Overview" in J. de Melo and A. Panagariya (ed.) *New Dimensions in Regional Integration* (Cambridge: Cambridge University Press, 1993), pp. 22-51 as cited in W. Michalak and R. Gibbs, n. 35 at p. 269. According to Bhagwati, the largest challenge in regionalism is to resist the temptation of protectionism. He further adds that, although trading blocs do not necessarily lead to a trade war, they certainly increase the possibility of hostile unilateral actions.

[138] Open Regionalism refers to plurilateral agreements that are nonexclusive and open to new members to join. It requires that plurilateral initiatives be fully consistent with Article XXIV of the GATT, which prohibits an increase in average external barriers. Beyond that, it requires that plurilateral agreements do not constrain members from pursuing additional liberalization either with non-members on a reciprocal basis or unilaterally.

> Trade agreements are as hard as multilateral trade treaties to negotiate. Taking the case of speed to support this view, Bhagwati points out that, after a decade, there are three countries in NAFTA; by contrast the Uruguay Round took over seven years to negotiate with over 115 nations on old and new issues. [139]

Going a step further it is stated that

> free trade arrangements seriously damage the multilateral trade liberalization process by facilitating the capture of it by extraneous demands that aim, not to reduce but to increase trade barriers (as when market access is sought to be denied on grounds such as "eco dumping" and "social dumping").[140]

In sum, classical economic analysis as well as the trade theory is ambiguous about the outcome of regionalism. Under certain favourable circumstances regionalism is found complementary to the global free trade while in some unfavourable circumstances regionalism complicate and damage the multilateral trade liberalization process. This shows that the classical analysis of the issues surrounding regionalism requires elaboration.

II.8. WTO on Regionalism

In the WTO context, regional trade agreements have both 'a more general and a more specific meaning:' more general because RTAs may be agreements concluded between countries not necessarily belonging to the same geographical region; more specific because the WTO provided for specific rules and conditions for preferential trade liberalization with RTAs. The WTO[141] provided a note of caution on the impact of RTAs on the multilateral trade liberalization. The note observed that RTAs can compliment the multilateral trading system, help to build and strengthen the liberalization of trade multilaterally. At the same time it observed that the very nature

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[139] See, Bhagwati's views as cited in T. N. Srinivasan, *Developing Countries and the Multilateral Trading System: from the GATT to the Uruguay Round and the Future* (US: Westview Press, 1998), pp. 59-64 at p. 63 and 64.

[140] *Ibid.*

[141] See, www.wto.org, last accessed on 15th July, 2006.

of RTAs is discriminatory; they are a departure from the MFN principle, a corner stone of the multilateral trading system. The effects of RTAs on the global trade liberalization and economic growth are not clear given that the regional economic impact of RTAs is ex ante inherently ambiguous. The WTO Report 1995[142] suggested that:

> In the face of the wide range of views on whether the world is moving inexorably towards integration on a global scale or towards a geographic concentration of trade, with the attendant risk of trade conflicts among the regional groups, the only sensible course of action is to accept that there is movement along both trades[143]

that is, both regional and multilateral. The report further observed that:

> (t)he relative lack of success in enforcing the rules and procedures for customs unions and free trade areas is a concern, both as regards the specific issues involved and because of the implications it has for the broader credibility of the WTO system and its rules. This is especially true a time when the number of actual or planned regional integration agreements, and the attention they are getting from third countries, is large. Moreover, even if there is an affirmative answer to the question of whether regional integration agreements have been complementary to the multilateral process, experience cautions against assuming that post-Uruguay Round rules and procedures will be sufficient to guarantee that this will be the case with future agreements or, for that matter, with the evolution of current agreements.[144]

It is yet disputed that the Uruguay Round had provided sufficient flesh and blood to the body of rules to enable it to regulate the existence and functioning of RTAs. However, while the credibility of the WTO would be certainly compromised if any of its rules, including those relating to Customs Unions are not enforced, it should also be noted that whether rules regarding PTAs such as Customs Unions make sense, is also

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[142] *Annual Report of Director General of WTO*, 1995 available at www.wto.org as last accessed on 15th July, 2006.

[143] *Ibid.*

[144] *Ibid*, p. 23.

an important issue.[145] WTO also admitted the RTAs influence on the multilateral trade liberalization process. WTO Report 1995 asserted that

> "(t)here is little question that the failed Brussels Ministerial in December 1990 and the spread of regional integration agreements (especially after 1990) were major factors in eliciting the concessions needed to conclude Uruguay Round."[146]

It can be found that the proliferation of regionalism and its increased role and influence in multilateral trade was viewed seriously by the WTO while it observed that, 'though RTAs are designed to the advantage of the signatory countries, expected benefits may be undercut if distortions in resource allocations as well as trade and investment diversion, potentially present in any RTA process, are not minimized if not eliminated altogether. Concurrent MFN trade liberalization by RTA parties, either unilaterally or in the context of multilateral trade negotiations, can play an important role in defusing potential distortions, both at the regional and at the global level.'[147]

II.8.1. Committee on Regional Trade Agreements

In the past the examination of the conformity of a regional agreement with the relevant GATT obligations was carried out by GATT working parties. Due to the vagueness and ambiguity in the interpretation of the legal text, the working party process on Article XXIV had been one of 'the most abused' in GATT; the principal criticism against the working parties were lack of its conclusiveness. In this context the former Director of WTO, Gary P. Sampson[148] observes that, the lack of conclusiveness of the working party process, a trend that can be traced to the examination of the European Economic Community in 1957.[149] While the Community did not confirm to

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[145] T. N. Srinivasan, n. 74, at p. 334.

[146] WTO Report 1995, n. 142, at p. 54.

[147] See, www.wto.org on RTAs as accessed on 15th July, 2006.

[148] Gary P. Sampson, "The WTO and Regional Trading Agreements", *Australian Economic Review*, vol. 30, no. 1, 1997, pp. 75-89 at p. 87.

[149] Report evaluating the free trade area relationship of the European Economic Community to the associated African States. GATT, 6th Supp. BISD 94, 1958.

GATT obligations, a finding in this direction could have spelt an end to GATT rather than the Community.

A marked improvement in the procedure relating to the examination of regional agreements has been achieved by WTO through the establishment of the Committee on Regional Trade Agreements.[150] As per the terms of reference, the Committee on Regional Trade Agreements (hereinafter referred to as the Committee) is to carry out all the examinations of agreements in accordance with the agreed procedures and terms of reference. The Committee is empowered to develop, necessary appropriate procedures, to facilitate the examination process of the agreements. The formation of Committee to look after this affair was welcomed as the establishment of a large number of working parties, otherwise, along with the nomination of their Chairpersons for each agreement would have created great difficulties. Further, one Committee examining all agreements would facilitate the task of drawing conclusions about how to improve the examination process. Moreover, the Committee has particularly wide terms of reference, broad enough in fact to permit significant changes in the WTO concepts, principles and rules relating to regional trade agreements.[151] The Committee on Regional Trade Agreements has been mandated by WTO members 'to consider the systematic implications of regional agreements and initiatives for the multilateral trading system and the relationship between them and to make appropriate recommendations to the General Council.'[152] The Committee has concentrated its preliminary efforts on addressing the question whether the world trading system is moving to a world of rules at the regional level that compete with, or even contradict, multilateral rules, or are regional agreements developing regional rules which are complimentary to those in the WTO rules-based multilateral trading system and prepare the ground for future multilateral disciplines.[153] The methodology adopted in this work

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[150] Decision of the General Council of 6th February, 1996, WT/L/127, dated 7th February, 1996. The Committee on Regional Trade Agreements convened its first meeting on the 21st of May, 1996. Minutes of the meeting reported as WT/REG/M/1.

[151] Gary P. Sampson, n. 148 at p. 81.

[152] Drawn from the 1999 Report of the Committee on Regional Trade Agreements to the General Council, WT/REG/8 of 11th October, 1999.

[153] Gary P. Sampson, n. 148, at p. 84.

is to compare across the regional agreements under examination in the Committee the various provisions of these agreements with those contained in the various WTO Agreements.

As per the Report (2005) of the Committee on Regional Trade Agreements to the General Council[154] chaired by Mr. R Saborio Sote,[155] as of 30th September, 2005, 334 RTAs have been notified to the GATT/WTO. Of these, 273 agreements were notified under GATT Article XXIV; 22 under the Enabling Clause[156] and 39 under GATS Article V. Of the notified agreements, 183 are currently in force. It is stated that the Committee ha currently under examination a total of 141 agreements of which 110 in the area of trade in goods and 31 in trade in services. 44 RTAs are currently undergoing factual examination; the Committee has not yet stated the factual examination for 48 RTAs. For the remaining 49 RTAs the factual examination has been concluded. The Committee has not made any progress on the completion of the corresponding examination reports.[157]

II.9. Conclusion

In this Chapter an attempt had been made to see as to how scholars from various disciplines, including legal experts, view and theorize the evolution of trade regionalism. The debate concerning the emergence of regionalism and its impact on multilateralism were not new. Though several studies had appeared on the conventional debate on 'regionalism versus multilateralism,' its precise impact on the multilateral trading system was still hazy. It would be interesting to note that views in support of regionalism or disfavouring its expansion were highlighted and substantiated with ample empirical data within global economic structures. The entire debate, nevertheless, emphasized the fact that regionalism remained an important factor in the global trade. The 'trade creating' and 'trade diverting' effects of RTAs were considered against the

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[154] WT/REG/15 of 3rd November, 2005.

[155] Chairman of Committee on Regional Trade Arrangements, 2005.

[156] *Differential and More Favourable Treatment, Reciprocity and Fuller participation of Developing Countries.* Decision of the GATT CONTRACTING PARTIES of 28th November, 1979.

[157] See, Report WT/REG/15, n. 154.

backdrop of multilateral trade liberalization. As the multilateral trade body, WTO is also concerned of the implications of trade regionalism. WTO provided for an institutional mechanism, the Committee on Regional Trade Agreements to look into the various aspects of RTAs. The Committee is empowered to examine the compatibility and other aspects in accordance with the agreed procedures and terms of reference. The establishment of the Committee is a remarkable development in addressing the issue of regionalism from a multilateral framework.

In the final analysis, the instances of compatibility and conflict between the trading regimes are beyond the theoretical nuances. The economic interests of the country members in each regime decide the balance between regionalism and multilateralism. The inter relationship of the two regimes is still a matter of explanation as in each circumstance. The important question is whether the proliferation of regionalism circumvents the multilateral legal framework and its carefully calculated rules and regulations. In the present world order, the question is not a choice of either of the regimes but one of how to attain a coordinated coexistence. In setting the broader picture of the debate it is attempted to bring forth a background for the study in these lines.

CHAPTER III

LEGALITY OF RTAs WITHIN GATT/ WTO FRAMEWORK

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LEGALITY OF RTAs WITHIN GATT/ WTO FRAMEWORK

III.1. Introduction

Article XXIV[1] of General Agreement on Tariff and Trade (hereinafter referred to as GATT)[2] is the basic legal provision for regional arrangements in the WTO regime. Article XXIV of the GATT grants an exception to GATT obligations for three types of regional arrangements (1) a customs union, (2) a free trade area and (3) an 'interim agreement' leading to the formation of either a customs union or free trade area. If this particular legal requirement and the pre requisites of one of the three GATT regional arrangements are satisfied, then such an arrangement becomes eligible for exception to GATT obligation.

The *Most Favored Nation principle* (hereinafter referred to as MFN) is the cornerstone of the multilateral trading system. Despite the existence of policies and legal obligations within and outside the GATT that support MFN, it is widely recognized that substantial departures from MFN are apparent and frequent in international trade. Indeed, it has been estimated that 25 per cent of all world trade moves under some form of discriminatory regime that is a departure from the MFN principle.[3] Regionalism or Regional Trading Arrangement is one such primary exemption or departure from the MFN principle. Since a number of preferential systems were already in existence at the time of evolution of GATT, the drafters of an international trade charter could not overlook the then prevalent trading systems. The final GATT text recognized the existence of these preferential treatments and provided for the continuance of these preferential systems. It should be noted that one of the major goals that the United States sought to accomplish through the ITO and

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[1] Article XXIV and the Enabling Clause are the legal provisions for Regional Arrangements and Preferential Arrangements respectively. This scope of this study is confined to the Regional Trade Agreements, and hence the discussion is limited to Article XXIV.

[2] GATT Final Act 1947 (hereinafter referred to as GATT 1947), Geneva, 55 UNTS 194, 1947, Article XXIV, at p. 264. GATT 1994 which is annexed to the Marrakesh Agreement establishing the World Trade Organization (hereinafter, WTO Agreement) consists of the provisions in GATT 1947 within it.

[3] Michel M. Kostecki, "Export-Restraint Arrangements and Trade Liberalization", *World Economy* Vol.10, 1987 pp. 425-29.

subsequently the GATT was the dismantling of trading preferences, especially the Common Wealth preferences.[4] Yet, even the United States proposals recognized the legitimacy and need for exceptions for Customs Unions. The original United States draft included clauses exempting such arrangements from the MFN and other obligations.[5] Delegates from other nations at the 1946-47 preparatory conferences urged, however, that a period of transition to form a Customs Union be allowed.[6] Though not all the proposals in this regard are accepted,[7] the Geneva draft ITO and the original GATT incorporated clauses allowing exception for regional arrangements.[8] The ITO Draft Charter article on regional exceptions and its provisions were carried to GATT by a Protocol of March 24, 1948.[9] Though a special article on preferential arrangements for economic development and reconstruction was expected to be added to the text, it did not appear in the final version. The language of Article XXIV remains same as drafted at Havana, except two minor amendments effected in 1955-57.[10]

This section will analyze the legal criteria and requirements for each of the three types of regional arrangements proposed under GATT/ WTO. Further, an attempt will be made to examine the salient features and interpretative matrix of Article XXIV of the GATT 1994.

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[4] W. Brown, "The United States And the Restoration of World Trade: An Analysis and Appraisal of the ITO Charter and the GATT" (1950) and C. Wilcox, *A Charter for World Trade* (1949) as cited in John H. Jackson, *World Trade and the Law of the GATT* (New York: Bobbs-Merril Company INC, 1969) at pp. 576-77.

[5] See, US Proposals, Dept of State, Pub. No. 2411, at p. 18 (1945); US Suggested Charter, Dept of State Pub. No. 2598, Art. 33 at p. 25 (1946), as cited in Jackson, *ibid,* p. 577.

[6] Delegates from Netherlands, France, etc. See EPCT/C. 11/38 at 8 (1946), cited in Jackson, ibid, at p. 577.

[7] Certain less developed countries particularly Syria and some Latin American countries argued that regional exception clause shall be drafted so as to allow less-developed countries to enter into regional arrangements to broaden their markets and assist them in the industrial development process. For more details refer to Preparatory Work of GATT Article XXIV. UN Doc. EPCT/C.11/7, (1946) at p. 9.

[8] GATT Final Act 1947; See n. 2.

[9] See Special Protocol relating to Article XXIV of the GATT, 1948 (Agreement No. 7 in Appendix C, GATT 1947) which came into force on 7th June, 1948, UNTS 62/56, as well as the discussion in GATT Docs. GATT 21, GATT/1/23, 1948.

[10] At the Ninth Session, "constituent territories" was substituted for parties in paragraph 4 and "included" replaced "provided for" after the "schedule" in paragraph 7(b).

III.2. Salient Features of Article XXIV of the GATT

The main features of Regional Trade Agreements (hereinafter referred to as RTAs) are the preferential treatment in tariff elimination and other trade and investment restrictions for the members. Though WTO permits a degree of deviations from the principles such as the MFN principle and the national treatment principle with regard to RTAs, there should be a limit to exclusivity so that its restrictive features would not unnecessarily distort the multilateral trading system. The key elements of Article XXIV can be summarized as under

- A customs union or a free trade area should be to facilitate trade and not to raise barriers to the trade.
- Duties or other regulations imposed at the institution of a customs union shall not on the whole be higher or more restrictive than those applicable prior to the formation.
- If any member increases tariffs as a result of forming a customs union, it shall negotiate with members outside the union under Article XXVIII of GATT.
- For both customs union and free trade area, duties and restrictions of commerce shall be eliminated with respect to substantially all the trade between the members.
- Customs union shall establish common tariffs and other restrictions of commerce with outside members.

The substantive provisions of the GATT 1947[11] are Article XXIV: 4, Article XXIV: 5 (a), (b) and (c), Article XXIV: 6 and Article XXIV: 8 (a)(i), (ii) and (b). Each of these is considered below in detail.

It can be seen that Article XXIV: 4 declares a general principle that the purpose of a customs union or 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. The expressed rationale behind the regional exception in GATT is stated in Article XXIV, paragraph 4, that regional arrangements can "increase freedom

[11] GATT Final Act, 1947, See, n. 2. Also see, Annex I for the text of Article XXIV of GATT.

of trade" through "closer integration between economies." But the danger of regions raising barriers to the trade of other contracting parties is also recognized.

Article XXIV: 5 sets out the conditions under which FTAs can be formed. Article XXIV: 5 (a) provides that a customs union can be formed if the duties or other regulations imposed at the institution of such union with regard to commerce with outside parties shall not on the whole be higher or more restrictive than those applicable prior to the formation of such union. Article XXIV: 5 (b) provides the same conditions with regard to a free trade agreement. The terms of paragraph 5, which establishes the exception, apply only to regional arrangements between territories of contracting parties. In a case where a non-party to GATT is a member of a regional arrangement, such an arrangement is not eligible for the "automatic exception" in GATT. However, it can be approved by two thirds of the CONTRACTING PARTIES[12] under the special provisions of paragraph 10 of Article XXIV. Thus Article XXIV, including paragraph 10, "would not prevent the formation of customs union and free trade areas of which one or more parties were non-members, but would give the Organization an essential degree of control."[13]

Article XXIV: 6 states that, if a Member increases tariffs above the concession rate as a result of forming a customs union, it negotiates with other Members outside the union under Article XXIV of the GATT. This provision refers to situations where members are required to increase or decrease tariff rates to meet the requirements to form a customs union generally or as a part of formation of a free trade area. It is obligatory under GATT provisions to negotiate with other affected members under Article XXIV.

It is required by paragraph 7 of Article XXIV that any GATT contracting party who enters into any regional arrangement as provided in the Article is obliged to "promptly notify the CONTRACTING PARTIES"[14] and furnish information about the arrangement. An explicit provision is made in Article XXIV paragraph 7 (b) that CONTRACTING PARTIES can make recommendation under certain conditions,

[12] The term "CONTRACTING PARTIES" refers to the members of GATT/WTO.

[13] Havana Reports, U. N. Doc. ICITO/1/8, 1948 at p. 51; GATT Doc. C. P. 6/24, 1951, at paragraph 2 and Add.1, Paragraph 5.

[14] See, n.12.

which must be followed before the interim agreement can be maintained under certain conditions which must be followed before the interim agreement can be maintained or put into force.

The definition of Customs Union and Free Trade Area is contained in Article XXIV: 8.[15] Article XXIV: 8 (a)(i) states that a customs union is an entity in which duties and restrictions of commerce are eliminated with respect to substantially all the trade between the members of the union except those restrictions permitted under Articles XI, XII, XII, XIV, XIV and XX[16]. Article XXIV: 8 (a)(ii) states that a customs union establishes common tariffs and other restrictions of commerce with respect to commerce with Members that are outside parties to the union. Article XXIV: 8 (b) provides the same requirements with respect to free trade area except for the fact that there is no requirement equivalent to (ii) which applies to a customs union.

III.2.1. Key Provisions of Article XXIV

III.3. Legal Criteria and Requirements for Regional Arrangement

Having considered the key elements of Article XXIV we propose to examine below the various terminologies used within the Article XXIV and their scope in terms of GATT interpretation and practice. These terms are 'Customs Union,' 'Free Trade Area' and 'Interim Arrangements.'

III.3.1. Customs Union

Paragraph 8 (a) of Article XXIV defines a Customs Union. The two required characteristics to be graduated as a Customs Union as per the Article are that (a) trade restrictions between union members are "substantially eliminated" and (b) uniform restrictions on trade with non union members are established. For such a customs union or interim agreement leading to a customs union to be eligible for exemption to GATT obligations, the paragraph 5 (a) of the Article lays down that the duties and other restrictions on trade of non union GATT parties to and from the customs union shall not on the whole be higher or more restrictive than the general incidence of the duties

[15] See, discussion below.

[16] See, GATT Final Act, 1947, n. 2.

and regulations of commerce... prior to the formation of such union. It will require some tariff increase and decrease by the union members in order to arrive at a common external tariff. In such a case, if any of the increased tariffs are bound in a GATT Schedule, then the procedures of Article XXVIII of the GATT are to be applied to provide for compensatory adjustment.[17]

III.3.2. Free Trade Area

The GATT definition for free trade area is relatively simple. Paragraph 8 (b) of Article XXIV requires the elimination of duties and restrictions on "substantially all the trade" between members, without a requirement of uniform common external tariffs, and regulations on trade of non members as in the case of customs union. The members in a free trade area can remain the same as they were prior to the arrangement, as there is no mandatory requirement to have uniform tariffs and restrictions towards non-members of this area. Any free trade area to be eligible for exemption to GATT obligations under Article XXIV, each member's duties and regulations of commerce "shall not be higher or more restrictive than the corresponding" ones existing prior to the formation of the free trade area or the interim agreement.[18]

According to GATT definitions, a customs union results in a new "customs territory" to which the GATT obligations apply directly, whereas a free trade area is not so defined.[19] It is interesting to note that GATT obligations do not apply to this trade area as an entity, since each remains autonomous as to trade restrictions toward non area territories.

III.3.3. Interim Agreements

Paragraph 5 (c) of Article XXIV states that "[A]ny interim agreement referred to in sub paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such free trade area within a reasonable length of time." The

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[17] GATT Article XXIV, paragraph 6. Article XXVIII deals with the procedure for Modification of Schedules. See, GATT Final Act, n. 2.

[18] GATT Article XXIV, paragraph 5 (b); see, Annex I.

[19] GATT Article XXIV, paragraph 8 (a) and the definition of customs territory in GATT Article XXIV, paragraph 2.

GATT provides that with respect to either a customs union or a free trade area "an interim agreement (as referred above) shall be eligible for the GATT exemption. In fact, all regional agreements so far brought to GATT approval or accepted under GATT have been basically interim agreements.[20] The interim agreements must, however, meet the requirement of Article XXIV, paragraph 5, set for the customs union or free trade area as to the level of restrictions of trade barriers permitted by its formation. Thus the interim agreement leading to a customs union is required to have duties "not on the whole...higher...than the general incidence" prior to formation; that leading to a free-trade area which requires "corresponding duties" to be no higher than before.

III.4. Interpreting Article XXIV

As one could see the text of Article XXIV of GATT is intricate in terms of its legal language. It is argued that this provision seem to lack conceptual clarity as well as an acceptable and precise interpretation. Further, it appeared to leave wide room for interpretation of the many terms, which is capable of even undermining the basic purpose and object of the Article. Hence it is important to look into the legal text of the Article and its interpretation and emerging jurisprudence in interpreting the legal text. An attempt is made hereunder to examine some of the emerging interpretations of the key elements of Article XXIV such as

(a) Interpretation of the terms "substantially all."

(b) The test of "not on the whole...higher... than the general incidence...."

III.4.1. "Substantially All"

The term "substantially" is used in four occasions in different contexts in the definition of customs union and free trade area.[21] The term "substantially all" qualifies each of the definitional criteria for regional arrangements. The definitions of both the customs union and the free trade areas in Article XXIV requires that "duties and other restrictive regulations of commerce are eliminated" on or with respect to "substantially all the trade between the constituent territories," at least as to products originating in

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[20] John H. Jackson, n. 4 at p. 584.

[21] All references are in GATT Article XXIV, paragraph 8. See, the text of Article XXIV in Annex I.

such territories. In addition, the custom union definition requires that each member of the union apply to non-members' trade "substantially the same duties and other regulation of commerce."[22] The term "substantial" is inherently ambiguous in various contexts and this creates much difficulty and interpretative problems in evaluating the compatibility of any regional arrangement in the framework of Article XXIV. Further, it is interesting to note that the meaning of the term "substantially" is not always necessarily the same in all the four instances. In other words, adopting the interpretation at one context in another context may create an analogy.

The preparatory work is not comprehensive in providing the meaning of "substantial," beyond the ordinary and obvious point that substantial is not "all," so some duties and restrictions can remain in each of the cases to which the terms apply.[23] We can find several discussions on the possible interpretations of the term "substantially" in GATT reports.[24] The "substantially all" question arose in the discussions on the European Free Trade Area (hereinafter referred to as EFTA) also. The problem here was the effect of exempting most agricultural trade from the terms of the EFTA agreement. The Report[25] indicates, it was argued that the phrase "substantially all the trade" had a qualitative as well as quantitative aspect and that it should not be taken as allowing the exclusion of a major sector of economic activity. It was argued that the percentage of trade covered should not be the only factor to be taken into account. Finally, the member states agreed that the quantitative aspect, in other words the percentage of trade freed was not the only consideration to be taken into account.[26]

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[22] The preparatory work reflects a conscious choice to apply the "substantiality" test to the external duties and regulations of a customs union, as well as to the elimination of internal rates and regulations. See, UN Doc EPCT/C.11/PV.7, 1946, at p. 20.

[23] *Ibid.*

[24] In a report evaluating the free trade area relationship of the European Economic Community to the associated African States, it was asked to furnish the data on trade proportions to GATT. GATT, 6th Supp. BISD 94, 1958.

[25] *Ibid.*

[26] GATT, 9th Supp. BISD 83, 1961, paragraphs 48 and 49.

Finally, the GATT Working Party reported:

> There was, therefore, a divergence of view regarding the justification for including, in estimating the amount of trade within the free trade area to be freed from barriers in terms of Article XXIV, the trade in agricultural products where imports were freed in the case of one member state only. In the time at its disposal, the Working Party was unable to reach agreement concerning the interpretation which should be given to the relevant provisions of Article XXIV.[27]

However, if the test is one that is qualitative as well as quantitative, a mere fact that the trade of a member country is liberalized as a whole is not sufficient for the customs union or free trade area to be qualified to be exempted under Article XXIV, if a particular sector is not liberalized.

In sum, not only it is difficult to arrive at a proposition that could be deemed "substantially all" within the GATT regional criteria, but it has so far been impossible for GATT parties to agree on even the qualitative aspects of interpreting this term. So far an agreement of consensus appears on this position that no important segment of trade can be omitted from an arrangement to meet the requirement of "substantially all" test.

III.4.2. Test of "[N]ot on the whole...higher... than the general incidence...."

Article XXIV: 5 (a) requires that tariffs and other trade restrictions imposed by a FTA to outside parties shall not on the whole be higher or more restrictive than those before the formation of the FTA. Any customs union to be eligible for exemption from GATT obligation under Article XXIV must be the "substitution of a single customs territory for two or more customs territories" and that duties and other restrictive regulations of commerce are to be "eliminated with respect to substantially all the trade between the constituent territories" and the members of the union must apply "substantially the same duties and other regulations of commerce" to non members and further with respect to a customs union, or an interim agreement to the formation of a customs union,

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[27] *Ibid* at p. 84, paragraph 54.

the duties and other regulations of commerce imposed at the institution 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*[28] 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....

Here we examine the requirement of Article XXIV, paragraph 5 (a), that those duties and regulations in respect to trade of non members shall not on the whole be higher or more restrictive than the general incidence prior to the formation of the arrangement. It is interesting to note that the original GATT used the phrase "average level"[29] but at Havana Conference, this was changed to general incidence.[30] The drafters seem to be keen in providing a greater flexibility to the phrase so that the volume of trade may be considered rather than the mathematical average.[31]

In an earlier Preparatory Conference[32] the phrase "on the whole" was explained, as follows:

The phrase "on the whole"... did not mean an average tariff should be laid down in respect of each individual product, but merely that the whole level of tariffs of a customs union should not be higher than the average overall level of the former constituent territories. The evaluation and application of these criteria had raised serious difficulties and problems. The EEC case[33] was the single case so far in this

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[28] Emphasis added.

[29] GATT Article XXIV, paragraph 2 (b) in the GATT Final Act, n. 2 at p. 270.

[30] The Havana Conference change was then incorporated into GATT by the Protocol of March 24, 1948. See, n. 9.

[31] *Ibid.*

[32] Harry Hawkins, in UN Doc. EPCT/C.11/38, 1946 at p. 9. See the statement of United Kingdom urging the use of weighted averages in the document, at p. 8.

[33] See, n. 24. *The UK-Increase in margin of preferences on bananas case, the preferential tariffs to import of bananas case*, the preferential tariffs to import of bananas from colonies was considered. Following the Panel ruling in 1962, the proposed tariff increase was abandoned in October 1962. The Panel Report was not adopted. See, GATT Docs. L/ 1749 (1961).

practice of GATT that considered the criteria of Article XXIV, paragraph 5 (a), in detail.[34] The GATT report showed that majority of the GATT members

> felt that an automatic application of a formula, whether arithmetic[al] average or otherwise, could not be accepted and agreed that the matter should be approached by examining individual commodities on a country-by-country basis.[35] It was observed that as the probable intention of the draftsman has to be considered as there is lack of drafting history and the term shall be interpreted in the light of general principles set out in paragraph 4 of Article XXIV.[36]

More difficult problem arise with the interpretation of the term "other trade restrictions." The interpretation becomes more crucial and difficult in the treatment of rules of origin. Here the central question in this regard is whether rules of origin are "other restrictions" or not. Although there are views that rules of origin should be regarded as restrictions of trade, there are strong opposition to it also. In the working party which examined the compatibility of the NAFTA with GATT rules, the United States argued that rules of origin are not trade restrictions in the same sense as tariffs and quantitative restrictions.[37] In the EC-Bananas Case, both the Panel and Appellate Body considered the scope of a waiver of specified obligations granted by the GATT Council and extended by the WTO General Council with respect to the Lome Convention, which required the Community to extend preferential treatment to goods originating in certain African, Caribbean and Pacific Countries (hereinafter referred to as ACP). On the substantive question as to what was required by Lome Convention, the EC and ACP argued that the Panel was not competent to answer it, and should defer to the interpretation given by the EC and ACP themselves, since as the parties to the Convention they were competent to answer it. It was noted by the Panel that EC and

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[34] Since most of the customs union arrangements brought to GATT as interim agreements have not reached the state of having common external tariff, there was no other opportunity to examine in detail the application of these criteria except for the EEC case.

[35] GATT, 6th Supp. BISD 72, 1958.

[36] *Ibid*; Jackson, n. 4, at p. 614.

[37] WT/REG/M2, dated February 21, 1997 at p. 10. *The EC- Regime for Importation, Sale and Distribution of Bananas*, WTO Doc. WT/ DS27/ R (May 22, 1997).

ACP were granted a waiver by the GATT CONTRACTING PARTIES which was subsequently adopted by the WTO. The waiver itself is a WTO Agreement within the competence of WTO Panel. Since the waiver itself applies to action necessary...to provide preferential treatment...as required by the relevant provisions of the Fourth Lome Convention, the Panel said, "we must also determine what preferential treatment is required by the Lome Convention." The Appellate Body observed while affirming the Panel decision that "to determine what is required by the Convention, we must first look to the text of that Convention and identify provisions of it that are relevant to trade in bananas."[38]

Though the negotiators deliberated on the issue whether Rules of Origin[39] were "other restrictions" or not in the Uruguay Round negotiations, they failed to reach any conclusion as to whether Rules of Origin were "other restrictions" or not.[40] So far no Panel or Appellate Body reports have clarified these issues and hence this remains unresolved.

III.5. Understanding on the Interpretation of Article XXIV– Its Meaning and Scope

In the context of existing ambiguities and vagueness in the interpretation of Article XXIV of GATT, the GATT CONTRACTING PARTIES took a legislative step to strengthen the legal discipline in the area of regional trade particularly in the face of continued proliferation of RTAs. The legislative step was that the parties agreed on an 'Understanding on the Interpretation of Article XXIV of the General Agreement on Tariff and Trade 1994'[41] (hereinafter referred to as the Understanding). The Understanding aims at addressing some of the traditional controversial issues as well as

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[38] *EC-Bananas Case*, paragraphs 167 and 168. For a detailed discussion see, David Palmeter and Petros C. Mavroidis, "The WTO Legal System: Sources of Law", *American Journal of International Law*, vol. 92, 1998, pp. 398-413 at pp. 412-13.

[39] For details see, Chapter IV.

[40] Background note by the Secretariat, Systematic Issues Relating to "Other Regulations of Commerce," WT/REG/W17 dated October 31, 1997 cited in Mitsuo Matsushita and Dukgeun (ed.), *WTO and East Asia: New Perspectives* (London: Cameroon May International Law Publishers, 2004), pp.497-514 at p. 507.

[41] The Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade, 1994 and Part IV B of GATT. See, Annex II.

clarifying and reaffirming the procedures and other practices in monitoring and reviewing the formation and functional aspects of RTAs.

The Preamble[42] of the Understanding on the Interpretation of Article XXIV acknowledges and reaffirms the increased importance and vital role of RTAs in the present day world trade. The preamble emphasizes on the positive contribution of RTAs in the liberalization or rather highlighting the "stumbling block" perspective[43] of RTAs. At the same time, the preamble reminds of the need of substantial liberalization of trade without excluding any major sector of trade.[44]

The Article XXIV Understanding re-emphasizes the importance of meeting the requirements of paragraphs 5, 6, 7 and 8 in the main body. It provides clarity to paragraph 5 of Article XXIV by clarifying the calculation to assess whether the post RTA level of tariff outweighs the pre-RTA one. It is agreed in the Understanding that the assessment shall be based upon an overall assessment of weighted average tariff rates as well as applied tariffs.[45] The Article XXIV Understanding wipes out the ambiguity by defining reasonable length of time as defining the same as 10 years and it specifically provides that extra time shall be given only in exceptional cases and that too with full explanation.[46]

The Article XXIV Understanding also explains the mechanism to be practiced for balancing tariff concessions through the negotiation of mutually satisfactory compensatory adjustment and withdrawal or modification of pre-existing tariffs.[47] The above procedure is to be initiated when a member forming an RTA proposes to increase

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[42] See, Annex II.

[43] See, discussions in Chapter II.

[44] Paragraph 3 of the Preamble of the Understanding on the Interpretation of Article XXIV of GATT, 1994. It is also recognized that such contribution is increased, if the elimination of duties and other restrictive regulations of commerce, between the constituent territories is extended to all trade, and diminished, if any major sector of trade excluded.

[45] Paragraph 2 of the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade, 1994.

[46] Paragraph 3, *ibid.*

[47] Paragraphs 4-6, *ibid.*

a "bound"[48] rather than "applied"[49] rate of duty. This provides member states to have some room for increasing their applied tariffs while forming an RTA without taking the tiring and complex process of tariff re-negotiation.

Further, the Article XXIV Understanding provides for five paragraphs under the title of "Review of Customs Unions and Free Trade Area."[50] These provisions provide for reports by working parties, recommendations by the Council for Trade in Goods and other monitoring and surveillance mechanisms. It is pertinent to note that the paragraph 7 of the Understanding provides that a working party shall recommend a plan and schedule for an interim agreement if it is not included in the submitted interim agreement.[51] This provision enabled to resolve the many endless delays encountered in the final integration stage of many RTAs.

Finally, the paragraph 12 of the Article XXIV Understanding provided that the WTO Dispute Settlement procedure shall be invoked with respect to any dispute concerning Article XXIV. It put an end to a long standing controversy on the matter.[52] Considering that the 1985 Panel Report explicitly refused to adjudicate this issue,[53] it is observed that the paragraph 12 represent another example of "Judicialization."[54]

Though the Article XXIV Understanding achieves some level of progress, this legislative solution is insufficient because it focuses mainly on tariffs or other financial charges, while failing to address other newly emerging forms of non-tariff trade

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[48] Bound tariff rate means the ceiling tariff or maximum tariff rate that can be levied on a particular imported product.

[49] Applied tariff rate means the rate of tariff that is actually levied on an imported product.

[50] Paragraphs 7-11, *ibid.*

[51] Paragraph 7, *ibid.*

[52] An important point that the Understanding makes clear is that the examination of a regional agreement under Article XXIV does not extinguish the rights to invoke GATT/ WTO dispute settlement procedures on matters arising from the application of the Article. See, Paragraphs 7-11 of the Understanding. Also, John Croome, *Guide to the Uruguay Round Agreements* (Hague: Kluwer International, 1999), at p. 45.

[53] *European Community- Tariff Treatment on Imports of Citrus Products from Certain Territories in the Mediterranean Region*: Report of the Panel, GATT 2/5776, dated February 7, 1985. (un adopted)

[54] Sungjoon Cho, "Breaking the Barriers between Regionalism and Multilateralism: a New Perspective on Trade Regionalism", *Harvard International Law Journal*, vol. 42, no. 2, 2001 at p. 445. The WTO General Council has established a Committee on Regional Trade Agreements to carry out the examination of such agreement, in replacement of the *ad hoc* working parties, used for the purpose. See, the Decision of 6th February, 1996, WT/ L/ 127. Also see, the discussion on the Committee in Chapter II.

barriers such as domestic regulations pertaining to labour standards or the environment.[55]

III.6. Turkish QR Case and Article XXIV[56]

Turkish QRs was the first case in the history of GATT/WTO which directly dealt with the application and interpretation of Article XXIV. Although there were other cases[57] like EEC Case, EC-Citrus Products Case and EC-Bananas Case, they had not elaborated directly on the interpretation and application of Article XXIV. The Panel as well as the Appellate Body had examined the legal text of Article XXIV in interpreting the provisions under dispute. This judicial breakthrough had shed much light in the legal interpretation of the nebulous and complex text of Article XXIV. Though we cannot find a comprehensive analysis of the whole of the Article XXIV the many crucial as well as important provisions of the Article are examined and interpreted by the Panel and Appellate Body.

III.6.1. Facts of the Case

Turkey introduced Quantitative Restrictions on the imports of textiles and clothing products from India as part of integration made into European Communities (hereinafter referred as EC).[58] India claimed that the quantitative restriction measure introduced by Turkey is violative of GATT/WTO obligations and inconsistent with; *inter alia*, Article XI and XIII.[59] In justifying the Quantitative Restriction, Turkey argued that without these new Quantitative Restrictions, the EC would have excluded the textile and clothing sector of trade from free trade within the Turkey-EC Customs Union, which in turn, would have prevented Turkey from meeting the requirement of

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[55] Cho, *ibid*, at p. 444. See further discussions in Chapter IV.

[56] See, GATT Dispute Panel Report on *Turkey Restrictions on Imports of Textile and Clothing Products* (hereinafter Turkish QRs case), WT/DS34/R dated November 19, 1999; Appellate Body Report WT/DS34/AB/R accessed at www.wto.org on 5th June, 2006.

[57] The *EEC case* (1958), see n. 24; *EC-Citrus Products* case (1985, un adopted), see n. 53; and *EC-Bananas* (1997) see n. 37; they did not address the issue directly.

[58] See n. 56, at paragraph 50.

[59] *Ibid*, paragraph 21.

"substantially all trade," when considering the fact that Turkey's export in textile and clothing amounts to forty per cent under Turkey's total exports to EC.[60]

III.6.2. Analysis Report and Interpretation

In the report the Panel concluded that the quantitative restriction applied by Turkey to the textiles and clothing from India is inconsistent with GATT Article XI.[61] Then the Panel also observed that the Quantitative Restriction applied in this case by Turkey is not consistent with the other GATT provisions.[62] While examining the Turkish defense that the requirement of complying with the provisions of Article XXIV in the given context, particularly paragraphs 5 and 8 of Article XXIV, with regard to the 'external requirement' in paragraph 5 of Article XXIV the Panel concluded that the paragraph does not allow participants in a newly formed Customs Union to deviate from the prohibitions contained in Articles XI and XIII.[63] Similarly, regarding the 'internal requirement' of paragraph 8, the Panel concluded that the provision does not require Turkey to impose restrictions on imports of textiles and clothing that violate other provisions of the WTO Agreement.[64] Further, the Panel observed that considering the "flexibility" embedded in paragraph 8 of Article XXIV, the EC and Turkey could have introduced relevant "administrative means," namely, the "system of certificates of origin," to avoid trade diversion resulting from the formation of a Customs Union.[65] Thus the Turkish argument of Article XXIV requirement was rejected and the Turkish quantitative restrictions were judged as violations of GATT Article XI and XIII.

It is interesting as well as important to examine the reasoning and interpretation by the Panel in the judicial discourse. The Panel attempted to legitimize its functions by invoking and emphasizing the objective of trade regionalism vis-à-vis the GATT/WTO

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[60] *Ibid*, paragraph 17.

[61] Article XI of GATT deals with General Elimination of Quantitative Restrictions, see n. 2.

[62] *Turkish QRs case*, Panel Report, n. 56, paragraph 9.86.

[63] *Ibid*, paragraph 9.134.

[64] *Ibid*, paragraph 9.156.

[65] *Ibid*, paragraph 9.152.

system as a whole.[66] The Panel observed that the objective of trade regionalism is to complement the global trading system. RTAs are to increase and not to raise barriers to global trade.[67] The Panel thus rejected the Turkish argument of requirement of Article XXIV above the other GATT/WTO obligations by interpreting the relevant provisions in the light of the objective of trade regionalism embedded in paragraph 4 of GATT Article XXIV, the Article XXIV Understanding and the Preamble of the WTO Agreement[68] as a whole.[69]

III.6.3. Appellate Body Report

The Appellate Body delivered a brief report upholding most of the findings of the Panel in principle. The Appellate Body upheld and reinforced the Panel's approach in interpreting the provisions by basing its own interpretation of paragraph 5 of Article XXIV on the objective of a Customs Union as set in paragraph 4 of Article XXIV.[70] Thus the Appellate Body interpreted the relevancy and function of a RTA in the light of the global trading system. Going a step ahead, the Appellate Body observed that the Chapeau or Preamble of paragraph 5 was the key provision in resolving the issue in question. The Appellate Body criticized the Panel for overlooking or not giving the relevance in the given context. The Appellate Body observed that the term "accordingly" in the beginning of paragraph 5 as the key link referring to paragraph 4.[71] Hence it concluded that the Preamble of paragraph 5 of Article XXIV, and the conditions and requirements laid down in the same shall be interpreted in the light of the purpose of a Customs Union set forth in paragraph 4 of Article XXIV.[72]

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[66] See, n. 54 at p. 446.

[67] See, n. 56 at paragraph 9.163.

[68] Marrakesh Agreement Establishing the World Trade Organization. See, *The Results of the Uruguay Round of Multilateral Trade Negotiations: the Legal Texts* (Geneva: WTO, 1995) at pp. 6-18.

[69] *Ibid*, at paragraphs 9.186- 187.

[70] GATT 1947, n. 2, Article XXIV, paragraph 4.

[71] See, n. 56 at paragraph 56.

[72] *Ibi*d, paragraph 57.

The Appellate Body concluded its observations with similar suggestions as that of the Panel that Turkey could have adopted a "reasonable alternative," such as a system of certificates of origin, capable of addressing the concern of Turkey and the EC regarding any possible diversion of trade, while at the same time satisfying the requirements of sub-paragraph 8 (a)(i) of Article XXIV.[73] Thus, one can find that, though the Appellate Body criticized some aspects of the Panel report, it upheld most of the views and suggestions of the Panel.

III.7. Interpretation of Turkish QR Case

The Appellate Body and Panel Reports in Turkey QR case caused a serious shift in the interpretation of the legal text of Article XXIV. The Appellate Body Report clarified the relevance of paragraph 4 in interpreting paragraph 5 to 9 which in turn had created a well set norms and principles in the formation and functioning of RTAs. Thus the Report in effect put an end to a long standing controversy and ambiguity in the interpretation of Article XXIV of GATT/WTO. The Report well illuminated the relationship and the dictating role of paragraph 4 in the interpretation of paragraphs 5 to 9. This brought an end to the earlier argument that the fulfillment of paragraphs 5 to 9 would "automatically and necessarily" satisfy the requirements of paragraph 4.[74] While EEC raised this argument, most of the contracting parties objected to the same.[75] Later in the 1980s the debate again came up while the working party was reviewing the accession of Portugal and Spain to the European Communities. The Panel noted that the EC delegations did not consider paragraph 4 of Article XXIV an *obligation,* but rather an *objective.*[76] Therefore they argued that paragraph 4 did not prevent the members of a Customs Union from introducing new barriers to trade, which might be inconsistent

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[73] *Ibid*, paragraph 62.

[74] The European Economic Community: Report adopted on 29th November 1957, L/778, GATT 6th Supp. BISD at paragraph 2.

[75] *Ibid.*

[76] Accession of Portugal and Spain to the European Communities: Report of the Working Party, L/6405 adopted on 19-20 October, 1988.

with other provisions of GATT, if their net effect remains less trade restrictive than before the Customs Union was formed.[77]

The Appellate Body Report provided for substantial clarity in respect of the formation and functions of RTAs, in the back drop of multilateral trading system. Moreover, it checked and ruled out any possibility of upsetting the multilateral trading system with the proliferation of RTAs which would have created many trade barriers. If not the firm objective of paragraph 4 was set as the interpretative anchor for paragraph 5 to 9, the nebulous language in these paragraphs would have been used for the unhealthy trade practices in the global trade and in turn RTAs might have created '*stumbling block*' effect in the trade liberalization. The Turkish QRs Appellate Body dispelled this concern by putting an end to the long standing interpretative debate. In sum, the interpretative stance of the Appellate Body can be understood as providing enhanced legal rigour to Article XXIV in a way that permits the GATT/WTO system to be harmonized with the proliferation of RTAs. This is a federalist approach, in the sense that RTAs can co-exist with the GATT/WTO system, while remaining subject to multilateral discipline in key areas.[78] Even then it does not mean that the legislative as well as judicial breakthrough so far achieved had resolved all the legal and non legal issues in the operational relationships between the multilateral and regional trade blocs. The following sections will attempt to identify some of the unaddressed issues in the given context.

III.8. Limits of Article XXIV

So far the discussion focused on the legal text of the GATT Article XXIV, its interpretation and emerging jurisprudence on the subject. Though the legislative and judicial outcomes on the subject have contributed substantially towards providing

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[77] Parties forming RTAs are frequently tempted to erect trade barriers inconsistent with various GATT provisions, such as Article XI and XIII. In the EC- Bananas Case (1997), see, n. 37, the Appellate Body dealt with this phenomenon in the context of the EC's banana trading regime. Despite this fact that the ACP-EEC Fourth Lome Convention is one of the RTAs notified under Article XXIV, the EC's attempt to defend its behaviour by invoking the Lome waiver ultimately failed. Instead, the Appellate Body focused on the trading regime's violation of Article XIII. See, European communities Regime for the Importation, Sale and Distribution of Bananas, Appellate Body Report adopted on November 17, 1997, WT/DS27/AB/R cited in n. 54 at p. 448.

[78] See, n. 54 at p. 450.

clarity in applying the legal text of Article XXIV, it can be found that the legal framework of Article XXIV is not adequate in dealing comprehensively with the tensions arising out of the ethos of multilateralism and regionalism. Considering the vast stretch of areas that are covered in the global and regional trade, the complexity multiplies many times as divergent interests confront and clash in a wide and varied fashion.

(i) GATT Article XXIV is limited by its exclusive focus on trade in goods, despite the fact that the modern day trade involves both goods and services. It is technical that the latter cannot be brought under the purview of GATT Article XXIV. Services form an integral part of the contemporary trade. Hence, it is important to look into the relevant provisions which govern the rules of the game in this sector.

(ii) General Agreement on Trade in Services[79] (hereinafter referred to as GATS) is the agreement under GATT/WTO system which deals with the trade in services. GATS have provisions to deal with the possibilities of regional integration in trade in services.[80] Article V of the GATS features several provisions for "economic integration."[81] Similar to GATT Article XXIV, GATS Article V is also plagued by vague terms such as "substantial sectoral coverage."[82]

(iii) Further, there is hardly any body of jurisprudence emerged so far in this area to provide a guiding light in interpreting the inherently nebulous legal language of the text. Given the similarities between the two provisions, for instance, paragraph 1[83] and paragraph 4[84] of GATS Article V resembles paragraphs 4 and 8 of GATT Article XXIV

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[79] General Agreement on Trade in Services, 1994, Annex IB of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, n. 68, at pp. 327-64.

[80] Article V of GATS, ibid, at pp. 331-32.

[81] *Ibid.*

[82] *Ibid*, Paragraph 1 (a).

[83] *Ibid*, Article V (1).

[84] *Ibid*, Article V (4).

respectively, one might argue that the GATT/WTO jurisprudence shall be adopted in interpreting GATS Article V. But it is illogical to subscribe to this view considering the fundamental structural difference between GATS and GATT. The inherent differences between goods and services preclude simple legal conflation, which in turn may complicate the establishment of technically common jurisprudence in trade regionalism.[85]

III.8.1. RTAs as an Exception

When RTAs are examined in the backdrop of multilateral trade liberalization, it has to be treated as an exception to the fundamental principles of multilateral trade. This approach itself creates ample room for tension between the regionalism and multilateralism issues. The debate on the desirability of RTAs in a multilateral framework still surrounds in the form of 'multilateralism versus regionalism.'[86] Hence the elimination of tension between the two is not easy as RTAs are considered as exceptions to general obligations of multilateral trade. Further, the interpretation and jurisprudence on GATT Article XXIV emerged so far is limited to the abuse of RTAs for raising trade barriers.

The legal framework of GATT Article XXIV concerns only the "formation," that is, the creation or expansion of RTAs. The GATT Article XXIV lays down the requirements under GATT/WTO to be eligible for the exception under RTA. In other words, its basic purpose is to define the legal formation and expansion of RTAs. For this, such an arrangement will have to comply with the requirements stipulated in the paragraphs 4 to 8. The GATT Article XXIV is regrettably silent on critical issues such as the 'operational' and 'functional' part of RTAs. Nothing is found in the Article which could regulate the post-formative functioning of RTAs.[87] Given the fact that a

[85] See Cho, n. 54 at p. 451.

[86] For details, see discussion under Chapter II.

[87] The negotiating history of Article XXIV illustrates that the provision was included to allow for the existing preferential arrangements as an exception to MFN. At no time it was contemplated to regulate the regional arrangements under the GATT/ WTO rules. However, most recently in July 2006, a new WTO transparency mechanism for RTAs is under contemplation.

large number of regional arrangements exist and that the proliferation of RTAs continue unabated, it is likely to surface many new and complex legal questions from the interactions between RTAs and WTO as well as RTAs among themselves. Apart from the lack of legal discipline of the GATT Article XXIV, the provision miserably failed to address the many sophisticated issues pertaining to the operational aspects of RTAs. Hence, a comprehensive legal framework which could address the multidimensional problems surrounding trade regionalism is still to emerge and the future of international trade requires a harmonious existence and interaction between the regional and multilateral trading systems. In this context GATT/WTO will have to look beyond Article XXIV to achieve its wider goal of free trade.

III.9. Towards a New Legal Paradigm for Article XXIV

The discussions on RTAs elaborate the need for a new legal paradigm[88] capable of overcoming the inherent weakness of the existing legal framework of GATT/WTO dealing with the trade regionalism. Accepting the reality that regionalism in trade is an integral part of global trade and in the context of increased role of regional trade, it is important to avoid any kind of tension between the multilateral and regional trading blocs. As any tension between the two is likely to affect the ongoing global trade liberalization and the movement of the global trading community to free[r] trade, it is pertinent to provide for the harmonious interaction of the both. The world trade is not limited to trade in goods and the trade liberalization process is not confined to the tariff cutting exercises. Hence, this new paradigm shall be designed in such a way to address the complex issues surrounding the trade regionalism. Apart from the trade in goods, the present day trade involves trade in services and many other vital issues such as Rules of Origin, investment measures, TRIPS, environmental standards and the like.[89] The legal text[90] negotiated and concluded at a time when the trade between the

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[88] It is often suggested that the global trading system requires a new paradigm capable of overcoming the deficiencies and obsolete elements embedded in Article XXIV in order to make trade regionalism compatible with multilateralism in a constructive, rather than destructive manner. See, Cho, n. 54, at p. 421.

[89] See, discussion under Chapter IV.

[90] GATT Article XXIV; See, Annex I.

members was limited to trade in goods has proved incapable of addressing the multifaceted issues of the world trade which has moved far ahead from the GATT period.

RTAs, as they are evolving, appear to go much beyond the traditional trade concepts and the members negotiate and liberalize many areas which are not part of WTO agenda. In other words, many of the recent RTAs attempt to address and contain many provisions which could be regarded as "WTO Plus."[91] This might create unpredictability among the trade law regimes raising the issues of compatibility and implications of such measures under the WTO framework. Since most of the RTAs have already passed the 'formation' stage and are in the operating and functioning stage, the narrow focus of Article XXIV on the formation of RTAs is naturally obsolete and outdated. What requires is a new legal vision capable of managing and regulating the post-formation situation of RTAs.

Scholars[92] have advocated the need for strengthening Article XXIV. It is identified and pointed out that there is a need to shape the GATT rules and disciplines under Article XXIV, foreseeing the possible danger posed by RTAs.[93] One suggestion is that, "a strict interpretation of Article XXIV in regard to all newly emerging and prospective free trade areas must be insisted upon so that less demanding preferential and discriminatory arrangements do not multiply in the present pro regionalism climate."[94] Further, it is emphasized the need to reinforce the paragraph 5 of Article XXIV which leaves the matter wholly ambiguous.[95] The greatest danger today is the multiplication of RTAs and the resultant trade diversion[96] caused which eventually makes regionalism particularly antithetical to the GATT's principles and objective of

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[91] For details, see discussion under Chapter IV.

[92] Bhagwati: 1991; Srinivasan: 1998; Cho: 2001; Gary Sampson: 1997.

[93] See generally, Jagdish Bhagwati, *World Trading System at Risk* (UK: Harvester Wheatsheet, 1991).

[94] *Ibid,* at p. 76.

[95] *Ibid.*

[96] For trade diversion effects of RTAs, see discussion in Chapter II.

world freer trade and hence modifying Article XXIV to rule out free trade areas and to permit only customs unions to tackle the menace is suggested.[97]

A new paradigm, powered by a new vision is needed to deal with the daunting problems of trade regionalism. The legal relationship among the RTAs and the WTO, as well as among the RTAs themselves needs to be broadened in which the WTO and RTAs exist in the same dimension, rather than in the hierarchical relationship of normalcy and exception.[98]

In this context, one approach to reform is to replace Article XXIV by a better provision that is precise, transparent and predictable in its application.[99] Another alternative suggests to retain the provisions of Article XXIV and lays down a precise time limit (say five years) within which, first, any and all preferences (tariff and non tariff) that are included in any existing or proposed RTAs are required to be extended to all members of the WTO on an MFN basis; in the case of Customs Unions any increase in tariff level of any country prior to becoming the member of the Union, such increase are to be rescinded within the same period, further, in the case of FTAs, any increase in the applied external tariffs of a member following its formation, even if it is within its previously bound levels, is to be rescinded within the same period.[100]

The fundamental objective that prompted the inclusion of the "substantially all" trade condition, which had led to much interpretative dilemma, was to avoid a mass of protectionist oriented *a la carte* agreements that exclude a broad range of 'sensitive sectors.'[101] One way to avoid problems of interpretation is, first to replace the phrase "substantially all trade" with "trade in all products and services except those explicitly exempted from MFN or National Treatment requirements under other Articles or Understanding of WTO." Second, if a member of a Customs Union or Free Trade Area avails of administered protection permitted under WTO Articles that should be applied

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[97] Bhagwati, n. 93, at p. 77

[98] Sungjoon Cho, n. 54, at p. 452-53.

[99] T. N. Srinivasan, "Regionalism and the WTO: Is Non-discrimination Passé?" in Krueger, Anne O. (ed.) *the WTO as an International Organization* (Chicago: Chicago University Press, 1999), pp. 329-49 at pp. 344-45.

[100] *Ibid*, at p. 343.

[101] WTO Report, 1995 (Geneva: WTO, 1995) at p. 66.

on a non-discriminatory basis i.e. other members should not be exempted from its application.[102]

Another major interpretation problem of Article XXIV with respect to the provision which requires that the common external tariff and other restrictive regulations imposed at the time of formation of a Customs Union not to be "on the whole higher or more restrictive..."[103] than those imposed by its members prior to its formation.[104] Here too, the vagueness in the legal text makes its application and implementation difficult. The substitution of the vague phrase "general incidence" by a much more precise criterion for comparison of pre and post union tariff structures was suggested to resolve the ambiguity. The Understanding reached in the Uruguay Round[105] attempted in addressing the issues relating to the interpretation of Article XXIV. But it failed in improving the situation substantially. The WTO Report rightly concluded that

> While the purpose of the Understanding on Article XXIV is to clarify certain of the areas where the application of Article XXIV had given rise to controversy in the past and particularly on regards the external policy of Customs Unions, it fell short of addressing most of the difficult issues of interpretation noted above. For example, no consensus emerged in the Uruguay Round Negotiating Group on GATT Articles concerning proposals made by several participants, notably Japan, to clarify the substantially-all-trade requirement. It is evident, therefore, that most of the problems that have plagued the working party process were not solved in the Uruguay Round.[106]

In this context two proposals, one from Bhagwati and another form Mac Millen are worth noting. Bhagwati proposed that a Customs Union should be approved only when its common external tariff is set at the minimum of the pre union import tariffs of

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[102] T. N. Srinivasan, n. 99, at p. 344.

[103] See, Annex I for the text of Article XXIV.

[104] See discussion under Part IV.4 for more elaboration on the interpretative problems.

[105] See Annex II.

[106] WTO Report 1995, n. 101, at p. 20.

the member countries.[107] Mac Millen[108] suggested that "(a) proposed Regional Integration Agreement (RIA) in order to get GATT's imprimatur, would have to promise not to introduce policies that result in external trade volumes being lowered. And if after some years the RIA is seen to have reduced its imports from rest of the world, it would be required to adjust its trade restrictions so as to reverse their fall in imports."

III.10. Conclusion

It is well established that the legal framework of GATT/ WTO provides for many exceptions to the principle of MFN. Among this, Article XXIV of GATT is the basic legal provision for regional arrangements under the GATT/ WTO. It is under Article XXIV that most of the RTAs are notified to the WTO. Certain legal criteria are required to be met by the RTAs for being eligible for Article XXIV exemption. The examination of the compatibility of RTAs according to the legal provisions leads to many interpretative problems. Though some disputes were taken before the GATT working parties, it had failed miserably in interpreting the legal text of Article XXIV consistently. The inherent limitation clubbed with the interpretative confusion, Article XXIV largely failed to address the issue of regionalism within the multilateral framework. It is in this context, the GATT CONTRACTING PARTIES agreed to an 'Understanding on the Interpretation of Article XXIV of GATT' in 1994. The Understanding even failed to remove the vagueness existing in the legal interpretation of Article XXIV. Later, the Turkish QR Case clarified a large extent of interpretative confusion regarding the legal text of the Article. Though the Panel and Appellate Body held the same view, the Appellate Body decision provided substantial clarity in the broad interpretation of Article XXIV. It is observed that even after Turkish QR decision there still exit grey areas regarding the interaction of RTAs in the broader GATT/ WTO framework. It is argued that the GATT/ WTO require a strong legal discipline capable

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[107] Bhagwati, n. 93, at p. 344.

[108] See, John McMillan, "Does Regional Integration Foster Open Trade? Economic Theory and GATT's Article XXIV" in Kym Anderson and Richard Blackhurst (ed.), *Regional Integration and the Global Trading System* (London; Harvester Wheatsheet, 1993) as cited in T. N. Srinivasan, n. 99 at p. 345.

of addressing the complex legal issues arising out of the regionalism and multilateralism debate.

It is undisputed that the proliferation of RTAs is at an alarming rate. Today, MFN is an exception rather than a rule.[109] In this situation, the global trading system could sustain the increasing surge of regionalism with an inadequate legal mechanism only at its own peril. Often, the vested interests of regional groups undermine the multilateral trading negotiations, which is not a welcome trend. It is clear from the above discussions that, for a harmonious and prospective world trading system, the global community must overcome the fundamental deficiencies of GATT Article XXIV. Successful completion of this process is the foremost challenge as well as a major step towards harmonizing the regional and multilateral trade. At the same time the global trading community must develop 'a new legal perspective on which it could relocate RTAs and the WTO on a common legal terrain.'[110]

[109] Views expressed by S. Narayanan, Ambassador to WTO, in the *Keynote Address at the National Seminar on India and the WTO Regime: The First Decade and Beyond*, on 27-28th January, 2005 (New Delhi: School of International Legal Studies, JNU, 2005).

[110] Sungjoon Cho, n. 54, at p. 465.

CHAPTER IV

WTO PLUS AGENDA OF RTAs

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IV.1. Introduction

The course of international trade has changed substantially over the decades and it keeps changing while adapting to the new era of globalization and liberalization. As the international trade pervaded world wide, it had to face several challenges. The increasing complexities and controversies of trade slowed down the pace of multilateral trade liberalization substantially. Often the ambitious trading partners are eager to go beyond what the multilateral forum delivers. They consider the process of trade liberalization in the multilateral forum to be too slow and complex. The reflections of such ambitions can be found in the various RTAs of the modern age, which go beyond the existing multilateral framework, thereby raising the concerns for the developing world. Many of the present day RTAs, including the PTAs and FTAs, both bilateral and multilateral arrangements, tend to go much beyond the WTO framework. In other words we can find many WTO-Plus issues in the modern RTAs.

'WTO-Plus' provisions and standards are the exclusive feature of modern RTAs. WTO Plus refers to commitments and undertakings which go beyond the required legal standards under various Covered Agreements of the WTO. Some of these provisions demand more commitments compared to the existing ones while some other provisions shelve the available flexibilities in the WTO. These features appear to downplay the flexibilities guaranteed for developing and less developed countries by the GATT/ WTO, which were aimed at enabling the developing and the less developed countries to integrate to the global economy.

It should be noted that Rules of Origin and Trade Related aspects of Intellectual Property Rights (hereinafter referred to as TRIPS) constitute an important element in deciding certain kinds of trade-flows. Interestingly, both these regulations are, in many ways, region or state specific, needing implementation mechanism at the regional level. Accordingly, it should be further noted that majority of RTAs incorporate provisions relating to these two areas. The following discussion will, therefore, examine them in detail. Before proceeding to an analysis of the WTO Plus features of the modern RTAs in the backdrop of the existing multilateral legal framework, it is pertinent to look into

the Rules of Origin and TRIPS Plus issues, as two case studies of WTO-Plus agenda in the debate on regional trade.

IV.2. Rules of Origin Issues in the RTAs

This section seeks to address the Rules of Origin issues which determine the degree of free trade under the RTAs. As a critical regulatory mechanism the Rules of Origin control the volume of trade between countries,[1] thereby providing for the effectiveness of RTAs, by its trade creating as well as trade deflecting effects, and hence a comprehensive analysis is called for. The present day RTAs are seen to perpetuate such Rules of Origin exceeding the existing origin standards of the multilateral trading system; therefore a thorough evaluation of the disciplines in Rules of Origin as a WTO-Plus agenda is attempted to be made.

IV.2.1. Concept of Rules of Origin

The practice of regulating international trade, both multilateral and regional, has gone beyond the traditional techniques of tariff and non-tariff trade barriers. While the impetus of WTO sought to reduce the existing barriers to trade through the ideal of universal trade liberalization, new commercial policy instruments and trade measures[2] were invented to further the individual country interests in the protection of their trade. The Rules of Origin are those rules that aim at determining the geographical origin of goods imported on the territory of a state.[3] The origin of trade becomes all the more relevant because of the internationalization of production [4] and the consequent involvement of more than one country in the production of most commodities. This

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[1] Rules of Origin in RTAs generally facilitate to keep the preferential treatment to trade between the regional partners by distinguishing the products from member states. Rules of Origin in fact act as the regulatory mechanism in the RTAs/ FTAs etc. and hence play an important role in determining the trade flow in the arrangement.

[2] This includes administration of quantitative measures, preferential tariffs, licensing requirements, antidumping or countervailing duties, government measures etc.

[3] N. Zaimes, *EC Rules of Origin* (London: Wiley/ Chancey Law Publishing, 1992) at p. 5.

[4] The concept of internationalization of production is labeled as the trend towards a "global factory" (Jacques H. J. Bourgeois: 1994), wherein most final products in contemporary international commerce involve factors of production from more than one country. Moshe Hirsch, "International Trade Law, Political Economy and Rules of Origin: a Plea for a Reform of the WTO Regime on Rules of Origin", *Journal of World Trade*, vol. 36, no. 2, 2002, pp. 171-88 at p. 177.

mixture of origin[5] can raise difficulties especially in subjecting particular products from one county to a separate treatment like antidumping or countervailing duties, or safeguard measures. It can entail serious difficulties right from the routine procedures of trade because the knowledge of origin is important for marking purposes, or for filling import quotas for products from a certain country, or for merely statistical reasons.[6] The origin rules also aid the Customs administration to apply customs duties and other foreign trade policy measures in adopting the settled policy for treatment of imports. Thus, as a criterion of "economic nationality of goods"[7] entering a country, the Rules of Origin is highly essential. In the context of the discussion on Regional Trading Arrangements, the origin rules are important in defining the scope and application of the arrangement by deciding the products which are entitled to preferential or duty-free treatment if it comes from a developing country or a partner country in regional trade.[8]

The Rules are generally drafted by individual countries having the prerogative to fix the criteria for origin of different products, manipulating it to deliver benefits or burden on trade in particular products. They can also be defined very liberally and thereby facilitate trade.[9] They can be used as protectionist tool as well.[10] Broadly there

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[5] John Croome, *Understanding the Uruguay Round Agreements* (The Hague: Kluwer, 1999), pp. 118-21 at p. 118. The complexity due to mixture of origin arises in two ways- by processing materials or components of a product from more than one country, and by undergoing processing in several countries.

[6] *Ibid*, at p. 118.

[7] *Rules of Origin: a Road Map for India*, Draft Report of the Study commissioned by the Department of Industrial Policy and Promotion, Ministry of Industry, Government of India (New Delhi: Institute of Applied Manpower Research, February 2005) at p. 6, hereinafter referred to as 'Study Report.'

[8] John Croome, n. 5, at p. 118.

[9] Franklin Dehousse, Katelyn Ghemar and Philippe Vincent, "The EU-US Dispute Concerning the New American Rules of Origin for Textile Products", *Journal of World Trade*, vol. 36, no. 1, 2002, pp. 67-84 at p. 67.

[10] Ibid, at p. 67. Uncertainty about whether products will meet origin requirements can in itself be a serious obstacle to trade. The possibility of alteration or manipulation of rules renders it further as a protective measure. John Croome, n. 5, at p. 119. The high cost of compliance with the Rules of Origin of an importing country by itself can act as a trade deterrent. This involves administrative and technical costs involved, and the need to keep the proof of origin. *WTO Agreement on Rules of Origin: Implications for South Asia, Research Report* (Jaipur: Centre for International Trade, Economics and Development, 2004) at p. 1 and 29 and footnote no. 2 at p. 29, (hereinafter referred to as 'Research Report'). Also see, Moshe Hirsch, n. 4.

are preferential and non-preferential Rules of Origin. The RTAs provide for preferential Rules which may be examined as under.

IV.2.2. Preferential Rules of Origin

The history of discriminatory policies between trading partners can be traced to 1947 when the GATT was signed. In order to practice the MFN rule, it became necessary to evolve some mechanism for identifying products originating from MFN and non-MFN countries.[11] In tune with the broader objective of liberalizing trade, and minimizing the incidence of protectionist measures undertaken at the world forum, efforts were made to address the evolving restrictive practices. The international efforts to reduce protectionism involve the operation of reciprocal trade regimes.[12] The emergence of preferential arrangements[13] led to a discriminatory or preferential system of origin rules.[14] Such arrangements offer preferential treatment to a group of designated partners, that is, for the members in case of customs unions and free trade areas, and for eligible beneficiaries in the case of non-reciprocal arrangements such as the Generalized System of Preferences (hereinafter referred to as GSP).[15] In the preferential arrangements, the Rules of Origin are the important elements determining whether the goods traded are eligible for preferential treatment or not.[16] Thus the proliferation of PTAs has necessarily been accompanied by proliferation of Rules of Origin.

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[11] Research Report, n. 10, at p. 4.

[12] Moshe Hirsch, n. 4, at p. 176.

[13] The Rome Treaty and the formation of European Union in 1957 paved way for the emergence of preferential arrangements.

[14] Annex II of the Agreement on Rules of Origin, paragraph 2, defines the preferential Rules of Origin as 'those laws, regulations and administrative determinations of general application applied by any Member to determine whether goods qualify for preferential treatment under contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994 in *The Results of the Uruguay Round of Multilateral Trade Negotiations: the Legal Texts* (Geneva: WTO, 1995), pp. 241-54, at p. 252.

[15] Research Report, n. 10 at p. 5.

[16] See, Moshe Hirsch, n. 4.

As Moshe Hirsh[17] points out, "the underlying rationale for this approach is to avoid 'free riding': the benefits of free trade are not to be accorded to all states.[18] The particular trade concession are granted reciprocally to players within the same arrangement, thereby creating barriers against other states involved in similar trade, and in this, the Rules of Origin operates as a real differentiating mechanism.[19] Thus Rules of Origin function as "gate keepers" in discriminatory trade regimes.[20] Compared to this the role of non-preferential rules is minimal. In general terms, the Rules of Origin operate simply to determine the country of origin of imports, without any reference to the question of preferential treatment and, constitute the non-preferential Rules of Origin. In the preferential regimes, the additional and distinctive role played by Rules of Origin in the RTAs and FTAs, especially as a regulator of trade deflection can be explained as under.

The Rules of Origin are essential to maintain Free Trade Areas with different external tariffs towards non-FTA members. In the absence of origin rules, the trade route for non-FTA country products would be through the country with the lowest tariffs and will be re-exported to the other FTA members. Over a period of time, this trade pattern would cause the states with higher tariff rates to lower their tariff rate, nearing that of the state with lowest duty. Such a process would naturally pressurize the FTA members to adopt same external tariff rates, thereby forming a Customs Union. It is considered that Rules of Origin avert this undesirable development by not allowing products manufactured in non-FTA members to enjoy movement along the FTA members.[21] Thus, origin rules help to maintain such bilateral, regional or preferential

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[17] Moshe Hirsch: Arnold Brecht Chair in European Law, Faculty of Law and Department of International Relations, Hebrew University of Jerusalem. *Ibid*, at p. 171.

[18] *Ibid*, at p. 176.

[19] *Ibid*, at p. 176; the Rules of Origin function as a differentiating mechanism in preferential arrangements, but these arrangements may operate in both directions, providing for trade preferences like tariff reduction or restrictive measures like quantitative restrictions. Though the role determining whether a particular product qualifies for a certain trade preference is more noticeable, the rationale underlying both the roles is the same.

[20] Moshe Hirsch, n. 4, at p. 176; Also, Kale Krishna and Anne Krueger, "Implementing Free Trade Areas: Rules of Origin and Hidden Protection" in Jim Levinson, Alan V. Deardroff and Robert M. Stern (eds.), *New Dimensions in International Trade* (Ann Arbor MI: University of Michigan Press, 1995) at pp. 149-151.

[21] Krishna and Krueger, *ibid*, at p. 149-151.

arrangements in which parties reduce trade barriers only on a mutual basis and not otherwise. In any case, the application of Rules of Origin would invoke differentiated tariffs or other tariff measures; if the same tariff or other trade measures were equally applicable to import from all countries without any differentiation or discrimination, (which is only a hypothesis), then there would be no need to establish any Rules of Origin.[22]

IV.2.3. Methods of Determining Preferential Rules of Origin

The increasing number of Customs Unions, Free Trade Areas and other preferential arrangements in the past few decades has increased the need for establishing one or the other rules for determination of the country of origin for internationally traded commodities when applying differentiated customs tariffs or other trade measures.[23] As per a 1998 estimate[24] there were 14 different rules in the EEC, 6 in the US and one in Japan, with the possibility of the numbers varying according to the method of counting used. The international legal setting for developing a common method for origin rules was not forthcoming.[25] Though the GATT 1947 referred to the origin of products in many provisions,[26] it contained no method for determining this. In an unfulfilled attempt by the GATT Contracting Parties to develop Rules of Origin,[27] it was concluded that "the nationality of goods resulting from materials and labour of two or more countries shall be of that country in which such

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[22] See, Study Report, n. 7, at p. 13. Also, Hironori Asakura, "The Harmonized System and Rules of Origin", *Journal of World Trade*, vol. 29, no. 2, 1995, pp. 5-21 at p. 5.

[23] Hironori Asakura, *ibid*, at p. 5.

[24] *Ibid*, at p. 5.

[25] Franklin Dehousse et al., n. 9, at p. 68.

[26] Article I and XXIV, GATT Final Act 1947 (hereinafter referred to as GATT 1947), Geneva, 55 UNTS 194, 1947.GATT 1994 which is annexed to the Marrakesh Agreement establishing the World Trade Organization (hereinafter, WTO Agreement) consists of the provisions in GATT 1947 within it.

[27] Hironori Asakura, n. 22, at p. 6-7. See, 3.5 BISD at pp. 94-98. The GATT Contracting Parties examined a Resolution submitted by the International Chamber of Commerce in October 1953. This is described as an unfulfilled attempt because it did not materialize due to objection from several countries.

goods have last undergone a substantial transformation...." This implies the concept of 'substantial transformation.[28]

The attempt for a harmonization of the Rules of Origin was made under the International Convention on the Simplification and Harmonization of the Rules of Customs Procedure (commonly known as Kyoto Convention)[29] in 1974. This provided for two criteria to determine the origin of goods: one of "wholly produced in a given country" where only one country enters into consideration in attributing origin, and another of "substantial transformation" where two or more countries have taken part in the production of the goods.[30] The substantial transformation criterion applied three methods for determination as under-

(i) a rule requiring change of tariff heading (CTH) in a specified nomenclature, with lists of exceptions, and/ or

(ii) a list of manufacturing or processing operations which confer, or do not confer, upon the goods the origins of the country in which those operations were carried out (the technical test), and/ or

(iii) the ad valorem percentage rule, where either the percentage value of the materials utilized or the percentage value added reaches a specified level (the domestic content test).[31]

Most Customs administrations apply the rules that decide the origin of goods according to where the product underwent its last substantial transformation.[32] The most widely accepted criterion attributes origin to a country if the product was sufficiently changed there to move the customs classification from one heading to another.[33] The "percentage criterion" which exists in several variants, measures how

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[28] *Ibid.*

[29] Annex D.1 to the Convention. See, Decision 77/ 222 EEC, OJ, 1997, L166/1 adopted at the 41/ 42nd Session of the Customs Cooperation Council held in Kyoto, Japan, 1947.

[30] Hironori Asakura, n. 22 at p. 7.

[31] *Ibid*, p. 7.

[32] John Croome, n. 5, at p. 118. See also, the Agreement on Rules of Origin, n. 14, at pp. 241-54.

[33] John Croome, *ibid*, at p. 118.

much value was added to the product in that country.[34] Origin can also depend on certain specific technical tests.[35] These criteria are broadly adopted in the different RTAs as well.[36]

IV.2.4. Rules of Origin Criteria in GATT/ WTO

As indicated earlier, the GATT regime lacked a proper discipline on the origin criteria. Till the emergence of the WTO, there were few attempts towards a single system of Rules of Origin applicable world wide. However, the regional agreements emerged in the meantime applied an agreed set of rules to suit their objectives. This was subject to the guidelines laid down in Article XXIV of the GATT.[37] The origin rules meant different effects for a Customs Union and a Free Trade Area. Unlike a customs union, a free trade area is not likely to raise duties against outsiders, but they use Rules of Origin to identify products that qualify for the duty-free treatment.[38] However, these rules must not be allowed to become trade obstacles in themselves.[39]

The Agreement on Rules of Origin[40] annexed to the WTO Agreement, provides the legal discipline for the origin rules at the multilateral level, since the inception of WTO. This broadly follows the criteria laid down by the Kyoto Convention of 1974. The Preamble of the Agreement[41] recognizes the relevance of Rules of Origin. The

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[34] *Ibid*; Article 6 of the Agreement on Rules of Origin, n. 14 at p. 247.

[35] John Croome, *ibid*, at p. 118;

[36] This is illustrated by the Rules of Origin practices discussed below. In fact, there is no different criterion to determine the preferential Rules of Origin.

[37] GATT Final Act, n. 26; See also, Annex I for the text of Article XXIV.

[38] John Croome, n. 5, at p. 43.

[39] *Ibid*, at p. 43; Article XXIV: 5(b) of GATT; see, Annex I.

[40] See, n. 14, at pp. 241-54.

[41] Preamble to the Agreement on Rules of Origin, n. 14 at p. 241. The Preamble elaborates that the Agreement recognizes that "a clear and predictable Rules of Origin and that their application facilitate the flow of international trade; that Rules of Origin themselves are not to create any obstacles to trade or cause to nullify or impair the rights of GATT/ WTO members." It further seeks to ensure that the Rules of Origin are "prepared and applied in an impartial, transparent, predictable, consistent and neutral manner" and "to harmonize and clarify" them. The Agreement recognizes the availability of a consultation mechanism and procedures for speedy, effective and equitable solution of disputes arising under the Agreement.

object of the Agreement was to formulate some general principles pending formulation of the Harmonized Rules of Origin and to apply them to non-preferential trade.[42] A harmonization was considered necessary because Rules of Origin as applied by major world trading countries have very uncertain origin determinations and they differ substantially. While majority of the developing countries have no legislation for non-preferential Rules of Origin, developed countries like the United States,[43] European Union[44] and Japan[45] have designed some expressed Rules of Origin practices. Also an understanding was reached in the Agreement to apply the basic principles to preferential trade. The Origin criteria under the Agreement on Rules of Origin prescribe the discipline for determination of the origin criteria of a product.[46]

Regarding the preferential Rules of Origin, an understanding[47] was reached to apply the basic principles of the Agreement to preferential trade also. According to the understanding, the WTO members have to ensure that

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[42] This is learned from Article 1 of the Agreement on Rules of Origin. It limits the scope of the Agreement mainly to the non-preferential Rules of Origin.

[43] In the United States, Section 304 of the US Tariff Act govern origin requirements by laying down that all foreign products imported into the US should be marked with foreign origin, and it is administered by the Customs. The rule of 'last substantial transformation' is generally followed. The "Federal Trade Commission" deals with the marking of US made goods for the US domestic market. The Commerce Department as an independent authority determines origin for trade law purposes in the context of antidumping.

[44] The EU has a separate Customs Code and follows substantial transformation. EU applies detailed Rules of Origin for different product categories. These rules require either a minimum manufacturing process or a minimum percentage of value addition to determine substantial transformation. Unlike in the US, all EU agencies apply one set of rules with no particular marking rules.

[45] Japan has Rules of Origin to determine customs tariffs, to control false origin marking, to collect import statistics and to certify origin. Origin is conferred by way of change in tariff classification method. For certain measures, where parts and goods are in the same category, Assembly confers origin. The Ministry of International Trade and Industry applies Rules of Origin while the Fair Trade Commission checks origin markings.

[46] As a broad principle, Article 9(1) stipulates that the country of origin of a product should be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out. The Agreement further envisages harmonization work mandated by the Technical Committee on the Rules of Origin (hereinafter referred to as TCRO) under the auspices of the World Customs Organization.

[47] Annex II of the Agreement, n. 14 at p. 252-54. In a "Common Declaration," the members agree to apply many of the same general principles for rules of origin to those rules which they use to administer preferential arrangements, either on a contractual basis (as in free trade area agreements) or autonomously (as in the case of GSP given to imports from developing countries), and to notify these rules. They do not, however, accept a requirement to apply harmonized rules for preferential purposes.

(a) While issuing administrative determinations of general application that the requirements to be fulfilled are clearly defined.[48]

(b) The preferential rules are to be based on a positive standard.[49]

(c) The laws, regulations, judicial decisions and administrative rulings of general application relating to preferential rules of origin are published as per Article X, paragraph 1 of GATT 1994.[50]

(d) When introducing changes to their preferential Rules of Origin or new preferential rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations.[51]

(e) Any administrative action which they take in relation to the determination of preferential origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination.[52]

(f) All information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of preferential rules of origin is treated as strictly confidential.[53]

(g) The details of the preferential rules or origin, including a list of the preferential arrangements to which they apply, judicial decisions, and administrative rulings on the date of entry into force of the WTO Agreement as well as any modification to their preferential rules of

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As there is no reference to this annex in the agreement itself, its legal status under the WTO is not clear. John Croome, n. 5, at p. 120-121.

[48] *Ibid*, Paragraph 3 (a) of the Common Declaration.

[49] *Ibid*, Paragraph 3 (b).

[50] *Ibid*, Paragraph 3 (c).

[51] *Ibid*, Paragraph 3 (e).

[52] *Ibid*, Paragraph 3 (f).

[53] *Ibid*, Paragraph 3 (g).

origin or new preferential rules of origin are to be notified to the WTO Secretariat.[54]

This indicates the WTO standards regarding the origin rules in preferential arrangements as well.

IV.2.5. Rules of Origin Practices in RTAs

The actual practices of some of the present-day RTAs may be examined against these criteria.

IV.2.5.a. Rules of Origin Practices of US

The preferential Rules of Origin practices of the US can be understood from the US proposal to the Negotiating Group on Non-Tariff Measures[55] that would start a process to achieve international harmonization of Rules of Origin. In this proposal, the US stressed on the attributes like laying down a positive standard indicating what confers origin as opposed to what does not; maintaining different systems of origin with consistency required only within each system, etc.[56] The primary rule of origin in the Canada-US Free Trade Agreement was a change in tariff heading, supplemented by a 50 per cent value added test for many products.[57] NAFTA takes Change in Tariff Heading as a primary rule for preferential trade among Canada, Mexico and US, supplemented by a value added test and for particular cases of textiles, apparel and electronic products, a test of specified process.[58] The US-Israel Free Trade Agreement[59]

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[54] *Ibid*, Paragraph 4.

[55] David Palmeter, "The US Rules of Origin Proposal to GATT: Monotheism or Polytheism", *Journal of World Trade*, vol. 24, no. 2, 1990, pp. 25-36 at p. 28-30; Communication from US dated 27 September, 1989 as indicated in the Appendix in the Article at pp. 34-36. See also, David Palmeter, "Pacific Regional Trade Liberalization and Rules of Origin", *Journal of World Trade*, vol. 28, no. 1, 1994, pp. 49-62.

[56] *Ibid*, at pp. 28-30.

[57] David Palmeter, "Pacific Regional Trade Liberalization and Rules of Origin", *Journal of World Trade*, vol. 28, no. 1, 1994, pp. 49-62 at p. 54. See, the text of the Canada-US Free Trade Agreement at www.werner.tamu.edu/mgmt accessed on 10th June, 2006.

[58] *Ibid*, at p. 58. See, the agreement at 32 ILM 289 (1993).

[59] *Ibid*, at pp. 57-58. See, the text of the agreement at http://www.mac.doc.gov/tcc/data/commerce_html/TCC_Documents/IsraelFreeTrade.html accessed on 10th June, 2006.

uses the common law substantial transformation test, and apparently this is the only US FTA with this origin criterion, and also contains a 45 per cent value added requirement. The US-Singapore Free Trade Agreement[60] goes beyond NAFTA provisions with the origin criteria of "goods wholly produced entirely in the territory of one country or more than one of the countries"[61] with the addition of a new category of *recovery of goods derived from used goods*, which is very important for Singapore because of the integrated petro-chemical complexes that exist in Singapore, since the US has at no place such a integrated manufacturing facility.

IV.2.5.b. Rules of Origin Practices of EU

The EU frame work regulation[62] sought to harmonize the non-preferential Rules of Origin has not been uniformly adopted by EC member states. This largely follows the Kyoto Convention[63] Rules. However the EC preferential Rules of Origin are addressed to be fairly complex,[64] which largely adopts the broad criteria of having undergone "sufficient working or processing and have been transported directly to the community."[65] To overcome the complexities of preferential Rules of Origin, the EU, EFTA, Baltic Countries and the Central and Eastern European Countries (CEEC) introduced a unified system for determining Rules of Origin in 1997, namely the Pan-European Rules of Origin.[66] This allows the different kinds of cumulation procedures

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[60] Study Report, n. 7, at p. 44. See, the text of the agreement at www.ustr.gov/new/fta/Singapore/consolidated_texts.htm accessed on 10th June, 2006.

[61] The provision of NAFTA Chapter IV, Paragraph 4.29 is changed with the addition of a new sub-clause "(j) recovery of goods derived from used goods" under Article 3.19 (4)(j) of the US-Singapore Free Trade Agreement.

[62] Council Reg. (EEC) No. 802/62 or Basic Origin Regulation by the European Commission (1968), *Official Journal of the European Union*, Series 1 148/ 165.

[63] Kyoto Convention, see, n. 29.

[64] Ahmed Farouk Ghoeneim, "Rules of Origin and Trade Diversion: The Case of the Egyptian- European Partnership Agreement", *Journal of World Trade*, vol. 37, no. 3, 2003, pp. 597-622 at p. 610.

[65] *Ibid*, at p. 610; also see, Paul Weir, "European Community Rules of Origin", in Edwin Vermulst, Paul Weir and Jacques Bourgeois (ed.), *Rules of Origin in International Trade: a Comparative Study* (Ann Arbor, MI: University of Michigan Press, 1992), at pp. 85-194.

[66] *Ibid*, at p. 610.

of inputs and industrial processes to confer origin.[67] It also allows "General Tolerance Rule" (or, de minims principle) which permits the use of inputs of a third non-member country to the concerned RTA in an amount that exceeds the normal criteria specified by the preferential Rules of Origin as long as they do not exceed 10 per cent of the value of the product exported to be granted the preferential treatment within the context of the RTA.[68]

The EC preferential trade arrangements are regional as such arrangements are with countries of the EFTA, the ACP countries, the Mashreq countries (Egypt, Jordan, Lebanon and Syria) and the Magreb countries (Algeria, Morocco and Tunisia). The Rules of Origin vary generally but they are based on a Change in Tariff Heading supplemented by specific processing requirements, and in some cases value added test.[69] The EC-EFTA Free Trade Agreement provided for restricted Rules of Origin wherein cumulation was allowed only in certain conditions between EFTA countries.[70]

However, closer analyses of the various agreements disclose the double standards of the US and the EU preferential trade agreements especially with the African countries. More recently, the extremely restricted role of the Rules of Origin in the much publicized African initiative of the US, Africa Growth and Opportunity Act (hereinafter referred to as AGOA),[71] was highlighted. It is widely recognized that the Rules of Origin, often exceeds the WTO standards and enter new realms. Origin rules more often than not violate the trade neutrality assumption; this is evident especially from the RTAs. It is possible through these rules to keep the preference margin

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[67] Pan- European Rules of Origin allows for example, the diagonal cumulation, which allows the country engaged with the EU in an RTA and with a third country(s) engaged also with the EU and / or the third country(s) to confer origin as long as they follow identical systems of rules of origin. It allows as well bilateral cumulation, which allows the country engaged with the EU in an RTA to cumulate factors of production, inputs and industrial processes from the EU to confer origin.

[68] *Ibid*, at p. 611.

[69] David Palmeter, n. 57, at p. 57.

[70] Ahmed Farouk Ghoeneim, n. 64 at p. 611.

[71] Research Report, n. 10, at p. 7; The AGOA passed in 2000 forged a new trade partnership between US and Sub-Saharan Africa, granting duty free access to the US market for substantially all the products of the eligible countries, seeking to bring new jobs and new investment to the area.

unchanged and still manipulate the trade flows by changing the rules.[72] Further, the cost compliance of the Rules of Origin often exceeds the preference margin, offsetting the tariff margin and thereby making the notion of preferential treatment itself meaningless.

IV.3. TRIPS- Going Beyond WTO Flexibilities

In the GATT/WTO system, one of the key concerns of the developing countries was addressed by way of a 'special and differential' mechanism. The Special and Differential Treatment in the economic relations of developed and developing countries implies notions of equity and justice. It reflects a trend towards the internationalization of welfare state principles, by introducing at the international level such legal concepts as the collective responsibility of the community for the social and economic well being of its members.[73] Since the inception of GATT 1947, the developing countries were demanding for a more favourable treatment for them in the international trade regime. Though the issues were not addressed comprehensively by the CONTRACTING PARTIES, some declarations and other efforts were made in response to the demand. A provision for the first time, providing special treatment for developing countries appeared in the GATT in the review session of GATT in 1955.[74] Further, when the Tokyo Round of Multilateral Trade Negotiations was being launched in 1973, the ministers of the Contracting Parties called for consideration to be given "to improvements in the International Framework for the conduct of World Trade."[75] As a result, the Contracting Parties to the GATT decided that the preferential treatment of developing countries would no longer be inconsistent with the general MFN clause of GATT. The decision is embodied in the text, commonly referred to as the Enabling

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[72] In many such affirmative preferential arrangements, the poor countries that are meant to be helped, find it extremely difficult to meet the origin requirements. The AGOA for instance, insists that the apparel be assembled in eligible African countries and that yarn and fabric be made either in US or in African countries. In addition, a number of customs requirements need to be satisfied to claim the US concessions.

[73] This concept is referred to as S & D Treatment.

[74] Three sub sections A, B and C which pertained only to developing countries were included in the revised Article XVII. Another major achievement in this regard was the adoption of the '*Declaration Giving Effect to the Provision of Article XIV: 4 of GATT*' by CONTRACTING PARTIES in 1960.

[75] Paragraph 11 of the "Declaration of Ministers Approved at Tokyo on 14 September 1973", GATT Doc MIN (73).

Clause.[76] By this the developed countries could accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties and enumerates the areas in respect of which differential and more favourable treatment may be extended and specifies the conditions under which such treatment is to be granted. It also reaffirms the commitment by developed countries not to seek reciprocity from developing countries.

The Special and Differential Treatment as a principle was long recognized in GATT and the WTO. These provisions provide for favourable treatment in many areas such as market access, flexibilities in implementation, technical assistance, protection of special needs of developing countries etc. In fact, these are hard earned policy-spaces earned through persistent and collective efforts of developing countries in the tough negotiations in the past. It is in this context the developing countries are forced to or persuaded to shed these flexibilities and spaces in the RTAs. Developed countries are demanding and pushing more stringent commitments from developing countries in RTAs between developed countries and developing countries. [77] For a better understanding of the issue, here an attempt is made for a comprehensive analysis of the available flexibilities and concessions for developing countries under the Agreement on TRIPS and the emerging 'TRIPS-Plus' trend in the modern RTAs whereby the available flexibilities are undermined. As the leading player of the game, an analysis of the US approach towards the issues enables to unravel the hidden perils.

IV.3.1. Intellectual Property Rights and RTAs

During the past several years the United States has concluded a substantial number of bilateral and regional free trade agreements, largely with developing countries and the trend still continues.[78] Each of these FTAs includes substantial

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[76] The main provision of the text reads as follows: "Notwithstanding the provisions of Article 1 of the General Agreement, Contracting Parties may accord differential and more favourable to developing countries, without according such treatment to other contracting parties." Part IV of GATT, n. 26. *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*, Decision of the GATT CONTRACTING PARTIES of 28 November 1979.

[77] NAFTA, EU, MERCOUSER, South African Customs Union FTA, etc. are examples.

[78] See, discussion and analysis of the phenomenon in Fedrick M. Abbot, "The WTO Medicines Decision: World Pharmaceutical Trade and the Protection of Public Health", *American Journal of International Law*, vol. 99, 2005, pp. 317-58, at 348-58; See, Fedrick M. Abbot, "Towards a New Era in the Field of

commitments in the field of Intellectual Property Rights (hereinafter referred to as IPRs) which demand high levels of intellectual property protection and related regulatory matters. These levels of protection exceed those minimum standards of protection required by the TRIPS Agreement. The TRIPS provides some flexibility to the WTO members with respect to the level of protection, allowing developing countries a measure of leeway.[79] The United States has shifted its attention to other fora to accomplish its objective of securing greater levels of IPR protection as there is little enthusiasm among members at WTO to raise standards of IPR protection. US FTA policy hardly takes developmental interests into consideration. In some areas such as the protection of pharmaceutical patent holders, US policy threatens to cause harm to the interest of comparatively poor populations.[80]

The IPR related chapters of the FTAs set forth obligations to provide protection for various subject matter, including expressive work (protected by copyright), trade marks, geographical indications, inventions and data. Some exceptions as in TRIPS Agreement also appear attached with some provisions. In a number of cases, the exceptions in the FTAs are narrower than those allowed by the TRIPS Agreement. The problems potentially created for developing countries by the adoption of these IPR provision in fields such as public health have been widely noted.[81] Many developing countries have yet to implement basic TRIPS standards mandated by the WTO. In this circumstance, it is difficult to understand the purpose of imposing even more rigorous and complex undertakings on developing countries. It appears that developing countries which enter into these FTA commitments may immediately be in default of their obligations and then make them vulnerable to trade related claims by the United States and by its industry groups.

TRIPS and Variable Geometry for the Preservation of Multilateralism", *Journal of International Economic Law*, vol. 77, no. 8, 2005, pp. 88-98; Peter Drahos, "Developing Countries and International Intellectual Property Standard Setting", *Journal of World Intellectual Property*, vol. 5, 2002, at p. 765 as cited in Pedro Roffe, "*Bilateral Agreements and a TRIPS-Plus World: Chile-US Free Trade Agreement*", pp. 3-50 available at www.qiap.ca or www.geneva.quno.info accessed on 10th June, 2006.

[79] See generally, UNCTAD-ICTSD, *Trips and Development Resource Book* (Cambridge: Cambridge University Press, 2005).

[80] Fedrick M. Abbot, n. 78, at p. 94-95.

[81] Ibid, at foot note 234.

IV.3.2. US Approach

US is one of the strongest advocates for greater IPR protection. The US has followed a consistent and unremitting policy of elevating IPR standards. It has done this through unilateral, bilateral, regional and multilateral action. US have strong IPR legislations which provide higher level of protection for IPR domestically. Further, it has kept a monitoring enforcement of IPRs internationally, through the Special 301 Report.[82] Regionally and multilaterally, the US has always been at forefront of IPR negotiations. Bilaterally, even before the completion of the TRIPS Agreement, the US concluded its bilateral agreement with Canada[83] in which IPR features prominently. The US had a particular concern about the liberal Canadian policies in allowing compulsory licensing in support of its pharmaceutical domestic generic industry.[84] Again, in NAFTA, the Chapter on IPR is an important component of the treaty which provides for standards closely to that of the TRIPS Agreement.[85]

US had signed and have been negotiating a number of FTAs across the continents.[86] Recently, US reached an agreement for a free trade with the Hashemite Kingdom of Jordan[87] which entered into force in December 2001. This agreement was viewed as politically important as it reflected the TRIPS-Plus policy of the US. The Bilateral Trade Agreements (hereinafter referred to as BTAs) negotiated with Lao Peoples Democratic Republic and with the Socialist Republic of Vietnam[88] also have extensive TRIPS-Plus provisions.

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[82] The Special 301 Report is part of the Trade Act which orders the US Trade Representative to produce an Annual Report which is the first step in imposing trade sanctions on countries which systematically damage the interests of US IPR holders. India and many other US trade partners such as Canada, Mexico and many developing countries are listed in the priority watch list. See the 2005 Special 301 Report at www.ustr.gov/assets/document_library/reports_publications/2005/2005_special_301/asset/_upload_file195_7636.pdf accessed on 10th June, 2006.

[83] Canada-US Free Trade Agreement entered into force on 1st January, 1989. See, n. 57.

[84] *Ibid.*

[85] Pedro Roffe, n. 78, at pp. 3-50.

[86] See, Annex III for a list of Agreements notified to GATT/ WTO.

[87] The Agreement was signed on 24th October, 2000. See, www.sicc.oas.org/trade/US_ird/usird.asp accessed on 15th June, 2006.

[88] The US-Lao Bilateral Trade Agreement was concluded in 1997 and signed in 2003. See, www.ustr.gov/regions/asia-pacific/ic/2003-04-bta-laos.pdf accessed on 15th June, 2006.

The US has concluded free trade agreements, with Israel,[89] Australia,[90] and Morocco[91] and with Central American countries (CAFTA) including Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.[92] In all of these agreements specific provisions on IPRs were included. The US also has free trade negotiations with five nations of the Southern African Customs Union (SACU)[93] including Botswana, Lesotho, Namibia, South Africa and Swaziland. Apart from this, US have free trade agreement with Bahrain and a number of other Middle East Countries.[94] Trade agreements with Thailand, Panama, Colombia, Peru, Bolivia and Ecuador[95] are the recent and upcoming ones. A close analysis of the above free trade agreements reveal the TRIPS-Plus commitments that the free trade partners of US (including the developing countries) have to undertake. To get a broad understanding of the approach, it will be worth to look at the official negotiating objectives of US with respect to IPRs rather than going for individual analysis of different FTAs.

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[89] The agreement was signed on 22nd April, 1985 and implemented on 1st January, 1995. See, text at www.us-israel.org accessed on 15th June, 2006.

[90] The agreement was concluded on February 2004 and signed in May 2004. See www.ustr.gov/new/fta/Australia/text accessed on 15th June, 2006.

[91] Negotiations concluded on 2nd March, 2004 and the FTA was signed on 15th June, 2004. See, text at www.ustr.gov/new/fta/Morocco/text/index.htm accessed on 15th June, 2006.

[92] CAFTA was signed in May 2004. See, www.ustr.gov/new/fta/cafta/text/index.htm accessed on 15th June, 2006.

[93] The US and the SACU launched negotiations for a free trade agreement on 2nd June, 2003. it will be the first free trade agreement of the US in Sub Saharan region. Now, Africa Growth and Opportunity Act is in place; see n. 71.

[94] Free Trade Agreement with Bahrain was concluded on 28th May, 2004. Details available at www.ustr.gov accessed on 15th June, 2006.

[95] See, Pedro Roffe, n. 78 at p. 5. The US announced on 9th May, 2003, a proposal to create a free trade area between the US and several countries in the Middle East over the next decade. The proposal consists of gradual steps to increase trade and investment with the US. The first step is to work closely with nations that want to become members of the WTO, in order to expedite their accession (mainly Saudi Arabia, Lebanon, Algeria and Yemen). Another step is to enhance trade and investment framework action plans (Bahrain, Egypt, Tunisia, Algeria, Saudi Arabia signed on July, 2003; Kuwait signed on February 2004 and Yemen signed on February 2004). The third step corresponds to free trade agreements with Israel, Jordan, Morocco and Bahrain. See, www.ustr.gov accessed on 15th June, 2006.

IV.3.2.a. Trade Promotion Authority (Trade Act of 2002)

The US Trade Act of 2002 lays down the principal negotiating objectives of the US regarding trade related Intellectual Property (hereinafter referred to as IP). The Act asserts the need to further promote adequate and effective protection of IPRs.[96] In achieving the above object, it reaffirms the need to ensure accelerated and full implementation of the Agreement on TRIPS reflected in Section 101 (d)(15) of the Uruguay Round Agreement Act[97], particularly with respect to meeting enforcement obligations under that Agreement.[98] Further, it provides that any multilateral or bilateral trade agreement governing IPRs that is entered into by the US reflect a standard of protection similar to the one found in the US Law.[99] The Act provides for the need for strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying IP, the need to prevent or eliminate discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use and enforcement of IPRs.[100] The Act cautions the negotiators to ensure that standards of protection and enforcement keep pace with technological developments and in particular ensuring that the right holders have the legal and technological means to control the use of their works through the internet and other global communication media, and to prevent the unauthorized use of their works and it also emphasizes on the need for expedition and effective civil, administrative and criminal enforcement mechanisms.[101] The Act also refers to the Declaration on the TRIPS Agreement and Public Health adopted by the WTO at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001 and the urge to respect the Declaration.

The above referred sources are the guidelines for US in their approach towards IPRs in RTAs. In other words, the trade policies of the US shows how keen and

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[96] *Ibid*, at p. 5. Negotiations with Colombia, Ecuador and Peru were launched on May 18-19, 2004.

[97] US Trade Act 2002, Section 2102 (A). Text available at www.tpa.gov/pf107_210.pdf accessed on 15th June, 2006.

[98] *Ibid*, section 2102 4(A)(i)(1).

[99] *Ibid*, Section 2102 4(A)(i)(II).

[100] *Ibid*, Section 2102 4(A)(ii) and (iii).

[101] *Ibid*, Section 2102 4 (A)(iv) and (v).

committed are they in pushing the TRIPS-Plus through RTAs. Moreover, the term TRIPS-Plus itself is evolving, and not fixed.[102] Although US uses TRIPS-Plus as a general framework in its bilateral treaties, the intensity and influence varies in case of different countries. Hence, the US bilateral agreements are acquiring an accumulative nature, consolidating along the way with each new agreement. New countries completing FTAs with the US should, therefore expect to see more conditions imposed on them.[103] EU also joined the bandwagon and is pushing 'TRIPS-Plus' and 'WTO-Plus' commitments through their FTAs.

IV.3.3. EU Approach

In a paper by an NGO GRAIN, it was alleged that the EU is aggressively pursuing developing countries to accept the strictest IP rules on seeds that are possible.[104] It was identified that the EU Free Trade Agreements with Algeria, Tunisia, South Africa, Morocco, Lebanon and Bangladesh contained provisions of TRIPS-Plus. These provisions were also likely to appear in the African-Caribbean-Pacific (ACP) grouping.[105] Thus, it is estimated that the EU has forced TRIPS-Plus commitments regarding IP on life forms in almost 90 developing countries, including the ACP grouping.[106] The language or the commitments dictated in different FTAs are not always the same. Some countries are required to join International Convention for the Protection of New Varieties of Plants (Paris: 1961, hereinafter referred to as UPOV) and/ or Budapest Treaty on the International Recognition of Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest: 1977, hereinafter referred to as Budapest Treaty), while in some other cases countries have to implement effective *sui generis* system and in some other agreements, the parties recognize the need to provide

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[102] Hamed El-Said and Mohammed El-Said, "TRIPS Bilateralism, Multilateralism and Implications for Developing Countries: Jordan's Drug Sector", *Manchester Journal of International Economic Law*, vol. 2, issue. 1, 2005, pp. 59-79 at p. 78.

[103] *Ibid.*

[104]. 'Trips Plus Must Stop', *GRAIN*, March 2003 at pp. 1-5, available at www.grain.org/publications/tripsplus accessed on 20th June, 2006.

[105] *Ibid.*

[106] *Ibid.*

adequate and effective protection of IPRs to the level of "the highest international standards" which sometimes amount to patent protection of plant varieties and biotechnological inventions. As TRIPS has no provision on or about implementing or joining either UPOV or Budapest treaties and it neither requires patent protection of plant varieties nor have a reference to "biotechnological inventions." Hence, the above referred agreements and its provisions qualify as 'TRIPS-Plus.'

IV.3.3.a. TRIPS-Plus and the EFTA

Following the footsteps of the US and EU FTAs, the EFTA also joined in promoting TRIPS-Plus in their bilateral and regional agreements. The Free Trade Agreements concluded between the four member states of the EFTA- Switzerland, Norway, Iceland and Liechtenstein- and a number of developing countries contain provisions on the protection of IPRs which go far beyond the obligations already imposed under the framework of WTO. EFTA member countries have close ties to the EU and basically follow a very similar trade policy vis-à-vis countries outside Western Europe.[107] A number of FTAs concluded or presently being negotiated between the EFTA-states and the developing countries[108] contains TRIPS-Plus provisions.[109] These agreements contain almost similar kinds of TRIPS-Plus provisions as EU Agreements.[110]

IV.4. New Issues

The Uruguay Round Multilateral Trade Negotiations had brought a host of new issues like services, investment and IPRs within the realm of WTO. The inclusion of services trade introduced new services related aspects like competition policy, domestic

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[107] "TRIPS-Plus through EFTA's Back door: How Bilateral Treaties Impose Much Stronger Rules for IPRs on Life than WTO", *GRAIN*, July 2001, pp. 1-14, available at www.grain.org/publication/tripsplus at p.4 accessed on 20th June, 2006.

[108] EFTA- states have concluded Free Trade Agreements with 12 Eastern and South East European countries. The list of countries includes Chile, Egypt, Jordan, Lebanon, Mexico, Morocco, Palestinian Authority, South Africa, Tunisia etc. All free trade agreements concluded by EFTA are available at www.secretariat.efta.int/wev/legalcorner accessed on 20th June, 2006.

[109] See, n. 107 at p.4.

[110] *Ibid*, at pp. 2-4.

regulation, people's movement, government security and the like. In the recent times the RTAs are also grappling with how to incorporate these new trade issues. Such RTAs which incorporate these new issues are described by some as "New Age' or "Third Wave" agreements. [111] These "Third Wavc" agreements which go beyond the current status quo in WTO to cover additional aspects of these new issues are essentially "WTO-Plus." In this section, some of the emerging new issues in the RTAs are examined.

IV.4.1. Investment

Like the TRIPS issue discussed above, investment is another area where FTAs are playing a crucial role in creating commitments beyond the WTO standards and flexibilities. It can be found that most of the recent FTAs have separate chapters and provisions governing investment. Many of these provisions undermine WTO rights relating to the use of performance requirements and other provisions in favour of domestic investors. The developed countries had attempted to bring investment policy fully under multilateral trade rules by introducing the concept of trade in services and "trade-related" investment. However, this was not fully successful as the Trade Related Investment Measures (hereinafter TRIMS) Agreement[112] did not establish any new obligations and imposed a variety of performance requirements on foreign investors including transfer of technology conditions. Through FTAs, developed countries now seek to include those provisions they were unable to incorporate in the multilateral framework. Developed countries since have moved to impose bilateral obligations on investment in Bilateral Investment Treaties and FTAs.[113] The US model, for instance, include six core principles: (a) prohibition on a variety of performance requirements; (b) the right of establishment, unless excluded in a negative list; (c) the right to expropriation compensation; (d) selection of top management; (e) assured access to

[111] Jane Drake-Brockman, "Bilateral Approaches to Services Trade and Investment Liberalisation – WTO Plus or WTO Minus?", Paper delivered at Conference of Economists, Canberra on 31st September,2003. Available at www.bilateralis.org accessed on 20th June, 2006.

[112] Agreement on Trade Related Investment Measures (TRIMS), see, n. 14, at pp. 163-167.

[113] Most of the recent FTAs concluded between developed and developing countries include chapters and provisions on investment.

investor-state arbitration; (f) the right to free transfer of all transfer related to the investment.[114] The US FTAs go further to include provisions on expropriation and mechanisms for investor-state dispute settlement. Like the TRIPS, the long standing objective has been to set up a system under which trade sanctions can be applied legally to protect property rights. A comprehensive analysis of the Indian RTAs provides a better understanding on the recent trends in modern RTAs.

IV.4.2. Trade in Services

Services is yet another area where both developing and developed countries cherish their own interest and priorities. The enthusiasm can be found in way of GATS-Plus in various FTAs concluded between the developed and the developing countries. As a crucial area, a different approach is required in developed-developing country FTAs, incorporating transfer of technology and social obligations. FTAs should not be allowed to undermine developmental objectives such as public health, environment, energy, culture etc. Since 1980, trade in services has grown faster than trade in goods, despite services being subject to complex non-tariff barriers.[115] Now a days, countries are endeavoring to incorporate services into the regional integration process. ASEAN moved along with the Asian Framework Agreement on Services (hereinafter referred to as AFAS) under which the member countries negotiated GATS-Plus commitments on a positive list basis.[116] Members are also negotiating Mutual Recognition Agreements (hereinafter referred to as MRAs) for a variety of professions within this framework. Developed countries also have placed liberalization of services with higher importance in their FTAs. It is interesting to note that while some others adopt a negative list format;[117] developed countries target areas of traditional interest for them in services

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[114] Remarks by Randall K. Quarles, Assistant Secretary for International Affairs, US Treasury Department, before the US Chamber of Commerce and the Association of American Chambers of Commerce in Latin America on 5th May, 2001 as cited in Murray Gibbs and Swarnim Wagle, *The Great Maze: Regional and Bilateral Free Trade Agreements in Asia: Trends, Characteristics, and Implications for Human Development*, UNDP Policy Paper (Colombo: UNDP, December 2005), p. 72.

[115] *Measuring Trade in Services*, Training Module (Geneva: WTO, 2003) at p. 9 as cited in ibid, at p. 66.

[116] Murray Gibbs and Swarnim Wagle, n. 114, at p. 67.

[117] For example, Singapore-Jordan FTA has GATS-Plus positive list while Singapore-US FTA adopts negative format.

like telecommunications and financial services in their FTAs with developing countries. The main goal of developing countries in their FTAs with developed countries is to obtain transfer of technology commitments and access to networks as well as access for natural persons. Developing countries may find themselves under pressure to open up key service sectors central to human development like health, environment, energy and audio-visual/ cultural services to foreign participation in FTA negotiations. Such liberalization can further the development goals if properly channeled and vice versa if not properly checked. Hence, it is important to ensure that FTAs do not infringe the sovereign rights of the trading partners to implement regulatory mechanism to protect the public interest. All this points to the fact that developing countries should enter into FTAs liberalizing services which go beyond the commitments under GATS under the WTO framework after proper preparation and ensuring necessary legislative safeguards.

IV.4.3. Labour and Environmental Standards

Another issue wherein the modern RTAs seek to exceed the WTO mandate is the labour standards. From the time of Uruguay Round of Multilateral Trade Negotiations there was increasing pressure to bring labour issues into trade policy.[118] Often it is rendered as a labour market activity and operates as a trade barrier prohibiting items produced by certain specific labour groups like child or prison labour. A wider interpretation of labour standards include elements like hours of work, conditions of work, right to unions and other extensive matters. In the GATT/ WTO the labour standards are not explicit. The only provisions where it can be read in are Articles XX (e), XX (a) and the Chapeau to Article XX.[119] The use of trade policies to promote labour standards was prompted by the inclusion of labour provisions in NAFTA,[120] Caribbean Basin Initiative (CBI),[121] etc. The adoption of labour standards

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[118] John Whalley and Randall M. Wigle, "Labour Standards and Trade: Preliminary Estimates", *Uruguay Round Results and the Emerging Trade Agenda: Quantitative Based Analyses from the Development Perspectives* (New York: UNCTAD, 1998) at pp. 477-91 at p. 477.

[119] GATT Final Act, see n. 26.

[120] The labour side agreements negotiated in NAFTA, n. 118, at p.479.

[121] Under the CBI, potential beneficiary countries are evaluated according to a number of criteria, including whether the workers are given 'reasonable workplace conditions and enjoy the right to organize and bargain collectively.' While this is a discretionary criterion under the CBI, it has been taken

by powerful trading partners into the emerging RTAs, and the consequent exploration of the impact of possible use of trade measures on the labour standards ground are likely to effect the trade volumes and the patterns of trade in the labour intensive sectors of the developing world. In the absence of an international standard in this issue, negotiating labour issues into regional arrangements call for greater caution.

It is considered that the trade-environment negotiations at the multilateral level have produced rules that are neither well developed nor as environmental friendly as that of some of the regional arrangements like NAFTA and EU.[122] There is a marked difference in the proliferation of trade-environmental rules at the regional and multilateral fora.[123] The environmental issues negotiated in trade bodies are broadly classified as (1) domestic health, safety and environmental protection; (2) extra jurisdictional activity; (3) transboundary remediation and (4) trade-environment institutions envisaged.[124] A comparative analysis indicates that the RTA standards in Sanitary and Phytosanitary measures and Technical Barriers to Trade often exceed the corresponding WTO measures.[125] In contrast to the WTO system, the RTAs permit a party to impose a ban as legitimate retaliation for environmental activities that would otherwise be considered beyond its jurisdiction.[126] Further, they encourage separate dispute settlement processes, leading to a new jurisprudence in trade-environmental issues. In a situation where powerful states set the rules of international regimes, the trade-environment agenda driven by wealthy states with relatively stringent environmental regulations might redraw the existing balance in the debate.

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seriously by a number of Caribbean countries and led to commitments to improve the workers' conditions in Haiti, Honduras, the Dominican Republic and El Salvador. See, n. 118.

[122] See generally, Richard H. Steinberg, "Trade-Environment Negotiations in the EU, NAFTA, and the WTO: Regional Trajectories of Rule Development", *American Journal of International Law*, vol. 91, 1997, pp. 231-67.

[123] *Ibid*, at p. 233; the variance in the development of environmental friendly rules across the trade organizations depends on differences in the relative power and interests of the richer, greener *demandeur* states in each organization.

[124] *Ibid*, at pp. 237-39.

[125] For example, the NAFTA rules provide that each party may establish the level of protection it considers appropriate. See, Article 712.1, NAFTA Agreement, n. 58.

[126] See, n. 122 at pp. 245-46.

IV.5. Implications for Multilateral Trading System

Regional as well as bilateral agreements recently concluded between developed and developing countries have taken place in an environment characterized by a stalemate in the WTO multilateral system over the so called 'new issues'- investment, competition policy, government procurement, trade facilitation and softening of IPRs.[127] Least Developing Countries (hereinafter referred to as LDCs) and developing countries agreed to TRIPS under the WTO not because they believed that the TRIPS Agreement was necessarily in their best interests, but rather because it was part of the "bargain;"[128] the best deal they could get in return of market access to developed country markets.[129] However, for industrialized countries, the inclusion of TRIPS in the WTO was just the beginning of a more heavily regulated global market for IPRs.[130]

Incidentally, the FTAs are being designed by the developed countries to get more than what the WTO and TRIPS could give at this stage. When the developed countries get what they want through the FTAs, they would then later attempt to place these FTA rules inside the WTO.[131]

IV.6. Conclusion

The explosion in the number of bilateral agreements between developed and developing countries represent part of a new trade strategy by industrialized countries to eventually weaken LDCs and developing countries' opposition to new issues in WTO, which are of great interest for the developed world. Bilateralism will also have significant implications in the multilateral trading system under the WTO framework. As more developing countries sign bilateral agreements with the developed countries and accept their TRIPS-Plus and similar other extra-conditionality, eventually they will

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[127] Walden Bello and Aileen Kwa, "The Stalemate in the WTO: An Update on the Global Trends", *Focus on the Global South*, Special Series dated 11th June, 2006.

[128] Fredrick M. Abbot, n. 78 at p. 472 as cited in Hamed El-Said and Mohammed El-Said, n. 102, at p. 66.

[129] Christopher Mary, "Why IPRs are a Global Political Issue?", *European Intellectual Property Review*, no. 1, 2003, p. 1.

[130] Peter Drahos, "Expanding Intellectual Property's Empire: The Role of FTAs" *GRAIN*, November 2003, pp. 1-19, available at www.grain.org/rights/tripsplus accessed on 20th June, 2006.

[131] Ashok B. Sharma, "Developed Countries Undermining WTO Spirit through FTAs", *Financial Express*, 17th October, 2005.

become weak in their opposition towards including 'new issues' in the multilateral trade negotiations. This will result in the gradual migration of those 'new issues' including TRIPS-Plus to the WTO multilateral system. In this context developing countries which are tempted to draw up individual agreements with developed countries ought to think twice. In a world dominated by uneven powers and development levels, bilateralism between developed and developing countries is inherently un-equalizing and aimed at undermining the principles of equity and justice which is the corner stone of establishing the Special and Differential Treatment for developing countries in the international trade.[132] Hence, it will be advisable in this circumstance, for the developing countries to conclude regional agreements and alliances among themselves and avoid signing imbalanced bilateral agreements with far more powerful industrialized countries.

Otherwise, the proliferation of the regional arrangements is likely to create a more difficult trade environment for developing countries: they will be under pressure to join RTAs/ FTAs to not be left out of these preferential trade clubs, or they would have to suffer more harshly from the disadvantage of not being part of one. However, joining an arrangement may subject the developing country to terms that are adverse to their development interest, presenting a double-dilemma for developing countries.[133] Some scholars are critical of trade preference regimes accepting that developing countries facing these regimes would be vulnerable, and believe that an MFN-based regime is the only genuine protection available to developing countries as "a legal substitute for economic power on behalf of smaller countries."[134]

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[132]. See, discussion under Part IV.3 above.

[133] Yong-Shik Lee, "Foreign Direct Investment and Regional Trade Liberalization: a Viable Answer for Economic Development?", *Journal of World Trade*, vol. 39, no. 4, 2005, pp. 701-717 at p. 716.

[134] Robert Hudec, *Developing Countries in the GATT Legal System*, Thames Essays (London: Trade Policy Research Centre, 1987), pp. 216-17 as cited in *ibid*, at p. 717.

CHAPTER V

INDIA AND REGIONAL TRADE ARRANGEMENTS

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V.1. Introduction

It is understood that presently there exist an unprecedented amount of negotiating activity for trade arrangements in Asia, both within the region and with extra-regional partners. Political factors and motivations which could have mooted the impetus for regional integration in the economic sphere, were largely absent in the continent till 1990s.[1] Association of South East Asian Nations (hereinafter, ASEAN) in South East Asia and South Asian Association for Regional Co-operation (hereinafter, SAARC) in South-Asia were the first of regional integration initiatives at the sub-regional level.[2] Asian countries have now become very active in deepening existing sub-regional agreements; the sub regional groupings are integrating with each other through a variety of mechanisms, including "framework" FTAs,[3] bilateral FTAs, and a new sub-regional agreement BIMSTEC.[4] The accession of China to the WTO and the proactive role of Japan and Korea in regional integration have contributed to the pace of regional integration in the continent.

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[1] The Bangkok Agreement signed on 31st July, 1975 aimed at a region wide economic integration through a preferential tariff arrangement. It was an initiative for UN ESCAP (Economic and Social Commission for Asia and Pacific) for trade expansion through exchange of tariff concessions among developing country members of the ESCAP region. It was signed between seven countries namely Bangladesh, India, Lao PDR, Republic of Korea, Sri Lanka, Philippines and Thailand, who had agreed to a list of products for mutual tariff concessions. Only five countries ratified the agreement; Philippines and Thailand did not ratify due to their ASEAN commitments, which were also coming into force at that time. Lao PDR is not an effective participating member since it has not issued Customs Notification on the tariff concession granted to the other participating states. For details, see http://commerce.nic.in/india_rta.htm as accessed on 15th July, 2006.

[2] See, Murray Gibbs and Swarnim Wagle, *The Great Maze: Regional and Bilateral Free Trade Agreements in Asia: Trends, Characteristics, and Implications for Human Development* UNDP Policy Paper (Colombo: UNDP, December 2005) at p. 30.

[3] The three framework FTAs of ASEAN with China, India and Japan eventually would involve 30 sets of bilateral FTA negotiations and another such framework with Republic of Korea would add 10 more. The countries negotiating SAFTA have a series of bilateral FTAs with each other.

[4] BIMSTEC: Bay of Bengal Initiative for Multi Sectoral Technical and Economic Cooperation provides an interface for some South and Southeast Asian integration. See, Murray Gibbs and Swarnim Wagle, n. 2 at p. 30.

Compared to South East Asia, the economic integration progressed much slower in South Asia, but Bilateral Trade Agreements between the countries kept the trend going. The lack of favourable political climate[5] was the reason for slow regional integration. The South Asian Preferential Trade Agreement (hereinafter referred to as SAPTA) was the major attempt in the region to use a largely political entity, SAARC to host Preferential Tariff Agreements among its seven members namely, India, Pakistan, Sri Lanka, Bangladesh, Bhutan, Maldives and Nepal. Though the regional integration has not reached its desired heights, individual SAARC members have pursued sub regional integration through bilateral FTAs. India has free trade regimes with Nepal and Bhutan and has entered into negotiations with Bangladesh. India negotiated an ambitious FTA with Sri Lanka which was upgraded to a "Comprehensive Economic Co-operation Agreement" (hereinafter referred to as CECA).[6]

V.2. India: Towards Regional Integration

India is also part of several regional and bilateral integration initiatives. India has accelerated the sub-regional integration process beyond SAPTA by negotiating FTAs with four of its five immediate neighbors: Nepal, Bhutan, and Bangladesh (negotiations are ongoing) and Sri Lanka. Recently, India signed the Draft Framework Agreement for an FTA with ASEAN, under which an FTA has been negotiated with Singapore and Thailand. Moreover, India is a member of BIMSTEC, with which FTA negotiations have started. In the inter-regional context, India has been a member of the Generalized System of Trade Preferences (hereinafter referred to as GSTP), and a PTA has been signed with MERCOSUR. Another important step taken is the CECA with Singapore. Other initiatives include India-Sri Lanka Comprehensive Economic Partnership Agreement (hereinafter referred to as CEPA), India-Bangladesh FTA, Bangladesh-Bhutan-India-Nepal Growth Quadrangle, Indian Ocean Association for Regional Cooperation (IOARC), India-China Economic Cooperation, India-Gulf Cooperation Council (hereinafter referred to as GCC) Economic Cooperation, India-Brazil-South Africa (hereinafter referred to as IBSA) initiative, India-Mauritius and

[5] Political tensions between the two largest countries of the region, viz. India and Pakistan has stalled intra-regional progress.

[6] See, Annex IV for the list of regional agreements signed by India.

India-Egypt Economic Partnerships.[7] India is also nourishing the idea of a Pan-Asian Economic Co-operation initiative known as Asian Economic Community.[8]

India also joined the drift to trade regionalism with regional, intra-regional, inter-regional and bilateral trade initiatives, in its efforts to catch up with the high pace unprecedented trade liberalization process taking place in the international level. Initial hesitation of trade ministers of the country changed, and India is no more a timid player in the game of trade regionalism in the global trade arena. A high demanding pressure of an emerging economy drives the policy makers of the country to fine tune the trade policy of the nation in accordance with the music of the day. This resulted in an increased emphasis on India's economic partnership arrangements with various countries and regions. There has been a dominant view that India was lagging behind in the global trend of proliferation of RTAs and would have been left out of the global economic space if needed initiatives were not taken.[9] The lack of momentum at multilateral level to the desired level is also pointed out as a reason for the shift in concentration to regional and bilateral initiatives. Further, there is a mix of geo-political and economic considerations at play in influencing these initiatives.

V.3. India: Trade and Economic Regionalism

India had entered into a number of regional and sub regional trade initiatives. This includes regional and bilateral FTAs/ BTAs and other kind of economic arrangements. An attempt is made here to analyze some of the key features of a few of these arrangements.[10]

V.3.1. SAARC and SAFTA

Excluding Afghanistan, the South Asian countries Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka and India are members to SAARC. These

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[7] See, Murray Gibbs and Swarnim Wagle, n. 2, at p. 46.

[8] Views expressed at International Workshop on IDRC Project on "Preferential Trading Agreements in Asia: towards an Asian Economic Community" (New Delhi: March 30, 2006) at p. 4.

[9] Rajesh Mehta and R. Narayanan, "Indian Regional Trading Agreements", *Asia Pacific Regional Initiative on Trade, Economic Governance, and Human Development* (India: UNDP, April 2005).

[10] See, Annex IV for a list of Agreements signed by India. Also see, Annex V for an overview of India's trade agreements.

countries have organized themselves into a regional group. The South Asian region has attempted to intensify regional economic integration over the past decade. As the major South Asian grouping in the region, the SAARC also played its role in promoting economic co-operation. The progress of SAPTA in terms of tariff liberalization has been rather slow because of product-by-product or positive list approach adopted. Even the limited experience with trade liberalization under SAPTA has produced encouraging results in terms of trade expansions.

In 2003-2003, India's total trade turnover with the SAARC member countries amounted to Rs.14932.81 crores against Rs.12388.09 crores achieved in the previous year, reflecting an increase of 20.54 per cent. While India's exports to these countries stood at Rs.12530.14 crores in 2002-2003 against Rs.9662.44 crores in 2000-2001 registering an increase of 29.67 per cent, imports from these countries amounted to Rs.2402 crores in 2002-2003 as compared to Rs.2725.65 crores in 2000-2001 showing a decline of 11.84 per cent. India's trade with these countries in 2002-2003 amounted to 2.71 per cent of our global trade. While India's exports to these countries amounted to 4.95 per cent, its imports from these countries amounted to 0.81 per cent of its global imports. During April-August 2003, India's total trade with the SAARC member countries amounted to Rs.7627.87 crores against Rs.5513.98 crores in the same period during the previous year, i. e. an increase of 38.33 per cent. While Indian exports to these countries touched Rs.6716.45 crores in April-August 2003 as compared to Rs.4624.7 crores in the same period last year, i.e. an increase of 45.22 per cent. India's imports from these countries were to the tune of Rs.911.42 crores as compared to Rs.889.28 crores during April-September, 2001, showing an increase of 2.48 per cent.[11]

V.3.2. East Asia and ASEAN

The ASEAN countries are Indonesia, Malaysia, Philippines, Singapore, and Thailand, Brunei Darussalam, Vietnam, Laos and Myanmar and Cambodia as of now. The bilateral and regional trade with East Asian nations and ASEAN has increased recently and India is looking forward for more ties and cooperation in the region. In

[11] All data obtained from the Annual Report, 2004 of the Ministry of Commerce available at http://commerce.nic.in/ accessed on 10th July, 2006.

order to address the economic content of the 'Look East Policy,'[12] a continuous dialogue is maintained with ASEAN and the countries of South East Asia. During the year 2005 India-Singapore Comprehensive Economic Cooperation Agreement (CECA)[13] was signed between the countries on June 29, 2005. The CECA came into effect from August 1, 2005. The CECA with Singapore is considered as an important instrument for expansion of Indian economic relations in the region. Negotiations for conclusion of the CECA with ASEAN are well under way.[14] India is also hopeful of concluding CECA with Indonesia which will further enhance Indian economic thrust in the region.[15]

V.3.3. India-GCC Countries

The Gulf Co-operation Council is a customs union of six countries viz. Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. India is in the process of negotiating a Free Trade Agreement with GCC. Trade in services and Investment cooperation is likely to be included in the proposed FTA.[16]

V.3.4. BIMSTEC

The Bay of Bengal Initiative for Multi Sectoral Technical and Economic Cooperation or, BIMSTEC includes Bangladesh, Bhutan, Myanmar, Nepal, Sri Lanka, Thailand and India. The seven country forum aims to achieve its own free trade area by 2017. The leaders of the grouping agreed in 2004 on steps designed to take forward initiatives which agreed to cooperate on transport infrastructure, energy, communications, tourism, trade and fisheries initially.[17] Members will cooperate on

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[12] This refers to the trade policy of India which emphasized the need for more concentration and cooperation with East Asian Nations.

[13] Text of the agreement is available at http://commerce.nic.in/ceca/toc.htm accessed on 15th June, 2006.

[14] Both the states have shown flexibility to conclude the agreement as early as possible. Two meetings of the Indian- ASEAN Trade Negotiating Committee were held in the year 2005.

[15] An MOU has been signed with Indonesia on 23rd November, 2005 for setting up of a Joint Study Group to look into the flexibility of conclusion of CECA.

[16] Annual Report, Ministry of Commerce, n. 11, at p. 95.

[17] Rajesh Mehta and S. Narayanan, n. 9, at p. 18.

research and development based on the available rich natural bio diversity, aimed at producing breakthrough affordable drugs.[18]

V.3.5. India-Bangladesh

Bangladesh is a strategically important neighbor for India both politically and economically, due to its geographical proximity and historical legacy. India is negotiating bilateral FTA with Bangladesh for last few years. The bilateral ties with Bangladesh are significant for India. The bilateral trade is carried out within the framework of India-Bangladesh Trade Agreement, with MFN treatment accorded to each.

V.3.6. India-Afghanistan

India and Afghanistan have a Preferential Trade Agreement signed on March 6, 2003 under which preferential tariff is granted by the government of Afghanistan to 8 items from India; and India has granted preferential tariff to 38 products from Afghanistan.[19]

V.3.7. India-Bhutan

The Agreement on Trade and Commerce between India and Bhutan provides for free trade between two countries.[20] Under the Agreement, India also provides transit facilities through Indian Territory for Bhutan's trade with trade countries.

V.3.8. India-Nepal

Indo-Nepal bilateral trade and other related matters are governed by the bilateral treaties namely, Treaty of Trade, Treaty of Transit[21] and Agreement for Co-operation to

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[18] *Ibid.*

[19] See, the Annual Report 2005-06 of the Ministry of Commerce and Industry available at http://commerce.nic.in/annual2005-06/englishhtml/cover.htm accessed on 2nd July, 2006.

[20] The ten year validity of the Agreement which expired on 1st March, 2005 has been extended till a new Agreement comes into force. Bilateral negotiations on a new Agreement mainly incorporating certain additional exit/ entry points for trade have been completed in two bilateral meetings held in New Delhi on 16-17 June, 2005 and in Thimpu on 24-26 September, 2005.

Control Unauthorized Trade.[22] Under the Treaty of Transit, 15 transit routes have been provide through the Indian territory for Nepal's trade with third countries. Under the Treaty of Trade, primary products from each other are given preferential treatment by allowing duty free imports and without quantity restrictions. Under this treaty on non-reciprocal basis, India provides preferential access to goods manufactured in Nepal, subject to fulfilling the twin criteria of four digit tariff head changing and value addition of 30 per cent, by allowing its imports on duty-free basis and without quantity restriction. [23]

V.3.9. India- Sri Lanka

Sri Lanka has traditionally been an important export market for India. Sri Lanka is the second largest importer of Indian goods in the region after Bangladesh. The bilateral trade between the countries is carried out under the Indo-Sri Lanka Free Trade Agreement (ISFTA).[24] Under the Free Trade Agreement two sides are maintaining Negative list[25] of items. The India-Sri Lanka FTA does not attempt to remove all tariffs at one go. Instead tariff reductions on some goods are to be effected immediately, while in others reduction is to be applied gradually. India has a three-year time to give duty free access to all Sri Lankan exports, except[26] tea, textiles and other items in the negative list. The Agreement excludes some 196 items from the proposed tariff reduction on the ground of injury or threat of injury to domestic industry and also for national security reasons. Under the agreement, the Indian tariff liberalization programme is complete (tariff reduced to zero) since March 18, 2003. Sri Lanka's tariff liberalization programme will be complete in the year 2008. A notable feature of the

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[21] The Treaty of Transit as modified on 5th January, 1999 is automatically extendable for a period of seven years at a time unless either party gave a notice of termination.

[22] The Treaty of Trade and the Agreement for Co-operation to Control Unauthorized Trade were renewed for a period of five years with effect from 6th March, 2002.

[23] Annual Report of the Ministry of Commerce, n. 11.

[24] India-Sri Lanka Free Trade Agreement (ISFTA) was signed on 28th December, 1998 and is operational since March 2000.

[25] Negative list refers to the list of items on which no duty concessions are given. The governments are free to include the items which they feel it is necessary to be protected from imports.

[26] Rajesh Mehta and S. Narayanan, n. 9, at p. 15.

India-Sri Lanka FTA is the availability of various provisions for safeguarding domestic economic sensitivities in both the countries.[27] Some of the safety measures include sensitive or negative lists, tariff rate quota, Rules of Origin etc. to protect from trade deflection, safeguards against checking a surge in imports etc.[28] Both countries are also negotiating a Comprehensive Economic Partnership Agreement which could include not only trade in goods but also trade in services, investment and economic co-operation.[29]

V.3.10. India-Israel

A Joint Study Group (hereinafter referred to as JSG) has been constituted to look into the ways and means of greater bilateral economic relations and to consider the possibilities of Economic Partnership Agreement between India and Israel. The JSG recommended an India-Israel Action Plan for Comprehensive Economic Co-operation between the two countries which inter alia also include a WTO compatible Preferential Trade Agreement.[30]

V.3.11. India-Thailand

India and Thailand has agreed to explore the possibility of establishing a bilateral FTA with a view to intensifying trade and economic relations between the two countries.[31] The Joint Working Group (JWG) formed for this purpose recommended that there exists immense potential for enforcing cooperation in trade and other areas such as services and investment and observed that an FTA on this line will be feasible and mutually beneficial.[32] According to the recommendations, a Draft Framework Agreement towards an FTA was signed in 2003. An early harvest scheme, covering 82

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[27] *Ibid*, at p. 15.

[28] *Ibid*, at p. 17-18.

[29] See, Annual Report, Ministry of Commerce, n. 11.

[30] The inter-Ministerial JSG finalized and released its Report at Tel Aviv, Israel on 10th November, 2005.

[31] The decision to study the feasibility of an FTA between India and Thailand was announced during the visit of Thai Prime Minister, Dr. Taksin Shinawatra in India in November, 2001.

[32] JWG finalized its Report on 22-23 December, 2002.

items, a HS 6-digit level was implemented on September 1, 2004. The full FTA is envisaged to be operational in 2010. It is worth highlighting that the delay in signing the India-Thai Framework Agreement or FTA was largely due to lack of consensus on Rules of Origin.[33]

V.3.12. India-Mauritius

India and Mauritius have desired for having a Comprehensive Economic Cooperation and Partnership Agreement (hereinafter referred to as CECPA) in order to boost bilateral trade, investment and general economic cooperation between the two countries. Both the countries agreed for a CECPA.[34] Memorandum of Understanding (hereinafter referred to as MoU), on Harmonization of Standards between the concerned agencies; cooperation on Consumer Protection and Legal Metrology; MoU between Indian Institute of Public Administration (IIPA) and the Government of Mauritius and MoU on Preferential Trade Agreement was signed in October, 2005 under the CECPA between the two countries.

V.3.13. India-Chile

The text of the Preferential Trade Agreement (hereinafter referred to as PTA) between India and Chile and its five Annexes viz. two lists of products for tariff concession from each side, Rules of Origin, Safeguard Measures and Dispute Settlement Measures have been finalized during the four rounds of negotiations between the two states.[35] A JSG has been set up to study the feasibility of a FTA between India and Chile.[36]

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[33] Rajesh Mehta and S. Narayanan, n. 9, at p. 19.

[34] The decision to form a CECPA between India and Mauritius was announced during the visit of the Prime Minister of India, Dr. Man Mohan Singh to Mauritius from March 30- April 2, 2005.

[35] Annual Report, Ministry of Commerce, n. 11, at p. 99.

[36] First meeting of the JSG took place in New Delhi during November 21-22, 2005 along with the fourth and final round of negotiations for a PTA between two sides.

V.4. Conclusion

From an overview of India's regional trading arrangements provided for so far, it is understood that the terms of each arrangement varies according to the respective strengths and interests of the countries involved. However, when contracting with less developed countries India has to tread with caution because the bargain India gets out of it must be thoroughly examined. India being a huge market, every arrangement would benefit the other contracting state to gain the much sought market access. With the reciprocal benefits not so promising, it has to be reconsidered if the RTAs entered into by India are really bringing forth the benefits idealized. Especially, with the emergence of SAFTA from the first week of July, 2006, the time is ripe to rethink about the real issues underlying the regional arrangements.

CHAPTER VI

CONCLUSION

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The fundamental principles regulating trade pattern under the GATT/ WTO are the principles of MFN and unconditional non discrimination enunciated in Article I of GATT. The most important GATT exemption to the principle of MFN is the provision for regional arrangements. RTAs are trade arrangements entered into by countries whereby they agree to grant preferential treatment to trade within and among the participant members. Countries generally enter into regional trade arrangements for enhancing trade benefits and market access. The surge of regionalism in global trade could be attributed to political, economic as well as legal reasons. The wave of 'new regionalism' of the 21st century necessitated a change in the conventional theoretical approach towards the international trade. The gradual evolution of multilateralism in global trade over the decades stands in contrast to the unprecedented proliferation of regional trading arrangements in recent years. The historical outline of origin and evolution of regionalism in the study makes an attempt to understand the gradual emergence of RTAs in international trade.

Trade agreements, in the form of regional, sub regional and bilateral arrangements substantially affect the pattern and nature of international trade. Trade experts refer to the gradual shift of trade concentration from the multilateral forum to regional and bilateral forums. This shift in trade concentration would inevitably lead to the debate on the desirability of RTAs. One of the central pillars of this debate is the 'dynamic time path question,' as propounded by Jagdish Bhagwati, as to whether RTAs are 'stepping stones' or 'stumbling blocs' to multilateral trade liberalization. The 'dynamic time path question,' an essentially economic framework, refers to whether regionalism promotes trade liberalization or hinders it.

Attempts to analyze the impact of trade regionalism within the multilateral trade liberalization framework invariably involves trade creating as well as trade diverting effects of the RTAs. Generally, trade moves within a preferential trade area, but trade is also diverted to the non member countries outside the union. Economic analysis of regionalism focuses on the welfare effect of preferential trade areas. Critics of regionalism view RTAs as a serious threat to multilateral trade liberalization as it may

result in raising of more trade barriers. Contrary to the above, some scholars emphasize, the 'deeper integration' and 'laboratory effect' of RTAs whereby it promote more regionally sustainable trade liberalization process, thereby contributing to the further liberalization of the multilateral trade. Given the reality of substantial trade flow through RTAs, WTO provides for an institutional mechanism through the Committee on Regional Trade Agreements, to look into various aspects of RTAs and its compatibility with GATT/ WTO. In the context of existing multilateral trading system, existence of a large number of Regional Trading Arrangements between WTO members, the primary legal issue that needs consideration is- as to how and how effectively to reconcile the obligations flowing from RTAs vis-à-vis WTO.

The present study attempts to look at the existing rules governing the trade regionalism under GATT/ WTO. The GATT Article XXIV is the basic legal provision for RTAs under the multilateral rules. Besides this, the 'Understanding on the Interpretation of Article XXIV of GATT 1994,' an understanding reached by the Contracting Parties seeks to clarify some of the grey areas of Article XXIV. The study also attempts to provide an analysis of the 'Understanding.' The key legal elements of Article XXIV are (a) a customs union or free trade area should facilitate trade; (b) duties and other regulations imposed as part of a customs union shall not on the whole be higher or more restrictive than prior to the formation of the union; (c) the duties and restrictions of commerce shall be eliminated with respect to substantially all the trade between the members. The study also looks at the fundamental difference between a customs union and free trade area, as customs union keep common duties and restrictions against the outside members while members of a free trade area are free to have their own duties and other commercial restrictions. In explaining the salient features, the study examines the legal criteria and requirement for regional arrangements and its interpretations.

The interpretation and implementation of Article XXIV presents many difficulties. The study discusses these problems and ambiguities in interpreting the legal text of Article XXIV such as "substantially all" and the test of "not on the whole...higher...than the general incidence...." The Panel and Appellate Body decision in the Turkish QR Case seems to provide a judicial clarity as well as understanding on the interpretative problems of Article XXIV. Rejecting the claim of

Turkey, the Panel concluded that the quantitative restrictions applied are inconsistent with GATT. The observation of the Panel that the objective of trade regionalism is to complement the global trading system and not to raise barriers to global trade, firms up the basic framework. In delivering its report, the Appellate Body upheld most of the findings of the Panel but went a step ahead and observes that the chapeau or preamble of paragraph 5 is the key provision in resolving the issue in question. Upholding the view of the Panel, the Appellate Body further emphasizes on the legal requirement for complementary relationship between regionalism and multilateralism under Article XXIV. Thus the Panel and the Appellate Body reports provide much needed legal interpretation for some key concepts of Article XXIV. The study also attempts to look into the shift in the interpretation and analyses the limits of Article XXIV.

According to the nature and characteristics of trade regionalism in the 1950s, the framers of GATT, treated regionalism as an exception and designed Article XXIV accordingly. Article XXIV is framed with a view to create an exception to the RTAs rather than regulating its operation. Considering the recent proliferation of RTAs for both economic and political reasons, Article XXIV appears to be failing in reconciling regional and multilateral trade obligations. In many ways, Article XXIV could be regarded as incapable of dealing with the opposing multilateral and regional trade obligations. Its success was limited by the weak mandate of the GATT Working Party as well as by the lack of an effective legal framework. As a result, RTAs proliferated in the absence of a proper discipline governing the subject. Any improvement in the discipline occurred only after the adoption of the Understanding on Article XXIV in 1994 and later to a limited extent with the Turkish QR case interpretation.

RTAs are becoming increasingly complex as the nature and characteristic of RTAs have changed substantially. This is more apparent when RTAs involve developed and developing countries. For example, many of the US FTAs with developing countries include provisions which go beyond the WTO commitments. RTAs contain many, what has been termed as 'WTO Plus' requirements. The study looks into the 'Rules of Origin' and 'TRIPS Plus' issues as two case studies of 'WTO Plus' trends in RTAs. Besides this, other issues like investment, services, labour and environmental standards need consideration.

It should be noted that through RTAs, developed countries aim at higher levels of protection and greater market access in the developing country markets. Many of the RTAs, especially between the developed and developing countries, are purely driven by economic and strategic interests, which include a variety of areas that are not governed by proper disciplines in GATT/ WTO and contain more commitments than in WTO. This may eventually lead to a legal uncertainty as to which rule will prevail or be made applicable to a dispute arising out of such an agreement. In other words, multiplicity of dispute settlement forums within RTAs will become a major international legal issue. The difficult legal question will be, whether the WTO shall decide according to the multilateral rules of the WTO or to follow the RTA rules. The same question becomes more complicated when RTA members undertake commitments which are in contravention of their obligations.

Finally, the study examines the Indian approach towards RTAs. India has various regional, sub regional and bilateral trade arrangements. The present study provides an analytical table which explains the features and commitments of Indian RTAs. In the Indian context, both its legal and trade policy on regionalism and bilateralism needs more clarity. With a huge market and an emerging economy, India has to be cautious focusing its trade tools while entering into preferential trade regimes.

Some of the conclusions of the study may be summarized as under:

- The phenomenon of regionalism is an integral part of the global trade.
- The legal discipline governing RTAs in GATT/ WTO requires to be strengthened for making both regionalism and multilateralism in trade complementary to each other.
- Many RTAs tend to go much beyond the WTO framework to include many 'WTO Plus' provisions and standards and these 'WTO Plus' features may undermine the flexibilities guaranteed by GATT/ WTO for developing and least developed countries.

Though legislative as well as judicial interpretations of Article XXIV provide some clarity for key provisions, one could state that it failed to provide substantive

legal clarity for other provisions of Article XXIV. In this context it is argued that there is a need for a new legal paradigm capable of overcoming the inherent weaknesses of the existing legal framework of Article XXIV in GATT/ WTO. For example, Pascal Lamy, the Director General of WTO on July 10, 2006 announced the formal approval of a new WTO Transparency Mechanism for all RTAs, agreed by the Negotiating Group on Rules. This announcement by the Director General should bring in RTAs in greater harmony with the WTO. The new transparency mechanism provides for an early announcement of any RTA and notification to the WTO. The members will consider the notified RTAs on the basis of a factual presentation by the WTO Secretariat. The Committee on Regional Trade Agreements will conduct the review of RTAs falling under Article XXIV of the GATT and Article V of GATS. The Committee on Trade and Development will conduct the review of RTAs falling under the Enabling clause. The transparency mechanism is to be implemented on a provisional basis. The members are to review, and if necessary modify the decision, and replace it by a permanent mechanism adopted as a part of the overall results of the Doha Round. The new mechanism, no doubt will be another important step forward in the efforts to relocate regional and multilateral trade in a mutually reconcilable legal terrain wherein both complement each other.

ANNEXURES

ANNEX I

Article XXIV

Territorial Application - Frontier Traffic - Customs Unions and Free-trade Areas

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; *Provided*, that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of provisional Application by a single contracting party.

2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

3. The provisions of this Agreement shall not be construed to prevent:

   (*a*) Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;

   (*b*) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. 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.

5. Accordingly, 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* that:

(*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 if 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 sub-paragraphs (*a*) and (*b*) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of sub-paragraph 5 (*a*), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.

7. (*a*) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them

such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(*b*) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (*a*), the CONTRACTING PARTIES find that such agreement is not 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, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties 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.

(*c*) Any substantial change in the plan or schedule referred to in paragraph 5 (*c*) shall be communicated to the CONTRACTING PARTIES, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. For the purposes of this Agreement:

(*a*) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(*b*) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles

XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article I shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected.* This 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*).

10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.*

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.

ANNEX II

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members,

Having regard to the provisions of Article XXIV of GATT 1994;

Recognizing that customs unions and free trade areas have greatly increased in number and importance since the establishment of GATT 1947 and today cover a significant proportion of world trade;

Recognizing the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements;

Recognizing also that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded;

Reaffirming that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other Members;

Convinced also of the need to reinforce the effectiveness of the role of the Council for Trade in Goods in reviewing agreements notified under Article XXIV, by clarifying the criteria and procedures for the assessment of new or enlarged agreements, and improving the transparency of all Article XXIV agreements;

Recognizing the need for a common understanding of the obligations of Members under paragraph 12 of Article XXIV;

Hereby *agree* as follows:

1. Customs unions, free-trade areas, and interim agreements leading to the formation of a customs union or free-trade area, to be consistent with Article XXIV, must satisfy, *inter alia*, the provisions of paragraphs 5, 6, 7 and 8 of that Article.

Article XXIV: 5

2. The evaluation under paragraph 5(a) of Article XXIV of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges 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, on a tariff-line basis and in values and quantities, broken down by WTO country of origin. The Secretariat shall 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. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognized that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required.

3. The "reasonable length of time" referred to in paragraph 5(c) of Article XXIV should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period.

Article XXIV: 6

4. Paragraph 6 of Article XXIV establishes the procedure to be followed when a Member forming a customs union proposes to increase a bound rate of duty. In this regard Members reaffirm that the procedure set forth in Article XXVIII, as elaborated in the guidelines adopted on 10 November 1980 (BISD 27S/26-28) and in the Understanding on the Interpretation of Article XXVIII of GATT 1994, must be commenced 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.

5. These negotiations will be entered into in good faith with a view to achieving mutually satisfactory compensatory adjustment. In such negotiations, as required by paragraph 6 of Article XXIV, due account shall be taken of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation. 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. Where, despite such efforts, agreement in negotiations on compensatory adjustment under Article XXVIII as elaborated by the Understanding on the Interpretation of Article XXVIII of GATT 1994 cannot be reached within a reasonable period from the initiation of negotiations, the customs union shall, nevertheless, be free to modify or withdraw the concessions; affected Members shall then be free to withdraw substantially equivalent concessions in accordance with Article XXVIII.

6. GATT 1994 imposes no obligation on Members benefiting from a reduction of duties consequent upon the formation of a customs union, or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its constituents.

Review of Customs Unions and Free-Trade Areas

7. All notifications made under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of GATT 1994 and of paragraph 1 of this Understanding. The working party shall submit a report to the Council for Trade in Goods on its findings in this regard. The Council for Trade in Goods may make such recommendations to Members as it deems appropriate.

8. In regard to interim agreements, the working party may in its report make appropriate recommendations on the proposed time-frame and on measures required to complete the formation of the customs union or free-trade area. It may if necessary provide for further review of the agreement.

9. Members parties to an interim agreement shall notify substantial changes in the plan and schedule included in that agreement to the Council for Trade in Goods and, if so requested, the Council shall examine the changes.

10. Should an interim agreement notified under paragraph 7(a) of Article XXIV not include a plan and schedule, contrary to paragraph 5(c) of Article XXIV, the working party shall in its report recommend such a plan and schedule. The parties 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. Provision shall be made for subsequent review of the implementation of the recommendations.

11. Customs unions and constituents of free-trade areas shall report periodically to the Council for Trade in Goods, as envisaged by the CONTRACTING PARTIES to GATT 1947 in their instruction to the GATT 1947 Council concerning reports on regional agreements (BISD 18S/38), on the operation of the relevant agreement. Any significant changes and/or developments in the agreements should be reported as they occur.

Dispute Settlement

12. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of those provisions of Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free-trade area.

Article XXIV: 12

13. Each Member is fully responsible under GATT 1994 for the observance of all provisions of GATT 1994, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.

14. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked in respect of measures affecting its observance taken by regional or local governments or authorities within the territory of a Member. When the Dispute Settlement Body has ruled that a provision of GATT 1994 has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

15. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of GATT 1994 taken within the territory of the former.

ANNEX III

REGIONAL TRADE AGREEMENTS NOTIFIED TO GATT/ WTO AND IN FORCE (by date of entry into force)

(As of June 15, 2006)

Agreement	Date of entry into force	Date of notification	Related provisions	Type of agreement	Document series
ECOWAS	1993	26-Sep-05	Enabling Clause	Preferential arrangement	WT/COMTD/N/21 WT/COMTD/54
EC (Treaty of Rome)	1-Jan-58	10-Nov-95	GATS Art. V	Services agreement	WT/REG39 S/C/N/6
EC (Treaty of Rome)	1-Jan-58	24-Apr-57	GATT Art. XXIV	Customs union	L/626
EFTA (Stockholm Convention)	3-May-60	14-Nov-59	GATT Art. XXIV	Free trade agreement	WT/REG85
CACM	12-Oct-61	24-Feb-61	GATT Art. XXIV	Customs union	WT/REG93
TRIPARTITE	1-Apr-68	23-Feb-68	Enabling Clause	Preferential arrangement	L/2980 L/2980/Add.1
EFTA accession of Iceland	1-Mar-70	30-Jan-70	GATT Art. XXIV	Accession to free trade agreement	L/3328 L/3328/Add.1
EC — OCTs	1-Jan-71	14-Dec-70	GATT Art. XXIV	Free trade agreement	WT/REG106
EC — Switzerland and Liechtenstein	1-Jan-73	27-Oct-72	GATT Art. XXIV	Free trade agreement	WT/REG94
EC accession of Denmark, Ireland and United Kingdom	1-Jan-73	7-Mar-72	GATT Art. XXIV	Accession to customs union	L/3677
PTN	11-Feb-73	9-Nov-71	Enabling Clause	Preferential arrangement	L/3598 18S/11
EC — Iceland	1-Apr-73	24-Nov-72	GATT Art. XXIV	Free trade agreement	WT/REG95
EC — Norway	1-Jul-73	13-Jul-73	GATT Art. XXIV	Free trade agreement	WT/REG137
CARICOM	1-Aug-73	14-Oct-74	GATT Art. XXIV	Customs union	WT/REG92
Bangkok Agreement	17-Jun-76	2-Nov-76	Enabling Clause	Preferential arrangement	L/4418 L/4418/Corr.1
EC — Algeria	1-Jul-76	28-Jul-76	GATT Art. XXIV	Free trade agreement	WT/REG105
PATCRA	1-Feb-77	20-Dec-76	GATT Art. XXIV	Free trade agreement	L/4451 L/4451/Add.1

EC — Syria	1-Jul-77	15-Jul-77	GATT Art. XXIV	Free trade agreement	WT/REG104
SPARTECA	1-Jan-81	20-Feb-81	Enabling Clause	Preferential arrangement	L/5100
EC accession of Greece	1-Jan-81	24-Oct-79	GATT Art. XXIV	Accession to customs union	L4845
LAIA	18-Mar-81	1-Jul-82	Enabling Clause	Preferential arrangement	L/5342
CER	1-Jan-83	14-Apr-83	GATT Art. XXIV	Free trade agreement	WT/REG111
United States — Israel	19-Aug-85	13-Sep-85	GATT Art. XXIV	Free trade agreement	L/5862 L/5862/Add.1
EC accession of Portugal and Spain	1-Jan-86	11-Dec-85	GATT Art. XXIV	Accession to customs union	L/5936
CAN	25-May-88	12-Oct-90	Enabling Clause	Preferential arrangement	L/6737
CER	1-Jan-89	22-Nov-95	GATS Art. V	Services agreement	WT/REG40 S/C/N/7
GSTP	19-Apr-89	25-Sep-89	Enabling Clause	Preferential arrangement	L/6564/Add.1
Laos — Thailand	20-Jun-91	29-Nov-91	Enabling Clause	Preferential arrangement	L/6947
EC — Andorra	1-Jul-91	9-Mar-98	GATT Art. XXIV	Customs union	WT/REG53
MERCOSUR	29-Nov-91	5-Mar-92	Enabling Clause	Customs union	WT/COMTD/1
AFTA	28-Jan-92	30-Oct-92	Enabling Clause	Preferential arrangement	L/4581
EFTA — Turkey	1-Apr-92	6-Mar-92	GATT Art. XXIV	Free trade agreement	WT/REG86
EFTA — Israel	1-Jan-93	1-Dec-92	GATT Art. XXIV	Free trade agreement	WT/REG14
Armenia - Russian Federation	25-Mar-93	27-Jul-04	GATT Art. XXIV	Free trade agreement	WT/REG174
Kyrgyz Republic — Russian Federation	24-Apr-93	15-Jun-99	GATT Art. XXIV	Free trade agreement	WT/REG73
EC — Romania	1-May-93	23-Dec-94	GATT Art. XXIV	Free trade agreement	WT/REG2
EFTA — Romania	1-May-93	24-May-93	GATT Art. XXIV	Free trade agreement	WT/REG16
Faroe Islands — Norway	1-Jul-93	13-Mar-96	GATT Art. XXIV	Free trade agreement	WT/REG25
Faroe Islands — Iceland	1-Jul-93	23-Jan-96	GATT Art. XXIV	Free trade agreement	WT/REG23
EFTA — Bulgaria	1-Jul-93	7-Jul-93	GATT Art. XXIV	Free trade agreement	WT/REG12
MSG	22-Jul-93	7-Oct-99	Enabling Clause	Preferential arrangement	WT/COMTD/N/9 WT/COMTD/21
EC — Bulgaria	31-Dec-93	23-Dec-94	GATT Art. XXIV	Free trade agreement	WT/REG1

EEA	1-Jan-94	10-Oct-96	GATS Art. V	Services agreement	WT/REG138 S/C/N/28
NAFTA	1-Jan-94	1-Feb-93	GATT Art. XXIV	Free trade agreement	WT/REG4
NAFTA	1-Apr-94	1-Mar-95	GATS Art. V	Services agreement	WT/REG4 S/C/N/4
Georgia — Russian Federation	10-May-94	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG118
COMESA	8-Dec-94	29-Jun-95	Enabling Clause	Preferential arrangement	WT/COMTD/N/3
CIS	30-Dec-94	1-Oct-99	GATT Art. XXIV	Free trade agreement	WT/REG82
Romania — Moldova	1-Jan-95	24-Sep-97	GATT Art. XXIV	Free trade agreement	WT/REG44
EC accession of Austria, Finland and Sweden	1-Jan-95	20-Jan-95	GATT Art. XXIV	Accession to customs union	WT/REG3 L/7614/Add.1
EC accession of Austria, Finland and Sweden	1-Jan-95	20-Jan-95	GATS Art. V	Accession to services agreement	WT/REG3 S/C/N/6
EC — Bulgaria	1-Feb-95	25-Apr-97	GATS Art. V	Services agreement	WT/REG1 S/C/N/55
EC — Romania	1-Feb-95	9-Oct-96	GATS Art. V	Services agreement	WT/REG2 S/C/N/27
Faroe Islands — Switzerland	1-Mar-95	8-Mar-96	GATT Art. XXIV	Free trade agreement	WT/REG24
Kyrgyz Republic — Armenia	27-Oct-95	4-Jan-01	GATT Art. XXIV	Free trade agreement	WT/REG114
Kyrgyz Republic — Kazakhstan	11-Nov-95	29-Sep-99	GATT Art. XXIV	Free trade agreement	WT/REG81
SAPTA	7-Dec-95	25-Apr-97	Enabling Clause	Preferential arrangement	WT/COMTD/10
Armenia - Moldova	21-Dec-95	27-Jul-04	GATT Art. XXIV	Free trade agreement	WT/REG173
EC — Turkey	1-Jan-96	22-Dec-95	GATT Art. XXIV	Customs union	WT/REG22
Georgia — Ukraine	4-Jun-96	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG121
Armenia - Turkmenistan	7-Jul-96	27-Jul-04	GATT Art. XXIV	Free trade agreement	WT/REG175
Georgia — Azerbaijan	10-Jul-96	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG120
Kyrgyz Republic — Moldova	21-Nov-96	15-Jun-99	GATT Art. XXIV	Free trade agreement	WT/REG76
Armenia - Ukraine	18-Dec-96	27-Jul-04	GATT Art. XXIV	Free trade agreement	WT/REG171
EC — Faroe Islands	1-Jan-97	19-Feb-97	GATT Art. XXIV	Free trade agreement	WT/REG21
Canada — Israel	1-Jan-97	23-Jan-97	GATT Art. XXIV	Free trade agreement	WT/REG31
Turkey - Israel	1-May-97	18-May-98	GATT Art. XXIV	Free trade agreement	WT/REG60

CARICOM	1-Jul-97	19-Feb-03	GATS Art. V	Services agreement	WT/REG155 S/C/N/229
CEFTA accession of Romania	1-Jul-97	8-Jan-98	GATT Art. XXIV	Accession to free trade agreement	WT/REG11
EC — Palestinian Authority	1-Jul-97	30-Jun-97	GATT Art. XXIV	Free trade agreement	WT/REG43
Canada — Chile	5-Jul-97	13-Nov-97	GATS Art. V	Services agreement	WT/REG38 S/C/N/65
Canada — Chile	5-Jul-97	26-Aug-97	GATT Art. XXIV	Free trade agreement	WT/REG38
EAEC	8-Oct-97	21-Apr-99	GATT Art. XXIV	Customs union	WT/REG71
Croatia - FYROM	30-Oct-97	1-Apr-05	GATT Art. XXIV	Free trade agreement	WT/REG197
Kyrgyz Republic — Ukraine	19-Jan-98	15-Jun-99	GATT Art. XXIV	Free trade agreement	WT/REG74
Romania — Turkey	1-Feb-98	18-May-98	GATT Art. XXIV	Free trade agreement	WT/REG59
EC — Tunisia	1-Mar-98	23-Mar-99	GATT Art. XXIV	Free trade agreement	WT/REG69
Kyrgyz Republic — Uzbekistan	20-Mar-98	15-Jun-99	GATT Art. XXIV	Free trade agreement	WT/REG75
Mexico - Nicaragua	1-Jul-98	2-Nov-05	GATS Art. V	Services agreement	WT/REG206 S/C/N/359
Mexico - Nicaragua	1-Jul-98	2-Nov-05	GATT Art. XXIV	Free trade agreement	WT/REG206
Georgia — Armenia	11-Nov-98	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG119
Bulgaria — Turkey	1-Jan-99	4-May-99	GATT Art. XXIV	Free trade agreement	WT/REG72
CEFTA accession of Bulgaria	1-Jan-99	24-Mar-99	GATT Art. XXIV	Accession to free trade agreement	WT/REG11
CEMAC	24-Jun-99	29-Sep-00	Enabling Clause	Preferential arrangement	WT/COMTD/N/13 WT/COMTD/24
EFTA — Palestinian Authority	1-Jul-99	21-Sep-99	GATT Art. XXIV	Free trade agreement	WT/REG79
Georgia — Kazakhstan	16-Jul-99	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG123
Chile — Mexico	1-Aug-99	14-Mar-01	GATS Art. V	Services agreement	WT/REG125 S/C/N/142
Chile — Mexico	1-Aug-99	8-Mar-01	GATT Art. XXIV	Free trade agreement	WT/REG125
EFTA — Morocco	1-Dec-99	18-Feb-00	GATT Art. XXIV	Free trade agreement	WT/REG91
Georgia — Turkmenistan	1-Jan-00	21-Feb-01	GATT Art. XXIV	Free trade agreement	WT/REG122
EC — South Africa	1-Jan-00	21-Nov-00	GATT Art. XXIV	Free trade agreement	WT/REG113

WAEMU/UEMOA	1-Jan-00	3-Feb-00	Enabling Clause	Preferential arrangement	WT/COMTD/N/11 WT/COMTD/23
Bulgaria — Former Yugoslav Republic of Macedonia	1-Jan-00	18-Feb-00	GATT Art. XXIV	Free trade agreement	WT/REG90
EC — Morocco	1-Mar-00	8-Nov-00	GATT Art. XXIV	Free trade agreement	WT/REG112
EC — Israel	1-Jun-00	7-Nov-00	GATT Art. XXIV	Free trade agreement	WT/REG110
Israel - Mexico	1-Jul-00	8-Mar-01	GATT Art. XXIV	Free trade agreement	WT/REG124
EC — Mexico	1-Jul-00	1-Aug-00	GATT Art. XXIV	Free trade agreement	WT/REG109
EAC	7-Jul-00	11-Oct-00	Enabling Clause	Preferential arrangement	WT/COMTD/N/14 WT/COMTD/25
SADC	1-Sep-00	9-Aug-04	GATT Art. XXIV	Free trade agreement	WT/REG176
Turkey — Former Yugoslav Republic of Macedonia	1-Sep-00	22-Jan-01	GATT Art. XXIV	Free trade agreement	WT/REG115
Croatia - Bosnia and Herzegovina	1-Jan-01	6-Oct-03	GATT Art. XXIV	Free trade agreement	WT/REG159
New Zealand - Singapore	1-Jan-01	19-Sep-01	GATT Art. XXIV	Free trade agreement	WT/REG127
New Zealand - Singapore	1-Jan-01	19-Sep-01	GATS Art. V	Services agreement	WT/REG127 S/C/N/169
EFTA — Former Yugoslav Republic of Macedonia	1-Jan-01	31-Jan-01	GATT Art. XXIV	Free trade agreement	WT/REG117
EC — Mexico	1-Mar-01	21-Jun-02	GATS Art. V	Services agreement	WT/REG109 S/C/N/192
El Salvador - Mexico	15-Mar-01	30-May-06	GATS Art. V	Services agreement	WT/REG212 S/C/N/367
El Salvador - Mexico	15-Mar-01	30-May-06	GATT Art. XXIV	Free trade agreement	WT/REG212
EC — FYROM	1-Jun-01	21-Nov-01	GATT Art. XXIV	Free trade agreement	WT/REG129
Romania - Israel	1-Jul-01	25-Apr-05	GATT Art. XXIV	Free trade agreement	WT/REG199
EFTA - Mexico	1-Jul-01	22-Aug-01	GATT Art. XXIV	Free trade agreement	WT/REG126
EFTA - Mexico	1-Jul-01	22-Aug-01	GATS Art. V	Services agreement	WT/REG126 S/C/N/166
India — Sri Lanka	15-Dec-01	27-Jun-02	Enabling Clause	Free trade agreement	WT/COMTD/N/16
United States — Jordan	17-Dec-01	18-Oct-02	GATS Art. V	Services agreement	WT/REG134 S/C/N/193
United States — Jordan	17-Dec-01	5-Mar-02	GATT Art. XXIV	Free trade agreement	WT/REG134
Armenia - Kazakhstan	25-Dec-01	27-Jul-04	GATT Art. XXIV	Free trade agreement	WT/REG172

Bangkok Agreement - Accession of China	1-Jan-02	29-Jul-04	Enabling Clause	Accession to Preferential arrangement	WT/COMTD/N/19
Bulgaria - Israel	1-Jan-02	14-Apr-03	GATT Art. XXIV	Free trade agreement	WT/REG150
EFTA — Jordan	1-Jan-02	22-Jan-02	GATT Art. XXIV	Free trade agreement	WT/REG133
EFTA — Croatia	1-Jan-02	22-Jan-02	GATT Art. XXIV	Free trade agreement	WT/REG132
Chile — Costa Rica	15-Feb-02	24-May-02	GATS Art. V	Services agreement	WT/REG136 S/C/N/191
Chile — Costa Rica	15-Feb-02	14-May-02	GATT Art. XXIV	Free trade agreement	WT/REG136
EC — Croatia	1-Mar-02	20-Dec-02	GATT Art. XXIV	Free trade agreement	WT/REG142
EC — Jordan	1-May-02	20-Dec-02	GATT Art. XXIV	Free trade agreement	WT/REG141
Chile - El Salvador	1-Jun-02	16-Feb-04	GATT Art. XXIV	Free trade agreement	WT/REG165
Chile - El Salvador	1-Jun-02	17-Mar-04	GATS Art. V	Services agreement	WT/REG165 S/C/N/299
EFTA	1-Jun-02	3-Dec-02	GATS Art. V	Services agreement	WT/REG154 S/C/N/207
Albania - FYROM	1-Jul-02	14-Dec-04	GATT Art. XXIV	Free trade agreement	WT/REG182
FYROM - Bosnia and Herzegovina	15-Jul-02	11-May-05	GATT Art. XXIV	Free trade agreement	WT/REG200
Canada — Costa Rica	1-Nov-02	17-Jan-03	GATT Art. XXIV	Free trade agreement	WT/REG147
Japan - Singapore	30-Nov-02	14-Nov-02	GATS Art. V	Services agreement	WT/REG140 S/C/N/206
Japan - Singapore	30-Nov-02	14-Nov-02	GATT Art. XXIV	Free trade agreement	WT/REG140
EFTA - Singapore	1-Jan-03	24-Jan-03	GATS Art. V	Services agreement	WT/REG148 S/C/N/226
EFTA - Singapore	1-Jan-03	24-Jan-03	GATT Art. XXIV	Free trade agreement	WT/REG148
EC - Chile	1-Feb-03	18-Feb-04	GATT Art. XXIV	Free trade agreement	WT/REG164
CEFTA accession of Croatia	1-Mar-03	3-Mar-04	GATT Art. XXIV	Accession to free trade agreement	WT/REG11
EC - Lebanon	1-Mar-03	4-Jun-03	GATT Art. XXIV	Free trade agreement	WT/REG153
Panama - El Salvador	11-Apr-03	5-Apr-05	GATS Art. V	Services agreement	WT/REG196 S/C/N/325
Panama - El Salvador	11-Apr-03	18-Mar-05	GATT Art. XXIV	Free trade agreement	WT/REG196
Croatia - Albania	1-Jun-03	31-Mar-04	GATT Art. XXIV	Free trade agreement	WT/REG166

ASEAN - China	1-Jul-03	21-Dec-04	Enabling Clause	Preferential arrangement	WT/COMTD/N/20 WT/COMTD/51
Turkey - Bosnia and Herzegovina	1-Jul-03	8-Sep-03	GATT Art. XXIV	Free trade agreement	WT/REG157
Turkey - Croatia	1-Jul-03	8-Sep-03	GATT Art. XXIV	Free trade agreement	WT/REG156
Singapore - Australia	28-Jul-03	1-Oct-03	GATS Art. V	Services agreement	WT/REG158 S/C/N/233
Singapore - Australia	28-Jul-03	1-Oct-03	GATT Art. XXIV	Free trade agreement	WT/REG158
Albania - Bulgaria	1-Sep-03	31-Mar-04	GATT Art. XXIV	Free trade agreement	WT/REG167
Albania - UNMIK (Kosovo)	1-Oct-03	8-Apr-04	GATT Art. XXIV	Free trade agreement	WT/REG168
Romania - Bosnia and Herzegovina	24-Oct-03	14-Feb-05	GATT Art. XXIV	Free trade agreement	WT/REG191
Romania - FYROM	1-Jan-04	14-Feb-05	GATT Art. XXIV	Free trade agreement	WT/REG193
Albania - Romania	1-Jan-04	14-Dec-04	GATT Art. XXIV	Free trade agreement	WT/REG180
China - Macao, China	1-Jan-04	12-Jan-04	GATT Art. XXIV	Free trade agreement	WT/REG163
China - Macao, China	1-Jan-04	12-Jan-04	GATS Art. V	Services agreement	WT/REG163 S/C/N/265
China - Hong Kong, China	1-Jan-04	12-Jan-04	GATT Art. XXIV	Free trade agreement	WT/REG162
China - Hong Kong, China	1-Jan-04	12-Jan-04	GATS Art. V	Services agreement	WT/REG162 S/C/N/264
United States - Singapore	1-Jan-04	19-Dec-03	GATT Art. XXIV	Free trade agreement	WT/REG161
United States - Singapore	1-Jan-04	19-Dec-03	GATS Art. V	Services agreement	WT/REG161 S/C/N/263
United States — Chile	1-Jan-04	19-Dec-03	GATT Art. XXIV	Free trade agreement	WT/REG160
United States — Chile	1-Jan-04	19-Dec-03	GATS Art. V	Services agreement	WT/REG160 S/C/N/262
Republic of Korea - Chile	1-Apr-04	19-Apr-04	GATT Art. XXIV	Free trade agreement	WT/REG169
Republic of Korea - Chile	1-Apr-04	19-Apr-04	GATS Art. V	Services agreement	WT/REG169 S/C/N/302
Moldova - Bosnia and Herzegovina	1-May-04	28-Jan-05	GATT Art. XXIV	Free trade agreement	WT/REG187
EU Enlargement	1-May-04	30-Apr-04	GATT Art. XXIV	Accession to customs union	WT/REG170
EU Enlargement	1-May-04	28-Apr-04	GATS Art. V	Accession to services agreement	WT/REG170 S/C/N/303
Bulgaria - Serbia and Montenegro	1-Jun-04	11-Mar-05	GATT Art. XXIV	Free trade agreement	WT/REG195

EC - Egypt	1-Jun-04	4-Oct-04	GATT Art. XXIV	Free trade agreement	WT/REG177
Croatia - Serbia and Montenegro	1-Jul-04	22-Sep-05	GATT Art. XXIV	Free trade agreement	WT/REG205
Romania - Serbia and Montenegro	1-Jul-04	14-Feb-05	GATT Art. XXIV	Free trade agreement	WT/REG192
Moldova - Serbia and Montenegro	1-Sep-04	28-Jan-05	GATT Art. XXIV	Free trade agreement	WT/REG190
Albania - Serbia Montenegro	1-Sep-04	19-Oct-04	GATT Art. XXIV	Free trade agreement	WT/REG178
Moldova - Croatia	1-Oct-04	31-Jan-05	GATT Art. XXIV	Free trade agreement	WT/REG189
Albania - Moldova	1-Nov-04	20-Dec-04	GATT Art. XXIV	Free trade agreement	WT/REG183
Bulgaria - Bosnia and Herzegovina	1-Dec-04	11-Mar-05	GATT Art. XXIV	Free trade agreement	WT/REG194
Moldova - FYROM	1-Dec-04	31-Jan-05	GATT Art. XXIV	Free trade agreement	WT/REG188
Moldova - Bulgaria	1-Dec-04	28-Jan-05	GATT Art. XXIV	Free trade agreement	WT/REG186
Albania - Bosnia and Herzegovina	1-Dec-04	14-Dec-04	GATT Art. XXIV	Free trade agreement	WT/REG181
EFTA - Chile	1-Dec-04	10-Dec-04	GATT Art. XXIV	Free trade agreement	WT/REG179
EFTA - Chile	1-Dec-04	10-Dec-04	GATS Art. V	Services agreement	WT/REG179 S/C/N/309
Thailand - Australia	1-Jan-05	5-Jan-05	GATT Art. XXIV	Free trade agreement	WT/REG185
Thailand - Australia	1-Jan-05	5-Jan-05	GATS Art. V	Services agreement	WT/REG185 S/C/N/311
United States - Australia	1-Jan-05	23-Dec-04	GATT Art. XXIV	Free trade agreement	WT/REG184
United States - Australia	1-Jan-05	23-Dec-04	GATS Art. V	Services agreement	WT/REG184 S/C/N/310
EC-Chile	1-Mar-05	1-Nov-05	GATS Art. V	Services agreement	WT/REG164 S/C/N/360
Japan - Mexico	1-Apr-05	22-Apr-05	GATT Art. XXIV	Free trade agreement	WT/REG198
Japan - Mexico	1-Apr-05	22-Apr-05	GATS Art. V	Services agreement	WT/REG198 S/C/N/328
Turkey - Palestinian Authority	1-Jun-05	15-Sep-05	GATT Art. XXIV	Free trade agreement	WT/REG204
EFTA - Tunisia	1-Jun-05	7-Jun-05	GATT Art. XXIV	Free trade agreement	WT/REG201
Thailand - New Zealand	1-Jul-05	2-Dec-05	GATS Art. V	Services agreement	WT/REG207 S/C/N/361
Thailand - New Zealand	1-Jul-05	2-Dec-05	GATT Art. XXIV	Free trade agreement	WT/REG207
Turkey - Tunisia	1-Jul-05	15-Sep-05	GATT Art. XXIV	Free trade agreement	WT/REG203

Turkey - Morocco	1-Jan-06	21-Feb-06	GATT Art. XXIV	Free trade agreement	WT/REG209
United States - Morocco	1-Jan-06	16-Jan-06	GATS Art. V	Services agreement	WT/REG208 S/C/N/362
United States - Morocco	1-Jan-06	16-Jan-06	GATT Art. XXIV	Free trade agreement	WT/REG208
Dominican Republic-Central America-United States (CAFTA-DR)	1-Mar-06	28-Mar-06	GATS Art. V	Services agreement	WT/REG211 S/C/N/365-6
Dominican Republic-Central America-United States (CAFTA-DR)	1-Mar-06	28-Mar-06	GATT Art. XXIV	Free trade agreement	WT/REG211
Republic of Korea - Singapore	2-Mar-06	24-Feb-06	GATS Art. V	Services agreement	WT/REG210 S/C/N/363
Republic of Korea - Singapore	2-Mar-06	24-Feb-06	GATT Art. XXIV	Free trade agreement	WT/REG210
ECO	not available	22-Jul-92	Enabling Clause	Preferential arrangement	L/7047
GCC	not available	11-Oct-84	Enabling Clause	Preferential arrangement	L/5676

Source: WTO, available at www.wto.org.

ANNEX IV

LIST OF INDIAN TRADE AND TRANSIT AGREEMENTS

Sl. No.	**LIST OF AGREEMENT ENTERED INTO BY INDIA**	**DATE OF SIGNING THE AGREEMENT**
1	India-EU Strategic Partnership Joint Action Plan	September 7, 2005
2	India-US Commercial Dialogue	March 23, 2005
3	CECA between India and Singapore	June 29, 2005
4	Framework Agreement with GCC States	August 24, 2005
5	Framework Agreement with ASEAN	October 8, 2003
6	Framework Agreement with Thailand	October 9, 2003
7	Framework Agreement with Chile	January 20, 2005
8	India-Nepal Trade Treaty	December 6, 1991
9	India-Bangladesh Trade Agreement	March 21, 2006
10	India-Bhutan Trade Agreement	February 28, 1995
11	India-Ceylon Trade Agreement	October 28, 1961
12	India-Maldives Trade Agreement	March 31, 1981

13	India-China Trade Agreement	August 15, 1984
14	India-Japan Trade Agreement	February 4, 1958
15	India-Korea Trade Agreement	February 3, 1978
16	India-DPR Korea Trade Agreement	August 12, 1974
17	India-Mongolia Trade Agreement	September 16, 1996
18	India-Sri Lanka FTA	December 28, 1998
19	India-Afghanistan PTA	March 6, 2006
20	India-Chile PTA	March 8, 2006
21	India-MERCOSUR PTA	March 19, 2005

Source: Ministry of Commerce India, available at www.commerce.nic.in.

ANNEX V

INDIA'S TRADE AGREEMENTS AT A GLANCE

Agreement/ Protocol [Partner Country(ies)]	Name of the Agreement	Timeframe of Tariff Reduction by India	Remarks
India- Sri Lanka FTA [Sri Lanka]	Free trade agreement in goods	Operational from March 2000. Provides free trade in goods except 'negative list'- India has 429 and Sri Lanka has 1180 tariff lines in negative list	Joint Study Group Report Submitted on greater integration, through CECA. CEPA negotiations in progress. CEPA to include investment and services also.
India-Thailand FTA [Thailand]	Comprehensive FTA involving (i) goods (ii) services and (iii) investment	Early Harvest Scheme (EHS): for 82 items phased tariff reduction and elimination by September 2006 (began from 1st September 2004)	Framework Agreement, signed in October 2003, became operational from September 1, 2004.
India-Singapore CECA [Singapore]	Comprehensive Economic Cooperation Agreement involving (i) goods (ii) services (iii) investment (iv) air services and (v) improved double taxation avoidance agreement	Early Harvest Programme: India will terminate tariffs for Singapore on 506 items on 1st August 2005. Phased tariff elimination on 2202 items from 1st August 2005 to 1st April 2009. Phased reduction in tariffs beginning from 1st August	Agreement signed in June 2005; to be operational from 1st August 2005. Agreement in an integrated package comprising trade in Goods and Services, an agreement on Investments, mutual recognition agreements in conformity

		2005 on 2407 items. 6551 items kept in the 'sensitive list' and no tariff concession offered by India to Singapore on these.	assessment of standards in goods, mutual recognition agreement in services, cooperation agreement in customs, science and technology, education, e-commerce, intellectual property and media.
India-ASEAN CECA [10 South-East Asian countries]	Comprehensive Economic Cooperation Agreement including (i) goods (ii) services and (iii) investment	Tariff reduction & elimination between January 2006 & December 2011 vis-à-vis all ASEAN countries except Philippines; between January 2006 and December 2016 vis-à-vis Philippines	Framework agreement signed in October 2003. 'Early Harvest Scheme' envisaged in the Agreement has been abandoned due to differences between the both sides on rules of origin. Negotiations to continue.
Agreement on South Asian Free Trade Area (SAFTA) [all SAARC countries]	Free trade agreement in goods	Tariff reduction to 20% by January 2008; subsequent reduction & elimination by January 2013 in equal annual instalments of no less than 15%	Details were being worked out to implement the Agreement from January 2006. **
India-Nepal Treaty of Trade [Nepal]	Preferential treaty of trade	Valid for 5 years w.e.f. 6 March 2002	It is a non-reciprocal trade treaty in which India has unilaterally given tariff concessions to Nepal.
BIMSTEC [Bangladesh,	Free trade area with coverage of goods,	Fast Track: Beginning 1 July	Negotiations underway on FTA

Bhutan, Myanmar, Sri Lanka, Thailand and Nepal]	services and investment	2006, by 30 June 2007 vis-à-vis LDCs and by 30 June 2009 vis-à-vis others. Normal Track: Beginning 1 July 2007, by June 2010 vis-à-vis LDCs and by 30 June 2012 vis-à-vis others	in goods including negative list and rules of origin.
India-MERCOSUR PTA [Brazil, Argentina, Uruguay and Paraguay]	Preferential Trade Agreement		Agreement was signed in January 2004. Agreement provides for five Annexes. These five Annexes had been finalised during six rounds of negotiations in order to operationalise the PTA. These have been signed between the two sides on March 19, 2005. The PTA would be operational immediately on the ratification by the legislatures of the MERCOSUR countries. MERCOSUR has offered tariff concessions to India on 452 products. India has offered tariff concessions to MERCOSUR on 450 products
India-Chile PTA	Preferential Trade Agreement		Agreement signed in January 2005. So

			far two rounds of tariff negotiations have been completed. Chile has presented a 'wish list' of 845 products for seeking tariff concessions from India. It comprises mostly of seafood, fruits & vegetables, wines and spirits, paper and pulp, copper and copper products. India has also given a wish list of 681 products for seeking tariff preference from Chile. India's wish list mainly consists of textiles, chemicals, pharmaceuticals, and engineering products
GSTP (Global System of Trade Preferences)	Preferential Trade Agreement		Agreement established in 1988 for the exchange of trade preferences among developing countries in order to promote intra-developing- country trade. So far, 43 developing countries have ratified/ acceded to the Agreement. Very limited tariff concessions exchanged during the first and second round by India. The number of tariff

			lines on which concessions were granted by India is 31 and in return India received tariff concessions on products of its export interest from 14 GSTP-members. In June 2004, third round of trade negotiations under the GSTP was launched.
Bangkok Agreement [Bangladesh, South Korea, Laos, Sri Lanka and China]	Preferential Trade Agreement in goods	India has granted tariff concessions on 188 tariff lines (another 33 items for LDCs); recently it has also extended tariff concessions on 106 items (corresponding to the above 188 tariff lines) to China	Recently China extended tariff concessions on 217 items to India under this Agreement.

**SAFTA entered into force in July 2006.

Source: FICCI Study on *India and Free Trade Agreements: Issues and Implications* (New Delhi: FICCI, 2005).

SELECT BIBLIOGRAPHY

SELECT BIBLIOGRAPHY

I. Primary Documents

Agreement on Rules of Origin.

Annual Report of Director General of WTO, 1995 available at www.wto.org as last accessed on 15th July, 2006.

Annual Report of the Ministry of Commerce, 2004 available at http://commerce.nic.in/

Annual Report of the Ministry of Commerce and Industry 2005-06, available at http://commerce.nic.in/annual2005-06/englishhtml/cover.htm.

GATT Final Act 1947, Geneva, 55 UNTS 194.

General Agreement on Trade in Services, 1994.

Marrakesh Agreement Establishing the World Trade Organization, 1994.

Special Protocol relating to Article XXIV of the GATT, 1948 (Agreement No. 7 in Appendix C, GATT 1947), 7th June, 1948, UNTS 62/56.

The Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade, 1994.

WTO Analytical Index: Guide to WTO Law and Practice, Volume I (Geneva: WTO, 2003).

Other GATT/ WTO Documents Referred:
UN Doc. EPCT/C.11/38 (1946).
UN Doc. EPCT/C.11/7 (1946).
UN Doc. EPCT/C.11/38 (1946).
U. N. Doc. ICITO/1/8 (1948).
GATT Docs. GATT 21, GATT/1/23 (1948).
GATT Doc. C.P.6/24 (1951).
Report L/778, GATT 6th Supp. BISD (1957).
GATT, 6th Supp. BISD 94 (1958).
GATT, 9th Supp. BISD 83 (1961).
GATT Docs. L/ 1749 (1961).
GATT Doc. 2/5776, (February 7, 1985)
WTO Doc. WT/ L/ 127 (February 6, 1996)
WTO Doc. WT/ DS27/ R (May 22, 1997).
WTO Doc. WT/DS27/AB/R (November 17, 1997).
WTO Doc. WT/REG/W17 (October 31, 1997).
WTO Doc. WT/DS34/R (November 19, 1999).

II. Secondary Documents

(A) Books Referred

Anderson and Blackhurst (eds.), *Regional Integration and the Global Trading System* (New York: St Martin's Press, 1993).

Baldwin et al. (eds.), *Market Integration, Regionalism and Global Economy* (Cambridge: Cambridge University Press, 1999).

Bhagwati, Jagdish and Arvind Panagariya (ed.), *Economics of Preferential Trade Arrangements* (Washington DC: AEI Press, 1996).

Bhagwati, Jagdish and Robert Hudec, *Fair Trade and Harmonization: Prerequisites for Free Trade, Volume II: Legal Analysis* (Washington: MIT Press, 1997).

------- *A Stream of Windows: Unsettling Reflection on Trade, Immigration and Democracy* (Cambridge: MIT Press, 1999).

------- *Multilateralism at Risk: the Seventh Harry G. Johnson Lecture* (Princeton: Princeton University Press, 1990).

------- *World Trading System at Risk* (UK: Harvester Wheatsheet, 1991).

Bhalla, A. S. and P. Bhalla, *Regional Blocs: Building Blocs or Stumbling Blocs?* (UK: Macmillan, 1997).

Bronkers, Marco and Reinhard Quick (ed.), *New Directions in International Economic Law: Essays in Honour of John H. Jackson* (Hague: Kluwer, 2000).

Business Guide to the World Trading System, 2nd ed., (Geneva: ITC, 1999).

Croome, John, *Understanding the Uruguay Round Agreements* (The Hague: Kluwer, 1999).

Demaret, Paul et al., *Regionalism and Multilateralism after the Uruguay Round: Convergence, Divergence and Interaction* (Brussels: European University Press, 1997).

Development, Trade and the WTO-A Handbook (Washington: IBRD, 2002).

El-Agraa, Ali M., *Regional Integration: Experience, Theory and Measurements* (London: MacMillan Press, 1999).

Frankel, Jeffrey A., *Regional Trade Blocks in the World Economic System* (Washington: Institute for International Economics, 1997).

Garg, Hema, *WTO and Regionalism in World Trade* (New Delhi: New Century Publications, 2004).

Gibbs, Murray and Swarnim Wagle, *the Great Maze: Regional and Bilateral Free Trade Agreements in Asia: Trends, Characteristics and Implications for Human Development*, UNDP Policy Paper (Colombo: UNDP, December 2005).

Helpman, Elhanan and Assaf Razin (ed.), *International Trade and Trade Policy* (Cambridge: MIT Press, 1991).

Hudec, Robert, *Developing Countries in the GATT Legal System*, Thames Essays (London: Trade Policy Research Centre, 1987).

India and Free Trade Agreements: Issues and Implications (New Delhi: FICCI, 2005).

Jackson, John H, *World Trade and Law of GATT: A Legal Analysis of the General Agreement on Tariff and Trade* (New York: Bobbs-Merril, 1969).

------- *World Trading System* (Cambridge: MIT Press, 1997).

Lawrence, *Regionalism, Multilateralism and Deeper Integration* (Washington DC: Brookings, 1990).

Lindberg, Leon N. and Stewart A. Scheingold, *Regional Integration: Theory and Research* (Cambridge: Massachusetts, 1971).

Matsushita, Mitsuo and Dukgeun (ed.), *WTO and East Asia: New Perspectives* (London: Cameroon May International Law Publishers, 2004).

Matsushita, Mitsuo, et al., *the World Trade Organization: Law, Practice and Policy* (New York: Oxford University Press, 2003).

Measuring Trade in Services, Training Module (Geneva: WTO, 2003).

Mehta, Rajesh and S. Narayanan, "India's Regional Trade Agreements", *UNDP Asia Pacific Regional Initiative on Trade, Economic Governance and Human Development* (India: UNDP, April 2005).

Mitchell, Andrew D. (ed.), *Challenges and Prospects for the WTO* (London: Cameron, May 2005).

Mitrany, David, *a Working Peace System* (Chicago: Quadrangle Books, 1960).

Mukherji, Indra Nath, *Towards a Free Trade Area in South Asia: Charting a Feasible Course for Trade Liberalisation with Reference to India's Role*, Discussion paper 86 (New Delhi: RIS, December 2004).

Nye, Joseph S., *Peace in Paris* (Little: Brown University Press, 1971).

Qureshi, Asif H., *the World Trade Organization: Implementing International Trade Norms* (New York: Manchester University Press, 1996).

Rosamond, Ben, *Theories of European Integration* (US: Palgrave, 2000).

Ruggiero, R., "Growing Complexity in International Economic Relations Demands Broadening and Deepening of Multilateral Trading System", *WTO Director General Press Release* 25, 16th October, 1995.

Rules of Origin: A Road map for India, Report of the Study commissioned by the Department of Industrial Policy and Promotion, Ministry of Industry, Government of India (New Delhi: Institute of Applied Manpower Research, February 2005).

Singer, Sir Hans, et al. (ed.), *Regional Trading Arrangement* (New Delhi: IBR Publishing Co., 2003).

Srinivasan, T. N., *Developing Countries and the Multilateral Trading System: from the GATT to the Uruguay Round and the Future* (US: Westview Press, 1998).

Stare, Metka and Mitre Kolisevski, *the Global System of Trade Preferences: Principles and Problems* (Yugoslavia: Research Centre for Co-operation with Developing Countries, 1984).

Teunissen, Jan Joost, *Regional Integration and Multilateral Co-operation in Global Economy* (Netherlands: FONTAD, 1998).

The Results of the Uruguay Round of Multilateral Trade Negotiations: the Legal Texts (Geneva: WTO, 1995).

Trebilcock, Micheal J. and Robert Howse, *the Regulation of International Trade* (London: Routledge, 1995).

UNCTAD-ICTSD, *TRIPS and Development Resource Book* (Cambridge: Cambridge University Press, 2005).

Viner, Jacob, *the Customs Union Issue*, (New York: Carnegie Endowment for World Peace, 1950).

Watson, Peter S., et al., *Completing the World Trading System: Proposal for a Millennium Round* (The Hague: Kluwer, 1999).

Wilcox, Clair, *a Charter for World Trade* (New York: Macmillan, 1949).

Winters, Alan L., "Regionalism versus Multilateralism", *World Bank Policy Research Papers*, Series No. 1687, (Washington D. C: World Bank, 1996).

WTO Agreement on Rules of Origin: Implications for South Asia, Research Report (Jaipur: Centre for International Trade, Economics and Development, 2004).

WTO Working Paper: *Regionalism and World Trading System* (Geneva: WTO, 1995).
Zaimes N., *EC Rules of Origin* (London: Wiley/ Chancey Law Publishing, 1992).

(B) Articles Referred

Abbot, Fedrick M., "The WTO Medicines Decision: World Pharmaceutical Trade and the Protection of Public Health", *American Journal of International Law*, vol. 99, 2005, pp. 317-58.

------- "Towards a New Era in the Field of TRIPS and Variable Geometry for the Preservation of Multilateralism", *Journal of International Economic Law*, vol. 77, no. 8, 2005, pp. 88-98.

Abbot, Kenneth W. and Duncan Snidal, "Why States Act Through Formal International Organizations?", *The Journal of Conflict Resolution*, vol. 42, no. 1, 1998, pp. 3-32.

Aho, C.M., "American and the Pacific Century: Trade Conflict or Cooperation?", *International Affairs*, vol. 69, 1993, pp. 19-37.

Akinkugbe, Oluyele, "The European Union and South Africa Free Trade Agreements: An Exploratory Partial Equilibrium Analysis of Potential Effect on ACP-EU Trade Flows", *Journal of World Trade*, vol. 34, no. 3, 2000, pp. 95-109.

Angol, Malati, "Growth of Regional Trading Blocs and Multilateral Trading System", *Foreign Trade Review*, vol. 26, no. 4, 1992, at pp. 297-311.

Anwar, Syed Aziz, "Regionalism in Trade: Evidence and Implications for the GATT", *Foreign Trade Review*, vol. 28, no. 2 & 3, 1993, pp. 130-42.

Asakura, Hironori, "The Harmonized System and Rules of Origin", *Journal of World Trade*, vol. 29, no. 2, 1995, pp. 5-21.

Batra, Amita, "Preferential Trading Arrangements in Asia: Towards an Asian Economic Community" in *International Workshop on IDRC Project* (New Delhi: ICRIER, March 30, 2006).

Baumer, Max and Jacobsen H D, "Institutional Aspects of East West Economic Relations", *Journal of World Trade Law*, vol. 10, no. 5, 1976, pp. 434-52.

Bellasa, Bela, "The 'New Protectionism' and International Economy", *Journal of World Trade Law*, vol. 12, no. 5, 1978, pp. 409-37.

Bello, Walden and Aileen Kwa, "The Stalemate in the WTO: An Update on the Global Trends", *Focus on the Global South*, Special Series, 11th June, 2006.

Bergsten, C. Fred, "Open Regionalism," *World Economy*, vol. 20, 1997, pp. 530-54.

Bhagwati, Jagdish et al., "Trading Preferentially: Theory and Policy", *The Economic Journal*, vol. 118, 1998, pp. 1128-48.

------- "After Seattle: Free Trade and the WTO", *International Affairs*, vol. 77, no. 1, 2001, pp. 15-29.

Bhagwati, Jagdish, "Regionalism and Multilateralism: an Overview" in J. de Melo and A. Panagariya (ed.) *New Dimensions in Regional Integration* (Cambridge: Cambridge University Press, 1993), pp. 22-51.

------- "Regionalism and Multilateralism", *World Economy*, Vol. 15, 1992, pp. 532-48.

------- "The Watering of Trade", *Journal of International Economics*, vol. 42, 1997, pp. 239-41.

Burnett, Robin, "Inclusion of Papua New Guinea in Newziland-Australia FTA", *Journal of World Trade Law*, vol. 9, no. 2, 1975, pp. 226-30.

Cantin, Frederic P. and Andreas F. Lowenfield, "Rules of Origin, the Canada-US FTA, and the Honda Case", *American Journal of International Law*, vol. 87, 1993, pp. 375-90.

Chase, Kerry, "Multilateralism Compromised: the Mysterious Origins of Article XXIV", *World Trade Review*, vol. 5, no. 1, 2006, pp. 1-30.

Cheysson, Claude, "The Lome Agreement: Co-operation Rather than Confrontation", *Journal of World Trade*, vol. 9, 1975, pp. 691-701.

Cho, Sungjoon, "Breaking the Barriers between Regionalism and Multilateralism: a New Perspective on Trade Regionalism", *Harvard International Law Journal*, vol. 42, no. 2, 2001, pp. 419-65.

Cohen, Stephen D., "Changes in International Economy: Old Realities and New Myths", *Journal of World Trade Law*, vol. 12, no. 4, 1978, pp. 273-88.

Cohen, Yaacov, "Implication of Free Trade Area between the EEC and Israel", *Journal of World Trade Law*, vol. 10, no. 3, 1976, pp. 252- 64.

Cone, Sydney M., "The Promotion of Free Trade Areas Viewed in Terms of Most Favored Nation Treatment and 'Imperial Preference'", *Michigan Journal of International Law*, vol. 26, no. 2, 2005, pp. 563-85.

Crook, John R., (ed.), "US Congress Approves Central American Free Trade Agreement", *American Journal of International Law*, vol. 99, no. 4, 2005, pp. 911-12.

Davidson, Paul J., "The Legal Framework for RTAs/ FTAs in the Asia-Pacific Region", *APEC Study Centre Consortium Conference on Building an Asia-Pacific Economic Community*, May 22- 25, 2005 (Korea: APEC Study Centre Consortium, 2005).

Dehousse, Franklin, et al., "The EU-US Dispute Concerning the New American Rules of Origin for Textile Products", *Journal of World Trade*, vol. 36, no. 1, 2002, pp. 67-84.

Devuyst, Youri, "GATT Customs Union Provisions and the Uruguay Round: The European Community Experience", *Journal of World Trade*, vol. 26, no. 1, 1992, pp. 15-34.

Drabek, Zdenek, et al., "Regionalism and the Global Economy: The Case of Central and Eastern Europe" in Teunissen, Jan Joost, *Regional Integration and Multilateral Co-operation in Global Economy* (Netherlands: FONTAD, 1998).

Drahos, Peter, "Expanding Intellectual Property's Empire: The Role of FTAs", GRAIN, November 2003, pp. 1-19, available at www.grain.org/rights/tripsplus accessed on 20th June, 2006.

Drake-Brockman, Jane, "Bilateral Approaches to Services Trade and Investment Liberalization- WTO Plus or WTO Minus?", Paper delivered at Conference of Economists, Canberra on 31st September, 2003, available at www.bilaterals.org.

Drysdale, Peter, "Regionalism in Asia and the Pacific and an Asian Economic Community" in *International Workshop on IDRC Project* (New Delhi: ICRIER, March 30, 2006).

"EEC Trade Agreement with China", *Journal of World Trade Law*, vol. 12, no. 5, 1978, pp. 467-70.

"EEC-Arab Cooperation Agreements", *Journal of World Trade Law*, vol. 11, no. 3, 1977, pp. 291-94.

"EFTA: Consolidating Free Trade", *Journal of World Trade Law*, vol. 13, no. 3, 1979, pp. 269-72.

El-Said, Hamed and Mohammad El-Said, "TRIPS Bilateralism, Multilateralism and Implications for Developing Countries: Jordan's Drug Sector", *Manchester Journal of International Economic Law*, vol. 2, issue. 1, 2005, pp. 59-79.

Estevadeordal, Antoni, "Negotiating Preferential Market Access: The Case of the North American Free Trade Agreement", *Journal of World Trade*, vol. 34, no. 1, 2000, pp. 141-66.

Ethier, Wilfred J., "The New Regionalism", *The Economic Journal*, vol. 108, 1998, pp. 1149-61.

Fiallo, Fabio R., "The Negotiation Strategy of Developing Countries in the Field of Trade Liberalizaiton", *Journal of World Trade Law*, vol. 11, no. 3, 1977, pp. 203-12.

"Finland-Czechoslovakia FTA", *Journal of World Trade Law*, vol. 11, no. 5, 1997, pp. 479-88.

Fisch, "Regionalism and Multilateralism-Side by Side" in Deutsch and Speyer (ed.) *the WTO Millennium Round: Free Trade in 21st Century* (London: Routledge, 2001).

Francois, Joseph F. et al., "European Union- Developing Country FTAs: Overview and Analysis", *World Development*, vol. 33, no. 10, 2005, pp. 1545-65.

Friedelberg, Alfred S., "Lome Agreement - Cooperation rather than Confrontation", *Journal of World Trade Law*, vol. 9, no. 6, 1976, pp. 691-700.

Gebhardt, Immanuel and Kerstin Olbrich, "Foreign Law in China: Perspectives Regarding Rules of Origin", *Journal of World Trade*, vol. 36, no. 1, 2002, pp. 117-127.

Ghoeneim, Ahmed Farouk, "Rules of Origin and Trade Diversion: The Case of Egyptian-European Partnership Agreement", *Journal of World Trade*, vol. 37, no. 3, 2003, pp. 597-622.

Hague, D. C., "Integration World Wide, Regional and Sectoral", *Journal of World Trade Law*, vol. 9, no. 1, 1975, pp. 103-111.

Hellenier, G. K., "Lome: Market Access and Industrial Cooperation", *Journal of World Trade Law*, vol. 13, no. 2, 1979, pp. 181-185.

Hilaire, Alvin and Yang, Yongsheng, "The US and the New Regionalism/Bilateralism" *Journal of World Trade*, vol. 38, no. 4, 2004, p. 603.

Hine, R. C., "Mini-symposium: Translantic Trade Relations after Uruguay Round", *World Economy*, vol. 16, 1993, pp. 533-36.

Hirsch, Moshe, "International Trade Law, Political Economy and Rules of Origin", *Journal of World Trade*, vol. 36, no. 2, 2002, pp. 171-88.

------- "Rules of Origin as Trade or Foreign Policy Instruments? The European Union Policy on Products Manufactured in the Settlement in the Gaza Strip", *Fordham International Law Journal*, vol. 26, no. 3, 2003, pp. 572-94.

Hsu, Locknie, "Non-violation Complaints- World Trade Organization Issues and Recent Free Trade Agreements", *Journal of World Trade*, vol. 39, no. 2, 2005, pp. 205-237.

Inama, Stefano, "The Association of South East Asian Nations- People's Republic of China Free Trade Area: Negotiating Beyond the Eternity with Little Trade Liberalization?", *Journal of World Trade*, vol. 39, no. 3, 2005, pp. 559-79.

Jackson, John H., "Regional Trade Blocs and the GATT," *World Economy*, vol. 16, 1993, pp. 121-30.

------- "The Crumbling Institutions of the Liberal Trade System", *Journal of World Trade Law*, vol. 12, no. 2, 1978, pp. 93-106.

Jianren, Lu, "Asian Economic Integration: Perspectives from a Chinese Scholar" in *International Workshop on IDRC Project* (New Delhi: ICRIER, March 30, 2006).

Kirkpatrick, C. H., "Lome II", *Journal of World Trade Law*, vol. 14, no. 4, 1980, pp. 352-59.

Kono, Daniel Yuichi, "Are Free Trade Areas Good for Multilateralism? Evidence from the European Free Trade Association", *International Studies Quarterly*, vol. 46, 2002, pp. 507-527.

Kostecki, Michel M., "Export-Restraint Arrangements and Trade Liberalization", *World Economy* Vol.10, 1987 pp. 425-29.

Krishna, Kale and Anne Krueger, "Implementing Free Trade Areas: Rules of Origin and Hidden Protection" in Levinson, Jim et al., *New Dimensions in International Trade* (Ann Arbor MI: University of Michigan Press, 1995) at pp. 145-58.

Krugman, Paul, "The Narrow and Broad Arguments for Free Trade", *American Economic Review*, vol. 83, 1993, pp. 362-66.

Kumar, Umesh, "Southern African Customs Union and BLS- Countries (Botswana, Lesotho and Swaziland)", *Journal of World Trade*, vol. 24, 1990, pp. 31-53.

Langhammer, Rolf J., "Multilateral Trade Liberalization among Developing Countries", *Journal of World Trade Law*, vol. 14, no. 6, 1980, pp. 508-15.

Lawrence, R. Z., "Emerging Regional Agreements: Building Blocs or Stumbling Blocs?" in R. O' Brian (ed.), *Finance and the International Economy* (Oxford: Oxford University Press, 1991) at p. 155-71.

Lee, Yong-Shik, "Foreign Direct Investment and Regional Trade Liberalization: a Viable Answer for Economic Development?", *Journal of World Trade*, vol. 39, no. 4, 2005, pp. 707-17.

Lockhart, Nicolas JS and Andrew D. Mitchell, "Regional Trade Agreements under GATT 1994: an Exception and its Limits" in Mitchell, Andrew D. (ed.), *Challenges and Prospects for the WTO* (London: Cameron, May 2005).

Malawer, Stuart. S., "International Law, European Community Law and the Rule of Reason", *Journal of World Trade Law*, vol. 8, no. 1, 1974, pp. 17-74.

Marceau, Gabrielle, "Dispute Settlement Mechanisms: Regional or Multilateral: Which One is Better?", *Journal of World Trade*, vol. 31, no. 3, 1997, pp. 169-79.

Mary, Christopher, "Why IPRs are a Global Political Issue?", *European Intellectual Property Review*, no. 1, 2003, p. 1.

Matsushita, Mitsuo, "Governance of International Trade under WTO Agreement-Relationship between WTO Agreements and other Trade Agreements", *Journal of World Trade*, vol. 38, no. 2, 2004, pp. 183-210.

McLachlan D. L et al., "The Canada-US Free Trade Agreement: A Canadian Perspective", *Journal of World Trade*, vol. 22, pp. 2-34.

Mcqueen, Matthew, "Lome and the Protective Effects of Rules of Origin", *Journal of World Trade Law,* vol. 16, no. 2, 1982, pp. 119-32.

Michalak, Wieslaw and Richard Gibb, "Trading Blocs and Multilateralism in the World Economy", *Annals of the Association of American Geographers*, vol. 87, no. 2, 1997, pp. 264-279.

Miller, William F., "Regionalism and Globalism", *Foreign Trade Review*, vol. 26, no. 4, 1992, pp. 242-52.

Moore, Robert, "Redefining Success: a Functionalist Approach to the Construction of Regional Trade Associations in Sub-Saharan Africa", *The University of Michigan Student Journal of Political Science*, vol. II, issue 4, 2005, pp. 65-99.

Nell, Philippe G., "WTO Negotiations on the Harmonization of Rules of Origin: A First Critical Appraisal", *Journal of World Trade*, vol. 33, no. 3, 1999, pp. 45-71.

Nusbaumer, Jacques, "Origin Systems and the Trade of Developing Countries", *Journal of World Trade*, vol. 13, 1979, pp. 34-46.

Palmeter, David and Petros C. Mavroidis, "The WTO Legal System: Sources of Law", *American Journal of International Law*, vol. 92, 1998, pp. 398-413.

Palmeter, David, "Pacific Regional Trade Liberalization and Rules of Origin", *Journal of World Trade*, vol. 28, no. 1, 1994, pp. 25-36.

------- "The US Rules of Origin Proposal to GATT: Monotheism or Polytheism", *Journal of World Trade*, vol. 24, no. 2, 1990, pp. 25-36.

Parker, Robert P., "Dispute Settlement in the GATT and the Canada-US Free Trade Agreement", *Journal of World Trade*, vol. 23, 1989, pp. 83-96.

Pomfret, Richard, "Trade Preference and Foreign Investment in Malta", *Journal of World Trade Law*, vol. 16, no. 3, 1982, pp. 236-50.

Preusse, Heinz G., "Regional Integration in the Nineties: Stimulation or Threat to the Multilateral Trading System", *Journal of World Trade*, vol. 28, no. 4, 1994, pp. 147-64.

Ranjan, Prabhash and Aparna Shivpuri, "Regional/ Bilateral Trade Agreements and Bio-Diversity", *Indian Journal of International Law*, vol. 45, no. 3, 2005, pp. 370-78.

Roffe, Pedro, "Bilateral Agreements and a TRIPS-Plus World: Chile-US Free Trade Agreement", available at www.qiap.ca accessed on 10th June, 2006, pp. 3-50.

Rom, Micheal, "Restrictive Business Practices in EEC Agreements with LDCs", *Journal of World Trade Law*, vol. 12, no. 1, 1978, pp. 36-55.

Sampson, Gary P., "The WTO and Regional Trading Agreements", *Australian Economic Review*, vol. 30, no. 1, 1997, pp. 75-89.

Sarna A. J., "The Canada-US Free Trade Option", *Journal of World Trade*, vol. 13, 1979, pp. 303-310.

Satapathy, C., "Rules of Origin: A Necessary Evil", *Economic and Political Weekly*, August 29, 1998, pp. 2270-72.

Schiff, Maurice and Alan Winters L., "Regionalism and Development- the Implications of World Bank Research for ACD and Latin American countries", *Journal of World Trade*, vol. 36, no. 3, 2002, pp. 479-500.

Schruer, Christoph, "Regionalism v. Universalism", *European Journal of International Law*, vol. 6, 1995, pp. 477-99.

Sharma, Ashok B., "Developed Countries Undermining WTO Spirit through FTAs", *Financial Express*, 17th October, 2005.

Srinivasan T. N., "Discussion" in De Melo and Panagariya (eds.) *New Dimensions in Regional Integration* (New York: Cambridge University Press, 1993).

Srinivasan, T. N., "Regionalism and the WTO: Is Non-discrimination Passé?" in Krueger, Anne O. (ed.) *the WTO as an International Organization* (Chicago: Chicago University Press, 1999), pp. 329-49.

Stedman, Charles, "Canada-US Automotive Agreement: The Sectoral Approach" *Journal of World Trade Law*, vol. 8, no. 2, 1974, pp. 176-85.

Steinberg, Richard H., "Trade-Environment Negotiations in the EU, NAFTA and the WTO: Regional Trajectories of Rule Development", *American Journal of International Law*, vol. 91, 1997, pp. 231-67.

Stoler, Andrew L., "The Australia-United States FTA as a 'Third Wave' Agreement: Beyond the WTO Envelope", in Mitchell, Andrew D. (ed.), *Challenges and Prospects for the WTO* (London: Cameron, May 2005).

Summers, "Regionalism and the World Trading System" in *Federal Reserve Bank Policy Implication of Trade and Currency Zones* (Kansas City: Federal Reserve Bank, 1991) at pp. 295-302.

Tandon, Rameshwar, "Regional Trade Cooperation in South East Asia", *Journal of World Trade Law*, vol. 8, no. 2, 1974, pp. 388- 460.

Tietje, Christian, "Global Governance and Inter-Agency Cooperation in International Economic Law", *Journal of World Trade*, vol. 36, no. 3, 2002, pp. 501-16.

Tovias, A., "A Survey of the Theory of Economic Integration," *Journal of European Integration*, vol. 15, 1991, pp. 5-23.

"TRIPS Plus Must Stop: the EU Caught in Blatant Contradiction", *GRAIN*, March 2003, at pp. 1-5, available at www.grain.org/publications/tripsplus accessed on 20th June, 2006.

"TRIPS-Plus through EFTA's Backdoor: How Bilateral Treaties Impose Much Stronger Rules for IPRs on Life than WTO", *GRAIN*, July 2001, pp. 1-14, available at www.grain.org/publications/tripsplus accessed on 20th June, 2006.

Tusie, Diane, "Latin American Integration: From LAFTA to LAIA", Journal of World Trade Law, vol. 16, no. 5, 1982, pp. 399-414.

Ustor, Estor, "The MFN Customs Union Exception", *Journal of World Trade Law*, vol. 15, no. 5, 1981, pp. 377-87.

Vigni, Patrizia, "The Overlapping Dispute Settlement Regimes; and Emerging Issue of International Law", *Italian Year Book of International Law*, vol. 11, 2001, pp. 139- 164.

Volker, Paul A., "Regionalism and the World View of Arthur Dunkel" in Bhagwati, Jagdish and Mathias Hirsh (ed.), *the Uruguay Round and Beyond* (Heidelberg: Springer, 1998), pp. 215-40.

Voon, J. P. and Y. Y. Kueh, "Country of Origin, Value-added Exports, and Sino-US Trade Balance Reconciliation", *Journal of World Trade*, vol. 34, no. 5, 2000, pp. 123-36.

Wassermann, Ursula, "African Trade and Commodity Price Boom", *Journal of World Trade Law*, vol. 9, no. 1, 1975, pp. 224-225.

------- "Anglo-Argentine Trade", *Journal of World Trade Law*, vol. 16, no. 4, 1982, pp. 366-69.

------- "Arab Economic Cooperation", *Journal of World Trade Law*, vol. 9, no. 1, 1975, pp. 116-20.

------- "EEC-Israel Trade Agreement", *Journal of World Trade Law*, vol. 10, no. 6, 1975, pp. 691-700.

------- "Latin American Trade and Commodity Price Boom", *Journal of World Trade* Law, vol. 9, no. 2, 1975, pp. 221-23.

Weir, Paul, "European Community Rules of Origin" in Vermulst, Edwin et al. (ed.), *Rules of Origin in International Trade: A Comparative Study* (Ann Arbor MI: University of Michigan Press, 1992), at pp. 85-194.

Whalley, John and Randall M. Wigle, "Labour Standards and Trade: Preliminary Estimates", *Uruguay Round Results and the Emerging Trade Agenda* (New York: UNCTAD, 1998), at pp. 477-91.

Yarbrough and Yarbrough, "Dispute Resolution in International Trade: Regionalism and Procedural Co-ordination" in Mansfield and Milner (ed.) *the Political Economy of Regionalism* (New York: Columbia University Press, 1997).

Zahrnt, Valentin, "How Regionalization can be a Pillar of a More Effective World Trade Organization", *Journal of World Trade*, vol. 39, no. 4, 2005, pp. 671-99.

(C) Websites Visited

http://www.apec.org

http://www.aseansec.org/15528.htm

www.bilateralis.org

http://commerce.nic.in/

http://encylopedia.com/html/z/zollvere.asp

www.grain.org

http://www.mac.doc.gov

http://www.mercosur.int/msweb

www.qiap.ca

http://www.saarc-sec.org

www.secretariat.efta.int

www.tpa.gov

www.us-israel.org

www.ustr.gov

www.wto.org