Overlaps and Conflicts of Jurisdiction between the World Trade Organization and Regional Trade Agreements

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INTRODUCTION

The relationship between the dispute settlement mechanism of the World Trade Organization (WTO) and that of regional trade agreements (RTAs) demonstrates the difficulties surrounding the issues of overlaps/conflicts of jurisdiction and of hierarchy of norms in international law.[1] Jurisdiction is often defined in terms of either legislative or judicial jurisdiction — that is, the authority to legislate or to adjudicate on a matter. Jurisdiction may be analyzed from horizontal points of view (the allocation of jurisdiction among states or among international organizations) and from a

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[1] On the issue of jurisdiction generally and the relationship between the jurisdiction of the World Trade Organization [hereinafter WTO] and that of other treaties and institutions, see Joel Trachtman, "Institutional Linkages: Transcending 'Trade and ...'" (2002) 96(1) A.J.I.L 77. On the issue of universal jurisdiction, see the recent judgment of the International Court of Justice [hereinafter ICJ] in *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*, February 14, 2002. The full text of the judgment (including separate and dissenting opinions) is available at <www.icj-cji.org>.

vertical point of view (the allocation of jurisdiction between states and international organizations).[2]

This article addresses the issue of horizontal allocation of judicial jurisdiction between RTAs and the WTO, as expressed in the dispute settlement provisions of each treaty. The choice of a dispute settlement forum is often an expression of the importance that states give to the system of norms that may be enforced by the related dispute settlement mechanism. For instance, if the same states — which are parties to two treaties A and B that contain similar obligations — provide that priority or exclusivity is given to the dispute settlement mechanism of A over that of B, it may be that the states are expressing their choice to favour the enforcement of treaty A over treaty B.

In the case of RTAs, the situation is further complicated because the General Agreement on Tariffs and Trade (GATT)[3] authorizes WTO members to form regional trade agreements. The WTO jurisprudence has made it clear that members have a "right" to form preferential trade agreements. This right is however conditional. In the context of an RTA, Article XXIV may justify a measure that is inconsistent with certain other GATT provisions. However, in a case involving the formation of a customs union, this RTA "defence" is available only when two conditions are fulfilled. First, the party claiming the benefit of this defence must demonstrate that the measure at issue is introduced upon the formation of a customs union that fully meets the requirements of sub-paragraphs 8(a) and 5(a) of Article XXIV. Second, this party must demonstrate that the formation of the customs union would be prevented if it were not allowed to introduce the measure at issue. Again, *both* of these conditions must be met to have the benefit of the defence under Article XXIV of GATT.[4]

[2] This categorization is suggested by Joel P. Trachtman who argues that the linkage problem between "[t]rade and ... is a problem of allocation of jurisdiction; he suggests that there are three basic, and related, types of allocation of jurisdiction: (i) horizontal allocation of jurisdiction among States, (ii) vertical allocation of jurisdiction between states and international organizations and (iii) horizontal allocation of jurisdiction among international organisation." Trachtman, *supra* note 1 at 79.

[3] General Agreement on Tariffs and Trade, October 30, 1947, 61 Stat. A-11, TIAS 1700, 55 U.N.T.S. 194 [hereinafter GATT].

[4] *Turkey — Restrictions on Imports of Textile and Clothing Products*, Appellate Body Report, October 22, 1999, Doc. WT/DS34, para. 58. Presently, Article XXIV and WTO jurisprudence clearly establish that it is for the parties to the regional trade

Many RTAs include (substantive) rights and obligations that are parallel to those of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).[5] Generally, these RTAs may provide for their own dispute settlement mechanism, which makes it possible for the states to resort to different but parallel dispute settlement mechanisms for parallel or even similar obligations. This situation is not unique as states are often bound by multiple treaties, and the dispute settlement systems of these treaties operate in a parallel manner.[6] At the same time, the WTO dispute settlement system claims to be compulsory and exclusive. Article 23 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)[7] mandates exclusive jurisdiction in favour of the DSU for WTO violations. By simply alleging that a measure affects or impairs its trade benefits, a WTO member is entitled to trigger the quasi-automatic, rapid, and powerful WTO dispute settlement mechanism, excluding thereby the competence of any other mechanism to examine WTO law violations. The challenging member does not need to prove any specific economic or legal interest nor provide any evidence of the trade impact of the challenged measure in order to initiate the DSU mechanism.[8] The

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agreement [hereinafter RTA] to prove that the concerned free trade area or customs union is compatible with Article XXIV of GATT (and/or Article IV of the General Agreement on Trade in Services [hereinafter GATS] in World Trade Organization, Results of the Uruguay Round Multilateral Trade Negotiations: The Legal Texts, 325, text is also available at <http://www.wto.org/english/docs_e/legal_e/legal_e.htm#services>.) This test has, however, been severely criticized for being unrealistic.

[5] Marrakesh Agreement Establishing the World Trade Organization, in World Trade Organisation, Results of the Uruguay Round Multilateral Trade Negotiations: The Legal Texts, 33, text is also available at <http://www.wto.org/english/docs_e/legal_e/14-ag.pdf> [hereinafter WTO Agreement].

[6] The arbitral tribunal of the International Centre for the Settlement of Investment Disputes/International Tribunal for the Law of the Sea stated that "[t]here is frequently a parallelism of treaties, both in their substantive content and in their provisions for settlement of disputes arising thereunder." *Southern Bluefin Tuna* (*New Zealand v. Japan; Australia v. Japan*), Provisional Measures Order of 27 August 1999 (International Tribunal for the Law of the Sea), Award on Jurisdiction and Admissibility of 4 August 2000, p. 91 [hereinafter *Southern Bluefin Tuna* case].

[7] Understanding on Rules and Procedures Governing the Settlement of Disputes, 1994, Annex 2 to the WTO Agreement, *supra* note 5 [hereinafter DSU].

[8] The WTO jurisprudence has confirmed that any WTO member that is a "potential exporter" has the sufficient legal interest to initiate a WTO panel process (*European Communities — Regime for the Importation, Sale and Distribution of Bananas,*

WTO will thus often "attract" jurisdiction over disputes with (potential) trade effects even if such disputes could also be handled in fora other than that of the WTO.

Overlaps of Jurisdiction between RTAs and the WTO

Overlaps of jurisdiction in dispute settlement can be defined as situations where the same dispute or related aspects of the same dispute could be brought to two distinct institutions or two different dispute settlement systems. Under certain circumstances, this occurrence may lead to difficulties relating to "forum-shopping," whereby disputing entities would have a choice between two adjudicating bodies or between two different jurisdictions for the same facts. When the dispute settlement mechanisms of two agreements are triggered in parallel or in sequence, there are problems on two levels: first, the two tribunals may claim final jurisdiction (supremacy) over the matter and, second, they may reach different, or even opposite, results.[9]

Various types of overlaps of jurisdiction may occur. For the purpose of the present discussion, an overlap of jurisdiction occurs: (1) when two fora claim to have exclusive jurisdiction over the matter; (2) when one forum claims to have exclusive jurisdiction and the other one offers jurisdiction, on a permissive basis, for dealing with the same matter or a related one; or (3) when the dispute settlement mechanisms of two different fora are available (on a non-mandatory basis) to examine the same or similar matters. Conflicts are possible in any of these three situations. All of the

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Appellate Body Report, April 9, 1999, WTO Doc. WT/DS27/ARB at para. 136); and in WTO disputes, there is no need to prove any trade effect for a measure to be declared WTO inconsistent (DSU, *supra* note 7 at Article 3.8). This is to say, in the context of a dispute between two WTO members, involving situations covered by both the RTA and the WTO Agreement, any member that considers that any of its WTO benefits have been nullified or impaired has an absolute right to trigger the WTO dispute settlement mechanism and request consultations and the establishment of a panel (*United States — Measures Affecting Imports of Woven Wool Shirts and Blouses from India*, Appellate Body Report, Doc. WT/DS33, para. 13). Arguably, a single WTO member cannot even agree to take its WTO dispute in another forum.

[9] The issue of forum shopping is not new. In the old GATT days, parties to the Tokyo Round codes had the choice between the general GATT dispute settlement mechanism and that of the codes (Agreement on Implementation of Article VI of the General Agreement on Trade and Tariffs (1979), Article 15, text is available at <http://www.wto.org/english/docs_e/legal_e/tokyo_adp_e.doc>).

RTAs examined in Table 1 at the end of this article have dispute settlement mechanisms with jurisdiction that may potentially overlap with that of the WTO Agreement.

Table 1 examines different dispute settlement mechanisms of RTAs and attempts to describe systematically the dispute settlement mechanisms provided in the RTAs according to two different categories —the characteristics of the dispute settlement system and the region. Furthermore, the table identifies several elements in RTAs, including: (1) the compulsory or non-compulsory nature of the RTA jurisdiction; (2) the reference to the GATT/ WTO dispute settlement mechanism; (3) the exclusive or priority forum prescription clause; (4) the choice of forum clause; (5) the binding nature of dispute settlement conclusions; and (6) the remedy provided by the agreement, including the explicit right to take countermeasures in trade matters with or without the permission of RTA dispute settlement bodies.

EXAMPLES OF OVERLAPS OF JURISDICTION BETWEEN THE WTO'S AND RTAS' DISPUTE SETTLEMENT MECHANISMS

Canada-United States Free Trade Agreement / North American Free Trade Agreement (NAFTA) and the GATT/WTO Dispute Settlement Mechanisms

NAFTA[10] provides that a forum can be chosen at the discretion of a complaining party and gives preference to the NAFTA forum when the action involves environmental, sanitary and phytosanitary (SPS) measures, or standards-related measures.[11] At the time of the conclusion of NAFTA, these provisions were more advanced than those of GATT. It further provides that, if the complaining party has already initiated GATT procedures on the matter, the complaining party shall withdraw from these proceedings and may initiate dispute settlement mechanism under NAFTA.[12]

[10] North American Free Trade Agreement, December 17, 1992; Model Rules of Procedure for Chapter Twenty of the North American Free Trade Agreement; Code of Conduct for Dispute Settlement Procedures under Chapters 19 & 20 of the North American Free Trade Agreement [hereinafter NAFTA], text is available at <http://www.sice.oas.org/cp_disp/English/dsm_II.asp>.

[11] NAFTA, *supra* note 10 at Article 2005(3).

[12] NAFTA, *supra* note 10 at Article 2005(7), concludes that for purposes of Article 2005, dispute settlement proceedings under the GATT are deemed to be initiated by a party's request for a panel, such as under Article XXIII:2 of GATT 1947. Indeed, the explicit references to "GATT" and to the "General Agreement

However, in light of Article 23 of the DSU, which provides that a violation of the WTO Agreement can be addressed only according to the WTO/DSU mechanisms, would the invocation of this NAFTA provision be sufficient to halt the WTO adjudicating body? How can Article 23 and the quasi-automatic process of the DSU be reconciled with the preference and, in some circumstances, the exclusive priority given to the NAFTA dispute settlement mechanism for obligations that are similar in NAFTA and in the WTO for the same facts? For instance, Article 301 of NAFTA explicitly refers to Article III of GATT. In a hypothetical case where a NAFTA state's domestic regulation violates Article III of GATT and Article 301 of NAFTA, the defending party may prefer to have the matter submitted to a NAFTA panel — it may have a valid defence under NAFTA — but the complaining party may prefer to have the matter addressed in the WTO. The situation may also be reversed if the defending party sees some procedural or political advantage in having its case debated in the WTO.[13]

In light of the quasi-automaticity of the mechanism, once a dispute is initiated under the DSU, it is unlikely that a WTO panel would give much consideration to the defendant's request to halt the procedures just because similar or related procedures are being pursued under a regional arrangement. To take the NAFTA/WTO example again, a WTO panel would not examine any allegation of a NAFTA violation, rather it would be asked to examine an alleged WTO violation, which would be similar to a NAFTA violation. Could it be said that the NAFTA and the WTO provisions are dealing with the same subject matter (which could be defined as the measure plus the type of obligation imposed by the law)? Strictly speaking, the matter is different, although the content of the obligations is similar. For instance, the Free Trade Agreement between

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on Tariffs and Trade 1947" raise the question whether the same rules would continue to apply to the new DSU of the WTO. However, since the first paragraph of Article 2005 refers to "any successor agreement (GATT)" and the recent NAFTA panel described GATT as "an evolving system of law" that includes the results of the Uruguay Round, the provisions of Article 2005 of NAFTA would be applicable to the dispute settlement rules of the WTO. Arbitral Panel Established Pursuant to Article 2008 of the North American Free Trade Agreement, *In the Matter of Tariffs Applied by Canada to Certain US — Origin Agricultural Products*, Final Report (December 2, 1996).

[13] *Canada — Certain Measures Concerning Periodicals*, July 30, 1997, Doc. WT/DS31/AB/R is a good example of potential overlap. The United States initiated its dispute against Canada under the DSU of the WTO rather than that of the NAFTA.

the EU and Mexico[14] states that arbitration proceedings established under this agreement will not consider issues relating to parties' rights and obligations under the WTO Agreement. Would the insertion of this type of provision mitigate the problem of conflicts of jurisdiction or would it aggravate the situation?

If there is an allegation of WTO violation, it would be difficult for a WTO panel to refuse to hear a WTO member complaining about a measure claimed to be inconsistent with the WTO Agreement on the ground that the complaining or defending member is alleged to have a more specific or more appropriate defence or remedy in another forum concerning the same legal facts. Before a WTO panel, should the NAFTA parties have explicitly waived their rights to initiate dispute settlement proceedings under the WTO, the situation would be the same. However, in such a case, in initiating a parallel WTO dispute, a NAFTA party may be found to be violating its obligation under NAFTA — that is, not to take a dispute outside of NAFTA. In these circumstances, the NAFTA party opposed to the parallel WTO panel (the "opposing NAFTA party") could claim that the WTO panel initiated by the other NAFTA party is impairing some of its benefits under NAFTA. The opposing NAFTA party would arguably win this claim before the NAFTA panel. Theoretically, that opposing NAFTA party would then be entitled to some retaliation — the value of which could probably correspond to (part of) the benefits that the other NAFTA party could gain in initiating its WTO panel.

In other words, even if it may not be practical or useful for a NAFTA party to duplicate in the WTO a dispute that should be handled in NAFTA, there does not seem to be any legal impediment against such a possibility, since, legally speaking, the NAFTA and WTO panels would be considering different "matters" under different "applicable law," providing for different remedies and offering a different implementation and retaliation mechanisms.

[14] Free Trade Agreement between the EU and Mexico, Decision no. 2/2000 of the EC/Mexico Joint Council of 23 March 2000 (covering trade in goods, government procurement, cooperation for competition, consultation on intellectual property rights, dispute settlement), Article 41, entered into force on July 1, 2000, text is available at <http://europa.eu.int/comm/trade/bilateral/mexico/fta.htm >.

Other Free Trade Agreements with a "Forum Election Clause" and an "Exclusivity Forum Clause"

Some recent free trade agreements contain even further detailed and articulate provisions on the overlap with the WTO dispute settlement system. The Free Trade Agreement between the European Free Trade Association States and Singapore[15] explicitly provides that disputes on the same matter arising under both this agreement and the WTO Agreement, or under any agreement negotiated thereunder, to which the parties are party, may be settled in either forum at the discretion of the complaining party but that the forum thus selected shall be used to the exclusion of the other.[16]

The Free Trade Agreement between Canada and Costa Rica contains a general provision on the compulsory nature of the dispute settlement system provided for in the same agreement.[17] The agreement also provides that "[s]ubject to paragraph 2, Article VI.4 (Dispute Settlement in Emergency Action Matters), Article VII.1.5 (Antidumping Measures), Article IX.5.1.2 (Sanitary and Phytosanitary Measures) and Article XI.6.3 (Consultations), disputes regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated there under, or any successor agreement, may be settled in either forum at the discretion of the complaining Party."[18] It also adds that once dispute settlement procedures have been initiated under Article XIII.8 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other unless a party makes a request pursuant to paragraph 2.[19]

These free trade agreements prohibit their members from initiating a second dispute on the same or related matters once the dispute settlement process of these free trade agreements or of the WTO has been initiated. It is doubtful whether this type of provision would

[15] Free Trade Agreement between the European Free Trade Association States and Singapore, signed on June 26, 2002, entered into force on January 1, 2003, text is available at <http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Singapore/SG/SG_FTA.pdf>.

[16] *Ibid.* at Article 56(2).

[17] Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica, Article XIII:6, entered into force on November 1, 2002, text is available at <http://www.dfaitmaeci.gc.ca/tna-nac/Costa_Rica_toc-en.asp>.

[18] *Ibid.*

[19] *Ibid.*

suffice to allow a WTO panel to refuse to hear the matter in situations where the dispute settlement process of the free trade agreement has been triggered. It may be difficult at the early stage of a WTO panel to assess whether the matter is indeed exactly the same as the one raised in the free trade area forum. The WTO panel may simply continue its investigation to find out whether the measure is inconsistent with the WTO provisions while assessing whether the obligations are the same under both treaties. However, the WTO member party to the free trade agreement who initiates a WTO dispute process in parallel or subsequently to that of the free trade agreement could very well be in violation of that free trade agreement and lose, in application of the free trade agreement, all the benefits that it would/could otherwise have obtained from the WTO dispute settlement system.

MERCOSUR/WTO Dispute Settlement Mechanisms

The Southern Common Market (MERCOSUR)[20] provides that "[t]he controversies which arise between the State Parties regarding the interpretation, application or non-compliance of the dispositions contained in the Treaty of Asuncion, of the agreements celebrated within its framework, as well as any decisions of the Common Market Council and the resolutions of the Common Market Group, will be submitted to the procedure for resolution established in the present Protocol (of Brazilia): 'the state parties declare that they recognize as obligatory, *ipso facto* and without need of a special agreement, the jurisdiction of the Arbitral Tribunal which in each case is established in order to hear and resolve all controversies which are referred to in the present Protocol.'"[21] The Protocol of Olivos[22] now provides that the forum chosen by the complaining party should be the forum of the dispute and adds

[20] The Southern Common Market [hereinafter MERCOSUR] was created by the 1991 Treaty of Asunción, approved by Act 23981/91 (Argentina, Official Bulletin, September 12, 1991), text is available at <www.mercosul.org.uy/paginaiesp.htm>.

[21] Protocol of Brasilia, Council Decision MERCOSUR/CMD/DEC NO. 01/91; Protocol of Brasilia for Dispute Settlement, Article 1, signed on December 17, 1991, text is available at <http://www.mercosul.gov.br/textos/default.asp?Key=231>.

[22] Protocol of Olivos for the Settlement of Disputes in MERCOSUR, Article 1, signed on February 18, 2002, text is available at <http://www.mercosul.gov.br/textos/default.asp?Key=232>.

that once a forum has been selected it shall deal with the dispute at the exclusion of other fora.

In 2000, Argentina decided to impose safeguard quotas on entries of certain cotton products from Brazil, China, and Pakistan. Brazil asked an arbitral panel to rule on the trade dispute. The three arbitrators concluded that Argentina's safeguard measure was incompatible with the MERCOSUR agreement. Argentina did not remove its quotas immediately, thus Brazil asked the WTO Textiles Monitoring Body (TMB) to review the legality of the Argentina quotas.[23] Although the WTO rules on textiles allow members to take some safeguard actions, the TMB concluded that Argentina's safeguard measures were incompatible with the WTO Agreement. Since Argentina continued to refuse to comply, Brazil was forced to take the dispute to the dispute settlement body (DSB) and could have requested the establishment of a panel. In the end, the parties settled amicably.

In 2002, Brazil initiated a WTO dispute complaint relating to the imposition of anti-dumping measures against the importation of poultry from Argentina.[24] Before the WTO panel, Argentina argued that Brazil had failed to act in good faith by first challenging Argentina's anti-dumping measure before a MERCOSUR ad hoc tribunal and then, having lost that case, initiating WTO dispute settlement proceedings against the same measure. Argentina raised a preliminary issue concerning the fact that, prior to bringing WTO dispute settlement proceedings against Argentina's anti-dumping measure, Brazil had challenged that measure before a MERCOSUR ad hoc arbitral tribunal.[25] According to Argentina, a member is not acting in good faith if it first has recourse to the mechanism of the integration process to settle its dispute with another WTO member and, then, dissatisfied with the outcome, files the same complaint within a different framework, making matters worse by omitting any reference to the previous procedure and its outcome.[26] Argentina considered that "Brazil's conduct in

[23] The legal issues in the WTO were slightly different from those before the MERCOSUR arbitrators and could have led to very complicated questions relating to the WTO compatibility of the MERCOSUR customs union and whether countries in a customs union can impose safeguard measures against imports from another member.

[24] See *Argentina — Definitive Anti-Dumping Duties on Poultry from Brazil*, Panel Report, May 22, 2003, Doc. WT/DS241/R.

[25] *Ibid.* at para. 7.17.

[26] *Ibid.* at para. 7.19.

bringing the dispute successively before different fora, first MERCOSUR and then the WTO, constitutes a legal approach that is contrary to the principle of good faith which, in the case at issue, warrants invocation of the principle of estoppel."[27] Argentina requested that, in light of the prior MERCOSUR proceedings, the panel refrain from ruling on the claims raised by Brazil in the present WTO dispute settlement proceedings. In the alternative, Argentina submitted that the panel should be bound by the ruling of the MERCOSUR tribunal. In the alternative, Argentina submitted that "in view of the relevant rule of international law applicable in the relations between parties pursuant to Article 31.3(c) of the *Vienna Convention* the Panel cannot disregard, in its consideration and substantiation of the present case brought by Brazil, the precedents set by the proceedings in the framework of Mercosur."[28]

According to Brazil, the simple fact that it had brought a similar dispute to the MERCOSUR tribunal did not represent that Brazil had consented not to bring the current dispute before the WTO, especially when the dispute before this panel was based on a different legal basis than the dispute brought before the MERCOSUR tribunal. Brazil asserted that the MERCOSUR Protocol of Olivos on Dispute Settlement, signed on 18 February 2002, could not be raised here as an implicit or express consent by Brazil to refrain from bringing the present case to the WTO dispute settlement, again because the object of the earlier MERCOSUR proceedings was different from that of the present WTO proceedings. Furthermore, the Protocol of Olivos did not apply to disputes that had already been concluded under the Protocol of Brasilia.[29]

It is worthwhile to note the United States's argument as a third party. The United States submitted that the MERCOSUR dispute settlement rules are not within the panel's terms of reference:

> Article 7.1 of the *DSU* makes quite clear that a Panel's role in a dispute is to make findings in light of the relevant provisions of the "covered agreements" at issue. The Protocol of Brasilia is not a covered agreement, and Argentina has not claimed that Brazil's actions with respect to the Protocol breach any provision of a covered agreement. Rather, Argentina's claim appears to be that Brazil's actions could be considered to be inconsistent with the terms of the Protocol. A claim of a breach of the Protocol is not within this Panel's terms of reference, and there are no grounds for the

[27] *Ibid.* at para. 7.18

[28] *Ibid.*

[29] *Ibid.* at para. 7.22.

Panel to consider this matter. Argentina may, however, be able to pursue that claim under the MERCOSUR dispute settlement system.[30]

The panel decided to limit itself to the arguments raised by Argentina — allegations of bad faith on the part of Brazil and the invocation of estoppels that would prohibit Brazil from challenging Argentina's actions before the WTO — and to reject them as inherently inconsistent. The panel concluded that "two conditions must be satisfied before a Member may be found to have failed to act in good faith. First, the Member must have violated a substantive provision of the WTO agreements. Second, there must be something 'more than mere violation.' With regard to the first condition, Argentina has not alleged that Brazil violated any substantive provision of the WTO agreements in bringing the present case. Thus, even without examining the second condition, there is no basis for us to find that Brazil violated the principle of good faith in bringing the present proceedings before the WTO."[31] The panel then discussed the international law criteria for estoppel and concluded that there was nothing on the record to suggest that Argentina actively relied in good faith on any statement made by Brazil, either to the advantage of Brazil or to the disadvantage of Argentina. There was nothing on the record to suggest that Argentina would have acted any differently had Brazil not made the alleged statement that it would not bring the present WTO dispute settlement proceedings.

The panel also rejected Argentina's argument based on Article 3.2 of the DSU and Article 31.3(c) of the Vienna Convention on the Law of Treaties.[32] The panel recalled that Article 3.2 of the DSU is concerned with international rules of treaty interpretation:

> Article 3.2 of the DSU is concerned with treaty *interpretation*. Article 31.3(c) of the *Vienna Convention* is similarly concerned with treaty *interpretation*. However, the Panel noted that Argentina has not sought to rely on any law providing that, in respect of relations between Argentina and Brazil, the WTO agreements should be *interpreted* in a particular way. In particular, Argentina has not relied on any statement or finding in the MERCOSUR Tribunal ruling to suggest that we should interpret specific provisions of the WTO agreements in a particular way. Rather than concerning itself with the interpretation of the WTO agreements, Argentina

[30] *Ibid.* at para. 7.30.

[31] *Ibid.* at para. 7.36.

[32] Vienna Convention on the Law of Treaties, May 23, 1969, Can. T.S. 1980 No. 37 (entered into force January 27, 1980) [hereinafter Vienna Convention].

actually argues that the earlier MERCOSUR Tribunal ruling requires us to *rule* in a particular way. In other words, Argentina would have us *apply* the relevant WTO provisions in a particular way, rather than *interpret* them in a particular way. However, there is no basis in Article 3.2 of the *DSU,* or any other provision, to suggest that we are bound to rule in a particular way, or apply the relevant WTO provisions in a particular way. However, there is no basis in Article 3.2 of the *DSU,* or any other provision, to suggest that we are bound to rule in a particular way, or apply the relevant WTO provisions in a particular way.[33]

This report was not appealed to the Appellate Body.[34] It is clear that WTO adjudicating bodies do not have the authority to enforce provisions of a RTA as such.[35] In a case such as this one, however, the WTO adjudicating bodies would seem to be assessing the concerned states' situation in light of their WTO obligations and not in light of their MERCOSUR obligations. Yet, contrary findings based on similar rules from the MERCOSUR and WTO institutions would have unfortunate consequences for the trust that the states are to place in their international institutions.

How Can States and WTO Panels Deal with Overlaps of Jurisdiction between Dispute Settlement Mechanisms of RTAs and the WTO?

SOLUTIONS SUGGESTED BY INTERNATIONAL LAW

Overlaps and conflicts of jurisdictions are now of relevance in international law generally because of the multiplication of international jurisdictions. In recent years, treaties and organs of jurisdiction have increased drastically in number. An obvious example is the multiplicity of treaties, organs, and jurisdictions that are involved in human rights issues.[36] The accepted practice seems to be that states may adhere to different but parallel dispute settlement

[33] *Argentina — Definitive Anti-Dumping Duties on Poultry from Brazil, supra* note 24 at para. 7.41.

[34] It is interesting to note that the new Protocol of Olivos on Dispute Settlement, *supra* note 22, now contains an exclusive forum clause: "Once a dispute settlement procedure pursuant to the preceding paragraph has begun, none of the parties may request the use of the mechanisms established in the other fora, as defined by article 14 of this Protocol." At the time of this dispute, it was not yet in force.

[35] *United States — Margin of Preferences,* BISD II/11, Decision of August 9, 1949.

[36] See Emmanuel Roucounas, *Engagements parallèles et contradictoires,* Cours de la Haye (1987), 197.

mechanisms for parallel or even similar obligations. The arbitral tribunal of the International Centre for the Settlement of Investment Disputes/International Tribunal for the Law of the Sea in the recent *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)* case stated:

> But the Tribunal recognizes as well that there is a commonplace of international law and State practice for more than one treaty to bear upon a particular dispute. There is no reason why a given act of a State may not violate its obligations under more than one treaty. *There is frequently a parallelism of treaties, both in their substantive content and in their provisions for settlement of disputes arising thereunder* ... the conclusion of an implementing convention does not necessarily vacate the obligations imposed by the framework convention upon the parties to the implementing convention.[37]

A call for increased coherence was also made by a former president of the International Court of Justice (ICJ), Stephen Schwebel,[38] and again by Gilbert Guillaume,[39] against the dangers of forum shopping and the development of fragmented and contradictory international law. Roselyn Higgins believes, however, that there may not be any need for such an international structure and that coherence may be best ensured through awareness and exchanges between jurisdictions:

> With the greatest respect to the past two Presidents of the International Court, I do not share their view that the model of Article 234 (the renumbered Article 177) of the Rome Treaty provides an answer. It is simply cumbersome and unrealistic to suppose that other tribunals would wish to refer points of general international law to the International Court of Justice. Indeed, the very reason for their establishment as separate judicial instances militates against a notion of intra-judicial reference.

[37] *Southern Bluefin Tuna* case, *supra* note 6 at 91 [emphasis added].

[38] "[I]n order to minimize such possibility as may occur of significant conflicting interpretations of international law, there might be virtue in enabling other international tribunals to request advisory opinions of the International Court of Justice on issues of international law that arise in cases before those tribunals that are of importance to the unity of international law ... There is room for the argument that even international tribunals that are not United Nations organs, such as the International Tribunal for the Law of the Sea, or the International Criminal Court when established, might, if they so decide, request the General Assembly — perhaps through the medium of a special committee established for the purpose — to request advisory opinions of the Court." Stephen M. Schwebel, President of the ICJ, Address to the Plenary Session of the General Assembly of the United Nations, October 26, 1999, text is available at <http://www.icj-cij.org/>.

[39] See, for instance, the note by Gilbert Guillaume, "La mondialisation et la Cour internationale de justice" (2000) 2(4) Forum (ILA) at 242.

The better way forward, in my view, is for us all to keep ourselves well informed. Thus the European Court of Justice will want to keep abreast of the case law of the International Court, particularly when it deals with treaty law or matters of customary international law; and the International Court will want to make sure it fully understands the circumstances in which these issues arise for its sister court in Luxembourg. Many ways of achieving this can be suggested; and events such as this lecture may perhaps be seen as counting among them.[40]

In the absence of provisions such as a choice of forum clause and an exclusive forum clause, it is possible that the dispute settlement forum of an RTA and that of the WTO may be seized, at the same time or sequentially, of very similar matters, to the extent that obligations under the RTA and the WTO are similar and applicable. In the absence of any other specific treaty prescription, the rules and principles of treaty interpretation and of conflicts applicable to the substantive provisions of treaties would also be applicable to the issue of the overlap or conflict of their respective dispute settlement mechanisms. The issue is whether these rules of conflict (*lex posterior* and *lex specialis*) are such as to be able to invalidate the WTO dispute settlement process or nullify its access. It is doubtful.

As long as a treaty provides for a dispute settlement mechanism in its text, parties to the treaty may invoke that mechanism to settle a dispute concerning the interpretation or application of the treaty. In the absence of any clear prescription, such a cumulative application of various dispute settlement mechanisms under different treaties seems possible. In initiating a WTO dispute, the RTA member may, however, nullify the benefits of another RTA member and may be subject to RTA dispute settlement procedures and eventually retaliation in the RTA context. The WTO recognizes the legitimacy of RTAs (with conditions). It may be argued that RTAs' dispute settlement mechanisms are used to enforce the disciplines of RTAs (which themselves must be compatible with Article XXIV and with the GATT/WTO) and are therefore "necessary" to allow members to enforce RTA rules (and the related countermeasures).

Treaty Clauses Addressing Dispute Settlement Mechanisms of Other Treaties

Article 23 of the DSU is a specific treaty clause[41] that seems to prevent other jurisdictions from adjudicating WTO law violations.

[40] Roselyn Higgins, "The ICJ, The ECJ, and the Integrity of International Law" (2003) 52 I.C.L.Q. 1-20 at 20.

[41] Vienna Convention, *supra* note 32 at Article 30.2.

However, Article 23 cannot prohibit tribunals established by other treaties from exercising jurisdiction over the claims arising from their treaty provisions that run parallel to, or overlap with, the WTO provisions. Hence, there is a need for WTO members to further address the issue of overlapping WTO/RTA dispute settlement jurisdictions. Table 1 at the end of this article identifies a number of aspects relevant to RTA jurisdiction. A large number of RTAs provide for compulsory jurisdiction mandating the parties to refer their disputes to an institution established by the constituting treaty. Some RTAs provide for forum shopping or a forum choice clause, allowing for the settlement of disputes either in the RTA forum or in the GATT forum at the discretion of the complaining party. Other RTAs contain exclusive forum clauses, in addition to the choice of forum clause, providing that, once a matter has been brought before either forum, the procedure initiated shall be used to the exclusion of any other, as is the case with NAFTA and the free trade agreements between the United States and Singapore,[42] Japan and Singapore,[43] or Singapore and Australia.[44] The purpose of this rule was not to recognize the existence of *res judicata* as such (since the applicable law was strictly different — the law of the free trade agreement in one forum, GATT law in the other) but rather to introduce certainty and avoid multiple dispute settlement proceedings. In fact, NAFTA goes further than the Canada-United States Free Trade Agreement,[45] which preceded NAFTA and, in the area of sanitary and phytosanitary measures (SPS) and environment and other standard disputes, obliges a NAFTA state to

[42] United States — Singapore Free Trade Agreement, signed on May 6, 2003, text is available at <http://www.ustr.gov/new/fta/Singapore/final.htm>.

[43] Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership, signed on January 13, 2002 and entered into force on November 30, 2002, text is available at <http://www.mti.gov.sg/public/FTA/frm_FTA_Default.asp?sid=28>.

[44] Singapore — Australia Free Trade Agreement, signed on February 17, 2003 and entered into force on July 28, 2003, text is available at <http://www.austlii.edu.au/au/other/dfat/treaties/2003/16.html>. Article 1801 of the Canada-United States Free Trade Agreement, *infra* note 45, envisaged that disputes arising under both this agreement and GATT (including the Tokyo Round codes) could be settled in either forum at the discretion of the complaining party but that once a matter has been brought before either forum, the procedure initiated shall be used to the exclusion of any other.

[45] Canada — United States Free Trade Agreement, signed on January 2, 1989, text is available at <http://wehner.tamu.edu/mgmt.www/nafta/fta/complete.pdf>.

withdraw from a GATT dispute if the other NAFTA state prefers the NAFTA jurisdiction.[46] The Free Trade Agreement between Chile and Mexico[47] and the Free Trade Agreement between Canada and Chile[48] have similar provisions.[49]

There is no clear rule in regard to the relationship between the WTO jurisdiction and other jurisdictions. Article XXIV of GATT does not make any reference to the dispute settlement mechanisms of RTAs. In order to govern the legal relationships between RTAs' dispute settlement mechanisms and those of the WTO, a set of principles can be devised. If both processes were triggered at the same time, it is quite probable that the WTO panel process would proceed much faster than the RTA process. What arguments may be raised before a WTO adjudication body with respect to the RTA dispute settlement mechanism? Are there rules of general international law that may be useful? Principles and rules that have

[46] Article 2005 of NAFTA, *supra* note 10, provides that after consultation "the dispute normally shall be settled under this Agreement." Paragraphs 3 and 4 of Article 2005 go further and prescribe the exclusive application of NAFTA to the detriment of GATT: When the responding party claims that its action is subject to Article 104 of the Environmental and Conservation Agreements (inconsistency with certain environmental and conservation agreements), sanitary and phytosanitary measures, or standards-related measures adopted or maintained by a party to protect its human, animal or plant life or health, or its environment, and that raises factual or scientific issues on these aspects, "the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under [NAFTA]." According to paragraph 5 of Article 2005, if the complaining party has already initiated GATT procedures on the matter, "the complaining Party shall promptly withdraw from participation in those proceedings and may initiate dispute settlement procedures under Article 2007." See the Agreement between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste, signed on October 28, 1986; and the Agreement between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area, signed on August 14, 1983.

[47] Free Trade Agreement between the Government of the Republic of Chile and the Government of the United Mexican States, signed on April 17, 1998 and entered into force on August 1, 1999, text is available at <http:www.sice-oas.org>.

[48] Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile, signed on December 5, 1996, text is available at <http://www.dfait-maeci.gc.ca/tna-nac/cda-chile/menu-en.asp>.

[49] Article N-05 of the Free- Trade Agreement between the Government of Canada and the Government of Chile, *supra* note 48; and Free Trade Agreement between the Republic of Chile and the Government of Mexican States, *supra* note 47, Article 18-03, para. 2.

been developed in private international commercial law for dealing with overlaps and conflicts of jurisdictions are also informative. It may be worthwhile to examine whether such rules could be used in situations of multiple jurisdictions of international law tribunals.

Abuse of Process, Abuse of Rights, and Good Faith

In public international law, a state, by initiating a second proceeding on the same matter, may be viewed as abusing its process or procedural rights. A tribunal could decline jurisdiction if it considers that the proceedings have been initiated to harass the defendant or that they were frivolous or groundless. It is not the multiple proceedings that are condemned "but rather the inherently vexatious nature of the proceedings."[50] Such a prohibition against "abuses of rights" could be considered a general principle of law.[51] However, it is unlikely that any adjudicating body, including those of the WTO, would find the allegations that their constitutional treaty has been violated to be "vexatious," especially when, in all probability, the claims would be drafted to capture the specific competence of that tribunal.

One could possibly argue that a state may be bound by its implied commitment to respect a previous ruling and thus may have to refrain from resorting to another forum to challenge the previous ruling. However, at the same time, states may be bound by two different jurisdictions sequentially and this situation happens often in international law. One may also argue that the general obligation of states to enforce their treaty obligations in good faith obliges them to use the most appropriate forum to settle their disputes or to use them in any sequence. However, if states have negotiated the possibility of referring disputes to various fora, it has to be assumed that they intended to retain the possibility of using such fora freely, yet in good faith.

[50] Lowe affirms that the doctrine of abuse of process is "well established, though occasions for its application are likely to be very rare." Vaughan Lowe, "Overlapping Jurisdictions in International Tribunals" (2000) 20 Australian Y.B. Int'l L. 113.

[51] Brownlie wrote that "[i]t is not unreasonable to read the principle of abuse of right as a general principle of law." See Ian Brownlie, Principles of Public International Law, 5th ed. (Oxford: 1998), 447-48. See also *United States — Import Prohibition of Certain Shrimp and Shrimp Products*, Appellate Body Report, October 26, 2001, Doc. WT/DS58, at para. 158.

In addition, it may be argued that a WTO panel could consider consultations and the use of the RTA dispute settlement mechanism in an RTA context or the efforts to reach a mutually agreeable solution to the dispute as an evidence of the good faith of its member(s), which may be relevant for the determination of compliance with the WTO provisions. As shown in Table 1, RTAs generally provide for consultation mechanisms. Once consultations have been requested by a party, the other party usually has to respect such a request. Consultations normally take place in a RTA institution composed of representatives of participating member states.

Exhaustion of RTA Remedies

There does not seem to be any rule that demands the exhaustion of one dispute settlement mechanism prior to the initiation of another one. There is a principle in general international law that obliges states to ensure that local remedies have been exhausted before bringing a claim on behalf of a national to international dispute settlement mechanisms, but many would argue that this doctrine does not apply under WTO law.[52] In any case, the dispute settlement mechanism of a RTA does not provide for any "local" remedy, therefore it is difficult to consider that such a principle could be invoked to oblige a state to exhaust RTA remedies before going to the WTO.[53]

Reference to the ICJ

Another solution to address the proliferation of international jurisdictions is to adopt the suggestion of Judge Guillaume and empower the ICJ with some form of reference jurisdiction to be used by international tribunals, possibly through advisory opinion

[52] See, for instance, Ernst-Ulrich Petersmann, "Settlement of International Disputes through the GATT: The Case of Anti-Dumping Law," in Ernst-Ulrich Petersmann and Gunther Janicke, *Adjudication of International Trade Disputes in International and National Economic Law* (Fribourg: University Press, 1992), 126;

[53] On the issue of the exhaustion of local remedies in international law and its application in WTO law, see Pieter Jan Kuijper, "The Law of GATT as a Special Field of International Law" (1994) Neth. Y. B. Int'l L. 227; Pieter Jan Kuijper, "The New WTO Dispute Settlement System — The Impact on the European Community" (1995) 29(6) J. World T. 49; and J. Martha Rutsel Silvestre, "World Trade Dispute Settlement and the Exhaustion of Local Remedies Rule" (1996) 30 J. World T. 107.

requests.[54] However, as he points out, it is unrealistic to expect states to empower the ICJ in this way or to expect international tribunals to surrender their judicial power. In addition, states or tribunals may not be able to agree on the type of questions to be referred to the ICJ.

PRINCIPLES OF PRIVATE INTERNATIONAL COMMERCIAL LAW DEALING WITH OVERLAPS AND CONFLICTS OF JURISDICTION

Forum Conveniens *and* Forum Non Conveniens[55]

The *forum conveniens* doctrine is defined as "a court taking jurisdiction on the ground that the local forum is the appropriate forum (or an appropriate forum) for trial or that the forum abroad is inappropriate. It is said to be a positive doctrine, unlike *forum non conveniens* which is a negative doctrine defined as a general discretionary power for a court to decline jurisdiction."[56] However, the objective of both doctrines is the same — that is, to identify which forum is the most convenient one or which forum is not convenient. The criteria to determine which jurisdiction is to be preferred vary with each state. Most states rely on criteria such as connecting factors, expenses, the availability of witnesses, the law governing the relevant transactions, the place where the parties reside or carry on business, the interest of the parties, and the general interest of justice. In some states, courts use the *forum conveniens* doctrine as one of the discretionary criteria on which to base their jurisdiction. Other states explicitly refer to the doctrine and provide when and how such assessment must be performed by national courts and based on what criteria.

In the current state of international jurisdictional law, the doctrine of *forum non conveniens,* or of *forum conveniens,* absent an agreement among states, appears to be inapplicable to an overlap of jurisdictions in public international law tribunals. In domestic jurisdictions, the defendants have usually agreed to subject themselves to any such available jurisdiction, while it may not be the case

[54] He referred to the model found in Article 177 of the Treaty Establishing the European Community (consolidated text), Official Journal C 325 of 24 December 2002) [hereinafter EC Treaty] (now Article 234). See, for instance, Guillaume, *supra* note 39 at 242. In contrast, see Higgins, *supra* note 40 at 20.

[55] On this issue, see T. Sawaki, "Battle of Lawsuits — Lis Pendens in International Relations" (1979-80) 23 Japanese Ann. Int'l L. 17.

[56] J.J. Fawcett, *Deciding Jurisdiction in Private International Law* (Oxford: 1995), 5-6 and 10.

with international jurisdictions. The location of evidence, witnesses, and lawyers is usually of minimal importance in international disputes. Although demands of efficiency in the administration of justice may indicate that a specific court should decline to exercise its jurisdiction, "criteria developed in the context of a proper concern for the interest of private litigants make little sense in the context of inter-State proceedings."[57]

Article 23 of the DSU reflects the clear intention of WTO members to ensure that WTO adjudicating bodies can always exercise exclusive jurisdiction on any WTO-related claim. The WTO forum is always a "convenient forum" for any WTO grievance. In fact, it seems to be the exclusive forum for WTO matters. In order to change this situation, members would have to negotiate amendments to Article 23 of the DSU and would risk reopening the debate on the prohibition of unilateral counter-measures, mandated by Article 23 of the DSU.

Lis Alibi Pendens *and* Res Judicata

The rule on *lis alibi pendens* (litispendence) provides that once a process has begun, no other parallel proceedings may be pursued. The object of the *lis alibi pendens* rule is to avoid a situation in which parallel proceedings, which involve the same parties and the same cause of action, simultaneously continue in two different states and with the possible consequence of irreconcilable judgments.[58] The *res judicata* doctrine provides that the final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and, as between them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action.

It is generally difficult to speak of *res judicata* or *lis alibi pendens* between two dispute settlement mechanisms under two different treaties. The parties may be the same and the subject matter may be a related one, but, legally speaking, in the WTO and RTAs, the applicable law would not be the same — certain specific defences may be available only in one treaty or time-limits, procedural rights, and remedies may differ. Therefore, it is difficult to speak of *lis pendens* or *res judicata* between two international law jurisdictions.[59]

[57] Lowe, *supra* note 50 at 12.

[58] Fawcett, *supra* note 56 at 26.

[59] As Lowe points out, in most cases, the fact that a state has sought adjudication

However, RTAs such as the Central American Common Market (CACM) and MERCOSUR refer to the effect of *res judicata.* The CACM, for instance, states that the arbitration award has the effect of *res judicata* for *all contracting parties* so far as it contains any ruling concerning the interpretation or application of the provisions of this treaty. Thus, once the interpretive ruling is rendered, all CACM parties are bound by it, even if they are not parties to the dispute. However several questions remain. Does it mean that the WTO panel's ruling, as long as it concerns the interpretation and application of the General Treaty on Central American Economic Integration between Guatemala, El Salvador, Honduras and Nicaragua[60] cannot be challenged (or risk to have it changed) in the WTO forum? How then can it be used? What if a WTO panel, in its assessment of the WTO compatibility of the RTA or one of its specific measure reads a provision of an RTA differently from the CACM formal interpretation? Should the CACM judgment not be considered as a fact — a legal fact — which the WTO panel will have to assess?

In the WTO context, Article 23 of the DSU provides that WTO grievances can only be debated within the parameters of the WTO institutions. It is difficult to see how WTO panels could decline jurisdiction for reasons of *res judicata, lis pendens,* or *forum non conveniens.*[61] This is not to say that the decisions and conclusions of those other RTA jurisdictions would be of no relevance to the WTO process. On the contrary, similar to any other court decision on a similar matter, they will be examined as a judicial interpretation by another international tribunal of a similar provision.

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under one treaty cannot deprive it of the right to seek a declaration in respect of another treaty. See Lowe, *supra* note 50 at 14.

[60] General Treaty on Central American Economic Integration between Guatemala, El Salvador, Honduras and Nicaragua, December, 1960; Protocol of Tegulcigalpa to the Charter of the Organization of Central American States, December 13, 1991; Protocol of Guatemala to the General Treaty on Central American Economic Integration, October 29, 1993; Convenio del Estatuto de la Corte Centroamericana de Justicia, December 13, 1992, text is available at <http://www.sice.oas.org/cp_disp/English/dsm_II.asp>.

[61] This is not to say that other jurisdictions do not have the capacity to read, take into account, and somehow interpret WTO provisions to the extent that it is necessary to interpret their own treaty.

POSSIBILITY OF INVOKING ARTICLE 13 OF THE DSU TO OBTAIN (EXPERT) EVIDENCE FROM RTA PROCEEDINGS

Article 13 of the DSU allows any WTO panel to request from the parties, or from any source, any relevant information. Arguably, this information could include evidence from the proceedings in another forum. The WTO panel may want to require expert information from a RTA secretariat, or, with the agreement of the parties, it may also want to use the analysis or data collected during a RTA dispute process as expert data. However, how should a WTO panel treat submitted evidence that relates to a RTA's relations? Panels are at all times bound by the provisions of Article 11 of the DSU, which mandates an "objective" assessment of the facts and the law. If the panel respects due process, nothing would limit the right of a panel to inquire about members' actions in another forum dealing with similar claims.

Discussion on Overlapping Dispute Settlement Mechanisms

In the absence of any treaty prescription, the state initiating the dispute will make its choice, taking into account the specific facts of the case, which include the expertise of adjudicators of each forum, the need for efficiency and specific remedies, and the procedural aspects of each forum. In addition, there are other factors of a more political nature that may affect the state's choice of forum, such as whether the state will seek a dispute settlement or a systemic declaration or what type, importance, or influence the forum will have, which will affect the state's choice of forum.

Is it conceptually possible that a RTA adjudicating body reach a conclusion contrary to that of the WTO adjudicating body on exactly the same factual allegation? The applicable law — that is, the treaty provision being interpreted and applied— would be different (on the one hand, RTA law and, on the other hand, WTO law), although it may happen that the said provisions of the two treaties are almost identical. Even if WTO members are not faced with a formal conflict between two mutually exclusive jurisdictions, it may be that an RTA jurisdiction and the WTO jurisdiction adjudicate the same dispute or related aspects of the same dispute, and this situation in itself can be problematic.

In the absence of the agreement of the parties to suspend the DSU mechanism, it is most doubtful whether a WTO adjudicating body would terminate its process solely on the ground that a related dispute or aspects of the same dispute are being examined

or have been examined in another forum. Article 23 of the DSU and the quasi-automaticity of the DSU mechanism do not allow for such suspension of the DSU mechanism to happen. However, in initiating a WTO process, the RTA member may be in violation of the RTA and be subject to dispute settlement and possibly retaliation or other sanctions or countermeasures. It is thus argued that since dispute settlements are inherent to the application of Article XXIV, countermeasures are necessary instruments for effective RTAs and are therefore WTO compatible pursuant to Article XXIV.[62]

It is equally wrong to argue for an exclusive allocation in favour of the WTO forum for any "trade" matter. Could one argue that Article 23 of the DSU goes as far as denying WTO members the right to sign RTAs or other treaties with dispute settlement provisions where rights and obligations are parallel to those of the WTO? Such an argument is rather extreme since RTAs are explicitly permitted (with conditions attached) under Article XXIV of GATT and Article XIV of the General Agreement on Trade in Services,[63] and such is the practice of states as well.

If an RTA contains an exclusive forum clause, nothing appears to prevent a WTO panel from proceeding to examine a claim of WTO violation even if, in initiating the WTO dispute, the WTO complaining party may be in violation of its RTA obligation. As mentioned earlier in this article, in such a case, the WTO member that is also an RTA state, may, in initiating a parallel WTO dispute, be found to be violating its obligation under the RTA not to take a dispute outside the RTA and not to trigger a WTO claim regarding a related violation under the RTA. In these circumstances, the RTA state that is opposed to the parallel WTO panel could claim before the RTA panel that the WTO panel initiated by the other RTA party is impairing some of its benefits under the RTA. The RTA state that is opposed to a WTO dispute would arguably win this claim before the RTA dispute settlement body. Theoretically, that RTA state would then be entitled to some retaliation, the value of which could probably correspond to (part of) the benefits that the other RTA party could gain in initiating its WTO panel. In other words, a distinction must be made between the fact that parallel dispute settlement proceedings can be triggered (and arguably cannot be stopped

[62] The assumption is that the RTA otherwise respect the prescriptions of Article XXIV. See the Appellate Body report in *Turkey — Restrictions on Imports of Textile and Clothing Products*, supra note 4 at para. 48.

[63] GATS, *supra* note 4.

since there is as yet no international agreement on this issue) and the international responsibility of the concerned states, which, in doing so, may be in violation of their treaty obligations.

A large number of difficult issues remain unresolved. Members may consider the possibility of providing for the suspension or the exhaustion of either the WTO or the RTA process in certain circumstances subject to identified criteria. Exchanges of information between RTAs and the WTO Secretariats can also be envisaged. Finally, the relationship between the rulings of RTAs and those of the WTO can also be negotiated. Since there is no "international constitution" regulating the relationship between the dispute settlement procedures of regional and other multilateral agreements, nor any treaty provision on the matter in the WTO or elsewhere, the position taken by the parties to one of these agreements cannot be sufficient to prevent a different forum from adjudicating on a similar matter within its jurisdiction. Hence, there is the potential for tensions in their overlaps and the need to consider that the issue is authentic. At the moment, there is no solution for this matter until a set of common rules is negotiated.

Conclusion

There could be overlaps or conflicts of judicial jurisdiction between the dispute settlement mechanism of the WTO and RTAs. The wording of Article 23 and the quasi-automaticity process of the DSU makes it evident that a WTO adjudicating body always has the authority and even the obligation to examine claims of violations of WTO obligations. WTO rights and obligations can be challenged only pursuant to the WTO dispute settlement procedures and only before a WTO adjudicating body (Article 23 of the DSU).[64] In addition, as stated earlier, in the context of a dispute between two WTO members involving situations covered by both a RTA and the WTO Agreement, any WTO member that considers that any of its WTO benefits have been nullified or impaired has the absolute right to trigger the WTO dispute settlement mechanism and to request the establishment of a panel.[65] Such a WTO member cannot be asked, and arguably cannot even agree, to take its WTO dispute to another forum, even if that other forum appears to be more

[64] Even an arbitration performed pursuant to Article 25 of the DSU would be a WTO arbitration, hence, covered by the exclusivity provision of Article 23 of the DSU.

[65] See note 8.

relevant or better equipped to deal with the sort of problems at issue. In so doing, the WTO member may be in violation of a RTA, but this matter is not for the WTO adjudicating body (under the existing WTO provisions). However, this WTO member may risk RTA retaliation that could be considered WTO compatible.

There appears to be no legal solution for a situation where two members are faced with two treaties that contain overlapping and potentially conflicting jurisdictions. Members remain obliged at all times to respect both treaties. However, this obligation on states may not suffice to stop a dispute settlement mechanism process triggered by a WTO member contrary to its RTA obligations. Tensions may also arise from the availability of RTA non-compulsory dispute settlement mechanisms with no binding effect even in the absence of strict *de jure* conflicts. It is not clear how members' benefits or their nullification in another forum could be taken by the WTO adjudicating bodies. For the time being, international law does not appear to offer any complete solution. It is therefore for WTO members to negotiate how they want to allocate jurisdiction between RTAs and the WTO and how the dispute settlement mechanism of RTAs and that of the WTO will operate. In the meantime, the general principle of good faith and principles of interpretation call for the "awareness" by jurisdictions and adjudicators of others' jurisdictions.

Sommaire

Chevauchements et conflits de compétences dans les mécanismes prévus par l'OMC et par les accords commerciaux régionaux

Cet article traite de l'attribution horizontale de compétences judiciaires dans le cadre des mécanismes de règlement de différends prévus par les accords commerciaux régionaux et ceux de l'Organisation mondiale du commerce (OMC). Un recoupement de compétences en matière du règlement de différends est possible dans certaines instances. Les recoupements, mais aussi les conflits de compétences sont inévitables, eu égard à la nature quasi automatique et obligatoire des mécanismes de règlement de différends de l'OMC. Afin d'approfondir le sujet, l'article passe en revue une série de principes du droit commercial international en matière de recoupements et de conflits de compétences: les notions de forum conveniens et forum non conveniens, de lis alibi pendens et de res judicata ainsi que les principes généraux du droit international: l'abus de procédure, l'abus des droits et la bonne foi, l'épuisement des recours en vertu des accords commerciaux

régionaux, les renvois à la Cour internationale de justice et la possibilité d'invoquer l'article 13 du Mémorandum d'accord sur les règlements des différends afin d'obtenir de la preuve déposée lors d'une procédure en vertu d'un accord commercial régional. Enfin, l'article suggère que dans l'état actuel du droit international, aucune règle ne semble offrir une solution qui permette de résoudre efficacement la question des conflits résultant d'un chevauchement de compétences dans le contexte de l'Accord de l'OMC et des accords commerciaux régionaux. Il appartient donc aux États de décider de l'opération des mécanismes de règlement des différends de l'OMC et des accords commerciaux régionaux ainsi que des interactions entre les deux. En conclusion, l'article suggère de nouvelles pistes de réflexion pour l'avenir.

Summary

Overlaps and Conflicts of Jurisdiction between the World Trade Organization and Regional Trade Agreements

This article addresses the issue of horizontal allocation of judicial jurisdiction between the dispute settlement mechanisms of regional trade agreements (RTAs) and that of the World Trade Organization (WTO). There could be various instances where overlaps of jurisdiction in dispute settlement could occur. Overlaps and even conflicts of jurisdiction are unavoidable due to the quasi-automatic and compulsory nature of the WTO dispute settlement mechanism. With a view to furthering discussions on this issue, the article proceeds to examine a number of principles of international commercial law that deal with overlaps and conflicts: forum conveniens *and* forum non conveniens*;* lis alibi pendens *and* res judicata *as well as the principle of general international law; abuse of process, abuse of rights, and good faith; the exhaustion of RTA remedies; reference to the International Court of Justice; and the possibility of invoking Article 13 of the DSU to obtain evidence from RTA proceedings. Finally, the article suggests that in the current state of international law, no rules seem to offer any effective answer to resolve conflicts resulting from overlaps of jurisdiction in the context of the WTO Agreement and RTAs. It is thus for states to decide how the dispute settlement mechanisms of the WTO and RTAs should operate and interact with each other. The article concludes by pointing to areas of further discussions.*

Table 1
Dispute Settlement Mechanisms of Regional Trade Agreements[1]

SECTION 1: CONSULTATION, GOOD OFFICES, CONCILIATION, AND MEDIATION

Dispute Settlement Provision	*Jurisdiction*	*Reference to WTO Dispute Settlement (DS) Mechanism*	*Binding Effect of Decision*	*Remedy or Other Countermeasures*	*Potential for Overlap*
Asia and the Pacific[2]					
Australia — New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)[3] • In addition to the provisions for consultations elsewhere in the agreement, ministers of the member states shall meet annually or otherwise as appropriate to review the operation of the agreement. • Consultations: The member states shall, at the request of either, promptly enter into consultations with a view to seeking an equitable and mutually satisfactory solution if the party that requested the consultation considers that an obligation under the agreement is not being fulfilled; a benefit conferred upon it by the agreement is being denied; the achievement of any objective of the agreement is frustrated; and a case of difficulty has arisen or may arise.	Non-compulsory	WTO DS mechanism not mentioned	No binding effect	Unilateral safeguard measures	Low

First Agreement on Trade Negotiations among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Bangkok Agreement)[4] • Consultations: If a participating state should consider that another participating state is not duly complying with any given provision under this agreement, and that such non-compliance adversely affects its own trade relations with that participating state, the former may make formal representation to the latter, which shall give due consideration to the representation made to it. • Referral to the Standing Committee:[5] If no satisfactory adjustment is effected between the participating states concerned within 120 days following the date on which such representation was made, the matter may be referred to the Standing Committee, which may, by majority vote, make to any participating state such recommendation as it considers appropriate. • Decision of the Standing Committee: If the participating state concerned does not comply with the recommendation of the Standing Committee, the latter may, by majority decisions authorize any participating state to suspend in relation to the non-complying state, the application of such obligations under this agreement as the Standing Committee considers appropriate.	Non-compulsory	WTO DS mechanism not mentioned	Binding effect	Appropriate measures: • The measures considered to be appropriate by the Standing Committee can be taken by the affected party. Unilateral suspension of concessions (safeguard measures): • Suspension of concessions is possible but should be notified to the other party, and the committee shall enter into consultations. • If the consultations fail, the party affected by such suspension shall have the right to withdraw equivalent concession(s)	Low

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to WTO Dispute Settlement (DS) Mechanism*	*Binding Effect of Decision*	*Remedy or Other Countermeasures*	*Potential for Overlap*
Agreement on South Asian Association for Regional Cooperation (SAARC) Preferential Trading Arrangement (SAPTA)[6] • Consultations: Each contracting state shall accord sympathetic consideration to, and shall afford adequate opportunity for consultations regarding such representations as may be made by another contracting state with respect to any matter affecting the operation of this agreement. • The Committee of Participants[7] may, at the request of a contracting state, consult with any contracting state in respect of any matter for which it has not been possible to find a satisfactory solution through such consultation. • Agreement between parties: Any dispute regarding the interpretation and application of the provisions of this agreement or any instrument adopted within its framework shall be amicably settled by agreement between the parties concerned. • Referral to committee: In the event of a failure to settle a dispute, it may be referred to the committee by a party to the dispute. The committee shall review the matter and make a recommendation thereon within 120 days from the date on which the dispute was submitted to it.	Non-compulsory	WTO DS mechanism not mentioned	No binding effect	Unilateral suspension of concessions (safeguard measures): • Same as Bangkok Agreement	Low

South Pacific Regional Trade and Economic Agreement (SPARTECA)[8] • Consultations: A party may at any time request consultations on any matter related to the implementation of the agreement. • Director: Any such request shall be submitted in writing to the director of the South Pacific Bureau for Economic Co-operation. On receipt of a request for consultations, the director shall inform the parties accordingly and arrange for consultations between interested parties.	Non-compulsory	WTO DS mechanism not mentioned	No binding effect	Unilateral variation or suspension of obligations (unilateral safeguard measures): • If, after consulting the other party, a mutually satisfactory solution is not available, then the party may vary or suspend its obligations.	Low
Melanesian Spearhead Group[9] • Consultation: Consultation shall take place between the parties, if a party is of the opinion that any benefits conferred on it by this agreement are not being achieved. • Institutional Framework.[10] The consultations shall take place through the institutional framework of the agreement.	Non-compulsory	WTO DS mechanism not mentioned	No binding effect	Unilateral suspension of obligations (safeguard measures): • Same as SPARTECA	Low

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to WTO Dispute Settlement (DS) Mechanism*	*Binding Effect of Decision*	*Remedy or Other Countermeasures*	*Potential for Overlap*
Europe and the Mediterranean					
Central European Free Trade Agreement (CEFTA)[11] • Exchange of information and consultation within the committee: For the purpose of the proper implementation of this agreement, the parties to it shall exchange information and, at the request of any party, shall hold consultations within a joint committee. • Decision-making at the Joint Committee:[12] The Joint Committee is responsible for administration and implementation, keeps under review the possibility of removing further obstacles to trade between the parties. The committee shall/may make decisions in the cases provided for in the agreement and make recommendations on other matters.	Non-compulsory	WTO DS mechanism not mentioned	No binding effect	Unilateral safeguard measures: • If the party considers that the other party has failed to fulfil its obligations under the agreement, the party may take appropriate measures.	Low
FTAs between European Free Trade Association (EFTA)[13] • Same as CEFTA	Same as CEFTA	Same as CEFTA	Same as CEFTA	Same as CEFTA	Low
FTAs between two states[14] • Same as CEFTA	Same as CEFTA	Same as CEFTA	Same as CEFTA	Same as CEFTA	Low

FTAs between European Community (EC) and other countries[15] • Same as CEFTA	Same as CEFTA	Same as CEFTA	Same as CEFTA	Same as CEFTA	Low
Association agreements:[16] EC — Cyprus and EC — Malta • Exchange of information and consultation within Association Council:[17] For the purpose of the proper implementation of this agreement, the parties shall exchange information and, at the request of any party, hold consultations. • Decision-making at Association Council: The Association Council is responsible for administration and implementation and shall keep under review the possibility of removing further obstacles to trade between the parties. The council shall make decisions by common agreement in the cases provided for in the agreement. On other matters, the council may make recommendations.	Non-compulsory	WTO DS mechanism not mentioned	No binding effect	Unilateral safeguard measures: • In case of serious difficulties in the economic situation of either party, the party may take the necessary protective measures. Such measures shall be notified to the Association Council.	Low
Cooperation Agreement between the EC and the former Yugoslav Republic of Macedonia (FYROM)[18] • Decision-making at the Cooperation Council:[19] Each party may refer to the cooperation council any dispute relating to the application or interpretation of the agreement. The council may settle the dispute by means of a binding decision.	Non-compulsory	WTO DS mechanism not mentioned	Binding effect	Direct recourse to retaliation: • If a party considers that the other party has failed to fulfil an obligation under the agreement, it may take appropriate measures. Unilateral safeguard measures	Low

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to WTO Dispute Settlement (DS) Mechanism*	*Binding Effect of Decision*	*Remedy or Other Countermeasures*	*Potential for Overlap*
Cooperation agreements:[20] EC — Jordan; EC — Lebanon; and EC — Syria • Referral to Cooperation Council:[21] The parties shall take any general or specific measures to fulfil their obligations under the agreement. If either party considers that the other party has failed to fulfil an obligation under the agreement, it may take appropriate measures. Before so doing, it shall supply the Cooperation Council with all relevant information for a thorough examination of the situation with a view to seeking a solution acceptable to the parties.	Non-compulsory	WTO DS mechanism not mentioned	Binding effect	Direct recourse to retaliation Unilateral safeguard measures: • Same as the Cooperation Agreement between the EC — FYROM	Low
Bilateral Agreement between Kyrgyz and Uzbekistan[22] • Negotiation or other means: Disputes between the parties regarding the interpretation or application of the provisions shall be settled by way of negotiations or by any other way acceptable for the parties.	Non-compulsory	WTO DS mechanism not mentioned	No binding effect		Low

America

Latin American Integration Association (ALADI)[25] • Resolution 114: — Any member state may request that consultations be held with any member country or countries that, in their view, take measures that are inconsistent with the commitments undertaken by virtue of the provisions of the 1980 Treaty of Montevideo or of relevant resolutions of the association. The request shall also be forwarded to the Committee of Representatives. — Consultations: Consultations shall begin within five days after the request is processed and shall conclude ten working days after consultations begin. The member countries agree to respond diligently to requests for consultations and to carry them out without delay in order to reach a mutually satisfactory solution. — Referral to the Committee of Representatives:[24] Should no satisfactory solution be achieved between the parties directly involved in the dispute at the end of the consultation period, the member countries may submit the matter to the Committee of Representatives. — The committee shall propose to the countries directly involved in the dispute, 15 days after the matter was submitted to its consideration, the formulas deemed most appropriate for settling the dispute.	Non-compulsory	WTO DS mechanism not mentioned	No binding effect	Low

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to WTO Dispute Settlement (DS) Mechanism*	*Binding Effect of Decision*	*Remedy or Other Countermeasures*	*Potential for Overlap*
• Article 35 of 1980 Treaty of Montevideo: — The Committee has the obligation to propose formulas for the resolution of matters raised by the member states, when the failure to observe some of the rules or principles of the present treaty has been alleged.					
Inter-regional					
Agreement on the Global System of Trade Preferences among Developing Countries (GSTP)[25] • Consultations: Any dispute that may arise among the participants regarding the interpretation and application of the agreement or any instrument adopted within its framework shall be amicably settled by agreement between the parties through consultation. • Recommendation of Committee:[26] In the event of a failure to settle a dispute through consultations, it may be referred to a committee by a party to the dispute. The committee shall review the matter and make a recommendation within 120 days from the date on which the dispute was submitted to it.	Non-compulsory	WTO DS mechanism not mentioned	No binding effect	Unilateral suspension of concessions: • If a party considers that the value of concessions or any benefit from the agreement is being nullified or impaired, the party may consult the other party.	Low

- If the consultations fail, the matter may be referred to the committee, which may make recommendations.
- If no satisfactory adjustment is made within ninety days after the recommendations, the party may suspend concessions.

Table 1 *(continued)*

SECTION 2: ARBITRATION[27]

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
Asia and the Pacific					
ASEAN Free-Trade Area (AFTA)[29] • Protocol on Dispute Settlement Mechanism:[30] — A member state involved in a dispute can resort to other fora at any stage before the Senior Economic Officials Meeting (SEOM)[31] has made a ruling on the panel report. — Consultations: Members shall accord adequate opportunity for consultations regarding any representation made by other members with respect to any matter affecting the implementation of the agreement. Any differences between the members concerning the interpretation or application of the agreement shall, as far as possible, be settled amicably between the parties. — Good offices, conciliation, or mediation: Member states that are parties to a dispute may at any time agree to good offices, conciliation, or mediation. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation, or mediation are terminated, a complaining party may then proceed to raise the matter to the SEOM.	Non-compulsory	WTO DS mechanism not mentioned	Binding effect: • Arbitration: The party shall comply with the rulings of the arbitration tribunal within a reasonable time-period. If the party fails to do so, that party may consult with the complaining party. If no mutually satisfactory resolution is reached, the complaining party may request authorization for suspension of benefits from the AEM.	Arbitration award: • Decision by the AEM	High

— Referral to the SEOM: If the consultations fail to settle a dispute within sixty days after the date of receipt of the request for consultations, the matter shall be raised in the SEOM. The SEOM shall establish a panel or, where applicable, raise the matter to the special body in charge of the special or additional rules and procedures for its consideration. However, if the SEOM considers it desirable to do so in a particular case, it may decide to deal with the dispute to achieve an amicable settlement without appointing a panel.
— Establishment of the panel: The SEOM shall establish a panel within thirty days after the date on which the dispute has been raised to it. The SEOM shall make the final determination of the size, composition, and terms of reference of the panel. The panel shall submit its findings to the SEOM.
— Decision by the SEOM: The SEOM shall consider the report of the panel in its deliberations and make a ruling on the dispute within thirty days from the submission of the report.
— Appeal: Parties to the dispute may appeal the ruling by the SEOM to the ASEAN Economic Ministers (AEM)[52] within thirty days of the ruling. The AEM shall make a decision based on a simple majority.

• Appeal with the AEM: The decision of the AEM on appeal shall be final and binding on all parties to the dispute.

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
Agreement between New Zealand and Singapore on a Closer Economic Relationship (ANZSCEP)[33] • Consultation: The parties shall consult each other concerning any matter that may affect the operation of the agreement. The parties shall try to reach a mutually satisfactory resolution of any matter through consultations. The parties may at any time agree to good offices, conciliation, or mediation. • Arbitral stage: If the consultations fail to settle a dispute within sixty days after the date of the receipt of the request for consultations, the complaining party may make a written request to the other party to appoint an arbitration tribunal. • Composition of the arbitral tribunal: The tribunal consists of three members. Each party shall appoint an arbitrator within thirty days of the receipt of the request, and the two arbitrators appointed shall designate by common agreement the third arbitrator, who shall chair the tribunal. If the chair has not been designated within one month from the appointment of second arbitration, the directorate-general of the WTO, at the request of either party, may select the chair.	Compulsory	WTO DS mechanism not mentioned. However, the rules and procedures of dispute settlement under the agreement shall apply to the parties in dispute but without prejudice to the rights of the parties to dispute settlement procedures under other agreements to which they are parties.	Binding effect: • The rulings of the arbitral tribunal shall be final and binding on the parties.	• The party shall comply with the rulings of the arbitration tribunal within a reasonable time period. • If the party fails to do so within the time limit, that party may consult with the complaining party. • If no mutually satisfactory resolution is reached, the complaining party may suspend the application of equivalent benefits.	Medium/High

Free trade area agreements:[34] EFTA — Morocco and EFTA — PLO • Referral to the Joint Committee:[35] For the purpose of the proper implementation of this agreement, the parties to it shall exchange information and, at the request of any party, shall hold consultations within a joint committee. • Decision-making at the Joint Committee: The Joint Committee is responsible for the administration and implementation and shall keep under review the possibility of further removing the obstacles to trade between the parties. The Joint Committee may make decisions in the cases provided for in the agreement. On other matters, the committee may make recommendations. • Arbitral stage: Disputes relating to the interpretation of rights and obligations of the parties, which have not been settled through consultation or the committee within six months, may be referred to arbitration by any party to the dispute by means of a written notification. • Composition of the Arbitral Tribunal: The complaining party will designate one panel member in its notification. Within a month from the receipt of the notification, the other party will designate one member. Within two months from the receipt of the notification, the two members already designated shall agree on the designation of a third member, who will become the president of the Arbitral Tribunal. The tribunal takes its decision by majority vote.	Non-compulsory	WTO DS mechanism not mentioned	Binding effect: • The arbitration award is binding and final upon the parties.	Direct recourse to retaliation: • If a party considers that the other party has failed to fulfil an obligation under the agreement, it may take appropriate measures. Decision of arbitration panel: • However, once the matter is referred to arbitration, the decision of the arbitration panel is binding.	Medium

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
Free trade area agreements between EFTA and certain countries[36] • Referral to Joint Committee:[37] The parties shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of disputes. At the request of a party, the consultations shall take place in the Joint Committee if any of the parties so request. • Arbitral stage: Disputes between the parties to this agreement, relating to the interpretation of rights and obligations under this agreement, which have not been settled through direct consultations or in the Joint Committee within ninety days from the date of the receipt of the request for consultations, may be referred to arbitration by any party to the dispute. • Composition of the Arbitral Tribunal: The complaining party will designate one panel member in its notification. Within a month from the receipt of the notification, the other party will designate one member. Within two months from the receipt of the notification, the two members already designated shall agree on the designation of a third member, who will become the president of the Arbitral Tribunal. The tribunal takes its decision by majority vote.	Non-compulsory	WTO DS mechanism not mentioned	Binding effect: • The arbitration award is binding and final upon the parties.	Direct recourse to retaliation: • Same as EFTA — Morocco/ PLO Decision of arbitration panel: • Same as EFTA — Morocco/ PLO	Medium

EFTA — Mexico[38] • Consultation: The parties shall at all times endeavour to agree on the interpretation and application of the agreement and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect their operation. • Referral to Joint Committee:[39] Each party may request consultations within the Joint Committee with respect to any matter relating to the application or interpretation of the agreement. The Joint Committee shall convene within thirty days of delivery of the request and shall endeavour to resolve the dispute promptly by means of a decision. That decision shall specify the implementing measures to be taken by the party concerned and the period of time to do so. • Arbitral stage: In case a party considers that a measure applied by the other party violates the agreement and such matter has not been resolved within fifteen days after the Joint Committee has convened or forty-five days after the delivery of the request for a Joint Committee meeting, either party may request in writing the establishment of an arbitration panel.	Compulsory jurisdiction	Exclusive forum clause: • Once the dispute settlement provisions of this agreement or the WTO Agreements have been initiated, the procedure initiated shall be used to the exclusion of any other. Forum election clause: • Disputes regarding any matter arising under both this agreement and the WTO Agreement may be settled in either form at the discretion of the complaining party.	Binding effect: • The decision of the arbitration panel is final and binding.	Decision of arbitration panel: • The party shall comply with the rulings of the arbitration tribunal within a reasonable time period. • If the party fails to do so within the time limit, that party may consult with the complaining party. • If no mutually satisfactory resolution is reached, the complaining party may suspend the application of equivalent benefits.	Medium

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
• Composition of arbitration panel: The panel consists of three members. Each party shall appoint an arbitrator, and the two arbitrators appointed shall designate by common agreement the third arbitrator, who shall chair the panel. If all three members have not been appointed within thirty days from receipt of notification, any party may request that the directorate-general of the WTO designates the member.		Recourse to DS procedure by a third party: • If a third party wishes to resort to DS procedures as a complainant under this agreement on the same matter, it must inform the notifying party. If these parties cannot agree on a single forum, the dispute normally shall be settled under this agreement.			

Customs Union between the EC and Andorra[40] • Referral to Joint Committee:[41] Any disputes arising between the contracting parties over the interpretation of the agreement shall be put before the Joint Committee. • Arbitral stage: If the Joint Committee does not succeed in settling the dispute at its next meeting, each party may notify the other of the designation of an arbitrator; the other party shall then be required to designate a second arbitrator within two months. The Joint Committee shall designate a third arbitrator. The arbitrator's decisions shall be taken by majority vote.	Compulsory	WTO DS mechanism not mentioned	Binding effect: • The arbitration award is binding and final upon the parties.	Direct recourse to retaliation: • Same as EFTA — Morocco/ PLO Decision of arbitration panel: • Same as EFTA — Morocco/ PLO	High
Customs Union between the EC and Turkey[42] • Consultation: In harmonizing the legislation, each party may consult each other within the Customs Union Joint Committee.[43] • Referral to Joint Committee: If a mutually acceptable solution is not found by the committee and if either party considers that discrepancies in the legislation may affect the free movement of goods, deflect trade, or create economic problems, it may refer the matter to the committee, which may make recommendations. If discrepancies cause or threaten to cause impairment of the free movement of goods or the deflection of trade, the party may take the necessary protection measures.	Compulsory	WTO DS mechanism not mentioned	Binding effect: • The arbitration award shall be binding on the parties.	Decision of arbitration panel	High

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
• Arbitral stage: If the Association Council[44] fails to settle a dispute relating to the scope or duration of protection measures, either party may refer the dispute to arbitration. • Composition of arbitration panel: There shall be three arbitrators, two appointed by each party and a third appointed by common agreement. The panel shall take its decisions by majority.					
Europe Agreements[45] • Referral to Association Council:[46] Each of the two parties may refer to the Association Council any dispute relating to the application or interpretation of the agreement. The Association Council may settle the dispute by means of a decision. Each party shall be bound to take the measures involved in carrying out the decision. • Arbitral stage: If it is impossible to settle the dispute by means of a decision, either party may notify the other of the appointment of an arbitrator; the other party must then appoint a second arbitrator within two months. The Association Council shall appoint a third arbitrator. The arbitrator's decisions shall be taken by majority vote.	Compulsory	WTO DS mechanism not mentioned	Binding effect: • The arbitration award is binding and final upon the parties.	Direct recourse to retaliation: • If a party considers that the other party has failed to fulfil an obligation, it may take appropriate measures. Decision of arbitration panel	High

Association agreements between the EC and certain countries:[47] • Same as Europe Agreements	Compulsory	WTO DS mechanism not mentioned	Same as Europe Agreements	Same as Europe Agreements	High
Cooperation Agreement between the EC and Algeria • Same as Europe Agreements	Compulsory	WTO DS mechanism not mentioned	Same as Europe Agreements	Same as Europe Agreements	High
Bilateral agreements[48] Same as Europe Agreements	Compulsory	WTO DS mechanism not mentioned	Same as Europe Agreements	Same as Europe Agreements	High
EC — Mexico[49] • Consultation: The parties shall endeavour to agree on the interpretation and application of the agreement and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect their operation. • Referral to Joint Committee:[50] Each party may request consultations within the Joint Committee with respect to any matter relating to the application or interpretation of the agreement. The Joint Committee shall convene within thirty days of delivery of the request and shall endeavour to resolve the dispute promptly by means of a decision, which should specify the implementing measure and the period for implementation.	Compulsory	Exclusive forum clause: • Recourse to the dispute settlement provisions of the agreement shall be without prejudice to any action in the WTO framework. However, where a party has instituted a DS proceeding under this agreement or	Binding effect: • Each party shall be bound to take the measures involved in carrying out the final arbitration report.	Decision of arbitration panel	High

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
• Arbitral stage: In case a party considers that a measure applied by the other party violates the agreement and such matter has not been resolved within fifteen days after the Joint Committee has convened or forty-five days after the delivery of the request for a Joint Committee meeting, either party may request in writing the establishment of an arbitration panel. • Composition of an arbitration panel: The panel consists of three members. Each party shall appoint an arbitrator, and the two arbitrators appointed shall designate by common agreement the third arbitrator, who is the chair of the panel.		the WTO Agreement, it shall not institute a DS proceeding on the same matter under the other forum until the end of the first proceeding. Arbitration proceedings under the agreement will not consider parties' rights and obligations under the WTO Agreement.			

Commonwealth of Independent States (CIS)[51] • Any disputes and disagreements between the members shall be settled in the following manner: conduct immediate consultations through a special conciliatory procedure; in the Economic Court of the CIS; through other procedures provided by international law. • Transition to the subsequent procedure is possible by mutual consent of the disputing parties or by the order of one of them if agreement is not reached within six months from the day of the beginning of the procedure.	Non-compulsory	WTO DS mechanism not mentioned	Binding effect		Medium/High
America[52]					
Central American Common Market (CACM)[53] • General Treaty on Central American Economic Integration: — Agreement: The parties may settle disputes concerning interpretation or application of the agreement amicably through the Executive Council[54] or the Central American Economic Council.[55] — Arbitral stage: If agreement cannot be reached, they shall submit the matter to arbitration. For the purpose of constituting the arbitration tribunal, the secretary-general of the Organization of Central American States and the government representatives in the organization shall select, by drawing lots, one arbitrator for each contracting party from a list containing the names of arbitrators proposed by each member state.	Compulsory	WTO DS mechanism not mentioned	Binding effect: • The award of the arbitration tribunal shall require the concurring votes of not less than three members and shall have the effect of *res judicata* for all the contracting parties so far as it contains any ruling concerning the interpretation	Decision of arbitration panel	High

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
• Protocol of Tegucigalpa: — Article 35: Any disagreement on the application or interpretation of the provisions contained in this protocol and any other convention, agreement, or protocol between the members (bilateral or multilateral) on Central American integration shall be put before the Central American Court of Justice. — Transitional provisions (Article 3) provides that, for the purposes of what is established in paragraph 2 of Article 35, until the Central American Court of Justice is established, disputes on the application or interpretation of the provisions in the protocol will be submitted to the Central American Judicial Council.			or application of the provisions of this treaty.		
US — Israel FTA[56] • Consultations: The parties shall make every attempt to arrive at a mutually agreeable resolution through consultations whenever: a dispute arises concerning the interpretation of the agreement; a party considers that the other party has failed to carry out its obligations under the agreement; or a party considers that measures taken by the other party severely distort the balance of trade benefits accorded by the agreement or substantially undermine fundamental objectives of the agreement.	Compulsory	WTO DS mechanism not mentioned. However, exclusive forum clause: • If the dispute settlement panel under the agreement or any other international dispute settlement mechanism is	No binding effect: • The panel report is not binding but the Joint Committee will make a final decision taking into account the panel decision.	Appropriate measures: • After a dispute has been referred to a panel and the panel has presented its report, the affected party shall be entitled to take any appropriate measure.	Medium

• Referral to Joint Committee:[57] If the parties fail to resolve a matter through consultations within sixty days, either party may refer the matter to the joint committee. • Arbitral stage: If a matter referred to the joint committee has not been resolved within three months, or within such other period as agreed upon, either party may refer the matter to a dispute settlement panel. The panel shall be composed of three members: each party will appoint one, and two appointees will choose a third.		invoked with respect to any matter, the mechanism shall have exclusive jurisdiction over that matter.			
Southern Common Market (MERCOSUR)[58] There are two tracks of dispute settlement mechanisms to which the parties can resort. Member states can either go straight to the Brasília Protocol, which is faster, or through the Ouro Preto Protocol, which is longer but provides for a technical committee phase and could allow more easily for mutually agreeable solutions. • Brasília Protocol — Chapter IV: — Direct negotiations: The state parties to any controversy will first attempt to resolve it through direct negotiations. They will inform the Common Market Group[59] regarding the actions undertaken during the negotiations and their results.	Compulsory: • The state parties declare that they recognize as obligatory, *ipso facto* and without need of a special agreement, the jurisdiction of the Arbitral Tribunal, which in each case is established in order to hear and resolve all	WTO DS mechanism not mentioned	Binding effect: • The decisions of the tribunal cannot be appealed, and are binding on the parties to the controversies from the moment the respective notification is received and will be deemed by them to have the effect of *res judicata.*	Decision of arbitration panel	High

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
— Participation of the Common Market Group: if the direct negotiations do not resolve the matter, any of the parties can submit for consideration by the Common Market Group, which will evaluate the situation. At the conclusion of the procedure (not exceeding thirty days), the Common Market Group will formulate its recommendations to the parties. — Arbitral stage: If direct negotiations and intervention by the Common Market Group fail, any of the state parties to the controversy can communicate to the Administrative Secretariat its intention to resort to the arbitral procedure. The tribunal shall issue its decision within sixty days, extendable for an additional thirty days, from the time its president is designated. The tribunal will take decision by majority vote. — Composition of the Arbitral Tribunal: Each state party will designate one arbitrator from a pre-existing list of names deposited at the Administrative Secretariat. The third arbitrator will be designated upon common agreement and will reside over the arbitral tribunal. The arbitrators should be named within fifteen days from the date on which the intention of one of the parties to resort to arbitration was communicated to the other parties to the controversy.	controversies that are referred to in the present protocol.				

- Protocol of Ouro Preto — Article 21 + Annex:
  - MERCOSUL Trade Commission: The commission receives complaints originating from member states or from private parties. It must consider the complaint in the first subsequent meeting. If no solution is agreed upon, then a technical committee (intergovernmental) is established. There are thirty days to elaborate joint recommendation or individual conclusions. The commission evaluates joint recommendation or conclusions in its next meeting.
  - Submission of Complaint to Common Market Group: If there is no consensus, the complaint is submitted to the Common Market Group, which will have thirty days to consider the complaint. If a consensus is reached, a deadline is given to the member state to take measures. If there is no consensus or the member state does not implement measures, Chapter IV of the Brasília Protocol — Ad Hoc Arbitral Tribunal is invoked.
- Protocol of Olivos for the Solution of Controversies:
  - The new Protocol of Olivos Protocol was signed in Buenos Aires on 18 February 2002 and changes the mechanism in fundamental ways (Appellate Body, WTO clause, and so on) and will enter into force after ratification and will replace the Brasília Protocol.

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
North American Free-Trade Agreement (NAFTA)[60] — Cooperation: The parties shall at all times endeavour to agree on the interpretation and application of the agreement and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation. — Consultations: If the matter is not settled through cooperation, either party may request in writing consultations with the other party regarding the interpretation or application of the agreement, or wherever a party considers that an actual or proposed measure of the other party is, or would be, inconsistent with the obligations of this agreement or cause nullification or impairment. — Commission[61] — Good Offices, Conciliation and Mediation: If the parties fail to resolve a matter through consultations within the time limit (thirty days of delivery of a request for consultations, fifteen days of delivery of a request for consultations on matters of urgency, or any other period as they may agree), either party may request in writing a meeting of the commission.	Compulsory	Exclusive forum clause: • Once the dispute settlement provisions of this agreement or the WTO Agreement have been initiated, the procedure initiated shall be used to the exclusion of any other. Forum election clause: • Disputes regarding any matter arising under both this agreement and the WTO Agreement may be settled in either form at the	Binding effect: • On receipt of the final report of a panel, the disputing parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel, and shall notify their sections of the Secretariat of any agreed resolution of any dispute.	Suspension of benefits: • If the final panel report determined that a measure is inconsistent with the obligations of the agreement or causes nullification or impairment, and the respondent party has not agreed with the complaining party on a mutually satisfactory solution within thirty days of receiving the final report, the complaining party may	High

— Arbitral stage: If the matter has not been resolved, either party may request in writing the establishment of an arbitral panel within the time limit (thirty days after the commission has convened for the meeting, thirty days after the commission has convened with respect to the matter most referred to it, where proceedings have been consolidated, and such other period as the parties may agree). On delivery of the request, the commission shall establish an arbitral panel. The panel issues the initial report and the parties have the opportunity to submit their comment. The panel issues its final report. — Composition of arbitration panel: The panel shall comprise three members. Each party shall select one panelist and will agree on a third panelist, who shall serve as chair of the panel.	discretion of the complaining party. • An exception is made with respect to claims involving environmental, SPS, and technical standards matters, for which the responding party may demand that the matter be settled by a NAFTA panel. • Recourse to DS procedure by a third party: If a third party wishes to have recourse to NAFTA DS procedures on the same matter and if these parties cannot agree on a single forum, the dispute normally shall be settled under the NAFTA agreement.	suspend the application of benefits of equivalent effect until the measures complained against have been removed or a mutually satisfactory solution is reached.	High

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
Canada — Israel FTA[62] • Same as NAFTA	Compulsory	Exclusive forum clause Forum election clause: • In the event of any inconsistency between this agreement and the WTO Agreement, this agreement shall prevail to the extent of the inconsistency, except as otherwise provided in the agreement.	Binding effect: • Same as NAFTA.	Suspension of benefits: • Same as NAFTA, except, insert "30 days of receiving the final report if the measure was found to be inconsistent with the agreement or within 180 days if the measure was found to cause nullification or impairment" instead of "30 days of receiving final report."	High

Canada — Chile FTA[63] • Same as NAFTA	Compulsory	Exclusive forum clause: Forum election clause: • If the party claims that its action is subject to Article A-04 (relation to environmental and conservation agreements) and request that the matter be considered under this agreement, then the party has the sole recourse to dispute settlement under the agreement.	Binding effect: • Same as NAFTA	Suspension of benefits: • Same as NAFTA	High

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
Chile — Mexico FTA[64] • Same as NAFTA	Compulsory	Exclusive forum clause: Forum election clause: • If the responding party claims that its action is subject to Article 1-06 (relation to environmental and conservation agreements) and request that the matter be considered under this agreement, the complaining party may have recourse to dispute settlement procedures solely under this agreement.	Binding effect: • Unless the Commission decides otherwise, the final report of the panel shall be published. The final report of the panel is binding on the parties.	Suspension of benefits: • Same as NAFTA	High

Israel — Mexico FTA[65] • Same as NAFTA	Compulsory	Exclusive forum clause Forum election clause	Binding effect: • Same as NAFTA	Suspension of benefits	High
US — Jordan FTA[66] • Consultations: The parties shall make every attempt to arrive at a mutually agreeable resolution through consultations whenever: a dispute arises concerning the interpretation of the agreement; a party considers that the other party has failed to carry out its obligations under the agreement; or a party considers that measures taken by the other party severely distort the balance of trade benefits accorded by the agreement; or substantially undermine fundamental objectives of the agreement. • Referral to the Joint Committee:[67] If the parties fail to resolve a matter through consultations within sixty days, either party may refer the matter to the joint committee. • Arbitral stage: If a matter referred to the joint committee has not been resolved within three months, or within such other period as agreed upon, either party may refer the matter to a dispute settlement panel. The panel shall be composed of three members: each party will appoint one, and two appointees will choose a third.	Compulsory	WTO DS mechanism not mentioned. However, exclusive forum clause: • If the panel under the agreement or any other international dispute settlement mechanism is invoked with respect to any matter, the mechanism shall have exclusive jurisdiction over that matter.	No binding effect: • After the presentation of the panel report, the Joint Committee shall try to resolve the matter taking into account the report. • If the committee does not resolve the dispute within one month, the affected party is entitled to take appropriate measures.	Appropriate measures	Medium

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Reference to GATT/WTO DS Mechanism*	*Binding Effect of the Decision*	*Remedy*[28]	*Potential for for Overlap*
Inter-regional					
African Caribbean Pacific (ACP) — EC Partnership Agreement • Referral to the Council: Any dispute arising from the interpretation or application of this agreement between one or more member states or the EC and one or more ACP states, shall be submitted to the Council of Ministers.[68] Between the meetings of the Council of Ministers, such disputes shall be submitted to the Committee of Ambassadors. • Arbitral stage: If the Council of Ministers does not succeed in settling the dispute, either party may request settlement of the dispute by arbitration. To this end, each party shall appoint an arbitrator within thirty days of the request for arbitration. In the event of failure to do so, either party may ask the secretary-general of the Permanent Court of Arbitration to appoint the second arbitrator. • The two arbitrators shall in turn appoint a third arbitrator within thirty days. In the event of failure to do so, either party may ask the secretary-general of the Permanent Court of Arbitration to appoint the third arbitrator. • The arbitrators' decisions shall be taken by majority vote within three months.	Non-compulsory	WTO DS mechanism not mentioned	Binding effect: • Each party to the dispute shall be bound to take the measures necessary to carry out the decision of the arbitrators.		

Table 1 *(continued)*

SECTION 3: STANDING TRIBUNAL[69]

Dispute Settlement Provision	*Jurisdiction*	*Binding Effect of the Decision*	*Potential for Overlap*
Europe			
European Economic Area (EEA) Agreement[70] • Alleged infringement of EEA law by a state party • Informal stage • Pre 31-Letter sent to the concerned state by the Surveillance Authority • The EFTA state submits comments to the authority (within one to two months) • Letter of formal notice • The EFTA state submits comments to the authority (normally within two months) • Reasoned opinion by the authority • The EFTA state replies to the opinion (normally within two months) • Decision on referral to the EFTA Court Proceedings before the EFTA Court • The court is mainly competent to deal with infringement actions brought by the EFTA Surveillance Authority against an EFTA state with regard to the implementation, application, or interpretation of an EEA rule, for the settlement of disputes between two or more EFTA states, for appeals concerning decisions taken by the EFTA Surveillance Authority and for giving advisory opinions to courts in EFTA states on the interpretation of EEA rules.	Compulsory jurisdiction: • The EFTA Court has jurisdiction with regard to EFTA states that are parties to the EEA Agreement (at present Iceland, Liechtenstein, and Norway). Exclusive jurisdiction	Binding effect Direct effect	High
Customs Union[71]			

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Binding Effect of the Decision*	*Potential for Overlap*
• The community court will provide guarantees of uniform enforcement by the parties of this agreement and other agreements between the community members and decisions taken by community institutions. • The court shall also consider economic disputes arising between the parties on issues of implementation of decisions of the community institution and provisions of agreements effective between members, and provide explanations and opinions.	Compulsory jurisdiction Exclusive jurisdiction	Binding effect	High
America			
Andean Subregional Integration Agreement[72] (Cartegena Agreement) • Action of nullification: It is up to the court to nullify the decisions taken by the commission[73] and the resolutions issued by the Board that violate the rules comprising the legal system of the Cartagena Agreement. When the Board considers that a member state has failed to fulfil the obligations from the Cartagena Agreement, it shall make its observations in writing, to which the member country must reply within two months. The Board shall issue a reasoned opinion. If, in the Board's opinion, the member country failed to fulfil the obligations mentioned above and continues to do so, the Board may request a verdict from the court.	Compulsory jurisdiction Exclusive jurisdiction: • Member countries shall not submit any controversy arising from the application of rules comprising the legal system of the Cartagena Agreement to any court, arbitration system, or proceeding other than those contemplated herein.	Binding effect: • If the court rules finds non-compliance, the member country at fault shall take the necessary steps to execute the judgment within three months after notification.	High

• Action of non-compliance: When a member country considers that another member country has failed to fulfil the obligations from the agreement, it may raise its claim with the Board, stating all of the background of the case, so that the Board can issue a reasoned opinion. If, in the Board's opinion, the member country failed to fulfil its obligations and continues to do so, the Board may request a verdict from the court. Should the Board not file the action within two months after the date of its judgment, the claiming country may appeal directly to the court. Should the Board fail to pronounce judgment within three months from the date the claim was submitted, or rule against the noncompliance, then the claiming country may appeal directly to the court. • Prejudicial interpretation: It is up to the court to issue a prejudicial interpretation of the rules comprising the legal system of the Cartagena Agreement, in order to ensure its uniform application in the territories of member countries.	• Member countries hereby agree to make use of the procedure established in Article 23 (action for non-compliance) of the Cartagena Agreement only for controversies arising between any one of them and another contracting party of the Montevideo Treaty that is not a member of the agreement.		
Treaty Establishing the Caribbean Community (Caricom)[74] • Modes of dispute settlement: Disputes shall be settled only by recourse to the following modes: good offices, mediation, consultation, conciliation, arbitration, and adjudication. If a dispute is not settled using one of the modes other than arbitration or adjudication, either party may have recourse to another mode. • Expeditious settlement of disputes: When a dispute arises between member states, the parties shall proceed expeditiously to an exchange of views to agree on a mode of settlement and a mutually satisfactory implementation method.	Compulsory jurisdiction Exclusive jurisdiction	Binding effect	High

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Binding Effect of the Decision*	*Potential for Overlap*
• Notification of existence and settlement of dispute: Member states to a dispute shall notify the secretary-general of the existence and nature of the dispute and any mode of dispute settlement agreed upon or initiated. When a settlement is reached, the member states concerned shall notify the secretary-general of the settlement and the mode used in arriving at the settlement. • Good offices, mediation, and consultations: Parties to a dispute may agree to employ the good offices of a third party or agree to settle the dispute by recourse to mediation. • Consultations: A member state shall enter into consultations upon the request of another member state where the requesting member state alleges that an action taken by the requested member state constitutes a breach of obligations arising from, or under, the provisions of the treaty. • Conciliation Commission: Where member states parties to a dispute have agreed to submit the dispute to conciliation, any such member state may institute proceedings by notification addressed to the other party or parties to the dispute. The complaining party chooses one conciliator from a list of conciliators and the other party does the same. Two conciliators will appoint a third conciliator from the list, who will be the chairman. The decision shall be made by majority vote. • Arbitration tribunal: A party to a dispute may, with the consent of the other party, refer the matter to an arbitration tribunal. Each of the parties will appoint one arbitrator from the list of arbitrators. The two arbitrators shall appoint a third arbitrator.			

• Judicial settlement: The court has compulsory and exclusive jurisdiction to hear disputes concerning the interpretation and application of the treaty. The court has exclusive jurisdiction on inter-state disputes, disputes between members and the Caricom, referrals from national courts of members, and persons. The court shall have exclusive jurisdiction to deliver advisory opinions concerning the interpretation and application of the treaty.			
Africa			
Common Market for Eastern and Southern Africa (COMESA)[75] • The court has jurisdiction to hear the following: disputes between states, disputes between the state and the COMESA institutions, claims from members, the secretary general, and legal and natural persons, claims against COMESA or its institutions by COMESA employees and third parties, and claims arising from arbitration clauses and special agreement.	Compulsory jurisdiction: • The court shall have jurisdiction to adjudicate upon all matters that may be referred to it pursuant to the treaty.	Binding effect	High
Economic Community of Central African States (CEEAC); Communauté et monétaire de l'Afrique Centrale (CEMAC)[76] • La Cour de Justice Communautaire comporte deux Chambres: Une Chambre Judiciaire et une Chambre des Comptes. • La Cour de Judiciaire de la Communauté est régie par une Convention spécipique.	Compulsory jurisdiction • La Chambre Judiciaire de la Communauté connaît des litiges liés à la mise en oeuvre de la Convention régissant l' Union Économique de l'Afrique Centrale.	Binding effect	High
East African Community (EAC)[77] • The court can hear claims from members, the secretary general, persons, claims against the EAC or its institutions by EAC employees and third parties, and claims arising from the arbitration clause and special agreement.	Compulsory jurisdiction: • The court shall initially have jurisdiction over the interpretation and application of the treaty.		

Table 1 *(continued)*

Dispute Settlement Provision	*Jurisdiction*	*Binding Effect of the Decision*	*Potential for Overlap*
	• The court shall have such other original, appellate, human rights, and other jurisdictions as will be determined by the council at a suitable subsequent date. To this end, the partner states shall conclude a protocol to operationalize the extended jurisdiction.		
Traité de l'Union Economique et Monetaire Ouest Africaine (UEMOA) West African Economic Monetary Union (WAEMU)[78] • La Cour de Justice connaît, sur recours de la Commission ou de tout Etat member, des manquements des Etats membres aux obligations qui leur incombent en vertue du Traité de L'Union. • La Cour de Justice statue à titre préjudicionnel sur l'interpretation du Traité de l'Union sur la légalité et l'interprétation des status des organismes créés par un acte du Conseil. • La Court de justice connaît des litiges relatifs à la réparation des dommages causés par les organes de l'Union, des litiges entre l'Union et ses agents, et des différends entre membres relatifs	Compulsory jurisdiction: • La cour de Justice veille au respect du droit quant à l'interprétation et à l'application du Traité de L'Union au Traité de l'Union.	Binding effect	High

[1] Table 1 is based on the wording of the treaties, but the practices of states may be different. The table does not include regional trade agreements that have not been notified to the World Trade Organization (WTO).

[2] The agreements in Table 1 only include the agreements that have been notified to the WTO.

[3] The agreement entered into force on 1 January 1983.

[4] The agreement is a preferential tariff arrangement that aims at promoting intra-regional trade through exchange of mutually agreed concessions by member countries. The agreement entered into force on 17 June 1976. Current signatories are Bangladesh, China, India, Republic of Korea, Lao People's Democratic Republic and Sri Lanka.

[5] A Standing Committee of the participating states members of the Economic and Social Commission for the Asia and the Pacific (ESCAP) Trade Negotiations Group consists of the representatives of the countries participating in the agreement.

[6] The agreement entered into force on 7 December 1995. Current signatories are Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

[7] The Committee of Participants is composed of the contracting states.

[8] SPARTECA is a non-reciprocal trade agreement under which the two developed nations of the South Pacific Forum, Australia, and New Zealand offer duty free and unrestricted or concessional access for virtually all products originating from the developing island member countries of the forum. SPARTECA was signed by most forum members at the forum's eleventh meeting in Kiribati on 14 July 1980. It came into effect for most Forum Island countries (FIC) on 1 January 1981. With the joining of new members to the forum, the current list of FIC signatories to SPARTECA includes the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu, and Western Samoa.

[9] The agreement entered into force on 22 July 1993. The initial members were Papua New Guinea, Solomon Islands, and Vanuatu. Fiji became a formal member of the agreement on 14 April 1998.

[10] Under the Melanesian Spearhead Group Institutional Framework, the Annual Summit of Heads of Governments of the Melanesian Spearhead Group provides policy directions with respect to the implementation of the agreement. Trade officials of the parties meet annually prior to the annual summit of heads of governments to jointly review trade matters among the parties. The annual summit of the heads of governments may decide from time to time to establish technical committees to oversee the implementation of specific fields of activity of this agreement.

[11] On 21 December 1992, the Former Czechoslovakia, Hungary, and Poland signed the Central European Free Trade Agreement (CEFTA). On 1 March 1993, CEFTA entered into force. Slovenia, Romania, and Bulgaria joined afterwards.

[12] The Joint Committee is composed of the representatives of the parties, who act by common agreement.

[13] These agreements include the FTAs concerning: EFTA — Czech Republic; EFTA — Hungary; EFTA — Poland; EFTA — Romania; EFTA — Slovak Republic; and EFTA — Turkey. The FTA with the former Czech and Slovak Federative Republic (CSFR) entered into force on 1 July 1992. In the wake of the dissolution, two separate but identical FTAs with the Czech Republic and the Slovak Republic superseded the original one. The FTA with Hungary entered into force on 1 October 1993 and the FTA with Poland entered into force on 1 September 1994. FTAs entered into force on 1 May 1993 for Romania. The FTA with Turkey entered into force on 1 April 1992.

[14] Croatia — Hungary, Czech Republic — Estonia, Czech Republic — Latvia, Czech Republic — Turkey, Faroe Islands — Estonia, Faroe Islands — Iceland, Faroe Islands — Norway, Faroe Islands — Poland, Faroe Islands — Switzerland, Hungary — Estonia, Hungary — Latvia, Hungary — Lithuania, Hungary — Slovenia, Hungary — Turkey, Latvia — Estonia, Latvia — Poland, Latvia — Slovak Republic, Romania — Turkey, Slovak Republic — Estonia, Slovenia — Croatia, Slovenia — Estonia, Slovenia — FYROM, Slovenia — Latvia, Slovenia — Lithuania, Turkey — Bulgaria, Turkey — Estonia, Turkey — Latvia, Turkey — Lithuania, Turkey — Slovak Republic, and Ukraine — Estonia.

[15] These agreements concern: EC — Faroe Islands; EC — Iceland; EC — Norway; and EC — Switzerland. The agreements entered into force for Faroe Islands on 1 January 1997, for Iceland on 1 April 1973, for Norway on 1 July 1973, and for Switzerland on 1 January 1973.

[16] The EC — Cyprus Agreement entered into force on 1 June 1973, and the EC — Malta Agreement entered into force on 1 April 1971.

[17] The Association Council consists of the members of the Council and members of the Commission of the EC and of members of the government of the Republic of Cyprus/Malta.

[18] The EC — FYROM Agreement entered into force on 1 January 1998.

[19] The Cooperation Council is composed of representatives of the EC and its member states and of representatives from the FYROM.

[20] The EC — Jordan, EC — Lebanon, and EC — Syria agreements all entered into force on 1 July 1977.

[21] The Cooperation Council is composed of representatives of the EC and of its member states and of representatives of Jordan/Lebanon/Syria. The Cooperation Council acts by mutual agreement between the EC and Jordan/Lebanon/Syria.
[22] The agreement entered into force on 20 March 1998.
[23] The agreement entered into force on 18 March 1981. Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela are current signatories.
[24] The committee is the permanent organ of the association and is constituted by one permanent representative from each member state with the right to one vote. Each permanent representative has an alternate.
[25] The agreement entered into force on 19 April 1989. Forty-four countries are GSTP participants. See <http://www.g77.org/gstp/#members> for the full list.
[26] A Committee of Participants consists of the representatives of the governments of participants. The committee takes decisions by two-thirds majority on matters of substance and a simple majority on matters of procedure.
[27] Arbitration is a more judicial and adversarial system, whereas consultations mechanism in a political and diplomatic system. The arbitration procedure is normally used after the consultation mechanism is exhausted.
[28] In addition to the remedy provided by the arbitration panel, unilateral safeguard measures adopted by either party are generally available for the agreements in this section (see Section 2: Arbitration).
[29] The agreement entered into force on 31 August 1977. Brunei Darussalam, Cambodia, Republic of Indonesia, Malaysia, Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and Vietnam are the current signatories.
[30] The protocol has not been notified to the WTO.
[31] The SEOM consists of senior economic officials of the contracting states.
[32] The AEM consists of economic ministers of the contracting states.
[33] The agreement entered into force on 1 January 2001.
[34] The EFTA — Morocco FTA entered into force on 1 December 1999. The interim EFTA — PLO FTA entered into force on 1 July 1999.
[35] The Joint Committee consists of the representatives of the parties and acts by common agreement.
[36] These agreements concern: EFTA — Bulgaria; EFTA — Croatia; EFTA — Estonia; EFTA — FYROM; EFTA — Israel; EFTA — Jordan; EFTA — Latvia; EFTA — Lithuania; and EFTA — Slovenia. The agreements entered into force for Bulgaria on 1 July 1993, for Croatia on 1 January 2002, for Estonia on 1 October 1997, for FYROM on 19 June 2000, for Israel on 1 January 1993, for Jordan on 21 June 2001, for Latvia on 1 June 1996, for Lithuania on 1 January 1997, and for Slovenia on 1 September 1998.
[37] The Joint Committee consists of the representatives of the parties and acts by common agreement.
[38] The EFTA — Mexico Agreement entered into force on 1 July 2001.
[39] The Joint Committee consists of representatives of the parties and acts by consensus.
[40] The agreement entered into force on 1 July 1991.
[41] The Joint Committee is composed of representatives of the EC and of representatives of the Principality of Andorra.
[42] The agreement entered into force on 31 December 1995.
[43] The Joint Committee consists of the representatives of EC and Turkey. It acts by common agreement.
[44] The Association Council consists of the members of the Council of the EC and members of the Commission of the EC and of members of the government of Turkey.
[45] The Europe Agreements were concluded with respect to: EC — Bulgaria; EC — Czech Rep.; EC — Estonia; EC — Hungary; EC — Latvia; EC — Lithuania; EC — Poland; EC — Romania; EC — Slovak Rep.; and EC — Slovenia. The agreements entered into force for Bulgaria on 31 December 1993, for Czech Republic on 1 March 1992, for Estonia on 1 January 1995, for Hungary on 1 March 1992, for Latvia on 1 January 1995, for Lithuania on 1 January 1995, for Poland on 1 March 1992, for Romania on 1 May 1993, for Slovak Republic on 1 March 1992, and for Slovenia on 1 January 1997.
[46] An Association Council consists of the members of the Council of the EC and members of the Commission of the EC and of members of the governments of participating states.

[47] These agreements concern: EC — Israel; EC — Morocco; EC — PLO; and EC — Tunisia. The agreements entered into force for Israel on 1 June 2000, for Morocco on 1 March 2000, for the PLO on 1 July 1997, and for Tunisia on 1 March 1998.
[48] These agreements are: Czech Republic — Israel, Israel — Poland, Israel - Slovak Republic, Israel — Slovenia, Israel — Turkey, and Slovenia — Turkey.
[49] The EC — Mexico Agreement entered into force on 1 July 2000.
[50] The Joint Committee consists of the representatives of the parties and acts by common agreement.
[51] The agreement entered into force on 30 December 1994. Azerbaijan Republic, Republic of Armenia, Republic of Belarus, Republic of Georgia, Republic of Kazakstan, Kyrgyz Republic, Republic of Moldova, Russian Federation, Republic of Tajikistan, Republic of Uzbekistan, and Ukraine are the current signatories.
[52] The agreements in America, especially in North America, are organized in a chronological manner in order to show the evolution of RTA dispute settlement provisions. Dispute settlement mechanism in Latin American arrangements became more sophisticated with the addition of protocols.
[53] The agreement entered into force for Guatemala, El Salvador, and Nicaragua on 4 June 1961, for Honduras on 27 April 1962, and for Costa Rica on 23 September 1963.
[54] The Executive Council consists of one titular official and one alternate appointed by each contracting party. Before ruling on a matter, the Executive Council shall determine unanimously whether the matter is to be decided by a concurrent vote of all its members or by a simple majority.
[55] The Central American Economic Council is composed of several ministers of economic affairs of several contracting states.
[56] The agreement entered into force on 19 August 1985.
[57] The Joint Committee is composed of representatives of the parties and shall be headed by the United States trade representatives and Jordan's minister primarily responsible for international trade, or their designees. All the decisions by the Joint Committee are taken by consensus.
[58] The Treaty of Asuncion entered into force on 29 November 1991. The members are Argentina, Brazil, Paraguay, and Uruguay.
[59] The Common Market Group consists of four members and four alternates for each country, representing the following public bodies: Ministry of Foreign Affairs; Ministry of Economy or its equivalent (areas of industry, foreign trade and/or economic co-ordination); and the Central Bank.
[60] The NAFTA agreement entered into force on 4 January 1994.
[61] The Free Trade Commission comprises representatives of both parties. The principal representative of each party shall be the cabinet level officer or minister primarily responsible for international trade, or a person designated by the cabinet level officer or minister. All the decisions of the commission is taken by consensus.
[62] The agreement entered into force on 1 January 1997.
[63] The agreement entered into force on 5 July 1997.
[64] The agreement entered into force on 1 August 1999.
[65] The agreement entered into force on 1 July 2000.
[66] The agreement entered into force on 17 December 2001.
[67] The Joint Committee is composed of representatives of the parties and shall be headed by the United States trade representatives and Jordan's minister primarily responsible for international trade, or their designees. All the decisions by the Joint Committee are taken by consensus.
[68] The Council of Ministers comprises the members of the Council of the EC and members of the EC Commission, and a member of the government of each ACP state. The council takes its decisions by common agreement of the parties.
[69] Standing tribunal is the most sophisticated dispute settlement mechanism to adjudicate disputes within regional trade organizations. One of the most developed regional trade integration systems, the European Communities, is not included here because the European Communities and its member states are treated as one member of the WTO. For the agreements written in French, the original French text was used.
[70] The EEA entered into force on 1 January 1994. The EEA Agreement unites fifteen EU member states and three EFTA states (Norway, Iceland, and Liechtenstein) into a single market.
[71] The agreement entered into force on 8 October 1997. The members are the Kyrgyz Republic, the Russian Federation, Belarus, and Kazakhstan.
[72] The Andean Subregional Integration Agreement entered into force on 25 May 1998. The Customs Union was established in February 1995. On 10 March 1996, the countries signed the Act of Trujillo for the creation of an Andean Community. The members of Andean Community are Bolivia, Colombia, Ecuador, Peru, and Venezuela.

[73] The Commission of the Andean Community is comprised of a plenipotentiary representative from each one of the governments of the member countries.
[74] The Treaty Establishing the Caricom entered into force on 1 August 1973. Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Trinidad and Tobago, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Suriname are Caricom members.
[75] The COMESA treaty entered into force in December 1994. Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe are COMESA members.
[76] The CEMAC members are Cameroon, Central African Republic, Congo Republic, Equatorial Guinea, Gabon, and Chad.
[77] The EAC treaty was signed on 30 November 1999. Kenya, Uganda, and Tanzania are members.
[78] The agreement entered into force on 1 August 1994. Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, and Togo are members.