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Regional Trade Agreement and WTO Dispute Settlement Mechanism

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ABSTRACT

At the intersection of global trade governance is the relationship between the WTO Dispute Settlement Mechanism and RTAs. This study explores potential synergies and problems within the current framework as it digs into the nuances of this relationship. The cohabitation of the global standards established by the WTO and the region-specific flexibility RTAs gives rise to conflicts that could potentially split the international trade system. Relationship complexity is increased by ambiguity in the integration of RTA law into the WTO framework. The paper anticipates a future to strike a balance between regional autonomy and global coherence by tackling these issues.

Keywords*: Regional Trade Agreements, World Trade Organization, Dispute Settlement Mechanism, Global Trade Governance, NAFTA.*

I. INTRODUCTION

The interaction between Regional Trade Agreements (RTAs) and the World Trade Organization (WTO) Dispute Settlement Mechanism appear as a crucial junction in the intricate web of global trade. RTAs, also referred to as trade blocs, are agreements made by two or more countries to promote the free movement of commodities and services across their boundaries.. Through fostering economic cooperation, encouraging investments, and facilitating the seamless flow of goods and services, these accords seek to lower trade barriers among member countries. As nations join together in these alliances, they build a special ecosystem of preferential treatment, reshaping the economic landscape of the area. The WTO which regulates international trade establishes the rules of the competition for global commerce, guaranteeing parity for all of its participants.

RTAs and the WTO do not, however, coexist peacefully without difficulties. The WTO Dispute Settlement Mechanism becomes the courtroom for settlement when disagreements emerge within RTAs or when a member believes another has broken WTO regulations. This study aims to understand the difficulties and synergies present in the current architecture of international trade regulation by navigating the convoluted pathways of trade agreements and dispute

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resolution processes. Understanding the subtleties of this relationship becomes crucial for politicians, economists, and trade enthusiasts alike as countries increasingly navigate the precarious balance between regional autonomy and global coherence.

II. REGIME OF RTA AND WTO

The history of the World Trade Organization (WTO) and Regional Trade Agreements (RTAs) is a story of changing global economic dynamics and the struggle to strike a balance between local concerns and international trade control.

The General Agreement on Tariffs and Trade (GATT), which was established in 1947, planted the seeds for the World Trade Organization. The international community realized the need for a structure that would promote trade cooperation and lower obstacles after World War II. GATT was formed as a temporary international agreement with an emphasis on trade and tariff reduction. The World Trade Organization became a legally recognized entity on January 1, 1995, marking the conclusion of decades of negotiations and development. There was a paradigm change when the GATT gave way to the WTO. The WTO broadened the scope of its authority to include intellectual property and services in addition to traditional trade in goods. This action was a response to the evolving nature of international trade and the requirement for a more thorough regulatory framework. The WTO's Dispute Settlement Mechanism lies at the core of its efficacy. This system, which was established under the Dispute Settlement Understanding (DSU), offers a planned and law-based procedure for settling trade disputes between member nations. The DSU provides a forum for nations to seek redress when they see a violation of trade accords, ensuring that the rule of law prevails in international trade.

The post-World War II era is where regional trade agreements first emerged. With the founding of the European Coal and Steel Community (ECSC) in 1951[2], Europe became a global leader in the pursuit of economic stability and collaboration. This innovative project gave rise to the European Economic Community (EEC) in 1957, creating the framework for much greater economic unification. Through interdependence, these regional initiatives sought to promote economic development in addition to conflict avoidance in the future. RTA development throughout several continents increased exponentially in the second part of the 20th century. The North American Free Trade Agreement (NAFTA), which promoted economic cooperation between the United States, Canada, and Mexico[3], was established in 1994, bringing North America into the arena. Similar initiatives include the 1992 inauguration of the ASEAN Free

[2] Gordon, R. "*Energy Policy in the European Community", 13, Journal of Industrial Economics"*, 219 (1965).
[3] Bejan, M. *"Trade agreements and international comovements: The case of NAFTA (North American Free Trade Agreement)"*, 14, Review of Economic Dynamics, 667-685 (2011).

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Trade Area (AFTA) by the Association of Southeast Asian Nations (ASEAN) and the 1991 formation of Mercosur by the countries of South America[4]. These regional blocs were created in order to strengthen political stability in each region while simultaneously fostering stronger economic relations. In terms of international trade, the expansion of RTAs has created both benefits and challenges. On the one hand, the possibility of fragmentation increases when various regions set up their individual trade laws. This may result in a complicated web of rules that make it difficult for enterprises to operate in a variety of marketplaces.

The WTO and RTAs' associated histories shed light on the complex processes of global trade governance. With its unified framework for trade laws and dispute settlement, the WTO serves as a beacon for global collaboration. RTAs also demonstrate the regionalization of commercial interests, enabling countries to establish closer ties based on common physical, cultural, and economic characteristics. Harmonizing these two trends to achieve a balanced and inclusive international trade landscape is a problem as the global economy continues to develop.

III. Relationship between RTA and WTO

RTAs have evolved over time to reflect the varying economic, political, and cultural settings of the participating countries. Every RTA, from free trade agreements like NAFTA to customs unions like Mercosur, is customised to the unique requirements and goals of its member nations. It is difficult to achieve worldwide coherence in trade rules given this variation. The complementarity of the relationship between RTAs and the WTO is frequently observed. RTAs offer a more flexible and region-specific approach than the WTO, which offers a global framework for trading laws and principles. RTAs take into account subtleties that could be difficult to account for in a global environment, allowing member nations to customise accords to their particular situations.

The conflict between preferential treatment within RTAs and the WTO's non-discrimination standard is one of the relationship's key elements. RTAs are intended to include members giving each other privileged access. The WTO's Most Favoured Nation (MFN) principle, which mandates that any benefit awarded to one member must also be extended to other members, could be in conflict with this. There is a chance that the global trade system may become fragmented as the number of RTAs increases[5]. Various regional blocs have various norms and regulations, which can make commerce more difficult for companies who operate in several

[4] Elliott, R., & Ikemoto, K. *"AFTA and the Asian Crisis: Help or Hindrance to ASEAN Intra-Regional Trade?"*, 18, Asian Economic Journal, 1-23 (2004).
[5] Lee, J., Park, I., & Shin, K.. *Proliferating Regional Trade Arrangements: Why and Whither?*, International Trade, (2004)

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markets. It is extremely difficult to harmonize these many accords while still upholding the autonomy of RTA members.

When the rules of an RTA and the WTO overlap, disagreements can result. Navigating the overlapping jurisdictions and settling any problems that may arise are the difficult parts. Conflicts between the two systems may arise as a result of different interpretations of trade regulations. When problems occur within RTAs, the WTO steps in to mediate disputes[6]. Member nations have the option to submit disputes to the WTO Dispute Settlement Mechanism, establishing a standardized and widely acknowledged method of dispute resolution. This emphasises the WTO's position as the last adjudicator in the field of international trade. A coordinated strategy is required given the shifting global environment, which includes problems like pandemics, digital trade, and climate change. There may be a way for the global and regional levels to work together as the WTO and RTAs both adjust to deal with these modern difficulties. The capacity to achieve a careful balance will determine how RTAs and the WTO interact in the future. It is crucial to discover ways to harmonize regional interests with international laws as the world economy grows increasingly intertwined. This can entail raising transparency, encouraging conversation, and creating methods for better collaboration between the two systems.

The interaction between regional autonomy and global coherence in the connection between RTAs and the WTO is subtle. While the WTO guarantees a global framework and a mechanism for resolving disputes, RTAs offer a platform for specialized, region-specific accords. Maintaining a delicate balance while taking into account the various needs of different countries and the necessity of a unified global economic system is necessary to navigate the changing dynamics of this relationship. The cooperation between RTAs and the WTO becomes increasingly crucial in determining the future of global trade regulation as the international community faces new challenges[7].

IV. WTO AND RTA DISPUTE SETTLEMENT

One important component of the WTO's framework for controlling global commerce is the dispute settlement mechanism. The procedure is intended to guarantee that participating nations fulfill their commitments under WTO accords and to offer a platform for settling disagreements that may emerge amongst them. There are three primary steps to the dispute resolution process.

[6] Gao, H., & Lim, C. *"Saving the WTO from the Risk of Irrelevance: The WTO Dispute Settlement Mechanism as a 'Common Good' for RTA Disputes"*, International Economic Law eJournal, (2008).
[7] Schaefer, M. *"Ensuring that Regional Trade Agreements Complement the WTO System: US Unilateralism a Supplement to WTO Initiatives?"*, 10, Journal of International Economic Law, 585-603, (2007).

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Making a request for consultations with the other member or members is the initial step. After receiving the request, the member in question has 30 days to respond and start in-person consultations. Both deadlines must be met. If the dispute cannot be resolved by consultation within 60 days, the next step is to create a panel. Three panelists are selected from the lists kept by the Secretariat, unless the parties to a dispute agree otherwise. Parties submit their submissions to the panel once it has been established. The WTO Dispute Settlement Body (DSB) adopts the panel's final report, which contains its conclusions and recommendations, after 60 days, barring a consensus against adoption[8].

Recent years have seen a rise in the popularity of RTAs, as numerous nations have signed them to encourage investment and trade. Dispute resolution clauses are commonly found in RTAs and are intended to handle disagreements that may occur between member nations. Depending on the details of each individual agreement, RTA dispute resolution procedures can differ greatly.[9] Certain RTAs call for talks between the disputing parties, which are then followed by conciliation or mediation. Others call for the creation of a panel to hear the issue and are modeled after the WTO procedure. Arbitration and other forms of alternative dispute resolution are also permitted under certain RTAs.

The dispute resolution procedures of RTAs have not been utilized as much as those of the WTO. To begin with, compared to RTAs, the WTO dispute settlement procedure is a more advanced means of settling conflicts. Parties looking to settle disputes find the WTO process more appealing since it is more structured and provides a higher level of legal certainty. RTA dispute resolution procedures, on the other hand, are frequently less formal and might not provide the same degree of legal certainty. In addition, a dispute resolution process may not be included in some RTAs, or it may be included but be inadequate or ineffectual. As a result, parties may become less likely to use the mechanism and instead turn to bilateral talks or the WTO process to settle their differences. Furthermore, it can be challenging to settle disagreements using the specified procedure if there is a lack of confidence between the parties to an RTA. It's possible that parties won't want to submit to an RTA panel's jurisdiction or won't trust the panelists' objectivity. Lastly, there might not be a knowledge or comprehension of the RTA's dispute resolution procedure. Parties may be dissuaded from employing the mechanism if they are unaware of it or do not comprehend how it operates.

[8] Jackson, J. *"The Role and Effectiveness of the WTO Dispute Settlement Mechanism"*, 2000, Brookings Trade Forum, 179-219, (2000).
[9] Martin, P., Mayer, T., & Thoenig, M. *"The Geography of Conflicts and Regional Trade Agreements"*, 4, American Economic Journal: Macroeconomics, 1-35, (2012).

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The intricate relationship between the dispute settlement procedures of RTAs and the WTO arises from the fact that RTAs are conditionally constituted for greater integration among WTO members under GATT Article XXIV[10]. As a result, WTO law has a significant impact on and even depends on the substantive law of RTAs. This indicates that the two mechanisms overlap significantly, which may cause contradictions and inconsistencies.

V. CONFLICTS

(A) Jurisdiction

When two independent organisations or two unique dispute resolution processes may receive the same dispute or related portions of the same dispute, this is referred to as an overlap of jurisdiction between the WTO and the RTAs' dispute settlement procedures. Forum-shopping, in which disputing parties choose between two adjudicating bodies or between two distinct jurisdictions for the same facts, may result from this. Two different kinds of issues could occur when the dispute resolution procedures of two agreements are initiated simultaneously or consecutively. First, the two dispute resolution procedures may assert their supreme authority (final jurisdiction), and second, they may come at disparate or even diametrically opposed decisions regarding the merits of the disagreement.

Particularly in the context of RTAs, which are created under GATT Article XXIV to promote greater integration among WTO members, the question of overlapping jurisdiction is pertinent. WTO law has a significant influence on and even depends on the substantive law of RTAs. This indicates that the two mechanisms overlap significantly, which may cause contradictions and inconsistencies. The lack of a clear remedy provided by international law makes addressing the overlapping jurisdiction difficult. Although the dispute resolution mechanism of RTAs is not mentioned in GATT Article XXIV, the exclusion clauses under RTAs appear to be invalid when it comes to the mandatory jurisdiction for alleged WTO violations granted by Article 23 of the DSU[11].

Moreover, the WTO dispute settlement system shall have exclusive jurisdiction over all disputes arising under WTO-covered agreements, as stated in Article 23 of the Dispute Settlement Understanding (DSU). This means that members will have recourse to, and be bound by, the procedures of this Understanding when seeking redress for a breach of obligations, other nullification of impairment of benefits under the covered agreements, or an obstacle to the

[10] Mrázová, M., Vines, D., & Zissimos, B. *"Is the GATT/WTO's Article XXIV bad?"*, 89, Journal of International Economics, 216-232, (2013).
[11] Jennifer Hillman, *"Conflicts between dispute settlement mechanisms in Regional Trade Agreements and the WTO - What Should WTO Do"*, 42, Cornell International Law Journal, 194-208, (2009).

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achievement of any objective of the covered agreements. To put it another way, all disagreements arising from WTO-covered agreements have to be settled via the WTO dispute resolution process.

(B) Choice of forum clause

When a dispute occurs under both the WTO and the relevant RTA, complaint parties are granted choice in selecting the forum for dispute resolution by means of NAFTA Article 2005 and comparable provisions in agreements like ASEAN, the EU-Mexico Free Trade Agreement, and others. Nonetheless, a significant problem arises from the majority of choice of forum clauses' exclusivity, as demonstrated by NAFTA Article 2005, which mandates that the chosen forum must be used exclusively for dispute resolution procedures once they are started[12]. The essential issue is the necessary jurisdiction described in World Trade Organisation (WTO) Dispute Settlement Understanding (DSU) Article 23. This clause requires member nations to use the WTO's dispute settlement process to resolve alleged violations. In light of this required recourse to the WTO, the effectiveness of exclusion clauses—which are meant to keep disagreeing parties from seeking resolution in other forums—comes under examination.

Essentially, the problem stems from the requirement to participate in the WTO when conflicts arise. Even while international agreements sometimes contain exclusion clauses intended to restrict the options for resolving disputes, the Article 23 provision requires that certain trade disputes be resolved through the WTO's established processes. This begs the question of how effective exclusion clauses are in practise and how much they can actually prevent parties from pursuing remedies outside of the WTO. The fine balance that needs to be achieved in international trade agreements is highlighted by the conflict between the required recourse to the WTO and the inclusion of exclusion clauses.

The issue stems from various elements that impact the decision-making process of parties when choosing a venue, such as procedural considerations, process issues, potential for appeal, and external support. Exclusion clauses are intended to avoid jurisdictional overlaps, but in practise, opposing parties may be swayed by a number of variables, including the extent of precedents, the applicable legislation, and enforcement strategies. The difficulties are demonstrated by the ***Mexico - Tax Measures on Soft Drinks and Other Beverages case***[13]. Mexico attempted to have the WTO's authority excluded, claiming that the larger dispute could only be settled by a NAFTA panel. Mexico's motion was, however, denied by both the panel and the Appellate

[12] Armand C. M. de *"Mestral, Dispute Settlement Under the WTO and RTAs: An Uneasy Relationship"*, Journal of International Economic Law, 1–49, (2013).
[13] DS308, Mexico - Tax Measures on Soft Drinks and Other Beverages case.

Body, highlighting the WTO panel's duty to exercise its authority as soon as a case has been properly filed before it. This emphasises how the WTO procedure is automatic and mandatory, which could weaken the impact of exclusion provisions. The security and predictability of the global trading system are seriously threatened by the possibility of overlapping jurisdiction. The Argentina-Poultry Antidumping duties case serves as a stark reminder of the serious worry regarding the possibility of conflicting decisions on the same or related issues coming from the WTO and RTA dispute settlement systems.

The matter is still unresolved even though WTO panels and the Appellate Body have had chances to render definitive decisions regarding the legality of exclusion clauses. The integrity of the global trading system may be compromised by this ambiguity, which could cause confusion for the parties in dispute and possibly lead to misuse of the process.

(C) Interaction of Obligations

Although RTAs are separate treaties, WTO and RTA law cannot be viewed as completely independent legal entities. This is known as the "clinical isolation" of WTO and RTA law[14]. This is so that WTO members can integrate more deeply, as required by GATT Article XXIV, which conditionally establishes RTAs. As a result, the responsibilities of the WTO and RTAs strongly interact. A number of difficulties may arise from the therapeutic separation of WTO and RTA legislation. For instance, it may result in contradictions and disputes between the two systems, which could reduce the system's ability to facilitate international trade. Parties may find it challenging to comprehend and fulfill their responsibilities under both systems as a result.

WTO law has been taken into consideration by certain RTA panels, such as those under NAFTA, although there is little reciprocal recognition of RTA law in the WTO dispute resolution process. As seen in the US-Tuna case, WTO panels have frequently rejected the applicability of RTA law when interpreting WTO rules. The reciprocity of this approach was not supported in cases like as the ***Chile-Price Band System***[15], where a WTO agreement was deemed significant for interpreting an RTA requirement. In this instance, Chile's agricultural policy presented difficulties, particularly with relation to the introduction of a Price Band System. Under the Price Band System, the government set a price range for specific agricultural items and intervened in the market to support domestic producers and stabilise prices. WTO members expressed alarm over the issue, claiming that Chile's Price Band System could impair the competitiveness of imported agricultural products, thereby distorting international

[14] Son, N., *"Towards a Compatible Interaction between Dispute Settlement under the WTO and Regional Trade Agreements"*, 5, Macquarie journal of business law, 113-135, (2008).
[15] DS207, Chile-Price Band System.

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commerce. The complainants argued that this practise breached WTO agreements, specifically those pertaining to trade in agricultural products and subsidies. The Chile-Price Band System instance emphasises the necessity of consistency between regional trade preferences and international trade regulations. The current integration is characterized by a deficiency of systematic methods, which makes integration when it happens unclear and disorganized. Notably, panels in NAFTA Chapter 20 cases appeared to take WTO decisions as precedent without delving deeply into relevant NAFTA clauses.

The vagueness surrounding integration stems from the lack of a well-defined procedure for integrating RTA law into the multilateral WTO legal framework throughout the dispute resolution procedure. Adopting WTO interpretations without carefully considering RTA laws is considered unwise, even though it may not be preferable for RTA panels to completely ignore the WTO. This difficulty is demonstrated by examples such as ***Korea Various Measures on Beef***[16], when bilateral agreements were regarded as complementary tools for interpretation rather than as equal partners. Tensions with exporting nations emerged as a result of South Korea's implementation of regulations affecting the importation of beef. The case brought to light the complicated difficulties in balancing WTO responsibilities with bilateral agreements since these agreements' interpretations were seen as complimentary rather than equal, which reflected the continued complexity of navigating the world trade landscape. Due to these issues' unsettled nature, the integration of RTA and WTO legislation in the dispute settlement process requires a careful and methodical approach.

VI. COMPATIBLE INTERACTION

(A) Resolving the jurisdiction issue

A major obstacle that necessitates close thought and cooperation between the two institutions is the question of overlapping jurisdiction between the WTO and RTA dispute settlement processes. Enhancing the predictability and openness of RTAs' dispute resolution processes is one way to address the issue. This can entail defining precise guidelines and protocols for the start and management of RTA-based conflict resolution processes. In order to encourage more predictability and openness, it can also entail the publication of rulings and reports by RTA adjudicatory authorities. Improving the coordination and collaboration between the dispute resolution processes of RTAs and the WTO is an additional option. This can entail setting up a system for information sharing and coordinating how WTO and RTA laws are interpreted. It might also entail formulating a set of guidelines to control how the WTO and RTAs divide up

[16]DS161, 169, Korea- Various Measures on Beef.

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their respective domains. Encouraging the adoption of alternative conflict resolution procedures is a third option. The creation of a system for WTO and RTA dispute mediation or conciliation may be necessary to achieve this. Lastly, RTAs should handle the matter of conflicting and overlapping jurisdictions with the WTO on a regional level, as well as on a multilateral one by amending the DSU. In certain circumstances, an integrationalist approach by WTO adjudicators would help to prevent inconsistent rulings.

In situations where there may be overlapping jurisdiction, it can also entail promoting arbitration as a substitute for litigation. It is possible to guarantee that the two mechanisms may live without undermining one another and to advance a more effective and efficient international trade system by attaining greater compatibility between them.

(B) Mutual Recognition

A suggested way to improve the interoperability of the two methods is for the dispute settlement bodies of RTAs and the WTO to recognize the law in their respective interpretation processes[17]. This would entail encouraging more uniformity in the application of WTO and RTA law and acknowledging the rulings of each other's dispute resolution authorities. RTA dispute resolution bodies have good reason to interpret RTA duties by consulting and relying on WTO legislation, including case law. This is so because a lot of RTA requirements are just WTO commitments reiterated or confirmed. The interpretation of RTA responsibilities would be more in line with WTO principles if this were done. Furthermore, the WTO ought to take into account RTA law when interpreting agreements covered by the WTO. This would facilitate a smoother transition of dispute resolution between the WTO and RTAs, leading to a more contented coexistence between these two regimes.

VII. CONCLUSION

The cohesiveness of the international economic system is threatened by the complex interactions between RTAs and the WTO Dispute Settlement Mechanism. Overlapping jurisdictions give rise to conflicts, and the region-specific flexibility offered by RTAs runs counter to the WTO's non-discrimination requirement. Complexity is increased by the preference for the organized WTO dispute settlement procedure over RTAs. Ambiguity results from unclear procedures for incorporating RTA law into the WTO framework. Improved coordination between WTO and RTA processes, more predictability in RTA dispute settlement, alternative conflict resolution, and mutual recognition are some recommendations to overcome

[17] Farasat, S.. *"India's Quest for Regional Trade Agreements: Challenges Ahead",* 42, Journal of World Trade, 433-460. (2008).

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these problems. In the face of constantly changing global issues, maintaining a healthy partnership between regional trade agreements (RTAs) and the World Trade Organization (WTO) is essential for a functioning international trading system.

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