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Introduction

Iorand bartels and federico ortino

It has become something of a commonplace, when introducing the subject matter covered in this book, to remark upon the steady proliferation of regional trade agreements. And yet it is difficult to imagine any other description that so well captures this phenomenon. In 1963, Kenneth Dam, in one of the first legal commentaries on regional trade agreements, spoke of proliferation when referring to a grand total of two bilateral agreements, the European project in its various forms, and a regional agreement in Latin America.¹ In retrospect, that appears rather to have been the golden age of multilateral trade: forty years later, over 300 regional trade agreements have been notified to the WTO and its predecessor, of which a full two-thirds have been notified within the past decade.² Among WTO Members regional trade agreements are practically universal,³ economically significant,⁴ and, as one observes in agreements such as the United States–Jordan and Korea–Chile free trade agreements, no longer even geographically ‘regional’.⁵ As the 21st century gets underway, trade on a most favoured nation basis risks becoming a rarity,

¹ K. Dam, ‘Regional Economic Arrangements and the GATT, the Legacy of a Misconception’ (1963) 30 U Chi L Rev, 615, at 615.

² By 31 March 2006, 346 agreements had been notified, of which 195 are currently in force: personal communication with WTO. For published earlier figures, see the Report of the WTO Committee on Regional Trade Agreements, WTO Doc. WT/REG/15, 3 November 2005, para. 4, www.wto.org/english/tratop_e/region_e/eif_e.xls (visited 30 May 2006) and, with discussion, J.A. Crawford and R.V. Fiorentino, ‘The Changing Landscape of Regional Trade Agreements’, WTO Discussion Paper No 8 (2005).

³ Crawford and Fiorentino, *ibid.*, n 4.

⁴ Regional trade agreements represent over 90 per cent of the trade of some WTO Members: *ibid.*

⁵ In this sense the term ‘regional trade agreement’ is clearly a misnomer, but to be consistent with WTO practice, this book adopts this term. See the WTO Decision to establish a Committee on Regional Trade Agreements, which (at n 1) defines the agreements within its mandate to include ‘all bilateral, regional, and plurilateral trade agreements of a preferential nature’: WTO Doc. WT/L/127, 7 February 1996.

rather than the norm on which the world's trading system is supposedly founded.⁶

Whether this is a positive development raises difficult political, economic, and legal questions. In their favour, regional trade agreements provide countries with an opportunity for broader and deeper integration than is otherwise possible, with all attendant political and economic benefits. Who, then or now, would fault the Working Party on the European Economic Community for not taking a harder line on the EEC Treaty? More prosaically, regional trade agreements can serve as a laboratory for multilateral liberalization, as well as legal initiatives, such as in the realm of dispute settlement. Sometimes they also provide a forum for consenting parties to link trade with issues that are more controversial at the multilateral level, such as human rights, the environment, and cultural industries.

But of course regional trade agreements are also politically and economically risky. They are proving to be the basis for new political alliances in Asia, Latin America, and the Middle East to an extent that must evoke the warnings of the founders of the multilateral trading system six decades ago; and despite some successes, their economic credentials are often shaky. The authors of the 2004 Sutherland Report on the Future of the WTO expressed themselves to be 'deeply concerned' by the current spread of regional trade agreements, 'unconvinced' by their economic justification, and 'especially concerned that the preferential treatment is becoming merely a reward for governments pursuing non-trade related objectives.' They issued this warning: 'Governments need to show restraint or risk more damage to the multilateral trading system'.⁷

It is in this context that this book seeks to investigate both the specific features of these agreements and their regulation at the multilateral level. It is divided into five parts. Part I sets out the framework—economic, political, and constitutional—of regional trade agreements as they exist in the multilateral trading system, while Part II analyses the precise WTO rules under which regional trade agreements operate: an area singled out by a former Chairman of the Appellate Body as 'potentially explosive'.⁸ Parts III and IV look at the way in which regional trade agreements have gone beyond the WTO, on both economic and social issues, as well as in their dispute settlement mechanisms. Finally, Part V looks at the way in which the two levels of trade liberalization interface with each other from the perspectives of the EU (the only regional trade agreement simultaneously a WTO Member) and international law.

Within this general structure, the contributions in this book deal with some

⁶ If one includes its Generalized System of Preferences for developing countries, the EU trades on a most-favoured nation basis only with the US, Canada, Japan, Australia, New Zealand, Hong Kong, and Korea.

⁷ P. Sutherland *et al.* *The Future of the WTO: Addressing Institutional Challenges in the New Millennium* (Geneva: WTO, 2004), at 79.

⁸ C.-D. Ehlermann, 'Tensions between the Dispute Settlement Process and the Diplomatic and Treaty-making Activities of the WTO' (2002) 1 WTR, 301, at 303.

of the thorniest of legal questions provoked by the phenomenon of regional trade agreements: What political and economic explanations are there for regional trade agreements? What does it take for a regional trade agreement to comply with Article XXIV of GATT, that provision distinguished by both dubious origins⁹ and (at least until *Turkey—Textiles*)¹⁰ a tradition of non-application.¹¹ How is one to assess the legality of certain of the special features of regional trade agreements, such as their rules of origin and trade remedies provisions? To what extent has the regulatory action on such matters as services, investment, intellectual property, and competition moved to the regional level? And—an important question if it has—what are the impacts of regional and multilateral trade law on each other?

We hope that the essays in this volume will provide a basis for fruitful discussions on a topic of undoubted importance not only to professionals in the area of international trade, but in the wider community as well.

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⁹ Some of the background to Art. XXIV has recently been uncovered in K. Chase, 'Multilateralism Compromised: the Mysterious Origins of GATT Article XXIV' (2006) 5 WTR, 1; see also J.H. Mathis, *Regional Trade Agreements in the GATT/WTO: Article XXIV and the Internal Trade Requirement* (The Hague: T.M.C. Asser, 2002), especially Chs 1–2.

¹⁰ WTO Appellate Body Report, *Turkey—Textiles*, WT/DS34/AB/R, adopted 19 November 1999.

¹¹ Of the hundreds of agreements notified so far to the GATT and WTO, only one (between the Czech and Slovak republics) was ever positively approved by its examining Working Party, and none definitively rejected.

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