



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**



### **Megha Middha**

*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **“MFN TREATMENT AND REGIONAL TRADE AGREEMENTS: EXAMINING COMPATIBILITY AND CONFLICTS”**

AUTHORED BY - TUSHTI RATNAPRIYA THAKUR  
& DR. VALARMATHI R

## **ABSTRACT**

The magnitude of the multilateral trading system's inclusion and the variety of economic conditions, trade pursuits, and past agreements provide a number of internal challenges despite the system's rapid growth in trade. However, the unusually fast growth of bilateral and regional free trade agreements also threatens the multilateral trading system. This presents significant obstacles to the system of international trade. The quantity of regional trade agreements has increased dramatically in the last several years. It has brought up the issue of whether the system of multilateral trade is in danger from RTAs. There should be grave worries regarding the detrimental repercussions of expanding regionalism seen in the trend of RTA expansion. Regionalism should be seen much more as a supplement to multilateralism. In terms of tariffs and other trade-related matters, member nations of the World Trade Organization (WTO) are required to provide quick and unrestricted Most Favoured Nation (MFN) treatment to the products of other members. Since free trade agreements provide member countries with special commercial advantages not available to other trading partners, they are intrinsically incompatible with this condition. The general consensus that free trade agreements are beneficial to commerce may be the reason for the special exception for FTAs in Article XXIV of the General Agreement on Tariffs and Trade (GATT). The World Trade Organization has had difficulties in properly monitoring the compliance of Free Trade accords. with the granted exemption due to the proliferation of regional trade accords. A key element of the WTO Doha Round is the inclusion of talks about rules for regional trade agreements. Furthermore, in December 2006, the WTO General Council established a unique transparency system for Free Trade Agreements, in an independent move. This mechanism requires WTO members to provide advance notification of their free trade agreements. The US is currently involved in nine regional or bilateral trade agreements.

**Key Words:** Most-favored Nation, Free-Trade Agreement, World Trade Organisation, General Agreement on Tariffs and Trade, Obligation, Multilateral Trading System

## INTRODUCTION

In accordance with the provisions of the General Agreement on Tariffs and Trade (GATT) 1994, it is mandatory for members of the World Trade Organization (WTO) to provide prompt and unrestricted most-favored-nation (MFN) treatment to the goods originating from fellow members. This treatment incorporates a multitude of facets, including but not limited to customs duties, import charges, internal taxes, and trade-related regulations. Therefore, should a member of the World Trade Organization accord preferential treatment to a specific product emanating from a nation, irrespective of whether that nation is a member or not, that member is bound to extend the same treatment to comparable products originating from every other member of the WTO. Free trade agreements are incongruous with this requirement due to the preferential treatment bestowed on the commodities of FTA participants. On the other hand, free trade agreements have often been seen as instruments for promoting trade liberalization. Consequently, the General Agreement on Tariffs and Trade has a provision that accounts for these agreements. According to Article XXIV of the General Agreement on Tariffs and Trade, it is mandatory for parties involved to inform the World Trade Organization about these agreements, which thereafter undergo a thorough evaluation by the WTO. The exemption is applicable to both fully executed Free Trade Agreements and the interim agreements that precede their establishment.<sup>1</sup>

The increase in the number of regional agreements and their broad scope in terms of trade led the parties involved in the General Agreement on Tariffs and Trade to make efforts to strengthen the existing multilateral regulations during the GATT Uruguay Round. The parties involved in the General Agreement on Tariffs and Trade have refrained from explicitly expressing disapproval towards Free Trade Agreements, although they have concerns over the compatibility of some aspects within these agreements with the conditions outlined by GATT. The primary objective of the Uruguay Round Understanding on the Interpretation of Article XXIV, often known as the 1994 Understanding, is to strengthen the supervisory role of multilateral institutions over regional trade agreements. The principal aims of this initiative are the clarification of the criteria and methodologies used in the assessment of novel or extended agreements, as well as the augmentation of the visibility and openness of all agreements falling under Article XXIV. The

---

<sup>1</sup> J. Jackson, W. Davey & A. Sykes, *Legal Problems of International Economic Relations* 453 (4th ed. 2002)

Committee on Regional Trade Accords (CRTA) was established by WTO Members in 1996. Its primary function is to perform evaluations of both new and existing FTAs, while also examining the broader implications of these accords on the global trading system. Enhancement in this domain is also included under the negotiation mandate for the World Trade Organization's Doha Round. The establishment of a novel transparency system for Free Trade Agreements was initiated by the World Trade Organization General Council on December 14, 2006. This mechanism encompasses many provisions, including the provision for timely notice of FTA discussions.<sup>2</sup>

## **THE INTERSECTION OF REGIONALISM AND REGULATORY COOPERATION WITHIN GATT'S ARTICLE XXIV**

In order to adhere to the provisions outlined in Article XXIV, free trade agreements (FTAs) must satisfy four essential criteria. Firstly, they must eliminate duties and other restrictive commercial regulations. Secondly, they must encompass a significant portion of trade activities. Thirdly, the external tariffs and commercial regulations, which pertain to nonparticipating entities, cannot exceed the levels of restrictiveness or tariffs that were in place prior to the establishment of the FTA or interim agreement. Lastly, interim agreements must be inclusive of well-defined planning and schedules to attain these objectives within reasonable timeframes. Despite the GATT mandating the elimination of tariffs and restrictive regulations in Free Trade Agreements, it permits FTA parties to impose tariffs, restrictions, and measures that are inconsistent with GATT provisions under certain GATT articles, but only when deemed essential.

When World Trade Organization Members engage in a Free Trade Agreement or an interim agreement, it is necessary for them to expeditiously inform the WTO and provide relevant information that facilitates the preparation of reports and recommendations for other WTO Members. Traditionally, ad hoc working committees have been responsible for the examination of 10 Free Trade Agreement accords. These working parties are tasked with preparing reports on their conclusions, which are then presented to Members of the World Trade Organization (WTO) for their consideration. The 1994 Understanding stipulates that the working parties are required to provide reports to the WTO Council on Trade in Goods, which will thereafter present suitable recommendations to the Members of the WTO. According to Article XXIV, paragraph 10 of the

---

<sup>2</sup> FREE TRADE AGREEMENTS AND THE WTO EXCEPTIONS, <https://www.everycrsreport.com/reports/RS21554.html#ifn4>, (last visited Oct 21, 2023)



WTO agreement, it is possible for WTO Members to adopt proposals that do not completely adhere to the requirements outlined in Article XXIV. However, this approval may only be granted by a two-thirds majority vote, and the proposals must nonetheless result in the establishment of a Free Trade Agreement as intended by the provisions of the Article. In situations when an agreement is not being adhered to, the involved parties have the option to request a waiver of their responsibilities as outlined in Article IX of the World Trade Organization Agreement. This provision permits waivers to be granted in cases deemed "exceptional circumstances," subject to the approval of three-fourths of the WTO Members.

## **GATS ARTICLE V: FACILITATING TRADE IN SERVICES**

The General Agreement on Trade in Services (GATS) includes a general Most-Favored Nation (MFN) obligation, but it also allows for an exemption for regional service agreements that aim to liberalize trade. However, for these agreements to qualify for the exemption, they must ensure the immediate or timely elimination of barriers and restrictions on trade in services, and they must provide significant coverage across various sectors. Furthermore, it is essential that the agreement does not impose elevated or more stringent trade obstacles on non-parties in the realm of services. In conclusion, it is essential that the parties involved in the agreement duly inform the Council for Trade in Services of the existence of such agreement. Additionally, if the agreement is being implemented within a certain timeframe, it is necessary for the parties to provide periodic reports to the Council. The General Agreement on Trade in Services has a provision that allows for exceptions in cases where agreements are established to achieve complete integration of labor markets between parties. These agreements would exempt nationals of the parties from restrictions related to residence and work permits.<sup>3</sup>

## **WTO CHALLENGES: EXAMINING FREE TRADE AREAS AND THEIR IMPLICATIONS**

### **1. Ambiguity of the phrase 'substantially all trade'**

The interpretation of the word "substantially all trade" poses a significant challenge within the context of Article XXIV, especially in relation to the exclusion of economic sectors from Free commerce Agreements. The phrase in question has not been officially defined either by the parties to the GATT acting collectively or by the working parties of GATT, whose reports have

---

<sup>3</sup> Joost Pauwelyn. (2009). Multilateralizing Regionalism: What About an MFN Clause in Preferential Trade Agreements? Proceedings of the Annual Meeting (American Society of International Law), 103, 122–124

often yielded inconclusive results. The term in question is not explicitly defined in the 1994 Understanding. However, the preamble of the agreement acknowledges that regional agreements contribute to trade expansion, which is enhanced when the elimination of duties and other trade barriers extends to all sectors of commerce and diminishes when any significant sector is excluded. When assessing the extent to which FTAs adhere to this duty, the working groups have used a combination of quantitative and qualitative elements. The working groups raised concerns with the omission of specific agricultural commerce in the United States Free Trade Agreements with Israel and Canada. However, it is important to note that neither committee suggested rejecting the FTAs, and both reports were later approved.<sup>4</sup>

## 2. The current state of safeguard measures

Article XIX of the General Agreement on Tariffs and Trade (GATT), which has been further elaborated in the World Trade Organization (WTO) Agreement on Safeguards, gives parties the authority to implement temporary import restrictions in response to sudden increases in imports. As per the provisions outlined in Article 2.1 of the Safeguards Agreement, a member state of the World Trade Organization is granted the authority to implement a safeguard measure on a specific product, subject to the condition that the member state has reached a conclusion that the said product is being imported into its jurisdiction in substantially greater quantities, either in absolute terms or relative to domestic production. Furthermore, it is essential that the imports take place under circumstances that possess the capacity to engender or present a significant peril of harm to the domestic sector engaged in the production of analogous or directly competitive commodities.

Article XIX is not explicitly included as an exemption to free trade agreements in Article XXIV, paragraph 8(b). Additionally, the Safeguards Agreement does not provide clear guidance on how safeguards relate to FTAs. There are divergent opinions among 20 members of the World Trade Organization (WTO) regarding the matter at hand. These members argue that:

1. Safeguard measures cannot be imposed on free trade agreement (FTA) partners because paragraph 8(b) does not provide an exemption for such measures.
2. Safeguard measures should be applied on a most-favored-nation (MFN) basis, partly due to the requirement outlined in Article 2.2 of the Safeguards Agreement, which mandates that a safeguard should be applied to an imported product regardless of its origin.

---

<sup>4</sup> Krueger, A. O. (1999). Are Preferential Trading Arrangements Trade-Liberalizing or Protectionist? *The Journal of Economic Perspectives*, 13(4), 105–124

3. Safeguard measures are permissible among FTA parties as long as they do not infringe upon the rights of third parties.

Although the connection between Article XXIV and the implementation of safeguards has not been definitively established by WTO panels and the Appellate Body, they have recognized the presence of a "parallelism" condition in the Safeguards Agreement. According to this provision, in the event that a decision of severe harm is established by considering all imports, including those originating from a Free Trade Agreement, the corresponding safeguards shall be extended to include those specific imports as well.

### **3. Complexities in the Dispute Settlement Process**

According to paragraph 12 of the 1994 Understanding on Article XXIV, the dispute resolution processes of the World Trade Organization (WTO) may be used to address issues that arise from the provisions of Article XXIV pertaining to free-trade regions and interim agreements. The clause elucidates that the assessment mechanisms outlined in Article XXIV are not the only means for evaluating the conformity of Free Trade Agreements with the regulations of the General Agreement on Tariffs and Trade. The World Trade Organization (WTO) dispute resolution mechanism may be used for addressing any responsibilities arising from the General Agreement on Trade in Services (GATS) as well.<sup>5</sup>

### **4. The Thesis on "Spaghetti Bowl" and the Laboratory Impact**

According to this viewpoint, RTAs might erode the integrity of the international system by establishing rival regulatory frameworks, or "a global patchwork of differing trade regulations." Preferential rules of origin, overlapping tariff rates, and other requirements are only a few of the many layers of regulation that arise from these overlapping "spaghetti bowl" kind of RTAs, making things tough for merchants and customs officers throughout the globe. On the other hand, the experimental or laboratory impact in relation to international trade liberalization serves as the foundation for this case for RTAs. It is maintained that when RTAs are achieved, the information and lessons learned by trial and error will be utilized as a knowledge base. Afterward, they will provide a beneficial basis upon which more multilateral trade agreements may be constructed. One may argue that RTAs facilitate international trade negotiations and act as test beds for future

---

<sup>5</sup> Nguyen, Duc Bao. "A New Examination of the Impacts of Regional Trade Agreements on International Trade Patterns." *Journal of Economic Integration*, 34(2), 2019, 236–79.

trade regulations in the multilateral trading system.<sup>6</sup>

## 5. Thesis on Regional Convergence

This perspective emphasizes that RTAs result in convergence, which is the consolidation of many overlapping trade regulations into a new, unified list in a single cumulation zone rather than a standardization of trade laws across RTAs. According to some academics, multilateral rules of origin raise transaction costs, restrict trade possibilities inside RTAs by preventing access to competing inputs, and hinder trade prospects for third parties. The most significant effects would be concentrated on major industrial nations, such as the US and the EU. This perspective holds that the outcome of integration creates "lasagna plates" from spaghetti platters and regional cumulation bowls and that testimony of the achievement of regional testing, i.e., convergence, for the liberalization of trade globally may lessen the adverse reactions that accompany trade rules.<sup>7</sup>

## FINDINGS AND CONCLUSION

The fundamentals of the WTO multilateral trade system have been called into question by the significant rise of RTAs since the late 1980s. Although RTAs seem to run counter to the WTO's overarching goal, they are permitted under specific restrictions under GATT Article XXIV. As previously stated, one may claim that a major shortcoming of Article XXIV since the GATT system's founding is the noncompliance with and subsequent execution of these rules. There are several unclear aspects in GATT Article XXIV, which causes different people to interpret its disciplines in different ways.

International initiatives are also needed to address a further developing issue with the poor institutional architecture of the WTO regarding GATT/WTO supervision and RTA surveillance. Stated differently, strengthening the GATT/WTO standards for RTAs promotes the multilateral trade system by strengthening the CRTA's decision-making process. These RTAs would not have been possible without the GATT/WTO framework, which also ensures a more free and international trade system. In conclusion, international efforts should be undertaken to reorganize the WTO in order to resume multilateral trade liberalization inside the GATT/WTO.

---

<sup>6</sup> MacPhee, Craig R., and Wanasin Sattayanuwat. "Consequence of Regional Trade Agreements to Developing Countries." *Journal of Economic Integration*, 29(1), 2014, 64–94.

<sup>7</sup> Hoang, Khac Lich, and Duc Bao Nguyen. "Trade Liberalization Schedules and Members' Development Characteristics: How Are They Connected and Why Do They Matter to Trade Agreements?" *Journal of Economic Integration*, 37(4), 2022, 734–89

**Suggestions:**

1. To address the challenges posed by the rise of Regional Trade Agreements (RTAs), the WTO should prioritize enhancing its role as a facilitator of multilateral trade negotiations. This can be achieved by promoting transparency, coherence, and inclusivity in trade agreements. Additionally, the WTO could focus on modernizing its rules and procedures to better accommodate the complexities of the evolving global trade landscape.
2. Addressing the ambiguities in GATT Article XXIV and strengthening WTO oversight over RTAs is essential for promoting a harmonious and inclusive international trade environment.
3. The international community must prioritize reforming the WTO to reinvigorate multilateral trade liberalization, ensuring that it remains the cornerstone of global commerce.
4. The coexistence of RTAs and the WTO presents both challenges and opportunities, requiring a nuanced approach to strike a balance between regional agreements and multilateral cooperation.
5. In the final analysis, international efforts should be directed towards reorganizing the WTO to facilitate multilateral trade liberalization within the framework of GATT/WTO, preserving a more open and equitable global trade system.

**References**

1. J. Jackson, W. Davey & A. Sykes, *Legal Problems of International Economic Relations* 453 (4th ed. 2002)
2. FREE TRADE AGREEMENTS AND THE WTO EXCEPTIONS, <https://www.everycrsreport.com/reports/RS21554.html#ifn4>, (last visited Oct 21, 2023)
3. Joost Pauwelyn. (2009). Multilateralizing Regionalism: What About an MFN Clause in Preferential Trade Agreements? *Proceedings of the Annual Meeting (American Society of International Law)*, 103, 122–124
4. Krueger, A. O. (1999). Are Preferential Trading Arrangements Trade-Liberalizing or Protectionist? *The Journal of Economic Perspectives*, 13(4), 105–124
5. Voon, T. (2010). Eliminating Trade Remedies from the WTO: Lessons from Regional Trade Agreements. *The International and Comparative Law Quarterly*, 59(3), 625–667
6. Nguyen, Duc Bao. "A New Examination of the Impacts of Regional Trade Agreements on International Trade Patterns." *Journal of Economic Integration*, 34(2), 2019, 236–79.

7. MacPhee, Craig R., and Wanasin Sattayanuwat. "Consequence of Regional Trade Agreements to Developing Countries." *Journal of Economic Integration*, 29(1), 2014, 64–94.
8. Hoang, Khac Lich, and Duc Bao Nguyen. "Trade Liberalization Schedules and Members' Development Characteristics: How Are They Connected and Why Do They Matter to Trade Agreements?" *Journal of Economic Integration*, 37(4), 2022, 734–89
9. Irwin, Douglas A. "The World Trading System: THE WTO, TRADE DISPUTES, AND REGIONAL AGREEMENTS." In *Free Trade under Fire: Fifth Edition, NED-New edition.*, 257–314. Princeton University Press, 2020.
10. Khan, Selina Adam. "Regional and Bilateral Trade Agreements: Why Countries Exceed WTO Obligations." *Strategic Studies* 29, no. 4 (2009): 95–105.
11. Mattoo, Aaditya, and Carsten Fink. "Regional Agreements and Trade in Services: Policy Issues." *Journal of Economic Integration* 19, no. 4 (2004): 742–79
12. Kang, Yoo-Duk. "Development of Regionalism: New Criteria and Typology." *Journal of Economic Integration* 31, no. 2 (2016): 234–74

