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OVERLAPS AND CONFLICTS OF JURISDICTION BETWEEN THE WTO AND RTAS

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Executive Summary

The paper addresses the issue of horizontal allocation of judicial jurisdiction between the dispute settlement mechanism of regional trade agreements (RTAs) and that of the WTO. There could be various instances where overlaps of jurisdiction in dispute settlement could occur. Although a number of treaties provide for the choice of a forum clause or an exclusive forum clause, an overlap and even clash of jurisdiction is unavoidable due to the quasi-automatic and compulsory nature of the WTO dispute settle mechanism. The paper proceeds to examine a number of principles of international commercial law to deal with overlaps and conflicts: *forum conveniens* and *forum non conveniens*; *lis alibi pendens* and *res judicata* as well as principle of general international law; abuse of process, abuse of rights and good faith; 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.

After having examined various possibilities, the paper suggests that in the current state of international law, no rules seems to offer any effective answer to resolve conflicts 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. And this paper concludes with pointing to areas of discussions.

A. DISPUTE SETTLEMENT MECHANISMS IN THE WTO AND IN RTAS

1. The relationship between the dispute settlement mechanism of the 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.[2]

2. Jurisdiction is often defined in terms of either legislative or judicial jurisdiction, i.e. the authority to legislate on a matter and to adjudicate on a matter. Jurisdiction may be analyzed from horizontal points of view, i.e. allocation of jurisdiction among States or among international organizations, and from a vertical point of view, i.e. allocation of jurisdiction between States and international organizations.[3]

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[2] On the issue of jurisdiction generally and the relationship between the jurisdiction of WTO and that of other treaties and institutions, see Joel Trachtman, Institutional linkages: Transcending "Trade and …", A.J.I.L (2002) Vol.96, No.1, p. 77. On the issue of universal and criminal jurisdiction see the recent judgment of the International Court of Justice and the separate opinions of Judge Guillaume and Judge Higgins, Kuuijmans and Buergenthal in *Congo – Belgium*, 14 February 2002.

[3] See Joel Trachtman who argues that the linkage problem between "Trade and …" is a problem of allocation of jurisdiction; he suggests that there are three basic, and related, types of allocation of jurisdiction:

3. This brief paper 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 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, 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, this may be that States are expressing their choice to favour the enforcement of treaty A over treaty B.

4. In the case of RTAs, the situation is more complicated because the GATT 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, but this right is conditional. In the context of an RTA, Article XXIV may justify a measure, which 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. And, second, that party must demonstrate that the formation of that 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]

5. Therefore, to the extent that an RTA is WTO-compatible, WTO Members also members of an RTA would be justified in using the RTA's internal dispute settlement mechanism in order to enforce the RTA norms.

6. Many RTAs have (substantive) rights and obligations that are parallel to those of the WTO Agreement. Generally, these RTAs may provide for their own dispute settlement mechanism, making it possible for the States to resort to different but parallel dispute settlement mechanisms for parallel or even similar obligations. This is not a unique situation as States are often bound by multiple treaties and the dispute settlement systems of those treaties operate in a parallel manner.[5]

7. Overlap or conflict of jurisdictions 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 may lead to difficulties relating to "forum-shopping", where 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: two tribunals may claim final jurisdiction (supremacy) over the matter, and they may reach different, or even opposite results.[6]

(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". *Idem* at p. 79.

[4] Appellate Body Report on *Turkey - Textiles* (WT/DS58), para. 58. Presently, Article XXIV and WTO jurisprudence clearly establish that it is for the parties to the RTA to prove that the concerned free-trade area or customs union is compatible with Article XXIV of GATT (and/or Article IV of GATS).

[5] The Arbitral Tribunal (ICSID/ITLOS) stated that : "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" (emphasis added). Award on Jurisdiction and Admissibility of 4 August 2000, *Southern Bluefin Tuna Case, Australia and New Zealand v. Japan*, p. 91.

[6] 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.

8. Article 23 of the DSU 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 violation claims. 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.[7] The 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.

B. OVERLAPS OF JURISDICTION BETWEEN RTAS AND THE WTO

9. There are various types of overlaps or conflicts of jurisdictions that 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. All the RTAs examined in the chart in the Annex have dispute settlement mechanisms with jurisdiction that may potentially overlap with that of the WTO Agreement.

10. The chart in the Annex 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 – by the characteristics of dispute settlement system and by region. Furthermore, the chart identifies several important elements in RTAs, including: (i) compulsory or non-compulsory nature of the RTA jurisdiction; (ii) reference to the GATT/WTO dispute settlement mechanism; (iii) exclusive or priority forum prescription clause; (iv) choice of forum clause; (v) binding nature of dispute settlement conclusions; and (vi) remedy provided by the agreement, including the explicit right to take countermeasures in trade matters with or without permission of RTA dispute settlement bodies.

1. Examples of overlaps of jurisdiction between involving the WTO and RTAs dispute settlement mechanism

(a) FTA/NAFTA and the GATT/WTO dispute settlement mechanisms

11. As previously discussed, NAFTA 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, SPS or standards-related measures. It further provides that, if the complaining party has already initiated GATT/WTO procedures on the matter, the complaining party shall withdraw from these proceedings and may initiate dispute settlement mechanism under NAFTA. [8]

12. However, in the 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

[7] 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 (Appellate Body report on *EC– Bananas III*, at para. 136); and in WTO disputes, there is no need prove any trade effect for a measure to be declared WTO inconsistent (Article 3.8 DSU). 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 (*US* – Wool *Shirts and Blouses*, Appellate Body Report, p. 13). Arguably a single WTO Member cannot even agree to take its WTO dispute in another forum.

[8] 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.

this FTA provision be sufficient to stop the WTO adjudicating body?[9] 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, which are similar in NAFTA and in 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 be reversed as well, if the defending party sees some procedural or political advantage in having its case debated in the WTO.[10]

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 any 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 but it could 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 area agreement between the EC and Mexico states that arbitration proceedings established under that 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?

14. 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. The situation would be the same, should the NAFTA parties have explicitly waived their rights to initiate dispute settlement proceedings under the WTO.

15. However, in such a case, in initiating a parallel WTO dispute, a NAFTA party may be found to be violating its obligation under NAFTA not to take a dispute outside of NAFTA and trigger a WTO claim regarding a related violation under 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.

16. 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 would be no legal impediment against such a possibility, since, legally speaking, the NAFTA and WTO panels would be considering different

[9] Indeed, the explicit references to "GATT" and to "General Agreement on Tariffs and Trade 1947" raise the question whether the same rules would continue to apply to the new DSU of the WTO. However, it seems that since the first paragraph of Article 2005 refers to "any successor agreement (GATT)" and taking into account the conclusion of the recent NAFTA panel on *Tariffs – Poultry* where GATT was described 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.

[10] The *Canada – Periodicals* dispute between the United States and Canada is a good example of potential overlap: the United States initiated its dispute against Canada under the DSU of the WTO rather than the NAFTA (*Canada – Certain Measures Concerning Periodicals* (WT/DS31/AB/R), adopted on 30 July 1997).

"matters" and would be addressing different "applicable law": the WTO panel examining the allegations of WTO violations and the NAFTA panel examining NAFTA violations.

2. Mercosur/WTO dispute settlement mechanisms

17. 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 Treaty. Argentina did not remove its quotas immediately, thus Brazil asked the WTO Textiles Monitoring Body (TMB) to review the legality of the Argentina quotas.[11] 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 DSB and could have requested the establishment of a panel. Finally, the parties settled amicably.

18. It is clear that the WTO adjudicating bodies do not have the authority to enforce provisions of a regional trade agreement as such.[12] Provisions of RTAs are enforced pursuant to the dispute settlement mechanism of the RTA. In a case over overlapping jurisdictions, however, the WTO adjudicating bodies would be assessing the concerned States' situation in the light of their WTO obligations and not in the 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 States are to place in their international institutions.

C. How can States and WTO panels deal with overlaps of jurisdiction between Dispute settlement mechanisms of RTAs and that of WTO?

1. Any solutions suggested by international law?

19. Overlaps and conflicts of jurisdictions are now of relevance in international law generally, because of the multiplication of international jurisdictions. A call for increased coherence was made by the previous President of the International Court of Justice (ICJ), Judge Schwebel,[13] and again by the President, Judge Guillaume,[14] against the dangers of forum shopping and the development of fragmented and contradictory international law. So far, however, rules have not yet been agreed upon among States.

20. 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 leaves open the issue of ensuring coherence between the

[11] The legal issues in 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 a another Member.

[12] *US – Margin of Preferences*, BISD II/11.

[13] "[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." Judge Stephen M. Schwebel, President of the ICJ, Address to the Plenary Session of the General Assembly of the United Nations, 26 October 1999, reproduced in the Internet site of the ICJ <http://www.icj-cij.org/>.

[14] See, for instance, the Note by Gilbert Guillaume, *La mondialisation et la Cour internationale de justice*, Forum (ILA), Vol. 2 No. 4 (2000), at p. 242.

dispute settlement mechanism of an RTA and that of the WTO, to the extent that the same measure could be challenged in either forum. It should, however, also be remembered that the WTO recognizes the legitimacy of RTAs (with conditions). It may be argued that RTAs' dispute settlement mechanisms can be used to enforce the disciplines of RTAs (which themselves must be compatible with Article XXIV and GATT/WTO).

(a) Treaty Clauses Addressing Dispute Settlement Mechanisms of Other Treaties

21. Article 23 of the DSU is a specific treaty clause[15] that seems to prevent other jurisdictions from adjudicating WTO law violations. 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, the need for WTO Members to further address the issue of overlapping WTO/RTA dispute settlement jurisdictions.

22. The chart in the Annex identifies a number of aspects relevant to RTA jurisdiction. Many 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 the settlement of a dispute either in the RTA forum or in the WTO 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 was the case with the old Canada – US Free Trade Agreement (FTA).[16] The purpose of this rule was not to recognize the existence of *res judicata* as such (since the applicable law was strictly different – FTA law in one forum, GATT/WTO law in the other) but could have been to introduce certainty and avoid multiple dispute settlement mechanism. In fact, NAFTA goes further than the FTA and, in the area of sanitary and phytosanitary measures (SPS), environment and other standard disputes, obliges a NAFTA State to withdraw from a WTO dispute, if the other NAFTA State preferred the NAFTA jurisdiction.[17] FTAs between Chile and Mexico and between Canada and Chile have similar provisions.[18]

23. It is thus possible that the dispute settlement mechanism of an RTA and that of the WTO may be seized, at the same time or sequentially, of a very similar matter, to the extent that the 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 be applicable to the issue of the overlap or conflict of their respective dispute settlement mechanisms as well. The issue is whether these conflicts rules (lex posterior and lex specialis etc.) are such as to be able to invalidate the WTO dispute settlement mechanism or nullify its access. It is doubtful.

24. There is no clear rule as regards 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. To govern the legal relationships among the RTAs' and the WTO's dispute settlement mechanisms, a set of principles may 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 regard to the RTA dispute settlement mechanism? Are there rules of general international law that may be useful here? Principles and rules have been developed in private international commercial law for dealing with

[15] Article 30.2 of the Vienna Convention.

[16] Article 1801 of FTA envisaged that disputes arising under both FTA and GATT/WTO (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.

[17] Article 2005 of NAFTA.

[18] Article 18-03 of Chile-Mexico Free Trade Agreement and Article N-05 of Canada-Chile Free Trade Agreement.

overlaps and conflicts of jurisdictions. It may be worthwhile examining whether such rules could be used in situations of multiple jurisdictions of international law tribunals.

(b) Abuse of process, abuse of rights, good faith

25. Some may argue that 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 were frivolous or groundless. It is not the multiple proceedings, which are condemned "but rather the inherently vexatious nature of the proceedings".[19] Such a prohibition against "abuses of rights" could be considered as a general principle of law.[20]

26. However, it is unlikely that any adjudicating body, including those of the WTO, would find the allegations that their constitution treaty has been violated as "vexatious", especially when, in all probability, the claims would be drafted to capture the specific competence of that tribunal.

27. 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. But, at the same time, States may be bound by two different jurisdictions sequentially and this happens often in international law.

28. One may 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 on separate and distinct occasions.

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

(c) Exhaustion of RTA remedies - Timing of Different Dispute Settlement Mechanisms

30. There exists no 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 exhaust local remedies before having recourse to international dispute settlement mechanisms, but many would argue that this doctrine does not apply under WTO law.[21] In any case, the dispute settlement mechanism of a RTA does not provide for any "local" remedy, so no parallels can be drawn.[22]

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[19] Lowe affirms that the doctrine of abuse of process is "well established, though occasions for its application are likely to be very rare", V. Lowe, *id*., at p. 13.

[20] Brownlie wrote that "It 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, at p. 447–448. See also the Appellate Body Report in *US – Shrimp*, at para. 158.

[21] See for instance, Uli Petersmann, *Settlement of International Disputes Through the GATT: The case of Anti-dumping Law*, in Petersmann and Jaenicke (eds), *Adjudication of International National Disputes*, Fribourg University Press (1992), at p. 126;

[22] 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) NYIL, p. 227; Kuijper,

(d) Reference to the International Court of Justice

31. Another solution to address the proliferation of international jurisdictions is to adopt the suggestion of Judge Guillaume, President of the ICJ, namely, to empower the ICJ with some form of reference jurisdiction to be used by international tribunals, possibly through advisory opinion requests.[23] However, as he pointed 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.

2. Principles of private international commercial law dealing with overlap and conflicts of jurisdiction

(a) *Forum Conveniens* and *Forum non Conveniens*[24]

32. 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."[25] But the objective of both doctrines is the same, i.e. 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, 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.

33. 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 overlap of jurisdictions in pubic 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 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, in general, "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."[26]

34. 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, 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.

The New Dispute Settlement System, J.W.T., p. 49 (1995); J. Martha Rutsel Silvestre, *World Trade Dispute Settlement and the Exhaustion of Local Remedies Rule*, J.W.T. Vol. 30 , p. 107 (1996).

[23] He referred to the model found in Article 177 of the EC treaty (now Article 234). See, for instance, Gilbert Guillaume, *La mondialisation et la Cour internationale de justice*, Forum (ILA) (2000) Vol. 2, No. 4, at p. 242. He referred to the model found in Article 177 of the EC treaty (now Article 234).

[24] On this issue see T. Sawaki, *Battle of Lawsuits -- Lis Pendens in International Relations*, in Japanese Annual Int'l L. 17 (No. 23, 1979–80.

[25] J.J. Fawcett, *Deciding Jurisdiction in Private International Law*, Oxford (1995), at p. 5–6 and 10.

[26] Vaughan Lowe, *Overlapping Jurisdictions in International Tribunals*, Australian Year Book of International Law (2000), Vol. 20, p. 1, at. p. 12.

(b) *Lis Alibi Pendens* and *Res Judicata*

35. The rule 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, involving the same parties and the same cause of action, simultaneously continue in two different States, with the possible consequence of irreconcilable judgments.[27]

36. 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.

37. It is generally difficult to speak of *res judicata* or *lis alibi pendens* between two dispute settlement mechanisms under two different treaties.[28] The parties may be the same and the subject-matter may be a related one but, legally speaking, in the WTO and the RTA, 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.

38. However, regional trade agreements like the Central American Common Market (CACM) and the Mercosur refer to the effect of *res judicata*. CACM, for instance, states that the arbitration award granted under the CACM treaty has the effect of *res judicata* for *all contracting parties* as 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 CACM panel's ruling, as long as it concerns the interpretation and application of the CACM Treaty, cannot be challenged (or risked being changed) in the WTO forum? Then, how can it be used? What if a WTO panel, in its assessment of the WTO compatibility of the CACM, reads CACM Treaty provisions differently from the previous CACM arbitration panel? Shouldn't the CACM judgment be considered as a fact – a legal fact – which the WTO panel will have to assess? The same questions arise with the CARICOM, whose treaty provides that the CARICOM court has the compulsory and exclusive jurisdiction to hear disputes concerning the interpretation and application of the treaty.

39. 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 reason of *res judicata*, *lis pendens* or *forum non conveniens*.[29]

40. 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, it could be argued that they constitute relevant evidence or a judicial interpretation by another international tribunal, which could be considered by a WTO panel.

3. Possibility of invoking Article 13 of the DSU to obtain (expert) evidence from RTA proceedings

41. Article 13 of the DSU allows any WTO panel to request from the parties, or from any source, any relevant information. Arguably, this could include evidence from the proceedings in another forum. The WTO panel may want to require expert information from an 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. But how should a WTO panel treat evidence submitted and relating to RTA's relations?

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[27] J.J. Fawcett, Deciding Jurisdiction in Private International Law, at p. 26.

[28] As Lowe points out, in most cases the fact that a State has sought adjudication under one treaty cannot deprive it of the right to seek a declaration in respect of another treaty. See V. Lowe, *Overlapping Jurisdictions in International Tribunals*, at p. 14.

[29] 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.

D. DISCUSSION ON OVERLAPPING DISPUTE SETTLEMENT MECHANISMS

42. In the absence of such a 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. Then, there are other factors of a more political nature that may affect the States' choice of forum, such as whether States seek a dispute settlement or a systemic declaration, or the type, importance or influence of the forum considered, that would affect the States' choice of forum.

43. Is it conceptually possible that an RTA adjudicating body could reach a conclusion contrary to that of the WTO adjudicating body on exactly the same factual allegation? The applicable law, i.e. the treaty provision being interpreted and applied would be different (on the one hand the RTA law and on the other hand the WTO law) albeit 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 in itself can be problematic.

44. In the absence of the agreement of the parties to suspend the DSU mechanism, no 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 that.

45. Arguing for an exclusive allocation in favour of the WTO forum for any trade matter is equally wrong. Could one argue that Article 23 of the DSU goes as far as denying WTO Members the right to sign regional trade agreements 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 regional trade agreements are explicitly permitted (with conditions attached) under Article XXIV of GATT and Article XIV of GATS, and such is the practice of States as well.

(a) Exhaustion of the RTA or the WTO process first?

46. Members may, on the one hand, want to negotiate the possibility of obligating WTO Members who initiate a WTO dispute settlement mechanism, first to exhaust, suspend or renounce the RTA dispute settlement mechanism.[30] Members may, on the other hand, prefer the opposite case and oblige the members to exhaust the WTO dispute settlement mechanism before initiating a RTA process. Additional point to be negotiated is, in both situations, how the rights of WTO third parties should be handled if they are not parties to the overlapping RTA.

(b) Suspension of the RTA or WTO dispute process?

47. WTO Members may want to negotiate the possibility of suspending one process while the other one is on-going. They may also want to negotiate criteria that may identify which mechanism should be favoured. In other words, in the case of parallel dispute initiations (WTO and RTA), which dispute settlement mechanism should be given priority? In addition, Members may also want to negotiate how long this dispute mechanism can last, and what to do in case of inconsistent behaviour of the parties.[31] Furthermore, there are other related issues to be discussed by the Members. For

[30] For instance, paragraph 4 of the GATS Annex on Air Transport Service provides that: "The dispute settlement procedures of the Agreement may be invoked only … where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted."

[31] Members may also want to negotiate the issue of the applicable law before the WTO and RTA, e.g. what are the rights and obligations that can be enforced, that can provide for effective remedies before the RTA adjudicating bodies (and before the WTO adjudicating bodies)? For instance in the *NAFTA Poultry case*, the WTO – as an evolution of GATT – was given direct application because of the explicit treaty reference to GATT commitments in the NAFTA treaty itself. Can WTO law be invoked before the RTAs bodies as a defense

instance, if both mechanisms are triggered at the same time, the WTO panel process would probably proceed faster than the NAFTA process. How would this affect the choice of forum by the parties? In addition, if mediation or consultations are proceeding in the WTO, can the RTA dispute settlement mechanism be initiated? Conversely, if mediation or consultations are proceeding in the RTA, can the WTO dispute settlement mechanism be initiated?

(c) Evidence and exchange of information between RTA Secretariats and the WTO

48. Members may want to consider the possibility of agreeing on rules for the exchange of notification, data and other information relating to dispute settlement among the RTA States. They may also agree on the exchange of experts and on the evidentiary or legal value to be given to acts of each other's jurisdiction.

(d) Interaction between RTA rulings and WTO rulings

49. How should a WTO panel treat information and facts from an RTA when they are invoked during a panel process? As mentioned earlier, the CACM RTA provides that the effect of *res judicata* applies to all the contracting parties, when it concerns the interpretation or application of the constitution treaty. What if a CACM Member brings to the WTO panel a dispute based on the claims similar to the ones previously brought by other CACM Members? If the WTO panel has to rule on WTO violations similar to CACM treaty violations, then would the WTO panel be bound by the CACM panel's interpretation? The answer is most likely to be no, formally, yet to the extent that it is necessary to interpret a provision of the WTO treaty, the WTO panel may be obliged to examine and interpret non-WTO material.

50. If exclusive forum clause exist in an RTA and reference to the WTO dispute settlement is addressed nothing seems to stop the WTO panel to proceed over a claim of WTO violation even if this would be contrary to the wording one the RTA treaty. However, in such a case, in initiating a parallel WTO dispute, that WTO Member also an RTA state may be found to be violating its obligation under 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 opposed to the parallel WTO panel could claim that the WTO panel initiated by the other RTA party is impairing some of its benefits under the RTA. The RTA State opposed to a WTIO 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.

51. In other words a distinction must be made between the fact that parallel dispute settlement proceedings can be triggered (and arguably cannot be stopped since there is no international agreement on this issue yet) and the international responsibility of the concerned States which in doing so may be in violation of a treaty provision.

52. Suppose that one measure was challenged at an RTA level and brought (partly) into compliance, but later, a similar measure by the same State is set up and challenged. If, after the WTO adjudication process, an arbitration panel is established to decide upon the level of suspension of obligations (sanctions), then should the compensation or retaliation decided upon by the RTA be taken into account and examined? Would a WTO arbitration panel (Article 22.6-7 DSU) take into account sanctions and/or suspensions of concessions enforced under an RTA in its evaluation of the level of WTO retaliation caused by the nullification of WTO rights on the same trade flow? Should the compensation or retaliation decided upon by the RTA be presumed to be compatible with the WTO?

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to an obligation in the RTA? Can WTO Members invoke compliance with a RTA as a defense to a WTO violation?

53. 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 foreclose them from using a different forum at the same time. Hence the potential for tensions in their overlaps and the need to consider the issue. At the moment, there is no solution for this matter until a set of common rules are negotiated.

E. CONCLUSION

54. There could be overlaps or conflicts of judicial jurisdiction between the dispute settlement mechanism of the WTO and that of RTAs. The wording of Article 23 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).[32] In addition, the WTO jurisprudence has confirmed that, at least, any WTO Member that is a "potential exporter"[33] has the sufficient legal interest to initiate a WTO panel process. That is to say, in the context of a dispute between two WTO Members involving situations covered by both an RTA and the WTO Agreement, any WTO Member which 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.[34] 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 relevant or better equipped to deal with the sort of problems at issue.

55. 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. Tensions may also arise from the availability of RTA non-compulsory dispute settlement mechanism with no binding effect even in the absence of strict *de jure* conflicts (but when faced with overlaps of jurisdictions). For instance, trade measures taken pursuant to non-compliance with an RTA adjudication process could be argued to be inconsistent with Article 23 of the DSU and Article XI of GATT. The benefits gained from such RTA countermeasures may be nullified by the consequences of a violation of Article 23 of the DSU and GATT. 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.

[32] 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.

[33] Appellate Body Report on *EC – Bananas III*, at para. 136.

[34] Appellate Body Report on *US – Wool Shirts and Blouses*, WT/DS33/AB/R, adopted on 23 May 1997, at p. 13.

ANNEX

DISPUTE SETTLEMENT MECHANISM OF REGIONAL TRADE AGREEMENTS[35]

Level 1: Consultation, good offices, conciliation and mediation

Regions	Agreements[36]	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of Decision (2) Remedy or other countermeasures	Potential for Overlap
Asia and the Pacific	Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)[37]	• 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 which 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.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned**	**(1) No binding effect.** **(2) Unilateral safeguard measures**	Low

[35] This Annex is based on the wording of the treaties, but practices of states may differ. Therefore, any comments or inputs concerning the Annex are welcome.
[36] The agreements in the Annex only include the agreements that have been notified to the WTO.
[37] The Agreement entered into force on 1 January 1983.

Regions	Agreements[36]	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of Decision (2) Remedy or other countermeasures	Potential for Overlap
	First Agreement on Trade Negotiations among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Bangkok Agreement)[38]	• **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[39]:** 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.**	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect** **(2) 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).	Medium

[38] 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 were signatories to the Agreement.

[39] 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.

Regions	Agreements[36]	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of Decision (2) Remedy or other countermeasures	Potential for Overlap
	SAARC Preferential Trading Arrangement (SAPTA)[40]	• **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**[41] 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 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.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) No binding effect.** **(2) Unilateral suspension of concessions (safeguard measures)** • **Same as Bangkok Agreement**	Low

[40] The Agreement entered into force on 7 December 1995. Current signatories are Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.
[41] The Committee of Participants is composed of the contracting states.

Regions	Agreements[36]	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of Decision (2) Remedy or other countermeasures	Potential for Overlap
	South Pacific Regional Trade and Economic Agreement (SPARTECA)[42]	• **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.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) No binding effect**. **(2) Unilateral variation or suspension of obligations (Unilateral safeguard measures)** • A party may consult the other party concerning taking safeguard measures. If a mutually satisfactory solution is not available, then the party may vary or suspend its obligations.	Low
	Melanesian Spearhead Group[43]	• **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[44]:** The consultations shall take place through the Institutional Framework of the agreement.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) No binding effect.** **(2) Unilateral suspension of obligations (safeguard measures)** • A party may consult the other party concerning taking safeguard measures. If a mutually satisfactory solution is not available, then the party may vary or suspend its obligations.	Low

[42] 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 14th July, 1980. It came into effect for most Forum Island Countries from 1 January, 1981. With the joining of new members to the Forum, the current list of FIC signatories to SPARTECA includes Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa.

[43] 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.

[44] Under 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 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.

Regions	Agreements[36]	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of Decision (2) Remedy or other countermeasures	Potential for Overlap
Europe & the Mediterranean	Central European Free Trade Agreement (CEFTA)[45]	• **Exchange of information and consultation within 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 Joint Committee[46]:** The Joint Committee is responsible for the administration and implementation, shall keep under review the possibility of further removal of the obstacles to trade between the parties. The committee shall/may make decisions **in the cases provided for in the agreement**. On other matters, the committee may make recommendations.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) No binding effect.** **(2) 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 in accordance with the procedure for the application of safeguard measures.	Low
	Free trade agreements:[47] • EFTA – Czech Rep. • EFTA – Hungary • EFTA – Poland • EFTA – Romania • EFTA – Slovak Rep. • EFTA – Turkey	**Same as CEFTA**	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**Same as CEFTA**	Low

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

[46] The Joint Committee is composed of the representatives of the parties and act by common agreement.

[47] The Free Trade Agreement with the former CSFR entered into force on 1 July 1992. In the wake of the dissolution, two separate but identical Free Trade Agreements with the Czech Republic and the Slovak Republic superseded the original one. The Free Trade Agreement with Hungary entered into force on 1 October 1993 and the Free Trade Agreement with Poland entered into force on 1 September 1994. Free Trade Agreements entered into force on 1 May 1993 for Romania. The Free Trade Agreement with Turkey entered into force on 1 April 1992.

Regions	Agreements[36]	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of Decision (2) Remedy or other countermeasures	Potential for Overlap
	Free trade agreements between two states[48]	**Same as CEFTA**	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**Same as CEFTA**	Low
	Free trade agreements:[49] • EC – Faroe Islands • EC – Iceland • EC – Norway • EC – Switzerland	**Same as CEFTA**	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect** • Decisions shall be put into effect by the parties **in accordance with their own rules.** **(2) Appropriate measures (Safeguard measures)** • If a Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take appropriate measures. The safeguard measures shall be notified immediately to the Joint Committee and shall be subject to consultations.	Low

[48] 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.

[49] The agreements entered into force for Faroe Islands on 1 January 1997, for Iceland 1 April 1973, for Norway on 1 July 1973, and for Switzerland 1 January 1973.

Regions	Agreements[36]	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of Decision (2) Remedy or other countermeasures	Potential for Overlap
	Association agreements:[50] • EC – Cyprus • EC – Malta	• **Exchange of information and consultation within Association Council[51]:** 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 an Association Council. • **Decision-making at Association Council:** The Association Council is responsible for the administration and implementation, shall keep under review the possibility of further removal of the 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.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) No binding effect.** **(2) Unilateral safeguard measures** • In case of serious difficulties in the economic situation of either party, the party concerned may take the necessary protective measures. Such measures and the procedures for applying them shall be notified to the Association Council.	Low
	Cooperation Agreement between EC and FYROM[52]	• **Decision-making at Cooperation Council[53]:** 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**.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect.** **(2) 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**	Medium

[50] The EC – Cyprus Agreement entered into force on 1 June 1973 and the EC – Malta Agreement entered into force on 1 April 1971.
[51] 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.
[52] The EC – FYROM Agreement entered into force on 1 January 1998.
[53] The Cooperation Council is composed of representatives of the EC and of its Member States and of representatives of FYROM.

Regions	Agreements[36]	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of Decision (2) Remedy or other countermeasures	Potential for Overlap
	Co-operation agreements:[54] • EC – Jordan • EC – Lebanon • EC – Syria	• **Referral to cooperation Council[55]:** 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.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect.** **(2) 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
	Bilateral agreement between Kyrgyz and Uzbekistan[56]	• **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**.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) No binding effect.**	Low

[54] The EC – Jordan, EC – Lebanon and EC – Syria Agreements all entered into force on 1 July 1977.
[55] 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.
[56] The Agreement entered into force on 20 March 1998.

Regions	Agreements[36]	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of Decision (2) Remedy or other countermeasures	Potential for Overlap
America	Latin American Integration Association (ALADI)[57]	**Resolution 114** • Any member State may request that consultations be held with any member country or countries which, 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 **5 days** after the request is processed and shall conclude **10 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**[58]: Should no satisfactory solution be achieved between the parties directly involved in the dispute at the end of 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. **Art. 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.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) No binding effect.**	Low

[57] 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.

[58] 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.

Regions	Agreements[36]	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of Decision (2) Remedy or other countermeasures	Potential for Overlap
Inter-regional	Agreement on the Global System of Trade Preferences among Developing Countries (GSTP)[59]	• **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[60]:** In the event of 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.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) No binding effect.** **(2) Unilateral suspension of concessions** • If a party considers that the value of a concessions or any benefit from the agreement is being nullified or impaired, the party may consult the other party. • If the consultations fail, the matter may be referred to the Committee, which may make recommendations. • If no satisfactory adjustment is made within 90 days after the recommendations, the party may suspend concessions.	Low

[59] The Agreement entered into force on 19 April 1989. 44 countries are GSTP participants. *See* http://www.g77.org/gstp/#members for the full list.
[60] 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.

Level 2: Arbitration[61]

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
Asia and the Pacific	Asean Free-trade area (AFTA)[63]	**Protocol on Dispute Settlement Mechanism[64]** • A member State involved in a dispute can resort to other fora at any stage before the Senior Economic Officials Meeting ("SEOM")[65] 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 which 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 SEOM. • **Referral to the SEOM**: If the consultations fail to settle a dispute within 60 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 Panel**: The SEOM shall establish a panel within 30 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.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect** • **Arbitration:** The party shall **comply with the rulings of the arbitration tribunal** within a reasonable time-period. If the party fails to 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. • **Appeal with the AEM:** The **decision of the AEM** on the appeal shall be **final and binding** on all parties to the dispute. **(2)** **Arbitration award** **Decision by AEM**	High

[61] Arbitration is a more judicial and adversarial system, whereas consultations mechanism is a political and diplomatic system. The arbitration procedure is normally used after the consultation mechanism is exhausted.

[62] 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, Level 2: Arbitration.

[63] 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 current signatories.

[64] Protocol has not been notified to the WTO.

[65] SEOM consists of senior economic officials of the contracting states.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
		The panel shall submit its findings to the SEOM. • **Decision by SEOM:** The SEOM shall consider the report of the panel in its deliberations and make a ruling on the dispute within 30 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)[66] within 30 days of the ruling. The AEM shall make a decision based on **simple majority.**			
	Agreement between New Zealand and Singapore on a Closer Economic Relationship (ANZSCEP)[67]	• **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 60 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 arbitral tribunal:** The tribunal consists of 3 members. Each party shall appoint an arbitrator within 30 days of the receipt of the request, and the 2 arbitrators appointed shall designate by common agreement the 3rd arbitrator, who shall chair the tribunal. If the chair has not been designated within one month from the appointment of 2nd arbitration, the Directorate-General of WTO, at the request of either party, may select the chair.	**(1) Compulsory** **(2) 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.	**(1) Binding effect** • The rulings of the arbitral tribunal shall be **final and binding** on the parties. **(2)** • The party shall comply with the rulings of the arbitration tribunal within a reasonable time-period. • If the party fails to 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

[66] AEM consists of Economic Ministers of the contracting states.
[67] The Agreement entered into force on 1 January 2001.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
Europe and the Mediterranean	Free trade area agreements:[68] • EFTA – Morocco • EFTA – PLO	• **Referral to Joint Committee[69] -** 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 Joint Committee:** The joint Committee is responsible for the administration and implementation, shall keep under review the possibility of further removal of 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 **6 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 designate one panel member in its notification. **Within a month** from the receipt of the notification, the other party designate one member. **Within 2 month** 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**.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect** • The arbitration award is binding and final upon the parties. **(2) 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 arbitration panel is binding.	Medium

[68] The EFTA – Morocco Free Trade Agreement entered into force on 1 December 1999. The interim EFTA – PLO Free Trade Agreement entered into force on 1 July 1999.
[69] The Joint Committee consists of the representatives of the parties and acts by common agreement.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	Free trade area agreements:[70] • EFTA – Bulgaria • EFTA – Croatia • EFTA – Estonia • EFTA – FYROM • EFTA – Israel • EFTA – Jordan • EFTA – Latvia • EFTA – Lithuania • EFTA – Slovenia	• **Referral to joint Committee**[71]: The parties shall make every attempt through co-operation 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 **90 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 designate one panel member in its notification. Within **a month** from the receipt of the notification, the other party designate one member. Within **2 month** 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**.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect** • The arbitration award is binding and final upon the parties. **(2) 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 arbitration panel is binding.	Medium

[70] 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.
[71] The Joint Committee consists of the representatives of the parties and acts by common agreement.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	EFTA – Mexico[72]	• **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 to a **mutually satisfactory resolution** of any matter that might affect their **operation**. • **Referral to Joint Committee**[73] – 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 30 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 15 days after the Joint Committee has convened or 45 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 arbitration panel –** The panel consists of 3 members. Each party shall appoint an arbitrator, and the 2 arbitrators appointed shall designate by common agreement the 3rd arbitrator, who shall chair the panel. . If not all 3 members have been appointed within 30 days from receipt of notification, any Party may request that the Directorate-General of the WTO designates the member.	**(1) Compulsory jurisdiction** **(2)** **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.** **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.	**(1) Binding effect -** The decision of arbitration panel is final and binding. **(2)** **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 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

[72] The EFTA – Mexico Agreement entered into force on 1 July 2001.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	Customs Union between EC and Andorra[74]	• **Referral to Joint Committee[75] – 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 **2 months**. The Joint Committee shall designate a third arbitrator. The arbitrator's decisions shall be taken **by majority vote.**	**(1) Compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect** • The arbitration award is binding and final upon the parties. **(2)** **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 arbitration panel is binding. (Each party is required to take the measures to ensure the application of the decision).	High

[73] The Joint Committee consists of representatives of the parties and acts by consensus.
[74] The Agreement entered into force on 1 July 1991.
[75] The Joint Committee is composed of representatives of the Community and of representatives of the Principality of Andorra.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	Customs Union between EC and Turkey[76]	• **Consultation** – In harmonizing the legislation, each party may consult each other within the Customs Union Joint Committee.[77] • **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 free movement of goods or deflection of trade, the party may take the necessary protection measures. • **Arbitral stage –** If the Association Council[78] 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 3 arbitrators, two appointed by each party and a third appointed by common agreement. The panel shall take its decisions by majority.	**(1) Compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect** • The arbitration award shall be binding on the parties. **(2) Decision of arbitration panel**	High

[76] The Agreement entered into force on 31 December 1995.
[77] The Joint Committee consists of the representatives of EC and Turkey. It acts by common agreement.
[78] 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.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	Europe Agreements:[79] • EC – Bulgaria • EC – Czech Rep. • EC – Estonia • EC – Hungary • EC – Latvia • EC – Lithuania • EC – Poland • EC – Romania • EC – Slovak Rep. • EC – Slovenia	• **Referral to Association Council[80]:** 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 2 months**. The Association Council shall appoint a third arbitrator. The arbitrator's decisions shall be taken **by majority vote**.	**(1) Compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect** • The arbitration award is binding and final upon the parties. **(2) 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 arbitration panel is binding.	High
	Association agreements:[81] • EC – Israel • EC – Morocco • EC – PLO • EC – Tunisia	**Same as Europe Agreements.**	**(1) Compulsory** **(2) WTO DS mechanism not mentioned.**	**Same as Europe Agreements.**	High
	Co-operation agreement between EC and Algeria	**Same as Europe Agreements.**	**(1) Compulsory** **(2) WTO DS mechanism not mentioned.**	**Same as Europe Agreements.**	High

[79] 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.
[80] 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.
[81] The Agreements entered into force for Israel on 1 June 2000, for Morocco on 1 March 2000, for PLO on 1 July 1997, and for Tunisia on 1 March 1998.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	Bilateral agreements[82]	**Same as Europe Agreements.**	**(1) Compulsory** **(2) WTO DS mechanism not mentioned.**	**Same as Europe Agreements.**	High
	EC – Mexico[83]	• **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 to a mutually satisfactory resolution of any matter that might affect their operation. • **Referral to Joint Committee[84]**: 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 30 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 15 days after the Joint Committee has convened or 45 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 arbitration panel:** The panel consists of 3 members. Each party shall appoint an arbitrator, and the 2 arbitrators appointed shall designate by common agreement the 3rd arbitrator, who shall chair the panel.	**(1) Compulsory** **(2) Exclusive Forum Clause** • Recourse to the dispute settlement provisions of the agreement shall be without prejudice to any possible action in the WTO framework. • However, where a party has instituted a DS proceeding under this agreement or the WTO Agreement, it shall not institute a DS proceeding on the same matter under the other forum until such time as the first proceeding has ended. • Arbitration proceedings established under the Agreement will not consider issues relating to parties' rights and obligations under the WTO Agreement.	**(1) Binding effect** • Each party shall be bound to take the measures involved in carrying out the final arbitration report. **(2) Decision of arbitration panel**	High

[82] Czech Republic – Israel, Israel – Poland, Israel - Slovak Republic, Israel – Slovenia, Israel – Turkey and Slovenia – Turkey.
[83] The EC – Mexico Agreement entered into force on 1 July October 2000.
[84] The Joint committee consists of the representatives of the parties and acts by common agreement.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	Commonwealth of Independent States[85]	• 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 parties between which disputable questions or disagreements arose, or by the order of one of them if agreement is not reached within 6 months from the day of the beginning of the procedure.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect**	Medium/ High
America[86]	Central American Common Market (CACM)[87]	**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[88] or the Central American Economic Council**.[89] • **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. **Protocol of Tegucigalpa** • **Art. 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 (Art. 3)** provides that , for the purposes of what is established in par. 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.	**(1) Compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) 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 or application of the provisions of this Treaty. **(2) Decision of arbitration panel**	High

[85] 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 current signatories.

[86] 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.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	US – Israel Free Trade Agreement[90]	• **Consultations:** The parties shall make every attempt to arrive at a mutually agreeable resolution through consultations whenever: a disputes 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 Joint Committee[91]:** If the parties fail to resolve a matter through consultations **within 60 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 3 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 3 members: each party appoint one, and two appointees choose a third.	**(1) Compulsory** **(2) 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 invoked with respect to any matter, the mechanism shall have **exclusive jurisdiction** over that matter.	**(1) No binding effect** • The panel report is not binding but the **Joint Committee will make a final decision** taking into account the panel decision. **(2) 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

[87] 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.
[88] 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.
[89] The Central American Economic Council is composed of several Ministers of Economic Affairs of several Contracting States.
[90] The agreement entered into force on 19 August 1985.
[91] 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.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	Southern Common Market (Mercosur) [92]	There are **two tracks of dispute settlement mechanisms** to which the parties can resort. Member states can either go straight to Brasília Protocol which is faster or through Ouro Preto Protocol which is longer but provides for technical committee phase and could allow more easily for mutually agreed 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**[93] regarding the actions undertaken during the negotiations and their results. • **Participation of the Common Market Group**: if the direct negotiations do not resolve the matter, any of the parties can submit it for consideration by the Common Market Group, which will evaluate the situation. At the conclusion of the procedure (not exceeding 30 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 60 days**, extendable for additional 30 days, from the time its President is designated. The tribunal will take decision **by majority vote**. • **Composition of 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 15 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.	**(1) 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 controversies which are referred to in the present Protocol. **(2) WTO DS mechanism not mentioned.**	**(1) 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.** **(2) Decision of arbitration panel**	High

[92] Treaty of Asuncion entered into force on 29 November 1991. The members are Argentina, Brazil, Paraguay and Uruguay.
[93] 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); Central Bank.

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
		Protocol of Ouro Preto - Article 21 + Annex • **Mercosul Trade Commission:** The Commission receives complaint originating from **Member states** or from **private parties**. It must consider complaint in the first next meeting. If no solution is agreed on, then **a Technical Committee** (intergovernmental) is established. There are 30 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 no consensus, Complaint is submitted to Common Market Group, which will have 30 days to consider Complaint. If consensus is reached, deadline is given to **Member State to take measures.** If **no consensus** or Member State does **not implement measures, Chapter IV of 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, etc) and will enter into force after ratification and will replace the Brasília Protocol.			

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	North American Free-trade area (NAFTA)[94]	• **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[95] – Good Offices, Conciliation and Mediation:** If the parties fail to resolve a matter through consultations within the time-limit (30 days of delivery of a request for consultations, 15 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. • **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 (30 days after the Commission has convened for the meeting, 30 days after the Commission has convened in respect of 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 3 members. Each party shall select one panelist and will agree on a third panelist, who shall serve as chair of the panel.	**(1) Compulsory** **(2) 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.** • An exception is made in respect to claims involving environmental, SPS, and technical standards matters, for which the responding Party may demand that the matter may 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, it must inform the notifying party. If these parties cannot agree on a single forum, the dispute normally shall be settled under NAFTA agreement.	**(1) 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. **(2) 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 30 days of receiving the final report**, the complaining party may **suspend the application of benefits of equivalent effect** until the measures complained against have been removed or a mutually satisfactory solution is reached.	High

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	Canada – Israel Free Trade Agreement[96]	**Same as NAFTA**	**(1) Compulsory** **(2)** **Exclusive forum clause** **Forum election clause** • The parties affirm their existing rights and obligations with respect to each other under the WO Agreements. In the event of any inconsistency between this agreement and WTO agreement, this agreement shall **prevail to the extent of the inconsistency**, except as otherwise provided in the agreement.	**(1) Binding effect** • On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally **shall conform with the report**. **(2) Suspension of benefits**: **Same 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 Free Trade Agreement[97]	**Same as NAFTA**	**(1) Compulsory** **(2)** **Exclusive forum clause** **Forum election clause** • If the party claims that its action s 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.	**(1) Binding effect** • On receipt of the final report of a panel, **the 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. **(2) Suspension of benefits: Same as NAFTA**	High

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	Chile – Mexico Free Trade Agreement[98]	**Same as NAFTA**	**(1) Compulsory** **(2)** **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.	**(1) 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. **(2) Suspension of benefits: Same as NAFTA**	High
	Israel – Mexico Free Trade Agreement[99]	**Same as NAFTA**	**(1) Compulsory** **(2)** **Exclusive forum clause** **Forum election clause** .	**(1) Binding effect** • On receipt of the final report of the panel**, the Commission** shall agree on the resolution of the dispute, which normally shall conform with the report of the panel. **(2) Suspension of benefits**	High

Regions	Agreements	Dispute Settlement Provision	(1) Jurisdiction (2) Reference to GATT/WTO DS Mechanism	(1) Binding Effect of the Decision (2) Remedy[62]	Potential for Overlap
	US – Jordan Free Trade Agreement[100]	• **Consultations:** The parties shall make every attempt to arrive at a mutually agreeable resolution through consultations whenever: a disputes 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 Joint Committee[101]:** If the parties fail to resolve a matter through consultations **within 60 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 3 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 3 members: each party appoint one, and two appointees choose a third.	**(1) Compulsory** **(2) 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.	**(1) 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 1 month, the affected party entitled to take **appropriate measure.** **(2) Appropriate measures**	Medium
Inter-regional	African Caribbean Pacific – 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.[102] Between 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.	**(1) Non-compulsory** **(2) WTO DS mechanism not mentioned.**	**(1) Binding effect** • Each Party to the dispute shall be bound to take the measures necessary to carry out the decision of the arbitrators.	

Level 3: Standing Tribunal[103]

Regions	Agreement	Dispute Settlement Provision	Jurisdiction	Binding Effect of the Decision	Potential for Overlap
Europe	European Economic Area Agreement [104]	• Alleged infringement of European Economic Area (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 1-2 months) • Letter of Formal Notice • The EFTA State submits comments to the Authority (normally within 2 months) • Reasoned Opinion by the Authority • The EFTA State replies to the opinion (normally within 2 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 which are parties to the EEA Agreement (at present Iceland, Liechtenstein and Norway). **Exclusive jurisdiction**	**Binding effect** **Direct effect**	High
	Customs Union[105]	• 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 institution. • The court shall also consider **economic disputes** arising between the parties on issues of implementation of decisions of the community institution and provisions of agreement effective between members, provide explanations and opinions.	**Compulsory jurisdiction** **Exclusive jurisdiction**	**Binding effect**	High

Regions	Agreement	Dispute Settlement Provision	Jurisdiction	Binding Effect of the Decision	Potential for Overlap
America	Andean Community[106]	• **Action of Nullification**: It is up to the Court to nullify the Decisions taken by the Commission[107] 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 2 months. The Board shall issue a reasoned opinion. If in the Board's opinion the Member Country failed to fulfill the obligations mentioned above and continues to do so, the Board may request a verdict from the Court. • **Action of non-compliance:** When a Member Country considers that another Member Country has failed to fulfill the obligations from the agreement, it may raise its claim to the Board stating all 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 fulfill its obligations and continues to do so, the Board may request a verdict from the Court. Should the Board not file the action within the two months after the date of its judgement, the claiming country may appeal directly to the Court. Should the Board fail to pronounce judgement 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 pre-judicial 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.	**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. • 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.	**Binding effect** • If the court rules finds non-compliance, the member country at fault shall take the necessary steps to execute the judgment within 3 months after notification.	High

Regions	Agreement	Dispute Settlement Provision	Jurisdiction	Binding Effect of the Decision	Potential for Overlap
	Caribbean Community (Caricom)[108]	• **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. • **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 of 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 appoint one arbitrator from the List of Arbitrators. The two arbitrators shall appoint a third arbitrator.	**Compulsory jurisdiction** **Exclusive jurisdiction**	**Binding effect**	High

Regions	Agreement	Dispute Settlement Provision	Jurisdiction	Binding Effect of the Decision	Potential for Overlap
		• **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) [109]	• The court has jurisdiction to hear the followings: disputes between states, disputes between state and the COMESA institutions, claims from members, the Secretary General, legal and natural persons, claims against COMESA or its institutions by COMESA employees and third parties, claims arising from arbitration clause and special agreement.	**Compulsory jurisdiction** • The Court shall have jurisdiction to adjudicate upon all matters which 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) [110]	• 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) [111]	• The Court can hear claims from members, Secretary General, persons, claims against EAC or its institutions by EAC employees and third parties, claims arising from arbitration clause and special agreement.	**Compulsory jurisdiction** • The Court shall initially have jurisdiction over the interpretation and application of the Treaty. • 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.	**Binding effect**	High

Regions	Agreement	Dispute Settlement Provision	Jurisdiction	Binding Effect of the Decision	Potential for Overlap
	Traité de l'Union Economique et Monetaire Ouest Africaine (UEMOA) West African Economic Monetary Union (WAEMU)[112]	• 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

Non-notified Agreements

There are approximately 240 regional trade agreements that have not been notified to the WTO. The following chart shows one of these agreements.

	Agreement	Dispute Settlement Provision	Jurisdiction	Binding Effect of the Decision / Remedy	Potential for overlap
Africa	Economic Community of West African States (ECOWAS)[113]	• Any dispute that may arise among the members regarding the interpretation and application of the treaty shall be amicably settled by direct agreement. In the event of failure to settle such disputes the matter may be referred to the Tribunal of the Community by a party to such disputes and decisions of the Tribunal shall be final.	• There shall be established a Tribunal of the Community which shall ensure the observance of law and justice in the interpretation of the provisions of this Treaty. It shall be charged with the responsibility of settling such disputes as may be referred to by the procedure of dispute settlement set out in the treaty. • The composition, competence, statutes and other matters relating to the Tribunal shall be prescribed by the Authority.	**Binding effect**	High