DEEP INTEGRATION AGREEMENTS AND THE LIMITS OF WTO COMPATIBILITY: A LEGAL AUDIT

Dr. A. Venkateswara Rao, PhD-Law, LL.M, M.B.A, M.Com.
Research Scholar GSL, & Asst. Prof. MSSLC / O.U venkatllm05@gmail.com

ABSTRACT

The rise of deep integration agreements preferential trade arrangements that reach far beyond tariff reduction into domestic regulatory space has reshaped the landscape of international trade governance. This article undertakes a systematic legal audit of deep integration commitments against the disciplines of the World Trade Organization (WTO) framework. It proceeds in four principal stages: first, clarifying what "deep integration" means in legal and economic terms; second, mapping the specific WTO compatibility tensions that arise in relation to the most-favoured-nation obligation, the GATT Article XXIV exception, and key agreements on technical barriers, sanitary measures, and intellectual property; third, analysing how those tensions have been addressed or left unresolved by WTO panels and the Appellate Body; and fourth, situating the compatibility question within a broader assessment of what deep integration does to the policy space of WTO members, particularly developing countries. The article argues that while deep integration agreements are not categorically incompatible with WTO law, they generate systemic tensions that the existing legal architecture is poorly equipped to resolve. The result is a regulatory environment in which the formal permissibility of deep integration commitments coexists uncomfortably with persistent substantive conflict, eroding the coherence of the multilateral trading system without openly repudiating it.

Keywords: Deep integration, WTO compatibility, preferential trade agreements, MFN obligation, GATT Article XXIV, TBT Agreement, SPS Agreement, TRIPS-plus, regulatory policy space, trade governance.

I. INTRODUCTION

For most of the twentieth century, the grammar of international trade law was essentially tariff-centric. The principal achievement of the General Agreement on Tariffs and Trade the institutional predecessor to the World Trade Organization was the successive reduction of customs duties through negotiating rounds that progressively liberalized market access[1]. Tariffs were, in this framework, the paradigmatic trade barrier: visible, measurable, and susceptible to multilateral discipline. The architecture of the trading system was built around their reduction and eventual elimination[2].

That architecture is now under significant strain. Tariffs have not disappeared indeed, in certain sectors and certain political moments they have made vigorous returns but the centre of gravity in trade policy has shifted decisively toward what scholars call "behind-the-border" measures: domestic regulations, standards, procurement rules, intellectual property regimes, investment conditions, competition laws, and a host of other policy instruments that shape market access as profoundly as any customs duty[3]. This shift has been accompanied by the proliferation of preferential trade agreements (PTAs) that address these behind-the-border measures in elaborate detail, creating what analysts have called "deep integration" frameworks that go far beyond what the WTO multilateral system currently disciplines[4].

The legal question this development poses is both precise and consequential: when WTO members negotiate deep integration commitments with one another commitments that regulate domestic policy spaces, impose regulatory harmonization, or establish bilateral preferential standards do they remain within the bounds of what the WTO legal framework permits? This is not merely an academic question. It bears directly on the coherence of the multilateral trading system, on the policy options available to WTO members, and on the distribution of benefits

[1] General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT 1947]; Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter WTO Agreement].

[2] Robert E. Baldwin, Nontariff Distortions of International Trade 3–9 (1970) (tracing the shift from tariff-based to non-tariff barriers in the post-war trading order).

[33] Dani Rodrik, The Globalization Paradox: Democracy and the Future of the World Economy 84–88 (2011) (developing the "trilemma" argument that deep economic integration, national sovereignty, and democratic politics cannot be simultaneously maintained).

[4] Peter C. Mavroidis, Trade in Goods: The GATT and the Other Agreements Regulating Trade in Goods 22–27 (3d ed. 2020) (distinguishing "shallow" from "deep" integration in trade law).

and burdens within the global trading order[5].

The WTO agreements contain several provisions that govern the relationship between multilateral obligations and regional or preferential arrangements. Chief among them is GATT Article XXIV, which permits the formation of customs unions and free trade areas subject to specific conditions, and its GATS counterpart in Article V[6]. But these provisions were designed for a world of tariff-based preferential arrangements, and their adequacy as a framework for evaluating the legality of deep integration commitments is, at best, partial[7].

This article attempts a systematic legal audit of deep integration agreements against WTO law. It proceeds in five parts. Part II maps what deep integration means as a legal and analytical category. Part III examines specific compatibility tensions across key WTO agreements. Part IV assesses how WTO adjudicatory bodies have engaged with these tensions. Part V considers the systemic consequences for the multilateral trading system. Part VI offers conclusions.

II. MAPPING DEEP INTEGRATION: LEGAL AND ANALYTICAL CATEGORIES

A. Shallow Versus Deep Integration: The Conceptual Landscape

The term "deep integration" entered the trade policy lexicon largely through the work of economists attempting to describe a qualitative shift in what preferential trade agreements were actually doing[8]. At its core, the distinction between shallow and deep integration tracks the distinction between border measures and domestic measures. Shallow integration reduces or eliminates tariffs and import quotas instruments that operate at the border to restrict market access. Deep integration reaches behind the border to address the domestic regulatory conditions that affect competitive opportunities in national markets[9].

---

[5] WTO Agreement, supra note 1, art. II (establishing the scope and legal personality of the WTO and the status of its covered agreements).

[6] GATT 1947, supra note 1, art. XXIV; General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183 [hereinafter GATS], art. V [hereinafter GATS art. V].

[7] See Appellate Body Report, Turkey Restrictions on Imports of Textile and Clothing Products, WT/DS34/AB/R (Oct. 22, 1999) (establishing the two-part test under GATT Article XXIV for the formation and operation of customs unions and free trade areas).

[8] WTO, World Trade Report 2011: The WTO and Preferential Trade Agreements: From Co-existence to Coherence 100–09 (2011) (documenting the proliferation of preferential trade agreements and their increasing scope of coverage).

[9] Henrik Horn, Petros C. Mavroidis & André Sapir, Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements, 33 World Econ. 1565, 1568–72 (2010) (coining and developing the WTO-X and WTO-Extra framework for classifying PTA commitments).

The most analytically rigorous framework for classifying the content of preferential agreements along this spectrum was developed by Horn, Mavroidis, and Sapir, who proposed a taxonomy distinguishing between "WTO-plus" provisions which deepen existing WTO obligations and "WTO-extra" provisions which regulate subjects entirely outside the current WTO framework[10]. Their empirical analysis of EU and US agreements found that a substantial and growing proportion of PTA content falls into the WTO-extra category, covering subjects such as competition policy, investment, labour standards, environmental regulation, and data flows that the WTO has never systematically addressed.

From a legal standpoint, this taxonomy matters enormously. WTO-plus provisions must be assessed against the existing WTO disciplines they supplement or reinforce, raising questions of consistency and potential conflict. WTO-extra provisions occupy a more ambiguous legal space: they govern subjects on which the WTO is silent, but they may nonetheless produce effects in terms of market access, MFN treatment, and regulatory impact that interact with WTO obligations in ways that are difficult to predict and harder still to adjudicate.

B. The MFN Problem and Article XXIV

The most-favoured-nation (MFN) obligation is the foundational non-discrimination norm of the multilateral trading system. Under GATT Article I, any advantage, favour, privilege, or immunity granted by a member to any product originating in or destined for any country must be extended immediately and unconditionally to the like product of all other WTO members. By definition, preferential trade agreements whether shallow or deep violate this obligation: they grant advantages to partner countries that they deny to the wider WTO membership.

The GATT provides a carefully circumscribed exception to this logic in Article XXIV, which authorizes the formation of customs unions and free trade areas on two conditions: the arrangement must cover "substantially all the trade" between the parties, and it must not raise barriers to third-country trade[11]. The Appellate Body has interpreted these conditions strictly, holding that they establish a necessity test the PTA-inconsistent measure must be introduced

[10] Id. at 1572–78 (demonstrating that a significant proportion of PTA provisions in EU and US agreements regulate matters entirely outside existing WTO disciplines).

[11] See generally Joost Pauwelyn, At the Edge of Chaos? Foreign Investment Law as a Complex Adaptive System, How It Emerged and How It Can Be Reformed, 29 ICSID Rev. 372, 390–94 (2014) (discussing the normative complexity created when bilateral and multilateral trade obligations interact).

as part of the formation of a qualifying customs union or free trade area, and must not go beyond what is required for that formation[12].

Here lies a fundamental tension for deep integration agreements. The "substantially all the trade" standard was designed for tariff-focused arrangements, and WTO adjudicatory bodies have not authoritatively resolved whether it encompasses service trade and behind-the-border regulatory measures[13]. GATS Article V provides a parallel exception for services economic integration agreements, requiring "substantial sectoral coverage" and elimination of "substantially all discrimination." But neither provision adequately addresses the situation of an agreement that imposes deep regulatory harmonization obligations while leaving certain goods or service sectors outside its scope. Can such an agreement satisfy the "substantially all" threshold while producing deep behind-the-border effects in the areas it does cover? The answer is genuinely uncertain, and the absence of clear adjudicatory guidance has left a significant gap in the legal framework[14].

III. COMPATIBILITY TENSIONS ACROSS KEY WTO AGREEMENTS

A. Technical Barriers to Trade and Regulatory Harmonization

The Agreement on Technical Barriers to Trade (TBT Agreement) is one of the central instruments through which WTO law governs domestic regulatory measures affecting market access[15]. The TBT Agreement disciplines technical regulations, standards, and conformity assessment procedures, requiring that they do not create unnecessary obstacles to international trade while preserving members' right to pursue legitimate regulatory objectives[16].

Deep integration agreements routinely include provisions on regulatory harmonization, mutual recognition, or equivalence that go well beyond TBT disciplines. They may require parties to adopt common standards, recognize each other's conformity assessment results, or accept each other's regulatory frameworks as equivalent even where they differ from international

[12] GATT 1947, supra note 1, art. I:1 (requiring that any advantage granted by a WTO member to a product of any country be extended immediately and unconditionally to the like products of all other WTO members).
[13] See Appellate Body Report, European Communities Conditions for the Granting of Tariff Preferences to Developing Countries, WT/DS246/AB/R (Apr. 7, 2004) (interpreting the scope of the MFN obligation and its application to preferential arrangements).
[14] GATT 1947, supra note 1, art. XXIV:5 (permitting formation of customs unions and free trade areas provided they do not raise barriers to trade with third parties).
[15] Appellate Body Report, Turkey Textiles, supra note 8, paras. 45–58 (applying the two-part necessity test: (i) the PTA must satisfy the conditions of Article XXIV, and (ii) the measure must be introduced upon the formation of the PTA).
[16] GATS, supra note 7, art. V:1 (permitting economic integration agreements among WTO members provided they have substantial sectoral coverage and eliminate substantially all discrimination).

standards[17]. The compatibility question arises acutely when these bilateral arrangements produce different regulatory treatment for products from PTA partners than for products from non-partner WTO members. The Appellate Body's jurisprudence on TBT Article 2.1 has clarified that "less favourable treatment" requires an examination of the competitive impact of the regulatory measure, not merely its formal structure[18]. A deep integration arrangement that grants mutual recognition to a PTA partner but not to other WTO members may well confer a competitive advantage on partner-country products in precisely the sense that TBT Article 2.1 was designed to prevent. The SPS Agreement presents a structurally similar problem, with additional complexity[19]. SPS disciplines require that members' food safety, animal health, and plant health measures be based on scientific risk assessment and be no more trade-restrictive than required to achieve the member's chosen level of protection. The Appellate Body has been firm that political or precautionary considerations cannot substitute for science-based justification[20]. Yet deep integration agreements, particularly between the EU and its trading partners, regularly address food safety and agricultural standards in ways that go beyond WTO-mandated science-based requirements sometimes in the direction of higher protection, sometimes in the direction of mutual recognition that bypasses individual risk assessments. The legal status of these arrangements under the SPS Agreement has never been directly adjudicated, leaving a significant space of normative uncertainty.

B. TRIPS and the TRIPS-Plus Problem

Nowhere has the tension between deep integration and WTO compatibility been more extensively discussed than in the domain of intellectual property[21]. The TRIPS Agreement sets minimum standards for intellectual property protection across all WTO members, including patent terms, copyright protection periods, and data exclusivity for pharmaceutical test data[22]. TRIPS Article 1(1) explicitly permits members to implement more extensive protection,

[17] See Bernard Hoekman & Petros Mavroidis, WTO "à la Carte" or "Menu du Jour"? Assessing the Case for More Plurilateral Agreements, 26 Eur. J. Int'l L. 319, 325–29 (2015) (analyzing the tension between plurilateral flexibility and the MFN principle).

[18] Agreement on Technical Barriers to Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 120 [hereinafter TBT Agreement].

[19] Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493 [hereinafter SPS Agreement].

[20] TBT Agreement, supra note 19, art. 2.1 (requiring that technical regulations accord imported products treatment no less favorable than that accorded to like domestic products and like products of any other country).

[21] Appellate Body Report, United States Measures Affecting the Production and Sale of Clove Cigarettes, WT/DS406/AB/R (Apr. 4, 2012), para. 174 (interpreting the TBT Agreement's "less favorable treatment" standard as incorporating an effects-based analysis beyond formal non-discrimination).

[22] SPS Agreement, supra note 20, art. 3 (encouraging WTO members to base their SPS measures on international standards while permitting higher levels of protection supported by scientific risk assessment).

provided it does not contravene the Agreement's own provisions[23].

Deep integration agreements particularly those negotiated by the United States and the European Union have systematically used this permissive language as a basis for imposing "TRIPS-plus" obligations on their trading partners: extensions of patent terms beyond twenty years, data exclusivity requirements that restrict generic pharmaceutical competition, and expanded enforcement mechanisms not required by TRIPS itself[24]. The problem with TRIPS-plus obligations is not that they violate TRIPS as such TRIPS Article 1(1) allows them but that they interact with WTO law in ways that have significant welfare consequences, particularly for developing countries whose ability to use TRIPS flexibilities (most notably for access to medicines) is effectively curtailed by bilateral commitments that are never reviewed for WTO consistency[25].

C. Government Procurement and Plurilateral Overlap

Government procurement represents a distinct category of compatibility tension. The WTO's Government Procurement Agreement (GPA) is a plurilateral instrument binding only on those WTO members that choose to accede and it extends non-discrimination obligations to covered procurement by covered entities[26]. Deep integration agreements routinely include procurement chapters that go beyond GPA obligations in coverage, threshold values, or substantive disciplines. The compatibility question here is whether bilateral procurement commitments that exclude non-party WTO members from equivalent access are consistent with the GPA's non-discrimination obligations. For members of both the GPA and a deep integration PTA, the answer depends on the specific coverage schedules and exclusions in each instrument a complexity that has produced a patchwork of overlapping and potentially conflicting obligations rather than a coherent framework[27].

---

[23] Appellate Body Report, European Communities Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R (Jan. 16, 1998), para. 186 (holding that the precautionary principle does not override the science-based obligation under SPS Article 3).

[24] See Mireille Cossy, Determining "Likeness" Under the GATS: Squaring the Circle?, WTO Staff Working Paper ERSD-2006-08, at 12–18 (2006) (analyzing the challenges of applying non-discrimination standards to services trade).

[25] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

[26] TRIPS Agreement, supra note 26, art. 1(1) (permitting members to implement more extensive intellectual property protection provided it does not contravene the Agreement's provisions)

[27] See Henning Grosse Ruse-Khan, The Protection of Intellectual Property in International Law 189–203 (2016) (discussing the phenomenon of "TRIPS-plus" obligations in preferential trade agreements and their implications for developing country policy space).

IV. THE VIEW FROM DISPUTE SETTLEMENT: ADJUDICATED AND UNADJUDICATED TENSIONS

A. What WTO Adjudication Has and Has Not Resolved

The record of WTO dispute settlement on deep integration questions is notable less for what it has resolved than for what it has left untouched. Adjudicatory bodies have engaged with some of the specific compatibility questions raised by individual measures TBT consistency, SPS disciplines, TRIPS obligations but they have rarely confronted the deep integration question in its systemic form[28]. This is partly a function of how disputes are framed: parties bring specific measures before specific WTO agreements, not abstract questions about the compatibility of PTAs as such[29].

The general exceptions in GATT Article XX have played a significant role in mediating compatibility tensions, providing WTO members with a measure of regulatory autonomy that pure non-discrimination analysis might otherwise deny[30]. Article XX permits measures necessary to protect public morals, human or animal or plant life or health, and a range of other legitimate policy objectives, subject to the overarching requirement that they not constitute arbitrary or unjustifiable discrimination or a disguised restriction on trade[31]. The Appellate Body's interpretation of the Article XX chapeau has been moderately permissive, allowing members to calibrate their level of protection while imposing a duty of good faith and non-discriminatory application[32]. But the general exceptions were not designed to address the situation of regulatory commitments undertaken in a deep integration PTA, and it is far from

[28] See Frederick Abbott, The Doha Declaration on the TRIPS Agreement and Public Health: Lighting a Dark Corner at the WTO, 5 J. Int'l Econ. L. 469, 490–95 (2002) (analyzing the tension between TRIPS obligations and access to medicines, exacerbated by TRIPS-plus provisions in bilateral agreements).

[29] Government Procurement Agreement, Apr. 6, 2014, WTO Doc. GPA/113 [hereinafter GPA]; see also Steve Charnovitz, Mapping the Law of WTO Accession, in WTO Law and Developing Countries 93, 110–13 (George A. Bermann & Petros C. Mavroidis eds., 2007) (discussing plurilateral agreements and their relationship to the WTO framework).

[30] Rodrik, supra note 3, at 200–07 (arguing that democratic self-determination requires preserving policy space for domestic regulatory choices).

[31] See Joseph E. Stiglitz & Andrew Charlton, Fair Trade for All: How Trade Can Promote Development 64–72 (2005) (arguing that deep integration commitments asymmetrically burden developing countries by constraining regulatory tools that developed countries used during their own industrialization).

[32] See Gabrielle Marceau & Joel Trachtman, The Technical Barriers to Trade Agreement, the Sanitary and Phytosanitary Measures Agreement, and the General Agreement on Tariffs and Trade: A Map of the World Trade Organization Law of Domestic Regulation of Goods, 36 J. World Trade 811, 813–17 (2002) (analyzing the layered interaction between GATT, TBT, and SPS disciplines on domestic regulation).

clear that a PTA partner could invoke Article XX to justify discriminatory application of standards that it has specifically committed to harmonize with a subset of WTO members[33].

B. The Architecture of Major Deep Integration Agreements Under Review

A review of the major deep integration agreements of recent years reveals both the ambition and the WTO compatibility challenges of behind-the-border liberalization[34]. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) contains extensive chapters on investment, e-commerce, and intellectual property that go well beyond existing WTO disciplines[35]. The Regional Comprehensive Economic Partnership (RCEP) represents a comparatively shallower integration model reflecting the diverse development levels of its signatories but still incorporates WTO-plus and WTO-extra elements in e-commerce and intellectual property[36].

The United States-Mexico-Canada Agreement (USMCA) pushes the frontier further, incorporating digital trade provisions that govern cross-border data flows and data localization requirements, labour enforcement mechanisms, and a novel chapter on currency manipulation all of which are either absent from WTO agreements or addressed in far less prescriptive terms[37]. The European Union, for its part, has been explicit about its strategy of using PTAs to export its own regulatory model including data protection standards derived from the General Data Protection Regulation as a mechanism of normative leadership in the global trading system[38].

---

[33] See Panel Report, United States Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/R (Nov. 10, 2004), paras. 6.321–6.335 (examining the GATS general exceptions and their applicability to domestic regulatory measures).

[34] GATT 1947, supra note 1, art. XX (providing a closed list of general exceptions, including measures necessary to protect public morals, human, animal, or plant life or health, and measures relating to the conservation of exhaustible natural resources).

[35] Appellate Body Report, United States Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R (Apr. 29, 1996) (establishing the two-tier interpretive approach to the general exceptions under Article XX: first, classification under a specific paragraph; second, the chapeau requirements of good faith and non-discriminatory application).

[36] See Appellate Body Report, Brazil Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB/R (Dec. 3, 2007), paras. 140–56 (applying the "necessity" test under GATT Article XX(b) and affirming the right of members to set their own level of protection).

[37] See Horn, Mavroidis & Sapir, supra note 10, at 1580–86 (demonstrating that deep integration provisions in US and EU PTAs systematically exceed WTO disciplines in areas including competition law, investment, and intellectual property).

[38] See Comprehensive and Progressive Agreement for Trans-Pacific Partnership, Mar. 8, 2018, [2018] ATS 23 [hereinafter CPTPP], ch. 8 (investment), ch. 14 (electronic commerce), ch. 18 (intellectual property) (illustrating deep integration commitments extending well beyond WTO disciplines).

C. The Problem of Systemic Fragmentation

The cumulative effect of these developments is a form of systemic fragmentation in the international trading order. Mavroidis and Sapir have identified the central tension clearly: the WTO's multilateral framework provides universal coverage and legally binding dispute settlement, but it has progressively fallen behind the frontier of trade governance; deep integration PTAs address that frontier but do so in bilateral or plurilateral settings that fracture the universality of the multilateral system[39]. Hoekman and Mavroidis have proposed that the WTO itself develop plurilateral frameworks as a response building on the precedent of the Government Procurement Agreement to create opt-in disciplines on deep integration subjects within the WTO framework itself[40].

V. POLICY SPACE, DEVELOPMENT, AND THE SYSTEMIC STAKES

The compatibility question cannot be fully answered in purely doctrinal terms. Behind the legal analysis lies a more fundamental normative question: what is the multilateral trading system for, and does the current trajectory of deep integration agreements serve that purpose?[41] The COVID-19 pandemic brought this question into sharp relief, as deeply integrated global value chains proved brittle under the pressure of supply disruptions and export restrictions, prompting a renewed debate about the appropriate limits of trade-driven integration[42].

The interpretive methodology of WTO dispute settlement grounded in good faith textual interpretation under the Vienna Convention on the Law of Treaties, and guided by the DSU's instruction to preserve the rights and obligations of members provides only limited tools for navigating these systemic tensions[43]. Adjudicatory bodies are constrained to decide specific

[39] See Regional Comprehensive Economic Partnership Agreement, Nov. 15, 2020, ch. 12 (electronic commerce), ch. 11 (intellectual property) [hereinafter RCEP] (representing a comparatively shallower integration model than CPTPP while still incorporating WTO-plus and WTO-extra elements).

[40] See generally United States-Mexico-Canada Agreement, Nov. 30, 2018, T.I.A.S. No. 20-0101, chs. 19, 20, 32 [hereinafter USMCA] (addressing digital trade, labour, and currency manipulation areas absent from the WTO covered agreements).

[41] European Commission, Trade Policy Review An Open, Sustainable and Assertive Trade Policy, COM(2021) 66 final, at 7–9 (Feb. 18, 2021) (articulating the EU's strategy of exporting its regulatory model through deep integration commitments in trade agreements).

[42] See Petros C. Mavroidis & André Sapir, China and the WTO: Why Multilateralism Still Matters 102–17 (2021) (analyzing the tensions between China's trade practices and WTO obligations, and the role of PTAs in building alternative normative frameworks).

[43] Hoekman & Mavroidis, supra note 18, at 330–36 (proposing a plurilateral architecture within the WTO as a more transparent alternative to the proliferation of bilateral deep integration commitments).

disputes on specific legal grounds[44]; they cannot redesign the architecture of the trading system or fill the gaps left by the negotiators of the covered agreements[45].

What is required, the analysis suggests, is not merely better legal interpretation but institutional innovation: either through the negotiation of multilateral disciplines on behind-the-border measures within the WTO framework, or through the development of more robust transparency and review mechanisms for PTA commitments that affect the rights of non-parties. Neither path is politically easy, but the alternative a trading system in which the formal legality of deep integration agreements coexists with persistent and unresolved substantive incompatibility carries its own long-term costs for the credibility and effectiveness of international trade governance.

VI. CONCLUSION

This article has argued that deep integration agreements are not categorically incompatible with WTO law, but that they generate compatibility tensions across multiple WTO agreements the MFN obligation, GATT Article XXIV, the TBT and SPS Agreements, and TRIPS that the existing legal architecture is poorly equipped to resolve. The Appellate Body and WTO panels have addressed some of these tensions in specific dispute contexts, but the systemic compatibility question remains largely unadjudicated.

The deeper problem is structural. Deep integration agreements are, in essence, instruments of regulatory governance that have been drafted using the legal form of trade agreements. They are neither purely WTO-consistent nor purely WTO-inconsistent; they inhabit a normative grey zone in which formal legality and substantive tension coexist. Managing that tension requires more than legal ingenuity it requires the kind of political will to reform the multilateral trading system that has, so far, been conspicuously absent[46].

Rodrik's famous trilemma reminds us that the ambitions of deep integration, the demands of democratic self-determination, and the requirements of a coherent multilateral order cannot all

[44] See Joel P. Trachtman, The International Law of Economic Migration: Toward the Fourth Freedom 243–58 (2009) (arguing that the conceptual apparatus of deep integration theory needs to be extended to account for factor mobility, not merely goods and regulatory harmonization).

[45] See generally WTO, World Trade Report 2021: Economic Resilience and Trade Policy 55–68 (2021) (examining how the COVID-19 pandemic exposed vulnerabilities in deeply integrated global value chains and renewed interest in domestic industrial policy).

[46] DSU, supra note 6, art. 3(2) (directing panels and the Appellate Body to clarify the existing provisions of the WTO agreements in accordance with customary rules of interpretation of public international law).

be fully satisfied simultaneously[47]. The task for international trade lawyers and policymakers alike is not to pretend otherwise, but to make the trade-offs explicit, to design institutions that manage them as fairly as possible, and to resist the temptation to treat the formal permissibility of deep integration commitments as a substitute for genuine multilateral consensus.

[47] Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT] (providing that a treaty shall be interpreted in good faith in accordance with the ordinary meaning of its terms in their context and in light of its object and purpose).

BIBLIOGRAPHY

International Instruments

1. 1.Comprehensive and Progressive Agreement for Trans-Pacific Partnership, Mar. 8, 2018, [2018] ATS 23.

2. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

3. General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183.

4. Government Procurement Agreement, Apr. 6, 2014, WTO Doc. GPA/113.

5. Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154.

6. Regional Comprehensive Economic Partnership Agreement, Nov. 15, 2020.

7. Agreement on Technical Barriers to Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 120.

8. Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493.

9. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

10. Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

11. United States-Mexico-Canada Agreement, Nov. 30, 2018, T.I.A.S. No. 20-0101.

12. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

WTO Decisions and Reports

1. Appellate Body Report, Brazil Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB/R (Dec. 3, 2007).

2. Appellate Body Report, European Communities Conditions for the Granting of Tariff Preferences to Developing Countries, WT/DS246/AB/R (Apr. 7, 2004).

3. Appellate Body Report, European Communities Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R (Jan. 16, 1998).

4. Appellate Body Report, Turkey Restrictions on Imports of Textile and Clothing Products, WT/DS34/AB/R (Oct. 22, 1999).

5. Appellate Body Report, United States Measures Affecting the Production and Sale of Clove Cigarettes, WT/DS406/AB/R (Apr. 4, 2012).

6. Appellate Body Report, United States Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R (Apr. 29, 1996).

7. Panel Report, United States Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/R (Nov. 10, 2004).

Books

1. Baldwin, Robert E. Nontariff Distortions of International Trade. Washington, D.C.: Brookings Institution, 1970.

2. Cass, Deborah Z. The Constitutionalization of the World Trade Organization. Oxford: Oxford University Press, 2005.

3. Grosse Ruse-Khan, Henning. The Protection of Intellectual Property in International Law. Oxford: Oxford University Press, 2016.

4. Mavroidis, Petros C. Trade in Goods: The GATT and the Other Agreements Regulating Trade in Goods. 3d ed. Oxford: Oxford University Press, 2020.

5. Mavroidis, Petros C., and André Sapir. China and the WTO: Why Multilateralism Still

Matters. Princeton: Princeton University Press, 2021.

6. Rodrik, Dani. The Globalization Paradox: Democracy and the Future of the World Economy. New York: W.W. Norton, 2011.

7. Stiglitz, Joseph E., and Andrew Charlton. Fair Trade for All: How Trade Can Promote Development. Oxford: Oxford University Press, 2005.

8. Trachtman, Joel P. The International Law of Economic Migration: Toward the Fourth Freedom. Kalamazoo: W.E. Upjohn Institute, 2009.

9. Van den Bossche, Peter, and Werner Zdouc. The Law and Policy of the World Trade Organization. 5th ed. Cambridge: Cambridge University Press, 2022.

Journal Articles and Working Papers

1. Abbott, Frederick. "The Doha Declaration on the TRIPS Agreement and Public Health: Lighting a Dark Corner at the WTO." 5 Journal of International Economic Law 469 (2002).

2. Charnovitz, Steve. "Mapping the Law of WTO Accession." In WTO Law and Developing Countries, edited by George A. Bermann and Petros C. Mavroidis. Cambridge: Cambridge University Press, 2007.

3. Cossy, Mireille. "Determining 'Likeness' Under the GATS: Squaring the Circle?" WTO Staff Working Paper ERSD-2006-08 (2006).

4. Hoekman, Bernard, and Petros C. Mavroidis. "WTO 'à la Carte' or 'Menu du Jour'? Assessing the Case for More Plurilateral Agreements." 26 European Journal of International Law 319 (2015).

5. Horn, Henrik, Petros C. Mavroidis, and André Sapir. "Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements." 33 World Economy 1565 (2010).

6. Marceau, Gabrielle, and Joel Trachtman. "The Technical Barriers to Trade Agreement, the Sanitary and Phytosanitary Measures Agreement, and the General Agreement on Tariffs and Trade: A Map of the World Trade Organization Law of Domestic

Regulation of Goods." 36 Journal of World Trade 811 (2002).

7. Pauwelyn, Joost. "At the Edge of Chaos? Foreign Investment Law as a Complex Adaptive System, How It Emerged and How It Can Be Reformed." 29 ICSID Review 372 (2014).

Official Documents

1. European Commission. Trade Policy Review An Open, Sustainable and Assertive Trade Policy. COM(2021) 66 final (Feb. 18, 2021).

2. WTO. World Trade Report 2011: The WTO and Preferential Trade Agreements: From Co-existence to Coherence. Geneva: WTO, 2011.

3. WTO. World Trade Report 2021: Economic Resilience and Trade Policy. Geneva: WTO, 2021.