

Conflict and Harmonization of Dispute Settlement Mechanisms between the WTO and Regional Trade Agreements

Tsai-Yu Lin *

Abstract

The expansion of the coverage of international law and the increasing number of international tribunals have led to the issue of “fragmentation” of international legal order becoming widespread concern in recent years. Given the proliferation of regional trade agreements (hereinafter RTA) as well as its dispute settlements, the risk ensuing from the conflicts of jurisprudences and rulings seems also to exist within international trade law. On the overlapping subject matter, the WTO and RTA share common jurisdiction. In addition, the lack of clear rule in regard to the interaction between WTO and RTA tribunals may also contribute to the occurrence of conflicting rulings given that each tribunal may adjudicate parallel or similar obligation in parallel dispute settlement procedures. In light of the cases of *Mexico-Soft Drinks*, *Argentina-Poultry* and *Brazil-Tyre* analyzed in this paper, we may find that the WTO adjudicators do not show judicial coherence towards the preservation of RTA legal order.

In this paper, the author argues that the operation of the global trade order as well as its predictability and legal certainty depend on how WTO and RTA trading systems may create judicial accommodation and fit each other. In this sense, whether or how the future panel or the Appellate Body can pragmatically respond to the need of alleviating the WTO-RTA judicial conflicts through certain normative instruments found in the past practices, such as the concept of “legal impediments”, the principles of international law or the tool of treaty interpretation is worth further observing. In the long term, it is suggested that WTO Members should devise a set of principles to manage the interaction

* Professor, Department of International Business, Soochow University.

E-mail: kry.tylin@msa.hinet.net

between WTO and RTA tribunals, which is concurrently shared by both trading systems.

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