

## **Proliferation of Preferential Free Trade Agreements are Facilitating or Hindering the Progress of WTO Regime**

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### **Abstract**

WTO, the flag bearer of the world trading system is under a threat from the sudden emergence of several Free Trade Agreements. The deadlock and snail pace negotiations at WTO among nations on innumerable contentious matters and geopolitical strategies has induced FTAs to significantly grow by leaps and bounds in recent years. Trends suggest that more and more trade is happening bilaterally rather than multilaterally and in such a scenario it becomes pertinent to examine FTAs trade creation or diversion effects while analyzing its institutional compatibility and structure with the WTO agreement. This article sheds light on probable reasons for the drastic expansion of FTAs which can undermines WTO's existence by pushing WTO at crossroad and suggests various measures to comprehensively improve pitfalls of the FTAs within WTO and strengthen existing legal framework of FTAs within WTO system.

**Keywords:**Free Trade Agreements, Preferential Trade Agreements, FTAs, PTAs, WTO.

*Nations have no permanent alliances, just permanent interests.*

— Castlereagh

### **I. Introduction**

GATT/WTO system is a complex web of Law, Economics and Politics.<sup>1</sup>It was formed to promote trade liberalization through reduction of tariff barrier all over the world so that two or more countries can access each other's markets without any obstacles.<sup>2</sup>And undoubtedly it has significantly achieved the goal of reducing the tariff almost on all the subject matters of trade in which the States are engaged in today's world.

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<sup>1</sup>Craig VanGrasstek, *The History and Future of the World Trade Organization* (World Trade Organization, 2013)

<sup>2</sup>Michael J. Trebilcock, *Understanding Trade Law*(Edward Elgar Publication, 2011)

Although the establishment of GATT/WTO was to reduce the fiscal tariff but it received a wider acceptance all over the globe due to the non-discriminatory clauses and in particular Most Favored Nation (committed negotiations must be extended to all the members of trading system), which is often regarded as a 'cornerstone principle'<sup>3</sup> of multilateral trading regime. Suppose, a country wants to be a part of GATT/WTO system, and if we pose a question why it wants to be part of GATT/WTO system, the simplest answer we may get is because of the "Most Favored Nation principle", which is also known as equity principle in the WTO system.<sup>4</sup>

The principle of MFN is not an absolute principle. The GATT/WTO provides exceptions to the principle of MFN. These exceptions provide flexibility to the WTO regime. One such exception formulated in the WTO is FTAs (Free Trade Agreements). The mushrooming of FTAs around the world, contrary to the principle of MFN as embodied in the GATT/WTO system, according to some economists, are undermining the existence of multilateralism trading system. With the revival of WTO after the Bali ministerial conference, Balithe question still needs to be asked that whether the proliferation of free trade in the international trading system should be reconsidered in the post Bali ministerial conference and are FTAs attempting to undermine multilateralism or complementing the WTO regime?

The foremost concern regarding the FTAs is the flurry of FTAs which can be gauged from the fact that till January 31, some 583 notifications of RTAs (counting goods, services and accessions separately) have been received by the GATT/WTO<sup>5</sup> and its subject matter is extended beyond the field covered in the WTO system.<sup>6</sup> In this article will attempt to put forth critique of the FTAs and examine its pros and cons in the world trading system.

## **II. Rational of Free Trade Agreements in GATT/WTO system**

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<sup>3</sup>John H. Jackson, *The World Trading System Law and policy of International Economic Relations* (2<sup>nd</sup> edn, MIT Press, 1997)

<sup>4</sup>Trebilcock, Supra Note 2.

<sup>5</sup>'Regional Trade Agreements', <[http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm)> accessed April 2, 2014

<sup>6</sup>Catherine A Novelli, 'Commentary: Bilateral Free Trade Agreements and Support for the Doha Round of Multilateral Trade Negotiations' (2005)5(4) GEL  
<<http://www.degruyter.com/view/j/gej.2005.5.4/gej.2005.5.4.1154/gej.2005.5.4.1154.xml?format=INT>> accessed April 2, 2014

Before getting into the nitty-gritty of the rational of FTAs, I would like to start with what these FTAs are all about? FTAs are legal instruments which entirely abolishes the trade and non-trade barriers between the members so that partaking members can construct a free trade area or zone for the smooth functioning of trade and commerce without any hassle. Actually, Free trade agreement is a creature of Regional Trade Agreements (RTAs) which is an exception craved out from the foundational principle of MFN in the GATT/WTO structure provided in Article I of GATT/WTO agreement.

The premise on which FTAs are incorporated into WTO was that the free trade zone constructed by it would enlarge the opportunities for trade which may also engage the non-members, consequently with that opportunity non-members can also realize the benefits of free trade. Even the classical comparative advantage trade theory supports that the abolition of trade barriers would allow a country to concentrate on the production in which it has a relative advantage and that concentration will lead to economic efficiency.<sup>7</sup> Summarily, the liberalized free trade reinforces that, FTAs have the potential to allow the economy to be efficient and enhance economic development.<sup>8</sup>

On the contrary, if we take a glance on the history of GATT system we will discover that it is not the above mentioned argument which justified the FTAs but at the time of inception of GATT system, a framework was required to accommodate the major European policy of economic and political integration after the end of World War II. However, it was the perception of developing countries that free trade areas can be a vehicle of development for trade and commerce in their undeveloped regions. Therefore, developing countries in order to protect their interests embrace the free trade agreement in GATT. Apart from that US, a staunch supporter of the multilateralism at that time sought to accommodate its secretly concluded free trade agreement with Canada.<sup>9</sup> In conclusion, the central objectives of FTAs are the creation of welfare and the promotion of development in poor countries through trade.<sup>10</sup>

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<sup>7</sup>Yong-Shik Lee, *Reclaiming Development in the World Trading System*(Cambridge University Press, 2006)

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup>Y.H.Hodu, 'Regionalism in the WTO and the Legal Status of a Development Agenda in the EU/ACP Economic Partnership Agreement', (2009) 78 NJIL

Now with the development of economies around the world along with the expansion of market for broader economic advantages, more countries are following the suit for adopting the FTAs for the benefits of open trade policies as Baldwin in his “domino theory” pursued that no country wants to be excluded from the potential benefits of being part of the FTAs/PTAs.<sup>11</sup>

### **III. Reasons for Drastic Expansion of FTAs**

The expansion of FTAs after the establishment of WTO in 1995, at global level is unprecedented. It is an irony that GATT/WTO which liberalizes the world trade and facilitates the rapid development of economic growth is no longer the first preference nowadays among the member States; more number of the free trade agreements notified at WTO narrates this fact.

According to noted economist Bhagwati, the rapid expansion of FTAs are partly due to the policymakers who are unable to realize the potential detrimental effects on world economy and partly due to the bandwagon effects wherein countries are imitating U.S. and EU initiative contributed by inadequate institutional legal regime of WTO to regulate FTAs.<sup>12</sup> Nevertheless, many explanations and justification has been emerged from array of policies and practices of states for undertaking trade through FTAs rather than WTO system.

Firstly, the lethargic developments of overall progress of WTO, especially the negotiation of trade issues are tedious. Sometimes it takes decades to come to the conclusion on a specific trade aspect with little success. Often it results in the stalemate between member States that frustrate the objective of trade, that too at the cost of time and efforts.

Secondly, the opportunity of trade at WTO is quite limited than the scope of FTAs which covers more contentious issues of trade that cannot be done through the channels of multilateralism. Take an instance of Japan-Singapore Economic Partnership Agreement (JSEPA) which not only takes into account the various tariff and non-tariff issues but also comprises of various range of

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<<http://heinonline.org/HOL/LandingPage?handle=hein.journals/nordic78&div=14&id=&page=>> accessed April 3, 2014

<sup>11</sup> Andrew G Brown and Robert M. Stern, ‘Free Trade Agreements and Governance of the Global Trading System’(2011) International Policy Center Gerald R. Ford School of Public Policy University of Michigan IPC Working Paper Series Number 113, <<http://ipc.umich.edu/working-papers/pdfs/ ipc-113-brown-stern-free-trade-agreements-governance-global-trading-system.pdf>>accessed April 28, 2014

<sup>12</sup> Jagdish Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (Oxford University Press, 2008)

specifications from facilitation of direct trade and investment to promotion of economic and technical cooperation in numerous areas of trade.<sup>13</sup> Yet another example can be taken from the free agreement of US-Singapore (USSFTA) which incorporated security concerns and challenges the trade undertakings. Border disputes, territorial claim disputes and other regional tensions of South East Asia have stirred Singapore to sign a trade pact with the US.<sup>14</sup>

Thirdly, in FTAs there are not too many participant members, hence the likelihood of deadlock is almost negligible and only less number of disputes arises, that too are generally settled amicably through mutual understanding even without taking recourse of the dispute settlement mechanism of FTAs.

Fourthly, in certain sensitive and core issues such as defense, states jealously guard their interest and do not grant access in these areas therefore, in such areas a multilateral approach is not a viable approach to access the particular stream of a country. However, FTAs provide ample opportunity to access those grey areas bilaterally.<sup>15</sup>

Fifthly, traditionally FTAs have been perceived from the standpoint of achieving economic objectives of “deep integration” and to a large extent for securing economic benefits.<sup>16</sup>

Apart from these FTAs, they have become a potent tool for furthering foreign policy. FTA has emerged as a critical foreign diplomacy which was unforeseen previously. Perhaps EU was the first to visualize the potential of FTAs, however, it was the US which refashioned it into a tool to “exploit trade and diplomatic opportunities” by enhancing the collaborations and cooperation. For instance FTAs initiated by US with Israel, Middle East FTA are driven by the geo-political strategy and are aimed to achieve a peaceful resolution of contentious disputes through economic

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<sup>13</sup> Shujiro Urata, 'Japan's Free Trade Agreement Strategy' (2009) 36(2) JE <<http://mesharpe.metapress.com/app/home/contribution.asp?referrer=parent&backto=issue,3,5;journal,15,169;linkinpublicationresults,1:110911,1>> accessed April 28, 2014

<sup>14</sup> Eul-Soo Pang, 'Embedding Security into Free Trade: The Case of the United States-Singapore Free Trade Agreement', (2007) 29(1) <<http://connection.ebscohost.com/c/articles/25429498/embedding-security-free-trade-case-united-states-singapore-free-trade-agreement>> accessed April 28, 2014

<sup>15</sup> Trejos Alberto, 'Bilateral and Regional Free Trade Agreements, and Their Relationship with the WTO and the Doha Development Agenda' (2005) 5(4) GEL <<http://www.degruyter.com/view/j/gej.2005.5.4/gej.2005.5.4.1153/gej.2005.5.4.1153.xml?format=INT>> accessed April 28, 2014

<sup>16</sup> Gilbert Gagné, 'Free Trade and Cultural Policies: Evidence from the U.S.-Korea Free Trade Agreement' (2012) Paper presented at the 22nd World Congress of the International Political Science Association <[http://paperroom.ippsa.org/app/webroot/papers/paper\\_11417.pdf](http://paperroom.ippsa.org/app/webroot/papers/paper_11417.pdf)> accessed April 28, 2014

development. In other words, FTAs not only offers economic prospects but it has also been used to forge geo-political and military alliances.<sup>17</sup>

FTAs provide freedom and flexibility to the countries to conduct experiments on critical issues bilaterally which may not be feasibly done at multilateral level. However, after the success at bilateral level it can be incorporated in WTO system after accessing pros and cons of the agenda involved. The penultimate effects of this arrangement will be reflected in the development of cohesive relations among countries for espousing common agendas for trade liberalization and a jolt to those who are holding the negotiation hostage.<sup>18</sup> However, a word of caution needs to be addressed, today's world is technology driven and humans are continuing to make progress by leaps and bounds in almost every field of knowledge so, its pertinent to be vigilant especially in developing and LDCs where the matter is related to FTAs as in recently concluded FTAs, it was found that obligations contained in the FTAs in the area of IPRs enforcement are more rigorous than what is contained in GATT/WTO agreements.<sup>19</sup> In other words, FTAs contains even those provisions which go beyond WTO member countries commitments at the WTO's agreement on Trade Related aspects of Intellectual Property Rights (TRIPS). These provisions are also known as 'TRIPS-plus' provisions.

#### **IV. Legal Framework for Free Trade Agreements**

Article XXIV of the GATT permits certain exceptions to the principle of MFN. Countries may enter into bi-lateral or regional agreements if they eliminate "duties and other regulations of commerce" on "substantially all trade" among themselves. The GATT rules allow for both customs unions, in which member countries impose a common external tariff on trade with the rest of the world, and free-trade areas, in which the countries maintain separate external tariffs.<sup>20</sup>

Article XXIV of GATT provides for the provisions pertaining to the FTAs in the WTO regime. The objective of Article XXIV has been provided in Article XXIV (4) which states that:

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<sup>17</sup>Greg Mastel, 'The Rise of the Free Trade Agreement' (2004)47(4) Challenge  
<<http://www.jstor.org/stable/i40032458>>accessed April 29, 2014

<sup>18</sup>Eul-Soo Pang, Supra Note 14

<sup>19</sup>Catherine A Novelli, Supra Note 6

<sup>20</sup>Gene M. Grossman and Elhanan Helpman, 'The Politics of Free-Trade Agreements' (1995) 85(4) AER  
<[http://www.congreso.gob.pe/tlc/4\\_DOSSIER\\_TEMATICO/4\\_5/4\\_5\\_1/19.pdf](http://www.congreso.gob.pe/tlc/4_DOSSIER_TEMATICO/4_5/4_5_1/19.pdf)>accessed April 28, 2014

*"The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories."*<sup>21</sup>

Article XXIV(4) elaborates that FTAs are not prohibited per se but are desirable for liberalization of trade. But it shall be employed to eliminate or reduce trade barriers rather than creating fresh barriers in the world trade. To institute FTAs, Article XXIV has to comply to three basic rules.<sup>22</sup> These basic rules are as follows:

**i. Obligation to notify the Committee on Regional Trade Agreements**

Members seeking to establish FTAs are required to fulfill the procedural requirement of notifying the details of FTAs to the WTO so that CRTA can review the FTAs and check its compatibility with WTO rules.<sup>23</sup>

**ii. External Trade Requirement**

This substantive rule obligates that FTAs should not modify the external protection as it may negatively affect the non-members. It has to be ensured that these FTAs do not develop into exclusive trade blocs depressing the world trade.<sup>24</sup>

**iii. Internal Trade Requirement**

In order to institute FTAs, WTO members must substantially liberalize trade in all the fields among participant members. The rationale of this policy was that FTAs should facilitate liberalization rather hinder its progress and members shall not use FTAs merely to further their own interests in a particular sector of trade.<sup>25</sup>

The analysis of above provisions of FTAs under WTO reinforces that the unparalleled and unabated development of FTAs make it practically impossible to examine obligations contained in FTAs and monitor each and every FTA's implementation in its letter and spirit within current existing

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<sup>21</sup>GATT 1994, Article XXIV (4)

<sup>22</sup>Michael Trebilcock, Robert Howse and Antonia Eliason, *The Regulation of International Trade* (4<sup>th</sup> edn, Routledge Publication, 2010)

<sup>23</sup>Simon Lester, Bryan Mercurio and Arwel Davies, *World Trade Law: Text, Materials and Commentary* (2<sup>nd</sup> edn, Hart Publishing, 2012)

<sup>24</sup>Id.

<sup>25</sup>Id.

framework. And it isurgently requirestrengthen of the exiting framework by developing new mechanism or if the previous suggestion is practically not feasible then states must act together to build a new entity to examine and evaluate the issues involved in the FTAs.<sup>26</sup>

## **V. Compatibility of FTA with WTO Rules**

Sudden rise of FTAs and its apprehensions of destabilizingthe WTO led to the creation CRTA in 1996 to examine individual FTA compatibility with the WTO rules. The official position of WTO is that FTAs are compatible with multilateralism and has the potential to further the cause of trade liberalization and development.<sup>27</sup> Although it has been acknowledged that FTAs are compatible with WTO but the scope of FTAs is far wider than the subject matters covered by WTO therefore it is difficult to appreciate that with its inherent limitation, WTO competency extends to examine compatibility of those subject matters which are beyond its negotiated agreements.

Moreover, the institutional framework for ensuring consistency of such agreements with WTO commitments is weak. While provision is made for reviewing of such agreements by the (CRTA), only some 20 odd examination reports have been adopted till date, of which only one has stated clearly that the agreement was found fully compatible with the relevant WTO rules<sup>28</sup>

It is not that WTO does not offer any protection or it is devoid of regulations to protect the countries from the negative implications of FTAs but countries are by and large reluctant to challenge any inconsistencies of the other member countries FTAs due to the implied mutual compromise not to challenge inconsistencies at CRTA or Panel.<sup>29</sup> In such scenario a question becomes quite relevant that why States are not questioning such procedural impropriety in dispute resolution system? One reason is that of “spaghetti bowl” problem, where in counties are having overlapping trading interests and it is quite possible that a State losing at one end may be benefitting in another FTAs or is aspiring to become member of any FTAs in future, so it may

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<sup>26</sup>Irfan ul Haque, 'The Rise of Bilateralism in Trade and its Implications for Pakistan' (2009) 14(1) LJE <[http://www.lahoreschoolofeconomics.edu.pk/JOURNAL/special%202009/6%20Irfan\\_ul\\_Haq%20TTC.pdf](http://www.lahoreschoolofeconomics.edu.pk/JOURNAL/special%202009/6%20Irfan_ul_Haq%20TTC.pdf)>accessed April 20, 2014

<sup>27</sup>Simon Lester,Supra Note 23

<sup>28</sup>Dan Ciuriak, 'Commentary: Free Trade Agreements and the Doha Development Agenda' (2005) 5(4) GEJ <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1660202](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1660202)>accessed April 29, 2014

<sup>29</sup>Greg Mastel,Supra Note 17

want keep their options open by not instituting any case against it in GATT/WTO dispute resolution system.<sup>30</sup>

## **VI. FTAs and Dispute Settlement System**

Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994 expressly provides that the panel has jurisdiction to review the FTAs notified under Article XXIV. The appropriate wording of the Understanding is as follows:

*The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of those provisions of Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free-trade area.*

It's been almost 20 years since the establishment of WTO and lot of debate has taken place about the role of FTAs in the world economy, but most alarming concern FTAs flag is that the dispute settle body is yet to receive a full fledge complaint concerning invalidity of FTAs as being inconsistence to the WTO framework. Nonetheless Turkey – Textiles<sup>31</sup> case has shed some light on the FTAs legitimacy. The factual matrix of the case is as follows:

India challenged Turkey's introduction of the quantitative restrictions on imports from India on 19 categories of textile and clothing products and were justified under Article XXIV of GATT.

The Appellate Body held that "*the chapeau makes it clear that Article XXIV may, under certain conditions, justify the adoption of a measure which is inconsistent with certain other GATT provisions, and may be invoked as a possible "defence" to a finding of inconsistency.....the Panel, in this case, did not address the question of whether the regional trade arrangement between Turkey and the European Communities is, in fact, a "customs union" which meets the requirements of paragraphs 8(a) and 5(a) of Article XXIV. The Panel maintained that "it is arguable" that panels do not have jurisdiction to assess the overall compatibility of a customs union with the requirements of Article XXIV. We are not called upon in this appeal to address this issue, but we note in this respect our ruling in India – Quantitative Restrictions on Imports*

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<sup>30</sup>Irfan ul Haque, Supra Note 26

<sup>31</sup>Turkey — Restrictions on Imports of Textile and Clothing Products, DISPUTE DS34

*of Agricultural, Textile and Industrial Products on the jurisdiction of panels to review the justification of balance-of-payments restrictions under Article XVIII:B of the GATT 1994. The Panel also considered that, on the basis of the principle of judicial economy, it was not necessary to assess the compatibility of the regional trade arrangement between Turkey and the European Communities with Article XXIV in order to address the claims of India.<sup>26</sup> Based on this reasoning, the Panel assumed arguendo that the arrangement between Turkey and the European Communities is compatible with the requirements of Article XXIV:8(a) and 5(a) and limited its examination to the question of whether Turkey was permitted to introduce quantitative restrictions at issue. The assumption by the Panel that the agreement between Turkey and the European Communities is a "customs union" within the meaning of Article XXIV was not appealed. Therefore, the issue of whether this arrangement meets the requirements of paragraphs 8(a) and 5(a) of Article XXIV is not before us..... We wish to point out that we make no finding on the issue of whether quantitative restrictions found to be inconsistent with Article XI and Article XIII of the GATT 1994 will ever be justified by Article XXIV. We find only that the quantitative restrictions at issue in the appeal in this case were not so justified.*

So, in this case Appellate Body upheld the Panel's finding in favor of India albeit on different reasoning. However, it has limited itself in defining the relationship between Article XXIV and Article XI and XIII of GATT and not examining the compatibility question.

## **VII. Are FTAs are Building or Stumbling Blocks in World Trade**

The explosion of FTAs in the world trading system engendered the debate of trade diversion or trade creation paradigm. Never ending debates are still going on the merits of FTAs/PTAs as some considered FTAs as stepping stone for the liberalization of world trade, others are cynical about it as stumbling blocks. The main reason for skepticism against FTAs is that it diverts trade to the preferential countries.

Vinerian framework provides that PTAs trade creation is relative to the trade diversion and it does not necessarily result in welfare. Trade creation ensues when reduction of tariff enables

the importing countries to replace goods and services with high cost of domestic productions. CUSFTA is an illustration of trade creation.<sup>32</sup>

In contrast, trade diversion arises when a preferential trade agreement replaces efficient trade with less efficient trade. In addition to, it also occurs when low cost imports from non-members are diverted to high cost imports from its member nations.<sup>33</sup>

According to Bhagwati and Panagariya, regionalism is detrimental to the world economy as trade diversion will exceed trade creation “*in almost all cases*” but it has not been substantiated by empirical research conducted by the OECD and the WTO. The 2003 report stressed that evidence of trade creation has been in existence in the EU (European Union), the European Free Trade Association (EFTA) and the North American Free Trade Agreement (NAFTA) whilst “some evidence” of trade diversion has been found in the Andean Group and MERCOSUR”

Even though the 2003 Report emphatically assert that many regional FTAs “*do not provide strong evidence of trade creation*” but many studies on the net trade diversion or trade creation effects of regional FTAs till date suggest that they are not harmful to the global economy and in some cases, the net trade creation has outweighed any trade diversionary effects.<sup>34</sup>

Generally, FTAs have some effect of trade creation and trade diversion. One scholarship is that it improves resource allocation and generates income in the participant countries. Apart from it, it also provides opportunities to the consumers of the participants to buy quality products and services from efficient manufacturer or producer without spending much. This is known as trade creation effects. The second view is that if the trade diversion effects are relatively higher than the effects of trade conversion then it may fetch losses for the participant countries. It has been empirically established that India–Sri Lanka Free Trade Agreement (ISLFTA) is an illustration of successful south-south FTAs which has trade creation effects. Homles (2005) who applied

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<sup>32</sup> Kimberly A. Clausing, ‘Trade Creation and Trade Diversion in the Canada - United States Free Trade Agreement (2001) 34(3) CJE <[http://www.congreso.gob.pe/historico/cip/tlc/4\\_dossier\\_tematico/4\\_5/4\\_5\\_1/06.pdf](http://www.congreso.gob.pe/historico/cip/tlc/4_dossier_tematico/4_5/4_5_1/06.pdf)> accessed April 29, 2014

<sup>33</sup> Sonam Choudhry, Murali Kallummal and Poornima Verma ‘Trade Creation and Trade Diversion in India’ (2013) Center for WTO Studies, IIFT Working Paper <<http://wtocentre.iift.ac.in/workingpaper/working paper 11.pdf>> accessed April 29, 2014

<sup>34</sup> Michael Ewing-Chow, ‘Southeast Asia and Free Trade Agreements: WTO Plus or Bust’ (2004) 8 SYBIL <<http://pdc-connection.ebscohost.com/c/articles/51915731/southeast-asia-free-trade-agreements-wto-plus-bust>> accessed April 29, 2014

'gravity model' on as many as 122 FTAs found that 46% of FTAs are amplified trade flows in the participant's countries.<sup>35</sup>

Nonetheless, the apprehensions that FTAs causes trade diversion arenot unfounded, though it stimulates the trade among the participants of FTAs butit also divertstrade away from the non-members. But itappears that FTAs to an extent are building blocks rather than stumbling blocks.<sup>36</sup>Despite that the trade creation and trade diversion effect has to be assessed on the FTA to FTA basis. So, in conclusion, empirically it has been established that neither every FTA creates trade nordiverts trade.Trade creation and diversion has to be evaluatedon case to case basis.

### **VIII. Advantages of FTAs**

If FTAs are regulated properly, it can yield benefits thereby reducing its destructive effects on world trade. The advantages of FTAs are as follows:

1. The likelihood of success in negotiation of FTAs is much higher as only few members are involved and eventually it enhances the flexibility and efficiency of trade in comparison to WTO negotiation as it involves 159 member countries.<sup>37</sup>
2. FTAs may function as policy anchors for the developing counties. The commitments made by the developing countries spread to a wider array of areas such asinvestment, IPRs, health and safety, competition policy which may not be negotiated otherwise at WTO because of its contentious nature. Apart from that,FTAs also requires active engagement of domestic government machinery as many obligations of FTAs are essentially connected to the transparency and governance. So, FTAs commitments can facilitate in achieving the necessary regulations of good governance by reforming domestic policies.<sup>38</sup>

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<sup>35</sup>Vivek Joshi, 'Econometric Analysis of the India–Sri Lanka Free Trade Agreement' (2012) 26(2) AEJ <<http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8381.2012.02078.x/abstract>>accessed April 29, 2014

<sup>36</sup>James Anderson and Yoto V Yotov, 'Good News on Free Trade Agreements'<<http://www.voxeu.org/article/good-news-free-trade-agreements>>accessed April 20, 2014

<sup>37</sup>Sonam Choudhry, Supra Note 33

<sup>38</sup>Michael J. Ferrantino, 'Policy Anchors: Do Free Trade Agreements and WTO Accessions Serve as Vehicles for Developing-Country Policy Reform?' (2006) U.S. International Trade Commission, U.S.A<[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=895272](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=895272)>accessed April 20, 2014

3. It provides a testing ground to accomplish experiment on contentious issues bilaterally.  
After the success it can be incorporated and replicated at the multilateral level.

## **IX. Shortcomings of FTAs**

1. In today's globalized world almost all of the States are members of one or more FTAs or PTAs and that membership of several FTAs/PTAs are often overlapping, which provide for the basis of spaghetti type of trading systems in world. Almost all nations in the world belong to one or the other preferential arrangements. In short, the increase in RTAs and PTAs lead to a 'crisscrossing' of global trade which is known as 'spaghetti bowl' phenomenon which hampers the global free trade system due to the cost involved in pursuing multiple set of confusing rules.<sup>39</sup>
2. Major cause of concern is how to administer the identical bilateral agreements.<sup>40</sup>
3. It has been seen that the obligations contained in few FTAs are more rigorous than what is contained in GATT/WTO agreement.<sup>41</sup> For instance IPR related clauses are stricter than what is provided in the TRIPS which may jeopardize the commercial and economic interests of developing and least developing countries.
4. Drain out limited resources of country which may severely impact developing countries.<sup>42</sup>
5. Overlapping FTAs most likely give rise to regulatory confusion, distortion of regional markets, and severe implementation problems.<sup>43</sup>

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<sup>39</sup>Gopalakrishna and Kumar 'Free Trade Agreements and Determination of Rules of Origin: An Indian Perspective' (2009) JIBL

<sup>40</sup>Trejos Alberto, 'Bilateral and Regional Free Trade Agreements, and Their Relationship with the WTO and the Doha Development Agenda' (2005) 5(4)

GEL<<http://www.degruyter.com/view/j/gej.2005.5.4/gej.2005.5.4.1153/gej.2005.5.4.1153.xml?format=INT>>accessed April 28, 2014

<sup>41</sup>Catherine A Novelli, Supra Note 6

<sup>42</sup>Irfan ul Haque, Supra Note 26

<sup>43</sup>'Regional Trade Agreements: Scope Of RTAs' (2014)<[http://www.wto.org/english/tratop\\_e/region\\_e/scope\\_rta\\_e.htm](http://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm)>accessed April 20, 2014

## **X. Suggestions to Improve Existing FTAs Regime**

1. FTAs in Asia can be more effective if a regional advisory center is setup to address various negotiations and compliance of WTO rules. And that regional center can be utilized in reducing compatibility issues among regional and global level.<sup>44</sup>
2. The review mechanism needs to revamp so that FTAs can be made more accountable and transparent.<sup>45</sup>
3. Consolidation of various small and regional FTAs into the bigger agreement so that it's functioning can be reviewed and monitored effectively.<sup>46</sup>
4. Reform in the CRTA can be a possible option to explore the rules concerning transparency, review of supervisory mechanism and periodic review requirements which are marred by ambiguities. CRTA monitoring power needs to be strengthened and it has to be given more teeth to investigate the inconsistent FTAs.<sup>47</sup>

## **XI. Concluding Remark**

FTAs have changed the face of the world trading system. FTA was integrated in WTO as a trade liberalizing instrument but it has become a tool for furthering political and security objectives. In order to achieve the bolstering effects of FTAs, their economic objective has to be separated from political convenience otherwise it will prove fatal to the multilateral regime. From the economic perspective, it's not that all the FTAs are *per se* discriminatory but the apprehensions voiced against the intensifying network of FTAs possibly hamper the predictability of the world trading system and erode the benefits of multilateralism which needs to be balanced though the prospective benefits of the FTAs. The developing and the least developing countries need to be cautious and vigilante while entering into the FTAs and should rigorously scrutinize the FTAs which may have become inimical to their interests. With the unprecedented wave of FTAs it will

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<sup>44</sup>Ganeshan Wignaraja, ‘South-South Free Trade Agreements: A Work in Progress’ (2011)

< <http://www.voxeu.org/article/south-south-free-trade-agreements-work-progress> > accessed: April 30, 2014

<sup>45</sup>Simon Lester, Supra Note 23

<sup>46</sup> Id.

<sup>47</sup>Michael Ewing-Chow, Supra Note 34

bean impractical and fruitless exercise to halt the development of FTAs proliferation.Besidesit should be edged constructively so that itencourages the revival of multilateralism.