

PHD RESEARCH TITLE:

**The role of the World Trade Organisation's Committee on Regional
Trade Agreements, between 1996 and 2010.**

Dedication

This work is dedicated to my children, with the hope that this accomplishment will inspire them.

Acknowledgement

I am delighted to express my sincere gratitude and appreciation to all the people whose special assistance might have helped me in the completion of this Thesis. I hereby, therefore, wish to thank my Director of Studies Professor K. O. Kufuor of the department of Law and Social Sciences, University of East London and my supervisors Doctor Josephine Ann Stein, PhD, former Principal of the School of Humanities and Social Sciences, University of East London, who acted in the capacity of an external supervisor. Both have been very supportive throughout this research project. Professor Kufuor's direction and guidance has been very helpful to achieving my goal of completing this research project within a reasonable time frame. While Doctor Josephine Ann Stein, has been very instrumental in raising my awareness regarding University administrative procedure. I am blessed for your very dedicated assistance.

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ABBREVIATIONS

APEC	Asian-Pacific Economic Cooperation
CRTA	Committee on Regional Trade Agreement
CEFTA	Central European Free Trade Area
CUs	Customs Unions
DDA	Doha Development Agenda
EAC	East Africa Co-operation
AFTA	ASEAN Free Trade Area
ASEAN	Association of South East Asian Nations
EU	European Union
AU	African Union
EFTA	European Free Trade Area
EPAs	Economic Partnership Agreements
FDI	Foreign Direct Investment
FTA	Free Trade Area
FTAs	Free Trade Areas
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
MERCOSUR	Common Market of the South
MFN	Most Favoured Nation
MTS	Multilateral Trade System
NAFTA	North America Free Trade Agreement
NRFC	National Rice Farmers Council
ROO	Rules of Origin
RTAs	Regional Trade Agreements
SAT	Substantially All the Trade
SDT	Special and Differential Treatment
UN	United Nations
USA	United States of America
WTO	World Trade Organization

Abstract

This paper looks at the role of the Committee on Regional Trade Agreements (CRTA) in its examination of regional trade agreements (RTAs) between 1996 and 2010. The rapid proliferation of RTAs led to concerns about the weakening of the multilateral trading system (MTS); it was feared that the rapid growth in the number of bilateral and regional trade agreements (RTAs), such as free trade areas (FTAs) and custom unions (CUs) could pose substantial threats to the multilateral trade system (MTS). This fear led to the creation of the CRTA by the World Trade Organization (WTO) in February 1996, for the examination of RTAs to ascertain their compatibility to the MTS and their conformity to WTO rules. Furthermore, this paper also explores the legal and systemic difficulties faced by the CRTA in the execution of its mandated duties. Nonetheless, the rapid proliferation of RTAs intensified the debate on the merits of RTAs to the MTS, this study, is also a contribution to that debate - the trade creation and trade diversion effects of RTAs, by showing how RTAs could displace trade with non-member nations, while at the same time boosting trade among its own members. Under the auspices of the WTO, as a rule, the CRTA was to devote a single formal meeting for the consideration of each RTA notified to the WTO, formed under the provisions of the general agreement on tariffs and trade (GATT) Article XXIV and the general agreement on trade in (GATS) Article V. The focus of this paper is the role of the CRTA in its examination of RTAs created under the legal provisions and interpretation of GATT Article XXIV and GATS Article V.

CHAPTER 1

1.1. Introduction:

This introductory chapter explores the role, nature and evolution of the committee system from a comparative perspective. In addition, it studies the link between parliamentary committees and the committee on Regional Trade Agreements (CRTA) under the auspices of the World Trade Organisation (WTO) committee system. Although different committee systems vary enormously from each other, a basic understanding of the origin of the committee system may be helpful to understanding the origin of the WTO's CRTA. Furthermore, studying the role of parliamentary committees could help in gaining a clearer understanding of the role of the CRTA in the multilateral trade system.

1.2. The Concept of Organization:

The Reference Dictionary variously defines organisation as a business or administrative concern united and constructed for a purpose (www.dictionary.com). Furthermore, organisation could be defined as the act of organising or the state of being organised. In fact, an organisation could be identified by an arranged structure or unit; an order or system; method, a body of administrative officials, such as a political party or a government department or an agency for example. It could also include, a group of persons organised for some end or work or association, such as a non-profit organisation.

In my view, an organisation could simply be defined as a concise system of interaction between different entities, individuals or groups. Most of the important international global organisations we have today came into existence after the First and Second World Wars. Notwithstanding, these organisations could be classified into three main categories:

a.) International nongovernmental organisations (INGOs) - These organisations include many international charitable organisations such as Oxfam, Catholic Relief Services, CARE International (Cooperative for Assistance and Relief Everywhere) and the Ford Foundation.

b.) International non-profit organisations – Such organisation includes among others the World Organisation of the Scout Movement, the International Committee of the Red Cross and doctors without borders (Médecins Sans Frontières).

c.) Intergovernmental organisation – Sometimes referred to as international governmental organisations (IGOs). This includes the United Nations (UN), the WTO, the European Union (EU), the Council of Europe (CoE) and the Organization for Security and Co-operation in Europe (OSCE). Before the First and Second World Wars, there were very few powerful international global organizations as the ones we have today such as the UN.

1.3. Committees as Organizational Structure:

A committee is an established arm of an organisation made up of two or more persons, appointed or elected to accomplish a specific objective. It is sometimes accorded specific jurisdiction, powers and authority. Committees are formally established by an organisation for specific reasons and purpose, it may be given powers and authority to take decision or put forth recommendations on certain matters concerning the organisation.

According to Handy (1999), the organisational idea is that a group or team of talents and resources should be applied to a project, problem or task. In that way, each task gets the treatment it requires – it does not have to be standardised across the organisation. The groups can also be changed, disbanded or increased

as the task changes. There are various forms of committees in an organisational structure, the main ones include:

a.) Standing Committees: These are permanent committees. The CRTA is an example of a standing committee at the WTO.

b.) Ad hoc Committees: They are Temporary committees. An Ad hoc committee is usually constituted for a special purpose or objective and dissolved immediately after that objective is achieved.

c.) Executive Committees: Executive committees are usually given designated powers and authority to make final decisions on matters concerning an organisation, institution or a party.

d.) Advisory Committees: Advisory committees are generally given limited authority and power; as a result, they can only make recommendations towards resolution of problems. Most large organisations operate through committee structures, ranging from governmental institutions, charities and other nongovernmental organisations as mentioned earlier. This includes organisations such as national parliaments and renowned international organisations like the UN and the WTO. This system has proven to be the best way to run such organisations. Since different committees are given special functions, powers and sometimes a specific jurisdiction to take care of. In certain cases, a committee is only responsible for a specific issue, such as the CRTA in the WTO committee system. The CRTA is only responsible for the examination of RTAs, while other committee are responsible for other issues within the WTO. Organisational theory is not as old as bureaucracy; it is considerably a new theory in terms of bureaucracy since Max Weber, Émile Durkheim and Karl Marx were all writing

about bureaucracy and authority in different societies before organisation theory was known by its present name.

1.4. Bureaucracy in Organisations:

Bureaucracy could be defined as administration by appointed government or career officials, popularly known as bureaucrats. A bureaucrat is a person who works in an office or a bureau. This word normally relates to administrative office work or duty with laid down rules and regulations. A bureaucrat is commonly used to refer to a government administrative official or an administrative officer of a renowned international organisation.

Furthermore, the Reference Dictionary also defines bureaucracy as excessive multiplication of, and concentration of power in, administrative bureaus or administrators or as administration characterised by excessive red tape and routine (www.dictionary.com). Bureaucracy could also be defined as excessive red tape and routines, which are the common features of most government agencies, administrative offices of large companies and organisations, such as the Ford Foundation, the International Committee of the Red Cross, the UN and even the WTO and many others. Nonetheless, whenever one talks about bureaucracy, Max Weber (1864-1920) comes to mind. This is simply because Weber was the very first scholar to classify social authority into three different categories.

According to Buchanan and Huczynski (2004) bureaucracy acquired a pejorative meaning in modern usage among the public and the media alike; For example, when people come up against red tape and obstruction in any aspect of organisational life. They explained that Weber's view was in direct opposite of this development within the society; that for Weber bureaucracy was the most efficient form of social organisation precisely because it was so coldly logical and

did not allow personal relations and feelings to get in the way of achieving goals. However, many people are truly frustrated to have to follow what appear to be illogical rules that could result in them experiencing considerable delays.

Within a bureaucracy, people do what managers, civil servants or University lecturers, and others in official positions and authority tell them to do. Not because they think that these individuals have a natural right to give directions or because they possess some divine powers. But because people acknowledge that their exercise of power and authority is legitimate and supported by two distinct factors (Buchanan and Huczynski, 2004). There should be a demonstrably logical relevance of the requests, directions and instructions from these individuals to the people.

As suggested by Buchanan and Huczynski (2004) the commands of these individuals must seem rational by being justified through their relevance to the task of bureaucracy, and ultimately to its objectives. And a shared belief in the norms and rules of the bureaucracy which have been arrived at rationally (not based on traditional or personal whim) and which possess a law-like character (Buchanan and Huczynski, 2004).

In Weber's analysis of bureaucracy, he laid emphasis on the fact that modern state institutions were based on rational-legal authority. He contributed enormously in establishing the constituent nature of bureaucracy and the power and rational behind a bureaucracy, looking at the different forms of authority he delineated one can see very clearly Weber mind-set in the way our society functions today.

i.) Charismatic Authority: This is often seen in situations where visionary leadership tends to be inspirational. Most often it is related to extraordinary

characteristics of an individual. In Weber's thinking such leaders inspire new social movements and are often considered to be divinely ordained and imbue with supernatural powers, like prophets of religion.

ii.) Traditional Authority: Mostly found in traditional societies. Legitimacy of authority comes from sanctity or respect of tradition. Leadership and ascension to power is often through heredity, such as in a Monarchy.

iii.) Rational-Legal Authority: Known as Legitimate authority, it is the most important of the three types of authority; due to the rationalisation of modern society, legitimate authority predominates. Legitimacy of authority is derived from legal order and enacted laws, often this is found in modern civilised societies or nations. (Buchanan and Huczynski, 2004). Many large organisations such as the UN and the WTO are bureaucratic in operation and in nature. I feel strongly that there is no other way such large organisations could operate effectively and properly without the apparent bureaucracy in the way they are managed or function.

1.5. The Characteristics of Bureaucracy:

The characteristics of bureaucracy are wide and diverse. Nonetheless, a defining characteristic of every bureaucratic structure is its rules (Buchanan and Huczynski, 2004). Bureaucracy is a very present element in many of our organisational structures today, most specifically in international and public institutions. Even some large private concerns nowadays are becoming more bureaucratic in their manner of operation; some of these companies tend to operate complex administrative units, for instance Microsoft, America on Line (AOL) and Apple, just to name a few. Bureaucracy has many identifiable

characteristics, some of which include the following. (Buchanan and Huczynski, 2004)

- Stable and official structure of authority and power
- Explicit and comprehensive hierarchy of authority (commonly known as pecking order)
- Written records are kept over a long period of time
- Specialised training and expertise, in staffing and recruitment of staff
- Official duties and institutional protocol comes first.
- Established and comprehensive system of rules are used for operation
- Work is career employment
- Managers are separate from “owners” of the organisations
- Managers are free to allocate and relocate resources

1.6. The Characteristics of Weberian Bureaucracy:

Based on Max Weber’s writing, in the Theory of Social and Economic Organisation, one could distinguish six characteristics of bureaucracy. These characteristics are popularly called the characteristics of Weberian bureaucracy (Buchanan and Huczynski, 2004).

a.) Job Specialisation: Jobs are broken down into simple, routine and well-defined tasks. Clear definition of authority and responsibility are legitimated as official rules.

b.) Authority Hierarchy: Positions are in a hierarchy of authority, with each position under the authority of a higher one. There is a clear chain of command and workers clearly know to whom they are responsible.

c.) Employment and Career: All personnel are selected and promoted based on their technical qualifications and offered a full-time career.

d.) Recording: Administrative acts and decisions are recorded in writing. Records keeping provide an organisational memory and continuity over time.

e.) Rules and Procedures: All employees are subject to rules and procedures that ensure reliable, predictable behaviour.

f.) Impersonality: Procedures and rules are impersonal, and apply to managerial and non-managerial employees alike. As per Buchanan and Huczynski (2004) Weber's description of bureaucracy is known as the 'Ideal Type', since it is not meant to describe any existing organisation. His description is a representation of a model or a checklist against which to compare and assess real organisations in society. They explained that Weber believed organisations based on legitimate authority would be more efficient than those ones based on either traditional or charismatic authority and argued that it is because continuity in real or legitimate organisations is very much related to formal structures and positions within it, rather than to a person who may leave or die. Buchanan and Huczynski (2004) also suggested that not every formal organisation would possess all these characteristics identified by Weber. Stating that if more of these characteristics are found in an organisation, the more that organisation approximates to the 'ideal type' of organisation Weber had in mind. It is worth noting that many aspects of Weber's model of bureaucracy reflected the organisational circumstances at the time in which he was writing, particularly in the early twentieth century (Buchanan and Huczynski, 2004). Today organisations such as the WTO operate on similar structures. In fact, the WTO operates on a committee system and the

CRTA is one of many committees at the WTO. The CRTA is in-charge of the examination of RTAs.

1.7. The role of a Committee:

One of the major roles of a committee system is to encourage power sharing. The authority and power of decision making of an organisation, congress or parliament could be shared through a committee system. Different committees could be authorised to investigate issues that fall within its competence. In the case of governments, parliamentary committees could hold inquiries on behalf of the parliament or congress as need arises, and then make recommendations to the congress or parliament.

In many countries, so many legislations have been proposed or initiated through various committees because this is one of the central roles of the committee system. In a parliamentary democracy, committees play an important role in terms of accountability by government officials. If there were issues arising from governance, a committee would take charge of the investigation. And ministers could be asked to appear before the said committee. This is also true with the US congress, where officials are often summoned to appear before congressional committees in case there are questions to be answered by them.

The committee system in organisation and governance creates the possibility of significant involvement of states and non-states actors in the activities of an organisation or government. For instance, the public could partake in what is going on in a government or in an organisation by appearing before a committee to give evidence in relation to matters being investigated by the said committee. Members of the public could also petition a committee to investigate any matter they deem worthy of investigation.

1.7.1. The role of the Committee system in the US Congress:

In the United States of America (US) after each congressional election, newly elected representatives of political parties, who have been elected as Congressmen and women, and even Senators are assigned to congressional standing committees. It was during the first US congress of the 2nd of April 1789 that the first ever US congressional Select committee was established. This committee functioned for five years. It was commissioned for the preparation and reporting of the standing rules and order for proceedings in the House of Congress. When this first Congressional Select-Committee finished its work and submitted its report to the House of Congress, it was dissolved. But since then the US congress has relied very heavily on the committee system to function both effectively and efficiently.

Before a congressman or woman is assigned to any congressional standing committee, his or her own wishes are first and foremost taken into consideration. Notwithstanding, in most cases the need of committee is first and foremost ascertained; in terms of the personality of congressmen and women, regional affiliations and sometimes even party connections before any assign to a standing committee is made. Most congressmen and women only serve on one or two committees because of the large number of members of the House of Representatives, which stands at 435. However, one of the main differences between members of the House of Representatives and the senate is that members of the Senate do serve on several committees and sub-committees.

It is worth noting that in the US congress, assignment to a Committee is one of the most important steps for the future work of a newly elected congressman or woman in the US congress. In some cases, appointment to a committee is

carried out or arranged in such a way as to allow committee member's ample time to carry out their duties to serve their constituencies adequately. It is not unusual in the US congress for some congressmen and women to lobby to be assigned to powerful committees such as Foreign Relations, Judiciary, or the House Ways and Means committees. These positions enable some congressmen and women to exercise considerable power and authority in leadership and governance. And congressmen and women in these positions are more likely to generate media attention and are often in contact with the present leader of the country – President

The Importance of Committees in the US congress and senate cannot be underestimated; in fact, most government actions in the US are investigated by special committees, set-up by the congress or the senate. For example, in 1993 a special committee was set-up to investigate the Waco religious cult tragedy in Texas. In the US, most bills often start and terminate their lives in committees, it does not matter whether these bills are passed into law or are put aside. But all bills must be scrutinized in a committee of the US congress.

Furthermore, the setting of the US congressional committee system has enabled accountability of governance in the US. Often hearings from the public and non-state actors such as lobby groups and bureaucrats from many state agencies are heard in committees and subcommittees of the US congress. Statistically, annually, about 8,000 bills go through the US congressional committees. However, less than 10% of the bills tabled in committees proceed to the floor of the congress to be considered to pass into law. In fact, committees help in the organisation of the very most important duties of the congress. There are

in total four types of committees at the US congress, namely Standing, Select, Joint and Conference committees:

a.) Congressional Standing Committees:

These are undoubtedly the most important committees of the US congress; because it is in standing committees that majority of US laws are proposed, debated, shaped into laws. The duties of the standing committee are not limited to one congress period, but could be stretched from one congress period to another. Some investigations are conducted in a standing committee. For instance, the US Senate Banking Committee's was put in charge of investigations of President Bill Clinton's White water real estate investment scandal.

b.) Congressional Select Committees:

These are temporal committees, which are established for a specific purpose, usually for the investigation of a specific matter. These committees are often established for a limited time frame. Congressional Select Committees do not draft legislations. Often, committees such as the Congressional Select Committee are put in charge of certain investigations. Indeed, it was a Congressional Select Committee that investigated the assassinations of Reverend Martin Luther King, Jr and John Fitzgerald Kennedy, the 35th president of the USA, who was born on the 29th of May 1917 and assassinated on the 22nd of November 1963.

Some Congressional Select Committees could stay for so many years, and some end up producing legislations, examples of Congressional Select committees would include the Select Committees on and the Select Committee on Indian Affairs. In fact, some long standing congressional Select Committees are eventually transformed into standing committees. Generally, most Congressional Standing committees like the Standing House Committee on Small Business; these

Standing committees operate their own websites and monthly journals, which they distribute to the public; this is means by which they disseminate information to the electorates.

In the US Congressional Select-Committee is also sometimes referred to as a special committee. This is because such congressional committees are occasionally established for the performance of a specific duty or responsibility, which goes above and beyond the authority or power of other committees such as a standing committee. The US Congressional committee system has been evolving for so many years, the nature of these committees have nevertheless been similar over the century with very slight differences in function, operation and duration of existence. Most often, the lifespan of a select committee depends on the completion of its assignment.

However, some select committee could be given other assignments on the expiration of one, thus keeping it in operation for a very long time; in which case, it could then be reclassified as a congressional standing committee. Both houses of congress – the House of Representative and Senate have clear and good examples of Congressional Select Committees on Intelligence, and these committees are now a permanent feature of both houses of congress. In the 20th century some select committee were simply called special committees, this includes the Senate Special Committee on Aging, others are named without the word select on them, for instance the Senate Indian Affairs Committee is also a select committee.

c.) Congressional Joint Committees:

The purpose of this sort of committee is in line with the purpose of the Congressional Select-committees. The difference between these committees and others is that they are made up of both members of the House and the Senate. These committees are established to help direct public interest and attention on major issues affecting the nation, and to conduct business between the two houses. Some, joint committees are created to handle specific matters, such as supervising the Library of Congress; for instance, a congressional select committee was established for the investigation of the assassination of Reverend Martin Luther King, Jr. the civil right activist.

d.) Congressional Conference Committees:

These are committee are created for specific purposes. For example, if the US House of congress and the senate wants to reconcile differences arising from different versions of a bill a conference committee will be established. This committee is usually made up of members of both houses who originally worked on the bill in question. Once the congressional conference committee arrives at a consensus on their matter of differences the revised bill is then returned to both the senate and the House for approval.

1.7.2. The Role of the Committee System in the UK's House of Commons:

In the UK's parliamentary committee system, parliamentary committees established by the UK parliament are often composed of few members of parliament, selected and appointed to handle specific areas of interest, and to take control of matters arising from the parliamentary democratic process such as public inquires and parliamentary reviews. The committee system of doing business in large organisations such as the parliament was first introduced in the

UK's parliamentary system - Westminster. It all began through the recommendations of the committee process to a Parliamentary Select Committee established in 1976; Nonetheless, the UK's departmental committee system came into existence in the year 1979, following the recommendations set in the Select Committee's report a year before.

The report recommended the establishment of different Select Committees to take charge of all main departments of government, with sweeping powers and very broad terms of reference. These recommendations also stated that selected Committees should be given clear powers and authority for the appointment of special advisers, as the committees deem necessary. In addition, it also suggested the independence of UK parliamentary party whips in the selection and the appointment of members of Select Committees. In the year 1980, the newly established select committees started work, these committees were fourteen in total.

Committee systems based on the British model (Westminster specifically) operates in Australia and New Zealand. The existence and use of Select committees in the parliaments of Australia and New Zealand is based solely on their history with the UK.

The UK parliamentary committees play a very important role in the life and work of the UK parliamentary system. These committees are responsible for the collection of evidence from witnesses when need be, they are also involved in conducting parliamentary inquiries and in charge of scrutinizing government legislations. In terms of meetings, most UK parliamentary committees meet weekly or fortnightly. In fact, most of the work conducted by the UK's House of Commons is done through different committees. Committees play a central role in

the efficient and proper functioning of the UK House of commons. The UK's parliamentary committee system is divided into three kinds of committees, namely: committees of the whole house, special committees and standing committees. In fact, at a point in history, the whole House committee handled all bills but this process was amended after 1968 when the committee system of the UK's parliament was reformed.

Furthermore, after the year 1968, most bills were being scrutinized in parliamentary standing committees. It is worth noting that in the UK's parliamentary system standing committees' is in fact the true essence of the current committee system. The UK's standing committees have three distinct functions, which could be classified as legislative, investigative and financial. The UK's Parliamentary Standing Order allows for the establishment of a maximum of 18 standing committees, which have specific area of coverage in the parliamentary democracy. There is also the existence of three joint standing committees made up of members from both the House of Commons and the House of Lords, which is in of charge scrutinizing government legislations made through Act of Parliament.

The duties of the Parliamentary Standing Committees are very vast, they include the scrutinizing of bills, government departments estimate and public inquiries commissioned by the government or the parliament. The fact that the Parliamentary Standing Committees deal with such matters of importance on behalf of the parliament helps to lessen the volume and magnitude of floor debates in parliament. Furthermore, the authority of UK's Parliamentary Standing Committees includes the creation of sub-committees, hiring and firing of Experts, and the interrogation of witnesses in the case of an investigation. However, the

Parliamentary Standing Committees do not have any powers to take or effect any decision, they can only make recommendations to the House of Parliament. As a matter of fact, all parliamentary committees report their findings directly to the House of Parliament.

Before money is voted out to any government department, the Standing Committee on Public Accounts scrutinizes the proposed departmental expenditure presented in detail and reports its finding, conclusion and recommendations to the House of Parliament. This helps the House of Parliament exercise adequate financial control on government expenditure and on the financial activities of government departments. Exercising financial control over government departments does not end only with scrutinizing government expenditure proposals but it goes further than that.

In addition, the Parliamentary Standing Committee on Public Accounts also examines public expenditure records after the expenditure has been incurred; this helps maintain accountability, checks and balances. In carrying out this specific duty, the Standing Committee on Public Accounts is in fact assisting in the audit of public departments, which is normally the duty of the Auditor General. In the situation that the Standing Committee on Public Accounts notices any irregularities, it will inform the House of Parliament and start an investigation and interview witnesses and later make known its findings to the House of Parliament. Traditionally, the Auditor General makes an annual report to parliament every year.

One minor issue of importance and tradition concerning the UK's Parliamentary Standing Committee on Public Accounts is that its chairman is traditionally from the main opposition party in parliament, for instance, if the

Conservative Party were in power, the Chair of the Standing Committee on Public Accounts would be a member of the Parliamentary Labour Party. In addition, in the UK's parliamentary system there is also the work of parliamentary special committees. Parliamentary special committees are often established on an ad hoc basis, and these are generally made up of a maximum of 15 members of the UK of parliament.

1.7.3. The role of Committees in the European Union:

Like most big organisations, the European Union (EU) operates using the committee system. In the EU, the Council, the Commission and the Parliament work through various committees. In these committees, member states of the EU and EU institutions interact to find solutions to problems plaguing the union. The committee system of the EU is made up of Standing committees and Comitology committees. The committee system of the EU works in the form of democratic deliberation. The deliberations in these committees are a means to seek for agreement on matters of interest to member states and EU institutions. However, the EU committees do not function like those of national parliaments, such as the UK parliament or committees in the US congress.

The EU's parliamentary Standing Committee takes into consideration private and public sector interest and adequately employs technical expertise in its working with available resource for the resolution of problems. It provides a forum for the coordination of EU institutions, acting as effective and efficient liaison between the European Council, the Commission and the Parliament.

Furthermore, Comitology committees of the EU committee system are in-charge of the adoption and implementation of EU laws. Comitology committees

are not a common feature in the committee system but they have been used very broadly in the EU committee system.

1.8. The World Trade Organisation (WTO):

The WTO came into existence in the year 1995. Although the WTO came into existence, as a successor to the GATT treaty, the GATT treaty is still the umbrella treaty of the WTO. The WTO is an organisation that countries could join, with a headquarters in Geneva, Switzerland, it is quite different from the GATT, which was just a treaty with provisional applications (Grimwade, 1996).

According to Article XII of the WTO Agreement, any state or customs territory having full autonomy in the conduct of its trade policies is eligible to accede to the WTO on terms agreed between it and WTO Members. However, Article XII of the WTO Agreement states that accession to the WTO will be “on terms to be agreed” between the acceding government and the WTO. Accession to the WTO is essentially a process of negotiation, which is quite different from the process of accession of any other international organisation, such as the IMF. Access to organization such as the IMF is largely an automatic process; there are no elaborate negotiations involved.

The accession process of the WTO commences with the submission of a formal written request for accession by the applicant government. The General Council of the WTO normally considers this formal request. A Working Party is established by the General Council to examine the accession request. After the examination of the request by the Working Party, the findings are then submitted to the General Council for approval. Nonetheless, the Working Party is open to all member countries of the WTO, each accession Working Party decisions is taken by consensus. Once the General Council of Ministerial Conference (GCMC)

approves the accession request, the applicant is then at liberty to sign the Protocol of Accession; stating that it accepts the approved. The 'accessions-package' must be ratified by the national parliament of applicant nations for it to become binding. The National parliament of applicant nations should normally ratify the 'accession-package' not later than three months from the date the Protocol of Accession was signed. And thirty days after the applicant government notifies the WTO Secretariat that it has completed its ratification procedures; the applicant government becomes a full Member of the WTO.

In addition to national governments ascending to WTO membership, there are some countries and even international intergovernmental organisations granted observer statuses at the WTO. But apart from the Vatican, all other countries exercising their rights as observers must begin accession negotiations at the WTO within five years of gaining observer status. There are also certain international intergovernmental organizations are granted full observer status to WTO bodies.

International intergovernmental organizations granted observer statuses, on the CRTA includes the European Free Trade Association (EFTA), the Food and Agriculture Organization (FAO), the International Monetary Fund (IMF), the Organization of American States (OAS), the United Nations Conference on trade and Development (UNCTAD) and the World Bank. The Latin American Integration Association (ALADI) is the only international intergovernmental organizations exercising an ad hoc observer status rights at the WTO. It is also worth noting that about 31 countries and governments and 6 international intergovernmental organizations are exercising observer status at the WTO, as at December 2010.

Through the GATT/WTO, multilateralism was very well positioned to be the driving force of world trade than RTAs. This seems to be the very much the case during the late 1940 to the early 1990s, because more and more nations joined the GATT and its successor the WTO. During this period multilateralism grew in strength and prominence. According to Lester and Mercurio, (2009) RTAs however, gained significant momentum in later years partly because of the failed WTO negotiations of the Seattle Ministerial Conference of 1999, and its rapid proliferation became very controversial. Before this period, it was very rare for major trading powers to negotiate and sign bilateral trade agreements. But following the failure of the WTO's Seattle Ministerial Conference, there was an immediate overwhelming tendency for nations, both big and small to negotiate multiple RTAs.

Lister and Mercurio (2008) suggested that some of the RTAs negotiated during this period were pluralistic in nature (they were negotiated between more than two nations). Since most of these RTAs did not necessarily include mainly nations in specific geographic regions, their establishment created lots of complications to WTO regulatory system. These complications were very visible in terms of implementation, in relation to other multilateral trade agreements already in existence.

Bhagwati and others have argued that the desirability and purpose of RTAs in the face of multilateral trade negotiations is highly controversial. Before the beginning of the global economic and financial crisis in this century, the apparent success of the EU as a regional, political and socio-economic integration model, has given full credibility to RTAs. For so many years Europe enjoyed considerable degree of economic prosperity and political stability through the EU project.

However, the rapid proliferation of RTAs, its apparent contradictory nature to free trade created significant controversies especially during this period of global economic crisis. The onus for the WTO has always been to ascertain, if RTAs are indeed compatible to the MTS. The willingness of the WTO to correct the trade problems emanating from RTAs proliferation, led to the creation and establishment of the Committee on Regional Trade Agreements (CRTA).

1.8.1. The Committee on Regional Trade Agreements: (CRTA);

To ensure consistency in the examination of RTAs, the General Council of the WTO established the CRTA, on the 6th of February 1996. Under its terms of reference, the CRTA was mandated, inter alia, to carry out the examination of RTAs in accordance with the procedures and terms of reference adopted by the WTO's Council for Trade in Goods (CTG), the Council for Trade in Services (CTS) and the Committee on Trade and Development (CTD), including any agreements for which the examination was being carried out in the working parties arrangement prior to the establishment of the CRTA.

Before the establishment of the CRTA in February 1996, the examination of RTAs by GATT/WTO was carried out by individual working parties in accordance with paragraph 7 of Article XXIV of the GATT 1994 and on the interpretation of the Understanding of Article XXIV of the GATT 1994. The background history of the CRTA is very vast; its conceptual origin goes as far back to the GATT days, when RTAs were being examined in individual working parties; by GATT Contracting Parties. The Contracting Parties of the GATT treaty were very much aware of the serious consequences that could arise for the multilateral trade system (MST) from the proliferation and multiplication of RTAs. As a result, they decided that Contracting Parties of GATT would examine RTAs in Individual

Working Parties, to ensure RTAs' conformity to GATT/WTO rules. Yet the Contracting Parties of the GATT did not envisage the intrinsic and serious consequences RTAs could create for the MTS.

According to Pomfret, the period between 1947 and 1994 is popularly known as the GATT era by many policy-makers. Pomfret acknowledges that this period was distinguished by a huge dismantling of conventional trade barriers, such as tariffs, quota and exchange controls. He explains that there were widespread agreements not to replace these conventional trade barriers with equivalent protectionist measures developing at the time. Although tariff and quotas remained widespread at the time, many grey area measures also developed to compensate for tariff reduction made by many nations.

By the early 1990s, world trade was considerably freer than it had ever been before this period. The significance here is that the lower the trade barriers, the less scope there is for discriminatory application. This was an encouragement for the proliferation of RTAs (Pomfret, 1997). The problem with RTAs during this period is that many nations were very eager and comfortable to negotiate new trade agreements with one another. Even in situations where these nations are members of existing RTAs. In most cases, complex issues were created for existing multilateral trade agreements, especially, where one or more nations to an RTA are member nations of the WTO. This brings to light what Bhagwati describes as the existence of spaghetti bowl of RTAs, criss-crossing each other (Bhagwati, 1995).

The CRTA was established by the WTO, via the Uruguay Round of negotiations. And the principal duties of the CRTA were to examine individual RTAs. In addition to examining individual RTAs, another very important duty of

the Committee is to consider the systemic implications of RTAs for the multilateral trading system and the relationship between them. The CRTA was created also with the mandate to take up the work and functions of the CTG and the duties of the CTD

Crawford and Laird (2001) suggested that, the rapid growth in the number of RTAs has led to concern about the weakening of the MTS. It is possible that the apparent fear of the weakening of the MTS through the proliferation of RTAs necessitated the creation of the CRTA by the WTO.

1.8.2. The Link between Parliamentary Committees and WTO's CRTA:

Parliamentary committees predate the WTO committee system, thus the CRTA is tailored in a similar way to most parliamentary committees. Parliamentary committees play certain important roles in the process of governance of any nation, just as the CRTA also plays an important role in the WTO governance in matters relating to RTAs. Parliamentary committee roles involve representation, a process whereby parliamentary representatives link citizens with the government; and legislation, this is a process where parliamentary representatives initiate and/or amend legislations. Furthermore, they also perform legislative duties, which involve voting on new legislations, thereby making decisions to reject or accept laws proposed by government executives.

This logic of committees is not unique to national parliamentary settings, because large private firms, public institutions, political parties and even social clubs operate via committees. Committees seem to be the most efficient means to delegate tasks rather than having every member of the organisation actively engaged in decision-making. This is some ways in similarity to what happens in the CRTA, where Contracting-Parties (WTO representatives of member nations)

sit on the CRTA for the examination of RTAs and make recommendations to the WTO.

Committee models such as the CRTA are widely used now days by many large institutions because of the advantages of bringing in the management of such establishments. The pooling of knowledge and experience could lead to profound deliberations by a group of people assembled as a committee helping to explore an issue appropriately. The reasoning behind a committee could hinge on the premise that when several individuals study and deliberate an issue in a critical manner, there is more chance that every facet of the issue would be explored thoroughly. The CRTA uses this same model in its examination of RTAs, specific issues related to the consistency to WTO rules and conformity to the MTS are examined under the CRTA process and decisions and recommendations made concerning each RTA by the Contracting-Parties.

Notwithstanding, there are also certain disadvantages of the parliamentary committees or parliamentary committee system, which is mirrored in the way the CRTA functions, as part of the WTO committee system. Parliamentary committees, just like the WTO's CRTA suffers from indecision, which is one of the greatest weaknesses of most committee structures. The decision-making process of a committee takes longer that when decisions are taken by individuals, most often members of a committee tend to indulge in lengthy discussions before decisions are reached. Most often decisions taken by consensus or a simple majority vote. However, with the CRTA decisions on the examination of RTAs are done by consensus. With parliamentary committee, just like with the CRTA, no individual can be held responsible for any decision made because responsibility is shared or diffused. Members of a parliamentary committee or CRTA members are

not individually responsible for any wrong decision made by the committee or at the CRTA. Since, no member is held responsible for any one thing. Most parliamentary committees serve as an advisory body to help the government make appropriate decisions, through their advice. The CRTA is not different from these committees, since it makes recommendations to the WTO on the RTAs it has examined.

1.9. Conclusion:

Using qualitative research methodology, this chapter has explored the origin, nature and evolution of committees, to explain the source of the WTO's CRTA. Furthermore, it also explored the concept of organisations to provide a clear understanding of what happens within some large organisations and institutions, such as national parliaments.

In addition, it studied the importance of organisational structure and their relevance in decision making. Thereby offering a vivid appraisal of the CRTA and the way the WTO operates through its committee system. And it also explored the origin and source of the concept of bureaucracy and studied the links between the CRTA and parliamentary committees.

Finally, the findings of this chapter points to the bureaucratic difficulties involved in decision making in large organizations through the committee system. has brought to light how difficult it is to make effective decisions in large organisations and institutions, which are plagued by bureaucratic norms.

CHAPTER 2

2.1. Introduction:

Chapter 2 explores the methodology used in this study and it looks at other research methodologies that could have been used. Furthermore, it explores the chosen research method and other research approaches that could have been selected. In addition, it looks at various methods of literature search, how data was collected and analysed, and discusses the lacuna in literature on the CRTA. The CRTA as an organ of the WTO committee system has been rather ignored. As a result, a random literature search on the CRTA, reveals mainly scanty literatures.

2.2. Research Methodology:

To attempt to answer the initial research question of this work, it was important to undertake a literature review of relevant and available literature relating to the CRTA. Literature review is defined as a comprehensive study, interpretation and analysis of literature that relates to a specific topic. This literature review was an essential primary step that was undertaken aimed at summarising relevant literature on the CRTA, to try and develop a clear insight on the research topic and to help identify gaps in literature within this area of research.

2.3. Literature Search:

The very first step that was employed was to develop a systematic search strategy with the aim to identify and locate the most relevant literature on the CRTA. The decision to use a systematic approach was to prevent a random and disorganised literature search. Another advantage of employing a systematic literature search approach was to ensure that all relevant and available literature on the CRTA would be identified. As a result, a hierarchy of literature relating to the CRTA was

established to identify the most appropriate literature available. Any literature in which the CRTA was specifically given attention was classified as primary material, while other literature not relating specifically or directly to the CRTA, such as literature on the WTO or RTAs were considered as secondary materials to the research. This classification of literature in this manner is not consistent with conventional primary and secondary research classification, which relates to original work for primary research and secondary research relating to reviews and non-original works. However, to keep my literature search organised, this terminology had to be applied in the context of my literature search on the CRTA. The importance of searching, reading and analysing literature on the WTO and RTAs is to get a clear and useful insight and background on the CRTA.

Using key words and literature search terms, such as CRTA, WTO, RTAs, MFN, GATT, GATS, Article XXIV, Interim agreements, multilateral trade system, free trade, trade liberalisation, tariff concessions, substantially all trade, Customs Unions, Free trade areas, Common Markets and bilateral trade agreements helped to facilitate literature search. Through this strategy an inclusion and exclusion criteria was developed based on key words and search terms. Literature search only included topic areas related to the CRTA and its work and other areas not directly or indirectly relating CRTA were excluded from the literature search.

The development of inclusion and exclusion criteria was important to ensure and maintain focus on the subject matter – the role of the CRTA and its relevant areas. Thereby making the search strategy relevant, valid and concrete, since inclusion and exclusion search strategy can help to ensure that the literature that would be discovered or found could directly or indirectly help to address the research questions. To ensure that the information gathered was relevant and up-

to-date as possible, a decision was made to limit the search period, by only searching for literature in relation to the role of the CRTA between 1996 and 2010.

Initially, an online electronic search of literatures on the CRTA, WTO, RTAs, GATT, GTAs and Interim Agreements was carried out. The following databases and search engines were used ATHENS, British National Library, University of East London Library, Google and Google Scholar. There was considerable success from Google search and Google Scholar search the search engine came up with lots of book titles, articles and Journals for my research area. However, only reputable journals that are peer reviewed were considered. Searching Techniques such as Boolean Logic and truncation were employed in searching for literature on the role of the CRTA, using key words and search terms. These searching techniques allowed for the use of Boolean operators that includes AND, OR and NOT in combination of search terms.

In using the Boolean logic, AND was used to restrict the literature search to a specific area; for instance, CRTA and RTAs; WTO and CRTA; RTAs and WTO. Whilst OR were used to widen the search area a little bit (Boole, 2003). Furthermore, to ensure that all relevant variations of the search were retrieved, truncation techniques were employed. This involved entering the asterisk symbol (*) after the search terms, thus allowing for different endings of the search term to be found, for instance 'Regional Trade Agreement*', this allowed for the identification of literature relating to Regional Trade Agreement and Regional Trade Agreements.

Another technique employed for literature search for this work in addition to electronic searches was hand search, 'snowballing' technique. Snowballing literature search technique involved identifying key articles, journals and books

on the CRTA and related topics and afterwards looking through their reference list or bibliography to select relevant references or bibliography to explore. This technique helped to reveal and identify lots of relevant and related literature on the CRTA for further exploration.

2.4. Data Collection:

A certain number of abstracts from literature found on the CRTA, the WTO and RTAs were reviewed. After this review was completed, 20 of them, (including articles, journals and books) were initially selected for basic review, after the basic review, they were further narrowed down to 18 for in-depth critical appraisal and analysis. The limitation of this process is that some articles might have been missed if the search term or keywords were not found in the title. However, this was undertaken to create focus on my research area – the CRTA and to search for articles directly related to the CRTA.

Literature relating to all RTAs involving developed countries that were notified to WTO and supposed to be subjected to the CRTA's examination procedure between 1996 and 2010 were collected and analysed. Other literature relating to RTAs negotiated and concluded by WTO members and entered into force between 1996 and 2010 was also collected and analysed. There was no in-depth study on RTAs concluded only among developing countries under the Enabling Clause that are notified to the Committee on Trade and Development (CTD) (Enabling Clause is an Exception to the Most Favour Nation Clause rule. (Note that RTAs concluded under enabling Clause were not taken into consideration by this study since it is not the duty of the CRTA to examine such RTAs. As a result, this area has not been fully covered by this work, although it has been mentioned several times in the discussions and analyses

Furthermore, this research project made use of three important libraries in London namely: The Libraries of the University of East London, The London School of Economics, and that of the Advanced Legal Studies. These libraries contained useful books, Journals and Articles, pertaining to this field of studies – the WTO, RTAs and the CRTA. So, many valuable materials in relation to the study of economics, trade and most aspects of world trade laws and RTAs have been accumulated over a very long period of time. As a result, these libraries were very valuable sources for data collection relating to this research project. However, many others online libraries and sources were also consulted, this included Athens, the websites of the WTO and the Libraries of the London Borough of Croydon. were the three main University libraries made use of in London.

2.5. Data Analysis:

Data collected on RTAs, the CRTA, and the WTO were studied and analysed, these included books, articles, publications by renown media houses, peer reviewed journals articles, GATT treaty, WTO legal texts, decisions on WTO case law, minutes of WTO meetings, WTO secretariat reports, minutes of the CRTA meetings, and a wide range of academic literature on the WTO between 1996 and 2010. All documents and materials collected for this research project were examined, studied and analysed in line with well-established procedure for documentary analysis. The framework that was used included:

a.) Time Frame: Documents collected were up-to-date and were dated between 1996 and 2010.

b.) Categorization: All documents were classified under their various categories, namely RTAs, CRTA and WTO and because they fitted appropriate to their various categories they were deemed relevant to this research project.

c.) Content Evaluation: The content of each document was examined to determine, if the materials therein were relevant to this research project or not.

d.) Appropriateness: All documentary evidence was evaluated and re-evaluated to determine its suitability to this work. All evidence was also analysed in accordance with the case study framework to provide answers to the research hypothesis of this work.

e.) Genuineness: The genuineness of each document collected from all sources was checked, and crosschecked many times to ascertain their genuineness. It is worth noting here that most documents, if not all documents on the WTO website are deemed to be genuine.

f.) Authenticity: The authenticity of documents on the WTO web site is not in doubt as previously mentioned under genuineness. This is because the WTO is a renowned, genuine and authentic international organization. Nonetheless, each document was still examined and analysed, for authenticity.

g.) Thorough Examination: Thorough examination for the selection of necessary and relevant documentary evidence was carried out. In fact, the examination and analysis of documentary evidence were conducted based on the general outlook of the document, the author, the manner of presentation, and the WTO icon on the document, if any. Each document was subjected to careful study and each one of them was examined before being accepted as evidence. Information on these documents was analysed and elaborated upon in very clear details, with adequate descriptions and explanations (Yin, 2003).

2.6. Choice of Research Methodology:

In deciding what research methodology to use for this research, factors such as the nature of the topic under investigation, the availability of literature on the

CRTA, RTA, WTO and the research methodology commonly used in academic research in the law discipline were taken into consideration. However, qualitative and quantitative research methodologies are the two most widely used research methodologies in most academic studies as a result it was vital to have a detailed understanding of both.

2.6.1. Quantitative Research Methodology:

Quantitative research could be defined as an objective, formal, and systematic process in which, information about a specific area of interest is obtained through the study and use of numerical data. To ensure that the study could be replicated and applied to a much larger sample than that used during the studies. Quantitative research method places great emphases on transparency and accuracy in data collection.

Quantitative research could be presented in various formats which, could be divided into four key forms as commonly used in sciences and medical disciplines namely: descriptive, correlational, quasi-experimental and experimental research. However, some of the limitations of quantitative research approach are that it often seems to fail to take into consideration an individual's unique ability to interpret their own experiences and construct their own meanings to the research undertaken. As a result, of this limitation, some contenders have argued that quantitative research often seems to lack flexibility in its nature.

2.6.2. Qualitative Research Methodology:

Qualitative research could be described as a research that concentrates primarily on the 'lived experiences'. Qualitative research allows for a more flexible research approach in terms of data collection, since data is usually in the form of words,

rather than numbers. Some have argued that often the findings and conclusions of qualitative research are often subjective because of lack scientific and statistical data.

One of the major limitations of qualitative research is its accuracy and validity, since the research findings and conclusions are very much down to the researcher's personal and individual interpretation. As a result, the value, findings and interpretation of a qualitative research study are sometimes viewed with caution. Furthermore, others have argued that in cases where qualitative research has depended on data collected from sampling, the research findings and conclusions cannot be generalised on the population, because qualitative research designs often suffer from small sample sizes of the total population under investigation.

2.6.3. Mixed Methods Research Methodology:

A 'mixed method' approach is the application of a combination of quantitative and qualitative research methods in a study. Some have argued that the main aim of this approach is to provide a certain degree of balance in the research. Since a quantitative method would aim to provide a scientific aspect to the research, in which the findings could have the potential to be generalised on a larger sample. Whilst a qualitative method could help to provide depth, context and details to the research studies.

Furthermore, others have also argued that combining quantitative and qualitative research methods together could help strengthen confidence in the validity of the research findings and its conclusions. However, one of the main limitations of a mixed method research approach is the complexity involved in the interpretation of the research findings. Nonetheless, to be able to combine

research methods together effectively, one needs the appropriate skills and a thorough understanding of both methods of research - quantitative and qualitative methods.

2.6.4. The Chosen Approach:

The decision to select a qualitative research approach was done after a detailed analysis of both quantitative and qualitative research approaches. This decision was primarily informed through the availability of literature on the GATT treaty, RTAs and the WTO, which took a qualitative approach in their designs. Moreover, a qualitative research approach is most suited for studies that are mostly descriptive in nature, with similarity to my own research project. And one of the main reasons for choosing a qualitative study is because a quality study is most likely to provide this search with in-depth information relevant and appropriate to answer the research questions.

Armed with a qualitative research design, the decision to use Grounded Theory Approach (GTA) was made. The concept of GTA is to discover theory from collected data, rather than attempting to make data collected to fit into specific theories. From the available literature on the CRTA, there was no theory in direct relation to the CRTA, the theory found within collected data relates to specialisation, comparative cost advantage, regionalisation, regionalism and new-regionalism. Furthermore, there wasn't any research directly relating to the CRTA as a research topic or specifically based on the CRTA as a research area.

As a qualitative study of the role of the CTRA under the auspices of the WTO between the year 1996 and 2010, document and literature on the GATT/WTO, the CRTA, RTAs, including Free Trade Areas (FTAs) and Custom Unions (CUs) between 1996 and 2010 were collected and analysed. In addition, related

documents on regional blocs and other bilateral trade agreements between nations of the world between 1996 and 2010 were also collected, studied and analysed.

Because of the lacuna in literature on the CRTA, a specific and comprehensive literature review on the CRTA was not possible. Because of this difficulty, this work instead explored literature and publications related to the CRTA; these included some literature on RTAs and the GATT/WTO committee system in general.

Although this work is a qualitative study, however, statistical data on the CRTA, RTAs and the GATT/WTO between 1996 and 2010 was not ignored. This includes data on the total number of RTAs notified to the WTO; Data on the total number of RTAs that were notified to the WTO and which underwent factual examination at the CRTA, and data on the total number of RTAs entered into-force between 1996 and 2010. In analysing and describing changes in the creation and establishment of RTAs and the work of the CRTA between 1996 and 2010, statistical data was also used to present a clear and concise picture of this trend (Table of the Notification of RTAs in Appendix).

2.6.5. Research Ethics:

No ethical issues, considerations, or implications arose because of undertaking this research project. From choosing the research topic to the gathering of data leading to the final draft of the research findings there were no ethical issues, since there was no fieldwork involved with this research project, or investigations involving human participants or animals. However, in a situation where fieldwork was necessary such as interviews, survey or a pilot scheme involving human

participants or animals, each chosen research design and approach would have had its own unique ethical issues.

2.7. Inter-Disciplinary Research Approach:

In the early 90s authors such as Kenneth Abbot highlighted the importance and necessity for inter-disciplinary scholarships (Slaughter, Tulumello, and Wood, 1998). This is partly because no academic discipline is isolated, as there is an existing correlation between different disciplines that makes isolated researches in any specific discipline incomplete, without incorporating resources from a related discipline or disciplines. As noted by Slaughter, Tulumello, and Wood (1998) "... Kenneth Abbott published an article exhorting international lawyers to read and master regime theory, arguing that it had multiple uses for the study of international law" (Slaughter, Tulumello, and Wood, 1998, p367). Nonetheless, in this era, it seems legal scholarship (International Law) is moving away from just analysing provisions of treaties, towards an inter-disciplinary analysis of the law. This analysis is occurring both at the domestic and international level (Slaughter, Tulumello, and Wood, 1998).

Furthermore, although Posner (1987) dealt with legal developments in the USA, it is still a good basis for the understanding of the dynamics of inter-disciplinary scholarships. Posner (1987) suggested that the law discipline should not be regarded as an autonomous or an isolated discipline, as many law scholars would like it to be. In warning advocates of this notion, Posner (1987) observed that although the economist and the statistician, not to mention the philosopher, the sociologist, the political scientist, the historian, the psychologist, the linguist, and the anthropologist may not be interested in the practice of law or the law discipline; however, this does not necessarily mean that the notion that the law

discipline is completely an autonomous discipline is right

In addition, (Posner, 1987) went further to explain that: “This perverse or at best incomplete way of thinking about law was promptly assailed by Holmes, who pointed out that law is a tool for achieving social ends, so that to understand law requires an understanding of social conditions” (Posner, 1987, p762). Posner added that: “Holmes thought the future of legal studies belonged to the economist and statistician rather than the ‘black-letter’ man” (Posner, 1987, p762). This is proving to be very true because some scholars now pursue inter-disciplinary scholarship research and some jobs nowadays involve the participation of a multi-disciplinary team in the accomplishment of various tasks or operations. Presently, knowledge and materials from other disciplines, such as international relations, are being applied in different related areas of international law.

Slaughter, Tulumello, and Wood (1998) have been able to carry this tradition to an international level, drawing on the international relations theory to bridge the divide between this discipline and law as a means of understanding how international law really evolves and works. The correlation between these two disciplines can be seen in the application of law in matters of international relations between nations, and in matters of trade negotiations. The application of law in the interpretation of legal text of treaties is now of paramount importance to most policy makers. On matters of international politics, international law is very useful; in fact, international law has become the yardstick for conflict resolutions both between nations and at the Security Council of the United Nations, because of constant reliance on diplomacy.

Nonetheless, in relation to the GATT/WTO Committee system framework, the approach utilised by Kufuor in his book on the GATT/WTO Committee system

and governance follows the inter-disciplinary line of analysis. Although, Kufuor's work places the committee system in the context of the framework of GATT/WTO law, it also focuses on international politics and related areas. This gave his work an inter-disciplinary outlook. The Inter-disciplinary approach now seems to have evolved as one of the main conceptual applications in international trade law researches (Kufuor, 2004). According to Slaughter, Tulumello, and Wood (1998): "The new enthusiasm for inter-disciplinary collaboration may also be understood partially as the product of intellectual dynamics within each discipline" (Slaughter, Tulumello, and Wood, 1998, p371).

In much the same light, in Kufuor's book on the Institutional Transformation of Economic Committee of West Africa State (ECOWAS), the application of inter-disciplinary approach can be clearly identified in the very first chapter. In this book, Kufuor applied the tools of rational choice institutionalism, sociological institutionalism and historical institutionalism to explain and elaborate on the Revised ECOWAS Treaty; and the transformation of the institutions of ECOWAS and its system of operation (Kufuor, 2004).

As earlier mentioned, so many functions and duties nowadays are increasingly making use of multi-disciplinary team participation in the accomplishment of many different tasks and the result in the application of inter-disciplinary concept has been very successful. So, there is the encouragement for this to continue. Currently, researches in many different disciplines are increasingly utilising concepts and principles from related disciplines to strengthen their research project and give it added value. Thereby making things even clearer from all directions and dimensions, through inter-disciplinary strategy. Slaughter, Tulumello, and Wood (1998) suggested that "...the American

Society of International Law and the Academic Council on the United Nations System sponsor joint summer works hops explicitly designed to bring young (International Relations) and (International Law) scholars together to explore the over-lap between their disciplines” (Slaughter, Tulumello, and Wood, 1998, p367).

One of the important benefits of inter-disciplinary research approach is that it could help conceptualise and contextualize research in its proper and related domain. Inter-disciplinary research strategy could also help to encourage multiple-disciplinary scholarships. Again, it could help to facilitate multi-dimensional broad based research collaboration between different faculties or disciplines. If this trend continues, it may usher in a new multi-dimensional comprehensive investigative strategy that could incorporate so many related disciplines in an academic research project, which could facilitate revolutionary discoveries of appropriate solutions to difficult problems in different aspects of human endeavours (Slaughter, Tulumello, and Wood, 1998).

Finally, this research has also made use of inter-disciplinary scholarship strategy, through the application of sociological, political, economics, and legal concepts in its analyses, explanations and clarification of the nature and origin of the committee system and their links to the WTO’s CRTA.

2.8. Discussion on the Lacuna of Literature on the CRTA:

Multilateral trade rules for international trade might have been created with the objectives of securing market access for the post Second World War recovering economies. However, these were implemented to support continuous economic growth for allied nations. Following the introduction of these rules in 1947 as the GATT, it was very apparent that countries with easier access to other countries’ markets were capable to grow faster than others without such access. This was

probably one of the main reasons why more and more independent states, including former colonies accepted the multilateral trade discipline; despite that these trade rules restricted their freedom to make unilateral decisions about trade. Accepting these trade rules, therefore, allowed some countries with limited policymaking space to manoeuvre things the way they would have liked to do (Mikic, 2009).

The multilateral trade system (MTS) is made up of a set of rules, which could help to promote international trade liberalisation. This set of rules evolved from the GATT 1947 treaty. However, the creation of the WTO in 1995 as mentioned earlier, further enhanced the multilateral nature of the MTS rules. Thereby developing the MTS into a more complex trading system, which was to be managed and monitored by the WTO via the CRTA. After the establishment of the WTO, the rapid proliferation of RTAs became the order of the day among GATT/WTO member nations (Mikic, 2009).

However, one of the intended functions of the CRTA was to ascertain if RTAs were indeed compatible with the MTS or not. The CRTA was supposed to examine and ascertain, if RTAs were indeed “Building blocks” or “Stumbling blocks” vis-à-vis the MTS (Bhagwati, 2008). In addition, one of the other very important functions of the CRTA is to ensure transparency of RTAs; and to provide an opportunity for WTO member nations to evaluate, if RTAs are consistent with MTS rules (Bhagwati, 1992).

According to Crawford and Laird (2001), in two previous annual reports on the CRTA, work on systemic issues has been based in part on issues arising in the examination of specific RTAs and on certain written contributions submitted by some WTO-delegations. Crawford and Laird also suggested that the work of the

CRTA has not been wholesome. They argued that there were lots of systemic issues arising from its work. However, Crawford and Fiorentino (2005) also suggested that to better clarify and simplify the work of the CRTA, there have been numerous attempts to identify these systemic issues arising from the interpretation and application of individual GATT/WTO provisions of GATT Article XXIV and GATS Article V. In addition, further attempts were made by WTO members to try to explore possible systemic linkages between GATS Article V and GATT Article XXIV (Crawford and Laird, 2001).

Nonetheless, there seems to have been rather little scholarly interest in the CRTA or its work in general. For instance, in the book: *Regional Trade Agreements in the GATT/WTOs* by Mathis (2002) with a foreword written by Jagdish Bhagwati, an excellent book for the study of RTAs in the GATT/WTO arrangements; but this book however, ignored very important issues relating to the CRTA and its work. In fact, important issues such as the examination of RTAs at the CRTA and the publication of RTAs examination reports by WTO/CRTA were wholly ignored. Information provided in this book on the CRTA only centred on the difficulties faced by the CRTA in terms of systemic issues. Just as in various past annual reports by Crawford and Laird, only systemic issues facing the CRTA were discussed (Mathis, 2002).

In chapter 11 of *Regional Trade Agreements in the GATT/WTO* by Mathis (2002), titled *Systemic Issues in the CRTA*, specific systemic issues were examined without elaborating on the examination of RTAs at the CRTA or RTA examinations reports. It seems that even some scholars and writers, who attempt to examine the work of the CRTA, largely ignore many important sections of the subject matter, which includes the examination of RTAs at the CRTA and the publication

of examination reports of RTA by WTO/CRTA. This could explain one of the main reasons for the gap in literature on the work of the CRTA (Mathis, 2002).

Although, so much literature exists on the WTO and so much has been written on RTAs, there has been very little written on the CRTA or the WTO committee system in general. The question now is: Why are there not many literary works or research on the CRTA or the WTO committee system? The answer could probably be because of lack of interest in the work of the CRTA or partly because of the lack of authority and power in the mandate of the CRTA.

In addition, one other reason that could be advanced for the gap in literature on the CRTA could be the existing impasse at the CRTA in relation to the examination of RTAs. Crawford and Fiorentino (2005) suggested that this impasse at the CRTA, prevents the CRTA from doing its work on the examination of RTAs. A thorough examination of RTAs and the publication of all examination report is very difficult because of this impasse. In fact, it indirectly puts a halt on the work of the CRTA, thereby making the CRTA almost irrelevant and helping in creating a vacuum in literature on the role of the CRTA (Crawford and Fiorentino, 2005).

Furthermore, Crawford and Fiorentino (2005) also suggested that at the Fourth Ministerial Conference in Doha, Qatar, WTO Members recognised that RTAs could play an important role in promoting trade liberalisation. And they also recognized that RTAs could help in fostering economic development. As such they stressed the need for a harmonious relationship between the multilateral and regional processes. On this basis, they stated that the ministers agreed to launch negotiations aimed at clarifying and improving the relevant disciplines and procedures under existing WTO provisions with a view to resolve the impasse in

the CRTA, exercise better control of RTAs dynamics, and minimize the risks related to the proliferation of RTAs (Crawford and Fiorentino, 2005).

Basically, the WTO committee system in general has been given limited literature coverage or rather largely ignored by scholars of world trade law. Even those scholars who have written widely on RTAs and on the WTO committee system especially have not sufficiently and adequately explored the CRTA. For example, Kufuor (2004) is one of the few comprehensive studies on the WTO committee system, his book titled: "World Trade Governance and Developing Countries: The GATT/WTO Code Committee System". Kufuor seems to be one of the few authors who have diligently examined the GATT/WTO committee system and its governance (Kufuor, 2004).

However, in the Transformation of the Economic Committee of West African States (ECOWAS) published in 2006, Kufuor explored in detail the transformation of the institutional structure of ECOWAS, an RTA, but largely ignored the CRTA. This book only made mention of the fact that the CRTA is a part of the GATT/WTO's committee system but never mentioned if the ECOWAS treaty was supposed be subjected to the examination process at the CRTA or not (Kufuor, 2004).

Although Kufuor's books took a close look at the whole GATT/WTO committee system, it did not treat the CRTA as an important subject. For example, Kufuor (2004) mainly explored in considerable detail the GATT/WTO committee system and its function from a general perspective, without exploring the examination of RTAs at the CRTA. Instead Kufuor carefully examined how developing countries had been shaped and are being shaped by the GATT/WTO committee system. And investigated certain critical areas of importance to

developing countries such as antidumping, textiles and agriculture, which could have led to the CRTA being explored. But the CRTA was still overlooked, although the CRTA is supposed to be one of the most important committees in the WTO committee system, considering the position of RTAs in multilateral trade liberalisation, there still seems to be a general lack of interest on the CRTA (Kufuor, 2004).

Even some prominent authors on RTAs, such as Jagdish and Bhawagti have also systematically ignored the CRTA process for RTAs. One may argue that the existing gap in literature on the CRTA may be partly or wholly because the CRTA has not been able to publish most of its works on RTAs. In addition, it might have also resulted because RTAs have now become an acceptable means for trade liberalisation for both developed and developing nations, making RTAs the norm in our global trade arena. In effect, the role of the CRTA in the examination of RTAs is marginalised.

Some have also argued that since certain regional integration groupings such as the EU are encouraging the establishment of RTAs in other regions of the world, the role of the CRTA is indirectly irrelevant. While others believe the work of the CRTA is not taken seriously both by the WTO and some members of powerful RTAs who seem to rely on the existence of unregulated RTAs to further their individual economic agendas.

Furthermore, De Lombaerde and Schulz (2009) suggested that the literature on regionalism is vast and covers different methodologies, approaches, aspects and dimensions of the phenomenon. Hence, it is somewhat surprising to find that there is a research void concerning the role of the EU as an actor that promotes regionalisation and even RTAs. De Lombaerde and Schulz suggestion

may probably be one of the main reasons why it seems scholars of RTAs may not be really interested in the CRTA because if a powerful institution such as the EU tends to encourage the proliferation of RTAs, there would be no reason why prominent authors on regional trade would advocate the relevance of the CRTA.

In addition, De Lombaerde and Schulz (2009) also suggested that the EU and its Member States are indeed generally seen as natural supporters of regional integration initiatives worldwide. The European success in establishing a regional grouping, with effective institutions and decision-making rules has fuelled demands by other regions for political and financial assistance. This has led the EU and its Members States to switch from pursuing a reactive approach to actively promoting and supporting regionalism worldwide. Since the EU seems to be in support of RTAs, this could have created a negative perception on the role of the CRTA that could have led to the lack of interest even from prominent scholars of regionalism. One other important reason for the lack of adequate literature on the CRTA is that even famous trade economist such as Bhagwati largely ignores this committee.

While to other scholars, RTAs could be the best and shortest means to achieving multilateral trade liberalisation rather than through lengthy and confusing multilateral negotiations at the WTO called 'Rounds' (Bhagwati, 2008). Professor Andre Sapir (a Belgian Economist) suggested that the founding fathers of the post-war trading system wisely chose non-discrimination as its central principle, but observed that in the last fifteen years they have witnessed an erosion in the trading system due to the proliferation of Preferential Trading Agreements. Explaining that Jagdish Bhagwati, the leading trade economist of our time, rang first the alarm bells about the resulting spaghetti bowl of

discriminatory rules and regulations in our trading system. And that in Bhagwati's book - *Termites in the trading system*, he brilliantly used his wit and bluntness to describe the rise of PTAs and analyses why it has occurred and how it threatens the MTS (Bhagwati, 2008). Scholars such as Professor Andre Sapir, were aware of the difficulties faced by the MTS from the proliferation of RTAs, but did not envisage the role of the CRTA as important in bringing this proliferation to a halt.

Furthermore, Richard Pomfret for example did not include any chapters on the CRTA in his book on RTAs: *The Economics of Regional Trade Agreements* published in the year 1997. In this book, the CRTA was wholly ignored, notwithstanding the fact that this was a book on regional RTAs (Pomfret, 1997). Although this book was written in 1997, the CRTA was not discussed in any of its chapters, even though the CRTA was two years old at the time. As earlier mentioned, some authors have largely ignored the WTO committee system, especially the CRTA, this may be partly because the CRTA was new and the proliferation of RTAs was considered a normal phenomenon and partly also because proliferation of RTAs seem to be encouraged by some advanced economies.

And in 'World Trade Organization, A GUIDE to the Framework for International Trade', Bhagirath LaL Das talks elaborately on the WTO, but made no mention about the CRTA. Neither did he examine the broader GATT/WTO committee system. In a nutshell, the broader WTO committee system and the CRTA were virtually ignored. Although he made mention of the Committee on Trade and Development (CTD) and to elaborated on some important features of this committee, he virtually ignored the CRTA. A very significant proof that the

CRTA is not really regarded as being important in the minds of some authors of international business, when international trade is concern.

Winters (1996) argued in favour of RTAs existing side by side with multilateral agreement. He emphatically stated that RTAs are like street gangs and went further to explain that: one may not like them, but if they are in one's neighbourhood, it is safer to be in one of them. However, Nader (1993) was very blunt in his condemnation of RTAs, in his analysis, Nader suggested that multi-national cooperation most often influence the outcome of most RTAs for their own interest – Solely to maximize profits. The implication of this is that these agreements are not successfully negotiated purely for trade liberalisation. The argument here is that RTAs are not always compatible to the MTS. However, according to Pomfret (1997), some scholars view the proliferation of RTAs as a challenge, while others consider RTAs a complement to the establishment of the WTO as the successor to GATT.

Ethier (1998) specifically observed that new regionalism is in good part a direct result of the success of multilateral liberalisation, as well as being the means through which some newly independent countries enter the multilateral trading system, to compete among themselves for direct investment (Jagdish, 1992). This suggests that RTAs are a pathway to multilateral trade liberalisation, as such compatible with the MTS. This analysis seems very true from the EU's perspective. This theory however, could make the existence of the CRTA irrelevant. In fact, authors such as Ethier (1998) have directly or indirectly contributed to the CRTA being partly or whole ignored, thus resulting to a lacuna in literature on the CRTA.

Nonetheless, from the views of Viner (1950), Bhagwati (2008), Crawford and Laird (2001), Baldwin (1997), Ethier (1998), Lawrence (1999) and even

Winters (1996); one could conclude that some of these writers have in some way or another considered that RTAs could help facilitate multilateral trade liberalisation or could be made to complement the MTS, instead of being a mechanism for market protection. Most of these authors to some extent feel RTAs could become building blocks rather than stumbling blocks to multilateral trade agreements, if certain rules and principles are properly put in place with the objective of fostering global trade. It is not surprising to see that none of them have written specifically about the CRTA. That is why this work is unique because it focuses specifically on the role of the CRTA under the auspices of the WTO.

2.9. Conclusion:

Chapter 2 has explored the choice of methodology for this work. It explored the nature of qualitative research and its limitation, and in addition to clarified why qualitative methodology was chosen as the best research methodology for this work.

Furthermore, it also explored the different methodologies that could have been chosen or used for this study and their limitations, which includes quantitative and mixed-methods. In addition, it explored the trend and relevance of interdisciplinary research approach in the context of legal research. Nonetheless, one of the main reasons for choosing this research topic was clarified through discussions on the lacuna in literature on the CRTA.

Finally, this chapter helped to refocus this work on the main element of the study, which is the role of the CRTA under the auspices of the WTO committee system, by explaining how the literature search was mainly focused on the CRTA and related topics, and how this was conducted. In addition, discussions on the gap in literature on the CRTA, brought to light the need for further research on this topic.

CHAPTER 3.

3.1. Introduction:

Chapter 3 explores the research question: How does the GATT/WTO treaty impact on the world trading system and on the role of the CRTA? It explores the development of our present-day world trading system, tracing its beginning from the Napoleonic era and the early trade treaties between nations, to the advent of negotiations leading to the creation of the General Agreement on Tariff and Trade (GATT) treaty. Furthermore, it also explores: The GATT, the concept of regionalisation, regionalism and new regionalism. In addition to the Text of Article XXIV GATT 1994, the Text of GATS Article V, the interpretation of the Understanding of Article XXIV of GATT 1994, GATT Article XXIV through which RTAs are formed. Finally, it looks at the ambiguities of Article XXIV of the GATT 1994 and its impact on the role of the CRTA.

3.2. The World Trading System:

The world trading system is the name many economists, scholars and trade policy-makers use when referring to the global trading arena. In this present age, the world trading system is commonly and professionally referred to as the multilateral trading system (MTS). The history of the world trading system, most specifically international trading agreements could be traced back in time to the era of bilateralism.

After the end of the Napoleonic Wars (1799 - 1815) there was a steady development in inter-regional trade, and subsequently international trade also increased considerably leading to a sustained period of globalisation. In fact, the period between 1870 and 1914 is often classified as a landmark period of the globalisation of the world economy in the 19th century. During this period, there

were very few restrictions to trade, as a result, there was free movement of labour and capital.

The movement of people and commodities within and between different continents was considerably unhindered by trade restrictions and barriers. However, in the very early stages of this period, the only apparent restriction on trade and the free flow of people and commodities was transportation. Indeed, during the early stages of globalisation, the modern transportation system we have in place today was also in its early stages of development. This was one of the major restrictions on trade, which reflected very much on the international trading prices of commodities as compared to domestic prices.

This period of globalisation saw a steady increase and growth in the volume of international trade for many European countries. It was observed that between the years of 1870 and 1913 the total amount of European International trade growth rate in percentage terms was 4.1% yearly, calculated on current values. Although this growth rate was lower than that reported between 1830 and 1870, which was at about 16.1% annually, but the difference is that the period between 1830 and 1870 constitutes a period of war - the era of Napoleonic wars.

Also, some of the most important international trade deals during this era were geared towards war efforts, making trade during this period very different from trade in times of peace. In relation to other peacetime international trade, such as peacetime prices of goods during 1990s, it shows a 6.8% annual European international trade growth rate. This percentage represents very high growth rates, specifically for countries such as Germany, Finland, Belgium and Switzerland. In fact, the volume and value of international trade for these

countries were quiet high in the 1990s, due to relative considerable peace among nations (Maddison, 2001).

Furthermore, after 1870 there was steady growth in global trade, accompanied by a considerable reduction in the price of commodities both in domestic and international markets. This steady growth of global trade and price reduction after 1870 was because of many contributing factors. Firstly, prices became stable and even lower than they were at the very early stages of globalisation during this period, due to improvement in the transportation system such as the availability of better and faster steam-liners that could carry more heavy quantities of commodities and reach international markets earlier than before.

Improvements in transportation led to considerable reduction in transportation costs that reflected positively on price reduction for commodities. Secondly, the construction of the Suez Canal in 1869 also helped significantly in reducing the cost of transportation for people and commodities, through the reduction in the amount of time normally used to deliver goods to other international markets.

However, internal transportation cost for many countries was still very high until the development of railway lines. This method of transportation helped to further reduce the general cost of trading, through making the transportation of commodities and the movement of people cheaper and more affordable. Because of the constant improvement in the transportation system, the cost of shipping goods from New York in the USA to Liverpool in the United Kingdom fell from 11.6% to 4.7% (Findlay and O'Rourke, 2007). It is worth noting that for many countries with vast territorial landscape such as Russian and the USA the advent

of the railway line transportation system was of specific importance for the movement of goods and people (Metzer, 1974).

A lot of other factors have also contributed tremendously to the reduction of the prices of commodities and the stabilization of the global economy during the period between 1871 and 1914, such as the development of European Empires and kingdoms during this period, which guaranteed considerable peace, leading to a marked reduction in trading barriers among trading nations; resulting in a general reduction in the prices of commodities (Jacks, 2006). Directly or Indirectly the inclusion of colonial territories into the currency union of colonial powers and the spread of the gold standard during this period might also have contributed in some ways or another to promote trade and reduce prices during this period in history.

As suggested by Lester and Mercurio (2008), during the late nineteenth and the early twentieth century, bilateralism was clearly the dominant form of trade negotiations throughout the globe. In fact, trading agreements were often negotiated on a bilateral basis between two different countries and these bilateral trade agreements covered specific areas of trade. But immediately after the Second World War, multilateralism and regionalism replaced bilateralism as the dominant approach to world trade. Many trading agreements and negotiations involved mostly countries in specific region; many nations were at the time very reluctant to embrace multilateralism, due to the vast nature of multilateral negotiations and the cost involved.

The period between 1919 and 1939 is commonly referred to as the epoch of de-globalisation. This is reasonably correct because during this period, both international trade and international capital flow shrank considerably compared

to the period before the start of the First World War. Between 1919 and 1939, RTAs were not considered a threat to the MTS, because there was no existing multilateral trade regulatory system or arrangement. Neither did there exist any multilateral trade surveillance for RTAs. This is partly due to the absence of a multilateral trade regulatory system and the non-existence of multilateral trade surveillance for RTAs. The negotiation of RTAs was unregulated. RTAs negotiated during this period were not subject to any trade rules or regulations.

However, it seems that most trade agreements negotiated during this period, were often for war purposes, partly because the world was not stable enough for global trade to prosper or for market expansion. But immediately after the Second World War, the necessity for the development an effective MTS became necessary, because many allied nations, such as the USA, Britain and France were so desperate to improve the general economic welfare of their citizens, through trade negotiations with one another.

Nonetheless, the possibility of a general reduction of tariffs and other barriers to trade seemed very unattractive to some developed and developing countries struggling to make sense of the real benefits of free trade agreements. Because protectionism was to them a safeguard to their markets being hijacked by producers and investors of more powerful and efficient economies. Therefore, protectionism was a mechanism for market safeguard and stability; because of free trade at a preferential level was more acceptable to them.

Crawford and Fiorentino (2005) suggested that the promotion of free trade at a preferential level may help developing economies implement domestic reforms that could enhance their ability to withstand competitive market pressures at a sustainable pace, thus facilitating their integration into the world

economy. Crawford and Fiorentino (2005) also argued that the resulting effects of the implementation of domestic market reforms through the engagements in preferential free trade negotiations and agreements may benefit the multilateral process; by exerting leverage on developing economies and others for openness and competitive trade liberalisation in international trade relations.

In addition, Crawford and Fiorentino (2005) also suggested that the development of a complex network of trade relationships and the existence of regulatory regimes that increasingly touch upon policy areas uncharted by multilateral trade agreements may place certain countries, especially developing economies, in a weaker position than under the multilateral trade framework. For the MTS, the rapid proliferation of RTAs and other bilateral trade agreements are already undermining transparency and predictability in international trade relations, which are the pillars of the GATT/WTO system. This situation of uncertainty creeping gradually into global trade could ultimately alter global trade patterns with severe negative implications for the MTS and the WTO/CRTA

3.3. The Concept of Regionalism:

Early forms of human interactions, cooperation and trade were concentrated solely within specific geographic locations – centres for trade were littered in various hotspots across the globe. Trade was mostly conducted between people within specific geographic locations - regions. Interaction and trade between people of different regions was very limited, due to various reasons; notably, in many cases some regions did not even know the existence of other regions. Trade during the very early stages of human civilization was regionalised; this was also partly due to other constraints such as a rudimentary transportation system in

existence at the time, the lack of proper means of communication and limited financial instruments to facilitate exchange of goods and services.

Whenever regionalism is mentioned, the very first thing that impresses upon the minds of most people is 'REGION' – that is a geographic location. However, it seems many people are truly confused on what should really constitute a region per se. A region could be defined as a geographic area distinct from all others in the overlapping territorial surface of the earth. Many would agree that this definition looks rigid. The main question of contention here is whether this rigid definition of region is still relevant in this age and time. Because with the continuous quest for internationalisation and the aggressive expansion of market access the notion of regionalism as per a fix geographic location becomes out-dated.

The traditional concept of regionalism has been deeply plagued by certain underlining features of internationalisation, the expansion of market access and globalisation. In this modern era, regionalism constitutes any attempt to restrict trade within a specific group of nations, whether in the same region or not, through the means of certain arrangements, agreements or treaties. In contrast, the old form of regionalism constituted the liberalisation of trade within a specific geographic location.

As earlier mentioned, regionalisation occurred at a very early stage of human existence, due to ignorance and certain physical limitations, such as transport infrastructure. However, regionalisation was never by design, whereas regionalism is by design. Regionalism is a carefully crafted human decision, a deliberate process of economic and political integration within a specific geographic area. According to Nieuwkerk, co-operation between countries in

specific geographic areas, whether in economic or security matters, is an ambition that resonates strongly in the minds of policymakers (Van Nieuwkerk, 2001).

Two of some of the most important international trade theories that have been behind the concept of regionalism are the Ricardian and Heckscher–Ohlin models. Clearly, the Ricardian model of comparative cost advantage, states that specialisation and trade would benefit all nations. This concept by David Ricardo is widely accepted by many scholars. This is partly because David Ricardo based his concept on cost, specialisation, production and trade, which are generally regarded as very important elements in international trade. While the Heckscher–Ohlin model is based on a general mathematical equilibrium of specialisation, production and trade with special emphases on the availability and use of factors of production. Eli Heckscher and Bertil Ohlin of the Stockholm School of Economics developed this model to illustrate the fact that specialisation and trade would improve the welfare of many nations.

Nonetheless, the Heckscher–Ohlin model is built on the foundation of Ricardo's own model but the main difference between these two models is that Heckscher–Ohlin model predicts clear patterns of increased benefits for all trading nations, through specialisation, production and trade. (Armstrong and Taylor, 1993). However, these two models would not be explored in detail by this research project. However, it is worth noting that since the year 1930, economists and policy-makers have considerably expanded these models to include tariff reduction and the elimination of other barriers to trade, in their attempt to support the formation and establishment of RTAs (Armstrong and Taylor, 1993).

Basically, some important trade experts hold the opinion that the Anglo-French trade agreement of 1860 was the very first RTA in this modern era. This

agreement stated that French protective duties were to be reduced to a maximum of 25 percent, achievable within five years of the agreement, and it also provided for the free entry of all French products except wines into Britain.

One of the main points of interest about regionalism is that it liberalises trade amongst member nations. It also encourages some sort of economic discrimination, through preferential treatments accorded to member states of a trading agreement. By allowing stronger internalisation of the gains from trade liberalisation, regionalism would likely facilitate free trade than when it was highly restricted to a specific geographic location (Winters, 1996).

Some liberal thinkers, such as Adam Smith have always argued in favour of free trade. They believe that any trade agreement which could result in the reduction of trade barriers, especially in the form of general tariff reduction or the removal of non-tariff barriers would benefit the economies of both developed and developing countries. This concept is based on the philosophy that the reduction or total elimination of tariffs and other trade barriers would help to encourage trade among member nations to an RTA. An expanding market for goods and services through the removal of tariff and non-tariff barriers is an important factor in economic development (Kufuor, 2005).

The continuous evolution of the concept of regionalism within the EU context has made regionalism very complex and multi-dimensional in nature. The continuously conceptual variance and changing dynamics of regionalism, which now involves new-regionalism, inter-regionalism and trans-regionalism has created unimaginable difficulties to the WTO in terms of monitoring trade treaties and agreements. These constant conceptual changes have made checking the consistency and compatibility of new-regional RTAs with the MST very complex

and difficult, because they do seem to overlap the original WTO rule by which RTAs are assessed.

3.3.1. New Regionalism:

New-regionalism is a new form of regional cooperation that involves political, social and economic integration within a specific territory or region. The belief in new-regionalism was strengthened by the post-cold war, new international economic order and certain academic 'discovery', which comprises some of the benefits of this new form of regionalism. New regionalism is simply a multi-dimensional form of regional integration that includes economic, political, social, and cultural aspects, and in addition involving governments, states and non-state actors.

The focus of new-regionalism appears to be on real political ambition and endeavour geared towards the establishment of a regional coherence and identity amongst member states of an agreement (Hettne, 2000). Certain RTAs such as ECOWAS, the South Common Market (MERCOSUR), the Association of South East Asia Nations (ASEAN), the North America Free Trade Agreement (NAFTA) and the Southern African Development Community (SADC) have all tried to remodel their agreements and transformed their institutions in one way or another in response to pressures from new-regionalism ideology. Other regional integration schemes have made meaningful changes to modernize their institutions to function just like institutions of the EU. This is partly due to the apparent success of the application of new-regionalism ideology within the EU project (Kufuor, 2005).

According to Soderbaum (2003) the term 'new regionalism' is now widely used in debates all over the world. He argues that to understand more about what is 'new' in new regionalism, he suggested that one should be able to differentiate

between a variety of partly overlapping and partly competing distinctions and meanings of what is really involved in new regionalism. Furthermore, he observed that many scholars and policy-makers simply refer to new regionalism as the current wave of regionalism because new regional seems to be always evolving. The prevailing school thinking is that new-regionalism gradually evolved from old form of regionalism with some fundamental differences and changes (Soderbaum, 2003).

Nonetheless, there are both continuities and similarities between old and new regionalism, in such a way that when one studies contemporary regionalism, one tends to easily get the feeling of *déjà vu*. One of the most fundamental features of new-regionalism is that it has worldwide recognition, some likability and it is also seen to be trendy. Therefore, it could be construed that the simple reason why this form of regionalism is often labelled as 'the new regionalism' maybe partly because it does not confine itself only to formal inter-state regional organisations and institutions. Instead it includes a whole host of non-state actors and other multi-state institutions in its make-up, operation and in its decision-making. In new regionalism both state and non-state actors often come together in rather informal multi-actor coalitions (Soderbaum, 2003).

Soderbaum (2003) also suggested that the resurrection and redefinition of regionalism are among the dominating trends in our international studies today. He defined new-regionalism as a range of formal and informal mid-level 'triangular' relationship among not only states actors but also non-state actors, notably civil societies and private companies. He also observed that the relationship between these various groups is a central feature of new-regionalism.

The supranational aspect of new-regionalism can be vividly observed in the expansion, widening and deepening of the economic and political integration scheme of the EU. According to Hay (1966) Supra-nationalism is a political quality, rather than a power or a right. It does not depend on express stipulation, but follows from powers and functions accorded an organisation; because supra-nationalism is a quality, no agreement exist on its attributes.

Supra-nationalism is one of the main defining features of new-regionalism; it is that element which makes new-regionalism very different from the old-fashioned regional organisations the world was accustomed to (Hay, 1966). Supra-nationalism simply transfers a considerable degree of sovereignty of member states to a supra-national organisation. The EU is a very fine example of a supra-national organisation. Supra-nationalism in new-regional RTAs could lead to monitoring and examination difficulties at the CRTA, due to the size, nature, powers and sphere of influence of such organisations.

3.3.2. Inter-regionalism:

Inter-regionalism could be defined as a formal inter-governmental relationship on trade and economic issues between two or more regions or regional bodies or RTAs. Inter-regional trade is simply trade between two or more regions or regional bodies or RTAs. The growing influence of inter-regionalism is multi-dimensional in nature. It could be identified in the form of economic or political relationship between different regional groupings; it could also take the form of relationships between regional groupings and a single industrialised nation. These two forms of inter-regionalism are the most common in the world. In 1996 Europe and Asia formally concluded what could be termed as the very first recognisable inter-regional agreement known as the Asia-Europe meeting

(ASEM). Rüländ, Hänggi and Roloff (2008) and many others have argued that ASEM has been one of the main multilateral channels of communication between Europe and Asia. They also suggested that without any formal treaty or agreement, ASEM has helped strengthen interaction and mutual understanding between Europe and Asia via multi-channel dialogues.

Rising intra-regional trade, intra-regional investments, production networks, banking, financial links, technology transfers, communication, cultural and personnel exchanges have all helped to increase regional cohesion, connectivity and interdependency among East Asia nations. (Lincoln, 2004) In addition, the emergence, formation and establishment of intra-regional RTAs have also helped to reduce the total number of RTAs in existence. As suggested by Crawford and Fiorentino (2005) the EU enlargement also consolidated the extensive network of intra-European RTAs built over the years by considerably reducing the number of existing agreements within the territory of Europe.

3.3.3. Trans-regionalism:

Trans-regionalism could be defined as bilateral trade agreements involving two or more countries located in two different geographic regions. The Asia-Pacific Economic Cooperation (APEC) is a clear example of a trans-regionalism project; APEC is made of 21 Pacific Rim countries from various continents. (Aggarwal, 1998 and Bhagwati, 2008) and others have argued that trans-regionalism could truly be a game-changer for the future of traditional RTAs.

In the present state of things, some authors would prefer to describe RTAs simply as preferential trade agreements (PTAs), because RTAs now seemed to have clearly moved away from its regional or geographic constraints. Many RTAs nowadays are being concluded between nations in different regions or continents.

Lots of RTAs today are not based on the outdated model of early trade agreement that was normally concluded mostly by nations that were geographically proximate to one another. Some of these RTAs would include preferential or bilateral trade agreement between China and the United Kingdom; such agreement would be classified as a non-geographic RTA – Meaning such RTAs would normally be called trans-regional RTAs (Bhagwati, 2008).

It is believed by some that trans-regional RTAs could help ease global distribution of goods and services (Bhagwati, 2008). In addition, it is also widely believed that trans-regionalism could enable trans-national regulatory coherence across a broad spectrum of issues affecting trade and investments; thereby facilitating globalisation (Aggarwal, 1998). It is essential to understand the terms of reference of trans-regionalism that it is just an innovation beyond the already extensive approach adopted by “normal RTAs” – in terms of geographic proximity and location. Trans-regionalism RTAs are our normal RTAs moving away from their physical geographic limitation (Bhagwati, 2008). These new forms of RTAs no longer place any importance on the ‘regional’ aspects of our normal RTAs – That is the LOCATION aspect. Instead trans-regional RTAs tend to place more emphases on a range of trade and trade-related issues than the geographic location importance of old fashioned RTAs (Bhagwati, 2008).

Finally, trans-regionalism is a multi-lateralising form of regionalism because it tends to untangle the difficulties and limitations placed by “regionalist or old fashioned RTAs” that tend to limit the extent and nature of all agreements that could be classified Regional. One could say that Trans-regional RTAs are a global multi-lateralising innovation and initiatives from the concept of new-regionalism (Bhagwati, 2008).

3.3.4. Regional Economic Integration:

Regional economic integration could simply be defined as an agreement between and among countries in a specific geographic location, which aims at reducing or eliminating tariff and non-tariff barriers to trade thereby guaranteeing the free flow of goods, services and other factors of production within that region. It could also be described as any form of agreement in which countries in a specific geographic area, agree to co-ordinate their trade, fiscal, and monetary policies together. Currently we have two types of regional economic integration model, namely the European and the Asian models.

As suggested by Sakakibara, Eisuke and Yamakawa (2003), the forces behind the processes of regional integration in Europe and East Asia were initially very similar, i.e. they were political in nature, but ex-post the implementation and outcomes of the process have differed in several ways. Sakakibara, Eisuke and Yamakawa (2003) also suggested that the EU model of integration corresponds more to the policy-driven model of regional integration arguing that institutions and governments have ended up guiding the process, as the number of regional institutions and regional agreements shows.

Furthermore, Sakakibara, Eisuke and Yamakawa (2003) also argued that the East Asian model of regional economic integration, better fits the market-driven integration process scheme. They suggested that the market and corporations-driven process in East Asia has been encouraged by the development of both regional and global cross-border production networks and that intra-industry trade in parts and components and Foreign Direct Investment (FDI) conducted by corporations; and encouraged by significant liberalisation, have been, and continue to be, the key driving forces of the established

production-sharing scheme, of the Asian subcontinent (Sakakibara, Eisuke and Yamakawa, 2003). The difference in between these two models could impact on the MTS and multilateral trade negotiations in different ways from the two continents.

3.4. The General Agreement on Tariff and Trade (GATT):

The general agreement on tariff and trade came into existence in the year 1947 and was amended in 1994. It all started with the desire for some allied nations to improve trade, increase economic prosperity and open access to restricted markets immediately after the Second World War. This urge led to meetings and negotiations for the creation of international organisations to foster cooperation promote and regulate trade among them.

One such international organisation of significances at the time the GATT was being negotiated was the international trade organisation (ITO). Because of the United States of America refusal to sign the treaty intended for the creation of the ITO, the meeting for the creation of the ITO failed. Because of the failure of the meeting's main objective, which was the creation and establishment of the ITO, some participants of the negotiation were ready to look at other options. Accepting that an ITO could not be created and established as intended, negotiating nations decided to go into a contract to reduce tariff barriers, to liberalise trade as a result, GATT came into existence through the ashes of the ITO charter.

Furthermore, once the GATT treaty was agreed upon and accepted, it became an international trade treaty. The GATT is generally referred to as the GATT treaty. The opening section of the GATT 1947 treaty stipulated that the Governments of the Commonwealth of Australia, the Kingdom of Belgium, the

United States of Brazil, Burma, Canada, Ceylon, the Republic of Chile, the Republic of China, the Republic of Cuba, the Czechoslovak Republic, the French Republic, India, Lebanon, the Grand-Duchy of Luxemburg, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, Pakistan, Southern Rhodesia, Syria, the Union of South Africa, the United Kingdom of Great Britain and Northern Ireland, and the United States of America: Recognising that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods, Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce (The GATT 1947 treaty).

Although the GATT treaty was amended in 1994; however, it is often and correctly referred to as GATT 1947, since it was first contracted in the year 1947. GATT is a treaty, founded and entered into by CONTRACTING PARTIES. One of its most important Articles is GATT Article 1, it states that: Any advantage, favour, privilege or immunity granted to any Contracting Party to products originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating or destined for the territory of all other CONTRACTING PARTIES (Pomfret, 1997). GATT Article 1 created an unconditional principle of non-discrimination. This was coined as the most favoured nation (MFN) clause. The wording of GATT Article 1 is very relevant for

this work because it gave rise to the establishment of RTAs, and their notification to the WTO and examination at the CRTA.

3.5. The Text of Article XXIV of GATT 1994:

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the CONTRACTING PARTIES and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a Contracting Parting; Provided that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single Contracting Party.

2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

3. The provisions of this Agreement shall not be construed to prevent:

(a.) Advantages accorded by any Contracting Party to adjacent countries with the intention to facilitate frontier traffic;

(b.) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. The contracting parties recognise 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 recognise 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.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of CONTRACTING PARTIES, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; Provided that:

(a.) With respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with CONTRACTING PARTIES not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(b.) With respect to a free-trade area, or an interim agreement leading to the formation of a free trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of CONTRACTING PARTIES not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories

prior to the formation of the free-trade area, or interim agreement as the case may be; and

(c.) Any interim agreement referred to in subparagraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of subparagraph 5a, CONTRACTING PARTIES proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.

7. (a.) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(b.) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of subparagraph (a.), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The

parties shall not maintain or put into force, as the case may seem, such agreement if they are not prepared to modify it in accordance with these recommendations.

(c.) Any substantial change in the plan or schedule referred to in paragraph 5c shall be communicated to the CONTRACTING PARTIES, which may request the CONTRACTING PARTIES concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. (a.) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i.) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii.) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(b.) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with CONTRACTING PARTIES affected. This

procedure of negotiations with affected CONTRACTING PARTIES shall, in specific situations apply for the elimination of preferences required to conform with the provisions of paragraph 8a, (i) and paragraph 8b.

10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals, which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into consideration the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognising the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from negotiating special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.

3.6. The Text of GATS Article V: Economic Integration:

1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalising trade in services between or among the parties to such an agreement, provided that such an agreement:

(a.) has substantial sectoral coverage (1), and

(b.) provides for the absence or elimination of substantially all discrimination, in the sense subparagraph (a), through:

(i) elimination of existing discriminatory measures, and/or

(ii) prohibition of new or more discriminatory measures, either at the entry into force of that agreement or based on a reasonable time frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.2. In evaluating whether the conditions under paragraph 1b are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalisation among the countries concerned.

3.(a.) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, with specific reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.

(b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance-notice of such modification or withdrawal and the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provide it engages in substantive business operations in the territory of the parties to such agreement.

7. **(a.)** Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

(b.) Members which are parties to any agreement referred to in paragraph 1 which is implemented based on a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a Working Party necessary.

(c.) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

3.6.1. GATS Article V: Labour Markets Integration Agreements:

This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration.

(2.) of the labour markets between or among the parties to such an agreement, provided that such an agreement: (a.) exempts citizens of parties to the agreement from requirements concerning residency and work permits; (b.) is notified to the Council for Trade in Services.

3.7. The Understanding on the Interpretation of GATT 1994, Article XXIV:

WTO members having regard to the provisions of Article XXIV of GATT 1994, recognising that customs unions and free trade areas have greatly increased in number and importance since the establishment of GATT 1947 and that today it covers a significant proportion of world trade; Recognised the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements; Recognising also that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded; Reaffirming that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other Members; Convinced also of the need to reinforce the effectiveness of the role of the Council for Trade in Goods in reviewing agreements notified under Article XXIV, by clarifying the criteria and procedures for the assessment of new or enlarged agreements, and improving the transparency of all Article XXIV agreements; Recognising the need for a common understanding of the obligations of Members under paragraph 12 of Article XXIV; Agreed as follows: Customs unions, free-trade areas, and interim agreements leading to the formation of a

customs union or free-trade area, to be consistent with Article XXIV, must satisfy, inter alia, the provisions of paragraphs 5, 6,7 and 8 of Article XXIV.

3.7.1. Article XXIV: Paragraph 5:

The evaluation under paragraphs 5 of Article XXIV of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff-line basis and in values and quantities, broken down by WTO country of origin. The Secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognised that for the purposes of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, product's covered and trade flows affected may be required. The "reasonable length of time" referred to in paragraphs 5 (C) of Article XXIV, should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the CTG of the need for a longer period.

3.7.2. GATT Article XXIV: Paragraph 6:

Paragraphs 6 of GATT Article XXIV establishes the procedure to be followed when a Member forming a customs union proposes to increase a bound rate of duty.

In this regard, Members reaffirm that the procedure set forth in GATT Article XXVIII as elaborated in the guidelines adopted on 10 November 1980 and in the Understanding on the Interpretation of Article XXVIII of GATT 1994 must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union. These negotiations will be concluded in good faith with a view to achieving mutually satisfactory compensatory adjustment. In such negotiations, as required by paragraph 6 of Article XXIV, due account shall be taken of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation. Should such reductions not be sufficient to provide the necessary compensatory adjustment, the customs union would offer compensation, which may take the form of reductions of duties on other tariff lines. Such an offer shall be taken into consideration by the Members having negotiating rights in the binding being modified or withdrawn. Should the compensatory adjustment remain unacceptable, negotiations should be continued; Where, despite such efforts, agreement in negotiations on compensatory adjustment under Article XXVII, as elaborated by the Understanding on the Interpretation of Article XXVIII of GATT 1994 cannot be reached within a reasonable period from the initiation of negotiations, the customs union shall, nevertheless, be free to modify or withdraw the concessions; affected Members shall then be free to withdraw substantially equivalent concessions in accordance with Article XXVIII. GATT 1994 imposes no obligation on Members benefiting from a reduction of duties consequent upon the formation of a customs union, or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its constituents.

3.7.3. GATT Article XXIV: Paragraph 7:

(a.) “Any contracting party ... shall promptly notify the CONTRACTING PARTIES”

At its 44th Session on 13 October 2006, the Committee on RTAs adopted a common and simplified notification format for regional trade agreements, and agreed to recommend it to the relevant bodies. The Council for Trade in Goods adopted such format at its meeting of 19 March 2007. As of 30 September 2011, 502 regional trade agreements (RTAs), counting goods and services notifications separately, had been notified to the GATT/WTO; 310 of which were in force by that same date. These figures correspond to 388 integrated RTAs (goods and services together), of which 209 remained in force by that same date. Of the RTAs in force, 184 were notified under Article XXIV of the GATT 1947 or GATT 1994; 35 under the Enabling Clause and 91 under Article V of the GATS. (Appendix, 4)

3.8. The Ambiguities of Article XXIV of GATT 1994:

Some of the major reasons that have been raised for the rapid proliferation of RTAs across the globe have been the systemic issues emanating from the interpretations of GATT Article XXIV. The wording of GATT Article XXIV seems to have created lots of legal loopholes and ambiguity in its interpretation, leading to the formation and establishment of RTAs that are incompatible to the MTS, and in addition leading to the entering into-force of RTAs that do not conform to WTO rules (Bhagwati, 2008). The confusion created by the ambiguity in the text of GATT Article XXIV makes it practically impossible for the CRTA to produce acceptable multilateral reports on the compatibility of RTAs under examination. And the CRTA cannot also prove with legal certainty that RTAs entered into-force conforms to WTO rules, under the provisions of GATT Article XXIV. Even if the CRTA process is amended or reformed, the wording of GATT 1994, Article XXIV

would still present a formidable problem to the smooth functioning of the CRTA. And in addition, the respect and adherence to the CRTA's recommendations to member states seeking to form RTAs as required by the WTO would still be in jeopardy.

For any RTA to be compatible to the MST and in addition conforms to WTO rules under the provisions of GATT Article XXIV, it must at least fulfil two requirements of GATT Article XXIV. The first being the nations must comply with the impact of the RTA they are seeking to establish to third party countries not members to the trade arrangement. Paragraph 5 of GATT Article XXIV suggested that this impact must be acceptable. The second requirement is that the internal liberalisation process within the territory of the RTA (Paragraph 8 of GATT Article XXIV).

However, the purpose of these requirements by the GATT/WTO was to ensure that only RTAs which are not considered to be detrimental to third party nations and which would not practice protectionism within the territory of the RTAs are to be allowed to enter into-force. Because the text of GATT Article XXIV itself seemed very ambiguous, it has created varying interpretations leading situations not previously intended by the founding fathers of the GATT treaty. The formation of RTAs that are incompatible to the MTS or inconsistent with GATT Article XXIV seem very damaging to the global trading system (Bhagwati, 2008).

The work of the CRTA has been seriously hindered by the interpretation accorded to GATT Article XXIV by WTO members in the formation of RTAs. The extent of the exemptions granted to WTO members by the provisions of GATT Article XXIV, 5, has been a point of argument in the CRTA. One of the problems regarding the interpretation of the text of GATT Article XXIV is that it does not

seem clear enough to some nations who are members of the WTO and represented at the CRTA. It is not really clear how many of the provisions of GATT Article XXIV, 5, are applicable only to Article I's MFN clause or to other provisions of the GATT in as much as there is no violation of the rights of third parties in the formation of an RTA. However, it seems GATT Article XXIV gives ample rights to WTO members to by-pass GATT/WTO rules in the formation of RTAs, provided the rights of third parties are taken care of.

In 1997, the representatives of Korea at the CRTA suggested that the drafters of GATT 1947 treaty envisaged the express legal contravention of all obligations under the GATT treaty, in matters relating to the formation of RTAs, not just that of the MFN Clause. Similarly, to the expression of the Korean representatives, the EC representative also alleged that the wording contained under the provisions of GATT Article XXIV,5, which states that the provisions of this agreement shall not prevent the formation of RTAs grants absolute exemption to all GATT provisions regarding the formation of RTAs.

Furthermore, the EC representative also suggested that from their interpretation of the wording of GATT Article XXIV, it uniquely meant that RTAs that are properly formed are, therefore, exempt from all provisions under the GATT. For example, in the Turkey-Textile case the issue of what is really exempt in the RTA arrangement came up in full-force and was addressed by both the Panel and the Appellate Body. However, the Panel was of the view that the invocation of the provisions of GATT Article XXIV to legitimise a GATT incompatible measure taken by a WTO member other than a departure from the MFN clause is unacceptable and not consistent with WTO rules. But this ruling was later challenged and thrown out by the Appellate Body, in its declaration that GATT

Article XXIV clearly justifies inconsistencies with other provisions under the GATT treaty.

Nonetheless, in the US–Wheat Gluten case of 2001, the Appellate Body reaffirmed the extended interpretation of GATT Article XXIV. In its ruling, it stated that: they understand that Article XXIV of the GATT 1994 may provide a defence to a claim of violation of the GATT 1994, and may also provide a defence to a claim of inconsistency with a provision of another covered agreement, if it is somehow incorporated into that provision or agreement (US–Wheat Gluten case, 2001).

The problems arising from the decision of the Appellate Body on these cases, creates enormous difficulties in terms of a consensus on a unique interpretation of GATT 1994, Article XXIV. This does not help the work of the CRTA in any way, regarding the surveillance and monitoring of RTAs by the WTO; since the CRTA is mainly mandated to examine RTAs and in addition to assess their conformity to GATT Article XXIV, 5 and 8, and their compatibility with the MTS. The broadness of this interpretation is significant, because the CRTA is not mandated to test other areas, such as RTAs' conformity to all GATT Articles.

However, certain protectionist measures against third parties, such as quantitative restrictions (QRs) could be slipped in by WTO members under the pretext of RTAs or the formation of RTAs. In addition, RTAs could only be formed when WTO members decide to invoke the exemption to the MFN clause in their dealings with one another. There is no other principle or clause that permits the violation of WTO rules by member states of the WTO other than GATT Article I (Bhagwati, 2008). The wording under the provisions of GATTT Article XXIV, 5, which contains the ambiguous phrase reads: '*shall not prevent*' has been

interpreted variously as giving express permission to member states of the WTO to breach all GATT provisions in their quest to form RTAs (Bhagwati, 2008).

However, others have suggested that this phrase simply means that no GATT provision can prevent the formation of RTAs. This makes the position of the CRTA irrelevant, in terms of multilateral surveillance, monitoring and examination of RTAs to ascertain their conformity to GATT Article XXIV. This also renders the compatibility assessment of RTAs to the MTS almost impossible to carry out because these two requirements put together certainly goes beyond the mandate of the CRTA. This is one of the main reasons why we have the proliferation of some incompatible and inconsistent RTAs in existence within the MTS today (Bhagwati, 2008).

In practice, the CRTA should have been the committee to scrutinize all RTAs and make the appropriate recommendations that should be introduced into RTAs formed through the invocation of GATT/WTO provisions, which goes beyond the exemption of GATT Article I. For the role of the CRTA to be effective and relevant, WTO members seeking to establish RTAs or intending to introduce new measures into existing RTAs should present a submission of the proposed measures to the CRTA for approval and recommendation.

The WTO could also expand the mandate of the CRTA to include every aspect of multilateral monitoring and surveillance of RTAs. Because even if RTAs have been approved by the CRTA and recommendations are issued to member states, they could still implement measures that do not conform to GATT Article XXIV, if the RTAs are not properly monitored by the CRTA and if no reports are made by third parties affected by these measures (Bhagwati, 2008). It should be

mandatory for WTO members to implement recommendations from the CRTA on notified RTAs, before they are entered into-force.

In principles, the CRTA could stick to a tight procedure that could make it mandatory for all measures necessary for the formation of RTAs to be introduced at the beginning of the formation process, before notification to the WTO to enable the CRTA to scrutinize these measures during its examination process. Therefore, the CRTA should be given the mandate to test the overall compatibility and suitability of RTAs to the MTS before the RTAs are entered into-force. The CRTA should also be able to check the overall conformity of RTAs to GATT/WTO rules before they are issued with any recommendations. If this vast mandate were to be put in place, it would be plausible for WTO members to adhere to the authority of the CRTA when forming RTAs.

3.9. Conclusion:

With the use of qualitative research methodology, this chapter has studied the World Trading System, the concept of regionalisation, regionalism and new-regionalism. It has also looked at Regional Economic integration, GATT/WTO rules, provisions, procedures applicable for the formation and establishment of RTAs, the text of GATT Article XXIV and GATS Article V.

This chapter has highlighted some of the differences between law and practice and in addition explored the implications of these divergences as per GATT/WTO rules and provisions for the formation of RTAs. It studied the impact of the GATT Treaty on the world trading system and on the role of the CRTA and explored events leading to the creation of the GATT treaty. In addition, it looked at the ambiguities of GATT Article XXIV, its impact and consequences on the role of the CRTA.

What has been learnt from this chapter is that the GATT treaty created the platform for WTO members to legally and comfortably establish RTAs – Thus leading to the proliferation of RTAs in our trading system. And this seems to have helped in undermining the importance of multilateral trade negotiations. And because of some of the ambiguities of the GATT and its legal loopholes the role of the CTRA in the examination of RTAs was also undermined, giving rise to the proliferation RTAs in our trading system.

Finally, one could say today that RTAs are now a global phenomenon and this situation was facilitated via the GATT treaty. Although the GATT treaty might have impacted positively on the MTS by liberalising trade through multiple RTAs, however, it might have also had a negative impact via the proliferation of some incompatible and unsuitable RTAs. Nonetheless, further research is still needed in this area.

CHAPTER 4.

4.1. Introduction:

This chapter explores the origin, nature, functions and importance of the Most Favoured Nation (MFN) principle. It seeks to answer the research question: How does the MFN clause affects the formation of RTAs and their examination at the CRTA? Furthermore, it studies the exceptions of the MFN principle, Article XXIV of GATT 1994, Article V of GATS 1994 and MFN Exemptions. It also looks at the formation of RTAs and abuse of WTO exemptions from which RTAs are formed. In addition, it studies the Transparency Mechanism for RTAs, legal obligations under the Transparency Mechanism and discusses the distinctions between interim agreements and full-RTAs, and the requirement for the notification of interim agreements.

4.2. The Most Favoured Nations (MFN) Clause:

The negotiations that led to the establishment of the GATT 1947 treaty were strongly influenced by First and Second World War experiences. Originally, these negotiations were concluded towards the creation of an International Trade organisation (ITO). But since negotiating countries were unable to ratify the ITO charter, the negotiations led to the establishment of the GATT 1947 treaty (Bhagwati, 2008).

One of the main purpose of the GATT 1947 treaty was to provide a legal framework for multilateral trade negotiations and a means to foster non-discriminatory trade among allied nations. The cornerstone of the GATT 1947 treaty was the extension of the MFN clause to all signatories to international trade agreement under the auspices of the GATT/WTO. As a result, the GATT 1947

treaty and WTO membership guaranteed MFN treatment for its entire members. In a nutshell, the MFN treatment together with the principle of national treatment, are the true cornerstones of the GATT/WTO and world trade law.

MFN clause in international trade simply means that any tariff concession or reduction agreed by member states of the WTO would automatically apply to all other member states, even though those members were not involved in the negotiations. The MFN treatment is simply the principle of non-discrimination in matters of trade between nations. The bottom-line here is very clear, the fact is that all WTO member states must be treated equally in matters of international trade among each other. For instance, if Country A, a member of the WTO succeeds in negotiating a 45% customs duty reduction with country B, it would automatically apply to all other member states of the WTO. That is what the MFN really means in simple terms (Bhagwati, 2008).

During the GATT days, despite the commitment to unconditional MFN treatment, the GATT did not totally exclude all discriminatory trade policies. These exceptions illustrate the practical difficulties in legislating against such measures (Bhagwati, 2008). The exceptions to the MFN treatment allows for preferential treatment towards trade agreements with or between developing nations, such as CUs and FTAs. It is due to these exceptions that the MFN became the main underlying principle by which nations began negotiating various types of RTAs. According to Pomfret, the exception to the unconditional nature of MFN treatment was created on British insistence. This was done through the insertion of a 'grand-father' clause into the GATT treaty, permitting the continuation of existing preferential arrangements (Bhagwati, 2008).

Some of the major difficulties faced by allied nations after the Second World War led many policy-makers to put faith in economic and political integration, as the most reliable pathway towards economic prosperity. Crawford and Fiorentino (2005) suggested that RTAs were being embraced by many WTO member nations as trade policy instruments and at best as complementary to the MFN clause. They also argued that economic considerations were only one facet of the complex RTAs strategies being pursued by individual countries or groups of countries. These strategies often include broader foreign policy objectives, with specific interest on security and political matters. They also argued that the proliferation of RTAs presents WTO Members and the MTS with so many challenges.

In addition, Crawford and Fiorentino (2005) also identified that RTAs presents WTO members with certain opportunities that could be carefully explored for the benefits of RTA members. Interestingly, no matter how trade diverting RTAs are presumed to be for third parties, the functions and importance of the MFN clause to the world trade arena cannot be underestimated. In fact, the MFN clause and its exceptions have played very important roles in the negotiation, formation and establishment of the various RTAs in existence – Thus contributing enormously to the development of the MTS and the desire towards the establishment of global free trade.

4.3. Functions and Importance of the MFN Clause:

The nature and implication of the most MFN clause in the negotiation and establishment of RTAs in our present multilateral trade system comprising more than 100 countries is very complex. In considering policies relating to RTAs and the multilateral trade system the MFN clause becomes a most important factor. Due to the sheer number of nations who are going to benefit from a specific

negotiating process even if they are not party to it as prescribed by the MFN, specifically in Article 1 of GATT, this creates the problem of free riders (Jackson, 1983 and 1989). The main function of the MFN was to reduce discrimination among trading nations to facilitate trade by reducing trading cost for all through the elimination of tariffs and other trading barriers (Jackson, 1983).

The MFN clause has multiple functions and one of the principles behind the crafting of this clause is that it would help to foster trade in the most multilateral way possible. Nonetheless, in a very specific fashion the multilateral trade arrangement and agreement of GATT/WTO also allows for exceptions to the MFN clause in specific circumstances. One of the main provisions granting exception to the MFN clause is found in Article XXIV of the GATT treaty. The provisions of this article give rise to the formation and establishment of RTAs, if the trading bloc meets all the requirements of the article (Jackson, 1989).

As a matter of fact, the basic notion behind the exception to the MFN clause was the promotion and expansion of free trade within the territories of an FTA or CUs, which in turn could help the development of the MTS. The principle covering this concept of RTA in the multilateral trading arrangements of the GATT/WTO is that if tariffs and other trading barriers are reduced or eliminated on 'substantially all the trade', this would be a clear means of testing the notion of multilateral free trade in a specific territory. And if this works very well, just like a pilot scheme in trading arrangements, it could be expanded to incorporate many other territories. Looking at the probability of arriving at multilateral free trade through the exception to the MFN clause, one could now say that the main purpose of this exception might have been trade creation rather than trade diversion as some authors have also argued (Bradsher, 1992 and Jackson, 1969 & 1989).

4.4. The Exceptions to the MFN Principle:

As per the GATT treaty member nations of the WTO can freely setup RTAs, while respecting WTO rules and provisions. Nonetheless, in certain conditions WTO members could invoke a waiver. There are conditional exceptions, which Members could invoke when departing from their MFN commitments. These conditions are contained in Article XXIV of the GATT 1994, the understanding on the interpretation of Article XXIV of the GATT 1994, Enabling Clause and GATS Article V (Bhagwati, 2008).

The Enabling Clause was introduced by a decision of the Contracting Parties to the GATT in 1979 to allow for preferential conditions for RTAs involving only developing countries. It exempts such RTAs from the stipulations contained in Article XXIV of the GATT for regular RTAs, such as procedural prerequisites and reciprocity of preferences. (Bhagwati, 2008) Thus, while approximately three quarters of the RTAs in force are FTAs and less than ten per cent are customs unions, the remainder are made up of these partial scope arrangements. (Bhagwati, 2008)

However, when concluding an RTA, a WTO member should invoke one of the above provisions and comply with the necessary conditions or seek a waiver. As a matter of fact, the Doha Ministerial Declaration of the 14th of November 2001, made two references in relation to RTAs. First, the declaration recognised the WTO as the unique forum for global trade rule making and trade liberalisation. Secondly it acknowledged RTAs' role in trade liberalisation and development. During this ministerial meeting, there was a call for further negotiations that would clarify and improve WTO rules and procedures on RTAs. However, it was

agreed that the WTO rules and procedures should take into consideration developmental aspects of RTAs within member nations (Bhagwati, 2008).

As earlier mentioned, one of the key features in the formation of RTAs is the exception to the principle of the MFN clause. For the creation of RTAs this exception is very important. It seems the principles of transparency and predictability of RTAs apparently make RTAs an integral part of the MTS. The legal framework for the creation of an RTA, under the WTO rules is provided in these provisions:

- Article XXIV of GATT 1994. (Paragraphs 4 to 11 - RTAs entered into by WTO-members).
- GATS Article V (RTAs involving agreements on trade in services).
- The enabling clause of 1979:

However, in relation to the Enabling Clause, it is only developing countries that are authorised by the WTO to make use of its provisions, because the Enabling Clause is an exception to the MFN clause. This exception to the MFN clause was granted to developing countries by the WTO, towards trade liberalisation. (Enabling Clause RTAs are not subject to the CRTA process, as a result, they will not be considered by this work)

4.4.1. Article XXIV of GATT 1994 and the MFN Clause:

Studying the GATT treaty carefully, one will discover that Article XXIV is an exception to the MFN principle contained in article I of the GATT treaty. As earlier mention in this work, according to the MFN principle "any advantage, favour, privilege or immunity" granted by any CONTRACTING PARTIES to any product originating from other CONTRACTING PARTIES shall be extended to like products originating from other CONTRACTING PARTIES. From this interpretation, the

MFN principle of the GATT/WTO system is the mechanism for multilateralisation of bilateral preferences among CONTRACTING PARTIES of the GATT/WTO (Bhagwati, 2008).

However, it is GATT Article XXIV that prevents this multilateralisation from operating in such a circumscribed setting. There are specific conditions posed by GATT Article XXIV for the formation of RTAs. One of the major aims of Paragraph 4 of the GATT Article XXIV is to facilitate trade between the constituent territories and not to raise barriers to the trade of other CONTRACTING PARTIES with such territories. Jacob Viner also highlighted and supported the general functions of Paragraph 4 of GATT Article XXIV, with the request that the trade creating effects of RTAs should prevail over the trade diverting effects of RTAs (Bhagwati, 2008).

As earlier mentioned in chapter 3 of this work, Article XXIV of GATT 1994 regulates two types of trade agreements: CUs and FTAs. The provisions of Paragraph 4 of GATT Article XXIV is to ensure that the agreement will enable and facilitate trade, instead of generating increased trade barriers. That the purpose for the formation of CUs or FTAs; must not be to restrict trade against third party countries, who are not part of the agreement. It states further that the establishment of FTAs should enable free trade in large number of products. However, it also requires that in the establishment of a CU, the CONTRACTING PARTIES should develop a common trading policy among themselves (Bhagwati, 2008).

Furthermore, in paragraph 5 and 3 of Article XXIV, there is a plan and schedule for interim agreements for the duration of up to 10 years (this is treated in detail in this chapter under the heading - Interim Agreements). As stipulated in Article 1 of GATT, the MFN clause states that all member states of the GATT/WTO

should and must be treated equally. In this case, there should be a level playing field for all; and in circumstances where WTO-members are willing to establish CUs, they maybe in breach of the MFN restriction. An obligation they might have agreed upon at the time they joined the WTO. In such cases, negotiations with those countries with initial negotiating right (INR) would be re-conducted to achieve compensatory adjustments (Bhagwati, 2008).

Looking at the preferential nature of RTAs through the MFN clause, Frankel (1997), suggested that the principal objectives in the drafting of the customs union and free trade areas provisions became to tie down, in the most precise legal language possible, the conditions that such regional groupings would have to fulfil to escape prohibition under the MFN clause. It seems that in drafting GATT Article XXIV, the position of DCs were some-how taken into consideration in matters relating to RTAs formation. This consideration might have been directly or indirectly put in place for the protection of the economies of DCs from more developed economies.

It seems the exception to the MFN clause is one of the main factors that are encouraging the formation and proliferation of RTAs, since the MFN clause is re-enforced by the principles of national treatment of GATT Article III. However, the principle of national treatment provides protection from discrimination in relation to the MFN clause, by preventing countries from taking advantage of the MFN principle, to discriminate against products from a third-party country. As suggested by Frankel (1997), the phrase MFN causes considerable confusion. He suggested that some WTO members think that the phrase means, they could choose whom to favour, in trade deals.

Basically, one of the main reasons for the proliferation of RTAs among DCs is that they are negotiated under the principles of reciprocity. Practically, both sides to a RTA are supposed to be under similar degree of obligations. Nonetheless, in most RTAs concluded on a North–South basis, developing country partners often tend to lose their preferential privileges of non-reciprocity that are normally accorded to them, even under the WTO system. Paragraph 8 of GATT Article III stipulates that any newly concluded agreement requires that all customs duties and other restrictive trade regulations, be eliminated on ‘substantially all the trade’ (this will be treated in detail in chapter 6).

The terminology of ‘substantially all the trade’ seemed to have been put to test, in the negotiations of the Economic Partnership Agreement (EPA) between the EU and African Caribbean and Pacific (ACP) countries. During negotiations, the EU negotiators thought the term ‘substantially all the trade’, meant 90% of trade. But ACP negotiators thought it meant 60% of trade. This discrepancy in interpretation shows how the principle of reciprocity is of paramount importance to DCs (Crawford, and Fiorentino, 2005). Such variation in interpretation tends to highlight certain confusion arising from the wording of most WTO Articles (Crawford, and Fiorentino, 2005).

In relation to Rule of Origin (ROO), there is no direct mention of it in GATT Article XXIV. But according to Pushe (2000), ROO could be inferred from paragraph 5 of the Articles that deals with other regulation of commerce. The crux of the matter is that DCs place a lot of importance on ROO, since it gives exclusive rights to products originating within a specific region in terms of the establishment of RTAs. The application of ROO could be clearly seen in regional integration schemes such as ECOWAS. The absence of ROO in some RTAs could

make them unnecessary and lacking in adequate economic benefits (Mathis, 2002).

The use of ROO rules in RTAs has not yet proven to be in contradiction to WTO rules. It should be noted that the phenomenon of the proliferation of RTAs has resulted in a bewildering 'spaghetti bowl' of crisscrossing bilateral tariff rates and complicated the ROO rules, concerning the trans-shipment of non-members' products through some member countries territory (Baldwin, 2006). As suggested by Crawford and Fiorentino (2005), RTAs are traditionally established between so-called "natural" trading partners. This means geographically proximate countries. Generally, these countries already have well-established trading patterns with one another. These RTAs include RTAs between countries such as Australia and New Zealand, NAFTA, the EU and CEFTA (Bhagwati, 2008). With such RTAs, their examination at the CRTA will not pose a serious problem in terms of coverage (Crawford and Fiorentino, 2005).

4.4.2. GATS Article V and MFN Exemptions:

The basic MFN obligation as contained under Article II of the GATS is applicable in principle to all services sectors. In fact, Article II:1 of GATS states: "With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country". However, the probability avoiding the MFN rule via a wholesale sectorial exclusion of certain service sector from GATS emerged during the Uruguay Round, to rectify this situation limited exemptions to the MFN clause were permitted under the GATS. MFN exemptions could be defined as deviations from the MFN principle (Bhagwati, 2008).

Nonetheless, such exemptions would have to be in accordance with the provisions of GATS Article II:2, which states: "A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of the Annex of Article II Exemptions". The Annex of Article II Exemptions, provides for new exemptions to be listed only at the end of negotiations, when agreements have been finalised by WTO members (Adlung, 2003).

GATS Article II Exemptions lists approximately 400 MFN exemptions in its Annex. The Annex on GATS Article II Exemptions specifies the condition that are exempt from obligations under paragraph 1 of GATS Article II, such as, "in principle, such exemptions should not exceed a period of 10 years", or "in any event, they shall be subject to negotiation in subsequent trade-liberalizing rounds". The MFN principle is one of the core fundamental principles of the GATT/WTO and it is also considered as one of the most important elements in trade liberalization in the multilateral framework (Mathis, 2002).

However, apart from services specified in individual MFN exemption lists contained in GATS Article II Exemptions lists, the only GATT/WTO permitted deviation from the principle of the MFN is covered under the formation of RTAs contained in GATS Article V, provisions for Economic Integration (found in chapter 3 of this work). It seems the provisions of GATS Article V are fashioned based on the provisions of GATT Article XXIV, because GATS Article V,1, permits any GATT/WTO member to conclude further agreements for liberalization of trade in services with other member nations, provided such agreements has 'substantial sectoral coverage' that helps in the elimination of discrimination in trade in services. GATS Article V,2 also recognizes the need to open and expand

the market for trade in services for the aim of economic integration (Baldwin, 2006).

It seems the drafting of the provisions of GATS Article V, helped in the improvement of the interpretation of the equivalent provisions contained in GATT Article XXIV, in that the terms such as 'substantial sectorial coverage' was more carefully defined under GATS Article V. This is because GATS Article V tends to disqualify agreements that exclude any of the four modes of supply. While some other provisions are just carried from GATT Article XXIV to GATS V with little changes; For example, GATS Article V,4, states that: any RTA entered into-force must be designed to help trade among its members, and must not result in the increase in additional or total barriers in trade in services for third parties (Adlung, 2003).

The provisions under GATS Article V:5 stipulates that 'there must be negotiations to provide for appropriate compensations for third parties, in a situation where the formation and entry into-force of an RTA or its subsequent enlargement leads to withdrawal of commitments to third parties. While the provisions of GATS Article V,8, explains that third parties will be awarded benefits accruing from an RTA. In addition, the provisions of GATS Article V,7, creates a transparency obligation, in which GATT/WTO members to an RTA are required to promptly notify the WTO of its formation and any significant modification of the RTA or subsequent enlargement. As per these provisions NAFTA, the European Communities and their member states are some of the agreements which have been notified to the WTO (Baldwin, 2006).

Furthermore, in studying the usage of the MFN exemptions based on the World Bank classification and statistics on developed and developing countries,

one discovers that developed countries that account for 36% of the WTO members have registered 47% of MFN exemptions, while developing countries with 53% of the total number of WTO membership have registered approximately 45% of the MFN exemptions. This shows that the usage of the MFN exemption is much higher amongst developed nations than developing countries who make-up the bulk of WTO membership. As per the role of the CRTA in the examination of RTA with substantial sector coverage, these exemptions create additional difficulties, in terms of conformity to GATS rules (Adlung, 2003).

4.5. Regional Trade Agreements (RTAs):

As earlier mentioned, most RTAs are established between so-called “natural” trading partners, which are geographically contiguous nations, with already well established trading patterns. But nowadays, different forms of RTAs are found in every continent. Among the best known are the EU, the EFTA, NAFTA, the Southern Common Market (MERCOSUR), the Association of Southeast Asian Nations (ASEAN), and the Common Market of Eastern and Southern Africa (COMESA) (Bhagwati, 2008).

It is important to distinguish between different types of trade agreements that are contained under the broad heading of RTAs. One must consider the fact that bilateral trade agreements, trade agreements involving more than two countries and preferential trade agreements are all various forms of trade agreements that are classified under RTAs. Many scholars such as Crawford and Fiorentino (2005) argued that RTAs are now a major part of our everyday life and perhaps an irreversible feature of our today's MTS. This is partly because there are so many different trade agreements negotiated under GATT Article XXIV that could be classified as RTAs. However, only two types of such trade agreements

negotiated through GATT Article XXIV, falls under the prescribed norms of RTAs accepted by the WTO. These two trade agreements are free trade areas (FTAs) and customs unions (CUs). These also include interim trade agreements leading to the formation of both (Bhagwati, 2008).

Both FTAs and CUs require the elimination of 'substantially all trade' barriers between member nations. Nonetheless, in an FTA, each member nation is free to determine its own trade relationship with third parties. A good example of an FTA is NAFTA, where members such as the United States of America (US), Canada, and Mexico were permitted to retain their own tariff rates for the rest of the world, while eliminating duties and other trading barriers amongst themselves (Bhagwati, 2008). Basically, all CUs are FTAs, but not all FTAs are CUs. The singular clear difference between CUs and FTAs is that with CUs a common external tariff is agreed between its members in relation to third parties to the trade agreement (Hoekman and Kostecki, 2001).

Crawford and Fiorentino (2005) suggested that under the existing WTO provisions on RTAs, the proliferation of preferential agreements between developed and developing countries, poses the latter with the formidable challenge of transition from non-reciprocal trade preferences to trade liberalisation on a mutual basis, under reciprocal RTAs with developed country partners. A clear case one could point at is the current negotiations for Economic Partnership Agreements (EPAs) between the EU and the African, Caribbean and Pacific group of countries (ACP) that are supposed to replace the existing non-reciprocal preferences of the Cotonou Agreement (Bhagwati, 2008).

GATT/WTO records shows that since the early 1990s, the number of RTAs concluded or being negotiated has greatly increased. There have been some 421

RTAs notified to the GATT/WTO up to December 2008. This includes 324 RTAs notified under Article XXIV of the GATT 1947 or 1994 and 29 notified under the Enabling Clause, while 68 RTAs were notified under Article V, of the General Agreement on Trade in Services. The mandate of the CRTA under the auspices of the GATT/WTO committee system is to examine these RTAs and ascertain their conformity to GATT/WTO rules and compatibility to the MTS.

4.5.1. Requirements for RTAs and their Complications:

WTO rules and requirements through which RTAs are formed and established are expressly found in the provisions of GATT Article XXIV and are very complex in their interpretations (Jackson, 1969). In fact, one can easily identify four significant rules from this article which could be classified as follows: the very first being 'substantially all the trade' requirement; the 'not-on-the-whole-higher' rule, a requirement for customs unions; the interim agreement plan and schedule rule; and last but not the least the rule governing notification and decision of the GATT/WTO (Jackson, 1993)

The rule of 'substantially all the trade' requirement is clearly identifiable in the description of the various entities that are permitted by the GATT treaty to have recourse to the exceptions to Article XXIV of the GATT. Indeed, this exception to the MFN clause is reserved for customs unions and free trade areas. This exception to the MFN clause forms the basis by which RTAs are created and established. The issue of importance here is that in the forming and establishment of an RTA, the nations involved in this process agree through this arrangement to eliminate tariffs and other trading barriers in relation 'substantially all the trade' in the whole territory of the customs unions and free trade areas.

However, the rationale behind this rule is that if tariffs and other trading barriers are eliminated on substantially all the trade in the territory of the RTA, the advantage that would accrue from this rule is a free trade element. And it would be more beneficial to the MTS or far outweigh the disadvantages from the use of the exception to the MFN clause. However, Jackson (1993) suggested that the phrase 'substantially all' is profoundly troublesome and ambiguous. And suggested that the wording 'eliminate' (in terms of tariffs and other trading barriers) is apparently vague and problematic in the context of GATT Article XXIV.

The 'not on the whole higher' rule, a requirement for CUs, this is so because of certain CUs that do not only eliminate tariffs and other barriers to trade between member states. But instead creates a common external trade regulatory system in relation to imports from third party countries. In this situation, there is the requirement from GATT Article XXIV, which prevents the regulations, duties and even tariffs of the common external regulatory system not to be 'on-the-whole', higher than the previous ones before the customs union was formed Jackson (1993).

Furthermore, Jackson (1993) also suggested that there is the additional requirement that the regulations and duties of the common external system shall 'not on the whole be higher or more restrictive than the general incidence of the duties and regulations' applicable prior to the formation of the union. The ambiguity in the wordings of this provision or rule is troublesome as Jackson also suggested. He nonetheless suggested that some have argued that the new union essentially needs to only 'net in' the different advantages and disadvantages available to third parties from the formation of the union to fulfil this rule. Meaning the parties involved in the RTA, just need to square things up to meet this

requirement; in as much as the whole changes to the common external regulatory system, involving regulations and duties are not indeed 'on-the-whole' higher than the previous ones. It would mean the parties have in fact complied with the rule (Jackson, 1993).

From GATT Article XXIV it is clear that the benefit from the invocation of the exceptions to the MFN clause does not only applies just to FTAs or CUs but also to 'interim agreements' leading the formation of both. The reasoning behind this provision of the GATT hinges on the fact that before a RTA is formed there must be a considerable lapse of time. This interim or transitional period gives room for adjustment to the agreement to be made by the parties involved. As per GATT 1994, the wording on interim agreement states that interim agreement shall include a plan and schedule for the formation of agreements such as CUs or FTAs within a reasonable length of time. The definition of what exactly constitutes a reasonable length of time could differ from person to person for different reasons. So therefore, a uniform interpretation of the wordings of this requirement would be troublesome (Jackson, 1993).

The rule governing notification of RTAs and decision of the GATT/WTO is based on the procedural requirements derived from GATT 1994, Article XXIV. These rules require the notification of new RTAs to the GATT/WTO. In fact, Paragraph 7a of GATT Article XXIV states that any Contracting Party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

And furthermore, Paragraph 7b of GATT Article XXIV, which is really our point of interest here states if, after having studied the plan and schedule included in an interim agreement, the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or put into-force, such agreement if they are not prepared to modify it in accordance with these recommendations.

The general interpretation of this specific paragraph of this article is that once an RTA has been notified to the GATT/WTO, unless recommendations are made by the CONTRACTING PARTIES or the CRTA, the RTA can be put into-force. Often this has been the case with the GATT/WTO in relation to the many RTAs in existence. Jackson (1993) suggested that before the creation of the CRTA in 1996 the CONTRACTING PARTIES of the GATT treaty have never been able to agree on any set of recommendations on notified RTAs. Therefore, it means that there are some RTAs in operation that do not fully comply with the provisions of GATT Article XXIV. And such RTAs would certainly be detrimental to the development of the MTS, because of non-compliance to GATT/WTO rules and requirements Jackson (1993).

In addition, to these rules and requirements for the formation of RTAs, there still exist some other contentious areas in terms of the wordings, interpretation and application of GATT Article XXIV. In relation to the formation of RTAs, the interpretation behind the 'Rule of Origin' (ROO) is still one major point of confusion. ROO concerns the determination of the origin of goods, which

are to be traded in the territory of the regional bloc. This rule all depends very much on the territory of origin of the goods or where they are produced. ROO as it is, has be crafted to favour goods and components produced within the territory of the regional bloc. In any case the application of the ROO in the formation and establishment of RTAs, poses serious disadvantage to goods originating from third party territories. Jackson (1993) also suggested that ROO could be very damaging to the trade of third parties, if the rules are designed to strongly favour products and parts manufactured within the preferential area. He also suggested that neither the wordings of the GATT treaty nor even the wordings of GATT Article XXIV dealt seriously with this important question patterning to the nature of ROO (Jackson, 1993).

With all the efforts made towards free trade and the establishment of an MTS that would benefit all and sundry, there still exist lots of motivations for the formation of RTAs. This is partly because of the ambiguity of the GATT treaty, and the complex nature of GATT Article XXIV, through which RTAs are formed. It has been noted by several authors, such as Jackson that certain trade policy laws and the GATT/WTO rules are not clearly worded (Jackson, 1993).

Jackson (1993) also suggested that there often arise varying interpretations from many rules and laws found within the GATT treaty, because of the apparent ambiguity in the language that has been used in their wordings. For instance, Jackson (1993) pointed at some areas of potential difficulties such as in the application of safeguard or escape clause. He acknowledged that a preferential agreement could give preference to its members in matters concerning the escape clause. Noting that this is correct because members of a regional bloc are supposed to be treated as a single trading unit. Considering the

situation of the rules governing the unfair trade practices, such as anti-dumping and countervailing duties, Jackson admitted that there is now the practice of tolerating RTAs, which do not eliminate such unfair trade practices between member states (Jackson, 1993).

4.5.2. The Formation of RTAs and Abuse of WTO Exemptions:

RTAs are normally negotiated and formed under certain exemptions to WTO rules and provisions (these are the exemptions under GATT Article XXIV that covers RTAs in trade in goods). But the abuse of these exemptions to WTO rule and their provisions for the formation of RTAs has led to the proliferation of RTAs globally. So, addressing this abuse of the exemptions to WTO rules and their provisions has been a constant problem to the Director-General of the WTO. The suggestion is that the mechanism put in place to ensure that RTAs are compatible to the MTS were proving ineffective and raising lots of concerns to WTO governance. This also alludes to the suggestion that mechanisms such as the CTRA, established for the examination of RTAs were not working well as expected or were inadequate. Bhagwati (2008) argues that mechanisms such as the CRTA employed by the WTO, were not effective enough to assure a reasonable degree of compatibility and consistency between RTAs and the MTS.

Investigations into how the exemption to the fundamental MFN clause came to be under the GATT 1947 treaty reveals a power struggle between two hegemonic groups. Policymakers and trade negotiators of the United States of America (USA) and the economic powerhouses of Europe, who were in a desperate struggle with each other to obtain the best trade deals possible at the time. During these negotiations, the focus of Europe and Japan, during the time of the drafting of the 1947 GATT treaty was reconstruction and development. This

was because of the destructions they sustained in their territories from the Second World War. So, European countries and Japan were very much interested in the principle of reciprocity – where similar concession would be granted to each nation as required (Keohane, 1989). But the USA was very much in favour of the MFN. By so doing, it accepted its exemptions in the negotiations and establishment of bilateral trade agreements – RTAs (Mansfield and Milner, 1999).

The formation and proliferation of RTAs have generally been based on the provisions stipulated in the GATT treaty. That is the exception to the MFN clause. This exception allows member nations of GATT/WTO to be parties to RTAs. Schiff & Winters, (2003) suggested that the exemption to the MFN clause regarding RTAs, such as FTAs and CUs was accepted in the GATT treaty to make GATT more attractive to some countries. However, the loose manner by which the GATT treaty is interrelated prompted Feketekuty (2000) to suggest that it would be beneficial to WTO member nations, if GATS Article V were redrafted.

Keohane, (1989) suggested that the reciprocity element within the GATT is not very attractive to all member states. Suggesting that to balance things up the exemption to the MFN was permitted by GATT Contracting Parties, to give member states an opportunity to negotiate and conclude bilateral agreement amongst themselves (Keohane, 1989). By so doing, GATT Article XXIV was made a balancing mechanism between the MFN and the principle of reciprocity (Keohane, 1989). This apparent appeasement created the loopholes from which some many RTAs have now been formed. In effect, threatening the very existence of the multilateral system that created these legal loopholes (Keohane, 1989).

Maybe the drafters of the GATT 1947 treaty would not have envisaged the damage that the exemption to the MFN clause could have caused the MTS through

the proliferation of RTAs. Since it seems some GATT/WTO members apparently considered the provisions of GATT Article XXIV as a license for the formation of RTAs (Keohane, 1989). This article appears to represent a facilitator in the formation of all sorts of RTAs. It is embarrassing to see that over 300 RTAs are existence in our world today (Crawford & Laird, 2001). This figure more than double the number of WTO members, considering that the WTO has only 146 member nations (Crawford & Laird, 2001). The founding fathers of the GATT treaty would not have tolerated such an exception, if they had any knowledge of the threat that it could pose in future to the MTS. However, the intended exception is now become the norm in our trading system. It is no secret that RTAs have eventually become a vital threat to the successful establishment of a viable MTS (Baldwin, 2006).

The preference of some nations nowadays is new-regionalism RTAs rather than multilateral trade agreements of the WTO. Even the apparent non-conclusion of the Doha Development Agenda (DDA) has given currency to the assertion that RTAs are more beneficial for the short-term needs of many nations than multilateral trade negotiation. This is because some multilateral trade negotiations could take more than a decade to conclude. In this light, it seems correct because many RTAs are negotiated and concluded more quickly than multilateral trade deals (Baldwin, 2006).

Moreover, the move from the old system of RTAs to the new-regionalism-RTAs has created extra benefits for members, thereby leading to more nations participating in the formation of RTAs. Some nations who previously seem hostile towards the formation of RTA are now cashing in on RTAs, especially on new-regional RTAs, which are not confined to specific geographic locations (Ethier,

1998). However, RTAs have always been among natural trading partners or nations that are geographically proximate to one another, such as the countries of Europe, or the countries of Africa, or RTAs among Asian countries or a RTA between Australia and New Zealand; these are normal traditional RTAs than a bilateral agreement concluded between ten African countries, four Latin American countries and China (Ethier, 1998).

Furthermore, the emergence of mega-bloc RTAs, comprising nations of different continents has made RTAs even more attractive than ever before. Nowadays even ardent supporters of the MTS have turned into advocates of RTAs. Almost all nations of the world now want to tap the benefits accruing from these new-regionalism mega-bloc RTAs. Since, these RTAs seem rather more multilateral than bilateral in nature. This is partly because these RTAs involve so many different countries across the globe (Baldwin, 1995). The Euro-Mediterranean FTA is a very good example of such mega-bloc RTAs, with lots of attractive benefits. Such RTAs may pose a real and recognisable threat to the success of an MTS under the auspices of the WTO (Bhagwati, 2008).

In addition, several other RTAs are being negotiated and established on an inter-RTAs arrangement. Some of these complex negotiated RTAs turn to create new RTAs from already existing ones. Thereby creating a spaghetti bowl of RTAs across the globe (Baldwin, 2006). Generally, it would not be wrong to say that we are not only entering an era of new-regionalism RTAs, but an era of new-regionalism with the conglomeration and merger of RTAs, across multiple regions. This phenomenon of conglomeration or merger of RTAs seems rather to be approaching very steadily. Because of the confusing nature of the evolution of these RTA mergers, many policymakers have not yet been able to sound their

opinions on this very situation as it engulfs the globe. One reason being that many contenders think this very phenomenon could help foster multilateral trade negotiations. Believing that inter-regional RTAs arrangements could help bring a faster establishment of the MTS. Through a steady reduction of the total number of regional and bilateral trade agreements, which have been proliferated all over the globe. Some of the best examples of these inter-regional RTAs include among others the CARICOM-CACM, ACP-EU and SACU-SADC inter-regional RTAs (Bilal & Van Hove, 2002).

It is very necessary nowadays to take a closer look at the provisions of GATT Article XXIV that has led to the formation of many of the RTAs in the world today. In principle, GATT Article XXIV allows for the formation of two distinct RTAs. Namely Free Trade Areas (FTAs) and Customs Unions (CUs) (Bhagwati, 2008).

However, it is worth noting that it is in section 8 of GATT Article XXIV that the WTO specify the provision for the formation of FTAs and CUs, and interim agreements leading to the formation and establishment of either of them. The most important factor or element in the formation of FTAs or CUs is that there would be the elimination of substantially all trading barriers between member states. Since FTAs and CUs are easily and very quickly negotiated, they represent very attractive alternatives to multilateral trade negotiations. And they also present recognisable threats to the success and survival of the MTS (Bhagwati, 1993).

RTAs that are compatibility to MTS could be very important to the smooth functioning of international trade and global business (Bhagwati, 2008). One of the main reasons the CTRA is so vital for the establishment and smooth running

of the MTS is that some RTAs in existence do not actually meet the requisite requirements of the WTO provisions through which RTAs are formed, although member nations must have evoked the provision contained in section 8 of GATT Article XXIV for the formation of these RTAs (Bhagwati, 2008). Most of the tariff reduction they apply does not always meet the prescribed provision of 'substantially all trade' requirement of GATT Article XXIV (Crawford and Laird, 2001). It seems that just the slightest compliance to this requirement is often considered as sufficient by some WTO members forming such RTAs (Crawford and Laird, 2001).

This research believes that if the work of the CRTA was robustly carried out and the examination of RTAs at the CRTA was truly effective, unsuitable RTAs might have been censured to effectively meet higher degree of the requirements of the provisions of GATT Article XXIV (Crawford and Laird, 2001). However, as it is right now, many developing countries are willing to bypass compliance of WTO rules in relation to the principle of reciprocity by simply invoking the Enabling Clause rule.

Furthermore, the need for faster negotiations towards the formation of RTAs, have encouraged many developing countries to use the Enabling Clause rule in a manner that was never envisaged by the founding fathers of the GATT treaty (Majluf, 2004). The number of RTAs formed while invoking the provisions of the Enabling Clause could constitute abuse of the WTO system. It would be interesting to recall that the true purpose GATT CONTRACTING PARTIES put the Enabling Clause into the GATT treaty in 1979 was to allow for the existence of preferential practices on RTAs involving only developing countries. The reason for the allowance of this preferential condition was to help speed up development in

developing countries that were in serious need of development after their independence struggles.

The Enabling Clause rule is an exemption from the requirement contained in the provisions of GATT Article XXIV, which applies to regular RTAs. Furthermore, almost three quarters of all the RTAs in existence or in-force today are FTAs; only about ten percent of them are CUs, whilst the rest fall under the Enabling Clause rule. However, almost all the RTAs falling under the Enable Clause provision are classified technically as 'partial scope arrangements', since they do not cover so much trade as other regular RTAs (Bhagwati, 1991).

It seems the wordings of the GATT 1947 treaty encouraged WTO members who naturally trade amongst themselves to congregate and form closer trading ties with one another. This in effect seems to portray the fact that the GATT treaty showed considerable support for regionalism. When one studies the wordings of GATT Article XXIV, one would discover that the text itself recommends regionalism as a progressive means for trade liberalisation. The GATT 1994 states that the CONTRACTING PARTIES recognise 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 (The Text of GATT, 1994).

However, the abuse of the exemptions to WTO provisions for the formation of RTAs is bad. But this does not actually make regionalism a bad concept amongst other things, because there are certainly lots of economic benefits accruing from regionalism that could be beneficial to CONTRACTING PARTIES involved in RTAs. The problem here is that the unchecked proliferation of RTAs is a threat to the MTS, which the WTO aims to establish for the benefit of all members (Bhagwati,

1991). Nonetheless, the founding fathers of the GATT 1947 treaty might not have envisaged that RTAs could become a bad concept. There seems to have been a general belief that regionalism could help to foster or enhance the MTS (Robson, 1993). This undoubtedly could have been the case, if RTAs entered into-force did not tend to increase trading barriers to third parties (Bhagwati, 1991).

Practically, the WTO favours the MTS, instead of RTAs, because the MTS is a more comprehensive way of eliminating substantially all trade barriers for all WTO members than RTAs. Thereby adhering to the principle of non-discrimination in matters of trade between member nations of the WTO (Bhagwati, 1991). Economically speaking the MTS might be able to guarantee the passing to individual consumers the advantages derived from international trade principle of comparative cost advantage, through lower prices for goods and services, if distorting trading barriers and tariffs are finally eliminated (Bhagwati, 2008).

Nonetheless, with the MTS and without any sort of protectionist mechanism, such as quotas, tariffs and even other trading barriers, it seems some firms would be able to reduce their cost of production considerably (Bhagwati, 2008). This reduction of cost could lead to efficiency in all sectors of the economy, thereby leading to lower prices for goods and services and a marked improvement in welfare for all citizens of trading nations (Panagariya and Krishna, 2002). This is one of the main reasons advocated by staunch supporters of free trade and the MTS. Many argue that free trade and the MTS would benefit all trade nations and improve the wellbeing, and welfare of citizens of all trading nations (Panagariya and Krishna, 2002).

Bhagwati (2008) suggested that free trade and the MTS could offer more to nations than RTAs, in terms of trade liberalisation. Clearly, the wording of the preamble of the GATT 1947 treaty reads thus, "...relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods etc." (GATT, 1947, p1).

The stipulation of the preamble of GATT 1947 treaty constitutes a clear proof that the GATT Contracting Parties were ready to allow any form of RTAs that could enhance the MTS. This enhancement was envisaged to occur through maximizing the effective use of available resources, increase in trade and job creation. Because of the facilitation of exchange of goods and services, the wellbeing of most citizens in all trading nations will improve. And without raising tariffs and other barriers to trade for third parties to a regional bloc, there would be a general reduction in the cost of trade. This could lead to a marked improvement in the global economy through increases in the volume of trade (Panagariya and Krishna, 2002).

Viner (1950) categorisation of RTAs as either trade creation or diversion looks very much simplistic. Because in terms of the sophisticated, complicated and challenging effects of the proliferation of RTAs to the MTS Viner (1950) categorisation seems too basic in nature. In fact, seeking to only determine if RTAs are trade creating or trade diverting in nature could only turn to simplify the long run damaging effects to the MTS that could result from the formation, establishment and proliferation of RTAs. The advantages accruing from RTAs are very clear. Especially, the advantages RTAs avail to its members in the short term.

However, in the long run, the general and global impact resulting from the proliferation of RTAs is tremendous. In practice, a new RTA could lead only to more RTAs being created by other nations who are also party to other existing RTAs. In effect creating the Spaghetti Bowl effect propounded by Bhagwati in 1995, with no real or comprehensive economic benefits (Bhagwati, 1995).

Some of the negative effect of a trade diverting RTAs could be effectively construed from Jacob Viner's prediction, in which he stated emphatically that situations could occur: "...where the trade-diverting effect is predominant, one at least of the member countries is bound to be injured, the two combined will suffer a net injury, and there will be injury to the outside world at large" (Viner, 1950, p2). This shows that it is clearly impossible to determine the degree of damage to the MTS that could be caused by such trade diverting RTAs. Since these RTAs are many in number and since they are very easy to form, their impact on the MTS could be unimaginable (Viner, 1950).

Some contenders have also argued that Viner's interpretation of the effects and consequences of the proliferation of RTAs, whether they are trade creating or diverting, provides a better critical and analytical outcome than many recent interpretations of the impact resulting from the abuse of the exemptions of GATT Article XXIV. Viner's analysis confirms the fact that RTAs do not necessarily liberalise trade (Bhagwati, 2008). But they could help minimise certain difficulties to trade within a short term, by eliminating tariffs and other barriers to trade within a specific region. Affirming the notion that in a situation where RTAs are rapidly formed without compliance to WTO rules, this would constitute an abuse of the exemptions to WTO rules permitting the formation of PTAs (Bhagwati, 2008).

Like Summers (1991), Baldwin (1997) also suggested that the reduction of tariffs and other trade barriers through the formation of RTAs could trigger a positive domino effect on trade. They argued that this could in return force an effective reduction of tariffs and other trading barriers by third parties to the RTA. Therefore, the resulting impact would be the cancellation of any probable negative effect of trade diversion through the formation of that specific RTA Baldwin (1997). In effect, Baldwin was suggesting that RTAs could indirectly act as building blocks to the MTS. He also acknowledges that there is always a natural reaction to the formation of RTAs by third party nations, which are not party to the RTA in question (Ethier, 1998). However, if this is clearly the case, this might in fact eliminate the negative consequences resulting from the formation of trade diverting RTAs and Baldwin (1997) suggested that this is plausible in real life.

However, the perception is that the formation of some RTAs could result in a general reduction or even elimination of tariffs and other trade barriers in third party countries, in line with the reduction of tariffs and other trading barriers in the territories of the RTA nations (Lawrence, 1999). As a result, one can confidently say Baldwin (1997), Summers (1991), Lawrence (1999), Ethier (1998) and others like them with the similar views consider RTAs not only as building blocks but also as part of the process of multilateral trade liberalisation and one of the main mechanisms towards the establishment of an effective MTS (Krueger, 1999).

Although, Viner's (1950) Thesis seems very clear, elaborate and plausible in its presentation, however, not many authors agree with his assertions. Authors such as Summers (1991) and Lawrence (1999) belittle Viner's assertion concerning RTAs that are trade diverting. They suggested that if trade diversion

through the formation of RTAs, it would constitute a side effect of RTAs. And that this could be very well compensated through the general effect of a comprehensive elimination of tariffs and other trading barriers within the territory of the RTA (Summers, 1991).

Furthermore, Summers (1991) suggested that all RTAs help to enhance the MTS, no matter their make-up. Summers also argued that in as much as RTAs help in eliminating tariffs and other barriers to trade, they should be considered generally as MTS enhancing, no matter whether they are bilateral or multilateral in nature. Summers and many others like him holding such views, constitute the group who consider RTAs as building blocks to the MTS (Summers, 1991).

However, others have also argued that the existence of so many RTAs within the MTS does not make RTAs a progressive instrument or building blocks of the MTS (Krueger, 1999). Rather, RTAs seem more like stumbling blocks to the MTS because no matter how RTAs are, they do not create the urgency needed for the conclusion of multilateral trade negotiations. Instead RTAs seems to have helped in slowing down multilateral trade negotiations. This could have been partly because some parties to RTAs apparently feel that they are benefiting from what it offers (Krueger, 1999). The continuous abuse of WTO provisions through which RTAs are formed constitutes a significant threat to the establishment of the MTS (Bhagwati, 2008).

Nonetheless, there is lack of consensus on the overall economic impact of RTAs on the MTS (Bhagwati, 2008). The debate on whether RTAs are building blocks or stumbling blocks of the MTS, falls short of a clear assessment as to the true nature of the positive or negative impact exerted on the MTS by the existence of RTAs (Bhagwati, 2008). Although some contenders have argued that RTAs

seem to exert considerable negative impact on the efforts made towards the establishment of the MTS, however, others do not consider this argument a big issue.

If RTAs were only exerting positive impacts on the MTS, no concern would have ever been raised about them (Bhagwati, 2008). Since there are some tangible concerns regarding the compatibility of some RTAs with the MTS, one could conclude that RTAs might be a problematic global instrument towards the establishment of the MTS. As a result, the move towards the establishment of an effective MTS, might need the refining of some RTAs via the CRTA process (Bhagwati, 2008).

4.6. Interim Agreements:

Although GATT Article XXIV made mention of interim agreements, however, the legal principles under GATT rules does not give rise to other forms of regional integrations. In a nutshell, interim agreements are not a separate form of legal RTAs from fully-fledged-RTAs (an FTA or CUs), but they are simply a pathway to full-RTAs. These are agreements leading to the formation of full-RTAs or which should lead to the formation of full-RTAs in the end of the transitional period, usually 10 years.

In practice, it is hard for any integration initiative to become fully operational from the very beginning, in most cases, transitional agreements leading to the formation of RTAs are initially put in place to cover harmonisation and adaption phases – Thus interim agreements as they are conventionally known by GATT/WTO (Bhagwati, 2008).

The problem with interim agreements is that they could sometimes last for a very long period of time, thus becoming a discriminatory preferential trade

agreements in their own rights. To avoid this dilemma, GATT article XXIV requires any interim agreement to be formed with a plan and schedule leading to the formation of a fully-fledged RTA within a reasonable time. This period should not exceed 10 years from the date of the commencement of the interim agreement, only in exceptional circumstances should an interim agreement exceed 10 years (Majluf, 2004).

However, some have argued that because the GATT treaty was drafted just immediately after the Second World it did not take into consideration further forms of regional integration at the time. That GATT rules did not address other forms of integration because higher forms of integration at the time were unforeseeable (Majluf, 2004).

4.6.1. The Interpretation of Article XXIV of GATT 1994:

The Interpretation of GATT Article XXIV provides that CUs, FTAs, and interim agreements leading to the formation of both shall be consistent with GATT 1994, Article XXIV and must satisfy, inter alia, the provisions of paragraphs 5, 6, 7, and 8 (Majluf, 2004).

Following the review of CUs and FTAs by WTO members, all notifications made under paragraph 7(a) of GATT Article XXIV shall be examined by a working party in the light of the relevant provisions of GATT 1994 and of paragraph 1 of the Understanding on RTAs. The working parties shall submit a report to the Council for Trade in Goods (CTG) on its findings in this regard. The CTG may make such recommendations to members as it deems appropriate (Bhagwati, 2008).

In relation to interim agreements, the working party may in its report make appropriate recommendations on the proposed time frame and on measures required to complete the formation of the customs union or free-trade area. It

may, if necessary, provide for further review of the agreement. Furthermore, member nations who are parties to an interim agreement shall notify substantial changes in the plan and schedule included in that agreement to the CTG and, if so requested, the Council shall examine the changes (Bhagwati, 2008).

Furthermore, should an interim agreement, which have been notified under Paragraph 7a of GATT Article XXIV not include a plan and schedule, contrary to Paragraph 5c of GATT Article XXIV the working party shall in its report recommend such a plan and schedule. The parties shall not maintain or put into force, such agreement if they are not prepared to modify it in accordance with these recommendations. Provision shall be made for subsequent review of the implementation of the recommendations (Majluf, 2004). CUs and FTAs shall report periodically to the CTG, as envisaged by the Contracting Parties of GATT 1947 and any significant changes and/or developments in the agreements should be reported to the CTG as they occur (Majluf, 2004).

Under GATT Article XXIV, GATS Article V or the Enabling Clause, WTO members participating in new negotiations aimed at the formation of RTAs shall endeavour to inform the WTO. In addition, WTO members who are parties to newly formed RTAs shall convey to the WTO information on the RTAs, including its official name, scope and date of signature, any foreseen timetable for its entry into-force or provisional application, relevant contact points and/or website addresses, and any other relevant unrestricted information. This information should be forwarded to the WTO Secretariat, which will post it on the WTO website and periodically provide WTO members with a synopsis of the communications received (Bhagwati, 2008).

4.6.2. Transparency Mechanism for RTAs:

As mentioned earlier, there were significant changes at the WTO on the notification and examination of RTAs and interim agreements when the CRTA was established in 1996. The CRTA took over all the functions previously performed by an ad hoc working party model. However, because of the ineffectiveness of the CRTA, a decision on the 'Transparency Mechanism for RTAs was taken on the 14th of December 2006, by the GATT/WTO General Council. And this resulted in the substantial revision of the work of the CRTA. However, the Transparency mechanism did not distinguish between interim agreements leading to the formation of full-RTAs and a fully-fledge RTA (Bhagwati, 2008).

This new transparency mechanism was negotiated in the Negotiating Group on Rules, it provided for early announcements of RTAs and notification to the WTO. Therefore, members to RTAs were henceforth expected to consider the notified of the RTAs based on a factual presentation by the WTO Secretariat. The aim of the transparency mechanism was to retrieve information on the formation of RTAs and on the historical background information on the CRTA. In fact, only RTAs falling under GATT Article XXIV) and GATS Article V were to be considered by the CRTA (Bhagwati, 2008).

RTAs falling under the Enabling Clause of 1979, which are preferential trade arrangements on goods between DCs were to be considered and regulated by the Committee on Trade and Development (CTD). However, non-reciprocal preferential agreements involving selected developing and developed countries, require WTO members to seek a waiver from WTO rules. Among the best-known examples of such agreements are the US-Caribbean Basin Economic Recovery Act and the Cotonou Agreement recently signed by the EC and the ACP countries to

replace the Lomé Convention (Bhagwati, 2008). At the time this research was being conducted, the waiver initiative was still under consideration at the WTO.

Notwithstanding, it was also decided that the transparency mechanism would be implemented on a provisional basis, however, members were to review it and if necessary modify the decision; and replace it with a permanent mechanism that maybe adopted as part of the overall results of the Doha Rounds. However, members agreed to begin the review of the Transparency Mechanism for RTAs as required by the General Council Decision, with a view to making it permanent. This was based on two proposals put forward by the United States and Ecuador (Bhagwati, 2008).

4.6.3. Legal Obligations Under the Transparency Mechanism:

Under the transparency mechanism the contracting parties were now specifically obliged to provide GATT/WTO Secretariat with detailed and specified data on all notified RTAs and interim agreements within 10 weeks of notification. However, 20 weeks, for RTAs involving DCs only. And this must be prior to implementation and not later than the ratification date. This data must include the following: All Tariff concessions under the agreement, in case of RTAs involving trade in goods and secondly, a full list of each member nation's preferential duties to be applied in the year of entry into-force of the RTA. Thirdly, a full list of each member nation's preferential duties, which are to be applied over the transition period and when the RTA is to be implemented in stages (Bhagwati, 2008).

One of the major points about the transparency mechanism for RTAs, is that it enhances the role of the WTO Secretariat in relation to the notification of RTAs, and at the same time it reduced the role of the CRTA. The Secretariat was now empowered to prepare factual reports on RTAs based primarily, but not

exclusively, on information provided by parties to a RTA. The CRTA was no longer empowered to produce a report and recommendations on notified RTAs as mandated in its original terms of reference, but it was required to hold just a single meeting, based on written questions submitted earlier, on which the RTA would be considered (Bhagwati, 2008).

Following this transparency mechanism which changed terms of reference of the CRTA, a formal review on RTAs base on their compatibility with GATT Article XXIV was no longer undertaken by the CRTA. Practically, this situation shifted the burden of the challenge of the compatibility of RTAs to GATT Article XXIV to dispute settlement. Legally, this situation also applies to interim agreements, since they are treated in terms of notification in the same light as full-RTAs (Majluf, 2004).

As mentioned earlier, WTO rules for interim and full-RTAs were also strengthened by the Understanding of the interpretation of GATT Article XXIV. However, it seems the adoption of this Understanding has paradoxically created a precisely opposite effect than that which was intended, because since 1995, of the 300 or so RTAs that were notified to the WTO/CRTA none were notified as interim agreements. Although most of this RTAs legally did not meet the requirement of full-RTAs during their notification. This situation might have been created directly or indirectly by the Transparency mechanism because interim agreements were rather ignored in its wordings (Armstrong and Taylor, 1993).

4.7. Distinctions between Interim Agreements and Full-RTAs:

The distinction between interim agreements leading to the formation of RTA and full-RTAs is contained in GATT Article XXIV and the Understanding on the Interpretation of Article XXIV GATT. An RTA (FTAs) is defined by GATT Article

XXIV,8, as a territory in which duties and other restrictive regulations of commerce are eliminated on substantially all the trade. In contrast GATT Article XXIV:5 defines an interim agreement, as an agreement necessary for the formation of an RTA (Bhagwati, 2008). The implication of the interpretation of the definitions of these two provisions as per GATT Article XXIV,8, is that only agreement which have already been implemented or entered into force are classified as full-RTAs. However, any agreement that has not yet entered into force or not yet implemented, but includes a plan and schedule for implementation would be classified as an interim agreement (Bhagwati, 2008).

a.) Internal condition for Interim Agreements and Full-RTAs:

There is a clear difference between interim agreements and full-RTAs in relation to the internal requirements for trade liberalisation within the constituent territories of an RTA. Under GATT Article XXIV,5c, an interim agreement must include a plan and schedule for the formation a full-RTA within a reasonable length of time. According to Paragraph 3 of the Understanding of GATT Article XXIV a 'reasonable length of time' referred to in paragraph 5c, GATT of Article XXIV should not exceed 10 years but only in exceptional circumstances (Armstrong and Taylor, 1993)

In exceptional circumstances the GATT/WTO requires parties to an interim agreement to provide a full explanation to the CTG if there is a need for an adaption period of more than 10 years. However, with full-RTAs there is no such requirement. Because it is presumed that a full-RTA is already providing liberalisation on substantially all the trade between the contracting parties. Nonetheless, in relation to WTO notifications and reviews, interim agreements and full-RTAs are treated on equal terms by GATT/WTO (Bhagwati, 2008).

b.) External Requirement for Interim Agreements and Full-RTAs:

By contrast, there is no difference between interim agreements and full-RTAs on external requirements because under GATT Article XXIV,5a, and 5b duties and other restrictive regulations of commerce may not be higher during the adoption of an RTA or interim agreement leading an RTA, than before the adoption period. This external requirement applies from the very date the agreement is concluded, no matter whether it is an interim agreement or a full-RTA (Bhagwati, 2008).

c.) Review of Interim Agreement and Full-RTAs by WTO Members:

One other difference between Interim agreements and full-RTAs is based on the control over notified agreements exercised by WTO members. GATT Article XXIV,7a, states that: Any contracting party deciding to enter into a CU or FTA, or an interim agreement leading to the formation of both, shall promptly notify the contracting parties and shall make available to them such information regarding the proposed union as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

Furthermore, according to the understanding of GATT 1994, Article XXIV,7, notification of an RTA made under paragraph 7a of GATT Article XXIV shall be examined by a working party in accordance to the provisions of paragraph 1 of the understanding of Article XXIV of GATT 1994. In addition, after the examination, the working party shall submit a report to the CTG on its findings. And if need be, the CTG may make appropriate recommendations on the examined RTA to member nations (Majluf, 2004).

Legally, the degree of control over notified RTAs exercised by WTO member nations is vague, because there is no legal obligation on the part of member nations of an RTA to accept or implement any appropriate

recommendations on an RTA proposed by the CTG. However, as clarified in the in the Appellate Body Report in the Turkey-Textile case of 1999, legally the non-acceptance or non-implementation of appropriate recommendations from the CTG does not prevent recourse on the question of the legality of the RTA, through dispute settlement process. Nonetheless, in the case of an interim agreement the situation is different.

GATT Article XXIV,7b, states that in situations where WTO Member nations discover that a notified interim agreement is not likely to result in the formation of a CU or an FTA within the period contemplated by the parties to the agreement or that such period is not a reasonable one, they may make appropriate recommendations. In such a situation, the contracting parties to the interim agreement are under an obligation not to maintain or enter into-force the agreement, if they are not willing to modify the agreement in accordance with the appropriate recommendations (Bhagwati, 2008).

Under Paragraph 8 of the Understanding of GATT Article XXIV, these obligations are further elaborated and reinforced. It states that: the working party may in its report make appropriate recommendations on the proposed time-frame and on measures required to complete the formation of the CU or FTA. It may if necessary provide for further review of the agreement.

Furthermore, under Paragraph 10, a new set of obligations are also added for an interim agreement, which obliges the working parties to recommend a plan and schedule if the parties have not included one as per GATT Article XXIV,5c. In addition, Paragraph 10 also obliges the contracting parties not to maintain or enter into-force the agreement, if they are not prepared to modify the interim agreement in accordance with the recommendations (Majluf, 2004).

4.8. Requirement for Notification of Interim Agreements and Full-RTAs:

As mentioned earlier, GATT Article XXIV,7, and the Understanding of the interpretation of GATT Article XXIV requires notified interim agreements to include a plan and schedule, which should include how the interim agreement will lead to the formation of a full-RTAs within a 'reasonable length of time', as per the provisions of GATT Article XXIV,8. Furthermore, the Transparency Mechanism decision also specifically obliged the contracting parties to provide a full-listing of each contracting party's preferential duties, which is applicable over the transition period of the agreement. This transition period of the interim agreement must not exceed a reasonable length of time, which is 10 years as per the provisions of the Understanding of GATT Article XXIV (Bhagwati, 2008).

In fact, at the end of the transitional period of the agreement, no matter whether the agreement was notified as an interim agreement or a full-RTA, it is expected that the agreement must liberalise trade in all sectors substantially. However, neither GATT CONTRACTING PARTIES nor WTO members have ever reached an agreement as to the interpretation of the phrase 'substantially all the trade' under the provision of GATT Article XXIV. The ambiguity of the phrase 'substantially all the trade' a requirement of GATT Article XXIV, was famously contested during the Turkey-Textiles case, and noted in the WTO Appellate Body Report of 1999 (Majluf, 2004).

However, the phrase 'substantially all the trade' does not explicitly mean all the trade, but could be considered as substantial liberalisation of trade not just some trade, as construed from the WTO Appellate Body Report of the Turkey-Textile of 1999. Nonetheless, no matter the interpretation of the requirement of substantially all the trade, the bottom-line of this provision requires that a

considerable amount of trading barriers must be eliminated between the contracting parties' territories by the end of the transitional period of the agreement (Majluf, 2004).

4.8.1. The Reasonable Length of Time Requirement:

As per the Paragraph 3 of the Understanding of the provisions of GATT Article XXIV, the phrase 'reasonable length of time' in relation to paragraph 5c, of GATT Article XXIV, states that interim agreements should not exceed a period of 10 years and that this timeframe could be exceeded only in exceptional circumstances. In circumstances in which GATT/WTO members decide that a transitional period of 10 years would be insufficient for an interim agreement to transit to a full-RTA, they should provide a full explanation to the CTG explaining the need for a longer transitional period for the agreement (Bhagwati, 2008).

However, although this transitional period could be extended when invoked in exceptional cases, it does not have any legal backing under WTO rules or provisions. For example, in United States-Chile RTA of 2003, a 12-year transition period time frame was agreed for the achievement of a complete liberalisation on all agricultural produce – that is a 2-year extension to the requirement of the GATT/WTO provision.

In addition, in the case of EC-Jordan RTA of 2004, the CONTRACTING PARTIES agreed that Jordan would need more than 10 years to achieve competitiveness in its economic sectors and adjust to the requirements of the RTA by its exporters. As a result, a 12-year period was agreed as the timeframe for the transitional period (Armstrong and Taylor, 1993).

Nonetheless, in Australia-US RTA of 2007 involving beef export from Australia to the USA, it took 18-years for USA trade barriers to Australia beef

exports to be fully eliminated, making the extension to transition period unfixed. Although in the two previous examples, the extensions were for two years only, this did not constitute a legal precedent under the GATT/WTO system. Since neither Article XXIV of GATT or the Understanding of GATT 1994, Article XXIV explicitly limits the transition periods to a timeframe of ten years, the meaning of the phrase 'reasonable length of time' is opened to numerous interpretation and application by members of the WTO (Bhagwati, 2008).

It is also impossible to give a definite legal interpretation to the phrase 'exceptional circumstances or cases' member nations of the GATT/WTO are free to use any argument to justify the need for a longer transitional period of more than 10 years and inconsistencies are bound to exist. As a result, some member nations have invoked the sensitivity of the agricultural sector, goods, imports, exports and even the overall economic situation to justify an extension of the transitional period. This is partly because GATT Article XXIV explicitly requires the elimination of tariffs on substantially all the trade for the formation of RTAs. Furthermore, it is also possible for member nations to invoke Part IV of the GATT treaty or even the GATT/WTO Preambles to support and justify the need for an extended transitional period for the formation of RTAs (Majluf, 2004).

4.8.2 The 'Plan and Schedule' Requirement:

As mentioned earlier, an interim RTA must include a plan and schedule on how a full-RTA would be achieved by the end of the transition period. And following the Transparency Mechanism decision, there was no difference between interim RTAs and full-RTAs during notification to GATT/WTO. In a nutshell, after the Transparency Mechanism decision all RTAs were henceforth being notified to the GATT/WTO as full-RTAs. This is because the conditions that were normally

applicable only to interim RTAs were now being applied to all RTAs, whether interim or full. Since all RTAs notified to the GATT/WTO were to include a plan and schedule with a transitional period (Armstrong and Taylor, 1993).

This decision created some difficulties to WTO members in terms of the specific content of the plan and schedule, such as the degree of liberalisation. And WTO Secretariat requires such information to be able to prepare and issue a factual report on the RTAs notified. For example, in the case of the factual report of SADC, the WTO did not consider sugar in its assessment of the liberalisation of trade on the provision of 'Substantially all the trade'. Because in SADC's plan and schedule, the liberalisation of sugar was to be concluded after 2012, and this will also depend on the global market for sugar. As a result, sugar was excluded by the WTO in its assessment of the degree of trade liberalization during the transitional period, in its preparation of SADC's factual report (Bhagwati, 2008).

Furthermore, the legal difficulties emanating from the implications and interpretation of the 'plan and schedule' for RTAs could be tested by the provisions of GATT Article XXIV,7b, which stipulates that: if the CONTRACTING PARTIES to an interim RTA discover that the agreement will not lead to the formation of a full-RTA within the agreed period, usually ten years, CONTRACTING PARTIES shall make recommendations to the RTA members. The provisions of GATT Article XXIV,7b, gives GATT/WTO member nations the authority to make recommendations to parties to RTAs, but does not specifically oblige members of an RTA to provide a 'plan and schedule'. As such the provision of a 'plan and schedule' during the notification RTAs by WTO member is simply instrumental (Bhagwati, 2008).

In regards, to the understanding of the interpretation of GATT 1994, Article

XXIV, the provisions of Paragraph 10, authorizes the CRTA to impose a 'plan and schedule' if the parties' to the notified RTA did not include one. The legal implication of GATT Article XXIV,7b, is that with a 'plan and schedule' from members of an RTA, WTO member would be unable to approve the interim agreement (Bhagwati, 1995).

As per GATT/WTO rules on RTAs between developed and developing countries under the provisions of GATT Article XXIV, there could develop the legal issue of asymmetric trade liberalisation in relation to the requirements of 'substantially all the trade' during the transitional period when RTA is considered an interim agreement. However, the provisions under GATT Article XXIV,7, and the understanding of the interpretation of GATT Article XXIV placed no conditions on the formation of RTAs. However, under GATT Article XXIV,8, the condition is that the interim agreement would lead to the formation of a full-RTA, with the approval of the CRTA (Bhagwati, 1995).

However, the issue of asymmetry does not actually give rise to any legal difficulties under GATT/WTO rules, to end the RTA, even if trade has already been fully liberalized by some of the parties to the agreement. The legal implications of GATT/WTO rules on this matter, effectively eliminates the controls and oversights required under the provisions of GATT Article XXIV for interim agreements between developed economies and developing countries, including reviews and dispute settlement (Bhagwati, 1995).

4.9. Conclusion:

Employing qualitative research methodology, this chapter has studied and traced the origin of the MFN principle, its functions and importance. It has also studied the exceptions and exemptions to the MFN principle to gain an understanding of its effects on the formation of RTAs and their examination at the CRTA. From the studies in this chapter, shows that unconditional MFN treatment might have lost its appeal because of widespread noncompliance to GATT/WTO obligations.

In addition, since the requirements for the formation of RTAs such as FTAs seem weak, it is apparently much easier to achieve the rights to MFN deviation to form RTAs. The undermining or abuse of the exceptions to the MFN principle, which is the core principle of the GATT led to the proliferation of RTAs, making the number of RTAs in existence more in number than WTO membership. Since most WTO members were engaged in the formation of RTAs, the mandate of the CRTA in the examination of RTAs might have been indirectly undermined.

Furthermore, this chapter has also explored probable deviation from the law, rules and procedures of GATT/WTO that might have had some practical implications on the role of the CRTA, some of which were contained in the Transparency Decision. After the Transparency Mechanism, all subsequent trade agreements were notified to the WTO as 'full' agreements with an implementation period, making it very hard to distinguish between full RTAs and interim agreements.

Finally, what has been learnt from this chapter is that GATT/WTO treaty or/and decisions helped to encourage the proliferation of RTAs, by diminishing the control mechanism for RTAs via the Transparency Decision. The formation of RTAs by WTO members became much easier after 2006 because the mandate of the CRTA was revised through the Transparency Decision for RTAs.

CHAPTER 5.

5.1. Introduction:

This chapter explores the motivation for the formation of RTA and looks at the nature and make-up of some of the major RTAs in existence in the world today. It seeks to answer the research question: How does the regulation and examination of RTAs at the CRTA affect the formation and proliferation of RTAs? It studies the multilateral surveillance, monitoring of RTAs at the CRTA and explores the regulation of RTAs involving: the examination of RTAs at the CRTA, the procedure for RTA examination, RTA examination process, difficulties in the examination of RTAs and difficulties in the CRTA process for RTAs. Furthermore, it also looks at the inability of the CRTA to perform its duties and the need to reorganise the CRTA's examination process.

5.2. Motivation for the Formation of RTAs:

Some WTO members are sceptical about the benefits of RTAs compared to the benefits that could accrue from multilateral trade negotiations and from the establishment of a successful MTS. However, the urgency in which some established economies used in the formation of RTAs, leave much to be desired. Although some trade policymakers are very much in favour of multilateral trade agreements, notwithstanding, WTO members continue incessantly to be involved in the formation of RTAs, even with on-going multilateral trade negotiations (Bhagwati and Panagariya, 2003)

Although, it is impossible to dismiss the short-term benefits that could accrue from the establishment of RTAs, however, it might not take a long for such benefits to be quickly eroded by the creation of another RTA by third parties

(Bhagwati and Panagariya, 2003). The rapid proliferation of RTAs seems to present the evidence that there is acute competition between different types of RTAs in different regions, offering different benefits to its members.

Nonetheless, it seems some RTAs are created to counter the negative impact caused by the creation of a specific RTA or might even be an indirect response to the creation of a specific RTA (Bhagwati and Panagariya, 2003). Some authors have argued that many political considerations are taken into consideration in the formation of RTAs (Bhagwati and Panagariya, 2003). For example, a 2001 World Bank Report by Guy de Jonguières, suggested that the purpose of regional integration is often political, and that the economic consequences, good or bad, are side effects of the political pay-off (Mansfield & Milner, 1999). While others believe that RTAs are not only established solely for trade liberalisation purposes, that their merits go far beyond free trade (Mansfield & Milner, 1999).

In the 19th century, some emerging and even industrialised economies looked up to the United States of America (US) for leadership, in many aspects of life including trade. Although the US was an ardent supporter of multilateral trade negotiations under the auspices of the GATT/WTO before the 1990s, but during the early 1990s the US position in relation to RTAs changed considerably, and this seems to have created a domino effect in relation to the proliferation of RTAs throughout the world (Mansfield & Milner, 1999). As a result, some of the countries that looked up to the US for leadership could have felt that the US itself was now in favour of RTAs, when the US became a member of NAFTA. The conclusion might have been that RTAs are surely the best way forward and this

might have led to a massive proliferation of RTAs worldwide (Mansfield & Milner, 1999).

Although, some RTAs could serve a useful economic purpose beyond the direct gains from multilateral trade liberalisation, however, regional security and defence is also one of the most important factors that encourages some WTO members to form RTAs, because an unstable region cannot attract sufficient Foreign Direct Investment (FDI) and economic development (Kufuor, 2006).

Schiff and Winters (1997) suggested that RTAs could help reduce regional conflicts. The free movement of goods and people via RTAs has also helped in reducing regional tensions, territorial conflicts and even wars. Schiff and Winters (1997) also suggested that RTAs could help in the provision of political and military protection for member nations. Furthermore, some RTAs could also give rise to regional security operations, such as the Economic Community of West African States Monitoring Group (ECOMOG) in the case of ECOWAS (Kufuor, 2006). The inclusion of Rwanda and Burundi in the East Africa Co-operation (EAC) may help to minimize the probability of future conflicts between Rwanda and Burundi (Kufuor, 2006).

In much the same manner, Kufuor (2006) also suggested that according to Robert Schumann and Jean Monnet, the founding fathers of the EU, European integration aimed at, inter alia, preventing any future Franco-German conflicts. He also argued that this same principle has been re-applied in the creation of Association of South East Asian Nations (ASEAN), to help reduce tensions between Indonesia and Malaysia (Kufuor, 2006).

Nonetheless, some RTAs could help in the enhancement of regional cohesion, by promoting the notion of belonging and citizenship. For example,

some individuals in the EU see themselves most often as European citizens, rather than citizens of their own countries (Kufuor, 2006).

Furthermore, the ability for firms in the territory, to spread their operations throughout the entire territory because of trade liberalisation resulting from RTA is one of the major reasons for the proliferation of RTAs. It is also believed that the degree of cooperation that may be achieved through RTA could help propel economic development in the entire region via joint-project initiatives (Bhagwati and Panagariya, 2003). As suggested by Kufuor (2006), interactions between members of ECOWAS helped to breed trust leading to positive spin-offs such as cooperation in hydroelectric projects and transport networks (Kufuor, 2006).

Nonetheless, the importance of regional cohesion and co-operation through RTA was also highlighted by the then French President Nicolas Sarkozy, on the 26 of March 2009, during a state visit to the Democratic Republic of Congo, where he suggested that Kinshasa and its Great Lakes neighbours should work together for their own mutual benefits (Armstrong and Taylor, 1993).

The desire to achieve better and quick trade agreements through the reduction of negotiation time, because similarity of needs is one of the greatest motivation for the formation of RTAs (Kufuor, 2006). It seems most of the nations involved in an RTA, know exactly what is at stake, as a result negotiations are smooth and fast (Kufuor, 2006). Moreover, the duration and resources involved in the GATT/WTO negotiations seems to make RTAs a better option to WTO negotiations (Kufuor, 2006), because multilateral trade negotiations often take a longer period to conclude, since they involve many nations with varying problems from different regions of the world (Bhagwati and Panagariya, 2003).

In addition, since some DCs share similar histories and cultures resulting from similar background, these nations are either poor or former colonies of developed nations, as a result, some of them feel comfortable congregating together via RTAs to find the best way forward. Countries sharing the same language and who have similar ethnic groups can easily form RTAs. This factor is one of the major driving force or motivation for the formation and proliferation of multiple RTAs across the globe. However, RTAs could also create employment opportunities throughout the territory, thereby reducing political tension within member-states (Bhagwati and Panagariya, 2003).

In an increasingly globalising world the need to pool resources together as a unit became the focus of some DCs, the preference for mutually reciprocal market access with countries at the same stage of development was favoured to multilateral trade arrangements. Kufuor, (2006) suggested that an expanding market for goods and services through the removal of tariff and non-tariff barriers is an important factor for economic growth and development. In addition, the seminal work on Jacob Viner's study on regional integration underscores the links between trade creation and national welfare (Viner, 1950).

It is believed that one of the most attractive features of RTAs, is that it could serve as a guarantor against losses that could be suffered from unforeseen economic calamities (Kufuor, 2006). Nonetheless, commitment to a common purpose is certainly what brings most nations together for the formation of RTAs. A common interest could arise from RTAs, leading to a solution to a common problem, such as the part played by the Southern African Development Co-operation (SADC) in resisting apartheid (Kufuor, 2006).

According to a remark attributed to E. Anthony Wayne, Assistant Secretary for Economic and Business Affairs of the USA at the time of the Leadership Forum Dinner, Chicago Council on Foreign Relations, Chicago, on the 15th of September 2003, he said that the U.S. will continue to aggressively pursue bilateral and regional trade agreements with countries committed to opening markets and undertaking economic reform. As per this statement, it shows that the motivation for RTAs for most advanced economies is truly market access more than anything else. As such even customs unions such as the EU (an RTA) and other RTAs also continue to pursue bilateral trade agreements in the face of on-going multilateral trade negotiations (Bhagwati and Panagariya, 2003).

5.3. Some of the Major RTAs in Existence in the World Today:

Some contenders have suggested that powerful nations such as the USA, the United Kingdom, Japan, China, Canada, Australia and amongst others continue to be engaged in the formation and establishment of RTAs, while acknowledging its disadvantages and the detriment of RTAs to the MTS.

Furthermore, the EU Commissioner for Trade in 2003, Mr. Pascal Lamy, also surprisingly expressed ambivalence towards the MTS after the Cancún conference in 2003. Whilst speaking to Journalists in Brussels on the 16th of September 2003; he said: “We will have to have a good hard think amongst ourselves... should we maintain our priority as multilateralism which was the basic tenet of EU commercial policy?” This statement supporting maintaining the push towards multilateralism by a representative of an RTA is further proof that although some advanced economies are now engaged in RTA, the benefits that could accrue to WTO members from an established MTS could by far surpass the

benefits accruing to nations currently involved in RTAs (Bhagwati and Panagariya, 2003).

However, trade liberalisation through RTAs is not truly multilateral in nature and the advantages it brings is just a taste of what a global free trade incorporating all WTO members and non-members could bring as benefits to all nations involved. Although multilateralism is the priority for many nations, yet they continue with their unquenchable taste for RTAs, with their short-term benefits, such as quick market access.

5.3.1. The European Union (EU)

The EU is an economic union of 28 European member nations. It could simply be classified as a supranational RTA based on economic and political integration. It was established through the Maastricht treaty signed by six Western European member nations in the Netherlands, on the 7th of February 1992, and entered-into force on the 1st of November 1993.

The six Western European nations who originally founded the EU were Germany, France, Italy, Netherlands, Belgium and Luxembourg. The EU has expanded from its humble beginning of six nations to its present 28 nation status and it would continue to expand as new nations join the union. Currently the EU is the most vibrant RTA as compared to its counterparts globally. Its integration process has apparently been very smooth and fast as compared to similar integration models across the globe such as the African Union (Bhagwati and Panagariya, 2003).

5.3.2. The North America Free Trade Area (NAFTA)

The North America Free Trade Area (NAFTA) was established on the 1st of January 1994, by the United States of America (USA), Canada and Mexico. These three

countries are all North American nations. The formation and establishment of this RTA permit member nations to eliminate all duties, tariffs and other barriers to trade between them but are supposed to retain their own individual rates of tariffs with other nations of the world, who are not members of NAFTA, such as the United Kingdom.

One of the most important aspects of NAFTA is that NAFTA is a free trade area. The most important element of a Free Trade Area over a Customs Union or Common markets, is that in a Free Trade Area each member state can freely determine its own trade relationship with other third parties as it pleases. NAFTA is a regional bloc that fits the regional closed proximity element of our traditional RTAs (Bhagwati, 2008).

5.3.3. Caribbean Community (CARICOM):

CARICOM came into existence in 2001, to replace the former Caribbean Community and Commons Market that was formed and established in 1973, through the treaty of Chagares's, with headquarters in Georgetown, Guyana. The Caribbean Community and Commons Market was also the replacement of the former Caribbean Free Trade Association (CARIFTA) that became redundant in 1968. The process of regionalisation in the Caribbean has always been evolving since the creation of CARIFTA, just as RTA itself has been an ever evolving and self-innovating process of political and economic integration.

The Treaty of Chagares's gave rise to associate institutions that helped to promote cooperation and economic development among Caribbean member states such as the Organization of East Caribbean states and the Caribbean Development Bank. CARICOM is made up of Antigua, Bahamas, Barbuda, Belize, Barbados, Dominica, Grenada, Haiti, Guyana, Jamaica, Montserrat, Saint Kitts and

Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. While associate member status includes Anguilla, Bermuda, the British Virgin Islands and the Cayman Islands and the Turks and Caicos Islands. However, Venezuela, Mexico, Puerto Rico, the Dominican Republic, Colombia and Aruba all exercise observer status within CARICOM.

From the late 1980s to 2006 CARICOM went through certain changes and other major changes were also envisaged for further integration such as the CARICOM Single Market (CSM) and the proposal to create a single currency within the territory of member states. In fact, the evolution of CARICOM has been constant, although certain changes have taken a longer time than necessary to be implemented by all member nations. The treaty of Chagares's, which established the organisation, was revised in July 2001, by a meeting of the head of governments of member states (Bhagwati, 2008).

5.3.4. MERCUSOR:

MERCUSOR is a customs union made up of Brazil, Argentina, Venezuela, Uruguay, Paraguay and Bolivia. Bolivia was the last member country to join the regional bloc in 2012, after ratifying the MERCUSOR treaty by members of its legislature on the 7th of December 2012. The purpose and objectives of MERCUSOR is to encourage free movement of labour, good and services within the territories of the customs union. Generally, the promotion of free trade amongst member nations of an RTA has always been the direct motive for the formation and establishment of RTAs; MERCUSOR is not an exception. The three official languages of MERCUSOR are Spanish, Portuguese and Guarani. In the Americas, Guarani is one of the most-widely spoken indigenous languages. A vast proportion of non-indigenous people in the Americas also speak Guarani. Along with Spanish,

Guarani is also an official language of Paraguay. In fact, Guarani is spoken in Paraguay, parts of North-Eastern Argentina, South Eastern, Bolivia and South Western, Brazil. Since 2004, it is the second official language of the Province of Corrientes, Argentina). Currently, MERCUSOR is undergoing transitory stages of transformation into a common market status from its original formation as a customs union. This transformation process has been encouraged or triggered by the successes achieved so far by the EU model of regional economic and political integration.

5.3.5. The African Union (AU):

The AU was formed in Addis Ababa, Ethiopia on the 26th of May 2001 and launched in South Africa, on the 9th of July 2002. It is a regional integration scheme, which is made up of 54 African Nations, the very latest member that made the organisation's membership number to increase from 53 members to 54 member states is South Sudan who became a member of the AU in the summer of 2011. The AU was created to replace the Organization of African Unity (OAU), which became more of a mere talking shop, a gathering for African head of states to meet and greet one another.

The main objective of the AU is to foster political and economic integration among its 54 African member states, from its inception the AU seemed more robust in ideology than the defunct OAU. Although the aims of both organisations have been quite similar, such as the eradication of poverty, the promotion of Pan-African democracy and unity amongst African states, their progress and accomplishments in this regard are insignificant, since, dictators are still ruling most of the continent now and when the OAU was functional. The AU is considered the brainchild of the late Libyan leader Muammar Gaddafi, who was very

interested in creating a 'United States of Africa', governed by only one president, like the USA. Although the AU is modelled from the EU ideology, however, its structures and manner of operation are quite different from those of the EU (Kufuor, 2006).

Currently, Morocco is the only African country that is not a member of the AU (Kufuor, 2006). In 1984 Morocco left the OAU because the organisation granted membership status to the Saharan Arab Democratic Republic, which is seeking independence from Morocco for the disputed territory of Western Sahara, which Morocco considers to be part of its territory. Since, then Morocco has not applied for re-admission into the organisation.

The progress of the AU as an economic and political integration scheme has been extremely slow. Even now there are still tangible restrictions and barriers within its territory, in terms of movement of capital and labour, which are one of the main aspects of a successful political and economic integration scheme (Kufuor, 2006). Although most AU institutions seem weaker than those of the EU, however, it is still too early to describe the AU as a complete failure just like the OAU. One of the main institutions of the AU is the Pan-African parliament, which was inaugurated in March 2004. The Pan-African parliament is a deliberative body that debates issues affecting the continent and acts as an advisory to head of states of member states (Kufuor, 2006).

The AU has very many ambitious projects that very much mirrors the EU in its set-up, such as the establishment of a human rights court, an African central bank, an African monetary fund, and an African Economic Community with a single currency, all these projects are envisaged to be in place by the year 2023. However, one of the most interesting elements of the AU is the intervention in the

affairs of member states in case of conflicts, such as wars or serious political instability. This is very much a departure from its predecessor the OUA, which was modelled very much on non-interference in the affairs of member states. The creation of the OAU after post-independence struggle made sovereignty a very important element for most African nations and their leadership. However, the current departure from the protection of sovereignty to intervention in cases of conflicts within the African continent is a new development in integration schemes in Africa (Kufuor, 2006).

The AU's believe that conflicts in Africa must be settled before prosperity could be achieved within the continent. The end of these conflicts could encourage sustainable development (Armstrong and Taylor, 1993). As a result, this ambition led to the establishment of the Peace and Security Council, in 2004 (Kufuor, 2006). The mandate of this council is the deployment of a military force in any member state at short notice in situations where genocide or crimes against humanity are being committed. Nonetheless, plans for the council to set-up a rapid-reaction military force by 2010, did not actually materialise, however, this is not uncommon with the AU or its predecessor - the OAU (Kufuor, 2006). In fact, the AU has provided peacekeepers and cease-fire monitors along with the United Nations (UN) in places such as Darfur and Burundi, and has maintained a military presence in Somalia since 2007.

To attract foreign direct investments for member states through the union, the AU established a body known as the New Partnership for Africa's Development (NEPAD). NEPAD is an anti-poverty blueprint which aims to placate Western democracies to provide both foreign aid and investments to member states who try to practice good governance (Kufuor, 2006). The AU has often suspended

member states over unconstitutional change of government, suspended members are only re-admitted after rule law and respect for the constitution is re-established, for instance, in 2009, Madagascar was suspended from the AU after Andry Rajoelina ascended to power through an unconstitutional means.

5.3.6. The Association of South East Asia (ASEAN):

ASEAN was created on the 8th of August 1967, during a meeting of South East Asian countries in Bangkok, the capital of Thailand. The founding member nations of ASEAN are: the host nation Thailand, Indonesia, Malaysia, the Philippines and Singapore. ASEAN founding member nations made a declaration in Bangkok stating that the association represents the collective will of the nations to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, to secure for their people and for posterity the blessings of peace, freedom and prosperity (Kufuor, 2006).

The aim of ASEAN was to create a fully functional economic community among its ten member nations. From its inception, economic growth in the region's territory was at the forefront of its main objectives. Presently, ASEAN is made up of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, and the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam.

During the very first ASEAN summit in 1976, in Bali, Indonesia, member nations accepted and signed a Treaty of Amity and Cooperation (TAC). The aim of the TAC treaty was to enshrine amongst its member nations the principle of non-interference by other member states in the domestic affairs of member nations. However, the TAC treaty has also been signed by five non-member nations of the

organisation. China, India, Japan, Russia and South Korea, are all signatories to the TAC treaty, making the treaty effectively opened to other non-members of the organisation.

However, in 1994, ASEAN member nations created an important regional security forum known as the ASEAN Regional Forum (ARF) that attracted the interest of other non-ASEAN member nations, such the USA and North Korean, up to 23 nations are members of this forum. The aim of this forum was to foster long-term security, prevention conflicts among member nations and the resolution of conflicts via diplomacy and any available peaceful instruments. Furthermore, in 1995 ASEAN member nations also signed the Southeast Asia Nuclear Weapon-Free Zone Treaty, a very important treaty for the enhancement of regional security and stability (Kufuor, 2006).

ASEAN is moving towards EU integration style or ideology by harmonising its economic policies, scrapping tariffs within its territory, liberalising trade and the free movement of factors of production – Labour and Capital. ASEAN is also pursuing and negotiating a possible FTA with Japan, China and India. Many have suggested that a successful FTA between China and ASEAN would create the largest free trade zone the world has ever seen. Nonetheless, in 2005, ASEAN organised its very first ever East Asian Summit (EAS), as from 2005, it was agreed by members that the summit would be held on a biennial basis.

The EAS is made up of all member nations of ASEAN, including also Australia, Japan, New Zealand, South Korea China and India. Some commentators believe that one of the main aims of this forum is to create a consolidated trade bloc, which could be a rival to the USA and the EU. A landmark charter that was created by ASEAN member nations in November 2007 was finally ratified and

signed by all ten members of ASEAN in 2008, constituting a major progress in regional economic integration amongst ASEAN member nations. This charter turned ASEAN into a rules-based legal entity, with commitment for the promotion of democratic ideals and the protection of human rights amongst member nations, and the prevention of human rights abuses within its territory.

5.4. Multilateral Surveillance and Monitoring of RTAs:

By the 1st of January 1995, 60 new RTAs were already notified to the WTO and most were also enforced. But no examination had been completed on any of them and no examination reports were adopted or published for any of them. However, by the end of the year 1998, there were 62 RTAs at the CRTA awaiting examination (Crawford and Laird, 2001).

Multilateral monitoring and surveillance of RTAs under the CRTA process requires that members should agree to a report on the examination of notified RTAs as mandated by WTO rules. Principally, the examination process should be on the consistency and compatibility of the RTA to the MTS, taking into consideration any exceptions to WTO provisions invoked by its members during negotiations (Crawford and Laird, 2001). This is to say; there is also the requirement of conformity examination of RTAs to the WTO provision by which they are formed. Finally, the examination report is then supposed to be transmitted to the relevant WTO body. Apparently, it seems it does not really work this way (Crawford and Laird, 2001).

- **Article XXIV of the GATT 1994:** Subsection, 7a.: This provision elaborates the implicit requirement for consistency assessment of RTAs and thereby leads to mandatory examination of RTAs at the CRTA.

- **Enabling Clause:** Subsection, 4a and 4b gives rise to RTAs by involving only developing countries. Here there are possibilities for consultations with the WTO's CRTA, but in principles there is no requirement for examination of such RTAs at the CRTA.
- **GATS Article V:** Subsection 7a, gives rise to RTAs on trade in services: This article stipulates there is explicit requirement for consistency assessment and possible examination of such RTAs at the CRTA

5.5. The Regulation of RTAs:

One of the major problems facing the GATT/WTO and the MTS is the lack of an effective multilateral regulatory mechanism for RTAs. The CRTA is proving to be an inadequate regulator of RTAs and this seems evident from the rapid proliferation of RTAs around the globe. Before the creation and establishment of the CRTA, the examination of RTAs to determine their compatibility to the MTS was carried out by 'individual working parties' under the auspices of the GATT treaty (Kufuor, 2006).

During the GATT days, newly formed RTAs were notified to the Council for Trade in Goods, known variously as the Goods Council. During this period, the Goods Council was the sole regulator of RTAs. The Council delegated the examination to determine the compatibility and suitability of RTAs to the MTS to individual working parties. In principles, after the examination of RTAs, these individual working parties were expected to report back their findings and recommendations to the CTG (Crawford and Laird, 2001).

The examination process was often incomplete because of some difficulties, and it was very almost impossible for representatives of member nations to agree on the interpretation of the provisions of GATT Article XXIV. And

one other major difficulty was that the amount of information disclosed by member nations purporting to conclude an RTA, was usually inadequate. This inadequate information made it almost impossible for the “Individual Working Party” to properly examine for notified RTAs, in accordance with WTO standards. As a result, there were no definite conclusion on the examination of any RTA during this period. The European Economic Community (EEC), which was one of the very first best known RTAs established in 1957 by the Treaty of Rome, has no adopted or published examination report as to its compatibility or incompatibility to the MTS. Furthermore, no conformity report exists, as to the conformity of the EEC to GATT Article XXIV.

The regulatory situation of RTAs has wholly been inadequate because of the lack of consensus on the rules governing RTAs and the lack of adequate information on the RTAs to be examined. The examination of RTAs by the ‘Working Parties’ continued for over 46 years. By 1995, 98 RTAs had been notified to the WTO and examined by the ‘Individual Working Parties’. On the matter of conformity to GATT Article XXIV, only one RTA was regarded to have conformed to the provisions of this article, that is the Czech-Slovak customs union (Crawford and Laird, 2001).

5.6. The Examination of RTAs:

One of the main functions of the CTRA under the auspices of the WTO is the examination of RTAs. As mentioned earlier, before the creation and establishment of the CRTA, there was some form of examination of RTAs carried out by Contracting-parties of the GATT treaty. The CRTA was established in 1996 as earlier mentioned for the examination of RTAs to test their conformity, suitability and compatibility to multilateral trade agreement of the WTO or the MTS. But

generally, the CRTA only examines RTAs falling under GATT Article XXIV, and in addition, RTAs falling under GATS Article V. In fact, before 2010 the CRTA had under examination more than 100 agreements (Crawford and Laird, 2001).

The examination of RTAs at the CRTA serves two purposes: it ensures the transparency of RTAs and allows Members to evaluate an agreement's consistency with WTO rules. The examination is conducted based on information provided by the parties to the RTA, through written replies to written questions posed by WTO Members or through oral replies to questions posed at CRTA meetings. Once the factual examination is concluded, the Secretariat drafts the examination report. Thereafter, consultations are conducted and once the report is agreed by the CRTA, it is submitted to the relevant superior body for adoption (Crawford and Laird, 2001).

It is worth noting that the Committee had 62 RTAs before it for examination at the end of 1998, but it was not able to complete any of them. As a result, no report has been adopted. The main reason the CRTA was not able to fulfil its mandate for the examinations of these RTAs was due to the lack of consensus on interpretation of the so-called systemic issues originating in GATT 1994, Article XXIV (Crawford and Laird, 2001).

The intention of the GATT/WTO General Council's decision to establish the CRTA in 1996 had two main objectives – the gathering of information on and their examination at the CRTA. However, one of the primary requirements of CRTA from the General Council of GATT/WTO after its establishment in 1996 was that the Committee would report annually to the General Council of the WTO on all its activities (Crawford and Laird, 2001).

Furthermore, the second main objective was to establish a Committee on Regional Trade Agreements (CRTA), which would be open to all Members of the WTO, with the following terms of reference: The First term of reference was to carry out the examination of agreements in accordance with the procedures and terms of reference adopted by the CTG, the CTS and thereafter present its report to the relevant body for appropriate action. The Committee would also carry out the outstanding work of the working parties already established by the CTG, the CTS or the Committee on Trade and Development (CTD), within the terms of reference defined for those working parties, and report to the appropriate bodies.

The Second being to consider how the required reporting on the operation of such agreements should be carried out and make appropriate recommendations to the relevant body. The third was to develop, as appropriate, procedures to facilitate and improve the examination process. The Fourth was to consider the systemic implications of such agreements and regional initiatives for the multilateral trading system and the relationship between them, and make appropriate recommendations to the General Council. And the fifth and last was to carry out any additional functions assigned to it by the General Council.

As a matter of fact, the CRTA's terms of reference are found in WTO document, number: WT/L/127. This document reads as follows: Having regard to agreements which are required to be notified, under Article XXIV of the General Agreement on Tariffs and Trade (GATT) 1994, Article V of the General Agreement on Trade in Services or the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; Having regard to the biennial reporting envisaged in Paragraph 11 of the Uruguay Round. Understanding on the Interpretation of Article XXIV of the GATT 1994 and Acting

pursuant to paragraphs 1 and 7 of Article IV of the Agreement Establishing the World Trade Organization (WTO).

The term 'agreements' in this Decision refers to all bilateral, regional and multilateral trade agreements of a preferential nature. The CRTA was established and empowered by two relevant decisions namely: The General Council's Decision and the Transparency Mechanism on RTAs. A study of the transparency mechanism on RTAs reveals the background details of the WTO's intentions for the creation and establishment of the CRTA – Thus transparency in the CRTA process for RTAs is very essential.

5.6.1. The Process of RTAs Examination:

The CRTA's examination process for RTAs is divided into two principal duties (The WTO's decision of 6 February 1996, in relation to the CRTA is found on the WTO website and could be seen in the Document number: WT/L/127 of the 7th of February 1996 (Crawford and Laird, 2001). They are as follows:

- To examine individual RTAs;
- And to consider the systemic implications of RTAs for the MTS and the relationship between them.

This simply means that in examining RTAs, the CRTA studies the information submitted by member nations involved in RTAs to determine the compatibility and suitability of RTAs to the MTS. The CRTA's work should go further to check if the RTAs under examination complied with WTO rules or provisions through which RTAs are formed (Armstrong and Taylor, 1993). However, the work of the CRTA has been plagued and hindered by procedural issues. Some procedural issues at CRTA could be because of loopholes in GATT/WTO rules through which RTAs are formed and established (Crawford and Laird, 2001).

In addition, some WTO trade representatives at the CRTA, generally believe that the WTO and even the CRTA need to be reformed before the CRTA could properly perform the duties for which it was created. The WTO needs to be reformed, and reforms should also take place at the CRTA. The reason is that the procedure put in place when the CRTA was created seems inadequate and out-dated in relation to the ever-evolving nature of RTAs (Crawford and Laird, 2001).

Although some adjustments to this procedure has since been made, like the Transparency mechanism for RTAs, they still fall short of what is expect for the CRTA to do an adequate work of the examination of the compatibility and suitability of RTAs to the MTS. The term “Transparency Mechanism” could be very confusing in terms of its usage in relation to the CRTA. It could have been made clearer and explicit, making things much more straight forward when a RTA has been formed, when must notification take place, exact information to be provided at notification. This simple and clear description of the process could provide the much-needed transparency regarding the work of the CRTA and save time, thereby minimising procedural defects.

Notwithstanding, there also seems to be a lack of clear procedures as to exactly what is to be done when RTAs have been formed, the clear step by step approach or procedure that could have given WTO members of RTAs the ability to act in an authoritative manner once a RTA have been formed. This lack of clear transparency, tends to delay or confuse things, making the work of the CRTA even harder to effectively examine RTAs as it should (Bhagwati and Panagariya, 2003).

Furthermore, present day RTAs seems to have vast coverage and scope, because RTAs are now very open ended in terms of sectorial coverage. Since some RTAs nowadays do not cover only goods; the coverage extends to almost every

aspect of trade in any form, from goods to services, antidumping, dispute settlement, safeguard mechanisms and even development. Because of this, the CRTA in its present state does not have sufficient scope to cover all these aspects in the present life of today's RTAs (Bhagwati and Panagariya, 2003).

In the GATT days, RTAs were simple bilateral trade agreements, but now they have changed drastically, involving so many nations and admitting new members as time goes by. With such expansion, some RTAs today are not confined to a specific region instead they cover two or more continents. As a result, the work of the CRTA seem irrelevant in its examination of the compatibility and suitability of such RTAs. Since, the procedures and mechanisms in place are just not adequate for its role.

According to WTO rules RTAs referred to the CRTA for compatibility and suitability examination to the MTS are only RTAs notified to the WTO under Article XXIV of GATT 1947. The WTO is not obliged to refer RTAs notified under GATS Article V to the CRTA, since such RTAs are regulated by the Council for trade in Services. This is very confusing, in terms of clarity as the specific RTAs the CRTA is supposed to examine, because some newly RTAs created RTAs do not actually limit themselves to either goods, or services. As a result, there is a degree of uncertainty as to where certain RTAs should be examined, since it is not within the mandate of the CRTA to examine all or such RTAs. The burden to clear this apparent state of confusion is on the WTO to make certain vital decisions on RTA examination, once the formation of any RTA is notified by member nations (Bhagwati and Panagariya, 2003).

Furthermore, in the present situation, when any RTA is established the WTO decides or determine whether such a RTA needs examination at the CRTA,

or to be handled by the Council for Trade in Services or analysed at the Committee on Trade and Development. However, regarding the analysis of RTAs at the Committee on Trade and Development, in practice, RTAs formed under the Enabling Clause rules of the GATT/WTO by developing countries are not referred to the CRTA for examination. And such RTAs are even exempt from critical and in-depth analysis at the CTD under the present WTO rules. As a result, the application of the CRTA procedure on any RTA is very uncertain. And the probability of a comprehensive examination of all RTAs at the CRTA for compatibility and suitability to the MTS is almost impossible, due to very unclear rules and procedures. The problem is that the powers of the CRTA are very limited, since the CRTA is not mandated for the surveillance and monitoring of all types of RTAs. And the decision on what RTAs to examine is not within the powers of the CRTA (Crawford and Laird, 2001).

One of the other major confusions on the WTO-CRTA process is the notification of RTA by member countries. The fact is that the wordings of the timing of the notification period or procedure are very ambiguous, thereby leaving many countries with different interpretations. However, the choice of interpretation of the timing of notification depends very much on the need of member countries on when they feel comfortable to notify the RTA. Notwithstanding, GATT Article XXXIV,7a, establishes the requirement of notification for RTAs by member states. The rule seems very vague because it states that: any WTO members deciding to negotiate and enter into-force an RTA, shall promptly notify the WTO of their intention. The word promptly here is not clearly defined as to the exact time scale that the notification would seem correct, legal and in line with WTO requirement (Crawford and Laird, 2001).

The wording “PROMPTLY” is open to varying interpretations. Many have argued that promptly here simply means as soon as possible before the RTA is entered into force by the member states. Normally, if one is to consider the position of the CRTA, as to the entry into force of an RTA, the CRTA is supposed to examine RTAs before they could be operational. But this is not the case because most RTAs are already in operation or in force before they are even notified to the WTO (Bhagwati and Panagariya, 2003).

Nonetheless, some policymakers have argued that due to certain political ramifications and legal complexities many RTAs cannot be notified to the WTO before entering into-force or before enactment. This makes the examination of such RTAs at the CRTA futile, because the RTA is already in operation before being examined by the CRTA, to ascertain whether it is compatible to the MTS or if, it even conforms to WTO rules by which RTAs are supposed to be formed. The fact is that the ideal situation would have been for a specific notification period to be decided by the WTO and made very clear to all members and a decision on a strict and exact notification time frame, stating that no RTA could be considered concluded or entered into force before the completion of examination report by the CRTA, so that member states could make adjustments from the recommendations of the CRTA before the RTA could be legally entered into force (Crawford and Laird, 2001).

Although, it is a necessity for WTO members to notify the WTO as to their intentions before an RTA is formed and certain information concerning the formation the RTA is supposed to be submitted to the WTO, for the RTA to be examined by the CRTA. This is not often the case, the information usually submitted by member nations to an RTA, at the early stages of the RTA, when

notification is required by the WTO, does not usually meet the protocol for the examination of these RTAs at the CRTA. Generally, the information submitted is often rather insufficient or too little for the CRTA to appropriately examine the RTAs involved. This insufficient information or the lack of it, very much hampers or tends to limit the work of the CRTA, with regards to the RTAs to be examined (Crawford and Laird, 2001).

In respect to the Understanding of GATT 1994, Article XXIV on the conformity of CUs to the MTS, it was clarified that the examination of CUs at the CRTA should be centred upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics from a previous representative period to be supplied by the CU, on a tariff-line basis, broken down on country of origin. The implication of this provision is that WTO members are supposed to furnish the WTO/CRTA with substantial information regarding the RTA they are intending to form (Crawford and Laird, 2001). However, the exact information required by this provision is not very clear, because the term substantial information could nonetheless include a comprehensive statistical trade data of the territory and this type of data is probably very difficult to assemble at the early stage of the RTA (Crawford and Laird, 2001).

However, even if such data could be readily assembled, it would not be a true reflection of the actual situation prevailing within the territory, since the RTA is still very new. The impact of the RTA would be felt after a passage of reasonable time, maybe after a year of the RTA being enforced. So, the requirement of the provision stating the supply of import statistics for a previous representative period is vague and could be misleading. The work of the CRTA seems almost

impossible to fulfil because of the difficulties in the submission of appropriate statistical data within a reasonable timeframe. However, the submission of this data is not only for the CRTA to complete its work on factual examination of an RTA, but it is also to enable the CRTA submit a comprehensive factual report about such RTAs to the WTO members, to prove that such RTAs conform to WTO rules and compatible to the MTS (Crawford and Laird, 2001).

5.6.2. The Procedure for RTAs Examination:

The process of the examination of RTAs at the CRTA follows specific orderly steps. The first requirement from member states to an RTAS is – The notification by the parties to an RTA, plus submission of relevant related documentation to the WTO. Furthermore, the second expectation from the parties to an RTA is – The submission of background information on the RTA, either by the parties in a Standard Format or by the Secretariat in the form of ‘Factual Presentation’. The third and last step is - The Factual Examination of the RTA by WTO members, at the CRTA. The procedure for this final step is that it is done in three stages, following specific detailed process procedure:

- Firstly, there is the presentation of oral policy statements
- Followed by oral comments, questions and replies
- Then there are written exchanges of comments and questions and replies by delegates or representatives of WTO member nations.

The examination of an agreement in the CRTA serves two purposes: it ensures the transparency of RTAs and allows members nations of the WTO to evaluate an agreement's consistency with WTO rules. The examination is conducted based on information provided by the parties to the RTA, through written replies to written questions posed by WTO Members or through oral replies to questions posed at

CRTA meetings. Once the factual examination is concluded, the Secretariat drafts the examination report (Crawford and Laird, 2001). Thereafter, consultations are conducted and once the report is agreed by the CRTA, it is submitted to the relevant superior body for adoption.

5.7. Difficulties in the Examination of RTAs:

Between 1996 and 2010, the examination reports of many of the RTAs in operation have not been adopted or published, because of this very reason the compatibility of some of these RTAs to the MTS and their conformity to WTO rules is very uncertain, doubtful and debatable. Until a conclusive report on the examination of all RTAs examined under the CRTA process are adopted and published, one cannot truly estimate the exact impact on the MTS by any of the RTAs in operation today (Crawford and Laird, 2001).

One of the major problems affecting dispute settlement in cases related to RTAs has been the non-adaptation and publication of examination reports of RTAs. This has led to acute confusion in the interpretation of basic dispute settlement rules and on the implementation of solutions. The most fundamental problem here lies on the responsibility of the burden of proof on the issue of compatibility of RTAs to the MTS and the conformity of RTAS to WTO rules in the event of disputes between WTO members and member of an RTA. The popular argument has always been that the burden of proof lies with the RTA members to prove that their agreement is in conformity with WTO rules by which RTAs are formed or that the RTA is compatible to the MTS (Bhagwati and Panagariya, 2003).

However, others have also argued that the legal position in international law puts the burden of proof on the third party to an RTA to clarify that an RTA is in breach of WTO provisions by which RTAs are supposed to be formed or that the

RTA in operation does not conform to GATT Article XXIV. The legal argument here is that since no WTO member would intentionally want to establish a RTA that is in direct breach of WTO rules, the burden of proof should lie with any third party affected by the formation of an RTA to prove the contrary (Bhagwati and Panagariya, 2003).

5.7.1. Difficulties in the CRTA Process for RTAs:

Since, the CRTA seems to have been unsuccessful in its primary responsibility, which is the examination of the various RTAs in operation, it probably needs to be reformed. In fact, the CRTA seems to have failed in its duty to assess their suitability and compatibility of RTAs to the MTS. Although the CRTA seems to also have been unable to ascertain the conformity of RTAs to WTO rules, it has enjoyed some reasonable success in terms of informing the WTO on the systemic issues relating to RTAs (Crawford and Laird, 2001). Information gathered by the CRTA on the many RTAs in existence has helped the WTO in its quest to find ways and means to check the rapid proliferation of RTAs. And the CRTA has also helped the WTO in its desire to seek means to make RTAs more beneficial to the establishment of an effective MTS.

After the examination of any RTA, one of the main duties of the CRTA is to recommend ways and means that the RTA it has just examined could become more compatible to the MTS. The other alternative is to recommend ways and means on how the said RTA could best fulfil the necessary requirements of Article XXIV of the GATT treaty. In my opinion, the CRTA has reasonably failed in the exercise of this very important duty (Crawford and Laird, 2001).

However, the point of contention is that, when the CRTA was created it was thought that it would help solve the compatibility problem of RTAs in relation to

the MTS. And in addition, indirectly help to solve the issue of RTAs' conformity to WTO rules. It might have been assumed that these regulatory measures could have helped reduced the global proliferation of RTAs. If the regulatory measures were effective, it could have helped to contain the negative impact exerted on the MTS through the existence of multiple incompatible and unsuitable RTAs (Bhagwati and Panagariya, 2003). However, this has not been the case, because different issues have affected the CRTA's work in relation to the examination of RTAs and some of these issues are fundamental in nature and others include problems arising from RTAs formed by DCs under the Enabling Clause rules, which are normally exempted from the CRTA process (Bhagwati and Panagariya, 2003).

The lack of adequate and sufficient information on RTAs involving developing countries has helped to create additional headaches for the WTO in relation to the establishment of an effective MTS. It would have been much better for all existing RTAs to be subjected to equal treatment at the CRTA. In fact, the examination process at the CRTA should have focused more on the transparency of RTAs. With this procedure in place DCs could also benefit from the CRTA's recommendations on the RTAs they form. By examining all RTAs at the CRTA, there could have been enormous progress in the formation of new RTAs, from recommendations from the CRTA the CRTA process. In this light, the WTO could have been able to collect appropriate feedbacks on all RTAs, from the information gathered by the CRTA (Mathis, 2002).

Furthermore, one of the other most profound difficulties experienced at the CRTA is on the issue of late notification and insufficient submission of information regarding the RTA being negotiated. This research strongly suggests that the situation at the CRTA could dramatically improve, if there is sufficient

motivation for WTO members to strictly comply with the requirements of GATT Article XXIV, 7a, because of some deep difficulties experienced by the CRTA (Mathis, 2002)

In addition, Mathis (2002) suggested that the CRTA's examination procedure should be divided into different linking sets of stages to minimise difficulties faced by the CRTA's. In addition, Mathis (2002) also suggested that the CRTA process for the examination of RTAs should be divided into different separate stages and that this division would greatly improve the work of the CRTA. In fact, Mathis (2002) suggestions depend very much on the setting that each stage of the CRTA's examination process should be very independent of one another.

Furthermore, Mathis (2002) recommended that through the passing of one stage, the next stage would then be ushered in. For example, in any circumstances, RTAs seeking the approval of the CRTA should first comply with stage one of the CRTA's process before moving into the next stage of the process, which is stage two. Furthermore Mathis (2002) suggested that, in a situation where an RTA is not able to comply with stage one of the CRTA's examination process, there would be no reason whatsoever for the process to continue. Clearly speaking, he meant that failure to comply with stage one of the CRTA process by any RTA; this should simply be the end of the CRTA process for that RTA.

The process of disclosure of information to the WTO by RTA members should be the very first stage in the CRTA's examination procedure. This simply means that disclosure of information to the WTO should constitute stage one (Mathis, 2002). And this stage should first be completed satisfactorily before any factual examination by the CRTA is carried out. In this regard, once members to an RTA are unable to fulfil this specific obligation at stage one, the CRTA process

should end immediately. Mathis (2002) further suggested that this could be considered as tangible proof that the RTA has failed to comply with WTO rules. As a result, the RTA in question must cease to exist, as a legal agreement. The reasoning behind his proposal is that this RTA has not been able to comply with GATT/WTO requirements. If this procedure were to be implemented, it would convey a clear message to all WTO members that GATT/WTO rules must be strictly adhered to.

Mathis (2002) also suggested that if the already mentioned reforms become the order of the day for all RTAs in existence, it would be very effective towards the adherence to the provisions Article XXIV, 7a, of the GATT. Arguing that this could help to strengthen the probability of members of an RTA receiving positive recommendations from the CRTA before the RTA is put into force.

Nonetheless, it is still very possible that even if the proposal put forward by Mathis (2002) previously analysed is implemented by the CRTA, very little will change. Because there is a very high probability that some WTO members would continue to use the apparent ambiguity contained in the interpretation of WTO rules, in their desire to establish RTAs. This is very plausible, because the general desire of these nations is to use loopholes found in WTO rules in their quest to achieve their individual goals. Indeed, the CRTA in its present state seems rather more like a political forum for member states of the WTO than a mechanism for the surveillance and monitoring of RTAs (Bhagwati and Panagariya, 2003). Apparently, it seems a monumental task to effectively reform the CRTA to meet its obligations and mandate under the auspices of the WTO. This is partly because before any reform could be possible, there must be consensus by all member states of the WTO. This has always been the case within the WTO system.

Consensus must be reached, for the application of any decision to reform or make changes to anything is applicable (Crawford and Laird, 2001).

In principle, a strict application of the interpretation of WTO rules and adherence to the provisions of Article XXIV,7a, of the GATT 1994 treaty is needed, for the work of the CRTA on RTAs to be relevant and respected to the letter, by WTO member states. If this cannot be attained the CRTA would continue to be inapt in its duties, obligations and mandate to the WTO and its member states. Because of this inability for the CRTA to properly perform its duties, any reform of the CRTA process would be beneficial, no matter how small.

However, if the suggested proposal of Mathis (2002) and a clarification on the strict and unique interpretation of GATT Article XXIV,7a is accepted by member states of the WTO, this could be the solution to the difficulties faced by the CRTA process. If Mathis (2002) suggested proposal is achieved, it could help to check the proliferation of RTAs, which are not in compliance to WTO rules and also prevent the coming into force of so many RTAs that are not also compatible to the MTS. Due to lots of minor problems and some major problems, such as the ambiguity in the interpretation of Article XXIV,7a, of the GATT treaty, WTO members apparently have not been unable to reach a clear consensus on the unique interpretation of this Article (Crawford and Laird, 2001).

Legally, the wordings of GATT Article XXIV seems ambiguous, since it creates varying interpretations by WTO members, as need arises. These legal loopholes or ambiguity has been one of the main problems at the CRTA in relation to the formation of nonconforming RTAs (Bhagwati and Panagariya, 2003).

Nonetheless, if needed reforms are implemented it could lead to a change or rewording or even a specific interpretation of the provisions of GATT Article XXIV,

that could state that no RTA should be entered into-force if it does not comply fully with all WTO rules (Mathis, 2002). In fact, this could be a great step forward. And if this situation becomes the norm, the trouble of dealing with RTAs that come into force without the authorisation of the WTO through the examination process at the CRTA could become a thing of the past (Mathis, 2002). Through such reform, the CRTA could be well able to execute its mandate with renewed vigour, authority and legitimacy. As a matter of fact, this has not been the case with the role of the CRTA between 1996 and 2010.

Furthermore, the unreasonable delays and bureaucracy that sometimes seem to plague the WTO and even the CRTA are both political and institutional (Mathis, 2002). If the CRTA process could be reformed, the WTO should insert a limited time frame between notification and the delivery of CRTA's recommendations to member states intending to establish an RTA; to minimise any unnecessary negative impact on the work of the CRTA, which could in turn impact negatively on trade and trading matters of member states (Bhagwati and Panagariya, 2003).

WTO members could then use this time frame to assess and implement the CRTA's recommendations (if any) before RTAs are entered into-force. If the role of the CRTA in its delivery of recommendations on RTAs were prompt, without delays and without unnecessary bureaucracy, WTO members would view the CRTA process as effective and relevant. By so doing, adherence to the CRTA process might be supported and respected by all and sundry (Mathis, 2002).

As mentioned earlier, the CRTA seemed even more powerless in relation to insufficient information submitted on RTAs to be formed by WTO members. The situation of insufficient submission of information by members to an RTA has

been one of the practical hindrances to the CRTA's work. The CRTA could not be expected to finish its work on any RTA without the needed or necessary information to do its investigative work: Firstly, on the examination of the compatibility of RTAs to the MTS. And secondly, on the conformity of RTAs to WTO rules. All these areas need to be reformed to give the CRTA the needed help necessary for it to be able to do its work properly in relation to the examination of RTAs.

However, with RTAs formed under the provisions of GATS Article V, the problem of insufficient information was carefully eliminated, because the wordings of the provisions of GATS Article V made it very clear that the Council for Trade in Services (CTS) can request additional information from members of an RTA, if need arises. But this is not the case with the wordings of GATT Article XXIV. The wordings of GATT Article XXIV could be amended, since, the withholding of vital information concerning the formation of RTAs has led to difficulties in the examination process at the CRTA, in relation to RTAs formed under GATT Article XXIV.

In addition, as per the wording of GATS Article V,7a, there is the requirement by member nations to submit to the CTS all requested relevant information concerning the RTA being formed - and this is a must. GATS Article V: 7a states that members which are parties to an RTA shall also make available to the Council of Trade in Services (CTS) such relevant information as may be requested by it. Furthermore, the Enabling Clause provision contained in Paragraph 4a also states that WTO members intending to introduce an arrangement shall furnish the WTO with all the information it may deem appropriate relating to such action. There seems to be a clear authorisation of

legitimate authority given to the CTS to decide on the level of information it deems necessary. Therefore, the CTS could request the submission of such information from WTO members seeking to form RTAs. Nonetheless, this has not been the case at the CRTA (Mathis, 2002).

The CRTA's position in relation to the GATT treaty as per the submission of information concerning RTAs being formed can be interpreted as follows: Although it enables the WTO through the CRTA to make certain reports, there are practically no legal powers given to the CRTA to request further information relating to RTAs from Contracting Parties. However, if the information submitted by WTO members to the CRTA is deemed insufficient – the provisions of GATT Article XXIV in its present state renders the CRTA powerless as compared to the CTS in relation to GATS Article V (Mathis, 2002).

In this light, the mandate of CRTA should be changed to give powers and authority required to perform its duties. Reforms in this direction could help the CRTA in performing its role appropriately. However, this would certainly do very little in real terms in relation to RTAs examination backlog already existing at the CRTA. Since reforms are made to take care of the future not the past. Furthermore, in terms of the formation of RTAs between WTO members and non-members the CRTA is even more powerless. This is an area the WTO needs to take full charge of by reforming mandate of the CRTA.

Finally, if the WTO is to monitor all existing RTAs, in its effort to establish free trade through a carefully crafted MTS, the CRTA would need to be reformed to ensure it is fit for purpose - effective and relevant (Mathis, 2002).

5.7.2. Inability of the CRTA to Perform Its Duties:

It seems the CRTA has proven to be inept to fulfil its mandate, because the examination process of RTAs at the CRTA has been wholly ineffective. Clearly, the examination process of RTAs at the CRTA has been incomplete and inadequate, because of so many reasons mentioned earlier in various sections of this work. This inadequacy of the CRTA to complete the examination of the various RTAs in operation was one of the main difficulties that plagued the 'Individual Working Parties' during the GATT days.

Although it was the desire for WTO members to oversee the examination of RTAs and the publication of examination reports, which led to the establishment of the CRTA and the disbanding of the Working Party model, however, the CRTA also has failed in the execution of these two functions. Because the CRTA has also been plagued by similar difficulties, which also troubled the Contracting Parties of the GATT.

Crawford and Laird (2001) suggested that the CRTA has been unable to come to a decisive conclusion in its examination of many of the RTAs in existence today. This has led to incomplete examination of RTAs and the non-finalisation of many examination reports of most of the RTAs in existence in our world today. Because of incomplete examination reports of many RTAs, there has been no publication of final examination reports (Crawford and Laird, 2001). Since, there are no final examination reports on these RTAs, there can be no adoption of these reports (examination reports) by the WTO or the CRTA. This has been the position of the CRTA, since its establishment in 1996 up to 2010 (Crawford and Laird, 2001).

Furthermore, the CRTA has also been unable to suggest recommendations to the various RTAs it has attempted to examine. This has been partly due to the lack of decisive, conclusive and final examination reports of these RTAs at the CRTA (Crawford and Laird, 2001). In 2003, one of the published reports of the CRTA on its activities, the CRTA suggested that it had pursued its examination work on RTAs, but had been unable to finalise reports on any of the examinations before it.

In addition, the former Director General of the WTO, Mr Supachai Panitchpakdi, also made a damning indictment of the CRTA, by saying that the CRTA has been a 'moribund' committee. This was a clear acknowledge by a leading figure at the WTO that one of its committees is inept or irrelevant or that the committee is not progressing with its work, as it should; or whichever other way one chooses to see it.

Mr. Panitchpakdi, however, attempted to explain away his "moribund" comment about the CRTA, by alluding to the fact that the failures at CRTA has been partly because the CRTA had been unable to carry out a proper examination of RTAs, notified to the WTO. He suggested that this had occurred simply because WTO members forming an RTA have been unable to furnish the CRTA with full and factual-information on the RTAs, they are seeking to establish. He acknowledged that for the CRTA to effectively carry out its duties, WTO member nations seeking to form and establish RTAs must assist the CRTA in its examination process. He also suggested that the lack of proper and adequate information about the RTAs under examination had helped to hinder the work of the CRTA. This has effectively made the CRTA look moribund. Thereby placing the examination of RTAs by at the CRTA under the auspices of the WTO almost in the same position they were before the creation of the CRTA in 1996.

However, in a WTO annual report of 2001, the WTO made a very strange admission in relation to the examination of RTAs at the CRTA. In highlighting failures encountered by the CRTA in the examination process of RTAs, the WTO suggested in its report that the it does not have rules and procedures for examination of RTAs that function adequately (Crawford and Laird, 2001).

5.7.3. The Need to Reorganise the CRTA Examination Process:

If the CRTA process is reorganised, it might enable the CRTA to effectively fulfil the purpose for which it was created. To make the CRTA process more effective the WTO as an institution might also need to be reformed. In addition to the reorganisation of the examination process, there would be added benefits to WTO members if the process of multilateral surveillance and monitoring of RTAs at the CRTA were reorganised. The reason being that the current CRTA process for the examination of RTAs, aimed at assessing compatibility of RTAs to the MTS, and their conformity to WTO rules is completely inadequate (Crawford and Laird, 2001).

The apparent gross inadequacy of the examination process at the CRTA makes it almost impossible for WTO members to reach consensus to be able to make informed legal decisions on RTAs under examination (Mathis, 2002). Because of the inadequacies in the examination process at the CRTA, the WTO seem unable to carry out appropriate multilateral surveillance and monitoring of many of the RTAs in operation. It has now become a difficult task for the WTO to ensure that only RTAs that are suitable, which conform to WTO rules and are compatible to the MTS can continue to exist in our trading system (Mathis, 2002). To be able to correct these difficulties, defects or inability in the CRTA's examination process: Firstly, there must be procedural and institutional changes

within the WTO, which would in effect affect the way the examination process at the CRTA works. Secondly, the WTO needs to re-examine the CRTA process and eliminate aspects in its work that tends to hinder the effectiveness of the examination process for RTAs.

In fact, improvements in the CRTA's examination process could help to put in place adequate control mechanism for multilateral surveillance and monitoring of the various RTAs in operation and make the examination process worth-while. Thirdly, the wording of GATT Article XXIV needs to be clarified in terms of its legal ambiguity that has created so many loopholes in its interpretation. This could help reduce the abuse of WTO provisions, and help to limit the formation of RTAs that do not conform to WTO rule.

A careful study of GATT Article XXIV reveals that it prohibits any RTA from entering into-force without the express permission of the CRTA through its consistency report on conformity to WTO rules. One of the duties of the CRTA in relation to the examination of RTAs is to produce recommendations that would have legal consequences on the RTAs being formed by WTO members. RTAs formed respecting WTO rules, as per GATT Article XXIV, 7a & 7b, are only those that should be permitted to enter into force by the CRTA.

In addition, recommendations of compatibility and consistency reports from the CRTA states clearly that the RTA being formed would be incompatible to the MTS or does not conform to WTO rules, the question then would be, what happens next? Should member nations involved in the RTA continue to establish this RTA? The clear answer is of course, NO! Because if the CRTA is truly functional, with the right mandate and legal status, such RTAs should cease to exist immediately; or be amended to conform to WTO rules.

In relation to GATT 1994, Article XXIV,7b, if the CRTA finds an RTA wanting of the WTO rules, the RTA must be modified, if not it cannot enter into-force – Thus the RTA must cease to exist. GATT Article XXIV, 7b, states that the parties shall not maintain or put into force, as the case maybe, such agreements if they are not prepared to modify it in accordance with the CRTA's recommendations.

The emphasis on the legality to enter into-force of an RTA is part of the mandate of the CRTA, and this should have been through the CRTA's recommendations. Through the GATT treaty, the CRTA was given the authority to decide which RTAs are to be entered into-force or not. If all RTAs are subjected to an effective examination process at the CRTA, then the probability that inconsistent or incompatible RTA would be allowed to exist under the auspices of the WTO could be minimised (Mathis, 2002). And this could present a substantial benefit to the development of the MTS. Furthermore, this could also help multilateral trade negotiations at the WTO, by preventing the establishment of unregulated RTAs.

Even if an RTA has been formed invoking the exemption to form regional agreements found in GATT Article XXIV, 5, there is still no justification for such a RTA to enter into force just by notifying the WTO. The requirement of the GATT treaty states that the examination process at the CTRA and the CRTA's recommendation is necessary to assess the consistency and compatibility of any RTAs before it can enter into-force. But this has not been the case since 1996 to 2010. The matter is that RTAs should not have been allowed to enter into force immediately after notification to the WTO as the case seems to have been, without recommendations at the CRTA. Finally, the CRTA's recommendations should have been the only legal entitlement granting RTAs the power and legal status to enter-into

force. This control and regulation mechanism could have helped checked the proliferation of RTAs and given the needed impetus to the conclusion of multilateral trade negotiations and to the development of the MTS (Mathis, 2002).

With the passage of time the WTO regulatory process for RTAs has proven to be grossly inadequate. Even the clarification on the 1994 Understanding of GATT Article XXIV undertaken in the year 1997 has not been very productive because it did not prevent or check the proliferation of RTAs, and RTAs that could have caused lasting damage to the development and establishment of the MTS.

Finally, with all the difficulty involved in preventing the entering into-force of RTAs that could be detrimental to the MTS, it is now evident that there seemed to have been a lack of real foresight in the drafting of GATT Article XXIV. Because the wordings of GATT Article XXIV seemed to have created multiple legal loopholes and ambiguity in its interpretation that have led to incessant abuse of its provisions by WTO members in their quest to form RTAs. These and other situations created difficulties in the role of the CRTA.

5.8. Conclusion:

This chapter has explored the impact of the work of the CRTA on the formation of RTAs, the examination of RTAs at the CTRA, and multilateral surveillance and monitoring of RTAs using qualitative research methodology. It attempted to shine light on the impact of the role of the CRTA on the formation of RTAs in the face of multilateral trade negotiations.

In addition, the motivation and attractiveness for the formation and establishment of RTA both by developed and developing countries were explored and some of the major RTAs in existence in the world today were also looked at.

The findings of this chapter points to the fact that RTAs have now become a global phenomenon, attractive to both developed and developing countries, with no exception.

However, this research argues that with the present phenomenon of new regionalism RTAs, attractive to both developed and developing countries, the work of the CRTA did not seem to have had any significant impact on the formation and establishment of such RTAs between 1996 and 2010. Because the work of the CRTA did not seem to have affected the total number of RTAs formed or entered into force by member nations of the WTO, between 1996 and 2010.

CHAPTER 6

6.1. Introduction:

This chapter explores the research question: How does the coverage of RTAs affect the Role of the CRTA? It studies RTAs coverage, the difficulties posed by the meaning of the 'Substantially all the Trade' phrase and issues relating to WTO-plus provisions RTAs. Furthermore, it studies the complexities in the interpretation of the 'Substantially all the Trade' provision and its implication in the Turkey-textile and the Canada-Auto cases. In addition, it also looks at the need to amend the GATT treaty, reform the WTO and other major international multilateral organisations whose influences could affect world trade. Finally, it discusses whether RTAs are a trade creation or a trade diverting mechanism, explores the impact of RTAs on the economic development of member states and looks at the Doha Development Round.

6.2. RTAs Coverage:

It is very confusing when one uses the words RTAs without a comprehensive knowledge, since some RTAs cover a broad spectrum of trade in goods and services. The term RTAs seems simplistic if one is to describe it in very few words. However, the concept of what regional integration schemes really are and the broad verities they seem to represent is vast. It is very probable that no two RTAs are identical in nature, even if they are classified under the same heading, because all RTAs are formed and established through a treaty; and no two treaties are truly identical in nature and wordings. The very fact that all RTAs are formed and established through closed door negotiation calls to mind the incorporation of

specific regional interest, and the fact is that each region of the world differs in many ways, shape and form from each other.

In researching the role of the CRTA, it is important to look at the various types of RTAs classified under the broad heading of RTA that are negotiated, formed and established by WTO members all over the world and their different coverage. The various types of RTAs authorised by the GATT/WTO under GATT Article XXIV, 8, namely: Free Trade Areas (FTAs), Customs Unions (CUs) and any Interim Agreements leading to the formation of either FTAs or CUs. One of the most important requirements of FTAs and CUS is the elimination of substantially all tariffs and trade barriers between member states.

One aspect that clearly stands out in an FTA is that all member states are free to decide on their own trading terms with non-member nations, such as in matters relating to tariffs and other trade barriers. An example of an RTA that operates directly in line with FTAs classification is NAFTA, where member nations can establish their own individual tariffs and trade barriers with other nations who are not members of the organisation. In fact, the USA, Canada or Mexico could individually freely decide what tariffs or trade barriers could be applicable to other trading nations of the world they chose to trade with. Meaning individual nations are at liberty to decide trade terms and trading policy with the rest of the world, without any interference from other member states of NAFTA.

Basically, all CUs are FTAs, however, the main difference between CUs and FTAs is that with CUs there is a common external tariff applicable to all member states in relation to third parties. In practice CUs often requires significant harmonisation of trading policy amongst member states that could take a very long time to implement, sometimes this is part of the joining requirement. The fact

is that some present-day CUs first began as FTAs, before evolving into CUs through the harmonisation of trading policies, such as the implementation of common external tariff by all member states in relation to all third parties. One concrete example of an FTA that has transformed into a CU is the Andean Community.

6.3. Difficulties posed by the Meaning of ‘Substantially All the Trade’- (SAT):

There are systemic issues arising from the interpretation of the SAT phrase by WTO members to an RTA, as contained in Article XXIV: 8 of the GATT. The provisions of Article XXIV: 8 of the GATT states: “duties and other restrictive regulations of commerce are eliminated with respect to substantially all the trade between the constituent territories of the [RTA] or at least with respect to substantially all the trade...” (GATT Article XXIV: 8a (i) and 8b)

There is a general understanding that the wording of this phrase under GATT Article XXIV,8, were to ensure and secure a level playing field within the territories of an RTA. SAT refers to the reduction of tariffs and the elimination of other trade barriers, in terms of all goods and services, rather than the liberalisation of certain selected areas of trade. But because of the ambiguity of the phrase ‘Substantially all the Trade’ in GATT Article XXIV, 8, some WTO member nations have interpreted this phrase to mean a less significant amount of trade could be liberalised. Thereby, permitting the existence of certain regulatory restrictions and duties within the territories of an RTA.

Because of the non-clarification of the exact percentage of all the trade that is supposed to be liberalised in the territories the RTAs, as required by WTO provision through the SAT phrase contained in Article XXIV: 8 of the GATT, there has been varying interpretation as to the exact nature of compliance to be adhered to. This ambiguity in interpretation and the nature of compliance to the SAT has

been one of the major hindrances in the examination of RTAs at the CRTA. The CRTA has been unable to evaluate the exact application of the SAT phrase on RTAs.

In fact, the CRTA has not been able to reach consensus on what could be considered as SAT in its examination process. The existing disagreement on the exact interpretation of SAT at the CRTA has been huge, leading to some suggestions on ways to find a consensus in its interpretation. Since, the liberalization of trade is very fundamental when invoking the exemption to the MFN clause in the formation and establishment of RTAs. Some have suggested the utilization of a quantitative measure at the CRTA. While others have proposed that an exact percentage should be considered, accepted and implemented as the SAT phrase benchmark, which could be statistically verified by the CRTA.

These proposals contain the clarification that certain percentage of all trade should be liberalised by member nations to an RTA, for the RTA to comply with the requirement of contained in Article XXIV: 8 of the GATT. These proposals or new interpretations always create additional problems for the CRTA's examination process, since this could usher in a new set of regulations requiring WTO members to comply to certain amount of trade liberalisation in relation to new RTAs. And when the percentage of liberalisation are met, there would be no need for further liberalisation. This situation could put RTAs as clear obstacles to the development of the MTS. RTAs would then be clearly regarded by many as being unsuitable and incompatible to the MTS. RTAs conformity to WTO rules could also be clearly questioned, because the application of these interpretations in relation to Article XXIV: 8 of the GATT would be a clear breach of WTO rules in general, due to the fact that free trade cannot be achieved with indirect restrictions in place with the pretext of trade liberalisation. The agreed percentage

could henceforth be the acceptable level of trade liberalisation under the auspices of the WTO – one can truly see that SAT ambiguity is a real threat to the work of the CRTA.

Furthermore, the other proposals put forward by certain WTO member nations at the CRTA have been described as a qualitative measure as opposed to the already proposed quantitative measure. This qualitative proposal is intended to consider and accept SAT as the liberalisation of 95% of all the trade. This proposal seemed to be reasonable, in terms of coverage and trade liberalisation. This qualitative proposal as it seems went forward to state that RTAs do not exclude any sector of trade for liberalisation, and that 95% liberalisation of all the trade in this proposal means 95% liberalisation of all sectors of trade. Member nations of the WTO have been very wary of the phrase percentage, level or degree of liberalisation within the territories of an RTA, because some nations feel very strongly that a liberalisation process that goes just below what is required by the MFN clause and just above zero could be considered as sufficient liberalisation. In as much as there is substantial elimination of barriers to trade in all sectors of the economy. Considering there is no consensus on the bases by which this proposal is agreed upon, places a heavy burden on the CRTA.

Since, many nations who favoured the quantitative approach before also accepted the qualitative proposal, this means that both interpretations could be applied variously at will by WTO member in relation to the formation and establishment of RTAs. The opinion of this research on this matter is that the CRTA's examination mandate should be broadened to incorporate compliance to interpretations that have been debated and accepted at various instances. This could help in the promotion of the development of the MTS. Proposals such as

these quantitative and qualitative proposals to the interpretation of the SAT phrase, if implemented by the WTO could go a long way in improving the work of the CRTA. In fact, this could give the CRTA more power and authority in making legal and binding decision on RTAs entered into by member states of the WTO.

To tighten the CRTA's examination process for RTAs, the application of the provisions of Paragraphs 5 and 8 of Article XXIV of the GATT must be carefully reconsidered by the WTO. This could be done through the CRTA examination process by correlating the application of these two paragraphs. Since, it is through the assessment of the compatibility of RTAs with the provisions contained in Paragraphs 5 and 8 of Article XXIV of the GATT that RTAs could attain their legal status. The question at the CRTA has always been that which of these two Paragraphs should first be used to assess the compatibility of RTAs. And if an RTA under examination fails to meet the first assessment should the second assessment be carried out? The fact is that to save time and reduce the unnecessary bureaucracy and workload at the CRTA, the examination process based on the compatibility assessment of Paragraphs 5 and 8 of Article XXIV of the GATT must be simplified.

If this process is simplified, this could make the CRTA more effective in executing its mandate on the examination of RTAs and in its duty to assess RTAs' suitability and compatibility to the MTS. Paragraphs 5 and 8 of Article XXIV of the GATT are very closely related. This is partly because the provisions of Paragraphs 5 permit the formation of RTAs in the form of either FTAs, customs unions or Interim Agreements leading to the formation of any of the two. While the provisions of paragraph 8, grants exemptions to WTO rules. Simply by defining the nature of RTAs permitted by the WTO to be either FTAs, customs unions or

Interim Agreements leading to the formation of either of any of the two options. Indeed, to clearly enhance the work of the CRTA and simplify the examination process for RTAs, RTAs that are inconsistent with the provisions of Paragraph 8 need not be assessed with the provisions of Paragraph 5 of GATT Article XXIV. Inconsistency with Paragraph 8 of GATT Article XXIV signifies that the RTA does not comply with the SAT phrase, so it can't be put into force (Mathis, 2002).

The provisions of Paragraph 4 of GATT Article XXIV and its influence on Paragraph 5 and 8 should also be taken into consideration at the CRTA, in its examination process of RTAs. The provisions under Paragraph 4, intended that RTAs should not raise barriers to trade with third parties who are not members to the agreement. The main interpretation of Paragraph 4 is that it helps to give ample cover and safeguard to Paragraphs 5 and 8. Practically, the provisions of Paragraph 4 do not constitute a separate assessment for RTAs. In relation to the Turkey-Textiles case, the Appellate Body made the following statement in its ruling, it stated that: Paragraph 4 contains purposive, and not operative, language. It does not set forth a separate obligation by itself but, rather, it sets forth the overriding and pervasive purpose for Article XXIV which is manifested in operative language in the specific obligations that are found elsewhere in Article XXIV. This in fact could be interpreted to signify that Paragraph 4's provisions could help in re-enforcing the requirements under Paragraph 5 and 8, and that Paragraph 4 of GATT Article XXIV does not contain or purport a separate requirement. This means that the careful application of the requirements of Paragraph 5 and 8, in correlation with the safeguards contained in Paragraph 4, could help the CRTA in its examination process of RTAs. If the CRTA's examination process were to be tightened, through the application of the requirements

contained in paragraph 5 and 8, it would help to prevent the entry into force of unsuitable and incompatible RTAs (Appellate Body's Report on Turkey-Textile Case, 1999).

Based mainly on GATT Article XXIV, 8a, SAT, the Appellate Body's decision could be explored in these cases to gain insight into the interpretation of this phrase as applied by the Appellate Body's.

6.3.1. The Turkey-Textile Case:

In Turkey-Textiles the definition of the provisions of Article XXIV,8a, of the GATT, for a GATT consistent Customs Union was addressed by the Appellate Body. The Appellate Body suggested that Sub-paragraph 8a(i) of GATT Article XXIV establishes the standard for the internal trade between constituent members to satisfy the definition of a customs union. It requires the constituent members of a customs union to eliminate 'duties and other restrictive regulations of commerce' with respect to SAT between them. They also noted that neither GATT CONTRACTING PARTIES nor the WTO members have ever reached an agreement on the interpretation of the term 'substantially' in this provision (Appellate Body's Report on Turkey-Textile Case, 1999).

It is clear, though, that SAT is not the same as all the trade, and that SAT is something considerably more than merely some of the trade. They also noted that the terms of sub-paragraph 8a (i) provide that members of a customs union may maintain, where necessary, in their internal trade, certain restrictive regulations of commerce that are otherwise permitted under Articles XI through XV and under Article XX of the GATT 1994. However, they agree with the Panel that the terms of sub-paragraph 8a (i) offer some flexibility to the constituent members of a customs union when liberalising their internal trade in accordance with this

subparagraph. Yet they cautioned that the degree of flexibility that sub-paragraph 8a (i) allows should be limited by the requirement that duties and other restrictive regulations of commerce be eliminated with respect to substantially all internal trade (Appellate Body's Report on Turkey-Textile Case, 1999).

Applying the second step of the test set out in the explanation above, the Appellate Body in the Turkey-Textiles case examined whether the formation of an EC-Turkey customs union meeting the requirements of Article XXIV,8a (i) would have been prevented if Turkey were not permitted to impose the textile restrictions at issue. Turkey argued that without these restrictions, the European Communities would have excluded these products from free trade within the Turkey/EC customs union; since the goods at issue amounted to 40 per cent of Turkey's exports to the EC, Turkey expressed concern that in that event, the customs union might not cover SAT. However, the Appellate Body found that the restrictions were not necessary because there were alternatives available for this purpose (Appellate Body's Report on Turkey-Textile Case, 1999).

But as the Panel suggested, there were other alternatives available to Turkey and the European Communities to prevent any possible diversion of trade, while at the same time meeting the requirements of sub-paragraph 8a(i). For example, Turkey could adopt rules of origin for textile and clothing products that would allow the European Communities to distinguish between those textile and clothing products originating in Turkey, which would enjoy free access to the European Communities under the terms of the customs union, and those textile and clothing products originating in third countries, including India. A system of certificates of origin would have been a reasonable alternative until the quantitative restrictions applied by the European Communities, which are

required to be terminated under the provisions of the ATC. Yet no use was made of this possibility to avoid trade diversion. Turkey preferred instead to introduce the quantitative restrictions at issue. For this reason, we conclude that Turkey was not, in fact, required to apply the quantitative restrictions at issue in this appeal to form a customs union with the European Communities (Appellate Body's Report on Turkey-Textile Case, 1999).

6.3.2. The Canada-Autos Case:

In Canada-Autos case, Canada argued that under GATT Article XXIV, it was permitted to grant a selective import duty exemption in the automotive sector to products of its partners in the North American Free Trade Agreement (NAFTA). But in a finding not reviewed by the Appellate Body, the Panel rejected this defence. It found that the measure was not properly characterized as a RTA measure, because the exemption applied to products of non-parties to the NAFTA, and was denied to some products of NAFTA parties:

As a result, its ruling stated that their analysis of the impact of the conditions under which the import duty exemption is accorded, they found that those conditions entail a distinction between countries depending upon whether there are capital relationships of producers in those countries with eligible importers in Canada. Adding that the measure not only grants duty-free treatment in respect of products imported from the United States and Mexico by manufacturer-beneficiaries but it also grants duty-free treatment in respect of products imported from third countries not parties to a customs union or free-trade area with Canada. Observing that the notion that the import duty exemption involves the granting of duty-free treatment of imports from the United States and

Mexico does not capture the aspect of the measure (Appellate Body's Report on the Canada-Autos Case, 2000).

Finally, they stated that in their view, GATT Article XXIV clearly cannot justify a measure, which grants WTO-inconsistent duty-free treatment to products originating in third countries not parties to a customs union or free trade agreement. They further note that the import duty exemption does not provide for duty-free importation of all like products originating in the United States or Mexico and that whether such products benefit from the exemption depends upon whether they are imported by certain motor vehicle manufacturers in Canada who are eligible for the exemption (Appellate Body's Report on the Canada-Autos Case, 2000)

While in view of the specific foreign affiliation of these manufacturers, the exemption will mainly benefit products of the United States and Mexico; products of certain producers in these countries who have no relationship with such manufacturers are unlikely to benefit from the exemption. Thus, in practice the import duty exemption does not apply to some products that would be entitled to duty-free treatment if such treatment were dependent solely on the fact that the products originated in the United States or Mexico. However, the Appellate Body did not believe that the import duty exemption, which provides for duty-free treatment of imports of products of parties to a free-trade area is properly characterised as a measure (Appellate Body Report on the Canada-Autos Case, 2000).

6.4. Issues relating to 'WTO-Plus- Provisions' RTAs:

In relationship to regional integration schemes, the needs of DCs are very much quite different from those of developed economies. While DCs are very much

interested in the reduction of tariffs and other trade barriers, with the agricultural sector occupying a prominent position, however, for developed economies such as the USA and some Western European countries their interest goes beyond these perspectives and includes areas such as intellectual property rights, investment, labour, environmental needs and competition. RTAs that are negotiated which includes such areas of coverage are classified as RTAs having WTO-plus provisions coverage. This simply means these RTAs involve areas of coverage not covered by the WTO provisions by which RTAs are supposed to be formed. Meaning that the coverage of such RTAs goes beyond what is expected by the WTO under GATT Article XXIV.

Since, some of the RTAs being negotiated and entered into force today by developed economies who are members of the WTO includes the liberalisation of all sectors of the economy, they could be classified as WTO-plus provision RTAs. In addition, WTO-plus provisions could also be labelled on RTAs that are formed by WTO members with non-member nations. Politically, every nation can negotiate all sort of trade agreements with other nations whether WTO members or not. However, a tariff reduction trade agreement concluded between WTO members and non-members would be beyond the jurisdiction of the WTO, and such RTAs would be classified as 'WTO-Plus-Provision'

It is possible nowadays to identify two types of WTO-plus provisions RTAs following the rules under the provision of Article XXIV: 8 of the GATT 1947 treaty. The EU (Economic Union) and CARICOM (Common Market) are RTAs that could have probably gone beyond WTO provisions in their negotiations and areas of coverage. Apparently, most present day Common Markets and Economic Unions involve areas of coverage that goes beyond the requirement of the GATT Article

XXIV:8. However, an Economic Union goes far beyond a simple Common Market concept, since it incorporates the harmonisation of fiscal and monetary policies within the territory of the union. The nations involved in these types of RTAs involving fiscal and monetary policies harmonisation would not have evoked the provisions prescribed under GATT Article XXIV:8, because fiscal and monetary policies harmonisation process is indeed superfluous to WTO rules.

6.5. The Debate on RTAs – Trade Creation or Trade Diversion?

Interestingly, most debates on RTAs have been centred on the perceptions of RTAs by Jagdish Bhagwati and his army of supporters, such as Arvind Panagariya, on the question of whether RTAs are trade diversion mechanisms or not? The other part of this debate has been to identify if RTAs are stumbling blocks or building blocks of the MST?

The question and the answer now hinge very much on the relevance of the CRTA. However, if the answer is YES - it means RTAs are building blocks – that is all RTAs. If this were the case, the CRTA would be rather irrelevant, in the examination of RTAs; because it would mean RTAs could help in the process of achieving free trade; thereby being one of the means to accomplish one of the main objectives of the GATT/WTO – the achievement of multilateral trade liberalisation. But if RTAs are indeed ‘stumbling blocks’ to the MST, the position of the CRTA becomes very necessary, relevant and even compulsory to examine the various RTAs in operation or in existence and determine their compatibility to the MST. This was the initial feeling of the WTO when the CRTA was established I suppose – To examine the compatibility of RTAs to the MST and multilateral trade liberalisation (Bhagwati and Panagariya, 1996).

In 1950, Jacob Viner's wrote one of the most pioneering literatures on preferential trade agreements (PTAs), 'The Customs Unions Issue'. This pioneering treatise on PTAs opened the lid on the nature and difficulties of multilateral trade liberalisation through such agencies as RTAs. According to Arvind Panagariya, Viner's 1950 treatise on Customs Unions focuses principally on what he claims Bhagwati coined a 'static' welfare questions (Viner, 1950).

Bhagwati has been instrumental in coining most of the famous and fine phrases we are now conversant with. Most prominent among these phrases coined by Bhagwati includes 'spaghetti bowl' of PTAs and 'stumbling blocks' or 'building blocks' in terms of the position of RTAs in relation to the MST. When one looks at PTAs or RTAs and some of the difficulties faced in the process of multilateral trade liberalization, one always turns to think of Bhagwati's ideas, on the nature of these trade agreements (Bhagwati and Panagariya, 1996).

Viner attempted to answer the question about the desirability of RTAs posed by protectionists and some supporters of free trade. Viner developed an important distinction between trade creating and trade diverting PTAs. He argued that most RTAs would be trade creating if they allowed for the replacement of high cost domestic products with lower cost ones from a member nation or nations; the reverse would be trade diverting. Noting that RTAs that were trade creating could lead to enhancement in efficiency that would benefit member nations and the world at large and while those RTAs that seem to be trade diverting may lead to reduction in efficiency and welfare for all (Bhagwati and Panagariya, 1996).

In contrast, Baldwin (1995) laid emphases on incentive of outsiders to seek to become members of an RTA, asserting that monotonously this incentive could rise as the RTA expands to incorporate most, if not all the countries in the

region. In this case RTAs could turn out to be very attractive to non-members seeking to benefit from multiple trade incentives arising from them, instead of multilateral trade liberalisation.

Nonetheless, in his conclusion, Viner stated that when supporters of free trade and some policy-makers are vying for RTAs, they probably would have in their minds trade creating RTAs, while protectionists would always be aiming for trade diverting RTAs (Viner, 1950). However, Viner's analysis of trade creating and trade diverting RTAs seems very ambiguous because there are no clear criteria to assess or even determine if a specific RTA would be trade creating or trade diverting.

The ambiguity in Viner's analysis of trade creating or trade diverting RTAs led to further research and literature in this domain and direction by authors such as Krugman (1991), Wonnacott and Lutz (1989), Summers (1991) and many others searching for the modality to determine what are trade creating or trade diverting RTAs. This led to the assertion that RTAs concluded between already trading partners who are deemed natural trading partners and who are geographically proximate to one another; would lead inevitably to trade creation – thus trade creating RTAs (Baldwin, 1995).

But Bhagwati and Panagariya (1996) attempted to illustrate certain vital contradictions to this assertion or model. They pointed out that the term natural trading partners could vary if applied in a reverse manner. For instance, the fact that The USA could be a natural trading partner of India since India is seemed to be its biggest trading partner, this does not necessarily mean India is a natural trading partner of the USA. Taking the debate further they pointed out that even with some RTAs such as NFTA where member states are in closed proximity to

one another, member nations may not still be natural trading partners if the model is reversed. Stipulating that even if the USA maybe a natural trading partner of Canada, it could occur that both Canada and Mexico may not even be natural trading partner to one another.

It is now widely accepted that the natural trading partner assertion can no longer be acceptable as a reasonable justification for the creation of RTAs. Bhagwati and Panagariya (1996) properly elaborated and put some clarity to this assertion. It is very difficult however, to determine if a specific RTA would improve welfare or deteriorate it. However, Kemp and Wan (1976) and Panagariya and Krishna (2002) further clarified how trade diversion could be overturned in a CUs and FTAs by adjusting their internal tariff and setting appropriate general external tariff for member state by members of such RTAs.

When one looks at Cooper and Massell (1965) and Bhagwati (1968) one can see an independent alternative as per welfare enhancing RTAs the nature of CUs in terms of emerging and developing economies seeking to advance their industrialisation through regional specialisation and trade. In this situation, a CU is the best option. This has been clearly supported by the analysis contained in Krishna and Bhagwati (1997) on how developing countries wanting to achieve an exogenous level of industrialisation at a lower cost, could achieve this through the formation of a CU.

In addition, Bhagwati and Brecher (1979) and Brecher and Bhagwati (1981) attempted to show through various analyses how exogenous trading changes within small nations could very much make lots of unimaginable impacts on national welfare. Such impacts in national welfare through exogenous changes

in trading matters are clearly noticeable within EU member nations especially in smaller nations within the EU, as a Common Market with single external tariff.

Furthermore, a nagging question remains to be answered on the Issue of welfare improvement via exogenous changes in trading arrangements, since the welfare improvement or enhancement can only easily be noticeable in small or smaller nations within a Common Market with a single external tariff such as the EU. The question many would like to ask is: What are the welfare impacts on large or big countries such as Germany and France from these exogenous changes in trading arrangements. This has not been sufficiently demonstrated, since emphasis has always been on the welfare impacts on impoverished or small countries within the Common Market.

Although Bhagwati and his army of supporters lost the policy debate or battle as some would say, he won lots of credits on the intellectual aspect of this debate. We could see today that what Bhagwati was staunchly critical about became more apparently clear to all; proving that he had some rear insight into the subject matter.

Finally, as result of the proliferation of RTAs, the trade regime seems to be a 'spaghetti bowl' of PTAs crisscrossing each other. In fact, Bhagwati was right in this regard. Now, many trade scholars and policy-makers have come to agree that to address the problem of so many RTAs in the trading system, further multilateral liberalisation is needed. Most have ended up supporting Bhagwati's assertion of deep multilateral trade liberalisation. Even the trade diversion argument against RTAs which seemed obvious in the late 1980s, does not seem to have any credibility in the 21st Century because most newly negotiated RTAs tend to reverse the trade diversion element of previous RTAs. Nevertheless, many

scholars such as Bhagwati are still clamouring for a universal tariff free trading system or a complete multilateral liberalisation of global trade (Krishna, Pravin and Bhagwati, 1997).

6.5.1. The Impact of RTAs on Economic Development:

“Assuring that regional and multilateral trade arrangements grow together and not apart is the greatest challenge for trade policy-makers today” (Ruggerio, 1996, p1). Mr Renato Ruggiero was the Director-General of the WTO between 1995 and 1999. An Italian diplomat, Ruggiero believed that the WTO and the MTS were powerful tools for peace and prosperity. He was highly instrumental at finding common ground amidst a myriad of seemingly contradictory negotiating positions at the WTO. In the late 1990s, he played an extremely important role in brokering three important WTO agreements covering information technology products, trade in telecommunications services and trade in financial services. Ruggiero was also highly effective in guiding Ministers through the First WTO Ministerial Conference in Singapore in 1996.

In this Ruggiero’s statement, it could be interpreted that Ruggiero very much hoped that RTAs and multilateral trade arrangements could grow together and not apart, if certain measures of control were put in place. Generally, he was preferring to certain mechanisms that could ensure that RTAs complements multilateral trade arrangements. But in the present state of the WTO, these mechanisms could only be assured through the CRTA process. In a nut shell, through the work of the CRTA in the examination of RTAs. Others have also pointed out that there are many tangible and significant benefits accruing to nations engaged in the so many RTAs in operation. Apparently, that is why RTAs

seem to be very attractive to both developed and developing nations alike. (Brecher and Bhagwati, 1981)

In terms of development, many have argued that RTAs are the most effective means of attracting significant foreign direct investments (FDI) within a very short period of time (Panagariya, 1999). It is also generally believed that RTAs are the best means to guarantee market access, and they also act as safeguards for the protection of market access gained. In addition, there are lots of political interests involved or to be fulfilled directly or indirectly through the creation of certain RTAs, by individual member states (Lawrence, 1997). That is why to some countries RTAs are more attractive than multilateral trade arrangements of the WTO, due to the politics involved in their creation – Thus responding to Ruggerio's concern on the formidable challenges that RTAs could pose to the MTS if it turns out to be a competing model to multilateral trade arrangements

Even in the 21st century, national development and bilateral trade arrangements continue to take precedence over multilateral trade negotiations, this might be partly because of the lack of adequate scientific evidence on the negative impacts of RTAs to the development of the MTS (Brecher and Bhagwati, 1981). Furthermore, ambiguities in relation to many theories concerning trade distortion or trade diversion through the formation of some RTAs have also not helped matters in favour of multilateral trade arrangements (Bhagwati, 2008).

The lack of clear scientific evidence to support some of the negative assumptions on the global impacts of RTAs on world trade and on the MTS, made the situation even more confusing to some WTO members looking for FDI (Bhagwati, 2008). As a matter of fact, many began to believe that closer regional

ties through the negotiation, formation and establishment of RTAs was a better option for attraction of substantial FDI for sustainable development, than multilateral trade arrangements preferred generally and advocated by the WTO (Brecher and Bhagwati, 1981).

Nonetheless, most of the concepts propagated against the advantages gained through regionalism against that which could be gained from multilateral trade agreements seem very contradictory in everyday life situations. Because the benefits accruing through the congregation of countries in a specific region for free trade purposes seems more practical in real life than multilateral trade arrangements which could take multiple years to negotiate, with all its ramifications. These and many others are undoubtedly the main reasons why RTAs have continued to proliferate around the globe, in the face of on-going multilateral trade negotiations of the WTO (Brecher and Bhagwati, 1981).

In fact, many of our present-day RTAs do not actually fall under the perception of what bilateral trade arrangements should look like. The scope, territory and coverage of many RTAs have surpassed the scope and nature of RTAs envisaged at time of the creation of GATT/WTO. Today FTAs and CUs are not how they intended them to be, they are now very vast with coverage outside a specific region. Globalisation has encouraged RTAs to abandon most of its original characteristics in favour of new ones. RTAs have now moved out of one of its very main characteristics, which is closed proximity. However, today's reality is very different from the former. (Majluf, 2004)

The coming together of two or more RTAs into an RTA is the new development in regionalism that would surpass some of the other complexities earlier posed by the proliferation of RTAs. But many see this new development as

a push towards multilateralism. Others have seen this new development in the formation and establishment of RTAs as ways and means to foster economic development and multilateralism among WTO members; a good example of such RTAs is the trade agreement between the EU and MERCOSUR. Some feel that if this trend continues it could help reduce the number of RTAs in existence, making it much easier to negotiate multilateral trade agreements. (Crawford and Fiorentino, 2005).

Nonetheless, if the number of existing RTAs were to be reduced to a very small amount, the work of the CRTA in the examination of RTAs to determine their compatibility and suitability to the MTS would be much easier and could also be well managed. One of the advantages of this new development in RTA is the attraction of global FDI from different regions of the globe. This new development in RTAs could have been engineered by the continuous globalisation of the world economy (Bhagwati, 2008).

Although the proliferation of RTAs is considered as a very serious challenge to the MTS promoted by GATT/WTO, it could sometimes also present strong economic advantage to member states through regional preferential trade liberalisation. It is also believed that RTAs could help DCs to compete for international market access through regional development. Development accruing from regionalism could help developing countries integrate from a stronger position into the global economy, better than through the MTS. Lots of developing countries consider RTAs as the most effective means to gain economic empowerment and development (Bhagwati, 2008).

Through regional agreements there exists greater possibility for DCs to attain some level of economic of scales and specialisation in their industries.

Market expansion most often guarantees increase in production in all sectors of the economy. The gross domestic products (GDP) of many countries engage in RTAs often increases, because of some increase in market share. Many countries also benefit economically, from the advantages accruing from the principle of rule of origin, usually applicable in most RTAs (Bhagwati, 2008).

One of the main purposes of the Doha Development Round or Doha Development Agenda (DDA) was to find means and ways to accelerate development in developing countries by opening-up new markets access through the lifting of some trade restriction, tariffs and other trade barriers hindering development in these countries. The difficulties faced by many DCs and emerging economies in multilateral negotiation and the restrictive protectionist tactics employed by many developed industrialised countries to protect their markets from access to DCs, has made many DCs to rely very much on RTAs as one of their main development apparatus (Krishna, Pravin and Bhagwati, 1997).

Although some DCs have resorted to RTAs to push forward their development aspiration, however, some policymakers still feel strongly that RTAs are not the best way forward. There is the general belief amongst WTO members that RTAs are just a temporary measure but a fast solution in terms of development. As a matter of fact, it is assumed that the establishment of free trade and an MTS through multilateral trade negotiations is undoubtedly the best solution for development in the long run (Krishna, Pravin and Bhagwati, 1997).

Finally, the Director-General of the WTO Pascal Lamy, in presenting the Richard Snape Lecture on 26 November 2012, in Melbourne, Australia - Emerging economies have shifted the balance of power in world trade. He explained that: "The rising weight of influence of emerging economies has shifted the balance of

power. This clearly implies some number of transitions to which we have not yet adjusted as classic Westphalia concepts of sovereignty are being challenged by the realities of interdependence. Some may consider this a problem; it is perhaps better to think of it as an opportunity to look at the real shaping factors of trade.” This could be a confirmation by the Director-General of the WTO at the time, that the WTO needs to be reformed.

6.5.2. The WTO Doha Development Round:

The conclusion of the WTO Doha development round or Doha Development Agenda (DDA) which started in November 2001, just after the destruction of the twin towers, of the World Trade Centre in New York, has been long over-due or awaited. This is partly because it would help to open-up new market access and in addition help in bringing about a new set-up in the multilateral arena, through completed negotiations.

The main purpose of the DDA was to facilitate development in less developed countries and emerging economies through the integration of their domestic economies into the global economy by granting them unrestricted access to the markets of industrialised nations, which were formerly restricted to them. The main difficulties for the conclusion of the DDA has been partly due to the sheer number of nations involve in the negotiations. It is worth noting that all 153 WTO member states are involved in this negotiation, and to arrive at a conclusion acceptable to all member nations involved would depend on what one could describe as ‘maximum luck’. The fact is that major agreements on multilateral negotiations most often are concluded by consensus and the DDA is not an exception (Adlung, 2006a).

Talks aimed at concluding the DDA has stalled for many years, longer than anticipated. One of the main areas of contention is the reduction of tariff for specific industrial goods. Some advanced countries want a reduction in tariff in this area to gain considerable market access through lower prices resulting from tariff cuts. However, emerging economies such as India, China and Brazil are not amused by this proposition of tariff reduction for specific industrial goods. They are not comfortable to allow such concession to industrially advanced economies, since nothing seems to be on the table for them in areas they desperately need market access in industrially advanced economies. As a result, the conclusion of DDA has seemed very much farfetched.

Nonetheless, even some G-20 leaders recognising these twists and turns in the DDA negotiations have called for a new and different approach or even a change of strategy to enable a fair and quick conclusion. The economic effects on the global economic recovery cannot be underestimated, if the DDA is concluded during this period of global economic recession. The impact that the conclusion of the DDA would have on the global volume of multilateral trade through new market access and renewed hope in further trade liberalisation in general would be enormous.

It is very important that this round is concluded for so many reasons. The conclusion of DDA could help in securing limits to domestic trade-distorting agricultural support used by both advanced and developing nations alike. This would usher in new advanced WTO rules on such things like anti-dumping and other domestic regulations that are very important for the smooth operation of the multilateral trade system. Its conclusion could also affect the general nature and operation of the CRTA. The CRTA could be given a new dimension, impetus,

area of coverage and even duties that were not previously under its mandate, due to lots of recent changes in the formation and negotiation of RTAs.

6.7. The need to Reform the GATT 1994 Treaty:

From the analyses presented within this work, it is quite clear that in this present dispensation, the GATT treaty is becoming out-dated, due to the inadequacy of its original provisions in relation to the formation of RTAs. The articles and provisions of this treaty, such as GATT Article XXIV and the Enabling Clause of 1979, which permitted the formation, surveillance and monitoring of all forms of RTAs are now grossly inadequate. Generally, the articles and provisions of this treaty are now insufficient towards the establishment of a viable MTS. This seems very true because the present urge towards the formation of RTAs has dangerously departed from the discipline and supervision that GATT Article XXIV was supposed to guarantee (Bhagwati, 2008).

According to Jackson (1993) "GATT Article XXIV is out of date, and some would say fatally flawed from the outset (given its inability to impose some GATT discipline). This raises the question of what needs to be done in the future." This position of alert by Jackson is an emphatic declaration of the inability of GATT/WTO to provide a safeguard for the MTS for the present dispensation given the desire for some nations to form RTAs that are dangerously incompatible with the present surveillance and monitoring mechanism provided through the GATT treaty. Even with the certain draft 'Understanding on the Interpretation of Article XXIV of the GATT Treaty such as the Dunkel Draft of December 1991; a draft agreement in the context of the Uruguay Round.

Despite all the work that has been done, GATT Article XXIV and its provisions are still dangerously ambiguous and could be abused with intent.

Jackson (1993) suggested that the Dunkel Draft, which includes the Understanding on the Interpretation of Article XXIV, which was aimed at establishing some useful principles and benchmarks for providing rigour to the language of GATT Article XXIV. One of the examples Jackson (1993) cited was the interpretation of length of time in the formation of regional blocs, he said that: a 'reasonable length of time' is said not to exceed 10 years, except in exceptional cases. And added that this draft agreement would undoubtedly be useful if adopted, and one can hope that it will become part of the Uruguay Round package. Simply because some experts of international trade law were desperate for GATT Article XXIV to be less ambiguous than it is currently (Jackson, 1993).

In addition, Jackson (1993) suggested that the Dunkel Draft would solve certain important issues if it were to be made a part of the package of the Uruguay Round, but also admitted that even with the Understanding on the Interpretation of GATT Article XXIV, there would still exist some loopholes. Looking at Article V of the services Dunkel draft text, he noted that the text included the wordings 'economic integration' or 'preferential agreements'. And hoped that it would be very important for the services trade to be brought under a clear and rigorous discipline, just as the Dunkel draft seemed to have portrayed (Jackson, 1993).

The Dunkel draft text constituted a very valuable start to changes in the way GATT is generally understood and interpreted, and the draft of Article V of the services Dunkel drafts text is a great move towards that direction. But the fact is that in new era of RTAs the GATT needs to be rewritten or discarded all together, for the development of a new multilateral framework to regulate and monitor trade and international business (Jackson, 1993).

Nonetheless, it would be very difficult to totally discard the GATT for a completely new mechanism for the MTS, but before the decision is made by the powers that be the out-dated nature of the GATT and the ambiguity plaguing GATT Article XXIV would have sufficiently delayed the development of the MTS. However, the WTO could influence this situation through certain minimum reforms of the system to minimise damage by laying strong emphasis on transparency and fortifying GATT/WTO rules on the formation of new RTAs (Jackson, 1993).

In terms of transparency, as suggested by Jackson (1993), a more detailed report on the formation of a new RTA should be presented to the GATT/WTO and in addition made available to all the Contracting Parties. Jackson (1993) also suggested that regular periodic reviews should be strengthened. Periodic reviews of preferential trade blocs could be developed along the lines of the new Trade Policy Review Mechanism (TPRM) of the GATT. Noting that the Dunkel Draft suggested the availability of the dispute settlement provisions of the GATT to challenge the nullification or impairment that is imposed on third parties through the formation of RTAs (Jackson, 1993).

Finally, Jackson (1993) also suggested that the GATT/WTO should create an opportunity to develop certain specific rules that would force members to an RTA to commit and respect the principles of the MTS. And that such specific rules would provide the bases for complaint under a dispute settlement regime. He explained that some of these specific rules that should be developed under the GATT/WTO should obviously take into consideration many factors already addressed by the Dunkel draft text, such as the rule of Origin provision in the GATT treaty. In addition, he suggested that such specific rules if developed should

incorporate provisions making regulatory actions to be the least trade restrictive as possible (Jackson, 1993,).

6.7.1. Reforms at the WTO:

If there has been any impact on the proliferation of RTAs through the work of the CRTA between 1996 and 2010, the impact would have been rather insignificant. Because the total number of RTAs notified to the WTO and entered into-force during this period continue to increase steadily (Table of notified RTAs, Appendix). This steady increase in the number of RTAs in operation was partly because the CRTA has not been able to successfully exert its force (as mandated by the WTO) on the formation and establishment of RTAs, under the WTO provisions through which RTAs are formed.

Studying the pattern of international trade and international trade agreement before and after the creation of the CRTA up to 2010, shows that the pattern did not changed significantly. In conclusion one could say that the creation of the CRTA never influenced the number of RTAs formed or established during the period between 1996 and 2010. If there were any changes at all, no matter how slight, it was in fact directly linked to natural and other economic factors than the work of the CRTA.

However, if one examines the policy preference of many WTO members during the period covering 1996 to 2010, it would be immediately clear that most policymakers during this period preferred multilateral free trade. Just as observed by Hoekman and Kostecki (2002): The policy stance preferred by most economists is unilateral free trade. And most of these Economists would also agree that international trade and international trade agreements have always

gone hand in hand, judging from historical perspective (Hoekman and Kostecki, 2002).

The only exception to this perception could be seen in special circumstances such as during the colonial era, where discriminatory trading policies could be imposed by a dominant power, without any agreements. Hoekman and Kostecki (2002) also suggested that normal trade agreements between independent states have often been based on the promotion of trade between one another. And these trade agreements have always led to tariff reduction and the elimination of non-tariff barriers. This has been undoubtedly the main reason for the proliferation of RTAs all over the world, both by DCs and industrially advanced economies alike.

Hoekman and Kostecki (2002) also suggested that generally multilateral trade rules still provide the best guarantees to achieving trade liberalisation towards free trade, under the auspices of the WTO. Although, WTO rules allow for the formation of RTAs, which could lead to regional, political and economic integration, the WTO is also aware that the existence of some of these RTAs could adversely affect negotiations of multilateral trade arrangements. This is one of the reasons that led to the creation of the CRTA by the WTO. For the WTO to be able to check adverse impact that could occur from the entering into-force of non-conforming RTAs.

If the WTO is to ensure that only RTAs, which conform to WTO rules, were to be allowed to enter into-force. The examination of RTAs by the CRTA is the main mechanism through which the WTO checks if notified RTAs are compatible with multilateral trade agreements. And in addition, check the conformity to WTO rules, after they have been notified to the WTO. In fact, this is the only possible

available means through which the WTO could ensure that no incompatible RTA formed by WTO member nations would enter into-force. But the CRTA is powerless to do this as earlier discussed. However, the CRTA has not truly been able to exert any impact on the formation and establishment of RTAs, whether negatively or positively. In a nut shell, the CRTA has been unable to exert any influence on the formation and establishment of RTAs, due to the lack of adequate and proper enforcement mechanism and other minor factors.

Some trade experts seem to be in unity on the important part RTAs by WTO members could play towards trade liberalization. Apparently, RTAs are concluded at a faster pace, than multilateral trade agreements, which often take longer to negotiate. While others argue that RTAs should be considered complementary to multilateral trade agreements, rather than obstacles. Suggesting that both agreements are geared towards trade liberalisation (Baldwin, 1995). The perception that multilaterally orientated RTAs could help ease the difficulties faced in multilateral trade negotiations, seems to be favoured by WTO members.

It is assumed that since multilaterally orientated RTAs are being more favoured than the old regional RTAs, they could help in achieving faster trade liberalisation. The encouragement of such perception by WTO members has helped to diminish the work of the CRTA. And this perception might have encouraged the CRTA to hold back damning examination reports that could have prevented the establishment of certain RTAs considered incompatible to the MTS. As previously noted, the CRTA does not seem to have made any noticeable impact to prevent the proliferation of RTAs that are incompatible with the MTS.

The most nagging unanswered question about RTAs has been: Whether the proliferation of RTAs is compatible with the WTO's agenda towards the

establishment of an effective MTS and the liberalisation of trade. This question could only be answered in the context of whether a specific RTA would result in less trade between members and/or non-members of an RTA or not. If the answer is NO, it therefore means that the RTA is compatible to WTO agenda (Kemp and Wan, 1976)

Furthermore, a remark by the Director General of the WTO, Mike Moore, at the Forty Seventh Sessions of the Trade and Development Board in 1976, stated that: "...regionalism can provide an important complement to the multilateral system. But it would be a grave mistake for us to use it as an easy substitute. Not only could this be burdensome-serving to impede integration and distort world trade-but could also jeopardize multilateral efforts to liberalize trade and even undermine the huge achievements that have been made..." (Kemp and Wan, 1976, p95). Notwithstanding, the purpose of GATT/WTO is for trade liberalisation towards global free trade. And furthermore, as many have argued the main purpose of RTAs is trade liberalisation, leading to regional free trade (traditionally). So therefore, both regimes could be classified as compatible or even contradictory at one moment or another.

Nonetheless, the CRTA has not been able to do its work as it should have done. This has been partly because of the lack of proper legal status and means to implement its decisions, such as the Dispute Settlement Committee of the WTO. Many have argued that the CRTA's powers and position is rather largely ceremonial in nature, although it appears to be a very powerful committee at the WTO. It is close to being an irrelevant committee in terms of taking decisions, finding solutions and the implementation of possible recommendations. In relation to asserting its powers on the compatibility of RTAs to the MTS or RTAs

conformity to GATT/WTO rules or to the multilateral trade arrangements, the CRTA is powerless. In the present-day arrangement of the WTO, it is worth noting here that RTAs such as the EU, EFTA or NAFTA are even above the containment of the WTO, meaning the CRTA is even more powerless faced with such RTAs, in terms of power and political authority.

It seems the political authority of the EU makes it impossible for it to be examined and monitored by the CRTA. It is even more difficult for some of the very powerful RTAs in our world today to accept the recommendations of the CRTA's and to implement them. Even if some of these RTAs accept to be examined by the CRTA, it is almost certain that they wouldn't accept the recommendations that it could offer because of the political powers involved in their negotiations. There are other factors that point to the political strength and power of these RTAs, in relation to the present state of the WTO. Since, these RTAs are becoming supra-national they are now asserting their hegemonic power even on the WTO and other international organisations. It is surprising that a committee created for the examination of RTAs, grants observer status to its meetings to certain RTAs such as the European Free Trade Association (EFTA) – This seems to be rather a clear paradox (Krishna, Pravin and Bhagwati, 1997).

On the other hand, ensuring additional policy space and flexibility for promoting economic development, in the context of RTAs is very necessary, under the auspices of the WTO via the CRTA. It is very necessary to recognise the fact that since the creation of the CRTA by the WTO, no RTA reported to the WTO by member nations has ever been rejected by the WTO through the work of the CRTA. However, this is an apparent proof that the proliferation of RTAs is not in any way in violation of the GATT/WTO rules, or the rules governing world trade. Because

no real or concrete action from the CRTA under the auspices of the WTO to exert its power on RTAs that do not conform to WTO rules, this could have led to a general assumption by nations that RTAs are in fact not a problem to the WTO that the CRTA is just a political forum for the discussion of trade issues related to RTAs. They might have developed the belief that RTAs are in many ways compatible with the GATT/WTO agenda, since the WTO has never banned any RTA from entering into-force, because it does not conform to WTO rules. Since the formation of RTAs have been consistent, one could conclude that the CRTA has had no direct or indirect impact at all on their formation and establishment between 1996 and 2010 (Krishna, Pravin and Bhagwati, 1997).

Some DCs consider RTAs, as one of the sure means of enjoying the advantages of comparative cost, advocated in international trade. With market harmonisation and ROO, there is less competition within the territory of an RTA from products from more advanced countries. The Secretary-General of UNCTAD; Rubens Ricupero stated in 2000 at an UNCTAD Trade and development conference that: "The Regional and Sub-Regional pact is possibly the only practical pact for developing countries or for most of them, to integrate into the world economy. Through such mechanisms, they can insert themselves into the global economy at a pace that will allow them to be competitive." Effectively, he was reiterating that RTAs could complement multilateral agreement, through the enhancement of their potentials to face global competition.

Finally, the proliferation of RTAs reached its apex in the period covering 1996 and 2010. The negotiation of many RTAs took place during this period, some RTAs were entered into-force even before the WTO/CRTA were notified of their existence. This situation puts the monitoring and surveillance of RTAs by the

WTO/CRTA in question, because if RTAs could be entered into force before being notified to the WTO, it shows that the CRTA and even the WTO was by passed. This clearly proves the work of the CRTA is irrelevant to the countries that created the RTA. By passing the regulation, monitoring and surveillance of RTAs by parties to a RTAs, it means that neither the WTO nor the CRTA could have prevented any RTA from entering into-force between 1996 and 2010. Therefore, this means that the work of the CRTA could not have prevented the proliferation of RTAs between 1996 and 2010.

6.7.2. The Need for Reforms at International Multilateral Institutions:

The need to reform some, if not all major international multilateral institutions, due to changes in the global trading arena, such as globalisation and the emergence of supranational RTAs. The main objectives of the Doha Development Round (DDR) that began in the year 2001, in Doha Qatar, was for the re-organisation of world trade. One of the main purpose of all the negotiations, arrangements and meetings of the Doha Development Round was to give priority to developing countries (DCs) through the opening-up of the markets of industrialised economies.

The DDR aimed to introduce new trade rules and systems for the 21st century. The DDR negotiations were looked upon as very new negotiations, since it opened new avenues for DCs. During the DDR negotiations, evolution of RTAs and the rapid changes of newly negotiated RTAs, were taken into consideration, showing the willingness of WTO member nations to embrace changes.

Some contenders have argued that the proliferation of RTAs is not only because of the failure of multilateral trade agreements. But that this has partly been due to the poor state of the global economy. While others have strongly

rejected this assertion, and arguing that the rapid proliferation of RTAs is indeed indirectly linked to the failure of multilateral institutions to meet the true purpose for which they were created. In fact, these institutions have not been able to evolve or reform to meet the ever-changing landscape of global business and trade (Kemp and Wan, 1976).

Some contenders feel strongly that the never-ending multilateral trade negotiation time-frame and the implicit unwillingness for many advanced economies to fully open their markets to the products of DCs and other emerging economies have been one of the major reasons for the rapid proliferation of RTAs globally. This prevailing situation instigated many DCs and other emerging economies to negotiate multiple RTAs to cater for their own individual needs (Krishna, Pravin and Bhagwati, 1997).

One of the major problems of the MTS is not really the proliferation of RTAs but rather the out-dated nature and structure of international multilateral institutions, such as the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD) popularly known as the World Bank and the state of GATT/WTO (Kemp and Wan, 1976). Some have pointed out that the state of all these institutions have been a major source of concern for some countries for many years. There is a generally acknowledgement that the lack of confidence in international multilateral institutions could have led to the consistent formation of RTAs by some nations (Krishna, Pravin and Bhagwati, 1997).

Some international trade experts have long argued on the necessity to reform certain international multilateral institutions, however, others now believe that there is the need to reform some of these institutions, this is partly

because most of these institutions were created more than half a century ago; and some of the operational procedures and administrative structures that were put in place then are no longer effective in the present global economic paradigm. In fact, there has never been a more urgent time to call for the reform of these institutions than in this era, after the global economic crisis. Others have pointed out that the situation we face today globally has similarities to that of the 1970s, when the failure to forge a new Bretton Woods agreement on currencies, led to the breakdown of the Bretton Woods institutions.

Furthermore, during the G20 summit in November 2008, which took place in Washington DC, with the aim of finding ways of resolving the global economic crisis that was plaguing the world. The US President at the time, George W. Bush purported in an interview that the World Bank and the IMF were out-dated. He went further to suggest it because of this they were unable to rescue the world from the present crisis. And that if they continue to function in their present state they would still be unable to tackle any serious economic crisis in the future. He then suggested that the World Bank and the IMF were created based on an economic order of 1944. And that all these international multilateral institutions need now to modernise their governance, and their various institutional structures to make them fit for purpose, in this present day and age. George W. Bush's statement applies to all international multilateral institutions created after the Second World War. And the WTO is certainly one of those institutions needing vital reforms in its governance, structure and system, to make it fit for purpose in relation to current changes in international trade.

In much the same light, during the same G20 summit of November 2008, the Russian President, Dmitry Medvedev also said that the present global

financial structures created at the end of the Second World War were now inadequate. In his statement, he reaffirmed that it would be necessary to rebuild the whole international financial architecture, making it open and fair, effective and legitimate. Furthermore, the Indian Prime Minister Mr. Singh also added his own voice on the debate by saying that whatever economic model would be chosen, it would have to be genuinely multilateral and a reflection of the on-going changes in the global economic dispensation.

It seems the Indian Prime Minister was mainly echoing the views held by some policymakers of emerging economies. By suggesting that any new arrangement towards the reorganisation of some of the major international multilateral institutions should significantly take into consideration the growing power of emerging economies. This research is also of the view that the failure to effectively incorporate the needs and aspirations of DCs and emerging economies in international multilateral arrangements and negotiations, indirectly gave rise to the rapid of RTAs amongst these countries (Kufuor, 2006). This situation could have been much controlled, if the WTO was a well-reformed institution playing a more vital role in the international trade arena, than it is currently doing.

Hoekman and Kostecki (2002) suggested that global integration has cultural and social ramifications as well as economic dimensions, and these must be recognised and managed. This is quite true, since globalization of trade, culture, politics and economics has created a more complex setting for all major institutions that were created as world bodies at a time when the world operated on internationalisation and protectionism, rather than on multilateralism and a push towards globalisation (Kemp and Wan, 1976).

The issue of WTO reform is so pressing, thereby proving very frustrating to many who would have readily accepted any iota of reform within this organisation. This frustration led the chairperson of the Filipino National Rice Farmers Council, Jaime Tadeo to criticise the WTO following the conclusion of one of its meetings in Geneva, on the 26th of July 2008. Tadeo suggested that this WTO meeting should not be called a development round, if only a few countries are deciding on the outcome of a trade deal that will greatly affect the livelihood of billions of poor people around the world. Tadeo added that it was grossly unfair that only a handful of countries would decide on modalities that could greatly impact on the fate of millions of poor farmers in developing countries. He also noted that the Filipino delegation including that of other DCs and emerging economies were not optimistic that such undemocratic and non-transparent process at the WTO talks would yield the needed flexibilities that could reflect the developmental interests of the local farming sector of less developed economies (Armstrong and Taylor, 1993).

Finally, to discourage the formation of RTAs globally, the WTO could ensure that the timeframe for multilateral trade negotiations are shorten, because the timeframe of ten years or more for the conclusion of a multilateral trade negotiation seems like ages. If the time frame for the conclusion of multilateral trade negotiations were to be reduced, RTAs could simply become less attractive to WTO members than multilateral trade agreements.

6.8. Conclusion:

Chapter 6 has explored the work of the CRTA in relation to the coverage of RTAs between 1996 and 2010, using qualitative research methodology. It also looked at the two most important cases on “Substantially all the Trade’ phrase, which is the key WTO provision in the formation of RTAs, for the purposes of trade liberalisation.

The importance of this provision was explored in these two cases, with the arguments that the phrase is ambiguous and does not go far enough to disclose the level or degree of trade liberalisation needed to meet the WTO provisions. Thereby creating the problem of interpretation and in addition making it hard for the CRTA to appropriately examine such RTAs. So, therefore the dispute settlement body is where such cases are treated instead of the CRTA. The issue of ‘WTO-Plus-Provision RTAs’ are also above the mandate of the CRTA. As a result, the examination process of such RTAs at the CRTA is largely ignored because of their coverage.

Furthermore, discussions on whether RTAs can foster trade or restrict them, brought to light the trade creative aspects of RTAs. These discussions and arguments seem to point to the fact that RTAs are more trade creating than a trade diverting mechanism. Thereby supporting the argument that RTAs could help foster economic development in developing countries and that market expansion via RTAs could also benefit developed nations, by improving the wellbeing of it citizen through economic prosperity. However, further research is still needed in this area.

CHAPTER 7.

7.1. Introduction:

This is the final chapter and conclusion of my research. It outlines and explores the research findings and discusses recommendations and the implications of the research findings, which are analysed under two sub-headings, namely: Regulatory failures of the WTO and institutional obstacles at the WTO, the findings are vastly interrelated and intertwined. Furthermore, this chapter also contains a general discussion section, which discusses the present context of RTAs in our global trading arena.

7.2. Research Findings on the Role of the CRTA between 1996 and 2010:

- The existing monitoring and surveillance mechanism of RTAs by the CRTA under the auspices of the WTO is largely an ineffective process.
- The Examination process of RTAs at the CRTA begins and ends only with a 'factual examination', without the production or publication of final reports.
- There has never been any clear consistency or compatibility assessment between any of the existing RTAs or RTAs entered into-force and the MTS between 1996 and 2010.
- Some member nations of the WTO have little, incomplete or no information at all about some of the RTAs notified to the WTO. No important RTA examination report has ever been finalised by the CRTA due to lack of consensus on the interpretation of the provisions of Article XXIV of the GATT 1947 treaty.

- The work of the CRTA has had no identifiable impact on the proliferation of RTAs between 1996 and 2010.
- The CRTA under the WTO committee system is very limited in power, since it acts as an advisory body, just as any other committee system.
- The CRTA could be described as a moribund committee or body under the auspices of the WTO.

7.3. Regulatory Failures at the WTO:

The argument put forward by some policymakers and representatives of member nations of the WTO against the formation and establishment of RTAs, in the face of multiple efforts geared towards the establishment of an effective MTS, sometimes seem very ironic and even counter-productive. Since, the WTO permits the formation of RTAs through its own provisions. Most RTAs are formed through the provisions of Article XXIV of the GATT treaty, GATS Article V and the Enabling Clause provision (for RTAs involving only DCs). Apparently, these provisions have consistently been abused by some WTO members in their attempt to form and establish RTAs. Some WTO members have consistently shown little regard for WTO rules in terms of strict compliance to the provisions through which RTAs are formed. Some of these nations continue to negotiate bilateral trade agreements, whilst also taking active part in on-going multilateral trade negotiations (Armstrong and Taylor, 1993).

The abuse of these WTO provisions through which RTAs are created, constitutes a major area of failure by the WTO in the regulation of RTAs. This failure to regulate RTAs by the WTO was first highlighted by Haight in 1972. Haight suggested that If the General Agreement on Tariffs and Trade is to retain a significant influence in world trade policy, a new understanding of the meaning

and application of GATT Article XXIV is one of the issues that must be resolved. He argued that the Article permitting the formation of customs unions and free-trade areas, is probably the most abused in the whole agreement and the heaviest cross the GATT treaty bears (Haight, 1972).

However, before the close of the Uruguay Round, the WTO attempted to clarify the misinterpretation ensuing from the provisions of Article XXIV of the GATT treaty. This was done through the attachment of the Understanding on the Interpretation of Article XXIV to the GATT treaty. In fact, this attachment of the Understanding on the Interpretation of GATT Article XXIV was an elaboration on the meaning of the legal implication of the text and it was meant to clear the ambiguity relating to the provisions contained in GATT Article XXIV (Bhagwati, 1992).

Furthermore, the creation of the CRTA in February 1996 by the WTO General Council did not appear to have really helped matters concerning the regulation of RTAs. The proliferation of RTAs continued, even with the establishment of the CRTA. It is now very clear that the regulation of RTAs before and after the establishment of the CRTA has been an abysmal failure. The 'Individual Working Parties' were unable to check the rapid proliferation of RTAs through their examination of RTAs. And the CRTA itself, established, as a special committee dedicated for the examination of RTAs, has also been incapable to control the rapid proliferation of RTAs. The CRTA's failure to regulate RTAs is almost identical to that of the 'Individual Working Parties'. It seems that nothing really changed, in term of the regulation of RTAs. Many had envisaged significant changes when the WTO walked away from the "Individual Working Parties" procedure in the examination of RTAs to the creation and establishment of the

CRTA. But today there are still very substantial concerns on the impact of the global proliferation of RTAs to the MTS, and in addition to the abuse of Article XXIV of the GATT treaty through which RTAs are formed and established. (Crawford and Laird, 2001)

In November 2001, the WTO recognising the continuous regulation failure of RTAs both during the GATT days and after the creation of the CRTA, made an attempted move to rectify the situation. In this light, during the Ministerial Conference before the launch of the Doha Development Round, WTO members agreed to further examine the issue of the regulatory failure of RTAs. Because of the commitment to seek a better way to regulate the proliferation of RTAs, in the Doha Declaration, the WTO stated that: “We also agree to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into consideration the developmental aspects of regional trade agreements” (Paragraph 27 of the Doha Declaration, 2001)

Authors such as Haight (1972) and (Bhagwati, 1992) have identified some of the regulatory problems of RTAs facing the WTO. In fact, the advent of new regional RTAs, which encompasses multiple regions or continents, could further complicate the already difficult regulatory problem the WTO is currently facing. Haight (1972) suggested that GATT Article XXIV has been consistently abused in the formation of RTAs. Others have argued that the regulatory checks and balances found in the provisions of GATT Article XXIV has not been fully respected. Many also feel that there has not been any control in the way RTAs have been formed. Generally, the formation of RTAs seemed to have been done in the form of ‘freedom to act at will’ – meaning WTO members wishing to form RTAs could

simply do so at will, simply by invoking the exemptions to GATT Article XXIV to their advantage (Bhagwati, 1992).

From Haight's (1972) suggestions, one could infer that there has been a consistent misapplication and a possible misinterpretation of the provisions of GATT Article XXIV. However, Jackson (1998) argued that there is the probable misconstruction of the wordings of the provisions found in GATT Article XXIV. Jackson (1998) suggested that this misconstruction of the wordings of GATT Article XXIV must have led to abuse, misapplication and a general misinterpretation of its provisions (Bhagwati, 1992). In addition, Jackson (1998) also suggested that it has become increasingly clear that the language of GATT Article XXIV is not adequate for the developing international economic practice today.

Furthermore, Jackson (1998) suggestion raises lots of questions/debates as to the necessity to revise the provisions of GATT Article XXIV, to make it very strict, clear and simple to interpret; thereby removing the possibility of misapplication, abuse and misinterpretation. Without which the legal background for RTAs and their regulation would be lacking the very important coverage and legal status, which it so badly needs to maintain scrutiny under WTO rules (Bhagwati, 1992).

The opinion of this research in this matter is that the wording of GATT Article XXIV, and its ambiguity are in fact the source of the regulatory problems hindering the work of the CRTA today. Since, RTAs could be created at will by WTO members without regards to their suitability and compatibility to the MTS. Some WTO members forming RTAs nowadays only seek to prove that the FTA or CU they intend to establish conforms in principles to GATT Article XXIV. However,

they are not ready to comply with any strict interpretation of the provisions of GATT Article XXIV (Kemp and Wan, 1976).

Finally, necessary adjustment to GATT Article XXIV should be made, in such a way that all RTAs formed under the auspices of the WTO should be compatible to the MTS, in the most rigorous manner possible. This could very much help to avert the negative impact the proliferation of RTAs could have on the development of the MTS. And it could also help to regulate the formation of RTAs. The major problem now is that most RTAs today have gone beyond the scope of the WTO provisions through which RTAs are formed. As a result, this has created multiple legal loopholes, which tends to evade any possible scrutiny of such RTAs by the WTO, through its general rules and regulations (Bhagwati, 1992).

7.4. Institutional Obstacles at the WTO:

All large institutions are burdened with different institutional problems, ranging from bureaucracy to system and regulatory failures; the WTO is no exception. In fact, there are certain institutional impediments within the WTO that seems to have some negative effect on the work of the CRTA, in many ways. One of the reasons is the CRTA has no legal bases to enforce its findings or recommendations under the auspices of the WTO (Bhagwati, 1992). And institutional and procedural weaknesses of the power and authority of the CRTA were not envisaged by the WTO at the time of its creation. Moreover, many difficulties have risen from WTO rules that exempt certain RTAs from the CRTA process. This has created a situation where a great number of RTAs entered into-force, are not compatible to the MTS (Armstrong and Taylor, 1993).

In addition, to all these complexities, some RTAs are also not even notified to the WTO during their formation and establishment process and this has been a

big problem for the CRTA that has led to situations where some WTO members have been deeply unsatisfied with the state of things at various CRTA meetings. For instance, even if the CRTA decides that an RTA does not conform to WTO rules or is not suitable/compatible to the MTS, the CRTA does not have any set of appropriate mechanisms to enforce such decisions. In practice, the CRTA has no real powers to sanction an RTA and stop it from entering into force, because it only acts as an advisory to the WTO, just like any other committee in a committee system. In a situation where the entering into force of an RTA, affects a third-party nation or nations, it is only the third-party nation or nations who are affected by the operations of the RTA that could seek redress through the Dispute Settlement Mechanism of the WTO. This cannot be done through the CRTA, because the CRTA seems completely powerless in this regard (Kemp and Wan, 1976).

In the process of the creation of the CRTA, the WTO did not give the CRTA the necessary legal powers it needed, to ensure that it would be able to enforce its decisions and recommendations, this is because the CRTA is just a committee. Maybe the CRTA should have been created as a different body instead of a committee, because it seems this is the greatest institutional impediment hampering the work of the CRTA. The work of the CRTA has also been genuinely affected by the lack of consensus on matters regarding the interpretation of the ambiguous wording of the provisions contained in GATT Article XXIV through which RTA are formed (Bhagwati, 1992).

Furthermore, the CRTA has also been affected directly by the fact that the WTO has been unable to implement some of its requirements, such as the periodic reporting on RTAs to WTO members. And the lack of satisfactory adherence to the requirements and rules set forth to make the CRTA effective and reliable, such as

biennial reporting on the implementation of RTAs appeared to have been undermined or ignored; thereby helping to create considerable negative impact on the smooth running of the CRTA process (Bhagwati, 1992).

Another major factor also contributing to the difficulties faced by the role of the CRTA under the auspices of the WTO is the perception by many observers that the CRTA is simply another administrative organ of the WTO, with no clear legal authority or distinct powers. In practice, such a perception has truly hindered the effective operation of the mandate of the CRTA, and has helped to make the CRTA appear just as any other administrative unit of the WTO with no appropriate legal powers or authority to enforce its recommendations or decisions. To be able to change this erroneous perception of the CRTA, much work needs to be done by the WTO, to answer some important questions regarding the authority, power and position of the CRTA, within the framework its committee system (Kemp and Wan, 1976).

Furthermore, the legal status of the CRTA within the WTO committee structure needs to be carefully clarified. In addition to this, the role of the CRTA within the framework of the WTO needs also to be carefully defined or redefined, to assert its true purpose and objectives (Kemp and Wan, 1976). The fact is that the mission of the CRTA and the CRTA process is extremely important for the MTS, and if the CRTA process and its duty were well defined and empowered, the CRTA would become an effective WTO committee. This could help dismiss the perception that the CRTA is merely an administrative organ of the WTO, which gathers data on RTAs and conducts factual examination on the compatibility and suitability of RTAs to the MTS, on behalf of WTO members.

The CRTA should have been regarded as a committee empowered to grant legal covering for the entry into force of RTAs all over the world, with binding recommendations that must be respected and implemented. Instead the CRTA has been presented as a white elephant within the WTO committee system with no real powers or authority. The current state of the CRTA provides tangible proof that the CRTA has been powerless to stop the entry into force of unsuitable and incompatible RTAs and since no conclusive report on RTAs has ever published or adopted between 1996 and 2010 makes the CRTA even more irrelevant in the exercise of its mandate (Armstrong and Taylor, 1993).

The CRTA's position under the WTO is apparently not in the same framework as the dispute settlement body (DSB), because unlike the DSB, the CRTA lacks the necessary authority to sanction decisions or recommendations it makes to member states seeking to form RTAs. And because of these institutional obstacles there seem to be no clear demarcation between the CRTA and the DSB.

In addition, in cases of non-implementation of CRTA's recommendations, there is apparently no clear legal authority backing the CRTA on such matter, because there is no enforcement mechanism to help the CRTA enforce its recommendations or decisions. For instance, in a situation where the CRTA could make a declaration that an RTA does not conform WTO rules, the CRTA would have no means to enforce such a decision. As a matter of fact, this has been the situation of the CRTA, between 1996 and 2010 (Kemp and Wan, 1976).

However, even if the CRTA makes recommendations and these recommendations are ignored by WTO members involved in the formation of RTAs, the CRTA would still be unable to prevent such RTAs from entering-into force. This is partly because the CRTA does not have the means to do so. In fact, if

the CRTA were to be accorded a distinct and clear legal status and powers by the WTO, it would constitute a breach of the GATT treaty. This is because the GATT treaty clearly stipulates that recourse on all matters related to trade between member states of the GATT/WTO should be resolved through GATT Articles XXII, XXIII and the Dispute Settlement Understanding (DSU) of the WTO.

Finally, paragraph 12 of the Understanding on GATT Article XXIV seems to reaffirm the notion of the rights of recourse by member states through the DSB, on matters relating to RTAs by stating that the provisions of GATT 1994, Articles XXII and XXIII 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 RTAs. This however, complicates the position of the CRTA in terms of granting it a distinct and clear legal powers by the WTO. The implication of the provisions of GATT 1994, Articles XXII and XXIII, is that it makes the CRTA more like a quasi-judicial body under the WTO (Bhagwati, 1992). These institutional obstacles seemed to have helped in making the role of the CRTA under the auspices of the WTO, powerless and irrelevant to implement its recommendations and/or decisions between 1996 and 2010.

7.5. General Discussion:

The current context of RTAs make it imperative for RTAs to be examined and monitored by the CRTA. Furthermore, the current impasse in multilateral negotiation also points to the necessity for the re-examination and clarification of the present WTO rules through which RTAs are formed (Krueger, 1999). The WTO really needs to re-assess its rights and obligations in relation to the development of the MTS, in retrospect to the true nature of present day RTAs, because for over two decades that RTAs have firmly been in operation in the world scene, there still

appears to be no clear consensus among WTO members as to whether RTAs favours or contradicts the development of the MTS. The nagging question, however, has always been whether RTAs function as 'building blocks' or 'stumbling blocks' to the MTS (Baldwin, 2006).

In allowing the formation of RTAs, WTO members seem to have entertained the understanding that RTAs that would be formed under the provisions of GATT Article XXIV would comply with WTO rules, through which they are created, thereby helping the development of the MTS. However, the facts suggest a different result because the CRTA that was created to ensure the smooth running and success of this process has totally been unable to guarantee the compliance of RTAs to WTO rules (Bhagwati, 1992).

However, this research suggests that the proliferation of RTAs and the area of coverage of some of the RTAs formed between 1996 and 2010 has made it rather harder for the CRTA to monitor compliance to WTO rules. Notwithstanding, some policymakers have interpreted the proliferation of RTAs, as representing a strengthening mechanism for multilateral trade negotiations (Baldwin, 1997). The proliferation of RTAs and the coverage of some RTAs falling beyond the provisions of GATT Article XXIV, created enormous regulatory difficulties for the WTO/CRTA, leading to the inability of the CRTA to appropriately check the compliance of RTAs to WTO rules (Crawford & Laird, 2000).

On Systemic issues involving the examination of RTAs, the CRTA did work on them for over two years. Unfortunately, after this period there were still no consensus among member states on these systemic issues (Crawford & Laird, 2000). A similar situation was also experienced by the WTO, when negotiators revisited certain aspects of GATT Article XXIV, intending to clarify some of its

provisions, during the Uruguay Round. The results from these negotiations were embodied in the Understanding on the Interpretation of Article XXIV of GATT 1994. However, the provisions of the Understanding on the Interpretation of GATT Article were also considered unsatisfactory by some WTO members, due to the interpretation of some elements of its provisions (Crawford & Laird, 2001).

The integration of DCs into the world economy is often emphasised as one of the most positive aspects of RTAs. This aspect of RTAs could have contributed in influencing the monitoring work of the CRTA in relation to compliance to WTO rules. It seems very likely that the WTO could have over looked RTAs involving DCs, in terms of conformity to WTO rules, in its examination process at the CRTA, to lessen the burdens in the formation of RTAs among DCs. However, some policymakers now believe that to achieve better synergy between RTAs and the MTS in today's circumstances, a redefinition of the relationship between RTAs and the MTS is required. Meaning that the WTO needs reforms, because a re-interpretation of the rules governing RTAs and the MTS drafted over 50 years ago would not suffice to take into consideration the fundamental changes in the nature and scope of the various RTAs in existence today. RTAs moving away from their regional or geographic constraint through their overlapping membership across multiple continents has increased the dimension of monitoring. And in addition, the verification complexities resulting from the vast coverage of certain RTAs have created another enormous difficulty for the WTO, and the CRTA (Frankel, Stein, & Wei, 1997).

Furthermore, certain issues arising from some RTAs are usually plural-dimensional in nature, because these issues are often interlinked with multiple correlated complex legal implications, it is very difficult for the CRTA to

appropriately monitor such RTAs. For instance, GATT Article XXIV requires that 'substantially all the trade' between member nations should be covered in the negotiation of RTAs (Feketekuty, 2000). In fact, conditions of a similar nature are also laid down in Article V of GATS, where there is a requirement for 'substantial sector coverage' in trade in services (Frankel, Stein, & Wei, 1997).

The difficulties resulting from the wordings of GATT Article XXIV and GATS Article V, makes it impossible for an agreement to be reached amongst WTO members on the exact meaning of the words used in GATT Article XXIV – 'substantially all the trade'. Or that used in GATS Article V – 'substantial sector coverage'. In addition, some large and sensitive areas of trade, such as agriculture and textiles are sometimes omitted from the coverage of some RTAs, making the fulfilment of these provisions impossible to monitor by the WTO (Feketekuty, 2000)

Notwithstanding, lots of other issues arising from the proliferation of RTAs are more institutional in nature than resulting from problems with WTO rules. Most often, they highlight possible discrepancies between rules by which RTAs are formed and the WTO provisions by which these RTAs are assessed. And sometimes maybe they result from the whole WTO system in general. It is worth noting that trade rules have never been stagnant at any time in the history of international trade and commerce, rather they have always been evolving at both regional and multilateral levels. The evolution of trading rules has always seemed to be consistent with trade expansion, ranging from tariff reduction to a complete overhaul of the regulatory trading system (Ito & Krueger, 1997).

Furthermore, at one of WTO's Ministerial Conferences in 1999 in Seattle, USA, some WTO members wanted to include a review of Article XXIV of GATT and

Article V of GATS to be put on the agenda of the conference. Arguing that there were lots of discrepancies in their interpretation, which needed to be addressed. One of the reasons for this urgency to review GATT Article XXIV and GATS Article V was because of the existence of a continuous backlog in examination reports at the CRTA. The existence of this backlog was simply due the fact that WTO members could not agree upon a way forward in relation to the interpretation of GATT Article XXIV (Crawford & Laird, 2001).

There is also the probability of a future development of critical systemic issues that could result from the relationship between regionalism and multilateralism, since, so many RTAs are now being negotiated in abandonment of regional constraint or geographic proximity. Systemic issues that would arise from some of these RTAs would require considerable political initiative in their resolution. The WTO would be incapable of resolving such systemic issues because of the lack of an appropriate mechanism for their resolution (Crawford & Laird, 2001)

In today's world, one must take into consideration the economic dimension of RTAs that goes far beyond the effects of tariff preferences amongst member states; because the present development, success and expansion of world trade in general, has largely been through the increasing number of RTAs established by WTO members. It seems that the current state of world trade has been facilitated through the overlapping intercontinental memberships of RTAs. The apparent continental impact of RTAs has been one of the glaring contributions to world trade by regional blocs (Ito & Krueger, 1997).

Furthermore, it would be important for the WTO to take into consideration the final content of negotiations at the completion of the Doha Round of trade

negotiations. Because this would pose further challenges to policymakers in all continents, in addition to existing challenges. Trade in general, regional or multilateral has proven to be a very controversial and a non-stop evolving domain with multiple facets posing different sort of problems on monitoring and regulation. However, there is no clear or sufficient scientific evidence to suggest that RTAs would help solve the peculiar problem of development plaguing some DCs. However, multilateralism seems to be the best option forward for both DCs and developed economies (Frankel, Stein, & Wei, 1997).

In short, to make the work of the CRTA easy and effective, whether it being RTAs involving only DCs or those involving DCs and developed nations, all RTAs henceforth, should fall under the jurisdiction of the CRTA. In short, all RTAs, no matter what they are, should be subjected to the same examination process at the CRTA. In fact, this should be the case if full transparency of the CRTA process is to be ensured.

Henceforth, if all RTAs formed were henceforth subjected to the rigorous provisions of GATT Article XXIV, without exceptions, this could help to reduce the ambiguity in the interpretation of the article and thereby help to eliminate some of the existing legal loopholes of this article. Furthermore, by subjecting all RTAs to the examination process of the CRTA and checking their conformity to GATT/WTO rules found in GATT Article XXIV, (Bhagwati, 1992).

7.6. Conclusion:

This chapter has explored the research findings and analysed their implications on the future of the CRTA and the WTO. Furthermore, it has also explored the need to reform the WTO and its committee system, and the necessity for reforms in other multilateral trade institutions with considerable global influence. However, there is a need for further research on the WTO's CTRA, since there exists a gap in literature on the CRTA as compared to RTAs and the WTO.

Although this work has mainly studied the role of the CRTA under the auspices of the WTO committee system, however, it only covers between the years 1996, when the CRTA was created to the year 2010. As a result, more research is needed to cover the complete work of the CRTA to the present day. The findings of this work could help reshape future policy development for the CTRA and the WTO in general, probably through the regeneration of scholarly interest in the WTO and the CRTA. Nonetheless, this study has been able to raise issues that should lead to a general reassessment of the achievements of the CRTA, and the re-examination of the place of the CRTA within committee system of the WTO.

The recommendations contained in this work is to support the notion that the WTO needs meaningful reforms. The relevance of the CRTA and its functions in the 21st century, need to be reassessed by the WTO. Studying the impact of the work of the CRTA on the formation, and establishment of RTAs from the year 1996 to the year 2010, has brought to light some of the difficulties hindering the work of the CRTA and the relevance of the CRTA to the MTS.

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- *USCSI: www.uscsi.org*
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APPENDIX

1. Some Essential Definitions and Explanations:

This section clarifies certain words that may seem confusing to people, who may not be conversant or familiar with such words as used in international trade. There are words used in this discipline that may mean different things than they are supposed to mean in ordinary English. Some of these words or phrases may at different times refer to the same condition of trade. This however makes their uses sometimes more or less confusing to non-experts of international trade agreements. This is one of the main reasons I decided to add this section to this work.

a.) Bilateral Trade Agreements: (BTAs)

BTAs could be defined as a trade agreement between two parties or two sides. BTAs could be between two nations or between two trading blocs or between two groups of nations. They could also be called bilateral free trade agreements. Trade agreements between England and France constitute BTAs, similarly trade agreements between the EU and the AU also falls under BTAs.

b.) Preferential Trade Agreements: (PTAs)

Preferential Trade Agreements: (PTAs) could be defined as trade agreements that accord some degree of favouritism in relation to the reduction of tariffs and non-tariff barriers to its member-states. Some trade agreements are classified as preferential because favour in the reduction of tariffs and other barriers to trade is given to each negotiating party to the trade agreements. Vivid examples of PTAs are trading blocs. However, free trade areas, common markets, economic unions, customs and monetary unions are all considered as different forms of PTAs.

c.) Multilateral Trade Agreements: (MTAs)

Multilateral trade agreements could be defined as trade agreements entered into by more than two nations. That is a trade agreement between many nations. It is worth noting that multilateral trade agreements are very complicated to negotiate. One of the primary benefits of multilateral trade agreements is that all member nations are given equal treatment. Most of these agreements aim to liberalize trade. The Doha round of trade negotiations is a multilateral trade agreement between all 149 members of the WTO.

d.) Multilateral Trade System (MTS)

Multilateral Trade System comprises the body of rules that govern world trade. These rules are the world trading principles of the WTO. The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. They deal with: agriculture, textiles and clothing, banking, telecommunications, government purchases, industrial standards and product safety, food sanitation regulations, intellectual property, and much more. However, certain simple fundamental principles are found throughout these documents. These principles are the foundation of the multilateral trading system.

e.) Free Trade Areas (FTAs):

Free Trade Areas (FTAs) could be variously defined as economic free zones or special economic zones; most often governments of certain countries establish FTAs to attract FDI. However, one of the reasons for the establishment of these zones is the reduction of tariffs and the elimination of and non-tariff barriers to trade. Most FTAs are established by developing or emerging economies, they are often accorded special status. This means that normal trade restrictions applicable within the nation do not apply in these zones, since they are established as

separate legal entities from the rest of the country. Most often FTAs are established incorporating rule of origin (ROO), which deals with the origin of a product or a produce. The incorporation of ROO helps to prevent goods from non-member states from entering the zone. Many of the RTAs negotiated among developing countries are FTAs, due to the advantages arising from ROO. The ASEAN Free Trade Area is the best example of FTAs.

f.) Customs Unions:

Customs unions are a free trade agreement in which member states conduct free trade among themselves, within the union and in addition, maintaining a common tariff and trade policies. Generally, customs unions require a country to surrender some of its independence to the union in matters relating to customs and trade policies, both internally and externally. The wide acceptance of FTAs over customs unions is because they are concluded faster and requires a lower degree of political co-ordination. For FTAs, each member-states to the agreement, preserves their individual trade policy, from third countries.

g.) Common Markets:

Common markets are economic arrangements in which the markets of a specific region are liberalized. In this situation, the countries involved in this agreement go beyond a customs union arrangement, by eliminating most barriers to trade. They also guarantee free movement of labour and capital, within the confines of the integrated market. The EU is still the very best example of a common market in this era.

h.) Economic Unions:

Economic Unions are arrangements where member countries merge their economies together. In this arrangement, there is also a merger of all institutions

and common economic policies and the unification fiscal and monetary policies. The EU is also a true example of an economic union.

i.) Doha Development Agenda (DDA):

This meeting and negotiations are a continuation of the round Started in Doha, Qatar; The Doha Round of negotiations for global trade deals were launched in November 2001 with the aim of boosting the world economy and help in the fight against poverty.

2. The WTO Secretariat:

The WTO Secretariat is in Geneva, Switzerland. Indeed, the WTO is a well-known international organization in good standing. Institutions such as the WTO normally operate using at least one or many of the well-known organizational concepts. The WTO however, operates through the committee system; the CRTA is one of the committees of the WTO and the main object of this research. Many international organizations big and small are mostly bureaucratic in nature and in their operations. In our present-day organisational structure bureaucracy is the norm or the affected and appropriate method for the functioning and operation of big organizations due to its legal rational tag; the WTO is not an exception.

The WTO operates as bureaucratic organization; it functions through a committee system. As per regional agreements, the CRTA is one of its most important committees. The current chairperson of the CRTA is H.E. Mr. François Riegert of France. The WTO has around 630 staff and is headed by a director-general. Its responsibilities include among others: Administrative and technical support for WTO delegate bodies (councils, committees, working parties, negotiating groups) for negotiations and the implementation of agreements; Technical support for developing countries, and especially the least developed;

Trade performance and trade policy analysis by WTO economists and statisticians; Assistance from legal staff in the resolution of trade disputes involving the interpretation of WTO rules and precedents; Dealing with accession negotiations for new members and providing advice to governments considering membership. It is worth noting that some of the WTO's divisions are responsible for supporting specific committee. For instance, the Agriculture Division assists the committees on agriculture on sanitary and phytosanitary measures. Notwithstanding, other divisions of the WTO provide broader support for WTO activities. These activities include among others technical cooperation, economic analysis, and information. The WTO budget is over 160 million Swiss francs, with individual contributions calculated based on shares in the total trade conducted by WTO members. Part of the budget of the WTO is used for the operation and management of the International Trade Centre.

3. Observer Status in International Law:

Observer status could be defined as a passive participation in the proceedings of an organization or at meetings. The person, group or organizations or nations exercising observer status are permitted to participate in meetings but do not normally have voting rights or powers and do not participate in decision making. In fact, observer status could simply be referred to a secondary role in any organization that permits the existence of members exercising such a status. Observer status however, grants its recipients an advisory role in the organization involved. This status simply means that any individual, group or groups, organization, organizations, nation or nations exercising observer status can give advice but cannot partake actively in decision making. The role of observer status is that exercised by an individual, group or groups, an organization or

organizations, a nation or nations who are not members of a specific organization but are permitted to partake in its proceedings or meetings. The status of an observer is the position occupied by mostly non-governmental organizations (NGOs) in many international organizations such as the United Nations (UN). In some organizations and regional integration schemes observer status is sometimes obtained by nations. Observer status developed from the position of consultative arrangements successfully fought for by NGOs at the creation and drafting of the UN charter in 1945 at the San Francisco conference in the USA. Through the efforts and lobbying of NGOs Article 71 of the UN charter covers the position of observer's status within the UN, notably the Economic and Social Council (ECOSOC). Over the years, NGOs have been very instrumental in many reforms and social changes through their networking and lobbying. As a group, they now occupy a very strong position in the UN general assembly and always lobbying at the corridors of the Security Council in relation to human rights issues in times of conflict and in countries where war is going on. There are over 1700 recognized NGOs all over the world with ever expanding coverage. NGOs are very prominent in debates and lobbying in areas such as the distribution of wealth in the economy and social justice. They have now made human rights and environment issues their main areas of expertise and advocacy. Increasingly they are also taking over arms control and issues relating to the supply of weapons in conflict zones. In fact, one could say that there is no aspect of UN life that is devoid of the advocacy, activities and participation of NGO in an observer or consultative status. In addition, observer status could be granted on an ad hoc basis that is participation in specific meetings like in the UN. It could also be granted on a permanent basis, such as in regional integration schemes, which includes regional

and bilateral trade agreements. Observer status became very important and sort after very hotly in the 1990s, when NGOs began playing active advisory roles both in local and international politics especially on human rights issues. But some NGOs, such as Amnesty international have become so powerful that they seem to be participating in UN deliberation above what an ordinary observer status should be. The ECOSOC has even called the UN to make clear in its charter the true position in deliberations by those exercising observer status in the council, to avoid any conflicting interest among members.

4. List of Notified RTAs under GATT Article XXIV and GATS Article V:

As of the 31st of December 2010, the following RTAs had been notified to the WTO and are in-force (www.wto.org)

Table 1:

NAMES OF RTAs	TYPES	COVERAGE	NOTIFICATION	DATE NOTIFIED	DATE OF ENTRY INTO FORCE	STATUS
West African Economic and Monetary Union (WAEMU)	CU	Goods	Enabling Clause	27-Oct-1999	01-Jan-2000	In Force
US - Singapore	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	17-Dec-2003	01-Jan-2004	In Force
US - Peru	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	03-Feb-2009	01-Feb-2009	In Force
US - Oman	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	30-Jan-2009	01-Jan-2009	In Force
US - Morocco	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	30-Dec-2005	01-Jan-2006	In Force
US - Jordan	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	15-Jan-2002	17-Dec-2001	In Force

US – Israel	FTA	Goods	GATT Art. XXIV	13-Sep-1985	19-Aug-1985	In Force
US – Chile	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	16-Dec-2003	01-Jan-2004	In Force
US – Bahrain	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	08-Sep-2006	01-Aug-2006	In Force
US - Australia	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	22-Dec-2004	01-Jan-2005	In Force
Ukraine - Turkmenistan	FTA	Goods	GATT Art. XXIV	18-Aug-2008	04-Nov-1995	In Force
Ukraine - Uzbekistan	FTA	Goods	GATT Art. XXIV	18-Aug-2008	01-Jan-1996	In Force
Ukraine - Tajikistan	FTA	Goods	GATT Art. XXIV	18-Aug-2008	11-Jul-2002	In Force
Ukraine - Russian Federation	FTA	Goods	GATT Art. XXIV	18-Aug-2008	21-Feb-1994	In Force
Ukraine - Moldova	FTA	Goods	GATT Art. XXIV	18-Aug-2008	19-May-2005	In Force
Ukraine - Kazakhstan	FTA	Goods	GATT Art. XXIV	18-Aug-2008	19-Oct-1998	In Force
Ukraine - Former Yugoslav Republic of Macedonia	FTA	Goods	GATT Art. XXIV	18-Aug-2008	05-Jul-2001	In Force
Ukraine - Belarus	FTA	Goods	GATT Art. XXIV	18-Aug-2008	11-Nov-2006	In Force
Ukraine - Azerbaijan	FTA	Goods	GATT Art. XXIV	18-Aug-2008	02-Sep-1996	In Force
Turkey - Tunisia	FTA	Goods	GATT Art. XXIV	01-Sep-2005	01-Jul-2005	In Force
Turkey - Syria	FTA	Goods	GATT Art. XXIV	15-Feb-2007	01-Jan-2007	In Force
Turkey - Serbia	FTA	Goods	GATT Art. XXIV	10-Aug-2010	01-Sep-2010	In Force
Turkey - Palestinian Authority	FTA	Goods	GATT Art. XXIV	01-Sep-2005	01-Jun-2005	In Force
Turkey - Morocco	FTA	Goods	GATT Art. XXIV	10-Feb-2006	01-Jan-2006	In Force

Turkey - Montenegro	FTA	Goods	GATT Art. XXIV	12-Mar-2010	01-Mar-2010	In Force
Turkey - Israel	FTA	Goods	GATT Art. XXIV	16-Apr-1998	01-May-1997	In Force
Turkey - Georgia	FTA	Goods	GATT Art. XXIV	18-Feb-2009	01-Nov-2008	In Force
Turkey - Former Yugoslav Republic of Macedonia	FTA	Goods	GATT Art. XXIV	05-Jan-2001	01-Sep-2000	In Force
Turkey - Croatia	FTA	Goods	GATT Art. XXIV	02-Sep-2003	01-Jul-2003	In Force
Turkey - Bosnia and Herzegovina	FTA	Goods	GATT Art. XXIV	29-Aug-2003	01-Jul-2003	In Force
Turkey - Albania	FTA	Goods	GATT Art. XXIV	09-May-2008	01-May-2008	In Force
Trans-Pacific Strategic Economic Partnership	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	18-May-2007	28-May-2006	In Force
Thailand - New Zealand	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	01-Dec-2005	01-Jul-2005	In Force
Thailand - Australia	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	27-Dec-2004	01-Jan-2005	In Force
Southern Common Market (MERCOSUR)	CU & EIA	Goods & Services	Enabling Clause & GATS Art. V	17-Feb-1991 (G) 05-Dec-2006 (S)	29-Nov-1991 (G) 07-Dec-2005 (S)	In Force
Southern African Development Community (SADC)	FTA	Goods	GATT Art. XXIV	02-Aug-2004	01-Sep-2000	In Force
Southern African Customs Union (SACU)	CU	Goods	GATT Art. XXIV	25-Jun-2007	15-Jul-2004	In Force

South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)	PSA	Goods	Enabling Clause	07-Jan-1981	01-Jan-1981	In Force
South Asian Preferential Trade Arrangement (SAPTA)	PSA	Goods	Enabling Clause	21-Apr-1997	07-Dec-1995	In Force
South Asian Free Trade Agreement (SAFTA)	FTA	Goods	Enabling Clause	21-Apr-2008	01-Jan-2006	In Force
Singapore - Australia	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	25-Sep-2003	28-Jul-2003	In Force
Protocol on Trade Negotiations (PTN)	PSA	Goods	Enabling Clause	09-Nov-1971	11-Feb-1973	In Force
Peru - Singapore	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	30-Jul-2009	01-Aug-2009	In Force
Peru - China	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	03-Mar-2010	01-Mar-2010	In Force
Pan-Arab Free Trade Area (PAFTA)	FTA	Goods	GATT Art. XXIV	03-Oct-2006	01-Jan-1998	In Force
Panama and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	28-Jul-2009	01-Jan-2004	In Force
Panama - Singapore	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	04-Apr-2007	24-Jul-2006	In Force
Panama - Honduras (Panama - Central America)	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	16-Dec-2009	09-Jan-2009	In Force
Panama - El Salvador (Panama -	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	24-Feb-2005	11-Apr-2003	In Force

Central America)						
Panama - Costa Rica (Panama - Central America)	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	07-Apr-2009	23-Nov-2008	In Force
Panama - Chile	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	17-Apr-2008	07-Mar-2008	In Force
Pakistan - Sri Lanka	FTA	Goods	Enabling Clause	11-Jun-2008	12-Jun-2005	In Force
Pakistan - Malaysia	FTA & EIA	Goods & Services	Enabling Clause & GATS Art. V	19-Feb-2008	01-Jan-2008	In Force
Pakistan - China	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	18-Jan-2008 (G) 20-May-2010 (S)	01-Jul-2007 (G) 10-Oct-2009 (S)	In Force
Pacific Island Countries Trade Agreement (PICTA)	FTA	Goods	Enabling Clause	28-Aug-2008	13-Apr-2003	In Force
North American Free Trade Agreement (NAFTA)	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	29-Jan-1993 (G) 01-Mar-1995 (S)	01-Jan-1994	In Force
Nicaragua and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	09-Jul-2009	01-Jan-2008	In Force
New Zealand - Singapore	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	04-Sep-2001	01-Jan-2001	In Force
Mexico - Nicaragua	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	17-Oct-2005	01-Jul-1998	In Force
Mexico - Honduras (Mexico - Northern Triangle)	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	10-Jul-2006 (G) 20-Jun-2006 (S)	01-Jun-2001	In Force

Mexico - Guatemala (Mexico Northern Triangle)	-	FTA & EIA	Goods & Services	&	GATT Art. XXIV & GATS V	03-Jul-2006	15-Mar-2001	In Force
Mexico - El Salvador (Mexico Northern Triangle)	-	FTA & EIA	Goods & Services	&	GATT Art. XXIV & GATS V	23-May-2006	15-Mar-2001	In Force
MERCOSUR - India	-	PSA	Goods		Enabling Clause	23-Feb-2010	01-Jun-2009	In Force
Melanesian Spearhead Group (MSG)		PSA	Goods		Enabling Clause	03-Aug-1999	01-Jan-1994	In Force
Latin American Integration Association (LAIA)		PSA	Goods		Enabling Clause	01-Jul-1982	18-Mar-1981	In Force
Lao People's Democratic Republic - Thailand	-	PSA	Goods		Enabling Clause	26-Nov-1991	20-Jun-1991	In Force
Kyrgyz Republic - Uzbekistan	-	FTA	Goods		GATT Art. XXIV	15-Jun-1999	20-Mar-1998	In Force
Kyrgyz Republic - Ukraine	-	FTA	Goods		GATT Art. XXIV	15-Jun-1999	19-Jan-1998	In Force
Kyrgyz Republic - Russian Federation	-	FTA	Goods		GATT Art. XXIV	15-Jun-1999	24-Apr-1993	In Force
Kyrgyz Republic - Moldova	-	FTA	Goods		GATT Art. XXIV	15-Jun-1999	21-Nov-1996	In Force
Kyrgyz Republic - Kazakhstan	-	FTA	Goods		GATT Art. XXIV	29-Jun-1999	11-Nov-1995	In Force
Kyrgyz Republic - Armenia	-	FTA	Goods		GATT Art. XXIV	12-Dec-2000	27-Oct-1995	In Force
Korea, Republic of - Singapore	-	FTA & EIA	Goods & Services	&	GATT Art. XXIV & GATS V	21-Feb-2006	02-Mar-2006	In Force
Korea, Republic of - India	-	FTA & EIA	Goods & Services	&			01-Jan-2010	In Force

Korea, Republic of - Chile	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	08-Apr-2004	01-Apr-2004	In Force
Jordan - Singapore	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	07-Jul-2006	22-Aug-2005	In Force
Japan - Viet Nam	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	01-Oct-2009	01-Oct-2009	In Force
Japan - Thailand	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	25-Oct-2007	01-Nov-2007	In Force
Japan - Switzerland	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	01-Sep-2009	01-Sep-2009	In Force
Japan - Singapore	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	08-Nov-2002	30-Nov-2002	In Force
Japan - Philippines	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	11-Dec-2008	11-Dec-2008	In Force
Japan - Mexico	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	31-Mar-2005	01-Apr-2005	In Force
Japan - Malaysia	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	12-Jul-2006	13-Jul-2006	In Force
Japan - Indonesia	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	27-Jun-2008	01-Jul-2008	In Force
Israel - Mexico	FTA	Goods	GATT Art. XXIV	22-Feb-2001	01-Jul-2000	In Force
India - Sri Lanka	FTA	Goods	Enabling Clause	17-Jun-2002	15-Dec-2001	In Force
India - Singapore	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	03-May-2007	01-Aug-2005	In Force
India - Nepal	PSA	Goods	Enabling Clause	02-Aug-2010	27-Oct-2009	In Force
India - Bhutan	FTA	Goods	Enabling Clause	30-Jun-2008	29-Jul-2006	In Force
India - Afghanistan	PSA	Goods	Enabling Clause	08-Mar-2010	13-May-2003	In Force
Iceland - Faroe Islands	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	10-Jul-2008	01-Nov-2006	In Force
Hong Kong, China - New Zealand	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	03-Jan-2011	01-Jan-2011	In Force

Honduras - El Salvador and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	06-Apr-2010	01-Mar-2008	In Force
Gulf Cooperation Council (GCC)	CU	Goods			01-Jan-2003	In Force
Global System of Trade Preferences among Developing Countries (GSTP)	PSA	Goods	Enabling Clause	25-Sep-1989	19-Apr-1989	In Force
Georgia - Ukraine	FTA	Goods	GATT Art. XXIV	08-Feb-2001	04-Jun-1996	In Force
Georgia - Turkmenistan	FTA	Goods	GATT Art. XXIV	08-Feb-2001	01-Jan-2000	In Force
Georgia - Russian Federation	FTA	Goods	GATT Art. XXIV	08-Feb-2001	10-May-1994	In Force
Georgia - Kazakhstan	FTA	Goods	GATT Art. XXIV	08-Feb-2001	16-Jul-1999	In Force
Georgia - Azerbaijan	FTA	Goods	GATT Art. XXIV	08-Feb-2001	10-Jul-1996	In Force
Georgia - Armenia	FTA	Goods	GATT Art. XXIV	08-Feb-2001	11-Nov-1998	In Force
Faroe Islands - Switzerland	FTA	Goods	GATT Art. XXIV	12-Feb-1996	01-Mar-1995	In Force
Faroe Islands - Norway	FTA	Goods	GATT Art. XXIV	12-Feb-1996	01-Jul-1993	In Force
European Free Trade Association (EFTA)	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	14-Nov-1959 (G) 15-Jul-2002 (S)	03-May-1960 (G) 01-Jun-2002 (S)	In Force
European Economic Area (EEA)	EIA	Services	GATS Art. V	13-Sep-1996	01-Jan-1994	In Force

Eurasian Economic Community (EAEC)	CU	Goods	GATT Art. XXIV	21-Apr-1999	08-Oct-1997	In Force
EU - Serbia	FTA	Goods	GATT Art. XXIV	31-May-2010	01-Feb-2010	In Force
EU - San Marino	CU	Goods	GATT Art. XXIV	24-Feb-2010	01-Apr-2002	In Force
Egypt - Turkey	FTA	Goods	Enabling Clause	05-Oct-2007	01-Mar-2007	In Force
EFTA accession of Iceland	FTA	Goods	GATT Art. XXIV	30-Jan-1970	01-Mar-1970	In Force
EFTA - Turkey	FTA	Goods	GATT Art. XXIV	06-Mar-1992	01-Apr-1992	In Force
EFTA - Tunisia	FTA	Goods	GATT Art. XXIV	03-Jun-2005	01-Jun-2005	In Force
EFTA - Singapore	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	14-Jan-2003	01-Jan-2003	In Force
EFTA - Serbia	FTA	Goods	GATT Art. XXIV	24-Nov-2010	01-Oct-2010	In Force
EFTA - SACU	FTA	Goods	GATT Art. XXIV	29-Oct-2008	01-May-2008	In Force
EFTA - Palestinian Authority	FTA	Goods	GATT Art. XXIV	23-Jul-1999	01-Jul-1999	In Force
EFTA - Morocco	FTA	Goods	GATT Art. XXIV	20-Jan-2000	01-Dec-1999	In Force
EFTA - Mexico	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	25-Jul-2001	01-Jul-2001	In Force
EFTA - Lebanon	FTA	Goods	GATT Art. XXIV	22-Dec-2006	01-Jan-2007	In Force
EFTA - Korea, Republic of	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	23-Aug-2006	01-Sep-2006	In Force
EFTA - Jordan	FTA	Goods	GATT Art. XXIV	17-Jan-2002	01-Jan-2002	In Force
EFTA - Israel	FTA	Goods	GATT Art. XXIV	30-Nov-1992	01-Jan-1993	In Force
EFTA - Former Yugoslav	FTA	Goods	GATT Art. XXIV	11-Dec-2000	01-Jan-2001	In Force

Republic of Macedonia						
EFTA - Egypt	FTA	Goods	GATT Art. XXIV	17-Jul-2007	01-Aug-2007	In Force
EFTA - Croatia	FTA	Goods	GATT Art. XXIV	14-Jan-2002	01-Jan-2002	In Force
EFTA - Chile	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	03-Dec-2004	01-Dec-2004	In Force
EFTA - Canada	FTA	Goods	GATT Art. XXIV	04-Aug-2009	01-Jul-2009	In Force
Economic Cooperation Organization (ECO)	PSA	Goods	Enabling Clause	10-Jul-1992	17-Feb-1992	In Force
Economic Community of West African States (ECOWAS)	CU	Goods	Enabling Clause	06-Jul-2005	24-Jul-1993	In Force
Economic and Monetary Community of Central Africa (CEMAC)	CU	Goods	Enabling Clause	21-Jul-1999	24-Jun-1999	In Force
EC Treaty	CU & EIA	Goods & Services	GATT Art. XXIV & GATS V	24-Apr-1957 (G) 10-Nov-1995 (S)	01-Jan-1958	In Force
EC (9) Enlargement	CU	Goods	GATT Art. XXIV	07-Mar-1972	01-Jan-1973	In Force
EC (27) Enlargement	CU & EIA	Goods & Services	GATT Art. XXIV & GATS V	27-Sep-2006 (G) 26-Jun-2007 (S)	01-Jan-2007	In Force
EC (25) Enlargement	CU & EIA	Goods & Services	GATT Art. XXIV & GATS V	26-Apr-2004	01-May-2004	In Force
EC (15) Enlargement	CU & EIA	Goods & Services	GATT Art. XXIV & GATS V	15-Dec-1994 (G) 22-Dec-1994 (S)	01-Jan-1995	In Force
EC (12) Enlargement	CU	Goods	GATT Art. XXIV	11-Dec-1985	01-Jan-1986	In Force
EC (10) Enlargement	CU	Goods	GATT Art. XXIV	24-Oct-1979	01-Jan-1981	In Force
EC - Turkey	CU	Goods	GATT Art. XXIV	22-Dec-1995	01-Jan-1996	In Force

EC - Tunisia	FTA	Goods	GATT Art. XXIV	15-Jan-1999	01-Mar-1998	In Force
EC - Syria	FTA	Goods	GATT Art. XXIV	15-Jul-1977	01-Jul-1977	In Force
EC - Switzerland - Liechtenstein	FTA	Goods	GATT Art. XXIV	27-Oct-1972	01-Jan-1973	In Force
EC - South Africa	FTA	Goods	GATT Art. XXIV	02-Nov-2000	01-Jan-2000	In Force
EC - Palestinian Authority	FTA	Goods	GATT Art. XXIV	29-May-1997	01-Jul-1997	In Force
EC - Overseas Countries and Territories (OCT)	FTA	Goods	GATT Art. XXIV	14-Dec-1970	01-Jan-1971	In Force
EC - Norway	FTA	Goods	GATT Art. XXIV	13-Jul-1973	01-Jul-1973	In Force
EC - Morocco	FTA	Goods	GATT Art. XXIV	13-Oct-2000	01-Mar-2000	In Force
EC - Montenegro	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	16-Jan-2008 (G) 18-Jun-2010 (S)	01-Jan-2008 (G) 01-May-2010 (S)	In Force
EC - Mexico	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	25-Jul-2000 (G) 21-Jun-2002 (S)	01-Jul-2000 (G) 01-Oct-2000 (S)	In Force
EC - Lebanon	FTA	Goods	GATT Art. XXIV	26-May-2003	01-Mar-2003	In Force
EC - Jordan	FTA	Goods	GATT Art. XXIV	17-Dec-2002	01-May-2002	In Force
EC - Israel	FTA	Goods	GATT Art. XXIV	20-Sep-2000	01-Jun-2000	In Force
EC - Iceland	FTA	Goods	GATT Art. XXIV	24-Nov-1972	01-Apr-1973	In Force
EC - Former Yugoslav	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	23-Oct-2001 (G)	01-Jun-2001	In Force

Republic of Macedonia				02-Oct-2009 (S)	(G) 01-Apr-2004 (S)	
EC - Faroe Islands	FTA	Goods	GATT Art. XXIV	17-Feb-1997	01-Jan-1997	In Force
EC - Egypt	FTA	Goods	GATT Art. XXIV	03-Sep-2004	01-Jun-2004	In Force
EC - Croatia	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	17-Dec-2002 (G) 12-Oct-2009 (S)	01-Mar-2002 (G) 01-Feb-2005 (S)	In Force
EC - Côte d'Ivoire	FTA	Goods	GATT Art. XXIV	11-Dec-2008	01-Jan-2009	In Force
EC - Chile	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	03-Feb-2004 (G) 28-Oct-2005 (S)	01-Feb-2003 (G) 01-Mar-2005 (S)	In Force
EC - CARIFORUM States EPA	FTA & EIA	Goods & Services	GATT Art. XXIV & GATS V	16-Oct-2008	01-Nov-2008	In Force
EC - Cameroon	FTA	Goods	GATT Art. XXIV	24-Sep-2009	01-Oct-2009	In Force