

**Trading into the future:
Increasing Inter-Regimes Coherence between WTO and
other Legal Regimes**

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I. A Fact of Fragmented International Legal Order

- Since the creation of the WTO nearly 20 years ago, the international legal order has witnessed a transformation into evolving fragmented world.
- International economic law system
 - Increasing prevalence of regional trade agreements
 - investment, labor, competition, intellectual property
 - New Mega FTAs
 - Rapid growth of bilateral investment treaties (more than 2800)
- Other international law regime
 - E.g. International environmental law (Kyoto Protocol)
 - E.g. International health law (WHO International Health Regulation; Framework Convention on Tobacco Control)
- Arisen Issues, but unresolved
 - Normative overlap, conflict, and forum shopping by complainant.
 - issues of coordination and conflict among different regimes

II. What can WTO Move Forward?

- (1) Increasing WTO's actual influence on the dispute settlement in the RTA/BIT forums?
- (2) Decreasing the level of conflicts between WTO and other legal regimes?

III. Strengthen WTO's Influence on RTA/BIT in terms of Dispute Settlement

- **(1) Current situation**
- Panels or tribunals in RTA/BIT have referred to WTO to interpret relevant rules.
 - Procedural issue: e.g. amicus curiae, burden of proof
 - Substantive issue:
 - national treatment (NAFTA *Pope & Talbot*, *Japan – Beverages*)
 - necessity test (ICSID *Continental award*, *GATT Article XX*)
 - the principle of single undertaking (*SD Myers*)
- Whether WTO law will be applied as a guidance would entirely rely on the RTA/BIT tribunals in a given case.
- No formal linkage between judicial authority and WTO has been established.

- **(2) Promoting the use of WTO precedent to increase a broader influence of WTO on RTA/BIT through some mechanism arrangements?**
- The WTO represents the multilateral system of disciplines on trade matters, it could be expected that RTA/BIT follow WTO case law.
- Some Procedural mechanisms
 - Permission of WTO to intervene as amicus curiae?
 - Compulsory consulting review by WTO?

IV. Minimizing the Level of Inter-Regimes Potential Conflicts

- **(1) Current situation: The conflicts between WTO and WHO FCTC as an example**
- The spread of the tobacco epidemic is facilitated through trade liberalization.
- Plain packaging has been formally recommended by the FCTC Guidelines.
- In 2011, Philip Morris initiated an arbitral proceeding against the Australian government for its requirement of tobacco plain packaging under the Hong Kong-Australia BIT.
- Some countries, which are also WHO FCTC contracting parties, initiated dispute settlement cases with Australia concerning its plain packaging requirements in 2012. (Ukraine, Honduras, Dominican Republic and Cuba).
- Philip Morris is reportedly providing legal advice and funding to the Ukraine and Honduras governments.

(2) Is there any new approach for dispute avoidance?

- The integrity of international legal order should be achieved through interpretation?
- Open the wide possibility of non-WTO law status in the WTO for interpreting WTO law?
- Would WTO become a backdoor to support anti-health movement?
 - Using good faith principle to preclude frivolous claims indirectly controlled by the private company (such as tobacco company)?
 - Leaving public health issue to the WHO?
 - Sharing common responsibility of protecting human health by WTO?
 - Enhancing cooperation with WHO?

IV. Conclusion

No real conclusion provided.

A Need for intellectual inputs, open mind and political commitments for WTO to help de-fragment international legal regimes.

Not only for other legal regimes' development, but also for the maintenance of future WTO.