

International Economic Development Law Series

**Asia Pacific Economic Integration
and the GATT/WTO Regime**

Yoshi Kodama

SMU Institute of International
Banking and Finance,
Dallas, Texas

Centre for Commercial Law Studies
University of London

Institute of International
Banking, Finance and
Development Law, London

Asian Institute of
International Financial Law,
University of Hong Kong

Asia Pacific Economic Integration and the GATT-WTO Regime



Published by
Kluwer Law International Ltd
Sterling House
66 Wilton Road
London SW1V 1DE
United Kingdom

Sold and distributed in
the USA and Canada by
Kluwer Law International
675 Massachusetts Avenue
Cambridge MA 02139
USA

Kluwer Law International incorporates
the publishing programmes of
Graham & Trotman Ltd,
Kluwer Law & Taxation Publishers
and Martinus Nijhoff Publishers

In all other countries, sold and distributed by
Kluwer Law International
P.O. Box 322
3300 AH Dordrecht
The Netherlands

ISBN 90-411-9745-1
CIP 99-044763
© Kluwer Law International 2000
First published 2000

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Kodama, Yoshi.

Asia Pacific economic integration and the GATT-WTO regime/by Yoshi Kodama
p. cm. – (International economic development law; v. 12)

Includes bibliographical references and index.

ISBN 90-411-9745-1

1. Asia–Economic integration. 2. Pacific Area–Economic integration. 3. International
economic integration. I. Title. II. Series.

KNC742 K64 1999
341.7'5 21–dc21

This publication is protected by international copyright law. All rights reserved. No part of
this publication may be reproduced, stored in a retrieval system, or transmitted in any form
or by any means, electronic, mechanical, photocopying, recording or otherwise, without the
prior permission of the publisher.

Typeset in 10/11 pt Palatino by Midlands Book Typesetting, Loughborough, Leicestershire
Printed and bound in Great Britain by MPG Books Ltd, Bodmin, Cornwall.

**Asia Pacific Economic Integration
and the GATT-WTO Regime**

International Economic Development Law

VOLUME 12

Series Editor

J.J. Norton

Centre for Commercial Law Studies

University of London

London Institute of International Banking,

Finance and Development Law

SMU Institute of International Banking and

Finance, Dallas, Texas

Asian Institute of International Financial Law

University of Hong Kong

Executive Editor

Rosa M. Lastra

Centre for Commercial Law Studies

University of London

The titles published in this series are listed at the end of this volume

Preface

This study attempts to examine the legal issues concerning the currently progressing economic co-operation in the Asia Pacific region. It deals with the GATT-WTO rules and their possible modification so as to accommodate the region's diversified economies as well as export-oriented development needs. Then the thesis tries to present a possible form of regional arrangement for the Asia Pacific region.

Preparatory work for the study started in 1994, and the thesis covers events up to 1 April 1998. During this period, two important events occurred in the region. One was the economic crisis in most of the previously successful East Asian economies, which began in summer 1997. The crisis has driven such economies to a serious economic slump, with stagnant economic performance and devastated domestic financial markets. The other was Russia's admission to the Asia Pacific Economic Co-operation (APEC) forum in 1997. Regional co-operation schemes in the Asia Pacific have generally been based upon pragmatism and economic interdependence. Russia's admission has introduced more politically influenced co-operation in the region, which is not necessarily based upon economic rationality.

The author believes that, despite these two events, the discussions and prescriptions in the thesis are still valid. Rather, the events in 1997 have strengthened the validity of some of the assumptions upon which the thesis is based, that is, the diversity in the Asia Pacific region and the need for economic development in some East Asian economies.

The author would like to express his gratitude to those who offered generous and patient help in writing this thesis. They particularly include Professor Joseph J. Norton, Sir John Lubbock Professor of Banking Law, and Dr George Walker, Research Fellow, both at the Centre for Commercial Law Studies, Queen Mary and Westfield College, University of London, for their supervision. With regard to the GATT-WTO rules, the author particularly appreciates useful suggestions from Professor John H. Jackson, Hessel E. Yntema Professor of Law, School of Law, University of Michigan, and Ms Mary Footer, former Lecturer, Faculty of Law, University College, London. Linguistic help was kindly given by Ms Valerie Grey, Embassy of Australia to Japan, Mr Adam Baxter, former political advisor, Embassy of Japan to the United Kingdom, and Ms Holly Helt. The author also expresses

his thanks to Ms Margaret Bowen, Second Secretary, Embassy of Australia to Japan, Ms Erika J. Hrabec, Secretary to Professor John H. Jackson, and the staff of the University of Michigan Law Library for their kind help.

The author is currently working for the Japanese Ministry of Foreign Affairs. The views expressed in this thesis are purely personal to the author.

Y. K.

Tokyo, Japan

November 1999

yoshinori.kodama@mofa.go.jp

Abstract

The main objective of this study is to analyse the application of the 'rule on regional arrangements' mainly under the General Agreement on Tariffs and Trade (GATT), which has been incorporated in the World Trade Organisation (WTO) Agreement, to the current attempts at regional co-operation in the Asia Pacific region and, simultaneously, to present institutional recommendations for a possible arrangement in the region. This study first examines Article XXIV of the General Agreement, concerning the rules of regional arrangements in the light of the recent proliferation of such arrangements. Then, the background and perspective of Asia Pacific regional co-operation will be considered. By doing this, two possible recommendations for the GATT-WTO rules emerge. These are: (1) the tolerance for differential sub-regional flexible arrangements, which is inevitable for the Asia Pacific region; and (2) the acceptance of a development-oriented trade policy, which has been common in some countries in the region. Finally, as the outcome of this study, a possible framework of an expected Asia Pacific regional arrangement is explored, with particular attention to its compatibility with the GATT-WTO rules. Tentative ideas for this framework are as follows.

First, the current policy programme of the Asia Pacific Economic Co-operation (APEC), aiming at the establishment of a free-trade area, while maintaining the strict application of the most-favoured-nation principle to outsiders, would be difficult to achieve. Therefore, either of these two policies should be loosened.

Second, considering the domestic conditions of the economies in the region, harmonisation of economic measures and policies would need considerable flexibility.

Third, a possible dispute settlement mechanism should inevitably reflect a legal approach, so as to address the diversity and variety of economies in the region. The extent of such a legal element should be carefully examined.

Summary of Contents

General Introduction

CHAPTER 1

THE GATT-WTO RULE ON REGIONAL ARRANGEMENTS AND THE CURRENT INTERNATIONAL ECONOMIC REGIME

Introduction

- I. The Current Development of Regional Arrangements**
- II. Normative Difficulties in Regulating Regional Arrangements**
- III. The GATT-WTO Rule on Regional Arrangements**

Conclusion

CHAPTER 2

THE HISTORY AND CURRENT DEVELOPMENT OF INTER-STATE CO-OPERATION IN THE ASIA PACIFIC REGION

Introduction

- I. General Conditions for Economic Integration in the Asia Pacific Region**
- II. Pre-APEC Regional Co-operation in the Asia Pacific**
- III. The Progress of the Asia Pacific Economic Co-operation (APEC)**

Conclusion

CHAPTER 3

DIVERSITY AMONGST ECONOMIES IN THE ASIA PACIFIC REGION

Introduction

- I. The Overview of Diversity in the Asia Pacific Region**
- II. Policy Recommendation for the Diversity Amongst Economies in the Asia Pacific Region**

Conclusion

CHAPTER 4**EXPORT-ORIENTED DEVELOPMENT POLICY IN NEWLY
INDUSTRIALISED ECONOMIES IN THE ASIA PACIFIC REGION**

Introduction

- I. Practice and Analysis of Export-oriented Development Policy in the Asia Pacific Region**
- II. Legal Analysis and Policy Recommendations for Export-oriented Development Policy Measures**

Conclusion

CHAPTER 5**A POSSIBLE REGIONAL ARRANGEMENT IN THE ASIA PACIFIC
REGION**

Introduction

- I. An Institutional Structure of a Regional Arrangement in the Asia Pacific Region**
- II. Trade and Investment Liberalisation in the Asia Pacific Region**
- III. Harmonisation at Regional Level in the Asia Pacific**
- IV. A Possible Regional Dispute Settlement Mechanism for the Asia Pacific Region**

Conclusion

General Conclusions

Treaties and Domestic Legislation

A. Multilateral Treaties

1945 Charter of the United Nations

Article 2, paragraph 2

Article 33

Article 34

Article 51

Article 52

Article 53

1947 Havana Charter for an International Trade Organisation (not entered into effect)

Article 1

Article 15

Article 2

Article 17

1947 General Agreement on Tariffs and Trade (GATT)

Article I

Article II

Article III

Article VI

Article XII

Article XVI

Article XVII

Article XVIII

Article XIX

Article XX

Article XXII

Article XXIII

Article XXIV

Article XXV

Part IV, especially Article XXXVI

Article XXXVII

- 1965 International Convention on the Elimination of All Forms of Racial Discrimination
Article 4 (b)
- 1994 Marrakesh Agreement Establishing the World Trade Organisation
- General Agreement on Tariffs and Trade 1994
- Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994
- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
- Article 3
- Article 5
- Article 9
- Agreement on Rules of Origin
- Agreement on Technical Barriers to Trade
- Article 2
- Article 5
- Article 10
- Article 12
- Article 13
- Article 14
- Agreement on the Application of Sanitary and Phytosanitary Measures
- Article 3
- Article 4
- Article 7
- Annex B
- Agreement on Subsidies and Countervailing Measures
- Article 11
- Article 19
- Article 21
- Article 22
- Article 27
- Annex I Illustrative List of Export Subsidies
- Agreement on Safeguards
- Preamble
- Article 5
- Article 7
- Article 8
- Article 9
- Article 11
- Article 27



Understanding on Rules and Procedures Governing the Settlement
of Disputes

- Article 6
- Article 12
- Article 17
- Article 23

General Agreement on Trade in Services

- Article II
- Article V
- Article VII

B. Regional and Bilateral Treaties

- 1860 Cobden Treaty between Britain and France
- 1950 Convention for the Protection of Human Rights and Fundamental
Freedoms (European Convention on Human Rights)
 - Article 24
 - Article 25
 - Article 28
 - Article 30
 - Article 31
 - Article 32
 - Article 47
 - Article 48
 - Article 51
- 1963 Second Protocol
- 1994 Eleventh Protocol
- 1957 Treaty Establishing the European Community, as amended by the
Treaty Amending Certain Financial Provisions, the Single European
Act, the Merger Treaty, the Greenland Treaty, the Acts of Accession
and the Treaty on European Union (Maastricht Treaty)
 - Article 30
 - Article 36
 - Article 92
 - Article 93
 - Article 100a
 - Article 169
 - Article 170
 - Article 173
 - Article 175
 - Article 177
- 1963 Convention Establishing the Organisation of African Unity
Article XIX
- 1976 Treaty of Amity and Co-operation in South East Asia

- 1977 Agreement on ASEAN Preferential Trading Arrangements
Instrument Establishing the Latin American Integration Association
(LAIA)
Article 44
- 1986 Single European Act
- 1987 Agreement on ASEAN Industrial Joint Ventures
- 1988 Canada–US Free Trade Arrangement
- 1992 Agreement on the Common Effective Preferential Tariff Schemes for
the ASEAN Free-trade Area
- 1993 North American Free Trade Arrangement
Article 1118
Article 1120
Article 2000
Article 2005
Article 2006
Article 2007
Article 2008
- 1996 ASEAN Protocol on Dispute Settlement Mechanism
Article 2
Article 3
Article 4
Article 5
Article 6
Article 7
Article 8
- 1997 Agreement on Mutual Recognition between the United States and
the European Community
Article 4
- Sectoral Annex for Medical Devices
Article 11
Article 12
Article 20
- Sectoral Annex for Pharmaceutical Products
Article 21
Appendix 4
Appendix 5
- 1997 Agreement on Mutual Recognition in relation to Conformity Assess-
ment, Certificates and Markings between Australian and the European
Community
Article 2
Article 4

C. Domestic Legislation

1. France

Crime Act

Article 265

2. Germany

Criminal Law

Article 127

Article 129

3. Italy

1982 Comprehensive Anti-Mafia Act

Article 1

4. Japan

Law concerning the Prevention of Unjust Acts of *Boryokudan* (Japanese Mafia) Members

5. Korea

1986 Industrial Development Law

6. People's Republic of China

1994 Arbitration Law

7. Thailand

1977 Investment Promotion Law

8. The United States of America

1934 Trade Agreement Act

1970 Organized Crime Control Act
Chapter 9

1974 Trade Act

1979 Trade Agreement Act

Cases

A. Permanent Court of International Justice

Advisory Opinion concerning Territorial Disputes between Turkey and Britain (1925), PCIJ Series B, 12

B. International Court of Justice

Fisheries Jurisdiction (*U.K. v. Ice.*, Merits, 25 July 1974), I.C.J. 1 (1974)

Military and Paramilitary Activities (*Nicar. v. U.S.*, Jurisdiction and Admissibility), I.C.J. Rep. 1984

C. General Agreement on Tariffs and Trade

1. Panel Reports

United States Tax Legislation on Domestic International Sales Corporations (12 Nov. 1976), B.I.S.D., L/4422

The EC Sugar Export Subsidies (1979, Presented by Australia; 1980, Presented by Brazil)

EC-Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region (1985), L/5776

European Economic Community Regulation on Imports of Parts and Components (*Screwdriver Case*), (22 Mar. 1990), L/6657

2. Working Party on Regional Arrangements

The Treaties Establishing the European Economic Community and the European Atomic Energy Community (29 Nov. 1957), L/778, B.I.S.D. (6th Supp.), at 68 (1958)

Association of Greece with the European Economic Community (15 Nov. 1962), L/1829, B.I.S.D. (11th Supp.), at 149

The Arrangement between the European Communities and Lebanon (1975), L/4143, B.I.S.D. (22nd Supp.) at 43 (1976)

D. European Court of Justice

Case 120/78, *Rewe-Zentralfinanz v. Bundesmonopolverwaltung für Branntwein*, 1979 E.C.R. 649, [1979]3 C.M.L.R. 337

Case 249/81, Re: 'Buy Irish' Campaign, *EC Commission v. Ireland*, 37 C.M.L.R. 104 (1983: 2)