



## CONCEPT NOTE

### JURISDICTIONAL CONFLICTS BETWEEN WTO DISPUTE SETTLEMENT AND REGIONAL TRADE AGREEMENTS

As of January 13, 2026, the World Trade Organization [“WTO”] records 380 Regional Trade Agreements [“RTAs”] in force,<sup>1</sup> pushing states to incorporate dispute settlement mechanisms within their agreements and raising questions about jurisdictional design, concurrent proceedings, and enforcement.

#### **The Multi-Fora Landscape of Dispute Settlement**

Modern RTAs cover up to fifty-two distinct policy areas, including investment, digital trade, intellectual property rights, competition policy, labour standards, environmental regulation, and government procurement.<sup>2</sup> Disputes at the intersection of trade and related international obligations span overlapping institutional frameworks. The WTO Dispute Settlement Understanding [“DSU”] governs WTO-covered agreements, with Article 23 requiring mandatory recourse to WTO procedures. The International Centre for Settlement of Investment Disputes [“ICSID”] and the United Nations Commission on International Trade Law [“UNCITRAL”] tribunals handle Investor-State claims under investment chapters and bilateral investment treaties. Where maritime trade routes or marine resource rights are implicated, the International Tribunal for the Law of the Sea [“ITLOS”] or ad hoc tribunals under Annex VII of the United Nations Convention on the Law of the Sea [“UNCLOS”] come into picture. Many of the RTAs employ the quasi-judicial model, characterised by automatic

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<sup>1</sup> WTO, Regional Trade Agreements Information System, [rtais.wto.org](https://rtais.wto.org) (last visited January 13, 2026); WTO Comm. on Reg'l Trade Agreements, WT/REG/W/195/Rev.1 (2025).

<sup>2</sup> United States-Mexico-Canada Agreement chs. 10, 14, 31, November 30, 2018 (hereinafter USMCA); Understanding on Rules and Procedures Governing the Settlement of Disputes art. 23, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 33 I.L.M. 1125 (hereinafter DSU); Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, March 18, 1965, 575 U.N.T.S. 159 (hereinafter ICSID Convention); UNCITRAL Arbitration Rules (2021); United Nations Convention on the Law of the Sea ann. VII, December 10, 1982, 1833 U.N.T.S. 3 (hereinafter UNCLOS).



access to ad hoc panel adjudication mirroring the WTO DSU panel process, encompassing consultation, conduct of proceedings, implementation, compliance review, and remedies.<sup>3</sup>

For instance, under the North American Free Trade Agreement [“NAFTA”], dispute settlement was structured across three dedicated tracks, each assigned to a distinct subject matter, including State-to-State disputes (Chapter 20), binational antidumping and countervailing duty panels (Chapter 19), and Investor-State Dispute Settlement claims (Chapter 11).<sup>4</sup>

The central jurisdictional difficulty stems from the absence of any hierarchical relationship between WTO norms and RTA norms.<sup>5</sup> Article 23.1 of the DSU mandates WTO recourse for violations of WTO-covered agreements but does not preclude concurrent RTA proceedings over overlapping obligations. Where an RTA panel and a WTO panel address the same measure but reach different findings, no binding rule of priority governs and compliance with conflicting awards becomes unmanageable for the responding state.

### **Parallel Proceedings and the Institutional Risks of Multi-Fora Dispute Resolution Mechanism**

Because states are simultaneously bound by WTO obligations, RTA commitments, and bilateral investment treaties, a single domestic measure can be challenged before multiple forums at once. The key risks are forum shopping (selecting the most advantageous venue, producing inconsistent rulings on identical facts), double recovery (pursuing identical harm before multiple forums), and regulatory chill (where litigation costs lead states to abandon legitimate public policy). Mandating a single forum, as under the Treaty on the Functioning of the European Union [“TFEU”] Article 344 for intra-EU disputes, promotes jurisprudential consistency but risks institutional brittleness if that forum becomes ineffective. Hence, RTA drafters increasingly attempt to address the multi-fora dilemma through forum election clauses.

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<sup>3</sup> CLAUDE CHASE, ALAN YANOVICH, JO-ANN CRAWFORD & PAMELA UGAZ, MAPPING OF DISPUTE SETTLEMENT MECHANISMS IN REGIONAL TRADE AGREEMENTS: INNOVATIVE OR VARIATIONS ON A THEME? 5–6 (WTO Econ. Rsch. & Statistics Div., Working Paper No. ERSD-2013-07, 2013) (hereinafter Chase et al.); HANDBOOK OF DEEP TRADE AGREEMENTS (Aaditya Mattoo, Nadia Rocha & Michele Ruta eds., 2020).

<sup>4</sup> Chase et al., *supra* note 2, at 8–13, tbl.1.

<sup>5</sup> Tim Graewert, *Conflicting Laws and Jurisdictions in the Dispute Settlement Process of Regional Trade Agreements and the WTO*, 1 CONTEMP. ASIA ARB. J. 287, 290 (2008) (hereinafter Graewert); Int'l Law Comm'n, Report of the Study Group of the International Law Commission: Fragmentation of International Law, paras. 23–25, U.N. Doc. A/CN.4/L.682 (April 13, 2006).



In this context, the discussion may deliberate upon the following questions:

1. How should dispute settlement clauses in RTAs be drafted to address the risks of overlapping jurisdiction?
2. If such clauses are employed, do forum election provisions in RTAs effectively prevent forum shopping, given WTO panels' mandatory jurisdiction under Article 23 of the DSU?
3. What gaps in the existing multilateral dispute settlement framework have RTA-specific mechanisms sought to fill, particularly following the WTO Appellate Body's paralysis since 2019?
4. Should future trade agreements move toward a single mandatory dispute forum or does maintaining multiple avenues of adjudication better serve the needs of states and investors?
5. Where formal dispute settlement proves inadequate or inaccessible, can joint committees or mediation mechanisms serve as viable alternatives in RTA contexts?