

Table of Contents

About the Author	xv
Acknowledgments	xvii
Abbreviations and Acronyms	xix
Introduction and Overview	xxi
 Chapter 1	
The Role of Law in the Conduct of International Trade Relations	1
1.1. Introduction	1
1.2. International Legal Process	2
1.2.1. Compliance and the Nature of the ‘Managerial Model’	2
1.2.2. Relative Normativity and Compliance	6
1.3. Central Elements of the Management Strategy	9
1.3.1. Reporting and Data Collection	9
1.3.2. Policy Review, Assessment, Participation and Supervision	10
1.3.3. Capacity Building and Technical Assistance	11
1.3.4. Dispute Settlement	11
1.3.5. The Adaptation and Modification of Treaty Norms	12
1.3.6. The Role of Institutions in Securing Compliance	12
1.4. Factors Influencing Regime Design	13
1.4.1. The Minimization of Transaction Costs	14
1.4.2. The Enhancement of Credibility	15
1.4.3. The Modification of Political Strategies	16

1.4.4.	Incomplete Contracting and Uncertainty	16
1.4.5.	Safeguarding Sovereignty	17
1.4.6.	The Promotion of Compromise	18
1.4.6.1.	Summary	18
1.5.	International Relations Theory, the Creation of Regimes and the Effect of Law on State Behaviour	19
1.5.1.	The Relationship Between IL and IR Approaches	19
1.5.2.	Realism: Agreements as Reflections of Underlying Power Distributions	21
1.5.3.	Institutionalism: Agreements as Contracts for Securing State Interests	22
1.5.4.	Constructivism: Agreements as Covenants for Creating State Identities and Interests	24
1.5.5.	Liberalism: Agreements as Embodiments of Domestic Interests	25
1.6.	Conclusions	26

Chapter 2

Regionalism, Multilateralism and Free Trade – Theoretical Perspectives

29

2.1.	Introduction	29
2.2.	Regionalism: Regional Integration or Regional Cooperation?	31
2.3.	The Economic Justification for Global Free Trade	32
2.4.	The Economic Rationale for Regional Integration	35
2.4.1.	Theoretical Models of Integration	35
2.4.1.1.	Market Integration (Customs Union) Theory	35
2.4.1.2.	Development Integration Theory	37
2.4.2.	The Economic Effects of Regional Integration	38
2.4.2.1.	Regional Integration, Market Size and Economies of Scale	38
2.4.2.2.	Integration and Traditional ‘Gains from Trade’	39
2.4.2.3.	The Effect of Regional Integration on Economic Growth	39
2.4.2.4.	The Effect of Integration on Industry: Agglomeration	40
2.4.2.5.	The Effect of Integration on Incomes	41
2.4.2.6.	The Role of Integration in Stimulating Investment	41
2.5.	Factors Affecting Benefits Conferred by Regional Integration	42
2.5.1.	Choice of Partner(s)	43
2.5.2.	Choice of Form of RTA	43
2.5.3.	Number of Trade Agreements Entered Into	44
2.5.4.	External Trade Policy Stance	44
2.5.5.	RTAs and Taxes	45

2.6.	The Political Economy of Regionalism (The ‘Multilateralism Versus Regionalism’ Debate)	45
2.6.1.	Domino Regionalism	47
2.6.2.	Regionalism as Insurance	47
2.6.3.	Trade Blocs as Forums for Increasing Negotiating Strength and Facilitating Negotiations	48
2.6.4.	Trade Blocs as Forums for Negotiating Tactically	49
2.7.	Regionalism as Politics	49
2.7.1.	Peaceful Relations	50
2.7.2.	Regional Integration and the Nation-State – The Issue of Sovereignty	51
2.7.3.	Other Political Factors	52
2.8.	Conclusion	53

Chapter 3

The WTO’s Regulatory Regime for Regional Trade Agreements: A Managerial Perspective

55

3.1.	Introduction	55
3.2.	The Status and Function of the MFN Principle in GATT	56
3.2.1.	History of the MFN Principle Prior to the Formation of GATT	56
3.2.2.	The Incorporation of the MFN Principle into GATT: Compromise	57
3.2.3.	Developing Country Grievances: Legitimacy of GATT Rules Called into Question	59
3.2.4.	The Impact on Legal Discipline of the Wider Policy Changes	63
3.3.	The Substantive Rules for the Establishment of RTAs	66
3.3.1.	The Substantive Legal Requirements	66
3.3.2.	Interpretation and Clarification of the Substantive Rules	69
3.3.2.1.	Substantially all the Trade (SAT)	70
3.3.2.2.	General Incidence of the Duties and Regulations of Commerce Applicable	72
3.3.2.3.	Interim Agreements and the Meaning of Reasonable Length of Time	74
3.3.3.	The Approval of Non-Conforming Agreements	75
3.3.4.	Summary	76
3.4.	Norm Implementation: The Procedural Rules	76
3.4.1.	Data Collection and Reporting: The Notification Requirement	77
3.4.2.	Nature of Data to be Provided and Identity of Provider	78
3.4.3.	The Examination of Notified Agreements: Forum and Procedure	79
3.4.4.	Monitoring and Supervision of Compliance	83

3.5.	Dispute Settlement and the Regulation of RTAs	83
3.5.1.	Competence and Jurisdiction to Determine Consistency	84
3.5.2.	The 'Lex Specialis' Argument in 'Turkey – Restrictions'	86
3.5.3.	The EEC's Preferential Arrangements and the Dangers Inherent in Preferences	89
3.5.3.1.	Background	89
3.5.3.2.	The EC – Conditions for Granting Tariff Preferences Dispute	91
3.5.3.3.	The Panel Report	92
3.5.3.4.	The Appellate Body Report	93
3.6.	Conclusion	93

Chapter 4

Regional Integration and Trade Liberalization in Eastern and Southern Africa: Order or Disorder? 97

4.1.	Introduction	97
4.2.	The Nature of, and Rationale for African Integration	100
4.2.1.	Shared Identity	100
4.2.2.	Institutionalist Considerations: Economic Growth and Development	103
4.3.	An Overview of Selected Regional Trading Arrangements	104
4.3.1.	The African Economic Community (AEC): Supra-Regional Regulation	104
4.3.1.1.	History and Nature of the Treaty	104
4.3.1.2.	Institutional Framework	106
4.3.1.3.	The Liberalization Programme	107
4.3.2.	The Southern African Customs Union (SACU): Hegemonic Integration	109
4.3.2.1.	History and Nature of the Union	109
4.3.2.2.	Institutional Framework	111
4.3.2.3.	Trade Liberalization Programme	112
4.3.3.	The Southern African Development Community (SADC): Development Integration	112
4.3.3.1.	History and Nature of the Organization	112
4.3.3.2.	Institutional Framework	114
4.3.3.3.	The Liberalization Programme	115
4.3.4.	The East African Community (EAC): Aspirations of Federation	116
4.3.4.1.	History and Nature of the Organization	116
4.3.4.2.	Institutional Framework	118
4.3.4.3.	Trade Liberalization Programme	119
4.4.	Alternative Approaches to Integration and Trade Liberalization	120
4.4.1.	The Regional Integration Facilitation Forum (RIFF)	120

4.4.2. The Cotonou Agreement and its Implications for Trade Liberalization	122
4.5. Summary	123

Chapter 5

The COMESA Treaty: A Managerial Perspective **127**

5.1. Introduction	127
5.2. Background: Nature and Objectives	128
5.2.1. Historical Development of COMESA: From Preferential Trade Area to Common Market	129
5.2.2. Nature and Objectives of COMESA	131
5.2.3. Membership	133
5.3. The Institutional Framework of the Common Market	135
5.3.1. COMESA Organs	135
5.3.2. Norm Formulation in COMESA	136
5.3.2.1. Source of Law	136
5.3.2.2. Law making with in COMESA	137
5.4. Norm Implementation and Dispute Resolution in COMESA	141
5.4.1. The Supervision of Implementation and Compliance	141
5.4.2. The Role of the Secretariat in Securing Compliance	141
5.4.3. Dispute Resolution and the COMESA Court of Justice	144
5.4.4. The Relationship between COMESA Law and National Law	145
5.5. The COMESA Economic Integration and Trade Liberalization Agenda	146
5.5.1. The Intra-Regional Trade Liberalization Strategy	148
5.5.1.1. The Most-Favoured-Nation Principle in COMESA	148
5.5.1.2. The Elimination of Customs Duties on Intra-Regional Trade	149
5.5.1.3. The COMESA Rules of Origin	152
5.5.1.4. The Elimination of Non-Tariff Barriers (NTBs) to Trade	154
5.5.2. Establishing a COMESA Customs Union	155
5.5.2.1. The Customs Union Roadmap	156
5.5.2.2. The Common External Tariff (CET)	156
5.5.2.3. Developing a Framework for the Administration of the CU	159
5.5.3. National Treatment	160
5.5.4. Unfair Trade Practices: Anti-Dumping and Countervailing Duties	161
5.5.5. Serious Disturbances and Safeguard Measures	162
5.5.6. Derogations	163

5.6.	Relations with Third Parties: Institutional Linkages	164
5.6.1.	Relations with the WTO	165
5.6.2.	Relations with Neighbouring Trade Blocs	166
5.6.3.	Relations with the EU: Economic Partnership Agreement Negotiations	169
5.7.	Constraints to Integration	171
5.7.1.	Legal Shortcomings of the Treaties	171
5.7.2.	Lack of Capacity	172
5.7.3.	Inappropriate Integration Strategy	173
5.7.4.	Structural factor	174
5.7.5.	Multiple Overlapping Organizations	174
5.7.6.	The Dominance of Politics	175
5.7.7.	Institutional Shortcomings	175
5.8.	Summary and Conclusion	176

Chapter 6

Improving the Effectiveness of the WTO: An Assessment of the Doha Development Round Proposals 177

6.1.	Introduction	177
6.2.	Modalities for, and State of, Negotiations on Rules	178
6.3.	The Relationship Between Regionalism and Multilateralism	180
6.4.	'Developmental Aspects' of the Negotiations	181
6.5.	Proposals Aimed at Increased Transparency	183
6.5.1.	Time of Notification	183
6.5.2.	Purpose of Examination	185
6.5.3.	Forum for Notification and Examination	186
6.5.4.	Provision of Information	186
6.5.4.1.	Party to Provide Information	187
6.5.4.2.	Nature of Information to be Provided	188
6.6.	Normative Requirements: The Definition of 'Substantially all the Trade (SAT)'	189
6.7.	Summary	191

Chapter 7

The Regulation of Regional Trade Agreements: Enhancing the Effectiveness of the COMESA Legal Regime 193

7.1.	Introduction	193
7.2.	Norm Formulation and Treaty Adaptation	194
7.2.1.	The Necessity for Consensus	194
7.2.2.	Consent and Treaty Adaptation: Holding Parties Accountable	195

<i>Table of Contents</i>	xiii
7.3. The Adoption of Appropriate Integration Strategies	196
7.4. Capacity Building and Technical Assistance to Enhance Compliance	197
7.4.1. The Alleviation of Member State Capacity Constraints	197
7.4.2. The Alleviation of Institutional Capacity Constraints	198
7.5. The Management of Compliance with COMESA Obligations	199
7.5.1. Enhancing Transparency	199
7.5.2. Dispute Settlement	199
7.6. The Issue of Membership and RTA Configuration	199
7.7. Summary	202
 Chapter 8	
Summary and Conclusion	203
 Appendix I	
Article XXIV, GATT 1947	207
 Appendix II	
The Enabling Clause	211
 Appendix III	
Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994	215
 Appendix IV	
Dates and Summary Reports of the Meetings of the Negotiating Group on Rules	219
 Appendix V	
Submissions on Regional Trade Agreements to the Negotiating Group on Rules	221
Bibliography	223
COMESA Materials	241
GATT/WTO Materials	243
Table of Treaties	247
Table of Cases	249
Index	251