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REGIONALISM IN A MULTILATERAL TRADING SYSTEM:
LEGAL INTERPLAYS BETWEEN THE EURASIAN ECONOMIC
UNION & THE WTO

ELKE HELLINX*

This paper explores the relationship between the Eurasian Economic Union (EAEU) and the WTO, and identifies some of the legal obstacles to their effective co-existence. In doing so, the paper touches upon ways in which membership of the EAEU may interfere with that state's position within the WTO and with its obligations under the WTO Agreements. By using selected examples, it illustrates that the legal relationship between the EAEU and the WTO is an ambiguous one, and one which deserves special attention.

Starting point of this paper is a short overview of how regional trade agreements fit into the WTO structure in a general sense. It then discusses the process of deepening economic integration in the EAEU and the legal mechanisms through which Eurasian states have previously attempted to integrate trade with their partners in the region. A short stop will also be made at the institutional structure of the EAEU. The main body of the study delves into some of the legal interplays between the WTO and the EAU. It concludes with some thoughts and considerations as to whether the EAEU can be a building block for the WTO's project of multilateral trade liberalisation.

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I. INTRODUCTION

During the second half of the 20th century, we have witnessed a notable intensification of regional economic integration, which became even more pronounced during the first years of the 21st century. *Regional Trade Agreements* (RTAs) were not entirely new, but their number – and importance – has increased considerably in the past thirty years. According to the database of the *World Trade Organisation* (WTO), there are more than 280 RTAs in force at this moment in time.¹ A dozen more RTAs are currently in the pipeline.

The recent increase in the number of RTAs (both notified and in force) has raised considerable concern with proponents of multilateral trade liberalisation.² The ‘regionalism’ embodied by RTAs has become a systemic issue that is the subject of

¹ *Welcome to the Regional Trade Agreements Information System (RTA-IS)*, WORLD TRADE ORGANISATION, <http://rtais.wto.org/UI/PublicAllRTAList.aspx>.

² See, e.g., World Trade Organization, Singapore Ministerial Declaration, Dec. 13, 1996, 36 I.L.M. 218, ¶17 (1997), https://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm.

substantial debate in the context of the WTO and the multilateral trading system.³ RTAs represent an interesting paradox; on the one hand, they are tools by which deeper economic integration (and thus liberalisation) can be realised. On the other hand, each individual RTA is characterised by its specific geographical configuration and content, and there is no way to ensure coherence amongst the ever-growing number of RTAs. As a consequence, RTAs add a significant level of complexity to the (already exceedingly complex) multilateral trading system.⁴ All WTO Members⁵ have entered into RTAs, which has inevitably increased discrimination and undermined transparency in global trade relations.⁶

The purpose of this article is to succinctly explore the interaction between such regional integration mechanisms and the legal framework created by the WTO, to analyse their position vis-à-vis one another, and to identify the legal obstacles to their effective co-existence. To do so, I will draw from one specific example of progressively deepening regional economic integration, namely the *Eurasian Economic Union* (EAEU). In doing so, the intention is to identify ways in which membership of the EAEU may interfere (be it positively or negatively) with that state's position within the WTO and with its obligations under the WTO Agreements. I should stress emphatically that it is not my aim to identify and analyse *every* way in which the EAEU and WTO could interact, but rather, by using a select number of examples, to illustrate that the legal relationship between RTAs and the WTO is an ambiguous one, and one which deserves particular attention.

The starting point of this article is a short overview of how RTAs fit into the WTO structure in a general sense. In order to understand the lurking tension between RTAs such as the EAEU and the WTO, it is important to first gain an – at least elementary – understanding of the general dynamics between the WTO and RTAs. I then move on to a second essential preliminary element, namely the history of the project of Eurasian integration, in which part I discuss the process of deepening economic integration in the EAEU and the legal mechanisms through which Eurasian states have previously attempted to integrate trade with their partners in the region. Having discussed the history of the EAEU, a short stop will also be made at its institutional structure. This will allow us to better appreciate certain

³ See, e.g., Pascal Lamy, Former WTO Director-General, Address at the University of International Business and Economics, Beijing (Sept. 20, 2009), https://www.wto.org/english/news_e/sppl_e/sppl246_e.htm, where he warned of the policy-fragmenting effects regional trade agreements could have.

⁴ R. Fiorentino et al., *The Landscape of Regional Trade Agreements and WTO Surveillance*, in *MULTILATERALIZING REGIONALISM: CHALLENGES FOR THE GLOBAL TRADING SYSTEM* 28 (R. Baldwin & P. Low eds., 2009).

⁵ Mongolia was a notable exception until it decided to join APTA in 2013.

⁶ See J.N.BHAGWATI, *THE WORLD TRADING SYSTEM AT RISK* (1991).

implications of the mutual interplay between the EAEU and the WTO. After this necessary introduction, the main body of the study is developed, where I delve into the interrelation between the WTO and the EAU. I finish with some thoughts and considerations as to whether RTAs, the EAEU in particular, can be a building block for WTO's project of multilateral trade liberalisation, or whether instead they deprive the WTO of some of its essence.

II. REGIONAL ECONOMIC INTEGRATION WITHIN THE WTO

A. *Contradiction in Terms*

As a preliminary note, and before digging into the current situation of the Eurasian Economic Union, it is perhaps useful to highlight the position and development of RTAs within the WTO system. In fact, the relationship between RTAs and the WTO is a convolutedly contradictory one. RTAs and the WTO share a common objective, i.e. the reduction of trade barriers and the liberalisation of trade, and thus, at first glance, seem to supplement each other rather well. When the WTO hits the limits of what is attainable on a multilateral level, regional initiatives could build on that to achieve a more profound level of trade liberalisation.⁷ However, looking more closely, it becomes clear that, in its essence, the concept of a regional trade agreement; i.e. an agreement in which a limited number of states⁸ offer each other more favourable trading conditions than they do to other states, fundamentally contradicts one of the WTO's basic underlying principles, and may distort international trading relations.⁹ Indeed, the preferential nature of trade relations resulting from RTAs, and the external discrimination that preferential relations inevitably entail, fundamentally clash with the WTO principle of non-discrimination.¹⁰ The inherently discriminatory nature of RTAs erodes one of the pillars of the WTO system - the *Most-Favoured-Nation* (MFN) principle, as enshrined in article I of the *General Agreement on Tariffs and Trade* (GATT).¹¹ Consistent

⁷ P. VAN DEN BOSSCHE & W. ZDOUC, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION* 651 (2014) [hereinafter VAN DEN BOSSCHE & ZDOUC].

⁸ Not necessarily in the same geographic region.

⁹ J. MATHIS, *REGIONAL TRADE AGREEMENTS IN THE GATT/ WTO* 141 (2002).

¹⁰ Preamble, Marrakesh Agreement Establishing the World Trade Organization, Legal Instruments - Results of the Uruguay round, 1867 U.N.T.S. 187, 33 I.L.M. 1153, ¶3 (1994).

¹¹ General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187., art. I [hereinafter GATT 1994]; General Agreement on Trade in Services, Jan. 1, 1995, Marrakesh Agreement Establishing the World Trade Organization, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, GATT Doc. MTN/FA, Annex 1B, art. II [hereinafter GATS]; Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, art. IV.

application of this MFN principle would prevent states from discriminating between international trading partners, and thus prevent a deeper integration of regional trade relations through negotiation of RTAs.¹² However, even from the beginning, RTAs were perceived to have a largely positive impact on the liberalisation of trade, and the GATT allowed an exception for RTAs.¹³ Now, art. XXIV of the GATT¹⁴ provides a conditional exception to the MFN principle¹⁵ for customs unions and free trade areas.¹⁶

B. Ineffectuality of the WTO

When the GATT was originally negotiated, the reciprocal preferential trading agreement exception did not spark an awful lot of debate.¹⁷ In the '40s, '50s and '60s, only a limited number of RTAs were in force, and the few agreements that were in force were seen as essential steps towards further integration.¹⁸ Although art. XXIV GATT expressly provides an exception to the MFN principle, and allows the establishment of RTAs, the recent proliferation of RTAs has elicited discussion on

¹² G. Glania & J. Matthes, *Multilateralism or Regionalism?*, CENTRE FOR EUR. POL'Y STUD. 38 (2005), http://aci.pitt.edu/32590/1/29._Multilateralism_or_Regionalism.pdf.

¹³ MULTILATERALIZING REGIONALISM: CHALLENGES FOR THE GLOBAL TRADING SYSTEM 55 (R. Baldwin & P. Low eds., 2009).

¹⁴ See also GATS, *supra* note 11, art. V.

¹⁵ A similar exemption is also provided by the so-called 'Enabling Clause' for differential treatment between developing countries.

¹⁶ GATT 1994, *supra* note 11, art. XXIV. Art. XXIV:4 provides that: "*The [Members] recognize 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 recognize 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 [Members] with such territories.*" This provision thus describes the general principle that customs unions should be conceived in view of facilitating trade, not raising additional barriers. Article XXIV:5 GATT elaborates on this general principle by establishing the requirements under which RTAs are to be allowed: "*Accordingly, the provisions of this Agreement shall not prevent, as between the territories of [Members], 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 [Members] 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; [...].*"

¹⁷ P. Pal, *Regional Trade Agreements in a Multilateral Trade Regime: An Overview*, 2 (2004), www.networkideas.org/feathm/may2004/survey_paper_RTAs.pdf [hereinafter Pal].

¹⁸ The GATT Analytical Index lists only five agreements notified under art. XXIV that came into force prior to 1960.

the question whether RTAs effectively support trade liberalisation or whether, in reality, they put the multilateral trading system at risk.¹⁹

RTAs have stirred controversy because the burgeoning number of RTAs, each with their own particular scope and constellation of member states, has increased the complexity of global trade relations to a previously unrivalled extent.²⁰ In fact, the web of RTAs has become so dense that it has been likened to a “spaghetti bowl”.²¹ It is feared that this complexity endangers the overall coherency of the multilateral trading system.

Over time, and despite the initial unconcern, the WTO has developed a rather uneasy relationship with RTAs. William Davey, former Director of the Legal Affairs Division of the WTO, even seems to suggest that the negotiation of RTAs – instead of multilateral negotiations through the WTO – is a direct result of the failing of the WTO.²² Because multilateral negotiations in the WTO were stalled interminably, and were perceived as inadequate by participating member states, the idea took hold that further integration could only be stimulated by means of RTAs.²³

Russian President Vladimir Putin himself has also referred to the WTO-stalemate as a reason for regional integration: *“At the same time, the elaboration of post-crisis global development models is proving to be a difficult process. For example, the Doha Round is virtually mired in stalemate, the WTO faces objective difficulties, and the principle of free trade and open markets is itself in deep crisis. We believe that a solution might be found in devising common approaches, as they say from the “bottom up”, first within the existing regional institutions, such as the EU, NAFTA, APEC, ASEAN inter alia, and then through dialogue between them. These are the integration bricks that can be used to build a more sustainable global economy.”*²⁴

¹⁹ M. Lovell, *Regional Trade Agreements and the WTO*, 7 (2007), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1114770.

²⁰ D. LYNCH, *TRADE AND GLOBALIZATION: AN INTRODUCTION TO REGIONAL TRADE AGREEMENTS* 1 (2010); Pal, *supra* note 17.

²¹ J.N.BHAGWATI, *TERMITES IN THE TRADING SYSTEM: HOW PREFERENTIAL AGREEMENTS UNDERMINE FREE TRADE* 63 (2008).

²² W. Davey, *Regional Trade Agreements and the WTO: General Observations and NAFTA Lessons for Asia* 3 (Illinois Public Law Research Paper No. 05-18, 2005), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=863846 [hereinafter Davey].

²³ R. Baldwin, *Failure of the WTO Ministerial Conference at Cancun: Reasons and Remedies*, 11 (2004), <http://fordschool.umich.edu/rsie/Conferences/CGP/May2004Papers/Baldwin.pdf> [hereinafter Baldwin].

²⁴ V. Putin, *Новый интеграционный проект для Евразии — будущее, которое рождается сегодня* [*A New Integration Project for Eurasia: A Future That is Born Today*], IZVESTIYA, Oct. 3, 2011, <https://iz.ru/news/502761> [hereinafter Putin].

Whilst the arguments put forward might not be enough to conclude that there is a causal link between the perceived failure of the WTO to move forward with its agenda of further liberalisation and the explosion in the number of RTAs, it is striking to note how a majority of RTAs have been concluded and have come into force after the Cancun Conference and the subsequent standstill in the WTO negotiations.²⁵ The causal link might indeed also work in the opposite direction: the recent unchecked proliferation of RTAs²⁶ might have made it more difficult to negotiate multilateral trade agreements.²⁷

The complexity of the debate has been further exacerbated by the doubts that are raised by economists about the question whether the effects of RTAs on the WTO can be considered economically positive or negative.²⁸ A conclusive answer to this question has not been formulated to date.²⁹ Skipping across large areas of the underlying debate, the issue I will try to address here is the legal and institutional potential for the Eurasian attempt at regional integration to contribute to the global integration of trade through the WTO. How do the Eurasian Economic Union and its predecessors fit into the debate on multilateralism versus regionalism? And might the increasing use of RTAs herald a period of reduced significance, or even insignificance, for the WTO?

III. THE PROJECT OF EURASIAN INTEGRATION

The Eurasian Economic Union – much like Rome – was not built in a day. In fact, the process of economic integration between Eurasian states began in the early 1990s. In the decade that followed, several attempts were made to achieve more comprehensive integration of the economies of the post-Soviet bloc, but no substantial progress was made.³⁰

²⁵ *Regional Trade Agreements*, WORLD TRADE ORGANISATION, www.wto.org/english/tratop_e/region_e/region_e.htm; *supra* note 1.

²⁶ Indirectly, the unwillingness of a group of least-developed countries to move forward with the negotiations at the Cancun Conference led to a proliferation of RTAs. *See, e.g.*, the statement by the (then) US Trade Representative Robert Zoellick that the US would pursue bilateral trade agreements instead: R. Zoellick, *America will not wait for the won't-do countries*, FINANCIAL TIMES, Sept. 22, 2003, https://ustr.gov/archive/Document_Library/Op-eds/2003/America_will_not_wait_for_the_won't-do_countries.html.

²⁷ Baldwin, *supra* note 23.

²⁸ Davey, *supra* note 22.

²⁹ *See, e.g.*, VAN DEN BOSSCHE & ZDOUC *supra* note 7.

³⁰ T. Valovaya, *Eurasian Economic Integration: Origins, Patterns and Outlooks*, in EURASIAN INTEGRATION Y.B. 43 (E.Vinokurov ed., 2012) [hereinafter Valovaya].

The idea of a Eurasian Union³¹ was first put forward in 1994 by President Nazarbayev of Kazakhstan. More than a decade later, the goal of forming a Eurasian Economic Union re-appeared and was actively pursued by Russian President Putin.³² Over time the EAEU member states have gone through the classic phases of economic integration. What started as a free trade area, gradually turned into a customs union, which in turn developed into a common market.³³ The latest step in this process of regional economic integration is the Eurasian Economic Union.

A. Commonwealth of Independent States

Over time, Russia and its Eurasian trade partners have engaged in a number of different RTAs. After the dissolution of the Soviet Union by the Belavezha Accords, and thus the dissolution of the single economic system that went hand in hand with the Soviet Union, most³⁴ of its former republics immediately united in the *Commonwealth of Independent States* (CIS). The twelve republics³⁵ still relied heavily on trade flows between each other, and tried to overcome this problem through the CIS (amongst other initiatives).³⁶

Russia's pursuit of the CIS was driven by more than just economic reasons. It was to be the vehicle that enabled Russia to streamline the dissolution of the Soviet Union, and to ensure a certain degree of dependence of the other former Soviet Republics. However, reluctance of several participating countries to fully commit to this project resulted in a weak institutional framework. There was no mechanism in place that could ensure that the obligations were actually carried out.³⁷ The Economic Court of the CIS only had the power to issue recommendations on interstate disputes in the CIS.³⁸ In the years that followed the establishment of the CIS,

³¹ Note the absence of 'economic'.

³² Putin, *supra* note 24.

³³ G. Vousinas, *Eurasian Economic Community: Towards Integration. Economic Challenges and Geostrategic Aspects*, 4 (2014), papers.ssrn.com/sol3/papers.cfm?abstract_id=2376513.

³⁴ With the exception of the Baltic States: Lithuania, Latvia and Estonia.

³⁵ Meanwhile, Ukraine and Turkmenistan have 'downgraded' their membership to that of 'associated member'. Georgia withdrew from the organization completely.

³⁶ J. Verceuil, *L'Union Economique Eurasiatique: une intégration au prisme de la Russie* 71(4) GÉOÉCONOMIE 168 (2014) [hereinafter Verceuil]; R. Dragneva & K. Wolczuk, *The Eurasian Customs Union: Framing The Analysis*, in EURASIAN ECONOMIC INTEGRATION: LAW, POLICY AND POLITICS 2 (R. Dragneva & K. Wolczuk eds., 2013) [Dragneva & Wolczuk, *Eurasian Economic Integration*].

³⁷ N. Kaveshnikov, *Developing Institutional Structure of Eurasian Economic Community*, in *supra* note 30; Eric Engle, *A New Cold War? Cold Peace. Russia, Ukraine, and NATO*, 59 ST. LOUIS U. L. J. 97 (2015) [hereinafter Engle].

³⁸ S. Shadikhodjaev, *Trade Integration in the CIS Region: A Thorny Path towards a Customs Union*, 12(3) J. INT'L ECON. L. 29 (2009),

Russia predominantly engaged in bilateral economic agreements instead of acting through the CIS framework.³⁹ This way, Russia could better benefit from its superior bargaining position vis-à-vis its Eurasian neighbours.⁴⁰

The multitude of bilateral agreements between CIS member states was replaced by the *Commonwealth of Independent States Free Trade Area Agreement* (CISFTA Agreement), which was signed in 2011 by a group of CIS members: Russia, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Moldova and Armenia.⁴¹ All states, with the exception of Tajikistan have meanwhile ratified the CISFTA Agreement, and it entered into force in 2012. Uzbekistan joined the CISFTA in 2014.

B. Eurasian Economic Community

Russia, Belarus and Kazakhstan established a customs union in 1995.⁴² They were joined later by Kyrgyzstan (1996) and Tajikistan (1997). In 2000, the five member states turned this customs union into the *Eurasian Economic Community* (EurAsEc).⁴³ Under the Eurasian Economic Community, a permanent executive body, the Integration Council was set up along with a special court.⁴⁴ However, important shortcomings remained,⁴⁵ and EurAsEc was dissolved into the EAEU in 2015.⁴⁶

C. Eurasian Customs Union and Single Economic Space

<http://jiel.oxfordjournals.org/content/12/3/555.abstract> [hereinafter Shadikhodjaev]; R. Dragneva & K. Wolczuk, *Russia, the Eurasian Customs Union and the EU: Cooperation, Stagnation or Rivalry?* 3 (Chatham House Briefing Paper, 2012) [hereinafter Dragneva & Wolczuk].

³⁹ R. Dragneva & J. de Kort, *Russia's Role in Fostering the CIS Trade Regime*, 6 (2006), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1440809.

⁴⁰ Dragneva & Wolczuk, *supra* note 38, at 4.

⁴¹ Commonwealth of Independent States Free Trade Area Agreement, Oct. 18, 2011, <http://www.worldtradelaw.net/document.php?id=fta/agreements/cisfta.pdf>.

⁴² *Соглашение О Таможенном союзе* [*Agreement concerning the Customs Union*], 20 January 1995, http://www.eurasiancommission.org/_layouts/Lanit.EEC.Desicions/Download.aspx?IsDlg=0&print=1&ID=3034.

⁴³ D. Shendrikova, *Going Regional the Russian Way: The Eurasian Economic Union between Instrumentalism and Global Social Appropriateness*, 4 (GREEN Working Paper (2015), http://cris.unu.edu/sites/cris.unu.edu/files/WP%2054_GREEN_Shendrikova.pdf).

⁴⁴ Dragneva & Wolczuk, *supra* note 38, at 4.

⁴⁵ For an in-depth overview, *see id.*

⁴⁶ S. Roberts & A. Moshes, *The Eurasian Economic Union: A Case of Reproductive Integration?*, 32(6) POST-SOVIET AFF. 543 (2016) [hereinafter Roberts & Moshes].

At the turn of the century – with Putin’s rise to power – the movement towards true economic integration between the Eurasian countries finally gained momentum.⁴⁷ With projects such as the *Eurasian Customs Union* (ECU) and the *Single Economic Space* (SES), a deeper level of economic integration was achieved by a select club: Russia, Belarus and Kazakhstan.⁴⁸

The treaty setting up the Eurasian Customs Union between Russia, Belarus and Kazakhstan was signed in October 2007. It was implemented by means of a specific legal and institutional structure and has delivered an important deepening of the economic integration.⁴⁹ The legal regime of the Eurasian Customs Union provides for a common customs code,⁵⁰ a binding mechanism of dispute resolution⁵¹ and for supranational delegation.⁵² The Eurasian Economic Commission was set up as a supranational institution, to coordinate the activities of the ECU and SES.⁵³ In this regard, the ECU and SES were the first Eurasian attempts at a comprehensive law-based integration.⁵⁴

⁴⁷ J. Cooper, *The Development of Eurasian Economic Integration*, in Dragneva & Wolczuk, *Eurasian Economic Integration*, *supra* note 36, 15.

⁴⁸ Engle, *supra* note 37; N. Popescu, *Eurasian Union: The Real, the Imaginary and the Likely*, 132 (Chaillot Paper No. 132, EU Institute for Security Studies, 2014) [hereinafter Popescu].

⁴⁹ A.A. KASHIRINKA & A.N. MOROZOV, РОССИЯ, ЕВРАЗИЙСКИЙ ЭКОНОМИЧЕСКИЙ СОЮЗ И ВСЕМИРНАЯ ТОРГОВАЯ ОРГАНИЗАЦИЯ [RUSSIA, THE EURASIAN ECONOMIC UNION AND THE WORLD TRADE ORGANIZATION] 198 (2014) [hereinafter KASHIRINKA & MOROZOV].

⁵⁰ See Таможенный кодекс Таможенного союза (в ред. Протокола от 16 апреля 2010 года), Приложение к Договору о Таможенном кодексе Таможенного союза, принятому Решением Межгосударственного Совета Евразийского экономического сообщества (Высшего органа Таможенного союза) на уровне глав государств от 27 ноября 2009 года №17 [The Customs Code of the Customs Union (as amended by the Protocol of April 16, 2010), Annex to the Treaty on the Customs Code of the Customs Union adopted by the Decision of the Interstate Council of the Eurasian Economic Community (Supreme Body of the Customs Union) at the level of the Heads of State of November 27, 2009 No. 17] <http://www.tsouz.ru/Docs/Kodeks3/Pages/default.aspx>. English translation: http://trade.ec.europa.eu/doclib/docs/2010/february/tradoc_145777.pdf.

⁵¹ See Статут Суда Евразийского экономического сообщества от 5 июля 2010 года [Statute of the Court of the Eurasian Economic Community of July 5, 2010], art. 13-14, <http://sudevrazes.org/en/main.aspx?queueid=2391.html>.

⁵² I. Krotov, *Customs Union between the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation within the Framework of the Eurasian Economic Community*, 5 WORLD CUSTOMS J. 130 (2012) [hereinafter Krotov]; A. Libman & E. Vinokurov, *The Eurasian Economic Union: Why Now? Will it work? Is it enough?*, 13 WHITEHEAD J. DIPL.&INT’L REL. 29 (2012) [hereinafter Libman & Vinokurov].

⁵³ Shadikhodjaev, *supra* note 38, at 15.

⁵⁴ R. Dragneva, *The legal and institutional dimensions of the Eurasian Customs Union*, in Dragneva & Wolczuk, *Eurasian Economic Integration*, *supra* note 36, at 34.

The ECU came into effect in 2010, followed by the SES in 2012.⁵⁵ These projects marked a change for the post-Soviet regionalism. For the first time, regional integration of trade was seen as more than a political instrument, and the three partners actually upheld the commitments that were made.⁵⁶ These two projects have served as the stepping-stones towards the creation of the Eurasian Economic Union.⁵⁷

D. Eurasian Economic Union

The founding treaty of the EAEU, the *Treaty on the Eurasian Economic Union* (the EAEU Treaty),⁵⁸ was signed by the Presidents of Belarus, Kazakhstan and the Russian Federation on May 29th, in Astana, and became effective on January 1st, 2015. Armenia acceded to the EAEU on January 2nd, 2015 and Kyrgyzstan⁵⁹ followed suit soon afterwards on August 12, 2015.

Drawing heavily from their achievements, the EAEU has replaced both the ECU and SES. The EAEU member states employ a common external tariff vis-à-vis third countries, and, in principle, do not apply any tariffs or customs controls *inter se*. Pursuant to the EAEU Treaty, one of the EAEU's core objectives is the establishment of an internal single market characterized by the 'four freedoms': free movement of goods, services, persons and capital.⁶⁰ The EAEU also envisages to eliminate non-tariff barriers, as well as to establish a common market in energy. As such, it also intends to introduce common technical standards and sanitary and phytosanitary standards.⁶¹

⁵⁵ D. Tarr, *The Eurasian Customs Union among Russia, Belarus and Kazakhstan: Can it succeed where its predecessor failed?*, 54 *Eastern European Economics* 1 (2016) [hereinafter Tarr].

⁵⁶ Libman & Vinokurov, *supra* note 52, at 29.

⁵⁷ Roberts & Moshes, *supra* note 46, at 543.

⁵⁸ The original can be consulted here: https://docs.eaeunion.org/docs/en-us/0043610/itia_05062014. For an English translation, see http://www.un.org/en/ga/sixth/70/docs/treaty_on_eeu.pdf.

⁵⁹ To speed up the process of Kyrgyzstan's integration, Russia had promised financial aid (more or less \$500 million). *Russia vows \$500 Mln for Kyrgyzstan's integration into Eurasian Economic Union*, SPUTNIK INT'L, Aug. 11, 2014, www.sputniknews.com/business/20140811/191918441/Russia-Vows-500-Mln-for-Kyrgyzstans-Integration-Into-Eurasian.html.

⁶⁰ Treaty on the Eurasian Economic Union, May 29, 2014, arts. 4, 28 [hereinafter EAEU Treaty]; See also A. Slepnev, *Eurasian Economic Union Integration: Timetable, Priorities and Challenges*, in U. DADUSH & C. OSAKWE, *WTO ACCESSIONS AND TRADE MULTILATERALISM* 195 (2015).

⁶¹ EAEU Treaty, *id.*, at §§X, XI.

Additionally, the EAEU will seek to harmonise other trade-related policies such as, for example, competition, fiscal policy, and public procurement.⁶² In the long term, monetary policy and financial market regulation would also be harmonised to a certain extent. In fact, the idea of a common currency for the EAEU has already been put forward at various points in time,⁶³ most recently by Russian President Putin in March 2015,⁶⁴ but no actual steps have been taken in this direction so far.

E. Enlargement and External Cooperation

Having succeeded in tightening the bonds of economic integration, Russia is also seeking to expand the scope of the Eurasian Economic Union. Initially, there were hopes to further expand the EAEU to Ukraine. Russia had mounted a campaign to persuade Ukraine to join the EAEU, but to no great avail.⁶⁵ The events in Crimea and their aftermath have rendered a Ukrainian accession virtually impossible at the moment.

The most likely candidates for accession are Moldova⁶⁶ and Tajikistan,⁶⁷ but the road towards accession is proving rather rocky. Although Moldova already has observer status in the EAEU, so far, both states have made little headway in starting the

⁶² Eurasian Economic Commission, *Eurasian Economic Union – Facts and Figures* (Aug. 22, 2017) at 30, http://greater-europe.org/wp-content/uploads/2017/09/2597_1_eng_%D0%A6%D0%B8%D1%84%D1%80%D1%8B-%D0%B8-%D1%84%D0%B0%D0%BA%D1%82%D1%8B_07.pdf.

⁶³ See, e.g., President Nazarbayev in 2003: *Назарбаев предложил ввести единую валюту - "алтын"* [Nazarbayev proposed to introduce single currency – “Alтын”], NOMAD (Apr. 2003), <http://nomad.su/?a=3-200304020025>; Prime Minister Medvedev in 2012: A. Makhonin, *What Euro Crisis? Russia Seeks Single Currency*, THE MOSCOW TIMES, June 18, 2012, <https://themoscowtimes.com/articles/what-euro-crisis-russia-seeks-single-currency-15471>; See also D. Sudakov, *Russia, Kazakhstan and Belarus to have new joint currency by 2025*, PRAVDA, Apr. 10, 2014, http://www.pravdareport.com/russia/economics/10-04-2014/127325-russia_kazakhstan_belarus_new_currency-0.

⁶⁴ *Путин предложил Белоруссии и Казахстану валютный союз* [Putin offered Belarus and Kazakhstan a monetary union], LENTA, Mar. 20, 2015, <https://lenta.ru/news/2015/03/20/currency-union>.

⁶⁵ For more details on this process, see R. DRAGNEVA & K. WOLCZUK, *UKRAINE BETWEEN THE EU AND RUSSIA: THE INTEGRATION CHALLENGE* (2015).

⁶⁶ Moldova was initially primed to enhance its economic cooperation with the EU through the Moldova-European Union Association Agreement that was signed in 2014, and came into force in 2016. However, the Moldovan President Igor Dodon, in office since December 2016, has vowed to scrap the agreement with the EU, and instead join the EAEU. *Moldova leader vows to scrap EU trade deal for Moscow-led bloc*, FINANCIAL TIMES, Jan. 2017, <https://www.ft.com/content/52651bb6-dcd4-11e6-86ac-f253db7791c6>.

⁶⁷ T. Sommer, *Eurasische Wirtschaftsunion: Putins Projekt als Partner der EU?*, ZEIT, Jan. 2015, <http://www.zeit.de/politik/ausland/2015-01/russland-eurasische-wirtschaftsunion-armenien-kasachstan>.

accession process. Aside from the abovementioned states, the other former Soviet republics are still potential candidates to join the EAEU and are being wooed by Russia. So far, few of these countries seem genuinely keen on joining the Eurasian Economic Union and prospective expansion in the immediate future seems to be limited to Moldova and Tajikistan.⁶⁸

Although the progress of actual further expansion has been slow, the EAEU has succeeded in substantially deepening the economic integration between its member states. Internal borders have been removed. A common import tariff has been set up and an ECU Customs Code, regulating, amongst other things, rules of origin and customs valuation, has been adopted.⁶⁹ This Code has effectively replaced the relevant domestic legislation and has, in theory at least (see *infra*) ensured the application of common procedures for customs clearance and control.⁷⁰

The EAEU - through the Eurasian Economic Commission, on the basis of a mandate by the Supreme Council⁷¹ - has also started to conclude free trade agreements with third countries. The first success was achieved with Vietnam - the Free Trade Agreement between the EAEU and Vietnam entered into force on October 5, 2016.⁷² The negotiations with China to conclude an Agreement on Trade and Economic Cooperation have been finalised, and it is expected that the agreement will be signed in the near future.⁷³ Singapore is also close to signing a Free Trade Agreement with the EAEU.⁷⁴

⁶⁸ For example, Azerbaijan has taken an ambiguous stance. *Minister: Azerbaijan not planning to join the Eurasian Economic Union*, KYIV POST, June 2014, <https://www.kyivpost.com/article/content/russia/azerbaijan-not-planning-to-join-eeu-minister-350464.html>; *Azerbaijan foreign minister: 'Never say never' to Eurasian Union membership*, ANN.AZ, Oct. 2015, <http://ann.az/en/azerbaijan-foreign-minister-never-say-never-to-eurasian-union-membership/#.VhDCt-swYfQ>. While Mongolia has expressed interest to join the EAEU, the process is showing little progress. *Mongolia considers joining the Eurasian Economic Union*, THE ASTANA TIMES, Sept. 2016, <https://astanatimes.com/2016/09/mongolia-considers-joining-eurasian-economic-union>.

⁶⁹ Libman & Vinokurov, *supra* note 52, at 31.

⁷⁰ Krotov, *supra* note 52, at 131; Dragneva & Wolczuk, *supra* note 38, at 7.

⁷¹ EAEU Treaty, *supra* note 60, art. 12, §15.

⁷² Free Trade Agreement between the Eurasian Economic Union and the Socialist Republic of Viet Nam, May 29, 2015, http://www.eurasiancommission.org/ru/act/trade/dotp/sogl_torg/Documents/EAEU-VN_FTA.pdf.

⁷³ *China and EAEU declared the conclusion of negotiations on the Agreement on Trade and Economic Cooperation*, EEC, Oct. 2017, <http://www.eurasiancommission.org/en/nae/news/Pages/2-10-2017-5.aspx>.

⁷⁴ *Singapore set to sign Free Trade Agreement with the Eurasian Economic Union by year-end*, ASEAN BRIEFING, Sept. 2017, <https://www.aseanbriefing.com/news/2017/09/12/singapore-set-sign-free-trade-agreement-eurasian-economic-union-year-end.html>.

The waiting list of countries seeking to enter into a free trade deal with the EAEU is growing rapidly, especially as it has dawned on states in the region that the EAEU will be an important link in the Chinese ‘One Belt, One Road’ project.⁷⁵ Important candidates for a free trade agreement include India, Israel, Iran, Egypt, and Serbia.⁷⁶ Another 40 or so countries have expressed interest in cooperating with the EAEU, be it through a free trade agreement or by other means of economic cooperation.⁷⁷

IV. ANATOMY OF AN ECONOMIC UNION

In addition to widening the scope of previous integration mechanisms such as the ECU and CES, the EAEU has also brought about the implementation of a more comprehensive and robust institutional framework. In this part, we will briefly set out the main characteristics of the institutional structure that was set up under the EAEU Treaty. In order for the EAEU to implement its economic integration agenda, the strength (or weakness) of its institutions will be paramount.

The institutional structure of the EAEU – which is endowed with international legal personality pursuant to article 1 of the EAEU Treaty⁷⁸ – comprises the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, the Eurasian Economic Commission, and the Court of the Eurasian Economic Union.⁷⁹

A. Supreme Eurasian Economic Council

The Supreme Eurasian Economic Council consists of the heads of state of the EAEU member states, and is the supreme body of the EAEU.⁸⁰ Meetings are held at least once a year,⁸¹ and decisions are adopted by consensus.⁸² Pursuant to article 12 of the EAEU Treaty, the Supreme Council considers the main issues of the

⁷⁵ *Eurasian Economic Union FTA the Hot Ticket to Participating in China’s OBOR Trade*, SILK ROAD BRIEFING, Nov. 2017, <https://www.silkroadbriefing.com/news/2017/11/23/eurasian-economic-union-fta-hot-ticket-participating-chinas-obor-trade/>.

⁷⁶ *EAEU Update: Multiple countries express free trade interest*, RUSSIA BRIEFING, Mar. 2017, <https://www.russia-briefing.com/news/eaEU-update-multiple-countries-express-free-trade-interest.html>.

⁷⁷ *Interview: Tigran Sargsyan on the Eurasian Economic Union*, EEC, Oct. 2017, <http://www.eurasiancommission.org/en/nae/news/Pages/24-10-2017.aspx>.

⁷⁸ EAEU Treaty, *supra* note 60, art. 1, §2.

⁷⁹ *Id.*, art. 8.

⁸⁰ *Id.*, art. 10.

⁸¹ *Id.*, art. 12.

⁸² *Id.*, art. 13.

EAEU's activities, defines the strategy, directions and prospect of the integration development and makes decisions to implement the objectives of the EAEU.

B. Intergovernmental Council

The Intergovernmental Council consists of the heads of government of the EAEU member states.⁸³ Meetings are held at least twice a year.⁸⁴ Its powers include, amongst others, to ensure the implementation and to control the performance of the EAEU Treaty, international treaties within the Union and decisions of the Supreme Eurasian Economic Council.⁸⁵

C. Eurasian Economic Commission

The EEC is the two-tiered permanent executive body of the EAEU, and consists of a Council and a Board.⁸⁶ The Commission, itself an heirloom of the ECU,⁸⁷ started its activities in 2012, and is based in Moscow.

The Commission's objective is to ensure and enable the functioning and development of the EAEU, as well as to develop proposals concerning economic integration within the EAEU.⁸⁸ Its structure and competences are set out in Annex 1 to the EAEU Treaty.⁸⁹

The executive body of the Commission, the Board, is composed of 10 members; 2 representatives from each member state. The members of the Board (including the Chairman of the Board⁹⁰) are appointed for a renewable term of 4 years.⁹¹ Members of the Board of the Commission work in the Commission on a permanent basis, are required to act independently from any public authorities and officials of the member states and may not request or receive instructions from government authorities or officials of the member states.⁹²

⁸³ *Id.*, art. 14.

⁸⁴ *Id.*, art. 15.

⁸⁵ *Id.*, art. 16.

⁸⁶ *Id.*, art. 18.

⁸⁷ The Commission of the Customs Union was created in 2009, and replaced by the Eurasian Economic Commission in 2012.

⁸⁸ EAEU Treaty, *supra* note 60, annex 1, art. 1.

⁸⁹ *Id.*, art. 18, §3.

⁹⁰ Currently Tigran Sargsyan, the former prime minister of Armenia.

⁹¹ EAEU Treaty, *supra* note 60, annex 1, art. 33.

⁹² *Id.*, annex 1, art. 34.

The Board is, *inter alia*, tasked with developing proposals concerning integration within the EAEU, implementing decisions and dispositions adopted by the Supreme Council and the Intergovernmental Council and decisions adopted by the Council of the Commission, and developing recommendations on issues relating to the formation, functioning and development of the Union.⁹³ The Board takes decisions by qualified majority or consensus.⁹⁴

The Council of the Commission is composed of one representative⁹⁵ from each member state, and is tasked with the management of the Commission's activities as well as the regulation of the integration process in the EAEU.⁹⁶ The Council takes decisions by consensus.⁹⁷

D. Court of the Eurasian Economic Union

The court is a permanent judicial body, and is based in Minsk, Belarus.⁹⁸ The rules with regard to its functioning, jurisdiction and composition are enshrined in Annex 2 to the EAEU Treaty.⁹⁹ The Court is composed of two judges from each member state whose term of office is 9 years.¹⁰⁰ The Court's objective is to ensure uniform application of the EAEU Treaty, international treaties within the EAEU, international treaties concluded with a third party and decisions of the Bodies of the EAEU by the member states and by the different bodies of the EAEU.¹⁰¹

Consequently, the Court of the Eurasian Economic Union is tasked with resolving disputes that relate to the implementation of international treaties concluded within the framework of the EAEU and with the enforcement of the decisions made by the different bodies of the EAEU.

V. EAEU AND THE WTO: AN ODD COUPLE

As a preliminary note in the context of the Eurasian integration into the global trading system, attention should be drawn to the fact that until six years ago, Russia was not a member of the World Trade Organization. Russia joined the WTO in

⁹³ *Id.*, annex 1, art. 43.

⁹⁴ *Id.*, art. 18.

⁹⁵ Always the deputy Head of the Government of the state, duly authorised.

⁹⁶ EAEU Treaty, *supra* note 60, annex 1, art. 22.

⁹⁷ EAEU Treaty, *supra* note 60, art. 18.

⁹⁸ *Id.*, art. 19.

⁹⁹ *Id.*, art. 19, §2.

¹⁰⁰ *Id.*, annex 2, arts. 7, 8.

¹⁰¹ *Id.*, annex 2, art. 2.

2012, after nearly twenty years of negotiations.¹⁰² Until 2012, Russia was the biggest trading nation outside the WTO. Kazakhstan only became a WTO Member in November 2015,¹⁰³ and Belarus is still not a WTO Member.

Considering that, between themselves, the three founding members of the EAEU have less than ten years of experience with the intricacies of WTO membership, the EAEU provides us with an especially interesting case to investigate how RTAs can harmoniously co-exist and interact with global, multilateral integration in the shape of the WTO.

As mentioned above, regional trade integration schemes have a tenuous relationship with the WTO. The main issue this short paper attempts to address is how the two inter-relate. Here, the following issues will be discussed: (A) the compatibility of EAEU law with the WTO legal framework, (B) the fragmentation of customs regimes, (C) the effect of RTA membership on negotiation leverage in the WTO, and (D) the interaction of dispute resolution processes.

A. Compatibility of Rules

A first question that deserves attention is how WTO rules and the law of the EAEU¹⁰⁴ inter-relate. When developing the legal framework of the EAEU's predecessor, the ECU, concerns arose about the conflict of rules between ECU rules and WTO rules, and about the full implementation of the WTO legal regime. The issue was complicated by the fact that Russia, Belarus and Kazakhstan were not WTO Members when the ECU was founded.

This question was explicitly raised by Members of the Working Party on the Accession of the Russian Federation to the World Trade Organisation.¹⁰⁵ Questions were raised with respect to (i) how the Russian Federation would ensure that it could implement and comply with WTO provisions on those issues where ECU Bodies were the competent authorities, (ii) the status of the WTO Agreement within the ECU legal system, and (iii) how the Russian Federation would ensure that future ECU international treaties and ECU Commission Decisions would comply with the

¹⁰² Protocol on the accession of the Russian federation, Dec. 17, 2011, WT/MIN(11)/24, WT/L/839.

¹⁰³ WTO, Accession Protocol for the Republic of Kazakhstan, Jul. 30, 2015, WT/L/957.

¹⁰⁴ For an overview of what constitutes 'the law of the EAEU', see EAEU Treaty, *supra* note 60, art. 6.

¹⁰⁵ Report of the Working Party on the Accession of the Russian Federation to the World Trade Organisation, Nov. 17, 2011, WT/ACC/RUS/70; WT/MIN(11)/2, ¶184 [hereinafter Working Party Report (Russia)].

WTO obligations of the Russian Federation.¹⁰⁶ In addition, the Working Party requested confirmation, and sought assurances from Russia that (i) the WTO Agreement would be an international treaty for the ECU and part of the single undertaking for all ECU Parties, and (ii) in case of a conflict, the WTO Agreement would always prevail over provisions of ECU Agreements and ECU Commission Decisions and other measures adopted by ECU Bodies, including those in effect prior to the date of the accession of the Russian Federation to the WTO.¹⁰⁷

The above questions and concerns were, to a large extent, addressed by the 2011 *Treaty on the Functioning of the Customs Union in the Framework of the Multilateral Trading System* (TMTS),¹⁰⁸ which took effect when Russia acceded to the WTO in 2012.

The TMTS was subsumed in the EAEU Treaty through its Annex 31; The Protocol on the Functioning of the Eurasian Economic Union within the Multilateral Trading System, which states that within the EAEU, “*all corresponding relations shall be governed by the Treaty on the Functioning of the Customs Union in the Framework of the Multilateral Trading System of May 19, 2011*”.¹⁰⁹

In accordance with the TMTS, and as of the date of accession of any member of the ECU to the WTO, the provisions of the WTO Agreement shall become an integral part of the legal framework of the Customs Union (and thus EAEU).¹¹⁰ These are as detailed in the relevant Protocol of Accession, including the individual commitments undertaken by said member of the ECU as part of the terms of its accession to the WTO, which relate to matters that the parties of the ECU have authorised Customs Union Bodies to regulate in the framework of the Customs Union, as well as the legal relationships, regulated by the international treaties, constituting the legal framework of the Customs Union.

Pursuant to article 2 of the TMTS, the parties to the ECU undertake to adopt measures to adjust the legal framework of the Customs Union and the decisions of its Bodies to comply with the WTO Agreement (as detailed in each Party’s Protocol of Accession, including the commitments undertaken by this Party as part of the terms of its accession to the WTO).¹¹¹

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ The original (Договор о функционировании Таможенного союза в рамках многосторонней торговой системы) can be accessed here <http://www.eurasiancommission.org/ru/act/trade/dotp/SiteAssets/wto/freddy-rus.pdf>.

¹⁰⁹ EAEU Treaty, *supra* note 60, annex 31.

¹¹⁰ Treaty on the Functioning of the Customs Union in the Framework of the Multilateral Trading System, May 19, 2011, art. 1, §1 [hereinafter TMTS]; *See also* KASHIRINKA & MOROZOV, *supra* note 49, at 202.

¹¹¹ TMTS, *id.*, art. 2, §1.

Article 2,§1 of the TMTS further stipulates that, until such measures have been adopted, the provisions of the WTO Agreement shall prevail over the respective provisions of treaties concluded within the framework of the ECU, and over the decisions of the bodies of the ECU (now EAEU).¹¹² The Court of the Eurasian Economic Community (EurAsEC), referring to the same has confirmed that the WTO Agreements take precedence over the treaties concluded within the ECU in case of contradictions between the two.¹¹³

What is more, the rights and obligations of the parties to the ECU that result from the WTO Agreement, including the commitments undertaken by such party as part of the terms of its accession to the WTO cannot be abrogated or limited by any decision of the Bodies of the ECU, including the Court, or by any international agreement concluded between the parties.¹¹⁴

When the ECU members enter into an international treaty in the framework of the ECU, they are obliged to ensure the consistency of said international treaty with the WTO commitments of each member.¹¹⁵ In the same vein, when the ECU bodies adopt or apply the laws of the ECU, these must be consistent with the WTO commitments of each member.¹¹⁶

In sum, the decisions and agreements of the ECU must comply with WTO law, and, in case of contradiction, WTO rules will prevail over ECU provisions.

Further addressing the concerns of the Working Party on the Accession of the Russian Federation to the World Trade Organisation, the representative of the Russian Federation highlighted that the TMTS forms an integral part of the domestic legal framework of each ECU (now EAEU) member, and that, in consequence, the national courts of the EAEU member states must apply the provisions of the TMTS. In addition, he confirmed that an infringement of the rights and obligations by an EAEU Party or an EAEU Body regarding the commitments undertaken by each Party as part of the terms of its accession to the WTO can be challenged by an

¹¹² See also Working Party Report (Russia), *supra* note 105, at ¶185.

¹¹³ Решение Коллегии Суда Евразийского экономического сообщества от 24 июня 2013 года по заявлению публичного акционерного общества «Новокраматорский машиностроительный завод» об оспаривании решения Комиссии [The decision of the collegium of the court of the Eurasian economic community of June 24, 2013 on the application of the public joint stock company “Novokramatorsky machine-building plant” to challenge the decision of the Commission], 19 (¶ 7 *Выводы Суда – Применимое право*) <http://www.eurasiancommission.org/docs/Download.aspx?IsDlg=0&print=1&ID=4499>.

¹¹⁴ TMTS, *supra* note 110, art. 2, §2.

¹¹⁵ *Id.*, art. 2, §4.

¹¹⁶ *Id.*

EAEU Party, or EAEU Commission before the EAEU Court.¹¹⁷ In addition, economic operators could assert breaches of the provisions of the TMTS in the EAEU Court, as provided for in Chapter IV (Jurisdiction of the Court) of Annex 2 to the EAEU Treaty.

When answering the question whether WTO rules prevail over those of the EAEU, Daria Boklan,¹¹⁸ professor of law at the National Research University Higher School of Economics, guides her inquiry by asking two questions: (i) whether EAEU law and the WTO Agreement relate to the same subject-matter within the meaning of article 30 of the *Vienna Convention on the Law of Treaties* (VCLT), and (ii) whether the provisions of EAEU law can be considered as *lex specialis* vis-à-vis WTO rules.

In my opinion, and aside from the fact that I think the author reaches the wrong conclusion on at least one occasion, these questions are of little relevance when determining the priority between WTO rules and EAEU rules.

Starting with the question whether WTO rules (GATT) and EAEU law relate to the same subject matter within the meaning of article 30 VCLT, I would argue that the answer is relatively clear.¹¹⁹ For one thing, the WTO and RTAs share a common goal: the lowering of trade barriers in order to allow trade to flow as freely as possible. In essence, both the WTO and RTAs relate to reciprocal preferential trading conditions. And while RTAs will sometimes elaborate a set of norms that is more wide-ranging or more in-depth than the rules of the WTO, it is difficult to argue that they do not relate to the same subject matter.¹²⁰ Take for example the EAEU trade regulation measures with respect to anti-dumping, countervailing and special protection measures,¹²¹ sanitary and phytosanitary requirements,¹²² and technical regulations¹²³, which each have a clear link to corresponding WTO rules. The GATT

¹¹⁷ Working Party Report (Russia), *supra* note 105, at ¶186.

¹¹⁸ D. Boklan, *Compatibility of the Eurasian Economic Union Law and the WTO Agreements*, in A. DI GREGORIO & A. ANGELI, *THE EURASIAN ECONOMIC UNION AND THE EUROPEAN UNION: MOVING TOWARDS A GREATER UNDERSTANDING* 187-196 (2017) [hereinafter Boklan, *Compatibility*]; D. Boklan, *Евразийский экономический союз и Всемирная торговая организация: соотношение правовых режимов* [*The Eurasian Economic Union and the World Trade Organisation: the interrelation of legal regimes*] 2 *Право. Журнал Высшей школы экономики* [L. J. HIGHER ECON.] 226-228 (2017) [hereinafter Boklan, *Eurasian Economic Union*].

¹¹⁹ It is interesting to note that the author in question is not very consistent on this subject. In two articles, both dating from 2017, she comes to a different conclusion with respect to the question whether RTA's such as the EAEU and WTO rules relate to the same subject matter. See *supra* note 118.

¹²⁰ C. Borgen, *Resolving Treaty Conflicts*, 37 *GEO. WASH. INT'L L. R.* 580 (2005).

¹²¹ EAEU Treaty, *supra* note 60, art. 48-50 & Annex 8.

¹²² *Id.*, section XI.

¹²³ *Id.*, section X.

moreover expressly refers to arrangements such as the EAEU in article XXIV. The EAEU Treaty in turn refers to the WTO (and its rules) on multiple occasions.

Secondly, whether or not the WTO Agreement and EAEU law fall within the purview of article 30 VCLT is of little consequence. If in his/her interpretation, a judge would decide that this is a question falling beyond the scope of article 30 VCLT because both sets of rules do not relate to the same subject matter, the said judge would have to fall back on the general rules of interpretation. This is where the second question raised by Boklan comes in: Can EAEU law be considered to be *lex specialis* vis-à-vis WTO rules? If it is the case, as Boklan argues, that EAEU law is indeed *lex specialis*,¹²⁴ the said judge would have to apply the EAEU Treaty, and would inevitably wander upon Annex 31 to the Treaty, which incorporates the TMTS into the EAEU Treaty.¹²⁵

As such, in the end, the rule of WTO priority, as set out in the TMTS would still have to be applied. If no contradiction or inconsistency exists between the two regimes, both sets of rules must be applied with respect to the parties to each such regime.

B. Fragmentation of Customs Regimes

1. Belarus, Kazakhstan and Russia

As was set out above, the TMTS ensures that EAEU actions (agreements/decisions) are in compliance with the WTO regime by stipulating that the provisions of the WTO Agreement that are set out in Russia's Protocol of Accession to the WTO will become an integral part of the legal regime of the Eurasian Customs Union (now EAEU).¹²⁶ It is interesting to note that indirectly, the TMTS may thus have a liberalising effect on a larger scale. By engaging in the ECU before having acceded

¹²⁴ The statement that “In the case the Treaties within the Customs Union are in conformity with the WTO Agreements, the Treaties within the Customs Union should be regarded as *lex specialis* and WTO Agreements as *lex generalis*” in Boklan, *Compatibility*, *supra* note 118, at 190, hinges on an incorrect reading of the referenced judgment of the Court of the Eurasian Economic Community, *see* Решение Коллегии Суда Евразийского экономического сообщества от 24 июня 2013 года по заявлению публичного акционерного общества «Новокраматорский машиностроительный завод» об оспаривании решения Комиссии [The decision of the collegium of the court of the Eurasian economic community of June 24, 2013 on the application of the public joint stock company “Novokramatorsky machine-building plant” to challenge the decision of the Commission], <http://www.eurasiancommission.org/docs/Download.aspx?IsDlg=0&print=1&ID=4499>.

¹²⁵ As Boklan rightly states in Boklan, *Eurasian Economic Union*, *supra* note 118, but glosses over completely in Boklan, *Compatibility*, *supra* note 118.

¹²⁶ TMTS, *supra* note 110, art. 1, §1. *See also* KASHIRINKA & MOROZOV, *supra* note 49, at 198.

to the WTO, Belarus and Kazakhstan were obliged to act in conformity with WTO law even before their accession to the WTO.

It would however be gross oversimplification to say that the effect of participating in the ECU was always one of trade liberalisation – sometimes quite the opposite. Case in point is Kazakhstan.

As a result of the TMTS, when Russia joined the WTO, the rates of the Single Customs Tariff (SCT) of the ECU were (gradually) adjusted to reflect the level of the import tariff rates listed in the Schedule of concessions and commitments on market access for goods, which is annexed to Russia's Protocol of Accession to the WTO.¹²⁷

Before joining the ECU, the tariff barriers put in place by Kazakhstan were relatively low. As a result of its accession to the ECU, it was forced to bring its tariffs in line with the common ECU tariff – and thus with the substantially higher Russian tariffs.¹²⁸ Although a number¹²⁹ of temporary exemptions were granted to Kazakhstan, the problem of differentiating tariffs reared its head again when Kazakhstan acceded to the WTO.

Because ECU members accede to the WTO individually,¹³⁰ there exists a risk that the concessions granted by the acceding state in the accession process are substantially different from those negotiated by Russia – and implemented in the ECU through the TMTS.¹³¹ This enhances the risk of legal fragmentation even more, because, according to the abovementioned TMTS, the WTO obligations of ECU members become part of the ECU legal system.¹³² The TMTS further addresses this problem in Article 1, §5:

¹²⁷ I. Tochitskaya, *Kazakhstan's Accession to the WTO: Overview and Implications for the Eurasian Economic Union 5* (GET Belarus/IMP Research Ctr. Policy Paper Series, PP/01/2016, 2016), <http://eng.research.by/webroot/delivery/files/english/pp/pp2016e01.pdf> [hereinafter Tochitskaya].

¹²⁸ According to a World Bank Report, Kazakhstan's (simple, i.e. not trade-weighted) mean effective tariff rate went from 6.72% to 11.08% as a consequence of joining the ECU, and is expected to rise further to 11.51% when all exceptions will be eliminated. See *Assessment of Costs and Benefits of the Customs Union for Kazakhstan*, World Bank Report No. 74356-KZ, Jan. 3, 2012, 81 <http://documents.worldbank.org/curated/en/190711468041116333/pdf/NonAsciiFileName0.pdf>; See also Tarr, *supra* note 55 at 4.

¹²⁹ Exemptions from the SCT were applied for 409 types of goods.

¹³⁰ And not as a bloc, as was once suggested.

¹³¹ KASHIRINKA & MOROZOV, *supra* note 49, at 205.

¹³² H-M. Wolffgang, G. Brovka & I. Belozarov, *The Eurasian Customs Union in Transition*, 7 WORLD CUSTOMS J. 99 [hereinafter Wolffgang et al]; TMTS, *supra* note 110, art. 1, §3.

“[...]each Party newly acceding to the WTO shall aspire to create such set of commitments, which relate to matters that the Parties have authorized Customs Union Bodies to regulate in the framework of the Customs Union, as well as the legal relationships, regulated by the international treaties, as well as the legal relationships, regulated by the international treaties, constituting the legal framework of the Customs Union, which would comply to the maximum extent with the commitments of the Party which becomes a WTO Member first. Substantial deviations from such commitments, resulting from the negotiations of the Party newly acceding to the WTO, are subject to consultations with and consent of the Parties.” (emphasis added)

In short, the TMTS requires newly acceding states (to the WTO) to try to adhere to the commitments made by the first member who acceded to the WTO with regards to matters that fall within the competence of the ECU.¹³³ If the ECU member in question cannot do so, a process of consultations with the other parties is started.

Although article 1, §5 of the TMTS makes an attempt to remedy the problem of regulatory fragmentation, it does not offer a conclusive solution. For one thing, problems arose over ‘*the Party which becomes a WTO Member first*’. As the EAEU has expanded, this element became uncertain as the new EAEU members (Armenia and Kyrgyzstan) had acceded to the WTO well before Russia. However, this problem was dealt with relatively elegantly by simply excluding the WTO accessions of Armenia and Kyrgyzstan from the scope of the TMTS.¹³⁴

Secondly, the TMTS does not rule out that, in negotiating their accession commitments, newly acceding WTO Members deviate from the commitments negotiated by the “*Party which becomes a WTO Member first*”. It only provides that, in such case, deviations from the original commitments require consultations and the consent of the other parties to the TMTS. In reality, the schedule of commitments as negotiated by Kazakhstan was significantly more liberal than the Russian ones (and thus that of the ECU), as there are around 3,500 types of goods for which the SCT rates exceeded Kazakhstan’s bound rate.¹³⁵ This represents around 49% of Kazakhstan’s non-EAEU imports. In consequence, the import duties levied by Kazakhstan on certain goods are lower than those imposed by other EAEU members. On average, Kazakhstan’s final bound rate in its accession schedule is 6.9% whereas the Russian one is 7.8%.¹³⁶ However, while Kazakhstan currently enjoys transitional exemptions from the EAEU commitments for a large number of

¹³³ KASHIRINKA & MOROZOV, *supra* note 49, at 202; Wolfgang et al *supra* note 132, at 99.

¹³⁴ See V. Movchan & M. Emerson, *The Eurasian Economic Union’s Problematic Customs Union* 5 (2018), <http://www.3dcftas.eu/publications/other/eurasian-economic-union%E2%80%99s-problematic-customs-union> [hereinafter Movchan & Emerson].

¹³⁵ Tochitskaya, *supra* note 127, at 5.

¹³⁶ *Id.*

tariff lines, it has committed itself to enter into negotiations to bring its tariffs in line with EAEU rates three and a half years after all transitional periods have expired (i.e. 2024).¹³⁷ This would mean that accession to the EAEU has led to a tangible increase in Kazakhstan's barriers to trade.

Of course, a commitment to start negotiations says nothing about the outcome of such negotiations. If no agreement can be reached, Kazakhstan's exemption regime to the EAEU common external tariff would become permanent.¹³⁸

2. Armenia and Kyrgyzstan

For other EAEU members, the situation is even less straightforward. Contrary to what was the case for Belarus, Kazakhstan and Russia, the newer EAEU members (i.e. Armenia and Kyrgyzstan) were already WTO Members before acceding to the EAEU (and thus ECU).¹³⁹

Expanding the EAEU towards countries such as Armenia and Kyrgyzstan has entailed significant consequences because of their WTO membership. In fact, the countries' membership of the WTO has proven to be a substantial hindrance for them to join the EAEU. Joining the EAEU meant that the countries had to bring their tariffs in line with the EAEU standard. Because the EAEU tariffs are significantly higher than the ones previously in force in Armenia and Kyrgyzstan (and their bound tariffs in the framework of the WTO), this entailed an important increase in their tariffs, which would, in principle, be a violation of their WTO obligations, and which triggered a duty to provide compensatory adjustment under art. XXVIII GATT.¹⁴⁰

As such, both Armenia and Kyrgyzstan had to enter into consultations and compensatory negotiations with the WTO¹⁴¹ in order to be allowed to increase their import tariffs to the EAEU level.¹⁴² Neither country has been able to successfully finalise these consultations and negotiations at this moment.

¹³⁷ R. Dragneva & K. Wolczuk, *The Eurasian Economic Union: Deals, Rules and the Exercise of Power* 22 (Chatham House Research Paper, May 2017), <https://www.chathamhouse.org/publication/eurasian-economic-union-deals-rules-and-exercise-power> [hereinafter Dragneva & Wolczuk, *Eurasian Economic Union*]; Movchan & Emerson, *supra* note 134.

¹³⁸ Tochitskaya, *supra* note 127 at 11.

¹³⁹ Armenia has been a WTO Member since February 2003. Kyrgyzstan has been a WTO Member since December 1998.

¹⁴⁰ Movchan & Emerson, *supra* note 134.

¹⁴¹ Armenia notified the WTO of its accession to the EAEU in December 2014. Kyrgyzstan notified the WTO of its accession to the EAEU in September 2015.

¹⁴² Dragneva & Wolczuk, *Eurasian Economic Union*, *supra* note 137.

Within the framework of the EAEU, Armenia and Kyrgyzstan were granted a number of transitional exemptions to at least temporarily ease the sharp increase in tariffs for both countries. This was necessary because the TMTS only relates to WTO accessions of EAEU members after 2012, and thus does not apply to Armenia¹⁴³ and Kyrgyzstan.¹⁴⁴ In consequence, the commitments of both countries under the WTO were not transposed into the legal framework of the EAEU.¹⁴⁵

Under the transitional arrangement, Armenia applies exemptions on 800 tariff lines (covering 40 per cent of non-EAEU imports), and Kyrgyzstan applies exemptions on 200 tariff lines (representing 14 per cent of non-EAEU imports).¹⁴⁶ Armenia's transitional period will end in 2022. Kyrgyzstan's transitional period is set to expire in 2020.¹⁴⁷

3. Consequences of Fragmented Customs Regime

The fact that four of the five EAEU members apply exemptions¹⁴⁸ on a (combined) vast number of tariff lines leads to a pronounced disparity within the EAEU and engenders a danger that goods entering the EAEU under an exemption tariff would be re-exported within the EAEU, or that goods that are subject to restrictions in one EAEU member state, enter the EAEU via another member state and are subsequently re-exported into the original EAEU destination.¹⁴⁹ This problem became abundantly clear in the wake of the counter-sanctions that were imposed against western countries by Russia, as Belarus suddenly started to export obviously non-Belarusian products such as peaches, shrimp and kiwi to Russia.¹⁵⁰ Russia's

¹⁴³ See Treaty concerning the Accession of the Republic of Armenia to the Treaty of the Eurasian Economic Union, Oct. 10, 2014, art. 3, read together with provision 38 of Annex 3 to the Treaty concerning the Accession of the Republic of Armenia to the Treaty of the Eurasian Economic Union.

¹⁴⁴ See Treaty on accession of the Kyrgyz Republic to the Treaty of the Eurasian Economic Union, Dec. 23, 2014, annex, point 23.

¹⁴⁵ Movchan & Emerson, *supra* note 134.

¹⁴⁶ Verceuil, *supra* note 36 at 173.

¹⁴⁷ Dragneva & Wolczuk, *Eurasian Economic Union*, *supra* note 137.

¹⁴⁸ Armenia, Kazakhstan and Kyrgyzstan were discussed above. Russia applies different (MFN) tariffs vis-à-vis Ukraine, and has implemented other trade restrictions (transit restrictions).

¹⁴⁹ *Россия обвинила власти ЕС в поддержке реэкспорта запрещенных продуктов* [Russia has accused the EU authorities of supporting the re-export of banned products], RBC, Oct. 2014 <https://www.rbc.ru/politics/16/10/2014/543fe1c9cbb20f429eb17998>.

¹⁵⁰ See E. Vinokurov, *Eurasian Economic Union: Current State and Preliminary Results*, 3 RUSSIAN J. ECON. 59 (2017); A. Yeliseyev, *Belarusian Shrimps Anyone? How EU food products make their way to Russia through Belarus* 3 (Think Visegrad Research Paper, 2018), <http://east-center.org/wp->

response to these re-exports was to increase border controls with Belarus and to introduce a customs monitoring scheme.¹⁵¹ Of course, such measures do not exactly demonstrate the trade liberalising spirit that should be at the heart of a customs union, and they effectively re-introduce barriers to trade in the internal market. This clearly runs counter to the underlying objectives of the EAEU, and more generally of the WTO.

The existence of so many exemptions furthermore creates a gap in the regulatory armour of the EAEU with respect to integration of trade between the members, and the reduction of barriers to trade within the internal market.¹⁵² It is difficult to see how the fragmentation of customs regimes between the different members of the EAEU, and the layers of complexity effectively introduced by such fragmentation could possibly contribute to the liberalisation of trade as it is advocated by the WTO.

C. Negotiation Leverage

Although states are formally equal under the WTO, there is a significant asymmetry in states' power to negotiate. This asymmetry can be discerned both in the accession process as well as in the further workings of the WTO, for example in the dispute resolution process. The discrepancy between formal negotiation power and actual negotiation power is especially relevant for developing countries.¹⁵³ For a state, entering into an RTA in order to increase its negotiating leverage is not an outlandish strategy. It has been argued that in the case of Russia, one of the main aims of its expanding RTA network is to offset the EU's dominance, both in its Eurasian backyard, as in the WTO in general.¹⁵⁴ Russia has already tried to counter European Union initiatives concerning the protection of the internal market for solar panels by using its position within APEC to lobby for a liberalisation of the market for solar panels.¹⁵⁵ More generally, Russia has the intention to influence global trade policy and realign the WTO with its own objectives.¹⁵⁶

content/uploads/2018/01/Belarus-Embargoed-Food-Re-export-EU-Russia.pdf; *Белоруссия лидирует среди стран по фактам реэкспорта санкционных товаров в Россию [Belarus worldwide leader in re-exporting sanctioned products to Russia]*, TASS, Jan. 27, 2016, <http://tass.ru/ekonomika/2618692>.

¹⁵¹ *Id.*

¹⁵² Tochitskaya, *supra* note 127 at 11.

¹⁵³ VAN DEN BOSSCHE & ZDOUC, *supra* note 7, at 148.

¹⁵⁴ B. Mamlyuk, *Regionalizing Multilateralism: The Effect of Russia's Accession to the WTO on Existing Regional Integration Schemes in the Former Soviet Space*, 18 UCLA J. INT'L L. & FOREIGN AFF. 124 (2014) [hereinafter Mamlyuk].

¹⁵⁵ *Id.*

¹⁵⁶ F. McKenzie, *GATT and the Cold War*, 10 J. COLD WAR STUD. 79 (2008), www.mitpressjournals.org/doi/pdf/10.1162/jcws.2008.10.3.78.

This strategy is further exemplified in the proposal of the ECU members to negotiate their WTO membership as a bloc instead of individually.¹⁵⁷ Although this proposal was never accepted, it had the required effect, and helped accelerate Russia's accession process. As a result, Russia and Kazakhstan have negotiated, and Belarus is still negotiating, WTO accession on an individual basis. Nevertheless, this remains an indication of the political objectives underlying the EAEU and illustrates Russia's intention to gain bargaining power in the WTO through enhanced regional cooperation.¹⁵⁸

D. Dispute Settlement

Pursuant to Annex 2 to the EAEU Treaty, the Court of the Eurasian Economic Union is entrusted with the judicial dispute settlement within the EAEU, and is tasked with ensuring the uniform application by the member states and bodies of the EAEU as well as resolving any disputes arising in connection with the implementation of (i) the EAEU Treaty, (ii) international treaties within the EAEU, and (iii) decisions of the bodies of the EAEU. Its decisions are binding on the parties to the dispute.¹⁵⁹

In certain sections of the EAEU Treaty, and other parts of EAEU law, there is extensive reference to WTO law and principles.¹⁶⁰ This could be a potential source of conflict between both legal regimes; that of the EAEU and that of the WTO.

Firstly, in case of a dispute, parties have a choice between two forums: the WTO Dispute Settlement Body and the EAEU Court. It is unclear which forum member states will choose for their disputes, and whether they could be forced to give precedence to one over the other.¹⁶¹ Although Belarus is not a member of the WTO as of now (and thus cannot bring a dispute before the WTO dispute settlement panels), there are plans for its accession in the near future. When Belarus becomes a WTO Member, a dispute relating to, for example, a breach of tariff concessions

¹⁵⁷ J. Lynn, *Russia and allies edge to joint but separate bid*, REUTERS, Oct. 15, 2009 <https://www.reuters.com/article/us-trade-wto-russia-sb/russia-and-allies-edge-to-joint-but-separate-bid-idUSTRE59E35X20091015>; J. Lynn, *WTO in confusion after Russia customs union plan*, REUTERS, June 18, 2009, <https://www.reuters.com/article/us-trade-wto-russia-analysis/wto-in-confusion-after-russia-customs-union-plan-idUSTRE55H18920090618>.

¹⁵⁸ B. Mamlyuk, *Russia and Regional Trade Integration in a Historical Perspective: Response to William E. Butler*, 44 U. MEM. L. REV. 625 (2013).

¹⁵⁹ EAEU Treaty, *supra* note 60, annex. 2, ¶99.

¹⁶⁰ Dragneva & Wolczuk, *supra* note 38, at 8.

¹⁶¹ W. Davey, *Dispute Settlement in the WTO and RTAs: A Comment*, in REGIONAL TRADE AGREEMENTS AND THE WTO LEGAL SYSTEM (L. Bartels & F. Ortino eds., 2006); J. Hillman, *Conflicts between Dispute Settlement in Regional Trade Agreements and the WTO – What should the WTO do?* 42 CORNELL INT'L L. J. 196 (2009).

could be brought before the EAEU Court as well as the WTO Dispute Settlement Body.

Aside from the choice of forum, there is a more profound issue, which is one of legal harmonisation.¹⁶² There is a substantial risk of conflict between the ‘jurisprudence’ of the EAEU Court and that of the WTO Dispute Settlement Body. Such conflict could exist, for example, when the standards imposed by the legal regime of the EAEU overlap with those of the WTO.¹⁶³ In such case, and as mentioned above, the EAEU member states could choose to bring their dispute before the EAEU Court or the WTO Dispute Settlement Body. A risk exists that the jurisprudence of both bodies would not be (entirely) consistent. One way to avoid such inconsistency is by incorporating WTO law into the substantive law of the EAEU. Indeed, this has already been done to some degree (see in more detail above: *A. Compatibility of Rules*). However, as long as there remains an overlap between the two regimes, there remains a potential source of conflict. The Court of the Eurasian Economic Union would have to apply WTO standards and jurisprudence in its own decision-making process to ensure a smooth harmonisation of regional and multilateral trading regimes. Even if it did so consistently, there is a substantial risk of regional judiciary bodies interpreting WTO standards in a way that is not entirely consistent with the legal developments within the WTO itself.

Furthermore, full harmonisation of both systems would also require the WTO dispute settlement body to take regional jurisprudence into account. Considering the proliferation of RTAs, and their general mutual incoherence, this does not seem to be a workable solution.

VI. BUILDING BLOC?

In exploring the Eurasian attempt at regional integration, a last question that we should ask ourselves is: how can the regional integration in the shape of the Eurasian Economic Union contribute to the legal, global integration of trade networks? Can the EAEU really prove to be a stepping-stone – or building bloc – towards a multilateral, global integration of trade?

With regard to this question, we have focused on some of the benefits of the EAEU in the global trading system, in particular the interaction of EAEU rules with the WTO framework. We have seen that, on the positive side, Belarus and Kazakhstan were indirectly tied into the WTO system before becoming WTO Members.

¹⁶² Mamlyuk, *supra* note 154, at 228.

¹⁶³ *Id.*

Another important question in this regard is whether the increased trade cooperation and integration can push Belarus towards WTO membership, or whether it will only complicate its accession process.¹⁶⁴

Additionally, consolidating different RTAs into a single Eurasian Economic Union has an obvious advantage- it can reduce the complexity brought about by a large number of RTAs between the different countries. However, this would require the Eurasian Economic Union to replace the current web of other overlapping bilateral and plurilateral agreements. Seeing as only five countries – albeit some of which are considerably large – have joined the EAEU thus far, the Eurasian Economic Union does not really simplify things yet. Although the Eurasian Economic Union provides a (relatively) uniform regime for these countries, the diversity in Eurasia as a whole remains striking.

An important factor in determining whether the Eurasian Economic Union can really be a legal building bloc, is the Eurasian Economic Union's ability to act as whole. Can the EAEU engage in trade liberalisation schemes as an over-arching legal entity, thus avoiding the complexity of having negotiations with five separate countries?¹⁶⁵ Can the EAEU prove to be a motor of further integration, by acting as a truly consolidated bloc? Although the first results seem to be positive, and the EAEU has already proven its ability to negotiate free trade agreements with third countries (e.g. Vietnam and China), those free trade agreements were not as ambitious in scope as they might have been. It remains to be seen how the EAEU will fare in future negotiations.

Of course, the political element should not be overlooked. As Nicu Popescu, whose research deals with EU-Russia relations and the post-Soviet space, already observed, there is no guarantee that the Eurasian Economic Union in and of itself will survive.¹⁶⁶ Apart from external pressure on the EAEU, there is also a very real internal danger; the possibility that Russia will dominate its partners in this regional trade block and thus discourage them from actively engaging in the EAEU.¹⁶⁷ Advancement of the EAEU has thus far largely depended on the participating

¹⁶⁴ Tarr, *supra* note 55, at 7; Valovaya, *supra* note 30.

¹⁶⁵ R. Baldwin, *Stepping Stones or Building Blocs? Regional and Multilateral Integration*, 5, Sept. 10, 2004, http://phase1.nccr-trade.org/images/stories/publications/Baldwin_SteppingStones.pdf.

¹⁶⁶ Popescu, *supra* note 48, at 151.

¹⁶⁷ L. Delcour & H. Kostanyan, *Towards a Fragmented Neighbourhood: Policies of the EU and Russia and their Consequences for the Area that Lies in between*, 7, CEPS, (2014), <https://www.ceps.eu/system/files/CEPS%20Essay%20No%2017%20Fragmented%20Neighbourhood%20-%20H%20Kostanyan%20L%20Delcour.pdf>.

countries' leaders. It is unsure whether the EAEU would be able to withstand a change of regime in its member countries.

Popescu has moreover put forward the argument that Russia's geopolitical goals could undermine the successful consolidation of the Eurasian economic integration project. He says that if Russia wants the Eurasian Economic Union to work, "*It needs to consolidate in a gradual and consensual way. However, the imperative of geopolitical Eurasia dictates the opposite. Thus the states participating in this project are at the same time closely linked to Russia and also busy hedging against Russia. And none of them is particularly willing to take part, by siding with Russia, in a geopolitical confrontation with the West*".¹⁶⁸

Looking beyond the geopolitical concerns, there are also legal and institutional issues that need to be addressed in the long run.¹⁶⁹ The concern has been raised that the institutions and legal framework provided for in the Eurasian Economic Union are not comprehensive enough to support a long-term viability of the project.¹⁷⁰

Anders Aslund, who has worked as an economic adviser to the Russian and Ukrainian governments, believes that the Eurasian Economic Union will not lead to deeper economic and political integration and that "*Russia's promotion of the Eurasian Union does not lead to further political and economic integration but to Russia's isolation with Belarus and Kazakhstan at great cost to the Kremlin*".¹⁷¹

The future of the EAEU will thus largely depend on the willingness and commitment of its member states to cooperate to the fullest extent, and to effectively overcome political squabbles.

VII. CONCLUDING REMARKS

In order to retain a dominant position vis-à-vis its Eurasian neighbours, Russia has had to adjust its political strategies. It has recently adopted a legal, rule-based approach to regional integration, much like the European Union. In fact, the EU's encroaching on Russia's power in the former Soviet region may be one of the biggest

¹⁶⁸ Popescu, *supra* note 48, at 48.

¹⁶⁹ T. Bordachev & A. Skriba, *Russia's Eurasian Integration Policies*, in THE GEOPOLITICS OF EURASIAN ECONOMIC INTEGRATION 21 (D. Cadier ed., 2014).

¹⁷⁰ S. Blockmans, H. Kostanyan & I. Vorobiov, *Towards a Eurasian Economic Union: The Challenges of Integration and Unity*, 24, CEPS SPECIAL REPORT NO. 75 (2012), papers.ssrn.com/sol3/papers.cfm?abstract_id=2190294 [hereinafter Blockmans]; I. Dreyer & N. Popescu, *The Eurasian Customs Union: The Economics and the Politics*, 4 (2014), https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_11_Eurasian_Union.pdf.

¹⁷¹ A. Aslund, *Putin's Eurasian Illusion Will Lead to Isolation*, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS (2012), www.piie.com/publications/opeds/oped.cfm?ResearchID=2148.

reasons why Russia has been forced to change its game.¹⁷² Russia has recently put more emphasis on regional integration through economic integration, based on an improved legal regime and institutions. However, the scope of the deepened integration has remained somewhat limited, extending only to Russia, Belarus, Kazakhstan, Kyrgyzstan and Armenia.

We have seen that the interaction between RTAs – in particular the Eurasian Economic Union – and the WTO is not always mutually beneficial.¹⁷³ Although the legal framework of the Eurasian Economic Union attempts to accommodate the WTO legal regime, substantial imperfections remain that hamper a harmonious coexistence of both legal regimes.

The real question is whether the legal and institutional framework that has been put in place can be a firm basis on which to pursue more advanced economic integration. Although the EAEU is clearly a rule-based organisation, supported by a much-improved legal and institutional framework, it remains to be seen whether this will be enough to support further integration into the multilateral regime. Authors such as Blockmans, Kostanyan and Vorobiov¹⁷⁴ as well as Dragneva and Wolczuk¹⁷⁵ have voiced concerns over this issue and have emphasised the fact that the EAEU currently suffers from lacklustre enthusiasm and lacks genuine engagement from its members.

Although the potential of the EAEU project should not be dismissed out of hand, we have seen that Russia and its regional partners have an impressive range of obstacles – political, legal as well as economic – to overcome for the EAEU to be considered a success. Only the future will tell whether the EAEU can truly be a building bloc towards multilateral integration.

¹⁷² R. Dragneva & K. Wolczuk, *Eurasian Economic Integration: Institutions, Promises and Faultlines*, 8, LSE IDEAS! (2014).

¹⁷³ Mamlyuk, *supra* note 154 at 123.

¹⁷⁴ Blockmans, *supra* note 170.

¹⁷⁵ R. Dragneva & K. Wolczuk, *The Eurasian Customs Union: framing the analysis*, in Dragneva & Wolczuk, *Eurasian Economic Integration*, *supra* note 36, at 11.