
The Sociology of International Economic Law: Sociological Analysis of the Regulation of Regional Agreements in the World Trading System

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Abstract

International economic law (IEL) is influenced by diverse theoretical approaches. This article emphasizes that international economic activity is a social phenomenon and international trade should also be conceived as a specific type of social interaction. The scarcity of sociological analysis in contemporary IEL literature does not diminish the influence of social factors that are active in the under-explored layer of the international economic arena. Sociological analysis may recast well-known dilemmas in a different manner and generate insights regarding better legal mechanisms for coping with modern challenges faced by IEL. These properties of sociological analysis are illustrated in this article, which addresses one of the most challenging dilemmas in current IEL literature: the relationship between the World Trade Organization (WTO) and regional trade agreements (RTAs). The underlying argument of this article is that the economic dimension of RTAs is overlaid with a sociological dimension. Consequently, the global/regional debate is analysed with new conceptual tools: sociological theories, mainly the structural-functional perspective, the symbolic-interactionist approach, and the social conflict perspective. The core sociological theories lead to different conceptions of IEL and different interpretations of existing WTO legal provisions regarding RTAs. This article argues that while each of the above sociological approaches underscores certain significant aspects of the global/regional debate, the symbolic-interactionist perspective should generally serve as a point of departure for law- and policy-making in this sphere. This approach suggests that the relevant WTO legal rules should be interpreted in a liberal manner.

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1 Introduction

International economic law (IEL) is influenced by diverse theoretical approaches (e.g., rational choice, economic, political science, and constitutional theories). This article emphasizes that international economic activity is a social phenomenon and that international trade should also be conceived as a specific type of social interaction. Sociological analysis offers valuable insights into IEL and broadens our understanding of social factors involved in the creation and implementation of IEL rules. As elaborated below, sociological analysis also has implications for policy-making and suggests some better mechanisms for coping with the modern challenges faced by IEL.

These properties of sociological analysis¹ are illustrated in this article, which addresses one of the most challenging dilemmas in current IEL literature: the relationship between the World Trade Organization (WTO) and regional trade agreements (RTAs). The unprecedented proliferation of free trade areas and customs unions² has engendered one of the most fundamental structural changes in the contemporary international economic system.³ This process has intensified the long-standing debate among scholars and policy-makers regarding the motives and repercussions of RTAs, and whether the WTO system should promote, tolerate, or restrict the formation of RTAs. The answers provided to these important questions affect the interpretation of existing WTO legal provisions regarding RTAs, and current negotiations regarding future rules in this sphere.

The formation and enlargement of RTAs are addressed by several WTO legal provisions – mainly, Article XXIV of the General Agreement on Tariffs and Trade⁴ (GATT) and Article V of the General Agreement on Trade in Services⁵ (GATS) – and these preferential arrangements are monitored by the WTO organs. The WTO oversight mechanism has proven unsatisfactory, and numerous specialists believe that it suffers from a lack of legal discipline.⁶ The perceived weakness of the current regulation

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¹ On the sociological analysis of international law in general see Hirsch, 'The Sociology of International Law', 55 *U Toronto LJ* (2005) 891.

² The term 'regional trade agreements' refers to agreements through which the states involved grant more favourable conditions to trade than to other WTO members' trade. The most common RTAs are free trade areas and customs unions: M. Matsushita, T.J. Schoenbaum, and P.C. Mavoroidis, *The World Trade Organization: Law, Practice and Policy* (2006), at 548–549; M. Schiff and A. Winters, *Regional Integration and Development* (2003), at 1–2.

³ See, e.g., J.A. Crawford and R.V. Fioentino, *The Changing Landscape of Regional Trade Agreements* (2005), at 2; WTO, *WTO Annual Report – 2005* (2005), at 58; OECD, *Regionalism and the Multilateral Trading System* (2003), at 1–2.

⁴ General Agreement on Tariffs and Trade 1994, 1867 UNTS 190; General Agreement on Tariffs and Trade 1947, 55 UNTS 194.

⁵ General Agreement on Trade in Services 1994, 1869 UNTS 183.

⁶ See sect. 3.

of RTAs led the WTO members to agree, in the 2001 Doha Ministerial Declaration, to initiate negotiations aimed at clarifying and improving disciplines under the existing WTO provisions in this sphere.⁷

Contemporary IEL literature on RTAs discusses extensively the economic motives and repercussions of RTAs (e.g., the interest in reaping the benefits of economies of scale and the resulting trade creation/diversion).⁸ IEL literature is also influenced, though to a lesser extent, by studies of the political factors involved in the formation and operation of RTAs (such as the neo-functional approach).⁹ The abundant legal literature pays only scant attention to socio-cultural aspects of RTAs. The underlying argument of this article is that the economic and political dimensions of RTAs are overlain with a sociological dimension. These three dimensions are inextricably interlinked in the life of RTAs and cannot be properly understood in isolation. Though these three dimensions are inseparable in reality, this article is devoted to a sociological analysis of RTAs.

As elaborated below, sociological analysis casts new light on an under-explored dimension of RTAs. Such analysis may bear significant implications for the interpretation of existing legal provisions (such as Article XXIV of the GATT) and affect the content of future rules in this controversial sphere of IEL.

This article is structured as follows: section 2 introduces the fundamental tenets of the sociological approach and economic sociology. Following a discussion of the mutual interrelationships between international economics and sociology, the section underscores that IEL rules often reflect and affect societal factors. Section 3 outlines the regulation of RTAs in the WTO legal system. The section briefly discusses the relevant legal provisions, the activities of the WTO oversight mechanism, and the decisions of the GATT/WTO dispute settlement bodies that dealt with these provisions. Section 4 addresses the contemporary debate regarding the appropriate regulation of RTAs in the global system. This section delineates the main economic theories of RTAs, as well as the prominent political science theories of international economic integration. Section 5 presents sociological analysis of the global/regional debate in IEL. The section analyses the thorny question regarding the regulation of RTAs with the most influential sociological theories: the structural-functional perspective, the symbolic-interactionist approach, and the social conflict perspective. Section 6 analyses the merits and limitations of each sociological perspective on RTAs, and concludes that while each of the above sociological core approaches underscores certain significant aspects of the global/regional debate, the symbolic-interactionist perspective should generally serve as a point of departure for law- and policy-making in this sphere. This sociological approach suggests that the relevant WTO legal rules should be interpreted liberally. Section 7 briefly recapitulates the main conclusions drawn from preceding sections and highlights the potential contribution of sociological analysis to IEL scholarship.

⁷ Para. 29 of the 2001 Doha Ministerial Declaration, 41 ILM (2002) 746.

⁸ See sect. 4.

⁹ See *ibid.*

2 The Sociology of International Economic Law

The central assumption of the sociological perspective is that individual behaviour and normative choices are significantly affected by social factors. As stated by Emile Durkheim, society is more than the individuals who compose it; society has a life of its own that stretches beyond our personal experience.¹⁰ Social inquiry generally emphasizes that norms and roles constrain human behaviour. A role is defined as a typified response to a typified expectation; roles are constituted by society's expectations that other persons will behave in a certain manner in a given situation. Under this conception, 'roles encode norms, and conformity to norms becomes a motive of behaviour'.¹¹ Thus, for instance, the readiness to abide by norms¹² depends largely on the internalization of the relevant social norm, and not on rational calculation whether the behaviour is profitable or not.¹³

The sociological core assumptions regarding the influential role of social factors on individual behaviour are extended to the economic realm by *economic sociology*. Well-known sociologists who explore economic behaviour attack the 'under-socialized' concept of persons that characterizes the economists' analysis. Mark Granovetter, a leading scholar of economic sociology, argues that an adequate analysis of human behaviour requires the avoidance of the theoretical extremes of 'under-socialized' and 'over-socialized' conceptions. He states that '[a]ctors do not behave or decide as atoms outside a social context, nor do they adhere slavishly to a script written to them by a particular intersection of social categories that they happen to occupy. Their attempts at purposive action are instead embedded in a concrete, ongoing system of social relations.'¹⁴

Under this concept, international economic activity does not constitute an exception, and trade is conceived of as a specific type of social interaction.¹⁵ Statistical studies demonstrate that socio-cultural factors influence international economic relations among states and individuals. Thus, for instance, Noland's studies show that, after accounting for economic factors, public attitudes are statistically correlated with trade and capital inflows, and that these attitudes are in turn correlated with indices of cultural affinity (i.e., ethnic and religious similarity) and political ideology.¹⁶

International economic relations are not only *affected* by socio-cultural factors, they often *influence* the socio-cultural features of the communities involved. Thus,

¹⁰ E. Durkheim, *Sociology and Psychology* (1953), at 55.

¹¹ S.H. Heap et al., *The Theory of Choice* (1992), at 63–64; J. Scott, *Sociological Theory* (1995), at 63.

¹² For a sociological analysis of compliance with international law see Hirsch, 'Compliance with International Norms in the Age of Globalization: Two Theoretical Perspectives', in E. Benvenisti and M. Hirsch (eds), *The Impact of International Law on International Cooperation* (2004), at 166, 188 ff.

¹³ Heap et al., *supra* note 11, at 68.

¹⁴ Granovetter, 'Economic Action and Social Structure: The Problem of Embeddedness', in R. Swedberg (ed.), *Economic Sociology* (1996), at 239, 245. See also Dobbin, 'The Sociological View of the Economy', in M. Dobbin (ed.), *The New Economic Sociology: A Reader* (2004), at 5.

¹⁵ See, e.g., Irwin and Kasarda, 'Trade, Transportation, and Spatial Distribution', in N.J. Smelser and R. Swedberg (eds), *The Handbook of Economic Sociology* (1994), at 342.

¹⁶ M. Noland, *Affinity and International Trade* (2005), at 3, 8 and see the references therein. See also J. Frankel, *Regional Trading Blocks in the World Economic System* (1997), at 45–46.

for instance, international trade and foreign investments are considered a source of knowledge spillovers.¹⁷ International trade spreads knowledge, norms, and values, through traders who often cross boundaries and settle in new communities, and by the content of the products or services purchased by the members of different communities. Socio-cultural factors do not necessarily support international economic relations, and resistance to the expansion of global economic integration is often based on socio-cultural concerns.¹⁸ The relationship between some socio-cultural factors (such as ideas, identities, and shared understandings) and international relations, including international economic relations, is also explored by the proponents of the social constructivist approach¹⁹ in contemporary international relations literature.²⁰

In light of the mutual interrelationships between international economics and socio-cultural factors, it is not surprising that IEL often reflects and affects societal factors (such as values and norms) and processes (such as socialization, conformity, and social exclusion). Alternative legal rules regulating international economic activities reflect different socio-cultural values and affect social processes. The link between IEL and socio-cultural factors is evident in special rules for trade in cultural goods and services (publications, films, sound recordings, and television programmes),²¹ which 'are seen as vehicles for transmitting intangibles that are the essence of a society: ideas, values, identity and a sense of shared experience and community'.²² This relationship between international trade and culture is also discernable with regard to trade in other products and services.²³

Analysis of sociological factors involved in various international economic activities is likely to affect legal policy regarding the interpretation of relevant treaty provisions and the development of future legal instruments. The properties

¹⁷ Falvey, Foster, and Greenaway, 'North-South Trade, Knowledge Spillovers and Growth', 17 *J Econ Integration* (2002) 650.

¹⁸ See Paul, 'Cultural Resistance to Global Governance', 22 *Michigan J Int'l L* (2001) 1.

¹⁹ Social constructivism is increasingly influential in contemporary international relations literature. On the constructivist approach in international relations theory see, e.g., A. Wendt, *Social Theory of International Politics* (1999); Adler, 'Cognitive Evolution: A Dynamic Approach for the Study of International Relations and their Progress', in E. Adler and B. Crawford (eds), *Progress in Postwar International Relations* (1991), at 43; J.G. Ruggie, *Constructing the World Polity* (1998), at 11–14. On the potential of the constructivist approach for the study of international trade law see Lang, 'Reconstructing Embedded Liberalism: John Gerard Ruggie and Constructivist Approaches to the Study of International Trade Regimes', 9 *J Int'l Econ L* (2006) 81. On the constructivist approach and RTAs see sect. 5A.

²⁰ Some international relations scholars (not necessarily subscribing to the constructivist approach) attach significant weight to social issues involved in international economic relations: see, e.g., Nicolaïdis and Schmidt, 'Mutual Recognition "on Trial": The Long Road to Services Liberalization', 14 *J European Public Policy* (2007) 717.

²¹ For an overview of the regulation of cultural sectors in major international trade agreements and negotiations see M.J. Trebilcock and R. Howse, *The Regulation of International Trade* (3rd edn, 2005), at 637–640; R. Bhala, *Modern GATT Law* (2005), at 1179–1205.

²² *Culture and International Trade Rules: Issues and Outlook*, available at: www.mediatrademonitor.org/node/view/75

²³ See, e.g., B. Jamieson, *Trade Liberalization: Culture, Identity and Social Cohesion* (2006), available at: www.international.gc.ca/eet/pdf/06-en.pdf

of sociological analysis and its potential contribution to IEL scholarship are illustrated in the sections below that address the relationship between the WTO and RTAs.

3 The Regulation of RTAs in the WTO System

The recent decade has witnessed an unprecedented wave of growth in the number of RTAs and their scope. Though some kinds of RTAs have existed for centuries, the numbers, as well as the world share of trade covered by RTAs, have been steadily increasing over the last 10 years. Nearly all countries belong to at least one RTA, and some are party to numerous agreements.²⁴ Developing countries increasingly form RTAs and join existing ones,²⁵ with both developing and developed countries.²⁶ RTAs already account for almost half of world trade; this is expected to increase if all the RTAs currently in the pipeline are implemented.²⁷

Though RTAs deviate from one of the WTO core objectives, the Most Favoured Nation (MFN) principle,²⁸ WTO law allows members to establish and enlarge such preferential arrangements if certain conditions are fulfilled. These requirements are included in Article XXIV of the GATT, Article V of the GATS, and the 'Enabling Clause' with regard to RTAs among developing countries. The most important rules are included in Article XXIV of the GATT and the 1994 Understanding on the Interpretation of Article XXIV.²⁹ These provisions lay out the criteria and procedure for the assessment of new or enlarged RTAs.³⁰ The central requirements are:

- (i) '[S]ubstantially all the trade' between the RTA members is liberalized.³¹ With respect to Customs Unions, the members are also required to apply substantially the same duties and other trade restrictions to products of third parties.³²

²⁴ See, e.g., *WTO Annual Report – 2005*, *supra* note 3, at 58–59; Crawford and Fioentino, *supra* note 3, at 1; World Bank, *Global Economic Prospects: Trade, Regionalism, and Development* (2005), at 28–29.

²⁵ Crawford and Fioentino, *supra* note 3, at 2–7.

²⁶ On RTAs between developing and developed states see, e.g., Hirsch, 'The Logic of North-South Economic Integration', 32 *LIEI* (2005) 3.

²⁷ OECD, *supra* note 3, at 1–2.

²⁸ Art. I GATT, *supra* note 4.

²⁹ *Understanding on the Interpretation of Article XXIV of The General Agreement on Tariffs and Trade 1994*, available at: www.wto.org/english/docs_e/legal_e/10-24.doc

³⁰ For a detailed analysis of Art. XXIV GATT see Matsushita *et al.*, *supra* note 2, at 555–578; J.H. Jackson, W. Davey, and A.O. Sykes, *Legal Problems of International Economic Relations* (2002), at 452–465. See also P. van Den Bossche, *The Law and Policy of the World Trade Organization* (2005), at 652–662; Cottier, 'The Challenge of Regionalism and Preferential Relations in World Trade Law and Policy', 1 *European Foreign Affairs Review* (1996) 149, at 157–170.

³¹ Art. XXIV(8)(b) GATT (regarding FTAs) and Art. XXIV(8)(a)(i) GATT (regarding customs unions), *supra* note 4. This principle also requires the elimination of discriminatory standards included in RTAs: Trachtman, 'Toward Open Recognition? Standards and Regional Integration under Article XXIV of GATT', 6 *J Int'l Econ L* (2003) 459, at 485–486.

³² Art. XXIV(8)(a)(ii) GATT, *supra* note 4. This principle also requires the elimination of discriminatory standards included in customs union agreements: *ibid.*, at 486–487.

- (ii) The liberalization of trade among the RTA members is achieved 'within a reasonable length of time'.³³ The 1994 Understanding clarifies that this period 'should exceed 10 years only in exceptional cases'.³⁴
- (iii) Duties and other trade restrictions imposed by RTA members on products from third parties shall not be higher or more restrictive than those existing prior to the formation of the RTA.³⁵ If the formation of a customs union leads to an increase in the bound duties (under Article II of the GATT) towards third parties, there is an obligation to provide the latter with compensatory adjustment³⁶ (regularly in the form of tariff concessions).³⁷
- (iv) RTA members notify the WTO and provide the agreements and all relevant information.³⁸

Article V of the GATS sets out similar but somewhat weaker requirements for the formation and modifications of 'Economic Integration' agreements in services:³⁹

- (a) The agreement has substantial sectoral coverage (in terms of the number of sectors, volume of trade affected, and modes of supply). The agreement should not provide for the *a priori* exclusion of any mode of supply.⁴⁰
- (b) The agreement provides for the absence or elimination of substantially all discrimination among the parties, in the sectors covered in this agreement. This requirement must be attained either at the entry into force of that RTA or on the basis of a reasonable time frame.⁴¹
- (c) The agreement is designed to facilitate trade among the RTA parties and not raise the overall level of trade barriers towards third states (compared to the level applicable prior to such an agreement).⁴²
- (d) The members shall promptly notify any such agreement to the Council for Trade in Services and make available to the Council the relevant information.⁴³

³³ Art. XXIV(5)(c) (regarding FTAs and customs unions).

³⁴ Art. 2 of *Understanding on the Interpretation of Article XXIV*, *supra* note 29.

³⁵ Art. XXIV(5)(b) GATT (regarding FTAs) and Art. XXIV(5)(a) (regarding customs unions), *supra* note 4. See also para. 2 of *Understanding on the Interpretation of Article XXIV*, *supra* note 29.

³⁶ Art. XXIV(6) GATT, *supra* note 4, and paras 4–6 of *Understanding on the Interpretation of Article XXIV*, *supra* note 29.

³⁷ Cho, 'Breaking the Barrier between Regionalism and Multilateralism', 42 *Harvard Int'l LJ* (2001) 419, at 439–440.

³⁸ Art. XXIV(7)(a) GATT, *supra* note 4. See also paras 7–10 of *Understanding on the Interpretation of Article XXIV*, *supra* note 29.

³⁹ B.M. Hoekman and M.M. Kostecki, *The Political Economy of the World Trading System* (2nd edn, 2001), at 355; R. Lawrence, *Regionalism, Multilateralism, and Deeper Integration* (1993), at 103.

⁴⁰ Art. V(1)(a) GATS, *supra* note 5.

⁴¹ Art. V(1)(b) GATS, *supra* note 5.

⁴² Art. V(4) GATS, *supra* note 5.

⁴³ Art. V(7)(a) GATS, *supra* note 5.

RTAs among developing states that liberalize trade in either goods or services are subject to more lenient criteria. The 1979 Decision on Differential and More Favourable Treatment of Developing Countries ('the Enabling Clause')⁴⁴ lays out less demanding requirements than those included in the GATT and GATS.⁴⁵

Agreements establishing RTAs are reviewed by the WTO organs.⁴⁶ Following the report of the Committee on Regional Trade Agreements (CRTA), the Council for Trade in Goods may determine whether the particular RTA is consistent with the above criteria. If the Council finds that the RTA is not likely to comply with these conditions, it may make recommendations to the RTA's parties. In the latter case, the RTA's members shall not put into force or maintain the regional agreement unless they are prepared to modify it in accordance with these recommendations.⁴⁷ Similar procedures apply to regional agreements on trade in services.⁴⁸ This oversight process has proven to be a weak enforcement mechanism of the conditions laid out in the WTO agreements.⁴⁹ The traditional requirement of consensus for a decision to be adopted by the Committee effectively blocked decisions disqualifying RTAs.⁵⁰

Thus, while numerous RTAs were reviewed by the *ad hoc* working parties and CRTA, no RTA was condemned and only few⁵¹ were declared consistent with the GATT rules.⁵² The new Committee on Regional Trade Agreements (CRTA) has made some progress in outlining systemic issues regarding RTAs but its members have been unable to finalize reports on any of these issues.⁵³

⁴⁴ Arts 2 and 3 of the *Decision on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries*, available at: www.wto.org/english/docs_e/legal_e/enabling_e.doc

⁴⁵ See Hoekman and Kostecki, *supra* note 39, at 355; Lawrence, 'Regionalism and the WTO', in J.J. Schott (ed.), *The World Trading System: Challenges Ahead* (1996), at 41, 46.

⁴⁶ In the past, all relevant information was examined by WTO *ad hoc* working parties which reported to the Council for Trade in Goods. The Singapore Ministerial Meeting called for an end to the *ad hoc* working party review system by establishing a standing Committee on Regional Trade Agreements (CRTA). The new Committee was entrusted to carry out the examination of RTAs, 'consider systematic implications of such agreements for the multilateral trading system', and make appropriate recommendations: Decision of the General Council, WT/L/127, 7 Feb. 1996; J.H. Mathis, *Regional Trade Agreements in the GATT/WTO* (2002), at 306. See also at 130–131.

⁴⁷ Art. XXIV(7)(b) GATT, *supra* note 4; Arts 7–11 of *Understanding on the Interpretation of Article XXIV*, *supra* note 29.

⁴⁸ See Art. V(7) GATS, *supra* note 5; Van Den Bossche, *supra* note 30, at 666.

⁴⁹ See, e.g., Lawrence, *supra* note 39, at 52–53; Bhala, *supra* note 21, at 604–605; Cottier, *supra* note 30, at 160–161.

⁵⁰ See, for instance, WTO, *Analytical Index: Guide to GATT Law and Practice* (6th edn, 1994), at 761. See also Mathis, *supra* note 46, at 83; W.J. Davey, *Regional Trade Agreements and the WTO* (2005), at 9.

⁵¹ See, for instance, Report of Working Party on the South Africa–Southern Rhodesia Customs Union, GATT/CP3/24, 14 May 1949, at 9. See also with regard to the Customs Union between the Czech Republic and the Slovak Republic, Minutes of the Meeting, C/M/275, 24 Oct. 1994, at 14.

⁵² Jackson *et al.*, *supra* note 30, at 454. For an analysis of the practice of the GATT/WTO *ad hoc* working parties, the CRTA, and WTO members in this field see Mavroidis, 'If I Don't Do It, Somebody Else Will (or Won't)', 40 *J World Trade* (2006) 187.

⁵³ *Report of the Committee on Regional Trade Agreements to the General Council* (1999), WT/REG/8, 11 Sept. 1999, as cited in Mathis, *supra* note 46, at 306, 308–309.

The GATT dispute settlement bodies have rarely been involved in the application and interpretation of the above WTO provisions, and their jurisprudence will be summarized very briefly. The 1985 GATT panel decision on *EC – Tariff Treatment of Imports of Citrus Products from the Mediterranean Region* showed a restrained approach and the panel concluded that it should abstain from examination of the relevant RTA in the context of Article XXIII (nullification and impairment).⁵⁴ The two decisions of the GATT panels in the ‘Bananas Case’⁵⁵ in 1993–1994 displayed a less cautious approach regarding legal review of RTAs under Article XXIV. These panels’ decisions indicated that in the absence of an Article XXIV compatibility recommendation by the GATT working groups, RTAs could be subject to legal review by the GATT panels.⁵⁶

The most important decision of the GATT/WTO dispute settlement bodies with regard to Article XXIV is the WTO Appellate Body’s decision in the *Turkish Textile Case*.⁵⁷ A controversial question that arose in this case relates to the jurisdiction of the WTO dispute settlement bodies to examine the legality of the WTO members’ actions under Article XXIV. The Appellate Body stated that it was not called upon to address this issue in this appeal but the decision indicates that the WTO dispute settlements bodies are competent to review matters that are also committed to the evaluation of political bodies, such as CRTA.⁵⁸

The proper scope of the WTO judicial organs’ jurisdiction regarding the formation and enlargement of RTAs, as well as the interpretation of the WTO legal provisions regarding RTAs, remain disputed between the WTO members and scholars.⁵⁹ These issues are also currently negotiated in the Doha Round.⁶⁰ Many of these controversies boil down to the fundamental policy debate regarding the relationship between the WTO and RTAs.

4 The Global/Regional Debate

The current proliferation of RTAs and the perceived weakness of the current WTO supervisory mechanism intensify the controversy regarding the relationship between

⁵⁴ European Community – Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region: Report of the Panel, Section 4.15 GATT/ L/5776, 7 Feb. 1986 (unadopted).

⁵⁵ *EEC – Member States’ Import Regime for Bananas*, DS32/R, 3 June 1993 (hereinafter: ‘the First Bananas Case’); *EEC – Member States’ Import Regimes for Bananas*, DS38/R, 11 Feb. 1994 (hereinafter: ‘the Second Bananas Case’).

⁵⁶ The *First Bananas Case*, *supra* note 54, at para. 358; see also para. 372; the *Second Bananas Case*, *supra* note 54, at para. 158.

⁵⁷ *Turkey – Restrictions on Imports of Textile and Clothing Products*, Report of the Appellate Body, AB-1995-5, WT/DS34/AB/R (adopted by the DSB on 19 Nov. 1999) (hereinafter: ‘*Turkey – Textile Case*’). For a detailed examination of this decision see Mathis, *supra* note 46, at 193–226; Trachtman, ‘Decision of the Appellate Body of the World Trade Organization: Turkey-Restrictions on Import of Textile and Clothing Products’, 11 *EJIL* (2000) 217.

⁵⁸ *Turkey – Textile Case*, Appellate Body Report, *supra* note 56, at para. 60. See Trachtman, *Decision of the Appellate Body*, *supra* note 57, at 217. See also Mathis, *supra* note 45, at 215–216, 255–257.

⁵⁹ On the jurisdiction of the WTO judicial bodies under Art. XXIV see Mavroidis, *supra* note 52; Matsushita *et al.*, *supra* note 2, at 555–558, 573–577.

⁶⁰ On the current negotiations regarding RTAs, see at www.wto.org/english/tratop_e/region_e/region_negot_e.htm.

the WTO and RTAs. As in other IEL areas, economic efficiency has pervasively been used as the benchmark against which to appraise these regional arrangements.⁶¹

Economic analyses of RTAs do not provide a single answer to the question of the desirability or undesirability of such arrangements, and economic literature provides support for both views.⁶² The Vinerian Customs Union theory, which is considered ‘the orthodox’ theory of economic integration, emphasizes not only the prospects of ‘trade creation’ arising from preferential arrangements but also the detrimental impacts of ‘trade diversion’ on third parties.⁶³ Modern trade theories, which are based on models of imperfect competition, challenge traditional customs union theory. The new approaches lead to a more favourable attitude towards preferential arrangements stemming from the relative insignificance that their proponents attribute to the phenomenon of trade diversion. The latter theories tend to emphasize the role of economies-of-scale opportunities, technology transfer, and dynamic effects generated by RTAs.⁶⁴

Foreign policy factors often play a significant role in the formation and enlargement of RTAs. States occasionally form or join RTAs to promote geopolitical objectives such as advancing peaceful relations, supporting political partners, or coalition building.⁶⁵ Consequently, RTAs have also been investigated by political scientists. The neo-functional approach is one of the most influential political science theories of international integration. This theory (and particularly its intellectual ancestor, the functional approach) is widely associated with the integration process in Europe post-World War II.⁶⁶ While the functional approach emphasizes the final aims of reduction of interstate conflicts and promotion of peace, the neo-functional approach embraces a general utilitarian perspective that may promote a wider range of additional goals.

In accordance with the neo-functional approach, the process of increasing interdependence generates complex problems that individual states cannot deal with effectively. This approach suggests that, in the first stage, states’ policy-makers identify a

⁶¹ Jackson *et al.*, *supra* note 30, at 447, 451; Matsushita *et al.*, *supra* note 2, at 552–553; Davey, *supra* note 50; Mathis, *supra* note 46, at 101–115; Trebilcock and Howse, *supra* note 21, at 195–198.

⁶² See, e.g., Lawrence, *supra* note 39, at 44; Bhagwati and Panagriya, ‘Preferential Trading Areas and Multilateralism – Strangers, Friends, or Foes?’, in J. Bhagwati and A. Panagriya (eds), *The Economics of Preferential Trade Agreements* (1996), at 1–78; Schott, ‘More Free Trade Areas?’, in J.J. Schott (ed.), *Free Trade Areas and U.S. Trade Policy* (1989), at 1, 17–55.

⁶³ In accordance with the Vinerian model, ‘trade creation’ happens when high-cost domestic products are replaced by cheaper products imported from other members of the preferential arrangements. ‘Trade diversion’ happens when imported low-cost products from non-member states are replaced by higher-cost goods that are imported from a member state of the preferential arrangement: J. Viner, *The Custom Union Issue* (1950), at 3; P.R. Krugman and M. Obstfeld, *International Economics: Theory and Policy* (6th edn, 2003), at 243–247.

⁶⁴ R. Pomfert, *The Economics of Regional Trading Arrangements* (1997), at 207; Frankel, *supra* note 16, at 149–195; P. Robson, *The Economics of International Integration* (4th edn, 1998), at 37–50, 231–247; Schiff and Winters, *supra* note 2, at 46–54.

⁶⁵ See, e.g., *ibid.*, at 187–207.

⁶⁶ See C. Navari, ‘Functionalism Versus Federalism: Alternative Visions of European Unity’, in P. Murray and P. Rich (eds), *Visions of European Unity* (1996), at 63.

cooperative framework that is plausible to further the interests of involved parties. It is desirable to begin with international cooperation in relatively 'low-key' and apolitical sectors (such as technical or environmental⁶⁷ sectors), which should be of importance for the parties involved. Once the cooperative efforts in such 'low political' spheres generate benefits for both parties, interest groups are expected to exert pressure on national leaders to expand integration to additional sectors, not necessarily apolitical ones. The gradual process of broadening integration ('the spillover') is expected to generate further gains for involved states, thus enhancing the prospects of closer political association.⁶⁸

The hegemonic stability approach (and the realist perspective on international relations) views regional integration as a political phenomenon pursued by states for national political motives. This approach assumes that a successful regional arrangement must be championed by one or more core political powers that are ready to employ their political power and influence to promote the integration efforts.⁶⁹ The benefits generated by RTAs are not equally divided among the RTAs' members, and political scientists have examined the distributive consequences of regional integration.⁷⁰ Some experts attribute the relatively poor performance of certain RTAs, particularly among developing countries, to persistent friction among the members regarding re-distributional mechanisms.⁷¹ Consequently, Mattli argues that the chances for successful regional integration improve considerably if there is a regional leader who 'is able and willing to assume the role of regional paymaster' and ease distributional tensions among the RTA members by side-payments.⁷² Some political scientists underscore that trade diversions generated by RTAs alienate non-member states and exacerbate political tensions between RTAs members and third parties.⁷³

While the existing IEL literature on RTAs is dominated by abundant economic and political analyses, the relevance of socio-cultural factors is under-emphasized. Current RTAs literature includes only rudimentary references to socio-cultural factors, and these factors are not systematically analysed with sociological theoretical tools.

⁶⁷ On environmental cooperation and the neo-functional approach see, e.g., Hirsch, 'The Evolution of Environmental Cooperation between Former Belligerents in the Middle East and Europe: A Rational Choice Approach' [2001] *Netherlands Int'l L Rev* 115, at 124–125.

⁶⁸ On the neo-functional approach see W. Mattli, *The Logic of Regional Integration* (1999), at 23–28; B. Rosamond, *Theories of European Integration* (2000), at 50–73. On the functional approach see Mattli, at 21–23; Rosamond, at 31–42. It is noteworthy that neo-functionalism identifies certain linkage mechanisms but makes no assumptions as to the inevitability of the cumulative integrative process: Mattli, at 26–27.

⁶⁹ R. Gilpin, *Global Political Economy* (2001), at 356–357.

⁷⁰ See, e.g., Grieco, 'Systemic Sources of Variations in Regional Institutionalization in Western Europe, East Asia, and the Americas', in E.D. Mansfield and H.V. Milner (eds), *The Political Economy of Regionalism* (1997), at 164.

⁷¹ Agarwal, 'South-South Trade: Building Block or Bargaining Chip?', in J. Whalley (ed.), *Developing Countries and the Global Trading System* (1989), at 189, 200–204; D.J. Ray, *Development Economics* (1998), at 47–126.

⁷² Mattli, *supra* note 68, at 56–57; and see the analysis of particular RTAs in light of this parameter at 147, 150, and 160–161.

⁷³ See, e.g., R.H. Steinberg, 'Transatlantic Cooperation in Managing the World Trading System' [1995] *Berkeley Roundtable on the International Economy* 1, at 8–9.

The following sections focus on the sociological dimension of RTAs and on a sociological theoretical analysis of the regional/global debate.

5 The Sociology of RTAs

A *Sociological Aspects of RTAs*

Drawing on the above-discussed premises of economic sociology,⁷⁴ the sociological perspective on RTAs underscores that these agreements are embedded in socio-cultural relations among state societies. This statement implies two central arguments: (i) the formation, legal content, and implementation of RTAs *are influenced* by socio-cultural factors; (ii) the formation, legal content, and implementation of RTAs *affect* socio-cultural factors.

As to the influence of socio-cultural factors on RTAs, current literature on RTAs testifies that significant socio-cultural dissimilarities and negative public images of other state societies impede the formation of RTAs. The impact of this factor is well documented with regard to the formation of the NAFTA,⁷⁵ the accession of Eastern and Central European states to the EU,⁷⁶ Turkey's current problems in its quest to become a full member of the EU,⁷⁷ and the relatively low level of economic integration in East Asia (compared to West Europe).⁷⁸ And *vice versa*, state societies that share similar socio-cultural features are often more amenable to closer economic integration.⁷⁹ Furthermore, RTAs' provisions often reflect different socio-cultural values prevailing in the societies and the particular region involved.⁸⁰

The proponents of the social constructivist approach extend certain sociological insights into the sphere of international relations.⁸¹ In accordance with this approach, states are embedded in a set of social relations, and their identity encompasses social traits defined by their interaction with other international actors. States' interests and identities are significantly constructed by social structures, rather than given exogenously.

⁷⁴ See sect. 2.

⁷⁵ Skonieczny , 'Constructing NAFTA', 45 *Int'l Studies* (2001) 433. See also Gonzalez and Haggard, 'The United States and Mexico: A Pluralistic Security Community?', in E. Adler and M. Barnett (eds), *Security Communities* (1998), at 295, 295–298, 314–316.

⁷⁶ Schimmelfennig, 'International Socialization in the New Europe', 6 *Eur J Int'l Relations* (2000) 109, at 109–110, 124.

⁷⁷ Kabaalioglu, 'The Turkish Model of Association', in P. Demaret, J Bellis, and G.G. Jimenez (eds), *Regionalism and Multilateralism after the Uruguay Round* (1997), at 115, 116.

⁷⁸ Qingjiang, 'Is the European Experience Duplicable in East Asia?', in R. Wolfrum and V. Roben (eds), *Developments of International Law in Treaty Making* (2005), at 297, 300.

⁷⁹ See, e.g., OECD, *supra* note 3, at 1.

⁸⁰ See, e.g., Picker, 'Regional Trade Agreements v. the WTO', 26 *U Pennsylvania J Int'l Economic L* (2005) 267, at 282–284.

⁸¹ In addition, certain international law scholars often emphasize the role of social and ethical factors involved in international economic relations (e.g., legitimacy, justice and redistributive justice, ideologies, and norms). See, for instance, Howse and Nicolaïdis, 'Legitimacy and Global Governance: Why Constitutionalizing the WTO is a Step too Far?', in R.B. Porter, P. Sauve, A. Sbramanian, and A.B. Zampetti (eds), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium* (2001), at 227; Nicolaïdis and Howse, 'This is My EUtopia ...: Narrative as Power', 40 *JCMS* (2002) 767.

by human nature or domestic politics.⁸² Constructivist analysis of regional arrangements emphasizes that developing a regional identity is an essential part of regional cooperation and aims to explain how cultural and normative factors contribute to the emergence of various regional arrangements. Thus, the formation of economic groups is affected by collective identities, a sense of common fate, and mutual trust among the potential members. Social, political, and ideological homogeneity is likely to lead to greater international interaction and association, as well as to the development of common institutions.⁸³

As to the influence of RTAs on social factors, the formation and implementation of RTAs clearly affect socio-cultural differences. International economic integration promotes transboundary interactions among the states involved, and often reduces social dissimilarities and tensions among their societies.⁸⁴ As discussed above, international trade spreads norms and values among the communities involved. Thus, scholars consider the recent EU enlargement process to be part of the process of international socialization⁸⁵ by which the Western community of states transmits its constitutive liberal values and norms of domestic and international conduct to the Central and Eastern European states.⁸⁶ Consequently, RTAs are sometimes expressly aimed at building or fostering a sense of community among the peoples involved.⁸⁷

Having noted that IEL often reflects and affects societal factors and processes, sociological inquiry emphasizes that the global/regional debate is closely related to questions regarding international social integration and coherence, i.e., whether the enhancement of global or regional *social integration* is desirable, and what are the likely consequences of such processes.

The corresponding debate in sociology revolves around the fundamental attitude of the larger society towards smaller communities. This debate parallels the most prominent theoretical divide in sociology regarding the relationship between individuals and social structures (often labelled the ‘action-structure’ debate).⁸⁸

⁸² Wendt, ‘Collective Identity Formation and the International State’, 88 *Am Political Science Rev* (1994) 385; Adler, ‘Cognitive Evolution: A Dynamic Approach for the Study of International Relations and their Progress’, in E. Adler and B. Crawford (eds), *Progress in Postwar International Relations* (1991); Ruggie, *supra* note 20, at 11–14.

⁸³ Adler and Barnett, ‘A Framework for the Study of Security Communities’, in Adler and Barnett (eds), *supra* note 75, at 29, 47–51; Prieto, ‘Constructing Regionalism in South America: the Role of Ideas in the Andean Community and MERCOSUR Projects’, 1 *Colombian Econ J* (2003) 267.

⁸⁴ See Hirsch, *supra* note 26. On the link between RTAs and peace/ conflict see Schiff and Winters, *supra* note 2, at 187–196 and the discussion in sect. 6.

⁸⁵ For an insightful analysis of international socialization and the role of international institutions see Goodman and Jinks, ‘How to Influence States: Socialization and International Human Rights Law’, 54 *Duke LJ* (2004) 621. See also Bearce and Bondanella, ‘Intergovernmental Organizations, Socialization, and Member-State Interest Convergence’, 61 *International Organization* (2007) 703.

⁸⁶ Schimmelfennig, *supra* note 76, at 109–110, 124.

⁸⁷ See, e.g., with regard to ASEAN O.K. Yong, Leadership Challenges in the 21st Century, Southeast Asia: Regional Integration, Competitiveness and Community Building (2004), available at: www.aseansec.org/16017.htm.

⁸⁸ On the structure-agency debate see D. Layder, *Understanding Social Theory* (1994), at 1–7; C. Calhoun et al. (eds), *Contemporary Sociological Theory* (2002), at 25–26; A. Giddens, *Sociology* (4th edn, 2001), at 666–669; R. Banakar and M. Travers (eds), *An Introduction to Law and Social Theory* (2002), at 4–5.

Sociological theory includes various streams. Since the ascendancy of the structural-functional perspective in the 1950s and early 1960s, no single theory has dominated the discipline.⁸⁹

Among the numerous sociological theories, three major perspectives are widely recognized as most influential: the structural-functional perspective, the symbolic-interactionist approach, and the social conflict perspective. Each of the core perspectives highlights a different aspect of social phenomena and sociological investigations often employ theoretical tools borrowed from several perspectives.⁹⁰ As elaborated below, these sociological theories lead to different conceptions regarding the nature and goals of IEL, different answers to the question concerning the relationship between RTAs and the WTO, and different interpretations of existing WTO legal provisions regarding RTAs.

B The Structural-functional Perspective on RTAs

Structural-functionalism was for many years the dominant sociological theory. However, in the last three decades its importance has declined dramatically.⁹¹ The structural-functional perspective (sometimes labelled ‘systems theory’) belongs to the category of macro-sociological theories that have been developed, *inter alia*, by Emile Durkheim, Talcott Parsons, and Robert Merton. Theories belonging to the macro-sociology tradition tend to focus on large-scale groups and social patterns such as the social system as a whole and its functional elements. These approaches tend to emphasize the constraining power of social structures on individual choices. Thus, the typical units of analysis are the entire society, large groups, or certain social patterns (e.g., religion) within a society.⁹²

The structural-functional perspective emphasizes the interdependence of the various components of society and the ensuing tendency of societies to enhance cooperation and integration. Consequently, this perspective attaches particular significance to social stability and equilibrium. In this perspective, social patterns (including social norms) are perceived as external constraints that are imposed on individuals. The capacity of individuals to change these ‘social facts’ is limited.⁹³

The above features of the structural-functional perspective indicate that the general attitude of this approach to RTAs is characterized by suspicion and reluctance. The structural-functional approach to RTAs is linked to the underlying tendency of the structural-functional perspective to value social integration, often through enhancing the constraining role of central institutions. The proponents of this approach are conscious that RTAs often embody values and norms, and they emphasize the threatening consequences of international disintegration.

⁸⁹ J.E. Farley, *Sociology* (2nd edn, 1992), at 66–67; Giddens and Turner, ‘Introduction’, in A. Giddens and J. Turner (eds), *Social Theory Today* (1987), at 1, 3–4.

⁹⁰ See, e.g., J.W. Coleman and H.R. Kerbo, *Social Problems* (2nd edn, 2003), at 29 ff.

⁹¹ G. Ritzer and D.J. Goodman, *Modern Sociological Theory* (6th edn, 2004), at 91–92.

⁹² Farley, *supra* note 89, at 58, 69–70; Calhoun et al. (eds), *supra* note 88, at 25–26; ‘Macro-sociology’, in N. Abercrombie, S. Hill, and B.S. Turner (eds), *The Penguin Dictionary of Sociology* (4th edn, 2000), at 64–65.

⁹³ E. Durkheim, *The Rules of Sociological Method* (3rd printing, 1962), at 1–13.

The structural-functional approach views the global/regional debate from a global perspective, and the key question is often phrased from this point of view: do RTAs contribute to or undermine the achievement of full multilateral liberalization? This approach contends that RTAs undermine the integrity and underlying viability of the whole global WTO system. The frequent divergence between the legal rules included in the WTO agreements and RTAs may constitute a source of potential tensions and destructive conflicts among the contracting parties of these divergent trade agreements.⁹⁴ Under the structural-functional conception, RTAs are discriminatory not only in economic but also in political and social terms. Thus, such discriminatory arrangements often alienate non-members that are left out of the regional block. Such political and social exclusion breeds international rifts that may lead to dangerous conflicts. The structural-functional perspective on RTAs is discernable from the statements of some WTO Directors General and some other scholars.⁹⁵

Thus, the structural-functional conception of IEL may reluctantly accept treaty provisions that allow the WTO member states to form RTAs (such as Article XXIV of the GATT), but the general inclination would be to interpret these provisions narrowly. The proponents of this approach are likely to emphasize that these provisions constitute an exception to the overarching MFN principle, and warn that liberal interpretation of these provisions may well erode the major achievements of the GATT/WTO system since 1947.

C The Symbolic-interactionist Perspective on RTAs

The symbolic-interactionist perspective belongs to the category of micro-sociological theories developed, *inter alia*, by Max Weber, Herbert Blumer, and Harold Garfinkel. Like other micro-sociological theories, this perspective emphasizes the role of individuals in society, and is primarily concerned with the behaviour of individuals and small groups. In accordance with this approach, social structures, like society itself, are constituted and changed by interactions among individuals.⁹⁶ This perspective does not dispute the existence of the large social system, but its point of departure is that social structures emerge and are maintained 'from below', through a complex process of interaction among individuals. As people interact over time, patterns of interaction emerge, and rules governing social interaction develop.⁹⁷

Thus, in this perspective human beings are not viewed as the products (or victims) of the social system, but rather as active agents that can resist, challenge, and change

⁹⁴ See, e.g., Picker, *supra* note 80, at 287–290.

⁹⁵ See, e.g., *ibid.*, at 287–294; 'Supachai: Regional Trade Agreements Threaten WTO System', 8 (No. 44), *Bridges Weekly Trade News Digest* (22 Dec. 2004), at 10–11; 'Moore Says Regional Pacts Weakening Multinational System', 5 (No. 1) *Bridges Weekly Trade News Digest* (16 Jan. 2001), at 9; *WTO Annual Report – 2005*, *supra* note 4, at 59.

⁹⁶ See, e.g., H. Blumer, *Symbolic Interactionism: Perspective and Method* (1969), at 1; Craig *et al.* (eds), *supra* note 88, at 2–4; Ritzer and Goodman, *supra* note 91, at 230–231.

⁹⁷ See, e.g., Calhoun *et al.* (eds), *supra* note 88, at 26; C.M. Renzetti and D.J. Curran, *Living Sociology* (2nd edn, 2000), at 16–17; M. Waters, *Modern Sociology Theory* (1994), at 15; R.J. Brym and J. Lie, *Sociology* (2003), at 19–20.

social structures.⁹⁸ Blumer, a leading scholar of the symbolic-interactionist approach (who coined this term), is critical of ‘sociological determinism’, in which the social action of people is treated as an outward flow or expression of forces playing on them rather than as acts which are built up by people through their interactions.⁹⁹

Blumer states the three premises of symbolic interactionism: (i) human beings act toward ‘things’ on the basis of the meaning that these ‘things’ have for them (‘things’ includes physical objects, other human beings, institutions, guiding ideals, etc.); (ii) the meaning of such things is derived from the social interactions among individuals (and not from the intrinsic properties of the ‘thing’); (iii) these meanings are handled in, and modified through, an interpretative process made by the person who conducts social interactions with other things he/she encounters. Thus, ‘interpretation is not regarded as a mere automatic application of established meanings but as a formative process in which meanings are used and revised as instruments for the guidance and formation of action’.¹⁰⁰

Micro-sociological theories underline the *inter-subjective* aspects of individuals’ interactions, i.e., the meaning that humans attribute to social phenomena. Sociology itself was perceived by Max Weber as ‘a science which attempts the interpretative understanding of social action in order thereby to arrive at a causal explanation of its course and effects’.¹⁰¹ The aim of sociology is to study social behaviour by interpreting the actions of individuals in the social world and the ways in which individuals attribute meaning to social phenomena.¹⁰² Thus, for Weber, social action itself occurs ‘when and in so far as the acting individual attaches a subjective meaning to it’.¹⁰³

The interpretations that individuals give to social patterns are important because they significantly influence behaviour.¹⁰⁴ These meanings are contested, negotiated, and – to some extent – shared by the individuals who compose society.¹⁰⁵ The symbolic-interactionist perspective places particular stress on providing explanations of everyday social experiences, frequently from the point of view of a certain individual or types of individuals.¹⁰⁶

The social order that emerges from this approach is not accomplished by conforming to external rules. Instead, it grows out of a shared social understanding of

⁹⁸ Calhoun *et al.* (eds), *supra* note 88, at 26; Renzetti and Curran, *supra* note 97, at 16–17; Waters, *supra* note 97, at 15; Ritzer and Goodman, *supra* 91, at 217–221; Brym and Lie, *supra* note 97, at 19–20; B.B. Hess, E.W. Markson, and P.J. Stein, *Sociology* (1998), at 21; Giddens, *supra* note 88, at 17–18.

⁹⁹ Ritzer and Goodman, *supra* note 91, at 230.

¹⁰⁰ Blumer, *supra* note 96, at 2–5.

¹⁰¹ M. Weber, *The Theory of Social and Economic Organization* (1947), at 88. On Weber’s concept of ‘understanding’, and the distinction between direct observational understanding and explanatory understanding see J.E.T. Eldridge, *Max Weber: The Interpretation of Social Reality* (1972), at 28–32.

¹⁰² As to methodological individualism, Weber states that ‘sociology itself can only proceed from the actions of one or more separate individuals and must therefore adopt strictly individualistic methods’ (as cited in Elridige, *supra* note 101, at 25). See also Giddens, *supra* note 88, at 25–26.

¹⁰³ Weber, *supra* note 101, at 88.

¹⁰⁴ Farley, *supra* note 89, at 70; Ritzer and Goodman, *supra* note 91, at 217–219.

¹⁰⁵ Waters, *supra* note 97, at 15; Calhoun *et al.* (eds), *supra* note 88, at 26.

¹⁰⁶ Waters, *supra* note 97, at 16.

'taken-for-granted' social practices, and various accounting procedures underlying everyday life.¹⁰⁷ This order is, however, unstable and rather fragile. Garfinkel's empirical investigations showed that our socially constructed everyday world can be disrupted and individuals can depart from social standardization of common understanding.¹⁰⁸

The core features of the symbolic-interactionist approach to IEL are diametrically opposed to the structural-functional perspective. The point of departure of this approach is that international economic rules and institutions are not externally imposed on states and other actors, but rather represent the outcome of their interactions. As the symbolic-interactionist perspective in sociology is primarily concerned with the interactive behaviour of individuals in small groups, this approach to IEL generally prefers integration in small groups of states (rather than in large international groups). Unlike the structural-functional approach that seeks to attain global social integration through inclusive and uniform legal regimes, the symbolic-interactionist approach prefers flexible regimes that correspond to the particular social characteristics of the communities involved. This perspective views the global/regional debate in IEL from the point of view of an individual state or a region. From this viewpoint, it is often preferable to deepen economic integration among a small number of like-minded states.

The inclination of the symbolic-interactionist approach to favour regional integration also stems from the greater difficulty of creating common norms in the extremely heterogeneous WTO system (in comparison with RTAs). The current, continual expansion of the WTO membership intensifies the profound socio-cultural and ideological divisions that characterize the contemporary global economic arena. The current WTO system includes 151 members from very different stages of economic development with widely differing political and cultural orientations; these differences are expected to deepen with the accession of additional members.¹⁰⁹

The symbolic-interactionist approach argues that the need to generate shared social understandings in the international economic system cannot be effectively fulfilled by the imposition of external, global rules. Common norms that embody common understandings on the global level should emerge 'from below', i.e., from the interaction among states and societies in smaller regional groups. Different RTAs may offer more legal flexibility and are more suited to providing different trade rules to each specific region or bilateral context, in accordance with the particular socio-cultural, economic, and ideological features of the societies involved.

In sum, the ingrained aversion of sociologists employing symbolic interactionism towards integration on a large scale and the emphasis on the need to respect the socio-cultural features of smaller groups of states suggest that IEL should allow the WTO

¹⁰⁷ See, e.g., J. Heritage, *Garfinkel and Ethnomethodology* (1984), at 231; T. May, *Situating Social Theory* (1996), at 89–90; Waters, *supra* note 97, at 39.

¹⁰⁸ Heritage, *supra* note 107, at 53–75. On these experiments see also Heritage, 'Ethnomethodology', in A. Giddens and J.H. Turner (eds), *Social Theory Today* (1987), at 224, 232–235; Waters, *supra* note 97, at 39–40. For an ethnomethodological analysis of the binding character of norms see Heritage, *supra*, at 240–248.

¹⁰⁹ Trebilcock and Howse, *supra* note 21, at 93–194.

member states wide discretion as to whether to form or join regional arrangements. Consequently, the relevant legal rules regarding RTAs (such as Article XXIV of the GATT) should be construed liberally.

D *The Social Conflict Perspective on RTAs*

The social conflict perspective belongs to the category of macro-sociological theories and has been developed, *inter alia*, by Karl Marx and Emmanuel Wallerstein. For social conflict theorists, society is characterized by regular patterns of inequality regarding the allocation of essential resources among its members (e.g., wealth and political power). The uneven distribution of resources engenders social stratification and struggle among rival groups; each is interested in advancing its own interests at the direct expense of the other groups. The existing social structures are the outcome of the competition between rival groups.¹¹⁰ The dominant groups in society are interested in preserving the existing social structures that privilege them, and employ various resources to maintain the *status quo*. Disadvantaged groups are interested in changing the existing social order and increasing their share of social wealth and power.¹¹¹

The social conflict perspective views ideologies and values as instruments that the competing groups use to advance their own goals. Thus, ideologies are often judged according to their contribution to the furtherance of the interest of a certain warring group.¹¹² Unlike the structural-functional perspective that emphasizes the value of social stability, the proponents of the conflict perspective view social change as inevitable and desirable.¹¹³ The *global* social conflict perspective views the international system as stratified along several dividing lines, most prominently in accordance with economic standards (developing and developed states).¹¹⁴

The social conflict conception of IEL is conscious of economic and social stratification in the international system and is poised to unveil parallel inequalities in international economic law. Some international legal rules manifestly accord unequal rights to rich states (e.g., voting in IMF and the World Bank)¹¹⁵ while other legal rules attach greater weight to the position of powerful states in a less distinct manner (e.g., rules applying to trade in agricultural or textile products).¹¹⁶ The exposure of the international system's hidden priorities sheds light on the 'dark side' of IEL

¹¹⁰ Waters, *supra* note 97, at 292, 321–322; R.A. Wallace and A. Wolf, *Contemporary Sociological Theory* (3rd edn, 1991), at 76–77; Coleman and Kerbo, *supra* note 90, at 12; Hess, Markson, and Stein, *supra* note 98, at 18.

¹¹¹ R. Brym, *New Society: Sociology for the 21st Century* (4th edn, 2004), at 15–16; Renzetti and Curran, *supra* note 97, at 16; Coleman and Kerbo, *supra* note 90, at 12.

¹¹² Wallace and Wolf, *supra* note 110, at 77; Farley, *supra* note 89, at 44.

¹¹³ R. Munch, *Sociological Theory* (1994), at 189; Renzetti and Curran, *supra* note 97, at 15; Farley, *supra* note 89, at 65.

¹¹⁴ The most famous global economic perspective is presented in Emmanuel Wallerstein's world system analysis: E. Wallerstein, *The Modern World System I* (1974), at 347–350, 100–103. On other global approaches in sociology see B. Buzan, *From International to World Society?* (2004), at 70–77.

¹¹⁵ See, e.g., L. Damrosch *et al.*, *International Law* (4th edn, 2001), at 1602–1603.

¹¹⁶ For the impact of the current WTO regime on trade in agricultural products on developing states see, e.g., Desta, 'Food Security and International Trade Law – An Appraisal of the WTO Approach', 35 *J World Trade* (2001) 449.

and may trigger a legal reform. Such a reform should promote equality and redistributive policies that would be implemented, *inter alia*, through the allocation of differential legal obligations to different states according to their level of economic development.¹¹⁷

As a macro-sociological perspective, the social conflict approach is suspicious of RTAs. Conscious of the significant power asymmetries in the global system, this perspective suggests that one of the few strategies available to developing states in their struggle against developed states is collective action. Unification of forces enables the weaker states to strengthen their bargaining positions *vis-à-vis* the stronger states in the global economic system. Regional or bilateral negotiations between a powerful trading state and developing states are likely to weaken the bargaining positions of the latter states and generate RTAs that reflect these power asymmetries.

From this perspective, it is not surprising that some RTAs that involve developed and developing states, and particularly bilateral ones, favour the interests of the developed party and its domestic groups. Thus, 'North–South' RTAs often apply more restrictive rules to trade in agricultural products (compared to industrial goods)¹¹⁸ on the one hand, and apply liberal rules for trade in industrial goods, as well as services, on the other hand.¹¹⁹ Furthermore, some trade topics that are of interest to major developed states, such as investment and competition, were not accepted by the WTO Ministerial Conference in Cancun in 2004, but are included in some recent RTAs between developed and developing states.¹²⁰ Thus, under this conception, RTAs established by strong developed parties are interpreted as an attempt by the powerful trading parties to shift the rule-making process from the global to the regional or bilateral level.¹²¹

In sum, the social conflict approach generally opposes the establishment of RTAs, which are perceived as another disguised instrument of 'divide and rule' employed by developed states to perpetuate their dominance in the world economy. Consequently, this approach inclines to interpreting existing WTO provisions regarding RTAs in a restrictive manner.

6 The Symbolic-interactionist Perspective as a Point of Departure

The sociological analyses presented above reveal that the major sociological perspectives suggest different answers to the dilemma regarding the relationship between the WTO and RTAs. While the structural-functional and the social conflict perspectives

¹¹⁷ On the concept of 'common but differentiated responsibility' in contemporary international law see Stone, 'Common but Differentiated Responsibility in International Law', 98 *AJIL* (2004) 276; Cullet, 'Differential Treatment in International Law', 10 *EJIL* (1999) 549.

¹¹⁸ See, e.g., The World Bank, *Global Prospects – Overview and Global Outlook* (2005), at ix–x.

¹¹⁹ See, e.g., M. Gibbs and S. Wagle, *The Great Maze: Regional and Bilateral Free Trade Agreements in Asia* (2005), at 52; World Bank, *supra* note 118, at x.

¹²⁰ Crawford and Fioentino, *supra* note 3, at 5–6; Gibbs and Wagle, *supra* note 119, at 10–11, 52.

¹²¹ See, e.g., *ibid.*, at 11.

favour global integration (and restriction of RTAs), the symbolic-interactionist perspective generally advocates the formation and enlargement of RTAs.

The major sociological perspectives on RTAs should not be considered exclusive but rather complementary. Each of the core perspectives discussed above highlights different social aspects of the WTO–RTAs relationships, and analysis of this question with several sociological lenses may meaningfully clarify the social context of this debate. I am of the view that, while each of the above sociological approaches underscores certain significant aspects of the global/regional debate, the symbolic-interactionist perspective should generally serve as a point of departure for law- and policy-making in this sphere.

The structural-functional perspective on the global/regional debate has certain virtues. Restricting the formation and enlargement of RTAs is expected to enhance global economic integration, as well as provide greater coherence and uniformity in IEL. Increased legal coherence and uniformity are expected to decrease the likelihood of incompatible socio-legal prescriptions that may generate dilemmas for states participating in overlapping global and regional regimes. Such legal divergence may generate tensions among trading partners and systemic friction. This risk is not as considerable as it may seem,¹²² and some scholars emphasize the process of material convergence among global and various RTAs (and the emergence of the ‘Common Law of International Trade’).¹²³ Still, overlapping global and regional regimes are bound to generate a certain extent of legal inconsistencies and disputes. Legal coherence between global and regional regimes is likely to increase predictability and certainty in the international economic system.

The structural-functional perspective also suggests that increasing international legal coherence is likely to enhance common values in the international arena. Increasing social coherence and integration are expected to enhance stability and order, and reduce the prospects of tensions and conflicts among states which participate in overlapping regimes. As elaborated below, the social costs accompanying such international economic coherence are considerable.

The social-conflict perspective on the global/regional debate also presents significant merits. This approach emphasizes the asymmetric aspects of many RTAs and the significant leverage of powerful trading states in negotiations leading to RTAs. Power asymmetries are particularly prominent in some bilateral RTAs which involve a large developed state and a small developing state (but not all RTAs). While the need to narrow economic gaps between developing and developed states is important, and IEL should strive to decrease the scope of considerably unequal RTAs that favour the interests of powerful states, the abolition or imposition of substantial restrictions on RTAs is not likely to attain these aims. In addition, it is noteworthy that some RTAs

¹²² A recent OECD study suggests that RTAs are ‘most commonly based upon underlying WTO approaches and principles’: OECD, *supra* note 3, at 4. See also the brief comparative review of the trade issues involved at 4–6.

¹²³ Weiler, ‘Cain and Abel – Convergence and Divergence in International Trade Law’, in J.H. Weiler (ed.), *The EU, the WTO and the NAFTA: Towards a Common Law of International Trade?* (2000), at 1.

between developed and developing states have succeeded in narrowing the economic gaps between RTAs' members.¹²⁴

It is desirable that the above goal of decreasing the detrimental repercussion of considerably asymmetric RTAs would affect the interpretation of the WTO rules (such as Article XXIV of the GATT) and the review process of such RTAs by the WTO organs. Thus, for instance, it is desirable that 'North–South' RTAs will liberalize 'substantially all trade' in agricultural and textile products (and not 'substantially all trade' in general). While these considerations should somewhat affect the interpretation of the relevant GATT provisions, they do not justify the imposition of substantial restrictions on the formation of RTAs. As elaborated below, RTAs' contribution to socio-economic pluralism in the community outweighs the undesirable impacts of some asymmetric RTAs.

The intimate link between international economic rules and social values points to the social costs of implementing the structural-functional and the social conflict approaches to RTAs. These perspectives suggest imposing greater restrictions on RTAs and increasing socio-economic integration, coherence, and equality in the international economic system. Different rules in RTAs often reflect different social values and ideologies which prevail in different regional communities.¹²⁵ Thus, increasing policy and legal coherence is expected to be accompanied by a process of international socio-economic integration. Such a process may certainly increase efficiency and coordination among the relevant international trade regimes, but is also expected to stifle socio-economic pluralism.

The symbolic-interactionist approach to RTAs aims to attain a lower degree of international economic order, and to promote order that grows from a less deliberate and more spontaneous interactionist process. As discussed above, the symbolic-interactionist perspective favours social structures that emerge and are maintained 'from below', through a complex process of interactions among states and regions. This approach enhances socio-economic pluralism, which encourages various regional regimes to develop and test different legal responses to modern challenges – the 'laboratory effect'.¹²⁶ This approach also allows RTAs to address the particular socio-economic features of each region or bilateral association without excessive intervention from external global regimes.

The structural-functional and social conflict approaches to RTAs are inclined to undervalue the particular culture, customs, and ideology that evolved in each region

¹²⁴ This is the case, for instance, with regard to the accession of some Mediterranean as well as Central and Eastern states to the EU. On the potential of RTAs to attract foreign investments to developing states see Ethier, 'The New Regionalism', 108 *Econ J* (1998) 1149.

¹²⁵ Some RTAs, e.g., include human rights provisions. See, e.g., Art. 2 of the Euro-Mediterranean Agreement between the European Communities and their Member States, and the Hashemite Kingdom of Jordan, available at: http://europa.eu/eur-lex/pri/en/oj/dat/2002/l_129/1_12920020515en00030165.pdf On the promotion of 'good governance', see, e.g., Articles 9(3) and (4) of the 'Cotonou Agreement' between the European Community and the Members of the African, Caribbean and Pacific group of states (2000), available at <http://www.acpsec.org/en/conventions/cotonou/accord1.htm>

¹²⁶ On the 'laboratory effect' of RTAs see Cho, *supra* note 37, at 432–434, 457. See also Hoekman and Koestecki, *supra* note 39, at 351. RTAs that introduce new legal responses to modern challenges must conform to the GATT/WTO rules; i.e., rules that are included in Art. XXIV (and particularly Art. XXIV(8)) and the Understanding on Interpretation of Art. XXIV as well as those included in other WTO agreements: Trachtman, *supra* note 31.

or bilateral context, and apply the same (or similar) policy and legal prescription to different regions or bilateral associations. The symbolic-interactionist approach is more sensitive to the particular social features present in each particular regional or bilateral context, and more inclined to tailor-made arrangements.

The distinctive characteristics of the modern WTO regime lend further support to the application of the symbolic-interactionist approach to the relationship between the WTO and RTAs. The WTO regime represents a relatively mature and ‘well-ordered’ sphere. It has been significantly legalized since the conclusion of the Uruguay Round in 1994; it includes numerous binding agreements that are enforced, *inter alia*, by effective dispute settlement bodies with compulsory jurisdiction. In addition, the global economic domain is extremely heterogeneous, and the continued expansion of the WTO and accession of new states intensifies its pluralistic character.

Proponents of the structural-functional approach emphasize the undesirable results of legal incoherence, particularly leaving countries to cope with incompatible legal rules that arise from overlapping global and regional regimes. The symbolic-interactionist approach is more likely to lead to more incompatible legal rules and disputes, and this feature should not be underestimated. Still, empirical studies show that RTA parties are less likely to be engaged in political-military conflicts and that RTA membership has a stronger influence on decreasing hostilities than membership in the WTO.¹²⁷

In addition, well-established rules of international law may alleviate the problems of legal inconsistencies. First, the basic values of the international community are embodied in peremptory norms of international law (*jus cogens*) that prevail over conflicting rules,¹²⁸ including those included in RTAs. Secondly, Articles 103 and 25 of the UN Charter accord superior status to the Charter’s fundamental provisions (including the Security Council decisions undertaken under Chapter VII) over other international treaties,¹²⁹ including the GATT¹³⁰ as well as RTAs. Thirdly, many of the remaining questions regarding inconsistent global and regional rules may be resolved by international treaty law.¹³¹

Clearly, the structural-functional and social-conflict approaches increase legal coherence and certainty that are significant for the expansion of international trade. Generally, the symbolic-interactionist approach strives to achieve a lesser degree of orderliness and is more amenable to tolerate some degree of legal inconsistency and instability. This approach, which emphasizes the personal and societal costs associated with social integration, is ready ‘to pay the price’ of lower level order in terms

¹²⁷ Mansfield, ‘Preferential Peace: Why Preferential Trading Arrangements Inhibit Interstate Conflict’, in E. Mansfield and B.M. Pollins (eds), *Economic Interdependence and International Conflict* (2003), at 222, 229–231; Mansfield and Pevehouse, ‘Trade Blocks, Trade Flows, and International Conflict’, 54 *Int’l Org* (2000) 775, at 788–801.

¹²⁸ Art. 53 of the Vienna Convention on the Law of Treaties (VCLT), 8 ILM (1969) 679.

¹²⁹ See, e.g., *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention* [1992] ICI Rep 3, at para. 39.

¹³⁰ Art. XXI(c) GATT explicitly states that this agreement should not be construed so as ‘to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security’.

¹³¹ Art. 30 VCLT, *supra* note 128; Damrosch *et al.*, *supra* note 115, at 119.

of legal predictability, and prefers the above-discussed benefits of socio-economic pluralism.¹³² These significant benefits justify a presumption in favour of the symbolic-interactionist approach to the regional/global debate in contemporary IEL.

In sum, the contribution of RTAs to socio-economic pluralism in the international system and the accompanying benefits to IEL indicate that the WTO members should generally be accorded a significant measure of discretion in the formation and enlargement of RTAs. The above sociological analysis indicates that it is not desirable for the WTO legal regime to impose substantial restrictions on RTAs, and the relevant legal provisions should generally be interpreted in a liberal manner. Still, the desirable aim of decreasing the detrimental repercussions of considerably asymmetric RTAs should somewhat affect the interpretation of these legal rules and the operation of the WTO oversight mechanism regarding such RTAs.

7 Concluding Remarks

The preceding analysis of the fundamental dilemma regarding the relationship between the WTO and RTAs testifies that the combination of IEL and sociological theory offers new insights on RTAs. The above analysis recasts the global/regional debate in a different light, and bears significant implications for interpretation of the legal provisions and policy-making, as well.

The underlying assumptions of this article that IEL reflects and affects socio-cultural factors, and that economic and societal factors are inextricably interlinked in the real life of RTAs, led us to analyse the global/regional debate as an issue of international socio-economic order. The sociological analyses reveal that the major sociological perspectives suggest different answers to the question of the desirable relationship between the WTO and RTAs. This sociological analysis also indicates that while each of the core sociological perspectives highlights different social aspects of the WTO–RTAs relationship, the particular virtues of the symbolic-interactionist approach justify a presumption in favour of this approach to RTAs. The contribution of RTAs to socio-economic pluralism in the international system and the accompanying benefits to IEL indicate that the relevant WTO legal rules should be interpreted in a liberal manner.

¹³² The concept of pluralism in moral and political philosophy is concerned with the question of what sort of restrictions central institutions may impose on people's freedom to act according to their value systems. Pluralism generally refers to the promotion of heterogeneity over homogeneity and the dispersal of power over centralism. Political pluralists assert the desirability of a wide diffusion of sovereign power among a variety of associations and the fragmentation of governments into decentralized units. The pluralist approach views small groups as the natural form of association and suggests that the state's power should be reduced. On the pluralist approach in political philosophy see W. Kymlicka, *Contemporary Political Philosophy* (2nd edn, 2002), at 346 ff; Hirst, 'Pluralism', in W. Outhwaite, (ed.), *Modern Social Thought* (2006), at 484; Tivey, 'Robert Dahl and American Pluralism', in L. Divey and A. Wright (eds), *Political Thought Since 1945* (1992), at 91; 'Value Pluralism', *Stanford Encyclopedia of Philosophy* (2006), available at: <http://plato.stanford.edu/entries/value-pluralism/>; *Pluralism*, in G. Marshall (ed.), *The Concise Oxford Dictionary of Sociology* (1994), at 281. On the pluralist approach to the EU see Weiler, 'European Democracy and its Critics: Polity & System', in J.H.H. Weiler (ed.), *The Constitution of Europe* (1999), at 264, 283–285.