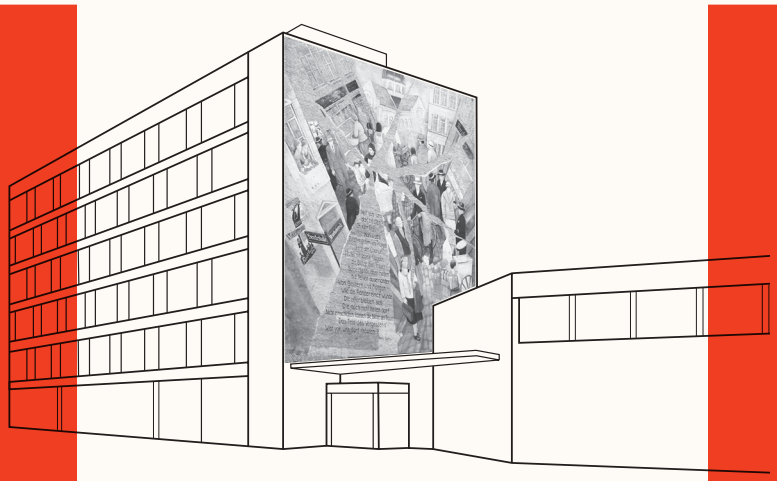

Karsten Nowrot

“Competing Regionalism” vs. “Cooperative Regionalism”: On the Possible Relations between Different Regional Economic Integration Agreements

Rechtswissenschaftliche
Beiträge der
Hamburger Sozialökonomie

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Impressum

Kai-Oliver Knops, Marita Körner, Karsten Nowrot (Hrsg.)
Rechtswissenschaftliche Beiträge der Hamburger Sozialökonomie

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Heft 19, November 2018

Bibliografische Information der Deutschen Bibliothek
Die Deutsche Bibliothek verzeichnet diese Publikations in der Deutschen Nationalbibliografie;
detaillierte bibliografische Daten sind im Internet unter http://dnb.dnb.de abrufbar.
ISSN 2366-0260 (print)
ISSN 2365-4112 (online)

Reihengestaltung: Ina Kwon
Produktion: UHH Druckerei, Hamburg
Schutzgebühr: Euro 5,–

Die Hefte der Schriftenreihe „Rechtswissenschaftliche Beiträge der Hamburger Sozialökonomie" finden sich zum Download auf der Website des Fachgebiets Rechtswissenschaft am Fachbereich Sozialökonomie unter der Adresse:

https://www.wiso.uni-hamburg.de/fachbereich-sozoek/professuren/koerner/fiwa/publikationsreihe.html

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Contents

A. The Rise of Regionalism ... and its Consequences*

When asked to name a number of current mega-trends in the progressive development of the international economic legal order, one of the first issues that probably comes to the mind of most scholars and practitioners is the perception that regionalism is on the rise.[1] And indeed, it is an almost incontrovertible fact and hardly needs to be emphasized that in particular since the beginning of the 1990s, for a variety of reasons numerous treaties establishing free trade zones as well as other bilateral and regional economic integration agreements have been successfully concluded or are currently under negotiation, among them more recently also emerging so-called "mega-regionals", occasionally also referred to as "super-RTAs";[2] a term and concept that mostly refers to economic agreements that are inter-regional in character in the sense of connecting different regions of the world and are concluded by a group of countries that together have a significant economic weight in current global trade and investment relations.[3] Among the respective preferential trade agreements frequently classified as mega-regionals are the Trans-Pacific Partnership (TPP) originally signed by the United States as well as Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam on 4 February 2016 (whose fate, however, hung somewhat in the balance following the withdrawal by the United States in January 2017[4] and which was, for the time being, replaced by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) concluded on 8 March 2018 between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam[5]), the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU) which has been signed by the parties on 30 October 2016 and is provisionally applied since 21 September 2017,[6] the Transatlantic Trade and Investment Partnership (TTIP) negotiated between the United States and the EU since July 2013 (with the negotiations being currently on hold), the Economic Partnership Agreement signed by the EU and Japan on 17 July 2018[7] as well as the Regional Comprehensive Economic Partnership (RCEP) on which negotiations have been launched in 2012 by the ten member states of the Association of Southeast Asian Nations

* The contribution is based on a presentation given by the author at the conference "The Future of Cooperation between the EU and Ukraine" organized by the Institute of East European Law at the Faculty of Law of the Christian-Albrechts-University of Kiel/Germany in Kiel on 4 July 2014.

1 On this perception see, e.g., UNCTAD World Investment Report 2013, Global Value Chains: Investment and Trade for Development, 2013, 103 *et seq.* ("Regionalism on the rise"); *Alschner*, Journal of International Economic Law 17 (2014), 271 (273); *Bungenberg*, in: Hofmann/Schill/Tams (eds.), Preferential Trade and Investment Agreements, 269 (270 *et seq*.).

2 See for example *Karmakar*, Rulemaking in Super-RTAs: Implications for China and India, Bruegel Working Paper 2014/03.

3 On these elements as well as for related characterizations of mega-regionals see, e.g., UNCTAD World Investment Report 2014, Investing in the SDGs: An Action Plan, 2014, 118; *Nowrot*, in: Rensmann (ed.), Mega-Regional Trade Agreements, 155 (157); *Riffel*, Mega-Regionals, para. 1, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; *Opoku Awuku*, European Yearbook of International Economic Law 7 (2016), 615 (616); *Pauwelyn/Alschner*, in: Dür/Elsig (eds.), Trade Cooperation – The Purpose, Design and Effects of Preferential Trade Agreements, 497 (512).

4 For recent developments in this regard see, e.g., UNCTAD, Investment Policy Monitor, Issue 18, December 2017, p. 8-9; UNCTAD, World Investment Report 2018, Investment and New Industrial Policies, 2018, 90.

5 For the text of this agreement and its annexes see the information under: <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text/> accessed on 19 September 2018.

6 OJ EU L 11/23 of 14 January 2017.

7 The text of the EU-Japan Economic Partnership Agreement is for example available under: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1684> accessed on 19 September 2018.

(ASEAN) and six other countries like China, India, Japan and Australia.[8]

Whereas within the time frame of close to fifty years under the former General Agreement on Tariffs and Trade 1947 (GATT 1947), from the beginning of 1948 until the end of 1994, only a total number of 107 regional trade agreements and accessions thereto where notified by contracting parties under Article XXIV:7 GATT 1947,[9] as of 1 May 2018, already some 673 respective notifications have been received by the World Trade Organization (WTO). These figures correspond to a total of 459 regional trade agreements, of which 287 treaties are at present in force.[10] As a result, the number of regional trade agreements has increased more than four-fold in the last two decades.[11] In order to illustrate the overall significance and consequences of these developments, let it initially suffice to draw attention to the fact that as of today all of the at present 164 WTO members are party to at least one regional trade agreement; and most of them have concluded considerably more than one of these types of arrangements. Already towards the end of the previous decade, the average WTO member had concluded regional trade agreements with roughly fifteen other countries.[12] To mention just three more or less randomly chosen examples, according to respective information provided by the WTO, the EU, being a WTO member and itself based on an economic integration agreement, is at the time of writing in September 2018 party to some forty notified regional trade agreements in force and has made an early announcement[13] for thirteen more treaties currently under negotiation. The Ukraine is currently negotiating three regional trade agreements and is party to roughly eighteen other respective arrangements. And the Russian Federation is at present bound by twelve agreements while having entered into notified negotiations on two more treaties aimed at a closer economic integration at the sub-multilateral level.[14]

In light of these findings, it appears hardly surprising that it is in particular the consequences arising from these structural developments in the international system that are of considerable practical importance and have thus – in principle already for quite some time – also already attracted significant scholarly attention.[15] Thereby, the respective academic debates were until recently primarily concerned with the economic effects of regional integration agreements.

8 Generally on the phenomenon of mega-regionals see for examples the contributions in *Rensmann* (ed.), Mega-Regional Trade Agreements, 2017; as well as *Riffel*, Mega-Regionals, paras. 1 *et seq.*, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018.

9 See, WTO, *Turkey – Restrictions on the Imports of Textile and Clothing Products*, Report of the Panel of 31 May 1999, WT/DS34/R, para. 2.3.

10 On these data as well as continuously updated information on this issue see the respective information provided by the WTO on its website available under: <https://www.wto.org/english/tratop_e/region_e/region_e.htm> accessed on 19 September 2018.

11 See on this finding already WTO, World Trade Report 2011, The WTO and Preferential Trade Agreements: From Co-Existence to Coherence, 2011, 3.

12 *Freund/Ornelas*, Regional Trade Agreements, World Bank Policy Research Working Paper 5314, May 2010, 2; *Bungenberg*, in: Hofmann/Schill/Tams (eds.), Preferential Trade and Investment Agreements, 269 (270); *Van den Bossche/Zdouc*, The Law and Policy of the World Trade Organization, 674.

13 Generally on the procedure of early announcements see WTO, Transparency Mechanism for Regional Trade Agreements, WT/L/671 of 18 December 2006, paras. 1 *et seq*.; as well as *Crawford/Lim*, Journal of World Trade 45 (2011), 375; *Bering/Nowrot*, The 2010 WTO Transparency Mechanism for Preferential Trade Arrangements: As Good as it Currently Realistically Gets, 7 *et seq.*

14 See the information provided by the WTO, available under: <https://www.wto.org/english/tratop_e/region_e/rta_participation_map_e.htm> accessed on 19 September 2018.

15 See thereto as well as on the continuing need for additional research efforts for example the observations made by *Winter*, in: Bagwell/Mavroidis (eds.), Preferential Trade Agreements – A Law and Economics Analysis, 7 ("The literature on PTAs has proliferated even faster than the phenomenon itself, but not the set of convincing general results to which one can appeal for policy guidance.").

Jagdish Bhagwati, for example, emphasized the – if compared to multilateral approaches aimed at trade liberalization – rising transaction costs for private economic operators as a result of the "spaghetti bowl" phenomenon created by the proliferation of bilateral and regional free trade agreements granting diverging trade preferences to the goods and services originating from a limited number of countries.[16] In addition, in order to mention but one further example, already in the beginning of the 1950s *Jacob Viner* identified, analyzed and contrasted the "trade-creating" and thus economic as well as social welfare-enhancing effects of regional trade agreements for the participating actors on the one side with the respective "trade-diverting" as well as welfare-reducing consequences for economic operators from third countries on the other side.[17]

Whereas it is increasingly recognized that any attempt to make unambiguous and generalizing determinations on the preponderance of the positive or negative consequences of regional integration agreements for the multilateral trading regime as a whole seems to be rather challenging and error-prone,[18] the last mentioned aspect of potential "trade-diverting" effects with regard to non-participating countries already indicates one of the generally agreed "dark sides" of regionalism, the consequences of which are potentially not confined to the realm of economics: the exclusionary dimension of regional trade agreements. Although a sober evaluation of this aspect indeed reveals, first, that "nearly every country is excluded from nearly every PTA [preferential trade agreement]"[19] and, second, that this fact – at least under normal circumstances and in most situations – does not pose something even close to an insurmountable economic or normative challenge to the realization of regional integration projects, it should nevertheless be recalled that preferential trade agreements are rarely if ever concluded for economic reasons alone.[20] Just as transboundary economic relations never develop – and as a consequence should never be considered – in isolation from, and thus uninfluenced by, the respective political relationship between the states concerned, foreign trade policy measures and regulations have not infrequently been, and continue to be, used also as governmental means to promote and protect non-economic interests and objectives. This applies first and foremost also to the establishment of regional economic integration regimes, not infrequently also intended, *inter alia*, to promote peace and security, to foster democracy and stability in the region, to secure political influence as well as – in particular in the case of more advanced forms of regional trade agreements – to facilitate political integration among the contracting parties.[21]

16 On the term "spaghetti bowl" phenomenon and its negative connotations in the present context see, e.g., *Bhagwati*, in: Bhagwati/Krueger (eds.), The Dangerous Drift to Preferential Trade Agreements, 1 (2 *et seq*.); *Bhagwati*, Free Trade Today, 112 *et seq*.; see also for example *Leal-Arcas*, International Trade and Investment Law, 76.

17 *Viner*, The Customs Union Issue, 41 *et seq*.

18 On this perception see already *Viner*, The Customs Union Issue, 52 ("Confident judgment as to what the over-all balance between these conflicting considerations would be, it should be obvious, cannot be made for customs unions in general and in the abstract, but must be confined to particular projects and be based on economic surveys thorough enough to justify reasonable reliable estimates as to the weights to be given in the particular circumstances to the respective elements in the problem. Customs unions are, from the free-trade point of view, neither necessarily good nor necessarily bad; […]."); see also more recently for example *Krajewski*, Wirtschaftsvölkerrecht, para. 992; *Matsushita/Schoenbaum/Mavroidis/Hahn*, The World Trade Organization, 513.

19 *Winter*, in: Bagwell/Mavroidis (eds.), Preferential Trade Agreements – A Law and Economics Analysis, 7 (17).

20 See, e.g., *Gantz*, Regional Trade Agreements, 26 ("It would be naïve to assume that the United States and other nations busily concluding RTAs are doing so exclusively for economic and trade reasons."); *Cattaneo*, in: Lester/Mercurio (eds.), Bilateral and Regional Trade Agreements, 28 (50) ("It seems clear, however, that the political economy of bilateral/regional trade agreements revolves more around politics than economics."); *Haftel*, in: Dür/Elsig (eds.), Trade Cooperation – The Purpose, Design and Effects of Preferential Trade Agreements, 295; *Hirsch*, European Journal of International Law 19 (2008), 277 (293).

21 On these as well as other non-economic foreign policy goals often associated with the promotion of regional economic integration processes see for example *Gantz*, Regional Trade Agreements, 26 *et seq*.; *Bartels*, Regional Trade Agreements, para. 4, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.

And it is precisely the frequent use of – and deliberate choice between – certain bilateral or regional economic integration projects as an instrument for the pursuit of broader foreign policy goals by individual states that occasionally results in this segregative or exclusionary dimension of respective trade agreements developing a notable and worrisome potential to contribute to the outbreak or deepening of a political crisis between the affected countries.[22]

A well-known recent example for such severe political consequences arising from – or at least also fueled by – the conclusion of and choice between different regional trade agreements is the Ukraine crisis that began towards the end of 2013. There is probably almost general agreement among academic observers that ever since the country gained independence in 1991, Ukraine has – from an overarching and to a certain extent simplifying perspective – more or less constantly oscillated, and is in fact somewhat torn, between two main different processes of regional economic integration.[23] On the one hand are the efforts of this country aimed at forming a closer alliance with, and even securing a perspective for membership in, the EU. Following the dissolution of the Union of Soviet Socialist Republics (USSR), Ukraine happened to be the first participant of the then newly formed Commonwealth of Independent States (CIS) to sign a partnership and cooperation agreement (PCA) with the former European Communities on 14 June 1994 that entered into force on 1 May 1998.[24] In addition, Ukraine became, almost naturally, an important partner in the EU's European Neighborhood Policy (ENP), originally developed as a policy framework in 2003/2004[25] and subsequently, since the entry into force of the EU Lisbon Reform Treaty in December 2009, also enshrined in primary EU law on the basis of Article 8 of the Treaty on European Union (TEU).[26] The same applies to the eastern regional dimension of the ENP established in 2009 in the form of the so-called "Eastern Partnership", a policy regime that currently, in addition to Ukraine, comprises Armenia, Azerbaijan, Belarus, Georgia and Moldova.[27]

mpepil.com/> accessed on 19 September 2018; UNCTAD, Key Statistics and Trends in Trade Policy 2015: Preferential Trade Agreements, 2015, 3.

22 See also generally thereto, e.g., *Kloewer*, Denver Journal of International Law and Policy 44 (2016), 429 (435) ("PTAs [preferential trade agreements] between a selected number of nations can also serve another useful political purpose by pitting regions against one another in ideological battles.").

23 On this perception see for example *Van der Loo/Van Elsuwege*, Review of Central and East European Law 37 (2013), 421 (422); *Biedermann*, North Carolina Journal of International Law and Commercial Regulation 40 (2014), 219 (231); *Mamlyuk*, UCLA Journal of International Law and Foreign Affairs 18 (2014), 207 (232). More generally also, e.g., *Nitoiu*, International Politics 51 (2014), 234 (235) ("the distant prospect of EU membership and the influence of Russia have made the states of the Eastern Neighbourhood open to gamble between Moscow's short-term solutions and the EU's potential economic and democratic benefits").

24 Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine of 14 June 1994, OJ EC L 49/3 of 19 February 1998. See thereto as well as generally on the political and historical background of EU-Ukraine relations since the beginning of the 1990s *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 62 *et seq*.; *Dragneva/Wolczuk*, Review of Central and East European Law 39 (2014), 213 (214 *et seq*.), each with further references.

25 For the creation of the ENP see originally in particular Commission of the European Communities, Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, COM(2003) 104 final of 11 March 2003; Commission of the European Communities, European Neighbourhood Policy – Strategy Paper, COM(2004) 373 final of 12 May 2004.

26 Generally on the ENP see, e.g., *Geiger*, in: Geiger/Khan/Kotzur (eds.), European Union Treaties, Article 8 TEU, paras. 2 *et seq*.; *Van Elsuwege/Petrov*, European Law Review 36 (2011), 688 *et seq*.; *Schütze*, European Union Law, 910 *et seq*.; *Kotzur*, in: von Arnauld (ed.), Europäische Außenbeziehungen, 2014, § 7, paras. 1 *et seq*.; *Emerson*, The International Spectator – Italian Journal of International Affairs 46 (2011), 45 *et seq*.; as well as more recently European Commission/High Representative of the Union for Foreign Affairs and Security Policy, Report on the Implementation of the European Neighbourhood Policy Review, JOIN(2017) 18 final of 18 May 2017.

27 Generally on the Eastern Partnership see, e.g., *Petrov/Braun*, in: Hatje/Müller-Graff (eds.), Europäisches Organisations- und Verfassungsrecht, § 22, paras. 1 *et seq*.; as well as recently Joint Declaration of the Eastern Partnership Summit in Brussels on 24 November 2017, Council of the European Union Doc. 14821/17 of 24 November 2017.

Last, but surely not least, it was under the umbrella of the ENP, that the negotiations between the EU and Ukraine on a successor agreement to the 1994 PCA were launched in March 2007;[28] a process that ultimately led to the conclusion of the EU-Ukraine Association Agreement in March/June 2014, that entered into force on 1 September 2017.[29]

In parallel with these efforts aimed at a closer integration into the EU realm, Ukraine was, ever since it gained independence in 1991, on the other hand also until more recently actively involved in various – albeit notably by far not all, in particular not the more ambitious[30] – processes of regional economic integration unfolding among a number of post-Soviet countries, frequently at the initiative of the Russian Federation.[31] Among the respective agreements also adopted by Ukraine are a free trade agreement (FTA) signed on 15 April 1994 by Armenia, Azerbaijan, Belarus, Georgia, Moldova, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan, Ukraine and Uzbekistan,[32] a number of bilateral FTAs like the one concluded between Ukraine and Tajikistan on 6 June 2001,[33] as well as – in the form of a successor agreement to the 1994 FTA – the Treaty on a Free Trade Area signed by Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, Moldova, the Russian Federation, Tajikistan and Ukraine on 18 October 2011.[34] However, Ukraine was in the last two decades, at least for the most part,[35] intentionally abstaining from becoming involved in what in retrospect ultimately turned out to be the at present most remarkable as well as influential process of regional economic integration among post-Soviet countries and has more recently emerged as a serious competitor to the

28 For a more detailed account of the negotiations see for example *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 104 *et seq.*

29 Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, OJ EU L161/3 of 29 May 2014. For a quite comprehensive description and analysis of this agreement see *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 165 *et seq*.; as well as for example *Dragneva/Wolczuk*, Review of Central and East European Law 39 (2014), 213 (222 *et seq*.); *Van der Loo/Van Elsuwege/Petrov*, The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument, EUI Working Papers Law 2014/09, 2014, 7 *et seq.*

30 See thereto in particular *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 131 *et seq*.; European Parliament, Study: When Choosing Means Losing – The Eastern partners, the EU and the Eurasian Economic Union, by Pasquale de Micco, DG EXPO/B/PolDep/Note/2015_108, March 2015, 44 *et seq*.

31 Generally on these processes see, e.g., European Parliament, Study: When Choosing Means Losing – The Eastern partners, the EU and the Eurasian Economic Union, by Pasquale de Micco, DG EXPO/B/PolDep/Note/2015_108, March 2015, 38 *et seq*.; *Aliyev*, Osteuropa 59 (2013), 378 *et seq*.; *Kembayev*, Legal Aspects of the Regional Integration Processes in the Post-Soviet Area, 25 *et seq*.; as well as the contributions in *Dragneva/Wolczuk* (eds.), Eurasian Economic Integration – Law, Policy and Politics, 2013.

32 The text of the agreement is for example available under: <https://wits.worldbank.org/GPTAD/PDF/archive/CIS.pdf> accessed on 19 September 2018. The agreement was never ratified by the Russian Federation and consequently of only limited practical relevance, see thereto European Parliament, Study: When Choosing Means Losing – The Eastern partners, the EU and the Eurasian Economic Union, by Pasquale de Micco, DG EXPO/B/PolDep/Note/2015_108, March 2015, 41; *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 132; *Kembayev*, Osteuropa 59 (2013), 369 (371); *Dragneva/de Kort*, International and Comparative Law Quarterly 56 (2007), 233 (238).

33 The text of the agreement is for example available under: <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=576> accessed on 19 September 2018.

34 The text of the agreement is for example available under: <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=762> accessed on 19 September 2018.

35 A temporary exception was the signing, by Belarus, Kazakhstan, the Russian Federation as well as Ukraine, of the Agreement on the Formation of a Single Economic Space on 19 September 2003, a project that was apparently primary initiated in order to induce Ukraine into a more advance regime of regional economic integration with the other three countries but was no longer pursued after the next Ukrainian President *Yuschenko* announced in August 2005 that his country does not intend to ratify those parts of the agreement that were related to the establishment of supranational organs and a customs union. See thereto, e.g., *Shadikhodjaev*, Journal of International Economic Law 12 (2009), 555 (564 *et seq*.); *Van der Loo/Van Elsuwege*, Review of Central and East European Law 37 (2013), 421 (433 *et seq*.); *Dragneva/Wolczuk*, Review of Central and East European Law 39 (2014), 213 (226 *et seq*.); European Parliament, Study: When Choosing Means Losing – The Eastern partners, the EU and the Eurasian Economic Union, by Pasquale de Micco, DG EXPO/B/PolDep/Note/2015_108, March 2015, 44-45.

EU; a process that began in January 1995 with the conclusion of a customs union agreement between Belarus, Kazakhstan and the Russian Federation, subsequently leading, among others, to the signing of the Treaty on the Customs Union and Single Economic Space by these three countries as well as the Kyrgyz Republic and Tajikistan in February 1999, the conclusion, by these five countries, of the Treaty on the Foundation of the Eurasian Economic Community in October 2000, the Treaty on the Establishment of the Common Customs Territory and Creation of the Customs Union agreed by the "core group" of Belarus, Kazakhstan and Russia in October 2007, the implementation of the Eurasian Customs Union between these three countries on 1 January 2010[36] as well as, most recently and most notably, the creation of the Eurasian Economic Union as the successor to the Eurasian Economic Community on the basis of an agreement signed by Belarus, Kazakhstan and Russia on 29 May 2014, by Armenia on 10 October 2014 and by the Kyrgyz Republic on 23 December 2014 that entered into force for the first four members in January 2015 and for Kyrgyzstan in August 2015.[37]

Whereas in the two decades prior to the establishment and implementation of the Eurasian Customs Union in 2010, the political and economic pressure exercised by the Russian Federation on Ukraine to participate in the post-Soviet regional integration processes "remained limited",[38] respective efforts clearly intensified from the beginning of 2011 onwards.[39] And in particular in the second half of 2013, these initiatives initially appeared to be successful. Not only did Armenia inform the EU in September 2013 about its decision not to sign the association agreement that it had negotiated with the EU between July 2010 and July 2013 but to join instead the Eurasian Customs Union.[40] Rather, also the Ukrainian government (in-) famously announced on 21 November 2013 that the preparations for signing the respective agreement with the EU, scheduled to take place on the occasion of the third Eastern Partnership Summit in Vilnius on 28/29 November 2013, have been suspended indefinitely. While it is incontrovertible that a number of different factors have contributed to the outbreak of the complex and ongoing Ukrainian crisis at the end of 2013,[41] there is by now probably almost general agreement among commentators that quite prominently among these causes was the

36 On the emergence and subsequent maturing of this regional economic integration regime see also for example European Parliament, Study: When Choosing Means Losing – The Eastern partners, the EU and the Eurasian Economic Union, by Pasquale de Micco, DG EXPO/B/PolDep/Note/2015_108, March 2015, 43 *et seq*.; *Ispolinov*, Legal Issues of Economic Integration 40 (2013), 225 *et seq*.; *Kembayev*, Eurasian Economic Community (EurAsEC), paras. 2 *et seq*., in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; *Schewe/Aliyev*, German Yearbook of International Law 54 (2011), 565 *et seq*.; *Wolffgang/Brovka/Belozerov*, World Customs Journal 7 (No. 2, 2013), 93 *et seq*.

37 Concerning the founding of the Eurasian Economic Union and its institutional as well as substantive regulatory features see, e.g., *Kühn*, Zeitschrift für Europarechtliche Studien 20 (2017), 185 (197 *et seq*.); *Kembayev*, Eurasian Economic Union (EAEU), paras. 3 *et seq*., in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; European Parliament, Study: When Choosing Means Losing – The Eastern partners, the EU and the Eurasian Economic Union, by Pasquale de Micco, DG EXPO/B/PolDep/Note/2015_108, March 2015, 50 *et seq*.; *Schladebach/Kim*, Wirtschaft und Recht in Osteuropa 24 (2015), 161 *et seq*.

38 *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 135.

39 For respective Russian initiatives see for example *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 135 *et seq*.; in particular *ibid*., 135 ("However, in 2011 – the same period when the negotiations on the EU-Ukraine AA and DCFTA were finalised –, Russia moved up a gear and tried to convince Ukraine to join the Eurasian Customs Union with several trade benefits and even threatened to retaliate with additional trade barriers if it would conclude the AA and DCFTA with the EU."); as well as *Dragneva/Wolczuk*, Review of Central and East European Law 39 (2014), 213 (229 *et seq*.).

40 See thereto, e.g., *Grigoryan*, Polish Quarterly of International Affairs (No. 4, 2015), 7 *et seq.*

41 See for example the observation by *Mamlyuk*, German Law Journal 16 (2015), 479 (482) ("Like any geopolitical phenomenon, the Ukraine crisis has multiple roots."); from a more overarching perspective see also, e.g., *Smith*, European Foreign Affairs Review 19 (2014), 581 (595) ("the Ukraine crisis appears to have been the product of structural forces in Europe, where two competing powers with overlapping spheres of influence have created a geopolitical 'pressure-cooker' in Ukraine").

decision by the Ukrainian government to halt the association process with the EU in favor of (potentially) acceding to the Eurasian Customs Union;[42] a choice between two different and apparently incompatible projects of regional economic integration that subsequently resulted in the Euromaidan Revolution as well as, among others, the annexation of Crimea by Russia and the outbreak of an armed conflict between Ukrainian governmental forces and separatist movements in the Donbas region of eastern Ukraine in the currently more stabilized form of the so-called "Luhansk People's Republic" as well as the "Donetsk People's Republic".

In light of this renewed[43] rise of "competing regionalism" in Europe[44] and the at times severe – and most certainly deplorable – consequences resulting from this phenomenon, the present contribution intends to present some systemizing thoughts, primarily from an international law perspective, on the apparently increasingly important issues concerning the relationship between different regional economic integration agreements in general and their mutual compatibility (or incompatibility) in particular. For this purpose, the following assessment is divided into three main parts. The first section illustrates the rising need for a broader analytical focus when evaluating the effects of regional trade agreements by not only taking into account the vertical relationship between these agreements and the multilateral trading regime but also a horizontal dimension and thus the interactions between different regional economic integration agreements (B.). Against this background, the following second part outlines and evaluates the compatibility of regional trade agreements in theory and current treaty practice from the perspective of international law (C.). Based on the findings made in this section, in the third and final part of this contribution an attempt will be made to provide some concluding thoughts on the issue of compatibility from a more policy-oriented perspective, thereby contrasting the phenomenon of "competing regionalism" with the in general more promising and desirable normative ordering idea of "cooperative regionalism" (D.).

42 On this perception see, e.g., *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 131; *Hoekman/Jensen/Tarr*, Journal of World Trade 48 (2014), 795; *Breuer*, in: Pechstein/Nowak/Häde (eds.), Frankfurter Kommentar zu EUV, GRC, und AEUV, Vol. I, 2017, Art. 8 EUV, para. 32; *Lain*, Polish Quarterly of International Affairs (No. 3, 2016), 61; Kühn, Zeitschrift für Europarechtliche Studien 20 (2017), 185 (186 *et seq*.); *Marxen*, The Crimea Crisis – An International Law Perspective, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 74 (2014), 367 (368-369); *Grigoryan*, Polish Quarterly of International Affairs (No. 4, 2015), 7 (25); *Dragneva/Wolczuk*, Review of Central and East European Law 39 (2014), 213 (214) ("It is not an understatement [sic] to say that this Agreement has fermented one of the most complex political, security and economic situations in Europe for many decades: […].").

43 It seems appropriate to draw attention to the fact that „competing regionalism" is in principle also in the context of Europe not an entirely new phenomenon as illustrated – with, however, considerably less severe consequences – in particular by the political and historical circumstances that led to the almost parallel emergence and subsequent co-existence of the European Economic Community (EEC) and the European Free Trade Association (EFTA) since the end of the 1950s. See thereto, e.g., *van Middelaar*, The Passage to Europe, 166 *et seq*.

44 See, e.g., *Kembayev*, Osteuropa 59 (2013), 369 (376) ("we can clearly state that those processes are in principle of competitive character, Russia tries to create a Eurasian alliance consisting of former Soviet republics, while the EU attempts to establish a 'zone of friendly neighborhood' encompassing inter alia a number of post-Soviet countries").

B. Broadening the Analytical Focus: From Vertical to Horizontal Perspectives on the Effects of Regional Trade Agreements

Academic discussions on the economic as well as in particular also political effects of regional trade agreements have until recently primarily – not to say almost exclusively – adopted what might be labelled a vertical perspective by focusing on the respective consequences for the multilateral trading regime as legally manifested originally in the GATT 1947 and, following its entry into force in January 1995, the global legal order established by the WTO. Already for a number of decades we find in this regard for example a quite intensive and controversial debate on whether regional economic integration agreements should more appropriately be perceived – to borrow from a distinction introduced by *Jagdish Bhagwati* – as "building blocks" or rather as "stumbling blocks" for the progressive development of the multilateral legal regime governing transboundary trade relations.[45] Furthermore, a truly notable amount of thought and ink has been devoted for quite some time to an assessment of the interpretation as well as overall appropriateness and effectiveness of the provisions enshrined in the former GATT 1947 and the current WTO legal order – among them Article XXIV GATT, Articles V and V*bis* GATS as well as the "Enabling Clause"[46] – stipulating normative requirements for the legal compatibility of regional economic integration agreements concluded by WTO members with their treaty obligations arising from the multilateral trading regime.[47]

While these as well as other issues related to the connection between regional trade agreements and the multilateral legal order established by the WTO have surely been – and most certainly remain – of outstanding importance and thus clearly merit continued intensive scientific evaluation,[48] it is equally incontrovertible that dealing with these questions can only illuminate one dimension of what is in fact a two-dimensional topic. As for example already indicated and quite vividly illustrated by the underlying developments leading to the Ukraine crisis,[49] the horizontal dimension of regional economic integration agreements is, from the perspective of practical relevance, surely no less important for the political and economic interactions in the international system than the respective vertical dimension. Against this background, the need arises to somewhat broaden and readjust the analytical focus when assessing the effects of these agreements by first and foremost also taking into account and evaluating

45 See for example *Bhagwati*, The World Trading System at Risk, 77 ("so that these arrangements more readily serve as building blocks of, rather than stumbling blocks to, GATT-wide free trade"); as well as in principle already *Dam*, University of Chicago Law Review 30 (1963), 615 *et seq*.; and subsequently, e.g., *Jovanović*, The Economics of International Integration, 7 *et seq*.; *Jackson*, The World Economy 16 (1993), 121 (130); *Cho*, Harvard International Law Journal 42 (2001), 419 (432 *et seq*.); *Senti*, in: Cremona/Hilpold/Lavranos *et. al.* (eds.), Reflections on the Constitutionalisation of International Economic Law – Liber Amicorum for Ernst-Ulrich Petersmann, 441 *et seq*.

46 GATT, Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, GATT Doc. L/4903 of 3 December 1979; on the "Enabling Clause" see also, e.g., *Choi/Lee*, Minnesota Journal of International Law 21 (2012), 1 *et seq*.; *Bartels*, Regional Trade Agreements, para. 42 *et seq*., in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018.

47 From the numerous contributions on these issues see for example *Van den Bossche/Zdouc*, The Law and Policy of the World Trade Organization, 671 *et seq*.; *Matsushita/Schoenbaum/Mavroidis/Hahn*, The World Trade Organization, 507 *et seq*.; *Nowrot*, in: Tietje (ed.), Internationales Wirtschaftsrecht, 67 (141 *et seq*.), each with further references.

48 For a more critical perspective see, e.g., *Pauwelyn/Alschner*, in: Dür/Elsig (eds.), Trade Cooperation – The Purpose, Design and Effects of Preferential Trade Agreements, 497 (498) ("The vertical, top-down WTO-PTA relationship is, at least in legal terms, much overrated.").

49 See thereto *supra* under A.

the interactions between, and compatibility of, the various regional economic integration regimes from a horizontal perspective; an analytical approach that has been until recently largely or – in light of the numerous contributions on the vertical relationship – at least comparatively neglected in the legal, economic and social science literature on regional integration.

C. Compatibility and Interactions between Regional Trade Agreements: Legal Implications

The institutional and substantive design of regional economic integration agreements does surely not follow something even close to a single model but, quite to the contrary, rather displays an almost infinite variety in treaty practice.[50] Nevertheless, in order to reduce the existing factual complexities by way of systemization,[51] it has become quite common among economists and legal scholars to distinguish, according to the degree of economic integration, between five different types of economic integration agreements, namely preferential trade arrangements, free trade zones, customs unions, common markets as well as economic unions.[52] For the purposes of the present analysis dealing with the compatibility and interactions among regional trade agreements from the perspective of international law, however, it seems useful to reduce the given complexities even further by distinguishing merely between two forms of economic integration agreements: On the one hand we find what might be referred to as "basic" or "shallow" integration regimes in the form of preferential trade arrangements and free trade agreements, both characterized by a comparatively low degree of economic integration between the contracting parties. On the other hand there are regional trade agreements, among them customs unions, common markets and economic unions, that distinguish themselves by a higher degree of economic integration agreed upon by the participating countries and might, consequently, be referred to as "advanced" or "deep" integration regimes.[53]

Taking this binary distinction as the overarching reference point of a systematic approach towards the mutual compatibility of regional trade agreements from a legal perspective, one can again basically distinguish between two main scenarios.

50 See for example the observation made by *Trachtman*, in: Guzman/Sykes (eds.), Research Handbook in International Economic Law, 151 (153) ("regional integration defies simple categorization"); *de Mestral*, Economic Integration, Comparative Analysis, para. 4, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018 ("the form and scope of RTAs can vary greatly"); *Kembayev*, Legal Aspects of the Regional Integration Processes in the Post-Soviet Area, 18 ("impressive variety of forms regional integration agreements can take").

51 Generally on this underlying purpose pursued by approaches of systemization or categorization see, e.g., *Luhmann*, Kölner Zeitschrift für Soziologie und Sozialpsychologie 19 (1967), 615 (618 *et seq*.); as well as already *Bruner/Goodnow/Austin*, A Study of Thinking, 12 ("A first achievement of categorizing has already been discussed. By categorizing as equivalent discriminable different events, the organism *reduces the complexity of its environment*.") (emphasis in the original).

52 On the respective systemization of regional trade agreements see, e.g., *Jovanović*, The Economics of International Integration, 21 *et seq*.; *Marceau/Reiman*, Legal Issues of Economic Integration 28 (2001), 297 (302); *Hilpold*, Max Planck Yearbook of United Nations Law 7 (2003), 219 (224 *et seq*.); *Nowrot*, in: Tietje (ed.), Internationales Wirtschaftsrecht, 67 (128 *et seq*.); *Bartels*, Regional Trade Agreements, para. 2, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; *de Mestral*, Economic Integration, Comparative Analysis, para. 4, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; *Krajewski*, Wirtschaftsvölkerrecht, paras. 970 *et seq*.; as well as in principle also for example already *Balassa*, The Theory of Economic Integration, 2 (who distinguishes, however, only between four different categories of regional economic integration agreements).

53 On the distinction between "basic forms" and "advanced forms of regional integration agreements" see in principle also already for example *Kembayev*, Legal Aspects of the Regional Integration Processes in the Post-Soviet Area, 19 *et seq*.

First, there are those situations that exclusively involve countries not being a party to an "advanced" or "deep" regional economic integration agreement and therefore only concern the compatibility of multiple different "basic" or "shallow" trade treaties concluded by these actors. It seems appropriate to recall that this first scenario actually reflects the normality in the international economic system by covering the in current treaty practice most common relationship between regional trade agreements, considering the facts that only about eight per cent of all regional economic integration agreements belong to the category of what is here referred to as "advanced" or "deep" integration regimes[54] and that the overwhelming majority of countries is not a party to respective agreements. However, this first scenario is not only the most common one. Rather, it is also the one that gives rise to comparatively few difficulties from the perspective of economics as well as international law.

The perception that countries not being party to a customs union or even more advanced forms of regional economic integration are in principle not inhibited from concluding multiple regional trade agreements with other states is already confirmed by the quite extensive treaty practice in this regard. To mention but three examples, the United States has concluded numerous free trade agreements with countries like Australia, Israel, Jordan, Singapore as well as Canada and Mexico (North American Free Trade Agreement).[55] Ukraine has entered into respective treaty arrangements with, among others, the members of the European Free Trade Association (EFTA), Macedonia, Georgia and Uzbekistan.[56] Japan has free trade agreements in force with a variety of other states, among them Mexico, Thailand, Peru and Malaysia.[57] Thereby, the legal "key" to the coordination and parallel implementation of the different and varying preferential regimes entered into by one country is, in the practically still most important realm of trade in goods, the stipulation of so-called "rules of origin"; legal regimes that – in the absence of unconditional most-favoured-nation (MFN) obligations that are normally not included in free trade agreements[58] – provide for example the domestic customs authorities with the necessary normative tools to determine whether imported products at issue are manufactured in the respective treaty partner and thus benefit from the preferential tariff treatment stipulated in the specific free trade agreement in question.[59]

54 See thereto WTO, World Trade Report 2011, The WTO and Preferential Trade Agreements: From Co-Existence to Coherence, 2011, 62; *Kaufmann*, Customs Unions, para. 34, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; *Fiorentino/Verdeja/Toqueboeuf*, The Changing Landscape of Regional Trade Agreements: 2006 Update, WTO Discussion Paper 12 (2007), 5 *et seq*.; *Nowrot*, in: Tietje (ed.), Internationales Wirtschaftsrecht, 67 (132-133).

55 See the information provided under: <https://ustr.gov/trade-agreements/free-trade-agreements> accessed on 19 September 2018.

56 See the information provided under: <http://mfa.gov.ua/en/about-ukraine/economic-cooperation/trade-agreements> accessed on 19 September 2018.

57 See the respective information under: <http://www.mofa.go.jp/policy/economy/fta/index.html> accessed on 19 September 2018.

58 Generally on MFN obligations in the realm of international economic treaty law see, e.g., *Matsushita/Schoenbaum/Mavroidis/Hahn*, The World Trade Organization, 155 *et seq*.; *Van den Bossche/Zdouc*, The Law and Policy of the World Trade Organization, 305 *et seq*. Specifically on the observation that regional free trade agreements usually do not provide for an unconditional MFN obligation see for example *Pauwelyn*, in: Baldwin/Low (eds.), Multilateralizing Regionalism, 368 (393).

59 On the functioning and design of rules of origin particularly in regional trade agreements see, e.g., *Abreu*, in: Acharya (ed.), Regional Trade Agreements and the Multilateral Trading System, 58 *et seq*.; *Brenton*, in: Chauffour/Maur (eds.), Preferential Trade Agreement Policies for Development, 161 *et seq*.; *Hirsch*, Rules of Origin, paras. 19 *et seq*., in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; *Köbele*, Free Trade Areas, paras. 5 *et seq*., in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; *Herdegen*, Principles of International Economic Law, 319 *et seq*.; *Inama*, Rules of Origin in International Trade, 174 *et seq*.

Consequently, the design and more limited degree of economic integration of "basic" or "shallow" regional trade agreements allows countries that are not a party to an "advanced" or "deep" regional economic integration agreement to commit themselves to a variety of different – and often quite ambitious – preferential treaty regimes with numerous other countries at the same time, while nevertheless safeguarding the respective country's independence with regard to its external commercial policy, because each contracting party to a free trade agreement retains the option of pursuing its own foreign trade policy vis-à-vis third states.[60]

The situation appears to be quite different – and with that we turn to the second main scenario – once a country decides to become a member of an "advanced" or "deep" regional economic integration agreement in the form of a customs union or even a more advanced type of integration regime like a common market or an economic union. Although still a comparatively rare phenomenon in the international economic system, respective examples for such a commitment are provided, among others, by France being a member of the EU, by the Russian Federation as one of the members of the Eurasian Economic Union, by Switzerland having entered into a customs union with the Principality of Liechtenstein based on a treaty concluded on 29 March 1923 as well as by Botswana, one of the contracting parties of the Southern African Customs Union (SACU) as being apparently the world`s oldest still existing customs union.[61]

Whereas in the case of "basic" or "shallow" regional trade agreements like free trade areas each contracting party still retains the right to determine its own tariffs and other foreign economic policy measures in its relations with third countries, a factor that allows for the compatibility of various different agreements to be concluded by one state,[62] an "advanced" or "deep" integration regime in the form of a customs union – as for example indicated by Article 28 (1) of the Treaty on the Functioning of the European Union (TFEU)[63] as well as Article XXIV:8 (a) GATT 1994[64] – requires the adoption of a common external tariff policy by all of its members applying to the imports of goods from all non-members as well as, at least regularly, a considerable overall harmonization of their external commercial policies vis-à-vis third states.[65]

60 On this finding see also already for example *Fiorentino/Verdeja/Toqueboeuf*, The Changing Landscape of Regional Trade Agreements: 2006 Update, WTO Discussion Paper 12 (2007), 6.

61 Generally on SACU see for example the information under: <http://www.sacu.int/> accessed on 19 September 2018; as well as *Gantz*, Regional Trade Agreements, 435 *et seq*.; *Meyn*, The Impact of EU Free Trade Agreements on Economic Development and Regional Integration in Southern Africa, 45 *et seq*.

62 *Andriamananjara*, in: Chauffour/Maur (eds.), Preferential Trade Agreement Policies for Development, 111 ("They [free trade agreements] tend to achieve significant preferential and reciprocal trade liberalization within a short time while simultaneously preserving a member's sovereignty over its trade policy vis-à-vis the rest of the world, including its option of joining other preferential trade agreements (PTAs)."); *Fiorentino/Verdeja/Toqueboeuf*, The Changing Landscape of Regional Trade Agreements: 2006 Update, WTO Discussion Paper 12 (2007), 7 ("the parties to an FTA [free trade agreement] have, in principle, full flexibility with regards to their individual choices of future FTA partners").

63 Article 28 (1) TFEU: "The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries."

64 Article XXIV:8 (a) GATT 1994: "For the purposes of this Agreement:
(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that
(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,
(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union; […]."

65 See thereto as well as generally on the characteristics of customs unions for example *Andriamananjara*, in: Chauffour/Maur (eds.), Preferential Trade Agreement Policies for Development, 111 *et seq*.; *Kaufmann*, Customs Unions, paras. 1 *et seq.*, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/>

Customs unions thus do not only require a certain degree of economic and political homogeneity of its members.[66] They first and foremost also entail the potential to considerably limit the participating countries' autonomy with regard to pursuing an individual foreign trade policy in their relations with non-member states;[67] and this applies also to their options to sign and ratify additional regional trade agreements with third countries. Thereby, it should be recalled that membership in a customs union does surely not *per se* prevent the conclusion of other economic integration agreements involving non-members. Compatibility is in particular obtained if all members of the customs union are – jointly or/and in form of the (supranational) economic integration organization being itself a treaty party – also a contracting party of the "basic" or "advanced" regional trade agreement with the third country in question.[68] Respective examples in current treaty practice are provided by the free trade agreement between the Eurasian Economic Union and its member states, of the one part, and the Socialist Republic of Vietnam, of the other part, signed on 29 May 2015 and in force since 5 October 2016,[69] the free trade agreement between the member states of SACU and the EFTA states, signed on 26 June 2006 and in force since 1 May 2008,[70] the economic partnership agreement, establishing a free trade area, between the EU and its member states, of the one part, and the member states of SACU as well as Mozambique, of the other part, signed on 10 June 2016 and provisionally in force since 10 October 2016,[71] the free trade agreement between the EU and its member states, of the one part, and the Republic of Korea, of the other part, signed on 6 October 2010 and in force since 13 December 2015,[72] as well as – in the realm of "advanced" economic integration agreements concluded with third countries – the agreement establishing a customs union between the former European Economic Community and the Principality of Andorra concluded in the form of an exchange of letters on 28 June 1990.[73] Furthermore, the same positive finding of compatibility applies in principle to situations in which all members of an "advanced" economic integration agreement have concluded – preferably simultaneously, but potentially also successively – virtually identical bilateral "basic" regional trade agreements with the non-member state in question; an approach first and foremost also taken recourse to by the EU with regard to Turkey as outlined below.

Against this background, the question remains as to the respective compatibility of regional trade agreements concluded by only some of the members to an "advanced" economic integration regime like a customs union. This issue is far from theoretical, as for example the Ukraine crisis illustrates.

accessed on 19 September 2018; *Nowrot*, in: Tietje (ed.), Internationales Wirtschaftsrecht, 67 (132 *et seq*.); *Jovanović*, The Economics of International Integration, 28 *et seq*., each with further references.

66 See, e.g., *Kaufmann*, Customs Unions, para. 7, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; *Faccini/Silva/Willmann*, Journal of International Economics 90 (2013), 136 et seq.; *Nowrot*, in: Tietje (ed.), Internationales Wirtschaftsrecht, 67 (133).

67 *Fiorentino/Verdeja/Toqueboeuf*, The Changing Landscape of Regional Trade Agreements: 2006 Update, WTO Discussion Paper 12 (2007), 7 ("loss of autonomy over the parties' national commercial policies"); *Andriamananjara*, in: Chauffour/Maur (eds.), Preferential Trade Agreement Policies for Development, 111 *et seq*.

68 For a different perception that is, however, not supported by respective treaty practice see *Kembayev*, Osteuropa 59 (2013), 369 ("membership in one of the [advanced] RIAs [regional integration agreements] precludes the membership in another").

69 The text of the agreement is for example available under: <http://www.eurasiancommission.org/ru/act/trade/dotp/sogl_torg/Documents/EAEU-VN_FTA.pdf> accessed on 19 September 2018.

70 The text of the agreement is for example available under: <http://www.efta.int/free-trade/free-trade-agreements/sacu> accessed on 19 September 2018.

71 Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, OJ EU L 250/3 of 16 September 2016.

72 OJ EU L 127/6 of 14 May 2011.

73 Agreement in the form of an exchange of letters between the European Economic Community and the Principality of Andorra of 28 June 1990, OJ EC L 374/14 of 31 December 1990.

It is precisely this question that lies at the heart of Ukraine's apparently required choice between deepening the association process with the EU or becoming a member of the Eurasian Customs Union. The former European Commissioner for Enlargement and Neighbourhood Policy, *Štefan Füle*, has outlined the EU's position on the issue of (in)compatibility for example in his "Statement on the Pressure Exercised by Russia on Countries of the Eastern Partnership" given at the European Parliament on 11 September 2013: "It is true that the Customs Union membership is not compatible with the DCFTAs which we have negotiated with Ukraine, the Republic of Moldova, Georgia, and Armenia. This is not because of ideological differences; this is not about a clash of economic blocs, or a zero-sum game. This is due to legal impossibilities: for instance, you cannot at the same time lower your customs tariffs as per the DCFTA and increase them as a result of the Customs Union membership. The new generation of Association Agreements will bring enormous transformative benefits through legal approximation, regulatory convergence, and market liberalisation. Independent studies indicate that a DCFTA will bring substantial benefits. Exports to the EU could double over time, leading to increase in GDP of up to approximately 12%. But in order to implement these, our partners must enjoy full sovereignty over their own trade policies, which members of the Customs Union will not."[74] In addition, former European Commissioner for Trade, *Karel De Gucht*, has highlighted in a statement of 28 February 2014, that "[t]echnically, the DCFTA is not compatible with Ukraine becoming a member of the customs union between Russia, Belarus and Kazakhstan, but Ukraine is not [a member]".[75]

And indeed, the clearly prevailing view in scholarly discussions on this issue, referring especially to the common external tariff policy as one of the primary characteristics of a customs union, assumes that the need for a proper functioning of such an integration regime prevents individual members of an "advanced" regional trade agreement to separately and autonomously sign and ratify additional economic treaties with third countries. To mention but two examples, *Roberto V. Fiorentino*, *Luis Verdeja* and *Cristelle Toqueboeuf* – drawing attention to the unacceptable economic consequences for the other members of the customs union at issue – have emphasized that "[t]he requirement in a CU of a common external tariff and harmonization of the parties' commercial policies does not allow in principle a 'go alone' policy whereby one party alone negotiates a preferential agreement with a third party. Such a situation would disrupt the functioning of the CU since products from the third party could enter the union at a preferential rate through the bilateral RTA, implying a loss of tariff revenues for the other members to the union".[76] Moreover, in an analysis by *Guillaume Van der Loo* we find the statement that "since the establishment of the Customs Union, Russia cannot conclude a FTA with a third country on its own, but only together with Belarus and Kazakhstan as one customs union entity".[77] This perception in academia also finds its support in more recent state practice.

74 The full statement is for example available under: <http://europa.eu/rapid/press-release_SPEECH-13-687_en.htm> accessed on 19 September 2018; see thereto also, e.g., *Lain*, Polish Quarterly of International Affairs (No. 3, 2016), 61 (73 *et seq*.); *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 149 *et seq*.

75 The full statement is for example available under: <http://trade.ec.europa.eu/doclib/docs/2014/february/tradoc_152219.pdf> accessed on 19 September 2018.

76 *Fiorentino/Verdeja/Toqueboeuf*, The Changing Landscape of Regional Trade Agreements: 2006 Update, WTO Discussion Paper 12 (2007), 7 fn. 19.

77 *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 158; see also for example *Pauwelyn*, in: Baldwin/Low (eds.), Multilateralizing Regionalism, 368 (393) ("makes negotiating an FTA with only one member of a CU most difficult"); *Lain*, Polish Quarterly of International Affairs (No. 3, 2016), 61 (73 *et seq*.); *Van der Loo/Van Elsuwege*, Review of Central and East European Law 37 (2013), 421 (442); *Hoekman/Jensen/Tarr*, Journal of World Trade 48 (2014), 795 (797); *Andriamananjara*, in: Chauffour/Maur (eds.), Preferential Trade Agreement Policies for Development, 111 (118) ("Indeed, membership in a CU [customs union], at least in principle, prevents an individual member from acting individually, since any agreement with a third party or any change to the CET

The – currently stalled – negotiations on a free trade agreement between the United States and South Africa were, apparently at the insistence of the United States, expanded to include also the other members of SACU.[78] Moreover, although the EFTA states had originally envisioned negotiations on a free trade agreement with the Russian Federation only,[79] the respective – and currently suspended – discussions were subsequently expanded to include also Belarus and Kazakhstan, following the implementation of the Eurasian Customs Union.[80] Finally, the Comprehensive and Enhanced Partnership Agreement, more recently signed on 24 November 2017 by the EU and the European Atomic Energy Community and their member states, of the one part, and Armenia, of the other part,[81] that entered into provisional application on 1 June 2018, provides a vivid example in the present context. Compared to the association agreements concluded by the EU with Georgia, Moldova and Ukraine, the partnership agreement with Armenia – in the same way as the Enhanced Partnership and Cooperation Agreement signed by the EU and Kazakhstan already on 21 December 2015 and provisionally applied since 1 May 2016[82] – stipulates rather modest regulations in the field of trade liberalization, thereby "taking full account of Armenia's obligations as a member of the Eurasian Economic Union".[83]

Nevertheless, also certain notable state practice exists that indicates the compatibility – at least in principle and under certain circumstances – of regional trade agreements concluded by only some of the members of an "advanced" economic integration regime like a customs union. For example, the possibility for the Principality of Liechtenstein to become a contracting party to the Agreement on the European Economic Area (EEA), signed on 2 May 1992 and in force since 1 January 1994 (with Liechtenstein having joined in May 1995),[84] despite the fact that Switzerland – the other member of the 1923 Swiss-Liechtenstein Customs Union – has abstained from concluding the EEA Agreement, is ensured on the basis of Article 121 (b) of the EEA Agreement as well as a bilateral treaty between Liechtenstein and Switzerland of 2 November 1994 complementing their customs union agreement.[85]

Aside from this rather unique case, it seems also noteworthy that a considerable number of "basic" regional trade agreements include provisions allowing each contracting party to become a member of a customs union with third countries.

[common external tariff] needs to be decided by the CU as a whole. […] In a world of criss-crossing and overlapping trade agreements, the issue of the loss of autonomy can severely constrain members of CUs in using trade agreements as an effective commercial instrument — at least in theory. In the current wave of regionalism, in which flexibility and speed are valued, membership in a CU, if played by the rules, could constitute a straitjacket for some countries."). *Andriamananjara* subsequently mentions some examples of situations "in which a CU member alone negotiates an FTA with a third party" and thus has not 'played by the rules'.

78 See thereto *Pauwelyn*, in: Baldwin/Low (eds.), Multilateralizing Regionalism, 368 (393).

79 See, e.g., Results of the Analysis Regarding the Perspective of Closer Trade and Investment Relations between the Russian Federation and the EFTA States, November 2008, available under: <http://www.efta.int/media/documents/free-trade/News/EFTA-Russia-Joint-Study-Group-Report-17-November-2008-Summary.pdf> accessed on 19 September 2018.

80 *Van der Loo*, EU-Russia Trade Relations: It Takes WTO to Tango?, Legal Issues of Economic Integration 40 (2013), 7 (30); *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 158.

81 Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, OJ EU L 23/4 of 26 January 2018.

82 Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part, OJ EU L 29/3 of 4 February 2016.

83 Explanatory Memorandum, reprinted in: European Commission/High Representative of the Union for Foreign Affairs and Security Policy, Joint Proposal for a Council Decision, JOIN(2017) 37 final of 25 September 2017.

84 OJ EC L 1/3 of 3 January 1994.

85 See thereto, e.g., *Pelkams/Böhler*, The EEA Review and Liechtenstein's Integration Strategy, 21 and *passim*.

Respective examples are provided by Article 1.3 (2) of the free trade agreement between the EFTA states and Ukraine, Article 39 (1) of the EU-Ukraine Association Agreement, Article 1.3 (2) of the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), Article 16 (1) of the free trade agreement between Macedonia and Ukraine, Article 157 of the EU-Moldova Free Trade Agreement as well as Article 4 (1) of the free trade agreement concluded by Ukraine and Montenegro. However, a closer look at the wording of these treaty clauses quickly reveals the legal and political challenges also arising in connection with this regulatory approach. As stipulated in Article 39 (1) of the EU-Ukraine Association Agreement, this economic integration treaty does "not preclude the maintenance or establishment of customs unions, […]" only insofar as they do not "conflict with trade arrangements provided for in this Agreement". The EU-Ukraine Association Agreement, in the same way as the other regional trade agreements mentioned above, thus in fact claims priority over "advanced" economic treaty regimes subsequently entered into by one of the contracting party.[86] Consequently, joining a customs union with third countries will, from a practical perspective, in all likelihood only be feasible for a contracting party at the price of, if possible, renegotiating or ultimately abandoning and thus terminating the "basic" regional trade agreement, i.e. for example the EU-Ukraine Association Agreement, at issue; a finding that clearly illustrates the difficulties a country is potentially faced with when trying to unilaterally coordinate its treaty commitments arising from a combination of "advanced" and "basic" economic integration agreements.

Finally, also the EU itself is a notable case in point when assessing the issue of (in)compatibility in the present context. On the one hand, this supranational organization comprises of a customs union of its member states in accordance with Article 28 (1) TFEU. On the other hand, however, the EU is also itself a member of a number of other customs unions, namely the ones with the Principality of Andorra concluded in the form of an exchange of letters on 28 June 1990,[87] with the Republic of San Marino by an agreement signed by the two parties on 16 December 1991 and in force since 1 April 2002,[88] as well as with Turkey on the basis of Decision No. 1/95 of the EC-Turkey Association Council;[89] a joint institution created as the central decision-making body within the framework of the EEC-Turkey Association Agreement of 12 September 1963.[90] Despite this quite impressive multiple membership in three separate customs unions, however, it is well-known that the EU and its member states continue to regularly negotiate and conclude free trade agreements with third countries alone. In order to ensure – or at least facilitate – the compatibility of these "basic" regional economic integration treaties with its membership in three customs unions, the EU currently adopts in particular two main regulatory approaches.

The first one addresses the concerns of Andorra and San Marino. In this regard, the EU acts on the basis of an approach that might be characterized as including modified rules of origin.

86 See thereto generally also for example *Evans*, in: Lester/Mercurio (eds.), Bilateral and Regional Trade Agreements, 52 (71).

87 Agreement in the form of an exchange of letters between the European Economic Community and the Principality of Andorra of 28 June 1990, OJ EC L 374/14 of 31 December 1990.

88 Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino, OJ EC L 84/43 of 28 March 2002.

89 Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on Implementing the Final Phase of the Customs Union (96/142/EC), OJ EC L 35/1 of 13 February 1996.

90 Agreement establishing an Association between the European Economic Community and Turkey, OJ EC L 361/1 of 31 December 1977.

This regulatory concept finds its manifestation for example in Annex 7 to the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the EU and its member states, of the other part, signed on 30 October 2016 and provisionally in force since 21 September 2017.[91] Annex 7 CETA contains joint declarations by the parties concerning Andorra and San Marino, stipulating, among others, that "[p]roducts originating in the Republic of San Marino shall be accepted by Canada as originating in the European Union within the meaning of this Agreement, provided that these products are covered by the *Agreement on Co-operation and Customs Union between the European Economic Community and the Republic of San Marino*, done at Brussels on 16 December 1991, and that the later remains in force".[92] As a result of this stipulation, as also for example enshrined in the EU-Ukraine Association Agreement,[93] the EU-Korea Free Trade Agreement,[94] the EU-Georgia Association Agreement[95] and the EU-Moldova Association Agreement,[96] San Marino as well as – on the basis of similar joint declarations – Andorra are, with regard to the realm of trade in goods, under the respective agreement entitled to the same preferential treatment as the member states of the EU. This incorporation into the regional economic integration regime at issue ensures the compatibility with Andorra's and San Marino's status as members of customs unions with the EU. While this legal approach undoubtedly provides an elegant solution to the compatibility challenge, it nevertheless should not be left unmentioned that this method has to be accepted by the other contracting party and, moreover, that such acceptance is surely easier to obtain in the present cases involving so-called "micro states"[97] than in situations concerned with larger economies.

This last-mentioned consideration is probably also one of the main reasons why the EU adopts – or is required to adopt due to the insistence of negotiating partners – in its respective treaty practice a different regulatory approach when trying to accommodate the interests of Turkey; an approach that might appropriately be qualified as including a *pactum de negotiando* in favor of Turkey. In this regard, Annex 30-D of CETA stipulates in the first paragraph of a "Joint Declaration of the Parties on Countries that have Established a Customs Union with the European Union" that the EU "recalls the obligations of the countries that have established a customs union with the European Union to align their trade regime to that of the European Union, and for certain of them, to conclude preferential agreements with countries that have preferential agreements with the European Union". Paragraph 2 of this Joint Declaration emphasizes that "[i]n this context, Canada shall endeavour to start negotiations with the countries which, (a) have established a customs union with the European Union, and (b) whose goods do not benefit from the tariff concessions under this Agreement, with a view to conclude a comprehensive bilateral agreement establishing a free trade area in accordance with the relevant WTO Agreement provisions on goods and services, provided that those countries agree to negotiate an ambitious and comprehensive agreement comparable to this Agreement in scope and ambition. Canada shall endeavour to start negotiations as soon as possible with a view to have such an agreement enter into force as soon as possible after the entry into force of this

91 OJ EU L 11/23 of 14 January 2017.

92 Para. 1 of the Joint Declaration concerning the Republic of San Marino, OJ EU L 11/566 of 14 January 2017 (emphasis in the original).

93 Joint Declaration concerning the Republic of San Marino, OJ EU L 161/2120 of 29 May 2014.

94 Joint Declaration concerning the Republic of San Marino, OJ EU L 127/1413 of 14 May 2011.

95 Joint Declaration concerning the Republic of San Marino, OJ EU L 261/734 of 30 August 2014.

96 Joint Declaration concerning the Republic of San Marino, OJ EU L 260/731 of 30 August 2014.

97 Generally thereto as well as for the qualification of Andorra and San Marino as micro states see, e.g., *Grant*, Micro States, para. 1, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; *Crawford*, Brownlie's Principles of Public International Law, 129; *Klabbers*, International Law, 75.

Agreement".[98] Annex 30-D CETA, in the same way as comparable joint declarations for example attached to the trade agreement between the EU and its member states, of the one part, and Colombia and Peru, of the other part, signed on 26 June 2012 and provisionally applied with Peru since 1 March 2013 and with Colombia since 1 August 2013,[99] and to the EU-Ukraine Association Agreement,[100] arguably stipulates from a public international law perspective a *pactum de negotiando*, by which the other contracting party assumes an obligation to enter into future negotiations in good faith with the intention to conclude a similar free trade agreement with Turkey;[101] the country to which the – frequently quite generally phrased[102] – characterization included in the joint declarations applies. The respective wording of these declarations is to be understood against the background of Turkey's obligations under Article 16 of the Decision No. 1/95 of the EC-Turkey Association Council, namely to "align itself progressively with the preferential customs regime" of the EU also as far as "preferential agreements with third countries" are concerned and, in this regard, to "take the necessary measures and negotiate agreements on mutually advantageous basis with the countries" at issue.

Compared to the solution regularly found in EU treaty practice concerning Andorra's and San Marino's position as members of customs unions of this supranational organization, the second approach as just outlined entails certain – not to say considerable – disadvantages for Turkey. Prominently among them is the fact that Turkey has no direct – and probably also a rather limited indirect – influence on the EU's choices and priorities with regard to potential negotiation partners, the timing, content and strategy of the respective trade talks as well as the outcome of the treaty negotiations.[103] While this finding most certainly also applies to Andorra and San Marino, Turkey is – contrary to the two last-mentioned countries – in addition required to subsequently negotiate on its own with the individual treaty partners of the EU a regional economic integration agreement similar in terms to those concluded by the EU and, even more notable, not infrequently faces in this regard considerable challenges due to a certain lack of enthusiasm and incentives for a successful conclusion of these treaty negotiations on the side of the respective countries. One of the main economic reasons for this occasional absence of motivation among the EU treaty partners is the consequence that once this supranational organization and its member states have concluded a free trade agreement, exporters of goods from the respective partner countries also enjoy – as a result of the EU-Turkey customs union – duty-free access to the Turkish market in case they enter it via the EU, whereas Turkish products – contrary to EU products – do not benefit from a similar preferential treatment when being exported to the EU treaty partners' markets.[104]

98 Joint Declaration of the Parties on Countries that have Established a Customs Union with the European Union, OJ EU L 11/464 of 14 January 2017.

99 Joint Declaration, OJ EU L 354/2607 of 21 December 2012.

100 Joint Declaration, OJ EU L 161/2129 of 29 May 2014.

101 On the *pactum de negotiando* as a normative concept under public international law see, e.g., *Owada*, Pactum de contrahendo, pactum de negotiando, paras. 5 *et seq*., in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> accessed on 19 September 2018; *Beyerlin*, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 36 (1976), 407 *et seq*., each with further references.

102 See, however, also for example the "Joint Declaration on Turkey", adopted in connection with the EU-Korea Free Trade Agreement and available under: <http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145195.pdf> accessed on 19 September 2018.

103 On this observation see also already, e.g., *Bülbül/Orhon*, Global Trade and Customs Journal 9 (2014), 444 (446); *Neuwahl*, European Foreign Affairs Review 4 (1999), 37 *et seq*.

104 See thereto for example *Bülbül/Orhon*, Global Trade and Customs Journal 9 (2014), 444 (446) ("It is unquestionable that whenever the EU signs an FTA with a third country, it leads to disturbance in the CU due to the fact that Turkey has to indirectly open its markets to the goods traveling through the EU without benefitting in return from a similar preferential treatment."); World Bank, Evaluation of the EU-Turkey Customs Union, Report No. 85830-TR, 28 March 2014, para. 49 ("However, in those cases where the EU has concluded an FTA with a third country but Turkey has not, exporters have an incentive to transship goods via the EU resulting in trade deflection.").

This leaves not only Turkish companies at a competitive disadvantage to EU importers but first and foremost undoubtedly also weakens Turkey's negotiating position with the countries in question.[105]

Admittedly, when the EU-Turkey customs union was established in 1995, these – in fact foreseeable – complications for Turkey were meant to be merely temporary as well as quantitatively speaking manageable, since, first, the legal scheme was intended to be transitional until Turkey becomes a member of the EU and, second, the EU did not have many free trade agreements in place with other countries in the middle of the 1990s. However, enduring these difficulties has more recently become increasingly burdensome for Turkey, bearing in mind the growing number of regional economic integration agreements concluded by the EU as well as the realization that Turkey's accession to the EU is for the time being obviously not at the doorstep.[106] Against this background, it is hardly surprising and understandable that there have been fervent calls for changes by Turkey – and respective suggestions by a World Bank team – aimed at remedying the "[a]symmetries in the FTA process"[107] by, among others, providing for joint or at least parallel and coordinated treaty negotiations of Turkey and the EU;[108] until now and probably for the time being to no avail. Viewed from an overarching perspective, this situation clearly indicates that this second approach currently adopted by the EU can only be implemented at the price of asymmetries in the treaty-making processes as well as inequality among the members of the EU-Turkey customs union. These considerations thus once more illustrate the considerably challenges arising in connection with regulatory strategies aimed at securing compatibility of "basic" regional trade agreements concluded only by some members of an "advanced" economic integration regime.

105 *Zeynep Pirim*, Legal Issues of Economic Integration 42 (2015), 31 (43) ("It is obvious that it is more advantageous for these countries not to conclude preferential agreements with Turkey because in the actual situation, they already have access to the Turkish market through the EC-Turkey customs union. However, the preferential agreements that the Community signs but that Turkey does not manage to conclude because of third countries' objections, constitute a heavy burden for the Turkish economy: Turkey is obliged to apply reduced or zero rates for the imported products from these countries although these latter do not reduce the custom duties for the products that they import from Turkey."); World Bank, Evaluation of the EU-Turkey Customs Union, Report No. 85830-TR, 28 March 2014, para. 49.

106 On these challenges see, e.g., World Bank, Evaluation of the EU-Turkey Customs Union, Report No. 85830-TR, 28 March 2014, para. 51; *Zeynep Pirim*, Legal Issues of Economic Integration 42 (2015), 31 (52) ("without a membership perspective, the EC-Turkey customs union risks failure").

107 World Bank, Evaluation of the EU-Turkey Customs Union, Report No. 85830-TR, 28 March 2014, paras. 48 *et seq.*

108 See thereto, e.g., World Bank, Evaluation of the EU-Turkey Customs Union, Report No. 85830-TR, 28 March 2014, paras. 53 *et seq*., 190; *Bülbül/Orhon*, Global Trade and Customs Journal 9 (2014), 444 (448).

D. From Competing to Cooperative Regionalism: Some Concluding Thoughts from a Policy-Oriented Perspective

The analysis undertaken in the previous section has revealed that the relationship between different regional trade agreements concluded by one single country and the need to ensure compatibility among them can give rise to considerable difficulties, in particular in situations where "basic" bilateral trade agreements are entered into by only some of the members of an "advanced" economic integration regime such as a customs union or a common market. The constraints imposed on a political community as a result of membership in a customs union with regard to its more limited autonomy in pursuing an individual foreign trade policy in its relations with third states, make it advisable for a country to carefully consider, first, whether to participate in an "advanced" economic integration regime at all, as well as, second – in case there is membership in more than one customs union available – which of the respective regional trade agreements to align itself with. Bearing in mind, however, that regional economic integration agreements are rarely concluded on the basis of economic reasons alone, but not infrequently first and foremost also in pursuit of broader foreign policy goals of a non-economic character,[109] the just mentioned choices made by a country can – albeit admittedly only under extreme and deplorable circumstances – give rise to political consequences that reach well beyond the realm of economics as for example sadly illustrated by the case of Ukraine.

In order to avoid a situation that might give rise to such severe political consequences as the result of choices made by individual countries between different – and *de facto* competing – regional economic integration regimes, it is submitted here that it seems potentially promising to prevent the emergence, and to remedy the continued existence, of scenarios of competing regionalism by taking recourse to the normative ordering idea of what might be appropriately qualified as "cooperative" regionalism or inter-regionalism. Based on such a more accommodating approach, the exclusionary effects of regional trade agreements and the potential rivalry arising between them could for example be mitigated by creating overarching (inter-)regional economic integration frameworks in the form of a free trade agreement between the competing regimes, preferably also providing for some kind of regulatory cooperation mechanism in order to facilitate compatibility between the two regime's regulatory standards.[110] In the realm of Europe, a respective example – among others also aimed at accommodating possible negative consequences of competing regionalism – is the Agreement on the European Economic Area (EEA), signed on 2 May 1992 and in force since 1 January 1994, between the EU and its member states on the one hand and three of the four EFTA states – Iceland, Norway and Liechtenstein – on the other hand.[111]

109 See thereto already *supra* under A.

110 Generally on the approach of regulatory cooperation see, e.g., *Nowrot*, Zeitschrift für Gesetzgebung 31 (2016), 1 *et seq*., with numerous further references.

111 On the relations between the EU and the fourth EFTA state, Switzerland, that are based on a comprehensive regime of bilateral treaties see for example *Kaddous*, in: Hatje/Müller-Graff (eds.), Europäisches Organisations- und Verfassungsrecht, § 20, Rn. 1 *et seq*., with further references.

And indeed, a quite comparable common legal framework, established between the EU and the Eurasian Economic Union and being also open to countries like Ukraine that are neither member of the EU nor of the Eurasian Economic Union,[112] has most certainly also occasionally been suggested by politicians as well as in academia.[113] For the time being, and potentially for a long time to come, however, such an overarching inter-regional economic integration framework for the broader Eurasian realm – although in principle undoubtedly reflecting the normative ordering idea of cooperative regionalism – is for a variety of obvious and a number of less obvious reasons unfortunately quite unlikely to be agreed upon and successfully implemented in practice.

112 On the idea of "open regionalism" itself, see, e.g., UNCTAD World Investment Report 2014, Investing in the SDGs: An Action Plan, 2014, 124.

113 See thereto for example European Parliament, Study: When Choosing Means Losing – The Eastern partners, the EU and the Eurasian Economic Union, by Pasquale de Micco, DG EXPO/B/PolDep/Note/2015_108, March 2015, 72 *et seq*.; *Libman/Vinokurov*, Whitehead Journal of Diplomacy and International Relations 13 (2012), 29 (39); *Van der Loo*, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area, 153 *et seq*.; *Dragneva/Wolczuk*, Review of Central and East European Law 39 (2014), 213 (241 *et seq*.).

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Rechtswissenschaftliche Beiträge der Hamburger Sozialökonomie

ISSN 2366-0260 (print) / ISSN 2365-4112 (online)

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