

REGIONAL TRADE AGREEMENTS: LAW, POLICY AND PRACTICE. BY DAVID A. GANTZ. 2009, CAROLINA ACADEMIC PRESS. PP. XXVI, 507.

*Reviewed by Stephen Zamora**

Before embarking on a review of David Gantz's excellent new book, *Regional Trade Agreements: Law, Policy and Practice* [hereinafter *Regional Trade Agreements*],¹ I should confess that I am not a great fan of free trade agreements (FTAs). Despite having published articles on the North American Free Trade Agreement (NAFTA), and although I have served as a panel arbitrator in the first case presented under the governmental dispute provisions under NAFTA Chapter 20,² I lack enthusiasm for the "FTA Movement" that is so effectively described and analyzed by Professor Gantz.³ My lack of

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1. DAVID A. GANTZ, *REGIONAL TRADE AGREEMENTS: LAW, POLICY AND PRACTICE* (2009).

2. In re Tariffs Applied by Canada to Certain U.S.-Origin Agric. Prods., CDA-95-2008-01 (NAFTA Arbitral Panel 1996), *available at* <http://dsp-psd.pwgsc.gc.ca/Collection/E100-2-1-95-2008-01E.pdf>. NAFTA Chapter 20 deals with institutional arrangements, including government-to-government dispute resolution.

3. GANTZ, *supra* note 1, at 7 (pointing out that "regional trade agreements" (RTAs) may be a misnomer because many of the agreements, such as the U.S.-Singapore Free Trade Agreement, belie the term, and that eighty-four percent of all RTAs are FTAs while the rest are customs unions or more limited agreements).

enthusiasm for FTAs grows out of the education I received as a young lawyer in the early 1970s, during which I readily embraced two shibboleths of the Bretton Woods System:⁴ the need to dismantle trade and other barriers in order to promote economic growth worldwide, and the desire to carry out this dismantling by multilateral, rather than regional or local, means. This orthodoxy, preached by such eminent and persuasive advocates as Georgetown University's Professor John H. Jackson⁵ and Columbia University's Jagdish Bhagwati,⁶ was very convincing to a young student of international economic law. Actively promoted by the Western (i.e., non-Soviet) economic powers, the global, multilateral approach to trade liberalization—led by efforts initiated under the General Agreement on Tariffs and Trade (GATT)—resulted in an unprecedented expansion of global trade, setting the stage for the era of globalization that we are now experiencing.⁷

4. The term Bretton Woods System, named for the New Hampshire resort at which the International Monetary Fund (IMF) and World Bank Agreements were signed, refers generally to the collection of international economic law agreements created at the end of the Second World War to help rebuild the world's economy. R.J. BARRY JONES, *ROUTLEDGE ENCYCLOPEDIA OF INTERNATIONAL POLITICAL ECONOMY*, VOL. 1, at 130–34 (2001). There is some difference of opinion whether the term “Bretton Woods System” refers only to the World Bank, IMF, and related financial organizations, or whether the term refers to the panoply of international organizations fostered by the Western industrialized countries. *See id.* at 130–38 (stating that the term refers to “the international monetary regime that prevailed from the end of World War II until the early 1970s”); Stephen Zamora, *Economic Relations and Development*, in *UNITED NATIONS LEGAL ORDER*, VOL. 1, at 503, 514–15 (1995) (stating that the term applies to agencies created after Bretton Woods, such as the General Agreement on Tariffs and Trade (GATT)). I believe the latter is the more useful use of the term: the IMF and World Bank regimes (and their spinoffs, such as the regional development banks) generally complement the regimes of the GATT/WTO, WIPO, and other organizations.

5. *See, e.g.*, John H. Jackson, *Perspectives on Regionalism in Trade Relations*, 27 *LAW & POL'Y INT'L BUS.* 873, 874 (1996) (stating how it is important that a credible multilateral “mediator” exists to inhibit dangerous temptations in regional blocs).

6. *See generally* JAGDISH BHAGWATI, *TERMITES IN THE TRADING SYSTEM: HOW PREFERENTIAL AGREEMENTS UNDERMINE FREE TRADE* (2008) (analyzing the trade-restrictive effects of regional trade agreements).

7. *See* World Trade Organization, *World Trade Report 2007*, at 199 (Dec. 4, 2007), available at http://www.wto.org/english/news_e/pres07_e/pr502_e.htm (illustrating that total world exports grew tremendously from \$59 billion in 1948 to \$10 trillion in 2005).

Over time, the challenge of promoting trade liberalization increased, as governments imposed complex webs of non-tariff barriers, and as stubborn protectionist obstacles resisted liberalization during successive GATT trade rounds.⁸ As David Gantz points out, the consolidation of the European Union in the 1980s, coupled with frustration over the lack of progress within the multilateral negotiations of the GATT, led the United States to seek a new approach—to promote regional solutions through FTAs—as a more realistic avenue towards trade liberalization compared to the global, multilateral trade negotiation rounds sponsored by the GATT.⁹ This new policy coincided with U.S. foreign policy under President George W. Bush, which was intent on rewarding U.S. allies in the war on terrorism with offers of trade advantages gained through increased access to U.S. markets through free trade agreements.¹⁰ This piecemeal, regional approach also permitted the United States to add rules to the trade agenda to accomplish several long-standing goals: the adoption of international rules to promote and protect foreign investment, and the adoption of rules governing trade in services, which were not added to the GATT agenda until the entry into force of the Uruguay Round Agreements and the formation of the World Trade Organization (WTO) in 1995.¹¹

The impulse to adopt FTAs has thus advanced the jurisdiction of what used to be referred to as the international trade regime. The term “Free Trade Agreement” is a misnomer—used to signify NAFTA, the most important FTA to which the United States is a party, as well as most of the FTAs adopted by the United States—the U.S. model FTA includes

8. See FRED LAZAR, *THE NEW PROTECTIONISM: NON-TRADE BARRIERS AND THEIR EFFECTS ON CANADA* xiv–xv (1981) (explaining how “new industrial policies” implemented by many governments created, to some extent, new barriers to trade).

9. See GANTZ, *supra* note 1, at 14–17 (explaining the “demonstration effect of European and United States’ embrace of a dual-track trade policy”).

10. See Bernhard Speyer, *Birth of a New Regime? U.S. Trade Policy in the Context of the New National Security Doctrine* (Nov. 6, 2003) (unpublished participant report), available at http://www.runder-tisch-usa.de/washington/site/reports/lwg_speyer.pdf.

11. See Kavaljit Singh, *Investment Agreement in the WTO*, GLOBAL POLICY FORUM, <http://www.globalpolicy.org/component/content/article/162/27885.html>. See generally MITSUO MATSUSHITA ET AL., *THE WORLD TRADE ORGANIZATION* (2nd ed. 2006) (discussing the WTO).

rules governing investment, intellectual property protection, trade in services, environmental protection, and other subjects.¹²

Free trade agreements have thus become important tools in U.S. foreign policy, underscoring the geopolitical implications of FTAs and RTAs, which are barely mentioned, but are certainly recognized by Gantz.¹³ I consider NAFTA to be not just a trade agreement, but rather a *relationship agreement*—an important, albeit tentative, strategic step in the development of a structure to manage a permanent relationship among North America's three largest nations. NAFTA's value must be assessed under this broader perspective.

Unfortunately, while FTAs may increase trade between nations, the increase comes at a price. Gantz's text points out how FTAs complicate international trade, by creating a "spaghetti bowl" of confusing tariff rates and other obligations that apply to exports and imports depending on where the goods are from, or where they are headed.¹⁴ The result is a nightmare that businesses must confront and navigate when they decide to export or import goods.¹⁵

In this confusing world of hundreds of FTAs and RTAs, we can be thankful for Gantz's astute and reasonable voice as an antidote to the confusion surrounding RTAs. Parts of this book have been reworked from the extensive *oeuvre* on international trade law previously published by Professor Gantz between 2004 and 2009.¹⁶ *Regional Trade Agreements* benefits from Gantz's extensive background as an international lawyer and international trade practitioner for twenty-five years in Washington, D.C. In 1993, Gantz joined the University of Arizona law faculty, but in addition to his teaching and

12. C. O'Neal Taylor, *The U.S. Approach to Regionalism: Recent Past and Future*, 15 ILSA J. INT'L & COMP. L. 411, 420–22 (2009).

13. See GANTZ, *supra* note 1, at 26–27 (discussing non-trade objectives of RTAs).

14. *Id.* at 22–23.

15. See CUSTOMS MODERNIZATION HANDBOOK 204 (2005), available at http://siteresources.worldbank.org/INTEXP/COMNET/Resources/Customs_Modernization_Handbook.pdf (noting that the cost of proving the origin for the Rules of Origin Requirements can amount to two or three percent or more of the cost of the shipment).

16. A list of Gantz's articles is contained in the Preface and Acknowledgements section. GANTZ, *supra* note 1, at xix–xx.

scholarly research, he continued to consult on international trade matters, serving as panel member (arbitrator) in five international trade disputes conducted under NAFTA Chapters 11 (investment disputes), 19 (disputes over antidumping and countervailing measures) and 20 (government-to-government disputes).¹⁷ His combination of academic and practical experience is reflected in the text. Gantz deals with practical problems and technical legal doctrines, while also addressing some of the geopolitical implications of FTAs and providing background on political economy.

Organized into three parts, the book begins with an initial part (pages 1 to 78) entitled “Introduction to RTAs.”¹⁸ The first chapter, very short, sets forth Professor Gantz’s outline and goals for the book.¹⁹ *Regional Trade Agreements* does not pretend to be a comprehensive treatment of all aspects of the FTAs that are surveyed; this would be impossible in a text of fewer than 500 pages (not counting annexes). Instead, Gantz addresses the most important aspects of FTAs, striking a necessary balance between detail and generality. Extensive research and citation to authorities provides additional help for the reader interested in pursuing further detail. Chapter Two, entitled “History, Pros and Cons of Regional Trade Agreements,” will be extremely useful for those persons who lack expertise in the field of international trade law.²⁰ To justify referring to this phenomenon as the “FTA movement,” Gantz presents the following statistics: according to the WTO, Mongolia is the only country not party to at least one regional trade agreement; more than 380 regional trade agreements have been notified to the WTO, with more than half since 1995; over 205 such agreements are currently in force.²¹

17. Curriculum Vitae, David A. Gantz, *available at* <http://www.law.arizona.edu/faculty/facultypubs/documents/cv/41/41.pdf>.

18. GANTZ, *supra* note 1, at 3.

19. *Id.* at 7–9.

20. *Id.* at 11.

21. *Id.* at 7. This chapter includes a short section on “The Benefits and Costs of Regionalism;” the eight pages devoted to this subject barely scratch the surface, as Professor Gantz acknowledges in stating that this is “a brief overview of the debate.” *Id.* at 17. Fortunately, there have been a number of balanced assessments of NAFTA and of

Chapter Three provides a useful summary, and analysis, of the GATT and WTO rules that apply to RTAs.²² GATT Articles V and XXIV create exceptions that allow RTAs to deviate from the most-favored-nation (MFN) principle that is the bedrock of the GATT.²³ Despite the important deviation from MFN, Gantz notes that the exceptions have not been applied strictly, and relatively few disputes brought to the WTO's Dispute Settlement Body have involved alleged violations by RTAs of the provisions of WTO agreements.²⁴ Gantz also gives an overview and analysis of four of the most important RTA disputes.²⁵

As a preamble to the detailed analyses of FTAs that comprise two-thirds of the text, in Chapter Four, Gantz presents a survey of the principle RTAs and RTA provisions.²⁶ This is a helpful section both for the practitioner and the academic researcher. RTAs and FTAs are complex, individually negotiated agreements that deviate in content, but follow a general pattern.²⁷ This chapter presents a table with detailed information on the many RTAs discussed in this book, which facilitates comparisons and generalizations.²⁸

Part II of *Regional Trade Agreements* will be of the greatest interest to U.S. readers, as it describes and analyzes the fifteen FTAs the U.S. government has negotiated with foreign

other FTAs, including the writings of Gary Hufbauer and Jeffrey Schott that have been published by the Peterson Institute for International Economics in Washington, D.C. See, e.g., GARY CLYDE HUFBAUER & JEFFREY J. SCHOTT, *NAFTA REVISITED: ACHIEVEMENTS AND CHALLENGES* (2004), available at <http://bookstore.piie.com/bookstore/332.html>. This is an excellent overview, published on the tenth anniversary of NAFTA's entry into force.

22. See generally GANTZ, *supra* note 1, at 31–56 (explaining the “RTAs under the GATT/WTO system”).

23. Henry Gao & C.L. Lim, *Saving the WTO From the Risk of Irrelevance: The WTO Dispute Settlement Mechanism as a “Common Good” for RTA Disputes*, 11 J. INT'L ECON. L. 899, 904 (2008).

24. See GANTZ, *supra* note 1, at 45.

25. *Id.* at 46–52.

26. *Id.* at 57.

27. See *id.* at 7–9 (explaining that RTAs and FTAs are complex agreements that are substantially similar in structure although different in geographical scope and topic).

28. See *id.* at 66–78 (providing Table 4.1: provisions contained in selected RTAs and Table 4.2: RTAs notified and in force).

governments.²⁹ As Gantz points out, each chapter is a “stand-alone treatment of a particular FTA or group of FTAs”—there is no attempt to provide a uniform comparison.³⁰ Chapter Five gives a brief background on the political, legal, and policy considerations behind the U.S. FTA program, including discussion of the legislative fast-track/trade promotion authority under which the U.S. government negotiates FTAs.³¹ Chapter Six analyzes the most important FTA the United States has signed, the North American Free Trade Agreement (NAFTA) between Canada, Mexico, and the United States.³² It is a daunting task to deal with such a complex and important agreement in only fifty pages of text. This is where Gantz’s intelligence as a trade expert is particularly helpful, as he is able to explain and give background to complicated provisions without confounding the reader. For non-international trade lawyers, the most interesting part of this section will be the pages devoted to the notorious obligations and dispute settlement provisions of Chapter 11, dealing with investor protection.³³ In this concise overview, the pages provide valuable insights, such as Gantz’s astute observation that Canadian and United States negotiators did not expect the Chapter 11 provisions to be directed against their governments because these countries “maintained highly developed legal systems with independent, non-corrupt, well-educated judiciaries . . .”³⁴ The dispute settlement provisions of Chapter 11 were obviously intended to keep the Mexican government from violating NAFTA’s commitments, and yet the Mexican government has been the defendant in fewer cases (16) than have the governments of Canada (26) and the United States (19).³⁵

29. See Office of the U.S. Trade Representative, Free Trade Agreements, <http://www.ustr.gov/trade-agreements/free-trade-agreements> (last visited Oct. 29, 2009) (listing the fifteen agreements, including the U.S.-Canada Free Trade Agreement and the three FTAs with Colombia, Korea, and Panama, which have not yet received governmental approval).

30. See GANTZ, *supra* note 1, at 8.

31. See *generally id.* at 81–103.

32. See *generally id.* at 105–57.

33. *Id.* at 121–27.

34. *Id.* at 122.

35. See NAFTA Claims, Pleadings, Orders & Awards, <http://www.naftaclaims.com/>

Other Chapters in Part II discuss the Dominican Republic–Central America FTA (U.S. CAFTA–DR), with emphasis on the FTA as a development tool, and RTAs in the Middle East and North Africa, with which the United States is a party.³⁶ This part ends with the fascinating story of a little-known agreement, the U.S.–Vietnam Bilateral Trade Agreement (VBTA),³⁷ which preceded Vietnam’s accession to the WTO.³⁸ A legacy of the Vietnam War, according to Gantz, the VBTA represents a potentially powerful model of development agreement.³⁹

Part III of *Regional Trade Agreements* gives a broad, comparative overview of a wide range of RTAs, starting with the European Union (which has become much more than a trade agreement or customs union), the Southern Cone Common Market (Mercosur), the Central American Common Market, the Organization of South East Asian Nations (ASEAN), the ASEAN Free Trade Area, and the Southern African Customs Union (an agreement Gantz argues is both unsuccessful and “deeply flawed”).⁴⁰

The book ends with a cursory, one-page chapter of conclusions—a bit of a disappointment given the richness of the subject and the author’s understanding of the mechanisms of the international trade regime.⁴¹ Nevertheless, *Regional Trade Agreements* is a valuable contribution to the general literature on international trade law—a useful overview of an important phenomenon in international economic law. We can only hope that David Gantz will continue to add to the text in future editions, as RTAs wax and wane, and that he will give us more insights about whether FTAs are here to stay, and whether they represent a beneficial force for the world economy—something

disputes.htm (last visited Oct. 29, 2009) (providing information on the sixty-one disputes filed under NAFTA Chapter 11, organized by defendant country).

36. See generally GANTZ, *supra* note 1, at 159–205, 207–42.

37. See generally MARK E. MANYIN, THE VIETNAM-U.S. BILATERAL TRADE AGREEMENT, RL30416, Cong. Research Serv. (2001), available at <http://www.usvtc.org/info/crs/CRS-BTA-Dec01.pdf>.

38. See GANTZ, *supra* note 1, at 273 (explaining the VBTA).

39. See *id.* at 300 (explaining that the VBTA could serve as “an important force in encouraging further global trade liberalization”).

40. *Id.* at 455.

41. *Id.* at 457–58.

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about which I am not entirely convinced. In the end, the geopolitical importance of FTAs, as structures that engage regional interests and intrude into, but also mediate, national interests, may outweigh the inefficiencies and costs that these agreements bring to the business world.