

Mapping of Dispute Settlement Mechanisms in Regional Trade Agreements

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Project objectives

- Classify a dataset of RTA-DSMs
- Identify trends and patterns of use
- “Nuts and bolts” analysis – Functioning of RTA-DSMs
- Appraisal of the universe of RTA-DSMs and comparative analysis of predominant RTA-DSM model, and WTO-DSM

Classification

Three models of dispute settlement

- Political / Diplomatic
- Quasi-Judicial
- Standing tribunal

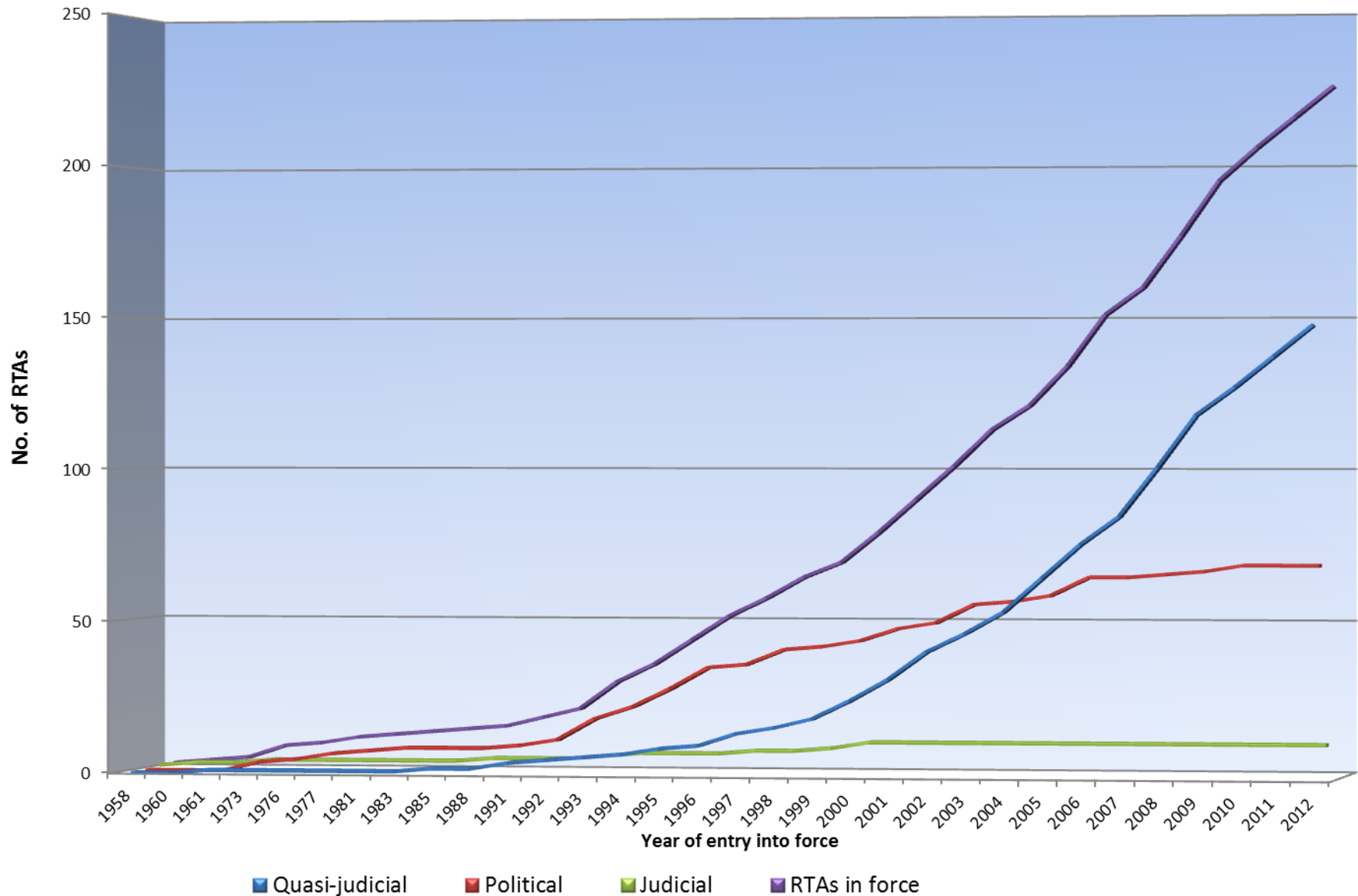
Results of classification

| DSM Model | Number of RTAs | Share of total |
|----------------|----------------|----------------|
| Political | 69 | 30% |
| Quasi-judicial | 147 | 65% |
| Judicial | 10 | 5% |
| Total | 226 | 100% |

Trends in RTA-DSM design

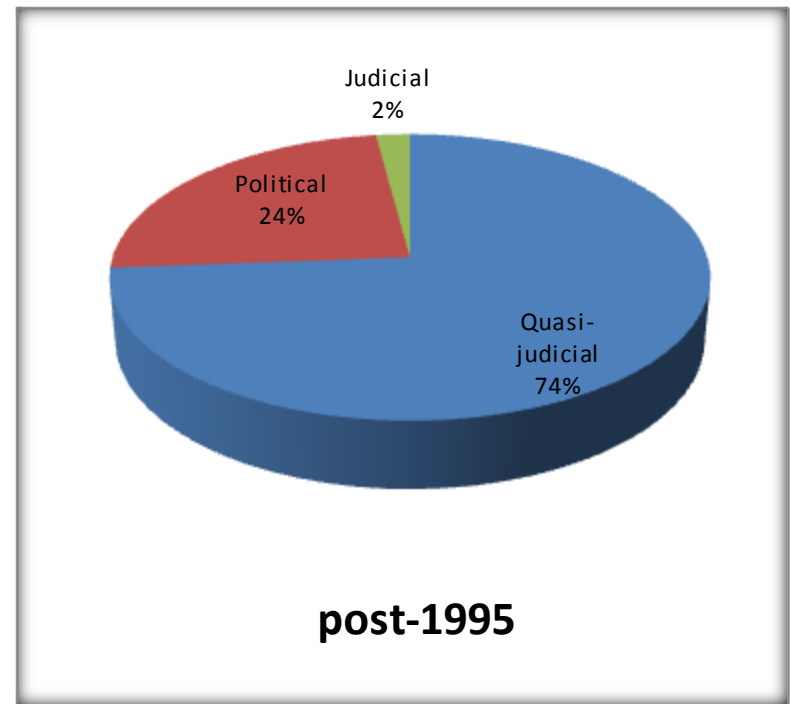
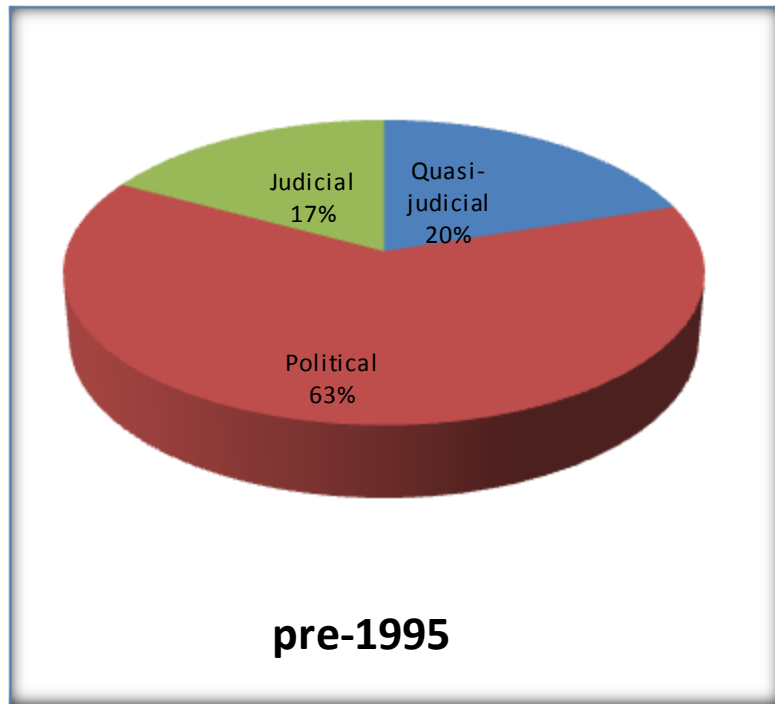
- Evolution over time
- Level of Economic Development
- Regional Characteristics
- Level of Integration
- Configuration

Evolution of RTAs and corresponding DSM model - cumulative figures



Source: WTO Secretariat.

Dispute Settlement in RTAs: pre- and post-entry into force of the DSU



Source : WTO Secretariat.

Regional characteristics

- Strong preference in some geographic regions for certain DSM models
- In the Americas, quasi-judicial model is preferred
- In Europe, with the exception of Turkey's RTAs with Balkan countries, quasi-judicial model predominates

Regional characteristics

- In Asia, quasi-judicial model is preferred (except in west Asia where political model is used)
- In CIS, clear preference for the political model
- In Africa, more or less even split between the quasi-judicial and judicial models

RTA-DSMs – nuts and bolts analysis

Issues examined

- Jurisdictional scope
- Forum-related provisions
- Standing
- Consultations
- Adjudicating bodies (composition, qualifications, nationality requirements)
- Interim Review

RTA-DSMs – nuts and bolts analysis

Issues examined

- Appellate review
- Duration of adjudicatory process
- Implementation, compliance and remedies
- Transparency
- Third parties
- Role of political bodies and administrative secretariats
- Special and differential treatment
- Costs

RTA-DSMs - appraisal of the universe

- Preference for quasi-judicial model
- Low degree of institutionalization
- Regulation of RTA-WTO interface
- Replication of WTO panel procedures
- The paradox of RTA-DSMs

RTA-DSMs and WTO-DSM

Limited departures from the DSU

- Panel composition
- Remedies
- Transparency
- Timeframes

RTA-DSMs and WTO-DSM

RTA-DSMs – the paradox

- Low levels of DS activity under RTA-DSMs with few exceptions.
- WTO Members “continue to use the WTO dispute settlement system to resolve disagreements with their PTA partners.” (WTR, 2011)

Causal explanations of forum choice

- Explicit deferral to the WTO for some subject areas – SPS, TBT, trade remedies; intellectual property
- More familiarity with WTO-DSM rules (Porges, 2011; Van den Bossche and Lewis, 2013);
- Large body of WTO case law that ensures predictability of jurisprudence (Van den Bossche and Lewis, 2013);
- Relative reputational costs of non-compliance with WTO rulings and PTA rulings (Davey, 2006);

Causal explanations of forum choice

- Relative value of creating legal precedent at the multilateral level vs bilateral or plurilateral levels (Busch, 2007);
- RTA-DSMs are inherently designed as a “second best” option – a bulwark against the remote, yet real possibility of multilateral failure (Froese, 2014)

THANK YOU