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ENFORCEMENT OF WTO DECISIONS IN CARICOM

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The enforcement of WTO decisions in CARICOM is of increasing importance given obligations by WTO Members to enforce WTO obligations within their domestic legal order and the possibility of conflict of obligations in the context of overlapping treaty regimes which could include WTO consistent, WTO- minus and WTO-plus commitments.

CARICOM Members are not only parties to the Treaty of Chaguaramas (RTC), but also of the European Partnership Agreement (EPA), and bilateral treaties, which often contain WTO minus or WTO- plus provisions.

For WTO consistent commitments the enforcement of WTO decisions on similar or identical provisions within a regional trade agreement (RTA) does not present as much a challenge as in the case of WTO-minus provisions.

WTO-minus commitments within an RTA raises issues of which obligations should be given primacy in the resolution of disputes within the RTA because such trading arrangements are governed by Article XXIV of GATT which for some scholars represent a constitutional order, according to which WTO norms take precedence, at least in determining whether the RTA satisfies the conditions stipulated for RTAs, but also whether measures pursued by RTA Members, even if in accordance with the provisions of the RTA, satisfies WTO norms.

Conceptually, WTO-plus commitments can be treated similarly as WTO consistent commitments since the assumption is that the WTO norm will be met, although issues can arise as to whether WTO-plus commitments are to be given primacy to WTO commitments if the application of the WTO-plus commitment or a measure based thereon is in violation of core principles such as MFN or national treatment as in the case of a measure for the benefit of disadvantaged regions *only* to give effect to special and differential provisions within the RTA.

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There is no specific provision in the WTO Agreement requiring judicial decisions of the WTO (in particular adopted panel reports and Appellate Body reports) to have direct application in domestic legal systems or to be taken into account by courts and other tribunals, whether or not such tribunals are interpreting domestic legislation that seeks to give effect to WTO obligations assumed by a particular WTO Member. This notwithstanding, Article XVI.4 of the WTO Agreement enjoins each WTO Member to "ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements". While this obligation may be regarded as applicable to laws and regulations as such, as against the interpretations of panels and the Appellate Body on specific provisions of particular agreements, the reference to 'administrative procedures' suggests that the obligation extends to the decision making process of administrative tribunals which, as far as WTO decisions of panels and the Appellate Body are concerned, would implicate the law developed in these reports for application to specific disputes where the domestic administrative tribunal is established to administer WTO obligations.

This observation, however, is undercut by the Appellate Body's own jurisprudence in, for example, the *Japan-Taxes on Alcoholic Beverages* case to the effect that adopted reports are not binding except with respect to resolving the particular dispute between the parties.[1] This assertion of the limited binding nature of adopted reports is less observed in practice where panels and the Appellate Body frequently rely on adopted reports and even pre-WTO adopted reports, as guidance in the conduct of their interpretive function, so that there is much to be said for the view that adopted reports have assumed a *de facto* binding significance for parties other than those in the dispute resulting in the adoption of the particular report.

The practice of states, with respect to their submissions before panels or the Appellate Body, also confirms their sense of the obligations that they appear to regard as having been created by adopted reports, as reflected in the frequent references to such decisions in advancing arguments with respect to claims of a breach of an obligation or the assertion of a defence to any such claims.[2]

[1] *Japan-Taxes on Alcoholic Beverages*, WT/DS1/ABR, WT/DS10/AB/R, WT/DS22/AB/R, at 15.

[2] This position is at best tentative in light of the difficulty of attributing state practice to a preexisting obligation without recourse to the 'psychological element' that may be necessary for such determination as exists in the case of determining whether there is *opinio juris* for the creation of customary international law.

The WTO Agreement does not mandate that the WTO rules and decisions are to be given direct effect because of the institutional framework providing a margin of appreciation for satisfying such obligations, but increasingly WTO rules are applied by administrative agencies within CARICOM giving rise to indirect enforcement of WTO decisions. Notable examples include Customs Departments applying Article VI of the WTO Customs Valuation Agreement, and administrative bodies applying trade remedy legislation (dumping, subsidies, and safeguards).

PRIMARY AND SECONDARY OBLIGATIONS TO COMPLY WITH WTO RULES

Pursuant to Article XVI: 4 of the WTO Agreement WTO Members are enjoined to implement their WTO obligations in good faith and to 'ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements'.

In addition, the adoption of panel and Appellate Body Reports represent secondary obligations for the implementation of the rulings and recommendations arising from such reports. Measures found inconsistent with the WTO Agreement must be withdrawn immediately or within a reasonable time frame.[3]

And, if the violation persists after the end of the period of implementation full implementation is a preferred means of satisfying the obligation despite authorization for retaliation in regard to suspension of concessions or voluntary compensation.[4]

FLEXIBILTY IN COMPLIANCE WITH PRIMARY AND SECONDARY OBLIGATIONS

The view that there is substantial flexibility in adhering to WTO obligations has undercut the notion of the desirability of imposing WTO law on domestic courts without the consent of the executive as to whether they will comply with those obligations and the preferred course of action they are likely to adopt to comply with those obligations.

[3] Article 21.3 of the DSU.
[4] Article 22.1 of the DSU.

Judith Bello has observed that "the WTO rules are not binding in the traditional sense, but that "rather, the WTO-essentially a confederation of sovereign governments-relies upon voluntary compliance."[5]

In the same vein but from a different analytical prism, Professors Warren Schwartz and Alan Sykes posit an 'efficient breach' theory, analogizing US domestic contract law, as the central feature of the WTO dispute settlement system.[6] This they argue is evidenced by WTO provisions for renegotiation and the settlement of disputes for breaches designed to accommodate efficient adjustments to unexpected circumstances. They conclude that formal sanctions in the WTO system are subordinated to the goal of deterring inefficient breaches.[7]

Further, textual support for flexibility in adherence to WTO obligations is found in the Understanding on Dispute Settlement Procedures (DSU).[8]There is the possibility of compensation or suspension of obligations arising from a breach, and the reasonable period of time given to comply with the recommendations of the Dispute Settlement Body (DSB) can be extended by agreement of the parties to the dispute.[9]

Also, recommendations of a panel or the Appellate Body can suggest, but not dictate, the means by which compliance is to be achieved,[10] and this is to be done without adding to or diminishing the rights and obligations of the parties under the covered agreements.[11]

There is, however, a preference for compliance with WTO obligations. The text of the DSU states that 'the first objective ... is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with covered agreements,[12] and that 'neither compensation nor the

[5] Judith Hippler Bello, *The WTO Dispute Settlement Understanding: Less is More*, 90 American Journal of International Law, 416, 416-417 (1996).
[6] Warren F. Schwartz & Alan O. Sykes, '*The Economic Structure of Renegotiation and Dispute Resolution in the World Trade Organisation*', 31 Journal of Legal Studies, 179 (2002).
[7] Ibid.
[8] DSU, Articles 21-26.
[9] DSU, Article 21(3) (c).
[10] DSU, Article 19(1).
[11] DSU, Article 19(2).
[12] Article 3.7 of the DSU.

suspension of concessions or obligations is preferred to full implementation of a recommendation'.[13]

The preference for compliance is also seen in the continuing supervisory role of the Dispute Settlement Body (DSB) whereby the DSB is to 'keep under surveillance the implementation of adopted recommendations',[14] that such matters are to 'remain on the DSB's agenda until the issue is resolved.',[15] and that 'prompt compliance with recommendations ... is essential.'[16]

The DSU also states compensation and suspension are temporary and to be applied 'until such time as the measure found to be inconsistent with a covered agreement has been removed.'[17]

Notwithstanding the above, there is indeed some flexibility in satisfying primary and secondary obligations. While compensation and suspension of concessions is not the preferred option to full implementation of the recommendations of a panel or the Appellate Body, suspension can be temporary and to be applied until such time as the inconsistent measure is removed.

In addition, there may be a grace period for compliance with obligations or a waiver may be obtained or a particular category of countries (e.g. developing countries) could invoke special and differential provisions under the Enabling Clause to avoid satisfying obligations otherwise applicable.

In this regard, one may note Article V of the GATS Agreement on the flexibility accorded to developing countries.

GATS ARTICLE V AND FLEXIBILITY FOR DEVELOPING COUNTRIES

As noted above, flexibility is provided in GATS Article V regarding the requirements of Article V: 1 for developing countries, that is, substantial sectoral coverage and the absence or elimination of

[13] Article 22.1 of the DSU.
[14] Article 22.8 of the DSU.
[15] Article 22.6 of the DSU.
[16] Ibid.
[17] Article 22.8 of the DSU.

substantially all discrimination in the sense of Article XVII in accordance with the overall development of the country concerned and its sectors and sub-sectors.

GATS Article V: 3(a) specifies that this flexibility is to be accorded in situations in which developing countries are parties to a PTA and in respect of the requirement for 'absence or elimination of substantially all discrimination' in particular.

However, the flexibility contemplated may also extend to the implementation of obligations incurred. For example, the obligation for removal of substantially all discrimination in terms of Article XVII of GATS can take place either at the entry into force of the PTA or within a 'reasonable time frame' as stipulated in GATS Article V: 1(b).

MEANING OF REASONABLE TIME FRAME

There is no definition in GATS as to what constitutes a reasonable time frame. Article 3 of the Understanding on the Interpretation of GATT Article XXIV states that the reasonable length of time within which an interim agreement is to become a final agreement embodying all the obligations contemplated in Article XXIV should 'exceed ten years only in exceptional cases'.

Given the overlapping nature of GATT and GATS,[18] the existence of similar terms in GATT can be used to interpret provisions in GATS. In *Canada-Periodicals*,[19] for example, the Appellate Body noted that the obligations of GATT 1994 and GATS coexist and are cumulative as opposed to the one taking precedence to the other.[20]

More particularly in *EC-Bananas* the Appellate Body identified two situations in which a measure could fall within the provisions of GATT and GATS in the following terms:

[18] That the provisions of GATT and GATS are not mutually exclusive and may overlap in particular cases is observed in the position of the Appellate Body in *European Communities- Regime for the Importation, Sale and Distribution of Bananas (EC-Bananas)*, WT/DS27/AB/R, adopted September 25, 1997,para. 220, and *Canada-Certain Measures Affecting the Automotive Industry (Canada-Autos)*, WT/DS139/AB/R, adopted June 19, 2000.
[19] *Canada-Certain Measures Concerning Periodicals*, WT/DS31/AB/R, adopted July 30, 1997.
[20] Ibid, p.18-22. In *Canada-Periodicals*, Canada argued that an 80% tax on advertisements in split-run periodicals was a measure affecting trade in services and subject to the national treatment provision of GATS and not GATT Article III because it made no commitments under GATT for advertising services. The Appellate Body rejected this view.

The second issue is whether the GATS and the GATT 1994 are mutually exclusive agreements. The GATS was not intended to deal with the same subject matter as the GATT 1994. The GATS was intended to deal with a subject matter not covered by the GATT 1994, that is, with trade in services. Thus, the GATS applies to the supply of services. It provides, inter alia, for both MFN treatment and national treatment for services and service suppliers. Given the respective scope of application of the two agreements, they may or may not overlap, depending on the nature of the measures at issue. Certain measures could be found to fall exclusively within the scope of the GATT 1994, when they affect trade in goods as goods. Certain measures could be found to fall exclusively within the scope of the GATS, when they affect the supply of services as services. There is yet a third category of measures that could be found to fall within the scope of both the GATT 1994 and the GATS. These are measures that involve a service relating to a particular good or a service supplied in conjunction with a particular good. In all such cases in this third category, the measure in question could be scrutinized under both the GATT 1994 and the GATS. However, while the same measure could be scrutinized under both agreements, the specific aspects of that measure examined under each agreement could be different. Under the GATT 1994, the focus is on how the measure affects the goods involved. Under the GATS, the focus is on how the measure affects the supply of the service or the service suppliers involved. Whether a certain measure affecting the supply of a service related to a particular good is scrutinized under the GATT 1994 or the GATS, or both, is a matter that can only be determined on a case-by-case basis. This was also our conclusion in the Appellate Body Report in Canada - Periodicals.[21]

The overlapping nature of GATT and GATS, therefore, suggests that jurisprudence under GATT can be used to interpret GATS as the Appellate Body has done in *US-Gambling* with respect to the interpretation of GATT Article XX and GATS Article XIV because of the similarity of the exception language used.[22]

On this view, a reasonable time frame for substantial sectoral coverage and elimination of discrimination in the context of PTAs may be interpreted as not to exceed ten years.

[21] *EC-Bananas*, supra, para. 221.
[22] *United States-Measures Affecting the Supply of Cross-Border Gambling Services*, WT/DS285/AB/R, adopted April 20, 2005, para. 291.

A CONSTITUTIONAL LEGAL ORDER FOR THE WTO?

The term 'constitutional legal order' or 'constitutionalization', as is often used, is subject to various meanings.[23] Here I use the term to connote the primacy given to WTO law in relation to related and subordinate legal regimes for which the WTO's mandate includes monitoring and implementing WTO norms regarding the founding of such regimes and the interpretation and application of rules within such regimes to be consistent with WTO norms.[24]

The primacy of the WTO legal order over the legal order of an RTA has loomed large in recent times because of overlapping jurisdictions between the WTO and RTAs, but also as between RTAs involving the same parties.

The WTO Agreement is often viewed as a type of trade law constitution according to which the terms of other trade agreements are to be subordinated. On this view a hierarchical relationship exists between the WTO Agreement and regional trade agreements within the meaning of Article 41 of the Vienna Convention on the Law of Treaties.[25]

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[23] See, for example, Deborah Cass, '*The Constitutionalization of International Trade Law: Judicial Norm-Generation as the Engine of Constitutional Development in International Trade*', 12 European Journal of International Law (2001) P. 39-75. Cass notes that the term is ambiguous but includes the establishment of a set of institutions rules and practices to implement and operate the multilateral trading system, the elaboration of 'rights' including a right to trade, a set of social practices governing the division of power within a community, judicial norm creation borrowing interpreting techniques and concepts from domestic constitutional adjudication, and jurisdictional competence issues underlying the relationship between international trade law and other legal regimes such as specific developments in other branches of international law or between the WTO system and other treaty regimes governing trade relations.

[24] Admittedly, there is no provision in GATT 1994 or the jurisprudence emanating therefrom to suggest that the provisions in RTAs, even if similar to provisions in the WTO Agreement, must be interpreted consistent with the terms of the WTO Agreement or the jurisprudence generated from the interpretation of such provisions. The avoidance of litigation costs, or the possibility of conflicting interpretations or obligations (attendant on a dispute being simultaneously being subject to the dispute settlement system of an RTA and that of the WTO, whereby the latter tribunal is less likely to genuflect to norm generation or judicial interpretation of provisions in the RTA to govern its interpretation and application of a WTO provision) suggests that there is a *de facto* primacy of WTO law.

[25] Article 41 of the Vienna Convention on the Law of Treaties provides as follows:

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:
(*a*) the possibility of such a modification is provided for by the treaty; or
(*b*) the modification in question is not prohibited by the treaty and:
(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

Cottier and Foltea suggest that a constitutional approach is to be used to regulate preferential trade agreements by employing WTO law to give effect to the hierarchical relationship since Article XXIV of GATT 1994 regulates preferential trade agreements.[26]However, it is unlikely that WTO law as the governing rules would be utilized by a regional court in interpreting a preferential trade agreement to modify the terms of the regional treaty if its mandate is to interpret that treaty and not the WTO Agreement and its relationship to subsidiary agreements concluded in accordance with GATT Article XXIV.

To be sure, Cottier and Foltea were not necessarily advocating that the laws of RTAs should be interpreted in accordance with WTO law in every particular situation, but rather that WTO law should be used to determine the legality of RTAs *per se*. The implication of a constitutional order constituted by the 'primacy' of WTO law, because RTAs are to be consistent with Article XXIV of GATT 1994, suggests by implication, though not an argument advanced by Cottier and Foltea, that RTAs should be interpreted in accordance with WTO law not only from the perspective of whether the RTA is legally constituted but whether its provisions accord with WTO law in the interpretation of similar provisions included therein.

On this view, the provisions of RTAs are to be interpreted in accordance with the WTO Agreement where the provisions are similar, particularly if, as has been suggested by some scholars, the WTO legal order represents a constitutional order according to which other laws should be subordinated.

Without resolving the contested nature of WTO obligations (a constitutional order or a contract permitting derogations), the practice of tribunals in some CARICOM jurisdictions exhibits a preference for compliance with WTO rules even if there is no incorporation in domestic law of the specific provision applied.

(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1 (*a*) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

[26] *See* Thomas Cottier, *The Legal Framework for Free Trade Areas and Customs Unions in WTO Law*, section 6 of the third workshop hosted by the State secretariat for Economic Affairs (SECO) and the World Trade Institute (WTI), at 12,http://www.acp-eu-trade.org/library/files/Cottier-Thomas_EN_15042004_World-Trade-Institute_The-Legal-Framework-for-Free-Trade-Areas-and-Customs-Unions-in-WTO-Law.pdf

This is particularly the case in areas of WTO law (such as trade remedies) where there is arguably a high degree of micro-management exhibited by WTO tribunals when a measure is contested.[27]

INDIRECT ENFORCEMENT OF WTO RULES BY DOMESTIC OR REGIONAL ADMINISTRATIVE TRIBUNALS IN CARICOM

Although administrative tribunals routinely apply WTO law in their determinations (for example, in the case of trade remedies, whether there is dumping or material injury, or in the case of customs administration whether the valuation of goods is in accordance with Article VII of the WTO Agreement on Customs Valuation incorporated in domestic law) there is sparse authority within CARICOM on the issue of whether WTO law can be invoked by a private party aggrieved by a decision of the administrative tribunal in an application for leave to apply for judicial review or of judicial review of that determination.

Arguably, a domestic court may consider WTO law in its determination of whether an applicant should obtain leave to apply for judicial review or, if leave is granted, whether there should be judicial review, if one of the bases for the challenge of the administrative tribunal's determination is that there is an error of law and the error of law being referred to is the law applied by the administrative body in its determination.[28]

It seems likely also that a determination by the Council for Trade and Economic Development (COTED) (in performing the role of an administrative tribunal) on the lawfulness of a subsidy measure is to be based on considerations of WTO law.[29]

The decision by the administrative tribunal to apply WTO law may occur even if the WTO obligation is not sufficiently incorporated in domestic law. In the case of Jamaica, for example, there is no provision in the Safeguards Act, 2000 for the interpretation and application of Article XIX of GATT 1994 before imposition of a safeguard duty, although the Jamaica Anti-Dumping and

[27] See, for example, Delroy S. Beckford, '*Trade Remedies in the CARICOM Single Market and Economy: Some Thoughts on the Challenge for Achieving a Coherent Administration*', West Indian Law Journal, vol. 32, no. 1, May 2007.

[28] That is, if the law applied by the administrative tribunal is law other than domestic law, its interpretation and application of that law if, in issue, would warrant a domestic court reviewing that determination on the basis of the jurisprudence arising from a competent tribunal charged with interpreting such laws.

[29] See Article 103 of the RTC on determinations by COTED in respect of prohibited subsidies.

Subsidies Commission has in a previous decision, ostensibly one in respect of the application of a safeguard measure,[30] interpreted and applied Article XIX of GATT 1994 to determine if a 'safeguards duty' should be imposed.[31]

ENFORCEMENT OF WTO OBLIGATIONS UNDER THE RTC

Under the RTC, there are several provisions allowing for the application and enforcement of WTO rules. These arise particularly in areas of similarity between the WTO obligation and the obligation under the RTC.

This is seen particularly in the case of trade remedies whereby the obligations under the RTC bear some similarity with WTO obligations.[32]

This similarity in the obligations would at the very least suggest that the CCJ may, in taking into relevant rules of international law under Article 217, refer to WTO jurisprudence in interpreting similar provisions of the RTC which could doubtless result in the indirect enforcement of WTO obligations.

WHEN ARE WTO OBLIGATIONS ENFORCEABLE?

Generally, WTO obligations would become enforceable in individual CARICOM countries with a common law tradition where there is incorporation of the WTO obligation in domestic law because of the dualist principle of the enforcement of international obligations.

Particular WTO Agreements have been incorporated by amendments to existing legislation or promulgation of new legislation.[33] For example, the WTO Agreement on Customs Valuation

[30] The 'safeguard duty' recommended to be applied was below the WTO bound rate for the subject good (Portland Cement) in the Schedule of WTO Concessions for Jamaica and arguably not a safeguard duty in terms of Article XIX of GATT 1994.

[31] See, *Statement of Reasons (Final Determination) SG-01-2003*, in respect of Ordinary Portland Grey Cement originating in or exported from Argentina, China, Egypt and Russia, July 16, 2004. Available at http://jadsc.gov.jm

[32] See, for example, Parts II, III, and V, of the RTC.

[33] Incorporation of an international agreement into domestic law is seen as transforming the international law instrument into a municipal law instrument subject to the ordinary rules of statutory interpretation. See, for example, *Fothergill v. Monarch Airlines Ltd* (1981) AC, 251.

providing for, inter alia, the application of the transaction value for duty purposes is reflected in amendments to the Customs Act of Jamaica.

A margin of appreciation is also permitted for CARICOM countries to prefer implementation of WTO obligations to those existing under their other treaty commitments (e.g. under the Revised Treaty of Chaguaramas or the European Partnership Agreement) where either WTO rules are chosen as the applicable rule to examine a measure or the WTO forum is chosen to settle a dispute that simultaneously arises under more than one treaty regime.

WTO obligations would also be applicable to the extent that the CCJ determines that the resolution of a particular dispute requires recourse to international law or WTO law.[34] Much depends on how the CCJ characterizes WTO law.

The CCJ may, for example, treat WTO law as a species of obligations that are not to be considered as international law *per se* for application to a particular dispute if such obligations are neither general customary international law nor a specific obligatory type of customs such as *jus cogens,*[35] and if the WTO Agreement is not binding as such in the RTC legal order when the CCJ exercises its original jurisdiction.

The reference to international law in Article 217 of the RTC may also be interpreted by the CCJ as referring only to principles of interpretation in the Vienna Convention on the Law of Treaties (VCLT), in particular Articles 31-32, similar to the approach taken by the Appellate Body in *Japan-Taxes on Alcoholic Beverages*[36] and *United States-Standards for Reformulated and Conventional Gasoline,*[37] and not to other rules (for example, Article 30 of the VCLT relating to successive treaties, and despite the VCLT being regarded as customary international law) which could result in another treaty taking precedence to obligations under the RTC.

[34] Article217 of the RTC gives the CCJ discretion to apply international law to resolve disputes under the RTC in its original jurisdiction.
[35] For a general discussion on the rejection of the notion of WTO obligations as either general customary international law or *jus cogens* see, for example, Joost Pauwelyn, ' *A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature?*', 14 EURO. J. INT'L L. 907, 937 (2003). This observation, however, does not undercut the notion of WTO as a branch of public international law.
[36] WT/DS8, 10, 11/AB/R, at 17, adopted March 20, 1997.
[37] WT/DS2/AB/R, at 17, adopted May 20, 1996.

The existence of WTO-plus, WTO-minus and WTO consistent provisions suggest, however, that some reference may be made to similar provisions and the interpretation of those provisions as guidance in the interpretation of provisions in the RTC which could result in an indirect application and enforcement of WTO law.

In the case of WTO-plus provisions, WTO obligations are usually considered as a starting point for negotiators as opposed to the provision being an entirely new concept.[38] And even in the case of provisions independent of the WTO, many of the concepts used are common to WTO jurisprudence.[39]

In the case of WTO-minus provisions, there is arguably some room for an interpretation independent of WTO law, but concepts embodied in the obligation may also be common to WTO law separate from the issue of the enforceability of the alternative WTO consistent obligation if the parties choose the WTO forum to resolve the dispute on the basis of a measure inconsistent with the WTO obligation and not the WTO-minus provision in the regional trade agreement or the RTC in particular.

WTO consistent provisions or those confirming WTO obligations (as in the case of trade remedies) may be typical candidates for the application of WTO law under Article 217 of the RTC.

CONCLUDING REMARKS

The enforcement of WTO decisions in CARICOM factors considerations on the nature of the WTO obligation in question and the degree of flexibility in satisfying those obligations. Even when a breach is found and a measure is recommended to be withdrawn, there is the remaining flexibility of whether compensation, though intended as a temporary measure, is the preferred choice as opposed to full compliance. This latter decision is usually reposed in the executive and any attempt to enforce WTO obligations by a court requires a delicate balancing of these competing considerations and the potential charge of usurpation of the role of the executive.

[38] I G Bercero, '*Dispute Settlement in European Union Free Trade Agreements: Lessons Learned?*' in L. Bartels and F. Otino (eds), Regional Trading Agreements and the WTO Legal System (2006) 383, 400.
[39] Ibid.

Within individual CARICOM countries, and independent of the role of the CCJ, local courts may, it seems, consider WTO law in judicial review proceedings of administrative tribunals established to administer WTO provisions, particularly in the area of trade remedies whereby the claimed error of law, for example, need not be limited to the usual bases such as denial of the right to be heard but could incorporate substantive and procedural WTO law as well.

Indeed, many of the reports from such tribunals routinely refer to and apply WTO law to ground the legality of the decision taken and this surely must be a basis for challenging such decisions if there is a mis-interpretation or mis-application of the WTO law applied.

Another avenue for enforcement of WTO law in CARICOM may very well be Article 217 of the RTC to the extent that the CCJ determines that the term 'international law' includes WTO law and is not limited to rules of interpretation in the VCLT.

In this vein, WTO would be particularly applicable for the interpretation of WTO consistent provisions in the RTC or those provisions confirming WTO obligations.