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978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

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[More information](#)

LIBERALIZING INTERNATIONAL TRADE AFTER DOHA

After ten years, the Doha Development Round is effectively dead. A broadly comprehensive round of trade negotiations reminiscent of the Doha agenda or the Uruguay Round will not likely be attempted again in the foreseeable future. Although some have suggested that Doha's demise threatens the continued existence of the GATT/WTO system, even with some risks of increasing protectionism, the United States, the European Union, Japan, Brazil, China, and India, among others, have far too much to lose to make abandoning the WTO a rational option. If there is reason for cautious optimism post-Doha, it is because there are alternatives to a comprehensive package of new or amended multilateral agreements. In addition to likely consensus on a few noncontroversial multilateral elements of Doha, the alternatives include existing and future plurilateral trade agreements, new or revised regional trade agreements covering both goods and services, and liberalized national trade laws and regulations in the WTO member nations. This book discusses the alternatives, which, although less than ideal, may provide an impetus for continuing trade liberalization both among willing members and, in some instances, worldwide.

David A. Gantz is Samuel M. Fegtly Professor of Law and Director of the International Trade and Business Law Program at the University of Arizona, James E. Rogers College of Law. He also serves as a member of the affiliated faculty of the Latin American Studies Department. After two years with the U.S. Agency for International Development law reform project in Costa Rica and a year as a law clerk with Judge Charles M. Merrill of the U.S. Court of Appeals for the 9th Circuit, he spent seven years with the Office of the Legal Adviser, U.S. Department of State. Professor Gantz has served as a binational panelist under the trade dispute resolution provisions of Chapter 19 of NAFTA and the U.S.-Canada FTA and Chapter 20 of NAFTA; as a NAFTA Chapter 11 arbitrator; and as an expert witness in other trade and investment disputes. He is the author of a textbook, *NAFTA and Western Hemisphere Free Trade* (2005, with Ralph Folsom and Michael Gordon); a treatise, *Regional Trade Agreements: Law, Policy and Practice* (2009); and *Trade Remedies in North America* (2010, with Gregory Bowman, Nick Covelli, and I. H. Ihm).

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Frontmatter

[More information](#)

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Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

This volume is dedicated to my children, Julie and Steve; their spouses, Chris and Renée; and to my grandchildren, Claire, Gillian, Graham, Henry, and Lena. May they all thrive in an increasingly interdependent world!

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Frontmatter

[More information](#)

Liberalizing International Trade after Doha

MULTILATERAL, PLURILATERAL,
REGIONAL, AND UNILATERAL
INITIATIVES

David A. Gantz

University of Arizona, James E. Rogers College of Law



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978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

Contents

<i>Preface and Acknowledgments</i>	page xiii
<i>List of Abbreviations</i>	xvii
1 Introduction: Pursuing Trade Liberalization in a Post-Doha World	1
2 The World Trading System under GATT and the WTO, 1947–2012	11
I. The Creation of the GATT	11
II. The Evolution and Implementation Processes	13
III. The Uruguay Round Negotiations	16
IV. Debacle in Seattle and the Rise of the BRICs and Other MICs	26
3 The Doha Round Failure and the Likely Demise of the “Single Undertaking”	30
I. Events Leading to the Doha Round Failure	31
II. Exploring the Reasons for the Failure	36
A. Rise in MIC Economic Power	37
B. Divergence in Developing Member Objectives and Concerns	38
C. Fear of Increased Chinese Source Imports	39
D. Lack of Political Will	41

vii

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

viii

CONTENTS

E. Lack of Strong Support from Business Stakeholders	41
F. Expansion of Government Industrial Policies	43
G. Increased Use of Non-Tariff Barriers	44
H. The WTO's Consensus Requirement	45
III. Reduced Prospects for Future Single-Undertaking Rounds	46
4 Assisting Developing Nations with Duty-Free, Quota-Free Market Access, Trade Facilitation, and Related Initiatives	50
I. Tariff and Quota Barriers for LDCs	51
II. Developing Nations and Rules of Origin	54
III. Trade Facilitation	57
IV. Reducing or Eliminating Cotton Subsidies	61
V. Expanding and Improving GSP and Similar Programs	64
VI. Tariff Rate Quotas, Food Security, and Related Aspects of Agricultural Trade	69
5 Preserving the Environment: Fisheries Subsidies and Trade in Environmental Goods	72
I. Fishing Subsidies and Related Measures	74
A. Importance of Fisheries	74
B. Status of the Negotiations in Geneva	75
C. Alternative Approaches	76
II. Encouraging Freer Trade in "Green" Technology Goods and Services: A Sustainable Energy Trade Agreement?	78
A. General Considerations	78
B. Addressing Subsidies and Unfair Trade Actions	81
C. A Plurilateral Initiative at APEC	84
6 New and Expanded Plurilateral Agreements (Part I)	87
I. Expanding the Government Procurement Agreement	89
A. History and Significance	89
B. Updating the GPA – 2011	91
C. Further Expansion of the GPA	93

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)**CONTENTS****ix**

II.	Revision and Expansion of the Information Technology Agreement	96
	A. History and Significance	96
	B. Conclusion of a Revised ITA and Expanded Country Participation	97
III.	Other Possible Plurilateral Agreements Affecting Trade in Goods	104
	A. Health Care Products and Services	104
	B. Electronic Commerce	104
	C. Investment Protection Agreements	105
	D. Competition Law	111
	E. Anti-Counterfeiting Trade Agreement	114
7	New and Expanded Plurilateral Agreements (Part II):	
	An International Services Agreement	120
	I. Introduction and Background	121
	II. Reasons for Pursuing Additional Services Market Access	124
	III. Creation of the GATS	128
	IV. Alternative Routes to an International Services Agreement	132
	A. Continued Negotiations under Doha	133
	B. Plurilateral Agreement with WTO Waiver	134
	C. Economic Integration Agreement under GATS, Article V	135
	V. Shaping the ISA	140
	A. General Approach	140
	B. Expansion of Sector Coverage	145
	C. Foreign Direct Investment, Government Procurement, and Competition	147
	D. SOE and Other Desirable Provisions	149
	E. Dispute Settlement	152
	F. Institutions	155
	VI. Conclusions	156

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

x

CONTENTS

8 Continued Proliferation of Regional Trade Agreements	158
I. Historical Background	159
II. GATT/WTO Legal Structure	184
III. Exploring the Pros and Cons	190
A. Traditional Considerations	190
B. Dealing with Twenty-First-Century Issues	192
C. Seeing RTAs as the Preferred Approach	196
9 Widening and Deepening (or Disregarding) Existing RTAs	201
I. European Union	202
A. Overview of the EU and Eurozone	202
B. The Eurozone Crisis	204
C. Further EU Expansion	209
D. British Euroskepticism	210
II. Mercosur	212
A. Overview	212
B. Mercosur's Implementation Challenges	214
C. Admission of Venezuela and Bolivia	216
III. ASEAN FTA	218
A. Overview	218
B. ASEAN's Implementation and Fragmentation Challenges	220
IV. North American Free Trade Agreement	223
A. Overview	223
B. Implementation without Amendment	225
V. Asia-Pacific Economic Cooperation Forum	229
A. Standstill, Environmental Goods, and Trade Facilitation	231
B. Supply Chain Support	232
C. Free Trade Area of the Asia-Pacific?	233
10 Concluding New and Pending RTAs (Part I)	235
I. European Union Initiatives	235
A. Free Trade Agreements	236
B. Economic Partnership Agreements	240

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)**CONTENTS****xi**

II.	A Transatlantic Trade and Investment Partnership?	247
	A. The Pros and Cons	247
	B. Will They or Won't They?	250
III.	Pacific Alliance	255
IV.	All-Asian FTA Initiatives	258
	A. China–Japan–South Korea FTA	258
	B. Regional Comprehensive Economic Partnership	261
V.	All African Regional Initiatives	263
VI.	Prospects for Chinese Trade Arrangements with Africa	266
11	Concluding New and Pending RTAs (Part II):	
	The Trans-Pacific Partnership	269
I.	Introduction	269
II.	The General Approach	272
III.	Potential Expansion of Membership	272
	A. Canada and Mexico	274
	B. Japan	275
	C. Other Possible TPP Members	278
IV.	Progress and Challenges	279
	A. Investment	281
	B. State-Owned Enterprises	283
	C. Tobacco Products	285
	D. Intellectual Property	286
	E. Labor and Environment	288
	F. Market Access	289
	G. Regulatory Coherence and Supply Chain Support	295
V.	Domestic Political Factors in the United States	297
	A. Political Support and Opposition	297
	B. The Obama Administration's Catch-22	299
VI.	Other Legal and Economic Challenges	301
	A. The "Spaghetti Bowl"	301
	B. Addressing Variations in Level of Economic Development	303
	C. Putting the TPP into Force	304

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

xii	CONTENTS
VII. “Backdoor” Modification of NAFTA?	306
VIII. The Prognosis	308
12 Unilateral Approaches to Trade and Market Liberalization	312
I. Individual Developing Nation Market and Trade Liberalization	314
A. The “Four Tigers”	314
B. The Latin American “Jaguars”: Chile, Colombia, Mexico, and Peru	324
C. Concluding Observations on Unilateralism	334
II. The “Washington Consensus” as an Incentive to Unilateral Actions	335
III. Model Corporate and Commercial Laws	338
A. Secured Transactions	338
B. Simplified Stock Corporation	341
IV. Reduction of Agricultural Subsidies in the EU and United States?	343
13 Conclusions and the Crystal Ball	347
<i>Selected Bibliography</i>	351
<i>Table of Cases</i>	365
<i>Index</i>	367

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

Preface and Acknowledgments

This has been both an exciting and challenging book to write, reflecting the article from which the idea arose, “World Trade Law after Doha: Multilateral, Regional and National Approaches,” published as part of a tribute to Professor Ved Nanda by the *Denver Journal of International Law and Policy* in April 2012.¹ Denver’s concept of “Perspectives on International Law in a Time of Change” seemed ideally suited to a forward-looking analysis of the future of international trade negotiations in the aftermath of the Doha Round’s demise.

Excitement comes from reviewing and analyzing dozens of creative ideas from academics, trade lawyers, and government officials concerning how more than sixty years of world trade liberalization can continue without the WTO Members’ political will to complete the Doha Round of WTO negotiations. Although I have disagreed with some of the suggestions of experts, and have added many of my own ideas and conclusions, I have nevertheless felt free to borrow (with proper attribution) and build on what others are urging and in many instances governments are already actively pursuing. Whatever the utility of the volume in exploring the options, originality will not be its strongest point.

¹ *Denv. J. Int’l L. & Pol’y* 40 (2012), 321; also available in book chapter form under the same title in *Perspectives on International Law in an Era of Change*, Anjali Nanda & Alissa Mundt eds. (Denver: Denver Journal of International Law and Policy, 2012), 321–367.

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

The challenges are also obvious. First and most significant, this is essentially a snapshot of a rapidly moving target of negotiations and proposals for new negotiations as of the time this book was submitted to the publisher (January 2013). It is inevitable, despite a few minor updates in March 2013, that by the time the book is published it will be at least partially out of date, although this deficiency will be mitigated by the availability of online periodic updates.² Of more concern for me as an author is that even in the months between submission and publication it will be obvious that some of my analysis and predictions are wrong. If these risks had been controlling, there would have been no point in attempting to complete the project. I take some comfort from the fact that the fixes for the demise of Doha are short, medium, and long term. Some of the proposals that do not catch on in the short term may be more attractive to policy makers in the future and revisited after the passage of two years or five years or more.

The nature of the project is reflected in my use of sources. Although I have drawn from the large collection of excellent books and law review articles in the international trade literature and from the international trade agreement texts themselves, by necessity I have relied heavily on various contemporary sources and the trade press, including Bloomberg/BNA's *International Trade Reporter* and *World Trade Online* as well as the *Financial Times* and *The Economist*.

For this year-long project I have had the strong support of my wife, Cate Fagan, who has cheerfully tolerated (most of the time) my day, evening, and weekend research and writing, all of which has made it possible to complete the volume sooner than would have otherwise been the case.

I am also very grateful to John Berger of Cambridge University Press in New York (a fellow sailor) for his counsel throughout this book project, and to Jayashree Prabhu, the production manager at Newgen Knowledge

² Updates will be available at http://www.law.arizona.edu/tradelaw/World_Trade_After_Doha.cfm, beginning shortly after publication.

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

PREFACE AND ACKNOWLEDGMENTS

xv

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A research grant for summer 2012 from the Rogers College of Law facilitated the more or less prompt completion of this volume.

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978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral,
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David A. Gantz

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

Abbreviations

AANZ	ASEAN, Australian and New Zealand FTA
ACP	African, Caribbean and Pacific States
ACTA	Anti-Counterfeiting Trade Agreement
AEC	ASEAN Economic Community
AGOA	African Growth and Opportunity Act
ALBA	Bolivarian Alliance for the Peoples of Our America
APEC	Asia-Pacific Economic Cooperation Forum
ASEAN	Association of South-East Asian Nations
ASEAN+6	ASEAN, China, Japan, Korea, Australia, New Zealand and India
BDC	Beneficiary developing country/ies
BIT	Bilateral Investment Treaty
BRICS	Brazil, Russia, India, China, and South Africa
CAFTA-DR	Central America–Dominican Republic–United States Free Trade Agreement
CAP	Common Agricultural Policy (EU)
CARICOM	Caribbean Community
CARIFORUM	Caribbean group for trade negotiations
CBP	Customs and Border Protection (U.S.)
CCP	Common Commercial Policy (EU)
CET	Common External Tariff
CFP	Common Fisheries Policy

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

xviii

ABBREVIATIONS

CFTA	United States–Canada Free Trade Agreement
CGP	Committee on Government Procurement
CIA	Central Intelligence Agency
CIDIP	Committee on Private International Law (OAS)
CJKFTA	China, Japan and Korea FTA
COMESA	Common Market for Eastern and Southern Africa
CP	Contracting Parties (GATT)
CRS	Congressional Research Service (U.S.)
CRTA	Committee on Regional Trade Agreements (WTO)
CTE	Committee on Trade and the Environment (WTO)
CTS	Council on Trade in Services (WTO)
CVD	Countervailing duty
DDA	Doha Development Agenda
DFQF	Duty Free, Quota Free (treatment of imports)
DJP	Democratic Party of Japan
DSB	Dispute Settlement Body (WTO)
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO)
EC	European Communities
ECB	European Central Bank
ECFA	Economic Cooperation Framework Agreement (China/Taiwan)
ECJ	European Court of Justice (EU)
EEZ	Exclusive Economic Zone (Law of the Sea)
EFTA	European Free Trade Association
EIA	Economic Integration Agreement (GATS)
EIF	Enhanced Integrated Framework (WTO)
EMS	European Monetary System
EPA	Economic Partnership Agreement
EU	European Union
FAO	Food and Agricultural Organization (U.N.)
FCN	Friendship, Commerce and Navigation (treaty)
FDI	foreign direct investment

Cambridge University Press

978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)**ABBREVIATIONS**

xix

FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
FTAAP	Free Trade Area of the Asia-Pacific
FTC	Free Trade Commission (NAFTA)
G-20	group of 20 developed and developing nations
GATS	General Agreement on Trade in Services (WTO)
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GNP	gross national product
GPA	Government Procurement Agreement (WTO)
GPC	Government Procurement Code (GATT)
GSP	Generalized System of Preferences
ICSID	International Center for the Settlement of Investment Disputes
ICTSD	International Centre for Trade and Sustainable Development
ILO	International Labor Organization
IMF	International Monetary Fund
IP	Intellectual Property
ISA	International Services Agreement
IT	Information Technology
ITA	Information Technology Agreement
ITAC	ITA Committee
ITC	International Trade Centre (WTO, U.N.)
ITO	International Trade Organization
KORUS	United States–Korea Free Trade Agreement
LDC	Least-Developed Country
LDP	Liberal Democratic Party (Japan)
MAI	Multilateral Agreement on Investment
MEAs	Multilateral Environmental Agreements
Mercosur	Common Market of the Southern Cone
MFN	most favored nation (treatment)
MICs	middle income countries

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978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

xx

ABBREVIATIONS

MNCs	multinational corporations
MNEs	multinational enterprises
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NAMA	Non-Agricultural Market Access
NGO	non-governmental organization
NICs	newly industrializing countries
NME	non-market economy
NTBs	non-tariff barriers
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OEM	original equipment manufacturer
PAN	Partido Acción Nacional (Mexico)
PNTR	permanent normal trade relations (U.S.)
PPP	purchasing power parity
PQ	Parti Québécois (Canada)
PRI	Partido Revolucionario Institucional (Mexico)
PTA	preferential trade agreement
RCEP	Regional Comprehensive Economic Partnership
REC	Regional Economic Community (Africa)
RTA	Regional Trade Agreement
SACU	Southern African Customs Union
SADC	South African Development Community
SAR	Special Administrative Region (Hong Kong)
SCMA	Agreement on Subsidies and Countervailing Measures (WTO)
SETA	Sustainable Energy Trade Agreement
SOEs	state-owned enterprises
SPS	Agreement on Sanitary and Phytosanitary Measures (WTO)
TBT	Agreement on Technical Barriers to Trade (WTO)
TFQF	tariff-free, quota-free (market access)

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978-1-107-03420-4 - Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives

David A. Gantz

Frontmatter

[More information](#)

ABBREVIATIONS

xxi

TPA	Trade Promotion Authority (U.S.)
TPP	Trans-Pacific Partnership
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights (WTO)
TRQ	tariff-rate quota
TTIP	Transatlantic Trade and Investment Partnership
UNCITRAL	U.N. Commission on International Trade Law
UNCTAD	U.N. Conference on Trade and Development
UNDP	U.N. Development Programme
UNECA	U.N. Economic Commission for Africa
USTR	Office of the United States Trade Representative
VCLT	Vienna Convention on the Law of Treaties
WCO	World Customs Organization
WTO	World Trade Organization