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"Thinking Outside the (Tax) Treaty" Revisited

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"THINKING OUTSIDE THE (TAX) TREATY" REVISITED

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The 2012 article entitled "Thinking Outside the (Tax) Treaty" ("*Thinking*")[1] examined the state of international tax relations among countries that had not entered into bilateral tax treaties with each other. At the time, the Organisation for Economic Co-operation and Development (OECD) had spent over a decade pursuing a project to combat harmful tax competition,[2] with reportedly mixed results.[3] While most countries had agreed to enter into Tax Information Sharing Agreements as a result of the Harmful Tax Competition project, the consensus, for the most part, was that the OECD effort had not completely eliminated the problem of international tax competition.[4] In light of this, at the time, *Thinking* proposed that the international tax community should consider developing a new multinational institution, one uniquely designed for international tax and focused specifically on resolving disputes between states that had not entered into a bilateral tax treaty with each other.[5] The idea behind developing such an institution was that no single regime could be crafted to appeal to all countries at the same

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1. Adam H. Rosenzweig, *Thinking Outside the (Tax) Treaty*, 2012 WIS. L. REV. 717 (2012).

2. *See* ORG. FOR ECON. CO-OPERATION & DEV. [OECD], HARMFUL TAX COMPETITION: AN EMERGING GLOBAL ISSUE (1998).

3. *See, e.g.*, Reuven Avi-Yonah, *The OECD Harmful Tax Competition Report: A Retrospective After a Decade*, 34 BROOK. J. INT'L L. 783 (2008); *see also* Rosenzweig, *supra* note 1.

4. *See, e.g.*, Steven A. Dean, *The Incomplete Global Market for Tax Information*, 49 B.C. L REV. 605 (2008).

5. *See generally* Rosenzweig, *supra* note 1.

time due to the differences in their economies, tax base, population, and other attributes.[6] Consequently, a second-best approach—with treaties among the most cooperative countries and some form of a non-treaty mechanism among the other non-treaty states—proved necessary. The ultimate goal was to find a way to increase cooperation marginally among the noncooperative states under the existing international tax regime.

Since the publication of *Thinking*, the OECD has moved on to address the challenge of fundamental international tax reform through its Base Erosion and Profit Shifting (BEPS) project, which continues to this day.[7] Rather than represent a retreat from the issue of global tax competition in the wake of the Harmful Tax Competition project, the BEPS project represents an even more ambitious approach to international tax reform. To this end, the BEPS Action Plan announced fifteen unique action items to consider as part of a comprehensive review of the entire international tax regime, ranging from more technical issues (such as dealing with the digital economy and fixing transfer pricing)[8] to more fundamental reforms (such as increasing tax transparency, increasing multinational dispute resolution, and even adopting a multilateral tax treaty).[9] The BEPS Action Plan represents a truly revolutionary and groundbreaking effort to

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6. *See, e.g.*, Adam H. Rosenzweig, *Defining a Country's "Fair Share" of Taxes*, 42 FLA. ST. U. L. REV. 373 (2014); Adam H. Rosenzweig, *Why Are There Tax Havens?*, 52 WM. & MARY L. REV. 923 (2010).

7. *See generally* ORG. FOR ECON. CO-OPERATION & DEV. [OECD], ACTION PLAN ON BASE EROSION AND PROFIT SHIFTING (2013).

8. For example, one issue confronting the international tax community has been how to allocate income from digital sales across borders. Assume a taxpayer in the United States buys a computer program written in Canada and downloads it over the internet from the server in Canada to a computer in the United States. The question that arises is how to divide the income from the sale between the United States and Canada. One reason this has proven difficult is that the traditional rules to divide income were based on physical presence, which has little meaning in the digital context. *See id.* at 14.

9. For example, the lack of transparency in tax information across borders is one current issue facing the international tax community. Each country typically collects and processes its own tax information, such as tax returns, but does not necessarily share that information with other countries. In turn, taxpayers are able to exploit this lack of transparency to manipulate tax liability across countries. Increasing transparency across borders could help address this issue. *See id.* at 18.

reform the international tax regime; in fact, it is the first attempt to revisit the fundamental building blocks of the international tax regime since its emergence in the early 1920s.

The development of BEPS highlights the need for a new institutional framework to implement the new, emerging regime of international tax law.[10] In turn, the BEPS project provides an ideal opportunity to revisit the principles of *Thinking* and, in particular, to question what role bilateral tax treaties can and should play in a post-BEPS world. More specifically, there are two reasons why tax treaties should be reevaluated in light of BEPS. First, BEPS represents an attempt to create a new, truly multinational consensus (at least among member states of the OECD) over many, if not most, of the issues presently covered in most existing tax treaties—a move that could render most of the provisions embedded in existing tax treaties obsolete. Second, BEPS represents a clear move toward a distinctly multilateral tax instrument (and potentially a multinational tax institution) and away from the idea of bilateral tax treaties as the primary form of international coordination.[11]

Before it is possible to revisit the tax treaty in light of BEPS, however, it is necessary to be precise in defining the scope and breadth of a bilateral treaty.[12] First, a bilateral tax treaty is intended to permit countries to shift, on a bilateral basis, from a primarily source-based system to a primarily residence-based system.[13] Bilateral tax treaties achieve this through the doctrine of "permanent establishment," in which each signatory country agrees not to impose a tax on residents of the other country absent some significant and continuous presence in the other country.[14] In turn, bilateral tax treaties lower the source-based taxes on residents of the other signatory states.[15] Second, bilateral tax treaties coordinate the rules of the signatory states to minimize the risk of both countries exercising their taxing power over a

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10. *See* Adam H. Rosenzweig, *Building a Framework for a Post-BEPS World*, 42 TAX NOTES INT'L 1077 (2014).

11. *See, e.g.*, Pasquale Pistone, *Coordinating the Action of Regional and Global Players During the Shift from Bilateralism to Multilateralism in International Tax Law*, 6 WORLD TAX J. 3 (2014).

12. *See generally* Rebecca M. Kysar, *On the Constitutionality of Tax Treaties*, 38 YALE J. INT'L L. 1 (2013).

13. *See* Rosenzweig, *supra* note 1, at 742.

14. *See* U.S. MODEL INCOME TAX CONVENTION art. 5 (U.S. DEP'T OF THE TREASURY 2006).

15. *See, e.g.*, *id.* art. 10.

single taxpayer or item of income (more colloquially referred to as double-taxation relief, although that term is not precisely correct).[16] Third, bilateral tax treaties establish a dispute resolution mechanism to resolve disputes between the signatory states over the application and interpretation of the treaty as to a particular taxpayer or item of income.[17]

It is important to emphasize these three distinct roles of the bilateral tax treaty before determining what role the bilateral tax treaty can play in a post-BEPS world. Isolating out each of these three distinct purposes can help identify why certain countries may choose not to enter into bilateral tax treaties with each other. By identifying how and why different countries might not enter into a bilateral tax treaty with each other, it can become possible to identify and analyze precisely what conditions might increase the possibility of cooperation between specific countries. For example, the United States and Brazil do not have a bilateral tax treaty, primarily because the countries do not agree on how to reconcile their rules on transfer pricing; by contrast, the United States and the Cayman Islands do not have a bilateral tax treaty, primarily because the United States has no interest in lowering source-based taxes on payments to the Cayman Islands (a country with which the United States has virtually no international trade).[18]

The difficulty with the modern tax treaty is that it adopts an all-or-nothing approach, meaning that the signatory countries must agree on all three aspects before they can agree to enter into a bilateral tax treaty. Consequently, due to the all-or-nothing approach of the bilateral tax treaty, countries that might agree on many of the goals of a bilateral tax treaty might still be incapable of entering into a tax treaty with each other. The result is little to no cooperation between these countries (despite potential agreement on a number of issues), precisely because the bilateral tax treaty presently provides the only mechanism for formal cooperation on tax matters between countries under the existing regime. For example, countries that are not signatories to a bilateral tax treaty have no formal means to enter into a form of dispute resolution or coordination over baseline rules when disputes over particular taxpayers arise. As a result, even

16. *See, e.g.*, *id.* art. 4.
17. *See, e.g.*, *id.* art. 25.
18. *See* Rosenzweig, *supra* note 1.

minor disputes over international tax rules among such countries that might otherwise easily be resolved through some form of dispute resolution mechanism can result in conflict.

Thinking attempted to address this problem by proposing a non-treaty international tax dispute resolution mechanism that could still benefit two countries that might agree on some aspects of a tax treaty but which are not parties to a bilateral tax treaty. From this perspective, *Thinking* adopted the following framework to analyze the role of bilateral tax treaties:

> 1. Bilateral tax treaties embody certain baseline rules underlying a cooperative international tax regime that benefit the signatory countries;
>
> 2. Bilateral tax treaties provide a dispute resolution mechanism to divide the tax revenue over a particular taxpayer or item of income between two countries; and
>
> 3. Increased cooperation over baseline rules and dispute resolution creates a form of global public good that all countries benefit from. Countries with a larger gross domestic product (GDP) and greater amounts of international trade benefit from this global public good more than poorer countries, and thus, poorer countries have less of an incentive to contribute to the development of the global public good.[19]

Under this framework, *Thinking* proposed the adoption of a non-treaty-based dispute resolution mechanism to resolve disputes among countries that have not entered into a bilateral tax treaty as a way to incentivize both wealthier countries and poorer countries to bring claims before the non-treaty dispute resolution mechanism.

The difficulty in accomplishing the proposal set forth in *Thinking* is to provide sufficient incentives for both sides to enter the dispute resolution mechanism. The solution proposed in *Thinking* was to require poorer countries to agree to abide by certain baseline rules (primarily those embodied in bilateral tax treaties) to govern the dispute at issue in exchange for a presumption (from a factual standpoint) in favor of the poorer countries in resolving the dispute.[20] The premise is that increasing cooperation on baseline rules will primarily benefit larger, wealthier

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19. *See* Rosenzweig, *supra* note 1.
20. *See id.*

countries, while the presumption over specific disputes will primarily benefit smaller, poorer countries.[21] In other words, the non-treaty-based dispute resolution mechanism would build into the system a classic solution to a collective action problem (e.g., side payments) so as to increase cooperation among otherwise noncooperative countries.

The theory underlying this framework is referred to as the "weaker link" theory of global public goods, in which the total amount of global public goods is determined in reference to the least contributor rather than by the sum of total contributions.[22] This theory is best exemplified by an analogy to a community building a protective dike around a city, where each citizen controls the construction of a portion of the dike on their land. The entire city will be flooded if any one landowner does a poor job building their portion of the dike or does not build the dike on their land. The wealthiest landowners with the largest homes would benefit the most from building the dike. Building a dike is expensive, however, meaning the poorest landowners would have little incentive to do so. By contrast, the wealthiest landowners have a large incentive to build the dike, but cannot do so alone. Rather, they need the poorest to build the dike on their land in order to protect their more valuable land. As becomes readily apparent, the solution to the problem would be for the wealthy landowners to pay the poorer landowners to build dikes to protect the wealthy landowners.

The same is true of tax agreements: a modified version of side payments can resolve the weaker-link collective action problem. For example, *Thinking* proposed that the international tax regime is a form of a weaker-link game, in which certain smaller, poorer countries have little incentive to contribute to the global public good of international tax cooperation, but wealthier countries need the poorer countries to cooperate to prevent the pernicious effects of harmful tax competition.[23] Consequently, side payments would resolve the problem. *Thinking*, however, assumed, based on experience, that traditional side payments are not a realistic option in the real world.[24]

Instead, *Thinking* proposed building an alternative form of side payments into the regime itself through a dispute resolution

21. *See id.*
22. *See id.*
23. *See id.*
24. *See id.*

mechanism. More specifically, the dispute resolution mechanism would apply in a dispute over a particular taxpayer between two non-treaty member countries (since a treaty-based dispute resolution would not be available). The poorer of the two countries would agree to abide by certain baseline rules, such as those present in most tax treaties. For example, a country may agree to information sharing and transfer pricing with respect to the taxpayer at issue. In return, the wealthier country, much like a litigant bearing the burden of persuasion in a trial, would agree to a presumption in favor of the poorer country in resolving the dispute. In this manner, the wealthier country receives cooperation from the poorer country that it prefers and, in exchange, concedes that close cases will come out in favor of the poorer country.

At the time of the publication of *Thinking*, the reaction to the idea that large, developed countries should compromise on their preferred international tax rules to make the overall international tax regime more attractive to developing countries (thereby increasing total cooperation) was, for the most part, considered unrealistic, even if theoretically appealing.[25] Since that time, however, the idea of developing an international regime targeted toward increasing participation by developing countries has gained increased traction, with the BEPS Action Plan calling for the consideration of the divergent interests of developing countries as part of designing the rules of the overall project (at least with respect to the so-called "BRIC" countries of Brazil, Russia, India, and China).[26] Consequently, BEPS can provide the perfect opportunity to revisit the proposals of *Thinking* in light of this shift toward a more inclusive international tax regime for all countries of the world.[27]

In a post-BEPS world, a number of the assumptions underlying the framework in *Thinking* may no longer apply. More specifically, under the BEPS Action Plan, the ultimate goal of BEPS is to shift from a competitive to a cooperative international tax landscape by establishing *multilateral* baseline rules that OECD

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25. *See* Allison Christians*, Getting to Yes? Thoughts on a BATNA for International Tax*, 2 WIS. L. REV. ONLINE 7 (2013).

26. *See, e.g.*, Reuven S. Avi-Yonah, *A Perspective on Supra-Nationality in Tax Law* (U. of Mich. Law Sch., Law & Econ. Research Paper Series, Paper No. 14-019, 2014), http://ssrn.com/abstract=2508869.

27. *See* Adam H. Rosenzweig, *An Antigua-Gambling Model for the International Tax Regime,* 44 WASH. U. J. L. & POL'Y 79 (2014).

member states will agree on, such as transfer pricing, the digital economy, and a *multilateral* tax instrument to increase cooperation on these issues.[28] If successful, the focus on multilateral rules could result in the promulgation of a multilateral instrument that could well replace the bilateral tax treaty as the primary instrument for international tax cooperation. Assuming that BEPS, if fully implemented, would mean the end of the bilateral tax treaty as we know it, what does that mean for the non-treaty-based mechanism described in *Thinking*? Rather than ring its death knell, a fully implemented BEPS could actually make a non-treaty international tax dispute resolution mechanism not only more important but also easier to implement and potentially more effective.

This could be the case precisely because there would still be issues that a non-treaty international tax dispute resolution mechanism could address that may not be addressed, even with a multilateral tax instrument. At least at the outset, it is unlikely that *every* country of the world would agree to the entirety of BEPS, including signing a multilateral tax instrument. Absent the agreement of every country in the world, the potential for harmful tax competition could still arise.[29] Yet, if agreeing to baseline rules truly is a form of global public good, it would be beneficial to have more countries join the regime rather than less. Thus, some mechanism that would increase the amount of cooperation from those countries that are unwilling to fully commit to all the aspects of BEPS would only increase the overall effectiveness of BEPS.[30]

The real benefit of BEPS is that, by its own terms, it establishes new multinational baseline norms for the modern international tax regime. Thus, BEPS directly solves one of the more difficult challenges facing the proposal in *Thinking*—finding a consensus over the baseline rules derived from bilateral tax treaties. While many people agree that bilateral tax treaties do represent some form of consensus on norms, there is little consensus

28. *See* Yariv Brauner, *What the BEPS?*, 16 FLA. TAX REV. 55 (2014).

29. *See* May Elsayyad & Kai A. Konrad, *Fighting Multiple Tax Havens*, 86 J. INT'L ECON. 295 (2012); *see also* Rosenzweig, *supra* note 1.

30. *Cf.* Itai Grinberg, *Taxing Capital Income in Emerging Countries: Will FATCA Open the Door?*, 5 WORLD TAX J. 325 (2013).

that the network of bilateral tax treaties represents clearly defined and agreed-upon international baseline rules.[31] BEPS, on the other hand, is a multinational effort by all member states of the OECD (and potentially the G20).[32] While each state may need to adopt implementing legislation domestically, for the first time, BEPS represents an effort both to agree on the underlying baseline norms from a multinational standpoint and to implement them through specific rules. By contrast, bilateral tax treaties can, at most, only implement specific rules between signatory countries with implicit underlying baseline norms (i.e., norms developed through commentary on the OECD Model treaty).

From this perspective then, the framework of *Thinking* could be updated for a post-BEPS world as follows:

> 1. BEPS embodies certain baseline rules underlying a cooperative international tax regime that benefit the signatory countries;
>
> 2. Signatories to BEPS adopt a dispute resolution mechanism to divide the tax revenue over a particular taxpayer or item of income between two countries; and
>
> 3. Increased cooperation from the multilateral baseline rules and dispute resolution mechanism creates a form of global public good from which all countries can benefit. Countries with a larger GDP and greater amounts of international trade would benefit from this global public good more than poorer countries, and thus, poorer countries have less of an incentive to agree to BEPS.

From this perspective, an alternative post-BEPS dispute resolution mechanism could be established to address specific disputes between OECD member states on the one hand and countries that do not agree to sign BEPS on the other. In this manner, OECD member states would then benefit from getting non-member states to agree to at least some of the baseline rules of BEPS

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31. *See, e.g.*, Reuven S. Avi-Yonah, *Who Invented the Single Tax Principle: An Essay on the History of US Treaty Policy*, 59 N.Y.L. SCH. L. REV. 305 (2014–2015).

32. The G20 is an international group consisting of foreign ministers of the twenty largest world economies that discusses international fiscal and monetary matters. *See About G20*, G20.ORG (Nov. 27, 2015), http://www.g20.org/English/aboutg20/AboutG20/201511/t20151127_1609.html.

(under some circumstances), while non-member states would benefit from the increased certainty of tax benefits delivered to particular taxpayers.

An example could be illustrative. The following example is taken substantially from *Thinking*:

> Assume a U.S. corporation has active operations in multiple countries throughout the world but maintains two separate special purpose entities [in non-BEPS signatory countries]: an intellectual property holding company in Brazil and an internal finance company in Andorra. Under U.S. international tax law, the corporation allocates income to these companies under the arm's-length method of allocation . . . .
>
> A dispute arises with respect to the allocation of income among these entities among the states involved. The United States accuses the U.S. parent of artificially paying higher rates to Andorra and Brazil to "shift" income to these lower tax jurisdictions . . . .
>
> More specifically, assume that the U.S. parent earns $10,000,000 in gross revenue from worldwide sales, but then claims to the United States that it pays $3,000,000 in interest to the Andorran entity and $4,000,000 in royalties to the Brazilian entity. Since those are both deductible in the United States, that leaves only $3,000,000 of net income subject to U.S. tax. The United States in response argues that under an arm's length standard only $1,000,000 of interest should have been paid to Andorra and only $1,000,000 in royalties should have been paid to the Brazilian entity. As a result, the United States proposes to unilaterally impose tax on the additional $5,000,000 of income, without being able to know whether this would result in double taxation or whether it would prefer to impose tax on this amount from a normative standpoint . . . .
>
> The taxpayer, not wanting the United States to impose a second tax on the $5,000,000, petitions Andorra and Brazil to challenge the United States pursuant to the mechanism. Assume both Andorra and Brazil do so and petition that a panel be created pursuant to the mechanism to challenge the assertion by the United States to tax the $5,000,000.[33]

As discussed above, assume the non-treaty dispute resolution mechanism is in place that could serve as a form of arbitration for non-treaty member states. The poorer country in a dispute

33. *See* Rosenzweig, *supra* note 1, at 775.

would be required to concede certain baseline rules as a condition to utilizing the mechanism. The wealthier country in a dispute would be required to concede to a rebuttable presumption in favor of the poorer country as a condition to utilizing the mechanism. The rebuttable presumption would work in the same way rebuttable presumptions work in any dispute or trial—the party with the presumption in its favor will win unless the opposing part can provide sufficient evidence to overcome the presumption. Thus, if the wealthier country fails to provide sufficient factual support in its favor to overcome the presumption in favor of the poorer country, it would lose the dispute. If the poorer country refused to comply with the baseline rules, however, it would lose the benefit of the presumption in its favor.

With respect to Brazil, assume BEPS establishes a baseline rule on how to allocate income from intellectual property based on some combination of research and development (R&D) costs, management and operation costs, and sales and license fees. Also assume that one of the reasons Brazil did not sign BEPS was that it preferred to use its own formulary apportionment method for intellectual property. Finally, assume that all of the R&D costs were incurred in the United States, but most of the management and operation costs and license fees were located in Brazil (and that each of the parties agree to these assumptions). Prior to using the dispute resolution mechanism, Brazil would have to agree to apply the BEPS rule on transfer pricing for intellectual property to the specific dispute at hand (and only to that specific dispute). In turn, the United States would agree to a rebuttable presumption in favor of Brazil. To attempt to rebut the presumption, the United States would then argue that under the BEPS standard, the R&D costs should carry more weight when settling the dispute at hand, while Brazil would argue that the management and operation costs should carry more weight. Since both positions are acceptable alternatives under BEPS, Brazil's argument would prevail because the United States would have failed to rebut the presumption.

With respect to Andorra, by contrast, there would not be any dispute over the methodology to be used since both jurisdictions have adopted the arm's length method. Rather, the dispute would be over the ability of Andorra to accept the transfer price amount chosen by the taxpayer without requiring independent support, as opposed to the United States, which would prefer an independent transfer pricing study to be performed. Assume here that BEPS establishes a baseline rule of complete transparency on transfer pricing that requires countries to share underlying support for the preferred transfer price. Andorra would need to agree to comply with the baseline rule to have access to the mechanism (which would mean sharing all of its information supporting the transfer price). Since it did not request any supporting information, however, it would not have any information to share supporting its preferred transfer price. By contrast, the United States would provide all of its support in favor of its preferred transfer price. Assuming this evidence is substantial, the United States would be successful in rebutting the presumption in favor of Andorra and would thus prevail. Alternatively, if Andorra refused to comply with the BEPS transparency rule, the presumption would not apply, and the United States would also win the dispute. Either way, the United States would win, despite the presumption in favor of Andorra, because Andorra failed to comply with the baseline rules of BEPS.

Taken together, establishing a dispute resolution mechanism for countries that do not fully sign BEPS would not undermine the success of BEPS; rather, it could increase the benefits that BEPS provides by extending them, at least on a case-by-case basis, to all countries around the world. This result holds, at least as an initial matter, so long as there exists at least one country in the world that does not agree to sign on to the entirety of BEPS, which seems like a relatively safe assumption. By agreeing to exchange specific factual disputes in exchange for complying with BEPS baseline rules, OECD member states would offer an incentive to non-member states, at a minimum, to participate in a dispute resolution mechanism, even if they do not want to sign BEPS as a whole. In turn, non-member states would have an incentive to concede to certain BEPS baseline rules, at least on a case-by-case basis, in order to win a greater share of disputes before the dispute resolution mechanism. In effect, a non-member dispute resolution mechanism could lead to a form of second-best harmonization in the post-BEPS international tax regime. Thus, while such a dispute resolution mechanism may not be as ideal from the perspective of the OECD member states, such a result is preferable to the risk of potentially undermining the success of BEPS altogether.

A similar approach has proven quite successful in the World Trade Organization (WTO) with respect to what is typically referred to as "cross-retaliation." Under cross-retaliation, a WTO member state that wins a dispute before the WTO under one agreement under the purview of the WTO may, under certain circumstances, retaliate under a different agreement that is also under the purview of the WTO.[34] The typical justification for permitting cross-retaliation is that the threat of retaliation under the particular agreement by a small country against a large one is insufficient to induce compliance, but retaliation under a different agreement might. For example, in response to a recent violation of the General Agreement on Trade in Services (GATS) by the United States, the country of Antigua and Barbuda recently won permission from the WTO to cross-retaliate against the United States under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). More specifically, the United States was found to be in violation of GATS for adopting a law that banned online gambling conducted by companies outside the United States yet permitted certain remote gambling in some cases conducted by companies within the United States. The United States, however, refused to comply with the WTO ruling, which required the United States to change its law. In turn, Antigua and Barbuda was permitted by the WTO to retaliate under TRIPS for the U.S. violation of GATS. More specifically, the WTO ruled that Antigua and Barbuda would no longer be required to enforce U.S. copyright laws under TRIPS due to the U.S. violation of GATS (although only up to the value of the harm incurred).[35] In short, cross-retaliation permitted Antigua and Barbuda to retaliate under TRIPS in response to a violation of GATS by the United States.

Taken together, it appears that the approach taken in *Thinking*, in light of a world in which the OECD Harmful Tax Competition effort did not achieve all of its intended goals and BEPS was not yet undertaken, could not only survive the implementation of BEPS but could actually prove more effective in achieving its goals in a post-BEPS world. Ultimately then, the lesson of *Thinking*—that increasing cooperation of the *least* cooperative states in the world is as important, if not more important, to the ultimate success of the international tax regime as cooperation among the largest, most cooperative states—can prove increasingly relevant in a modern, globalized world. The alternative—ignoring least cooperative states and hoping that they either

34. *See* Rosenzweig, *supra* note 27.
35. *See id.*

eventually sign BEPS and/or happen to disappear from the international tax scene—could potentially undermine the ultimate success of BEPS as the foundation for a new international tax regime. For these reasons, a non-BEPS dispute resolution mechanism—whether housed in the OECD, the WTO, or otherwise—should be considered as a fundamental part of any institutional framework for a post-BEPS world.[36]

36. *See* Rosenzweig, *supra* note 10.