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The WTO and Regionalisation

The World Trade Organisation inherited from the GATT the responsibility for defining and regulating "regions". This responsibility is based partly on the necessity of formally reconciling the basis of the GATT system, most favoured nation, with the explicit discrimination of regions and partly on the implicit assumption that regions are, like the GATT or WTO, basically instruments of trade regulation. But regions are formed for many non-trade, and indeed non-economic, reasons of common interest, security, etc., and are institutions, not simply treaties, with a continuing and evolving existence and role relative to other institutions, including other regions and the WTO. This paper will first explore the historical origins of the regulation, and the way in which the role of GATT developed, then consider some of the problems raised by the fact that regions are not just about trade preferences.

The problem for any regulation of trade regimes other than free trade, the economic ideal, is that all are second-best, and choosing what to permit will depend on which costs are considered "worst". Under what circumstances should countries be able to treat each other differently from "normal", and is it desirable or feasible to have a range of degrees of special treatment? The second question is a practical one. The first requires the international system to judge the legitimacy of the preferences of different countries for their international relations. Including such judgements was a major innovation when GATT was founded. Unlike other international institutions, the essential element of GATT (now the WTO) has been that it is based on regulations and legal processes for defining, implementing and enforcing them. Others rely on consent or implementation through the countries' own legal systems. Discretion to respond to members' changes in preferences or the organisation's own changes in perceptions about appropriate economic policy (as in the IMF or World Bank) would not be consistent with this, but the assessment of what type of relationship between countries is closer than normal is inevitably political. For this reason, any GATT definition had to be in terms of outcomes, not intentions or motives.

1. Historical and Theoretical Background to the GATT Regulation of Regions

The international regulation of trade regions dates formally from the founding of GATT in 1948, but Viner (1950: 4) traces it back to the "widespread existence of contractual obligations not to resort to tariff discrimination, and the general acceptance of customs unions as a derogation from such obligations". In doing so, he brings out what has remained a dual aspect of regulation. It regulates the coverage and the form of existing agreements, but it also encourages a particular type of agreement to emerge. These agreements "tended to restrict the field for special tariff arrangements between independent countries to agreements of a type which could plausibly be held to meet the criteria of a 'customs union'".

Under the system of bilateral arrangements which governed most trade among advanced countries from the nineteenth century to the foundation of GATT, countries normally bound themselves to offer each trading partner "Most Favoured Nation" treatment. It was the growth of the concept of MFN in the nineteenth century which forced the development of the customs union exception agreement. Even though the analysis of trade diversion and creation had not been formally developed until Viner's 1950 publication, it was obvious that countries outside paying higher tariffs for entry into a market than other suppliers suffered damage to their interests, even if the damaging effect of track diversion on the region itself was not understood. By liberalising trade among themselves, countries are able to substitute for home production by importing goods produced at lower cost in other members. This trade creation increases both production and consumption. Income is increased by the availability of the lower cost goods, and production is shifted from the less to the more efficient location. If, however, one member previously imported from a non-member, but, after removal of tariffs on imports from fellow-members, finds that imports from them are now cheaper to the purchaser, then trade will be diverted from the more efficient outside producer to the less efficient one within the group. Clearly the outsider loses, but so does the member: although there is a consumption gain from cheaper imports, it does not receive the tariff revenue; welfare is damaged because production is shifted from a more efficient to a less efficient location.

Trade diversion means that regions unambiguously damage countries not in the region, and this justifies international regulation to limit the diversion effects or compensate for them. Trade creation does not directly affect those outside, although the income effect can have a positive effect, if some of the demand goes to externally produced goods. If the increase in income and efficiency in turn has dynamic effects, this effect is reinforced. This effect was strongly emphasised in the analyses of the effects of the Single European Market in the mid-1980s. Confusingly, it was also called trade creation. This argument could have been expected to reduce international pressure to regulate regions, but scepticism about the EU's openness to others meant that non-EU negotiators ignored or rejected it.

Whether the creation or diversion effects will be more important for the members of a region requires empirical analysis. It will depend on the similarity and competitiveness of the members' economies and may also depend on their size. Similarly, trade diversion and psuedo-trade creation effects can be compared for those excluded. But, it is important to remember that each of the excluded countries must be considered (and in principle should be compensated) separately, not as a "rest-of-the-world-bloc".

The analysis of creation and diversion can be extended to other factors of production. Investment will be created or diverted into the region to meet the new production demanded by the changes in trade flows. Labour may follow a similar pattern. Non-trade elements of a region may affect income (for example, outsiders may be disadvantaged by regional standards or intellectual property rules). It is even possible to extend the concept of diversion to policy-making: members may be more interested in improving trade flows within the region, especially if these are a high share of their total trade, than in multilateral negotiations. An extension is to diversion of attention: joining a group "tends to reduce the incentive to take a world view" (Winters 1993: 7). The simplest form of this is that countries normally do not have the negotiating capacity to negotiate a region and a multilateral agreement simultaneously. The stronger view is that this affects liberalisation. This concern must be balanced, however, against the possibility that regions may be an alternative to a country view (strategy expansion) rather than an alternative to the world (strategy diversion). There may even be declining rates of return to regional policy-making, as the intra-regional barriers become smaller relative to the external.

Diversion analysis holds even where countries do not raise their actual barriers against the rest of the world; they merely rise relative to the lower barriers to the group. An alternative strand of analysis asks whether the group is more likely to raise barriers than an individual country (or a larger group more likely than a smaller). For example, an argument for gains from setting the optimum tariff, the level which maximises a country's income from terms of trade gain, suggests that a larger group will be more likely to raise this. But there is little evidence that countries do follow optimum tariff policies. A more plausible argument with the same result arises from the greater difficulty, institutionally or because of the assumed greater sympathy for interests of fellow members, of taking protective action within the region in response to any interests which consider themselves damaged by imports. So action is more likely externally. Multilateral regulation (for tariffs, binding under the WTO) has made clearly identifiable cases of this type increasingly rare.

2. GATT and WTO Regulation

The multilateral treaty, GATT, carried forward the old MFN rule, of ensuring that no countries were treated better than their competitors. But there was also the belief that regional liberalisation could be seen as a step towards general liberalisation. Even the trade creation and diversion arguments suggested that the world as a whole could gain more than it lost from a regional group if creation exceeded diversion, and therefore that regions with compensation could be beneficial. There was also the problem that a variety of imperial preferences remained. These could not be forbidden because they merely extended the boundaries of countries, within which free trade, and thus discrimination against the rest of the world, was normal. Given that one of the principal objectives of establishing the GATT was to introduce certainty and international sanctions against arbitrary changes in trading arrangements, the exceptions to the MFN principle had to be further defined and limits set.

The answers to when countries can discriminate under GATT and the WTO have followed two potentially contradictory strands. One takes the country as the standard. Special treatment was allowed if there is a special relationship, like that between a country and its colonies (Viner 1950: 16) and if it was as extensive as in a country, i.e. virtually without exceptions. Regions come under these provisions. The second strand dates from the major revision of the GATT in 1971 to provide a special section on the developing countries.

The concept of preferential treatment for regions requires an agreed definition and acceptance of what "normal" treatment is. On those subjects where countries have a variety of different arrangements with different partners, and there is no international standard, for example for co-operation on infrastructure or external pollution effects, or, until recently at least, on rules to regulate investment flows, there is no perception that having a special relationship is unusual. The definition of "normal" has thus expanded with the growing coverage and legal rigour within GATT and the WTO. This has brought in not only different types of economic activity (the extension to services, investment, etc.) but different institutions, including dispute settlement procedures, standard setting, etc.

2.1 GATT Regulation

GATT permitted those regional groups which became, as far as trade was concerned, effectively the same as countries. The explanation given in the GATT agreement was "the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements ... The purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories" (GATT 1986, Article XXIV). As GATT was designed to regulate and have as members "customs territories" rather than "countries", a customs union could be viewed simply as the substitution of one customs territory for a number of pre-existing ones, although this was not carried to the logical outcome of having only the customs union as a member. For customs unions, the requirement was that the new common tariff was "not on the whole" higher or more restrictive than those of the countries forming the region (GATT 1986, Article XXIV). For a free trade area, which does not fit the customs territory model, the requirement was that tariffs be eliminated on "substantially all the trade" within the area. For both "regulations of commerce" were also not be raised above the pre-agreement level, but these were not defined.

The rationale was that without the obligation to go "almost" all the way to free trade, regional groups would free the products where group members were competing with non-members (and thus divert trade from them) and keep restrictions where they were competing with each other (and thus hinder trade creation). The rule does not prevent non-member countries from being damaged from trade diversion. But it tries to limit the damage first by limiting the number of regions to those where the members are willing to accept the full obligations of Article XXIV and then by not allowing them to increase tariffs. Because diversion depends on the relationship between the difference between regional and other prices and the tariff, there can be no rule (other than 0 tariffs) which can guarantee that there will be no damage to outsiders, and the fact that production patterns and costs will change within the region and outside it means that any solution can only be approximate and based on information available at the time the region is formed. Where production uses inputs from within and outside the region, the rules about what goods are treated as coming from the region, the rules of origin, become an essential part of the regulating regions, and of their effect on the rest of the world. These effects are also unpredictable over time, and it could be argued that they should have been explicitly specified among the "regulations of commerce" to be controlled.

2.2 Rules of Origin

For a country with no regional arrangements, no intra-country discrimination, and MFN treatment for all other countries, it is only necessary to identify all goods crossing its border as "foreign". While this is the perfectly compliant WTO standard, no country follows it, and therefore all countries need more defined rules for determining origin. (Even countries with MFN for all external countries need rules if they discriminate within the country, for example in public procurement policies.) A free trade area which is not a customs union or members of regions or countries with preferential regimes for developing countries need rules to avoid goods from less preferred regions gaining more favourable entry by entering through more preferred countries. As long as the members have different external regimes for non-members, they need to identify goods crossing from another member as, originally, either "regional" or "external" (and if external, whether they are entitled to a preferential regime). The rules for identifying "regional" products must be the same, although this may mean applying different rules to different trading partners, as they can vary among countries and among purposes. Even in a full customs union, rules are necessary unless there is not only a Common External Tariff (CET), but common preferences, common NTBs and common regimes for health and safety and all other standards governing goods within the customs union. This means that some form of control or inspection remains necessary at internal borders of Free Trade Agreements (FTAs) and all but the most complete customs unions.

Although Viner (1950: 60) recognised the possibility that administering an incomplete customs union could have costs because of different border regimes, this has not been sufficiently recognised in analysis of the costs and benefits of regional groups. It is only recently that empirical work has suggested that the administration of rules of origin can be a serious limitation on the functioning of a free trade area. If the rules are drawn particularly tightly or if the production conditions or characteristics of a product mean that they are difficult to meet, then they can constitute a border barrier within a free trade area. If rules adopted at the outset by a region effectively define as foreign (non-regional) any goods which were previously produced using foreign imports, it is arguable that this is an increase in impediments to trade outside the region. As it is capable of producing trade diversion, it might be suitable for international regulation. Even if there is not an increase in protection at the outset, however, the fact that production conditions change means that the rules of origin could become a barrier in the future.

Rules of origin can work efficiently for goods which are traded frequently, by a limited number of major traders, who become familiar with the requirements. The more complex production patterns become, however, the more firms are involved, and, if imports are close substitutes for domestic goods or for imports from different trading partners, and if there is a high share of exports in production, the more difficult it becomes to administer them. As with any regulation, it is also possible to use oppressively detailed or onerous verification and enforcement as an additional barrier.

There is no internationally agreed standard for rules of origin. It was first proposed that there should be common rules, or at least common procedures, for rules of origin in 1973, and this was revived in GATT in 1981 (Palmeter 1995: 201). Following the Uruguay Round, there is a now a WTO commitment to try to establish a common regime for MFN rules of origin. This would at least ensure that statistics by country of origin were compatible. There is no agreement that preference regimes or FTAs should follow the same rules.

Rules of origin are now a major part of regional negotiations. There are three commonly used bases, but these give rise to a very large number of variants. Goods grown or entirely produced with local inputs within a country have that origin. Where non-national inputs are used, the rule can look either at the share of local value added or at whether the processing was sufficient to change a customs heading. But any percentage or any level of customs heading can be used, with variations among commodities even within the rules of single countries and different more specific regimes for particular goods.

Rules of origin are no longer needed within the EU, but remained in force and a barrier to trade in a few commodities on which there were country quotas or special regimes until 1992. The EU has a variety of different rules for its external agreements and preferential arrangements. They are based on tariff

heading (usually at 4 digit level, but occasionally requiring more substantial transformation), but supplemented by percentage requirements for processed goods, and in some cases (clothing and textiles, for example) more specific industrial requirements. The extensive use by the EU of preference arrangements has encouraged the development of the "technology" of rules of origin, with industrial variations, and other regions have followed.

The SADC Trade Protocol bases rules of origin on local content or change of tariff heading (40% local materials or 35% value added or a change of heading; the level of heading has not yet been specified). This flexibility provides both relative openness and simplicity. The only industry with special rules is fishing, and that requires only one of: country of registration, nationality of crew, or nationality of ownership to give national origin. (The EU requirement for Lomé fish, for example, requires all three, and area of catch.) ASEAN requires that 40% of the value be ASEAN content, but with additional rules for textiles and clothing since 1996.

The US had a variety of rules of origin for its preferential agreements before the agreements with Canada and Mexico, and the NAFTA rules are different again. There were 1498 rules in the US Canada agreement, and Palmeter (1995: 193) estimated that there were 11,000 in NAFTA, and that the cost of record keeping would add 3% to costs of importing (all records must be kept 5 years; both exporters and importers must submit certificates; and the importing country can verify the certificates). The rules include change of heading, share of value added (normally 50–60% depending on the form of the calculation), and for some industries specific processing requirements. These are particularly important in cars, dairy products, electronics, textiles, tools, and energy. There is one form of simplification, where imports and domestic products are used as substitutes in production, where "inventory management" rules, rather than explicit identification of each input, is allowed. The industries with special provisions include many of those where production using imports from a variety of countries, in substitution, is most frequent, particularly cars, electronics, and textiles. These mean that the rules are likely to be a barrier to trade, and were intended to be. The textile rules in general follow the most restrictive form, of requiring that clothing be made from locally made textiles from locally made yarn ("yarn forward"). The regime for cars gives detailed regulations for different parts and factories.

MERCOSUR has different rules for the larger and smaller countries. Goods not yet under the CET are subject to a requirement of a change of heading or local content of 60% for Argentina and Brazil, but 50% for Paraguay and for some products for Uruguay. The rules also apply for cars and sugar because of special regimes. The administration of rules of origin in MERCOSUR is more like that of an FTA than a customs union because goods are still controlled and pay tariffs at intra-regional borders. MERCOSUR rules for clothing are less liberal than the previous Argentine rules for imports from Chile, so that there has been an increase in barriers.

2.3 Developing Regions

In the 1960s, most colonies became independent and ceased to be covered by the provisions for extended customs areas under imperial preferences. At the same time analysis of how countries develop led to a set of beliefs that they should have the right to assistance and special treatment; that they needed to be able to use trade policy, including import protection and export promotion, as part of a development strategy; and that they might need a larger market area than that of an individual country to provide a start for new industries. These arguments were pressed particularly by the Latin American countries, partly because their economists had participated in the theoretical analysis, but also because they did not have the preferential access available under special schemes for former colonies. As a result, in 1971, Part 4 was added to the GATT agreement, allowing developing countries "special and differential treatment". This included exemption from the MFN rules for special preferences by developed countries for developing countries and greater freedom for developing countries to alter their own tariffs. In 1979, this was supplemented by the "Enabling Clause on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" which allowed regions among developing countries to be notified to the Committee on Trade and Development, exempting them from the usual constraints; it permitted "regional groups" without meeting the full requirements of Article XXIV for FTAs.

2.4 Enforcement of GATT Rules

In practice, even for developed countries, control has been effectively non-existent, before and after 1971. Most groups were, as required, notified to the GATT, and thus the controls at least have ensured transparency. But then, each was reviewed by an *ad hoc* committee, and the reviews never rejected a proposed agreement. Decisions could only be adopted by consensus, and thus the members of the group themselves would have had to agree. The use of *ad hoc* committees meant that no general patterns of examination or precedents for what was permitted were developed. The most significant new region of the 1950s, the European Community, was approved for political and security reasons by the country which might have been most economically damaged by trade diversion, the US, and therefore not challenged. Other groups did not include countries large enough to have a major impact on world trade or on major traders. Later, as Europe expanded and the original conditions which ensured support for it changed, the emphasis in the reviews of new members was on calculating the possible trade diversion effects, and negotiating compensating changes in tariffs, not judging whether the expansion should be allowed. Implicitly, it came to be assumed that the formation of regions was a decision properly left in the hands of the countries involved.

Events in the 1980s led to changes in this process. The moves of Europe to integrate more closely into the Single European Market and to extend itself to first southern Europe in the 1980s, then northern Europe in the 1990s, and potentially eastern Europe in the 2000s, combined with the formation of NAFTA and the developing country regions, meant that regions were no longer special cases, to be treated individually, but a major trend affecting the nature of the world economic system. Larger countries were joining regions, so more had direct trade effects, but even small ones could have a systemic effect.

2.5 Innovations under the WTO

The adoption of the WTO brought two changes in the legal regulation of regions. An Understanding on Article XXIV re-emphasised the need to cover "substantially" all trade, and although there is still no formal definition, the principal trading countries and a newly active WTO secretariat have tried to build a consensus around a belief that no major sector can be entirely excluded.[1] (This would be consistent with the services provisions, as described below.) The provisions allow transition periods, but these gave additional "flexibility" to the requirement for substantial coverage; the new Understanding limited transition to 10 years. It tightened the rules about not increasing barriers from: not "on the whole higher" to: an "assessment of weighted average tariff rates and of customs duties collected", with detailed requirements for the calculation. The latter only gave legal force to what had become the practice. It did not attempt to clarify the provisions on other "regulations of commerce", although it had become clear that rules of origin were being used, particularly in free trade areas, as an instrument of protection. The Understanding also provided for periodic reviews of groups in transition to regions, and the WTO later substituted a single Committee on Regions for the old working group system.

For developing countries, there was an additional modification, although more by association. The Uruguay Round (UR) negotiations had put more emphasis on reciprocal obligations (except for the least developed), and, although some special provisions for smaller concessions or longer periods of adjustment were built into the settlement, the old presumption that special and differential treatment was the rule was shaken. Formally, this meant that even regions of developing countries started to be examined under the normal, Article XXIV provisions, rather than the more flexible ones for Part 4 treatment; informally, it meant that the presumption that developing countries should be able to use trading rules relatively freely was weakened, so any examination would be more rigorous.[2]

The second innovation of the Uruguay Round was to extend the regulation of regions beyond trade in goods. For areas not covered by the GATT, there were had been no restrictions from Article XXIV on countries' giving each other more or less favourable treatment. The Uruguay Round extended the responsibilities of the new WTO to services, regulations and standards like intellectual property and the use of health standards as a barrier to trade, and implicitly to some aspects of investment. The General Agreement on Services included (as Article V) a provision that countries could liberalise trade in services within a group, provided the agreement had "substantial sectoral coverage" and was part of "a wider process of economic integration or trade liberalisation among the countries concerned" (GATS, Article V). Significantly, the phrase substantial sectoral coverage is to be "understood in terms of number of sectors, value of trade affected and modes of supply". As most existing regions, especially those in Latin America, took the opportunity of their initial services offers to specify their regional partners as exceptions to the MFN rule (as was allowed at that point), this provision may take some time to be tested. Other "new areas", however, were not brought into regional regulation, so in principle no regional preference is allowed.

Another significant change in treatment of regions in the WTO was the admission of the EU as a member, although additional to, not instead of, its member states. This marked the logical outcome of treating it as the customs region which is making commitments to other members of the WTO, as trade in goods is a matter of EU, not member state competence. The EU had already been the unit, not the individual members, which was reviewed as part of the WTO's regular Trade Policy Review assessment process of its members. This step is in part a return to the past, when imperial powers were recognised as the member, with responsibilities for applying GATT rules to their colonies. The other customs unions have not been admitted, and are still formally treated as separate countries, including in the trade reviews. In the UR, however, South Africa negotiated for all the SACU countries, forcing the other (developing and least developed) members to conform to its offer (made as a developed country). This was a clear demonstration of the potential conflict between the WTO's two forms of preference.

No new region has yet completed a process of review under the new Article XXIV or GATS Article V rules, so it cannot be certain that the process will in practice be more restrictive than in the past, but the fact that regions have been put through the full process, even if they are made up of developing countries, and statements of support for more rigorous enforcement of WTO rules, even by regions like the EU, suggest stronger enforcement. The new rigour may be reflected not in the criticism or rejection of regions in the review process, but in the way in which regions are negotiated in the first place. The agreements which the EU has signed with the eastern European countries all included provisions for eventual free trade, explicitly to meet these new requirements, and the proposals for reform of Lomé explicitly seek WTO compatibility. There are, however, agreements signed since the adoption of the new rules which clearly violate them, such as in the case of Chile and Canada (and the EU may be using the WTO to justify demands for increased access). If the 10 year rule is enforced, then this will be a major difference from past regions, which have had longer

planned periods of transition, and where the nature of the final opening may not have even been included in the initial treaty. This progressive approach may not be allowed any longer if the 10 year rule means that the details of the 10 years need to be established before the first notification to the WTO. (In 1997 Canada and Chile nevertheless signed a free trade agreement with a 17 year transition period.)

3. The Evolution of Regions

The assumption that regions should cover "everything", first all goods, now all services, may have provided an impulse to regions to go further than they would choose, but examining notifications shows how limited and concentrated the spread of regions was under GATT. Of the 98 agreements notified to the GATT under Article XXIV procedure, almost half were from the EEC: 25 internal, including those with new and potential members, and 23 the association agreements of the EEC with developing countries before and under Lomé. A further 10 involved the EFTA countries. Of the rest, 22 involved agreements with eastern European countries, which were not in GATT and where formal bilateral agreements were needed. In contrast, only three included the US, with Israel in 1986, then the US-Canada agreement of 1989, and NAFTA in 1994. Only six are in Latin America or the Caribbean, with four each in Africa and the Pacific and one in the Middle East. If we add those under the enabling clause, this increased the Latin American total to nine, with four in Asia, four in the Middle East, and five in the Pacific.

The first stage of CARICOM was notified as CARIFTA in 1968, being superseded by CARICOM, in 1973. CARIFTA and CARICOM enjoy the distinction of being two of the six regions ever to be formally accepted by the GATT, and CARICOM is one of the two surviving accepted regions (the other is that between the Czech and Slovak Republics) (WTO 1995). The Central American Common Market was notified, although Nicaragua was the only member country also a member of GATT in 1959.

The Latin America Integration Agreement was notified in 1981 under the Enabling Clause; most other Latin American agreements have been notified as subdivisions of this. This procedure has continued under the new WTO regime for regions, with the Group of Three (Colombia, Mexico, Venezuela) being officially notified to LAIA, and then by LAIA to the WTO. This suggests that for some groups among developing countries, the new enforcement regime can be little different from that under GATT. MERCOSUR, however, was initially notified to LAIA, but then also directly to GATT, although still under the Enabling Clause (and before the WTO came into force). Because of concern among some developed countries (in particular the US), however, an Article XXIV working group was set up. NAFTA, with two developed members, was notified under the normal procedures, but also under GATT, not WTO, rules. It was initially examined by a working group, but both MERCOSUR and NAFTA were later transferred to the Committee on Regions.

SACU, the one existing agreement to predate GATT, has not been officially notified; although the membership has formally changed, with independence, the actual coverage of the customs area has not. As it covers all trade in goods, it would probably be accepted. The Australia-New Zealand agreement was notified, in its original form in 1966 and later in 1983 when the initial agreement was replaced by ANZCERTA. ASEAN was notified under the Enabling Clause in 1978. The South Asian Association for Regional Co-operation (SAARC) was not notified until 1997. APEC has not been notified because it has no substantive content.

4. Regions and the Multilateral System

4.1 Regulation So Far

The intention of the new WTO regime for regions, and in particular the new Committee on Regions, is to require regions to conform to the model: an FTA or a CU that moves to full internal free trade (at least in goods; potentially in services) within ten years. This could force regions without a strong trade motivation either to remove any trade element or to complete trade integration, which has the probable implication of trade discrimination against the rest of the world, sooner or more fully than they would otherwise do. If they follow the first path, of deleting trade, the region, under present rules, is effectively removed from international supervision. There is no way of regulating the other policy elements which a region may include, although all of these have the potential to set up barriers to or to disadvantage non-member countries, and no obligation for a region without traditional trade-measure elements, to give information to the WTO or any other multilateral institution. APEC, which considers itself exempt from WTO rules because it has only a distant and non-binding trade policy target, might be joined by other non-trade regions which would escape outside appraisal. The alternative response, of following the WTO model, could also damage excluded countries by accelerating trade diversion.

Improving the regulation of the trade policies of regions, and extending this to all the possible types of integration which have been considered here, and which also have effects on the rest of the world, is desirable to reveal, and if possible mitigate or prevent, trade diversion or other damage to excluded countries. The most efficient and welfare-efficient way of setting the boundary between countries' freedom to choose policies including those that discriminate against the rest of the world and international regulation of policies is always difficult to define. The boundary has been moving increasingly into the realm of country policies. Policy on new areas like intellectual property, standards, or public procurement has gone beyond demands for MFN, non-discrimination

among non-nationals, to first: national treatment, non-discrimination between nationals and the rest of the world, and now to internationally set minimum standards of treatment. How do the rules for regions fit into this? Effectively, regions can discriminate in favour of their members only if they follow particular forms for matters covered by the multilateral system or if they find other areas. As the coverage of the WTO extends, the scope for regions diminishes. This is an inevitable conflict.

As to the question how tightly to regulate: all rules have costs, in creating rigidities and in encouraging distortions to find ways to avoid them, or to go around them. The question for the international system is whether the objective of avoiding diversion (in trade and all its forms) is worth the distortions. So far there has been little regulation, but few regions. The central objective has been fairly well preserved, and regions have moved more in the direction of liberalising their arrangements with each other and to the rest of the world than finding ways of discriminating more tightly. The WTO has failed in two respects: by not extending its regulation beyond goods and services and by not reviewing old regions. Other aspects of regions with clear effects on excluded countries in WTO regulated areas, notably rules of origin, should have been included in the Uruguay Round.

4.2 The Nature of regions

MFN rules and permitted derogations from them depend on clear definitions of trade and of nation and region. The preference derogation for developing countries has already led to some problems here (SACU in the UR, for example), but the potential for conflict is now much greater, as the definition of "trade" and "trade related" expands, widening the scope of WTO regulation, and as countries form a variety of groups and preference areas. These difficulties are most likely to affect developing countries: their regions are more likely to be changing and "messy"; and their economies are more likely to have structural changes, leading to changes in trade patterns, policies, and partners; they receive varying preferences; they have not registered exceptions to services MFN. But they can no longer expect full exemption under the Enabling Clause.

A subsidiary question is the effect of relations among regions on the regions and on the system. Issues like rules of origin and the appearance of continental regions, APEC and FTAA, show how having a range of regional affiliations can become increasingly costly in terms of regulation and that negotiations on one can delay or discourage integration in another, or hinder policy development at the national level or at the multilateral level (policy diversion). Multiple levels of decision-making are difficult to manage, as is well known within countries. They normally work acceptably if there are clear divisions of responsibilities and clear hierarchies (whether from bottom up in a federal system or from the centre out in a more centralised ones), and if changes in the division and the scope of responsibilities are not too frequent. The recent history of regions and the multilateral system showed that the limits on consistent simultaneous evolution were being reached during the Uruguay Round, when developments in NAFTA and the EU had the potential to delay or conflict with those in the WTO. The current developments in the Americas, with regions like MERCOSUR both deepening and widening while there are simultaneous negotiations for an FTAA, suggest potential conflicts in priorities. In Asia, conflict is less likely, but only because the roles of APEC and the sub-regional groups like ASEAN have been limited. There is, however, also a possibility that progress at one level can encourage faster negotiations at a different level, if a region wants to remain more integrated than the rest of the world or than a higher-level region, it may be encouraged to go further to keep ahead; this is the experience of MERCOSUR in the FTAA, perhaps the EU in GATT, and potentially ASEAN in APEC. These interactions make it difficult to reach a general conclusion on whether regions help or obstruct multilateralism. The WTO's basic position of opposition to regions is justified by the measurable costs of trade diversion and the costs to their trading partners of the administration of their agreements and also the cost of examining and regulating these. But for regions and non-members the non-trade motives and effects also need to be considered.

One type of regulation which is clearly impossible is for the international system to set standards for membership of the regions. It is clear that the range of different objectives and coverage would make it impossible to set a standard for all regions; any such standard would simply lead to their relabelling as other types of group. The evolutionary nature of groups is a further obstacle: no rule could hold over time. Even entry to GATT/WTO has meant different conditions at different periods, and also different conditions for different countries. These vary according to current policies and views of trade, and the growing coverage of the WTO but also according to the interest of the existing members in allowing the new member to join. If regions are not allowed to retain the same discretion, the international system will be sidelined as unrealistic.

The non-trade responsibilities of many of the groups raise problems of co-operation among the international institutions. These are not new. On trade policy, there is already the need to reconcile the IMF principles on payments regimes, the IMF and World Bank policies on fiscal balance (for countries often dependent on tariff revenues), the World Bank support for trade liberalisation, and the WTO regulation of tariff changes and support for reciprocity. The potential regulatory overlap of the WTO with the ILO on labour standards or with environmental conventions is already an issue. The acceleration of regulation and integration at the international level has left few areas in which regions have moved which are not at least proposed for the WTO. The regions, by example, illustrate the need for an integrated global system.

There is another possible outcome of greater regionalisation. In the face of the complexity of different regional obligations, there are pressures to reduce other sources of complexity and special trading arrangements, in particular those with developing countries. An alternative way of viewing this is that, based on the simplistic model that policy makers can only deal with a small number of divisions, regionalisation is a substitute for the pre–1989 division of the world into North, South and East; with the "East" gone, the "South" does not fit into the new model of continents. A reduction in preferences for developing countries happens automatically from the reduction in relative preferences when developed members of a region lower tariffs to each other. A growth in geographical regionalisation could lead to a review of non-geographical preference schemes (the reform of the ACP scheme of the EU) to "rationalise" treatment of the countries by rearranging them also into regions. Requirements of reciprocity in negotiations with other schemes suggest that there will be difficulties in maintaining special preference regimes alongside regional groups (the SACU experience, in SADC as well as GATT). Regional groups with developing and industrial country members pose new complexities for preference regimes between the industrial country members or the group as a customs union and non-member developing countries.

4.3 Do Regions Matter? Are there Policy Conclusions?

The regionalism which is observed is complex, and there are strong reasons to believe that it will remain so. Regional trading groups either move towards more integration (culminating, at least in the past, in what are now federal countries) or prove to be unstable temporary alliances of countries whose common interests diverge as they diverge economically or in policy approach (the experience of past developing country groups). There is a strong case for saying that the most successful group of the last decade is the new WTO. It has expanded its membership, the coverage of its rules, and its powers. The extension of its responsibilities means that in practice it now embraces many of the areas that the EU's adoption of the SEM 1992 (Single European Market) programme and the formation of NAFTA were intended to integrate: services, national treatment for foreign investment, intellectual property, dispute resolution, potentially environment, labour and business regulation questions. Its rules on services have neglected migration up to now, but the framework is there. This means that regions have more complex motives.

The discussion of regions in the early 1990s suggested a world which was rapidly dividing into regions. This is not a true picture: the "real", integrated regions are still found only in Europe, North and South America, basically in one political-economic tradition. The countries not organised in regions include some of the largest countries in the world: most of the largest continent, and substantial numbers in other areas. Less than a third of total world trade takes place within the regions, and this share has fallen since 1990.[3] Of this, 24%, i.e. three quarters, is accounted for by the EU and 7–8% by NAFTA. All other regions are too small or have too low a share of intra-trade to matter. These low numbers also indicate that the effect of regions other than the EU on world output is small, although clearly trade diversion or income effects could be important for major trading partners. There is still substantial scope for multilateral negotiations, and little reason for the WTO to fear redundancy.

The large number and the importance of the non-joiners also suggests that any regions are likely to be challenged under the new WTO Article XXIV and dispute procedures if they seem likely to have any adverse effect on the rest of the world. The over-done fears of regions may mean that regions now face more serious institutional obstacles to any special arrangements than earlier groups faced.

But the regions which do exist and those which may form do offer a challenge for the international organisations. Both they and the regions will need to accept that there is a conflict between fully flexible systems and transparency. The advantages for economic agents of multilateral transparency and certainty may be greater than they seem to regional policy-makers. The advantages of flexibility for regions, however, may be greater than they seem to the WTO.

For developing countries, the shift to looking at the system in terms of regions and non-members and different levels of integration among countries, rather than to industrial countries and developing countries confirms the ending of a special position for them as a group in the international system. They remain a group, however, although one with various sub-groups, some overlapping with developed countries, with common interests, over wide or narrow bands of economic and other issues. An international system which is more adapted to deal with such groups, some of which may be based in geographic regions, others defined by income, type of economic structure, or other characteristics, could offer different advantages for development, including greater flexibility as countries' development needs change and their groupings change. Developing country regions which do not have the institutional strength and identity of the more advanced regions will have the disadvantage of being fluctuating groups, without internal stability or the external negotiating power given by a mature regional group, but the corresponding advantage of not needing to seek group agreement over all issues. It is unrealistic to require a simple structure or even a tidy or logical relationship with the multilateral system. To do so would be to put "managing" the structure of the system ahead of development or welfare as an objective. "Messy" solutions are invariably found at national levels (as they are in the EU). But it is not wrong to seek to make any solution as simple as possible, for the sake of those not involved: for countries excluded from the region, in the case of the regions which do exist; for participants who are excluded because they are economic agents, not countries, in the case of all institutions.

It may be not only the international system, but national systems and analysis of political actors which need to be adapted. In a more regulated and organised international system, it may be possible to accept actors with different obligations to the world system and to other countries or regions. The simple structure of a world of countries is too new to be regarded as immutable. Regions may be a return to the more irregular structure of the past. The emergence of new arrangements of partial autonomy within countries would be the counterpart of the partial unification represented by regions. Is this reconcilable with the criterion of "identity": can this hold simultaneously for different levels, of sub-country region, country, region, the world? Clearly it can, because it already exists at different levels within a country, not only geographic, but of interest groups or other social groupings.

Abstracts

Die WTO ist für die Regulierung der Regionen verantwortlich, da diese eine Ausnahme vom nichtdiskriminierenden Prinzip der Meistbegünstigung darstellen. Diese Aufgabe wird durch parallele Systeme positiver Diskriminierung zugunsten von Entwicklungsländern verkompliziert. Die Aufsicht der WTO war schwach und erstreckt sich weiterhin nicht auf zunehmend wichtige Arten der Diskriminierung außerhalb des konventionellen Bereichs der Zölle. Obwohl die Zahl der Regionen und deren potentielle Bedrohung des multilateralen Systems klein bleibt, besteht ein ungelöster Konflikt zwischen dem Wunsch nach einem einfachen, internationalen System und der Unvermeidbarkeit sich ändernder Ländergruppierungen mit wirtschaftlichen und anderen Verbindungen. Die regulatorischen Instrumente der WTO müssen ausgeweitet werden, um neue Bereiche abzudecken, sowie flexibler gestaltet werden, um der Vielfältigkeit regionaler Gruppierungen Rechnung zu tragen.

The WTO has the responsibility for regulating regions, because they are an exception to the non-discriminatory MFN principle. The task has been complicated by parallel systems of discrimination in favour of developing countries. WTO supervision has been weak and continues to exclude some increasingly important types of discrimination outside the conventional area of tariffs. Although the number of regions and their potential threat to the multilateral system remain small, there is an unresolved conflict between the desirability of a simple international system and the inevitability of shifting groups of countries, with economic and other linkages. The regulatory instruments of the WTO need to be both broadened, to cover new areas, and made more flexible, to recognise the complexity of regional groups.

Notes

1 "If agricultural restrictions are prohibitive, then agricultural trade is by definition not substantial" (Sampson 1996: 90). Although writing unofficially Sampson was a WTO official.
2 The WTO review of Mexico (WTO 1997a: xvii) included a recommendation that "there is scope for Mexico to bring together its regional and multilateral efforts for example, by binding its regional commitments under the WTO; this would also confirm internationally

the major shift that Mexico has made, over several years, away from its earlier protectionist policies". It is not clear what this means. The individual regions of which it is a member are notified and may be approved by the WTO, but this does not constitute binding in the sense that MFN tariffs are bound. The WTO has not found a way of "binding" the extra commitments for least developed countries which have been negotiated under its auspices in 1997. The idea that the WTO should require an overall enforcement function for regions seems difficult to implement, given the different procedures and rules of the groups.

3 This includes EU, MERCOSUR (including Bolivia and Chile), CARICOM, Andean, CACM, NAFTA, G3, and ANZCERTA, ASEAN including Singapore, SAARC and SADC. Assertions that "virtually every WTO member belongs to at least one regional economic grouping" (WTO 1997b) are meaningless because they include organisations without content like APEC.

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Die WTO und Afrika: Von der Subsistenz zum Global Player – wie funktioniert das?

Von den 132 Mitgliedern der Welthandelsorganisation (World Trade Organization, WTO) sind 39 afrikanische Staaten[1]. Länder wie Äthiopien oder der Sudan haben Beobachterstatus und wollen über kurz oder lang Mitglied werden. Als der fünfzigste Geburtstag des GATT und die Gründung der WTO im Mai 1998 in Genf gefeiert wurde, waren die Ansprachen der Staatschefs, auch derer aus Entwicklungsländern und der Least Developed Countries (LLDCs), von hoffnungsvollem Optimismus gekennzeichnet, daß das Regelwerk der WTO den Handel mit ihren Ländern intensivieren und so den Wohlstand mehren würde. Nelson Mandela aus Südafrika begrüßte die WTO als effektiveres Regelwerk, als Überwachungsinstanz des internationalen Handels und als Organisation, die Welthandel und Direktinvestitionen ankurbeln werde. Er sah die WTO zwar vor allem nach den Bedürfnissen der Industrieländer geformt *(„... it was mainly the preoccupations and problems of the advanced industrial economies that shaped the agreement"*, Mandela 1998: 3) und monierte, daß die Teile des Vertrages, die sich mit Entwicklungsländern befassen, nicht ähnlich gut durchdacht seien. Aber der Optimismus überwiegt: mit der WTO soll Unterentwicklung bekämpft und überwunden werden *(„... as we enter the new millennium, let us forge a partnership for development through trade and investment"*, ebd.: 5). Sein Kollege Daniel Kablan Duncan, Premierminister der Elfenbeinküste, äußerte sich ebenfalls voller Optimismus, daß Handelsliberalisierung, eine liberale Wirtschaftspolitik und die Senkung von Zöllen eine stärkere regionale Integration der Länder Afrikas südlich der Sahara bewirken werden – ein Präludium zu stärkerer Teilnahme der afrikanischen Länder am multilateralen Handelssystem. Beeindruckt von den Schätzungen über die Zunahme des globalen Einkommens durch Freihandel stellt er jedoch fest, daß Afrika daran keinen gerechten Anteil hatte. Im Gegenteil: Afrikas Anteil am Welthandel ging stetig zurück. Dennoch überwiegt die Hoffnung: „... will strengthen still further our faith in the globalisization of the trading system as a factor for progress and solidarity among nations on the eve of the third millennium" (WTO 1998b: 3).

Offenbar teilen afrikanische Politiker die Auffassung der WTO selbst und des Mainstreams der Ökonomen, Freihandel nütze allen, offene Ökonomien wüchsen schneller als geschlossene und durch die Mitgliedschaft in der WTO könnten Entwicklungsprobleme in Afrika, insbesondere südlich der Sahara, schneller überwunden werden. Kritisiert wird diese Auffassung von einer Minderheit von Ökonomen und von – i.d.R. europäischen oder amerikanischen – Nichtregierungsorganisationen, teilweise mit der Begründung, nicht-reziproke Handelsbe-