

Saving Multilateralism in a higgledy-piggledy Trading System

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Abstract

Whether international economic integration arrangements result in a more liberal trade at the multilateral level cannot be proven with ease. Integration may start this process, but it may also reverse it. New mega-integration deals such as the Trans-Pacific Partnership, Regional Comprehensive Economic Partnership and Transatlantic Trade and Investment Partnership are under negotiation. The American policy of creating trade rules for decades to come without the involvement of China in rulemaking may backfire. If China faces a choice of capitulation or exclusion, it may create a parallel trade and payments system. The World Trade Organization still has important assets: to convene meetings and to settle trade disputes. If the World Trade Organization transforms its role from trade liberalisation forum into an institution which supervises and administers international trade rules and obligations, this may be a realistic development given the

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Doha Round agony and the meagre final result in Bali (2013).

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I. Introduction

The basic neoclassical theoretical argument in favour of trade liberalisation is that it improves the allocation of resources both at home and among partner countries. As such, it contributes to efficiency in production and to economic growth. Various damaging events such as the tsunamis in Indonesia (2004) and Japan (2011) confirmed the damage inflicted on their economies as well as on their trading partners. The current production, supply and trade structure is so intertwined both regionally and internationally that a minor bump in the supply chain may have exponential negative effects worldwide. Hence, an appropriate degree of openness for trade and investment may be always necessary.

In order to introduce and enforce the principle of multilateral trade liberalisation, the founders of the General Agreement on Tariffs and Trade (GATT) of 1947 introduced the Most Favoured Nation (MFN) concept. According to Article I, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties. The consequence is that if a country opens up its market to another country, it must also open it to all other GATT member countries. This encourages movement towards free trade. At the same time, this discourages countries from imposing protectionist measures and moving away from free trade seeing as other countries may be authorised to retaliate.¹

The MFN treatment was supposed to both prevent the return of mercantilist trade policies (prevalent in the 1930s) and to introduce order in, and the expansion of, the

¹ Carousel sanctions may be applied on a rotating basis to various goods. This rotating list of products open for retaliation enables a country to inflict damage, increase uncertainty and intensify pressure on the trading partner to change policy.

process of multilateral trade liberalisation. This is a victory of liberal international economic and legal vision over nationalism. However, it ought to be remembered that multilateralism is not an end in itself, but only a means to achieving an increase in welfare.

The basic principles of the GATT are:

- non-discrimination (MFN clause – Article I);
- national treatment (Article III);
- reciprocity (Article XXVIII);²
- transparent and foreseeable tariffs (Article X);
- the impartial settlement of disputes (Article XXVIII); and
- enforcement.

These principles were originally conceived to ameliorate international trade at the border for the small club of 23 founding (developed) member countries. At the time of the creation of the GATT, border measures were, perhaps, the most important protectionist instruments. As tariffs were reduced over time, grey-area measures (Non-Tariff and regulatory Barriers [NTBs]) expanded, and transformed protectionist techniques. Real protection does not take place at the border. It takes place within the domestic market, once goods and services cross the border. The Uruguay and Doha Rounds of trade negotiations were signs that the multilateral trading system was seeking ways and means to address these new challenges.

The GATT principles are especially important for small and weak trading countries. The principles protect them from the whimsical behaviour of big players. However, the whole system is in a sense hostage to the United States (US) because the Congress votes every five years on whether to disapprove the US membership in the World Trade Organization (WTO) (Charnovitz 2005, p. 181). The danger is that if the US leaves the WTO, this may prompt other important players to also leave.

Contemporary concerns about the global application of labour and environmental standards often have strong lobbies behind them (labour unions and the greens). The unions do not necessarily worry about workers in foreign countries, but rather the

² The developed market economies granted the developing countries an exemption from reciprocity. Although this might have been seen as a concession to the developing world, in some cases, indeed, this concession excluded developing countries from negotiations about certain trade issues. As these countries graduate in their development process, just as the newly industrialised Asian countries have done, there is an understandable demand for an exchange of concessions between the developing countries and the developed market economies. This has, in fact, taken place during the Uruguay Round.

protection of those at home. Hence such lobbies promote the global flattening of the economic landscape. Lipsey (2004, p. 12) argued that:

“it is policy imperialism to argue that the poor must accept the standards of environment and labour protection that the rich ones can now afford (but could not when they were poor).”

This article is structured as follows. Section II outlines issues linked with economic integration and the WTO. Section III questions the viability of the multilateral trading system and asks the question of whether it is falling apart. Section IV considers the issue of the possible narrowness of the WTO. Whether economic integration presents building or stumbling blocks on the way to multilateral free trade is discussed in Section V. Section VI sheds light on the emerging mega-trade deals which take place outside of the WTO. The concluding Section VII considers the potentially weakening attractiveness and importance of the WTO alongside with the creation of parallel trading systems.

II. World Trade Organization and Economic Integration

The WTO³ is the international organization that has the basic objective of negotiating, providing and securing market access. This intergovernmental organization provides a negotiation forum through which governments may obtain, exchange, secure and enforce deals that affect world trade. Its main institution, the General Council, includes representatives from all of its member countries. The WTO secretariat convenes, organises and services meetings. It also provides information, training, technical assistance, advises countries, monitors national trade policies, guards the institutional memory, eases negotiations and facilitates the resolution of dispute-settlement issues which is perceived as the WTO, crown jewel. The WTO is driven and controlled by its member countries. Corporate market-searching interests, especially from developed countries (the US and the European Union [EU]), exert strong influence over

³ The Uruguay Round deal established the WTO in 1995. The WTO is the only multilateral institution that can curb the operation of large trading blocs. It is an umbrella organization for the GATT, the General Agreement on Trade in Services (GATS) and the Agreement on Trade Related Intellectual Property Rights (TRIPS).

governments and negotiation processes.

Various rounds of trade negotiations under the auspices of the GATT have had an important impact on world trading arrangements. Negotiations, however, can last long. In addition, there is usually a transition period prior to the date when the new arrangements are definitively put into practice, so the impact of trade concessions that each round brings is felt only by the next generation.

Experience has demonstrated that real and substantial negotiations took place only among a select number of countries. Since the end of the Second World War, these negotiations have mainly been done by the US and the EU. Japan appeared as the third major negotiator in the late 1960s, when its industrial base and trading relations permitted it to play a more active international role. However, the basic negotiations still took place between the EU and the US. A number of developing countries (colonies at that time) showed little interest in negotiations. They were free riding since the MFN clause extended to them all of the concessions that were exchanged among the three major players. This has changed since the 1990s. There is now an increasing influence on multilateral trade negotiations emerging from developing countries such as Brazil, China, India, South Africa, Turkey, and Indonesia. In fact, the future openness of the developed economies' markets for trade, Foreign Direct Investment (FDI) and labour mobility will increasingly depend on similar concessions being offered by the developing countries.

The international trading system had eight rounds of tariff negotiations as outlined in Table 1. The Dillon Round of trade negotiations brought a relatively modest reduction of tariffs. A more significant step took place during the Kennedy Round when tariffs on manufactured goods were reduced on average by 35%. Following on from the earlier round, which reduced excessive protectionism, this one cut protectionism even deeper. It provoked serious structural adjustment in developed world economies as they opened up to foreign competition. During this round, the US wanted to include trade in farm goods in negotiations, as at that time a fifth of US exports into the EU were agricultural goods. The EU proved its bargaining power, as it resisted those pressures and protected its Common Agricultural Policy (CAP). The Tokyo Round reduced tariffs on manufactured goods by a third on average. The inclusion of farm goods and NTBs into negotiations was a big success. Nonetheless, the outcomes of the round in these new areas remained slim.

Table 1. GATT/WTO rounds of trade negotiations

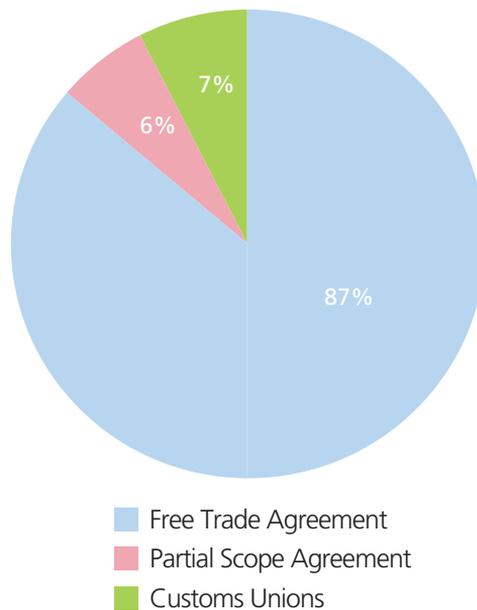
Round	Year	Participating countries	Subject
Geneva	1947	23	Tariffs on manufactured goods
Annecy	1949	13	Tariffs on manufactured goods
Torquay	1950~1951	38	Tariffs on manufactured goods
Dillon	1959~1962	26	Tariffs on manufactured goods
Kennedy	1963~1967	62	Tariffs, on manufactured goods, antidumping
Tokyo	1973~1979	102	Tariffs, on manufactured goods, NTBs
Uruguay	1986~1994	125	Tariffs, on manufactured goods, NTBs, services, intellectual property, textiles, agriculture, dispute settlement, creation of WTO
Doha	2001~2013	159	Initial negotiating subjects included: agriculture, services, intellectual property rights, trade and investment, competition rules, public procurement, electronic commerce, environment. The final deal referred to trade facilitation.

It is widely accepted that the Dillon, Kennedy and Tokyo rounds of trade negotiations were attempts by the US and other developed market economies to reduce the discriminating effect that came from the creation and enlargement of the EU. Theory predicted that a customs union increases its clout in dealings with the outside world. The outcome of these rounds was that the average tariff decreased from 11% at the time of the introduction of the Common External Tariff (CET) in the EU to 7.5% after the completion of the Tokyo Round reductions (Yannopoulos 1988, p. 26~27). One could have argued that the pace of multilateral trade liberalisation during the 1960s and beyond, as well as the extension of GATT/WTO coverage of new areas such as services, agriculture and NTBs, would have been delayed without European integration. Hence, European integration provided a favourable environment for the general multilateral liberalisation of trade.

The US was the principal moving spirit behind all eight rounds of trade liberalisation negotiations. The incentive has always been a certain trade-related problem that had to be

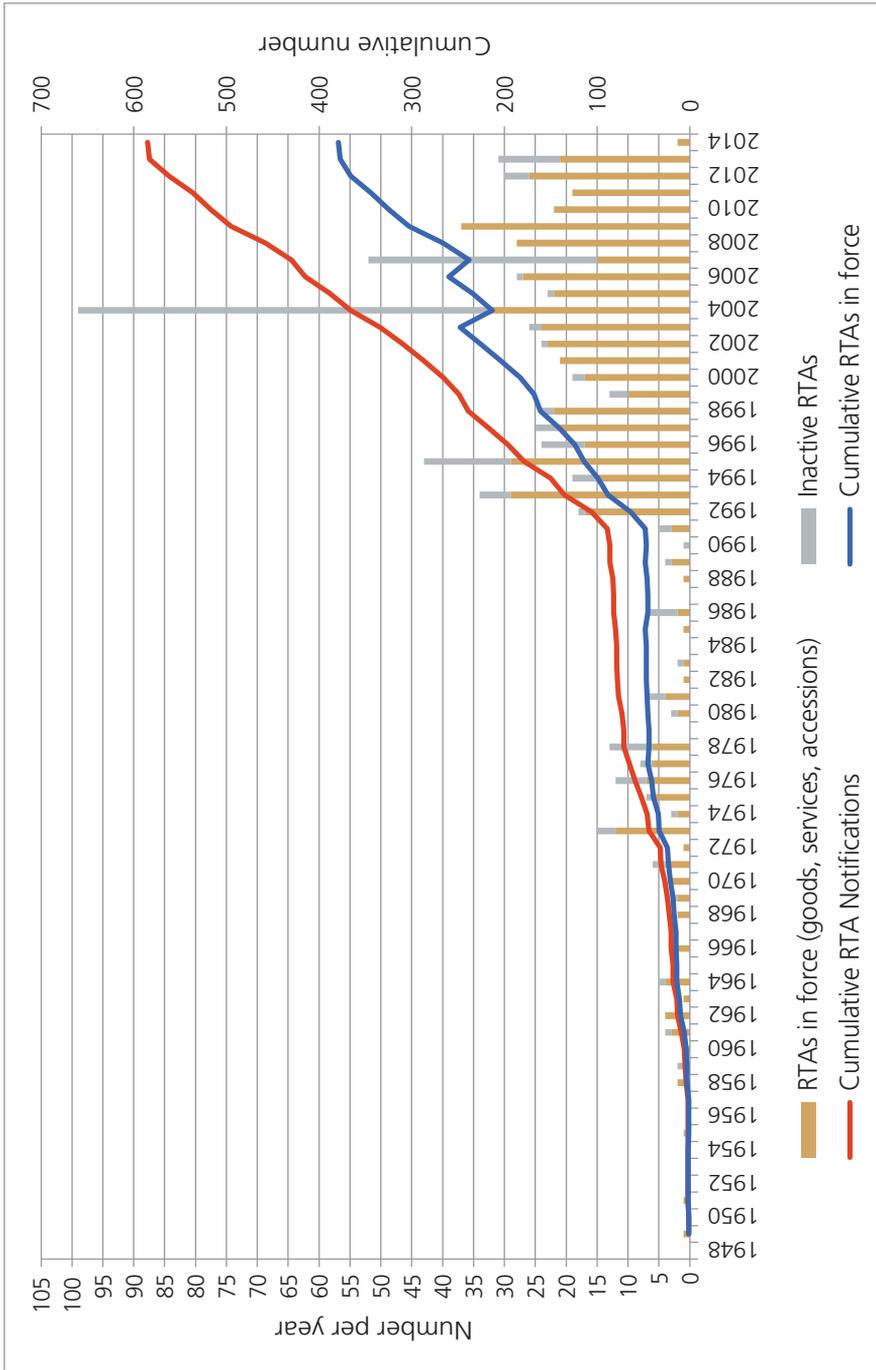
addressed and, eventually, solved. Key issues included European integration, the creation of the CAP, EU enlargements, subsidies (Domestic International Sales Corporation in the US), intellectual property rights, CO₂ intensive goods, economic nationalism and buy domestic campaigns. The principal negotiators were the US, Europe and Japan. Hence, the GATT was a kind of a trade-related peace treaty between the US and the EU. While these countries are still the major negotiators, deals between them are necessary but not sufficient for the successful end of the round. Other players, especially Brazil and some Asian countries, have played a significant role in recent negotiations.

Figure 1. Notified regional trade agreements in force (2014)



(Source) WTO (2014).

Figure 2. Regional trade agreements by year of entry in force



(Source) WTO (2014).

Figure 1 shows that almost nine tenths of preferential trading areas are free trade areas while the rest is distributed between customs unions and partial scope agreements. The domination of free trade areas is understandable because it is easier to negotiate such deals. They do not ask for a unification of trade policy as is the case in customs unions. There were 585 notified trade agreements to the GATT/WTO in 2014. Of those, 379 were in force.⁴ These include notifications under GATT Article XXIV, GATS Article V, accession to the existing agreements, as well as the Enabling Clause.

The most prolific period regarding notifications of preferential trade agreements started after the establishment of the WTO in 1995 and, especially, after the launch of the Doha Round in 2001 (Figure 2).⁵ This raises an important issue: what is the relation between the multilateral trading system and these preferential deals? Are they in conflict or not? Are countries losing confidence and interest in the multilateral trading system?

In spite of the booming number of various integration deals throughout the world, Pomfret (2007) thinks that the perception that multilateral system is in jeopardy is an illusion. Few of the integration deals have a notable impact on the global trading system. Integration arrangements foundered throughout the developing world because policymakers rejected bearing the cost of trade diversion. If one excludes the EU from considerations, then there is relatively little discrimination in trade due to regional integration deals. The number of integration deals is not the measure of their real impact as the vast majority of those deals are ineffective. In addition, certain integration arrangements are not offered to advance trade. The US offers such deals to Latin American countries (Colombia) to further non-trade goals such as the war on drugs.

Big countries and groups such as the US, Russia and the EU may break coalitions in the developing world by offering bilateral trade deals. Bilateral or regional deals may divert attention from the multilateral path. However, the US entered into free trade deals with Israel, Canada and Mexico during the Uruguay Round (1986~1994) without reducing its commitment to the final multilateral deal. Similarly, the US entered into free trade arrangements with Chile and Singapore in 2004 during the Doha Round.⁶

⁴ Information on the integration arrangements is available from the WTO at http://www.wto.org/english/tratop_e/region_e/region_e.htm (accessed on 28 June 2014).

⁵ A sharp fall in the number of active deals took place in 2004 and 2007 when the EU enlarged. The previous preferential trade deals between the new EU member countries ended as these countries joined the EU.

⁶ The US has active bilateral free trade agreements with Australia, Bahrain, Chile, Colombia, Israel, Jordan, Korea, Morocco, Oman, Panama, Peru and Singapore. The American multilateral free trade agreements include the North American Free-Trade Agreement and the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR). <http://www.export.gov/fta/> (accessed on 28 June 2014).

III. What Makes the Multilateral Trading System Uncertain?

Despite declared official interest in the success of the Doha Round (planned for 2001~2005) of multilateral negotiations under the auspices of the WTO, there is considerable uncertainty regarding the future and relevance of the multilateral trading system. These problems are embodied by obvious, serious and repeated troublesome instances (Seattle in 1999 and Cancun in 2003)⁷ within the Doha Round of multilateral trade liberalisation negotiations. This is all compounded by the ambiguous, even acrimonious, attitudes of many negotiators from both the developed and the developing world concerning the real success of the Doha Round.⁸

The US wanted a big reduction in the remaining tariff barriers, while others wanted a cut in lavish domestic farm subsidies in the US. Negotiations were suspended in July 2005, one of the darkest moments in WTO history. There were fears that the WTO may transform into an ineffective international organization such as the United Nations Conference on Trade and Development (UNCTAD).

By starting the Doha Round in 2001, governments have declared their willingness to negotiate a more liberal multilateral trade regime which would set trade in such a way that it would serve for the development of all member countries. But this is only a declaration. The reality is that the EU already has some thirty free trade and special customs agreements (more are in the pipeline). The US has free trade deals with Canada, Mexico, Israel and a select group of countries, while there is a long list of candidates and potential candidates for such deals (mainly, but not exclusively on the US side, for political reasons) throughout the world. If, however, the Doha Round would not be able to handle new issues satisfactorily, it seemed possible that the regional trade organizations and various bilateral deals may take their own, potentially uncoordinated, path. A big problem at stake was related to the question of how to save the WTO from the Doha Round in order to avoid the creation of a parallel international trading system.

Economic cycles that are not in step between countries or regions may continue to provoke tensions in trade. A global institution such as the WTO may not always be able to solve this problem. Regional institutions may be better able to synchronise economic

⁷ Another failure could potentially make the WTO a marginal international institution

⁸ The interim agreement reached in Geneva in 2004 committed WTO member countries to continue negotiations on the further multilateral liberalisation of trade. The bases for talks include issues such as eliminating almost all farm-export subsidies given by developed countries, the need for developing countries to cut their tariffs on import and to make customs clearance procedures simpler and easier.

cycles within their confines. However, for the WTO to survive, it is equally important to persuade the US that it would get something more from the WTO than a bigger trade deficit.

It is convenient and common to blame foreigners during turbulent economic times. An often considered first reaction is to introduce trade restrictions. Policymakers may take a wrong-headed approach and regard trade as a zero- or even a negative-sum game. When many participants look at trade in this way, they feel no necessity to back down. This was one of the policy methods for handling the economic troubles which culminated in the Great Depression during the 1930s. The vital role of the WTO is to prevent this from happening again. Domestic support for new trade liberalisation throughout the world is rather weak. The general perception is that it benefits big businesses and investors, rather than domestic workers. Considerations are shaped by worries about labour and restructuring-related costs in domestic firms because of strong import competition coming from Asia – especially China – rather than the opportunities that this provides.

In the meantime, economic integration deals are proliferating worldwide. Compared with a clean and lean multilateral trading system and rules that benefit especially small and poor countries, the existing trading system creates and maintains a complex labyrinth of international trading rules and relations which complicate production (rules of origin), supply chains and logistics, as well as increase costs.

There is a list of many causes for the difficulties and stalemate in the Doha Round. They include the following:

- The WTO has too many member countries. They all have different interests, levels of development and share of international trade. Many of them actively participate in negotiations and horse-trading. Next to the US, EU, Japan and Australia as the old negotiators, there are Brazil, China, India, South Africa, Nigeria and Indonesia as prominent new and powerful negotiators. It is hard to accommodate all of their interests and to find a formula for compromise.
- The WTO operates based on unanimity. While in the past it was workable, but not with ease, to find compromise between the EU, Japan and the US, it is hard to reach consensus when there are too many participants or groups of participants with clashing interests.
- An impressive increase in the number and spread of preferential trade and regional integration agreements. This may be, potentially, a reaction to the deadlock in the

Doha Round negotiations.

- The multilateral system was rather successful in the trade liberalisation of non-agricultural goods. Concessions in this area are almost exhausted. Negotiations in other areas such as agriculture, services and intellectual property rights (deals regarding rules and core sovereignty) are much more complex and difficult. Agriculture is a tricky area as the Doha Round tried to address the issues of 1990s, when food and commodity prices were relatively low. These prices increased and became volatile, especially in 2008 and 2011. Unilateral export bans, production of biofuels and anxiety about the security of supply became policy leitmotifs. Self-sufficiency in food supply became the political rallying currency in many developing countries (e.g., India).
- New protection devices, such as enforceable labour and environment standards, drive a wedge between the negotiating parties.
- Services are economic activities related to the performance of agreed tasks. Negotiations over their liberalisation concern changes rules. Reasons for the lack of vigour in services include changes in technology. More and more services can be fragmented and performed elsewhere. This was not possible before. Services were non-tradable and regarded as natural monopolies. As services are often intimately linked with the production of manufactured goods, the fragmentation of services influenced the spatial location of manufacturing. As such, competition functions changed for many firms through FDI and outsourcing.

Services have always been highly regulated. They have been, in general, more regulated than manufacturing. Bargaining in service industries is harder than in the manufacturing industries. The calculation of gains and losses as well as their distribution is harder, hence it is an uphill task to sell the deal to the stakeholders. This is compounded by the inertia of the domestic regulators who may fear that they could lose their privilege and respect. This is important both in developing and developed countries. The former may have comparatively weak capacities for handling open markets, while the latter fear an inflow of immigrants under the guise of freedom to provide services.

The GATS covers a vast range of services, all but the ones supplied in exercise of government authority. They range from health, childcare and education to retailing and telecommunication, to beauty parlours and shoe repair. The GATS exerts serious pressure and interferes in vital public services (education, health, water supply or electricity) that were not previously provided through the market. International commercial interests

are at an advantage over the social and public interests of each country. All government actions may be subject to inspection and potential challenge under the GATS. This is chilling because of the hazards of leaving the ambitious commercial ministers, and the corporate lobbyists driving them on, unchecked by broader public scrutiny and debate (Sinclair 2003, p. 354). Too much importance and influence was given to foreign commercial interests in services. The GATS puts limitations on the abilities of domestic governments to handle domestic public services (expansion, restoration or renovation), even if some of them are necessary and in the interests of the country. For instance, the domestic government may structure education in order to have its young citizens conscious of domestic history (sometimes so as to not repeat it) and embedded values, contrary to the global educational machines which raise denationalised people who may at the end of the day not be able to fluently speak the national language or use the national alphabet.

The general idea of rather liberal international trade under the auspices of the WTO is still bigger than the Doha Round. A decade of negotiations on complicated and sensitive international trade issues went into and stayed in very deep waters. If there is no agreement under the Doha Round, the WTO shall still continue with its functions:

- monitoring commitments of the member states,
- settling trade-related disputes, and
- assisting developing countries in their trade policies.

A failure of the Doha Round would weaken the trade-law-making functions of the WTO. Updates to this law would be absent. This would weaken the multilateral rules-based trading system. A gap in the negotiations on non-agricultural market access among the negotiating countries (eliminating or deeply cutting tariffs across the board on entire industrial sectors) was among the biggest impediments to the Doha Round agreement. The US insisted on this as agreement on the issue would set the trade scene with Brazil, China, India and others for decades to come. There were also serious differences regarding trade in farm goods and services. The developing countries were concerned that the developed ones had ambitions in services that were in excess of their concessions to developing countries in agriculture.

Other reasons also contributed to the Doha Round agony. They include the increased number of countries that are in the WTO, as many of them may have diverging interests and priorities; changed global economic circumstances (global financial crises); the

negotiations agenda being a decade old and not reflecting the actual situation; and a lack of enthusiasm for liberalisation from the start of the talks (retreat from multilateralism). To abandon the Round and start from scratch would not solve much, as over a decade of work would be thrown away, while the same problems would remain. Leaving the problems aside in the hope that they would disappear on their own would provide countries with the incentive to search for more replies outside of the multilateral WTO. Faith in the multilateral system would wane.

A shining success (perhaps the only low-hanging fruit) in the Doha Round negotiations was the agreement on trade facilitation. It provided grounds for a faster, simpler and easier movement of goods through customs which contributes to the smooth operation of global supply chains. It also included a differential treatment of countries, especially the least developed ones, regarding the capacity to implement the deal. The developed countries are obliged to technically and financially assist the other parties to improve their trade-related infrastructure. Countries are obliged to publish and keep updated customs procedures; tariffs, fees and charges; trade-transparency measures; and trade restrictions. The developed countries accepted obligations to assist in these trade-facilitation matters.

If Plan A (a multilateral Doha Round deal) cannot be reached, what was Plan B? Was the Lite package (Plan B) to pick up the low-hanging fruit in the form of a few settled pieces, conclude a thin version of the deal and leave the conflict-ridden issues (final cut in manufactured goods tariffs, services and agriculture) aside? Would a lost trust be re-established if the developing countries, especially Brazil, China, India and South Africa, get something new to bargain for? In any case, the introduction of new negotiating issues would prolong the talks for years.

Since the global credit crunch crisis (2007~2009), globalisation has been in retreat. James Carrick had this to say regarding this pause in globalisation:

“Since 2006, the ratio of global imports to production has moved sideways. In other words, a product bought today is using the same proportion of domestic and foreign components as a product bought six years ago. This is in sharp contrast to the prior two decades of globalisation, when more and more of the goods we bought were made overseas.”⁹

⁹ L. Elliott, ‘Bali talks are make or break for World Trade Organisation’, *The Guardian*, 1 December 2013.

Why is that so? First comes the recession that followed the financial crisis. Almost all countries became watchful and somehow inward looking. Big waves of buy domestic campaigns were the norm. Trade walls have been going up in the US, France,... Then came an increase in energy prices. Costs of transport increased and made the re-shoring of select manufacturing an attractive business option. Third, economic progress and wealth creation in China generated an increase in wages. Even though labour costs are still lower than in the US, they are not as low as they were a decade ago. Finally, Russia is building its own economic area.

The Doha Round deal was concluded in Bali in 2013 after 12 long and bumpy years of negotiations. The WTO avoided calamity and delivered a trade deal for the first time since its creation in 1995. This first deal was seriously needed as the multilateral trade rules were badly out of date. They did not encompass the international production and supply chains (this alters the interpretation of trade data as most of trade takes place within the same firm, which is often trade in tasks and services) and the reorganization of firms and electronic commerce; hence the capacity and credibility of the WTO was at stake.

Praise from the politicians about great achievements in the Doha deal could not sugar-coat the fact that from the ambitious and all-encompassing Doha Development Round agenda (too many contentious and complex issues) only a tiny portion was agreed. A rather slim final deal which basically covered trade facilitation and market opening measures (cuts in red tape at the border) may add up to much less than was expected.¹⁰ Upon the request made by the developing countries to have capacity-building included in the programme, the World Bank and the Organization for Economic Co-operation and Development (OECD) promised to fund infrastructure and train customs officials. Tit-for-tat negotiations were too long and obscure. The developed countries did not open their market for cotton from the developing world and India was allowed to stockpile grain and sell it at subsidised prices to its poor citizens for four years until a permanent solution could be agreed (the fear at the WTO was that these stocks may be used to flood the world market). The demise of the WTO as a multilateral negotiating forum and dealmaker was temporarily set aside.

¹⁰ Estimates were that the Doha deal would reduce trade costs by 10–15% and lift over time the global output by 1 trillion US dollars (S. Donnand and N. Dua, 'Business salutes trade deal as WTO delivers', *Financial Times*, 9 December 2013). It is widely accepted that the customs procedures and infrastructure have a low efficiency in the developing countries. That increases trade costs. 'Cutting customs red tape could raise annual global output by 400 billion US dollars, with much of the gain flowing to developing economies' (*The Economist*, 'Life after Doha', 14 December 2013). Such developments (single-window customs clearance, unified electronic documents, inspections,...) would not only permit the developing countries to be involved in the global supply chains, but also enhance the capacity to trade.

IV. The Post-Doha Fair Trade away from Apathy

The WTO may drift silently into irrelevance, while trading issues are settled bilaterally or regionally where the big and mighty have an upper hand.¹¹ Such deals fragment and may corrode international trade based on multilateral deals. A patchwork of bilateral or regional trade deals give free rein to special interests and often work more to complicate rather than to liberate trade. This is a paradise for lawyers, consultants and those who fish in muddy waters. There will be a lot of work for them, but this would not create much additional trade. A certain order and international institution which handles international trade is necessary, especially for the small and weak countries, in order to avoid chaos and oppression by the mighty. A new post-Doha WTO ought to have a more elastic and faster negotiation design. In addition, it may need a much more open process for the resolution of trade-related cases, which needs to include public hearings to increase the legitimacy of the process.¹²

One ought to keep in mind the post-Doha context:

- If the Doha Round fails, this may provide shaky ground for the multilateral trade system based on globally agreed rules and laws. Some countries might even leave the WTO and resort to bilateral preferential trade deals as an acceptable replacement currency for multilateralism. The Uruguay Round Agreement Act (1994) passed by the US Congress requests Congress to vote every five years on whether or not to keep the US as a WTO member. In a sense, this continuously keeps the whole WTO system in a kind of a hostage situation because of the large volume of US international trade.
- There is a kind of frustration with the WTO in the US. Regarding disputes in trade, the WTO Dispute Settlement Body often ruled against the US. The intellectual

¹¹ What is the chance of the Cayman Islands coercing the US Congress to rewrite company tax law in a bilateral trade deal? Or what in similar bilateral circumstances can any African cotton-producing state do to influence cotton-production subsidies in the US? The WTO dispute settlement system, no matter how controversial it may be, has two important properties. First, these are enforceable rulings and, second, small and/or poor countries have the possibility of taking on the mighty ones.

¹² WTO panels comprise three from a roster of part-time panellists that includes trade officials, diplomats and academics. Some, oddly, are moonlighting from day jobs as national ambassadors to the WTO, meaning they are negotiating over trade deals one day and ruling on their meaning the next. They do not have to be lawyers, though there is a separate appellate body whose members must have legal expertise. Panels rely heavily on advice from the WTO's small secretariat to interpret legal questions. It is hard completely to dismiss the contention that law affecting thousands of businesses, millions of workers and billions of dollars is being determined by panels of part-time amateurs making it up as they go along' (A. Beattie, 'From a trickle to a flood – how lawsuits are coming to dictate the terms of trade', *Financial Times*, 10 March 2007).

mood in the US also changed against multilateralism and globalisation, especially on the left (Democrats). In bilateral preferential trade deals, the US may set its own trade terms with ease (the country is a big and important trade partner to smaller ones), while this is much harder in the multilateral arrangements that are based on wide compromises.

- A new set of preferential trade deals offered by the EU and the US contain provisions that goes beyond the WTO set of rules and obligations. The two powerful trade hubs export their home regulation to their trading partners (Horn, Mavroidis, and Sapir 2010). Some of the new provisions go beyond those that are within the WTO mandate (WTO+) i.e., they are accepted multilaterally. These refer to reductions in tariffs, state aid, technical barriers to trade, public procurement or GATS. Others refer to the areas that are outside of the WTO terms of reference i.e., WTO-extra (WTO-X).¹³ Small, poor and/or weak countries are forced to accept provisions that would not be acceptable if countries had a similar bargaining power.
- Such a bilateral approach weakens the commitment of big and powerful states to the multilateral system of trade. Multilateralism may provide other (small) countries with a fair trade safety belt.
- The US pursues a functionalist model: the selection of a few defined and enforceable commitments such as labour market regulation, data protection and anti-corruption. The EU opted for a legal inflation model (mostly WTO-X): many areas are included in the trade deal (education, human rights, political dialogue, culture, terrorism, illegal immigration, statistics), but few of them are legally enforceable. Weak legal enforcement conditions in EU external trade deals reflect a compromise (lack of consensus) among EU member countries. If the spoke trading partners are forced to accept such bilateral trade arrangements (even if few provisions are enforceable), this raises concerns about fair relations in trade and the reasonable sharing of gains.
- The Doha Round was difficult to start, it spent its life limping and it was even more difficult to bring it to an end. It was the longest negotiation round under the GATT/WTO. The biggest danger facing the post-Doha WTO is perhaps not stalemate, but rather political apathy and even indifference, as well as marginalisation of the WTO by the negotiating parties. Resorting to bilateral or regional deals may question the relevance of WTO dispute mechanisms, one of the WTO's crown jewels.

¹³ These refer to labour and social standards, human rights, visas, illegal immigration, terrorism, anti-corruption, money laundering, Small and Medium-sized Enterprises (SMEs), environmental laws, movement of capital, consumer protection, data protection, innovation policies or energy.

- While international trade has grown faster than income over the past decades, there are questions and doubts over the role and influence of the GATT/WTO in these developments. Could this be attributed to the GATT/WTO? But there are plenty of other candidates. Higher rates of productivity in tradables, falling transport costs, regional trade associations, converging tastes, shift from primary products towards manufacturing and services, growing international liquidity and changing endowments are all possibilities (Rose 2004, p. 112).

V. Building or Stumbling blocs?

It is feared that regional trading blocs may turn hostile and cause splintering or even a collapse in the liberal- and multilateral-minded world trading system because of various conflicts of interest, including pressure from the well-entrenched rent-seeking special national and regional lobbies. What if the simplicity of non-discriminatory multilateral trade continues to be replaced by complex bloc-specific internal rules of origin that are not in accord with the others? The WTO may be the forum to push for standardised and simple rules of origin not only across regional groups, but also on a multilateral basis.

An inevitable question has always been: are regional trading arrangements good or bad for world welfare? The answer to this question depends on the answer to a related question: is regional economic integration assisting (a building block) or damaging (a stumbling block) to the multilateral trading system? This is the consequence of the value judgements within the second-best world. Even though most of the international integration schemes in the past were on a rocky road (indeed, many of them turned ineffective or disappeared, particularly in the developing countries), in general terms they tended to increase trade and FDI, rather than restrict it. Hence, this may be taken at first sight to be an economically beneficial effect. In the case of the Canada-US Free Trade Agreement (1987), Lipsey and Smith (1989) argued that the deal was consistent both with the letter of GATT Article XXIV and with the original spirit of the founders of the multilateral trading system. This integration agreement was a step towards the liberalisation of trade, rather than a move towards the creation of Fortress North America.

While there is a general agreement about the advantages, value and importance of a

multilateral approach to international trade, there are differences in opinion regarding international trade liberalisation (integration) arrangements. Do they help or hinder the multilateral trading system under the auspices of the WTO? Are regional trade liberalisation agreements and integration effective substitutes for poorly operating multilateral trade liberalisation processes and institutions? In the 1990s, the issue was hotly debated amongst economists and policymakers.¹⁴ This comes as no surprise when we consider it as a second-best situation.

Proponents of integration argue that regional trade liberalisation arrangements and regional integration are steps towards universal free trade (building blocks). This is done in a number of ways:

- Growth and other favourable effects such as erosion of opposition to economic openness;
- Integration potentially playing the role of an incubator for firms to operate in a larger market without fully-blown global competition. Once they are used and successful in operating on the enlarged market, they are more open to wider spatial integration;
- Exporters may gain political clout and ask for more liberalisation because integration secures a wider market for their goods and services;
- Trade policies and barriers may be adapted faster to the wishes of participants in a cosy group of countries than can be achieved through the multilateral process;
- The impact of domestic monopolies on policymaking may be reduced in an integration group because of competition;
- The group may enhance its bargaining power with external partners or competitors;
- The group may enlarge, hence spreading liberal trade (at least initially within the group through the domino effect); and
- Certain points that are specific to the integrated group of countries may be non-discriminatory. Hence, these measures may generate gains for everyone.

Opponents disagree; they state that the spread of integration deals is not a sign of their virtues. These deals are stumbling blocks and they argue that:

¹⁴ For the select debate on whether regional arrangements are building or stumbling blocks on the road towards universal free trade, see Lipsey and Smith (1989, 2011), Krugman (1991, 1995), Bhagwati (1995, 2008), Snape (1996), Frenkel (1997), Bagwell and Staiger (1998), Bhagwati *et al.* (1998), Ethier (1998), Baldwin *et al.* (1999), Krueger (1999), Laird (1999), Panagariya (1999, 2000), McLaren (2002), Schiff and Winters (2003), Limão (2005, 2007), Esteveordal, Freund and Ornelas (2008) and Baldwin (2008). The answer to the dilemma is likely to be found in the middle ground between those two extreme positions.

- Integration hurts third countries through costly trade diversion;
- Preferential trading agreements are eating away at the multilateral trading system relentlessly and progressively (Bhagwati 2008, p. 12); Simple multilateral trade rules (tariffs, rules of origin) are replaced by a complex and overlapping labyrinth or spaghetti bowl¹⁵ of various rules specific to each group;
- There are regional industry-specific lobbies that demand and receive various types of protection in order to shift rents and distort location of production;
- These lobbies resist further trade liberalisation;
- Resources, time and energy are shifted from multilateral towards regional issues (crowding out the attentions of policymakers);
- There are administrative, operational and multiple enforcement costs (for example, a spaghetti bowl of origin rules) that increase production, transaction and overall trade costs through the tyranny of small differences;¹⁶
- Strong and exclusive regional trading blocs may exploit their monopoly power and improve their own terms of trade; they may clash and provoke trade wars;
- Deeper integration may introduce protection in previously unprotected business areas;
- Major players in multilateral trade liberalisation negotiations, the US and especially the EU, are bound to specific trade liberalisation (discrimination) agreements (the EU has never been too enthusiastic about overall free trade, the CAP being the prime example); and
- Regional trade arrangements may slow down and postpone progress on the multilateral plane as there are those who gain from the existence of deals that discriminate in trade who may not welcome the arrival of a new multilateral deal.

In spite of the hot debate and concerns among economists and politicians, hard empirical evidence about the effects of preferential trade on multilateral trade liberalisation remains rather lacking.

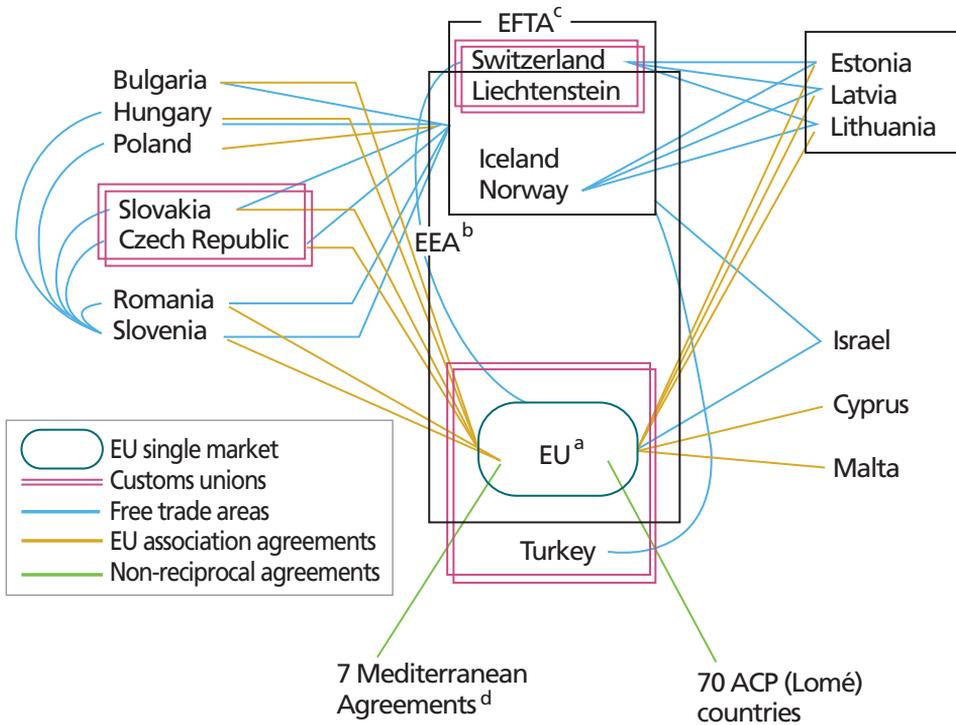
If regional integration obstructs MFN cuts in tariffs over time, this would be a sign that integration-related trade liberalisation and MFN tariffs are substitutes. Baldwin and Seghezza (2010, p. 295) claim “An examination of tariff-line data for a broad range of

¹⁵ Bhagwati (1995, p. 2).

¹⁶ The tyranny of small differences creates increased costs, wasteful duplication, headaches and annoyances to firms and consumers. Manufacturers are forced to make five or even ten versions of the same product in order to satisfy different rules of origin. This increases costs and reduces efficiency. For instance, cheese-flavoured popcorn must contain no more than 49% of real cheese in Canada, while the US standard is no less than 53% (C.D. Howe Institute, ‘Tyranny of small differences’, Press Release 21 March 2006).

nations finds exactly the opposite. ... the data show that MFN and Preferential Trade Agreements (PTA) tariffs are complements, not substitutes". Hence, regionalism does not necessarily harm the multilateral trading system.

Figure 3. Preferential trade agreements of the European Union 1996



(Notes) Does not include countries of the former Soviet Union other than the Baltic countries.

^a EU comprises Austria, Belgium, Denmark, Finland, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and United Kingdom.

^b European Economic Area.

^c European Free Trade Area.

^d Algeria, Egypt, Jordan, Lebanon, Morocco, Syria, Tunisia.

(Source) Snape (1996, p. 392).

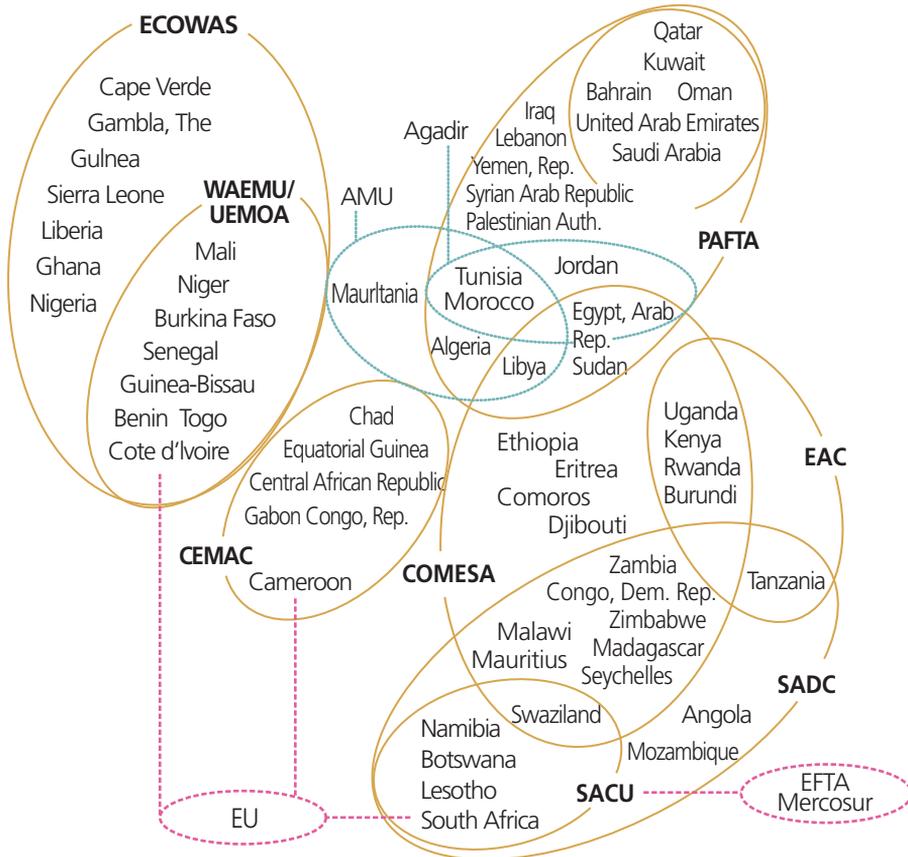
Figure 3 presents graphically the web of the EU's passion for trade liberalisation deals as it stood in 1996. The EU became a regional hub, while most of the other partners were the spokes. This spaghetti bowl of relations in trade was further seasoned with a formidable entry process of transition countries from Central and Eastern Europe

and deals with Mediterranean, Latin American and African, Caribbean and Pacific countries. The figure does not capture the fact that each deal has its own rules of origin. If this all looks complicated, difficult and confusing, that is because it is so. Therefore, such a complex, overlapping and even chaotic structure distorts investment decisions and allocation of resources. It may seem to be an unlikely vehicle for taking countries towards a simple non-discriminatory universal (multilateral) free trade system. As a result, the EU MFN trade regime applies to only nine WTO member countries¹⁷ which account for about 36% of its merchandise trade.

The EU is not the only contributor to this messy situation in international trade relations. The higgledy-piggledy bowl of trade deals exists throughout the globe. Just for a simplified illustration, Figures 4, 5 and 6, respectively, present a similar shambles in Africa and the Middle East, as well as in South Asia, East Asia and the Pacific region.

¹⁷ Australia, Canada, Chinese Taipei, China, Japan, Republic of Korea, New Zealand, Singapore and the US (WTO 2004, p. 22).

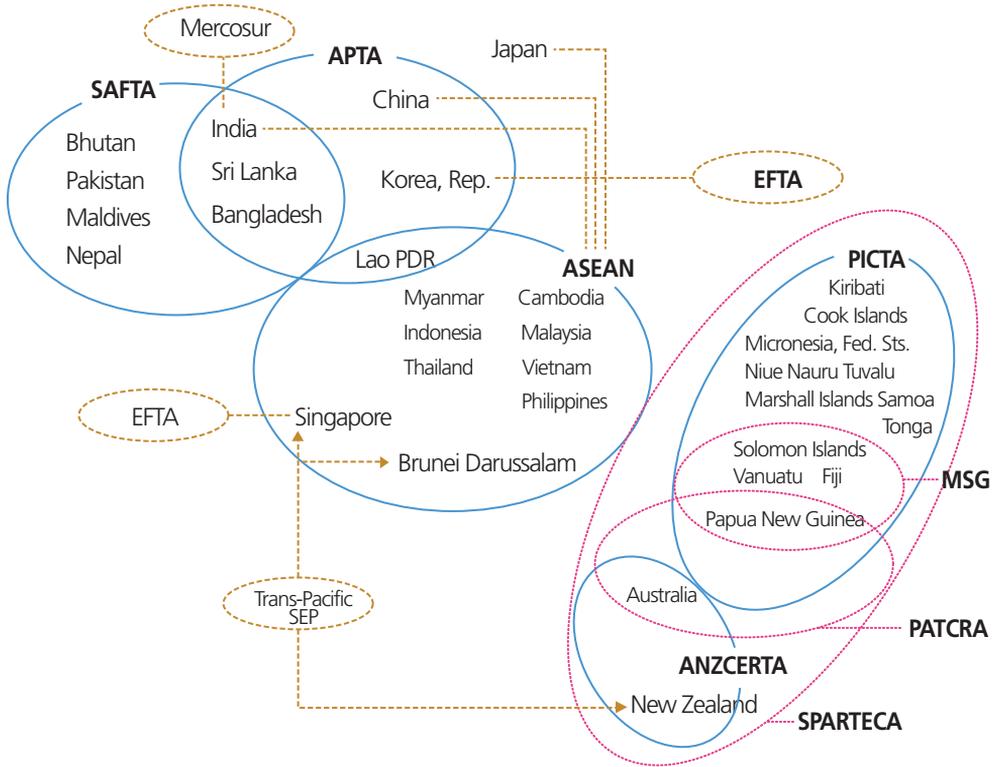
Figure 4. Network of plurilateral groupings in Africa and the Middle East



(Notes) Abbreviations are as follows: CEMAC: Central African Economic and Monetary community; COMESA: Common Market of Eastern and Southern Africa; ECOWAS: Economic Community of West African State, EAC: East African Community; GCC: Gulf Cooperation Council; SACU; Southern African Customs Unions; WAEMU/UEMOA: West African Economic and Monetary Union.

(Source) Chauffour *et al.* (2011, p. 54).

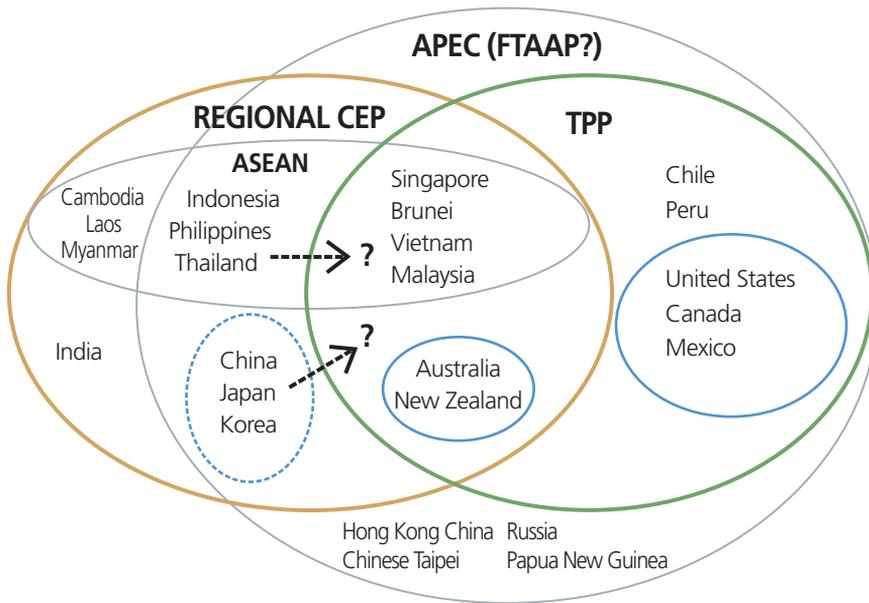
Figure 5. Network of plurilateral groupings in South Asia, East Asia and the Pacific.



(Notes) Abbreviations are as follows: ANZCERTA: Australia-New Zealand Closer Economic Relations and Trade Agreement; APTA: Asia-Pacific Trade Agreement ASEAN: Association of South-East Asian Nation; EFTA: European Free Trade Association; MSG : Melanesian Spearhead Group; PATCRA: Papua New Guinea-Australia Trade and Commercial Relations Agreement; PICTA: The Pacific Island Countries Trade Agreement; SAFTA: South Asian Free Trade Area.

(Source) Chauffour *et al.* (2011, p. 53).

Figure 6. Configuration of Asia-Pacific integration



(Notes) Abbreviations are as follows: APEC: Asia Pacific Economic Cooperation; FTAPP: Free Trade Area of the Asia-Pacific; RCEP: Regional Comprehensive Economic Partnership; TPP: Trans-Pacific Partnership. (Source) Scollay (2012, p. 33).

The EU has many preferential trade agreements with most developing countries that have been in operation for decades. However, the empirical literature supports the broad conclusion that trade preferences have had little beneficial impact beyond the obvious rent transfer accompanying duty-free entry of goods (Panagariya 2002, p. 1,426).

Preferences offered to one group of developing countries might have been to the detriment of others. These favours could have reduced domestic pressure for reform in the beneficiary countries. They felt fewer compelling reasons for reform (because of the secure foreign market) than was the case in countries that did not have preferential trade deals.

VI. Mega-Trade Deals and Corporate Power

The future relevance of and impact by the WTO or its drift into oblivion will be shaped and challenged by external events such as the three mega-trade deals that are soon to be realised: the Trans-Pacific Partnership (TPP), the Regional Comprehensive Economic Partnership (RCEP), and the Transatlantic Trade and Investment Partnership (TTIP). The new 21st century generation of trade deals are in making. Tariffs are already low, so the big (American-led) international trade wheels may be looking for real custom-made solutions to NTBs, standards (health, safety, and environment) and trade and investment issues outside of the WTO. The new mega arrangements deal with the closing of regulatory gaps and easing of the operation of global supply chains. What matters for the new generation of trade deals is not only selling products (as was the case in the past), but also the making of goods (supply chain) and services. Contrary to the situation during the 1950s and 1960s when goods were made entirely in the US, Germany or Japan, one may not easily demarcate the origin of goods, services, firms or capital now (these are all mongrels with a pedigree that cannot not be deciphered). This new competition-related development would be favourable if the newly created standards and regulations are not skewed by corporate lobbies.¹⁸

One such mega-trade deal is the TPP. The American intention is to sideline the WTO and to create a template for global trade deals for decades to come.¹⁹ This American trade template engineering would be without the involvement of China or the WTO. China is a globally dominant producer and trader. At the same time, China may be the natural heir of the US as the custodian of the liberal global trading system. It may be insidious and dangerous to exclude this important country from negotiations and trade rule-making for the coming decades. This would be like staging Hamlet without the prince.²⁰ If China wants to join the group later on, it would have to accept the deal and the standards and rules as they stand crafted outside of the WTO by the US (and a few select others). Instead of being the rule-maker, China would be forced to become a rule-taker, and to capitulate. This may backfire as China could create its own parallel trading and payments system with its big (Brazil, India and Russia) and small but growing partners (countries

¹⁸ Standards and regulations are often imperfect and they may increase the costs of operation for firms. However, those standards most often protect the environment, consumers (e.g., anti-smoking laws) and employees.

¹⁹ The TPP may be extended to cover all APEC countries.

²⁰ Other countries excluded from this process are Brazil, China and India.

in Asia, Africa and Latin America). A new China-sponsored development bank may rival the World Bank. If the Western objective is to open up fast growing markets in Asia, it may not be a good idea to exclude those countries from negotiations and rule-making. The global trading and financial system could experience a harmful split. The Americans excluded agriculture from the GATT, which backfired. Is a new mistake about to happen again?

There are hurdles in negotiations and uncertainty regarding the TPP deal. The new trade arrangement may be much less about trade (tariff protection has already been largely eliminated) and much more about other things such as patents (drugs), copyrights (movies) or environment (pollution). There are fears that the TPP would transfer excessive power to corporations. By doing so, democracy may be threatened.

Big corporate power may be the principal threat to democracy.²¹ For instance, US Senator Ron Wyden stated in 2012:

“The majority of Congress is being kept in the dark as to the substance of the TPP negotiations, while representatives of U.S. corporations—like Halliburton, Chevron, PHRMA, Comcast, and the Motion Picture Association of America—are being consulted and made privy to details of the agreement. ... More than two months after receiving the proper security credentials, my staff is still barred from viewing the details of the proposals that USTR [US Trade Representative] is advancing. We hear that the process by which TPP is being negotiated has been a model of transparency. I disagree with that statement. ... the representatives elected by the American people are afforded the same level of influence over our nation’s policies as the paid representatives of PHRMA, Halliburton and the Motion Picture Association.”²²

While hundreds of corporate officials have access to information and have certain influence over negotiations, the public and elected representatives are kept in the dark. Transnational Corporations (TNCs), for their part, argue that regulation is heavy and hardens business. These firms are right as they exist to make profit. Laws and regulations exist to protect consumers, workers, the environment and the social structure. Secret negotiations were strongly criticised from many sides, including by academics²³

²¹ ‘People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices’ (Smith 2005 [1776], p. 111).

²² Congressional Record-Senate, 23 May 2012, S3517-S3518.

²³ J. Stiglitz, ‘On the wrong side of globalization’, New York Times, 15 March 2014.

or Médecins Sans Frontières. In a democratic process, public regulation is normally sponsored by citizens' demands. If the law-making process is hijacked by corporations (the wealthy), why then do the authorities need elections, voters and citizens at all? Instead of elected representatives, corporations and the wealthiest may gain control over drug patents, movie rights, intellectual property, labour laws and the environment. What is good for TNCs and the wealthiest is not necessarily good for national economies and citizens. Secret negotiations by governments on the one hand and corporations and bankers on the other are not good social omens. Excessive corporate power may threaten the democratic process (as was the case with the big bailout of the banks during [2007~2009], with no democratic debate about the cost to taxpayers).²⁴ The purpose of the Sherman Act of 1890 was to prevent such excessive corporate influence in politics. Nonetheless, the TPP will be hard to conclude as Japan resolutely defends its domestic farmers, especially concerning the production of rice and beef. Paul Krugman wrote "So don't cry for TPP. If the big trade deal comes to nothing, as seems likely, it will be, well, no big deal."²⁵

Another mega-trade deal (again in the dynamic Asia-Pacific region), the RCEP is negotiated in parallel with the TPP. However, this pie in the sky is less ambitious than the TPP. The TPP seeks the elimination of all tariffs (including farm goods), the liberalisation of services and limits to the operation of state-owned businesses. The RCEP may exclude agricultural goods, and focus on trade and FDI.

Japan, as a big international trade fish, may have a temporary favourable position in negotiations both with the US and China. If the US demands too much from Japan in the TPP, Japan may turn more towards the RCEP and China. If China demands too much from Japan in the RCEP, Japan may turn towards the TPP and the US. Another twist in the RCEP is that it involves foot-dragging India, which may slow down negotiations.

The position of the Association of South-East Asian Nations (ASEAN) developing countries is somewhat unfavourable as they may be split between the pro-TPP camp and the pro-RCEP group. Some may have even multiple memberships. High standards in the TPP and few development-related considerations create tough conditions for these developing countries to join the TPP.

The third mega trade deal in making, the TTIP, may also be a hard sell. In the US, AFL-CIO stated in 2014:

²⁴ Another issue for studies is the impact of the military industry on decisions to go and stay in wars (Vietnam, Iraq, Afghanistan,...).

²⁵ P. Krugman, 'No big deal', New York Times, 28 February 2014.

“Contrary to the promises that NAFTA would create U.S. jobs, it made outsourcing to Mexico much more attractive for U.S. companies. Most of the jobs displaced by trade with Mexico - 415,000 jobs, or 60.8% of the total 682,000 jobs lost - have been in manufacturing.”²⁶

Any similar deal may be unattractive to the American public and trade policymakers. This may be in spite of the attractive political sales pitch that the US is creating for an economic NATO which may contain China and others.

The 2014~2019 European Parliament may be leery regarding liberal markets and free trade, especially *vis-à-vis* the US in spite of certain expected material gains from the TTIP. Estimates are that the TTIP would add about 0.025 to 0.05% to GDP both in the EU and in the US annually (545 euros a year per each EU household).²⁷ This boils down to 2.60 euros a week per person (approximately a cup of coffee). Not much to be excited about overhauling of business laws. Consumer groups are mobilising because they fear that the deal would lower EU standards for everything. Agriculture, genetically modified organisms, hormone beef, chlorine-treated poultry (all toxic content goods), culture-related goods, hydraulic fracturing (fracking) and dangerous issues regarding the investor-state dispute settlement mechanism in which corporations may have an upper hand will have a tough ride in the EU.²⁸ An EU internal agreement may be also difficult. An internal EU crisis is revealing fragmentation inside the bloc. Countries such as Britain, Germany and the Netherlands already trade a lot with the US. They may argue in favour of the deal, which may boost further their export-oriented economies. Other countries such as France or Italy count more on the home market, hence their passion for free trade may be limited. Any deep EU crisis curbs its aptitude to act as a unified bloc.

One of the dangerous issues in the possible TTIP is the investor-state dispute settlement mechanism:

“This would enable corporations to claim potentially unlimited damages in secret courts or ‘arbitration panels’ if their profits are adversely affected by environmental or consumer

²⁶ <http://www.aflcio.org/Issues/Trade/NAFTA/NAFTA-Made-Outsourcing-Easy> (accessed on 28 June 2014).

²⁷ A. Winters, ‘The problem with TTIP’, Vox, 22 May 2014; K. de Gucht, ‘The Transatlantic Trade and Investment Partnership: where do we stand on hottest topics in the current debate?’, European Commission (Lecture at Atlantikbrücke, Dusseldorf), 22 January 2014.

²⁸ An additional difficulty is the ‘alleged US spying on EU institutions’. Normally, ‘Partners do not spy on each other’ (J. Chaffin, ‘Report snags EU-US pact hopes’, Financial Times, 1 July 2013). European worries were reinforced because at the very same time, the US ‘is taking a strong stand against a rising tide of cyber espionage from China’ (Editorial, ‘Spies, lies and ties; EU should reinforce defences if it wants to stop espionage’, Financial Times, 2 July 2013). Does the US regard the EU as a partner or a threat?

regulations. These investment suits are tried before business-friendly tribunals composed of corporate lawyers, bypass domestic courts and override the will of parliaments. Even expected future profits are compensable.”²⁹

This item strongly favours big corporations. It would be a much disputed issue in the European Parliament, which must approve the deal. It is possible that the TTIP may easily turn out to be a showcase on the issue of just how little the US and the EU are able to concur.³⁰

These new mega-trade deals in the making ought to be open to other countries that wish to join, while the new trading blocs ought to be included in the WTO multilateral trading system to avoid the creation of a parallel international trading system. The WTO may use its convening authority to exchange views and inform (if not direct) the member countries about these new developments. In order to avoid the Doha-style flaw in design, a future WTO round agenda may not need to be too liberalisation-heavy as each WTO member state may block the whole colossal process. If, however, the post-Doha WTO cannot handle new issues satisfactorily, it seems possible that the regional trade organizations and various bilateral deals may take their own, potentially uncoordinated, path.

One ought to keep in mind that many past mega-trade deals have not gone anywhere. Deals such as the ones in Africa, the Free Trade Area of the Americas or the APEC may be examples of such disappointments. If one of the three new mega-integration deals succeeds, it will be the first one to do so.

²⁹ M. Stoczkiewicz and E. Pica, ‘EU and US both threatened by secret trade talks’, *EUobserver*, 16 December 2013.

³⁰ Excessive influence by large corporations may be seen from this example: ‘The UK government, like that of the US and 13 other EU members, wants to set up a separate judicial system, exclusively for the use of corporations. While the rest of us must take our chances in the courts, corporations across the EU and US will be allowed to sue governments before a tribunal of corporate lawyers. They will be able to challenge the laws they don’t like, and seek massive compensation if these are deemed to affect their “future anticipated profits”.

The TTIP is widely described as a trade agreement. But while in the past trade agreements sought to address protectionism, now they seek to address protection. In other words, once they promoted free trade by removing trade taxes (tariffs); now they promote the interests of transnational capital by downgrading the defence of human health, the natural world, labour rights, and the poor and vulnerable from predatory corporate practices.

The proposed treaty has been described by the eminent professor of governance Colin Crouch as “post-democracy in its purest form”. Post-democracy refers to our neutron-bomb politics, in which the old structures, such as elections and parliaments, remain standing, but are uninhabited by political power. Power has shifted to other forums, unamenable to public challenge: “small, private circles where political elites do deals with corporate lobbies”.

Investor-state dispute settlement – ISDS – means allowing corporations to sue governments over laws that might affect their profits. The tobacco company Philip Morris is currently suing Australia and Uruguay, under similar treaties, for their attempts to discourage smoking. It describes the UK’s proposed rules on plain packaging as “unlawful”: if TTIP goes ahead, expect a challenge.

Corporations can use the courts to defend their interests. But under current treaties, ISDS lets them apply instead to offshore tribunals operating in secret, without such basic safeguards as judicial review and rights of appeal. As Crouch notes, this is not just post-democracy, but “post-law” (G. Monbiot, ‘The TTIP trade deal will throw equality before the law on the corporate bonfire’, *The Guardian*, 13 January 2015).

VII. Conclusions

Much of civilisation is characterised by the search for understanding. What can one offer regarding this quest for comprehension in the area of economic integration? If there are so many serious objections to regional trade agreements and little hard quantitative evidence about their clear beneficial effects for the multilateral trading system, in what lies their fatal fascination and justification? Why do they proliferate? Here come several reasons:

- Bilateral or regional trading agreements may be a response to tremendous and uncertain resource costs related to multilateral negotiations and deals. It may be simpler, faster, cheaper and more tangible to put into practice a regional integration deal, than to wait a very long time for an uncertain multilateral trade arrangement and its benefits. Static and usually short-term costs in terms of trade diversion do not give the full picture of the costs of regional deals for third countries. The lowering of tariffs under the auspices of General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO) reduced large-scale opportunities for trade diversion. Long-term dynamic effects may be much more important and beneficial for everyone. The choice that policymakers face is not between multilateral agreements and economic integration, but rather between a potentially beneficial economic integration with select partners (now) or no such arrangement at all.
- The WTO lost over time a lot of its appeal. The questions asked are different now from those in 2000. The US is increasing its energy independence (shale gas) and is shifting certain lines of production back home. Narrow tit-for-tat bargaining over the tariffs and quotas agenda was therefore more well suited to the 1980s. A broader context may be necessary. Currency crises, distorted exchange rates, various buy national and subsidy campaigns, global production chains, as well as company taxes are jeopardising trade and production location. If the Transatlantic Trade Investment Partnership (TTIP), Trans-Pacific Partnership (TPP) and Regional Comprehensive Economic Partnership (RCEP) take off from the ground, this would be the most sizeable departure from the multilateral trading system since the end of the Second World War.

- In general terms, tariffs are reduced to a rather low level. Hence, trade negotiations moved to the harder ground of Non-Tariff and regulatory Barriers (NTBs). These deal with national sovereignty, domestic policy (public procurement, standards and subsidies) and tough resistance from lobbies such as industry and labour unions. To compound the negotiating difficulties, new and important players rose up from the third world. Gone are the days when free trade was the only game in town. The same holds for the US as the leading advocate for free trade. Regional agreements spread, while the WTO stands by this rather buoyant world. These risks move the WTO towards oblivion. Still, the WTO has important assets: it has to convene and service meetings, as well as sort out disputes. Would a less ambitious WTO negotiating agenda and more focused meetings and deals be the way forward?
- Technology and standardisation enabled the spatial fragmentation of production tasks and activities in many industries. At the same time, a spread of formidable supply chains will continue to keep world production, trade and consumption integrated. However, this type of globalisation is linked in the developed world with job losses in manufacturing and immigration which endangers jobs in services; it is not necessarily linked with cheaper imported goods. A possible gain of 1 trillion US Dollars to the global economy that may come from the Doha Round deal signed at the Bali (2013) meeting does not impress voters. That is partly because:

“... the \$ 1 trillion figure is made up; it's also because the public now associates increased integration with falling wages and job insecurity. Precedent suggests that if there is a \$ 1 trillion boost to the global economy on offer, the benefits will accrue to capital as higher profits rather than to labour in the form of higher pay or lower prices.

Free trade is seen as a racket dominated by a particular class interest. Unless that changes and the fruits are more equitably shared, the WTO will continue to stumble from crisis to crisis and globalisation will remain a dirty word.”³¹

- Big players such as the US and the EU negotiate mega-regional integration deals. The cases in question are the TTIP and the TPP. The message is clear and direct:

³¹ L. Elliott, ‘Bali talks are make or break for World Trade Organization’, The Guardian, 1 December 2013.

if the emerging market economies do not want to deal under the WTO roof, the US and other developed players have alternatives! Regional liberalisation may be superior to no liberalisation. However, a higgledy-piggledy bowl of trade and investment deals may complicate the global situation with clashing rules of origin which complicate production, trade and the smooth operation of supply chains.

- One should not forget the important ideological factors and political – especially security – gains that integration agreements bring. Some of them, the EU being one example,³² were created primarily to ensure that war between France and Germany would be impossible. Economic integration was simply a vehicle towards that objective. Politics and strong and sustained commitment (or a lack of it) according to the letter and spirit of the agreed goals are often the primary reason for the success, or failure of an integrating group. In addition, many integration deals go well beyond mere trade, so that arguments concerning the trade-related costs of integration are not necessarily the whole story.³³ Many quantitative studies about the effects of integration on world welfare have questionable and ambiguous results.
- One ought to recall that economic integration is not always a safe vehicle for achieving peace. Kenya, Tanzania and Uganda created the East African Community (1967~1977). Kenya, specifically Nairobi, was the place which attracted the location of business. Tanzania and Uganda wanted compensation (financial transfers) because of the agglomeration of business in Kenya. This led to the disintegration of the group and contributed to the 1979 clash between Tanzania and Uganda. Earlier, integration influenced the American Civil War (1861~1865). The North manufactured goods that were sold in the South, while the South produced and exported cotton to Europe. Tariffs that protected producers in the North nearly caused the civil war in 1828. Income transfer from the South to the North was enormous because of protection. South Carolina refused to collect duties and warned that it could leave the union. The US Congress yielded before the start of hostilities with the federal troops.

One may observe that the WTO is the victim of its own success. Earlier rounds of

³² The ASEAN is another example.

³³ Recall the distorting effects of the EU's Common Agricultural Policy on international trade.

trade negotiations reduced tariffs to quite a low level. Hence, new concessions in tariffs offer fewer additional gains. The role of the WTO in the international trading system is being modified in at least two ways. (i) There is a lack of enthusiasm from member countries to see the WTO as the principal player that removes the remaining and newly created barriers to trade. While the developing countries continue to be interested in removing the remaining barriers in the developed world, developed countries are expressing their interest in changing domestic regulation in all countries that are partners in trade and investment. (ii) The management of the world trading system is no longer the sole prerogative of the US, the EU and Japan. Other important players such as Brazil, China, India, Russia and South Africa have entered this hitherto exclusive group, while others such as Turkey and Indonesia are approaching it. If the WTO transforms its role from being a trade liberalisation forum into an institution which convenes meetings that direct the pace of new multilateral rules, supervises and administers international trade rules and obligations, as well as settles international disputes in trade, perhaps this may not be an unwelcome development.

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