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The interface of multilateralism and regionalism within the world trade organisation: contextualising the new partnership for Africa's development

Ndayi, Zoleka Veronica

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CHAPTER THREE

THE INTERFACE OF MULTILATERALISM, PLURILATERALISM AND REGIONALISM IN THE WORLD TRADE ORGANISATION.

This chapter examines the World Trade Organisation (WTO) as the facilitator of multilateral trade while still retaining elements of plurilateralism and regionalism, characteristics, which are contrary to multilateralism. An examination of institutionalized multilateralism requires the tracing of the advent of the multilateral trade system from the General Agreement on Trade and Tariffs (GATT) to the WTO. Hence the chapter starts by looking at the GATT's role as an international arrangement to promote worldwide international trade and its transformation into the current multilateral trade regime.

The description and analysis of the WTO provisions permitting regional as well as plurilateral trade arrangements form the main discussion of the chapter. This is because, though the WTO promotes the multilateral trade order, it accommodates preferential trade relations as well. The key historical events, which led to the current wave of plurilateralism and regionalism, are also recounted. In looking at the history of regionalism within the WTO, it is important to treat developmental regionalism or regionalism in the South differently from regionalism in the North. The study uses different GATT/WTO provisions to highlight these differences. Article XXIV is used for regionalism in the North, whereas in the South an attempt is made to apply the Enabling Clause. This provision also allows for non-reciprocal trade relations in favour of the South. Hence in the analysis of plurilateralism, combining regionalisms or countries from both the North and South, the study attempts to apply the Enabling Clause.

The section below starts by arguing that GATT started as a plurilateral agreement among "contracting" parties as reflected by the political landscape during the trade regime's reign.

3.1. The Political Landscape in Early GATT Years.

Based on non-discrimination in the form of the Most Favoured Nations (MFN) principle, GATT was formed in 1947 to ensure that international trade flows as freely as possible among its signatories. Membership was open to "any state or customs territory having full autonomy in the conduct of its trade policies...."[117] Nevertheless, GATT was established in a tripartite world characterised by the First, Second and Third Worlds in a colonial and later Cold War era.

A Euro-American bloc of states, composed of capitalist democracies came to be called the First World. Japan was later added to the alliance. At the formation of GATT the First World was concerned with economic reconstruction after the destructive Second World War. The Second World were the communist-socialist states including the Soviet Union, China, North Korea, North Vietnam and Eastern Europe. These countries adopted a "command"[118] economy model, which was directed by a central planning commission.

Third World countries were often the less developed countries of the world, which were formerly colonized and newly decolonized states. Richard Griggs[119] asserts that it is the situation of their economic dependency on the First and Second Worlds that denotes the

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[117] "Accessions", http://www.wto.org/english/thewto_e/acc_e/acc_e.htm

[118] Mark Harrison, "Are Command Economies Unstable? Why did the Soviet Union Collapse? Warwick Economic Research Papers, No 604, http://64.233.183.104/search?q=cache:VIVxU7Knmj0J:www2.warwick.ac.uk/fac/soc/economics/research/papers/twerp604.pdf+command+economy+soviet+union&hl=en

[119] Richard Griggs "Background on the Term "Fourth World"; http://www.cwis.org/fourthw.html

connotation for the term Third World. It becomes imperative to give a brief discussion of the Second and Third Worlds' relations with the GATT.

The centrally planned economies of the Second World did not subscribe to the doctrine of free trade as espoused by GATT and the First World. Hence in 1949 they founded the Council for Mutual Economic Assistance (Comecon), also known as CMEA and CEMA, a communist economic alliance that operated until 1991[120]. However, some Communist countries became members of the GATT. Czechoslovakia is the founding member of GATT, while Yugoslavia, Poland, Romania, and Hungary joined GATT during the 1960–70s. Halverson explains these countries' admission into GATT as a way of extending Western influence into the East. Citing Kostecki, he points out that "The GATT did not really succeed in becoming an instrument of Western policy . . . despite the favouritism displayed toward the East European countries admitted to GATT, Washington and Western Europe did not really grant them better commercial treatment than those Eastern European states remaining outside the organization."

Halverson[121] noted that in terms of overall trade flows, the balance of trade for Hungary, Poland, and Romania vis-à-vis the GATT countries were generally negative. Though imports from GATT countries increased dramatically during the early 1970s, the increase is mainly attributable to the availability of Western credit to importers. Hence he also points out that the communist countries that participated in the GATT did not achieve a meaningful integration of their economies into the world trading system. However, though the Third World wanted an economic way independent of the other two worlds, it was closer to the GATT.

In 1947, some Third World countries were subjected to GATT rules because they were colonies or dependencies of the developed countries that had signed the Protocol of

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[120] Members in 1991: were Bulgaria, Cuba, German Democratic Republic, Czechoslovakia, Hungary, Mongolia, Poland, Romania, the Soviet Union, and Vietnam.

[121] Karen Halverson, "China's WTO accession: Economic, Legal, and Political Implications"; http://www.bc.edu/schools/law/lawreviews/meta-elements/journals/bciclr/27_2/06_TXT.htm

Provisional Application.[122] Otherwise, in 1961, the Third World countries adopted political plurilateralism in the form of the Non-aligned Movement (NAM). The Movement's objective was to create a third force that is neither aligned to the First nor to the Second World. Hence in 1964 these countries sought developmental plurilateralism under the United Nations Conference on Trade and Development (UNCTAD), the aim of which was to press for trade measures to benefit developing countries[123]. To that effect, UNCTAD established a technical cooperation agency, the International Trade Centre (ITC), which was charged with assisting developing countries to promote exports.

The ITC became the link between the UNCTAD and GATT, the result of which was the 1971 GATT waiver, authorizing tariff preferences under the General System of Preferences (GSP). Under this system, developed countries voluntarily and unilaterally grant tariff preferences to developing countries on a non-reciprocal basis. During the Tokyo Round (1973-9), over 70 developing countries participated in the negotiations and came out with the "Enabling Clause". It endorsed and made permanent the GSP and introduced the concept of "special and differential treatment" (S&D).[124]

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[122] Sometimes referred to as the Grandfather Clause, it is a legal device that enabled the original Contracting Parties of the GATT to accept general GATT obligations and benefits, despite the fact that they are not obligated to observe rules that are inconsistent with their domestic laws at the time of entry into GATT. Although the protocol was intended to be temporary, it has remained in effect since 1947. Countries that acceded to the GATT after 1947 do not have recourse to the protocol

[123] Allan Freeman, "Fixing the World? GATT and the World Trade Organisation"; http://www.dsp.org.au/links/back/issue10/freeman.htm

[124] For more see Bernard M. Hoekman and Michael M. Kostecki, The Political Economy of the World Trading System: The WTO and Beyond, (Oxford University Press: UK; 2001) Second Edition, pp 385-390

Apart from the UNCTAD, developing countries had also influenced GATT proceedings through the Group of Ten (G-10)[125]. Though Kamir[126] noted that the group did not insist on adoption of a unified position in all issues and was not a formal coalition, he also points out that it represented the interests of the contracting developing countries in the GATT fairly well. It succeeded in blocking the inclusion of trade in services in the Tokyo Round and ensured that all issues concerning developing countries were included. Even during the Uruguay Round, the group continued to attempt to block progress on new issues and tried to ensure that negotiations progressed on trade in goods[127].

With the end of the Cold War, the First, Second and Third Worlds became obsolete and were replaced by the two groups: the "developed" and the "less-developed" or "developing" alternatively, North and South. In most parts, the two groups share or conduct their economic relations under the same ideology of liberalism. This is despite the fact that these countries are divided according to their economic development. Nonetheless, the tripartite world order under the Cold War saw GATT as plurilateral; it was when it transformed to the WTO that it became a multilateral institution. The section below examines this assertion in detail.

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[125] Members of which were Argentina; Brazil; Egypt; India; Yugoslavia; Chile; Jamaica; Pakistan; Peru and Uruguay.

[126] Rajiv Kumar, "Developing-Country Coalitions in International Trade Negotiations" in Dianna Tussie and David Glover (Eds.), The Developing Countries in World Trade: Policies and Bargaining Strategies; (Lynne Rienner Publishers: USA; 1993) pp 205-221

[127] see ibid pp 210-212

3.2. THE EVOLUTION OF GATT INTO WTO

From 1948 to 1994, GATT provided the rules for much of world trade and was presiding during periods that saw some of the highest growth rates in international trade. With tariff reduction of about 85.0 percent since its years, by 1994 GATT membership accounted for more than 90.0 percent of world trade. [128] The GATT period also saw the growing membership of the institution from 23 in 1947 to 123 in 1994. **See Table 3.2.** . Yet throughout those 47 years, it was a provisional agreement and not an organization.[129] It was an international agreement - documents setting out the rules for conducting international trade, hence it had "contracting parties" and not members. An international organization was created later to support the agreement.[130]

The GATT negotiators at the Geneva preparatory session also prepared the draft International Trade Organisation (ITO) charter, under which the former would operate. Owing to United States Congress' failure to approve it, the ITO never came into force.[131] Likewise, the GATT never came into force, it nevertheless applied as a treaty obligation under international law through a protocol of provisional application.[132] "Multilateral" decisions under the GATT had to be taken by the contracting parties acting jointly and not by any organizational body. De Melo and Bacchetta attribute this characteristic of the

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[128] U.S. State Department, 95/06/07 Fact Sheet: "Uruguay Agreement Reforms and US Trade"; Bureau of Public Affairs; http://dosfan.lib.uic.edu/ECR/economist/agreement/950607WTO2.html

[129] "Roots: from Havana to Marrakech", http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm

[130] "Two GATTS", http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact6_e.htm

[131] For more see Charles W. Kegley, Jr and Eugene Wittkopf, World Politics: Trends and Transformation, (New York: St. Martins; 2001) Eighth Edition, pp. 261-262

GATT to the absence of organizational clauses in the GATT and to the fact that the ITO never came into being.[133] Since the original signatory nations expected the Agreement to become part of the more permanent ITO Charter, the text of the GATT contains very little "institutional" structure.[134]

However, since the establishment of the GATT, there have been eight major "multilateral" negotiations. The UR of Multilateral Trade Negotiations (MTNs) that saw the establishment of the WTO was launched in September 1986 and concluded in Geneva on 14 December 1993. During the UR, Professor Jackson, who was then an advisor and consultant for the negotiators, advocated establishment of a World Trade Organization and many of the other organizational reforms that were eventually adopted on the grounds that it would strengthen the multilateral trading system institutionally.[135] The establishment of the WTO, the creation of the Dispute Settlement Body (DSB), the "single undertaking" approach in decision-making and a permanent secretariat, are the areas that constitute the cornerstone of strengthening of the multilateral trading system.

The Marrakech Agreement established the WTO as the custodian and guarantor of the multilateral trading system. Out of the 124 GATT members that established the WTO, 98 were developing countries or economies in transition, compared to only 11 out of 23 in 1948 when the GATT was established.[136] One remarkable characteristic, distinguishing WTO from GATT, is that with its legal instruments, the WTO Agreement has created a common and multilateral institutional framework for the conduct of trade relations among

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[132] For details of the protocol of provisional application, see John H. Jackson, The World Trading System, (Cambridge: MIT Press; 1997) 2nd Edition, pp. 39-41

[133] Jaime de Melo and Marc Bacchetta, CD-ROM "Applied Trade Policy for Developing Countries: Outline, Content, and Readings for Short Course." (Washington DC: World Bank Institute; 2002)

[134] http://www.ll.georgetown.edu/intl/guides/gattwto/gatt_1.html

[135] See John H. Jackson, Restructuring the GATT System (Royal Institute of International Affairs: London, 1990) p. 67

[136] Susan B. Epstein, "GATT: The Uruguay Round Agreement and Developing Countries"; Congressional Research Report Service. http://www.natlaw.com/pubs/gatt.htm

its members. Making sure to be non-discriminatory in coverage, it has integrated agriculture and textile and clothing into the system.

The enforcement mechanisms in the GATT were weak. The findings of the panel of experts could be adopted, noted or rejected by the constituents and the 'contracting parties' decision was consensual. On the other hand, the WTO established the DSB, whose procedure and new dispute settlement rules are binding. The findings of the panel can only be rejected by consensus, while in the GATT it could be accepted by consensus.[137]

The WTO has come with clearly defined rules of procedure for decision-making by the members and the agreement is a "single undertaking". GATT had great flexibility for countries to "opt out" of new agreements. In decision-making, any country could simply decide not to sign GATT agreements, and therefore cannot be held to any rules or measures contained in that agreement. The adoption of interpretations of any agreements falling within the WTO parameters requires a three-thirds majority of all members, whereas in GATT it required a simple majority. The waiver of an obligation requires a three-quarters majority of all members, as opposed to GATT's two-thirds of those voting.[138]

The WTO came with a formal establishment of a genuine secretariat. This organ has much greater transparency and surveillance functions through the creation of the Trade Policy Review Mechanism. Previously, the GATT "secretariat" lacked such a status and existed technically as the staff of the Executive Secretary of the Interim Commission for the International Trade Organization.[139]

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[137] Also see Bernard Hoekman, "The WTO: Functions and Basic Principles" in Bernard Hoekman et al, Development, Trade, and the WTO: A Handbook (Washington, DC: World Bank; 2002) pp. 41-49

[138] Ibid

The draft charter of the WTO was signed at a ministerial meeting in Marrakech in April 1995. In this Round, trade negotiations included agriculture and textiles, and were extended to also cover services and intellectual property. This transition of the international trade regime from a plurilateral to a multilateral arrangement merits further exploration.

3.3. From a Plurilateral to a Multilateral Trade Regime

Although GATT membership grew from 23 at inception[140] to 103 in 1992, and accounted for almost 90% of world trade[141], its authority applied mainly to manufactured goods, textiles and agriculture were excluded from GATT rules[142]. This meant discriminating against developing countries, the majority of whom are primary exporters of textile and agricultural products. This leads one to argue that though the founding principle of GATT sounded multilateral, the institution was plurilateral since the principle of non-discrimination did not apply to the most important interests of a significant number of nations on the globe.

The Multifibre Agreement (MFA) is the best illustration of GATT discrimination. As early as in the 1950s, developed countries obligated developing countries to restrain their

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[139] Ibid

[140] These countries were: Australia, the Kingdom of Belgium, the United States of Brazil, Burma, Canada, Ceylon, the Republic of Chile, the Republic of China, the Republic of Cuba, the Czechoslovakian Republic, the French Republic, India, Lebanon, the Grand-Duchy of Luxemburg, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, Pakistan, Southern Rhodesia, Syria, the Union of South Africa, the United Kingdom of Great Britain and Northern Ireland, and the United States of America

[141] Gist: GATT and international trading system;
http://www.findarticles.com/p/articles/mi_m1584/is_n5_v3/ai_12642253

[142] On America's role in the international trading system, see Robert Gilpin, "The Rise of American Hegemony," in Two Hegemonies: Britain 1846-1914 and the United States 1941-2001 edited by Patrick Karl O'Brien and Armand Clesse (Aldershot: Ashgate Publishing, Ltd., 2002), pp. 165-182

exports of textiles and clothing. This led to a series of short-term arrangements that culminated into the MFA from 1974 to 1994.[143] High tariffs and other non-tariff barriers complemented the Arrangement. These trade measures included the voluntary export restraints (VERS) and quantitative restrictions (QR). The MFA allowed contracting parties to negotiate bilaterally on QRs on textile imports, which normally would be considered contrary to GATT provisions. The MFA adversely affected the developing countries' labour-intensive and low technology industries (because textiles and agriculture are significant sectors marking the integration of the developing countries into the WTO, Chapter Four goes into detail on the nature of the MFA).

This Arrangement was widely used by developed countries versus the developing countries to discriminate against the latter's exports. Consequently, up to 19 million jobs have been lost due to restrictions, plus a further 9 million owing to high tariffs. The IMF-WB further estimates that for every job protected in the developed world, around 35 have been lost in developing countries.[144] Nonetheless, through authorization of the MFA, GATT was discriminatory against developing countries.

However, the international trade regime under GATT has undergone a series of negotiations since its inception from Geneva to the Uruguay trade Rounds. **See Table 3.1** While the first round of negotiations resulted in 45,000 tariff concessions affecting US$10 billion of trade, this constituted only about one-fifth of the world's total[145]. In addition to its plurilateral character, GATT also encompassed some plurilateral agreements of a lesser extent. These agreements, however, fell short of GATT's entire membership because they were not part of the "Single Undertaking", and members could choose not to sign them. Agreements in: *Trade in Civil Aircraft*; *Government Procurement*; *Bovine Meat; and Dairy Products* were originally negotiated in the Tokyo

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[143] For more see " A Short History of ATC", http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto02/wto2_28.htm#note2

[144] International Monetary Fund and World Bank (2002) "Market Access for Developing Country Exports-Selected Issues", 26, September 2002, Washington DC.

Round. The latter two Agreements were scrapped in 1997 and transferred to the Agriculture and Sanitary and Phytosanitary Agreements.[146]The *Agreement on Trade in Civil Aircraft* entered into force on 1 January 1980 and continued under the WTO with 30 signatories. Among other things, the agreement served to eliminate import duties on all aircraft, except military aircraft, as well as on all other products covered by the agreement, such as civil aircraft engines and their parts and components.[147]

An *Agreement on Government Procurement* came into force on 1 January 1981, initially with the objective of opening up businesses and facilitating international competition in procurement. It was designed to formulate laws, regulations, procedures and practices regarding making government procurement more transparent and ensuring that they would neither protect nor discriminate against foreign products or suppliers. The renegotiation of the Agreement during the UR led to a new agreement, which came into effect on 01 January 1996. Currently, this Agreement has 28 members.[148] Under the WTO, this Agreement was widened by extending international competition to include national and local government entities. Its coverage was also extended to include construction services, procurement at a sub-central level and procurement by public utilities.[149]

However, government procurement and its related policies have very important social, economic and political roles in development, especially in the Southern countries. In countries where there were segregation policies, preferences are applied to the historically disadvantaged, local firms and infant contractors, in order to boost the

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[145] http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm

[146] http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm

[147] Ibid

[148] These are Austria, Belgium, Canada, Denmark, the European Communities, Finland, France, Germany, Greece, Hong Kong (China), Ireland, Israel, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the United Kingdom, and the United States

[149] Ibid

domestic economies and participation of locals in economic development and benefits. For instance, in South Africa, the Black Economic Empowerment (BEE) is a policy aimed at providing preferences for Blacks, since they suffered economic and political oppression during the apartheid era and now are under-represented in economic standing In addition, Affirmative Action is directed towards the so called "previously disadvantaged", which are Blacks and women. Policies such as these can be used to redress socio-economic imbalances by for instance, specifying that these groups of people be allocated a particular share of procurement business.

Should government procurement be opened up through the national treatment and MFN principles, the ability for a government to use procurement as a policy tool for development would be severely curtailed. The capacity to help infant local companies and particular socio-economic groups would also be seriously hampered. This is because national treatment would have to be given to foreign firms to compete with local firms for supplying goods and services. Given the great importance of government procurement policy as a tool needed for socio-economic development and nation building, it becomes imperative that developing countries retain the right to have full autonomy and flexibility over their government procurement policies. It comes as no surprise that it is only the developed countries that have signed this agreement.

Therefore, GATT was a plurilateral trade agreement because it was short of being a multilateral institution, and yet was not confined to a specific region. Though membership was intercontinental, and included both developed and developing countries, it was selective (sovereignty was a precondition for accession, colonies were excluded or not treated as autonomous entities). Even though it sought to promote "world" trade, membership comprised mainly the capitalist camp and catered primarily for developed countries' interests. In the same breath, one can also argue that despite its plurilateral character, GATT was striving for multilateralism to some extent. The gradual inclusion of the Second and Third World countries attests to this assertion.

3.3.1. Inclusion of the Second and the Third Worlds

The gradual completion of the decolonisation process in the Third World, the collapse of the Second World and the end of the Cold War, together with the adoption of market economies worldwide, were the developments in international political economy that warranted the integration of the former Second and Third world countries into the trading system. This, in turn, necessitated the transformation of the international trading system, not only because these developments saw increased membership, but also this increase was accompanied by a rise in issue-areas and new challenges.

The demise of the Cold War in 1989/1990 depicted unprecedented political and economic reforms in Eastern Europe, with far reaching implications for the Second World. This part of Europe witnessed breaking ground with new political reforms, moving from planned economies to free market economies.

Most developing countries became independent in the period 1960 to the 1990s. These were the years that marked the accession of most developing countries into the GATT system. Hence, prior to the introduction of the GSP and the "Enabling Clause", GATT had made provisions within the "contract" for the accommodation of developing countries. In 1965, Part IV was added with few binding provisions but established the principle of non-reciprocity in trade negotiations between developed and developing countries. This provision took the economic conditions of the developing countries into consideration, and therefore stated that they should not be asked to make contributions "inconsistent with their individual development, financial and trade needs".[150]

However, the sidelining and marginalisation of the developing countries within the GATT system, through the exclusion of agriculture and textile products on which the developing countries had a comparative advantage, invoked a vigorous move toward full

participation of these countries in the international trade regime. Ironically, at the same time, the exclusion of agriculture was leading to the marginalisation of these countries. This irony necessitated the transformation of GATT from a plurilateral arrangement towards a multilateral institution. During the UR (1986-1994), developing countries were active participants in negotiations with an objective of securing opportunities for their exports in the global market.[151] Consequently, and for the first time in GATT negotiations, agriculture became the subject of trade liberalisation rules.

Another area that marked the transition of GATT into a multilateral institution was the phasing out of the MFA. The elimination of MFA contains an agreed upon schedule for the gradual phase-out of quotas, established pursuant to the MFA over a ten-year transition period, after which textile and clothing trade will be fully integrated into the GATT and subject to the same disciplines as are other sectors. The UR Agreement on Textiles and Clothing (ATC) came into force in January 1995. It laid down rules for the gradual elimination of quotas on textiles and clothing. The process was set to be completed by January 2005.

Besides the recognition of developing countries' interests in the international trading system, the UR period also saw the increase of GATT membership by both the developing and former communist countries. Out of 23 original contracting GATT members, 11 were developing countries. During the official transformation of GATT in 1994, out of 124 members, 98 were developing countries or economies in transition. [152]

At the end of the GATT era, average tariffs had fallen from 40.0 percent to under 5.0 percent. The UR also sought to reduce tariffs to a 3.0 percent range and to eliminate them on 40.0 percent of world trade.[153] Since the GATT years, it is said international trade

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[150] http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto01/wto1_17.htm#note3

[151] Oxford Analytica Daily Brief; September 27, 1999 http://www.oxan.com/pdf/In270999-5.pdf.

[152] Susan B. Epstein, "GATT: The Uruguay Round Agreement and Developing Countries"; Congressional Research Report Service. http://www.natlaw.com/pubs/gatt.htm

negotiations had resulted in tariff reduction of about 85.0 percent. By 1994, GATT membership accounted for more than 90.0 percent of world trade. [154] Even so, the decrease in tariffs has been accompanied by an increase in non-tariff barriers such as plant and animal health requirements and technical regulations.

3.3.2 . The WTO as a Multilateral Institution.

As has been argued in the previous chapter and within the context of this study, multilateralism refers to non-discriminatory trade based on WTO rules and principles governing international trade. Since most nations, including almost all major trading nations, are members of the WTO, this makes "multilateral" have a near universal and global character. Though the trade regime did not start off as a multilateral institution, it is progressing towards it. Yet the multilateral character of the WTO reflects multilateralism as a near-global phenomenon. Some of the factors that make the WTO a multilateral institution include the growing membership in the international trade organisation, and the tremendous increase in world trade illustrates the strength of the WTO as an institution of multilateralism. Membership grew from 123 as at the transformation of GATT in 1994 to 150 countries as of 2006.[155] Some countries have an observer status, while others are not yet members, some of them still awaiting to gain accession[156]. **See Figure 3.1**

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[153] Dr. Terry van der Werff, CMC "GATT Going!; Global Future Report; http://www.globalfuture.com/9402.htm

[154] U.S. State Department, 95/06/07 Fact Sheet: "Uruguay Agreement Reforms and US Trade"; Bureau of Public Affairs; http://dosfan.lib.uic.edu/ECR/economist/agreement/950607WTO2.html

[155] http://www.wto.org/english/thewto_ewhatis_e/tif_e/org6_e.htm

[156] Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Cambodia, Cape Verde, Equatorial Guinea, Ethiopia, Former Yugoslav Republic of Macedonia (FYROM, Holy See (Vatican), Kazakhstan, Lao People's Democratic Republic, Lebanese Republic, Nepal, Russian Federation, Samoa, Sao Tome and Principe, Saudi Arabia, Serbia and Montenegro, Seychelles, Sudan, Tajikistan, Tonga, Ukraine, Uzbekistan, Vanuatu, Vietnam, and Yemen

In the year 2000, total trade was 22 times the level of the 1950s.[157] According to Kegley and Wittkopf[158], between 1970 and 1998, the value of world trade has been growing by an average of 4.8 percent annually. Estimates also showed that between 1999 and 2004, the average growth rate was expected to increase to 5.9 percent annually.

However, in contrast to the multilateral nature of the WTO, there has also been an increasing move towards regionalism. Around 50.0 percent of world trade is currently carried out under PTAs. Preferential trade between 1993 and 1997 was growing faster at 66.0 per cent than global trade, which was growing at 34.0 percent. [159] This is not necessarily contradictory to multilateralism, since according to the WTO "countries within a region can set up a free trade agreement that does not apply to goods from outside the group". [160] The main problem is that the WTO rules governing these arrangements are not clear.

Since the focus of this study is on the relationship of multilateralism with regionalism and plurilateralism, it will be useful to locate both the trends of regionalism and plurilateralism within the broader context of multilateralism. The section below locates the trends within the WTO system.

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[157] The Multilateral Trading System-Past and Present Future", http://www.inbreif/e/_inbr01_e.htm

[158] Charles W. Kegley, JR. and Eugene R. Wittkopf, World Politics: Trends and Transformation, (New York and Boston: Bedford/St. Martin's; 2001; Eighth Edition, pp. 282-283

[159] "Regional Trading Agreements"; http://intl.econ.cuhk.edu.hk/topic/index.php?did=14

[160] "Trading into the Future": the introduction to the WTO; http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm

3.4. REGIONALISM WITHIN THE WTO

The founders of GATT also recognized "the desirability of increased freedom of trade by the development of closer integration through voluntary agreements between the economies of countries being parties to such agreements."[161] Thus RTAs became an exception to the MFN principle and some provisions were made for such schemes. Because GATT associated free trade with welfare, it sought to ensure that the formation of regional schemes would be of a benign and not of a malign nature. [162] The formation of RTAs has become associated with regionalism, a highly contentious trend in promoting or "blocking" multilateralism.

There is a widely held notion that all WTO members are partners of at least one RTA and several are part of two or more.[163] According to WTO statistics, a total of nearly 250 RTAs have been notified to the GATT/WTO up to December 2002, of which 130 were notified after January 1995. Today, over 170 RTAs are in force. Yet not all the RTAs in force among the WTO members have been notified to the GATT/WTO. It is estimated that around 70 are operational though not yet notified. Estimates suggest that if RTAs reportedly being planned or already under negotiation are concluded, the total number of RTAs in force might surpass 300 by the end of 2007.[164]

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[161] Fawcett, L. and Andrew Hurell (eds.) Regionalism in World Politics: Regional Organisations and International Order; (United States of America: Oxford University Press; 1995) p. 79

[162] Benign regionalism is the kind of arrangement that does not increase barriers to outsiders, thereby reducing their welfare. On the other hand, malign regionalism is where powerful parties engage in arrangements with weaker parties in a regional setting in order to establish a discriminatory trade and finance network in which they would dominate.

[163] Doha Development Agenda: Symposium, 29 April-01 May 2002, http://www.org/english/traptop_e/dda_e/symp_devagenda_02_e.htm

[164] "The Changing Landscape of RTAs", Regional Trade Agreements Section Trade Policies Review Division WTO Secretariat, prepared for the seminar on Regional Trade Agreements and the WTO, WTO Secretariat, Geneva, 14 November 2003.

However, the *Preliminary Draft* prepared by the WTO Secretariat for the *Seminar on Regionalism and the WTO* estimates that out of the total number of RTAs of those in force, nearly 60.0 percent have been concluded among European countries. RTAs concluded among developing countries account for 15.0 percent of the total.[165]

However, these RTAs use different provisions of regionalism under the WTO. Article XXIV, the Enabling Clause and the GSP become an exception to the MFN principle and thus endorse the formation RTAs and Plurilateral Trade Arrangements (PLTAs). Therefore, it becomes imperative to scrutinise each of these provisions in relation to the existing regional arrangements. Article XXIV becomes the starting point since it is the first provision of regionalism under the WTO.

3.4.1. WTO AND TRADE-CENTRED RTAS

It is noteworthy that economic liberalism informs both multilateral and regional approaches to international trade. Regionalism limits free trade to RTAs, whereas multilateralism advocates universal liberalisation. Despite its structural strength, the WTO has been beset by operational weaknesses in dealing with RTAs. This is also because the rules governing the establishment of RTAs are not clear, and are becoming more complex as the number and the scope of regional initiatives increase. In order to understand the weaknesses and complexities associated with GATT Article XXIV, it becomes important to look at the original provision.

Article XXIV of the GATT was drafted in the late 1940s on the assumption that regional trade liberalisation constituted an advancement of tariff reductions on an MFN basis. This article basically allows the formation of customs unions and FTAs, if such agreements "have the potential to further economic integration without necessarily adversely affecting the interests of the third party." [166] The purpose should be to facilitate trade

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[165] "Significance of RTAs in the WTO Context"
http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto08/wto8_55.htm#note1

between the constituent territories and not to raise barriers to outsiders. The precondition is that there should be elimination of duties and other restrictive regulations of commerce with respect to substantially all the trade between their constituent customs territories.[167] This interpretation amounts to regarding RTAs as the stepping-stone to multilateralism.

However, according to the WTO, until the conclusion of the UR, Article XXIV was the only provision that spelt out the rules concerning the customs unions and FTAs. Nevertheless, it has been found that, despite the criteria contained in that Article, the examination of RTAs in the GATT led to numerous problems throughout the years. One study by the WTO[168] brought to light that only one agreement out of eighty examined was found to be fully GATT-consistent, the Czech Republic-Slovak Republic Customs union. Yet no agreement was ever deemed inconsistent with the GATT. It is this dilemma that placed Article XXIV on the UR agenda. Consequently, some progress was made in the adoption of the Understanding on the Interpretation of Article XXIV of the GATT 1994. [169] **See Figure 3.4 Extracts from GATT Article XXIV and it's Understanding.**

Nevertheless, the Understanding of Article XXIV is highly contentious in itself. For example, in the WTO provisions for establishing RTAs, the most contentious one is the interpretation of "substantially all trade".[170] There is neither common criteria used to assess the exclusion of a particular sector nor a stipulated definition of percentage of trade to be covered. This loophole can be used by larger trading partners to their

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[166] Article XXIV, http://www.itd.org/forums/gattwto11.doc
[167] Ibid

[168] "RTAs in the GATT; http://www.wto.org/english/thetwo_e/whatis_e/eol/e/wto8_55.htm#note/

[169] "Conditions: Paragraph 5";
http://www.wto.org/english/thetwo_e/whatis_e/eol/e/wto08/wto8_56.htm

[170] Report (1998) of The Committee on Regional Trade Agreements to the General Council, WT/REG/7; http:/www.itd.org/forums/7.doc

advantage. A case in point is the EU-South Africa Trade, Development and Cooperation Agreement

From a developing country's perspective, one would interpret the clause to be covering the major sectors, in this case agriculture and textiles. For this arrangement, "substantially all trade" means an average of 90.0 per cent of the items currently traded between the two parties. Hence, the trade agreement between the EU and South Africa could exclude some agricultural products, in which South African farmers are highly competitive. Even the South African agri-food products covered by the agreement are subjected to progressive tariff reduction over a ten-year period. Besides, the agreement also utilises safeguard clauses to protect against import surges. Some products are subject to quota-limited duty-free access.[171]

During the UR, the lack of clarity on "substantially all trade" was addressed and reference was made to the "Preamble of Understanding". It was concluded that the contribution of RTAs to multilateralism "...increases if the elimination between the constituent territories of duties and other regulations of commerce extends to all trade, and diminishes if any major sector of trade is excluded."[172] This conclusion is unclear on a few matters though. Firstly, there is no agreement on the scope of what constitutes a major sector. Secondly, "major sector" has no clear definition. One would assume that it refers to the sector of the economy that contributes significantly to the overall economic activity. If that is the case, then in almost all developing countries, agriculture is the major sector, which also remains one of the most protected sectors in the developed countries.

The lack of clarity on WTO rules is compounded by the inconsistencies of RTAs with the WTO provisions for regional integration. For instance, North America Free Trade

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[171] Alan Matthews, "Regional Integration and Food Security in Developing Countries", report prepared for Agricultural Policy Support Service, Policy Assistance Division, Food and Agricultural Organisation of the United Nations, Rome 2003

[172] See Understanding of Article XX1V

Association (NAFTA) came into effect in 1994 under GATT Article XXIV. GATT Article XXIV paragraph 5 allows for "the formation of such a customs union or of such a free-trade area within a reasonable length of time". According to the Understanding on the Interpretation of Article XXIV, this length of time should not exceed 10 years, except in exceptional cases. However, NAFTA has decided to phase out quotas and tariffs over a period of 15 years, but does not give any explanation as to why it is exceeding the stipulated period.

The same paragraph 5 stipulates that duties shall not be higher or more restrictive than the corresponding duties and other regulations existing in the RTA prior to the formation of such an arrangement. However, the US has strengthened the rules of origin[173] to violate this clause. Under US- Canada Free Trade Agreement (CUFTA), textile products satisfy these rules if the fabrics originate in the region. "Under NAFTA, goods made with materials or labor from outside NAFTA qualify for NAFTA treatment only if they undergo substantial transformation with a member country in order to meet NAFTA treatment". Otherwise products must be produced from yarns originating in the region.[174] Furthermore, NAFTA is subject to significant protectionist tendencies. For example, the FTA does not cover commodities such as energy, agricultural products, automobiles, textiles, cultural products, and so on. [175]

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[173] "Rules of origin" are the criteria used to define where a product was made. They are part of trade rules discriminating between exporting countries: quotas, preferential tariffs, anti-dumping actions, and more. Rules of origin are also used to compile trade statistics.

[174] See " 2000 Report on the WTO Consistency of Trade Policies by Major Trading Partners", 31 March 2000
http://www.meti.go.jp/english/report/downloadfiles/gCT0211e.pdf

[175] For more details visit http://www.dbtrade.com/publications/overview.htm;
http://www.worldtradelaw.net/nafta/chap-01.pdf;
http://www.itcilo/english/actrav/telearn/global/ilo/blokit/nafta.htm#introduction

Alan Freeman[176] found that as from 1990, only four working parties (out of a total of over fifty) could agree that any regional agreement satisfied Article XXIV; three of these working parties were functional before 1957. According to him, the advanced countries control GATT and this allows the WTO rules and RAs to continue to be at variance. He agrees with other writers who see "GATT rules (on regional agreements) as largely a dead letter", since the advanced countries do what they like.[177] In substantiating this assertion, Tussie and Lengyel observed that the norms embodied in the WTO agreements are those prevailing in the OECD countries.[178]

Another trend in regionalism is termed developmental regionalism and is often exercised by developmental regional trade arrangements (DRTAs). This kind of arrangement is a result of marginalisation in a rapidly globalizing world. Internal or regional economic development is a priority; secondary is the strategic integration into the global economy.

Hence it is basically characterized by south-south cooperation, adopting a mixture of economic liberalism and protectionism. However, the DRTA has received little if any attention from the WTO. The section below looks at and examines this assumption in detail.

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[176] Alan Freeman. "Fixing Up the World: GATT and the World Trade Organisation."http://members.tripod.com/~leftforum/gatt.html

[177] Such as Hoekman, B. and Kostecki, M., The Political Economy of the World Trading System: from GATT to WTO, (Oxford: Oxford University Press; 1995) p. 8.

[178] Diana Tussie and Migeul F. Lengyel, "Developing Countries: Turning Participation into Influence", in Hoekman et al, 2002, p. 483

3.4.2. WTO AND DEVELOPMENTAL RTAS

During the Tokyo Round of negotiations (1973-79) GATT membership agreed upon the Enabling Clause. The Clause includes provisions that accord differential and a more favourable treatment to developing countries, without according such treatment to other contracting parties.[179] This provision also emphasises special preferential treatment for the least developed countries. The purpose of these conditions is to facilitate and promote trade in developing countries and not to raise barriers or create undue difficulties for trade in any other contracting party.

However, according to the Clause, during the negotiations on preferential treatment, developed countries do not expect reciprocity or to make offers that might be inconsistent with developing countries' individual development, financial and trade needs. Though this provision emphasises the development needs of developing countries, it also stresses that the arrangements of preferential treatment should be in accordance with the objectives of GATT/WTO, that is, it should not impede GATT Article 1.**See Figure 3.5 – Extract from the Enabling Clause**

It is not easy to apply the Enabling Clause in relation to developmental regionalism. This is because, firstly, it does not guarantee the protection of these countries against the highly competitive economies in the global market. Secondly, it does not promote close economic relations among developing countries. From a developmental perspective, greater openness within the region and somewhat protectionist measures against the highly competitive third parties, might promote development in the developing countries.

Another difficulty with the Enabling Clause is that it seems to emphasise the "individual" developmental needs of countries in the region in question, rather than focusing on a broader regional perspective. In this sense, preferential treatment is inclined to promote

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[179] The Enabling Clause, http:www.wto.org/English/traptop_e/region_e/region_e.htm

trade "of", instead of "among" developing countries. Developmental regionalism comprises developing countries and believes that promotion of trade among members is one of the best ways to achieve sustainable economic development. Among these developing countries, are least developed countries (LDCs) that deserve special treatment from both their partners in the region in question as well as the third parties. In this case, individual economic advancement is impossible without the development of the neighbouring countries or countries in the region in question.

As an illustration, South Africa would not be able to overcome her domestic economic problems without prioritising regional economic development. A reference is made to the uncontrollable migration from the rest of the continent to South Africa, amongst other factors. The escalating unemployment rate in South Africa compounds the problem of migration in Africa. For instance, Post- apartheid South Africa has reported the "threat" posed to citizens by "waves" and "floods" of immigrants from an impoverished Africa. Official figures claim that there are up to nine million unauthorized migrants in the country. Between 1994 and 2000, the police reported over 600,000 forced removals of illegal immigrants from the country.[180] Therefore, a collective development strategy for the whole region is not a choice but a necessity.

Finally, the Enabling Clause, permitting PTAs towards developing countries, and Article XXIV, do not give a clear distinction between the developing and the developed world. Yorizumi Watanabe[181] refers to the case of Mercosur. Participants wanted to apply the Enabling Clause in the formation of the union. However, the adoption of the Clause was argued on the basis that due to its size and its importance, the agreement (Mercosur) could not escape the obligation in Article XXIV.

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180 Jonathan Crush and David A. McDonald, "Introduction to Special Issue: Evaluating South African Immigration Policy after Apartheid, Africa Today Volume 48 (3); http://iupjournals.org/africatoday/aft48-3.html

181 Yorizumi Wanatabe, "Regionalism vs. Multilateralism", Working Paper Series, The Helen Kellogg Institute for International Studies, University of Notre Dame, http:// www.nd.edu/~kellogg/WPS/220.pdf

The Enabling Clause was clearly not meant to promote trade amongst developing countries, but between them and the developed countries. Because economies of developing countries are not complementary, it is impossible at this stage to facilitate trade among them without some form of discrimination against the third party. However, even if one applies the Clause to the arrangement of developed and developing countries, it becomes problematic.

Besides regionalism, the international political economy is witnessing an unprecedented proliferation of plurilateralism. This concept is often used interchangeably with regionalism. Some refer to it as "open" regionalism, whilst others contextualise it as "mega-regionalism". Linda Low refers to mega-regionalism with a great number of states being led by centre countries with an open and flexible regionalisation approach.[182] She cites APEC as an example. Because plurilateralism is characterized by heterogeneous levels of economic development, with the majority of members being developing or LDCs, it becomes difficult to apply GATT XXIV in its analysis. In addition, since the Enabling Clause is meant to facilitate trade "of" developing countries, and not necessarily on a regional basis, it becomes applicable to plurilateralism.

Under the Lome Convention the EU provided preferential access to its 71 ex-colonies in Africa and the Caribbean-Pacific regions.[183] However, the Lome Convention excluded other developing countries, which were of the same development status as the EU ex-colonies. This way, the EU-ACP relations violated the Enabling Clause designed to support and include all LDCs. Consequently, there were calls for renegotiation of the Lome to be WTO compatible.

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182 Linda Low "Whither Multilateralism? Wither Asian Regionalism?", paper presented for the Third Asian Development Forum on Regional Economic Cooperation in Asia and the Pacific", organised by the Asian Development Bank, Bangkok; 11-14 June 2001; http://www.fba.nus.edu.sg/fba/mscphd/01-23%20Linda%20Low.htm

183 Dot Keet, "Europe Scramble for Africa", Red Pepper Archives, http://www.redpepper.org.uk/intarch/xeurosa.html

The preferred position of the EU has been the negotiation of regional economic partnership agreements in the various sub-regions of the ACP where members feel they wish to proceed with a GATT Article XXIV compatible FTA.[184] Again, this provision would not bring any benefits to the developing countries, which are not yet competitive in the global markets. In fact, this would unfairly integrate these economies into the highly competitive economies of the Northern regions.

This discussion is not only reflective of the shortcomings in dealing with regionalism within the WTO, it also highlights the loopholes in the system which the developed countries use to advance their interests. The institution's weaknesses are also reflected in the participation and integration of the developing countries into the system. The following chapter looks at the decision-making processes and refers to the multilateral trade rounds since the establishment of the WTO as well as integration of the developing countries as signified by the Agreements on Agriculture and Textiles.

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184 Roman Grynberg and Mr Bonapas Onguglo; "A Development Agenda for the Economic Partnership Agreement between the EU and the Pacific ACP (PACP)" :A Concept Paper;