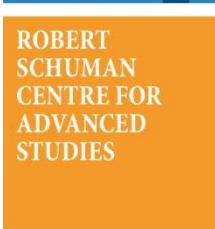




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The WTO and Regional Trading Agreements:  
Is it all over for Multilateralism?

L Alan Winters



European University Institute  
**Robert Schuman Centre for Advanced Studies**  
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## **Abstract**

The number of operative regional trading agreements (RTAs) has been rising steadily. This paper reviews the history of regionalism, and argues that the increasing focus of RTAs on nontariff measures and non-trade issues make the creation of coalitions of countries to pursue specific rather than global objectives easier. In the process important aspects of multilateralism threaten to be eroded. While the effects of RTAs to date in terms of trade discrimination appear to have been relatively benign, the process has been systemically harmful. This is illustrated most prominently by the post 2008 mega-regionals, which aim not just to manage trade relations between their members, but to control or circumvent the multilateral discussion of trade policy by creating coalitions of countries that can, more or less, dictate terms to other players.

## **Keywords**

Regionalism; trade agreements; WTO; multilateral cooperation; China





## Introduction\*

The number of operative regional trading agreements (RTAs) in the world has been increasing, and at an increasing rate, over the life of the GATT-WTO system – WTO (2011) – and this has been a source of unease for many economists, including myself. However, the trading system has not obviously collapsed during its course and, except possibly for the last few years, the growth of world trade does not seem to have been materially affected.<sup>1</sup> Such observations often seem to lead commentators to conclude that RTAs are neutral or, indeed, benign, fostering international trade and boosting incomes at only the tiniest cost in terms of discrimination. I would argue, on the other hand, that the process has been systemically harmful and that, although the problems have been building up only gradually, they are now of sufficient magnitude to be seriously alarming: although regionalism has always been with us, something fundamentally and qualitatively different has happened in the world of RTAs since 2008.

Three (related) factors have come together to create my alarm. First, the treatment of RTAs in the WTO has always been highly political and has actually owed very little to the principles of trade policy or, even, trade law. Second, the GATT/WTO's success in addressing tariff barriers and the increased propensity of governments to regulate transactions in labour and product markets have switched the focus of trade policy firmly onto non-tariff measures (NTMs), and also extended attention towards areas such as investment and intellectual property. The WTO has found it difficult to respond to these trends. Third, since 2008 we have witnessed the rise of the so-called mega-regionals – RTAs of huge economic size, with geographical spreads far exceeding any plausible notion of political integration, and of global policy ambition. The mega-regionals aim not just to manage trade relations between their members, as have previous RTAs, but quite explicitly to control or circumvent the multilateral discussion of trade policy by creating coalitions of countries that can, more or less, dictate terms to other players.

This paper sets out the history of regionalism starting from the discussion about it preceding the Havana Charter. Quite understandably (and reasonably), this history was driven by geo-politics rather than simple commercial policy considerations, and, from the start, those politics have been more about separating countries than bringing them together. In the face of such overwhelming forces, economists' analytical attachment to non-discrimination and the GATT/WTO's institutional attachment to it have been able to do little about the march of RTAs. Moreover, I shall argue that because NTMs and the non-trade issues are more 'all-or-nothing' than are tariffs, they make the creation of coalitions of countries to pursue specific rather than global objectives easier. If its members insist on negotiating NTMs and related non-trade issues in the mega-regionals, important aspects of multilateralism will be lost and I fear that the rest will be undermined. Realistically, it would take a huge change of attitude to promote the interests of the multilateral system above those of the members of the various mega-regionals, and while I advocate such a change I cannot honestly say that I expect it.

A premise of this paper is that multilateralism is worth preserving. It has an inherent ethical basis; it has served us well in the past in terms of preserving peace (if not harmony!), and it has clear economic benefits in terms of fostering efficiency. Multilateralism, as opposed to wholly power-based international relations, did not emerge spontaneously but as a conscious goal and with associated birth

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\* I am grateful to colleagues at the following seminars for their constructive comments on an earlier draft: The World Trade Forum 2015 held on 25/26th September 2015, at the World Trade Institute, Bern, including my discussants Dirk De Bièvre and Krzysztof Pelc; The FIW/CER Workshop on the 'Political Economy of Trade Policy', Vienna, 22 September 2015, and the University of Sussex WTO Study Group. Naturally, none is responsible for the paper's remaining short-comings.

<sup>1</sup> See Hoekman (2015) for various analyses and hypotheses about the recent trade slowdown.

pangs as part of the post-World War II settlement. It was substantially an American conception and one for which we should be grateful, but over time we have seen the commitment to multilateralism of the USA and of those who model their policy on US ideals erode. Nowhere has this been more obvious than in the spread of RTAs. It is true that by accommodating the rise of preferentialism in the past, the central institution of multilateralism, the GATT/WTO, may have preserved itself and its other functions, and may thus have made the best of a bad hand in maintaining multilateralism. But the analysis of this paper suggests that in the case of RTAs, at least, it was never able to promote multilateralism above the national demands of its major members and that therefore, absent a major and conscious change in the value placed by such countries on multilateralism, we are unlikely to bequeath an effective multilateral system to the next generation.

### **Non-discrimination and multilateralism**

The principle of non-discrimination is the corner-stone of the GATT. We tend to equate it with multilateralism, but this is not really correct. There are arguably at least three dimensions to multilateralism that need to be considered:

- first, procedural – multilateralism as an organising principle by which all parties have appropriate(although not necessarily equal) scope to contribute to debate and decision-making;
- second, whether the result is spread more or less widely across the world economy, which is arguably what we mean by non-discrimination; and
- third, whether there is a multilateral enforcement mechanism trade agreements which represents the general interest and is tolerably even-handed.

The most frequently cited champion of the principle of non-discrimination is Cordell Hull, US Secretary of State 1933-1944, who wrote in the following terms in his memoirs (Hull, 1948):

to me, unhampered trade dovetailed with peace; high tariffs, trade barriers, and unfair economic competition, with war. ... if we could get a freer flow of trade—freer in the sense of fewer discriminations and obstructions—so that one country would not be deadly jealous of another and the living standards of all countries might rise, thereby eliminating the economic dissatisfaction that breeds war, we might have a reasonable chance for lasting peace (p. 81)

you could not separate the idea of commerce from the idea of war and peace. ... wars were often largely caused by economic rivalry conducted unfairly. (p 84)

Hull was convinced that the protectionism of the interwar period was an evil both globally and for the US economy itself; he firmly believed that liberalisation was a desirable policy. Following the failure of the London World Economic Conference of 1933 which had hoped to achieve a multilateral de-escalation of trade barriers, Hull largely wrested control of US trade policy from Congress for the Executive with the passing of the Reciprocal Trade Agreements Act (RTAA) of 1934, an act whose authorship may be wholly ascribed to Hull according to Schwob (2009). The RTAA permitted the President (effectively the State Department) to reduce US tariffs line-by-line by up to 50% in bilateral negotiations with individual trading partners who offered similar concessions; these concessions were then extended to other countries which had signed such agreements via an unconditional most favoured nation clause. For the USA in the 1930s this was not a large set but it was arguably an improvement on the restrictive regime of the period. However, the RTAA process reduced the average US tariff only from 46.7 percent to 40.7 percent (Irwin, 2012) and was criticised at the time for doing little to address the need to increase US imports as well US exports (Bidwell, 1944, p.344) or to foster effective trade liberalisation elsewhere in the world (Bidwell, 1943, p.297).

Bilateralism was not entirely absent from the GATT because negotiations were conducted bilaterally before extension to others, but the key difference from the RTAA process was that all the negotiations occurred together and were adopted and extended to others simultaneously. Schwob (2009 p. 9) notes Hull's attachment to the principal supplier rule, but argues that the origins of

multilateral approach to negotiations lay elsewhere, with Percy Bidwell and James Meade. He credits the latter pair, rather than Cordell Hull, with being the father(s) of the multilateral trading system, as I will discuss below.

Both the RTAA process and the early GATT embedded a somewhat limited notion of non-discrimination – non-discrimination *within* a club. Clearly the extent of the non-discrimination that club approaches can achieve depends on the size of the club – the set of countries included among those deemed to have signed ‘similar agreements’. In both cases the club was small – by 1940 twenty-one partners had signed RTAA-agreements with the USA and the first GATT negotiation had twenty-three signatories, albeit of greater economic weight than the RTAA-club. But as the GATT and then the WTO was enlarged, the network of multilaterally linked partners was extended and became more nearly global and hence more nearly non-discriminatory.

Schwob (2009) argues that Hull’s attachment to bilateral negotiations was not pragmatic so much as born out of a conviction that only bilateralism would allow the USA to exercise its economic muscle in terms of extracting concessions. In fact, Schwob argues (pp.11-12) that Hull took no steps to encourage multilateral trade negotiations and actually opposed them. Overall, one can see in the way in which Hull approached liberalisation the seeds of the rhetoric currently surrounding the mega-regionals: “If the global system will not generate the liberalisation we require, we will work individually with like-minded countries to achieve it and extend it in a non-discriminatory way within that set”.

Cordell Hull was an early advocate of multilateral enforcement. As early as a speech in 1916 he argued that maintaining non-discrimination required – or at least was greatly aided by - an international body: if he were President, Congressman Hull said, he would

... propose ...an international trade conference .... For the purpose of establishing a permanent international trade congress [to consider] all international trade methods, practices, and policies which in their effects are calculated to create destructive commercial controversies or bitter economic wars, and to formulate agreements with respect thereto, designed to eliminate and avoid the injurious results and dangerous possibilities of economic warfare, and to promote fair and friendly trade relations among all the nations of the world. (Hull, 1948, p. 82)

Although according to Toye (2012) Hull used the term ‘International Trade Organization’ in 1925, he apparently cooled on the idea of an international body quite soon afterwards. Probably for merely practical reasons, during the war the State Department sub-contracted thought about the post-war trading system largely to the Council for Foreign Relations, where the leading exponent was Percy Bidwell<sup>2</sup>. Bidwell had thought about an international body in 1938 and made a concrete proposal for an International Trade Agency in 1942; he published his ideas in Bidwell (1943 and 1944). The 1942 proposal was matched on the British side by James Meade’s proposal for an International Commercial Union (Meade, 1942) and together these formed the basis for the on-going discussion of the trading system that lead eventually to the Havana Charter and, via that, to the GATT. Schwob argues that the origins of the World Trade Organisation can be much more clearly traced back to Bidwell and Meade than to Hull.

Bidwell was an unashamed multilateralist and liberaliser<sup>3</sup>. He had advocated a multilateral negotiation in 1933 and argued for post-war trade liberalisation not only on the grounds of economic efficiency within the USA but as the only effective way of generating sufficient trade liberalisation, and hence trade, to alleviate the UK’s balance of payments pressures. He felt that negotiations had to be multilateral in order to help governments to overcome the opposition of domestic pressure groups and hence make extensive concessions, to manage the logistics of such a broad negotiation, especially if it was to be viewed as a single item, and to manage trade relations with state-traders such as the

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<sup>2</sup> This account is taken substantially from Schwob (2009).

<sup>3</sup> He also had a very clear view of the USA’s existential leadership role in the creation of the post-war era.

Soviet Union. He also argued that multilateral arbitration of trade disputes and oversight of trade agreements would be necessary to keep the partners honest (not his words!). None of this was messianic, however; Bidwell's writing is suffused with the pragmatism and practicality necessary to achieve such a dramatic change in practice from the interwar period.

Meade held similar, but possibly more measured, views to Bidwell's. His proposals would have forbidden import or export quotas and restrictions on current account payments, restricted subsidies to 10% and protection of home producers by any means to 25%. While he did not debate between bilateral and multilateral negotiations, his International Commercial Union would provide for an 'International Commerce Commission of a semi-arbitral semi-judicial nature'. This would interpret the Charter of the Commercial Union and express an opinion on any dispute between members.

### **The early treatment of regional trading agreements**

This section considers the views of Bidwell, Hull and Meade on regional trading agreements. Throughout the war-time and early post-war discussions of the future trading system, British Imperial Preferences figured large. To Cordell Hull these were an abomination, not only as examples of the discrimination he abhorred but as a restriction on the USA's ability to export effectively (Schwob 2009, p.12). Meade, as a British government official, could hardly disown Imperial Preferences, but he seems a bit embarrassed by them; he wrote about the International Commercial Union permitting 'moderate preferences' to a 'recognised political or geographical group of nations' as the way of grand-fathering them. Bidwell was also diplomatic on the specifically British issue.

Hull had little to say practically on preferences more generally, but Bidwell and Meade were very explicit. Their plans both recognised a role for preferential trading arrangements but subject to well-defined limits. Discussing his proposed International Trade Authority, Bidwell (1943, p.306) writes:

The definition of "discrimination" raises the problem of preferential tariffs and customs unions. Present usage does not consider that the most-favored-nation clause is violated when a country accords tariff favors to another country with which it maintains especially close political relations, as for example in the Ottawa Agreements and in our reciprocal preferential arrangement with Cuba. But there is grave danger that the clause may become so weakened by these and other exceptions and interpretations that it will lose all real significance. The wise course, however, would seem to be not to attempt to prevent all discriminations of this type. If customs unions are properly organized they can be useful in promoting a diversification of industries in certain areas. But they and preferential tariff arrangements should be subjected to scrutiny by the Trade Authority, which should have power to recommend to the states belonging to the general organization whether or not they should waive their rights under most-favored-nation pledges.

Just prior to this Bidwell argues that

[bilateral trade agreements] should be given close scrutiny by the International Trade Authority, which should attempt to devise substitute policies more in line with the general aims of sound reconstruction policy on the basis of equal treatment. Hence the writer urges the advisability of an agreement that not later than five or ten years after the close of hostilities the nations will undertake to abolish all discrimination in their commercial policies and in the administration of exchange controls.<sup>4</sup>

Meade proposed a limit on the degree of preference that customs unions or other blocs could maintain (p.32):

(iii) As exceptions to [the mfn obligation] members could give price preferences up to a maximum of, say, 10 percent to the produce of another state with which it formed a special recognised geographical or political union.

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<sup>4</sup> "Exceptions should, of course, be made for frontier trade [- small scale trade between immediate neighbours]." This footnote is from the original.

He also clearly included such unions within the ambit of the International Commerce Commission which would oversee the implementation of the Commercial Union's Charter.

This brief discussion shows that 'the founding fathers' envisaged a role for customs unions and possibly other preferential trade agreements within the post-war trading system, but subject to conditions:

- Maximal degrees of preference or maximal durations
- Restriction to recognised groups or specific circumstances, and
- Multilateral over-sight to represent the interests of non-partners as well partners in the agreement, with, at least implicitly, the right to veto agreements.

It also seems reasonable to infer that these officials had a greater degree of comfort with customs unions than with other forms of preference, despite their diplomatic efforts to accommodate Imperial Preference.

### **The birth pangs of Article XXIV<sup>5</sup>**

The 'founding fathers' logic followed through to the negotiations around the early drafts of the Charter for what had come to be called the International Trade Organization (ITO), with the USA generally pushing hard against preferences and the British far more ambiguous in view of their wish to keep Imperial Preference. Irwin, Mavroidis and Sykes (2008) lay out the somewhat tortured timetable of trade discussions (and then negotiations) on the post-war trade architecture, from which one can extract the following milestones on Imperial Preferences, which was more or less the only form in which non-customs union preferences were discussed<sup>6</sup>.

*The Atlantic Charter* of August 14, 1941 called for 'access, on equal terms, to' trade, but subject to 'due respect to ... existing obligations', which the British believed grandfathered Imperial Preferences (as did Cordell Hull, to his considerable frustration). *The Mutual Aid Agreement* of 23<sup>rd</sup> February 1942, Article VII, referred back to the Charter but also spoke of 'the elimination of all forms of discriminatory treatment...', which deepened the ambiguity. *The Washington Seminar* of September-October 1943, an informal meeting between various government economists, agreed many features of the post-war regimes but not on Imperial Preferences.

Following the Washington seminar, the discussion stalled as the British became less and less interested in a liberal world trading order. However, preferences re-surfaced as a contention in *The British Loan Negotiations*, September-October 1945, which after much acrimony concluded that Imperial Preferences would be negotiated, along with reductions in American tariffs, previous commitments notwithstanding. It was also agreed that the US side would draft Proposals on 'expanding world trade and employment' for discussion among a dozen or so key countries in March 1946. The Proposals were issued in December 1945 but no meeting occurred on them and they were then transformed into the USA's 'Suggested Charter for an International Trade Organization' in September 1946. This fed into *The First Preparatory Meeting*, London, October-November 1946, Article 38 of which permitted customs unions provided that they did not raise the average of the tariffs charged by members prior to the customs union. This position remained unchanged through the *New York Meeting* of January-February 1947 which produced the first draft of the GATT out of the

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<sup>5</sup> The first part of this section draws heavily on the excellent research in Chase (2006) and Irwin, Mavroidis and Sykes (2008).

<sup>6</sup> While this account stresses the international negotiations on the trading system, behind them lay pressing and immediate domestic political pressures and also the desire to construct an international system which helped governments to manage such pressures.

Commercial Policy Chapter of the ITO Charter, and the *Second Preparatory Meeting*, Geneva, April-October 1947, which produced the putative definitive draft of the GATT.

The Geneva Draft included, *inter alia*, a provision grandfathering Imperial Preferences and some other existing arrangements via a qualification to Article I on MFN, and the inspired relegation of the treatment of customs unions to a mere technical question of the definition of a customs territory in a quite separate Article XXIV. In the meantime, however, the *Havana Conference* of November 1948 to March 1949 was working on the Charter for the ITO and during this meeting the disciplines on preferential trading agreements were suddenly relaxed – and the relaxation then retrofitted into the GATT. Suddenly free trade areas were to be permitted as well as customs unions, arrangements had to cover only ‘substantially all trade’, interim arrangements were allowed during which even this was not required, and the requirement not to raise the average tariff was replaced by the less operationalisable notion of not increasing ‘the general incidence of duties’.

It is sometimes suggested that Article XXIV’s general lack of clarity, consistency and practicality arose from the sensitivity over Imperial Preference or in order to make space for economic integration within Europe or between developing countries aimed at encouraging industrialisation. However, as Chase (2006) so thoroughly documents, a very substantial part of the reason was that the USA was planning – indeed, was already negotiating – a free-trade area with Canada. Thus from a somewhat unforgiving position of ‘customs unions only’, the USA sought to relax the exceptions to be permitted in the Havana Charter to include free-trade areas and to subject the latter to fewer disciplines than the former. This is the origin of the language that preferential agreements must cover ‘substantially all trade’ as opposed to ‘all trade’ which had been the presumption before the US change of heart. It also lies behind the wording in Article XXIV Clause 6, which requires that if partners to an agreement raise tariffs subsequent to its creation they are liable to provide compensation to third parties: this applies only to customs unions but not to free-trade areas.<sup>7</sup>

This dramatic change of position by the USA might look like mere opportunism – the pursuit of immediate commercial benefits out-weighing long-term principles and the fruit of dispassionate analysis. However, even this requires explanation and Chase argues that change between 1946’s restrictive stance to 1947’s pragmatic flexibility lay in the security situation (p.21):

By early fall 1947, the Truman administration had concluded that a Soviet invasion of Europe was unlikely in the foreseeable future; instead, the Soviet regime would use political and economic means of subversion. ....

At Geneva and Havana, its primary objective was to demonstrate cohesion among market-oriented, democratic nations in the face of the Soviet threat. The Canadian trade initiative caused US officials to recognize that preferential arrangements could be employed to serve this larger Cold War strategy. This realization led policymakers to revise their beliefs about multilateralism. Previously, they had preferred a rigid MFN clause so the benefits of trade would be non-excludable: exclusion was repugnant, and it aroused hostility. But after the Canadian proposal, they concluded that international trade institutions, whether multilateral or regional, cemented political bonds among non-communist countries, deepened commitments to the capitalist model, and mobilized a united front against the Soviet Union.

Chase examines other possible drivers of the relaxation and extension of Article XXIV and largely dismisses them. To facilitate European integration: this may have explained the provisions for interim stages for customs unions but not those for FTAs because the USA had decided that Europe needed a customs union not an FTA; to please developing countries: but the USA resisted any amendments that went beyond its precise requirements for Canada; to preserve Imperial Preference: but that was treated elsewhere and, indeed, the British objected to the form of Article XXIV on the grounds that it

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<sup>7</sup> Given that FTA members each control their own tariffs, however, it is presumably the case that each is liable individually to the normal rules for compensation, so that this asymmetry is of no consequence.

permitted others to form FTAs but not the Commonwealth, because the latter could never agree to 'substantially all'.

One other question arises – why write universal rules to accommodate the putative USA-Canada free-trade area rather than merely insist on an exception, which in the aftermath of the war, the USA could surely have done? Would these rules not eventually lead to a plethora of agreements that discriminated against the USA? Partial answers are that no one expected much use to be made of Article XXIV and that it is just more comfortable diplomatically to be within rather than outside a system you are leading.<sup>8</sup> More satisfying is Chase's argument that by the fall of 1947, the US Administration had concluded that the USSR was unlikely to pursue its goals in Europe militarily and that US foreign policy should now focus on drawing major western countries into its market-based economic system.

It seems clear from this account that FTAs were an after-thought which received little analytical scrutiny and which lay awkwardly within the system even though, by dint of clever drafting (treating the matter as one of defining a customs territory), the latter admitted exceptions to non-discrimination in the form of customs unions. The contemporary (pre-Vinerian) view was that by facilitating the internal allocation of resources customs unions would be welfare enhancing, but that preferential trade areas were just discriminatory. Claire Wilcox (1949), the USA's Chief Negotiator and Director of the US Department of International Trade Policy, wrote,

A customs union creates a wider trading area, removes obstacles to competition, makes possible a more economic allocation of resources, and thus operates to increase production and raise planes of living. A preferential system, on the other hand, retains internal barriers, obstructs economy in production, and restrains the growth of income and demand. It is set up for the purpose of conferring a privilege on producers within the system and imposing a handicap on external competitors.

... a customs union is conducive to the expansion of trade on a basis of multilateralism and nondiscrimination; a preferential system is not.

While we no longer see the distinction in quite these terms, it is not without validity. A customs union demonstrates a serious intention to integrate member economies, and as, for example, Sapir (1995) has argued, almost inevitably leads to deeper integration in areas beyond trade. An FTA is about managing competition between countries. It is only slightly hyperbolic to say that customs unions are domestic policy, FTAs are foreign policy. In the legitimisation of FTAs, the driving force was entirely geopolitics, not economic efficiency.

## **The early application of Article XXIV**

The history of the creation of regional trading agreements since the advent of the GATT has been well documented elsewhere, and so I will not dwell on it (e.g. Mathis, 2002; WTO, 2011). As negotiators had foreseen, not much use was made of regional trading arrangements in the first decade, but Article XXIV was nonetheless tested severely – indeed, in one sense, to destruction.

The three principal substantive conditions that Article XXIV lays down are that a Regional Trading Agreement (RTA) should:

- cover substantially all trade
- abolish duties and other regulations on internal trade between members

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<sup>8</sup> Goldstein and Gowa (2002) argue convincingly that the USA saw benefits in tying its hands – in establishing a set of rules and enforcement mechanisms that applied equally to it as hegemon as to other, smaller, players in the trading system. This was to give the others confidence that the trading system would not exploit them and so encourage them to invest in it and in trading activities. From this perspective, it was important to make the FTA consistent with the rule-book rather than to present it as an exception.

- not raise the general incidence of duties against third countries<sup>9</sup>

and the procedural requirement was that each RTA should be notified to the GATT which was then permitted 'to make such reports and recommendations to contracting parties as they may deem appropriate'. This is a little vague, but for interim agreements the GATT had the power to prohibit an agreement from coming into or remaining in force if the GATT's recommendations were not followed. To start with each RTA was examined by a Working Group in order to guide the contracting parties about whether it should be acceptable to them.

In principle this structure could have imposed a good deal of discipline on preferentialism within the GATT, but in fact it failed to do so in any explicit fashion.<sup>10</sup> The terms in the Article turned out to be so vague as to defy legal interpretation but this was basically merely a cover for the political difficulties that acting against an RTA involved after it had been established. The first cases examined concerned small countries: South Africa-Rhodesia for a customs union (1949) and Nicaragua-El Salvador for an FTA (1951).<sup>11</sup> In each there was at least room for doubt whether the conditions had been satisfied but in each case any determination was put off until full plans or more data had been supplied, by which time the ability to act if ever there had been one would have evaporated. The South Africa-Rhodesia case dissolved as Rhodesia federated with two other states in 1955, while the FTA continued to report on trade relations between the partners but no action by other contracting parties apparently resulted.

Two key early cases that came to define the GATT's practice on regionalism both concerned the European Economic Community – its creation in 1957 and its relationships with its overseas territories (which became a GATT issue in 1958). The EEC's precursor – The European Coal and Steel Community, which liberalised trade in coal and steel between six European countries and more controversially created a steel cartel – had been granted a waiver. When it came to the Treaty of Rome establishing the EEC itself and then the relationship between the EEC and its members' overseas territories, however, politics became central. The European countries concerned were quite clear that European integration was their principal interest in terms of economic institutions. And in this, they were backed by the USA which saw economic integration as the route to economic success and hence a bulwark against both internal and external threats to the democratic/market system<sup>12</sup>. Thus while the EEC arguably violated the injunction against increasing average tariff levels and the agreements with overseas territories those about 'substantially all trade', in neither case could the contracting parties bring themselves to declare the arrangements inconsistent with the GATT.

By backing off on European integration, the GATT survived what might have been an existential threat, essentially by bowing to a superior political imperative. And it may well have been right to do so, for the GATT offered more advantages than just controlling RTAs – both economic and in terms of promoting co-operative solutions to global problems. But within the GATT the casualty of the compromise was Article XXIV, which was emasculated (if it ever had any masculinity to lose). Even this might not have been a bad deal – at least, so it seemed until recently. Even a regulation that is almost universally violated may still have a positive effect in the sense that it heads-off even worse behaviour. Speeding laws, which are very commonly violated to a degree, are still regarded by most people as worthwhile and as having some influence on traffic speeds. Likewise, the existence and

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<sup>9</sup> The Enabling Clause of 1979 allows developing countries to conclude RTAs between themselves without these restrictions.

<sup>10</sup> This is not to say, of course, that the Article had no effect – the scrutiny and the definition of norms it entailed may well have influenced what members proposed. However, once something was proposed the contracting parties were not able or willing to change it materially.

<sup>11</sup> This account is based on Curzon (1965).

<sup>12</sup> Lowenfeld (1996) gives an inside view of the US position.



monitoring entailed by Article XXIV may still constrain the degree to which RTAs disadvantage third countries.

## **The Middle Years**

From the 1960s the number of RTAs has increased dramatically with a burst of activity in the 1970s and another, continuing, one starting in 1992 – WTO (2011). Until 1995 the procedure remained as described above and not a single working group concluded that an RTA was consistent with the GATT – although four concluded that an agreement was broadly consistent with it (Schott et al, 1989) – and none concluded that an agreement was inconsistent with the GATT. That is, the working groups, and hence the contracting parties, sat firmly on the fence – RTAs were just too hot to handle. And neither were any disputes lodged directly against an RTA or even in which the GATT-consistency of an RTA figured in a significant way. However, given that pre-1994 dispute settlement required the acceptance of a conclusion by both parties to a dispute before it had any effect, one can see why contracting parties might not have bothered. There were claims for compensation for the effects of tariff changes resulting from the enlargement of the EEC under GATT Article XXVIII - see, for example, GATT (1986) which arose from Spain and Portugal increasing certain tariffs to the level of the EEC's common external tariff on their accession - but it is difficult to see these isolated incidents as reflecting any attempt to enforce Article XXIV.

The problems of Article XXIV were well recognised within the GATT community and were the subject of a pretty thorough negotiation in the Uruguay Round. The changes to the Dispute Settlement Procedure will have affected disputes in the area of Article XXIV as much as any other, but the agreement concerning Article XXIV specifically – the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994 – did not advance matters very far. The Understanding clarifies a few terms but avoids any really contentious issues because agreement could not be reached. At least in part this was because the major players, again, found it politically impossible to address the issues: by 1994 the USA had just signed NAFTA and the EU (as it had now become) had created many RTAs as it sought to integrate the newly liberated Central and Eastern European states into European and world markets. Both were clearly very important foreign policy imperatives and allowing a mere commercial treaty to unpick them was unthinkable.

The Understanding states that notifications of RTAs will be 'examined by a working party'; whether this refers to one working party or one per RTA is unclear to me, but the question was immediately resolved by placing the investigations in the hands of a Committee on Regional Trading Arrangements (CRTA). This, it was hoped, would give the process more expertise and clout and a greater ability and willingness to make comparisons between agreements. It is true that the CRTA managed one definitive conclusion – that the customs union between the Czech and Slovak Republics following the division of Czechoslovakia was GATT-consistent. But otherwise, the CRTA continued the studied agnosticism of the GATT working parties.

In December 2006 the WTO created the Transparency Mechanism for Regional Trading Agreements as a complement to the CRTA's work. As explained by Mavroidis (2011), however, transparency actually provided the context for the CRTA to cease the pretence of assessing RTAs itself – it became a *de facto* a substitute for, not a complement to, the CRTA's role as a judge of new RTAs. The CRTA now circulates a factual document on an RTA to members; the members submit questions which the parties to the RTA must answer in advance and then everyone meets. The formal record contains the document, the Q&As and a minute of the meeting, but does not attempt to come to any decision about the WTO-consistency of the RTA in question. Presumably transparency limits the degree to which new RTAs deviate from Article XXIV, but the membership no longer has any mechanism by which it can express an institutional view, still less seek amendment. It may also provide evidence on which disputes could be launched, but so far that has not happened, and by and

large it seems unlikely that responding parties would offer the membership sticks with which to beat them.

While the GATT failed to defend Article XXIV it nonetheless made considerable progress on reducing tariffs, supplemented in the cases of developing countries by the tender mercies of the Bretton Woods institutions' conditionality which often featured trade liberalisations. Thus after the Uruguay Round had been implemented, it was often stated that tariffs were no longer a major issue for the world trading system. Even though this was not precisely true – plenty of developing countries have significant average tariffs and developed countries have a number of peaks – it clearly illustrated a trend. By simple arithmetic, then, regulatory issues - non-tariff measures (NTMs) and issues surrounding the coverage of agreements - became relatively more important; they also actually increased in importance in a number of spheres - for example, food standards rose, environmental standards were introduced and labour standards extended. Moreover, with leaps in communications technology, production chains fragmented, increasing the integration of economies and, arguably, raising the opportunity costs of the assorted barriers to trade. Global value chains also brought issues such as foreign direct investment (FDI) and intellectual property (IP) more to the fore as large sophisticated global firms sought protection for their activities in developing countries.

Thus, as many scholars have noted, by the twenty-first century regulation had become the focus of trade discussions, and the WTO proved ill-equipped to deal with it. Developing countries, smarting from what they felt were the asymmetries of the Uruguay Round, were suspicious of attempts to deal with four such issues in the Doha Round – Investment, Competition Policy, Transparency in Government Procurement and Trade Facilitation - and so, after generating a considerable amount of ill-will, the first three of these were excised from the agenda in 2004. At the same time, the regulatory issues were the only ones for which large-scale business could work up any enthusiasm. Caught between a rock and a hard place, trade negotiators came up with the idea of treating them outside the WTO in smaller 'coalitions of the willing'. And by packaging them up with preferential access to their markets the major players realised that they could persuade sets of developing countries to overlook the scruples that developing countries had expressed as a group.

Two features make negotiating tariffs more straight-forward than negotiating regulation: tariffs are continuous variables and so may be tweaked to reach acceptable agreements and are 'owned' by trade ministries so that the internal bureaucratic process is much simpler. The regulatory issues, on the other hand, are frequently 'owned' by other ministries or by pseudo-independent agencies and often have a rather all-or-nothing character to them – you either have an acceptable regime or you do not, you either meet the standard and can access a market or you do not. This not only makes them harder to negotiate, I would argue, but it also gives a strong first mover advantage to a bloc that can arrive at the global negotiating table with a ready-made proposal. It also makes them much more firmly exclusionary than tariffs: a tariff might be circumvented by reducing prices (preferably after reducing costs), but a regulation leaves no alternative than to accept it or reject it completely. Thus regulatory negotiations seem likely to be more 'take it or leave it' than those on tariffs.

To conclude, the 'middle' years saw two forces coming together – the shifting of attention from tariffs to NTMs and regulations and the confirmation that in matters of RTAs, the trading system bowed to the political demands of the major players. RTAs had become the perfect instrument for dividing up the trading system: they would not be opposed and yet they could very effectively exclude certain countries. Thus the scene was set of the advent of the Mega-Regional Trading Arrangements.

## **The Mega-Regionals**

The term mega-regional is not defined, but in common with most commentators I will take it to encompass just three blocs, none of which is yet ratified and implemented. These are:

- ***The Trans-Pacific Partnership (TPP)***, which has been signed between twelve countries, namely Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the USA, and Vietnam. They have a combined GDP of \$27.8 trillion, (37 per cent of global total), total trade of \$11.6 trillion (26%) and have a combined population of about 802 million (11%)<sup>13</sup>.
- ***The Trans-Atlantic Trade and Investment Partnership (TTIP)*** which is being negotiated between the USA and the EU. These two economies have a combined GDP of \$34.6 trillion, (46 per cent), total trade of \$19.6 trillion (44%) and have a total population of over 823 million (12%).
- ***The Regional Comprehensive Economic Partnership (RCEP)*** which is being negotiated between the ten members of ASEAN (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam), and six other, larger, economies - Australia, China, India, Japan, New Zealand and South Korea. They have a combined GDP of \$21.8 trillion (31 per cent), total trade of \$12 trillion (27%) and a total population of 3.43 billion (48%).

These huge trading arrangements are unprecedented in terms of the numbers of countries involved (*ab initio*), their total GDP, the variance in their levels of development, the volume of world trade that they account for and the spread and depth of the issues that they seek to address. Moreover, they also include the major hubs in most, if not all, global production networks, account for nearly all the world's patents and generate the bulk of the world's outflows of FDI. They differ from their predecessors not only in scale, however, but also in nature. The largest blocs of yesteryear – the EEC, NAFTA – were smaller and regionally concentrated, and in the case of the EEC aiming to become a customs union rather than a FTA. They were not aimed at influencing the architecture of world trade and the world trading system, but at essentially local integration. The Mega-Regionals, on the other hand, are explicitly global in conception and scope. They aim to define global standards and to create blocs of sufficient size that being outside them would be materially costly. I will argue that the mega-regionals threaten the multilateral trading system both by discriminating and by displacing multilateral functions and activities with regional ones.

### ***The Trans-Pacific Partnership (TPP)***

The history of the multilaterals is linear. In 2002 the leaders of three small countries - Chile, New Zealand and Singapore - started talks on a Pacific Three Closer Economic Partnership (P3-CEP). Brunei joined the talks in April 2005, and the Pacific-4 (P4) came into being in 2006. It sought quite deep integration, with, for example, chapters on SPS, TBT, TRIPs, competition policy, government procurement and services, and it committed to negotiating financial services and investment within two years of coming into force. It accounted (on the 2013 data in Table 1) for 1 per cent of world GDP, and no-one batted an eyelid.

The P-4 also had an open access clause whereby excluded countries could negotiate accession, and in February 2008 the USA (22% of world GDP) announced that it would join the negotiations on finance and investment and explore full accession<sup>14</sup>. USTR Susan Schwab said “This initiative also will provide another opportunity for the United States to participate in the regional trade architecture that is emerging in the vitally important Asia-Pacific region.” And the press release explained by way of background that “Asia-Pacific countries are actively pursuing preferential trade agreements, both with one another as well as with partners outside the region. This trend has important commercial and strategic implications for the United States” (USTR, 2008).

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<sup>13</sup> All statistics come from WDI online and refer to 2013. Details are in Table 1.

<sup>14</sup> The USA made clear that it viewed this process as negotiating a new agreement, not accession to an old one.

Thus the overt motivation seems to have been a fear of being on the outside of a nascent Asian-Pacific economic structure. But other forces were perhaps pressing in the same direction<sup>15</sup>. By 2008 the Doha Round was failing, and, according to many, the Uruguay Round had been closed only when the USA pursued NAFTA; why not try to enliven the Doha Round via the same stratagem?<sup>16</sup> Second, US foreign policy was already ‘pivoting’ towards Asia, and TPP could form part of this. Such a pivot seemed desirable partly on economic grounds – compared to nearly all of Asia, European growth was very disappointing – and partly on geopolitical grounds – Europe exercised declining amounts of leadership or influence in the world and China was becoming more powerful and assertive. By the late-2000s US policy makers were becoming much more cautious about China as a trading rival and also as an alternative focal point politically. By binding other Asian countries into an economic bloc the US hoped to head off any development of a Chinese-led Asian bloc in the WTO. This would be especially effective while the TPP was being negotiated because at that stage any defection could be punished.

More parochially, there was a general concern that business seemed to have little or no interest in the world trade talks and a deeper but narrower deal with dynamic Asia seemed as if it might address this. A fresh start would enable business to be more influential in the agenda and also, very probably, dilute the amount of opposition that the US business agenda faced. Finally, some commentators argued that President Bush was aiming to wrong-foot the Democrats in the forth-coming election. Becoming ever more sceptical about liberal trade, the Democrats would struggle to define a position over a TPP presented in terms of jobs and opportunities.

Soon, if not immediately, the TPP became the central pillar of US trade policy and unashamedly strategic. For example,

Our goal is for high standards for the Trans-Pacific Partnership to enter the bloodstream of the global system and improve the rules and norms.

Vice President Joseph P. Biden, April 5, 2013, cited by Fergusson et al (2013), who continued to say, the TPP aims to establish disciplines on new trade issues, such as state-owned enterprises or supply chain facilitation, that could serve as a model for future negotiations bilaterally, regionally, or in the WTO.

And his boss, President Obama, was even more direct in the State of the Union address, 2015,

China wants to write the rules for the world’s fastest-growing region. That would put our workers and our businesses at a disadvantage. Why would we let that happen? We should write those rules. ....

In the Asia Pacific, we are modernizing alliances while making sure that other nations play by the rules -- in how they trade, ...

Once the USA had sought membership, as Baldwin and Robert-Nicoud’s (2007) juggernaut theory predicts, other countries rushed to join the TPP – so much so, in fact, that negotiators announced in 2013 that no new potential members would be admitted to the negotiations – they would have to wait until the TPP was completed.

The most notable feature of the TPP’s coverage, however, is that it excludes China, the largest economic force in Asia. It is true that until the window was shut, China could have applied for membership, but it did not require much imagination to see that many of the rules reportedly being developed in the TPP negotiations would imply huge changes in economic regulation in China. Moreover, China could hardly have expected to be able to influence those rules or to get waivers from

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<sup>15</sup> Fergusson et al (2013) discuss several of these.

<sup>16</sup> This effect of NAFTA on the Uruguay Round is far from certain, but there is convincing evidence that the creation of the EEC stimulated the USA to negotiate the Kennedy Round – Dür (2010). But the latter was quite a different business from creating a regional bloc as a negotiating ploy.

them, for at least two reasons. First, it is frequently argued in the west that China had benefitted asymmetrically from its WTO accession, getting huge market access benefits while still pursuing non-cooperative mercantilist policies such as state ownership and currency manipulation at the expense of her trading partners. So China receives little sympathy. Second, China is so large that almost every country in the world fears that if it grants market access to China it could be swamped by imports which undermine both domestic production and imports from other ‘friendlier’ countries. Thus while the TPP will obviously have to stretch to accommodate Vietnam’s state ownership and export promotion for some time, China could not expect any such political favours.<sup>17</sup>

In the case of a purely commercial operation one might regret that it excludes important partners, but for an organisation intended to define standards for the global economy one should surely be more severe about the exclusion of the second largest member in the world trading system.

Even setting China aside, norms agreed between countries accounting for 37% of world output are going to be pretty hard for excluded countries to review or reform even if those countries are brought into a negotiation at a later stage. And this is particularly true if those norms have already been implemented as is likely to be the case if the TPP forms and a WTO Round is then opened. Mavroidis (2015) has coined the phrase ‘forum diversion’ to describe the phenomenon whereby the creation of an RTA leads specific activities to migrate from one forum to another controlled or created by the FTA. We observe precisely this phenomenon in the TPP and it is quite explicit and deliberate.

It might be argued that if the varied membership of the TPP can collectively agree a set of norms, then surely those norms ought to be suitable for other countries in the world – i.e. that somehow the TPP members are a representative group. Aside from the arrogance of this view, we should also note that TPP members would have accepted the norms as part of a particular package which will not be offered to others even under a supposedly MFN deal. Specifically, the TPP offers preferential access to the US market in return for agreeing the norms, whereas when the norms are offered to all other WTO members, the preferential component will, by definition, be absent.

### ***The Trans-Atlantic Trade and Investment Partnership (TTIP)***

For smaller Asian-Pacific countries the natural reaction to TPP was to try to join, but this was precluded *de facto* for China and *de jure* for Europe, the two other mega-trading powers. As several analytical models (e.g. Andriamananjara, 2002), as well as the political economy discussion have suggested, if you are excluded in a regionalising world, the next best thing is to start your own group. Europe and China could indeed have started to negotiate a parallel agreement – and did in fact start on a Bilateral Investment Treaty in 2013 – but Europe too harbours deep fears of China’s huge productive potential. Hence Europe was more inclined to pursue a trans-Atlantic trade agreement – which eventually found form in the Trans-Atlantic Trade and Investment Partnership - TTIP.

Trans-Atlantic free trade had been talked about on-and-off since the 1960s and an Economic Council had been established in 2007 to consider a number of regulatory issues. But by 2012 it had become a priority for the EU. Not only did Europe fear economic and political exclusion from the US ‘pivot’ to Asia but recovery from the financial crisis was painfully slow. Under similar circumstances in the 1980s the European Commission had proposed the Single Market Programme, as an imaginative way of stimulating economic activity, which is widely accepted to have helped economic growth. Perhaps deeper integration with the USA would offer the same benefits now. Given the greater homogeneity and sophistication of its membership, the TTIP could go even further than the TPP in the regulatory race, and Europe could leapfrog into a position of leadership in global economic regulation.

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<sup>17</sup> The USA is blocking China from joining the Trade in Services Agreement (TiSA) talks in the WTO, despite both China and the USA professing to want China to join.

Moreover, trade agreements are almost the only policy area over which the European Commission holds undisputed sway and so there was a ready-made champion in Europe for any such agreement.

While the EU was the demandeur, an agreement had two attractions for the USA: it offered a chance, perhaps, to open some sensitive markets such as for genetically modified foods or hormone-treated beef and, more importantly, it would re-inforce the TPP. European objections to the latter would be muted and any issues on which the TPP and TTIP agreed would have the support of countries producing 60% of world output and nearly 60% of world trade. In addition, for so long as the Europeans were engaged with the USA in negotiating TTIP the latter could be pretty confident that they would not make or entertain overtures from the Chinese. Thus, I would argue, TTIP is not merely another mega-regional agreement which seeks to determine important issues for the world trading system within a small group, but it is, wittingly or unwittingly, a further brick in the wall that excludes China from the design of the twenty-first century trading system.

We saw above the USA's ambitions to design global rules, but Europe's were no less vaunting: TTIP aims 'to enshrine Europe and America's role as the world's standard-setters' (European President Van Rompuy - Van Rompuy, 2013). This sounds like an agreement to cooperate to make sure that outcomes in the trading system are as the US and EU want them. With 45% of world GDP between them and a further 15% in the rest of TPP, it suggests that the choice facing other countries will be capitulation vs. exclusion. Even if the EU/US rules are the best available, which is contended at least in part, imposing them in this way is likely to spur opposition and is hardly compatible with multilateralism.

### ***The Regional Comprehensive Economic Partnership (RCEP)***

As noted above, in the world of regionalism the advice is "if you can't join 'em, beat 'em". China is party to a third mega-regional under negotiation - The Regional Comprehensive Economic Partnership (RCEP). Broached by the ASEAN Summit in November 2011, negotiations between them and the six other members started in August 2012. RCEP was significant in that it represented a truce between Japan and China in their struggles to lead Asian trade discussions. Japan arguably wanted it to re-inforce its hand with the USA in the TPP negotiations (the USA was not unambiguously in favour of letting Japan in at the time), but was anxious to avoid China's proposed ASEAN+3 (China, Japan and Korea) configuration because it wanted to dilute China's influence by bringing in some other significant traders. China, on the other hand, excluded from the TPP, was anxious to have a forum, any forum, in which the USA was not represented<sup>18</sup>.

The RCEP is much less deep in ambition than the TPP, and much less prescriptive in that it recognises the need for different countries to move at different speeds or even have effectively permanent differences in their regulatory practices. On the other hand, its major members have higher protection than most TPP members and so the bloc has more than the TPP to gain from old-fashioned shallow integration. And with two massive and rapidly growing members – China and India – RCEP appears to offer considerable trading potential. RCEP seems to have made some progress towards fostering freer trade in its region and so in purely commercial, rather than regulatory terms, it cannot be discounted. While not as large as TPP, it still accounts for 29% of world GDP and 27% of world trade – and a massive 48% of world population.

The principal relationship between the TPP and the RCEP is one of competition for influence, but their overlapping membership (Japan and six other states) makes the game more complex than that. There are at least three possibilities. Some commentators talk of combining the two into a Free-Trade Area of Asia and the Pacific (FTAAP) but the two arrangements have different philosophies and so creating a new institution seems unlikely. Second, absorption: attracted by its greater economic mass,

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<sup>18</sup> See Hamanaka (2014) for more on these motivations.

the currently excluded countries opt for the TPP, either abandoning the RCEP or letting it wither. Ultimately, as Schott (2014) observes, ‘If China decides to participate in the TPP in the coming years, it will cement the TPP as the template for both a FTAAP and an upgrading of the world trade rules’. It is difficult to see Europe, India or Africa providing much of a counterweight to such a bloc, certainly if Europe is co-opted into the arrangement via TTIP.

The third possible outcome is fragmentation. The overlapping members gravitate towards the TPP and the rump of the RCEP creates a looser and shallower arrangement, but one that steadfastly declines further integration with the TPP. Given the size of China and India, this rump could not be considered, and will not behave, as just a minor anomaly; rather it would represent the demise of effective multilateralism.

## **Multilateralism**

Where does all this leave multilateralism? The WTO, of course, has played no role in the negotiation of the mega-regionals, but one might want to argue that if the latter are basically about defining unassailable positions from which to impose regulatory standards on the rest of the world, eventually the issues must come back to the WTO. Indeed, it seems likely that if TPP-TTIP or a substantially enlarged TPP/RCEP do come to fruition they will seek a broad WTO Round to consolidate their dominance. But consolidation may well not appeal to the excluded countries and thus such an initiative may be still-born. This outcome would reflect the excluded countries’ sovereignty and thus in a sense be multilateral in process, but it would leave the world trading system fractured and discriminatory.

The prospect of a small number of competing trading blocs is one which pre-occupied the international trade profession in the 1990s. Paul Krugman (1991, 1993) provided a simple model which traded off the benefits of intra-bloc free trade with trade diversion visited on the rest of the world, either with or without an incentive for members to exploit excluded countries by raising their external tariffs; both versions predicted that under many circumstances the number of blocs was three. Andriamananjara (2002) and Loke and Winters (2012) have shown that once we are down to such small numbers there is no guarantee that the groups would combine into the so-called global coalition of universal free trade because admitting new members to a group dilutes the benefits of discrimination.

The alternative outcome of a mega-regional dominated WTO Round would be that the non-member countries felt that they had no option than to accept the mega-regional’s offer and terms. This would eliminate the discrimination but would violate multilateralism in the sense of collective decision-making rather than the unfettered exercise of power. Thus the forum diversion inherent in the mega-regionals will violate multilateralism either procedurally or substantively. And even if it is ‘merely’ the former, the final equilibrium on regulation will probably be different from that which would have emerged from a single multilateral negotiation and for that reason less desirable from the point of view of the initially excluded countries. By breaking the negotiation up into stages – first with TPP or TTIP members and then with the remaining countries – the USA is exercising the power in a way that it arguably sought to avoid by creating even-handed rules in the immediate post-war period. And if this is the likely outcome, other countries may decline to play and the post-war multilateral system will collapse. If we were talking about bidding for oil plots, say, rather than designing a trading regime, the USA’s own competition laws would outlaw such collusion prior to the final negotiation.

In countering the fears of fragmentation, many commentators argue that harmonising standards between Europe and the USA (or between Japan and the USA) will benefit not only intra-bloc trade but also exports from third countries because they will no longer have to meet two disparate standards. There is clearly some truth to this, but it should be qualified. Chen and Mattoo (2008) show that, when countries harmonise their standards, exports from third countries tend to fall, especially when, as is

likely with the two largest and richest economies in the world, those standards are high and rising. Moreover, the view that harmonisation around *any* standard is desirable is not strengthened when one observes the sensitivity of the process of selecting which, or more precisely whose, standard is to be adopted. That is, simply observing the politics of harmonisation would suggest that the benefits of having one's own standard often outweigh those of having a common standard. If TTIP does actually start to define norms, they will not be those of excluded countries and thus the latter may therefore expect to lose from the process, at least in the short and medium terms.

Although much of what the TPP entails is actually sound policy, and although the final provisions are in several ways more accommodating of developing country members than had been anticipated, TPP members will still often have to approach US regulatory norms faster than is desirable for low and middle income countries, and possibly faster than they can effectively administer.<sup>19</sup> For example, the TPP extends copyright to seventy years beyond the author's death rather than the fifty years in the TRIPs agreement. On state-owned enterprises TPP commitments go beyond WTO principles 'in important ways, including by applying subsidies rules to services exports of SOEs and to the operations of SOE manufacturers outside their home territory' (USTR, 2015). Third, the TPP's Investor-State Dispute Settlement Chapter does little to address the concerns that have been expressed such as that ISDS gives foreign-owned firms more protections from government action than local firms have and compromises the policy sovereignty of member states. Thus it is not clear that the TPP standards will actually be in the interests of all countries even setting aside concerns about multilateralism.<sup>20</sup>

The final defence offered for the mega-regionals is that even if there is a chance that things go wrong, and the multilateral system is undermined, the benefits of the mega-regionals are so great that the risk is worth it. The simple static gains do not commend such a bet. Plausible estimates suggest that a 'realistic' agreement in TTIP might add about 0.25% to EU GDP and that an 'ambitious' agreement might add 0.5%. The returns to the USA are around the same level. (Francois et al, 2013, Table 16).<sup>21</sup> Similarly with the TPP, the USA might gain 0.4% of GDP and the smaller members a bit more (Petri and Plummer, 2012, table 1). Global gains depend what is assumed about the rest of the world: Francois et al assume that they gain from the integration of standards inside TTIP whereas Petri and Plummer see trade diversion as harming excluded countries. Either way they do not contribute much to the overall total. It is likely that these static benefits are underestimated, but even if they were doubled the major partners would gain less than one year's normal economic growth in return for isolating China and undermining what has been one of the triumphs of the post-war settlement. To some, it hardly seems worth the risk – e.g. Krugman (2015).

## Conclusion

Multilateralism is under severe threat at present both procedurally and, perhaps following inevitably from that, substantively. The seeds of this threat were sown in the closing stages of the negotiation of the International Trade Organisation, when for political, not commercial, reasons the exception from MFN was extended from customs unions to free trade areas. The latter are much less intrusive on domestic policy than the former, with the result that they have become essentially instruments of foreign policy, rewarding current favourites with possibly valuable market access and permitting the explicit exclusion of non-favourites.

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<sup>19</sup> And likewise for other countries if they feel obliged to follow TPP-TTIP norms.

<sup>20</sup> It has been argued that the TPP actually implies very little change in members' policies; but this would imply that the extensive effort has been just to establish an exclusionary club.

<sup>21</sup> Felbermayr et al (2014) offer much greater estimates, by 'assuming that the TTIP will reduce transatlantic trade costs by as much as existing bilateral agreements have reduced trade costs between their trade partners'. This is entirely unrealistic and so their estimates must be discounted.



When the ITO rules about regionalism passed into the GATT there was still a chance to impose a good deal of discipline on their use, but, again for essentially political reasons (the desire to not to let the GATT prevent European integration), the membership turned a blind eye to their violation. Having done this once it became almost impossible to reverse and so not a single notified agreement was rejected or modified after explicit comment by the Contracting Parties.<sup>22</sup> As we moved from the GATT to the WTO members were perfectly aware of the problems, but despite considerable negotiating effort they were unable to agree to a tightening of the arrangement. There were procedural adjustments that might have underpinned a change of heart – the CRTA could have evolved into a stronger enforcer of Article XXIV – but without the members exhibiting the political will to undertake that change of heart it was essentially powerless. With the transparency agreement in 2006, the WTO threw in the towel.

Multilateralism is a delicate flower; while the generation that had experienced the war and the interwar period was willing to pool sovereignty and recognise constraints in order to maintain the multilateral order, such public-spiritness has become less and less visible as time has proceeded. Hegemons have declined and hence been resentful of the cost of maintaining the system and the countries that have gained power during this process and which were arguably previously marginalised, have been unable or unwilling to pick up the challenge. Thus while everyone knows the script, no country seems is willing or able to exert itself to actively re-assert the multilateral ideal in fact. It is a classic public good failure.

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<sup>22</sup> This is not to say that Article XXIV had no effect – it probably did constrain what members of integration schemes proposed – but that it was not enforced sufficiently to prevent the world from slipping away from multilateralism.

**Table 1 Statistics on Mega-Regionals, 2013**

	TPP	TTIP	RCEP	population	GDP	Imports	Exports
				millions	\$billions		
Australia	1		1	23.1	1560.4	329.4	310.2
Brunei	1		1	0.4	16.1	5.2	12.3
Cambodia			1	15.1	15.2	11.2	10.0
Canada	1			35.2	1839.0	584.6	555.3
Chile	1			17.6	276.7	91.5	89.7
China			1	1357.4	9490.6	1953.5	2213.3
European Union		1		506.6	17950.1	7055.5	7495.3
India			1	1252.1	1861.8	523.6	468.5
Indonesia			1	249.9	910.5	225.5	218.3
Japan	1		1	127.3	4919.6	934.3	794.6
Korea, Rep.			1	50.2	1305.6	638.4	703.4
Lao PDR			1	6.8	11.2	5.2	4.2
Malaysia	1		1	29.7	313.2	226.7	255.8
Mexico	1			122.3	1262.2	411.9	400.6
Myanmar			1	53.3	58.7	..	..
New Zealand	1		1	4.4	188.4	51.9	55.1
Peru	1			30.4	202.4	49.8	48.3
Philippines			1	98.4	272.1	87.0	75.9
Singapore	1		1	5.4	302.2	508.8	579.0
Thailand			1	67.0	387.3	272.2	284.9
United States	1	1		316.5	16768.1	2770.4	2262.2
Vietnam	1		1	89.7	171.2	139.5	143.2
				population	GDP	Imports	Exports
TPP				802.1	27819.4	6104.0	5506.2
TTIP				823.0	34718.2	9825.9	9757.5
RCEP				3430.3	21783.9	5912.4	6128.6
				As percentage of world total			
TPP				11%	37%	27%	24%
TTIP				12%	46%	44%	43%
TPP+TTIP				18%	60%	58%	57%
RCEP				48%	29%	26%	27%

Source: WDI Online (11<sup>th</sup> September 2015).

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