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Reconciling Regionalism and Multilateralism Towards Multilevel Governance

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Introduction

Much ink has flowed on the question of the relationship between regionalism and multilateralism. There is still, however, no definitive answer. So the debate goes on. Is regionalism a substitute or a complement to multilateralism? Put another way, is regionalism a building block or a stumbling block to multilateralism?

The re-invigoration of regionalism in developing countries over the past decade has given a new twist to the old debate. Developing countries are increasingly turning to regionalism as a strategy for development (UNCTAD, 2005). But their regionalism is part of a multilevel strategy which needs to be synchronised with their national development plans as well as their efforts to achieve development friendly multilateral trade rules in the World Trade Organisation (WTO).

Developing countries are increasingly concerned about how to achieve coherence between development, regionalism and multilateralism. The multilateral trade system (MTS) is currently in a state of flux as the outcome of the Doha Development Agenda is yet unknown. Nevertheless, the regional trade agreements (RTAs) that are currently being negotiated all depend on WTO rules. Moreover, the policy space that developing countries need to carry out their national development plans, is increasingly determined by the market access rules of the WTO. In short, developing countries are faced with an increasingly complex, multilevel process in which they are trying to combine trade and development (Abbugatas, 2004).

The concept of multilevel governance (Marks *et. al.*, 1996) emerged in the European Union (EU) where it was used to explain the increasing complexity of policy making in the 1990s. It was a period of upheaval resulting from the far reaching structural change that was uprooting many traditional policy practices across Europe. As a consequence of that change a new model of multilevel governance (MLG) began to take shape that challenged the traditional state-centric model.

Has the experience of the EU generated a hypothesis that could be generalised to other systems of governance? That question has received growing interest in the academic literature. *'Is there Room for the Multilateral in Multilevel Governance?'* McGowan (2001) asked, and explored the emergence of multilevel governance in three sectors of the new trade agenda. The conference on *'Globalization, Multilevel Governance and Democracy'*, held at Queen's University in Canada (2002), explored comparative aspects of MLG in regional and global governance.

The Organisation for Economic Co-operation and Development (OECD), which has worked extensively on regulatory reform since the 1990s, has now produced a study on *Multilevel Regulatory Governance* that for the first time concentrates on the multilevel dimension of regulation. Multilevel regulatory governance is defined as regulatory strategies and activities covering the development, execution and reform of regulation between national, supranational and sub-national levels.

This paper will explore how the model of MLG could be used to reconcile regionalism and multilateralism in global trade governance. The paper will be structured around

three topics. First, the origin and development of the concept of MLG in the EU. Second, the generalisation of the concept in the context of globalisation. Third, the application of the model to the multilateral trade system, in particular to the field of trade and development.

I. The Concept of multilevel governance in the EU

The concept originated in the EU from attempts to understand the policy process by looking at it in a broader manner than the traditional state-centric approach. From the MLG perspective authority and policy making power are shared across multiple levels of governance. States are no longer the exclusive actors in the EU as some of their autonomous powers have been taken over by supranational and sub-national authorities. While states are still the most important actors in the EU they no longer have a monopoly on policy making or in the aggregation of national preferences. The EU is seen as a multilevel polity where direct links are established between actors in diverse political arenas, where political control is more diffuse and where states no longer serve as the sole nexus between domestic politics and international relations.

MLG is based on the organising principle of subsidiarity which, in its broadest philosophical meaning, asserts that no community at a higher level should interfere with the life of a community at a lower level. The principle was introduced into the EU treaty in the 1990s to govern policy making in areas where there are shared powers between the European institutions and its member states. It says that action should only be taken at the EU level when it has been proven that action at the national level is inadequate and that there is a value added from EU action through greater efficiency. The objective is to achieve the optimal assignment of regulatory powers. The new European Constitution strengthens the principle by giving national parliaments a direct role in exercising subsidiarity for the first time (Gavin, 2003).

Multilevel governance is used to describe a relatively new pattern of policy making in the EU. It was developed in response to the state-centric approaches of theories of European integration, especially liberal inter-governmentalism, and its strongest conclusion is that states no longer serve as the exclusive nexus between domestic and international political relations. We need to ask how solid is the concept before attempting to apply it to global governance

Some critics considered that its main purpose was to provide a route for bringing sub-national regions into the political analysis of the EU. Others argued that it was merely describing the actual situation of federalist oriented 'multilevel government' that could be applied to the EU itself and many of its member states (Best, 2002). Moreover, MLG was originally confined to a limited set of policies, those of budgetary-redistributive policies in relation to regional policy and the structural funds.

- *Multilevel governance in regional and global governance*

Although MLG and global governance have common features, they are not similar as O'Brien (2002) argues. Multilevel governance focuses on formal political institutions and assumes a high degree of community under the governed. It has been primarily concerned with efficiency. Global governance has been mostly concerned about the interaction between governments and non-state actors. It has focused on the imbalance between trade liberalisation and the neglect of citizens' demands for environmental and labour standards. Moreover, global governance has been concerned with issues of equity more than efficiency.

Could the model of MLG be applied beyond the bounded territorial area of the EU to the open-ended global system? McGowan's three case studies show the emerging system of MLG in the fields of competition, regulation of public utilities such as telecommunications, and in public procurement at the multilateral level. However, we need to be aware of the potential pitfalls involved in transposing the concept from regional to global level. Table 1 presents a comparative typology of MLG characteristics in the regional (EU) and multilateral context.

Table 1: Two Models of Multilevel Governance

<i>Characteristics</i>	<i>Regional model of MLG</i>	<i>Global model of MLG</i>
Analytical boundary	Preferential system closed loop	Non-discriminatory system open ended
Institutional framework	Supranational structure	Intergovernmental structure
Policy sectors	Redistribution policy/environmental regulation	Trade regulation
Levels of governance	Sub-national, national, supranational	National, supranational multilateral
Organising principle	Subsidiarity	Hierarchy
Role of region in relation to other levels of governance	Empowers sub-national actors	Seeks compatibility with multilateral regime
Monitoring/compliance	Political	Legal

Source: adapted from Mc Gowan (2001).

Both models have three different levels of governance but the institutional framework within which they operate are quite different. Behind the institutional framework lies different philosophies and organising principles. Subsidiarity has close affinity with the theory of fiscal federalism which has been generalised as a principle for the optimal assignment of jurisdictions in federal systems of power sharing (Gavin and De Lombaerde, 2005)

Multilateralism is based on international trade theory and is primarily concerned about how to achieve the optimal-sized market for trade, which is the global market. Viewed from this perspective, multilateralism is 'first best' and regionalism is 'second best', which implicitly asserts a hierarchical relationship. The optimal size of the market is global and the MTS is the best available forum for disciplining trade – distorting policies, as argued by the World Bank in its most recent *Global Economic Prospects* (2005). Thus a hierarchical relationship has been established whereby regional trade agreements must be made compatible with multilateral rules.

Multilevel governance in the EU has evolved in a co-operative style of partnership and more as 'soft law' than hard constitutional law. Monitoring of subsidiarity has been through political rather than legal means. In the global context the compatibility of regional agreements with multilateral rules is subject to judicial review and dispute settlement in the WTO. In summary, different principles and practices in the regional and global contexts will affect how multilevel governance operates at regional and global level. Before discussing the possibilities for cross-fertilisation between the two systems, we first look at a wider model of MLG that has emerged across the OECD region in response to the forces of globalisation.

II. Multilevel Regulatory Governance and Globalisation

The OECD has been actively involved in the analysis of regulatory reform since the 1990s. For the first time it has now produced a study which focuses on the multilevel dimension of regulation. One of its main conclusions is that the multilevel dimension has been considered as a side issue up to now and has not received sufficient attention by its member governments. That needs to change. The OECD no longer considers the state as a unitary actor but rather sees it as an integral part of a multilevel system of regulatory governance. How has this come about?

The process of globalisation has led to more, not less regulation. There has been a proliferation of new actors in regulation making and the nature of regulation itself has changed. The new regulatory landscape has become more complex, more sophisticated, more dense and more participatory. The overall result has been the emergence of a multilevel system and it is essential for policy makers to consider the interaction between all the new players. The objective is to achieve 'regulatory quality', which the OECD defines as regulations that contribute to achieving public policy objectives without placing unnecessary constraints on economic actors.

- *Downscaling of regulatory power*

Globalisation has brought a dual movement of downscaling to lower orders and upscaling towards higher orders. Downscaling has been driven by decentralisation, deregulation and privatisation. The theoretical argument in favour of decentralisation is that the preferences and needs of citizens are better known to local government than to national government. Contiguity provides better information and hence makes for better decisions, while distance does the opposite. The importance of information has been given priority over efficiency considerations of economies of scale in the provision of public services.

Privatisation has been a powerful force in downscaling. Many activities that were in the domain of national government have now been passed to the private sector. Examples of activities such as broadcasting, telecommunications, transport, and electricity come to mind. This has been a universal trend although the scale of privatisation has differed between countries. Some countries have gone much further than others including health services, education, water management and even jails in their privatisation activity.

Local and municipal authorities are creating new regulation. It was the London municipal authority, and not the British government, that introduced the congestion tax. In fact, a large proportion of regulations affecting economic activity and citizens' lives are made by local government in all countries. Each layer of government can make regulation to pursue its own objectives and that even without the revenue raising power of taxation. However, fiscal federalism has led to increasing decentralisation of revenue raising powers as well.

Delegation of power to statutory independent agencies has also become widespread. In the past standard-making power was usually nested in some central government department. Today the power of standard making is increasingly outsourced to non-governmental bodies. Private sector organisations are active in industrial standards, scientific experts dominate the making of food safety standards and technical experts are responsible for standards in telecommunications and broadcasting, environmental standards are frequently shaped by ecologists. Thus, there has been a proliferation of actors at the horizontal level bring non-state actors into the regulation making process.

- *Upscaling of regulatory power*

In parallel to devolution of regulatory power towards sub-national levels, there has been a simultaneous movement towards supranational regulation making. Deregulation at the national level has been frequently accompanied by re-regulation at the supranational level. In the field of competition policy, for example, the policy of merger control comes to mind. As the movement of capital was deregulated at national level, there was need for supranational regulation to control cross-border mergers and acquisitions. Deregulation of financial institutions required new prudential regulation at the supranational level to ensure the safety of banks. Industrial standards needed to be harmonised at the international level. And public procurement practices required supranational regulation to ensure standards of open international competition.

- *Multilevel governance in developing countries*

The emergence of MLG has not been confined to OECD countries. The wave of globalisation, decentralisation, deregulation, privatisation that swept across the industrial countries in the 1980s, began to take effect in the developing countries a decade later. In response to the ‘sound economic policies’ advocated by the Bretton Woods institutions under the slogan of ‘the Washington consensus’, devolution of regulatory power began to take root in many countries in the South.

The new wave of regional integration among developing countries has led to increasing supranational regulation of South-South trade. Developing countries have reinvigorated their regional activity by deepening their integration to go beyond trade in goods to opening up in services and investment. This trend has spread across the whole South leading to what UNCTAD calls an emerging new trade geography. In parallel with proactive regionalism in the South to boost development efforts, there has been a rise in North-South-South agreements such as the EU-ACP negotiations for economic partnership agreements.

Developing countries must also be concerned with the multilevel dimension of their strategies. Countries have their national development plan which is based on the Poverty Reduction strategy papers of the World Bank. They are simultaneously engaging in regional integration as a development strategy that will foster economies of scale, attract FDI, and to create regional infrastructure in transport, communications and energy. At the multilateral level they are engaged in the Doha round of trade negotiations which will be crucial to getting the optimal policy mix between trade and development.

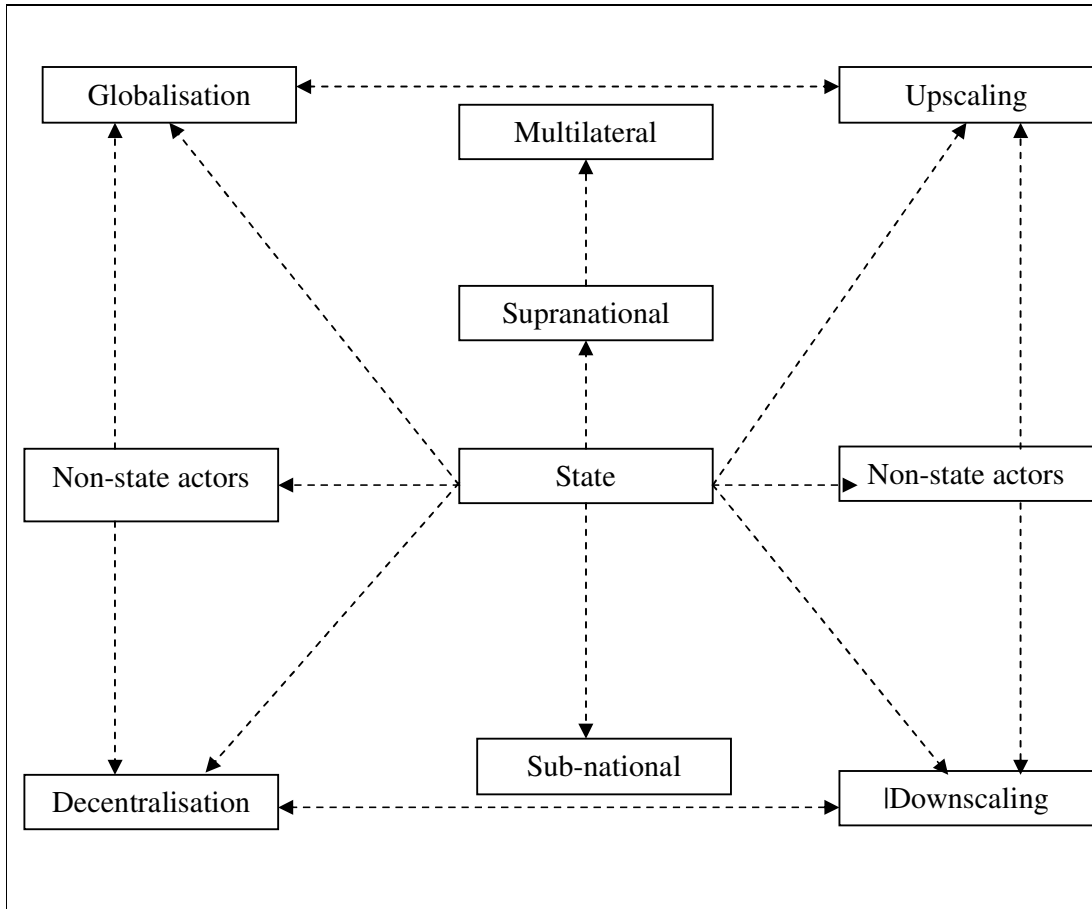
The generalised model of multilevel regulatory governance, which has now spread across the world, shows the increased interaction between the different levels of policy making and between the different policy actors. This complex interaction is depicted in Figure I.

What are the implications of this new complexity? The well-known principles of good governance such as accountability, transparency, efficiency etc., are no longer sufficient to ensure high quality regulation. The multilevel dimension has created a new set of problems relating to quality and coherence. There is need for clear demarcation of responsibilities in an environment where the quality of regulation depends on co-ordination between multiple players. Who regulates what, and why, are questions that need to be clearly answered. The principle of subsidiarity reflects the concern for clarity about assignment of responsibilities. It seeks to avoid overlapping rules by stressing the need for co-ordination mechanisms.

With decentralisation and a proliferation of new players, there is increasing disjunction between the responsibility for making decisions and implementing them. If the dichotomy between the two levels widens there may be perverse effects on the quality of regulation. Co-ordination must be fostered through a clear assignment of responsibility. The recently developed tool of ‘regulatory impact assessment’ offers a methodology for measuring the costs and benefits of rule-making at each level. This

tool should be used before taking decisions to transfer regulatory powers to new levels of government.

Figure 1: Generalised Model of Multilevel Regulatory Governance



The transfer of power to a lower or higher level is not just a question of shifting responsibility. The capacity of each level to carry out the regulatory function must be first verified. It must be based on the comparative advantage of each level. There needs to be co-ordination between different levels of government before the transfer of power. This would lead to an ongoing process of a dynamic separation of powers.

The key element in the new situation is coherence. In the absence of coherence there will be a risk of contradictory rules, excessive regulation or regulatory gaps. New co-ordination mechanisms are needed to avoid this. The old approach to regulation, which relied on coercion and control, is no longer sufficient. Regulatory strategies must use more co-operative, more innovative and more persuasive strategies.

The MLG system requires new management style. It requires attention to horizontal as well as vertical interdependence. If MLG is not properly managed there is a risk of accumulating overlapping rules. The most promising framework for avoiding cumulative regulatory pile up is subsidiarity, which is a principle for the exercise of shared powers.

III. From multilateral to multilevel trade system

Looking at the multilateral trade regime today, it is hard to avoid the conclusion that it has, in practice, already become a system of multilevel governance. It is made up of hundreds of agreements all of which have been entered into voluntarily by governments at multilateral, regional and bilateral levels. The multilateral trade system is only a small part of a much larger regime that has grown up over the past two decades. The proliferation of regional trade agreements has been spawned by the forces of globalisation. Indeed regionalisation and globalisation may be viewed as the two sides of the same coin.

- *Proliferation of regional trade agreements*

Since the 1990s some 250 preferential trade agreements of different types have been notified to the GATT/WTO and over 50 per cent of them since 1995. From the total number of PTAs notified, over 170 are in force. An additional 70 agreements are estimated to be operational although not yet notified. According to the *World Trade Report* of 2003, if all agreements planned and notified come into force, there will be over 300 agreements operating by the end of 2005. More than 50 per cent of world trade is now taking place under actual or planned RTAs. Almost all countries in the world are now members of one or more RTAs. And even countries like Japan and South Korea that have always been so strongly committed to the MTS are now turning to RTAs.

Regionalism is not so much the cause as the reflection of much deeper transformation of the MTS. The history of the GATT/WTO shows how the nature of the regime has changed in a number of important ways. The work of the MTS has been transformed from its original focus on classical trade liberalisation to positive rule-making. This evolution has been the outcome of what Michael Hart (1998) has called the 'cautious pragmatism' of its members during the first fifty years of its history.

The work of the original GATT was oriented towards the elimination of border tariffs and quotas. But as the GATT progressed down this road it began to turn its attention to the problem of non-tariff borders. The new direction was reflected in the Tokyo Round Agreements. For example, the Agreement on Technical Barriers to Trade reflected the beginning of the new trend that was moving towards positive rule making and the harmonisation of standards. The Uruguay Round proved to be the decisive and major turning point in this process. The new agreements on Trade Related Intellectual Property Rights (TRIPS) and the Agreement on Sanitary and Phyto-Sanitary (SPS) measures were hallmarks of the new direction. Prior to the UR all of those areas were governed by domestic regulation that was embedded in the institutions and traditions of national governance.

- *Proliferation of policy actors*

As the WTO moved to regulation of sectors that were previously beyond the domain of trade rules, a much wider range of government ministries got involved. The new trade policy agenda impinges upon a number of domestic policy spaces such as public health, food safety, environment, public services, social policy and the ability of governments to carry out redistribution. Prior to the Uruguay Round the management of trade policy was confined to a small number of government ministries notably, trade and industry, agriculture and finance.

The new trade agenda has made trade much more political. In the traditional system of global governance, it was the United Nations that dealt with issues of high politics. The specialised agencies were left to get on with the technical work, of which trade liberalisation was regarded as a prime example. That has now changed completely. The WTO has become linked with an increasing number of public policy issues which are in the domain of high politics. The interaction between the Millennium Development Goals and the Doha Development Agenda reflects the growing coherence between the multilateral institutions.

New political actors have mobilised to contest the impact of the new trade policy on countries, which has changed and the costs-benefits balance. The benefits of traditional trade liberalisation were spread widely across whole countries but that is no longer the case. The benefits have become more diffuse and the costs of implementing the new trade agreements may be onerous for the poorest countries. Moreover the new policy stance that increasingly revolves around standards has given momentum towards more litigation and less mediation. The role of independent agencies has been increasingly contested because of their powerful influence on rule making in the WTO. *Codex Alimentarius*, the body that is responsible for setting food safety standards, has been in the eye of a storm of criticism by consumer groups that have challenged the infiltration of the body by industrial interest groups.

Prior to the UR it was almost exclusively business groups that were involved in international trade negotiations. The arrival of non-governmental organisations (NGOs) in a cross section of areas including, *inter alia*, human rights, environment, consumer protection and development has expanded the trade policy debate beyond economic criteria to include the principles of good governance, notably transparency, accountability and legitimacy.

In summary, as the WTO increased its powers with regard to national regulation, many national parliaments perceived this as a threat to 'sovereignty impairment' in socially sensitive sectors such as consumers' protection, environmental regulation and food safety standards. Regionalism was viewed as a more appropriate forum for dealing with those 'deep integration' issues where agreement on standards could be found more easily among a more limited group of countries with closer cultural and historical traditions.

Implications for the Developing Countries

The Developing countries have been drawn into a multilevel approach to development since the 1990s. At the national level they are committed to carrying out poverty reduction strategy programmes that have been co-ordinated with the World Bank and the International Monetary Fund. At the same time they are actively pursuing regional integration as a development strategy to help their gradual insertion into the global economy. They are now faced with a whole new set of challenges in the MTS as they try to cope with the simultaneous process of regional and multilateral trade negotiations.

The greatest challenge is the lack of co-ordination between the two levels of regulation. Many developing countries feel that they are currently building their regional development strategy on quicksand. In other words, the MTS, which sets the standards for overall compatibility, is in a state of flux itself and appears to be increasingly unable to control the coherence of the multilateral trade regime. Three dimensions of this multilevel regulatory governance are important for developing countries. One, the contours of the new regionalism are determined by the rules of the WTO. Two, it is the WTO that sets the minimum standards for all regional agreements in those areas that are governed by WTO rules. Three, the developing countries' policy space for regional integration is largely defined by the market access commitments in the WTO.

Regional governance under the WTO has evolved in conditions of legal uncertainty. It has depended more on the inactivity of the Committee on Regional Trade Agreements (CRTA) than on the elaboration of positive rules. During the past fifty years only one RTA has been approved and none have been rejected. But this leaves the whole area of RTAs in a legal limbo and potentially open to judicial review in the future. This legally grey area has contributed to a feeling of unpredictability about the future of regional governance for developing countries. The GATT/WTO has always emphasised the importance of creating a rule-based system that would provide stability and predictability for traders and policy makers. The most important challenge of the Doha 'development' round is to get the rules right for trade and development.

The uncertainty concerning the interface between regional and multilateral governance has increased in the Doha round of trade negotiations. The policy space for a regional development strategy is determined by Article XXIV of the GATT, Article 5 of the GATS and the Enabling Clause. All of those rules are under review in the Doha Round to see whether they take into account the development aspects of RTAs. The Doha round aims to clarify the key benchmark requirements of RTAs that would make them development friendly. But little progress has been made so far.

What is needed is a thorough review of WTO rules regarding RTAs. The revised rules should provide development benchmarks for RTAs that would allow the developing countries to pursue their strategy of regionalism for development while making this compatible with the WTO. A number of possible options exist. The first best option would be the incorporation of special and differential provisions into Article XXIV to address the current issues in North-South agreements. The GATS article V has not yet been tested in practice but it mirrors Article XXIV in goods trade. Another possibility

would be introduction of flexibility clauses into Article XXIV with respect to transition periods and product coverage. Alternatively, Part IV of the GATT on non-reciprocity could be improved, making it enforceable and rendered applicable to the negotiation of RTAs.

The current situation is leading to contradictory rules. At the multilateral level a certain amount of retrenchment is taking place with regard to the implementation of the UR agreements notably with the TRIPs agreement, also the Subsidies and Countervailing Duties agreement. The implementation of those agreements would impose significant costs on developing countries thus having a negative effect on their development. Side by side with this the Doha Round is committed to a general review of the special and differential provisions that would allow developing countries more policy space for implementing their own autonomous national development strategies.

However, in the North-South regional agreements, the industrial countries are pushing ahead with the type of 'WTO-plus' agreements that demand obligations from developing countries in those same areas that are under review. Thus the developing countries are faced with contradictory rule-making at the multilateral and regional levels. Gains that are made by the developing countries at the multilateral level are cancelled out at the regional level. For example, despite the decision that was taken at the WTO Ministerial meeting in Cancun to exclude the Singapore issues, they continue to be pursued at the regional level in the economic partnership agreements being negotiated between the EU and the ACP countries. The new challenges are in the North-South-South RTAs such as the FTAA initiative and the EU-ACP economic partnership agreements.

Although trade is hugely important it is not a magic bullet for achieving development (Sachs, 2005). Trade reform must be complementary to other parts of development policy such as infrastructure investment and social policies to develop a healthy and well-educated workforce. Therefore flexibility in the MTS is needed. Special and differential treatment makes sense for developing countries as they usually have limited capacity to take advantage of trade liberalisation measures at the multilateral level and to finance the adjustment cost. S& D provisions should emphasise flexibility, longer time for transition periods and capacity building assistance for implementation of the rules. The focus should be on longer times to adjust to liberalisation and to improve technology. A special fund should be set up to finance the adjustment costs associated with the implementation of the Doha trade reform agenda.

Developing countries need to pursue their development strategy at different levels. At the multilateral level they need to gain market access provisions to foster their exports to the global economy. At the same time they need to carve out policy spaces at the regional level. Regional integration is the best means to foster development by increasing South-South trade. That trade, which has almost doubled over the past twenty years, is still mostly in commodities, agricultural products and merchandise trade. But it is moving towards trade in services. And as intra-regional and inter-regional trade grows in the South there will be need for regional regulation. Development still depends primarily on domestic conditions and the challenge is to

build national institutions that provide the right springboard for development to take off.

Conclusions

This paper has presented an analysis of multilevel regulatory governance in three different contexts, the EU, the OECD region and the multilateral trade system. In all three contexts, the emergence of multilevel governance has been triggered by the forces of globalisation. Multilevel governance has been determined by decentralisation, deregulation and privatisation – all of which have been considered as essential conditions for maximising the benefits from globalisation. Multilevel governance has become a generalised practice around the world today.

Multilevel governance presents new challenges that go beyond the ‘good governance’ debate. The key issue is how to ensure coherence between the multiple layers of regulation. Without proper co-ordination there is a risk of cumulative regulatory pile-up that will have a negative impact on the quality of regulation. Given that regulation is an important ingredient for competitiveness and a factor of comparative advantage, the quality and integrity of the regulation is of major importance.

Global trade governance has been the locus of significant upscaling of regulatory power to the multilateral level since the creation of the WTO. The optimal size of the market is global, as posited by international trade theory, so the multilateral trade rules has always tended towards the global. Primary importance is given to achieving the economies of scale that the global market provides.

In contrast, multilevel governance is concerned about the optimal jurisdiction for policy making. Its origins are closer to the theory of fiscal federalism than international trade economics. One of the strongest arguments in favour of downscaling regulatory power is that better information is provided at local level and, hence, better policy decisions are made at the level closest to citizens.

The multilateral trade system has gradually evolved into a *de facto* multilevel system but without the operational principle of subsidiarity. This is the source of much tension. Multilateral trade rules now intrude into public policy issues that directly affect the daily lives of citizens. But information about local preferences can not be adequately incorporated into global, universal rules. Carving out a special space for developing countries is of primary importance in this context. Developing countries need policy spaces to make their national and regional strategies work on the ground. The major challenge facing the MTS is how to achieve coherence between its different levels of governance by effective, functioning subsidiarity.

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