

International Market Access Rights and the Evolution of the International Trade System

by

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“In this way, GATT’s articles represent an attempt to create a system of property rights over negotiated market access commitments which are secure against unilateral infringement.”

BAGWELL AND STAIGER [2001, p. 74]

In international trade policy, the concept of market access is pivotal. Yet, it remains a neglected category in institutional economics approaches to international trade. The paper introduces a new analytical category, which relates explicitly to the exchange of market access among governments: market access rights, MARs. Tariffs, quotas, standards, border controls etc. are all treated as specific institutional forms of MARs. Major aspects of the international trade system can be explained as evolving institutional solutions to problems in transacting MARs, such as the MFN as a mechanism to internalize externalities, and the rules governing safeguards and retaliation as procedures of continuous renegotiation of MARs with changing value (JEL Classification: F10, B 25).

1 General equilibrium versus institutional approaches to international trade policy

Recent efforts in understanding the economic mechanisms working behind the scene of international trade policy have produced a strong intellectual revival of equilibrium analysis (see the advanced textbook by FEENSTRA [2004]). Core institutions of the world trade system are being explained by means of models which are embedded into the standard approach to trade in goods. One of the cutting-edge contributions in this field will serve as a point of reference for the arguments presented in this paper, namely BAGWELL’S AND STAIGER’S [2002] analysis of the GATT.

I intend to challenge this view in presenting an analytical enlargement based on the concept of property rights and hence, arguing in an institutional economics framework. In doing this, I hope to achieve two accomplishments:

* This paper is a distillation of and further elaboration on ideas developed in the two German-language volumes HERRMANN-PILLATH [2001, 2004]. The JITE reviewers’ comments helped to improve and sharpen the argument substantially. Thanks to them.

- Firstly, to systematicise existing insights of the literature and at the same time to provide a clear argument why in real world trade negotiations market access is the guiding conceptual category, whereas economic theory disqualifies this as being utter economic nonsense (KRUGMAN [1997]). In the recent decade, however, equilibrium approaches (including game theoretic approaches) have shown that many seemingly ‘irrational’ aspects of trade policy can be better understood if the problem of strategic interaction between governments and traders is analyzed in more detail; examples include the role of relative size of countries in trade negotiations (MCLAREN [1997]) and the salience of power balances in terms of mutual sanctioning potential (MAGGI [1999]; BOWN [2002, 2004]).
- Secondly, to broaden and to correct the existing approaches in the important regard that the fact of the institutional evolution of the world trade system is explained. In the equilibrium approach, international trade policy can only be seen as a constant battle between the two forces of liberalization and protectionism, ending up in certain states of political equilibrium. I argue that we should rather explain the fact of the growing institutional complexity of the world trade system, which at the same time increases impediments to trade in the sense of increasing transaction costs and enables trade in the sense of providing an institutional framework that makes transactions viable. This goes beyond the dualism of liberalization and protectionism.

The core idea of the paper is to take the political concern for market access seriously and to assign a neatly defined analytical category to it: international market access *rights*. The concept of MARs has been lingering in the trade literature for long. Indeed, in a 2001 paper BAGWELL AND STAIGER [2001] themselves use the term “market access property rights” to deal with the fact that governments declare market openings to be “concessions” even though economic theory implies that this would mean to ‘concede’ a welfare improvement to oneself. However, neither in this paper nor in the 2002 book there is a further analytical elaboration of this conceptual idea. One of its clearest statements can be found in HILLMAN AND MOSER [1996] who argued that domestic producers implicitly own rights to market access which cannot be simply appropriated by governments and handed over to foreigners. This idea was accepted in the magistral textbook on the WTO, HOEKMAN AND KOSTECKI [2001, pp. 32ff.]. However, there has not been further development of the concept, presumably because most uses remain in the context of equilibrium trade theory and do not broaden the analytical scope to include institutional economics. This is especially true for the important BAGWELL AND STAIGER [2002] contribution.

BAGWELL AND STAIGER propose a clear and complete reduction of institutional trade policy analysis on a general equilibrium base, which takes the tariff as its archetypical instrument. Their common ground with my paper is to focus on *market access* as the main policy objective of governments when negotiating trade policy. However, they argue that most, if not all institutions in trade can be explained by reference to the Prisoners’ Dilemma that emerges from the possibility to create terms-of-trade externalities in less than multilateral trade agreements for all countries that remain outside of their scope. Those externalities result into changes of market access that become observable in the

realized bilateral trade volumes, which therefore serve as indicators for assessing policies on part of the government. Thus, far beyond tariffs and quotas *all* institutions in trade are finally reduced to their effects on costs, prices, and trade flows, with externalities being possibly transmitted via the diverging movements of domestic and world prices.

The question arises whether the strictness and analytical clarity of the equilibrium approach does not finally end up as a straightjacket for a deeper understanding of institutional issues in trade policy. A case in point is the discussion of export subsidies by BAGWELL AND STAIGER [2002, pp. 179f.], which in the equilibrium framework can only be seen as trade-enhancing institutions and hence as being beneficial from the viewpoint of world welfare. Clearly, such an assessment flies in the face of all institutional concerns for a non-distorted competitive environment of trade, and thus faces the puzzle why export subsidies have been much less used in trade policy than tariffs (in the same vein, see ETHIER [2004]).

I take position against such a pure equilibrium theory reductionism. My main argument is that the equilibrium approach is not able to catch the simple, yet fundamental fact that the world trade system is evolving. As it is also emphasized by BAGWELL AND STAIGER, this evolution takes place in the setting of a system of exchange of MARs between governments. Therefore, I propose to draw the full analytical conclusions of this descriptive approach and to view the world trade system as a two-layer system of markets of goods and services and markets for MARs. The value of this perspective lies in opening up the possibility to apply established concepts of property rights theory and institutional economics on the market for MARs.¹ I will argue that it makes a difference whether we assess institutions in terms of their effects on the markets for goods and services or on the market for MARs. Thus, my approach is deeply rooted in the tradition of the institutional economics analysis of international trade policy which has been created by the seminal analysis of YARBROUGH AND YARBROUGH [1992] and which is almost entirely neglected by equilibrium theorists, even up to the point of simply ignoring it in the references, as in the BAGWELL AND STAIGER [2002] case. The YARBROUGHS tried to understand trade policy by means of the application of core concepts of institutional economics, such as transaction costs, opportunism and asymmetric information. This paper proceeds in two steps. I begin with a definition of MARs and sketching their scope, with brief reference to their historical evolution. This is followed by an analysis of the causes why a market for MARs emerges once MARs have been created, and how the evolution of this market feeds back on the evolution of MARs. In the second step, I detail the evolutionary forces, concentrating on four determinants: The problem of describability of MARs and hence, incomplete contracts; the role of power balances in determining the value of MARs; the need to internalize externalities; and the importance of renegotiation procedures in the international trade system. As a major result,

¹ Let me emphasize that my use of the term “market“ vascillates between a metaphorical and a phenomenological use, just as in HOEKMAN’S AND KOSTECKI’S [2001, p. 25] textbook on the WTO. I refer to the fact that countries explicitly exchange rights, strive to agree on valuations, and settle bargains, while adopting a competitive attitude with regard to the distribution of benefits resulting from that exchange. I do not imply that this market is formally homologous to the competitive markets of general equilibrium theory.

these four determinants explain the increasing complexity of the international trade system, that is: its institutional evolution.

2 *MARs and Markets for MARs*

2.1 *The nature and scope of MARs*

Much of the legal analysis of trade policy issues is related to MARs, yet mostly coined in the more simple concept of “market access”. Market access has become a crucial category in the context of the European Common Market (e.g. BARNARD AND DEAKIN [2002]) and in international services negotiations, where it is the twin term of “national treatment” (WTO SECRETARIAT [2001: Chapter Twenty-two]). It is necessary to distinguish between certain legal provisions to secure market access and effective market access. In a first approximation, the concept of MARs could be closely related to the former category. However, considering the HILLMAN AND MOSER argument, we can straightforwardly conclude that MARs can manifest strong properties of informal institutions in the sense of NORTH [1990] (for an elaboration on this, see HERRMANN-PILLATH [2006a]). This blurs the clear distinction between legal rights and effective access, if effective access is also heavily shaped by informal rights. For example, in the long standing trade policy controversies between the United States and Japan the impact of the structures of the Japanese distribution system on market access has been interpreted in this vein. In that sense, MARs are closely related to the expectations that trade partners build over future market access, which is clearly different from realized market access in the past, and from the mere formal legal description. Indeed, in the GATT regulations on “non-violation complaints” the concept of prior knowledge about potential restraints on access plays a crucial role in the legal procedure, such that prior knowledge (as in the famous Kodak-Fuji case) invalidates claims of violation of rights, implying a previous informal recognition of them.

Thus, pulling these observations together, in a first step we may define MARs in the following way;

MARs are all formal and informal institutional forms that regulate market access for foreign traders to a particular territory, and that influence behavior through their effects on the formation of expectations about the security and scope of future market access. Specific institutional forms of MARs are, for example, tariffs, orderly-market arrangements or sanitary standards. The exchange of MARs can take place in a manifold of institutional settings reaching from bilateral to multilateral arrangements, with the surveillance and sanctioning of agreements also being regulated in a diversity of arrangements reaching from self-enforcing relations to third-party settlement.

This definition reveals a close resemblance to SCHLICHT’S [1998] approach to the emergence of property rights which analytically completes HUME’S account. Property rights can be seen as being based on the notion of entitlements, with formal property rights being just legal specifications in written shape. They emerge out of socio-psychological processes of recognizing valued assets, possessions, and legitimate means to defend entitlements. SCHLICHT [1998, p. 24] defines entitlements as “subjectively perceived rights that go along with a motivational disposition to defend them.” They are mainly stabilized by the

regularities of custom, which are in turn guided by a set of principles which closely relate to psychological Gestalt theory. For example, entitlements follow the rules of clarity or continuity that favour the persistence of simple and unequivocally defined patterns, which, however remain fuzzy at the fringes and hence open to possible reinterpretations. According to this theory, property rights emerge in particular historical setting as a creation of economic agents, and may evolve into legal categories. Thus, there is no fully exogenous determinant of the emergence and of the shape of particular rights, as it was assumed in early versions of transaction cost based property rights theory.

From this perspective it is important to distinguish between the context of the emergence and the diffusion of MARs, because MARs may assume entirely different functions in either of the two. MARs may assume a legal form in the framework of international institutions, but this is only a point in the long-run evolution of MARs. Without being able to go into the historical details here, it is important to note that the ideal-typical instrument of trade policy, the tariff, originated in a customary right to market access. Etymologically, the German “Zoll” (tariff) goes back on “teloneum” which is a kind of transit fee, and in edicts of Charlemagne there was the view that trade should be free unless there was a utilization of certain public goods like bridges, for which the foreigners should pay a fee (IRWIN [1996, Chapter one]; ADAM [1996]). Thus, although market access was treated as a privilege that could be bestowed upon traders by the ruler, there was also the idea of exchange in the sense that traders should pay for the use of certain public goods supplied by the government, or even to compensate the importing countries for negative externalities caused by trade. Hence, in the prehistory of modern trade policy we already find three core principles of MARs as entitlements:

- firstly, MARs are owned and controlled by governments, and they relate to entitlements of the residents in a territory to privileged market access;
- secondly, MARs can be exchanged with other subjects, and there is a notion of balancing values between the underlying transactions;
- thirdly, MARs are perceived as enabling trade institutions against the background of a general presumption for free trade, especially in the sense of creating equal opportunities of market access for domestic subjects and foreigners, given the fact that foreigners do not contribute directly to all the domestic activities that are needed to make trade possible.

Given this context of emergence, after the establishment of the Westphalian state system and the modern territorial national states, the stage was set for the contemporary system of regulating MARs, that is, control of market access by domestic governments and the exchange of rights to market access among governments, thereby explicitly excluding market actors from the negotiation process, as in the case of the GATT and the WTO. This is the principle underlying the entire post WWII system of international trade, being deeply entrenched in the entire institutional set-up, as private actors have no direct channel to approach foreign governments in the WTO, such that every private interest is always filtered through the domestic government’s interests (HOEKMAN AND KOSTECKI [2001, pp. 87f.]).

Once the concept and institutional form of MARs had emerged, its use can be manifold, depending on the context, so that emergence and diffusion sometimes follow very different principles. Protection is only one possible use, taxation

being one of the most prominent alternative uses before the twentieth century. Indeed, the role of the tariff as protectionist device did only strengthen considerably after the modern income tax could serve as a substitute for a reliable source of revenue, so that the taxation motive lost importance (see e.g. HANSEN [1990] for the American case). This interdependency persists until today in poor developing countries. Thus, transaction and organization costs of taxation seem to be a determinant of institutional choice as much as special interest.

MARs are very often related to security considerations, such as sanitary controls, preservation of cultural identity or military security.² In recent times the troubles of economists with consumer-oriented trade restrictions demonstrate that the simple equation between protection and control of market access is partially misleading. In global markets, regulations e.g. on genetically modified food are not simply a measure for restricting market access, but are essential for setting up a workable market at all.³

MARs can be created by all actors in the economy who collectively build institutions to regulate market access within a territory for other actor outside the territory. Clearly, in most cases these are governments, because there must be an organization that is able to control cross-border market access of other actors. However, if we look at the contemporary world economy we realize immediately that there is a considerable variety in MARs which simply results from the different ways how such collective agreements can be reached. For example, the international regulation of market access in maritime transport remains outside the scope of the WTO and is implemented by politically legitimized private bodies (see STRANGE [1994, chapter 7]; and SIEN ET AL. [2003]).

Thus, a theoretical question regarding the evolution of MARs is why most MARs are controlled by governments. One simple reason is that MARs are costly, because they presuppose the relevant market infrastructure, like border controls and legal arrangements (cf. YARBROUGH AND YARBROUGH [1994]), which are normally provided for by governments (which also explains why important trans-territorial MARs such as in the previously mentioned maritime trade are under the custody of private and semi-private bodies). Government control of MARs also reflects the public good problem lurking behind any private administered system of MARs. If only resulting from the conflicting interests of importing and import-competing industries, private provision will always suffer from the free-rider problem behind MARs, which is similar to the public good of national defense (this argument extends on RODRIK [1986]). As MARs relate to a territory, every group in society will be affected by MARs, whether they contributed to their protection or not. Hence MARs emerge as a

² In comparison with economics, this fact is very much emphasized in the “international political economy” strand of research which analyzes international trade as one dimension of the webs of interest and power among nations, see e.g. the illuminating juxtaposition in GILPIN [2001].

³ As we shall discuss below in more detail, the modern trade system is designed to balance producers’ interests. Issues directly related to consumer interests are very difficult to treat within the established system, so that, for example, the challenge for agricultural trade policy becomes very different, if so-called protection is designed to reflect consumers’ preferences over food security, see TANGERMANN AND JOSLING [2001, p. 88], PERDIKIS ET AL. [2001].

government-provided public good, which, however, is a private good on the level of intergovernmental relations because actors from other territories can be excluded from its use, and because the domestic demand is certainly a good in limited supply, hence rival in exploitation by producers, domestic and foreign. Thus, even if domestic industries are being regarded as being entitled, as in the HILLMAN AND MOSER [1996] picture, there are good reasons to outsource the administration of MARs to governments. To this we add the simple observation that the evolution of the modern trade system is mainly determined by producers' interests. This depends on whether buyers' or sellers' markets prevail globally. Modern economic development expanded the scope of buyers' markets to being the dominant form. This implies that producers strive to get access to new markets and hence, push foreign governments to open up market access, which might cause conflicts with domestic incumbents. As a result, the international trade system is fundamentally shaped as a system which balances producers' interests, and much less of consumers' interest, in spite of the assumption of economic theory that the benefit of free trade is precisely the maximization of consumer rents. This exalted role of producers can be further explained by the well-known arguments in the theory of protection, such as the high organizational costs to organize consumer interests.

Summarizing:

Governments have emerged historically as incumbents of territorially defined MARs, because private creation and protection of MARs faces a free-rider problem, thus rendering MARs a public good in domestic terms. Simultaneously, governments supply the infrastructure of border control that might produce protection of MARs with economies of scale and scope. The evolution of the system is mainly driven by producers' interests in market access, as buyers' markets prevail globally.

2.2 *The emergence of markets for MARs*

The standard approach to trade policy confronts producers-as-exporters interests with import-competing-producers' interests, so that governments only play a role in balancing market access and protection, with the latter being a direct form of government intervention. From that perspective, the crucial problem in understanding MARs would be the principal-agent problem that inheres the fact that governments act as agents of the primordial owners of MARs, i.e. the different groups in a territory. This would lead towards the standard political economy of tariffs and other barriers to trade. Although this is an extremely valuable approach, in this paper I cannot pursue it in more detail for reasons of limited space. I wish to concentrate on the aspects in which the institutional approach differs from the traditional approach. This is the simple point that MARs do not only restrict trade, but also enable trade.

I posit that the demand for protection is by no means the main or even exclusive determinant of the emergence and evolution of MARs. The simple fact of the existence of different governments implies that there are always different jurisdictions with diverging legal norms and administrative regulations, which implies that cross-border transactions always face a higher degree of uncertainty and a higher level of transaction costs (for empirical support on the impact of institutional differences on trade, see DE GROOT ET AL. [2004]; LINDERS ET AL.

[2005]). Even in an hypothetical state of “free trade” there would be a problem of shaping the market access of exporters in terms of institutional security. Thus, the creation of market access rights overcoming jurisdictional differences is the primordial problem of international trade, or, in other words, producers-as-exporters’ interests are constitutive for the generic problem of international trade, whereas protection of import-competing producers is a special case.⁴ The important question is, why are MARs and the exchange of MARs the dominant institutional form to resolve uncertainty resulting from institutional differences?⁵

Imagine a global market divided into several territories where certain jurisdictional authorities can arbitrarily change the terms of market access across territories for whatever reasons, with both legal and administrative means, and with and without protectionist objective. That is, we do not regard free trade as the state of nature, but trade plus government. This is a major source of uncertainty for traders, quite independent from the issue of protectionism and special interest. Even if there were free access to markets in a territory, how could traders trust that this will also be extended into the future? We can distill a very clear statement of the problem in exploring the archetypical policy recommendation of the standard theory, i.e. unconditional unilateral liberalization: If a government decides to liberalize market access unilaterally, how can it possibly assure the foreign traders that this MAR is reliable? Note that unilateral liberalization is the optimal strategy for countries which cannot impose ToT-effects on other countries, and which is recommended invariably as the best institutional choice by both theorists and practitioners (BHAGWATI [1993]; LINDSEY [2000]). This is based on the clear welfare gains that can be reaped if the most efficient producer is allowed to serve the market. Our argument looks at an entirely different aspect of the problem, namely whether unilateral liberalization is a viable strategy in the interaction among governments, which actually can set the incentives to foreign producers to specialize on exports. To my knowledge, this idea has been first propounded by YARBROUGH AND YARBROUGH [1992, pp. 25ff.].

Basically, there are three ways to assure the reliability of MARs:

- creating a binding transnational legal regime that allows for third-party enforcement of MARs,
- embedding the unilateral action into other bonds of obligation,
- offering a hostage on similar terms to the foreigners.

The latter is the most interesting solution in our current context. A government cannot reliably liberalize unilaterally without a reciprocal movement of the

⁴ ETHIER [2004] argues that the impact of both groups of producers results from the fact that voters and politicians mainly perceive the direct causal relation between a trade policy measure and its impact on income and employment. However, this does not explain why one of this groups should prevail in political bargains.

⁵ Indeed, as the German economist RÖPKE [1959: 76f.] remarked, “The theory of international trade tells us that the world economy rests on the law of comparative costs, but recent experience suggests that it would be truer to say that it ultimately rests on the maxim *pacta sunt servanda*.” Our emphasis on legal and regulatory uncertainty is similar to the approach of the “New Institutional Economics of International Transactions” as programmatically proposed by SCHMIDTCHEN AND SCHMIDT-TRENZ [1990]. However, this line of research focuses on the emerging private law solutions, whereas we concentrate on the way how governments can contribute to resolving uncertainty.

other government, because only a reciprocal MARs gives the foreign government the power to retaliate, such that this endowment with sanctioning power increases the certainty of the MARs of the domestic government. This is the standard situation in the GATT, where tariffs at the same time serve as means to define MARs and as a sanction against breaches of trade policy agreements. Indeed, trade economists have frequently emphasized the puzzling observation that the GATT / WTO restricts means of sanctioning precisely on the same dimension as the primary trade transaction, excluding, for example, the use of pecuniary penalties (e.g. LOCKWOOD AND ZISSIMOS [2002]). Evidently, this is the institutional prerequisite for a market for MARs, and, as we shall see below in more detail, the so-called “retaliation” is in fact a regulated exchange of MARs.

Why is unilateral liberalization a problem for foreign traders and their governments, in spite of being the simple offer of new business opportunities? This depends on the extent to which traders need to incur specific investments in the trading relation, such that a classical hold up problem emerges. There are two different kinds of specific investments:

- investment into production technology which is specific to the target market (almost exclusively emphasized in YARBROUGH AND YARBROUGH [1992]);
- investment into distribution technology in the broadest sense, which is specific to the target market.

We can reasonably assume that the second kind of specific investment is much more important than the former, because there are quite significant territorial differences affecting distribution and marketing, like different languages, cultural standards or legal environments (cf. HARRIS [1989]; ENGEL AND ROGERS [1998]; HERRMANN-PILLATH [2000]). Since these are even defining properties of territories, we might say that depending on the degree of the differences, every international economic transaction requires a certain amount of specific investments, which are part and parcel of the general transaction costs of international trade as compared to domestic trade. Specificity adds to the more general role of fixed costs of international market entry which have attracted the attention of trade economists only recently (e.g. MEDIN [2003]). Fixed specific investments into bilateral trade relations cause a “specialization dilemma” to emerge which might reduce the benefits from unilateral liberalization for the importing country, if its government cannot commit itself credibly to its own policy announcement, because the foreign exporters might specialize less than their comparative advantage would warrant.⁶

From this follows, international trade is concomitant with a higher level of risk, and hence requires additional means to increase certainty of market access, otherwise the incentives to trade will be weaker than in domestic trade. The exchange of MARs is a powerful institutional means to increase certainty of market access and hence to strengthen the incentives to invest into trading relations, because it is tantamount to a mutual exchange of hostages. There is even a self-reinforcing mechanism to emerge, because increasing certainty of

⁶ BAGWELL AND STAIGER [2002, pp. 68ff.] only mention the hold up issue in the context of power relations between small and large countries and treat this as a special case. Following YARBROUGH AND YARBROUGH [1992] I would submit that the hold up issue is industry- and market specific and therefore applies to a much larger number of cases.

MARs strengthens the incentives for specific investments, which in turn increase the demand for safe MARs (for related views on regionalism, see MCLAREN [2002]; CHISIK [2003]).

Thus, the international market for MARs is an emerging phenomenon of international trade relations, as long as there is neither third-party enforcement and binding international legal regime, nor other strong force of mutual commitment to announced policies. In other words, the mere possibility of sovereign intervention and the divergence across jurisdictions creates the need for a system of mutual stabilization of expectations regarding the future security and reliability of market access, which presupposes the existence of enforceable claims to market access, hence MARs. Independent from the causes that lead towards the creation of MARs, their function will become determined by this strategic role. As a result, an institution like the tariff always has to be understood as fulfilling two different functions at the same time: The tariff is a *trade-restricting institution* in so far as it serves protectionist goals, and it is a *trade-enabling institution* because it is a means to define MARs and to enable governments to exchange MARs.⁷ Thus, we reach the important conclusion:

Independent from the original objective to create MARs, MARs evolve as an institutional solution of the need to secure market access in cross-border transactions. That is, the emergence and the evolution of MARs may follow an entirely different logic, respectively. The unilateral transformation of a MARs into a free international public good (i.e. unilateral liberalization) is not necessarily credible, from which the need arises to stabilize MARs via the exchange of hostages, i.e. via mutual exchange of MARs. Thus, the market for MARs is an emergent phenomenon in international trade relations, which in turn generates forces of their further evolution. The mechanism behind the increasing complexity of MARs is the fact that once expectations of traders are stabilized, this increases incentives for transaction- and target market specific investments, which feeds back on the demand for MARs.

From this conclusion the question emerges, how can we understand the evolutionary forces underlying this growth of complexity of the market for MARs?

3 The evolving institutional design of the market for MARs

3.1 Describability of MARs as an evolutionary force in the international trading system

Having established the economic rationale for MARs, I want to make a simple point that is very often neglected by trade theorists, even though being the bread and butter of trade lawyers. This is the need for a language to describe MARs exactly in order to make binding exchange commitments possible (for an elaboration on trade and language, see HERRMANN-PILLATH [2007]). When economic theory treats the tariff as the primordial form of MARs, this

⁷ A similar view emerges from DIXIT'S (1996) transaction cost approach to politics, which also takes the tariff as one example. In his game-theoretic analysis, as long as the tariff is the only means of retaliation, free trade cannot be a stable institutional regime, because a minimum tariff is necessary to signal the readiness to retaliate, if there are unilateral deviations from free trade.

fundamental issue is somehow covered up because the tariff is a very simple, quantifiable measure that can be communicated with ease. However, this is an exception. Actual market access is determined by many and complex factors. In particular, market access for a particular good is always influenced by the MARs for other goods and services which are complementary in the sense that they support the trading action and / or the use of the good on the demand side (cf. HIRSCH [1989]). For example, MARs for cars might depend on MARs for financial services. Furthermore, in a dynamic economy the value of market access is constantly shifting, depending on innovation and market competition, such that, for example, innovation in financial services also changes the MARs for cars in terms of their value in opening effective market access. The description of MARs needs to reflect these complex interdependencies. Thus, the treatment of MARs as tariff equivalents in equilibrium approaches seems to be a misleading simplification. Whereas the equilibrium approach implicitly regards tariffs as the fundamental form of MARs, the institutional approach assigns to them the role of only one variant in a multifarious spectrum of institutional forms, i.e. tariffs are a special case of MARs, not the general case. Describability of MARs is a very important analytical category from the viewpoint of institutional economics, because the extent of the incompleteness of contracts is affected (cf. ANDERLINI AND FELLI [1999]). The less describable a good and all actions related to the successful transaction, the larger the potential for rent extraction and rent dissipation (BARZEL [1989: pp. 2ff.]). On the other hand, description is a determinant of ex ante transaction costs, which raise with increasing exactness of description. Hence, there is a trade-off between ex ante and ex post transaction costs, which is exacerbated by the fact that complexity increases the general uncertainty about form and value of MARs. After all, a MAR is a future with contingent value, such that there are irremovable limits to description. From the final conclusion of the previous section follows, that the endogenous growth of complexity of the market for MARs simultaneously increases the ex ante transaction costs of further bargains (which easily explains the fact that the duration of trade rounds in the GATT system has increased continuously since its inception).

Thus, we arrive at a fundamental hypothesis about the evolution of MARs and, hence, the international trade system:

Changes of MARs will be driven by the extent of rent extraction that is allowed by incomplete descriptions of MARs. Since rent extraction changes the distribution of costs and benefits among the actors in the international trade system, different actors will perceive incentives to change the system at different time and in different contexts. The process of change is mainly determined by the need to minimize ex ante transaction costs in negotiating new arrangements, which favours a sequence of changes moving from low-cost to higher-cost tracks, with the low cost tracks triggering corresponding activities in rent-extraction. At the same time, low-cost ex ante regimes are frequently linked up with high-cost ex post regimes, because incomplete contracts leave much scope for conflicts requiring complex political negotiations. Thus, apart from direction of change triggered by rent-extraction, the system will move towards regimes which also lower ex-post transaction costs.

Tariffication seems to be a clear case in point. The post WWII history of the GATT shows a strong trend towards tariffs as becoming the dominant form to identify and delineate MARs. Especially in the early GATT rounds, tariffs and

implied market shares were used as descriptive devices to balance supply and demand for MARs across countries.⁸ Tariffs are a transaction-cost minimizing descriptive instrument and allow for easy quantification. However, tariff-based contracts over MARs remain seriously incomplete, because many other actions can impact effective market access. Thus, the evolution of the international trade regime was strongly driven by the stepwise inclusion of non-tariff barriers to trade into the negotiation agenda, triggered by attempts at rent extraction of incomplete bargains over MARs. However, this has increased the ex-ante transaction costs, which is reflected in the increasing duration of the trade rounds and growing resource input into the negotiations. This historical pattern clearly supports the institutional treatment of tariffs as a special case of MARs, which prevailed during a certain period of time because of a particular configuration of transaction costs. In the course of time, tariffs have retreated in importance as compared to the large variety of non-tariff MARs.

The challenge of describing MARs is especially obvious in the context of the GATS, where technological and legal innovations constantly shift the borders between industries and types of transactions. Economists mostly recommend a negative list approach allowing for free market access unless parties explicitly mention the exceptions (for a discussion of the alternatives, see STEPHENSON [1999]; LOW AND MATTOO [2003]). The GATS actually adopts a mixed positive / negative list approach with explicitly listing the sectoral commitments and concessions of the parties. This reflects the need to reach precise descriptions of MARs in an uncertain environment. The complexity of the descriptions is much higher than in the case of tariffication and does not lend itself easily to quantification, because, for example, the four “modes” of market access open up a multi-dimensional space of describing MARs. Quantification becomes a complex scientific endeavour which presupposes large sets of data which are mostly not yet collected by statistical agencies and authorities.⁹

In sum, important elements of the evolving international trade system can be understood as enabling the traders and governments to identify form and content of MARs. There is a plenitude of legal forms, like tariffs, quotas, GATS schedules and so forth, which have a specific impact on the ex ante and ex post transaction costs. MARs are not simply given, but their form and content develops through international political communication, which is mostly couched in legal terms, yet with a strong political twist. So far, the economic assessment of these forms has only rested upon the criterion of allocative efficiency. We can now introduce another criterion, namely whether a particular linguistic form helps the actors to realize successful transactions on the market

⁸ For reasons of space, I cannot go into details here. HUDEC [2002] makes the important point that the principles governing the use of tariff classifications have always been strongly influenced by the principle of reciprocity (and hence were, in our words, always related to the market for MARs, not simply industry protection). This means, that the classifications were never based on an economic rationale of identifying goods via relevant markets, but on the need to organize reciprocal exchange of rights to market access. This has left the countries much leeway to adapt the use of the classifications, and the same time those classifications which violated the principle of reciprocity were rejected by GATT panels.

⁹ For a survey of techniques to determine effective market access in services, see FINDLAY AND WARREN [2000]. The serious data limitations are emphasized by ANDERSON AND VAN WINCOOP [2004].

for MARs. For example, tariffs can only be the most efficient form if there are no substantial difficulties in determining scope and kind of market access, as in simple arms length trade.¹⁰

3.2 *Value determination of MARs as expression of power balances*

Describing the form and content of a MAR is not sufficient to enable the parties to reach a workable agreement on exchange of MARs. This requires also a viable method to agree on values, which is a complex category: Following the seminal approaches by SYKES [1996] and SCHWARTZ AND SYKES [1996] I posit that on the market for MARs, politico-economic values are balanced across countries. If mutual sanctioning potential is a crucial feature of MARs, then the value of a MAR is not only determined by the expected market volume for domestic exporters, but by the implied sanctioning potential for the importing country.¹¹ Once domestic and foreign MARs are linked via exchange, the domestic value of a foreign MAR correlates with the value of the domestic MAR that is given away via exchange, because this domestic MAR creates the sanctioning potential which determines the certainty of the foreign MAR. From this general consideration, some criteria for valuing MARs can be deduced.

The first and foremost is the fact that the sanctioning power implied by a domestic MAR is dependent on the intensity of the foreign interest in it. Following an enlightening definition of power proposed by COLEMAN [1990, p. 133], we may say that the power of a country is determined by the interests that other governments have in certain actions that are controlled by the country's government. As a result, in global political exchange, if a domestic government wants to sanction a perceived violation of an exchange agreement, it will try to retaliate in a way that exerts most impact on the foreign government, such that the sanction may not be related to the original bargain. This is the main reason why most international institutions regulating trade conflicts fly in the face of economic theory and its criteria of efficiency (in more detail, see SYKES [1996]; ANDERSON [2002]). For example,

- retaliation does not necessarily work to the favour of the industry that was originally damaged, because governments restrict trade in industries that hurt the offender most;
- governments enjoy rights to safeguard action in precisely those circumstances where the welfare losses are the largest, i.e. when the most efficient foreign suppliers are excluded from the domestic market;

¹⁰ In the mainstream literature on trade the problem of effective communication has surfaced in the context of the issue of asymmetric information about triggers of trade policy, see e.g. RIEZMAN [1991] and FEENSTRA AND LEWIS [1991]. The problem is whether a certain policy regime may effectively transmit credible information about the conditions for safeguard action. FEENSTRA AND LEWIS argue that a tariff quota is the most effective instrument to communicate the true intentions of the implementing government, because it sends a costly signal, i.e. the transfer of rents to the affected country's producers. I discuss these issues in much detail in HERRMANN-PILLATH [2007].

¹¹ This argument is close to MAGGI [1999], who argues that trade policy institutions are strongly influenced by the need to achieve power balances among countries for optimal enforcement. He puts this explicitly in the context of a "market where countries exchange trade concessions". In his abstract model, net exporters are less powerful than net importers, which fits our idea of the primacy of producers-as-exporters interests in market access as a moving force in the evolution of trade institutions.

- and finally, retaliation always hurts the domestic consumers in the retaliating country;

As we have already observed in the previous section, the efficiency criteria of the market of goods and services do not apply for the market for MARs. Instead, the actual practice reflects the need to balance valuation across MARs on the market for MARs. For example, as SYKES [1996] and SCHWARZ AND SYKES [1996] have demonstrated, given the fact that welfare losses are relatively large if the most efficient producers are excluded from the market, then at the same time this normally implies that those producers themselves have a relatively large global market share and a sound business, so that the political damage in the foreign country will not be large. Hence, the procedure that seems inefficient in standard economic terms is at the same time optimal in the context of political exchange of sanctioning power and MARs, maximizing the political cost/benefit ratio for both trade partners.

Further, the value of MARs depends on the degree of the specificity of the investment that is needed to actually exploit the rights. Again, this is a question of balance. This means, if domestic traders need to invest with high specificity into foreign MARs, the foreign government wins a high sanctioning potential if it gives those MARs away. From this follows, in international trade negotiations a trend will emerge that establishes a correlation between the degrees of specificity on the different related sides (cf. YARBROUGH AND YARBROUGH, [1992, Chapter 5]). If there is a large difference in specificity, the government with the less specific investment will enjoy a stronger relative position. Of course, it is very difficult to exactly quantify this balance, such that the actual behavior will be determined by general perceptions of balances of bargaining power.

An empirical support for this view is the strong trend for regionalism which emerged in recent years and which is being assessed differently today than during earlier upsurges of regional agreements, with the political factor gaining in acceptance also on part of the economists (WORLD BANK [2000]). The equilibrium approach cannot account for this development, because its focus on ToT implies that only the Vinerian trade creation / trade diversion categories serve to assess the efficiency of regional arrangements (see BAGWELL AND STAIGER [2002: Chapter 7]). In our view, regionalism is an institutional regime that allows countries to exchange MARs in areas which are more complex to negotiate, and which allows a closer balance of mutual sanctioning potentials, especially in areas where specific investments are increasingly important.¹²

As we may safely assume that the more complex the technologies and goods traded, the higher the specificity of investments into building trading relations, we can thus hypothesize that the forces towards regionalism become the stronger, and the regional arrangements will be the more successful, the more

¹² For more detail on my argument, see HERRMANN-PILLATH [2006b], and for a related view and strong empirical support, see MANSFIELD AND REINHARDT [2003]. They investigate into the observation that precisely with the expanding inclusiveness of the multilateral system the incentives for concluding regional arrangements seem to have grown. In their view, regional arrangements allow a renegotiation of power balances across countries, both in the sense of power relations within the regional club and of the relations between the club and the rest of the world.

developed the economies involved. This is exactly what we observe. The Asia Pacific is a case in point, because APEC originally tried to follow a strategy of “concerted unilateral liberalization”. Today, the Pacific Rim countries ended up with an increasing number of even bilateral trade agreements, which recognize the need to exchange MARs in order to stabilize the institutional framework in a region which is deeply integrated by complex linkages between trade and investment. In particular, trade-related foreign direct investment increases the specificity of trade relations considerably. Hence, our institutional theory precisely predicts such an upsurge of regionalism.

Finally, and closely related with the former issue, the size of the market matters, which is related to relative market shares and export dependency of a country. Generally speaking, the more important the import market of a country, the higher the value of its MARs in terms of both foreign interest and implied domestic sanctioning potential. We need to distinguish neatly between relative size and absolute size, defining relative size in the sense of bilateral relations, and absolute size in terms of relative size as compared to the world economy. This distinction is needed to include terms-of-trade effects into the analysis of value determination of MARs. The important difference between relative and absolute size is that an absolutely large country can impose additional terms of trade effects on another country once it restricts MARs, if the market share of the bilateral trade is large as compared to the world market, because the importing country is large. From this follows that countries will try to equalize the potential for ToT-effects resulting from the exchange of MARs (for a pertinent modelling approach, see BOWN [2002; 2004]). Relative size is closely related with the specificity issue, because a small country might be attracted completely by a large importing country in the sense of fully specializing its production and trade infrastructure to that country. This leads into the trap of a hold-up problem similar to the one previously discussed (for a full development of this argument, see MCLAREN [1997]).

The three factors that we considered so far enable us to identify further forces of the evolution of the international trade system:

The exchange of MARs follows principles of a reciprocal power balance among the exchange partners, as far as the sanctioning potential is concerned. There is no direct way to quantify the implicit values of MARs, however it can be shown that the institutional evolution goes back on the mutual recognition of determinants such as relative market size and relative specificity of investments into market access, which determine relative sanctioning potentials of countries. In particular, the interrelatedness between regionalism and multilateralism in the international trading system grounds in the process of balancing power relations among countries.

An interesting proof of this argument can be found in what I call the paradox of hegemony. The proposed approach has important implications for one of the most influential theories on trade liberalization, which was strongly influenced by institutional economics thinking, namely the hegemonial theory.

Hegemonial theory argues that a country with a high share in world trade and a strong political position will perceive strong incentives to overcome the free-rider problem in liberalization and, in particular, in sanctioning deviant behavior in trade policy, such that the hegemon will produce an international public good following his individual interest. Our approach provides the analytical reason why this persuasive argument has proven difficult to confirm empirically: Since

the power of a country results, amongst other factors, from the MARs that it controls, liberalization is in fact a give-away of MARs. If power is a precondition for exerting hegemonial influence on liberalization, precisely the restriction of MARs and, hence, a limited liberalization according to the received standards is one of the determinants of just this hegemonial position. This explains the vascillating role of the United States in the recent history of world trade liberalization, which at the same time staunchly supports liberalization and adopts protectionist policies.¹³

3.3 Externalities and the market for MARs

Given the inter-governmental structure of the exchange of MARs, one particular aspect of the historical institutional evolution is the MFN clause that emerged since the Cobden-Chevalier-Treaties (for a survey, see POMFRET [1997, Chapter 2]). This is mostly referred to the principle of non-discrimination in trade negotiations, and hence justified on normative terms, having the idea of free trade in mind, and of equal opportunity in access to export markets. However, from our perspective the MFN-principle causes a free-rider problem because MARs are artificially transformed into a semi-public good. MARs are close to private goods, precisely because the parties of a bargain can discriminate against third parties. The MFN clause opens market access also for all countries which did not contribute to the exchange, especially if interpreted, as usually, in unconditional terms.

In BAGWELL'S AND STAIGER'S approach the MFN issue is directly related with the externality issue, which may indeed be one of the driving forces of the historical emergence of MFN. The argument is that bi- or plurilateral exchange of market access rights can cause ToT effects on other countries, basically generalizing the classical Vinerian argument on regionalism. This means that the value of MARs of a single country is not independent from the MARs transacted between other countries. In other words, unless all countries are small ones, the market for MARs will always be pervaded by externalities. Against this background, the role of the MFN can be explained without reference to normative liberalization principles. If a MAR is automatically extended to third parties, externalities are internalized because there is no longer an indirect effect on world prices in the sense that the domestic prices in third countries are changed via the ToT-effects of a bilateral agreement. Thus, the MFN clause is efficiency enhancing, as far as the market for MARs is concerned, because it increases the certainty of MARs which might otherwise be affected by third-party decisions.

There is a small and complex literature on the theoretical interpretation of the MFN (see HORN AND MAVROIDIS [2001] for a survey). ETHIER [2004] criticizes the BAGWELL AND STAIGER explanation because he regards the ToT argument as non-realistic. Instead, he proposes that the MFN clause is designed to prevent "concession diversion", which means the debasement of concessions by their

¹³ Interestingly, the hegemonial theory is much more fashionable with economists than with political scientists; for a survey see GILPIN [2001, pp. 93ff.]. MANSFIELD [1994] contains a comprehensive discussion of the difficulties to test the theory empirically. GADZEY [1994] is a detailed assessment of the US role in the international trade system.

proliferation to countries which did not participate in the original bargain. In his view, it is the MFN which causes an externality, which is then internalized via the multilateralization of trade negotiations. If we focus on MARs, both views are important, however the first step in the ETHIER argument needs to be considered as a complex externality, too. That is, concession diversion operates as a negative externality on the MARs of the original partner of a bargain, and MFN internalizes this externality because all negotiating partners can fully foresee a complete concession diversion through MFN and will adapt to this. Hence, both the BAGWELL AND STAIGER and the ETHIER Argument are covered in the MARs approach.

Historically, the resulting free-rider problem has been solved by always applying the MFN principle in a club of nations. That is, the GATT and in particular the WTO are regarded as a common endeavour where the contracting parties share a public good, and where club members enjoy the right to control the behavior of other members and are allowed to sanction deviant behavior. This principle is especially evident from the WTO access negotiations, which treat the entire set of mutual commitments as a “single undertaking”. Once we emphasize the club-principle, the fundamental continuity with regionalism beyond bilateral agreements and multilateralism becomes evident (FRATIANI AND PATTISON [2001]). The equilibrium treatment of multilateralism as “non-discrimination” conceals this nature of the WTO as a club which is necessarily based on principles of exclusion and inclusion, i.e. on a particular kind of discrimination.¹⁴ In this sense, regionalism is just another institutional form of the club principle which fits to the increasing complexity of MARs traded among nations. Regionalism is a means to adapt the market for MARs to an increasingly complex structure of externalities, when MARs themselves become more complex.

We should note that externalities do not only emerge via ToT effects. Generally speaking, trade effects externalities if exporters rely on certain public goods provided by the importing country, without contributing to its provision. As we have seen, these effects stood at the center of the historical emergence of tariffs in Europe. Externalities of trade play an important role in issues of sanitary regulations or technological safety. However, I cannot go into more detail here, just summarizing this section,

MARs emerged historically as complex institutional solutions to regulate externalities in the provision of market infrastructure. The contemporary institutional regulation of exchange of MARs among governments has been shaped by the externalities linking up particular MARs bargains with ensuing exchanges among other parties. The MFN clause solved this problem by simultaneously converting MARs in semi-public club goods, with the clubs taking shape as the multilateral organization of the WTO, or as regional arrangements of different scope and depth.

¹⁴ Another solution of the free-rider problem relates to the bargaining process. In earlier GATT rounds the contracting parties applied the principal supplier rule, which is actually a way to solve the incentive problems resulting from the MFN, because negotiations start among the parties with the highest bilateral shares of trade (HOEKMAN AND KOSTECKI [2001, pp. 126ff.]). Hence, the free-riders are only traders of minor importance, such that their benefit from free-riding can be neglected, as ex-ante transaction costs are saved. Contemporary accession negotiations are organized in a similar fashion.

3.4 *Renegotiation as a discovery procedure on the market for MARs*

One of the conspicuous characteristics of the GATT and the ensuing WTO framework is the fact that the contracting parties did never set up a system of sanctions which would effectively deter governments to use illegitimate means to restrict trade. Although many observers claimed that the Uruguay dispute settlement mechanism was a move towards third-party enforcement, in fact this system went hand in hand with the following phenomena (for detailed scrutiny of the empirical data, see REINHARDT [2000]; see also ROSE [2004]):

- The number and duration of trade disputes has been growing considerably.
- There is an increasing number of sequential disputes involving the same countries.
- The duration of single disputes is frequently extended to the maximum possible.
- There is less use of safeguard clauses than of Anti-dumping procedures.

These phenomena seemingly contradict the spirit of the WTO if this is interpreted as an institutional regime for trade liberalization. If we adopt the viewpoint of this paper, this contradiction evaporates.

There are two major problems for organizing an international market for MARs, namely the uncertainty regarding future values and the dynamics resulting from innovation, new market entries and changing domestic constellations of interests. Both imply that exchange agreements must be open to renegotiation, because otherwise the risk resulting for the partners may be too high to enter an agreement at all, taking specific investments into consideration. We can understand the above characteristics of the current global trade regime as an institutional solution to the recognized requirement of a continuous renegotiation of open MARs (for a related view, see FINGER [1998]). This is also a need from the perspective of democratic political systems, because external agreements may always run into conflict with changing domestic political constellations, which imply that the value of MARs changes. Finally, renegotiation might be unavoidable if there are temporary ruptures in domestic and global economic growth.

Again, the comparison with the equilibrium approach is illuminating: Interestingly, the free-rider problem in MFN is the only area where the equilibrium approach by BAGWELL AND STAIGER [2002, pp. 86ff.] is enhanced by a truly institutional perspective. That is because they argue that the freerider issue is a “forward looking” one in the sense that the application of the MFN changes future bargaining power among countries, such that they might refrain from offering too much in the present. These incentives are changed if renegotiation is explicitly allowed for in the institutional regime, so that countries are ready to offer more extended market access.

In this context it is illuminating that the GATT distinguishes between what has been called general and specific reciprocity. General reciprocity refers to the overall objective of the WTO to enable the parties to mutually beneficial concessions of MARs. Special reciprocity means, that given a particular agreement on exchange, any further unilateral changes must entail “substantially equivalent concessions” by the country which changes its MARs. This is true for both the safeguard clauses and retaliation, with the latter consisting in an authorized “withdrawal of equivalent concessions”.

Now, how can equivalence be established? As we have analyzed above, the value of MARs is a complex politico-economic category. Negotiations establishing this value face considerable incentive problems, because governments cannot assess the internal political economy of other countries, such that foreign governments have much leeway to act opportunistically. In most cases, international communication among governments will result in “cheap talk”, because there are narrow limits for building trust in the messages of other governments.

Against this background it seems to be obvious that threatening a unilateral withdrawal of concessions is the effective approach, because ex-ante negotiations over safeguard procedures are difficult to proceed. The threat of a unilateral withdrawal forces the affected government to enter a dispute resolution process where both governments may reach a common definition of the MAR and an agreement over valuation. The costs of filing a case with the WTO serve as a signal of the strength of the affected foreign interests, that is a kind of non-verbal communication to the domestic government. Furthermore, compensation would need to follow the MFN principle and undermines reciprocity because of the externalities caused for other countries, whereas dispute resolution eventually leads toward a bilateral, reciprocal settlement. Thus, dispute resolution seems to be less guided by the idea of sanctioning than by the need to institutionally complete a market for MARs.

The true nature of dispute resolution as renegotiation is also clear from the principle of “accepted retaliation” which means that a trade dispute is limited to be a mere exchange with enforced reciprocity, but not a conflict possibly leading toward a chain of retaliation. A similar analysis is given by BAGWELL AND STAIGER [2002, pp. 97ff.] who argue in much detail that the “retaliation” (or, the threat thereof) in GATT is in fact an institutional arrangement that rebalances the exchange of market access in case of a unilateral withdrawal of concessions, such that this is converted into a GATT-conforming act of reciprocal exchange. This viewpoint is further supported by our institutional analysis.

In a similar vein, we can interpret Anti-Dumping as a mechanism of renegotiation, which can be related to non-expected changes in the relative power of countries in world trade and especially with the emergence of new exporters in certain countries. If a country develops new export potential and threatens the competitive position of other countries, this leads to a major change of the value of MARs and, by implication, of the original conditions of the prevailing bargaining agreement among governments. In particular, the implicit balance of interest among free-riders and main traders is affected, because a newly emerging trader might become a principal supplier, without having partaken (and, hence, contributing to) in the original agreement. Indeed, in many anti-dumping arguments the idea figures prominently that the alleged dumping is actually possible via cross-subsidizing predatory pricing through protected industries which are able to earn supernormal profits in domestic business. Thus, the anti-dumping procedure is actually based on pinpointing a free-rider position, because the allegedly dumping exporter enjoys some MARs of the importing country which are not balanced with MARs of the exporting country. From this results the need to renegotiate the system of MARs, which, however, would presuppose knowledge about future values and scope of MARs. The Anti-dumping procedure forces the affected parties to renegotiate the

original agreement, either by rescinding some MARs bilaterally or by enforcing further exchange of MARs on the dumping country. Interestingly, Anti-dumping is a purely bilateral procedure, such that protection for the domestic industry is not extended to other exporters. This is a clear reflection of the renegotiation process.

Summarizing this section, we have shown that

The GATT stipulations on safeguards, retaliation and Anti-dumping are institutional means to regulate the process of continuous renegotiation of MARs among governments. This need arises from the fact that MARs are closely interrelated with the market for goods and services and the domestic political market on which novelty, innovation and political change recurrently impact on the value of MARs, thereby disequilibrating settled institutional structures and balances of power. Thus, the GATT provisions on dispute resolution do not represent a sanctioning mechanism, but are in fact a part of the larger institutional setup of the market for MARs.

4 Conclusion

This paper proposes to rearrange our knowledge about the real mechanisms of the international trading system around one core concept, i.e. market access rights. The main theoretical innovation is to speak about “rights” and not simply “market access”, which allows us to draft a systematic institutional economics approach to the metaphor which views international trade policy as a “market” on which governments exchange opportunities to export. The analytical harvest of this innovation mainly results in being able to explain the long-run evolution of the international trade system, confronting the standard view to describe certain states of the system as political equilibria in interest group politics (cf. URSPRUNG [2000]). Therefore, the institutional economics perspective explains the fact of the increasing institutional complexity of the trade system, whereas the standard approach can only interpret actual policies as vasillations between the two poles of protectionism and free trade.

Summarizing our main insights, we have identified the following evolutionary forces:

- The market for MARs emerges out of the need to reduce uncertainty over future market access in an international trade system without fully-fledged third party enforcement, and it generates endogenous growth of complexity, as reduced uncertainty increases the incentives for specific investments into trade relations, which in turn increase the demand for more complex MARs.
- In this process, the problem of describability looms large, rendering agreements about mutual exchange of MARs incomplete. This offers opportunities for rent extraction. As a result, changes of the trade system are driven by steps towards increasing internalization, which also navigate through the trade-off between minimizing ex ante or ex post transaction costs.
- Exchange of MARs aims at balancing politico-economic values which are rooted in the sanctioning potential that is created by offering a MARs. Basically, these are power balances across countries. The sanctioning potential is foremostly determined by the relative

competitive position of the pertinent industries and their political clout, the relative specificity of investment into trade relations by the different trading partners, and the relative size of the markets of the different countries.

- However, at the same time any bi- or plurilateral exchange of MARs may cause externalities in the trading system through ToT effects. The MFN clause is a mechanism to internalize those externalities by means of moving MARs from the private property rights pole to a club good. The more complex the MARs, the more complex the externalities, and hence, the resulting club arrangements.
- Most exceptions in the existing regulatory framework of international trade can be explained as institutions that enable the countries to renegotiate trade agreements implicitly, especially by following the principle of specific reciprocity, which allows to target renegotiation procedures on particular constellations of transaction partners.

These evolutionary forces drive the growing complexity of the trade system, simultaneously increasing transaction costs, but at the same time enabling traders to manage an increasing scope and scale of trade relations. This is the fundamental paradox of international trade policy: Trade policy institutions are at the same time trade-enhancing and trade-restricting.

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