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Mercosur, The Free Trade Area of The Americas and the Future of U.S. Hegemony in Latin America

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MERCOSUR, THE FREE TRADE AREA OF THE AMERICAS, AND THE FUTURE OF U.S. HEGEMONY IN LATIN AMERICA*

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INTRODUCTION

The purpose of this Article is to examine U.S. hegemony in Latin America by looking at the impact of the Free Trade Area of the Americas ("FTAA") negotiations on U.S.-Latin American relations. Does the FTAA process confirm the claim that "[s]ince World War II . . . the general trend has *always* been for the United States to exert a great degree of influence over Latin American countries. . ."?[1] Does it mark the beginning of a new, more balanced relationship between the United States and Latin America, a mature partnership based on reciprocity, mutuality of interests and mutual respect? Alternatively, are the United States and Latin America growing apart? Can Latin America say "good-bye" to the United States and establish a presence of its own on the world stage?

Active opposition to the FTAA by civil society constituencies in several countries of the Western hemisphere, including the United States, and recent U.S. protectionist measures, do not bode well for the successful completion of the FTAA in 2005. On the other hand, the collapse of the World Trade Organization ("WTO") global trade talks at Cancun in September 2003

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1. Peter H. Smith, *The United States, Regional Integration, and the Reshaping of the International Order, in* COOPERATION OR RIVALRY? REGIONAL INTEGRATION IN THE AMERICAS AND THE PACIFIC RIM 30 (Shoji Nishijima & Peter H. Smith eds., 1996) [hereinafter Smith, *Regional Integration*].

creates new incentives for the United States to complete the FTAA talks on schedule in order to avoid trade discrimination in Southern Cone Common Market ("MERCOSUR") countries (Argentina, Brazil, Paraguay, and Uruguay) if they strike a free trade deal with the European Union and the FTAA talks collapse, or are extended until 2007.

I. *THE FREE TRADE AREA OF THE AMERICAS NEGOTIATIONS*

The FTAA negotiations were formally launched at the Second Summit of the Americas in Santiago, Chile, on April 18-19, 1998. The FTAA was originally conceived as an extension of the NAFTA model to the rest of the Western Hemisphere. However, the inability of President Clinton to obtain "fast-track" authority from the U.S. Congress and the victory of the Brazil/ MERCOSUR position during the *negotiations to negotiate* from 1994 through 1998 eliminated the NAFTA extension approach (also known as the *hub-and-spokes* model) and established a more balanced format for the negotiations. At the Trade Ministerial Meeting in San Jose, Costa Rica, on March 19, 1998, the United States had to make significant concessions. First, the FTAA process would be a *single undertaking* (where nothing is agreed until everything is agreed upon). Second, countries can negotiate as members of a sub-regional trading bloc and "the FTAA can coexist with bilateral and sub-regional agreements, to the extent that the rights and obligations under these agreements are not covered by or go beyond the rights and obligations of the FTAA."[2] As Gilmore notes, "the United States position is considerably weaker in this format than under the 'hub and spokes' approach, as it will face the growing economic power of Brazil and MERCOSUR in achieving many of its trade objectives."[3] Although the United States accepted the creation of a negotiating group for agriculture — a key problem for many Latin American countries seeking to sell in the U.S. market — most of the other negotiating groups deal with the *deep integration* agenda of the United States. Since 1998, nine technical working groups have

2. Free Trade of the Americas: Fourth Trade Ministerial Joint Declaration, San Jose, Costa Rica, Mar. 19, 1998, *available at* http://www.ftaa-alca.org/minsterials/costa_e.asp [hereinafter Ministerial Joint Declaration of San Jose].

3. David M. Gilmore, *Free Trade Area of the Americas: Is it Desirable?*, 31 U. MIAMI INTER-AM. L. REV. 383, 385-86 (2000).

been involved in the FTAA negotiations: (1) market access, (2) agriculture, (3) services, (4) investment, (5) government procurement, (6) intellectual property rights, (7) subsidies, antidumping, and countervailing duties, (8) dispute settlement, and (9) competition policy.[4]

Although the FTAA talks have made significant progress at the technical level, considerable *political* obstacles remain to achieve a FTAA on schedule in January 2005. The commitment to make concessions, especially, but not only on the part of the United States and Brazil is still missing.

As Poitras notes, "finding common ground between the NAFTA three and the rest of the [S]tates in the Americas could ultimately transform hemispheric relations."[5] However, making NAFTA compatible with the other sub-regional blocs in the Western hemisphere is a formidable undertaking. MERCOSUR and NAFTA follow different models of regional integration. MERCOSUR is an ambitious project to become a customs union and a common market, whereas NAFTA is a free trade area which allows the United States to pursue its *deep integration* agenda with Mexico and Canada through very detailed governing clauses. The NAFTA treaty is very broad in scope and extremely detailed, with twenty-two chapters, 295 articles, and ninety annexes. In contrast, the Treaty of Asuncion which created MERCOSUR in March 1991 has only twenty-four articles. The Southern Cone grouping is still loosely organized, with a strong inter-governmental component, even after the Protocol of Ouro Preto, which gave MERCOSUR international personality. If MERCOSUR survives the FTAA negotiations, it will probably establish supranational institutions resembling those of the European Union (the "EU"). In contrast, the United States is unlikely to accept the creation of a supranational governing body in NAFTA.

Even if the FTAA negotiations can bridge the gap between NAFTA and MERCOSUR, formidable obstacles remain to achieve a balanced agreement between the thirty-four participating countries. The greatest obstacle is the asymmetric distribu-

4. *Id.* at 410-11; J. Steven Jarreau, *Negotiating Trade Liberalization in the Western Hemisphere: The Free Trade Area of the Americas*, 13 TEMP. INT'L & COMP. L.J. 57, 65-70 (1999).

5. GUY POITRAS, INVENTING NORTH AMERICA: CANADA, MEXICO, AND THE UNITED STATES 127 (2001).

tion of power in the Western Hemisphere: "the US economy, for example, is 10 times larger than that of Brazil, the second biggest economy in the hemisphere, and almost 100 times larger than the *combined* total of all of the countries of Central America and the Caribbean."[6]

II. *HEMISPHERIC REGIONALISM AND U.S. HEGEMONY*

From the perspective of the U.S. government and big business interests, the FTAA offers a unique opportunity to pry open the MERCOSUR market (as U.S. exports and imports from the MERCOSUR region grew steadily in the 1990s), while making permanent the rules of the neo-liberal game; the so-called "*Washington Consensus*", that became the dominant ideological discourse in the region in the 1990s.[7] As Schott puts it, "US firms have a U.S. $50 billion bet on the future of the MERCOSUR economies."[8] The FTAA project is aimed at locking in a *deep integration* agenda that if implemented would amount to the virtual annexation of the Latin American economies to the U.S. economy, much in the way NAFTA converted the Mexican economy in an appendix of the U.S. economy. A NAFTA-style FTAA with a *WTO-plus* format would eliminate all the existing barriers to U.S. foreign investment in the region, extending international rules (or *trade disciplines*) from trade to investment. The comprehensive FTAA sought by the United States would open the Latin American markets for a wide range of U.S. service industries, while eliminating national restrictions on government procurement and establishing trade courts in which U.S. multinational corporations would be able to sue the Latin American governments over health, labor, and environmental laws. A NAFTA-style FTAA would also eliminate differences in national regulatory regimes that have discriminatory ef-

6. JEFFREY J. SCHOTT, PROSPECTS FOR FREE TRADE IN THE AMERICAS 2 (2001).

7. The "*Washington Consensus*" promotes full reliance on market forces to allocate resources. It covers three major areas of economic policymaking: macroeconomic stability ("fiscal discipline"), a reduced government role in the economy (deregulation and privatization of state enterprises), and greater openness to the outside: elimination of barriers to trade while attracting foreign direct investment. *See generally* JOHN WILLIAMSON, THE PROGRESS OF POLICY REFORM IN LATIN AMERICA (1990).

8. Jeffrey Schott, *The United States, Mercosur and the Free Trade Area of the Americas*, at 8, prepared for conference on New Challenges for Regional Integration, Buenos Aires, Argentina, (Oct. 3, 2002).

fects on trade and investment, such as rules governing intellectual property, or discriminating against foreign competition.

A. *The Reassertion of U.S. Hegemony Thesis*

Several scholars argue that the asymmetric nature of U.S.-Latin American relations and U.S. overwhelming structural power over the region make it impossible to achieve a mature partnership between the United States and Latin America. As Mace and Belanger note:

> [T]he extremely dominant position of the United States in the Americas . . . [has several implications]:
> First, U.S. dominance means that hemispheric regionalism makes very little sense without U.S. involvement. Second, it means that the United States is the only country in the region with the capacity to push and mold continental integration the way it wants, provided that it has the political will to do so and the necessary domestic support. Third, no other country can hope to challenge the hegemonic role of the United States on an individual basis.[9]

The theoretical challenge is to determine what kind of hegemony the United States is exercising over South America (in contrast to the Caribbean, Central America, and Mexico) in the post-Cold War era. There are two schools of thought:

First, the *recharged hegemony thesis* argues that "[t]he end of the Cold War has if anything *strengthened* the drive in Washington to *consolidate* its informal empire in Latin America."[10] MERCOSUR would be just an instrument to achieve that goal, serving the function "of more thoroughly incorporating . . . [member countries] within the world capitalist system while preserving their subordinate status in that system."[11] From this perspective, MERCOSUR is not an autonomous project of regional integration and is destined to perish, absorbed by the Free Trade Area of the Americas; or to become irrelevant, after the

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9. Gordon Mace & Louis Belanger, *The Structural Contexts of Hemispheric Regionalism: Power, Trade, Political Culture, and Economic Development*, *in* THE AMERICAS IN TRANSITION: THE CONTOURS OF REGIONALISM 42 (Gordon Mace & Louis Belanger eds., 1999) [hereinafter AMERICAS IN TRANSITION].

10. JAMES PETRAS & MORRIS MORLEY, LATIN AMERICAN IN THE TIME OF CHOLERA: ELECTORAL POLITICS, MARKET ECONOMICS, AND PERMANENT CRISIS 47 (1992).

11. Donald G. Richards, *Dependent Development and Regional Integration: A Critical Examination of the Southern Cone Common Market*, 24 LAT. AM. PERSP. 133, 133 (1997).

successful conclusion of the Doha round of global free trade negotiations.

James Petras has argued that the United States "is pushing to extend and deepen its control [of Latin America] via the FTAA."[12] According to Petras, the FTAA is part of the U.S. "imperial project" to consolidate "client regimes" in Latin America.[13] A NAFTA-style FTAA would allow the United States to compensate the relative decline of its position in the world economy by reasserting U.S. hegemony in the Western hemisphere. The U.S. growing international debt burden, now close to US$3 trillion, is approaching 30% of the U.S. GDP, forcing the United States to seek new markets for U.S. exports in order to reduce the U.S. trade deficit and current account deficit.[14] From this perspective, the U.S. rationale for the FTAA is to gain privileged access to MERCOSUR (where Brazil is the big prize) before the sub-regional bloc manages to strike a free trade deal with the European Union. In a world of competing regional trading blocs, the FTAA would allow the United States to use Latin America "as a staging ground for an impending battle for the world market among the leading centers of capitalist power."[15]

The United States is far from having consolidated its "informal empire" in Latin America. In the 1990s, there was an inherent contradiction between the ideological power of the United States (acceptance of the *Washington Consensus* by the Latin American political elites) and its inability to fund the recovery of the ravaged Central American economies; or to facilitate the recovery of the South American economies through large-scale flows of U.S. economic aid and/or significant debt reduction. In the early 2000s, the *Washington Consensus* had lost legitimacy, especially after the United States decided not to help Argentina avoid default on its external debt, despite Argentina's strong commitment to the *Washington Consensus* in the 1990s.

The second school of thought is *hegemony by default.* Peter

12. James Petras, *U.S. Offensive in Latin America: Coups, Retreats, and Radicalization, available at* http://www monthlyreview.org/0502petras.htm.

13. *See id.*

14. *See* Sherle R. Schwenninger, *Revamping American Grand Strategy*, 20 WORLD POL'Y J. 25, 38 (2003).

15. JAMES PETRAS & HENRY VELTMEYER, GLOBALIZATION UNMASKED: IMPERIALISM IN THE 21ST CENTURY 78 (2001).

Smith has argued that after the Cold War the United States reasserted its role of regional hegemon in the Western hemisphere through a process of default, resulting from:

> a systematic retreat by extrahemispheric rivals. [. . .] This occurred not so much because the end of the Cold War provoked the United States to do anything particularly bold, innovative, or effective; it happened, instead, because outside powers withdrew from the Americas and directed their attention elsewhere.[16]

There are several problems with this interpretation. Arguably, Smith exaggerates the importance of the withdrawal of outside powers from South America, which may have been a temporary phenomenon, as shown by the European Union's renewed interest in the region during the mid through late 1990s, culminating with the EU-Latin American Summit of June 1999 in Rio de Janeiro. Smith overlooks the furious EU-U.S. competition for emerging markets in Latin America and Asia, the loss of momentum of the *hub-and-spokes* model of Western hemisphere regional integration, and the strengthening of the Brazil/MERCOSUR position on the format for the FTAA negotiations, after the meeting of the hemisphere's trade ministers at Belo Horizonte in May 1997.[17]

The *hegemony by default* thesis relies heavily on the asymmetric nature of the relationship between the United States and Latin America:

> These undertakings [bilateral or minilateral U.S. trade talks with Latin American countries] further reaffirmed the power of the United States. These would not be conversations among equals. They would be highly asymmetrical negotiations (the U.S. economy is approximately 175 times larger than that of Central America, 140 times larger than Chile's, and 11 times larger than all of MERCOSUR's).[18]

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16. Smith, *Regional Integration, supra* note 1, at 33-34.

17. At the meeting, the United States attempted to speed up the negotiations for the FTAA, proposing to start talks on rapid tariff reductions. The idea was rejected by the MERCOSUR countries, arguing that U.S. non-tariff barriers pose significant obstacles to MERCOSUR exports in the U.S. market. In the end, the MERCOSUR position prevailed, and the United States had to make significant concessions. *See Ground Rules for FTAA Agreed: MERCOSUR Stance Carries the Day as Washington Cedes*, LAT. AM. WKLY. REP. 136, Mar. 24, 1998.

18. Peter H. Smith, *From NAFTA to FTAA? Paths toward Hemispheric Integration, in* NAFTA IN THE NEW MILLENIUM 478 (Edward J. Chambers & Peter H. Smith eds., 2002).

Regime theorists argue that there is no need for a multilateral regime when there are extreme power disparities between a hegemonic power and smaller powers because the hegemon will rely on its superior relational power to impose its will through independent decision making or, at the most, *bilateral* arrangements.[19] If Smith is correct, the United States does not really need the FTAA to exercise hegemony in the Western hemisphere. Bilateral free trade agreements ("FTA's"), such as the one signed with Chile on June 6, 2003, would allow the United States to obtain concessions from individual countries without going through the cumbersome FTAA process.

An alternative interpretation is that although asymmetry *is* an essential characteristic of U.S.-South American relations, the dramatic rise in the relative power of Brazil since the 1970s and the structural problems facing the U.S. economy make it possible for MERCOSUR to narrow its current gap in GDP with the United States in the next decades.[20] The asymmetric distribution of structural power in favor of the United States in the Western hemisphere does not automatically translate into U.S. hegemony. Coercive leadership is not the same as hegemony by consent.[21] The ability of the United States to exercise hegemony by consent has been damaged by the unfulfilled promises of the neo-liberal reforms promoted by the Washington Consensus in the 1990s. On the other hand, the relative decline of U.S. hegemony in the globalized post-Cold War international economy is a serious structural constraint on the ability of the United States to assert its authority over the rest of the Western hemisphere in economic matters, despite the structural power of its U.S. $10 trillion economy.[22] The United States may be the

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19. *See* Arthur Stein, *Coordination and Collaboration: Regimes in an Anarchic World*, 36 INT'L ORG. 299, 301 (1982); Donald Crone, *Does Hegemony Matter? The Reorganization of the Pacific Political Economy*, 45 WORLD POLITICS 501, 504 (1993).

20. *See* MARIO E. CARRANZA, SOUTH AMERICAN FREE TRADE AREA OR FREE TRADE AREA OF THE AMERICAS? OPEN REGIONALISM AND THE FUTURE OF REGIONAL ECONOMIC INTEGRATION IN SOUTH AMERICA 167-69 (2000) [hereinafter CARRANZA, OPEN REGIONALISM]. As of 2000, MERCOSUR's GDP was U.S. $900.9 billion, while the United States' GDP was U.S. $9,882.8 billion. *See* World Bank, WORLD DEVELOPMENT REPORT 2002: BUILDING INSTITUTIONS FOR MARKETS 236-37 (2001).

21. *See* Duncan Snidal, *The Limits of Hegemonic Stability Theory*, 39 INT'L ORG. 579, 582 (1985). "[W]hen power is distributed asymmetrically but hegemony is exercised in ways that do not benefit all states, subordinate [S]tates will chafe under the (coercive) leadership." *Id.*

22. *See* ROBERT GILPIN, THE POLITICAL ECONOMY OF INTERNATIONAL RELATIONS 347

world's most powerful country in terms of military capabilities. However, its economic weaknesses, including dependence on foreign capital in order to finance current account deficits, impair its ability to exercise hegemony even in Latin America (its traditional sphere of influence) thus opening up a window of opportunity for Latin American countries to have independent foreign economic policies.

Neither the Petras & Morley thesis of a *recharged* U.S. hegemony over Latin America nor Peter Smith's *hegemony by default* thesis tell the whole story of post-Cold War U.S.-Latin American relations. Both Petras & Morley and Smith exaggerate U.S. domination of South America and are unable to explain the autonomous foreign policy behavior of Brazil and her MERCOSUR partners.

B. *Hegemonic Stability Theory and U.S. Hegemony*

During the Cold War, there was a significant amount of literature on the relationship between global hegemony and international cooperation.[23] The *hegemonic stability theory* was an attempt to explain U.S. hegemony in the Western-dominated international economic order and the relationship between *regimes* and international cooperation in different issue areas.[24]
The two central propositions of *hegemonic stability theory* are:

(1) An international hegemon (*primus inter pares*), can (a) largely impose and enforce its rules and its wishes in the international political economy (free trade during *Pax Britannica* and *Pax Americana*) and (b) maintain international peace, establishing a security framework that prevents great power wars.[25]

(2) The presence of a single, strongly dominant actor in international politics leads to collectively desirable outcomes for *all* states in the international system.[26]

(1987). The "declinist" approach dominated the scholarly debate about U.S. hegemony in the mid-1980s, when U.S. control of the Western capitalist economy seemed to be slipping away in the face of an increasingly unified European Community and a threatening Japanese economy.

23. *See* ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY (1984).

24. *See* Snidal, *supra* note 21.

25. CARRANZA, OPEN REGIONALISM *supra* note 20, at 153.

26. *Id.* (citing Snidal, *supra* note 21, at 579).

The novelty of *hegemonic stability theory* is the claim that smaller States gain even more than the international hegemon when the latter provides the public good of leadership for the emergence of a stable international regime of free trade.[27] This claim is clearly unwarranted in the U.S./Latin American context. Several studies have shown that if a NAFTA-style Free Trade Area of the Americas comes into existence, the United States will obtain greater benefits than its Latin American counterparts will. "[I]t is highly doubtful that Latin American countries stand to gain much from entering into an arrangement which gives their rich counterparts — the USA and Canada — a much greater preferential market access than the latter are able to offer in return. . . . Discriminatory liberalization with the United States under these circumstances is unlikely to confer major gains and will, very likely, lower welfare."[28] If Mexico's experience with NAFTA is of any guide, the Latin American countries are not likely to benefit from the FTAA, unless the United States truly opens its large market to Latin American agricultural and industrial exports. In 1995, the Salinas *miracle* collapsed together with the Mexican peso crisis. As a result,

> [e]mployment in manufacturing fell, the poorly paid informal sector of the economy grew, and assets became more concentrated. Average wages for most of Mexico's industrial workers dropped 10% since the early 1990s. . . . [R]elative social spending has declined since the late 1980s. The North American Development Bank has yet to have a major impact on cleaning up the U.S.-Mexican border. . . . Many Mexicans have not yet supped at the table of free trade prosperity.[29]

According to two World Bank experts, "[o]verall, full Free Trade Agreement preferences would raise Latin American exports only 8 or 9[%] . . . U.S. trade gains, particularly for highly protected transport and machinery products, are likely to be considerably greater than those for Latin America are in the U.S. market."[30]

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27. *See* Snidal, *supra* note 21, at 581.

28. Arvind Panagariya, *The Free Trade Area of the Americas: Good for Latin America?*, WORLD ECON. 485, 504-05 (1996).

29. POITRAS, *supra* note 5, at 125.

30. CARRANZA, OPEN REGIONALISM, *supra* note 20, at 154 (quoting REFIK ERZAN & ALEXANDER J. YEATS, FREE TRADE AGREEMENTS WITH THE UNITED STATES: WHAT'S IN IT FOR LATIN AMERICA (1992)).

Opposition to the FTAA in Latin America is widespread, because it is perceived as a narrow, free-market oriented agreement, "a brainchild of big business, whose interests it would serve from start to finish."[31] On the other hand, the United States presents itself as a benevolent hegemon, attempting to debunk the *myths* of the FTAA as an instrument of U.S. predatory hegemony. The Office of the U.S. Trade Representative has produced a series of fact sheets on the FTAA trying to prove that (a) NAFTA has been a huge success for the United States and its NAFTA partners,[32] (b) far from spreading poverty, "free trade and open markets are among the most powerful tools available to fight poverty,"[33] and (c) the FTAA would not provide excessive privileges to U.S. corporations, such as the right to sue governments to overturn laws.[34]

Despite the U.S. rhetoric on the benefits of free trade in the Americas, after the Cancun debacle in September 2003 the United States has deployed a coercive, rather than benevolent, diplomacy. According to *hegemonic stability theory*,[35]5 "when power is distributed asymmetrically but hegemony is exercised in ways that do not benefit all states, subordinate states will chafe under the (coercive) leadership."[36] After Cancun, the United States used its structural power, attempting to destroy the Group of twenty-two developing nations that stood their ground in the WTO negotiations. Economic threats and reprisals were delivered against the Latin American nations that had stood with Brazil at Cancun:

> The impoverished island nations of the Caribbean were told they could forget about their newly negotiated US trade agreement. They folded. Central American countries were threatened with loss of the modest trade preferences. . . already granted to their products. Costa Rica. . .was hammered

31. William Finnegan, *The Economics of Empire: Notes on the Washington Consensus*, 306 HARPER'S MAGAZINE, May 2003, at 41, 49 (2003).

32. *See* Office of the United States Trade Representative, *Myth: NAFTA was a Failure for the U.S.*, Fact Sheet (Nov. 2003), *available at* http://www.ustr.gov.

33. *Id.*, *Myth: Trade and the FTAA will Spread Poverty*, Fact Sheet, (Nov. 2003), *available at* http:ustr.gov.

34. *See id.*, *Myth: FTAA Allows Corporations to "Sue" Governments to Overturn Laws*, Fact Sheet, (Nov. 2003), *available at* http:ustr.gov.

35. See CARRANZA, OPEN REGIONALISM, *supra* note 20, at 153 (quoting Snidal, *supra* note 21, at 579).

36. Snidal, *supra* note 21, at 582.

> — privatize your energy and telecommunications sectors or be left in the cold — and gave in. Peru and Colombia both resigned from Lula's group. . . . Within a few weeks, Lula's G-22 coalition had shrunk to the G-12.[37]

Yet, these defections did not lead the smaller economies to bandwagon with the United States in the FTAA negotiations, as predicted by the Gruber thesis, which is discussed in detail in the next section. Gruber explicitly makes the distinction between "*go-it-alone* power" and coercive power. Unlike the latter, *go-it-alone* power does not require the winners to force their opponents into submission:

> At no point does anyone in the power-politics model I put forward coerce, or even attempt to coerce, anyone else. Nor, for that matter, do the beneficiaries of cooperation engage in 'linkage politics.' The winners do not get the losers to acquiesce by compensating them (via side payments) in some other sphere of interaction. The losers acquiesce because they know that the winners are in a position to proceed without them.[38]

The post-Cancun U.S. offensive was meant to soften up Brazil for the Miami Trade Ministerial Conference in November 2003. Although the United States managed to weaken the Southern coalition formed in Cancun, U.S. economic threats were not enough to form a pro-NAFTA-style FTAA in Miami, where the countries which abandoned the G-22 still supported Brazil's proposal for a multi-speed FTAA (see below). Bargaining power, not *go-it-alone* power was at work in Miami. The United States did not even offer meaningful side payments to the smaller economies, such as redistributive mechanisms or some type of compensation for the loss of trade taxes that would result from the FTAA.

Go-it-alone power would have worked in the early 1990s, when NAFTA extension was still a possible pathway to the FTAA, and the Latin American countries still had strong *defensive* motivations to join an enlarged NAFTA, to avoid the costs of exclusion. However, between the Miami (1994) and Santiago (1998)

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37. William Greider & Kenneth Rapoza, *Lula Raises the Stakes*, 277(18) THE NATION 12 (2003).

38. LLOYD GRUBER, RULING THE WORLD: POWER POLITICS AND THE RISE OF SUPRANATIONAL INSTITUTIONS 7-8 (2000).

summits of the Americas, the United States was unable to convince the South American countries that a NAFTA-style FTAA was in their best interests. Instead of a U.S.-dominated Western hemisphere trading bloc, which would undermine sub-regional cooperation, sub-regional trading blocs, particularly MERCOSUR, seemed to be trumping the possibility of a "Western Hemisphere Free Trade Area." For domestic political reasons (including strong domestic political opposition to NAFTA), the United States was reluctant to move from a mere regionalist option to strongly committing to a regionalist policy and thus "fail[ed] to provide strong leadership or a clear vision in its policy on hemispheric regionalism."[39]

III. *DEFENSIVE INCENTIVES TO "BANDWAGON" WITH THE UNITED STATES*

Lloyd Gruber has argued that regional collective action and the emergence of supranational regional institutions can be explained by the logic of *go-it-alone* power:

> [I]nstitutionalized cooperation by one group of actors (the winners) can have the effect of restricting the options available to another group of actors (the losers), altering the rules of the game such that members of the latter group are better off playing by the new rules despite their strong preference for the original, pre-cooperation status-quo.[40]

If Gruber is correct, all the Latin American countries will end up jumping on the bandwagon of the hemispheric hegemonic power for fear of being excluded from a hemispheric accord that grants preferential access to the U.S. market, one of the largest markets in the world. According to Gruber, the *losers* are forced to accept the institutional arrangements (including supranational institutions) proposed by the "enacting coalition" because they have no alternative:

> [T]he winners' actions have had the effect of removing the status quo from their choice sets, leaving them with what they view as a bad option (cooperating with the winners) and an even worse alternative (incurring the costs of exclusion).[41]

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39. Louis Belanger, *U.S. Foreign Policy and the Regionalist Option in the Americas*, *in* AMERICAS IN TRANSITION, *supra* note 9, at 95.
40. GRUBER, *supra* note 38, at 7.
41. *Id.* at 8.

In the early 1990s, the extension of NAFTA, and *NAFTA-plus* scenarios were based on this framework. For example, Roberto Bouzas and others argued that after NAFTA, *defensive* incentives would lead the Latin American countries to eagerly seek either NAFTA membership or bilateral free trade agreements with the United States, "to avoid the costs of exclusion."[42] The assumption was that a *rule-constrained hegemonic order* under U.S. leadership left the Latin American countries with no choice but to accept the rules of the game imposed by the United States in exchange for vague promises for access to the U.S. market. From this perspective, a free trade regime in the Americas would come into existence through the progressive extension of NAFTA (Gruber's "enacting coalition") to Central America, the Caribbean, and South America, beginning with Chile. For these countries, outright opposition to NAFTA's "rules of the game" would be "dangerous and costly."[43]

Similarly, Andrew Hurrell compared the "far stronger states" of the Asia Pacific region to the "weaker" South American states. He argued that the "balance of incentives" would force the latter to accept the "major U.S. objectives" in exchange for "more secure access to the crucial U.S. market" hoping that "high levels of institutionalization" would eventually "restrict their vulnerability to the unilateral exercise of U.S. power."[44]

If the Gruber/Bouzas thesis is correct, bandwagoning with the United States is inevitable and eventually MERCOSUR and the other sub-regional trading blocs in the Western hemisphere will *dance to the tune* of the U.S. vision of hemispheric regionalism. However, the history of the FTAA negotiations after the Miami (1994) and Santiago (1998) summits of the Americas has not followed the logic of *go-it-alone* power. Only Mexico was prepared to pay the high entry fees required by the United States to accept a Latin American country as a reliable trading partner. NAFTA standards assumed many conditions that were unique to

42. *See* Roberto Bouzas, *Preferential Trade Liberalization in the Western Hemisphere: NAFTA and Beyond*, *in* REGIONALISM AND THE GLOBAL ECONOMY: THE CASE OF LATIN AMERICA AND THE CARIBBEAN 144 (Jan Teunissen ed., 1995).

43. Andrew Hurrell, *Regionalism in Theoretical Perspective*, *in* REGIONALISM IN WORLD POLITICS: REGIONAL ORGANIZATION AND INTERNATIONAL ORDER 51 (Louise Fawcett & Andrew Hurrell eds., 1995). *See* GRUBER, *supra* note 38 (providing sophisticated theoretical basis of forecast); Bouzas, *supra* note 42.

44. Hurrell, *supra* note 43, at 51.

Mexico. Bouzas argues that whether other countries would be ready to pay high "entry fees" will vary "according to the size of the costs of exclusion for those left out of an expanding NAFTA."[45] The costs of exclusion were high for the Central American and Caribbean countries but rather low for the MERCOSUR countries. Argentina toyed for a while with the possibility of joining NAFTA to attract foreign investments but Brazil was deeply concerned about the high short-term costs of entering NAFTA.

Once the FTAA negotiations were launched in 1998, Brazil pressed for a slower pace in negotiations fearing that its local industries would be unable to compete with the more competitive U.S. industries. For Brazil, the FTAA is not a foregone conclusion; it will sign the agreement only if the United States makes a serious commitment to open its domestic market to Brazil's manufactured products. Contrary to what one would expect using Gruber's model, the simplest way of explaining Brazil's foreign economic policy and strategy during the FTAA negotiations is that Brazil uses MERCOSUR to balance U.S. power in the Western Hemisphere, "by forging a single South American negotiating bloc capable of standing up to the United States, and by courting other trading partners [such as the European Union] to reduce dependence on the United States."[46] Brazil's strongly autonomous foreign policy and its aspirations to a greater international role challenge Gruber's claim that "as pressures on outsiders continue to mount," more and more countries will be forced to jump on to the U.S.-led *bandwagon* of free trade in the Western hemisphere.

Next, the logic of *go-it-alone* power does not help explain the emergence and resilience of MERCOSUR as an independent, thriving trading bloc in the 1990s, despite the structural power asymmetry between the United States and the Southern Cone countries.

During the Cold War, the United States and the Soviet Union favored regionalist arrangements as long as they "reinforced the strength of their respective alliance systems or pro-

45. Bouzas, *supra* note 42, at 145.
46. Christopher M. Bruner, *Hemispheric Integration and the Politics of Regionalism: The Free Trade Area of the Americas*, 33 U. MIAMI INTER-AM. L. REV. 1, 29 (2002).

vided support for important clients."[47] The United States rhetorically supported the Latin American Free Trade Area ("LAFTA") created by the Treaty of Montevideo in 1960.[48] However, the World Bank and its subsidiaries ignored LAFTA's existence in their lending activities and the International Monetary Fund openly opposed the creation of regional payment mechanisms.[49] MERCOSUR has been openly opposed by the United States and the international agencies controlled by the U.S. government.[50] The United States failed to prevent MERCOSUR from becoming an imperfect customs union in January 1995. The United States' attempts to disarm MERCOSUR in stages in the name of Western hemisphere trade liberalization have been hindered by the United States' failure to support Argentina during the severe economic crisis of 2001-2002. U.S. indifference to the Argentine crisis created incentives for the MERCOSUR countries to cling together and seriously damaged the model of a NAFTA-centered FTAA promoted by Washington.

Neo-realists claim that States that feel threatened by U.S. *benign* hegemonic pretensions will inevitably form a coalition (or even an alliance) in order to balance U.S. power.[51] The Argentine and Brazilian governments describe MERCOSUR as a "strategic alliance" and MERCOSUR has become "extremely important to Brazil's overall economic and foreign policy goals."[52] After the South American presidential summit in Brasilia, in August 2000, the countries in the region are increasingly committed to developing a specifically South American international policy, reducing reliance on the United States and expanding

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47. Hurrell, *supra* note 43, at 49.

48. At the summit conference of Western Hemisphere presidents in Punta del Este, Uruguay, in April 1967, U.S. President Johnson formally endorsed the commitment of the Latin American countries to turn all of Latin America into a common market by no later than 1985.

49. See Miguel Wionczek, *The Latin American Free Trade Association: Toward Economic Cooperation*, *in* INTERNATIONAL POLITICAL COMMUNITIES: AN ANTHOLOGY 322-23 (1966).

50. "First attacked in 1991 for its credibility and internal cohesion, MERCOSUR was subsequently depicted as a threat to hemispheric regionalism." Ivan Bernier & Martin Roy, *NAFTA and MERCOSUR: Two Competing Models?*, *in* AMERICAS IN TRANSITION, *supra* note 9, at 69.

51. *See* Christopher Layne, *The Unipolar Illusion: Why New Great Powers Will Rise*, 17 INT'L SECURITY 11-12, 34 (1993).

52. Andrew Hurrell, *The Politics of Regional Integration in MERCOSUR*, *in* REGIONAL INTEGRATION IN LATIN AMERICA AND THE CARIBBEAN: THE POLITICAL ECONOMY OF OPEN REGIONALISM 210 (Victor Bulmer-Thomas ed., 2001).

their external contacts. Brazilian President Luiz Inacio Lula da Silva is leading this effort, arguing that merging South America's two largest trading blocs (MERCOSUR and the Andean Community) will force the United States to grant concessions in the final round of the FTAA negotiations.[53].

IV. *THE FTAA NEGOTIATIONS AS A TWO-LEVEL GAME AND THE U.S.-BRAZIL STRATEGIC GAME*

As Feinberg notes, U.S. trade policy "does not arise from some unitary 'national interest' embodied in the presidency but rather boils up from the many strands of domestic politics. And U.S. society is deeply divided on trade policy, especially with regard to developing countries."[54] Domestic political constraints will significantly affect the outcome of the FTAA negotiations:

> The choices of U.S. trade negotiators are greatly affected by the demands of a number of domestic constituencies, including labor, environmental, and business groups, all of which in turn impact the more general perceptions of the American public, leaving the USTR with a complex and often contradictory set of marching orders. Brazil, for its part, encounters significant constraints in the form of intra-MERCOSUR and South American relations, which must be carefully managed if Brazil is to achieve its goal of exerting greater leverage through bloc negotiation of the FTAA.[55]

An FTAA will dramatically affect domestic politics in individual countries, which helps explain the Brazilian tough negotiating position at the Miami talks (quietly supported by much of the rest of Latin America) and the opposition to the FTAA on the part of several U.S. business organizations and the AFL-CIO.[56] In the end, the fate of the FTAA may be decided in the corridors of the U.S. Congress, in the White House, and in the presidential palace (the Planalto) in Brasilia, rather than in the nine negotiating groups or in the trade ministerial conferences.

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53. *See* Kim Housego, *Brazil Pushes S. American Trade Links*, SAN ANTONIO EXPRESS-NEWS, June 29, 2003.

54. Richard E. Feinberg, *Regionalism and Domestic Politics: US-Latin American Trade Policy in the Bush Era*, 44 LATIN AM. POL & SOC'Y 127, 129 (2002).

55. Bruner, *supra* note 46, at 64.

56. *See* AFL-CIO Executive Council, Free Trade Area of the Americas Ministerial in Miami: An Action Plan to Oppose the FTAA, *available at* http://www.aflcio.org/aboutaflcio/ecouncil/ec02272003k.cfm (2003).

From this perspective, the FTAA negotiations can be analyzed as a two-level bargaining game.[57] "Level I bargaining" at the summits of the Americas and trade ministerial conferences has attracted the attention of the official media in the thirty-four participating countries. Yet the FTAA will be ultimately decided at "Level II bargaining," involving parallel discussions among domestic constituents over the pros and cons of the final text submitted for ratification by the national legislatures.

The Level II bargaining game is as important in individual Latin American countries as it is in the United States. The FTAA has been thoroughly discussed in the Brazilian Congress and press. The Cardoso administration organized a referendum on the FTAA which confirmed the existence of strong domestic political opposition to the FTAA in Brazil. A similar popular consultation has been organized in Argentina by one hundred non-governmental organizations. Even if the Bush administration manages to organize a Level-II win-set (quashing domestic opposition to the FTAA in the United States), domestic skepticism in several Latin American countries, energized by the socio-political backlash against globalization in the region, could still derail the FTAA. On the other hand, the negotiating position of individual countries, especially the smaller ones, has been strengthened by the fact that they can negotiate as members of a subregional grouping.[58]

The FTAA talks are about more than eliminating tariff barriers (market access) and involve several sensitive issues such as services, investment, government procurement, and intellectual property rights that have the potential to compromise Brazil's industrial policy and autonomous development strategy. Hence President Lula's claim that it does not make sense "to concede preferential access to [Brazil's] markets without receiving in re-

57. *See* Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT'L ORG. 427-60 (1988).

58. For example, the fifteen-member Caribbean Community had a lead negotiator, Richard Bernal, at the Eighth Trade Ministerial Meeting in Miami, November 20, 2003. Similarly, the MERCOSUR and Andean Community countries have each adopted a posture as a bloc in the final round of the FTAA talks. At the Trade Ministerial Meeting in San Jose, Costa Rica, March 19, 1998, it was decided that countries can negotiate as members of a sub-regional trading bloc, thus legitimizing MERCOSUR's stance in the negotiations and forcing the United States to make important concessions on the format for the FTAA talks, such as the "single undertaking" principle and the creation of a negotiating group for agriculture.

turn concessions in areas in which [Brazil] is more competitive, such as agriculture . . . ."[59]

The U.S. strategy of isolating Brazil (and MERCOSUR) by negotiating bilateral free trade areas with individual Latin American countries may backfire because Brazil is also negotiating free trade agreements with some of the same countries. Despite having signed a free trade agreement with the United States, Chile has restarted talks to join MERCOSUR, something that will weaken the bargaining power of the United States in the final round of the FTAA negotiations. All the countries participating in the FTAA talks have their own independent trade strategy, which has resulted in a tapestry of bilateral and sub-regional free trade agreements, i.e., countries integrating with each other *around* the United States, not *with* the United States. This *split dynamic* was recognized and legitimized at the Eighth Trade Ministerial Meeting held in Miami, on November 20-21, 2003. The "Miami Declaration" (or the "Declaration") establishes a multiple speed FTAA, allowing individual countries to "conduct plurilateral negotiations *within the FTAA*," defining additional obligations and benefits in several issue areas.

As originally conceived, hemispheric regionalism was a strategy on the part of the Clinton administration, supported by "internationalist" business interests, "to 'lock in' a political economy ideologically and strategically hospitable to the rules of the neo-liberal game."[60] For example, the five-hundred U.S. companies with the closest links to Latin America are pushing for fast implementation of a NAFTA-style FTAA incorporating all the *trade disciplines* of the *deep integration* agenda.[61] Yet implementing the *Washington Consensus* undermined democracy in Latin America and laid the basis for the backlash against globalization in the 1990s.

The turning point was the implosion of the Argentine economy in December 2001 and the callous indifference of the United States to Argentina's plight in 2001-2002, which led Ar-

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59. Luiz Inacio Lula da Silva, Speech at the Inaugural Parliamentary Meeting to Discuss the FTAA and the Role of the Legislators in the FTAA (Oct. 29, 2003), *available at* http://www.brazil.org.uk/page.php?cid=1764.

60. Nicola Phillips, *Hemispheric Integration and Subregionalism in the Americas,* 79 INT'L AFF. 327, 330 (2003).

61. *See* Claudio Katz, *Free Trade Area of the Americas: NAFTA Marches South, in* NACLA REPORT ON THE AMERICAS 27-28, 34 (2002).

gentina to strengthen its strategic alliance with Brazil, while seeking support from the rest of Latin America, the European Union, Japan, and China. U.S. policy toward Argentina showed the shaky foundations for establishing a new partnership between the United States and Latin America, based on the "Western Hemisphere Idea." The absence of U.S. leadership during the Argentine crisis bodes very poorly for building a long-term, mature relationship between the United States and Latin America, based on mutuality of interests. In the words of Peter Hakim, President of Inter-American Dialogue, "[i]f this is what community means, it doesn't mean much."[62]

V. *FROM COOPERATION TO DISILLUSIONMENT: U.S.-LATIN AMERICAN RELATIONS BEFORE AND AFTER SEPTEMBER 11TH*

After assuming office in January 2001, President Bush emphasized his interest in strengthening ties with Latin America and his first official presidential trip was to visit Mexican President Vicente Fox at his ranch in Guanajuato. However, after the September 11, 2001 terrorist attacks against the United States, Latin America returned to its normal status of third order priority in U.S. foreign policy.[63] This occurred despite the fact that the failure of neo-liberal economic policies was producing increasing resentment against U.S./IMF-sponsored economic adjustment programs and the popular backlash against globalization which had already overthrown four presidents: Jamal Mahuad in Ecuador (2000), Alberto Fujimori in Peru (2000), Fernando De La Rua in Argentina (2001), and Gonzalo Sanchez de Lozada in Bolivia (2003).[64]

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62. Larry Rohter, *A Fiscal Crisis, Paid in Credibility: Consequences for the United States in Argentina's Collapse,* N.Y. TIMES, Dec. 25, 2001, at A9.

63. Latin America has always been neglected in the "grand strategies" of the United States. During the Cold War, the United States paid attention to the region only in times of crisis and only when it perceived its security interests to be threatened, such as during the October 1962 Cuban missile crisis or the 1965 U.S. military intervention in Santo Domingo. The rest of the time, the United States ignored the region:

> most policy makers believe that the security of the United States would not be adversely affected if Latin America were, say, to sink to the bottom of the sea. . . . [I]t is not that policy makers want much of anything from Latin America but rather that they do not want the Soviet Union to have it.

LARS SCHOULTZ, NATIONAL SECURITY AND UNITED STATES POLICY TOWARD LATIN AMERICA 310 (1987).

64. *See* Anibal S. Perez Linan, *Argentina y el Nuevo Patron de Inestabilidad Politica en*

Most people in the region feel that two decades of neoliberal economic policies have done little to alleviate poverty in Latin America. Several U.S. analysts noted that by ignoring the Latin American economic and social predicament, the United States was "losing Latin America."[65] As a result, the strong Latin American solidarity with the United States after the September 11th tragedy slowly vanished. These sentiments turned into resentment and animosity, especially after the U.S. decision to invade Iraq, which was widely perceived in Latin America as a neocolonial enterprise. This decision was not supported by the Latin American non-permanent members of the United Nations Security Council, Mexico and Chile, despite their close economic ties with the United States.

The Summit of the Americas Process and the FTAA negotiations, launched at the Second Summit of the Americas in Santiago, Chile, 1998, were originally perceived in Latin America as marking the beginning of a new era in U.S.- Latin American relations. Despite structural asymmetries between the United States and Latin America, the two sides would embark on a mature relationship and the United States would be willing and able to deliver sufficient concessions in the FTAA talks to compensate the concessions it wanted from Latin America. However, the inability of the Clinton administration to obtain *fast-track* negotiating authority from the U.S. Congress raised serious doubts during and after the Santiago summit about the seriousness of the U.S. commitment to the FTAA.

In October 2002, the U.S. Congress finally granted *fast-track* authority (renamed Trade Promotion Authority, "TPA") to President Bush, but it imposed severe limitations on his power to sign free trade agreements without amendments from Congress.[66] Since the last stage of the FTAA talks coincides with the

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America Latina, 1 REVISTA DE LA SOCIEDAD ARGENTINA DE ANALISIS POLITICO 167-85 (2002).

65. *See, e.g.*, Paul Krugman, *Losing Latin America,* N.Y. TIMES, Apr. 16, 2002, at A27; Enrique Rangel, *Latin Americans Shout They're Fed Up — but is U.S. Listening?*, SAN ANTONIO EXPRESS-NEWS, Oct. 26, 2003; Nicholas D. Kristof, *The Next Africa? South America Sinks Into Crisis,* N.Y. TIMES, Dec. 10, 2002, at A31; Edward N. Luttwak, *U.S. is Ignoring the Dire Straits of Latin American Countries,* SAN ANTONIO EXPRESS-NEWS, May 26, 2002, at 3G; Nicholas Kristof, *If Saddam Were Only Brazilian,* N.Y. TIMES, Dec. 17, 2002, at A35.

66. For a list of "sensitive" agricultural products, for example, the TPA law imposes several conditions that must be met before including them in trade negotiations.

2004 election year, the Bush administration is unlikely to make concessions on issues such as agricultural subsidies, which have strong domestic constituencies in states like Florida (which are crucial battlegrounds in President Bush's drive for reelection). These domestic political constraints have made it difficult to achieve a comprehensive FTAA treaty in January 2005. On one hand, Brazil has consistently refused to accept the U.S. position of excluding farm subsidies from the FTAA negotiations, leaving them for the Doha Round of global trade talks (which have stalled). On the other hand, as Brazilian Foreign Minister Celso Amorim recognized at the Miami Trade ministerial meeting in November 2003, trying to push the United States to discuss U.S. agricultural subsidies in the FTAA talks is like "believing in fairy tales."[67]

The history of the FTAA negotiations challenges former U.S. Trade Representative Charlene Barshefky's claim that the United States, will always be at the center just because of the structural weight of its US$ ten trillion economy. In the mid-1990s it was widely believed that the Latin American countries had no alternative to moving in the direction of the FTAA. This interpretation underestimated the potential of sub-regional blocs such as MERCOSUR to challenge U.S. hegemony.

The United States managed to include the *deep integration* agenda of a NAFTA-style FTAA in the nine negotiating groups which began their work after the Santiago Summit in 1998. These groups, however, have not made much progress in dealing with contentious issues, such as trade in services, agriculture, government procurement, intellectual property, or antidumping. A cursory review of the third draft of the FTAA treaty shows that most of the draft treaty remains in brackets.[68] This enhances bloc bargaining, i.e., balancing U.S. power, rather than *bandwagoning* on the U.S. vision for the FTAA. Bolstering the sub-regional groupings (MERCOSUR, Andean Community, CARICOM and CACM) has been a strategy for survival against *absorption* into an FTAA that would not recognize the needs and sensitivities of the different sub-regions and the tremendous ad-

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67. John Pain, *Negotiators in Miami Adopt Draft Creating Trade Zone in Americas*, CHATTANOOGA TIMES FREE PRESS, Nov. 20, 2003, at C6.

68. *See* FTAA — Free Trade Area of the Americas, Third Draft Agreement, Nov. 21, 2003, FTAA.TNC/w/133.REV.3 (not yet entered into force), *available at* http://www.ftaa-alca.org/FTAADraft03/Index_e.asp.

justment problems for individual countries, especially the smaller economies of Central America and the Caribbean.

VI. *THE MIAMI TRADE MINISTERIAL: REASSERTED U.S. HEGEMONY OR U.S. HEGEMONY IN DECLINE?*

A. *From Quito to Miami: the Cancun Debacle*

The FTAA talks began in earnest after the Seventh Trade Ministerial Meeting, held in Quito on November 1, 2002. The thirty-four trade ministers reiterated their commitment to initiate market access negotiations in early 2003, to continue progress in eliminating brackets from the draft text of the FTAA, and to define the institutional aspects of the agreement. In February 2003, the participating countries began to exchange their offers for market access negotiations. The U.S. offer granted different rates of reductions in trade barriers throughout the region, providing for better access to the U.S. market for the smaller and poorer economies, than to MERCOSUR. Brazil and Argentina argued that they were unfairly penalized by this approach.

In Quito, the biggest sticking point was agriculture. The United States insisted that in the FTAA, it would talk only about greater market access, leaving the highly controversial issue of U.S. agricultural subsidies for the Doha round of global trade talks. At the July 2003 meeting of the Trade Negotiations Committee (the "TNC") in El Salvador, MERCOSUR made a proposal to negotiate the issues so far discussed in five of the nine negotiating groups in *three tracks*, excluding from the FTAA talks the issues that matter most for the United States — trade in services, government procurement, and rules to protect intellectual property and foreign investment. It soon became apparent that unless the United States and Brazil made major concessions at the Eighth Trade Ministerial Meeting in Miami (November 16-21, 2003), the FTAA talks could end up in failure; or at best result in an *FTAA-light*, which would exclude: (1) agricultural subsidies and anti-dumping duties (two areas in which the United States adamantly refuses to make concessions) and (2) all the sensitive issues (trade in services, government procurement, etc.) of the *deep integration* agenda promoted by the United States. Such issues are unlikely to be settled in the WTO/Doha Round of global trade talks.

The breakdown of negotiations at the trade ministerial meeting of the WTO in Cancun, in September 2003 was due to the resistance of the Group of twenty-two developing countries, or G-22, led by India, China, and Brazil, to make concessions on the *Singapore issues.* The Singapore issues *were* a set of new issues, including rules on foreign investment and competition policy, that have little to do with trade and "would make it more difficult for developing countries to make foreign investment work for their own benefit."[69] These rules "could forbid countries from requiring that foreign firms transfer technology or hire local skilled workers or managers"[70] and would establish brand new rights for U.S. and European multinational corporations overseas, including the so-called "investor-state" provision contained in NAFTA, "which grants to corporations a legal status similar to that of states and expands their ability to use trade agreements to challenge local regulatory legislation."[71]

MERCOSUR has consistently rejected the *Singapore issues* throughout the FTAA talks. On the other hand, MERCOSUR and the Andean Community have made significant progress in the negotiations to achieve a free trade agreement ("FTA") between both blocs. If such an agreement comes into existence, Brazil and MERCOSUR will have a meaningful alternative to the FTAA: a South American Free Trade Area (SAFTA) and a South-South scenario, including negotiations with India, South Africa, South Korea, and China, while pursuing a free trade area with the European Union.

A *South-South* scenario has become more likely after the Eighth Trade Ministerial Conference in Miami, which adopted a vague buffet-style commitment to free trade a la carte, thus renouncing to achieve the kind of comprehensive, *deep integration* agreement promoted by the United States. In this scenario, only an *FTAA-light* will come into existence, without binding commitments in the controversial areas of trade in services, government procurement, etc. (long sought by the United States) or agricultural subsidies and anti-dumping duties (long sought by Brazil and the rest of Latin America).

69. Mark Weisbrot, *WTO Beached in Cancun,* Center for Economic and Policy Research, *available at* http://www.cepr.net/columns/weisbrot/WTO_Cancun.htm (Sept. 16, 2003).
70. *Id.*
71. Phillips, *supra* note 60, at 334.

Although the United States and Brazil managed to avoid a Cancun-style collapse at the Miami talks, they failed to bridge the gap between their negotiating positions. The United States refused to consider reducing its farm subsidies as part of the FTAA and Brazil refused to accept the comprehensive NAFTA-like agreement sought by the United States. The outcome of the Miami meeting shows that there is nothing inevitable about the FTAA, because individual countries want different things from free trade in the Americas.

The inevitability assumption about the FTAA starts from the premise that all the Latin American countries are eager to obtain what Mexico gained through NAFTA: attracting foreign investment, unrestricted access to the U.S. market, and a certificate of credibility for their market-oriented policy reforms. From this perspective, it would have made sense for the Latin American trade representatives to make concessions to the United States in Miami in the areas of investment, competition, services, and intellectual property rights, without a reciprocal commitment on the part of the United States to eliminate its non-tariff barriers to Latin American exports at a certain date. This would leave the settlement of the latter issue to the stalled Doha Round of global trade talks. However, the lesson of Mexican President Salinas's strategy in the NAFTA negotiations is that without a genuine initial balance of reciprocal concessions the final product of the negotiations ends up disproportionately benefiting the United States. In the new domestic political context, created by the backlash against globalization in Latin America, the "investment and growth"[72] logic for *bandwagoning* with a NAFTA-style FTAA does not solve the *immediate* challenges faced by the new reformist ruling elites in the region. It also

72. *See* Jose M. Salazar-Xirinachs, The Politics and Future of Hemispheric Free Trade, *available at* http://www.sice.oas.org/tunit/staff%5Farticle/jmsx03%5Fyale.asp (Apr. 2-4, 2003). Salazar-Xirinachs has argued that instead of "insisting on a genuine mercantilist balance of reciprocal concessions" in the final round of the FTAA talks, Latin American trade negotiators should

> internalize to some extent the political economy restrictions of the United States and give more weight to an investment and growth logic according to which even if the mercantilist balance of concessions is not attractive enough, other growth, investment and policy signaling effects incline the balance in favor of signing up to a less liberalizing, or less ambitious, FTAA.

Id. He does recognize, however, that this option is more attractive for the smaller economies than for Brazil and the larger economies. *Id.*

suspiciously sounds like "more of the same" to an impoverished and angry Latin American population that perceives the FTAA as a plan designed by the United States and big business to deepen the neo-liberal reforms which are blamed for the social, economic and political crises of the 1990s.

B. *The Miami Declaration*

On Thursday, November 20, 2003, the trade ministers from the thirty-four participating countries approved the Miami Declaration, ending the Eighth Ministerial Meeting one day earlier. The early end allowed the trade ministers to avoid a collapse similar to the one at the WTO talks in Cancun in September 2003. The trade ministers agreed on a framework to continue the negotiations, "[b]ut it's a vague plan that caters to the lowest common denominator."[73] Most importantly, the new framework supersedes the single undertaking principle that had guided the negotiations since the San Jose Declaration and Santiago Summit in 1998.

The Miami Declaration contemplates a more flexible, but also diluted, FTAA. The idea of a broad-based FTAA is preserved and the nine negotiating groups are instructed to make progress in their respective areas. The parties will attempt to develop a common and balanced set of rights and obligations applicable to each country. However, the declaration gives countries the right not to take on all the obligations in any one of the nine areas of negotiations, thus establishing a multi-speed FTAA in which "interested parties may choose to develop additional liberalization and disciplines,"[74] on a bilateral or plurilateral basis.

In Miami, the United States attempted to pressure Brazil to play by its rules. The United States announced on the second day of the Trade Ministerial Conference that, in addition to ongoing free trade talks with Central American countries, it also intends to pursue free trade agreements with six Latin American Nations, including Bolivia, Colombia, the Dominican Republic, Ecuador, Panama, and Peru.

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73. *Free Trade, a la Carte*, N.Y. TIMES, Nov. 22, 2003, at A28.

74. *See* Free Trade Area of the Americas, Eighth Trade Ministerial Meeting, Declaration of Ministers, Miami, Florida Nov. 20, 2003, *available at* http://www.ftaa-alca.org/Ministerials/Miami/Miami_e.asp [hereinafter Ministerial Declaration of Miami].

The Miami Declaration reflects a draw between NAFTA and MERCOSUR. On the one hand, the Declaration can be interpreted as a victory for MERCOSUR. According to paragraph 7, "[m]inisters recognize that countries may assume different levels of commitments,"[75] that is countries do not have to accept NAFTA-style trade disciplines if they do not wish to. On the other hand, after the Cancun debacle, U.S. Trade Representative Robert Zoellick announced that "America will not wait for the won't-do countries [and would] move towards free trade with can-do countries."[76] From this perspective, the Miami Declaration is a victory for the United States because the Declaration legitimizes the U.S. strategy of striking bilateral free trade agreements with individual countries.

The U.S. strategy in Miami resembles the hub-and-spokes model for NAFTA extension in the early 1990s. However, U.S.-Latin American relations have changed since 1992, when Mexico negotiated NAFTA with the United States. Nowadays, bandwagoning with the United States is not the only alternative for the rest of Latin America; countries can choose alternative courses of action. For example, according to Argentina's trade representative, Martin Redrado, "Argentina is not interested in a bilateral agreement with the United States . . . [because] Brazil is [Argentina's] strategic partner; this is [Argentina's] official government policy and priority."[77] "Mr. Redrado also emphasized that Argentina's trade policy does not exclude any scenario, and 'FTAA is one of those scenarios.'"[78] However, President Kirchner of Argentina promised "'a great national debate on the FTAA' to decide 'on which areas we should advance', depending on Argentina's and MERCOSUR's interests."[79] Though this is similar to the Brazilian position, Brazil has always emphasized the need for balancing the United States in the FTAA talks, instead of bandwagoning with the U.S. proposals.

MERCOSUR's strategy of balancing U.S. structural power in

75. *See id.* at ¶ 2.

76. Robert B. Zoellick, *America Will Not Wait for the Won't-do Countries,* FIN. TIMES, Sept. 22, 2003, at 23.

77. *See Consensus in Miami Surprises Demonstrators, in* MERCOPRESS: FALKLAND-MALVINAS & SOUTH ATLANTIC NEWS, *available at http://www.mercopress.com/Detalle.asp?NUM=2893* [hereinafter MERCOPRESS].

78. *Id.*

79. *Id.*

the FTAA talks while leaving the door ajar for jumping on the U.S.- led bandwagon of unrestricted free trade in the Americas runs the risk of playing with fire. In the absence of a good alternative (such as a consolidated MERCOSUR, with a common currency and supranational institutions) bandwagoning with a diluted NAFTA-like FTAA may end up being the only attractive option for Argentina and Brazil, if this alternative provides for the elimination of at least some important non-tariff barriers (e.g., U.S. anti-dumping legislation) for access to the U.S. market.

The nature of U.S. hegemony in the era of globalization is a hotly-debated scholarly topic. This issue is sometimes conflated with the question of whether the United States is in the process of establishing an "informal global *empire*," backed up by its unchallenged global military superiority. However, the term *hegemony* is better than *empire* in analyzing U.S. leadership in the contemporary world, especially in the new global political economy.[80] The term *empire* is closely associated with control on the part of an imperial State of the territory and populations formerly controlled by subservient states. The United States runs a *military empire* of 752 military bases located in more than 130 countries, and an erosion of national sovereignty clearly exists in certain areas of economic policy-making. However, we still live in an "unconquerable world"[81] of sovereign Nation-States formally controlling their own territory and populations. Whether or not the United States is in the process of establishing an informal or virtual empire, it undoubtedly has a considerable amount of structural power in the areas of production, finance, knowledge, and security.[82]

VII. *IS THERE LIFE FOR THE FTAA AFTER MIAMI?*

At the Third Summit of the Americas in Quebec, President Bush reaffirmed the formal commitment of the United States to

80. Bruce Cumings, *Is America an Imperial Power?*, 102 CURRENT HIST. 355-60 (2003).

81. *See* JONATHAN SCHELL, THE UNCONQUERABLE WORLD: POWER, NONVIOLENCE, AND THE WILL OF THE PEOPLE (2003).

82. *See* SUSAN STRANGE, STATES AND MARKETS: AN INTRODUCTION TO INTERNATIONAL POLITICAL ECONOMY 24-27 (1988). *See also* Susan Strange, *The Future of the American Empire*, 42 J. INT'L AFF. 1, 1-17 (1988); Martin Walker, *America's Virtual Empire*, 19 WORLD POL'Y J. 13, 13-20 (2002).

achieving a Free Trade Area of the Americas in 2005. However, the lack of progress in the nine negotiating groups between 2001 and 2003, to reach the genuine balance of reciprocal concessions demanded by Brazil shows that the United States is not seriously committed to a *fair* FTAA, instead hoping that in the end it would be able to isolate Brazil by negotiating bilateral trade deals with Brazil's neighbors. The United States' apparent strategy is to lure Brazil's neighbors away from MERCOSUR by convincing them that gaining limited access to the U.S. market, and *a seal of approval* of neo-liberal economic policies in order to attract foreign investment are good reasons for signing a free trade agreement with the United States, even in the absence of major U.S. concessions on U.S. non-tariff barriers to trade, such as agricultural subsidies. According to Mark Fried, Communications and Advocacy Coordinator for Oxfam International, "[i]f the United States is not going to deal with . . . [agricultural subsidies] in the FTAA, it's not going to deal with it in the bilaterals."[83]

The apparent *divide and conquer* strategy used by the United States may not work and could even backfire, considering that Brazil is also negotiating a free trade agreement between MERCOSUR and the Andean Community that might be more attractive for Ecuador, Colombia, Peru, and Bolivia than the Bush administration's offers in bilateral negotiations. In fact, most Latin American countries supported the Brazilian position at the Trade Ministerial Meeting in Miami in November 2003, despite the efforts made by Canada, Chile, and Mexico to place the more ambitious NAFTA-style, FTAA talks back on track.

The lesson of Miami and the diplomatic maneuvering *before* the conference is that the United States can exercise its structural power more effectively at the bilateral level, rather than at the multilateral level of trade negotiations. Despite the asymmetric distribution of power in the Western hemisphere, Brazil's economy is the largest Latin American economy (the eighth largest in the world) and it does not make sense to talk about an FTAA that excludes 36% of the economy of Latin America and the Caribbean. However, the U.S. strategy before the Miami Trade Ministerial Meeting was to isolate Brazil,

83. Jenalia Moreno, *FTAA Trade Meeting: U.S. adds 6 players to Lean on Brazil; S. American Giant Puts Up Resistance*, HOUS. CHRON., Nov. 19, 2003, at 1B, 10B.

> [a]nd when Lula didn't seem to get the message, Zoellick's deputy, Peter Allgeier, announced that the United States intend[ed] to go ahead on FTAA without him. The new agreement would include all of North and South America-every country but Brazil. Argentina, however, stood firm with Lula and turned down a backdoor trade offer.[84]

Part of the ambiguity surrounding the issue of U.S. hegemony in Latin America stems from the use of different definitions of international hegemony in contemporary literature. Realist scholars tend to equate hegemony with military power. For example, William Wohlforth argues that the gap between U.S. military capabilities and its potential competitors is so wide that there is no danger of "hegemonic rivalry" (hegemonic wars) and "[t]he only options available to second-tier states [such as Brazil] are to bandwagon with the polar power [the United States] . . . or at least to take no action that could incur its focused enmity."[85] A better definition of hegemony is the one provided by Antonio Gramsci, which combines the concepts of coercion (military force) and consent (ideological leadership) as in the often quoted equation: "State = political society + civil society, in other words hegemony protected by the armor of coercion."[86] For Gramsci, hegemony cannot be based only on sheer force.

If one applies Gramsci's definition of hegemony to United States-Latin American relations, it becomes clear that the Bush administration has failed to exercise ideological leadership in the FTAA negotiations. During Bush's administration, there has been a structural shift in the balance between force and consent in the exercise of U.S. hegemony. The Bush administration has a tendency to use force without (or with very little) consent, as in the case of the U.S.' invasion of Iraq, which was strongly opposed in Europe and Latin America.[87] Robert Zoellick's strong-arms trade strategy after the Cancun debacle fits nicely in George W. Bush's *go-it-alone* foreign policy which is unwittingly encouraging the emergence of anti-U.S. coalitions, such as the group of

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84. Greider & Rapoza, *supra* note 37, at 12.

85. William C. Wohlforth, *The Stability of a Unipolar World*, 24 INT'L SECURITY 5, 25 (1999).

86. *See* ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 263 (Quinton Hoare & Geoffrey Smith trans. & eds., 1971).

87. For an excellent analysis of the "Bush revolution" in U.S. foreign policy, see Ivo H. Daalder & James M. Lindsay, *Bush's Revolution*, 102 CURRENT HIST. 367, 367-76 (2003).

twenty-two developing nations at Cancun ("G-22") that seek to redefine the rules of the game of globalization.

Even if one uses a realist, narrow definition of hegemony as "the power of one state to enforce its will over others,"[88] the Miami Trade Ministerial Meeting shows that U.S. hegemony in Latin America is declining. Brazil, supported by most Latin American trade ministers, managed to block the U.S. attempt to have its way on the *deep integration* agenda without making concessions regarding agricultural subsidies.[89] On the other hand, an FTAA *a la carte* gives the United States enough room to exercise its considerable structural power over smaller Latin American countries, such as Panama and the Dominican Republic.[90]

The NAFTA negotiations in 1991 through 1993 illustrate the use of U.S. structural power in trade negotiations. The United States was able to extract enormous concessions from Mexico by taking advantage of the tremendous asymmetry of power between the two countries (the U.S. gross domestic prod-

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88. This is the standard realist definition of hegemony, using Max Weber's concept of power as "power over." *See* STEPHEN GILL, POWER AND RESISTANCE IN THE NEW WORLD ORDER 74 (2003).

89. The outcome of the Miami trade ministerial was almost a foregone conclusion after an understanding, ten days before the official conference between U.S. Trade Representative Robert Zoellick and Brazilian Foreign Minister Celso Amorim to promote a variable-speed ("flexible") FTAA. *See US-Brazil Anticipate Miami Success, in* MERCOPRESS, *supra* note 77, *available at* http://www.mercopress.com/Detalle.asp?NUM=2889.

90. The United States has an obvious interest in signing a NAFTA-style free trade agreement with Panama, a largely service-based economy, in which U.S. firms play an important role. However, Brazil and Argentina, together accounting for nearly two-thirds of South America's economic output, are immensely more important as export markets for U.S. corporations than Panama, the Dominican Republic, and the Andean countries. The initial U.S. offer for market access for Latin American consumer and industrial goods, textiles and apparel, and agricultural products is far more attractive for the Caribbean, Central American, and Andean countries, than for MERCOSUR.

U.S. Agricultural Imports Offered Immediate Duty-free Treatment Under FTAA

CARICOM countries	85%
Central American countries	64%
Andean countries	68%
MERCOSUR countries	50%

See Office of the United States Trade Representative, *Free Trade Area of the Americas: The Opportunity for a Hemispheric Marketplace*, Fact Sheet, *available at* http://www.ustr.gov/regions/whemisphere/ftaa.shtml (Feb. 11, 2003) [hereinafter HEMISPHERIC MARKETPLACE].

uct represents 90% of the North American economy). As Cameron and Tomlin put it:

> This meant that a negotiator for the United States could say to counterparts in Mexico and Canada: You want access to our US$7 trillion market, and you offer in exchange access to your US$250 and US$500 billion markets? You are going to have to pay for that access, and here is what it is going to cost you . . . .[91]

Although the U.S. economy is ten times larger than the Brazilian economy, Brazil has much more bargaining power with the United States in 2003 than Mexico in 1993 for several reasons. First, Brazil is negotiating as the leader of a sub-regional bloc (MERCOSUR) with a common position, which enhances its bargaining power. Second, the international and ideological context is different. Developing countries are openly challenging the EU and the United States over agricultural subsidies in the Doha round of global trade talks and the backlash against neo-liberal reforms in Latin America has de-legitimized a NAFTA-style FTAA which is perceived as *more of the same* rather than a genuine alternative to the Latin American economic crisis. Third, Brazil is a global trader. Unlike Mexico, Brazil is not dependent on trade with the United States, even if the genuine elimination of non-tariff barriers (such as antidumping measures) to Brazilian exports to the United States would undoubtedly lift the Brazilian economy.

The United States has been unable to impose the same kind of concessions obtained from Mexico during the NAFTA talks on Brazil. Gruber's logic of *go-it-alone* power does not apply to the FTAA negotiations. The FTAA schedule has not allowed the United States to *control the clock* until the final round of negotiations the way it did with the NAFTA talks in 1992 and 1993.[92] Although the substance of the FTAA negotiations resembles the NAFTA agenda, the Trade Negotiations Committee ("TNC") and the nine negotiating groups have been less prone to U.S. influence due to the sheer size of the negotiations (thirty-four countries with very different national interests) and the ability of MERCOSUR at the March 1998 Trade Ministerial Meeting in

91. MAXWELL A. CAMERON & BRIAN W. TOMLIN, THE MAKING OF NAFTA: HOW THE DEAL WAS DONE 15 (2000).
92. *See id.* at 175, 225-36.

San Jose, Costa Rica, to gain concessions from the United States on the format of the negotiations, including the requirement that Brazil and the United States would co-chair the final round of the talks after the Eighth Trade Ministerial Conference in Miami.

Brazil has few *defensive* incentives for free trade *bandwagoning* with the United States and strong incentives *not* to sign up to a NAFTA-style FTAA. On the other hand, the smaller Latin American and Caribbean economies have more *defensive* incentives, including the need "to develop their role as export and services platforms for larger markets . . . [while attracting] major world-class investments,"[93] to strike bilateral free trade agreements with the United States, and are prepared to pay *entry fees* in areas such as government procurement, and protection of intellectual property and foreign investment, that are unacceptable for Brazil. Yet, the smaller economies have strong *disincentives* to join a NAFTA-style FTAA without compensatory mechanisms, similar to those provided by the European Union to the lesser developed European countries and regions.[94] Whether these countries join a NAFTA-style FTAA through bilateral deals with the United States (a revived *hub-and-spokes* model) or whether they abandon the FTAA process and join a South American trading bloc depends on the number of concessions MERCOSUR is prepared to make in the Andean Community-MERCOSUR free trade talks.[95]

After the Miami compromise, the dim prospects for achieving an FTAA in 2005 increase the incentives for MERCOSUR to strike a free trade deal with the Andean Community creating a *SAFTA-minus Chile* trading bloc that would strengthen the South

93. *See* Jose M. Salazar-Xirinachs, *Proliferation of Sub-Regional Trade Agreements in the Americas: An Assessment of Key Analytical and Policy Issues*, OAS Trade Unit Studies, Oct. 2002, at 10.

94. *See* Sarah Anderson, *The Equity Factor and Free Trade: What the Europeans Can Teach Us*, 20 WORLD POL'Y J. 45, 45-51 (2003).

95. In December 2003, MERCOSUR and the Andean Community signed an the Acuerdo de Complementacion Economica [Economic Complementation Accord] that falls short of the comprehensive free trade area both blocs were expected to reach by mid-December 2003. However, the accord has a political meaning, considering that Peru (a member of the Andean Community) has joined MERCOSUR as an associate member and it has already signed a free trade agreement in MERCOSUR. By March 31, 2004 MERCOSUR and the Andean Community are scheduled to agree on common rules of origin for a bioregional free trade area and to iron out their differences regarding the treatment of "sensitive" agricultural and industrial products.

American countries' bargaining power with the NAFTA countries if the FTAA talks continue beyond 2005. This scenario assumes that Bolivia, Colombia, Ecuador, and Peru would in the end bandwagon with MERCOSUR rather than with the United States, preferring Southern solidarity and the prospects for *bigger* gains in the global and hemispheric trade talks to limited access to the U.S. market through bilateral trade deals with the United States.

CONCLUSION

In Miami, the Western hemisphere trade ministers prevented the FTAA process from collapsing. However, they arrived at a messy compromise that lends itself to different interpretations. After Miami, a modest FTAA without disciplines in anti-dumping and agricultural subsidies is the most likely scenario. From now on, the FTAA process is supposed to take place at two levels. First, the search for "a common and balanced set of rights and obligations applicable to all countries . . . [and secondly,] bilateral or plurilateral agreements that may go beyond the minimum of disciplines agreed upon at the first level.[96] There is only one important deadline— September 30, 2004, for improving market access conditions for products. However, there are no deadlines set for thorny issues like agricultural tariffs and government contracts. Before Miami, the United States had threatened to build the FTAA with or without Brazil[97] but it soon became apparent that without Brazil there would be no *real* FTAA. On the other hand, Brazil had long-insisted that agricultural subsidies be negotiated at the FTAA, not in the WTO, where the negotiations could drag on indefinitely due to the reluctance of the European Union and Japan to renounce to their own farm subsidies. By excluding the controversial issues from the first level of negotiations, the trade ministers paid the price of settling for a modest FTAA comprising only a few common standards and some tariff cuts; a far cry from the ambitious project of eliminating trade barriers from Alaska to Tierra del Fuego, launched at the Miami Summit of the Americas in 1994. One of the virtues of the FTAA project was that it was aimed at

96. *See* Ministerial Declaration of Miami, *supra* note 74, at ¶ 2.

97. *See* Greider & Rapoza, *supra* note 37, at 12; *see generally Trade in the Americas: Much Wind and Little Light*, THE ECONOMIST, Oct. 18, 2003, at 35.

simplifying the *spaghetti bowl* of overlapping free trade agreements in the hemisphere, homogenizing rules of origin, thus facilitating business activities throughout the Americas.[98] The Miami compromise will increase the complexity of overlapping free trade agreements in the Western hemisphere. The emerging "*patchwork of minideals* . . . [is] potentially unfair to those countries that have made greater concessions to Washington."[99]

The Miami Trade Ministerial Conference illustrates the limitations faced by the United States in its attempt to reassert hegemony in Latin America. Despite President Bush's initial interest in developing a balanced *new partnership* with Latin America, the U.S. conviction that it has a *natural right* to achieve and exercise hegemony in the Americas is alive and well.[100] The United States likes to believe that it is a benevolent hegemon that does not seek unilateral (non-reciprocal) advantages and that uses its power to provide for the common good of "free trade."[101] However, the United States has increasingly become a protectionist power. In March 2002, President Bush imposed new steel import tariffs under the escape clause of section 201 of U.S. trade law.[102] In May 2002, Congress approved a new farm bill that provides between fifteen and twenty billion U.S. dollars per year in subsidies to U.S. farmers.

After the Cancun debacle and at the Eighth Ministerial Meeting in Miami, the United States exercised coercive, rather than benevolent leadership. Brazil and MERCOSUR successfully managed to balance U.S. power. Yet the trade ministers' decision to go ahead with a less ambitious FTAA should not be interpreted as a Brazil/MERCOSUR *victory* but rather as a draw between the United States and MERCOSUR, showing that despite the asymmetric distribution of power in the Western hemi-

98. *See* Salazar-Xirinachs, *supra* note 93, at 16.

99. *Free Trade, a la Carte*, *supra* note 73, at A28.

100. Lowenthal coined the phrase "hegemonic presumption" to describe this persistent U.S. attitude toward Latin America. *See* Abraham Lowenthal, *Two Hundred Years of American Foreign Policy: The United States and Latin America: Ending the Hegemonic Presumption*, 55 FOREIGN AFF. 201, 210 (Oct. 1976).

101. "We have a great vision before us: a fully democratic hemisphere, bound together by good will and free trade." HEMISPHERIC MARKETPLACE, *supra* note 90 (quoting George W. Bush speaking at the Third Summit of the Americas on April 21, 2001).

102. The steel tariffs were cancelled on December 4, 2003 to avoid retaliatory tariffs from the European Union and Japan. *See* Dan Freedman, *Steel May Test Bush Mettle*, SAN ANTONIO EXPRESS-NEWS, Dec. 5, 2003, at 1A.

sphere, the Southern Cone countries are now *makers* and not simply *takers* of international policy, having decided to take their destiny into their own hands. This is summarized in Argentine foreign minister Rafael Bielsa's explanation of why Argentina stood with Brazil in Miami, "[i]f the US hopes that our countries will be subservient, they are sadly mistaken."[103]

The United States undoubtedly faces domestic political constraints to make meaningful concessions to its Latin American counterparts in the FTAA talks. Yet without a change of U.S. attitude toward Latin America, seeking a genuine partnership with its neighbors to the South and an equal balance of rights and obligations, Brazil and its MERCOSUR partners will continue distancing themselves from the *colossus of the North.* They will seek to consolidate a South American bloc and alternative partnerships with other economic powers, such as China, and Southern blocs, like the Southern African Development Community ("SADC") and the Association of Southeast Asian Nations ("ASEAN"). A successful conclusion of a free trade agreement with the European Union would enhance MERCOSUR's bargaining power in the FTAA talks and in possible *four plus one* trade negotiations with the United States.

The U.S. strategy of reasserting its hegemony in Latin America through NAFTA-style deals with individual countries may not work if Brazil manages to counter the discredited *Washington Consensus* with a *South American Consensus* and a South American Free Trade Area in 2004. If U.S. policy makers can overcome their deep-seated image of Latin American elites as *dependent,* a mature partnership between the United States and South America is a real possibility. However, this is a very big "*if,*" considering the *hegemonic* tendencies of the Bush administration.

The history of the FTAA negotiations shows the difficulties faced by the United States in consolidating hegemony over Latin America and the important role played by MERCOSUR as a counterweight to the exercise of U.S. structural power in the region.[104] The stalled Doha round of global trade negotiations and the prospects for (at best) a modest FTAA in 2005 show that U.S. Trade Representative Robert Zoellick's strategy of *competi-*

103. Greider & Rapoza, *supra* note 37, at 12.

104. *See* CARRANZA, OPEN REGIONALISM, *supra* note 20, at 131-32.

tive trade liberalization is in trouble. If the United States is really interested in opening the Southern Cone market for U.S. exports and investments, it should reconsider its refusal to discuss agricultural subsidies and U.S. antidumping actions in the FTAA. The U.S. should also recognize the Latin American countries' legitimate demand for a *fair* FTAA which would truly contribute to the region's economic and social development and help lift millions of Latin Americans from absolute poverty. The FTAA has political implications aside the economic effects. In the absence of major concessions on the part of the United States, strong opposition across Latin America to a NAFTA-style FTAA could sound the death knell for the FTAA and end the fragile Brazilian-U.S. partnership. Thus, disillusionment with the United States in Latin America would increase, and a new chapter may begin in the troubled history of U.S.-Latin American relations.