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NAFTA IN THE GLOBAL CONTEXT

*Richard O. Cunningham**

In a conference that focuses, for the most part, on quite detailed analyses of specific aspects of the working of and issues under the North American Free Trade Agreement, this Article seeks to assess NAFTA's place in the larger scheme of global trade. What follows will be unavoidably broad brush, unashamedly opinionated, and intended to be thought-provoking rather than comprehensively analytical.

First, I will attempt an overview of the major substantive issues that I believe will be the principal focus of the world trading system in the near to intermediate term — you might think of this as Dick Cunningham's view of the global trade agenda. With regard to that agenda, I will also venture some suggestions as to how NAFTA fits in with and is affected by those issues.

My second topic is much more pragmatic. It deals with the organization of world trade. I propose to discuss — from the standpoint of my country, the United States — the relationship of NAFTA to the WTO and to other regional trade groupings (notably APEC and the E.U.). In part, this will be an assessment of globalism vs. regionalism. But it will also be a discussion of the likely direction of U.S. trade leadership.

I. THE TRADE ISSUES OF TODAY AND TOMORROW

The theme I would choose for this discussion is taken from Alexander Pope:

“Man's reach should ere exceed his grasp,
Or what's a Heaven for?”

Nowhere is this more true — sometimes painfully so — than in the post-World War II evolution of the world trading system. Step by step, led in most instances by the United States, the global community has striven mightily to reduce and even eliminate one set of trade barriers

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after another. Each time success has been achieved with one form of trade barrier, we have had to turn our attention to barriers of a different nature.

When this process began in mid-century, the main emphasis was on reducing the ubiquitous high tariffs which then constituted the major inhibition to expansion of trade. By the end of the Kennedy Round, that effort had been so successful that the focus shifted — partially in the Tokyo Round and emphatically in the Uruguay Round — to other governmental policies and practices that restrict or distort trade. Codes of fair conduct were negotiated on practices as diverse as subsidization, standards, customs valuation, rules of origin, and phytosanitary regulations. Work was begun, but not yet concluded, on governmental procurement practices and on special trading rules for specific industries (for example, agriculture, textiles, and civil aircraft).

By the end of the Uruguay Round, any fair-minded observer would have to be impressed by the astonishing progress we have made in only half a century. With relatively few exceptions, tariffs no longer impose major burdens on trade flows. Moreover, we now have rules dealing — more or less effectively, and somewhat contingent on the efficacy of international dispute resolution procedures — with the most overtly trade-restricting governmental practices.

But have we arrived at the elusive Heaven of free and unrestricted trade? As the far-sighted Mr. Pope would have predicted, that goal still seems just a bit beyond our grasp. New issues — issues which are the major focus of this portion of my remarks — now loom on the trade horizon. Some are in the realm of private practices that are perceived to be “unfair” and trade-restricting. Others are in new areas of trade (e.g., services, information, and telecommunications) or in new issue areas seen to be related to trade (e.g., investment and intellectual property). Finally, the trading world is beginning to see increasing conflicts between the Heaven of unimpeded trade and the perceived need to use trade restrictions as the lever to achieve social or political objectives in such areas as the environment, worker rights, and national security.

Before delving into those issues and their implications for NAFTA, I need to interject a brief comment. Some observers of a cynical bent see in all of this evidence of the Dark Side of the Force. In this view, we are all self-interested protectionists at heart. As trade negotiations reduce or eliminate each form of trade barrier, the ingenuity of the human mind devises other barriers, subtler and more complex, to achieve the same restrictive purpose.

I do not share that view. While there is some truth to this “many-headed Hydra” theory as to a few countries, it seems to me that three

factors are infinitely more important in the rise of these “new issues” on the trade agenda.

First, the elimination of overt governmental trade barriers makes the restrictive effects of other practices more evident and more important to address. An analogy may be drawn to the emergence in the twentieth century of lung cancer as a serious, wide-spread killer. Tobacco smoking had been prevalent for several centuries before, but was not seen as a serious health threat. Why? Because lung cancer takes years, even decades to develop, and most people died of other causes before their cancer caught up with them. Only when modern medicine extended the human life span sufficiently did society begin to become concerned at people dying in large numbers from cancer, with the next step being an increasing focus on tobacco as the likely cause. Similarly, there was little point in worrying about the access-denying effect of closed distribution system in a country that imposed a forty-percent tariff. But when the tariff was reduced to two percent, the preclusive effect of the closed distribution system became an object of major attention.

Second, the expansion of trade — the success we have achieved over the past half century — has brought with it increasing conflicts between the goal of free trade and other societal goals. This has happened in two important ways. On the one hand, the fact that goods of a particular type now enter Country A from several other countries poses the problem of what to do about the fact that each of those other countries may have different ways of regulating (or not regulating) production of those goods with regard to such issues as product safety or worker rights. Where Country A regards such an issue (say, worker rights) as societally or politically important, it may insist that compliance with Country A’s regulatory standards be a prerequisite to entry of the imported goods. Conversely, the existence of a flow of goods from Country X to Country A provides a vehicle for imposing on Country X a penalty for not adhering to Country’s A’s concept of what is good and proper in some area of social or political policy, whether it be an environmentally damaging method of production or a denial of human or worker rights. In short, the existence of trade flows made possible by a half-century of liberalization may either create the policy issue that leads to trade sanctions, or create the vehicle (the trade flow itself) for imposing the sanction, or both.

Finally, technological or socio-economic changes are the cause of many of the so-called “new issues.” For example, the whole complex of telecommunications and information trade issues — intellectual property rights, spectrum allocation, content regulation, rate regulation, encryption, etc. — has arisen over the past two decades from new technologies.

And the movement to establish rules for trade in services reflects a shift in the developed world's economies from manufacturing toward an emphasis on the service sector — a shift that has both economic and technological causes. Since new conditions require new rules of fair trading, and since conditions always change and evolve, the Heaven of totally free trade is — as Pope said — always just beyond our grasp.

On that note of a continuing challenge, let me turn to a somewhat closer examination of the major issues that I see looming on the world trade agenda, and to an assessment of how NAFTA may be affected by, or be a vehicle for the resolution of those issues. As an organizational matter, I want to group these issues into three categories:

- The “new” market access barriers — private anticompetitive practices and the practices of state trading enterprises.
- The effort to develop rules of free and fair trade for areas of economic activity not heretofore regulated in the world trading system — notably investment, trade in services, and trade in information.
- The clash between free trade and social/political policies, such as the environment, worker rights, and national security.

A. *The New Market Access Barriers*

At the end of the Uruguay Round, some important segments of the U.S. exporting community were of the view that in some export markets — Japan is the example most frequently given, but other Asian economies are also mentioned — the Round's achievements in reducing tariffs and eliminating government barriers to market access might have little or no beneficial effect unless private anticompetitive practices were also addressed. The concern expressed by these industries was the existence of closed systems of distribution, or exclusive buying relationships among members of a keiretsu or similar business group, would prevent foreign firms from making sales even in the absence of tariffs or government barriers.

Initially, the Clinton Administration was active and vocal on this issue. The President himself included “competition policy” on the short list of issues for a next round of multilateral negotiations and working groups on this issue area were established within both the World Trade Organization (WTO) and the Organization of Economic Cooperation & Development (OECD). Moreover, the issue of *keiretsu* and restrictive business practices was put on the agenda of the U.S.-Japan Framework Initiative.

Subsequently, U.S. ardor on this issue has cooled considerably. With respect to Japan, the issue appears to have proved non-negotiable. Noth-

ing has come of this aspect of the Framework, and it seems likely that this issue will be pursued there in a desultory manner, if at all. The OECD working group is proceeding ahead, but the United States now actually opposes making competition policy a major WTO project.

There are two major factors underlying the new U.S. reserve on the question of competition policy as a trade issue. First, with specific reference to the market access aspects of the issue, it turns out that most if not all of the practices of which U.S. exporters complain — notably preclusive distribution arrangements and exclusive buyer-seller purchasing relationships — are not practices that would be found violative of U.S. antitrust law as interpreted today. Over the last twenty-five years, aspects of U.S. law that condemned restrictions imposed by sellers on their distributors or other “vertical restraints” have been abandoned by the courts. Given this evolution of our own law, the United States would be in an awkward position in arguing that the same practices are, when carried on in other countries, somehow violative of international norms of competition policy. It is for this reason that the United States, in complaining to the WTO about problems in access to the Japanese film market, has transmuted what was originally a case centered on private restrictive practices into one focusing almost entirely on the role of the Japanese government in fostering the alleged access barriers.

Second, with regard to the initiative aimed at developing an international consensus on competition policy, the United States has drawn back after realizing that the concepts of competition policy held by many if not most other countries are quite different from those of present U.S. antitrust law. Moreover, adoption of — or even compromise with — these other approaches to competition policy could be seriously detrimental to the interests of major U.S. companies that are leaders in their fields. In most of the developing world, the principal thrust of competition policy (or “restrictive practices law”) is to protect smaller companies from domination by their larger competitors and to facilitate the dissemination of patented or proprietary technology among competitors. Needless to say, application of such principles in the international arena would be a serious problem for globally dominant U.S. producers. This consideration has led the United States to shift the competition policy debate to the OECD, where it is hoped that a consensus can be reached among the developed industrial nations. Even there, however, the United States is finding that European concepts of “abuse of dominant position” and “essential facility” are not compatible with U.S. antitrust theory.

NAFTA’s role in this issue area is expected by U.S. policymakers to be supportive of the United States approach to competition policy.

Canada's law is essentially compatible with that of the United States, and Mexico has enacted antitrust legislation based on the U.S. model. It remains to be seen, however, whether the Mexican application of that law will be consistent with U.S. policy or will have strong developing country overtones.

A second, related issue in this area is that of state trading enterprises. The GATT provision on this issue does not condemn state trading enterprises per se, but rather insists that they act like private companies and in a manner that does not discriminate against foreign companies. In China, Taiwan, and certain other Asian countries, however, much of the economy is controlled by state trading enterprises that allegedly do not operate in a GATT-consistent manner. Moreover, these countries — especially China — are proving reluctant to abolish these state trading enterprises or to change the manner in which they operate. This is a looming issue in the APEC process and — even more so — in China's effort to join the WTO.

The state trading issue, in its agricultural incarnation, is already a major problem within NAFTA — specifically, between the United States and Canada. The U.S. agricultural community, and the U.S. Department of Agriculture, are intent on abolishing Canada's agricultural boards, especially the Wheat Board. The U.S. rhetoric on this issue goes far beyond insisting that the Canadian boards play by the WTO's state trading rules. Rather, the boards are condemned as unfair, and the United States will apparently be satisfied with nothing less than their abolition. At one point, the U.S. Secretary of Agriculture went so far as to urge consuming countries to boycott exports by the Canadian agricultural boards. This U.S. effort seems unlikely to be discontinued, especially given the overall heated tone of U.S.-Canada agricultural trade relations. It should be noted, however, that the United States has brought no legal challenge against Canada's state trading enterprises, either under Section 301 or the U.S. countervailing duty law. Nor has it challenged the boards under either NAFTA or the WTO.

B. The "New Areas" of Trading Rules

A major element of the trade agenda for the next decade will be the task of extending the world trading regime beyond trade in goods to include trade in services, trade-related investment issues, and the mushrooming information sector. The work toward a meaningful General Agreement on Trade in Services (GATS) and a WTO Agreement on Trade-Related Investment Measures (TRIMS) was, of course, begun in the Uruguay Round and continues actively under WTO auspices. While

some aspects of these issues will be addressed in the NAFTA and APEC contexts, the multilateral process appears to have sufficient momentum that the major development of these regimes will occur in the WTO.

The development of rules governing the multifaceted problems of the emerging information economy are another matter entirely. An International Telecommunications Agreement has been launched, which deals with a number of issues in this area. Simultaneously, talks are proceeding multilaterally — both in the private sector and governmentally — on a much broader range of issues, including:

- allocation of spectrum
- content regulation (including “cultural” issues)
- encryption
- ownership of all the various aspects of the business
- rate regulation
- market access
- trade in hardware
- patent and copyright issues
- competition policy

In most of these areas, application of traditional trading rules, designed originally for trade in goods, repeatedly poses problems of the “square peg into round hole” variety. Not the least of the problems is the difficulty, or impossibility, of controlling or even monitoring information flows.

All three NAFTA members are acutely interested in this process, but each comes to it from a point of view dramatically different from the other two countries.

For the United States, this is perhaps the ultimate growth market, and one in which U.S. companies generally have technological superiority and an advantageous market position. The U.S. objectives, therefore, are to promote expansion of information/telecommunications/data transmission trade, and to do so in such a way that U.S. companies do not lose their present leadership position.

Canada, and even more so Mexico, see their industries as playing “catch up” in a market that is essential to the future economic welfare of both countries. Accordingly, they seek greater access to technology and ways in which their companies can narrow the gap within their U.S. competitors. They thus tend to support less comprehensive intellectual property protection, an aggressive competition policy aimed at preventing the achievement of monopoly positions, and some dispensation to protect and nurture their fledgling industries through market access barriers, ownership limitations, and even subsidies.

Canada's position has the added nuance of cultural identity protection. As discussed in another presentation at this conference, Canada succeeded in exempting its cultural industries from NAFTA's free trade requirements. Canada's insistence on that theme is already a sharp bone of contention in the global telecommunications talks and will be at least as sensitive in the evolution of the issues relating to the global information society.

C. Free Trade vs. Social/Political Issues

A major theme of multilateral trade negotiations, at least beginning with the Tokyo Round, has been the effort to limit the extent to which countries may impose non-tariff restrictions on trade flows. Thus the rules on imposition of anti-dumping duties, countervailing duties, and other import restrictions (e.g., Section 301, Section 337, safeguard measures) have placed increasingly tight constraints on the use of such restrictive measures. Similarly, the WTO has begun to scrutinize government-imposed standards, phytosanitary measures, and other non-trade regulatory measures to ensure that they do not have discriminatory or unduly trade-restricting effects.

In the 1980s, and increasingly in the 1990s, this movement to reduce or eliminate trade-restricting measures has run head on into a very different policy trend, the increasing tendency to see social issues as transnational issues. U.S. environmentalists, for example, no longer restrict their concerns to environmental damage in the United States, but rather extend their concerns to the Brazilian rain forests, the welfare of whales in the open ocean, the building of dams in China, etc. Similarly, those concerned about sweatshops, child labor, and the right to organize unions no longer limit their concerns to worker rights in the United States. Today they are equally concerned with forced labor in China, child labor in Southeast Asia, and working conditions throughout the developing world.

One problem posed by the internationalization of these social concerns is: How do you get other countries to cease what you regard as unacceptable practices? The days of military threats to achieve such ends are over. "Perdicardis alive or Raisuli dead!" does not work in the modern world. Accordingly, groups advocating these social issues often look to trade restrictions to coerce foreign countries into following more enlightened social policies. If your tuna fishing methods kill dolphins unnecessarily, we will not allow your tuna into the United States. If you violate human rights, we will not grant you MFN tariff treatment. If your goods are made with forced labor or child labor, we will ban them

or impose high tariffs.

The clash occurs because, in general, such trade restrictions are inconsistent with GATT rules. Thus trade liberalization is put in direct conflict with what are widely regarded as worthy social policy movements.

Another embodiment of this clash of policies is the politically powerful movement in the United States to engraft environmental and worker rights requirements onto regional and bilateral trade agreements. This issue has become a major impediment to the enactment of fast-track legislation by the U.S. Congress.

The important point here is that this type of issue conflict is qualitatively different from the normal debate over trade questions. Historically, trade debates have pitted forces that are widely regarded as representing truth, beauty, and goodness — namely, free trade, open market advocates — against protectionist ideas that lend themselves to being portrayed as reactionary, economically backward and in general politically, socially, and hygienically incorrect. The equation changes radically, however, when the opposition to trade liberalization comes from groups widely anointed as advocates of virtue and goodness. Perhaps more significant, the groups themselves see their causes as more worthy than mere economics — and much of the press, the public, and therefore the public's political representatives agree. Viewed in this light, it is clear why this type of trade vs. social concerns issue is proving so intractable.

NAFTA has already been a battleground of this nature, with U.S. approval of the Agreement made contingent on “side agreements” dealing with the environment and worker rights. Since then, Mexico's performance in these two areas has been and is being put under a microscope. The returns are not in yet, by any means, and the process is being watched not only by social advocacy groups in the United States, but also by the countries of Latin America and Asia who will have to cope with these same social issue demands if they are to pursue free trade area talks with the United States.

I am more concerned about the playing out of these issues than I am about any other aspect of the next decade's trade agenda. We have for almost half a century made great progress in trade liberalization largely because we have been pursuing a great and good goal which at all times held the intellectual and moral high ground. To the extent that free trade is opposed — or at least sought to be qualified or limited — by forces who claim equally high moral ground, further progress in trade liberalization is in jeopardy in a way we have not seen before. The power of that opposition began to appear in the NAFTA debate. It is even more formidable in the Congressional roadblock over Fast Track

legislation. Protectionist interests are finding artful ways to ally themselves with environmentalist, human rights, and worker rights forces. A major challenge for the forces of trade liberalization will be to find ways to make further progress that do not bring into play the demands for commitments on these social issues — commitments that many countries, especially developing nations, have no interest in discussing.

II. NAFTA AND OTHER ELEMENTS OF THE WORLD TRADING SYSTEM

Traditionally, a tension has existed in the world trading system, between unilateralism and bilateralism, two very often intertwined concepts, on the one hand and multilateralism on the other hand. In particular, this tension was related to United States trade policy (although Europe, and even individual European countries, engaged from time to time in unilateral/bilateral approaches to trade problems). By multilateralism, I mean the resolving of trade problems by obtaining international agreement on the governing rule or principle, and then relying on an international dispute resolution mechanism to resolve specific trade controversies with respect to that rule or principle. The alternative was bilateral resolution of controversies, either by negotiation between the two governments involved or by one government forcing the other to capitulate. Not infrequently in these bilateral disputes, the United States (other countries less frequently) would unilaterally impose import or other restrictions, either as a self-imposed resolution of the problem or as leverage to force the other nation to negotiate a satisfactory agreement.

Needless to say, the multilateral organizations created to regulate world trade — the GATT, the WTO, and the various bodies dealing with specific issue areas, such as patents and copyrights — have sought to reduce bilateral and especially unilateral resolution of disputes and to encourage multilateralism. They have done this in two ways: by expanding the scope of their rules of fair conduct so that more subjects of dispute will be cognizable under multilateral rules, and by creating dispute resolution procedures and encouraging — even mandating — member nations to use those procedures.

Let me make a parenthetical observation. The world trading system generally — and legitimately — condemns unilateralism, and the United States is the main object of international criticism in this regard. As a general matter, I do not take issue with the condemnation of unilateralism, but I would suggest that a distinction must be recognized. I would distinguish between the situation where one country takes uni-

lateral action despite the existence of both a multilateral rule governing the disputed issue and a multinational forum for resolving the controversy, and the situation where the issue disputed between two nations is not governed by an established international rule. In the former situation, it seems clear to me that unilateral action — or even a bilateral resolution of the dispute in a manner inconsistent with the international rule — is detrimental to the integrity of the world trading system. But I pose the question whether the world trading system has gone too far when it entirely bans unilateral action, even on issues — investment, services, environment, worker rights, etc. — not meaningfully covered by multilateral rules.

I know the WTO position on this issue is clear: unilateral measures to restrict trade are forbidden, unless done under the WTO rules. But consider two points. First, where there is no WTO or other international rule covering a practice deemed unfair by the complaining country — for example, government toleration of anticompetitive, market access-denying private conduct — the aggrieved country is left with no remedy and a trade-distorting practice is allowed to continue. In cases of economically serious trade distortion, I fear that countries — including the United States — will act unilaterally despite the WTO prohibition. Indeed, the U.S. Trade Representative has said as much on several occasions, notably in Ambassador Kantor's testimony to Congress on the Uruguay Round Agreements Act. In asserting that the United States receives the right to act unilaterally, he embraced what I would refer to as "basketball morality."

All of us have seen the situation on television. A seven foot center receives a pass close to the basket and turns to dunk the ball. A smaller player, unable to block or otherwise defend against the shot, simply commits a foul — grabbing the opposing center to prevent him from scoring. The center walks to the line to shoot two free throws and the television audience hears a basketball "expert" say, "That was a good foul." To some of us, the concept of a "good foul" is a total oxymoron. How can the breaking of the rules be "good?" The player — and the basketball "expert" — would probably argue that, even in committing the foul, the player was in a sense *not* "breaking the rules." Rather, the player evaluated the adverse consequences of not fouling — a sure two points for the other team — against the consequence prescribed by the rules for committing the foul — the seven foot center gets to shoot two free throws. The player reasoned that seven foot centers are notoriously bad free throw shooters, so the center would probably miss one or both free throws. Thus, under "basketball morality," one can "play by the rules" in the sense of accepting the consequences provided for a pro-

scribed action.

I see this approach as very dangerous for the world trading system, undermining the rule of law that the members of the system — and especially the United States — have worked so hard to establish. Yet I also see the likelihood that, in an economically and/or politically important case, countries — and particularly the United States — will have no political option but to take unilateral action. Even worse, the political imperative to do so will be strongest in large, highly visible cases — precisely the sort of case where unilateral action will do the most damage to the world trading system.

Second, it has been my observation that one major impetus for expansion of the substantive rules of international trade has been the pressure posed by the potential for unilateral measures and/or conflicting bilateral arrangements on issues where international rules do not exist. In some areas, I already see this process slowing, with countries becoming more intransigent on various issues because they have less concern that the United States will take unilateral action. In this regard, I would contrast the failure of that portion of the U.S.-Japan Framework Initiative concerning restrictive business practices (where there was never any hint of U.S. unilateral action) with the success of the International Telecommunications Agreement (where the United States brought pressure on several key countries with unilateral measures — notably holding up FCC approval of license applications pending improvement in a country's International Telecommunications Agreement (ITA) offer).

In short, I suggest that preserving some latitude for unilateral action, in substantive areas not covered by global rules, may in fact have benefits for the trading system.

But I digress from my main theme — how NAFTA will fit with the structuring of trade over the near-to-intermediate term.

NAFTA is, of course, an example of a new addition to the chemistry of international trade — namely, the injection of regional initiatives into the existing tension between multilateralism and unilateralism/bilateralism. As you have heard throughout this conference, NAFTA was originally conceived as a trade-expanding concept, intended to create economic synergies in North America, in part as a counterpart or offset to the European Common Market (now the European Union). Under President Reagan, it evolved into the grander ambition of a free trade area covering the entire hemisphere.

Today, of course, the continuation of the Americas Free Trade initiative is paralleled in U.S. trade policy by the APEC negotiations to liberalize trade in the Asia-Pacific region. From the U.S. standpoint, participation in the APEC initiative had two major motivations:

- Expansion of trade in that region, with a preferred U.S. position vis-à-vis Europe and a position in the region of at least equality with Japan, and
- Pressure on Europe (in the initial years of the APEC discussion) to be more forthcoming in the WTO's Uruguay Round, lest the United States create a network of free trade agreements in Asia and the Americas, with Europe left out.

What we have now, therefore, is a patchwork quilt of continuing trade initiatives. On the multilateral level, we are in a consolidation phase, absorbing the agreements reached in the Uruguay Round and testing — with surprising success thus far — the new WTO Dispute Settlement Mechanism. At the regional level, we have continuing discussion in the APEC process and talk — but not much action — about expanding NAFTA and/or merging it with MERCOSUR. Finally, sporadic bilateral initiatives rise and sometime fall — the U.S.-Japan Framework Initiative, Chile's free trade agreement negotiations with Canada and Mexico, etc.

How will all of this fit together? Before answering that — or at least hazarding a guess or two — it is useful to assess where we stand now.

There seems little likelihood that a new WTO Round will be launched soon. Most countries are still digesting the achievements of the Uruguay Round, the United States — after early proclamation calling for a new Round focused on investment, services, and competition policy — is mired in the Fast Track morass and is not pressing for early negotiations, and the main action lies in what has turned out to be a fairly vigorous use of the WTO Dispute Settlement Mechanism.

As to APEC and NAFTA, the timetables for further and definitive agreements seem to be lengthening substantially, and each has its own internal problems.

The extension of NAFTA to other American countries, as you have heard in other presentations at this Conference, is encountering problems. Chile, at first thought likely to be the next NAFTA member, has backed away, put off by the inability of the United States to enact Fast Track and its indecision about how to balance possible NAFTA membership with Chile's ties to MERCOSUR. Chile has now negotiated separate free trade agreements with Canada and Mexico, and an affiliation with MERCOSUR. As to NAFTA accession, Chile says it prefers to wait for the Free Trade Agreement of the Americas late in the first decade of the next century.

MERCOSUR's progress also poses quandaries for NAFTA. The MERCOSUR countries, especially Brazil, are intent on firming up their own association, so that they can negotiate with NAFTA on a more nearly equal basis. Moreover, the nature of MERCOSUR — a customs

union with a common external tariff — raises significant issues of incompatibility with NAFTA's structure.

In sum, NAFTA is momentarily stalled. Even when (and if) passage of Fast Track gets NAFTA moving again, progress is likely to be slow until well into the first decade of the next century. This raises the specter that NAFTA will fall behind APEC. Already, many U.S. policymakers are coming to see APEC — with its vibrant "Asian Tiger" economies and the huge Chinese market — as a more important focus of the U.S. trade effort.

But APEC itself has its problems — most notably, a substantial gap between U.S. thinking and the thoughts of the major Asian players on how it should evolve. Whereas the United States wants to move APEC toward a free trade area concept, the predominant view of the Asian APEC participants is much looser. Staged tariff reductions, on an MFN basis, seem achievable, but on non-tariff barriers there is a reluctance among Asian countries to go beyond the WTO rules. This is especially evident with regard to issues such as State Trading Enterprises and restrictive business practices. Moreover, the looming presence of China, with its array of unique trade issues, overshadows and complicates the APEC process. The new Clinton Administration trade strategy reflects these problems by suggesting that the United States may resort to selected bilateral negotiations as a way of prodding the APEC process. Thus, while APEC is in one sense a more active, ongoing process than NAFTA, the task of achieving tangible free trade results in APEC is probably more difficult in the long run.

The most likely forecast is for bilateral — not regional or multilateral — initiatives to occupy center stage for the next year or two. Activity will continue both in APEC and in WTO working groups, but these are longer-term exercises than was originally anticipated.

With respect to NAFTA, the situation is worrisome. The deadlock over Fast Track will, I believe, be broken sometime this year — next year at the latest — but the delay has been quite costly. MERCOSUR, led by Brazil, has started down an independent path, and Chile — once at the doorstep of NAFTA membership, is reconsidering its options. Moreover, within NAFTA itself problems are emerging — most notably, the likelihood of a fairly serious rift between the United States and Canada in the areas of agriculture and telecommunications.

Finally, there are two fairly serious problems looming for the NAFTA/FTAA process. The first is the possibility of a U.S. recession in the next year or so. Hard economic times often produce trade confrontations, and at the very least a recession would add fuel to anti-NAFTA politics in the United States

Second, the passage of time, together with the shift in active negotiations to APEC and to bilateral initiatives, threatens the degree of U.S. zeal for the Americas relative to other areas of trade policy, especially APEC. The problem is compounded if, as seems likely, MERCOSUR intends to restructure the FTAA process as a sort of bilateral negotiation between NAFTA and MERCOSUR. The U.S. Administration is already giving serious thought to strategies for renewing the vigor of the NAFTA/FTAA process, but the results are not yet in.

Let me end, however, on a more optimistic note. This has been, in my view, one of the most artful and creative Administrations of recent times in the field of international trade. As Ambassador Barshefsky is wont to boast, their record of successful negotiations is imposing. I would not be at all surprised to see some substantial surprises in the way of new negotiating initiatives over the next several years. Moreover, with respect to both APEC and NAFTA/FTAA, the momentum is now too strong for the processes to collapse. The question as to each is not whether significant progress in trade liberalization will be made, but how much and in what form.

