

4-1-2002

Hemispheric Integration and the Politics of Regionalism: The Free Trade Area of the Americas (FTAA)

Christopher M. Bruner

Follow this and additional works at: <http://repository.law.miami.edu/umialr>



Part of the [International Trade Commons](#)

Recommended Citation

Christopher M. Bruner, *Hemispheric Integration and the Politics of Regionalism: The Free Trade Area of the Americas (FTAA)*, 33 U. Miami Inter-Am. L. Rev. 1 (2002)

Available at: <http://repository.law.miami.edu/umialr/vol33/iss1/2>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

ARTICLE

HEMISPHERIC INTEGRATION AND THE POLITICS OF REGIONALISM: THE FREE TRADE AREA OF THE AMERICAS (FTAA)

CHRISTOPHER M. BRUNER*

I. Negotiating Structure	6
II. Goals and Challenges for the United States	16
III. Brazil, MERCOSUR, and South American Unity	24
IV. The U.S. Response – Fragmenting South America ...	38
V. Practical Ramifications for the FTAA.....	52
VI. Theoretical Implications – The Politics of Regionalism	62

* Associate, Ropes & Gray, Boston, Massachusetts. A.B., University of Michigan, 1995; M.Phil., Oxford University, 1997; J.D., Harvard Law School, 2001. I would like to thank William Alford for helpful comments on an earlier draft of this article. I would also like to thank the editors of *the University of Miami Inter-American Law Review*, and particularly D. Porpoise Evans, for their editorial assistance. This is for my wife, Lia Pierson Bruner.

The Free Trade Area of the Americas (FTAA) was initially proposed as the “trade liberalizing cornerstone” of President George Bush’s Enterprise for the Americas Initiative, a broad-scale plan to “unify the Western Hemisphere” enacted in 1990.¹ The process of creating an FTAA actually began, however, with the first “Summit of the Americas” held in Miami in 1994, at which the thirty-four democracies of the Western Hemisphere² – essentially the entire hemisphere minus Cuba³ – committed themselves to pursuing the creation of an FTAA by 2005.⁴ The Plan of Action adopted at the first Summit of the Americas addresses a broad range of concerns beyond trade, with goals including the promotion of democracy, the fight against corruption and drug trafficking, the elimination of poverty, cooperation in science and technology, universal access to education, and the achievement of gender equality.⁵ This linkage of hemispheric free trade with democratic values primarily reflects the perspective of American policy-makers, who locate the emergence of the effort toward an FTAA in a post-Cold War, pan-hemispheric “consensus of the citizen rather than the state as the source of law and policy.”⁶ Charlene Barshefsky, U.S. Trade Representative (“USTR”) under President Bill Clinton, pointed to the decline of “mercantilism” in Latin America, and stated that “[m]ost governments in the hemi-

1. J. Steven Jarreau, *Negotiating Trade Liberalization in the Western Hemisphere: The Free Trade Area of the Americas*, 13.1 *TEMPLE INT’L & COMP. L.J.* 57, 57 (1999); see also 7 U.S.C. § 1738 (1994). Efforts to unite the Western Hemisphere are not a recent development, “dat[ing] to the days of Simon Bolivar and the Pan American Congress of 1826.” Jarreau, *supra*, at 57 (citation omitted); see also Ambassador Charlene Barshefsky, Keynote Address, 30 *LAW & POL’Y INT’L BUS.* 1, 1-2 (1999) (*Symposium: The Role of Legal Institutions in the Economic Development of the Americas*).

2. The negotiating nations are: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Vincent and the Grenadines, St. Lucia, St. Kitts and Nevis, Suriname, Trinidad and Tobago, Uruguay, the United States of America, and Venezuela. See Denver Ministerial Declaration, at n.1, http://www.ftaa-alca.org/ministerials/denver_e.asp (official website of the FTAA) (last visited Oct. 18, 2000).

3. Lenin Guerra, *The Use of Fast Track Authority in the Negotiations of the Free Trade Area of the Americas*, 8 *KAN. J. L. & PUB. POL’Y* 172, 174 (1999); see also *infra* text accompanying notes 50-51. French Guiana, a part of France, also is not participating. See *All In the Familia*, *ECONOMIST*, Apr. 21, 2001, at 19, 19.

4. Overview of the FTAA Process, http://www.ftaa-alca.org/view_e.asp (last visited Mar. 10, 2002).

5. Plan of Action, http://www.ftaa-alca.org/ministerials/plan_e.asp (last visited Sept. 22, 2000).

6. Barshefsky, *supra* note 1, at 3.

sphere now agree in principle that economic development is best achieved through freedom, open markets and entrepreneurialism rather than detailed guidance by the state in favor of one group or another.”⁷ Barshefsky’s comments refer to a general trend in Latin America over recent decades away from protectionist “import-substitution strategies” toward trade liberalization and an “outward oriented development strategy.”⁸ Robert Zoellick, USTR under President George W. Bush, describes the FTAA effort in similar terms: “[L]ook at the Americas today – democracy in every nation but one, a hemispheric free trade agreement on its way, and the triumph of open markets in the battle of ideas.”⁹

An FTAA would clearly be of great economic significance to all negotiating nations. For Latin America, the FTAA brings the promise of increased access to capital, technology, and an immense market.¹⁰ The size of the U.S. economy relative to the rest of the hemisphere sheds some light on the value of U.S. market access. According to the World Bank, total gross domestic

7. *Id.* Mario Esteban Carranza more fully describes “the ‘neoliberal consensus’ that today prevails in Latin America” as including “three main elements: macroeconomic stability (smaller fiscal deficits), a diminished government role in the economy (privatisation, deregulation) and greater openness to the outside (free trade and an ‘open’ approach to foreign capital).” MARIO ESTEBAN 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* 50 (The Political Economy of Latin America Series, 2000). While Barshefsky emphasizes ideological agreement as a matter of “principle,” Carranza criticizes U.S. management of the debt crisis of the 1980s, questions whether the economic difficulties faced by Latin America really resulted from import substitution policies and excessive reliance on debt, and argues that Latin American countries were largely pressured into adopting market reforms by the United States and development banks. *See id.* at 52-58. Any such “neoliberal consensus” may falter in the wake of Argentina’s economic crisis. *See infra* text accompanying notes 275-297.

8. *See generally* Gary C. Hufbauer & Barbara Kotschwar, *The Future of Regional Trading Arrangements in the Western Hemisphere* (Sept. 11-12, 1998) (paper for the Michigan State University 10th Anniversary Conference, The U.S.-Canada Free Trade Agreement, <http://www.iie.com/papers/hufbauer0998.htm> (last visited Feb. 25, 2002)). Hufbauer and Kotschwar explain that

[t]he aim of ISI [import substitution industrialization] was to buffer Latin America from worsening terms of trade following the commodity boom sparked by the Second World War. By erecting high walls against manufactured imports, countries would develop their own industries and reduce their dependency on the advanced countries in general and the United States in particular.

Id. at “Latin America: A Clouded Past.”

9. Ambassador Robert B. Zoellick, *Free Trade and the Hemispheric Hope*, Remarks at the Council of the Americas (May 7, 2001), at 1, http://www.ustr.gov/speech-test/zoellick/zoellick_2.html (last visited Sept. 20, 2001).

10. *See* Alan C. Swan, *The Dynamics of Economic Integration in the Western Hemisphere: The Challenge to America*, 31 U. MIAMI INTER-AM. L. REV. 1 (2000).

product ("GDP") for the United States in 2000 came to approximately US\$9.9 trillion, amounting to nearly four-fifths of total GDP for the entire Western Hemisphere.¹¹ This figure is over fourteen times that for Canada, the hemisphere's next largest economy, and nearly seventeen times that for Brazil, the largest economy in Latin America.¹² There are also significant disparities across the hemisphere in terms of population and land area,¹³ providing a further reflection of the vastly disproportionate resources available to the negotiating parties. Because of such factors, smaller nations in the hemisphere tend to have "problems of scale" and a narrower scope of production, leaving them more dependent on foreign trade than larger nations like the United States.¹⁴ This only tends to increase the economic stakes of the FTAA for Latin America, especially considering the extent to which some of the smaller nations in the hemisphere rely on tariffs for revenue.¹⁵ At the same time, however, the FTAA is also of

11. World Bank, *Total GDP 2000*, <http://www.worldbank.org/data/databytopic/GDP.pdf> (last updated July 16, 2001) (last visited Jan. 27, 2002). GDP "is the sum of the gross value added by all resident producers in the economy plus any product taxes and minus any subsidies not included in the value of the products." See World Bank, *2001 World Development Indicators*, tbl. 4.1, at 197, http://www.worldbank.org/data/wdi2001/pdfs/tab4_1.pdf (last visited Jan. 27, 2002).

12. World Bank, *supra* note 11.

13. Frank J. Garcia, *The Integration of Smaller Economies into the FTAA*, NAFTA: L. AND BUS. REV. OF THE AMERICAS, Spring 1999, at 221, 231. "In terms of population, of the thirty-four summit countries, nine account for nearly ninety percent of the hemisphere's population. In terms of land area, the five largest countries account for over eight-two percent of the hemisphere's land territory, and the ten largest account for over ninety-five percent." *Id.* (citations omitted).

14. *Id.* at 226. Smaller nations in the hemisphere have also been hurt by the "shift in international aid priorities" away from development and towards security that has occurred since the terrorist attacks on the United States on September 11, 2001. *Guyana's Jagdeo Urges Solidarity Among Caricom Nations*, BBC MONITORING SERVICE, Jan. 2, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020102002002> (last visited Jan. 26, 2002) (source: Caribbean Media Corporation, Jan. 1, 2002). An alignment of negotiating positions may be pursued by Caribbean and Central American nations to ensure their needs are accounted for in the FTAA process. Canute James, *Caribbean Leaders In Push For New Trade Pact*, Feb. 6, 2002, <http://globalarchive.ft.com/globalarchive/article.htm?id=020206001972> (last visited Mar. 31, 2002).

15. See, e.g., *Jamaican Minister Makes Case for Caricom's Smaller Economies in FTAA*, BBC MONITORING SERVICE, Apr. 19, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010419010625> (last visited Sept. 7, 2001) (text of report by Johnson John Rose carried by Cana, Apr. 19, 2001); *St Kitts and Nevis's Premier to Talk at Summit on Special Needs of Small States*, BBC MONITORING SERVICE, Apr. 21, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010421001914> (last visited Sept. 10, 2001) (source: Cana, Apr. 20, 2001) (St. Kitts and Nevis Prime Minister Dr. Denzil Douglas observing that "a large percentage of our revenue is specifically based on tariffs," and that "if we are to integrate with the rest of the

great importance to the United States, given that the Western Hemisphere is a large and growing market.¹⁶ Zoellick further points out that the United States, as of February 2002, was a member of only three of the 130 free trade agreements in force around the world, and that as a result, "U.S. businesses are losing marketshare."¹⁷ Barshefsky has additionally suggested that the "FTAA can help us reach trade goals outside the hemisphere," allowing the United States to approach future World Trade Organization ("WTO")¹⁸ negotiations bolstered by "a more cohesive Western Hemisphere position."¹⁹ While the Ministers negotiating the FTAA ("Trade Ministers") have expressed assurance that it will "be fully consistent" with the WTO and "not raise barriers to other countries,"²⁰ it is crucial to observe that it will extend beyond the present scope of the WTO to include areas such as a common investment regime, government procurement, and competition policy.²¹ It is likely this expansion beyond the present scope of the WTO regime that Barshefsky had in mind when she referred to "trade goals outside the hemisphere," illuminating the FTAA's broader significance.

This article examines the negotiation of the FTAA from a tactical perspective. It seeks to discern what key negotiating nations want out of such a free trade agreement, and the means through

hemisphere and the rest of the world, there must be special consideration given to our peculiarities").

16. Barshefsky, *supra* note 1, at 1.

17. *Statement of U.S. Trade Representative Robert B. Zoellick before the Committee on Finance of the U.S. Senate*, Feb. 6, 2002, http://www.ustr.gov/speech-test/zoellick/zoellick_14.html (last visited Feb. 24, 2002). Zoellick also advances the strategic argument that "[t]roubled neighbors export problems like illegal immigration, environmental damage, crime, narcotics, and violence. . . . If the Americas are strong, the United States will be better positioned to pursue its aims around the world. But if our hemisphere is troubled, we will be preoccupied at home and handicapped abroad." Zoellick, *supra* note 9, at 5.

18. The WTO represents "the common institutional framework for the conduct of trade relations" among its members. Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], Apr. 15, 1994, art. II(1), *THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS* 4 (1999); 33 I.L.M. 1144 (1994). As of January 1, 2002, 144 nations were members of the WTO, including the United States and Brazil. *See The Organization: Members and Observers*, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (WTO website) (last visited Jan. 27, 2002). The WTO Agreement includes annexed agreements on trade in goods, services, and intellectual property; dispute settlement; trade policy review; and certain plurilateral trade agreements. WTO Agreement, *supra*, arts. II(2)-(3).

19. Barshefsky, *supra* note 1 at 7.

20. Denver Ministerial Declaration, *supra* note 2, ¶ 2.

21. *See Overview of the FTAA Process*, *supra* note 4.

which they have sought to achieve their disparate goals. The United States and Brazil, in particular, have employed complex negotiating strategies in order to gain the upper hand – strategies prompted by a variety of economic and political dynamics at domestic and subregional levels. These dynamics include the significant pressure exerted on U.S. policy-makers by constituent groups sensitive to globalization's impact on labor and the environment, as well as the challenge Brazil faces in maintaining a stable subregional bloc through which to exert greater negotiating leverage in the FTAA process. Consonant with insights of liberal international relations theorists and multi-level game theorists, it is observed that the FTAA negotiations are significantly constrained by political dynamics at multiple levels of organization, and that these constraints will be major determining factors in the outcome of the process. Ultimately, the article argues that while potential gains from trade in the Western Hemisphere are of great consequence, the FTAA's long-term significance lies more in its precedential value for future trade negotiations at all levels – in domestic, bilateral, regional, and multilateral fora. Throughout the FTAA process, a number of voices in the United States, Brazil, and other nations will be actively debating the meaning and ramifications of "free trade," and thereby seeking to determine the appropriate intersection of economics and politics for international trade in this new Millennium.

I. NEGOTIATING STRUCTURE

The FTAA process has been aptly described as unfolding along two "tracks," the first track involving "the process of developing and continually refining a negotiating mechanism," and the second "focus[ing] on broadening and deepening hemispheric economic integration by building on existing trade relationships and encouraging the development of new arrangements."²² Unlike the Uruguay Round negotiations for the WTO, which began "without a negotiating mechanism or a well-defined agenda," the FTAA approach has been to first establish a negotiating structure and to set parameters for the agenda, and only then to negotiate the substance of the FTAA through that pre-defined structure.²³ The Trade Ministers initially established a number of "working groups," charged with the task of assembling data and making

22. Jarreau, *supra* note 1, at 58.

23. *Id.* at 59.

recommendations on how to structure eventual negotiations,²⁴ as well as a “tripartite committee” comprised of the Organization of American States, the Inter-American Development Bank, and the United Nations Economic Commission for Latin America and the Caribbean, “to provide analytical support, technical assistance, and relevant studies within their respective areas of competence.”²⁵ The original working groups eventually became “negotiating groups,”²⁶ focusing on market access, investment, services, government procurement, dispute settlement, agriculture, intellectual property rights, subsidies, antidumping and countervailing duties, and competition policy.²⁷

The work of these groups has fed into the series of “ministerial meetings” at which the structure and parameters of negotiation have been established, in turn punctuated by less frequent “summits” of the heads of state of the negotiating nations.²⁸ As of the Third Trade Ministerial Meeting in Belo Horizonte, Brazil, several principles had been established to guide the negotiations:

- a. Consensus constitutes the fundamental principle of decision making in the FTAA process . . . ;
- b. The outcome of the negotiations . . . will constitute a comprehensive single undertaking . . . ;
- c. The FTAA will be consistent with the WTO agreements;
- d. Countries may negotiate . . . individually or as members of a sub-regional integration group . . . ;
- e. Special attention should be given to the needs, economic conditions and opportunities of the smaller economies to ensure their full participation in the FTAA process;
- f. The need for establishing a temporary administrative Secretariat to support the negotiations;
- g. The year 2005 as the date for concluding negotiations, at the latest.²⁹

The significance of these negotiating principles will be discussed in detail below,³⁰ but it should be observed here that the requirement of a “single undertaking,” with no interim agreements, and

24. See generally Denver Ministerial Declaration, *supra* note 2, at Annex I.

25. *Id.* ¶ 8.

26. Belo Horizonte Ministerial Declaration, http://www.ftaa-alca.org/ministerials/belo_e.asp, ¶ 11 (last visited Oct. 18, 2000) (requesting recommendations on “how the Working Groups could be reconfigured into negotiating groups”).

27. San Jose Ministerial Declaration, http://www.ftaa-alca.org/ministerials/costa_e.asp, ¶ 11 (last visited Oct. 18, 2000).

28. See Overview of the FTAA Process, *supra* note 4.

29. Belo Horizonte Ministerial Declaration, *supra* note 26, ¶ 5.

30. See *infra* text accompanying notes 133-143.

the express endorsement of negotiation as part of “a sub-regional integration group” reveal a fundamental tension between the respective interests of Brazil and the United States. These two negotiating principles are generally considered diplomatic victories for Brazil. The former tends to preserve flexibility for trade-offs and prevents the United States from achieving incremental liberalization of sensitive sectors through interim agreements, while the latter ensures the ability of economically less powerful nations to increase their negotiating leverage through the formation of blocs, thereby reducing the disparities described above.³¹

Further refinements to the negotiating structure at the Fourth Trade Ministerial in San José, Costa Rica, reflect anticipation of two major challenges for the negotiations. It was agreed in San José that the Chairmanship and Vice-Chairmanship of the FTAA would “rotate among different countries” throughout the process.³² In the critical final stage of negotiations, however, the FTAA will be co-chaired by Brazil and the United States.³³ This clearly reflects an expectation that the process will eventually reduce itself to ensuring satisfaction of these two nations with the final product.³⁴ Another major challenge to successful completion of the negotiations is reflected in the creation of a structure affording some measure of participation in the FTAA process for “civil society” – effectively a term of art for non-governmental groups impacted by trade:

We recognize and welcome the interests and concerns that different sectors of society have expressed in relation to the FTAA. Business and other sectors of production, labor, environmental and academic groups have been particularly

31. See, e.g., CARRANZA, *supra* note 7, at 124; Jarreau, *supra* note 1, at 61, 63-64. Notwithstanding the single undertaking requirement, however, the Trade Ministers directed that certain “business facilitation measures” be adopted before completion of the negotiations, in light of the “commitment to make concrete progress by the year 2000.” San Jose Ministerial Declaration, *supra* note 27, ¶ 18. These measures address areas such as dispute resolution, customs, and visa requirements. See Business Facilitation, http://www.ftaa-alca.org/ALCA_e.asp#busfac (last visited Jan. 2, 2001). Brazil argues that such measures violate the single undertaking requirement while the United States argues that there is no inconsistency. See Jarreau, *supra* note 1, at 61 n.36.

32. San Jose Ministerial Declaration, *supra* note 27, ¶ 12.

33. *Id.* The final stage of negotiation covers the period from November 1, 2002 through December 31, 2004, but the San Jose Ministerial Declaration makes clear that the period of co-Chairmanship will last “until the conclusion of the negotiation,” suggesting that negotiation could continue indefinitely notwithstanding the goal of completion by 2005. *Id.*

34. See Jarreau, *supra* note 1, at 65-66.

active in this matter. . . . We have, therefore, established a committee of government representatives, open to all member countries, who shall select a chair. The committee shall receive these inputs, analyze them and present the range of views for our consideration.³⁵

While this signals recognition of the demands of various interest groups that their viewpoints be heard, labor and environmental constituencies in particular have questioned the extent to which such a committee allows for substantial participation of “civil society” in the negotiations.³⁶ As discussed below, it will likely prove politically crucial for U.S. trade negotiators to ensure that the views of these constituencies are adequately addressed in the FTAA.³⁷ Indeed, the “civil society” mechanism itself reflects concern that domestic debate over such issues could threaten the legitimacy of the outcome, or even paralyze the process altogether.³⁸ As Barshefsky has observed,

the public – in the United States and elsewhere – clearly expects trade policy to respond more effectively than it has in the past to the concerns of ordinary citizens. . . . That means our FTAA negotiations must pay appropriate attention to the views of business, labor, consumer groups, environmentalists, and others. Just as important, we must promote openness and citizen contribution if the results are to be credible.³⁹

It is thus with the anticipation of public scrutiny that the Trade Ministers were directed, at the Second Summit of the Americas in Santiago, Chile, to begin negotiation of the substance

35. San Jose Ministerial Declaration, *supra* note 27, ¶ 17.

36. See, e.g., *Statement of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) to the Committee of Governmental Representatives on Civil Society Participation: Executive Summary* (Apr. 14, 1999), http://www.state.gov/www/issues/economic/ftaa/ftaa_soc_68.pdf [hereinafter *UAW Statement*] (last visited Mar. 8, 2001) (“We believe this Committee is a thoroughly inadequate mechanism for incorporating the views of working people into the FTAA process or addressing the UAW’s concerns regarding the FTAA model of trade liberalization and regional economic integration.”).

37. See *infra* text accompanying notes 96-106.

38. Efforts to disrupt the negotiation process through protest at the Third Summit of the Americas, scheduled to take place in Quebec City, Canada, in April 2001, began far in advance via the internet. See, e.g., *WTO Action, Stop the Summit of the Americas!*, <http://wtoaction.org/ftaa.phtml> (last visited Oct. 18, 2000) (“In the spirit of Seattle, and the anti-IMF/WB demonstrations in Washington . . . , we’ve started to organize to make sure the Summit is effectively short-circuited. We want to go beyond symbolic protest or reformism to making sure the Summit of the Americas is shut down.”).

39. Barshefsky, *supra* note 1, at 5-6.

of the FTAA within the framework established in the prior Trade Ministerials.⁴⁰ At the Fifth Trade Ministerial Meeting in Toronto, Canada, the Trade Ministers instructed the Negotiating Groups to “prepare a draft text of their respective chapters” of the FTAA for consideration at the April 2001 Ministerial meeting.⁴¹ By January 2001, the Negotiating Groups had completed a bracketed draft text “available for review by cleared advisors, including all Members of Congress.”⁴² Summaries of U.S. negotiating positions, discussed below, were made available through the USTR website,⁴³ but the draft text itself was not made available for public review or comment at that time.⁴⁴ At the Sixth Trade Ministerial in Buenos Aires, Argentina, however, the Trade Ministers “agreed to publicize the draft FTAA Agreement in the four official languages, after the third Summit of the Americas,” believing it would “alleviate considerably public concerns about the FTAA” and “establish new standards of transparency in trade negotiations.”⁴⁵ The Trade Ministers also decided that market access negotiations should begin by May 15, 2002, and set out a series of instructions for the Negotiating Groups.⁴⁶ Significantly, these instructions recognize the “general principle that any delegation has the right to present the text proposals it deems relevant,” but add that “[m]ost Ministers recognize that the issues on environment and labour should not be utilized as conditionalities nor subject to disciplines, the non compliance of which can be subject to trade

40. See Second Summit of the Americas: Santiago Declaration, http://www.ftaa-alca.org/ministerials/chile_e.asp (last visited Oct. 18, 2000).

41. Toronto Ministerial Declaration, ¶¶ 8-9, http://www.ftaa-alca.org/ministerials/minis_e.asp (last visited Oct. 18, 2000).

42. *FTAA Negotiating Groups Meet Ministerial Challenge; USTR Releases Public Summaries of U.S. Positions*, Jan. 17, 2001 (Press Release, Office of the USTR), <http://www.ustr.gov/releases/2001/01/01-06.pdf> (last visited Mar. 2, 2001).

43. See notes 111, 251; text accompanying notes 117, 249-251; see generally *Free Trade Area of the Americas (FTAA)*, <http://www.ustr.gov/regions/whemisphere/ftaa.shtml> (last visited Mar. 2, 2001).

44. Social and labor organizations pointed to this fact as evidencing a lack of true transparency in the FTAA process, and called for release of draft texts for public review. See *Statement of Dr. Brent Blackwelder, President, Friends of the Earth, Before the Senate Finance Committee, Subcommittee on International Trade*, Oct. 5, 2000, <http://www.senate.gov/~finance/blackwel.htm> (last visited Feb. 9, 2001); *Liberal Government Urged to Support Transparency in Current Negotiations for Free Trade Area of the Americas (FTAA)*, CANADA NEWSWIRE, Nov. 7, 2000, available at LEXIS, News Group File.

45. Buenos Aires Ministerial Declaration, ¶ 23, http://www.ftaa-alca.org/ministerials/Bamin_e.asp (last visited Sept. 12, 2001).

46. *Id.* ¶ 11. Specific instructions for the Market Access, Agriculture, Investment, Services, and Government Procurement groups aim at initiating negotiations by May 15, 2002. See *id.* at Annex I, ¶¶ (A)1, (B)1, (C)1, (F)1, (G)(2).

restrictions or sanctions.”⁴⁷ It is worth noting that in endeavoring to preempt such debate, the statement clearly anticipates it.

The Third Summit of the Americas took place the weekend of April 20-22, 2001 amidst the “most elaborate internal security operation in Canadian history,” including miles of chain link fence, a jail “cleared in case of mass arrests,” and the deployment of thousands of police officers.⁴⁸ The protests themselves are discussed below, but for present purposes it suffices to note that while they did manage to disrupt and distract to some degree, the Summit nevertheless proceeded to its conclusion.⁴⁹ The assembled heads of state issued a declaration, including an anticipated “democracy clause”:

We acknowledge that the values and practices of democracy are fundamental to the advancement of all our objectives. . . . Consequently, any unconstitutional alteration or interruption of the democratic order in a state of the Hemisphere constitutes an insurmountable obstacle to the participation of that state’s government in the Summit of the Americas process.⁵⁰

This effectively formalizes Cuba’s exclusion from the FTAA process, and while at least some Caribbean nations have opposed this, the United States’ answer has been that Cuba “‘excluded’ itself from the process by its lack of democratic governance.”⁵¹ The

47. *Id.* at Annex I, ¶ 1.

48. Ken Warn, *Quebec Braced to Repel New Invaders: The Forthcoming Summit of the Americas Prompts the Most Elaborate Security Operation in Canadian History*, FIN. TIMES, Apr. 10, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010410001329> (last visited Sept. 7, 2001).

49. See *infra* text accompanying notes 100-104.

50. Third Summit of the Americas: Declaration of Quebec City, http://www.sice.oas.org/ftaa/quebec/declara_e.asp (last visited Sept. 10, 2001).

51. *Caribbean and USA Differ at Meeting in Barbados on Cuba in FTAA Process*, BBC WORLDWIDE MONITORING, Mar. 10, 2001, available at LEXIS, News Group File (source: Cana, Mar. 9, 2001). The Quebec Summit prompted a May Day speech by Fidel Castro dedicated almost entirely to depicting the FTAA as a U.S. effort “not to isolate Cuba but to liquidate sovereignty, prevent integration, devour resources and frustrate the destiny of a group of nations that, not including the English-speaking countries, comprises more than 500m inhabitants who speak a Latin language and share the same culture and history.” *Cuba: Castro’s May Day Speech Rejects US Trade “Annexation”*, BBC MONITORING SERVICE, May 6, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010506001970> (last visited Sept. 10, 2001) (source: Cubavision TV, May 2, 2001, in Spanish) (excerpting Castro’s May Day speech). Should the FTAA come to pass, Castro foresees U.S. domination of agriculture, profitable service industries, intellectual property and technology, the dollar as the hemispheric currency, and the relegation of Latin America “to play the part of supplier of raw materials and workers,” all leading “inexorably to the annexation of Latin America by the United States.” *Id.*

declaration also confirms eventual public release of the draft text, and that negotiations are to be completed in time for the FTAA to enter into force “no later than December 2005.”⁵²

The long-awaited draft text was finally released on July 3, 2001, several months later than initially expected.⁵³ In general, the draft text confirms what was largely expected of the basic architecture of the FTAA, providing for some degree of national treatment and tariff reduction for agriculture and goods;⁵⁴ rules on safeguards, origin, customs procedures, and technical barriers to trade;⁵⁵ some degree of national treatment and most favored

At the same time, however, Cuban opposition parties have pushed for Cuban involvement in the FTAA, arguing that “[o]ur people will only progress towards sustainable development through a concerted effort, unity and intelligent negotiation, and not by demonizing proposals which, like the FTAA, are headed in the direction of freedom of trade in our region.” *Moderate Cuban Opposition Parties Express Support For FTAA*, BBC MONITORING SERVICE, Nov. 24, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=011124001760> (last visited Dec. 2, 2001) (source: Notimex, Nov. 23, 2001, in Spanish).

The democracy clause has also raised questions as to “whether Haiti met the grouping’s democratic criteria after two elections marred by irregularities.” Edward Alden & Guy de Jonquieres, *Summit Gives a Rich Study of Contrasts Not Unity: Heads of the 34 Countries May Struggle to Maintain the Public Veneer of Solidarity*, FIN. TIMES, Apr. 23, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010423000683> (last visited Sept. 10, 2001).

52. Declaration of Quebec City, *supra* note 50; Third Summit of the Americas: Plan of Action, sec. 6, paras. 1-2, http://www.sice.org/ftaa/quebec/plan2_e.asp (last visited Sept. 13, 2001). Venezuela was the only nation to reserve its position on any part of the text. President Hugo Chavez objected to the phrase “representative democracy,” a system that he blames for decades of plundering by elected officials in Venezuela, as well as to the time frame for negotiations. In Venezuela, FTAA ratification will be subject to referendum, leading Chavez to question whether his or any nation can guarantee ratification by a specific date. Jesus Maria Alonso, *Venezuela Has Reservations on Declaration’s “Democracy Clause”*, EFE NEWS SERVICE, Apr. 22, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010422002208> (last visited Sept. 14, 2001); *A Cautious Yes to Pan-American Trade*, ECONOMIST, Apr. 28, 2001, at 35.

53. While the delay has been explained as resulting from the process of translation and approval, critics have questioned whether “the timing was designed to distract attention from its contents.” The draft appeared a day before the Independence Day holiday, “in the middle of the summer when no one would be watching.” Nancy Dunne, *Critics Attack Timing of Americas Free Trade Draft*, FIN. TIMES, July 4, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010704001597> (last visited Sept. 10, 2001).

54. FTAA – Free Trade Area of the Americas: Draft Agreement: Chapter on Agriculture, sec. 2, arts. 3-4, July 3, 2001, <http://www.ftaa-alca.org> (last visited Sept. 17, 2001); FTAA – Free Trade Area of the Americas: Draft Agreement: Chapter on Market Access: Annex: [Chapter on] Tariffs and Non-Tariff Measures, arts. 2-4, July 3, 2001, <http://www.ftaa-alca.org> (last visited Sept. 17, 2001).

55. FTAA – Free Trade Area of the Americas: Draft Agreement: Chapter on Market Access: Annex: [Chapter on] Safeguard Measures, [Chapter on] Origin Regime, [Chapter on] Customs Procedures, [Chapter on] [Customs] Procedures

nation treatment for government procurement, investment, services, and intellectual property protection;⁵⁶ rules on the use of subsidies, antidumping, and countervailing duties laws;⁵⁷ a dispute settlement mechanism;⁵⁸ and the extension of competition law throughout the hemisphere.⁵⁹ The 434 page draft text remains almost entirely in brackets, with numerous variants included on many important provisions, leaving opponents and proponents alike unsure what to make of it.⁶⁰ Indeed, while non-governmental organizations have long demanded its release in the interest of transparency,⁶¹ and while Zoellick has described it as “an unprecedented effort to make international trade and its economic and social benefits more understandable to the public,”⁶² there is really quite little to glean from the document beyond a few crucial points. First, environmental and labor concerns remain almost entirely unaddressed.⁶³ This will likely fuel criticism by

Related to Rules of Origin, [Chapter on] Standards and Technical Barriers to Trade, July 3, 2001, <http://www.ftaa-alca.org> (last visited Sept. 17, 2001).

56. FTAA – Free Trade Area of the Americas: Draft Agreement: Chapter on Government Procurement, art. 3, July 3, 2001, <http://www.ftaa-alca.org> (last visited Sept. 17, 2001); FTAA – Free Trade Area of the Americas: Draft Agreement: Chapter on Investment, arts. 2-3, July 3, 2001, <http://www.ftaa-alca.org> (last visited Sept. 17, 2001); FTAA – Free Trade Area of the Americas: Draft Agreement: Chapter on Services, arts. 3, 6, July 3, 2001, <http://www.ftaa-alca.org> (last visited Sept. 17, 2001); FTAA – Free Trade Area of the Americas: Draft Agreement: Chapter on Intellectual Property Rights, pp. 8.4-8.5, July 3, 2001, <http://www.ftaa-alca.org> (last visited Sept. 17, 2001).

57. FTAA – Free Trade Area of the Americas: Draft Agreement: Chapter on Subsidies, Anti-Dumping and Countervailing Duties, July 3, 2001, <http://www.ftaa-alca.org> (last visited Sept. 17, 2001).

58. FTAA – Free Trade Area of the Americas: Draft Agreement: Chapter on Dispute Settlement, July 3, 2001, <http://www.ftaa-alca.org> (last visited Sept. 17, 2001).

59. FTAA – Free Trade Area of the Americas: Draft Agreement: Chapter on Competition Policy, July 3, 2001, <http://www.ftaa-alca.org> (last visited Sept. 17, 2001).

60. John Cavanagh, director of the Institute for Policy Studies and an opponent of the FTAA, notes the extensive bracketing and likens the draft text to “reading a detective novel.” Tim Shorrock, *Americas: Free-Trade Draft Exposes Rifts, Opportunities for Critics*, INTER PRESS SERVICE, July 6, 2001, <http://www.corpwatch.org/news/PND.jsp?articleid=65> (last visited Mar. 31, 2002). Jerry Haar, senior research associate at Dante B. Fascell North-South Center and a proponent of the FTAA, likens the draft text to “a letter from a Soviet citizen to a relative in the West that had to go through the censors at the time of the Cold War,” and concludes, “I see them light years away from reaching any kind of agreement, given all the bracketed text.” Jane Bussey, *Nations Divided on Free Trade Draft*, MIAMI HERALD, July 14, 2001, at 1C.

61. See *supra* note 44.

62. Dunne, *supra* note 53.

63. The Chapter on Investment does include brief articles on labor and the

non-governmental organizations⁶⁴ and entrench democratic opposition in Congress,⁶⁵ heightening the pitch of domestic debate in the United States. Second, the toughest negotiations on liberalization appear to lie ahead.⁶⁶ For example, the Chapter on Agriculture predictably aims at national treatment and tariff reduction, yet includes the following provision:

[4.2.3.1. The Parties do not acquire tariff commitments on products included in Annex . . .]⁶⁷

The scope of this single provision may effectively determine the

environment, but they direct only that nations “strive” to make sure they do not “waive or otherwise derogate from . . . such laws as encouragement for the establishment, acquisition, expansion or retention of an investment.” Chapter on Investment, *supra* note 56, Arts. 18-19. This has done little to assuage fears, or blunt criticisms, regarding the rest of the investment chapter. The investment chapter actually leaked to the public in April 2001, months before the rest of the draft text, giving rise to immediate concern over its resemblance to Chapter 11 of the North American Free Trade Agreement (“NAFTA”). See Gumisai Mutume, *Finance: FTAA Investment Chapter Confirms Worst Fears of Civil Society*, INTER PRESS SERVICE, Apr. 19, 2001, http://www.oneworld.org/ips2/apr01/00_56_003.html (last visited Sept. 17, 2001); *Leaked FTAA Investment Chapter Cause for Concern*, ENV’T NEWS SERVICE, Apr. 20, 2001, available at LEXIS, News Group File. Among other things, NAFTA’s Chapter 11 states that “[n]o Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party,” and permits an investor to pursue a claim against an allegedly breaching nation to enforce this provision. Canada-Mexico-United States: North American Free Trade Agreement, Dec. 17, 1992, arts. 1110, 1116, 32 ILM 289 (1993); see also <http://www.nafta-sec-alena.org/English/index.htm> (last visited Mar. 10, 2002) [hereinafter NAFTA]. One critic calls this “the most pernicious element of the entire free trade edifice,” given its use “to challenge laws and regulations designed to protect the environment, health and safety measures.” Mutume, *supra*. It appears that the FTAA investment chapter will essentially replicate these provisions. See Chapter on Investment, *supra* note 56, arts. 10(1) (in four variants), 15(3).

64. According to Public Citizen’s Lori Wallach, “[t]his one-time public relations stunt will not deceive the broad-based civil society opposition to negotiating a trade agreement, which is being drawn up at the behest of special interests who flatly refuse to address the concerns of environmentalists, labor organizations or consumers when they negotiate secret agreements.” Public Citizen Global Trade Watch, *FTAA “Draft” Text Made Public Today Is Missing Vital Information; Has Been Released Too Late*, July 3, 2001, <http://www.citizen.org/pressroom/release.cfm?ID=169> (last visited Mar. 31, 2002). Wallach also questions how a bracketed draft text for such an agreement could come to only 434 pages while the final version of NAFTA is over 700 pages, charging that the draft has been “sanitized by eliminating vital information.” *Id.*

65. Congressman Lloyd Doggett, for example, “attacked the draft,” charging the Bush administration with showing “only minimal interest in addressing either the impact of trade on environmental and labour standards or in assuring a reasonable level of transparency and public participation in trade decision-making.” Dunne, *supra* note 53.

66. Recall the Trade Minister’s decision that detailed market access negotiations should begin by May 15, 2002. See *supra* text accompanying note 46.

67. Chapter on Agriculture, *supra* note 54, art. 4.2.3.1.

scope of liberalization for the entire chapter on agriculture, and its negotiation will likely prove central to the FTAA, given the importance Brazil attaches to U.S. market access for its agricultural products.⁶⁸ Finally, it should also be observed that while no variants in the actual text are attributed to particular nations, one of only two attributions made in the entire document comes in the form of an annexed issue “for further discussion” raised by MERCOSUR, a customs union including Argentina, Brazil, Paraguay, and Uruguay,⁶⁹ as if to make utterly clear that Brazil will encounter the negotiations bolstered by a unified bloc rather than alone.⁷⁰

This overview of the basic negotiating structure and progress to date, though cursory, is sufficient to highlight those variables most crucial to the outcome of the FTAA process:

- The centrality of the United States and Brazil in the negotiations, and the recognition that completion of the negotiations will largely come down to reconciling their competing demands;
- The demands of various sectors of “civil society” to be heard and to have their views incorporated into the final negotiated text, and the particular challenge for the United States and Canada to forge a deal acceptable to domestic constituencies skeptical of globalization’s impact on labor and the environment; and
- The desire of many nations to negotiate together as blocs, and the particular challenge for Brazil to forge a coalition substantial and stable enough to stand up against the United States.

How the FTAA process will come out – whether it will succeed, and if so, what the final product will look like – will depend largely

68. See *infra* text accompanying notes 110-121.

69. See generally Argentina-Brazil-Paraguay-Uruguay: Treaty Establishing a Common Market, Mar. 26, 1991, 30 I.L.M. 1041 (1991) (the “Treaty of Asuncion”).

70. “Mercosur considers that the FTAA’s future chapter on services should contain specific disciplines related to eliminating and prohibiting subsidies that have distorting effects on the market or that cause shifts in normal trade flows.” Chapter on Services, *supra* note 56, at Annex 1, Disciplines on Subsidies. At the same time, however, it must also be observed that the other named attribution is to Chile. See *id.* at Annex 1, Quantitative Restrictions. While Chile is an associate member of MERCOSUR, Brazil failed in its effort to strengthen the negotiating bloc through full membership, due largely to the United States’ effort to cement its own bilateral relations with Chile. See *infra* text accompanying notes 192-203. Thus it is certainly conceivable that MERCOSUR’s attributed statement aims at conveying solidarity as a negotiating bloc, while Chile’s attributed statement aims at checking it by conveying independence from MERCOSUR.

on how these key states formulate their goals and manage these challenges.

II. GOALS AND CHALLENGES FOR THE UNITED STATES

Certainly, a primary motivation for the United States in pursuing hemispheric trade liberalization is the value of the Western Hemisphere as a market for U.S. exports.⁷¹ But the current appeal of regionalism for the United States also likely results, in substantial part, from impatience with what it perceives to be the relatively slow pace and narrow scope of multilateral trade liberalization under the General Agreement on Tariffs and Trade ("GATT")/WTO regime. Commentators have observed, beginning in the early 1990s, a sense of "negotiating fatigue" on the part of both the United States and Canada – an "increasing frustration . . . over the slow pace of progress in the Uruguay Round, particularly in the critical areas of agriculture, services, investment, and intellectual property" – as well as "the corollary tactical desire, particularly of the U.S., to signal to Japan and the EU that their reluctance to engage in the Uruguay Round negotiations seriously would lead to discriminatory regional alternatives to trade and investment liberalization."⁷² That this sense of "fatigue" with WTO-level negotiations motivates the U.S. approach to the FTAA is particularly apparent in Barshefsky's comment that this process could ultimately help the United States achieve its goal of broader liberalization globally.⁷³ Essentially the idea is to achieve the desired degree of liberalization at a more modest level (if hemispheric free trade may be termed "modest"), and then to use that as a foundation for a similar agreement at the global level.⁷⁴ This is, in fact, a common U.S. trade negotiating technique:

[T]he foreign economic policy of the United States is deter-

71. See text accompanying note 16.

72. Pierre Sauve, *Canada, Free Trade, and the Diminishing Returns of Hemispheric Regionalism*, 4 UCLA J. INT'L L. & FOREIGN AFF. 237, 240 (1999); see also David Palmeter, *Some Inherent Problems with Free Trade Agreements*, 27 LAW & POL'Y INT'L BUS. 991, 991 (1996) (arguing that one explanation "for the move toward preferential arrangements is the 'GATT-frustration' factor. . . . Since multilateralism was hostage to the lowest common denominator, the argument went, countries interested in freer trade should move ahead bilaterally, letting the laggards catch up if they could").

73. See text accompanying notes 18-19.

74. Manuela Tortora, *The Free Trade Area of the Americas: A Latin American Perspective on Future Prospects*, 5 NAFTA: L. AND BUS. REV. OF THE AMERICAS 261, 263 (1999).

mined first by objectives defined in terms of economic topics and, second, in terms of partners or economic fora. . . .

By defining *ab initio* its global objectives in terms of issues rather than fora, the United States derives a double advantage. On the one hand, it achieves coherence in its foreign policy (at least in the economic arena). On the other hand, it is able to proceed "in a spiral." In other words, Washington presents a specific position in a bilateral or multilateral forum. Once it achieves its goals at the forum, it proposes them as the "floor" for the next negotiations, and so on.⁷⁵

In this sense the United States is already looking further down the road – beyond the FTAA and the intrinsic value of the Western Hemisphere as an export market – to the FTAA's anticipated precedential value in future global trade negotiations.

While U.S. trade policy-makers have enthusiastically pursued the FTAA,⁷⁶ various domestic constituencies have begun to scrutinize their actions closely, and the effects of trade liberalization on labor and the environment have become increasingly contentious political issues in the United States over recent years. The question of whether labor and environmental issues are "sufficiently trade-related to warrant consideration" remains an open one. Some argue that "trade is trade and social issues are social issues, and the latter should never be allowed to interfere with the purity of the former." Others contend that "the line between trade related and not trade-related is determined by what influences the competitive position of products on international markets," a standard under which "both labor and environmental issues are sufficiently trade-related to warrant consideration."⁷⁷ The intensity of

75. *Id.* at 266-67.

76. The Clinton administration identified the FTAA as one of its "top trade expansion priorities for 2000." See Identification of Trade Expansion Priorities Pursuant to Executive Order 13116, Apr. 30, 2000, pt. I, <http://www.ustr.gov/pdf/report.pdf> (last visited Jan. 2, 2001). President Bush has made "Trade Promotion Authority," formerly known as "fast track," his top trade priority, with an eye toward facilitating the FTAA negotiation and other trade negotiations. See 2001 International Trade Agenda, at 2-4, <http://www.ustr.gov/agenda.pdf> (last visited Sept. 21, 2001); see also *infra* text accompanying notes 80-85.

77. Robert F. Housman, *The Treatment of Labor and Environmental Issues in Future Western Hemisphere Trade Liberalization Efforts*, 10 CONN. J. INT'L L. at 301, 315-16 (1995) (citations omitted); see also *Trade in the Americas: Progress, Challenges, and Prospects: Hearing Before the House Subcommittee on International Economic Policy and Trade*, 106th Cong., 20-21 (1999) (statement of Philip Stephen Lande) (observing that one side "views the issue of the linkage between trade and labor and environment one way – i.e., that trade perhaps is the best way to have economic growth and through economic growth you perhaps solve some of these

this debate resulted in President Clinton's loss of "fast-track" authorization, under which Congress had previously granted the President authority to undertake trade negotiations subject only to limited committee review⁷⁸ and a yes-or-no vote in Congress, without the possibility of amendment.⁷⁹ Following establishment of the North American Free Trade Agreement ("NAFTA"),⁸⁰ which addresses labor and environmental issues in side agreements,⁸¹ the Clinton administration's attempt to renew fast-track authority encountered a divided Congress; congressional Republicans and business constituencies opposed granting Clinton fast-track authority because it would have allowed him to negotiate "trade-related aspects of both labor and environmental issues," while congressional Democrats and labor, environmental, and human rights constituencies "were unwilling to see a retreat from even the labor provisions that the [first] Bush administration had placed in prior fast-tracks."⁸² Fast-track authority was lost and subsequent attempts by the Clinton administration to regain it failed.⁸³ Although U.S. policy-makers in favor of hemispheric trade liberalization have nevertheless achieved some successes without it,⁸⁴ it is widely recognized that the absence of fast-track authority compromises the United States' credibility (and therefore leverage) in international trade negotiations.⁸⁵ Simply put, many nations are reluctant to negotiate a deal with the President

problems, and the other side believes that there is a linkage where you really have to have economic sanctions and use trade as your major instrument as a way to convince countries to have acceptable labor and environmental rights").

78. 19 U.S.C. § 2191(e) (1994). "Fast track" negotiating authority was originally granted to the President through the Trade Act of 1974 as a solution to the problem of non-tariff barriers abroad. *See also* 19 U.S.C. § 2112(a) (1994); Guerra, *supra* note 3, at 172.

79. 19 U.S.C. § 2191(d) (1994).

80. The United States, Canada, and Mexico established NAFTA on December 17, 1992, with the objectives, among other things, of achieving free trade in goods and services, and "establish[ing] a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement." NAFTA, *supra* note 63, art. 102.

81. *See* Canada-Mexico-United States: North American Agreement on Labor Cooperation, Sept. 14, 1993, 32 I.L.M. 1499 (1993) [hereinafter NAFTA Labor Agreement]; *see also* <http://www.naalc.org/english/infocentre/NAALC.htm> (last visited Mar. 10, 2002); Canada-Mexico-United States: North American Agreement on Environmental Cooperation, Sept. 14, 1993, 32 I.L.M. 1480 (1993) [hereinafter NAFTA Environmental Agreement]; *see also* http://www.ccc.org/pubs_info_resources/law_treat_agree/naaec/index.cfm?varlan=english (last visited Mar. 10, 2002).

82. Housman, *supra* note 77, at 311-13; *see also* Guerra, *supra* note 3, at 173-74.

83. Guerra, *supra* note 3, at 174.

84. *See* Housman, *supra* note 77, at 314.

85. *See, e.g.,* Guerra, *supra* note 3.

only to have Congress amend it, putting a very expensive process back to square one.⁸⁶ It is thus not surprising that Zoellick stressed the importance of renewed fast-track authority in his Senate confirmation hearings,⁸⁷ or that President Bush has made it his top trade priority under the name “trade promotion authority.”⁸⁸ As of the Quebec Summit, the European Union (“EU”), which grants its trade commissioner such authority, had “signed 20 substantial pacts since 1990, and [had] 15 more on the way; over the same period the United States [had] ratified only two, with four more in the works.”⁸⁹ The impact of the loss of fast track on the FTAA process, and particularly the opportunities it has opened up for Brazil, are discussed further below.⁹⁰

This congressional impasse over fast track is indicative of the mixed feelings of the U.S. public regarding the relationship of trade to labor and environmental issues,⁹¹ but over recent years it has become increasingly apparent that a trade deal of the magnitude of the FTAA has little chance of achieving substantial legitimacy in the United States without addressing these issues in some way. Barshefsky has stated that “the public – in the United States and elsewhere – clearly expects trade policy to respond more effectively than it has in the past to the concerns of ordinary citizens,” and that this requires “appropriate attention to the views of business, labor, consumer groups, environmentalists, and others,”⁹² presumably referring to the FTAA’s structure for “civil

86. See, e.g., Guerra, *supra* note 3, at 177; Jarreau, *supra* note 1, at 75.

87. See Abid Aslam, *Trade: New U.S. Trade Representative Faces Obstacles*, INTER PRESS SERVICE, Feb. 6, 2001, available at LEXIS, News Group File. Toward this goal, Zoellick even suggested changing the term “fast track” to “the relatively innocuous ‘trade promotion authority’” to avoid the connotation of insufficient congressional oversight, much like the replacement of “most favored nation status” with “permanent normal trading relations” by those supporting stronger trade relations with China. *Id.*

88. See *supra* note 76.

89. *All In the Familia*, *supra* note 3, at 22.

90. See *infra* text accompanying notes 133-143.

91. One poll found that while the majority of Americans support increased international trade, “Americans are lukewarm about the actual net benefits of trade for most sectors of society, except for the business community.” Program on International Policy Attitudes (PIPA), *Americans on Globalization: A Study of US Public Attitudes*, Mar. 28, 2000, at pt. 2, <http://www.pipa.org/OnlineReports/Globalization/2.html> (last visited Oct. 4, 2000). A “strong majority” felt that “trade has not grown in a way that adequately incorporates concerns for American workers, international labor standards and the environment. Support for fast track is low, apparently because it signifies the increase of trade without incorporating these concerns.” *Id.*

92. Barshefsky, *supra* note 1, at 5-6.

society" input. While President Bush strongly supports the FTAA and has renewed efforts to regain fast track,⁹³ Barshefsky believes that major trade agreements like the FTAA cannot be expected to make it through Congress without the inclusion of protections for

93. See Anthony Boadle, *Bush Would Revive Free Trade in the Americas - Aide*, REUTERS, July 20, 2000, <http://europe.cnn.com/2000/ALLPOLITICS/stories/07/20/campaign.bush.latam.reut/> (last visited Sept. 15, 2000); Peter Morton, *Republican U.S. President Would Ease Trade, Leaders Say: Canadian Viewpoint: Split Congress Seen as Obstacle to New Initiatives*, NAT'L POST, Nov. 18, 2000, at D06.

The attacks of September 11, 2001, did not diminish the Bush administration's pursuit of fast track authority. On September 20, 2001, the Washington Post published a controversial Op-Ed piece by USTR Zoellick, arguing that in response to the attacks, "Congress now needs to send an unmistakable signal to the world that the United States is committed to global leadership," particularly by granting fast track authority. Robert B. Zoellick, *Countering Terror With Trade*, WASH. POST, Sept. 20, 2001, at A35. Senator Ernest Hollings, among others, subsequently criticized the article as "an unfortunate effort to take partisan advantage of a national tragedy." Ernest F. Hollings, *No Trade War*, WASH. POST, Sept. 29, 2001, at A26; see also Juliet Eilperin, *Bipartisan Approach Faces Tests: As Congress Tackles Tough Issues, Leadership is Questioned*, WASH. POST, Sept. 27, 2001, at A04 (reporting that Representative Robert Matsui "was particularly offended by a speech that . . . Zoellick delivered Monday [September 23, 2001] at the Institute for International Economics, in which he suggested trade was integral to the war against terrorism"). Such criticism led Zoellick to respond "I have never said, and do not feel now, that this is a litmus test of patriotism." *Id.*

As of this writing, the House of Representatives has passed a trade promotion authority bill by a single vote (215-214), with the support of 194 Republicans and 21 Democrats. Last minute maneuvering included an agreement by House Republican leaders that "any trade bill coming back to the House would have to ensure Caribbean and Andean garment imports would use fabric that was finished and dyed in the United States". Juliet Eilperin, *Trade Bill Passes House by One Vote: Bush Closer to Obtaining More Negotiating Power*, WASH. POST, Dec. 7, 2001, at A01. In addition, House Republican leaders stated that the Bush administration would have to "undertake special consultations with Congress before agreeing to consider tariff reductions on hundreds of agricultural products considered import sensitive" to garner the votes of Florida Republicans. Edward Alden, *Trade Zone for Americas "Threatened"*, FIN. TIMES, Dec. 13, 2001, available at LEXIS, News Group File. Democrats generally opposed the bill "on the grounds that it lacked sufficient environmental and labor protections," listing them as negotiating priorities but including "nothing to ensure foreign countries will observe a minimum standard," and opening the possibility of suits aimed at such standards in the United States. *Id.* The bill's fate in the Democratic-controlled Senate remains uncertain. As of this writing, a bill similar to the House bill has passed through the Senate Finance Committee (18-3). *Statement of U.S. Trade Representative Robert B. Zoellick before the Committee on Finance of the U.S. Senate*, *supra* note 17. In a sense, however, the question of whether fast track as currently conceived will pass through Congress is mooted by the fact that its exceptions encompass the very goods of greatest consequence to many hemispheric trading partners, including Brazil, rendering it ineffective as a show of good faith negotiation. See, e.g., Alden, *supra*; *Bush Calls on Democrats to Support Fast-Track Trade Authority*, EFE NEWS SERVICE, Jan. 15, 2002, <http://global.archive.ft.com/globalarchive/article.html?id=020115008509> (last visited Mar. 15, 2002).⁴ See also sources cited *supra* note 77.

labor and the environment.⁹⁴ Senator Max Baucus, the ranking Democrat on the Senate Finance Committee, has likewise stated that “they are plainly on the agenda,” and “[t]hose who simply ignore that reality-I think, are holding back the debate and they are stalling progress.”⁹⁵

Various forms of response to the FTAA process by “civil society” constituencies reflect significant misgivings about its impact on labor and the environment, highlighting the particular challenges facing U.S. and Canadian policy-makers from within their own borders.⁹⁶ A submission to the FTAA’s Committee of Govern-

94. See James Cox, *Trade Issues in “Good Shape” Barshefsky: Next President Faces Major Challenges*, USA TODAY, Nov. 3, 2000, at 3B. The New Democrat Coalition, a group of “nearly 90 centrist lawmakers in the House of Representatives and the Senate,” has said that while they ultimately support completion of the FTAA, it likely would not make it through Congress if labor and environmental issues were not addressed. *New Democrats Say Bush Needs To Consider Labor, Environment in Trade Deals*, BULLETIN’S FRONTRUNNER, Jan. 4, 2001, available at LEXIS, News Group File.

95. Globalization and American Trade Policy: Hearing Before the Committee on Finance: United States Senate, 107th Cong., 5 (2001) (statement of Senator Max Baucus).

96. While the role of these groups in domestic politics is particularly significant in the United States and Canada, it is important to recognize the global nature of the movements they represent. See, e.g., *World Poor In Sale of the 21st Century: Democratic Rights Are a High Price to Pay for Western Free Trade*, GUARDIAN, Apr. 6, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010406000661> (last visited Sept. 7, 2001) (observing that some countries are “presented as diverse, complicated political landscapes where citizens have a range of divergent views,” while others “seem to speak on the world stage in an ideological monotone,” and that “such diversity of public opinion is rarely attributed to citizens of third world countries”). In Argentina, for example, the “Mobilization Committee Against the FTAA Free Trade Agreement,” which includes a number of trade unions and non-governmental organizations, planned its own demonstrations to oppose the FTAA. *Argentine Unions Join Mass Mobilization Calling for Referendum on FTAA*, BBC WORLDWIDE MONITORING, Feb. 28, 2001, available at LEXIS, News Group File (source: Telam, Feb. 27, 2001, in Spanish); see also *Argentina: Anti-Globalization Protests to Disrupt Regional Economic Talks*, BBC WORLDWIDE MONITORING, Apr. 2, 2001, available at LEXIS, News Group File (source: Telam, Apr. 1, 2001, in Spanish); *Argentina: Protesters Clash With Police at Demonstration Against FTAA*, BBC WORLDWIDE MONITORING, Apr. 7, 2001, available at LEXIS, News Group File (source: Telam, Apr. 7, 2001, in Spanish); *Ecuador: Environmental, Rights Activists Occupy Canadian Embassy in Quito*, BBC WORLDWIDE MONITORING, Apr. 22, 2001, available at LEXIS, News Group File (source: Notimex, Apr. 20, 2001, in Spanish) (reporting the occupation of Canada’s embassy in Ecuador to protest the FTAA).

The “World Social Forum,” held in Porto Alegre, Brazil, as a counter-gathering to the “World Economic Forum” held in Davos, Switzerland, saw the convergence of thousands of delegates from unions and non-governmental organizations around the world dedicated to fighting globalization. See *World Social Forum: Porto Alegre, Brazil*, <http://www.forumsocialmundial.org.br/eng/2001.asp> (last visited Feb. 6, 2001); Mario Osava, *World Social Forum: Consensus Takes Shape as Forum Ends*, INTER PRESS SERVICE, Jan. 30, 2001, available at LEXIS, News Group File. The event’s

mental Representatives on Civil Society Participation (“Committee on Civil Society”) by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”) expressed the opinion that such a committee is a “thoroughly inadequate mechanism for incorporating the views of working people into the FTAA process.”⁹⁷ The UAW further notes that corporations have had “special access” to the Trade Ministers through business fora, and that there are no negotiating groups for labor and the environment.⁹⁸ The submission expresses dissatisfaction with the protections afforded by the NAFTA “side agreements,” and registers support for treatment of these issues in the text of the FTAA itself.⁹⁹

Discontent with the impact of globalization generally, and the prospect of the FTAA in particular, has also been expressed in numerous organizing efforts, through the Internet and otherwise, aimed at protesting and even stalling the FTAA negotiations. Canadian social and labor organizations, in response to the Summit of the Americas held in Quebec City in April 2001, “actively prepar[ed] a counter-summit to the official gathering to put our concerns firmly on the trade agenda.”¹⁰⁰ Indeed, such organiza-

prominence was underscored by a televised debate with participants at the Davos meeting, including George Soros, who found himself “accused by one speaker of being responsible for the deaths of children in poor countries – although he is one of the few Davos participants to agree with some of their more concrete policy ideas.” Geoff Dyer, *No Common Ground Over Globalisation: Transatlantic Televised Debate*, FIN. TIMES, Jan. 29, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010129000836> (last visited Feb. 19, 2002). Organizers of the event “promote alternatives to the ‘neoliberal’ orthodoxy of free trade, free markets and privatisation: a familiar wish-list, such as cancelling third-world debt, a worldwide tax on financial transactions, workers’ rights and more care for the environment in trade accords.” *Globalisation Trashed in Brazil*, ECONOMIST, Feb. 3, 2001, available at LEXIS, News Group File. Paradoxically, some suggest that the Brazilian government “can use it as evidence of the growing opposition in Brazil, and as leverage to eke more concessions out of the US to help it sell globalisation to the Brazilian public.” *Lafer Will Oppose Fast Track to FTAA; Brazil Seeks Trade Concessions From Bush*, LATIN AM. WKLY. REP., Jan. 30, 2001, at 51. See also *infra* note 119 (noting the party division within Brazil regarding the FTAA, as enunciated at the 2002 World Social Forum).

97. UAW Statement, *supra* note 36.

98. *Id.*

99. *Id.* The U.S.-Jordan Trade Agreement does in fact include labor and environmental provisions in the text of the agreement itself. In substance they differ little from the NAFTA side agreements, but their inclusion in the text itself does signal more widespread focus among U.S. policy-makers on the interconnection of trade with labor and environmental issues. See *infra* text accompanying notes 228-237.

100. *Liberal Government Urged to Support Transparency in Current Negotiations for Free Trade Area of the Americas (FTAA)*, *supra* note 44.

tions used the Internet as a tool through which to organize an “anti-capitalist convergence” aimed at halting the negotiations:

In the spirit of Seattle, and the anti-IMF/WB demonstrations in Washington . . . , we’ve started to organize to make sure the Summit is effectively short-circuited. We want to go beyond symbolic protest or reformism to making sure the Summit of the Americas is shut down.¹⁰¹

The fast, cost-effective, and global nature of the Internet has made it a valuable tool for organizing efforts of this sort,¹⁰² and it can be expected in the long term to impact the FTAA process as “civil society” seeks to force concerns like labor and the environment onto the agenda. The Quebec Summit itself was in no sense “shut down,” leading some to speculate as to whether a “law of diminishing media returns” from protest to protest may be at work.¹⁰³ The protests did garner significant attention, however, with almost 30,000 people attending marches,¹⁰⁴ maintaining the public’s focus on their issues and the perceived shortcomings of the FTAA process.¹⁰⁵

Ultimately, the perspectives expressed through official submissions to the Committee on Civil Society, or through less formal organizing efforts and protests, spring from a widespread skepticism about the effects of globalization generally, and the expansion of free trade in particular. Thus, U.S. policy-makers

101. WTO Action, *Stop the Summit of the Americas!*, <http://wtoaction.org/ftaa.phtml> (last visited Oct. 18, 2000); see also *The Anti-Capitalist Convergence*, <http://www.quebec2001.net/enintro.html> (last visited Mar. 2, 2001).

102. See generally, e.g., Jeffrey M. Ayres, *From the Streets to the Internet: The Cyber-Diffusion of Contention*, 566 ANNALS AM. ACAD. POL. & SOC. SCI. 132 (1999) (discussing the impact of internet-based protest efforts on the negotiation of the Multilateral Agreement on Investment).

103. See, e.g., Charlotte Denny, *Free Trade Free-For-All: As Quebec Hosts the Third Summit of the Americas, This Weekend, Divisions Within the Conference May Overshadow the Protests Outside It*, GUARDIAN, Apr. 20, 2001, available at LEXIS, News Group File.

104. See Jane Martinson, *Street Fighting Flares as Police Crack Down: Anti-Globalisation Protests in Quebec as 34 American Leaders Gather*, OBSERVER, Apr. 22, 2001, available at LEXIS, News Group File.

105. Cf. *New Battle of Quebec: But the Protesters Are Missing the Point*, GUARDIAN, Apr. 21, 2001, available at LEXIS, News Group File (“The protests in Quebec are not going to halt trade, let alone bring about the demise of global capitalism. What they will do is help create space for those with constructive ideas on debt relief, the environment, trade and global economic governance, to influence the world for the better.”); *A Cautious Yes to Pan-American Trade*, supra note 52 (observing that while the FTAA effort “took a few more steps forward in Quebec,” the Summit and accompanying protests nevertheless “provided evidence of the difficulties in the path of the FTAA”).

enthusiastic about the hemispheric expansion of free trade will face opposition not only at the international negotiating table, but also at the domestic level from constituencies questioning the distributional effects of increased free trade.¹⁰⁶

III. BRAZIL, MERCOSUR, AND SOUTH AMERICAN UNITY

As observed above, the U.S. market is vastly disproportionate in size and scope to other individual markets in the Western Hemisphere, and indeed to the rest of the hemisphere combined.¹⁰⁷ Ultimately Brazil's leaders recognize the value of access to the U.S. market for their exports, but fear a free trade deal in which

106. The UAW's submission to the Committee on Civil Society, for example, emphasizes the distributional nature of the debate, arguing that the FTAA "will lead to rapid shifts in production from one FTAA country to another, with serious dislocation for workers," and that "NAFTA has demonstrated that U.S. workers can lose their jobs as a result of increased imports from Mexico or other developing countries due to decisions by multinational corporations to move their production or to arrange for contractors to supply them from other countries." *UAW Statement*, *supra* note 36. To the extent that a primary aim of the FTAA is the promotion of prosperity and a higher living standard for workers hemispherically, "[t]he UAW supports providing debt relief to countries in the region in order to make funds available for stimulating domestic economic growth and for public investment in infrastructure and progress in education, health and social welfare." *Id.* However, others question this position. "The mainstream academic view actually is that increased trade with developing countries may account for at most 20 per cent of the reduction in the earnings of low-skilled American workers (relative to highly skilled workers) but not much more." Dani Rodrik, *Sense and Nonsense in the Globalization Debate*, *FOREIGN POL'Y*, June 22, 1997, at 19, 20.

Assessment of the distributional effects of free trade relates to the complex theoretical debate over the effects of "regulatory competition." The fear is that increasing ease of movement across national boundaries will allow corporations to locate in the jurisdiction with the lowest levels of labor and environmental regulation, creating a "race to the bottom" in which nations in need of foreign investment compete by reducing levels of regulation, thereby reducing the costs of compliance with their rules. See Joel P. Trachtman, *International Regulatory Competition, Externalization, and Jurisdiction*, 34 *HARV. INT'L L. J.* 47, 52 (1993). Law-and-economics scholars, on the other hand, argue that regulatory competition is beneficial because corporate managers will incorporate in the jurisdiction with the most efficient rules from the shareholder's perspective. See David Charny, *Competition Among Jurisdictions in Formulating Corporate Law Rules: An American Perspective on the "Race to the Bottom" in the European Communities*, 32 *HARV. INT'L L. J.* 423, 431 (1991) (comparing various perspectives on regulatory competition). For good examinations of this debate in varying contexts, see generally Trachtman, *supra*; Lucian Arye Bebchuk, *Federalism and the Corporation: The Desirable Limits on State Competition in Corporate Law*, 105 *HARV. L. REV.* 1435 (1992) (seeking to determine "the desirable role of state competition in shaping corporate law" within the United States); Charny, *supra* (examining the potential for a "race to the bottom" in the European Communities and "outlin[ing] some basic principles for constructing a theory about how to allocate corporate rulemaking responsibility among jurisdictional levels").

107. See *supra* text accompanying notes 11-14.

market access secured is insufficient to counteract resulting imports from the United States.¹⁰⁸ Brazil's most competitive industries, including textiles, agriculture, steel, and ceramics, would likely benefit from increased trade with the United States.¹⁰⁹ Brazilian President Fernando Enrique Cardoso has expressed frustration, however, with what Brazil considers non-tariff barriers in the form of NAFTA quality and hygiene requirements that function to keep Brazilian goods out of the U.S. market, and which are thought to have contributed to surpluses for the United States in its trade with Brazil.¹¹⁰ Equally frustrating have been the United States' continued protection of precisely those sectors most important to Brazil, including textiles, steel, and agriculture,¹¹¹ and its refusal to negotiate regarding its

108. See Lenilson, *U.S. Congress Hampers Pan-American Trade Bloc, Cardoso Says*, JAPAN ECON. NEWSWIRE, Dec. 14, 2000, available at LEXIS, News Group File.

109. See *All In the Familia*, *supra* note 3, at 20. Brazil would likely lose, however, in less competitive industries such as chemicals, paper, and electronics. *Id.* Hence an FTAA in which Brazil liberalized trade in its sensitive areas yet gained no greater access to the U.S. market in its competitive areas would be disastrous from Brazil's point of view. See, e.g., *id.* at 19 (suggesting that for Brazil, "a watered-down or hobbled FTAA might be worse than no agreement at all"); *Some Realism For Mercosur: Better a Genuine Free-Trade Area Than a Phoney Customs Union*, ECONOMIST, Mar. 31, 2001, at 17, 18 (arguing that "Brazil is right than any FTAA which did not involve dismantling such protectionist devices as the United States' farm subsidies and anti-dumping duties might not be worth having").

110. Lenilson, *supra* note 108. A NAFTA embargo on Brazilian beef imports, prompted by fear of mad cow disease, "trigger[ed] fierce protests" in Brazil, and even led to speculation for a time that Brazil might boycott the Summit of the Americas in Quebec City. Lenilson, *Mad Cow Disease May Derail Pan-American Trade Bloc*, JAPAN ECON. NEWSWIRE, Feb. 16, 2001, available at LEXIS, News Group File.

111. See Edward Alden et al., *U.S. Push for Free Trade Deal Faces Hurdles: Americas Pact: US Keen for Accord but Reluctant to Ease Trade Barriers*, FIN. TIMES, Feb. 16, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010216001249> (last visited Feb. 19, 2002); Evelyn Iritani, *Payback Time as Countries Protest U.S. Trade Policies*, L.A. TIMES, Jan. 25, 2001, at A1. In its position statement on agriculture, the USTR stresses the importance of "cooperation among FTAA countries in the WTO negotiations on agriculture to seek the maximum possible improvement in market access opportunities for agricultural products and the multilateral elimination of export subsidies for agricultural products." *FTAA Negotiating Group on Agriculture: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/whemisphere/agri.pdf> (last visited Mar. 2, 2001). This may reflect recognition that "Washington and Brasilia have a common interest in the agricultural sector, namely to reduce trade barriers into the European Union." *Lafer Will Oppose Fast Track to FTAA*, *supra* note 96, at 51. Brazil has not been satisfied to date with the United States' treatment of these issues, however, and has issued stern warnings that failure to address agricultural issues up front could result in Brazil's abandonment of the FTAA entirely, and that increased protection of domestic steel would result in WTO proceedings. See *Brazil Asks U.S. Reps To Reduce Agricultural Subsidies*, EFE NEWS SERVICE, Jan. 16, 2002, available at LEXIS, News Group File; *Brazil to Abandon FTAA Talks Unless Agricultural Subsidies Tackled - Minister*, BBC MONITORING

antidumping laws. Brazil has argued that the United States' "average tariff or tariff equivalent" on Brazil's most important exports (45.6%) far exceeds that placed by Brazil on the United States' most important exports (14.3%). This results in large part, according to Brazil, from a high tariff rate on frozen concentrate orange juice (44.7% tariff), and high tariff equivalents on sugar and tobacco (236% and 350% "extra-quota tariff," respectively).¹¹² Brazil also argues that antidumping law, which permits the imposition of a duty "when an exporter sells merchandise in the importing country at a price below that at which it sells like merchandise in its home country,"¹¹³ are used by the United States "to protect sectors such as steel and agriculture from cheap imports" – viewed by many countries as "rank protectionism."¹¹⁴ Brazil's Ambassador to the United States has stated that such barriers to Brazilian exports are "inconsistent with the proclaimed 'free trade' rhetoric of the United States,"¹¹⁵ an argument bolstered by President Bush's decision to impose significant tariffs on imported steel.¹¹⁶ The USTR, on the other hand, has reaffirmed the view

INTERNATIONAL REPORTS, Jan. 18, 2002, available at LEXIS, News Group File (source: Agencia Estado, Jan. 16, 2002, in Portuguese); *Brazil Says That US Steel Protectionism Will Hurt Free Trade Talks*, O ESTADO DE SAO PAULO, Jan. 16, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020116011961> (last visited Jan. 26, 2002).

112. See *U.S. Tariff Treatment of Main Brazilian Export Products*, <http://www.brasilemb.org/trade/Regis%20Text%20Ingles.htm> (last visited Sept. 15, 2001). Brazil also dislikes the United States' use of agricultural subsidies, demanding that they be dismantled "as a prior step to the establishment" of the FTAA. *Brazil to Raise U.S. Agricultural Subsidies Before WTO*, XINHUA GEN. NEWS SERVICE, Aug. 3, 2001, available at LEXIS, News Group File.

113. Raj Bhala, *Rethinking Antidumping Law*, 8 GEO. WASH. J. INT'L L. & ECON. 1 (1996), reprinted in RAJ BHALA, INTERNATIONAL TRADE LAW: CASES AND MATERIALS 601, 603 (1996); see also 19 U.S.C. § 1673 (1994) (U.S. antidumping statute); General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, art. VI, WTO Agreement, *supra* note 18, Annex 1A [hereinafter GATT 1994]; 33 I.L.M. 1154 (1994) (permitting antidumping and countervailing duties laws within the GATT/WTO regime).

114. Alden, *supra* note 111; see also *Chile-US /Trade Chile Charges U.S. Uses Anti-Dumping Laws as Threat*, EFE NEWS SERVICE, Apr. 3, 2001, available at LEXIS, News Group File.

115. Rubens A. Barbosa, Brazilian Ambassador to the United States, *U.S. Barriers On Brazilian Goods and Services*, Oct. 2001, http://www.brasilemb.org/trade/trade_barriers.htm (last visited Feb. 9, 2002); see also Charlotte Denny, *Qatar Could See a First Class Beef*, GUARDIAN (London), Apr. 16, 2001, available at LEXIS, News Group File ("The basic gripe of the developing world is that when it comes to trade, the west says one thing and does another. While protecting its own vulnerable sectors from competition, it demands that southern countries liberalise. . . . The Brazilian government, for one, is sceptical about the US's commitment to the free trade agenda when Washington regularly uses anti-dumping measures to block imports from its neighbours and spends Dollars 20,000 a year per farmer on subsidies.").

116. See, e.g., Raymond Colitt et al., *Steel Trade Dispute: World United to Condemn*

that “the FTAA Agreement should make no changes to the WTO rules on antidumping and countervailing measures and should ensure the right of each country to maintain and apply trade remedies within the FTAA.”¹¹⁷ Indeed many in Congress urge a stronger U.S. position. A letter to President Bush signed by sixty-one U.S. senators stated their “strong opposition to any international trade agreement that would weaken U.S. trade laws,” and in a concurrent statement Senator Max Baucus warned that “[a]s the Administration begins its effort to win fast track negotiating authority, I hope they recognize the handwriting on the wall: new trade agreements or grants of fast track that endanger key U.S. trade laws, such as antidumping law, countervailing duty law, Section 201, and Section 301, will not win congressional support.”¹¹⁸ Nevertheless, “Cardoso has acknowledged that Brazil is seeking ways to boost its exports,” and that “this is a prerequisite for future accords with the U.S.”¹¹⁹ Brazil, like other Latin American nations, generally opposes inclusion of labor and environmental provisions in the FTAA.¹²⁰ Latin America generally views such

US Decision to Impose 30% Tariffs, FIN. TIMES, Mar. 7, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020307001902> (last visited Mar. 12, 2002); Steven Pearlstein & Clay Chandler, *Reaction Abroad on Steel is Harsh: Bush Decision to Impose Tariffs Called Setback to Free Trade Effort*, WASH. POST, Mar. 7, 2002, at E01. Zoellick emphasized that the safeguard could be adjusted if necessary restructuring did not occur. *Press Briefing by U.S. Trade Representative Robert Zoellick*, Mar. 5, 2002, <http://www.whitehouse.gov/news/releases/2002/03/20020305-13.html> (last visited Mar. 12, 2002).

117. *FTAA Negotiating Group on Subsidies [sic], Antidumping and Countervailing Duties: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/w Hemisphere/subsid.pdf> (last visited Mar. 2, 2001).

118. *Senator Baucus on Protecting U.S. Laws in Trade Talks: 61 Senators Sign Letter to President Bush*, May 7, 2001, available at <http://usinfo.state.gov/topical/econ/groper8/summit01/01050701.htm> (last visited Sept. 19, 2001).

119. Lenilson, *supra* note 108. Jose Dirceu, Chairman of Brazil's Workers' Party, made clear at the 2002 World Social Forum, however, that if his party wins the next presidential election it will reject the FTAA entirely. *Brazil: Free Trade Area of the Americas Criticized at World Social Forum*, BBC MONITORING SERVICE, Feb. 2, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020202003831> (last visited Feb. 24, 2002) (text of report by Elizabeth Lopez carried by Agencia Estado, Feb. 1, 2002, in Portuguese). Cardoso insists on protecting Brazil's interests, but urges a more moderate position on the FTAA. *Brazil: President Cardoso: "The FTAA Is a Market, Not Sovereignty"*, BBC MONITORING SERVICE, Feb. 7, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020207002032> (last visited Feb. 24, 2002) (source: Agencia Estado, Feb. 6, 2002, in Portuguese).

120. See *Planned Chile-USA Trade Deal Seen as "A Stab in the Back of Mercosur"*, BBC SUMMARY OF WORLD BROADCASTS, Dec. 4, 2000, available at LEXIS, News Group File (text of report by Denise Chrispim Marin published by Valor web site, Dec. 1, 2000, in Portuguese) (suggesting that Brazil's negative reaction to the announcement of bilateral negotiations between the United States and Chile stems in part from its

measures as yet another "disguise to protect domestic industries."¹²¹

At the same time, Brazil is fundamentally uncomfortable with U.S. hegemony in the Western Hemisphere. It has been argued that, "because of the excessive focus on the relationship between the dominant bipolar system and regions as subordinated systems" during the Cold War, the "role of middle powers" like Brazil has been "under-theorised."¹²² The fact that Brazil has sought greater autonomy than nations like Mexico in its relations with the U.S., "even challenging U.S. leadership in the FTAA process,"¹²³ is consistent with the perception that Brazil views its role in hemispheric politics as quite different from that of other Latin American nations. In this respect, it is worth noting that the United States' relative dominance in trade with Latin America declines as the focus moves from north to south:

While it is true that we do dominate trade in the northern part of the hemisphere, having 74 percent of the Mexican market, 48 percent of the Central American market, and 40 percent of the Caribbean market, . . . the figure declines to 35 percent of the market of the Andean communities and only 21 percent of the MERCOSUR market. In fact, in many years, Japan [sic] and European Union exports to this region exceed those from the United States.¹²⁴

MERCOSUR, comprised of Argentina, Brazil, Paraguay, and Uruguay,¹²⁵ is a customs union with the aspiration of becoming a common market,¹²⁶ and is itself the third largest trading bloc in the world after the EU and NAFTA.¹²⁷ This, in a sense, raises the stakes of the FTAA for MERCOSUR nations, as they arguably have more to lose in the way of autonomy achieved, and effort expended, in subregional¹²⁸ integration than do other negotiating

fear that labor and environmental provisions included in the U.S.-Chile agreement could be included in the FTAA).

121. Daniel Bradlow et al., *The Expanding International Trade Regime: New Challenges and Opportunities for Legal Practitioners*, 13 AM. U. INT'L L. REV. 915, 945 (1998); see also Guerra, *supra* note 3, at 182.

122. CARRANZA, *supra* note 7, at 7.

123. *Id.* at 122.

124. *Trade in the Americas*, *supra* note 77, at 20 (statement of Philip Stephen Lande).

125. See *supra* note 69.

126. CARRANZA, *supra* note 7, at 77. Whether MERCOSUR can accurately be termed a "customs union" is debatable, given its difficulties in maintaining its common external tariff. See *infra* text accompanying notes 268-271.

127. CARRANZA, *supra* note 7, at 76.

128. Use of the word "regional" in connection with the FTAA effort, and

nations.¹²⁹ Additionally, Brazil itself feels that it has global competitive potential and finds the United States an “overbearing” presence in the hemisphere.¹³⁰ Brazil genuinely “views itself and in many ways is the premier country of South America and a competitor of the United States,”¹³¹ and as such believes in its own potential to achieve some measure of hegemony in South America.¹³² Despite the attraction of U.S. market access, then, the MERCOSUR nations, and more specifically Brazil, clearly recognize the costs of abandoning their subregional autonomy.

In light of these dynamics, Brazil has sought to increase its negotiating leverage in two ways – by forging a single South American negotiating bloc capable of standing up to the United States, and by courting other trading partners to reduce dependence on the United States.¹³³ As discussed above, U.S. policy-

“subregional” in connection with South American integration efforts, should not be interpreted as categorically meaningful. As Carranza has pointed out, “[t]he concept of ‘region’ is highly ambiguous.” See *id.* at 7. The use of “regional” and “subregional” in this article reflects only that the Western Hemisphere, taken as a whole, is the “region” of primary interest.

129. *Id.* at 76 (observing that “[t]he FTAA process creates a particularly excruciating dilemma for Mercosur, because it is already a customs union and has gone a long way toward the formation of an autonomous regional trade bloc”).

130. CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (CSIS), THINKING STRATEGICALLY ABOUT 2005: THE UNITED STATES AND SOUTH AMERICA 32-33 (1999).

131. *Trade in the Americas*, *supra* note 77, at 20 (statement of Philip Stephen Lande); Brazil: Daily Sees US Haste to Implement Free Trade Pact as Bargaining Block, BBC WORLDWIDE MONITORING, Apr. 2, 2001, available at LEXIS, News Group File (text of report by Vicente Nunes published by Correio Brasiliense web site, Mar. 31, 2001, in Portuguese); see also CARRANZA, *supra* note 7, at 78 (noting that Brazil accounts for eighty percent of MERCOSUR’s population and sixty-five percent of its domestic product).

132. CARRANZA, *supra* note 7, at 79. One avenue through which Brazil may seek to exert greater influence at the global level is the United Nations. It has been reported that Brazil may seek a permanent seat on the U.N. Security Council, and that President Cardoso may pursue the position of Secretary General. See *Daily Concludes That Brazil’s Cardoso Seeks To Become UN Secretary General*, WORLD NEWS CONNECTION, Nov. 8, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=011108012724> (last visited Dec. 2, 2001) (text of report by Arthur published by Jornal do Brasil web site, in Portuguese).

133. Ambassador Rubens Barbosa presented Brazil’s priorities as: maintaining its “diversified structure”; strengthening MERCOSUR; negotiating with other South American countries; and pursuing the EU and FTAA negotiations. See Rubens A. Barbosa, *FTAA and the Future of Regional Integration: the Brazilian View*, at “The Brazilian Position”, http://www.brasilemb.org/trade/FTAA_future.htm (last visited Feb. 6, 2001). The Brazilian magazine *Valor* has reported Brazil’s trade negotiation priorities as: negotiating a South American bloc with MERCOSUR as its “main axis”; pursuing further negotiations with other Latin American countries; negotiating with the FTAA and the EU “at the same time”; and establishing friendly relations around the world toward the end of “an agreement of stances in a possible multilateral round.” *Negotiating Priorities and Plans Reported*, BBC SUMMARY OF WORLD

makers have described the FTAA as reflecting a new “consensus” in favor of open markets and rejecting protectionist import-substitution policies.¹³⁴ Subregional forms of integration such as MERCOSUR and the Andean Community¹³⁵ are described as having “both justified and strengthened the hemispheric consensus,”¹³⁶ setting the stage for the FTAA to “improve, strengthen, and transcend all of this.”¹³⁷ The manner in which Brazil has pursued South American integration over recent years, however, does not reflect easy cooperation or “consensus” so much as the pursuit of its own distinct vision of hemispheric integration. It is widely thought that the loss of fast track negotiating authority opened up an opportunity for Brazil to exert greater influence on the FTAA process. A South American Free Trade Area, or “SAFTA,” was proposed by Brazil in September 1993, but it first garnered significant attention with the loss of fast track and the resulting inability of the United States to extend NAFTA.¹³⁸ “MERCOSUR’s willingness to expand its membership and network of trade accords at a time when the United States is immobilized by the lack of fast track authority makes MERCOSUR a more feasible option for many countries.”¹³⁹

BROADCASTS, Oct. 21, 2000, available at LEXIS, News Group File (text of report by Denise Chrispim Marin published by Valor web site in Portuguese, Oct. 10, 2000).

This section argues that Brazil’s priorities actually reduce to strengthening its hand in the FTAA through bloc negotiations, while at the same time reducing dependence on the United States through the establishment of alternative trade relationships. It is worth noting at this point, however, that establishing useful precedents for future rounds of multilateral trade negotiations is clearly an important long-term objective of both Brazil and the United States.

134. See *supra* text accompanying note 7.

135. The Andean Community, which includes Bolivia, Colombia, Ecuador, Peru, and Venezuela, was created in 1969 with the signing of the “Cartagena Agreement,” sometimes referred to as the “Andean Pact”; See *Who Are We?*, <http://www.comunidadandina.org/ingles/who/who.htm> (last visited Mar. 29, 2002) (website of the Andean Community); see also Andean Pact: Official Codified Text of the Cartagena Agreement Incorporating the Quito Protocol, July 15, 1988, 28 I.L.M. 1165 (1989) (originally signed May 26, 1969). The Andean Community has set the ambitious goal of establishing a common market by 2005. *Common Market*, at <http://www.comunidadandina.org/ingles/market/market.htm> (last visited Mar. 3, 2002). Important near-term goals, however, include consolidating the free trade zone and applying a common external tariff. *Andean Community Presidents Sign Santa Cruz de la Sierra Declaration in Bolivia*, BBC MONITORING SERVICE, Feb. 1, 2002, at paras. 1, 11, <http://globalarchive.ft.com/globalarchive/article.html?id=020201007755> (last visited Feb. 24, 2002) (source: Bolivian Information Ministry web site, Jan. 30, 2002, in Spanish) (providing the text of the Santa Cruz de la Sierra Declaration).

136. Barshefsky, *supra* note 1, at 4-5.

137. *Id.* at 5.

138. See CARRANZA, *supra* note 7, at 84.

139. Richard L. Bernal, *Regional Trade Arrangements and the Establishment of a*

Brazil took advantage of "the vacuum in US leadership" between the first two Summits of the Americas, making a concerted effort to strengthen South American diplomatic relations toward the goal of SAFTA,¹⁴⁰ and in so doing, won several important victories in negotiating the structure of the FTAA. Brazil has favored slower negotiations to avoid lowering protective tariffs as long as possible,¹⁴¹ and Brazil's ability to stand with a united South American bloc at the Belo Horizonte Ministerial effectively resulted in deferral of decisions on the FTAA negotiating structure, thereby delaying negotiation of substantive measures.¹⁴² Brazil ultimately achieved several other substantial victories in the form of the "single undertaking" principle, the creation of a negotiating group for agriculture, the deferral of environmental and labor issues, and the endorsement of bloc negotiation.¹⁴³

With the summit meeting of twelve South American presidents on September 1, 2000, and the subsequent issuance of a document called the "Brasilia Communiqué,"¹⁴⁴ the possibility of coalescing into a SAFTA appeared to be taking more definite shape. While Brazilian diplomats have disavowed any intention to create a "confrontation" with the United States and Canada in the FTAA negotiations,¹⁴⁵ the document issued by the presidents at the South American summit makes clear that consolidation of negotiating leverage is a central aim. Much like the Plan of Action issued at the first Summit of the Americas,¹⁴⁶ the Brasilia

Free Trade Area of the Americas, LAW & POL'Y INT'L BUS., Summer 1996, at 945, 954; see also Guerra, *supra* note 3, at 180 (arguing that "[t]he lack of fast track authority increases the opportunity for MERCOSUR to become the core agreement for the FTAA").

140. CARRANZA, *supra* note 7, at 93; see also Guerra, *supra* note 3, at 180; Jarreau, *supra* note 1, at 71.

141. See Jarreau, *supra* note 1, at 71. (contending that, with regard to the slow pace of negotiations, Brazil has preferred to place the blame at the door of the U.S. Congress for failing to authorize fast track). See also Lenilson, *supra* note 108.

142. See CARRANZA, *supra* note 7, at 119.

143. *Id.* at 120, 124.

144. See *South American Presidents End Summit, Issue Final Communiqué*, BBC SUMMARY OF WORLD BROADCASTS, Sept. 5, 2000, available at LEXIS, News Group File (source: Ministerio das Relacoes Exteriores web site, Sept. 1, 2000) (providing the English version of the Brasilia Communiqué).

145. See *Foreign Minister Denies Plan to Create Bloc to Counter USA, Canada*, BBC SUMMARY OF WORLD BROADCASTS, Aug. 30, 2000, available at LEXIS, News Group File (source: O Globo web site, Aug. 28, 2000, in Portuguese); *South American Presidents Meet, Pledge Economic Unity*, CNN.COM, Sept. 1, 2000, <http://www.cnn.com/2000/WORLD/americas/09/01/latam.summit.02/index.html> (last visited Sept. 2, 2000) ("Brazilian officials have attempted to calm fears that regional integration would be a threat to the U.S. vision of a Free Trade Area of the Americas (FTAA).").

146. See *supra* text accompanying note 5.

Communique places hemispheric trade in the broader context of democratic values and development,¹⁴⁷ and expresses commitment to other shared hemispheric goals such as fighting drug trafficking and money laundering.¹⁴⁸ It also makes clear, however, that South American interests diverge significantly from those of more developed nations, emphasizes globalization's "unequal effects on different groups of countries,"¹⁴⁹ and enumerates shared South American goals for future trade negotiations. The Brasilia Communique states that "[i]t is crucially important that multilateral trade negotiations adhere to a greater degree of balance and symmetry between the rights and commitments of developed and developing countries" and expresses dissatisfaction with the Uruguay Round agreements in this regard,¹⁵⁰ and underscores that liberalizing trade in agricultural goods "is a high priority for South America."¹⁵¹ The document further calls for debt reform, noting that "for some of the highly indebted South American countries, the debt service not only constitutes a heavy burden but also places the countries' stability at risk and seriously compromises their economic and social development."¹⁵²

The statements garnering the most attention, however, were those concerning regional integration and a common posture toward the FTAA. Paragraph 31 states that "[t]he heads of state of MERCOSUR and the Andean Community (CAN) decided to start negotiations leading to the signing of a free trade agreement between the two groups as soon as possible and, in any case, by January 2002," and signals approval of pending talks "leading to Chile's full membership in MERCOSUR."¹⁵³ These are described as initial steps "toward the shared goal of creating a broader economic and trade area in South America, with the participation of

147. See The Brasilia Communique, Sept. 1, 2000, ¶¶ 1, 5-6, 20-28, at <http://www.mre.gov.br/cimeira/comunicado-i.htm> (website of the Brazilian Foreign Affairs Ministry) (last visited Jan. 8, 2001).

148. *Id.* ¶¶ 47-52.

149. *Id.* ¶ 12.

150. *Id.* ¶ 15.

151. *Id.* ¶ 16.

152. *Id.* ¶ 17. This point appears particularly prophetic in light of Argentina's social and economic turmoil. See *infra* text accompanying notes 275-297.

153. *Id.* ¶ 31. Neither has been achieved as of this writing. See *infra* part IV. Alignment of MERCOSUR and the Andean Community, however, remains a goal of both groups. *Andean Community Presidents Sign Santa Cruz de la Sierra Declaration in Bolivia*, *supra* note 135, at para. 24; *Brazil Seeks Greater Andean Community-Mercosur Integration*, EFE NEWS SERVICE, Feb. 15, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020215004732> (last visited Feb. 24, 2002).

Chile, Guyana and Suriname¹⁵⁴ – effectively a SAFTA. Beyond stating the bare goal of integration, however, the following paragraphs discuss its intended impact on the FTAA negotiations:

33. The Presidents of the South American countries reaffirmed their understanding that the creation of an expanded economic area in the region will occur in accordance with the principles of an “open regionalism”. *This will strengthen the position of the South American countries in important negotiations the region wants to see brought to a successful conclusion*, such as those for a free trade area of the Americas, those aimed at closer coordination with the European Union, or those in the framework of the World Trade Organization, among others. . . .

34. The Presidents of the South American countries reaffirmed their support to the process of expanding and deepening integration in the Hemisphere. They welcomed the results of the Fifth Ministerial meeting of the FTAA . . . and reiterated their engagement in the gradual establishment of a free trade areas of the Americas, the negotiation of which should be concluded by no later than 2005, on an equitable and balanced basis that will ensure the effective access of South American exports to markets. *To this end, the presidents decided to intensify the coordination of the South American countries’ negotiating positions.*¹⁵⁵

This statement maintains a tenuous balance between appearing constructive and open, on the one hand, and taking a strong negotiating stand on the other. In his statement to the National Press Club the morning of the summit, Ambassador Rubens Barbosa walked a similarly fine diplomatic line, characterizing the integration effort both as “a building block towards larger hemispheric integration,” and as “intensification of the coordination of South American countries in negotiating positions in relations to the FTAA.”¹⁵⁶ Somewhere between these varying signals of cooperation and confrontation lies the reality of Brazil’s approach to the

154. The Brasilia Communique, *supra* note 147, ¶ 32.

155. *Id.* ¶¶ 33-34 (emphasis added).

156. *National Press Club Morning Newsmaker Rubens Barbosa, Brazilian Ambassador to the United States*, FED. NEWS SERVICE, Sept. 1, 2000 (statement to the National Press Club), available at LEXIS, News Group File. President Hugo Chavez of Venezuela, is less guarded. He strongly supports South American integration, and has stated that the “FTAA . . . can’t grab us this way and wipe us off the map We need to relaunch negotiations between the blocs because in 2005 we have FTAA.” *Venezuela’s Chief Urges South American Integration*, CNN.COM, Aug. 30, 2000, <http://www.cnn.com/2000/WORLD/americas/08/30/latam.summit.chavez.reut/> (last visited Sept. 2, 2000).

FTAA; it is willing to talk, but is girding itself to pursue its own vision of hemispheric free trade. As Cardoso told the press on the day of the summit, “[w]e are not prepared to open up more our economies without negotiations which will give us access to rich countries.”¹⁵⁷

The portion of the Brasilia Communique quoted above also alludes to a complementary strategy aimed at reducing dependence on U.S. market access. At the same time that Brazil seeks to consolidate a bloc for greater negotiating leverage vis-à-vis the United States, it also seeks to build stronger relations with other current and potential trading partners.¹⁵⁸ In particular, Brazil has endeavored to maintain concurrent, parallel negotiations with the FTAA and the EU.¹⁵⁹ As noted above, Brazil prefers a slower pace of negotiation for the FTAA,¹⁶⁰ and it has not escaped Congress’ attention that slower progress toward the FTAA has

157. *South American Presidents Meet, Pledge Economic Unity*, *supra* note 145.

158. See, e.g., *Mexico: Foreign Secretary on Diplomatic Linkage With Argentina, Brazil, Chile*, BBC WORLDWIDE MONITORING, Mar. 31, 2001, available at LEXIS, News Group File (source: Notimex, Mar. 29, 2001, in Spanish) (describing Mexico’s coordination with Argentina, Brazil, and Chile – “what in diplomatic circles is known as the South American ABC” – regarding the FTAA).

Brazil has also sought greater coordination with Venezuela. See *Brazil-Venezuela: Leaders Meet to Coordinate Americas Summit Policy 3 April*, BBC WORLDWIDE MONITORING, Apr. 1, 2001, available at LEXIS, News Group File (source: Venezuela Online News web site, Mar. 30, 2001); *Venezuela’s Chavez Meets With Brazil’s Cardoso; Requests Membership in Mercosur*, WORLD NEWS CONNECTION, Apr. 4, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010404014958> (last visited Sept. 14, 2001) (text of report by Valderez Caetano published by Jornal do Brasil web site, in Portuguese). This has raised diplomatic problems for Brazil with the United States, given that Venezuela’s President Chavez, “[s]ince taking office in February 1999, . . . has embarked on a crusade to promote close relations with Fidel Castro, communist China, Iraq and Iran and Russia and has often criticized the United States.” *Chavez Urges Venezuela, Cuba “Single Team” Against FTAA “Cauldron of Hell”*, BBC WORLDWIDE MONITORING, Sept. 7, 2001, available at LEXIS, News Group File (source: Venezuela Online News web site, Sept. 6, 2001); see also *Brazil: Cardoso To Convey Bush’ [sic] Concern to Venezuela’s [sic] Chavez*, WORLD NEWS CONNECTION, Apr. 2, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010402013932> (last visited Sept. 14, 2001) (text of report by Paulo Sotero published by O Estado de Sao Paulo web site, in Portuguese); Armando Perez, *Venezuela’s Chavez Favors Strong Russia, Opposes U.S. Trade Moves*, EFE NEWS SERVICE, May 15, 2001, available at LEXIS, News Group File. Chavez has described the FTAA as the “cauldron of hell itself,” *Chavez Urges Venezuela, Cuba “Single Team” Against FTAA “Cauldron of Hell”*, *supra*, and Castro has characterized Venezuela and Brazil as the twin “resistance” to United States domination of Latin America. See *Cuba: Castro’s May Day Speech Rejects US Trade “Annexation”*, *supra* note 51. This likely tends toward a far more direct confrontation with the United States than Brazil would like. See *supra* text accompanying note 145.

159. See *The Brasilia Communique*, *supra* note 147, ¶ 33.

160. See *supra* text accompanying note 141.

allowed nations “to pursue agreements outside of the hemisphere, particularly with the European Union and countries of Asia.”¹⁶¹ In testimony before the House Subcommittee on International Economic Policy and Trade, Philip Stephen Lande has emphasized that beyond Brazil’s attempt to forge a South American bloc, “the new threat is the European Union,” which could negotiate a free trade agreement with South America having “a negative effect on the United States.”¹⁶²

Brazil has sought “to play one external trading partner (the EU) against the other (the US)”¹⁶³ in order to reduce dependence on either one, and in fact to set up something of an auction dynamic between the EU and the United States for a dominant position in the South American market. Brazil has stated that 2005 is the “absolute limit for an E.U.-Mercosur deal,”¹⁶⁴ putting it on the same schedule as the FTAA negotiations.¹⁶⁵ Thus when the EU negotiation began to slow over tariff and phytosanitary requirements, Brazil’s Foreign Minister could spur them along by stating publicly that “[t]he trend is for increasingly strengthening ties with the FTAA. I am sceptical about negotiations with the EU because they are going very slowly.”¹⁶⁶ But after the EU Com-

161. *Trade in the Americas*, *supra* note 77, at 3 (statement of Congressman Bob Menendez).

162. *Id.* at 20 (statement of Philip Stephen Lande).

163. CARRANZA, *supra* note 7, at 204.

164. *Germany Backs Timetable for E.U.-Mercosur Accord*, DEUTSCHE PRESSE-AGENTUR, Oct. 4, 2000, available at LEXIS, News Group File. Officials have since stressed, however, that the timetable is fluid. See, e.g., *Brazil-EU: Brazil Confident of an EU-Mercosur Trade Agreement*, EFE NEWS SERVICE, Feb. 26, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020226008586> (last visited Mar. 12, 2002).

165. CARRANZA, *supra* note 7, at 204. Brazil has supported putting the next round of WTO negotiations on the very same time frame. See *Brazil: Graca Lima Expresses Optimism Over WTO Ministerial in Qatar*, WORLD NEWS CONNECTION, Nov. 5, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=011105013338> (last visited Mar. 8, 2002) (text of report by D.C.M. published by O Estado Sao Paulo web site, in Portuguese). This schedule was adopted at the Fourth WTO Ministerial Conference, and the negotiations will include agriculture, focusing on market access, export subsidies, and “trade-distorting domestic support.” See Ministerial Declaration, World Trade Organization, Ministerial Conference, Fourth Session, Nov. 14, 2001, WT/MIN(01)/DEC/1, at 3 (2001); *USTR Fact Sheet Summarizing Results from WTO Doha Meeting*, <http://www.uspolicy.be/Issues/WTO/factsheet.111501.htm> (last visited Apr. 1, 2002). Both Brazil and the United States have trumpeted this as promising greater exports for their own domestic producers. *Id.*; see, e.g., *Victory For Brazil in Agriculture and Medicines*, O GLOBO, Nov. 15, 2001, available at LEXIS, News Group File.;

166. *Brazil: Foreign Minister “Sceptical” About Trade Talks with EU*, BBC WORLDWIDE MONITORING, Oct. 7, 2000, available at LEXIS, News Group File (source: Agencia Estado, Oct. 6, 2000, in Portuguese); see also *Negotiating Priorities and Plans*

missioner for External Relations made a visit to Brazil for the next set of negotiations to show “the strong commitment and priority given to the EU-Mercosur negotiations by the European Union,”¹⁶⁷ and with progress made in those talks on a variety of issues (including the phytosanitary requirements), the Brazilian press was speculating that “[n]egotiations for a free trade agreement between Mercosur . . . and the EU may conclude before the creation of the Free Trade Area of the Americas.”¹⁶⁸ When negotiations over the EU’s agricultural policies did not progress quickly enough, however, Brazil then threatened to refocus on the FTAA.¹⁶⁹ Apparently, the hope is that Europe can be pressured into lowering its agricultural barriers in order to preserve its market share in Latin America (avoiding the sort of damage sustained when NAFTA cut into its exports to Mexico), allowing Brazil and MERCOSUR to then turn around and push for similar liberalization from the United States.¹⁷⁰ Brazil likely overplays its hand in seeking such a degree of trade disarmament from both the EU and the United States,¹⁷¹ but the strategy nevertheless remains an

Reported, supra note 133 (observing that “Mercosur representatives are under the impression that the EU is dragging its feet regarding negotiations concerning preliminary subjects, such as the exchange of information on non-tariff barriers”).

167. *Commissioner Chris Patten Opens Third Round of EU-Mercosur Association Negotiations*, 2000 RAPID, Oct. 31, 2000, available at LEXIS, News Group File.

168. *Negotiator Sees “Significant Progress” in Mercosur-EU Talks*, BBC SUMMARY OF WORLD BROADCASTS, Nov. 15, 2000, available at LEXIS, News Group File (source: Gazeta Mercantil web site, Nov. 13, 2000, in Portuguese).

169. *Brazil-Trade Cardoso: European Protectionism Pushed Brazil Toward FTAA*, EFE NEWS SERVICE, Apr. 5, 2001, available at LEXIS, News Group File. Ultimately, however, MERCOSUR has remained equivocal on the subject. See, e.g., *Mercosur Yet to Decide if Trade Talks with EU or with FTAA to Take Priority*, AFX EUR. FOCUS, Feb. 1, 2001, available at LEXIS, News Group File (reporting MERCOSUR administrative secretary Santiago Gonzalez’s statement to the effect that “Mercosur has yet to chose [sic] whether to give priority to trade negotiations with the EU or with the Free Trade Area of the Americas”).

170. See, e.g., *Argentine News Agency Says FTAA Could Lead to Opening of European Markets*, BBC WORLDWIDE MONITORING, Apr. 23, 2001, available at LEXIS, News Group File (text of report by Alberto Galeano published by Telam, Apr. 22, 2001, in Spanish). Mixed messages from MERCOSUR and Brazil continue to keep the EU on its guard. Compare Raymond Colitt, *EU Seeks to Hasten Deal With Mercosur*, FIN. TIMES, Feb. 16, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020216001739> (last visited Feb. 24, 2002) (reporting that the EU and MERCOSUR “are seeking to accelerate free-trade talks”) with *Brazil: Foreign Ministry Denies Mercosur to Step Up Trade Negotiations With EU*, BBC MONITORING SERVICE, Feb. 22, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020222004681> (last visited Feb. 24, 2002) (Brazil denying that there has been any agreement to accelerate such talks).

171. See, e.g., *All In the Familia*, *supra* note 3, at 22 (observing that “the talks with the EU are at least as likely as the FTAA ones to founder on the issue of farm protection”). Brazil had hoped that a turn back toward the FTAA would force the

effective one. The EU has recognized that "Mercosur wants to preserve this balance, to the point of making Europe and the United States compete with each other," and that "we have to be on our guard."¹⁷²

At the same time, Brazil and MERCOSUR have sought to diversify further by strengthening trade relationships in Asia. China has been particularly impressed with the idea of South American integration, noting the competitive advantages it offers,¹⁷³ and China and MERCOSUR have expressed desire to "strengthen their cooperation on international affairs and trade."¹⁷⁴ In talks with both Hong Kong and Singapore, Brazil has billed itself as an entry point into the South American market,¹⁷⁵ and emphasized "the increasing strategic power of the South

French, in particular, to agree to negotiate lower agricultural barriers, and that a visit by French Prime Minister Lionel Jospin would "breath new life into free trade negotiations between Brazil and the EU." *Brazil-Trade Cardoso: European Protectionism Pushed Brazil Toward FTAA*, *supra* note 169. Jospin, however, gave no such indication, rejecting Brazil's focus on agriculture to the exclusion of other issues, noting that the EU accepts more agricultural exports from Brazil than the United States does, and stating that "[t]he world is too complex to be negotiated on the basis of unilateralism." *Brazil: Lionel Jospin Noncommittal on Accelerated Mercosur*, *EU Timetable*, WORLD NEWS CONNECTION, Apr. 6, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010406012829> (last visited Sept. 14, 2001) (text of report by Claudia Dianni, "Jospin Rejects Pressure to Open Market," published by O Estado de Sao Paulo web site, in Portuguese). Intra-MERCOSUR tensions have even led the EU to question the viability of continued negotiations, given MERCOSUR's delay in producing a joint proposal. *European Diplomats Concerned About Future of Mercosur*, WORLD NEWS CONNECTION, July 2, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010702014267> (last visited Sept. 14, 2001) (text of report by Jamil Chade published by O Estado de Sao Paulo web site, in Portuguese). In seeking to "assuage fears that recent divisions within Mercosur could undermine the chances of an agreement with the EU," Brazil predictably suggested that "talks with the EU, although complicated, faced fewer obstacles than those with the US ." Raymond Colitt, *S American Trade Bloc Confident of Accord Over Tariff Regime*, FIN. TIMES, Sept. 12, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010912000229> (last visited Sept. 14, 2001).

172. *EU Trade Commissioner Lamy Sanguine About FTAA*, WORLD NEWS CONNECTION, Apr. 21, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010421008439> (last visited Sept. 14, 2001) (text of interview by Laurence Caramel, "Three Questions For . . . Pascal Lamy," published by Le Monde web site, in French).

173. See David Hsu, *Central and South America Good Markets for Taiwan Products: CETRA*, CENT. NEWS AGENCY, Oct. 12, 2000, <http://www.taiwan.com.au/Polieco/Trade/SMEs/200010/12.html> (last visited Feb. 10, 2002).

174. *China, Mercosur Vow to Strengthen Trade Relations*, XINHUA GEN. NEWS SERVICE, Oct. 18, 2000, available at LEXIS, News Group File.

175. See Chris Oliver, *Nation Looks to Region for Trade Partners; Sophisticated Industrial Base and Expanding Hi-Tech Manufacturing Sector Puts Country at Forefront of Emerging Economies*, SOUTH CHINA MORNING POST (Supplement), Sept. 7, 2000, at 10; Irene Ng, *Asia Wants Closer Ties with Latin America*, STRAITS TIMES (SINGAPORE), Sept. 13, 2000, at 1; *Singaporean PM in Brazil, Promotes Closer*

American trade bloc.¹⁷⁶ Thailand has also discussed the possibility of closer ties with MERCOSUR as part of its own strategy "to hone its competitive advantage and forge alliances to increase its bargaining power," noting that "Mercosur could be a 'stepping stone' for Thai business . . . and Thailand could play a similar role for Latin American firms."¹⁷⁷

IV. THE U.S. RESPONSE – FRAGMENTING SOUTH AMERICA

Brazil's equivocal strategic and diplomatic response to the FTAA negotiations reflects its sense that, while free trade would be beneficial, allowing greater U.S. market access for its exports, it would suffer under a trade regime in which Brazil makes significant concessions without securing enough benefits at least to counterbalance them.¹⁷⁸ Thus, its strategy of augmenting negotiating clout through the coalescence of a South American bloc is a sensible one, but so is the United States' counter-strategy. Brazilian efforts to bring South America together as its own trade bloc have met a concerted U.S. effort to fragment South America through bilateral negotiation.

Just as Brazilian diplomats have downplayed any intention of actively confronting the United States in the FTAA negotiations,¹⁷⁹ U.S. diplomats have been outwardly supportive of moves toward South American integration. Clinton's Secretary of State, Madeleine Albright, was "careful to state in Brasilia that she saw the South American trading blocks as 'components in the construction of the FTAA,' not obstacles to it,"¹⁸⁰ and Brazilian diplo-

Economic Ties, AGENCE FRANCE PRESSE, Sept. 13, 2000, available at LEXIS, News Group File.

176. Oliver, *supra* note 175, at 10.

177. Vorapun Srivoranart, *Thailand-L America Ties a Must: Strategist*, NATION, Sept. 5, 2000, available at LEXIS, News Group File. More specifically, however, Thailand has focused on Chile, noting that their products generally do not compete, and that "Chile is one of the countries with the best economic stability in Latin America." See *Thailand: Foreign Minister Reports on Trip to Chile, Dialogue with Burma*, BBC WORLDWIDE MONITORING, Apr. 19, 2001, available at LEXIS, News Group File (source: Than Setthakit, Apr. 19, 2001, at 8, in Thai). An agreement between Chile and Thailand to serve as mutual entry points into the Latin American and Southeast Asian markets, respectively, would only raise the cost to Brazil of failing to ensure Chile's full membership in MERCOSUR. See *infra* text accompanying notes 192-203.

178. See *supra* text accompanying notes 108-121.

179. See *supra* text accompanying note 145.

180. *South American Strategy Advances: Cardoso Takes Further Steps Towards Regional Leadership*, LATIN AM. REGIONAL REP.: BRAZIL, Sept. 12, 2000, at 2, available at LEXIS, News Group File.

mats have picked up on such comments in their own efforts to avoid any appearance of confrontation.¹⁸¹ From the beginning of the process, however, the United States favored the creation of the FTAA through NAFTA expansion on a bilateral basis, which would give the United States substantial negotiating leverage over other nations in the hemisphere.¹⁸² This would allow the United States to position itself as a gatekeeper to the FTAA, exerting great influence over the determination of whether a particular nation has conformed to the new "consensus" of economic liberalization sufficiently to receive the merit of U.S. market access.¹⁸³ Beyond this, however, such a structure has the potential to disrupt subregional integration schemes already in place. Frank Garcia has argued that while "piecemeal accession" to NAFTA could "provide immediate, appreciable economic benefits for the acceding RTA [regional trade agreement] member, it may have significant adverse effects on the non-acceding members of the RTA and on the RTA itself" as a result of the United States "cherry picking" only the most advanced countries for early membership in the FTAA.¹⁸⁴ Benefits flowing to the acceding nation would include not only increased gains from trade, but also "a considerable advantage in attracting increased foreign manufacturing investment because investors will site their plants in the accessor in order to gain preferential access into the NAFTA market for their goods."¹⁸⁵ This could divert investment from neighboring nations, potentially leading to political and economic tensions since the "competitive advantages and other gains from trade which the accessor is likely to realize may fundamentally alter the economic bases" of the original subregional grouping.¹⁸⁶ As to whether accession to NAFTA would require accession to the labor and environmental side agreements, the accession provi-

181. See *National Press Club Morning Newsmaker Rubens Barbosa, Brazilian Ambassador to the United States*, *supra* note 156 ("Albright went to Brazil . . . and she was very positive publicly and privately there, speaking about the importance from the U.S. perspective of this initiative. The stronger the countries in South America, the more integrated the countries in South America, as the U.S. sees it, the better for hemispheric integration. And we share that view.").

182. See CARRANZA, *supra* note 7, at 112, 127; Guerra, *supra* note 3, at 176; Frank J. Garcia, *NAFTA and the Creation of the FTAA: A Critique of Piecemeal Accession*, 35 VA. J. INT'L L. 539, 540 (1995).

183. See CARRANZA, *supra* note 7, at 127.

184. Garcia, *supra* note 182, at 550-51 (citations omitted).

185. *Id.* at 566.

186. *Id.* at 569-73.

sions of the NAFTA agreement¹⁸⁷ and the side agreements¹⁸⁸ make no mention of any such requirement.¹⁸⁹ Given the current political climate in the United States, however, it seems unlikely that Congress would approve accession to NAFTA without concurrent accession to the side agreements,¹⁹⁰ and the United States would probably have a much easier time persuading an individual acceding nation to accept them than it would an organized bloc. Adoption of the accession-to-NAFTA model for the FTAA – or any model based on bilateral negotiation, for that matter – would appear to create a “prisoner’s dilemma” for South America in which immediate gains for individual acceding nations come at the expense of what might have been a better negotiated deal for all of them in the long term.¹⁹¹

A successful SAFTA would greatly diminish the United States’ ability to control negotiation of the substance of the FTAA,¹⁹² and the United States has responded to this threat by redoubling efforts to negotiate a bilateral agreement with a key South American nation – Chile. While all South American nations are clearly essential for a comprehensive SAFTA, Chile’s relatively open economy and “steady growth” have made its membership in MERCOSUR, and ultimately in SAFTA, particularly important to Brazil.¹⁹³ Chile has remained relatively independent from the hemisphere’s major trade groups,¹⁹⁴ and is unique among South American nations for having embraced economic openness as early as the 1970s.¹⁹⁵ The Clinton administration actually tried to secure Chile’s membership in NAFTA in 1995 but failed due to the loss of fast track authority, Chile being reluctant to negotiate

187. Article 2204 states only that accession is allowed “as may be agreed between such country or countries and the Commission and following approval in accordance with the applicable legal procedures of each country.” NAFTA, *supra* note 63, art. 2204(1).

188. Both provide for accession “as may be agreed between such country or countries and the Council and following approval in accordance with the applicable legal procedures of each country.” NAFTA Labor Agreement, *supra* note 81, art. 53; NAFTA Environmental Agreement, *supra* note 81, art. 49.

189. See Housman, *supra* note 77, at 303-04.

190. See *supra* text accompanying notes 91-106.

191. For an in-depth description of the prisoner’s dilemma, see ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* 9-10 (1984).

192. See *supra* text accompanying notes 133-57 (discussing Brazil’s efforts toward this end).

193. Marcela Valente, *Trade-Latam: U.S. Throws Wrench into Mercosur Summit Agenda*, INTER PRESS SERVICE, Dec. 13, 2000, available at LEXIS, News Group File.

194. See Jarreau, *supra* note 1, at 73.

195. See *id.* at 81. “Chile enacted a foreign investment code in 1974, and its constitution includes a prohibition against import quotas.” *Id.* (citation omitted).

its accession twice should Congress choose to amend the deal.¹⁹⁶ In 1996, then, Chile became an associate member of MERCOSUR, a move thought to have resulted directly from the loss of fast track and consequent failure to secure NAFTA accession.¹⁹⁷ Brazil and the rest of MERCOSUR considered Chile's request for full membership "a triumph," as this "would have represented a reinforcement for the common market project, tending to add to the weight of the group in international negotiations and favouring the position of Mercosur in the talks with the United States for the creation of the FTAA."¹⁹⁸ Thus the announcement on November 29, 2000 of the commencement of negotiations between the United States and Chile for "a comprehensive bilateral Free Trade Agreement (FTA)"¹⁹⁹ was received by MERCOSUR, and particularly by Brazil, as "a 'stab' in the back"²⁰⁰ – especially as the announcement of negotiations with the United States came soon before the expected announcement of Chile's full membership in MERCOSUR.²⁰¹ Full membership was immediately ruled out,²⁰² Brazil viewing the negotiations as a "co-optation' of the US ideas on the FTAA."²⁰³

Whereas Chile's full membership in MERCOSUR might have further cemented South American diplomatic and economic relations, the announcement of their negotiations with the United States has left MERCOSUR to manage the fundamental rifts among its existing members with diminished hopes for SAFTA. Behind their nominal unity lies a history of tense trade relations between Brazil and Argentina that the MERCOSUR structure has contained but not eliminated. Recent contentious issues include

196. See Guerra, *supra* note 3, at 177; Jarreau, *supra* note 1, at 81; CARRANZA, *supra* note 7, at 112.

197. See Guerra, *supra* note 3, at 177.

198. *Planned Chile-USA Trade Deal Seen as "A Stab in the Back of Mercosur"*, *supra* note 120.

199. *Statement By the President: The United States of America and Chile Agree to Start Negotiations on Comprehensive Bilateral Free Trade Agreement*, U.S. NEWSWIRE, Nov. 29, 2000, available at LEXIS, News Group File. President Bush has identified bilateral negotiations with Chile as a priority. See 2001 International Trade Agenda, *supra* note 76, at 4.

200. *Planned Chile-USA Trade Deal Seen as "A Stab in the Back of Mercosur"*, *supra* note 120.

201. See Mario Osava, *Trade Latam: Chile Excluded from Mercosur Customs Union*, INTER PRESS SERVICE, Dec. 14, 2000, available at LEXIS, News Group File.

202. The prospect of a free trade agreement with the United States automatically excludes Chile from membership in the MERCOSUR customs union, but not from the free trade zone. See *id.*

203. *Planned Chile-USA Trade Deal Seen as "A Stab in the Back of Mercosur"*, *supra* note 120.

the addition of sugar to MERCOSUR's free trade regime;²⁰⁴ reduction of the common import tariff on all capital goods;²⁰⁵ exports of Brazilian chicken to Argentina,²⁰⁶ and trade in automobiles.²⁰⁷ Generally speaking, Argentina's focus on "primary products" and Brazil's focus on manufacturing have resulted in a significant degree of "Brazil-dependency,"²⁰⁸ and years of recession have led Argentina to question Brazil's strategy of slowing the FTAA talks, and even for a period to advocate advancing the starting date to 2004.²⁰⁹ It is crucial to recognize the perception that high MERCOSUR tariffs on capital goods – maintained in part by slowing FTAA negotiations – have primarily benefited Brazil, providing protection for its own manufacturers.²¹⁰ At this point, Brazil quite reasonably "fears Argentina may make concessions to the

204. See Mario Osava, *Trade-Mercosur: Sugar Deal Blocked by Social and Energy Issues*, INTER PRESS SERVICE, Sept. 28, 2000, available at LEXIS, News Group File; Marcela Valente, *Integration-Mercosur: Economists Outline Cures for Bloc's Ills*, INTER PRESS SERVICE, Sept. 15, 2000, available at LEXIS, News Group File.

205. See *Brazil Turns Down Argentine Proposal to Lower Mercosur Tariffs on Capital Goods*, BBC SUMMARY OF WORLD BROADCASTS, Nov. 11, 2000, available at LEXIS, News Group File (excerpt of report by Maria Luiza Abbott published by Valor web site, Oct. 27, 2000, in Portuguese). Ultimately Argentina found a unilateral reduction necessary. See *infra* text accompanying notes 268-71.

206. See *Brazil, Argentina to Settle Chicken Conflict Through WTO*, XINHUA GEN. NEWS SERVICE, Sept. 17, 2000, available at LEXIS, News Group File.

207. See Valente, *supra* note 204.

208. CARRANZA, *supra* note 7, at 194; see also Paul Wonnacott, *Beyond NAFTA – The Design of a Free Trade Agreement of the Americas*, in THE ECONOMICS OF PREFERENTIAL TRADE AGREEMENTS 79, 94-95 (Jagdish Bhagwati & Arvind Panagariya, eds. 1996) (observing that whereas "[a] nation in an FTA [free trade agreement] . . . has an incentive to cut tariffs in situations where its consumers are paying high prices for goods imported from its FTA partners," a nation in a customs union like Argentina may "see itself as an exploited market" as a result of its inability to reduce tariffs unilaterally to import cheaper outside goods).

209. See *Chopping Block*, ECONOMIST, Dec. 16, 2000, at 40; Lenilson, *U.S., Brazil Duel Over Pan-American Trade Bloc*, JAPAN ECON. NEWSWIRE, Dec. 13, 2000, available at LEXIS, News Group File. Ultimately, however, Argentina has maintained a stance consistent with Brazil's view that the starting date should remain as is. When Chile proposed a starting date in 2003, Argentina stood with MERCOSUR in rejecting the proposal. See *Mercosur Rejects Bringing Forward Deadline for FTAA Negotiations*, BBC SUMMARY OF WORLD BROADCASTS, Feb. 3, 2001, available at LEXIS, News Group File (text of report by Janaina Figueiredo published by O Globo web site, Jan. 25, 2001, in Portuguese). Chile eventually backed down from this position. See *Foreign Minister Hails Chilean Decision Not to Shorten FTAA Timetable*, BBC SUMMARY OF WORLD BROADCASTS, Feb. 17, 2001, available at LEXIS, News Group File (text of report by Leandra Peres & Gecy Belmonte, "Chile gives up on advancing FTAA creation timetable," published by O Estado de Sao Paulo web site, Feb. 11, 2001, in Portuguese).

210. See, e.g. *Another Blow to Mercosur: A Decade After It Was Created, South America's Largest Trade Block Is Losing Direction*, ECONOMIST, Mar. 31, 2001, at 33.

U.S.” in order to secure direct financial assistance,²¹¹ another avenue for the United States’ strategy of fragmentation. The civil unrest, partial debt default, and strained diplomatic relations that Argentina has endured since late 2001 have greatly raised the stakes in this regard for both the United States and Brazil, as discussed below.²¹²

Even more fundamentally, however, Argentina historically has disliked Brazil’s subregional dominance.²¹³ The perspective of “Brazil as a regional power” is “especially frustrating for Argentina in the commercial sphere and limits Argentina’s autonomy in foreign policy.”²¹⁴ The perception is that Brazil “see[s] Mercosur as just a large visiting card to show in its dealings with the outside world, while Argentina has been desperate for it to offer its firms a larger market.”²¹⁵ In this light, it should be observed that Brazil has “stymied efforts led by Argentina to lower the average tariff on imports coming from outside the trading bloc.”²¹⁶ This may explain the fact that while Brazil’s President Cardoso originally projected that a SAFTA could be created by the end of 2001, Argentina’s former President de la Rúa questioned the plan’s feasibility and resisted fixing any deadlines.²¹⁷ Without the benefit of Chile’s full membership in MERCOSUR, this skepticism will be substantially more difficult to overcome.

In addition, the United States’ contribution toward Colombia’s drug war, though not directed at fragmenting the continent, could nevertheless destabilize the region and render SAFTA more difficult to achieve. The regional difficulties that could result from “Plan Colombia,” to which the United States has made a substan-

211. Lenilson, *supra* note 209.

212. *See infra* text accompanying notes 275-97.

213. *Brazil’s Plan For a Resurgent South America: The Hosts of Today’s Brasilia Summit Hope it Could Mark the Beginning of Regional Dominance for their Country*, FIN. TIMES, Sept. 1, 2000, <http://globalarchive.ft.com/globalarchive/article.html?id=000901000708> (last visited Feb. 19, 2002).

214. Valente, *supra* note 204; *see also* CSIS, *supra* note 130, at 32-33 (observing that Argentina has historically cultivated a stronger strategic and diplomatic relationship with the United States than has Brazil).

215. *Chopping Block*, *supra* note 209.

216. Jonathan Wheatley, *The Mercosur Marriage is in Trouble*, BUS. WK., Jan. 29, 2001, at 25; *see also* *Mercosur Summit Bring [sic] Progress But Also Setbacks for Integration Diplomacy*, LATIN AM. REGIONAL REP.: BRAZ., Jan. 2, 2001, at 1 (“Brazil ended the year by implementing the 0.5% reduction in the common external tariff That much was a success for Brazil, as the other Mercosur countries had wanted to cut the common tariff by 2 percentage points straight away, but Brazil feared for the impact on its manufacturing sector.”).

217. *South American Strategy Advances: Cardoso Takes Further Steps Towards Regional Leadership*, *supra* note 180.

tial contribution, include the possibility that drug traffickers and drug-related violence could spill over Colombia's jungle borders into neighboring nations, including Brazil, which shares a thousand-mile border with Colombia.²¹⁸ The Brasilia Communique devotes significant attention to the topic of combating "illicit drugs and related crimes in the region,"²¹⁹ outlining several potential approaches to the problem.²²⁰ Significantly, however, the document does not mention Colombia by name in connection with illicit drugs, and does not signal direct support for Plan Colombia. Indeed, Brazil has been notably circumspect on the subject, expressing support for "the peace process in Colombia,"²²¹ and even for Plan Colombia, yet opposing armed intervention by Colombia's South American neighbors.²²² A destabilizing drug war spreading beyond Colombia's borders would clearly stress diplomatic relations and problematize the Brasilia Communique's goals of economic and infrastructural integration,²²³ rendering a SAFTA far more difficult to achieve.²²⁴

218. *Impact of Colombia's Anti-Drug Campaign Key Issue at South American Summit*, CNN.COM, Aug. 30, 2000, <http://www.cnn.com/2000/WORLD/americas/08/30/brazil.southamericans.ap/index.html> (last visited Sept. 3, 2000); see also *US President Bush Says Plan Colombia For Entire Region*, BBC WORLDWIDE MONITORING, Apr. 22, 2001, available at LEXIS, News Group File (source: El Espectador web site, Apr. 21, 2001, in Spanish); *Andean Community of Nations Meeting in Venezuela to Focus on Trade, Drugs*, BBC WORLDWIDE MONITORING, June 22, 2001, available at LEXIS, News Group File (source: Venezuela Online News web site, June 21, 2001). The Revolutionary Armed Forces of Colombia (FARC) has characterized Plan Colombia as the "military arm" of the FTAA. *Plan Colombia Seeks to Be "Military Arm" of FTAA - FARC Representative*, BBC WORLDWIDE MONITORING, Sept. 5, 2001, available at LEXIS, News Group File (source: Notimex, Sept. 3, 2001, in Spanish).

219. The Brasilia Communique, *supra* note 147, ¶ 47.

220. *Id.* ¶¶ 47-52.

221. *Brazilian Organizer of Summit Interviewed*, BBC SUMMARY OF WORLD BROADCASTS, Sept. 2, 2000, available at LEXIS, News Group File (source: Globo TV, Aug. 31, 2000, in Portuguese).

222. See *Impact of Colombia's Anti-Drug Campaign Key Issue at South American Summit*, *supra* note 218.

223. "Integration and the development of physical infrastructure are two complementary approaches. . . . This must be guided by the principles of social and environmental sustainability and have the ability to attract capital from outside the region and to generate multiplier effects within it." The Brasilia Communique, *supra* note 147, ¶ 37.

224. It has also been argued that given the importance of the U.S. market to Andean nations, the United States could prevent SAFTA from taking shape with strategic promises of market access. See CARRANZA, *supra* note 7, at 98. Given Venezuelan President Chavez's strong support for SAFTA and an independent South America, however, such a strategy seems less plausible. See *Venezuela's Chief Urges South American Integration*, *supra* note 156; Lenilson Ferreira, *S. America's*

Viewing the U.S.-Chile negotiations within the broader context of U.S. trade relations demonstrates that the United States' hopes and Brazil's fears²²⁵ are well founded. It is much easier for the United States to achieve its goals in a trade agreement through bilateral negotiations, and Brazil recognizes the danger that a proliferation of bilateral agreements would present, were it to abandon the FTAA entirely.²²⁶ As discussed earlier, the United States traditionally employs a strategy in trade negotiations of securing favorable terms in a bilateral agreement in which it has significant negotiating leverage, then using that result as a "floor" in future negotiations and, in this manner, building up a series of useful precedents.²²⁷ Here, the pertinent series of negotiations actually begins not with Chile, but with Jordan. On October 24, 2000, President Clinton and Jordan's King Abdullah signed the U.S.-Jordan Trade Agreement.²²⁸ In a number of respects, the document reads like a trade wish list for the United States, including: national treatment and the elimination of customs duties on goods (Article 2); national treatment for services (Article 3); the incorporation of provisions from a number of intellectual property-related treaties, and national treatment for intellectual property (Article 4); firm commitments to enforce domestic environmental and labor laws (Articles 5 and 6, respectively); commitments by each

Presidents Open First-Ever Summit, JAPAN ECON. NEWSWIRE, Aug. 31, 2000, available at LEXIS, News Group File.

225. See *Planned Chile-USA Trade Deal Seen as "A Stab in the Back of Mercosur"*, *supra* note 120; cf. *Brazil: Businessmen Fear US Using Weakness To Impose FTAA*, WORLD NEWS CONNECTION, Sept. 24, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010924011836> (last visited Dec. 2, 2001) (text of report by Paula Puliti published by Agencia Estado, in Portuguese).

226. See, e.g., *Brazil: Foreign Minister Sets Out Position On FTAA Ahead of Quebec Summit*, BBC WORLDWIDE MONITORING, Apr. 16, 2001, available at LEXIS, News Group File (source: Correio Brasiliense web site, Apr. 16, 2001, in Portuguese) (Brazilian Foreign Minister Celso Lafer stating that should Brazil reject the FTAA, "a proliferation of bilateral free trade accords between the hemisphere's northern and southern countries" could occur, leaving Brazil vulnerable to "growing competition on the North American markets from other Latin American countries that would be exporting their goods on preferential terms"); *Brazil: Lafer on Threats of Possible US Accords With Other American Countries*, WORLD NEWS CONNECTION, May 10, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010510014973> (last visited Sept. 14, 2001) (text of report by Claudia Dianni published by O Estado de Sao Paulo web site, in Portuguese); *All In the Familia*, *supra* note 3, at 19-20 (Lafer acknowledging that "his country risks losing much of its existing trade if the rest of the Americas rushes to sign a deal without it").

227. See Tortora, *supra* note 74, at 266-67; *supra* text accompanying notes 73-75.

228. See *Press Briefing By U.S. Trade Representative Charlene Barshefsky*, U.S. NEWSWIRE, Oct. 24, 2000 (published in two parts), available at LEXIS, News Group File.

nation to “seek to refrain from . . . deviating from its existing practice of not imposing customs duties on electronic transmissions . . . [and from] impeding the supply through electronic means of services subject to a commitment” under the provision on services (Article 7); commitments to enter into negotiations for Jordan’s accession to the WTO Agreement on Government Procurement (Article 9); “safeguard measures” for circumstances in which “the reduction or elimination of a duty” under the Agreement “constitute[s] a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive product” (Article 10); incorporation of GATT 1994 Article XX with the express “understand[ing] that the measures referred to in GATT 1994 Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT 1994 Article XX(g) applies to measures relating to conservation of living and non-living exhaustible resources”; and a dispute settlement mechanism (Article 17).²²⁹ As Barshefsky put it, from the U.S. perspective “[t]his is a very high-quality agreement, covering every major trade issue and opening up the full range of trade opportunities.”²³⁰ The Agreement truly is “path-breaking” in several respects.²³¹ It is the first free trade agreement to include provisions on the environment and labor in the text of the agreement itself, and also the first to cover electronic commerce.²³² Its intellectual property rights protections are described as “the most up to date standards . . . anywhere in the world.”²³³

Beyond the value of free trade with Jordan, the Agreement serves broader purposes for the United States in its general strategy of global trade negotiation. First, it represents an attempt by U.S. trade negotiators to reconcile inconsistent domestic and international pressures on labor and environmental issues. The Clinton Administration’s hope must have been that the limitation of the labor and environmental obligations to enforcement of existing laws would be acceptable to developing nations, which

229. Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area Oct. 24, 2000, <http://www.ustr.gov/regions/eu-med/middleeast/textagr.pdf> (last visited Apr. 1, 2002) (website of the USTR) [hereinafter U.S.-Jordan Trade Agreement].

230. See *Press Briefing By U.S. Trade Representative Charlene Barshefsky*, *supra* note 228.

231. *Id.*

232. *Id.* Recall that under the NAFTA regime, environmental and labor issues are treated in side agreements. See *supra* text accompanying note 81.

233. See *Press Briefing By U.S. Trade Representative Charlene Barshefsky*, *supra* note 228.

generally view such measures as disguised protectionism,²³⁴ and to Republicans in Congress, who generally oppose the inclusion of such measures in trade agreements.²³⁵ At the same time, the hope must also have been that inclusion of these issues in the text itself, and the creation of some binding obligations with regard to labor and environmental standards, would be viewed by domestic labor and environmental constituencies as an improvement over the NAFTA regime, which only includes them in side agreements,²³⁶ and the WTO regime, in which labor and environmental concerns are addressed through the limited general exceptions of GATT Article XX.²³⁷ It is certainly possible that such an approach could satisfy an equivocal U.S. public,²³⁸ as the focus on enforcing existing law is not without rhetorical force. Ultimately USTR Zoellick “oppose[d] suggestions made by some Republicans to strip the [Agreement] of its labor and environmental provisions,” opting rather “to work with Republicans and Democrats to address their

234. See *supra* text accompanying notes 77, 121; see also Cox, *supra* note 94 (noting Barshefsky’s position that “[p]oor countries won’t agree to U.S. standards but would consider trade agreements requiring them to be faithful to their own worker-protection and environmental laws,” and observing that “[d]eveloping nations vehemently oppose suggestions by Vice President Gore that countries should face trade sanctions if they allow employers to abuse workers and pollute. They fear those measures, backed by U.S. unions, would lock them into Western standards and erase their advantage as low-cost suppliers of manufactured goods and commodities”).

235. See, e.g., Housman, *supra* note 77, at 311-13; Guerra, *supra* note 3, at 174; Lafer Will Oppose Fast Track to FTAA, *supra* note 96, at 51.

236. See *supra* text accompanying notes 81, 99.

237. See GATT 1994, *supra* note 113, art. XX(b) (permitting certain exceptions “necessary to protect human, animal or plant life or health”), art. XX(e) (permitting certain exceptions “relating to the products of prison labour”), art. XX(g) (permitting certain exceptions “relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption”). Major environmental disputes between the United States and developing nations, both before and after creation of the WTO, have focused on the validity of extraterritorial enforcement of U.S. laws aimed at protection of the environment. See, e.g., Report of the GATT Panel, United States – Restrictions on Imports of Tuna, unpublished GATT Panel Report (June 16, 1994), DS29/R, 1994 GATTPD LEXIS 11, at 196 (finding that the Article XX(b) and XX(g) exceptions to the GATT did not justify extraterritorial enforcement of a U.S. law banning the importation of fish caught with technology resulting in the incidental killing of ocean mammals); United States – Import Prohibition of Certain Shrimp and Shrimp Products, Report of the Appellate Body (Oct. 12, 1998), WT/DS58/AB/R, at 51, 75 (finding that “sea turtles . . . constitute ‘exhaustible natural resources’ for purposes of Article XX(g) of the GATT 1994,” but that a U.S. law for the protection of sea turtles from shrimp trawlers violated the Article XX chapeau’s prohibition of discriminatory measures), http://www.wto.org/english/tratop_e/dispu_e/58abr.pdf (last visited Mar. 6, 2001).

238. See PIPA, *supra* note 91.

differing concerns.”²³⁹ The Agreement was approved by both the House of Representatives and the Senate, and signed into law by President Bush,²⁴⁰ but Republican support came only with an exchange of letters between Zoellick and his Jordanian counterpart stating each country’s intention to settle agreements without recourse to the dispute settlement mechanism or sanctions.²⁴¹ This angered some Democrats and organized labor, but the labor and environmental provisions nevertheless remain in the Agreement.²⁴² These letters obviously render application of the Agreement ambiguous, and the effect of such maneuvering may simply be a deferral of this significant domestic debate – an unacknowledged wait-and-see approach in which the applicability of these provisions can be argued either way as trade relations with Jordan unfold.

The U.S.-Jordan Trade Agreement also establishes a useful precedent for the substance of future U.S. trade negotiations. Barshefsky was initially non-committal when asked whether the labor and environmental provisions would serve as “a potential template for future trade agreements,” stating only that, “as a general matter, we think we have taken a very sensible course here.”²⁴³ Only a little over a month later, however, when the U.S.-Chile free trade negotiations were first announced, President Clinton’s statement made explicit that the deal “will include labor and environmental provisions along the lines of the U.S.-Jordan [agreement].”²⁴⁴ With such an agreement between the United States and Chile, the inclusion of labor and environmental provisions in the text of trade agreements would have precedent in the

239. Gary G. Yerkey, *USTR Vows to Work for Compromise Between GOP, Democrats on Jordan FTA*, DAILY LABOR REPORT, Mar. 30, 2001, at A-8, <http://subscript.bna.com/SAMPLES/dlr.nsf/7f560dcedd4d2099e8525672200509850/580570adb3c704fa85256a1f0012ed51?OpenDocument> (last visited Sept. 21, 2001).

240. See Edward Walsh, *House Approves Jordan Trade Pact*, WASH. POST, Aug. 1, 2001, at A04; Paul Blustein, *Senate Backs Free-Trade Agreement With Jordan*, WASH. POST, Sept. 25, 2001, at E12; *President Bush, King Abdullah* (transcript of news conference), Sept. 28, 2001 <http://www.washingtonpost.com/ac2/wp-dyn/A40716-2001Sep28> (last visited Mar. 12, 2002).

241. Walsh, *supra* note 240, at A04.

242. *Id.*

243. *Press Briefing By U.S. Trade Representative Charlene Barshefsky*, *supra* note 228, pt. 2.

244. *Statement By the President: The United States of America and Chile Agree to Start Negotiations on Comprehensive Bilateral Free Trade Agreement*, *supra* note 199; see also *U.S., Chile Trade Talks to Encompass Labor, Environment*, NAT’L J.’S CONGRESSDAILY, Dec. 5, 2000, available at LEXIS, News Group File (stating that the U.S.-Chile agreement will have “labor and environmental provisions similar to the U.S. agreement with Jordan”).

Western Hemisphere, and just as Brazil has feared, would support U.S. demands to include similar provisions in the FTAA itself.²⁴⁵ While negotiations with Chile have remained a priority,²⁴⁶ it is unclear to what extent the Bush Administration actually feels committed to including labor and environmental provisions like those in the Jordan Agreement. Zoellick's reluctance to remove those provisions from the Jordan Agreement may suggest that they continue to be viewed as a way forward toward compromise on these difficult issues. It must also be borne in mind that if an agreement with Chile fails to include such labor and environmental provisions, congressional Democrats, organized labor, environmentalists, and others will all consider it a step backward.²⁴⁷

It remains plausible that the United States would eventually push for terms like those in the Jordan Agreement in the Chile²⁴⁸ and FTAA negotiations, and ultimately at the global level through further WTO negotiations. Indeed, the USTR's FTAA position statements include summaries of the United States' positions on labor and the environment, notwithstanding the fact that there are no negotiating groups for these issues,²⁴⁹ and the position statement on investment calls for the inclusion of provisions ensuring that existing labor and environmental laws "are not relaxed to attract investment"²⁵⁰ – precisely the approach taken

245. See *Planned Chile-USA Trade Deal Seen as "A Stab in the Back of Mercosur"*, *supra* note 120.

246. Rafael Ca As [sic], *Bush, Lagos Agree to Conclude Trade Pact and Go On with FTAA*, EFE NEWS SERVICE, Apr. 17, 2001, available at LEXIS, News Group File.

247. See, e.g., *Blustein, supra* note 240, at E12 ("Democrats have insisted that future trade agreements must include such provisions, arguing that otherwise, free trade will encourage companies to move operations to the lowest-wage and most environmentally lax nations.").

248. Difficult issues including labor, the environment, and dispute resolution were deferred until later rounds of talks. See *Chile-U.S. Free-Trade Talks In Final Phase, Demonstrators Protest*, EFE NEWS SERVICE, Jan. 22, 2002, available at LEXIS, News Group File; *Chile and the United States Agree on Further Rounds of FTA Negotiation*, Feb. 28, 2002, <http://www.ustr.gov/releases/2002/02/02-26.htm> (last visited Mar. 6, 2002).

249. *The FTAA and Labor Issues: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/whemisphere/labor.pdf> (last visited Mar. 2, 2001); *Environment and the FTAA: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/whemisphere/envir.pdf> (last visited Mar. 2, 2001).

250. *Negotiating Group on Investment: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/whemisphere/invest.pdf> (last visited Mar. 2, 2001). The labor position statement emphasizes that U.S. negotiators "pressed repeatedly for the establishment of a study group to address the relationship between FTAA goals and labor issues," but that opposition by other delegations resulted in the United States "not obtain[ing] the necessary consensus either to form a study group on labor or to

with the NAFTA and Jordan agreements (and potentially with the Chile agreement).²⁵¹ While labor and environmental considerations are largely absent from the draft FTAA text in its current form, it should be noted that the investment chapter at least includes similar provisions in brackets,²⁵² leaving the door open for further discussion of labor and environmental issues as the negotiations progress and potential tradeoffs across issue areas emerge. The carefully worded instruction to the Negotiating

include labor as an issue for discussion when the Ministers met in San Jose in March 1998." *The FTAA and Labor Issues: Public Summary of U.S. Position*, *supra* note 249. Similarly, the environmental position statement emphasizes that the "USTR recently initiated a written environmental review of the FTAA and is in the process of obtaining public comment on the scope of that review." *Environment and the FTAA: Public Summary of U.S. Position*, *supra* note 249. That the USTR considered it necessary to issue such statements, notwithstanding the lack of negotiating groups devoted to these issues, suggests the degree to which the USTR remains cognizant of the domestic-level debate, and the importance of conveying the impression to domestic labor and environmental constituencies that the USTR has actively sought to voice their concerns at the negotiating table.

251. The remaining U.S. position statements are also generally consistent with the trade goals apparent in the U.S.-Jordan Trade Agreement and other agreements, including national treatment on goods and services, see *FTAA Negotiating Group on Market Access: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/whemisphere/mkt.pdf> (last visited Mar. 2, 2001), and *FTAA Negotiating Group on Services: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/whemisphere/services.pdf> (last visited Mar. 2, 2001); significant intellectual property obligations and enforcement mechanisms, see *FTAA Negotiating Group on Intellectual Property: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/whemisphere/intel.pdf> (last visited Mar. 2, 2001); "non-discriminatory" treatment in government procurement, see *FTAA Negotiating Group on Government Procurement: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/whemisphere/gov.pdf> (last visited Mar. 2, 2001); safeguard measures upon determination that "the imports in question are a substantial cause of serious injury, or threat thereof, to a domestic industry," see *FTAA Negotiating Group on Market Access*, *supra*; and a dispute settlement mechanism, see *FTAA Negotiating Group on Dispute Settlement: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/whemisphere/dispute.pdf> (last visited Mar. 2, 2001). In addition, the statement on competition policy calls for the identification of an agency responsible for antitrust enforcement in each nation, and "supports having rules on official monopolies and state enterprises" resembling those in the NAFTA. See *FTAA Negotiating Group on Competition Policy: Public Summary of U.S. Position*, <http://www.ustr.gov/regions/whemisphere/comp.pdf> (last visited Mar. 2, 2001). With regard to tariff reduction, the United States has proposed "three different categories or 'baskets,'" allowing phased tariff reduction in more sensitive sectors (not specified in the position statement). See *FTAA Negotiating Group on Market Access*, *supra*. The United States has thus far declined to make concrete proposals in some particularly contentious areas, including the elimination of "technical barriers to trade," *id.*, and "domestic regulation" in services, see *FTAA Negotiating Group on Services*, *supra*. The USTR also notes that the negotiating nations will have to deal with "cross-cutting issues" such as "general exceptions, a national security exception, transparency, taxation, [and] certain definitions." *Id.*

252. See generally *supra* note 63.

Groups included in the Buenos Aires Ministerial Declaration, stating that “[m]ost” Trade Ministers oppose labor and environmental provisions enforceable by trade sanctions,²⁵³ should be noted for its lack of unanimity on this point. While President Bush has gone on record opposing such use of trade sanctions,²⁵⁴ Zoellick’s disinclination to remove such provisions from the Jordan Agreement may nevertheless signal recognition by the Bush administration that this form of compromise represents a viable way forward for the United States.²⁵⁵

Another sense in which the U.S.-Chile negotiations could be beneficial for the United States comes through in President Clinton’s announcement, contextualizing the potential agreement as expressing a shared vision for the FTAA and the WTO:

This endeavor reflects our mutual commitment to advancing free and open trade and investment in the Americas and around the world. The USA and Chile are both strong supporters of the Free Trade Area of the Americas (FTAA) negotiations. The negotiation of a bilateral free trade agreement between us will provide further impetus for the FTAA negotiations.

The United States and Chile reaffirm their strong commitment to the multilateral trading system and the launch of a New Round in 2001.²⁵⁶

This statement is clearly intended to communicate U.S.-Chilean unity with regard to the FTAA and the WTO, further compromising the viability of a SAFTA and Brazil’s negotiating position vis-à-vis the United States.²⁵⁷ This overall approach to the FTAA negotiations remains intact under President Bush, with U.S. officials confirming an effort “to put pressure on Brazil by moving

253. Buenos Aires Ministerial Declaration, *supra* note 45.

254. See, e.g., Brink Lindsay, *How to Open Markets By Example: The US Will Never Persuade Others to Drop Trade Barriers If It Cannot Defeat Its Own Protectionist Lobby*, FIN. TIMES, July 6, 2001, <http://globalarchive.ft.com/globalarchive/article.html?fid=010706001491> (last visited Sept. 10, 2001). The USTR web site has published a “Labor and Environment “Toolbox,”” but trade sanctions are not included in the “illustrative list” of measures the United States could employ to further these goals. See *Labor and Environment “Toolbox”*, <http://www.ustr.gov/toolbox.pdf> (last visited Sept. 25, 2001).

255. See Lindsay, *supra* note 254 (observing that “[m]any members of Congress insist they can support [trade promotion authority] only if certain strings are attached,” including “demands that labour and environmental standards be written into new trade deals”); text accompanying notes 94-95.

256. *Statement By the President: The United States of America and Chile Agree to Start Negotiations on Comprehensive Bilateral Free Trade Agreement*, *supra* note 199.

257. See Osava, *supra* note 201.

rapidly with bilateral trade talks in the hemisphere."²⁵⁸ Zoellick has stated that "several Latin American nations have expressed 'great interest'" in bilateral agreements like that under negotiation with Chile, and even suggested that the emerging Chile agreement might serve as a model for others in the region.²⁵⁹

Yet another facet of the United States' victory in winning over the "coveted prize"²⁶⁰ of Chile stems from the fact that Chile, like Jordan, has agreed to negotiate without fast track.²⁶¹ This sends a message to other Latin American nations that negotiating with a U.S. executive lacking fast track authority remains worthwhile, and tends to undercut Brazil's claim that the sluggishness of the FTAA negotiations has resulted from the lack of fast track authority,²⁶² as opposed to its own concerted effort to slow the pace of negotiations.²⁶³

V. PRACTICAL RAMIFICATIONS FOR THE FTAA

From Brazil's subregional point of view, the U.S.-Chile negotiations represent a loss both externally and internally. They will not only allow the United States to establish a powerful precedent for its own vision of the proper terms of hemispheric integration, but will also make it much more difficult for Brazil to achieve substantial South American integration. Brazil's ability to overcome

258. Edward Alden & Geoff Dyer, *White House Hard Pressed on Americas Trade Bloc*, FIN. TIMES (London), Mar. 30, 2001, available at LEXIS, News Group File; see also *Bush Says Will Intensify Efforts to Win Trade Talk Powers From Congress*, AFX (UK), Apr. 17, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010417012811> (last visited Sept. 7, 2001) (Bush stating that "[m]y administration is committed to pursuing open trade at every opportunity. We will pursue open trade bilaterally with individual nations such as Chile and Singapore and Jordan").

259. *FTAA-US Zoellick: Other Countries Seek Free-Trade Agreement With U.S.*, EFE NEWS SERVICE, Apr. 7, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010407003915> (last visited Sept. 14, 2001); see also *Salvadoran President to Support FTAA at Americas Summit*, BBC MONITORING SERVICE, Apr. 19, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010419003638> (last visited Sept. 7, 2001) (source: Notimex, Apr. 17, 2001, in Spanish) (reporting El Salvador's desire for a free trade agreement with the United States); *Bolivia Seeks Free Trade Accord With USA*, BBC MONITORING SERVICE, June 6, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010606007547> (last visited Sept. 10, 2001) (source: La Paz La Razon web site, June 6, 2001, in Spanish).

260. Valente, *supra* note 193.

261. See *U.S., Chile Trade Talks to Encompass Labor, Environment, supra* note 244.

262. See Lenilson, *supra* note 108; see also Valente, *supra* note 193 (arguing that "Washington's intention is to negotiate with Chile in order to give new momentum to the [FTAA] and counteract the position of Brazil, which the U.S. government says is 'dragging its feet' in the talks . . . over questions of political competence").

263. See *supra* text accompanying notes 141-42.

the loss of Chile and to manage pre-existing tensions within MERCOSUR will significantly impact the future of the FTAA.

Successful subregional integration in South America will be very difficult to achieve without significant "convergence of interests of Argentina and Brazil."²⁶⁴ As discussed above, their relationship is fundamentally strained by a series of trade disputes, Argentina's uncomfortable economic position of "Brazil-dependency," and a more fundamental dislike of Brazil's emerging subregional hegemony.²⁶⁵ Add to this Argentina's partial debt default and civil unrest, and the future of South American integration efforts becomes far more difficult to predict.

Whereas Brazil has firmly committed itself to pursuing bloc negotiation, Argentina's perception of its own interests has remained much less clear over recent years. As one Argentine scholar has observed, Argentina has found itself "in a tricky situation." While it has generally recognized that MERCOSUR could "give it a bargaining chip in the negotiations for the eventual entry into FTAA," it has also observed "the benefits that a country like Chile can get by getting into a bilateral negotiation with the US."²⁶⁶ Brazil has sought to slow the FTAA negotiations in order to maximize concessions from the United States, while Argentina has sorely needed faster integration to stimulate its own failing economy.²⁶⁷

As Argentina's economic condition continued to falter over recent years, the rift with Brazil only grew deeper while the prospect of stronger bilateral relations with the United States for a time grew more attractive. The clearest advocate for stronger U.S. relations was former Argentine economy minister Domingo Cavallo, whose economic recovery plan centered on unilateral elimination of tariffs on capital goods – a move that effectively gutted "Mercosur's common external tariff policy and its customs union pretensions," and further weakened Brazil's strategy of using the common external tariff as a "negotiating chip."²⁶⁸ While

264. See CARRANZA, *supra* note 7, at 95-99.

265. See *supra* text accompanying notes 204-17.

266. Thomas Catan & Raymond Colitt, *Mercosur Partners Wrestle with Conflicting Impulses: The Four Members of the South American Customs Union Are Torn Between Expansion and Bilateralism*, FIN. TIMES, Dec. 14, 2000, <http://globalarchive.ft.com/globalarchive/article.html?id=001214000642> (visited Feb. 19, 2002) (quoting Juan Gabriel Tokatlian, professor of international relations at Argentina's University of San Andres).

267. *Id.*

268. The plan also called for an increase in tariffs on consumer goods (to 35%). Thomas Catan & Geoff Dyer, *Argentine Emergency Hastens the Decline of Mercosur*,

Argentina consistently affirmed that it would negotiate the FTAA as part of MERCOSUR,²⁶⁹ the lack of consensus on this point among central members of the de la Rúa administration only added to tensions with Brazil. Cavallo remained openly critical of MERCOSUR, which he wanted to limit to a free trade area, and he described the prospect of bilateral negotiations with the United States as “politically irresistible,”²⁷⁰ while de la Rúa’s foreign minister Adalberto Giavarini favored further subregional integration.²⁷¹

The rift with Argentina under de la Rúa even began to compromise Brazil’s strategy of slowing the FTAA talks. Brazil resisted U.S. efforts to accelerate the process of hammering out

FIN. TIMES, Apr. 3, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010403000379> (last visited Sept. 7, 2001); see also *Some Realism For Mercosur*, *supra* note 109, at 17-18 (“Though almost all trade within Mercosur is now duty-free, almost none of the ‘deepening’ associated with a customs union has happened.”); *Another Blow to Mercosur*, *supra* note 210, at 33.

269. See, e.g. *Argentina to Negotiate FTAA Accession Through Mercosur – Stubrin*, AFX EUR., Apr. 4, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010404014321> (last visited Sept. 14, 2001); *Argentina: De La Rúa Plays Down Cavallo Comments on Mercosur*, BBC MONITORING SERVICE, Apr. 22, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010422002045> (last visited Sept. 10, 2001) (source: Correio Brasiliense web site, Apr. 21, 2001, in Spanish); *Argentina: Foreign Minister Denies Ruling Out US Proposal for Free Trade Accord*, BBC MONITORING SERVICE, May 10, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010510001208> (last visited Sept. 10, 2001) (source: Telam, May 8, 2001, in Spanish).

270. *Brazil: President Cardoso Suspends State Visit to Argentina*, BBC MONITORING SERVICE, Apr. 5, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010405007100> (last visited Sept. 7, 2001) (source: Ambito Financiero web site, Apr. 4, 2001, in Spanish). Brazil’s anger at Cavallo’s criticisms even resulted in the suspension of a state visit, *id.*, but at least one member of the Brazilian administration subsequently suggested a temporary suspension of the common external tariff. See Alexandra Penhalver, *Brazil’s Lafer Disagrees With Amaral, Defends Mercosur Common Tariff*, WORLD NEWS CONNECTION, Sept. 28, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010928011274> (last visited Dec. 2, 2001) (text of report by Alexandra Penhalver published by O Estado de Sao Paulo web site, in Portuguese) (reporting “the stand taken by Sergio Amaral, minister of development, industry, and foreign trade”).

271. *Brazil: Daily Says Mercosur Contributes [sic] to Divide Argentine Government*, WORLD NEWS CONNECTION, May 8, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010508013965> (last visited Sept. 14, 2001) (text of report by Ariel Pelacios published by O Estado de Sao Paulo, in Portuguese); see also *Argentina Calls For Greater Unity in Mercosur*, EFE NEWS SERVICE, Sept. 17, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010917007455> (last visited Oct. 2, 2001) (reporting Cavallo’s statements that MERCOSUR’s goals were “exaggeratedly ambitious” from the outset, and that further depreciation of Brazil’s currency would force Argentina “to reevaluate its relationship” with Brazil and MERCOSUR, while Giavarini, “seeking to calm the waters, said his country would not imagine a future without the cooperation of Brazil”).

their differences by moving up the starting date of their co-chairmanship by six months, as it has “no interest in creating the impression that the negotiations are being accelerated before the United States meets its demand to include on the agenda the reduction of non-tariff barriers hampering Brazilian exports to the US market.”²⁷² However, Brazil was effectively drawn into accelerated trade talks with the United States through revival of “Four-Plus-One” talks with MERCOSUR.²⁷³ Such talks were more directly in the interests of Argentina, which previously (and unsuccessfully) sought acceleration of the FTAA time-frame to stimulate its own economy, contrary to Brazil’s wishes.²⁷⁴

While it is far too early, as of this writing, to draw firm conclusions about the long-term impact of Argentina’s recent social and economic turmoil on the FTAA process, it is nevertheless crucial to recognize the risks and opportunities the United States and Brazil will likely face in its wake as the negotiations move forward. For over a decade, Argentina “pegged” its peso to the dollar, fixing a one-to-one exchange rate in order to prevent hyperinflation like that experienced in the 1980s.²⁷⁵ Over time, however, the increasing value of the dollar raised the value of the peso beyond its true worth, which some, particularly the International Monetary Fund (“IMF”), argue has rendered Argentine exports less competitive, contributing to its recession.²⁷⁶ At the same time,

272. *Brazil: New US-Brazil Trade Group May Help Resolve FTAA Differences*, WORLD NEWS CONNECTION, Apr. 1, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010401005002> (last visited Sept. 14, 2001) (text of report by Paulo Sotero, “New Group May Lead to Solutions For FTAA,” published by O Estado de Sao Paulo web site, in Portuguese). Brazil, however, did agree to the creation of “a new mechanism for bilateral consultation that the two countries will establish to discuss problems related to trade and investments.” Not surprisingly, Brazil emphasized that discussions would not relate directly to the FTAA. *Id.*

273. See *Mercosur, U.S. Set Timetable for Free Trade Talks*, XINHUA GEN. NEWS SERVICE, Sept. 5, 2001, available at LEXIS, News Group File; *United States Hosts “Four-Plus-One” Meetings With Argentina, Brazil, Paraguay & Uruguay on Expanding World & Regional Trade*, Sept. 24, 2001, <http://www.ustr.gov/releases/2001/09/01-75.htm> (last visited Mar. 12, 2002); *United States-Mercosur Four-Plus-One: Statement: Economic Growth Through Increased Trade*, <http://www.ustr.gov/releases/2001/09/4plus1statement.htm> (last visited Oct. 2, 2001) (agreeing to “redouble our efforts to ensure the successful conclusion of the Free Trade Area of the Americas no later than January 2005”).

274. See Edward Alden, *US Eyes Trade Talks With Latin Southern Cone*, FIN. TIMES, Aug. 23, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010823011827> (last visited Sept. 10, 2001); text accompanying notes 209, 267.

275. See, e.g., Steven Pearlstein, *For IMF, Argentina Was an Unsolvable Puzzle*, WASH. POST, Jan. 3, 2002, at E01.

276. *Id.* Brazil’s floating exchange rate permitted a 1999 devaluation, giving Brazil an advantage in export markets and attracting businesses from Argentina. See No

Argentina's commitment not to "monetize" (simply printing more currency) left it to finance its deficits through borrowing,²⁷⁷ resulting in debts in excess of US\$140 billion.²⁷⁸ The debt problem has only been exacerbated by longstanding corruption and inefficiency throughout the Argentine government.²⁷⁹ In December 2001, the situation finally boiled over, as citizens protested significant austerity measures, particularly banking restrictions that Cavallo had introduced to pay down the debt.²⁸⁰ In the face of riots killing as many as 28 and leaving numerous businesses looted or destroyed,²⁸¹ Cavallo resigned, followed shortly thereafter by de la Rúa.²⁸² Over the following two weeks, Argentina suspended its debt payments, amounting to a default,²⁸³ and saw four more presidents,²⁸⁴ concluding with the appointment of the Peronist

Right Answer?, ECONOMIST GLOBAL AGENDA, Jan. 21, 2002, http://www.economist.com/agenda/displaystory.cfm?story_id=948342 (last visited Jan. 21, 2002); Anthony Faiola, *Devaluation Imminent in Argentina: New President's Success, Economic Recovery Hinge on Peso's Future*, WASH. POST, Jan. 3, 2002, at A12.

277. See Pearlstein, *supra* note 275, at E01. It should be noted that with the dollar "peg" removed, as discussed below, Argentina has almost immediately found itself tempted to print more pesos to "compensate for a lack of cash." Bloomberg News, *Argentina Poised to Double Money Supply, Risk Inflation*, BOSTON GLOBE, Jan. 24, 2002, at E2.

278. See Anthony Faiola, *Argentines Prepare To Face Fallout of Economic "D-Day"*, WASH. POST, Jan. 6, 2002, at A01.

279. See, e.g., Brink Lindsay, *How Argentina Got Into This Mess*, WALL ST. J., Jan. 9, 2002, at A14 (arguing that Argentina's problems result from "the dilapidated state of its political and legal institutions," resulting particularly from corruption and "profligacy"); Anthony Faiola, *Argentina Gets a New President - Again: Protectionist Vows to End "Immoral" Economic Policies*, WASH. POST, Jan. 2, 2002, at A01 (noting that "many economists blame Argentina's collapse on widespread corruption and an uncompetitive economy"). Disillusionment with the government is thought to factor into an estimated 40% tax evasion rate among Argentines. See Faiola, *supra* note 278, at A01.

280. Cavallo "tried to prevent a default on foreign debt by cutting retirees' pensions and state employees' pay, and slashing social spending at a time of soaring poverty and a record unemployment rate of 18.3 percent." After the IMF withheld a loan disbursement in early December 2001, Argentina "partially froze bank accounts and seized retirement funds to raise money to pay foreign creditors." It was in response to these latter steps that protests initially broke out. Anthony Faiola, *State of Siege in Argentina*, WASH. POST, Dec. 20, 2001, at A01.

281. Faiola, *supra* note 279, at A01.

282. Anthony Faiola, *Besieged President Resigns in Argentina: Opposition Party Vows To End Market Policies That Sparked Rioting*, WASH. POST, Dec. 21, 2001, at A01.

283. Anthony Faiola & Steven Pearlstein, *Argentina To Suspend Debt Payment: Stage Appears Set For Historic Default*, WASH. POST, Dec. 24, 2001, at A01.

284. Upon de la Rúa's resignation, Ramon Puerta, head of the Argentine senate, automatically became president. Soon afterward, Rodriguez Saa was appointed interim president by the legislature until an election could be held in March. Saa soon lost support within the Peronist party and resigned. At this point Puerta

Eduardo Duhalde to fill out the remaining two years of de la Rúa's term.²⁸⁵

Duhalde faces the significant challenge of placating a public still fuming over austerity measures, while formulating an economic recovery plan sufficient to convince the IMF and the U.S. Treasury Department to extend further loans.²⁸⁶ While Duhalde's early rhetoric emphasized protection of domestic industry and Argentina's citizens, more recent actions signal recognition of the necessity of working with international financial institutions.²⁸⁷ "[W]ildly unpopular" banking restrictions²⁸⁸ remain in place,²⁸⁹ and a full devaluation of the peso has occurred.²⁹⁰ And while

stepped down from his position as head of the senate to avoid the presidency, leaving it to Eduardo Camano, head of the lower house of the legislature, who held the position pending Duhalde's appointment to fill out de la Rúa's term. See Anthony Faiola, *Crisis-Wracked Argentina Seeks Fifth President in Two Weeks*, WASH. POST, Jan. 1, 2002, at A18.

285. See Faiola, *supra* note 279, at A01. Upon taking office, Duhalde "blamed the financial collapse of Latin America's third largest economy on the failings of U.S.-backed free-market policies adopted in the 1990s," branding it an "immoral" economic model, and stated that he would increase state control over the economy and impose protectionist measures to shelter domestic industries from competition. *Id.* Ironically, Duhalde lost to de la Rúa in the 1999 elections, having argued for a suspension of debt payments. Duhalde is "known for his links to many of the same labor unions that sparked de la Rúa's downfall." *Id.*

286. See, e.g., Faiola, *supra* note 279 at A12 (noting that Duhalde "may have to tone down plans for erecting trade barriers to foreign competition in order to secure the backing of the IMF and the U.S. Treasury Department"); *Romance Gone Sour: Argentina Breaks Up With the Dollar*, Jan. 4, 2002, <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&content/D=A63435-2002Jan4> (last visited Apr. 1, 2002) ("For their part, U.S. officials in Washington portray the criticism of U.S. policy as Argentine fare, directed mostly at a domestic audience by leaders anxious to reduce discontent in a shaken country. Sooner or later . . . Buenos Aires would have to turn to Washington and the international financial institutions based [there] to obtain a 'sustainable' solution to the crisis.").

287. See, e.g., Jackson Diehl, *Dreams of Normality*, WASH. POST, Jan. 21, 2002, at A17; WORLD/americas/01/29/arge Thomas Catan, *Argentina Hopes to Reassure US On Reform: Carlos Ruckauf Foreign Minister Visits Washington*, FIN. TIMES, Jan. 29, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020129000529> (last visited Feb. 24, 2002).

288. Faiola, *supra* note 279; Anthony Faiola, *In Argentina, Peronism Vs. Pragmatism: Populist Leader Alters Plans to Meet Reality of Economic Crisis*, WASH. POST, Jan. 26, 2002, at A01 ("[Duhalde] seems willing to shift his positions to meet the realities of modern Argentina, which will have to seek fresh support from the IMF and, in the long run, the return of foreign investors as part of an effort to recover from financial collapse.").

289. Duhalde's recovery plan lifts restrictions on wages deposited directly into banks. *Argentina Unveils Recovery Plan*, WASH. POST, Feb. 4, 2002, at A14.

290. *Argentina Unveils Recovery Plan*, *supra* note 289, at A14; Paul Blustein, *Argentina Lets Peso Float: Feared Plunge Fails to Occur Despite Long Lines at Exchanges*, WASH. POST, Feb. 12, 2002, at E01. The Argentine Supreme Court has actually held the banking freeze unconstitutional, threatening Duhalde's economic

banks have been forced to accept payment on certain dollar-denominated loans in pesos at the pre-devaluation rate,²⁹¹ Duhalde's administration has stated that banks will be permitted to pay out dollar-denominated accounts in pesos,²⁹² a move clearly aimed at convincing the IMF and the U.S. Treasury Department that Argentina will do what has to be done to save its banking system.²⁹³

recovery plan entirely. *Argentina Forced to Revise Economy Plan: Court Ruling Against Freeze on Bank Accounts Could Jeopardize Financial Institutions*, WASH. POST, Feb. 3, 2002, at A23. Ultimately, however, Duhalde's "government prohibited Argentines from going to court to take advantage of the . . . court ruling." Alistair Scrutton, *Argentine Leader Moves Against Court and Banks*, WASH. POST, Feb. 5, 2002, at A12. Argentina initially had a two-tier system with a set rate for exports of 1.40 to the dollar, and a freely floating peso otherwise. This has disappointed exporters, who saw more to gain from a lower rate (because foreign purchasers could buy cheaper pesos with which to purchase their exports). Anthony Faiola, *No Relief for Argentine Exporters: Hoped-For Peso Devaluation May Work Against Many Companies*, WASH. POST, Jan. 9, 2002, at E01. Many feared a full devaluation, however, because approximately eighty percent of debts in Argentina are dollar-denominated, while most people actually earn pesos, meaning the pesos they earn would buy fewer dollars with which to repay their loans. See Faiola, *supra* note 282.

Anne O. Krueger of the IMF and Secretary Paul H. O'Neill of the U.S. Treasury Department both expressed displeasure at the initial two-tier system. See Paul Blustein & Anthony Faiola, *Argentina Told of Conditions for Aid: IMF, O'Neill Urge Free-Floating Peso, Action to Curb Inflation and Spending*, WASH. POST, Jan. 10, 2002, at E01; Anne O. Krueger, *Transcript of Press Briefing (Teleconference) on Argentina*, Jan. 11, 2002, <http://www.imf.org/external/np/tr/2002/tr020111.htm> (last visited Apr. 1, 2002) ("In the medium or the longer term, we do not believe that a dual exchange rate system is sustainable. It requires a number of control mechanics . . . which are very difficult to administer and are inconsistent with the growth, or healthy growth of an economy."). Argentine leaders took issue with this assessment, with one official replying that IMF representatives "should talk less if they don't have anything interesting to say." Anthony Faiola, *Argentine Accuses IMF of Meddling: Criticism Is Seen Damaging Efforts Toward Recovery*, WASH. POST, Jan. 14, 2002, at A14.

291. See Anthony Faiola, *Argentina Sets Sharp Devaluation: Steps Aim to Limit Consumers' Pain*, WASH. POST, Jan. 7, 2002, at A01.

292. Marc Lifsher & John Hechinger, *Argentina Will Pay Bank Deposits in Pesos: Policy Will Placate Banks, But Is Sure to Frustrate Their Account Holders*, WALL ST. J., Jan. 21, 2002, at A2; Jennifer L. Rich, *Argentina Planning a Shift to Pesos*, N.Y. TIMES, Jan. 21, 2002, at A5; *Argentina Unveils Recovery Plan*, *supra* note 289, at A14; *Argentine Leader Moves Against Court and Banks*, *supra* note 290, at A12.

293. Rich, *supra* note 292, at A5; see also Paul Blustein, *IMF, White House Fumble for a Strategy as Argentina Founders*, WASH. POST, Jan. 18, 2002 (noting the IMF's insistence "that the government ensure the viability of the banking system, which would mean making bank depositors absorb some of the losses arising from the peso's devaluation"). To date, Duhalde's economic plan and a trimmed-down budget have not been enough to please the IMF and U.S. Treasury Department, who still fear for the future of the banking system. Paul Blustein, *IMF's Stony Silence On Austerity Plans Worries Argentina*, WASH. POST, Feb. 7, 2002, at A20. New limitations on the ability of provinces to spend central government funds has improved the outlook,

The ultimate impact on the negotiating positions of the United States and Brazil remains to be seen, but it should be observed that this economic crisis places the United States in a relatively active role with regard to Argentina's future negotiating alignment. As "dominant shareholder" of the IMF,²⁹⁴ the United States at least has the opportunity to formulate a strategy and pursue it, whereas Brazil remains in a reactive posture, save assuring investors that the "contagion" will not spread its way.²⁹⁵ This is not to suggest, however, that the United States will necessarily win Argentina's lasting friendship. The United States (and IMF) must strenuously avoid demanding reforms considered politically impossible by Argentine leaders, or run the risk of pushing this historic ally straight into the arms of Brazil.²⁹⁶ Arguably, the

however. Paul Blustein, *IMF, Argentina to Hold Talks on Loan Package: Negotiations to Begin After Two-month Standoff*, WASH. POST, Mar. 1, 2002, at E03.

294. Paul Blustein, *Bush Defends Free-Market Path*, WASH. POST, Jan. 17, 2002, at A02.

295. Significantly, the rest of Latin America has largely been unaffected by Argentina's economic turmoil. With the exception of Uruguay, "whose economy is tightly linked to commerce with Argentines," investors have largely recognized that Argentina's "massive foreign debt, budget deficits and exchange rate controls" make it "a unique case." Anthony Faiola, *Argentine Crisis Sends Few Ripples: Latin American Markets Are Calm Following Currency Devaluation*, WASH. POST, Jan. 8, 2002, at A13. Nevertheless, Brazilians remain "keen to stress their differences with their troubled neighbour." *Fingers Crossed: Brazil Hopes It Can Escape Collateral Damage*, ECONOMIST, Jan. 5, 2002, at 31. Some analysts argue that Argentina's troubles will ultimately leave MERCOSUR a free trade area at best (rather than a customs union), and will compromise the "policies and credibility of the United States in Latin America," especially given the lack of direct support from the United States. *Argentine Economic Collapse Will Affect the Americas: Analysts*, AGENCE FRANCE PRESSE INTL., Jan. 6, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020106002399> (last visited Jan. 26, 2002). MERCOSUR has reaffirmed its mission, while acknowledging that more affluent countries and international institutions are in the better position to dictate an active course. See *Mercosur Chiefs Call For International Support For Argentina*, EFE NEWS SERVICE, Feb. 18, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020218007038> (last visited Feb. 24, 2002).

296. See, e.g., Faiola, *Argentine Accuses IMF of Meddling*, *supra* note 290, at A14 (discussing Argentina's angry response to Anne O. Krueger's statement that a two-tier exchange rate would not be "sustainable," and observing that angry comments in response "reflect frustrations within the new government that the IMF is underestimating the complex and potentially explosive social situation"); Anthony Faiola, *Argentina Signals Shift Away From U.S.: Rioting Spreads as New Leader Calls for Latin American Unity Against "Domination"*, WASH. POST, Jan. 16, 2002, at A14; Larry Rohter, *Argentina and the U.S. Grow Apart Over a Crisis*, N.Y. TIMES, Jan. 20, 2002, at A5 (observing that Argentina has been "stung by the Bush administration's apparent indifference and lack of assistance during the current crisis," and that Argentina "now places an especially high priority . . . on improving relations with Brazil and the European Union"). In this light, the IMF's decision to give Argentina a one-year extension on a loan payment comes as no surprise. IMF

worst-case scenario to result from a heavy-handed approach could be a Latin American backlash against the very free market principles motivating the FTAA.²⁹⁷

Brazil, for its part, must endeavor to counteract the perception that it uses MERCOSUR solely for the attainment of its own foreign policy goals – “as just a large visiting card to show in its dealings with the outside world.”²⁹⁸ One Brazilian commentator has noted that “[i]n Brazil there coexist several perceptions of Mercosur, each traversed by the idea of a bloc adapted to the nation’s own foreign policy, which tends toward fighting the United States for leadership in South America.”²⁹⁹ Brazil is right that slowing the FTAA negotiations leaves more time to coalesce a significant negotiating bloc, creating an opportunity to win greater concessions from the United States. However, it must be acknowledged that this also squares nicely with Brazil’s own domestic economic interests,³⁰⁰ and that the costs of this strategy have been borne more directly by Argentina. Indeed, it has been

Extends Argentina’s SRF Repayment by One Year, Press Release No. 02/2, Jan. 16, 2002, <http://www.imf.org/external/np/sec/pr/2002/pr0202.htm> (last visited Apr. 1, 2002).

297. See, e.g., Blustein, *supra* note 294, at A02 (reporting that “President Bush admonished Latin America . . . against straying from the path of free markets, a sign of mounting worries in Washington that Argentina’s wrenching economic crisis may lead Buenos Aires and neighboring countries to resort to protectionism and government intervention,” and that Bush will be pursuing a trade deal in Central America to send “a signal to other countries in the region that if they balk at making concessions to create the hemisphere-wide FTAA, the United States will cut deals with those nations that are more eager for free trade”); *Latin Trade*, *supra* note 93 (interpreting Bush’s announcement of potential trade talks in Central America as a warning to Argentina and others that “the US had other options for hemispheric trade liberalisation”).

298. *Chopping Block*, *supra* note 209; see also Wheatley, *supra* note 216, at 25 (observing that Brazil “has claimed the lion’s share of Mercosur’s spoils,” and that its “habit of putting its own interests ahead of those of Mercosur has badly strained relations between the bloc’s members”). Argentina has signaled its “strong desire to maintain commercial relations with Brazil and the rest of Mercosur,” as well as to continue pursuing the EU and FTAA negotiations. *Argentina Promises Not to “Surprise” Mercosur Partners*, EFE NEWS SERVICE, Jan. 3, 2002, <http://globalarchive.ft.com/globalarchive/article.html?id=020103006934> (last visited Jan. 26, 2002).

299. Valente, *supra* note 204 (paraphrasing Pedro da Motta Veiga, head of the Brazilian Society for the Study of Transnational Firms and Economic Globalization).

300. See *Brazil Turns Down Argentine Proposal to Lower Mercosur Tariffs on Capital Goods*, *supra* note 205 (reporting Brazil’s rejection of Argentina’s proposal to reduce MERCOSUR’s common import tariff on all capital goods as a reflection of Brazil’s belief “that there are still sectors which need to be relatively protected by the special 35 per cent tariff,” particularly “vehicles, petrochemical, telecommunications and computer goods which, within Mercosur, are mainly produced in Brazil”).

suggested that MERCOSUR's failure to bring in Chile as a full member resulted directly from Brazil's insistence on maintaining high protective tariffs.³⁰¹ If Brazil is to hold MERCOSUR together as a negotiating bloc, and possibly as the core for a larger South American bloc, it must deal with intra-MERCOSUR distributional questions³⁰² in what is perceived to be a fair and equitable way. As one Chilean economist has put it, "Brazil sees Mercosur as a tool for building a position to confront the United States, and not as a tool to improve the region's competitive force on international markets. . . . [I]f Brazil's intention is to compete with the United States, it would be better off developing a leadership position that is less committed to national interests and more in line with the common interests of the entire bloc."³⁰³

To the extent that Brazil fails to keep MERCOSUR unified in its approach to the FTAA, it will only make it that much easier for the United States to capitalize on useful precedents with Jordan and Chile, to prevent any potential South American bloc from coalescing, and to extract the kinds of concessions that it will need to get from other negotiating nations on issues such as labor, the environment, and intellectual property in order to satisfy its own domestic constituencies' demands. Brazilian policy-makers certainly recognize the importance of negotiations within MERCOSUR,³⁰⁴ but must more clearly acknowledge the necessity

301. See *The Western Hemisphere Unites*, FOREIGN REP., Jan. 25, 2001, available at LEXIS, News Group File; Valente, *supra* note 193 (observing that "[w]hile Chile has a nine percent single foreign tariff, to be slashed to six percent in 2003, the four full members of Mercosur have staggering duties ranging from zero to 35 percent, and averaging 14 percent").

302. See, e.g., *supra* text accompanying notes 204-09. The recent conflict over the possibility of adding sugar to MERCOSUR's free trade regime provides a good example. Argentina, on the one hand, would likely suffer higher unemployment in its impoverished cane producing region if it removed its import tax on sugar from Brazil, where production costs are lower. Yet Brazil, for its part, maintains a "program of adding cane-based fuel alcohol to gasoline" to reduce its dependence on foreign sources of fuel, a practice which Argentina considers a subsidy of the sugar industry and a distortion of competition within MERCOSUR. See Osava, *supra* note 204. Numerous distributional questions of this sort offer opportunities for trade-offs within MERCOSUR, allowing the parties to negotiate internally in order to lessen the temptation of a bilateral deal with the United States, and thus to maintain a united front in the FTAA negotiations.

303. Valente, *supra* note 204 (paraphrasing Patricio Meller, economist at the Corporation of Economic Research for Latin America).

304. See, e.g., Barbosa, *supra* note 133, at "The Brazilian Position" ("The launching of the FTAA negotiations in April 1998 represented the greatest challenge for Brazil and for Mercosul in the coming years: how to reconcile negotiations within the regional sub-group with those regarding the entire hemisphere"); *Brazilian Foreign Minister Says Common Market Key to Mercosur Survival*, BBC SUMMARY OF

of short-term sacrifice to achieve long-term gain.

VI. THEORETICAL IMPLICATIONS – THE POLITICS OF REGIONALISM

The recent “proliferation of regionalism” throughout the world raises the important question of the impact of regional trade agreements (“RTAs”) on the GATT/WTO regime.³⁰⁵ Given the ambitious nature of the FTAA undertaking, as well as the complexity and scope of its negotiation, it is important to consider how the developments discussed above inform theoretical discussions of the impact of “regionalism” on efforts to improve the multilateral trading system. This final section will argue that regardless of any purely economic answers to this question, a full understanding of the nature and impact of regional trade efforts like the FTAA requires acknowledgment and comprehension of their political meaning – the extent to which regionalism reveals fundamental fracture lines within and among various nations regarding the *desirable* scope and depth of multilateral free trade.

The GATT/WTO regime explicitly permits RTAs. Article XXIV of the GATT states that “[t]he contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements,”³⁰⁶ and goes on to authorize “the formation of a customs union or of a free-trade area” subject to the general requirement that its creation must not raise new barriers to the trade of GATT contracting parties not participating in the RTA.³⁰⁷ While this language emphasizes compatibility with the GATT, it has been aptly characterized as recognition that “regionalism is an unstoppable trend.”³⁰⁸

The question of whether RTAs are “stepping stones or stumbling blocks”³⁰⁹ on the road to global free trade remains an open

WORLD BROADCASTS, Feb. 3, 2001, available at LEXIS, News Group File (text of report by Denise Chrispim Marin published by Valor web site, Jan. 29, 2001, in Portuguese) (reporting the belief of Celso Lafer, Brazil’s Foreign Minister, that MERCOSUR “will not be absorbed by the FTAA . . . if it rapidly fulfils its common market agenda,” and observing that “Mercosur will survive only if it guarantees a more profound degree of integration than the FTAA”).

305. See, e.g., Myung Hoon Choo, *Dispute Settlement Mechanisms of Regional Economic Arrangements and their Effects on the World Trade Organization*, 13 TEMP. INT’L & COMP. L.J. 253, 253 (1999).

306. GATT 1994, *supra* note 113, art. XXIV(4).

307. *Id.* art. XXIV(5).

308. Choo, *supra* note 305, at 254.

309. *Id.*

one. Some, notably economist Jagdish Bhagwati, remain highly skeptical of regionalism. Bhagwati argues that proliferation of free trade agreements results in trade diversion and creates a “spaghetti bowl” phenomenon of tangled rules of origin that lend themselves to “protectionist capture.”³¹⁰ With regard to the Western Hemisphere, Bhagwati has rejected the idea that free trade agreements like NAFTA and the FTAA pave the road to multilateralism, arguing particularly that NAFTA has only raised political divisions more easily elided at the WTO level.³¹¹ Ultimately, Bhagwati accepts regionalism only where the goal is a common market, or when multilateralism is not possible.³¹² On the other hand, some have argued that free trade areas do offer trade-enhancing advantages. Paul Wonnacott, for instance, points out that free trade agreements permit trade liberalization to occur where the degree of political integration required for a customs union or a common market is not feasible.³¹³ In particular, he observes that smaller economies like those in South America would not want to have a customs union with a common external tariff largely determined in Washington, and the United States

310. Jagdish Bhagwati, *U.S. Trade Policy: The Infatuation with Free Trade Areas*, in JAGDISH BHAGWATI & ANNIE O. KRUEGER, *THE DANGEROUS DRIFT TO PREFERENTIAL TRADE AGREEMENTS* 1, 2-5; see also Martin Wolf, *Bush's Free Trade Responsibility: The US President Must Take the Lead in Ensuring the Successful Negotiation of a New Global Trade Round*, FIN. TIMES, Apr. 25, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010425000952> (last visited Sept. 10, 2001) (“The US, outspokenly opposed to discriminatory trading arrangements half a century ago, is now among their most convinced advocates.”); Guy de Jonquieres, *Popular Trend Is At Odds With Global Free Trade: Regional Trade Agreements*, FIN. TIMES, Nov. 30, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=011130001667> (last visited Dec. 2, 2001); cf. *American Trade*, FIN. TIMES, Apr. 19, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010419001234> (last visited Sept. 7, 2001) (arguing that President Bush “needs to couple his drive for FTAA with an equally strong effort to launch a new global trade round and to strengthen the World Trade Organization,” as they are “unattainable without US support,” and that “a successful trade round would offer the US and other countries in the Americas a far larger economic pay-off than would a purely regional liberalisation”).

President Bush's enthusiasm for the FTAA to some degree reflects his initial foreign policy emphasis on the Western Hemisphere. See, e.g., Mary Dejevsky, *Bush Seeking 'Hemisphere of Liberty' at Summit of Americas*, INDEPENDENT, Apr. 21, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010421000498> (last visited Sept. 10, 2001); Edward Alden et al., *Protesters Greet Leaders to Quebec: Anti-Corporate Demonstrations: Two Days of Talks on Launching Free-Trade Area Prompt Opposition But Little Violence*, FIN. TIMES, Apr. 21, 2001, <http://globalarchive.ft.com/globalarchive/article.html?id=010421000659> (last visited Sept. 10, 2001); *The New Cosmopolitan*, ECONOMIST, May 12, 2001, at 76.

311. Bhagwati, *supra* note 310, at 11-13.

312. *Id.* at 8.

313. Wonnacott, *supra* note 208, at 93.

likewise would not want this if entering the customs union would mean that it could not change its tariffs without the consent of other nations.³¹⁴ Wonnacott also argues that “[a] nation in an FTA . . . has an incentive to cut tariffs in situations where its consumers are paying high prices for goods imported from its FTA partners,” whereas in a customs union “with its collective decision making on the common external tariff, there is greater opportunity for producer interests to triumph and establish a coalition to set a high tariff or block a tariff reduction.”³¹⁵ Wonnacott’s argument, taking into account the political variables that constrain the choices of policy-makers, reflects a relatively pragmatic comfort with the idea of contextualizing economic theory within a broader set of issues. This touches upon the fundamental reality at the heart of the free trade debate – the fact that the economics of trade are constrained by the politics of trade. As John Jackson has observed, “[a]lthough we often consider ‘regionalism’ to be concerned primarily with economic matters, we must recognize that there are many ‘tie-ins’ to non-economic policies. . . . Some portion of the attention that we give to the relationship between the multilateral trading system and trading blocs must take cognizance of non-economic goals.”³¹⁶

The FTAA negotiations reveal significant political constraints, along a number of axes, which limit the set of achievable outcomes. 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,³¹⁷ 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.³¹⁸ As a result particularly of domestic political pres-

314. *Id.*

315. *Id.* at 94.

316. John H. Jackson, *Perspectives on Regionalism in Trade Relations*, 27 *LAW & POL’Y INT’L BUS.* 873, 874-75 (1996); see also Rodrik, *supra* note 106, at 20-21 (observing that “economists and proponents of trade have either neglected or pooch-pooched some of the broader complications associated with international economic integration,” including “the distributional implications of globalization,” and that “the full story of globalization cannot be told unless these broader issues are addressed as well”).

317. See *supra* pt. II.

318. See *supra* pts. III, IV.

asures, the United States can only pursue broader hemispheric trade liberalization in certain ways, and likewise as a result particularly of subregional political pressures, Brazil can only amass negotiating clout and pursue U.S. market access in certain ways.

The multi-level dynamic apparent in this examination of the FTAA process accords closely with insights of liberal international relations theory and multi-level game theory, particularly in their recognition of the variety of axes along which any particular international negotiation unfolds. Realism, "[t]he dominant approach in international relations theory for virtually the past two millennia," assumes, first, that "states are the primary actors in the international system, rational unitary actors who are functionally identical"; second, that "power determines the outcomes of state interactions"; and third, that "states can be treated as if their dominant preference were for power."³¹⁹ Liberal international relations theory, in contrast, "begin[s] with individuals and groups operating in both domestic and transnational civil society. . . . State behavior is in turn determined not by the international balance of power, whether or not mediated by institutions, but by the relationship between these social actors and the governments representing their interests, in varying degrees of completeness."³²⁰ The series of constraints placed upon the USTR in the FTAA negotiations provides a striking example of the centrality of domestic politics in international relations, particularly through the "fast track" debate and the related demands of "civil society" constituencies to have their views incorporated into the FTAA process.³²¹ Robert Strauss has commented that in serving as Special Trade Representative for the Tokyo Round of multilateral negotiations, "I spent as much time negotiating with domestic constituents (both industry and labor) and members of the U.S. Congress as I did negotiating with our foreign trading partners."³²² Multi-level game theory also recognizes these dynamics, emphasizing the importance of viewing complex international relations in terms of multiple levels of negotiation. A simple two-level game model views the negotiations among nations as Level I, and the domestic-level negotiations within each nation as Level II:

319. Anne-Marie Slaughter, *Interdisciplinary Approaches to International Economic Law: Liberal International Relations Theory and International Economic Law*, 10 AM. U.J. INT'L L. & POL'Y 717, 722 (1995) (citations omitted).

320. *Id.* at 728 (citations omitted).

321. *See supra* pt. II.

322. Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT'L ORG. 427 (1988) (quoting Strauss, citation omitted).

In this model, the range of agreements for Level I, the international agreements, that are acceptable to a majority at Level II, the domestic constituency, constitutes the "win-set" for that particular country. By viewing the international negotiations from the perspective of one country through the lens of win-sets, it is possible to estimate the impact of domestic politics on the potential success of the international stage of the game.³²³

Much like liberal international relations theory, the multi-level game theorist views international negotiation in light of the set of possible outcomes acceptable at the domestic level. Ultimately the extent to which the two sides' "win-sets" converge determines their ability to reach an agreement at the international level.³²⁴ As a corollary, multi-level game theory also suggests that "side-payments" can be used at the domestic level to control the international "bargaining set."³²⁵ Brazil will most certainly find it necessary to make some type of "side-payment" in the form of intra-MERCOSUR trade concessions contributing to Argentina's economic recovery, effectively making a side-payment at the secondary level in order to pursue a favorable negotiating strategy at the primary level. It may be objected that both liberal international relations theorists and multi-level game theorists term the secondary level of negotiation "domestic," whereas the constituents of MERCOSUR and the would-be SAFTA are themselves nations, but this objection misses the fundamental insight. As Anne-Marie Slaughter has observed, with regard to any given set of international goals,

[a]ltering positive assumptions about who the principal actors are in the international system and about the motives that drive them gives rise to different causal statements about the source of particular problems. These dif-

323. Robert J. Schmidt, Jr., *International Negotiations Paralyzed by Domestic Politics: Two-Level Game Theory and the Problem of the Pacific Salmon Commission*, 26 ENVTL. L. 95, 109-10 (1996) (discussing the work of Robert Putnam, citation omitted); see generally Putnam, *supra* note 322.

324. The definition of a "win-set" as an international negotiation outcome acceptable to domestic constituencies is closely related to the concept of the "zone of possible agreement," or "ZOPA," in negotiation theory. Robert Mnookin views negotiations among individuals in these terms, observing that each participant has a point at which they are "indifferent between reaching a deal and walking away," their "reservation value," and that negotiated outcomes are in turn constrained by the ZOPA, a "bargaining range created by the two reservation values." ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 19 (2000).

325. Schmidt, *supra* note 323, at 118.

fering analyses will in turn suggest different political and legal strategies as to how to resolve those problems in the service of the posited affirmative goals.³²⁶

As the analysis of this article has suggested, ascertaining the true nature of the FTAA negotiations and the negotiators' motives requires acknowledgment of the multiple levels at which political pressure is exerted upon policy-makers, consonant with recent recognition among international relations and game theorists that the interaction of nations amounts to something more complex than a set of unitary, rational actors pursuing power.

In assessing the future of regional efforts like the FTAA and their impact on multilateral free trade, then, it is important constantly to reexamine the assumptions and the goals of the process. Whether regional efforts like the FTAA constitute "stepping stones" or "stumbling blocks" for multilateral trade depends in part on the goals WTO members have for the organization. If the aim is truly absolute free trade at the global level, then it becomes a simpler matter to dismiss regional free trade areas as "discriminatory," and therefore sub-optimal,³²⁷ in effect, the political debate is assumed off the table. However, the manner in which the FTAA process has unfolded suggests that nations, and their constituents, are anything but clear on what multilateral "free trade" *should* mean. The sense of "GATT-frustration"³²⁸ that led nations like the United States to pursue regional arrangements during the Uruguay Rounds; the wide divergences between developed and developing nations with regard to the process and substance of hemispheric free trade; and the vocal debates among various "civil society" constituencies all suggest that regional integration schemes like the FTAA constitute a dialectical process through which the proper balance of economic and political goals for trade policy is debated and negotiated.³²⁹ This is certainly not to suggest that the economic debate over whether regionalism results in faster or slower multilateral trade liberalization is not important. The point is rather that trade negotiations generally play themselves out at the intersection of economics and politics, and that in this light, the analysis is fundamentally altered; it makes little

326. Slaughter, *supra* note 319, at 720.

327. See, e.g., Bhagwati, *supra* note 310, at 2.

328. See *supra* text accompanying note 72.

329. Cf. Jackson, *supra* note 316, at 877 (arguing that since "the focus has shifted from tariffs to non-tariff barriers," assessing "trade relations now require[s] consideration of matters formerly thought to be well within national sovereignty and matters that are deeply embedded in societal structures and cultures").

sense to assess regionalism solely in terms of some fixed notion of "free trade" if regionalism represents a political dialogue aimed precisely at calling that concept into question. In the FTAA process, a number of voices are all straining to be heard at the negotiating table because if it comes to exist, the FTAA will represent yet another exemplar of trade relations. Hence the U.S. approach to trade negotiation has been to begin with easier victories at the bilateral stage, as with Jordan, and then to move progressively toward more ambitious goals like Chile, and very likely on to the FTAA, and then toward the ultimate goal of achieving its particular vision of free trade at the WTO level.³³⁰ Likewise, Brazil seeks to establish itself as the center of a unified and strong South American trade bloc with the immediate goal of achieving more favorable results at the FTAA level, but its simultaneous talks with the EU and other potential trade partners make clear that the FTAA is a component of a truly global agenda.³³¹ Above all else, these complex negotiating dynamics suggest that in its political dimension, the meaning of "free trade" remains very much in flux, and that the FTAA's most significant ramification may be the resulting momentum behind a particular blueprint of trade relations for future global negotiations.

330. See *supra* text accompanying notes 225-63.

331. See *supra* pt. III.