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GOVERNANCE IN INTERNATIONAL TRADE: LESSONS FROM SECTORALISM, REGIONALISM, AND GLOBALISM

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I. INTRODUCTION

This chapter examines changing governance patterns in international trade in the post-WW II era, focusing on the efficacy and implications of the use of alternative mechanisms in resolving conflicts. Over the last fifty years, states have utilized a host of measures to regulate trade flows. These include unilateral restraints, bilateral agreements, minilateral accords, and multilateral arrangements. Depending on the number of products and the geographical participation of countries, we can consider three important specific governance categories, namely sectoralism, regionalism, and globalism. Sectoralism refers to industry specific arrangements that can be unilateral, bilateral, minilateral or multilateral, and may be driven by market opening or protectionist objectives. Regionalism refers to arrangements by a limited set of geographically concentrated countries that involve either free trade arrangements or customs unions with common external tariffs, either on a single or multiproduct basis. Finally, globalism refers to multilateral, multiproduct arrangements such as the General Agreement on Tariffs and Trade (GATT) and its successor organization, the World Trade Organization (WTO).

In considering the evolution of these different arrangements in international trade, we consider four elements: agenda setting, the strategic interaction among actors over various issues, the implementation of these arrangements to alter national actions, and the effort to cope with violations of various types of institutional arrangements.¹ In addition, an important question for understanding the prospects for the future of governance in the international trading system is the relationship of different types of governance forms to each other. As we shall see, these various forms of governance have closely interacted

¹ de Jonge Oudraat and Simmons (1998, pp. 5-7).

with each other and have often arisen in response to perceived problems in one or another type of arrangement.

A variety of important lessons emerge from analysis of previous and more recent efforts to manage trade at different levels. The details of various lessons are found Section IV of this paper; here I only present two key themes that are drawn from analyzing the dynamic interaction among governance arrangements at different levels.

First, an important new challenge in global trade management arises from the increasing tension and potential conflicts between sectoral, regional, and global approaches to liberalization. While there is still debate about the role of regional blocs serving as building blocks for global liberalization, the conventional wisdom is that liberalization on a sectoral basis (liberal sectoralism) is good for the trading system. By contrast, I am more cautious. I believe that the evidence suggests that the recent effort to develop liberal multilateral sectoral arrangements such as the Information Technology Agreement (ITA) or WTO Basic Telecommunications Agreement (BTA) may make it *more* difficult to conduct global trade negotiations. As potential supporters of multilateral trade liberalization achieve liberalization in their sector, they become less willing to lobby for the more general public good of trade liberalization. A similar but lesser danger exists for the negotiation of regional arrangements; such accords may also decrease the commitment of various groups to global solutions, thus leaving strongly protectionist forces in the multilateral global negotiation arena. For example, the post-Asia financial crisis collapse of the U.S. voluntary sectoral approach in Asia-Pacific Economic Cooperation (APEC) Forum has left unresolved divisions between Japan, U.S., and other Asia countries over liberalization of agricultural and industrial sectors.

It is worth noting that this concern about the development of sectoral and regional arrangements is not simply a whole-hearted endorsement of global negotiations as the only route to reconciling trade conflicts. As we shall see, ferreting out protectionist groups for special treatment through sectoral agreements may indeed allow for the advancement of broader global liberal trading arrangements. Moreover, NAFTA and APEC regional arrangements have, in their own ways, contributed to the reinforcement of the WTO norms and principles.

The second theme concerns the costs and benefits of the formalization of compliance and dispute settlement mechanisms. It may well be that the recent further legalization of this process in the World Trade Organization may generate greater conflict among major powers, as evidenced in the recent EU-U.S. hormone-beef dispute - - rather than forcing them to abide by the “rule of law.” In some cases, more informal consultations rather than formalized procedures may accomplish the end of diminishing trade conflict and achieving balanced and progressive liberalization.

The paper focuses on providing an analytical account, rather than a detailed history of trade negotiations, to examine the governance approaches that states have used in this area. Section II of the paper begins with a discussion of the motivation for developing governance arrangements in trade and the evolving and shifting nature of the “trade issue area.” Section III then turns to a focus on different types of possible trade arrangements and then focuses on an empirical overview of sectoral, regional, and global accords with an eye to examining the impact that they have had on enhancing cooperation in this issue area. In Section IV, we review the lessons to be learned in the four components of the governance process of agenda setting, negotiations,

implementation, and reactions to non-compliance on a sectoral, regional, and global basis. In conclusion, Section V evaluates the lessons we have learned in this area and considers how different forms of governance might be reconciled in trade.

II. INTERNATIONAL TRADE: NATURE OF THE PROBLEM

The underlying premise behind the benefits of international trade goes back to Adam Smith, who argued that it would be foolhardy to purchase higher priced domestically produced goods. The idea of absolute advantage was extended to the case of comparative advantage and the case for mutual gains from trade has now become an article of faith among liberal economists.² But at the same time, the benefits for free trade have continued to be questioned by other perspectives. For example, dependency theorists have argued that declining terms of trade could permanently impair the ability of developing countries to compete in the global economy. To cope with this perceived problem, the more radical theorists argued for a break with the capitalist world, suggesting that interaction with rich advanced capitalist countries will always be detrimental to the less developed. Less radical analysts called for policies of temporarily restricting imports (import substitution industrialization) so that countries could develop a comparative advantage in higher value-added products. From a different perspective, neomercantilists have suggested that the strategic nature of some industries, economies of

² Many economists have contributed to the basic theory of comparative advantage including Robert Torrens, David Ricardo, John Stuart Mill, Eli Hecksher, Bertil Ohlin, Paul Samuelson, and Abba Lerner.

scale, or the possibility of manipulating trading arrangements to improve one's terms of trade signify that open trade may not always be an optimal policy.³

Despite these criticisms, there continues to be a strong consensus, particularly among liberal economists, on the benefits of open markets. Even the mainstream view, however, recognizes that labor and firms often face significant adjustment costs. While some believe that no compensation is necessary to ensure smooth transitions to changing comparative advantage in the global economy, others have called for various forms of adjustment assistance and many countries have implemented schemes to help displaced workers and firms.

In the absence of smooth adjustment or sufficient compensation, groups that are negatively affected by shifts in comparative advantage are likely to press governments to intervene in international trade on their behalf. If these groups are politically powerful enough to secure the support of their governments, they may be able to secure unilateral measures such as tariffs, quotas, anti-dumping measures, or threats of trade restrictions to open foreign markets. These measures have commonly led to a series of countermeasures by other states, and this process of reaction and counter-reaction may lead to a downward spiral of trade protection and economic contraction as in the 1930s. Following World War II, the U.S. and others responded to the widely held belief that trade protection had exacerbated the depression by making efforts to control the use of unilateral measures through the negotiation of the GATT. But while multilateral multiproduct negotiations have been the dominant form of negotiations over the last 50 years, a variety of other trade measures on a bilateral and minilateral basis have also been

³ See, for example, the work on strategic trade theory.

common, and unilateral trade restraints have also continued. Moreover, trade arrangements have also been concluded on a narrower basis, covering only a limited set of products. Thus, whereas broad agreement on the benefits of open trade continue, there is much less consensus on the impact of different types of arrangements and their contribution to greater trade liberalization or protectionism. This topic is taken up in the next section.

While specific types of trade measures have been a key subject of debate, a more recent direct attack on what issues should properly be included in “trade negotiations” has come from environmentalists and human rights activists. Environmentalists worry that increased trade promotes greater consumption that will undermine the environment; they also argue that mandated reductions in trade barriers prevents states from using domestic regulations to achieve their environmental objectives. Human rights groups, particularly those concerned about the conditions of labor in the third world, claim that trade encourages firms to seek low cost production sites, reducing wages and undermining their efforts to improve working conditions in the developed world.⁴ Through lobbying and the use of new forms of communication such as the internet, both environmentalists and human rights activists have been increasingly challenging the current arrangements for governance in international trade.

⁴ It is worth noting that what should properly be included in the issue-area of “trade” goes beyond recent environmental and labor concerns. In the early period of post-WW II negotiations, the focus at all levels was on the manufacturing sector. Especially at the global level, agriculture was left out of negotiations and only began to be seriously addressed with any success in the Uruguay Round of GATT negotiations from 1986-1993. Moreover, issues such as intellectual property, trade related investment measures, government procurement, came to be seen as legitimate questions for discussion in the GATT/WTO only over a long period of time. Thus, at least in principle, the scope of the trade issue-area is subject to fluctuation based on an evolving cognitive consensus and political pressures.

In summary, because both state and non-state groups have different preferences for open trade and propensities to intervene in international trade, national intervention decisions to protect them create externalities that in turn spread to other states and nonstate actors. This stimulates pressure to collaborate on a bilateral or regional basis to avoid conflict generated by unilateral actions. Such bilateral and regional agreements can themselves in turn generate externalities that spill over onto other states and interest groups, further stimulating pressure for global negotiations. At the same time, because consensus and agreement at the global level is far from assured, weaker states may simply end up bearing the costs of negative externalities generated by the national actions of stronger states who prefer to pursue unilateral or non-global governance mechanisms.

III. TRACK RECORD OF INTERNATIONAL RESPONSES

What has been the evolution of various forms of trade mechanisms? Before examining the empirical record of globalism, sectoralism, and regionalism, it is useful to first analytically examine these mechanisms within a broader context of trade measures. As noted, we can focus on three dimensions to characterize different forms of governance mechanisms: 1) the actor scope (number of actors); 2) the product scope (few or many); and geographical focus of accords (dispersed or concentrated). The dimensions are illustrated in Table 1 along with some empirical examples of arrangements in each resulting category.

TABLE 1 HERE

Table 1: Categorizing Modes of Governance in Trade

		ACTOR SCOPE					
		<i>Unilateral</i>	<i>Bilateral</i>		<i>Minilateral</i>		<i>Multilateral</i>
			<i>GEOGRAPHICALLY DISPERSED</i>	<i>GEOGRAPHICALLY CONCENTRATED</i>	<i>GEOGRAPHICALLY DISPERSED</i>	<i>GEOGRAPHICALLY CONCENTRATED</i>	
PRODUCT SCOPE	<i>Few products (sectoralism)</i>	Specific quotas or tariffs or Super 301 (1)	U.S.- Japan Voluntary export restraints (2)	U.S.-Canada auto agreement (3)	Single sector commodity agreements (4)	European Coal and Steel Community (5)	Information Technology Agreement (6)
	<i>Many products</i>	Tariffs such as Smoot-Hawley, or unilateral liberalization (7)	Mexico-Chile free trade agreement (8)	U.S.-Canada free trade agreement (9)	Agreement on government procurement or LOME (10)	Multiactor free trade agreements or customs unions such as EU (11)	GATT or WTO (<i>globalism</i>) (12)

As this table shows, one can consider 12 different cells based on the three dimensions.⁵

In general, analysts do not adequately specify what the terms regionalism or globalism mean, with the latter often being used interchangeably. From my perspective, the most useful analytical definition of globalism should refer to negotiations on a multiproduct multilateral basis. By contrast, “sectoralism” can come in many forms, essentially referring to cells 1-6. Of course, whether such sectoralism takes place with only a few actors or many is an important political economy question, and one worth investigating. Finally, regionalism is often used to describe geographically proximate countries, but as the table makes clear, cells 3, 5, 9, and 11 are all forms of regionalism. Here again, the political economic implications of arrangements in these different cells have been a subject of analytical scrutiny.

⁵ The dimension of geographical dispersion applies only to the bilateral and minilateral categories, although one could imagine a focus on unilateral measures that were oriented toward geographical neighbors or to more distant actors.

We can now turn to an examination of three major categories that group several cells (in the cases of sectoralism and regionalism) to examine their evolution and interaction. Turning first to globalism, even before the end of WWII, governments in North America, Western Europe, and elsewhere agreed on and developed the International Monetary Fund and International Bank for Reconstruction and Development — known collectively as the Bretton Woods regime — to cope with fluctuating exchange rates and provide for post-war reconstruction.⁶ In trade, the counterpart organization to the Bretton Woods financial arrangements was to be the International Trade Organization (ITO).

This system of international management depended on U.S. leadership. With a dominant military force, a large market, enormous productive capacity, and a strong currency and financial system, the U.S. was well-positioned to assume this global responsibility. In addition, with Western Europe and Japan ravaged by the war, the Cold War context further reinforced the U.S. desire for rebuilding these economies. But despite this positive context, a coalition of protectionists and free traders in the United States, each of whom thought that the ITO was an excessive compromise, prevented the ITO from securing Congressional approval and thus led to its death.⁷

With the ITO moribund, the U.S. promoted a temporary implementing treaty, the GATT, as the key institution to manage trade on a multilateral basis in 1948. As a trade ‘institution’, the GATT got off to a difficult start, representing a stop-gap agreement among ‘contracting parties’ — rather than a true international institution. Originally brokered in parallel with ITO negotiations, the 23 GATT members negotiated a series of tariff

⁶ See Spero and Hart (1997) for detailed historical narrative.

concessions and free trade principles designed to prevent the introduction of trade barriers. Unlike the ITO, GATT negotiations were successfully concluded and signed in Geneva in October 1947. Under the agreement, over 45,000 binding tariff concessions were covered, constituting close to \$10 billion in trade among the participating countries.

As the sole interim framework for regulating and liberalizing world trade, the GATT turned out to be highly successful at overseeing international trade in goods and progressively reducing trade barriers. While the Annecy Round of 1949 resulted in 5,000 more tariff concessions and the entry of ten new GATT members, the Torquay Round of 1951 led to an overall reduction of close to 25% and the inclusion of four new contracting parties. The 1956 Geneva Round that followed resulted in further agreement of tariff reductions worth approximately \$2.5 billion. Under the terms of the Dillon Round of 1960-61, for the first time, a single schedule of concessions was agreed for the recently established European Economic Community (EEC), based on the Common External Tariff. Also, tariff concessions worth over \$4.9 billion in trade were also negotiated. In total, tariff reductions for the first five rounds amounted to 73%.⁸

The Kennedy Round of 1962-67 proved to be the most dramatic facilitator of trade liberalization. GATT membership increased to 62 countries responsible for over 75% of world trade at the time. New tariff concessions reached over 50% on many products as negotiations expanded from a product-by-product approach to an industry/sector-wide method, while overall tariff reductions were 35%.⁹ In addition, an agreement establishing a Code on Anti-Dumping was also brokered. This period is often dubbed the “golden age” of

⁷ Diebold (1952).

⁸ Economic Report of the President (1995, p. 205).

⁹ Economic Report of the President (1995, p. 205).

trade liberalization, witnessing a dramatic reduction of border barriers. With the United States acting as the world's central banker, providing the major impetus for international trade liberalization, and dominating the manufacturing production, these two decades were marked by unprecedented economic growth and development.

By the 1970s, however, the Bretton Woods financial system faced severe challenges. A weakening dollar and balance of trade throughout the decade prompted President Nixon to take the U.S. off the gold standard and devalue the dollar. By the mid-1970s, the OPEC "oil shocks" produced stagflation and a rise of new domestic "inside the border" protectionism in the form of voluntary export restraints and support for declining industries. Although the developed countries remained the dominant agenda setters, developing countries increasingly sought to become more influential in obtaining the benefits of international management.¹⁰ Finally, the liberal consensus had begun to erode, both among the advanced industrialized countries and the developing world. The U.S. continued to run large, but was unable to get Europeans or the Japanese to revalue their currencies. The most vocal critics of the trade and financial order came from developing countries, who argued that the open monetary, trade and financial system perpetuated their underdevelopment and dependence upon the richer Northern countries.

It is in this context of increasing complex interdependence that the next GATT round was negotiated. In the Tokyo Round of 1973-79, a record 99 countries agreed to further tariff reductions worth over \$300 billion of trade and an average reduction in manufacturing tariffs from 7% to 4.7%. In addition, agreements were reached on technical barriers to trade, subsidies and countervailing measures, import licensing procedures, government

¹⁰ See Krasner (1985).

procurement, customs valuation and a revised anti-dumping code. Yet for most participants, the Tokyo Round was a disappointment. With inadequate implementation and enforcement mechanisms in place, disputes involving nontariff barriers, agricultural and industrial subsidies remained relatively unsolved. Still, the Tokyo Round marked the first time that GATT dealt with significant non-tariff barriers arising from domestic policies.

Following significant difficulties in setting the agenda for a new round, the Uruguay Round got under way in 1986. Although the major initiative for the Uruguay Round again came from the U.S., the high level of contentiousness that threatened the conclusion of the round was unprecedented. In part, this reflects the changing balance of power among more actors in the system, the dissolution of the liberal consensus and inclusion of diverse interests, and the unwillingness of the U.S. to continue to be the lender and market of last resort. The era of *détente* and the subsequent end of the Cold War also served to weaken the security argument for continuing economic cooperation. Finally, the U.S. was no longer the undisputed hegemon of the system. In addition to a rise of a “Fortress Europe” and a “Japanese Miracle” replicated by the East Asian NICs, the debt crisis of the 1980s led to power- and burden-sharing arrangements with Europe and Japan.

After several delays from the original target conclusion date of 1990, the Uruguay Round was finalized in 1993. Despite serious conflicts during the round, the round succeeded in establishing the WTO. This new institution is equipped both with a Trade Policy Review Mechanism to increase the transparency of trade laws and practices across the border, as well as a strengthened Dispute Settlement Mechanism. In addition, many issues that had previously been absent or not subject to GATT disciplines such as services, trade-related investment, and intellectual property are now incorporated into the WTO. In addition,

market access for agricultural products has been dramatically improved as countries have committed to transforming their quotas to tariffs and then implementing reductions.

Most recently, an effort to start a new round of global negotiations under the appellation of the “Millennium Round” was marred by unprecedented conflict at the end of November 1999 in Seattle. While dispute among the major powers on how best to move forward with a new round was hardly unprecedented, the active protests by environmentalists, labor activists, human rights activists, and many other self-styled anti-globalists was quite unanticipated. While many analysts have conducted a post-mortem on the Seattle meeting, few have been able to suggest why the activists came forward with such strength at this particular time.

In summary, despite recent problems, under the global trade regimes of GATT and the WTO, tariffs have been significantly reduced and global trade has grown at an average of 6% from 1947 to the present.¹¹ Still, although tariff rates have been drastically reduced, the decline of tariffs has been accompanied by a rise of various non-tariff barriers. Thus, despite the dominance of GATT in the trade arena, we have also seen the parallel development of sectoralism and regionalism.

Sectoralism first emerged in the 1950s, and accelerated in the 1980s. The first such market sharing arrangements were in textiles, steel, electronics, autos, footwear, and semiconductors. These include such accords as voluntary export restraints (also known euphemistically as orderly marketing agreements, OMAs), and sector specific international regimes such as those in textile trade known as the Multifiber Arrangement.¹² Voluntary export restraints (VERs) seek to allocate market shares between exporters and importers,

¹¹ See WTO website at <http://www.wto.org/wto>.

stipulating that low-cost exporters “voluntarily” restrict their exports to countries where they threaten industry. VERs were *temporary* sectoral responses to evade the strictures of Article 19 of the GATT that prevent single exporters from being singled out for import protection. These arrangements have typically started out as bilateral sector-specific measures in mature low-cost, and labor-intensive industries.¹³

The most prominent international export-restraining regime is the Multi-Fiber Arrangement that grew out of the Short Term Agreement and Long Term Agreements on Cotton Textiles (LTA) in the 1960s. The MFA provided for the application of selective quantitative restrictions when surges in imports of particular products caused, or threatened to cause, serious damage to the industry of the importing country.¹⁴ The Multi-Fiber Arrangement was a major departure from basic GATT rules and particularly the principle of non-discrimination.

The persistence of VERs has varied depending on sectors.¹⁵ For example, the United States negotiated an OMA with Japan for color televisions in 1977, which expired in three years, and with Korea and Taiwan in 1980, which expired in two years. In footwear, OMAs negotiated with Taiwan and Korea in 1977 were allowed to lapse in 1981. In steel, the extent of protectionist arrangements among the European Community, Japan, and the United States have varied over time. In textiles and apparel, protectionism became multilateral and institutionalized during the 1960s and 1970s.

The success of a VER can be measured based on whether it maintains orderly international efforts to prevent states from engaging in detrimental protectionism. The

¹² For an analysis of the MFA, see Aggarwal (1985).

¹³ Aggarwal, Keohane, and Yoffie (1987, pp. 345-348).

¹⁴ WTO website at <http://www.wto.org/wto/goods/textiles.htm>.

¹⁵ See Aggarwal, Keohane, and Yoffie (1987) for extensive discussion on these sectors.

success and failure of VERs have depended on whether the industry covered by VERs was securely protected and had an opportunity for competitive adjustment.¹⁶ In textiles and apparel, the difficulty of providing secure protection and adjustment alternatives led to a bilateral VER in the 1950s with Japan, which was later expanded to include more countries and multilateralized in the MFA to include most fabrics. The most restrictive protectionist regime in the postwar era, the MFA progressively became more protectionist and thus increased conflict between the South—the main exporters—and the North—the main importers. The Agreement on Textiles and Clothing reached during the Uruguay Round of GATT negotiations gradually eliminates MFA over ten years,¹⁷ but it remains to be seen whether this will actually take place.

By contrast, VERs in the television industry succeeded in providing temporary protection and facilitating competitive adjustment of the industry, because the barriers to entry and exit as well as the size of the industry were small.¹⁸ During the 1970s, Japanese rising TV set imports into the United States led Zenith to file countervailing duty suits against Japanese firms. In 1977, they won an OMA with Japan. The subsequent increase of imports from Korea and Taiwan led to further OMAs with each of them, but by mid-1980s, 12 of the 17 producers assembling televisions in the United States were foreign-owned, and most firms, including Zenith, had adjusted to find another competitive niche. The OMAs were soon eliminated, leading once again to free trade in this sector.

¹⁶ Aggarwal, Keohane, and Yoffie (1987, pp. 347-352).

¹⁷ WTO website at <http://www.wto.org/wto/goods/textiles.htm>.

¹⁸ Aggarwal, Keohane, and Yoffie (1987, pp. 356-357).

In addition to these classic protectionist sectoral arrangements, a new trend in promoting sector-by-sector liberalization has begun, most notably the Information Technology Agreement (ITA) model, developed in 1996, and championed as a model for other sectors by the USTR. Building on the momentum generated by the successful conclusion of the Uruguay Round, the U.S. was able to push through an APEC-brokered ITA agreement through the WTO in a highly expeditious manner. Covering over 90% of the total trade in IT products among 69 participant countries, the ITA forms the foundation upon which further liberalization of the information technology (IT) sector is currently being negotiated in WTO committees. In addition, the BTA seeks to extend the same sectoral liberalization principle to trade in telecom products.

The second key deviation from the multilateral process has been the development of regional accords. Beginning in the 1950s, we have seen among others the formation of the European Economic Community (EEC), European Free Trade Area (EFTA), Latin American Free Trade Area (LAFTA), and the Association of Southeast Asian Nations (ASEAN). More recently in the 1990s, growing subregionalism has arisen with Mercosur, the North American Free Trade Area (NAFTA), and the ASEAN commitment to form the ASEAN Free Trade Agreement (AFTA). Each of these institutions has developed distinct sets of regime objectives, rules and procedures.

Regional arrangements have liberalized trade among members, but many have warned of the problem of trade diversion resulting of such regional accords. Moreover, there continues to be considerable debate over whether these arrangements will facilitate or undermine the WTO. In the case of the EU, one could make the argument that internal trade liberalization has led its member states to be more open to liberalizing trade with

the rest of the world, rather than a turn toward a “Fortress Europe” that many feared in the 1980s. In terms of origin, it is worth noting the often important role played by major powers in their formation and the close connection to security issues as a basis for the origins of some of these regional arrangements.

In addition to these geographically circumscribed regional arrangements, new transregional arrangements or summits have emerged. These include links between North America and Asia (APEC), the EU and U.S., and the EU and East Asia (Asia Europe Meeting, or ASEM). In addition, we have seen growing links between the U.S., Latin America and the EU as well. The current negotiation to create a Free Trade Area of the Americas (FTAA) is an ambitious effort to nest all subregional groupings in the Western Hemisphere. Here, as with regional agreements, the question of whether such transregional accords might prevent a possible inward focus by countries has become an issue of research and policy debate.

Our discussion below of regional trade accords focuses primarily on NAFTA and APEC owing to space constraints.¹⁹ Moreover, NAFTA represents a notable achievement in terms of widening the scope of the market and facilitating the exchange of available labor skills, and is an example of a legalized formal free trade agreement.²⁰ By contrast, in the Asia Pacific, APEC has a much softer and diffuse form. It has been in existence since 1989 but in 1993, heads of states met in Seattle and enhanced its role, in the process giving the Uruguay Round of negotiations a strong boost. Since then, with the Bogor declaration, issued in November 1994 in Indonesia, APEC members set a target for

¹⁹ The literature on the complex institutional history of the EC/EU is beyond the scope of this article and is relatively well known. For an excellent review the EC/EU’s history, see Tsoukalis (1997).

²⁰ See Condon (1997) for an empirical overview.

achieving open trade in the region for developed nations by 2010 and developing nations by 2020. The Bogor accord also supports the acceleration and the implementation of commitments under the WTO, promotes the notion of “open regionalism,” and calls for an expansion of trade and investment. Distinct from the “closed regionalism” developing in the EU, the APEC “open” concept is based on the belief that APEC should be part of the broader GATT/WTO efforts to promote further liberalization.²¹

An important question that remains to be resolved is the relationship between sectoral, regionalism, and globalism. As noted, debate over compatibility of these arrangements has been active. One way to think about the issue of appropriate institutional design issues is to consider three types of possible relationships. As I have argued elsewhere,²² arrangements can be linked in nested or parallel fashion, or simply not linked at all.

Nested institutions in an issue-area are nicely illustrated by the relationship between the international regime for textile and apparel trade (the Long Term Arrangement on Cotton Textiles and its successor arrangement, the Multifiber Arrangement) with respect to the GATT. To cope with these competing pressures, the U.S. it promoted the formation of a sector-specific international regime under GATT auspices. This "nesting" effort ensured a high degree of conformity with both the GATT's principles and norms as well as with its rules and procedures. For an example of the nesting of regional institutions, we can consider APEC's relationship to the GATT and WTP. APEC's founding members were extremely worried about undermining the

²¹ Aggarwal and Morrison (1998).

²² See Aggarwal (1985) for a discussion of nested systems and institutions in the context of sectoral arrangements. Also see Aggarwal (1994) for analysis of institutional nesting in a regional context in North

GATT, and thus the notion of "open regionalism" discussed above provided an alternative to the use of Article 24 of the GATT, which permits the formation of free trade areas and customs unions, to justify this accord.

An alternative mode of reconciling institutions would be to simply create "parallel" institutions that deal with separate but related activities, as exemplified by the GATT and Bretton Woods monetary system. By promoting fixed exchange rates through the IMF and liberalization of trade through the GATT (following the ITO's failure), policymakers hoped that this parallel institutional division of labor would lead to freer trade. On a regional basis, one can see the development of the European Economic Coal and Steel Community and the Western European Union (WEU) as parallel organizations. The first was oriented toward strengthening European cooperation in economic matters (with, of course, important security implications), while the WEU sought to develop a coordinated European defense effort.

Lastly, of course institutions could simply be independent and not linked. Thus, in the past environmental institutions and trade organizations were seen to be independent. As we have seen, as a result of politicization and new perceptions about the impact of issues on one another, attempts are now being made to connect what were previously separate institutions. The question of how institutions at the sectoral, regional and global level might be "appropriately linked" is thus a key question for policymakers and one we will return to after consideration of lessons from the history of trade governance mechanisms.

America and the Asia-Pacific region and APEC's options. These ideas are elaborated on in Aggarwal

IV. LESSONS IN FROM TRADE GOVERNANCE

We now turn to an examination of lessons learned from the history of trade negotiations. In each case, with respect to the four elements of agenda setting, negotiations, implementation and compliance, and enforcement, we first review all of the lessons to be learned about each phase. By focusing on specific themes that cut across sectoral, regional, and global trade regimes, we provide detailed generalizable lessons. Naturally, not all of the lessons learned will apply to all types of arrangements.

A. Agenda Setting

The process of setting agendas, or getting particular issues ‘on the table’, has varied considerably among different forms of governance. Generally speaking, five sets of actors have been involved in agenda-setting: hegemonic powers, middle powers, domestic interest groups, transnational interest groups, and epistemic communities. In the regional context, the hegemonic power does not automatically refer only to the U.S. For example, Germany has acted a regional hegemon in bearing the startup cost and assigning obligations to other countries in the formation of the European Monetary Union.²³ Why certain issues become salient on an agenda, and the mechanisms through which they arise are two key questions we will attempt to address.

The following are the key lessons learned in agenda setting. I then provide a closer examination of how these lessons relate to the three main types of governance structures, namely sectoralism, regionalism, and globalism.

(1998).

²³ See Crawford (1998).

- *Lesson 1: The agenda of trade negotiations has been heavily influenced by the general security environment. Domestically, if an issue can be framed as a security concern it will be dealt with more expeditiously.*
- *Lesson 2: U.S. interest groups have been very effective in setting the international trade agenda, and their influence has grown since the end of the Cold War.*
- *Lesson 3: International trade agreements offer opportunities for the control of international and domestic actors.*
- *Lesson 4: Mobilizing political action on a specific issue or limited set of issues along sectoral or regional lines is generally easier than mobilizing political action on a wide array of issues.*
- *Lesson 5: Liberal sectoralism can become a stumbling block for global multiproduct trade negotiations.*
- *Lesson 6: Mobilizing support for protective policies is easier than mobilizing support for the removal of protection for other actors to lower input prices.*
- *Lesson 7: Deregulation and internationalization have pushed industries to lobby for open markets.*
- *Lesson 8: Academic research has often helped in generating a shared understanding on the nature of the trade problem and its solutions.*

Lesson 1: The agenda of trade negotiations has been heavily influenced by the general security environment. Domestically, if an issue can be framed as a security concern it will be dealt with more expeditiously. The core idea behind the creation of a new post-World War II trading system emerged from the conviction of U.S. policymakers that they must take world leadership in coordinating collective action. Acutely mindful of the tariff wars following the Great Depression and the looming Cold War with the Soviet Union, the U.S. set out to create a liberal international trading system that would simultaneously bolster its own economy and the economies of allied countries.

As the post-WWII hegemon, the U.S. acted as military leader of the Western alliance, served as the world's central banker, and provided the major impetus for international trade liberalization. In particular, the subordination of the international trading system within the overall security system gave the U.S. executive leverage over domestically oriented protectionist groups by allowing it to argue for the primacy of Cold War concerns over narrow parochial interests.²⁴ Thus, the U.S. maintained a coherent approach to the trading system — founded on its interest in promoting multilateralism — and ensured that its trading partners grew to buttress the Western alliance against Soviet encroachment.

For much of GATT's history, it is clear that the U.S. government, pressed in part by domestic interests, has been able to pursue its national objectives by leveraging its hegemonic position, and thus remained the prime mover in setting international trade agenda. U.S. negotiators were the initiators of all eight rounds of GATT. The GATT rounds in the 1950s and 1960s were successful due to the concentration of market and military power, and the accepted leadership of the U.S. during the postwar recovery phase and within an overarching Cold War security context. For the most part, Europeans feared U.S. isolationism -- not U.S. hegemony. With the Cold War in full force, the U.S. was often willing to allow the rest of the developing world to "free ride" on its open markets in exchange for political influence.

At the same time, despite U.S. commitment to multilateralism, security concerns also influenced decisions about regional arrangements. For example, when the European Coal and Steel Community came under challenge as a violation of the GATT (which prohibited sector specific regional arrangements under Article 24), the U.S. strongly supported this

²⁴ See Aggarwal (1985) for a discussion of the nesting of economic issues with a security context.

arrangement for security reasons and pressed for an exception in the GATT in support of the Germans and French. At the sectoral level, the U.S. textile and apparel industry as well as the steel industries have often argued that they need protection for reasons of national security. Indeed, in the Pastore Hearings on the textile industry in the 1950s, the industry went so far as to argue the case for protection successfully by claiming that woolen blankets would be necessary for protection against radiation in the event of an atomic war!

By the 1960s, it became increasingly clear that U.S. trading partners were disproportionately benefiting from progressive tariff reductions. With persistent European and Japanese exchange controls and industrial policies, trade concessions provided only limited returns for U.S. exporters and tangible damage to import-competing sectors. Yet as long as economic growth continued and the Cold War raged on, the U.S.-led liberal system worked well for all participants.

By the late 1970s, the conditions conducive to further liberalization had deteriorated. Protectionism was on the rise. Increased economic interdependence and surging merchandise trade growth resulted in higher political sensitivity in issues such as jobs and persistent trade imbalance. As U.S. manufacturing productivity declined relative to other developed economies, U.S. competitiveness in many sectors deteriorated. In addition, rising foreign direct investment led to a shift of manufacturing to the newly industrializing economies. Finally, Japan and Western Europe began to challenge the U.S. lead in high-technology industries. While international trade management up to the end of the Kennedy Round occurred under high economic growth, low unemployment, and increasing world trade, the 1970s was marked by stagflation and oil shocks. In this context, the institutional flaws and “gray areas” embedded in the GATT became painfully

clear and politically volatile. Consequently, the eagerness of the U.S. to bare a disproportionate amount of the costs associated with providing the public goods of global trade liberalization waned.

Two historical moments marked the turning points in U.S. trade policy: first, the collapse of the Bretton Woods in 1971 signaled the end of the post-WWII monetary order, challenging the conventional view that international economic institutions were necessarily enduring. And second, the difficulties in starting the Uruguay Round, followed by the end of the Cold-War and growing global interdependence, redefined the commercial interests of the U.S. These changes have influenced American bargaining leverage in trade issues vis-à-vis its historical trade partners and emerging markets such as China, and the political alignment and policy influence of trade-impacted domestic groups. The overall impact on U.S. trade policy has been a loss of focus in sustaining an overarching vision and an effort to move toward a strategy of multiple institutional commitments in the face of difficulties in various trade fora.²⁵

Lesson 2: U.S. interest groups have been very effective in setting the international trade agenda, and their influence has grown since the end of the Cold War. Influenced by particular national institutional configurations and state/society relationships, interest groups have pursued various political strategies with varying degrees of success in advancing their trade agenda. Activities, such as lobbying, coalition-building, electoral mobilization, PR and communications, judicial strategies, and mass protests have all been used to change state behavior.²⁶ With the diminution of security priorities in the post-

²⁵ See Aggarwal and Lin (2000).

²⁶ See Baron (1996).

Cold War era, however, interest groups have increased their ability to set the trade agenda. Changing domestic political constellations will not only affect the issues to be put on the trade agenda, but also the choice of arena that is deemed most appropriate for negotiations.

Interest groups often have multi-pronged strategies. They may attempt to influence the issues put on the agenda by direct pressure on the various branches of government. In addition to lobbying legislators and negotiators, they may lobby administrative agencies with the hope that *new interpretations* of existing trade arrangements may change the state's agenda. When faced with growing imports from Japan in the 1950s, the U.S. textile industry pressed for protection. While labor and business were at odds on many issues, they came together on the protection issue. Using access to Congress and pointing to job losses, the coalition was able to halt progress on trade acts that authorized the President to negotiate tariff reductions. In addition, they used the Tariff Commission mechanism to investigate imports with the hope of bring new information to the table propitious to their protectionist cause.

Given that the United States was committed to free trade in the post-WWII 'golden years' for economic and security reasons, the administration faced the dilemma of how to help the industry without directly violating the GATT. The result was the 1957 U.S.-Japan bilateral protectionist agreement on cotton textiles, which set off a "snowballing" of protectionism.²⁷ First, as textile input prices increased, apparel manufacturers threw their hat into the protectionist ring and began to lobby for protection through its peak associations. Second, the export-restricting agreement on cotton between

²⁷ Aggarwal, with Haggard (1983, p. 276).

Japan and the U.S. led to increasing exports of cotton from other countries into the U.S., prompting the coalition to demand protection against more countries. Finally, the rapid rise in imports of non-cotton fibers, such as wool and man-made fibers drew other parts of the textile and apparel industry into focusing on these fibers into the game. Accordingly, the MFA of 1974 covered a variety of fibers and has continued to this day.

Agriculture is another case of U.S. producer interests leading to a significant departure from GATT's liberal principles. For example, provisions made in the original treaty and amended in the Torquay and Geneva Rounds provided for a separate agricultural trading regime. In fact, in 1955, the U.S. even obtained a waiver under GATT rule that provided it with authority to impose quotas on agricultural products.²⁸ Over time U.S. agricultural interests have changed their trade objectives. The Clinton administration has attempted to pressure European and other protected agricultural markets to eliminate export subsidies, reduce tariffs, and reduce barriers against biotechnology, which is one the U.S. agrochemical business' strong suits. Since Europe, Japan, South Korea, and others have very little interest in agriculture liberalization, the American farming groups could expect little from these ambitious goals.²⁹

In addition to putting political pressure on governments, interest groups often attempt to create a fertile ideational environment for their cause. The initial advocates of an agreement on services first had to convince trade experts, businessmen, and policy makers that services merited their attention. In the early seventies, U.S.-based service firms faced increased regulations and restrictions abroad. As a result, they instigated the initial

²⁸ See Hathaway (1987).

²⁹ "Press Briefing by National Economic Advisor Gene Sperling, United States Trade Representative Charlene Barshefsky, and Secretary of Agriculture Dan Glickman," 10/13/99. Released by the White House Office of the Press Secretary.

lobbying for action on trade in services.³⁰ The Coalition of Service Industries (CSI), a group formed in 1982, was formed as a focal point to advance the interests of a larger group of firms in this sector. This group was influential in getting the U.S. government to persuade the other contracting parties of GATT to initiate a new round and to place services on the agenda.

In the post-Cold War, post-Uruguay Round environment, the coalition for free trade has increasingly frayed. Thus, in the service sector, liberalization is supported aggressively by some groups, but not all. Because of the sector-specific liberalization agreements that have been concluded in their favor, some of the most politically powerful groups, such as the telecom and information technology sectors, are not as interested as before in a new round of the WTO (see below for a detailed discussion). As a consequence, business interests do not include the full panoply of committed interests to the extent that they did before the start of the Uruguay Round. In addition, agriculture remains powerful, but it is no longer as vociferous of an advocate as liberalization has taken place in this sector.

At the same time, protectionist oriented interest groups now have a freer hand than in the 1950s and 1960s, when the U.S. government often resorted to security arguments to deny protection to affected interests. Among the anti-Millennium Round coalition, the strongest protectionist interests have been the sunset industries such as steel, textiles, and apparel. These industries may exert a powerful public voice, depending on the parties in office. Their influence does not of course guarantee protection for these industries, as the recent defeat of a protectionist steel bill in the U.S.

³⁰ Aronson (1988, p.7). This paragraph draws on this work.

Congress indicated but as their alliance with other groups expands, their power has increased.

For example, environmental, and human rights groups have increasingly allied themselves with older protectionist industries in their advocacy of “fair trade.” While the strength of these groups varies, the highly educated and well-organized environmental and human rights groups together with their labor allies can mount strong opposition to further trade liberalization. Since these groups often pale financially in comparison to many of the pro-liberalization business interests, they have attempted to influence state behavior through mobilizational and educational strategies. Enhanced organizational tactics such as voter mobilization or call-in drives can be quite effective. In addition, they may also attempt to ‘frame’ trade issues through education and media campaigns.

In short, with the end of the Cold War, the fraying of the pro-free trade coalition, and a new multifaceted coalition that includes industries in decline, environmentalists, and human rights activists, trade liberalization faces an uphill battle.

Lesson 3: Agenda setting offers an opportunity for the control of international and domestic actors. Different governance structures and negotiating arenas offer different options and payoffs for actors. Thus, a country’s size, relative power, and objectives will influence the choice of arena in which states pursue their agenda. Moreover, trade agreements may serve not only as an instrument of attempting to control the behavior of other states, but also the pressures arising from domestic actors.

Even the undisputed role of the U.S. as a global hegemon has not always directly translated into trade agreements. Instead, U.S. leverage must be conscientiously translated into trade strategies during the agenda-setting and negotiation stages. At the

same time, middle and small countries have taken advantage of the “leveling” mechanisms of multilateral institutions to counter the influence of the U.S. Examples of opportunities for control in regional negotiations can be seen in the agenda setting history of NAFTA and APEC.

The most important motivation for all countries and non-state actors in setting the agenda for negotiations in NAFTA has been the opportunity to control other actors through a rule-based system. When the U.S. and Mexico began negotiations for a bilateral FTA in the early 1990s, Canada decided to engage in trilateral negotiations rather than stand aside and have its own FTA with the U.S. possibly undermined. If the U.S. and Mexico formed an exclusive agreement other such agreements would soon follow (e.g. with Chile), and hemispheric trade would be on its way to a “hub-and-spoke” model. The US would control a bilateral trade agreement with each country, making it the only one with unrestricted access to all the markets of the “spoke” countries. In this way, U.S.-Mexican negotiations set the agenda for Canada.

In NAFTA negotiations, Mexico set the initial agenda by pressing for a free trade agreement. Underlying this strategy were several domestic developments. The Salinas government, faced with slow movement in the Uruguay Round, worried about retaining market access to its primary export market. By binding the U.S. into an agreement, Mexico hoped to ensure that protectionist measures would not stymie its newly outward-oriented focus. In particular, the objective was to firmly lock-in economic reforms, particularly those related to investment to attract capital. At the same time, Salinas also saw NAFTA as an arrangement that would strengthen his hand vis-a-vis domestic interest groups.

Turning to APEC, its coming of age was to a large extent a response by Australia and Japan to the negative spillovers of U.S. unilateralism in Asia-Pacific and regionalism in North America. Many smaller Asian states wished to draw their largest partners -- the United States and Japan -- into a larger organization that would diminish U.S. pressure for market openness and prevent isolation if the trend turned toward discriminatory trading blocs. This consideration appears to have been the central driving force behind Australia's promotion of APEC: it was highly concerned about both potentially exclusionary Asian (ASEAN) and North American (NAFTA) blocs.

While the U.S. was motivated to promote APEC for a number of reasons,³¹ a key motivation with respect to control was the view that the creation of APEC norms, principles and rules might prevent a turn toward an exclusive East Asian free trade area.³² Pressuring the Europeans on the Uruguay Round also was a critical motive.

Precisely because of the individual APEC members' motivation for controlling others' actions, agenda setting in APEC has been particularly controversial. Most Asian countries have attempted to secure an agenda that focuses only on voluntary trade and investment liberalization in the region. But the U.S., Canadians, Australians, and others, pressed by a variety of domestic and transnational lobbies, have pushed a number of other issues onto the agenda. As a result, APEC's issue scope now includes trade and investment liberalization, the environment, social issues, infrastructure, women's issues, and recently, efforts at financial coordination in the aftermath of the Asian crisis.

With respect to sectoralism, efforts to control domestic and international actors have been common. In the 1960s, the U.S. sought to develop an international textile

³¹ Baker (1998, pp. 170-1).

regime for multiple purposes: it would open up European and other closed markets, would control imports from developing countries, and would diminish pressure from domestic interest groups by tying the U.S. administration's hands to an international accord. More recently, a liberal sectoral approach to manage market opening has been pursued with mixed success. Following on the success in information technology with the ITA, the U.S. saw an opportunity to champion the model of sectoral liberalization in the context of APEC. In Vancouver in 1997, Ministers agreed to consider nine additional sectors for fast-track trade barrier reduction and to create detailed market-opening plans in the nine areas by the first half of 1998, aimed at beginning implementation in 1999 (Early Voluntary Sectoral Liberalization or EVSL). The U.S. led a movement to make the nine-sector liberalization a package in order to discourage countries from picking and choosing sectors based on domestic concerns. But at Kuala Lumpur at the 6th Leaders' Summit in November 1998, Japan, supported by other Asian countries who were concerned about moving forward with liberalization in their weakened economic state, refused to liberalize fishing and forestry products. This development threw the U.S. strategy of using APEC as the vanguard for sectoral liberalization into disarray and forced the participants to send the whole package to the WTO for negotiation.

The EU and Japan, instead of the U.S., have provided the main impetus for a comprehensive new round of global talks. This so-called "Millennium Round" would have emphasized unique opportunities of control for the EU, Japan, and the U.S. The EU's tactic was to put everything that anyone wanted on the agenda, to conduct the negotiations as a "single undertaking" to ensure that all the agreements would be

³² Grieco (1998, pp. 245-6).

accepted by everyone and concluded within a 2-3 year span. Such an undertaking would have covered the built-in issue of further liberalization of agriculture, where the U.S. and the Cairns Group have demanded substantial concessions from EU, Japan, and others in terms of import liberalization and reducing domestic support and export subsidies. In addition, both the U.S. and the EU pushed for some type of sectoral negotiations on industrial tariffs. Some of the major developing countries, with relatively high average bound tariffs and which have the potential to industrialize and compete, were to be the focus of further WTO-driven trade liberalization.

The EU has argued that without a comprehensive round where there could be some tradeoffs, it would be politically unable to undertake the major concessions expected of it in agriculture. The EU also tried to tie agricultural concessions to the "trade and investment" issue that and frame multilateral rules and disciplines on governments and expand the rights of foreigners to invest in countries for all kinds of capital. This effort followed from the failed OECD attempt to pass Multilateral Agreement on Investment (MAI). In contrast, developing countries were wary that putting all the new issues in an omnibus round would lead to further marginalization of the developing countries within the multilateral trading system. Instead, they have emphasized the need to evaluate issues of implementation from the Uruguay Round and to keep off the table any issue on which there is no consensus, including the labor and environmental concerns of advanced industrialized countries. The insistence for special and differential treatment of developing countries in the various WTO agreements has become acute, as developing countries feel that they have paid an enormous price in disproportionate concessions under the Uruguay Round.

Lesson 4: Mobilizing political action on a specific issue or limited set of issues along sectoral or regional lines is generally easier than mobilizing political action on a wide array of issues. States in the international system frequently struggle with obstacles to collective action that in principle benefits their interests. Due to high start up costs, problems of freeriding, and the anxiety over disproportional contributions, agenda setting has often been marred by significant disagreements for fear of losses from trade liberalization. Generally, the smaller the group in question, the easier it is to overcome collective action problems, as behavior can be more easily monitored and the distribution of costs and benefits is more transparent. There have been surprisingly several instances of successful collective action in the international arena; we will now explore how some of the actual problems were confronted and resolved.

As the history of GATT illustrates, global trade talks have been seriously plagued by problems of collective action arising from their multi-product nature and inherently large membership. Compounding factors have been the erosion of the post-WWII U.S.-centered world order, and the rising relative autonomy of middle powers. Sectoralism and regionalism partially address this problem by limiting the scope of issues and participants, although they have their own downside as noted in Lesson 5 below.

Sectoral initiatives, both in liberal and protectionist incarnations, often aim to resolve issues that have been raised, but failed to resolve, by global or regional governance structures. In fact, the Uruguay Round's "build-in agenda" amounted to a series of ongoing sectoral talks. The key difference between liberal and protectionist sectoralism is the presence or absence of transnational collective action among the

affected industries and their governments. The domestic coalition behind protectionist agreements is inward looking, and in the case of the hegemon pursuing protectionism, other countries are compelled to enter into a managed-trade concession or to face unilateral actions such as the U.S. Super 301 clause. Protectionism in middle or small countries has historically not produced sectoral agreements, but has created distortions in the global liberalization framework. One such example is the persistence of the European CAP as a barrier to agricultural liberalization. Protection in small and middle countries has also caused the breakdown of sectoral liberalization negotiations, such as the stalemate over ITA-II and APEC's EVSL negotiations in the aftermath of the Asian financial crisis.

The opposite is true for liberal sectoralism. The ITA, BTA, and the Financial Services Agreement (FSA) show that intense lobbying by transnational and domestic industrial groups in advanced countries similarly positioned in the global economy can overcome collective actions problems in crafting a sectoral agreement. For example, numerous high-technology business lobbies supported by the USTR and Department of Commerce initially promoted the ITA as an effective way to liberalize trade in technology equipment associated with the information superhighway by 2000. With more than 1.8 million Americans employed in IT firms, it is not surprising that umbrella organizations composed of powerful U.S. semiconductor, software and telecommunications firms have become powerful lobbying forces on Capitol Hill.³³ With internet-related demand growth booming on a global scale, U.S. firms and their business

³³ Some of the major U.S. lobbying organizations include the Information Technology Association of America, the World Information Technology and Services Alliance, the Telecommunications Industry Association, the Information Technology and Telecommunications Association, the Telecommunications

associations have become increasingly influential transnational actors.³⁴ In short, sectoral liberalization strongly depends on the ability of certain industries to convince a hegemon or a critical mass of middle powers to use their influence to overcome resistance from countries that may be wary of accepting a liberal agenda in their uncompetitive sectors.

Theoretically, overcoming collective action problems at the regional level should be easier compared to the global level. After all, there are fewer actors and clearer payoff schemes. However, the success of regional cooperation depends on *how* the regional market is defined, and how ambitious the goals of integration are. Is there a relatively high degree of consensus on means and ends? Are the members *relatively* culturally homogenous with similar historical experiences? The core treaties of what was to become the European Union were established by a small group of six original members that were relatively culturally homogenous and generally agreed to the means and ends of their regime. And in agenda setting for NAFTA, the presence of the U.S. as a hegemon clearly facilitated the process of starting negotiations. By contrast, APEC is now a 21-member organization with a vast array of cultures, histories, and ideas about the proper approach to regionalism. In the EU many of the rules and institutions were in place before they expanded to the current size of 15; but as the EU expanded, it became clear that qualified majority voting would have to be extended if any substantial progress was to be made. By contrast, due to its larger size and more diverse makeup, APEC has been saddled with significant collective action problems from the beginning, despite strong

Association, the Telecommunications Industry Alliance, the American Electronics Association and the Software Publishers Alliance.

³⁴ Some estimates predict that 70 percent of the demand for computers will come from outside the United States by the year 2000. See *Frost and Sullivan, 1996-98 IT Market Reports*.

leadership initiatives from the U.S., Japan, Australia, and Malaysia at times, and thus the agenda setting process has become extremely complex.

Lesson 5: Liberal sectoralism can become a stumbling block for global multiproduct trade negotiations. Despite the relatively easier process of agenda setting for sectoralism and regionalism as noted in Lesson 4 above, these types of arrangements have an important downside. Because sectoral (and regional) agenda-setting involves a limited and easily polarized set of domestic interests, the margin for coalition building and political give-and-take is much slimmer. Thus, ironically, industries that have succeeded in securing sectoral liberalization may pose a threat to a global liberalization agenda. These groups will see little reason to take the risk and energy in relocating the basis of their existing benefits onto the global multilateral level. That is, by giving highly motivated liberal-minded interests what they wanted in their specific sector, the classic “horse trading” among a variety of different sectors that has been the hallmark of the GATT process may be undermined.³⁵

After the end of the Tokyo Round (1973-79), faced with an increasingly protectionist Congress and pressed by certain outward-looking sectoral interests to place new issues on the GATT agenda, the U.S. government began pushing for a new round of talks. However, the 1982 GATT Ministerial was marked by severe conflict over possible new items on the agenda, as the U.S. pressed to include items on which its producers enjoyed competitive advantages—trade in services, investments and intellectual property. The major problem facing early attempts to promote action in services was that no one

³⁵ See Aggarwal (2000) and Aggarwal and Lin (2000).

considered services important or relevant enough for international trade negotiations.³⁶ Eventually, of course, information technology and telecommunications firms got the sectoral agreements they wanted with the ITA, BTA, and the FSA.

By the mid-1980s with the problems in starting the Uruguay Round, the U.S. was no longer solely committed to the multilateral route. The regional and sectoral alternatives were in full bloom, and both the Bush and Clinton administrations pursued a mixed trade strategy of “opportunistic liberalization” while at the same time exercising its bilateral leverage to defend job and trade balance concerns. In the end, the mixed strategy has led to a lack of focus and sustainable commitment to these alternatives, as well as a deterioration of the U.S. hegemonic leadership in the WTO process.³⁷

The concrete realization of the risk of sectoral liberalization undermining global liberalization has become evident in the surprisingly weak lobbying effort and conservative agenda-setting priorities of U.S. information technology and telecommunications industries in the recent Seattle WTO Summit. It appears that these sectors have come to rely on extant sectoral agreements and bilateral pressures to open key emerging markets, most notably China, and have lost interest in global institutions.

Lesson 6: Mobilizing support for protective policies is easier than mobilizing support for the removal of protection for other actors to lower input prices. Historically, industries have rarely lobbied for the removal of protection or major domestic adjustment programs if securing their own protection was an option. Thus, from a theoretical economic standpoint, one might have expected the auto industry to argue for the removal of

³⁶ See Aggarwal (1992).

protection for the upstream steel industry that raised their input prices; similarly apparel producers might be expected to press for the removal of protection on textiles. In practice, however, because of the political dynamics of coalition building and issue framing, this has not been the case in the U.S. For example, in the 1950s, after a bilateral agreement with Japan that raised prices for textile products, the apparel industry asked for its own protection, rather than attempting to remove protection for textiles. And the textile industry itself had sought and received protection in 1955, arguing that the agricultural price support system in the U.S. had raised their input prices for cotton.³⁸

Lesson 7: Deregulation and internationalization have pushed industries to lobby for open markets. Closely related to Lesson 4 above is that a country's domestic deregulation or its industries' success in becoming internationally competitive often have an impact on how firms' and states' perceive their optimal trade strategy. For example, deregulation of U.S. financial services industry under the Reagan administration intensified competition at home, leading to increased demand for market access and national treatment of U.S. services abroad. The subsequent creation of the FSA fits the pattern of the U.S. government heeding the demands of globally-competitive domestic businesses to bring liberalization to the trade agenda.

As American firms developed a clear competitive advantage in the booming global financial service industry in the early 1980s, U.S. financial service industries began to organize and put pressure on the U.S. government to pay more attention to

³⁷ See Aggarwal and Lin (2000).

³⁸ See Aggarwal (1985) for a discussion of this.

services in the formulation of its trade-policy.³⁹ However, the service lobby did not primarily seek unilateral action. In fact, representatives of key financial firms seemed opposed to bilateral accords, arguing that introduction of services into the GATT's framework of multi-lateral trade would provide the critical mass of countries necessary to achieve a comprehensive liberalization of the sector.⁴⁰ As a part of a broader Coalition of Service Industries (CSI), the U.S. financial service industry staged a campaign to influence American policy makers to push for a re-orientation of U.S. trade policy to put greater emphasize on liberalization of trade in services. Attempting to link the inclusion of services in GATT's negotiating agenda with the general health of the U.S economy, the financial lobby focused on trade and investment barriers that restricted U.S. firms' penetration of foreign markets. These barriers, they argued, would hurt the U.S. economy, resulting in lost jobs and undermined national competitiveness.⁴¹

The U.S officially raised the issue at a GATT ministerial meeting in November 1982. But already in July of that year, Bill Brock, the key American trade representative in the GATT negotiations, had called for the inclusion of services in the upcoming Uruguay Round as a U.S priority.⁴² The U.S. initiative unleashed fierce debate and opposition. Still, the United States initially refused to make any concessions threatening not to participate in the Uruguay Round if services were not on the agenda. In the end, only ten of the thirty developing countries that had first voiced reservations against the U.S proposition remained. Eventually in 1986, a compromise was reached: negotiations on services would take place simultaneously as negotiations on goods but in a parallel

³⁹ Schott (1994, p. 99).

⁴⁰ *New York Times*, 23 November, 1982, p.1.

⁴¹ Dobson and Jacquet (1998, p.71).

⁴² *The New York Times*, 18 January, 1982., p. 1.

and separate forum.⁴³ This separate track of negotiations became the General Agreement of Trade in Services (GATS).⁴⁴

Deregulation of certain domestic industries within the U.S. and the EU has left both the winning and exiting firms with an outward orientation and eager to push for international agreements that would open up emerging markets. Thus, it is clear that the effects of national policy on domestic firms' global competitiveness will influence the demand for modifying national trade agenda. The question remains if deregulation will have this affect on all industries or whether strategic regulation may enhance competitiveness in qualitatively different industries.

Lesson 8: Academic research has often helped in generating a shared understanding on the nature of the trade problem and its solutions. In highly complex and technical issues, policymakers often must rely on experts, or 'epistemic communities,' to help them construct and justify what they believe to be their best interest.⁴⁵ Since the institutional, economic, environmental, and political ramifications of various trade agreements can be confoundingly complex, states often turn to experts for assistance.

The American academic community has long advocated a multilateral approach to U.S. relations with the region. Receptive to ideas emanating from the intellectual community, some members of the U.S. government have adopted a regional focus. Winston Lord, Clinton's Assistant Secretary of State for East Asian and Pacific Affairs from 1993 through 1996, authored the Clinton administration's policy of multilateral

⁴³ For more information of the content of the compromise see *Financial Times*, September 22, 1986, p. 6; *Journal of Commerce*, September 23, 1986, p. 3.

⁴⁴ For an extensive account of the position of developing and industrialized countries, see Aggarwal (1992, pp.48-53).

cooperation in its approach to the region.⁴⁶ Clinton subsequently promulgated Lord's embrace of multilateralism in his own speeches during his July 1993 trip to Asia. Moreover, by the late 1980's, many officials in foreign affairs and national security condemned the Bush administration's continuing resistance to Asia-Pacific cooperation as short-sighted.⁴⁷ Their new support towards building a multilateral cooperation helped provide acceptance of a shift in policy that occurred under the Clinton administration.

Formal think tanks associated with APEC also enjoy considerable access and influence over agenda-setting and the subsequent momentum of negotiation. The Eminent Persons Group led by C. Fred Bergsten was critical in defining the principle of "open regionalism."⁴⁸ The Pacific Economic Cooperation Council—a forum of government officials, business representatives and academics, played a large role in advocating and creating the consensus for establishing APEC.⁴⁹

Another example involves the U.S. push to get services onto the GATT agenda discussed above in Lesson 7. The financial lobby received support from several U.S. trade policy experts, who argued that the U.S. should support the extension of GATT's agenda from a slightly different viewpoint. In their view, it simply did not make sense to exclude financial services from GATT's agenda when trade in services accounted for an increasingly larger part of economic transactions among countries. They argued that

⁴⁵ Haas (1989).

⁴⁶ Baker (1998, p. 174).

⁴⁷ Baker (1998, p. 176).

⁴⁸ Bergsten (1997, p. 99).

⁴⁹ Aggarwal and Morrison (1998, pp. 11-12). It had provided the intellectual rationale for open regionalism by characterizing trade liberalization as a "prisoner's delight," with unilateral liberalization being a high-payoff strategy. See Aggarwal (1994, p. 48).

continuing to exclude services would undermine the GATT's credibility and obstruct further liberalization of world trade.⁵⁰

B. Negotiations

Trade negotiations at different levels have involved different actors and a variety of strategies. For the most part, sectoral trading arrangements tend to arise from strong industry pressure on dominant states in the system such as the U.S., or in the case of the EU, a supranational entity. But many opportunities for smaller states to broker arrangements or to promote their interests in view of the broad agenda of negotiations arise on the multilateral level. Regional arrangements fall somewhere in between, with clear domination by one or two states, but with some opportunities for compromise and strategic maneuvering by smaller countries. Non-state actors also play a role at all three levels, often in attempting to affect individual states behavior, but also in serving as experts or affecting the ideational environment of negotiations via media and educational campaigns. Several key lessons can be drawn from the effects of international power structures, and the choice of direction and pace of global liberalization on the outcome of trade negotiation.

- *Lesson 1: While major powers generally determine negotiating outcomes, middle and small powers can gain considerable maneuverability in negotiation by alternating between the roles of “supporter” and “spoiler” of hegemonic initiatives.*⁵¹
- *Lesson 2: Domestic politics may affect ongoing international negotiations.*

⁵⁰ Dobson and Jacquet (1998, p.71).

⁵¹ The terms “supporter” and “spoiler” are used by Lake (1983).

- *Lesson 3: The commonly espouse “bicycle theory”—the notion that unless liberalization moves forward constantly, protection will become rampant—appears to have little merit.*

Lesson 1: While major powers generally determine negotiating outcomes, middle and small powers can gain considerable maneuverability in negotiation by alternating between the roles of “supporter” and “spoiler” of hegemonic initiatives. In the post-WWII period, due to its military and economic superiority, the U.S. has dominated negotiations at the sectoral, regional, and global levels. Although power asymmetry has often resulted in the U.S. having the primary say in determining outcomes, actual negotiations are often mediated by the institutional setting and by the specific nature of the issues. Both of these factors may give middle and small powers disproportionately high leverage over the dominant state. In addition, the dynamics of negotiations often depend on how closely interests are aligned between the hegemonic and middle powers, with the lesser powers often having little influence.

An example of sectoral negotiations reflecting the power asymmetry between the North and South is the Financial Services Agreement. The profound divergence of national interests between the industrialized and developing countries were revealed prior to the Uruguay Round. The issues motivating the developing countries to resist the inclusion of services into global trade talks under WTO auspices (i.e. the lagging competitiveness of their service industries, and the politically sensitive nature of deregulating their services sectors) applied also to the financial services industry.

For the developing countries, the gains for market opening reforms were far from obvious. Their financial firms were (and still are) small, underdeveloped and incapable of competing with their U.S or European counterparts. The developing countries were also

concerned with the political consequences of financial liberalization. Although they welcomed foreign investment to provide the duly needed capital to boost economic growth and development, they wished to keep control over the pace of deregulation and the terms on which foreign firms penetrated their financial markets.⁵²

The industrialized countries faced reversed incentives. As leading exporters of financial services, the perceived benefits of the industrialized countries were substantial. Their competitive financial firms would capitalize on increased market access to developing countries closed financial markets. In addition, as most OECD countries' financial systems were already relatively open, the cost of liberalizing their financial sectors would be marginal.⁵³ Not surprisingly, then, while the US and the European countries argued for extensive liberalization, most developing countries were reluctant to endorse extensive market opening reforms. Over a protracted negotiation period of ten years, the U.S. withdrew its offer from the table several times and pressured countries individually to wear down the anti-financial services coalition. Still, the end of the Uruguay Round did not bring with it an agreement on financial services because of continued opposition from developing countries. Indeed, it was only several years later as a separate agreement that financial services were subject to an accord, the 1997 Financial Services Agreement, implemented in 1999.

As with sectoral negotiations, regional negotiations are often dominated by one or two regional "great powers" that strongly influence, if not dictate, whether progress is made or not. However, small or middle powers are sometimes able to wield significant

⁵²For a discussion see Dobson and Jacquet (1998); on the link between comparative advantages and developing countries stances see Gibbs and Hayashi (1989, pp.3-8), and Outreville (1989, pp.177-178).

⁵³ Dobson and Jacquet (1998, p. 78-79).

influence through their strategic positioning as “spoilers” or “supporters” of the dominant agenda.

The U.S. regional approach to liberalization in the Western hemisphere is characterized by a strategic leveraging of hegemonic power. Recognizing its market appeal and political persuasion, the U.S. has sought to bring its trade partners into a “hub-and-spoke” negotiation relationship with the U.S. at the center. Despite the advantages of hegemonic bargaining position, however, the U.S. often encounters resistance in the process of negotiations. Middle powers have consistently asserted their rights as members of an economic club in haggling over terms of concession and preferential treatments, or a catalytic role in bringing other regional players into a consensus. This is most clearly illustrated in the formation cases of the Free Trade Area of Americas (FTAA).

The hemispheric initiative, the first meeting of leaders of 34 countries in the Western Hemisphere in over a generation, was launched at the Miami Summit in 1994, and calls for completion of negotiations by 2005. On paper, FTAA is currently the most ambitious trade initiative in the world, building on the trend of regional trading blocs in the past five years. For the U.S., FTAA represents a strategic opportunity to shore up its leadership of Western hemispheric trade arrangements, even as its capacity to lead continues to be hampered by the absence of Congressional approval of fast-track authority.

The need for the U.S. to exercise persuasion rather than only power can be seen during the pre- FTAA summit meetings. Latin American delegations harbored considerable resentment towards what they perceived as a US strategy of using the “hub-

and-spoke” approach to enhance the US bargaining position. In the months leading to Miami, the U.S. Trade Representative (USTR) met separately with various subregional groups (Caricom, CACM, Andean, Mercosur, and Mexico and Canada individually) in succession at Washington D.C., in order to bring them aboard the U.S. position. In this sense we can see the U.S regional strategy to base FTAA on the NAFTA model as posing serious redistributive concerns to members of Latin and Central American subregional organizations. The Latin Americans expressed numerous reservations about the U.S. advocacy of NAFTA disciplines. Points of contention included: the linking of trade and labor and environmental protection, issues of flexibility in the timing of implementation, and differential treatment in the process of liberalization. Permitting these differentials may be necessary to keep the negotiation moving, but may eventually undermine the integrity of the trade regime.

Similarly, the structure of negotiation in APEC is designed to downplay the role of regional hegemonic power and to reduce the anxieties of forced redistribution. The process of negotiation in APEC reflects its “consensus-building, non-binding, ‘soft law’ approach” to multinational cooperation.⁵⁴ The executive-decision making structure in APEC is the annual summit, where the host country asserts considerable leverage over the selection of issues to be discussed. Leaders at the summit tend to put a premium on politically visible accomplishments, making pledges of action that are largely symbolic and uncoordinated rather than outcomes of substantial negotiations.

The notion of give-and-take negotiations is problematic in the APEC setting, as most Asian countries have placed a great deal of emphasis on reaching consensus. After

⁵⁴ Zarsky (1998, p. 3).

the summits, operational measures and plans for public-private cooperation are worked out at specific committees and working groups of technical experts. Although one might expect to detect more concrete negotiations in these arenas, little real progress has emerged from this process.

The norms of consensus do not imply absence of controversies and stalemates. The lack of practical results and hesitation exhibited in APEC are not simply a product of organizational softness, but also reflect political tensions within the APEC regime. Several geographic, economic and political dividing lines among member nations have vitiated against consensus on norms and procedures. The central debates in APEC continue to focus around alternative mechanisms for liberalization and for rendering APEC compatible with GATT/WTO. More recently the central debates have expanded to include sectoral liberalization and the potential roles of APEC in regional financial supervision and monetary coordination. Thus, while U.S. hegemony may have been contained in APEC, the institution's lack of progress illustrates the difficulty of concluding agreements when there is not clear consensus. In such cases, other states might regret the lack of exercise of hegemonic power to ensure the provision of public or club goods.

The U.S has long dominated negotiations at the global level. However, as the regional and sectoral examples illustrated, the particular trajectory of negotiations often depends on the constellation of interests of hegemonic and middle powers. In an increasingly interdependent global economy, states or economic blocs with large markets have a decisive reservoir of clout that they can wield in negotiations. This situation of 'asymmetric interdependence' often allows the larger economies to dominate the agenda

as well as the negotiations because they can threaten to limit access their markets. The Uruguay Round negotiations were primarily dominated by the U.S. and the EU for this reason. When consensus existed between the U.S. and EU, the developing countries had few options. On nearly every issue of trade liberalization, the major industrial countries successfully shaped the talks according to their interests and often at the expense of the developing countries, producing an increasingly polarized situation.

In agriculture, for example, negotiations were led by U.S. negotiators, who initially put forward ambitious reform proposals, and the EU, which sought to limit reform only to modest cuts in domestic price supports. Agreement between these major industrial countries was necessary before any substantial package could be adopted by all of the participating countries.

While developing countries are not completely subject to the whims and wishes of the developed countries, their room for maneuvering is quite circumscribed. Even in areas where developing countries made gains in asserting their interests, they often found themselves forced to ultimately grant concessions to the developed countries. The Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) was initially negotiated along a North-South divide, but soon refocused on North-North issues. In the end, developing countries proved willing to trade their support for the TRIPs accord for improved access to industrial markets in agriculture and light manufacturing products.

The general pattern appears to be that global and sectoral negotiations succeeded when U.S. and EU norms were in agreement and failed when talks required the U.S. to

significantly change its existing laws or practices.⁵⁵ The North-South bargaining pact is consistent with an economic club interpretation of the multilateral institution, and is similar to the ongoing efforts in Europe to incorporate Eastern European countries into the existing economic sphere of their wealthier Western neighbors. In short, the less developed countries want access to the capital and markets, and due to the asymmetric dependence on the more developed regions, they have much less influence in negotiations. In a sense, they are price takers.

Lesson 2: Domestic politics may affect ongoing international negotiations. Whether states are negotiating at a sectoral, regional, or global, multilateral level strongly influences the ability of negotiators to “horse trade” between competing domestic interests. In addition, the bargaining room that states have depends on the strength and flexibility of domestic interests. In short, a more circumscribed sectoral negotiation, or an influential lobby with a rigid agenda, leaves negotiators with less bargaining room in comparison to a more multilateral arena where interests can be played off against each other or compensated via creative package deals. Thus, the particular issue and domestic situation will determine which negotiating arena is preferred, and the arena will reciprocally influence the dynamics of negotiations.

While the U.S had been a catalyst in bringing the issue of liberalization of trade in financial services on the international agenda, the uncompromising position of its domestic business interests prevented swift agreement. The U.S was unwilling to sign any agreement that did not fulfill its very stringent demands presented at the onset of

⁵⁵ Schott (1998).

negotiations. On two occasions, under pressure from domestic interests, the U.S. withdrew its offers, almost precipitating a total breakdown of the negotiations.

The problems that U.S. negotiators faced can be understood by consideration of the financial services lobby. As noted above, the financial service industries were instrumental in pressuring the U.S to bring the issue of liberalization of financial services on GATT's agenda in the early 1980s. The U.S. financial lobby made it clear at an early stage of the negotiation process that it would play an assertive role.⁵⁶ It was suspicious of any limited agreement that would grant developing countries firms a free ride to the American market while their own operations in foreign markets continued to be hampered by restrictions. During critical phases of the negotiation process, the financial lobby pressured the U.S delegation not to accept offers it did not consider forthcoming enough.

A window of opportunity opened in 1997, as actors who previously had obstructed a comprehensive agreement seemed more reluctant to jeopardize the agreement. Some propitious factors can be discerned. One was the outburst of the financial crises, which begun with the Thai currency crises on 2 July 1997. As the Asian financial crises spread, South East Asian countries came to see an agreement as a quick remedy that would boost their reform efforts and restore some of the credibility that had been lost to foreign investors.⁵⁷

Also the financial lobby had become increasingly weary of the consequences of another breakdown in negotiations. In the spring of 1997, U.S and European financial services firms joined together in a transatlantic initiative aimed at coordinating their

⁵⁶ *Journal of Commerce*. June 8, 1990, p.1.

lobbying efforts. They rallied around the Financial Leaders Group, a new lobbying group consisting of some thirty leading financial firms with a stake in securing an agreement.⁵⁸ In addition, the tension between EU and the U.S. that had marked the negotiations that led to the Interim agreement of 1995 evaporated as negotiations progressed. At the end of 1997, a new joint leadership between EU and the U.S for bringing the negotiations to a successful conclusion had emerged.⁵⁹ In sum, it was the obdurate position of the domestic financial service industry that led to a protracted negotiating history, and only with the some fortuitous events and continuing arm-twisting of developing countries was the deal able to go through.

Lesson 3: The commonly espoused “bicycle theory”—the notion that unless liberalization moves forward constantly, protection will become rampant—appears to have little merit.

Contrary to the “bicycle theory’s” maxim that global liberalization must always be propelling forward in order to maintain the requisite political and economic momentum, poorly planned piecemeal liberalization often derail the global liberalization momentum. For example, the difficulties in reaching agreements on Multilateral Agreement on Investment (MAI) and ITA-II in the late-1990s demonstrate that piecemeal liberalization arguably jeopardizes the overall global trade structure. Conversely, while the granting of sectoral protectionism to the textile and apparel industries through the Long Term Arrangement on Cotton Textiles (LTA) has distorted trade patterns in these industries, it

⁵⁷ See Dobson and Jacquet (1998, p.83).

⁵⁸ For a list of participating companies see *Financial Times*, September 22, 1997, p. 20.

⁵⁹ Dobson and Jacquet (1998, p.81).

allowed the Kennedy Round of trade negotiations to go forward and for the U.S. to ratify the resulting agreement.

The MAI, an initiative originating in the OECD and strongly championed by American and European business interests keen on quickly gaining market access in emerging markets, was abandoned in 1999 in the face of organized resistance by environmentalists, labor, and governments of developing countries. The opposition was able to claim that there would be a high human and environmental cost from “greedy” multinationals running rampant, and in the process brought to the negotiation table the complex issue of modifying global trade and investment liberalization framework to include labor and environmental standards.

Similarly, the aim of completing an ITA-II pact that would remove duties on 200 high-tech products by 2002 (2007 for some poorer countries) has been aggressively pushed forward by the U.S. and EU, and has met considerable resistance from some Asian developing countries— especially Malaysia and India.⁶⁰ Due to the impact of the Asian Crisis, both Malaysia and Thailand wanted more consumer electronic products included despite the fact that many of their industrial lobbies were opposed to further liberalization during a recession. Another sticking point in the negotiations occurred when India strongly objected to the inclusion of dual-use technologies and other non-IT items such as radar/navigation equipment and satellite parts. As Indian producers have made no secret of their desire to be an IT superpower, few were sympathetic to their concerns. These examples serve to illustrate two main points: (1) the dissension between countries as well as their domestic producers; and (2) how the inclusion of additional

⁶⁰ *Financial Times*, December 15, 1998, p. 9.

products tends to spiral in response to individual domestic lobbies. Consequently, rushing forward toward global liberalization without addressing or including key potential interest groups has led to the weakening of pro-free trade coalitions, and created negative momentum for future WTO negotiations.

The collapse of sectoral initiatives in the APEC context also created difficulties of negotiation at the WTO level. The U.S.-led forward momentum of regionalism through EVSL initially appeared to be viable, but quickly ran into difficulties. Mexico opposed the sectoral approach, preferring multilateral liberalization through the WTO. Chile opted out because of its flat tariff rate structure. Then in Kuala Lumpur at the 6th Leaders' Summit in November 1998, Japan (supported by China, Indonesia, Thailand and Malaysia) refused to liberalize trade in fishing and forestry products. With an economy that was still moribund, the Japanese government was unwilling to take the political heat from interest groups who strongly opposed liberalization in this area. Further regional cleavages in APEC have manifested themselves primarily because Japan and the U.S. failed to narrow the gap between their approaches during the APEC meetings. Japan wanted a 'single-undertaking' approach (supported by South Korea), while the U.S. wanted to allow participating economies to implement accords as soon as they are reached.⁶¹ Following the Auckland APEC meeting, the U.S. won out and it was decided that tariff reductions would be delivered sector by sector according to each economy.

Disagreement in APEC led to the failure of any APEC member country to implement unilateral EVSL tariffs cuts, essentially ending EVSL as an effective means for reducing tariff barriers. The resulting tension carried over to the Seattle WTO summit

⁶¹ Japan Economic Newswire, September 8, 1999. "APEC Ministers End Morning Session in N.Z."

in November 1999. Japan preferred to take up a variety of issues, but the U.S. wanted a limited agenda, and they continued their disputes over liberalization of fish, timber products and agriculture. Paradoxically, at the same time, many developing nations, particularly Malaysia, were cautious of moves to widen the scope of WTO negotiations to include non-trade issues. In fact, Malaysian ministers were glad that APEC did not set a decisive time for new trade negotiations in the Millennium Round, against U.S. pressures to do so.⁶²

While the welfare merits of sector specific arrangements are debatable, it is arguable that in the early 1960s textiles and apparel protection was simply the necessary price to be paid for the broader objective of what became known as the Kennedy Round of GATT negotiations. And most crucially, the Long Term Arrangement on Cotton Textiles and the MFA were carefully nested in the GATT, and indeed, the implementation and enforcement structure were housed in Geneva. In short, states may have to appease certain interest groups demanding some protection as the price to be paid for global liberalization. Thus, to sum up: all liberalism does not help the trade bicycle move forward, and pausing or even riding backwards at times may help the broader goal of multiproduct global trade liberalization.

C. Implementation and Compliance

After states agree to trade agreements, the question of how such accords become translated into domestic laws and regulations in line with the multilateral commitment is

⁶² Bernama-The Malaysian National News Agency, September 19, 1999. "MSIA Happy No Date Set To Launch New WTO Negotiations".

a critical one. Some measures require little effort, while others are more ambiguous, expensive, and technically complicated. In assessing this stage of trade governance, we can focus on two key questions: (1) what helps or obstructs the implementation of measures; and (2) what are the mechanisms in place to determine if states are complying or not. For example, is it mainly a lack of financial or technical resources that prevents a state from full implementation, or is it a problem of flawed institutional design that gives actors' incentives to delay implementation? Similarly, are problems with compliance caused by inadequate monitoring mechanisms, or an ambiguity of what "compliance," in fact, is? The main lessons with respect to implementation and compliance are as follows:

- *Lesson 1: Formal institutionalization has a better track record of advancing the reduction of tariffs than the alternatives.*
- *Lesson 2: Formal institutions frequently encounter problems of politicization.*
- *Lesson 3: Formal institutions may encourage and exacerbate the use of available exceptions.*
- *Lesson 4: Material incentives and flexibility may assist compliance.*
- *Lesson 5: Open regionalism sometimes reinforces globalism through supportive norms and rules.*

Lesson 1: Formal institutionalization has a better track record of advancing the reduction of tariffs than the alternatives. Since situations of "voluntarism" closely resemble the uncontrolled situation which existed before any trade agreements, it can be presumed that voluntarism will not often be strong enough to overcome national protectionist tendencies and the temptation to free ride on other states that might have complied. In addition, legalistic institutions with a stronger independent means of gathering information are better at highlighting non-compliance.

Voluntary implementation makes it difficult to distinguish between states that comply and those that do not. Without developed criteria and interventionist mechanisms to verify non-compliance, or effective enforcement mechanisms, voluntary governance structure could mainly rely on the persuasive power of norms and the ability of more powerful actors to enforce compliance through arm-twisting diplomacy. At the same time, the conventional threat of unilateral retaliation or collective action against laggard states is often restrained by the trade regime itself.

These points are well illustrated by APEC's voluntary tariff reduction program. The evidence shows that this approach has not worked consistently and independently of global or other regional momentum. The 1994 Bogor Declaration called for free and open trade by 2020 for all countries and by 2010 for developed countries, but this objective has been implemented mainly through Individual Action Programs undertaken by member governments following the guidelines set by the Osaka Action Agenda.⁶³ The IAP commitments to tariff reduction are non-binding and voluntary. Unfortunately, few developed members of APEC have proposed anything beyond their existing Uruguay Round obligations; at the same time the ASEAN countries have sometimes circumvented APEC in pursuing initiatives started in the sub-regional context. Ongoing political negotiations and institutional efforts have focus on resolving the ambiguities left by the Osaka Agenda, including the issues of endpoints, benchmarks, time path, and extension of reduced tariffs to nonmembers. The slow progress of IAPs and the success of the ITA in 1996 has revived the enthusiasm for a more coercive sectoral approach, but as noted

⁶³ Bergsten (1997, p. 62).

earlier, the nascent “Early Voluntary Sectoral Liberalization” multi-sectoral framework has met significant resistance.

The positive effects of transparency in inducing compliance via institutional processes such as information sharing is best captured by more formal, legalistic governance structures. An agreement to simply provide information – even without the threat of enforcement – may be a useful beginning point for putting pressure on other states or for states to persuade domestic interests to go along with multilateral accords.

A formal system of monitoring based on information gathering and verification enhances transparency. Consequently, it is more probable that states will implement and comply as their actions are observable to others. This is probable for two reasons: (1) generally, states will find it embarrassing to confront information that contradicts their public claims; and (2) if there are enforcement mechanisms in place, they will ex ante know that non-compliant behavior is likely to be noticed and other states will respond.

A possibly powerful counterpoint to the APEC problematic model of voluntarism is the EU’s attempt to intensify monitoring and information-gathering in employment (and quite recently social protection) areas. Essentially, what has been called the ‘Luxembourg process’ institutionalizes a process of centralized coordination on employment issues begun in 1997 before it even had a legal basis in the EC Treaty.⁶⁴ In exchange for states being required to provide certain information (quantifiable whenever possible), they are allowed to comply voluntarily.

Each year, the intergovernmental Council of Ministers and the Commission are to publish a joint report communicating specific employment *guidelines*. The 15 member

⁶⁴ The process began in 1997, but the Treaty of Amsterdam did not come into force until May 1999.

states must take into account these guidelines in formulating their National Action Plans for that year. Then, at the end of the year, the Council can make recommendations to the member states concerning their employment policies. They analyze each state's action taken in that year in relation to the common objectives and the specific National Action Plans. However, the most severe sanctioning mechanism member states face is a non-binding recommendation from the Council.

In contrast to other issue areas such as the promotion of a single market via binding supranational legislation, the institutional framework put in place for employment policy is facilitative rather than prescriptive. Member states maintain control over their own employment policies, and the principle of subsidiarity has been further enshrined. The perceived success of this process has led to an interesting case of institutional mimicry. In December 1999, a High Level Working Party on Social Protection was created. The Council underlined the need for cooperation in modernizing social protection, based on a structured and permanent dialogue, follow-up and exchange of information, experience and good practice between Member States, concerning social protection.

An implicit assumption is that the production and dissemination of quantifiable information that can be compared to state's behavior will put enough pressure on states to comply. Although it is still too early to make any categorical judgements about the effects of increased transparency on implementation and compliance in this process, the perceived success does not mean that such as institutional mechanism can readily be transferred to other regions. The EU is already relatively culturally homogenous, currently dominated by social-democratic governments, and quite economically and

legally integrated. In addition, this process depends on states that are very concerned with whether they appear -- to their own public, the transnational public, and the regime -- to be acting consistently with their stated plans. In short, increased transparency can exacerbate the fact that states within the EU are probably more susceptible to “shaming” than states in other regimes. The ostracization of Austria since the government’s inclusion of the Freedom Party is a compelling example.

By comparison, the WTO is a good example of a fully codified Trade Policy Review Mechanism (TPRM) designed to provide greater transparency of national laws and practices, and to examine the impact of member policies’ on other countries. TPRM reviews are simple consultations that are not intended to judge the consistency or conformity of national practices with trading regime rules. Rather, under the permanent Trade Policy Review Board (TPRB), it has become the repository of all notifications for WTO member country obligations and is required to conduct reviews of major countries (U.S., EU, Japan and Canada) every other year. Through seminars, reviews and publication of reports and TPRM meetings, the TPRM has made a significant contribution to the transparency objective. It is worth noting, however, that the implementation of these agreements has strained limited WTO resources, especially in the legal and economic analyses divisions.⁶⁵ Ironically, the U.S. has resisted budgetary increases despite indications that it stands to benefit disproportionately.⁶⁶

⁶⁵ Schott (1998, pp. 10-11).

⁶⁶ Schott (1998) argues that if we use U.S. success in panel rulings and the amount of trade at stake as indicators, the U.S has the most to gain. See the last section of Chapter 1.

Lesson 2: Formal institutions frequently encounter problems of politicization. Although formal institutional mechanisms appear to be superior to voluntary implementation and compliance, formal institutions are not a universal panacea but have their own practical shortcomings. The crucial question is what *kind* of formal institutions are in place, and how impervious to political manipulation they are. An example that illustrates some of the potential pitfalls of formal institutions is the development of voluntary export restraints (VERs).

Even though VERs are generally negotiated on a bilateral or multilateral basis, they must be implemented by the national governments of exporting countries and monitored by importing countries. Given the nature of this process, exporting countries have incentives to circumvent their self-imposed restraints since their exports are artificially restricted, while the importing countries have incentives to monitor compliance to protect their industries. The typical process has been for the governments of exporting countries to instruct industries to restrict their exports to the bilaterally or multilaterally agreed level. The industries and the national agencies of the importing countries usually carry out monitoring and verification of compliance. For example, if an import-competing industry suspects that imports are larger than permitted under a VER, it can appeal to its home government for retaliation.

An example of the politicization of formal monitoring mechanisms is in textiles and apparel trade. Here the sectoral specific MFA regime governing the rules of bilateral VERs established an international monitoring mechanism called the Textiles Surveillance Board (TSB) under the auspices of the GATT. The organization was set up to monitor compliance with the agreement. The TSB's mandate emphasized conciliation of disputes

through a multilateral mechanism, which reviewed all actions taken under the provisions of the arrangement and made recommendation to the participating countries to facilitate implementation.⁶⁷ The TSB examined bilateral and unilateral actions of its member countries and reported the findings to the Textiles Committee of the GATT forum.

The TSB consisted of members of various importing and exporting countries. The delegates to the TSB were to serve as technical experts in monitoring agreements, although, in reality, political criteria have often determined their actions. In the late 1970s, for example, the EEC argued that “a balance must be maintained between parties viewing trade problems as importers and those viewing them as exporters.” This was an attempt to shift the TSB’s role further away from an impartial panel of experts that would review cases of control imposition, to a more highly politicized body to facilitate the settlement of disputes by means of conciliation between the parties. In contrast, the LDCs always wanted the mechanism to be stronger.

The flexibility clauses that allowed departures from the agreed rates of growth in import quota create another problem for maintaining compliance with the MFA guidelines of VERs. Under these clauses, developed importing countries negotiated increasingly restrictive trade agreements claiming disruptions to their markets, but the TSB was not able to criticize their actions and it also did not force compliance.

Finally, the periodic renewal requirement of certain agreements makes them vulnerable to domestic pressures at times of renewal. The MFA is an example in which the requirement of periodic renewals hurts compliance. The MFA was established on the system of periodic renewal. As the domestic industry pressure for protectionist measures,

⁶⁷ This and the following paragraph draw heavily on Aggarwal (1985).

the developed countries weakened the agreement in successive renewals. Thus, overall compliance has decreased over time.⁶⁸

Lesson 3: Formal institutions may encourage and exacerbate the use of available exceptions. Three types of measures within the GATT/WTO regime provide exceptions or a temporary pause in the implementation of a state's multilateral commitments: antidumping measures (ADM), subsidies and countervailing duties (CVD), and safeguard measures (SGM). The Uruguay Round tried to prohibit the use of voluntary export restraints in favor of formal SGMs, but at the same time it limited the potential restrictiveness of SGMs and thus diminished their appeal. Moreover, the U.S. and EU had managed to blunt efforts to restrain ADMs, thus creating a dynamic favoring ADMs as trade remedies.⁶⁹

Antidumping measures are special tariffs on imported goods that are priced below home market prices. Because of the difficulty for affected states to prove that they are not dumping, such measures have become the most frequently used trade remedy in Western countries. They have been employed by protectionist minded groups with a higher success rate than SGMs, reflecting the selective rules and power-based enforcement of these measures.⁷⁰ ADMs also impose relatively low costs for its user — they do not require the provision of trade compensation, and shift high procedural burden

⁶⁸ More recently, the MFA has begun to be phased out since January 1, 1995 by the new Agreement on Textiles and Clothing reached during the Uruguay Round. Under the Agreement, WTO Members have committed themselves to remove the quotas in the industries by January 1, 2005 by integrating the sector fully into GATT rules. A Textiles Monitoring Body (TMB) will oversee the implementation of commitments under this new agreement and prepare reports for major periodic reviews (WTO web site. Available at http://www.wto.org/legal/ursum_wp.htm#cAgreement.)

⁶⁹ Abbott (1997, p. 366, p. 376).

⁷⁰ Abbott (1997, p. 367).

onto responding firms that have the onus of providing information to the dumping authorities.⁷¹ The GATT permits the use of ADMs in Article IV, but provides little guidance as to the proper procedure and bases for determining injury. The Tokyo Round Code and the Dunkel Draft of 1991 tightened up the procedures somewhat, but in the necessary process of translating the Code into domestic law, the U.S. and European countries have been able to preserve considerable leeway for domestic import-competing industries to claim injury from dumping.⁷²

Safeguard measures, commonly known as the “escape clause” of GATT Article XIX, are formal procedures by which governments may suspend or withdraw GATT commitments affecting an injured industry. Prior to the Uruguay Round, there was no multilateral legal code governing the use of SGMs. The UR SGM Code specified general rules, especially for the phasing out of VERs and constraining the use of SGMs. It also gave developing countries benefits through a longer phase-in period, exempting their exports from SGMS in some cases and lengthening the effective period of SGMs to ten years. By contrast with ADMs, SGMs have been used far less as a means of modifying states’ GATT/WTO commitments. The problem is mainly one of complex legalism. To qualify for import relief, an industry has to show that it was experiencing serious injuries that was caused in major part by increased import, and furthermore it has to show that the increased import was itself caused in major part by past tariff concessions. The key difficult is in showing the second link; and even if it is demonstrated, the complainant must compensate the trading partner for the granting of import restriction as relief. As Schott (1994) argues, the remaining attraction of SGM is as an option for its main users

⁷¹ Abbott (1997, p. 386).

— EU and U.S. -- to act against import surges from emerging trading powers such as China.⁷³

Lesson 4: Material incentives and flexibility may assist compliance. Financial assistance used to support poorer countries in implementation and to create monitoring systems for developing countries increases the likelihood of efficacious implementation and compliance. For example, sectoral liberalization programs have been better implemented when there were financial incentives for the poorer countries. Flexibility in implementation may also encourage the broader objective of overall compliance.

The ITA provides a clear example of the benefits of material incentives to encourage compliance. Implementation and compliance of the ITA have focused on making the IT trading processes transparent, setting up uniform data-gathering methods, creating monitoring systems, and establishing verification procedures. Because the ITA was negotiated by and for WTO members, it utilized the Trade Policy Review Mechanism as the chief implementation and compliance mechanism. The concern for transparency and monitoring is most evident in setting up a uniform schedule for phasing out tariffs and other customs and duties. However, the financial resources and technological know-how needed for monitoring and verification are not always in ample supply in some developing countries.

While the phase-in time extension was agreed upon in principle by ITA developed country participants, it was acknowledged that many countries would need assistance to set up effective monitoring systems. To this end, the U.S. Department of

⁷² Abbott (1997, p. 376) and Schott (1994, pp. 84-5).

State provided a grant of \$90,000 in support of the WTO ITA initiative for least-developed and developing countries in September 1998. The idea is that the U.S. grant will help provide internet connections and computer equipment (personal computers, printers, modems, etc.) for the operation of WTO Trade Reference Centers in these countries, facilitating monitoring and implementation.

Another example comes from protectionist efforts in sectors such as footwear, steel, textiles, and apparel. As we have seen, the U.S. government has often been willing to meet the demands of domestic industries by pressing for quantitative export restraints. At the same time, in pursuit of its own objectives, it has also been willing to make concessions on flexibility of product definitions, categories, base years from which to judge growth, and other such elements to secure an agreement. The U.S. has also offered incentives such as PL 480 aid to the Koreans in exchange for their agreement to restrict textile and apparel exports.

For their part, the exporting countries have been reluctant to complain very vocally to the GATT for fear of jeopardizing exports. Moreover, since limiting exports can lead to increased prices, in some cases, exporting countries have been able to secure quota rents and have not been unduly harmed by the restraints. Because restraints are quantitative, another negotiating effort has been to avoid any restrictions on the prices of goods, thus allowing them to export higher priced goods and still maintain an overall quantitative limitation to meet the demands of the importing country. Thus, while compliance with the overall goal of reducing export growth has been met, the willingness

⁷³ Schott (1994, p. 98).

of U.S. negotiators to “go easy” on specifics has allowed them to meet competing political imperatives.

Lesson 5: Open regionalism sometimes reinforces globalism through supportive norms and rules. Although the lack of compliance mechanisms has retarded the progress of tariff reduction in the context of Asia-Pacific integration, APEC’s norms and principles of “open regionalism” have tended to reinforce the existing global regime.⁷⁴ “Open regionalism” is a code phrase that reflects a certain Asian skepticism for “Western-style institution-building,” and serves as a defense against bureaucratic, region-wide rule-making. Nevertheless, a central substantive tenet of “open regionalism” is an institutional commitment to consistency and convergence with the global liberal momentum.

At the level of elite consensus formation and socialization, the APEC forum can be said to have had some influence on member states’ general economic orientation and state-society relations; however, these effects are difficult to quantify. Member bureaucracies have on occasions looked to APEC and each other for reinforcement of a liberal economic policy line against domestic interests who do not share the free market ideology. For example, it would have been unlikely for China to make the across-the-board tariff cuts it offered at the 1995 Osaka APEC meeting without the justification of needing an impressive down payment for APEC.⁷⁵ Participation in the APEC process *may* have helped to moderate U.S. trade unilateralism and to provide impetus for Japan to carry out long-delayed deregulation.⁷⁶ Thus, there is some evidence that states are using

⁷⁴ The following two paragraphs are excerpted from Aggarwal and Morrison (1998, pp. 403-404).

⁷⁵ See Zhang (1998).

⁷⁶ See Baker (1998) and Yamamoto and Kikuchi (1998).

APEC to gain some “slack” from domestic interests by using APEC as a focal point that justifies some modicum of voluntarism. But the bottom line remains that without more effective mechanisms, implementation and compliance will remain in short supply.

Open regionalism has encouraged APEC countries to abide by the GATT/WTO regime in trade, and similar global conventions. Through its information exchange and training, APEC may apply pressure for improved enforcement or help overcome technical deficiencies or simply ignorance. For example, such “soft” mechanisms in such areas as intellectual property protection, customs classification, valued added network services, and transportation may help overcome the considerable deficiencies in some APEC member’s compliance with the global regimes. Moreover, the normative APEC vocabulary is full of other more operationally meaningful principles like: transparency, non-discrimination, comprehensiveness, WTO-consistency, mutual benefit. These serve both as guiding principles influencing national, bilateral, and sub-regional rule-making, and as a basis for other governments to challenge actions inconsistent with them.

Thus, institutional developments in one arena may support or stifle agreements made in other arenas. In the operational rules making, implementation, enforcement, and adjudication arenas, APEC facilitates the effectiveness of other regimes. It does so, however, by acting to strengthen the operation of global regimes at the regional level rather than creating new regional regimes or pushing for major extensions of global regimes. Although not all members in APEC are members of the WTO, there is a significant amount of membership overlap. Indeed, with such overlapping membership in different governance structures that, in principle, have complementary goals, it is intuitive that rules in one would strengthen those in the other. That is not to suggest,

however, that regional structures cannot cause tensions with global structures, as the legacy of political tension and institutional fatigue upon the collapse of the U.S-led sectoral initiative in the APEC context demonstrates.

D. Enforcement

Although the enforcement of trade agreements is tightly linked with implementation and compliance, they are distinct phases of a trade regime. Enforcement refers to the problem of dealing with states that have clearly failed to comply. A trade deal can be implemented, but not effectively enforced. The causes and motivations of states' failure of compliance largely determine the types of enforcement mechanisms needed. If one believes non-compliance is unintentional and rare, then a managerial approach may be preferred.⁷⁷ If non-compliance is believed to be the outcome of willful deceit, then more coercive measures that significantly raise the costs of non-compliance would prove useful. Once non-compliance has been detected, the two most important factors dealing with enforcement are: the party in charge of reacting to non-compliance, and the enforcement mechanisms in place. The key lessons learned from our survey of the history of enforcement with respect to different trading arrangements are:

- *Lesson 1: Without strong legal-rational mechanisms for dispute settlement, collective international responses to non-compliant behaviors are difficult to organize.*
- *Lesson 2: Dispute resolution mechanisms may vary in design depending on the nature of the parties involved.*
- *Lesson 3: Countermeasures from major powers may be effective in reducing violations of bilateral and multilateral agreements.*

⁷⁷ Chayes and Chayes (1995).

- *Lesson 4: Recent strengthening of the GATT/WTO dispute settlement mechanism represents an effort to shift enforcement from a power-based system of the Cold War era to a rule-based system.*
- *Lesson 5: Global mechanisms of enforcement can support regionalism or sectoralism.*

Lesson 1: Without strong legal-rational mechanisms of dispute settlement, collective international responses to non-compliant behaviors are hard to organize. Formal institutions at all three levels have had more success in enforcing implementation and compliance than voluntary and non-binding mechanisms. A comparison of the enforcement mechanisms of NAFTA and APEC illuminates the strengths and weaknesses of legalism and soft-law approaches.

NAFTA has demonstrated that regional dispute settlement mechanisms can provide an effective alternative to unilateral actions, while APEC shows that a deliberate avoidance of enforcement mechanisms – the logical result of Asian member states’ shared skepticism for “Western-style institution-building” and excessive bureaucratization – has seriously impeded progress in the reduction of trade barriers.

The strength of the NAFTA structure as an alternative to other forms of implementation and compliance is demonstrated by the fact that its dispute mechanisms have practically eclipsed the WTO mechanisms as a forum for Canada, Mexico, and the United States to settle their formal trade disputes. Indeed, from 1995 to 1997, only two disputes among the parties have been taken to the WTO.⁷⁸ To understand this lesson, it is necessary to briefly examine NAFTA’s dispute settlement mechanisms.

⁷⁸ Hufbauer and MacFadyen (1997, p. 16).

Open investment in North America is promoted by NAFTA's Chapter 11 based on the norms and principles of: ⁷⁹ 1) national treatment; 2) MFN treatment when a NAFTA partner decides to retain measures that run counter to the national treatment provision; and 3) minimum standard of treatment in accordance with accepted international standards for treatment of investors. It also prohibits the imposition of performance requirements with regards to export, foreign currency balance, transfer of technology, domestic content or preferential treatment to domestic goods or services.⁸⁰

Both state-to-state and investor-to-state disputes are handled by Chapter 11. Articles 1116 and 1117 of Chapter 11, for example, give individual investors and investors the right to assert that a government has breached its NAFTA investment or state enterprise obligations, or that a monopoly in its territory has done so. If the government of a NAFTA country, through the passage of inconsistent laws, in its treatment of foreign companies from another NAFTA country, or through its state monopolies or enterprises discriminates against a foreign investor of the other NAFTA country, the investor can demand arbitration. In order to allow individual investors the right to bring international legal disputes against a host state, NAFTA has effectively created a system of claim adjudication parallel to national courts. Moreover, it has enhanced the role of supra-national rules and administrative structures in the governance of the FDI regimes of North America by allowing for further steps if arbitration fails. In this case, the investor may seek recourse to mandatory arbitration through the World

⁷⁹ Other NAFTA chapters also contain rules that relate to investment (chapters 12 and 14 cover investment issues with respect to services and financial services, and chapter 17, intellectual property rights. Investment-related trade regulations are included in rules of origin and other measures related to duty-drawback and deferral. Gestrin and Rugman (1994, p. 78).

⁸⁰ Studer and Molot (1999, p.2).

Bank's International Center for the Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL).⁸¹

The lesson that regionalism could be successful in curbing political negotiations and unilateral actions is clear by examining the implementation of Chapter 19, which deals with anti-dumping and countervailing duty complaints. During the NAFTA negotiations, Mexico was able to get Chapter 19 protection from unilateral U.S. trade remedy laws such as Section 301 and Super 301. Since then, most of the disputes arising from Chapter 19 have been resolved on a "technical track," without resorting to political negotiations.⁸²

A governance structure with a stronger mandate provides the institutional resources to enforce compliance and overcome political "foot-dragging" and obfuscation. An extreme example would be the EU's Court of Justice. Its rulings trump any national legislation that conflict with EU law. Conversely, there are governance structures with weak institutional resources. They are often heavily dependent on state's self-restraint and good faith.

The textile sector provides a good example of a relatively impotent sectoral enforcement mechanism. The Textiles Surveillance Body (TSB) periodically reviewed violations of MFA guidelines. In view of mutual monitoring, the TSB does have some effect on member states. The weak mandate for the TSB in the MFA, however, has rendered the body more of a symbol of multilateral collaboration rather than a

⁸¹ Gestrin and Rugman (1994, p. 82), as cited in Studer and Molot (1999, p.1).

⁸² Hufbauer and MacFadyen (1997, p. 16). It is important to remember that this mechanism was included in the CUSFTA because Canada and the United States could not agree to harmonize their national laws in the politically sensitive areas of dumping and subsidies. Instead, the two states agreed to retain their existing AD/CVD laws and to create a system of binational review that would lend an air of objectivity and fairness to the application of those laws. See Huntington (1993, p. 414).

substantive enforcement mechanism. First, the TSB does not have an independent information gathering capability. Instead, the necessary information is supplied by participating countries. Second, even though the TSB's conducts reviews of unilateral and bilateral actions and makes recommendations on an annual basis and on demand,⁸³ no strong incentives exist for the countries to abide by the recommendations. The MFA simply stated that countries "shall endeavor to accept in full the recommendations of the TSB. Whenever they consider themselves unable to follow any such recommendations, they shall forthwith inform the TSB of the reasons therefore and of the extent, if any, to which they are able to follow the recommendations."⁸⁴ If problems persisted, the issue could be brought before the Textiles Committee or before the GATT Council through the normal GATT procedures but this path was rarely followed with much success.⁸⁵

While formalization generally results in more efficient and expeditious mechanisms of enforcement, flawed formalization in the context of an anarchic international system can place too strong a burden on international legal mechanisms and give rise to a host of thorny problems and lead to extralegal solutions or unilateral retaliation.⁸⁶ Ill-conceived legal procedures may give countries incentives to utilize every single avenue and legal maneuver to delay action, thus hindering negotiations to ensure compliance. These scenarios are discussed below as lessons of unilateral retaliation and of developments in the GATT/WTO dispute settlement mechanisms.

⁸³ Arrangement Regarding International Trade in Textiles, Article 11 Sections 5 and 12.

⁸⁴ Arrangement Regarding International Trade in Textiles, Article 11 Section 8.

⁸⁵ Arrangement Regarding International Trade in Textiles, Article 11 Sections 9.

⁸⁶ See Schott (1994), Howell (1998) and Ostry (1998).

Lesson 2: Dispute resolution mechanisms may vary in design depending on the nature of the parties involved. NAFTA's dispute settlement mechanisms have generated many valuable ideas for future designs of dispute settlement mechanisms, of which a critical one involves the differential treatment of states and individual or corporate entities as parties in disputes. A strong case has been made that while transparency is essential to the monitoring and verification of state behaviors, and thus helps organize collective responses to non-compliant state behaviors, in cases involving individual or corporate entities, the benefits of transparency must be balanced against the need for confidentiality in facilitating mediation and arbitration.

This lesson is drawn from the claims that have been brought under Chapter 11 against all three NAFTA signatories, four each involving Mexico and Canada, and one involving the US. In the Canadian context, one has been withdrawn and three are at the notice of intent stage. Three of the four cases against Mexico are already following the arbitration process and one is at the notice of intent stage.⁸⁷ These cases share the common themes of: 1) claims made by investor against acts of a NAFTA government "tantamount to expropriation" under Article 1110; 2) use of Chapter 11 to challenge environmental regulations; and 3) claims directly targeting actions or regulations of sub-national or local governments.⁸⁸ These outcomes have led to controversies over the precise definitions of expropriation, defense of legitimate national standards by environmental groups, and issues of preserving domestic sovereignty and jurisdiction, respectively.

⁸⁷ See Studer and Molot (1999) for details of the cases.

⁸⁸ Studer and Molot (1999, pp. 13-14). Also see Hufbauer and Schott (1998, pp. 80-82).

Of the cases involving investor-to-state disputes, a vigorous debate continues in Canada and the United States over the institutionalization of “secrecy” in which the dispute resolution process has taken place. Proponents argue that secrecy is deemed necessary to preserve mediation and arbitration, and to cut down on resorts to litigation through courts.⁸⁹ Opponents argue that this lack of information prevents taxpayers and interested parties from participating in what could amount to dramatic changes in legislation, and makes it difficult to analyze how the Chapter 11 process is working.⁹⁰ Indeed, one of the WTO’s means of promoting more faith in an efficient dispute settlement mechanism was its Trade Policy Review Board (TPRB), which enhanced transparency.

In a comprehensive update of the ongoing investor-to-state disputes under Chapter 11, Maria Studer and Maureen Molot (1999) conclude that there is not yet enough information to reach final conclusions about the workings of investor-to-state dispute settlement. However, they point out that studies about ICSID arbitration process lead us to believe that this type of lengthy and complex process would be used only for disputes involving unusually large claims.⁹¹ Moreover, pending cases have been stalled by interest group lobbying against Chapter 11 procedures. Eventually, the resolution of these enforcement shortcomings may require the reopening NAFTA and the establishment of an unrealistic level of inter-governmental cooperation.⁹²

⁸⁹ See Appleton (1994) and Winberg (1998), as cited in Studer and Molot (1999, p. 15).

⁹⁰ Herman (1998, p.13), as cited in Studer and Molot (1999). The Canadian government, sensitive to a considerable number of complaints in the press about the secrecy surrounding the Chapter 11 claims in Canada, has suggested the creation that NAFTA committees examine the secrecy question and to make recommendations to the process more transparent.

⁹¹ Brewer (1996, p. 90).

Lesson 3: Countermeasures from major powers are effective in correcting violations of bilateral and multilateral agreements. Historically, early flaws in the GATT dispute settlement made enforcement of trade agreements difficult. Long delays in panel proceedings, the ability of disputants to block the necessary consensus to approve panel findings and authorize retaliation, and the difficulty of securing compliance with rulings threatened to derail the entire global trading regime. Partly in response to the GATT's weak dispute resolution mechanism, the EU, and the U.S. began to resort to unilateral laws, such as "Super 301." When or why would states believe that certain unilateral threats are better than the current arrangement, and whose threats are likely to be credible? Power asymmetry and national strength in the affected industries are two of the most salient factors. A powerful state with a large market can often use unilateral threats as an effective weapon to enforce compliance.

In the backdrop of successive rounds of GATT negotiations was the fear of U.S. unilateralism. Under pressure from highly competitive European and Asian firms, the U.S. adopted trade remedy laws for unilateral retaliation in the form of Section 301 of the Trade Act of 1974. Section 301 has been tailored to promote the enforcement of U.S. rights under international trade agreements and to deter foreign countries from unfair trade practices. While it is nominally consistent with GATT, it exploits the gray area through which the U.S. could continue to exercise unilateralism.

With respect to VERs, the threat of unilateral retaliation often results from violation of import levels, brought to the government's attention by the affected industries. Threats following official complaints by the importing country have often set

⁹² Studer and Molot (1999, p. 17).

off new negotiations. For example, in the process of monitoring the domestic impact of OMAs in television and footwear, the U.S. International Trade Commission played a key role in reviewing industry petitions under Section 201 on import pressures and in making recommendations for trade barriers or renegotiations.⁹³ In 1984, the ITC refused to recommend trade barriers in response to petition by footwear manufacturers, citing their profitability as the objection; however, it was forced to reverse its recommendation after the Congress stipulated that profitability was not a sufficient indicator of industry health.⁹⁴

The strengthening of the GATT/WTO dispute settlement mechanisms in the Uruguay Round have predictably challenged the use of Section 301 and increased the additional costs of U.S. unilateralism, but perhaps not to the degree hoped for and expected by developing countries. As a formal “equalizer” between the enforcement powers of great and lesser powers, the DSM is expected to substantially impair the use of unilateralism by great powers to pry open emerging markets and dismantle restrictive business practices. While the Japanese believed that “the era of bilateralism is over” and the Japanese system of import and investment protection would henceforth be immune to U.S. sanctions,⁹⁵ this has not been the case in practice. The strengthened DSM is broadly compatible with the continuing creative use of Section 301. U.S. firms and policymakers have attempted to recast their claims as trade remedies in response to unfair trade practices, in conjunction with GATT/WTO-sanctioned measures of antidumping,

⁹³ Aggarwal, Keohane and Yoffie (1987, p.358).

⁹⁴ Aggarwal, Keohane and Yoffie (1987, p.358).

⁹⁵ Howell (1998, p. 311).

subsidies and countervailing duties, and safeguards.⁹⁶ In the most drastic scenario, the U.S. can simply choose to ignore the rulings of the DSM.

As the above cases illustrate, an economic powerhouse like the U.S can credibly threaten with unilateral action as many other countries are asymmetrically dependent on the U.S. market. It generally follows that states with smaller economies can use this option less often, and most likely only with other economies of size. Of course, one must not look only at the size of the economy, but also at the affected industry.

Lesson 4: Recent strengthening of the GATT/WTO dispute settlement mechanism represents an effort to shift enforcement from a power-based system of the Cold War era to a rule-based system. The Uruguay Round addressed three basic flaws in the GATT DSM — long delays in the panel proceedings, difficulties in achieving consensus needed for approval of panel findings and authorization of retaliation, and difficulties in securing compliance with panel rulings.⁹⁷ Closely resembling a judicial regime of appellate review operating on a strict time schedule, the Dispute Settlement Understanding established a unified system to settle disputes arising under all multilateral trade agreements covered by the WTO. Under the new WTO agreement, a new standing appellate body consisting of third-country nationals to review appeals of panel rulings, procedures to monitor compliance actions as well as allow for automatic retaliation in the event of noncompliance were established. Finally, a new Dispute Settlement Body was created to administer dispute settlement rules and procedures with the ability to disapprove noncompliance retaliation by

⁹⁶ Howell (1998, p. 313).

⁹⁷ Schott (1994, p. 125).

consensus.⁹⁸ From start to finish, the dispute process is supposed to take no longer than 20 months.

In the past, disputants had significant latitude to complain about the terms of reference of a DS panel or the selection of panel members. Under the DSU, both panels and the terms of reference are automatically established within 30 days if initial consultations fail to quickly resolve the dispute. In addition, panel reports are issued in a timely manner and subject to automatic approval that can be blocked only by consensus disapproval. No longer can a disgruntled “guilty” party indefinitely delay a ruling. In short, new procedures not only give panels more authority to decide cases and to recommend remedial action in a broader range of disputes, they also provide for some important safeguards to protect against legal errors through the institution of a new appellate process.

A newly established, standing appellate body then can review all panel rulings and, unless a DSB consensus opposes it, all appellate body decisions are adopted automatically. Furthermore, if panel rulings are not implemented within a reasonable period of time, complaining countries have the right to retaliate by suspending the application of WTO obligations to the offending country. As in panel rulings, only a consensual disapproval by the DSB can block the right to automatically retaliate. In addition, since all DSU rulings fall under the umbrella of the WTO, cross-sector retaliations are permissible when within sector suspensions or concessions are neither practicable nor effective.

⁹⁸ Consistent with GATT Article XXIII, the DSU also can adjudicate disputes involving measures that affect benefits accruing to a WTO member but do not violate any provision of the WTO agreements. However, such “nonviolation” cases are subject only to non-binding recommendations by the panel and cannot require the withdrawal of the disputed measure. As Sylvia Ostry has noted, the WTO obligations to include a broader range of trade and investment in goods and services than under GATT without the requisite capability to bind national sovereignty towards a single liberalization standard is likely to result in a sharp increase in trade disputes over time. Ostry (1998).

The U.S. had spearheaded the strengthening the DSM in hope of improving its position as a complainant in trade disputes. Ironically, in the recent years the U.S. has increasingly become a *defendant* in GATT/WTO disputes, and therefore the restraints on retaliation imposed by the new DSM process have encumbered the U.S. from its former habit of unilateral action.

The DSM represents a dramatic move from a power-based system to a rule-based system. While its scope is limited, its jurisdiction is compulsory. The preferred solution is the removal of the offending measure, not award of damages for trade lost during the process. It has some potential advantages and many more practical disadvantages for smaller and developing countries. The DSM is the primary way by which larger countries' Uruguay Round commitments can be enforced through a rule-based system, and it restricts the use of unilateral measures like the U.S. Section 301 that have targeted exporters from developing countries. However, the function of enforcement is potentially most effective when the WTO DS institution is willing to take on the enforcer role, rather than its current position as a passive third party that encourages settlement.⁹⁹ The final resort to retaliation by the complainant state clearly disadvantages smaller countries that value the markets of their major trade partners and have little resource to risk an escalation of the trade dispute. Paradoxically, the DS procedures actually restrain the complainant state from retaliation until its case has been reviewed by a neutral panel, and the panel's ruling affirmed by the Appellate Body and adopted by the DS Body. Meanwhile, the defendant state simply agrees to participate in the process.¹⁰⁰ Furthermore, when the weak state takes on politically entrenched programs of powerful

⁹⁹ Abbott (1997, p. 394).

states, the latter might choose to ignore a DS decision, thus precipitating a legal crisis that could undercut confidence in the DS regime itself. One may argue that “the real sanction of the system is the value that the parties — especially the large parties — place on it.”¹⁰¹

To summarize, the creation of new legal institutions has sought to change the incentives of state actors. Examples from NAFTA, GATT, and APEC all support the view that flawed legal institutions give states an incentive to hide behind legal loopholes and undermine reactions to non-compliance, resulting in diminished confidence in the global trade governance structure.

Lesson 5: Global mechanisms of enforcement can support regionalism or sectoralism.

Procedures and monitoring mechanisms in one arena may support dispute resolution in another arena if institutions have been designed to be compatible and if states have overlapping memberships in various agreements. For example, the WTO have been used as an effective and efficient tool to implement and enforce a sectoral agreement. One significant case involving IT products illustrates the point. When U.S. companies Cisco Systems, Cabletron, 3Com and Bay Networks suddenly faced higher tariffs on their computer network products because EU countries reclassified them as “telecommunications equipment,” they took their case to the WTO.¹⁰² In February 1998, the WTO panel not only ruled against this reclassification but also rejected similar attempts by several European countries to raise tariffs on U.S. exports of multimedia

¹⁰⁰ Palmeter (1997, p. 430).

¹⁰¹ Palmeter (1997, p. 429).

¹⁰² *The New York Times*, 1 April 1998, p.2.

computers by reclassifying them as entertainment goods.¹⁰³ Rather than seek a WTO appellate body hearing, the dispute was eventually settled through ITA II negotiations.

Although this dispute was not a direct test of the ITA, it does indicate how using the WTO to implement and enforce a sectoral agreement can be both effective and efficient. As indicated in other sections, transparent procedures and monitoring mechanisms promote speedy dispute resolution when the issue is narrow and clearly defined.

However, the role of the WTO as the arbiter of trading rules remains under intense scrutiny domestically. Both liberals and conservatives from the U.S. Congress, for example, have openly questioned the decisions of the dispute resolutions panels established under the WTO's dispute settlement understanding. Arguing that such WTO decisions interfere with the national sovereignty of creating and maintaining domestic rules and regulations, it remains unclear whether the DSU will be an effective mechanism for resolving non-compliance disputes.

V. CONCLUSION AND IMPLICATIONS

This paper has examined the process of agenda setting, negotiations, implementation, and reactions to non-compliance in the trading arena. My focus has been on understanding the interplay of various state and non-state actors in three different categories of governance in this issue area: sectoralism, regionalism, and globalism. Let us briefly review the evolution and lessons from the negotiation of these various forms of arrangements.

¹⁰³ *Electronic Buyers News*, February 9, 1998, p. 6.

With respect to agenda setting, the most significant factor has been the general security environment. Interest groups have often framed their concerns as one that deals with national security in an effort to secure protection. At the same time, the U.S. government, for one, was able to use the threat of communism as a means to resist protection from vested interests. Moreover, it was often able to use various types of trade arrangements, particularly multilateral ones, as a means of controlling both domestic interest groups (by arguing that its hands were tied once and international agreement was negotiated), as well as other states once it was able to get them to commit to an agreement. But as a result of the end of the Cold War, interest groups have now been able to more effectively lobby for their specific interests. The most interesting recent manifestation of this is the advent of liberal sectoral arrangements in new industries such as telecommunications and information technology. A similar phenomenon can be seen in the financial services industry. Faced by deregulation domestically in the U.S., and similar changes in other countries, industry groups in these sectors have been able to obtain sector specific multilateral agreements. At the same time, protectionist groups such as textiles, apparel, and steel producers have become more active in opposing liberalization and have even opposed developments such as China's accession to the WTO.

My analysis suggests that sectoral arrangements must be analyzed more carefully than has been done in the past. I would argue that protectionist agreements need not impede global liberalization, if they are marked by clearly delimited commitment and designed in a manner to provide a temporary respite for affected industries to permit them to adjust to competition or exit the industry. The most egregious example that does

not meet this criteria has been the textiles and apparel industries, with the MFA evolving into a multifaceted protectionist beast that has eroded the developed countries ability to make moral entreaties in the name of liberalism to developing countries. In the second best of all worlds, sectoralism may allow policymakers to move forward with broader trade objectives; but this path can also be a Pandora's box of protectionist evil.

Sectoral openness, as manifested in the ITA, might seem to be an ideal means of promoting liberalism when global trade efforts stall. Yet as I have argued, this approach is potentially fraught with danger. When successful, by giving highly motivated liberal-minded interests what they want in their specific sector, sectoralism undermines the classic "horse trading" among a variety of different sectors that has been the hallmark of the GATT process. When unsuccessful, such as in the cases of the aborted U.S.-led EVSL in APEC and the OECD-originated MAI campaign, sectoral initiatives threaten to disrupt regional or multilateral cooperation and create entrenched domestic opposition on the same issue. Thus, liberalism for its own sake can be destructive -- without concern for the creation of a broader political-economic coalition that will propel global negotiations forward.

In international trade negotiations, major powers have generally been able to determine outcomes. Yes, middle and smaller powers who are adroit in forming coalitions (as well as in working to set the agenda for trade negotiations), may often have a much larger role than one might predict from their economic position. Domestic actors, particularly with the end of the Cold War, have also been able to exert a great deal of power during international state-to-state negotiations, often placing negotiators in untenable positions or undermining national positions. While the traditional wisdom has emphasized the so-called "bicycle theory of trade", arguing that unless liberalization

moves forward constantly, protection will become rampant—appears to have little merit. Indeed, as I have suggested above, a little protection may grease the wheels of the trade bicycle, and riding forward with only a few participants on a sectoral or regional basis may leave the rest of the group behind and result in an inability to reach one's destination.

The success of implementation and compliance of multilateral agreements depend largely on the incentives and institutional mechanisms targeting the national level. While the track record of international trade regimes demonstrates that formal institutionalization is more effective in advancing tariff reductions than the alternatives including the soft-law, voluntary approach of APEC, states may respond to formal constraints by political manipulation of the monitoring mechanism, or by increasing resorts to trade relief measures that put on hold the multilateral commitments. Moreover, I argue that developing countries or “laggards” in the multilateral trade liberalization efforts predictably require additional institutional incentives for cooperation. In this regard, material incentives and flexibility in implementation have proven useful in eliciting compliance from countries concerned with their capability to bear the costs and develop domestic institutional capacities for liberalization. Furthermore, where compulsory, legalistic mechanisms of compliance face insurmountable cultural or political resistance, such as in the Asian-Pacific regional context, a principled commitment to consistency and convergence with the global regime, promoted by continual renewal of consensus and socialization of member state bureaucrats, can be useful in raising the probability of voluntary compliance. Nevertheless, the slow progress in sectoral liberalization of APEC in recent years casts doubt on this soft-law approach. This development stands in sharp contrast to regional

integration in Europe and America which has continued to deepen through developing formal monitoring systems and rule-based dispute settlement mechanisms that aim to close loopholes for domestic noncompliance.

The two most important factors in dealing with states that have failed to comply with their multilateral commitments are: (1) the party in charge of reacting to non-compliance — whether it is the injured nation(s) or the international community at large; and (2) the enforcement mechanisms in place — whether they are power-based or rule-based. I have observed that supranational, legalistic dispute settlement mechanisms, as exemplified by NAFTA's Chapter 11, have had greater success in redressing deviations from implementation and compliance than voluntary and non-binding mechanisms. As a caveat, I argue that these mechanisms must make sufficient distinctions among parties involved in disputes, such as by granting confidentiality to private investors while insisting on transparency in monitoring and verification of state behaviors. The reasons for the differential treatment are the reduction of transaction costs inherent in a legalistic process and the provision of incentives for mediation and arbitration.

The institutionalization of rule-based enforcement mechanisms also tends to create an equalizing effect among member states, as weaker countries gain avenues and institutional leverages to bind the commitments of powerful countries and restrain them from unilateralism. As examples I discussed Mexico's use of Chapter 19 to gain protection from unilateral U.S. trade remedy laws such as Section 301 and Super 301 and to avoid politicization of trade disputes which would expose Mexico's lesser bargaining position. This objective of empowering weaker states through supranational legal mechanisms has also been incorporated into post-Uruguay Round modifications in the

GATT/WTO dispute settlement mechanisms. However, I argue that this effort to shift enforcement from a power-based system of the Cold War era to a rule-based system does not entirely rule out the advantages of and domination by strong states, in particular the U.S., since the WTO has been unwilling to take on the enforcer role, thus leaving weaker states to face the real risks of retaliation in confronting their major trade partners.

Finally, I note that well-functioning global mechanisms of enforcement provide support for sectoral and regional liberalization initiatives -- if proper institutional linkages are established to provide the alternatives of dispute settlement and enforcement through global institutions. The question of the factors that permit such “nesting” or some type of parallel arrangements that enable a division of labor among trade institutions is of great relevance for policymakers who wish to design new multilateral institutional solutions to global interdependence.

Still, further WTO legalization brings about problems of its own. While many lawyers and some economists are enthusiastic about the direction that the WTO has taken, an excessive preoccupation with formalization may undermine the objective of minimizing hostilities among countries. Simply developing rules and procedures -- without due attention to creating a consensus on the appropriateness of certain kinds of intervention and retaliation -- does not provide a solution to conflicts arising from ideational differences and power asymmetries. The continuing controversy and escalating protectionism between the EU and U.S. over hormonized beef, despite a ruling from the WTO in favor of the latter, demonstrate the limits of dispute settlement mechanisms in the absence of shared norms on proper justification of national regulation for health and safety reasons.

While calling for efforts to develop a consensus on a host of issues may seem naïve and not the stuff of international politics, institution building in the absence of such discussion will be meaningless. I can only hope that this paper provides a small step in our efforts to better understand the dynamics of governance in international trade and to improve our ability to formulate policy in this arena.

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