

The Regional Dynamics of FTAA Negotiations

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity...

Charles Dickens: A Tale of Two Cities

Introduction

A casual observer would be forgiven for concluding that these are both the best and the worst of times for eliminating barriers to international trade and investment. On the plus side, developed countries are firmly committed to the trade liberalization agenda. New US fast-track negotiating authority which the Bush Administration has undertaken to obtain from the Congress should impart momentum to multilateral and regional trade negotiation initiatives. The great majority of developing countries are choosing open markets and deregulated economies and are eager to enter into regional and bilateral free trade agreements. China and the countries of the former Soviet Union -- now liberated from Communist dogma -- have made the same choice and are lining up to join the World Trade Organization (WTO). All competing models of economic governance -- command and control, import substitution, and central planning -- have been discarded by electorates when given a free choice between integration into the global economy and its autarchic rivals.

But there is also distressing evidence on the negative side. The high-water mark of post-war trade liberalization was probably reached in 1994/95 with the entry into force of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO). Progress in the Hemisphere towards a free trade agreement of the Americas faces formidable challenges and the APEC free trade initiative appears moribund. The WTO, which should be at the height of its powers and prestige, failed to launch a new round of trade negotiations in Seattle and since then has presided over steadily widening fault lines between developed and developing countries on the object and purpose of multilateral trade negotiations. In developed countries, at the same time that the trade agenda has slipped off the radar screen of the business community, a broad range of environmental, labour, church, and human rights groups have coalesced to mount spirited opposition to the architecture and intrusiveness of increasingly complex trade and investment rules. Many developing countries are seeking relief from their WTO obligations and refusing to take up the issues of critical importance to developed countries.

The reality is that these are neither the best nor the worst of times. They are in-between times and, for that, warrant the greatest level of political attention. Globalization has undermined the fundamental premise of trade rules and institutions that nation states are the premium decision makers in the global economy. New and intrusive trade rules arising principally from the Uruguay Round are creating a widening gulf between economic performance and national governance. Within the Americas, separate negotiating dynamics are in potential conflict. In order to turn matters around, it is essential to revive forward-looking negotiating momentum, to resolve bottlenecks, and to

capture the synergies that flow from broadening and deepening global economic integration.

This memorandum analyzes the impact of globalization upon trade and investment liberalization; discusses the structure of the trade rules as they have emerged both multilaterally and regionally; and explores the dynamics of the NAFTA and its influence upon hemispheric trade negotiations and the WTO. It concludes with some recommendations on the way forward.

The Impact of Globalization

The architecture of post-war trade rules was erected on the premise that cross-border trade in goods was the principal instrument of economic integration. The main obstacles to trade consisted of tariffs and quotas imposed at national borders or discriminatory treatment in taxation and other measures of internal economic regulation. Such trade largely took place between unrelated firms, most of which operated within the boundaries of individual nation states and looked to international trade as an additional source of profit rather than as their principal business strategy. Trade in raw materials, machinery, and finished goods made up the bulk of international trade governed by the rules; only a small proportion involved intermediate goods, such as parts and components.

Beginning in the 1970s, a divide emerged between the industrial, nationally organized economies that had been the mainstay of economic development through much of the 20th century, and the new, science-based, globally integrated economy. While the old bastions of economic growth concentrated in heavy industrial sectors retained their importance, services, technology, and other knowledge-based economic sectors started to make an increasingly important contribution to growth. The impact is illustrated by the rising proportion of trade represented by intra-industry transactions, the increasing importance of trade in intermediate inputs, and the growing share of global business taking place on an intra-firm, intra-network, or other interrelated corporate basis.¹ With the increase in international trade in services and the disaggregation of production on a global basis, trade, investment, and technology transfers have become complementary economic activities.² The most important but most difficult indicator to measure is the flow of information and technology. An unknown but large quantity of information and technology is traded within private and proprietary networks, adding to the ability of firms to do business globally. Only a proportion of this trade can be measured suggesting that official statistics may be underestimating the true value of world trade and not capturing the full richness of new patterns of economic integration. The result is the emergence of a global economy which enables owners of technology, capital, and technical skills to escape the confines of national borders and the strictures of national policies of economic development, resource allocation, and income distribution.³

Most governments have eagerly embraced globalization. Historically, it has been the OECD countries that have moved the furthest towards economic deregulation, privatisation, and open markets, essential conditions for globalization. Throughout the post-war period, these countries established the dominant model for achieving the benefits of high rates of national and per capita income growth. As charter members of

the post-war economic institutions, notably the General Agreement on Tariffs and Trade (GATT), and participants in their own regional arrangements, they have steadily subjected the instruments of national economic management to governance by international rules and organizations.

Within the Americas, there has been a reversal in decades of efforts to erect walls between national economies and the global economy. Import substitution policies, heavy state involvement in production and distribution, burdensome economic regulation, and suspicion of foreign investment, often backed by authoritarian political structures, have given way to open markets and democratic governance. Mexico's membership in the NAFTA, combined with its growing network of free trade agreements, initiatives between Canada and Chile and Canada and Central American countries, and the emergence of the Mercosur and its expanding links all attest that free trade is now firmly embedded as the model throughout the hemisphere.⁴

The impact of globalization on the negotiating dynamics of trade and investment agreements is striking. In the post-war model, these agreements governed relationships between nation states. In the new global economy, the rules bear much more directly upon the relationship between nation states and transnational corporations (TNCs) with no clear national identity. The strategies of TNCs, involving the integration of their operations within one country into a global network, create a potential clash with the expectations, values, and interests of the state.⁵ In developing countries, the scope for TNCs to overwhelm the national interests, customs, and values creates a difficult choice between maintaining national prerogatives and accepting the economic development stimulus of TNC investment.⁶ Within developed countries, TNCs are often perceived as exporting employment, technology, and income beyond national borders to escape costly social policies, high taxation, or rigorous environmental legislation and subverting the domestic and foreign policy interests of the home country, for example by investing in countries that abuse human rights.⁷ These concerns have generated a campaign to use trade and investment agreements for broad public purposes, notably in the areas of labour, environment and human rights.⁸

The result is a degree of flux and churning that is challenging the adaptive capacities of both individuals and social, political, and economic institutions. Should Brazil be allowed to license the generic production of pharmaceuticals protected by patents held by giant multinational companies? Should Canada be allowed to ignore market forces and set the price of those natural resources it makes available to private companies? Should Europe be allowed to discriminate against Latin American bananas in favour of production from its former colonies? Should developing countries be required to adopt the labour and environment standards of developed countries as a condition for benefiting from the trade rules?⁹ Should democratic governance be a condition for membership in any regional trade agreement? None of these concerns bears any resemblance to such traditional trade policy issues as tariffs and quotas. All testify to the extent to which trade can take seemingly domestic matters and turn them into trans-border issues. All are examples of what Sylvia Ostry has called system friction, i.e., conflicts that arise out of the differing regulatory and value systems that have developed historically in various countries and have become key issues in multilateral and regional negotiating forums.¹⁰

There is every reason to be optimistic about the benefits that will flow from globalization. Long-term economic growth and development can only flourish in a society that accepts change, values innovation and entrepreneurship, and maintains an institutional structure that rewards both.¹¹ At the same time, globalization and democratic progress have produced a conflict of governance between the accountability of governments for the performance of national economies and a global economy that surmounts the frontiers of the nation state and the managerial capacity of trade agreements based on post-war premises. The reality confronting governments is that the almost universal acceptance of an economic regime based on open and deregulated national and international markets has expanded the economic space for individuals and contracted the political space for governments.

There are worrisome portents. If the political legitimacy of policies to promote and protect national companies, national products, and national technologies has all but evaporated, governments retain the full range of constitutional authority to slow or halt the impact of globalization on their economies. The public debate has taken on hysterical tones treating globalization as a creed and failing to recognize that it is a process neither new nor more threatening today than in the past.¹² Indeed, by some measures, the global economy is just reaching the level of economic integration achieved in the first decade of the 20th century before two world wars, depression, and the rise of totalitarianism -- the antithesis of globalization -- produced calamity.¹³ The risk that history may repeat itself and policies to retard or reverse global integration gain support should not be discounted.

The way forward is to negotiate and implement trade agreements as part of a seamless web of rules for global governance that will ensure that the benefits of globalization are widely shared.

Global Governance: New Model Trade Rules¹⁴

The post-war model of multilateral trade policy -- enshrined within the 1948 General Agreement on Tariffs and Trade (GATT) -- sought to foster the expansion of world trade through the reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce. The rights and obligations of the GATT consisted of an interlocking set of negative prescriptions by which governments undertook self-denying ordinances disciplining their capacity to impose trade barriers and to discriminate among their trading partners. The substantive obligations of the GATT required its members to refrain from applying their trade policies in ways contrary to its fundamental objectives. The obligations did not require adherence to absolute standards of behaviour, nor did they impose rules and procedures for the detailed administration of trade policy. For example, the GATT did not require its members to apply countervailing or antidumping measures, marks of origin, quantitative restrictions on trade, or subsidies, but rather established controls on the use of such measures. The articles allowing exceptions, for example for balance-of-payment reasons, tariff preferences, or import surges, were similarly circumscribed by disciplines and in some cases surveillance, all intended to make their use difficult.

The Uruguay Round and the WTO constitute a decisive shift from a preoccupation with negative prescriptions to a focus on positive rule making as the basis

of international trade rules. The shift into rule making is particularly apparent in the basic obligation of each WTO member to ‘ensure the conformity of its laws, regulations and administrative procedures with its [WTO] obligations ...’ (Article XVI:4), replacing the GATT’s Protocol of Provisional Application, which only required compliance with its provisions to the extent that such provisions were not inconsistent with domestic law (at the time of entry into force of the GATT). The shift is also apparent from the agreements governing trade in services, the protection of intellectual property, technical barriers, and sanitary and phytosanitary measures, and in parts of the agriculture agreement. For example, the GATS requires signatories to establish or ensure the establishment of judicial, arbitral, and administrative tribunals or procedures to provide, on request, a review and, if justified, remedies for administrative decisions affecting service providers (Article VI).¹⁵ Taken together these agreements, combined with the positive obligation to ensure conformity with WTO rules and the new powerful dispute settlement system institutionalize a degree and intensity of intervention into domestic governance that exceeds anything possible or contemplated under the GATT.

This is a major paradigm shift with profound implications for the political economy of multilateral and regional trade agreements. First, there has been a transformation in the balance of economic benefits of trade rules. The economic benefits of reducing border barriers to trade flow from the exploitation of comparative advantage made possible by the more efficient employment of capital, labour, and natural resources. The shift into rule making is aimed principally at the harmonization of the regulatory framework of trade. While global economic efficiencies flow from eliminating barriers arising from different regulatory structures, the distribution of benefits is far less clear and in certain cases economic costs will be incurred.¹⁶

Second, the relationship between trade rules and domestic governance has changed. The construction of trade rules around negative prescription leaves domestic governance basically intact. The shift into positive rule making inserts international rules and procedures into domestic governance and brings areas of public policy hitherto immune from international rules within the ambit of international rule making and governance. Further, differences in economic regulation may have little to do with the economic need for protection against imports but rather may have deep historical or social roots.¹⁷

Third, the political management of trade rules and trade negotiations has become more complex. Prior to the Uruguay Round, trade negotiations fell within the ambit of a small number of ministries, essentially those responsible for trade, finance, and agriculture. The constituencies affected by the negotiations were confined to goods producing industries competing with imports or for export markets. The shift to positive rule making introduces a new universe of public policy issues and economic sectors for negotiation within a trade agreement context. It also brings a new cast of players to the scene in terms of whose interests are directly engaged and a broader and more diverse range of constituencies whose support, opposition or indifference will be crucial to the outcome of negotiations.¹⁸

Fourth, there has been a change from negotiation to litigation as the principal currency of trade relations management. A trade agreement erected upon a set of self-denying ordinances produces a natural momentum towards negotiation as a means of

managing trade relations. The source of trade problems will typically be the level of trade barriers maintained by a country which frustrate the export ambitions of its partners. Solutions will typically be found in negotiations to reduce and eliminate such barriers. A trade agreement erected upon positive rule making produces a natural momentum towards litigation because the source of problems lies in differences in the policies and practices of domestic regulation. This arises even where the domestic procedures meet the highest standards of transparency, need, and proportionality. In such litigation, changes in policy and practice to conform to the rules present themselves as losses and thus are only available through litigation.

Fifth, positive rule making changes the calculus of trade negotiations between developed and developing countries. For the former, the economic gains which flow from classic trade liberalization have been realized, apart from a few sectors of declining importance, for example agriculture. The challenge of global governance is generating negotiating agendas on investment, competition policy and the so-called 'trade and' agenda, embracing such issues as the observance of international labour standards, environmental protection, and human rights. These agendas are clearly not about trade liberalization. Rather, they are about the interface between the private economy and public regulation and blur the lines between the domestic and global economies.

For developing countries, the GATT agenda, that is the reduction of tariff and non-tariff barriers to trade, remains essential to expanding their export capacity. Developing countries were persuaded through the years of the Uruguay Round, which they grudgingly accepted, to abandon their opposition to trade liberalization on the grounds that an open and non-discriminatory world trading system would increase economic growth through expanded trade. In their view, these benefits have not materialized. Far from embracing a new agenda, many developing countries are demanding a 'rebalancing' of current commitments, in effect a renegotiation of the Uruguay Round, which would liberate them in part or in whole from many of their WTO obligations, and rejecting the 'trade and' agenda as an attempt to impose Western standards and models upon them as a condition for participating in international trade.

There is no disagreement among governments that open markets, transparent, non-discriminatory rules, and co-operative decision making and dispute resolution should be the commanding principles of trade policy. The role that regional and multilateral trade negotiations can play in coming to grips with the conundrums of global governance does not lie in confining agreements to the traditional trade liberalization agenda which gave shape and texture to trade negotiations from the first negotiations in Geneva in 1948 through the Uruguay Round. They must come to grips with the need to give shape and texture to the new global economy.

Dynamics of the NAFTA, the FTAA, and the WTO

The dynamics of the NAFTA throw into relief the challenges confronting both multilateral and regional trade negotiations. The NAFTA is unique for many reasons. It is the first free-trade agreement between a developing country and developed countries without special and differential treatment for the former. It was the first-trade agreement to exceed the rights and obligations of traditional trade agreements by including a

comprehensive set of provisions on investment, services, and intellectual property rights. It is the first agreement to include, via side agreements, provisions on labour and environmental issues. Beyond its importance as a vehicle for North American economic integration, the NAFTA has geopolitical importance. For Canada, the NAFTA constituted a critical step in Canada's recognition of its status as a nation of the Americas with hemispheric interests and responsibilities. For the United States and Mexico, the NAFTA opened a new and positive chapter in a relationship marked by mutual misunderstanding and frequently hostility.

The NAFTA, after seven years, is in danger of becoming a victim of its own success. The transformation in the North American economy has created new tensions, challenges, and opportunities that are surpassing the capacity of the rules and institutions of the NAFTA to provide satisfactory and timely responses. At its most fundamental, the problem is that the three economies have become, for all intents and purposes, a customs union governed by the limited rules and institutions of a free-trade agreement. Until this basic problem is resolved, rational investment decisions and wealth-creating trade flows will be deterred. A cursory examination of some of the major trade issues in the relationship illustrates the scope and depth of the problem: *customs and border administration* need to be facilitated, streamlined, and even eliminated; *tariffs and related programs*, such as rules of origin, deter industry in all three countries from reaping the full benefits from the reduction and harmonization of MFN tariff levels; *product and process standards* need greater acceptance of equivalence, mutual recognition, common testing protocols, and similar provisions; *services trade* requires common standards and mutual recognition especially in the areas of financial, transportation, tele-communications, and professional services; *government procurement* needs to move to a full national-treatment approach, mandating that governments throughout the region purchase goods and services for their own use on a non-discriminatory, fully competitive basis, at least insofar as North American suppliers are concerned; *trade remedies* -- antidumping and countervailing duties -- should evolve beyond WTO-like procedural safeguards to common rules about competition and subsidies, reducing the scope for anti-competitive harassment and procedures; for *competition policy*, more effort could be devoted to setting out common goals and providing a basis for cooperative enforcement procedures.

This litany of issues has two characteristics that underline the inadequacy of the NAFTA rules and institutions. First, they are all issues whose importance derives from the impact of globalization. In the not too distant past, most of them were either unimportant compared with the task of reducing or eliminating classic barriers to trade through multilateral or regional agreements, or were not on the negotiating agenda. For example, the intensity of intra-firm trade as well as trade driven by global alliances has rendered outmoded customs procedures a serious obstacle to economic growth. Second, they are not generally susceptible to management without supranational decision-making powers and institutions to exercise those authorities. For example, the risk of globally anti-competitive behaviour arising from borderless economies cannot be adequately addressed either through purely national laws or guidelines for cooperation. Here, a single competition authority, as established in the European Union Treaties, is probably necessary. While the FTAA may yield some modest trade benefits to the NAFTA

members, its real value and the degree of business support it can command may lie in its capacity to resolve the problems of integration among Canada, the United States and Mexico.

For the rest of the Americas, the FTAA negotiations are occurring within quite a different context and sharp differences are emerging. In one respect, they are an important expression of the new-found enthusiasm for freer trade and rules-based trade relations. The new attitude is reflected in a renaissance in regional and sub-regional negotiations, including efforts to breathe new life into moribund agreements such as the Andean Pact, the Central American Common Market, and the Caribbean Common Market. It was evident in the negotiation of bilateral free-trade agreements, most notably by Mexico and Chile. It was apparent in Mexico's success in transforming the Canada-US Free Trade Agreement into a North American Free Trade Agreement. The successful implementation of the Mercosur agreement, notwithstanding recurrent stresses and strains, illustrates the momentous changes that have taken place in the region.

At the same time, many countries of the Americas are new to the demands of binding trade obligations and have relatively little experience in internalizing a set of external obligations into their domestic policy regimes. Only Canada, the United States, and Brazil are charter members of the GATT and Brazil made extensive use of GATT exceptions to escape the full rigours of trade disciplines. Argentina and a few others accepted GATT obligations in the 1970s and Mexico acceded only in 1986. Successfully concluding and implementing an FTAA clearly will build on the WTO obligations as a minimum. If the needs of the NAFTA countries are to be met, they may well also require that participants accept obligations that go well beyond their WTO obligations. For countries that are having serious problems in implementing the current rules, this may amount to a larger step than most of the countries of the region appear ready -- or able -- to take at this time.

Beyond the challenges of new, and for many, unfamiliar restraints on sovereign decision making, there are conflicting dynamics at play. Brazil has always been lukewarm in its public support for the goal of a hemispheric free trade agreement. Its primary goal is to expand and consolidate the Mercosur and use it as a launch pad for a South America-wide arrangement in which it would be the pre-eminent player. Joining a free trade agreement that submerges the Mercosur into a US-dominated free trade agreement has little appeal for the Brazilians. Argentina, its key Mercosur partner, is increasingly restless under an arrangement which could deny free access to the US market while locking its economy into a high tariff Brazilian dominated common market. The Caribbean countries are anxious about losing their preferences and facing the rigours of open competition in their own small markets. For many of the Central American and Andean countries, free access to the US market is critical to their economic development. Three years of negotiations has accentuated these tensions which can only become more severe as and when they close in on the hard questions.

The FTAA negotiations are a voyage of discovery. The intense discussions in the working groups, the preparations for summits of leaders and meetings of ministers and senior officials, the sharing of responsibility for chairing various sessions, and similar activities have created a momentum and commitment that are new to many of the countries. For the first time, the full implications of membership in the WTO and in

regional agreements are being studied and discussed in capitals.¹⁹ While many months and even years of tough bargaining lie ahead and success cannot be assured, the negotiations have proven invaluable in building confidence in the Americas and creating networks of business, political and trade linkages where few existed before. One tangible result of the process was the agreement reached by trade ministers to undertake a series of far-reaching trade facilitation measures that will yield practical and immediate benefits to the traders and investors of the Americas.

The impasse at the WTO transfers an importance to the FTAA negotiations that exceed the objective of hemispheric free trade. WTO dynamics are trapped in a time warp. Since the collapse of the December 1999 WTO Ministerial Meeting, governments have been unable to strike a consensus on the negotiating objectives for a new round, while business support for multilateral trade negotiations has waned in the face of a powerful, well-organized, and well-financed chorus of public opposition. The United States, the European Union, Japan, and Canada, which have been the principal drivers of the multilateral trading system through most of its existence, have lost the initiative, if not the legitimacy, to lead. Divided between a conception of negotiations targeted at precise issues informed by domestic political priorities and an approach which seeks to shield vulnerable sectors through insistence on a broad agenda, the United States and the European Union have no new ideas to offer. Canada appears hobbled by the need to strike a wide domestic consensus before announcing a position on any subject while Japan is wallowing in economic stagnation with neither the will nor the credibility to push the system forward. Developing countries face a Hobbesian choice. Bitterly disappointed over the meagre benefits of the Uruguay Round, they have retreated into the once discredited north-south politicization of earlier economic negotiations.²⁰ Yet until they show readiness to address the new agenda, developed country readiness to address developing country interests, especially improved market access to their lucrative markets, will be next to impossible to mobilize.

Conclusions

Governments, and most of their citizens, have yet to fully grasp the demands of the new economy, the changing paradigm of international trade and investment, and the multilateral and regional trade rules which ought to govern. While a plausible case can be made to defer negotiations until these implications are fully understood, a more compelling case is that it is essential not to lose the momentum of developing the rules and institutions for global governance. It is the need for imparting new momentum to this imperative which makes progress in the FTAA so necessary. If progress is to be achieved, timetables and schedules, negotiating texts and declarations are less important than focusing hard on the central issues and finding the synergies and interconnections between them. To resolve the bottlenecks and capture the synergies which flow from the dynamics of regional and multilateral trade negotiations, progress needs to be made on three fronts.

First, globalization makes it necessary to recast trade agreements from instruments to manage relations between states to instruments to ensure that the benefits of global trade and investment are widely spread. The FTAA needs to move beyond the

classic free-trade agenda of border barriers to trade and embrace the kind of new rules needed to respond to the challenges of the global economy. Without progress on these fronts, there will be little but symbolism in the FTAA for the three NAFTA countries and domestic political support for it will become problematic. For the developing countries of the Americas, it will serve them ill, if having decided to abandon statist models of economic development and invest their futures in the global economy, they seek refuge in antiquated notions of sovereignty and decline negotiations engaging the issues on the new agenda.

Second, the United States needs a trade policy. In the more than seven years since the approval of the NAFTA, the US Administration has not had fast-track negotiating authority. This is the longest period for almost 70 years that the United States has been so handicapped in the conduct of its trade policy. The result has been paralysis. The commitment of President Bush to make a free-trade agreement in the Americas his first trade priority and to secure the necessary fast-track negotiating authority -- now dubbed trade promotion authority -- is an important step to restoring the United States to trade leadership. However, it is essential this authority be large enough to encompass the market access requirements of developing countries, including in sensitive areas such as agriculture and trade remedy laws. It also needs to permit the United States to negotiate the rules and strengthen the institutions required for the management of the global economy.

Third, the non-trade agenda requires a positive response. Canada and the United States are facing increasingly strident demands to use trade agreements to reinforce democracy, strengthen human rights, and require the enforcement of high labour and environment standards. Developing countries of the Americas almost unanimously reject this agenda. However, free access to lucrative developed country markets is a key factor in exploiting the full advantages of domestic economic reform. Stonewalling the Canadians and Americans on the new agenda will frustrate this objective. While the FTAA or the WTO are probably the wrong forum to grapple with these issues and reinforcing the UN institutions will be a more productive route, there is a need to move beyond sterile rhetoric and find practical solutions which are politically saleable in both developing and developed countries in the Americas and the broader international community.

Solving these problems in the Americas is crucial to the success of the FTAA and even more would point the way forward to defining a new multilateral consensus on the object and purpose of trade agreements. In this way, the worst of times will be avoided and the best of times will return.

ENDNOTES

¹ The extent of global economic activity that is now accounted for by firms active in more than one national market has become the focus of increasing study. The UNCTAD Division on Transnational Corporations and Investment reports that as early as 1990, some 37,000 firms qualified as multinational in their activities, responsible for some 205,000 separate branches held outside the firm's country of origin. More recent reports suggest the number of multinational firms has surpassed 50,000. Worldwide sales by foreign affiliates had reached \$4.8 trillion in 1992, more than worldwide trade in goods and services at that time of \$4.3 trillion. On this scale, there can be little question that such firms exercise a considerable degree of influence and control over global patterns of production, trade, technology, investment, industrial structure, and competition. See Karl Sauvant, "Market Access through Market Presence." See also OECD, *New Dimensions of Market Access in a Globalising Economy* (Paris, 1995).

² For a discussion of trade and investment as complementary rather than substitutable activities in the international economy, see DeAnne Julius, *Global Companies and Public Policy* (London: Printer for the Royal Institute of International Affairs, 1990), pp. 269-286.

³ For an appreciation of the dynamics of modern integration at regional and global levels, see OECD, *Regional Integration and the Multilateral Trading System* (Paris: OECD, 1995).

⁴ Cuba being the notable exception.

⁵ M. Sornarajah, *The International Law on Foreign Investment* (Cambridge: Cambridge University Press, 1994) notes: "Foreign investment attracts the greater attention of international law for the simple reason that it involves the movement of persons and property from one state to another and such movements have potential for conflict between the two states...Historically, this area of law has been built up as part of the area of diplomatic protection of citizens abroad and of state responsibility for injuries to aliens...The right of diplomatic missions to intercede on behalf of the property rights of their nationals came to be asserted in the diplomatic practice of the capital-exporting states...The extension of the right was contested from the time it was attempted on the ground that it leads to unwarranted interference in the domestic affairs of the host state." p. 7.

⁶ In the late 1980s, when the first major surge of foreign, especially Japanese, investment occurred in the United States, a vigorous and critical debate on the negative influence of FDI erupted in this country that traditionally promoted the benefits of foreign investment. See Edward M. Graham and Paul R. Krugman, *Foreign Direct Investment in the United States* (Washington: Institute for International Economics, 3rd edition, 1995).

⁷ Jack N. Behrman, *National Interests and the Multinational Enterprise: Tensions among the North Atlantic Countries* (Englewood Cliffs, New Jersey: Prentice-Hall, 1970) contains one of the earliest comprehensive surveys of the concerns raised by the operations of transnational corporations in both host and home governments, and the policy responses these concerns gave rise to.

⁸ Civil society groups opposed to globalization demonize trade agreements as instruments of corporate greed. See for example the brief of the Council of Canadians on the FTAA at www.Canadians.org for a flavour of the colourful rhetoric espousing this viewpoint.

⁹ The AFL-CIO insists that for countries whose labour laws are inadequate, elaborate mechanisms need to be put in place to ensure that domestic laws are brought up to international standards on a clear timetable. See *Inside US Trade*, vol. 19, no. 7, Feb. 16, 2001.

¹⁰ See "New Dimensions of Market Access; Challenges for the Trading System," in OECD, *New Dimensions of Market Access in a Globalising World Economy* (Paris, 1995) and *Governments and Corporations in a Shrinking World* (New York: Council on Foreign Relations, 1990).

¹¹ This is the thesis convincingly explored by Nathan Rosenberg and L.E. Birdzell, Jr., in *How the West Grew Rich: The Economic Transformation of the Industrial World* (New York: Basic Books, 1986).

¹² For a discussion of the globalization debate, see also Dani Rodrik, "The Sense and Nonsense in the Globalization Debate, in Patrick O'Meara, Howard D. Mehlinger, and Matthew Krain, *Globalization and the Challenges of a New Century* (Bloomington and Indianapolis: Indiana University Press, 2000), pp. 217-226. For a complete collection of anti-globalization opinion see Jerry Mander and Edward Goldsmith (eds.), *The Case Against the Global Economy* (San Francisco: Sierra Club Books, 1996). I discuss this debate in "The Critics Have It All Wrong," in the *Globe and Mail*, December 6, 2000, p. A-15.

¹³ For an analysis of globalization in the 19th century and its reversal, see Kevin H. O'Rourke and Jeffrey G. Williamson in *Globalization and History* (Cambridge and London: MIT Press, 1999).

¹⁴ This section draws on W.A. Dymond and Michael Hart, "Post-Modern Trade Policy: Reflections on the Challenges to Multilateral Trade Negotiations after Seattle" in *Journal of World Trade Law*, vol. 34:3 (June 2000).

¹⁵ Other examples include the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which requires members to comply with the provisions of the Berne Convention (Articles 1 through 21) on copyright and related rights, and the Agreement on Sanitary and Phytosanitary Measures (SPS), which requires members to ensure that such measures are based on scientific principles and not maintained without sufficient scientific evidence.

¹⁶ For example, enhanced intellectual property protection rules produce economic benefits for the owners of intellectual property rights but costs for the users without corresponding benefits in terms, for example, of greater export opportunities.

¹⁷ The requirement to base food safety standards upon scientific examination as provided for in the WTO Agreement on Sanitary and Phytosanitary Measures, rather than decisions by governments accountable to their electorates, is an example.

¹⁸ The departments of Industry, Trade and Commerce, Finance, Agriculture, and External Affairs basically managed the Tokyo Round in Canada. The interdepartmental group preparing for the Seattle Conference involved some two dozen departments and agencies. This explosion of interests is multiplied several times over in federal countries such as Canada and the United States, since positive rule making intrudes deeply into the jurisdiction of sub-federal levels of government

¹⁹ Much useful material on various aspects of the FTAA agenda has been produced under the auspices of the OAS trade unit, some of which has been gathered together in Miguel Rodriguez Mendoza, Patrick Low, and Barbara Kotschwar, eds., *Trade Rules in the Making: Challenges in Regional and Multilateral Negotiations* (Washington: Brookings Institution, 1999). See also the now somewhat dated study by Gary Clyde Hufbauer and Jeffrey J. Schott, *Western Hemisphere Economic Integration* (Washington: Institute for International Economic Integration, 1994).

²⁰ The division of the WTO into two solitudes was most vividly on view in the long debilitating struggle to find a new Director-General for the organization and the awkward compromise that was found.