

## A NEW DOMINANT TRADE SPECIES EMERGES: IS BILATERALISM A THREAT?

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### ABSTRACT

Over the past decade, government trade and finance ministries have increasingly turned toward negotiating bilateral and regional trading arrangements, and away from negotiations in multilateral forums like the WTO. There are several reasons for this shift, including changes in the global political environment and negotiating obstacles encountered by the multinational business community at the multilateral level. This shift appears to be an embedded phenomenon. Positive and negative aspects of preferential trading arrangements (PTAs) are in evidence. Trade creation–trade diversion economic analysis suggests the results may be net global welfare enhancing, although such analysis does not readily assess distributional effects. The global economy is enjoying a period of sustained—and widely distributed—economic growth, suggesting that the PTA phenomenon is not an immediate economic threat. On the negative side, the PTAs lead to administrative complexity, and may be somewhat destabilizing as businesses are encouraged to relocate. Some countries may suffer if left out, but this risk is ameliorated by the wide availability of potential negotiating partners. The PTA negotiating environment strongly favors powerful economic actors like the United States and European Union, which are largely dictating terms to developing (and developed) countries. Developing countries, particularly the less economically powerful, are losing autonomous decision-making authority. The consequences of this are difficult to quantify, and may raise questions better attuned to moral philosophers than economists. The WTO continues on its way, relegated to a less central status. A return to the WTO might reinvigorate the role of less powerful actors, but such return does not appear an immediate prospect. The PTA phenomenon, on balance, does not appear aggressively threatening. We may, however, be underestimating the positive role of multilateralism.

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One objective of this special issue is to identify the major changes in the world trading system over the ten years this Journal has been published, and to explore the implications of those changes. This essay addresses the shift away from multilateralism as the preferred government trade policy option, toward bilateral and regional trade negotiations as the central focus of government trade ministries. This trend is not newly “discovered” here. It is well known to participants and commentators in the trade arena. It was addressed at some length in the Sutherland Report,<sup>1</sup> the results of which were commented upon in this Journal.<sup>2</sup> The fact that a trend is well known does not make it less important. The emergence—or re-emergence—of a new dominant species in the world trading system, the bilateral and regional trading arrangement, is certainly worthy of attention here.

### I. SHIFTING TRADE POLICY PRIORITIES

From the 1700s through the 1930s, countries conducted their trade relations largely on the basis of bilateral treaties.<sup>3</sup> By the start of the Second World War, bilateral arrangements underlay imperial trading systems covering much of the world. Conventional wisdom is that the architects of the post-war institutional architecture established a preference for multilateralism—in the trade context grounded in most-favoured-nation (MFN) treatment—in order to guard against a recurrence of conflict among competing systems of colonial preference.<sup>4</sup> The MFN principle was embedded in the GATT 1947, now the WTO, to institutionalize this policy preference.

We are today confronted with substantial, and perhaps compelling, evidence that the post-War commitment to the MFN principle is deteriorating. Most countries of the world—in all regions—are actively pursuing bilateral and regional trade deals (hereinafter sometimes referred to as ‘preferential trading arrangements’ or “PTAs”). The European Commission and the Office of the US Trade Representative devote most of their trade attention to bilateral and regional negotiations. The European Union—itsself a manifestation of preferential regionalism—is comprised of 27 member states, but this vastly understates the scope of the EU preferential trading sphere, when the African, Caribbean and Pacific (ACP) group and other EU-related PTAs are included. The United States is rapidly expanding its

<sup>1</sup> Peter Sutherland, et al., *The Future of the WTO, Addressing Institutional Challenges in the New Millennium*, Report by the Consultative Board to the Director-General Supachai Panitchpakdi (2005).

<sup>2</sup> Regarding preferential trade agreements, or PTAs, see, e.g. Gary Hufbauer, ‘Inconsistency Between Diagnosis and Treatment’, 8 *Journal of International Economic Law* 291 (2005).

<sup>3</sup> Frederick M. Abbott, *Crosscurrents in European Union External Commercial Relations: The Controversy Over the Germany-United States Treaty of Friendship*, 54 *Zeitschrift für Ausländisches öffentliches Recht und Völkerrecht (Zaörv)* (1994) 756.

<sup>4</sup> See, e.g., Stefan A. Riesenfeld, *The Changing Face of Globalism*, in F. Abbott and D. Gerber (eds), *Public Policy and Global Technological Integration* (Kluwer Law International, 1997).

network of bilateral and regional preferential agreements, Israel, Canada, Mexico, Chile, Jordan, Singapore, Australia, Morocco, Bahrain, Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua, Dominican Republic, Panama, Peru, Colombia, and Korea (and onward to Malaysia, Thailand, and so forth).<sup>5</sup>

But the PTA phenomenon is by no means limited to the EU and the United States. The countries of Asia are dramatically expanding formal preferential arrangements among themselves, and with other regions.<sup>6</sup> Even Japan, which long considered its better interests served by multilateral negotiations,<sup>7</sup> has joined the crowd.<sup>8</sup> The countries of Latin America are strengthening their already existing ties in the Mercosur and elsewhere.<sup>9</sup> This expansion of preferential relations, previously well documented by the WTO Secretariat, appears to be an embedded phenomenon.<sup>10</sup>

## II. FACTORS UNDERLYING THE SHIFT

There is no single factor underlying the shift. Rather, a number of political and economic forces have combined to produce the change.

### A. Geo-political movement

In hindsight, that the GATT 1947 was comprised of one block among several global political and economic antagonists may have been underestimated as 'glue' holding the multilateral trading system together. The GATT was not truly a 'global' trading system. It was a key institution of a Western liberal political bloc confronting a perceived threat from a Second World of 'communist' and 'socialist' countries.

The deterioration of the military power of the Soviet Union and the dismantling of the ideological underpinning of the communist Chinese government has led to a wide expansion of participation in the multilateral trading system embodied in the WTO. Yet, at the same time, it seems to have diluted the 'multilateralism glue' holding it together. Without a

<sup>5</sup> See USTR website, at Trade Agreements, at <<http://www.ustr.gov>>

<sup>6</sup> See, e.g. *ASEAN to Push for More FTAs As Global Trade Talk Pace Slows*, BNA INT'L TR. DAILY, 8 June 2007. See the Asia-Pacific Trade and Investment Agreements Database (APTAD), at United Nations Economic and Social Commission for Asia and the Pacific, at <<http://www.unescap.org/tid/aptiad/default.aspx>>.

<sup>7</sup> See report of this author's discussions in Japan in 1994, shortly following entry into force of the NAFTA, in Frederick M. Abbott, *Law and Policy of Regional Integration, The NAFTA and Western Hemispheric Integration in the World Trade Organization System* 139–51 (Kluwer/Martinus Nijhoff, 1995) [hereinafter 'Abbott, Regional Integration'].

<sup>8</sup> See, e.g. See Japan-Mexico FTA Comes Into Force, UNCTAD-ICTSD, 9 Bridges Weekly Trade News Digest, 6 April 2005.

<sup>9</sup> See information regarding developments in Latin American regional integration at websites of the Organization of American States (<<http://www.sedi.oas.org/dttc/>>) and Inter-American Development Bank (<[http://www.iadb.org/int/1\\_English/2\\_Divisions/a\\_ITD.htm](http://www.iadb.org/int/1_English/2_Divisions/a_ITD.htm)>).

<sup>10</sup> See, e.g. Jo-Ann Crawford and Roberto V. Fiorentino, 'The Changing Landscape of Regional Trade Agreements', WTO Secretariat Discussion Paper No. 8 (2005).

common ideological and economic enemy, the West appears to have lost interest in multilateralism as a policy principle.

Governments are seeking to establish new bilateral and regional alliances to advance their particular geopolitical interests. Europe, Latin America, and Asia are not keen on a political (or economic) world dominated by the United States. It may be hard to empirically demonstrate that political power considerations, in addition to mercantile considerations, are driving the new bilateral and regional negotiating wave, because governments are not generally so explicit about these objectives. But the shifting constellations of political and economic power in Latin America being played out in regional trade alliances should provide some backup for this thesis. Similarly, the ongoing bilateral economic and political negotiations between United States and India, including nuclear power-related discussions, suggest that economics and politics are not so far apart.

### **B. Redirection of the multinational business community**

It has become exceedingly difficult for the multinational business community to achieve its preferred economic agenda at the multilateral level. This is true at the WTO, as evidenced by lack of progress on the Doha Development Agenda (DDA). It is also true at the World Intellectual Property Organization (WIPO).<sup>11</sup> Even limited membership multilateral organizations such as the Organization for Economic Cooperation and Development (OECD) have failed in efforts to move on issues perceived as important to the multinational business community; in particular the Multilateral Agreement on Investment (MAI).

The preferred agenda of the multinational business community is not the preferred agenda of many other stakeholders in multilateral governance. Multinational business enterprises are typically pursuing mercantile agendas designed to enhance their returns on investment. Other stakeholders in multilateral governance have much different agendas. The difference between the multinational business community and most other stakeholders is that the former can elect to transfer its negotiating agenda to more favorable forums because it generally has the power to direct the focus of trade negotiators. Other forums may be 'second-best', but that is just a fact of business to which enterprises can adapt.

To take just a few examples: Although negotiations on the MAI may have failed at the OECD, negotiations on investment protection have been successfully carried out by the United States in its series of bilateral and regional agreements, and; while there is little present prospect for negotiating higher levels of intellectual property protection at the WTO and WIPO,

<sup>11</sup> Observe stalled negotiations on the Substantive Patent Law Treaty and other proposals. See generally, Barton et al., *Views on the Future of the International Intellectual Property System*, ICTSD Selected Issue Briefs No. 1, June 2007.

the United States and the European Union have been successfully negotiating higher levels of protection in various bilateral and regional settings. While governments hardly make offers in DDA services negotiations at the WTO, services market access commitments in the bilateral and regional context are far-reaching, suggesting that governments are reserving their most valued concessions for these latter forums.

### **C. Seeking higher growth**

In light of the reduced impetus for multilateral cooperation, and the present inability of private enterprise to promote consensus on ‘improved’ rules at the multilateral level, government economic planners looking for ways to stimulate domestic economic growth might well be justified in concluding that alternative forums for negotiating are required. The ‘second-best’ solution is negotiations on a bilateral or regional basis which, from the perspective of Treasury Departments and Trade Ministries, may well reflect the present national interest. Of course, this reflects a certain circularity in reasoning: bilateral and regional trade agreements have become the ‘new first best’ option because the Ministries turned away from the ‘old first best’ option.

## **III. REWARDS AND RISKS**

### **A. Rewards**

There is a substantial ‘classical’ economics literature explaining the potential benefits and costs of PTAs.<sup>12</sup> This classical literature focused on the dual effects of ‘trade creation’ and ‘trade diversion’ that follow from the establishment of localized trade preferences among a group of countries. Jacob Viner laid the foundation of the trade creation–trade diversion analytical approach, concluding that if the trade creating effect of a PTA exceeded the trade diverting effect (i.e., if it was ‘net trade creating’), the global economic welfare effect would be positive. It is also understood that Viner’s analytic approach did not account for the distributional effects of the arrangement. That is, net positive welfare gains might accrue disproportionately to a particular region, yet still increase overall global welfare.

Viner’s original analytic work was done in an era when tariffs and quotas remained the principal concerns of the trading system. More recent work by economists necessarily has taken into account the broader range of economic activity covered by PTAs. Today, reducing barriers to the free movement of services, enhancing the protection of investment and strengthening the rules governing intellectual property rights (IPRs) account for a substantial part of

<sup>12</sup> See discussion in Abbott, *Regional Integration*, above n 7, Ch. 9. The seminal document is Jacob Viner, *The Customs Union Issue* (New York: Carnegie Endowment for International Peace, 1950), at 41–81.

new PTA texts, and typically involve the more contentious aspects of negotiations. Yet, taking into account the expanded scope of subject matter interest, the basic idea that a PTA will have a ‘net positive’ impact on the global economy if it creates more trade than it diverts appears to remain sound. We continue to expect that greater trade flows are a signal of increasing efficiencies as lower-priced goods and services, reflecting comparative advantage and specialization, displace higher-priced less efficiently produced goods. In this overall calculation, IPRs are something of a conundrum, because strengthening protection of IPRs tends to increase prices and may constitute a drag on economic growth, unless offset by efficiency gains.

The phenomenon commonly known as ‘globalization’ is thriving on an apparent increase in the security of foreign direct investment (FDI) which facilitates investment in plants and equipment. One of the main elements of many new PTAs is increased investor protection, including possibility for third party dispute settlement. Similarly, globalization is thriving on the basis of relatively free capital flows that are stimulated by PTA rules liberalizing the establishment of banks and other financial institutions, as well as the inward and outward flow of capital. This increasingly open flow of global capital is benefiting individual consumers who are more likely to obtain credit for purchases of homes and consumer goods, further stimulating localized and global economic growth.

All of the ‘positives’ referred to above are part of the rule-making pursued in PTAs presently being negotiated. And, we are in the midst of a relatively unprecedented era of widely-shared global economic growth. We could well be satisfied to conclude that the trend toward increased regionalization embodies the creation of a series of ‘mini-engines’ of growth that are driving the global economy to greater heights.

## **B. Risks**

There are some fairly apparent disadvantages to the present focus on bilateral and regional trade negotiations, and perhaps some less apparent, and even greater, difficulties.<sup>13</sup>

<sup>13</sup> The world has changed a great deal since 1947, and the wealth of nations may not be so nearly dependent on particular trading constellations as it was then. Advances in transportation and communications technologies have reduced the transaction costs of trade. The success of the GATT and WTO in reducing tariff rates and quotas means they may not play the role in trade relations they once did. Goods and services are flowing across national boundaries. The multilateral trading system may not be as important as it once was, due to its own success.

And, perhaps a good part of this success can be attributed to the benign influence of a relatively open multilateral trading system. We may all be taking for granted the fact that the GATT and WTO have worked—and are working. But that is okay, because the WTO is not a celebrity seeking adulation—it does not need recognition and praise. It only needs to keep working.

### *1. Complexity and inefficiency*

Perhaps the most obvious problem presented by the plethora of new PTAs is the sheer complexity of the rules now confronting the international trader, and the government officials seeking to implement the rules. How a good or service is to be treated from a tariff, quota or regulatory standpoint depends on its origination, the determination of which may involve significant factual issues. Once the originating country or region is determined, the applicable set of bilateral or regional rules must be found and applied. Multiplying this activity into the millions and billions of transactions presents obvious prospects for inefficiency, delay and error.

The difficulties confronting customs and related regulatory authorities in identifying and applying relevant rules are mirrored in the increasing complexity of choice of forum and law for dispute settlement. This is not to suggest that the 'tail' of dispute settlement should 'wag the dog' of international trade, but evidence of conflict of norms problems is growing.<sup>14</sup>

### *2. Rapid change and destabilization*

Business enterprises calculate opportunities based on their expected costs, and those costs include applicable tariffs, quotas, and regulatory norms. It is commonplace today to read of businesses that are shifting production from one country to another because of shifts in tariff or quota preferences under PTAs. As governments increasingly pursue bilateral and regional trade arrangements, the rate of change in applicable preferences is likely to accelerate, and with it the rates at which businesses shift their locations. The consequence is increased instability for national and local economies, employees, families, etc. While net global trading activity may be increased, this may not adequately offset the negative social consequences of economic destabilization.

### *3. Potential isolation and the 'domino effect'*

It has long been noted that the major potential 'losers' from regional or bilateral trade arrangements are the countries which, for one reason or another, are left on the sidelines of the negotiations.<sup>15</sup> A country not receiving preferential treatment may find itself in some economic difficulty if competitor countries are so benefiting.

Recall that the 'net trade creation' analytical approach to PTAs does not capture their distributional effects. The United States and European Union may benefit substantially more from PTAs than their smaller trading partners, and countries outside these PTAs may suffer from trade diversion. PTAs may be overall increasing in world trade, but that does not mean that all countries are benefiting, or are benefiting in a proportional way.

<sup>14</sup> For example, in the Mexico–US high fructose corn syrup saga involving NAFTA and WTO claims.

<sup>15</sup> See concerns expressed by Singapore Ambassador Tommy T.B. Koh in 1990, recounted in Abbott, *Regional Integration*, above n 7, at 167–18.

Yet with the proliferation of regional alliances today, it may be that almost any country which seeks a preferential trading partner can find one. There is, in fact, a ‘domino effect’ in operation around the world. Trade Ministries, perhaps legitimately, fear that domestic economies will suffer if their countries do not join the wave of PTAs. The trend towards preferential arrangements is self-reinforcing. Joining a PTA out of perceived necessity may be an improvement over being left out, but it reflects part of an overall loss of independence being suffered by less powerful economic actors, discussed under the next heading.

#### *4. Loss of sovereign control*

Perhaps, the most dramatic negative consequence of the recent trend toward bilateral and regional negotiations is the loss of economic and political control facing developing countries, as a whole, and especially smaller and less economically powerful developing countries. When the United States or European Union tenders a draft PTA to a developing country, it expects the basic template of its proposal to be followed, and in some areas (such as investment rules or strengthening of IPRs protection), the possibilities for effective counterproposal are almost non-existent.

Countries such as Argentina and Brazil have rejected meaningful participation in negotiations with the United States and EU on PTAs (such as the proposed Free Trade Area of the Americas) because they are unwilling to accept the basic template, and there is little present room for further discussion. In Latin America, the push of the United States to secure FTAs with countries of Central America and the Andean Community is viewed as part of a strategy to isolate Argentina and Brazil, and ultimately to cause them to rethink their own policy preferences. Argentina and Brazil, however, are exceptions to the general rule among developing countries. They are large economy countries that can withstand some economic pressure from the United States and EU, and have been in that position for a long time. Even then, the United States is holding out some increasingly valuable carrots to Brazil,<sup>16</sup> and at some stage the incentives might be great enough to bring that country into the PTA program.

Jordan, Morocco, Dominican Republic, El Salvador, Guatemala, Peru and the like do not have leverage to bargain with the United States. In much the same way the ACP countries have very limited leverage with the EU.<sup>17</sup> As a consequence, these countries accept economic and regulatory policies ‘made in the USA’ and ‘made in the EU’. The recent agreement between the Bush

<sup>16</sup> For example, the prospect of large-scale sugar-based Ethanol imports implicit in discussions in a recent visit by President Bush to Brazil. See, e.g. White House Office of the Press Secretary, *President Bush and President Lula of Brazil Discuss Biofuel Technology*, São Paulo, Brazil, 9 March 2007.

<sup>17</sup> The ACP countries are in the midst of negotiating an Economic Partnership Agreement with the European Commission, the proposed terms of which have drawn considerable criticism from the European Parliament and NGOs.

Administration and congressional leaders to modify the terms of concluded FTAs with Panama, Peru, Colombia, and South Korea so as to reflect new labour, environmental and IPRs-related conditions precisely illustrates the lack of bargaining power on the other side of the table.<sup>18</sup> These changes to bilateral agreements are being dictated by the US Congress as a condition of ratification. While Panama et al. are being ‘asked’ to renegotiate, it is doubtful anyone is under the illusion that Panama et al. will draft the new conditions, or even have the chance to say much about them.

United States and EU trade negotiators might well acknowledge the imbalanced nature of these negotiations—the facts are too well known to allow otherwise—but presumably would argue that there is little cause for concern because the rules of the FTAs are beneficial to all sides. Developing countries may be forced to take certain medicine, but since the medicine is beneficial where is the cause for complaint?

Here, we tread on some pretty treacherous moral, political, social, and economic ground. I cannot suggest to you with any certainty what the implications of all this ‘pushing around’ may be. Some former British colonies get along pretty well with their former imperial leader. Imbalanced power relations may be the natural order of things, and the weak may not resent the strong for their efforts.

The precise nature of the problem is difficult to define, but there is something not quite right about one-sided trade negotiations. In his essay on the Sutherland Report, Gary Hufbauer invoked Shakespeare’s Julius Caesar.<sup>19</sup> I might follow suit by invoking the Chinese philosopher, Lao Tzu:

To be overbearing when one has wealth and position  
Is to bring calamity upon oneself.

Lao Tzu, *Tao Te Ching*, Book I, Chapter IX<sup>20</sup>

Lao Tzu can be a bit obtuse, and he does not always seem constrained to explain his reasoning.<sup>21</sup> It is hard to elaborate more on this particular point: the current negotiating environment for PTAs is heavily imbalanced in favour of the large economy actors that are effectively dictating the terms of the agreements. In my own view, there is something not quite right. But, I cannot—or I prefer not attempting to—explain the problem in terms of economic science.

It can of course be argued that this current situation does not represent a significant change from the GATT 1947. In the old GATT environment,

<sup>18</sup> See, e.g. USTR, *Bipartisan Agreement on Trade Policy: Intellectual Property*, May 2007, Trade Facts, available at <<http://www.ustr.gov>>.

<sup>19</sup> Hufbauer, above n 2, at 294.

<sup>20</sup> Translated by D.C. Lau, Penguin Classics (1963).

<sup>21</sup> Gautama Buddha’s karmic wheel may have suggested much the same thing, but the Buddha was not grounded in empirical science either.

rules and terms of trade were largely dictated by the EU and United States. In this sense, power relations in the PTA environment are not much different.

That may be true, but the shift away from the WTO took place at precisely the point when developing countries had managed to secure one of their first multilateral successes—the Doha Declaration on the TRIPS Agreement and Public Health of 14 November 2001.<sup>22</sup> The moment developing countries demonstrated some mastery of WTO diplomacy, the rug was pulled out from under them, as if the prospect of negotiating at the WTO on more equal terms was too much for the OECD countries to bear. This does not shed a better light on the current PTA situation.

### C. What if things go wrong

The rewards and risks of the PTA phenomenon so far seem to be in rough balance, and the dangers not too great. The DDA is making scant progress, but the global economy is thriving in relative terms, and emerging economy countries are enjoying virtually unprecedented economic growth. The PTAs may be stimulating some cross-border investment and capital flows, and encouraging a general air of economic progress and security. Many developing countries are accepting the terms of PTAs dictated to them by the United States and EU, but perhaps only a few ancient philosophers would worry (as I do) about the unconstrained exercise of power.

We are in the midst of a benign global economic environment, where most boats seem to be rising, and we may need to be reminded that things can change. An Avian flu pandemic, a disruption of Mid-East oil flows or the sudden collapse of a major currency could change the global economic environment pretty quickly. Is the PTA phenomenon likely to influence the course of a serious global economic contraction, for better or worse?

Viewed through the lens of 1910, or the lens of the 1930s, we might well be concerned that severe stresses on the global economy will pressure countries to revert to the kind of political, military, and trade alliances that foretold global conflict. Bilateral and regional trade agreements might form the basis for such renewed alliances. Yet, without suggesting that the human condition (and capacity for aggression) has moderated, it seems doubtful that today's PTAs would play a similar role to those of the competing imperial empires of the early 1900s or 1930s. This largely has to do with the evolution of military, communications and transportation technologies.

The outcome of 'serious' military conflict today seems more likely to be determined in a matter of days and weeks, as opposed to years. It seems doubtful that the regional identity of suppliers of raw materials and foodstuffs will be a decisive factor in such events. There likewise does not

<sup>22</sup> See Frederick M. Abbott, 'The Doha Declaration on the TRIPS Agreement and Public Health: Lighting a Dark Corner at the WTO', 5 *Journal of International Economic Law* 469 (2002).

seem much likelihood that the United States or EU would initiate an armed conflict to defend a trade preference with particular developing countries. (This should not be confused with a war to defend the integrity of oil supplies.) All in all, it seems doubtful that the pre-occupation of the architects of the GATT 1947 with avoiding renewal of systems of colonial preference should be of equal concern in today's age of the Internet and routine airfreight. (I hope I am right about that.)

#### IV. WHERE DOES THIS LEAVE THE WTO?

##### **A. The WTO continues on its way**

The WTO is still operating in Geneva, overseeing the implementation of rules agreed to in the Uruguay Round, and refereeing disputes between its members. World tariff rates, generally speaking, are low; many quotas have been eliminated; some agricultural subsidies have been reduced; global textile trade is opening up; telecommunications and banking markets have been liberalized; basic standards of IPRs protection have been widely recognized; membership continues to expand. Unless one is a strong adherent to the 'bicycle theory', the WTO does not appear in any great danger of going away.

The movement of the world's trade negotiators away from the WTO and into bilateral and regional negotiating forums may well reduce the prospects for new WTO agreements, including results of the DDA, but at least for the near-to-medium term it seems doubtful that the WTO as an institution is at any great risk from the PTA phenomenon. It has simply been relegated to a less central status.

##### **B. The Doha development agenda**

It appears virtually incontestable that the focus on PTAs is diminishing prospects for successful conclusion of the DDA, if for no other reason than that trade negotiators are working on other matters. Since the trade concessions being sought by the United States and EU in the PTAs are more extensive in scope than those they are seeking in the DDA—and they are being asked for less in return—one might well ask what incentive the United States and EU have for demanding that the DDA once again take center stage.

One possible answer is that major concessions on non-agricultural market access (NAMA) (e.g., tariff spikes on OECD goods) are being withheld by the major developing country economic actors like Brazil, India and Egypt, and the United States and EU may not be able to secure these concessions on a bilateral basis any time soon. So, there is at least some reason to try to complete the DDA. On the other hand, since the EU and United States are not serious about reducing agricultural subsidies, and since major

concessions on agriculture are a condition to success on NAMA, the game at the WTO may not be so much worth playing.

While it seems most likely that the PTAs are perceived as a viable alternative to the DDA, and are almost certainly impeding its conclusion, it is not so clear that this is very important. Developing countries long ago gave up the illusion that the DDA was in fact a ‘development round’, and it is not as if failure to complete this venture would make a tremendous difference to them in an immediate economic sense.

### C. PTAs as models for future WTO negotiations

It is not beyond possibility that a sufficient critical mass of new rules at the PTA level will have emerged over the next five or ten years such that transposing these rules to the WTO will be comparatively easy.<sup>23</sup> A country that has already agreed to protect foreign direct investment in a regional forum, including provision of third party investment dispute settlement, may not balk at negotiating the same rules among a wider group of countries. The WTO might, in effect, ‘free ride’ on all the PTA activity taking place. To the extent that the PTAs could lead to new ‘progressive’ agreements at the WTO, this would be perceived as a net benefit to the WTO.

Of course, the developing countries that are presently being pressured to accept PTA terms dictated by the United States and EU may find such a development less than wholly satisfactory, and NGOs would be ready to oppose a ‘WTO-encirclement’ strategy.

### D. WTO reform

What would be needed for the WTO to regain its central role as a forum for trade negotiations? As many have suggested, including in the Sutherland Report, probably some change to the voting structure to enable ‘less than consensus’ agreements. There is a lot of territory to address in respect to such reform—including especially the implications for the less powerful countries. This brief essay will not attempt to address these difficult issues.

### V. ARE PTAS THREATENING?

PTAs have emerged as the dominant new trade species, today surpassing the WTO as the primary focus of trade negotiators. We are in the midst of a sustained period of global economic growth that is raising standards of living in developed and developing countries. In the present circumstances, it is hard to make a compelling case that the PTAs represent an immediate economic danger.

<sup>23</sup> It seems doubtful that the United States and EU are consciously engaging in a ‘grand strategy’ to create this specific momentum for the WTO because the prospects are rather uncertain.

The most troubling aspect of the PTA phenomenon is the exercise of virtually unconstrained political and economic power by the United States and EU to secure concessions from developing (and developed) countries. While this phenomenon might (or might not) have negative economic implications for developing countries, that is not at the heart of the problem. The heart of the problem is that it deprives developing countries of the capacity to make autonomous decisions about the way their affairs should be governed. Presumably, most imperial leaders have believed they were acting in the best interests of their vassal states, and no doubt in some cases they were. But this does not justify subjugation.

Perhaps, the best case that can be made for encouraging a return to multilateralism is that the weaker actors have a better chance to have their voices heard, and their policy choices taken into account, than in the PTA negotiating environment. In that regard, the present WTO rule of consensus may not be such a bad thing. Some compromises on governance might still be made that would improve the capacity of the WTO to 'move forward', while at the same time preserving the decision-making authority of its less powerful Members.

We are living in a trading environment of bilateralism. It does not appear to be an aggressively threatening environment, but even seemingly benign environments need careful watching. In the late 1940s, the grounds for multilateralism appeared compelling. It is possible we are too optimistic in thinking that those grounds have weakened.