Minilateral and Managed Trade in the Post-Uruguay Round World

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Recent discussion on free trade areas (FTAs) and other minilateral[1] associations has focused on whether such arrangements will detract from further multilateral[2] trade liberalization on a most-favored-nation[3] (MFN) basis. However, much of this debate has occurred in the absence of empirical information relating to: (1) the global importance of minilateral arrangements that have been, or are now being, formed; (2) the relative size of other major bilateral trade flows *not* affected by minilateral arrangements and their suitability for the minilateral approach; (3) the global importance of Europe in promoting

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1. The term "minilateral arrangement" is used in this Article as encompassing any treaty *negotiated* by two or more trading partners which violates the most-favored-nation (MFN) rule of the General Agreement on Tariffs and Trade (GATT). General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. pts. 5, 6, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT]. For a discussion of MFN, see *infra* note 3. Unilateral concessions, such as the Generalized Systems of Preferences (GSP) of industrialized countries, as well as non-reciprocal contractual preferential arrangements (such as the Lomé Convention), are not considered as falling under this definition.

2. Multilateral trade negotiations are the type used under the GATT. They involve multi-party negotiations between all GATT members, as opposed to a minilateral trading arrangement involving a small number of countries.

3. The concept of MFN is a major tenet of the GATT. Under the MFN provision, each member is obligated to treat all other GATT members at least as well as it treats *any other country* with regard to imports and exports. GATT art. I:1. Theoretically, this concept is advantageous to world trade in that a negotiated reduction in tariffs between two or more countries will also benefit all GATT member countries and reduce the total incidence of world-wide tariffs.

minilateral arrangements; and (4) the threat of other types of arrangements, such as "managed trade" initiatives.[4]

In this Article, we tabulate and analyze the implications of statistics on the global importance of trade which now occurs under minilateral arrangements. We then compare these results with the major trade flows which still occur outside these arrangements. Using data recently compiled by the United Nations, our analysis demonstrates that the global importance of minilateral arrangements is presently far greater than is often recognized; almost one-half of world trade is affected by minilateral arrangements. Thus, our analysis reveals that the concerns expressed about a further spread of minilateral arrangements weakening the multilateral negotiation process are at best tardy; minilateral arrangements are larger than is generally realized and presently encompass trade flows equivalent to those that occur on an MFN basis. Therefore, we argue that the alarms now being raised are tantamount to locking the barn door after the horse has escaped.

However, we also demonstrate that, contrary to popular belief, the further expansion of FTAs will be negligible. Our analysis of the major bilateral trade flows that are *not* covered by FTAs reveals that these flows are not appropriate candidates for minilateral agreements because they are dominated by important country-specific problems. In particular, problems relating to high-technology trade between the Asian "Newly Industrialized Economies"[5] (NIEs), Japan, and the United States, as well as between the Asian NIEs, Japan, and Western Europe are sufficient to hinder the formation of additional FTAs. Furthermore, our tabulations and analysis of the "discriminatory" trade barriers applied to these flows indicates that "managed trade"[6] is a far more likely outcome. Therefore, based on our analysis,

4. Managed trade initiatives specify quantitative trade targets, as in the case of voluntary export restraint agreements (VERs). See *infra* note 6 for additional examples.

5. The Asian "Newly Industrialized Economies" consist of the Republic of Korea, Singapore, Hong Kong, and Taiwan.

6. The term "managed trade" is used here to characterize arrangements that specify quantitative trade targets (either for exports or imports). "Voluntary export restraints" (VERs), "orderly marketing agreements" (OMAs), "voluntary import expansion" agreements (VIEs) (e.g., the U.S.-Japan Semiconductor Trade Agreement), and the "multi-fibre arrangement" (MFA) are some of the main examples in this context. For a review of alternative definitions of managed trade, see Laura D'Andrea Tyson, *Managed Trade: Making the Best of the Second Best*, *in* AN AMERICAN TRADE STRATEGY: OPTIONS FOR THE 1990s 142 (Robert Z. Lawrence & Charles L. Schultze eds., 1990), and Robert E. Baldwin et al., *Commentary*, *in* AN AMERICAN TRADE STRATEGY, *supra*, at 195.

we conclude that further expansion of minilateral arrangements will not necessarily hinder multilateral negotiations under the GATT.

The Article closes with an assessment of our findings for post-Uruguay Round trade relations, highlighting the issue of "high-tech" trade. The authors stress that this Article addresses just *one* of the major concerns being expressed regarding FTAs: that further spread of minilateral arrangements will detract from or deter global efforts to reduce trade barriers in the GATT multilateral negotiations.[7]

I. DISSATISFACTION WITH MULTILATERAL TRADE NEGOTIATIONS

Over the last few years many analysts have expressed concern over the growing dissatisfaction with multilateral trade negotiations (MTNs) as a means of achieving trade liberalization.[8] However, this growing dissatisfaction has its roots in sources other than minilateral trade arrangements. One source of this dissatisfaction has been the pace of the GATT negotiations. The Tokyo Round lasted seven years, from 1973 to 1979. The Uruguay Round started in 1986 and, while originally scheduled for completion in 1990, an impasse at the Brussels Ministerial Meeting in December 1990 led to its extension. The negotiations were finally concluded on December 15, 1993. In contrast, the Canada-United States Free Trade Agreement[9] was completed in

7. For a legal analysis of the GATT, see OLIVIER LONG, LAW AND ITS LIMITATIONS IN THE GATT MULTILATERAL TRADE SYSTEM (1987). There are other related topics equally deserving of attention. For example, some developing countries have attempted to utilize regional arrangements to stimulate industrialization and growth. Such arrangements may be relatively unimportant from a global perspective, but can be of key importance for the growth prospects of the FTA member developing countries since they may have a negative impact on growth if they reduce access to more economically efficient outside suppliers. A further key concern is that some arrangements, such as the European Union (EU) and the North American Free Trade Agreement (NAFTA), may actually turn hostile to each other and impose new forms of trade barriers. For a list of major regional integration arrangements, see *infra* Annex.

8. *See* C. MICHAEL AHO & JONATHAN DAVID ARONSON, TRADE TALKS: AMERICA BETTER LISTEN (1986); Gardner Patterson, *Implications for the GATT and the World Trading System*, *in* FREE TRADE AREAS AND U.S. TRADE POLICY 353 (Jeffrey J. Schott ed., 1989).

9. Canada-United States Free Trade Agreement, Jan. 1, 1989, 27 I.L.M. 281.

about eighteen months, and the recently signed Chile-Mexico FTA was negotiated in less than one year.[10]

A second problem is that the GATT multilateral negotiations involve a large number of participating countries with very diverse interests, which results in complicated MTN agendas.[11] A third concern is the GATT's *de facto* consensus rules. Although each member of the GATT is entitled to one vote regardless of its size or resources, decisions are made by consensus of all members.[12] Many countries have used this system to block the progress of negotiations until their individual demands are satisfied.[13]

Moreover, problems relating to the functional aspects of the GATT itself have contributed to the dissatisfaction with the MTN approach. One set of functional concerns involves the nature of the GATT rules and the efficacy of its enforcement mechanisms. Furthermore, criticisms often arise concerning the deficiencies in the GATT. For example, trade in textiles and clothing has evolved outside the GATT disciplines. Similarly, the areas of agriculture and subsidies are not adequately addressed. Lastly, the proliferation of so called "grey area" meas-

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10. The perception that the minilateral route is quicker than the multilateral one, however, is not undisputed. It is worth remembering, for instance, that the road to the single European market began to be "carved" almost four decades ago. For a discussion of this theme, see Jagdish Bhagwati, *Regionalism vs. Multilateralism*, *in* NEW DIMENSIONS IN REGIONAL INTEGRATION 22 (Jaime de Melo & Arvind Panagariya eds., 1993).

11. On the eve of the Uruguay Round there were 92 contracting parties (67 of which were developing countries). The groups reporting to the Trade Negotiating Committee during the first four years of the Uruguay Round encompassed the following themes: safeguards, dispute settlement, agriculture, tropical products, natural resource-based products, textiles and clothing, tariffs, non-tariff measures, MTN agreements and arrangements, subsidies and countervailing measures, GATT articles, functioning of the GATT system, trade related aspects of intellectual property, trade-related investment measures, and services.

12. GATT art. XXV.

13. For example, India and a few other developing countries blocked the adoption of recommendations on intellectual property rights in the Ministerial Declaration at the Montreal midterm review of the GATT negotiations in December 1988. According to Gary Hufbauer and Jeffrey Schott, "footdragging" has become more acute as GATT talks focus more on the negotiation of trading rules rather than on reciprocal trade liberalization. GARY CLYDE HUFBAUER & JEFFREY J. SCHOTT, TRADING FOR GROWTH: THE NEXT ROUND OF TRADE NEGOTIATIONS (1985). Schott argues that such problems would be far less important in bilateral or minilateral negotiations among "like-minded" countries. Jeffrey J. Schott, *More Free Trade Areas?*, *in* FREE TRADE AREAS AND U.S. TRADE POLICY, *supra* note 8, at 1, 7.

ures has also caused increased dissatisfaction with the GATT.[14] These measures, such as "voluntary" export restraints and orderly marketing arrangements, run counter to the spirit and goal of the GATT.

The growing interest in "minilateral arrangements" has been a direct result of the inherent weaknesses in the GATT discussed above. Government officials have viewed FTAs as both an alternative and a complement to the GATT's multilateral approach.[15] Proponents of FTAs cite numerous advantages of negotiating with a limited number of countries willing to liberalize trade bilaterally.[16] The agenda in such negotiations can be geared to the specific interests of the participants. Furthermore, compliance problems can be better addressed by the establishment of special administrative bodies, as in the Canada-United States Free Trade Agreement,[17] to provide consultation and dispute settlement mechanism for its members.

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14. *See* WORLD BANK, WORLD DEVELOPMENT REPORT 1987, at 154, 167 (1987). The expression "grey area measures" refers to those measures whose conformity with GATT obligations are unclear.

15. While serving as U.S. Secretary of the Treasury, James Baker stated: "If possible, we hope liberalization will occur in the Uruguay Round. If not, we might be willing to explore a 'market liberalization club' approach through minilateral arrangements or a series of bilateral agreements. In this fashion, North America can build steady momentum for more open and efficient markets." James Baker, *The Geopolitical Implications of the U.S.-Canada Trade Pact*, INT'L ECON., Jan.-Feb. 1988, at 35.

It should be noted that the U.S. emphasis has been on the establishment of free trade areas, not customs unions. The latter involves two or more countries which abolish all, or nearly all, trade restrictions among themselves and set up a common and uniform barrier against outsiders. The European Union (EU), in its initial stages, was an example of this type of arrangement. Once the arrangement expands beyond the trade in goods, encompassing trade in services and the movement of factors of production, it is referred to as a common market.

In a free trade area, trade among member countries is also completely liberalized, or nearly so. However, there is not a common trade barrier against nonmember countries; each country is free to impose its own trade restrictions. The European Free Trade Association (EFTA) is an example of this latter type of arrangement.

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16. Such a conclusion is not extraordinary. One can easily imagine that negotiations between two or three government officials with similar goals is much more advantageous than talks among 96 diverse countries.

17. For details about dispute settlement in the Canada-United States Free Trade Agreement, see Gilbert R. Winham, *Dispute Settlement in NAFTA and the FTA*, *in* ASSESSING NAFTA: A TRINATIONAL ANALYSIS 251 (Steve Globerman & Michael Walker eds., 1993).

Jeffrey Schott suggests that FTAs have also been considered as a way to achieve specific policy objectives such as managing trade deficits, reducing foreign barriers, eliminating the "free rider" problem in multilateral negotiations, balancing bilateral trade flows, or even establishing more favorable conditions for multilateral agreements.[18] Although differences exist on all but a few of these issues, the latter has been particularly contentious. Specifically, many economists apparently view recent FTA activity as a threat to the multilateral approach since it channels liberalization efforts along alternative and possibly conflicting lines.[19] However, this threat can only be properly assessed by examining the GATT's treatment of FTAs and by analyzing both existing FTAs and the potential for new minilateral arrangements through the remainder of the decade.

II. COMPILATION OF DATA AND METHODOLOGY

GATT regulations allow FTAs if certain conditions are met. First, minilateral arrangements require notification and review by all contracting parties to the General Agreement.[20] GATT Article XXIV permits such departures from the MFN obligation provided that the FTA or customs union meets three conditions: (1) duties and other restrictive regulations are eliminated on "substantially all" trade between partner countries; (2) the general incidence of duties and regulations affecting third parties is no higher after the establishment of an agreement; and (3) the agreement contains a plan and schedule for its complete formation within a reasonable length of time.[21] Although the intent of these rules is sometimes interpreted to require a FTA to be trade-creating, there is no guarantee that this will be the result.

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18. *See* JEFFREY J. SCHOTT, INST. FOR INT'L ECONOMICS, MORE FREE TRADE AREAS? 8 (1989). The "free rider" problem reflects the possibility that a contracting party may benefit from reforms under the MFN principle without offering trade concessions. Developing countries have often been accused of taking a "free ride" in the multilateral system.

19. *See* Paul Wonnacott & Mark Lutz, *Is There a Case for Free Trade Areas?*, *in* FREE TRADE AREAS AND U.S. TRADE POLICY, *supra* note 8, at 59; JAGDISH BHAGWATI, THE WORLD TRADING SYSTEM AT RISK (1991).

20. For a detailed analysis of the GATT regulations concerning minilateral arrangements, see Frieder Roessler, *The Relationship Between Regional Integration Agreements and the Multilateral Trade Order*, *in* REGIONAL INTEGRATION AND THE GLOBAL TRADING SYSTEM 311, 325 (Kym Anderson & Richard Blackhurst eds., 1993).

21. GATT art. XXIV.

Since 1948, more than sixty minilateral arrangements have been subject to this formal procedure.[22]

A compilation of these minilateral reviews prepared by Schott[23] provided the starting point for our analysis of global trade "affected" by minilateral arrangements.[24] Next, an attempt was made to include other quasi-minilateral arrangements that had not been subject to the GATT review process.[25] Moreover, in an attempt to make our analysis as current as possible, we added the following new arrangements to the above

22. Schott, *supra* note 13, at 24. Only four agreements — the South African-Rhodesian Customs Union (1948), the Nicaragua-El Salvador Agreement (1951), Nicaraguan participation in the Central American Free Trade Area (1958), and the Caribbean Community and Common Market (1973) — were declared *fully* compatible with Article XXIV requirements. *Id.* However, no agreement has been censured by a working group as being incompatible with GATT rules. As a result of these precedents, countries are perceived to be able to derogate from MFN obligations in FTAs without regard to the effects on third countries. This impression has been reinforced by the introduction of the 1979 Decision on Differential and More Favourable Treatment: Reciprocity and Fuller Participation of Developing Countries (the Enabling Clause). GATT Dispute Resolution Panel, *Differential and More Favourable Treatment: Reciprocity and Fuller Participation of Developing Countries*, GATT Doc. L/4903, BISD 26th Supp. 203 (1979) [hereinafter Enabling Clause]. As a result of this decision, regional arrangements involving only developing countries are excluded from the requirement to meet the formal criteria of Article XXIV. Regional arrangements among these countries are permitted as long as they facilitate trade, do not create "undue difficulties" for the trade of other countries, and do not act as an impediment to the reduction or elimination of trade barriers on a most-favored-nation basis. Formal procedures have not been established to ensure that these conditions are met. For further details, see Schott, *supra*, at 25.

23. *See* FREE TRADE AREAS AND U.S. TRADE POLICY, *supra* note 8, Annex at 376-383.

24. As mentioned before, other types of arrangements, like the GSP and the Lomé Regime, were excluded from these tabulations since they depart from the typical FTA model and only apply to one-way trade (i.e., imports by industrial countries). This exclusion will impart an upward bias to the residual amount of MFN trade in global totals.

25. An example would be regional arrangements involving countries which are not GATT members. It is also worth noting that developing countries have experimented with inter-regional trade preferences from time to time. In the mid-1970s, some 16 countries exchanged mutual trade preferences under the provision of GATT's Protocol for Trade Relations Among Developing Countries. In the 1980s, more than 60 developing countries exchanged trade preferences, or established an institutional framework to do so, under the aegis of UNCTAD's Global System of Trade Preferences (GSTP) among developing countries. Several less ambitious attempts have also been made such as the Tripartite Arrangement involving India, Egypt and Yugoslavia. Our tabulations of FTA trade excludes these arrangements, largely because of their special nature and the difficulties in obtaining information on the trade they affect.

data: the North American Free Trade Agreement (NAFTA)[26] and the potential FTAs between Eastern European countries and developed Europe.

At the time the data was compiled, the U.S.-Mexico and Canada-Mexico trade flows comprising NAFTA[27] were considered in anticipation of an agreement being ratified in the future. Arrangements between Eastern and Western Europe, in turn, were considered because a majority of these negotiations are at an advanced stage and some form of agreement seems likely. In fact, Poland, the Czech and Slovak Federal Republic (the former Czechoslovakia), and Hungary have applied for associate European Economic Community (EEC) membership, and special deals have been approved[28] or are pending with European Free Trade Association (EFTA) members.[29] Furthermore, with reunification, the former German Democratic Republic was absorbed into the European Community, providing duty free access for manufactured goods exported to EFTA markets.

Recent developments in Latin America such as Mercosur[30] and the Chile-Mexico FTA were not specifically included in our tabulations.[31] The Mercosur intends to create a common market encompassing Argentina, Brazil, Paraguay, and Uruguay by the

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26. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Mexico-Canada, *reprinted in* 32 I.L.M. 605 (1993) [hereinafter NAFTA].

27. The U.S.-Canada trade flows have already been included under the Canada-United States Free Trade Agreement.

28. For further details, see GATT, GATT ACTIVITIES 1992, 85-92 (1993).

29. The estimate of "affected" trade flows between Eastern Europe and Developed Europe should be interpreted with care (see Table 1). It assumes that all trade between the former European COMECON members and high-income European countries would be covered by preferential arrangements. Since, at least in the near future, one should not expect such a broad array of FTAs, this assumption tends to introduce an upward bias in the estimate. On the other hand, it can be argued that the use of 1988 trade flows inserts a downward bias in this figure. After all, the trade potential of Eastern European countries was significantly hampered by the maze of controls which characterized their trade relations with the West at that time.

30. Mercosur is the Southern Cone Common Market (Mercado Comun del Sur).

31. Other prospective minilateral agreements in Latin America and the Caribbean appear to be in a formative stage. For example, in January 1991 both Mexico and Venezuela announced their intention to negotiate bilateral free trade agreements with several Central American countries by 1996; in 1991, Colombia, Mexico, and Venezuela also signed a trilateral framework for liberalization of trade and investment flows. There are also ongoing attempts to revitalize CARICOM, CACM, and the Andean Pact, although the proliferation of new minilateral arrangements is adding to the stress of the "old" initiatives, particularly the Andean Pact.

end of 1994.[32] The Asuncion Treaty, signed in March 1991, established this ambitious target date based on progress already achieved in the Argentine-Brazilian Integration Program initiated in 1986.[33] The September 1991 treaty for a Chile-Mexico FTA, in turn, established a framework for the gradual reduction of tariffs affecting bilateral trade over the next four years.[34] Accordingly, ninety percent of the goods traded between Chile and Mexico are expected to be exchanged under duty free status by the end of 1995.[35] The approximate impact of these arrangements can, however, be inferred from our data on the Latin American Integration Association (LAIA)[36] "affected" intra-regional trade (see Table 1).

Once the data was collected, we utilized the "affected" trade concept in our tabulations due to a lack of detailed information on coverage of preferences. We assumed that all trade occurring between members of a minilateral arrangement is affected by the terms of the agreement. This simplified procedure does not allow for exclusions and differential treatment by type of good that typically exists under these agreements.[37] For example, some developing country arrangements allow for preferential tariffs below MFN rates as opposed to duty free trade.[38] Further, the degree of product coverage varies significantly among different agreements. For example, only forty percent of intra-regional trade among LAIA members was conducted under preferential terms as of 1988.[39] Nevertheless, the "affected" trade

32. For a brief description of Mercosur, see OECD, REGIONAL INTEGRATION AND DEVELOPING COUNTRIES 94-97 (1993).

33. For a brief description of this program, see C.A. Primo Braga, *U.S. Policies and the Prospects for Latin American Economic Integration*, *in* UNITED STATES POLICIES AND THE LATIN AMERICAN ECONOMIES 153 (Werner Baer & Donald V. Coes eds., 1990).

34. OECD, *supra* note 32, at 93-94.

35. *Id.*

36. The Latin American Integration Association (LAIA) consists of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela.

37. For example, the EC agreements with EFTA countries in the 1970s did not include agricultural products. *See* Paul Luyten, *Multilateralism Versus Preferential Bilateralism: A European View*, *in* FREE TRADE AREAS AND U.S. TRADE POLICY, *supra* note 8, at 271.

38. For example, ASEAN or LAIA.

39. *See* INTERAMERICAN DEVELOPMENT BANK, ECONOMIC AND SOCIAL PROGRESS IN LATIN AMERICA: 1989 REPORT 72 (1989). It is worth emphasizing, however, that if Mercosur and other planned FTA initiatives, such as the Chile-Mexico FTA, evolve as planned, they will significantly increase the proportion of intra-regional trade in Latin America which is exchanged under preferential terms.

concept provides more than adequate results for the purpose of our analysis.

Raw data required for measuring the importance of these minilateral arrangements was drawn from three different sources. The base for our analysis was provided by UNCTAD, which estimated total world exports for 1988 and other years.[40] UNCTAD also provided similar statistics for trade in broad classes of goods like manufactures or energy products.[41] This source also provided detailed data on major trade flows, such as the intra-trade of EFTA and EU countries, trade between Europe and Japan, and trade between Japan and North America which greatly assisted our tabulations of "affected" and non-affected trade. Second, Andras Inotai compiled data on intra-trade among developing countries' existing regional arrangements.[42] In situations where required data were not available from either of these two sources, such as trade under the United States-Israel FTA, it was compiled directly by the authors from United Nations Series D Trade Tapes.[43]

III. THE RELATIVE IMPORTANCE OF MINILATERAL ARRANGEMENTS

Employing the three statistical sources discussed in the previous section, Table 1 tabulates information on the relative importance of exports that occur under existing minilateral arrangements. Table 1 shows the actual total value of 1988 "affected" trade that occurs within the framework of these arrangements and each specific flow's share of world trade. Similar statistics are given for all non-energy goods[44] and all manufac-

40. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD), HANDBOOK OF INTERNATIONAL TRADE AND DEVELOPMENT STATISTICS, 1990, Annex A, Table A1.

41. *Id.*

42. ANDRAS INOTAI, REGIONAL INTEGRATION AMONG DEVELOPING COUNTRIES (PRE Working Paper, WPS 643, World Bank, 1991).

43. There are some inconsistencies between the data sources employed in these tabulations, but it is anticipated that their overall effects are relatively small. Inotai, *supra* note 42, employed IMF (Direction of Trade) and OECD statistics for his tabulations and these data may differ from United Nations trade statistics. For a detailed analysis of the importance of these differences, see Jerzy Rozanski & Alexander Yeats, On the (In)Accuracy of Economic Observations: An Assessment of Trends in the Reliability of International Trade Statistics, paper presented at a Ford Foundation Conference (1992) (unpublished manuscript, on file with the authors). The data published in UNCTAD, *supra* note 40, reflects United Nations trade data.

44. This category includes products classified in the Standard International Trade Classification (SITC) classes 0 to 9, excluding SITC 3.

tures.[45] To assist in evaluating this information, separate subtotals are shown for arrangements involving Organization for Economic Cooperation and Development (OECD) countries, developing countries, and Eastern Europe.

Perhaps the key point to be extrapolated from the data in Table 1 concerns the relative importance of European integration efforts when viewed from a global perspective. In 1988, the preferential trade of Western Europe accounted for about $0.9 trillion, which was thirty-one percent of world trade, or about thirty-four percent of global manufactures trade.[46] Another interesting point is that the EC and EFTA combined arrangements dwarf the current formation of a North American free trade area. At $195 billion, the intra-trade of the NAFTA countries is less than one-quarter of Europe's. From a global perspective, arrangements between developing countries are minuscule — they affected roughly three percent of world exports in 1988.

Overall, the completed, or nearly completed, arrangements listed in Table 1 encompassed more than forty percent of world exports in 1988. Furthermore, if we include NAFTA and the potential new arrangements, the share of "affected" world trade in all goods would be as high as forty-six percent and approximately fifty percent for trade in manufactures. Therefore, a clear message is that while the *further spread* of regional integration efforts *may* threaten the multilateral negotiations process, a more imposing threat is that these arrangements, which are now so globally expansive, could turn hostile to each other. A further point to consider is that these established arrangements provide a disincentive for members to engage in multilateral negotiations that will lower MFN tariffs since these reductions would reduce the established preference margins

45. Manufactured goods are defined as SITC 5 to 8, excluding SITC 68 (non-ferrous metals). For further details on products classification, see UNCTAD, *supra* note 40.

46. A point often missed is that a special protocol between the EC and EFTA has allowed for duty-free trade in manufactured goods between members of these two blocks since 1973. Trade in some agricultural goods also occurs on a preferential basis between EC and EFTA countries. The data in Table 1 has been prepared to reflect these intra-European arrangements. In October 1991, EC and EFTA countries agreed on the establishment of the European Economic Area. This treaty provides for the free movement of goods (with significant exceptions in agriculture), services, labor, and capital in Western Europe, and partial adoption of the EC's *acquis communautaire* (i.e., the secondary legislation that guides the process of integration) by the EFTA countries. *See* MIRANDA XAFA ET AL., THE EUROPEAN COMMUNITY'S TRADE AND TRADE-RELATED INDUSTRIAL POLICIES (International Monetary Fund Working Paper, 1992).

they receive in each other's markets as a result of minilateral negotiations.

Table 1: Value and Share of Merchandise World Trade Under Minilateral Arrangements

	Share of 1988 Trade (%)			Value of 1988 Trade ($million)		
	All Items	All Non-Oil Goods	All Manu-fac-tures	All Items	All Non-Oil Goods	All Manufac-tures
Total World Exports	100.00	100.00	100.00	2,829,098	2,562,252	1,980,066
OECD Related Arrangements	38.66	40.62	42.06	1,093,644	1,040,692	832,759
Intra/trade of Dev. Europe	30.52	32.30	34.02	863,405	827,715	673,702
United States and Canada	5.32	5.49	5.20	150,391	140,562	103,028
EEC Regional Arrangements	2.05	1.98	1.96	57,976	50,853	38,803
EFTA and Turkey (a)	0.46	0.51	0.54	12,985	12,952	10,625
United States and Israel	0.19	0.21	0.24	5,507	5,449	4,730
Australia and New Zealand	0.10	0.10	0.08	2,795	2,646	1,612
Australia and Papua New Guinea	0.02	0.02	0.01	585	515	259
Developing Country Arrangements	2.74	3.13	3.13	77,619	80,320	61,918
Hong Kong-China	1.27	1.40	1.64	36,012	35,995	32,427
ASEAN	0.80	1.06	0.95	22,648	27,191	18,783
LAIA	0.37	0.40	0.32	10,562	10,149	6,376
Gulf Cooperation Council	0.16	0.16	0.13	4,650	4,170	2,560
Economic Commu-nity West Africa	0.05	0.04	0.03	1,513	953	650
Central American Common Market	0.02	0.02	0.02	570	567	422
SADCC	0.02	0.01	0.01	537	375	210
Maghreb	0.02	0.02	0.01	517	440	200
CARICOM	0.02	0.01	0.01	426	320	170
UDEAC	0.01	0.01	0.01	184	160	120
Total Trade Flows Under Minilateral Arrangements	41.40	43.75	45.18	1,171,263	1,121,012	894,677
Potential New Arrangements	4.42	4.11	4.07	124,911	105,338	80,666
United States and Mexico	1.54	1.54	1.56	43,460	39,449	30,934
Canada and Mexico	0.05	0.05	0.05	1,439	1,388	1,002
Eastern Europe and Dev. Europe	2.83	2.52	2.46	80,012	64,501	48,730

Trade Flows Under Potential and Existing Arrangements	45.82	47.86	49.26	1,296,174	1,226,350	975,343
Memo Item: Collapsed Arrangements	4.87	4.16	3.67	137,879	106,644	72,749
Eastern Europe Intra-Trade	4.47	3.78	3.45	126,459	96,775	68,357
Eastern Europe and Cuba	0.40	0.39	0.22	11,420	9,869	4,392

[a] Turkey and EFTA signed a free trade agreement in October 1991. This arrangement came into force in April 1992.

Notes: Data compiled from UNCTAD, *supra* note 40, and Inotai, *supra* note 42, with some statistics drawn directly from the United Nations COMTRADE data base. Developed Europe and Cuba were reporters in the COMTRADE base and are the sources for Eastern European data on these trade flows. For some of the developing country arrangements (SADCC, UDEA, etc.) manufactures and non-oil trade values were estimated by applying the share of these goods in a previous year to the 1988 trade totals. The 1976 Bangkok agreement (Bangladesh, India, Republic of Korea, Sri Lanka and Laos) was not included because at present only three percent of the members' intra-trade is exchanged under tariff preferences. The above tabulation consider the exchange of goods between EEC member states to constitute international trade. If the EEC were assumed to be a single unit, the global share of merchandise trade under existing and potential FTAs would be about 31%.

Eastern European preferential trade arrangements, which existed until the collapse of the Council for Mutual Economic Assistance (CMEA) in 1991, are also reported as a memo item in Table 1. It is worth mentioning that in 1992 Poland, Hungary and the former Czechoslovakia established the Central European Cooperation Committee and announced their intention to negotiate a new FTA among themselves.[47]

IV. THE POTENTIAL SPREAD OF MINILATERAL ARRANGEMENTS

Table 2 provides additional information relating to the point that the threat from the *further spread* of regional arrangements may have been exaggerated and the actual importance of established arrangements overlooked. The table identifies major bi-

47. The former Czech and Slovak Federal Republic was dissolved, but the Czech Republic and the Slovak Republic established a customs union that entered in force on January 1, 1993. Another example of regionalism in Eastern Europe is provided by ongoing discussions concerning the establishment of the Black Sea Economic Cooperation Zone (BSECZ). Originally conceived in 1990, the BSECZ has been enlarged to accommodate several new states born from the disintegration of the Soviet Union. Its membership now includes: Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Turkey, and Ukraine. *See* GATT, *supra* note 28, at 89.

Table 2. The Relative Importance of Merchandise Trade Flows not Influenced by Regional Trade Arrangements in 1988

	Share of 1988 World Trade (%)			Value of 1988 Trade ($million)		
Trade Flow	All Items	All Non-oil Goods	All Manufactures	All Items	All Non-oil Goods	All Manufactures
Total World Exports	100.00	100.00	100.00	2,829,098	2,562,252	1,980,066
Existing and Potential FTA Trade Listed in Table 1	45.82	47.86	49.26	1,296,174	1,226,350	975,343
Collapsed Arrangements	4.87	4.16	3.67	137,879	106,644	72,749
Major Non-Preferential Trade Flows	38.29	38.94	41.72	1,083,405	997,946	826,163
North America - Developed Europe	7.14	7.56	8.31	202,105	193,717	164,561
North America - Japan	4.94	5.35	5.90	139,846	137,091	116,890
North America - Developing South and SE Asia	4.77	5.12	5.82	134,999	131,963	115,152
Japan - Developing South Asia	3.96	3.98	4.73	112,134	102,047	93,683
Developed Europe - Developing South and SE Asia	3.46	3.53	4.47	97,856	90,303	88,498
Japan - Developed Europe	2.84	3.12	3.92	80,206	80,040	77,712
Developed Europe - Developing West Asia	2.00	1.69	1.85	56,460	43,388	36,702
Developed Europe - Developing Africa	2.44	2.04	1.81	68,935	52,271	35,795
Developed Europe - Developing America	1.86	1.92	1.39	52,729	49,126	27,465
Eastern Europe - Developing Countries	2.01	1.86	1.37	56,727	47,769	27,214
North America - Developing America[1]	1.62	1.47	1.21	46,014	37,587	23,906
Australia/New Zealand - Developed Europe	0.61	0.64	0.52	17,216	16,510	10,238
Japan-Australia/New Zealand	0.64	0.63	0.42	18,178	16,134	8,347
Intra-Regional Developing Country Trade[2]	2.03	1.16	1.17	57,509	29,830	23,079
Total of Bilateral Flows Listed Above	88.98	90.96	94.65	2,517,458	2,330,940	1,874,255

[1] Excludes CBI (Carbbean Basin Initiative) and CRIBCAN (Canada's Preferential Trade Scheme for the Commonwealth Caribbean).
[2] Although a preferential trade framework among developing countries exists under UNCTAD's Global System of Trade Preferences (GSTP) this system has, thus far, been little utilized.
Note: For convenience, regional groupings adopted were those employed by the Statistical Office of the United Nations. *See* UNCTAD, *supra* note 40.

lateral trade flows *not* currently affected by existing minilateral arrangements (i.e., North America-Japan, North America-Developed Western Europe, Japan-Developed Western Europe, etc.). Table 2 also indicates the 1988 value and global share of this exchange. Similar tabulations are also shown for trade in all non-energy goods and manufactures. Excluding developing countries' inter-regional trade, the thirteen major "unaffected" trade flows listed in Table 2 account for thirty-eight percent of world trade, but the first five flows are of key importance as they comprise over two-thirds of this total. Clearly, if one is to examine the potential *further spread* of regional arrangements and its implications for *global* negotiations and trading conditions, these are the flows upon which one should focus.

Our individual analysis of these bilateral flows in Table 3[48] suggests that, unless there are radical and unexpected developments, it is *unlikely* that FTA arrangements could be concluded among the involved countries. For example, approximately $200 billion, or almost one-sixth of global unaffected trade, occurs between North America and Western Europe. Disputes between the main trade actors in these regions, the United States and the European Union (EU), were the main obstacles in concluding the Uruguay Round. Although, generally speaking, minilateral arrangements may help overcome multilateral negotiation problems, it is difficult to conclude that the particular points of contention, such as those relating to agricultural trade policy issues, could be more easily resolved in an FTA as opposed to MTN negotiations. Similar problems occur in other trade flows, such as those between Australia/New Zealand and the EU. North America-Japan and Japan-Western Europe account for a further one-fifth of the unaffected trade flows, and it is again difficult to see how bilateral FTA deals could be established here. In both markets, Japan has been the objective of important discriminatory trade barriers[49] and the sense that Japan does not "play by the rules" has produced some rather strident calls for further protective measures.[50] In these cases "managed trade" appears to be a more likely outcome than a FTA arrangement.[51]

48. Only bilateral trade flows in excess of U.S. $50 billion are reported in Table 3.

49. *See* SAM LAIRD & ALEXANDER YEATS, QUANTITATIVE METHODS FOR TRADE-BARRIER ANALYSIS (1990).

50. For a discussion of the so-called "Japan question," see BHAGWATI, *supra* note 19, at 24-44.

51. *See infra* Section V.

Table 3. Observations on Potential FTA Arrangements Between Specific Trading Partners (Unaffected trade flows over $50 billion)

Trade Flows	Share of total exports going to the partner (%) 1970	1988	1988 Value exports ($mil.)	Share of all FTA unaffected trade (%)	Observations
North American and Developed Europe	—	—	202,105	14.5	An unlikely arrangement. The current MTNs stalled due to disputes between these parties and there is no indication they would be easier to address bilaterally. Europe now seems preoccupied with the single Market Initiative and related problems.
North America's exports to Europe	29(43)	21(33)	90,174	6.5	
Europe's exports to North America	9(28)	7(31)	111,931	8.9	
North America and Japan	—	—	139,846	10.0	Wide U.S. deficits and attempts to brand Japan an "unfair" trading partner make this combination unlikely — as do the large number of discriminatory NTBs applied to Japan. A more likely outcome is managed trade.
North America's exports to Japan	9(14)	10(16)	47,446	3.1	
Japan's exports to North American	34	37	87,553	6.9	
North America's and Developing South and SE Asia	—	—	134,999	9.7	Persistent U.S. deficits with South and SE Asia, as well as the latter's concentration of exports in "sensitive" sectors make this arrangement difficult. U.S. discriminatory protection also targets SE Asian NICs.
North America's exports to South Asia	7(10)	11(17)	47,446	3.4	
Developing South Asia's exports to Japan	25(31)	29(37)	87,553	6.3	
Japan and Developing South and SE Asia	—	—	112,134	8.0	Developing Asia's reliance on the U.S. export market makes this combination unlikely, not to mention World War II memories. Also, Yeats shows that Developing South and SE Asia countries have very similar comparative advantage profiles — a point that would make a FTA difficult. Alexander Yeats, "China's Foreign Trade and Comparative Advantage: Prospects, Problems and Policy Implications," *World Bank Discussion Paper, No. 41* (1991).
Japan's exports to South Asia	25	25	67,109	4.8	
Developing South Asia's exports to Japan	17(21)	15(19)	45,025	3.2	

Developed Europe and Developing South and SE Asia	—	—	97,856	7.0	South Asia's reliance on the North American market all but precludes this arrangement. SE Asian NICs are often targeted by discriminatory European trade barriers.
Developed Europe's exports to South Asia	3(7)	4(13)	46,316	3.3	
Developing South Asia's exports to Europe	19(24)	17(22)	51,540	3.7	
Japan and Developed Europe	—	—	80,206	5.8	Distance is a negative factor as is Japan's export concentration in sensitive sectors. The fact that Japan's North American exports are nearly twice as great as those to Europe makes this arrangement unlikely.
Japan's exports to Europe	15	21	55,736	4.0	
Developed Europe's exports to Japan	1(4)	2(7)	24,470	1.8	
Developed Europe and Developing Africa	—	—	68,935	5.0	Vast differences in industrialization levels make these combinations very unlikely. There are few sectors where African industry could compete with Europe.
Developed Europe's exports to Africa	5(14)	3(10)	37,614	2.7	
Developing Africa's exports to Europe	68(72)	59(63)	31,321	2.3	
Eastern Europe and Developing Countries	—	—	56,727	4.1	Major Eastern European internal problems, plus a lack of experience in market-oriented relations with developing countries, makes an agreement here very unlikely.
Eastern Europe's exports to Developing Countries	13(34)	17(37)	37,479	2.7	
Developing countries exports to Eastern Europe	6(7)	3(5)	19,248	1.4	
Developed Europe and Developing West Asia	—	—	56,460	4.1	Industrialization level and differences make major FTA agreements here unlikely.
Developed Europe's exports to Asia	2(7)	3(10)	36,631	2.6	
Developing West Asia's exports to Europe	44(47)	23(27)	19,829	1.5	
Developed Europe and Developing Americas	—	—	52,729	3.8	Developing America's reliance on the U.S. market all but precludes these arrangements. Also, industrialization level differences are a major negative factor.
Developed Europe's exports to Americas	4(12)	2(7)	28,337	2.0	
Developing America's exports to Europe	32(39)	23(27)	24,392	1.8	

[1] Figures in parentheses exclude the exporting region's intra-trade.

The possibility of a minilateral arrangement between Japan and other Asian countries, however, cannot be dismissed as easily. Actually, there have been proposals supporting such an idea. For example, the Prime Minister of Malaysia advanced the concept of an East Asia Economic Group in 1991.[52] We believe, however, that the export orientation of the Asian economies tends to inhibit the attractiveness of any proposal which would entail explicit discrimination against outsiders, particularly the United States (see Table 3).[53]

Among the potential FTA arrangements falling below the US $50 billion "cut-off" used for Table 3, there is one that merits special attention: an FTA between the United States and Latin American countries as suggested by the Enterprise for the Americas Initiative (EAI).[54] With the conclusion of NAFTA, attention may now be given to the EAI. However, there are important obstacles to its implementation.

First, there are significant differences in the level and character of protection between these countries; these differences often vary directly with levels of development. For example, Erzan and Yeats found that less than ten percent of exports from Bolivia, Chile, Ecuador, Peru or Venezuela to the United States faced tariffs greater than five percent and, with the exception of textiles and clothing under the Multi-Fiber Arrangement (MFA) and some agricultural products, few nontariff barriers were encountered.[55] In contrast, this same study found that U.S. exports to Latin America face tariffs that average fif-

52. *See* OECD, *supra* note 32, at 63.

53. It is worth noting that arrangements like the Asia-Pacific Economic Cooperation (APEC) that work as a forum for exchanging views on economic themes among participating economies do not fit our definition of a regional trading bloc because they do not entail trade preferences negotiated on a reciprocal basis.

54. For a series of papers discussing the EAI, see THE PREMISE AND THE PROMISE: FREE TRADE IN THE AMERICAS (Sylvia Saborio ed., 1992).

55. REFIK ERZAN & ALEXANDER YEATS, FREE TRADE AGREEMENTS WITH THE UNITED STATES: WHAT'S IN IT FOR LATIN AMERICA? (World Bank PPR Working Paper No. 360, 1991). Many tariffs of less than five percent resulted from general across-the-board tariff cutting procedures applied in previous MTNs, and it is often suggested that they have insignificant trade effects. In fact, one proposal in the current multilateral negotiations termed them "nuisance tariffs" and suggested they be dropped automatically. The relatively low tariff barriers facing Latin American exports to the United States are due to several factors: tariff reductions negotiated in previous MTNs; existing preference schemes like the GSP or CBI; and the concentration of some countries' exports on raw materials that have traditionally faced zero or low trade barriers. The Asian NICs would have a much higher incentive to explore FTA arrangements due to the more restrictive barriers they often face.

teen to fifty percent in different countries and are subject to a large number of nontariff measures.[56] This evidence suggests that there would be implementation difficulties since FTA gains, from a mercantilistic perspective, would be skewed toward the United States — the country facing the highest trade barriers.[57]

Second, as the debate concerning the approval of NAFTA in the U.S. Congress illustrated, trade arrangements involving developed and developing countries raise distributive issues, since most North-South trade flows can be characterized as inter-industry trade. Accordingly, trade creation generated by the arrangement is perceived as a competitive threat by non-skilled labor in the developed economy and, as such, these arrangements involve costly political negotiations.

Third, the accession clause of the NAFTA agreement requires unanimous approval of any new prospective participant.[58] It is hard to imagine that Mexico would be anxious to see other Latin American countries accede to NAFTA. The accession of new countries would erode Mexico's preferential access to the U.S. and Canadian markets, particularly if these new members have similar resource endowments as do the other larger Latin American economies.

V. THE MANAGED TRADE ALTERNATIVE

While our assessment of the likelihood of FTAs being negotiated for the major trade flows currently "unaffected" was not optimistic (see Table 3), this does not suggest that multilateral disciplines are, or will continue to be, binding as far as these flows are concerned. Drawing on trade intervention data for the United States, Table 4 demonstrates that a high proportion of these major inter-regional trade flows "unaffected" by minilateral trade arrangements take place under "discriminatory" trade barriers reflecting managed trade conditions (particularly

56. *Id.*

57. It can be argued that this danger will be minimized by the U.S. negotiating strategy for the EAI, which seems to stress the need for Latin American and Caribbean countries to implement significant structural reforms (including trade liberalization) before embarking on FTA negotiations with the United States. In any case, it seems unlikely that a FTA encompassing the entire Western Hemisphere will be put in place in the near future. For further details on Latin American and Caribbean countries reactions to the EAI, see C.A. Primo Braga, *NAFTA and the Rest of the World, in* NORTH AMERICAN FREE TRADE: ASSESSING THE IMPACT (N. Lustig et al. eds., 1992).

58. NAFTA art. 2205:2. *See* GARY C. HUFBAUER & JEFFREY J. SCHOTT, NAFTA: AN ASSESSMENT 115 (1993).

VERs) and/or are influenced by "unfair trade" laws — particularly countervailing duties and anti-dumping concerns.[59] It is also clear from Table 4 that Japan is the main target of U.S. managed trade initiatives. Specifically, $68 billion of U.S. imports from Japan are subject to discriminatory measures — more than thirteen times the combined U.S. imports from Germany, France and the U.K subject to such discriminatory measures.

As Table 4 suggests, managed trade has a major role in shaping current international trade relations. One should not infer from this data, however, "that rules do not work and more managed trade must, therefore, be the way to go."[60] Nevertheless, if the Uruguay Round agreements prove to be less than satisfactory, the cause of those who believe that a "fixed-quantity" trading regime built around managed trade practices is an inevitable development would be advanced. Such a development could not only impede the rollback of the large array of already existing discriminatory trade barriers, but also foster their use in sectors such as technologically advanced products which are characterized by significant trade dynamism.

Advocates of managed trade have used different rationales to justify government intervention. These "rationales," as far as motivations are concerned, can be classified as follows: macroeconomic, systemic, and sectoral or microeconomic.[61] The deterioration of the U.S. current account over the 1980s, for example, has led to several proposals — usually focusing on the U.S.-Japan bilateral imbalance — in favor of quantitative trade targets in the context of a macroeconomic rationale.[62] Managed

59. The non-tariff barriers (NTBs) listed in Table 4 are discriminatory in that they are directed against *specific* countries whereas other measures, like global quotas or variable import levies, do not differentiate among foreign suppliers. As indicated, the U.S. discriminatory measures are very heavily concentrated on Japan — particularly Japanese exports of high technology products. The authors have undertaken a separate analysis of EU discriminatory trade barriers and also found that these restrictions are primarily directed at Japan (results available from the authors on request). With Canada, United States, and Sweden as the combined comparator group, our results indicated that over 90% of EC discriminatory protection was directed against Japanese exports. For additional information on the application of NTBs by major trading nations, see LAIRD & YEATS, *supra* note 49.

60. BHAGWATI, *supra* note 19, at 23.

61. For analyses of the different meanings of "managed trade," see BHAGWATI, *supra* note 19, at 23-47, and Tyson, *supra* note 6, at 146-50.

62. *See, e.g.*, Henry Kissinger & Cyrus Vance, *Bipartisan Objectives for Foreign Policies*, 66 FOREIGN AFFAIRS 899 (1988); CLYDE V. PRESTOWITZ, JR., TRADING PLACES: HOW WE ALLOWED JAPAN TO TAKE THE LEAD (1988); RUDIGER

Table 4: The Incidence of Discriminatory U.S. Trade Barriers on Japan, Federal Republic of Germany, United Kingdom and French Exports (Trade values are for 1986 and trade barriers are those in place in 1990)

NTB Code	Description	Japan		Fed. Republic of Germany		United Kingdom		France		Affected Trade of all Four Countries	
		Tariff Lines	Value ($mill.)	Tariff Lines	Value ($mill.)	Tariff Lines	Value ($mill.)	Tariff Lines	Value ($mill.)	Value ($mill.)	Japan's Share %
1172	Retaliatory duties	3	1,429	7	30	6	4	7	6	1,496	97.3
2510	Anti-dumping duties	83	6,297	16	872	6	473	19	419	8,061	78.1
2520	Countervailing duties	2	139	1	8	4	10	3	11	168	82.7
3230	Quota allocated by country	16	70	7	32	11	10	11	40	152	46.1
3410	Voluntary export restraint	106	27,676	105	810	98	270	93	496	29,252	94.6
3500	MFA restraint agreement	489	1,163	0	0	0	0	0	0	489	100.0
4220	Import monitoring	3	942	4	358	1	—	0	0	1,300	72.5
6310	Anti-dumping investigations	29	29,945	9	633	9	332	3	348	31,258	95.8
6400	Undertaking	2	942	1	3	1	—	1	1	946	99.6
	All Above Measures[2]	733	68,603	150	2,746	136	1,099	137	1,321	73,122	93.9

[1] The United States has also employed two additional discriminatory trade measures, namely, voluntary price restraints (primarily against Republic of Korea) and countervailing duty investigations. Neither of these two measures has been used against Japan, Germany, France or the United Kingdom.

[2] The totals recorded in this row may involve some double counting of discriminatory barriers if two or more of these measures are applied to the same tariff line product. For this reason one should *not* attempt to relate the value figures shown above to total trade in order to derive an NTB "coverage ratio".

Source: Authors' tabulations using the UNCTAD Data Base on Trade Control Measures and the World Bank SMART system.

trade is presented in most of these proposals as an instrument to force U.S. trade partners to open their markets. The limitations of this approach to "correct" U.S. current account deficits are well known. Nevertheless, supporters claim that the increase in demand for U.S. goods would tend to ease, via a terms-of-trade effect, the impact of a fiscal-induced real income adjustment.

A "systemic" rationale in favor of managed trade, in turn, has been developed by those concerned with the so-called "Japan question".[63] According to this perspective, Japanese policies reveal a cultural preference for a "fixed-quantity" trade regime as opposed to a rules-oriented regime.[64] Therefore, the only way to effectively negotiate the opening of the Japanese economy is to implement managed trade practices. This rationale is based on the thesis that Japan is an outlier among trading nations — more precisely, that Japan is a relatively closed economy. To the extent that the accuracy of this proposition remains open to debate, the economic relevance of the systemic argument is also questionable.[65]

Sectoral or microeconomic rationales, although equally controversial, have provided the most popular arguments used to support managed trade initiatives. In the past, these initiatives were often framed as defensive actions to ease the adjustment of mature industries in the industrialized countries.[66] Accusations of unfair trade practices by dynamic exporters were also a com-

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W. DORNBUSCH ET AL., MEETING WORLD CHALLENGES: U.S. MANUFACTURING IN THE 1990s (1989).

63. BHAGWATI, *supra* note 19, at 24-44.

64. *See, e.g.*, James Fallows, *Containing Japan*, ATLANTIC MONTHLY, May 1989, at 40.

65. Some authors argue that Japan is, vis-a-vis other OECD countries, a closed economy. *See* Robert Lawrence, *Imports in Japan: Closed Markets or Minds*, 2 BROOKINGS PAPERS ON ECONOMIC ACTIVITY 517 (1987); BELA BALASSA & M. H. NOLAND, JAPAN IN THE WORLD ECONOMY (1988); Rudiger W. Dornbusch, *Policy Options for Freer Trade: The Case for Bilateralism*, *in* AN AMERICAN TRADE STRATEGY: OPTIONS FOR THE 1990s (Robert Z. Lawrence & Charles Schultze eds., 1990). Other authors, in turn, dispute this conclusion. *See* G.R. Saxonhouse, *What's Wrong with Japanese Trade Structure* (Seminar Discussion Paper, 166 University of Michigan, 1985); BHAGWATI, *supra* note 19. For a review of the related literature, see Kenji Takeuchi, *Does Japan Import Less Than It Should?* (World Bank PRE Working Paper, WPS 63, 1988), and T.N. Srinivasan, *Is Japan an Outlier Among Trading Countries?*, *in* TRADE THEORY AND ECONOMIC REFORM: NORTH, SOUTH, AND EAST (Jaime de Melo & Andre Sapir eds., 1991).

66. This policy is exemplified by the adoption of the Multi Fiber Arrangement (MFA) to protect the textiles and clothing industries of developed economies. For more details on the MFA, see WORLD BANK, *supra* note 14, at 136-37.

mon characteristic of defensive managed trade policies.[67] More recently, however, the demand for managed trade has become increasingly associated with the aspiration to promote "strategic" industries in order to foster national competitiveness.[68] This development, in part, reflects the perception that Japan has successfully targeted "strategic" industries.[69] This perception, reinforced by the economic success of a few followers of the Japanese-paradigm, has given a new appeal to interventionist trade and industrial policies, at least as far as policy makers are concerned. At the same time, a flurry of theoretical contributions in the context of the so-called "strategic trade theory" have seemingly given a new "respectability" to interventionist policies.[70]

In this Article, we simply argue that the major "unaffected" trade flows identified in Table 2 provide fertile ground for further managed trade initiatives. Our analysis reflects the following considerations: (1) currently, high-technology industries are the preferred choice for those who support the "strategic indus-

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67. See, *e.g.*, the role of U.S. dumping and subsidy investigations in paving the way for the steel VRAs negotiated by the United States and major steel exporters in the 1980s. *See* KENT JONES, POLITICS VS. ECONOMICS IN WORLD STEEL TRADE (1986).

68. Tyson, *supra* note 6, at 153-62.

69. There is no consensus on the precise meaning of the term "strategic industry." Most of the contributions in this area tend to list high sunk costs in R&D, "positive externalities, large economies of scale based on learning by doing, and important upstream and downstream linkages" among the typical attributes of strategic industries. Wolfgang Michalski, *Support Policies for Strategic Industries: An Introduction to the Main Issues*, *in* STRATEGIC INDUSTRIES IN A GLOBAL ECONOMY: POLICY ISSUES FOR THE 1990S, at 9 (1991). As Barrie Stevens points out, however, the fundamental issue here is "the fact that many governments [in spite of the non-existence of an accepted working definition] are able to identify what they perceive to be 'strategic' industries and are willing to promote them with specific policies." Barrie Stevens, *Support Policies for Strategic Industries: An Assessment and Some Policy Recommendations*, *in* STRATEGIC INDUSTRIES IN A GLOBAL ECONOMY: POLICY ISSUES FOR THE 1990S, *supra*, at 98.

70. For a review of the strategic trade theory, see, *e.g*, Paul Krugman, *Strategic Sectors and International Competition*, *in* U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY 207 (Robert M. Stern ed., 1987), and Elhanan Helpman, *The Noncompetitive Theory of International Trade and Trade Policy*, *in* PROCEEDINGS OF THE WORLD BANK ANNUAL CONFERENCE ON DEVELOPMENT ECONOMICS 193 (1989). For critical analyses see, *e.g.*, Avinash K. Dixit, *Trade Policy: An Agenda for Research*, *in* STRATEGIC TRADE POLICY AND THE NEW INTERNATIONAL ECONOMICS 283 (Paul R. Krugman ed., 1987), Jagdish Bhagwati, *Is Free Trade Passe After All?*, WELTWIRTSCHAFTLICHES ARCHIV. 3-30 (1989), and Gottfried Haberler, *Strategic Trade Policy and the New International Economics: A Critical Analysis*, *in* THE POLITICAL ECONOMY OF INTERNATIONAL TRADE 25 (Ronald W. Jones & Anne O. Krueger eds., 1990).

Table 5: Trends in United States Exports of High-Tech Products to Selected Markets: 1965 to 1989

High Technology Export Facts	1965	1975	1985	1987	1989
Destination of U.S. Exports ($million)					
Argentina/Brazil/Chile	139	971	1,601	2,459	2,976
European Community[1]	1,434	5,888	18,544	23,481	36,163
Developing South and SE Asia	338	2,063	10,191	13,008	20,083
Japan	324	1,406	6,114	8,019	12,378
World	4,778	21,951	63,368	78,384	110,367
U.S. High-Tech Trade Balance ($million)					
Argentina/Brazil/Chile	135	883	720	1,295	1,723
European Community	844	3,452	5,968	7,986	17,199
Developing South and SE Asia	300	597	-2,714	-6,878	-8,096
Japan	-101	-1,219	-18,668	-22,186	-24,313
World	3,182	12,059	-2,707	-5,258	2,444
Hi-Tech Trade Balance As a Share of U.S. High-Tech Exports (%)					
Argentina/Brazil/Chile	97	91	45	53	58
European Community	58	59	32	34	47
Developing South and SE Asia	89	29	-27	-53	-40
Japan	-31	-87	-305	-276	-196
World	66	55	4	-7	2
Hi-Tech Goods as a Share of All U.S. Exports (%)					
Argentina/Brazil/Chile	17	24	36	43	43
European Community	21	26	43	44	47
Developing South and SE Asia	13	21	38	39	37
Japan	1615	28	29	29	
World					
MEMO ITEM: EEC Hi- Tech Trade Performance					
Hi-Tech Exports to Japan ($million)	108	612	1,678	3,112	3,926
Hi-Tech Trade Balance with Japan ($million)	-22	-1,024	-8,064	-14,615	-18,888
Hi-Tech Balance as a Share of Hi-Tech Exports	-20	-196	-480	-470	-476
Hi-Tech Goods as a Share of All Exports	21	22	22	20	18

[1] The 13 percentage point increase over 1987-89 is largely due to a $5 billion upsurge in U.S. aircraft exports.

try" argument; (2) the relative importance of high-tech trade[71] vis-a-vis global trade flows has increased significantly over the last three decades from about ten percent in world trade volume in 1965 to twenty-two percent in 1989 as shown in Table 5; (3) the United States is perceived to be losing competitiveness in high-tech sectors;[72] and (4) Japan has assumed a commanding position in high-tech trade. As portrayed in Table 5, the United

71. High-tech products are defined as products for which investment in the creation of knowledge are responsible for a substantial share of their production costs. A high-tech industry is usually defined in terms of its factor inputs (e.g., the relative intensity of research and development (R & D) investments, or the proportion of scientists and engineers in the labor force). The better known high-tech definitions are reviewed in VICTORIA L. HATTER, U.S. DEP'T OF COMMERCE, INT'L TRADE ADMIN., U.S. HIGH TECHNOLOGY TRADE AND COMPETITIVENESS (1985).

We adopted the definition proposed in LESTER A. DAVIS, TECHNOLOGY INTENSITY OF U.S. OUTPUT AND TRADE (1988), which estimates the technology intensity for any given industry in the United States in terms of the R&D expenditures required to produce a certain manufactured good. This methodology takes into account not only the direct R&D investments made by final producers, but also the indirect R&D expenditures made by suppliers of intermediate goods used in the production of the final good. The "indirect" R&D contribution was estimated by Davis using input-output techniques. *Id.* Based on the U.S. Standard Industrial Classification (SIC), industries were ranked according to their R&D intensity and the first ten SIC groups (3-digit classification) were designated as high-tech industries. *Id.* The industry ranked as number 10 had an R&D index 30% greater than the industry in eleventh place and more than 100% above the average for the manufacturing sector as a whole. *Id.* In other words, Davis' methodology imposes a much higher standard in terms of R&D intensity than the "above average level" criteria often adopted in the literature. In order to translate Davis' industry classification into a definition of high-tech trade, we used the concordance between the SIC grouping and the SITC Revision 1 classification proposed by Hatter. HATTER, *supra*. Given the imperfect match between SIC and SITC codes, Hatter estimated high-tech weights (the proportion of US high-tech imports and exports in each given SITC group, based on 1975-1977 US trade data) as a way to highlight the relative importance of high-tech products in any given SITC grouping. *Id.* In preparing our data on high-tech trade, we considered only those SITC groups (at 4-digit level) which presented a high-tech weight greater or equal to 50%. It is worth mentioning that the appropriateness of this methodology relies on the assumption that the use of U.S. input-output relations and trade patterns for high-tech production does not introduce a perverse bias in the classification.

72. Revealed comparative advantage (RCA) indices for high-tech trade do not confirm this perception for the 1968-88 period. The RCA index is defined as follows: $RCA_{ij} = (x_{ij}/X_{ij})/(x_{iw}/X_{tw})$ where the w subscripts indicate world totals, t represents all manufactured goods, x_i denotes a certain category of manufactured exports (in this case high-tech goods), and j is a country. Values above unity are taken to indicate that the country has a comparative advantage on high-tech products. In the case of the United States, the index for high-tech products was 1.56 in 1968 and 1.59 in 1988. Yet, the significant increase in competitiveness of Japan (the RCA for high-tech products increased from 1.05

States ran a $24 billion trade deficit in high technology trade with Japan in 1989[73] and these products were often the focus of U.S. discriminatory trade restrictions imposed against Japan.

Growing U.S. trade deficits in high-tech trade vis-a-vis Japan and the Asian NIEs, together with the perception that their success has been fostered by government intervention, is an additional factor eroding U.S. support for the non-interventionist approach with respect to high-tech industries. In the EU, the search for European "champions" in high-tech sectors provides another likely source of additional managed trade initiatives against not only East Asian firms, but also U.S. companies.[74] There is also a growing recognition that existing multilateral trade disciplines are not sufficient to avoid international trade frictions in high-tech sectors.[75] Accordingly, there have been proposals for drafting a code for innovation policies — encompassing trade, research and development, competition, and foreign direct investment policies, as well as financial market regulation — at the OECD level as a means to promote policy-convergence over the long run.[76] Such an initiative clearly reflects a desire to create a fixed-rule multilateral regime for high-tech industries in order to avoid the proliferation of managed trade initiatives. However, the prospects of such a code being implemented in the near future seem dim at best.

VI. FINAL COMMENTS

Fears about the proliferation of minilateral initiatives are qualified by the analyses presented in this Article. Once NAFTA and the potential agreements between the EU and Eastern European countries are taken into account, remaining major trade flows are not likely candidates for minilateral arrangements, at least for the near future. Managed trade initiatives seem to pose a larger threat to the multilateral trade system in a post-Uruguay Round world than the emergence of new preferen-

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to 1.33 over the same period) and some NIEs (in the case of Singapore it jumped from 0.49 to 2.23) may explain the perception of relative U.S. decline.

73. The EC deficit in high-tech trade with Japan was $19 billion in 1989.

74. See, *e.g.*, the analysis of the EC's evolving trade and industrial policies for the electronics industry in LAURA D'ANDREA TYSON, WHO'S BASHING WHOM? TRADE CONFLICT IN HIGH-TECHNOLOGY INDUSTRIES ch. 6 (1992).

75. Tyson, *supra* note 6, at 150-53.

76. SYLVIA OSTRY, GOVERNMENTS AND CORPORATIONS IN A SHRINKING WORLD (1990); Sylvia Ostry, *Beyond the Border: The New International Policy Arena*, *in* OECD STRATEGIC INDUSTRIES IN A GLOBAL ECONOMY: POLICY ISSUES FOR THE 1990S (1991).

tial trading blocs. Furthermore, high-tech trade is a natural candidate for additional managed trade initiatives. This, in turn, may increase the danger of trading blocs turning hostile to each other due to the competitiveness and nationalistic importance of the high-tech industry.

If events proceed along these lines, developing countries may have to deal with some unpleasant realities in the 1990s. It is doubtful that minilateralism will be rolled back from its current high profile as far as trade flows are concerned, and managed trade practices will continue to add strain to the frail multilateral trading system built around the GATT, fostering a power-based system of international economic relations. It is improbable, to say the least, that developing countries will benefit from such a development.

Annex

List of Major Regional Integration Arrangements

AM	Arab Maghreb Union (Algeria, Libya, Mauritania, Morocco, Tunisia).[77]
Andean Pact	Bolivia, Colombia, Ecuador, Peru, Venezuela.
ASEAN	Association of South East Asian Nations (Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand).
CACM	Central American Common Market (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua).
CARICOM	Caribbean Common Market (Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent, Trinidad and Tobago).
EC	European Communities (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, United Kingdom).
ECOWAS	Economic Community of West African States (Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo).
EFTA	European Free Trade Association (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden, Switzerland).
EC-EFTA	A protocol allows for free trade in manufactured goods between these two trading blocs since 1973. The establishment of the European Economic Area (EEA) was agreed to in 1991.

77. This arrangement remains largely unimplemented, but a program of preferential liberalization has been recently approved. *See* UNCTAD, "Regional and Subregional Economic Integration and Cooperation Among Developing Countries: Adjusting to Changing Realities" (The African Case), UNCTAD/ECDC/228 (1992) (on file with the authors).

GCC	Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates).
LAIA	Latin American Integration Association (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, Venezuela).
MERCOSUR	Southern Cone Common Market (Argentina, Brazil, Paraguay, Uruguay)
SADCC-PTA	South African Development Coordination Conference (Angola, Botswana, Lesotho, Mali, Mozambique, Swaziland, Tanzania, Zambia, Zimbabwe) and Preferential Trade Area of Eastern and Southern African States (members of SADCC, minus Angola, plus Burundi, Comoros, Ethiopia, Kenya, Mauritius, Rwanda, Somalia).
UDEAC	Central African Customs and Economic Union (Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea, Gabon).