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Global and Regional Trade Developments

Bruce J. Janigian*

I. INTRODUCTORY COMMENTS

I am greatly pleased to be here. My presentation will provide an overview of what is happening in international trade law by focusing on current and upcoming international trade issues.

II. OVERVIEW OF CURRENT AND UPCOMING ISSUES IN INTERNATIONAL TRADE LAW

A. Goals and Desires of the WTO

I will begin with what the World Trade Organization (WTO) wants to do. The WTO is very anxious to get a new trade negotiations round launched in November 2001 at its ministerial meeting to be held in Doha, Qatar. Whether this new round succeeds or not is going to depend largely on the condition of the U.S. economy and on domestic protectionist pressures, which will test George Bush's¹ free trade resolve.

Following on the shambles of the Seattle ministerial meeting in November 1999, U.S. support for free trade has been diverted. On the one hand, these diversions have been created by groups seeking greater environmental and labor protections; and, on the other hand, they result from businesses leery of increased competitive pressures at a time of domestic economic downturn. A key concern of the WTO is that the United States and other key members are being distracted by protectionism and regionalism, causing a loss of momentum in the tremendous strides toward global free trade made at the conclusion of the Uruguay Round.²

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1. Throughout this paper, references to "George Bush" are intended to refer to President George W. Bush.

2. See WTO Director-General Mike Moore, *The WTO: Challenges Ahead*, Remarks at the Meeting of the National Press Club (February 5, 2001), available at http://www.wto.org/english/news_e/spmm_e/spmm52_e.htm (last visited Nov. 26, 2001) (copy on file with *The Transnational Lawyer*).

One of President Bush's early legislative goals will be to secure fast track trade negotiation authority from Congress, or, as it is now called, "Trade Promotion Authority" or TPA. Rather than following up with a new trade round, the new President is apparently more interested in building agreement on a Free Trade Area of the Americas by 2005, which will involve a huge negotiating effort among thirty-four countries in widely different stages of economic development.³ Nor do hemispheric prospects for trade liberalization appear necessarily promising. In Brazil, many manufacturing industries are fiercely resisting lowering trade barriers, while the United States steadfastly refuses movement in agriculture, textiles, and anti-dumping, which are priority areas for our southerly neighbors.

Europe and the WTO would prefer that these energies be directed to global free trade through a new trade negotiation round commencing in November 2001, and not be diverted to another regional accord. Within the WTO, the European Union and Japan are trying to launch the new round this year to break the threat of growing protectionism and regionalism. This will require building a new consensus for free trade in the United States. Interestingly, however, Europe itself has also been busy building its own regional agreements. The European Union has twenty-seven special agreements, and is currently negotiating fifteen more.

B. The WTO's Concern With Regional Agreements

Let me say a word about the WTO's concern with regional agreements. On the one hand, regional agreements are a part of globalization and help create economic efficiencies through larger trade blocs. However, there are roughly 170 regional agreements in place today, half of which have been concluded since 1990. Another seventy agreements are under discussion. In Africa alone, there are thirteen different regional trade arrangements.

While everyone speaks of globalization, this enormous proliferation of regional accords can also be divisive and add to trade friction. Regional agreements divert from multi-lateralism to a kind of post-colonial system of regional preferences. The drive toward regionalism today often appears less focused on efficiency and cooperation, but more on spheres of influence. Even as global tariffs are falling, thanks to the successful rounds of multi-lateral liberalization, what we see today is a maze of conflicting regional regulations, standards, and rules of origin, which risk becoming the new walls between trading blocs.

Led by the United States and the European Union, the race for finding blocs is acute for those left out. Today, there are only two major countries that have not

3. Following this presentation, President Bush clarified his intention to support a new trade round at November's WTO ministerial meeting.

availed themselves of such arrangements: one is Japan, and the other is South Korea. Yet, even now, Japan is in talks with Singapore and is considering agreements with South Korea, Mexico, and Chile.

At a recent meeting of the U.S. Business Roundtable, pressure was placed on the United States to get started on building more strategic alliances in an attempt to thwart the efforts of our trading partners from forming strategic alliances that cut against U.S. interests.⁴ The recent E.U.-Mexico Free Trade Agreement has reduced many U.S. advantages under NAFTA.⁵ The U.S. executives reported that if the pattern continues, they will need to invest more heavily abroad, as opposed to domestically, in order to take advantage of these preferential arrangements. For domestic protectionists opposed to globalization, investments are heading offshore to take advantage of regional arrangements, regardless of whether a new global trade round occurs or not.

C. The Banana War and Preferential Treatment

Besides the growing emphasis on regional competition, where are we today? Well, Robert Zoellick, the new U.S. Trade Representative (USTR), is going to start his work looking at a U.S.-European banana war, in which he will likely advocate a strong stance, including a possible rotation of \$308 million in sanctions on European exports.⁶ President Clinton sat on legislation to this effect since it was passed in June 2000. I would like to just say a brief word about the real nature of the banana imbroglio, which resulted from the financially-strapped Chiquita Brands' challenge of the E.U.'s banana regime—a regime that utilizes preferential import quotas. Exporters in the former European colonies, in Africa, the Caribbean, and the Pacific region receive preferential treatment in getting their bananas into the markets of Europe.

Chiquita Brands, Dole, and Del Monte, three American companies all operating internationally, are all facing the same challenge of getting their bananas into the European Union markets, but have all played their cards differently. Chiquita basically took on the European Union directly, and challenged its protectionist measures. Today, Chiquita is nearly insolvent. Dole and Del Monte increased their market share in Europe by buying production in favored former colonies of the European Union, and then buying up European importer licenses—the E.U. licenses needed to import bananas. So, right now the reality is that Chiquita's war is largely against Dole and Del Monte, who have actually picked up not only Chiquita's market share, but additional market shares

4. See Edward Alden, *US 'Falling Behind on Trade Agreements'*, FIN. TIMES, Feb. 9, 2001, at 12.

5. *Id.*

6. See Guy de Jonquieres, *EU Fears Bush Will Get Tough on Banana Imports*, FIN. TIMES, Feb. 23, 2001, at 13. Robert Zoellick met with Pascal Lamy, the E.U. Trade Commissioner, when he visited Washington D.C. in late March 2001. Following this presentation, the banana dispute was settled by the parties without sanctions in April 2001.

from E.U. importers and the exporters from E.U. territories.

If the United States imposes banana war sanctions, the European Union has threatened to retaliate with four billion dollars in sanctions on U.S. exports related to another dispute—the successful challenge in the WTO of the U.S. Foreign Sales Corporation (FSC) law, which the WTO ruled constituted an illegal export subsidy.⁷ Of course, the United States will then likely press ahead with a complaint about European government subsidies for the European Airbus A380 super-jumbo passenger jet aircraft. By now, I hope you understand the dynamics of international trade relations.

D. Possible Ramifications of China's Accession into the WTO

I want to discuss a couple of thoughts about China. I was in China recently, and anyone who has been to China knows that there is going to be something very dramatic happening with accession of China into the World Trade Organization. No discussion of the future of world trade can be complete without a discussion of Chinese accession. After visiting China from one end to the other, including parts of China where most people are not even ethnically Han Chinese, in Xinjiang, the Muslim Far West of China, I was able to see that developments are moving at an incredible pace.

Since 1979, this once closed-in economic power has expanded the annual volume of its trade seventeen times to \$360 billion dollars. At the same time, China has steadily improved the quality of its manufactured goods, which are now reaching more than two hundred countries around the world. With WTO accession anticipated this year, foreign direct investment is pouring into China in amounts second only to the United States. Consolidation of Chinese stock exchanges and the possible opening of class “A” shares to foreign investors will accelerate these flows.⁸ China is anticipated to again become the factory of the world. Furthermore, if you think Chinese goods are already abundant, they only account today for three percent of total export trade. Thus, a tidal wave will be en route following WTO accession.

Few realize that in most of recorded history, China had the world's largest economy. Even in the second half of the eighteenth century, when the newly formed United States was dependent on protectionism and tariffs for the survival of our infant industries, China still accounted for a full one-third of the world's manufacturing output. After two centuries of internal chaos, China appears

7. After the law was found to violate WTO rules, the United States modified the FSC law with enactment of the FSC Replacement Act, which a WTO panel this summer again found to constitute a prohibited export subsidy. The USTR is requesting that the European Union allow increased time to implement the panel's ruling, and does not appear to be seeking an appeal to the WTO Appellate Body.

8. The recent selection of Beijing as the situs for the 2008 Olympic Games is further fueling this phenomenon, as is the significant relative decline in growth rates of other world economies. Corresponding to these developments, Beijing recently announced its intention to complete 187 new hotels in that city alone by 2008.

poised once again to rekindle its role as a mighty economic power. To give some indication of the strength of China in relation to her neighbors, one need only consider that the market value of China Mobile, the country's biggest mobile telephone operator, now exceeds the entire stock market capitalizations of Indonesia, Malaysia, Thailand, and the Philippines combined.⁹

What does opening up the Chinese market mean locally in the short term? What does WTO accession offer to countries such as the United States? What economic sectors will be benefited? In the near term, there is some very good news for U.S. business as China's high tariffs and mandatory joint venture schemes give way slowly on a sector-by-sector and geographic region-by-region basis across China. China's non-tariff barriers will also end, such as its requirement that imports and distribution be done through state-controlled companies.

The good news extends to U.S. agriculture, as China's agricultural sector will be among the first to open up, with tariffs falling from twenty-two percent to 17.5 percent, and to fourteen percent for high-priority U.S. exports. Agricultural equipment tariff rates will go from 11.4 percent to 5.7 percent at the beginning of 2002. By 2004, tariffs on construction equipment will be reduced by half. In addition, China has promised to sign the Global Information Technology Agreement, which will cut tariffs on all information technology products within three years.

Arrangements to gain WTO entry also call for China to greatly increase its purchases from U.S. suppliers. China is expected to buy about four billion dollars worth of semi-conductors by 2003, which is four times the amount China is buying now. Some agricultural products will see enormous increases in sales to China. For example, cotton sales could possibly increase by a factor of twenty, as China's commitment increases its current yearly level of purchasing from fifty thousand metric tons to 760,000, and eventually to one million metric tons. These developments show why the U.S. Department of Agriculture is leading the support for Presidential TPA from Congress, and for greater free trade generally. However, while it offers some tremendous prospects to American businesses in the short-term, in the long run, the competitive prospects of China will be daunting.

III. CONCLUDING REMARKS

When we look ahead to the significance of what is happening in the world, one can clearly see that great changes are in the making. Whether or not this becomes the century of Asia, many indicators, including world trade and demographics, certainly point in this direction. The larger question is whether

9. Not far behind China, when we think about the century of Asia being at hand, is India, which is anticipated to exceed China's population within twenty years. Together with immediate neighbors, China and India will account for one-half of the world's population by the middle of this century.

this will be a century of global economic expansion offering increased opportunity around the world. How we manage international trade and the associated concerns of environmental and labor protection, the safeguarding of intellectual and other property rights, and the maintenance of competition, will likely be critical in shaping that outcome. Thank you very much.