7-1-1997

Essay on Paper Presented by Ambler Moss and Stephen Lande

Osvaldo R. Agatiello

ESSAYS

ESSAY ON PAPER PRESENTED BY AMBLER MOSS & STEPHEN LANDE

OSVALDO R. AGATIELLO, S.J.D., PH.D.*

This paper identifies the key issues of, and interests that affect, the process of trade integration in the Americas. This paper also analyzes the political stakes and actors, and provides recommendations that encompass such diverse areas as monetary, social, legal, infrastructure, and procedural policies. This stimulating intellectual undertaking reveals that the absence of "fast track" authority renders the Track I/Track II approach ineffectual and provides no hope for a Free Trade Area of the Americas (FTAA) by 2005.

However, even if the countries involved could ultimately agree upon a compromise blueprint for hemispheric trade negotiations, farther-reaching queries remain unaddressed. First, it is unclear whether trade will act as locomotive or caboose in the process of deep integration for which the Latin Americans appear to strive. Second, it remains doubtful that the U.S. Congress will ever admit that controversies arising from hemispheric trade and investment will be ruled upon without recourse by internationally-agreed upon procedures and supranational adjudication.

---

* The author is the Latin America Regional Coordinator at Baker & McKenzie. He has been the General Editor of the quarterly LATIN AMERICAN LEGAL DEVELOPMENT BULLETIN since its inception in 1993, which is available online at http://www.baker info.com. The author is also the editor of a series of Baker & McKenzie books on Latin America, including SECURITY INTEREST LAW IN LATIN AMERICA (1996).

International trade dealings and negotiations use the language of economic theory and interest. Thus, it is embarrassing to admit that trade is a secondary structure which directly depends upon the uncertainties of international security, changing modes of production, and the availability mechanisms for money, credit, and knowledge in the world.[1] Governments, whether democratic or nondemocratic, have to accommodate tradeoffs between rational economic efficiency, external demands—both rational and irrational—as well as rational and irrational internal resource allocation contests. International trade, despite its many benefits in disseminating technology, equalizing down prices across jurisdictions, and motivating voluntary relationships, does not—and cannot, at least for now—control the governing agendas of countries. This proposition remains true to the extent that one can speak only of an ideal, theoretical form of an international trade "system" or "regime," because quantitative restrictions, dumping practices, governmental and regional subsidies, protectionist threats, and customs bashing are as ordinary today as competitive devaluations were in the inter-war period.

Increased and freer trade enrich international relations, and that is the right direction which countries wishing to improve their welfare and potential should move. But, as the failure of trade boycotts reveals time and again, no uncontested evidence exists to suggest that restricted trade thwarts peaceful international relationships.[2] A more technical question is whether countries, traders, corporations, and intermediaries (securitization has made many a banker into a partner) are going to be advantaged by the creation of regional blocs rather than by adhering to the current loose interlocking of bilateral, subregional, and regional agreements or, conversely, by aiming for multilateralism in the lines of the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO). Governments of both industrial and developing countries, in their relentless quest for jobs, tax revenues, technology, know-how, and expanded markets, fiercely compete with each other to capture foreign direct investments by granting to foreign investors tax and financial privileges that frequently collide with their trade

1. *See* Susan Strange, *Protectionism and World Politics*, 39 INT'L ORG. 234 (1985).

2. Renato Ruggiero, Director General of the World Trade Organization, made this claim in *The High Stakes of World Trade*, WALL ST. J., Apr. 28, 1997, at A18.

pledges. In the name of free trade, inefficiencies are built into bilateral, regional, and subregional agreements[3] that entrench mercantilist negotiating positions and conspire against global productivity, as UCLA professor Sebastian Edwards and World Bank economist Alexander Yeats suggest.[4]

The discord between the expanded-Mercado Común del Sur (MERCOSUR)-versus-expanded-North American Free Trade Agreement (NAFTA) approaches yields yet another question: will the FTAA be a short document like MERCOSUR or a mountainous lawyerly creature more similar to NAFTA or the GATT/WTO agreements? In the Latin American experience of the postwar era, particularly that of the ill-fated Latin American Free Trade Agreement (LAFTA) and the original Andean Pact, closely-knit lawyerly agreements are the best deterrent to trade and investment growth. The import substitutions and Soviet containment theories of those times nurtured urban industrial elites and military dictatorships throughout Latin America. In the present day, all fledgling Latin American democracies embrace free market nostrums (albeit with differing zeal and priorities) and have generally discarded the costly hypotheses of conflict with their neighbors that used to dominate their foreign policy and budget agendas. Still, the European integration model—economic integration as the driving force to eradicate all wars, which De Gasperi, Schuman and Adenauer advocated in the 1920s and formalized in the Treaties of Rome of 1957—provides a comforting metaeconomic inspiration to many Latin American politicians. It is ironic that, as this feeling sweeps across South America, the Clinton administration succumbs to the temptation (with the strong resistance of the Secretary of State) of thrusting $1 billion worth of military matériel upon some Latin American governments.

As long as the U.S. executive and legislative branches of government do not address the administration's pledge for a progressive extension of NAFTA to the entire continent, the predominant model for economic integration south of Chiapas will

3. This also includes those of countries, states and municipalities with multinational corporations.

4. Sebastian Edwards, *Nafta Offers Latins Little They Can't Have Now*, WALL ST. J., April 18, 1997, at A19; Alexander J. Yeats, *Does Mercosur's Trade Performance Justify Concerns about the Effects of Regional Trade Arrangements? Yes!*, Processed, 1996.

continue to be the vibrant MERCOSUR. Despite its many problems, it already accounts for more than half of Latin America's output. Some even forecast that MERCOSUR will be "the core of an agribusiness and mining superpower, with a diversified and modernized manufacturing industry fueled by cheap and abundant energy."[5] The United States, which exports to Latin America (including Mexico) more than it exports to either the European Union or Asian Pacific countries (excluding Japan)—a trend likely to intensify over time—cannot indefinitely play the role of a voyeur of this promiscuous process of hemispheric integration.

5. *A Survey of Mercosur: Remapping South America*, ECONOMIST, Oct. 12, 1996, at 3.