

# **A COMMENTARY ON REGIONAL INSTITUTIONS IN THE PACIFIC RIM: DO APEC AND ASEAN STILL MATTER?**

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Not long ago, the Asia-Pacific rim was the darling of investors and entrepreneurs. President Clinton called it America's new economic frontier.<sup>1</sup> But that was before the so-called Asian "meltdown," when numerous regional economies imploded. In its wake, attention turned to Europe and Latin America, and to international undertakings like the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). This essay addresses the principal Pacific Rim trade associations, the Asia-Pacific Economic Cooperation (APEC) forum and the Association of South East Asian Nations (ASEAN), and asks what role they might play in regional recovery and the process of globalization. It argues that APEC and ASEAN are still relevant and often act synergistically with other international undertakings. In particular, ASEAN can, at the very least, help to give a collective voice to smaller Asian nations, while APEC initiatives can have a profound impact on WTO negotiations.

This essay is divided into three sections. The first section provides a brief description of the region and a history of the evolution of APEC and ASEAN. The second section discusses the failure (in Seattle in 1999) to launch a new GATT negotiating round, and the subsequent success in doing so (in Doha in 2001). The final

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1. President William J. Clinton, Remarks to the Parliament in Canberra (Nov. 20, 1996).

section outlines current changes in the Pacific Rim, and argues that regional and multinational groups will most likely continue to work synergistically on trade-related matters rather than competing with one another.

## I. THE PACIFIC RIM IN A NUTSHELL

### A. Economic Overview of the Region

The Pacific Rim encompasses a diverse group of states. Economically speaking, Australia is as different from China and Japan,<sup>2</sup> as the United States is from Chile.<sup>3</sup> But within this group, the subset of Southeast Asian states share important commonalities. For example, when the region is considered as a whole, most of its economies are low-income economies with a per capita gross national product (GNP) of approximately \$1,000 or less.<sup>4</sup> The region enjoyed spectacular economic success in the mid-1990s.<sup>5</sup> Subsequently, the region suffered the effects of the Asian “meltdown,” as the region’s most growth-oriented economies abruptly stalled.<sup>6</sup> Today, the

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2. Australia has a population of about nineteen million, a population density of three persons per km<sup>2</sup>, and a per capita gross national income (GNI) in purchasing power parity of \$25,780. China’s population is some 1.2 billion people, which is one-fifth of the world’s total. It has a population density of 136 and a per capita GNI in purchasing power parity of \$4,260. Japan has a population of over 127 million people, a population density of 349, and a per capita GNI in purchasing power parity of \$27,430. See THE WORLD BANK, WORLD DEVELOPMENT REPORT 2003 234 (2003).

3. The United States has a population estimated at 284 million people and a per capita GNI in purchasing power parity of \$34,870. Chile, with 15.4 million people, has a per capita GNI in purchasing power parity of a little over a quarter of the per capita GDP of the United States at \$9,420. *Id.* at 234–35.

4. Based on figures for Brunei, China, Hong Kong, Indonesia, Korea, Malaysia, Papua New Guinea, The Philippines, Singapore, Taiwan, Thailand and Vietnam, *available at* <http://www.apecsec.org.sg/member/indi.html> (last visited Feb. 14, 2002) (citing ECONOMIST: POCKETWORLD IN FIGURES: 2003 EDITION and THE APEC REGIONAL TRADE AND INVESTMENT 2002). See also THE WORLD BANK, ANNUAL REPORT 2002 (2002), *available at* <http://www.worldbank.org/annualreport/2002/chap0503.htm> (last visited Feb. 10, 2003). The World Bank Annual Report lists twenty-two “East Asian and Pacific” nations, including China, with a population of 1.8 billion persons and a per capita GNI of \$900.

5. THE WORLD BANK, ANNUAL REPORT 82 (1996), *available at* <http://www.worldbank.org/html/extpb/annrep96/annrep96.htm> (last visited Sept. 10, 2002) (stating that “[in] 1995, the region outperformed other developing regions . . . and posted the most rapid growth rate in the world: 9.2[%]”) [hereinafter ANNUAL REPORT].

6. For a full treatment of the “Asian Crisis,” see generally THOMAS C. FISCHER, THE UNITED STATES, THE EUROPEAN UNION, AND THE “GLOBALIZATION” OF WORLD TRADE, ch. 13 (2000) (describing the shaky foundations of export-oriented economies in which market influences were not allowed to function normally).

situation seems to be turning around. In 2000, Asia's gross domestic product (GDP) grew at a rate of 3.5%. Developing Asia recorded GDP growth of 7%, while the five Asian countries most affected by the financial turbulence of 1997–98 grew 6.5%.<sup>7</sup> The area also has tremendous growth potential.<sup>8</sup> Although the impact of September 11th and the slowdown in the U.S. economy again hampered Asian economic recovery in 2001,<sup>9</sup> forecasters are expecting regional growth to accelerate.<sup>10</sup> Even so, the Asian region still has monumental political and structural problems. These are exacerbated by the region's great diversity of economies, trading structures, culture and history. The distance to be crossed to attain stable, private, open economies is enormous and the problems (including the recent financial crisis and jealousies among Asian states) are many.<sup>11</sup>

The structural problems of Asia are far greater than commonly

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7. WORLD TRADE ORGANIZATION, INTERNATIONAL TRADE STATISTICS 2001 13 (2001), available at <http://www.wto.org> (last visited Sept. 18, 2002).

8. See generally Daniel Pruzin, *FDI in Asian Developing Countries Has Proved Resilient*, UNCTAD Reports, 16 INT'L TRADE REP. (BNA) 744 (1999) (reporting that foreign direct investment into Asian developing countries declined by 7% in 1998 but was still higher than investment inflows registered before the regions fiscal crisis); Stephen Fidler, *IMF forecasts sharp rise in net private capital inflow: Emerging economies' improved growth prospects attract funds for investment*, FIN. TIMES (London ed.), Sept. 23, 1999, at 4 (reporting that the IMF's World Economic Outlook predicted that net inflows of private capital to emerging economies were expected to almost double in 2000).

9. According to the Pacific Economic Cooperation Council's (PECC) Pacific Economic Outlook, the weighted average output of Asia Pacific economies grew just 1.2% in that year. Except for the "meltdown" year (1998), this was the lowest regional growth rate in fifty years. See PACIFIC ECONOMIC COOPERATION COUNCIL, PECC OVERVIEW 2002–03: A REGION GETTING OFF ITS KNEES, available at <http://www.pacificeconomicoutlook.com/overview.htm> (last visited Feb. 10, 2003) [hereinafter PECC OVERVIEW].

10. Regional growth is expected to accelerate to 2.7% in 2002 and 3.8% in 2003. China, the region's new economic engine, is expected to grow over 7.5% in 2002 and beyond. See PECC OVERVIEW, *supra* note 9. Rapid recovery is also expected in Singapore and Taiwan and on balance, many Asian economies seem well on the mend, subject only to the return of foreign investment and unforeseen external shocks. Nevertheless, Asian economies are still at risk of stumbling all over again. *Asia's roller coaster rides*, ECONOMIST, Oct. 21, 2000, at 81 (predicting that the slowdown in OECD countries combined with a rise in oil prices will lead to continued turmoil in Asian markets); *Stable but sickly*, ECONOMIST, Sept. 1, 2001, at 63 (reporting a general stabilization in Southeast Asian politics but continued concern over economic turmoil); *Another bout of flu*, ECONOMIST, Nov. 24, 2001, at 65 (emphasizing that the Asian downturn is a more serious manifestation of a general worldwide recession); John Edwards, *Why south-east Asia will recover*, FIN. TIMES, July 25, 2001, at 13, available at 2001 WL 25831536 (changes in Southeast Asian economies have led to stability).

11. See generally Milan Brahmabhatt, *APEC-Asian Pacific Cooperation: 'Miracle' is consigned to the history books*, FIN. TIMES, Oct. 16, 2001, at 6, also available at 2001 WL 29303395 (stating that there is no single reason for Asia's trade difficulties, but a dependence on exports and the cyclical nature of the high-tech industry have been contributing factors).

acknowledged. Population growth is expected to place a tremendous strain on infrastructure.<sup>12</sup> National road, energy, and telecommunications networks are generally underdeveloped and often overburdened.<sup>13</sup> The World Bank estimates that, in order to meet the demands of rapid modernization, increased urbanization, and trade integration, “East Asian countries will need to invest between \$1.2 trillion and \$1.5 trillion, or 7% of regional GDP, in transportation, power, telecommunications, and water and sanitary facilities in the next decade.”<sup>14</sup> Meeting this challenge (if it can be met) will require substantial foreign capital and technical know-how.<sup>15</sup>

Although Asian nations are beginning to consult with one another more and to liberalize their economies, they remain further from developing a comprehensive trade policy than either the nations of the North American Free Trade Agreement (NAFTA) or the European Union (EU). Part of this is due to their many dissimilarities. Indeed, labels aside, it is difficult to claim the existence of a “Pacific Community.”<sup>16</sup> Furthermore, these nations are very sensitive about being “bracketed” or “bullied” by the West. The significant trading difficulties the United States has experienced with

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12. See ANNUAL REPORT, *supra* note 5, at 84 (forecasting that the population in East Asian towns would triple, from 500 million in the early 1990s, to 1.5 billion by 2020, while infrastructure requirements would surge from \$70 billion in 1992 to \$200 billion in 2000).

13. In India, for example, 60% of freight traffic occurs on clogged roads; only 358 km of the national road network of 34,000 km are four-lanes wide. India has a persistent energy shortage of about 9%, with an average peak-demand shortfall of 20%. Although telecommunications is improving faster than any other infrastructure sector, there still is just one telephone for every hundred persons. See John Zubrzycki, *Infrastructure deficit will set ceiling on India's growth*, THE AUSTRALIAN, Nov. 25, 1996, at 16.

14. See ANNUAL REPORT, *supra* note 5, at 88.

15. WORLD BANK, INFRASTRUCTURE DEVELOPMENT IN EAST ASIA AND THE PACIFIC: TOWARDS A NEW PUBLIC-PRIVATE PARTNERSHIP (1996). But cf. Justin Fox, *The Great Emerging Markets Rip-Off*, FORTUNE, May 11, 1998, at 98 (analyzing the cause for the Asian crisis and the failure of emerging market investing to garner a significant return). Until the meltdown began in 1997, Southeast Asia did not have difficulty attracting capital. Indeed, excluding Japan, Asia was expected to eclipse Western Europe by the turn of the century as the most popular destination for foreign direct investment (FDI). Guy de Jonquières, *World Trade News: Asia set to become top investment target*, FIN. TIMES, Feb. 6, 1996, at 5 (predicting that Asia would overtake western Europe as the most popular destination for foreign direct investment within five years); see also ANNUAL REPORT, *supra* note 5, at 82–83; UNCTAD *Cites Drop in Foreign Direct Investment by Asian Firms*, 16 INT'L TRADE REP. (BNA) 1358 (1999) (reporting that FDI in developing Asian-Pacific countries fell by a quarter in 1998 and predicting a continued decrease in 1999).

16. Robert Manning & Paula Stern, *The Myth of the Pacific Community*, 73 FOREIGN AFF. No. 6, at 80 (suggesting that a host of political, military and psychological trends indicate the ideal of a U.S.-led Pacific Community could be unattainable).

the most westernized of the Asian economies—namely Japan—should indicate just how far removed their trading philosophies and structures are from those of Western nations.<sup>17</sup> Nevertheless, given the key role that export expansion plays in Asian economic recovery and development, it is imperative that Asian economies cooperate more closely on trade policy. In so doing, a “blended” approach—a hybrid of Eastern (characterized by flexibility) and Western approaches (characterized by enforceable obligations)—is most likely to be successful in the near term.

How might such a blended approach come about? There are at least three important considerations when evaluating the future of economic development and trade policy cooperation in the region. First, note that the principal capitalist trading groups—NAFTA and the EU—have not yet developed a collaborative approach to market opening in Asia. That leaves some of the major players, such as Japan, China, and other key members of the two major Asian regional associations—APEC and ASEAN (both discussed in detail below)—free to pit North American and European interests against one another when negotiating the terms of market openings, and the solicitation of capital and technical support. If NAFTA nations and the EU Member States were not so competitive in their attempts to open Asian trade and pursued a more coordinated approach,<sup>18</sup> then Asian nations would have less room to maneuver. Moreover, the existing associations of trading nations in Asia—chiefly APEC and ASEAN—are more loosely-organized than either the EU or NAFTA. They lack signed treaties, legitimate supranational institutions, and any mechanism to resolve disputes or enforce obligations (which are voluntary anyway). This is the way the Asian members want it.

In terms of a “blended approach,” Asian members of both

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17. See generally *ASEAN looks to the new year*, ECONOMIST, Dec. 19, 1998, at 47; Toshio Aritake & Corbett B. Daly, *USTR Official Urges Japan to Lower NTT's Rates, Hinting at WTO Action*, 17 INT'L TRADE REP. (BNA) 468 (2000) (the United States threatens action unless Japan deregulates its telecom industry); James Fallows, *How the Far East was won*, U.S. NEWS & WORLD REP., Dec. 8, 1997, at 11 (arguing that the structural design of Asian economies led to the turmoil in Asian markets).

18. Peter Montagnon & Ted Bardacke, *Europe will be 'sympathetic' on freer trade*, FIN. TIMES, Mar. 4, 1996, at 4 (reporting that Europe will give 'serious and sympathetic response' to APEC suggestions that it match APEC trade liberalization with market opening measures of its own); Ted Bardacke & Peter Montagnon, *Europe and Asia in accord to increase volume of exchanges*, FIN. TIMES, Mar. 4, 1996, at 4 (describing the start of a series of exchanges and meetings between European and Asian leaders signaling increased trade links).

associations want to keep the agreements flexible; they do not want to let Western nations or legalisms control (that is, they will not commit to fixed deadlines or enforceable obligations). Whatever “agreements” may be reached are “in principle” only. This is a far more Eastern than Western approach to trade policy. Due to the size and potential of the market involved, American and European nations have little choice but to agree. Conversely, the Asian nations realize that they need western capital and expertise, particularly after the recent regional “meltdown” and during the current recession. Economic recovery is still precarious, and in need of short-term (perhaps APEC and ASEAN) and long-term (perhaps the WTO) stimulus. Trade liberalization measures adopted by APEC and ASEAN have had an impact on the WTO and the GATT (to which most APEC members are signatories), and vice versa. The WTO, APEC, and ASEAN can act synergistically, sometimes “leap frogging” one another in order to set the pace for trade liberalization. Both East and West are gradually learning to coexist and cooperate on trade matters.

## B. The History of Asian Regional Associations

1. *APEC*. The Asia Pacific Economic Cooperation forum (or group)—APEC—is a real witches’ brew of the region’s trading “economies.” APEC’s twenty-one members<sup>19</sup> represent both very large and very small economies, those that are highly developed and those that are just beginning to develop, and they run the gamut from capitalism to communism. Once unkindly described as “four adjectives in search of a noun,”<sup>20</sup> the addition of the word “forum” or “group” to APEC’s title suggests just how loose this regional trading block is. Indeed, its lack of any signed treaty, any central institutions (save for a Secretariat in Singapore), any concrete commitments or a mechanism to enforce its agreements, makes one wonder whether APEC should be called a regional trade entity at all.<sup>21</sup> Its membership

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19. As of December, 2001, the “economies” that are members of APEC are: Australia, Brunei, Canada, Chile, China, Hong Kong, Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, South Korea, Taiwan, Thailand, the United States, and Vietnam. See Member Economies, at <http://www.apecsec.org.sg/loadall.htm?http://www.apecsec.org.sg/member/apecmemb.html> (last visited Nov. 10, 2002).

20. The oft-quoted quip was made by Australia’s former Foreign Minister Gareth Evans. Alan Freeman, *Leaders Aim for Free Trade at APEC Forum*, GLOBE & MAIL, Nov. 12, 1994, at B4.

21. An excellent article exploring APEC’s status as an international institution is: Melissa

is composed of “economies” rather than “nations” in order to finesse the problem of the three Chinas (the People’s Republic of China (PRC), Hong Kong, and Taiwan).<sup>22</sup>

Yet, APEC clearly has influence, so it would be wrong to treat it as less than a *de facto* organization. Moreover, it has achieved some surprising results in its short history. Originally assembled at Canberra in 1989, APEC’s early meetings were attended only by ministerial representatives. In 1993, President Clinton succeeded in bringing together in Seattle the heads of each member economy, except Malaysia. From that point forward, APEC’s economic leaders have set an agenda that is far more ambitious than any previous agenda set forth by their ministers.<sup>23</sup> At Bogor (Indonesia) in 1994, for example, the leaders agreed to what is called the “Bogor Declaration,” committing APEC members to the “goals of free and open trade in the region” by 2010 for industrialized members and by 2020 for developing economies.<sup>24</sup> This was a bold step, for it included not just tariffs, but *non-tariff* barriers (NTBs), such as the arcane customs documents and testing requirements that abound in highly protected markets. On the other hand, the pledge included a long time-line, when none of the signatories to it were likely to be in power. Last, it was just a gentlemen’s agreement. It had no legally binding effect. The concept now is called “open regionalism.”<sup>25</sup>

The following year, the Bogor Declaration gained substantial infrastructure, allowing various economic sectors to be assessed independently and compared, so that progress in tariff and non-tariff

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Castan, *APEC: International Institution? A Pacific Solution*, 15 U. TASMANIA L. REV. 52 (1996) (providing a good overview of APEC’s structural evolution and noting that, unlike most international institutions, APEC lacks legal personality).

22. China has not wavered from its demand that Taiwan and Hong Kong be considered part of one China. Mure Dickie, *Beijing softens “One China” definition*, FIN. TIMES (London ed.), Aug. 28, 2000, at 8; *Taiwan’s China Dare*, ECONOMIST, Mar. 25, 2000, at 17, available at 2000 WL 8141282 (chronicling tension between the People’s Republic and Taiwan).

23. Gary G. Yerkey, *What is APEC?*, 16 INT’L TRADE REP. (BNA) 1454 (1999) (President Clinton argues that top-level meetings were needed to advance APEC’s work).

24. APEC ADVISORY GROUPS, EMINENT PERSONS GROUP (EPG), ASIA PACIFIC ECONOMIC COOPERATION FORUM, IMPLEMENTING THE APEC VISION, THIRD REPORT OF THE EMINENT PERSONS GROUP (1995), available at <http://www.apecsec.org.sg/virtualib/history/epg/epg95.html> (last visited Sept. 15, 2002). The APEC Secretariat is also an excellent source of digested information about the past and future of APEC. APEC Secretariat, available at <http://www.apecsec.org.sg/> (last visited Feb. 14, 2003).

25. See generally *International Agreements: APEC Ministers Urge Transparency, Dynamism in Individual Action Plans*, 13 INT’L TRADE REP. (BNA) 29 d26 (1996).

liberalization could be tracked toward the Bogor goals.<sup>26</sup> The result was the so-called Osaka Action Agenda (OAA).<sup>27</sup> The OAA provided that the entire APEC trade liberalization and facilitation process should be governed by overarching principles. First, the process was to be comprehensive and consistent with its Members' commitments under the Uruguay Round of GATT. Second, the plans for each economy's effort to liberalize were to be comparable, non-discriminatory, and transparent (laws, regulations and administrative procedures affecting the flow of goods, services and capital among APEC economies must be notified or easily ascertainable). Third, APEC members were to "endeavor to refrain" from taking measures that would *increase* the level of protection then in force (essentially a "standstill" provision). Finally, the Action Agenda was to be a continuous process, characterized by flexibility and cooperation, which is APEC's unwavering bottom line.<sup>28</sup>

The OAA covered barriers to trade in fifteen areas.<sup>29</sup> As the list reveals, it was both ambitious and comprehensive. Moreover, it closely approximated the agendas of the EU and the WTO. The Action Agenda called upon "APEC economies [to] ensure full and effective implementation of Uruguay Round [of GATT] outcomes within the agreed time frame;" to gather and analyze trade information in order to isolate impediments and remove them; and to plot progress toward full liberalization.<sup>30</sup> The processes of data

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26. AUSTRALIA-JAPAN RESEARCH CENTER, IMPLEMENTING THE APEC BOGOR DECLARATION, RESEARCH SCHOOL OF PACIFIC AND ASIAN STUDIES, THE AUSTRALIAN NATIONAL UNIVERSITY (1995) (providing a very good, short study of APEC history, the Bogor goals, and the road to Osaka). The Australia-Japan Research Center at Canberra is another excellent source of research material about APEC. The Research School's homepage is available at <http://rspas.anu.edu.au/contact.html> (last visited Feb. 14, 2003).

27. ASIA PACIFIC ECONOMIC COOPERATION, THE OSAKA ACTION AGENDA: IMPLEMENTATION OF THE BOGOR DECLARATION (1995), available at <http://apecsec.org.sg/ecotech/osakaap2e.html> (last visited Sept. 10, 2002) [hereinafter THE OSAKA ACTION AGENDA].

28. *Id.* at 2-3.

29. *Id.* The areas in which barriers to trade are addressed in the OAA are Tariffs, Non-tariff measures, Services (telecommunications, transportation, energy, tourism), Investment, Standards and Conformance, Customs Procedures, Intellectual Property Rights, Competition Policy (combined with Deregulation), Government Procurement, Deregulation, Rules of Origin, Dispute Mediation, Mobility of Business People, Implementation of Uruguay Round Outcomes, and Information Gathering Analysis.

30. THE OSAKA ACTION AGENDA, *supra* note 27; see also COMMITTEE ON TRADE AND INVESTMENT, ASIA PACIFIC ECONOMIC COOPERATION FORUM, 1996 ANNUAL REPORT TO MINISTERS (1996) (detailing the activities of various sectorial subgroups that meet between annual APEC summits and reporting on progress and goals in most sectors), available at



gathering, analysis, and ministers' meetings were to continue throughout the year, with an APEC leaders' summit each autumn.

The major result of the Osaka Summit was the agreement among APEC leaders that each of the economies would produce an Individual Action Plan (IAP), detailing how it intended to eliminate its tariff and non-tariff barriers to trade and investment by the target dates. In some unstated way these IAPs would be collected into a Collective Action Plan (CAP).<sup>31</sup> Throughout the spring and summer of 1996, various APEC members worked on their plans, occasionally shared them, and urged various improvements in the less-ambitious ones. When the final versions were unveiled, however, they were described as "meager" and "disappointing."<sup>32</sup>

There might be many reasons for this perceived failure. For one, each IAP was developed in relative isolation. APEC is premised on voluntary and *unilateral* trade openings in order to minimize external pressure. In this type of high-stakes trade poker, however, it is difficult to find any economy willing to take the first step. If others do not follow, as explained by the "prisoners' dilemma" game of rational choice theory, the economy that takes the first step will be more exposed to competition, without having gained any reciprocal concession. If no one takes the first step, however, no progress is made.

A second reason why the IAPs may be considered disappointing is that many APEC members interpreted the Osaka commitment to require only that they reiterate the market opening steps already agreed upon and to propose some further liberalization (mostly tariff reductions). Thus, in their view, the IAPs were not comprehensive "blueprints" (i.e., they did not purport to detail how each economy would arrive at complete trade liberalization by the Bogor deadlines).

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<http://www.apecsec.org/cti/cti96/01anurpt.html> (last visited Sept. 13, 2002).

31. See ANNUAL REPORT TO MINISTERS, *supra* note 30; ASIA PACIFIC ECONOMIC COOPERATION, CONVENOR'S REPORT ON COLLECTIVE ACTIONS, OSAKA ACTION AGENDA ISSUE AREA 1: TARIFFS STATUS.

32. See generally 18 APEC Members Submit Action Plans at Cebu Meeting to Liberalize Trade, 13 INT'L TRADE REP. (BNA) 22 d15 (1996); Gary G. Yerkey & Mark Felsenthal, APEC Ministers Urge Transparency, Dynamism in Individual Action Plans, 13 INT'L TRADE REP. (BNA) 1173, 1173-74 (1996) (reporting on calls by APEC trade ministers for increased cooperation and action in voluntary trade liberalization assurances); Gary G. Yerkey, 'Meager' APEC Action Plans Put Forward; Major Trade Initiatives at Manila Summit Unlikely, 13 INT'L TRADE REP. (BNA) 1196 (1996) (reporting that National Security Council Director for Asian Affairs warned of a "tough year" for APEC and predicted that major trade initiatives would be unlikely at a coming APEC summit).

As a result, some of the more liberalized economies—particularly the United States and Japan—were criticized for not making bolder proposals. Their failure to do so set a conservative example for more timid members, whose nationals probably would not support greater market opening without equal gestures from developed nations. That is, it was difficult to get anyone to take the first step.<sup>33</sup> Finally, the IAPs lacked a single format or compatible data. The result is that it became difficult—if not impossible—for the APEC Secretariat (or any other research entity) to produce a collective plan.

Notwithstanding disappointment with the IAPs, APEC leaders at the Manila Summit on November 25, 1996 accepted that the “individual and collective initiatives . . . to implement the Osaka Action Agenda . . . [were just] the first steps of an evolutionary process . . . .”<sup>34</sup> The trade ministers themselves have called the IAPs “living documents, due to rollover many times.” Thus, while the Manila meeting did not produce any CAP of the sort contemplated at Osaka, the eighteen IAPs did give the APEC Secretariat some data that it might massage into the beginnings of a “collective” plan. Further, seventeen of eighteen APEC economies pledged to lower tariffs from existing levels.<sup>35</sup> These agreements added to the database of economic information maintained by the APEC Secretariat, which, at the very least, gives a better view of progress and retrenchment of the various APEC economies.<sup>36</sup> Thus, while some perceived the IAP

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33. ASIA-PACIFIC ECONOMIC COOPERATION, APEC ECONOMIC LEADERS' DECLARATIONS: FROM VISION TO ACTION, pts. 5–6 (1996), available at <http://www.apecsec.org.sg/virtualib/econlead/subic.html> (last visited Mar. 2, 2003) [hereinafter DECLARATIONS].

34. *Id.*

35. See Peter Hartcher, *APEC speeds towards free trade*, THE AUSTRALIAN FIN. TIMES, Nov. 25, 1996, at 1.

36. The Pacific Economic Cooperation Council (PECC) is a unique partnership of business, government and research representatives from 22 Asia Pacific economies who work on practical government and business policy issues to increase trade investment and economic development in the region. PECC is one of three observer organizations of APEC and the only non-governmental body given that status. PECC representatives attend APEC Ministerial meetings, the Senior Officials meetings and other working group meetings. For an overview of PECC, see PECC's website, at <http://www.pecc.net> (last visited Mar. 2, 2003). In anticipation of the Manila meeting, PECC attempted to show that most of the 18 APEC economies were “on track” to achieve their 2010–20 deadlines. Two notable exceptions, however, were the United States and Japan. But some economies, like Thailand, were well ahead of their Bogor commitment, with un-weighted tariffs down from about 40% in 1990 to fewer than 20% in 1996. Japan, meanwhile, was on schedule at the time of Bogor, but has let its average tariff increase since. U.S. tariffs, already low, remained unchanged. See generally PACIFIC ECONOMIC COOPERATION COUNCIL (PECC), SURVEY OF IMPEDIMENTS TO TRADE AND INVESTMENT IN THE APEC REGION (P. Drysdale ed., 1995); see 8–9, 56–57; PECC, MILESTONE IN APEC

process to have been a failure in certain ways, the fact that these agreements exist is itself a further liberalizing step.

Even if the IAPs between Osaka and Manila disappointed many, the economic leaders' final declaration "reaffirm[ed] . . . the ultimate [Bogor] objective." Moreover, the declaration was specific beyond previous commitments. The Manila Action Plan for APEC (MAPA) was acknowledged to be the "implementation phase" of the Bogor declaration. In MAPA, APEC economies agreed to "align national standards with international standards and . . . [to] recognize each other's national standards." Finally, APEC ministers were directed "to intensify work in 1997 on simplification of customs clearance procedures, effective implementation of intellectual property rights commitments[,] . . . facilitation of comprehensive trade in services, and enhancing the environment for investments."<sup>37</sup> These pledges, while not guaranteed, did add important new layers to prior agreements.

Other major pledges appear in the final MAPA declaration as well. The leaders recognized the "primacy" of the WTO over regional groups (like APEC), but urged the former to take efforts to complete trade negotiations in the financial services and telecommunications sectors.<sup>38</sup> The leaders also shifted away from national "foreign aid" programs, whereby wealthy states aid poor

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LIBERALIZATION: A MAP OF MARKET OPENING MEASURES BY APEC ECONOMIES (1995); PECC, PERSPECTIVES ON THE MANILA ACTION PLAN FOR APEC 12-15 (2d ed. 1996). *See also* Hartcher, *supra* note 35, at 1; David Jenkins, *Free trade on track, whatever they say*, SYDNEY MORNING HERALD, Nov. 23, 1996, at 36.

37. DECLARATIONS, *supra* note 33, pts. 1-10.

38. Specifically, APEC leaders called for the elimination of substantially all tariffs on information technology within its membership by the year 2000, and urged the WTO to do likewise (APEC agreements have spurred international negotiations, notably in telecommunications, because, although small in membership, APEC represents a large portion of the world economy). The United States and other developed economies in the Pacific Rim (Canada, Japan) have often used the APEC forum to leverage and advance their own trade agendas. *See generally* *New Zealand Urges APEC to Adopt Policies to Level Field for Foreign Competitors*, 16 INT'L TRADE REP. (BNA) 999 (1999) (describing New Zealand's efforts to compel APEC to combat cartels and promote competition); Gary G. Yerkey, *U.S. Urges APEC to Back Science-Based Biotech Trade, in Message Aimed at EU*, 16 INT'L TRADE REP. (BNA) 1428 (1999) (describing U.S. efforts to compel APEC to approve language included in a communiqué that would affirm the importance of "timely, transparent and science-based approaches" to the introduction and use of biotechnology products) [hereinafter *Biotech Trade*]; Gary G. Yerkey, *Leaders of APEC Agree to Back 'Single Package' Approach to WTO*, 16 INT'L TRADE REP. (BNA) 1491 (1999) (discussing the agreement among APEC members to launch a new round of global trade talks aimed at the adoption of a package of market-opening commitments) [hereinafter *'Single Package'*].

ones. Rather, there was to be greater capital investment and technology transfer among APEC economies, beyond just foreign aid. Further, this was to be accomplished “in partnership with the private sector,” from which the bulk of capital and technical know-how must come.<sup>39</sup> Building on the last theme of the MAPA, APEC leaders affirmed “the central role of the business sector in the APEC process,” particularly the contributions of APEC’s Business Advisory Council (ABAC),<sup>40</sup> a collection of business leaders appointed by the APEC economic leaders to provide them with advice on the implementation of the OAA and to provide a business perspective on certain key issues.

The Manila Summit, to some extent, maintained the “momentum” of Bogor and Osaka in that it did not retreat from previous commitments and most APEC members pledged to increase their commitment as well. The MAPA added numerous non-tariff initiatives to the tariff pledges that preceded it. There are also numerous examples of unilateral openings, including: Japan pledging to open its telecommunications market; Singapore forswearing its monopoly of the same; an increase in U.S. auto dealerships in Japan; China lifting its ban on leasing farmland to foreigners; and South Korea opening its construction market to outsiders.<sup>41</sup> Yet, at the same

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39. See DECLARATIONS, *supra* note 33, pt. 17.

40. See *id.* pts. 22–23. ABAC was authorized by APEC leaders in Osaka and is composed of the heads of small, medium and large enterprises drawn from the APEC economies. International businesspersons are an important source of advice because they confront daily the nettlesome restrictions that limit trade and, as a consequence, the economic growth upon which political leaders rely to stay in power. While businesses may be less concerned than some non-governmental organizations about the social and environmental consequences of international trade, they are very interested in developing economies. According to ABAC’s co-chair, the group “will give APEC leaders direct, hard-hitting, and specific advice [because] business wants APEC to act quickly . . .” See *APEC Business Advisory Group to focus its efforts on investment, other issues*, 13 INT’L TRADE REP. (BNA) 26 d7 (1996). Part of the ABAC exercise is to get trade liberalization ideas from business leaders. But other motives seem evident as well. One is to involve them in the lobbying effort to convince the general public that trade liberalization is desirable. After all, trade liberalization would shed many customs jobs and expose domestic businesses to more foreign competition. Hence, many local constituencies oppose market opening. The second thrust of the ABAC is to mobilize local business persons to put pressure on national leaders to accelerate the pace of opening, to show them where and how to do it, and to hold them accountable for a failure to be competitive. Thus, the ABAC is a way for the private sector to leverage public policy. See Brent Davis, *Business is looking for some results*, THE AUSTRALIAN, Nov. 22, 1996, at 35. For more information on ABAC, see ABAC Online, at <http://www.abaconline.org> (last visited Mar. 2, 2003).

41. Michiyo Nakamoto, *Cable operator breaks into Japan telecoms*, FIN. TIMES (London ed.), Oct. 1, 1996, at 5; *Foreign investment: Singapore sets out terms for telecom liberalization*, 14 INT’L TRADE REP. (BNA) 174 (1997); *U.S. automotive outlets in Japan increase*, 13 INT’L

time the Manila Summit may have reflected a certain cooling of enthusiasm for market liberalization.<sup>42</sup> Indeed, there are several “pet” trade areas, such as agriculture and textiles, in which APEC economies resisted liberalization. A few examples include: China, Japan, and South Korea’s exclusion of their uncompetitive farming sectors from the APEC principle; South Korea’s reticence to open large portions of its financial, business, transport and business services sectors to foreign investment; and China’s failure to curb computer disk piracy.<sup>43</sup>

The outcome of the 1996 Manila APEC meeting was to steer a steady—if slower—course toward market integration, with more sectors involved. The leaders’ agreement to liberalize trade in information technology fully by the year 2000 put leverage on WTO ministers in Singapore to charge Japan, the United States, and the EU with concluding their ITA negotiations by March 1997 as a basis for reaching a WTO information technology agreement.

Despite a pair of disappointing summits in 1997 and 1998,<sup>44</sup> the

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TRADE REP. (BNA) 1390 (1996); *China plans to lift ban on leasing some farmland to foreign investors*, 13 INT’L TRADE REP. (BNA) 1555 (1996); John Burton, *Seoul opens building market to foreigners*, FIN. TIMES, Oct. 15, 1996, at 7.

42. For example, the Malaysian Prime Minister, Dr. Mahathir, often expressed reservations shared by his ASEAN colleagues about opening markets too rapidly. In his opinion, it was “unrealistic and grossly unfair to coerce particularly the less-advanced member economies to undertake liberalisation measures at a pace and manner beyond their capacity.” Dr. Mahathir felt that less-developed nations should be given more time and more aid from APEC to open their markets. Peter Hartcher, *Mahathir’s APEC plea for poorer members*, AUSTRALIAN FIN. REV., Nov. 25, 1996, at 8; Michael Gordon, *Mahathir urges slower APEC pace*, THE AUSTRALIAN, Nov. 25, 1996, at 5.

43. William Dawkins, *Farm row halts APEC trade talks*, FIN. TIMES, Oct. 12, 1995, at 3; Frances Williams, *WTO calls for Korean reforms*, FIN. TIMES (Int’l ed.), Oct. 2, 1996, at 5; *Intellectual Property: Chinese officials acknowledge rebound in pirated disc trade*, 13 INT’L TRADE REP. (BNA) 1550 (1996).

44. By the time of the November 1997 leaders’ summit in Vancouver, Canada and the November 1998 meeting of APEC leaders in Kuala Lumpur, Malaysia, the Asian financial crisis had begun to bite deeply, and the heads of state were more interested in stabilizing effected economies than pushing liberalization. Despite the turmoil, they agreed to press forward with liberalization in nine industry sectors worth \$1.5 trillion. If anything, the November 1998 meeting of APEC leaders in Kuala Lumpur was even more disappointing than the one in Vancouver. President Clinton did not attend due to tensions between the United States and Iraq. But even if he had, financial conditions in Asia would still have favored retrenchment over liberalization. Vice President Gore gave an ill-advised speech criticizing the human rights record of the host nation, and Japan, contrary to its prior APEC commitments, announced its firm intention not to liberalize its forestry and fish industries. Although APEC earlier had been a leader in liberalizing trade in Asia and the world, its cohesion now appeared to be eroding. APEC seemed divided and paralyzed by the political and economic pressures generated by the Asian crisis, pressures that stimulated protective behavior everywhere. Nevertheless, APEC

late 1999 APEC leaders' summit in Auckland was moderately successful. By that time, the financial crisis in Asia had begun to subside. Nonetheless, several events conspired to take some momentum out of the Auckland meeting. First, the ABAC reported, just before the summit commenced, that the actions taken by the APEC nations did not seem ambitious enough to meet APEC's self-imposed Bogor deadlines.<sup>45</sup> Further, trade disputes among APEC members had become so numerous and severe that, if left unchecked, substantial repercussions on the prosperity and stability of the region could result.<sup>46</sup> The ABAC observed that selfish, unilateral behavior was directly counter to the economic and political realities of the region, in which economic and political power is increasingly diffused across a growing number of economies.<sup>47</sup>

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ministers did agree at Kuala Lumpur to begin negotiations to liberalize the nine sectors previously agreed to at Vancouver and the United States and Japan announced a joint plan to "restore growth" to Asia. Perhaps APEC was being subsumed in the broader flow of global economic integration, because it still played a role in the Pacific Rim, albeit slow-paced by business standards. See, e.g., Peter Montagnon & Sheila McNulty, *Trade liberalization accord thwarted*, FIN. TIMES (London ed.), Nov. 16, 1998, at 3; *Japanese Stance on EVSL Could Make APEC Meeting a 'Failure,' U.S. Official Says*, 15 INT'L TRADE REP. (BNA) 1822 (1998) (noting Japan's refusal to reduce tariffs on imported forest and fish products) [hereinafter *Japanese Stance on EVSL*]; *APEC trade ministers to work toward tariff-cutting pact in WTO in 1999*, 15 INT'L TRADE REP. (BNA) 1912 (1998); *U.S., Japan Announce Plan to Revive Growth in Asia*, 15 INT'L TRADE REP. (BNA) 1913 (1998); *APEC's family feud*, ECONOMIST, Nov. 21, 1998, at 41 (discussing the repercussions of Gore's speech in Malaysia).

45. Gary G. Yerkey, *APEC Seen Missing Deadline of 2020 For Free Trade in Asia-Pacific Region*, 16 INT'L TRADE REP. (BNA) 1399 (1999) [hereinafter *Missing Deadline*]. APEC economies also sought more serious and substantial commitments, especially from developed economies and they criticized APEC for referring nine sectors in its Early Voluntary Sectorial Liberalization (EVSL) program to the WTO. See Philip Burton, *Letter to the Rt. Hon. Jenny Shipley, Prime Minister of New Zealand, from the ABAC Chair*, in APEC BUSINESS ADVISORY COUNCIL, ASIA PACIFIC ECONOMIC COOPERATION, APEC BUSINESS ADVISORY COUNCIL REPORT TO THE APEC LEADERS (1999), available at <http://www.abaonline.org> (last visited Mar. 2, 2003) (urging APEC economies "to take concrete steps to achieve the goal of free and open trade and investment" and offering recommendations).

46. See Gary G. Yerkey & Toshio Aritake, *Japan Warns U.S. Against Restricting Steel Imports*, 16 INT'L TRADE REP. (BNA) 1433 (1999).

47. APEC, IMPLEMENTING THE APEC VISION, *supra* note 24, paras. 4-7. For example, when Japan refused to liberalize its fish and forest sectors, U.S. Trade Representative Charlene Barshefsky accused it of "not [playing] the leadership role it should in supporting Asian recovery . . ." See *Japanese Stance on EVSL*, *supra* note 44, at 1822. Naturally, U.S. businesses wished to accelerate market opening in the Pacific Rim, where U.S. trade rose nearly 26%, exceeding growth in all other regions of the world, and creating an estimated 3.8 million U.S. jobs. See generally HERITAGE FOUNDATION, TRADE WITH ASIA MEANS JOBS FOR AMERICA, REPORT NO. 119 (1996). But the pace pursued by the United States and its business interests often exceeds what other APEC economies find acceptable. See generally Yerkey, *Missing Deadline*, *supra* note 45; Yerkey & Aritake, *supra* note 46.

Finally, there was disagreement among APEC economies about the agenda for the new round of GATT negotiations that was due to be launched at the ministerial meeting of the WTO held just a few months later in Seattle. Some APEC members felt there was little reason to take bold steps regionally at the Auckland summit, especially when a different agenda would likely emerge.<sup>48</sup> Hence, the Auckland summit did little more than try to resuscitate the momentum achieved at the earlier meeting in Manila and promote certain agenda items for Seattle.

To sustain momentum, APEC ministers “reaffirm[ed] the central role of the [IAPs].”<sup>49</sup> They also “emphasized the need . . . to consult closely with businesses, including the . . . ABAC [process].”<sup>50</sup> The ministers noted with some pleasure that “little backsliding [was] evident in the IAPs” and that some economies had “improved” their offers while five economies, including Japan and the United States, had submitted their IAPs for “regular peer reviews on a voluntary basis.”<sup>51</sup> They also “agreed to a ‘road map’ that [set] out future work [in very general terms] . . .”<sup>52</sup> For the first time, APEC trade ministers sounded more ambitious than their economic leaders.

APEC leaders then “instructed” their ministers to broaden and deepen the APEC trading community by “intensify[ing] work.”<sup>53</sup> This language, appearing in the final declaration, is worded vaguely. Each leader could easily have given the language a different interpretation, but it was not a weak mandate. It recognized that the IAPs were “the first steps [in] an evolutionary process” that was expected to expand and intensify “through a continuous process of review and consultations.”<sup>54</sup> This process would occur in full public view, so backsliding would not be easy, even if progress might be slow at times. Finally, with tariff levels coming down almost everywhere, more attention would undoubtedly be given to non-tariff barriers.<sup>55</sup>

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48. Gwen Robinson, *Ministers back new trade round: APEC meeting global talks breakthrough follows setback to drive further liberalization*, FIN. TIMES (London ed.), June 30, 1999, at 4.

49. ASIA-PACIFIC ECONOMIC COOPERATION, JOINT STATEMENT, ELEVENTH ASIA-PACIFIC ECONOMIC COOPERATION TRADE MINISTERS MEETING, *reprinted in* 16 INT’L TRADE REP. (BNA) 1497 (1999) [hereinafter ELEVENTH MINISTERIAL MEETING, JOINT STATEMENT].

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. DECLARATIONS, *supra* note 33; ASIA PACIFIC ECONOMIC COOPERATION, MANILA

These could include issues such as dumping, rules of origin, and competition rules. They could also reach issues of great concern to many non-governmental organizations (NGOs), such as labor standards, environmental issues, and human rights issues.<sup>56</sup> There presently is no APEC consensus on these latter issues however.

At the global level, APEC ministers “underline[d] the critical importance of . . . forthcoming WTO negotiations in liberalizing trade and investment within the region” and noted that “[t]he pace of globalization and the scope and depth of the [Asian] economic crisis have underscored the need for policy responses . . . .” But apparently these responses were left for the global community, not APEC. That is, prior to the WTO debacle in Seattle, APEC leaders saw their initiatives as facilitating global undertakings, not substituting for them.<sup>57</sup> Following the failure of the Seattle WTO meeting discussed below, however, APEC leaders returned to their agenda with greater vigor.

2. *ASEAN*. ASEAN<sup>58</sup> is the smaller and weaker of the two important regional trade groups, and there appears to be considerable economic competition as well as interdependence among its members. ASEAN members rarely present a united front in regional economic affairs however.<sup>59</sup> Even when they do, that consensus can break down in the face of APEC or WTO opposition.

For example, the Asian financial crisis gave ASEAN leaders a tailor-made opportunity to negotiate a joint recovery plan, possibly with the help of Japan and China, Asia’s two largest economies. Yet

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ACTION PLAN FOR APEC §§ 5–10 (1997), available at <http://www.apecsec.org.sg/> (last visited Mar. 2, 2003).

56. The best short position paper on this point that I have seen was written by Dr. Jane Kelsey, Law Department, University of Auckland, New Zealand for *GATT Watchdog*. See Jane Kelsey, *More than a question of trade*, *GATT Watchdog* (1996). See also Florence Chong, *Free trade push risks a political backlash*, *THE AUSTRALIAN*, Nov. 25, 1996, at 5.

57. See ELEVENTH MINISTERIAL MEETING, JOINT STATEMENT, *supra* note 49, at 1497–98 (“Ministers emphasised the need for member economies to consult closely with business, including the APEC Business Advisory Council (ABAC) in developing the work programme. They noted ABAC’s view that business is looking to the developed economies to take a lead in the APEC process and show clearly how the Bogor goals are going to be achieved.”).

58. There are ten nations in the ASEAN: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. All current members, except Cambodia, Laos, and Myanmar, are members of APEC. See Member Countries, at <http://www.aseansec.org/74.htm> (last visited Mar. 3, 2003).

59. See Sheila McNulty, *Asean ponders its modest role*, *FIN. TIMES* (London ed.), July 27, 1999, at 6 (noting criticisms of the group’s effectiveness).



the ASEAN leaders could not agree on a single plan of operation. A number accepted help from Japan, many arranged bailouts with the International Monetary Fund (IMF), and Dr. Mahathir of Malaysia defied the IMF and introduced currency controls. The only issue on which some ASEAN leaders seemed to agree was their common resentment of “hectoring western politicians and advisors who [they believe] do not understand Asia’s real problems.”<sup>60</sup>

Even if ASEAN has had only a modest impact on trade liberalization in the Pacific Rim—even among its own membership<sup>61</sup>—it has somewhat successfully lobbied in forums such as APEC and the WTO for the concerns of emerging Asian economies facing pressure for market opening from highly industrialized economies. ASEAN believes that less-developed economies should be allowed to liberalize their markets more slowly and to continue tariff protection for sensitive products. It also has called for the “elimination of agricultural subsidies,” “a review of anti-dumping laws by wealthy nations,” and less protection for “textiles and clothing.”<sup>62</sup> All of these measures are meant to protect Western markets from Asian exports. But these pleas are made, by and large, at the global level rather than at the regional level.<sup>63</sup>

Without western members, ASEAN nations may strengthen their own hand in regional development. Although ASEAN is a loose arrangement with modest goals, it has some *potential* to be a counterweight to APEC<sup>64</sup> and the WTO. At the very least, ASEAN

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60. *ASEAN looks to the new year*, *supra* note 17, at 47. For general coverage of these events, see generally THOMAS C. FISCHER, *supra* note 6, ch. 13.

61. See, e.g., *ASEAN looks to the new year*, *supra* note 17, at 47; Ted Bardacke, *SE Asia united as Cambodia joins Asean*, FIN. TIMES, May 1, 1999, at 6.

62. Jason Gutierrez, *ASEAN Members to Push for End to Farm Subsidies, Dumping Review*, 16 INT’L TRADE REP. (BNA) 1745 (1999).

63. For example, Japan’s abrupt turnaround on its agricultural and fisheries commitments. See generally *Japanese stance on ESVL*, *supra* note 44. See also Glen Perkinson, *Thailand Charges Some ASEAN Members Not Implementing Their AFTA Commitments*, 17 INT’L TRADE REP. (BNA) 513 (2000); Gutierrez, *supra* note 62; *Southeast Asian Nations Accelerate Plan for Free Trade; China vows market reforms*, 16 INT’L TRADE REP. (BNA) 1951 (1999).

64. “Potential” is the operative word here, since, as detailed below, ASEAN is long on plans, but short on implementation and its members often break rank over prior agreements. See generally Rafael D. Frankel, *ASEAN Looks to Speed Up Integration At Economic Ministers Conference in Hanoi*, 18 INT’L TRADE REP. (BNA) 1436 (2001) (discussing a spate of ASEAN initiatives for closer cooperation). Ambassador Aneurin Hughes, a frequent attendee of ASEAN meetings and head of the EU’s delegation to Australia and New Zealand, reports that “little emerged from Hanoi” and “there were unguarded comments [that ASEAN had] . . . ‘outlived its usefulness’.” Aneurin Hughes, Letter to Thomas C. Fischer (Jan. 30, 2002) (on file with author).

can give a collective voice to the smaller economies in the region, whose concerns after the WTO debacle in Seattle have moved closer to center stage.<sup>65</sup>

## II. THE DEBACLE IN SEATTLE

Although some APEC and ASEAN leaders had hoped for a successful WTO summit in Seattle in late 1999, success never materialized. After vainly struggling for four days to reach a consensus on an agenda for a new round of GATT trade negotiations, the summit was acrimoniously suspended.<sup>66</sup> Much of the credit for bringing the summit to its ignominious end was assigned to environmental, labor, and human rights protestors, but was probably exaggerated.<sup>67</sup> The protestors' complaints were on the WTO's agenda in some form.<sup>68</sup> Furthermore, there were deep divisions about the agenda and the timing of the round long before the ministerial meeting commenced.<sup>69</sup> President Clinton particularly polarized the least developed countries (LDCs) in Asia and elsewhere by suggesting that labor and environmental standards should be enforced against them, despite the fact that cheap labor and lax environmental rules are their chief competitive assets.<sup>70</sup> The looming presidential election may also have left U.S. negotiators with less

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65. See generally *ASEAN looks to the new year*, *supra* note 17, at 47. See also Daniel Pruzin, *WTO Delays Talks on Post-Seattle Agenda; Agrees to Hold Off on Missed LDC Deadlines*, 16 INT'L TRADE REP. (BNA) 2061 (1999) (discussing WTO agreement postponing a discussion for a follow-up to failed Seattle ministerial conference as well as addressing LDC demands for longer periods of time for agreement implementation); *Philippines to Urge WTO Deferral of Links to Labor, Environment Issues*, 16 INT'L TRADE REP. (BNA) 1139 (1999) (reporting the Philippines' request that the WTO defer inclusion of labor and environmental policy in its agenda) [hereinafter *Philippines to Urge WTO Deferral*].

66. Daniel Pruzin et al., *WTO Seattle Ministerial Fails; Talks to Resume at a Later Date*, 16 INT'L TRADE REP. (BNA) 1990 (1999). For comprehensive coverage of the events in Seattle, see BUREAU OF NATIONAL AFFAIRS, WTO WATCH, Nos. 1-6 (1999).

67. See Michael Elliott, *The New Radicals*, NEWSWEEK, Dec. 13, 1999, at 36; Fareed Zakaria, *After the storm passes*, NEWSWEEK, Dec. 13, 1999, at 40.

68. *Philippines to Urge WTO Deferral*, *supra* note 65, at 27; Daniel Pruzin, *WTO Delays Talks on Post-Seattle Agenda; Agrees to Hold Off on Missed LDC Deadlines*, 16 INT'L TRADE REP. (BNA) 2061 (1999).

69. See Gary G. Yerkey, U.S., *EU Business Leaders See Little Backbone Behind WTO Pledges*, 16 INT'L TRADE REP. (BNA) 1804 (1999) [hereinafter *Backbone*]; Daniel Pruzin, *WTO Chief Describes Talks on Agenda as 'Disappointing' and Behind Schedule*, 16 INT'L TRADE REP. (BNA) 1869 (1999).

70. See Mark Felsenthal, *Clinton Defends Labor Stance at WTO; Says Link Will Eventually Be Accepted*, 16 INT'L TRADE REP. (BNA) 2028 (1999).

room to maneuver.<sup>71</sup>

In the end, regional organizations like the EU, APEC, ASEAN and NAFTA developed their Seattle agenda strategies somewhat in isolation of one another, so they could not easily be reconciled when they attempted to agree on important common issues.<sup>72</sup> For example, the United States initially wanted a sector-by-sector negotiation where it would benefit from more leverage and an “early harvest” of agreements in some sectors before the whole round of negotiations was completed. Meanwhile, most negotiators, including the EU and APEC, generally favored a comprehensive round. The United States eventually capitulated, but only after it was understood that “a ‘single package’ of market-opening commitments [would] not preclude the possibility of early results . . . .”<sup>73</sup> In addition, the United States and APEC nations with large agricultural economies pushed APEC to back the elimination of export subsidies for all agricultural products; a position they knew the EU would find unacceptable.<sup>74</sup>

The United States also attempted to use APEC to advance its agenda to expand trade in scientifically-secure biotechnology products, and to secure greater transparency in public procurement. Regional groups opposed these initiatives, as did other nations that would not have benefited significantly.<sup>75</sup> The United States definitely wanted a review of dumping standards kept *off* the WTO agenda, while Japan and South Korea, which the United States accused of dumping, decidedly wanted it included.<sup>76</sup> Only developed APEC

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71. See generally *U.S. Presidential Campaign Blamed for Failure to Launch New WTO Round*, 16 INT'L TRADE REP. (BNA) 197 (1999). See also Mark Suzman, *U.S. domestic concerns sank Seattle*, FIN. TIMES, Dec. 6, 1999, at 8 (discussing political impact of Seattle WTO meeting).

72. See, e.g., Yerkey, *Backbone*, *supra* note 69 (describing differences in perspectives between various regional organizations).

73. Yerkey, *'Single Package'*, *supra* note 38.

74. Gary G. Yerkey, *Trade Ministers to Urge WTO to Scrap Export Subsidies for Agricultural Products*, 16 INT'L TRADE REP. (BNA) 1492 (1999); Daniel Pruzin, *EU Agricultural Ministers to Defend CAP While Attacking Farm Aid by Other Nations*, 16 INT'L TRADE REP. (BNA) 1531 (1999).

75. Yerkey, *Biotech Trade*, *supra* note 38; *U.S. Accuses EU and Japan of Blocking WTO Government Procurement Agreement*, 16 INT'L TRADE REP. (BNA) 2028 (1999) [hereinafter *Procurement Agreement*]; Toby McIntosh, *Language on WTO Transparency Disappoints; Draft Outcome Evidences Deep Divide*, 16 INT'L TRADE REP. (BNA) 2001 (1999).

76. *Procurement Agreement*, *supra* note 75; McIntosh, *supra* note 75; *WTO agrees to establish dispute panels on U.S. antidumping duties on steel*, BNA INT'L TRADE DAILY, Mar. 21, 2000, available at WL 3/21/2000 BTD d10; *Legal experts urge WTO to reform anti-dumping agreement to curb abusive use*, BNA INT'L TRADE DAILY, Dec. 6, 2000, available at WL 12/6/2000 BTD d8.

economies signed on to some U.S. proposals, while others remained neutral or openly opposed.<sup>77</sup> It should surprise no one then, that in this delicately balanced and contentious atmosphere, consensus even among regional groups like APEC quickly collapsed.<sup>78</sup>

There was a growing schism between developed and developing nations prior to the Seattle meeting. Developing nations were having difficulty meeting their current WTO obligations and were vulnerable to enforcement procedures.<sup>79</sup> Naturally, they were not as keen as developed countries to increase their obligations through a new trade round. Developing nations also resented being marginalized during the intensive agenda negotiations that preceded Seattle.<sup>80</sup> They were promised a larger voice in the future and a better allocation of trade benefits, but the details remained unclear.<sup>81</sup>

Controversy among developed nations over the role of non-governmental organizations in the WTO and the issue of “transparency” also contributed to the failure of Seattle. Some developed nations wanted to give NGOs a role in WTO trade negotiations, but many others did not.<sup>82</sup> Similarly, many argued for increased transparency in the work of the WTO, providing greater public access, but many developed WTO members did not want their bargaining to be exposed to wider public view.<sup>83</sup> Such deep policy divisions could not be resolved overnight and a new WTO trade round was delayed until some type of consensus agenda could be worked out.<sup>84</sup>

Perhaps the real problem with Seattle was that regional groups

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77. McIntosh, *supra* note 75.

78. *U.S. proposals for transparency, APEC trade package in trouble at WTO*, BNA INT'L TRADE DAILY, Nov. 9, 1999, available at WL 11/9/1999 BTD d2; Corbett B. Daly, *U.S. Official Questions Japan's Commitment to Next Round of WTO Trade Negotiation*, 16 INT'L TRADE REP. (BNA) 1686 (1999).

79. See, e.g., Daniel Pruzin, *Five WTO Members Request Postponement of TRIMS Deadline*, 17 INT'L TRADE REP. (BNA) 77 (2000); Daniel Pruzin, *WTO Clinches Deal on Addressing Implementation by Developing Nations*, 17 INT'L TRADE REP. (BNA) 741 (2000).

80. Gary G. Yerkey, *Poorer Nations Want to Be Directly Involved in WTO Talks Before Agreeing to New Round*, 17 INT'L TRADE REP. (BNA) 742 (2000).

81. See *id.*; Daniel Pruzin, *WTO Members Bicker Over Seattle Initiative to Aid Poorest Countries, Win Their Support*, 16 INT'L TRADE REP. (BNA) 1875 (1999); *WTO's Next Director-General Backs New Round for Developing Nations*, 17 INT'L TRADE REP. (BNA) 1848 (2000).

82. Lawrence Speer, *OECD Discusses Trade Liberalization with NGOs, But Wide Differences Persist*, 17 INT'L TRADE REP. (BNA) 1667 (2000).

83. Toby McIntosh, *supra* note 75.

84. *Id.*; Frances Williams, *WTO faces challenging times down on the farm*, FIN. TIMES (London ed.), Apr. 11, 2001, at 15.

deferred too many issues to the WTO ministerial meeting whenever they could not agree. In any event, the WTO ministerial meeting failed and was recessed save for previously agreed negotiations in the areas of agriculture and services sectors.<sup>85</sup> The momentum also shifted from comprehensive negotiations trade towards smaller, more-cohesive regional groups of traders to advance liberalization proposals that were more acceptable to them.<sup>86</sup> Thus, with the failure of the Seattle ministerial meeting, regional institutions like APEC and ASEAN had the opportunity to play larger roles in defining and building consensus behind the trade agenda and consensus might be more quickly and easily achieved at the regional level.<sup>87</sup> Indeed, a group as diverse, and with a market share as large as that of APEC, should be able to substantially influence other WTO members.<sup>88</sup>

This approach is not without its own dangers, however. Smaller, more cohesive trading groups, like the EU, could adopt positions that are difficult to reconcile with international negotiations.<sup>89</sup> Rather than serving as stepping-stones to global agreements, regional agreements could increase competition and breed conflict. In the end, regional initiatives could undercut the WTO.<sup>90</sup> The following

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85. Guy de Jonquières & Frances Williams, *All at sea since Seattle storm*, FIN. TIMES (London ed.), Jan. 20, 2000, at 10; Gary G. Yerkey, *USTR Says New Talks Will Not Occur Until WTO Nations 'Rethink' Positions*, 17 INT'L TRADE REP. (BNA) 257 (2000); Daniel Pruzin, *Members Shy Away From Major Reform Of WTO Decision-Making Procedures*, 17 INT'L TRADE REP. (BNA) 550 (2000); Daniel Pruzin & Gary G. Yerkey, *EU, United States Clash Over Proposals for Agriculture Reform at WTO Meeting*, 17 INT'L TRADE REP. (BNA) 1034 (2000); Gary G. Yerkey, *WTO's Moore Now Sees 'Modest' Hope of Launching New Trade Talks This Year*, 17 INT'L TRADE REP. (BNA) 778 (2000); Daniel Pruzin, *WTO Members Formally Launch Agriculture and Services Talks*, 17 INT'L TRADE REP. (BNA) 226 (2000); Daniel Pruzin, *Launch of New WTO Round May Depend On Progress in Agriculture, Services Talks*, 17 INT'L TRADE REP. (BNA) 485 (2000).

86. Gary G. Yerkey, *U.S. Wants Quad Members to Agree on Agenda Before New WTO Meeting is Held*, 17 INT'L TRADE REP. (BNA) 392 (2000).

87. See, e.g., *id.*; Rosella Brevetti, *Barshefsky Welcomes Progress Made by APEC Trade Ministers*, 16 INT'L TRADE REP. (BNA) 1131 (1999); *FTAA talks offer precedent for WTO negotiations*, BNA INT'L TRADE DAILY, Jan. 21, 2000, available at WL 1/21/2000 BTD d7; *Quad group to accept 'two plus' solution for TRIMS compliance deadline extensions*, BNA INT'L TRADE DAILY, Nov. 6, 2000, available at WL 11/6/2000 BTD d3.

88. ASIA PACIFIC ECONOMIC COOPERATION, THIRD APEC SENIOR OFFICIALS MEETING, APEC SECRETARIAL MEDIA ADVISORY 38/2000 (2000), available at <http://www.apecsec.org.sg/loadall?http://www.apecsec.org.sg/whatsnew/press/rel38.2000.html> (last visited Mar. 27, 2002) (discussing preparations for an annual meeting of APEC ministers and economic leaders); Guy de Jonquières, *Asian ambition*, FIN. TIMES, Nov. 28, 2000, at 14.

89. Dan Bilefsky, *Move to reform EU farm policy suffers set back*, FIN. TIMES (London ed.), Apr. 25, 2001, at 10.

90. Martin Wolf, *Bush's free trade responsibility*, FIN. TIMES (London ed.), Apr. 25, 2001,

section, however, argues that APEC and ASEAN will likely act synergistically with the WTO.

### III. RECENT DEVELOPMENTS IN AND THE FUTURE PROSPECTS OF PACIFIC RIM ASSOCIATIONS

#### A. Leadership of the Pacific Rim

The wake of the Seattle ministerial meeting left the field quite open to the emergence of leadership in the international trading system.<sup>91</sup> The years following Seattle proved a real test for “open regionalism” and its ability to contribute to global consensus. The alternative was regional polarization via NAFTA and the EU, or, in the case of APEC, the prospect of polarized groups within a region.<sup>92</sup>

Asian members of APEC would like to solve their own problems without “Western” help or interference. To this end, Japan sought to undertake a leadership role and proposed a \$16.6 billion debt facility to guarantee bond issues for other Asian nations and to establish an Asian equivalent of the IMF. So far, however, these ideas have not taken hold. The APEC response was to call instead for a strengthening of the international financial architecture. The Western economies did not favor a regional bank with Japan at its head, but Japan knows that its recovery depends on Asia’s recovery, and vice versa. It hopes that a growing regional consciousness in ASEAN and APEC might supplant bilateral and international action and diminish western influence.<sup>93</sup>

Although the Asian recovery has been more rapid than expected, it is far from robust. Asia needs an economic engine, and the logical choice is Japan. Its output accounts for more than one-half of Asia’s GDP. But Japan seems preoccupied by its own economic woes and is reluctant to assume the regional role that would normally fall to it.

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at 23; *New Bush administration signals fresh approach to WTO talks*, 18 INT’L TRADE REP. (BNA) 475 (2001).

91. Brevetti, *supra* note 87; C. Fred Bergsten, *APEC to the rescue*, ECONOMIST, Nov. 7, 1998, at 21; Wolf, *supra* note 90.

92. The gradual return of financial stability to the Pacific Rim region was important. But, whether a “new financial architecture” would result remained doubtful, because a leadership vacuum existed in the Pacific Rim region. Gary G. Yerkey, *Asian Economic Recovery Taking Hold, Likely to Last Through 2000, APEC Says*, 16 INT’L TRADE REP. (BNA) 1493 (1999); Fidler, *supra* note 8.

93. Toshio Aritake, *Japan Proposes \$16.6 Billion Debt Facility To Guarantee Bond Issues in Asian Nations*, 16 INT’L TRADE REP. (BNA) 862 (1999); *Japan offers plan to avert financial crisis in Asia*, FIN. TIMES, May 6, 2000, at 3; de Jonquières, *supra* note 88.

To be fair, Japan invests heavily in Asia and is its largest provider of aid. But Japan's approach to the Asian and the world market is a "one-way" street. The Japanese are keen to penetrate other nations' markets, but prefer to close their own to foreign competition.<sup>94</sup> Japan is roundly criticized for this, and various attempts have been made, particularly by the United States, to persuade Japan to open its markets. Meanwhile, a huge trade surplus has built up with the rest of the world. At its worst, this provokes restrictive market behavior, which is the opposite of what APEC, ASEAN and the WTO promote.<sup>95</sup>

In any case, despite enormous efforts, the world's second-largest economy has experienced low levels of growth since the early 1990s, and it has been in recession for most of the past two years.<sup>96</sup> Moreover, this has occurred in the face of ten or more government stimulus packages worth a monumental 120 trillion yen (US \$1.14 trillion), more than doubling the governments' debt to GDP ratio since 1990.<sup>97</sup> The crisis in Japan shows no signs of abating as long as consumer confidence and domestic consumption continue to remain low. In deep denial, the Japanese people and their politicians seem unwilling or unable to undertake the economic reforms needed to return Japan's economy to a leadership position in the region.<sup>98</sup>

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94. Jean-Pierre Lehmann, *Why Asia needs a Japanese engine*, FIN. TIMES, Mar. 18, 2000, at 13; Toshio Aritake, *Japan to Create Regional Funds to Invest in Small Businesses in Asia*, 16 INT'L TRADE REP. (BNA) 1954 (1999); *Asia: 2000 Outlook*, 17 INT'L TRADE REP. (BNA) 102, 120 (2000); *Japan Releases Revised Package Of Mostly Minor Deregulation Items*, 17 INT'L TRADE REP. (BNA) 559 (2000); Toshio Aritake, *Japan to Propose Reduction in Rice Import Quotas Agreed to at WTO Talks*, 17 INT'L TRADE REP. (BNA) 1860 (2000); Toshio Aritake, *Japan, China Fail to Settle Dispute On Farm Products; Next Stop Probably WTO*, 18 INT'L TRADE REP. (BNA) 2035 (2001).

95. Toshio Aritake & Corbett B. Daly, *USTR Official Urges Japan to Lower NTT's Rates, Hinting at WTO Action*, 17 INT'L TRADE REP. (BNA) 468 (2000); Toshio Aritake, *U.S., Japan Avoid Sources of Friction In Annual Talks on Insurance Industry*, 17 INT'L TRADE REP. (BNA) 470 (2000); Naoko Nakamar & Gillian Tett, *Japan not backsliding on financial reform*, FIN. TIMES, Mar. 7, 2000, at 1; Toshio Aritake, *Japan's February Trade Surplus With U.S. Up 66 Percent Over Year Ago, Ministry Says*, 17 INT'L TRADE REP. (BNA) 514 (2000). But cf. *A bigger slice of a smaller pie*, ECONOMIST, Nov. 30, 2002, at 35 [hereinafter *A bigger slice*].

96. Japan's GDP has contracted in seven of nine quarters. Paul Abrahams, *Japan's fragile growth*, FIN. TIMES (London ed.), Mar. 14, 2000, at 23.

97. See *id.* See also Paul Abrahams, *Japanese economy slumps back into recession*, FIN. TIMES, Mar. 3, 2000, at 1. For a general treatment of Japan's experience and problems, see FISCHER, *supra* note 6, ch. 11.

98. Gillian Tett, *Economy tops the concerns of Japanese voters*, FIN. TIMES, July 24, 2001, at 6; Bill Powell, *Japan's Kamikaze Economy*, FORTUNE, Sept. 3, 2001, at 175; *Reform on Hold*, ECONOMIST, Sept. 8, 2001, at 43. See also *A bigger slice*, *supra* note 95; Jenny Corbett, *Does Japan's anti-deflation package add up?*, APEC ECON. NEWSL., Feb. 2, 2003.

China, Asia's second largest economy, might become Asia's economic engine, but it has enormous problems of its own and is thought by some to be "too backward—economically and politically"—to play that role.<sup>99</sup> Nonetheless, China's economy has continued to expand and liberalize, even during the Asian crisis. Further, Taiwan's accession to the WTO will likely strengthen trade relationships in the region while cooperation with Taiwan could potentially ease China's entry into the world trade system, as well as buffer long-standing frictions between the two economies.<sup>100</sup> Despite these positive indications, the government programs needed to keep China growing have also substantially increased its debt. Further, the civilian government has not resolved its relationship with the People's Liberation Army, and it must address the "chronic overcapacity" of its numerous loss-generating state enterprises. This is likely to result in higher unemployment, probable worker unrest, and an increased welfare burden.<sup>101</sup> Corruption also remains a major challenge to Chinese designs on increased leadership.<sup>102</sup>

The Chinese leadership and other political and economic entities in the Pacific Rim generally view China's trade liberalization and long-delayed entry into the WTO to be a positive step for China and the world trade community.<sup>103</sup> As President Clinton said, an engaged

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99. Lehmann, *supra* note 94. For a general treatment of China's problems, see FISCHER, *supra* note 6, ch. 12. See also *China: Running Out of Steam*, ECONOMIST, Nov. 25, 2000, at 43. Cf., James Kynge, *A tireless powerhouse in the region: Trade in China*, FIN. TIMES (U.K. ed.), Oct. 16, 2001, available at 2001 WL 29303598 (arguing that signs indicate the Chinese economy could become the strongest economic force in Asia).

100. Taiwan was the world's fourteenth largest exporting nation in 2000 and has a significantly more developed economy than China's. Daniel Pruzin, *Taiwan Wraps Up WTO Accession Deal, Expected to Lead to Better Ties With China*, 18 INT'L TRADE REP. (BNA) 1473 (2001); Mure Dickie, *China and Taiwan plan oil drilling venture*, FIN. TIMES (London ed.), Aug. 29, 2001, at 9; *China learns to live with Chen*, ECONOMIST, Dec. 1, 2001, at 39; Noah J. Smith & Chris Rugaber, *Taiwan Outlines Plans for Imports From China Following Entry into WTO*, 19 INT'L TRADE REP. (BNA) 57 (2002).

101. James Kynge, *Beijing bid to keep growth at 7% will prolong budget deficit*, FIN. TIMES, Mar. 7, 2000, at 16; Shai Oster, *China's Economy Posts Unexpected Growth; But Reliance on Exports Seen as Problem*, 17 INT'L TRADE REP. (BNA) 1821 (2000); Noah J. Smith, *China Eliminates Some Curbs to Selling \$170 Billion in Non-Performing State Assets*, 18 INT'L TRADE REP. (BNA) 1793 (2001); James Kynge, *5m Chinese state workers to lose jobs*, FIN. TIMES (London ed.), Mar. 8, 2000, at 6; James Harding, *China job losses to weigh on state welfare*, FIN. TIMES (London ed.), Apr. 14, 1999, at 7.

102. Richard McGregor, *China's public servants refine the art of the graft*, FIN. TIMES (London ed.), July 22, 2000, at 7.

103. See Jason Gutierrez, *Southeast Asian Nations Accelerate Plan For Free Trade; China Vows Market Reforms*, 16 INT'L TRADE REP. (BNA) 1951 (1999) [hereinafter *Market Reforms*]; Shai Oster, *Chinese Think Tank Sees More Pluses Than Minuses in China WTO Accession*, 16



rather than estranged China is a plus for the Pacific Rim.<sup>104</sup> The blessing of WTO membership is not undiluted, though. Foreign competition will increase, and jarring changes will be imposed, internally and externally, on the Chinese economy. Severe dislocations are bound to result from these changes.<sup>105</sup>

Thus, while China is keen to attract foreign capital and expertise, its officials remain ambivalent about giving foreigners unlimited access to business opportunities, even though this behavior may violate its WTO obligations. As a result, the huge potential of China's market remains just that—potential.<sup>106</sup>

The United States is also a candidate for Pacific Rim leadership. But, as the region recovers and expands, the U.S. role will likely be diluted. Further, its APEC partners tend to resent U.S. trade pressure and this resentment is not exclusive to Japan and China. Adding this resentment to the political backlash that a ballooning trade deficit can provoke and the sting of failure from the Seattle WTO ministerial, and the United States seems unlikely to command the laboring oar in the Pacific Rim trade liberalization.<sup>107</sup> Thus, it is hard to envision a clear leader and it is likely that Japan, China, and the United States will continue to share the mantle of leadership in the Pacific Rim in the near to medium-term future.

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INT'L TRADE REP. (BNA) 1743 (1999); Shai Oster, *S&P Sees Bright Future for China's Banks Even After WTO Clears Competition Barriers*, 17 INT'L TRADE REP. (BNA) 472 (2000); *WTO Successfully Concludes Negotiations on China's Entry*, 18 INT'L TRADE REP. (BNA) 1493 (WTO Press Release, Sept. 17, 2001). Cf., Chris Rugaber, *Economists Criticize Aspects of China's Accession Agreement*, 18 INT'L TRADE REP. (BNA) 1296 (2001) (describing certain provisions in China's accession agreement as "protectionist" and "WTO-inconsistent").

104. President William J. Clinton, Remarks to the Parliament in Canberra (Nov. 20, 1996).

105. Indira Lakshmanan, *Along with WTO opportunities come tremendous risks for China*, BOSTON GLOBE, Nov. 11, 2001, at F1; *Celebration and Concern*, ECONOMIST, Nov. 10, 2001, at 69.

106. See Shai Oster, *China Woos Venture Capital by Allowing Limited Partnership VC Fund to Register*, 18 INT'L TRADE REP. (BNA) 1337 (2001); see *China to Let Some Foreigners Invest in Stock, Issues Guide for Listing Shares on Exchanges*, 18 INT'L TRADE REP. (BNA) 1831 (2001); see *China Will Continue to Ban Foreign Sales in Domestic Oil, Gas Markets, Despite WTO*, 18 INT'L TRADE REP. (BNA) 1229 (2001); *The View from China*, FORTUNE, Nov. 8, 1999, at 211.

107. *Greenspan takes aim at protectionism, dubs Clinton trade policies 'adversarial'*, BNA INT'L TRADE DAILY, Apr. 19, 1999, available at WL 4/19/1999 BTD d2; see Yerkey & Aritake, *supra* note 46; Suzman, *supra* note 71; *The Siege of Seattle*, NEWSWEEK, Dec. 13, 1999, at 30; see Daniel Pruzin & Gary G. Yerkey, *Japan Hits Back at Zoellick Criticisms On Ministerial, Cites Efforts to Boost Doha*, 18 INT'L TRADE REP. (BNA) 1780 (2001) [hereinafter *Japan Hits Back at Zoellick*]; James Kynge & Amy Kazmin, *A tussle for Asia*, FIN. TIMES, June 27, 2001, at 200.

## B. APEC

The Asian financial crisis and the failure of the WTO ministerial meeting in Seattle, far from derailing APEC, have actually strengthened it. The APEC leaders' declaration in Auckland acknowledged that APEC softened the blow of the Asian crisis. Greater activity on the part of APEC finance ministers and the establishment of a private "Financiers Group" within APEC, as well as the shock of the Asian crisis, have stimulated structural reform and increased transparency in the region. Moreover, APEC has pledged to intervene earlier in any future financial crisis in order to mute its severity.<sup>108</sup>

The failure of the Seattle WTO ministerial moved the initiative for further trade liberalization, except the WTO's "built-in" agenda (agriculture and service), back to regional associations and bilateral agreements.<sup>109</sup> If organizations such as APEC did not already exist, they might need to be created to advance negotiations in trade sectors not addressed in Seattle. After all, the Auckland APEC ministerial was a reasonably positive one, whereas Seattle was quite a disappointment. Although the APEC leaders' consensus at Auckland broke down in Seattle, it was just as likely to be restored in APEC as it was in the WTO. Hence, the "disillusionment" that followed the Kuala Lumpur summit proved fleeting, and there has been a "new burst of interest in sub-regional arrangements" since Seattle.<sup>110</sup> Indeed, Peter Drysdale, Director of the Australia-Japan Research Centre at Australia's National University, a keen observer of the Pacific Rim, believes that it is well within APEC's capacity "to define a strategy for trade and economic diplomacy," particularly among developed and developing economics. For example, APEC has helped integrate China into "international economic affairs." APEC also gave China a platform to promote itself in the region and the

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108. ASIA PACIFIC ECONOMIC COOPERATION, JOINT COMMUNIQUÉ, APEC ECONOMIC LEADER'S DECLARATION (1999), reprinted in 16 INT'L TRADE REP. (BNA) 1494 (1999). See generally ASIA PACIFIC ECONOMIC COOPERATION, JOINT MINISTERS STATEMENT, SEVENTH APEC FINANCE MINISTERS MEETING (2000), available at <http://www.apecsec.org.sg/virtualib/minismtg/mtgfin2000.html> (last visited Sept. 25, 2002).

109. Christopher Findlay, *Asia-Pacific Economic Cooperation in the new millennium*, APEC ECON. NEWSL., Jan. 2000; *Collapse of WTO Talks Makes FTAA More Important*, 17 INT'L TRADE REP. (BNA) 92 (2000); *South Korea, Chile Announce Plans to Negotiate FTA, Others Follow*, 16 INT'L TRADE REP. (BNA) 1472 (1999).

110. Ross Garnaut, *The Future of APEC*, APEC ECON. NEWSL., July 1999; Christopher Findlay, *supra* note 109; *FTAA Talks Offer Precedents for WTO Negotiations*, BNA INT'L TRADE DAILY, Jan. 21, 2000, available at WL 1/21/2000 BTd d7.

world when it hosted the 2001 APEC ministerial in Shanghai.<sup>111</sup>

Without doubt, “APEC is the right forum for encouraging understanding of the value to the United States and to its Asia Pacific partners [of harmonizing] trade”<sup>112</sup> and accepting temporary trade imbalances in order to speed Asian recovery, build stable economies, and open trade. Whereas “U.S. trade policy is deeply committed to reciprocity . . . [t]his is inconsistent with the APEC [voluntary] *modus operandi*. The United States will not quickly change, and it is neither possible nor desirable for APEC to change.”<sup>113</sup> Yet some flexibility will be necessary on both sides.<sup>114</sup>

To their credit, APEC members have for the most part resisted the temptation to use the Asian crisis as a pretext for trade retrenchment. And, as much as APEC has been called a toothless “talking shop” by some, it has proved to be an essential forum for leveraging market reforms in the world’s largest trading community; it is a place for national leaders to strike sensitive deals.<sup>115</sup>

Between Seattle in 1999 and Doha in 2001, APEC needed to emphasize the facilitation of its own program.<sup>116</sup> The presumption at Auckland was that the process of trade liberalization would be transferred to the WTO in a new GATT round. After the failure of the Seattle ministerial, however, the initiative fell back on APEC, which introduced a program every bit as ambitious as a WTO Round. Even though a new round of WTO trade talks was launched at Doha, it will take years to complete. And there is every reason to believe that the sectorial talks already launched in services and agriculture will be held hostage to the completion of the full round.<sup>117</sup>

Conversely, the Seattle ministerial did highlight some major issues in globalization where APEC can make a difference.<sup>118</sup> One is

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111. Peter Drysdale, *Cementing the Achievements of APEC at Shanghai*, APEC ECON. NEWSL., Mar. 2001.

112. See Garnaut, *supra* note 110.

113. *Id.*

114. *Id.*

115. See U.S., *China Resume WTO Accession Talks*, 16 INT’L TRADE REP. (BNA) 1464 (1999); Findlay, *supra* note 109.

116. Christopher Findlay & David Parsons, *APEC Leaders Presented with Six First-Order Problems*, APEC ECON. NEWSL., Nov. 2001.

117. EU, U.S. hail WTO Agreement on Farm Trade Work Program, 18 INT’L TRADE REP. (BNA) 492 (2001); Gary Yerkey, *Seattle to Doha*, EUROPE, Oct. 2001, at 7; Williams, *supra* note 84; Dan Bilefsky, *supra* note 89.

118. Ted Bardacke, *Asian Crisis Victims Win Greater Voice*, FIN. TIMES (London ed.), May 17, 1999, at 3; Robert Chote, *Third World Woes Dominate First World Summit*, FIN. TIMES

“the linkage between [trade] liberalization and other policy areas.”<sup>119</sup> Indeed, Seattle “put a spotlight on the capacity of developing [economies] to negotiate and implement [trade] agreements” that substantially impact their economic structure and pace of development.<sup>120</sup> This included economic assistance to weaker Pacific Rim economies.<sup>121</sup>

The final reason why APEC might have a significant medium-term impact on trade liberalization, both in the Pacific Rim and globally, is its broad-based commitment to that goal. By setting discrete timelines, reporting commitments with monitoring and today’s peer review, this momentum has not flagged significantly since Bogor.<sup>122</sup> APEC’s history shows that it has always moved in fits and achieves more progress in good economic times than in bad. Finding common ground among APEC’s diverse membership has always been difficult. Critics claim that APEC economies defer to bilateral or WTO deals because they cannot deliver on their voluntary pledges. What critics miss is that APEC provides a regular forum for trade opening agreements and that unilateral and bilateral pledges often serve as a prototype for multilateral agreements, so progress is made either way.<sup>123</sup>

Moreover, the role of business in guiding and supporting the process of trade liberalization in the Pacific Rim cannot be overstated. Private businesses control much of the capital and technical know-how that will make the lofty goals of APEC achievable. That is why the ABAC plays such an influential role in APEC’s work, and why businesspersons are so concerned that the

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(London ed.), Apr. 27, 1999.

119. *Developing Countries Restate Objections to Formally Addressing Labor Issues*, 16 INT’L TRADE REP. (BNA) 1831 (1999).

120. *See id.* *See also India, Mexico Block Proposal to Release More WTO Documents*, 16 INT’L TRADE REP. (BNA) 272 (1999).

121. *See U.S., Japan Want APEC to Focus on Auto Sector*, 16 INT’L TRADE REP. (BNA) 1250 (1999). In a recent APEC report, the United States proposed an “‘ECOTECH’ . . . project to develop and implement economic and technical assistance programs to APEC’s developing members.” *See ASIA PACIFIC ECONOMIC COOPERATION, TWELFTH APEC MINISTERIAL MEETING REPORT*, pts. 36–39, available at [http://www.apecsec.org.sg/whatsnew/press/reL\\_53\\_2000.html](http://www.apecsec.org.sg/whatsnew/press/reL_53_2000.html) (last visited Mar. 2, 2003).

122. Findlay, *supra* note 109.

123. *South Korea, Chile announce plan to negotiate FTA, others follow*, *supra* note 109. *See generally APEC Trade Ministers: Special Report*, 16 INT’L TRADE REP. (BNA) 1455 (1999). It may not matter if progress is made unilaterally, bilaterally, or multilaterally, either within or outside APEC, so long as progress is made.

economics of world trade be understood.<sup>124</sup> Private capital can flee foreign markets faster than public capital, but it is also quick to return once the fundamentals are rectified. It would be foolhardy for businesses to avoid the Asia-Pacific region, which accounts for about one-half of global trade.<sup>125</sup>

Allowing businesspersons to play a larger role in market opening has proved to be highly successful. They speak a common language, operate internationally, work largely outside the public eye, and do not need to run for office. Because businesspersons interact regularly on matters of mutual interest, suspicion and xenophobia break down more quickly compared to similar interactions by political leaders. The ABAC has played such a role in APEC.

If the APEC summits in Vancouver, Kuala Lumpur, and Auckland ran the gamut from disappointing to moderately successful, the November 2000 summit in Brunei Darussalam was a genuine success. The Brunei reports are more energized than those from previous summits, and planning was more concrete and focused. For example, the finance ministers noted an improved Asian economy, but opined that APEC had a “role” in achieving maximum benefit at minimum risk, which could be continued by pursuing sound economic and fiscal policy while carrying out structural reforms.<sup>126</sup> There remained the prospect of a global, external shock that could be absorbed only by improved international financial architecture, however. Banking supervision and securities regulation in Asia need to be improved, as does corporate governance and transparency in the private sector.<sup>127</sup> Finally, the finance ministers promoted “privatization.”<sup>128</sup>

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124. See Yerkey, *Missing Deadline*, *supra* note 45; Gary G. Yerkey, *U.S. Businesses See Ministerial as Set-back for Trade Liberalization*, 16 INT'L TRADE REP. (BNA) 1994 (1999); see generally Lawrence Speer, *Business Groups Agree to Launch World Chambers Network on Web*, 16 INT'L TRADE REP. (BNA) 1607 (1999).

125. *Asia's bounce-back*, ECONOMIST, Aug. 21, 1999, at 11; Vicki Bakhshi, *Investment in Asian Returns to Favour*, FIN. TIMES (Int'l ed.), June 28, 1999, at 1; '99 *Record Year for U.S. Manufacturers' Foreign Direct Investment, Forecast Says*, 17 INT'L TRADE REP. (BNA) 55 (2000); Fareed Zakaria, *The Big Story Everyone Missed*, NEWSWEEK, Dec. 30, 2002, at 52.

126. See generally ASIA PACIFIC ECONOMIC COOPERATION, JOINT MINISTERIAL STATEMENT, SEVENTH APEC FINANCE MINISTERS MEETING (2000), available at <http://www.apecsec.org.sg/virtualib/minismtg/mtgfin2000.html> (last visited Mar. 2, 2003) (esp. items 4, 5–7, 9, 10–11, 13, 16, 19, 22–24 and 26) [hereinafter SEVENTH MINISTERIAL MEETING, JOINT STATEMENT].

127. *Id.*; Gordon de Brouwer, *Finance in an East Asia community*, APEC ECON. NEWSL., Mar. 3, 2002.

128. See SEVENTH JOINT MINISTERIAL MEETING, JOINT STATEMENT, *supra* note 126.

The “declaration” of APEC economic leaders in Brunei touched on numerous items carried forward from Auckland, but added a number of new initiatives as well. The Brunei report was three times longer than Auckland’s, excluding annexes. Like preceding conferences, the report began with a reaffirmation of “confidence in the APEC vision,” which has been reinvigorated since Seattle, and the leaders expressed “renew[ed] . . . determination” to reach that vision through the Bogor goals and the OAA.<sup>129</sup> However, they also urged the launch of a new WTO round in 2001, with a “balanced and sufficiently broad-based agenda that responds to the interests and concerns of all WTO members,” even though differences remained among APEC members regarding the content of that agenda.<sup>130</sup> Finally, they promoted the rapid accession of non-included APEC members (China, Taiwan, Russia and Vietnam) to the WTO.<sup>131</sup>

Among many new initiatives was an instruction to ministers to redouble their efforts to cause APEC economies to take the “required structural adjustments;” to pursue “massive infrastructure development and human capacity building” to “attract business investment;” and a “wide-ranging Action Agenda” in the area of information technology . . . .<sup>132</sup> Not all of these initiatives were wholly new. Interestingly, what strikes one about this latest report is its emphasis on “social safety nets,” least developed economies, youth and education and individual and institutional capacity building, and its stress on information technology development through public-private collaboration.<sup>133</sup> The APEC agenda has progressed well beyond market opening and liberalization. It is more comprehensive, it is more sensitive, and it is more concrete.

If anything, APEC ministers (meeting just before the economic leaders) took a bolder approach, except for the issue of a WTO round in 2001. They too urged that a round be launched at the “earliest opportunity,” but set no date.<sup>134</sup> Perhaps this was because some

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129. ASIA PACIFIC ECONOMIC COOPERATION, LEADERS’ DECLARATION, pt. 1 (2000), available at [http://www.apecsec.org.sg/whatsnew/press/rel57\\_2000.html](http://www.apecsec.org.sg/whatsnew/press/rel57_2000.html) (last visited Mar. 2, 2003) [hereinafter LEADERS’ DECLARATION].

130. *Id.* pt. 23; Sheila McNulty, *Leaders Call for New Trade Round*, FIN. TIMES (London ed.), Nov. 17, 2000, at 17.

131. LEADERS’ DECLARATION, *supra* note 129, pts. 22–28.

132. *Id.* pts. 11–12, 16–17, 18.

133. *Id.* pts. 11, 23–25, 8, 16–18, 21, 30–31 and 36, 13, 15–16, 18, 14, 29, and 32–33, respectively. See also Corbett B. Daly, *APEC Leaders Push for WTO Round in 2001, Pledge to Wire Region to Internet by 2010*, 17 INT’L TRADE REP. (BNA) 1778 (2000).

134. Corbett B. Daly, *APEC Ministers Call for New Round in 2001, But Fail to Set Specific*

ministers opposed an early round or doubted it was possible.<sup>135</sup> Just as likely, it was because they were charged with shoring up the Pacific-Rim economies most affected by the Asian crisis and forging ahead with regional initiatives *in the absence* of a global round. They emphasized that capacity-building and “the full realization of the potential of economic growth” depends on “close cooperation between government and business,”<sup>136</sup> a theme that recurs throughout the report.

The ministers also addressed the prospect of a “digital divide” in Asia, and the importance of a public-private partnership to address it, with emphasis on the role of private capital. The stress laid on this partnership—on capacity building, on education and training, on information and communication technology, and on small and medium-sized enterprises—is quite remarkable when compared to prior, more generalized reports.<sup>137</sup> It was as if the Asian crisis and the failed WTO ministerial had finally driven APEC ministers to focus on regional recovery and development.

The APEC Business Advisory Council (ABAC) report in October 2000 was just as uncompromising.<sup>138</sup> As in the past, the ABAC prodded APEC leaders to take bolder, more concrete steps. The ABAC report was reflected in the leader’s declaration and the report they received from their finance ministers (with whom the ABAC met twice in 2000).<sup>139</sup> In particular, the ABAC report opined that “APEC must go beyond acknowledging the need for capacity-building [and give] substance to it.”<sup>140</sup> The report noted that the “[IAP] process is APEC’s primary [trade liberalization] mechanism . . . [but] that, in many cases, the IAPs . . . contained

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*Date*, 17 INT’L TRADE REP. (BNA) 1744 (2000).

135. *Id.*

136. ASIA PACIFIC ECONOMIC COOPERATION, TWELFTH APEC MINISTERIAL MEETING, JOINT STATEMENT, pts. 3, 9, and 65 (2000). It should be remembered that, while IAPs are voluntary, APEC members are under constant pressure from other members and businesses to improve them. Because of this pressure, by 2001, two-thirds of APEC members had submitted their IAPs to voluntary “peer review.” *Id.* pt. 8.

137. *See id.* pts. 55, 3, 9, 11–12, 15, 56 and 63–65; 9, 33, 35, 42–43 and 66–68; 41, 46, 69; 44, 47, 53; and 33, 48, 58 respectively.

138. APEC BUSINESS ADVISORY COUNCIL, FACING GLOBALIZATION THE APEC WAY: REPORT TO THE APEC LEADERS (Oct. 2000), available at [http://tyr.apecsec.org.sg/abac/reports/ABAC-Report\\_2000.pdf](http://tyr.apecsec.org.sg/abac/reports/ABAC-Report_2000.pdf) (last visited Mar. 2, 2003).

139. *Id.* at 20.

140. *Id.* at 2.

incomplete information.”<sup>141</sup> However, the ABAC welcomed the new e-IAP system, since the perception was that it would “greatly improve the comparability and transparency of [IAPs].”<sup>142</sup> Nevertheless, the ABAC felt that “strengthening” the multilateral trading system, underpinned by the WTO, should “remain APEC’s top priority.”<sup>143</sup>

What does all the activity at Brunei signify? It seems to reflect a re-energized APEC at every level. All constituencies seemed ready, and many eager, to board the WTO bandwagon once it got rolling, but none seemed ready to wait for it. In comparison to Brunei, the 2001 APEC ministerial in Shanghai was a tame affair. By that time a new GATT round was all but launched,<sup>144</sup> China and Taiwan’s accession to the WTO was a foregone conclusion, and the global trade agenda was hijacked by the threat of terrorism.<sup>145</sup> The Taiwanese delegation did not attend the Shanghai summit, due to lingering tensions with China over its “one-China” policy.<sup>146</sup> The meeting was a success, however, insofar as China got the opportunity to underscore, on its own turf, its conversion to trade liberalization. Furthermore, face-to-face meetings between China’s President Jiang and America’s new President Bush allowed them to quell (actually, by not mentioning) smoldering tensions regarding a proposed missile defense shield, the bombing of China’s embassy in Belgrade, and a collision between an American surveillance aircraft and a Chinese fighter, in which a Chinese pilot was lost.<sup>147</sup>

Notwithstanding these clouds over the APEC proceedings, the talks went ahead. Even if APEC is a mere “talking shop” (as some claim), talks are good. This is especially so if they involve regional competitors. What can be worked out in the complex APEC crucible, can often be translated into a global solution.<sup>148</sup> While consensus at the WTO level may take years (its 2005 deadline for concluding the

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141. *Id.*

142. *Id.* at 4–5. The e-IAP system allows for the electronic filing and comparison of IAPs.

143. *Id.* at 6.

144. Lionel Barber, *Key Players in a New Trade Round*, EUROPE, Oct. 2001, at 11; Daniel Pruzin, *Moore Says New WTO Round Within Grasp But Cautions Important Differences Remain*, 18 INT’L TRADE REP. (BNA) 1774 (2001).

145. *China’s disappointment*, ECONOMIST, Oct. 20, 2001, at 46.

146. Mure Dickie, *Taiwan Boycotts Regional Meeting*, FIN. TIMES, Oct. 20, 2001, available at 2001 WL 29304395.

147. Gerard Baker, *Familiar hostilities lie behind the warm words*, FIN. TIMES, Oct. 20, 2001, available at 2001 WL 28472145; *Friends Again, for Now*, ECONOMIST, Oct. 13, 2001, at 41.

148. Guy de Jonquières, *Talkshop in Search of a New Direction*, FIN. TIMES (U.K. ed.), Oct. 16, 2001, available at 2001 WL 29303441 [hereinafter *Talkshop*].



Doha talks seems hopelessly optimistic), APEC nations may pave the way for convergence in the Pacific Rim much more quickly. In this respect, APEC has more influence than ASEAN.

The most important single step the APEC leaders took in Shanghai was to vigorously support a new GATT launch in Doha, just a month later, even though some APEC economies were reluctant.<sup>149</sup> While their language was equivocal, APEC's economic leaders also endorsed some help for weaker regional economies, in order to spur economic recovery in Asia and guarantee success in Doha.<sup>150</sup> More concretely, the leaders called for an extended moratorium on customs duties on e-commerce; supported WTO accession for China, Taiwan, Russia and Vietnam; and, in the so-called "Shanghai Accord," called on APEC to broaden its "vision," clarify its "roadmap" and proceed with "implementation."<sup>151</sup> The latter was to be achieved, in part, through "pathfinder initiatives," in which two or more APEC members would agree to further liberalization as a spur to the rest.<sup>152</sup>

This seems like a strongly worded call to action, in case the Doha WTO ministerial ended in disappointment. Although Doha did not fail, the Accord could easily have borne fruit earlier, given that it calls for trade facilitation measures such as increased transparency in investment rules, regulations, standards, and government procurement. In the words of one diplomat, this moves APEC "from cheerleader to a player," and could pave the way for WTO agreements in these areas.<sup>153</sup> Another source concluded that the Shanghai meeting "demonstrat[ed] once again APEC's pre-eminence as the body for regional cooperation in the Asia Pacific."<sup>154</sup>

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149. Gary G. Yerkey, *New WTO Trade Talks Look Likely As APEC Ministers Also Back Fresh Round*, 18 INT'L TRADE REP. (BNA) 1630 (2001); *Philippines Cautious on New WTO Round Talks, but Will Support APEC Consensus*, 18 INT'L TRADE REP. (BNA) 1608 (2001); ASIA PACIFIC ECONOMIC COOPERATION, APEC ECONOMIC LEADERS' DECLARATION: MEETING NEW CHALLENGES IN THE NEW CENTURY, pt. 21 (2001), available at <http://www.apecsec.org.sg/virtualib/econlead/china.html> (last visited Mar. 2, 2003) [hereinafter APEC LEADERS' DECLARATION]. See also Dirk Beveridge, *Malaysian Leader Says Trade Should Aid Poor*, BOSTON GLOBE, Oct. 21, 2001, at A16.

150. APEC LEADERS' DECLARATION, *supra* note 149, pts. 5–19. See also Glen Parkinson *Asia-Pacific Developing Members Stress Implementation Issues at Doha Ministerial*, 18 INT'L TRADE REP. (BNA) 1561 (2001).

151. APEC LEADERS' DECLARATION, *supra* note 149, pts. 23, 24, and App. 1. See also Gary G. Yerkey, *APEC Adopts 'Pathfinder' Plan to Spur Free Trade Goals, Promote Digital Society*, 18 INT'L TRADE REP. (BNA) 1698 (2001).

152. *Id.*

153. Chris Rugaber, *2002 Outlook*, 19 INT'L TRADE REP. (BNA) 159, 160 (2002).

154. Findlay & Parsons, *supra* note 116.

Contrary to news reports,<sup>155</sup> APEC's late 2002 summit in Mexico was not co-opted by concerns about terrorism and security. Naturally, terrorism was a concern because of the events of September 11th and the more recent attacks in Bali and Russia.<sup>156</sup> However, the Mexican summit reports of APEC ministers<sup>157</sup> and economic leaders<sup>158</sup> (the latter often echoing the former) are not dominated by security concerns. Words may be cheap, but when compared to other APEC reports, these are clearly meant to press ahead with APEC's broad trade agenda. Rather than curtailing ambitions in the face of uncertainty and a global economic slowdown, APEC economic leaders "resolved to . . . accelerate progress towards the . . . Bogor goals."<sup>159</sup> They expressed their "determin[ation] to translate [the] APEC vision into concrete benefits . . . through greater assessment, accountability and action."<sup>160</sup> Among many initiatives specifically mentioned were the GATT's Doha Development Agenda, the Shanghai Accord, APEC's Trade Facilitation Action Plan, and "transforming the digital divide into a digital opportunity" for less-developed Asian economies.<sup>161</sup> The ministers' report was even more explicit. It supported "an open, rules-based multilateral trading system under the [WTO]" noting the "dynamic and catalytic role that APEC plays [in the process]."<sup>162</sup> It agreed that "capacity and confidence building . . . under the APEC Strategic Plan should remain a top priority for APEC,"<sup>163</sup> and that broadening the OAA "put APEC on a faster track to achieve the Bogor goals"<sup>164</sup> and timetable. The seriousness of the ministers' commitment is illustrated by two initiatives: first, the great majority of APEC economies have now agreed to submit their IAPs to peer review and, second, APEC's

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155. Alexander Hanrath, *Focus on Safer Rather Than Freer Borders*, FIN. TIMES, Oct. 28, 2002, at 3, available at 2002 WL 101377361; Tim Wiener, *War Clouds Will Darken Asia-Pacific Meeting in Mexico*, N.Y. TIMES, Oct. 23, 2002, at A9.

156. *Id.*

157. ASIA PACIFIC ECONOMIC COOPERATION, JOINT STATEMENT, FOURTEENTH APEC MINISTERIAL MEETING (2002), available at <http://www.apec2002.org.mx/index.cfm?action=news&IdNews=54> (last visited Mar. 2, 2003) [hereinafter JOINT STATEMENT].

158. ASIA PACIFIC ECONOMIC COOPERATION, APEC ECONOMIC LEADERS' DECLARATION (2002), available at <http://www.apec2002.org.mx/index.cfm?action=news&IdNews=81> (last visited Mar. 2, 2003).

159. *Id.*

160. *Id.*

161. *Id.*

162. JOINT STATEMENT, *supra* note 157.

163. *Id.*

164. *Id.*

sponsorship of a first-ever Young Leaders and Entrepreneurs Forum to involve the next generation in the ongoing work of the regional trade group.<sup>165</sup> While there was support for the Doha round of GATT negotiations and a plea for a unified APEC position therein, there was no inclination to delay APEC's agenda because of the GATT talks. Indeed, it was quite the opposite.<sup>166</sup>

### C. ASEAN

What about ASEAN? Will it play a role? As mentioned previously, most ASEAN economies are smaller and generally less well developed than their APEC counterparts, although the stronger of ASEAN economies are also members of APEC. By banding together as ASEAN, these exclusively Asian countries hoped to exert more influence within APEC and the world trading system, and to pursue initiatives of their own. This is exactly what they have done, but with mixed results.

ASEAN's weaker economies got a boost from the failure of the Seattle ministerial, since one outcome was to place the needs of the LDCs higher on APEC's trade agenda.<sup>167</sup> Because some of the LDCs are in Southeast Asia and are members of ASEAN, ASEAN may extract greater concessions from APEC.<sup>168</sup> This is, in effect, what ASEAN countries have been asking for: the capital and technical know-how to develop their economies. The increased concern for LDCs, however, also advances western goals, since increased capital and technology transfer will come with increased western oversight. The technology should improve living standards, health, working conditions, and resource conservation. It could be a win-win situation.

Several ambitious ASEAN proposals, however, have achieved little success. For example, it was suggested that ASEAN countries develop a seamless telecommunications network and a uniform

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165. *Id.*

166. See ASIA PACIFIC ECONOMIC COOPERATION, NINTH APEC FINANCE MINISTERS' MEETING, JOINT MINISTERIAL STATEMENT (2002), available at <http://www.apecsec.org.sg/virtualib/minismtg/mtgfin2002.html> (last visited Mar. 2, 2003); ASIA PACIFIC ECONOMIC COOPERATION, SHARING DEVELOPMENT TO REINFORCE GLOBAL SECURITY, ABAC REPORT TO APEC ECONOMIC LEADERS (2002), available at <http://www.apec.info/2002ABACReport.pdf> (last visited Mar. 2, 2003) (noting "that APEC should work with a sense of urgency to support the recovery in the global economy").

167. See JOINT STATEMENT, *supra* note 157 (discussing the Doha Development Agenda).

168. Gutierrez, *supra* note 103.

regulatory framework.<sup>169</sup> At their 1998 summit in Vietnam, ASEAN leaders adopted a “Hanoi Plan” designed to accelerate the development of an ASEAN Free Trade Area, create an ASEAN Investment Area to “keep ASEAN a player” and attract foreign investment.<sup>170</sup> But these plans were slow to progress. ASEAN is always trying to develop common positions for multinational trade negotiations in order to protect its regional interests and secure concessions.<sup>171</sup> The ASEAN group, however, like many intergovernmental organizations, is hamstrung by internal disagreements.<sup>172</sup> Often, it has come together only around initiatives proposed by three of its stronger neighbors—APEC nations China, Japan, and South Korea.<sup>173</sup>

One such plan, put forward by China, was to establish an East Asian Free Trade zone (AFTA), which would include ASEAN, China, Japan and South Korea.<sup>174</sup> To be sure, the proposal was greeted cautiously.<sup>175</sup> If consummated, it could become a trading bloc similar to, but far looser than, the EU or NAFTA. The Chinese plan, however, faces severe obstacles.<sup>176</sup> ASEAN members are divided over how quickly to liberalize trade and are struggling to implement existing plans to lower import barriers.<sup>177</sup> China, moreover, could become preoccupied by its efforts to meet the requirements of WTO membership. At the same time, Japan and South Korea do not wish

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169. See Amy Kazmin, *Chuan urges ASEAN to move on free trade area*, FIN. TIMES (London ed.), Oct. 6, 2000, at 11.

170. Chad Bowman, *Southeast Asia Leaders Adopt ‘Hanoi Plan’ That Speeds Trade, Investment Liberalization*, 15 INT’L TRADE REP. (BNA) 2122 (1998); ASSOCIATION OF SOUTHEAST ASIAN NATIONS, HANOI PLAN OF ACTION (1998), available at <http://www.aseansec.org/10382.htm> (last visited Mar. 2, 2003) [hereinafter HANOI PLAN OF ACTION].

171. See Bowman, *supra* note 170; HANOI PLAN OF ACTION, *supra* note 170; Rafael D. Frankel, *ASEAN Members Accelerate Framework for ‘e-ASEAN’, Elimination of IT Tariffs*, 18 INT’L TRADE REP. (BNA) 1475 (2001); Rafael D. Frankel, *Deadlines for ASEAN Investment Area Moved Up in Bid to Draw Foreign Investment*, 18 INT’L TRADE REP. (BNA) 1476 (2001). See ASSOCIATION OF SOUTHEAST ASIAN NATIONS, JOINT COMMUNIQUÉ OF THE 34TH ASEAN MINISTERIAL MEETING (2001), available at <http://www.aseansec.org/3045.htm> (last visited Mar. 2, 2003).

172. See Kazmin, *supra* note 169.

173. *Id.*

174. Corbett B. Daly & Jason Gutierrez, *ASEAN Leaders Pledge to Study Possibility of East Asia Trade Zone*, 17 INT’L TRADE REP. (BNA) 1819 (2000) (discussing initiatives by China, Japan and South Korea to achieve greater economic integration in East Asia).

175. *Id.*

176. *Id.*

177. *Id.*

to be co-opted by the growing influence of China.<sup>178</sup> Regardless of these concerns, China recently signed a framework agreement with ASEAN to establish a comprehensive free trade area by 2010.<sup>179</sup> Whether the free trade area will eventually be established is unclear, but the framework agreement does improve China's influence in the region, as well as that of developing economies generally.<sup>180</sup> A free trade area would enable ASEAN to recoup some lost foreign investment and gain improved access to what should be a growing market.<sup>181</sup> Other agreements are being discussed with Australia and New Zealand (once shunned as non-Asian), and closer ties are being sought with the EU.<sup>182</sup> The United States, however, appears uninterested in closer relations,<sup>183</sup> and ASEAN's plans for increased liberalization in the short term appear to have stagnated.

This stagnation is reflected in ASEAN's recently adopted measures relaxing already-agreed tariff cuts (a "temporary exclusion list"), because its members were either unwilling or unable to meet them.<sup>184</sup> Although ASEAN nations stoutly deny "backtracking," this "more flexible mechanism" will not build confidence within or outside ASEAN.<sup>185</sup> Consequently, one has to wonder whether ASEAN will ever blossom into a true trading bloc with the influence it covets. Meanwhile, ASEAN members seem as disposed to be

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178. Gary G. Yerkey, *Supachai Says China Will Need to Prove Itself As 'Decent' WTO Member to Avoid Disputes*, 19 INT'L TRADE REP. (BNA) 237 (2002) (discussing sentiment within the WTO that China will be too preoccupied with its own compliance to play a major leadership role); John Thornhill & Gillian Tett, *Colliding Interests*, FIN. TIMES, Apr. 27, 2001.

179. Amy Kazmin, *ASEAN and China sign deal for free trade area*, FIN. TIMES (London ed.), Nov. 5, 2002, at 14, also available at 2002 WL 102373717.

180. *Id.*; Amy Kazmin, *Beijing looks to bring neighbours under its wing*, FIN. TIMES (London ed.), Nov. 5, 2002, at 14, also available at 2002 WL 102373718.

181. John Burton, *Asian leaders look to free trade area with China*, FIN. TIMES, Nov. 7, 2001, available at 2001 WL 29308061.

182. Rafael D. Frankel, *ASEAN Agrees to Broaden Economic, Trade Ties with Australia, New Zealand*, 18 INT'L TRADE REP. (BNA) 1477 (2001) (discussing ASEAN agreement to a "close economic partnership" with Australia and New Zealand); Rafael D. Frankel, *Momentum toward New WTO Round Emerges From EU and ASEAN Meetings*, 18 INT'L TRADE REP. (BNA) 1477, 1477-78 (2001) (discussing EU and ASEAN initiatives to narrow the gaps on a range of issues threatening the success of the WTO Doha round).

183. See generally Chris Rugaber, *Zoellick Meets ASEAN Ministers, While State Dept. Official Urges Closer Trade Ties*, 19 INT'L TRADE REP. (BNA) 655, 655-56 (2002) (while supportive of closer trading relations in theory, U.S. Trade Rep. Robert Zoellick said it was "far too early to talk about road maps" and a U.S. State Dept. official expressed concern over human rights violations in ASEAN member countries).

184. Glen Perkinson, *ASEAN FTA Agrees to Ease Rules On Tariff Cuts for Sensitive Products*, 17 INT'L TRADE REP. (BNA) 1354 (2000).

185. *Id.*

independent operators as a true trading group.<sup>186</sup>

#### D. Today's Challenges in the Pacific Rim

The most important recent event affecting APEC and ASEAN did not happen in the Pacific Rim but in the Arabian Gulf city of Doha, Qatar. For it was there, in mid-November 2001, that China and Taiwan were both admitted to the WTO, which initiated a new round of GATT negotiations. China and Taiwan were the two largest Asian economies still outside the WTO,<sup>187</sup> so their inclusion decidedly increases Asian influence in the Organization. It is also likely to distract attention from regional trade associations. APEC and ASEAN, however, may prove to be useful vehicles to promote Asian trade agendas—particularly China's, for there is a palpable sense that China and Japan are competing with one another for leadership in the Pacific Rim, and that China seems to be winning. China has a large and rapidly developing economy, but with enormous structural problems to overcome. If it can do so successfully, and if Japan's economy does not recover from a decade of low or no growth, then China could supplant Japan as Asia's economic engine.<sup>188</sup>

Finally, Pacific Rim trading partners have begun to negotiate bilateral free trade agreements (FTAs) with one another when regional or international negotiations falter.<sup>189</sup> This means that bilateral, regional, and multilateral negotiations are "in play" at the

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186. Peter Montagnon, *U.S. curbing cooperation efforts, says Mahathir*, FIN. TIMES (London ed.), Oct. 6, 2000, at 11; Colin Barlow, *Conditions for Malaysia's economic progress*, APEC ECON. NEWSL., Aug. 2000; Sheila McNulty, *Malaysia plans policy shift to attract foreign investors*, FIN. TIMES (London ed.), Oct. 30, 2000, at 14.

187. Gary G. Yerkey & Daniel Pruzin, *New Bush Administration Signals Fresh Approach to WTO Talks*, 18 INT'L TRADE REP. (BNA) 154, 156 (2001).

188. See generally FISCHER, *supra* note 6. Of particular note is ch. 12 (arguing that China, having been eclipsed and embarrassed by the West, will redouble its efforts to master the skills needed to prosper in today's trading world) and ch. 11 (arguing that Japan has gone from being the envy of other nations to a global pariah."). See also Noah J. Smith, *Taipei Complains of China Action to Bar It From Talks With Hong Kong, Macao, ASEAN*, 18 INT'L TRADE REP. (BNA) 1950, 1950-51 (2001) (China is showing a budding leadership role in the region, but distance still remains between Taiwan and China); Toshio Aritake, *METI Says Japan Trade Woes Not a Worry, But Warns China Is Formidable Competitor*, 18 INT'L TRADE REP. (BNA) 1233 (2001); Pruzin & Yerkey, *Japan Hits Back at Zoellick*, *supra* note 107, at 1780-81 (U.S. Trade Rep. criticized Japan for its "negative attitude" over the upcoming ministerial conference). Noah J. Smith, *China Blocks Japanese Imports in Move Seen as Retaliation for Emergency Tariffs*, 18 INT'L TRADE REP. (BNA) 711 (2001) (discussing the potential for continued retaliatory trade measures between China and Japan).

189. Sheila McNulty, *Bilateral trade deals gain favour*, FIN. TIMES (London ed.), Nov. 16, 2000, at 17.

same time. Pressure to reach any favorable trade deal is exerted by regional consolidation such as the prospect of EU enlargement; by the Western Hemispheric pursuit of a Free Trade Association of the Americas; and by APEC's ever-expanding agenda.

Singapore has long favored FTAs, and agreed in Brunei to negotiate one with the United States. Japan also recently embraced the idea and is negotiating one with South Korea. APEC ministers have approved such arrangements, providing they are WTO and APEC compatible. The arrangements are, after all, easy to negotiate between similar economies. Whether bilateral FTAs contribute to, or detract from, regional and multilateral negotiations remains to be seen. They are at best a patchwork. FTAs are being pursued, however, out of frustration with the slow pace of multilateral negotiations. Despite being motivated by frustration, negotiations at any level are generally positive, and often synergistic.<sup>190</sup> In other promising news for proponents of trade liberalization, the Bush administration, despite its preference for a new GATT round, is prepared to negotiate regional (FTAA, APEC) and bilateral deals as a way of maintaining momentum.<sup>191</sup>

Economic recovery and reform in Asia have brought fresh opportunities, but also new challenges. After all, the numerous "capacities" referred to in various trade documents need to *be* built, and the significant problems of developing the LDCs need to be addressed.<sup>192</sup> For the moment, APEC is the nearest thing to a laboratory in which to develop initiatives to address third-generation trade problems.<sup>193</sup> This is because APEC is small, diversified, and

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190. *Id.*

191. *New Bush Administration Signals Fresh Approach to WTO Talks*, 18 INT'L TRADE REP. (BNA) 154, 154-156 (2001); Guy de Jonquières, *Trading nations agree deals two by two*, FIN. TIMES, Oct. 16, 2001, available at 2001 WL 29303443; see also Guy de Jonquières, *Bush pushes for backyard deal*, FIN. TIMES, Oct. 16, 2001, available at 2001 WL 29303599; Rosella Brevetti, *FTAA Could Have Wide-Ranging Effects On U.S. Trade and Investment, GAO Says*, 18 INT'L TRADE REP. (BNA) 1566 (2001); Edward Alden & Stephen Fidler, *Bush stresses commitment to free trade*, FIN. TIMES, Apr. 18, 2001, at 10.

192. The Director-General of the WTO said that it was "(his) duty . . . to ensure that ministers are held accountable for their words at Doha." If the assistance promised to developing nations is not forthcoming, the WTO's fifth ministerial conference (in 2003) "will face some real problems." Daniel Pruzin, *Trade Officials Assess Winners, Losers In Aftermath of Doha Ministerial Meeting*, 18 INT'L TRADE REP. (BNA) 1856, 1858 (2001).

193. Drysdale, *supra* note 111 (arguing that APEC has acted as an "effective forum for Asian and Pacific countries to define strategy for trade economic diplomacy that is particularly suited to the development objectives, diversity and global interests of the region"); Andrew Elek, *Symposium on APEC 2002, the year of Mexico*, APEC ECON. NEWSL., Mar. 2002 (arguing

includes both developed and developing nations, East and West. So long as global organizations do not advance the trade agenda, regional ones surely will.<sup>194</sup>

#### IV. CONCLUSION

New trade deals are just as likely—probably even more likely—to be worked out within regional trade groups such as APEC, as in a full WTO round.<sup>195</sup> Whereas GATT negotiations are expected to be ongoing, the next WTO ministerial will not be held until September 2003, and promises to be difficult.<sup>196</sup> To expect the round to conclude by 2005 seems Panglossian.<sup>197</sup> APEC leaders, however, meet annually, and have developed relationships with non-governmental organizations and business leaders (the APEC Business Advisory Council), relationships still not formalized in the WTO. Hence, APEC initiatives can have a profound effect on WTO undertakings, not least because of the size and importance of the Pacific Rim region. In truth, the two blocks act synergistically. But the synergism often begins in APEC.<sup>198</sup>

That does not mean to imply that APEC members will always act as a block. Rather, APEC will evolve into a variety of floating alliances, depending upon the issue involved. These alliances will be neither Eastern or Western but will frequently combine the two. For example, the United States and Australia do not agree about certain issues involving autos, textiles and agriculture. Our best ally in the South Pacific is closer to Asia on the former two. Australia and Japan enjoy a growing bipolar trade but do not agree on agriculture.

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that APEC has made worthwhile progress on some relatively new issues and can take a lead in terms of shaping multilateral principles, agreements and disciplines).

194. *WTO chair issues checklist of issues for preparations for Qatar ministerial*, 18 INT'L TRADE REP. (BNA) 652 (2001); see also BUREAU OF NATIONAL AFFAIRS, WTO WATCH, No. 6, Dec. 3, 1999.

195. See generally Gary G. Yerkey, *2002 Outlook*, 19 INT'L TRADE REP. (BNA) 137, 140 (2002) (portraying the Europeans and Americans as having difficulty in expanding trade liberalization); Daniel Pruzin, *Zoellick Holds Talks With Cairns Group, African Nations on Biotech, Farm Issues*, 19 INT'L TRADE REP. (BNA) 112 (2002); Rossella Brevetti, *FTAA Draft Text Contains Proposal For Accelerated Farm Tariff Elimination*, 18 INT'L TRADE REP. (BNA) 1106 (2001).

196. *Coming unstuck*, ECONOMIST, Nov. 2, 2002, at 14.

197. See Jane Drake-Brockman, *New WTO Round launched at Doha*, APEC ECON. NEWSL., Dec. 2001 (discussing how APEC member governments realized the value of comprehensive rather than sectoral negotiations).

198. Drysdale, *supra* note 111; Findlay & Parsons, *supra* note 116 (arguing that APEC's Shanghai Ministerial demonstrated its continued preeminence).



Japan is looking to increase its trade with Asia and Latin America, as is Korea with China.<sup>199</sup>

Even if APEC is no more than a “talking shop,”<sup>200</sup> it does draw together the leaders of twenty-one important economies once annually and their ministers far more frequently. There is always pressure on APEC leaders to take some further market-opening step. Whereas ministers may be wary, even timid, the leaders do not want to be seen as such. No doubt they are emboldened by the company of fellow leaders and the prospect of joint action. They confront one another about unfulfilled promises and try to agree on future goals. In bilateral and multilateral meetings, they are able to promote their interests while learning the problems of their counterparts. If some new trade openings can be negotiated in these circumstances, even if voluntary, that is progress.

Every summit since Seattle in 1993 has seen some widening or deepening of APEC pledges.<sup>201</sup> That is what APEC is all about: peer group pressure to open domestic economies; to foster cooperation; and to end suspicion and animus. As a group, APEC leaders have shown a capacity for vision and commitment that virtually none of them would have undertaken unilaterally. Their agreements have a head start at the WTO level because of the size and diversity of the Pacific Rim economies.

Regional cohesion was slowed by the recent economic turmoil in Asia, although that very turmoil produced needed reforms. Recovery has not been easy, given the pressure on each nation to rebuild its economy, even at the expense of its neighbors. But the region will succeed or fail as a whole, due to its interdependence.<sup>202</sup> This requires collective action, and APEC is an obvious vehicle for this.

This is not to say that APEC (or ASEAN for that matter) will necessarily play the role that it might play within the region. For, as recounted above, the Asian-Pacific market is in a significant state of

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199. Gordon de Brouwer & Tony Warren, *Strengthening Australia-Japan Economic Relations*, APEC ECON. NEWSL., May 2001; Toshio Aritake, *Japan Should Pursue Free Trade Pacts, Continue Support for WTO, Ministry Says*, 18 INT'L TRADE REP. (BNA) 822 (2001); James Lim, *Slowing of U.S. Economy Shifts Investment from South Korea to China*, 18 INT'L TRADE REP. (BNA) 784 (2001).

200. See de Jonquières, *Talkshop*, *supra* note 148.

201. Drysdale, *supra* note 111.

202. *Despite U.S. slowing, East Asian economies will grow this year*, 18 INT'L TRADE REP. (BNA) 580 (2001); Gary G. Yerkey, *Recovery in Asia-Pacific Region Possible Next Year but 'Risks' Remain*, 18 INT'L TRADE REP. (BNA) 1743 (2001).

flux. Will China's effort to meet its WTO obligations (or to avoid or defer them)<sup>203</sup> distract it from further regional involvement? It appears doubtful because China, a self-professed "developing economy," has allies in the region (particularly among ASEAN members) to help it confront the WTO.<sup>204</sup> Moreover, a recent, smooth leadership change in China left former Communist party boss Jiang Zemin and his cohorts enough power to ensure the continuity of his market reform program. Will the contest between China and Japan over Asian "leadership" divide the region? Apparently not, insofar as China appears to have the momentum and Japan seems disinterested or distracted.<sup>205</sup> Will ASEAN, which finally launched its long-planned free trade area in 2002, seize the initiative from APEC?<sup>206</sup> This is possible, but unlikely. China, Japan, and South Korea are likely to cultivate relations with both regional groups in order to leverage WTO negotiations and enforcement. But they are *members* only of APEC. Furthermore, Asian economies cannot prosper without the Americas, and the latter nations are represented regionally in APEC alone.

So, far from marginalizing Asian-Pacific regional trade associations, the WTO seems to be taking aboard some of their suggestions and initiatives. Rather than competing, the WTO and the

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203. "China is making enormous changes to meet its WTO obligations. [It is] restructuring industries, publishing previously internal laws and regulations, establishing formal procedures to adjudicate disputes, and leveling the playing field for foreign companies." Chris Rugaber, *2002 Outlook*, 19 INT'L TRADE REP. (BNA) 140 (2002). Among numerous sources about these reforms are: *Chinese policy makers prepare to make legal system compatible with WTO rules*, 17 INT'L TRADE REP. (BNA) 140 (2000); *Credit where it's due*, ECONOMIST, Sept. 9, 2000, at 93; Noah J. Smith, *China Reforming Tax System In Preparation for WTO Accession*, 17 INT'L TRADE REP. (BNA) 1938 (2000); but cf., Noah J. Smith, *China Will Use 'Every Means' Available To Protect Agricultural Sector*, Official Says, 19 INT'L TRADE REP. (BNA) 88 (2002).

204. Daniel Pruzin & Gary G. Yerkey, *2002 Outlook*, 19 INT'L TRADE REP. (BNA) 137, 139 (2002).

205. See James Kynge & Richard McGregor, *Chinese old guard gives way to new in orderly handover*, FIN. TIMES, Nov. 15, 2002, at 8; *Who's in charge now?*, ECONOMIST, Nov. 23, 2002, at 40; Toshio Aritake, *Japan, China Fail to Settle Dispute On Farm Products; Next Step Probably WTO*, 18 INT'L TRADE REP. (BNA) 2035 (2001); Noah J. Smith, *Foreign Direct Investment in China Up 15 Percent in 2001 Ministry Says*, 19 INT'L TRADE REP. (BNA) 123 (2002); Toshio Aritake, *Japan Releases Revised Package of Mostly Minor Deregulation Items*, 17 INT'L TRADE REP. (BNA) 559 (2000); Toshio Aritake, *Japan to Propose Measures to Begin Action Plan for Free Trade Pact with ASEAN*, 19 INT'L TRADE REP. (BNA) 59 (2002); Corbett, *supra* note 98. China's commencement of free trade negotiations with ASEAN has spurred Japan to suggest the same, but it has yet to begin, and the idea is opposed in Japan. See Pruzin & Yerkey, *2002 Outlook*, *supra* note 204.

206. See *ASEAN Free Trade Area Launched Jan. 1*, 19 INT'L TRADE REP. (BNA) 28 (2002); Rugaber, *2002 Outlook*, *supra* note 203, at 159.

Asian Pacific regional trade associations are acting synergistically. WTO negotiations could easily be influenced by consensus agreements reached first in smaller regional groups, like APEC and ASEAN, which represent nearly one-half of world trade.<sup>207</sup>

Ultimately, regional coalitions cannot pursue their objectives at the expense of global concerns. The former ultimately must be a stepping-stone to the latter. This will require U.S. leadership, but of a more enlightened sort. At the end of the day, national, or even regional concerns, must give way to the greater good.<sup>208</sup>

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207. A leading research institute reports that the Shanghai APEC Summit (2001) “[demonstrates] once again APEC’s pre-eminence as *the* body for regional cooperation in the Asia Pacific” (emphasis added). Findlay & Parsons, *supra* note 116.

208. Wolf, *supra* note 90; *see generally* ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OPEN MARKETS MATTER, at 5 (1998) (documenting “the contribution of trade and investment liberalization to wealth creation and well-being”).