

# THE JAPANESE VIEW TOWARD NAFTA AND REGIONAL TRADE ZONES

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## I. INTRODUCTION

In the Global Partnership Plan of Action signed in January 1992,<sup>1</sup> President George Bush and Prime Minister Kiichi Miyazawa came to a fundamental agreement. The United States promised to ensure that the North American Free Trade Agreement (NAFTA)<sup>2</sup> would enhance global free trade, in accordance with basic principles of the General Agreement on Tariffs and Trade (GATT),<sup>3</sup> and would not lead to the erection of trade barriers for countries outside of the North American market.<sup>4</sup> However, without evidence that Japan is opening its markets to North American and European companies, there is little likelihood that President Bush will actually pursue these goals in the face of domestic pressures to adopt more protective trade measures directed at Japan.<sup>5</sup> These pressures have mounted over the past ten years, as the United States trade deficit with Japan remains large, while its deficit with Europe has disappeared.<sup>6</sup> At the same time, the Japanese have refused to respond to pressure,<sup>7</sup> initiated by corporate and political leaders in the United States,<sup>8</sup> to reform their business practices to correspond to those followed in North America and Europe.<sup>9</sup> This refusal, along with

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1. *Text of U.S.-Japan Global Partnership Plan of Action*, JAPAN TIMES, Jan. 11, 1992, at 3.

2. See Joint Statement Announcing Canada-Mexico-United States Trilateral Free Trade Negotiations, 27 WEEKLY COMP. PRES. DOC. 133 (Feb. 5, 1991).

3. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A3, 55 U.N.T.S. 187 [hereinafter GATT].

4. *Text of U.S.-Japan Global Partnership Plan of Action*, *supra* note 1, at 3.

5. *Congress Told to Retaliate on Investor Discrimination*, MAINICHI DAILY NEWS, Jan. 24, 1992, at 7, 8; *US Congressmen Favor Trade Imbalance Retaliation*, MAINICHI DAILY NEWS, Nov. 11, 1991, at 1; Yoshikuni Sugiyama, *Anti-Japan Car Bills Submitted in U.S.*, DAILY YOMIURI, Jan. 24, 1992, at 16.

6. Jim Mann, *Bush's Tour Reflects New Realities in U.S.-Asia Ties*, L.A. TIMES, Jan. 11, 1992, at 7, 8.

7. J. Douglas Johnson, *Japan Won't be Remade, American-Style*, L.A. TIMES, Sept. 18, 1991, at 7. Tadao Chino, Japan's Vice Minister of Finance, said Japan will remain "defiantly independent from the United States." *Id.*

8. "The Japanese must change their systems of competition and change . . . to bring them into material alignment in all respects with those in North America and those in Europe." *Id.* (quoting Joseph T. Gorman, Chairman of TRW Inc.).

9. An example of this discrepancy is found:

when [U.S.] and Japanese product prices are individually analyzed . . . [This analysis points] to substantial trade barriers in Japan that adversely affect only foreign products. Prices for the same U.S. or European products are about 65 percent higher in Japan than in the United States. For example, a U.S. made laser printer

the ever-increasing trade disparity between Japan and the United States, raises the distinct possibility that NAFTA will provide for trade measures that violate antidiscrimination GATT principles.

Given Japan's reluctance to make concessions in the Uruguay Round of negotiations,<sup>10</sup> Japanese government officials and company executives are preparing for this possibility and are beginning to lodge protests against potential GATT violations that might arise from the consummation of a North American free trade agreement. Yasuo Tanabe, the director of the North American Trade Planning section of Japan's Ministry of International Trade and Industry (MITI), has challenged NAFTA as a "threat to the international trade system."<sup>11</sup> Criticism such as this is unusual, yet it reflects a reaction to pressure exerted by the United States and Canada on the creation of the fifteen nation Asia Pacific Economic Cooperation group (APEC),<sup>12</sup> and their desire for APEC to take a different course than that of NAFTA or the European Community (EC).<sup>13</sup> Consequently, the Japanese are somewhat mistrustful of the intentions of the United States and Canada due to the apparent hypocrisy.<sup>14</sup>

Despite these criticisms and the apparent Japanese reaction against the formation of a North American free trade zone, Japanese opposition may not be as strong as it appears, as the Japanese have done very little to ameliorate the potential divisive situation that is evolving. Japan,

costs \$449 in the United States, but more than \$825 in Japan. . . .

But prices for Japanese products sold in the United States or Europe are almost exactly the same as in Japan. For example, a Japanese camera that sells for \$555 in the United States costs \$578 in Japan. The Japanese-made film costs \$3.50 in the United States, \$3.25 in Japan.

Virtually none of these products were subject to tariffs. Transportation costs, which should normally raise the cost of goods in foreign markets by about 5 percent to 15 percent, were not factors, either. This strongly suggests that nontariff trade barriers are the reason why foreign product prices are strikingly higher in Japan . . .

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Another favored explanation is that Japan's inefficient distribution system drives up prices of both foreign and domestic products. . . . [T]he system is especially inefficient—and thus a trade barrier—only for imports.

David Friedman & Loren Yager, *U.S. Autos: On the Road to Nowhere*, DAILY YOMIURI, Jan. 12, 1992, at 7.

10. Michio Sato & Yoshikuni Sugiyama, *Summit Seen Opening Era of Managed Trade*, DAILY YOMIURI, Jan. 11, 1992, at 16. Japan's position on trade barriers on rice is a notable example of its reluctance to concede on GATT issues. *Id.*

11. Edith Terry, *North American Free Trade Concerns Japanese*, GLOBE & MAIL (Toronto), Nov. 11, 1991, at B3.

12. APEC is "a new regional economic organization whose membership includes the United States, Japan and 13 other nations on both sides of the Pacific." Mann, *supra* note 6, at 8.

13. Terry, *supra* note 11, at B3.

14. *Id.*

although acknowledging through its Economic Planning Agency (EPA) that "free trade zones would be discouraged from becoming economic blocs if GATT were to operate more effectively and thereby impart confidence in the free trade system,"<sup>15</sup> refuses to make concessions which would facilitate compliance by the United States, Canada, and Mexico with GATT.<sup>16</sup> Furthermore, Japanese leaders recognize that changing their business practices and opening their markets to the West could lead to a less restrictive free trade agreement, yet they consistently refuse to comply with these demands.<sup>17</sup> These same leaders must also be aware of the recent conclusions of the EPA that the growth of regional trade agreements could signal a shrinkage of world trade.<sup>18</sup>

Japanese intransigence may result from the belief that concessions are unnecessary, as Japan may actually derive a long-term benefit from NAFTA. Japanese companies are financially strong enough to invest directly in North America and counter local content requirements<sup>19</sup> in a restrictive trade agreement. Japan would then develop economic hegemony over Asian nations with limited access to the North American market.

## II. NORTH AMERICAN FREE TRADE AGREEMENT

Japanese lobbyists and trade organizations are already mounting a coordinated campaign to minimize the negative impact of NAFTA on Japanese companies and their North American operations. In meetings with the Mexican Ministry of Commerce and Industry, the NIKKEI Enterprise Group<sup>20</sup> argued that the local content requirement should be lower in Mexico because its industrial power is less than that of the United States and Canada; the group urged Mexico to consider both its role and responsibilities as a Pacific Rim country.<sup>21</sup> As Korean

15. ECONOMIC PLANNING AGENCY, GOVERNMENT OF JAPAN, *THE JAPANESE PERSPECTIVE ON THE WORLD ECONOMY 1991 (SUMMARY)* 35 (1992).

16. Editorial, *Take Initiative on Rice Issues*, DAILY YOMIURI, Jan. 12, 1992, at 6.

17. *Japanese Fearful of Regional Trade Blocs*, WORLD TRADE NEWS, Dec. 4, 1991, at 7.

18. *Id.*

19. See *infra* notes 26-32 and accompanying text.

20. The NIKKEI Enterprise Group represents twenty-five Japanese companies with investments in and near Tijuana, Mexico who oppose Mexico's participation in NAFTA under the terms proposed by the United States.

21. *NAFTA ni taisuru nikkei kigyō no yōbō*, JETRO, Dec. 6, 1991, at 1. The Japanese Chamber of Commerce and Industry in Mexico surveyed its member companies on NAFTA and its impact. More than 70 percent of the companies thought that NAFTA was needed for Mexico, but more than 90 percent thought that NAFTA might create an economic trading block. Trading companies and manufacturers thought that NAFTA would increase business opportunities by enlarging the Mexican domestic market and opening a door to the American market. However, these same companies were worried that NAFTA might have a negative impact on trade between Mexico and Japan, particularly concerning local content requirements. *Kaigai Kara no Hōkoku: NAFTA kōshō wo niranu nikkei makiradōra kigyō (Mekishiko Sentā)*, JETRO

businessman Lee Hahn-Koo noted, reflecting the thoughts of many Japanese as well, "the success of the Mexican economy will depend to a large extent on' how the NAFTA talks progress, since 'the more protectionism there is, the less attractive Mexico will be'" to Asian investors.<sup>22</sup>

Mr. Tanabe of MITI argued similarly that Canada might offend its Asian partners by giving priority to NAFTA and, during Canadian Trade and Industry Minister Michael Wilson's 1991 visit to Japan, specifically stated that, "[i]f Canada spends too much time on the eastern side of the Pacific, there is a danger that countries on the western side will be angry with it."<sup>23</sup> Mr. Toshio Kunii, chairman of the Japan Automobile Manufacturers' Association of Canada, said that the imposition of NAFTA with high North American manufactured parts content requirements on automobiles would lead Japanese automobile manufacturing companies to decrease investment in Canada.<sup>24</sup> He added that it would be in Canada's best interest to oppose an increase from the current 50 percent local content level which is required to achieve duty-free status, as the United States-Canada Free Trade Agreement dictates.<sup>25</sup>

Under the current agreement between the United States and Canada, automobiles assembled in one of the two countries and shipped to the other are exempt from tariffs if at least half their content comes from either, or both, countries.<sup>26</sup> Automobile and electronic company executives are pressing for a local content requirement in NAFTA similar in style to the one found in the free trade agreement with Canada, as they are worried that Japan may attempt to expand its use of Mexico as an export door to the United States.<sup>27</sup> It is feared that these industries will be unable to compete with Japanese manufacturers in Mexico unless the agreement imposes "tight restrictions on the definition of what

SENSOR, Aug. 1991, at 121-22.

22. Eduardo Garcia-Aquilar, *Asia's Interest in Mexico Overshadowed by Proposed Free Trade Accord*, Agence France Press, Nov. 24, 1991, available in LEXIS, Nexis Library, Wire File.

23. Terry, *supra* note 11, at B3.

24. *General Developments*, 8 Int'l Trade Rep. (BNA) No. 44, at 1633 (Nov. 6, 1991).

25. *Id.* On December 5, 1991, the Japanese Consulate General in Toronto announced the findings of a survey of the thirty leading Japanese business firms in Toronto on NAFTA. The firms linked the decline of international competitiveness in Canada's industrial sector with the reduction in business opportunities for Japanese companies in Canada. They attributed this decline to high wages, the taxation system, and low enthusiasm for research and development. Most companies agreed that NAFTA may open up the Canadian market in the short-term and provide a constructive adjustment of Canadian industry in the mid to long run. *Kanada no kyōsōryoku teika nikkei kigyō mo shinpai — Toronto sōryōjikan ga chōsa*, JJI PRESS (Toronto Branch Office), Dec. 5, 1991, at 50.

26. United States-Canada Free Trade Agreement Implementation Act of 1988, Pub L. No. 100-449, § 202, 102 Stat. 1851, 1856 (1988).

27. Bruce Stokes, *Export Platform*, 1991 NAT'L J. 1258.

makes a product 'Made in Mexico'."<sup>28</sup> United States and Canadian automobile and automobile parts companies are calling for even higher local content requirements than the current 50 percent, in the range of 60 to 75 percent local content, for foreign, particularly Japanese, "transplant" automobile assemblers to be allowed to obtain duty free entry of parts into Canada.<sup>29</sup> "Higher local content standards would force Japanese auto makers [either] to upgrade their North American factories, costing billions of dollars,"<sup>30</sup> or to purchase automobile parts from North American suppliers. Japanese companies and the Japanese government are clearly concerned about this potential outcome and are closely monitoring the current situation between the United States, Canada, and Mexico.<sup>31</sup>

Nonetheless, many Japanese industries have the financial strength to continue to invest directly in North America, while the rewards of these investments will flow back to Japan due to the establishment of the *keiretsu* system in North America.<sup>32</sup> Thus, even a higher local content requirement will not be entirely successful at limiting Japanese access to the North American market.

Japanese automobile manufacturers have discretely encouraged Japanese automobile parts manufacturers to open plants in the United States where the establishment and success of the *keiretsu* system has already become evident.<sup>33</sup> For instance, a Honda plant in Ohio has been buying parts from its *keiretsu* affiliated Japanese parts manufacturers without utilizing an open and fair bidding process on the basis of quality and price.<sup>34</sup> Given the *keiretsu* affiliation, it is doubtful

28. Garcia-Aquilar, *supra* note 22.

29. *General Developments, supra* note 24, at 1633. "General Motors of Canada Ltd. has proposed a 60 percent rule, Ford Motor Co. and Chrysler Ltd. a 70 percent rule and the Canadian part industry a 75 percent rule of origin." *Id.*

30. Terry, *supra* note 11, at B3.

31. See *Beika kyōtei no hyōka narabe ni kyōtei hakkōgo no kigyō senryaku*, JETRO (Foreign Economic Information Center), 90-REA, 719-1541, Mar. 1991, at 54-61.

32. The *keiretsu* system permits the functionally integrated corporate groups "to capture economies of scale and exploit industrial linkages as a group." TERUTOMO OZAWA, *MULTINATIONALISM JAPANESE STYLE* 66 (1979). The five major trading companies, Mitsubishi, Mitsui, Marubeni, C. Itoh, and Sumitomo, head such corporate *keiretsu* groups. Corporate group companies tend to do business with each other. There are interlocking boards of directors and corporate shareholding between companies in the same group.

33. There is little direct evidence of such encouragement, as the Japanese are well aware that the United States would protest vehemently if knowledge of such actions were brought to its attention.

34. Robert Pear, *U.S. Says Honda Skirted Customs Fees*, N.Y. TIMES, June 17, 1991, at D6.

'Of approximately \$775 of materials or parts for the [Honda] engine assembled in Ohio, . . . only three parts (\$9.06) and \$42.69 of raw materials are sourced from U.S.-based companies that do not have an equity relationship with Honda.' . . .

The engines are important because they account for a substantial portion of the materials Honda listed as originating in North America to satisfy the 50 percent local

that even a high local content requirement by itself assists the competitive position of United States automobile manufacturers and parts suppliers. At best, there will be short-term improvement while the Japanese automobile companies and parts manufacturers increase their investments in the United States.

Japanese automobile companies have also transplanted the *keiretsu* system to Mexico; these manufacturers understand the advantage that manufacturing in low cost nations can provide in penetrating foreign markets.<sup>35</sup> The Japanese companies export components to Mexico which are then assembled by low paid Mexican workers. The resulting products are exported to the United States with a label indicating that they are officially Mexican products.<sup>36</sup> For instance, Japanese electronics companies in Mexico export over four million televisions to the United States each year.<sup>37</sup> Anticipating that NAFTA will be effective in 1992 or 1993, Nissan-Mexico has planned to increase its automobile production by renovating its three existing manufacturing plants and constructing a new automobile assembly plant by 1993.<sup>38</sup> Nissan-Japan is encouraging its *keiretsu* automobile parts manufacturers to invest in Mexico.<sup>39</sup> Mr. Harley Shaiken, associate professor at the University of California at San Diego, confirming the concerns of United States automobile executives, suggests that Japan could exploit NAFTA to its competitive advantage by using Mexico as a high technology export door into the United States and Canada.<sup>40</sup> To date, "only 70 of

content rule.

*Id.* (quoting the United States Custom Service Auditors Report on Honda). Most of these parts are provided by Honda's *keiretsu* affiliated companies. *Id.*

35. One of these advantages is the avoidance of U.S. tariffs by investing in so-called *maquiladora* industries located in a zone along the U.S.-Mexican border. "A *maquiladora* is a Mexican processing or assembly plant that receives raw materials and component parts from a foreign corporation free of import duties. Workers at the plant then assemble the goods into finished products to be exported with a tax levied only on the value added in Mexico. . . . The *maquiladora* system also lures manufacturing firms away from Asia and into Mexico, where they can take advantage of relaxed tariffs." Michael Scott Feeley & Elizabeth Knier, *Environmental Considerations of the Emerging United States-Mexico Free Trade Agreement*, 2 DUKE J. COMP. & INT'L L. 257, 273-74 (1992).

36. Garcia-Aquilar, *supra* note 22.

37. *Remarks by U.S. Senator John McCain (R-AZ)*, Fed. News Serv., Nov. 14, 1991, available in LEXIS, Nexis Library, Omni File.

38. *Nissan to Boost Mexican Output*, Japanese Econ. Newswire, Sept. 19, 1991, available in LEXIS, Nexis Library, Omni File.

39. The Mexican Embassy in Japan sponsored a seminar in June 1990 for companies considering investments in Mexico. The seminar was conducted by Mexico's Minister of Commerce and Industry and two company executives of Nissan-Mexico. Representatives from Japanese automobile parts manufacturers who have business relationships with Nissan-Mexico attended this seminar. *Nissan: mekishiko de no seisan kyōka; beimuke yushutsu ni shōjun; hinshitsu kaizen he no buhinkyōkyū sei bi*, NIKKEI SANGYO SHIMBUN, Oct. 11, 1991, at 11. See also H. Tanaka, *Hokubei jiyū boeki kyōtei; ikigai sannryū no sabetsu wa keikai; beikame ni zeseiyōkyū; seifui gensanchi kiseikyōka no ugoki*, NIKKEI SANGYO SHIMBUN, Oct. 8, 1991, at 1.

40. Stokes, *supra* note 27, at 1258.

the 1,924 *maquiladora* plants along the U.S.-Mexican border [are] Japanese-owned."<sup>41</sup> Great Britain and Germany have greater investments in these so-called *maquiladora* plants,<sup>42</sup> but the Japanese companies pose a more long-term competitive threat with their ability to use Mexican workers in high technology jobs.<sup>43</sup>

The competitive advantage of the Japanese is derived in the long run from the use of highly efficient, Japanese designed production processes, and not only from low-cost Mexican labor and the importation of parts from Japan, suggests Shaiken.<sup>44</sup> Unless United States companies prepare to respond in kind to Japan's commitment, local content requirements provide only a short-term boost to their competitiveness and it may be Japanese companies that ultimately prosper from NAFTA.

A recent report published by the Economic Strategy Institute in Washington, D.C. supports Professor Shaiken's views. It concludes that the business and trade environments in the United States and Japan are so structurally, institutionally, and culturally different, to Japan's advantage, that it is impossible for United States automobile manufacturers to compete.<sup>45</sup> The basic framework, institutions, and business practices of Japanese society are, obviously, beyond the means and legal jurisdiction of the United States to change. According to Ichira Kataoka, leader of Japan's Office of Trade Ombudsman and Dean of Osaka's Ryutsuu Kagaku University, "there aren't any areas in Japan where *keiretsu* doesn't exist," and *keiretsu* will not be dismantled by outsiders.<sup>46</sup> Tadao Chino, Japan's newly appointed Vice Minister of

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* The results of Japanese companies' willingness to use their most advanced technology and manufacturing techniques in their Mexican plants are evident.

The Ford Motor Co. automobile assembly plant in Hermosillo, Mexico, built with Mazda Motor Corp., using Japanese equipment and largely Japanese parts and with a fifth of the work force trained in Japan, has higher productivity and better quality than any U.S.-owned facility in Mexico. Furthermore, it ranks higher than many U.S.-based assembly lines.

*Id.*

45. 'Car Transplants' Called Drain on U.S. Economy, JAPAN TIMES, Jan. 7, 1992, at 1 (discussing ECONOMIC STRATEGY INSTITUTE, THE CASE FOR SAVING DETROIT (1992)). Of the automobiles displaced by the current Japanese domestic U.S. production (1.9 million units), 70 percent were U.S. domestic models and 30 percent were foreign car imports. Because so many parts of the domestically assembled Japanese automobiles are imported, there is a net loss of 83,201 jobs per million of the American population, the difference between jobs provided by the Japanese transplants (41,154 jobs per million population) and the loss of jobs resulting from the displacement of domestic automobile production (124,355 jobs per million population). *Id.*

46. Ronald E. Yates, U.S. Companies Should Direct Gaze Inward, MAINICHI DAILY NEWS, Nov. 11, 1991, at 2.

Finance, "promised to use Japanese foreign aid to facilitate the globalization of corporate Japan, [and] to remain unyielding to United States demands that Japan change its *keiretsu* corporate conglomerates . . ."<sup>47</sup> Vice Minister Chino is stating what has been obvious for years to scholars studying Japanese culture. Japan will not be made over in the image of the United States.

### III. FEASIBILITY OF A JAPAN-LED SOUTHEAST ASIAN TRADE BLOC

Japan's potential to benefit from NAFTA extends beyond the gains it may receive from direct investment in North America. Japan is positioned to lead an Asian trade bloc with restricted trading access to North America.

The feasibility of a Japanese-led Asian trade bloc once seemed remote. After World War II, Japan refrained from asserting itself in an Asian-Pacific regional leadership role to avoid criticism from its Asian neighbors that it was returning to its pre-War imperialist ambitions. Japan forged a special economic relationship with the United States and focused on global, as opposed to regional, economic development. However, the recent economic and political integration in the EC, and the prospect of NAFTA, has reawakened Japanese interest in an Asian-Pacific regional economic strategy which might exclude the NAFTA nations.<sup>48</sup>

Changing world politics have decreased Japan's reliance on the United States. The disappearance of the Soviet threat has severely weakened the bonds that strengthened the mutual security relationship between the two countries. Furthermore, the prospect of a United States military disengagement in Southeast Asia, the need to assist China, and the disintegration of the Soviet Union have spurred Asian states to become more responsible regional players.<sup>49</sup> Japan, with the region's biggest coffers, could take advantage of this situation and advance toward bolder Asian-Pacific leadership in the economic and political arena. As Asian-Pacific nations obtain capital, technology, and skills, Japan gains access to low-cost labor for its transplanted companies in addition to new markets for its products.<sup>50</sup> Japanese companies, recognizing both future business opportunities and needs, have thus

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47. J. Douglas Johnson, *Candor Needed to Save U.S.-Japan Relations*, JAPAN TIMES, Sept. 22, 1991, at 19.

48. Yoichi Funabashi, *Japan and the New World Order*, FOREIGN AFFAIRS, Winter 1991, at 58, 65.

49. *Id.* at 66.

50. Arthur Zich, *Japan's Sun Rises over the Pacific*, NAT'L GEOGRAPHIC, Nov. 1991, at 36, 43.

increased their investment throughout Asia.<sup>51</sup> An influential Japanese business leader, Yotaro Kobayashi, proposes "that Japan should find its 'home' in Asia, in the same way that . . . Russia should find its [home] in Europe."<sup>52</sup> He further has suggested that "Japan explore the possibility of playing a role as regional 'co-chairman' with China."<sup>53</sup>

Concurrently, the seven nations of South Asia<sup>54</sup> seek to "deepen their relationship with Japan."<sup>55</sup> Japan shares some cultural affinities with these nations and lacks historical animosities that have affected its political and economic relations with other Asian nations. Asian victims of Japanese aggression during World War II are diminishing in number and thus decreasing the impediment to much cooperation with Japan by those who still view it as a closet militarist that could rise again. Although many Asians still worry that Japan is seeking economic domination rather than cooperation,<sup>56</sup> the yen is universally welcome as an economic savior by its Asian neighbors and Japan is the leading investor, trading partner, and foreign aid donor in the region.<sup>57</sup> Asian nations seek to emulate Japanese management and organizational techniques.<sup>58</sup> If the Association of Southeast Asian Nations (ASEAN)<sup>59</sup> and South Asian nations see the future viability of their economies as dependent on Japan, they will look to Japan for leadership in the creation of any future free trade zone.

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51. Such enterprises include the building of industrial parks around Kuala Lumpur in Malaysia. *Id.* at 43. "[I]n 1989, Japan invested 1.2 billion dollars in Thailand, more than it had in the previous 35 years combined. Some 30,000 Japanese, representing more than 900 Japanese companies" brought over 300,000 jobs and a ten percent average economic growth to Thailand. *Id.* at 55. Between 1985 and 1990, Japanese investment in Australia grew from eleven billion dollars to thirty-two billion dollars. *Id.* at 58.

52. Funabashi, *supra* note 48, at 66.

53. *Id.*

54. The nations of South Asia include India, Pakistan, Nepal, Bangladesh, Maldives, Butan, and Sri Lanka.

55. Brad Glosserman, *South Asia Awaits Japan*, JAPAN TIMES, Dec. 18, 1991, at 23.

Masao Fujioka, former president of the Asian Development Bank [pointed out that] 'Japan's trade with South Asia amounted to only \$29 billion during the period 1985-1989, compared with \$190 billion with ASEAN. Japan's investment to South Asia amounted to only \$200 million companies with \$10 billion with ASEAN [sic].'

*Id.*

56. Peter Mackler, *Asians Ambivalent About Japan 50 Years After War*, MAINICHI DAILY NEWS, Dec. 2, 1991, at 2.

57. *Id.*

58. *Id.*

59. "The 24-year-old organization, comprising Thailand, Malaysia, Singapore, Indonesia, the Philippines and Brunei, has a long-standing aim of building a Zone of Peace, Freedom and Neutrality (ZOPFAN) in the region." Hiroko Kimura, *ASEAN Nations Focus on Economic Integration*, JAPAN TIMES, Nov. 2, 1991, at B1.

ASEAN also foresees Japanese participation in its developing East Asian Economic Caucus (EAEC).<sup>60</sup> A Malaysian official has even stated that Japan should play a leading role in EAEC.<sup>61</sup> In the face of United States opposition to EAEC, however, Japan has remained noncommitted on its future participation.<sup>62</sup>

A significant impetus for the members of ASEAN and the nations of South Asia to create a free trade zone is concern that North American and European investment resources and financial assistance previously targeted for those Asian countries will be diverted to Eastern Europe and the newly independent Soviet republics.<sup>63</sup> "As a result of the start of these negotiations to set up NAFTA, a lot of concern was created in Asian countries" regarding the locus of future investments, commented Mr. Tanabe of MITI.<sup>64</sup> Lower labor costs and improved access to the United States and EC markets may mean that Eastern Europe and Mexico will drain export investments from South and Southeast Asia. This scenario, if true, could hasten efforts to create such an Asian free trade zone.

Without a formal intergovernmental structure or coalition comparable to the EC or NAFTA, the health of the Asian-Pacific nations' economies is improving under Japanese leadership. Like the EC, over 60 percent of the Asian-Pacific nations' trade remains within the region.<sup>65</sup> "Japan accounts for 66 percent of the GNP of all Asian countries, including China and India, and Australia and New Zealand combined . . ." <sup>66</sup> If the United States, Canada, and Mexico attempt to form a protectionist regional trade zone through NAFTA and the EC moves in the same direction, Japan could justify pursuit of the same protectionist goals in the Asian-Pacific region. More importantly, Japan has the power to effectuate such a result, and it has already put in place the corporate infrastructure to promote regional economic cooperation.

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60. EAEC "will be a loose forum where participants can discuss economic issues of common interest on an ad hoc basis." Takashi Kitazume, *Gov't Faces Difficult Test of Regional Commitment*, JAPAN TIMES, Nov. 2, 1991, at B1. The concept of the EAEC is predicated on "bringing together the fastest expanding economies of East Asia, among them Japan, South Korea and Taiwan," with ASEAN nations. Kimura, *supra* note 59, at B1.

61. Thai Foreign Minister Arsa Sarasin said, "I think Japan ought to continue to play a major role, giving assistance to less fortunate countries through bilateral relations and also through international agencies." Kimura, *supra* note 59, at B1.

62. Kitazume, *supra* note 60, at B1.

63. *Remarks by Mr. Howard Lewis, Vice President for International Economic Affairs, National Association of Manufacturers*, Fed. News Serv., Feb. 12, 1992, available in LEXIS, Nexis Library, Omni File.

64. Terry, *supra* note 11, at B3.

65. Murray Weidenbaum, *World Trade: Globalism Vs Regionalism*, DAILY YOMIURI, Dec. 18, 1991, at 6.

66. Saburo Okita, *Japan-U.S. Cooperation Is Essential*, JAPAN TIMES, Jan. 7, 1992, at 21.

#### IV. CONCLUSION

Unsuccessful GATT negotiations at the Uruguay Round will, more than likely, increase the momentum toward the creation of regional trade blocs. The GATT provision that prohibits regional trade agreements from imposing trade barriers against the rest of the world would have little remaining significance.<sup>67</sup> As the imposition of trade barriers is no longer a remote possibility, Japan must consider its options.

Direct investment in North America made to counter local content requirements is currently being pursued. Farther down the road, Japan may first try to turn APEC into a free trade area and to link APEC with NAFTA to create a trans-Pacific trade bloc. If these measures fail and NAFTA is extended to include the rest of Latin America, Japan may strengthen its economic ties to the EAEC countries. It can be expected that ASEAN countries will then be receptive to Japanese advances.

Most of these Asian countries, including Japan, Korea, Taiwan, Hong Kong, and other Southeast Asian nations, are watching the EC and NAFTA very closely to see if they become exclusive western nation clubs. Southeast Asian nations fear that the EC and NAFTA will turn protectionist and favor Eastern Europe and South America. Thus, they have a vested interest in strengthening their economic ties with Japan.

Of all the Southeast Asian nations, however, only Japan is economically strong enough to counter trading block barriers with direct investment in EC and NAFTA member nations. As the economies of Southeast Asian nations become more advanced and regional trade becomes more active, an Asian intergovernmental trading structure or free trade zone becomes more viable with Japan playing a predominant role.

A western Pacific free trade zone, without the participation of the United States, might pose problems for Japan because of lingering political rivalries and historical antagonisms in Southeast Asia. If these obstacles can be overcome, Japan would dominate the trade zone with its overpowering economic strength; this would provide greater incentives for the EC and NAFTA to tighten their regional trade blocks to the exclusion of most Asian-Pacific nations. Unless the EC and NAFTA specifically prohibit Japanese direct investment, the development of trade zones will be countered by increased Japanese investment within the EC and NAFTA member nations.<sup>68</sup> Under this

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67. GATT, *supra* note 3, art. XXIV, 61 Stat. at A66, 55 U.N.T.S. at 268.

68. Japanese manufacturing and retail investments in Europe are increasing rapidly as the EC trading community negotiates its permanent structure. In 1990, Japanese companies carried out 440 mergers or acquisitions abroad, while foreign companies had made 18 such deals in Japan. In 1990, Japanese investment in Europe totalled \$14 billion, while European investment in Japan reached only \$1.3 billion. *Beregovay* (French Economic and Finance Minister) *Raps Japan's Trade Mentality*, MAINICHI DAILY NEWS, Jan. 16, 1992, at 7. Similar investments are

scenario, Japan and its economy are the long-term beneficiaries of regional trade zones.

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taking place in Mexico and the United States under the threat of NAFTA.

To combat this investment trend, the United States and the EC have suggested an anticircumvention rule that would undermine Japanese investments which shift manufacturing facilities to the importing country or a third country with free trade status. This rule is similar to the one contained in the EC-Japan agreement and prevents Japanese automobile manufacturers from selling large quantities of cars imported or made locally where markets are protected by quotas. *Special Tradeoff Said Reached Between France, Nissan and Toyota*, MAINICHI DAILY NEWS, Jan. 26, 1992, at 11.

Anticircumvention rules protect domestic companies that have shifted their manufacturing operations overseas and are importing and selling their products domestically. They may also protect domestic companies which sell products manufactured abroad under the domestic companies' names as part of original equipment manufacturing arrangements. These rules will likely hurt foreign capital-affiliated corporations that are creating jobs in the importing country and carrying on a good share of the production in the importing country. Hajime Ohta, *Administering the Correct Medicine?*, JAPAN TIMES, Dec. 2, 1991, at 10.