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SEOUL CONFERENCE ON INTERNATIONAL TRADE LAW: INTEGRATION, HARMONIZATION, AND GLOBALIZATION

In July 1995, the Center for Korean Legal Studies at Columbia University School of Law and the American Studies Institute at Seoul National University, in conjunction with support from the Samsung Group, held a conference on issues of international trade law in Seoul, Korea, attended by academics and practitioners from the United States and Korea. The purpose of the Conference was to provide a scholarly forum for discussing some of the salient topics and problems from the perspective of the new world economic order which has risen out of the Uruguay Round trade negotiations and the launching of the World Trade Organization (hereinafter "WTO").

This piece presents slightly edited portions of the Conference discussions, including summaries of two papers presented at the Conference, all related to the issues of international trade law.

I. OPENING REMARKS

Park Kil Jun:[1] Good morning everyone. I would now like to declare the opening of the International Trade Law Conference between Seoul National University and Columbia University.

Korea, in its rise through the ranks of international and economic and business communities, has distinguished itself as an increasingly important trading partner of the U.S. and is an important member of the World Trade Organization. Korea and the U.S. face many difficult and important issues related to trade. The American Studies Institute of Seoul National University and the Center for Korean Legal Studies of Columbia Law School will together attempt to address important bilateral and multilateral issues and to develop concrete, coherent and workable solutions that may provide a foundation for better relations between Korea and the U.S.

We will focus on three specific subject matters. The first is the integration and harmonization of international trade regimes. The second is regionalism in international trade. The third is dispute settlement in international trade. We will first hear from Professor Choi Dai-Kwon and Professor Michael K. Young.

Choi Dai-Kwon:[2] Distinguished scholars and practitioners from Columbia Law School and Seoul National University, I'm pleased to announce the opening of the Conference on International Trade Law, 1995, Seoul. First and foremost, welcome to Korea and welcome to Seoul National University.

I am sure that everyone present here today will benefit both intellectually and practically from this two day discussion and analysis of today's important topics in international trade law. The importance of these issues emerges ever more largely with the launching of the WTO, the full understanding of which requires a joint effort like the one making this conference possible. I believe and hope that we are now laying the foundation for an annual meeting that is to be held alternately in Korea and the U.S., and I also believe that what is well begun is half done in reference to our future joint endeavors. Thank you very much.

Park Kil Jun: The next opening address will be given by Professor Michael K. Young, who is the director for the Center for Korean Legal Studies at Columbia University.

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1. Professor of Law, Yonsei University.
2. Professor of Law, Director of the American Studies Institute, Seoul National University.

Michael K. Young:[3] Dr. Park, thank you very much. . . . The U.S. is Korea's largest trading partner, but I do not think that all Americans realize that Korea is the U.S.'s fifth largest trading partner. Moreover, reading the newspapers in the past few days, one sees the extraordinary growth of the Korean economy, which is, in my judgment, probably unprecedented historically.

The United States and Korea have a mutual interest in free trade. The U.S. has focused much of its public attention on opening markets in Japan. My suspicion is that Korea's interest in opening the Japanese markets is at least as great or greater than ours, and the same is probably true with regard to China. Korea's opportunities in these markets in Asia will be at least as great, and frankly speaking, probably greater than our opportunities in these markets, and so I think we share a very deep mutual interest in finding ways to create a special alliance that will work within the trade organization, the multilateral and the regional trade organizations.

What we hope will occur today and through tomorrow afternoon will be frank and open discussions. There will be disagreements, as there should be among friends, and there will be points of agreement. But through it all, I hope that we will be able to keep our eyes on our mutual set of very important and fundamental interests and that this dialogue that we start this morning will not end tomorrow afternoon but will continue on many years into the future. We have worked hard to bring Columbia professors who know something about these areas as well as two very, very distinguished practitioners from the U.S. who have written and thought extensively about these matters and have participated in senior government positions. We hope that we together with everyone here will start a dialogue that will continue long into the future and that our chance to discuss these matters today will be just the first of many in the future. Thank you.

Park Kil Jun: Thank you to our two directors, Professor Choi and Professor Young. Next, we will hear a welcome address and congratulatory remarks by the president of the university, Dr. Soo Sung Lee, who until a few months ago was a teaching professor of this college in criminology and criminal law.

Soo Sung Lee:[4] Distinguished scholars, lawyers, colleagues, and students. I cordially welcome you all to Seoul National University. I especially would like to congratulate Columbia University for undertaking such a monumental project in light of being an ocean away. I am extremely

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3. Fuyo Professor of Law, Columbia University; Director of Center for Korean Legal Studies, Columbia University.

4. President and Professor of Law, Seoul National University. Took office as Prime Minister of Korea in December, 1995.

pleased that the 1995 Seoul Conference is being undertaken with professors and professionals of both countries for the vital and timely topic of international trade law.

No one can deny that the world is going through some cataclysmic changes in the field of international trade. Recently, we have experienced the emergence of regional trade pacts and the establishment of the WTO, pitted against constant trade tensions between countries. In light of this, we as a whole must focus on integration, harmonization, and globalization in order to effectively enter the twenty-first century. Integration, harmonization, and globalization are naturally important issues for Korea and other rapidly industrializing nations.

However, all development activities carry an opportunity cost, whether with a positive or deleterious effect. Korea, in particular, is at an ideological crossroads. Korean society is changing at an alarming rate. Some of the traditional concepts which make Korea so unique are becoming endangered by the influx of new Western ideas. One impetus is the issue of trade at the international level. International trade is one of the most efficient ways to integrate a country's economy and the mind-set of the people, but a fundamental question is what will remain of Korea in the process of integration, harmonization and globalization.

II. LINKAGE AND HARMONIZATION

A. *An Analysis of Harmonization Claims — David W. Leebron*[5]

The following is a synopsis of "Lying down with Procrustes: An Analysis of Harmonization Claims," a paper presented at the Conference by David W. Leebron.[6]

Claims for harmonization of national laws and policies have been closely linked to claims for "fair trade." Many have argued that harmonization is the mechanism by which unfair differences in legal and other regimes are eliminated, and the "level playing field," is restored. Harmonization in this sense is the Procrustean response to international trade, a response fundamentally at odds with the theory of comparative advantage that has justified liberal trading policies since the early nineteenth century. The "fair trade" idea is undoubtedly one source of harmonization claims, but it would be misleading, and ultimately damaging to the cause of free trade, to characterize harmonization claims generally in this way.

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5. Dean of Columbia Law School and Professor of Law, Columbia University.

6. This summary is a highly condensed version of a paper that appears in J. Bhagwati and R. Hudec, Harmonization and Fairness (MIT Press 1996) [cite to be checked].

The debate over harmonization and trade will be improved if we make more explicit the underlying assumptions and fundamental issues. We ought to ask a number of questions regarding any harmonization claim. What is the basis of the claim that the laws of two or more jurisdictions should be the same? Why do the laws differ in the first place, and do the reasons for difference suggest additional costs to the process of harmonization? What other costs might harmonization entail? What kind of harmonization is needed and to what degree must the laws be harmonized? What should the scope of the harmonization effort be in order to realize any goals without unnecessary costs or distortions? Are there alternatives to harmonization that might serve the goals of the proposed harmonization without entailing some of its costs?

1. What is "Harmonization"?

Harmonization can be loosely defined as making the regulatory requirements or governmental policies of different jurisdictions identical, or at least more similar. It is one response to the problems arising from regulatory differences among political units, and potentially one form of inter-governmental co-operation. A "harmonization claim" is a normative assertion that the differences in the laws and policies of two jurisdictions should be reduced.

Types of Harmonization: Rules, Policy Goals, Principles and Institutions

What exactly does it mean to harmonize laws and governmental policies? Legal regimes, and the broader societal choices in which they are embedded, can differ in numerous aspects. Some of these differences are reflected in formal legal rules and institutions, and others are not. International harmonization has been pursued in a vast array of diverse fields: monetary and fiscal policy, contract law, banking law, securities regulation, intellectual property law, labor law, environmental law, food safety, product standards and liability law, and trade law, to name only a few. Despite this variety, it is useful to distinguish several broad types of harmonization.

First, fairly specific rules that regulate the outcome, characteristics or performance of economic goods, actors, transactions, institutions and productive facilities could be harmonized. Second, more general governmental policy objectives can be harmonized. Unlike the harmonization of performance requirements, states retain broad leeway to determine how to meet the policy objectives. Third, harmonization sometimes aims at adopting certain agreed principles that are intended to influence or constrain the factors that are taken into account in making policies and rules. In some instances, these principles limit the structure or implementation of policies. Fourth, harmonization of institutional

structures and procedures, both private and public, is often sought. Such harmonization primarily serves to reinforce other types of harmonization.

The Normative Aspect of Harmonization Claims

Harmonization claims have both a normative and non-normative component. The normative component consists not in the assertion that two political entities should adopt the same policies or laws (that is inherent in any harmonization claim), but rather in any accompanying claim that the laws of at least one society should be conformed to a *better* standard. The non-normative component is the claim that the laws of the two societies should be made the same, apart from any normative judgment as to either of the society's laws.

Saying that a harmonization claim is non-normative does not mean that there is not a normative claim that the laws of two jurisdictions should be harmonized. Quite the contrary. It means only that the claim is neutral with regard to which rule should be chosen as the basis of harmonized rule. In other words, the claim consists only of the assertion that the rules that govern the two societies should be the same. A claim that the law of all jurisdictions should be conformed to a particular standard, but contains no non-normative component, is in some sense not really a *harmonization* claim at all. Most harmonization claims are mixed in that they are assertions both that the laws of two jurisdictions should be made the same, and that the law of at least one of the jurisdictions should be conformed to a "higher" standard.

2. The Justifications for Harmonization

Jurisdictional Interface. One of the most important functions of harmonization is to enable participants or systems from different jurisdictions to interact or communicate. This interface claim for harmonization is limited to cases in which transactions occur directly between two jurisdictions. In some instances, harmonization of domestic regulatory requirements might appear necessary to make certain transnational activities possible, but in most cases it will simply be more efficient. However, the adoption of similar or identical *domestic* rules is rarely required. In many cases, a special interface (or international) regime (applying only to international transactions) will sufficiently serve the purpose. An alternative to (or perhaps special case of) interface harmonization in this last sense is the harmonization of rules for deciding which jurisdiction's regulatory requirements apply.

Externalities. A second argument for harmonization is the presence of externalities. Rules adopted by one jurisdiction can result in costs imposed on other jurisdictions. There are three types of externalities that might result from a nation's regulatory policies. First, domestic activity in

one nation can directly impose transborder costs on another, usually neighboring, nation, resulting in an overall welfare loss to that nation. Second, those policies might adversely affect some individuals in another nation, but not result in any overall loss in welfare (distributional externalities). Third, as a result of one nation's policies, another nation might make political choices that result in a loss of welfare (politically mediated externalities).

Leakage and the Non-efficacy of Unilateral Rules. A different kind of externality is the "leakage" into (or out of) a jurisdiction of goods or transactions that do not conform to a jurisdiction's rules, resulting in the diminished efficacy of those rules ("non-efficacy"). Government regulation often attempts to impose a protective envelope around a jurisdiction's territory and its inhabitants. Goods and services that enter this envelope are expected to conform with all requirements imposed by that jurisdiction's government for the protection of its citizens and residents. But borders are hard to police, especially for invisible transactions such as securities. Even for physical goods such as cigarettes, weapons, and narcotics, border and domestic enforcement have proven inadequate in meeting regulatory goals. An alternative to policing borders and cross-border transactions is to harmonize the rules of all jurisdictions concerned.

Fair Competition. A prevalent argument in support of harmonization is fairness in trade competition. The central idea is that lesser regulatory burdens will give producers an *unfair* advantage in international trade. A steel manufacturer that faces no pollution control requirements is able to sell steel cheaper than a manufacturer located in a jurisdiction that imposes severe limitations on emissions. This claim attempts to supply the argument, missing in the non-efficacy claim above, that there is something inherently wrong about the difference in regulatory policies.

Economies of Scale. A fifth argument for harmonization is economies of scale. If a manufacturer faces significantly different requirements in each jurisdiction for which it manufactures, it will not be able to achieve economies of scale beyond its market share for one jurisdiction. If further economies could be achieved by increasing the scale of production, harmonization of the regulatory requirements will make that possible. Legal information costs represent an additional fixed cost for each jurisdiction that must be recovered from the sales of products in that jurisdiction. In the face of ignorance and uncertainty, a producer might be unwilling to undertake the effort to engage in a small number of international transactions. In short, every separate legal system to some extent creates a barrier to trade. Harmonization substantially reduces information costs, enabling market entrance even for relatively small sales.

Political Economies of Scale. A somewhat different argument for harmonization could be termed "political economies of scale." Regulatory requirements generally result from a political process. The political forces and institutions involved in that process might realize certain economies,

or greater effectiveness, if decisions were made or influenced by a more encompassing forum. Some institutions of harmonization shift the process to a different political forum, with different resources and political forces. In some instances, the argument for shifting the forum to the integrated level is that resources can be better marshaled and coordinated. If there is one optimal standard for all jurisdictions, then it reduces costs to determine that standard jointly rather than separately. Some participants in the regulatory process, however, want harmonization shifted to a different forum because their political power in the alternative forum is greater (or the costs of exercising that power are less).

Transparency. The inability to determine whether another nation's policy choices are made on legitimate or illegitimate grounds is a serious problem for the international trading system, especially insofar as one of the prevailing norms is "reciprocity" in trading relationships. If trade liberalization commitments can be neutralized by disguised regulatory measures, then the multilateral trade negotiation process would be undermined. Requiring jurisdictions to adopt harmonized rules (e.g. international standards) eliminates their ability to choose alternative rules because of their protective effect. Of course, it also eliminates their ability to choose rules for reasons other than protective effect (such as a greater desire to protect human health and the environment), and for this reason harmonization based solely on the concern to assure trade transparency is controversial.

3. The Sources and Legitimacy of Difference

Harmonization claims cannot be evaluated solely with respect to the goals that harmonization is designed to achieve, such as economies of scale or fairness. Differences between nations may also have value, and harmonization can only be achieved at the cost of eliminating or reducing differences. Thus before evaluating claims that laws should be harmonized, we must ask why nations adopt different laws. Ultimately, the question of harmonization, particularly where the justification is fairness, is one of the legitimacy of difference. If differences are legitimate, then a harmonization claim could not be based solely on the existence of difference, as the fairness claim appears to be. Other harmonization claims are based at least in part on the cost of difference. If differences have *value* in addition to legitimacy, then even harmonization claims based on these other arguments must take that value into account in determining whether harmonization should be pursued.

Differences between national regulatory policies could be regarded either as substantively legitimate or procedurally legitimate. They are substantively legitimate if the differences in policy are justified by differences in the substantive concerns and values that inform policy. They are procedurally legitimate if we regard the process by which they were

adopted as establishing their legitimacy, whether or not the differences could be justified by reference to differing values.

Nations can be said to differ in five attributes that affect the laws and policies they adopt: endowments, technologies, preferences, institutions, and coalition formation. In addition, at least some differences in laws are probably stochastic. Differences in legal and policy regimes which result from differences in preferences, endowments or technologies reflect differences in the optimal regime. Any claim of unfairness would seem fundamentally at odds not only with the theory of comparative advantage, but also a minimalist notion of sovereignty that allowed each nation to adopt policies that are best for it. Harmonization in such a case would require one or both nations to adopt a less than optimal legal regime. Differences in institutions and coalition formation, on the other hand, result only in differences in the regime actually adopted, which might be the best politically attainable regime for any given society. In this event, differences between societies cannot be adequately defended on a normative basis, but only on a pragmatic basis, or on the basis of legitimacy conferred by process.

Process-based approaches to legitimacy might be preferable to substantive approaches. Requiring nations to alter their institutional processes at least allows those nations to continue to adopt different regulatory choices. Those choices need then only be defended on the basis of fair and open processes, not their substantive legitimacy. The difficulty is in agreeing on the minimal institutional arrangements for procedurally conferring legitimacy.

4. The Process and Institutions of Harmonization

Insofar as harmonization bespeaks a result — the convergence of legal and policy regimes — it will occur even in the absence of formal international efforts. Much harmonization is exogenous to the legal system, and the critical inquiry is whether international legal efforts at harmonization should lead rather than follow the forces that produce harmonization. These forces include not only the convergence of the factors, such as technology and preferences, that produce differences in legal regimes, but also the internationalization of the political forces that influence domestic decision making.

Unilateral efforts, whether through "spontaneous" adoption of common standards or the application of offensive sanctions, have a limited ability to achieve harmonization, and are sometimes of dubious legality under the GATT. For the most part, they are necessarily aimed at bilateral rather than multilateral harmonization. More structured, formal arrangements are needed for broad based harmonization.

Formal international harmonization processes are either mandatory or non-mandatory. A mandatory process entails an international commitment to adopt (and maintain) the harmonized regime. Non-mandatory harmonization limits itself to the formulation of harmonized rules. In some cases, each nation must formally indicate whether or not it accepts the rules, but that does not necessarily entail an international commitment.

Most international harmonization efforts have taken place without international legal obligation. A common methodology is the drafting of model or uniform laws and standards. Because the regime will not be mandatory, it may be easier to reach agreement on the substantive terms. Nonetheless, the formulation of a single international regime significantly alters the incentives to harmonize national rules, and thus parties will pursue their interests vigorously even when the result is in this sense non-binding.

Given the difficulties in compromising national regulatory standards, it is not surprising that international harmonization, other than interface harmonization, has met with very limited success. The structure of the harmonization process is often contentious not only internationally, but domestically as well. Important questions include: Who will be able to participate in the process? Should the process be one of governmental representation, or conducted by non-governmental organizations? If a non-governmental process, should it be subject to a multilateral approval mechanism, or should each nation make its own decision whether or not to adopt the harmonization proposal? As these questions suggest, there are numerous permutations. These include the following.

International Bargaining Through Representation of Nations. The most common structure for reaching international agreements is the negotiation by official national representatives, who most often report to the chief executive of the nation. Critical to the outcome is the perspective such representatives bring to the negotiations, and which constituencies they most represent. On the issue of food standards, for example, negotiation among national trade representatives would probably reach different results than negotiation among the heads of national agricultural agencies, or the agencies responsible for consumer safety. Non-governmental organizations, whether domestic or international, are sometimes granted observer or participant status. Observer status gives them a greater ability to maintain domestic debate during the course of the international process, and to generate political pressures on that process. Participant status in addition allows them to express their views within the negotiation process.

International Group of Experts. The formulation of a harmonization text is sometimes assigned to a group of experts who are instructed that they are not to represent their home countries in the process. The attraction of the expert model of harmonization is also its weakness: isolation from

political forces and, to some extent, self-interested economic forces. If these groups are excluded from a significant role in the process, they are more likely to exercise their political power in the domestic process to prevent the adoption of harmonization proposals they regard as contrary to their interests.

Constituency Representation at the International Level: The ILO. One approach to harmonization is to move the bargaining among various constituencies to the international level. This is the basic structure of the ILO, in which representatives of workers' and employers' organizations, as well as governments, participate directly in the formulation of ILO conventions. Each delegation to the ILO consists of four members: two nominated and instructed by their national government, one representative of labor and one of industry. Other than the double representation granted to governments, the three "constituencies" participate equally in most aspects of the ILO's work, including the formulation and adoption of international labor standards. Even the executive organ of the ILO is structured along similar representative lines. Trade-offs are thus not necessarily resolved, either before or after the harmonization process, within nations.

5. The Costs of Sameness

In a number of contexts, we find expressions of the idea that policy decisions ought to be made by the smallest appropriate political unit. Making decisions on a more local basis has both substantive and procedural value. The substantive value derives from the ability of a more local population to implement choices which, as suggested above, better reflect its preferences, resources and technologies. If the optimal policies for national populations do differ, then harmonization requires that some measure of local welfare be sacrificed (assuming local policies could be made effective). The procedural value of localism is one of participation, of having a more meaningful say over the policies that affect one's life, and of maintaining a more direct influence over one's government and governmental officials.

Harmonization also introduces costs not found in comprehensive regulatory systems. Because harmonization is invariably selective in some sense, it has the potential not only to introduce new distortions in both domestic and international policy, but also to result in greater rather than less divergence in the actual effects of regulatory policy. This is a sort of legal version of the theory of the second best: when legal regimes are not completely unified (i.e., all relevant differences eliminated), harmonizing selected elements might in fact produce greater distortions and divergences. Indeed, some recent harmonization efforts seem to recognize that procedures, and in particular enforcement, are more important than the substantive rules applied.

6. Alternatives to Harmonization

In cases in which harmonization is not justified despite a worthwhile objective, there may be means short of harmonization that would at least partially obtain that objective. Even if harmonization would appear warranted when measured against the existing regime, the question is whether harmonization is the best solution to the problems posed by differing legal regimes. Alternatives that at least in part address the claims underlying harmonization must be considered as well. Although in some cases harmonization would be preferable to maintaining the existing differences in policy and law, an alternative measure could be preferable to both. There are five common alternatives to harmonization: mutual recognition, cooperation in enforcement, unilateral measures, "private" harmonization and circumvention.

Mutual Recognition. The principle of mutual recognition requires that jurisdictions accept for domestic purposes certain regulatory determinations of other jurisdictions, even though those determinations, and the criteria on which they are based, are not harmonized. For example, products of a foreign producer approved for sale in its home jurisdiction would, solely on that basis, be permitted for sale in the importing country. Mutual recognition is most clearly an alternative to harmonization when the underlying purpose is to enable firms to realize economies of scale across international markets. In theory, mutual recognition allows two jurisdictions to maintain policy independence, but at the same time it exacerbates problems of leakage and non-efficacy, depending in part on the mobility of the regulated providers or entities. In most contexts, mutual recognition is not so much an alternative as a complement to harmonization. Many efforts at harmonization require some mutual recognition if they are to achieve their purpose.

Recognition of Greater Jurisdictional Authority and Enforcement Assistance. Some claims to harmonization could be addressed by providing the affected jurisdiction greater ability to enforce its chosen rules. (Mutual recognition, by contrast, entails a reduction in enforcement authority.) The problem of non-efficacy, for example, could be solved by giving the harmed jurisdiction the necessary lawmaking and enforcement powers. The force of national rules can be further extended if other jurisdictions agree to enforce them. Making a jurisdiction's rules more effective entails a number of elements. First is the choice of law to govern particular actors or transactions. A second element is the recognition and enforcement of judgments and other penalties. A third is assistance in the gathering of information.

Greater Unilateral Efforts. Other states will not always be willing to cooperate in addressing the problems of non-efficacy and externalities. An alternative to both harmonization and greater cooperation in enforcement

is stronger unilateral measures to prevent leakage, including border enforcement. Such measures may not only be more costly than harmonization to the jurisdiction seeking greater effectiveness of its laws, but also to other jurisdictions as well. Greater border enforcement measures, for example, almost invariably impose costs on trade, and thus constitute a common nontariff barrier. This could produce welfare losses to all trade partners. But unilateral efforts aimed directly at achieving more effective enforcement might again be preferable to unilateral efforts aimed at achieving harmonization.

"Private" Harmonization. If by harmonization one has in mind mandatory or non-mandatory regimes arrived at by an inter-governmental process or institution, an alternative is to allow non-governmental actors to formulate, and decide whether to adhere to, harmonization proposals or otherwise achieve harmonization. Government policies can play an important role in determining the extent of opportunities for such private harmonization. There may be good reasons to object to industry autonomy in some contexts, but private harmonization avoids some of the costs and difficulties of governmental harmonization efforts.

Circumvention. I use the term circumvention to refer to measures taken by private actors to reduce or eliminate the consequences of differing legal regimes. For example, the problem of economies of scale can be eliminated if a competitive product can be designed that meets the requirements of both jurisdictions.

7. Conclusion

The evaluation of harmonization claims is a complex and difficult endeavor. It requires first that we understand the nature of the claim and the extent to which it is normative (in the sense it asserts certain substantive outcomes other than harmonization alone must be achieved). Then we must identify the basis of the harmonization claim: what is objectionable or unduly costly about the existence of different legal regimes. Before harmonization is pursued, we need to understand the sources and value of the difference that is the predicate to harmonization. With all this in mind, we must determine what harmonization processes would be most suitable, and whether some alternative to harmonization would better serve our goals.

Many of these questions are admittedly unanswerable in the context of actual claims for the harmonization of national laws and policies. More dubious harmonization claims (e.g., fairness) will sometimes have more political appeal than sounder harmonization claims (e.g., economies of scale). Nonetheless, requiring those engaged in a debate over harmonization to make explicit their underlying arguments and assumptions should benefit the process.

B. Discussion

Park Kil Jun: We will now officially begin the first session entitled "Linkage and Harmonization," which will be moderated by Professor David Leebron, Professor Oh Seung Kwon, and Sang Jo Jong.

Oh Seung Kwon:[7] In this session, Professor Leebron will first give an outline of harmonization.

David Leebron: I want to say just a word about the relationship between my topic today and the rest of the conference, and particularly the topic of this afternoon. International integration, harmonization and policy coordination, will be the central international economic issues for the next several decades.

This morning we want to address these questions from both a general, analytical framework and also from a sectoral perspective, that is, looking at perhaps a few of the particular issues: worker rights, competition policy, intellectual property, product standards, and human rights. This afternoon, by contrast, we will primarily explore the level at which integration should occur. Should it occur on a multilateral, plurilateral or regional framework? We have a lot of choices on how to proceed both horizontally and vertically, but we are all basically dealing with the same problem; that is, how should this process of integration occur, whether it should occur on a geographic basis or on a sectoral basis.

Understanding the reasons for and alternatives to harmonization and other modes of integration is essential to achieving international agreement. If we put on the table before us only a particular conception or approach, then we are likely to end in disagreement. However, if we understand the full range of the processes and reasons that harmonization is urged, and what alternatives are available, then we may find there is an opportunity for agreement where perhaps previously we had seen none.

Moving on to the more specific problem of harmonization, there are two things we need to focus on. First, what kind of reasons can legitimately be advanced for the claim that nations should conform their laws or policies to some external standard? I want to clarify, as I attempt to do in my paper, the distinction between the claim that it is important that two or more nations have the same policy and the claim that all nations should adhere to some external standard. Those are somewhat different claims. For example, the claim that all nations should prohibit slave labor does not depend upon what any other nation does. We think generally that every single nation should prohibit slave labor, whether or not any particular nation already prohibits slave labor. This is distinct from the notion that it

7. Professor of Law, Seoul National University.

is important that two nations conform their policies. For example, we do not necessarily think that all nations should drive on the left- or right-hand side of the road, and this question presents no moral issue. However, the U.S. may prefer, and perhaps Korea also, that all countries drive on the right-hand side of the road so that we do not have to make separate vehicles that are capable of driving on the left-hand side of the road.

I list in the paper, seven different harmonization claims. I am going to spare you that list, because it will be somewhat incomprehensible merely by the labels that I attach to them. I will mention only the three that I think concern us most in the context of this conference. Those are: fair competition, which is the so called "level playing field" argument that the U.S. has become so fond of; economies of scale, which I think has been particularly important historically with respect to things like product standards; and transparency, which is being able to secure understandable and enforceable market access commitments in the context of international trade negotiations.

Beyond these claims for harmonization, there is the issue of the institutions and mechanisms for achieving that harmonization, and I think this is as important as the substance of harmonization itself. This is to some extent where the question of linkage comes in. How should harmonization issues be linked to the international trade regime? There are three different kinds of arguments that I see for linking issues to the trade regime. In discussing the problem before us, it is important that we understand where these fall.

In one category are the norms or principles that underlie the multilateral trade system itself, that is, those related to comparative advantage or efficiency. This is one basis for the claim that environmental protection policies should be harmonized. For example, if one nation has stringent environmental policies that require the polluter to pay for either environmental protection or environmental damage and another nation either subsidizes environmental protection or has lax requirements regarding environmental protection, there is some argument that those differences can lead to distortions in the sense of the trade flows that would result from notions of comparative advantage. One has to add, particularly in the context of environmental policy, that the differences in environmental protection may themselves represent a comparative advantage, that is, that different nations either value environmental protection differently or have different resources such as available water, clean air, or geography.

A second category of cases in which it is insisted that the trade regime be linked to other regimes is where trade is a factor in encouraging violations or in undermining the enforcement of the norms of the other regime. Examples of this might include protection of intellectual property or the protection of endangered species, where unrestricted trade in goods increases the violation of those regimes.

Lastly, there are those cases in which the only argument for linking the trade regime to these other regimes is that the trade regime provides a means of effectively enforcing the norms of the other regime, that is, what we might call a pure sanction or deterrence-based rationale. The best example of this is probably human rights. Most human rights do not directly affect the comparative advantage, or competitive advantage we should say, of nations. One exception of course, might be worker's rights, because many argue that this does affect comparative advantage.

This brings us to the third question, which we should keep closely in mind. If we achieve agreement that there is some case for linking different norms or different regimes, or if we agree that there should be some link between trade and environment or between trade and worker rights, then we face the question of exactly what kind of linkage or what kind of institutional arrangements are appropriate. I want to briefly lay out the alternatives that we should keep in mind, again on the theory that if we understand the full range of alternatives, we might find a path towards agreement.

The first is what I call macro or institutional linkage. We can require that participants in the trade regime also participate in some other regime. For example, we might require that any country that is a member and beneficiary of the WTO must also be a signatory of the covenants on international human rights, but not otherwise link the issues of human rights and trade. We have a couple examples of this. The IMF and the World Bank are linked in this way. In order to participate in the World Bank, you must be a member of the IMF. Indeed the IMF and the GATT are similarly linked. In order to participate in the GATT you must either be a member of the IMF or undertake obligations comparable to those undertaken by members of the IMF.

A second alternative is what I call a micro or norm-based linkage. This is to some extent the other extreme, and I think the source of much of the controversy, particularly in areas such as workers' rights and environmental protection. Here, rather than linking the regimes at a macro institutional level, the norms are directly incorporated into the trade regime and become enforceable as a part of that regime. That, for example, was the basic resolution with intellectual property in the Uruguay Round under the agreement on Trade Related Aspects of Intellectual Property. The norms of intellectual property were made part of the trade regime and are subject to dispute settlement and cross retaliation under that regime.

Third, we might empower another regime or institution to impose trade sanctions. For example, under Article XXI, the GATT is explicitly subordinated to some aspects of the United Nations. Thus the United Nations can authorize trade sanctions for certain violations even if those sanctions would otherwise violate the GATT.

Fourth, we could adopt what might be called permissive unilateral linkage, where unilateral action is authorized as an exception to the normal trade rules. This has been urged, for example, in the U.S. as a response to what is sometimes called social dumping. By analogy, what is being demanded is that the U.S. or other countries be permitted to impose antidumping duties in response to lax labor and environmental regulation as they can now impose against monetary subsidies.

Let me conclude by briefly mentioning the NAFTA approach to some of these problems, which is very different from the kind of things that I have talked about. In NAFTA, the primary response to objections regarding labor rights and environmental protection that were raised to the original agreement was not to harmonize the rules of Mexico, the U.S., and Canada or to insist that they conform to some external standard. Rather what was required, particularly with regard to Mexico, was that each country enforce its own laws, and further that such domestic enforcement be subject to international dispute resolution and supervision. I think in the future, we are going to see that example followed more. At one level, this shows greater respect for sovereignty and difference; that is, we allow each nation to adopt its own policies and only insist that it enforce those policies. On the other hand, which I think was already seen in NAFTA, this process of supervision can be perceived just as much as an infringement on sovereignty as having a mandatory international norm.

Sang Jo Jong:[8] Thank you Professor Leebron for a detailed explanation of the various reasons for and various approaches to harmonization and integration in the field of international trade. People usually believe that because issues of intellectual property were harmonized under or integrated into the WTO regime, nobody would find problems arising under the WTO regime with regards to intellectual property. For the purpose of raising issues, especially regarding the problem of linkage with international regimes, I simply want to present examples of problems related to Article 9 of TRIPS (Trade Related Aspects of Intellectual Property Rights), and Articles 8 and 30 of the Berne Convention.

Article 9 of the TRIPS, states that "[m]embers shall comply with Articles 1 through 21 of the Berne Convention (1971)" regarding the copyright protection of literary and artistic works. In turn, Article 8 of the Berne Convention concerning the right of translation states that "[a]uthors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works."

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8. Professor of Law, Seoul National University.

However, the Berne Convention continues in Article 30 to state that:

> [a]ny country outside the Union may declare...that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country.

Article 30 of the Berne Convention provides a very important exception to Article 8. Article 5 of the Union Convention of 1886 states that authors shall enjoy translation rights under Article 8 of the Berne Convention only when the original works are translated in the member country where the translation right is claimed. In other words, Article 5 of the Union Convention limited translation rights, and so Article 30 is designed to invite countries to enter the Berne Convention with the incentive that they can limit translation rights.

There is therefore an inconsistency between the TRIPS and the Berne Convention. TRIPS only incorporates Articles 1 through 21 of the Berne Convention, leaving other articles out, so I wonder whether Article 30 of the Berne Convention is applicable to WTO members or not. This is just one specific example of a problem arising from linking international standards with the international trade regime.

I would also like to point out that parallel imports, reverse engineering and other matters of intellectual property are not dealt with by the WTO TRIPS agreement and are rather left to member states to decide. I think this relates to the point Professor Leebron made about there perhaps being some country specific legislation that should be left out. I found Professor Leebron's paper very interesting, especially his Procrustean approach to international trade and his Procrustean response to the theory of comparative advantage. Parallel imports, reverse engineering, and other issues not dealt with in the WTO regime are probably those areas which should fall within the comparative advantage theory or in country specific legislation.

Sai Ree Yun:[9] With respect to competition policy, we understand that the WTO under the auspices of the U.S. and the European Union is proposing to have a competition round, in order to harmonize competition policies of various member countries. I think the purpose of such efforts would be multifaceted. It could be based on claims of fairness and

9. Attorney at Law, Korea.

competition, since every country opens its market to other countries in consideration for access to the markets of those countries. If the free trade system is based on such reciprocal treatment, then the rules for trade based on a level playing field should be provided reciprocally to each other. Because there are significant differences in competition rules and policies in each market, certain countries may feel that their companies or their enterprises are disadvantaged compared to their competitors in other markets. As Professor Leebron pointed out, fair competition can be a good argument for harmonization, and therefore the competition round may have its merits.

On the other hand, however, as Professor Leebron also made clear in his article, arguments for fair competition can be very political. When we try to reach a uniform or integrated set of rules in the international market, there always remain questions of who shall make the rules, who shall interpret them, and then who shall enforce or apply the interpretation of the rules to specific cases. Countries, particularly developing countries like Korea, may be concerned, because as a matter of fact, in forming international rules so far, countries like the U.S., the European Union, Japan, and other such G7 countries or OECD countries have been most active in determining the substance of these rules.

Such big countries have also been critical in the process of reaching an agreement on the rules. Although 150 countries have joined the Uruguay Round, and most of them have endorsed the agreements, the level of influence exercised by each participant in the actual rule making process is significantly different. Therefore, in the area of international rule making, as in all other political processes, smaller countries or developing countries are concerned that their interests may not be fairly represented, because they do not have an equal level of influence and resources.

There can also be significant differences in the level of participation in the process of interpretation of the rules. If we actually examine how international organizations function, we see that the level of participation in both the decision-making process and in the rule-interpreting process of each country is very different. Some countries may not adequately understand the purposes for the rules or how they will be applied, because they may not have similar institutions or regulatory regimes or experiences in their home countries. Therefore, these rules could be very foreign to some countries, even though they officially endorsed them.

Finally, at the level of applying or enforcing rules, each country does not have the same level of bargaining power or influence. As a private practitioner, I have experienced that even if you have a winning judgment, many times the judgment may just be a piece of paper, because you do not have the appropriate level of influence or means of enforcement. At the last minute, you may find yourself having to settle or yield. I think such problems or phenomena can be even more pronounced in the international arena. Therefore, even if we can reach an agreement in a competition

round or in other areas of harmonization at the international level, countries like Korea and other smaller countries have different concerns than countries like the U.S. and the European Union.

Ironically, however, we have heard so far that the U.S.'s single most concern in joining the WTO regime has been that it may infringe on the sovereignty of the U.S. If we look at this from our prospective, it is very ironical, because the U.S. should have the least concern about sovereignty. In Korea, the issue of sovereignty has not been as large a concern or problem so far.

To conclude my remarks on competition policy, we should be very careful in such harmonization and even in the process of reaching any agreement on the substantive issues. We have to be very mindful of the concerns of the smaller, developing countries and economies in order to persuade them to participate in the harmonization efforts. Secondly, the grounds for harmonization should be more technical and economic or specific rather than broad based philosophical or political claims. If the grounds for harmonization in competition or any other area become political, then such a process would only lead to controversies among various nations and eventually the process might fail. Even though the best position may be obtained by countries like the U.S., there may be internal opposition as experienced in the international trade organization forty or fifty years ago. Because the problem or the risk of political claims or political controversies in the area of competition law would be more severe than in the simple trade or services areas, we should start very conservatively and very slowly so that we can reach a full agreement that benefits all participants, such that a harmonized system if formed would last long.

David Leebron: In my paper, I raise the question of legitimate sources of difference. I break that down into substantive legitimacy, on the one hand — reflecting the different stages of development, different endowment, and different technologies available in nations — and procedural legitimacy, which is conferred by democratic processes, on the other hand. I think, ultimately, we are going to have to come to grips with this question of the relationship between the trade regime and comparative advantage and democracy. Where I disagree with Professor Bhagwati view as you have described it, is that I do not think we can describe a nation's labor regime as purely a result of the state of development or market forces. It is very much a question of the political processes.

I also want to say that when we talk about harmonization, it is also important that we keep in mind what it is we are harmonizing. There would be clear and legitimate objection if the U.S. said, "Well, we ought to have minimum wage, let me look at U.S. legislation, and it's $5.25 an hour." That is clearly illegitimate, and the only purpose of such a proposal is to destroy the comparative advantage of not merely nations with cheaper

labor so to speak, but nations which have lower productivity, which is a sign of earlier development. On the other hand, if the proposal is that countries ought to have a child labor, it is one thing to say there ought to be no child labor below the age of sixteen, but it is quite another, as it has been proposed, to say that the standard ought to be that each nation ought to prohibit child labor and choose that age which it feels is appropriate to its stage of development and its cultural and economic circumstances. By focusing on those somewhat different approaches to harmonization, which I sometimes call principles on policies, I think we have a better chance for agreement.

Lastly, I want to respond to something that Mr. Yun has said regarding the question of the power of developing countries. One of the reasons we see a discussion of harmonization of course is that various groups and various organizations have different amounts of political influence in different fora. We see often that certain labor unions would like to move the discussion to international fora, because they are less influential domestically, and sometimes the reverse. Another important issue, which I really did not touch on in my paper but is at the heart of the future of the WTO, is if these issues are linked to trade and are going to be dealt with in the WTO, are they going to be negotiated on an isolated basis? Or should we continue the process of what we may call the mega-negotiating round where developing countries were in fact able to preserve some of their power?

Choi Byung Sun:[10] Rather than asking a specific question concerning the linkage of environmental protection and trade, I would like to raise a more general question, because I think Professor Leebron has done a great job in his article. I think he has clearly sorted out a number of controversial ideas about harmonization.

I suppose in an ideal situation in which stronger countries such as the U.S. or the EU cling to the principle of free trade there is no need for harmonization at all. In this sense, I think that the claim for harmonization is ironical. I think they should give up the unsubstantiated claim or idea that their rules, procedures and practices are right and that those of other countries are wrong. What I am saying is that the U.S. and the EU and other strong countries should be ready and willing to change their views or to change their own rules or procedures and practices if necessary. I would like to know how you would respond to these comments?

Regarding my second question, there is no doubt that in theory a multilateral approach to harmonization is highly preferable in that such an approach leads to a more fair and stable result, and yet in practice such a result does not follow, thus making bilateral or unilateral approaches to

10. Professor of Public Administration, Seoul National University.

harmonization almost inevitable. This is how I see the world trade system running. Is there a way to avoid this kind of dilemma in the future?

David Leebron: I think the points you make are the important ones, and they are good ones. I just completed a study of the implementation of the Uruguay Round in the U.S., and you are quite right, the U.S. is not very flexible about changing its rules to compromise on regulations, particularly technical barriers to trade. We have no problem whatsoever in coming to Korea and saying that your rules on shelf life are not right or that you should really be more flexible about the additives you permit in your beverages and foods. The U.S. has really shown very little flexibility on those issues, and the implementation of the Uruguay Round in the U.S. reflects that.

Although I do not come here as a representative of my government and I do not think anyone here will undertake that task, I think that this is quite a matter of concern. I think that that really is the fundamental problem with international harmonization. There is an imbalance, especially for a small international economy. The loss of sovereignty is a fact of life. It flows from the international system, from the dependence on international trade, and for that reason, for most small countries or relatively smaller countries, it simply was not an issue. The U.S. perhaps surprisingly was willing to adopt the WTO agreements, but that was really about as far as it was willing to go.

The other issue you mentioned, and I think your perceptions are both very acute and correct, is to some extent a topic for this afternoon. The question we might ask for this afternoon is that in light of the expansion of the agenda of the WTO, what is the need for regional agreements anymore? If we look at NAFTA for example, and earlier cases, what you really see is the insistence on addressing certain issues that had not been previously been addressed. So one may ask, now that these issues have all been addressed, why bother with regional agreements?

I think you really put your finger on the reason, which is that compromise is more likely in a regional or bilateral context. I think that NAFTA has been politically and psychologically a very useful exercise for the U.S. That is, we are slowly getting used to the lack of economic hegemony in the world, and we need to occasionally compromise. I think this might come out more later today or be discussed by Professor Bhagwati tomorrow, but I am in some disagreement with Professor Bhagwati. Professor Bhagwati has been very skeptical of regionalism, and I think potentially regionalism serves as a way for a country like the U.S. to ease it into the process of negotiation and compromise on issues on which it has been very unwilling to negotiate and compromise. On the other hand, implicit in what you say and the foundation of much of Professor Bhagwati's criticism is that as these become the important issues in international trade, we have begun to erode the MFN system.

Oh Byung Sun:[11] On the occasions when I have traveled abroad, I have seen the advantages of free trade in the international arena. As a Korean, I could see where free trade and fair trade would benefit my country, but I also recalled the past history of harmonization in international trade law, particularly problems related to international private law. Even though it took almost two decades, I believe that there are still some unresolved issues regarding international private law and international public law, particularly with the international regulatory regime of international trade law. Although we have achieved a great deal concerning the WTO, the laws on competition policy, human rights and labor rights are still very problematic: I feel that labor rights and human rights are squarely connected with the way of life of each country and I do not think that many people in different countries are willing to change their ways of life. If you are trying to change the way of life of each country, I think harmonization will be a very difficult process.

It was mentioned that labor rights standards are involved when you try to universally impose the same level of labor standards, and also that developing countries should have some options regarding forced labor practices. This means that when trying to raise the minimum wage or other labor standard, such as child labor — here I am not speaking about other less developed countries and not Korea — a country might find itself facing different labor standards. This is a problem when we try to harmonize all the different regulatory rules. As a Korean I think that this is a very good idea, but as a member of the world citizenry, I recognize that the issue of labor rights or human rights seems to be quite removed from international trade law rules.

Victor P. Goldberg:[12] I would like to speak as another economist participant. I am rather surprised at discussion that conflates a nation's interest with the interest of producers. The focus of trade should be on the consumer's access to goods, although admittedly as a political reality focus tends to be on the protection of producers. Speaking as an academic, however, the primary focus should be on the consumer's role in this area of competition policy.

I confess that as an economist it is very hard for me to understand what the American interest, and specifically the American consumer's interest would be, in Korean competition policy. That Korea has a set of monopolies does not matter much to the American consumer. It matters to some American producers, perhaps, but it is not clear at all why it matters to American consumers. I may be taking the extreme position when I say that competition policy as a matter of harmonization should be off the

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11. Professor of Law, Sogang University.

12. Thomas M. Macioce Professor of Law, Columbia University; Co-Director, Center for Law and Economic Studies, Columbia University.

table. It just does not really matter as far as the local consumers are concerned.

David Leebron: One would say that not only about competition policy but about every issue on the table, with the exception of product standards, because among the arguments for harmonization, economies of scale generally is the only one economists like.

In my paper, I did provide a brief explanation of the problem. You are absolutely right, but I think that whatever the economists might say, fairness however defined still has an important hold on political life and the political process. Part of what goes on is the sense that it may be unfair that there are transition and transaction costs as imports become competitive and that both capital owners and workers in particular segments suffer from that process. To take the classic example of a dumping case, when I go into the store, I do not say when someone tells me the price, "I'm sorry that's not enough money, please ask for some more." I think generally economists would say that if you do not like the effects of that, the best solution is to subsidize the transfer of resources, but in our country's political process, it is not easy to do that. I think, however, there is a kind of second best, though not in an economic sense, but a political sense where the mass of citizens in the political process to some extent are unwilling to take the benefits of what they regard as unfair competition at the expense of their fellow citizens. As a normative matter, there may still be no legitimate interest in another country's policies, but as you acknowledge at the outset, the political reality is that these fairness arguments have appeal. I know economists quite rightly hate the American metaphor of the level playing field, and they are right in hating it, because field games are zero sum games, where one side wins and the other side loses. Although this is not what international trade is about, it is a lot of what influential domestic ideologies are about.

Park Nohyung:[13] Professor Leebron gave us food for thought about linkage issues. I myself study international trade law, and I think disparate areas can be linked to international trade. I think disparate areas are really in substance related to international trade, and also there can be very effective enforcement measures by giving tough sanctions through trade measures. I think as long as these areas are trade related, the WTO will be able to achieve success in these areas.

As a matter of fact, the WTO and the GATT and international trade organizations, like the ITO, experienced this from the beginning. The mission and the activities of the ITO as suggested by the U.S. in the 1940s was to cover trade methods, restrictive business practices,

13. Professor of Law, Korea University.

intergovernmental regimes, and international aspects of domestic or foreign policies. Interestingly, its charter mandated the ITO to make arrangements for respective cooperation and the avoidance of unnecessary complications in the activities of intergovernmental entities. I think the ITO was about the functions of international trade. But the ITO alone has survived for about forty years, and the GATT was merely about regulating the trade in goods. Now we have the WTO that covers the GATT, TRIPS, the environment and trade.

As you might know, in 1994 the General Assembly of WIPO, the World Intellectual Property Organization, adopted a resolution reiterating the desire of establishing a mutual and supporting relationship between WIPO and the WTO. But the resolution states that the international bureau of the WIPO should be at the disposal of any state that expressly asks for advice on any questions of the compatibility of existing or planned intellectual property legislation, not only with issues admitted by the WIPO but also with other international laws and plans, including, of course, the WTO.

In the future I think we will be have to deal with jurisdictional conflicts, as well as management problems or sovereignty issues. As you know, in the implementation of the Uruguay Round agreement in the U.S., sovereignty was a very hot issue, but if ever the WTO assumes or contains these errors, then I think at least in the U.S., the sovereignty issue or the management issue of the WTO will be troublesome.

III. OVERVIEW OF INTEGRATION, HARMONIZATION AND GLOBALIZATION — MICHAEL K. YOUNG

The following is a summary of the article "Dispute Resolution in the Uruguay Rounds: Lawyers Triumph over Diplomats" presented by Michael K. Young.[14]

When the contracting parties to GATT met for the Uruguay round of negotiations, they spent some time improving dispute resolution methods. There were two views: the diplomatic, flexible approach and the adjudicatory, legalistic approach. The results of the Uruguay round lean toward the latter. A historical and textual analysis of the agreements enhances the understanding and predictability of dispute resolution under the Uruguay agreements.

Articles XXII and XXIII, the initial GATT dispute resolution provisions, were non-legalistic. Per Article XXII, complainant had a right

14. The article in its entirety can be found at 29 INT'L LAW 389.

to consultations and sympathetic consideration. If this was not fruitful, multilateral consultation could be sought. Article XXIII was slightly stronger in that it required prompt investigations and appropriate recommendations.

Those who favored the legalistic approach anticipated that the Multilateral Trade Organization would serve as an implementor and interpreter of dispute resolution. The MTO was not enacted and out of necessity, Article XXIII became the basis of a slightly more formal dispute resolution process.

Until 1952, contracting parties formed working parties to carry out their Article XXIII responsibilities. In 1952, these parties became panels and more adjudicatory. These panels were often required to offer briefs. Also, reports were more like arbitration decisions than negotiated compromises. The late 1950s to the early 1960s are labeled the "golden years of the GATT" from the perspective of the more legalistic, adjudicatory proponents.

Unanticipated events and shift in basic understandings on the part of the GATT participants led to dissatisfaction in the results of the dispute resolution processes. Thus, in the Tokyo Round, the "Understanding of 1979" was created. It basically confirmed and refined the customs of dispute resolution which evolved during the 20 years prior. Although the Understanding appears to move to a more legalistic approach, it includes many provisions which preserve mediatory and flexible approaches.

Despite the changes, many complaints remained. The Uruguay Round is a clear step in the direction of a legalistic, adjudicatory process. This was done through two mechanisms, the "Improvements of 1989" and the "Understanding on Rules and Procedures Governing the Settlement of Disputes."

The Improvements of 1989 took seven important steps toward a more formal approach. It set time limits; made technical refinements to good offices, conciliation, and mediation procedures; created a formal approach to panel formation, resulting in panels of independent experts; allowed third parties to intervene in proceedings of interest; established methods of calculating a panel's time limit in completing a proceeding; addressed monitoring of implementation of a panel's recommendations; and authorized dispute resolution via binding arbitration.

The Understanding of 1994 is a clear step towards the legalistic approach. First, it creates a Dispute Settlement Body (DSB) which facilitates the Understanding. Second, it expands the scope of the general GATT dispute resolution process.

The third important aspect of the Understanding is the strengthening of the multilateral dispute resolution system. Freelance, unilateral, and even unauthorized bilateral dispute resolutions are unacceptable. In theory, the parties may resolve disputes only according to approved ways using approved substantive rules. The purpose of this exclusivity of procedure is

to limit the procedural and substantive problems that might occur when countries of vastly different economic and political power are in disagreement.

The fourth focus of the Understanding is the facilitation of the establishment of a panel. The Understanding makes it clear that the DSB must establish a panel at the request of an aggrieved party. It also obligates the DSB to act quickly in establishing the panel, and governs the selection of terms of reference for the panel.

The fifth and perhaps most startling innovation of the Understanding is its creation of a rule of almost automatic adoption of panel reports. Article 16.4 provides: "Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report." This new rule ensures that a victorious party will at least have the satisfaction of an authoritative, putatively binding decision in its favor.

Sixth, the Understanding requires the DSB to establish a standing body to hear appeals from panel cases. The DSB will appoint seven non-governmental persons "of recognized authority, with demonstrated expertise in law, international trade and the subject matter of covered agreements generally" to comprise the appellate body. In apparent support of American legalism, the appellate body may uphold, modify, or reverse only the legal conclusions of the panel. The appellate body's ruling is subject to basically the same rule as that of the panel, namely, adoption is automatic unless the DSB members agree otherwise by consensus. This automatic adoption occurs within thirty days following the circulation of the appellate body's report.

Seventh, the Understanding attempts to enforce compliance with the recommendations of the panel reports. If a concerned party indicates that it cannot implement the recommendations of the DSB immediately, the Understanding establishes procedures to ensure the determination of a reasonable time within which the party should comply. First, the party itself must submit a proposal that requires approval by the DSB. Next, the Understanding makes specific provision to evaluate and monitor the consistency of proposed compliance measures with the GATT, as well as the adequacy of the implementation in general. Finally, the Understanding requires the DSB to monitor and periodically review the implementation.

There are three major threats to the integrity and efficacy of the GATT dispute-resolution process. First, many groups whose interests are immediately and directly affected by GATT decisions and rulings protest the confidentiality requirement of the GATT. For example, the environmental community has been unhappy about the inadequate reasoning given for the GATT panel decisions, as well as the secretive nature of the dispute-resolution proceedings. Second, there is concern regarding the enforcement of compliance with panel and appellate body

rulings and recommendations. It appears that until sanctions for non-compliance are enhanced, enforcement of rulings and recommendations may prove to be somewhat problematic. Finally, there is uncertainty concerning insulation of the GATT disputes from political pressure.

Despite these problems, the changes generated by the Understanding are a clear step in the direction of creating a more coherent, consistent, comprehensive, and well enforced set of GATT principles and rules. The provisions of the Understanding appreciably increase the likelihood that GATT disputes will be more efficiently resolved and that the parties will enjoy more of the benefits for which they negotiated.

IV. THE WTO, REGIONAL TRADE AGREEMENTS AND SELF-HELP

A. Dispute Resolution in the Uruguay Round — Michael K. Young

Dae Yun Cho:[15] We are having this conference to discuss different aspects of international trade law, particularly in terms of integration, harmonization, and globalization. This is an open session for the public, and for benefit of the audience, co-moderator Professor Young of Columbia Law School will summarize what transpired in the sessions yesterday.

Michael K. Young: The morning session yesterday covered a series of issues that fall very generally under the rubric of integration or harmonization. It has become increasingly apparent over the years that we have been very successful, in a virtually unprecedented way, in reducing tariffs. The GATT has been very effective in eliminating tariffs and quotas, but nevertheless it appears that goods in some cases still do not flow freely. Tariffs are not necessarily the only barrier to the free trade of goods. The international community, certainly for much of the past decade, but I think with particular intensity in the past two to four years, has been trying to identify those things that inhibit the free flow of goods and to see if there are some ways in which we can address those in some cooperative fashion.

Much of the discussion in the morning session yesterday centered on what some of those issues may be and also what the methods and mechanisms for addressing those problems may be. We started out with some general, theoretical overviews of the problem, which were useful in focusing particularly on some of the major tensions. The principal tension that was discussed and then illuminated through much of the rest of the discussion really involved a tension between sovereignty on the one hand and protectionism on the other. These are not mutually exclusive ends of

15. Attorney at Law, Kim & Chang, Korea.

a pole, but they are both concerns that animate very deeply any attempt to address trade concerns beyond mere tariffs and quotas.

On the issue of sovereignty, it was pointed out that the U.S., particularly since the end of the Cold War, has begun to reassess both its position in the world and its own status and in the process, though perhaps not readily apparent to many of our allies and friends, has developed a heightened sense of insecurity and a sense of uncertainty about what our position exactly is in the world. I think this may have come as a surprise to many of our Korean friends in yesterday's discussion who somehow do not seem to see U.S. trade negotiators as tentative or hesitant or unsure of themselves.

That sense of unsureness, however, manifested itself particularly strongly in the debate over the Uruguay Round and particularly whether the U.S. should subject itself to the decisions of the World Trade Organization with the potential modification of sovereignty that occurs. That was not always a very rational and certainly not always an intelligently done debate in the U.S. but nevertheless a very heated one. We focused upon many issues, for example, domestic competition policy, environmental regulations that may somehow inhibit trade or conversely the interest of one country in increasing the environmental protection in another country, as well as concerns about the harmonization of labor standards and even addressing human rights issues through the mechanism of trade. These are questions about the extent to which one country could legitimately demand changes inside another country with respect to matters that have historically been thought to be exclusively the province of that government.

The other tension that intellectually animated much of the discussion in this area is also protectionism, because in many cases these policies that may serve some domestic purpose may also disproportionately disadvantage imports from foreign countries. In some cases, that may be quite intentional. There have been a number of GATT panel rulings that have addressed the issue of whether certain kinds of product safety standards are really designed to protect the citizens of the country that would consume the product or in fact were more likely to be a result of some interest in protecting its domestic industry.

Against the backdrop of that theoretical discussion, we then moved into a discussion in very concrete terms of the major issues, in particular, intellectual property, competition policy, environmental standards, labor standards, and the like. Summing up, I think it is probably fair to say that interesting problems were pointed out in all the areas. The area in which there was at least an initial thought that harmonization had advanced the farthest was in the area of intellectual property, and yet it was pointed out very perceptively that there are still serious problems in harmonization even in the TRIPS agreement, which is the part of the Uruguay Round that deals with trade related intellectual property issues. Even that agreement and other parts of the WTO have aspects which may be in conflict and

quite inconsistent and may not lead to harmonization, and even in this area, there are tensions and conflicts with the World Intellectual Property Organization, the WIPO rules, and the WTO rules as well. Even in that area which seems most clear cut and straightforward with respect to which most international progress has been made has in fact serious questions both conceptually and practically.

Naturally that perception increased quite a bit as we began to discuss competition policy. There were many different views on competition policy. There were about three economists and about thirty-five lawyers, and therefore the economists said they outnumbered the lawyers. Some of our economists said there was some question as to whether it was ever legitimate to be interested in the competition policy of a foreign country, because the primary concern ought to be the welfare of the consumers, and the consumers of your country are not likely to be adversely affected in any significant way by the activities of producers in foreign countries. There was some sense that nevertheless, at least as a political and psychological matter, that view is not likely to prevail in world trade negotiations.

So we moved into some discussion of what we meant by harmonization, and two or three views emerged. One view was that we were relatively happy with the substantive rules in competition policy in most countries around the world, but the question was one of enforcement. That then raised the issue of sovereignty again, the legitimacy of the World Trade Organization, multilateral organizations, and individual countries. Looking at the enforcement priorities and the commitment of enforcement resources of the laws of another country seems something that at least does not have deep historical precedent.

There was also some discussion of what we meant by harmonization in this case. Did we mean harmonization in the sense of really bringing our laws together? Or did we mean harmonization in the somewhat more strongly normative way such that it does not mean that we bring the laws together but that a few dominant countries try to make everybody else's laws like theirs? You can fill in the blanks as to which countries try to encourage that their laws be the model.

There was appreciably more skepticism on attempts to link environment, labor, and human rights. Skepticism increased in just about that order. There was some sense that the use of trade leverage to force other countries to increase their environmental standards was not necessarily such a good idea. On the other hand, there was an awareness that there is a tremendous linkage between things that affected environment of one country and the environmental impact of other country. There was also some sense of inevitability, that necessarily environmental regulations turn out to have a trade preclusive effect. One has to examine whether that environmental regulation is legitimate or inappropriate and to determine what the standard is for determining legitimacy, which is a very hard line to draw. So I think there was a conclusion that there was some

inevitability to addressing the environmental issue within the context of trade and that perhaps we did not have very clear guidelines for doing that.

For labor and human rights, I think there was substantially more skepticism. That seemed to many commentators to deal really with the fundamental nature of the society, and perhaps the least appropriate for international oversight, except in the area of the extreme cases. For example, commentators thought it important to distinguish between things like regulating child labor as opposed to the notion of child abuse, which may be a somewhat different problem. However, there was also a question even with respect to the latter and what kind of mechanisms were appropriate. Was trade an appropriate device to use to encourage behavior in other countries? Certainly it is not unprecedented by any stretch, but there is question of propriety.

The afternoon session turned to the question of organizations within which these kinds of discussions might occur. I think the particular focus was on APEC, and whether APEC could play a significant role in the Asian region in enhancing trade and opening markets. There was a great deal of discussion about terms, which as perceptive commentators noted sounded somewhat like oxymorons. Open regionalism sounded like one which we have some trouble defining, because if it is regional, it does not seem open, and if it is open, it does not seem regional. There was also some discussion about conditional most favored nation status, which somehow seems wrong, because the basic principle of MFN status is that it is not conditional, and the principle notion of conditionality is that it is not MFN. Nevertheless, however, it is with this rhetorical framework that questions about how APEC may evolve as an organization to enhance trade became quite interesting.

There was some substantial representation of Professor Bhagwati's views. There was much discussion about whether there was any way in which the APEC could turn into an effective economic organization that would enhance trade without becoming a trade block, although there was some discussion as to whether one ought to look to the creation of an Asian trade block to compete effectively in the formation of trade rules with the European Union and with the American free trade agreement, the so-called NAFTA. There was some quite divergent views on the use of that and the likelihood that that would result in more market openings that would be favorable to Korea or even the ability of Korea to erect its own trade policy in that kind of a situation.

There was further discussion about the relationship between APEC and the other free trade organizations with the WTO, which lead very nicely at the end of the day into what is going to be at least some of our discussion today, which is the question of everyone's commitment to the WTO. There was some question about the level of the U.S.'s commitment to the WTO in light of the Japan automobile dispute and other recent disputes, and that was again a theme that was being echoed throughout the

session. There were questions on the strategic level and the tactical level in terms of what the U.S. government was doing, but the fundamental question which remained on the table and which related directly to the APEC was what is the commitment of the countries around the world to the WTO and what does that level of commitment suggest for the way in which APEC will or perhaps should evolve over the next several years?

That all leads us in, as I said, to a whole series of questions with respect to which we have two very distinguished guests today who will answer them.

B. Discussion

Dae Yun Cho: Thank you, Professor Young. On that basis we will continue our discussion today. In order to better identify the issues to facilitate points of discussion, we have two distinguished guest speakers. The first will be Professor Jagdish Bhagwati, who is a professor of economics and political science at Columbia University, and who was a former Senior Economic Advisor for the Director General of the GATT. Professor Bhagwati will discuss various issues in the context of APEC.

Jagdish Bhagwati:[16] I will give a particular perspective on APEC and illustrate where I think the main decisions need to be made and why they need to be made from that perspective. The pamphlet which was circulated to you is written in my inimitable style to provoke. This is because I think there is a very strong move in favor of free trade arrangements in Washington. I prefer to call these agreements preferential trade arrangements. To make my perspective on this very clear, preferential is not necessarily bad although I think there is a presumption in the U.S. to that effect. I think these are preferential arrangements, despite the rhetoric such as "open regionalism," because they have limited membership as of a particular point in time — APEC's eighteen members or NAFTA's three and probably four by the end of the year, with the admittance of Chile. If you admit more people, it is then going to be subject to the same conditions of entry as the initial members established.

Since these are not just trade related, that is going to be another problem. You have specific exceptions about what are called in GATT jargon "trade related issues." I call them trade *unrelated* issues, because that is really part of newspeak, since every lobbyist in the world wants to get back into the trade negotiations. So we got in the Uruguay Round, intellectual property, which has some trade dimension although it is basically a matter of collecting your royalties. It is more an enforcement

16. Arthur Lehman Professor of Economics and Professor of Political Science, Columbia University; former senior economic advisor to the GATT.

question rather than a pure trade question. From a trade perspective, there is a presumption that when two parties agree on a trade negotiation, both parties profit from each other's liberalization or even from a particular country's liberalization unilaterally.

However, there is no such presumption in intellectual property, because it is just a matter of largely collecting royalty payments. It depends on the parameters of the case, and there is a protection angle to it. You get a rate of return that is higher on what you produce and at the same time it reduces the diffusion. It is a trade-off question. I think most economists who have looked at the agreement and the kind of extended protection they have provided at the Uruguay Round think the line was pushed towards over-protection of intellectual property rather than under-protection. Therefore, it was really a transfer payment from the users to the producers, so it is not a mutual gain transaction.

In that sense, one can approach it from several rational ways, but it is not quite like trade negotiations. There is some bit of trade if you say you are producing technology down the road, but then environmental and labor and other issues keep coming up. So when you have a regional or preferential agreement where everybody is not (as in the WTO or the GATT) a party to designing the rules, then to say you can be admitted if you buy all these other issues is not quite the same thing from a trade perspective. This is the problem people are running into with Chile and NAFTA. The Republicans want none of these extraneous things, which the Democrats, unions, and environmental groups want to a fiercer degree. Already the main power in NAFTA is divided internally.

In a way, regionalism makes it more complex, although there are advantages to it as well, depending on the way that you look at these preferential arrangements. How does one look at the existing situation as an economist in that there are a lot of FTAs in the world today? The developing countries or the poorer countries or non-OECD countries are actually moving into FTAs. Then there are those that consist of powerful countries or hegemonies, like the U.S. or Japan, which are the major players and initiators of arrangements like NAFTA and APEC. The skepticism I have is not extended to the small and developing countries, purely in policy terms, because what they were doing until now is to have no discipline. In any three or five countries under Part Four of the GATT under which there is special and preferential treatment, you could do virtually anything; if you want to shoot yourself in the foot, go ahead, because you are a developing country. You have no obligations, only rights. That was for economic cooperation among developing countries; you could have any level of preferences, by sectors, degree or tariffs, and so on, and that was for ECDC.

Compared to that, I am delighted to see them taking on Article XXIV discipline because that is an improvement in my opinion compared to what went before. But where I am a bit disappointed is that once they have now

decided that trade is good for them, why not go for the whole thing? Why do it just for three people? That is very much again a hang-over to some extent from the 30s and 60s when they were scared of trade and just wanted to open a little trade with one another to try to minimize the cost of import protection against the outside world. Today, I think developing countries think of trade basically as an engine of growth, if integration really works, and in that case, why take little, hesitant steps? Of course politics and other things come in. But there are three alternatives available for them: ECDC, Article XXIV, and just pure multilateralism. Developing countries are moving from ECDC to Article XXIV and are also WTO members, and if they want to do Article XXIV, I am not particularly worried. They are not setting jurisprudence the way the U.S. would by what it does.

So then I come to my much more skeptical view about preferential trading areas centered around the U.S. My basic view is that if you have preferential trading arrangements or preferential trade policies like voluntary exporter restraints (VERs) on somebody outside, depending on where the product is coming from, or if you have a discriminatory approach or a preferential approach to exclusion or treatment in your trade policy as against an MFN nondiscriminatory one, then you are going to run into a lot of trouble.

The main reason is that today you do not know whose product is whose. We are still having problems like a Japanese car produced in England or in a transplant in the U.S. and we get tied up in all kinds of contradictions which I have mentioned. So increasingly, it is becoming a matter of arbitrary political and administrative decisions to deal with such problems, and political and economic organizations of trade are trying to locate who is making what and then to hit them selectively. Now, I think the Far East has suffered from antidumping and VERs. For instance, if you take Article XIX on safeguards, you have to give a nondiscriminatory trade commitment to liberalization. But in reality, people decided against it just as we do not have it in VERs, because the tendency was to say, look, Korea is really growing fast, so hit it back but not on our friends who are not growing so fast.

The political tendency to favor your friends and to target whomever you want to for one reason or another, has been built into the system. Article XXIV basically is an arrangement where you permit discrimination on other grounds. Now I think it increasingly leads to problems: arbitrary rules of origin. You have hub and spoke systems: Israel has free trade with the U.S. but not with Canada and Mexico. The common market has gotten many associations of meetings of different kinds, with different tariff rates and so on depending on what stage of so called integration they might be at. So what you are getting is a proliferation. If you gave a child a piece of chalk and told him to draw circles around countries with regional preferences of one kind or another, you would get a chaotic, a kind of

spaghetti bowl kind of picture. Now do you really want that kind of world when in fact you can have MFN?

So my view is conditioned by various downsizings, which I do not have time to go into, but you should consider why several economists on balance do not seem to think this preferential treatment is a great way to go. On the other hand, it may be a great way to go, because there are offsetting arguments to choose this. Those offsetting arguments are basically twofold as far as I can see. One is that if you are really integrating politically and economically like in the core of the Common Market, that is forming a United States of Europe someday asymptomatically, it will facilitate mobility of labor and capital. It is taking a long time to get there, but it is a model where I, as an economist, would not want to stand in the way, because that is deeply integrationist. I cannot prove to you that that is better in economic terms than not having it, but it is almost overwhelmingly likely to be true, and this is where political commitments are being made at a very deep level. So that deep integration model you could call a common market model.

On the trade dimension, it is simply a common external tariff and a common external policy, so you have the EU represented in the GATT and the WTO by one ambassador who can technically negotiate and the other ones play tennis and have a good time, and sometimes make trouble, but have no real locus or standing to speak of. So, this is one model which I would exempt from this kind of downsizing. However, their tendency to give all these non-core preferences around the world is really not something that I approve of at all, because I think that there are a lot of chaotic arrangements there — one thing leading to another. Even my own country of origin, India, now wants to start talking about an association agreement, because of these arrangements multiplying everywhere. Everybody wants to get into everything, so you have got even more of a spaghetti bowl phenomenon. Moreover, Australia just told India, why do you not start some Indian Ocean thing rather than coming into APEC?

The second one, I think, is really the key one, which we have to think about in relation to APEC. The U.S., which has been a leader in multilateralism, basically did not want any of this, despite all the criticisms made of its policies. It never used Article XXIV for itself, and when it came to the European Community, the Common Market was warmly supported on political grounds. But as for the European free trade area, which is pure trade, we were very hesitant about endorsing that, although technically it was compatible with Article XXIV, which does not distinguish free trade areas or common markets. So we were really skeptical throughout any preferential arrangement which was purely on a trade dimension, and I think fundamentally it was good sound common sense which was steeped in this whole MFN tradition of international trade and international economics, and I think they were basically wise even

before it became difficult to identify who was making what. Their viewpoint has only been scrambling.

Then, however, we changed our opinion. I think that was quite deliberate, because it was what I call the dynamic time-path question. Mainly, if you want to be like the U.S., which really wants to dismantle barriers around the world and genuinely believes in multilateral free trade, if you cannot get negotiations started on an MFN basis in Geneva, then you think of an alternative route, which may involve embracing Article XXIV. So when the Europeans said no in 1982 to a new round where new issues were to be discussed and where we were having very legitimate reasons to start talking about these matters in the U.S., then the U.S., under Brock,[17] basically turned around and said we will go the Article XXIV route because we will simply open up with Canada which is available for historical reasons to sign such an agreement. Brock was very clear that he was doing this not on a regional basis or necessarily on a preferential basis once and for all. He really wanted to add everybody. If life had been discovered on the moon, he would have negotiated with the government there for an FTA. So he wanted to add more and more countries and thereby to get everybody through this alternative route. I think he offered it to ASEAN, if I remember, and offered it to Egypt but obviously did not clear it with Congress.

It is very interesting because at the end of the Kennedy Round, there was a move for a North Atlantic free trade area, what I call "NAFTA I," as against the North American Free Trade Area, which is NAFTA II, which we are now in. A number of economists from the U.S., Canada, and the U.K. wanted to start such a thing, because they thought that the EC after the Kennedy Round would never be interested in multilateral free trade and therefore it was the last round. Among the American politicians who were pushing for NAFTA were Jacob Javits[18] and Paul Douglas. However, politically it would not fly, because we were still into multilateralism at the governmental level. We simply did not want to start down that route, and politically again, we did not want the U.K. to come our way. We wanted Great Britain to remain in its position where having changed its mind, it was still trying to get into the E.C., and de Gaulle was saying repeatedly no.

This is where the politics of these things enter. We are not talking about trade per se. As soon as you talk about preferences and so on, immediately the politics become more highlighted. Here, you had the U.S. basically telling these people, no, we do not want NAFTA I, we do not want North Atlantic, because we really wanted Britain to persist in trying to get into the EC despite de Gaulle's repeated vetoes, and we Americans

17. Ed.: William E. Brock, in 1982 the chief trade negotiator for the U.S.
18. Former U.S. Senator (New York).

wanted Britain to balance France, which goes through occasional anti-American tremors, to act them out. Britain is actually still playing that role in the European Community. So those guys were smart too in not wanting to be Atlanticists, but then again, it was not Atlanticism, because as a part of the NAFTA I, the blueprint included immediately moving out to the Pacific, and to bring in Japan and the Asian nations. It was really the early Brock scenario, and it never got on because of economic and political reasons. We were too into multilateralism, and we probably did not believe that the EC would not play ball, that we could continue on, and moreover, politically we did not want to go that route.

All this changed in 1982. In 1982, Brock came in and said I have got to do this, and he was very clear that he had no interest in regionalism, no interest in preferences, and that he simply wanted to do this truly openly. His mind-set was that this was really a quick-fire alternative way to do it. He wanted MFN, but you have to distinguish MFN as a process and MFN as an outcome. He was interested in worldwide free trade and multilateral free trade, MFN free trade, but he could not go the Geneva route, so he had to start this route. But then of course, it becomes gelled. I think ultimately we got the Uruguay Round jump-started, and the question then is, do we still want to persist in that mentality? I think this is the way to look at it, in terms of the American dynamic. We started down this route, and now we have got a lot of people who are committed to that route. I do not mean regionalism like APEC in the sense that talking really does a number of important things, but a substantial thing which one is talking about is turning it into a free trade area. Now why is it that we do this?

That is really the interesting question, because we are providing the jurisprudence on this. It is true that people like in South America are keen on it now, but if we did not show enthusiasm, they would disappear as well and stick to the WTO. We cannot absolve ourselves of the leadership question. It is our leadership implied or explicit which is leading to it. I feel that there are really two schools of thought. One is simply what I call the "WTO plus" approach, which is the thinking that now we can just walk on two feet. We should dismantle trade barriers wherever we see them regardless of whether they are preferentially or non-preferentially done. Larry Summers,[19] my former student who runs U.S. international economic policy, says that every kind of lateralism, uni-, bi-, tri-, multi-, and so on, should be dismantled. As a trade economist, I feel frightened by such an approach, because he is saying that in my field, which is trade. If I were to say in his field, which is public finance, that if you want to raise taxes, it does not matter which taxes you raise, just take whatever taxes as long as you raise revenue. Or if you want to cut spending to reduce the budget

19. Lawrence H. Summers, former Harvard professor of economics, currently Under Secretary for International Affairs, Treasury Department.

deficit, it does not matter which spending you cut . . . do not worry about the exact economic efficiency implications. I think I would be thrown out of the Treasury right away.

On the trade side, however, there is this little bit of sloppiness in terms of the architecture and efficiency implications, which we "traditional, conventional, neo-classical economists," as people say to condemn us, look at things like cost-benefits, optimality approach and so on. I think there is a slight sloppiness in the WTO-plus approach, where the two processes are independent and simply additive. You go WTO and other routes. That is a bit like the movie "Indecent Proposal," where you have a marriage-plus thing. In those terms, which turns out not to be exactly separable, there are consequences to getting such an offer to play for just a million bucks. So I think the smart fellows do not think in terms of additivity or two independent processes. The really smart people say it is a benign symbiotic relationship. That is, if you want to go the WTO route, you can still turn APEC into an FTA as a way of expediting and pushing the WTO programs. That is a serious issue on which economists can divide. As to whether we can use these FTAs to create a domino effect, where two people get together, and a third one feels left out and wants to join. Of course countervailing that is the notion that if two people join in and provide preferences to each other, you also have lobbyists to keep the third guy out. So you have two competing forces, and of course it can come out any way, and that is where your policy judgment matters.

Rather than the benign relationship direction, the malign relationship people tend to think of this as diverting attention from wanting to do things in the WTO. Suppose Canada got into a free trade area with the U.S. and got basically its antidumping problems taken care of, then it has less incentive. Because 70 percent of its trade is with the U.S., it has less incentive, from having gotten what it really needs from its principal trading partner, to go and really become unpleasant in terms of bargaining and aggressively pushing for the WTO agenda or the GATT agenda. It is not just a matter of there only being five smart people like Merit Janow in the USTR, who cannot do everything, because they are not like Hindu gods with ten heads and twenty hands. You really have a limited amount of bureaucratic energy, but it is more than that. If they strike special deals with principal trading partners, which is often the way it develops, the loss of incentive to go and do things at the WTO on the part of governments is something that you need to worry about. So the malign relationship people have some good points on their side as well.

Now it is a matter of judgment, but I think on APEC, the arguments which are used on the benign side are not particularly compelling. Seattle is often used as an argument. Without Seattle, it is said, we would not have been able to go ahead and get the Round closed. Now we can have as many seminars as we want on that issue. I think the time was right for the Uruguay Round to be settled. I think the U.S. played a major role in

deciding that we were also going to take what we could get and go on to build other things. I do not think Seattle or the threat of APEC being formed forced the Europeans to come to terms. That is too simple-minded in my opinion. It might be a 5 percent explanation, but nothing very much more. I do not buy that.

NAFTA is also often used as an argument, saying that the President found his voice for free trade on NAFTA. But he would have found it equally well on the Uruguay Round if there were no NAFTA. I think NAFTA actually also created the trade in jobs issue, because if the Uruguay Round were still being discussed with so many countries, the notion that you have many unskilled people in China or India would not have meant anything to the average American. I do not mean smart people like us, but the average Americans, because they probably do not even know where India and China are. They probably think they are in South America, because nobody learns geography anymore. So I think they would have thought about an Indian as people like me or Chinese as people like I. M. Pei, for example, because these are the images they have, doctors, professionals and so on. But Mexico had the image of all these illegal, undernourished, underclass people streaming across. So then they thought, my gosh, free trade with this nation is going to mean that all these guys are going to be producing things and competing with us freely. In fact they were competing with us freely anyway, because we had hardly any barriers to talk about even earlier with Mexico.

However, the mind-set was that this is going to be an indirect way in which these guys are going to come over through their products and then going to demolish our workers. And that became a big political issue. In my opinion, the legacy of NAFTA was to create more difficulties with multilateral negotiations between North and South, poor and rich countries, because we did not have a Jacques Delors phenomenon in the U.S. The U.S. is a very trade-oriented and frugality-driven country on markets and trade. That is why it is the leader in world trade. We do not have a Jacques Delors talking about Asiatic ants and competition from the Far East and so on. We are a very open country. But suddenly this became a big issue, and that was a legacy of regionalism which enables you to focus then on one or two countries and worry about the special characteristics of this country which might affect some particular dimension you have. So I think that was a malign relationship, not a benign one.

Because I do not think anyone, including the U.S., wants FTA for its own sake, the real issue before APEC, therefore, is whether to go the conditional MFN route by buying the scenario that we are somehow getting these Europeans and others to involve in a WTO multilateral reduction of barriers. That is an instrumental policy. Now I think this is not necessary,

and it is also dangerous. Bergsten[20] has been talking about temporary suspension of MFN, but there is no such thing. You would have to get a waiver. I do not see the EU or India or anyone agreeing to a waiver on Article XXIV, saying you can discriminate without involving Article XXIV for any length of time. So I think you would have to invoke Article XXIV, which means that you get the dynamic set already in favor of an FTA. So the real choice we are discussing here is unconditional MFN or taking Article XXIV. Now if you take Article XXIV, I think it is not really open regionalism. True open regionalism as far as trade is concerned is MFN. All else is simply saying, yes, we will add more people. I was once at a meeting in Tokyo a couple of years ago, and the Foreign Secretary of Brazil from Mercasur was there and the Trade Minister of Hong Kong, and the Mercasur guy said, we have open regionalism and nobody has anything to worry about. So this lady said, well, I will put in an application tonight, would you agree to it tomorrow? It would really take a long time. So open regionalism is a sentiment by and large.

I feel we ought to go more in the direction of unconditional MFN. Will this mean the EU, etc., will not come on board? I think the desire for more free trade worldwide in the post-Uruguay Round era has resulted in politicians who endorse free trade being seen as true leaders or as statesmen rather than simply as politicians. Look at the reaction of the EU itself. As soon as the U.S. faltered on the financial services agreement and said we do not have enough reciprocity and will hold up this agreement, what did the EU do? In the old days, it would have just stood on the sidelines. Today, they moved right in and said we are going to do it, and they have now got Japan on board saying we are going to do it even if the U.S. does not. So why does the EU do it? That is because being for protectionism today does not really pay dividends to politicians around the world. Indonesian President Suharto says 2020, and even though he is not a democratically elected person and has a military background, he sees somehow that free trade is going to make him look different and good.

I think by and large politicians think they can turn into statesmen by signing on to these great big things, and I feel the evidence on the EU makes it very clear that it wants to take more initiative in sustaining the WTO. No matter how much we may resent the fact that the Europeans have lectured us on managed trade, the reality is that they really came out consistently against it if managed trade is just defined as asking for quantities. There is nothing deeper than that. It means to go for quantity outcomes, and that was what we were asking for. We made legitimate protests and said that there were good reasons for it, but to say that they are not asking for managed trade is not correct. Look at the last few months.

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20. C. Fred Bergsten, Director of the Institute for International Economics in Washington, D.C..

The EU is really behaving very much as a supporter of multilateral trade while we appear a little afraid of the margins on these issues.

I am not pessimistic, and I do not see APEC turning into an FTA, which would be bad form, as necessary to get people to move into the direction of better rules including worldwide liberalization. So my recommendation would be, as the Japanese noted in my writing recently, to suggest that alongside the so-called concerted unilateral liberalization where people do liberalize on an MFN basis, through which we know obviously we cannot go very far, they should set up power negotiations with the big countries at the same time, and then quickly move that under the WTO framework on the trade side. I do not think this is incompatible with doing a number of other things like investment codes and collective actions, which is entirely strengthening WTO or getting your customs and rules of origins more consistent with what the WTO requires. All that can be a part of the agenda, but I think the APEC at Osaka in November would provide an invaluable opportunity for this region to make a statement that we really are for MFN and that that is the true nature of open regionalism.

To suggest that a regional framework becomes a stepping stone complimentary to the WTO is rather to play what I see as essentially geopolitical games. I see people write about this. Charlie Krauthammer[21] and Mrs. Thatcher, who do not like the Far East as much as they like one another, have been saying that the Transatlantic one should be a way of kicking these guys including South Korea in the butt. People play-act. These economists and columnists play out these juvenile geopolitical fantasies through these recommendations or these airs, and I think we should get out of it and restore the focus on trade. Let regionalism deal with the commonality of positions on things like labor standards where we, on the American side, have different views on the governmental level from what you find over here, because the perspectives are very different on these matters and people do not face pressure here as much as President Clinton does. So maybe we should get the non-American members here to talk about these issues first among themselves and then to go to the American members of the APEC. That could be carried out under the APEC umbrella.

I think now, however, we have to learn to restore the trade focus and say that MFN is the way that we want to go. That is my view, and I think it can be done. I think this is also Asia's legacy in a way. Asia is not a free trader, and I have never argued that Japan is a free trader though I have been often accused of saying that, but I only said that it is less protectionist than we think — they just ignore what negotiations demand. On the output orientation side, however, they have always treated the world as their market. They have never been interested in a regionally or subregionally

21. Syndicated Columnist.

limited focus. Anyway, in Osaka, one could make a statement which you would never hear in any other part of the world. You would not hear it in Europe, and you would not hear it in North American anymore. Mainly, we stand for MFN, and we stand for strengthening the WTO. In fact, that would also be a good time to announce something like we want to go into a WTO round, since there will be two thousand cameras at that time and eighteen presidents. It is a great opportunity to make a statement that would strengthen the WTO multilateralism especially at a time when the WTO has started functioning.

In fact, this is the U.S. initiative too, since the President suggested a new round two summers ago in Italy. I do not see the U.S. actually objecting to this in the end, if it could get something like this, because it was originally an American idea. At that time, I am told, Japan and Britain supported us. To the French, however, the U.S. leadership in trade is like Mao's permanent revolution. As soon as we finish one negotiation we want to start another one, because we have the drive. There is no country like the U.S. We are the exception. Without us, these things would not have happened. The French reaction was, "Good God, we have just recovered from this trauma of the Uruguay Round, and you want to start another one?" They said, "No way." But I think the pressures are quite immense now to get into a competition policy which is affecting Korea and Japan, and that is another good APEC issue: the two capitalisms, ours and the Far Eastern one. What better place to discuss these things than under APEC auspices then to generalize it to WTO auspices? There are so many opportunities, but none of them require, in my opinion, going the FTA route. In fact, if you go for the FTA, you will be just another crummy FTA, bigger and worse. But here you've got the chance to do something really dramatic, and I hope it is taken. Thank you.

Dae Yun Cho: Thank you, Professor Bhagwati. We appreciate your deep insights into free trade and regionalism versus multilateralism, based on true MFN. If I understand you correctly, APEC can be viewed as a forum for constructive discussion and coordination, but as a free trade area it may become a stumbling block rather than a building block toward more liberalized world trade.

We will now have Doctor Kim Wan-Soon address the issue of a post-Uruguay Round agenda for APEC. Doctor Kim is a professor at Korea University and also Chief Commissioner of the Korea Trade Commission.

Kim Wan-Soon:[22] My overall view, which is by and large very much in agreement with Professor Bhagwati, is that the continued support of the multilateral trading system is a must for the growing Asia Pacific

22. Professor of Economics, Korea University.

interdependence. Therefore, interest in closer, more effective cooperation remains very strong in this region, supporting the process of ongoing global trade liberalization. To this end, the APEC, committed to open regionalism, upon which I will comment soon, could help the bilateral tensions that now exist among several pairs of member countries, and APEC can and should step in to supplement major weaknesses of the Marrakesh Accord and fill the void left by the WTO Agreement. Specifically, the APEC could move forward on the unfinished business of the Uruguay Round and seek regional agreements on new proposals which had been considered in the UR negotiations but could not be adopted there. In so doing, the APEC could develop workable regional models that may be adopted subsequently at the global level. The APEC could pursue a regional arrangement as a fallback and lead the world in trade and investment liberalization.

On open regionalism, we had several comments yesterday on the definition of open regionalism, and I am going to add to that. Of the several initiatives for the creation of a regional cooperation mechanism in the Asia Pacific, the most significant region-wide initiative has been the ministerial level Asia Pacific Economic Cooperation, which was chiefly engineered by Australia and Korea, and launched formally in Canberra in November 1989. APEC participants at the time included the six ASEAN countries, the U.S., Canada, Japan, Korea, Australia, and New Zealand. China, Taiwan, and Hong Kong joined the APEC at its third annual meeting held in Seoul during November 1991, bringing total membership to fifteen economies.

In November 1993 at the fifth annual meeting, President Clinton successfully elevated the APEC Ministerial Meeting to an informal leadership conference. At that meeting, two countries became new members of the APEC—Mexico and Papua New Guinea, bringing APEC membership up to 17 economies, now 18, including Chile. The unprecedented Informal Leaders' Conference in Seattle contributed substantially to the successful conclusion of the GATT Uruguay Round and added substance to the vision of a community of Asia Pacific economies. On November 15 of last year, in Bogor, Indonesia, leaders of the 18 APEC countries adopted the "APEC Economic Leaders' Declaration of Common Resolve," in which they agreed to achieve the long-term goal of free and open trade and investment in the region: the industrialized members by 2010 and developing countries by 2020. But the crucial question of how to actually implement the Bogor Declaration, particularly as to the exact mechanism of the liberalization and treatment for non-APEC members, is left to the November 1995 APEC meeting at Osaka, Japan. Though the Bogor Declaration clearly does not envisage the creation of a free trade area in the Asia Pacific region, the U.S. has exerted efforts to move APEC, as Professor Bhagwati notes, in the direction of becoming a preferential free trade agreement.

Of the seven principles upon which APEC is recommended by its Eminent Persons Group (EPG) in order to achieve the long-term goal of free and open trade and investment in the Asia Pacific region, the question of how to interpret "open regionalism" is a critical issue. In Asia, the view held chiefly by the ASEAN countries is that open regionalism should mean an "inclusive MFN" system where the benefits of regional trade liberalization are extended to the rest of the world on an unconditional MFN basis. This was also the meaning of open regionalism originally espoused in the first report of the EPG. However, unconditional MFN treatment of nonmembers has generated a free-rider issue. Although the extent of free-riding would be limited, even if the APEC countries were to liberalize jointly on an unconditional basis (since over 75 percent of the majority of APEC markets for trade in goods are located within the region), the U.S. is willing to trade off regional liberalization measures to obtain maximum liberalization around the world, particularly vis-a-vis the EU. With respect to the question of conditional MFN versus unconditional MFN, Professor Patrick[23] argues that a tit-for-tat approach may make the EU inward-looking and split the world economy into two groups. Committed to open regionalism, APEC should encourage the EU to keep an outward looking stance and to reduce trade barriers on an MFN basis.

Such differing North American and Asian views of open regionalism resulted in ambiguity within the 1994 EPG report. It proposes two operational solutions to the concept of open regionalism in order to advance the principle of unilateral liberalization and at the same time to deal with serious free-rider problems by offering the benefits of regional liberalization to nonmembers on a reciprocal basis. As the ratcheting-up approach to nonmembers is opposed by the Asian countries, the EPG advocates, (particularly Fred Bergsten), that individual APEC economies could unilaterally extend the benefits of their APEC liberalization to nonmember countries on an unconditional or a conditional basis. What is very confusing, however, is that the EPG's second report appears to apply reciprocity even to liberalization within the APEC. Referring to the ASEAN's CEPT scheme, the second EPG report notes that for an APEC member to be eligible to enjoy the benefits of liberalization undertaken by others in a particular sector, it must remove all quantitative restrictions in that sector and reduce its own tariffs below some agreed level in that sector as well.

In view of the diversity of the Asia Pacific region, it will not be easy for the group to come up with clear, unambiguous guiding principles for trade liberalization. Opposing a legally binding agreement, China, Malaysia, Philippines and Thailand prefer, according to Professor Patrick,

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23. Hugh Patrick, Professor, Columbia University Graduate School of Business; Director, Columbia University Center on the Japanese Economy and Business.

a voluntary and unilateral approach to trade liberalization. This could be a very slow process, since they plan to protect their domestic industries until they become internationally competitive. In contrast, the U.S., Canada, Mexico, Singapore, and Hong Kong prefer to pursue negotiated liberalizations with targeted deadlines and enforceable commitments. Others, including Japan, Indonesia, and Korea, seem to lean toward a middle way. Indonesia has proposed the concept of concerted unilateral liberalization, while Japan advocates for an open economic association modality of trade liberalization.

In my view, however, any proposals which would introduce trade discrimination among Asia Pacific economies or against nonmembers will prove divisive and impossible to reach by consensus. Achieving a free and open market in the Asia Pacific is a long-term vision. To this end, during the next ten years or so, APEC governments should endeavor, initially, to reduce the difficulties, uncertainties, and costs involved in cross-border economic transactions within the region. Agreement on and absorption of the guiding principles (transparency, nondiscrimination, and national treatment) for genuine trade liberalization shall follow naturally over the years. Thus, Professor Bhagwati emphatically states that the Asian members of APEC, by opposing APEC being turned into another free trade area, must support multilateralism at the WTO.

Another feature of APEC is that the U.S. and Canada, who are the principal players of the NAFTA, are also members of APEC. Naturally, East Asian members have doubts concerning the role of the U.S., when there are serious conflicts of interest between the two. There have also been constant fears that APEC will become a bargaining chip for the U.S. in its dealings with the EU and that the U.S. may dominate APEC for its own interests. In considering these uncertainties, APEC should have the capacity to influence the U.S. not to make the NAFTA an inward-looking, discriminatory regional trade arrangement.

On the agenda for APEC, I will first comment on the first unfinished business of the Uruguay Round. First, antidumping measures and dispute settlement procedures. The successful outcome of the UR has restored much of the credibility of the global trading system. But the UR made only modest progress at best in dealing with a number of contentious subjects, such as antidumping, dispute settlement procedures, regional trading arrangements, and the like. Furthermore, it left many key trade problems, such as trade-environment linkages, labor standards, and competition policy issues, unresolved. APEC could initiate regional negotiations on several specific issues and develop fresh precedents that could subsequently be adopted at the global level. In short, APEC could be complementary to and be supportive of multilateralism by resolving some of the major issues that continue to plague global liberalization through the GATT/WTO.

One of the natural candidates for the APEC agenda is the antidumping issue. Because implementation of antidumping policies by national governments is a source of contention in the Asia Pacific region, the EPG recommends the creation of a task force to address the urgent problems of the proliferation of abusive antidumping practices. The EPG is of the view that a successful mediation in resolving trade disputes at the regional level in APEC would eventually lead to a similar approach at the global level.

As the GATT succeeded in progressively eliminating traditional tariff and non-tariff barriers on the one hand, a temptation to allow antidumping measures to serve as a surrogate for an alternative form of protection has sharply increased on the other. In addition, the lack of sufficiently detailed rules and guidelines in the GATT Article VI and the Antidumping Agreement has given rise to the initiation of antidumping investigations without accurate and adequate evidence. The antidumping inquiry in the absence of a clear causal linkage between the import and its injury has, however, a chilling effect on exporters who are often forced to cut their prices drastically or even abandon their exports in addition to bearing heavy legal expenses in defending themselves.

The new agreement also failed to provide sufficiently detailed provisions to deal with the abuses of antidumping policies because of the sharply conflicting views of the participants regarding antidumping rules and concepts such as dumping, industry, injury, and material retardation. Most importantly, from the viewpoints of the Asian NIEs, by failing to agree on anti-circumvention measures, there is a new risk that anti-circumvention measures will be invoked to undermine legitimate efforts to globalize sourcing and production. Absence of specific statutory guidance in the application of a material retardation standard in the Dunkel Draft is a setback. For several middle income countries which have just embarked on the production of high-technology items, they cannot provide relief to their young industries by eliminating the injurious effects of dumped goods from abroad, unless they can justify dumping investigations on the basis of the material retardation provision.

In view of the trade restrictive effects of antidumping measures which have caused most of the intense and recurrent bilateral trade disputes among so many APEC members, the EPG recommends the creation of a task force to review the ways in which APEC countries are implementing their antidumping policies. Since the abuses of antidumping measures pose a serious threat to the predictability and security of market access, and as a result, threaten the evolution of the community of Asia Pacific economies, the EPG further proposes that the APEC should set up a non-confrontational, non-binding, and voluntary Dispute Mediation Service (DMS), as a complement to the GATT/WTO dispute settlement procedures, which would assist its members in resolving some of the highly contentious trade disputes.

APEC DMS is probably one of the most contributory proposals put forward by the EPG. Since domestic laws implementing antidumping policies are so incomparable among APEC members, the EPG supports an amicable process of voluntary, non-confrontational dispute mediation — a cooling off period, so to speak — rather than the adoption of binding arbitration in resolving trade disputes among APEC members.

I understand that yesterday there was discussion on the dispute settlement procedures in the WTO, which I know is an improvement over the existing system. But I would like to give an additional perspective regarding this system.

The dispute settlement procedures under the new WTO Agreement significantly improve the existing system by including six new features: (1) guaranteeing a right to a dumping panel (the rule of negative consensus); (2) strict time limits for each step in the dispute settlement process; (3) appellate review of the legal aspects of the panel report; (4) more retaliatory options for the country winning the dispute (the "cross retaliation provision") if the panel recommendations are not acted upon; (5) greater transparency in procedures; and (6) restrictions against unilateral measures. In addition, the Trade Policy Review Mechanism, established in April 1989, is sure to enable the WTO to search for violations of multilateral rules and to encourage governments to live up to their WTO obligations.

In reality, however, the WTO system does not seem to be a very significant departure from the GATT mechanism, if the panel decisions are to be often flouted as in the past. To be specific, retaliation for failure to implement the panel's recommendations will be far easier under the WTO system than it was under the GATT. However, the WTO can neither organize an international trade embargo to punish recalcitrant countries nor does it have an army to enforce its rulings. As an entity under the previous system, a country like the U.S., the world's largest trader, may still refuse to comply with a panel judgment and simply accept the complaining country's retaliatory measures as a tolerable price for continuing a particular disputed trade practice. In contrast, the right to retaliate legally is obviously not much use to a small country with little economic clout. Therefore, because of the concern about a supposed loss of sovereignty due to WTO dispute settlement procedures, if the U.S. refuses to endorse and embrace the new system, the very foundation of the multilateral trading system will be in grave jeopardy. The U.S. should, therefore, be a bona fide user of the WTO's new dispute settlement mechanisms when it is necessary.

Although Professor Bhagwati has already spoken about the further substantial strengthening of GATT Article XXIV, I will briefly discuss the issue as well.

GATT Article XXIV approves of the creation of free trade areas, customs unions, or interim agreements, as long as their purpose is to

facilitate trade within the region and not to raise trade barriers against nonmember countries. Article XXIV of the GATT has not been, however, administered strictly, particularly since 1985 sub-regional arrangements have proliferated throughout the world. If the world economy veers into inward-looking regionalism, this would have devastating consequences for the survival of the multilateral trading system. To this end, therefore, serious consideration should be given to revision and tightening of GATT Article XXIV. For example, Article XXIV could be modified to rule out FTA's and allow only customs unions.

While some 90 percent of GATT contracting parties are signatories to regional groupings, East Asian countries have not yet created a regional arrangement of their own. But should the NAFTA and the EU turn inward into a protectionist trading block, and if the NAFTA expands its geographical coverage to include the whole Western hemisphere, this could trigger the formation, in East Asia, of a countervailing trading block of its own as a deterrent to discrimination and protectionism in Europe and North America. An extending, discriminatory NAFTA could well split the Asia Pacific, a region which adheres to open regionalism.

The EPG rightly notes that despite the questionable value of sub-regional groupings for the process of global liberalization, their continued proliferation involves the risk of creating new sources of divisive strains and entrenched interests within the broader Asia Pacific and could blight the prospects for APEC liberalization. Consequently, the EPG recommends that the sub-regional arrangements within the APEC publicly indicate their willingness to equalize the margins of tariff concessions granted to their members with their nonmembers within the region, and eventually eliminate these margins on a APEC-wide basis.

China has become de facto integrated with Asia Pacific economies because of its high economic growth and its maintenance of an open-door policy over the past decade. The prosperity of the region will be further advanced by facilitating China's enlarged integration in the world economy. Therefore, the major WTO issue for APEC is China's accession.

The Republic of China was an original contracting party of the GATT but withdrew in 1950, because it was unable to meet its obligations under the GATT. In 1986, the People's Republic of China formally applied to accede to the GATT in the form of a "resumption of its status as a contracting party," and a working party was established in 1987 to negotiate on its accession to the GATT. In addition, China wishes to be an original member of the WTO.

China's accession to the GATT/WTO, I believe, is a major issue for APEC. Though Korea supports China's accession to the GATT, it is important that the Chinese agree to a demanding list of reductions in tariffs and quantitative restrictions, such as quotas and other non-tariff measures. Furthermore, what is most important, as Professor Patrick argues, is that China cannot be given blanket developing country status without

countervailing commitments to ensure that China will not become an enormous free rider on the global trading system.

The EPG is silent on the linkages between trade and labor standards. The EPG may have felt that it is of questionable utility for APEC to be overly involved in a debate over "the social clause" which may ignite a flame of discord among APEC members, in view of the various stages of growth of the countries of the Asia Pacific and of the export-oriented strategies, based on labor intensive manufactured items, adopted by a large number of developing East Asia countries.

To conclude my presentation, Korea was one of the co-founders of APEC and was elected as the first chair country of the APEC Committee on Trade and Investment (CIT). Korea is expected not only to strengthen APEC and bolster the multilateral trading system but also to advance its own national interests. Korea is sure to gain much from expanded global and regional trade and investment which will help accelerate Korea's structural adjustments.

The many weaknesses of the Marrakesh Accord reveal that faith in the new WTO will not be sufficient. As a mechanism for initiating and sustaining trade liberalization, APEC can and should step in to complement the global effort for trade and investment liberalization. On the more sensitive and critical issues, APEC-wide cooperation may become the beginning of the process to establish a set of reasonable global rules.

Promotion of APEC by itself does not resolve the issue of NAFTA becoming too inward-looking. In effect, the GATT Article XXIV has no teeth, as also noted by Professor Bhagwati. No significant bilateral agreement has been vetoed by the GATT. For example, the content requirement of the NAFTA is a disguised form of protection. The best solution is to revise Article XXIV such that the GATT/WTO permits only custom unions. At the regional level, the APEC should look for mechanisms that can help to ensure that subregional arrangements will be "building blocks" for the multilateral free trade system.

In view of the Asia Pacific region as a diverse region with an assortment of economies that are different in their socio-economic structures, policy orientation and development stages, any rash attempts to integrate environmental concerns and labor standards into trade agreements and the multilateral rules and procedures may easily lead to a head-on collision between developed and developing countries. At the regional level, the APEC could show to the world a region-wide approach by tackling these new issues of GATT and by initiating discussions among APEC members and seeking their views on the future agenda. Within the region, Korea's recent experience in dealing with its environmental degradation problems and labor management will be a valuable contribution to the WTO trade policy review mechanism. In terms of the normative negotiations on such issues as environment and labor standards,

Korea should be an active participant as well as a leader in looking for new rules to define the appropriate scope and bounds for trade action to be taken in support of the new agenda. Thank you for your kind attention.

Dae Yun Cho: Thank you Doctor Kim. Doctor Kim has provided some deep insights into some post-Uruguay Round issues for APEC.

Michael K. Young: We have had two extremely illuminating discussions, and as it is often the case when I listen to Professor Bhagwati, I frankly find nothing to disagree with. So I do not know what I would say, but I think there are those of you out there who do have some comments that you would like to make, and we will follow yesterday's format as a free and open discussion.

Stewart Baker:[24] I have some comments on Professor Bhagwati's position. First, I am a little astonished that a customs union is better than an FTA, especially since a customs union has a resolution of a host of investment and immigration rules, whereas a FTA involves extra labor codes, etc. Secondly, I think that these two examples simply seem to be just about harmonization. Thirdly, Professor Bhagwati's suggestion might hold water regarding rules of origin, which are complex, but the real question in my view is whether there are higher barriers or not, because there is no highly protectionist aspect to FTAs.

Jagdish Bhagwati: Basically, both raise the same issues correctly. The rules of origin have to be more pointed when you do not have common external tariffs. That is really the only point that I was making in relation to those two. I was talking really more about the common market approach, where you are really integrating across the board. So in my book the customs unions are marginally better, and compared to FTAs, since they have less rules of origin problems. You would still have rules of origin problems in customs unions such as when deciding whether an automobile is properly designated as British, British-Japanese, or Japanese? So you do not eliminate that issue within a customs union.

I was also making a political point about a general, unproven economic point that if you really integrate a market fully so that it becomes like one country as far as possible, that is a very different approach. I would contrast the EU as a common market with our FTAs.

Now you said that in your experience, you did not see anything like trade diversion in FTAs. That is a possibility, but just two weeks ago, I was at a seminar where people were talking about how Hungary, Mexico, and Brazil were recently under pressure not to change their tariff rates in their

24. Partner, Steptoe & Johnson.

countries within their association with the EU or with their FTAs. Some, in fact, just raised their tariffs. This is exactly what I am afraid of. Obviously, if it is a huge tariff, you probably could get it, because it is so uncompetitive, but if you are within the ballpark, the temptation is to accommodate one another at the expense of third parties. My own view, again, is that if you are going to take the preferential route, then I think it is very important to have the discipline of the WTO so that you cannot selectively raise barriers against nonmembers. I take a slightly different but more traditional view in terms of deciding what you want. If you are going to continue to take a preferential route, make sure that you do not indulge your preferences.

You cannot have a position which we had in the Uruguay Round, where what we voted for in much of the Dunkel Draft is that we can be antidumping basically. At the same time, you want to remain preferential to your approach to the world alongside the WTO. That seems to me a dangerous combination. I do not deny the possibility of having in fact a convergence under selective parameters.

One argument for FTAs is the ease with which it can expand membership. In contrast, in a customs union you must harmonize tariffs, which is more of an obstacle. There is a whole industry among economists on ranking those two, and then there are people like me who say, plague on both of them. If you want to strengthen the WTO without those two, then just proceed with the WTO.

Kim Wan-Soon: Although Professor Bhagwati answered your question, I would like to clarify that I was not really concerned in my paper between customs unions versus free trade areas or other agreements. I was more concerned that while the GATT stands for nondiscrimination and while Article XXIV is an exception to that, this article has not really been strictly administered in the past. From now on, to bolster multilateralism, we should be more aware of the many aspects involved. This is much more my concern rather than which regional arrangement is better.

Jagdish Bhagwati: I do have one comment on why we should worry so much about rules of origin. They matter very much, because there is a lot of discretion built into defining the matter within those rules of origin, for instance, as in the Canadian Honda case. The rule of origin was clear in the case, but there was a heated debate, and a lot of people made money making up these numbers. A lot of energy gets taken up by people digressing, making money by playing these rules, and getting people to decide whether you are truly satisfied by the requirements of the lower duty rather than a higher duty. There are generally transaction costs, and there is also manipulation depending on rivalry, corruption, and so on. I am told that in the EU, which has a huge number of these agreements, you can have a really successful career as a customs officer. Again, there are some

studies in process on how much this matters, so you will get more documentation.

Choi Byung Sun: Professor Bhagwati seemed to warn against the temptation to spread regionalism and to fall back on your own background when there are problems. Do you believe in the success of that strategy in the face of U.S. insistence? And if your group strategy does not work, what should Korea's strategy be except to go to FTAs?

Jagdish Bhagwati: I do believe that ideas and examples matter. I feel that if APEC does manage to emphasize open regionalism on the trade side to MFN, then it can exercise a very good influence even in truly opening up NAFTA, because NAFTA members are a part of APEC. I am of the idea that you should not emphasize reciprocity so much, which is something that the Americans are very obsessed with right now. That itself amounts to some bit of unilateralism. Even though the offers from the Far East are not as good as we would like them to be, we should go ahead and close the deal. We should not really be reciprocitarians. Just go ahead and close the deal, even though it is an imbalanced deal from the point of view of reciprocity. This, in effect, is to say that some marginal unilateralism is not a bad idea. Now why is it not a bad idea?

In my judgment, if you look at U.S. experience in telecommunication and financial services by being ahead of the curve on deregulating, we have become substantial competitors. Today you see the Nikkei in Japan having the sentiment that you are really going to see that it is competitive, regardless of foreign pressure, as demonstrated in the Eastman Kodak case, for example. If there is some unsavory practice going on, we want to get to the bottom of it, regardless of what Mr. Kantor[25] does or does not do. You may be able to protect yourself domestically in Korea or in Japan, but it really does not help you compete in the outside world, which is wide open in many cases.

I think those are matters which the Europeans have learned more in terms of policymaking. The leadership there, like Leon Brittain,[26] looks at these arguments unilaterally and say, we have done better by not worrying about reciprocity so much. Admittedly, you cannot ignore reciprocity all together because of politics or because of notions of fairness, and it has got to be there in some form in the real world. However, to get so hung up on it and so worried about having it exactly the same way as I am, like the U.S., is like having a trauma for no reason at all in terms of modern thinking. In that sense, I would say again that the Europeans paradoxically are learning from the American example and now are willing to say, let us

25. Mickey Kantor, former United States Trade Representative.
26. European Union Trade Commissioner.

close the deal and not worry about reciprocity. I would simply say in response to your question that I do believe that leadership, examples, and ideas do matter.

America right now is really keen on reciprocity, conditional MFN, and preferences to some extent, at least in terms of the other proposals we have been discussing. All of that comes from worries in the 1980s' about reciprocity. I think our industrial and financial sector experience is really contrary to all that. During the 80s, U.S. economists and even my star pupil, Paul Krugman,[27] actually formalized those arguments. He said essentially the following. Assume you are an identical firm to me, for example. You are in Japan, and I am in the U.S. If your market is closed and mine is open, then you have your market and mine, and I have only mine. So you have two markets, and I have only one. In addition, if there is learning by doing as your production increases, then the more you will learn and become efficient, and the more your costs will fall. Once you make all those assumptions about identity of learning and so on, then reciprocity becomes important from an economic point of view, not just as fairness or politics. In the 1980s model, the real damage done by Krugman was that he formalized these worries of protection, which lead ultimately to a cleaning out of my industries rather than your industries, because the latter market is protected.

That is because the assumption was that the two firms are identical regardless of the framework within which they were developing. If one is developing in a protectionist framework, it is not going to learn as much as I am learning in a very open framework where my home ground continues to deregulate. In economics, if you make wrong assumptions you reach wrong conclusions. So that model of the 1980s was wrong to emphasize reciprocity. I think you can blame policymakers for becoming so wedded to reciprocity, who say, in no way can we have unconditional MFN unless we can have exact reciprocity or we would somehow be cleaned out. I think that kind of thinking should be phased out. In my view, I would like to see APEC place less emphasis on reciprocity, and say instead, let us move to a world which is truly open and nondiscriminatory, which is the objective of the WTO. In that sense, U.S. policy is not consonant with U.S. experience. It is true that one will be left holding the parcel part of the way, but the U.S. has demonstrated the virtue of unilateralism, meaning the reduction of its tariff barriers by itself, whereas the politics are still based on the 1980s' worries. With a slight shift in focus, U.S. policymakers can be of a better mold. Whether we can do it is another question.

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27. Professor of Economics, Massachusetts Institute of Technology.

Conference Participant: Do you see a need for bilateral negotiations to alleviate predation?

Jagdish Bhagwati: This is what we call competition policy. If you are worried about predation, a necessary condition to any model is that markets should be segmented somehow. Suppose your ability to compete effectively is reduced not just because of openness but maybe because of a lack of penetrability due to all kinds of regulations on distribution networks and so on. Then one of the necessary conditions is satisfied for devising suitable antidumping measures. Within a national market, assuming there is one common jurisdiction, by definition you have identical policies, and therefore the usual argument for antidumping is that when you have segmented markets, you need it. But of course, that is not actually the way it operates. The way it operates has no relationship to any real definition of predation. Nobody actually ever goes to an antidumping case and really looks at whether in fact markets are truly open.

I think you do not need more emphasis on bilateral negotiations, because many negotiations are already bilateral, with two principal parties. Even the MFN negotiations of the GATT have always started with principal suppliers and so on and then extended to MFN. So the most interested parties are bound to start it, but I think APEC has an advantage. These are all virtually exporting nations, and the antidumping advocates are mostly in the EU and, unfortunately, in the U.S. as well. APEC is a good regional body to bring at least the two principal sets of players together and then to spread them to the WTO, because I think the WTO may be an area where negotiation of these kinds of competition policies is a bit more complicated — a real can of worms. It would be a good idea to get some principal players like Korea and Japan on the one hand and the U.S. on the other to use APEC auspices to try and make progress on how to define barriers to entry.

It sounds simple, but like the U.S., the French were complaining at the close of the Uruguay Round that as a matter of principle, to have only one percent of the U.S. movie market means that the U.S. market is closed. Obviously Americans don't want to read subtitles, but then why not teach French in your schools? That is a barrier to entry. Where do you draw the line? Or in the car industry, what if you can set up your own distributive network? Even with Eastman Kodak, which has locked up everything in terms of formal favors and other retailers like the little kiosks we have on Broadway, like Fotomat and so on, which really is an alternative method that is very low cost, why should it complain about these other matters? So when does something become a barrier to entry? I am afraid I do not know. I do not think economists have sorted these things out. When is something really critical to market access, and when is it to be disregarded? To me, these are the kinds of issues which will come up, because car manufacturers, for example, think that a single agency system

is the way to maintain quality, and this is also the way Americans used to think. The Europeans still give an exemption from the competition policy directed to the car industry. Economists and antitrust lawyers, I suppose, are not unified or do not have a clear set of principles. I think we have to draw up and try and get them.

I can see that going to the WTO, which I often recommended, is a problem, because it is a question of how you make law. Competition policy is a case that is so complex, with different points of view and undefined principles, that if you go to a panel of judges, if they do not throw out the case on jurisdictional grounds, they will make up some kind of law by rendering a decision. Do you want the WTO with these different sets of panels to make law in an area that is so complicated? Or do you really want to set up economists, lawyers, and policymakers from very different cultural and economic perspectives and then really make the law. I think to be fair, unless you can identify a very clear cut case upon which most regional people can agree, the general issue has to be done by raising the matter in a certain entity like APEC which could then take the issue to the WTO.

I would say APEC is an excellent place to start, whereas NAFTA would be a terrible place to start this process. The APEC member countries are basically friendly with each other. APEC is a friendly umbrella, where Japan can talk to the U.S., and Korea can talk to both of them and so on. I think it is an ideal place to start the talks and maybe bring in the Europeans, someone in the middle between Japan and the U.S. or another as far as some of these practices are concerned. Ultimately, it is going to be some sort of compromise agreement. We are going to have to arrive at something that might be undesirable yet unavoidable, because people are continuously worried about rights to basics and so on, as well as disputes. You will probably never completely have clear principles with which we would be happy academically, but you have to arrive at some agreement to bury points of conflict or resolve them in some particular way. As a trade matter, competition policy is a very complex matter. It is very hard to decide which is the correct position to take on some of these things. If you have a clear barrier to entry, as I wrote about in my article on the car dispute, where the Japanese distributor sends the Yakuza (Japanese mafia) to break the legs of people working for your dealership, that is clear enough. You do not need any advanced principles to discuss whether this is a barrier to entry or not.

This is a matter of relative costs. I asked economists and industrial organizers in that article about their talk about distribution becoming expensive. However, there is a whole chain from production down to the consumer. So suppose, just like as it was said with the distribution system,

that Iacocca[28] said, "It is very expensive for me to produce Chryslers in Japan, because I am coming in late and Toyota bought its land thirty years ago, and therefore Chrysler cars should be produced by Toyota or rather Japan should open up its production facilities." From an economic point of view, one is just dealing with production, and the other with distribution in the chain, and the same argument could be made symmetrically. I was of course just being naughty and mischievous, but they could not answer that question, because they always thought of distribution as the subject to focus on because of Rockefeller and antitrust. So there are very difficult issues in my judgment as an economist, and it is actually quite fascinating. Nothing that can be solved by simply using Section 301 and knocking people on the head, because that will just leave a lot of ill will as people think this is unreasonable.

I think you have to sit down and discuss matters, but this is also where impatience enters. I think one of the major reasons for the impatience is the thinking that if we are open, and they are closed, we will get cleaned out. I am not denying that we should do it. In fact, I am asserting that we do it at the APEC and then go to the WTO. But to take quick decisions on what should be done by using pressure unilaterally, I think this is just going to raise people's hackles, because there are reasonable questions about whether many of these complaints really relate to what we all agree are barriers to entry in excess. I think some wisdom and more patience, which we can afford, are necessary.

Conference Participant: International rule-making is performed by big nations. What room is there for self-determination? Korea is under a lot of pressure, especially regarding foreign direct investment and capital movement into Korea.

Jagdish Bhagwati: After the problems with the Mexican bailout, I do not think that pressure is going to persist on the opening up of capital flow. There was testimony before the U.S. Congress by Jeffrey Garten[29] on India and South Asia. At that time, Senator Hank Brown[30] asked how we were going to put pressure on India to open up its financial markets? Jeffrey Garten responded that he had spent most of his life trying to push such regulations, but today, new institutions are in place, the IMF and so on, so it does not make sense to treat financial sector liberalization in this way like portfolio capital liberalization. So I think there is going to be more understanding because of the whole Mexican crisis. Moreover, the financial sector is really not like the commodities market. It is subject to panic and all the classical ambiguities economists know. Of course,

28. Former CEO of Chrysler Corporation.
29. Former Undersecretary of Commerce for International Trade.
30. Former U.S. Senator (Colorado).

Salomon Brothers and the others are bound to continue pushing, but I think it will be more moderate in the next few years certainly, thanks to poor Mexico's troubles.

On labor, I have an opinion although no wisdom on this subject. Essentially, my view is that the pressure for service sector liberalization was coming up in the nonfinancial sectors, from professional bodies, like lawyers, advertising executives, analysts, and all the different professions who wanted to practice in Tokyo. My feeling is that this is a good time for the developing countries to use these services moving in this direction and to say that they would have access. You cannot do the same for unskilled labor, because that goes a little bit too close to the bowl. Technically, you can say that there is no difference between skilled and unskilled labor, but we are talking about the real world. It is not easy, for example, to export Korean construction workers on a temporary basis, outside of the construction industry. You really couldn't get much mileage, certainly not in model conditions when trade is supposed to be such a source of difficulty for unskilled labor. So I think that is a non-starter. Maybe this is contrary to other opinions, but I think the area of skilled labor is different. This is going to be the area where you could export a whole lot of people who can provide those kinds of services by the mutual recognition of standards. Again look at the professional bodies.

Also, one of my students did a thesis looking at the examination for foreign medical graduates as an entry restrictive device. You would not even have to use the INS, because you could restrict entry directly by just varying the exam's difficulty, so that people do not pass and cannot get their visas. He found a very good relationship between the success and failure rates, the state of the internships, and drops in the market in the U.S. It will take time to be able to get at these kinds of things, but the point is that it is the developed countries which are really pushing for these professional services. Let them walk into this web, and then they go back to the supply, because Korea, India, Brazil, Mexico, and Egypt have fairly well developed skilled manpower. They could take temporary visas to do services, like import doctor services, export patients, and do all sorts of things. There are endless possibilities here for trade, which I think, thanks to OECD initiatives, we can take advantage of in developing countries, because there are several overdeveloped developing countries in terms of skilled manpower.

So I am quite optimistic, but if you say our people should be free to go with unskilled, underpaid labor, you will never make it. That is a crazy position to have. In my country, often people take very logical positions.

David Leebron: I believe that it is the details that matter, and economic models which operate at too high a level of abstraction cannot be relied upon. We are struggling with many difficult questions. Is multilateralism good and unilateralism bad? What we are in fact dealing

with are mere labels. How much of a difference is there really? Professor Bhagwati says that after the Uruguay Round, the FTA obsession lingers, and we should get rid of it. But what are the problems we are talking about, and what is the complaint here? What we talked about made sense before the Uruguay Round, but not now without details. I can think of a list of problems that might be addressed in regional approaches: high tariffs of lesser developed countries; very high agricultural tariffs; services where preferences are still problematic; non-quantified barriers (such as antidumping); alternative dispute resolution; and rules of origin. How much can we address these without a revision of Article XXIV? Professor Bhagwati said there comes a time when you have to shift back to the WTO, but is this an idealism of multilateralism that ought to be respected?

Jagdish Bhagwati: I think that is a relevant question. Before I answer, to go back to unilateralism, I have just one thought on the pro-regionalism side, or rather pro-some-kind-of-reciprocity oriented mechanism. I think a lot of people tend to prefer bargaining within an FTA framework, because they see that as a framework where ultimately the end result is given to you, which is free trade for everyone within it. On the other hand, the GATT approach or the WTO approach is usually akin to having first order reciprocity. I make some concessions, and you make some concessions. That leads fundamentally to a whole lot of these people who file these Section 301 cases saying, "I have a higher tariff which I face somewhere else than they face in my market, and sectoral reciprocity is something that can be better satisfied in a framework where everybody is going to reduce tariffs." Again, I think this is one of the main reasons why FTAs continue — since you are asking me what is the role of these FTAs. Somehow if we could put into the WTO a credible framework saying we are going to be continuously negotiating our way down to zero tariffs, then somebody whose market is symmetrically covered is not able to then say, "I am not ever going to get there."

I am obviously going to get complete sectoral reciprocity within an FTA because the target is clear. Given the modern emphasis on sectoral reciprocity as well, I think that is one kind of rationale and perhaps the only political way to go. When political economists theorize as to why governments prefer these kinds of arrangements rather than multilateral ones, we look for incentives, and this is one clear incentive. The businesses have incentives or clear preferences for going into this kind of arrangement, and a lot of money and propaganda goes into it compared to the WTO or the Uruguay Round. This, I think, is one answer to what you were saying. I think the same kind of thing would also apply to a number of these areas that may be more easily negotiated within limited frameworks.

My feeling again is that even if you go down the route of FTAs, there is still nothing which we have not already negotiated at the WTO. So it is

not a matter of new topics or new areas which you cannot handle at the WTO. Now, to move back into fundamental political science, you have got to go back to the incentives. When Salinas was in a one-on-one bargain in NAFTA with our President, because he so badly wanted NAFTA, and because it was extremely important for Mexico, Mexico was willing to sign on to what are called world-class standards, meaning the ones the U.S. were looking for and wanting. There is no way in which at the multilateral negotiations you could get that, because then everybody from here, like Korea, etc., would be there giving support to Salinas and saying, this is counterproductive to trade according to their point of view. We would then have never had these supplemental agreements.

I believe that lobbies have now begun to see the fact that there is such an enormous power, economic and political, so many instruments of punishment and incentive, and so many policy instruments in a bargain that is not of the WTO. A hegemonic power, pejoratively speaking, can in fact play a leadership role or play to its lobbies which claim leadership to get things done. Even Chile, which has always been against these kinds of things, is now going to be willing to accept them. So you can break the opposition. It is easier for you to bargain sequentially rather than all at once at the WTO. It all depends on what you are putting into the pot. Some of them might be good, and some might be bad, but it all depends a great deal on lobbying today. A lot of trade policy is now privatized in the U.S., and that is the other argument I would use. Today, you are never going to get rid of this kind of approach. The only place where the kinds of demands that we want to put in other than competition policy from our part of the world or that a lot of these other lobbies are not going to get their way is here. It is the only way. This is why it is a little frustrating for us to come here, because they say we will not even discuss it being too divisive, meaning that that is not where we are going.

In fact, this is also why I just do not see how you could put in anything like labor and environment and get it through Congress as an FTA under the existing administration, unless perhaps if the Republicans become much more powerful and carry the White House. Whereas if you simply go for some concerted unilateral liberalization you will be able to keep a lot of these out of the way and get it going, I think. I would say these are the kinds of reasons why we are going to see some bit of pressure for regional, unilateral arrangements from our part of the world, because our policy is extremely privatized. I think from their perspective it is better to bargain unilaterally, which is not bargaining really but rather a kind of pressure. I think from our perspective, it is going to stay. I think we see therefore going to WTO as ultimately the last of where we finally clear the deck, having first really set the standards on a lot of these things.

There is a whole article in here as to why and what are the political and economic reasons for FTAs when we have the WTO, but it is an interesting question as to why we have it and whether we can persist with

it outside of our own region. Because our own region is just our backyard, and even Canada is perhaps like our front yard. Canadians do not really exercise any initiative on these issues of trade policy. We are the ones to initiate membership and so on. They simply decide whether they will go on with it, and they usually do. So I think we will not have a problem with this approach. However, with APEC, it is a different ballgame, where you can get true open regionalism, because perceptions, lobbies, governments, and export policies are very different. I think this is where the FTA approach can grind to a halt, but I am really worried about the thing turning into an FTA. I do not think that it will for the reasons that I mentioned, namely that these countries do not share our objectives and constraints under which we operate. However, you have to put something in place in a very concrete way, and what I was arguing is that you could use this occasion to make a very positive and pro-WTO statement that we have a WTO round on the trade issues and competition policy, just the two critical elements of trade liberalization and competition policy. Let that be the first Asian Round, as it were, and I think this is the time when they can do it.

Judy Bello: Actually, I have just a brief comment. My name is Judy Bello, and I am from Sidley & Austin in Washington. Professor Goldberg has suggested that maybe we can make headway on the antidumping law by discussing it bilaterally. I feel compelled to inject a brief note of bitter Washington political realism on these suggestions. I certainly share the underlying concern about the antidumping law and its proliferation. I think even before the end of the Uruguay Round, this law has become the leading barrier to trade, and so I share your objective. Nonetheless, I think it is important to recall that we had our largest trading partner, Canada, our front yard, have as its number one objective in the free trade negotiations, the achievement of a safe harbor from U.S. antidumping and countervailing duty laws, and they did not achieve it. We also just had, in case anybody missed it, a minor war in Washington throughout the Uruguay Round over the extent to which the U.S. would support reforms to the antidumping law, and the good guys did not win. We did actually have a battle for the first time, and we can all rejoice that there at least was some political support expressed for the first time in the U.S. for streamlining these very draconian laws. I think while it is fine to be idealistic, and I would hope also we could make some progress, but nonetheless, until politics in Washington change, I do not want people to have expectations that will be disappointed. Those politics will not change until more U.S. exporters complain that they are damaged by the application of antidumping laws to U.S. exports and more U.S. manufacturers complain that they are rendered less competitive when they cannot have access to inputs at world market prices because of the application of our antidumping law.

Jagdish Bhagwati: This is a matter of changing the politics. You get effective countervailing effects on your exporters, and it is a variation on the old argument of reciprocity. The only way to open your markets is by giving incentives to exporters. It is part of the same negotiations. I think a lot of people argue that, but the trouble about that is that once other countries start using those antidumping laws, they will fall in love with them too.

Some developing countries, which have been opening up under one form or another of trade liberalization, have been busy setting up antidumping legislation. I did, I am afraid, say to the Indian Finance Minister on Indian reforms that you have got to set up antidumping too, because you cannot be holier than other people. You might be simply be compromised in terms of continually opening the door. So I said, here were these downsides, and you have to be careful about the way you write your rules, but in the end, everybody gets onto this trend. It is such an easy way to do it. Whether you then are able to get everybody to say, what a wonderful way to live, or gosh, nuclear winter has broken out and we want to change it by cooperative action, I do not know which way it will go, but it is a sign of desperation when people use it as a way of changing the system.

Michael K. Young: We are going to conclude this session now. I am very grateful for your attendance. Allow me to express, on behalf of Columbia University, our gratitude for the tremendous facilities, for the efforts of Doctor Choi and his Institute that has been extremely cooperative in setting this up, and Mr. Song from Samsung, who has been with us throughout the entire Conference, as a sponsor and as an intellectual. We appreciate all of you attending, participating, and sharing with us your thoughts and ideas. We hope that this is just the first of many opportunities for all of us to discuss together matters of obvious import. I think in closing, I would like to express particular thanks to our very distinguished speakers today, Professor Bhagwati and Professor Kim. It has been highly illuminating, and since they did answer our questions, we will have to meet again to raise more. Thank you very much.