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Introduction

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INTRODUCTION

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The Saint Louis University *Public Law Review*, with the support of the Saint Louis University School of Law and the generosity of Dean Jeffrey E. Lewis, hosted its annual symposium on April 4, 2008 on the topic of the social, political and environmental implications of regional trade agreements. This volume contains the written contributions of the symposium participants, a group of distinguished academics writing in the field of international trade law and policy.¹

The symposium could hardly have been more timely, given the increasing trend towards regional economic integration among nations. Regional trade agreements (RTAs) are not a new phenomenon, but there has been an acceleration in the number of such arrangements in recent years, notably since the creation of the World Trade Organization (WTO) in 1995. The WTO predicts that this trend will continue and that 400 RTAs will be in place by 2010. At present, almost all members of the WTO, some 150 countries, are members of at least one RTA.

The term RTA encompasses several different types of trading arrangements, including free trade agreements (FTAs), such as the North American Free Trade Agreement (NAFTA), in which member countries have agreed to reduce or eliminate trade barriers among themselves, and customs unions, such as the European Union, which represent a deeper form of economic integration, in which members also maintain common tariffs and trade policies with respect to the rest of the world. The vast majority of the RTAs currently in existence are FTAs. Not all such arrangements are among

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1. The contributions made to the symposium by several other individuals should be acknowledged. Professor Armand de Mestral, Jean Monnet Chair in the Law of International Economic Integration and Co-Director of the Institute of International Studies, McGill University of Montreal, presented an overview of the global development of regional trade agreements, including historical, economic and legal analysis. This writer examined gender analysis in international trade agreements as a tool to redress the gender-differentiated effects of recent free trade agreements entered into by the United States. Professor Douglas R. Williams and Professor David Sloss, both of Saint Louis University School of Law, moderated panels at the symposium.

countries in the same geographic region, taking the U.S.-Singapore Free Trade Agreement as an example. For this reason, such arrangements are sometimes referred to as preferential trade agreements.

There is some friction between the WTO regime and RTAs, since RTAs discriminate against countries outside the regional arrangement, and this is inconsistent with the most favored nation principle, one of the conceptual pillars of the WTO. Nevertheless, the WTO rules permit the establishment of RTAs, which many view as complementary to the WTO's goal of promoting global economic welfare through trade liberalization. However, the effects of RTAs on global trade flows and economic growth are not clearly understood, nor are their regional economic impacts. RTAs are subject to regulation by the WTO and, increasingly, are being scrutinized by the WTO to determine whether they are consistent with the WTO treaties and are serving as "building blocks" rather than "stumbling blocks" to achievement of the WTO's mission.

Regional trade agreements vary in their scope. Many modern RTAs concern matters other than tariff-cutting for trade in goods, including trade in services, product standards, trade policy measures such as safeguards, and customs administration. Some go beyond trade policy matters to encompass rules on protection of intellectual property, the rights of foreign investors, environmental protection, and core labor standards. Some of these new agreements have generated controversy and criticism, as evidenced by the recent debates regarding NAFTA among candidates for the U.S. presidency.

National governments enter into RTAs for both economic and political reasons, in order to increase trade and investment opportunities across national borders but also to strengthen political ties with allies. These twin goals are evident in recent U.S. trade policy. Although the United States was a leader in the multilateral trade negotiations under the General Agreement on Tariffs and Trade that eventually led to the establishment of the WTO, U.S. trade policy is increasingly being dominated by bilateral and regional FTAs. The FTAs currently in force to which the United States is a party include NAFTA, the Dominican Republic–Central American Free Trade Agreement (DR-CAFTA), and bilateral FTAs with Israel, Jordan, Singapore, Chile, Australia, Morocco and Bahrain.

Bilateral FTAs have also been concluded with Peru, Colombia, Oman, Panama and South Korea. Other negotiations have been undertaken but have either failed or are currently dormant, including the effort to establish a Free Trade Area of the America and to conclude bilateral agreements with Malaysia, Thailand, the South African Customs Union and the United Arab Emirates.

This year's *Public Law Review* symposium was planned as a forum in which leading scholars in the area of international trade law could address the social, political and environmental implications of the proliferation of RTAs, with a special emphasis on the FTAs that the United States has entered into in

recent years. The conference was organized around three thematic panels and also included a keynote speaker. The keynote speaker was Commissioner Irving A. Williamson of the United States International Trade Commission (USITC), who addressed the role of the USITC in FTA negotiations and the process by which the U.S. government determines the relevance of development concerns and its national economic interests in such negotiations. The papers in this volume are arranged according to the thematic panel in which the author participated.

The first panel focused on “Recent RTAs in a Legal, Economic and Political Context.” Professor David A. Gantz, Samuel F. Fegly Professor of Law and Director, International Trade and Business Law, University of Arizona, Rogers College of Law, authored a piece on the Bipartisan Trade Deal (BTD) concluded in May 2007 between the Bush administration and Democratic congressional leaders to resolve long-standing differences over U.S. trade policy relating to the negotiation of FTAs in the areas of labor, the environment, investment, intellectual property and security. After analyzing recent efforts by the Bush administration to conclude FTAs with Peru, Panama, Colombia and South Korea reflecting the BTD and the likelihood of congressional approval of such agreements, Professor Gantz concluded that the BTD will likely serve as a starting point for discussions on the renewal of trade promotion authority that may occur after the U.S. presidential election. He expressed the hope that the United States will not renounce FTAs, noting that this “would be extremely unfortunate for all concerned and would likely lead to a further undermining of U.S. influence in the world in international economic matters”² Professor Chi C. Carmody, Associate Professor and Canadian Director, Canada-United States Law Institute, University of Western Ontario School of Law, addressed the use of the WTO transparency mechanism for RTAs as a means to examine the accommodation of such trade arrangements within the global trading system. He acknowledged that there is a need for some means to assess the compatibility of RTAs with the WTO Agreement and that the new WTO’s attempt to bring transparency and consistency to the treatment of RTAs in WTO law is a step in the right direction. However, he also noted that there are many obstacles to its successful operation and cautioned against the use of purely quantitative analysis. Professor Carmody suggested that the Canadian experience in using the methodology developed in regulatory impact assessments, with its emphasis on international regulatory harmonization and the justification of deviating national measures, may prove useful in improving the WTO mechanism. Finally, Professor Jorge Pérez, Professor of Law and International Studies, Universidad Central de Venezuela, examined the decline of the

2. David A. Gantz, *The “Bipartisan Trade Deal,” Trade Promotion Authority and the Future of U.S. Free Trade Agreements*, 28 ST. LOUIS PUB. L. REV. 115, 153 (2008).

normative legitimacy of the WTO in South America and the rise of RTAs within the region.

The second panel was entitled “Implications of RTAs: Issues of Social Justice, Development and Human Rights.” Professor Raj Bhala, Rice Distinguished Professor, University of Kansas School of Law, focused on social justice issues within FTAs. He suggested that a paradigm shift from economics to equal human dignity might be in order and analyzed this notion from philosophical, religious, and legalistic perspectives. Professor Bhala concluded that such approaches would result in greater accommodation for human, labor and environmental rights than currently exists. Professor Cherie O. Taylor, Professor of Law, South Texas College of Law, discussed bilateral FTAs as a “second best option” for developing countries, focusing on the asymmetries between developed and developing countries in negotiating and implementing such agreements. She noted that the U.S. approach to FTAs that has been developed under the last two administrations advances the U.S. agenda but does little to further the development needs of developing countries that are parties to such agreements. Professor Taylor suggested ways in which the United States might modify its approach to regionalism in order to address such needs of its closest developing country trading partners.

The third panel concerned the “Implications of RTAs: Environmental, Labor and Other Social Issues.” Professor Karen E. Bravo, Assistant Professor of Law, Indiana University School of Law–Indianapolis, wrote about the missed opportunity to experiment with labor liberalization, namely the free movement of persons across national borders, within the context of four regional trading arrangements within the Western Hemisphere, namely the Caribbean Community and Common Market (CARICOM), the Common Market of the Southern Cone (MERCOSUR), NAFTA and DR-CAFTA. She argued in favor of labor liberalization in the context of regional economic integration and acknowledged prospective implementation and transition challenges. Professor Sanford E. Gaines, Professor of Law and Director, The Utton Transboundary Resource Center, University of New Mexico School of Law, analyzed the potential for strengthening environmental protection programs and environmental cooperation through RTA negotiations, focusing on the examples of the European Union, NAFTA, DR-CAFTA and other U.S. RTAs. He conceded that integrating environmental considerations into trade policy have generated some useful reforms and new ideas, but noted that most work on environmental protection must be done at the national and local levels and that the greatest environmental gains have come about through institutions and procedures without any direct connection to trade or trade agreements. Professor Chris Wold, Associate Professor of Law and Director, International Environmental Law Project, Lewis & Clark Law School, critiqued the use of the North American Agreement on Environmental Cooperation (NAAEC), the NAFTA environmental side agreement, as a model for the environmental

component of more recent FTAs that the United States has concluded. He recommended a change in focus from competitiveness effects to scale effects in future FTAs and engagement of civil society through a citizen submission process as means to successfully integrate trade liberalization with environmental protection.

The writings contained in this volume make a contribution to the literature on RTAs by identifying emerging areas of concern and proposing frameworks to address such problems. Although more questions are raised than are answered, this process of framing the issues is very valuable in this context and will provoke much discussion and commentary in the years ahead as RTAs continue to evolve.

