

# ASIL



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## INTERNATIONAL INSTITUTIONS AND ECONOMIC INTEGRATION

The panel was convened at 2:15 p.m., on Friday, March 29, by its Chair, Frederick M. Abbott,\* who introduced the panelists: Ambassador Charlene Barshefsky, Principal Deputy U.S. Trade Representative; Ambassador Marcos Castrioto de Azambuja, Ambassador of Brazil to Argentina; and Professor Jochen Abr. Frowein, Professor at the University of Heidelberg, and Director of the Max Planck Institute for Comparative Public Law and International Law.

### REMARKS BY FREDERICK M. ABBOTT

The question put to this meeting is, "Are International Institutions Doing Their Job?" This panel will examine the institutions that are part of the process of regional economic integration. Regional economic integration may be understood in a narrow or in a broad sense. In a narrow sense, it may be understood to refer to the formation of customs unions, free trade areas and services liberalization arrangements under the rules of the General Agreement on Tariffs and Trade (GATT), Article XXIV and the General Agreement on Trade in Services (GATS), Article 5. The rules of the World Trade Organization (WTO) are silent regarding the kinds of institutional structures that might be used to govern or regulate these arrangements, requiring only that certain criteria with respect to the elimination of barriers to the flow of goods and services are met, and that the members of the arrangement (and the European Communities/Union as a member itself) otherwise comply with WTO rules.

In a broader sense, regional economic integration refers to the process by which a group of states gradually integrate their economic, social and political processes. In this broader sense, regional economic integration refers to removing impediments to the flow of goods, services, persons, capital and ideas. It may include the goal of progressive harmonization of national laws to facilitate this process. It may include social goals such as the protection and promotion of a healthy environment, protection against abusive exploitation of labor, and the promotion of technological development. In Europe, for example, the regional integration process has proceeded from the European Coal and Steel Community (ECSC), to the European Economic Community (EEC), to the European Communities (EC), and now to the European Union (EU), at each phase of the process enhancing the scope and goals of the regional integration undertaking well beyond the goal of creating economic efficiencies in the production and distribution of goods.

To address the question of whether institutions for regional economic integration are doing their job, we must naturally begin by asking, What is the job they have to do? The goals of the major regional integration arrangements at the moment are decidedly different. The goals of the North American Free Trade Agreement (NAFTA)<sup>1</sup> and nascent Free Trade Area of the Americas (FTAA)<sup>2</sup> are in the more narrow range of the classical free trade area which focuses on the elimination of barriers to the flow of goods and services. Limitations on the agenda of the NAFTA should not be overstated, as the North American Commission for Environmental Cooperation (NACEC),<sup>3</sup> for example, has made a very promising start in the pursuit of progressive social goals. The Mercosur<sup>4</sup> is in a middle

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<sup>1</sup> Canada-Mexico-United States: North American Free Trade Agreement, *reprinted in* 32 ILM 289 and 605 (1993).

<sup>2</sup> See Summit of the Americas: Declaration of Principles and Plan of Action, *reprinted in* 34 ILM 808 (1995).

<sup>3</sup> See Canada-Mexico-United States: North American Agreement on Environmental Cooperation, *reprinted in* 32 ILM 1480 (1993).

<sup>4</sup> The Treaty of Asunción established the southern cone common market, *reprinted in* 30 ILM 1044 (1991).

ground, with the establishment of a common external commercial policy, macroeconomic coordination and consultation on social matters.

The goals of the European Union are ambitious, and extend not only to the free movement of persons, but to the recognition of the citizen of the Union who enjoys voting rights in the state of residence.<sup>5</sup> There is new provision for the creation of common foreign and security policies, and cooperation in justice and home affairs. There is a plan for the creation of a common currency. The EU has long maintained the goals of environmental protection and the protection of the rights of workers, and these goals have recently been expanded. The EU envisions cooperation in the development of technological infrastructure, and technological and other assistance to the less developed member states. The EU, of course, maintains a common external commercial policy that guides all member state external commercial relations, with the occasional member state tug on the reins.

Many of us might readily be prepared to offer our own value judgment as to which set of goals is optimal for a regional integration arrangement. We might side with Jean Monnet and Helmut Kohl, or with Charles de Gaulle and Margaret Thatcher. Perhaps it is best to leave this subjective judgment aside for present purposes. The relevant point for today's proceeding is that the institutions of regional economic integration are doing jobs that are the same in some respects, and substantially (if not radically) different in others. The job performance of each institutional structure may be properly evaluated only in light of its goal context or agenda.

Every person in this room is familiar at least at a high level of generality with the institutional structures of the NAFTA and EU, and perhaps to a somewhat lesser extent with the Mercosur. These are three rather distinct models. In the past five years, with the creation of the Canada–U.S. Free Trade Area,<sup>6</sup> followed by the NAFTA, and with the creation of the Mercosur, we have been presented with a genuine opportunity for comparing regional integration experiences among large industrial economies. I say this not unmindful of the early Latin American integration experiences, such as the Latin American Free Trade Association (LAFTA), but in recognition of a broad consensus among Latin American governments and scholars that LAFTA did not quite get it right.

The NAFTA institutions are limited, and operate largely as a forum for consultation and consensus-based cooperation. The charter of the NAFTA Free Trade Commission (FTC) does not include general powers to issue legislative rules binding on the NAFTA parties, and there is no provision for a common external policy. Dispute settlement is largely an intergovernmental process, and with narrow exception the actual implementation of panel recommendations is a matter to be agreed upon by political decision makers.<sup>7</sup> Self-executing effect for the NAFTA has been denied in the United States by an act of Congress.

The EU structure is complex, and this is not an appropriate place to lay out any details. Suffice it to say that the EU Council and Commission have legislative powers that may be exercised with direct or indirect effect; that legislation may in some circumstances be adopted by qualified majority voting; that the EC Treaty is authoritatively interpreted by

<sup>5</sup>E.C. Treaty, Art. 8. See STEPHEN WEATHERILL & PAUL BEAUMONT, *EC LAW* 15–16 (2d. ed., 1995).

<sup>6</sup>Canada–U.S. Free Trade Agreement, *reprinted in* 27 ILM 281 (1988).

<sup>7</sup>See NAFTA, Art. 2018:

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel, and shall notify their Sections of the Secretariat of any agreed resolution of any dispute.
2. Wherever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Annex 2004 or, failing such a resolution, compensation.

the European Court of Justice (ECJ), whose decisions are binding on the member states and individuals; that individuals may directly rely on the Treaty as a source of rights; and that there is an increasingly active and effective Parliament. The European Commission is responsible for negotiating and pursuing the common commercial policy on behalf of the Union and its member states.

No one would suggest that the EU integration process is without its serious difficulties. Real or imagined concerns with domination by Brussels-based Eurocrats crystallized in the member states during the Maastricht Treaty ratification process and led to a strengthening of decision-making rules based on the "subsidiarity" principle. The move to a common currency is frustrated by persistently high levels of unemployment in some member states. Economic pressures arising from low-wage sources of production outside the Union are creating an internal political force that favors restrictions on market access, mirroring the U.S. political process. "Mad cow disease" is at the moment infecting the Union governing processes. The establishment of an ambitious agenda is not itself a guarantee of success.

The creation of the Mercosur institutional structure through the adoption of the Common Market Treaty of Asunción of 1991,<sup>8</sup> the Brasilia Protocol on Dispute Settlement, also of 1991,<sup>9</sup> and the Protocol of Ouro Preto on the Institutional Structure of the Mercosur of December 1994,<sup>10</sup> may be the most interesting development in the field of regional integration in the past decade. The Mercosur institutional structure contains a number of innovative features that deserve close attention both from NAFTA planners and from the architects of the FTAA. These include a consensus-based decisional structure that incorporates the power to adopt rules binding on states parties, a dispute resolution system that mandates compliance, and a novel interparliamentary consultation arrangement designed to facilitate the implementation of decisions and enhance parliamentary input into the integration process. We look forward to hearing about these features in greater detail from Ambassador de Azambuja.

Though each of our panelists will take his or her own approach to today's subject matter, I believe that it may be useful to briefly raise a few questions concerning institutions for regional economic integration that our panelists may wish to address in their presentations, or that we might return to during the discussion period.

First, are the institutional structures of the EU, Mercosur and NAFTA dictated by the specific goals of these arrangements, or does some other factor or factors give rise to the unique characteristics of each arrangement? For example, does the comparatively limited agenda of the NAFTA dictate the absence of centralized decision-making power, or is this rather the result of preoccupations within the U.S. body politic with so-called sovereignty concerns? Is there prospect for a more comprehensive set of institutions in the FTAA?

Second, and I think perhaps most important, do regional institutions play a major or decisive role in promoting the momentum of integration? Ernst Haas first suggested, in *The Uniting of Europe*, that strong regional institutions would create a spill-over effect that would accelerate and deepen the integration process.<sup>11</sup> If the forward momentum of integration is stalled—if Chile does not accede to the NAFTA or if the common European currency is aborted—will the regional integration process disintegrate, and what might

<sup>8</sup> Argentina-Brazil-Paraguay-Uruguay: Treaty Establishing a Common Market, *reprinted in* 30 ILM 1041 (1991).

<sup>9</sup> Protocolo de Brasília para a Solução de Controvérsias (Mercosul/CMC/Dec. No. 1/1991), Boletim de Integração Latino-Americana/Edição Especial-MRE/SGIE/NAT 195.

<sup>10</sup> Argentina-Brazil-Paraguay-Uruguay: Additional Protocol to the Treaty of Asunción on the Institutional Structure of the Mercosur (Protocol of Ouro Preto) *reprinted in* 34 ILM (1995) 1244.

<sup>11</sup> ERNST B. HAAS, *THE UNITING OF EUROPE* (1958).

be the consequences? Was the postwar creation of a comparatively strong EU institutional structure, with a potentially powerful spill-over effect, a historically unique event, or could a similar arrangement realistically be contemplated elsewhere? How have the Mercosur governments managed to create their middle ground arrangement? Is the vehicle of the interparliamentary institution viewed as critical to the success of the Mercosur? Are there variations in domestic political structure that facilitate integration momentum? To what extent does the fact that European Executive authorities (such as prime ministers) generally enjoy the support of the Parliament or National Assembly facilitate European cooperation? How could such cooperation/support be facilitated in the United States? Might the creation of an interparliamentary structure within the NAFTA and FTAA along the lines of the Mercosur encourage the Western hemispheric integration movement?

Third and finally, a hypothetical postulate for reflection: that regional integration is the inevitable outgrowth of technological development in the fields of transport, telecommunications and mass-scale production, and that we as human beings are exercising very limited control over the phenomenon.<sup>12</sup> To some extent, the actions of national and regional institutions may temporarily speed or stall integration process, but in the final analysis we are simply observers of what science has set in motion. In this context, the role of integration planners is to assure that the fruits of the technological revolution are to improve, rather than corrupt, the human living environment.

#### REMARKS BY CHARLENE BARSHEFSKY\*

I would actually like to talk about the FTAA and about the Asian Pacific Economic Cooperation forum (APEC) and suggest that in the context of those arrangements institution building will clearly be evolutionary and not a matter of *a priori* thought.

There are very interesting dichotomies between the FTAA integration process and the APEC process. Let me take the architecture and institutional point first. In Asia there is very little trade architecture of any sort on a regional or on a subregional basis. There are two subregional arrangements, the arrangement among the ASEAN countries called the ASEAN Free Trade Arrangement (AFTA) and the Australia-New Zealand Closer Economic Relations Trade Agreement (CER).<sup>1</sup>

There are relatively few bilateral arrangements for free and open trade in the region. One reason that the United States has taken such a lead role in the APEC is that we view the notion of regional architecture as critical over time, not only to U.S. commercial interests but also to U.S. diplomatic and security interests. Institution building is something that for the Asia-Pacific region, particularly in the economic sphere, is relatively new and untested and rather controversial.

The Western hemisphere abounds in architecture. There are five major subregional arrangements, of which NAFTA is only one. There is Mercosur, the Centro-American Common Market (CACM), the Andean Group or Development Corporation (ADC), and the Caribbean Community (CARICOM). There are, conservatively speaking, about a zillion bilateral arrangements, a multitude of multilateral arrangements and a couple of quadrilateral arrangements.

Of course, all the countries in the region, the United States included, are very fond of their own particular brand of arrangement, with the result that we abound in architecture but there is at this point no overriding harmonizing structure. The FTAA is intended, in large measure, to rationalize the varying rules and regulations, to expand upon these

<sup>12</sup> Foreshadowed in KARL W. DEUTSCH, *POLITICAL COMMUNITY AT THE INTERNATIONAL LEVEL* (1954).

\* U.S. Trade Representative.

<sup>1</sup> Reprinted in 22 ILM 945 (1983).

existing arrangements, and ultimately to arrive at a genuine free trade area that would be hemisphere-wide, where either a country is in for the whole arrangement or it is not in at all, very much like the single undertaking of the Uruguay Round. But even in the FTAA process and maybe because of the existing architecture, the notion of institution building is equally controversial. There really is no consensus about what this overarching framework ought to look like and what sub-institutions should form a part of it.

Going back to APEC (but this is also true for the Western hemisphere), there are two kinds of concensuses that need to be formed before we can actually talk about institutional structures. The first is the political-level consensus; that is, to ask among a group of countries what is it that we want to accomplish? Do we have a common goal? Do we have a common vision? In the APEC context this political consensus was achieved in the course of two meetings.

A first meeting initiated by President Clinton took place in November 1993 in Seattle. There it was agreed that APEC—which had been a rather loose consultative forum—ought to be a forum in which trade liberalizations would occur and as to which we could agree to common policy and substantive goals. A year later, in November of 1994, President Suharto of Indonesia chaired APEC—it is a rotating chairmanship—and said to the leaders: “We all agree that we want to use APEC as a trade liberalizing forum. Why don’t we agree on free and open trade by a specific date.” And he extracted from the APEC countries, some reluctantly, commitments for free and open trade by the year 2010 for developed countries, and 2020 for developing countries. Political consensus was achieved not through any institutional structure but on a very direct basis, among the leaders themselves, meeting alone with no bureaucrats around, with no recording device in the room.

By contrast the FTAA abounds in architecture—in regional and subregional institutions. How was the political consensus achieved? Exactly the same way as in the APEC context. President Clinton called together the other thirty-three democratically elected leaders of the hemisphere and said: “Why don’t we have a free trade area of the Americas: basically, at some point get rid of all these disparate agreements and have a genuine WTO-compatible free trade area.” The leaders agreed. In our hemisphere there is a tremendous movement toward market economics and the view that an open economy is likely to be a more wealthy economy. Again political consensus was achieved with no institutions, no bureaucrats, and only one note-taker in the room. It is the leaders’ getting together and talking among themselves and arriving at a common vision.

Then we have the question of substantive work. Political declarations are great. But at some point, these declarations must be translated into substantive work. Take the APEC example. Very little exists in the way of institutions economically. APEC has gone about the substantive work of translating this vision into some sort of reality by setting up a series of working groups—now there are ten of them of varying types—and by having a series of essentially plenary meetings called the SOM (Senior Officials Meetings), which take place roughly quarterly, sometimes more frequently. Here in plenary sessions major policy decisions are made, and the working groups often either carry out those policy decisions or do work that is an adjunct to the policy decision.

So in Seattle there were a number of working groups that gave reports in various areas. By the time of the meeting in Indonesia it was decided that if the goal is free and open trade, there needed to be some more structured environment apart from just the working groups, and so the SOM members had cut out for them the task of translating this 2010/2020 vision into a reality. This past year in November, Japan chaired APEC and at the Osaka meeting these plenary sessions in conjunction with the working groups came up with an action plan that covered fifteen areas, including everything from government procurement to tariffs and nontariff barriers. An additional directive was put forward that each country should elaborate a plan in order to move toward open and free trade in all of the areas or

sectors listed. Here there is not any formal institutional structure either, but there is a lot of very concrete work coming out of APEC, using a working group format with plenary sessions.

FTAA follows the same model. It abounds in architecture, but the form it uses is exactly the same as in the case of APEC. Here again there is a series of working groups. At the Denver trade ministerial meeting following the Miami meeting, seven working groups were set up in order to do some baseline data collection and information gathering, and in Cartagena last week four more groups were set up which cover the NAFTA chapters in terms of subject matter.

Last, there are vice-ministerial plenary sessions in which more basic policy decisions are made, including discussions on the questions of paths to the FTAA and what the ultimate architecture might look like. Here again, although the hemisphere is awash in agreements, basically the movement toward the goal of increasingly liberalized trade is done in very much the same way as in the APEC process. This has occurred, however, for different reasons: While in Asia institutional structures are not particularly sought after in areas of economics, in Latin America everybody is so wedded to their particular structures that countries—in many instances—almost have to start from scratch.

I think both these processes are absolutely critical from the point of view of U.S. interests. Asia is the fastest growing region in the world, but we are continually outstripped by competitors from Japan, Europe and elsewhere. Our relationship with Asia has been dominated by security relationships and by the notion that the U.S. presence in Asia is critical for stability in the region. That is still true, but certainly the United States has broader interests as well, including definite commercial interests in seeing a stable and prosperous Asia and in seeing the United States being an economic anchor within this constellation.

In Latin America we are well anchored, but trade barriers remain relatively high. Nonetheless, forty-five cents of every Latin American dollar used to buy imports buys U.S. goods. In many countries in the region, the United States supplies well over 70 percent of everything that they import. We can certainly do better, and a free trade area of the Americas would enhance our prospects, as well as other countries' prospects, with respect to our market.

All of that is to say, that the economic interests at stake are ultimately what led to the political-level consensus, and the political-level consensus ultimately is what will lead to substantive-level consensus. The set of institutions arising from the substantive consensus will grow gradually and only with respect to a perceived need for additional institutions in both parts of the world.

Professor ABBOTT: It seemed to me from your presentation that politics—that is, creating consensus among the parties involved—must lead the institutions. Do you think that in the Western hemisphere this implies that the United States should take the initiative? Could perhaps the Mercosur or the Latin American governments lead for a year or two?

Ambassador BARSHEFSKY: This is a very difficult question to answer. Certainly, the Mercosur is a very important trade group and Brazil's leadership in that group seems to me critical and unquestioned. There is a tendency, however, among the Mercosur countries to move more slowly than the United States would, and this comes in part from the belief among the Mercosur countries that there needs to be a perfection of the Mercosur arrangement itself before they can move to the FTAA integration process.

On the other hand, I think business interests in both regions are such that integration will proceed relatively quickly. From my own experience having chaired several meetings in our hemisphere, countries, including the Mercosur, still look to the United States in search of leadership, and the United States views itself as the hemispheric leader. I do



not see any particular change in that. I assume your question arises because of the lack of fast track authority in the United States, but I did not detect with respect to the Cartagena meeting that the lack of fast track authority altered the general view that the United States remains the hemispheric leader.

### MERCOSUR: A PRAGMATIC REGIONAL BUILDING BLOCK

*By Ambassador Marcos Castrioto de Azambuja\**

Mercosur is an interesting exercise in open-handed regionalism that is seen by its members as a necessary building block for future associative endeavors, be they with the European Union or NAFTA. It is remarkable that Argentina, Brazil, Paraguay and Uruguay—with Chile and Bolivia in an associate capacity—have been able, from 1991 to 1996, to put together a free trade zone that is also an imperfect customs union and that this project has advanced farther and more smoothly than could realistically have been anticipated.

After a long decade that for them was largely lost in terms of economic achievements, the four original members decided to set in motion an association taking advantage of four fundamental preconditions that were achieved more or less at the same time by them all:

- (1) the establishment of profound and stable democratic regimes;
- (2) the awareness that the import substitution cycle had run its course;
- (3) the adoption of rational and broadly orthodox macroeconomic policies; and
- (4) the awareness that in a global environment their economies had to adapt and become more open and competitive.

Once this awareness and the indispensable political will converged, the process went ahead at considerable speed, taking advantage of extraordinary cultural, institutional and linguistic affinities that had always existed among the countries. It helped that for over a century there had been no major conflict, armed or otherwise.

Another important factor that helped to speed up the pace of negotiations was the acceptance that the customs union to be established would be at the beginning an incomplete one, with each member being allowed to set up, for a limited period of time, a substantial list of exceptions, ample enough to safeguard its fundamental concerns but not so wide to make the concept of a customs union empty of real meaning and validity. Other factors that contributed to the fast pace of negotiations were that the national negotiating teams remained essentially stable through the years and that decisions were taken always seeking to avoid the setting up of permanent international or supranational arrangements that could generate bureaucratic inertia.

In fact, negotiations within Mercosur have been carried out basically by a decentralized structure of ten working subgroups, each one of them charged with specific issues: communications; mining; technical guidelines; financial matters; transport and infrastructure; environment; industry; agriculture; energy; and labor, employment and social security matters.

It is helpful to indicate the instruments that have been created by the Asunción Treaty of 1991 and by the Ouro Preto Protocol of December 1994 to allow Mercosur business to be conducted in an orderly fashion:

\* Ambassador of Brazil to Argentina.

The opinions of this paper express only the views of the author and do not necessarily represent any official position.

- The *Common Market Council* (CMC), formed by the Foreign Affairs Ministers and Economic Ministers of the four partners, is the highest level agency of Mercosur, with authority to conduct its policy according to the objectives and time frames set forth in the Asunción Treaty. The meetings take place whenever necessary, but at least once a year. The Presidents of the member states usually take part in the annual CMC meeting.
- The *Common Market Group* (GMC), coordinated by the Ministries of Foreign Affairs of the member states, is the chief executive body of Mercosur, to which the above-mentioned working subgroups are subordinated.
- The *Mercosur Trade Commission* (CCM), also coordinated by the Ministries of Foreign Affairs, assists the Common Market Group, striving to apply the instruments of common business policy agreed on by the member nations with regard to operations of the customs union.
- The *Joint Parliamentary Committee* (CPC) represents the legislative branches of the member nations, having an advisory and decision-making nature, with powers to submit proposals as well.
- The *Administrative Office* (SAM) is responsible for the documentation of Mercosur.
- Finally, the *Economic and Social Advisory Forum* (FCES) represents nongovernmental sectors of the member nations.

As we can see, Mercosur has an intergovernmental structure without a permanent staff. It has neither a parliament nor court of justice. The mechanism for settlement of disputes consists of a flexible system based on direct negotiations, on the fostering of consensus by the Mercosur Trade Commission or by the Common Market Group and, as a last resort, on arbitration procedures handled by an ad hoc tribunal.

It is important to note that the coordination for Mercosur matters rotates every six months among its four founding members and rules have been developed so as to make it possible to have a certain uniformity of procedures as well as an organized memory of what has been decided. We are proud of the path Mercosur has followed, having avoided so far the creation of a vast administrative machinery that had been a burdensome hindrance of previous Latin American efforts of association and integration.

In due course, more elaborate structures will have to be created and Mercosur will have to acquire a more precise legal and political identity, if for no other reason than in order to negotiate on an equal footing with the European Union and other international groupings. I am personally reluctant, however, to acknowledge the necessity to speed up this administrative structuring of Mercosur, for I think that so far the current arrangements have met the challenge of overcoming problems that have cropped up along their way.

It was a wise decision for Mercosur authorities to establish a list of agreements that could be reached and to postpone issues that are not ripe enough for constructive negotiations. Although my assessments of what Mercosur has achieved so far is extremely positive, I should not hide the fact that there are many challenges ahead and I would like to list seven that have to be faced in the next months or years.

First, given the pace of international negotiations, Mercosur will not be given the time to settle down at its own leisure and will have to respond positively to the overtures made by other international groupings and associations. It will have to develop its own style and specific procedures and institutions so as to better interact with other international arrangements.

Second, the joining of new members in Mercosur will probably require a more formal arrangement, in order to ensure an egalitarian participation by such newcomers in the decision-making process.

Third, Mercosur has suffered from a rather acute lack of theoretical and conceptional thinking and will have to engage universities and academic centers in a far more active way, so as to receive the necessary inputs to make it a coherent and purposeful entity.

authorities would already be an important step. Perhaps this could be one of the areas of real progress for the intergovernmental conference.

### *The New Candidates*

The historical opportunity existing since 1990 has created a new responsibility for the member states of the European Union and considerations about expanding membership. This responsibility is very much felt in Germany, which had the unique chance after World War II to join the system early in the 1950s and participate in its development step by step. However, nobody can deny that a contradiction between deepening the integration process and broadening the number of members exists. These contradictory tendencies will become quite obvious in the near future.

### *Conclusions*

The Monetary Union is the first area where the system has already formally accepted the possibility of different speeds. It may be that one of the old Community countries will be left out of the European Monetary Union. It is not clear what that will mean for the integration process. The idea that different circles will exist within one structure is not easily compatible with the fundamental ideas of the European system of integration. The explosive force of the principle of subsidiarity should not be underestimated. The Reflection Group correctly stated that the principle must not be an excuse for lack of solidarity or for the renationalization of common policies. This should be an area where the intergovernmental conference could create some clarity.

In spite of all the difficulties, the value of integrated structures in Europe cannot be overlooked. The role of these structures in the transformation of Europe, including German unification, cannot be neglected by anybody when a fair evaluation of that process is being made. Who could believe that the change of the territorial situation in Europe and the resulting change of power structures could have been solved so smoothly without the existence of the integrated European structures that helped to overcome tensions? Let us hope that this experience will remain important for the European states.

## **DISCUSSION**

GARRI BENJAMIN HENDELL:\* My question relates to the inevitability of economic integration. I agree that so far economic integration in Europe, Mercosur and NAFTA has been relatively successful. The current state of public opinion in Europe with regard to the European Monetary Union, however, and in Canada and the United States with regard to the development of NAFTA, in general seems far less enthusiastic about the inevitability of economic integration.

Ambassador DE AZAMBUJA: In my view economic integration remains, in the short term, inevitable at a regional level and maybe even at the interregional level. I see no alternatives and no signs that the tendency has run its course.

Professor FROWEIN: Let me just confirm this statement from a European point of view. If we did not yet have the internal market we would have to invent it immediately in view of the size of the European countries.

Ambassador BARSHEFSKY: I would just like to add that integration is hardly a new phenomenon. If we look at the GATT system and its trade rounds since World War II, which focused mostly on tariffs and tariff reductions, we have to acknowledge that the ultimate goal was the freer flow of goods, less burdensome regulations and increased trade flows overall. We give this today the labels of globalization, internationalization,

\* Borden & Elliott, Toronto.

liberalization and harmonization, but these trends have been strongly in existence since the end of World War II.

JEANNETTE TRAMHEL:\* At the Summit of the Americas, many of the initiatives were delegated to the OAS for implementation. Much of the technical and substantive work that has to be done in preparation for economic integration is currently being carried out by the OAS Secretariat. Does this not present an opportunity to engage the resources of a regional organization such as the OAS in order to both strengthen the organization as such and do the substantive work that is needed for economic integration?

Ambassador BARSHEFSKY: The Miami Declaration specifies that the OAS in conjunction with the Inter-American Development Bank and ECLEC is to provide technical or substantive assistance as requested by the working groups. The same is true of various subregional assistance groups such as ALADI or the NAFTA Commission, which can also be asked to provide information or data within their respective spheres of competence.

This mandate was arrived at by the leaders bearing in mind that there is a strong premium placed on direct country-to-country dialogue in the negotiations without the intercession of intermediaries or institutional arrangements that could inhibit direct discussion. The leaders and trade ministers of the negotiating parties agreed that the OAS, the IDB and ECLEC, which we collectively refer to as the tripartite committee, should be involved in the process—but only to the extent desired by the parties.

We have utilized the tripartite committee very effectively in the past year. This committee has put together some terrific information, such as a compendium on the hemispheric integration arrangements already existing, which will be published on the Internet in the coming year. Furthermore, the tripartite committee has put together a lot of information on tariffs and nontariff barriers and as those data are approved by the governments they will also be made public. This will be of use to the business community, as well as to citizens in the region in general. I think that there are a number of things that the tripartite committee can do, but it is also clear that their work is bounded by the directives of the working groups directly involved in the FTAA process.

MARCIA WISS:\*\* Could you share some of your ideas with us on how economic integration in this hemisphere will look in the year 2005?

Ambassador DE AZAMBUJA: Our integration is based on a number of fundamentals. There are a number of democracies that pursue basically rational macroeconomic policies, and the awareness that integration must continue is part of this policy. I think the area of cultural integration has not received the attention it should have and the same is true of academic involvement. There are a number of universities involved in jointly studying the problems, but much more could be done and the intellectual content of the exercise will probably be seen as being too little developed.

Furthermore, I think that the issue of mobility of manpower has been underestimated and will turn out to be extremely sensitive. During the course of these negotiations I found • that we were very good at tackling problems whenever goods or sometimes services were involved. But whenever movements of people are concerned, uncertainty and feelings of a strong national character arise.

Thus, in my view, issues of culture, academic content and manpower movement will be at stake. Additionally, so far the national legislatures have responded very little to the integration exercise. There is an enormous lack of parliamentary input into these exercises, which have been carried out much more by smaller, fast moving groups from the Executive Branch.

\* Legal Secretariat, Organization of American States.

\*\* Whitman Breed Abbott & Morgan, Washington, DC.

Ambassador BARSHEFSKY: The Miami declaration indicates some basic contours and roughly the breadth of the FTAA. It encompasses most everything that is in NAFTA or the Mercosur arrangements in terms of substantive scope. It is a single undertaking where members are not allowed to pick and choose. There is also a directive for WTO consistency, but that does not really provide for a specific level of discipline provided it is not WTO inconsistent. There is a further directive that whatever is formed should be a free trade area that is open to other participants and thus conforms to the notion of open regionalism.

What is not addressed is the path to the FTAA; that is, how you get from the existing architecture to a single comprehensive agreement or concept. Second, what is not addressed in the Miami Declaration is the level of discipline, which is referred to only as "high." With respect to the paths to get to the FTAA, it is important to note that in the Cartagena Declaration the vice-ministers have been charged by the ministers to discuss this issue and make recommendations to the ministers before the next ministerial meeting on how and when to launch negotiations and what the paths are.

As far as the question of discipline is concerned, I think that only agreements that go further than the WTO will survive. Agreements in the hemisphere that are "WTO-minus" will fall by the wayside. Agreements that are WTO-based will probably serve as a baseline but do not really serve the liberalization process. Therefore it seems to me logical that we will have by the year 2005—not necessarily in every area but in a number of areas—an agreement that is actually "WTO-plus."

PAUL FAUTEUX:\* Could you share with us some of your views on the implementation of NAFTA by the three existing partners? Second, you mentioned that the FTAA eventually has to include all of NAFTA. Do you consider the NAFTA of merely transitory character which would fade away in the face of a successful conclusion of an FTAA? Related to that, do you share Professor Frowein's view that in matters of economic integration there is a contradiction between widening and deepening?

Ambassador BARSHEFSKY: With respect to implementation, all three parties—the United States, Canada and Mexico—are pretty pleased with the operation of NAFTA. NAFTA has been an extremely effective protective mechanism for Mexico, Canada and the United States in the wake of the Mexican peso crisis. Mexican liberalization under NAFTA has continued absolutely on schedule even though tariffs have increased relative to non-NAFTA countries. Canadian and U.S. exports to Mexico—while affected by serious recession in Mexico—have grown faster than exports to Mexico by any other individual country or group of countries.

We see that free trade agreements are not only helpful in creating an "up-side," but also very helpful stabilizers in a "down-side" situation. Overall, we are very pleased with the operation of NAFTA and think it has worked extraordinarily well. When you consider the sheer volume of trade involved, this confirms the will of the three countries that NAFTA is a foundation of economic cooperation and of government-to-government cooperation.

With respect to whether the NAFTA will fade into the sunset when the FTAA comes into being, it is very hard to tell. Certainly, one could envision an FTAA as a new agreement in which other agreements and their respective disciplines and scopes would be subsumed. Others believe that ultimately the FTAA will be a series of linkages among existing arrangements while the underlying arrangements would remain.

This is a conceptually very interesting issue which will be discussed by the vice-ministers. There are certainly elements of national pride that make it difficult to do away with existing arrangements, but on the other hand that may be the most practical outcome.

\* Department of Foreign Affairs, Canada.

Countries over time may come to realize that this is in their best interest as it would allow a free trade arrangement to be effectuated earlier and very broadly.

As far as deepening is concerned, I think that there still exist significant differences among the existing economies and that in the context of these kinds of arrangements there will inevitably be some countries that take longer to get to where you want them to be and some countries that can do things right away and some countries that have long since been there. With respect to broadening it seems to me that open regionalism speaks to a situation where countries are allowed to come in to a pre-existing set of rules. If you can meet the rules you are welcome; if you cannot meet the rules you have to ask whether there is a way we can help you meet the rules; and if there is no way of doing that, perhaps you are to try again at some later time.

LOTHAR GRIESSBACH:\* All of you have concentrated on the government side of economic integration and its input in the existing arrangements. Could you elaborate a little bit on the involvement of businesses and consumers in the ongoing processes?

Ambassador BARSHEFSKY: With respect to both APEC and the FTAA, there is not only very substantial business involvement but there is also an affirmative desire on the part of the governments to integrate business into the process because ultimately countries want to start with practical steps, which means largely business facilitation steps. These are steps that are clearly in everybody's interest, but they are not really tradable as you do not save them up in the hope of trading them for something else. You want to take these steps because business and most other countries want them to happen this way. With respect to APEC, there have been various business advisory committees that have on an informal basis advised the senior officials, the trade ministers and the leaders with respect to specific business interests both structural and sectoral. Some of the APEC working groups reflect that; for example, the APEC telecom group has a business advisory component and an agenda dominated by business concerns with respect to standards certification and standards harmonization. Last year we established a new advisory group under APEC called the ABAC—the APEC Business Advisory Committee—which will be composed of three business leaders from each of the APEC economies who will serve in an advisory capacity, not only to the ministers but also separately to the leaders when they have their summits. This is a very significant event and will provide for continuous input by business.

With respect to the FTAA process: With every trade ministerial meeting, there is a companion business forum. This forum has done a lot of work providing recommendations to the vice-ministers as well to the ministers on areas of greatest concerns, in particular, with respect to business facilitation. The APEC and FTAA processes themselves were the idea of the leaders, in the sense that the leaders provided political impetus. But of course their common action was rooted in domestic business interests and the fact that each of these leaders individually believes that domestic economic growth will largely depend on growth in that country's major trading partners. This is the core that underlies the political declarations and the substantive work. Each of the business groups in APEC and the FTAA process has issued reports on what businesses would like to see. These reports focus on the areas of standards; customs; investments; tariff reduction, especially in certain sectors such as high-technology or capital goods; and agriculture.

JOEL P. TRACHTMAN:\*\* Ambassador Barshefsky and Ambassador de Azambuja have expressed the view that in the Western hemisphere context, economic integration without broad institution-building is possible. In the context of the EU, on the other hand, it is well recognized that institutions such as the European Court of Justice and its *Cassis de*

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\*\* The Fletcher School of Law and Diplomacy, Tufts University.

*Dijon* jurisprudence,<sup>1</sup> and the harmonization that was given impetus by the Single European Act and its provisions on majority voting have been crucial factors in achieving the desired level of integration. What, if anything, will replace these institutions in the Asian or Western hemisphere contexts as they seek to achieve a similar level of integration, or are their goals more modest?

Ambassador BARSHEFSKY: The goals in both the Asian and Western hemisphere context are certainly more modest than in the European context. The United States is not looking to form a customs union. We are looking in the Asian-Pacific region to reach free and open trade, which may or may not lead to a free trade agreement over time. In the FTAA context, we are looking for a free trade agreement within the bounds of Article XIV of the WTO, meaning the substantial liberalization of trade. We are not looking for the harmonization of political or social institutions or legal regimes. Although NAFTA is working quite well and contains important dispute settlement mechanisms, there is no basic alteration to our own domestic legal regime, social structure or political motivations. With regard to a future free trade arrangement it is an open question how broad this arrangement should be. If it covers the NAFTA areas it would say little about competition policy, would contain nothing on bribery and corruption, contain limited rules with regard to labor and environmental issues, and say little about some of the other new WTO-related issues. It is possible that by the year 2005 we will see the need for a trade agreement that is broader in scope than NAFTA, which seems relatively likely to happen to me. This is probably necessary to kept pace with a growing body of work that suggests that trade also encompasses such issues as bribery and corruption or environmental aspects.

Ambassador DE AZAMBUJA: We still find it difficult these days to justify the need for the creation of institutions, especially if they have a strong bureaucratic content. Public opinion does not respond to this issue and the need for such institutions is not apparent. The conduct of business through interplays of officials and formal groups seems to be a very successful way of handling the issue. This may change in the future, but at this very moment it seems that even linking the process to already existing structures such as the OAS hits some resistance as if this was not a way of accelerating procedures but of slowing them down and sidetracking them to a certain extent. Today's Western hemispheric situation seems to me completely distinct from the one existing in Europe in the 1950s and 1960s.

DALE FURNISH:\* My first question is on how important harmonization of laws is to economic integration, in particular in view of the European experience. My second question concerns Latin American integration. What do you think will be the first test of Mercosur in view of the experience with ALALC and ALADI?

Professor FROWEIN: I think it is true that during the initial phase of European integration harmonization played an important role. Afterwards, however, it became evident that harmonization in itself was going to create more problems than it could resolve. The more important concept developed mostly in the 1980s was the one of mutual recognition of standards, although certain minimum standards would still be harmonized. Therefore I think that in the future a desirable solution—for Europe at least—would be a “full faith and credit” clause with regard to the treatment of most commercial products.

Ambassador DE AZAMBUJA: Obviously ALALC and ALADI were very limited in their scope and success. The Andean Pact does not seem to me to be very promising either. It seems as if the shared mountains were separating rather than uniting. Mercosur, however, has seen an enormous increase in trade. Here we have faced a major test in the form of

<sup>1</sup> Case 120/78, *Cassis de Dijon*, 1979 ECR 649, 662.

\* Arizona State University College of Law.

the automotive regime, which was, admittedly, overcome only with a certain clumsiness; now we have to face the negotiations of the free trade exceptions of Manaus and Usuaia, which will represent another test. Apart from Mercosur, none of the trade agreements mentioned has ever had any major response from the business community, whereas Mercosur itself seems to me so far a very eloquent example that things have changed. Therefore I think there is a case to consider Mercosur different from the other agreements because of its more modest and therefore more viable approach.

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