Steve Charnovitz

STEVE CHARNOVITZ

I want to talk, first, about trade linkage issues in a regional context, focusing on environment and labor, and, second, about the U.S.-Jordan model. There are three reasons for governments to link trade and environment in a trade agreement. The first reason is to increase the net benefits of the agreement. The idea is that the gains from policy coordination in trade can be supplemented from other policy coordination. For example, last week the North American Commission on Environmental Cooperation issued a study saying that the increased freight shipments resulting from NAFTA trade had increased pollution and that unless measures were taken, the amount of pollution could double over the next twenty years. This trade-induced physical effect, I believe, can reduce the economic gains from trade. So it is appropriate for governments to respond to this type of situation with complementary environmental policies, and a trade negotiation can provide a venue for governments to adopt such policies.

The second reason is to ensure that the trade law disciplines in the agreement do not interfere with legitimate environmental, health, or consumer laws. For example, I would point to the investment section of NAFTA, where in the recent Metaclad decision, the arbitral panel said that a denial of a landfill permit in Mexico was an indirect expropriation that violated NAFTA and the panel went even further to say that a government decree to create a nature preserve could also violate NAFTA. Now any future FTA that has investment provisions is going to have to

address this question of when taking on some sort of environmental law becomes viewed as expropriation.

The third reason for linkage is political. There may have been a time, many decades ago, when governments put together trade treaties without public support but those days are long gone. Building a sustainable political coalition for trade negotiating authority is going to require support from a broad array of private actors and social actors, not just export interests.

To understand the significance of the U.S.-Jordan free trade model, one must look to the NAFTA model. NAFTA has a precatory provision stating that the parties should not lower domestic labor and environmental standards to attract investment, and separate environmental and labor agreements also provide a dispute settlement system for determining whether a party to the agreement has consistently failed to effectively enforce its environmental law. Trade sanctions could be imposed if the violation is not corrected.

What the Jordan model does is bring these environmental and labor dispute settlement provisions directly into the trade agreement itself. The Jordan model also has side agreements on WTO cooperation and on environmental technical cooperation.

Now, let me offer three observations about the debate over the Jordan model. First, it makes no practical difference whether the dispute settlement provisions are in the trade agreement or in a parallel agreement that can suspend the benefits of the trade agreement. If you are the innocent victim of one of these trade compliance sanctions, then it does not matter whether your business is hit frontally by the FTA or sideswiped by the side agreement. So the critics of the Jordan agreement have much less to fear about it than they think.

Second, the concept in the Jordan FTA and in the NAFTA side agreements of having governments monitor each other's enforcement of domestic law is deeply flawed. U.S. citizens may want to enforce U.S. law and probably favor, in general, promotion of the rule of law in other countries, but there may not be any U.S. interest in promoting enforcement of a specific foreign law absent some analysis that the foreign law benefits the foreign country, the United States, or the world. The notion of one country supervising another country's enforcement of its own domestic standard does not mean the country being monitored is free to change its law. So my conclusion is that the proponents of the Jordan FTA have less reason to be proud of it than they think.

My last observation is that the most important feature of the NAFTA model is the one that draws the least attention. That is the promise of cooperation among the three countries, not the possibility of confrontation.

NAFTA cooperation on the environment is important because the three countries share common ecosystems. NAFTA cooperation on labor is important because the three countries share some labor markets. The debate we've had in the United States over the past several months on Jordan really loses sight of this. It misses the point that what is needed is more cooperation, and the NAFTA agreement provides for that.

Let me close by saying that the topic of this panel is a good one and may help policymakers establish mechanisms of international cooperation to improve the environment and to promote a world public order of human dignity.

ROBERT FAUVER

In thinking about FTAs as templates, the first question that ought to be asked is whether the agreement is GATT-consistent. Does it comply with Article 24? Does it cover substantially all trade? In the last ten years or so, agreements have drifted away from broad compatibility with Article 24.

The second key question is whether the proposed FTA deals with any new areas of either tradable goods or services or internal sector issues. The old U.S.-Canada FTA, which I had the good fortune to work, was the first agreement that brought financial services into a trade agreement. By broadening coverage of old-fashioned trade agreements into some new sectors, the FTA served as a starting point for future negotiations in the financial services sector. I'm not arguing that that agreement was a perfect solution, but that it was a start on a solution.

So the second question to ask in evaluating current FTA discussions is, are they expanding coverage to new areas in ways that will indicate where the multilateral system might be able to move over time? Coverage could be expanded both in the tradable sector and in internal issues—what I would call structural rigidities or impediments to the movement of goods into and through an economy. Think of an agreement that incorporated telecommunications, civil aviation, customs clearance, and delivery systems. The sum of these are greater than any of the individual pieces in terms of being able to use the Internet for business to business or business to consumer trade expansion, but these are areas not now covered by trade agreements.

I think investment issues need to be covered. The right to establish, the right to engage in mergers and acquisitions, and a broad area of investment rules and agreements need to be included in trade agreements. We have not been successful to date, but that is another area for new coverage one could use to judge what might work in a multilateral context. Information technology services could be included. Structural

rigidities that interfere with the movement of goods and investment flows into and out of a country could be included in trade agreements; these might include corporate governance issues, transparency issues, accounting standards, and competition policy.

So it seems to me there are four questions to ask in evaluating an FTA in terms of its contribution to the global trading system. First, does it cover all goods? Second, does it increase tariffs or nontariff barriers to trade? Third, does it add new areas of coverage to the system? Fourth, does it bring a country into the system that previously had not been motivated toward free trade? For example, I think the NAFTA agreement moved Mexico clearly toward trade liberalization, as opposed to where it had been going. By itself, that can be a positive benefit.

Turning now to the question of how movements in Asia fit these evaluation criteria, I think it is difficult to tell yet where Japan is going. It is clear that even in the agreement with Singapore, not all trade will be covered because there are agricultural problems. Japan thought it could avoid all of the agricultural problems by negotiating with Singapore. But it turns out Singapore apparently produces koi (carp) and orchids. So two classically Japanese products have raised their heads to become a problem with the FTA even with Singapore. At the same time, the mutual recognition of professional standards included in the Japan-Singapore agreement is an expansion of coverage into a new area that could give us ideas to include in the next global or multilateral rounds.

The Japan-Korea discussions are not far enough advanced to figure out what positive contribution that agreement could make to the multilateral trading system. I do not see how those discussions will ever get beyond either investment issues—rights of establishment issues—or agricultural trading issues. I will not live long enough to see a full FTA that includes the ASEAN original six, let alone the ASEAN original six plus new members, let alone ASEAN as it sits today plus China, Japan, and Korea.

One thing we need to pay more attention to is the effects on the global trading system of EU expanded bilateral agreements and associated member status and with countries in Latin America. These limited agreements are not covering all trade or any new areas of trade, and therefore probably would not be templates for future expansion of the multilateral trading system. I think we make a mistake to focus only on what is happening in Asia and Latin American without also including the effects of EU associated status membership and some of the EU expansions in Latin America in terms of total coverage and the examples they are setting for the future.

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