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2008

# The Domestic and Transnational Policy Implications of “Deep” versus “Broad” Preferential Trade Agreements

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# THE DOMESTIC AND TRANSNATIONAL POLICY IMPLICATIONS OF “DEEP” VERSUS “BROAD” PREFERENTIAL TRADE AGREEMENTS

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## THE DOMESTIC AND TRANSNATIONAL POLICY IMPLICATIONS OF “DEEP” VERSUS “BROAD” PREFERENTIAL TRADE AGREEMENTS

### Abstract

*The subject of “preferential trade agreements” (PTAs) has been the focus of significant discussion in recent years. Much of the attention has concerned the economic desirability of preferential trade liberalization versus multilateral trade liberalization. While the debate about the benefits and dangers of trade liberalization via PTAs is an important one, it tends to overlook or mask other, more basic questions about PTA formation, scope, and membership.*

*The thesis of this Article is that decisions regarding PTA formation, the precise PTA forms used, membership, and the sectoral scope of PTAs are, at their core, decisions about deepening existing economic relationships versus broadening to form new ones. That is, these and other PTA decisions operate within a larger framework in which each PTA decision is, ultimately, a choice between deepening a state’s existing economic relationships to make them more fully integrative, versus broadening a state’s formal transnational economic ties to include new ties that are less deep, in an integrative sense. This Article explores the legal and policy implications of this conceptualization of PTAs, with primary focus on U.S. PTA activity.*

## THE DOMESTIC AND TRANSNATIONAL POLICY IMPLICATIONS OF “DEEP” VERSUS “BROAD” PREFERENTIAL TRADE AGREEMENTS

### I. Introduction

The subject of regional trade agreements—or to use more recent terminology, “preferential trade agreements” (PTAs)<sup>1</sup>—has been the focus of significant discussion in recent years. Much of the attention has concerned the economic desirability of preferential trade liberalization versus multilateral trade liberalization. Some observers, most notably Jagdish Bhagwati, contend that “spaghetti regionalism”—the creation of inconsistent, overlapping PTAs—hinders or even prevents much-needed multilateral trade liberalization.<sup>2</sup> Bhagwati even has gone so far as to describe PTAs as “a pox on the world trading system.”<sup>3</sup> In contrast, others observers, such as Jeffrey Schott, contend that PTAs lead to actual gains, and that comparing these real gains to the hypothetical, *pro forma* gains of multilateral trade liberalization is a relatively meaningless exercise.<sup>4</sup> Still other observers have co-opted Bhagwati’s term “spaghetti

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<sup>1</sup> The traditional term “regional trade agreement” reflects the historical tendency for such agreements to be focused on a single geographic region, such as with the North American Free Trade Agreement. This is not the case, however, with more recent trans-regional trade agreements, such as the U.S.-Singapore Free Trade Agreement. See Office of the United States Trade Representative, *Singapore*, at [http://www.ustr.gov/World\\_Regions/Southeast\\_Asia\\_Pacific/Singapore/Section\\_Index.html](http://www.ustr.gov/World_Regions/Southeast_Asia_Pacific/Singapore/Section_Index.html). While some commentators continue to prefer the term “regional trade agreement,” this Article employs the term “preferential trade agreement,” given that much of what is discussed below focuses on trade preferential programs that are not region-specific.

<sup>2</sup> See Jagdish Bhagwati, *U.S. Trade Policy: The Infatuation with Free Trade Areas*, in JAGDISH BHAGWATI & ANNE O. KRUEGER, *THE DANGEROUS DRIFT TO PREFERENTIAL TRADE AGREEMENTS*, 1 (1995); Jagdish Bhagwati, *PTAs: The Wrong Road*, 27 *LAW & POL’Y INT’L BUS.* 865 (1995). For a summary of other articles by Bhagwati in a similar vein, see RAJ BHALA, *MODERN GATT LAW: A TREATISE ON THE GENERAL AGREEMENT ON TARIFFS AND TRADE 21-001* (2005).

<sup>3</sup> JAGDISH BHAGWATI, *FREE TRADE TODAY* 95 (2002).

<sup>4</sup> *FREE TRADE AGREEMENTS: US STRATEGIES AND PRIORITIES 1-4* (Jeffrey J. Schott ed., 2004) [hereinafter “U.S. STRATEGIES AND PRIORITIES”]; see generally Jeffrey Schott, *The Korea-US Free Trade Agreement: A Summary Assessment* (Peterson Institute for International Economics, Policy Brief No. PB07-7, Aug. 2007), available at <http://www.iie.com/publications/pb/pb07-7.pdf> (discussing the benefits of the U.S.-

regionalism" to argue that overlapping PTAs are a positive development—that they are a first step toward establishing an ultimately harmonized network of liberalized international trade.<sup>5</sup>

The debate about the benefits and dangers of trade liberalization via PTAs is an important one, but it tends to overlook or mask other, more basic questions. Why, for example, have preferential trade agreements grown so much in popularity recently? Why are PTAs so diverse in form and scope? How do we explain the United States' entry into PTAs with countries that offer the United States little economic benefit, while the United States forgoes PTAs with countries that offer greater economic benefits? The purpose of this Article is to explore and discuss these aspects of PTAs.

The thesis of this Article is that decisions regarding PTA formation, the precise PTA forms used, PTA membership, and the sectoral scope of PTAs are, at their core, decisions about deepening existing economic relationships versus broadening to form new ones. That is, these PTA decisions operate within a larger framework in which each PTA decision is, ultimately, a choice between deepening a state's existing, formal transnational ties to make them more fully integrative, versus broadening a state's formal transnational economic ties to include new ties that are less deep, in an integrative sense. In an age in which regionalism is rivaling multilateralism for

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Korea trade agreement, and in doing so tacitly supporting the broadening of trade agreements rather than the deepening of existing agreements) [hereinafter Schott, *U.S.-Korea Summary Assessment*]. In Schott's view, the regional trade approach is a stable, if second-best, equilibrium for achievement of trade liberalization goals. See *infra* text accompanying note \_\_\_\_.

<sup>5</sup> Caroline Freund, *Spaghetti Regionalism*, FRB INT'L FIN. DISC. PAPER 680 (2000), available at <http://ssrn.com/abstract=244072>.

dominance in the international trading system, and in light of the United States' waning adherence to multilateral trade liberalization over regionalism, this is an important subject to explore.

This Article is organized as follows. Part II sets the stage by providing a brief overview of traditional PTA economic theory and the traditional taxonomy of PTAs, both of which have dominated PTA analysis and discussion in many respects. Part II also discusses how the traditional PTA theory and taxonomy can be in tension with foreign policy and national security considerations of states. Part III builds on and adds complexity to the commercial-versus-security tension in PTA literature by identifying and discussing important thematic points concerning contemporary PTAs.

Part IV then explores a more harmonized view of PTA formation and structure. First, Part IV compares modern U.S. PTA decisionmaking to European Community (now European Union) decisionmaking in the 1980s and 1990s regarding expansion of the Community's membership. The Community of that era was engaged in an intense debate over its future shape and scope, and this debate provides an excellent unifying thematic framework for analyzing and better understanding modern PTAs and the many factors affecting their formation and scope. To date, most discussions of PTA deepening versus broadening have been limited to the EU context,<sup>6</sup> which, this Article

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<sup>6</sup> See Roberta De Santis & Claudio Vicarelli, *The "Deeper" and the "Wider" EU Strategies of Trade Integration: An Empirical Evaluation of EU Common Commercial Policy Effects*, 7 GLOBAL ECON. J. 1 (2007) (discussing how the EU's Common Commercial Policy has instituted the implementation of deeper internal trading between member countries and broader external trading between member countries and non-member countries); See Charles Wyplosz, *The Challenges of a Wider and Deeper Europe*, Graduate Inst. Int'l Stud. available at [http://www.oenb.at/de/img/wyplosz\\_tcm14-15240.pdf](http://www.oenb.at/de/img/wyplosz_tcm14-15240.pdf).

suggests, has prevented greater conceptual understanding of PTAs. Second, Part IV applies the "deepening versus broadening" thematic framework to U.S. PTA activity. Part V concludes by discussing some of the implications of this conceptualization of PTAs for future PTA formation by the United States.

It must be noted at the outset that this Article consciously confines its analysis to a unitary view of state decisionmaking. This is perhaps best thought of as a simplifying assumption. Domestic political considerations clearly do affect state decisionmaking in many ways, which makes analysis of PTA formation and scope more complex, and there has been beneficial public choice theory scholarship along this vein.<sup>7</sup> The recent tensions over U.S. exports of beef to Korea, as part of the potential Korea-U.S. Free Trade Agreement, help to further illustrate the influence of such considerations.<sup>8</sup> In this Article, however, these domestic variables are held constant so that the effect of other variables can be explored.

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<sup>7</sup> Studies of domestic influences in PTA decision-making include, for example, David Quartner, *Public Choice Theory, Protectionism and the Case of NAFTA*, ECONOMIC AFFAIRS, March 2006, at 59-60; Paul B. Stephan, *Barbarians Inside the Gate: Public Choice Theory and International Economic Law*, 10 AM. U.J. INT'L L. & POL'Y 745 (1995); Thomas M. Murray, *The U.S.-French Dispute Over GATT Treatment of Audiovisual Products and the Limits of Public Choice Theory: How an Efficient Market Solution was "Rent-Seeking"*, 21 MD. J. INT'L L. & TRADE 203, 203-05 (1997); Charles K. Rowley & William Thorbecke, *The Role of the Congress and the Executive in U.S. Trade Policy Determination: A Public Choice Analysis in National Constitutions and International Economic Law*, in NATIONAL CONSTITUTIONS AND INTERNATIONAL ECONOMIC LAW (Meinhard Hilf & Ernst-Ulrich Petersmann eds., 1993).

<sup>8</sup> Schott, US-Korea Summary Assessment, *supra* note 4; *Still Beefing*, ECONOMIST.COM, June 25, 2008, available at [http://www.economist.com/world/asia/displaystory.cfm?story\\_id=11622408](http://www.economist.com/world/asia/displaystory.cfm?story_id=11622408); Jon Herskovitz, *South Korea Parliament Starts, MPs Battle on Beef*, REUTERS, July 10, 2008, available at <http://www.reuters.com/article/latestCrisis/idUSSEO91880>.

**II. PTAs and International Trade Theory**

PTAs traditionally have been thought of as economically-focused agreements. Yet there are tensions at play in PTA formation. First, traditional, integration-focused PTA taxonomies do not adequately reflect the variety of preferential trade arrangements in existence. Second, two lines of neoclassical economic thought—concerning redistributive effects and comparative advantage—can be in tension with one another in the PTA context. Third, add to this the fact that non-commercial PTA considerations have become much more prevalent in recent years, and it becomes apparent that traditional PTA analyses are not always sufficiently robust to explain and predict modern PTA activity, even in the unitary state context. These considerations are discussed in turn below.

**A. *PTAs and Traditional PTA Taxonomies***

Traditional PTA taxonomies focus on PTAs' levels of internal economic integration and cooperation, and thus characterize PTAs as preferential, potentially protectionist organizations. The taxonomies move from less integrated PTA forms, such as free trade agreements (FTAs) like NAFTA, which are characterized by internal trade liberalization but no coordination of monetary policy or a common external tariff (CET); to more integrated forms, such as customs unions with CETs; to even more integrated common markets like the EU, with broader elimination of internal trade barriers; to monetary unions that coordinate monetary policy and share a single

currency or tightly peg their currencies (again, like the EU).<sup>9</sup> The final, logical stage is complete economic integration, which presumably is tantamount to (or accompanied by) political integration as well.<sup>10</sup> While there are variations in the taxonomies employed by various scholars,<sup>11</sup> the main point is that PTA taxonomies are preferentialist and move from less to more integrated forms. This preferentialist view of PTAs is in fact so well established that it is embodied in the General Agreement on Tariffs and Trade.<sup>12</sup>

Traditional PTA taxonomies are clean and intuitive, but they have been rendered incomplete by modern PTA developments. First, all PTAs are not created equal: some are expansive in their scope, while others are limited to certain economic sectors. The North American Free Trade Agreement (NAFTA) and its accompanying side agreements, for example, are fairly comprehensive in their sectoral scope, whereas the Central American Free Trade Agreement-Dominican Republic (CAFTA-DR) is more focused on the textiles sector.<sup>13</sup>

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<sup>9</sup> See generally BÉLA BALASSA, *THE THEORY OF ECONOMIC INTEGRATION* (R.D. Irwin, Inc., 1961); STEVEN M. SURANOVIC, *INTERNATIONAL TRADE THEORY AND POLICY*, ch. 110-2 (2006), at <http://internationalecon.com/Trade/Tch110/T110-2.php>.

<sup>10</sup> BALASSA, *supra* note 9, at \_\_\_\_.

<sup>11</sup> See, e.g., Arvind Panagariya, *Preferential Trade Liberalization: Traditional Theory and New Developments*, available at <http://www.columbia.edu/~ap2231/technical%20papers/SURVEY4-with-Figures.pdf> (listing preferential trade arrangements, free trade areas, and customs unions); STEVEN M. SURANOVIC, *INTERNATIONAL TRADE THEORY AND POLICY*, ch. \_\_\_\_ (2006), <http://internationalecon.com/Trade/Tch40/T40-4.php#CA>.

<sup>12</sup> General Agreement on Tariffs and Trade, Oct. 30, 1947, Article XXIV [hereinafter GATT].

<sup>13</sup> Office of United States Trade Representative, *CAFTA Facts: Highlights of the CAFTA*, available at [http://www.ustr.gov/assets/Trade\\_Agreements/Regional/CAFTA/Briefing\\_Book/asset\\_upload\\_file834\\_7179.pdf](http://www.ustr.gov/assets/Trade_Agreements/Regional/CAFTA/Briefing_Book/asset_upload_file834_7179.pdf) (last visited Aug. 3, 2008); see David A. Gantz, *International Legal Development: The "Complex Problem" of Customs Law and Administrative Reform in Central America*, 12 SW. J. L. & TRADE AM. 215, 228-29 (2006) (discussing CAFTA-DR's possible effect on textile exports from Central America); see also Office of United States Trade Representative, *Textiles in the CAFTA-DR*, available at

Second, there are agreements amongst states that are not traditional PTAs, but which still need to be considered in any discussion of international or regional/preferential integration efforts. Bilateral investment treaties (BITs), for example, establish the terms and conditions for foreign direct investment amongst countries.<sup>14</sup> Because it is generally recognized that foreign direct investment can serve as both a substitute for and a complement to international trade,<sup>15</sup> BITs thus can have an enormous impact on regional and global trading patterns. The same can be said for tax treaties, which can facilitate (bilateral) trade and investment through the elimination of double taxation.<sup>16</sup> Trade and Investment Framework Agreements (TIFAs) serve as general trade framework agreements, and at least in some PTA contexts they are being used as precursor agreements to BITs and formal PTAs.<sup>17</sup> TIFAs can be thought of in

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[http://www.ustr.gov/assets/Trade\\_Agreements/Regional/CAFTA/Briefing\\_Book/asset\\_upload\\_file551\\_7185.pdf](http://www.ustr.gov/assets/Trade_Agreements/Regional/CAFTA/Briefing_Book/asset_upload_file551_7185.pdf) (last visited Aug. 3, 2008).

<sup>14</sup> See Zachary Elkins, Andrew Guzman & Beth Simmons, *Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000*, U.C. Berkeley Public Law Research Paper No. 578961 (2004), available at <http://ssrn.com/abstract=578961> (stating that BITs are "agreements establishing the terms and conditions for private investment by nationals and companies of one country in the jurisdiction of another . . . covering the areas of "FDI admission, treatment, expropriation, and the settlement of disputes"); Calvin A. Hamilton & Paula I. Rochwerger, *Trade and Investment: Foreign Direct Investment Through Bilateral and Multilateral Treaties*, 18 N.Y. INT'L L. REV. 1, 1 (2005) (stating that BITs generally encourage foreign investment by "provid[ing] investors with rights against states and state authorities that damage investment projects"); K. Scott Gudgeon, *United States Bilateral Investment Treaties: Comments On Their Origin, Purposes and General Treatment Standards*, 4 INT'L TAX & BUS. LAW. 105, 110-28 (discussing U.S. BIT legal standards on investment flow between nations).

<sup>15</sup> See, e.g., James Markusen, *Factor Movements and Commodity Trade as Complements*, J. INT'L ECON. 43 (1983); Kar-yiu Wong, *Are International Trade and Factor Mobility Substitutes?*, J. INT'L ECON. 21, 25 (1986).

<sup>16</sup> Richard L. Doernberg, *Overriding Tax Treaties: The U.S. Perspective*, 9 EMORY INT'L L. REV. 71, 71 (1995); Tsilly Dagan, *The Tax Treaties Myth*, 32 N.Y.U. J. INT'L L. & POL. 939, 940-41 (2000) (contending that tax treaties are one way to alleviate double taxation but not the only way).

<sup>17</sup> See generally, Office of the United States Trade Representative, *United States and United Arab Emirates Sign TIFA*, at

one sense as memoranda of understanding that precede formal agreements (PTAs), but even a TIFA that is not followed by a formal PTA can lead to trade benefits amongst the parties involved.

Third, there may be informal and *de facto* trade cooperation efforts amongst states that significantly affect regional and even global trade patterns. For example, the United States and Canada recently began coordinating procedures for inspecting and clearing commercial shipments by truck across their common border, in order to minimize delays without unduly sacrificing the vetting of these shipments.<sup>18</sup> This program (called "Free and Secure Trade," or "FAST") and other efforts like it are informal transnational networks that are being used by countries to coordinate and harmonize regional trade policies in certain respects.<sup>19</sup> In some cases such efforts have developed into more formalized, and perhaps even more global, programs—which is exactly what happened with the aforementioned FAST program—but expansion and increased formalization is not necessary for these programs to have significant impact

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[http://www.ustr.gov/Document\\_Library/Press\\_Releases/2004/March/United\\_States\\_United\\_Arab\\_Emirates\\_Sign\\_TIFA.html?ht=](http://www.ustr.gov/Document_Library/Press_Releases/2004/March/United_States_United_Arab_Emirates_Sign_TIFA.html?ht=). Former U.S. Trade Representative Robert Zoellick asserted that a TIFA between the United States and the United Arab Emirates (UAE) would "expand bilateral trade and investment," as well as help "liberalize" and expand the UAE's economy and "promote democracy." The U.S.-UAE TIFA was part of the United States' efforts toward building a stronger relationship with the Middle East through MEFTA. See *infra* text accompanying notes \_\_\_\_-\_\_\_\_\_.

<sup>18</sup> Gregory W. Bowman, *Thinking Outside the Border: Homeland Security and the Forward Deployment of U.S. Border*, 44 HOUSTON L. REV. 189, 198-201 (2007).

<sup>19</sup> Dunniela Kaufman, *Does Security Trump Trade?*, 13 L. & BUS. REV. AM. 619, 626-28 (2007); Mark J. Andrews et al., *International Transportation Law*, 41 INT'L LAW. 511, 518 (2007); Jim Bergeron et al., *International Transportation Law*, 40 INT'L LAW. 403, 410-12 (2006); see also generally ANN-MARIE SLAUGHTER, *A NEW WORLD ORDER*, 65-103 (2004).

on regional trade.<sup>20</sup> In still other cases, coordination occurs through mutual recognition by states of each other's regulatory regimes in a particular area (such as securities regulation), and this in turn leads to greater economic activity, interdependency, and integration amongst these states.<sup>21</sup>

Another recent regional trade development is the emergence of "open regionalism," which is contrary to traditional protectionist assumptions regarding PTAs.<sup>22</sup> The primary example of this approach is the Asia-Pacific Economic Cooperation Forum (APEC), which is "an open regionalism and non-discriminatory" group of "like-minded" countries that "recognize[ ] . . . diverse political, economic and social background[s] and . . . promote[ ] economic growth through intensifying regional interdependence."<sup>23</sup> Much of the current benefit of APEC arises out of its role as a forum for discussion—a matrix that allows and encourages the formation of formal and informal transnational networks

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<sup>20</sup> See Bowman, *supra* note 18, at 215-16 (discussing FAST and related programs); see also <http://www.whitehouse.gov/news/releases/2002/09/20020909-3.html>.

<sup>21</sup> See Kalypso Nicolaïdis & Gregory Shaffer, *Transnational Mutual Recognition Regimes: Governance Without Global Government*, 68 LAW & CONTEMP. PROBS. 263, 266-68 (2005) (discussing mutual recognition regimes); Jesse Westbrook, *SEC Set to Ease Accounting Rules for Foreign Companies*, INTERNATIONAL HERALD TRIBUNE, June 21, 2007 (stating that the U.S. Securities & Exchange Commission plans to ease accounting restrictions and allow overseas companies to use international accounting standards); Editorial, *French Deal, American Red Tape*, NEW YORK TIMES, June 17, 2008, (discussing the Securities & Exchange Commission's mutual recognition of alternative regulatory regimes standards). In still other cases, regional integration and cooperation can occur more organically, with little direct governmental support or direction. See, e.g., Kenneth W. Abbott & Gregory W. Bowman, *Economic Integration for the Asian Century: An Early Look at New Approaches*, 4 TRANS. L. & CONTEMP. PROB. 187, 192-94 (1994).

<sup>22</sup> Abbott & Bowman, *supra* note 21, at 191; see also NORMAN PALMER, THE NEW REGIONALISM IN ASIA AND THE PACIFIC 2-5 (1991) (noting that some recent regional integration efforts in Asia had openness as a defining characteristic).

<sup>23</sup> Serbini Ali, Presentation of APEC Secretariat (December 7, 1999), at [http://www.apec.org/apec/news\\_\\_media/1999\\_speeches/071299\\_rus\\_presentation.html](http://www.apec.org/apec/news__media/1999_speeches/071299_rus_presentation.html). For more discussion and analysis of APEC's "open regionalism" approach, see Abbott & Bowman, *supra* note 21, at 208-225.

amongst APEC states,<sup>24</sup> as well as the harmonization (or mutual recognition) of domestic regulatory regimes in order to promote greater transnational trade and integration.<sup>25</sup> In other respects, APEC offers the regional trade liberalizing benefits of a PTA without the potentially exclusionary characteristic of restricted membership.<sup>26</sup> APEC is thus an organization with significant potential benefit (and very little downside), but it is certainly not a traditional PTA.

Fourth, more recent “new regionalism” or “new trade theory” scholarship does not adequately explain recent PTA developments. This body of PTA scholarship appeared in the 1990s<sup>27</sup> and sought to explain PTA developments such as the European Community’s “1992 Program” and the North American Free Trade Agreement (NAFTA)—which were formed amongst countries with already low tariff barriers, and thus offered fewer conventional gains from trade liberalization.<sup>28</sup> “New regionalism” scholarship thus focused instead on the reduction of nontariff barriers to trade, as well as on the promotion of growth through imperfect competition and economies of scale (via establishment of a larger, more integrated transnational market for businesses offering differentiated products).<sup>29</sup>

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<sup>24</sup> See *How APEC Operates*, at [http://www.apec.org/apec/about\\_apec/how\\_apec\\_operates.html](http://www.apec.org/apec/about_apec/how_apec_operates.html) (last visited Aug. 3, 2008); Abbott & Bowman, *supra* note 21, at 215-18.

<sup>25</sup> Nicolaïdis & Shaffer, *supra* note 21, at 279 n.28.

<sup>26</sup> Abbott & Bowman, *supra* note 21, at 217-18; see also *APEC: Scope of Work*, at [http://www.apec.org/apec/about\\_apec/scope\\_of\\_work.html](http://www.apec.org/apec/about_apec/scope_of_work.html).

<sup>27</sup> See POMFRET, *supra* note \_\_\_\_, at 207-208.

<sup>28</sup> See *id.* at 208-209.

<sup>29</sup> See *id.* at 207-214.

These were positive developments in PTA economic scholarship—and yet in important respects they were not as new as their name suggests. First and foremost, attention remained focused on formal PTAs, as opposed to any broader view of regional cooperation and coordination. PTA analysis thus often continued to be confined or constrained by its own definitions of PTA activity. Second, the shift from focusing on tariff barriers to focusing on nontariff barriers was in a large sense not substantive, but rather a shift in the form of protectionist barriers addressed.<sup>30</sup> For that matter, the relatively newfound focus on the gains from a larger market also was implicit in earlier PTA analyses.

The point here is not to suggest that traditional views or taxonomies of PTAs are not useful. Rather, the key point is that PTAs are more appropriately thought of as embedded in a larger matrix of sub-global economic integration activities—and when thought of in this manner, it becomes easier to see broader trends in regionalism.

### ***B. PTAs, Redistributive Effects, and Gains from Trade***

In addition to the definitional shortcomings discussed above, two principal aspects of neoclassical trade theory are in tension with one another concerning PTA formation, and this tension carries important PTA policy implications. On the one hand, neoclassical international trade theory holds that PTAs cause fewer redistributive effects

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<sup>30</sup> RALPH H. FOLSOM, MICHAEL WALLACE GORDON & JOHN A. SPANOGLE, JR., *INTERNATIONAL BUSINESS TRANSACTIONS* 434 (2nd ed., 2001); Dale E. McNeil, *The NAFTA Panel Decision on Canadian Tariff-Rate Quotas: Imagining A Tariffing Bargain*, 22 *YALE J. INT'L L.* 345, 347-48 (1997) (noting that “[t]ariff and non-tariff barriers are different forms of protectionism, but they may have equivalent economic effects”); Irwin P. Altschuler & Claudia G. Pasche, *The North American Free Trade Agreement: The Ongoing Liberalization of Trade With Mexico*, 28 *WAKE FOREST L. REV.* 7, 23 (1993) (noting the general trend of replacing tariff barriers with non-tariff barriers).

when the states involved have fewer economic structural disparities amongst them.<sup>31</sup> One conclusion to be drawn, therefore, is that PTAs might be more successful, or at least less politically controversial, between economically similar states. An example of this is readily found in NAFTA. Indeed, the current NAFTA disputes and tensions between the United States and Mexico are based, in significant part, upon displacement of Mexican workers (and a resulting emigration surge to the United States) in the wake of greater U.S.-Mexico competition in the agricultural sector.<sup>32</sup> While there are significant trade disputes between the United States and Canada—such as the softwood lumber dispute—these disputes have led to few serious calls for revision of (or withdrawal from) NAFTA.<sup>33</sup>

On the other hand, traditional international economic theory also holds that greater economic structural disparities between trading states can lead to greater gains

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<sup>31</sup> Carol Wise, *Great Expectations: Mexico's Short-Lived Convergence Under NAFTA* 2-3, 11 (Centre for International Governance Innovation, Working Paper No. 15, Jan. 2007). For a useful overview of these neoclassical assumptions, see Timothy J. Kehoe, *Assessing the Economic Impact of North American Free Trade*, in *THE NAFTA DEBATE: GRAPPLING WITH UNCONVENTIONAL TRADE ISSUES* (M. Delal Baer & Sidney Weintraub, eds., 1994).

<sup>32</sup> Ranko Shiraki Oliver, *In the Twelve Years of NAFTA, The Treaty Gave Me . . . What, Exactly?: An Assessment of Economic, Social and Political Developments in Mexico Since 1994 and Their Impact on Mexican Immigration into the United States*, 10 *HARV. LATINO L. REV.* 53, 81-89 (2007) (discussing the losses of jobs in the manufacturing and agricultural sectors in Mexico since the ratification of NAFTA); See also SURANOVIC, *supra* note 9, at \_\_\_\_\_ (discussing displacement effects in international trade); Colin L. McCarthy, *Regional Integration of Developing Countries at Different Levels of Economic Development—Problems and Prospects*, 4 *TRANSNAT'L L. & CONTEMP. PROB.* 1, 10 (1994) (discussing trade liberalization amongst developed and developing countries).

<sup>33</sup> Office of U.S. Trade Representative, *U.S.-Canada Reach Final Agreement on Lumber Dispute*, July 1, 2006, *available at* [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2006/July/US,\\_Canada\\_Reach\\_Final\\_Agreement\\_on\\_Lumber\\_Dispute.html](http://www.ustr.gov/Document_Library/Press_Releases/2006/July/US,_Canada_Reach_Final_Agreement_on_Lumber_Dispute.html); see Joost Pauwelyn, *The U.S.-Canada Soft Wood Lumber Dispute Reaches a Climax*, *The American Society of International Law* (Nov. 30, 2005), *at* <http://www.asil.org/insights/2005/11/insights051129.html> (discussing differences between NAFTA and WTO dispute resolution).

from liberalized trade, with the amount of gain in part dependent on the percentage of the parties' domestic trade versus international trade, and international trade with each other versus third parties.<sup>34</sup> This has been one justification advanced for the liberalization of trade in agricultural sectors between Mexico and the United States.<sup>35</sup> Yet this goal is inconsistent with the previous observation that consensus and economic coordination is easier amongst states with structurally similar economies, or at least structurally similar sectors (if the agreements are limited to those sectors)—since such coordination promises smaller comparative or absolute advantage gains. While this tension can be partly reconciled by imperfect competition analysis and economies of scale considerations, it is not at all clear that these observations of “new regionalism” fully eliminate this tension—especially since, as noted above, most of the contributions of new regionalism are not necessarily all that new.<sup>36</sup> As a result, there appears to be continued conflict between these primary aspects of neoclassical trade theory—with one principle suggesting that PTAs should be formed by countries with similar economic structures, and the other suggesting precisely the opposite.

### **C. PTAs, National Security, and Foreign Policy**

In further tension with trade liberalization considerations for PTAs are

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<sup>34</sup> See SURANOVIC, *supra* note 9, at \_\_\_\_; McCarthy, *supra* note 32, at 4-5. McCarthy also discusses the challenges of regional integration amongst developing countries, as opposed to amongst industrialized countries. *Id.*

<sup>35</sup> See Gary C. Hufbauer & Yee Wong, *Security and the Economy in the North American Context: The Road Ahead For NAFTA*, 29 CAN.-U.S. L.J. 53, 63-64 (2003) (noting that agricultural trade between the U.S. and Mexico nearly doubled between 1993 and 2003).

<sup>36</sup> See *supra* text accompanying note \_\_\_\_.

considerations of national security or foreign policy. The formation of PTAs for national security or foreign policy reasons, as opposed to commercial reasons, has been emphasized in particular by the United States since the 9/11 attacks.<sup>37</sup> On the one hand, formation of PTAs for such non-commercial reasons is not a new development.<sup>38</sup> Indeed, the United States' first PTA, the 1985 U.S.-Israel Free Trade Agreement, was formed largely for non-commercial reasons—namely, the greater security and stability of Israel.<sup>39</sup> It was readily apparent then that the commercial or economic gains to the United States from a PTA with the small Israeli economy would be modest at best. What is new in recent years, however, is how frequently PTAs are being entered into by the United States (and other countries) for largely non-commercial reasons.<sup>40</sup> Fifteen years passed between the formation of the U.S.-Israel FTA and the United States' next small-country PTA, the U.S.-Jordan FTA. Since that time, three more U.S.-small country PTAs have entered into force,<sup>41</sup> and four more have been signed and are

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<sup>37</sup> See Sidney Weintraub, *Lack of Clarity in U.S. Trade Policy*, ISSUES IN INTERNATIONAL POLITICAL ECONOMY, July 15, 2003, available at <http://www.csis.org/media/csis/pubs/issues200307.pdf>; See generally, Brink Lindsey, *The Trade Front: Combating Terrorism With Open Markets* 1, CATO INSTITUTE, Trade Policy Analysis No. 24 (Aug. 5, 2003), available at <http://www.freetrade.org/pubs/pas/tpa-024.pdf> (discussing the link between MEFTA, U.S. trade policy, and U.S. national security).

<sup>38</sup> John Coyle, *Rules of Origin as Instruments of Foreign Economic Policy: An Analysis of the Integrated Sourcing Initiative in the U.S.-Singapore Free Trade Agreement*, 29 YALE J. INT'L L. 545 (2004); see also BHALA, *supra* note \_\_\_\_, at 21-003 ("Apparently, RTAs [PTAs] are economic mechanisms for realising fundamental political goals . . . includ[ing] cementing trade relationships.").

<sup>39</sup> Ralph Folsom, *Trading for National Security? United States Free Trade Agreements in the Middle East and North Africa*, Univ. of San Diego Legal Studies Research Paper Series, Research Paper No. 07-113 (Sept. 2007), available at <http://ssrn.com/abstract=1013372>; Howard Rosen, *Free Trade Agreements as Foreign Policy Tools: The U.S.-Israel and U.S.-Jordan FTAs*, in SCHOTT, *supra* note 4, at 51-62.

<sup>40</sup> Folsom, *supra* note 39, at 2.

<sup>41</sup> These FTAs are the U.S.-Singapore FTA, the U.S.-Morocco FTA, and the U.S.-Bahrain FTA. See [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Section_Index.html).

pending implementation or congressional consideration.<sup>42</sup> These PTAs have been proposed by the United States government largely for national security and foreign policy purposes, such as achieving greater regional stability,<sup>43</sup> promoting or strengthening political alliances,<sup>44</sup> or achieving goals such as combating narcotics trafficking<sup>45</sup> or ensuring energy supplies.<sup>46</sup> The increased use of non-commercial PTAs in recent years has important implications, as discussed further below.

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<sup>42</sup> These FTAs are the U.S.-Colombia FTA, the U.S.-Panama FTA, the U.S.-Peru FTA, and the U.S.-Oman FTA. See [http://www.ustr.gov/Trade\\_Agreements/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Section_Index.html); [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Section_Index.html).

<sup>43</sup> See U.S.-Middle East Free Trade Area (June 9, 2004), available at <http://www.whitehouse.gov/news/releases/2004/06/20040609-37.html>; Message to the Congress of the United States (June 26, 2006), available at <http://www.whitehouse.gov/news/releases/2006/06/20060626-4.html>.

<sup>44</sup> See Remarks by the President Upon Signing of H.R. 4759, the United States-Australia Free Trade Agreement Implementation Act (Aug. 3, 2004), available at <http://www.whitehouse.gov/news/releases/2004/08/20040803-1.html>; Jeffrey Schott, *Assessing U.S. FTA Policy*, in SCHOTT, *supra* note 4, at 363-376 (discussing the political benefits from U.S. bilateral FTAs); see also Paul G. Johnson, Note, *Shoring U.S. National Security and Encouraging Economic Reform in the Middle East: Advocating Free Trade With Egypt*, 15 MINN. J. INT'L L. 457, 462-65 (2006) (stating that the possible chief consideration for U.S. FTAs in the Middle East and other countries has been for beneficial political alliances and the furtherance of "political objectives").

<sup>45</sup> See President Bush Calls On Congress To Move Forward With U.S.-Colombia Free Trade Agreement, Help Sustain Economic Growth By Expanding Trade (Mar. 12, 2008), available at <http://www.whitehouse.gov/news/releases/2008/03/20080312-3.html>; Office of the United States Trade Representative, *Colombia FTA Briefing Materials*, at [http://www.ustr.gov/assets/Document\\_Library/Fact\\_Sheets/2008/asset\\_upload\\_file854\\_14604.pdf](http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2008/asset_upload_file854_14604.pdf).

<sup>46</sup> See Office of United States Trade Representative, *U.S. and Bahrain Announce Intention to Negotiate Free Trade Agreement*, available at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2003/May/US\\_Bahrain\\_Announce\\_Intention\\_to\\_Negotiate\\_a\\_Free\\_Trade\\_Agreement.html?ht=](http://www.ustr.gov/Document_Library/Press_Releases/2003/May/US_Bahrain_Announce_Intention_to_Negotiate_a_Free_Trade_Agreement.html?ht=); White House Press Release, available at <http://www.whitehouse.gov/nsc/nss/2006/sectionVI.html>; See generally Alexander J. Black, *Economic and Environmental Regulatory Relations: United States-Canada Free-Trade in Energy*, 8 CONN. J. INT'L L. 583, 583-84 (1993) (discussing the liberalization of energy trade between the U.S. and Canada).

National security in fact can be viewed as a subset of broader foreign policy concerns, but it is a driving, and arguably primary, force of foreign policy (both of the United States and other states) in the post-9/11 era. For that reason, these two terms—as well as the term "non-commercial"—are treated as generally synonymous for purposes of this Article.

### III. Thematic PTA Trends

The above observations highlight the narrowness of traditional conceptions of PTAs, as well as the three-way tension between PTA redistribution considerations, comparative advantage and gains from trade, and non-commercial considerations. This Article suggests that a "deepening versus broadening" analysis of PTAs helps resolve these tensions. In order to place this deepening versus broadening analysis into better context, however, it is first useful to identify and discuss several important trends concerning modern PTAs.

#### **A. *PTAs Have Proliferated as Multilateral Trade Liberalization has Slowed***

A common observation regarding the popularity of PTAs since the 1990s is that they have proliferated at the very point in time at which multilateral progress on trade liberalization has slowed dramatically.<sup>47</sup> There are now many more parties involved in global trade liberalization efforts through the World Trade Organization, which makes multilateral agreement much harder. In addition, the current topics on which WTO multilateral trade liberalization focuses—such as service sectors and agriculture—tend to be thornier topics plagued by contention.<sup>48</sup> The fact that less progress is currently being made on multilateral trade liberalization suggests that PTAs are indeed being

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<sup>47</sup> JAGDISH BHAGWATI & ANNE O. KREUGER, *THE DANGEROUS DRIFT TO PREFERENTIAL TRADE AGREEMENTS* 9 (1995).

<sup>48</sup> Rafael Leal-Arcas, *The Resumption of the Doha Round and the Future of Services Trade*, 29 *Loy. L.A. Int'l & Comp. L. Rev.* 339, 386-395 (2007); James Thuo Gathii, *The High Stakes of WTO Reform*, 104 *MICH. L. REV.* 1361, 1364-65, 1373 (2007).

used as a second-best strategy for trade liberalization—something that is bemoaned by some observers<sup>49</sup> and lauded by others.<sup>50</sup>

**B. *International Trade has Grown Exponentially in Recent Decades***

Another trend relevant to PTA formation is that the total volume of international trade has grown dramatically in recent decades, which amplifies the effects of trade diversion and trade creation, as well as of economies of scale.<sup>51</sup> Multilateral trade liberalization has slowed over the same time period during which international trade has become ever more important—which has enhanced the attractiveness of other approaches to liberalizing trade, such as PTAs.

**C. *PTAs Reflect Changes in Political and Economic Orders***

The increased use of PTAs also reflects fundamental changes in the world’s political and economic orders. There has been a splintering of state interests since the Cold War: there are no overarching, bipolar considerations to centripetally point trading partners—at least Western ones—in the same general direction.<sup>52</sup> The effect is that progress in multilateral trade liberalization is reduced. Instead, states have increasingly

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<sup>49</sup> See *supra* text accompanying note 2.

<sup>50</sup> See *supra* text accompanying notes 3-4.

<sup>51</sup> U.S. international trade statistics illustrate this growth. In 1960, U.S. trade in goods represented 6% of U.S. GDP. Bureau of Economic Analysis, *Percentage Shares of Gross Domestic Product*, available at <http://www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=14&ViewSeries=NO&Java=no&Request3Place=N&3Place=N&FromView=YES&Freq=Year&FirstYear=1960&LastYear=2003&3Place=N&Update=Update&JavaBox=no#Mid>. By 2003, this figure had tripled to approximately 18% of U.S. GDP (which itself had more than tripled after adjustment for inflation). *Id.*

<sup>52</sup> It is also worth noting that the Cold War also encouraged some regionalism in the West: the United States, although historically a strong proponent of multilateralization, supported Western European regional integration for containment purposes. See McCarthy, *supra* note 32, at 3.

divergent interests, based on their particular political and economic needs—and in some cases there is perhaps greater emphasis being placed on non-commercial security considerations. This is a key point that plays out starkly in the PTA context: when a state's vectors and patterns of trade, as well as its security and foreign policy interests, are concentrated on specific countries or regions, as opposed to being generally diffused across a larger, more multilateral landscape, the effect is that PTAs are more likely to be established with those countries or regions. In this sense, the "second-best" PTA approach to trade liberalization indeed may be a more stable equilibrium than multilateral liberalization.<sup>53</sup>

***D. Both Commercially-Driven and Security-Driven PTAs are Intended to be Mutually Beneficial Exchanges amongst PTA Parties***

While some recent PTAs appear to be driven heavily, and even primarily, by non-commercial security considerations, even non-commercially driven PTAs involve the exchange of benefits (or intended benefits) amongst PTA parties. That is, even in instances where policy considerations or national security concerns are paramount, the situation is characterized by the trading of one benefit for another, in the classic comparative or absolute advantage context. There is, in other words, an exchange of economic benefits for non-economic benefits, of security for economic gain.<sup>54</sup>

The U.S.-Israel Free Trade Agreement again serves as an example. The United States entered into that free trade agreement to help stabilize Israel. Israel has gained

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<sup>53</sup> U.S. STRATEGIES AND PRIORITIES, *supra* note \_\_\_, at 324.

<sup>54</sup> For a general discussion of this conception of international agreements, see Jeffrey L. Dunoff & Joel P. Trachtman, *Economic Analysis of International Law*, 24 YALE INT'L L.J. 1, 13-14 (1999).

enormously from an economic perspective<sup>55</sup>—it is able to consume far beyond its autarkic Production Possibility Frontier.<sup>56</sup> But that PTA has had only modest economic effect on the United States<sup>57</sup>—trade with Israel does not greatly improve U.S. production or consumption possibilities. The same analysis applies to the more recent U.S.-Jordan Free Trade Agreement.<sup>58</sup>

The most recent, and perhaps quintessential, example of a PTA effort that has been driven primarily by policy concerns is the Middle East Free Trade Agreement (MEFTA) initiative announced in 2003 with great fanfare by U.S. President George W. Bush.<sup>59</sup> The Middle East countries targeted by that initiative are not large, and they have relatively little to offer the United States in terms of direct commercial gains from trade. Many of these countries, however, do offer the United States access to oil and natural gas, and all could play significant political roles in the pursuit of U.S. national security and foreign policy interests in the Middle East. In contrast, greater access to the U.S. market could be highly beneficial commercially for these Middle Eastern

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<sup>55</sup> Folsom, *supra* note 39, at 2-3 (stating that the U.S. receives about 25 percent of Israeli exports and about 20 percent of Israeli imports are from the U.S.).

<sup>56</sup> See SURANOVIC, *supra* note 9, at \_\_\_\_.

<sup>57</sup> Folsom, *supra* note 39, at \_\_\_\_.

<sup>58</sup> This phenomenon of the smaller state benefiting much more from trade liberalization than large states has been colorfully described as “the importance of being unimportant.” Harvey W. Armstrong & Robert Read, *The Importance of Being Unimportant: The Political Economy of Trade and Growth in Small States*, in ISSUES IN POSITIVE POLITICAL ECONOMY 71 (S. Mansoob Murshed ed., 2002).

<sup>59</sup> Office of the U.S. Trade Representative, *Middle East Free Trade Area Initiative*, available at [http://www.ustr.gov/Trade\\_Agreements/Regional/MEFTA/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Regional/MEFTA/Section_Index.html) [hereinafter “*MEFTA Initiative*”]; Office of the U.S. Trade Representative, *Zoellick to Travel to Middle East June 18 – June 23*, available at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2003/June/Zoellick\\_to\\_Travel\\_to\\_Middle\\_East\\_June\\_18\\_-\\_June\\_23.html](http://www.ustr.gov/Document_Library/Press_Releases/2003/June/Zoellick_to_Travel_to_Middle_East_June_18_-_June_23.html) (discussing how President Bush proposed to establish a Middle East Free Trade Area by 2013).

countries. While it is questionable whether the MEFTA initiative is the best or easiest method for ensuring U.S. access to Middle East petroleum resources or for fostering Middle East economic and political stability, the larger point is that the MEFTA initiative is an apparent attempt to exchange economic for non-economic benefits. Whether it is a wise or unwise bargain is an entirely separate question.<sup>60</sup> This observation about bargaining amongst PTA members carries important considerations for this Article's "deepening versus broadening" analysis, since, as will be discussed below, deepening is generally undertaken to achieve commercial gains, while broadening may be undertaken for commercial gain or as an exchange of commercial for non-commercial benefits.

***E. "Failed" Security-Driven PTA Initiatives Might be Policy "Successes"***

For national security- or foreign policy-driven PTAs, it is important to bear in mind that because of these goals, PTA proposals that do not actually come to pass might not always be policy failures. Rather, in some cases these proposals actually could be considered foreign policy or national security successes. Again, MEFTA serves as an excellent example. The United States has made little progress recently toward the establishment of MEFTA: to date, progress has been limited to the preliminary steps of

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<sup>60</sup> Analogizing PTA efforts to contract negotiations, the point is one of freedom of contract—the ability, or freedom, to enter into a bad bargain for a legitimate purpose. RESTATEMENT (SECOND) OF CONTRACTS § 17(1) (1981) (. . . "[T]he formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.").

establishing trade and investment framework agreements (TIFAs), bilateral investment treaties (BITs), and bilateral PTAs with some of the proposed MEFTA members.<sup>61</sup>

However, one can argue that even if MEFTA fails—even if it is never fully formed—it still may have been successful from a policy perspective, above and beyond its use as a signaling mechanism for greater U.S. focus on Middle East prosperity.<sup>62</sup> That is, the U.S. national security goals embodied in the MEFTA initiative may still be partially or even completely achieved because of this proposal, even if MEFTA is never fully formed. The proposal to form MEFTA has coincided with increased dialogue amongst Gulf Cooperation Council (GCC) member states.<sup>63</sup> These countries are discussing whether the GCC, which historically has been more of a political forum than a trading bloc, could or should be revamped to increase the GCC's economic and policy role in the Middle East.<sup>64</sup> GCC member states implemented a customs union in 2003,<sup>65</sup> and recently greater efforts have been undertaken to promote greater economic

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<sup>61</sup> *MEFTA Initiative*, *supra* note 59.

<sup>62</sup> Signaling certainly occurs, for example, in the trade sanctions context. See MEGHAN L. O'SULLIVAN, *SHREWD SANCTIONS* \_\_\_\_ (2003). The same logic applies to the trade initiative context as well.

<sup>63</sup> Robert Z. Lawrence, *Recent U.S. Free Trade Initiative in Middle East: Opportunities but no Guarantees* 12 (John F. Kennedy School of Government, Working Paper Series No. RWP06-050, 2006) (noting that U.S. willingness to achieve MEFTA via bilateral negotiations with Middle Eastern states "has created a mechanism for those Gulf States that are most interested in economic reforms to place competitive pressures on those who are more reluctant to do so"); Michael Sturm et al., *The Gulf Cooperation Council Countries: Economic Structures, Recent Developments and Role in the Global Economy* 68-69 (European Central Bank Occasional Paper Series, No. 92, July 2008) (reviewing recent GCC efforts to enter into free trade agreements).

<sup>64</sup> See Office of U.S. Trade Representative, *Gulf Cooperation Council* 179, at [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2004/2004\\_National\\_Trade\\_Estimate/2004\\_NTE\\_Report/asset\\_upload\\_file226\\_4769.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_National_Trade_Estimate/2004_NTE_Report/asset_upload_file226_4769.pdf); *Profile: Gulf Co-operation Council*, BBCNEWS.COM, available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/country\\_profiles/4155001.stm](http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/4155001.stm) (last visited Aug. 6, 2008); Sturm et al., *supra* note 63, at 68-69.

<sup>65</sup> The Cooperation Council for The Arab States of The Gulf, *Implementation Procedures for the GCC Customs Union*, available at <http://www.gcc-sg.org/eng/index.php?action=Sec-Show&ID=93>.

coordination and even the possible achievement of monetary union by 2009 at the earliest.<sup>66</sup>

In economic terms, then, regional integrative competition from the United States may have resulted in greater accountability for the GCC, and might lead to a stronger, more proactive GCC organization. A stronger GCC could be beneficial to the United States in many respects. Even though United States would not be a GCC member state (as opposed to a MEFTA member state) and would have to trade with the GCC as a third party, GCC countries, through their efforts, might achieve greater economic cooperation, integration, and growth. This in turn might lead to greater economic opportunities and an improvement of stability in the region, all of which are goals the United States desires and seeks to foster through MEFTA.<sup>67</sup> MEFTA thus might not be successfully formed, but this initiative still might achieve some of its key objectives.

#### **IV. A Thematically Unified View of PTAs: "Deepening" Versus "Broadening"**

The above discussion illustrates that the subject of PTAs is messy and complex. PTAs are characterized by significant variety in form and scope, and also by apparent tensions between their desired (and undesired) effects. The increasing growth of international trade, difficulties in WTO trade liberalization, and recent changes in the

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<sup>66</sup> Daliah Merzaban, *GCC Unified Tariff Likely From 2009*, ARABNEWS.COM, Aug. 22, 2008, available at <http://www.arabnews.com/?page=6&section=0&article=113218&d=22&m=8&y=2008&pix=business.jpg&category=Business>. It should be noted that the goal of monetary union was first adopted by the GCC in 2001, prior to the United States' MEFTA initiative, but since the MEFTA initiative was announced significant further steps have been announced. *Dropping the Peg*, ECONOMIST.COM (July 8, 2008), available at [http://www.economist.com/agenda/displaystory.cfm?story\\_id=11698612](http://www.economist.com/agenda/displaystory.cfm?story_id=11698612) (reporting a GCC goal of monetary union by 2010).

<sup>67</sup> See *MEFTA Initiative*, *supra* note 59.

global political and economic orders, such as the end of the Cold War, also have affected PTAs substantially. Each of these topics is worthy of individual attention, to be sure—but it is also particularly interesting and useful to take a broad, general view of PTA decisionmaking, and that is this Article’s purpose. Taking such a broad, general view reveals that the choices made about PTA form, membership, and scope essentially boil down to one core decision—namely, the choice between “deepening” trade relationships versus “broadening” them. That is, when countries are considering how to promote or formalize their preferential trade arrangements, they essentially have two basic choices. First, the countries can deepen the relationship amongst themselves, so as to promote trade and integration in that manner. Second, they can broaden their trade arrangements to include other countries or regions as well, which often results in less direct economic benefit but which can be very beneficial from a policy perspective.

Much of academic literature discussing the question of “deepening” versus “broadening” in preferential trade has been focused on the European Union,<sup>68</sup> but the deepening versus broadening dichotomy works well in other contexts as well, and in particular with respect to current U.S. PTA activity. It is therefore useful to first review the deepening versus broadening debate that took place in Europe, and then try to apply a deepening versus broadening analysis to the subject of U.S. PTA activity.<sup>69</sup>

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<sup>68</sup> See, e.g., Wyplosz, *supra* note 6; De Santis & Vicarelli, *supra* note 6, at 13.

<sup>69</sup> The focus of this Article is on internal EU deepening, not on the EU’s more recent external PTA efforts. The EU has undertaken those, and they are certainly important—and indeed in many ways they are like the United States’ current PTA efforts. See *infra* note \_\_\_\_\_. Yet there has not been much discussion of

**A. European Integration and "Deepening" versus "Broadening"**

In the 1980s and early 1990s, a debate raged in Europe over the future development of the European Community (now the EU).<sup>70</sup> In the immediate wake of the Cold War, with the pending reunification of Germany and the possibility of many former Soviet bloc states seeking admission to the Community (along with perennial applicant Turkey), the question took on a new and added urgency. The Community was generally seen as an economic success, and there was general consensus that the goal of more meaningful internal economic integration should be pursued. Yet there was internal disagreement concerning the pace of integration—and perhaps more importantly, there was disagreement over which countries should be involved.

At the risk of oversimplification, two general schools of thought emerged. First, a number of European continental observers favored expansion of EU membership to include a modest-to-large number of new states.<sup>71</sup> Politically speaking, the reasoning

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the conceptual link between internal and external broadening versus deepening efforts, and a primary purpose of this Article is to explore that gap. For discussion of the EU's most recent PTA efforts, see Frederick M. Abbott, *A New Dominant Trade Species Emerges: Is Bilateralism a Threat?*, 10 J. INT'L ECON. L. 571, 572-73 (2007) (discussing the EU's expansion of trade with Africa, the Caribbean, and the Asia-Pacific Region). For a discussion that explore PTAs and deepening efforts, the narrower context of antidumping and competition (antitrust) law, see Bernard Hoekman, *Free Trade and Deep Integration: Antidumping and Antitrust in Regional Agreements* (World Bank & CEPR Paper, 1998).

<sup>70</sup> See Desmond Dinan, *Fifty Years of European Integration: A Remarkable Achievement*, 31 FORDHAM INT'L L. J. 1118, 1132-36 (2008). In discussing the difficulties that were involved in establishing a European monetary union and Britain's refusal to accept the Euro, Dinan notes (with interesting understatement) that public support for monetary integration in the 1990s was at best "equivocal."

<sup>71</sup> See Helen E. Hartnell, *Subregional Coalescence in European Regional Integration*, 16 WIS. INT'L L. J. 115, 119-21 (1997); Eneko Landaburu, *The Fifth Enlargement of the European Union: The Power of Example*, 26 FORDHAM INT'L L. J. 1, 1-2 (2002). For a detailed discussion European integration developments during and after this time period, see Earnest A. Young, *Protecting Member State Autonomy in the European Union: Some Cautionary Tales From American Federalism*, 77 N.Y.U. L. REV. 1612, 1623-1625 (2002).

went, the collapse of the Iron Curtain presented an unprecedented opportunity to heal Europe's East-versus-West schism. Expansion offered the prospect of bringing eastern parts of Europe into the fold, so to speak, and offered Western European countries the chance to exercise greater influence over Eastern European countries during a time of economic and political adjustment that posed risk for unrest and destabilization.<sup>72</sup> This was, in other words, a political and foreign policy benefit, rather than a purely commercial one. It was also argued by some observers that rapid expansion of Community membership would not cause difficulties in terms of coordination of economic policies and efforts to deepen economic and monetary coordination amongst existing European Community member states.<sup>73</sup> The assumption underlying the latter arguments was that any costs of integration with new members would be exceeded by the benefits, at least in the long term.

Second, other observers—many of whom were British Euroskeptics to begin with—generally opposed the broadening of Community membership until the economies of existing member states could be more closely integrated and coordinated, and these objections predated the end of the Cold War.<sup>74</sup> While a review of these

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<sup>72</sup> Hartnell, *supra* note \_\_, at 213-14.

<sup>73</sup> See *Id.* at 182; De Santis & Vicarelli, *supra* note 6, at 3; R. Baldwin et al., *The Costs and Benefits of Eastern Enlargement—The Impact on the EU and Europe* (1997), cited in Graeme Leach, *EU Membership—What's the Bottom Line?* 14-15 (Institute of Directors Policy Paper, Mar. 2000), at <http://www.euro-know.org/articles/eumembership.pdf> (discussing costs of EU enlargement, with Baldwin et al. characterizing them as "small" costs).

<sup>74</sup> ANTHONY FORSTER, *EUROSCEPTISM IN CONTEMPORARY BRITISH POLITICS* 74-75 (2002) (stating that British skeptics thought other EU member "governments were insincere about creating a Single Market" and that "imperfections in trade still remained, especially as regards air transports and banking and insurance").

objections to deepening reveals that in many respects they were veiled (or not so veiled) concerns over sovereignty,<sup>75</sup> the objections also had economic bases. Skeptical observers noted that while some core members of the European Community (namely the Benelux countries) already were closely integrated by the late 1980s and early 1990s and had similar economic structures (and currencies voluntarily pegged to one another), there were still large economic disparities amongst Community members as a whole.<sup>76</sup> These observers argued (and these arguments were by no means new) that adding additional members, especially ones that were even more economically divergent than current members, would be disastrous for Community cohesion and policymaking. Rather than extending the reach and influence of the European Community by adding new members, these observers contended that expansion of Community membership would further reduce the ability of Community member states to reach consensus and make effective decisions regarding the future course of the Community.<sup>77</sup> There were concerns that broader integration would lead to greater

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<sup>75</sup> J.F.O. McAllister, *Closer Union or Superstate?*, TIME, Jun. 20, 2004 (discussing opposition in Britain and other EU member states to greater EU integration); John Darnton, *Tories Stake Out a Tough Stand Against a 'Monolithic' Europe*, NEW YORK TIMES, Mar. 17, 1996 (stating that many "Euro-skeptics" oppose further EU integration because they believe "a common currency [will be] the . . . acid that will corrode national sovereignty and lead inevitably to a single political bloc).

<sup>76</sup> Graeme Leach, *EU Membership—What's the Bottom Line?* 14-16 (Institute of Directors Policy Paper, Mar. 2000), at <http://www.euro-know.org/articles/eumembership.pdf>; EUROPE'S POPULATION: TOWARD THE NEXT CENTURY 116-118 (Ray Hall & Paul White eds., 2004).

<sup>77</sup> Leach, *supra* note 75, at 14-16; Mariya Konovalova et al., *European Union Expansion* (The Columbia Political Union, Apr. 25, 2004), at <http://cupolitics.org/publications/0304/euexpansion.pdf>. For a general discussion of the costs to existing members of broader inclusion and integration, see Aristidis Bitzenis & Andreas Andronikidis, *Cost and Benefits of Integration in the European Union and in the Economic Monetary Union (EMU)*, 1 ECONOMICS, MANAGEMENT, & FINANCIAL MARKETS 28-29 (2006), available at [http://www.denbridgepress.com/emfm\\_abstract.php?a=18](http://www.denbridgepress.com/emfm_abstract.php?a=18) (discussing costs such as integration of highly disparate economies into the Community and reduced ability of member states to maintain separate fiscal

emigration from lesser developed member states to more developed member states,<sup>78</sup> as well as concerns that greater coordination—treating economically diverse states more like a single economy—would hamper economic and fiscal planning at the national level.<sup>79</sup> A primary focus on deepening integration amongst existing Community members, rather than on broadening to include new members, was therefore advocated.

On the face of it, then, both proponents and opponents of broadening generally agreed that further internal deepening of the Community could be desirable and beneficial. Yet they disagreed, in chicken-and-egg fashion, about whether deepening or broadening should come first, and which would best further the development of the other. While neoclassical economic theory generally was on the side of the skeptics—in the sense that it suggested very strongly that the commercial gains to existing members from broadening the community might be outweighed by the costs of integrating these new economies into the Community fold<sup>80</sup>—the European proponents of broadening before deepening nevertheless prevailed, and between 1986 and 2007

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policies concerning exchange rates and monetary supply (as means to regulate inflation and unemployment levels)).

<sup>78</sup> *Migration From Eastern Europe: Shutting the Door*, ECONOMIST.COM, Oct. 26, 2006, available at [http://www.economist.com/research/articlesbysubject/displaystory.cfm?subjectid=682266&story\\_id=8091309](http://www.economist.com/research/articlesbysubject/displaystory.cfm?subjectid=682266&story_id=8091309) (discussing the increased restrictions by Britain and other EU members concerning the migration of workers from Bulgaria, Romania, which were set to join in 2007 and Poland and other members who joined in 2004); see also McCarthy, *supra* note 32, at 809.

<sup>79</sup> Bitzenis & Andronikidis, *supra* note 77, at 28-29; *East European Economies: East, West and the Gap Between*, ECONOMIST.COM, Nov. 24, 2005, available at [http://www.economist.com/research/articlesbysubject/displaystory.cfm?subjectid=682266&story\\_id=5214902&CFID=18646233&CFTOKEN=65005923](http://www.economist.com/research/articlesbysubject/displaystory.cfm?subjectid=682266&story_id=5214902&CFID=18646233&CFTOKEN=65005923) (discussing the discrepancies between economies in east and west Europe).

<sup>80</sup> See *supra* text accompanying notes \_\_\_\_-\_\_\_\_.

seventeen new member states were added to what is now the EU (with most of these being added after the end of the Cold War).<sup>81</sup> Additional new member states likely will be added in the near future.

This broadening was not costless, of course, which strongly suggests that the observations of the critics of broadening were valid in many respects. The unification of Germany was the cause of enormous internal economic and political stresses,<sup>82</sup> and the admission of Greece and Spain in the 1980s led to enormous costs later, as both countries struggled to coordinate their fiscal policies with other disparate EU economies such as Germany and France.<sup>83</sup> Yet the EU's program of extensive broadening to include new members is now seen as largely successful. Does this mean that the (very significant) short-term economic costs of broadening were indeed outweighed by long-term economic gains? That is, was broadening a "loss leader" approach to PTAs, pursuant to which the costs and inconveniences of regional transnational coordination and cooperation were frontloaded in order to achieve longer term, and ultimately beneficial, coordination of efforts? Or was this simply a case of political considerations taking precedence over economic ones?

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<sup>81</sup> These countries were Portugal and Spain (1986); Austria, Finland, and Sweden (1995); Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia (2004); Bulgaria and Romania (2007). Europa, *European Countries*, available at [http://europa.eu/abc/european\\_countries/index\\_en.htm](http://europa.eu/abc/european_countries/index_en.htm).

<sup>82</sup> Robert F. Owen, *The Challenges of German Unification for EC Policymaking and Performance*, THE AMERICAN ECONOMIC POLICY REVIEW, Vol. 81 pp. 171-74 (1991).

<sup>83</sup> Loukas Tsoukalis, *Greece: Like Any Other European Country?*, NATIONAL INTEREST, Vol. 55 p. 64, 1999 (discussing Greece's struggle to conform to the EU).

**B. Application of Deepening versus Broadening" Framework to U.S. PTAs**

The deepening versus broadening conceptual framework from the EU's internal experience can be quite informative when applied to more recent PTA efforts, especially by the United States. On the one hand, the United States and EU preferential trade experiences are quite different. The United States certainly has never undertaken anything akin to the EU's internal integration efforts (at least since the Articles of Confederation), and its preferential trade efforts have been *ad hoc*. The EU, by contrast, has developed as a confederation of states embedded in an increasingly formalized legal and commercial framework. On the other hand, PTAs are currently being considered by the United States for significant non-economic reasons—such as the U.S.-Colombia Trade Promotion Agreement<sup>84</sup> and the proposed MEFTA<sup>85</sup>—and PTAs of this sort are akin in their justifications, as well as their effects, to the EU members' repeated decisions to broaden the EU, rather than to focus on deepening existing intra-EU relationships. That is, rather than concentrating on deepening existing and successful U.S. PTAs or seeking to deepen ties with countries with which the United States shares strong commercial interests and economic structural similarities, the United States instead has sought in many cases to expand its political reach and influence through the signing of new PTAs with other states, even when—and indeed

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<sup>84</sup> David Gantz, *The "Bipartisan Trade Deal," Trade Promotion Authority and Future of U.S. Free Trade Agreements* 3 (Arizona Legal Studies, Discussion Paper No. 08-16, 2008), at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1186982](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1186982); Office of United States Trade Representative, *United States and Colombia Sign Trade Promotion Agreement*, Nov. 22, 2006, available at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2006/November/United\\_States\\_Colombia\\_Sign\\_Trade\\_Promotion\\_Agreement.html?ht= \[hereinafter "U.S.-Colombia TPA"\]](http://www.ustr.gov/Document_Library/Press_Releases/2006/November/United_States_Colombia_Sign_Trade_Promotion_Agreement.html?ht=[hereinafter%20%22U.S.-Colombia%20TPA%22]).

<sup>85</sup> *MEFTA Initiative*, *supra* note 59; Lawrence, *supra* note 63, at 3; Folsom, *supra* note 39, at 7-9.

especially when—these new PTAs appear to offer the United States marginal economic benefit.

It must be noted that in recent years the EU has taken to signing (as a unified bloc) external PTAs with third countries, such as Mexico (2001), Croatia (2002), Jordan (2002), Chile (2003), Lebanon (2003), and Egypt (2004).<sup>86</sup> This does not undermine the validity of the U.S.-EU comparison, however. Rather, it is an example of the EU also taking an even shallower “broad” approach in recent years.

1. Deepening versus Broadening and U.S. Commercial Considerations

The deepening versus broadening dichotomy works well to explain the difference between U.S. commercially driven and non-commercially driven PTAs. With commercially-driven PTAs, there is U.S. interest in achieving greater integration with the other economies involved. NAFTA and its side agreements serve as a good example of this: there is a willingness—perhaps even a desire—to achieve closer U.S. economic integration with Canada. Even with Mexico, which has been the source of a great deal of NAFTA-related political tension in the United States, the very concerns the United States has about its trade relations with Mexico center on elements of greater economic integration—namely, labor mobility, direct investment, agriculture and trucking.<sup>87</sup>

With non-commercially driven PTAs, in contrast, the U.S. interest lies in

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<sup>86</sup> De Santis & Vicarelli, *supra* note 6, at 13.

<sup>87</sup> M. Angeles Villarreal, *U.S.-Mexico Economic Relations: Trends, Issues, and Implications* 20-22 (CRS Report for Congress, July 11, 2005), at <http://www.fas.org/sgp/crs/row/RL32934.pdf>; Gustavo Vega Canovas, *Convergence: Future Integration between Mexico and the United States*, 10 U.S.-MEX. L. J. 17, 18 (2002) (discussing strengths and weaknesses of NAFTA and NAFTA-related labor market integration); see generally Shiraki, *supra* note 32, at 53.

expanding formal (or in some cases, less formal) U.S. trade relations to include new countries for a variety of other reasons. Given the structural economic disparities between the United States and many of these other countries, deeper integration might prove difficult, and in any event the economic gains to the United States from liberalized trade with those countries are marginal at best. If direct economic gains from trade were the primary factor involved, it is likely these PTAs would never come to pass. PTAs of this sort include the proposed (and apparently moribund) U.S.-Colombia Free Trade Promotional Agreement<sup>88</sup> and the U.S.-Panama Trade Promotion Agreement, due to the Panama Canal and its importance to U.S. security and trade.<sup>89</sup>

With respect to the U.S.-Colombia Free Trade Promotional Agreement, President Bush's remarks to Congress in April 2008, when his administration was seeking congressional approval of this pact via implementing legislation, were particularly telling. The first justification given for this proposed PTA was that it would "advance America's national security interests in a critical region."<sup>90</sup> The second—closely related to the

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<sup>88</sup> *U.S.-Colombia TPA*, *supra* note 84; Steven R. Weisman, *Colombia Trade Deal Is Threatened*, NEW YORK TIMES, July 13, 2008 (listing opposition by American labor unions, Democratic leaders in Congress, and Senator Barack Obama as several reasons why Congress is unlikely to pass the legislation approving the Colombia Trade Promotion Agreement); *Bush Urges Congress to Approve Colombia Trade Pact*, REUTERS, July 22, 2008, available at <http://www.reuters.com/article/politicsNews/idUSN2231809520080722> (observing that congressional unwillingness to bring implementing legislation to a vote has placed the pact's future in doubt).

<sup>89</sup> Office of U.S. Trade Representative, *United States and Panama Sign Trade Promotional Agreement*, June 28, 2007, available at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2007/June/United\\_States\\_Panama\\_Sign\\_Trade\\_Promotion\\_Agreement.html?ht=](http://www.ustr.gov/Document_Library/Press_Releases/2007/June/United_States_Panama_Sign_Trade_Promotion_Agreement.html?ht=).

<sup>90</sup> White House, Office of Press Secretary, *President Bush Discusses Colombia Free Trade Agreement*, available at <http://www.whitehouse.gov/news/releases/2008/04/20080407-1.html> (last visited Aug. 12, 2008).

first—was the need “to strengthen a courageous ally.”<sup>91</sup> U.S. economic interests were only listed *third*.<sup>92</sup> President Bush made similar statements at other times as well, as did other U.S. government officials.<sup>93</sup> Moreover, the commercially-focused justifications given by U.S. officials for this PTA have emphasized the large economic benefits to Colombia, not to the United States, due to the fact that the United States is Colombia’s largest trading partner.<sup>94</sup> Similar national security statements have been made by U.S. officials about the U.S.-Panama Trade Promotion Agreement.<sup>95</sup>

PTA relationships that have little direct commercial benefit thus can be seen as agreements that do little to promote regional economic integration and the gains that integration can bring. In fact, if economic concerns were paramount, it is at least conceptually possible that the United States could achieve greater direct commercial

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> See, e.g., Dan Eggen, *Bush Backs New Trade Pact With Colombia*, WASHINGTON POST, Apr. 8, 2008, A3 (quoting President Bush as saying that “[a]pproving [this] free-trade agreement is one of the most important ways America can demonstrate our support for Colombia); Carlos Gutierrez, *Ask the White House*, Mar. 13, 2008, available at <http://www.whitehouse.gov/ask/20080313.html> (statements by Secretary of Commerce Gutierrez that “the Colombia FTA is more than just a free trade agreement; it is way to ensure security in our hemisphere”); David Lawder, *Paulson Urges OK on Colombian and Panama Trade Pacts*, REUTERS, Apr. 7, 2008, available at <http://www.reuters.com/article/politicsNews/idUSN0729483920080407> (reporting statements by President Bush that “the need for this [free trade] agreement [with Colombia] is too urgent, the stakes for our national security are too high, to allow this year to end without a [congressional] vote,” and by Treasury Secretary Paulson “call[ing] on the U.S. Congress to show support for the Colombian people . . . by passing the Colombian trade agreement”).

<sup>94</sup> Gutierrez, *supra* note 93.

<sup>95</sup> Lawder, *supra* note 93 (reporting statements by U.S. Treasury Secretary Henry Paulson calling for congressional approval of the Colombian and Panama trade pacts, as a means to bolster democracy in Latin America); Department of Commerce, Office of Public Affairs, *U.S. Commerce Secretary Carlos M. Gutierrez on Meeting With President of Panama Martin Torrijos*, Feb. 15, 2007, available at [http://www.commerce.gov/NewsRoom/PressReleases\\_FactSheets/PROD01\\_002795](http://www.commerce.gov/NewsRoom/PressReleases_FactSheets/PROD01_002795) (statements by Gutierrez characterizing the U.S.-Panama Trade Pact as “a comprehensive free trade pact that will enhance economic growth and prosperity for the people of the United States and Panama”).

benefits by forgoing these sort of non-commercial PTA efforts entirely and instead focusing on further deepening of the U.S. *domestic* market.<sup>96</sup> The U.S. domestic market retains various modest barriers to trade and transaction costs that are perhaps higher than they should or could be, and the United States could seek to reduce or eliminate these as a means to promote U.S. economic growth. Such efforts could include, for example, "more" active initiatives to federally preempt state laws in the name of national harmonization of certain disparate legal regimes; the harmonization of overlapping federal regulatory regimes; the improvement of roads and railways, including the development of new transport modes (such as mag-lev trains) to lower transportation costs and spur economic development; greater funding for renewable energy sources; and the upgrading of communications infrastructures. There is no readily available evidence that intra-governmental discussions or analyses of this sort have occurred in the United States, and it is likely that such choices between broadening transnationally versus deepening domestically are made by default—all the more so since U.S. governmental agencies that are heavily involved in transnational matters (such as the Office of the U.S. Trade Representative) are often different from (and have different budgets than) those involved in domestic matters (such as the Department of Transportation and Federal Communications Commission). Yet the conceptual point stands: every decision has an opportunity cost or gain. Moreover, this very sort of transnational broadening versus domestic deepening is not dissimilar to isolationist

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<sup>96</sup> This point can be thought of as a corollary of McCarthy's observation that (sufficiently deep) regional integration leads to a PTA's territory behaving as (or indeed, becoming) a single market. See McCarthy, *supra* note 32, at 9-10.

tendencies that historically have infused U.S. policymaking on international trade: there have been (and still are) some who would find great appeal in decisions to focus on deepening the U.S. market instead of trying to broaden internationally.<sup>97</sup>

## 2. Deepening versus Broadening and Choice of PTA Form

Deepening versus broadening is also a way to explain the structure or choice of PTA forms used by the United States and other countries. For example, the use of TIFAs and BITs as precursors to formal FTAs with MEFTA target countries<sup>98</sup> means that the initial U.S. PTA relationship with these countries is more broad and less integrative or deep than if a formal FTA were the first step in these relationships. In these cases, more limited agreements (and in the case of TIFAs, less formal agreements) have been chosen when there is an interest in broadening U.S. reach, but little or no interest in immediately deeper ties with the other countries involved. In addition, while the creation

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<sup>97</sup> The Smoot-Hawley Tariff Act of 1930 was perhaps the quintessential example of American isolationist desires in international trade (notwithstanding its disastrous consequences). U.S. Department of State, *Protectionism In the Interwar Period*, available at <http://www.state.gov/r/pa/ho/time/id/17606.htm> (last visited Aug. 23, 2008). While few now seriously entertain the notion of full isolationism, isolationists still have heavy influence on modern international trade thinking, as evidenced by numerous speeches made and positions taken by candidates and trade organizations in the 2008 presidential elections. See Barack Obama, *Why I Oppose CAFTA*, June 30, 2005, available at [http://obama.senate.gov/news/050630-why\\_i\\_oppose\\_cafta/index.php](http://obama.senate.gov/news/050630-why_i_oppose_cafta/index.php) (last visited Aug. 23, 2008) (stating that one reason for opposing CAFTA is that it does not do enough to protect U.S. jobs); Karen Tumulty, *Hillary: "I Have to Earn Every Vote"*, TIME, Feb. 1, 2007 (stating that Hillary Clinton opposes CAFTA because it represents a "race to the bottom" and does not do enough to protect environmental and labor standards in the U.S.); Council on Foreign Relations, *The Candidates on Trade*, July 30, 2008, available at <http://www.cfr.org/publication/14762/> (stating that Barack Obama, Hillary Clinton, Joseph Biden, Christopher Dodd, and John Edwards all claim to be free trade advocates, yet all have expressed doubt and quite frequently opposed recent U.S. free trade initiatives); Peter T. Kilborn, *The Free Trade Accord: Labor; Unions Vow to Punish Pact's Backers*, NEW YORK TIMES, Nov. 19, 1993 (stating that labor and workers' unions struck an alliance with other politicians against free trade agreements, including NAFTA). For a discussion of trade and protectionist sentiments specifically regarding PTAs in the 2008 U.S. presidential election, see Gantz, *supra* note \_\_\_\_, at 9-10.

<sup>98</sup> See *supra* text accompanying notes \_\_\_\_-\_\_\_\_.

of and U.S. membership in APEC preceded the current spate of U.S. PTA activity, APEC’s non-traditional approach fits well into this analysis too—and, in fact, its less formalized, less deep structure helps to explain why APEC’s membership is larger than that of most PTAs—with 21 members as of July 2008.<sup>99</sup>

### 3. Balancing Considerations

Of course, deepening versus broadening is not a true dichotomy, but rather more of a spectrum or axis. Various PTA agreements will be located at different points along the axis, depending on the precise balance involved. In many cases, both commercial and security concerns will be important. This is certainly true for the U.S.-Singapore Free Trade Agreement. Singapore’s status as one of the world’s largest “megaports” for international trade means that it is critically important to the United States for cargo security purposes—although much of that concern has been addressed by the United States through separate, non-PTA programs intended to promote inbound cargo security.<sup>100</sup> Singapore also is a significant trading partner for the United States, far in excess of its tiny size: it was the United States’ tenth-largest export market in 2007 and the United States’ thirteenth-largest trading partner, with two-way trade of over US\$22.5 billion.<sup>101</sup> It may be, then, that the commercial and security benefits to the United States from the U.S.-Singapore Free Trade Agreement are relatively evenly balanced between

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<sup>99</sup> See Asia-Pacific Economic Cooperation Forum, Member Economies, at [http://www.apec.org/content/apec/member\\_economies.html](http://www.apec.org/content/apec/member_economies.html).

<sup>100</sup> See Bowman, *supra* note 18, at 205-07.

<sup>101</sup> *U.S. Trade With Singapore: 2007 (Jan.-June) v. 2006 (Jan.-June)*, available at [http://singapore.usembassy.gov/uploads/images/dj4XLVFE4sljAwlSIYQ3VA/2007\\_H1\\_Trade\\_Data\\_Bulletts\\_8\\_07\\_\\_2\\_.pdf](http://singapore.usembassy.gov/uploads/images/dj4XLVFE4sljAwlSIYQ3VA/2007_H1_Trade_Data_Bulletts_8_07__2_.pdf).

economic and security benefits. The Korea-U.S. FTA is another example of a proposed PTA that has clear security and commercial benefits, given both the current (and potentially much greater) volume of U.S.-Korea free trade and strategic concerns regarding North Korea.<sup>102</sup>

The point, again, is that deepening versus broadening is not an all-or-nothing choice. The fact that many recent U.S. PTAs have been driven by non-commercial broadening considerations is thus reflective not of the exclusive nature of deepening versus broadening considerations, but rather of recent U.S. regional trade policymaking.

#### **V. Conclusion: U.S. Future PTA Activity**

As the above discussion demonstrates, taking a broadly thematic view of the tensions between PTA deepening versus PTA broadening can lead to better appreciation and understanding of PTA activity. This section concludes this Article by discussing potential future U.S. PTA activity and likely areas of inactivity.

First, this Article's conceptualization of PTAs suggests that PTA formation follows either economic or non-commercial national security or foreign policy interests, and that the balance of these two considerations will affect the scope, membership, and structure of each particular PTA. It also suggests that when neither type of interest is present, PTAs will not be formed, or if formed will be ineffective. On the one hand, such an observation—that PTAs will not be formed when there are little benefits involved for all parties—might appear trite. On the other hand, the United States has been involved

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<sup>102</sup> *The Case for the U.S.-Korea Free Trade Agreement*, U.S. DEPARTMENT OF STATE, May 2008, available at <http://www.state.gov/e/eeb/tpp/korea/>.

in PTA-related efforts over the past decade that satisfy neither condition—efforts that have yielded little or no results. This is therefore an observation worth making, any apparent obviousness notwithstanding.

For example, this conceptualization helps explain the lack of progress on PTA initiatives such as the Free Trade Agreement of the Americas (FTAA), for which there is (or at least there is perceived to be) neither strong economic benefit over current arrangements nor any grand, pressing security need. The FTAA initiative was launched in 1994,<sup>103</sup> but since that time several deadlines for FTAA formation have passed.<sup>104</sup> While FTAA discussions continue, and the United States and other potential FTAA member states officially proclaim their continued commitment to FTAA formation,<sup>105</sup> in truth there is little real progress currently being made toward FTAA formation. Instead, the United States has focused on bilateral PTAs with Latin American countries, such as the Central America-Dominican Republic-United States Free Trade Agreement

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<sup>103</sup> Christopher M. Bruner, *Hemispheric Integration and the Politics of Regionalism: The Free Trade Area of the Americas*, U. MIAMI INTER-AM. L. REV. 1, 2 (2002); Frank J. Garcia, "America's Agreements"—*An Interim Stage in Building the Free Trade Area of the Americas*, 35 COLUM. J. TRANSNAT'L L. 63, 65 (1997); see also Kenneth W. Abbott & Gregory W. Bowman, *Economic Integration in the Americas: "A Work in Progress"*, 14 J. INT'L L. & BUS. 493, 524-527 (1994) (discussing U.S. position on the FTAA initiative).

<sup>104</sup> Sarah Anderson & John Cavanagh, *State of the Debate on the Free Trade Area of the Americas* 3-6 (Institute for Policy Studies, Oct. 14, 2002), at <http://www.fntg.org/fntg/docs/stateofthedebate-FINAL4.pdf>.

<sup>105</sup> Ministerial Declaration, Free Trade Agreement of the Americas Eighth Ministerial Meeting (Nov. 20, 2003), available at [http://www.ftaa-alca.org/Ministerials/Miami/Miami\\_e.asp](http://www.ftaa-alca.org/Ministerials/Miami/Miami_e.asp). In that declaration, ministers from the 34 countries participating in the FTAA negotiations stated that "[w]e recognize the significant contribution that economic integration, including the FTAA, will make to the attainment of the objectives established in the Summit of the Americas process: strengthening democracy, creating prosperity and realizing human potential," and that "[w]e, the Ministers, expressly reaffirm our commitment to the successful conclusion of the FTAA negotiations by January 2005, with the ultimate goal of achieving an area of free trade and regional integration." *Id.* (reservation by Venezuela omitted).

(CAFTA-DR),<sup>106</sup> the U.S.-Panama Trade Promotion Agreement,<sup>107</sup> and the U.S.-Chile Free Trade Agreement.<sup>108</sup> For each of these agreements, there is a narrower economic or foreign policy interest that justifies the effort involved in negotiating and forming a PTA.

This observation also helps explain the disturbing American inaction concerning PTAs in sub-Saharan Africa. U.S. President Clinton signed the African Growth and Opportunity Act (AGOA) in 2000 to great fanfare,<sup>109</sup> and four years later President Bush signed the AGOA Acceleration Act of 2004.<sup>110</sup> The United States also has explored the possibility of establishing a free trade agreement with the Southern African Customs Union.<sup>111</sup> Like some of the smaller western hemispheric PTAs the United States recently has entered into, much of the focus of U.S.-African PTAs necessarily would be on agriculture and textiles. Yet the United States' trade numbers with sub-Saharan

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<sup>106</sup> Office of the United States Trade Representative, *Dominican Republic-Central America-United States Free Trade Agreement*, available at [http://www.ustr.gov/Trade\\_Agreements/Regional/CAFTA/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Regional/CAFTA/Section_Index.html) (last visited Aug. 9, 2008).

<sup>107</sup> Office of the United States Trade Representative, *Panama Trade Promotion Agreement*, available at [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Panama\\_FTA/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Panama_FTA/Section_Index.html) (last visited Aug. 9, 2008).

<sup>108</sup> Office of the United States Trade Representative, *Chile Free Trade Agreement*, available at [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Chile\\_FTA/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Section_Index.html) (last visited Aug. 9, 2008).

<sup>109</sup> Trade and Development Act of 2000, Title I, 19 U.S.C. §§ 3701-3741; Robert H. Edwards Jr. *et al.*, *International Investment, Development, and Privatization*, 35 INT'L LAW. 383, 383 (2001).

<sup>110</sup> AGOA Acceleration Act of 2004, H.R. 4103, 108<sup>th</sup> Cong.; Raj Bhala, *Generosity and America's Trade Relations With Sub-Saharan Africa*, 18 PACE INT'L L. REV. 133, 146 (2006).

<sup>111</sup> Members are Botswana, Lesotho, Namibia, South Africa and Swaziland. Raj Bhala, *The Limits of American Generosity*, 29 FORDHAM INT'L L.J. 299, 343 n.148 (2006); Bhala, *supra* note 110, at 178.

Africa are small—the export market was worth only US\$14 billion as of 2007<sup>112</sup>—and the efforts of both the Clinton and second Bush administrations have not matched their rhetoric.<sup>113</sup> Moreover, unlike western hemispheric countries, these countries in Africa fall outside the United States' immediate geographic sphere of influence.

It is sad to say, but without further significant destabilization in Africa, or growing support of terrorism in Southern Africa, it seems unlikely that in the immediate future the United States will focus substantial attention on fostering closer PTA ties with this region, or other regions like it. This is a disappointing conclusion, but it is a difficult one to avoid. Even with President Bush's 2008 visit to Africa—a visit that had all the trappings of an outgoing president seeking to strengthen his legacy at home and abroad—much of the focus was on health and individual opportunity, not development and trade *per se*.<sup>114</sup> During the visit President Bush spoke repeatedly about the

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<sup>112</sup> *Africa Policy*, WHITEHOUSE.GOV, available at <http://www.whitehouse.gov/infocus/africa/> (last visited Aug. 9, 2008) [hereinafter "*Africa Policy*"].

<sup>113</sup> See *Clinton Visits Nigerian Village*, BBCNEWS.COM, Aug. 27, 2000, available at <http://news.bbc.co.uk/2/hi/africa/898450.stm> (reporting on the disconnect between President Clinton's "messages of support" for Nigeria and lack of offers to assist with debt relief); R.W. Apple, Jr., *Analysis: Africa Faces Hurdles, Despite Clinton's Optimism*, NEW YORK TIMES, Apr. 3, 1998, available at <http://www.nytimes.com/library/world/040398clinton-africa-assess.html> (reporting on President Clinton's 1998 trip to Africa, his optimistic rhetoric, and uncertainty of substantive American aid); See Press Release, *President Bush Discusses Trip to Africa at Leon H. Sullivan Foundation*, The White House (Feb. 26, 2008), available at <http://www.whitehouse.gov/news/releases/2008/02/20080226.html> (stating that during his first term President Bush "doubled" assistance to Africa and asked Congress to "double" assistance to Africa during his second term).

<sup>114</sup> See *President and Mrs. Bush Discuss Africa Policy, Trip to Africa* (Feb. 14, 2008), available at <http://www.whitehouse.gov/news/releases/2008/02/20080214.html>; *Bush on Safari: Some Relief in Africa*, ECONOMIST.COM, Feb. 15, 2008, available at [http://www.economist.com/displayStory.cfm?story\\_id=10711375&fsrc=RSS](http://www.economist.com/displayStory.cfm?story_id=10711375&fsrc=RSS) (describing President Bush's AIDS package to Africa, dubbed "PEPFAR" (President's Emergency Plan For AIDS Relief), which is intended to give nearly US\$19 billion to Africa over a 5-year period) [hereinafter "*Bush on Safari*"]; Peter Baker, *Bush, in Africa, Issues Warning to Kenya*, WASHINGTONPOST.COM, Feb. 17, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/16/AR2008021600323.html> (describing President Bush's policies in Africa as programs that fight disease, poverty and illiteracy on the continent).

importance of malaria control and mosquito nets, but he said very little about fostering deeper U.S.-African economic ties or about fostering economic development and opportunity in sub-Saharan Africa.<sup>115</sup> Personal compassion and a focus on public health are certainly worthy and needed, but they do not themselves generate trade. Moreover, if we assume, as both the Clinton and second Bush administrations have, that greater trade can lead to greater opportunity and stability,<sup>116</sup> then the absence of such talk during President Bush's 2008 visit is all the more telling. Africa, at the current time, is apparently not perceived by the U.S. government as either presenting strong economic opportunities or posing a significant security or foreign policy threat or concern that can be addressed through trade, and so it is not the focus of current U.S. PTA efforts.<sup>117</sup>

On the other hand, the fact that PTA developments increasingly seem to follow perceived foreign policy goals—like MEFTA—means that we might be able to predict some future PTA developments, based on anticipated foreign policy shifts. In particular, given China's current push to secure access to natural resources and export markets in

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<sup>115</sup> See President Bush Tours Meru District Hospital, Discusses Malaria (Feb. 18, 2008), *available at* <http://www.whitehouse.gov/news/releases/2008/02/20080218.html> (discussing President Bush's "Malaria Initiative," which supports anti-mosquito measures including netting and spray, medical treatment, and anti-malarial medication); *Bush Begins African Trip in Benin*, BBCNEWS.COM, Feb. 16, 2008, *available at* <http://news.bbc.co.uk/2/hi/americas/7247370.stm> (reporting on visits by President Bush to local hospitals).

<sup>116</sup> *The National Security Strategy of the United States* 17 (2002), *available at* <http://www.whitehouse.gov/nsc/nss.pdf>; *The National Security Strategy of the United States* 25 (2006), *available at* <http://www.whitehouse.gov/nsc/nss/2006/nss2006.pdf>.

<sup>117</sup> For a discussion of longstanding structural impediments to inter-regional trade between Africa and developed countries, see McCarthy, *supra* note 32, at 16-17.

Africa<sup>118</sup>—and indeed in Latin America<sup>119</sup>—perhaps we will see a shift in U.S. foreign policy through trade, and thus greater focus on PTA developments in sub-Saharan Africa and renewed U.S. interest in multilateral preferential trade with Latin American countries. Perhaps these efforts, if they come to pass, will succeed; perhaps they will fail; or perhaps (like MEFTA) they may be policy successes even in the wake of their own technical failure. But they will not take place, either as “deep PTA efforts or broad PTA initiatives, unless something in the current politico-economic landscape of international trade changes.

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<sup>118</sup> *China's Quest for Resources: A Ravenous Dragon*, ECONOMIST.COM, Mar. 13, 2008, available at [http://www.economist.com/specialreports/displaystory.cfm?story\\_id=10795714](http://www.economist.com/specialreports/displaystory.cfm?story_id=10795714); *China's Quest For Resources: No Strings*, ECONOMIST.COM, Mar. 13, 2008, available at [http://www.economist.com/specialreports/displaystory.cfm?story\\_id=10795763](http://www.economist.com/specialreports/displaystory.cfm?story_id=10795763).

<sup>119</sup> Stephen Johnson, *Balancing China's Growing Influence in South America*, THE HERITAGE FOUNDATION, Backgrounder #1888 (Oct. 24, 2005), available at <http://www.heritage.org/research/latinamerica/bg1888.cfm> (stating that China's interest in Latin American stems from the abundance of raw materials and lack of formalized industry and being able to make quick deals with corrupt governments); See generally Kerry Dunbaugh & Mark P. Sullivan, *China's Growing Interest in Latin America*, (CRS Report for Congress, Apr. 20, 2005), available at <http://italy.usembassy.gov/pdf/other/RS22119.pdf> (reporting on China's investment and trade activities throughout Central and South America).