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REGULATORY AND TRADE DEVELOPMENTS

APEC, WTO, AND THE FTAA: MOVING U.S. TRADE POLICY INTO THE NEXT CENTURY

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As the U.S. Administration entered the fall and winter of 1994, it was faced with a set of three very important trade events which, depending on their outcomes, would indicate the direction of U.S. trade policy. The Asia-Pacific Economic Cooperation ("APEC") summit was scheduled in November as well as the long-awaited vote by Congress on the U.S. Uruguay Round implementing legislation. Also, in December, the leaders of the Western Hemisphere were meeting in Miami at the Summit of the Americas. All three events were interconnected as the U.S. continued its trade policy approach of regionalism within multilateralism. More importantly, they were an opportunity for the Administration to pursue free trade and demonstrate its commitment to an open trade policy, particularly in the aftermath of losing fast track negotiating authority in the debate over the Uruguay Round implementing legislation in September.

The first of these events was the APEC summit held during November 14 - 15, 1994 in Bogor, Indonesia. APEC was formed in 1989 with a small secretariat in Singapore and has grown to seventeen members of Pacific Rim countries including the U.S., Japan, Canada, China, South Korea, Papua-New Guinea,

Thailand, Hong Kong, the Philippines, Indonesia, Taiwan, Mexico, Singapore, Brunei, Australia, Malaysia, and New Zealand. Chile was added as the eighteenth member, thus extending APEC into South America. After admitting Chile, APEC has decided to close its doors to new membership in order to give the organization a chance to decide its framework and future.

The Asia-Pacific is the world's fastest growth region. APEC members represent 40 percent of global trade and 50 percent of global output. Through the organization, the U.S. benefits from Asia's economic potential and Asia improves its access to U.S. markets. The November APEC meeting was scheduled in order to take further steps toward the goal of creating a free trade area in the next century.

In August 1994, the Eminent Persons Group (the "EPG") released a report which provided a plan for Asia-Pacific trade. The EPG report proposed that the APEC countries should eliminate among themselves restrictions on trade and capital flows by 2020. In order to accomplish this goal, APEC's members would undertake cooperative measures through consultations, broad economic policies, common environmental rules and product standards and an investment code.

The timetable in the EPG report proposed that the implementation of free trade would start in 2010

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with the developed countries (i.e., the U.S., Canada, Japan, etc.), then by 2015 with the newly industrialized countries (apparently self-defined) with full implementation of free trade by all members by 2020. The report also called for "open regionalism" under which trade liberalization measures would be offered to other nations around the world with reciprocal concessions.

The final communique released by the APEC leaders at the end of the summit was broadly in line with the gradual building block process of the EPG recommendations. The agreement proclaimed a "commitment" to achieve "free and open trade" and the removal of investment barriers in the Asia-Pacific region by 2020. As proposed by the EPG report, economically advanced APEC members would eliminate their trade barriers more quickly than developing or newly industrialized nations. Although the ministers accepted an agreement to remove trade and investment barriers by 2020, the agreement is non-binding. Yet throughout the negotiations, the U.S. had strongly supported setting a target date against the resistance of Malaysia and China who would be forced to expose their economies to foreign competition. The timetable agreed upon allows for reliability, maintenance and acceleration of the economies in the region.

Unfortunately, the agreement does not define free trade and it lacks the specifics on how to achieve it. The differences among the economically and politically diverse groups created difficulty in producing a more detailed report. However, the November APEC summit was a turning point since in the past it was more of a loose gathering of nations without a clear goal. Now, APEC's first goals are to reduce import duties and quotas, harmonize product and safety standards, create better

investment codes, simplify customs procedures, and organize a dispute settlement system to supplement the World Trade Organization (the "WTO").

Overall, the November APEC summit was a means for ensuring participation and commitment for trade liberalization plans. APEC leaders have stated their commitment to continue the process of negotiations and have called for a detailed action plan with timetables and benchmarks for regional liberalization before the next summit in Osaka, Japan in 1995. The political pressure must now remain in order to keep up the momentum towards free trade.

Concurrent with the APEC summit, the Clinton Administration was also working with Congress in order to pass the U.S. Uruguay Round implementing legislation. The Uruguay Round Agreement of the Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade ("GATT") was signed in April 1994. The Agreement reduces tariffs and non-tariff trade barriers worldwide. On September 28, 1994, the Administration submitted the legislation to Congress with the hopes of approving it before Congress adjourned the following week on October 7, 1994. Under fast track authority, Congress votes up or down on the bill without any amendments. Fast track expired at the end of 1994 and thus would not apply to the bill if it were reintroduced in 1995.

Therefore, all of the details of the legislation had already been worked out in advance so that the House and Senate Committees could vote. However, at the last minute, Senator Hollings, a Democrat who is Chairman of the Senate Commerce Committee, which is one of several committees with jurisdiction over the bill, decided to use his power to delay the vote by holding on to the legislation for 45 days in order to review the bill. He wanted to

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receive more concessions from the U.S. Administration which would tighten restrictions on textile products entering the country.

It was finally decided that the vote would be delayed in the House until November 29th and in the Senate until December 1st in a lame duck session of Congress following the November 8th elections. Senator Hollings could review the bill and Congress could still give the Administration the promise of a vote on the implementing legislation in 1994.

After the November 8th elections, the Republicans, who are now in control of Congress, were faced with the Uruguay Round vote as a way of sending an early signal on its trade policy. The next major hurdle for the Administration was Senator Dole's (a Republican from Kansas) statement that he was undecided about whether to approve the legislation in the upcoming vote. He wanted a better explanation from the Administration as to why the WTO (the successor to the GATT) is not a danger to U.S. sovereignty.

Throughout the debates on the implementing legislation, there was fear that the WTO would have too much power to force changes in any U.S. laws found to violate the WTO Agreements. Under the old rules, the U.S. could "blast" GATT panel decisions. However, the WTO rules allow trade retaliation in the form of higher tariffs on U.S. goods if WTO panel decisions are not obeyed. The U.S. Uruguay Round implementing legislation contains provisions to address this issue by providing procedures to examine WTO decisions that go against the United States. The Administration is also required to report on the dispute process to Congress which can then vote whether to withdraw from the organization in five years.

In mid-November Senator Dole stated that in order for him to support the legislation, an independent committee of Federal judges must be organized to review decisions of WTO panels and recommend which should be adopted or ignored by the U.S. After three "major" decisions are improperly rendered against the U.S., the committee could recommend that the U.S. withdraw from the WTO. Since the legislation cannot be amended, Senator Dole's proposal will require legislation next year. This proposal placed the Administration in a position of obtaining the needed support for the legislation from the Republicans, a party which usually supports free trade.

A few days before the vote, the Administration received this support by reaching an agreement with Senator Dole that it would support legislation next year which would establish a dispute settlement review commission consisting of five appellate judges.

Finally, on November 29th the House approved the Uruguay Round implementing legislation through bipartisan support by a vote of 288 - 146. The only remaining obstacle was the budget waiver vote in the Senate where 60 votes were needed to waive the Senate's budget rules because a reduction in trade duties counts as a loss of tax revenue (even though the increase in trade brings more revenue in the long run). The Senate passed the budget waiver by a vote of 68 - 32 and also approved the legislation by a vote of 76 - 24. The U.S. vote opened the way for the rest of the world to ratify the Uruguay Round by its January 1, 1995 implementation date.

After this much needed victory, the U.S. moved to the December 9 - 11 meeting of 34 leaders of the Western hemisphere in Miami. The Clinton Administration had called for the summit as the next

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stage in economic integration of the Americas after the passage of the North American Free Trade Agreement ("NAFTA") last November. During 1994, the prospects for expanding NAFTA receded as the Administration lost its fast track negotiation authority which expired at the end of 1994. However, the passage of the Uruguay Round legislation as well as the success of the APEC summit assisted the U.S. in making trade the centerpiece of the Miami summit.

The last time the leaders from the Americas and the Caribbean met was in 1967 when they decided to "create progressively" a Latin American common market. However, much has changed since then as the U.S. now sees much economic potential in the Americas and also in Latin America since countries have ousted military leaders and have achieved a more outward economic policy. The summit allowed for the opportunity to launch negotiations on a free trade agreement in the Western Hemisphere.

Unlike the vague promises made at the APEC summit in Indonesia, the Summit of the Americas produced two substantive outcomes. First, in the beginning step towards a Western Hemisphere free trade zone, the U.S., Mexico, and Canada invited Chile to join NAFTA. The three NAFTA countries would initially meet in mid-December to assess Chile's readiness to join the agreement by discussing negotiating procedures and entrance criteria. Talks would then begin in January 1995 with formal negotiations on Chile's accession starting in May. The U.S. did not set a timeframe under which conclusions would be finished (perhaps for lack of fast track authority).

Second, the leaders agreed to establish 2005 as the year to complete negotiations on creating a free trade

accord covering all of the Americas. Unlike the APEC meeting, the U.S. was not looking for a two tier timetable approach to completing negotiations since many of the countries in the Americas have gone further than Asian ones in market based reforms to prepare for such agreements.

The Free Trade Area of the Americas (the "FTAA") would be built on the foundations of existing agreements such as the NAFTA. A five page declaration of principles was signed by the leaders at the end of the summit which, among other things, stated their commitment towards striving towards comprehensive trade agreements on tariff and non-tariff barriers, agriculture, subsidies, investment, intellectual property rights, rules of origin, anti-dumping, standards and dispute resolution.

A twenty-three point action plan was also agreed upon which specified procedures to ensure that the declared principles would be followed. Trade ministers' meetings have already been scheduled for June 1995 and March 1996. Foremost, an immediate analysis will begin of the compatibility of the many existing trade pacts in the region. The intention to start negotiations for Chile's accession to NAFTA has strong symbolic importance towards the declared principles and adds support for future negotiations.

Additionally, the U.S. Administration faces challenges in pursuing the FTAA because of the Congressional divide over the scope of trade negotiations and, in particular, whether they should include labor and environmental objectives. In order to advance its trade policy for 1995, the Administration will seek fast track authority next spring. Yet it is not clear how broad the authority will be. The Administration could limit its request to Chile's accession to NAFTA or it could include

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labor and environmental objectives. However, without fast track, the U.S. agenda in the FTAA would be severely weakened.

As a result of these major trade events, the U.S. has demonstrated its commitment to free trade policy in 1995 and into the next century.
