

1993

## Impact of the North American Free Trade Agreement on East Asia: A Korean Perspective

Jisu Kim

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [Law Commons](#)

---

### Recommended Citation

Kim, Jisu. "Impact of the North American Free Trade Agreement on East Asia: A Korean Perspective." *American University International Law Review* 8 no. 4 (1993): 881-900.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *American University International Law Review* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact [fbrown@wcl.american.edu](mailto:fbrown@wcl.american.edu).

# IMPACT OF THE NORTH AMERICAN FREE TRADE AGREEMENT ON EAST ASIA: A KOREAN PERSPECTIVE

Jisu Kim\*

## INTRODUCTION

On August 12, 1992, President Bush announced that the United States, Canada, and Mexico would enter into the North American Free Trade Agreement (NAFTA), which will eliminate tariffs and non-tariff trade barriers among the three countries over the next 15 years.<sup>1</sup> The agreement will take effect in January 1994, after approval by the legislature in each country. Once ratified, the NAFTA will create an enormous free trade area, with 360 million people and a total trade output of almost \$6 trillion.<sup>2</sup> The agreement is expected to provide considerable free trade benefits for North Americans, through trade expansion and the resulting effect on consumer welfare.<sup>3</sup> Non-participating coun-

---

\* LL.B. (1985), M.P.A. (1987), Seoul National University. Since 1988, Mr. Kim has been a secretary to the Prime Minister of the Republic of Korea. M.L.L. (Master of Legal Institutions), School of Law, University of Wisconsin, 1993. The views and opinions expressed by the author in this Article are his own and do not necessarily reflect those of the government of the Republic of Korea.

1. See Kenneth A. Bacon, *Trade Pact Is Likely To Step Up Business Even Before Approval*, WALL ST. J., Aug. 13, 1992, at A2, A10 (stating that the agreement will eliminate all tariffs between the three member nations and will create a free trade zone extending from the Yukon to the Yucatan).

2. Dean C. Alexander, *The North American Free Trade Agreement: Potential Framework of An Agreement*, 14 HOUS. J. INT'L L. 85 (1991).

3. See Paul Wonnacott & Mark Lutz, *Is There a Case for Free Trade Areas?*, in FREE TRADE AREAS AND U.S. TRADE POLICY 59, 62-65 (Jeffrey J. Scholt ed., 1989) (stating that in his classic analysis, THE CUSTOMS UNION ISSUE (1950), Jacob Viner argued that free trade agreements (FTAs) can create new trading opportunities by reducing barriers to bilateral flows of goods between the partner countries). However, FTAs also can divert trade by according preferences to the FTA partners that allowed them to replace lower-cost suppliers from third party countries. *Id.* Viner's analysis, however, attracted criticism for overlooking the dynamic effects of trade diversion and economies of scale. *Id.* In addition, trade diversion can promote growth,

tries in Asia, however, are likely to suffer economic hardships as a result of the NAFTA's potential to divert trade away from Asian markets.<sup>4</sup>

This Article examines the anticipated impact of the NAFTA on East Asian countries, and reviews the possibility of free trade agreements (FTAs) between the United States and the East Asian countries. Part I briefly summarizes the NAFTA negotiations and outlines the contents of the agreement. Part II explores the likely impact of the NAFTA on East Asian countries, particularly on Japan and Korea. Part III discusses the possibility of separate bilateral FTAs between the United States and Korea, Taiwan, and Japan, and how each trade agreement might create incentives for other regional agreements. The conclusion of this Article suggests that FTAs between the United States and East Asia could serve as building blocks for the United States' trade policy goal of establishing a free trade area spanning the Pacific Rim, from Australia to Chile.

## I. NEGOTIATIONS AND THE CONTENTS OF THE NAFTA

The NAFTA is an outgrowth of the United States-Canada<sup>5</sup> Free Trade Agreement (CFTA)<sup>6</sup> of 1988. The fact that Mexico, a developing country, is entering into a pact similar to the CFTA, with two developed countries as its partners, has distinguished the agreement from other trade agreements. Mexico's labor-intensive industrial structure<sup>7</sup> was one

---

and thus trade, by lowering input costs for producers, thereby increasing consumer welfare. *Id.*

4. See *id.* (discussing the consequences of FTAs for non-participating countries).

5. See U.S. Dep't of Commerce, *U.S. Foreign Trade Highlights 1991*, 23-27 (1992) [hereinafter *Trade Highlights 1991*] (indicating that the United States and Canada are each other's largest trading partner).

6. United States-Canada Free Trade Agreement Implementation Act of 1988, Jan. 2, 1988, Pub. L. No. 100-449, 102 Stat. 1851. See *United States-Canada Free Trade Agreement: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 100th Cong., 2d Sess. 16-53 (1988) [hereinafter *CFTA Summary*] (giving President Bush's summary of the United States-Canada Free Trade Agreement). See also William H. Cavitt, *Western Hemisphere Free Trade Initiatives*, 18 WM. MITCHELL L. REV. 271, 272-79 (1992) (outlining the contents of the CFTA).

The CFTA tariff abolition schedule will remain in force regardless of the NAFTA provisions. Bacon, *supra* note 1, at A10.

7. The average manufacturing wage in Mexico is estimated to be only 10% to 15% of manufacturing wages in the United States. See *United States-Mexico Economic Relations: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 101st Cong., 2d Sess. 123-34 (1990) [hereinafter *Economic Relations Hearing*] (testimony of Professor Rudiger Dornbusch).

of the most important factors leading to the proposal for the pact.<sup>8</sup> Another factor was Mexican President Salinas' courageous economic policies,<sup>9</sup> which have liberalized, privatized and revitalized<sup>10</sup> the formerly stagnant Mexican economy, to make Mexico the third largest trading

---

8. *Id.* See Ignacio Trigueros, *A Free Trade Agreement Between Mexico and the United States*, in *FREE TRADE AREAS AND U.S. TRADE POLICY* 255, 266-67 (Jeffrey J. Schott ed., 1989) (stating that "traditional gains from trade agreements suggested that greater benefits from import liberalization arise for economies whose economic structure fulfills two characteristics: strong differences between its trading partners, and flexibility in the resource allocation process").

9. *Economic Relations Hearing*, *supra* note 7, at 49-53 (testimony of U.S. Trade Representative, Carla A. Hills). It was former Mexican President de la Madrid who began to rescue the standstill Mexican economy in the mid-1980s. *Id.* Madrid changed the previously protective Mexican market policy into an open and competitive policy in 1985, with the assistance of the International Monetary Fund in 1986 to reduce trade barriers. *Id.*

However, since the Salinas Administration took office in 1988, the United States has observed an even sharper change in Mexican trade policies. *Id.* Mexico acted unilaterally to open its markets to trade, and in some cases went beyond the formal requirements of the GATT. *Id.* The average trade-weighted tariff has fallen from over 25% in the mid-1980s to about 9% in 1991. *Id.* Import licenses, which in 1983 controlled all Mexican imports, were restricted in scope so that these licenses now cover only 250 items, or approximately 7% of the value of U.S. exports to Mexico. *Id.*

In 1989, Mexico liberalized its foreign investment laws by issuing new regulations governing foreign investment. *Id.* Mexico also enacted an intellectual property law in 1991. *Id.*

Of the 1,155 enterprises owned by the Mexican government in 1982, 601 businesses are now privatized and 801 are authorized for divestment from public ownership. *Id.* Additionally, as a result of aggressive external debt restructuring under the Brady Plan, Mexico's debt servicing burden has declined. *Id.*

10. *Economic Relations Hearing*, *supra* note 7, at 49-53. *But see* Lucinda Harper, *Slowdown in Mexico Is Felt in the U.S.*, *WALL ST. J.*, Sept. 29, 1992, at A2 (stating that in recent months the Mexican economy has lost some momentum). In part, the slump is a consequence of the government's decision to launch an all-out effort to pare down the annual inflation rate to a single digit. *Id.* Another factor contributing to the economic setback was the stagnation among Mexico's principal trading partners, particularly the United States. *Id.* Many economists see the sluggishness in the Mexican economy as temporary, and maintain that the slowing may be a healthy factor for Mexico in the long run. *Id.*

Mexican companies face difficult choices in complying with the provisions of NAFTA. *See* Matt Moffett, *Mexican Companies Face Stark Choices In Adapting to Free Trade Agreement*, *WALL ST. J.*, Oct. 6, 1992, at A13 (stating that many Mexican firms have to choose between finding a partner in order to expand, and going out of business).

partner of the United States.<sup>11</sup>

The road to this agreement, however, has not been an easy one.<sup>12</sup> Because the pact involves all industrial sectors, negotiators experienced difficulty in satisfying the various constituencies within all three countries. In the face of these obstacles, Mexican President Salinas and his ruling party aggressively pursued the agreement, largely due to the fact that Mexico is expected to reap the greatest benefits under the NAFTA.<sup>13</sup> Canada too, gained parliamentary approval of the agreement,

---

11. *Trade Highlights 1991*, *supra* note 5, at 23. Two-way trade between the United States and Mexico in 1991 totalled \$64 billion. Karen E. House, *World Avoids a Trade Nightmare*, WALL ST. J., Aug. 14, 1992, at A12. Mexico is the fastest growing market for United States exports. *Id.* U.S. exports to Mexico increased at an average annual rate of 22% since 1987, while U.S. exports to Japan and Canada rose only 15% and 9% respectively. *Id.* Many economic analysts predict that Mexico will become the second largest market for United States exports in 1993, surpassing Japan. *Id.*

12. See *Economic Relations Hearing*, *supra* note 7, at 69 (testimony of the Honorable Anne E. Brunsdale, Chairman of the International Trade Commission). In 1987, the United States and Mexico signed the Framework of Principles and Procedures for Consultation regarding Trade and Investment Relations. *Id.* The Framework established ten working groups in five substantive areas: agriculture, investment and intellectual property rights, services, tariffs, and industry. *Id.*

The 1989 Understanding regarding Trade and Investment Facilitation Talks (TIFTs) represented a significant milestone in commercial relations between the United States and Mexico. *Id.* Negotiations under TIFTs focused on specific production areas, as well as cross-sectoral issues such as services, intellectual property rights, technology, investment, distribution problems, and various tariff and non-tariff barriers. *Id.* TIFTs further provided for a major change in the negotiations procedure whereby bilateral, rather than individual, teams of government experts facilitated the resolution of many issues before the negotiators met at the conference table. *Id.*

In June 1990, the Presidents of the United States and Mexico endorsed the objective of a bilateral free trade agreement. *Id.* at 52. In August 1990, President Salinas formally proposed the initiation of negotiations for a free trade agreement between the two countries, since U.S. trade laws limit access to "fast track" implementing procedures to FTAs that are requested by other countries. *Id.*; see *infra* note 21 (explaining the implications of fast track status). In September 1990, President Bush notified the U.S. Congress of Canada's desire to participate in the negotiations. *Id.*

In February 1991, the Presidents of the United States and Mexico, together with the Prime Minister of Canada, announced their intention to begin negotiations on the NAFTA. Cavitt, *supra* note 6, at 283. The U.S. Congress extended its delegation of authority to the President to negotiate under the fast track provisions in May 1991. *Id.* The NAFTA negotiations formally began in June 1991, when the trade ministers of the three countries agreed upon the modalities of the negotiations. *Id.*

13. See generally *Economic Relations Hearing*, *supra* note 7, at 284-85 (outlining

despite the fact that segments of the Canadian population have expressed strong disapproval of the NAFTA.<sup>14</sup> In the United States, support for the agreement is mixed, with many opponents to the pact voicing their concerns.<sup>15</sup>

Two important issues related to this free trade agreement with Mexico are unemployment due to economic displacement, and environmental protection.<sup>16</sup> United States negotiators emphasize that the enlarged North American common market, and the growth of exports through the use of Mexico's cheap labor, will produce more jobs in the long run.<sup>17</sup> The

---

the benefits Mexico will receive as a result of the free trade agreement).

14. Jeffrey H. Birnbaum & David Rogers, *Free Trade Treaty Casts Large Shadow As Political Issue in Presidential Race*, WALL ST. J., Aug. 13, 1992, at A10. Only 29% of Canadians favored the NAFTA, and labor unions and opposition political parties opposed the agreement. *Id.* Despite strong opposition, the Canadian government, with its parliamentary majority, [IS EXPECTED TO HAVE/HAD] little difficulty in gaining approval of the NAFTA. *Id.*

15. See Bob Davis & Asra Q. Nomani, *Jolt to NAFTA: Federal Judge's Ruling Could Be a Death Blow to Free-Trade Accord*, WALL ST. J., July 1, 1993, at 1 (discussing various groups' concerns over a U.S. court's mandate of an environmental impact statement prior to U.S. ratification of NAFTA); Bob Davis, *Free Trade Pact's Details Are Sparking Squabbles As Congress Takes Up Review*, WALL ST. J., Sept. 8, 1992, at A2, A4 (stating that the NAFTA sparked strong opposition by some members of Congress); *Economic Relations Hearing*, *supra* note 7, *passim*; *Proposed Negotiation of A Free Trade Agreement with Mexico: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 102d Cong., 1st Sess. (1991) [hereinafter *Negotiation Hearing*] (statement of Pharis J. Harvey, Executive Director of the International Labor Rights Education and Research Fund, in opposition to fast track consideration).

Due to the debate over the NAFTA, the agreement became one of the main political issues during the presidential campaign in the United States. See Birnbaum and Rogers, *supra* note 14, at A10 (stating that advisors to President Bush hoped to gain political support with the agreement, while Clinton continued to play both sides of the trade issue). See also Bob Davis, *Candidates' Views on Trade Accord May Be Undercut*, WALL ST. J., Sept. 21, 1992, at A2, A5 (stating that the Clinton campaign was undecided on whether or not to support the NAFTA).

16. *Negotiation Hearing*, *supra* note 15, at 255-63. Problems involving workers' rights and workplace safety in Mexico are also points of concern. *Id.* U.S. labor unions point out that such problems in Mexico may have an adverse influence on American workers. See *id.* (citing the testimony of Pharis J. Harvey); see also Thomas R. Howard, *Free Trade Between the United States and Mexico: Minimizing the Adverse Effects on American Workers*, 18 WM. MITCHELL L. REV. 507, 514-17 (1992) (arguing that laborers possess fundamental rights and that the denial of such rights are "objectionable" both in the human rights and the international trade context).

17. *Negotiation Hearing*, *supra* note 15, at 28-34 (testimony of Ambassador Carla

unemployment of unskilled workers in the United States, however, remains the focus of a great deal of concern.<sup>18</sup> A second concern for the United States is Mexico's lack of adequate environmental protection laws, their enforcement mechanisms, and the anticipated ecological damage from Mexico's stimulated economy, one of the fastest developing economies in the world.<sup>19</sup> Although these worries cast a shadow on the potential for Congressional approval of the NAFTA,<sup>20</sup> the agreement's chances for ratification are heightened by the so-called "fast track"<sup>21</sup> procedures for Congressional approval.

When the Presidents of the United States and Mexico and the Prime Minister of Canada initialed the NAFTA on October 7, 1992, a summary of the NAFTA, was released, listing the goals of the NAFTA as follows.<sup>22</sup>

(1) Tariffs and other barriers on trade and agricultural products<sup>23</sup> will

A. Hills arguing that the NAFTA will increase job opportunities).

18. *Negotiation Hearing*, *supra* note 15, at 28-34. These worries concerning job loss have already proven true in some areas. See Matt Moffett, *U.S. Manufacturers Already Are Adapting To Mexican Free Trade: Even Before Pact Is Ratified, Some Step Up Production And Some Move It South*, WALL ST. J., Oct. 29, 1992, at A1, A6 (stating that some American corporations are already transferring jobs from the United States to Mexico).

19. See *Economic Relations Hearing*, *supra* note 7, at 223-43 (highlighting some of the problems of the maquiladoras, the foreign-owned companies operating in the border region of the United States and Mexico). United States concerns about environmental problems in Mexico increased due to pollution from maquiladoras, which have created industrial belts along the United States-Mexico border and where foreign investment has concentrated for the manufacturing of export products. Leslie Kochan, *The Maquiladoras and Toxics*, reprinted in *Economic Relations Hearing*, *supra* note 7, at 223-43. Foreign investments continue to increase as the peso devalues. *Id.* As some in the United States feared, hundreds of American firms have moved their factories into maquiladora regions during the past decade, and do not seem to be deterred by the havoc done to the environment. *Id.* Environmentalists maintain that these firms were lured by Mexico's "rock-bottom" wages, and by the lack of effective environmental regulations and enforcement by the Mexican government. *Id.*

20. See Birnbaum and Rogers, *supra* note 14, at A10 (stating that there is little doubt that Congress will approve the NAFTA).

21. 19 U.S.C. § 2903 (1988). Under the "fast track" procedure, Congress must approve or disapprove any agreement without amendment within a given time. *Id.* The procedure has an important impact in the conduct of negotiations, because absent fast track status, United States negotiators could not assure their negotiating partners that the agreement would be the only one voted on by Congress. Cavitt, *supra* note 6, at 283.

22. Bacon, *supra* note 1, at A10.

23. Bacon, *supra* note 1, at A10. Mexico will abolish tariffs on half of its crop

be phased out over the next 15 years. Tariffs and other barriers will remain in force on imports from countries outside the new free trade zone in order to advantage North American products.

(2) Strict rules of origin will be established, such that in order to qualify for duty-free trade within North America, products must be manufactured predominantly in North America. For automobiles, the NAFTA will phase in a North American content standard of 62.5%<sup>24</sup> of the net cost of a car. Other vehicles and automotive parts must be 60% North American-made in order to qualify for duty-free treatment within the trading bloc. Similarly, computers, electronics, textiles, and apparel must meet rigid rules of origin standards to qualify for duty-free trade with the free trade zone.

(3) In the area of financial services, Mexico will gradually allow United States and Canadian banks, brokerage firms, finance companies and insurance companies free access to its markets, after a six-year transition period during which market share will be limited. Each country agreed to grant "national treatment" to North American financial institutions, meaning that they will be subject to the same rules as indigenous institutions.<sup>25</sup>

(4) Intellectual property rights protection will be revised, such that

---

imports from the United States when the NAFTA goes into effect. *Id.* Tariffs on the remainder of Mexican crop imports will end within 10 years. *Id.* Tariffs on sensitive products, including corn and dry beans for Mexico and orange juice and sugar for the United States, will be phased out over 15 years. *Id.* The three countries agreed to strive for domestic price-support policies that would not distort trade. *Id.* See *Trade Pact Would Curb Competition In Farm Products, Costing Consumers*, WALL ST. J., Aug. 19, 1992, at A2 (stating that the NAFTA will curb competition in farm products, ultimately resulting in higher costs to consumers).

24. See Bacon, *supra* note 1, at A10 (stating that the NAFTA provisions are a "significant increase from the CFTA, which set a 50% domestic-content standard, but it is less than the 70% the U.S. auto industry wanted to fence out Japanese and other imported parts"). Under the NAFTA, the auto industry will have four years to increase North American content to 57%, and an additional four years to reach 62.5%. *Id.* Both Canada and Mexico fought for lower content requirements to protect existing or encourage greater Japanese investment. *Id.* See also *Customs' Enforcement of the Rules of Origin Provisions of the United States-Canada Free Trade Agreement: Hearings Before the Subcomm. on Trade and the Subcomm. on Oversight of the House Comm. on Ways and Means*, 102d Cong., 1st Sess. 119-37 (1991) (discussing the proposal of the United States Motor & Equipment Manufacturers Association to include a Rule of Origin in the NAFTA).

25. See Lawrence E. Koslow, *Mexican Foreign Investment Laws*, 18 WM. MITCHELL L. REV. 441, 457-58 (1992) (articulating the four basic rules governing foreign investors in the CFTA).



high-technology, entertainment and consumer goods producers in the United States will enjoy more substantial patent, trademark and copyright protection. In addition, compulsory licensing will be limited, resolving important issues between the United States and Canada.

## II. IMPACT OF THE NAFTA ON EAST ASIA

While the NAFTA contains mechanisms benefiting North American business through trade liberalization, these same mechanisms disadvantage companies operating outside of the United States, Mexico and Canada.<sup>26</sup> North American products made by United States manufacturers that exploit cheap Mexican labor, will be strongly competitive not only in the North American common market, but also in foreign markets. European countries may be able to avoid successfully the expected negative trade effects of the NAFTA by simultaneously developing the European common market.<sup>27</sup> Moreover, many European companies have positioned themselves to cope with the NAFTA by investing in North American businesses, thereby securing access to the opportunities presented by the NAFTA.<sup>28</sup> By contrast, Asian countries, whose national growth rates are substantially dependent upon exports to the United States, expect to sustain losses in market share as a result of the NAFTA.<sup>29</sup>

---

26. See *infra* note 38 and accompanying text (discussing how the NAFTA provisions will benefit North American manufacturing and high-technology companies).

27. The European Community (EC), a customs union, is a regional arrangement differing from a free trade zone like that created by the NAFTA. The main difference is that in the former, the control over economic policy for third countries is ceded to a supranational mechanism, like the European Congress. *A Unifying Europe Tries to Dot Its I's*, N.Y. TIMES, Nov. 16, 1992, at C1, C3. Under NAFTA, however, each member maintains control.

In spite of the Maastricht treaty on European unification, divisive debates in France and Britain, which followed Denmark's decision to vote on the treaty in May 1993, cast a shadow over the goal of a unified Europe. See *Europe Copes With the Details of Unity*, N.Y. TIMES, Nov. 16, 1992, at D1 (stating that France and Britain are divided over the timing of a vote on the treaty).

28. See Percy R. Luney, Jr., *The Japanese View Toward NAFTA and Regional Trade Zones*, 2 DUKE J. COMP. & INT'L L. 297, 302-03 (1992) (stating that France and Germany made substantial investments into Mexican plants along the United States-Canada border). Less than 5% of the approximately 2000 plants located in Mexico in 1991 were owned by Japan. *Id.* These maquiladora plants allow companies to take advantage of regulations that allow foreign companies to enjoy duty-free status as long as the final products are exported from Mexico. *Id.* at 302 n.35.

29. See Leah Makabenton, *Trade: NAFTA Casts a Pall Over Asian-Pacific*

After the NAFTA provisions were declared, Japan expressed concern that the NAFTA was inconsistent with principles articulated in the General Agreement on Tariffs and Trade (GATT).<sup>30</sup> Korea expressed similar concerns about the validity of the NAFTA.<sup>31</sup> Because these two countries greatly depend on United States markets, however, neither is likely to bring legal action against the NAFTA. Moreover, it is unlikely that the GATT would find that the NAFTA constitutes a violation of the GATT provisions.<sup>32</sup> Indeed, the United States could use the NAFTA both as an incentive and as a threat to force further liberalization of trade within the GATT.<sup>33</sup>

---

*Grouping*, INTER PRESS SERVICE, Sept. 10, 1992, available in LEXIS, Nexis Library, Wires File (noting that Asian nations fear that under NAFTA, Mexico will take a larger market share at the expense of Asian nations, while Japan fears the effect of NAFTA rules of origin and content requirements).

30. *Japan's MITI Tells Dunker It's Unhappy About NAFTA*, REUTERS, Aug. 31, 1992, available in LEXIS, Nexis Library, Wires File. The GATT requires that signatory countries not discriminate among their trading partners, and must extend equal treatment to all "most favored nations," meaning trading partners with very beneficial stature. General Agreement on Tariffs and Trade, Oct. 30, 1947, T.I.A.S. No. 1700, 55 U.N.T.S. 188 [hereinafter GATT]. This is referred to as most favored nation status. *Id.* However, the GATT also recognizes and permits the existence of closer economic relationships between selected countries. Jeffrey J. Schott, *More Free Trade Areas?*, in FREE TRADE AREAS AND U.S. TRADE POLICY 24 (1989). GATT therefore allows nations to avoid full adherence to most favored nation status when a bilateral or multilateral free trade agreement meets certain criteria. GATT, art. XXIV. Free trade agreements conform to GATT requirements when GATT delegates are provided detailed notice of the agreement, the agreement applies to "substantially all" the trade between the parties, and the agreement does not increase trade barriers for other countries. *Id.* However, as Mr. Schott notes:

The provisions of Article XXIV are vague, however, as to whether an FTA must be on balance trade creating. The GATT merely implies that "the desirability of increasing freedom of trade" through FTAs or customs unions is the rationale for the derogation from the MFN obligation. However, the presumption that an FTA must be more trade creating than trade diverting has been incorporated into GATT working party reviews of FTA notifications, and is now generally considered the key standard by which to judge the value of FTAs to third countries.

Schott, *supra*, at 24.

31. *See Asia Wary of NAFTA Trade Protection*, REUTERS, Sept. 10, 1992, available in LEXIS, Nexis Library, Wires File (reporting that South Korea hoped that the NAFTA would promote world trade in a manner consistent with GATT principles).

32. *See Schott, supra* note 30, at 24-25 (indicating that between 1948 and 1988, none of the 69 FTAs and preferential trade agreements examined by GATT were held incompatible with GATT rules). However, only four of these agreements were found to be consistent with the requirements of Article XXIV. *Id.*

33. Schott, *supra* note 30, at 2; *see Negotiation Hearing, supra* note 15, at 23

Despite its concerns about the NAFTA, however, Japan is in a far better position to cope with the NAFTA than other Asian countries. First, Japanese products are widely preferred over products from most nations, both for their price and for their quality, and thus Japanese exports may not significantly decline under the NAFTA.<sup>34</sup> Second, like many European companies, Japanese businesses have already made significant investments in the United States and Mexico, and have similarly secured access to the North American market.<sup>35</sup> In the automobile industry, for example, which is one of Japan's largest export industries,<sup>36</sup> Japanese manufacturers already own and operate several assembly plants in North America.<sup>37</sup> Japanese auto parts companies also operate in North America, and supply many high-technology components to transplanted Japanese assembly facilities.<sup>38</sup> Thus, profits from Japanese investment will continue to flow back to Japan through their North American production facilities despite requirements for a high rate of local

---

(testimony of Ambassador Carla A. Hills) (stating that the NAFTA will bring significant benefits by creating a free trade zone encompassing 360 million consumers and producers).

34. See Michael Williams, *Japan's Merchandise Trade Surplus Gains 25% to a Record \$12.07 Billion*, WALL ST. J., Oct. 15, 1992, at A11 (reporting that even though the yen appreciated against the dollar, and therefore increased the dollar denomination sum of Japanese exports, Japan's trade surplus with the United States increased for the twenty-first consecutive month in September, 1992).

35. Clive Cook, *Fear of Finance: A survey of the Global Economy*, ECONOMIST, Sept. 19, 1992, at 17 (reporting that the Japanese contributed 22 percent of total foreign auto investments of \$214 billion in 1990, with much of that amount flowing into the United States).

36. See *Factors Affecting U.S. International Competitiveness (II): Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 102d Cong., 1st Sess. 676 (1991) (statement of the Honorable Sander M. Levin) [hereinafter *International Competitiveness Hearing*] (stating that Japan accounts for most of the United States trade deficit in automotive products, including one hundred percent of the deficit in auto parts). In 1990, automotive products represented \$53.3 billion of the \$101 billion United States trade deficit, of which the deficit in auto parts was \$10.4 billion. *Id.*

37. See Toni Thompson & Jim Impoco, *Reversal of Fortune*, U.S. NEWS & WORLD REP., Feb. 17, 1992, at 42 (reporting that by 1992, Japan had invested \$9 billion in automotive factories which employed nearly 30,000 workers and supplied 17.6% of the U.S. car market). See, e.g. Luney, *supra* note 28, at 302 (indicating that Nissan-Mexico plans to increase its production capacity in North America by renovating existing Mexican plants and constructing a new factory by 1993).

38. See *International Competitiveness Hearing*, *supra* note 36, at 675 (stating that more than 400 Japanese auto parts manufacturers have built factories in the United States).

content.<sup>39</sup> Third, the Japanese have established a foothold in the North American market through their heavy investment in assembly and manufacturing facilities,<sup>40</sup> and have successfully introduced their coordinated system of keiretsu into the United States,<sup>41</sup> enabling them to comply with the stricter local content rules of the NAFTA. Finally, in order to soften the ill-effects of the NAFTA, Japan was invited to lead a regional economic group in Asia.<sup>42</sup>

Korea, like other Asian countries besides Japan, is gravely concerned about the NAFTA.<sup>43</sup> Although Korea has reduced its trade dependence on the United States, almost one-quarter of its total exports still go to United States markets.<sup>44</sup> Therefore, Korea reacted quickly to the NAFTA by promoting investment in North America, primarily to obtain duty-free benefits.<sup>45</sup> In recent years, Korean companies have channeled

---

39. Luney, *supra* note 28, at 302-03.

40. See Cook, *supra* note 35, at 14 (stating that until recently, most foreign direct investment flowed between the developed countries).

41. See M.Y. Yoshino, JAPAN'S MANAGERIAL SYSTEM 148-49 (defining keiretsu *gaisho* as firms affiliated with a joint company engaged in ordinary business dealings). The Japanese system involves large firms forging a network of affiliated firms, primarily related through sub-contracting relationships into a single organization. *Id.* at 155.

42. See Bruce Stokes, *Japan's Asian Edge*, 23 NAT'L J. 1620, 1629 (1991) (stating that Asian leaders called on Japan to lead an East Asian Economic Group (EAEG) to defend Asian interests in an increasingly hostile trade environment).

43. See Lee Hao-Koo, *The Impact of North American Free Trade Agreement on Korean Industry*, KOREAN ECON. DAILY, Apr. 1, 1992, at 1, available in LEXIS, Nexis Library, Reuters File (stating that Korean exports to the United States will suffer due to the NAFTA and increased competition with low-cost labor in Mexico). Consumer electronics will be affected in the short term; products such as computers, telecommunications equipment, automobiles and apparel will be affected in the long-term. *Id.*

44. See Kim Dayong-Luan, *South Korea's Export Machine Faces Problems*, REUTERS, Sept. 4, 1992, available in LEXIS, Nexis Library, Wires File (reporting that in the first half of 1992, Korea exported \$8.72 billion worth of goods to the United States, representing 23.8% of Korea's total exports). In 1992, Korea's exports to Japan, the United States and the EC represented 51.4% of its total exports, down from 70% in 1987. *Id.* Korean products have lost their price competitiveness primarily due to rapidly increasing wages and costs during the late 1980s. *Id.* Increasing competition from other developing countries has resulted in estimated losses to Korea of nearly \$7.6 billion in export revenue between 1988 and 1991. *Id.*

45. See *Gov't Promotes Investment in North America*, KOREAN TIMES, Aug. 18, 1992, at 1, 7 (stating that in response to the NAFTA, the Korean government would give various financial and tax incentives to companies which invest in North America). Korea also decided to take steps to improve Korea-Mexico trade, and to conclude

more than one-half of their total overseas investments into North American enterprises.<sup>46</sup> Unfortunately, however, most of the Korean investments, which were intended to overcome trade barriers and to avoid wage hikes and labor disputes in Korea, are currently operating at a loss.<sup>47</sup> Korea, with limited capital, technology, and management resources, faces an uncertain future in the face of an increased number of regional trade agreements.

The prospect of the NAFTA has also spurred other nations to cooperate on regional economic issues. The likely success of the NAFTA, coupled with Mexico's successful economic policies, has induced many Central and South American countries to follow Mexico's market-opening policies.<sup>48</sup> In addition, if these countries successfully implement their own economic agreements, which are already in existence in these regions,<sup>49</sup> a single common market throughout the American continents may emerge in the near future.<sup>50</sup>

---

quickly a double-taxation accord and an investment guarantee agreement. *Id.*

46. See *Investment in NAFTA Countries Active*, KOREA ECON. DAILY, Aug. 18, 1992, available in LEXIS, Nexis Library, Reuters File (indicating that from 1988 to June 1992, 45% of Korea's gross overseas investment of \$1.8 billion was made in the three signatory nations of the NAFTA).

47. See *South Korea: Labor, Cost Woes Follow Companies to Overseas Plants*, KOREA ECON. DAILY, Sept. 23, 1992, available in LEXIS, Nexis Library, Reuters File (reporting that labor disputes resulting from cultural differences, increased local-content rules, and intense sales competition led to such unsuccessful profit results). This failure caused a reduction in Korean overseas investment. *Id.*

48. See, e.g., James Bune, *South American Trade Pact Spurs Petrochemical Fires*, HOUS. CHRON., Jan. 3, 1992, at C1 (stating that Brazil, Argentina, Uruguay and Paraguay have agreed to form a South American Common Market, which will eliminate tariffs by 1995); Anne Veigle, *Industry Applauds Trade Pact*, WASH. POST, Aug. 13, 1992, at C1 (reporting that Venezuela, Colombia, Ecuador, Peru and Bolivia renewed their agreement to create a free trade area through the elimination of tariffs by 1995).

49. See Cavitt, *supra* note 6, at 284-85 (detailing recent United States intentions to effect trade agreements between the United States and Latin and South American countries). An early trade agreement was the Caribbean Basin Initiative (CBI), signed in 1983 by former President Reagan and including 23 countries in the Caribbean, Central and South America. *Id.* at 285-86. The United States granted duty-free access to its markets for most Caribbean Basin products, under specific conditions. *Id.* at 286; Caribbean Basin Economic Recovery Act, 19 U.S.C. § 2701-2707.

In 1991, the Andean Trade Preference Act was signed into law by President Bush. 19 U.S.C. § 3201 (1991). This act, like the CBI, provides duty-free benefits for Andean Pact countries. Cavitt, *supra* note 6, at 285-89. Economic cooperation is also increasing between the regional groups. *South America-Caribbean Ties*, WALL ST. J., Oct. 20, 1992, at A13.

50. See Cavitt, *supra* note 6, at 284 (stating that the goal of some states is to

In Asia, efforts to cooperate on regional economic issues have been only marginally successful. One of the more profitable regional agreements is the Association of Southeast Asian Nations (ASEAN), whose members recently agreed to reduce tariffs on exports between signatory nations.<sup>51</sup> Other attempts to develop regional economic cooperation call for Japan to take the lead in the creation of an Asian free trade area.<sup>52</sup> After World War II, Japan refrained from assuming an Asia-Pacific regional leadership role to avoid criticism from its Asian neighbors.<sup>53</sup> Because of their experience during World War II, many Asians viewed any political or economic extraterritorial actions by Japan as a renewal of Japan's pre-war imperialist ambitions.<sup>54</sup> Such fears of Japanese ex-

---

create a free trade zone throughout the western hemisphere). On June 27, 1990, President Bush announced his Enterprise for the Americas Initiative (EAI) to encourage economic growth in the Americas through initiatives in the areas of trade, investment and debt. Sylvia Saborio, *Bush's Latin American Initiative: A Promising Move*, CHRISTIAN SCI. MONITOR, July 12, 1990, at 8. EAI is designed to support Latin countries in their efforts to reform their economies and liberalize their international trade and investment policies. *Id.*

51. See K.T. Arasu, *NAFTA Seen Cutting Asian Exports by \$2 Billion*, REUTERS BUS. REP., Nov. 23, 1992, available in LEXIS, Nexis Library, Wires File (reporting that the ASEAN countries agreed to eliminate all tariffs within 15 years). The tariff elimination will pave the way for a free trade zone in the region to stimulate inter-Asian trade. *Id.* ASEAN is the oldest regional organization and includes six countries: Singapore, Thailand, Malaysia, Indonesia, the Philippines and Brunei. *Id.* However, Thailand, because of its relatively weak industrial structure, will likely sustain the most adverse impact on its economy from the tariff reductions, and therefore may not adhere to the agreement. *Id.* ASEAN Agreed to NAFTA, KOREAN TIMES, Oct. 29, 1992, at 17.

52. See Stokes, *supra* note 42, at 1629 (describing the formation of the East Asia Economic Group (EAEG)). The Asia-Pacific Economic Cooperation (APEC) is the world's largest regional group, comprising nearly one-half the world's markets. *Id.*

Malaysia's proposed East Asian Economic Group (EAEG) would have included the United States, Australia, New Zealand and Canada. Clayton Jones, *Asia-Pacific Group Calls for Free Trade*, CHRISTIAN SCI. MONITOR, Nov. 15, 1983, at 1. This proposal was not realized partly because the United States opposed it. *Id.* Instead, the APEC enlisted as members, China, Taiwan, and Hong Kong. *Id.* In addition, when China and South Korea established diplomatic relations, prospects for a North East Asia Economic Area improved. *North East Asia*, INTER PRESS SERVICE, Aug. 26, 1992, available in LEXIS, Nexis Library, Wires File. A growth area encompassing the Korean peninsula, Japan, northeastern China, and far-eastern Russia would contain 300 million people. *Id.*

53. Luney, *supra* note 28, at 304.

54. Luney, *supra* note 28, at 303, 304; see House, *supra* note 11, at A12 (reporting that although World War II ended over 50 years ago, other Asian nations still

pansionism have been compounded by Japan's refusal to open its markets to other Asian countries, in spite of its extraordinary economic prosperity.<sup>55</sup>

Many now believe that these historical fears should no longer obstruct Asian regional cooperation, especially in light of growing regionalism within the Western hemisphere.<sup>56</sup> Japan has begun to respond to these changing economic circumstances, but to date its actions have been far short of the demands of other Asian countries.<sup>57</sup> Even if Japan joins a regional economic pact in Asia, it will likely entail looser ties among member nations than those created under the NAFTA.<sup>58</sup> Therefore, any regional Asian trade pact is unlikely to compensate for the trade losses that will be sustained by Asian countries due to the NAFTA. Most Newly Industrialized Countries (NICs), which have relied on United States markets for a large share of their total exports, will therefore experience trade problems with the United States after the implementation of the NAFTA. In light of the important trade relations between the United States and some NICs, individual, bilateral free trade agreements (FTAs) between the United States and individual East Asian nations,

---

fear and hate Japan).

55. *Trade Imbalances in Asia-Pacific Region*, KOREA ECON. DAILY, Sept. 9, 1992, at 2, available in LEXIS, Nexis Library, Reuters File [hereinafter *Trade Imbalance*]. Korea's estimated 1992 trade deficit with Japan was \$7.9 billion even though Korea had a net trade surplus of \$3 billion with other trading partners. *S. Korea Trade Deficit with Japan Seen Narrowing*, REUTERS, Oct. 13, 1992, available in LEXIS, Nexis Library, Wires File. Non-tariff trade barriers are one of the main reasons that foreign products are unsuccessful in the Japanese domestic market. Luney, *supra* note 28, at 297, 298 n.9. There is diverse opinion regarding the openness of the Japanese national economy. See, e.g., Peter Drysdale & Ross Garnaut, *A Pacific Free Trade Area?*, in FREE TRADE AREAS AND U.S. TRADE POLICY 217, 228 (Jeffrey J. Schott ed., 1989) (stating that among Asian countries, Japan's import system for manufactured goods is unencumbered by regulation and that trade is almost completely impeded by non-tariff barriers. Although Japan's distribution systems are conservative, imported goods from other Asian countries have grown by 50% annually since 1985. *Id.*

56. See, e.g., *Trade Imbalance*, *supra* note 55, at 1 (suggesting that Asia reduce its dependence on the United States by developing stronger trade ties among Asian nations); Luney, *supra* note 28, at 304-05 (describing the prospects and uncertainty of having Japan take a leading role in creating a regional free trade area).

57. See House, *supra* note 11, at A12 (suggesting that the potential for an Asian free trade area depends in part upon the willingness of smaller Asian nations to follow Japan's lead).

58. See *Trade Imbalance*, *supra* note 55, at 2 (discussing Japan's unwillingness to internationalize its economy and lower trade barriers to imports).

may be an alternative for avoiding economic losses at the hands of the NAFTA.<sup>59</sup>

### III. PROSPECTS FOR FTAS BETWEEN THE UNITED STATES AND EAST ASIAN NATIONS<sup>60</sup>

United States officials, including Senators and Representatives, have

---

59. See, e.g., Kim Dayong-Luan, *supra* note 44 (discussing Korea's trade dependence on United States markets); Yung-Chul Park & Jung-Ho Yoo, *More Free Trade Areas: A Korean Perspective*, in FREE TRADE AREAS AND U.S. TRADE POLICY 141, 153-54 (Jeffrey J. Schott ed., 1989) (suggesting that an FTA between Korea and the United States is in the best long-term economic interest of Korea, but that Korea may avoid being locked out of American markets by FTAs between the United States and other Asian countries); S.C. Tsiang, *Feasibility and Desirability of a US-Taiwan Free Trade Agreement*, in FREE TRADE AREAS AND U.S. TRADE POLICY 159, 159-62 (Jeffrey J. Schott ed., 1989) (suggesting that Taiwan would welcome an FTA with the United States). See also *It's Time to Think about an FTA with the U.S.*, KOREA TIMES, Sept. 22, 1992, at 2 (discussing the probable impact of the NAFTA and the EC on Asian trading control and suggesting that Asian countries seek FTAs with the United States); KOREAN INSTITUTE ON ECONOMIC POLICY, *Impact of NAFTA and Policy Suggestion*, KOREA TIMES, Sept. 21, 1992, at 7 (quoting South Korean President Roh Tae-woo as saying that an Asia-Pacific economic community is untimely at the present because Korea would participate as a subordinate member, rather than on an equal basis with other Asian nations). But see *President, Asia-Pacific Economic Community is Untimely*, KOREA TIMES, Oct. 31, 1992, at 1 (noting uncertainty over the President's statement concerning whether he would oppose an FTA with the United States at some future date).

60. Due to the larger size of the economies of Japan, Korea, and Taiwan than Hong Kong and Singapore, this article focuses on the possibility and probable effects of an FTA between these larger countries and the United States. Since Hong Kong and Singapore, the remaining NIC countries, have relatively small economies, the impact on East Asia of any such FTAs involving them would be relatively small. For instance, in 1991 Taiwan produced 4.7% of American imports, Korea 3.5%, Singapore 2%, and Hong Kong 1.9%. Francis G. McFaul, U.S. FOREIGN TRADE HIGHLIGHTS 1991 16 (1992).

In addition, Hong Kong's future economic impact is very uncertain, in light of the fact that the colony is scheduled to be returned to China in 1997. Nicholas D. Kristof, *China Threatens Hong Kong Treaty*, N.Y. TIMES, Nov. 18, 1992, at A1, A4. In 1988, China and Britain agreed that Hong Kong should continue political and economic freedom for 50 years after the colony returns to Chinese control in 1997. *Id.* However, China recently threatened to breach that agreement to counter British efforts to strengthen its political influence over the colony prior to 1997. *Id.*



demonstrated interest in establishing FTAs with Pacific Rim countries.<sup>61</sup> These officials appear to be focusing their efforts on the negotiation of an FTA with Japan, the most formidable trading nation in the world.<sup>62</sup> Nevertheless, an FTA alone between the United States and Japan would not correct the trade imbalance between the two countries,<sup>63</sup> due to Japanese differences in trade policy, market structure and culture.<sup>64</sup> Therefore, many American analysts proposed that the United States establish a broader conception of FTA<sup>65</sup> or promulgate permissible ranges of balanced trade goals with Japan.<sup>66</sup> Indeed, in a defensive approach to the threat of United States protectionism, Japan proposed a cooperative mechanism to reduce the binational trade imbalance, resulting in the United States-Japan Structural Impediments Initiatives (SII)<sup>67</sup> in 1989. However, it is likely that the trade imbalance between the United States and Japan will continue to widen, since Japan continues to concentrate on maintaining its exports to United States markets, rather than moving to liberalize the Japanese import market.

Japan continues to avoid binational trade agreements, preferring instead to remain under the Most Favored Nations (MFN) protection<sup>68</sup> of the GATT, under which Japan can exploit its superiority in manufactured products. Consequently, Japan's economic strategy for balancing binational trade can be most aptly characterized<sup>69</sup> as reliance on the

---

61. Schott, *supra* note 30, at 27.

62. Schott, *supra* note 30, at 32. In the late 1980s, there were many proponents of an FTA between the United States and Japan. *Id.*; Makoto Kuroda, *Strengthening Japan-U.S. Cooperation and the Concept of Japan-U.S. Free Trade Arrangements*, in *FREE TRADE AREAS AND U.S. FREE TRADE POLICY* 121, 122-23 (Jeffrey J. Schott ed., 1989).

63. Schott, *supra* note 30, at 35-36; Kuroda, *supra* note 62, at 127.

64. Robert Z. Lawrence, *Comments on Kuroda*, in *FREE TRADE AREAS AND U.S. TRADE POLICY* 131 (Jeffrey J. Schott ed., 1989); Clyde Prestowitz, *Comments on Kuroda*, in *FREE TRADE AREAS AND U.S. TRADE POLICY* 137 (Jeffrey J. Schott ed., 1989).

65. Lawrence, *supra* note 64, at 131.

66. Schott, *supra* note 30, at 35.

67. Takagi, *Japan to U.S. on Deadline: Impossible*, *NIKKEI WEEKLY*, June 1, 1991, at 1. After the U.S. Presidential election, reports indicated that Japan was preparing a broader binational cooperation scheme in place of SII. *Japan, Worry about New Trade Policy of the U.S.*, *KOREA TIMES*, Nov. 11, 1992, at 10.

68. Schott, *supra* note 30, at 35.

69. Kuroda, *supra* note 62, at 129; *Japan Should Push GATT Focus in Face of Growing Regionalism: Success of the UR Will Be a Litmus Test*, *NIKKEI WEEKLY*,

GATT to defend itself against aggressive trade pressure<sup>70</sup> from the United States on one hand, and cooperation with the United States in the negotiation of an agreement at the Uruguay Round<sup>71</sup> on the other.

This standstill between the United States and Japan might be resolved by the formation of an FTA between the United States and Korea, or the United States and Latin and South American countries of low wages will be likely to force Korea and Taiwan to consider an FTA with the United States.<sup>72</sup> An FTA between the United States and Korea or Taiwan, in turn, might be an impetus for an FTA between the United States and Japan because both Korea and Taiwan compete with Japan in their exports to the United States. Under such a competitive formation of FTAs, Japan will be more inclined to reform its trade system, rather than to continue to ignore current external pressures.

Thus, from the perspective of the United States, negotiating a trade agreement with Korea or Taiwan would be highly desirable in its own right, and would have the added appeal of exerting pressure on Japan to open its domestic markets. Taiwan is the United States' sixth largest trading partner, and its third largest creditor with a \$9.8 billion surplus in 1991.<sup>73</sup> Korea is the United States' seventh largest trading partner,

---

Aug. 29, 1992, at 6, available in LEXIS, Nexis Library, Current File.

70. President Clinton supported revision of Super 301 of the U.S. Trade Act of 1988. Alan O. Sykes, *Constructive Unilateral Threats in International Commercial Relations: The Limited Case for Section 301*, 23 LAW & POLICY INT'L BUS. 263, 265-66 nn.15-18 (1991). Critics contend that section 301 of the U.S. Trade Act of 1974, and the Super 301 of the 1988 Trade Act, undermine the multilateralism of the GATT system. *Id.* For an opinion supporting the use of Section 301, see *id.* at 266-69.

71. The Uruguay Round negotiations were initiated in 1986 to promulgate rules in areas the GATT fails to regulate, such as services, investment and intellectual property rights. Alan Riding, *Europeans Agree with U.S. on Cutting Farm Subsidies; French Withhold Support*, N.Y. TIMES, Nov. 21, 1992, at A1, A20. While both the Kennedy Round (1964-67) and the Tokyo Round (1973-79) concerned tariff reduction, the Uruguay Round has focused on the adjustment of each country's economic structure, in addition to tariff reduction. *Id.* Of the 15 areas of negotiations in the Uruguay Round, the most difficult area has been agriculture. *Id.* Although the EC agreed with the United States on the reduction of farm subsidies in November 1992, many obstacles remain, including the rice problem in East Asian countries. *Id.* Moreover, even if an agreement from the Uruguay Round is simultaneously submitted to the United States Congress with the NAFTA, the possibility of disapproval of the Uruguay agreement is significant. *Id.*

72. See Schott, *supra* note 30, at 29-31 (describing the objectives of signatory nations to FTAs). One objective of FTAs is avoiding discrimination in the trade context. Park & Ho Yoo, *supra* note 59, at 153-54; Tsiang, *supra* note 59, at 160.

73. UNITED STATES DEP'T OF COMMERCE, U.S. FOREIGN TRADE HIGHLIGHTS

and in 1991 it was the sixth largest purchaser of American products.<sup>74</sup> By negotiating FTAs with Korea and Taiwan, the United States could substantially reduce its trade deficit with these nations through the elimination of trade barriers.<sup>75</sup> Trade deficits and trade barriers with the other nations in East Asia would also be likely to fall as other East Asian nations would position themselves to enter similar arrangements with the United States. The United States might also choose more radical steps to reduce these trade barriers by balancing bilateral trade flows on a per-country basis.

For Korea and Taiwan, the most important objective of an FTA is to maintain access to United States markets,<sup>76</sup> since both Asian countries would continue to suffer economically from increasing United States protectionism without such agreements. The NAFTA creates a large obstacle to Korean and Taiwanese access to United States markets.

Another East Asian objective in pursuing an FTA with the United States is to improve bilateral relations between the region and the United States. Significantly, the establishment through an FTA of a dispute settlement mechanism would sharply diminish trade disputes between East Asia and the United States.<sup>77</sup> Under the present regime, all trade disputes regarding exports by Taiwan and Korea to the United States are governed by United States law and procedure. This has made the outcome of such disputes less acceptable to the Taiwanese and Koreans, regardless of the fairness of the process. Moreover, an FTA between Taiwan or Korea and the United States may be an instrument to enhance political recognition of Taiwan by the United States, and to strengthen existing diplomatic ties between Korea and the United States.<sup>78</sup>

---

1991 23-25 (1992).

74. *Id.*

75. *Clinton's Economics Point Man*, N.Y. TIMES, Nov. 21, 1992, at 17, 23. If the United States attempts to reduce its trade deficit with Asian countries without redressing its own trade barriers, the United States will have to formulate policies to improve the competitiveness of its products, in addition to diminishing the trade barriers of the two countries. *Id.* Significantly, President Clinton cited American economic problems as his highest priority, in light of an ailing U.S. domestic economy. *Id.* The term "Clintonomics" is based on principles from Robert B. Reich and his 1991 book "The Work of Nations." *Id.*

76. See Schott, *supra* note 30, at 29-31 (discussing why market access is a crucial element of FTAs).

77. *Id.*

78. Both Korea and Taiwan are divided countries. Taiwan assumed a defensive position against China's unification efforts, and has attempted to strengthen its rela-

Despite the benefits that Korea and Taiwan may gain from an FTA with the United States, such an agreement is likely to face strong opposition in both Asian countries. Although export industries in the manufacturing sectors would support an FTA, other economic sectors, such as service industries and agriculture, would be wary of the adverse impact from competition with U.S. companies. Nevertheless, Korea and Taiwan must deal with the United States regarding these bilateral issues, with or without separate FTAs.<sup>79</sup> Moreover, the Uruguay Round is addressing these same economic issues; if either Taiwan, Korea or Japan opens its agricultural sector to United States producers, the remaining countries will be unable to avoid opening up their own agricultural sectors in order to protect their national interests.

Additionally, an FTA between Korea and the United States is inconsistent with Korea's attempt to diversify its export markets and its growing nationalism.<sup>80</sup> Over the last five years, Korea has actively improved its relations with Eastern European countries, Russia, and China, in an effort to reduce its heavy economic dependence on the United States and Japan.<sup>81</sup> Korea has also attempted to upgrade its industrial infrastructure and to diversify the composition of its exports, emphasizing more capital and technology-intensive products. As a consequence, the

---

tions with the Western Hemisphere, particularly with the United States. Korea has assumed a leadership position in conducting a dialogue with North Korea, one of the most hostile countries in the world. Under the divided circumstances of the peninsula, Korea must maintain close ties with the United States.

79. Park & Ho Yoo, *supra* note 59, at 154-55; Tsiang, *supra* note 59, at 162-63.

80. Korean students staged many demonstrations against the United States, arguing that it was responsible for the nation's division during and after World War II, and for the Korean military suppression of the bloody Kwangju Riot in 1980. See Fred Hiatt, *S. Korea Discovers America-Bashing: Trade Issue Angers All Political Sectors*, WASH. POST, Feb. 29, 1988, at A14 (noting fierce South Korean activism, linking farmers to students to business executives); Henry Scott Stokes, *Outlook Darkens for South Korean Dissident Leader*, N.Y. TIMES, Nov. 10, 1980, at A2 (summarizing political events in Korea following the student-led Kwangju Riot). Since 1988, Korean democracy appears to have been improved and strengthened, such that these demonstrations are no longer as common. Increasing United States protectionism and pressure on Korea, though, to open its rice market have created new targets for student activism, with support from Korean farmers making these new movements different from past protests that lacked public support. *Exports Pact Unlikely Before Toronto Summit, Yeutter Says*, LOS ANGELES TIMES, June 17, 1988, at 8 (discussing increasing nationalism in Japan and South Korea, including student demonstrations).

81. See *Sharp Decrease of Exports to U.S., Japan, and EC*, KOREA TIMES, Nov. 14, 1992, at 7 (stating that Korea's exports to the United States and Japan decreased from 56.6% of its total exports in 1987 to 43.1% in 1991).

effects of an FTA with the United States on these diversification objectives may be adverse.

As opposed to Korea, Taiwan appears more receptive to the creation of an FTA with the United States, although it also feels pressure from powerful agricultural groups seeking to protect their product markets.<sup>82</sup> Chinese intervention, however, may provide an additional obstacle to the development of such an FTA. The Chinese ambassador to the United States has warned that a Taiwan-United States FTA would violate existing United States-China agreements.<sup>83</sup> It is conceivable, though, that "an FTA also could be seen by China as a future precedent for bilateral trade, with near-term benefits if it establishes a trading 'foot in the door' in Taiwan."<sup>84</sup>

### CONCLUSION

The implementation of the NAFTA will certainly bring free trade benefits to the North American countries. Unfortunately, the likely trade diversion effect of the NAFTA threatens the economies of many Asian countries, which have relied heavily on exports to the United States to foster their national economic growth. The United States must realize that a subsequent economic slump in Asia would trigger a decrease in American exports to East Asia. In addition, the NAFTA alone is not likely to be effective in reducing the United States trade deficit with Japan. Korea and Taiwan may attempt to formulate an FTA with the United States in order to secure access to United States markets and to cope with increasing North American protectionism under the NAFTA. In turn, the United States can use FTAs with Korea and Taiwan to exert pressure on Japan to accept a far broader free trade agreement, since these three East Asian countries compete with each other in the United States market.

This article suggests and evaluates the possibilities of free trade agreements between the United States and Korea, Taiwan, and Japan. If such FTAs proved successful, future FTAs may link the United States and Pacific Rim countries. The resulting free trade network would accomplish the same results that the United States has pursued through multinational and bilateral trade negotiations.

---

82. Tsiang, *supra* note 59, at 159-63; Schott, *supra* note 30, at 38.

83. Schott, *supra* note 30, at 39.

84. Schott, *supra* note 30, at 39.