Multilateral Agreements and Visions of the World

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TABLE OF CONTENTS

I. Introduction ................................................................................................................. 460
II. Contribution of the GATT to World Trade ................................................................. 463
   A. The Peace-keeping Role of the GATT ................................................................. 463
      1. Non-tariff Barriers to Trade ........................................................................ 469
      2. Use of Safeguard Mechanisms .................................................................. 471
      3. Developing Country Exceptions and Graduation ........................................ 472
      4. The Federalism Clause ............................................................................... 473
      5. Dispute Resolution Mechanism .................................................................. 473
III. Toward a More Effective Role for the GATT ............................................................ 474
   A. Bilateralism ....................................................................................................... 475
   B. Regional Agreements ....................................................................................... 477
   C. The GATT Multilateral Framework ................................................................ 481
IV. Non-Substantive Rules as Solutions to Defection ..................................................... 482
V. Summary and Conclusions ......................................................................................... 486

I. INTRODUCTION

Within nation states, governments typically are given the authority to establish the rules and other institutions that allow individuals to engage in market exchange. These rules and institutions govern contracts, property rights, and a host of other factors concerning which agreement must exist if markets are to function at all. Similar institutions are needed at the international level in order to realize the gains from trade that form such an essential component of the pure theory of international trade. In this case, however, there is no international

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state that can be charged with establishing and enforcing these rules.\(^1\) Since World War II, international trade has been regulated by the General Agreement on Tariffs and Trade (GATT), a voluntary treaty organization that includes most of the world's trading nations.\(^2\)

The GATT is extremely important for world trade. Since its formation in 1947, the world community has been able to use the GATT framework to negotiate tariff reductions, from an average of about 40 percent to as low as 5 percent today, in most industrialized countries.\(^3\) Even though these reductions in tariffs primarily have affected manufactures, the GATT also serves as a forum for dealing with non-traditional international trade issues including services trade, intellectual property rights and agriculture.\(^4\) With the radical political and economic changes occurring in Eastern Europe and the former USSR, the world community may be moving toward a brand of globalism that involves greater interaction than embodied in our current multilateral concepts of international relations.\(^5\) In this context, an organization such as the GATT is essential to establish and enforce rules regulating a particular set of these economic and political interactions.

However, the GATT is presently under attack as a result of the difficulties encountered in reaching agreement on a number of problems—notably those related to agricultural trade—during the current Uruguay Round of trade negotiations.\(^6\) The conflicts and diffi-

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2. The GATT was formed in 1947. Ninety-three countries are full signatories and about 122 countries follow the GATT rules in principle and receive GATT treatment from the signatories. About 80 percent of the world's trade is affected by the GATT rules. WORLD BANK, *WORLD DEVELOPMENT REPORT 1987*, at 156 (1987).
3. *Id.*

From their inception, the international trade rules relating to agriculture have been adjusted to fit the different national programs designed to protect farmers. Agriculture has been treated differently from other industries in the rules developed by the member nations of the General Agreement on Tariffs and Trade (GATT), and many of the trade prac-
culties that have arisen during these negotiations have made the GATT process seem cumbersome and subject to stalemate. In questioning the efficacy of the GATT multilateral approach to international institutions, some have argued that regional or bilateral agreements effectively can substitute for multilateral agreements and are easier to negotiate.7

The purpose of this article is to argue that the multilateral framework offered by the GATT is preferable to alternative approaches to the creation of international institutions for promoting world trade. Multilateral economic arrangements such as the GATT have as their object and purpose a vision of a peaceful world.8 But such a vision has not been exploited to mobilize domestic and international consensus on negotiated agreements.9 If the institutional objective of the GATT is seen as a contribution to world peace, a smoothly-functioning world trade regime becomes a means to an end rather than merely an end in itself. To provide operational force to this institutional objective, we examine critically the historical origins, intent and purpose of the GATT arrangement, focusing particularly on its “peace-keeping” goals. We argue that “non-substantive” concepts—such as good faith, sympathetic consideration, reasonableness, best efforts and the like which play an important and constructive role in the coordination of

tices common in agriculture have never had any effective rules applied to them.

Id. at 1.


It is not just a matter of strengthening GATT or applying its principles more vigorously, although that would be very helpful and might be essential. What we called for were quite a few changes in the international system. We asked whether bilateral negotiations (which we labelled selective action), or perhaps plurilateral arrangements, might be the way to reform, rebuild, and extend the multilateral system.

Id. at 181. See also Bruce Stokes, GATT Gathering, 18 NAT'L J. 2059 (1986)(“The postwar obligation to seek multilateral consensus on trade rules is outdated, and bilateral agreements and understanding among like-minded nations are the wave of the future”). For a more recent discussion, see REGIONAL TRADING BLOCS, supra note 5.


It has been my experience in Congress and in the State Department that the general public grasps with much more ease and interest many of the broad political actions of our government in foreign affairs than it does the economic actions. It is not too difficult to understand the meaning of a diplomatic protest, a political treaty, the withdrawal of an ambassador, or the recognition of a new government. It is indeed difficult to understand the interaction of foreign commerce, tariffs, currency exchange and debts.

[hereinafter MEMOIRS].
domestic markets—are also important in promoting the coordination and peace-keeping goals of the GATT.

This article is organized into four parts. In Part II, we describe and document the contribution of the GATT to world trade, highlighting (a) the peace-keeping role, and (b) forces tending to undermine that role. Part III discusses the implications of such alternatives to the GATT system as regional and bilateral arrangements. Part IV develops the concept of non-substantive clauses, particularly the concept of good faith as a mechanism for assuring compliance with international institutions in the context of the vision of a peaceful world offered by the GATT multilateral process. Conclusions are presented in Part V.

II. CONTRIBUTION OF THE GATT TO WORLD TRADE

A. The Peace-keeping Role of the GATT

The view that a harmonious world trade regime would lead to a peaceful world has a long intellectual history. John Stuart Mill best captured the spirit of this rich history:

It is commerce which is rapidly rendering war obsolete, by strengthening and multiplying the personal interests which are in natural opposition to it. And it may be said without exaggeration, that the great extent and rapid increase of international trade, in being the principal guarantee of the peace of the world, is the great permanent security for the uninterrupted progress of the ideas, the institutions, and the character of the human race.

The extensive literature on the question of worldwide economic reconstruction after World War II reveals that the planners of the various Bretton Woods Institutions, including the GATT, were influenced heavily by the intellectual history that recognized a harmonious trade regime as a condition for world peace. The drafters were practical

10. For a useful discussion of this theme see Fabricius, *The Universal and Regional Harmonisation of International Trade Law as a Means of Maintaining World Peace*, in *INTERNATIONAL ECONOMIC AND TRADE LAW* 201 (Clive Schmittoff & Kenneth Simmonds, eds., 1976).

11. Id. at 206.

12. The post-war literature on the relationship between a harmonious trade regime and world peace is extensive. The following observation by Cordell Hull summarizes the thrust of the argument during the period:

Economic warfare results in a lowering of hiring standards throughout the world. It foments [sic] internal strife. It offers constant temptation to use force, or threat of force, to obtain what could have been got through normal processes of trade. A people driven to desperation by unemployment, want, and misery is a constant threat of disorder and chaos, both internal and external. It falls an easy prey to dictators and desperadoes. In so far as we make it easier for ourselves and every one else to live, we diminish the pressure on any country to seek economic betterment through war. The basic approach to the problem of peace is the ordering of the world's economic life so that the masses of the people can work and live in reasonable comfort. Nations cannot produce on a level to sustain their people in well-being unless they have reasonable
thinkers, and most had experienced first-hand the disastrous consequences of the beggar-thy-neighbor policies of the 1930s and the fruitless results of the Smoot-Hawley Tariff Act. Thus, arguing before a suspicious Congress that the United States needed to take the initiative in establishing a multilateral trade regime and in reducing trade barriers, Secretary of State Cordell Hull emphasized the peace-keeping role of these institutions and their contribution to improving the human condition: "I have never faltered, and I will never falter, in my belief that enduring peace and the welfare of nations are indissolubly connected with friendliness, fairness, equality, and the maximum practicable degree of freedom in international trade," and further added, "one of the surest safeguards against war is the opportunity of all peoples to buy and sell on equal terms and without let or hindrance of a political character."

There are several reasons why a harmonious and well-instituted world trading environment is conducive to peaceful relations. First, trade itself can contribute to peace through its effect on cultural familiarity and understanding. The ordinary business of trading with foreigners requires human interaction and often entails a variety of endeavors that increase international contact and contribute to the development of mutual respect between people of different nationalities. For example, many governments—as well as states within the United States—have begun establishing overseas missions to promote their products. It has become increasingly clear that sales to foreign consumers are dependent upon understanding the culture and values of these consumers and adapting products to meet their needs and desires. Trade in physical goods is being partially replaced by the greater willingness of Japanese automakers to build plants in the United States and the proliferation of joint projects between Western firms and organizations in the emerging democracies of Eastern Europe. All of these trade-related trends lead to greater human inter-

opportunites to trade with one another. And this cannot happen in a world of extreme economic barriers, political hostility, and recurring wars.

See Memoirs, supra note 9, at 364.


15. Sumner Wells, "Address on 'Our Foreign Policy and National Defense' to the Foreign Affairs Council, Cleveland, September 28, 1940," quoted in DAM, supra note 14, at 12 n.5.

16. By mid-1985, 33 U.S. states maintained over 60 foreign trade offices in more than a dozen states. See John M. Kline, A New Federalism for United States Foreign Policy, 24 ST. POLICY REP. 3 (1985).

17. According to Dillon, one perspective of the importance of Japanese investments in the U.S. holds that "Japanese investments in the U.S. and all other types of foreign investments and trade (including U.S. investments abroad) are breaking
action and can be expected to increase tolerance for cultural differences and improve the odds that international conflicts will be resolved through non-military means.

In addition, an open trading system leads to gains from trade that increase the total amount of goods available for the satisfaction of human material wants. The greater availability of goods in an open trading system can help reduce the international tensions that might arise in a world not replete with resources. However, the existence of this surplus does not preclude international conflicts stemming from disagreements over how it is to be shared. It is in this context that rules assuring fair trading practices become critical. If the gains from trade do not appear to be equitably shared, nations will have little incentive to enter the world market and the contribution of the international trading system to world peace will be vitiated. Thus, not only trade itself but also the institutions to equitably govern trading relations have important peace-keeping functions.

Of course, some might argue that markets, including international markets, are actually a source of exploitation and conflict rather than institutions that foster peaceful business relations. This is more...
likely to be the case when the rules governing the market appear to be discriminatory or unfair to some of the parties participating in the market exchange. If this is true, it adds weight to the argument that rules assuring fair access to international markets are essential for the realization of both their economic and peace-keeping functions.

Some scholars have argued that the GATT system supplies a pure public good—a liberal trading system. As we have argued previously, the institutional purpose of a liberal trading system is the promotion of world peace. World peace and the liberal trading system instrumental for the realization of world peace have all the characteristics of pure public goods. Pure public goods are characterized by non-rivalry in consumption and the impossibility of excluding those who do not contribute to the provision of the public good. This latter characteristic leads to the problem of free-riding because self-interested individuals have little incentive to reveal their true preferences for the public good. This behavior often has been likened to the prisoners' dilemma because, while the sum of individual benefits from the public good is greater than the sum of individual costs, each individual has an incentive to defect from the cooperative solution. The best individual outcome occurs when others behave cooperatively while the individual defects.

Because all participants in the prisoners' dilemma are assumed to be rational, they all perceive that defection is the best strategy and the non-cooperative outcome prevails. Coleman refers to the difference between the non-cooperative outcome of the prisoners' dilemma and the pareto optimal outcome as a "capturable cooperative surplus." It

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1. Kindleberger, supra note 1, at 9 ("In the economic sphere, various international public goods have been identified; an open-trading system including freedom of the seas, well-defined property rights, standards of weights and measures that may include international money or fixed exchange rates and the like.").
2. Kindleberger also treated world peace as an international public good. "I come at last to international public goods. The primary one is peace. Economists are poorly qualified to discuss how, after war, peace is restored and maintained." Kindleberger, supra note 1, at 9.
is only through an enforceable contract that this cooperative surplus can be captured, and the existence of such contracts requires collective institutions. For international trade, those collective institutions are contained in the GATT.

According to the theory of international trade, the move from a position of autarky to a regime of free trade gives rise to gains from trade. Those gains can be seen as the cooperative surplus available to nations participating in world trade. Runge and others have argued that such gains from trade are a public good that will be provided in sub-optimal amounts in the absence of mechanisms to coordinate collective behavior. According to their analysis, the free-rider problem is an example of an assurance problem. They argue that free-riding can be overcome if all participants can be assured that others are complying with the rules. In the absence of that assurance, countries are likely to defect by attempting to take advantage of the free and open trading system while instituting measures to protect strategic or politically sensitive industries within the country itself.

The aforementioned defection is opportunistic. Opportunistic behavior occurs when "a performing party behaves contrary to the other party’s understanding of their contract, but not necessarily contrary to the agreement’s explicit terms, leading to a transfer of wealth from the other party to the performer . . . ." Opportunism is subtle behavior and, as such, very difficult to police. Having agreed to reductions in transparent protectionism (tariffs), many governments have exploited the open-ended character of some of the GATT provisions to impose a variety of measures and policies in an effort to mitigate the effects of the tariff reductions. Because some of the GATT provisions are open-ended by necessity and design, one might argue that the root cause of the perceived inadequacy of the GATT framework is the opportunistic exploitation of the open-texture of the agreement—and

24. See Runge, von Witzke, & Thompson, supra note 21, at 3.
25. Id. at 7.
27. For examples of how nations have exploited the open-ended character of the GATT provisions, see the discussion infra under NTBs, VERs, Safeguards, Developing Country Exceptions, Federalism Clause and Dispute Settlement. Sometimes, nations also exploit the ambiguity in the language of some GATT provisions. A good example is Article XXIV, which deals with "Regional Economic Arrangements." As Dam points out, the effort to attain precision and to force future arrangements into Article XXIV’s mold proved to be a failure if not a fiasco. Ambiguity rather than precision reigned. The dismaying experience of the GATT has been that, with one possible exception, no customs union or free-trade-area agreement thus far presented for review has complied with Article XXIV, yet no such agreement has been disapproved.

DAM, supra note 14, at 275-76.
not the inadequacy of the GATT provisions per se. The GATT provisions are effective only to the extent that contracting parties want them to be.

One might argue with some validity that opportunism in international interactions is a fact of life under democratic institutional arrangements. Since the seminal work by Downs and the growing empirical public choice literature, we have gained a better understanding of the influence that pressure groups and constituencies have on political and bureaucratic decision making. Baldwin has documented convincingly the myriad of constituencies that have shaped United States international trade legislation since 1945. Constituency-based legislation is not a monopoly of the United States as the experiences of the European Community, Japan and other democracies illustrate.

A strand of the public choice literature also identifies as a cause of opportunistic behavior in international interaction the endogeneous character of policy decisions by politicians and bureaucrats. For example, Vaubel has argued that politicians sometimes relegate to international organizations those decisions that have the potential to reduce their domestic political capital. Recently, Marra, Ostrom and Simon demonstrated empirically that politicians use drama in the international arena to bolster their popularity in the domestic market. Endogeneous policy actions are not restricted to politicians. Within the framework of the European Community, Messerlin demonstrated that the bureaucracy has a tendency to oversupply protectionism. In our own theoretical explorations on the issue of the supply of protectionism by the President of the United States and Congress, we suggested that the indivisibility of foreign policy and foreign trade decisions supports the granting of wider presidential discretion in international trade decisions. However, presidential discretion is increasingly circumscribed as international trade legislation is exploited by both politicians and bureaucrats to gain favor with clients. Thus, the problem of opportunism in international interactions has a cause or causes that

29. ROBERT E. BALDWIN, TRADE POLICY IN A CHANGING WORLD ECONOMY (1988).
are firmly rooted in the political culture.\textsuperscript{34} With this background in mind, we turn now to some specific examples of the problem of opportunism in international trade.

1. Non-tariff Barriers to Trade

The abolition of non-tariff trade barriers (NTBs) is arguably the most contentious issue in modern trade regulation. NTBs include such quantitative restrictions as import quotas and voluntary export restraints (VERs), as well as technical or administrative provisions such as health and safety regulations, standards, licensing, labeling, documentation requirements and minimum pricing regulations.\textsuperscript{35} Table 1 shows the extent of NTBs on selected products in 1984. The table shows that both developed and developing countries are actively involved in using NTBs as a means of excluding imports. The increase in the number of NTBs took place at the same time that tariffs were being reduced.

The use of NTBs is a prime example of opportunism in international trade. For example, it is often difficult to distinguish between provisions designed to protect consumers or the environment from harmful products and those aimed at protecting producers from foreign competition. That lack of transparency allows governments wishing to protect producers to accomplish their objective in the guise of following the letter of the law.\textsuperscript{36} In addition, “since NTBs can assume widely varying forms and since in many cases there can be honest disagreement not only on whether a given measure should be termed an NTB but also on what ‘abolition’ of that measure should entail, the GATT has no general provision on NTBs.”\textsuperscript{37} Those factors make NTBs ideal vehicles for opportunistic behavior.

Although there are no general GATT provisions governing the use of NTBs or negotiations on their reduction, GATT rules do prohibit

\textsuperscript{34} Historically, opportunism in international trade was held in check by a hegemonic power who policed the behavior of other nations. Great Britain was such a hegemonic power until the World War II, when the United States assumed the role. See Yarbrough & Yarbrough, infra note 57. See also Runge, von Witzke & Thompson, supra note 21, and references therein.

\textsuperscript{35} See URUGUAY ROUND, supra note 4, at 121.

\textsuperscript{36} As Malmgren points out, “sometimes the NTBs are intended by governments to discriminate against foreign trade. At other times the NTBs have come about unintentionally, often as an outgrowth of some domestic policy decision which never took the trade impact into account at all.” HAROLD B. MALMGREN, TRADE WARS OR TRADE NEGOTIATIONS: NON-TARIFF BARRIERS AND ECONOMIC PEACEKEEPING 13 (1970). For examples of conflicts over food regulations within the European Community, see E. Wesley F. Peterson, Mechel Paggi, & Guy Henry, Quality Restrictions as Barriers to Trade: The Case of EC Regulations on the Use of Hormones, 13 W. J. AGRIC. ECON. 82 (1988).

\textsuperscript{37} DAM, supra note 14, at 19.
<table>
<thead>
<tr>
<th>Product Category</th>
<th>Value of Imports From</th>
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<tr>
<td>Vehicles</td>
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</table>

Definitions: Fifteen developed markets: the EEC (10), Finland, Japan, Norway, Switzerland, and the United States. Exporting countries: World Bank definitions (World Development Report, 1984), except that Greece was transferred from developing to industrial countries.


Source: Finger and Olechowski (1986).
quantitative restrictions. The prevalence of VERs, quotas, licenses, etc., renders the prohibition ineffective in practice. A sampling of the language used to deal with some other NTBs shows how easy it is for NTBs to become sources of opportunism. For example, the provisions on formalities (fees charged for forms, documents, visas, inspections, etc.) only require nations to limit amounts to the "approximate costs of services rendered . . . ." The provisions on documentation in trade only state the "need for decreasing and simplifying import and export documentation requirements." Part of the "Marks of Origin" rule only requires nations to avoid making requirements that "unreasonably increase the cost" of products, and the provisions on 'health and sanitary regulations' exempt "measures necessary to protect human, animal, or plant life or health." There are considerable degrees of freedom in interpreting this particular regulation.

2. Use of Safeguard Mechanisms

Article XIX of the GATT permits governments to escape from their GATT obligations and raise trade barriers to safeguard any of their producers seriously injured by the liberalization of trade. The inherent invitation to abuse the intent of this provision is obvious because domestic producers are usually interested in trade liberalization as long as it means access to the other's markets. The original justification for the safeguard mechanism was to encourage cautious countries to enter into a greater number of tariff bindings than would otherwise be the case. One observer has stated that "Article XIX has rarely, if ever, been interpreted in a way that would appear to be consistent with the text. Countries have discriminated selectively against supplying countries in the application of trade barriers, avoided compensating foreign suppliers adversely affected by their actions, and stayed out of the limelight of national and international scrutiny." Parties' unwillingness to follow the stringent guidelines under Article XIX and the increasing political power of domestic producer groups and unions suggest that the GATT's safeguard mechanism has been a source of significant opportunism in international trade.

38. Id. at 150.
39. Id. at 181.
40. Id. at 183.
41. Id. at 187.
42. Id. at 194.
43. For a detailed discussion of some of these health regulation problems, see Peterson, Paggi, & Henry, supra note 36.
44. Sampson, Safeguards, in URUGUAY ROUND, supra note 4, at 143. Article XIX is popularly referred to as the "Escape Clause." See DAM, supra note 14, at 99.
45. See DAM, supra note 14, at 99.
46. See Sampson, supra note 44, at 143.
3. Developing Country Exceptions and Graduation

Several provisions under the GATT accord different and more favorable treatment of developing countries. These include provisions allowing countries to impose quantitative restrictions to protect infant industries and for balance-of-payments purposes; allowing relief from obligations to make reciprocal concessions consistent with the most-favored-nation (MFN) principle; and a preference scheme for developing country exports under the Generalized System of Preferences (GSP). The GSP scheme envisaged "graduation" for those countries that, over time, are not classified as developing. There is mounting evidence that developing countries are increasingly using the exceptions not for the purposes for which they originally were intended. For example, due in part to the open-ended nature of the balance-of-payments exception and a decline in enforcing the Standards of Application by the GATT, Hindley has suggested that developing countries have been able to "adjust their tariffs and impose quantitative restrictions almost at will" under the exception. It is also known that countries have resisted graduation, fearing the losses that might accompany such an action. To the extent that GATT's oversight of developing countries' adherence to the developing country exclusions is weak, the potential for opportunism will be enhanced and further weaken the efforts toward building a stable and credible world trade regime.

47. For a discussion of the different and more favorable treatment of developing countries under the Uruguay Round of negotiations, see Brian Hindley, Different and More Favorable Treatment and Graduation, in URUGUAY ROUND, supra note 4, at 67.


49. Hindley, supra note 47, at 73. GATT often seems not to be informed of tariffs or QRs applied by developing countries on balance-of-payments grounds. The reports of countries that do not notify GATT about trade restrictions used for balance-of-payments purposes suggest that the restrictions are often applied to only a small fraction of imports. Since trade restrictions genuinely used for balance-of-payments purposes are likely to be across-the-board, this strongly suggests that the notified trade restrictions are being used for some other purpose." Id. at 68. In the same paper, the author discusses the rejection of the graduation idea by developing countries. For example, the Group of 77 rejects the concept of 'graduation' sought to be introduced by developed countries to discriminate among developing countries in a unilateral and arbitrary manner. Id. at 72. For a recent example of the resistance to the removal of trade benefits, see Walter S. Mossberg, U.S. Removal of Trade Benefits is Tied to Currency Rates of Four Asian Nations, WALL ST. J., Feb. 1, 1988, at 4. (The four countries were South Korea, Taiwan, Singapore and Hong Kong. Representatives from these countries vigorously protested the removal of trade benefits).
4. The Federalism Clause

GATT Article XXIV:12 recognizes the difficulties facing parties with federal structures of government in complying with the non-discrimination provisions under Article III. In an effort to deal with the federalism problem, however, the drafters left room for opportunism. Article XXIV:12 states: "Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territory."

In countries such as the United States, where the Constitution reserves some areas of regulation to the component states, reasonable measures may not be defined easily and the potential for state opportunism is enhanced. This is especially true because the interpretative note to the Article attempts to distinguish between those actions by component units of a federation related to the "letter" and not the "spirit" of the clause.

5. Dispute Resolution Mechanism

The dispute resolution mechanism in any agreement is one way to gauge the intentions of the parties towards maintaining their relationships over time. One approach to dispute settlement is "power-oriented." Where the instrument for dispute settlement is power-oriented, the powerful party forces the settlement terms on the weaker party. It has been suggested, for example, that the EC follows a primarily more power-oriented approach in its international trade agreements.
Another route often advocated by developing countries is the "rule-oriented" approach to dispute settlement. Neither approach directly eliminates opportunism because both plaintiff and defendant countries may sit on the dispute resolution panels. Under the GATT practice of consensus decisionmaking, either party may prevent a GATT ruling from taking effect.

The lack of provisions to regulate the use of NTBs, the safeguard mechanism, and the other measures described above open the possibility for opportunism by countries that belong to the GATT. Opportunistic behavior undermines the world trading system because it leads to the perception that some countries are capturing more than their fair share of the cooperative surplus. That perception can give rise to further defections (for instance, the introduction of agricultural export subsidies by the United States as a response to the perception that the EC was unfairly subsidizing its farmers) and a general deterioration of the trading environment. Under those circumstances, the world trading system is no longer able to realize its functions of generating an economic surplus and promoting world peace. The problem here is not with the multilateral approach, but rather with the incentives to defect engendered by an incomplete set of rules and open-ended regulations.

III. TOWARD A MORE EFFECTIVE ROLE FOR THE GATT

The GATT arrangement has come under attack in recent years. Some have called for major reforms of the system while others have insisted on an outright dismantling of the GATT with more responsive institutional arrangements put in its place. In this section of the article, we discuss in some detail the various kinds of institutions that have been suggested as alternative paths to organizing world trade so as to further the institutional goal of a peaceful world. We focus primarily on the macro-institutional arrangements—multilateralism, bilateralism, and regional arrangements, as opposed to the micro-institutions and concepts such as reciprocity, issue linkage and hostage trading. The primary interest in this discussion is to assess how the suggested alternatives address the fundamental problems of interna-

55. Van Bael, supra note 54, at 75.
56. Id. at 73. Even though nations have the option under the GATT rules to prevent a ruling from taking effect, the authority has been rarely used.
tional trade institutions so as to move the world toward the goal of peaceful coexistence.

A. Bilateralism

Bilateral agreements have been described as a two-country contract. Bilateral arrangements cover one or more aspects of the trade relations between two countries. One example is the bilateral agreement on trade in grains and oilseeds that the United States has with the former USSR. The agreement was established in the late 1970s in response to the perception in the United States that sporadic and unpredictable Soviet grain purchases were disrupting United States grain markets. Under this arrangement, upper and lower bounds on Soviet grain purchases were established. Other bilateral agreements include the United States-Japanese agreement on beef trade, the USSR-Cuba sugar arrangements, and many more.

The existence of a great many bilateral agreements can lead to increased instability on world markets. The reason for this is that the greater the amounts of a given commodity traded under bilateral agreements, the smaller will be the volume traded on the residual world market. Small markets, often referred to as thin or illiquid markets, are less stable because relatively small shocks will have a substantial impact on prices. These are precisely the conditions that obtain on the world sugar market, which has been characterized in recent years by extreme price instability. Because of the instability, a world trade regime based on bilateral agreements will not generate as large a cooperative surplus as one organized around multilateral institutions.

In addition, bilateral agreements are discriminatory, meaning that access to the cooperative surplus generated is not open to all countries. A further disadvantage is that the arrangements are negotiated by governments, such that there is a potential for each government to attempt to act as monopolist. The behavior of bilateral monopolists is expected to be non-cooperative because each side is aware that the other has some ability to use the relationship to advance its interests at the expense of the other country. That can lead to distrust of the bilateral partner as well as discrimination against the third parties.

In practical terms, a world trade regime based on bilateral agreements could be extremely confusing for traders because they would be forced to deal with many sets of institutional arrangements in order to trade with more than a few countries. That would raise the transac-

tions costs of carrying out international trade, further reducing the cooperative surplus generated by the trading system. The reduction in the cooperative surplus, as well as the discriminatory nature of bilateral agreements, means that world trade and the institutions to govern it are less likely to contribute to world peace. It should be noted that the rationale for bilateral agreements is almost always based on a vision of narrow, national interest, and this nationalistic perspective is not conducive to world peace.

Several scholars have made distinctions between bilateralism as practiced by dictatorial regimes and the practice under Western democratic institutions. For example, pre-war Central European bilateralism under German leadership has been condemned on both political and economic grounds as "exploitative and opportunistic." 60 Similarly, the CMEA arrangement between Eastern European countries contains seeds of exploitation and opportunism by the dominant power, the Soviet Union. Faced with possible disintegration of the entire CMEA arrangement, the Soviet Union seems to be the only partner capable of capturing opportunistic rents from the relationship, "as the Soviet Union can more easily divert the bulk of its exports to Western markets than can the Six, and as it does not depend on supplies from any single country among the Six, while each of the Six is highly dependent upon the Soviet Union, it seems to be in an inherently strong bargaining position." 61

The history of bilateralism in Western capitalist countries shows that it has never been intended to be a permanent feature of trade policy. As Brabant puts it, "in the market-type economies, the bilateral trade policy is usually conceived as a transitional trade mechanism for bridging rather important disturbances in the international economy (such as war, depression, revolution, payments crises, etc.)." 62 Post-war Western European bilateralism was intended to deal precisely with a crisis—an acute shortage of convertible currency brought about by war financing. Bilateralism in Europe was not intended to function as "a competitive alternative to Bretton Woods and was not recognized as such by its members." 63 Even in its limited form, the United States protested the formation of bilateral arrangements between countries, seeing these arrangements as "inconsistent with multilateralism, the prime objective of United States international economic policy." 64

Bilateralism promotes a limited vision of the world. The agree-

60. See Polk & Patterson supra, note 58.
63. Polk & Patterson, supra note 58, at 142. (Emphasis added).
64. Id. at 188.
ments have the potential to increase tensions in international trade and restrict domestic political freedoms. International tensions are increased because bilateralism reduces specialization, inhibits international division of labor and poses difficulties in integrating into a multilateral world. The approach restricts domestic political freedoms because it increases bureaucracy and the creation of stringent governmental controls. In those situations where bilateralism has been regarded as a permanent trade policy—pre-war Central Europe and the post-war CMEA countries—bilateralism has been found to lead to exploitative opportunism by a dominant country. In the Western countries, bilateralism has never been accorded the status of a permanent international trade strategy, a far cry from the recent calls for such a plan of attack.

B. Regional Agreements

Regionalism refers to the construction of free trade areas, customs unions or sectorial agreements. In recent years, there has been a renewed interest in this strategy as a substitute for the GATT multilateral system. Some of the recent initiatives moving the world towards regional trading blocks include plans for a unified market in the European Community in 1992, the United States-Canada Agreement in 1989, the movements towards a United States-Canada-Mexico free trade agreement, the possibility of an ASEAN-inspired free trade area led by Japan, a possible Pacific Basin arrangement, and the recent Abuja declaration by sub-Saharan Africa governments.

Economic literature on international trade and customs unions shows that the theoretical welfare effects of forming trading blocks are ambiguous in contrast to the effects of establishing a free and open trading system that generates an unambiguous cooperative surplus. It may be that allowing free trade within a region would be preferable to a mercantilist world of protectionism and trade barriers. But such an approach is inferior to generalized free trade. In the language of economics, regional trading blocks are "second best" and can be expected to generate a smaller cooperative surplus than a more inclusive, open trading system.

Regional Trading Blocs contrast the characteristics of the GATT multilateral system with those of regional trading blocks (see Chart 1). They point out that the GATT multilateral system is based on a principle of non-discrimination through the most-favored-nation

65. VAN BRABANT, supra note 62, at 3.
66. REGIONAL TRADING BLOCS, supra note 5, at 1.
67. The least known regional proposal is the recent declaration by the 51-member states of the Organization of African Unity to establish an African Economic Community within a period of 34 years. See 28 AFR. RES. BULL. (Political Series) 6, 10154 (1991).
### Chart 1

#### A Comparison of the Principles and Characteristics of the GATT and the Regional Trading Bloc Model

<table>
<thead>
<tr>
<th>GATT Principles and Characteristics</th>
<th>Regional Trading Bloc Principles and Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Trade is based on the principle of nondiscrimination.</td>
<td>(1) Trade is based on the principle of discrimination.</td>
</tr>
<tr>
<td>(2) All members are bound to grant as favorable treatment to each other as they give to any other member (i.e., most-favored-nation status).</td>
<td>(2) Nations within the bloc share special preferences not granted to nations outside the bloc.</td>
</tr>
<tr>
<td>(3) To the maximum extent possible, protection should be provided only through tariffs.</td>
<td>(3) Protection is often provided through quantitative restrictions as well as tariffs.</td>
</tr>
<tr>
<td>(4) Basic ideas include economic liberalism and free trade based on comparative advantage.</td>
<td>(4) Basic ideas include economic nationalism, or regionalism, bilateralism, and trade often based on strategic trade theory and neomercantilism.</td>
</tr>
<tr>
<td>(5) The system is designed as a community open to all who are willing to follow membership rules.</td>
<td>(5) The bloc may not be open to all who wish to join and are willing to follow membership rules.</td>
</tr>
<tr>
<td>(6) The goal is to build a unified and integrated global system.</td>
<td>(6) The bloc may function as an exclusive club that generates a &quot;them versus us&quot; psychology.</td>
</tr>
<tr>
<td>(7) Under Article XXIV, the system provides a three-part test to determine if a regional trading bloc is consistent with the GATT.</td>
<td>(7) In the view of some advocates, blocs are a way of building a stronger multilateral system in the long run.</td>
</tr>
</tbody>
</table>

Source: Belous and Hartley, p. 3.

provision, while regional trading blocks are fundamentally discriminatory.

A regional agreement involves one in which the parties treat each other differently than they treat third parties. The inherent discrimination means that a world trading system grounded on regional agreements would not assure fair and equal access to the cooperative surplus that is essential for the provision of the public goods of a harmonious trading environment and world peace.

Regional Trading Blocs also note that the multilateral system is
open to all countries willing to follow membership rules. This is in stark contrast to regional trading blocks, which tend to be exclusive rather than inclusive. We have used the economic theory of clubs to analyze regional trade agreements. We have found that there are good theoretical reasons to expect that there will be an optimal number of members of these trading blocks, and that this number will be less than the number of potential applicants. Supporting this theoretical result is the current resistance of the EC to further enlargement to include the new democracies of Eastern Europe. As pointed out elsewhere, trading blocks that refuse to accept new members willing to abide by the rules are probably "building an income-destroying trade block by order of domestic lobbies" rather than expanding the world trading system.

The implication is that regional trading blocks are not likely to be effective vehicles for achieving the vision of a peaceful world. That conclusion is supported by an examination of the origin and history of regionalism in world trade. Almost invariably, regionalism has generated enthusiasm only when a hegemon concludes that it is no longer capable of dictating the terms of trade within a multilateral framework, and that its influence would be felt the most in a smaller, regional framework. Thus, for example, the British ardently supported internationalism between 1850 and 1928 because Great Britain was a major industrial, financial and investment center. The Stock Market Crash of 1929 and the ensuing Depression led to declines in American private investments abroad (especially in Great Britain) and the abandonment of the gold standard that supported British internationalism. By the end of World War II, the British policy of liberal economic internationalism was virtually abandoned in favor of regionalism. The focus of British policy shifted to Europe and the Commonwealth (the Sterling area), the United States focused on the dollar area, and France and Belgium dealt primarily with their overseas territories. British interest in pushing the vision of a peaceful world within a multilateral framework was virtually abandoned.

In a real sense, the United States and Britain traded places after 1945. The United States emerged from the Second World War as the undisputed political and economic leader of the world. Predictably, the United States championed the movement for a multilateral world political and economic adjustment program. The formation of the Interna-


70. Erik Thorbecke, *The Tendency Towards Regionalization in International Trade, 1928-1956* (1960). Thorbecke's book provides one of the most authoritative historical accounts of the evolution of regionalism. This section of our paper summarizes that history.
International Monetary Fund (to facilitate exchange rates alignment and balance-of-payments management), the World Bank (to finance economic development projects), the GATT (to liberalize trade), and the United Nations and its agencies (to address economic, social and political matters) were all under United States' leadership. United States' policy during this period was largely opposed to regionalism and bilateralism.

New political and economic realities arose after 1960. New nations emerged and membership in the Bretton Woods institutions expanded with the independence of former British and French colonies. The membership increases in the organizations brought new pressures and also increased the cost of decisionmaking within the organizations. By mid-1970, new economic powers—Japan, the newly industrialized countries (NICs), and Germany—began to emerge, and the dominant role of the United States as the world's economic leader was diminished. On the domestic front, mounting budget and trade deficits increased the pressures on legislators to supply protectionism. United States' trade deficits were blamed, in part, on the open-market-access policies that supported the world multilateral trade regime and on the failure of United States competitors to reciprocate with equal-market-access policies.71 Regional accords became an attractive alternative to the multilateral framework that has governed world trade for more than a quarter of a century.

This short history of regionalism reveals the inadequacies and threats to a harmonious world trade regime inherent in the policy. Regionalism is attractive when nations perceive a threat to their national interests as a result of their participation in a multilateral trading environment. Regionalism has never been an attractive alternative for promoting world peace through the establishment of a harmonious set of rules within a multilateral context. Some have argued that regional trading blocks can serve as stepping stones on the way to free and open trade. The problem with that argument is that there is neither a theory nor an empirical precedent for the transition from trading blocks to broad trade regimes. And it is difficult to see how such a transition would be accomplished. Regional policies, in contrast to a multilateral policy, are cyclical and heavily influenced by domestic interests who see the regional arrangement as a way to increase bargaining power in trade negotiations. If domestic interest groups perceive real advantages in regional arrangements, one would be hardpressed to argue that these regional arrangements could be

71. The increasingly restrictive U.S. trade legislation since the mid-1970s, culminating in the adoption of Super 301 under the Omnibus Trade and Competitive Act of 1988, has been explained by the failure of other countries to open up their markets to U.S. exports.
used as levers to push the world towards a multilateral trade arrange-
ment and, in effect, promote the vision of a peaceful world.

C. The GATT Multilateral Framework

In contrast to the bilateral and regional approaches discussed
above, the multilateral agreement embodied in the GATT addresses
the vision of a peaceful world. Multilateral approaches to world trade
are based on such concepts as the most-favored-nation clause, which
prevents discrimination against any particular country or set of coun-
tries. The GATT also is inclusive in that all nations willing to observe
the GATT rules can join the agreement. Such an approach differs
from bilateral arrangements and most regional agreements, which
tend to regulate specific aspects of world trade with no effort to in-
clude third parties. The broad rules associated with the GATT multi-
lateral approach apply equally to all countries, which leads to greater
participation, a larger cooperative surplus and more stable markets.
Conceptually, the multilateral approach emphasizes the potential
gains that can be realized by all participants in the world trading sys-
tem. In contrast, the aforementioned alternatives involve the pursuit
of narrow, national interests in a confrontational context where the
gains on one side are seen as losses to some other party. Clearly, a
smoothly-functioning, multilateral trading system is preferable to any
of the alternatives presently under discussion.

The present problem with the GATT is that negotiators have lost
sight of the true purpose of the agreement—a peaceful world. By fo-
cusing exclusively on how narrow national interests will be affected
by multilateral agreements, the MTN loses its global vision of peace
and becomes a rancorous, nationalistic contest to see which countries
can "win" by making the fewest "concessions". 72 This is the defection
problem that encourages opportunistic behavior in international rela-
tions. The defection problem seems to be of recent origin. As William
Kelly explains, "the spirit of cooperation among wartime allies helped
them to meet the challenges of trade and economic reconstruction.
The cooperative spirit has been overwhelmed by a competitive strug-
gle for exports in a world where many markets are shrinking rather
than expanding." 73 The cooperative spirit can be recaptured by re-
emphasizing the purpose and vision of the GATT. The next section
discusses how that vision can be made effective.

73. William B. Kelly, Functioning of the GATT System, in URUGUAY ROUND, supra
note 4, at 81.
IV. NON-SUBSTANTIVE RULES AS SOLUTIONS TO DEFECTION

Multilateral arrangements are preferable to regionalism and bilateralism, but the current multilateral system is plagued by opportunism and non-cooperative behavior. To obtain the full advantages of a multilateral regime, some institutional mechanism to control opportunistic defection is needed. Because there is no international government to set up a police force that could arrest governments that cheat, it is necessary to rely on "non-substantive rules."

Non-substantive rules are not easily defined. Their origin has been attributed to Bentham, who invented the term to describe "the bodies of principles and rules of law other than the substantive law; those dealing not with the rights and duties of persons, but with the means whereby those rights and duties may be declared, vindicated, or enforced, or remedies for their infraction secured . . . ." Non-substantive rules of contract play a gap-filling role in helping parties to an agreement realize the full benefits of their bargain. Because it is usually not possible to predict all future occurrences and reduce agreements to completely-specified rules, parties use non-substantive rules to fill gaps in their agreements. The rules are especially important in the context of international agreements, where the long-term nature and the difficulties in finding language that satisfies the aspirations of a heterogeneous group of nations and cultures demand that nations adhere to flexible principles with a goal in view to let an agreement work. Where parties exploit the flexibility in the non-substantive rule or fail to recognize the aspirational goals of the rules, defection from the cooperative effort and opportunism results.

The concept of "good faith" is one such non-substantive rule. In both domestic and international law, the concept of good faith performs a gap-filling role and, more importantly, deals with the problem of opportunistic behavior. In United States commercial law, for example, a duty of good faith and fair dealing is an essential element of the Uniform Commercial Code (UCC) and the common law: "Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement." The Seventh Circuit recently explained that good faith provisions in contracts are intended to check opportunism: "Good faith is a compact reference to an implied under-

74. DAVID M. WALKER, THE OXFORD COMPANION TO LAW (1980).
75. In the two studies by MacNeil, supra note 53, the author discusses several "gap-filling" mechanisms in modern contract law. See also Charles J.G. Goetz & Robert E.S. Scott, Principles of Relational Contracts, 67 VA. L. REV. 1089 (1981).
77. U.C.C. § 1-203. See also references in Dore & Defranco, supra note 76.
taking not to take opportunistic advantage in a way that could not have been contemplated at the time of drafting, and which therefore was not resolved explicitly by the parties. When the contract is silent, principles of good faith—such as the UCC’s standard of honesty in fact, and the reasonable expectation of the trade . . . fill the gap.”

Today, the principle of good faith is a firm component of contract law as practiced in most common law countries and continental systems (e.g., the Swiss, German, and French).

As one might expect, the extension of good faith principles to the international arena is not simple. Cultures differ and so does the meaning of concepts such as fair dealing and good faith. However, a review of the public international law literature reveals that the concept is not unknown in international interactions. Lord McNair acknowledges the application of the concept to check opportunism in the performance of international beliefs:

> The performance of treaties is subject to an overriding obligation of mutual good faith. This obligation is also operative in the sphere of interpretation of treaties and it would be a breach of this obligation for a party to make use of an ambiguity in order to put forward an interpretation which it was known to the negotiators of the treaty not to be the intentions of the parties.

The good faith principle has become a part of recent efforts to formulate uniform rules governing international trade. The United Nations Commission on International Trade Law (UNCITRAL) “employed good faith as a general guiding principle” in formulating uniform rules concerning international sale of goods. Article 7(1) of the U.N. Convention on the Contracts for the International Sale of Goods (CISG) states, “In the interpretation of this convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.”

Even though the ultimate substantive goal in employing good faith principles in all international agreements is the same—to check opportunism—the procedural requirements differ depending on whether one is dealing with a code such as the CISG or with the GATT, which is merely a voluntary association of nations making decisions by consensus. The major procedural difference is that the good faith principles in an international code are enforceable in a domestic court of

78. Kham & Nate’s Shoes No. 2 v. First Bank, 908 F.2d 1351 (7th Cir. 1990)(emphasis added).
81. Dore & DeFranco, supra note 76, at 60.
law. The court is usually determined by the choice of law rules also included in the code. The decisions rendered by the chosen court are binding.

The difficulties associated with enforcing principles of good faith in a forum such as the GATT have led some commentators to express doubts as to the utility of these principles in the international arena. For example, Zoller has argued that:

There is no juridical obligation of good faith in international law. Good faith might only be a veritable juridical principle if a normative and positive content could be attributed to it. Independent of its utilization as a criterion of interpretation by the international judge, the true juridical context of good faith is only erroneous belief.

Virally, who reviewed Zoller's book, considers good faith more than a mere moral concept. As he puts it, "It refers also, as [Zoller] admits, to rules of behavior. In particular, good faith requires that the expressed will be consistent with the real will and, more generally, that the legal reality be consistent with what it seems to be (that is, consistent with the appearances created by the declarations or the behavior of legal actors). Good faith excludes any separation between reality and appearances." In the context of an agreement such as the GATT, Virally is on point: "Good faith is essential to a nonformalistic order, which allows the most room for the creation and performance of law by the will of those who are submitted to it, and does not possess any system of enforcement independent of this will." Using similar arguments, Cassese in a recent book points out:

The principle of good faith is intended to 'invade' the penumbra of discretion left by international rules and guide the conduct of states (and other international subjects) in applying norms. While states are enjoined by the general norms, known as consuetudo est servanda (customary rules must be observed) and pacta sunt servanda (treaties must be complied with), to fulfill these duties, the principle in hand prescribes how to carry out the performance of such duties. The principle does not specify how states must behave but merely conveys the idea that international subjects must not take advantage of their rights (or discharge their obligations) in such a way as to thwart the purpose and object of legal rules. States must not betray the expectation created in other states by those rules, nor must they stultify by their behavior the confidence which the relevant norms have given to their fellow states.

What emerges from the Virally and Cassese arguments is that good faith may be an effective mechanism for dislodging opportunism in

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82. Id.
83. Elisabeth Zoller, La Bonne Foi En Droit International Public (English Summary, 1977).
84. Virally, supra note 79, at 131.
85. Id. at 135 (emphasis added).
86. Antonio Cassese, International Law in a Divided World 152 (1986). The usual full definition of the principle of pacta sunt servanda is "treaties must be complied with and performed in good faith." See Art. 26, Vienna Convention; Restatement of U.S. Foreign Relations Law § 324 (1956).
international interaction. It imposes a burden on participants in an international agreement such as the GATT to act such that "the expressed will be consistent with the real will." This consistency lessens the likelihood that nations will perceive the cooperative surplus to be unfairly and unequally distributed, perceptions which are often the basis for defection. Incorporating non-substantive rules into the body of international institutions can improve the chances of realizing the vision of a peaceful world. It is neither necessary nor desirable to cast the concept of good faith as an iron law of international obligation, for that would undermine its own usefulness. The issue is to determine how non-substantive rules such as good faith can be made part of international behavior. As a preliminary answer to this complex problem, we offer the following initial experiments:

- Governments should let the commitment to internationally-negotiated agreements reflect more effectively in domestic legislation. In addition, governments should set up mechanisms to ensure that commitments are followed. For example, the United States Congress committed the United States, by legislation, to abide by all final decisions of GATT panels. This was not a decision made by the Executive Branch of Government in furtherance of United States foreign policy objectives; it was a decision made by the Congress of the people as a commitment to obey the letter and spirit of international rules. Recent United States actions in rejecting GATT panel decisions send contradictory signals as to the value of the commitment enshrined in the legislation. Nations may want to follow the United States by drafting similar legislation, and more importantly, follow what has been laid down in the legislation.

- Another way of extending good faith to the international arena is by setting up what has been called domestic "transparency agencies." The goal of such an agency is to "provide an overview of government intervention;" that is, "to help the government and the public see sectoral proposals in an economy-wide framework." The agency would be an impartial judge that responds to both the narrow interests of pressure groups and the broader societal interests to promote international peace and harmony through the operation of fair and enforceable international trade rules.

- The desire to extend good faith to the international arena also calls into question the role and contribution of purveyors of information, especially the academic community. The difficulty in extending good faith to the international arena suggests that scholars should respond with a higher sense of commitment to world peace. Considerable energy has been expended on efforts to simply admit the existence of bilateral and regional arrangements. Very little effort

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87. WORLD BANK, supra note 2, at 111.
88. Id.
is devoted to showing that a multilateral framework would contribute to world peace.

- There should be efforts aimed at encouraging bilateral and regional arrangements to admit new members under the same terms and conditions of participating countries. This would be an important test of whether the arrangements seek to ultimately contribute to a multilateral world.

V. SUMMARY AND CONCLUSIONS

In this article, concepts drawn from the literature on the political economy of international trade have been used in conjunction with ideas from work on international organizations to examine the nature and consequences of three competing regimes for regulating international trade: bilateralism, regionalism and multilateralism as defined by the GATT rules. A principal vision and goal of the international trade regime was identified as the attainment of world peace based on harmonious world trade rules. It was argued that the inherently discriminatory and nationalistic orientation of bilateralism and regionalism led to a reduced specialization and, ultimately, to reduced capturable surplus from trade. Tensions are more likely to arise as nations struggle to grab a share of a small surplus. Furthermore, historical evidence shows that where bilateralism and regionalism have been used as permanent international trade strategies, opportunistic exploitation has resulted and individual freedoms have suffered. Thus, bilateralism and regionalism as international trade regimes do not promote the vision of a peaceful world.

It was argued that the GATT's multilateral framework has the potential to lead nations to a peaceful world by making possible the generation of a large capturable surplus from trade. However, since the output of the multilateral framework—world peace based on a harmonious set of rules is an international public good—nations have an incentive to defect. The defection is opportunistic in that nations often violate the spirit, even if not the letter, of the GATT rules. Opportunistic behavior takes the form of, to name a few, the imposition of non-tariff barriers, misuse of the safeguard clauses, abuse of the developing country exceptions, the federalism clause, and the dispute resolution mechanism.

We have argued in this article that the use of non-substantive rules such as good faith may provide a means for controlling opportunism, thereby allowing the multilateral approach embodied in the GATT to provide the institutions that would allow world trade to promote a vision of a peaceful world. Operationalizing this suggestion is not a simple matter, and there is great need for further scholarly debate and discussion to refine the issues and develop institutional innovations that accomplish the task. This is a particularly important responsibil-
ity of the community of scholars because they are the only ones who can reasonably claim to speak from a position of relative neutrality. Part of the rancor of the current discussions stems from the fact that it is being conducted almost exclusively by politicians and interest groups intent on pursuing narrow, self-interested strategies that do not reflect broader societal interests. In this setting, the only way for those societal interests to be heard is through the wide diffusion of scholarly argument on their behalf.