

**CHARTING THE TRANSNATIONAL
DIMENSION OF LAW:
U.S. FREE TRADE AGREEMENTS AS
BENCHMARKS OF GLOBALIZATION**

*Ewell E. Murphy, Jr.**

I. TWO RADICAL CHANGES	47
II. PREDICTING THE FUTURE	51
III. LAW IN THE THIRD DIMENSION	53
IV. SEARCHING FOR BENCHMARKS	57
A. <i>The five agreements</i>	57
B. <i>Imagining a template</i>	60
C. <i>Three sensitive issues</i>	64
V. THREE PARADOXICAL LESSONS	66

I. TWO RADICAL CHANGES

We are living in a time of radical changes, “a twilight age,”¹ “one of those relatively rare periods in which the future is unlikely to be very much like the past.”² Octavio Paz expressed

* B.A., LL.B., University of Texas at Austin; D.Phil., Oxford University, England.

Dr. Murphy is a retired senior partner of the law firm of Baker Botts, L.L.P. and currently a Distinguished Lecturer at the University of Houston Law Center. This article is based on his lecture at the University of Houston Law Center, *Houston Journal of International Law Lecture Series*, on April 8, 2004.

1. ROBERT NISBET, *TWILIGHT OF AUTHORITY* xii (Liberty Fund, Inc. 2000).

2. PHILIP BOBBITT, *THE SHIELD OF ACHILLES: WAR, PEACE, AND THE COURSE OF HISTORY* 816 (Anchor Books 2003) [hereinafter *SHIELD*].

it eloquently: “[I]f I am sure of one thing,” he wrote, “it is that we are living an interregnum; we are walking across a zone whose ground is not solid: its foundations, its basis have evaporated.”³

What is this interregnum we are living, this un-solid ground we are walking across? In what respects is our time so radically different from the past? When scholars answer those questions in terms of changes in human behavior, different scholars point to different contemporary traits—including, on the down-side, a self-destructive consumerism,⁴ a decline in religion and morality,⁵ the decay of human communication,⁶ and a surge of human brutality.⁷ When scholars answer the same questions in

3. OCTAVIO PAZ, *ITINERARY* 89 (Jason Wilson trans., Harcourt, Inc. 1994).

4. *See, e.g., id.* at 93 (“The market has undermined all the ancient beliefs—many of them, it is true, nefarious—but only one passion has replaced them: that of buying things and consuming this or that object.”); CLYDE PRESTOWITZ, *ROGUE NATION* 276 (Basic Books 2003) (“The U.S. economy is currently on an unsustainable track. Its growth is driven overwhelmingly by consumption that is based on ever-rising borrowing. As a nation, we consume increasingly more than we produce, and we are able to do so only by borrowing from abroad.”); MARTIN HEIDEGGER, *THE END OF PHILOSOPHY* 107 (Joan Stambaugh trans., The Univ. of Chi. Press 2003) (“This circularity of consumption for the sake of consumption is the sole procedure which distinctively characterizes the history of a world which has become an unworld.”).

5. *See, e.g.,* WILL DURANT, *THE GREATEST MINDS AND IDEAS OF ALL TIME* 1 (John Little ed., Simon & Schuster, Inc. 2002) (“The basic phenomenon of our time is not Communism; it’s the decline of religious belief, which has all sorts of effects on morals and even on politics because religion has been a tool of politics.”); CARLOS FUENTES, *EN ESTO CREO* 115 (Editorial Planeta Mexicana, S.A. de C.V. 2002) (“Lo extraordinario de este recuento es que el milenio del mayor progreso técnico y científico de la historia coincidió con el milenio del mayor retraso político y moral, comparativamente, de la historia.”).

6. *See, e.g.,* GEORGE STEINER, *GRAMMARS OF CREATION* 269 (Yale Univ. Press 2002) (“Speech-acts and instruments trivialized by mass consumption and publicity, falsified by the jargons of the bourse, of the educators, of the bureaucrats, of the men of law, had become incapable of telling the truth.”); *id.* at 267 (“The consequences of this destabilization, of this slippage of elemental trust in the word, may prove to be more far-reaching than those of the political revolutions and economic crises which have marked our age.”).

7. *See, e.g.,* GEORGE STEINER, *ERRATA* 115 (Yale Univ. Press 1998) (“It is plausible to suppose that the period since August 1914 has been . . . the most bestial in recorded history.”); SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* 321 (Simon & Schuster, Inc. 1996) (“On a worldwide basis Civilization seems in many respects to be yielding to barbarism, generating the image of an unprecedented phenomenon, a global Dark Ages, possibly descending on humanity.”).

terms of structural changes in society, they come closer to consensus; the radical changes, they say, are globalization and the decline of the nation-state.

Globalization accelerated at amazing speed. By the 1990s, merchandise exports were growing twice as fast, transnational investment three times as fast, and cross-border securities sales ten times as fast, as was growth of the world's domestic production.⁸ Global trading in foreign exchange zoomed from \$15 billion per day in 1973 to \$1.5 trillion per day in 1998.⁹ The foreign trade of the United States now equals some 30% of our gross domestic product, compared to only about 10% in 1970.¹⁰

Globalization has many accelerators, but two are especially powerful. One is technology. In the old days, the goods that moved in transnational commerce were chiefly such blue-collar products as foods, fuels, minerals and metals; now they increasingly are high-tech manufactures, white-collar services and intellectual property rights. By the late 1990s, average labor cost in OECD (Organisation for Economic Co-operation and Development) countries dropped to between 5% and 10% of the cost of production, down from 25% in the 1970s.¹¹ By 1996, the world's trade in commercial services rose to about one-fourth of its trade in tangible goods.¹²

Globalization's second powerful accelerator is transnational investment, annual flows of which increased six-fold between 1990 and 2000.¹³ By 1995, gross sales by foreign affiliates of transnational enterprises were greater than the total exports of the world, and the foreign sales of those affiliates were growing 20% to 30% faster than exports.¹⁴ Seventy percent of all transnational technology royalties, and more than one-third of

8. *Schools Brief*, THE ECONOMIST, Oct. 18, 1997, at 79.

9. *Id.* at 80; Nicholas D. Kristof with Edward Wyatt, *Who Went Under in the World's Seas of Cash*, N.Y. TIMES, Feb. 15, 1999, at A1, A10.

10. Daniel Yergin, *Knit Together, or Torn Apart?*, HOUS. CHRON., Apr. 14, 2002, at 1C; C. Fred Bergsten, *Foreign Economic Policy for the Next President*, FOREIGN AFFAIRS, Mar./Apr. 2004, at 89.

11. *Schools Brief: Worldbeater, Inc*, THE ECONOMIST, Nov. 22, 1997, at 93.

12. *Schools Brief: Trade Winds*, THE ECONOMIST, Nov. 8, 1997, at 86.

13. *Economic Focus: Footloose Firms*, THE ECONOMIST, Mar. 27, 2004, at 77.

14. *Schools Brief: Worldbeater, Inc*, *supra* note 11, at 92.

all world trade, move within those affiliated groups.¹⁵ Of the world's hundred largest economies, only forty-nine are nations; fifty-one are corporations.¹⁶ The two hundred largest corporations account for 28% of the world's economic activity; the five hundred largest conduct 70% of all world trade.¹⁷

The result is a world changed and challenged by globalization. A Director General of the World Trade Organization complained that “[g]lobalization is the new ‘ism’ that everyone loves to hate.”¹⁸ An African prime minister put it more pragmatically. “[T]here is only one thing worse than globalization,” he said, “and that is to be left outside it.”¹⁹ As President Clinton noted, “The great question of this new century is whether the age of interdependence is going to be good or bad for humanity.”²⁰ In the words of a Nobel Laureate, “globalization has become the most pressing issue of our time.”²¹

There is a growing perception that as national barriers to globalization diminish, so does the regulatory power of the state, and that the consequence is globalization's reciprocal, the decline of the nation-state. Henry Kissinger well described that cause and effect. “For the first time in history,” he wrote, “a single worldwide economic system has come into being . . . [B]y basing growth on interdependence, globalization has served to undermine the role of the nation-state as the sole determinant of a society's well-being”²² Contemporary views of national

15. *Id.* (citing the UN's 1997 World Investment Report estimate regarding international royalties on technology); Guy de Jonquieres, *Battles Among Regulators Could Damage Trade*, FINANCIAL TIMES, May 25, 2003, at 11 (stating that multinationals rely on global supply chains and, consequently, more than one-third of world trade is within companies).

16. ROBERT D. KAPLAN, *THE COMING ANARCHY* 81 (Random House 2001).

17. *Id.*

18. Joseph Kahn, *Swiss Forum Has its Focus on Memories from Seattle*, N.Y. TIMES, Jan. 29, 2000, at C1, C2 (quoting Michael Moore, director general of the World Trade Organization, in an interview).

19. Rubens Ricupero, *The World Trading System: Seattle and Beyond*, in THE WTO AFTER SEATTLE 65, 66 (Jeffrey J. Schott, ed., Inst. for Int'l Econ. 2000).

20. William Jefferson Clinton, *Clinton on New Century: World Interdependent*, HOUS. CHRON., Jan. 8, 2002, at 17A.

21. JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 4 (W.W. Norton & Co. 2002).

22. HENRY KISSINGER, *DOES AMERICA NEED A FOREIGN POLICY?* 211 (Simon &

sovereignty “amount to a revolution in the way the international system has operated for more than three hundred years.”²³

Other observers assert, even more extremely, that “traditional nation states have become unnatural, even impossible, business units in a global economy,”²⁴ have “begun to crumble,”²⁵ and are “increasingly a nostalgic fiction,”²⁶ with the consequence that the national boundaries marked on maps are themselves “a conceptual barrier that prevents us from comprehending the political crack-up just beginning to occur worldwide.”²⁷ Perhaps those are exaggerations, but certainly “[w]e are at a moment when our understanding of the very purposes of the State is undergoing historic change.”²⁸

II. PREDICTING THE FUTURE

If our world is changing so radically, what will the new world be like? Pondering that question, scholars have examined our time with the hindsight of history, seeking prefigurations of the future in the past. The result is divergent views. Francis Fukuyama praised the universalization of Western liberal democracy as the “final form of human government,” and celebrated the “end of history” that leaves no other political ideal to seek.²⁹ To the contrary, Samuel Huntington predicted that “the early years of the twenty-first century are likely to see an ongoing resurgence of non-Western power and culture and the clash of the peoples of non-Western civilizations with the West and with each other,”³⁰ and concluded that “Western intervention in the affairs of other civilizations is probably the single most dangerous source of instability and potential global

Schuster, Inc. 2002).

23. *Id.* at 235.

24. KENICHI OMAE, *THE END OF THE NATION STATE* 5 (The Free Press 1995).

25. *Id.* at 7.

26. *Id.* at 12.

27. KAPLAN, *supra* note 16, at 38.

28. SHIELD, *supra* note 2, at 7.

29. FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* xi (Avon Books 1992).

30. HUNTINGTON, *supra* note 7, at 121.

conflict in a multicivilizational world.”³¹ Philip Bobbitt’s massive study, *The Shield of Achilles*,³² offered yet another perspective, including thoughtful speculation on the impact our changing world will have on law.

By Bobbitt’s analysis the post-medieval world has seen states of six types that existed in successive but partly overlapping epochs, each type asserting its own concept of the proper function of the state: the Princely State of 1494-1572 (“The State confers legitimacy on the dynasty.”), the Kingly State of 1567-1651 (“The dynasty confers legitimacy on the State.”), the Territorial State of 1649-1789 (“The State will manage the country efficiently.”), the State-nation of 1776-1870 (“The State will forge the identity of the nation.”), the Nation-state of 1861-1991 (“The State will better the welfare of the nation.”), and now, since 1989, the Market-state (“The State will maximize the opportunity of its citizens.”).³³ Each epoch’s years of succession and overlap were its most changeful, and each epoch fought its own defining war. Bobbitt considers that the defining war of the nation-state was the “Long War” fought from 1914 to 1990.³⁴ Now, in his view, “we can expect a new epochal war in which a new form of the State—the market-state—asserts its primacy.”³⁵

Bobbitt predicts that the epoch of the market-state will see the continued withering of state functions as we have known them. The market-state, he wrote, “depends on the international capital markets and, to a lesser degree, on the modern multinational business network to create stability in the world economy, in preference to management by national or transnational political bodies.”³⁶ Accordingly, there will be “a world market that is no longer structured along national lines but rather in a way that is transnational and thus in many ways operates independently of states.”³⁷

31. *Id.* at 312.

32. SHIELD, *supra* note 2.

33. *Id.* at 346–47 (summarizing, dating, and diagramming the epochs).

34. *See id.* at 24.

35. *Id.* at 815.

36. *Id.* at 229.

37. *Id.* at 220.

How will law function in the new, market-driven world? In Bobbit's view, not in the manner law functions in the world we know today. "Law will continue as a resource available to [the] state," he wrote, "but it will occupy a very different role in the world of market-states than it did in the world of nation-states."³⁸ "Law will change, and the use of law as regulation, so favored by the nation-state, will lessen. Nevertheless the State will continue to rely on law to shape its internal order, even if the legal rules derived tend to be rules that recognize a larger role for the market."³⁹ And "we will have to change our ideas about international law;"⁴⁰ "we must free ourselves from the assumption that international law is universal and that it must be the law of a society of nation-states."⁴¹ "We eventually will have an international law that is based on the unwritten constitution of the new society of market-states,"⁴² "where multinational companies, NGOs, governments, and ad hoc coalitions share overlapping authority within a framework of universal commercial law but regionalized political rules."⁴³

III. LAW IN THE THIRD DIMENSION

Those are heady thoughts, difficult for lawyers to comprehend, and particularly difficult for U.S. lawyers of my generation, who were schooled in the doctrine that national authority is the exclusive source of law. We understand our national identity to be proclaimed by a Declaration of Independence, constituted by Articles of Confederation, and reformed by a Constitution—each the work of lawfully empowered representatives, each an act of national law. We respect both the external boundary of the United States and the internal boundaries of its component states. We realize that globalization is changing our world, and we can imagine that globalization is lessening the authority of less influential nations, but it is difficult for us to project that lessening on the

38. *Id.* at 713.

39. *Id.* at 814.

40. *Id.* at 354.

41. *Id.* at 477.

42. *Id.* at 356.

43. *Id.* at 363.

United States. The United States is the superpower of the globalizing world, we reason, so how can globalization diminish the national authority of the superpower itself? But when U.S. lawyers of my generation consider globalization from the perspective of the way our law practice changed over the decades following World War II, we perceive a persuasive parallel. That changed law practice, we realize, taught us an entirely new dimension of law.

The dimension of the law we learned in law school and encountered in the early years of our practice was *national*. Did Sally have title to Blackacre? Did Jack make a contract with Jill? Did Betty commit a tort against Bill? For answers we looked to enactments of nations; we looked to *national* law. In our daily mind-set, the effect of those enactments began and ended at *national* borders. We visualized the dimension of law as *national*; we saw ourselves practicing *national* law.

Occasionally we glimpsed, floating above *national* law, law of a second dimension, something called *international* law. But that *international* law seemed to be a rather wispy sort of law that did not directly affect our clients. As a matter of fact, when Jeremy Bentham invented the name “international law” he defined it to mean external, sovereign-to-sovereign commitments that have no direct effect in internal, *national* law.⁴⁴ The U.S. legal tradition echoes that distinction. The U.S. Constitution, for example, lists among the powers of Congress the power to “define and punish . . . Offences against the Law of Nations,”⁴⁵ hinting that, for purposes of punishment by the United States, *international* law is only what a *national* law of Congress defines it to be.⁴⁶ Although the Constitution declares a

44. See M.W. Janis, *Jeremy Bentham and the Fashioning of “International Law”*, 78 AM. J. INT’L. L. 405, 408–09 (1984).

45. U.S. CONST. art. I, § 8, cl. 10.

46. Compare Justice Cardozo’s description of the defining authority of courts: “International law, or the law that governs between states, has at times, like the common law within states, a twilight existence during which it is hardly distinguishable from morality or justice, till at length the imprimatur of a court attests its jural quality.” *New Jersey v. Delaware*, 291 U.S. 361, 383–84 (1934). For a spirited debate on whether it is proper for the U.S. Supreme Court to use international or foreign law as a guide to interpreting the U.S. Constitution, see Lori Fisler Damrosch & Bernard H. Oxman, *Agora: The United States Constitution and International Law*, 98 AM. J. INT’L. L. 42–

duly ratified U.S. treaty to be “the supreme Law of the Land,”⁴⁷ by its “last in time” doctrine the U.S. Supreme Court holds that such a treaty, like any U.S. statute, can be revoked or amended by subsequent federal legislation.⁴⁸ The U.S. Congress routinely denies even such perishable treaty status to the international trade agreements by which the United States accedes to globalization. Instead, the Congress crafts them as “Congressional-executive agreements,” congressional approval of which is conditioned by the statutory admonitions that no provision of an agreement that “is inconsistent with any law of the United States shall have effect,”⁴⁹ and that “[n]o person other than the United States . . . shall have any cause of action or defense under” an agreement or its Congressional approval.⁵⁰

Schooled in that tradition, U.S. lawyers and U.S. policymakers tend to be dismissive of *international* law as an operative social force.⁵¹ True to that tradition, in the years

43 (2004).

47. U.S. CONST. art. VI, cl. 2.

48. *See, e.g.*, *Edye v. Robertson*, 112 U.S. 580, 599 (1884); *Whitney v. Robertson*, 124 U.S. 190, 194 (1888); *Reid v. Covert*, 354 U.S. 1, 18 (1957); *Breard v. Greene*, 523 U.S. 371, 376 (1998).

49. North American Free Trade Agreement Implementation Act, 19 U.S.C. § 3312(a)(1) (2000); Uruguay Round Agreements Act, 19 U.S.C. § 3512(a)(1) (2000). *See also* United States-Israel Free Trade Area Implementation Act of 1985, Pub. L. No. 99-47, § 5(a), 99 Stat. 82, 82-83 (1985) (noted at 19 U.S.C. § 2112 (2000)); United States-Canada Free Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, § 102(a), 102 Stat. 1851 (1988) (noted at 19 U.S.C. § 2112) (2000); United States-Jordan Free Trade Area Implementation Act, Pub. L. No. 107-43, § 401(a)(1), 115 Stat. 243, 250-51 (2001) (noted at 19 U.S.C. § 2112 (Supp. I 2000)).

50. North American Free Trade Agreement Implementation Act, 19 U.S.C. § 3312(c) (2000); Uruguay Round Agreements Act, 19 U.S.C. § 3512(c) (2000). *See also* United States-Israel Free Trade Area Implementation Act of 1985, Pub. L. No. 99-47, § 5(d), 99 Stat. 84 (1985) (noted at 19 U.S.C. § 2112 (2000)); United States-Canada Free Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, § 102(c), 102 Stat. 1851 (1988) (noted at 19 U.S.C. § 2112 (2000)); United States-Jordan Free Trade Area Implementation Act, Pub. L. No. 107-43, § 401(c), 115 Stat. 251 (2001) (noted at 19 U.S.C. § 2112 (Supp. I 2000)).

51. Consider:

“Former judge Robert Bork . . . recently proposed that we frankly acknowledge the impracticality of the very idea of an international law and be done with it.” SHIELD, *supra* note 2, at 476;

“I confess to being one of those lawyers who do not regard international law as law at all.” *id.* at 641 (quoting John Foster Dulles from ANTHONY AREND, PURSUING A JUST AND

following World War II U.S. lawyers of my generation kept to our old mind-set and continued to see ourselves practicing only law in the first dimension, practicing only *national* law. But then our clients' lives became more complicated. Sally bought Blackacres overseas; Jack and Jill contracted across national borders; Betty committed torts abroad. To deal with such matters, sovereigns enacted laws about things that cross borders. Because such enactments of one sovereign tended to conflict with those of another sovereign, sovereigns made *international* agreements to resolve those conflicts, and some of those agreements were given effect in *national* law. Those innovations created law in the third dimension, law that addresses things that cross borders. Whether sourced in *national* enactments or in *international* agreements, in scope and effect the new law is *transnational*. To deal with that new *transnational* law, we lawyers adjusted our old mind-set a bit and began to realize that in exceptional situations we were practicing law in a third dimension, that we were practicing *transnational* law.

As globalization accelerated, those exceptional situations became the norm. In the United States today, most significant transactions that reach a lawyer's desk are touched by laws whose scope and effect are *transnational*. A major merger or acquisition may present issues of antitrust compliance in both the European Union and the United States. Tax and estate planning routinely involves income and assets overseas. Nation-to-nation trade disputes and transnational commercial arbitration are rapidly growing fields of advocacy. To understand even a *national* law that was enacted to deal only with *national* matters, a lawyer must evaluate that *national* law in terms of its impact on, or its vulnerability to, cross-border

DURABLE PEACE: JOHN FOSTER DULLES AND INTERNATIONAL ORGANIZATION 57 (Greenwood Press, 1988);

"[Dean] Acheson accurately (I believe) represented the attitudes of many diplomats and officials that international law is little more than a pretentious irrelevance." *id.* at 653;

"There may be good and sufficient reasons to abide by the provisions of a treaty, and in most cases one would expect to do so because of the mutuality of benefits that treaties provide, but not because the US is 'legally' obligated to do so." Philip Bobbitt, *Better than Empire*, FINANCIAL TIMES, Mar. 13, 2004, (FTMAGAZINE), at 18 (quoting U.S. Under-Sec. of State John Bolton).

transactions. In the most practical sense of everyday law practice, in this age of globalization substantially every law we lawyers deal with is *transnational* in its potential scope and effect.

The lesson for lawyers is obvious. To come to grips with globalization we must discard our old mind-set completely and enter the world of law in the third dimension. We must train ourselves to evaluate every law we encounter in terms of its *transnational* scope and effect. We must learn to think and practice in the new *transnational* dimension of law.⁵²

IV. SEARCHING FOR BENCHMARKS

So, we live in a time of radical change, scholars tell us that globalization and the decline of the nation-state are altering the nature of law, and experience has taught us that the new dimension of law is transnational. What are the characteristics of that new dimension? In the twilight of today, can we discover benchmarks to chart the transnational law of tomorrow?

No benchmark is infallible. Every survey point from which we seek to chart the future is clouded by conjecture. But the window to the future is the past, and from that window we see five milestones of yesterday that are useful benchmarks of tomorrow. They are the five free trade agreements of the United States now in effect.⁵³

A. *The five agreements*

Those five agreements are the U.S.-Israel Free Trade Agreement of 1985 (Israel Agreement);⁵⁴ the North American

52. This analysis is developed from the presentation of Ewell E. Murphy, Jr., *Coming to Grips with Globalization*, 11 CURRENTS: INT'L TRADE L. J. 3 (2002).

53. When this article was written the U.S. Trade Representative had also reached agreement on, or was in the process of negotiating, U.S. free trade agreements with Australia, El Salvador, Costa Rica, the Dominican Republic, Guatemala, Honduras, Nicaragua and Morocco, but none of those agreements had been submitted to the U.S. Congress for approval.

54. Israel-United States: Free Trade Area Agreement, Apr. 22, 1985, 24 I.L.M. 653 (1985) [hereinafter Israel Agreement]. The Israel Agreement was approved by the United States-Israel Free Trade Area Implementation Act of 1985, Pub. L. No. 99-47, 99 Stat. 82 (noted at 19 U.S.C. § 2112(2000)), and was implemented effective August 30,

Free Trade Agreement of 1994 among the United States, Canada and Mexico (NAFTA),⁵⁵ which in effect was an extension of the U.S.-Canada Free Trade Agreement of 1989 (Canada Agreement);⁵⁶ the U.S.-Jordan Free Trade Agreement of 2001 (Jordan Agreement);⁵⁷ and, most recently, the U.S.-Chile Free Trade Agreement (Chile Agreement)⁵⁸ and U.S.-Singapore Free Trade Agreement (Singapore Agreement),⁵⁹ both of 2004. To compare them we include with NAFTA its supplemental agreements on labor,⁶⁰ the environment,⁶¹ and emergency

1985 by Pres. Proclamation No. 5365, 50 Fed. Reg. 36220 (June 11, 1985).

55. North American Free Trade Agreement, Dec. 8, 1993, 3 I.L.M. 289 (1993) [hereinafter NAFTA]. NAFTA was approved by the North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057 (19 U.S.C. § 3311 (2000)), and was implemented effective January 1, 1994, by Exec. Order No. 12889, 58 Fed. Reg. 69681 (Dec. 27, 1993).

56. Canada-United States: Free Trade Agreement, Jan. 2, 1988, 27 I.L.M. 281 (1988) [hereinafter Canada Agreement]. The Canada Agreement was approved by the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, 102 Stat. 1851 (1988) (noted at 19 U.S.C. § 2112 (2000)), and was implemented effective Dec. 14, 1988 by Exec. Order No. 5923, 53 Fed. Reg. 50638 (Dec. 14, 1988). By Public Law No. 103-182, § 107, 107 Stat. 2065 (1993) the Canada Agreement is suspended while NAFTA is effective between Canada and the United States.

57. United States-Jordan: Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, Oct. 24, 2000, 41 I.L.M. 63 (2002) [hereinafter Jordan Agreement]. The Jordan Agreement was approved by the United States-Jordan Free Trade Area Implementation Act, Pub. L. No. 107-43, 115 Stat. 243 (2001) (noted at 19 U.S.C. § 2112 (Supp. I 2000)), and was implemented effective Dec. 17, 2001, by Pres. Proclamation No. 7512, 66 Fed. Reg. 64497, Dec. 7, 2001.

58. See the U.S. Trade Representative website at http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Section_Index.html (last visited Nov. 4, 2004) [hereinafter Chile Agreement]. The Chile Agreement was approved by the United States-Chile Free Trade Agreement Implementation Act, Pub. L. No. 108-77, Sept. 3, 2003, 117 Stat. 909 (noted at 19 U.S.C.A § 2805 (Cum. Supp. 2004)), and was implemented effective Jan. 1, 2004 by Proc. No. 7746, Dec. 30, 2003, 68 Fed. Reg. 75789.

59. See the U.S. Trade Representative website at http://www.ustr.gov/Trade_Agreements/Bilateral/Singapore_FTA/Section_Index.html (last visited Nov. 11, 2004) [hereinafter Singapore Agreement]. The Singapore Agreement was approved by the United States-Singapore Free Trade Agreement Implementation Act, Pub. L. No. 108-78, Sept. 3, 2003, 117 Stat. 948, (noted at 19 U.S.C.A § 2805 (Cum. Supp. 2004)), and was implemented effective Jan. 1, 2004 by Proc. No. 7747, Dec. 30, 2003, 68 Fed. Reg. 75793.

60. Canada-Mexico-United States: North American Agreement on Labor Cooperation, Sept. 8, 1993, 32 I.L.M. 1499 (1993) [hereinafter Labor Agreement].

61. Canada-Mexico-United States: North American Agreement on Environmental

action,⁶² and with the Jordan Agreement its parties' Bilateral Investment Treaty of 2003.⁶³

When we read those five agreements separately, each seems so unique that arranging them into an understandable relationship is daunting, but when we consider them chronologically they begin to fall into place. Especially instructive is their sequential relation to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). When the Israel Agreement was negotiated the world's chief multilateral trade commitment was still GATT. The Uruguay Round of trade negotiations commenced later, and U.S. approval of the resulting WTO agreements was not effective until 1995, the year following NAFTA's effective date.⁶⁴ Consequently, of the five U.S. free trade agreements now in effect, only the Jordan, Chile and Singapore Agreements purport to relate to the WTO. That accounts for much of the textual difference between those three and the earlier two.

The agreements' difference in length is also instructive. Including its annexes and letters of understanding, the Israel Agreement covers a scant 25 pages;⁶⁵ the Jordan Agreement is longer but nothing like the hundreds of pages that NAFTA and

Cooperation, Sept. 14, 1993, 32 I.L.M. 1480 (1993) [hereinafter Environmental Agreement].

62. Canada-Mexico-United States: Understanding Between the Parties to the North American Free Trade Agreement Concerning Chapter Eight – Emergency Action, Sept. 14, 1992, 32 I.L.M. 1519 (1993).

63. Jordan-United States: Treaty Concerning the Encouragement and Reciprocal Protection of Investment, July 2, 1997, 36 I.L.M. 1498 (1997) (ratified by the United States Senate in October 2000, 146 Cong. Rec. S.10658-02, S10661). This treaty entered into force on June 13, 2003. See U.S. Department of State Fact Sheet, *U.S.- Jordan Bilateral Investment Treaty* (May 13, 2003), at <http://www.state.gov/r/pa/prs/ps/2003/20521.htm> (last visited Nov. 11, 2004) (noting that the treaty was delayed in entering into force following ratification by both countries because “the governments of the United States and Jordan discovered a number of technical discrepancies between their respective versions of the Treaty.”).

64. The Uruguay Round agreements were approved by the Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994) (19 U.S.C. § 3501 (2000)). These agreements were chiefly effective Jan. 1, 1995, and were implemented by Exec. Order No. 13042, 62 Fed. Reg. 18017 (April 9, 1997); Pres. Proclamation No. 6763, 60 Fed. Reg. 1007 (Dec. 23, 1994); and Pres. Proclamation No. 6780, 60 Fed. Reg. 15845 (March 23, 1995) (noted at 19 U.S.C. § 3511 (2000)).

65. Israel Agreement, *supra* note 54.

the Chile and Singapore Agreements attain. That teaches us that each U.S. free trade agreement has its own political and economic objectives. The Israel Agreement is less a meticulous correlation of trade openings than a declaration of special relationship. NAFTA is both a meticulous trade correlation and a prototype of Western Hemisphere integration that in many respects the Chile Agreement follows. The originalities of the Singapore and Jordan Agreements show the leeway to negotiate more innovative texts outside the Western Hemisphere, the intricate Singapore Agreement defining a sophisticated trade relationship between two high-technology parties, and the simpler Jordan Agreement formulating a nurturing relation between the United States and a less-developed protégé.

B. Imagining a template

If we imagine a template to which each of those five free trade agreements conforms or from which it diverges, that template consists of two lists of reciprocal promises. The first list promises access for six economic factors. The second list promises common standards in seven sectors of national law. The economic factors are goods, investment, services, electronic commerce, government procurement, and (accessed minimally, as by promising business and professional visas) persons. The national law sectors are due process, competition, intellectual property, labor, the environment, alternative dispute resolution, and anti-corruption. No agreement promises every item on each list. The promises made or omitted in a particular agreement reflect the objectives of that agreement's parties at the time they negotiated that agreement.

Some disparities among the agreements are merely a matter of labels. For example, NAFTA has a chapter named "Publication, Notification and Administration of Laws"⁶⁶ that covers elements of what U.S. lawyers call "due process". Neither the Chile nor the Singapore Agreement has a chapter of that name, but each has a chapter named "Transparency".⁶⁷ To the

66. NAFTA, *supra* note 55, ch. 18.

67. Chile Agreement, *supra* note 58, ch. 20; Singapore Agreement, *supra* note 59, ch. 19.

casual scanner, that suggests that Chile and Singapore resist due process but are more committed to transparency in government than are Canada and Mexico. But when we read those chapters we see that they are virtually identical, and consequently that all three agreements promise common standards of due process.

Textual differences among the agreements may reflect only a difference in how detailed is the description of a particular access, not an inconsistency in whether that access is promised. It seems odd, for example, that NAFTA has a chapter on “Telecommunications”⁶⁸ but not a chapter on “Electronic Commerce,” while the Chile and Singapore Agreements have chapters with each name.⁶⁹ On examination we see that NAFTA’s “Telecommunications” chapter promises foreign investors access to telecommunications chiefly “for the conduct of their business”⁷⁰ or to enable the investors to provide “enhanced or value-added services,”⁷¹ that is, access for telecommunications not as a business in itself but as an ancillary service a business needs to use or provide. The “Telecommunications” chapters of the Chile and Singapore Agreements develop that concept in detail, and their “Electronic Commerce” chapters add the promise of access for digital products as a business in itself. Although the resulting contrast is striking, what we are seeing is not that the United States opened for Chile and Singapore a new electronics sector that the United States denied to Canada and Mexico, but that in the period between the negotiation of NAFTA and the negotiation of the Chile and Singapore Agreements the parties became increasingly aware of the significance of electronics as an independent sector of transnational trade. In that practical sense, all three agreements promise access for electronic commerce.

Even a small textual addition may constitute a commitment to common standards in an additional sector of law. An example

68. NAFTA, *supra* note 55, ch. 13.

69. Chile Agreement, *supra* note 58, chs. 13, 15; Singapore Agreement, *supra* note 59, chs. 9, 14.

70. NAFTA, *supra* note 55, art. 1302(1).

71. *Id.* art. 1303(1)(a).

is NAFTA's five sentences of commitment to alternative dispute resolution.⁷² That commitment was repeated (omitting the formation of a special advisory committee) in the Chile Agreement,⁷³ suggesting a precedent for future U.S. free trade agreements with Western Hemisphere nations. Although the Singapore Agreement does not contain a standards commitment in alternative dispute resolution, by four sentences it introduces an innovative commitment to "effective measures . . . against bribery and corruption in international business transactions,"⁷⁴ which may become an influential precedent for U.S. free trade agreements generally.

An innovation that promises neither access for an additional economic factor nor common standards in an additional sector of law may nonetheless be significant. An example is the evolution from NAFTA to the Chile and Singapore Agreements in the procedure for resolution of nation-to-nation trade disputes. NAFTA provides that hearings and pleadings in such cases will be confidential,⁷⁵ but the Chile and Singapore Agreements make them public⁷⁶ and require resolution panels to "consider requests from nongovernmental entities . . . to provide written views regarding the dispute . . ."⁷⁷ Similarly, NAFTA provides that the final report of a dispute resolution panel will be published only if the NAFTA commission does not decide otherwise,⁷⁸ but the Chile and Singapore Agreements require that such final reports be made public.⁷⁹ That evolution reflects a notable public policy trend of our time.

Ignoring such subtleties, Table I scores the five free trade

72. *Id.* art. 2022.

73. Chile Agreement, *supra* note 58, art. 22.21.

74. Singapore Agreement, *supra* note 59, art. 21.5.

75. NAFTA, *supra* note 55, art. 2012(1)(b).

76. Chile Agreement, *supra* note 58, art. 22.10(1)(a), (c); Singapore Agreement, *supra* note 59, art. 20.4(4)(d)(i), (iii). Each is subject to the protection of confidential information. Chile Agreement, *supra* note 58, art. 22.10(1)(c), (e); Singapore Agreement, *supra* note 59, art. 20.4(4)(d)(i), (iii).

77. Chile Agreement, *supra* note 58, art. 22.10(1)(d); Singapore Agreement, *supra* note 59, art. 20.4(4)(d)(iv).

78. NAFTA, *supra* note 55, art. 2017(4).

79. Each is subject to the protection of confidential information. Chile Agreement, *supra* note 58, art. 22.13(1); Singapore Agreement, *supra* note 59, art. 20.4(5)(d).

agreements on their respective conformity to, or divergence from, the basic promises of our imaginary template. On the access list it shows full conformity by all except the Israel Agreement, which does not promise access for electronic commerce or persons. On the list of common legal standards NAFTA and the Chile and Singapore Agreements tie for first place, each omitting only one standard. Omitting four standards, the Jordan Agreement places second. Promising common standards in nothing but intellectual property, the Israel Agreement ranks third.

That simplistic comparison sheds only dim light on the agreements. Table I's record of Israel's divergences, for example, is not evidence that Israel resists economic involvement with the United States, but reflects the more political nature of the Israel Agreement, the earlier date of its negotiation, and the fact that other agreements between the United States and Israel address additional elements of their relation.⁸⁰ By merely crediting each agreement with access for goods, Table I fails to show the extent to which that access varies among the agreements, including different transition periods for goods of different categories, and different quotas or other barriers remaining at the end. An agreement typically establishes exceptional rules for goods of particular interest to its parties. NAFTA, for example, contains special provisions for the automotive industry⁸¹ and a separate chapter on energy and basic petrochemicals;⁸² and there are extensive provisions concerning agricultural goods in NAFTA,⁸³ the Israel Agreement⁸⁴ and the Chile Agreement,⁸⁵ and concerning textiles and apparel in NAFTA,⁸⁶ the Chile Agreement,⁸⁷ and the Singapore Agreement.⁸⁸ The agreements'

80. See Friendship, Commerce and Navigation Treaty, April 3, 1954, U.S.-Isr., 5 U.S.T. 550 (detailing the complete treaty between U.S. and Israel).

81. NAFTA, *supra* note 55, ch. 3, annex 300-A.

82. *Id.* ch. 6.

83. NAFTA, *supra* note 55, ch. 7.

84. Israel Agreement, *supra* note 54, arts. 6, 9.

85. Chile Agreement, *supra* note 58, chs. 3 (§ F), 6.

86. NAFTA, *supra* note 55, ch. 3, annex 300-B.

87. Chile Agreement, *supra* note 58, ch. 3 (§ G).

88. Singapore Agreement, *supra* note 59, ch. 5.

numerous side letters and voluminous annexes are equally inconsistent. As in most human commitments, the devil is in the details.

C. Three sensitive issues

In the five free trade agreements the resolutions of three sensitive issues, in particular, are significant. Two of those issues originated in the negotiation of the Canada Agreement, and on each the United States acceded to a demand of Canada. One demand was to shield Canadian “cultural industries” against intrusion from the United States. Another was to grant an alternative to U.S. judicial review of U.S. antidumping and countervailing duty actions against Canadian goods. The results were two unusual provisions: (1) an undiplomatically blunt statement that “[c]ultural industries are exempt from the provisions of this Agreement,”⁸⁹ and (2) a five-year experiment with the option of importers of Canadian and U.S. goods to appeal final antidumping and countervailing duty determinations, not to local courts, but to binational trade panels.⁹⁰ After heated discussions, NAFTA adopted both of those results for all three of its parties, and elevated panel appeal from a five-year experiment to a permanent right.⁹¹

Viewing NAFTA as the prototype of a Free Trade Area of the Americas, one might expect replicas of those two Canadian victories in all subsequent U.S. free trade agreements with Western Hemisphere nations, but the Chile Agreement contains neither. The message seems to be that, even if a Free Trade Area of the Americas is achieved, three-party NAFTA will remain a distinct sub-group within it, retaining for Canada and Mexico some U.S. concessions not granted to others.

The third sensitive issue is a contentious problem of international trade relations generally: in the resolution of

89. Canada Agreement, *supra* note 56, art. 2005(1).

90. *Id.* arts. 1904–06.

91. See NAFTA, *supra* note 55, art. 2106, annex 2106 (cultural industries), ch. 19 (panel appeals). For accounts of the negotiation on those issues, see MAXWELL A. CAMERON & BRIAN W. TOMLIN, *THE MAKING OF NAFTA* 77, 97, 142–43, 160, 173–74 (Cornell Univ. Press, 2000) (cultural industries); see *id.* 162, 168–71, 227 (panel appeals); see also HERMANN VON BERTRAB, *NEGOTIATING NAFTA* 67–69 (Praeger 1997).

nation-to-nation claims for breach of a trade agreement, how should a losing respondent be penalized? For breaches in general, NAFTA follows the path of the General Agreement on Tariffs and Trade (GATT)⁹² and the World Trade Organization (WTO)⁹³ by allowing “suspension of benefits,”⁹⁴ i.e., a winning claimant is permitted to punish the loser by withholding a compensatory amount of trade benefits that NAFTA otherwise requires the winner to concede. For breaches of the supplemental NAFTA labor or environmental agreement, the penalty is different: the loser may be required to pay a “monetary enforcement assessment” into a fund to improve the labor law enforcement, or to improve the environmental law enforcement or the environment, of the loser.⁹⁵ Distinguishing between breaches in general and breaches of labor and environmental provisions, the Chile and Singapore Agreements follow that bifurcated penalty pattern,⁹⁶ but for breaches in general they add an innovative option: the loser may escape “suspension of benefits” by electing to pay an “annual monetary assessment” equal to 50% of the otherwise suspendible benefits.⁹⁷ The assessment is paid either to the winner or, if the administrative body so directs, into a fund to facilitate trade between the parties.⁹⁸ That innovation may become a norm of future U.S. free trade agreements.

92. General Agreement on Tariffs and Trade, Oct. 30, 1947, art. XXIII, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194.

93. Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 354 (1999), 1869 U.N.T.S. 401, 33 I.L.M. 1226 (1994).

94. NAFTA, *supra* note 55, art. 2019.

95. Labor Agreement, *supra* note 60, art. 39, Annex 39; Environmental Agreement, *supra* note 61, art. 34, Annex 34.

96. Chile Agreement, *supra* note 58, arts. 22.15, 22.16; Singapore Agreement, *supra* note 59, arts. 20.6, 20.7.

97. Chile Agreement, *supra* note 58, art. 22.15(5); Singapore Agreement, *supra* note 59, art. 20.6(5).

98. Chile Agreement, *supra* note 58, art. 22.15(6); Singapore Agreement, *supra* note 59, art. 20.6(6).

V. THREE PARADOXICAL LESSONS

What do the five free trade agreements tell us about the transnational law of tomorrow? I suggest that they teach us three lessons—the lessons of scope, energy and source—and that each of those lessons presents a paradox.

The first lesson is the scope of transnational law. Obviously, transnational law deals with things that cross borders; that is what “transnational” means. But does transnational law deal, also, with things that exist on the other side of borders? Our imaginary template answers: “yes”. Free trade agreements not only promise that certain economic factors can lawfully cross a national border, they also promise the legal system those economic factors will encounter when that border is crossed. The scope of transnational law is equally broad. It is not limited to regulating border-crossings; it also deals with things that happen on the other side: bribery in foreign nations, for example, and re-exports, contracts, intellectual property, court judgments and arbitration awards abroad. The scope of tomorrow’s transnational law will not stop at the customs border of its enacting nation.

When we consider that scope, we see the paradox of sovereignty. Free trade agreements are acts of sovereigns, but by making the agreements the sovereigns abdicate some of their sovereignty. Each sovereign says to the other: “I hereby promise to let your people’s enterprises enter my territory for these purposes, and I also promise that when those enterprises enter my territory my law will treat them this way.” Those are sovereign-to-sovereign promises, but the beneficiaries are enterprises, not sovereigns. The sovereigns are promising to step aside and give those enterprises a well-ordered space in which to operate. As we ponder that paradox, we see the wisdom of the scholars’ perception that globalization involves a transfer of authority to the private sector from the nation-state.

The second lesson the free trade agreements teach us is the energy of globalization. Examining the agreements, we see that “free trade” is not a syllogistic premise whose consequences can be logically deduced; it is a dynamic human interaction with unpredictable results. “Telecommunications” evolve into “Electronic Commerce”; due process sprouts anti-corruption;

cloistered dispute resolution is re-programmed as a public event; labor and the environment become responsibilities of trade. The transnational law of tomorrow will be as changeful as the human dynamics it implements.

Examining those dynamics, we see the paradox of energy. When asked what causes globalization, we answer with words like “technology,” “transnational investment,” and “trade.” When we are asked what causes those things, our answering is more difficult. Which end of a transnational transaction ignites its energy? In trade, is it export or import? In investment, is it the desire to invest or the invitation to invest? When we search for the cause of globalization we are looking, paradoxically, for an invisible—the “invisible hand” of the market which, Adam Smith told us, leads self-seeking human beings “without knowing it, without intending it, [to] advance the interest of the society”.⁹⁹ Globalization is driven by the energy of the market, and so will be tomorrow’s transnational law.

For practicing lawyers, the third lesson of the free trade agreements is the most instructive of them all. It is the lesson of source. To comprehend and practice the transnational law of tomorrow, lawyers will need to know not only the law itself, but the international agreements from which some of that law is sourced.

Suppose a Mexican client asks a lawyer to plan an investment in the United States by Mexicans. The client’s first question is whether Mexicans are allowed to make that sort of investment in the United States. Before NAFTA, to answer that question the lawyer would have researched only U.S. law. Under NAFTA that is not enough; now the lawyer must research NAFTA too. If the lawyer finds that by NAFTA the United States promised access to Mexican investors but a U.S. statute denies it, the client has a case for asking Mexico to take the United States to nation-to-nation dispute resolution under NAFTA Chapter 20. If a U.S. statute grants access but by NAFTA the United States reserved the right to withhold it, the client knows that the investment can be made but will stand on

99. ADAM SMITH, *THE NEW ENCYCLOPAEDIA BRITANNICA* 905 (15th ed., Encyclopaedia Britannica, Inc. 1980).

rather tenuous ground. Either way, NAFTA is a necessary part of the lawyer's research.

From the U.S. perspective, the paradox of that source lesson is that, in its efforts to disassociate U.S. law from NAFTA, the U.S. Congress used every tool in the legislative box: crafting NAFTA as a "Congressional-executive agreement," providing that U.S. law prevails over NAFTA, and stipulating that neither NAFTA nor its Congressional approval creates a private cause of action or defense.¹⁰⁰ Nevertheless, a source is a source, and to understand the U.S. law affecting the Mexican client's investment the lawyer must understand NAFTA's promise of, or reservation against, that U.S. law.

Those three paradoxical lessons of the five free trade agreements are persuasive benchmarks of the transnational law of the future. Admittedly, the future remains a matter of conjecture. If our world explodes in Huntington's clash of civilizations, globalization may become a nostalgic vignette of the past; but today globalization continues to move on the pathway of law in the third dimension, the pathway of tomorrow's transnational law.

100. *Supra* notes 48–50 and accompanying text.

TABLE I
A Comparison of U.S. Free Trade Agreements

- I** = U.S.-Israel Free Trade Agreement of 1985
N = North American Free Trade Agreement of 1994, including North American Agreement on Environmental Cooperation, North American Agreement on Labor Cooperation, and Understanding between the Parties to NAFTA Concerning Emergency Action
J = U.S.-Jordan Free Trade Agreement of 2001 and Bilateral Investment Treaty of 2003
C = U.S.-Chile Free Trade Agreement of 2004
S = U.S.-Singapore Free Trade Agreement of 2004

Access for Economic Factors					
Goods	I ¹	N ²	J ³	C ⁴	S ⁵
Investment	I ⁶	N ⁷	J ⁸	C ⁹	S ¹⁰
Services	I ¹¹	N ¹²	J ¹³	C ¹⁴	S ¹⁵
Electronic commerce		N ¹⁶	J ¹⁷	C ¹⁸	S ¹⁹
Government procurement	I ²⁰	N ²¹	J ²²	C ²³	S ²⁴
Persons		N ²⁵	J ²⁶	C ²⁷	S ²⁸
Common Legal Standards					
Due process		N ²⁹		C ³⁰	S ³¹
Competition		N ³²		C ³³	S ³⁴
Intellectual property	I ³⁵	N ³⁶	J ³⁷	C ³⁸	S ³⁹
Labor		N ⁴⁰	J ⁴¹	C ⁴²	S ⁴³
Environment		N ⁴⁴	J ⁴⁵	C ⁴⁶	S ⁴⁷
Alternative dispute resolution		N ⁴⁸		C ⁴⁹	
Anti-corruption					S ⁵⁰

TABLE ENDNOTES

1. Israel-United States: Free Trade Area Agreement, Apr. 22, 1985, 24 I.L.M. 653 (1985), arts. 2, 4–6, 9 (1985) [hereinafter Israel Agreement].
2. North American Free Trade Agreement, Dec. 8, 1993, 3 I.L.M. 289, chs. 3–9 (1993) [hereinafter NAFTA].
3. United States-Jordan: Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, Oct. 24, 2000, 41 I.L.M. 63, arts. 2, 10, 14 (2002) [hereinafter Jordan Agreement].
4. United States-Chile Free Trade Agreement, chs. 3–8 (2004) [hereinafter Chile Agreement]. See the U.S. Trade Representative website at http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Section_Index.html (last visited Nov. 4, 2004).
5. United States-Singapore Free Trade Agreement, chs. 2–7 (2004) [hereinafter Singapore Agreement]. See the U.S. Trade Representative website at http://www.ustr.gov/Trade_Agreements/Bilateral/Singapore_FTA/Section_Index.html (last visited Nov. 11, 2004).
6. Israel Agreement, *supra* note 1, art. 13 (prohibiting trade-related restrictions).
7. NAFTA, *supra* note 2, ch. 11.
8. Jordan-United States: Treaty Concerning the Encouragement and Reciprocal Protection of Investment, July 2, 1997, 36 I.L.M. 1498 (1997) [hereinafter Bilateral Investment Treaty]. The Bilateral Investment Treaty was ratified by the United States Senate in October 2000 (146 Cong. Rec. S.10658-02, S10661) and entered into force on June 13, 2003. See U.S. Department of State Fact Sheet, *U.S.-Jordan Bilateral Investment Treaty* (May 13, 2003), at <http://www.state.gov/r/pa/prs/ps/2003/20521.htm> (last visited Nov. 11, 2004).
9. Chile Agreement, *supra* note 4, ch. 10.
10. Singapore Agreement, *supra* note 5, ch. 15.
11. Israel Agreement, *supra* note 1, art. 16; United States-Israel: Declaration on Trade in Services, April 22, 1985, 24 I.L.M. 653, 679.
12. NAFTA, *supra* note 2, chs. 12, 14.
13. Jordan Agreement, *supra* note 3, art. 3.
14. Chile Agreement, *supra* note 4, chs. 11, 13.
15. Singapore Agreement, *supra* note 5, chs. 8, 10.
16. NAFTA, *supra* note 2, ch. 13 (Telecommunications).
17. Jordan Agreement, *supra* note 3, art. 7.
18. Chile Agreement, *supra* note 4, ch. 15; see also *id.* ch. 13 (Telecommunications).
19. Singapore Agreement, *supra* note 5, ch. 14; see also *id.* ch. 9 (Telecommunications).
20. Israel Agreement, *supra* note 1, art. 15.
21. NAFTA, *supra* note 2, ch. 10.
22. Jordan Agreement, *supra* note 3, art. 9 (undertaking negotiations regarding Jordan's accession to the WTO Agreement on Government Procurement).
23. Chile Agreement, *supra* note 4, ch. 9.
24. Singapore Agreement, *supra* note 5, ch. 13.
25. NAFTA, *supra* note 2, ch. 16.
26. Jordan Agreement, *supra* note 3, art. 8; see also Bilateral Investment Treaty, *supra* note 8, art. VII.
27. Chile Agreement, *supra* note 4, ch. 14.
28. Singapore Agreement, *supra* note 5, ch. 11.
29. NAFTA, *supra* note 2, ch. 18.
30. Chile Agreement, *supra* note 4, ch. 20 (Transparency).
31. Singapore Agreement, *supra* note 5, ch. 19 (Transparency).
32. NAFTA, *supra* note 2, ch. 15.
33. Chile Agreement, *supra* note 4 ch. 16.
34. Singapore Agreement, *supra* note 5, ch. 12.
35. Israel Agreement, *supra* note 1, art. 14.
36. NAFTA, *supra* note 2, ch. 17.
37. Jordan Agreement, *supra* note 3, art. 4.

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38. Chile Agreement, *supra* note 4, ch. 17.
 39. Singapore Agreement, *supra* note 5, ch. 16.
 40. Canada-Mexico-United States: North American Agreement on Labor Cooperation, Sept. 8, 1993, 32 I.L.M. 1499 (1993).
 41. Jordan Agreement, *supra* note 3, art. 6.
 42. Chile Agreement, *supra* note 4, ch. 18.
 43. Singapore Agreement, *supra* note 5, ch. 17.
 44. Canada-Mexico-United States: North American Agreement on Environmental Cooperation, Sept. 14, 1993, 32 I.L.M. 1480 (1993).
 45. Jordan Agreement, *supra* note 3, art. 5.
 46. Chile Agreement, *supra* note 4, ch. 19.
 47. Singapore Agreement, *supra* note 5, ch. 18.
 48. NAFTA, *supra* note 2, art. 2022.
 49. Chile Agreement, *supra* note 4, art. 22.21.
 50. Singapore Agreement, *supra* note 5, art. 21.5.