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Abstract

This article argues that the WTO entrenches an asymmetrical, non-reciprocal trading system that benefits multi-national corporations especially, at the expense of industrial workers, farmers, and a wide range of business enterprises. It argues that the WTO doesn't deserve to survive in its present, unbalanced, and unsustainable form, and that it is doubtful that its voting regime, accumulated asymmetries, and overall rigidity can be overhauled. The author posits that bilateral and regional trade bargaining will become increasingly important and that world market forces are likely to bypass, and perhaps overwhelm, the WTO.

THE WTO: A TRAIN WRECK IN PROGRESS?

*William A. Lovett**

The World Trade Organization[1] (or "WTO") grew out of (i) U.S. Cold War trade policies, (ii) non-reciprocal trade liberalization deals under the General Agreement on Trade and Tariffs[2] ("GATT") between 1947-1994, (iii) euphoria about the global economy emerging with the collapse of Communism in 1989-1991, and (iv) enthusiasm about European unification efforts between 1989-1992.[3] Although the United States promoted the Uruguay Round[4] in 1986-1993 to level the playing field and broaden free trade (in agriculture, finance, services, investments, and intellectual property), the rhetoric of the WTO celebration distorts the real results and ignores troubling flaws in the global trading regime.[5]

In fact, the WTO entrenches an asymmetrical, non-recipro-

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1. Marrakesh Agreement Establishing the World Trade Organization, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1, 33 I.L.M. 1144 (1994) [hereinafter WTO Agreement].

2. General Agreement on Tariffs and Trade, October 30, 1947, art. 1, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT].

3. This Essay evolved out of six previous trade studies: (1) STAFF REP. COMM. ON BANKING, FINANCE, AND URBAN AFFAIRS, 98TH CONG., COMPETITIVE INDUSTRIAL POLICIES AND THE WORLD BAZAAR (William A. Lovett 1984); (2) WILLIAM A. LOVETT, WORLD TRADE RIVALRY: TRADE EQUITY AND COMPETING INDUSTRIAL POLICIES (1987); (3) William A. Lovett, *Rethinking U.S. Industrial-Trade Policy in the Post-Cold War Era*, 1 TUL. J. INT'L & COMP. L. 135-89 (1993); (4) William A. Lovett, *Current World Trade Agenda: GATT, Regionalism, and Unresolved Asymmetry Problems*, 52 FORDHAM L. REV. 2001-2045 (1994) [hereinafter Current WTO Agenda]; (5) William A. Lovett, *World Trade Policies: Limits on Economic Integration*, *in* INTERNATIONAL MARKET CHANGE AND THE LAW (Jukka Mähönen ed., 1996); and (6) WILLIAM A. LOVETT ET. AL, U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO (1999) [hereinafter TRADE POLICY].

A central theme is the crucial importance of asymmetries, unequal openness, and differential subsidies. While many countries give lip service to "freer trade," in reality the world is far from a level playing field or fully open. This asymmetry produces substantial trade imbalances and strains, with heavy net capital inflows to the United States that cover large U.S. trade and current account deficits. U.S. banking and financial interests claim they benefit, but how much longer will the rest of the world trust the U.S. with large accumulations of foreign capital as a safe haven?

4. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1, 33 I.L.M. 1125 (1994) [hereinafter Final Act].

5. This Essay represents a sixth year review of the WTO Agreement. For a 1994 preview, see *The World Trade Organization: Hearing Before the House Ways and Means Committee*, 103rd Cong. (1994) [hereinafter Hearings].

cal trading system that benefits multi-national corporations ("MNCs") especially. It also makes insecure the lives and prospects of many industrial workers, farmers, and a wide range of business enterprises. Many environmental interest groups also complain that the WTO and GATT weaken the regulation of businesses and encourage the relocation of industrial plants to "irresponsible" countries which despoil their local environments. All this, they believe, threatens widespread damage to our ecosphere. Furthermore, the WTO-Uruguay Round aggravates some trading imbalances. In particular, the WTO-Uruguay Round allowed substantially enlarged U.S. trade and current account deficits during the mid-late 1990s, and into 2000-2001. Along with the trend toward more unrestricted capital flows, cross-border investments, lending, and borrowing, the WTO-Uruguay Round framework also facilitates "hot money" transfers, unstable liquidity movements, and allows wider "panics" and macro-economic instability in the global economy. Whether all this remains sustainable is questionable.[6]

Sadly, the WTO's decision-making and voting regime is a contradictory mess.[7] United Nations ("U.N.") General Assem-

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6. *See supra*, note 3. Particular attention should be paid to Trade Policy, *supra* note 3, at 3-218; *see also* JOHN CULBERTSON, THE TRADE THREAT (1989); SIR JAMES GOLDSMITH, THE TRAP (1994); WILLIAM GREIDER, ONE WORLD, READY OR NOT (1997); SAMUEL HUNTINGTON, THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER (1997); ROBERT JEROME, WORLD TRADE AT THE CROSSROADS (1992). For more recent articles on this topic see Chris Swann, *Funding Fears add Currency to Doubts on $*, FIN. TIMES, Oct. 24, 2000, at 14; Michael Phillips & Nicholas Kulish, *Current Account Deficit Rose Last Period*, WALL ST. J., Sept. 14, 2000, at A2; Samuel Brittan, *Watch The Dollar, Not the Euro*, FIN. TIMES, Oct. 12, 2000, at 19; Martin Wolf, *The Lure of the American Way*, FIN. TIMES, Nov. 1, 2000, at 19; and Stephen Roach, *Prepare for a Hard Landing*, FIN. TIMES, Nov. 22, 2000, at 15.

7. *See* WTO Agreement art. IX (establishing WTO voting procedures). Article IX states:

> The WTO shall continue the practice of decision making by consensus . . . . Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter shall be decided by voting . . . . [E]ach member of the WTO shall have one vote . . . . Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided . . . .

Id. Waivers and Interpretations require super-majorities of three fourths of the members. *Id.* Accessions and Amendments—of a nature that would not affect rights and obligations of members—require two-thirds of the members. *Id.* art. X, XII. This means, for most matters, majority voting (one vote per country).

In recent "voting" for Director-General a political impasse developed. *See* Frances Williams, *Impasse in Search for WTO Head*, FIN. TIMES, Mar. 2, 1999, at 9; Elizabeth Olson, *U.S. and Europe at Impasse on New World Trade Chief*, N.Y. TIMES, April 1, 1999, at C6. This bly-style voting governs (one vote per nation, except the EU, which receives fifteen). This guarantees heavy voting majorities for United Nations Trade and Developing Countries ("UNCTAD") and developing countries and a working majority for the EU and Lomé Convention states[8]—former European colonies—together. Nonetheless, the United States claims, with doubtful WTO textual support, a GATT tradition of "consensus" for important trade policy decisions. Fractious bickering followed, particularly for the Director-General and other top WTO leadership elections. The United States now finds itself frequently opposed to large "majorities" of WTO members with the EU remaining in the driver's seat (more often than not). Furthermore, increasingly fractious conflicts between the United States and EU over WTO disputes threaten a trade war among North Atlantic Treaty Organisation ("NATO") allies. Bitter conflicts include bananas, beef hormones, "higher-tech" farm products, commercial aircraft subsidies, export tax treatments, and e-commerce. Many worry about an unraveling of free world and NATO collaboration.[9]

Unfortunately, we converted the relatively obscure GATT, which was used for occasional, complex trade negotiations, with consensus deal-making, into a continuing body, the new World Trade Organization.[10] This was a serious U.S. foreign policy

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mess was solved by breaking the next WTO Director-General's term in half—with two years for the New Zealander and two years for the Thailander.

The International Monetary Fund's ("IMF") weighted voting system is far superior to the WTO's United Nations ("U.N.") General Assembly (one Country/one vote) decision-making. *See* Trade Policy, *supra* note 3, at 173-82 tbl. 5.3 (describing IMF Executive Directors and Voting Power).

8. African, Caribbean and Pacific States—European Economic Community: Final Act, Minutes, and Fourth ACP-EEC Convention of Lomé, 29 I.L.M. 783 (1990) [hereinafter Lomé IV].

9. For all eight General Agreement on Trade and Tariffs ("GATT") rounds, 1947-1994, the U.S. played the leading role in shaping the post-World War II trading arrangements among non-communist nations. For the best historical summaries, see ALFRED E. ECKES JR., OPENING AMERICA'S MARKET: U.S. FOREIGN TRADE POLICY SINCE 1776 (1995); STEVE DRYDEN, TRADE WARRIORS: USTR AND THE AMERICAN CRUSADE FOR FREE TRADE (1995). Yet, the recent Seattle (Millennium) WTO round of late 1999 broke up in dissension (and riots by protesters). *See World Trade: The Battle in Seattle*, ECONOMIST, Nov. 27, 1999, at 21-23; William Safire, *The Clinton Round*, N.Y. TIMES, Dec. 6, 1999, at A29; *see also The Trade Agenda: A Different, New World Order*, ECONOMIST, Nov. 11, 2000, at 83-85; *Lori's War*, FOREIGN POL'Y, Spring 2000, at 28.

10. Sadly, when the U.S. transformed leisurely GATT negotiations (with consensus decision-making) into a continuing body, the Americans put themselves under heavy, regular pressure to meet the "needs" of other members (especially the EU and develop-

blunder. Expectations of "continuing world trade governance" were aroused. The United States greatly reduced and marginalized its own influence in future trade negotiations. Why the United States political leadership (Presidential and Congressional) agreed to this arrangement is increasingly a "puzzle."

I. *CONFLICTING OUTLOOKS ON FREER TRADE AND THE GLOBAL ECONOMY*

The WTO's logjam of conflicting interests comes into better focus by appreciating the rival "freer trade" outlooks that compete in modern World politics.[11] At first glance a broad consensus seems to support freer trade in the post-Cold War era. But which version of freer trade?[12] On whose terms? With what

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ing countries). Now, it is hard for the United States to insist upon defending their own vital interests, and to limit excess U.S. trade deficits.

11. Most countries believe that trade policy should satisfy their own national interests, including industrial growth and development, productivity and competitiveness, and a healthy balance of payments. But, it was mainly U.S. trade negotiators, in recent years, that worried about "saving the system" of freer world trade, along with multinational corporate interests (rather than "defending" U.S. national interests, industries, jobs, growth, environmental concerns, and social cohesion).

12. (i) *Adam Smith's Reciprocal Freer Trade* developed out of the historical practice of mercantilism and guild and feudal privileges. Smith urged individual liberty, constitutional parliamentary governance, and reciprocity-based freer trade among nations. Tariffs for retaliation and safeguarding, along with subsidies for infrastructure and the merchant marine, are appropriate. (ii) *Alexander Hamilton and Friedrich List—National Development Model* accepts laissez faire within large countries (e.g., United States or German Federation), but imposes broad protective tariffs to promote industries and catching up with leading nations. (iii) *British Empire Freer Trade* largely eliminated tariffs in the U.K., but access to British colonies remained closed, for the most part, by informal restrictions and commercial custom. (iv) *Neo-Classical Free Trade* economists idealized a world of mutually open markets, investments, and technology flows that would internationalize laissez faire. (v) *Socialist Internationalism* tried to respond with the expropriation of extensive industrial property in each nation to eliminate oppression of the working class, thus freeing the world for socialist and democratic fraternalism among nations. (vi) *Cobdendite and Wilsonian Freer Trade* preached progressive politics with free trade, social insurance and safeguards for workers and farmers, representative democratic institutions, and world peace among nations. (vii) *United States Cold War Policies* created a free world alliance against communist oppression and backwardness. The United States and OECD industrial allies opened themselves to Least Developed Countries ("LDCs") using tariffs, industrial promotion, foreign aid, and international investment under GATT 1947, the IMF, and World Bank auspices. (viii) *United Nations Trade and Developing Countries ("UNCTAD") and the Group of 77 Plus* nations want more aid, trade preferences, and special treatment for investments to foster the development process with more equal sharing of prosperity. (ix) *The Uruguay GATT Round and WTO Agreements of 1994* tried to broaden freer trade by reducing safeguard protections for OECD nations, reduce tariffs somewhat for newly industrializing countries ("NIC")

preferences? And what safeguards? The devil is always in the details.[13] Unfortunately, the world trading "system" has become a disorderly mélange of conflicting versions of freer trade with substantial asymmetries and imbalances.[14] The GATT 1994-WTO agreements were clearly freer trade in aspiration, but the outcome failed to resolve structural disagreements.[15] Instead, the architects of the GATT 1994-WTO "accommodation" merely

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NICs and LDCs, promote more reliable intellectual property and investor protection, reduce agricultural protectionism somewhat, and create a new dispute settlement process with fast track enforcement of GATT and WTO commitments. (x) *Multinational Corporations* ("MNCs") are beneficiaries and instrumentalities of global trading and capital markets. They want freedom to deploy investment, production, and technology at their convenience, subject to restrictions that share progress with developing nations. Many workers, farmers, environmentalists, and companies that suffer dislocations and losses, however, insist that MNC "capture" of the WTO, global financial institutions, and world capital markets are unfair, unjustified, and should be corrected. Meanwhile, many NICs and LDCs complain that the richer nations are still benefiting disproportionately. Worries about the risks and dislocations of financial crises, panics, and devaluation have spread to most emerging nations and the majority of NICs and LDCs.

13. Chart 1 represents 18 years of research, thought, teaching, and lecturing abroad in 25 countries. *See supra* note 3. This chart was first used in a lecture in Denver on May 8, 2000. *See* William A. Lovett, Address at the Korbel Center of International Relations, University of Denver (May 8, 2000).

14. The international trade views of Adam Smith are of special importance, but not widely appreciated today. While Smith argued for laissez faire and the "invisible hand" as an efficiency machine for the domestic economy, he accepted four big limitations on international trade: (i) retaliation and mitigation tariffs, (ii) protection for national defense and security, (iii) navigation laws to promote the merchant marine and commerce, and (iv) extensive public works (roads, canals, harbors, and water works—now we extend this to infrastructure and technology promotion). *See* ADAM SMITH, WEALTH OF NATIONS 429-36, 414-44, 651-716 (Modern Library ed. 1937). Alexander Hamilton, Friedrich List, and John Stuart Mill broadened this limitation to include "infant industries." Most developing counties and NICs are still devoted to this industrial nurturing, even though they *partially* reduced tariffs in the Uruguay round.

15. For an outstanding collection of essays on modern trade policy, see THE ACADEMY OF POLITICAL SCIENCE, INTERNATIONAL TRADE: THE CHANGING ROLE OF THE U.S. (Frank Macchirarola ed., 1990). In particular, see John Culbertson, *Workable Trade Policy for Today's Economic and Political World, in* INTERNATIONAL TRADE: THE CHANGING ROLE OF THE U.S. 151 (Frank Macchirarola ed., 1990); Rudiger Dornbusch, *The Dollar and Adjustment Options, in* INTERNATIONAL TRADE: THE CHANGING ROLE OF THE U.S. 54 (Frank Macchirarola ed., 1990); Robert Kuttner, *Managed Trade and Adjustment Options, in* INTERNATIONAL TRADE: THE CHANGING ROLE OF THE U.S. 37 (Frank Macchirarola ed., 1990); Ray Marshall, *Standards Trade Linked Labor, in* INTERNATIONAL TRADE: THE CHANGING ROLE OF THE U.S. 67 (Frank Macchirarola ed., 1990). From their standpoints, the GATT 1994-WTO agreements were sadly lacking in balance, realism, and sustainability. If U.S. trade negotiators had paid proper attention to their guidelines, the Uruguay Round could have been a lot more successful, with more emphasis on reciprocity, too. *See* Robert Went, *Game, Set and Match for Mr. Ricardo?*, 34 J. ECON. ISSUES 655-73 (2000); Alan W. Wolf, *America's Ability to Achieve Its Commercial Objectives and the WTO*, 31 LAW & POL'Y INT'L BUS. 1013 (2000).

kicked the ball down the road. In so doing we failed to make a timely, overdue correction for unsustainable U.S. trade deficits, which are quite dangerous for the United States and world economies.

Chart 1
Conflicting "Freer Trade" Outlooks

- ADAM SMITH'S FREER TRADE (Reciprocity Oriented)
- NATIONAL DEVELOPMENT FREER TRADE (With Development Tariffs, e.g., Hamilton and Friedrich List)
- BRITISH EMPIRE FREER TRADE (With Restricted Foreign Access to British Colonies)
- NEO-CLASSICAL FREER TRADE (One World Model—Everyone Supposedly Gains)
- SOCIALIST INTERNATIONALISM (Liberated from Class Oppression, Fraternal Socialist Cooperation)
- COBDENITE, WILSONIAN FREER TRADE (Free Trade, Democracy and World Peace)
- UNCTAD – GROUP OF 77 PLUS FREER TRADE (With Strong newly industrializing countries ("NIC"), Least Developed Countries ("LDC") Preference)
- U.S. COLD WAR FREER TRADE (Led By U.S. and the Organisation of for Economic Co-operation and Development ("OECD"), Preferences for the Developing Nations Accepted by U. S.)
- WTO MODEL FREER TRADE (Strong LDC Preferences, With Aspirations for Gradually More Opening)
- MNC ORIENTED FREER TRADE (Freedom for MNCs to Operate Everywhere, Subject to Restrictions by Developing Nations to Promote Their Industrialization)

As President Clinton's Seattle WTO (Millennium) Round collapsed in confusion, televised riots, and recriminations, the disconnect between the WTO's rhetoric and reality became obvious. Clearly, trade policy "consensus" broke down *within* the United States, *between* the United States and EU, and *between* "rich" nations and most developing nations. Nonetheless, MNC-oriented trade "experts" press for WTO negotiations to be resumed. Why? The "bicycle theory"—employed in the 1980s and early 1990s to justify "free trade" and MNC control over the multilateral trade agenda, despite mistakes and weak compromises in the Uruguay GATT round—has been recalled into service.

But this outworn, battered "bike" is not working anymore.

Now the United States and EU are equals, and rather quarrelsome rivals, for global economic leadership. Now we lack an eager hegemon like the United States in the earlier Reagan-Bush-Clinton administrations (say 1985-1996). Most Asian nations (including the Association of Southeast Asian Nations ("ASEAN"), China, India, Japan, South Korea, and Taiwan) are now unwilling to allow further market-opening momentum. Latin America and most Islamic states are less willing now to move toward OECD-style market opening. Russia is a mess and grumpy. Meanwhile, OPEC forces higher oil prices and exploits scarcity in energy markets. Conflicts, violence, and terrorism in the Mid-East are increasing. Africa pleads special poverty and a need for greater aid, debt relief, market safeguards, and assured exports. And, most fundamentally, the rosy glow of free market global euphoria from the early-mid 1990s has faded by 2000-2001.[16]

II. *HOW BAD A DEAL?*

How bad a deal is the GATT 1994-WTO framework? Assessments depend upon different outlooks. MNC interest groups say, "Let's not rock the boat." MNCs feel comfortable with the entrenchment and extension of a global economy that allows MNCs the freedom to locate facilities, production, trade flows, and profits as they please. MNC interests want to extend, if possible, but most of all "to protect" this favorable environment.

By contrast, in the OECD countries, organized labor, the Greens, many farmers and manufacturers, and other globalist-skeptical elements in advanced industrial democracies (Australia, Canada, the EU, New Zealand, the United States, etc.) are not satisfied with the GATT 1994-WTO arrangements. In the United States, the "anti-WTO, no more fast track" coalition is still powerful. Only a strong and sustained U.S. stock market

16. A majority of countries may have seen in 1993-1994 a "new world order" (the collapse of communism, a new confidence in freer markets, the spread of democratic governance, and expanding European unification and other regional integrations). At that stage, some saw a continuing, perhaps rapid, trend toward a fully open world market. But by 2000, this vision no longer governed. Many crises in Asia and emerging markets, coupled with extensive capital flight, disruptions, and devaluations, have made the majority of nations more cautious. Even Europe is now less trusting of a global free market, with widespread fear for the excesses of globalization. Most countries now want more limited, better supervised openness and capital flows. This means a consolidation of partial, incomplete openness. This does not require, however, any drastic return to mercantilism. World markets are somewhat freer, but unevenly so.

boom, or "bubble," between 1993-1999 kept the lid on greater trade dissension in the United States. But when this bubble sags, the dollar slides, and a slump takes over, global economy protests will increase in the U.S. very substantially.

In the EU there are widespread anxieties about the excesses of globalization, its dislocations, and misgivings about European integration. As a result, EU officials have been tougher in defending their trade interests and maintaining their agricultural and industrial supports. On the "euro," Europeans are ambivalent, with many wanting a stronger currency. Others are content, because exports are promoted in part by the euro's fall from US$1.17 to US$.85. Now the EU has earned a growing trade surplus with the U.S. The WTO voting structure is not a problem for Europe, because the EU has fifteen votes and a large block of Lomé Convention states still collaborate with the EU on trade.

In Japan the government's trading policy preserves more safeguard protections through marketing customs, language, culture, and administrative guidance (in spite of the "formally" low tariffs). Thus, the Japanese "protect" their big trade surpluses. While globalist "strains" afflict some Japanese workers and small businesses—and considerable strain resulted from the 1997-1998 Asian crises—so far Japan does not gripe about GATT 1994 and the WTO. Japan basically cut itself a good deal in 1994.

Among the NICs and LDCs throughout the rest of Africa, Asia, Eastern Europe, Latin America, the Mid-East, and Russia, the current global trade/financial environment is viewed as insecure and not sufficiently favorable. Developing countries want to cut back on safeguards to foreign investors and intellectual property holders. These nations want to limit further trade opening, increase safeguard relief, and prevent the financial crises and devaluations that undercut their gains from expanding exports and manufacturing. But most NICs and LDCs are determined to keep the advantages of asymmetry in trade relations, i.e., their accumulated prerogatives under GATT and the WTO.

From the standpoint of a healthy, balanced, and sustainable global economy, the Uruguay Round, GATT 1994, and the WTO deals were needlessly flawed. They were badly designed architecture. What should have been constructed was more reciprocity-oriented trade. The deal should have eliminated large and troubling U.S. trade and current account deficits from 1983-1993; these trading deficits got even worse in recent years. Better balanced trade, more equal economic growth, and mutually shared prosperity on a healthier basis should have been the goals.

Instead, the United States pressed too hard for a GATT 1994-WTO deal "regardless of the details." In fact, United States Trade Representative Mickey Kantor promised a final GATT 1994 deal in the spring of 1993 for the fall of 1993.[17] This gave up U.S. bargaining leverage to force a better GATT 1994 deal. By contrast, the EU, France, and Japan bargained more skillfully. To them, "No GATT deal was better than a bad deal." This should have been the U.S. position, too. The global economy was gradually recovering in 1992-1993. Many emerging nations were moving voluntarily toward "market discipline." Investment capital was flowing again into many developing nations. Most OECD nations were prospering, along with Asian NICs and many other countries. The years 1993-1994 were an ideal time to move the global trading system toward better balanced reciprocity and sustainable economic growth. And the debt-overload crisis of 1982-1990, which badly squeezed more than sixty developing nations, was greatly eased by 1993. Many developing countries were recovering when Communism collapsed in 1990-1991.

Only limited modifications to GATT 1947 were needed. That regime was a well-balanced framework which gave ample room for increasing trade and foreign investment to all countries, but kept sensible industrial safeguards, unfair trade practice remedies, and balance of payments relief to limit excessive or undesirable trade imbalances.[18] Sadly, the GATT 1994-WTO

17. *See* TRADE POLICY, *supra* note 3, at 8-11, 100-05, 148-58. In the crucial June 10, 1994, hearings before the U.S. House Ways and Means Committee, United States Trade Representative Michael Kantor amazingly asserted that "[i]t is only a theoretical possibility that the U.S. would lose in any WTO dispute settlement proceeding." *See* Hearings, *supra* note 5 (statement of Michael Kantor, United States Trade Representative).

18. For a full analysis, see Current WTO Agenda, *supra* note 3; Hearings, *supra* note 5; TRADE POLICY, *supra* note 3, at 136-82. Unfair trade practice remedies—countervailing duties against subsidies or dumping—and safeguard remedies were powerful offsets to foreign industrial policies, unequal openness, and mercantilism. *See* Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, WTO Agreement, Annex 1A, *at* http://www.wto.org/english/docs_e/legal_e/final_e.htm; Agreement on

regime unwisely weakened U.S. industrial safeguards, unfair practice remedies, and trade balance discipline. In an unbalanced U.S. industrial-trade policy, the financial sector received an over-emphasis in the U.S. engagement with world markets. U.S. manufacturing, research and development, and exports needed greater stimulus and stewardship in the 1990s.

Instead, what was left of U.S. manufacturing in 1993 was encouraged simply to relocate into low wage nations. Manufacturing in the United States slumped further, although the U.S. service economy gradually recovered.[19] Meanwhile, the EU moved toward a new common currency, the euro (for eleven of the fifteen EU members), but the EU sensibly kept more of its safeguards, import restrictions, and subsidy systems intact. The EU also emphasized bilateral outreach and export expansion into other markets, including the Far East, Latin America, the Mid-East, and South Asia. Thus, the EU was able to maintain overall trade balance throughout the mid-late 1990s and into 2000-2001.

And yet, the U.S. economy managed to pick up momentum with a fortuitous series of stimuli.[20] U.S. tax increases and defense cuts in 1993-1994 eased excessive budget deficits. President Bill Clinton's US$200,000,000,000 health care reform failed, which saved U.S. federal budget discipline. The Federal Reserve lowered interest rates for awhile as the budget moved toward balance. Meanwhile, the collapse of Communism brought greater optimism, investments, and growth to many emerging markets. Interestingly, Republicans maintained control of Congress from 1994-2000. This brought more U.S. budget discipline and improved U.S. business confidence. New technologies helped enhance U.S. growth, too. In addition, a demographic accident proved helpful. There were fewer depres-

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Safeguards, Apr. 15, 1994, WTO Agreement, Annex 1A, *at* http://www.wto.org/english/docs_e/legal_e/final_e.htm; GATT art. XII. These trade remedies were also good tools for leverage in bilateral trade bargaining, and to enforce more effective reciprocity.

19. For a careful review of job losses (and limited gains), see TRADE POLICY, *supra* note 3, at 186-87. To the extent the United States gained somewhat in the short run, this occurred mainly in the years 1997 to 1999, when the U.S. stock market was booming strongly (allowed by large and increased trade-current account deficits and heavy net capital inflows). The Dow Jones Industrial Average went from 5743 in 1996, to 11,700 in fall 1999, while the NASDAQ went from 1165 in 1996, to 5048 in early 2000. *Id.* at 167-69 tbl. 5.1, 5.2. These were extraordinary stock price surges.

20. For an up-to-date review, see WILLIAM A. LOVETT, BANKING AND FINANCIAL INSTITUTIONS LAW 84-100, 428-31, 435-45 (5th ed. 2001).

sion babies (people born 1930-1942), and they have been retiring later. This turned U.S. social security accounts into a medium-term surplus machine (from about 1998-2010). U.S. inflation also stopped, U.S. corporate profits increased, and U.S. economic expansion broadened.

Along the way, in 1994-1995, and even more in 1997-1998, the Mexican, Asian, Russian, Brazilian, and other foreign currency crises and devaluations made the U.S. dollar, its stock markets, and debt markets even more attractive as a safe haven. Ironically, Federal Reserve Board Chairman Alan Greenspan's worries about irrational exuberance, and consequent U.S. interest rate increases in later 1998-1999, only seemed to enhance investor confidence.[21] Thus, the attractiveness of U.S. government and private debt instruments in the world marketplace only increased between 1995-1999. Meanwhile, the new euro, launched so hopefully at the end of 1998, gradually started to slide in value—from an initial US$1.17 to US$.85 by the fall of 2000. The EU also suffered economic unease in the mid-late 1990s. The U.S. boom accelerated and was reinforced by increasingly heavy foreign capital inflows into the United States (that covered swelling U.S. trade and current account deficits). In this way the global marketplace elected the U.S. stock market and the dollar as the favored manifestations of strength and virtue (at least from 1993-99). But how much longer can the United States keep living beyond its means this way? Not much longer say most wise, experienced observers.

Forecasts of U.S. economic growth and stock market wealth divide into four camps: (1) *Onward and upward* at unusually high growth rates say the most optimistic, with faith in the Internet, faster growth, and the unique virtue of U.S. capitalism; (2) *A soft landing* with slowed growth, but no recession, is the hope of many, including Alan Greenspan and the Federal Reserve; (3) *Unstable stagnation* is the projection of other observers, and the partial correction between the fall of 1999 and early 2001 (with the Dow Jones Industrial Average down 12% and

21. *Id. See also Greenspan Lays Out His Cards*, ECONOMIST, July 29, 2000, at 27, 29; Samuel Brittan, *Market Euphoria Cannot Last*, FIN. TIMES, Jan. 20, 2000, at 11; Peronet Despeignes, *Cup That Runneth Over may be Poisoned Chalice*, FIN. TIMES, Oct. 11, 2000, at 6; Richard Stevenson, *Candidates Plans for Surplus Face Threat in Budget*, N.Y. TIMES, Oct. 27, 2000, at A1; *The Next Banking Crisis: Banks in Trouble, The Bigger They Are*, ECONOMIST, Oct. 28, 2000, at 65-68.

NASDAQ down 50%) seems to confirm their view; and (4) *Crunch and slow recovery* is the gloomier forecast from those insisting that the U.S. stock market and the dollar are still substantially over-valued, and that a significant U.S. recession is unavoidable. In this situation, the renewed strength of OPEC, rising oil prices, and increased violence in the Mid-East, placed additional strain on the U.S. and global economies.[22]

Global trade has become, at the same time, more fragile (at least for the United States) since the GATT 1994-WTO agreements.[23] Strangely, the booming U.S. economy, its surging stock market, and high dollar allowed a temporary neglect for the normal requirements of current account discipline. Countries exporting heavily into the U.S.—ASEAN, Canada, China, India, Japan, Mexico, and parts of Europe—did not seem to worry about a lack of U.S. trade discipline and dollar devaluation. Why not?

By 2000 the United States was importing US$1,000,000,000,000 annually into its US$10,000,000,000,000 economy. But the United States was exporting only US$600,000,000,000 in goods annually. Heavy net capital inflows are needed to make up the difference, i.e., a trend of chronic and large U.S. trade-current account deficits that got going in 1983-1987, eased some in 1989-1991, and got worse again in recent years. By the end of 2000, the accumulated U.S. trade deficits will be at least US$3,000,000,000,000, while the accumulated U.S. current account deficits will be at least US$2,600,000,000,000.[24] In 1982, the U.S. had a net creditor po-

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22. *Id. See also* ROBERT J. SHILLER, IRRATIONAL EXUBERANCE (2000), for a powerful warning on the dangers of stock market over-valuation and the vulnerability to panics and recession. *See* Ed Crooks, *Oil Price Increase Could Derail Growth Train*, FIN. TIMES SURV., Sept. 22, 2000, at I. The world scene at the close of 2000, with increased violence in the mid-east and elsewhere, problems of terrorism, excessive partisanship, is also disturbing. *See* ANTHONY LAKE, 6 NIGHTMARES: REAL THREATS IN A DANGEROUS WORLD AND HOW AMERICA CAN MEET THEM (2000). In this context, the U.S. election—political crisis of November, 2000—was disturbing, with significantly negative potential impacts.

23. Surging U.S. imports in the later 1990s and 2000 depended upon a strong U.S. dollar, which helped attract heavier inflows of foreign capital. But this also limited U.S. export growth and aggravated the U.S. trade-current account deficits. Even back in early 1998, economists were warning that excessive U.S. external deficits could not last much longer. *See* Gene Koretz, *Is the Trade Gap A Ticking Bomb?*, BUSINESS WEEK, Feb. 23, 1998.

24. Between 1983 and 1997 U.S. trade deficits totaled at least US$2,000,000,000,000, with current account deficits at least US$1,600,000,000,000. *See* Trade Policy, *supra* note 3, at 14-43 tbl. 1.1-1.2. Between 1998 and 2000 U.S. trade and current account deficits surged further with at least another US$1,000,000,000,000 of

sition of nearly US$400,000,000,000; by the end of 2000, U.S. net external debts would be about US$2,100,000,000,000, a net swing of about US$2,500,000,000,000.[25]

The annual external debt service burden for the United States is about US$110,000,000,000 in 2000, or roughly five percent on the U.S. net external debt of US$2,100,000,000,000. And yet, in 2000, the rest of the world still poured in nearly US$400,000,000,000 in net capital flows into the U.S. stock markets and the purchase of U.S. government and private debt instruments (at significantly higher interest rates than the euro area and much higher rates than Japan). Only the U.S. stock market boom and higher interest rates explained this temporary anomaly. Yet by the end of 1999, U.S. stock markets (many believe) had peaked and were falling back somewhat thereafter in 2000.[26]

In this situation, when confidence in the U.S. stock markets and the dollar's value is shaken, the slumping dollar and falling stock market will reinforce each other. Substantial paper wealth in the United States and abroad could be destroyed, at least temporarily. The United States will be forced to cut excess imports

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trade deficits and US$900,000,000,000 of current account deficits. In addition, bilateral and regional trade imbalances "got worse" with China, Europe, Japan, and the NICs. *See* Michael Phillips, *Trade Gap Widened by 15% in September*, WALL ST. J., Nov. 22, 2000, at A2, A13. *Compare id.*, *and* TRADE POLICY, *supra* note 3, at 18-43 tbl. 1.2. In January 2001, the *Economist* estimated the U. S. trade deficit as US$435,000,000,000 and the U.S. current account deficit as US$416,000,000,000(for the year up to November, 2000). *See* ECONOMIST, Jan. 20, 2001, at 107.

25. For a careful collection of relevant estimates on the net debtor (formerly creditor) position of the United States, see TRADE POLICY, *supra* note 3, at 184 n.7. By the end of 1997, we estimated the net U.S. debtor position at somewhere between US$1,250,000,000,000 to US$1,500,000,000,000 (or 15-17% of U.S. GNP). With large U.S. current account deficits of at least US$900,000,000,000 between 1998 and 2000, the net U.S. debtor position should be roughly US$2,000,000,000,000 to US$2,200,000,000,000 at the end of year 2000, or 20-22% of the US$10,000,000,000,000 U.S. GNP at that time. Prospects for continued foreign tolerance of these extremely large U.S. net debt obligations are questionable. *See, e.g.*, Quentin Peel, *Get Ready for a Bumpy Ride*, FIN. TIMES, Nov. 13, 2000, at 17 (noting the international financial market reactions to the U.S. presidential elections crisis of 2000).

26. Peak values in late 1999-early 2000 for the Dow Jones Industrial Average ("DJIA") and NASDAQ Composite were 11,722 and 5048, respectively. Within the last 13 months the Dow Jones and NASDAQ had sagged to lows of 9796 and 2350, respectively. *See generally* WALL ST. J., Nov. 14, 2000, at C1; WALL ST. J. Jan 29, 2001, at C1. By year end 2000 the Dow Jones was 10786 and the NASDAQ 2470. E.S. Browning, *One Day Rallies Aren't Always a Sign of Pep: History Suggests Nasdaq Losses Aren't Over Yet*, WALL ST. J., Jan. 2, 2001, at C1.

from abroad (painful but unavoidable) and/or expand U.S. exports greatly (hard to achieve quickly). When the United States must cut imports heavily by devaluation or import restrictions, this will hurt U.S. trading partners. The WTO will become a bloodier battlefield. How can such repercussions be avoided? Unfortunately, pressures for better U.S. trade and current account "discipline," i.e., "living within our means," cannot be put off much longer.

III. *CONTINGENCY PLANNING FOR THE WTO*

Unfortunately, the WTO as presently constituted, with U.N. General Assembly-type voting (and the EU's fifteen votes), has no capacity for orchestrating an easy transition (over a few years) to eliminate the large U.S. "structural" trade and current account deficits. Agendas proposed by the EU, NICs, and LDCs for the Seattle WTO (Millenium) Round sought further weakening of U.S. safeguard relief and unfair trade practice remedies. Thus, U.S. import discipline would be crippled. Meanwhile, many developing countries want to weaken investment and intellectual property protections. All this makes it harder for the United States to cover its current account deficits with investment or royalty earnings. This kind of rigidity prevents the WTO from undertaking any U.S. relief on a multilateral basis.[27]

Instead, the United States probably will have to cope with its disruptive trade adjustment problems on an ad hoc, bilateral emergency basis.[28] A major U.S. stock slump combined with a

27. The lack of "flex" (not wanting to rapidly increase imports from the U.S. into their markets) among most other countries is simply a logical result of the established world trade-finance "system." They must avoid significant trade-current account deficits or their currencies will decline substantially with devaluation, with disruptive and damaging income, confidence, and banking effects. Only the current world reserve currency nation, the U.S. and its dollar, enjoy for awhile, apparent immunity from these trade-current account disciplines. How much longer?

28. As multilateral trade bargaining stalled out with conflicts and contradiction, a strong trend toward bilateral and regional trade deals is in the works. *See e.g.*, Guy deJonquieres & Gillian Tett, *International Economy: Japan Aims for S. Korea Trade Deal*, FIN. TIMES, Nov. 3, 2000, at 6; Sheila McNulty, *Singapore-NZ Trade Pact Sparks Fears Over WTO Authority*, FIN. TIMES, Nov. 15, 2000, at 10; Calvin Sims, *A Turning Point for Pacific Group*, N.Y. TIMES, Nov. 15, 20000, at A12; Nicol Degli Innocenti et al., *Middle East & Africa: Italy and S. Africa in Trade Plan*, FIN. TIMES, Nov. 3, 2000, at 13; Guy de Jonquieres, *Next WTO Chief: Supachai Urges Japan and EU to Reduce Trade Round Demands*, FIN. TIMES, Nov. 15, 2000, at 18; Takatoshi Ito, *Asian Countries Must Stand Together*, FIN. TIMES, Nov. 16, 2000, at 19; Guy de Jonquieres, *Asian Ambition*, FIN. TIMES, Nov. 28,

substantial dollar devaluation will create great internal stresses—both economic and political—within the U.S. Meanwhile "allied" confidence in the United States would be weakened. This greatly complicates helpful responses by the EU, Japan, LDCs, NICs, and the emerging nations.

The standard remedy of the International Monetary Fund ("IMF") for countries suffering a currency, trade imbalance, and import crisis is to advise them "to live within their means." The normal prescription is to devalue the currency, reduce imports, and increase exports over time.[29] With so many countries heavily dependent on exports to the United States (including ASEAN, Brazil, Canada, China, the EU, Japan, Mexico, South Korea, and others) these "normal" disciplines will be resisted. When the British pound faltered and floundered in the devaluations of 1949 and 1967, the then-predominant U.S. economy enjoyed the strongest reserve currency (the U.S. dollar) in the world. Is the EU's euro now strong enough to provide a comparable reserve currency to take the U.S. dollar's place? Not right away, say many experts, and perhaps not for some additional years. All this means that we face a disruptive threat to global finance and trade, with major domino effect potential. Could a suitable multilateral currency (like the special drawing rights ("S.D.R.")) be expanded quickly enough in a major U.S. stock market/dollar decline crisis? Can a broad global slump be avoided? We may be forced into finding out the hard way.

In retrospect, it would have been wiser for the U.S. and other countries to settle for a modest Uruguay Round outcome.

2000, at 14; Andre Meyer, *Discrimination Disguised as Free Trade*, FIN. TIMES, Nov. 1, 2000, at 19; *see also*, TRADE POLICY, *supra* note 3, at 139-82 (urging the need for more coherent and effective trade policy, with more emphasis on bilateral and regional relationships). For a thoughtful forecast of problems facing the WTO before the recent Battle in Seattle (over the proposed Millennium WTO Round), see Guy de Jonquieres, *System Threatened by Its Own Success*, FIN. TIMES SURV.: WORLD TRADE, Nov. 29, 1999, at I. *See also* Andrew Revkin *Odd Culprits in Collapse of Climate Talks*, N.Y. TIMES, Nov. 28, 2000, D1, 2; James Glassman, *Forget Kyoto*, WALL ST. J., Nov. 28, 2000, at A26.

29. Even though many favor *some* easing of IMF disciplines and selective debt relief for the poorest (and often overloaded with debt) countries, the IMF has only limited capitalization and borrowing capacity. Thus, with the U.S. net foreign debt around US$2,100,000,000,000, no IMF bailout can be orchestrated to prop up the U.S. dollar's value. When confidence in the dollar sags, and other currencies become better values, the dollar will fall substantially in value, along with foreign confidence in U.S. securities and debt instruments. For recent IMF developments see Alan Beattie, *Reform, Yes, But Easy Does It, Says IMF Chief*, FIN. TIMES SURV., Sept. 22, 2000, at 17.

A renewal of GATT 1947, limited tariff reductions by stronger NICs, aspirational agreements to improve intellectual property and investment safeguards, and modest reductions in agricultural subsidies were enough to reassure global markets in the early 1990s and to safeguard MNC interests. (No more was really achievable.) But in striving for "too much"—an unrealistic "progress" toward world federal governance in the WTO, which crippled U.S. trade flexibility—the Uruguay GATT 1994-WTO deal created a fragile structure that could not be sustained. That was really dumb.

GATT 1947, with its primary reliance on national states and normal balance of payments discipline, was a better, more durable framework for essential U.S. and trading partner adjustments.[30] If the United States had retained stronger safeguard and unfair trade practice remedies, well-established under GATT 1947, the U.S. could have reduced imports directly and with less stress upon trade partners. In fact, without GATT 1994 and WTO distortions, the U.S. trade and current account deficits of 1983-2001 probably would have been corrected by the mid-1990s, years earlier, with less disruption and political backlash. Stupidly, the architects of the GATT 1994-WTO fashioned a one-way straight jacket on the U.S. trade-finance flows. Why was this blunder made? I suspect because the United States seemed to be the "sole superpower" in 1992-1993, during the immediate Gulf War aftermath. This was the geo-political predicate for an unbalanced, unsound, and unsustainable trade regime in the GATT 1994-WTO deal. The United States saw itself as all-powerful, and, for awhile, the other nations largely deferred. Wall Street was enthusiastic, too. U.S. investment bankers saw them-

30. When GATT was created in 1947, leading economists had been greatly influenced by the Great Depression, extended troubles and unemployment in the 1930s, and the destruction and strains of World War II, along with major dislocations and inflation in the early post-war recovery. Ample "flex" with extensive safeguard relief, unfair trade practice remedies, quotas to protect farmers, and opportunities for industrial nurturing were taken for granted. When countries suffered balance of payments difficulties ("living beyond their means"), sensible adjustment measures, fiscal discipline, and use of appropriate "flex" was the best way to solve these problems. By contrast, the present WTO, with its badly unbalanced voting, is simply incapable of solving this major world problem of chronic, excessive, and unsustainable U.S. trade-current account deficits. Rather the present GATT 1994-WTO gets in the way of responsible, necessary trade adjustment measures. *See, e.g.*, Bruce Stokes, *The WTO Did Not Deliver*, 31 NAT'L J., Issue 50, Dec. 11, 1999, at I; *see also* Elizabeth Olson, *Europe Rejects Compromising With Europe Over Tax Benefits*, N.Y. TIMES, Nov. 22, 2000 at W1.

selves as big winners in the new post-Cold War economy. They saw themselves as the hub and heroes of global commerce. Ah well, that was then, this is now.

Will the WTO survive? It doesn't deserve to survive in its present, unbalanced, and unsustainable form. Can its voting regime, accumulated asymmetries, and overall rigidity be overhauled? That's doubtful. In any event, bilateral and regional trade bargaining will become increasingly important. In fact, this is already happening. World market forces are likely to bypass, and perhaps overwhelm, the WTO. So be it.

Sic transit gloria mundi.