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CURRENT WORLD TRADE AGENDA: GATT, REGIONALISM, AND UNRESOLVED ASYMMETRY PROBLEMS*

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INTRODUCTION

FIFTY Years after Bretton Woods is a good occasion for reappraisal of the post-World War II Economic Settlement.[1] With Communism's recent collapse, and a movement toward freer markets and greater democracy in many countries, the role of the IMF, World Bank, and GATT requires honest rethinking. Because the world has changed greatly, some adjustments in the global financial-trading regime are needed. A very serious challenge is the unresolved asymmetry problem, which produces strain and insecurities for many trading relationships, and has contributed to recent United States economic sluggishness.

Substantial asymmetries rooted in the GATT, unequal economic development for various countries, different regional arrangements, and divergent industrial policies are now built into the world marketplace.[2] Although done generally and often selectively, many developing coun-

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1. Leading allied economists gathered at Bretton Woods toward the end of World War II. Their dominant concerns were: (i) the Allies' plan for financing reconstruction and development of the post-war countries and (ii) that trade be freer and enlarged in the post-war environment so that broader, stronger economic development would follow. The principle consequences of this gathering were the International Monetary Fund ("IMF"), the International Bank for Reconstruction and Development (later the World Bank), the creation of the International Trade Organization ("ITO"—which failed to achieve sufficient support), and the General Agreement on Tariffs and Trade ("GATT"). For a convenient bibliography, see William A. Lovett, World Trade Rivalry: Trade Equity and Competing Industrial Policies 38-40 (1987) [hereinafter Lovett, World Trade Rivalry].

2. *See* Raymond M. Frost, *Losing Economic Hegemony: U.K. 1850-91 and U.S. 1950-90*, Challenge, July-Aug. 1992, at 30-34; William A. Lovett, *Rethinking U.S. Industrial-Trade Policy in the Post-Cold War Era*, 1 Tul. J. of Int'l & Comp. L. 135, 135-83 (1993) [hereinafter Lovett, *Rethinking U.S. Industrial-Trade Policy*]. *See generally*, John M. Culbertson, International Trade and the Future of the West (1984); John M. Culbertson, The Trade Threat and U.S. Trade Policy (1989); Robert Kuttner, The End of Laissez-Faire: National Purpose and the Global Economy After the Cold War (1991); Clyde V. Prestowitz, Jr., Trading Places: How We Allowed Japan to Take the Lead (1988); Lester Thurow, Head to Head: The Coming Economic Battle Among Japan, Europe, and America (1992). The asymmetry problem also has been analyzed extensively in Lovett, World Trade Rivalry, *supra* note 1, at 8-11, 52-53, 75-96, 105-28.

tries strongly promote industrial expansion with subsidies, tax relief, favorable financing, and differential exchange rates. They widely employ restrictions designed to cushion domestic industries, at least in part, from the impact of foreign competition, support measures, discounting and/or dumping. Many advanced industrial countries use such industrial and trade policies, too, although successive GATT rounds tried to encourage more openness and less subsidation among the more affluent industrial nations. A double standard that favors developing nations is implicit in these arrangements. This inequality was introduced at the outset of GATT to foster a spread of technology, industries, and prosperity around the globe, and it has become hardened into practice under the GATT and United States trade policies.

Within the last fifty years, global industrialization and growth have spread more widely than before.[3] Today, most of the countries in Asia, Latin America, and the Middle East are new industrial countries. Some of these nations (Japan, Korea, Taiwan, Singapore, and even China) strongly challenge older industrial leaders, such as the United States, United Kingdom, France, and Germany. International capital formation, savings, investment and lending flows also have spread more widely.[4] In 1945, the United States was the large source of investment capital; now East Asia, Western Europe, and North America are roughly equal as large accumulations of capital. Even parts of the Middle East and Latin America enjoy substantial financial flows and investment resources. In addition, the IMF and World Bank enjoy much larger capitalization and stronger borrowing capacity, and serve as critical catalysts for allocating and screening investment funding to debtor and developing countries.[5] This more equal spread of industrial prosperity was a major

3. See the last 25 years of the annual World Bank Atlas, the World Bank, Wash., D.C. (1992), which traces the uneven spread of economic development among the various countries. *See also*, Lloyd G. Reynolds, Economic Growth in the Third World, 1850-1980, at 387-418 (1985) (discussing comparative growth performance from 1950-80). *See generally* James Foreman-Peck, A History of the World Economy: International Economic Relations Since 1850 (1983).

4. *See* Lovett, World Trade Rivalry, *supra* note 1, at 21-73; *see also* Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at n.12 (comparing the divergent economic growth rates of key countries, from 1953 to 1989: U.S., $2,310 to $21,000; U.K. $940 to $14,570; Germany, $740 to $20,750; Italy, $430 to $15,150; Japan, $230 to $23,730; Spain, $340 to $9,150; Switzerland, $1,150 to $30, 270; Taiwan $100 to $7,190; and South Korea, $152 to $4,400).

For additional discussion of the development of the global economy, see generally Michael R. Czinkota, et al., International Business (2d ed. 1992); Charles P. Kindleberger, A Financial History of Western Europe (1984); Franklin R. Root, International Trade and Investment (7th ed. 1993) [hereinafter Root 7th ed.]. Note that, according to the World Bank Atlas (1992), the U.S.-Canada GNP was $6,250 billion, Western Europe's GNP was $5,250 billion, and Japan, Korea, Hong Kong, Taiwan and Singapore had a total GNP of $4,000 billion. With subsequent currency realignment, these three blocks had roughly equal GNPs in 1993.

5. See, for example, the most recent annual reports of the IMF and the World Bank, and compare early versions. The IMF's initial capitalization was $8 billion, but in 1992 the IMF's capitalization was scheduled to reach SDR $145 billion (about $210 billion),

achievement, which was the objective of the GATT, IMF, and World Bank. But now it is time for the United States to focus on the asymmetry problem, rejuvenate its industrial growth, and achieve more balanced trade flows.

The world economy is stronger today. Many countries have established self-sustaining industrial growth, and the diffusion of economic prosperity allows broader confidence in the notion that the benefits of industrial-technological progress can really be extended to the remainder of our globe. But serious medium-term challenges remain:[6] (i) the former Soviet Union and East European states, although technologically advanced with reasonably well-educated work forces, need substantial outside investment and trade to foster their transformation into market-oriented economies; (ii) the three leading world economies, the United States, Japan, and Germany, have slowed recently, for somewhat different reasons, and cannot serve as jump-starting locomotives for a rapid resurgence of world growth; (iii) regional blocks are hardening into place, led by the European Community's strong internal momentum, and these blocks make big multilateral trade agreements (with major mutual concessions) more difficult to work out except on a modest, incremental basis of slow adjustments to current *modus vivendi*; (iv) sensible nations realize that they must make the best of their own resources and opportunities, through self-sustaining fiscal responsibility, productive investment policies, current-account discipline, and skillful trade bargaining. The global marketplace can be relied upon for reasonable, balanced trade opportunities, but not as a big bailout window for governments that cannot get their acts together.[7]

A very important lesson from the last fifty years of economic progress is that some national governments have fostered industrial growth, export-trade expansion, and sustained productivity advances much more

with major additional borrowing authority. The World Bank began with only $1.6 billion capital, but enjoyed $175 billion capital in 1993. Meanwhile, private international banks expanded enormously between 1945-1993. At the close of World War II, Britain's few major banks—leaders in international banking since the 19th century—were somewhat weakened, German and Japanese banks were in very bad shape, and other European banks (with a few exceptions in Switzerland and Sweden) were substantially weakened. Only the top ten to twelve U.S. "international" banks came through the War with strengthened resources, and there was no other nation with strong enough capitalization to offer much help for global recovery and development. The post-war financial recoveries of Western Europe required substantial U.S. government resources, distributed mainly through the Marshall Plan and U.S. military assistance. By the early 1990s the leading international banking journals listed 1000 significant banks from 45 countries.

6. The former U.S.S.R. and Eastern European Countries suffered major dislocations and output losses in attempting to transform themselves into market-oriented economies. In contrast, led by many Asian and Latin American nations, developing countries as a whole were showing improvement, broader growth, and better finances.

7. Access to the IMF, World Bank, and international borrowing resources are soon depleted by nations that try to run large, sustained current-account deficits without strong economic growth to justify continued, heavy net foreign investments.

than have others.[8] The winners used internal and world-market competition to encourage healthy efficiency. The laggards suffered from a wide variety of shortcomings like misrule, lack of cohesion, internal disruptions, and waste of budgetary and investment resources. But the world community generally cannot mobilize the detailed diagnoses, widespread consensus, or outside resources to provide more than marginal help to the many troubled and/or failing nations that exist today. The underachieving nations must reorganize themselves and provide renewed self-discipline. And yet, the last fifty years show that relatively open world markets for capital, exports, and imports provide major opportunities for productive trade and shared prosperity. The world marketplace is not a bailout system, but it provides today a stronger network within which nations can help themselves, so long as they work hard and cohesively.

I. WORLD TRADE LAW FRAMEWORK AND ASYMMETRY PROBLEMS

A. *Conflicts Among Mature Industrial Countries, New Industrial Countries, and Less Developed Countries*

Ideally, the world economy should increase gradually the real per capita incomes and well-being of all countries together. The differential rates of increase of mature industrial countries, new industrial countries ("NICs"), and less developed countries ("LDCs") should move toward convergence, with poorer countries gaining more rapidly, so that at some utopian stage later in the 21st century all of humankind lives well and happily.[9] This scenario implies sensible solutions to the global environmental and population-growth problems.

The heart of international trade-growth conflicts is each nation's desire to gain respectibility or, at least, not to lose it. International trade bargaining and national policies (macro-economics, industrial development, and trade) are the instruments through which nations try to achieve these growth objectives. Success in achieving these objectives requires a mix of friendly collaboration and rivalry. Most countries struggle to expand production, strengthen exports, import wisely, and gain higher levels of output, well-paid employment and family incomes. But in their eagerness to foster and subsidize industrial growth, exports, and technology, it seems unavoidable that surges of output often will displace or

8. Among the strongest sustained growth economies of the post-World War II era have been Japan, Germany, Switzerland, Taiwan, Singapore, and South Korea. More recently, the P.R.C. has done well in the last decade, and Spain has prospered more than most countries (from a lower base) in Western Europe since the 1970s. *See* Lovett, World Trade Rivalry, *supra* note 1, tbl. P-2.

9. Most humane leaders now understand that economic development should be shared more equally over the long-run, and that real growth must be the calculated net of environmental degradation. Increasingly, the danger of excessive population growth and overcrowding is becoming a real and substantial concern for the future. *See generally* Miguel Santos, Managing Planet Earth: Perspectives on Population, Ecology, and the Law (1990); Klaus F. Zimmerman, Economic Theory of Optimal Population (W. Guth et al. eds., 1989).

threaten the production and livelihoods of others. Understandably, national governments must work out efforts to safeguard, offset, and alleviate these problems.[10]

Meanwhile, multinational corporations ("MNCs") operate independently in this maelstrom, pursuing their own agendas of growth, profits, and rivalry. Although national governments should try to supervise and regulate MNCs (particularly when MNCs form a substantial part of domestic commerce), competition among host states often induces countries to offer special tax relief and encouragements to MNCs. In fact, MNCs have become the most important beneficiaries of the accumulated GATT agreements and very powerful advocates who protect their interests within the international trading regime.[11]

B. *GATT and the United States International Trade Law Regime*

Successive GATT rounds tried to regulate, within limits, and reduce protectionist rivalries among trading nations. But built into the original GATT (1947) provisions were substantial concessions to developing nations: especially GATT Articles II, VI, XII, XVI, XVIII, and XIX, together with IMF, Articles of Agreement VI and XIV (1945). The United States and United Kingdon were key players in early GATT rounds, and their collective sense of responsibility for newly liberated colonies and Latin American nations led them to concede non-reciprocal leeway for more subsidies, protectionism, and multiple exchange rates to less developed countries.[12]

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10. A major function of the GATT (1947) as a framework to encourage collaborative economic progress, and to avoid beggar-thy-neighbor policies, is to allow countries enough leeway to ease disruptive displacements. Thus, Articles VI (anti-dumping and subsidy offsets), Article XII (balance of payments relief), Article XVI (subsidy relief), Article XVIII (aid for economic development), Article XIX (safeguard and emergency relief), and Article XXI (national security) provide substantial scope for each country to protect their vital interests from undue disruption as a result of expanding world trade. To be sure, Part IV (1965) added special concern for the needs of developing countries to use subsidies and restrictive measures in enhancing their export growth, and for developed countries to accommodate these needs. But the GATT was never intended to force countries, not even the U.S., to sacrifice their own long-term economic health, full employment, continued growth, and prosperity. Strictly speaking, the U.S. could have used these GATT provisions more effectively to limit U.S. job losses, industrial decline, and excessive current-account and trade deficits since the late 1970s to early 1980s.

11. Understandably, from MNC perspectives, they would like a world investment environment in which their new plant, expansion, marketing, employment, layoff, and relocation decisions are completely untrammeled. Thus, they can focus entirely upon minimizing costs, expanding sales, and enlarging profits. Thus, MNCs desire favorable interpretations of the GATT, a so-called "liberal" global economy, and most of the proposed Dunkel draft Uruguay GATT Round deal. This circumstance minimizes their risk of any serious assertion of national policies to offset dumping, subsidies, trade imbalances, or to achieve or maintain full employment that could interfere with their interests.

12. The basic theme of unconditional most-favored-nation treatment under Article II strongly favors the interests of weaker and smaller trading nations, i.e., most NICs and LDCs. In addition, the remedies for dumping or subsidies under Article VI would rarely come into play against smaller countries or exporters, because sufficient "material injury"

Nonetheless, GATT (at least until 1994) and United States national trade law still allowed considerable leeway for sensible United States adjustments and offsets to foreign subsidies, restrictions, and discounting. The problem, according to many United States domestic manufacturing, labor, and agricultural interests, is that recent United States presidential administrations (at least for the last ten to fifteen years) have failed to respond effectively to the increasing competitive challenge of successful foreign industrial policies, subsidies, and widespread discounting. Thus, the preferential "edge" for LDCs and NICs that was built into the original GATT (1947), GATT-Part IV (1965), and various GATT (1979) Codes, such as the Subsidies Code, has not been adequately offset by United States presidential administrations and trade authorities. Had the United States used its own GATT and national-law-trade remedies more skillfully and resolutely, most of the asymmetry problem could have been obviated. The United States could have sharply limited excessive imports, trade, and current-account deficits. If it had, the United States would have suffered much less industrial and job diplacement. The United States also could have implemented a comprehensive industrial-rejuvenation policy in the early 1980s, which would have rejuvenated a substantial part of the United States industrial base.[13]

would be unlikely. Balance of payments problems (deficits) were anticipated mainly from the weaker nations and those most disrupted from World War II, so that Article XII - XIV balance of payments relief provisions were designed originally for them. Few would have contemplated U.S. employment of Article XII measures, and they were intended more for smaller countries, whose restrictions would not restrict trade seriously among larger nations. Article XVI on subsidies (and the Subsidies Code of 1979) was designed more to limit subsidies by larger nations like the U.S. that could seriously disrupt trade; Article XVI did not seriously limit smaller and developing country subsidies. In fact, Article XVIII explicitly endorsed government assistance for economic development in very broad terms, especially for developing nations. Article XIX's safeguard and emergency relief gave more latitude for smaller and developing nations, because "serious injury" was required, and retaliation would be allowed against larger countries. And GATT Part IV (Articles XXXVI-XXXVIII) (1965) was designed to provide even more encouragement and special treatment for developing nations in their use of subsidies and restrictions.

13. If the U.S. had promptly implemented a tougher trade policy along with a strong industrial rejuvenation strategy in the years 1983-88, and continued these efforts thereafter, many desirable economic effects could have been achieved: (1) most of the accumulated U.S. $1 trillion current-account deficit could have been eliminated; (2) many U.S. manufacturing industries would be stronger today; (3) substantial numbers of U.S. jobs would have been saved—perhaps three to five million; (4) U.S. GDP would be around ten to fifteen percent larger today; and (5) U.S. budget deficits could have been reduced by $500-800 billion cumulatively (with at least $800-1,200 billion less U.S. government debt outstanding). If the agenda outlined herein, or that suggested by Lovett, Kuttner, or Prestowitz had been implemented, such results could have been achieved. *See generally* Kuttner, *supra* note 2; Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2; Prestowitz, *supra* note 2. This would have required either a substantial political change in the Reagan administration of 1983-188 with tougher trade-industrial policy outlook (which would have been popular among many congressional Democrats), or, less likely, a Mondale victory in 1984. Prompt budgetary discipline would have been desirable, too, with $100 billion or more of deficit reduction annually in 1983-85. But this overall U.S. under-achievement was the national economic price paid by the U.S. because of a failure

Why did the United States fail to respond more effectively with stronger industrial and trade policies in the last ten to fifteen years? Three main factors have been at work.[14] First, American presidents, foreign policy lobbies, and allied governments felt a need for the United States to continue "leadership" of the free world democracies. They feared that, without continued United States leadership toward open trade in world markets, a rising tide of "protectionism" would soon overwhelm the global marketplace. The United States feared that a weakened free-world alliance would create greatly increased opportunities for communists and other enemies of the free world. Thus, international security needs put a premium on continued United States free-trade leadership, even at the risk of losing "a few industries here and there," and a reduced United States rate of economic growth. Second, MNC lobbies (from United States, European, and Japanese companies) worked strongly and systematically to protect their interests in an open world trading system. MNCs feared risk to their investments, growth plans, relocation activities, and profitability if the United States were to assert or strongly defend its national trade (industrial or labor) interests in any substantial way. This outlook encompassed the major United States and other multinational banks, which feared threats to repayment of loans or other investments in the global marketplace. And high level staffing of United States trade policy was strongly influenced by prominent MNCs,

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to promptly put its economic house in order, and to eliminate the twin U.S. excessive deficits of the 1980s-90s (including excessive budget deficits and the trade current-account deficits).

An interesting question for historians will be whether the nomination of Mario Cuomo in lieu of Michael Dukakis as Democratic candidate in 1988, when then-Vice President George Bush was not considered a strong Republican successor to President Ronald Reagan, could have resulted in a Cuomo victory, and substantially different domestic and international economic policies from 1989 and beyond. Politically, many believe that Cuomo missed his best chance for the Presidency in 1988. For Cuomo's likely economic policies see The Cuomo Commission on Competitiveness, America's Agenda: Rebuilding Economic Strength: The Critical Issues of 1993 and Beyond and What To Do About Them (Lee Smith ed., 1992).

14. The case for a stronger U.S. trade-industrial policy has been stated forcefully by many authors, with an increasing accumulation of voices and experts. *See, e.g.*, Lovett, World Trade Rivalry, *supra* note 1, at 8-12, 77-89, 109-25 (citing various sources); Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at nn.2, 18, 28, 44, 52, 62 (same). But the main reasons for continued faith in a relatively unilateral version of U.S. free-trade policy were (1) special interest lobbying of MNCs, (2) the U.S. foreign policy establishment (exemplified by most writers in Foreign Affairs 1983-93) or the Institute for International Economics (1983-93), and (3) a common and recurrent theme of U.S. thinking that the world should become more like the U.S.: a great federal democracy with free trade, capital flows, and movement within its borders.

Contrast this recent U.S. elite-establishment thinking with the more cautious outlooks on trade of the Truman and Eisenhower administrations in the earlier Post World War II years. *See* Lovett, *Rethinking U.S. Trade Policy*, *supra* note 2, at nn.13-15 and accompanying text. It's interesting that the populist revolt against NAFTA in 1992-93 really represented widespread public unease about U.S. job stagnation, favoring MNC interests over those of U.S. workers, and an erosion of confidence in non-reciprocal U.S. free trade policies as practiced in the last 10-15 years.

and a network of alumni, experts, and senior professors at top universities and foundations in the United States and abroad. By contrast, domestic United States industries, labor, or agricultural interests that resisted "free trade" were typically dismissed as narrow, special pleaders, and not deserving by the free-trade and MNC outlooks. Third, especially from the later 1950s onward, the United States leadership establishment developed an ideological affinity for free trade and hands-off, untrammeled world-market competition. To be sure, these American attitudes were fairly recent, and tariff protectionism had been a strong theme of earlier United States foreign economic policies, from Alexander Hamilton through the Whigs and the Republican ascendancy (1860-1932). The Roosevelt-Truman administrations (1933-52) edged only slowly and cautiously into freer trade. But during the Eisenhower administration Republicans shifted fundamentally toward freer trade, using the slogan of "trade not aid" as a cheaper way to strengthen a free world, anti-Communist alliance. In addition, Americans naturally tended to favor a framework of open market rules, like the United States internal marketplace that resisted detailed supervision or collaboration with governments (such as the Japanese, Korean, Swedish, or French-style "collaborative" industrial policies).

Thus, post World War II American ideology, MNCs, and foreign policy establishments perpetuated faith in a strongly free-trade-oriented United States interpretation of GATT rights and remedies, along with United States international trade laws. These outlooks became institutionalized in the Office of the United States Trade Representative—part of the elite White House staff directly linked to the President, which dominated United States trade bargaining with other countries.[15]

C. *Growing Importance of Regionalism and the European Community*

Tensions between multilateral freer trade and regional economic blocks emerged early in the post-World War II era. But European unity was so desirable in the Cold War, as a military-political offset to the Union of Soviet Socialist Republics and its COMECON block of East European satellites, that Western regional arrangements were encouraged by the United States and soon implemented by the Europeans. The European Economic Community, created by the Treaty of Rome (1958), followed broader but more limited arrangements, the OEEC for economic recovery and cooperation (later the OECD), and the NATO

15. The U.S. Trade Representative's staff and alumni became the dominant source of U.S. trade negotiating leadership, with an increasingly protective outlook of pro-GATT, and rather anti-U.S. industrial policy outlooks. The U.S. Trade Representative's staff developed strong biases in favor of MNCs, in spite of an increasing accumulation of criticism from outside commentators. *See generally* Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2 (citing various sources that critique this approach to trade policy). Views of the Economic Policy Institute, the Economic Strategy Institute, U.S. Business and Industrial Council, and the AFL-CIO were never seriously considered by the U.S. Trade Representative.

military alliance, which included the United States and Canada. Later the OECD grew to include Australia, New Zealand, and Japan. But the European Economic Community, later the European Community ("EC"), became increasingly important and successful, going well beyond a free-trade area. The EC enlarged and transformed itself into a quasi-federation of twelve nations with a strong bureaucracy, the European Commission, extensive regulation, substantial tax revenues, and subsidy programs.[16] Its great economic success, overall prosperity, and substantial political stability made the EC attractive to additional members, as most of the outer seven (EFTA block), Turkey, and more recently, Eastern Europe and parts of the former USSR expressed interest in joining the EC. And the EC made special trade arrangements and concessions with many of these "candidates" for future admission, along with Moslem states in the Mediterranean area, and many former European colonies (Lomé Convention states) in Africa, the Americas, and parts of Asia. Despite the bickering in the ratification process, the Maastricht-Europe 1992 arrangements for close economic integration and mutual harmonization of laws and regulation have deepened the EC's cohesion.[17] In economic scale, political clout, and overall momentum the EC is the strongest and most powerful economic block in the world today.

The EC has become a tough trade bargainer, insisting, for example, upon only modest concessions in weakening its Common Agricultural Policy farm subsidy and export-promotion programs. The EC implements faster track anti-dumping and VRAs, and it has not allowed significant trade deficits to develop with East Asia or other parts of the world (in contrast to United States laxity on trade deficits). This approach is to their credit, of course, and reflects good sense.[18] The EC's federal character (led by French and German collaboration on many issues) has given them solid coherence and reasonably predictable policies.

16. For recent EC developments see Charles R. Bean, Economic and Monetary Union in Europe, 6 Jrl. of Econ. Perspectives 31-52 (1992); Richard Owen & Michael Dynes, The Times Guide to 1992: Britain in a Europe Without Frontiers: A Comprehensive Handbook (1989).

17. Among Europeans there also is a conflict between those seeking to widen Europe with broader, if looser membership and those preferring to deepen Europe with less widening, or at least a slower, more cautious expansion.

18. For recent summaries of the EC position with respect to agricultural subsidies, see *Agriculture-Collapse of Uruguay Round Talks Shows Unity of U.S. Farm-Business Interests*, Int'l Trade Rep. (BNA), Jan. 9, 1991, at 49; *GATT: U.S., EC Again Fail to Settle Farm Dispute But Pledge GATT Accord by End of this Year*, Int'l Trade Rpt. (BNA), Sept. 29, 1993, at 1604; Steven A. Holmes, *Despite Farm Pact France Still Talks Tough on Trade*, N.Y. Times, June 16, 1993, at D2; Julie Wolf, *EC Ministers Favor Further U.S. Talks on Farm Accord*, Wall St. J., Sept. 21, 1993, at A19; Keith Bradsher, *Farm Subsidies Still Threaten GATT Talks*, N.Y. Times, Sept. 27, 1993, at D1. The EC position on dumping prefers informal, prompt settlement and relief through price undertakings, findings of no injury are rare, and the investigations and procedures are more informal and rapid. *See* John H. Jackson & William J. Davey, International Economic Relations 718-19 (2d ed. 1986).

Many observers now predict, however, that the EC will become somewhat less open to outside economic and corporate interests, as its voting majority of states has to concern itself with maintaining reasonably full employment, expensive social welfare obligations, and internal cohesion.

Although much of Eastern Europe and portions of the Commonwealth of Independent States ("CIS") expressed eagerness to affiliate with or join the EC, a majority of current EC members wants to go slowly on admitting new members. This reflects an EC preoccupation with digesting and implementing the Maastricht 1992 reform agenda and to avoid destabilizing an already uneasy EC membership with further and divisive controversies over which new members should be admitted, and in what order. The EC seems to prefer generous access for trade-linked affiliates, rather than significant new membership.[19]

Meanwhile, Mexico and the rest of Latin America greatly transformed their attitudes during the later 1980s and early 1990s.[20] Observing the surge of industrial growth and per capita incomes in East Asia, and the economic failures of Communist regimes in Russia, Eastern Europe, Cuba, and Nicaragua, Latin Americans saw that market-oriented, export-led economic development strategies outperformed the inward-looking, statist, and import-substitution models that had been fashionable in Latin America for a generation. The Reagan-Bush administration, eager to capitalize on freer market, conservative allies, welcomed this new mentality. Bilateral investment treaties followed with many states, and the Caribbean Basin Initiative was expanded into the Enterprise for the Americas program. And, most recently, President Bush and President Salinas of Mexico built upon the United States-Canada Free Trade Agreement (1986-88), and they negotiated with Prime Minister Mulroney of Canada the North American Free Trade Agreement (1989-92). President Clinton accepted NAFTA in principle during the 1992 election campaign, subject only to the need for side agreements on environmental protection, worker rights, and import surges. Although the content and adequacy of these side agreements remained controversial in the fall of 1993, the basic goal of improved and expanded—though balanced—trade with Mexico and Latin America was not in much dispute. The problem was how to achieve, if at all, reasonable balance and supervision of these trade and investment flows.

19. With all the recent anxieties over the Maastricht ratification process, which consumed 18 months of serious uncertainties and political bickering (Spring 1992 through Fall 1993), together with anguished and demoralizing debates over the break up of Yugoslavia and Bosnia, Europe retreated from its brief euphoria over rapid EC expansion.

20. *See generally* Robert Bottome et al., In the Shadow of the Debt: Emerging Issues in Latin America (1992) (analyzing Latin American debt in the late 1980s and early 1990s); Robert Devlin, Debt and Crisis in Latin America: The Supply Side of the Story (1989) (analyzing Latin American debt in the late 1980s); The Latin American Development Debate: Neostructuralism, Neomonetarism, and Adjustment Processes (Patricio Meller ed., 1991) (discussing Latin American debt in the late 1980s and early 1990s); Miguel Urrutia, Long-Term Trends in Latin American Economic Development, Inter-American Development Bank (Miguel Urrutia ed., 1991).

Other regional cooperation and integration agreements were becoming more important, with an upsurge of efforts in the late 1980s to early 1990s.[21] ASEAN, founded in 1975, has been fairly successful for Southeast Asian nations. MERCOSUR (1991) in South America looks promising, and more so than the earlier Andean Common Market (1969), Central American Common Market (1961), or Latin American Free Trade Area (1960). In Africa, the East African Economic Community (1967) was an earlier effort, but more recently, the Economic Community of West African States (1975), the Southern Development Coordination Conference (1980), and the Arab Maghreb Union (1988), have been gaining some momentum. In the Caribbean the CARICOM (Caribbean Common Market) was established in 1973, and reinforced by Reagan's Caribbean Basin Initiative. Most recently, fifteen nations formed the Asia Pacific Economic Cooperation, including the United States, Japan, China, Canada, Indonesia, Singapore, South Korea, Taiwan, Thailand, Malaysia, Philippines, Australia, and New Zealand.

Finally, with the break-up of COMECON and the USSR in 1989-91, the CIS replaced most of the Soviet Union. Major economic linkages and interdependence remained in the CIS, and this grouping could become a quasi-federation comparable in some respects to the EC.[22]

Still other international groupings of nations have been important for common-trade policies in the world market. The Organization of Petroleum Exporting Countries ("OPEC") became the outstanding example of a commodity cartel, creating artificial scarcity and higher prices for its members and other sizeable oil exporters, especially between 1973-85.[23] More recently, the Cairns Group of agricultural exporting nations developed considerable clout, with joint bargaining, during later stages of the Uruguay GATT round negotiations, particularly between 1987-93.[24]

In any event, the growing trend to regionalism, along with commodity and sector arrangements across international lines, clearly makes it harder to get multilateral agreements widely accepted. This reality is not at all bad, however; it just means that changing "the rules for world trade"—such as there are rules—is just rather more difficult. Properly understood, this means that most nations still retain considerable leeway

21. *See* Franklin R. Root, International Trade and Investment, 562-75 (6th ed. 1990) [hereinafter Root 6th ed.]; Root 7th ed., *supra* note 4, at 535; James Brooke, *Latin America's Regional Trade Boon*, N.Y. Times, Feb. 15, 1991, at D1; *Secretary General Says OAU Is Going Broke*, J. of Com., Nov. 18, 1992, at 4A; Paula L. Green, *High Tech Investors Are Drawn to Tunisia*, J. of Com., Feb. 20, 1992, at 1A.

22. *See* Roger Cohen, *Yeltsin Opposes Expansion of NATO in Eastern Europe*, N.Y. Times, Oct. 2, 1993, at 4; Steven Greenhouse, *Russia Will Formally Seek Full Status in Trade Group*, N.Y. Times, June 9, 1993, at D4.

23. Since 1931 at least 50 commodity cartels have been established, governing some 15 commodities, but only the oil, tin, cocoa, coffee, rubber, and sugar agreements were somewhat successful, at least over a number of years. *See* Root 6th ed., *supra* note 21, at 541-59.

24. *See* Root 7th ed., *supra* note 4, at 207-09; Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at 171-72.

to employ serious industrial development policies, rejuvenation efforts, and offsets to other countries' policies.[25]

II. Critical Importance of Overall Trade Balances

A. *Current-Accounts and Balance-of-Payments Discipline*

For most nations, two high-priority economic goals are a healthy current-account and reasonable balance-of-payments discipline.[26] When countries try to import significantly more than they export in goods and services on a sustained basis, they weaken their creditworthiness; their debt load increases; and the terms, conditions, and availability of further borrowing become more onerous. Soon, their currencies depreciate. Devaluation may make it harder to import excessively, as imports become more expensive in stronger currencies. Exports could improve as they become cheaper to foreigners, if the exported goods and services are of good quality and competitive. But foreign exchange earnings increase only if the net volume of exports grows enough to more than compensate for a depreciated currency's decline in value. Another complication is that foreign debt-service obligations must be satisfied in hard currencies, so that devaluation increases the domestic currency burden of meeting foreign obligations. Thus, debt overload countries often find that devaluations alone do not help much in the short-run.[27] Instead, countries suf-

25. This certainly applies to the GATT (1947), and as further developed in the first seven GATT Rounds (1947-79), which is the still governing arrangement for world trade. *See supra* text accompanying notes 11-13. But with the Uruguay GATT Round agreement, the asymmetry problem is aggravated seriously for the U.S., and we lose a lot of this "safeguarding" leeway while other nations largely retain theirs. *See supra* notes 94-110 and accompanying text.

26. See the following standard texts on international economics: Richard E. Caves & Ronald W. Jones, World Trade and Payments, An Introduction 277-485 (3rd ed. 1981); Paul R. Krugman & Maurice Obstfeld, International Economics, Theory and Policy 285-592 (2d ed. 1991); Root 7th ed., *supra* note 4, at 462-508; John Williamson, The Open Economy and the World Economy: A Textbook in International Economics 206-48 (1983).

However, competitiveness problems in a nation can certainly lead to recurrent strains or balance-of-payments difficulties, and often successive devaluations (e.g., the extended post-World War II economic difficulties of the U.K.). Many believe the U.S. has developed these sicknesses in the last 10-15 years, aggravated by weak industrial-trade policies and serious asymmetry problems. *See* Robert A. Blecker, Beyond the Twin Deficits: A Trade Strategy for the 1990s (1992); Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at nn.53-59 and accompanying text.

27. For special insights on the sufferings of debt-overload countries in the 1990s, see Lovett, World Trade Rivalry, *supra* note 1, at 137-65; Carlos Marichal, A Century of Debt Crises in Latin America: From Independence to the Great Depression, 1820-1930 (1989); *Third World Debt: The Disaster that Didn't Happen*, The Economist, Sept. 12, 1992, at 21. *See generally* Sue Branford & Bernardo Kuclinski, The Debt Squads: The U.S., the Banks, and Latin America (1988); Benjamin J. Cohen, In Whose Interest? International Banking and American Foreign Policy (1986); Darrell Delamaide, Debt Shock: The Full Story of the World Debt Crisis (1984); Peter Korner et al., The IMF and the Debt Crisis: A Guide to the Third World's Dilemma (Paul Knight trans. 1986); Carlos G. Langoni, The Development Crisis: Blueprint for Change (1987); Philip A. Wellons, Passing the Buck: Banks, Governments, and Third World Debt (1987).

fering with chronic balance-of-payments and debt-overload problems usually need more comprehensive economic and fiscal reforms—cutting back on excess budget deficits, reducing government programs, increasing taxes, limiting inflation, losing jobs, reducing imports, expanding exports, and improving their overall international competitiveness. All this requires painful "belt tightening," lowered incomes for many people, and serious political strains which do not make the reform process any easier.[28]

For all these reasons, successful countries in the post-World War II era, such as Switzerland, West Germany, and Japan, place great emphasis upon a healthy balance-of-payments and current-account discipline. They avoid trade deficits, insofar as possible, and try to achieve some degree of current-account surplus over the years. Thus, solid trade surpluses or at least balanced trade are an important sign of national economic health, sound macro-economic management, and competitiveness. World markets come to view nations that combine balanced trade or trade surpluses with strong economic growth, increasing investment and productivity, as solid performers in the world economy, deserving of respect and worthy prospects for foreign investment.[29]

By contrast, nations that endure chronic or recurrent balance-of-payments difficulties, stagnation, or weak growth, are normally considered poor performers.[30] Typically, they suffer a lack of fiscal responsibility,

28. In the recent era between 1945 to 1971, under the Bretton Woods fixed dollar-gold exchange standard, before floating exchange rates became widely established in 1973, pressures for devaluation would build up after successive balance-of-payments deficits, and a more sudden "crisis" type devaluation would occur. This devaluation usually followed months of increasingly rigid denials by government officials that any devaluation was contemplated. For the pre-war gold standard era, the corrective mechanism for balance-of-payments deficits involved substantial specie outflows, reduced bank lending, tight credit conditions, and economic slump or depression. This action would cut imports, might reduce wages, and cause economic disruption, unemployment and distress. And devaluation of the local currency might be needed eventually, too, in terms of its value in gold.

29. Since the late 1970s, this author has maintained a running series of national macro-economic performance data on the leading industrial countries of the OECD, and the more successful NICs and LDCs (with higher economic growth). This research led to a comparative study of anti-inflation and stabilization policies. Broader research followed into comparative industrial-trade policies, including a extended 1983 sabbatical in Japan, together with various lectures, research, and teaching visits to Britain, France, Germany, Italy, Sweden, Denmark, Norway, Finland, Ireland, Greece, South Korea, Taiwan, Hong Kong, Thailand, Philippines, Mainland China (People's Republic of China), and Canada. In the course of that research William A. Lovett, World Trade Rivalry: Trade Equity and Competing Industrial Policies (1987) was published. In recent years this research has been extended with other articles, discussions, and studies including a standard text, William A. Lovett, Banking & Financial Institutions Law: In a Nutshell (1992). The criteria listed for successful national economic performance are consensus standards used by most international economists and bankers throughout the world today, especially in light of the 1970s inflation for many countries, and widespread debt overload problems in the last fifteen years.

30. Such nations normally have been on the IMF's "sick list" for years, and are subject to serious IMF "discipline" or conditionality for access to additional IMF-Paris Club

excess budget deficits, internal inflation, and competitiveness problems. In a rather stern way, national improvidence or underachievement is punished economically, whereas successful nations, which achieve sound teamwork, economic growth, and healthy current-account discipline or surpluses tend to be rewarded economically with increased prosperity, growing investment resources, and rising per capita incomes.

From this perspective, it is interesting to review United States economic history. From 1789 to 1819, the early American republic had mixed fortunes in the trade area, despite the federal government's balanced budgets and the country's established credit-worthiness. The long British-French conflict and wars between 1792-1815 brought uneven trading opportunities for the Americans, with serious, intermittent disruptions. United States trade deficits followed briefly between 1815-19 and during the big foreign-investment boom of 1831-37. But otherwise, despite substantial capital imports, an overall United States favorable trade balance prevailed from the 1820s until the Civil War, reflecting a strong period of sustained United States economic growth and expansion. Although some trade deficits occurred briefly again in 1861, 1864, 1867, 1869, and 1872-73, the United States generally enjoyed respectable trade surpluses from the 1870s all the way into the 1930s, another overall period of sustained United States growth and economic expansion. Trade deficits came briefly again in the depression years, 1933-40. But United States trade surpluses resumed between 1941-67, through World War II and the postwar economic boom. Although reasonable trade balance followed between 1968-75, United States trade deficits gradually began to accumulate between 1976-82 and became very large during the last decade 1983-93. United States trade deficits totaled −$1,300 billion since the early 1980s, with −$1,000 billion of current-account deficits accumulated between 1983-93. Meanwhile, the United States lost its large net-creditor position in 1982, which it had enjoyed since before World War I, and soon became the world's largest debtor nation, with −$750 billion in net external debt according to reasonable estimates by

credits to reschedule their external debts. Why has the U.S., however, been allowed "special grace" during the last ten years, when serious fiscal deficits and external deficit problems became more evident? The basic explanation is an aspect of the world's trade asymmetry problem: for the U.S., its many allies, friends, and even adversaries there has been a lagged appreciation of U.S. economic slowdown, relative recent stagnation, and transformation from leading creditor to largest debtor nation. This lack in perception has occurred because the U.S. emerged from World War II as the dominant free world industrial, economic, and financial power. The U.S. played a successful role as leader of the free world, and in developing the IMF, World Bank, and successive GATT Rounds. Furthermore, the collapse of Communism between 1989-1991 accentuated respect for U.S. achievement. It helped to mask widespread understanding of the real and dangerous consequences for the U.S. of aggravated lack of fiscal indiscipline, and chronic trade and current account deficits ($3,000 billion in budget deficits; $1,300 billion and almost $1,000 billion, respectively, between 1981-93). Prospects for the mid to late 1990s are not good with continued U.S. neglect of the twin deficits problem (i.e., budget and trading deficits).

1993.[31] This recent performance is troubling for the United States economy to any sensible observer.

Meanwhile, it is helpful to compare United States commercial and tariff policies with this overall record of United States trade and balance-of-payments, which mostly involved trade balance or surpluses until recent years.[32] From the beginning of Alexander Hamilton's sound financial policies in 1789, and through most of subsequent United States economic history, we imposed substantial tariffs on imports. It was not until the post-World War II era that the United States began to lower its tariffs substantially, especially after the late 1960s. During the first twenty-five to thirty years after the war, the United States enjoyed special advantages in competitiveness and productivity over most of its economic rivals. Trade surpluses occurred through 1967, and reasonably balanced trade continued into the mid-1970s. But from the late 1970s, and even more since the early 1980s, United States external trade performance (imports and exports) was squeezed between two forces: (i) increasing and asymmetrical United States trade openness with minimal response to foreign industrial policies, subsidies, restrictions, or discounting, and (ii) increasingly powerful industrial challenges from Japan and many NICs (Taiwan, Korea, and others). Many of these rivals used aggressive industrial development policies, including export subsidy meas-

31. A "rough" estimate of the shifting capital position for the U.S. can be suggested from accumulated current-account deficits. Thus, because the net creditor position of the U.S. was estimated in 1980 to be around +$140 billion and the accumulated current-account deficits between 1981-93 totaled at least −$1,000 billion as of end 1993, the U.S. stands roughly −$850 billion in debt as of end 1993. Heavy net inflows of capital were needed to offset heavy current account deficits. Between the years 1981-88, the U.S. net position went from +$141 billion to −$532 billion—a swing of −$671 billion in a period with −$798 billion current account deficits. If the same valuation estimates were extended (based on largely historical costs), the net U.S. debtor position would have reached at least −$800 billion by the end of 1993. Since June 1990, however, a different valuation procedure, based more upon contrasting stock market indexes, has been utilized by the Survey of Current Business. This new procedure yields a creditor position for the U.S. of +$374 billion in 1981 versus −$521 billion in 1992. Either way, the U.S. net international investment position has suffered a major deterioration between 1981-192, anywhere from −$900 billion to −$950 billion, depending upon the valuation procedure.

32. For general histories on tariffs, see Harold Underwood Faulkner, American Economic History 224-39 (Rev. ed. 1931). *See generally* F. W. Taussig, The Tariff History of the U.S. (8th ed. 1931).

We can summarize customs charged as a percentage of all free and dutiable imports as follows: 1791-1815, averaging roughly 10 percent; 1816-20, 20-25 percent; 1820-32, roughly 40 percent; 1833-43, 17-20 percent, 1844-56, 20-25 percent; 1857-61, 15-17 percent; 1862-72, 35-40 percent; 1873-90, 30 percent; 1891-98, 20 percent; 1899-04, 27 percent; 1905-12, 20-23 percent; 1913-20, 17 down to six percent; 1921-30, 13-14 percent; 1931-39, 15-17 percent; 1940-45, 10-12 percent; and 1947-70, only six to seven percent. Thus, except for the brief Wilson era (especially 1916-20), and the post World War II era, the U.S. generally charged tariff duties on imports averaging 10 percent, and often substantially more in the more protective periods. With respect to the tariffs charged on dutiable imports, i.e., non-free items, the percentages imposed were considerably higher, and more seriously protective.

ures, significant formal and informal import restrictions, and widespread discounting into United States markets.[33] In retrospect, we should not be surprised in the resultant large increases in United States imports and serious difficulties in expanding United States exports. And, most unfortunately, during the early 1980s the United States began to run very large peacetime budget deficits, financed by heavy domestic and foreign borrowing. Interest rates were kept up in the United States, which inhibited productive investments in United States industries. This scenario helped to allow foreign industries to grow faster than United States manufacturing. With weakened international competitiveness, United States companies lost further ground in production, and new plant and equipment investment. The United States neglected its underlying production-technology base, in contrast to the actions of a growing list of expanding industrial rivals (Japan, Taiwan, Korea, Brazil, and other NICs). Further, the EC as a whole did a better job of maintaining their industries and avoiding excessive trade and current-account deficits.

B. *Flawed United States Trade Bargaining and Weak Industrial Policies in the Last 15-20 Years*

With hindsight's wisdom we can see that the United States made a sustained blunder of relying too long upon a largely unilateral free-trade model, with asymmetrical openness and weak or minimal offsets to foreign industrial policies, subsidies, and discounting.[34] The United States did not need to accept large, chronic trade deficits. Certainly, Japan, Germany, Switzerland, and other strong manufacturing exporters were determined not to develop serious trade deficits, and they carefully maintained their overall competitiveness. The United States could have maintained comparable care and better self-discipline with less sacrifice of its industrial markets and healthy economic growth.[35]

1. The Nixon (Tokyo) GATT Round Trade Negotiations

The Nixon administration undertook the first efforts to correct the asymmetry problem for world trade in the early 1970s. Attention fo-

33. For more recent U.S. trade history, increasing asymmetrical openness, and the problems of competing industrial policies, see *supra* note 3.

34. *See supra* notes 16-17 and accompanying text.

35. Although "early warning" signs of U.S. competitive distress were developing in the 1970s, especially for the U.S. electronics, steel, and automobile industries, the overall U.S. trade, service, and current-account data only began to reveal serious deficits in the early to mid 1980s. The U.S. was preoccupied, from the later 1960s and on into the 1970s by its role as military-political leader of the free world: the Vietnam War (1965-75); Watergate (1973-1974); OPEC I and II (1973-80); Cold War tensions; and efforts at detente and arms control dominated the attention of U.S. administrations from Truman, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, and even Reagan-Bush.

But if U.S. leaders had focused as strongly on their economic-industrial-trade challenges as did the Japanese, West German, and Swiss establishments, the U.S. economy could have been substantially more successful in the last 10-15 years. For realistic projections, see *supra* note 14.

cused mainly upon Japan in the form of strong pressure from the United States and Europe on Japan largely to eliminate that country's substantially higher tariffs and import restrictions. The United States and Europe already had reduced their industrial product tariffs to low levels in the Kennedy GATT Round (1962-67).[36] Because the more successful developing countries at that time (Mexico, Brazil, Taiwan, Yugoslavia, Korea and others) were not yet seen as serious challengers in global industrial competition, a "double standard" of greater scope for LDC subsidies, tariff restrictions, multiple exchange rates, and overall protection still seemed reasonable. For all these reasons, the Tokyo GATT Round results achieved by the Carter administration in 1979 seemed reasonable at that stage.[37]

In fact, most complaints about the Tokyo GATT Round came mainly from LDCs, which had pushed for greater access to industrial-country markets, commodity cartels like OPEC, and a better share of world incomes. MNCs were content with the Tokyo Round, because they had succeeded in consolidating relative open-ness among the OECD industrial nations, a major priority at this stage. Widespread hopes were expressed about a series of GATT Supplementary Codes—dealing with Subsidies, Antidumping, Government Procurement, Customs Procedure, etc., that might gradually reduce non-tariff barriers over the years.[38]

In the Tokyo Round, which the Carter administration finalized in 1979, Japan agreed to reduce tariffs to low United States and European levels, so that apparent equivalence was achieved. But Japanese informal restrictions, buying habits (mostly of Japanese manufactures), cartelistic

36. *See generally* Kenneth W. Dam, The GATT: Law and International Economic Organization (1977); Dobson, *supra* note 32; John H. Jackson & William J. Davey, Legal Problems of International Economic Relations (2d ed. 1986).

Unfortunately, during the Kennedy Round the U.S. had acquiesced in much more protected agricultural markets for Europe and its Common Agricultural Policy. Designed to protect the small, less efficient farms of Europe, the EC gradually enlarged subsidies and began to subsidize increasing exports as well, which cut into the natural agricultural export potential of the U.S.

37. For background on the Tokyo Round Negotiations, see Jackson & Davey, *supra* note 36, at 325-31, 396-97, 409-17, 962-64, 1142-52. *See generally* Bruce E. Blubb, United States Foreign Trade Law, Vol. I and II (1991); Sidney Golt, The GATT Negotiations, 1973-79: The Closing Stage (1978); Sidney Golt, The GATT Negotiations, 1973-75: A Guide to the Issues (1974).

38. Many free-traders contended that these supplementary Codes could "discipline" or limit the non-tariff barriers that might erode the gradual GATT accomplishment of lowering tariffs between 1947-67. *See* authorities cited *supra* note 37. But a crippling limitation of the GATT Supplementary Codes proved to be their limited list of signatories who were mostly confined to the OECD club of advanced industrial nations. Only 24 countries signed the Subsidies Code, only 25 signed the Antidumping Code, only 39 signed the Standards Code, only 13 countries signed the Procurement Code, and only 29 signed the Customs Valuation Code. Thus, most of the "discipline" from these GATT Supplementary Codes impacts industrial nations, and not the NICs or LDCs. The toughest discipline has been self-inflicted by the U.S. against its own manufacturing interests. Despite its signature to each of these Codes, no other nation took these GATT Codes all that seriously.

marketing patterns, and MITI-style industrial-coordination expansion efforts continued.[39] Actually, the Japanese export machine was just moving into high gear, with greater value machinery, ship-building, cameras, musical instruments, automobiles, and more expensive electrical products receiving priority over lower-value consumer goods and textiles. But big increases in world energy and food prices in the 1970s (including OPEC I and II) put heavy strain on many countries' balance-of-payments, including Japan, Germany, Switzerland, Sweden, Italy, France, and most non-oil LDCs. Meanwhile, the United States remained a large food exporter, and it imported only half of its oil needs. Thus, the United States suffered less balance-of-payments strain, and it continued to enjoy favorable overall trade balance in the 1970s.[40]

In retrospect, however, the GATT Supplementary Codes failed to correct the asymmetry problem, particularly from the United States viewpoint. Mainly industrial countries, not many NICs or LDCs, signed most new codes, and these codes were relatively weak and aspirational in language.[41] In fact, the main impact on United States trade policy was to lull Americans into false confidence. Further, the United States weakened the prospects for countervailing duty for subsidy and dumping actions under United States trade law. But, in the late 1970s, Americans were mainly preoccupied with surging inflation, OPEC II oil price increases, the wage-price spiral, and income-tax-bracket creep. Although foreign-manufactured imports were increasing, which revealed possible United States competitiveness problems, Reagan's successful political campaign focused on inflation and increasing tax loads.[42]

39. Japan continues to employ more subtle measures to limit manufactured imports (social cohesion, cultural loyalties, language, marketing customs, administrative guidance), and continues to stress efficient, quality manufactures, and the need for strong export growth and volume. Japan has become the largest, chronic trade surplus nation since the early 1980s, which is the same period in which the U.S. became a sustained and excessive trade deficit country. *See generally* Thomas K. McCraw, America versus Japan (1986) (discussing the public policy-making for business in America and Japan); Prestowitz, *supra* note 2; Thurow, *supra* note 2; Karel van Wolferen, The Enigma of Japanese Power: People and Politics in a Stateless Nation (1989) (discussing Japan's relationships with the United States and Europe in the late 1980s). Needless to say, these comments are not "Japan bashing;" quite the contrary, the U.S. must learn to emulate the more productive features of Japanese culture, cohesion, and responsible government-industry teamwork.

40. It is an interesting irony of history that over-crowded, heavily industrialized Japan, West Germany, and Switzerland were all harder hit by feed-grains, meat, and oil price inflation in the 1973-75 period, but these special strains just stimulated these countries to even stronger export success, and much more rapid anti-inflation discipline in the mid to late 1970s. Unfortunately, the U.S. produced a large food surplus and most of its own energy.

41. *See* authorities cited *supra* note 39.

42. Interestingly, late in the Carter administration, officials considered an industrial policy effort for their second term, along with a stronger anti-inflation policy. Such possibilities were pre-empted, however, by Reagan's victory in 1980. For late Carter-era industrial policy thinking see Lovett, World Trade Rivalry, *supra* note 1, ch. 2 n.11.

2. Reagan-Bush Era Trade Policies

The Reagan administration's initial economic efforts concentrated upon large income tax cuts, increased defense outlays, and widespread deregulation. Tight federal monetary policies continued under Volcker, supported by measures to weaken unions and limit wage pressures. Inflationary momentum was largely halted, with a big recession in 1981-82, in which unemployment nearly reached eleven percent. But, a strong recovery came in 1983-84, with inflation staying down. Unfortunately, budget deficits rapidly increased, too, and interest rates were kept up to contain inflation. All this brought a substantial appreciation of the dollar, and a big import surge, together with stalled United States exports. United States trade deficits greatly increased in 1983-87, followed by record current-account deficits.[43]

United States trade policy in the Reagan era developed more slowly on two tracks.[44] The primary theme was protecting and extending the free-trade regime enjoyed by MNCs and favored by major United States banking interests. A secondary theme was somewhat stronger trade bargaining, with proposals by Commerce Secretary Baldridge for a new Department of Trade and Industry ("DITI"), a weaker version of Japan's MITI. But the USTR and MNC interests resisted the DITI, wanting strict control of United States trade policies to remain in the hands of the USTR staff, which was considered more reliably pro-free-trade and protective of MNC interests.

Early efforts toward another GATT Round focused on opening markets for services among developing nations, and, perhaps, some further reductions in NTBs.[45] But there was not enough consensus initially between the advanced industrial countries, NICs, and LDCs. A greater pre-occupation between 1982-84 was the Latin American-LDC debt overload emergency, which mobilized the IMF, leading central banks of the creditor nations, and most large multinational banks into successful, longer-term debt rescheduling operations.[46] Walter Mondale campaigned for President in 1984 against excessive budget deficits and growing trade deficits, and he warned against import pressures toward lower United States wages. But Mondale's offer to raise taxes was unpopular,

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43. *See* William A. Lovett, Banking and Financial Institutions Law ch. 2 (3rd ed. 1992); Lovett, World Trade Rivalry, *supra* note 1, chs. 1, 6; Wallace C. Peterson & Paul S. Estenson, Income, Employment, & Economic Growth 546-602, 626-86, 745-49, 769-94 (7th ed. 1992). *See generally* Paul Volcker, Changing Fortunes: The World's Money and the Threat to America's Leadership (1992).

44. See Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at 167-73, nn.62-66 & 68.

45. *See generally* Seymour J. Rubin & Thomas R. Grahan, Managing Trade Relations in the 1980's: Issues Involved in the GATT Ministerial Meeting 982 (1984). An important theme developed, which later became known as the bicycle theory, that further GATT round negotiations were crucial in order for free-trade and MNC interests to preempt and maintain dominance over the international trade agenda.

46. *See* Lovett, World Trade Rivalry, *supra* note 1, ch. 4. *See generally* Volcker, *supra* note 43.

and successfully rejected by Reagan. With a strong economic recovery underway in 1984, supported by a large inflow of foreign investments and lending, Reagan was able to beat Mondale badly in the 1984 election landslide.[47]

After Reagan's re-election, James Baker became Treasury Secretary, and American international economic policy crystalized into two major efforts.[48] First, the Plaza Agreement brought a realignment of major exchange rates, with the yen and leading European currencies appreciating substantially, and the dollar being substantially devalued. It was hoped this realignment would eliminate United States trade-deficit problems. Second, another GATT Round negotiation was launched in 1985 at Punta del Este, Uruguay. Orchestrated by the former Agriculture Secretary, Clayton Yeuter as United States Trade Representative, the Uruguay GATT Round emphasized market opening and freer-trade measures in services along with goods, and it tried to achieve major reductions in agricultural subsidies and protections. This approach would greatly improve United States and Cairns group agricultural export prospects, and would reduce the share of world output from smaller, less efficient European and Japanese farms. This agenda proved politically difficult, however, in many countries, and the GATT negotiating progress was slow and uneven.

Meanwhile, however, during the 1980s support began to build for an alternative United States international economic policy.[49] Common themes in the new outlook were an emphasis on the asymmetry problem,

47. *See* Lovett, World Trade Rivalry, *supra* note 1, at 190-201, 208-12. Mondale attempted to raise the issue of excessive deficit spending, a need for greater fiscal responsibility, and weakened competitiveness. But the 1983-84 recovery seemed strong, inflation was nearly halted, and Reagan gave a brilliant political iposte to Mondale's demand for a tax increase. Reagan remarked that the first thing Democrats wanted was a tax increase, but that was the last thing Reagan wanted. *See generally* Jack W. Germond & Jules Witcover, Wake Us Up When Its Over: Presidential Politics of 1984 (1985).

48. With respect to the Plaza Agreement of 1985 and subsequent efforts to realign exchange rates, see generally Volcker, *supra* note 44; Wendy Dobson, *Economic Policy Coordination: Requiem or Prologue?*, Inst. for Int'l. Econ. (1991); Roichi Funabashi, *Managing the Dollar: From the Plaza to the Louvre*, Inst. for Int'l Econ. (1989).

For background and early outlooks on the Uruguay GATT Round, see generally John Whalley, The Uruguay Round and Beyond, Final Report from the Ford Foundation Project on Developing Countries and the Global Trading System (1989).

49. Highlights in this literature included Industrial Policies for Growth and Competitiveness: An Economic Perspective (F. Gerard Abrams Lawrence R. Klein ed., 1983); Stephen S. Cohen & John Zysman, Manufacturing Matters: The Myth of the Post-Industrial Economy (1987); John Culbertson, International Trade and the Future of the West (1984); John M. Culbertson, The Dangers of "Free Trade" (1985); Anthony Harrigan & William R. Hawkins, American Economic Pre-Eminence: Goals for the 1990's (1989); Chikara Higashi, Japanese Trade Policy Formulation (1983); Milton Hochmuth with William Davidson, Revitalizing American Industry: Lessons from Our Competitors (1985); Alexis Jacquemin, European Industry: Public Policy and Corporate Strategy (Alexis Jacquemin ed., 1984); The Institute for Contemporary Studies, The Industrial Policy Debate (Chalmers Johnson ed., 1984); William A. Lovett, World Trade Rivalry: Trade Equity and Competing Industrial Policies (1987); Kevin Phillips, Staying on Top: The Business Case for a National Industrial Policy (1984); David B. Yoffie, Power &

and that Japan, many NICs and LDCs were actively using government subsidies, restrictions, and coordination—along with lower wages—to expand their industrial and agricultural output at the expense of American, British, and other open-country manufacturing industries. While some realignment of industrial location and equalization of *per capita* incomes were to be expected from freer world trade, the United States and United Kingdom were losing more ground than they should have. Their mutual mistake was to be unequally open. A tougher, reciprocity-oriented trade policy was needed, along with more industrial rejuvenation efforts, perhaps MITI-style, with better collaboration between government and industry.[50]

This outlook gathered some strength in the mid-1980s, and it led to repeated congressional efforts to enact stronger omnibus trade legislation.[51] Yet, resistance from free-traders, MNC interests, and the Reagan administration prevented significant changes. Representative Richard Gephardt's proposal for a mandated reduction in Japanese trade surpluses was watered down into so-called "Super 301," which merely requires annual trade-restriction reports on trade partners and *allows* somewhat stronger presidential responses to foreign government discrimination or unfair practices. Although the Democrats could have aggressively attacked record high United States trade and current-account deficits in the 1988 presidential campaign, their nominee Massachusetts Governor Michael Dukakis was free-trade oriented. He chose not to raise these issues substantially, and proved to be a weak opponent against incumbent George Bush.[52] Many wondered whether New York Governor Mario Cuomo could have been a tougher Democratic candidate, with a stronger trade-industrial policy outlook.

After the election, Bush emphasized free-trade policies, even more than Reagan's administration.[53] The new USTR, Carla Hills, moved forward on the GATT negotiations, and was less demanding on agriculture. Meanwhile, Bush built on the United States-Canada free-trade agree-

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Protectionism: Strategies of the Newly Industrializing Countries (1983); Otto Eckstein, et al., The DRI Report on U.S. Manufacturing Industries (1984).

50. *See* sources cited *supra* note 49.

51. Between 1984-88 there were repeated efforts in the U.S. House of Representatives, joined later by the Senate in 1987-88, to develop an Omnibus Trade bill that would strengthen U.S. industry and competitiveness in world markets. A highlight of the effort was an amendment offered by Congressman Richard Gephardt of Missouri that would have mandated fifteen percent annual reductions in the Japanese-U.S. trade surplus, unless the President found that U.S. sanctions under § 301 of the Trade Act of 1974 were inappropriate—a relatively weak, easily avoided requirement.

52. Governor Dukakis could have mounted a strong and coherent attack on the twin deficits issue, with record budget deficits at five percent of GNP, and record trade deficits at four percent of GNP, but he was uneasy on the economy, and overconfident. Instead, he stressed foreign policy and increased health care spending instead. *See* Jack Germond & Jules Witcover, Whose Broad Stripes and Bright Stars? The Trivial Pursuit of the Presidency (1989). It remained for Bill Clinton and Ross Perot to mount the coherent attack in 1992.

53. *See* Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at 169-73.

ment, and Mexico's new willingness for more open trade and United States investment, to negotiate an expanded North American Free Trade Agreement.[54] The NAFTA deal was concluded by the fall of 1992. It provided for further opening of the United States market to Mexico and for a slower opening by Mexico, with more safeguards to Mexican companies. The United States gained more investment opportunities, and could expand lower wage manufacturing activities (already substantial under the Maquiladora program) in Mexico. In the United States, controversy developed over the probability that jobs would be lost. Further negotiations in the Enterprise for the Americas Initiative looked toward freer trade with a growing list of other Latin American and Caribbean countries, patterned after the NAFTA deal, when approved by Congress.[55] And with respect to the Uruguay Round, although the initial deadline of December, 1990 proved unworkable, a near complete "Dunkel draft" GATT agreement was worked out in December 1992, along with a Blair House Accord on agriculture in which the EC promised to cut major agricultural export subsidies by twenty-one percent over six years.[56] If Bush had been re-elected in November 1992, he planned to seek prompt ratification for both deals early in 1993, relying upon the re-election mandate as the basis for Congressional support.

3. The Clinton Era: An Opportunity for Stronger United States Industrial-Trade Policies?

Challengers Bill Clinton and Ross Perot campaigned strongly against Bush economic and trade policies, with somewhat different emphases, and together won sixty-two percent of the popular vote.[57] Clinton emphasized the importance of more jobs, attacked "trickle down" economics, and demanded fairer trade. Perot feared a "giant sucking sound" of

54. *See generally* The Canada-United States Free Trade Agreement, The Global Impact (Jeff Schott & Murray Smith eds., 1988); Gary C. Hufauer & Jeffrey Schott, North American Free Trade: Issues and Recommendations (1992); Perspectives On a U.S.-Canadian Free Trade Agreement (Robert M. Stern et al. eds., 1987); The United States and Canada: The Quest for Free Trade-An Examination of Selected Issues (Paul Wonnacot ed., 1987); Sidney Weintraub, Free Trade Between Mexico and the U.S.? (1984).

55. Enterprise for the Americas Initiative was developed by the Bush administration as a supplement to NAFTA, in which many countries would be welcomed to "follow on" with similar arrangements. This makes the detailed terms and conditions of NAFTA and the Clinton Side Agreements very influential as a pattern for many other nations in the hemisphere that would be eager to join and share in such an expanding trade block.

56. See Lovett, *Rethinking U.S. Industrial-Trade Policy, supra* note 2, at 171-72; Root 7th ed., *supra* note 4, at 207-09.

57. *See* Governor Bill Clinton & Senator Al Gore, Putting People First 75-80, 143-45, 155-60 (1992); Ross Perot, United We Stand 57-72, 99-102 (1992); The Cuomo Commission on Competitiveness, America's Agenda: Rebuilding Economic Strength 92-123, 200-05 (Lee Smith ed., 1992); Kevin Phillips, Boiling Point: Republicans, Democrats, and the Decline of Middle-Class Prosperity 195-222, 249-59 (1993); Rethinking America's Security: Beyond the Cold War to New World Order 117-175 (Graham Allison & Gregory Treverton eds., 1992). *See generally* Lester Thurow, Head to Head: The Economic Battle Among Japan, Europe, and America (1992).

jobs moving South, demanded fiscal responsibility, and argued that rebuilding our industrial base was a necessity. Bush had highlighted free-trade and global markets, and claimed that his policies were sound. Sluggish and weak United States economic growth and stubborn unemployment in many areas, however, eroded public confidence. Many Reagan Democrats turned against the Republicans, and the voters clearly endorsed new policies and "change" in some degree.

But what mandate on industrial-trade policy seemed to follow? In Clinton's first months as President, an internal struggle raged within high levels of the administration between free-traders and stronger trade-industrial policy advocates.[58] Democrats in Congress sharply divided between pro-NAFTA, internationalist elements, and those who desired an improved NAFTA, a better GATT deal, and more reciprocity and support for United States industry and jobs. While more Republicans favored freer trade, Perot and Pat Buchanan had stoutly criticized Bush on NAFTA and trade policy.

Later, Clinton seemed to move in the free-trade direction. During the summer, Clinton's negotiators worked out relatively weak Side Agreements for Environmental Protection, Worker Rights and Import Surges.[59] Most labor groups and substantial parts of the environmental community continued to oppose NAFTA. Free-trade lobbyists were encouraged by Clinton's endorsement for NAFTA and a GATT Round agreement. In contrast, Democrats remained deeply and emotionally divided over trade policy issues, and many observers wondered how far Congress and the Clinton administration would go together.[60] Free-traders worried that Clinton's support might be limited, and not enough to force their agenda through Congress.

Meanwhile, the tentative Dunkel draft-Blair House deal on the Uru-

58. *See* Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at 173-77 nn.74-85.

59. *See* Keith Bradsher, *The Free-Trade Accord; 3 Nations Resolve Issues Holding Up Trade Pact Vote*, N.Y. Times, Aug. 14, 1993, at 1; *North American Free Trade Agreement Side Accord on Environment and North American Free Trade Agreement Side Accords on Labor and Import Surges*, 10 Int'l Trade Rep. (BNA), at 1536-58 (Sept. 15, 1993) [hereinafter *Side Accords*]; *Trade-NAFTA Side Deal All But Done: Focus Shifts to Congress*, Cong. Q. Wkly., Aug. 4, 1993, at 2219; *Presidential Address: Clinton Urges Passage of Free-Trade Pact*, 37 Cong. Q., No. 37, Sept. 18, 1993, at 2501-02 [hereinafter *Presidential Address*]; *American Survey: Viva NAFTA*, The Economist, Aug. 21st, 1993, at 21-22.

60. Highlights in the political fight over NAFTA included: Michael Lind, *Reaganomics, With a Mexican Accent*, N.Y. Times, June 11, 1993, at A31; William Schneider, *NAFTA Has the White House Spooked*, Nat'l J., Aug. 21, 1993, at 2112; Fred Barnes, *White House Watch-Better Late*, New Republic, Oct. 4, 1993, at 12; Jackie Calmes, *Gephardt States His Opposition to Trade Pact*, Wall St. J. Sept. 22, 1993, at A2; David E. Rosenbaum, *Democratic Split Over Trade Agreement Widens*, N.Y. Times, Sept. 22, 1993, at A1; Peter T. Kilborn, *Unions Gird for War Over Trade Pact*, N.Y. Times, Oct. 4, 1993, at A4; *TRB from Washington, Trading Places*, New Republic, Oct. 4, 1993, at 6; Clifford Krauss, *Washington Talk: In Finagling on Trade Pact, Legislators' the Barter Is the Votes*, N.Y. Times, Oct. 5, 1993, at B10; Keith Bradsher, *Clinton and Congress Discuss 3-Year Test of the Trade Pact*, N.Y. Times, Oct. 23, 1993, at 9; Tim Golden, *Trade Pact Passage May Hinge on Mexican Sugar*, N.Y. Times, Oct. 29, 1993, at A3.

guay GATT Round remained controversial.[61] A more conservative French government under Balladur seemed determined to renegotiate the Blair House commitments, i.e., to reduce EC agricultural export subsidies by twenty-one percent over six years. But Mickey Kantor, Clinton's USTR, refused to renegotiate. This left the EC's trade negotiator to seek reasonable "clarification and understandings." This apparent impasse might have been sufficient to block or delay a Uruguay GATT Round deal. In Congress, there was less support and understanding for the Dunkel draft than NAFTA, and most observers felt that NAFTA would be a close vote either way.

But what really was the Clinton industrial-trade policy agenda? What should it have been? In a post-Cold War era, a more comprehensive rethinking of United States industrial-trade policy seemed appropriate.[62] But what should be the main objectives of United States trade policy now? Clearly the Clinton administration was mobilizing a great effort to reform the overly expensive, wasteful, and incomplete coverage of the United States health care system. And eight months of hard work and struggle was needed to fashion a preliminary 1993 budget-tax-deficit reduction deal. By single votes in the House and Senate a sizeable tax increase, mainly imposed on the well-to-do, was enacted; but many believe that still more deficit reduction is needed between the years 1994-2000, and that further discipline on entitlements will be essential. In this context, there is a real danger that the administration could make key United States industrial-trade policy decisions with less than careful review, over-shadowed by larger battles over budget priorities, tax loads, and health care reform. Lacking in the national debates over NAFTA, and with little attention or understanding of the GATT (1994), is a serious reconsideration of national goals, long-term interests, and coherence for United States trade and industrial policy. What follows is an attempt to provide that perspective and a guideline for American trade and industrial policy overhaul.[63]

61. *See Highlights—The Blair House Dispute is Unresolved After a Meeting Between U.S. Trade Representative Mickey Kantor and the European Community's Chief Trade Negotiator, Sir Leon Brittan*, Int'l Trade Rep. (BNA), at 1601, 1604 (Sept. 29, 1993).

62. *See* Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at 173-84.

63. President Clinton's administration is giving high priority, with great attention for detail, to redesigning the health care "system," and bringing more effective cost discipline. Great effort also has been given to U.S. budget, tax, and deficit reduction. By constrst, the President has devoted less time to U.S. industrial-trade policy, particularly the details of the NAFTA agreement inherited from the Bush administration, and the Dunkel draft Uruguay GATT Round agreement nearly completed in December, 1992, by the Bush administration, and later approved by GATT negotiators in December, 1993. Certainly Clinton campaigned in 1992 on the urgency of rejuvenating the U.S. economy, and the need to provide greatly expanded jobs and better incomes for Americans.

III. Rebalancing Alternatives for United States Trade Policy

A. *Realistic Goals for United States Policy*

To formulate goals for United States trade policy in the 1990s we must understand the overall context of the United States economy and the serious challenges that face the Clinton administration. The basic American problem is that the country has been living beyond its means.[64] We have been neglecting technology, capital formation, full employment, and productivity needs. Significant waste of human and investment resources has been occurring, with chronic under-employment, both in urban and rural areas. Social demoralization, family difficulties, drug abuse, indiscipline, and excessive crime have spread. The Clinton-Perot election campaigns of 1992 tried, with considerable success, to focus national attention on these issues. But, central to solving these problems is a need to rejuvenate the American economy, restore higher levels of growth, and re-establish fuller employment. Expanding jobs, achieving greater efficiency, and renewing prosperity are top priorities.

Macro-economic policy, fiscal responsibility, health care overhaul, industrial rejuvenation, export expansion, and balanced trade should work together[65] and require steady United States progress toward deficit reduction. Gramm-Rudman in 1985 had the correct goal, i.e., eliminating the $200 billion annual budget deficits gradually over four years. But political gridlock from 1986-92 prevented Gramm-Rudman from successful implementation, except for limited gains in the 1990 Bush-Democratic deficit reduction compromise. Most observers and financial markets saw that Clinton's 1993 budget-tax package was helpful, but the country would need more discipline in successive years.[66] Clinton's

64. These goals were stated strongly by candidates Clinton, Gore, and Perot in 1992. *See* sources cited *supra* note 57. And leading economists like Lester Thurow, *supra* note 57, analyzed these problems in great detail. *Compare* Lovett, World Trade Rivalry, *supra* note 1, ch. 6; David P. Calleo, The Bankrupting of America: How the Federal Budget Is Impoverishing the Nation (1992); Benjamin M. Friedman, Day of Reckoning: The Consequences of American Economic Policy Under Reagan and After (1988).

65. All these things are needed together, and if done in tandem, reinforcing mutual benefits follow. But, if the U.S. fails to eliminate excess budget deficits, and get health care under prompt control, inflation and interest rates will rise, again, and undercut the economic growth and increased jobs that are necessary. If manufacturing is not rejuvenated and we fail to eliminate current account deficits and needless trade deficits, we will also fail to create the economic growth, increased jobs, and productivity that are needed for broader prosperity. So the Clinton era needs to accomplish three things together: (1) fix the budget and eliminate excess deficits; (2) bring health care under control and eliminate its inflationary, excessive cost momentum; and (3) rejuvenate our productive economy (services alone are not enough), eliminate the trade and current account deficits, and restore balanced trade.

66. The general reaction of money markets, most economists, the media, and foreign observers was that President Clinton deserved great credit for launching a strong effort to achieve major U.S. budget deficit reduction in the spring of 1993. This initiative required a mix of tax reductions and spending cuts with the hope that these measures do not fall too hard on the middle class. Most agreed that this was politically difficult. In the end,

much-awaited health reform proposals simultaneously attempted to cut waste, broaden coverage, and reduce health-spending growth.[67] This reform will be tricky politically, but most agree its aspirations are sound. Current outlays (fourteen percent of GDP) for health care are out of line with other advanced countries. The United States is wasting significant investment resources that could be more productively allocated to rejuvenating industry, improving technology, and expanding jobs. In these two broad efforts fiscal responsibility and health care reform, the Clinton administration could mobilize substantial consensus. The majority of the public supports the overall objectives of greater fiscal responsibility and health care efficiency, but skillful leadership is vital.

For United States industrial-trade policy there is incomplete consensus, but a solid majority could be mobilized on several points.[68] First, more careful and detailed export and import reporting must be required for all goods, services, and shipping activities involving United States international trade. Second, the United States soon should eliminate its overall trade and current-account deficits, and move firmly to eliminate any substantial trading deficits with significant trade partners, except to the extent that these deficits involve materials or equipment vital to national security. Third, the United States should comprehensively encourage enlarged exports of goods, services, and shipping, especially with respect to countries or areas that have enjoyed trading surpluses with the United States. Fourth, the United States, using the same policies used by other countires, should encourage industrial rejuvenation in many manufacturing sectors, particularly those involving higher value-added activities. In addition, it should develop general encouragements for industrial investment, research and development activities, worker training, regional or urban recovery, and export growth through tax relief and as-

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Clinton's deficit reduction package passed the House and Senate by only single votes. And at the margin, significant regrets were expressed that Clinton's deficit reduction package didn't go far enough, that it left too much of the cancer of excess spending uncut. The need for broader sacrifice was only partly recognized in health care reform and that was packaged as mostly an easy reduction of waste and paper work. *See generally* Peter Peterson, Facing Up (1993).

67. This effort already is entangled in special interest politics, and some honest confusion about controversial details. Most experts agree, however, that there is extensive duplication, very sizeable waste, and considerable unneeded health care provided, although a substantial minority get insufficient health insurance coverage. The challenge is to overhaul and organize things promptly enough, so that greatly increased health care costs and premium charges can be avoided. *See The Clinton Cure; Reinventing Health Care*, Newsweek, Oct. 4, 1993, at 36; Rashi Fein, *A Dangerous Year*, N.Y. Times, Oct. 28, 1993, at A27; J.D. Kleinke, *The Health Care Inflation Fantasy*, Wall St. J., Oct. 18, 1993, at A16; Uwe E. Reinhardt, *A Billion Here, A Billion There*, N.Y. Times, Oct. 18, 1993, at A17.

68. All the experts listed previously in *supra* note 49, and many others, could support this entire agenda with the usual qualifications as to relative emphasis. Broad public majority support also could be quickly mobilized, and was really implicit in the 62 percent popular vote received by Clinton and Perot in the 1992 election. What is needed now is to crystalize this consensus into serious, comprehensive, and programmatic action.

sisted financing. Fifth, on a comprehensive, industry-wide basis, the United States should develop offsets to foreign industrial policies, subsidies, tax relief, restrictions, and discounting. Sixth, those United States government agencies that have an impact on exports, imports, and trading balances should develop programs of collaboration and information-sharing with United States industries and trade associations involved in these fields. The United States government should work harmoniously with American companies and industries to promote United States exports, production, and balanced trade with other countries. Healthy United States national teamwork should be the watchword for a stronger, more competitive American presence in world markets. Seventh, with relatively few exceptions, government micro-management of companies or industries has not worked well in the United States political context. A smothering approach of heavy government regulation will command little confidence in business or Congress.[69]

B. *Rebalancing Options for United States Trade Policy*

1. Tariffs for Revenue and Industrial Rejuvenation

A striking fact of United States economic history is that tariffs played a major role in raising revenue and encouraging industrial development through most of the nation's history.[70] Until 1947, tariffs generally averaged at least fifteen to twenty percent. Revenues from customs and tonnage taxes comprised a large portion of overall federal revenues until the later 1930s, when income taxes became increasingly important as the major revenue base. Tariffs provided market-oriented incentives for United States manufacturing and industrial development. The government needed no bureaucrats to identify, justify, or subsidize candidates or projects for industrial expansion. Tariffs and early tonnage taxes did the job generally and reliably. Long-term United States manufacturing and industrial growth investments, along with industrial job growth, could count on a steady cost advantage through traditional United States tariff policy. Unquestionably, United States tariff policy was an active but general industrial-growth and promotion effort.[71]

69. Picking winners or losers in the American market-place has been difficult politically, at least as compared to more cohesive nations, in our large federal democracy, except for a limited range of national defense, naval, merchant marine, aerospace, and/or health care priorities at any given stage in U.S. history. The long-term U.S. industrial success of moderate market-oriented tariffs, especially from 1815 until after World War II, however, should not be forgotten. *See generally* Otis L. Graham, Losing Time: The Industrial Policy Debate (1992); *supra* notes 2-36 and accompanying text.

70. See authorities cited *supra* note 32. In addition, for insights on the British trade experience, see generally Michael Kitson & Solomos Solomou, Protectionism and Economic Revival: The British Interwar Economy (1990); Keith Middlemas & John Barnes, Baldwin: A Biography (1969); Charles L. Mowat, Britain Between the Wars, 1918-40 (1955). More broadly, for comparative tariff-industrial development history, see Lovett, World Trade Rivalry, *supra* note 1, ch. 1. And for a brief summary, see Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at 136-40.

71. Most other countries used comparable tariff policies, except that Britain largely

Today, the United States should revive moderate tariffs (in the ten to fifteen percent range) for two reasons.[72] First, eliminating the excessive United States budget deficit requires further cuts in spending and/or revenue enhancement. A ten to fifteen percent revenue-oriented tariff would generate $50-65 billion annually in additional revenues, and these levies would be consumption taxes that would not be discouraging to United States domestic investment, jobs, or productivity improvement. Second, foreign imports into the United States have benefited from a generation of asymmetrical openness, widespread foreign industrial policies, subsidies, targeting, restrictions, and discounting that gradually weakened United States manufacturing, industrial, and agricultural growth. Revenue tariffs in the ten to fifteen percent range are reasonable, not an unduly burdensome offset in these circumstances, and are a healthy, renewed incentive for United States rejuvenation. In key industries where special damage, dislocation, or contraction can be traced to foreign imports, these rejuvenation tariffs could be raised to twenty to twenty-five percent for a period of approximately ten years in order to encourage substantial United States and foreign investments that would rebuild and rejuvenate these damaged industries.

It should be emphasized that general-revenue tariffs are consistent with GATT, i.e., they do not involve discrimination among countries.[73] From this viewpoint a general tariff has advantages over a selective, unfair-trade-practice approach, which requires labeling various trade partners or their companies as violating international or national law standards of fair trade.

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opened its home markets to foreign imports between the 1840s-1920s. This policy worked well enough for Britain until the 1900s when strong U.S., German, and Japanese rivals had caught-up with British industry. But the British began to worry more about asymmetries in trade, until in 1931 they finally adopted Imperial Preference tariffs. *See generally* Kitson & Solomou, *supra* note 70; Middlemas & Barnes, *supra* note 70.

72. Unfortunately, Clinton administration forecasts project that large U.S. budget deficits still would remain in 1996, so that, no matter what happens to health care reform, large deficit reduction measures will still be needed. In addition, consumption taxes are increasingly favored by economists over business income-payroll taxes, because improved economic growth and more jobs will follow. *See* Thurow, *supra* note 2, at 268-71. *See generally* Peterson, *supra* note 66; Sijbren Cnossen, *Consumption Taxes and International Competitiveness: The OECD Experience*, 52 Tax Notes 1211 (1991). Finally, another advantage of moderate revenue tariffs is that they provide a much more reliable data base for careful administration of U.S. unfair-trade-practice laws by the U.S. Commerce Dept. and the U.S. International Trade Commission.

73. A central theme of GATT Article II (1957) is the principle of non-discrimination in tariffs. A general revenue tariff is consistent with this governing theme. This might encourage other GATT nations to provide comparable, but not higher, tariffs. Many might worry that this could hurt developing countries, but NICs and many LDCs have gained substantially in world markets as against the U.S. and EC over the last generation. Furthermore, most developing nations still have the advantage of lower wage costs, so that a moderate revenue tariff in the U.S. or EC would not greatly reduce their access to these higher wage countries.

2. Foreign-VAT Waiver Correctives

Another general measure that the United States could use is a value-added tax ("VAT") waiver corrective. Unlike most industrial countries, the United States does not employ a VAT, which is commonly ten, twelve, or fifteen to twenty-two percent of the value added in the large majority of industrial countries competing against the United States in world markets. Nations that use the VAT generally exempt or rebate this tax for their manufacturers that sell into the United States, which gives them an advantage or "subsidy" to this extent for their exports into the United States. This tax policy handicaps United States manufacturers that have to withstand competition from abroad. The United States has not, unfortunately, created a sufficient offset or corrective import tax to combat this practice.[74]

Alternatively, the United States could charge a general VAT-waiver offset of twelve to fifteen percent on imports from VAT countries. The United States could impose a variable VAT waiver-corrective charge of precisely the VAT amount waived by the EC, Germany, France, the United Kingdom, Japan, Mexico, etc. Nonetheless, a general charge probably makes more sense, because it is hard now to trace the percentage of foreign manufactures to particular countries. Some sensible offset would be a helpful measure to level the playing field for world trade.

Alternatively, the United States could impose its own VAT in the twelve to fifteen percent range.[75] This tax would generate larger additional consumption tax revenues, but federal, state, and city governments would have to share these revenues in some reasonable way. At present, most United States states and many large cities employ sizeable retail sales taxes, which are in fact more limited and truncated VATs.[76] A fair compromise might split equally a federal VAT of twelve to fifteen percent with state and local governments. But such a major change in United States tax policy, with large net government revenue increases, would be

74. *See* Jackson & Davey, Legal Problems of International Economic Relations, 784-789 (2d ed. & Supp. 1986); Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at 158-59; Lovett, World Trade Rivalry, *supra* note 1, at 118-19.

75. *See* Thurow, *supra* note 2, at 268-71; Fritz Hollings, *Here's A Great Tax*, N.Y. Times, February 15, 1993, at A16. Very interestingly, President Clinton suggested early in his administration that a U.S. VAT may be required "not too long into the future." Terrence Hunt, *U.S. Sales Tax in the Future*, New Orleans Times-Picayune, Feb. 20, 93, at A1. Many conservatives would be worried, of course, that a U.S. VAT could be used to prop up, and sustain overly generous health care and entitlement benefits, i.e., too much welfare state activity. But a U.S. VAT could be enacted as part of a more general tax restructuring, i.e., to reduce income and payroll taxes, increase consumption, and to improve overall savings, investment, employment and growth.

76. General sales taxes are widely imposed on retail sales, with 45 states using them at rates of three to seven and one-half percent. In addition, many cities have employed sales taxes (including New York and New Orleans), which are usually collected with state levies for convenience. *See generally* Hoffman F. Fuller, *The Proposed Value-Added Tax and the Question of Tax Reform*, 34 Rutgers L. Rev. 50 (1981). Any VAT reform in the U.S. must be meshed somehow and/or shared with state and local sales taxes, in order to be realistic politically.

controversial. Some would object to the regressive character of sales or VAT taxes unless substantial food and drug exemptions are provided in the VAT regime. A federal United States VAT of twelve to fifteen percent would provide an equivalent corrective to foreign VAT waivers or export subsidies. Excessive increases in United States tax revenues could be offset by substantial reductions in United States corporate, personal, or payroll taxes, which could improve savings and capital formation incentives, and help create more United States jobs. Although politically controversial, a VAT for the United States makes a great deal of sense for the long term.

3. Import Surcharges for Trade Imbalances

Another tool to enforce improved trade balances for the United States would be import surcharges or quota restrictions authorized by GATT Article XII (1947), or under section 122 of the United States Trade Act of 1974.[77] The United States used this tool before, when Nixon employed import surcharges to force major trading partners to realign their currencies in 1971-73. Strictly speaking, Presidential emergency and war powers authority was used for this purpose, which led later to an enabling act for import surcharges for serious balance-of-payments problems: section 122 of the Trade Act of 1974. At least from 1986 to the present—a period in which the United States sustained large and excessive United States current-account and trade-imbalance problems—the United States could have used import surcharges or quotas, supposedly in a non-discriminatory manner.

A complication with this general approach is that imports from cooperative, i.e., balanced trade partners, might be reduced as much or more as from heavy surplus trade partners. To the extent that blame and sources of chronic overall trade imbalance can be traced to particular trading partners, a selective response or treatment may be appropriate.[78]

4. GATT and United States Unfair Trade Practice Remedies

Use of unfair trade practice remedies has been rather limited in the United States, at least in recent years. Broader interpretation and use of

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77. Balance of payments emergencies quotas or surcharges are clearly authorized by GATT Art. XII (1947) and the United States Trade Act § 122 (1974). The aggravated United States current-account and trade deficits from 1985 to 1993, which show little sign of abating, still justify balance of payments measures to limit excessive imports. Lacking, however, has been the political will, and sufficient understanding of the linkages between excessive imports, weakened U.S. industry, reduced jobs, and slowed economic growth. Borrowing from world markets seemed relatively easy, and required no embarrassing political controversy over under-achievement in the U.S. economy. See the growth in U.S. external debts, indicated *supra* note 32. *See generally* Lovett, World Trade Rivalry, *supra* note 1; Thurow, *supra* note 2.

78. In 1985-89, a broad U.S. trade deficit was occurring with many trade partners, but by 1991-93 it seems that most of the U.S. trade deficit problem is concentrated with Japan, China, Taiwan, Canada, and Germany (and of these only Japan and Taiwan have been earning large surpluses lately).

these remedies, however, might help achieve sustained overall United States trade balance. The chief unfair trade practice remedies authorized by GATT Article VI (1947), and United States trade law are: actions for countervailing duties against foreign subsidies of imports into the United States, and actions against dumping by foreign companies into the United States.[79] Relief can be obtained when United States companies make a strong showing that subsidies or price discrimination occurred, and that substantial injury threatens the United States industries involved. Burdens of proof for successful plaintiffs in recent years have been demanding, with significant litigation expenses. Normally, a year or more is involved before those injured can hope to get any serious relief. In addition, private parties can seek relief under section 301 of the Trade Act of 1974 against foreign government activities that significantly discriminate against, threaten, or harm United States industries. Prospects for relief are doubtful in most situations, and United States government intervention to support United States companies is rare.

In recent years, the only private United States trade remedy with fairly strong prospects is the section 337 proceeding for infringement of United States domestic intellectual property rights: patents, trademark, or copyright interests.[80] Otherwise, United States trade-law remedies have had only minor impact in limiting imports and unfair trade practices.

For United States unfair-trade-practice remedies to become serious constraints against imports into the United States, the federal government must substantially relax burdens of proof. Thus, for example, the government could make any kind of indirect subsidy by foreign governments, financial institutions, or conglomerate companies subject to countervailing duty proceedings. Requirements for tracing injury in either subsidy or dumping situations could be eased. In addition, the cumulative effects of dumping, subsidies, and all other government support or restriction could be amenable to consolidated industry-wide proceedings. Thus, long-term foreign industrial policies, targeting, subsidies, or restrictions in their home or other markets could be open to challenge for their eventual impact in United States markets. Changes along these lines could be made consistent with GATT Article VI but United States trade law would need significant amendment by Congress.[81]

79. For a summary and sources see Lovett, *Rethinking U.S. Industrial Trade Policy*, *supra* note 2, at 160-63 n.4650. *See generally* Bruce E. Clubb, U.S. Foreign Trade Law (1991); Peter Ehrenhaft & Charlotte Meriwether, *The Trade Agreements Act of 1979: Small Aid for Trade?* 58 Tul. L. Rev. 1107 (1984).

80. *See generally* Clubb, *supra* note 79. *But see generally* Robert Krupka, et al., *Section 337 and the GATT: The Problem or the Solution?* 42 Am. U. L. Rev. 779 (1993); Anne L. Spangler, Note, *Intellectual Property Protection and Import Trade: Making Section 337 Consistent with the General Agreement on Tariffs and Trade*, 43 Hastings L.J. 217 (1991).

81. It should be emphasized that scale economies are widespread in modern manufacturing technology, and that discounting (or dumping) opportunities are therefore very common. *See* Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, at 154 chart 1A. When many other national industrial policies add extra cost reduction, favorable

To strengthen prospects of relief, United States international trade agencies should assist actively in unfair-trade-practice investigations, and they should help to cover the cost and risk of litigation for many United States plaintiffs. Within approximately thirty to forty days, Congress should establish rapid relief procedures so that defendant foreign companies and their United States importers would face heavy bonding requirements to guarantee any necessary relief or damages. Such legislation should encourage prompt settlement alternatives that would quickly eliminate threats of injury to United States industries and companies. If Congress took all of these measures, GATT and United States trade-law remedies against unfair-trade-practices in international commerce could become more effective and reliable, and the United States might cut back excessive overall imports into the United States[82] MNCs, import lobbies, and those favoring unilateral United States free-trade policies would regard such changes as controversial, however. But, unless a major liberalization occurs in United States government support for unfair-trade-practice proceedings, these remedies will continue to be rather limited and unreliable for United States companies.

In this context, however, it should be emphasized that the Uruguay Round-GATT 1994 agreement further limits United States companies' ability to use unfair-trade-practice remedies under GATT and United States trade law.[83] Thus, the GATT 1994 deal inhibits the revival and expansion of such proceedings as measures to cut back on excessive imports into the United States. NAFTA raises similar issues, and clarification is needed in order to preserve access for United States companies to unfair-trade-practice relief.[84]

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financing, or risk protection, the incentives and dangers of dumping into large, higher wage, and open markets like the U.S. become a very serious problem for its manufacturing industries. Further, current U.S. trade law requires that counter vailable subsidies must be closely related to exporting. Thus, it has been hard for many U.S. companies to prevail, even if they can show significant injury from dumping and/or subsidies. As Thomas E. Bennett of the Torrington Company remarked, "[e]ven after winning we continue to be faced with a long and expensive appeal process. So far we have spent more than $10 million and diverted substantial amounts of critical corporate resources to support these activities." World Trade at the Crossroads: The Uruguay Round, GATT and Beyond 148 (Robert W. Jerome, ed., 1992).

82. If these improvements in U.S. unfair-trade-practice law administration were implemented, U.S. domestic industry would gain from greater certainty, and the reduction of legal costs and inhibitions while leading to more reliable trading flows, with less distortion from injurious foreign subsidies and discounting practices. This outcome is consistent with the spirit of the original GATT Article VI (1947).

83. For a brief summary, see Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, app. 1. *See generally* World Trade at the Crossroads, *supra* note 81.

84. Under NAFTA dispute settlement provisions, U.S. investors in Mexico are given relatively strong safeguards, including access to international arbitral panels. Even some environmental interests could make complaints to relevant committees, or a tri-national commission under the Environmental Side Accord. In anti-dumping and countervailing duty cases, however, the U.S.-Canada FTA procedures are applied, i.e., final U.S. or Mexican determinations under their law are subject to binding tri-national review panels. This approach substantially weakens the U.S. anti-dumping and CVD remedies for U.S.

5. Supervising and Improving the NAFTA Relationship

Clinton's support of NAFTA reflects strong sympathy for the Mexican government's efforts to open their economy, encourage outside investment, and improve economic-growth prospects.[85] In Mexico, NAFTA mobilized broad spectrum support; safeguard provisions including "snap back" tariff relief options, have reduced their main risks that smaller, less efficient companies and farmers could suffer significant disruption. Mexican concessions to a larger role for United States investments could be permanent, however, unless a major change in Mexican politics and orientation occurs.

The NAFTA deal as currently negotiated, including the Clinton Side Agreements, allows more risk for United States labor, agricultural, and small business interests.[86] Because United States tariffs are already low or non-existent, the NAFTA "snap back" tariff provisions are relatively insignificant to United States interests. How much displacement will occur is highly controversial. Because Mexican labor costs are much lower for many United States industries, it seems reasonable to expect more United States companies to relocate to Mexico. More Mexican or third-party-owned companies will expand their exports to the United States. Cost reduction potentials, however, are efficiency gains for some interests. Many United States companies have expressed a desire for convenient, low-wage processing plant opportunities in Mexico and elsewhere in the Americas as an offset to low wage opportunities in Asia for Japanese and other East Asian companies. Thus, the United States will need reasonably strong rules-of-origin requirements in NAFTA to prevent East Asian companies from simply passing their exports through Mex-

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companies, unless U.S. government agencies press hard in the panel process in support of domestic U.S. interests. In recent years, at least, no such support has been forthcoming in most situations. Unfortunately, the Side Accords on Labor and Import Surges merely set up a tri-national commission for labor cooperation with a small secretariat, with no private rights of action. For the Side Accord texts see *supra* note 59.

85. Clinton also claimed that NAFTA will create 200,000 U.S. jobs within two years, a million within five years and "many more jobs than will be lost."

86. For constrasting analyses, see generally Leslie Glick, Understanding the North American Free Trade Agreement (1993); Paul Wonnacott, *NAFTA Scorecard*, Wall St. J., Sept. 30, 1993, at A18. Most observers agree that United States MNCs and investors could gain substantially, but job impact estimates vary considerably. Proponents claim net U.S. job gains, though conceding limited losses. Those opposing NAFTA in the U.S. fear that up to six million jobs will be lost in manufacturing, agriculture, and others in badly affected communities, without that much gain in services and management jobs. Mexican business and labor interests largely believe their country will gain substantially, even though some displacement of higher cost firms will occur. But, the "snap back" tariff relief provisions, and longer implementation schedules for Mexico, gives them substantial safeguard relief. On balance, most U.S. business interests favor NAFTA, and are willing to shift manufacturing jobs to lower wage countries for greater efficiency and profits. Some argue that Mexico and the Americas can be for the U.S. like Southeast Asia has been for Japan—part of an expanding co-prosperity sphere. A lot will depend on how the U.S. and Mexico supervise NAFTA. These economic outcomes will be influenced substantially by the conduct of both governments.

ico. The tentative rules-of-origin requirements are somewhat ambiguous, and should be tightened up.

The problems with NAFTA for United States interests arise in three areas. The first is Import Surges and Trade Imbalances. The Clinton Side Agreement on Import Surges and Worker Rights merely provides for mutual consultation by the United States, Mexico, and Canada. Does this mean that the United States reserves the right to assert unilaterally United States unfair-trade-practice or balance-of-payments remedies against Mexico? Or, does the United States preclude itself from serious response? Clarification is needed.[87] The second area is Worker Rights and Labor Protection. The Clinton Side Agreements merely establish a joint Council of the three Labor Ministers or Secretaries with a small investigative secretariat. Each country pledges to enforce its own laws and to study complaints and problems together. United States labor unions regard this as quite inadequate. Clearly, United States labor sees a risk of substantial job losses if American plants move to Mexico, without enough offset in new production jobs in the United States. Some United States farming interests fear a shift of agricultural production to Mexico and other warm countries south of the border. But, United States companies will create some new service and financial jobs in the United States to handle enlarged tourism and investment opportunities with Mexico. The Worker Rights Side Agreements will gradually improve Mexican working conditions and wages, but they will not prevent substantial job shifts and displacement from occurring.[88] The third area is Environmental Interests and Weakened Regulation. Environmental organizations in the United States worry that NAFTA could create a lower common denominator of reduced environmental standards. The Clinton Side Agreements establish an Environmental Council and Commission, with multibillion dollar funding for clean up projects in Mexico. Majority Leader Gephart proposed a two to four percent border transactions fee for financing, but the Clinton administration prefers to sell bonds for this purpose. What share will be sold by the United States and Mexico? Will payments be guaranteed, and by which governments? Now United States environmental lobbies are divided on NAFTA. Some environmentalists accept the deal because it provides collaboration on joint problems. Others still strongly oppose NAFTA, because United States

87. Each country preserves the right to its own laws regulating labor and trade, including anti-dumping and CVD for subsidies. Under U.S. law this allows the U.S. government trade agencies to supervise remedies. And yet, NAFTA dispute resolution provisions, like the U.S.-Canada FTA, call for delegating appeals on disputes to tri-national panels for resolution. This evidently allows leeway for governmental and political involvement at the highest levels when serious trade conflicts arise. Since both Mexican and U.S. Presidents now support NAFTA, this suggests mutual accommodation may be sought. But Canada's recent election of a new liberal government, much less involved in NAFTA sponsorship, indicates that Canada could be tougher in impasse bargaining. *See* Clyde H. Farnsworth, *Chretien Says He Wants Changes in Trade Accord*, N.Y. Times, Oct. 28, 1993, at A20.

88. *See Side Accords*, *supra* note 59, along with contrasting views, *supra* note 86.

companies can use relocation to Mexico as leverage to resist or weaken environmental standards, and because they want to restrict trade with countries that have low environmental-protection standards.[89]

Understandably, most United States labor interests strongly oppose NAFTA, along with many environmentalists, some agricultural interests, and some smaller companies in the United States that are unable to relocate plants south of the border. On the other hand, most MNCs and financial interests favor NAFTA, and they favor similar agreements with other countries in the Americas. The Side Agreements controversy is still unresolved, however, particularly with respect to Import Surges. More safeguard relief to the United States and Canada could be guaranteed through explicit understandings that unfair-trade-practice remedies and correctives for serious trade imbalances shall be unaffected by NAFTA.[90]

How will NAFTA affect United States revenue tariffs or VAT-waiver correctives? With respect to new revenue tariffs in the ten to fifteen percent range, NAFTA might seem to preclude additional United States tariffs now. Thus, Mexico and Canada could be inside the tent of NAFTA before the United States raises significant revenue tariffs. VAT-waiver correctives are another matter, however, and a new United States VAT-waiver corrective tax would merely adjust for waiver in the home country of foreign production. Thus, NAFTA would not preclude a VAT-waiver corrective for Mexican or Canadian exports into the United States[91]

6. Correcting Uruguay GATT Round Shortcomings

The Uruguay GATT Round really began in the early 1980s as a multifaceted effort to expand free-trade into agriculture and services, reduce tariffs on goods for NICs, reduce NTBs, and generally improve the

89. Environmental interests in the U.S. are sharply divided on NAFTA, even after the Side Accord on Environment, Sept. 14, 1993, was released. But, some free-traders want environmental support. *See generally* John Jackson, *World Trade Rules and Environmental Policies: Congruence or Conflict?*, 49 Wash. & Lee L. Rev. 1227 (1992); Thomas J. Schoenbaum, *Free International Trade and Protectio of the Environment: Irreconcilable Conflict?*, 86 Am. J. Int'l L. 700 (Oct. 1992). And yet, many environmental problems are global in scope, which are difficult for a liberal trading order to deal with responsibly. *See generally* Christopher D. Stone, *Beyond Rio: "Insuring" Against Global Warming*, 86 Am. J. Int'l L. 445 (July 1992).

90. More effective unfair-trade-practice relief could be assured by a U.S. administration determined to implement stronger remedies and safeguarding. This would require strong U.S. supervision of expanding trade flows under NAFTA. Most of the U.S. labor anxiety about NAFTA flows from a lack of confidence that such supervision will be forthcoming, and from the relatively weak Side Accords on Labor and Import Surges, together with less safeguarding for U.S. industries than for Mexican industries in the basic NAFTA agreement. By contrst, the Bush administration placed a greater priority on safeguarding U.S. investor and MNC interests in Mexico.

91. Like the EC, Mexico has a 15 percent VAT. Thus, any new U.S. VAT or VAT-waiver corrective would serve the function of taxing manufactured goods from those areas in a manner comparable to U.S. manufactured exports to those areas.

world-trade system. The agenda for the Uruguay GATT Round was not settled until 1985, when many task forces and working parties were established.[92] Unfortunately, at the outset, United States trade negotiators made a crucial concession with far-reaching impact in limiting results for the Round when they proposed "standstill" as the basis for a *modus vivendi* on multilateral trade until such time as the GATT Round might be concluded. This concession meant that the United States pledged not to increase significantly the use of its unfair-trade-practice remedies, or other trade restrictions, to achieve reasonable trade balance. Clearly, the most open major market failed to use its leverage as the largest importer and trade-deficit nation in the world. The United States failed to use its strongest moral and economic weapon to enforce effective reciprocity. Having already conceded more openness to its markets in previous GATT Rounds, the United States had little remaining bargaining power to force concessions from Japan, the EC, NICs, and LDCs when it tied its own hands with the standstill pledge. The United States could have achieved more with the GATT Round in 1986-93 if it had systematically used anti-dumping, countervailing duty, section 301, and/or import surcharge remedies along with multilateral bargaining.[93] When the United States had eliminated excessive trade and current-account deficits, a more level field of trade flows would have been a sounder basis for Uruguay GATT Round bargaining.

Yet, at this stage in the evolution of post-World War II trade patterns, with more than 132 independent trading nations in the global community, it is not surprising that that they could achieve only modest results on any multilateral consensus basis.[94] With an unlevel playing field having been strongly established throughout GATT's history (1947-93), in-

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92. *See* sources cited *supra* notes 45, 48.

93. Thus, the U.S. could have used a more active, Baldridge-Prestowitz trade bargaining strategy, with more MITI-style collaboration between U.S. government and industry. In this way, the Uruguay GATT Round would have focused more upon establishing equal overall U.S. trade flows, and the elimination of large U.S. trade deficits with key trade partners. Weakened U.S. industries could have been encouraged to use anti-dumping, CVD, and § 301 proceedings, and the U.S. government should have supported them, with § 122 (GATT Article XII) balance-of-payments surcharge leverage used to achieve real and prompt progress.

None of this firmness would have been inconsistent with the useful and primary goals of the Uruguay GATT Round, i.e., more openness and equal trading conditions for agriculture, gains in access for services, reduced tariffs by the NICs and many LDCs, less use of non-tariff barriers, and stronger protection for intellectual property. Greater U.S. toughness in trade bargaining, using its leverage as the world's biggest importer, would have assured more respect and faster results with the main items on the U.S. trade agenda.

94. An incomplete consensus on world trade is actually a blessing. The established GATT framework (1947), despite greater leeway given for subsidies and restrictions by developing countries, still contained (at least prior to the possible implementation of the 1994 Uruguay Round changes) enough flexibility for a large, powerful nation with large markets like the U.S., to adequately defend and safeguard its vital economic interests. What the U.S. should have done in the mid-1980s, i.e., implementing a stronger industrial-trade policy, can still be done today, but the GATT (1994) agreement and its new

cluding seven previous rounds of uneven tariff and trade-barrier reductions and strong UNCTAD challenges, major GATT realignment or leveling was unrealistic. Many nations remain committed to strong industrial-development strategies, including extensive subsidies, selective trade restrictions, and catch-up efforts. It would be naive to think that most nations would now take a "hands off" approach to international trade and service flows. Accordingly, the United States must accept the fact that widespread distortions, unequal openness, and varied subsidies are part of the world trade landscape.[95] Many large producers in the global marketplace experience substantial scale economies, face declining costs, and use extensive price discounting to enhance sales and profits.[96]

So, what evaluation should be made of the Uruguay GATT Round agreement of December 1993? Overall, the Uruguay Round deal makes modest movement toward somewhat freer-trade in goods and some services, and it tries to limit and weaken offsets for dumping, subsidies, and unfair-trade-practices by national trade law authorities.[97] The GATT (1994) agreement continues to prefer developing countries; they enjoy substantially more latitude for subsidies, restrictions, and industrial policies. Unfortunately, in agriculture the gains for freer markets and reducing subsidies are rather small and disappointing to most large exporters, such as the United States and Cairns group countries.[98] Additionally, most developing nations retain, not unreasonably, strong control over

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WTO (with majority rule voting and dispute settlement panels) makes a stronger U.S. trade policy more difficult to achieve.

95. The U.S. cannot realistically expect most nations to open up to imports as completely as the U.S., or even to the same extent as European community nations in the post-Maastricht environment after 1992. Many developing nations must use subsidies, tariffs, and/or other restrictions to nurture their industrial progress as did the U.S. from 1791 until after World War II. While the U.S. should accept this industrial fact of life with realistic compassion for the needs of others, the U.S. need not straight-jacket itself into asymmetrical trade openness with many provisions in the Uruguay Round agreement that are bad for U.S. industry, that would cripple competitiveness, and that would prevent a broad renewal of economic growth for America.

96. The facts of widespread scale economies, declining cost surveys, and a natural opportunity for marginal cost discounting are built into the world marketplace. It is the nature of modern technology that extensive scale economies arise in many fields of production, transport, and services. Thus, continuing care must be taken by U.S. industry and by its international trade agencies to offset and remedy the disruptive effects of such discounting when they threaten or cause significant injury or displacement for U.S. industries and companies.

97. See the four page summary of the Dunkel draft Uruguay Round Agreement in Lovett, *Rethinking U.S. Industrial-Trade Policy*, *supra* note 2, app. 1, Implications of the GATT 1994 Agreement; the excellent critical summary by Economic Strategy Institute experts, World Trade at the CrossRoads: The Uruguay Round, GATT, and Beyond (Robert W. Jerome ed. 1991).

98. As compared to the earlier U.S. and Cairns group hopes for major reductions in agricultural subsidies (especially by the EC and its CAP), the Blair House Accord of December, 1992, was a great retreat. Only limited reductions, spread over six years, are contemplated, and EC trade negotiators have been seeking to relax them further. *See* Root 7th ed., *supra* note 4, at 203-11, 263-64; and sources cited *supra* note 18.

their financial and service markets. So what interests gain, if any, from the Dunkel draft GATT Round agreement?

MNCs gain by consolidating their influence and limiting national trade policies that could disrupt their interests.[99] GATT panelists and officials gain more authority over trade flows, and become increasingly important as arbiters and mediators of inter-national trading disputes. GATT will be supplemented for most of its membership by a new World Trade Organization, with a continuing executive secretariat, self-perpetuating committees, and an international corps of trade-expert panelists whose travel expenses and fees are guaranteed.[100] This framework would be locked into place, and tends to straight-jacket United States trading relationships into the current, largely unlevel playing field of accumulated GATT provisions and prior agreements.

And what about the goals for United States trade policy in the 1990s?[101] Does the GATT (1994) help to eliminate promptly United States trade and current-account deficits, or promote renewed growth of United States manufacturing, services, and technology? The answer is no. What is the probable impact on overall United States trade of the Uruguay Round? The Uruguay GATT agreement seems most likely to lock into place the present asymmetrically-open GATT trading regime. It will weaken United States manufacturing somewhat more, and allow only limited, insecure gains in services. While the United States hoped originally in the Uruguay Round for a major expansion of agricultural exports, the Blair House Accord offers only modest gains over a number of years. Even this limited agricultural achievement is threatened by recent French government intransigence in pressing the EC hard to limit the Blair House Accord. Finally, by accepting the GATT (1994) deal the United States further erodes its ability to regulate imports and unfair-

99. MNCs have a vital interest in the outcome of the Uruguay GATT Round, *see supra* note 11, but so do most national governments, working people, farmers, smaller business, and all citizens. By reducing the "safeguarding limits" placed on international trade flows that were built into the original GATT in 1947, including Articles VI, XII, XVI, XVIII, XIX, and XXI, the GATT (1994) deal tips the balance too far in the MNC direction. This circumstance helps to explain why the base of national interest group support for the Uruguay Round outcome is rather narrow, i.e., MNCs, their trade lawyers, and a limited network of allied supporters.

100. *See* the GATT (1994), in particular MTN/FA II A2, Understanding on the Settlement of Disputes. This language provides:

> 8. Composition of Panels
>
> Panels shall be composed of well qualified governmental or non-governmental individuals, including persons who have served on or presented a case to a GATT panel, served as a representative to the GATT or in the GATT Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a contracting party. The Secretariat shall maintain and up-date an indicative list of panelists, with grandfather protection for the GATT panelists listed 12/30/84.

GATT art. 8.4, MTN/FA II-A2, at 6-7. These charming provisions suggest the flavor of in-group, mutual support from the existing cadre of GATT experts.

101. For a summary of the goals appropriate for U.S. trade policies, see *supra* notes 62-65 and accompanying text.

trade-practices, and to limit excessive trade and current-account deficits. On balance, the Uruguay GATT Round agreement of 1994 is not adequate trade policy for United States interests now.

The United States was unwise to accept the entire Dunkel draft agreement.[102] The most troublesome parts of the agreement for the United States, and for many other nations, are the supranational World Trade Organization and the proposed new Dispute Resolution panels and procedures. The World Trade Organization could easily become a "Super Brussels" Commission of World Trade Officials that may largely displace and emasculate United States international trade regulation authority, while allowing greater scope for subsidies and industrial policy support to continue for the EC, Japan, NICs, and LDCs.[103]

In addition, the Antidumping, Subsidies, and Safeguard provisions of the GATT (1994) deal are bad for United States interests, because they seriously weaken United States offsets and responses to widespread discounting and subsidies by foreign companies and governments.[104] The established GATT Article VI (1947) provisions are sufficient for United States purposes, allow enough leeway, and current GATT panels work well enough as vehicles for mutual accommodation and compromise when trade disputes arise. Stripped of these unnecessary, dangerous, and excessive restrictions upon United States trade policy, the remaining portions of the Dunkel draft, including the associated Blair House Accord, would have been a modest, not unreasonable gain for United States trade interests.

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102. The Uruguay Round negotiating process was extremely ambitious and multifaceted. *See* sources cited *supra* note 97.

103. Thus, the USTR's staff in the U.S. collaborated with counterpart trade negotiating agencies and staffs from many other countries to construct an insider's MNC oriented world trade club, with strong self-perpetuating momentum. Such an arrangement is completely inimical to U.S. national, economic, industrial, labor, agricultural, and trade interests. Even a strong free trade economist like Jagdish Bhagwati observed recently:

> [S]urely one cannot suppress the thought that our hands are already full and our backs overburdened enough by the difficulty of bringing the Uruguay Round to a successful conclusion; the grandiose [MTO] talks could prove diversionary and threaten the chances of the Round's success.

Jagdish Bhagwati, The World Trading System at Risk 97 (1991). Like many trade experts, he concluded that a more focused, limited agreement was more appropriate for the GATT Round.

104. Unfortunately, the 1994 Uruguay Round agreement, with respect to Antidumping, Subsidies, and Safeguards provides no real gains for U.S. manufacturing or industries, and only weakens remedies that already exist under U.S. law. Furthermore, § 301 of the U.S. Trade Act of 1974, not to mention Super 301, Omnibus Trade Act of 1988, would be emasculated by requiring, in effect, that all significant international trade disputes be settled by GATT panels.

Other serious shortcomings in the Uruguay GATT Round Agreement (1994) involve the Trade-Related aspects of Intellectual Property Rights. The widely hoped-for strengthening of U.S. intellectual property rights abroad is quite modest, while U.S. trade negotiators agreed to weaken § 337 under U.S. law (what many consider the most readily enforceable remedy against foreign unfair trade practices). This trade-off is adverse to U.S. industrial interests.

When the EC insisted upon the WTO and further weakening of the Blair House Accord on agriculture, the United States should have let the Uruguay GATT Round fail, and it should have allowed its fast-track negotiating authority to expire.[105] This eigth Uruguay GATT Round absorbed four years of preliminary negotiations and eight years of formal negotiations. Frankly, it is unrealistic to expect that much from grand, across-the-board multilateral trade negotiations involving 132 nations. The full-scale comprehensive GATT Round process has probably run its historical course, and more limited, special-sector agreements, regional trade areas, and bilateral negotiations will be more productive. No tears should have been wasted if the Dunkel draft GATT agreement foundered altogether, or if it merely achieved more modest results. Earlier GATT Rounds, especially the first six through 1967, fulfilled an important Bretton-Woods aspiration at the close of World War II. Trade rapidly expanded among OECD nations and many developing countries. The free world prospered, and it was their joint prosperity, in comparison to the USSR and most communist countries that won the Cold War. Nonetheless, a more open world economy is now strongly established, with market-oriented policies dominant almost everywhere. MNCs and business enterprises are well entrenched, and the world is effectively integrated into a global economy.[106]

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105. A frequent mistake in U.S. trade bargaining has been over-eagerness for a deal. In any deal-making situation, the party committed to rapid conclusion, at any price, is likely to get the short end of the stick. When George Bush rushed to negotiate the NAFTA deal in fourteen months so that it could be completed for the 1992 elections, a less successful trade deal that was more favorable to Mexico could be anticipated. In contrast, the U.S.-Canada FTA took almost four years, and it was mainly Canadians who later complained about the deal.

Unfortunately, USTR Mickey Kantor "promised to finish the Uruguay Round by Dec. 15, 1993," for the Clinton administration. *See* Bruce Stokes, *In Your Face*, Nat'l J., Aug. 21, 1993, at 2069. The U.S. government thereby weakened its bargaining leverage to hold out for significant improvements and modifications in the Dunkel draft agreement. By contrast, the French, EC, and Japan have been more patient and tougher trade bargainers over the years.

A tradition grew up in previous GATT Rounds that the U.S. would take a leadership role, serving as demandeur, and make important final concessions, more than other countries, to save the GATT Round, and preserve the liberal trade order. Unfortunately, this repeated expectation leads others to rely upon U.S. concessions at the end, with fast-track authority from the U.S. Congress serving as the effective termination date for GATT negotiations. This time the U.S. should have been tougher and smarter: *No* GATT without Blair House; eliminating WTO and Dispute Settlement, Subsidies, Antidumping, and Safeguard.

So what? The established GATT (1947) system was not that bad, with enough room for maneuver, so that U.S. industrial rejuvenation, tougher trade bargaining, and a trade balancing policy could still be implemented successfully. But, for the U.S. to accept a gravely flawed Dunkel draft Uruguay Round deal, that substantially impairs the American industrial recovery effort, for some doubtful, largely illusory gains, was stupid.

106. Recent trends illustrate the strengthened environment for MNCs and global business enterprise. *See generally* Jonathan I. Charney, *Transnational Corporations and Developing Public International Law*, 1983 Duke L.J. 748 (1983); John Daniels & Lee H. Radebaugh, International Business: Environments and Operations (4th ed., 1987); Patricia McKinstry Robin, *The Bit Won't Bite: The American Bilateral Investment Treaty*

The New World Order is based on a broad network of national legal institutions in most countries that increasingly respects individual and corporate enterprise, sensible property rights, and, within reason, market dynamics. International banking, capital movements, and the IMF provide a strong, diversified credit and financial network. And the main disciplines for trade and investment activity are the logic of markets, productive competition, and the drive for efficiency. This global system is not going to collapse; it has too much momentum, rooted in the strong economic self-interest of most nations.[107]

IV. Conclusions and Recommendations

What are the most productive United States trade policy options in the 1990s? The main goals should be to eliminate United States trade and current-account deficits; rejuvenate United States industrial growth, exports, and prosperity; offset foreign industrial policies, subsidies, restrictions; and build a more productive partnership between industries and the American government.[108]

1. Final implementation of the Uruguay Gatt Agreement is scheduled for completion in 1995. At best, the United States can only expect very limited gains from these GATT arrangements. Although some United States companies might achieve modest export openings in the agriculture and services area, the United States must not retreat from the Blair House Accord concessions on agriculture made by the EC in December, 1992. Some portions of the Dunkel draft agreement proposed in December, 1992, should have been rejected by the United States, particu-

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Program, 33 Am. U. L. Rev. 93 (1984); Bruno Solnik, International Investments (198); Detlev F. Vagts & Kenneth Propp, Book Review, 85 Am. J. int'l L. 398 (1991) (reviewing Sidney Dell, The United Nations and Intern'l Business (1990)). *But see* Robert Kuttner, *Market, State, and Dystopia*, 15 American Prospect 87 (1993) (critiquing of the dangers in an excessively "marketized society" with too much human insecurity and pressures for reduced wages).

107. Some Uruguay GATT Round enthusiasts feared the world economy faced drastic breakdown or severe trade wars if the Dunkel draft GATT agreements are not accepted in total. *See* Peter Sutherland, *If GATT Fails, We All Lose*, Wall St. J., Oct. 10, 1993, at A20. He wrote that the future of the world's new democracies and a secure and effective trading system could be at stake; that the multi-lateral system that had created prosperity in the 1950s through the 1970s is collapsing. *See id.* This is greatly overblown rhetoric. The world's trading system, based on the Bretton Woods heritage, is now stronger, and more secure than ever. At stake, really, in the Uruguay Round controversy, is whether a GATT (1947) system, workable with some unfortunate asymmetries, but forgiving flexibility, should have been transformed into a monster—a more rigid, third world dominated WTO, with entrenched asymmetries that greatly disadvantage the U.S., and some other advanced industrial countries to a lesser degree.

The Dunkel draft was a bad trade deal for the U.S., and it should have been greatly reduced in scope by stripping out the dangerous features. If this sensible cutting down to size were done, a limited GATT Round deal based upon more tariff cutting, modest opening, and improved flexibility made sense. Sutherland was dead wrong in saying that the round is a cohesive whole. This self-serving rigidity should have been rejected by the world community, and especially by the United States.

108. *See supra* text accompanying notes 27-30 and 64-69.

larly the burdensome and unnecessary WTO and Dispute Resolution provisions, together with the Anti-dumping, Subsidies, and Safeguards provisions. All these features significantly weaken United States trade law, and help erode further the position of United States manufacturing in world markets. If the Uruguay GATT round finally had failed in 1993, it would have been no great loss. Other policy avenues, bilateral and regional, will be more productive, and must deal more effectively with the serious asymmetry problems that burden the United States in current global competition.[109]

2. NAFTA is an important regional relationship for the United States that can, if wisely supervised, lead to expanding, mutually balanced trade in the Americas generally. The NAFTA Side Agreements should be strengthened, however, and growing trade in the Americas must be closely supervised by the United States to enforce mutual trade balance and substantial net benefits to all participating countries.[110]

3. Bilateral trade relationships with sustained trade surplus countries, particularly Japan and China, must be greatly improved. Merely asking for additional market opening is not good enough, and has failed so far. Imports into the United States from these countries should be reduced by import restrictions until reasonable balance is established.[111]

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109. *See supra* text accompanying notes 92-107.

110. *See supra* text accompanying notes 85-91.

111. The U.S. has allowed bilateral imbalance problems, particularly with Japan and China, to get out of hand. The U.S. has no right to complain about Japanese or Chinese industrial policies, import supervision, or their skillful self-improvement. Instead, we should congratulate their success, and intelligently emulate them. This means a comprehensive U.S. industrial rejuvenation effort, tougher trade policies, and enforcing overall trade balance. The U.S. has a right to do what Japan has shown is the best overall strategy for continuing, high tech progress, and industrial development.

In 1983, this author learned in a previous sabbatical to Japan (the year President Reagan enjoyed a successful visit to Tokyo, when the U.S.-Japan relationship was quite friendly) what is, in this author's opinion, the best way to deal with the Japan-U.S. trade imbalance. First, never accuse the Japanese of bad faith, sneakiness, or unfairness in trade relations. This tactic only brings them to quiet rage. Japanese people are extremely polite, and they hate confrontation; such behavior lacks dignity, a fundamental requirement of good, responsible behavior. The best way to deal with Japan is to accentuate the positive. Admire Japan's hard work, thrift, engineering, and business-government collaboration. Express eagerness to learn helpful lessons from Japan, as Japan learned helpful things from America in the Meiji, MacArthur, and 1950s eras. Then say, in passing, that the U.S. has serious social problems. We have excessive unemployment and poverty. To the Japanese, this is shocking and tragic social failure and a lack of healthy cohesion. Then say that America must solve these problems, and eliminate widespread U.S. unemployment. Trade and current-account deficits in the U.S. must be eliminated, as Japan well understands from their own experience. Japanese companies in America are good citizens, often more responsible than U.S. companies. The U.S. must ask the cooperation of all companies in America, wherever based, to work with the U.S. government in solving the excessive import, insufficient export problem. We will be fair. Japanese companies can make helpful suggestions. Thank you for your kind understanding.

Then, the U.S. Department of Commerce, which should be reorganized as a Department of Industry, Technology and Trade-DITT, and the USTR should work out a 36 month program by which Japan, China, and Taiwan can help eliminate their large trade deficits. Imports from these countries (but not U.S.-based production by their compa-

4. Unfair trade-practice-enforcement by the United States should be strengthened. More rapid provisional relief and effective settlements should be worked out. The United States Department of Commerce should become an active investigative partner with American industries and trade associations in dealing with widespread foreign subsidies, restrictions, and discounts that have affected many United States industries and companies and that gradually reduced the role for United States industry in many markets. The United States Department of Commerce should help work out extensive rejuvenation programs for many United States industries, trade associations, and American financial institutions.

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nies) will be phased down by 15 percent annually until bilateral trade balance is achieved. Statutory authority for this action comes from §§ 122 and 301 of the U.S. Trade Act of 1974. Thereafter, under § 2202 of the Omnibus Trade At of 1988, DITI and the USTR will closely supervise and prevent bilateral trade balances from getting out of hand in any other important trading relationship. These import reductions are not matters for negotiation.

A great deal of effort by the U.S. was put into the so-called Structural Impediments Initiative. This effort produced talk, promises of opening, but no meaningful results or change in trade flows. The same game has been renewed with the so-called Framework talks. Asking the Japanese to open their markets hasn't worked, nor does it make sense to set quotas for expanded exports into Japan. This is too confrontational for Japan. It is the wrong approach. Respect Japan's right to buy what they like, and regulate their own imports. But insist on the reciprocal right of the U.S. to cut excessive imports from large trade surplus countries until a reasonable bilateral trade balance is restored. This is sound internal policy Japanese style.

For Japanese history, economic policies, and overall performance, see Lovett, World Trade Rivalry, *supra* note 1, at 32, 79. Also, for highlights, see generally William Lockwood, The Economic Development of Japan: Growth and Structural Change 1868-1938 (1954); William Lockwood, The State and Economic Enterprise in Japan (1965); Thomas K. McCraw, America versus Japan (1986); and Karel van Wolferen, The Enigma of Japanese Power: People and Politics in a Stateless Nation (1989). In addition, for recent sources, see Christopher Wood, The Bubble Economy: Japan's Extraordinary Speculative Boom of the '80s and the Dramatic Bust of the 90s (1992); John O. Haley, *Luck, Law Culture and Trade: The Intractability of United States-Japan Trade Conflict*, 22 Cornell Int'l L.J. 403 (1989); Michael W. Punke, *Structural Impediments to United States-Japanese Trade: The Collision of Culture and Law*, 23 Cornell Int'l L.J. 55 (1990); Gary R. Saxonhouse, *Japan, SII and the International harmonization of Domestic Economic Practices*, 12 Mich. J. Int'l L. 450 (1991); Keith Bradsher, *U.S. and Japan Open Talks on New Trade Framework*, N.Y. Times, June 12, 1993, at 35; Bob Davis & Jathon Sapsford, *Japan Escapes U.S. Sanctions, Offering Plan to Open Up Public-Works Market*, Wall St. J., Oct. 27, 1993, at A2; Carla A. Hills, *Targets Won't Open Japanese Markets*, Wall St. J., June 11, 1993, at A10; Andrew Pollack, *U.S.-Japan Trade Talks Bog Down*, N.Y. Times, Oct. 23, 1993, at 45; David E. Sanger, *Moderate Meddling: From Asia, Models for Growing Economies*, N.Y. Times, Oct. 10, 1993, at E4; Jacob M. Schlesinger & Clay Chandler, *While Change Roars Through Japanese Politics, Real Power Still Lies in Hands of Bureaucrats*, Wall St. J., June 25, 1993, at A6; James Sterngold, *Japan's Leading Parties Crushed in Tokyo Elections*, N.Y. Times, June 28, 1993, at A3; *The Trade Trio Talking Tough with Japan*, Bus. Week, Sept. 27, 1993, at 84; David Wessel & Terrence Roth, *U.S. and Japanese Trade Negotiators Angle for Advantage Ahead of Talks*, Wall St. J., June 4, 1993, at A2.

For U.S.-China trade imbalances the problem is more recent, but there are great structural similarities. The Chinese have even stronger mercantilist regulation of trade flows, and are eager to expand on their export-led growth. The U.S. would be wise to enforce overall trade flow balance with China promptly, before this problem gets more seriously out of hand.

Appropriate tax relief and investment encouragement should be focused on these industries, with the possibility of rejuvenation tariffs to offset serious accumulated injury to United States industries. More extensive data on imports, exports, and shipping for all goods and services should be obtained and regularly reported, so that United States trade balances and current-account information can be closely monitored on a monthly reporting basis, with all United States trade partners simultaneously.[112]

5. The United States should develop a comprehensive federal VAT in the twelve to fifteen percent range, comparable to other major industrial areas. Significant exemptions should be included for food and drugs to ease the impact on lower income and retired people. Revenues must be shared equally with state and local governments, and surplus federal revenues should be used to reduce capital gains taxes, reduce corporate taxes for new investments, and reduce business taxes generally for industry receiving rejuvenation support. Until the federal VAT is implemented, a twelve to fifteen percent VAT-waiver corrective charge should be imposed on all imports into the United States.[113]

6. The United States should develop a GATT-consistent, non-discriminatory, general-revenue tariff of ten percent on all imports of goods and services into the United States to be phased in over three years to minimize disruptive impacts. This ten percent general revenue tariff should be maintained until the United States achieves a national trade surplus of at least one percent of United States GDP, after which time it could be relaxed to six to eight percent on all imports.[114]

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112. These U.S. unfair-trade-practice remedies, and their leverage for healthy trade bargaining to correct accumulated asymmetries, should be coordinated with U.S. industrial rejuvenation efforts on a sector-by-sector basis. Overkill should be avoided. This coordinative restraint should be the responsibility of a new U.S. Department of Industry, Technology, and Trade, reorganized from the present U.S. Dept. of Commerce. The U.S. should develop a Japanese-style industry, with government collaboration to improve American economic growth, achieve fuller employment, and restore overall prosperity.

113. See *supra* notes 74-76 and accompanying text. Great care must be taken, however, with any federal VAT, so that large new revenues are not wasted on health-care largesse. Any VAT reform must be linked to solving the U.S. excessive budget deficit problem, and collaterally to offsetting the widespread waiver of foreign VATs (which constitute a serious competitive handicap for U.S. manufacturing industries). Excess revenue creation must be avoided by offsetting cuts in business taxation, lower capital gains levies, and reduced payroll taxes.

114. During most of U.S. economic history significant tariffs greatly aided U.S. industrial development, especially between 1815-1945, when most of the U.S. industrial growth toward world leadership occurred. Unfortunately, U.S. industry has been so widely weakened in recent years that the U.S. should resume this market-oriented general incentive for industrial development. If the U.S. had reacted promptly in the late 1970s to early 1980s to increasing competitiveness and trade deficit problems, this measure might not have been needed. But, with widespread deindustrialization and heavier structural unemployment by the early 1990s, a general-revenue tariff in the 10 percent range is needed stimulus. Western Europe might want a comparable measure or rejuvenation, because they have widespread unemployment. Japan's sustained post World War II growth suggests that they might avoid this measure (informal import restraints still operate there.) When the U.S. restores healthy trade balance on a sustained basis, these general revenue tariffs might be relaxed again. Meanwhile, most lower-wage developing

If these recommendations are implemented, the United States could eliminate soon its chronic trade and current-account deficits, and America's industrial base could be rejuvenated on a broad scale. Excessive imports, and undue consumption generally, would be reduced. Savings and investment into productive United States industries would be encouraged. Competitive disruptions from foreign subsidies, restrictions, and discounting could be offset and neutralized. Within ten years most of the accumulated, costly consequences of unequally open and asymmetrical world markets could be alleviated. With economics and trade along these lines, the United States could resume stronger economic growth, and achieve fuller employment (more like the United States prosperity that governed in the 1940s-60s). With renewed growth and full employment, most American social problems—excessive crime, drug abuse, demoralization, and ethnic tensions—could be eased substantially, and the career and income potential for most United States citizens and families would improve.[115]

countries can still sell into the high-wage markets (though not quite so easily). The basic rationale for ten percent U.S. revenue tariffs is threefold: (1) to offset accumulated and excessive U.S. deindustrialization and unemployment; (2) to offset chronic and excessive U.S. trade and current-account deficits; and (3) to provide a surge of incentives for U.S. industrial rejuvenation effort. Once these medium-term objectives have been achieved, these revenue tariffs can be gradually relaxed.

115. As Paul Krugman recently observed:

> [T]he slowdown of American productivity growth since the early 1970s becomes the most important single fact about our economy. Over the first 70 years of this century, American output per worker rose at an average annual rate of 2.3 percent. During the 1950s and 1960s that rate was 2.8 percent. Since 1970, however, our economy has delivered average annual productivity growth of only 1.2 percent. Had productivity over the last 20 years grown as fast as it did for the first 70 years of this century, our living standards would now be at least 25 percent higher than they are.

Paul Krugman, The Age of Diminished Expectations: U.S. Economic Policy in the 1990s 12 (1990).

The key to restored economic growth, and greatly reduced unemployment and social distress, is a comprehensive rejuvenation of the U.S. industrial base. Americans must impose self-discipline. We must live within our means for public expenditures, health care, and imports from abroad. All excessive deficits must be promptly eliminated. For further insight on these matters, see Kevin Phillips, Boiling Point: Republicans, Democrats, and the Decline of Midle-Class prosperity (1993); Kevin Phillips, The Politics of Rich and Poor: Wealth and the American Electorate in the Reagan Aftermath (1990); B. Drummond Ayres, Jr., *Washington Mayor Seeks Aid of Guard in Combating Crime*, N.Y. Times, Oct. 23, 1993, at 1; Tim W. Ferguson, *Pensions: The Shape of Things to Come*, Wall St. J., Oct. 26, 1993, at A23; Robert D. Hershey, Jr., *New Data Point to Weakening U.S. Economy*, N.Y. Times, June 30, 1993, at D1; Marc Levinson et al., *Can Anyone Spare a Job?*, Newsweek, June 14, 1993, at 46; Joann S. Lublin, *Companies Plan More Job Cuts, Survey Indicates*, Wall St. J., Sept. 24, 1993, at A2; *Manufacturing Job Losses Cripple the Economy*, N.Y. Times, June 4, 1993, at A30 (letter to editor).