RETHINKING U.S. INDUSTRIAL-TRADE POLICY IN THE POST-COLD WAR ERA

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Many Americans now believe that a stronger industrial-trade policy is needed to help rejuvenate economic growth and broaden prosperity in the United States.[1] To understand this development, we must review U.S. industrial-trade

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1. This changing outlook was reflected in the 1992 election campaign. *See* GOVERNOR BILL CLINTON AND SENATOR ALBERT GORE, PUTTING PEOPLE FIRST 75-80, 143-145, 155-160 (1992); ROSS PEROT, UNITED WE STAND 57-72, 99-101 (1992); *See also* THE CUOMO COMMISSION ON COMPETITIVENESS, AMERICA'S AGENDA: REBUILDING ECONOMIC STRENGTH 92-123, 200-205 (Lee Smith ed., 1992); KEVIN PHILLIPS, BOILING POINT: DEMOCRATS, REPUBLICANS AND THE DECLINE OF MIDDLE-CLASS PROSPERITY 195-222, 249-259 (1993); RETHINKING AMERICA'S SECURITY: BEYOND COLD WAR TO NEW WORLD ORDER 117-175 (Graham Allison & Gregory Treverton eds., 1992) [hereinafter RETHINKING AMERICA'S SECURITY]; LESTER THUROW, HEAD TO HEAD: THE COMING ECONOMIC BATTLE AMONG JAPAN, EUROPE, AND AMERICA (1992); Sources cited *infra* notes 11, 19,

history and appreciate the recent U.S. neglect of trade reciprocity. Growing public unease, building up to the 1992 election, and widespread public recognition of reduced economic performance now provide an opportunity for stronger U.S. policies.

On the other hand, multinational corporations (MNCs) and banks, which have become a powerful special interest, are attempting to preserve substantial benefits for themselves in an asymmetrically-open trading system. This framework allows numerous opportunities for tax haven banking and favorable routings for investment, manufacturing, and marketing, that maximize MNCs' profit potential. Unfortunately, with competing industrial policies, less openness among many U.S. trading partners, and more widespread subsidies abroad, this framework encourages unequal growth rates in the world economy. In addition, this framework allows some significant net shifts in industrial location and manufacturing toward other countries (e.g., parts of Europe, Japan, Taiwan, Korea, and other newly industrialized countries [NICs] and less developed countries [LDCs]).

How much corrective or offset action should come from independent U.S. policies, and how much can be expected from bilateral or multilateral dealings? A key question is the extent to which more reciprocal and balanced trade flows, and a more equal sharing in the technological development process can be developed for the post-Cold War era by the Clinton Administration and its trade partners. A collateral problem is how the U.S. can correct asymmetries of unequal openness and the divergent use of subsidies, if at all. As the Clinton era begins in 1993, U.S. industrial-trade policy has become more controversial, complicated by conflicts over domestic tax loads and government spending priorities.

I. UNDERSTANDING INDUSTRIAL-TRADE HISTORY

Mercantilism, the national regulation or warping of international trade flows to foster domestic economic development and prosperity, was the dominant theme of pre-20th century trade history.[1] Britain's experiment with partial free

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1. For a convenient summary of world trade history, with extensive citations to literature about the U.S., Europe, and Asia, see WILLIAM A. LOVETT, WORLD TRADE RIVALRY: TRADE EQUITY AND COMPETING INDUSTRIAL POLICIES 21-74 (1987); JOHN M. DOBSON, U.S. INT'L TRADE COMMISSION, TWO CENTURIES OF TARIFFS: THE BACKGROUND AND EMERGENCE OF THE U.S. INTERNATIONAL TRADE COMMISSION (1976); PETER LINDERT & CHARLES KINDLEBERGER, INTERNATIONAL

trade (mainly between the 1840's and 1931) was the first major break in this mercantilist tradition. However, British Empire "free trade" was limited: most of the finance, shipping, and manufacturing flows between the mother country and her colonies remained in British hands. Also, the British could afford to open its home markets to imports in the 19th century since its manufacturing, finance, and shipping sectors enjoyed a big lead over rival nations. In fact, many other countries felt that Britain's so-called free trade was a ploy to induce weaker nations to open their markets to British manufacturing expansion.[3]

Although many nations followed Britain into freer trade to some extent in the 1840's and 1850's, the U.S., Germany, France, Italy, Spain, Russia, and Japan subsequently used tariffs and other protectionist practices as nurturing or catch-up policies in the period between the 1860's to the 1920's, and each of these powers developed colonies of their own.[4] The most dramatic successes were the U.S. and Germany, whose manufacturing industries and technology forged ahead of Britain by the early 20th century. Reflecting manufacturing interests, many British Conservatives began to retreat from free trade after 1899, under the leadership of Joseph Chamberlain, who advocated Imperial Preference and more effective reciprocity. Britain finally rejoined the industrial mainstream with Imperial Preference Tariffs in 1931, partly in 25
rresponse to the decline of world trade in the Great Depression.[5] Interestingly,

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ECONOMICS 224-239 (7th ed. 1982); F. W. TAUSSIG, THE TARIFF HISTORY OF THE USA (8th ed. 1931). *See also* FRIEDRICH LIST, THE NATIONAL SYSTEM OF POLITICAL ECONOMY (S.S. Lloyd trans., 1991) (1841).

3. *See* LOVETT, *supra* note 2, at xiii-iv, 63-67 and extensive sources cited therein.

4. It should be realized that moderate tariffs or taxes upon manufactured imports constitute a "market oriented" industrial development policy, as compared to direct subsidies or discretionary grants to particular companies or projects. The "infant industry" rationale for some tariff protection has been widely accepted by developing (or catching up) nations. It was urged by Alexander Hamilton (the first U.S. Treasury Secretary), early Northeastern industries, and more broadly by Whig and Republican politicians from the 19th Century through World War II. Classical economists like Adam Smith also accepted this argument within limits, while Friedrich List and others felt that tariffs and/or other measures should be used more extensively to encourage industrial development and economic progress. *See* LOVETT, *supra* note 2, at xiii-iv, 63-67 and sources cited therein. *See also* WITT BOWDEN ET AL., AN ECONOMIC HISTORY OF EUROPE SINCE 1750 (1937); SHEPHARD B. CLOUGH, FRANCE, A HISTORY OF NATIONAL ECONOMICS, 1789-1939 (1970); SHEPHARD B. CLOUGH & CHARLES W. COLE, ECONOMIC HISTORY OF EUROPE (1941).

5. *See* LOVETT, *supra* note 2, at xiii-iv, 68 and sources cited therein. In particular, see RICHARD REMPEL, UNIONISTS DIVIDED: ARTHUR BALFOUR, JOSEPH CHAMBERLAIN AND THE UNIONIST FREE TRADERS (1972); CHARLES L. MOWAT, BRITAIN BETWEEN THE WARS, 1918-40 (1955); KEITH MIDDLEMAS & JOHN BARNES, BALDWIN: A BIOGRAPHY (1969).

Britain's industry and economy revived under Imperial Preference Tariffs during the 1930's, enough for the British Empire to withstand Hitler's onslaught in World War II. In fact, British industrial growth was significantly stronger in the 1930's than the 1920's.[6]

After 1934, the U.S. began turning gradually toward reciprocal trade agreements (with somewhat lower tariffs) under Roosevelt's New Deal policies.[7] The majority of early reciprocal agreements were with Latin America. These early reciprocal arrangements could be interpreted, in part, as efforts to keep major markets open for U.S. manufacturers, which had been expanding sales there since the early 1900's. Otherwise, in the years prior to World War II, the U.S. remained rather strongly protected by tariffs, as did most other leading manufacturing nations -- Germany, France, Italy, the USSR, Japan, and, to a lesser degree, even Britain -- as we moved into World War II.[8] War-time trade flows were even more highly regulated, with priorities and partial rationing to support war efforts.

In the post-War era, world trade soon became substantially more open, at least among the non-Communist industrial countries. The U.S. and Britain led the way toward freer trade among most industrialized countries with a series of multilateral negotiation rounds between 1947-79, otherwise known as the General Agreement on Tariffs and Trade, or GATT.[9] A crucial reason was the Cold War, and a feeling among the U.S., Britain, and key allies (and their MNCs and banks) that freer trade would promote stronger economic integration, and thus

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6. MICHAEL KITSON & SOLOMON SOLOMOU, PROTECTIONISM AND ECONOMIC REVIVAL: THE BRITISH INTERWAR ECONOMY (1990).

7. *See* LOVETT, *supra* note 2, at 63-64, and sources cited therein; Sources cited *supra* note 2. *See also* JOHN D. HICKS, THE AMERICAN NATION: A HISTORY OF THE USA FROM 1865 TO THE PRESENT 711-713 (1946); FRANKLIN R. ROOT, INTERNATIONAL TRADE AND INVESTMENT 214-220 (6th ed. 1990).

8. World War I had brought trade controls to many nations, and postwar trade for Germany and former portions of Austria-Hungary was weakened. Meanwhile, the U.S. strengthened its tariffs again in the 1920's, and even Britain began to limit disruptive imports timidly under the Safeguarding of Industries Act of 1921. When stock markets crashed and manufacturing slumped in the Great Depression, many countries raised tariffs even more, and restricted agricultural imports. *See* sources cited *supra* notes 2 and 5.

9. *See* KARIN KOCK, INTERNATIONAL TRADE POLICY AND THE GATT, 1947-67 (1969); JOHN EVANS, THE KENNEDY ROUND IN AMERICAN TRADE POLICY: THE TWILIGHT OF THE GATT? (1971); KENNETH W. DAM, THE GATT: LAW AND INTERNATIONAL ORGANIZATION (1977); JOHN H. JACKSON & WILLIAM J. DAVEY, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 293-298 (2d ed., 1986); GILBERT WINHAM, INTERNATIONAL TRADE AND THE TOKYO ROUND NEGOTIATION (1986).

political and military security. However, many developing nations in these years began to use more mercantilism, selective tariffs, industrial subsidies, multiple exchange rates, quotas, domestic content, and other restrictions to foster domestic manufactures. The most successful "new" industrial countries, including Japan, Taiwan, and South Korea, very strongly encouraged manufacturing exports, although their domestic markets remained restricted and less open to foreign competition.[10] The GATT fostered this dichotomy by allowing LDCs a broad range of preferences, subsidies, and tariffs.[11] LDC preferences were expanded

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10. Economic development strategists emphasize, and take for granted, the use of industrial promotion and expansion measures. The contrast between free market globalist vs. national economic development thinking is striking. For an extended tracing of these literatures, see LOVETT, *supra* note 2, at 61-63, 76-104. *See also* F. GERARD ADAMS & LAWRENCE KLEIN, INDUSTRIAL POLICIES FOR GROWTH AND COMPETITIVENESS: AN ECONOMIC PERSPECTIVE (1983); KEVIN PHILLIPS, STAYING ON TOP: THE BUSINESS CASE FOR A NATIONAL INDUSTRIAL STRATEGY (1984); JOHN ZYSMAN & LAURA TYSON, AMERICAN INDUSTRY IN INTERNATIONAL COMPETITION: GOVERNMENT POLICIES AND CORPORATE STRATEGIES (1983); WILLIAM R. CLINE, EXPORTS OF MANUFACTURES FROM DEVELOPING COUNTRIES: PERFORMANCE AND PROSPECTS FOR MARKET ACCESS (1984); STEPHEN COHEN & JOHN ZYSMAN, MANUFACTURING MATTERS: THE MYTH OF THE POST-INDUSTRIAL ECONOMY (1987); JOSEPH GRUNWALD & KENNETH FLAMM, THE GLOBAL FACTORY: FOREIGN ASSEMBLY IN INTERNATIONAL TRADE (1985); GEORGE VARGISH, WHAT'S MADE IN THE USA? (1988); OTTO ECKSTEIN, THE DRI REPORT ON USA MANUFACTURING INDUSTRIES (1984); MILTON HOCHMUTH & WILLIAM DAVIDSON, REVITALIZING AMERICAN INDUSTRY: LESSONS FROM OUR COMPETITORS (1985); MICHAEL DERTOUZOS, MADE IN AMERICA: REGAINING THE PRODUCTIVE EDGE (1990); KAREL VAN WOLFEREN, THE ENIGMA OF JAPANESE POWER (1990); GEORGE C. LODGE & EZRA F. VOGEL, IDEOLOGY AND NATIONAL COMPETITIVENESS: AN ANALYSIS OF NINE COUNTRIES (1987); GEORGE C. LODGE, PERESTROIKA FOR AMERICA: RESTRUCTURING BUSINESS-GOVERNMENT RELATIONS FOR WORLD COMPETITIVENESS (1990); William J. Holstein, et al., *The Stateless Corporation*, BUSINESS WEEK, May 14, 1990, at 98-108.

11. *See* General Agreement on Tariffs and Trade, Oct. 30, 1947, T.I.A.S. No. 1700, 55 U.N.T.S. 188 [hereinafter GATT], especially art. XVI (Subsidies, which allows latitude for subsidies for economic development, including multiple exchange rates), art. XVIII (Governmental Assistance to Economic Development, which allows protective measures for developing countries, particularly their new industries and industrial expansion, and permits quotas to deal with persistent balance of payments pressures), art. XXXVI (which underscores the need for positive measures to promote the trade and development of LDCs, and provides that developed countries do not expect reciprocity from LDCs in trade negotiations), art. XXXVII (which provides that developed countries shall accord priority to reducing barriers against exports from LDCs, that contracting parties shall collaborate jointly and with other international organizations to stabilize and improve markets for LDC primary products and otherwise to promote LDC trade and development). In addition, the GATT Subsidies Code (1979) tried to limit countervailing duties against subsidies, and emphasized more strongly the rights of developing countries to use them. *See* GATT, *supra*, art. IV-VI, XI. *See also* DAM, *supra* note 9, at 225-236. For a critical overall analysis of the GATT, see JOHN M. CULBERTSON, THE TRADE THREAT AND U.S. TRADE POLICY 156-163 (1989) (explaining "free rider" problems).

by GATT-Part IV in 1965. In those years a "double standard" for LDCs seemed entirely reasonable, because their per capita incomes were so much lower than in the industrial nations. But as some developing countries "graduated" and became higher income industrial nations, most dramatically Japan, with Taiwan and South Korea later catching up considerably, LDC preferences became more controversial.[12] Now, with widespread asymmetry, unequal openness, and divergent use of industrial development subsidies, the current GATT regime presents an increasingly uncomfortable environment for many U.S. manufacturing industries.

12. For example, contrast the evolution of per capita incomes for key countries between 1953-1989 (In 1989 U.S.$):

Country	1953	1970	1989
U.S.	2,310	7,141	21,100
U.K.	940	2,213	14,570
France	1,010	2,779	17,830
Germany	740	3,042	20,750
Italy	430	1,875	15,150
Japan	230	1,964	23,730
Spain	340(a)	1,086	9,150
Sweden	1,120	4,139	21,710
Switz.	1,150	3,308	30,270
Mexico	232	701	1,990
Brazil	343(a)	505	2,550
India	62	100	350
China	93	167	360
Taiwan	100	227	7,190
Singapore	N/A	N/A	10,450
South Korea	132(a)	266	4,400

(a)=1960 Figures

LOVETT, *supra* note 2, Table P-2 at xix; *World Bank Atlas*, 1990, at 6-9; Bank of America, Taiwan, World Information Country Outlooks. Why should the more advanced LDCs, like Korea, Taiwan, and Singapore, be given any trade preferences and how much trade preference should be given to other LDCs like Brazil, Mexico, India, China, Malaysia ($2,130), Indonesia ($490), Egypt ($630), Chile ($1,790), Argentina ($2,160), Bulgaria ($2,320), Kenya ($380), Turkey ($360) or Greece ($5,340) (per capita income in 1989 U.S. $)?

II. U.S NEGLECT OF RECIPROCITY AND OVERALL TRADE BALANCE IN RECENT YEARS

When the U.S. emerged from World War II with a large lead in industry, technology, and shipping, we could afford to lead the way toward freer trade with greater concessions and unequal openness.[13] American foreign policy and Cold War strategy also stressed the rebuilding of Western Europe and Japan as allies in an integrated world economy with an effort to bring many LDCs into this trading-alliance system.[14] Our MNCs and international banks saw major benefits in these arrangements, and became part of the political support network. All this made sense for U.S. economic prosperity, *provided that* we maintained reasonable trade reciprocity, kept overall trade balances in alignment, and maintained a healthy share of industrial technology and growth potential.[15]

With hindsight's wisdom, the first step toward serious neglect and failure to enforce a reasonable trade balance may have occurred in concluding the Kennedy GATT round (1963-67), when the U.S. accepted the more strongly protectionist EEC common agricultural policy (CAP) as part of a general

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13. The U.S., which in 1939 was already the strongest industrial nation, emerged from World War II with a formidable industrial-technological advantage. In 1946 Americans produced 60% of the world's steel, 77% of motor vehicles, 68% of crude oil, 47% of coal, 36% of electric power, and it operated 55% of merchant shipping. The U.S. was the leading manufacturer in most consumer appliances. Yet by the early 1990's the U.S. had become a major importer of steel and motor vehicles, half its crude oil was imported, only 5% of world merchant shipping flew the U.S. flag, and consumer manufactures had migrated heavily to overseas production. LOVETT, *supra* note 2, Appendix Tables A-1 thru A-6. The U.S. was much wealthier in 1946, but by the early 1990's Western Europe and Japan had largely caught up, and some NIC's were moving up fast. *See supra* note 12.

14. *See* HARRY S. TRUMAN, MEMOIRS: YEAR OF DECISIONS 153 (1955); HARRY S. TRUMAN, YEARS OF TRIAL AND HOPE (1956); RICHARD N. SMITH, THOMAS E. DEWEY AND HIS TIMES (1982); DWIGHT D. EISENHOWER, MANDATE FOR CHANGE 292-93 (1963); DWIGHT D. EISENHOWER, WAGING PEACE 241 (1965). Interestingly, Truman emphasized his belief in "revenue tariffs", while Ike stressed "escape clause provisions to protect American businesses against serious injury from foreign competition." Thus, in the earlier Cold War years, 1946-67, the U.S. supported more open world markets, but within limits. *See also* sources cited *supra* note 9.

15. In particular, see EVANS, *supra* note 9, at 296-327, who expresses unease about the risk of increased discrimination. *See also* sources cited *supra* note 14. In retrospect, the main and proper criticism of post-World War II U.S. trade policy should be that, unlike Europe and Japan, which skillfully defended their own industrial interests and overall trade balances, the U.S. has recently neglected its own vital industrial and trade interests, at least since the later 1970's. *See generally* Table 1, p. 142 and *infra* notes 16-27.

minimization of industrial tariffs.[16] This deal allowed then lower wage Europe full access to U.S. industrial markets, while we accepted major limits on access to European agricultural markets. All this despite the significant comparative advantage enjoyed by the U.S. in larger farm efficiency. This divergence on agricultural openness became more important in later years, and evolved into a major trade conflict in the Uruguay GATT Round negotiations (1985-93).[17]

16. DAM, *supra* note 9, at 257-273; EVANS, *supra* note 9, at 61-85. *See also* HANS VON DER GROEBEN, COMMISSION OF THE EUROPEAN COMMUNITIES, THE EUROPEAN COMMUNITY: THE FORMATIVE YEARS-THE STRUGGLE TO ESTABLISH THE COMMON MARKET AND THE POLITICAL UNION (1958-66) 58, 70-77, 101-108, 147-150, 156-157, 199-202 (1987).

17. For recent controversies, see DALE E. HATHAWAY, AGRICULTURE AND THE GATT: REWRITING THE RULES (1987); WORLD AGRICULTURAL TRADE: BUILDING A CONSENSUS (Dale E. Hathaway & William E. Miner eds., 1988); COMMISSION OF THE EUROPEAN COMMUNITIES, THE DEVELOPMENT AND FUTURE OF THE COMMON AGRICULTURAL POLICY (1991); JAMES BOVARD, THE FARM FIASCO (1989); THE INTERNATIONAL FARM CRISIS (David Goodman & Michael Redclift eds., 1989); AGRICULTURAL TRADE LIBERALIZATION: IMPLICATIONS FOR DEVELOPING COUNTRIES (Ian Goldin & Odin Knudsen eds., 1990); HUGH ULRICH, LOSING GROUND: AGRICULTURAL POLICY AND THE DECLINE OF THE AMERICAN FARM (1989).

Table 1

U.S. External Accounts 1961-92[1]

(Dollars in billions)

Year	GNP	Imports[1]	Exports[1]	Trade Balance	Current Account Balance[1]
1961	520.1	14.5	10.9	4.5	5.6
1962	560.3	16.2	20.6	4.4	5.1
1963	590.5	17.0	22.0	5.0	5.9
1964	632.4	18.6	25.3	6.1	8.6
1965	684.9	21.5	26.4	4.9	4.3
1966	749.9	25.5	29.4	3.9	2.4
1967	793.9	26.8	30.7	3.9	2.1
1968	865.0	33.0	33.6	0.6	(0.4)
1969	930.3	35.8	36.4	0.6	(1.6)
1970	977.1	39.8	42.0	2.2	(0.3)
1971	1,054.9	45.5	42.8	(2.7)	(3.8)
1972	1,158.0	55.8	48.8	(7.0)	(9.8)
1973	1,294.9	69.8	70.3	0.5	0.5
1974	1,397.4	102.9	97.1	(5.8)	(4.0)
1975	1,528.8	86.5	89.7	3.1	18.3
1976	1,700.1	108.3	96.0	(12.3)	4.4
1977	1,887.2	131.3	101.0	(30.3)	(14.1)
1978	2,156.1	152.6	119.7	(32.9)	(14.3)
1979	2,413.9	182.4	151.4	(31.0)	(7.9)
1980	2,626.1	257.0	220.6	(36.4)	1.1
1981	2,957.8	273.4	233.7	(39.7)	6.9
1982	3,069.3	254.9	212.2	(42.7)	(5.9)
1983	3,304.8	269.9	200.5	(69.4)	(40.1)
1984	3,772.2	341.2	217.9	(123.3)	(99.0)
1985	4,010.3	361.6	213.1	(148.5)	(122.3)
1986	4,235.0	383.0	226.8	(156.2)	(145.3)
1987	4,515.6	424.1	252.9	(171.2)	(162.3)
1988	4,873.7	450.5	322.4	(137.1)	(128.9)
1989	5,200.8	492.9	364.0	(128.9)	(110.0)
1990	5,465.1	520.8	394.1	(126.7)	(95.2)
1991	5,677.5	508.9	422.2	(86.7)	(3.7)
1992	6,119.7	541.7	442.5	(99.2)	(82.4)

† Beginning with 1990 numbers, GNP number shown is actually GDP. 1992 figures are estimated based on the results of the first seven months of 1992. These figures only reflect merchandise transactions, services are not included. Imports, C.I.F. value base; exports F.A.S. value base. Current account balance reflects the results of services, investment, remittance and other unilateral transfers, as well as merchandise imports and exports. However, the years 1961-64 only show the result of merchandise imports and exports, services and income from investments.

Source: U.S. Council of Economic Advisers, *Economic Indicators*. The data for the years 1961-64 are found in the Aug. 1965 issue; 1965-68, Aug. 1971 issue; 1969-74, May 1975 issue; 1975-79, Jan. 1981 issue; 1980-84, Nov. 1985; 1985-1992, Sept. 1992 issue; Bureau of Economic Analysis, *U.S. International Transactions*, for balance on current accounts, April 24, 1993.

Table 2
U.S. Regional Trade Balances[†]
(Dollars in billions)

Country	Imports 1980	1987	1990	1991	1992	Exports 1980	1987	1990	1991	1992
Canada	42.9	73.6	93.0	93.0	100.7	41.6	62.0	83.6	85.0	90.4
West Europe	47.2	96.1	109.3	101.9	111.4	67.6	68.6	111.4	116.8	114.4
W. Germany	11.7	26.9	28.0	26.0	28.8	10.5	11.5	18.3	20.7	20.3
Japan	31.2	84.6	90.0	91.5	96.9	20.8	27.6	48.0	47.2	46.9
China	1.1	6.3	15.2	19.0	25.7	3.8	3.5	4.8	6.3	7.5
Taiwan	6.9	24.6	22.7	23.0	24.6	4.1	7.1	11.1	12.7	14.4
S. Korea	4.2	17.0	18.4	17.0	16.7	4.4	7.6	14.0	14.9	13.9
Total E. Asia	49.9	91.3	118.8	119.7	133.8	37.3	43.7	70.9	81.2	85.0
Latin America	37.5	47.3	64.3	63.0	69.1	38.8	35.0	54.3	63.3	75.3
Mexico	12.6	20.3	30.5	31.5	35.6	16.2	14.6	28.1	33.1	40.5
Africa	31.1	11.9	15.8	14.3	14.8	6.5	5.6	8.0	8.7	9.1
Australia	2.5	3.0	4.4	4.0	3.7	4.0	5.3	8.3	8.3	8.7
OPEC	22.8	11.6	17.9	15.2	33.0	9.6	5.8	8.1	11.2	20.7
East Europe	1.4	1.9	2.3	1.8	2.0	4.1	2.3	4.3	4.8	5.6
Totals	249.8	409.8	497.7	489.4	522.2	224.3	250.3	389.6	416.0	433.7

† 1992 numbers estimated from results of first three quarters of 1992. Sources: U.S. Dep't of Commerce, SURV. CURRENT BUS., June 1991 at Table 2; U.S. Dep't of Commerce, SURV. CURRENT BUS., December 1992, Table 2; March, 1993, Table 2.

The second serious neglect occurred gradually during the 1970's, when the U.S. lost substantial ground to Japan, Europe, and other countries in consumer product manufacturing, especially electronics.[18] Oil price shocks caused by the Organization of Petroleum Exporting Countries, or OPEC, and grain price increases hit Japan and Europe hard, forcing them to export more to get essential imports. Nevertheless, the U.S. maintained an overall trade balance in these years, more so than some of its allies. We also could afford a wasteful energy policy, with slower adjustments to world market prices to cushion consumers. However, in this period U.S. manufacturers began their retreat from world markets, as more industries switched to import dependence. Again, in retrospect, the U.S. began to neglect its civilian industrial base in the 1970's.

Although U.S. trade negotiators tried to achieve a more level playing field in the Nixon GATT round negotiations of 1973-1979 (which were later renamed the Tokyo Round), the new GATT Subsidies Code and other Codes failed to significantly limit the advantages of industrial support/export promotion policies, in the style of Japan, Taiwan, South Korea and elsewhere.[19] Yet, since East

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18. *See* CLYDE W. PRESTOWITZ, JR., TRADING PLACES: HOW WE ALLOWED JAPAN TO TAKE THE LEAD (1988); THOMAS K. MCCRAW, AMERICA VERSUS JAPAN: WHY THE U.S. AND JAPAN MAY BE ON A COLLISION COURSE FOR WORLD ECONOMIC LEADERSHIP (1986); KENICHI OHMAE, THE BORDERLESS WORLD: POWER AND STRATEGY IN THE INTERLINKED ECONOMY (1990); ROBERT KUTTNER, THE END OF LAISSEZ FAIRE: NATIONAL PURPOSE AND THE GLOBAL ECONOMY AFTER THE COLDWAR (1991); JEAN-CLAUDE DERIAN, AMERICA'S STRUGGLE FOR LEADERSHIP IN TECHNOLOGY (Severn Schaeffer trans., 1990); Raymond M. Frost, *Losing Economic Hegemony: U.K. 1850-91 and U.S. 1950-90*, CHALLENGE, July-Aug. 1992, at 30-34. *See also* DERTOUZOS, *supra* note 10; ECKSTEIN, *supra* note 10; THUROW, *supra* note 1; CULBERTSON, *supra* note 11.

19. In fact, the scope for subsidies by developing countries, already substantial under GATT arts. XVI, XVIII, XXXVI, XXXVII, and XXXVIII, was enlarged under the 1979 GATT Subsidies Code. For these reasons, preliminary negotiations in the Uruguay Round attempted to limit their use somewhat, but at the cost of restricting national enforcement of countervailing duties. But whether GATT enforcement panels could add any real discipline is questionable. GATT panels have had only a negligible enforcement impact in the past. For a recent discussion, see Gary C. Hufbauer, *Subsidies*, *in* COMPLETING THE URUGUAY ROUND: A RESULTS ORIENTED APPROACH TO THE GATT NEGOTIATIONS 93-107 (Jeffrey J. Schott ed. 1990). *See also* WORLD TRADE AT THE CROSS-ROADS: THE URUGUAY ROUND, GATT AND BEYOND (Robert W. Jerome ed. 1992) [hereinafter WORLD TRADE AT THE CROSS-ROADS]; GARY C. HUFBAUER & JOANNA S. ERB, SUBSIDIES IN INTERNATIONAL TRADE (1984).

For legal analysis on the relative weakness of U.S. trade law litigations as effective discipline, see Peter D. Ehrenhaft and Charlotte O. Meriwether, *The Trade Agreements Act of 1979: Small Aid for Trade?*, 58 TUL. L. REV. 1107 (1984); JOHN JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 249-273 (1990). *See also* discussion *infra* notes 87, 90, 93 of the Dunkel Draft, Uruguay Round Agreement.

Finally, the dramatic export and manufacturing gains of Japan, Taiwan, South Korea, and

Asian per capita incomes and wages were significantly lower in the 1970's, and the U.S. maintained a reasonable overall trade balance in these years, thanks to oil and feed grains, this neglect of long-term U.S. industrial interests was not widely appreciated, except in those industries adversely affected.[20] Carter Administration policies continued freer trade momentum, although limited efforts were made to safeguard key "sick" U.S. industries, such as steel and automobiles.[21]

The third and most serious neglect of U.S. industrial-technology interests ultimately developed in the Reagan-Bush era (1981-92).[22] The U.S suffered an unfortunate combination of very large, chronic budget deficits between 1983 and 1993, as well as a rapid buildup of large and excessive trade deficits. Macro-economic policy succumbed initially to supply-side optimism, and thereaf-

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other successful NICs during the late 1970s to early 1990s further demonstrate the lack of any significant U.S. trade law discipline over foreign subsidies, export promotion, exchange rate policies, and industrial development strategies.

20. The feed-grains crisis of 1973-74 and the two major OPEC oil price increases in the 1970's hurt Europe and Japan more severely than the U.S. Also, many non-oil NICs and LDCs were hurt seriously as well. Although U.S. manufacturing was beginning to lose ground to imports in that period, the lack of any significant U.S. current account deficit in those years made it hard for the U.S. as a whole to recognize any general problem of industrial competitiveness in that decade. *See supra* Table 1 at p.142.

21. In fact, the major Carter administration achievements in the international trade area were to complete the Tokyo Round (1973-79), and to enact the Trade Agreements Act of 1979. For an extensive analysis, see Ehrenhaft & Meriwether, *supra* note 19. The Carter steel industry "trigger price mechanism" was an arrangement for "faster-track" import relief proceedings as a special concession to this important industry. But not much help was given to the steel manufacturers, and the program was soon abandoned in the Reagan era. Japanese automakers had imposed upon themselves voluntary auto import restraints, at relatively permissive levels during the late 1970's under Carter, which have continued, to some degree, throughout the Reagan-Bush era. *See* DERTOUZOS, *supra* note 10, at 171-187, 278-287; ROOT, *supra* note 7, at 233-241; Louis L. Schorsch, *Can Big Steel Change Bad Habits*, CHALLENGE, July-Aug. 1987 at ___

22. Warnings on Reagan era budget deficits were provided by many economists. *See, e.g.*, WILLIAM A. LOVETT, INFLATION AND POLITICS: FISCAL, MONETARY, AND WAGE-PRICE DISCIPLINE 195-207 (1982); WALLACE C. PETERSON, OUR OVERLOADED ECONOMY (1982); THE REAGAN EXPERIMENT (John Palmer & Isabel Sawhill eds., 1982); Paul Volcker, *Facing Up to the Twin Deficits*, CHALLENGE, Mar.-Apr. 1984 at ___; Paul A. Samuelson, *Evaluating Reaganomics*, CHALLENGE, Nov.-Dec. 1984 at ___; Stephen Marris, *Why The Dollar Won't Come Down*, CHALLENGE, Nov.-Dec. 1984 at ___; Richard B. Duboff, *A Tale of Two Booms: The Longest Peacetime Expansion Was the 60's Not the 80's*, CHALLENGE, Mar.-Apr. 1991 at ___; KUTTNER, *supra* note 18; PAUL R. KRUGMAN, THE AGE OF DIMINISHED EXPECTATIONS: U.S. ECONOMIC POLICY IN THE 1990'S (1990); DAVID A. STOCKMAN, THE TRIUMPH OF POLITICS 395-411 (1986); THUROW, *supra* note 1.

ter degenerated into an unresolved political gridlock over spending/tax loads. As a whole, U.S. trade policy remained committed to free trade "leadership," supposedly in the interests of U.S. MNCs and big banks, but not realizing that *industrial* America was losing marketshare worldwide to Japan, Europe, and mercantilist NICs. The U.S. federal government debt load swelled from $1 trillion to $4 trillion between 1981 and 1992.[23] During these years, the U.S. suffered more than $1.2 trillion in cumulative trade deficits and $1 trillion in current account deficits (see Table 1 on page 142). We switched from the world's leading creditor nation to become the biggest debtor (roughly $750 billion in debt by some estimates in 1992).[24] Meanwhile, corporate and industrial America went on a borrowing binge, with excess leveraging, takeover games, and deal-making that distracted attention from the gradual relative decline of U.S. manufacturing and technology.[25] As the public and private debt loads

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23. *See* 1992 ECONOMIC REPORT OF THE PRESIDENT 394; DAVID P. CALLEO, THE BANKRUPTING OF AMERICA: HOW THE FEDERAL BUDGET IS IMPOVERISHING THE NATION 143 (1992); DONALD R. SABILE & JEFFREY A. CANTOR, THE PUBLIC DEBT OF THE U.S.: AN HISTORICAL PERSPECTIVE 207-214 (1991); *See generally* BENJAMIN M. FRIEDMAN, DAY OF RECKONING: THE CONSEQUENCES OF AMERICAN ECONOMIC POLICY UNDER REAGAN AND AFTER (1988).

Little of the $3 trillion increased federal debt was invested productively in new infrastructure or renewed industrial strength. A substantial part was dissipated in budgetary excesses, health care waste, reduced tax burdens for the wealthy, some defense boondoggle spending (including the B-2 bomber and the Strategic Defense Initiative) and $400-600 billion in FSLIC/FDIC losses (flowing from relaxed S&L and banking supervision).

24. A "rough" estimate of the shifting capital position of the U.S. can be suggested from accumulated current account deficits. Thus, because the net creditor position of the U.S. was estimated by in 1980 to be around $140 billion (1981) and the accumulated current account deficits totaled -$955 billion between 1981-92, the U.S. stands roughly -$750 billion in debt as of early 1993. *See The International Investment Position of the U.S.*, SURV. OF CURRENT BUS. (U.S. Dept. of Commerce, 1986-92). Heavy net inflows of capital were needed to offset heavy current account deficits. Between the years 1981-1988, 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 debtor position would have approached -$750 billion by the end of 1992. But, since June 1990, a different valuation procedure has been utilized by the SURVEY OF CURRENT BUSINESS (based more upon continuing stock market indexes). This new procedure yields a net creditor position for the U.S. of +$374 billion in 1981 versus -$361 billion in 1992. Either way the U.S. net international investment position has suffered a major deterioration between 1981-1992, anywhere from -$735 billion to -$890 billion, depending upon the valuation procedure.

25. *See, e.g.*, HENRY KAUFMAN, INTEREST RATES, THE MARKETS AND THE NEW FINANCIAL WORLD (1986); ADAM SMITH, THE ROARING 80'S: A ROLLER COASTER RIDE THROUGH THE GREED DECADE (1990); John D. Paulus, *Bust and Boom in the Stock Market: Prospects for the 1990's*, CHALLENGE, Jan.-Feb. 1991; DEBT, TAXES AND CORPORATE RESTRUCTURING (John B. Shoven & Joel Waldfogel

increased, middle-class incomes and employment opportunities began to be squeezed somewhat.[26] In fact, after discounting for inflation, the average real wage in the U.S. has fallen by nearly fifteen percent since 1972.

It became fashionable for journalists, and even economists who should have known better, to say that we had entered a new, "post-industrial" era in which services would be dominant, and production relatively unimportant.[27] Thus, we could afford to import anything we wanted from abroad. Neglected was the complication that the U.S. would have to settle its external accounts sooner or later, and sell enough in services, goods, properties, and/or debt interests to pay for imported manufactures. Ultimately, world markets require every nation "to live within its means," in other words, to get no more from other nations than it can produce from its own export trade. Thus, overall balance in trade and current accounts tends to be enforced over time.

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eds., 1990); Felix Rohatyn, *The Debt Addiction*, N.Y. REV. OF BOOKS, Apr. 13, 1989, at 39; Felix Rohatyn, *A Financial House of Cards*, TIME, Oct. 17, 1988, at 48; *Finance: Michael Milken, Junked*, ECONOMIST, Nov. 24, 1990, at 90. *See also* MARTIN MAYER, STEALING THE MARKET (1992); JAMES B. STEWART, DEN OF THIEVES (1991); *Predator's Fall: The Collapse of Drexel Burnham, The House that Junk Built*, TIME, Feb. 26, 1990, at 46; GEORGE ANDERS, MERCHANTS OF DEBT: THE KKR AND THE MORTGAGING OF AMERICAN BUSINESS (1992); BRYAN BURROUGH & JOHN HELYAR, BARBARIANS AT THE GATE: THE FALL OF RJR NABISCO (1990); RON CHERNOW, THE HOUSE OF MORGAN (1990); WALTER ADAMS & JAMES W. BROCK, DANGEROUS PURSUITS: MERGERS AND ACQUISITIONS IN THE AGE OF WALL STREET (1989).

26. *See* AMERICAN LIVING STANDARDS: THREATS AND CHALLENGES (Robert E. Litan et al. eds., 1988); LAWRENCE MISHEL & DAVID FRANKEL, THE STATE OF WORKING AMERICA, 1992-93 EDITION (1992); A FUTURE OF LOUSY JOBS? (Gary Burtless ed., 1990); Paul Krugman, *The Rich, The Right, and the Facts: Deconstructing the Income Distribution Debate*, 11 AMERICAN PROSPECT 19 (Fall 1992). *See also* LOVETT, *supra* note 2, at xviii (Table P-1, Average Weekly Earnings of U.S. Production or Nonsupervisory Workers on Nonagricultural Payrolls, 1940-86). When these data are extended to the end of 1992, they show a decline of real wages of 15-20% since 1972 in constant dollars. For an interesting forecast of political implications, see Robert Kuttner, *Is There a Democratic Economics*, 8 AM. PROSPECT 25 (Winter 1992); *Compare* sources cited *supra* note 1.

27. COHEN & ZYSMAN, *supra* note 10; Robert A. Lutz, *The Nonsense of a "Post-Industrial Society*, 53 VITAL SPEECHES 330, Mar. 15, 1987. Paul Kennedy notes that the manufacturing base is vital to American success in the next century:

> The heart of the trade deficit problem lies in the relative erosion of America's relative manufacturing position. ... Manufacturing is vital for other reasons: it accounts for virtually all of the research and development done by American industry, and a flourishing and competitive manufacturing base is still "fundamentally important to national security."

PAUL KENNEDY, PREPARING FOR THE 21ST CENTURY 298 (1993).

III. Options for Improving U.S. Trade Balance, Competitiveness, and Overall Economic Growth

The basic options for U.S. trade policy have not changed all that much in the last ten to twelve years.[28] But, the context of choice has evolved. Americans are becoming more aware of their industrial competitiveness problems and economic stagnation for the broad "middle class." The collapse of world Communism in 1989-91 also has allowed more focus upon domestic economic problems, such as restoring full employment and renewing economic growth.[29] Four broad strategies have been offered: Unilateral Free Trade Policy, Industrial Development Policies, Reciprocal Trade Policies, and Currency Re-Alignment with Responsible Macro-Economic Policies.

A. *Unilateral Free Trade Policy*

A unilateral free trade policy is supported by many free market-oriented economists, MNC interests benefiting from open access to the U.S. market, and many U.S. trade partners which export into the U.S. (although comparable openness or equivalent imports from the U.S. are often not welcome in their countries).[30]

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28. For an analysis of available options, *see* LOVETT, *supra* note 2, at 105-135, 189-237; AN AMERICAN TRADE STRATEGY: OPTIONS FOR THE 1990'S (Robert Z. Lawrence & Charles L. Schultz eds., 1990); C. FRED BERGSTEN, AMERICA IN THE WORLD ECONOMY: A STRATEGY FOR THE 1990'S (1988); Jeff Faux, *A Cheaper Dollar Is Not Enough*, CHALLENGE, May-June 1989, at 42; WORLD TRADE AT THE CROSS-ROADS, *supra* note 19; Robert B. Reich, *We Need A Strategic Trade Policy*, CHALLENGE, July-Aug. 1990, at 38; ROBERT A. BLECKER, BEYOND THE TWIN DEFICITS: A TRADE STRATEGY FOR THE 1990'S (1992); JACKSON, *supra* note 19; ROBERT KUTTNER, MANAGED TRADE AND ECONOMIC SOVEREIGNTY (1989); CULBERTSON, *supra* note 11; ANTHONY HARRIGAN & WILLIAM R. HAWKINS, AMERICAN ECONOMIC PRE-EMINENCE: GOALS FOR THE 1990'S (1989); ROOT, *supra* note 7, at 166-251; JEFFREY C. SCHOTT, COMPLETING THE URUGUAY ROUND: A RESULTS ORIENTED APPROACH TO THE GATT TRADE NEGOTIATIONS (1990). *See also* LINDERT & KINDLEBERGER, *supra* note 2, at 111-242; Sources cited *supra* note 10, on industrial policy.

29. *See* PAUL KENNEDY, THE RISE AND FALL OF THE GREAT POWERS (1987); RETHINKING AMERICA'S SECURITY, *supra* note 1; KUTTNER, *supra* note 18; THUROW, *supra* note 1. *See generally* sources *supra* note 1 (dealing with political and economic implications for the end of the Cold War).

30. Unilateral free trade advocates include JAMES BOVARD, FAIR TRADE FRAUD (1992); MILTON FRIEDMAN, BRIGHT PROMISES, DISMAL PERFORMANCE: AN ECONOMIST'S PROTEST 357-393 (1983). To a considerable extent, C. FRED BERGSTEN, HUFBAUER, and SCHOTT, *supra* note 28 (all colleagues at the Institute for International Economics in Washington, D.C.), take this line, but like most contemporary international trade experts, they see trade policy as involving greater complexity with

The sustained U.S. trade and current account deficits between 1983 and 1993 are rather surprising, and somewhat difficult to explain for free traders, because the adjustment process should normally have forced a greater dollar devaluation, or a more rapid movement toward equilibrium. However, limits on revaluation of their currencies imposed by major exporters (e.g. Japan, Taiwan, and, until recently, Germany) help explain this oddity.[31] Clearly, most small nations are not allowed that much time or leeway by world markets (unless these countries explicitly receive a large amount of aid from abroad). To some extent, the U.S. also benefits from sustained purchases by foreigners of its securities, debt instruments and even land, because, from their portfolio perspectives, the U.S. is an unusually large and secure market that readily absorbs such investments.[32]

However, completely unilateral free trade has widespread and growing

competing national interests. *See also* sources cited *supra* note 28. JOHN WILLIAMSON, THE OPEN ECONOMY AND WORLD TRADE: A TEXTBOOK IN INTERNATIONAL ECONOMICS (1983); RICHARD CAVES & RONALD W. JONES, WORLD TRADE AND PAYMENTS: AN INTRODUCTION (3d ed. 1981); PAUL KRUGMAN & MAURICE OBSTFELD, INTERNATIONAL ECONOMICS: THEORY AND POLICY (2d ed. 1991).

31. Between 1985 and 1987, the Japanese Yen, the Taiwanese Dollar, and the South Korean Won appreciated by about 40, 20, and 12%, respectively, but subsequent appreciation through 1992 has been negligible for the Yen and Won, and less than 10% for the Taiwanese Dollar. Meanwhile, the annual Japanese trade surplus reached a record high of $107 billion in 1992, the Taiwanese trade surplus was $9.5 billion in 1992, although South Korea had moved into a trade deficit for 1992 of $3.1 billion. *See also* PETER HOOPER AND CATHERINE MANN, THE EMERGENCE AND PERSISTENCE OF THE U.S. EXTERNAL IMBALANCE: 1980-1987 (1989); KRUGMAN, *supra* note 30, at 568-584. Additionally, the Yen appreciated another 10 - 12% by mid 1993.

32. The mixed blessings of foreign investment as a corrective for sustained balance of payments or current account deficits are discussed extensively in MICHAEL CZINKOTA ET AL., INTERNATIONAL BUSINESS 39-52, 132-153 (1992). *See also supra* note 24, discussing the growing net debtor position of the U.S., resulting from chronic current account deficits. Czinkota and company correctly observe that large net capital inflows to the U.S. in the 19th century were largely used to finance investment. These investments generated more than enough income to service the debt, and the leftover income increased living standards. "But in the 1980's, much of the foreign capital inflow went to increase consumption rather than investment. In addition, personal savings fell while the government budget deficit increased. These factors, many economists believe, imply a day of reckoning for the U.S." CZINKOTA ET AL., *supra*, at 48. For further discussion and concern over a shifting balance of economic power against the U.S., see KEVIN PHILLIPS, THE POLITICS OF RICH AND POOR 126-142 (1990). *But see* EDWARD M. GRAHAM & PAUL R. KRUGMAN, FOREIGN DIRECT INVESTMENT IN THE U.S. (1991), for a less alarmed view.

opposition.[33] Many U.S. trade experts, domestic industries, farmers, labor, and much of the public refuse to believe that some U.S. trade partners will really open up or reciprocate fully, *unless* the U.S. enforces more equivalent limits, restrictions, or subsidies. Stubborn U.S. trade deficits are seen as proof that unilateral kindness or openness simply does not work. Furthermore, most developing countries, LDCs and NICs, logically should use industrial development policies at their stage of economic progress, in concert with selective import restrictions. The U.S., Germany, Japan, Taiwan, and South Korea, the strongest exemplars of industrial success in the last 100 years, all employed tariff protection and/or other industrial policies to great advantage in their heyday of economic growth. To think that India, China, Brazil, Thailand, Malaysia, Indonesia, or many others will not use similar development strategies is unrealistic and naive.[34] And as for Japan's industrial-trade policy, their continued success, strong trade surpluses, and unwillingness to give up a working government-industry collaboration strategy seems evident to most observers.[35]

B. Industrial Development Policies

Industrial development policies are used by most LDCs and NICs today, and to a lesser extent by some mature industrial countries. A sharp distinction must be drawn between "efficiency oriented" policies, with world market exportability as the test for performance, and "relief oriented" policies designed to cushion industries and/or over-staffed labor markets from adjustment

33. Many recent U.S. advocates for a stronger industrial policy urge somewhat stronger trade bargaining with more reciprocity. *See, e.g.*, COHEN & ZYSMAN, ZYSMAN & TYSON, PHILLIPS, DERTOUZOS, LODGE, all *supra* note 10. Others stress more heavily the need for tougher trade bargaining, including CULBERTSON, *supra* note 11, PRESTOWITZ, *supra* note 18, FALLS, KUTTNER, REICH, HARRIGAN, HAWKINS, BLECKER, *supra* note 28, WORLD TRADE AT THE CROSS-ROADS, *supra* note 19, and LOVETT, *supra* note 2. Thurow argues for a tougher multilateral "cop on the beat ... that will police a fair trading system, even if the system is a system of managed trade." THUROW, *supra* note 1, at 236-237.

34. *See* sources cited *supra* note 10 and extensive references contained therein.

35. Japan's trade surplus for 1992 was $107 billion; by this stage Japan had become a very large net creditor nation. The secrets of Japanese success included hard work, a high savings rate, skillful investment, sensible industry-government collaboration, long-range planning and an exchange rate policy which favored manufactured exports. In addition, the Japanese language, distribution system, administrative guidance, and mutual loyalties and cohesion make it harder for foreign manufacturers to break into this market, when good products of local make are available. *See* sources cited *supra* notes 10 and 18; THUROW, *supra* note 1.

discipline.[36] Industrial policies oriented toward expanding world market exports tend to be much more successful than mere relief operations. Restructuring, down-sizing, and closing older plants is often needed to keep up with world market efficiency. At the same time, however, restructured industries and investments have a right to be safeguarded against heavy foreign subsidies, marginal cost discounting, and "dumping" strategies from their foreign rivals (see Chart 1). Governments in high wage, mature industrial countries should realize the difficulties of industrial adjustment, and foster long-term and sustained investments by companies, engineers, and marketers. Recent studies show that continuity and sustained efforts are needed for mature, industrial economies to remain competitive in a tougher global marketplace with more countries sponsoring serious challenges.[37] Modernization, technology sharing, and joint ventures with strong foreign competitors are often needed, too. Domestic government collaboration and support, as Japan employed from the 1950's onward, can also be vital in getting good technology cooperation from foreign companies seeking access to a large domestic market.

An interesting complication for industrial policies is the extent to which, if at all, government officials should "pick winners" among specific projects or companies, or merely provide general encouragements, such as favorable interest rates, tax incentives, tariffs on imports, improved infrastructure, education, engineering, or regulations that facilitate technology support and/or investment

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36. This is the crucial test for competitive firms in the marketplace and government industrial policies as well. *See* LOVETT, *supra* note 2, at 61-63, 76-104; *See also* sources cited *supra* note 10; GEOFFREY SHEPHERD, ET AL., EUROPE'S INDUSTRIES: PUBLIC AND PRIVATE STRATEGIES FOR CHANGE (1983); CLAUDE E. BARFIELD & WILLIAM SCHAMBRA, THE POLITICS OF INDUSTRIAL POLICY (1986); *Planning America: Government or the Market?*, 4 CATO J. No. 2, (1984).

Mergers and restructuring among companies can be a significant part of efficiency oriented industrial policies, but such transactions should not be anti-competitive, unduly disruptive, wasteful or weaken industries they are supposed to help. *See* F. M. SCHERER, INNOVATION AND GROWTH (1986); JOHN BROOKS, THE TAKEOVER GAME (1987); J. FRED WESTON ET AL., MERGERS, RESTRUCTURING AND CORPORATE CONTROL (1990); WALTER ADAMS & JAMES BROCK, DANGEROUS PURSUITS: MERGERS AND ACQUISITIONS IN THE AGE OF WALL STREET (1989). *See also* sources cited *supra* note 25.

37. *See* sources cited *supra* notes 10, 18, and 36; COMPETITION IN GLOBAL INDUSTRIES (Michael E. Porter ed., 1986); MICHAEL E. PORTER, THE COMPETITIVE ADVANTAGE OF NATIONS (1990); JOHN K. GALBRAITH, ECONOMICS AND THE PUBLIC PURPOSE (1973) (emphasis on earlier areas of U.S. industrial agricultural success); THUROW, *supra* note 1.

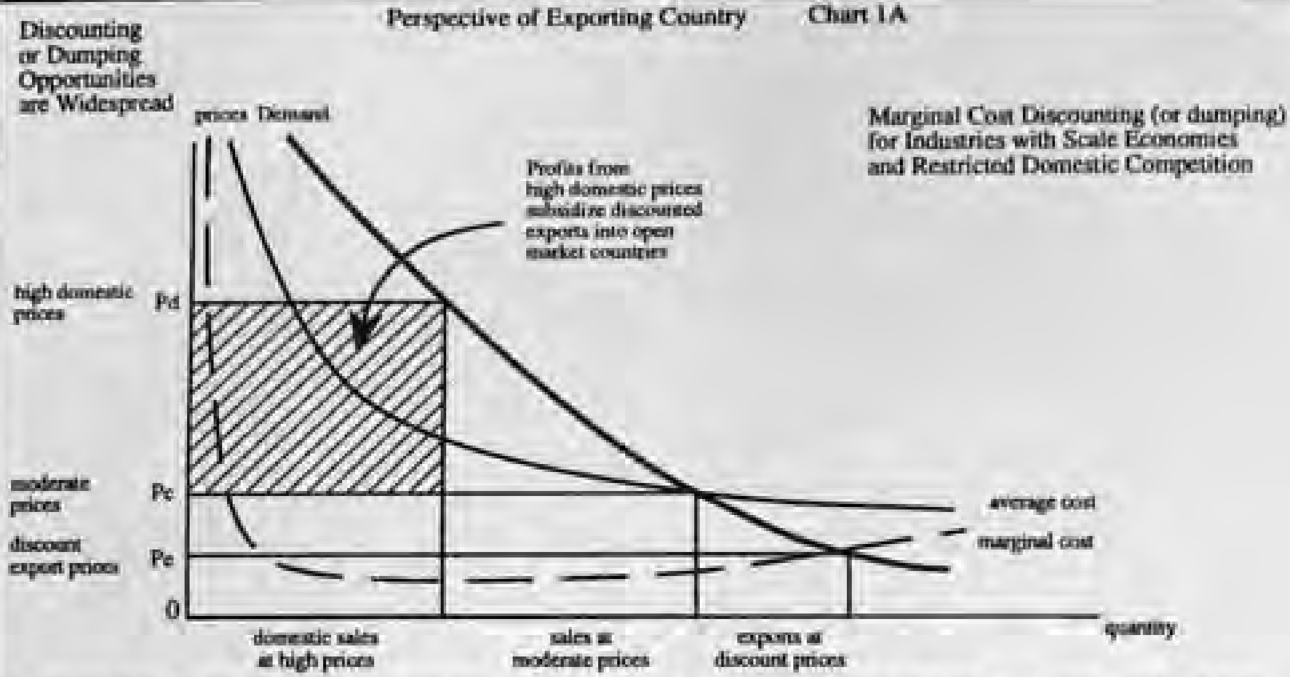
from abroad.[38] Another question is the extent of collaboration and friendly relations between government, trade officials, banking, industrial firms, and academic experts. While no absolute rules can be drawn from diverse international experience, it does seem that general encouragements normally work more reliably than "micro-management," and that limited government-industry collaboration can often be very productive. However, it should be noted that too much friendship on particular programs can often be corrupt, and undercut world market standards for efficiency discipline.

In any event, the need for a successful industrial development policy is increasingly recognized in most countries. The 1992 U.S. election outcome illustrates this trend as Presidential candidates Clinton and Perot, both espousing a need for stronger industrial policy, received 62 percent of the popular vote.[39] However, success is easier claimed than delivered; successful follow-through requires sustained government-industry-engineering teamwork. Financial restructuring and retrenchment may be needed to some extent as well. However, many so-called "restructuring deals" fashioned on Wall Street in the 1980's were, in fact, over-leveraging with high fees for dealmakers and insiders.[40] Real competitiveness and technological vitality were sometimes weakened. Some restructuring deals may have come closer to corporate looting than rejuvenation.

38. *See* sources cited *supra* note 37. The most successful modern countries developed a tradition of reasonable support, facilitation, or encouragement for industrial and technological progress. And, while conflicting outlooks are unavoidable among firms, government officials, and political leaders, winning "teams" tend to avoid significantly disruptive and adversarial relationships. The ultimate test is overall national performance, and sector by sector achievements should be encouraged, not discouraged.

39. *See* CLINTON & GORE, *supra* note 1; PEROT, *supra* note 1.

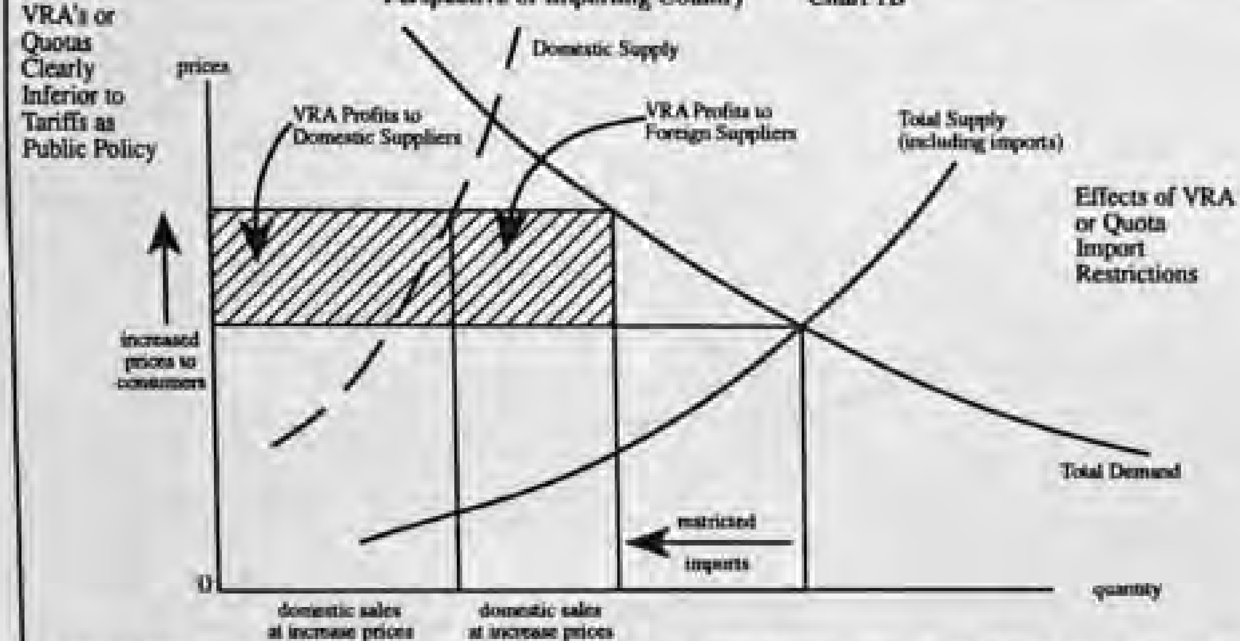
40. *See* sources cited *supra* note 25.



Where one or a few suppliers enjoy restricted competition in an exporting country (or benefit from subsidies), they can charge high prices to some domestic buyers which help subsidize discounted sales (or dumping) at marginal cost into open market countries.

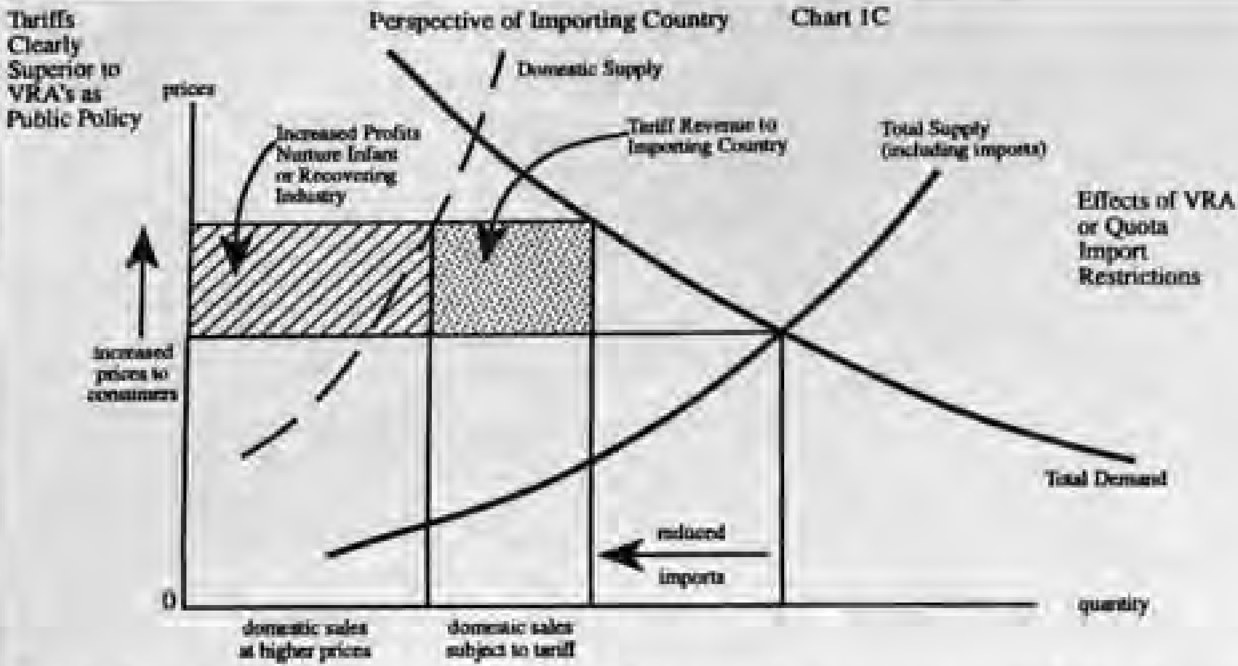
NOTE—So long as manufacturers cover at least their marginal costs with additional sales, such discounted sales into open world markets can be expected—even though markets may be disrupted abroad, and many producers suffer significant economic injury.

Perspective of Importing Country Chart 1B



Effect of VRA or Quota Import restrictions is to reduce supplies, increase prices and create artificial profits shared by foreign suppliers and domestic suppliers.

(These suppliers—both domestic and foreign—prefer restriction by VRA's or Quotas, because prices tend to be higher, profits are larger, and no tariff tax is given to the importing country government.



Effect of tariffs is to increase prices, but a large portion of this outlay is recovered as government revenues in the importing country.
(Social welfare is substantially better than VRA's or Quotas, because profits are less extreme, and must be shared as tariff revenue with importing governments. Foreign suppliers receive no artificial profits—only domestic industry receives extra profit as nurturing.

Most states and many cities within the U.S. now try to encourage industrial location and development within their jurisdictions.[41] This has become a significant measurement of gubernatorial and mayoral performance. This often boils down to a competition to offer the most company conveniences and/or tax concessions. National governments, on the other hand, have the opportunity to affect more of the cost-price company environment through import restrictions, fees, quotas, subsidy allocations, tax relief, financing access, research and development support, or other favorable (or unfavorable) treatment. Since most countries in the world are using industrial development policies and many MNCs employ marginal cost discount-pricing strategies, it is inevitable that the problem of how to respond to foreign policies and price-discounting cannot be avoided.[42] Hence, to some extent at least, the challenge for national industrial policies inevitably becomes interwoven with problems of responding to foreign industrial policies and marginal cost discounting.

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41. *See, e.g.*, William E. Schmidt, *What the States are Doing for Industry: Chasing Smokestacks Is Passé*, N.Y. TIMES, Feb. 5, 1989, at E2; Lawrence Litvak & Belden Daniels, *Financing State and Local Economic Development*, UPI, Sept. 23, 1983, *available in* LEXIS, Nexis Library, UPI File; EMIL E. MALIZIA, LOCAL ECONOMIC DEVELOPMENT: A GUIDE TO PRACTICE (1985); JEFFREY S. LUKE ET AL., MANAGING ECONOMIC DEVELOPMENT: A GUIDE TO STATE AND LOCAL LEADERSHIP STRATEGIES (1988); Clay Oglesbee, *The Kemp Plan for Rebuilding the City*, 106 CHRISTIAN CENT. 340, Apr. 5, 1989; Jill Zuckman, *Enterprise Zone Alchemy*, 50 CONG. Q. WKLY. 2354, Aug. 8, 1992; Barry Rubin & Margaret Wilder, *Urban Enterprise Zones: Employment Impacts and Fiscal Incentives*, 55 J. AM. PLAN. ASS'N 418 (1989); David Osborne, *The Kemp Cure-All*, THE NEW REPUBLIC, Apr. 3, 1989, at 21.

42. *See supra* Chart 1, p.133. In most complex manufacturing operations there are significant economies of scale. When national industrial policies add extra cost reduction, risk protection, or provide capital not otherwise available to support industrial development, the downward sloping cost curves implicit from scale economies are lowered further. And to these advantages, low wage countries bring additional cost reductions to the extent efficient local labor can be trained to utilize productive plants and equipment. No wonder, in these circumstances, that increasing flows of investment capital and relocation of manufacturing activities are going to lower wage countries, when new plants can be reliably tied into quality control and marketing offered by MNCs.

Within limits, the economies of global integration can be shared *jointly* to benefit both developing and advanced nations. But crucial questions exist, for instance, the extent to which excessive displacement, job losses and income disruption may occur in mature countries which offset the potential gains for them in the industrial relocation process. Also, how can national safeguard, anti-dumping, and anti-subsidy remedies be harmonized to minimize undue losses for mature countries in this regard?

C. *Reciprocal Trade Policies*

Reciprocal trade policies are sought by all interests that want more effective reciprocity and an improved trade balance for the U.S., together with most of those interests favoring U.S. industrial development policies. Fair trade and a level playing field are favorite slogans. Even some free traders now endorse "strategic" trade policy responses to foreign subsidy-discounting policies, as a means toward achieving more even-handed and general openness in world markets. Many different tactics and policies can be employed for these purposes; getting the right mix has become a technical controversy not widely understood by the public.[43]

However, the same distinction between general offsets to foreign industrial policies, targeting, and discounting practices, and more particular corrective actions may be useful here, as well. General offsets to foreign mercantilism or subsidy policies include: (i) general revenue tariffs (in the 8-15 percent range); (ii) foreign value added tax (VAT) waiver correctives (again, in the 8-15 percent range); (iii) general domestic content and/or joint venture partnership laws (requiring a set percentage of local production or ownership interests); or (iv) general import surcharges (in the 8-15 percent range), at least for periods in which substantial trade and/or current account deficits occur.[44]

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43. For a range of solutions to these problems, see sources cited *supra* note 28. Illustrating the ambiguities of public and administration thinking, the new Commerce Secretary Ron Brown said: "This is not a protectionist administration. . . We believe in free trade. We also believe in fair trade. We want to have a level playing field." *U.S. Will Not Be Rushed Into Concluding GATT Trade Talks: USDA's ESPY Says*, INT'L TRADE REPORTER (BNA), at 216-217 (Feb. 10, 1993). Unfortunately, a major problem afflicting U.S. trade policy in recent years is the highly technical nature of trade law controversies. Relatively few experts are conversant with Uruguay Round details. Special interests, especially MNCs, tended to dominate U.S. trade policy making in recent years.

44. For an earlier review of these general offset options, see LOVETT, *supra* note 2, at 105-128.

(i) General revenue tariffs at moderate levels (8-15%) are consistent with GATT's most favored nation (MFN) obligations (Article I) and, if used by the U.S., would encourage more general adoption in many countries. This would foster manufacturing location in the consuming countries and a spreading out of industrial technology in more countries over the long run. *See infra* note 46.

(ii) VAT waiver correctives are appropriate for industrial countries that do not employ the VAT (i.e., the U.S.). U.S. domestic manufacturers suffer a significant disability when foreign nations rebate 12-20% VAT charges on their manufactured exports into the U.S. Thus far, however, despite criticism over the years, the U.S. has not yet established a VAT waiver corrective. *See* JACKSON & DAVEY, *supra* note 9, at 784-789.

Another solution would be for the U.S. to levy its own VAT (say, in the 10-15% range) to provide more budget revenue. *See* Fritz Hollings, *Here's a Great Tax*, N.Y. TIMES, Feb. 15, 1993, at A17; Sijbren Cnossen, *Consumption Taxes and International Competitiveness: The OECD*

An important advantage of general offsets is avoiding extensive particular factual justifications, in other words, greatly improved administrative convenience. But, this can be a problem when responses tailored to particular trade partners (or companies) really might be more appropriate.[45]

Experience, 52 TAX NOTES 1211 (1991); Lawrence Kotlikoff, *The Case for the Value Added Tax*, 39 TAX NOTES 239 (1988). To be realistic politically, U.S. VAT revenues would have to be split with state and local governments (which would be popular); exemptions for foods and drugs could provide substantial progressivity, and benefit the poor and older people. State and local sales and property taxes could be cut heavily as part of a VAT revenue sharing arrangement. Many economists believe that a U.S. VAT is overdue, along with higher gasoline taxes, and that the government's tax base must be shifted more toward consumption and away from domestic production. *See* THUROW, *supra* note 1, at 268-271. Very interestingly, President Bill Clinton suggested recently that a U.S. VAT may be required "not too long into the future." Terrence Hunt, *U.S. Sales Tax in the Future*, TIMES-PICAYUNE, Feb. 20, 1993, at A1.

(iii) General domestic content, employment, or ownership laws in the moderate range of 50% are not seriously burdensome for international trade and investment, and they encourage the spread and diffusion of technology to most nations. Many developing nations already use such laws as part of their industrial policies, and they are unlikely to give themselves up to foreign MNCs. By 1989, at least 94 countries were using some form of countertrade, and joint ventures are widely encouraged along these lines, too. However, 80-90% domestic content, employment, or ownership laws are far more restrictive and protectionist, and do substantially limit international activities. CZINKOTA ET AL., *supra* note 32, at 320-322, 440-461.

(iv) GATT Article XII already allows restrictions on the quantity or value of merchandise imported so that nations may safeguard their external financial position and balance of payments with a counterpart in U.S. trade law, namely, Section 122 of the Trade Act of 1974. The U.S. could have been using this authority between 1984-92 to limit its chronic, large current account deficits, and large bilateral deficits with key trading partners. But the U.S. used import tariff surcharges only once for these purposes. In 1971, President Nixon used them to force major trading partners to realign their currency exchange rates. JACKSON & DAVEY, *supra* note 9, at 874-881.

45. Thus, while it could be argued in 1985-89 that a broad U.S. trade deficit was occurring with most trade partners, by 1991-92 it seemed that most of the U.S. trade deficit problem was heavily concentrated in trade with Japan, Taiwan, China, Canada, and Germany. *See supra* Table 2 p. 143. These five countries accounted for fully half of all U.S. imports in 1992, and almost all of the U.S. trade deficit in 1992.

More general offsets might still be useful, however, to the extent a "structural" problem exists, i.e., asymmetrical openness and divergent use of restrictions and subsidies. In this sense, significant structural problems still apply to U.S. trade with Japan, Taiwan, and China, along with many NICs and LDCs. To a lesser extent structural problems also inhibit trade with Germany, mainly because they are locked into the EC Common Agricultural Policy (CAP), wherein Germany must be loyal to higher cost European farmers. Whether general or specific, U.S. trade policy responses are most productive remain important tactical questions in dealing with sustained trade surplus countries.

Another important argument for general revenue tariffs and/or VAT waiver correctives in the 8-15% range is the severe U.S. budget deficit problem. These taxes could easily generate $40-50

Offsets tailored to particular trade partners or specific firms include: (i) unfair trade practice remedies, such as offsetting duties for subsidies and/or dumping, or a broad range of remedies for unfair or anti-competitive conduct or policies causing significant injury; and (ii) governmental sanction programs for unfair or discriminatory policies implemented by foreign governments.[48] The

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billion annually, and make a substantial contribution to closing the budget gap. Furthermore, many economists believe that the U.S. must move more in the direction of consumption taxes, like revenue tariffs or VAT waiver correctives, and away from taxes that restrict incentives for production and enterprise, for instance, high income, corporate, and capital-gains taxes.

A sensible "user cost" justification can be offered as well, for revenue tariffs and/or waiver correctives. Rebuilding the U.S. industrial base and promoting full employment are proper charges on the marketing of foreign goods in the U.S. An accumulated neglect of U.S. industrial interests has resulted from U.S. trade and foreign policy, which tolerated wide-open, asymmetrical openness.

Finally, a multilateral benefit argument can be made for revenue tariffs. It would be best for humanity if the common crafts and industrial technologies could be spread around the globe wherever they can be reasonably efficient. Moderate tariffs of 8-15% encourage technology diffusion; thus plants tend to be built in most countries (except where clearly inefficient). When these levies are supplemented, on occasion, by reasonable remedies for excessive discounting, dumping, subsidies, or other "unfair" trade practices, the spread and survival of technologies, broader productivity, and prosperity can be assured to most peoples.

48. For general background, *see* JACKSON & DAVEY, *supra* note 9, at 646-825; Ehrenhaft & Meriweather, *supra* note 19; JACKSON, *supra* note 19, at 217-298; WORLD TRADE AT THE CROSSROADS, *supra* note 19. *See also* Alan Holmer & Judith H. Bello, *The 1988 Trade Bill*, U.S. DEPT. OF STATE SPEC. REPT. NO. 180 (1988); *Recent Developments: The Implementation of Super 301, Omnibus Trade and Competitiveness Act*, 31 HARV. INT'L L.J. 359 (1990); Mitsuo Matsushita, *The Structural Impediments Initiative: An Example of Bilateral Trade Negotiation*, 12 MICH. J. INT'L L. 436 (1991); Gary R. Saxonhouse, *Japan, SII, and the International Harmonization of Domestic Economic Practices*, 12 MICH. J. INT'L L. 450 (1991); Terry L. Clark, *The Future of Patent-based Investigations Under Section 337 After the Omnibus Trade and Competitiveness Act of 1988*, 38 AM. U. L. REV. 1149 (1989); Jeffrey Neeley & Hideto Ishida, *Section 337 and National Treatment Under GATT: A Proposal for Legislative Reform*, 13 FORDHAM INT'L L.J. 276 (1989-90).

<u>Private Trade Remedies</u>

The important private remedies for unfair trade practices are: (a) <u>Antidumping Actions</u> (19 U.S.C. §§ 160, 1673). Anti-dumping duties may be imposed for unfair import price discrimination that produces or threatens material injury to U.S. industries. The U.S. Dept. of Commerce-International Trade Administration (ITA) determines whether sales at less-than-fair value (LTFV) are occurring, and the U.S. Int'l Trade Commission (ITC) determines whether dumped imports are causing or threatening material injury. (b) <u>Countervailing Duty Actions</u> (19 U.S.C. § 1671): Countervailing duties may be imposed for subsidies, bounties, or grants upon the production or export of imports into the U.S., where such subsidies produce or threaten material injury to U.S. industries. ITA determines whether the subsidization is occurring, and ITC determines whether such imports are causing or threatening serious injury. (c) <u>Unfair Import Practice Actions</u> (19 U.S.C. § 1337): Section 337 relief may be obtained where unfair methods of import competition (e.g., infringemost important private unfair trade practice relief under U.S. law comes in three forms — contervailing duties for "subsidies," offsetting duties for "dumping" (discounting exports into target markets at lower prices than at home or other markets), or remedies for injurious failure to respect intellectual property rights (patents, trademark, or copyrights). All these procedures under U.S. trade law (as presently interpreted) require fairly extensive investigation, tough burdens of proof, and are not readily available to private parties without substantial litigation and lobbying effort and expense. So far, U.S. government policy has not tried to independently investigate and press for remedies on behalf of American industry and labor to any significant degree.

Anti-subsidy relief has proven difficult to achieve so far given the narrow

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ment of patent, trademark, or copyright interests) threaten or injure substantially a domestic industry, or prevent establishment of such an industry. Investigations are made by the ITC which may issue cease and desist or exclusion orders. But the President may override these ITC findings and relief orders.

Government Corrective Actions

Section 301 and "Super 301" Proceedings (19 U.S.C. § 2411): (a) Discretionary relief under 301 - Although private parties may petition for relief under Section 301 of the Trade Act of 1974, only the U.S. Trade Representative may determine that U.S. trade rights are being denied or violated, or that an act, policy, or practice of a foreign country is unreasonable or discriminatory, and burdens or restricts U.S. commerce. Broad relief by the USTR is allowed for this purpose, under the supervision of the President, including import duties or restrictions, the suspension of benefits from trade agreements, or the negotiation of agreements with such a country; and (b) Mandatory relief under "Super 301" - Enacted as part of the Omnibus Trade Act of 1988, relief must be granted, subject to Presidential discretion, where the act, policy, or practice of a foreign country is unjustifiable, and burdens or restricts U.S. Commerce. But broad latitude is allowed not to take action when — the foreign country is taking satisfactory measures under a trade agreement; the foreign country provides adequate compensatory benefits; a GATT panel finds no violation of U.S. trade agreement rights; or when the taking of action by the USTR would cause serious harm to the national security of the U.S. or other adverse impacts out of proportion to the benefits. In addition, Super 301 required the USTR to initiate Section 301 investigations in 1989 and 1990, based on the annual National Trade Estimates Report identifying foreign barriers to trade and investment and restrictive practices. Under this provision limited complaints were made in 1989 against Japan, Brazil and India. The most important, against Japan for government procurement of satellites and supercomputers, and for restrictive standards on forest products, led to the Structural Impediments Initiative, wherein Japan made a few modest market opening assurances. Brazil was investigated for import licensing restrictions, and India for restrictions on foreign investments and insurance services; Brazil made some token concessions later, but India refused to take any action. All three countries protested, as did many other nations complaining that this procedure was in "conflict" with GATT. Strictly speaking, however, every country is free to organize its own decision-making process for trade negotiations, economic priorities, and achieving reasonable balance and reciprocity in trade flows.

definitions used to describe countervailable or actionable subsidies.[47] Antidumping relief could be more broadly obtained, if sufficient cost-price information were gathered, but enforcement agencies provide relief infrequently.[48] Nearly a year or more of investigation and hearings normally pass before relief is possible, and any relief granted may be subject to further review and delay. No adequate preliminary relief or prompt settlement procedure is generally available. However, with respect to intellectual property rights protection, i.e. "Section 337" actions, a stronger pattern of enforcement reliability seems to have been established, at least with respect to injuries to domestic commerce.[49] Little relief is available in other countries for injury to U.S. intellectual property interests abroad, but this is hardly surprising.

A U.S. government response to foreign government discrimination or unfair trade practices is available under Section 301 of the Trade Act of 1974,

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47. *See* GATT, *supra* note 11, arts. XVI, XVIII; Ehrenhaft & Meriwether, *supra* note 19; JACKSON & DAVEY, *supra* note 9; JACKSON, *supra* note 19; WORLD TRADE AT THE CROSS-ROADS, *supra* note 19. The crucial problem with countervailing duties for subsidies is the requirement, as interpreted under U.S. law currently, that countervailable subsidies must be closely related to exporting. Most subsidies and tax concessions in use are more generally related to economic and industrial growth, and thus not countervailable. Furthermore, the broad latitude allowed under GATT for economic development, unemployment relief, and regional subsidies greatly limits "CVD" relief also, at least as U.S. agencies and courts have been interpreting their law.

48. Because downward sloping cost curves are so commonplace for industrial manufacturing (*see supra* note 42), marginal cost discounting is widespread. And because many countries have less domestic competition than the big U.S. marketplace or they restrict imports (particularly developing nations), appreciably higher prices at home or in some export markets occur than in the U.S. Thus, discounting or "dumping" into the U.S. market is frequent. But, anti-dumping actions have been expensive to research, litigate, and effective relief is unlikely. *See* Ehrenhaft & Meriwether, *supra* note 19; JACKSON, *supra* note 19; JACKSON & DAVEY, *supra* note 9; WORLD TRADE AT THE CROSS-ROADS, *supra* note 19. A good illustration comes from Thomas E. Bennett with the Torrington Company, a leading U.S. bearing manufacturer, about their difficulties: "Even 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 CROSS-ROADS, *supra* note 19, at 148. *See also* James E. Wheeler, *Exporting Unemployment: Hail to the Japanese*, TAX NOTES, Dec. 21, 1992, at 1711.

49. *See* JACKSON & DAVEY, *supra* note 9, at 789-800. The main reason for greater success rates in Section 337 proceedings for relief against patent, trademark, and copyright proceedings is that current legal interpretations allow proof of relatively narrow markets, in which U.S. intellectual property holders can show substantial injury to their interests more easily. From the standpoint of U.S. companies, Section 337 actions are much more likely to succeed in getting worthwhile relief, and at a relatively moderate cost.

and the "Super 301" amendments since 1988.[50] Both "Section 301" and "Super 301" remedies are difficult to use in bilateral relationships, and totally impractical for multilateral negotiations. Calling other governments "unfair" or "discriminatory" is pejorative, even though target countries may be mercantilistic, offer industrial subsidies, and have markets less open to U.S. exports. Although supporters of this legislation say Section 301 is a useful "club in the closet," thus far it has proven a relatively weak tool. Ironically, detractors remark that Super 301 is "too powerful" for effective use among most U.S. allies or trade partners, which also explains its modest use.

Finally, "safeguard" remedies are available under U.S. trade law to assist or protect industries, labor, and conceivably communities, injured by foreign competition.[51] The original "escape clause" for safeguard relief was included

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50. *See* sources on Section 301 and Super 301, *supra* note 46, especially JACKSON & DAVEY, *supra* note 9, at 802-823; Holmer & Bello, Matsushita, and Sarnelsohn, all *supra* note 46. *See also* Alan F. Holmer & Judith H. Bello, *The 1988 Trade Bill: Savior or Scourge of the International Trading System?*, 23 INT'L LAW. 523 (1989); Steven R. Phillips, *The New Section 301 of the Omnibus Trade and Competitiveness Act of 1988: Trade Wars or Open Markets?*, 22 VAND. J. INT'L L. 491 (1989). Interestingly, President Bill Clinton called for renewal of Super 301 in his 1992 campaign. CLINTON & GORE, *supra* note 1, at 156. But in early 1993 it was not clear to what extent or how the Clinton administration might use Section 301 and Super 301 remedies in trade relations.

51. For sources on safeguard relief, *see* MIDDLEMAS & BARNES, *supra* note 5; DAM, *supra* note 9, at 99-107, 296-315; JACKSON & DAVEY, *supra* note 9, at 538-647; JACKSON, *supra* note 19, at 149-188; LOVETT, *supra* note 2, at 105-135; WORLD TRADE AT THE CROSS-ROADS, *supra* note 19. *See also* GARY C. HUFBAUER ET AL., TRADE PROTECTION IN THE U.S.: 31 CASE STUDIES (1986); GARY C. HUFBAUER & HOWARD F. ROSEN, TRADE POLICY FOR TROUBLED INDUSTRIES (1986); Harry First, *Structural Antitrust Rules and International Competition: The Case of Distressed Industries*, 62 N.Y.U. L. REV. 1054 (1987). *But see* Willard Mueller's comments, *id.*, at 1111. *See generally* Chart 1, *supra* p.153.

Although many free trade experts express a preference for safeguard relief and restructuring for distressed industries, which is allowed under GATT Articles XVI and XVIII, the central problem has been getting adequate funding, resources, and medium-term sheltering. The financing alternatives are import tariffs, quotas, special excises, and/or general budget revenues. However, Congress and past Presidents have been stingy with industrial adjustment efforts and funding. Partly for this reason, voluntary restraint agreements (VRA) have been used more frequently. While Japan and European countries have used safeguard relief more effectively to restructure and strengthen distressed industries (e.g., steel), U.S. government-industry collaboration has been, generally speaking, far less effective. Weak, fitful, and unreliable support has been typical, except for haphazard, occasional "success" in limiting imports through VRA's. The problem with U.S. safeguard relief has been a lack of coherent, sustained, industry-by-industry planning efforts. No wonder that U.S. results have been so marginal, with poorly funded, hesitant U.S. government action. *See* sources on industrial policies, *supra* notes 10 and 18. *See also* WILLIAMSON, *supra* note 30; CAVES & JONES, *supra* note 30; KRUGMAN & OBSTFELD, *supra* note 30; SCOTT, *supra* note 7.

for many years in U.S. reciprocal trade agreements. However, gradually, the escape clause was narrowed by judicial and administrative interpretation, and later replaced by Section 201 of the Trade Act of 1974, under which the U.S. normally allows only adjustment assistance for competitive injury, absent any proof of unfair trade practices. In fact, only modest resources have been allocated for adjustment assistance, although some free trade enthusiasts argue this is the only legitimate response to industrial displacement problems. For U.S. industries and labor, hard hit by competition from subsidized foreign industries, industrial targeting, dumping, or marginal cost discounting, the weakness of U.S. trade law remedies (at least since the Trade Act of 1974), strikes them as a "Catch 22" problem. Infrequent unfair trade practice relief is compounded by unreliable and stingy adjustment assistance. In their view, the bottom line is a steady progression toward further U.S. de-industrialization.[52]

D. *Currency Re-Alignment and Responsible Macro-Economic Policies*

Currency re-alignment and responsible macro-economic policies have been another strategy favored as a necessary complement to trade policies.[53] Free trade enthusiasts normally prefer currency re-alignment as the best way to overcome balance of payments problems. Industrial policy and reciprocal trade

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52. Many have written in recent years about the economic, industrial, and social stresses of a declining U.S. industrial base, with relatively less employment in manufacturing. In 1952 manufacturing accounted for 26.5% of the working force (16.2 million out of 62.6 million employed), but in 1990 manufacturing accounted for only 16% of the working force (19.1 million out of 119.6 million employed). Social Security Administration, EARNINGS AND EMPLOYMENT DATA FOR WAGE AND SALARY WORKERS COVERED UNDER SOCIAL SECURITY BY STATE AND COUNTY (1992); *See* BARRY BLUESTONE & BENNETT HARRISON, THE DEINDUSTRIALIZATION OF AMERICA (1982); CULBERTSON, *supra* note 11; PRESTOWITZ, *supra* note 18; PHILLIPS, *supra* notes 1 and 10; DERTOUZOS, *supra* note 10; LODGE, *supra* note 10; WORLD TRADE AT THE CROSS-ROADS, *supra* note 19; KUTTNER, *supra* note 28; A FUTURE OF LOUSY JOBS?, *supra* note 28; MESSEL & FRANKEL, *supra* note 26; REICH, *supra* note 28; BLECKER, *supra* note 28; HARRIGAN & HAWKINS, *supra* note 28; THUROW, *supra* note 1; LOVETT, *supra* note 2. *See also* CLINTON & GORE, *supra* note 1; PEROT, *supra* note 1.

53. Conventional wisdom in international economics holds that exchange rate adjustments normally play a crucial role in eliminating balance of payments problems. *See* LINDERT & KINDLEBERGER, *supra* note 2, at 278-415; ROOT, *supra* note 7, at 347-454; WILLIAMSON, *supra* note 30, at 106-248; CAVES & JONES, *supra* note 30, at 277-485; KRUGMAN & OBSTFELD, *supra* note 30, at 285-592. *See also* MARTIN N. BAILY & PHILIP FRIEDMAN, MACRO-ECONOMICS, FINANCIAL MARKETS AND THE INTERNATIONAL SECTOR 425-514 (1991). However, competitiveness problems in a nation can certainly lead to recurrent strains or balance of payments difficulties, and sometimes successive devaluations (e.g. the extended post-World War II, economic difficulties of the U.K.).

advocates can also support currency re-alignment to supplement their strategies. Thus, trade deficit countries will have their currencies depreciate, gradually reduce imports, and ultimately increase exports as their production becomes more competitive in world markets. Most deficit countries suffer fairly prompt discipline this way when serious trade and current account deficits accumulate. Even though devaluations are politically painful, and reduce living standards somewhat (to the extent they are dependent upon imports), this logic represents conventional wisdom in modern international finance. On the other hand, chronic trade surplus countries should revalue their currencies upwards, or at least accept the need to continue net lending or investments abroad.

Responsible macro-economic policies should go hand-in-hand with currency re-alignments as a corrective for serious and sustained deficits in external accounts.[54] In many, if not most deficit countries, the root problem is excessive government spending compared to their tax revenues, which creates substantial excess aggregate demand and considerable domestic inflation. This spills over into imports, and normally encourages greater imports than exports. Typically, the deficit countries have trouble with wage inflation, weak overall productivity, and sometimes capital flight. In these circumstances, their exports may, or may not, rebound as the currency depreciates. These woes often make "responsible" fiscal policy difficult to achieve in the poorer countries. In the more fortunate nations, people "tighten their belts," improve productivity, and learn to "live within their means" again. Thus, when fiscal discipline reappears, productivity improves, and overall output recovers, world capital markets tend to reward "virtue" with renewed investment and credit-worthiness. Responsibilities for "surplus" countries, in this conventional wisdom, include lending or investing current account surpluses in world capital markets.[55] However, in practice, this does not mean a great deal of charity to the more

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54. However, many experts have wondered in recent years why this discipline did not operate to eliminate U.S. trade and current account deficits promptly in the mid-late 1980's, and on into the 1990's. The main reasons seem to be a reluctance of key trade surplus countries to revalue sufficiently their currencies (especially Japan, Taiwan, and, until recently, Germany), together with a willingness of their investors to continue buying U.S. businesses, securities, debt instruments, and real estate.

International trade economists often describe the time lag in correcting a country's current account deficit after its currency is devalued as the "J-curve." *See* KRUGMAN & OBSTFELD, *supra* note 30, at 450-455.

55. *See* sources cited *supra* note 53.

improvident or badly governed deficit nations.[56] Instead, the successful surplus nations tend to invest in growing and more secure markets, which promise higher or more reliable returns on investments. Alternatively, surplus countries could gradually revalue their currencies upwards, take more imports, and reduce exports. These countries would thus eliminate their surpluses and resume an overall external balance. Central banks and finance ministers in these "successful" surplus countries (e.g. Germany and Japan) have been unwilling to risk substantial domestic inflation, which might weaken their export competitiveness, the bedrock of their strong post-World War II performance.

Recent communiques from the G-7 and G-5 group of industrialized countries reflect a weak consensus for greater macro-economic responsibility.[57] In a perfect world, the current economic situation would call for greater fiscal discipline from deficit countries (e.g., the U.S., with its large budget and external deficits between 1983-93), and for surplus countries (e.g. Germany and Japan) to provide as much stimulus as they could handle responsibly. However, as things worked out in the early 1990's, both Germany and Japan, for somewhat different reasons, decided to tighten monetary policies, while allowing greater fiscal deficits. Germany had to absorb East Germany and accommodate refugees from Eastern Europe. This was a very expensive undertaking, resulting in major budget deficits, increased borrowing, and upward pressures on interest rates.[58]

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56. *See* sources cited *supra* note 53. *See also* CZINKOTA ET AL., *supra* note 32, at 132-146; ROOT, *supra* note 7, at 538-576. To the extent surplus countries can afford and feel responsible to help the poorest countries, some limited capital resources also can be shared or given away in foreign aid. In the poorest nations, even this much could be meaningful seed capital, quite helpful in early economic development.

57. *See, e.g.*, C. FRED BERGSTEN, GLOBAL ECONOMIC IMBALANCES (1985); RALPH C. BRYANT, INTERNATIONAL FINANCIAL INTERMEDIATION (1987); YOICHI FUNABASHI, MANAGING THE DOLLAR: FROM THE PLAZA TO THE LOUVRE (2d ed. 1989); Jeff Faux, *The Austerity Trap and the Growth Alternative*, WORLD POL'Y J. 368 (Summer 1988); DOLLAR POLITICS: EXCHANGE RATE POLICYMAKING IN THE U.S. (I. M. Destler & C. Randall Henning eds., 1989); BELA BELASSA & JOHN WILLIAMSON, ADJUSTING TO SUCCESS: BALANCE OF PAYMENTS POLICY IN THE EAST ASIAN NICS (rev. ed. 1990); PAUL R. KRUGMAN, HAS THE ADJUSTMENT PROCESS WORKED? (1991); INTERNATIONAL ADJUSTMENT AND FINANCING, THE LESSONS OF 1985-1991 (C. Fred Bergsten ed., 1991); WENDY DOBSON, ECONOMIC POLICY COORDINATION: REQUIEM OR PROLOGUE? (1991); PAUL VOLCKER & TOYOO GYOHTEN, CHANGING FORTUNES: THE WORLD'S MONEY AND THE THREAT TO AMERICAN LEADERSHIP (1992); Barry Eichengreen, *It Can Happen Again*, CHALLENGE, Nov.-Dec. 1992, at 14; BLECKER, *supra* note 28; KRUGMAN & OBSTFELD, *supra* note 30, at 538-575.

58. The tightening of German monetary policy and higher rates pushed up the mark, slowed the German and European economies, and put great strain on the new post-Maastricht European Monetary System (EMS) accords in 1992-93. Unfortunately, heavy continued costs for the

Meanwhile, Japan tightened its monetary policy in 1991-92 as part of a general crackdown on excess liquidity, real estate speculation, and unhealthy investments. Under these circumstances, both countries were unable to fulfill economic "locomotive" expectations from the U.S. and other countries. Understandably, Germany and Japan had to concentrate on maintaining their industrial-export strength in a period of economic strain.[59]

IV. U.S. TRADE POLICY SINCE THE EARLY 1980's

When President Reagan took office in January 1981, the dominant economic problem was "stagflation," a nasty blend of wage-price inflation, underemployment, and weakened growth. Reaganomics featured 25 percent income tax cuts over 3 years, considerable deregulation, combined with strong

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absorption of East Germany, increased German tax and borrowing burdens, together with a serious recession and an elevated value for the mark, began to cause competitiveness problems for newly united Germany. This could interrupt or delay many of the hoped for benefits from the Maastricht Europe 1992 developments. *See, e.g.*, THE SINGLE EUROPEAN MARKET AND BEYOND: A STUDY OF THE WIDER IMPLICATIONS OF THE SINGLE EUROPE ACT (Dennis Swann ed., 1992); PETER B. KENEN, EMU AFTER MAASTRICHT (1992); Terence Roth, *Bonn Expects Decline of 0.5% In Its Economy*, WALL ST. J., Feb. 11, 1993, at A11; Craig Whitney, *Germans Feel Pain of Unity, Squabbling Over Who Pays*, N.Y. TIMES, Feb. 19, 1993, at A1.

Japan's economy had been greatly slowing down under sharp monetary restraint in 1991-92, which was designed to cool its speculative stock and real estate boom. However, Japan loosened its monetary policies substantially in late 1992, and greatly lowered interest rates in early 1993. Nonetheless, the Japanese economy remained strong with a record $107 billion trade surplus for 1992, showing very strong international industrial competitiveness. Interestingly, the Japanese avoided a serious mistake Germany made with the Deutsche mark, by not over-valuing the yen in 1992-93. CHRISTOPHER WOOD, THE BUBBLE ECONOMY: JAPAN'S EXTRAORDINARY SPECULATIVE BOOM OF THE '80's AND THE DRAMATIC BUST OF THE 90's (1992); Clay Chandler, *Bureaucratic Bickering Thwarts Japan's Search for Economic Cure*, WALL ST. J., Feb. 1, 1993, at A8; Andrew Pollack, *Dollar Drops Sharply to Record Low vs. Yen*, N.Y. TIMES, Feb. 23, 1993, at C1; Clay Chandler & John Bussey, *Yen's Surge Against Dollar Taxes Japan, Burdening Recessions Weary Exporters*, WALL ST. J., Feb. 23, 1993, at A12; *1992 U.S. Trade Deficit Grows 29 Percent*, INT'L TRADE REP. (BNA), at 110 (Feb. 24, 1993) (Japan's worldwide trade surplus is $107 billion in 1992, a 37.7% increase from 1991. Japan figures its trade surplus with the U.S. is rising 14.1% to $43.7 billion).

59. President George Bush might consider his re-election defeat in 1992 a partial consequence of these German-Japanese economic preoccupations, which helped cause a "double-dip" U.S. recession. However, overall sluggishness in the American economy between 1990-92 really resulted from more fundamental problems, e.g. heavy and continuing U.S. budget and external deficits, weak industrial competitiveness, unequal trading conditions and a decade-long, political gridlock in Washington.

monetary restraint.[60] Federal Reserve Chairman Paul Volcker had already instituted a tight monetary policy in late 1979, and continued with support from the new Republican administration. In addition, the Reagan Administration cracked down on labor unions, symbolically breaking an important air-traffic controllers' strike by firing the strikers, who were federal employees.

A sharp recession, coupled with growing unemployment, spread rapidly into many countries. In fact, U.S. unemployment reached nearly 11 percent in 1982. This recession greatly cooled world-wide inflation, and, for a while, commodity prices actually decreased.[61] Thus, Reagan seemed to be solving the top priority problem by greatly reducing inflation.

From 1983 to 1986, greatly enlarged U.S. budget deficits, resulting from large tax cuts and increased defense outlays, stimulated a strong economic recovery. Fears of "crowding out," or another recession induced by big borrowing, did not materialize, as foreign investors, especially from Europe and Japan, loaned and invested more heavily in the U.S. Although these heavy budget deficits later proved hard to control, given the impasse between Republican presidents and Democratic majorities in Congress, their negative implications were not widely perceived until the 1990's.[62]

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60. *See* sources cited *supra* note 22. *See also* LOVETT, *supra* note 2, at 189-225; WILLIAM A. LOVETT, BANKING AND FINANCIAL INSTITUTIONS LAW 76-95 (3d ed. 1992); WALLACE C. PETERSON AND PAUL S. ESTENSON, INCOME, EMPLOYMENT & ECONOMIC GROWTH 546-602, 626-686, 745-749, 769-794 (7th ed. 1992); ROBERT LEKACHMAN, GREED IS NOT ENOUGH: REAGANOMICS (1982); HERBERT STEIN, PRESIDENTIAL ECONOMICS: THE MAKING OF ECONOMIC POLICY FROM ROOSEVELT TO REAGAN AND BEYOND (1984).

61. Unfortunately, in many Latin American countries and other LDCs, their export earnings were cut heavily, leaving them unable to service rapidly growing debts. A consequence was the Latin American-LDC debt overload crisis in 1982, which lasted through most of the 1980's for many countries. Drastic rescheduling and stretch out of debts was needed, with great hardships, retrenchment, and stagnation for many countries involved, and eventually partial loan losses were recognized by the multinational banks. *See* ROOT, *supra* note 7, at 566-575; LOVETT, *supra* note 2, at 137-165; KRUGMAN & OBSTFELD, *supra* note 30, at 629-673.

62. During the 1984 U.S. Presidential campaign, Democratic candidate Walter Mondale attempted in 1984 to raise these issues of excessive deficit spending, a need for greater fiscal responsibility, and weakened competitiveness. But the 1983-84 recovery was strong, inflation had been nearly halted, and Reagan gave a brilliant political riposte to Mondale's demand for a tax increase. Reagan remarked that the first thing the Democrats wanted to do was raise taxes, but that was the last thing he wanted to do. When Vice-President Bush succeeded as Republican Presidential candidate in 1988, Governor Michael Dukakis could have mounted a more coherent political attack on the twin deficits-budget and trade, and the competitiveness issue. Instead, Dukakis ran a campaign which was overconfident, and failed until near the end to voice a strong economic critique of the Reagan era. *See, e.g.*, JACK GERMOND & JULES WITCOVER, WAKE US WHEN ITS OVER: PRESIDENTIAL POLITICS

Meanwhile, a Reagan-Bush trade policy gradually took shape. In 1985, Commerce Department officials urged somewhat tougher trade bargaining, offered a mild version of a U.S. industrial policy, and proposed a Department of International Trade and Industry.[63] Despite these suggestions by the Commerce Department, the administrations' predominant thrust was freer trade and a desire to open foreign markets.[64] Fears of protectionism were expressed by MNCs and multinational banks, concerned that a trade war might develop, endangering overseas investments and loan repayment prospects. The GATT, the International Monetary Fund (IMF), and the World Bank establishments echoed these concerns. Accordingly, the U.S. Trade Representative (USTR) took the lead toward another series of trade talks, known as the Uruguay GATT Round.[65] Partly because the USTR, former Agriculture Secretary Clayton Yeutter, was an agri-business expert, U.S. negotiating strategy emphasized opening foreign agricultural markets and cutting farm subsidies heavily in most countries. Opening service markets abroad, such as banking, finance, and insurance to more competition was another major goal. On the other hand, the U.S. suggested that it would limit unfair trade practice enforcement, and allow more imports of textiles, currently restricted under the International Multifibre Agreement regime,

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OF 1984 (1985); JACK GERMOND & JULES WITCOVER, WHOSE BROAD STRIPES AND BRIGHT STARS? THE TRIVIAL PURSUIT OF THE PRESIDENCY (1989). It remained for Governor Bill Clinton of Arkansas in 1992 to mount the coherent attack that might have been made years before. CLINTON & GORE, *supra* note 1.

63. *See* THE PRESIDENT'S COMMISSION ON INDUSTRIAL COMPETITIVENESS, GLOBAL COMPETITION: THE NEW REALITY 37-44 (1985). *See also Commission Recommends Two Cabinet-level Departments*, TIMES-PICAYUNE, Feb. 14, 1985, at D1.

64. *See* sources cited *supra* note 63. *See also* THE ECONOMIC REPORT OF THE PRESIDENT for 1984, 1985, and 1986, for the main thrust of subsequent Reagan era international policy: namely, free trade and a desire to open foreign markets. *But see* PRESTOWITZ, *supra* note 18, for a strong critique of these efforts, and their failure to be tough enough, especially with respect to Japan. *See also* WORLD TRADE AT THE CROSS-ROADS, *supra* note 19.

65. An important stepping-stone for the Uruguay Round negotiation effort was the Nov. 24-29, 1982, GATT ministerial conference. It gathered free trade-oriented officials and experts toward a consensus, later implemented in the late 1980's, that two major problems should be addressed: (i) a spread of industrial policies, trade related investment restrictions, and growing protectionism; and (ii) the lack of any international GATT-like disciplines for services and international investment. *See* SEYMOUR J. RUBIN & THOMAS R. GRAHAM, MANAGING TRADE RELATIONS IN THE 1980'S: ISSUES INVOLVED IN THE GATT MINISTERIAL MEETING-1982 (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. *See infra* note 84.

which allocates access to U.S. and European markets.

A crucial and controversial U.S. concession was a U.S.-orchestrated mutual pledge for "*standstill*," or no additional restrictions on trade during Uruguay Round negotiations.[66] In the context of rapidly increasing U.S. external deficits from 1983 onwards, this concession eroded a great deal of U.S. leverage to enforce more favorable trade flow balances. Rather than fearing trade imbalance, the U.S. negotiators seemed to fear any disruption to the increasingly large capital flows from abroad which were being used to finance large U.S. trade and current account deficits.[67]

Congressional Democrats criticized the neglect of many U.S. industries, growing job losses, and increased trade and current account deficits. Congressman Richard Gephardt offered a bill that would require Japan to gradually reduce its large trade surplus with the U.S. This proposal later survived, in a substantially weakened version, in the Omnibus Trade Act of 1988 and become known as "Super 301." An addition to the existing "Section 301" trade remedy, Super 301 required the President to report annually on restrictive trade practices by all significant U.S. trade partners.[68] For three years, the President was obligated to report on such practices, and explain whether U.S. action should be taken, if any significant trade restrictions on U.S. goods or services were found to exist. In 1990, the USTR found that Japan deserved a

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66. *See Uruguay Round-Surveillance Body As Well As Negotiating Structure and Plans Agreed*, GATT NEWSLETTER, Jan.-Feb. 1987. Crucial features implemented by the Trade Negotiations Committee (TNC), were Standstill Commitments and Rollback Commitments, with prompt notification procedures for all complaints addressed to the Surveillance Body. Many interests favored this U.S. policy, including most MNCs, multinational banks, securities firms, and the import lobbies. On the other hand, the AFL-CIO and some domestic manufacturers opposed a welcome to foreign capital "at the expense of U.S. industries and jobs."

In the later Reagan-Bush era, the administration's free-trade, Uruguay Round strategy had become dominant. Neglected now was the earlier Commerce Department push for a mild industrial policy. So long as the country felt it was prospering, and the popular majority were comfortable, a mood that lasted from 1983-91 (for the most part) sufficient political support existed for a largely unilateral free trade strategy and their Uruguay GATT Round effort.

67. *See* sources cited *supra* notes 24 and 32.

68. *See* Omnibus Trade and Competitiveness Act of 1988, §§ 1301 (revising §§ 301 of the Trade Act of 1974), 1304 (providing for National Trade estimate reports), 1305, 1306, and 1307 (dealing with U.S.-Japan Trade relations), 102 Stat. 1107, P.L. 100-418 (1988). *See also* sources on Section 301 and Super 301 cited *supra* note 46.

modest complaint and possible sanctions.[69] A limited set of promises by Japan to open some markets, known as the Structural Impediments Initiative, was accepted in 1991 as a sufficient undertaking to allay U.S. concerns, and the USTR deemed no further action was necessary under Super 301.

Meanwhile, the Uruguay Round had been scheduled for preliminary completion in December 1990, with final details to be worked out by March 1991, so that the fast-track deadline for submission the U.S. Congress could be met.[70] Unfortunately, a very substantial gap remained to be closed between the major agricultural exporters, namely the U.S. and the Cairns Group (Canada, Australia, New Zealand, Thailand, Indonesia, Brazil, Argentina, Uruguay, and others), and the European Community. The conflict was over the extent to which substantial EC agricultural subsidies, especially for export, could be eliminated. The U.S., the Cairns Group, and a few European countries (including the U.K.) favored larger cuts, but France and the majority of EC members would support only modest cuts. At this juncture, neither bloc could afford to make major concessions.

At first it seemed the whole Uruguay Round might collapse, but the Bush

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69. *See* Clyde H. Farnsworth, *Japanese Pledge to Lower Trade Barriers to Trade with U.S.*, N.Y. TIMES, Apr. 6, 1990, at A1 ("Carla A. Hills, the U.S. Trade Representative, stressed that there was likely to be very little short-term impact on the trade deficit with Japan, which last year totaled $49 billion."). *See also* sources on Section 301 and Super 301 cited *supra* note 46. Note that for the year 1992 the U.S. trade deficit with Japan was still $46.2 billion. *See* Table 2, p.143.

70. *See GATT-GATT Delegates Asking "What Went Wrong?" as Concluding Uruguay Round Session Begins*, INT'L TRADE REP. (BNA), at 7 (Dec. 5, 1990). The European Community could not concede much in the way of farm subsidy cuts to the U.S. and Cairns group of agricultural exporting countries. And, the U.S. could not include MFN treatment in services for its air transport, maritime, and telecommunications sectors. But, the U.S. had earlier sought MFN treatment for its banking and insurance industries, which wanted to expand overseas. Quotas versus open access over movies and TV programming was another sticking point with exporters like the U.S., Egypt, and India, which wanted broader access, while most film importing states preferred limited access and quotas. The U.S. and Europe want stronger intellectual property protection for pharmaceutical exports, with the Third World preferring to make much cheaper copies. And the EC and U.S. oppose tighter restrictions on anti-dumping measures, while Japan and some developing countries like more freedom for discounting into other markets. *Id.*

See also Agriculture-Collapse of Uruguay Round Talks Shows Unity of U.S. Farm-Business Interests, Kleckner Says, INT'L TRADE REP. (BNA), at 42 (Jan. 9, 1991) ("For the first time in GATT negotiations, U.S. farm interests were not sold out or ignored," quoting American Farm Bureau Federation President Dean Kleckner, referring to the European Community's stubbornness on agriculture); *U.S., Others Blame EC for Failure in Brussels to Agree on New Rules to Govern World Trade*, INT'L TRADE REP. (BNA), at 1876 (Dec. 12, 1990). For more details, see INT'L TRADE REP. (BNA), for the relevant period, Dec. 1990-Jan. 1991.

Administration and Congress extended the fast-track negotiating authority another two years, until early 1993.[71] The Bush Administration hoped, after re-election in 1992, that it could successfully conclude the GATT Round without the political pressures of an election year. In the spring of 1992, few realized that the 1992 election would produce a new President, Democrat Bill Clinton.

Another important trade development of the Reagan-Bush era was increasing U.S. efforts to enlarge investment opportunities and free trade in the Americas.[72] The U.S. had been uneasy at the growth of state enterprises and a drift toward more economic planning in the hemisphere. A few countries became leftist or Marxist in the 1950-70's, including Guatemala (briefly), Cuba, Guyana, Chile, Jamaica, Nicaragua, and Grenada, while guerilla movements persisted in El Salvador and Peru. Kennedy's Alliance for Progress Program in the early 1960's, plus subsequent encouragement for regional free trade areas (e.g., the Central American Common Market, the Andean Common Market, and the Latin America Free Trade Agreement) illustrated U.S. concern for broader economic opportunities and expanding trade. The Reagan Administration added many Bilateral Investment Treaties (BITs) and the Caribbean Basin Initiative, which was built upon a conservative election victory in Jamaica and the successful overthrow of the Marxist government in Grenada. The U.S.-Canada Free Trade Agreement of 1985 was a major step toward stronger regional economic integration. The Bush Administration proposed early on the North American Free Trade Agreement (NAFTA), involving the U.S., Canada, and

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71. *See* Peter Truell, *White House to Ask Congress to Extend 'Fast Track' Authority on Trade Pacts*, WALL ST. J., Jan. 28, 1991, at B5; David Cloud, *Hill Gives Bush Green Light to Negotiate Trade Pacts*, CONG. Q. WKLY., May 25, 1991, at 1358. The House rejected a resolution to deny a two year fast-track renewal sought by the Bush administration by a vote of 192-231, while the next day the Senate rejected a similar resolution by 36-59. This gave another two years, until March 2, 1993, for completion and submission of any Uruguay Round or NAFTA agreements.

72. *See* James Brooke, *Latin America's Regional Trade Boom*, N.Y. TIMES, Feb. 15, 1993, at C1 (Southern Cone integration and Mercosur); KEVIN P. POWER, CARIBBEAN BASIN TRADE AND INVESTMENT GUIDE (1984) (Caribbean Basin Initiative). Regarding the Canada-U.S. Free Trade Agreement, see THE U.S. AND CANADA: THE QUEST FOR FREE TRADE-AN EXAMINATION OF SELECTED ISSUES (Paul Wonnacott ed., 1987); PERSPECTIVES ON A U.S.-CANADIAN FREE TRADE AGREEMENT (Robert M. Stern et al. eds., 1987); THE CANADA-UNITED STATES FREE TRADE AGREEMENT, THE GLOBAL IMPACT (Jeffrey J. Schott & Murray G. Smith eds., 1988). With respect to NAFTA, see SIDNEY WEINTRAUB, FREE TRADE BETWEEN MEXICO AND THE U.S.? (1984); GARY C. HUFBAUER & JEFFREY J. SCHOTT, NORTH AMERICAN FREE TRADE: ISSUES AND RECOMMENDATIONS (1992).

For earlier efforts to promote integration in the Americas, see ROOT, *supra* note 7, at 562-575; WILLIAMSON, *supra* note 30, at 299-312.

Mexico. This was complemented by an Enterprise for the Americas Initiative (EAI), which sought to promote freer trade and investment activities among the U.S. and Latin American countries. By late 1992, the U.S., Mexico, and Canada had tentatively agreed to the NAFTA, although implementation and supplementary agreements for environmental protection and easing employment adjustments in the U.S. remain for the new administration in 1993.[73]

V. PROSPECTS AND CONTROVERSIES IN THE CLINTON ERA

The Democratic Clinton Administration represents an alliance of interests and perspectives that spans the spectrum on trade and industrial policy.[74] Clinton campaigned for a stronger U.S. trade policy, and urged that foreign MNCs be taxed more heavily to pay their "fair share." However, he stressed competitive disciplines in a global economy. He endorsed increased outlays for infrastructure and education, yet emphasized the need for greater efficiency in government programs. His initial appointments included well-known industrial policy advocates, Robert Reich as Labor Secretary and Laura Tyson as Chairman of the Council of Economic Advisors. On the other hand, however, key trade appointments went to Democratic party campaign leaders and lobbyists, like Mickey Kantor for United States Trade Representative and former Democratic National Committee Chairman, Ron Brown, as Secretary of Commerce. The other important treasury, budget, and economic policy appointments went to moderates, generally known for wanting stronger fiscal measures to cut excessive budget deficits.

Understandably, this provoked anxiety from conflicting interests about critical trade policy decisions early in the administration. President Clinton moved quickly to meet with President Salinas of Mexico, agreeing to expedite NAFTA approval, subject to environmental safeguards and adjustment relief for U.S. workers.[75] Questions remain on how to finance adjustment assistance and whether the administration might ask for an import fee as suggested by Congressman Gephardt, Majority Leader in the House of Representatives.

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73. *See Bush, Salinas, Mulroney Sign NAFTA Accord*, CONG. Q. WKLY., Dec. 19, 1992, at 3883.

74. *See The Clinton Team Applies Its Political Skills to Trade*, INT'L TRADE REP. (BNA), at 148-168 (Jan. 27, 1993). *See also* sources cited *supra* note 1.

75. Chris Black, *Clinton Meets Salinas, Vows to Act on Treaty*, BOSTON GLOBE, Jan. 9, 1993, at 6. ("Clinton pledged not to reopen negotiations on the treaty but contrived to insist on supplementary agreements to protect American jobs and the environment and to avoid the 'dumping' of Mexican goods on the U.S. market.")

Meanwhile, the Commerce Department made a preliminary finding that dumping and price discrimination against U.S. steel producers justified substantial anti-dumping [and countervailing] duties against many foreign countries.[76] The U.S. automobile industry is also considering an important antidumping case, and seeking broader import relief against Japanese cars, vans, and trucks. On the other hand, the free trade lobby is pressing hard for early "completion" of the Uruguay Round.

Meanwhile, Arthur Dunkel, Director General of GATT, conceded earlier this year that the March 2, 1993 deadline for completing the Uruguay Round negotiations was unrealistic.[77] This means another extension of the U.S. fast-track negotiating authority will be needed, with the Clinton Administration unclear on how lengthy a process for further negotiation might be appropriate. Mickey Kantor, the new USTR, was scheduled to meet on February 11, 1993 in Washington with the EC trade negotiator. As February began, Kantor threatened strong retaliation against the new EC utilities directive, which requires a three percent price preference for European bids over outsiders. This came as no surprise to the U.S. which had objected previously when this provision was proposed.[78] Journalists speculated over the situation, and many U.S. industries sensed a somewhat more favorable political environment for import relief, unfair trade practice findings, and voluntary restraint agreements by foreign companies.

76. *ITA Levies Provisional Duties In Steel Antidumping Actions*, INT'L TRADE REP. (BNA), at 175 (Feb. 3, 1993). *See also The Clinton Team Applies Its Political Skills to Trade*, *supra* note 74, at 165. The ITA made a preliminary determination that 19 countries are dumping steel products into the U.S., including Japan, Germany, U.K., Korea, Sweden, Belgium, Canada, and Australia. Provisional duties were imposed, but they will not become final unless the ITC makes an affirmative injury determination.

After an international consensus on steel was abandoned by the U.S. by the Bush administration, the steel companies of many countries began to prepare anti-dumping actions. Widespread discounting occurred in a soft global steel market, as most countries still provided subsidies to their domestic industries, subsidies which are unavailable to U.S. firms. Despite investing more than $35 billion on modernization since 1980, U.S. steel companies complain that foreign dumping and subsidies continue to undermine their market position and their suppliers, threaten the jobs of thousands of Americans and inhibit further upgrading efforts.

77. Roger Cohen, *World Trade Pact Now Seen as at Least Several Months Off*, N.Y. TIMES, Jan. 30, 1993, § 1, at 42.

78. *USTR Kantor Sets Plan to Sanction EC Over 'Intolerable' Procurement Law*, INT'L TRADE REP. (BNA), at 174 (Feb. 3, 1993). This concerns a new 3% price preference for EC over non-EC suppliers to utilities, and allows EC utilities to reject non-European bids. In retaliation, Kantor will prohibit, effective March 22, 1993, any purchases by U.S. government and defense agencies of EC equipment for utilities.

Some complained that "[t]he new team lacks the ideological anchor of a strong, publicly expressed belief in free trade...," while others observed "[s]o far little is new."[79] Lester Thurow, Dean of the Massachusetts Institute of Technology's Sloan School of Management, and an advocate of a stronger U.S. industrial policy, said that he believed Clinton would have to stem imports to achieve an economic growth of 4 percent annually, a goal which he believes the Clinton Administration should be trying to achieve.[80]

Clearly, the Clinton Administration believes that it has a mandate from the 1992 election to improve U.S. economic growth, broaden prosperity, and increase employment. This new administration probably will seek more equal sharing of the benefits from freer trade, and within limits, is likely to be a tougher trade bargainer. Some industrial policy efforts can be expected as well, but they will take longer to develop and to impact significantly, as members of the Clinton Administration have conceded.[81]

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79. The new team lacks the ideological anchor of a strong, publicly expressed belief in free trade, and is backed by a Democrat party that is deeply divided on trade policy. This combination could force the new team to confront a succession of industries allied with Democratic factions without a clear, consistent set of rules for rejecting requests for help.

Keith Bradsher, *Clinton Trade Policy: So Far Little Is New*, N.Y. TIMES, Feb. 2, 1993, at D1.

80. *See* Cohen, *supra* note 77.

81. Key issues for U.S. trade policy are the following:

(1) What kind of environmental safeguards, commodity taxes, and funding should be used to improve environmental protection for export (or import) industries involved in international trade?

(2) What kind of job displacement safeguards, retraining, or relocation assistance should be used with expanding international trade? How should these efforts be funded? With what revenue sources? Import fees, excise taxes, or general revenues?

(3) What kind of supervision and/or regulation, if any, should be employed to enforce better overall trade balances for the U.S.?

(4) What kind of U.S. industrial development policy makes sense in a period of substantially reduced defense outlays for an administration committed to reviving U.S. competitiveness, industrial vitality, and prosperity?

(5) How should U.S. trade policy deal with asymmetrical openness, greater use of subsidies and/or restrictions abroad, and extensive use of marginal cost discounting in many industries with substantial scale economies in the world market?

(6) To what extent, if at all, can free trade investment flows be relied upon to serve the best interest of the U.S. as a whole?

(7) To what extent, and how quickly, can the U.S. achieve fiscal discipline, eliminate excessive budget deficits, lower long-term interest rates, and strengthen the overall environment for industrial vitality and long-term prosperity?

Does this list of probing questions seem daunting? Perhaps, but these issues are open for debate within the new U.S. Administration and Congress. This may complicate resolution of the

Powerful lobbying interests with urgent agendas on trade and industrial policy are pressing for early resolution of key issues. On NAFTA, many free traders, plus Latin American and U.S. business interests are pushing for prompt completion. However, labor and other regional interests, together with some environmentalists, want to slow this momentum, or at least seek to enact substantial safeguards for environmental interests and worker displacement. How to fund these safeguards is an awkward problem, and some urge an import fee based on a "user cost" rationale. In other words, imports from Mexico should bear their own environmental and labor displacement costs.[82]

Unilateral free traders are pressing hard for quick acceptance of the Uruguay Round's Dunkel Draft agreement of December 1992.[83] Quick

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Uruguay GATT Round. To believers in unilateral free trade policy an extended debate may be upsetting, but to those demanding stronger U.S. industrial/and tougher trade policies these inquiries are overdue. Whatever policy choices are selected by the Clinton Administration, it's likely that controversy will continue – at least until U.S. industrial competitiveness, economic growth, and overall trade performance improves substantially.

82. *See The Clinton Team Applies Its Political Skills to Trade*, *supra* note 74, at 150: "[T]he North American Free Trade Agreement will prove a divisive and controversial issue..." *Id.* Assuming the pact is ratified, it will phase out most tariffs and non-tariff barriers between the U.S., Mexico, and Canada in 15 years. The Fast-track deadline for NAFTA is May 31, 1993. "Proponents (suggest) ... it will boost U.S. exports..., (but) opponents argue that NAFTA will result in U.S. jobs sliding south of the border to take advantage of cheap Mexican wages and lax environmental enforcement." *Id.* House Majority leader Gephardt and others had earlier proposed a border transactions fee to fund programs in worker training, infrastructure development, and environmental protection. Failure to enforce environmental standards could also become unfair trade practices. *Id.* at 150-151.

For pro-NAFTA arguments, see sources cited *supra* note 72, especially HUFBAUER & SCHOTT. On the other side, *see* Jonathan Tasini, *High Wages and NAFTA Can't Co-exist*, WALL ST. J., Jan. 21, 1993, at A15; Timothy Koechlin & Mehrene Larudee, *The High Cost of NAFTA*, CHALLENGE, Sept.-Oct. 1992, at ____; Sheldon Friedman, *NAFTA as Social Dumping*, CHALLENGE, Sept-Oct. 1992, at ____; Keith Bradsher, *Trade Pact Job Gains Discounted*, N.Y. TIMES, Feb. 22, 1993, at D1; Richard Rothstein, *Continental Drift: NAFTA and Its Aftershocks*, 12 AM. PROSPECT 68 (1993).

For a neutral forecast on the political conflict, *see* David S. Cloud, *Free Trade Pact Buffeted by Election Year Forces*, CONG. Q. WKLY., Sept. 12, 1992, at 2699.

83. *See* EC Trade Minister Leon Brittan, *GATT Deal: Seal it Now, Mickey*, WALL ST. J., Feb. 11, 1993, at A12:

> Director-General Arthur Dunkel of the GATT ... has called on the new Administration to accept the terms the Bush Administration agreed to on the opening of agricultural markets in Europe. Dunkel also urged Clinton to act quickly on the remaining major issues, including tariff reductions on technology, textiles, and other products, and expanded trade opportunities in services.

acceptance would require that the U.S. acquiesce to only modest reductions in foreign agricultural subsidies. American farm interests are divided on whether such modest gains are sufficient, and Cairns Group countries remain unenthusiastic. Some gains for services and intellectual property interests are achieved, but industrial countries are not entirely satisfied because of limits demanded by NICs and LDCs. Trade-related investment measures (TRIMs) provide modest gains for industrial country interests. However, the more attractive markets are already reasonably secure through recent BIT's. Some textile interests are not happy with concessions. Organized labor and distressed industries, including steel, automobiles, and some electronics-computer firms, want stronger unfair trade practices and mostly oppose the Dunkel Draft. Attempts were made to limit foreign subsidies somewhat, but little real progress occurred in this area. Dispute settlement has been extensively discussed, but a strong consensus is doubtful. Thus, "enforcement" is still left largely up to each GATT member protecting its own interests. Many experts believe, therefore, that the Dunkel Draft leaves much to be desired; but free traders want to sustain "momentum" for an "open" world economy. Free trade enthusiasts express their preference, despite many limitations, with a bicycle metaphor: to stay on, we must keep pedaling and moving a little, otherwise we will topple.[84]

Yet, tough trade and strong industrial policy advocates in the U.S. have serious doubts about this negotiating reasoning, and with the Dunkel Draft, in general.[85] Many mistrust the GATT framework now, and, instead, seek to use

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Peter Behr, *Kantor Questions Key Facets of International Trade Pact: Comments Cast Doubt on the Future of GATT*, WASH. POST, Jan. 20, 1993, at G1. *See also The Clinton Team Applies Its Political Skills to Trade*, *supra* note 74; *European Community-EC Trade Official Brittan, USTR Kantor to Meet Next Month on Uruguay Round Talks*, INT'L TRADE REP. (BNA), at 110 (Jan 27, 1993).

84. Peter Passel, *Economic Scene: Will Clinton halt or foster a drift toward protectionism?*, N.Y. TIMES, Feb. 4, 1993, at D2. Many free traders, such as C. Fred Bergsten, use a metaphor lately, "liken[ing] trade liberalization to a bicycle that will topple, absent continued forward motion." *Id.* But those skeptical about, or opposed to, the Dunkel Draft and some Uruguay Round outcomes, could reply to the bicycle metaphor with "[t]his old bike isn't getting us where we need to go anymore," or perhaps "[w]e've come far enough, thanks."

85. "The U.S. Trade deficit could rise by as much as $37.2 billion a year, resulting in an annual decline in gross national product of up to $62.4 billion, if negotiators approve proposals now being considered in the Uruguay Round of multilateral trade talks..." *General Developments: GATT*, INT'L TRADE REP. (BNA), at 93 (Jan. 20, 1993), citing, Economic Strategy Inst., URUGUAY ROUND AND THE U.S.: A CRITICAL ANALYSIS (1993). This new study also cites OECD *estimates* that the total *world-wide trade benefit* from the Uruguay Round, based on the Dunkel Draft, would be only $19.5 billion a year. Thus, critics argue, only modest world-wide gains coupled with substantially greater U.S. losses will flow from the Dunkel Draft.

existing U.S. safeguard, unfair trade practice, and trade "deficit" leverage to eliminate the major U.S. trade deficits, especially with Japan, China, and Taiwan. Some would like greater limits on agricultural subsidies than the EC will accept now, and they prefer tougher bargaining with Europe. Also, some trade commentators suspect that the era of further GATT Rounds may be coming to an end anyway. Substantial, albeit uneven, openness already exists among most OECD countries. And this relative openness, at least among the more open OECD countries, is unlikely to be altered in any significant way.[86]

What is needed now is greater openness and reciprocity from Japan, NICs and LDCs, for which safeguard and unfair trade practice remedies should be used widely in coordination with industrial policies among the U.S., EC, Japan, and other countries.[87] More productive at this stage could be gradual "deepening"

See also WORLD TRADE AT THE CROSS-ROADS, *supra* note 19 (extensive review of the earlier versions of the Dunkel Draft); KENNEDY, *supra* note 27 (dangers of insufficiently regulated MNCs, warning that the MNC network is increasingly immune from effective national regulation or supervision, and can be irresponsible and unstable); Robert Heilbroner, *The Worst Is Yet To Come*, N.Y. TIMES, Feb. 14, 1993, Book Review, at 1, 25 (reviewing PAUL KENNEDY, PREPARING FOR THE 21ST CENTURY (1993)) (pointing out that a recent UN study estimates that the total annual sales of the top 350 MNCs now equal one third of the GNPs of the industrial world); *Sources cited supra* note 35 (skeptical views of the Dunkel Draft); "Peter Kenen of Princeton University believes that the globalization of production is a fundamental factor in the decline of the GATT system and the increasing incidence of trade disputes." Bailey Morris, *Is It Time To Trade In GATT?*, THE INDEPENDENT, Nov. 15, 1992, at 8; RAYMOND J. WALDMANN, MANAGED TRADE: THE NEW COMPETITION BETWEEN NATIONS (1986) (arguing that GATT has reached significant limits in a world where developing nations are greatly relieved from its disciplines, and that stronger bilateral bargaining by the leading industrial nations was necessary); Rudiger Dornbusch, *The Case for Bilateralism*, *in* AMERICAN TRADE STRATEGY, *supra* note 28, at 106-141 (arguing, more recently, that bilateralism could help substantially in U.S. trade policy today, especially in dealing more effectively with Japan, and in promoting expanded trade with Latin America).

86. Some free traders like to argue that a "flood" of protectionism would be unleashed if the Dunkel Draft is not quickly ratified, resurrecting the protectionism of the Smoot-Hawley Tariff Act of 1930. But realistically, this fear seems overblown. The global economy has fundamentally changed, with MNCs, financial, and investment interests now deeply involved in transnational commerce. This global network simply will not allow their trading flows to be substantially disturbed in any major way. Nor is such radical change needed from any reasonable standpoint. A moderate rebalancing of trade flows, eliminating major trade surpluses, and evening out the playing field, cannot be misrepresented as a flood of protectionism.

87. Experience of the last 10-15 years demonstrates that the U.S. must bargain more firmly with Japan, China, and Taiwan to achieve regionally balanced trade. Assurances of future market openness have been largely unavailing. And more NICs and LDCs have studied recently the success of East Asia, and want to imitate their export-oriented industrial policies, and sell much more heavily into the U.S., perhaps Europe, and if it were possible, into Japan.

and "broadening" among leading integrated trade blocs, the post-Maastricht European Community (as its membership widens to include more nations) and the emerging Americas NAFTA bloc.[88] The momentum of expanding trade and investment in these prosperous regions may provide more manageable frameworks to accommodate better balanced trade and investment flows. Undoubtedly, other significant countries, Japan, China, the Commonwealth of Independent States, India, the ASEAN bloc, and mid-Eastern nations will want improved links and more open trade with these giant blocs. Further GATT

The Dunkel Draft of the Uruguay Round would not make it any easier for the U.S. to revive its industry, or to enforce more equal trading flows. In reality, the Dunkel Draft agreement is designed to serve mainly the interests of MNCs; making it even more difficult to use national unfair trade practice remedies, e.g. countervailing duties for subsidies, remedies for dumping, or Section 337 actions to exclude imports, with a very weak substitute of encouragement for GATT advisory panels. Increased openness for textiles and some services, and only slow, 21% reductions in agricultural subsidies over six years would be achieved. While U.S. banking and insurance firms might gain (along with Japanese and European firms), and MNCs would obtain more freedom in some markets, the Dunkel Draft is not going to rejuvenate U.S. domestic industries that have been suffering from unequal openness, widespread discounting, foreign subsidies or targeting, and are in need of sustained revitalization and adjustment support. In fact, implementing the Dunkel Draft would greatly weaken U.S. industrial policy, leaving the government only "tax and spend subsidies" to offset the advantages of foreign industrial policy momentum. In a context of aggravated U.S. budget deficits, heavily constrained by conflicting claims, and a very expensive health care-pension system, with increasing tax burdens on business and industry, the Dunkel Draft is "bad" industrial policy for the U.S. as a whole, its domestic industry and the U.S. labor force. For a status report, *see U.S. Trade Deficit Seen Increasing by $37.2 Billion Under GATT Accord*, INT'L TRADE REP. (BNA), at 74-78 (Jan. 20, 1993). *See also infra* note 93.

Instead, sector-by-sector industrial rejuvenation efforts, stronger U.S. investment incentives, and more reliable U.S. unfair trade practice constraints are needed to offset foreign subsidies, targeting, and widespread discounting. A major problem will be assuring adequate capital formation, profitability, and sustained confidence in U.S. domestic industrial outlays. What the U.S. needs to complement a gradual movement toward greater fiscal responsibility is a stronger U.S. industrial policy with somewhat tougher trade bargaining, not a reversion to even more unilateral free trade.

88. From the U.S. viewpoint an emerging NAFTA *could be* better supervised, carefully safeguarded, and overall trade balance could be enforced within it. Current U.S. trade with Mexico is reasonably balanced, and proceeds from a lower base (in 1992 the U.S. imported only $35 billion from Mexico, while U.S. exports to Mexico totaled $40 billion). *See supra* Table 2, p. 143. But, if NAFTA were combined with the Dunkel Draft Uruguay Round agreement in the spring of 1993, a much larger flood of MNC imports from LDCs would be allowed, with further incentives to relocate U.S. manufacturing activities into lower wage countries. Sadly, a Dunkel Draft agreement would allow imports from Mexico, other NICs and LDCs to get out of hand, just like U.S. imports from East Asia got out of hand in the 1980's. While some Uruguay Round outcomes might complement a stronger U.S. industrial-trade policy, the Dunkel Draft of December, 1992, does not do so. *See infra* note 93; Appendix A - Dunkel Draft Implications, *infra*.

Rounds are less likely to be workable forums through which to ensure reasonably balanced trade, and a level playing field. Thus, GATT, which never was a homogeneous free trade community, may be supplemented, and to some degree bypassed, by more open, better supervised, and, perhaps, more cohesive regional trading blocs like the EC and NAFTA. In this way, stronger regionalism can complement, and reinforce expanding trade, investment, and service links, that can be better coordinated than the entire global community of nearly 200 nation-states.

Certainly, previous GATT Rounds did make a contribution to expanding world trade, but the accumulated asymmetries, unequal openness, and rigidity of current world trade practices are no longer readily correctible through GATT Rounds.[89] The great unwieldiness of current GATT Round multilateral negotiations, together with the difficulty of getting concessions from the less open (e.g., Japan, NICs, and LDCs) by the most open (e.g. U.S.) simply suggests that regional groupings like Europe and the Americas can do the job more effectively.[90]

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89. Earlier GATT Rounds, at least through the 1960's and into the 1970's, did foster trade, expand MNCs, and broaden world prosperity. *See* sources cited, *supra* note 9. So long as the U.S. shared reasonably in that growing prosperity, with real increases in U.S. per capita incomes and overall balance in the U.S. current account, the global trading regime was not in conflict with U.S. national interests. *See supra* Table 1, p.142. But, from the late 1970's through the early 1990's the U.S. made two big blunders: (1) it neglected to enforce continuing overall current account balance, obtain reasonable industrial progress, and share adequately in manufacturing value added; and (2) it embarked upon a needless and costly binge of heavy deficit spending, marked by excessive government borrowing (much of it from abroad). The U.S. went from being the biggest creditor nation to become the greatest net debtor. In large part, the U.S. wasted $3 trillion, a tragic loss of capital resources.

Strictly speaking, one might say that even after the Tokyo Round of 1973-79, that the U.S. did not need to neglect its trade and current account deficits. Unfortunately, a naive faith in a global "free market," and a complete lack of adequate budget discipline (a peculiar blindness of naive economic "supply siders" who should have known better), led to the double, self-inflicted blunders of U.S. national economic policy for the last 15 years. However, these blunders now place an urgent burden upon U.S. policy-makers in the mid-late 1990's: (1) to establish a stronger U.S. industrial-trade policy; and (2) to restore U.S. fiscal responsibility and eliminate excessive budget deficits.

90. The Dunkel Draft is, in some respects, a reductio ad absurdum of the current unbalanced world trading regime. It largely reinforces current asymmetries, and makes it more difficult for the U.S. to correct serious trade and current account deficit problems. The U.S. needs to rejuvenate its industrial base, not to weaken it further. *See* discussion *infra* note 93. At this stage, U.S. bilateral negotiations with Japan, China, Taiwan and the EC should have priority over the Uruguay Round negotiations, as well as seeking improvements for NAFTA as a basis for expanded, more balanced trade in the Americas.

Finally, many Clinton Administration supporters insist that a broad-based U.S. industrial rejuvenation effort is critical to achieving full employment and stronger economic growth.[91] Because industrial policies are strongly established in most developing countries, LDCs and NICs, together with many industrial nations, it is essential that the U.S. use substantial industrial rejuvenation efforts, and that safeguarding and unfair trade practice remedies be employed in support.[92] Since scale economies and declining cost curves lead to widespread marginal-cost discounting in many industries, limited remedies for dumping and countervailing duties should be employed as well. Therefore, no matter how NAFTA and the Uruguay Round work out, U.S. safeguard and unfair trade practice relief should be preserved, with government investigation and reasonable assistance where significant injury or substantial displacement has occurred as

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91. Renewing economic growth while leaving out a substantial portion of the work force in poor urban areas, the rust-belt, or under-employed rural regions is not good enough. In addition, the jobs and careers that flow from broader industrial rejuvenation should be better paid. *See* Louis Uchitelle, *Stanching the Loss of Good Jobs*, N.Y. TIMES, Jan. 31, 1993, at F1. This is the attitude that gave 62% of the vote in November, 1992 to Bill Clinton and Ross Perot. *See* sources cited, *supra* note 1. *See also* Peter Kilborn, *Wanted: Those High-Tech Jobs for Retrained Workers*, N.Y. TIMES, Feb. 21, 1993, at F1, 3.

92. The U.S. must realize that Japan-Taiwan-South Korea style industrial policies, strongly oriented towards exports, have become increasingly fashionable among LDCs and NICs in Asia (*e.g.* China, India, South-East Asia), Latin America and the logic has appeal for countries in the Mid-East and Africa. Thus, the U.S. can anticipate continued foreign subsidies of industrial growth, targeting export markets, and widespread discounting or dumping pressures.

Now that the Clinton administration is embarking upon its own industrial revival and defense conversion program, U.S. industries must be given reasonable safeguard support and backstopping against foreign subsidies and dumping. Bob Davis & Michael K. Frisby, *Clinton Plans Expanded Role on Technology*, WALL ST. J., Feb. 23, 1993, at A3; John Markoff, *Clinton Proposes Changes in Policy To Aid Technology: 4 Year, $17 Billion Effort Would Include Joint U.S.-Industry Programs for Research*, N.Y. TIMES, Feb. 23, 1993, at A1, 9; Gwen Ifill, *Clinton to Fight Foreign Subsidies*, N.Y. TIMES, Feb. 23, 1993, at A1, 9.

But, the U.S. Department of Commerce should switch from a merely passive and isolated response pattern to develop sector-by-sector industrial rejuvenation strategies, as in Japan. *See* ECKSTEIN, *supra* note 10; HOCHMUTH & DAVIDSON, *supra* note 10; RETHINKING AMERICA'S SECURITY, *supra* note 1; DERIAN, *supra* note 18; DERTOUZOS, *supra* note 10. A vigorous and export-oriented efficiency strategy should be more comprehensive, and encourage success in many industrial sectors. Electronics, computers, machinery, machine tools, metals, chemicals and plastics, transportation equipment, pharmaceuticals, and environmental progress all reinforce each other, and the U.S., just like Europe, Japan, China, India and the C.I.S., needs comprehensive technological strength throughout its economy. Joint ventures and learning from others should be encouraged, as Japan, Taiwan, and Korea demonstrated so well over the last generation.

a result of expanding international trade.[93] For many involved in U.S. manufacturing and labor, there has been too much accumulated industrial neglect, and a failure to respond effectively to foreign mercantilism, subsidies, and widespread discounting.[94] U.S. industries, engineers, and labor have a right to expect comparable support from their government policies that Japanese, European, and other strong new competitors offer to their own industries. The world marketplace is an environment of competing industrial policies; for American industry to revive and strengthen itself, we must have a competitive industrial policy, too.

Because of large and excessive budget deficits in the U.S., which got out of hand in a period of neglect and political gridlock on fiscal policy, the U.S. has

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93. Along with comprehensive encouragement and support for research and development, up-grading employee training, and industrial rejuvenation efforts, the Clinton Administration cannot afford to cripple or to give up U.S. national safeguard remedies, i.e. relief against widespread discounting and dumping in world markets, offsets against foreign subsidies, and infringement of intellectual property interests. The Dunkel Draft Uruguay Round agreement goes too far in weakening U.S. remedies for unfair trade practices, safeguard relief, and undercuts the potential for a stronger U.S. industrial-trade policy. *See* Appendix A - Dunkel Draft Implications, *infra*. That should hardly be surprising, since the U.S. Uruguay Round negotiating effort reflected primarily a unilateral free trade orientation, and explicitly favored MNC interests. *See, e.g.*, RUBIN & GRAHAM, *supra* note 65; JAGDISH BHAGWATI, THE WORLD TRADING SYSTEM AT RISK (1991); SCHOTT, *supra* note 28.

94. Many experts on trade policy agree that the costs of U.S. passivity, weak bargaining, and neglect of domestic industrial interests has brought cumulative and substantial disadvantage for the U.S. economy. Their frustration is substantial, because key rivals in the world economy, Japan and Germany, did not make these mistakes, and their national economies have preformed substantially better over the last 20 years. As Paul Krugman observed recently:

> [T]he slowdown of American productivity growth since the early 1970's becomes the most important single fact about our economy. . . . During the 1950's and 1960's that rate was 2.8 percent. Since 1970, however, our economy has delivered 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.

KRUGMAN, *supra* note 22, at 12. *See also*, THUROW, *supra* note 1; PHILLIPS, *supra* notes 1 and 10; COHEN & ZYSMAN, *supra* note 10; ZYSMAN & TYSON, *supra* note 10; ECKSTEIN, *supra* note 10; DERTOUZOS, *supra* note 10; HOCHMUTH & DAVIDSON, *supra* note 10; LODGE, *supra* note 10; CULBERTSON, *supra* note 11; PRESTOWITZ, *supra* note 18; KUTTNER, *supra* note 18; WORLD TRADE AT THE CROSS-ROADS, *supra* note 19; BLECKER, *supra* note 28; HARRIGAN & HAWKINS, *supra* note 28; FRIED, *supra* note 28.

less scope today for direct "tax and spend" subsidies for industrial rejuvenation.[95] This also helps explain why, if the Clinton Administration is to succeed in regenerating overall economic growth, it needs a more active industrial policy, and a trade regime that eliminates needless trade deficits and offsets unequal trading relationships.[96] Japan, European Community, Taiwan,

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95. The New Clinton administration, for better or worse, must operate in a relatively narrow range for fiscal policy and deficit reduction. Moderate short-term stimulus (in the Keynesian sense) can be used because of accumulated slack, under-employment, and slowed growth during the last several years. But $300-350 billion annual U.S. budget deficits are agreed by most to be excessive, and must be reduced by some "balance" of spending cuts and tax increases over the medium term. *See, e.g.*, WALL ST. J., Feb. 18, 1993, at A1; R.W. Apple, Jr., *Clinton's Plan to Remake the Economy Seeks to Tax Energy and Big Incomes*, N.Y. TIMES, Feb. 18, 1993, at A1, 10-14.

But see Martin Feldstein, *Clinton's Path to Wider Deficits*, WALL ST. J., Feb. 23, 1993, at A16; *High Hopes*, THE NEW REPUBLIC, Mar. 8, 1993, at 9. However, this means only that Clinton has modest leeway for "tax and spend" subsidies to rejuvenate American industry. Large increases in U.S. deficit spending for the 1990's would rekindle fears of inflation, and substantially increase interest rates. Enlarged debt service costs on the $4.4 trillion U.S. federal debt (projected end of 1993) would cancel out the stimulus gains, and leave an even larger debt to be serviced thereafter. Not a pretty picture.

Also, bear in mind Lester Thurow's advice, quoted by Cohen, *supra* note 77 (as quoted in Cohen). Clinton needs strong economic and industrial growth. For the Clinton Administration to rebuild distressed cities, restore broad prosperity, and eliminate widespread structural unemployment, a 10-15 year period of "deindustrialization" and job losses must be reversed. Continued unilateral free trade by the U.S. would cancel out and negate any serious industrial revival effort. If Clinton wants to win re-election in 1996, he needs substantial progress on the economy. "It's the economy, stupid," as James Carville, Clinton's campaign adviser in 1992, reminded everyone.

96. Mere assurances from countries like Japan, China, Taiwan, and other NICs that they will open their markets in the future have proven unreliable. Since the U.S. seems likely to embark on the new NAFTA relationship with Mexico with its much lower wages, many worry that excessive import flows and manufacturing relocations could result. As Ross Perot described so vividly during the 1992 campaign, NAFTA would result in U.S. job losses sounding like "a giant sucking sound going south." Ross Perot, *Remarks during the Second Debate of the 1992 U.S. Presidential Campaign (Oct. 15, 1992)*, N.Y. TIMES, Oct. 16, 1992, at A11. Finally, bear in mind the concluding words of Milton Hochmuth and William Davidson:

> Given the ability of NICs and especially the export platforms, to capture overwhelming market share in the U.S. if allowed free access, some means must be found to tread the delicate line between unfettered free trade and pure protectionism....The threat is real and long-term. To respond, the U.S. needs a long-term industrial policy that takes into consideration its *societé civile*, encourages cooperation between industry and management, and recognizes when free trade is beneficial and when enlightened protection is necessary.

Korea, and other skillful players in the world economy already enforce balanced trade overall, and many Americans believe that the time has come for the U.S. to learn how to play the game, too.

HOCHMUTH & DAVIDSON, *supra* note 10, at 394. We can be assured that Japan, most of Europe, and the great bulk of NIC's and LDC's are comfortable with Hochmuth and Davidson's advice; they already practice it.

APPENDIX

IMPLICATIONS OF THE DUNKEL DRAFT

Topics	U.S. Concessions or Gains	Impact on U.S.
Antidumping (still in dispute)	• Partial weakening of U.S. antidumping remedies • More use of GATT panels and less national relief	• Opens U.S. to further discounting, dumping, and competition by subsidized foreign industries • Even more free importation
Countervailing Duties for Subsidies	• Weakens U.S. remedies for foreign subsidies • Negligible limitations for subsidies abroad • More use of GATT panels and less national relief	• Further weakening of U.S. countervailing remedies against foreign subsidies and industrial policies • Even more free importation
Safeguards	• Partial restrictions on safeguard relief • More use of GATT panels and less national relief • Liberal exemptions for most developing countries	• Somewhat further weakening of U.S. safeguard relief where serious injury may be threatened from increased imports • Strong safeguard relief for most developing countries

TRIP's Trade Related Intellectual Property (still in partial dispute)	• Reduced scope for U.S. Section 337 relief • Modest minimum standards for IP protection	• Some weakening of U.S. intellectual property protection • Somewhat freer importation
TRIM's Trade Related Investment Measures (still in dispute)	• U.S. efforts to restrict domestic content and export performance laws by developing countries • Substantial resistance by many LDC's, NIC's	• No substantial gains for U.S. exports
Non-Tariff Measures (still in dispute)	• U.S. seeks broader access to many countries • Gains so far modest	• No substantial improvement in access for U.S. merchandise or services
Tariffs (still in partial dispute)	• U.S. seeks general reductions but most U.S. tariffs already low or zero • Modest net reductions in foreign tariffs so far	• No substantial improvement in U.S. access to foreign markets • A few U.S. markets become more open
Agriculture (still in dispute - French veto threat puts EC concessions in serious doubt)	• Preliminary EC concession of 21% in agriculture subsidies over 6 years • France refused to accept such concessions - issue remains in doubt	• Modest gains for U.S. agriculture if EC concessions implemented • French veto threats leaves issue in doubt
Textiles/Clothing (still in partial dispute)	• Gradual phase out of multifibre agreement	• Gradual opening of remaining U.S. textile/clothing markets

Tropical Products (still in partial dispute) (may not be included in draft agreement)	▪ More opening of remaining U.S. tropical products (including domestic cane and beet sugar)	▪ More opening of U.S. markets, especially sugar (cane and beet)
Natural Resources (still in partial dispute)	▪ No substantial agreements affecting U.S.	▪ No substantial changes for U.S. as yet
Services (still in dispute)	▪ U.S. seeks broader access for banking, insurance, travel, and many other services ▪ Limited gains in many markets, but MFN treatment opens U.S. markets more than others	▪ Substantial resistance by many LDC's and NIC's, with limited access and opening
Dispute Settlement	▪ More use of GATT panels and mediation ▪ Less scope for national relief against unfair trade practices or other restrictions	▪ Efforts to promote stronger mediation ▪ Weaker and less reliable relief against unfair trade and other restrictive practices
GATT Articles and Tokyo Round Codes	▪ No major changes in present GATT and code structures ▪ But favorable treatment of least developed countries is strengthened	▪ No significant alteration of GATT provisions, or any changes in asymmetries

FOGS - Functioning of the GATT System	• Strengthens GATT secretariat and its initiative • Reduces scope for national challenges	• No great change except to further strengthen GATT momentum • Weakens national counter measures for asymmetrical trade
MTO - Multilateral Trade Organization*	• New MTO succeeds GATT (for acceding parties) • Substantial role in managing rounds, and managing the dispute settlement system* • Ministerial conferences every two years	• Supranational secretariat and continuing councils, settlement body, and conferences every two years* • Substantially weakens national trade regulation • Entrenches GATT asymmetries - changes become very difficult

* For many Council decisions voting by majority (or by requiring no more than two-thirds of the votes) will replace consensus or effective unanimity.

General Implications of the Dunkel Draft -

- **Makes U.S. somewhat more securely open to MNC's**

- **No substantial increase in U.S. exports, nor any substantial increase in access for U.S. merchandise or services**

- **Consistent with unilateral free trade outlook and interests of many MNC's**

- **Disadvantage for many U.S. domestic manufacturers - weakens U.S. safeguards, antidumping, and countervailing duties relief for subsidies or other unfair trade practices**