



Making International Trade Less Foreign: A "Nutshell" for Nonspecialists on the Changing Rules Governing International Trade

by John W. Head¹

About the Author

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Many Kansas practitioners consider questions of international trade law to be both literally and figuratively "foreign," outside the scope of their own practice and their clients' interests. For certain clients, however, international markets present business opportunities too valuable to be ignored. Sales abroad represent 70 percent of U.S. economic growth over the last three years,² and Kansas offers products that foreign buyers want, especially now with the U.S. dollar cheap in relation to other major currencies. Indeed, Kansas exports totalled \$2.6 billion in 1990, up 80 percent from 1987.³

FOOTNOTES:

1. The author acknowledges with gratitude the assistance provided by Nancy W. McKimmy in the preparation of this article.

2. Stuart Auerbach, *Expect the Unexported from America*, The

Wash. Post Nat'l Wkly. Ed., Sept. 28-Oct. 4, 1992, at 9.

3. Bureau of the Census, U.S. Dep't of Commerce, *State and Metropolitan Area Data Book* 259-60 (4th ed. 1991).

Therefore, if you have clients involved in any type of manufacturing, agriculture, or marketing, they should already be asking you how certain developments in international trade law will affect their business. For example, how might they benefit from the creation of a tariff-free market of over 300 million consumers and sharply increased agricultural exports to Mexico under the North American Free Trade Agreement (NAFTA)?

This article offers a framework for answering such questions, especially if your clients have not yet asked them. Specifically, it sketches out certain key developments in the legal rules governing international trade. It highlights recent changes in bilateral and multilateral trade pacts, tariff breaks, export licensing, and export financing. More importantly, particularly for the nonspecialist, the article identifies some overall trends that Kansas businesses, investors, and financial institutions should know about in order to plan successful strategies for the years ahead.

I. BACKGROUND — THE GATT'S "MULTILATERALIZATION" OF INTERNATIONAL TRADING RULES

Understanding recent developments in international trading rules requires an awareness of the overall context in which these developments are occurring. That context begins with the General Agreement on Tariffs and Trade (GATT)⁴ and its effort to "multilateralize" trade rules — that is, to replace bilateral trading rules and relationships with a global regime aimed at benefitting all participating countries.

A. Economic and Political Foundations of the GATT

According to the economic theory of competitive advantage, all countries benefit from free trade. A country should concentrate production in those items in which it has a comparative advantage and trade with other countries that produce goods in which they have a comparative advantage. By the close of World War II, this theory had gained general acceptance among the governments of Western countries, including the United States.

Corresponding to that shared economic theory was a shared political belief. The countries emerging as victors believed that World War II had resulted in part from an international economic order gone haywire. It was an order plagued by high tariff barriers, competitive devaluations of currencies, and economic conditions in Europe that had become too chaotic to attract investment. To avoid another world war, the theory went, would require a new international economic order with three indispensable elements:

- a multilateral system of binding rules governing international trade, with emphasis on cutting tariff levels and removing other barriers to trade that had marked the inter-war period;
- a stable monetary system with predictable exchange rates, in contrast to the competitive devaluations of the inter-war period, in order to facilitate trade; and
- a financing system by which the post-war wealth of the United States could be channeled into profitable investments overseas, especially for the reconstruction of war-ravaged Europe. This would also ensure strong markets for U.S. goods as the U.S. economy moved from wartime to peacetime.

In order to create and manage these three systems, three new international organizations were envisioned: the International Trade Organization (ITO), the International Monetary Fund (IMF), and the World Bank, respectively. The World Bank and the IMF were created at the Bretton Woods Conference of 1944, organized and conducted mainly by representatives of the Allied powers. The ITO, however, was never created. For political reasons related to the Cold War, the United States failed to agree to the proposed ITO charter.

The gap created by the absence of an ITO has been partially filled by the GATT. Originally intended merely as a treaty to implement the results of some tariff negotiations in 1947, the GATT in fact has been applied "provisionally" for over 40 years. More than 100 countries representing at least 90 percent of all world trade have become members (technically, Contracting Parties) of the GATT.

B. The Three Main Principles of the GATT

Nondiscrimination and MFN Treatment. Competitive escalation of tariff levels during the inter-war period was marked by discrimination on a country-by-country basis. Article I of the GATT disallows such discrimination: tariff duties imposed by a GATT member country on a particular item must be uniform for all imports of that item from all other GATT member countries. In the terms of the GATT, "most-favored nation" (MFN) treatment is to be accorded to all other GATT members. MFN treatment is not, as the term implies, a special preference given to only one or a few countries. Instead, it is the standard treatment given to most trading partners, "the trade equivalent of diplomatic relations."⁵

Prohibition of Non-Tariff Barriers. In order to avoid end-runs around the GATT's intent, Article XI and other provisions prohibit (with some exceptions) the use of quotas or other non-tariff barriers to trade. The GATT approach is to specify tariffs as the only legitimate type of trade barrier, and then to negotiate reductions in general tariff levels over time.

4. General Agreement on Tariffs and Trade, done Oct. 30, 1947, T.I.A.S. No. 1700, 55 U.N.T.S. 187 (entered into force Jan. 1, 1948).

5. 9 Int'l Trade Rep. (BNA) 1332 (Aug. 5, 1992) [hereinafter *ITR*].

Bound Duty Rates. Article II refers to "schedules of concessions." These represent commitments made after negotiation by each GATT member as to the maximum tariff duty rates that it will impose on particular products imported from other GATT members. A country may set its tariff levels lower than specified ceilings but cannot exceed the ceilings unless special exceptions apply.

The importance of these three GATT principles in operation appears in the Harmonized Tariff Schedules of the United States. The tariff schedules were previously codified at 19 U.S.C. §1202, but they change so often that the International Trade Commission now issues them in looseleaf form. The tariff schedules provide a classification for every item imported into the United States and prescribe a tariff duty rate for each classification. A client wishing to import an item will need to determine the applicable tariff from the tariff schedules. The client will want to select a supplier in a country that has MFN treatment (usually through GATT membership) or in a country that receives some special preferential treatment (see below).

A concrete example will illustrate the significance of MFN treatment. Assume a Wichita manufacturer of widgets needs to install ceiling fans in its warehouse. If imported, the ceiling fans would probably come into the United States classified under item 8414.51.0030 on the tariff schedules. Under that classification, if the fans come from a country with MFN status (from Japan, for example), a tariff of 4.7 percent would have to be paid on the value of each ceiling fan, unless some preferential tariff scheme applies. If the fans come from a country **without** MFN status (from Cuba, for example), a much higher tariff of 35 percent would have to be paid.

II. THE GATT AT WORK — THE GOOD, THE BAD, AND THE URUGUAY ROUND

Since its creation in the late 1940s, the GATT has largely met its goal of reducing tariff levels. In recent years, however, economic and political developments have taken their toll, especially on the GATT's key principle of nondiscrimination. The GATT's future rests largely on the outcome of the latest round of trade negotiations, called the Uruguay Round, now in its seventh troubled year. So far, prospects for success look dim.

A. Results of Earlier Rounds of Negotiations

The most visible GATT activity has been the sponsorship of eight "rounds" of multilateral negotiations on tariffs and other trade barriers. The first six rounds focused on reciprocal reductions in tariff rates. The seventh round, the "Tokyo Round" of the late 1970s, brought fur-

ther reductions. As a result, the overall level of tariffs among GATT members has fallen dramatically. Instead of duties of 40 percent, 60 percent, or even 100 percent, average tariff levels for trade between GATT members following the Tokyo Round were largely under 10 percent. For example, those tariffs averaged 5.6 percent for the United States, 7.2 percent for the European Community, 4.9 percent for Japan, and 8.9 percent for Canada.⁶

B. Erosion of the Non-Discrimination Principle

The GATT's non-discrimination principle has, over time, suffered numerous slings and arrows. Preferential treatment is overtaking MFN treatment. Such preferential treatment has taken two main forms: regional trading arrangements such as those in Europe and North America, and special tariff breaks for imports from less developed countries.

Regional Trading Regimes. Article XXIV of the GATT permits members to create a "free trade area." More favorable treatment may be given to imports from the participants in that area, so long as the treatment given to imports from nonparticipants in that area is no less favorable than that applicable before the creation of the area. For many years the main regional trading regime has been the European Community (EC). Through a complex set of constituent agreements, the EC aims to eliminate "internal" customs duties, to maintain a common external tariff, and to eliminate quantitative restrictions and other non-tariff barriers.⁷

More recently, the U.S.-Canada Free Trade Agreement (USCFTA)⁸ established the same kind of GATT-legal regional trade regime with preferential treatment for goods traded between the two participants. Because of the USCFTA, the Wichita widget manufacturer importing ceiling fans from Canada would face a tariff of only 3.7 percent, compared with the tariff of 4.7 percent for those imported from regular MFN-status countries.

Special Tariff Breaks for Developing Countries. The Generalized System of Preferences (GSP) represents another departure from the GATT's nondiscrimination principle. The interest of European states in providing preferential tariff treatment to imports from former colonies ripened in the 1970s into a call for a general GATT stamp of approval for such treatment. Under the U.S. version of the GSP,⁹ free entry or reduced tariffs apply to most articles imported from less developed countries. For example, the Wichita manufacturer importing

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6. *International Business Transactions* 325 (Ralph H. Folsom et al., eds., 2d ed. 1991) [hereinafter Folsom].

7. For details on the EC and its constituent agreements, see 2 *Basic Documents of International Economic Law* 3-4, 47-178 (Stephen Zamora and Ronald A. Brand, eds., 1990) [hereinafter *Basic Documents*]; G. Gregory Letterman, 3 *Letterman's Law of Private International Business* 629, 640 (1990) [hereinafter Letterman]; Folsom, *supra* note 6, at 125-27.

8. United States-Canada Free Trade Agreement, Dec. 22, 1987-Jan. 2, 1988, 27 *International Legal Materials* 281 (*entered into force* Jan. 1, 1989) [hereinafter *ILM*]; 2 *Basic Documents*, *supra* note 7, at 351.

9. See 19 U.S.C. §§ 2461-2466; 19 C.F.R. §§ 10.171-10.178; see also 9 *ITR* 1412-13 (Aug. 19, 1992).

10. 9 *ITR* 1589 (Sept. 16, 1992).

ceiling fans from a GSP beneficiary country would face no tariff at all on the fans. GSP beneficiaries include most African and Latin American countries, some Asian countries, and now certain countries in eastern Europe.

The U.S. GSP program expires in July 1993, unless renewed by Congress — by no means a foregone conclusion in today's political and economic climate.¹⁰ If it is extended, the increasing complexity it brings to tariff classification and country-of-origin determinations will further undermine the simplicity and transparency that the GATT's nondiscrimination principle was intended to create.

C. The Uruguay Round — Resurrection or Requiem?

The present round of GATT-sponsored trade negotiations is called the Uruguay Round because it was initiated by a GATT Ministerial Declaration at a 1986 meeting in Uruguay. It was intended to strengthen the GATT further, but so far it has failed, prompting some commentators to declare that the GATT is dead or dying.

An Ambitious Agenda. The Uruguay Round has sought to achieve more than any previous round of negotiations. Of particular interest to the United States is the establishment of rules in two areas: protection of intellectual property against counterfeiting, and trade in services. The latter rules would ensure that the United States and other services-exporting countries get equal treatment, or at least fair treatment, for the provision of banking, insurance, and other services across borders.

Another ambitious agenda item concerns agricultural subsidies. Although the GATT attempts in Article XVI to prohibit the use of most export subsidies, it effectively exempts from that prohibition what it terms "primary products." These include agricultural products. Thus, the agricultural export subsidy programs provided by the U.S. government and the EC are not inconsistent in principle with the GATT. At the Uruguay Round, however, the United States has called for substantial reductions and eventual elimination of such subsidies. Beset with economic and political difficulties surrounding its efforts toward integration, the EC has insisted on retaining the heavy subsidies that it provides its agricultural sector.

Present Status of the Uruguay Round. So far, the

high hopes for the Uruguay Round have been dashed. Although the Bush administration and others have tried to give encouraging signs, the lack of progress in recent months has left many officials and observers pessimistic about prospects for any satisfactory conclusion of the Uruguay Round negotiations.

Agricultural subsidies have emerged as the key sticking point. Proposals and counter-proposals have bounced around the negotiations, mainly between the United States and the EC. At a GATT ministerial meeting in late 1990, negotiations broke down over the agriculture issue.¹¹ Attempts to revive them continued through 1991. By year-end, attention had focused on the "Dunkel draft," a compromise text on the agriculture provisions under negotiation. Proposed by GATT Director General Arthur Dunkel, that draft would reduce farm subsidies within three years by amounts ranging from 20 percent to 36 percent, depending on the type of support.¹² The U.S. negotiators agreed to use the proposal as a basis for negotiations, but the EC rejected the Dunkel draft outright.

As this article went to press, 1992 was proving to be another year of grasping at straws. The following developments are illustrative:¹³

- In late March, talks between President Bush and German Chancellor Kohl failed to bring progress, and in April President Bush's exchange of new agriculture proposals with EC Commission President Jacques Delors failed to resolve the impasse. According to White House spokesman Marlin Fitzwater, the efforts had brought no "concrete progress ... in terms of changed positions or getting closer to an agreement."
- The July G-7 economic summit in Munich¹⁴ concluded with a communique saying G-7 leaders "expect that an agreement can be reached before the end of 1992," but little real progress was reported on agriculture, the main stumbling block.
- In late August, with NAFTA negotiations concluded (see part IIIB, below), U.S. Trade Representative Carla Hills reiterated that bringing the Uruguay Round talks to a successful conclusion remains a top priority for the United States. At about the same time, however, GATT Director General Dunkel admitted that the talks are in "a deeply disappointing situation of deadlock."
- Expectations for a breakthrough in U.S.-EC negotiations rose and fell several times during October, and

11. 7 *ITR* 1876 (Dec. 12, 1990).

12. For details on the Dunkel draft and related agricultural subsidy matters, see *The Uruguay Round: United States and European Community Stumble Over Agriculture*, 1 *Currents: Int'l Trade LJ*, 55 (1992).

13. For details of these and related developments, see 9 *ITR* 444, 499, 518, 669, 712, 750-51, 1410, 1503, 1558, 1561, 1680-81

(Mar. 11, 18, 25; Apr. 15, 22, 29; Aug. 19, 26; Sept. 2, 30, 1992); see also Keith Bradsher, *Talks Fail; Trade War is Feared*, N.Y. Times, Nov. 4, 1992, at C1.

14. The G-7 ("Group of Seven") countries are the United States, the United Kingdom, France, Germany, Japan, Italy, and Canada.

by early November both sides were threatening a trade war.

Prognosis. Considering the time and effort spent so far on the Uruguay Round, it appears unlikely that the 100-plus countries to the talks will simply throw in the towel and walk away from the GATT process entirely. On the other hand, there seems to be little hope now that the Uruguay Round will produce far-reaching agreements on all or most of the agenda items. Perhaps a reasonable prognosis for the next several months is that the Uruguay Round will limp forward until a face-saving patch-up emerges, thereby keeping the GATT alive but no stronger than before, and maybe even weaker. In short, unless the Uruguay Round achieves some kind of breakthrough to reinvigorate the multilateral regime of trading rules, the recent momentum toward a "demultilateralization" of trading rules and relations will probably continue to build.

III. THE "DEMULTILATERALIZATION" OF INTERNATIONAL TRADING RULES

"We are entering an era of economic blocs," a senior U.S. Chamber of Commerce official said recently. "Our member companies are much more interested in [a] U.S.-Mexico-Canada FTA [free-trade agreement] and in Latin America than in any GATT agreement."¹⁵ Recent evidence is overwhelming. A new era in trade rules and relations has indeed dawned, perhaps bringing with it an end to the "multilateralization" period that the GATT represented.

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A. Recent Developments in Europe

The past twelve months have seen some important steps toward economic consolidation in Europe. These include the Maastricht Treaty and the creation of the European Economic Area.

In February, at the Dutch city of Maastricht, the twelve members of the EC signed the Treaty on European

Union.¹⁶ The treaty was designed to move the EC to the final stage of full economic and monetary union, including the creation of a central bank and a single currency, by the beginning of 1999.¹⁷ Such a move would further consolidate Europe as a trading entity, bringing new challenges to American businesses wanting to trade with Europe. For the Wichita manufacturer of widgets, the treaty would mean facing tougher competition from European widget suppliers, whose trade within Europe not only would be increasingly free of "internal" tariffs but also would involve no exchange risk.

Thus far, the Maastricht Treaty has received mixed reviews. Denmark is the only country that has rejected it to date, but support in other EC countries is far from wholehearted. The closeness of the French vote in September — 51 percent in favor, 49 percent against — has prompted a move to make the image, if not the content, of the treaty more palatable. Full adoption of the treaty by the end of 1992 is now impossible. It seems clear, however, that the momentum toward greater economic union in Europe is nearly irreversible. The question is not whether it will come, but when and to what degree.¹⁸

Of even more direct significance to trade is the establishment of a vast single market of 380 million consumers in nineteen European countries — the twelve countries of the EC and the seven countries of the European Free Trade Area (EFTA).¹⁹ Those countries signed in May a treaty to create a European Economic Area (EEA).²⁰ It is to be ratified before the end of this year and take effect beginning on January 1, 1993.

Taken together, these recent developments in Europe seem destined to continue the trade integration of that region. Americans will face bigger challenges than ever in vying for export deals there.²¹ Beyond that, a unified Europe may wield more influence outside its borders as well. According to at least one observer, the power to establish the rules of international trade is shifting from the United States to Europe. "Americans will have to learn to play a different ball game, one where Europeans write all the rules."²²

B. Recent Developments in North America — the NAFTA

New rules are also being written, though, in this hemisphere. Based on the apparent success of the USCFTA (part II. B., above), the NAFTA has come quickly into the

15. 9 *ITR* 77 (Jan. 8, 1992).

16. Treaty on European Union, *done* Feb. 7, 1992, 31 *ILM* 247 (1992).

17. 8 *ITR* 1809 (Dec. 11, 1991).

18. See 9 *ITR* 1346 (Aug. 5, 1992) (prediction by the EC ambassador to the United States that Maastricht ratifications will be complete by mid-1993); 9 *ITR* 1635 (Sept. 23, 1992).

19. The EC countries are Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom; and the EFTA countries are Switzerland, Austria, Liechtenstein, Sweden, Norway, Finland, and Iceland.

20. Draft Agreement between the European Community and the European Free Trade Association Relating to the Creation of the European Economic Area, *signed* May 2, 1992, 9 *ITR* 906 (May 20, 1992). See 8 *ITR* 1528 (Oct. 23, 1991).

21. See 9 *ITR* 1146 (July 1, 1992) (warning by Australian Prime Minister Keating that the EC will be a "tough nut to crack," especially if integration continues and the Uruguay Round fails).

22. 9 *ITR* 230 (Feb. 5, 1992).

23. For reports of 1992 NAFTA developments, see 9 *ITR* 516, 562-67, 590-91, 637-39, 1375-76, 1398, 1632 (Mar. 25, Apr. 1, 8, Aug. 12, Sept. 23, 1992). See also *Tradewatch: NAFTA Schedule*, 113 *Bus. America* (inside cover) (1992).

realm of the probable. By eliminating "internal" tariffs between Canada, Mexico, and the United States, the NAFTA would bring the 360 million consumers of the North American continent together into one of the world's largest markets. The NAFTA officially became the subject of negotiations in June 1991, and by September 1992 an official text of the agreement had been negotiated and submitted to Congress. The President may sign the NAFTA as early as December 18.²⁴

Even without the NAFTA, Kansas exports to Mexico and Canada have almost doubled in the last five years and now account for a third of the state's total exports. Kansas exports to Mexico totalled roughly \$260 million in 1991, with agriculture representing the bulk of those exports. Exports to Canada, consisting mainly of food products, computers and machinery, and transportation equipment, totalled \$519 million.²⁴

Under the NAFTA, about 65 percent of U.S. industrial and agricultural exports to Mexico would be eligible for duty-free treatment either immediately (50 percent) or within five years (15 percent). As for agricultural trade generally, Secretary of Agriculture Edward Madigan has emphasized the NAFTA's potential rewards by saying that the increased exports of coarse grains and livestock products to Mexico expected for 1992 are "just the tip of the iceberg" when compared with the agricultural export opportunities under the NAFTA.²⁵ For the wheat trade specifically, Mexico would immediately remove its import licensing requirement in exchange for a 15 percent tariff, which would itself be phased out over ten years.

Thus far, the NAFTA has received mixed reviews by agricultural interest groups. U.S. Wheat Associates, which represents wheat boards in seventeen states, has expressed disappointment with the NAFTA because it does not address U.S. wheat growers' concerns about competition with Canadian wheat growers for the Mexican market. The American Farm Bureau Federation (AFBF), however, has said that the NAFTA would generally benefit U.S. agriculture. The president of the AFBF has cited the fact that farm exports to Canada more than doubled in the first three years of free trade under the USCFTA.²⁶

The NAFTA, like the USCFTA, would cover some trade in services as well as goods. For example, the NAFTA would permit U.S. banks and securities firms to establish wholly owned Mexican subsidiaries. It would allow residents of each of the three NAFTA countries to purchase financial services in the territory of another NAFTA coun-

try. The NAFTA also addresses numerous other trade and business matters.²⁷

It is important to recognize that the NAFTA is intended by some as the second step in a longer journey, with the USCFTA having been the first step. The Enterprise for the Americas Initiative, announced in June 1990, seeks ultimately to establish a free-trade system within the Western Hemisphere. Consistent with that goal, the Bush administration announced last

May that it would open negotiations on a free-trade agreement with Chile soon after the NAFTA is completed.²⁸ An "expansion" of the NAFTA itself is already being urged in some quarters.²⁹

[T]he U.S. enthusiasm for regional trading regimes extends beyond North America to embrace the so-called "Pacific Rim."

Indeed, the U.S. enthusiasm for regional trading regimes extends beyond North America to embrace the so-called "Pacific Rim." Bush administration officials say that an Asia-Pacific Rim free-trade area would complement the NAFTA. Trade figures explain such a look westward. Annual U.S. trade across the Pacific already exceeds \$300 billion, 40 percent more than U.S. trade across the Atlantic.³⁰

IV. COUNTERTRENDS

Despite the current crisis with the GATT and the corresponding rise of regional trading blocs, multilateral efforts do continue on several fronts. Moreover, the trend identified above toward "demultilateralization" should not be read simply as "regionalization": many important new bilateral initiatives, especially by the United States, extend beyond this hemisphere.

A. At the Multilateral Level

Traditional cooperation among the Western countries regarding export controls for national security purposes has continued, and in fact strengthened, in the past year or so. The Coordinating Committee on Multilateral Export Controls, known as "COCOM," is the 17-nation group³¹ that maintains a list of countries prohibited from importing high-technology goods from the West. In recognition of the sweeping political changes occurring in Eastern Europe, COCOM completely rewrote its list of embargoed goods and technologies between June 1990

24. See generally Int'l Trade Admin. Office of Mexico, U.S. Dep't of Commerce, *NAFTA Benefits State Sourcebook* (1992); see also 9 ITR 1481, 1474 (Aug. 19, 1992) (overall U.S.-Mexico trade figures).

25. 9 ITR 1550 (Sept. 2, 1992). See also 9 ITR 1461 (Aug. 19, 1992) (NAFTA provisions on eliminating agricultural subsidies), 1506 (Aug. 26, 1992).

26. 9 ITR 1441, 1505 (Aug. 19, 26, 1992).

27. See 9 ITR 1435, 1438, 1448-49, 1450-85 (Aug. 19, 1992) (summary of NAFTA).

28. N.Y. Times, May 14, 1992, at D1. These plans were reiterated in August; 9 ITR 1558, 1565 (Sept. 2, 1992).

29. See, e.g., 9 ITR 1410 (Aug. 19, 1992) (Secretary of State James Baker's reference to an "expanding network" of free trade agreements); 1505 (Aug. 26, 1992) (six-nation treaty aimed at a free trade area in Central America, including Mexico); 1565 (Sept. 2, 1992) (characterization of the NAFTA as "the first building block of a possible hemisphere-wide economic and trade system").

30. 9 ITR 1288, 1598. See also 9 ITR 1698-99 (Sept. 30, 1992) (San Francisco declaration on trade among 20 Pacific Rim countries).

31. COCOM participants are the NATO countries, except Iceland, plus Australia and Japan.

and May 1991. The resulting "Core List" contains only the most critical goods and technologies essential to maintaining military superiority.³² For U.S. business, this development "means a 50 percent reduction in existing export controls," being implemented by the issuance of a new Commerce Control List (previously called the Commodity Control List).³³

Multilateralism also appears on another front. In addressing the overall economic problems of the former Soviet republics, several Western countries have called upon multilateral resources. Although full of fits and starts, the efforts to assist the republics in moving to a market-based economic system have benefitted from heavy involvement by the G-7 countries and by the World Bank and IMF. Most of the former Soviet republics were offered membership in those two organizations last April.

With such membership comes the potential for economic development loans, subject to conditions calling for those countries to improve their economic structure and policies. If and when such improvements occur, trade opportunities for American businesses might improve as well. For example, the Wichita widget manufacturer might be able to secure a privileged foothold in an enormous market by getting in on the ground floor of economic development in one or more of the former Soviet republics.

B. At the Bilateral Level — U.S. Initiatives

While much of the recent non-multilateral focus of U.S. trade officials has been on the Western Hemisphere, and especially on the NAFTA,³⁴ several bilateral initiatives of the past six months have improved opportunities for U.S. exporters in other countries as well.

For example, U.S. officials announced last February that the United States would conclude separate bilateral trade agreements with Russia and the other former Soviet republics, using as a model the U.S.-Soviet trade agreement signed into law by President Bush in December 1991.³⁵ Since that time, several such trade agreements have been signed, generally providing for MFN treatment, meaning relatively low tariff levels.³⁶

Substantial support for U.S. trade and investment with the former Soviet republics will probably be channeled through the U.S. Export-Import Bank (Eximbank), which

provides export loans and guarantees, and through the Overseas Private Investment Corporation (OPIC), which provides loans, loan guarantees, and political risk insurance to U.S. investors. To encourage investment, officials raised ceilings in April on Eximbank and OPIC support for projects involving U.S. trade and investment in the former Soviet republics. By August, the Eximbank had arranged seven loan guarantees worth about \$102 million.³⁷

In addition to these Eximbank and OPIC initiatives, certain recent USDA initiatives should prove beneficial to Kansas agricultural interests. The USDA [R]cent USDA initiatives should prove beneficial to Kansas agricultural interests. announced in August a major food aid initiative to help ten former Soviet republics and several other countries, with wheat expected to be the major form of aid.³⁸ In addition, Russia received \$1.15 billion in agricultural export credit guarantees and other aid in mid-September. Half of the 1992-1993 U.S. wheat crop could be affected by the September White House announcement that a record-breaking 30 million metric tons of wheat will be offered to 28 countries under the export enhancement program.³⁹

The U.S. Government has also taken bilateral initiatives to improve trade opportunities in Asia, particularly in China, by pursuing legal and political agreement on numerous fronts. Results have been mixed, with prospects for smooth trade relations fluctuating wildly in recent months.

For example, in January 1992, China and the United States reached agreement on protection of intellectual property; and twice during 1992, China has retained MFN trade status with the United States when President Bush vetoed legislation that would have tied MFN status for China to progress on human rights and the export of missile technology.⁴⁰

U.S.-Chinese relations soured dramatically, however, last summer. First, failure of U.S. and Chinese negotiators to resolve a market access dispute resulted in U.S. publication of a list of nearly \$4 billion worth of Chinese goods that would have been subject to punitive tariffs if China had refused to lower alleged barriers that keep U.S. goods out of China's markets. The threatened punitive tariff lev-

32. 56 Fed. Reg. 30798 (1991); see also *COCOM Divided on Changes*, 1 Currents: Int'l Trade L.J. 57 (1992) [hereinafter *COCOM Divided*].

33. *Sweeping Export Control Changes Announced*, 13 Int'l Law. Newsletter 6 (1991); see 56 Fed. Reg. 52824 (1991); see also 8 ITR 1030 (July 10, 1991). For details on further COCOM liberalization and related U.S. export licensing changes, see 9 ITR 434, 1169 (Mar. 11, July 8, 1992) (restrictions eased on exports to Eastern Europe and former Soviet republics); *COCOM Divided*, *supra* note 32. See also 9 ITR 1585 (Sept. 16, 1992) (moves to streamline export controls generally).

34. Some U.S.-Mexico trade developments, however, have occurred outside the NAFTA negotiations. See, e.g., 9 ITR 1334 (Aug. 5, 1992) (U.S.-Mexico agreement on Mexican inspection and safety standards for U.S. meat and poultry exports).

35. 8 ITR 1857 (Dec. 18, 1991); see also 9 ITR 352, 713 (Feb. 26, Apr. 22, 1992).

36. See, e.g., 9 ITR 1571 (Sept. 2, 1992); 57 Fed. Reg. 39271 (1991) (Kyrgyzstan).

37. 9 ITR 353, 389, 713, 1546 (Feb. 26, Mar. 4, Apr. 22, 1992).

38. 9 ITR 1568 (Sept. 2, 1992). Kansas is a leader in U.S. wheat exports. Economics & Statistics Admin., U.S. Dept't of Commerce, *Statistical Abstract of the United States* 663 (111th ed. 1991) (citing end-Sept. 1989 data).

39. 9 ITR 1168, 1583 (July 8, Sept. 16, 1992).

40. 9 ITR 139, 385, 1332 (Jan. 22, Mar. 4, Aug. 5, 1992); Michael Wines, *Bush, This Time in Election Year, Vetoes Trade Curbs Against China*, N.Y. Times, Sept. 29, 1992, at A1; see also 9 ITR 493, 1682 (Mar. 18, Sept. 30, 1992).

els were high. For example, the Wichita widget maker importing ceiling fans from China would have paid a tariff of 100 percent instead of the 4.7 percent applicable with MFN treatment.⁴¹

The U.S.-China trade dispute was resolved, however, in early October when the two countries reached agreement on a range of measures to open China's markets to U.S. goods and services. The measures include a lowering of Chinese tariffs on certain agricultural goods. The agreement also envisions China's readmission to the GATT, which could take place as early as next year.⁴²

Other recent bilateral developments also might bring improved overseas trade opportunities for Kansas businesses. For example, a September proposal by President Bush would create a global "strategic network" of bilateral trade agreements between the United States and certain Latin American countries, Poland, Hungary, Czechoslovakia, and some Pacific Rim countries.⁴³

These and other bilateral initiatives by the United States have elicited harsh criticism from both the EC and the GATT. In September, EC officials denounced the "growing unilateralism" in U.S. trade policies and predicted that the NAFTA would result in discrimination against EC firms located in NAFTA countries. Similar criticism came in a GATT secretariat report released last March, warning that basic GATT principles could be eroded by the U.S. policy of putting more faith and effort into bilateral and regional trade pacts than into improving the existing multilateral system.⁴⁴

V. CONCLUSION: SUGGESTIONS FOR KANSAS PRACTITIONERS

The business of American import and export trade exists today in a changing environment. It is an environment that all Kansas practitioners, not just international trade specialists, should understand in order to serve their business clients.

This article has focused on a major trend in the changing environment of international trade law: the "demultilateralization" of international trading rules and activity. Notwithstanding certain countertrends, the historical and political progression revealed by events of the past few years and substantiated in recent months bodes ill for the multilateral, GATT-based approach to trade regulation and incentives. It bodes well for bilateral and regional approaches.

41. 9 *ITR* 1490, 1491, 1520-41 (Aug. 26, 1992) (list of affected imports from China), 1581, 1633 (Sept. 16, 23, 1992).

42. 9 *ITR* 1753, 1843, 1857 (Oct. 14, 28, 1992).

43. 9 *ITR* 1605 (Sept. 16, 1992). For other bilateral developments, see 9 *ITR* 1247 (July 22, 1992) (Eximbank financing for \$692 million aircraft sale to India); 8 *ITR* 1080, 1843 (July 17, Dec. 18, 1991) (tariff reductions on goods from Eastern European and Baltic countries); see also 9 *ITR* 267, 1553 (Feb. 12, Sept. 2, 1992).

44. 9 *ITR* 153, 479-80, 1609 (Jan. 22, Mar. 18, Sept. 16, 1992). Perhaps to defend against U.S. bilateral inroads, the EC itself has

Translating the overall trend of "demultilateralization" into specifics suggests the following observations and predictions of relevance to Kansas practitioners and their business clients.

NAFTA. The NAFTA process seems certain to go forward, and some agreement can be expected to take effect within the next several months. Although the NAFTA's overall goal is to improve trade opportunities in North America, Kansas practitioners will need to consider carefully specific NAFTA provisions to determine their effects on the interests of particular clients.

Fortress Europe? The EC, as well as the broader new European Economic Area, are likely to become more difficult for U.S. traders to penetrate, at least for the next several years while European governments sort out issues of economic and monetary integration. In particular, Kansas exports of agricultural products will probably continue to face competition from subsidized European products, unless a surprising breakthrough takes place in the Uruguay Round negotiations.

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Bilateral initiatives.

U.S. initiatives currently underway with large potential trading partners warrant attention. In particular, trade relations with China, the former Soviet republics, and Eastern Europe all may ripen in coming months. In this respect, Kansas businesses might benefit (i) from new trade agreements struck with such countries, (ii) from further liberalization of export controls, and (iii) from expanding U.S. government support for exports through loan and guarantee programs.⁴⁵

It remains to be seen how the change to a Clinton administration in Washington will affect the pace and direction of the trends described above. One thing, however, is certain. Most Kansas businesses cannot ignore the opportunities and challenges that international trade presents. For Kansas practitioners counseling those businesses, questions of international trade law can no longer be considered entirely "foreign." ■

recently begun bilateral trade initiatives, especially in Eastern Europe. The U.S. Department of Commerce complained in August about "association agreements" concluded between the EC and Poland, Hungary, and Czechoslovakia. 9 *ITR* 1560 (Sept. 2, 1992).

45. In watching for U.S. government export support in the regions mentioned here, of course, Kansas businesses should not overlook opportunities in other regions. For example, the USDA announced in August an export enhancement program for 350,000 metric tons of barley to Israel. 9 *ITR* 1570 (Sept. 2, 1992).