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GATT AND THE EVOLUTION OF THE GLOBAL TRADE SYSTEM: A HISTORICAL PERSPECTIVE

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I. INTRODUCTION

Although it has recently become the norm for policymakers to pay homage to the "emerging global economy," authorities have long recognized that there has always been a global economy. What separates the present from the past is not the existence of international trade and interdependence but, rather, the speed at which such contacts occur and the degree to which individual national economies are dependent upon one another, upon regional blocs, and upon the global system as a whole. This Article will not attempt to create a model or paradigm for understanding this system but will focus instead on explaining the historical and legal antecedents that gave rise to the current global trading system.

The Uruguay Round¹ of the General Agreement on Tariffs and Trade (GATT) produced two crucial developments that will have far-reaching consequences. One development is the solidification of a global free trade system.² The second is the commitment of all

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¹ Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994) (codified as amended at 19 U.S.C. §3501 (1995)); see Kenneth W. Abbot, *GATT As A Public Institution: The Uruguay Round and Beyond*, 18 *BROOK. J. INT'L L.* 31, 31 (1992) (describing Uruguay Round as "broadest and most complex round of trade negotiations in GATT's history"). See generally William J. Aceves, *Lost Sovereignty? The Implications of the Uruguay Round Agreements*, 19 *FORDHAM INT'L. L.J.* 427, 427 (1995) (noting that agreements which came out of these negotiations "were designed to fundamentally restructure and improve the multilateral trading system that had developed under the 1947 General Agreement on Tariffs and Trade (GATT)").

² See ROBERT E. HUDEC, *COMPLETING THE URUGUAY ROUND: A RESULTS-ORIENTED APPROACH TO THE GATT TRADE NEGOTIATIONS* 180 (Jeffrey J. Schott ed., 1990) (noting importance of negotiations with respect to future of global trading system); see also JEFFREY J. SCHOTT, *THE URUGUAY ROUND: AN ASSESSMENT* 17 (1994) [hereinafter *THE URUGUAY ROUND*] (discussing one of reforms of Uruguay Round as trade liberalization gains, which makes available more resources for additional consumption and investment, while promoting increased productivity).

member nations to a single dispute resolution forum.³ This second development is critical for the on-going development of international law, for it symbolizes an important surrender of sovereignty by individual nation-states to an international body operating under one unified code. This is far more significant than, for example, an individual state acceding to the United Nations. The purpose of this article is to provide an analysis of how the pre-GATT "system" of international trade evolved in a historical context. This analysis is not all-inclusive—one would require hundreds of pages for a brief but thorough outline. This article merely highlights examples of how the Western laissez-faire approach to commerce, in concert with distinctly American legal doctrines, laid the economic foundations for the system GATT and the World Trade Organization (WTO) seek to police.

II. THE EVOLUTION OF INTERNATIONAL TRADE IN THE MODERN WORLD

The notion of "a single global marketplace" is hardly new. Indeed, civilization has been evolving to such an economic unity for centuries.⁴ Even with protectionist regimes in place in many regions, competitive advantages and market demand encouraged the growth of global trade despite the existence of national and regional trade barriers.

Commerce that extends beyond national boundaries has always served two obvious but distinct functions. The first function is to secure resources or goods that are unavailable (*i.e.*, not found nor economically producible within the state).⁵ Conversely, the second

³ See THE URUGUAY ROUND, *supra* note 2, at 14. Uruguay Round restored credibility to the multilateral negotiating process and ensured ongoing regional initiatives. *Id.* The Uruguay Round also strengthened the Dispute Settlement Understanding (DSU), a multilateral dispute settlement mechanism, by creating the WTO. *Id.*

⁴ See KLAUS FRIEDRICH, INTERNATIONAL ECONOMICS: CONCEPTS AND ISSUES 279, 292-93 (1974) (describing Classical Gold Standard as example of nations seeking a degree of economic unity); see also THOMAS GRENNES, INTERNATIONAL ECONOMICS 3 (1984) (citing European Economic Community as attempt to connect independent countries into single economic unit); CHESTER G. STARR, A HISTORY OF THE ANCIENT WORLD 313 (2d ed. 1974) (detailing Athens' import and export trade with, among others, Macedonia, Thrace, and Libya).

⁵ See, e.g., GRENNES, *supra* note 4, at 12. Foods originally introduced to countries through international trade that have since become identified with those countries include: chocolate, not known in Europe until the 17th Century when imported from Mexico, and tea, brought from China to Europe in 1610 by the Dutch. *Id.* Grennes notes other advantages of international trade, specifically the increased availability of less expensive products as well as information regarding new products and technologies. *Id.*

impetus for international trade is the need to seek outside markets for resources and goods produced in surplus within the state.⁶ The impulses behind this export paradigm are multifold. Individual traders seek to maximize profits by selling in new markets. Concurrently, governments seek to control and/or maximize exportation to create a favorable balance of trade in which the net valuation of exports exceeds the net valuation of imports. This goal, in theory, advances the national interest and contributes to the prosperity of society.

National interest is similarly involved with the importation paradigm. A state which imports more than it exports can be at a disadvantage because the balance of payments (in gold) flow abroad causing potentially serious domestic social and economic consequences. Because of the qualitative and quantitative domestic implications, issues of trade policy are necessarily political issues. Comprehension of these domestic issues by Seventeenth Century European policymakers resulted in the competitive rise of "mercantilist" empires. Not only was a favorable balance of trade viewed as essential for domestic reasons, but it was tied resolutely to national security issues.⁷ Adam Smith, the godfather of capitalism, summed up this statist approach to international trade:

[T]hat wealth consisted in gold and silver, and that those metals could be brought into a country which had no mines only by the balance of trade, or by exporting to a greater value than it imported; it necessarily became the great object of political economy to diminish as much as possible the importation of foreign goods for home consumption and to increase as much as possible the exportation of the produce of domestic industry.⁸

⁶ See ADAM SMITH, *THE WEALTH OF NATIONS* 415 (Edwin Cannan ed., 1937) (noting that greatest advantage to foreign trade is sale of country's surplus, not importation of gold and silver).

⁷ See generally JOAN EDELMON SPERO, *THE POLITICS OF INTERNATIONAL ECONOMIC RELATIONS* 4, 5 (4th ed. 1990) (discussing how production, consumption, and distribution have been affected by diplomatic and strategic factors and how mercantilists believed that wealth and power were so related to acquisition of precious metals that in order to maintain favorable balance of trade they had to organize trading structures).

⁸ See SMITH, *supra* note 6, at 418. See generally JOSEPH CROPSEY, *POLITY AND ECONOMY: AN INTERPRETATION OF THE PRINCIPLES OF ADAM SMITH* 95 (1957) (arguing that Smith believed free political institutions are essential in order to preserve commerce).

The incessant warfare of Sixteenth to Eighteenth Century Europe involved large mercenary forces which consumed a substantial portion of Europe's annual Gross Domestic Product. Trade surpluses were essential for maintaining these armies in the field. The ever-increasing need to expand foreign markets and simultaneously gain access to inexpensively obtained natural resources led to colonial expansion in the Western hemisphere, in Africa and in the Indian Sub-Continent.⁹ Such expansion was in pursuit of perfecting mercantilist policies and similarly resulted in armed conflict.¹⁰ Trade wars of this period focused on preserving trade monopolies in a given sphere such as the Dutch Republic's trade with India.¹¹ Conflicts that had their origins in other issues, such as the War of Spanish Succession (1701-1713), inevitably involved trade issues.¹² For example, Britain's acquisition of the *asiento*, the monopoly granting the exclusive right to sell slaves to Spanish possessions in South America, was wrested from Spain by the Peace of Utrecht as Britain's price for interceding in this Bourbon-Habsburg conflict.¹³

Wars of this period also were brought about by the prevailing mercantilist notion that commerce was static and that the world could only support a definite volume of commerce.¹⁴ In light of this notion, for one nation to increase its share of the world's trade it would have to be at the expense of other nations.¹⁵ This idea had

⁹ See SPERO, *supra* note 7, at 5. "Mercantilist states acquired colonies for the purpose of favorable trade balances and for the political goal of self sufficiency." *Id.*

¹⁰ The First and Second Anglo-Dutch Wars of 1664 and 1678, for example, were fought purely over commercial rivalries. See generally JONATHAN ISRAEL, *THE DUTCH REPUBLIC 713-15, 934-36* (1995) (chronicling how trade conflict resulted in war between Dutch Republic and England).

¹¹ See, e.g., *id.* at 941 (noting Dutch mercantile system in Asia, Africa, and America was based on Dutch control of colonies and sea routes).

¹² A dynastic squabble ostensibly over whether a Bourbon or a Habsburg would sit on the Spanish Throne. See generally HENRY KAMEN, *THE WAR OF SUCCESSION IN SPAIN (1700-1715)* 1-5, 9 (1969).

¹³ See KAMEN, *supra* note 12, at 24. The Peace of Utrecht granted England the *asiento* for slave trade to Americas. *Id.*

¹⁴ See Deborah A. Ballam, *The Evolution of the Government-Business Relationship in the United States: Colonial Times to Present*, 31 AM. BUS. L. J. 553 (1994). The view of mercantilists was that wealth was not limitless and one of the principle means of acquiring such wealth was diverting it from other nations.

¹⁵ See ELI HECKSCHER, *MERCANTILISM* 260 (1936) (outlining origins and development of mercantilist competition; see also 2 DAVID HUME, *ESSAYS, MORAL, POLITICAL AND LITERARY* 348 (1898) (quoting prominent merchant who stated in Parliament: "Our trade will improve by the total extinction of theirs").

its antecedents in ancient history and was the cause of many conflicts throughout human history.¹⁶

It is important to bear in mind that for our purposes, global trade and international relations of this period are viewed exclusively in the European dimension.¹⁷ The Treaty of Westphalia (1648), which ended the Thirty-Years War, codified the concept of national sovereignty. Under this enduring concept, the nation-state became the principal player on the international stage. Sovereignty of the nation-state secured the primacy of that state's government and legal regime within its borders. Although this inviolability was often ignored at first, gradually the right of a nation-state to manage its internal affairs became sacrosanct. Only when a nation-state's conduct threatened the balance of power on the Continent did other states feel justified in forming alliances to intervene internally and restore the balance. The balance of power system, if one is to call it that, was the only device available to regulate relations between sovereign states.¹⁸

A comparison can be made, albeit simplistically, between the individual and society and between the nation-state and the international community as a whole. The individual theoretically surrenders his complete freedom of action to society and consents to adhere to its laws. Likewise, in the international system, the nation-state agrees, by treaty or executive action, to adhere to a set of internationally recognized norms or rules. In the case of the individual autonomous person, once adherence is obtained, the coercive aspect of law (force) ensures continuous obedience to the legal regime of society. In the case of the nation-state, however, the coercive aspect of the international community is barely present. There exists no uniform global means of compelling nation-

¹⁶ The Punic Wars, which had as their origin the conflict between the Roman and Carthaginian commercial empires, is just one example. See POLYBIUS, *THE RISE OF THE ROMAN EMPIRE* 53-56 (Ian Scott-Kilvet trans., 1979); see also BRIAN CAVEN, *THE PUNIC WARS* 183 (1980).

¹⁷ Sophisticated trade also existed between peoples in Africa, North America, and Asia so that Europe was the rule, not the exception. See Ballam, *supra* note 14, at 557 (discussing basis of American colonial mercantilism as European in nature); see also Paul Lansing & Joseph Gabriella, *Clarifying Gray Market Gray Areas*, 31 AM. BUS. L.J. 313, 329-30 (1993) (noting Japan's historical practice of neo-mercantilism, developed from European system).

¹⁸ See, e.g., HANS MORGANTHAU & KENNETH W. THOMPSON, *POLITICS AMONG NATIONS* 362 (6th ed. 1985) (discussing flaws of balance of power system that led to its collapse). But see INIS L. CLAUDE, JR., *SWORDS INTO PLOWSHARES* 24-27 (4th ed. 1984). Inis Claude offers the Concert of Europe as attempt to systematize and police the balance of power in the Nineteenth century.

states to adhere to international law. Attempts to cobble together some sort of system that is both "fair" and coercive in the Twentieth Century have largely failed. Even when a nation-state has joined itself to an international body, it feels itself bound only so long as its national interests require such membership. In the 1930s, for example, Italy was content to remain part of the League of Nations only until that body rejected Italy's aggression against Ethiopia. Likewise, Iraq demonstrated the futility of voluntary adherence to international law when its perceived national interests drove it to occupy Kuwait in 1990. In both instances, the global community was forced to confront its impotence in enforcing the international law.¹⁹

With the nation-state ascendent after 1648,²⁰ the idea that there existed a higher polity, the international community, was non-existent. International trade, as with war and diplomacy, was conducted under a vague set of occasionally recognized norms. There existed no higher legal authority than that enforced by individual states. There was no United Nations, no International Monetary Fund, and no permanent association of sovereign states.²¹ Such a vacuum could not, in the ordinary course, exist for long.

Expansion of the scope and volume of world trade should have created the necessity for some sort of international system as the age-old balance of power system was incapable of dealing with

¹⁹ I will tactfully suggest here that the "success" of the international system in responding to the Kuwait crisis was chimerical and is highly unlikely to occur again soon. It was the unusual timing which found a weak, dissolved Soviet Union, an indifferent China, and an unbalanced Middle East forced to rely on the United States and a Western Alliance unusually cohesive under then-President Bush.

²⁰ See 3 DAVID J. HILL, *A HISTORY OF DIPLOMACY IN THE INTERNATIONAL DEVELOPMENT OF EUROPE* 1-2 (1914) (discussing state of affairs in Europe after Peace of Westphalia and ascendancy of European nations); see also 6 W.F. REDDAWAY, *A HISTORY OF EUROPE FROM 1610-1715* 199 (1948). The treaties of 1648 "formed the greatest landmark in the political history of the 17th century, and perhaps the greatest in the record of modern times" *Id.*

²¹ See JOHN S. ODELL, *U.S. INTERNATIONAL MONETARY POLICY* 5 (1982) (noting that international monetary regime dates from Bretton Woods Conference of 1944, where United States was main "architect" of such regime, making United States markets and United States dollar "central pillars" in international market); see also A.F.K. ORGANSKI, *WORLD POLITICS* 454-55 (2d ed. 1968) (citing official birth date of United Nations as 1945, with intention of universal membership); ROBERT L. WENDZEL, *INTERNATIONAL POLITICS POLICY-MAKERS AND POLICYMAKING* 12 (1981) (noting displacement of League of Nations by United Nations through number of multilateral wartime conferences); LELAND B. YEAGER, *INTERNATIONAL MONETARY RELATIONS* 390 (2d ed. 1966) (stating that International Monetary Fund was drafted and signed by 44 nations at Bretton Woods, New Hampshire in July 1944 and ratified by requisite number of nations by end of 1945).

trade issues. The balance of power system, nevertheless, persevered up until the Twentieth century. The reason for this perseverance was that from the late Seventeenth century onwards, international commerce was dominated continuously by Britain, which used its naval supremacy and resulting financial resources to maintain the balance of power on land and to control the sea lanes unilaterally through which the world's commerce flowed.²² Sea power combined with shrewd geopolitical gamesmanship permitted England to preserve the balance of power and to regulate the course of international trade in the absence of a formal international regime.²³

By way of example, the seizure of Gibraltar from Spain in 1713 and the construction there of a naval base, gave England control of access to the entire Mediterranean Sea.²⁴ This acquisition, and the later construction of the Suez Canal, provided Britain with the means to interfere with the commerce of every state from Spain and Morocco in the West to the Ottoman Empire and Russia in the East.²⁵ Thus, Britain alone possessed the ability to close off the commerce of Continental powers.²⁶

This interrelation of commerce and power politics was a profound barrier to free trade for centuries.²⁷ Because the maintenance of the balance of power often necessitated interference with trade, it can be reasoned that a free trade system such as GATT

²² See PAUL M. KENNEDY, *THE RISE AND FALL OF BRITISH NAVAL MASTERY* 37-122 (1982) (discussing power of Great Britain as predominant maritime nation, vis-a-vis national, international, economic, political, and strategic considerations); ALFRED T. MAHAN, *THE INFLUENCE OF SEAPOWER UPON HISTORY 1660-1783* 217 (12th ed. 1890) (analyzing evolution of Britain's maritime dominance); see also ALFRED T. MAHAN, *MAHAN ON NAVAL WARFARE* 152-53 (Allan Westcott, Ph.D. ed., 1943) [hereinafter MAHAN ON NAVAL WARFARE] (demonstrating importance of England's acquisitions during and after Seven Years War).

²³ See CHARLES A. JONES, *INTERNATIONAL BUSINESS IN THE NINETEENTH CENTURY* 64-65 (1987) (noting pre-eminence of British mercantile system); see also Kennedy, *supra* note 22, at 149-75 (discussing England's lead in world economy and adoption of free trade); MORGANTHAU & THOMPSON, *supra* note 18, at 363-64 (observing that political, military, and economic preponderance allows such nation to balance power).

²⁴ See generally HILL, *supra* note 20, at 305.

²⁵ See MAHAN ON NAVAL WARFARE, *supra* note 22, at 152-53 (discussing England's controlling seapower and territorial acquisitions).

²⁶ For example, by controlling Gibraltar, the British were able to prevent the French, for several hundred years, from concentrating their entire fleet in one sea.

²⁷ Both the War of 1812 and United States entry into the First World War were largely caused by disruptions of United States commerce by European belligerents. See JOHN KEEGAN, *THE PRICE OF ADMIRALTY* 15-19 (1988). Keegan offers an extensive analysis of the practical economic and military implications of Britain's stranglehold over the Mediterranean in the Eighteenth and Nineteenth Centuries.

was not possible so long as the international order was maintained solely by the balance of power system.

III. THE DEVELOPMENT OF INTERNATIONAL TRADE REGIMES

Although throughout most of history international trade was carried out between sovereign entities, it should be borne in mind that there were exceptions. Indeed, the notion that free trade between states could benefit all parties is not entirely new. Since ancient times, there have been numerous examples of deliberate trade liberalization and regulation.

In the Fifth Century B.C., Greek city-states were grouped into the Delian League which served as both a military and an economic alliance.²⁸ Dominated by Athens, the League ensured open sea routes that enabled the Greeks to import grain from the Black Sea.²⁹ It is also noteworthy that Athenian coinage became the common currency of member states during this period.³⁰ Examples such as this illustrate that there has always been an international market which leagues and empires have occasionally sought to regulate and liberalize. Contemporary history merely reflects the latest stage of development whereby the sovereign nation-states of the industrialized world, sharing a common economic ideology and a fear of further military conflict, have created permanent institutions to govern global commerce.³¹

²⁸ See DAVID KAISER, *POLITICS AND WAR, EUROPEAN CONFLICT FROM PHILIP II TO HITLER* 157 (1990) (outlining means by which continental events were shaped by Britain's maritime suzerainty); JAMES MORRIS, *PAX BRITANNICA* 52-53, 109 (1968) (illustrating benefits derived from monopoly on seaborne commerce).

²⁹ See STARR, *supra* note 4, at 313-14; see also PLUTARCH, *THE RISE AND FALL OF ATHENS* 186-87, 225-31 (Ian Scott-Kilvert trans. 1960).

³⁰ See, e.g., STARR, *supra* note 4, at 315 (discussing Athenian "owls" as stable regional coinage).

³¹ See Judith H. Bello & Alan J. Holmer, *U.S. Trade Law And Policy Series No. 24: Dispute Resolution in the New World Trade Organization: Concerns and Net Benefits*, 28 *INT'L LAW.* 1095, 1098-99 (1994) (detailing how changes in WTO adjudication process will ultimately benefit U.S.); see also Mary E. Footer, *GATT And The Multilateral Regulation of Banking Services*, 27 *INT'L LAW.* 343 (1993) (discussing role of banking as trade in service as well as its role in GATT); Jeffrey E. Garten, *American Trade Law in a Changing World Economy*, 29 *INT'L LAW.* 15 (1995) (analyzing American trade law with respect to NAFTA, WTO, and Japanese market); J.F. Hornbeck, *United States-Mexico Economic Relations: Has NAFTA Made A Difference?*, 5 *MEX. TRADE & L. REP.* 8 (1995) (analyzing effects of North American Free Trade Agreement among United States, Mexico, and Canada); Kendall W. Stiles, *The New WTO Regime: The Victory of Pragmatism*, 4 *J. INT'L L. & PRACTICE* 3 (1995) (discussing motives and objectives of negotiating parties to WTO's International trade system).

A. *United States Internationalism Under Wilson*

President Wilson recognized that the breakdown of the balance of power between 1914 and 1918 required the imposition of a new order based on recognized legal precepts to govern political and economic relations among states.³² Wilson also used this breakdown as an opportunity to promote free trade and universal access to markets.³³ As both an attorney and a professor of American history, Wilson was uniquely suited to fashion a proposed structure based on American legalistic principles.³⁴ Wilson was aware that any new world order would have to guarantee open access to international markets to succeed.³⁵ Moreover, this guarantee could only be credible if backed by the sanction of international law. Hence, Wilson's proposed League of Nations³⁶ and World Court³⁷ would have had to play prominent roles as institutions responsible for enforcing a new international trade system.

Regrettably, Wilson also had to contend with other forces at work in Europe—reactionary nationalists unwilling to abandon the balance of power formula and socialists seeking an international system centered on Marxist determinist theories.³⁸ Daunted by shifts in European public opinion, stubborn allies, weak support at home, and his own inflexible personality, Wilson was unable to persuade the Allies to adopt his principles. In the

³² N. GORDON LEVIN, JR., *WOODROW WILSON AND WORLD POLITICS* 9, 123-28 (1968).

³³ See *id.* at 14-18 (noting that Wilson viewed commercial health of United States as evidence of country's political and moral strength). See generally CARL P. PARINI, *HEIR TO EMPIRE: UNITED STATES ECONOMIC DIPLOMACY, 1916-1923* 3-212 (1969) (arguing that foundations of modern American international economic policy were solidly laid by Wilson Administration).

³⁴ See ARTHUR S. LINK, *WOODROW WILSON AND THE PROGRESSIVE ERA 1910-1917* (1954) (principles set forth in Wilson's January 22, 1917 "Peace Without Victory" speech). See generally ARTHUR S. LINK, *WOODROW WILSON: REVOLUTIONS, WAR, AND PEACE* 1-20 (1979) (tracing Wilson's political thinking to his devout beliefs in law, democracy, religion, and ethics).

³⁵ See THOMAS J. KNOCK, *TO END ALL WARS: WOODROW WILSON AND THE QUEST FOR A NEW WORLD ORDER* 51, 56-57 (1992).

³⁶ See generally MARGARET E. BURTON, *THE ASSEMBLY OF THE LEAGUE OF NATIONS* 61 *passim* (1974) (discussing creation of league of nations).

³⁷ See generally THOMAS M. FRANCK, *JUDGING THE WORLD COURT* 13-27 (1986) (providing general history of World Court); MANLEY O. HUDSON, *THE WORLD COURT* 1-11 (1931) (same).

³⁸ See LEVIN, *supra* note 32, at 129-50. Wilson sought an "international commercial order, transcending traditional military and political imperialism, in which the human, political, and territorial rights of underdeveloped peoples would be respected, and in which the dangers of conflict among the advanced powers would be overcome by policies of peaceful free trade . . ." *Id.*; see also HERBERT HOOVER, *THE ORDEAL OF WOODROW WILSON* 19 (1958) (identifying Wilsonian principles as only permanent solution to international economic and political chaos).

United States, the isolationist Republican Party vigorously fought Wilson's proposals claiming that the League of Nations, with its attendant free trade, would be an economic disaster for the domestic economy.³⁹ Ultimately, the United States Senate's rejection of the Versailles Treaty meant that Wilsonian ideals would have to await another generation and another war.

B. *Post-WWII Economic Structure*

The international system that emerged from the crucible of the Second World War was primarily a creature of the victorious Western Allies (*i.e.*, Great Britain and the United States).⁴⁰ Unlike the sentiment felt between 1918 and 1919, there was a strong consensus among Western Allied policymakers that the causes of the Great Depression and the Second World War were related and that, to avoid future recurrences of war and depression, a stable international political and economic structure had to be developed. In terms of avoiding future armed conflict, the Allies embraced the Wilsonian view and established the United Nations.⁴¹

Policymakers on both sides of the Atlantic concluded that the Depression of the 1930s was caused by disparate national economic objectives, the unilateral pursuit of these objectives, and the failure to recognize that such national economic policies, in the absence of any multilateral coordination, would eventually undermine the global economic system. In other words, states acted in pursuit of their own selfish interests, without recognizing that an international system of interdependence had emerged on its own and was easily destabilized by unilateral action.⁴² It was the upsetting of this system which policymakers believed was responsible (at least in large part) for the rise of fascism and the outbreak of war in 1939.

³⁹ See KNOCK, *supra* note 35, at 168-69. See generally HENRY CABOT LODGE, *THE SENATE AND THE LEAGUE OF NATIONS* 7-9 (1925); HERBERT F. MARGULIES, *THE MILD RESERVATIONISTS AND THE LEAGUE OF NATIONS CONTROVERSY IN THE SENATE* 30-31 (1989).

⁴⁰ See, *e.g.*, W.M. SCAMMELL, *THE INTERNATIONAL ECONOMY SINCE 1945* 39 (2d ed. 1984) (noting that United States and Britain adopted complementary approach to commercial policy following World War II).

⁴¹ See 1 EVAN LUARD, *A HISTORY OF THE UNITED NATIONS: THE YEARS OF WESTERN DOMINATION, 1945-1955* (1982) (discussing factors that led to establishment of United Nations).

⁴² See THOMAS L. ILGIN, *AUTONOMY AND INTERDEPENDENCE* 136 (concluding that interdependence requires prudent economic management at home as well as flexible responses to problems of coordination abroad that will inevitably arise among interwoven economies).

Leaders in America also recognized that it was the withdrawal of the United States following World War I and its failure to exercise international leadership that hastened the collapse of the 1930s. As if overcompensating for its earlier reticence, the United States aggressively asserted its economic, political, and military leadership in the decades after 1945.⁴³ It assumed the role of the world's central bank, primary industrial center, largest market and, perhaps most importantly, provider of almost all initiatives in international trade negotiations.

IV. THE BRETTON WOODS SYSTEM

The Bretton Woods system was designed to balance the conflicting objectives of individual states pursuing separate domestic economic programs and to maintain international monetary stability through fixed exchange rates and currency convertibility.⁴⁴ The United States dollar was fixed to the gold standard and became, like the Athenian "owl" of the Fifth Century B.C., the international currency.⁴⁵ The International Monetary Fund (IMF) was created to provide credit to states with short-term balance of payments problems—in other words, to finance deficits where necessary.⁴⁶

Under a system of weighted voting, the United States dominated the IMF and managed the international monetary system from 1945 until about 1960.⁴⁷ At that point, the economies of Western Europe and Japan had recovered and the United States became increasingly and adversely affected by the unfavorable balance of trade caused by the artificially high value of the dollar. Despite its collapse in 1971, the Bretton Woods system was the first successful regime to regulate an aspect of the international

⁴³ See, e.g., SCAMMELL, *supra* note 40, at 11 (noting compliance by foreign nations under implicit threat that United States would soon fully emerge from isolationism).

⁴⁴ GADDIS SMITH, *AMERICAN DIPLOMACY DURING THE SECOND WORLD WAR 1941-1945* 179 (1985) (providing insight into formation and early structure of IMF and World Bank and suggesting both domestic and international imperatives involved with each).

⁴⁵ See ALFRED E. ECKES, JR., *A SEARCH FOR SOLVENCY* 3-4 (1975) (discussing adherence to gold standard); see also ROBERT GILPIN, *THE POLITICAL ECONOMY OF INTERNATIONAL RELATIONS* 132-33 (1987) (noting that adoption of gold standard made it possible for domestic interventionism and international stability to co-exist).

⁴⁶ See ECKES, *supra* note 45, at 150-51 (noting that at outset money would be lent selectively to potentially prosperous European countries).

⁴⁷ See ECKES, *supra* note 45, at 148 (noting United States dominance of IMF).

economy.⁴⁸ Fiscal stability provided by Bretton Woods was essential for post-war reconstruction. This period of monetary stability was also important because it provided the framework within which the early GATT rounds were negotiated.

V. A COLD WAR RE-APPRAISAL

Reconstruction of the industrialized West was accomplished through a model of multi-national cooperation. Ruined capitalist states faced the real and perceived military threats of the Soviet Union. The outbreak of the Cold War in the late-1940s made it clear that the United Nations system, by itself, was unable to guarantee national security for the Western democracies. A program of economic reconstruction, the Marshall Plan, beneath an umbrella of collective security, NATO, characterized Western policies of this period.⁴⁹

Ideological competition between the East and West ultimately proved to be the environment in which the international trade system and GATT developed in its current form. The East-West schism, although based primarily on the Soviet military threat, caused two opposing ideological and economic systems to develop and function separately, although not in complete isolation from one another.⁵⁰ In the West, a liberal free market system with limited government oversight flourished within the framework of the Bretton Woods/GATT regime. The East Bloc system of stringent state-controlled economies, on the contrary, operated within the Soviet-dominated Council for Mutual Economic Assistance (COMECON) with a much lower degree of success.⁵¹ In essence, the industrialized West, led by the United States, was able to use

⁴⁸ See, e.g., SPERO, *supra* note 7, at 36 (noting that in 1947 under Bretton Woods System, Western system was on verge of collapsing).

⁴⁹ See STEPHEN E. AMBROSE, *RISE TO GLOBALISM* 88-91 (1971) (providing expansive discussion on interrelationship between economic efforts (Marshall Plan) and European security arrangements (NATO)).

⁵⁰ See ILGIN, *supra* note 42, at 22 (noting that growing compatibility in economic relations among Western allies permitted United States to focus on its policy of containment of Soviet Union).

⁵¹ See Robert W. Campbell, *Soviet Economic Policies and their Impact on the Pacific-Asian Region* 102-03, 111 in *PACIFIC-ASIAN ECONOMIC POLICIES AND REGIONAL INTERDEPENDENCE* (Robert Scalapino, et al. eds., 1988). Mr. Campbell describes the evolution of COMECON and the Soviet attempts in the 1970s to expand its international trade while remaining within a socialist framework. *Id.*; see also Charles K. Wilber & Kenneth P. Jameson, *Paradigms of Economic Development and Beyond*, in *THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT* 20-21 (Charles K. Wilber ed., 1988) (contrasting Soviet and Chinese approaches to economics and trade in post-war era).

the Cold War decades as a period to perfect their system and to expand it gradually throughout Latin America and Asia.

Ultimately, this contest came down to a battle of economic systems, not ideologies, and it was resolved in rather Darwinian fashion. Since the United States and its power bloc, consisting of Western Europe and assorted client-states throughout the developing world, had embraced, for better or worse, the more efficient system, it was able to exhaust economically the Russian imperium and bring about its sudden and dramatic political collapse. With the elimination of the bipolar contest, the inhibiting factor to the full integration of the world's economies was removed. Trade gaps replaced missile gaps and diplomatic crises were henceforth created by the dumping of microchips and not by the destabilization of client regimes.

The end of the Cold War and the collapse of the East Bloc at long last enabled the system developed in the industrialized West to "go global." If the conclusion of the Uruguay Round implies anything at all, it is that the entire international community, with the exception of a few rouge states, has adopted the international trade regime developed by the West in the Cold War period.

VI. GETTING TO GATT

Post-War reconstruction and development took almost fifty years before a final trade system emerged on which a consensus could be reached. Although conceived in 1947, GATT took so long because reconstruction of industrial bases and infrastructure required, in addition to global monetary stability, carefully tailored investment and tariff policies. Because most of the industrialized West required tariffs and non-tariff barriers to rebuild their post-war economies, tariff elimination could not seriously be discussed until the 1980s.⁵²

⁵² I like to believe that the Uruguay Round could have occurred earlier but for the vicissitudes of history. International commerce suffered from dramatic upheavals in the 1970s which discouraged GATT discussions. The most notable was the six-fold increase in the price of oil by OPEC between 1973 and 1974 which threw most of the industrialized world into a prolonged recession. The second occurrence, particularly from the United States' viewpoint, was the advent of Japan as a global economy. Long-term stagnation, increased competition from Japan, and a re-evaluation of Americas commitment to freer global trade mired progress toward the goal of barrier-free trade. See United States Trade Representative, 1996 NAT'L TRADE ESTIMATE REP. ON FOREIGN TRADE BARRIERS 7, 103-04 171-72 (1996) (providing examples of continued trade obstacles with particular emphasis on non-tariff barriers). See generally William A. Lovett, *Current World Trade Agenda: GATT, Regional-*

That barrier free trade was a premature wish in the 1940s is best illustrated by the demise of the GATT forerunners, the Havana Charter, and the International Trade Organization (ITO).⁵³ Both institutions fell victim to the developmental priorities of individual states, although many experts today would argue that barrier-free trade in the 1940s would have been a greater stimulus for economic recovery than the protectionist schemes adopted.⁵⁴ In the final analysis, even the United States succumbed to protectionist arguments and the Truman Administration, which had led the Havana Charter talks, refused to submit the treaty to the Senate where it would have been defeated.

Because economic recovery took precedence, the various GATT rounds resembled diplomatic foreplay which consistently highlighted the failure of industrialized nations to reach a consensus. The 1974 Tokyo Round was significant in one respect, however, because it addressed, for the first time, non-tariff barriers including subsidies, restrictive technical standards and the like.⁵⁵ Non-tariff barriers had, of course, by this time become a significant issue in their own right.

The collapse of the Soviet Union and the liberation of its ring of satellite states provided a catalyst to the GATT process at the end of the 1980s. For forty years, the world had experienced an ongoing ideological and strategic Cold War between the United States and the Soviet Union. Suddenly, the remaining political barriers to the global economy were gone and a myriad of new economies became linked to the international system.

ism, and Unresolved Asymmetry Problems, 62 FORDHAM L. REV. 2001, 2027 (1994) (discussing tariff and non-tariff trade barriers between GATT member nations and non-member nations).

⁵³ See Havana Charter for an International Trade Organization, U.N. Doc. E/Conf. 2178 (Mar. 24, 1948); see also Paul Demaret, *The Metamorphoses of the GATT: From The Havana Charter To The World Trade Organization*, 34 COLUM. J. TRANSNAT'L L. 123, 125-27 (1995) (discussing failings of Havana Charter and ITO).

⁵⁴ Economic nationalism continues to be an obstacle to the GATT system in the U.S. and around the world. Robert Gilpin has characterized the ideology of those who regard national economic interests as essential to the security of the state as "benign mercantilism." GILPIN, *supra* note 45, at 31-32.

⁵⁵ See Jeffrey E. Garten, *American Trade Law in a Changing World Economy*, 29 INT'L LAW. 15, 16-17 (1995) (noting how as result of Tokyo Round tariffs affect only small percentage of total value of global trade in goods). See generally GILBERT R. WINHAM, *INTERNATIONAL TRADE AND THE TOKYO ROUND NEGOTIATION* 256-72 (1987) (discussing non-tariff barriers as discussed during Tokyo Round negotiations).

VII. PRACTICAL CONSEQUENCES OF THE URUGUAY ROUND

For most of its early decades, GATT was more or less an organization through which parties resolved their bilateral trade disputes by negotiation. In this respect, it was more of a political forum than an adjudicatory one. For years, the United States had sought a more legalistic (*i.e.*, Americanized) fashion of dispute resolution that would adjudge trade disputes according to an established, but evolving body of international trade law. This effort was resisted by other states which viewed the American effort as one that would make GATT too powerful.

The persistent problem of non-tariff barriers caused the United States to act increasingly unilaterally against offending nations. Heightened aggressiveness by the Reagan Administration was the impetus behind the finalization of the WTO. Initially, much of the industrialized world had resisted United States proposals for a highly organized and legalistic WTO.⁵⁶ In view of increased American unilateralism, however, both the European Community and Japan realized that the best way to restrain the United States was to adopt the American proposals for the WTO.⁵⁷ Suddenly, a strong legalistic GATT was viewed as a means of countering the United States and deterring it from unilateral acts of which it alone was capable.

CONCLUSION

The central thesis of Hobbes' *Leviathan* is that to restrain man's natural urges and aggressions, the Sovereign must have the absolute power to regulate the individuals' intercourse with all other

⁵⁶ See Kendall W. Stiles, *The New WTO Regime, The Victory of Pragmatism*, 4 J. INT'L L. & PRAC. 3, 6 (1995). The American approach to the WTO is best summarized by Kendall Stiles. "[T]he legalist position has been embraced most consistently by the United States—primarily because it was felt that since United States law was more consistent with GATT, and therefore advocacy of strict compliance more often than not favored existing legislation and gave the representative the moral high ground." *Id.* See generally John H. Jackson, *The Jurisprudence of International Trade: The D.I.S.C. Case in GATT*, 72 AM J. INT'L. L. 747-48, 753-81 (1978) (detailing glacial pace of dispute resolution under GATT rules of 1970s).

⁵⁷ Bello & Holmer, *supra* note 31, at 1098-99; see also Steven P. Croley & John H. Jackson, *WTO Dispute Procedures, Standard of Review, And Deference to National Governments*, 90 AM. J. INT'L. L. 193 (1996) (providing historical and analytical analysis of GATT and WTO talks between Japan, European Community, and United States both historically and analytically).

individuals.⁵⁸ In this brief overview of how the WTO and GATT evolved, it is apparent that international law has finally developed to the point where it will play the role of Hobbes' Sovereign in regulating the interaction of individual states.

The most significant challenge to the new WTO remains the issue of non-tariff barriers. Complex and very often insidious non-tariff barriers take all forms and are far more difficult to define and to curtail than simple tariffs. Indeed, many experts have noted that such barriers will be permanent fixtures of international trade for years to come. Such barriers include: the Arab League Boycott of Israel and of multinational corporations that do business there; Japan's exclusionary business practices, known as the "Keiretsu"; and, the European Community's heavy agricultural subsidies. Despite the supposed trend away from governmental involvement with industrial performance, experts have noted that such participation is increasingly more important. Instead of fighting this trend, it has been suggested that policymakers accept a "market access regime" which recognizes the permanence of public-private sector coordination in national economies:

International agreements cannot end this assistance; International rules provide for timely review of the concerns of foreign competitors and, in some cases, lead to limited harmonization of national policies. The best guarantee of efficient competition is using trade or investment, including alliances, to introduce robust foreign competitors in all major economic centers. Such a strategy undercuts the benefits of protectionist policies by letting foreign competitors share in any special benefits conferred by trade barriers or special assistance to boost particular industries.⁵⁹

Although it is far from certain what the future will bring under the new WTO regime, many policymakers have begun to eschew

⁵⁸ See THOMAS HOBBS, *LEVIATHAN* 161 (1988). Hobbes provided the most extreme view of individual competition, and by analogy, intrastate competition:

I put for a generall inclination of all mankind, a perpetuall and restlesse desire of Power after power, that ceaseth onely in Death. And the cause of this, is not alwayes that a man hopes for a more intensive delight, than he has already attained to; or that he cannot be content with a moderate power: but because he cannot assure the power and the means to live well, which he hath present, without the acquisition of more. *Id.*; see also Ronald A. Brand, *External Sovereignty and International Law*, 18 *FORDHAM INT'L L.J.* 1685, 1687-90 (1995) (distinguishing between Hobbesian and Lockean views of interstate relations).

⁵⁹ Peter F. Cowley & Jonathan D. Aronson, *A New Trade Order*, 72 *FOREIGN AFF.* 183, 184 (1993).

standard models and formulas. The continued growth of multinational conglomerates, the rapid industrialization and modernization of formerly Third World Nations, and the demise of ideological conflict have raised all sorts of possibilities. The whole idea of the nation-state as the central actor on the world stage has been challenged by those who view regional economic zones as the emerging primary unit of the international community.⁶⁰ These transformations have had an impact upon all facets of international relations. Clearly, military force is no longer an option where the most serious disputes between states are based on commerce, even where that commerce is tied to national security. The drag that non-tariff barriers place on economic growth can only be addressed through bilateral negotiations or a multilateral approach through the WTO. It may be trite to suggest but, perhaps after centuries of conflict, mankind has finally buried the Hobbesian savage and accepted the primacy of international law.

⁶⁰ See Kenichi Ohmae, *The Rise of the Region State*, 72 FOREIGN AFF. 78, 79-81 (1993) (suggesting that "region States," economic units traversing national boundaries, are prime economic actors in international system); see also Harold Hongju Koh, *A World Transformed*, 20 YALE J. INT'L L. ix, xi-xii (1995) (noting decline of importance of sovereignty). See generally A. LeRoy Bennett, INTERNATIONAL ORGANIZATIONS 373-375 (5th ed. 1991) (discussing rise of the EEC). But see Robert W. Cox, *Special Forces, States and World Orders: Beyond international Relations Theory*, in NEOREALISM AND ITS CRITICS 205 (Robert O. Keohane ed., 1986) Keohane stresses the continued importance of the state as the primary actor. *Id.* Regional trade systems are not necessarily formalized by treaty or legal sanction.

See Hornbeck, *supra* note 31 ("NAFTA represents only one of many influences on bilateral trade flows and is often not most important").

