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# PERSPECTIVES

## United States International Competitiveness and Trade Policies for the 1980s

*Senator Dan Quayle\**

A new wave of protectionism is upon us and its undertow, if not the wave itself, constitutes a serious threat to the Western alliance. This "neo-protectionism" differs from familiar past practices of relying heavily on higher tariffs; it is more often characterized by the use of more subtle ploys such as dumping, subsidization, and the erection of difficult marketing requirements for foreign traders.

Unfortunately, our allies thus far have generally failed to realize that their neo-protectionist practices are creating a serious trade problem. Recently, for example, the Speaker of the French General Assembly facetiously remarked to me that what Europe really needs is another Marshall Plan. Thus, some Europeans apparently hope that the economically strong United States will once again "bail-out" its European allies. There is little recognition in Europe that the maintenance of unsubsidized free trade and access to markets is as much their responsibility as it is our own. The sooner Europeans realize this, the better off we all will be.

When one reflects on the underlying causes of international hostil-

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\* United States Senator, Indiana. The author acknowledges the research assistance of Barbara N. McLennan and Tom Duesterberg of his legislative staff.

ities and the decline of the economic vitality of certain Western nations, the usual focus is on respective weaknesses in military preparedness. Clearly, the Western alliance must establish a viable deterrent to the Soviet threat. However, continued economic and trade failure may well constitute a more serious threat to the future peace and prosperity of Western nations. One does not need to be reminded that economic distress triggered World Wars I and II as much as did expansionist military policies. Indeed, the military policies resulted in part from the economic chaos.

In this time when the possibility of nuclear holocaust exists, it is easy to emphasize our military concerns over the requirements for stable economic growth and development. Our greatest challenge for the long term, however, must be to preserve a viable and open international trading order. Protectionism will lead only to economic ruin and greatly increased international tension.

#### I. THE COMPLEXITY OF INTERNATIONAL TRADE AND THE LAWS OF COMPARATIVE ADVANTAGE

In the United States today, the severe 1981-1983 recession has led to an increase in domestic unemployment. This unemployment has been particularly marked in specific industries, most notably the steel and auto industries.<sup>1</sup> Some commentators<sup>2</sup> have noted that pressures towards protectionism, a phenomenon partially due to the recession, could lead to a "replay of the 1930s,"<sup>3</sup> a decade when international trade nearly ground to a complete halt. As in the 1930s, people in some quarters attribute our domestic economic problems to the actions of foreign powers, and not to our own policies and economic performance.<sup>4</sup> Indeed, if Congress responds to these people, we may see Congress pass the present day equivalent of the Smoot-Hawley Tariff of 1930.<sup>5</sup> The Smoot-Hawley Tariff stifled international trade, deepened the Great Depression, and set the stage for the economic and military upheavals which were to occur at the end of the 1930s.<sup>6</sup>

Instead, our response today should be in terms of efforts to im-

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<sup>1</sup> See Cowan, *Despite a Recovery, High Jobless Rate is Expected During the Next Two Years*, N.Y. Times, Jan. 2, 1983, § 4, at 4, col. 2.

<sup>2</sup> See, e.g., Kirkland, *Washington's Trade War of Words*, FORTUNE, Apr. 5, 1982, at 35; *A Global Trade War on the Way?*, U.S. NEWS & WORLD REP., Mar. 1, 1982, at 57.

<sup>3</sup> Greene, *The New Protectionism*, 3 NW. J. INT'L L. & BUS. 1, 2 (1981).

<sup>4</sup> See Pine, *Protectionist Push: Threat of a Trade War Rises as Recession Spurs Competition*, *Nations Impose Curbs*, Wall St. J., Nov. 17, 1982, at 54, col. 1.

<sup>5</sup> Pub. L. No. 361, 46 Stat. 590 (1930).

<sup>6</sup> For a discussion of the Smoot-Hawley Tariff and the circumstances which surrounded it, see J. DOBSON, *TWO CENTURIES OF TARIFFS* 33-34 (1976).

prove trade. This requires that the issues of international trade and competition be addressed with a sensitivity for the complexity of the international economic system. Unfair trade practices affect international trade, but so do such factors as the international currency exchange rate system, comparative levels of interest rates, and comparative levels of productivity.

A sensible paradigm for future efforts is provided by the laws of comparative advantage. Countries are best off when they specialize; in this way they can keep as high as possible the quality of the manufactured goods and services in which they have a comparative advantage. An appropriate trade policy for all countries, assuming a free and fair international marketplace, is to export those products for which they have a comparative advantage while importing those products at which they are at a comparative disadvantage. In this way, consumers in all trading nations can enjoy the highest quality products at the lowest possible price.

Protection by individual countries of particular products or industries, whether through the use of tariffs or non-tariff barriers, represents government sanction of economic inefficiency and almost always involves a cost to the consumer. Often, the effect of such policies is to raise the price of products above that which a free international market would set. The only way to protect higher-priced domestic products is to raise artificially the price which the domestic purchaser pays for otherwise lower-cost, imported merchandise. The consumer in the end loses the opportunity to purchase a product at its more efficient, lower cost.

United States international trade policies must seek to promote the efficient operation of a free and fair system of international trade. We must reduce and eliminate quotas and subsidies that protect the inefficient and raise costs for everyone. We must minimize our own use of such policies, and also persuade our trading partners that it would be to their advantage to do the same.

We must also recognize that our recent difficulties in international commerce are the result of a number of complex factors. Our recent very high rate of interest has caused a relatively high valuation for the United States dollar in international markets.<sup>7</sup> This valuation has had the effect of raising the price of United States goods in international markets and has had a direct impact on our ability to sell products abroad.

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<sup>7</sup> See *U.S. Dollar Shows Unexpected Strength Since Start of '83, Aided by Interest Rates*, Wall St. J., Jan. 31, 1983, at 28, col. 2.

In addition, it is clear that United States levels of productivity growth have declined in recent years. This has to some extent affected our ability to compete internationally with products manufactured in countries that have had rapid gains in technological improvement and in labor productivity.

Finally, it is clear that some of our major trading partners have pursued policies that have placed unfair trade burdens on some United States industries. This is an especially controversial issue during this period of world recession, when the unemployment rates in many industrialized countries are unacceptably high.<sup>8</sup> We must strive to reduce trade burdens fairly and equitably. Otherwise, the imminent disruption and possible destruction of international trade will add to the severity of the current world recession, and will ultimately be harmful to all importing and exporting nations.

This perspective analyzes trends in United States trade and productivity growth, compares them to trends in other industrialized nations, and suggests that one way to make United States industries more competitive in the international market is to make them more productive. The perspective also discusses the business subsidies which the United States gives to its sugar industry, and which other countries give to their steel industries, and analyzes the range of current legislative proposals which may affect international trade. It is argued that the United States must continue its leadership in striving for a free and open international trade system by removing the subsidies which it now maintains, and by compelling other countries to do the same. Since the United States has already removed most of its trade barriers, however, there must be new legislation to allow the United States to retaliate against countries which have not reciprocated by removing their own trade barriers. The United States must not move in the opposite direction and retaliate by re-erecting trade barriers equivalent to the barriers which its trading partners continue to maintain. Such a policy would be counterproductive, and, indeed, might lead to a trade war.

## II. ARE UNITED STATES GOODS AND SERVICES INTERNATIONALLY COMPETITIVE?

Since 1970, the United States has suffered recurring deficits in its balance of trade. The value of our exports has not kept up with the value of our imports, and this problem recently has reached nearly crisis proportions. Table 1 summarizes the trend in United States export performance between 1970 and 1980.

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<sup>8</sup> See Lewis, *Threshold of Sanity*, N.Y. Times, Nov. 23, 1982, at 27.

Table 1: Indicators of United States Export Performance<sup>9</sup>

	1970	1975	1976	1977	1978	1979	1980
Total merchandise exports (value in billions of \$)	42.7	107.7	115.2	121.2	143.7	181.9	220.6
Share of Free World <sup>a</sup> Exports (percent)	18.0	15.5	14.7	13.8	14.2	14.1	13.8
Exports of manufactured goods (in billions of \$)	29.3	71.0	77.2	80.2	94.5	116.7	144.0
Share of world <sup>b</sup> manufactured exports (percent)	21.3	19.1	18.8	17.3	17.0	17.4	18.3

(a) "Free World" includes all countries except Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, U.S.S.R., People's Republic of China, North Korea, Viet Nam, Cuba, and Outer Mongolia. Percentages exclude exports to the United States.

(b) "World" exports are defined as the sum of the exports from 15 major industrial countries (excluding exports to the United States): United States, Austria, Belgium, Canada, Denmark, France, Federal Republic of Germany, Italy, Netherlands, Norway, Sweden, Switzerland, United Kingdom, and Japan.

<sup>9</sup> Source of data in Table 1: U.S. DEPT OF COM., INT'L TRADE ADMIN., INT'L ECON. INDICATORS, Dec. 1981, at 21 (Merchandise Exports), 33 (Share of Free-World Exports), 28 (Exports of Manufactured Goods), 34 (Shares of World Exports of Manufactures).

While United States exports increased at an annual rate of approximately 13% in the first half of the 1970s, exports increased by only 7% in 1976 and 5% in 1977. At the same time, imports, which had increased at an annual rate of 12% in the first half of the decade, grew by 25% in 1976 and 21% in 1977.<sup>10</sup>

United States export performance also declined in comparison to other industrial countries. In 1970, the United States accounted for 18% of all goods and 21.3% of all manufactured goods exported by major Western industrial countries.<sup>11</sup> In 1978, the United States shares were 14.2% and 17%, respectively.<sup>12</sup> The United States loss of export shares was largely the result of increased shares by Japan and West Germany.

United States export performance improved in the period 1978-1980, with total exports increasing by 18.5% in 1978, 26.5% in 1979, and 21% in 1980.<sup>13</sup> In 1979, the value of the United States share of world manufactured exports increased to 17.4% (from 17% in 1978), the first such increase in recent years.<sup>14</sup> This improvement continued in 1980 and, by the fourth quarter of that year, the United States share was 18.3%.<sup>15</sup>

However, in 1981, largely due to the rapid appreciation of the dollar and relative weakening of the economies of major United States trading partners, United States export performance worsened. Exports grew nominally at less than 6% (an actual decline after allowing for inflation).<sup>16</sup> The United States share of exports of manufactures, after peaking at 21.6% in the second quarter of 1981, declined to 21.1% in the third quarter.<sup>17</sup>

Table 2 shows the levels of exports, imports, and other components of the United States current account for the years 1977-1981. The current account balance includes trade in services as well as merchandise and net unilateral transfers, such as pension payments, private

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<sup>10</sup> Krueger, *U.S. International Transactions, First Quarter 1981*, SURV. CURRENT BUS., Aug. 1981, at 31 (Table A.: Summary of U.S. International Transactions).

<sup>11</sup> See CENTRAL INTELLIGENCE AGENCY, DIRECTORATE OF INTELLIGENCE, HANDBOOK OF ECONOMIC STATISTICS 1982, at 80 (Table 52: Exports by Selected Non-Communist Countries).

<sup>12</sup> *Id.*

<sup>13</sup> See U.S. DEP'T OF COM., BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1981, at 843 (Table No. 1508: Exports and Imports of Merchandise: 1960-1980) [hereinafter STATISTICAL ABSTRACT 1981].

<sup>14</sup> CENTRAL INTELLIGENCE AGENCY, DIRECTORATE OF INTELLIGENCE, *supra* note 11, at 80.

<sup>15</sup> DiLullo, *U.S. International Transactions, Third Quarter 1981*, SURV. CURRENT BUS., Dec. 1981, at 31 (Table A: Summary of U.S. International Transactions).

<sup>16</sup> U.S. DEP'T COM. INT'L TRADE ADMIN., INT'L ECON. INDICATORS, Mar. 1982, at 21.

<sup>17</sup> DiLullo, *supra* note 15, at 31.

Table 2: Current Account Balance for the United States, 1977-1981 (billions of dollars)<sup>18</sup>

	1981 Quarter								
	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981P/</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV P/</u>
Merchandise									
Exports	120.8	142.1	182.1	224.0	236.3	61.1	60.5	58.0	7.0
Imports (f.a.s.)	151.7	175.8	211.5	249.3	264.1	65.8	67.4	65.1	6.2
Merchandise Balance	-30.9	-33.8	-29.5	-25.3	-27.8	-4.7	-6.9	-7.0	-9.2
Services <sup>a</sup>									
Exports	63.9	79.0	104.4	120.7	139.7	33.4	34.6	36.1	35.6
Imports	42.5	54.4	70.1	84.6	98.5	23.8	25.0	25.1	24.6
Services Balance	21.4	24.8	34.4	36.1	41.1	9.5	9.6	11.0	11.0
Balance on Goods and Services	-9.5	-9.0	7.0	10.8	13.3	4.9	2.6	4.0	1.8
Net Unilateral Transfers <sup>b</sup>	-4.6	-5.1	-5.6	-7.1	-6.7	-1.5	-1.5	-1.8	-1.9
Balance on Current Account	-14.1	-14.3	1.4	3.7	6.7	3.3	1.1	2.1	-0.1

<sup>a</sup> Includes travel, transportation, fees and royalties, insurance payments, other government and private services, investment income, and military transactions.

<sup>b</sup> Includes international transfers of funds, such as private gifts, pension payments, and government grants for which there is no quid pro quo.

Note: f.a.s. = free alongside ship. P = preliminary. Data are on a balance-of-payments basis.

<sup>18</sup> Source of data in Table 2: U.S. DEPT OF COM., U.S. DEPT COM. NEWS, Mar. 18, 1982; U.S. DEPT OF COM., BUREAU OF ECON. ANALYSIS, SURV. CURRENT BUS., Feb. 1982; U.S. DEPT OF COM., BUREAU OF ECON. ANALYSIS, SURV. OF CURRENT BUS., Dec. 1980.



gifts, and unilateral government grants. After successive deficits of \$14.1 billion in 1977 and 1978, the United States current account registered small surpluses in 1979 and 1980, despite sizeable merchandise trade deficits.

For 1981, the current account surplus of \$6.6 billion was the highest in five years. This was somewhat surprising, considering the appreciation of the dollar and the merchandise trade deficit of \$27.8 billion on a balance of payments basis. Income from services, however, was strong, yielding a surplus of \$11.0 billion in each of the last two quarters alone. Much of the increase in service income, however, did not come from exports but rather from higher private investment receipts from abroad. These were mainly from investments in petroleum and manufacturing, as well as from bank interest.<sup>19</sup> While such receipts benefit the domestic economy, they do not directly create jobs as would exports of goods or services (such as transportation or insurance).

A preliminary estimate for the 1982 United States current account balance is a deficit of \$8.8 billion.<sup>20</sup> This swing into deficit was due to a worsening merchandise trade deficit. United States exports did not keep up with the growth in imports because of sluggish recovery of foreign economies combined with a relatively strong United States dollar. For the first three quarters of 1982, the United States had an estimated merchandise trade deficit of about \$24 billion.<sup>21</sup> At least one forecaster expects the merchandise trade deficit to exceed \$29 billion for the entire year.<sup>22</sup> The current account deficit is likely to continue into 1983.<sup>23</sup>

The long-term decline in the United States performance in international trade coincides with an overall drop in United States productivity growth rates. Annual increases in manufacturing output per worker in the United States have, on the average, been lower than that of most of our major trading partners over the last twenty years.<sup>24</sup> At

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<sup>19</sup> U.S. DEP'T OF COM., BUREAU OF ECON. ANALYSIS, U.S. DEP'T COM. NEWS, Mar. 18, 1982.

<sup>20</sup> ECONOMIC REPORT OF THE PRESIDENT TRANSMITTED TO THE CONGRESS 283 (1983) (Table B-107: World trade balance and current account balances, 1965, 1970, 1975, and 1979-82).

<sup>21</sup> See *id.* at 278 (Table B-102: U.S. merchandise exports and imports by principal end-use category, 1965-82).

<sup>22</sup> DATA RESOURCES, INC., DATE RESOURCES U.S. REV., Dec. 1981, at 1.75 (Table 8.1: A Breakdown of the U.S. Current Account Balance) (a copy of this source is on file at the offices of the Northwestern Journal of International Law & Business).

<sup>23</sup> Data Resources, Inc. projects a United States current account balance deficit of \$30 million for 1983. *Id.*

<sup>24</sup> SENATE SUBCOMM. ON EMPLOYMENT AND PRODUCTIVITY OF THE COMM. ON LABOR AND HUMAN RESOURCES, 97TH CONG., 2D SESS., PRODUCTIVITY AND THE AMERICAN ECONOMY: RE-

the same time, as Table 3 indicates, our average rate of capital investment as a proportion of output has also been lower than that of our major international competitors.

*Table 3: Average Annual Capital Investment and Rate of Growth in Output in Manufacturing<sup>25</sup>*

Country	Capital Investment Proportion of Output*	Growth in Output per Employee Hour**
	(Average Annual Percent, 1960-1977)	(Average Annual Percent Increase, 1960-1978)
United States	9.1	2.8
United Kingdom	13.5	2.9
France	19.2 <sup>a</sup>	5.5
Canada	14.7	4.0
Germany	15.9 <sup>b</sup>	5.4
Japan	28.8 <sup>c</sup>	8.2

\* For comparative purposes output is measured at current factor cost.

\*\* All employed persons for United States and Canada; all employees for other countries.

<sup>a</sup> For total economy.

<sup>b</sup> 1960-1976.

<sup>c</sup> 1960-1974.

The results of our low productivity growth in manufacturing have profound implications for international trade. Over time, our industrial plants in certain industries have become obsolete and inefficient compared to the newer, more highly automated plants in other countries.<sup>26</sup> Today, products made in other countries are often of high quality and less expensive than their American equivalents. These differentials have allowed foreign products to enter the American market, where consumers have sought to maximize their purchasing power during a period of rapid inflation. The result has been a weakening of American industry, lay-offs, and unemployment. Unless United States industry responds with heavier capital investment and modernization of industrial plants, it is in danger of permanently losing domestic sales as well as foreign markets.

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PORT AND FINDINGS 6 (Comm. Print 1982) [hereinafter cited as PRODUCTIVITY AND THE AMERICAN ECONOMY].

<sup>25</sup> This table is reprinted from: COMMITTEE FOR ECONOMIC DEVELOPMENT, STIMULATING TECHNOLOGICAL PROGRESS 3 (1980) (data from the U.S. Department of Labor, Bureau of Labor Statistics).

<sup>26</sup> PRODUCTIVITY AND THE AMERICAN ECONOMY, *supra* note 24, at 1-2 (discussion of the United States steel industry).

The causes of our long-term decline in productivity growth are deep-seated and complex. They derive from habits and policies that spur domestic consumption at the expense of savings and investment. This has led to a relative decline in our traditional support for research and development. We have much to do to retrain and educate our work force to deal with new processes and technologies. We must also improve the quality of our management, and improve the relations between labor and management.<sup>27</sup>

Today, we are faced with policies which do not mesh with the changes that have taken place in our society over the past decade or two. For example, despite some pro-investment incentives in the Economic Recovery Tax Act of 1981 (ERTA),<sup>28</sup> current tax policies encourage consumption and extend credit for the interest accrued on expenses. Because inflation has eroded buying power over the last several years, individuals have attempted to convert their income to goods and real property as a hedge against inflation. While this tendency has possibly come to a halt, as the decline in the real cost of housing, art, gold, diamonds, and antiques suggests, the recent national tendency to consume rather than to save has resulted in a national average ratio of savings to disposable income below that of any other major industrial nation. Indeed, the United States ratio is less than one-fourth the averages of Italy and Japan; only one-third that of France, Germany and the United Kingdom; and less than half that of Canada.<sup>29</sup>

Individuals' reluctance to save has led to diminished capital available for investment. Currently high interest rates, largely a result of past inflation and perceptions of high future risk, have meant that businesses cannot borrow to expand and update their operations. One result of the reduction in capital available for investment and the inability of businesses to expand has been a downward trend in our capital-labor ratio. As already noted, due to a combination of long-term domestic economic policies and other countries' rapid productivity growth, American plants and businesses today are often not equipped with the efficient equipment or up-to-date materials found in the plants of other countries.<sup>30</sup>

At the same time that the labor force in the United States has experienced an increase in growth due to a large influx of women and

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<sup>27</sup> *Id.* at 9-17.

<sup>28</sup> Pub. L. No. 97-34, tit. I, 95 Stat. 176, 176 (1981).

<sup>29</sup> U.S. DEP'T OF COM., INT'L TRADE ADMIN., INT'L ECON. INDICATORS, June, 1980, at 12; U.S. DEP'T OF COM., INT'L TRADE ADMIN., INT'L ECON. INDICATORS, June, 1979, at 12-13 (statistics reprinted in *PRODUCTIVITY AND THE AMERICAN ECONOMY*, *supra* note 24, at 5).

<sup>30</sup> See *supra* text accompanying note 26.

inexperienced youth, the country's capital stock has grown at a reduced rate. From 1947 to 1973, capital stock grew at an average annual rate of about 4%.<sup>31</sup> Since 1973, however, this average has been less than 2.5%.<sup>32</sup> Net of depreciation, capital per full- and part-time employed person rose at an average annual rate of about 2.37-2.71% from 1948 until 1973, but fell to about .77% thereafter.<sup>33</sup> Table 4 shows that average annual growth in gross domestic product per employed person has been lower in the United States than for any industrialized country from 1960 through 1979, with the 1970s showing a significant proportional drop compared to the 1960s.

Table 4: Average Annual Growth in Gross Domestic Product Per Employed Person in Leading Industrial Countries, 1960-1979 (Percent change per year)<sup>34</sup>

Country	1960 to 1979 <sup>a</sup>	1960 to 1970	1970 to 1979 <sup>a</sup>
United States	1.5	2.0	1.1
Belgium	3.7	4.2	3.2
Canada	1.9	2.3	1.3
France	4.2	4.9	3.4
Germany	3.9	4.4	3.4
Italy	4.6	6.4	2.6
Japan	7.1	9.5	4.5
Netherlands <sup>b</sup>	3.6	4.0	3.3
United Kingdom	2.4	2.7	2.0

<sup>a</sup> Data for 1979 are preliminary.

<sup>b</sup> Employment figures for the Netherlands are Dutch estimates of work-years of employed persons.

A major side-effect of the declines in personal savings and the erosion of buying power is the dramatic decline in our research and development (R&D) activities. Total spending in the United States for R&D declined from a peak 2.91% of GNP in 1965 to 2.27% in 1978.<sup>35</sup> In contrast, many of our competitors have, in recent years, increased their R&D spending in relation to their GNP. In the past twenty years, R&D/GNP ratios have been rising substantially in Japan, France, and Germany.<sup>36</sup> These are the countries that now constitute our most vig-

<sup>31</sup> CONGRESSIONAL BUDGET OFFICE, THE PRODUCTIVITY PROBLEM: ALTERNATIVES FOR ACTION 34 (1981).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 33 (Table 12: Various Measures of the Growth in Capital and the Ratio of Capital to Labor in the Nonfarm, Nonresidential Business Sector).

<sup>34</sup> This table is reprinted from: CONGRESSIONAL BUDGET OFFICE, *supra* note 31, at 136 (previously unpublished data from the U.S. Department of Labor, Bureau of Labor Statistics).

<sup>35</sup> *Id.* at 69.

<sup>36</sup> *Id.* at 71.

orous rivals in international trade. In addition, a large portion of United States R&D has been devoted to defense and space research; in contrast, Japan and other European countries have concentrated on manufacturing and industrial R&D.<sup>37</sup>

Because there is a lag between the time R&D is developed and the time it is applied to industry and becomes profitable, it is unclear how much the decline in R&D spending has caused the slow-down in productivity. Yet, R&D is a source of new knowledge and technologies. Ultimately, R&D stimulates productivity growth.

Increased support for R&D should encourage the growth of new technologies such as biotechnology and energy technology. It should also improve output per worker-hour through the increased use of robotics and other new manufacturing techniques. Innovation is likely to respond to such basic factors as the prospect of economic gain and improved quality of business management. While the government plays a secondary role in this process, it can encourage or discourage innovation through its policies in such areas as taxation, business regulation, patent law, support for scientific investigation, and the dissemination of information.

Today, however, we are paying a heavy price in international trade for the slowdown in savings, investment, and research activities which began in the late 1960s. The overall level of United States productivity is still somewhat higher than the level in all other industrial nations, even though our growth rate has declined over a fairly long period. Although our manufacturing sector has always been a world leader in the use of technological innovation to improve productivity, our international competitors are rapidly catching up. In 1980, exports of manufactured goods accounted for 65% of the value of all United States exports, about the same percentage as in 1970. It is therefore essential for us to stimulate our manufacturing productivity growth rates to retain our share of the international market and to stimulate the growth of civilian employment.<sup>38</sup>

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<sup>37</sup> *Id.* at 74.

<sup>38</sup> *Productivity in the American Economy, 1982: Hearings Before the Subcomm. on Employment and Productivity of the Senate Comm. on Labor and Human Resources, 97th Cong., 2d Sess. 629 (1982)* [hereinafter cited as *Hearings on Productivity*] (article by Kenneth McLennen, Vice President and Director of Industrial Studies, Committee for Economic Development).

III. A WRONG APPROACH TO INTERNATIONAL TRADE:  
UNITED STATES SUGAR SUBSIDY

A. *Productivity in the United States Sugar Industry*

United States agriculture has, to a large extent, been immune to the slow-down in productivity growth which has affected the industrial sector. Improvements in machinery, fertilizers, and, most importantly, improvements in modern hybrid seeds have contributed to constant growth in both productivity and output. Steady growth in worldwide demand kept agricultural prices generally strong throughout the 1960s and 1970s, and provided the earnings needed for improved mechanization and the use of the new technologies in modern fertilizers and seeds. Total exports of agricultural products grew from an average of \$5.4 billion in 1960-64<sup>39</sup> to almost \$43.5 billion in 1981.<sup>40</sup>

Productivity on United States farms has advanced almost exponentially since 1950. Table 5 provides an index of productivity growth in terms of farm output per hour of labor for all agriculture and for selected products.

Table 5: Farm Productivity Output per Labor Hour<sup>41</sup>

	All Products	Livestock	All Crops	Feed Grains	Cotton	Sugar
1950	34	37	36	22	26	38
1955	44	46	45	30	39	53
1960	65	62	66	57	57	78
1965	89	86	90	91	102	88
1970	115	121	111	109	136	116
1975	152	160	142	156	255	134
1979 <sup>a</sup>	198	222	182	221	571	145

1967 = 100

<sup>a</sup> Data for 1979 are preliminary.

This productivity growth has allowed the United States to maintain its comparative advantage in the world agricultural trade of such basic commodities as wheat, corn, and soybeans. Although a few countries have bettered the United States yields on one or more of these crops, United States productivity remains well above the world aver-

<sup>39</sup> U.S. DEPT OF COM., BUREAU OF ECON. ANALYSIS, BUSINESS STATISTICS 99 (1979) (Table: Foreign Trade of the United States, Value of Exports).

<sup>40</sup> U.S. DEPT OF COM., BUREAU OF ECON. ANALYSIS, SURV. CURRENT BUS., Oct. 1982, at S-17 (Table: Foreign Trade of the United States, Value of Exports, Agricultural Products, Total).

<sup>41</sup> Source of data in Table 5: STATISTICAL ABSTRACT 1981, *supra* note 13, at 681 (Table No. 1211: Farm Productivity—Labor-Hours and Indexes of Farm Output per Hour).

age.<sup>42</sup> As a consequence, in 1978 the United States sold 39% of all the wheat grain, 77% of all the corn, grain, and 77% of all the soybeans which were traded in international markets.<sup>43</sup>

*Table 6: Yields for Selected Crops, 1978*  
(Metric Tons per Hectare)<sup>44</sup>

<u>Crop</u>	<u>U.S.</u>	<u>Western Europe</u>	<u>World Trade</u> <u>(including U.S.)</u>
Corn	6.33	5.17	3.03
Wheat	2.13	3.69	1.97
Soybeans	2.16	N/A	1.83

Sugar is one of only a few crops that the United States imports in large quantities. Over the past ten years, we have imported an average of five million tons of sugar per year.<sup>45</sup> Domestic production costs tend to exceed our competitors' costs because of higher domestic labor, land, and irrigation costs.<sup>46</sup> This disadvantage has not been offset by the general improvement in domestic agricultural productivity. Table 7 indicates that sugar has lagged behind other crops in terms of labor productivity growth since 1966. Additionally, as Table 7 shows, United States producers now lag behind major competitors in terms of sugar produced per hectare. One explanation for this lack of productivity growth is that since 1970, production has increased in mainland growing areas, often on marginal lands.<sup>47</sup>

<sup>42</sup> See *infra* Table 6 accompanying note 44.

<sup>43</sup> U.S. DEP'T OF COM., BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1981, at 710 (Table No. 1246).

<sup>44</sup> Source of data in Table 6: U.S. DEP'T OF AGRIC., AGRICULTURAL STATISTICS 35-36 (corn); 9-10 (wheat); 133 (soybeans) (1981).

<sup>45</sup> U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., SUGAR & SWEETENER: OUTLOOK & SITUATION, May 1982, at 21 (No. SSRV7N2).

<sup>46</sup> See SCHNITTKER ASSOCIATES, SWEETNER MARKETS AND POLICIES - THE '80s, AN ANALYSIS AND COMPENDIUM OF FACTS ch. 2 (1983).

<sup>47</sup> See COMPTROLLER GENERAL OF THE U.S., REPORT TO THE CONGRESS OF THE U.S.—SUGAR AND OTHER SWEETENERS: AN INDUSTRY ASSESSMENT 29 (1979).

**Table 7: Yields of Beet and Cane Sugar Crops in Selected Countries, 1981-1982: Tons per Hectare<sup>48</sup>**

	<u>Cane Sugar</u>	<u>Beet Sugar</u>
U.S. Mainland	6.36	6.10
Hawaii*	23.68	N/A
Columbia	13.58	N/A
Honduras	7.03	N/A
Brazil	4.91	N/A
South Africa	8.72	N/A
Australia	11.27	N/A
Dominican Republic	5.64	N/A
France	N/A	8.81
West Germany	N/A	7.94
Netherlands	N/A	8.59
Italy	N/A	7.03
Switzerland	N/A	9.43
Chile	N/A	7.00

\* Hawaiian cane is harvested no more frequently than every 24 months, explaining the dramatically higher yields.

Reflecting both worldwide overproduction and lower production costs in most cane-producing nations, the world price of sugar has fallen from its 1974 level of 30 cents per pound to just under 7 cents per pound.<sup>49</sup> In late 1981, the United States Congress passed and the President signed a bill designed to keep domestic sugar prices substantially above this level.<sup>50</sup> This sugar price support program is likely to result in considerable damage to both the United States economy and to relations with our trading partners. The program also contravenes the basic principle of open trade and comparative advantage which has been the cornerstone of our economic and trading policy.

### *B. Cost of the Sugar Subsidy to the American Consumer*

The problems caused by the sugar program begin with the costs it imposes on American sugar consumers. For the 1981-1982 crop year, Congress required sugar to be supported at 16.75 cents per pound.<sup>51</sup> To avoid direct costs to the government, the United States Department of Agriculture and the President are attempting to keep domestic prices

<sup>48</sup> Source of data in Table 7: U.S. DEP'T OF AGRIC., FOREIGN AGRIC. CIRCULAR: SUGAR, July 1982, at 18-23 (No. FS 1-82).

<sup>49</sup> U.S. DEP'T OF AGRIC. ECON. RESEARCH SERV., SUGAR & SWEETENER: OUTLOOK & SITUATION, Sept. 1982, and 5-6 (No. SSRV7N3).

<sup>50</sup> Agricultural and Food Act of 1981, Pub. L. No. 97-98, 95 Stat. 1213 (codified in scattered sections of 7 and 16 U.S.C.A. (West Supp. 1982)).

<sup>51</sup> 7 U.S.C.A. § 1446(h)(1) (West Supp. 1982).



above 19.88 cents per pound.<sup>52</sup> Import duties and fees in effect add about 7 cents per pound to the world price<sup>53</sup> and import quotas drive up prices another 4 to 5 cents.<sup>54</sup> Thus, the current world price of 7 cents is raised by more than 12 cents per pound. Since each additional penny in sugar prices adds \$300 million to the nation's sugar bill, the total "sugar tax" imposed on American consumers amounts to more than \$3.6 billion on an annual basis. Viewed from another angle, the sugar program is currently costing each man, woman, and child in this country about \$15.50 per year.<sup>55</sup> The sugar support price will rise in future years, reaching 18 cents per pound in 1985.<sup>56</sup>

Highly restrictive import quotas imposed to protect sugar prices involve special problems for domestic sugar users. Over 40% of the United States sugar supply is imported.<sup>57</sup> In 1981, the United States imported five million tons of sugar.<sup>58</sup> Quotas are expected to be a factor in reducing this figure to three million tons in 1982.<sup>59</sup> Some spot shortages of sugar have already occurred in certain areas which depend on imported sugar. Additionally, since refiners of foreign sugar cannot be assured of supplies, they may be faced with the prospect of not making contracted deliveries to major users such as confectioners, bakers, soft drink bottlers, and food processors. Unreliable trading partners, as we have seen in the aftermath of our grain and soybean export embargoes,<sup>60</sup> tend to have great difficulties in regaining their markets or sources of supply. Finally, not the least of the problems caused by restrictive quotas is that they have raised domestic raw sugar prices well above the level needed to protect the government support program. Although a price of 19.88 cents is all that is needed, excessively tight quotas have raised the spot price to 23 cents,<sup>61</sup> and, thus, have

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<sup>52</sup> If the domestic market price falls below 19.88 cents per pound, it is more profitable for growers to sell their sugar directly to the government at 16.75 cents. For an explanation of the Program, see U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., SUGAR & SWEETENER: OUTLOOK & SITUATION, Feb. 1982 (No. SSRV7N1).

<sup>53</sup> U.S. DEP'T OF AGRIC., *supra* note 45, at 5-7.

<sup>54</sup> *Id.* at 7.

<sup>55</sup> See generally *Sugar Price Rise Hits Consumer: Food, Beverage Concerns Pass Along Increase*, N.Y. Times, June 14, 1980, at 29, col. 3.

<sup>56</sup> 7 U.S.C.A. § 1446(h)(1) (West Supp. 1982).

<sup>57</sup> CROP REPORTING BOARD, ECON. & STATISTICS SERV., U.S. DEP'T OF AGRIC., SUGAR MARKET STATISTICS, June 25, 1981, at 7 (Table 8—Sugar Receipts of Refiners and Importers by Source of Supply, January-April 1981 and 1980).

<sup>58</sup> U.S. DEP'T OF AGRIC., *supra* note 52, at 12.

<sup>59</sup> U.S. DEP'T OF AGRIC., *supra* note 49, at 4, 12.

<sup>60</sup> In 1980, President Carter imposed grain and soybean embargoes on the U.S.S.R. in response to the Soviet Union's military intervention in Afghanistan. See, e.g., NY Times, Jan. 5, 1980, at 1, col. 6.

<sup>61</sup> U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., SUGAR & SWEETENER: OUTLOOK & SITUATION, May 1981, at 2 (New York Spot Price).

raised costs to sugar users even further than the price which the USDA and the President have set.

*C. Effect of the Sugar Subsidy on United States Foreign Policy*

Another major problem caused by our sugar program stems from its impact on United States foreign policy objectives. Apart from the fact that the use of import quotas blatantly contradicts our stated policy of trying to promote a free international trading order, the quotas have real and immediate effects on our foreign policy in the western hemisphere and in Southeast Asia.

Sugar is a widely produced crop in the tropical climates of the Caribbean, South America, and Southeast Asia. Many sugar growing countries depend on this crop for a large part of their export earnings, and, indeed, for major portions of their GNP.<sup>62</sup> In the Dominican Republic, for instance, 10% of the population works in the sugar industry.<sup>63</sup> Since over 50% of the sugar from the Dominican Republic is sold to the United States,<sup>64</sup> the import quotas hit that nation particularly hard.

The Reagan Administration and its predecessors have emphasized that the Caribbean and South America must be economically stable in order to be politically stable. The President has articulated and formalized this policy at least partly in his proposed Caribbean Basin Initiative.<sup>65</sup>

Our sugar program, with its system of tariffs and quotas, clearly undermines United States policy towards the Caribbean and South America and detracts from the Caribbean Basin Initiative. Additionally, the combination of domestic support programs in the United States and similar programs in Europe, along with United States import quotas, have helped to drive world sugar prices to their lowest point in ten years.<sup>66</sup> The depressed world price injures the foreign cur-

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<sup>62</sup> For example, sugar and sugar byproducts comprised 34% of the Dominican Republic's export earnings in 1980. *Dominican Republic*, U.S. DEP'T OF STATE, BUREAU OF PUB. AFF., BACKGROUND NOTES, Oct. 1981, at 6.

<sup>63</sup> COMPTROLLER GENERAL OF THE U.S., *supra* note 47, at 70.

<sup>64</sup> U.S. DEP'T OF AGRIC., *supra* note 61, at 27 (Table 3: World Centrifugal Sugar Production in Specified Countries, Raw Value, 1976/77 to 1980/81); 41 (Table 17: U.S. Sugar Imports by Country, Annual, 1976-80).

<sup>65</sup> See S.2237, 97th Cong., 2d Sess. (1982); H.R. 5900, 97th Cong., 2d Sess. (1982). The future of the Caribbean Basin Economic Recovery Act is uncertain due to questions about the nature of its direct economic aid provisions, opposition by domestic industries such as the sugar, footwear, and leather goods industries to its trade concession proposal, and the reluctance of Congress to appropriate the funds necessary to implement the Act.

<sup>66</sup> U.S. DEP'T OF AGRIC., *supra* note 49, at 5-6; U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., SUGAR & SWEETENER: OUTLOOK & SITUATION, Dec. 1982, at 5 (SSRV7N4).

rency earnings of sugar-producing nations and hinders their ability to buy from the United States or other foreign producers. Furthermore, some sugar exporters who depend on United States markets cannot even sell their sugar.<sup>67</sup> Indeed, the United States quotas, now in effect for some countries, are so low that they do not constitute a full ship-load. The economies of the Dominican Republic, Thailand, the Philippines, Argentina, Costa Rica, El Salvador, Guatemala, Honduras, Panama, Ecuador, Peru, and Brazil are, thus, being buffeted by our protectionism while we extol the virtues of free trade.

The import quotas have come at a particularly bad time in United States relations with our American neighbors. The Secretary General of the Organization of American States (OAS), Mr. Alejandro Orfila, protested the imposition of quotas on imported sugar in a letter to President Reagan on May 20, 1982:

Even while Latin America has sought to expand its trade horizons, world prices for commodities such as sugar, coffee, bananas, meat and cotton—its principal exports—have gone down. As a consequence the region is not earning the income it requires to offset high hydrocarbon and debt servicing costs. With the imposition of U.S. quotas and the maintenance of very high duty rates and import fees on sugar, however forced by unforeseeable or uncontrollable conditions, the short-term economic outlook for many Latin American countries has become even more negative. Estimates indicate that under these new U.S. measures between mid-May and June 30, 1982, Latin American exporters will stand to lose about \$16.4 million. This figure, incidentally, may reach perhaps \$90 million over the rest of the year.<sup>68</sup>

Mr. Orfila concludes his letter by saying:

Given the overwhelmingly negative attitude in Latin America and the Caribbean towards these new U.S. measures, it would appear, Mr. President, that reconsideration of alternative policies is urgently required. Otherwise the prospects both for an economic turnaround in the region and for a near-term improvement in relations between OAS states can hardly be optimistic.<sup>69</sup>

In addition to undermining the stated foreign policy objective of the Reagan Administration, the use of import quotas may give ammunition to those who are bristling with protectionist sentiment, both domestically and abroad. We must remember that the United States enjoys a huge trade surplus in agricultural commodities. In 1981, our agricultural trade surplus reached \$26.5 billion.<sup>70</sup> In 1981 alone, we

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<sup>67</sup> See generally *No Sweets for the Carribean*, N.Y. Times, Sept. 24, 1982, at 30.

<sup>68</sup> Letter from Alejandro Orfila, Secretary General, Organization of American States, to President Reagan, May 20, 1982.

<sup>69</sup> *Id.*

<sup>70</sup> U.S. DEP'T OF AGRIC., 1982 HANDBOOK OF AGRICULTURAL CHARTS 61 (1982).

exported over \$2.5 billion worth of wheat and grains to ten major sugar exporting nations.<sup>71</sup> In 1980 we had an agricultural trade surplus of \$6.8 billion with Europe and \$5.7 billion with Japan.<sup>72</sup>

The possible consequences to United States farmers of a rising spiral of trade restrictions should be of extreme concern. A brief look at international reaction to United States sugar import quotas reveals the extent of this danger. On April 26, 1982, Trade Representative William Brock said that sugar import quotas would "make it more difficult" to press the European Economic Community (EEC) and Japan to ease their restrictions on United States agricultural imports.<sup>73</sup> On May 14, 1982, an EEC official was quoted as saying he believes United States sugar import quotas may "help dispel the myth that our agriculture is more subsidized than in the United States."<sup>74</sup> On this issue, he continued, "Americans really live in a glass house and they really should not throw stones at us."<sup>75</sup> On May 17, 1982, Japanese Foreign Minister Yoshio Sakurauchi told the United States that Japan has virtually ruled out any immediate removal of import restrictions on agricultural products.<sup>76</sup> Japanese officials said their government would be quick to "point out Washington's recent imposition of sugar import quotas to counter any pressure by the U.S."<sup>77</sup> Although such statements are the normal rhetoric and posturing of trade negotiations, they indicate that sugar import quotas will make our efforts to ease existing trade barriers and to prevent additional restrictions considerably more difficult.

Domestic sugar producers argue that an EEC sugar price support program and alleged "dumping" of surplus EEC sugar are the root cause of depressed world sugar prices.<sup>78</sup> They also argue that the United States sugar program along with sugar import quotas are necessary to protect domestic producers from material injury. Ten sugar producing nations other than the United States have already petitioned GATT under article 23 to protest the EEC sugar price support pro-

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<sup>71</sup> U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., FOREIGN AGRIC. TRADE U.S., Nov.-Dec. 1982, at 16-31 (Table 8: Agricultural Exports: Quantity and Value by Commodity and Country).

<sup>72</sup> U.S. DEP'T OF AGRIC., ECON. & STATISTICS SERV., FOREIGN AGRIC. TRADE U.S., May-June 1981, Table 7.

<sup>73</sup> REUTERS WIRE SERVICE REPORTS, April 26, 1982 (Editors note: We were unable to get copies of the REUTERS WIRE SERVICE REPORTS cited in notes 73-77 by the time of publication to verify the quotations).

<sup>74</sup> REUTERS WIRE SERVICE REPORTS, May 14, 1982.

<sup>75</sup> *Id.*

<sup>76</sup> REUTERS WIRE SERVICE REPORTS, May 17, 1982.

<sup>77</sup> *Id.*

<sup>78</sup> See the complaint filed with the Office of the U.S. Trade Representative by the Great Western Sugar Co., Docket No. 301-22, 46, 49, at 697-701 (1981).

gram.<sup>79</sup> These complainants argue that EEC subsidies have stimulated production and created a glut of sugar that has depressed world prices. They also contend that subsidized dumping of sugar on the part of the EEC is reducing their share of world sugar trade.<sup>80</sup> GATT is reviewing the petition of the ten sugar-exporting nations,<sup>81</sup> and the Office of the United States Trade Representative is still considering the advisability of a formal petition for a GATT panel on this subject.

Although one cannot deny the existence of the EEC price support program which guarantees European producers a floor price of about 22 cents per pound for a quota which represents domestic consumption within the EEC,<sup>82</sup> it is not clear that the EEC "dumping" of surplus sugar is the sole cause of depressed sugar prices.

It must be kept in mind that sugar prices have been extremely volatile throughout the twentieth century and that the EEC did not begin exporting sugar until the late 1970s, after a particularly volatile period for sugar prices. In the 1970s, world sugar prices fluctuated between 7 and 60 cents per pound.<sup>83</sup> In 1972 the average price was 7.43 cents.<sup>84</sup> By 1974 it was up to 29.9 cents, but then declined to 7.8 cents in 1977.<sup>85</sup> In 1981 alone, the price varied between 11 and 28 cents.<sup>86</sup>

Unfortunately, sugar prices are at the mercy of mother nature. Much as we might try to place the blame on some outside source, such as the EEC or United States subsidy programs, sugar prices depend on supply and demand. Increases in EEC production after 1975, largely accounted for by increases in productivity, have allowed the Europeans to enter the export markets. EEC sugar growers may have a cushion for sugar grown under the quota for European consumption, but they still must pay for the export subsidies out of their own pockets.<sup>87</sup>

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<sup>79</sup> The countries are: Argentina, Australia, Brazil, Colombia, Cuba, Dominican Republic, India, Nicaragua, Peru, and The Philippines.

<sup>80</sup> For an expression of this argument, see the Congressional debate on the sugar provision of the 1981 Farm Bill, 127 CONG. REC. S.9784-9805 (daily ed. Sept. 17, 1981).

<sup>81</sup> See *GATT Agrees to Set Up Dispute Panels on Canada's FIRA, EC Fruit Subsidies*, [Apr.-Sept.] U.S. INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 402, at 16 (Apr. 6, 1982).

<sup>82</sup> The EEC's scheme for supporting sugar prices is set out in Council Reg. No. 1785/81 on the Common Organization of the Market in Sugar, O.J. EUR. COMM. (No. L 177) 1 (1981), as amended by Council Reg. No. 192/82, O.J. EUR. COMM. (No. L 21) 1 (1982) and Council Reg. No. 606/82, O.J. EUR. COMM. (No. L 74) 1 (1982).

<sup>83</sup> U.S. DEP'T OF AGRIC., *supra* note 45.

<sup>84</sup> See *id.* at 6.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> For a description of the EEC Sugar Program, see *A New Common Organization of the Markets in Sugar as from 1 July, 1981*, GREEN EUROPE: NEWSLETTER ON THE COMMON AGRICULTURAL POLICY (1981) (No. 180).

*D. Dangers of Protectionism in the World Sugar Trade*

Blaming the Europeans for dumping and depressing world sugar markets, therefore, will not solve the problems of the United States sugar industry. Even a cursory examination of the history of sugar prices reveals their highly cyclical nature. We should admit this fact of life, and live with the consequences. Blaming the Europeans, much less retaliating against them, will not rid us of the alleged "need" for the United States sugar support program. It only deflects our attention from the economic realities of our own price support program.

The most ironic aspect of using sugar import quotas as a form of retaliation against the Europeans is that they have relatively little impact on the Europeans themselves. The United States does not import EEC sugar, so the impact of quotas falls largely on traditional sources of United States sugar imports, such as Brazil, the Dominican Republic, the Philippines, Australia, and the Caribbean nations. Quotas only affect the EEC to the extent that they depress world demand and prices for sugar. Furthermore, the United States has imposed countervailing duties on EEC sugar since 1978.<sup>88</sup>

A much more responsible and less dangerous way to counter any unfair trading practice by the Europeans or any others is to follow the well-established mechanisms of GATT to resolve disputes.<sup>89</sup> Admittedly, this method is laborious and sometimes frustrating, but the international trading order formalized in the GATT agreements is worth preserving. Unilateral action circumventing GATT will only invite the European nations and others to do the same for commodities such as corn or soybeans. Such a trade war can only hurt everyone involved.

The price American consumers and American farmers are being asked to pay to protect the domestic sugar industry is simply too high. Artificial price increases of this widely-used commodity can only set back United States efforts to bring inflation under control. Subsidization of a relatively inefficient industry only deflects needed investment capital from more productive industries. The private sector needs to build up its savings, and direct investment of capital in industries where we have a clear comparative advantage over other nations. However, the sugar program completely defies this principle. American consumers pay a subsidy of more than \$3.6 billion to the United

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<sup>88</sup> For the final determination on the imposition of these countervailing duties, which are now set at 3.5%, see 43 Fed. Reg. 33,237 (1978).

<sup>89</sup> For a discussion of GATT dispute settlement mechanisms, see de Kieffer, *GATT Dispute Settlements: A New Beginning in International and U.S. Trade Law*, 2 NW. J. INT'L L. & BUS. 317 (1980).

States sugar industry,<sup>90</sup> which serves only to escalate the spiral leading to protectionism. American sugar producers are protected in a way that will encourage the EEC, Japan, and South American countries to create new barriers against other United States agricultural exports. The international trading order must not be jettisoned so cavalierly to protect sugar.

Protectionism in international trade is always self-defeating in the long run. Even in the short run, United States protection of the domestic sugar industry can only reduce world trade because sugar exports are a vital source of earnings to the developing, sugar-producing nations of South America and Southeast Asia. Without earnings from sugar, these nations will be unable to buy the feed grains and manufactured goods produced so efficiently in the United States.

In May 1982, Senator Tsongas and I, along with twenty co-sponsors, introduced a bill which would eliminate the sugar program altogether.<sup>91</sup> It is the opinion of this author that it should be the ultimate goal of our actions in Congress. In addition, Senator Tsongas and I have offered an interim plan to reduce the sugar price supports to a level at which import quotas would not be needed.<sup>92</sup> As a step toward phasing out this costly program of quotas, a reduction in the price support level would give some relief to United States consumers and allow the elimination of the import quotas which have been fanning the fires of a trade war.

#### IV. THE UNITED STATES STEEL INDUSTRY AND THE ISSUE OF FOREIGN DUMPING

##### *A. Productivity in the United States Steel Industry*

The United States steel industry today is suffering through a period of severe recession. In northwest Indiana, between 1979 and 1982, more than 20,000 steelworkers lost their jobs.<sup>93</sup> This undoubtedly accounts for a large percentage of the 41,000 people who were unem-

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<sup>90</sup> See *supra* text accompanying notes 51-56.

<sup>91</sup> S.2484, 97th Cong., 2d Sess. (1982). This bill has been referred to the Senate Committee on Agriculture, Nutrition and Forestry. An identical bill, H.R. 6161, 97th Cong., 2d Sess. (1982), has been introduced in the House of Representatives by Congressman Peyser and has 25 co-sponsors. This bill has been referred to the House Agriculture Committee.

<sup>92</sup> Printed Amendment No. 2016. This amendment was to be offered as a floor amendment to H.J. Res. 520, 97th Cong., 2d Sess. (1982), a joint resolution to extend and raise the public debt limit. The final version of H.J. Res. 520, Pub. L. No. 97-270, signed into law by the President on September 30, 1982, however, did not contain the amendment. However, on March 11, 1983, Senator Tsongas, Senator Chafee, and I introduced S.788, a bill similar to amendment 2016, in the 97th Congress. S.788, 98th Cong., 1st Sess., 129 *Cong. Rec.* S.2676 (daily ed. Mar. 11, 1983).

<sup>93</sup> 128 CONG. REC. S.7263 (daily ed. June 22, 1982) (statement of Senator Quayle).

ployed in this part of the state in April, 1982.<sup>94</sup> The severe economic decline in the steel industry has forced other businesses in the area to curtail activities or, worse, to close their doors.<sup>95</sup> Clearly, if the Indiana steel industry was running at a higher capacity, such dire circumstances would not exist. Much the same situation exists in other steel-producing regions in the United States.

The current recession in the United States steel industry follows a long period of decline, caused by a number of complex factors. Though the United States steel industry was preeminent in the world market after World War II, it has since lost its international competitiveness and has fallen behind technologically. Table 8 summarizes the long-term trend in steel exports by principal countries.

*Table 8: Exports of Steel Products by Principal Countries*  
(Selected Years)<sup>96</sup>

<u>Producer</u>	<u>1956</u>	<u>1961</u>	<u>1966</u>	<u>1971</u>	<u>1976</u>	<u>1977</u>	<u>1979</u>
	(in millions of net tons)						
U.S.A.	4.4	2.0	1.7	2.9	2.7	2.0	2.8
(share percentage)	(14)	(5)	(3)	(3)	(2)	(1)	(2)
Japan	1.3	2.5	10.4	25.6	39.7	36.8	34.0
EEC	19.4	28.7	36.2	48.9	55.0	58.3	66.9
U.S.S.R.	2.3	3.7	6.0	8.2	8.3	8.3	7.2
Reported World Exports	30.3	42.7	65.3	101.1	131.6	140.0	151.0

Much of the difficulty which the United States steel industry faces today is the product of long-term declines in the growth rates for labor productivity for the industry as a whole. Compared to that of other nations, particularly Japan, the United States steel industry has seen large increases in labor costs per ton.<sup>97</sup> United States companies have been slow to introduce technological advances, such as continuous casting, which would improve labor productivity and reduce energy consumption and pollution. Indeed, no new steel plant has been started in the United States since 1962.<sup>98</sup> Also, rising labor costs have increased the unit cost of producing a ton of steel in the United States as com-

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Figures in this table are calculated from data from: INT'L IRON & STEEL INST., WORLD STEEL EXPORTS: QUANTITY (periodical published every six months).

<sup>97</sup> See *Hearings on Productivity*, *supra* note 38, at 48 (statement of Joel S. Hirschhorn, Project Director, Office of Technology Assessment).

<sup>98</sup> See *Hearings on Productivity*, *supra* note 38, at 9 (statement of Robert W. Crandall, Brookings Institution).



pared with Japan,<sup>99</sup> our foremost competitor. Today, the value of all outstanding common stock for the entire steel industry is equal to the price which United States Steel Corp. paid to acquire Marathon Oil Corp..<sup>100</sup>

Since the 1974 energy crisis, general worldwide demand for steel has weakened considerably. At the same time, some developing countries have tremendously increased their capacity for steel production. This has created a situation in which United States and European steel companies face excess capacity, but limited opportunities for expanding their exports.<sup>101</sup>

The strength of the United States dollar in international exchange has also weakened the United States steel industry's export prospects. For example, the strength of the dollar has helped to make the average foreign exchange cost of steel produced in a United States plant substantially higher than steel produced in Japan.<sup>102</sup> As long as the dollar maintains its strength relative to other steel producers' currency, its value will directly affect the ability of United States firms to export, and ease the entry of foreign steel into United States markets.

*B. Protectionism in the World Steel Trade: The Issue of Foreign Subsidies*

The significant problem facing the steel industry is thus caused by lower productivity, rising unit labor costs, and a strong dollar. However, the policy of government subsidization of steel by certain foreign governments, especially those with nationalized steel industries, has exacerbated these problems. If subsidized foreign steel industries can maintain high levels of investment while they suffer losses which would bankrupt United States firms, there will be little prospect for reviving the United States steel industry.<sup>103</sup> Foreign subsidy programs will raise prices for United States and foreign consumers alike, since they will keep inefficient plants open and make investment in unsubsidized United States plants uneconomic.

The United States International Trade Commission (ITC) has addressed the subsidies issue in some countervailing and antidumping duty suits, which a number of United States steel companies brought in January 1982 for relief from steel imports from Europe, Brazil, and

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<sup>99</sup> Starrels, *The Remedies Can Be Found at Home*, N.Y. Times, Jan. 2, 1983, § 3, at 2, col. 3.

<sup>100</sup> *Id.* at 10.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 11.

<sup>103</sup> See *Hearings on Productivity*, *supra* note 38, at 43 (statement of Donald F. Barnett, Vice President, American Iron & Steel Institutes).

South Africa. On January 11, 1982, United States Steel Corp., the Bethlehem Steel Corp., the Republic Steel Corp., the Inland Steel Co., Jones & Laughlin Industries, the National Steel Corp., and the Cyclops Corp. filed petitions under United States countervailing and antidumping duty laws<sup>104</sup> alleging that low-priced steel imports from eleven countries had materially injured domestic steel industries. The petitions comprised thirty-eight antidumping and ninety-four countervailing duty complaints and named the following countries: the United Kingdom, the Federal Republic of Germany, France, Italy, Belgium, Luxembourg, the Netherlands, Spain, Rumania, South Africa, and Brazil. The products cited were carbon steel plate, hot-rolled carbon steel, cold-rolled carbon steel sheet, galvanized carbon steel sheet, and carbon steel structural shapes and steel bars.<sup>105</sup>

Under United States law, countervailing duties will be imposed when: (1) the International Trade Commission finds that a domestic industry is materially injured, or threatened with such injury, by reason of subsidized imports; and (2) the Department of Commerce (DOC) determines that a subsidy is in fact being granted.<sup>106</sup> Similarly, antidumping duties are imposed when: (1) the ITC finds material injury due to imports that are being, or likely to be, sold in the United States at "less than fair value" (LTFV); and (2) the DOC makes an affirmative LTFV determination.<sup>107</sup> The DOC has the discretion whether or not to initiate an investigation on the basis of allegations made in countervailing duty<sup>108</sup> and antidumping petitions.<sup>109</sup> Once investigations commence, the ITC and DOC must each make preliminary and, if necessary, final determinations of injury from subsidized<sup>110</sup> or LTFV imports, in their respective areas, according to a precise statutory timetable.<sup>111</sup> The Court of International Trade may review negative preliminary ITC and DOC determinations, and also may review final ITC and DOC affirmative and negative findings.<sup>112</sup>

Both the countervailing duty and antidumping duty laws have been written to conform United States procedures to those set forth in

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<sup>104</sup> 47 Fed. Reg. 5739-51 (1982).

<sup>105</sup> *Id.*

<sup>106</sup> 19 U.S.C. § 1671(a) (Supp. V 1981).

<sup>107</sup> 19 U.S.C. § 1673 (Supp. V 1981).

<sup>108</sup> 19 U.S.C. § 1671a(a) (Supp. V 1981).

<sup>109</sup> 19 U.S.C. § 1673a(a) (Supp. V 1981).

<sup>110</sup> 19 U.S.C. §§ 1671b, 1671d (Supp. V 1981).

<sup>111</sup> 19 U.S.C. §§ 1673b, 1673d (Supp. V 1981).

<sup>112</sup> 19 U.S.C. § 1516a (Supp. V 1981).

the subsidies/countervailing duties<sup>113</sup> and antidumping agreements,<sup>114</sup> negotiated under the auspices of the General Agreement on Tariffs and Trade (GATT) during the Tokyo Round of Multilateral Trade Negotiations.<sup>115</sup> These agreements, which section 2 of the Trade Agreements Act of 1979 implement,<sup>116</sup> require that imports cause "material" injury to domestic industries before duties may be imposed.<sup>117</sup> Under United States law, countries such as South Africa, which are not parties to the GATT Subsidies/Countervailing Duties Code, or which do not reciprocally extend similar benefits to the United States, are not entitled to an injury test when they are named in countervailing duty petitions.<sup>118</sup>

On February 18, 1982, the ITC made preliminary affirmative injury determinations in response to eighteen antidumping and twenty countervailing duty petitions (these generally involving high volume items), and made negative determinations in response to fifty-two petitions.<sup>119</sup> On March 3, 1982, the United States Steel Corp. appealed to the United States Court of International Trade to overturn the preliminary negative findings regarding hot-rolled carbon plate, cold-rolled steel sheet, and galvanized steel sheet products from various Western European countries.<sup>120</sup> The ITC, on June 2, 1982, dismissed three countervailing duty petitions filed against imports from Spain, finding no reasonable indication of injury, but made a preliminary affirmative finding with regard to six petitions.<sup>121</sup> Since Spain signed the GATT

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<sup>113</sup> Agreement on Interpretation and Application of Articles XI, XVI, and XXII of the General Agreement on Tariffs and Trade, Apr. 12, 1979, 31 U.S.T. 513, T.I.A.S. No. 9619, — U.N.T.S. —.

<sup>114</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, Apr. 12, 1979, 31 U.S.T. 4919, T.I.A.S. No. 9650, — U.N.T.S. —.

<sup>115</sup> For a discussion of the Tokyo Round, see Graham, *A Practitioner's Guide to the Tokyo Round Trade Negotiations*, 4 N.C. J. INT'L L. & COMM. REG. 225 (1979); Graham, *Results of the Tokyo Round*, 9 GA. J. INT'L & COMP. L. 153 (1979).

<sup>116</sup> 19 U.S.C. § 2503 (Supp. V 1981).

<sup>117</sup> See *id.* §§ 1671b(a), 1671d(b), 1673b(a), 1673d(b) (Supp. V 1981); see also *id.* § 1677(7) (Supp. V 1981) (definition of "material injury").

<sup>118</sup> See *id.* § 1671. Under section 1671, the procedures under United States countervailing duty law extend only to countries which have signed the GATT subsidies and countervailing duties codes (see sources cited *supra* notes 113-14) or which have assumed obligations "substantially equivalent" to those under the codes. 19 U.S.C. § 1671(b)(2) (Supp. V 1981). Also, countervailing duty procedures will extend to a country which the United States must treat as a "most favored nation" with respect to goods in question, if the GATT does not apply between the United States and that country, if a United States agreement with the country does not expressly permit actions which United States law or the GATT requires, or if a United States agreement with the country contains "nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices." *Id.* § 1671(b)(3).

<sup>119</sup> 47 Fed. Reg. 9087, 10,314 (1982).

<sup>120</sup> *U.S. Steel Appeals Dismissal by ITC, Similar Actions Weighed by Other Firms*, [Oct.-Mar.] INT'L TRADE REP. U.S. IMPORT WEEKLY (BNA), No. 118, at 551 (Mar. 10, 1982).

<sup>121</sup> 47 Fed. Reg. 26,038 (1982).

Subsidies Code during the investigation, Spain was subject to a different timetable for injury determinations than the other European countries named in the various petitions.<sup>122</sup>

On June 10, 1982, the DOC found that Belgium, Brazil, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, South Africa, and the United Kingdom were granting subsidies through mechanisms such as interest rebates, capital grants, programs for introducing new technology, exemptions from real property taxes, and loans to uncreditworthy companies. The subsidies ranged from amounts of less than 1% to over 40% of the f.o.b. (free on board) value of the imports.<sup>123</sup> The DOC also found subsidies in various programs which the European Communities administered, such as industrial investment loans, housing loans for workers, and loan guarantees. However, the DOC did not find that the offending countries subsidized all of their steel companies.<sup>124</sup> It also refused to find the critical circumstances necessary to impose retroactive duties, that is, massive imports over a relatively short period of time.<sup>125</sup> Bethlehem Steel and five other companies sought retroactive duties, which section 1671b(e) authorizes in countervailing duty cases.<sup>126</sup>

As a result of the DOC determination, United States importers of the offending products would have been required to post cash or bond equal to the estimated subsidy, to ensure payment of countervailing duties, once the DOC made its final determinations of material injury.<sup>127</sup> However, on October 22, 1982, President Reagan announced that the EEC had agreed to cut steel exports to the United States by about one million tons from the 1981 level, over a three year period.<sup>128</sup> The effect of this agreement would be to reduce the share of European steel in the United States market from 6.3% to a little over 5%.<sup>129</sup> In response to the agreement, the United States steel companies, which originally filed countervailing duty and antidumping petitions against the European steel producers, withdrew their complaints.<sup>130</sup>

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<sup>122</sup> *Id.*

<sup>123</sup> 47 Fed. Reg. 26,300 (1982).

<sup>124</sup> *Id.* at 26,300 (Belgium), 26,310 (Brazil), 26,315 (France), 25,321 (Federal Republic of Germany), 26,327 (Italy), 26,331 (Luxembourg), 26,335 (Netherlands), 26,340 (South Africa), 26,343 (United Kingdom).

<sup>125</sup> *Id.* at 26,306 (Belgium), 26,314 (Brazil), 26,321 (France), 26,326 (Federal Republic of Germany), 26,330 (Italy), 26,334 (Luxembourg), 26,339 (Netherlands), 26,348 (United Kingdom).

<sup>126</sup> 19 U.S.C. § 1671b(e) (Supp. V 1981).

<sup>127</sup> *Id.* § 1671(a)(2).

<sup>128</sup> Farnsworth, *European Plan to Curb Exports of Steel to U.S.*, N.Y. Times, Oct. 22, 1982, § 1, at 1, col. 5.

<sup>129</sup> *Id.*

<sup>130</sup> 47 Fed. Reg. 49,058 (1982); *see also* Farnsworth, *supra* note 128.

Similarly, on the same day as the United States-EEC Steel Agreement, the Department of Commerce suspended its countervailing duty investigation against Brazilian steel, based on a United States-Brazilian agreement to offset with an export tax "all benefits which [the DOC found] to be subsidies on exports" of steel to the United States.<sup>131</sup> However, no agreements were reached with South Africa, and, accordingly, the DOC entered final affirmative countervailing duty determinations and orders against South African steel imported into the United States.<sup>132</sup>

Despite these agreements, however, it is crucial that the DOC continues to enforce vigorously the countervailing duty and antidumping law to assure that steel is fairly imported into the United States. In June, 1982, the Senate passed a concurrent resolution, of which I was a co-sponsor, that expressed the sense of Congress that the DOC pursue and conclude promptly what were then the pending steel unfair trade practices cases.<sup>133</sup> Also, the resolution expressed the sense of Congress that the President should direct the government to pursue vigorously and conclude promptly the antidumping and countervailing duty cases then pending investigation, concerning foreign trade practices involving carbon steel mill products and specialty steel mill products. The

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<sup>131</sup> 47 Fed. Reg. 47,048 (1982).

<sup>132</sup> *Id.* at 42,369, 47,900.

<sup>133</sup> S. Con. Res. 100, 97th Cong., 2d Sess. (1982). The text of this resolution, which passed the Senate on June 22, 1982, is as follows:

Whereas the steel industry of the United States is critical to the national defense and to the maintenance of a strong industrial economy, which employs millions of workers and sustains the Nation's prosperity;

Whereas between 1971 and the present there have been three distinct episodes of dramatic surges in importation of apparently dumped and subsidized steel mill products, episodes which contributed to the destruction of 118,000 steelmaking jobs, to the shrinking of production by 20 percent, and to aborted capital investment planned to modernize the steel industry;

Whereas the 1981-1982 episode, which is the most serious, has contributed to 100,000 layoffs and 31,000 workers on short work-weeks and threatens to abort \$700,000,000 in planned capital investment; and

Whereas the past failure of the United States Government to vigorously enforce the trade laws has contributed to the decline of the steel industry, and the failure of the Government to so enforce the trade laws in this most serious crisis in the steel industry would endanger critical planned investment and modernization, which in turn would threaten the economy and the national defense of the United States: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the sense of the Congress that—

(1) the President should exercise the authority granted to him by the Congress to direct the appropriate agencies to vigorously pursue and promptly conclude the countervailing duty and antidumping duty investigations being conducted under Title VII of the Tariff Act of 1930, and the investigation being conducted under Chapter 1 of Title III of the Trade Act of 1974, concerning foreign trade practices involving carbon steel mill products and specialty steel mill products; and

(2) the Congress, if necessary, should promptly consider appropriate legislation to strengthen the trade laws of the United States.

128 CONG. REC. S.7263 (daily ed. June 22, 1982).

resolution further stated that "the Congress, if necessary, should promptly consider appropriate legislation to strengthen the trade laws of the United States."<sup>134</sup> The message in the concurrent resolution is very clear: Congress will take action to enforce our trade laws that apply to steel if the DOC does not expeditiously carry out antidumping and countervailing duty investigations.

Considering how long DOC countervailing duty investigations take and how extensive the investigations are, it is important for Congress to signal that it is very serious about strong enforcement of our trade laws. International trade in steel must remain free and fair.

## V. CURRENT LEGISLATIVE PROPOSALS RELATING TO INTERNATIONAL TRADE

There is growing concern in Congress that the United States is being treated unfairly in international trade, that United States exports do not receive the same treatment that we give to other countries' exports, and that the United States does not receive reciprocity in foreign trade.

Over the years, countries have recognized the need for international agreement on foreign trade regulation. In November 1947, twenty-three countries concluded the General Agreement on Tariffs and Trade (GATT) in Geneva.<sup>135</sup> GATT established a set of rules to guide international trade, and set up an institutional framework to conduct trade negotiations.

The Trade Act of 1974,<sup>136</sup> provides for the United States to participate in the Multilateral Trade Negotiations (MTN).<sup>137</sup> During consideration of the Trade Agreements Act of 1979, Congress expressed concern that existing GATT mechanisms might not improve the process of settling of trade disputes.<sup>138</sup> In an effort to ensure enforcement

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<sup>134</sup> *Id.* § 2.

<sup>135</sup> General Agreement on Tariffs and Trade, *opened for signature*, Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

<sup>136</sup> Pub. L. No. 93-618, 88 Stat. 1978 (1975) *amended by* Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 144.

<sup>137</sup> See *id.* § 101, 88 Stat. at 1982.

<sup>138</sup> See A. REIFMAN & R. AHERN, RECIPROCITY IN FOREIGN TRADE, CONG. RESEARCH SERVICE ISSUE BRIEF NO. IB82043, UPDATE (1982) (a copy of this source is on file in the offices of the Northwestern Journal of International Law and Business). Among the bills pending at the time, several dealt generally with reciprocity: H.R. 5514, 97th Cong., 2d Sess. (1982) (Dingell); H.R. 5596, 97th Cong., 2d Sess. (1982) (Frenzel, et. al.); H.R. 5727, 97th Cong., 2d Sess. (1982) (Gaydos) (similar to S.2251, 97th Cong., 2d Sess. (1982)); S.2067, 97th Cong., 2d Sess. (1982) (Symms) (identical bill: H.R. 4407, 97th Cong., 2d Sess. (1982) (Schulze)); S.2071, 97th Cong., 2d Sess. (1982) (Pressler) (similar to H.R. 5727, 97th Cong., 2d Sess. (1982) and S.2347, 97th Cong., 2d Sess. (1982) (Byrd, R.)). In addition to these, there were several reciprocity bills which dealt specifically

of United States rights under the GATT agreements, and to challenge foreign unfair trade practices, Congress amended section 301 of the Trade Act of 1974 to give the President the power to retaliate against "unjustifiable" or "unreasonable" foreign trade practices.<sup>139</sup> Section 301 is now a powerful tool in the hands of the President, which he can use unilaterally if he deems it appropriate. The 1974 Trade Act also extends protection to American industry which faces heavy imports or unfair trade practices from other nations, and regulates United States trade with Communist countries.<sup>140</sup>

The evolution which has made non-tariff barriers, or distortions of non-tariff barriers, the primary barriers to international trade has also made reciprocity increasingly more complex. The trade problem was relatively simple to understand and deal with when tariffs were the only issue, since tariffs were highly visible. Today, tariffs are not important because they are low, and, for most goods, roughly equal between the major industrial countries.

Non-tariff trade barriers now include government subsidies, government procurement practices, regulations, tax preferences, and cultural factors which result in discrimination against foreign suppliers in favor of domestic ones. Governments may design measures to favor domestic producers, or they may design measures to achieve other national goals (such as pure food and drug or environmental standards), and have the incidental effect of restricting or distorting international trade. Adding to this problem is the difficulty of quantifying and evaluating the impact of non-tariff barriers on foreign trade.

Many in the United States are now arguing that diplomatic channels, GATT procedures, and the new codes concluded in 1979 under the MTN<sup>141</sup> have failed and probably will continue to fail to produce a universal reduction of all forms of trade barriers.<sup>142</sup> They point out that while the United States market is the most open market in the world, we are losing much more than we gain through our open market policy.

In part, the United States faces its current trade problems because

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with individual sectors of the economy. The sectors focused upon included the telecommunications industry (H.R. 5158, 97th Cong., 2d Sess. (1982) and S. 898, 97th Cong., 2d Sess. (1982)); high technology (H.R. 5579, 97th Cong., 2d Sess. (1982), S.2283, 97th Cong., 2d Sess. (1982), and S.2356, 97th Cong., 2d Sess. (1982)); and agriculture (H.R. 5860, 97th Cong., 2d Sess. (1982) and H.R. 6072, 97th Cong., 2d Sess. (1982)).

<sup>139</sup> 19 U.S.C. § 2411(a)(2)(B) (Supp. V 1981).

<sup>140</sup> *Id.*

<sup>141</sup> For materials discussing the codes concluded under the 1979 MTN, see *supra* note 115.

<sup>142</sup> See Pine, *U.S. Worries That Nov. 24 GATT Parley Will Increase Protectionism, Not Trade*, Wall St. J., Nov. 5, 1982, at 28.

of inadequate assumptions by United States policymakers that reciprocal action by other countries would accompany the massive reductions in United States trade barriers since 1934. Reciprocity has often been interpreted to mean that concessions by foreign governments would increase United States exports as much as United States concessions would increase United States imports. This, of course, has not occurred. Indeed, balancing (or reciprocal) concessions, commodity by commodity or country by country, is inconsistent with the concept of comparative advantage. Thus, it should not be surprising that the result of balanced reciprocity has been trade imbalances from country to country and from commodity to commodity.

#### VI. S.2094, THE RECIPROCAL TRADE AND INVESTMENT ACT OF 1982

In order to overcome the current problem of trade imbalance facing the United States, over twenty bills have been introduced in the ninety-seventh Congress, all with the aim of achieving the same ease of United States exports of goods, services to, and United States investment in foreign markets as foreign nations in United States markets. One such bill is S.2094, the Reciprocal Trade and Investment Act of 1982.<sup>143</sup> S.2094 has the following stated legislative purposes: (1) to foster United States economic growth and full employment by expanding United States exports by achieving fair and equitable market opportunities in foreign markets;<sup>144</sup> (2) to improve the President's ability to identify and analyze foreign barriers to and restrictions on United States trade and investment, and eliminating such barriers to trade;<sup>145</sup> (3) to encourage the President to expand international trade in services by negotiating agreements to eliminate barriers to such trade;<sup>146</sup> and (4) to enhance the free flow of foreign direct investment capital, by having the President negotiate international investment agreements that reduce or eliminate the trade-distorting effects of certain investment-related measures.<sup>147</sup>

Section 3 of the bill would add a new section 181 to the Trade Act of 1974 designed to reduce barriers to market access. It would require the United States Trade Representative (USTR) to conduct an annual study of foreign barriers to United States exports and foreign direct investment by United States citizens and nationals, to estimate the

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<sup>143</sup> S.2094, 97th Cong., 2d Sess., 128 CONG. REC. S.680 (daily ed. Feb. 10, 1982).(1982).

<sup>144</sup> *Id.* § 2(1).

<sup>145</sup> *Id.* § 2(2).

<sup>146</sup> *Id.* § 2(3).

<sup>147</sup> *Id.* § 2(4).



trade impact of such barriers, to report annually to Congress on these matters, and to consult with Congress on trade policy priorities for expanding foreign market opportunities.<sup>148</sup>

Section 4 of the bill would amend title III of the 1974 Trade Act, which currently authorizes the President to take certain retaliatory measures in response to unfair foreign trade practices.<sup>149</sup> The bill would also expand section 301 of the Trade Act to allow the President to respond to offending foreign trade practices by targeting his actions to any product or sector, regardless of whether it was involved in the offending practice.<sup>150</sup> In addition, the bill would clarify section 301 to specifically authorize the imposition of fees and restrictions on the suppliers of foreign services at the President's discretion. The President

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<sup>148</sup> *Id.* § 3.

<sup>149</sup> *Id.* § 4 (to amend 19 U.S.C. § 2411 (Supp. V 1981)).

<sup>150</sup> Section 301 of the Trade Act currently provides as follows:

Sec. 301. Determination and Action by President

(a) Determinations Requiring Action if the President determines that action by the United States is appropriate—

- (1) to enforce the rights of the United States under any trade agreement; or
- (2) to respond to any act, policy, or practice of a foreign country or instrumentality

that—

- (A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or
- (B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice. Action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.

(b) Other Action

Upon making a determination described in subsection (a) of this section, the President, in addition to taking action referred to in such subsection, may—

- (1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved; and
- (2) impose duties or other import restrictions on the products of, and fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate.

(c) Presidential Procedures

- (1) Action on Own Motion

If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

- (2) Action Requested by Petition

Not later than 21 days after the date on which he receives the recommendation of the Trade Representative under section 304 of this title with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.

(d) Special Provisions

- (1) Definition of Commerce

For purposes of this section, the term "commerce" includes, but is not limited to, services associated with international trade, whether or not such services are related to specific products.

would handle fees for restrictions under the 1974 Trade Act's "fast-track" procedures.<sup>151</sup>

S.2094 would expand section 302 of the Trade Act to allow the USTR to initiate section 301 investigations, which, under current law, may be initiated on the basis of a petition filed by an "interested person."<sup>152</sup> However, the bill would require the USTR to undertake private sector consultations before taking such action. The present section 303 international consultation procedure links domestic section 301 actions to the consultation and dispute settlement mechanism of the GATT.<sup>153</sup>

The bill would also amend section 303 of the 1974 Trade Act<sup>154</sup> to allow a temporary (i.e., 90 day) delay between the initiation of a section 301 investigation and the request for consultations with an offending foreign government, for which the section currently provides.<sup>155</sup> In addition, the bill would enact a new provision to ensure the confidentiality of certain business information made available to the USTR in connection with a section 301 proceeding.<sup>156</sup>

Section 301 of the 1974 Act would be further amended to provide definitions for the terms "unreasonable," "unjustifiable," and "discriminatory." "Unreasonable" practices would include those that do not violate United States trade agreement rights, but which are otherwise deemed to be unfair and inequitable, including practices denying fair and equitable market opportunities, opportunities for the establishment of an enterprise, and the provision of adequate protection of industrial property rights.<sup>157</sup> An "unjustifiable" practice would be one that would violate or be inconsistent with rights established under United States trade agreements.<sup>158</sup> "Discriminatory" practices would be those that deny national or most-favored-nation (MFN) treatment to United States products, services, or investments.<sup>159</sup> In addition, S.2094 would redefine the term "commerce" to include specifically foreign direct investment by United States citizens or nationals "with implications for trade in products or services."<sup>160</sup>

Sections 5 through 7 of S.2094 would add a new section 104A to

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<sup>151</sup> S.2094, *supra* note 144, § 4(a).

<sup>152</sup> 19 U.S.C. § 2411 (Supp. V 1981).

<sup>153</sup> *Id.* § 2412. See also deKieffer, *supra* note 89, at 327-33.

<sup>154</sup> 19 U.S.C. § 2412 (Supp. V 1981).

<sup>155</sup> S.2094, *supra* note 143, § 4(d).

<sup>156</sup> *Id.* § 4(f) (to amend 19 U.S.C. § 2415 (Supp. V 1981)).

<sup>157</sup> *Id.* § 4(e)(3).

<sup>158</sup> *Id.* § 4(e)(4).

<sup>159</sup> *Id.* § 4(e)(5).

<sup>160</sup> *Id.* § 4(e)(1).

the 1974 Trade Act, to deal with international trade in services, foreign direct investment, and high technology. Section 5 would give the President the authority to negotiate an international agreement on trade in services with the aim of reducing or eliminating barriers to or distortions of such trade, and to develop internationally agreed-upon rules, including dispute settlement procedures that are consistent with United States commercial policies, and that will ensure open trade in services.<sup>161</sup> The bill would require the USTR to develop and coordinate United States policy on service trade, and have United States agencies advise the USTR on foreign barriers to such trade.<sup>162</sup> In addition, the Commerce Department would establish a Service Industry Development Program that would, *inter alia*, promote United States export of services and collect and analyze information regarding United States competitiveness in services.<sup>163</sup> Finally, section 6 would require the USTR to consult with the states before entering into any negotiations on an international agreement on trade in services.<sup>164</sup>

Section 7 of S.2094 would authorize the President to negotiate an international foreign direct investment agreement aimed at reducing or eliminating artificial or trade distorting barriers to foreign direct investment, to expand the principle of national treatment, and to develop international rules to ensure a free flow of foreign direct investment.<sup>165</sup>

Section 8 would give the President the authority to negotiate an international agreement on trade in high technology products that is similar to the agreements mentioned above. Negotiating objectives would include the reduction and elimination of all tariffs on, and other barriers to, imports of high technology products and related services. This would include, but not be limited to, the acceleration of the full concession tariff rates on high technology products agreed to during the Tokyo Round of Multilateral Trade Negotiations,<sup>166</sup> and the modification, elimination, or continuance of any tariff on high technology products in effect on the date of enactment of S.2094.<sup>167</sup> The bill also envisions that such high technology agreements would be aimed to achieve joint scientific cooperation and minimum safeguards for the acquisition and enforcement of industrial property rights. The bill would provide additional negotiating authority to reduce certain tariffs

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<sup>161</sup> *Id.* § 5(a).

<sup>162</sup> *Id.* § 6(a)(1).

<sup>163</sup> *Id.* § 6(b).

<sup>164</sup> *Id.* § 6(c).

<sup>165</sup> *Id.* § 7.

<sup>166</sup> *Id.* § 8(a); for materials discussing the Tokyo Round, see *supra* note 115.

<sup>167</sup> S.2094, *supra* note 143, § 8(b).

on high technology products.<sup>168</sup> Finally, S.2094 would require the Department of Commerce to conduct a study analyzing factors that influence United States competitiveness in high technology industries, and to report its findings to Congress.<sup>169</sup>

*A. Issues Raised by S.2094*

S.2094, as reported to the Finance Committee, is a milder version of the original bill which Senators Danforth and Heinz introduced.<sup>170</sup> S.2094 is unlikely to offend United States trading partners, since it does *not* establish the principle that United States goods and services must be given "substantially equivalent market access"<sup>171</sup> to that which the United States gives foreign products. By weakening this bill, supporters hope to send a signal to Japan that the United States is still willing to negotiate to eliminate Japanese trade barriers before it resorts to harsh retaliatory measures.

As of April, 1983, the future of S.2094 is unclear. The bill, which the Administration supports, was sent by the Finance Committee to the full Senate on June 30, 1982. Some believe that protectionist amendments will be offered to the bill on the floor which will harm the prospects of passing S.2094. The most likely amendment at this time is S.2300,<sup>172</sup> the Fair Practices in Automotive Products Act, which would require manufacturers with certain sales volumes in the United States to maintain a certain percent of American-made parts in each automobile which they sell in the United States. The Administration and sponsors of S.2094 oppose S.2300. Indeed, Senator Danforth has said that he would withdraw S.2094 should an amendment such as S.2300 be added.

Although the Administration realizes the need for fair trade, some officials are concerned that reciprocity legislation other than S.2094, which allows unilateral retaliation, will erode world trade and will adversely affect the relations between the United States and its trading partners. United States Special Trade Representative Brock has warned the Senate Finance Subcommittee on Trade that such "a distorted use of reciprocity could undermine an already vulnerable multilateral trading system, trigger retaliation abroad, further deprive the

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<sup>168</sup> *Id.* § 8(c).

<sup>169</sup> *Id.* § 8(b).

<sup>170</sup> Senator Heinz' original bill was S.2071, 97th Cong., 2d Sess. (1982).

<sup>171</sup> The language "substantially equivalent" market access appeared in the earlier version of the Heinz-Danforth bill, S.2094, 97th Cong., 2d Sess., § 2(2), 128 CONG. REC. S.680 (daily ed. Feb. 10, 1982).

<sup>172</sup> S.2300, 97th Cong., 2d Sess. (1982).

United States of export markets and erode, if not eliminate, our role as the world leader in liberalizing international trade."<sup>173</sup> Any proposed legislation, Ambassador Brock noted, "must be absolutely consistent with current obligations under the GATT, and other international agreements . . . [and] must [also] stress multilateral rather than bilateral or sectoral solutions."<sup>174</sup>

## VII. CONCLUSION: UNITED STATES PERFORMANCE IN INTERNATIONAL TRADE AND THE PROS AND CONS OF RECIPROCITY LEGISLATION

The United States remains the world's leading economic power. Though we have suffered deficits in our balance of payments in recent years, many factors produced those deficits. The factors include our lagging productivity, declines in savings and investment, declines in research and development, high interest rates which have increased the value of the United States dollar relative to other currencies, and advances in technology and labor productivity in other countries. Unfair trade practices by other countries explain only a small portion of the lagging United States performance in international trade.

In addition, United States policies with respect to some industries have themselves created major trade barriers which burden our own consumers, as well as foreign nations' economies. Our current sugar program is such a trade barrier, since it raises prices to domestic consumers, contributes to inflation, and lowers domestic productivity. The program also makes it more difficult for countries with a comparative advantage in sugar production to export their crop to the United States. This directly harms our ability to achieve other stated foreign policy objectives, and conflicts with our often stated goal of a free and fair international market.

In the international market for steel products, however, the United States steel industry has suffered from lack of competitiveness partially because of other nations' unfair trade policies. While many of the legal challenges to such policies are yet to be resolved, Congress has responded to the policies with a fairly large number of legislative proposals, many of them protectionist.<sup>175</sup> These proposals would damage the operation of the international market.

Policymakers have now developed a new approach—that of "reciprocity"—like that embodied in S.2094. Their concept of "reciprocity"

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<sup>173</sup> A. REIFMAN & R. AHERN, *supra* note 138, at 2.

<sup>174</sup> *Id.*

<sup>175</sup> See generally *supra* note 138.

is difficult to challenge because they seem to base their proposals on principles of fairness and equity. Proponents of "reciprocity" argue that for trade to be free, it must also be fair.

However, the definition of "reciprocity" in some of the current legislative proposals represents a change from the one embodied in United States trade laws, practiced since at least 1934, and agreed to internationally by GATT. Before, reciprocity meant equal reductions in trade barriers. Yet now some would redefine reciprocity to mean equal *levels* of trade barriers. In addition, it can be argued that reciprocity, as current proposals define it, is something for the United States to practice unilaterally, since the definition allows the United States to assume for itself the right to decide which foreign practices are unjustified, and the right to retaliate against "unjustified" practices. But, if the United States acted in this way, other countries would soon do the same. The pattern of escalating trade barriers that would result, of course, could lead to a full-scale trade war.

Another problem with the proposed definition of reciprocity is that the retaliation that it might bring about would have costs. Should the United States impose high import duties, other countries are likely to boycott United States exports. In addition, advocates of the "new" reciprocity intend to direct it against any offending country, regardless of its economic needs, or previously favored status. This would mark a move away from the unconditional most-favored-nation treatment which many developing nations receive under the GATT.

One last major concern is that many of the "new" reciprocity proposals would be difficult to administer. To obtain reciprocity in foreign trade under the new approach, the United States must examine the foreign trade restrictions that a foreign country imposes on United States exporters or investors, and then impose the same restrictions on the foreign country. However, such reciprocity is likely to be difficult to implement since the United States economy is different from many of the economies of the countries which have raised barriers against United States exporters and investors.

Yet, despite arguments against reciprocity, new legislation is needed. Presently, the United States has the most open market in the world. The United States example of openness, its diplomatic efforts, the GATT, and the new GATT codes of conduct may have opened foreign markets, but it has not opened them to the same degree as United States markets. Protectionism in Japan, Europe (particularly evidenced by the Common Agricultural Policy), Canada (especially in the area of foreign investment), and in many developing countries continues to limit world trade in general, and to limit United States exports

in particular. Because the United States has few barriers left to eliminate in return for foreign concessions, the United States must try a new and more aggressive trade strategy. The threat of retaliation, embodied in the amendments to S.2094 strengthening section 301 of the Trade Act of 1974, must be employed to provide the President with the necessary negotiating leverage to reduce foreign trade barriers. Such positive trade reciprocity—reciprocity in the long-established sense—would challenge the rest of the world to liberalize trade policies, through the threat of unilateral United States action.

We must be cautious that the United States take unilateral actions to redress other nations' unfair trading practices only when the disputed practice is a clear violation of the GATT or of some other trade agreement. A regulated trading order respected by all nations is, in the long run, to the benefit of all, because it removes uncertainty and establishes clear rules of conduct. Furthermore, it lends a supranational legitimacy to trade actions.

Since the United States is the world's leading economic power and trading nation, it must take the lead in protecting the orderly operation of the international marketplace. Today, there is ample flexibility in international trade laws to seek redress for most unfair trading practices. Where existing law is inadequate, there are orderly procedures which we can use to press for clarifications and additions. The United States has a strong interest in protecting and maintaining the basic structure of international trade, and it must see that the framework continues to accommodate the established principle of reciprocity. We must ensure that reciprocity continues to fit within established international trade laws, and oppose efforts to redefine reciprocity, so that countries cannot use it as a pretext for disregarding those laws.

In contrast to protectionist attempts to redefine reciprocity, the reciprocity proposals in the Reciprocal Trade and Investment Act of 1982, S.2094, are moderate and fall short of outright protectionism. While other legislation attempts to compel foreign countries to open their markets to a level "substantially equivalent" to the United States market, S.2094 attempts to clarify and expand existing law, and stresses positive reciprocity through multilateral negotiation.

Unfortunately, the GATT Ministerial Meeting of November, 1982, suggests that GATT will need to be strengthened if it is to be successful in handling many of today's trade problems.<sup>176</sup> Despite

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<sup>176</sup> *Compromise GATT Accord Adopted, Though Differences Remain on Agricultural Trade*, 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA) 311 (Nov. 30, 1982); LONGWORTH, *Trade Talks End in Frail Pact, Discord*, Chicago Trib., Nov. 29, 1982, § 1, at 1, col. 6.

United States initiatives at the meeting, the GATT does not cover trade in services and in investments, which are two areas of growing economic importance. The Ministerial Meeting failed to deal adequately with Europe's Common Agricultural Policy, and with Japan's remaining protectionism.<sup>177</sup> Also, the GATT does not govern United States trade relations with a number of important countries, such as Mexico, China, and the U.S.S.R. Consequently, further multinational negotiations will be required if we are to reestablish a framework for a free and fair international trading system.

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<sup>177</sup> See *Transcript of Ambassador Brock's Closing News Conference*, reprinted in 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA) 369 (Nov. 30, 1982); see also *Communique*, reprinted in INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA) 362 (Nov. 30, 1982) (GATT Ministerial Meeting Communique); *Declaration by the Commission of the European Communities on Behalf of the European Communities Concerning Certain Points of the GATT Ministerial Declaration at the 38th Session of the Contracting Parties*, reprinted in 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA) 368 (Nov. 30, 1982).