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A GUIDE TO THE NEW GATT AGREEMENT

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INTRODUCTION

On April 15, 1994, the United States signed the Final Act of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), the multinational trade talks that were concluded successfully last December. President Clinton soon will send proposed legislation to Congress to amend U.S. laws to implement the Uruguay Round agreement. Congress is scheduled to consider the bill later this year under the "fast track" provisions for trade bills, which do not permit amendments to the bill and require a straight yes-or-no vote in both the House and Senate.[1]

This agreement will make profound changes in the rules governing world trade, particularly those affecting the rapidly growing trade in services and intellectual property, which are increasingly important to American business. Among other changes, the new GATT agreement cuts average tariffs worldwide by one-third and eliminates tariffs for many goods. It also writes new trade rules to open up agriculture and textiles, and to facilitate transnational investment. The agreement is scheduled to come fully into force on January 1, 1995, with a period of transition up to ten years for some provisions.

As with most international agreements, the GATT treaty contains a few provisions that affect some Americans unfavorably, and the negotiations failed to reach agreement in some important areas, such as audiovisual and financial services. But the final document is a major step toward more open trade to the benefit of all trading nations. The result is likely to be a significant increase in world trade.[2]

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1 The procedure for "fast track" consideration in Congress was specified in P.L. 103-49.

2 See Guy de Jonquières and Frances Williams, "Benefits of Free Trade Deal Are Felt Already," *The Financial Times*, April, 13, 1994, p. 5; "The New Age of Trade: GATT, The Uruguay Round and the WTO," *The New York Times*, April 15, 1994, pp. A24-27; "GATT at Last," *The Journal of Commerce*, April 15, 1994, p. 6A; Sherman E. Katz, "GATT: Helping U.S. Business," *The Journal of Commerce*, April 15, 1994, p. 6A; John Zarocostas, "GATT: Japan, W. Europe Key to '94 Trade Growth," *The Journal of Commerce*, April 6, 1994, p. 1A; Robert J. Samuelson, "Why GATT Isn't

This will be especially beneficial to American firms and workers. In 1948, when the GATT was established, U.S. merchandise exports were $13.3 billion, approximately 5 percent of gross domestic product. By 1993, exports of both goods and services represented 11.6 percent of U.S. GDP. One in six American manufacturing jobs is directly or indirectly related to exports.[3]

Lower tariff barriers—the GATT's original goal—have been central to the worldwide growth in trade. Tariffs have fallen from an average 40 percent in 1948 to 4.7 percent now. But the GATT's most important role in the growth of trade has been to provide a forum for countries to resolve trade disputes by arbitration, which has prevented serious trade wars. The GATT treaty sets the rules of trade, and these rules discourage barriers that discriminate against foreign producers, such as quotas, local preferences, license restrictions, and subsidies. The principles of "most favored nation status," which forbid a government favoring some foreign producers over others, and "national treatment," which forbid a government favoring its own nationals over foreigners, are central to GATT's system of fair trade.

The Uruguay Round was the eighth general renegotiation of the GATT rules since 1947; it began at a conference in Punta del Este, Uruguay, in September 1986. It was intended to be the most ambitious postwar expansion of international trade rules, and cover all the sectors emerging as points of dispute between trade partners. In particular, as tariff barriers were coming down, non-tariff barriers such as subsidies and government regulations were growing increasingly troublesome. The Uruguay Round negotiations were intended to address such barriers.

The agreement among 123 governments establishes international rules for trade in areas never before subject to multilateral agreements to prevent discrimination, such as trade in services, transnational investments, agricultural trade, textiles, and clothing. It also revises and tightens trade rules in such areas as intellectual property, government procurement, antidumping enforcement, and subsidies.

In summary the new trade pact includes:

✓ **The Agreement Establishing the World Trade Organization.** This agreement officially establishes the World Trade Organization (WTO), which will replace the GATT Secretariat and administer the system of international trade law. It is the key to enforcement of the rules of trade. Within the WTO, a Trade Policy Review Body will supervise the trade practices of member governments, identify problems, and make recommendations to address practices in restraint of trade. A trade policy review mechanism will raise trade issues for discussion on a regular agenda, essentially replacing the current practice of periodic "rounds" of negotiation with a permanent process for revising the rules of international trade.

Boring," *The Washington Post,* December 22, 1993, p. A21; Montieth Illingworth, "The Importance of Free Trade: An Interview With Peter Sutherland," *Hemispheres,* November 1993, pp. 21-26; Peter Sutherland, "If GATT Fails, We All Lose," *The Wall Street Journal,* October 19, 1993, p. A20.

3 Council of Economic Advisers, *Annual Report,* 1994, pp. 206-7.

- ✓ **The Agreement on Rules and Procedures Governing the Settlement of Disputes.** This will be administered within the WTO, and will provide for a speedy appeals process from national government trade decisions. It will also assist in the enforcement of judgments reached by dispute settlement panels. Too often in recent years, GATT decisions have been ineffective because they relied on good faith compliance.

- ✓ **The General Agreement on Trade in Services.** This is an historic extension of multilateral trade rules to the $3.9 trillion international service trade, including general business and professional services, information and computer services, retailing and wholesaling, engineering and construction, educational, health, and environmental services, and tourism. This agreement sets international rules of fair trade for the first time in economic sectors that are the cutting edge of the U.S. economy. Unfortunately, agreement was not reached in audiovisual, financial, and transportation services.

- ✓ **The Agreement on Trade-Related Investment Measures.** This will apply the most favored nation and national treatment principles for the first time universally to foreign investments. The United States is the world's largest foreign investor, with $2.1 trillion invested abroad. Eliminating discrimination against American direct investment is highly beneficial to the United States.

- ✓ **The Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods.** This will give worldwide protection to such items as patents, copyrights, and computer software and chip designs. While very important, this agreement is the most disappointing to some U.S. interests because of the extended phase-in periods for enforcement of their rights, and the failure to include some property rights.

- ✓ **The Agreement on Agriculture.** This should end the constant export-subsidies war and will replace quota protection with tariffs worldwide. Placing agriculture on a competitive basis for the first time will mean greater exports for efficient U.S. producers and greater international crop specialization.

- ✓ **Tariff reductions and quota repeal ("market access" amendments to the traditional GATT-regulated trade sectors).** This includes the phase-out of the complex system of bilateral textile and clothing quotas, and zero tariffs for a broad range of America's most competitive industries.

- ✓ **A new Agreement on Government Procurement.** This substantially expands the rules of fairness to allow international bidding on government contracts. The U.S. will eliminate "buy American" provisions from federal and state laws, and other countries will permit U.S. firms to participate in major construction contracts.

- ✓ **An expanded Antidumping Agreement.** Revisions to GATT Article VI will extend many U.S. procedural rules to the rest of the world and help protect low-cost American exporters from arbitrary challenges and penalties in foreign markets by giving a right of appeal and judicial review by the WTO in Geneva.

- ✓ **A new Agreement on Subsidies and Countervailing Measures.** These expand the way in which the GATT rules discipline government subsidies, defining what is an unfair subsidy, and explicitly prohibiting certain categories. Unfortunately, some subsidies were classified as permissible; such as support for research, regional development, and rebates of energy taxes; thus some U.S. industries, which are not similarly subsidized, will continue to face foreign subsidized competition.

- ✓ **Revisions to the Agreement on Safeguards.** This is the escape clause for temporary protection of industries jeopardized by imports. New rules prohibit voluntary restraint agreements, which were used by the U.S. in the 1980s to keep Japanese cars, computer chips, and steel from competing in the U.S. market while avoiding illegal import quotas. New rules in this area will restrict the use of safeguard procedures by government as a means to keep out U.S. goods.

- ✓ **Additional Agreements on Customs and Technical trade practices.** Several other, more technical agreements were reached on how to standardize the way customs procedures apply in every country. These will help prevent red tape from becoming a source of trade restrictions.

The Uruguay Round agreement is critical for the GATT to continue to play its role as arbiter and guardian of the rules of trade, which have served the world economy well for more than four decades. Just as economic and technological progress has changed the way business is done, the rules of trade have to be modernized and tightened to close loopholes and address problems that arise in a changing world economy.

Congress must consider and adopt or reject the implementing legislation that the President will submit under the strict "fast track" rules, which expedite the procedures in the House and Senate. Because world trade is growing so rapidly in importance to the U.S. economy, with exports doubling just since 1986, it is essential to extend the GATT system of trade rules to the rapidly growing sectors of America's trade in services, investment, and intellectual property. Extending procedural rules to discipline government subsidies, anti-dumping actions, government procurement, and agricultural trade will significantly enlarge the rights of American firms that expand their business in foreign countries. Finally, the achievements of the Uruguay Round are a turning point for the GATT itself, which in the 1980s was beginning to show increasing strain because of unresolved trade disputes that would not have arisen if the new Uruguay Round rules had been in effect.[4] For Congress to delay in putting the new GATT agreement into effect would have a dangerous economic impact on every American family.

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4 Illingworth, *op. cit.*, p. 22.

The General Agreement on Tariffs and Trade is the cornerstone of international trade law. It is a multilateral treaty, subscribed to by 123 member governments, which together regulate over 90 percent of world trade. Its basic aim is to create an open world trading system with enforceable rules.

The GATT treaty was negotiated in 1947 as a vehicle to lower some tariffs and to create dispute settlement procedures and fair trading rules. It began in 1948 as a "Protocol of Provisional Application" among 23 nations; the United States joined by an Executive Agreement of President Harry S Truman. The GATT has since grown to 123 members, voluntarily agreeing to its evolving system of international trade law. As an organization, the GATT has always been provisional. One of the achievements of the Uruguay Round is to establish GATT finally as a formal organization.

GATT AND THE RULE OF LAW

The first principle of the GATT, and the general rule of fairness in trade, is that governments should not discriminate against businesses in different countries.[5] The "most favored nation" (MFN) principle is that a government should regulate its imports without imposing penalties on the products of some countries, nor offering special benefits to others. The rules should be equal. An exception is allowed by the GATT treaty for customs unions and free trade areas, such as the North American Free Trade Agreement (NAFTA) and the European Union (EU).[6] And GATT members are allowed to have special trade relations with developing countries to help promote their economic growth.[7] But the MFN principle is the dominant general rule. All members of the GATT must administer their import and export laws with respect to each other the same as toward their most favored trading partner.

An important corollary of the MFN principle is "national treatment." Once imported goods and services are allowed into a country's markets, they must be treated no less favorably than equivalent domestically produced products and services.[8] The United States has long been one of the foremost advocates of national treatment.

The second basic principle of the GATT system of equal rules is that whenever trade protection is granted to a domestic industry, it should be done by means of a customs tariff on imports and not through other measures, such as quotas.[9] Quota restrictions were the primary barriers to trade at the end of World War II. In 1948, the GATT agreement made an historic breakthrough by prohibiting import quotas in most sectors of trade. High tariffs, of course, can be as prohibitive as quotas in keeping foreign goods out of a country, but quotas absolutely ban some producers and give import rights to others. Tariffs are fair in the sense that they impose an equal rule against all importers, so more efficient producers can still offer goods in a protected market when they pay the tax.

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5 GATT, Article I.
6 GATT, Article XXIV.
7 Cf. GATT, Articles XXXVI-XXXVIII.
8 GATT, Article III.
9 GATT, Articles XI-XIV, and Article XVIII.

MAJOR PROVISIONS OF THE NEW GATT AGREEMENT

The Uruguay Round Final Act consists in fact of approximately two dozen specifically negotiated Agreements, some reflecting more strict or carefully detailed revisions of existing GATT rules, as in the case of subsidies, anti-dumping enforcement, and government procurement. Other Agreements are entirely new to the GATT's jurisdiction, such as trade in services, protection of intellectual property rights, national treatment for investments, and the agriculture agreement. Finally, there are multiple agreements that have lowered tariffs—eliminating them entirely in many sectors—and prohibit some recently invented restrictive trade practices, such as the voluntary restraint agreements, which are self-imposed, cartel-like export controls a government enforces at the request of another government to avoid violating the GATT's rules against quotas.

One of the most important achievements, of the Uruguay Round negotiations was the strengthening of the GATT's dispute settlement procedures and the establishment of the World Trade Organization to bring every member government under the "rule of law" system of fair trade by equal rules.

The World Trade Organization

The Agreement Establishing the World Trade Organization (WTO) replaces the GATT Secretariat and makes permanent the Trade Policy Review Mechanism, which will continuously review national practices on trade and investment. The WTO will be a single institutional body responsible for the GATT agreements on trade in goods (including investment), trade in services, and the protection of intellectual property rights. Moreover, it establishes common dispute settlement rules and a forum for proposing amendments with respect to all of the Uruguay Round agreements.[10]

Unlike joining the GATT, which did not require a country to sign all multilateral trade agreements, the WTO Agreement requires all members to sign all the major Uruguay Round agreements and to set forth schedules of specific commitments on merchandise tariffs, agricultural tariffs, and services. These joint commitments will help to solve one problem under the GATT's current structure, which has been the "free rider" problem: all member countries get the benefits of other countries' trade-barrier reductions without necessarily making market-opening commitments themselves.

The WTO requires a country to agree to the obligations of the following Uruguay Round agreements:

- ✓ The Agreements on Trade in Goods (including the Agreement on Trade-Related Investment Measures);
- ✓ The General Agreement on Trade in Services;
- ✓ The General Agreement on Trade-Related Aspects of Intellectual Property Rights;

10 Office of the U.S. Trade Representative, *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations* (Version of 15 December 1993) [hereafter cited as MTN/FA] (Washington, D.C.: U.S. Government Printing Office, 1994), II, pp. 1-14. See also *Report of the Advisory Committee on Trade Policy and Negotiations* [hereafter cited as ACTPN] (Washington, D.C.: U.S. Government Printing Office, 1994), pp. 139-43.

- ✓ The Understanding on Rules and Procedures Governing the Settlement of Disputes; and
- ✓ The Trade Policy Review Mechanism.

Bringing all these practices under the jurisdiction of a single institution is important because it means that violations may be penalized by using "cross-retaliation" sanctions under the new dispute settlement procedures. A violation of intellectual property rules, for example, could lead to a penalty tariff against a country's own goods or service exports. Existing GATT agreements are not similarly linked, so a violation can only be addressed within the same economic grouping.

The WTO thus will be a forum for discussing and revising the rules of international trade and proposing changes. It will not be a legislature, but it will be more powerful than the *ad hoc* and occasional negotiations governments have in the past relied on (such as the Tokyo Round and the Uruguay Round). Interpreting GATT agreements over time, as conditions arise, will require negotiations. The WTO Agreement expressly states that the reports of dispute settlement panels will not constitute authoritative interpretations of the treaty. Rather, a three-fourths majority vote of the WTO membership would be needed to make authoritative rules. The WTO, however, is intended to function generally by consensus, which has characterized the GATT since 1948. Voting is provided for if decisions cannot be reached by consensus. Most important issues, such as amendments or reinterpretations of Uruguay Round agreements, require a supra-majority of two-thirds or three-quarters, but some issues, such as WTO institutional procedures, would be determined by majority vote.[11]

The GATT has been flawed in the past by the ability of members to demand and receive waivers from its rules, which is how agricultural trade dropped out in the 1950s—at the request of the United States. The WTO Agreement continues to permit waivers from substantive provisions of the Uruguay Round agreements, but waivers in the future are supposed to be granted only in exceptional circumstances, and any waiver granted must specify a date on which it expires. Moreover, a three-quarters vote of WTO members would be required to grant a waiver—up from two-thirds under the current GATT rules. In the case of a GATT provision subject to a phase-in period that has not yet been fulfilled by the requesting member, waivers could only be granted by unanimous consent.[12]

Why the WTO Poses No Threat to U.S. Sovereignty

Whenever the United States has joined an international organization, such as the United Nations or NATO, the question arises whether U.S. sovereignty is compromised. Sovereignty is a nation's shield against foreign interference in its domestic matters. Opponents of the North American Free Trade Agreement raised the concern of sovereignty, and critics of the Uruguay Round voice the same concern.[13]

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11 MTN/FA, II, pp. 5-6.

12 MTN/FA, II-A1A-1(e), p. 1.

13 Populists such as H. Ross Perot and conservatives such as Patrick J. Buchanan argued that the North American Free Trade Agreement contained provisions to supersede the U.S. courts and the Constitution.

This concern is unfounded. The WTO Agreement specifically provides that future amendments to the substantive rights and obligations of the members may be adopted only by a two-thirds vote. More to the point, amendments can become binding only on those WTO members that accept them. The United States thus could not be bound under the WTO by any substantive amendments to international trade rules that Congress did not accept.[14]

The critics' main concern, however, is the extent to which U.S. authority to impose unilateral trade sanctions, and to protect domestic political interests, will be limited.[15] While imposing a tariff or quota is clearly an exercise of sovereign power, the question has to be whether sovereignty is impaired by agreeing to arbitration before doing so. Prior to the Uruguay Round agreements, many trade-related problems were not covered by the GATT, and if a trade dispute could not be resolved bilaterally, the United States had no course other than to act alone. As a member of the World Trade Organization, the United States would be able to take complaints to a dispute settlement panel. All countries would abide by those judgments.

Representative Dick Armey (R-TX), chairman of the House Republican Conference, cogently answered critics of the North American Free Trade Agreement who made the same sovereignty argument:

> Any treaty or agreement restricts a participating government's policy choices to some extent. When the U.S. government decides to conduct its relations—economic, security or otherwise—with a country in a certain manner, it precludes, for the moment, following other courses of action. This is not a limit on sovereignty. It is instead the selection of one policy that necessarily excludes selection of the alternatives.[16]

The critics' desire to retain the right to act unilaterally in trade disputes in any case begs the question of what is the national interest. To surrender the power to act unilaterally and defend the national interest of all Americans would be to submit to foreign influence. But trade sanctions invariably benefit some Americans, and adversely affect the economic interests of others. The sovereignty argument is vitiated because the usual situation finds a special interest urging the U.S. government to put a narrow tax on the products other Americans want to import. The sovereignty argument cannot be invoked to justify protectionist trade sanctions that benefit a narrow interest, and injure others, any more than sovereignty can justify pork barrel legislation for special interests domestically.

There is a concern that the World Trade Organization will become a powerful bureaucracy, dominated by the less developed countries hostile to the United States. This fear arises because all members will have equal representation in its Ministerial Conference, which will meet at least every two years and will select the Director General, who appoints subordinate officials. The United States has often been in a minority position in other international organizations, and so this worry arises from numerous precedents.

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14 MTN/FA, II, pp. 6-8.

15 This claim is made by the United States Business and Industrial Council, an organization that asserts "trade liberalization in the GATT [has] weakened, rather than strengthened, our international competitive position" (letter to Congressional Trade Policy Staffers, March 14, 1994).

16 House Republican Conference, "NAFTA: Restoring Sovereignty to Individuals," *Issue Brief,* October 15, 1993, p. 3.

The risk hardly exists in the case of the WTO, however, because its primary focus will be the resolution of disputes according to transparent and clearly written rules, as set down in the several Uruguay Round agreements. There is no grant of executive power to the WTO; it cannot re-write the Uruguay Round agreements without ultimate approval of the U.S. Congress. Moreover, the self-interest of less developed countries is to resist costly environmental and labor standards, so this group of countries most likely will serve to block attempts by governments in some industrialized countries to use these standards to manage world trade to the detriment of U.S. companies and consumers.

Moreover, as discussed below, the new stricter, compulsory dispute resolution process is not a threat to any government's sovereignty. Even if a government loses a dispute settlement panel decision, the prevailing parties do not gain any power to enforce the judgment in the losing government's courts. They only gain the WTO's permission to impose trade sanctions on goods and services, etc., that *they* import from the country found to have unfair trade practices. In reality, powerful countries, including the United States, do that today. Smaller countries are unlikely to have much economic impact on the United States, even if they exercise their right to impose a sanction.

Extending GATT rules to trade in services, intellectual property, transnational investments, and agriculture will provide a new, mediating step into trade disputes that will allow negotiations and reasoned arguments to play a role where today passion and political posturing have the dominant role. The important change in dispute settlement procedures is that governments challenged for violating the GATT rules must negotiate, and they may not veto the decisions of the dispute settlement panel. In every case, the worst outcome for a party that loses a dispute is equivalent to the situation every country faces today, imposing unilateral trade sanctions. Sovereignty is not the real issue at all.

Conservatives, however, also understand the sovereignty argument in a different sense, as embodying the principles of "limited government" and "economic civil rights." In this sense, the World Trade Organization will expand the sovereignty of American citizens by reducing the power of interest groups to manipulate trade policy. Representative Armey affirmed this principle during the NAFTA debate:

> [This agreement] does take the power to block free exchanges between individuals—in the form of tariffs and non-tariff barriers—out of the hands of the governments.... In this way it restores the sovereign freedom of individuals to dispose of their property as they see fit—e.g., to sell or buy from citizens of other countries without government interference. Restoring individual sovereignty is the most important benefit of [the free trade agreement].[17]

Conservatives staunchly defend the right to freedom of contract and private property, allowing entrepreneurs, workers, and consumers to seek economic opportunities with the minimum need to obtain government permission. The GATT Codes, and the restrictions that the World Trade Organization will hold over 123 member governments, are steps forward for individual rights and the free market, just as the U.S. Constitution is a charter for limiting the sovereign power of the government, in favor of individual rights and private property.

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17 *Ibid.*, p. 9.

The Trade Policy Review Mechanism

The new GATT Agreement incorporates a "trade policy review mechanism," which is intended to replace periodic negotiating "rounds" with a scheduled procedure to examine every government's trade practices. The department within the WTO that will support this work is called the Trade Policy Review Body (TPRB). The trade practices of the four economic powers having the largest effect on the world trading system (currently the European Union, the United States, Japan, and Canada) will be reviewed every two years. The next sixteen largest economic powers will be examined every four years, and most other countries every six years.[18] The Trade Policy Review Body's reports will become the basis for revising trade laws and opening markets further among WTO members.

The new WTO charter codifies three key reforms in trade policy that directly benefit U.S. interests. The GATT articles permitted a country to set up import quotas on the excuse that balance of payments problems required restricting imports. The new agreement allows such measures only if they are phased out over a specific time period, and quotas are discouraged in favor of tariff surcharges. Such measures may also be challenged under the new dispute settlement procedures.[19] Second, the new agreement clearly applies the GATT rules to members' state trading enterprises—government-operated import/export monopolies and marketing boards, or private companies that receive special privileges from their governments to control trade.[20] These reforms are supposed to prevent state-owned enterprises from discriminating against U.S. firms. Finally, the GATT exemption to the MFN rules is clarified, for free trade areas and customs unions such as NAFTA and the EU, to assure that the world economy does not divide into competing trading blocs. The new agreement says such agreements should facilitate trade among the participating countries, but not raise barriers to other countries.[21]

THE NEW DISPUTE SETTLEMENT PROCEDURES

It is remarkable how effective GATT has been, given the essentially voluntary nature of its dispute settlement system. However, the existing dispute settlement procedures are being exercised to the limit. In the opinion of GATT Director General Peter Sutherland, the existing system is inadequate to the challenge.[22] Under the current rules, the GATT's dispute resolution proceedings could be delayed indefinitely by a country with a weak case. The new Agreement on Rules and Procedures Governing the Settlement of Disputes[23] provides instead for a system of speedy, compulsory arbitration of trade disputes. It sets deadlines at every stage of the dispute settlement process to prevent delays in the proceedings. Disputes typically are to be settled within twelve months, even if the parties should invoke every step of the entire process, including an appeal.[24]

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18 MTN/FA, II-A3, p. 1; ACTPN, p. 145.

19 MTN/FA, II-A1a-1(c), pp. 1-4; ACTPN, p. 145.

20 MTN/FA, II-A1A-1(b), pp. 1-2; ACTPN, p. 146.

21 MTN/FA, II-A1A-1(d), p. 1; ACTPN, p. 146.

22 Illingworth, *op. cit.*, p. 22.

23 MTN/FA, II-A2, pp. 1-28. Cf. ACTPN, pp. 150-54.

24 The process should not exceed nine months where the panel report is not appealed or twelve months in the case of an appeal. In urgent situations, such as cases involving perishable goods, the dispute settlement process has faster deadlines.

The Dispute Settlement Agreement applies to all of the main Uruguay Round agreements, including the Agreement on Trade in Civil Aircraft, the Agreement on Government Procurement, the International Dairy Arrangement, and the Arrangement Regarding Bovine Meat. This new dispute process is likely to be the subject of intense debate in Congress because the ability of the United States to ignore GATT panel decisions will be more strongly criticized by other countries.[25]

According to the Report of the Advisory Committee on Trade Policy and Negotiations (ACTPN), which is the acknowledged primary reference guide for the agreement:

> The process will begin when a [WTO] Member believes that its rights under one of the covered agreements have been infringed upon by another Member. The Member shall request consultations, to which the other Member must respond within 10 days of receipt of the request (unless otherwise agreed). Both parties shall enter into consultations in good faith for a period of no more than 30 days from the date of the request. If the Member does not respond within 10 days or does not enter into consultations within 30 days, the Member that requested consultations may seek the establishment of a dispute settlement panel.[26]

This panel typically would consist of three experts in the product or service sector under dispute. These panels have open-ended powers to examine the issues and make findings. The WTO Dispute Settlement Body then makes recommendations or rules accordingly. Explains the Advisory Committee report:

> The Dispute Settlement Agreement establishes a procedure for appellate review of panel decisions for the first time. Appeals shall be decided by a standing appellate body of seven members to be established and maintained by the DSB. Three members of the appellate body will serve on any given appeal. Appellate proceedings shall generally be concluded within 60 days and in no case shall they exceed 90 days. The appellate body shall not review the panel's decision on the facts, but only on issues of law.[27]

During the final days of the Uruguay Round negotiations in Geneva last December, U.S. Trade Representative Mickey Kantor negotiated a concession wanted by U.S. firms that have been frequent users of the antidumping and countervailing duty laws. The concession stipulates that a dispute settlement panel must uphold the defending country's measures if they are based on a "reasonable" interpretation of the GATT agreements and "reasonable" findings of fact. This may benefit active litigants in Washington, such as the steel industry, but it will reduce the ability of the United States to challenge penalties imposed by other countries against U.S. exporters. Fortunately, this weakened standard will apply only in cases involving antidumping or countervailing duty determinations.[28]

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25 The United States has chosen to ignore GATT judgments. See John Zarocostas, "GATT Rules in Favor of Mexico in Tuna Dispute," *The Journal of Commerce,* May 14, 1991, p. A3. The recent case of a U.S. ban on tuna imports from Mexico under the Marine Mammals Protection Act is a significant example of growing trade frictions over differing environmental values. See "*GATTery v. Greenery;* the Perils of Eco-Sanctions," *The Economist,* May 30, 1992, pp. 12-14.

26 ACTPN, p. 150.

27 ACTPN, p. 153.

28 ACTPN, pp. 151-52.

The losing country must implement the Dispute Settlement Body's recommendations immediately. If the losing country does not comply, sanctions are authorized. And if compensation for the prevailing country is not agreed upon by the disputing countries, the winner again may seek approval of the WTO to impose trade sanctions. The kinds of compensation awarded to prevailing parties in a dispute settlement under the WTO rules is essentially the same as under current GATT procedures. They gain the WTO's permission to impose trade sanctions on goods, services, etc., that they import from the country found to have unfair trade practices. There are no sinister new powers for successful litigants to enforce the dispute settlement panel's decisions by obtaining judgments or awards in another government's courts. And like all trade sanctions, even the prevailing party has to consider the adverse consequences of trade sanctions on some of its own people.

THE EXPANSION OF GATT RULES TO NEW AREAS

The agreements on trade in services, foreign direct investment, and intellectual property rights arguably are the most far-reaching achievement of the Uruguay Round. These sectors are the most rapidly changing and growing economic sectors. Beyond technological services, the rise of the global capital market could not have been imagined when the GATT was launched. The expansion of GATT rules to these new areas will make an enormous difference to America's most important new exports. As the Advisory Committee report puts it:

> Under the General Agreement on Trade in Services ("GATS"), the inclusion of services disciplines in the world trading system for the first time is a significant accomplishment. By establishing internationally accepted standards of conduct that will apply to all WTO Members, as well as a mechanism to implement them, the GATS provides progress towards trade liberalization in some sectors and lays a foundation for progress in sectors where negotiations were not successful, such as basic telecommunications, financial services, and audiovisual services.[29]

For the first time, also, restrictions imposed by governments on foreign investors will be subject to most favored nation status and national treatment rules, binding all WTO members. U.S. investors in foreign countries historically have been singled out for discriminatory treatment. Some of the protectionist practices, such as local content requirements, are abolished, but many other performance requirements and other investment restrictions unfortunately were not successfully addressed in the Uruguay Round. The Trade Related Investment Measures Agreement only begins a process of constraining the unequal treatment of investments.

Of particular significance to the United States, the Agreement on Trade-Related Intellectual Property includes important copyright protections for databases and computer programs the same as for literary works; it protects sound recordings; and it extends the term of protection for semiconductor layout designs to ten years. The agreement will protect trade secrets and prohibit the unfair commercial use of data required to be submitted to government agencies. Ultimately, it will require WTO members to agree to protect all patents, including pharmaceuticals and agrichemicals.

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29 ACTPN, p. 9.

THE GENERAL AGREEMENT ON TRADE IN SERVICES ("GATS")

Under the Uruguay Round agreement, trade in services is covered for the first time under GATT, in a section referred to as the General Agreement on Trade in Services, or "GATS."[30] As the Advisory Committee report explains:

> The GATS is based on three elements. The first element is the framework agreement embodying the basic obligations undertaken by the GATS signatories. The framework defines the scope of the agreement, sets forth the general obligations and disciplines embodied in the principles of transparency and most favored nation treatment, and establishes a basis for further liberalization through future negotiations.[31]

Second, there are several "annexes" dealing with specific issues. The annex dealing with exemptions from MFN treatment says that in principle such exemptions should last no longer than ten years, and must be subject to future negotiations. Other annexes define specific conditions particular to certain services sectors, including civil aviation, financial services, and telecommunications, for which existing commitments are intended to be further negotiated.

The third element is a schedule of country-specific commitments to liberalize markets on a sector-by-sector basis. These commitments assure there will not be delays in implementing access to service markets for spurious reasons.[32]

Uruguay Round negotiators were able to obtain specific commitments to improved market access and national treatment in the areas of general business services, professional services, information and computer services, general retailing and wholesaling services, engineering and construction services, educational services, health services, environmental services, and tourism, among others. Service areas receiving specific commitments cover subsectors that involve a substantial value in U.S. services exports. In addition to the agreements directly relating to services, the Uruguay Round Agreement on Government Procurement provides that GATT government procurement rules also will now extend to services that foreign governments buy.

While no sector was excluded *per se* from the final agreement on services, several important areas must be regarded as failures. Among these is the lack of commitments on film and audiovisual services, due to the opposition of certain European countries worried about U.S. domination of their culture. This leaves in place television programming quotas, restrictions on the distribution of U.S. motion pictures in Spain, and subsidies for local producers financed by fees on imports.

No formal commitments were agreed on market liberalizing negotiations for basic telecommunications services. While the U.S. market is relatively open, extremely profitable foreign markets remain closed. However, GATS provisions in some areas, such as private terminal equipment and circuits, combined with favorable market access commitments from a number of participants, offer prospects for further liberalization.

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30 MTN/FA, II-A1B, pp. 1-38; ACTPN, pp. 52-61.

31 ACTPN, p. 53. Transparency is the ability to recognize trade barriers and market restrictions for what they are, as opposed to disguising them as health or safety rules.

32 ACTPN, p. 54.

In the financial services area, including banking, securities, and insurance, the United States was among those countries refusing to make a full commitment to national treatment because market access offers from other governments, particularly Japan, were less open. Because of lack of reciprocity the Clinton Administration supports trade-retaliatory legislation in Congress to deny national treatment to foreign financial services firms.[33]

There was also no agreement on maritime service, due in large measure to a U.S. refusal. Under pressure from unions and shipping interests, the United States agreed to continue negotiations until June 1996, but all existing U.S. maritime subsidies and market restrictions will continue.[34]

TRADE-RELATED INVESTMENT MEASURES ("TRIMS")

The Agreement on Trade-Related Investment Measures (The "TRIMS Agreement")[35] brings each member government's regulation of foreign investment under GATT discipline. This agreement is another historic broadening of the principles of MFN and national treatment. Foreign investment has an enormous and beneficial impact on the U.S. economy, increasing exports and creating jobs. And U.S. companies with factories and other direct investments abroad contribute to a worldwide trade surplus from U.S.-owned businesses.[36]

The TRIMS Agreement essentially assures an open, non-discriminatory market for international investment. It provides an illustrative list of five TRIMS that would violate the new rules—two are examples of local content requirements and three of trade-balancing requirements.[37] The other most egregious and trade-distorting TRIM, export performance requirements, is specifically prohibited by the Subsidies Agreement if a subsidy is, in law or in fact, contingent upon it.[38] The TRIMS Agreement also increases the possibility of further liberalization of investment.

The political reality of moving from a world that has been traditionally constrained by closed investment markets did require the TRIMS Agreement to provide for transition periods to implement the new rules for some countries: two years for developed countries, five years for developing countries, and seven years for the least developed countries.[39]

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33 See H.R. 3248, "The Fair Trade in Financial Services Act."

34 ACTPN, pp. 54-58.

35 MTN/FA, II-A1A-7, pp. 1-5; ACTPN, pp. 62-66.

36 "The net balance of the United States on its global sales and purchases of goods and services was a surplus of $24 billion in 1991, compared with a deficit of $28 billion on cross-border trade alone. From 1981 to 1991, the surplus under this measure rose from $8 billion to $24 billion, whereas the deficit on cross-border trade alone rose from $16 billion to $28 billion." J. Steven Landefeld, Obie G. Whichard, and Jeffrey H. Lowe, "Alternative Frameworks for U.S. International Transactions," *Survey of Current Business,* December 1993, p. 50.

37 Local content requirements are mandates for a firm to use some significant amount of labor or certain components in manufacturing its products. Trade balancing requirements are mandates that a firm must also export some of its output to be able to import or invest in a country.

38 MTN/FA, II-13, p. 38.

39 ACTPN, pp. 63-64.

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS ("TRIPS")

Intellectual property rights are the basis for a broad range of U.S. industries in some of the nation's largest and most vibrant sectors, including computers and computer software, pharmaceuticals, publishing, and entertainment. Pirating and counterfeiting, due to lax or ineffective law enforcement in many countries, leads today to huge losses for these industries. The last official study, conducted in 1988 by the U.S. International Trade Commission, estimated that U.S. companies lost from $43 billion to $61 billion in 1986 alone from foreign intellectual property right infringement.[40] The U.S. copyright industry estimates a loss of $12 billion a year, and the pharmaceutical industry $6 billion a year, as a result of foreign piracy.[41] The Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (The "TRIPS Agreement")[42] will strengthen the international protection of these rights.

The TRIPS Agreement sets out specific protections that governments must make for copyrights, patents, trademarks, layout-designs (topographies) of integrated circuits, geographical indications, industrial designs, and the protection of trade secrets. The Agreement requires WTO members to comply with the Berne Convention on copyrights, including granting protection to databases and computer programs the same as to literary works. The right to authorize or prohibit the rental of computer programs and sound recordings is reserved to those who own the rights. Countries must establish a duration for copyright protections that is compatible with the Berne Convention, and the TRIPS Agreement provides a 50-year term for the protection of sound recordings. The enforcement provisions require criminal penalties against copyright piracy.[43]

When the TRIPS Agreement is fully in force, it will significantly improve patent protection, and be of particular benefit to U.S. firms. While compulsory licensing is not prohibited, it is severely limited.[44] The TRIPS Agreement does continue the exclusion from patentability of biotechnological inventions and diagnostic, therapeutic, and surgical methods.[45]

The agreement also protects trade secrets against third party acquisition, and prohibits the commercial use of proprietary test data submitted by firms to government agencies to demonstrate the efficacy and safety of new chemical entities in pharmaceutical and agrichemical products. It establishes a "gross negligence" standard for the disclosure of trade secrets to third parties.[46] And it provides for protection of service marks to the same extent as trademarks and protection for geographical indications such as the wine regions of France.[47]

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40 U.S. International Trade Commission, *Foreign Protection of Intellectual Property Rights and the Effect on U S. Industry and Trade*, USITC Publication 2596 (February 1988), p. H-3.

41 ACTPN, p. 67.

42 MTN/FA, II-A1C, pp. 1-32; ACTPN, pp. 67-80.

43 MTN/FA, II-A1C, pp. 5-7.

44 Compulsory licensing is a condition some governments attach to their grants of patent protection, which allows them to assign to competitors of the patent holder certain rights to manufacture and sell the protected products. In Canada, this power was used as a technique of price control over pharmaceuticals.

45 MTN/FA, II-A1C, pp. 13-17.

46 MTN/FA, II-A1C, p. 18.

47 MTN/FA, II-A1C, pp. 8, 10-12.

GATT members agreed to effective enforcement procedures for intellectual property rights. The TRIPS Agreement covers both civil and administrative remedies, and includes provisions on damages, injunctive relief, and due process. In addition, the agreement includes provisional measures, with safeguards, for expeditious action, such as special border measures to permit customs authorities to impound suspected infringing imports. These measures are mandatory for counterfeit trademark and pirated copyrighted goods, and may be extended to goods involving industrial designs, patents, integrated circuits, or undisclosed information.[48]

Unfortunately the TRIPS agreement has transition rules that will be costly to many U.S. companies. The NAFTA Agreement with Canada and Mexico, as well as bilateral agreements with other countries, have intellectual property provisions that are generally stronger than those in the TRIPS Agreement. For instance, the phase-in period under TRIPS is much longer.

The United States thus would be wise to continue pursuing bilateral agreements to accelerate intellectual property protection in individual countries. When it is fully implemented in 2006, the TRIPS Agreement will be a significant improvement for most of the world over the protections that have existed. But the United States should continue vigorously to pursue improved intellectual property protection abroad. The intellectual property chapter of the NAFTA should set the standard.

THE AGRICULTURE AGREEMENT

The Agriculture Agreement[49] for the first time subjects agricultural trade to general GATT principles. It is the net result of over seven years of frustrating and often fruitless talks between countries with widely different and strongly held positions on agricultural trade. It is, however, an important breakthrough for the world agricultural trading system. For the first time, agricultural trade will be governed by general GATT principles, not by a series of special exceptions. For the first time, export subsidies will be limited in both volume and budgetary terms. For the first time, import protection for agricultural products will be imposed through tariffs rather than through more restrictive quotas and other non-tariff barriers. And for the first time, Japan and Korea will allow access to their markets for U.S. rice—a small but very symbolic concession.

The Agreement calls for 36 percent tariff cuts by 2000. Since U.S. tariffs generally are lower, this will not have a major impact on most U.S. producers. Where U.S. tariffs are high (mainly in the fruit and vegetable sector), the cuts could have significant impact, but they will be phased in over six years and many will be subject only to 15 percent cuts over the six years. However, deeper cuts will have to be made in tariffs on other products to reach the mandated aggregate 36 percent reduction.

The Agreement will require converting U.S. Section 22 quotas[50] into tariff-rate quotas.[51] Minimum import access will have to be provided, equal to 3 percent of domestic consumption

48 MTN/FA, II-A1C, pp. 19-28.

49 MTN/FA, II-A1A-3, pp. 1-28; ACTPN, pp. 37-51.

50 Section 22 of the Agricultural Adjustment Act currently provides for quotas if imports are undercutting agricultural price support programs.

51 Tariff-rate quotas operate as follows: For a given commodity, the same level of imports will be allowed to enter as entered during the base period 1986-88 (average). That quantity will enter under low or non-restrictive tariffs. Once that

in 1995, rising to 5 percent by 1999, but this does not mean the United States must import this amount. Rather, it means that the United States government must not restrict access for this amount. This provision will affect peanuts, and certain dairy and sugar products where imports are less than 3 percent of consumption. Likewise, the U.S. Meat Import Law will need to be replaced with tariff-rate quotas. One advantage of tariff-rate quotas over quotas is that they are legal in the GATT and do not require a waiver to be maintained, as is the case with Section 22 of the Agricultural Adjustment Act.

The Agriculture Agreement requires reductions in subsidized agricultural exports, namely a 36 percent cut in budgetary outlays and 21 percent cut in volume terms, over six years. Including both tonnage and budgetary limits on export subsidies is important. Budgetary limits prevent raising the subsidies when world prices are low and more money is needed to make up the difference between internal prices and external prices. The Agreement will reduce subsidized EU exports substantially from existing levels by the year 2000. The EU currently uses export subsidies for wheat, flour, most other grains, dairy products, beef, pork, sugar, poultry, and a wide range of other products. Developing countries are required to cut export subsidies by 24 percent in budgetary terms and 14 percent in tonnage terms.

A number of U.S. agricultural export programs will be subject to the Uruguay Round disciplines. The main United States program is the Export Enhancement Program, which pays exporters to dump products on the world market at discounted prices. The United States will have to reduce expenditures on these programs and the tonnage of product shipped. Meat will be the main commodity affected, but cottonseed, soybeans, and dairy products and some other commodities will be included.

The Agriculture Agreement requires that some trade-distorting internal supports be subject to 20 percent reductions in their respective "aggregate measurements of support" (AMS) over six years. Domestic supports that do not exceed five percent of the total value of production of a product or product sector will not be subject to reduction requirements. Domestic supports not subject to reduction (other than those meeting the five percent test) must meet the fundamental requirement that they have no, or at most minimal, trade-distorting or production effects. Examples of such non-trade-distorting domestic subsidies include: disaster relief, domestic food aid programs, food security stockholding, income insurance, structural adjustment and long-term land retirement programs, environmental payments, regional assistance, research, pest and disease control, training services, extension services, inspection services, promotion services, infrastructural works and services, and direct or de-coupled payments to producers.

The agreement incorporates special rules to cover developing countries. It also contains provisions designed to assure a continuation of the agricultural reform negotiations that proved so contentious during the Uruguay Round. Under the agreement, notes the Advisory Committee report:

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level of imports is reached in a given year, a higher tariff may be imposed to limit additional imports. These above-quota tariffs essentially would be the difference between the internal and world prices during the base period, so as to provide the same level of price protection from imports as under current quotas, at least initially. The quantitative limits are to be increased by three percent per year over six years and the above-quota tariffs will be gradually lowered according to the reduction plan for regular tariffs (36 percent reductions by 2000 with no reduction less than 15 percent for developed countries, 10 percent for developing countries).

Developing countries will be allowed ten years to implement their obligations, which in some cases are reduced from those for developed countries. "Least developed countries" will not be obligated to undertake subsidies commitments, but will be required to undertake tariffication and binding.

The "continuation clause" requires negotiations after five years on how to continue the reform process. This provision represents a compromise between the European Union (EU), which had sought a simple review after 5 years, and the United States, which had sought a commitment to continue the reforms almost automatically for a total of 10 years.[52]

Various commodity sectors will be affected in different ways by the Agriculture Agreement. Subsidized wheat exports from the EU will be reduced by more than the 21 percent nominally required under the agreement because current subsidized exports from the EU are substantially higher than during the base period. This should raise world wheat prices and reduce the need for U.S. counter-subsidies. U.S. livestock exports will benefit from reduced export subsidies, mainly by the EU, and increased market access in a number of countries, mainly Japan, Korea, and the EU. Products expected to benefit most are pork, beef, poultry meat, and dairy items. The Agreement on Sanitary and Phytosanitary Measures will help to resolve the EU hormone ban, which currently keeps most U.S. beef out of European markets. The United States also can be expected to gain at least some benefits from the required tariff reductions in virtually all of its export crops, including citrus, almonds, walnuts, raisins, apples, asparagus and a wide range of processed and nursery products, and for a number of specialty horticultural crops.[53]

REDUCING TARIFFS AND ERASING QUOTAS

The "market access" negotiations for the most part addressed areas that already are covered by the GATT. But the Agreement contains significant reductions in overall tariff rates among developed countries, and introduces a broad range of new zero tariff sectors, concerning many of the most competitive U.S. industries, such as medical equipment, agricultural and construction equipment, and pharmaceuticals.

The complete elimination of tariffs in a broad range of sectors is a significant accomplishment of the Uruguay Round. One study found that the reduction in trade barriers could add $130 billion to the U.S. economy by the end of the 1990s.[54] Another study estimates that world economic output would increase by 4.2 percent by the year 2005 as a result of a one-third reduction in tariffs phased in over ten years.[55] The elimination of tariffs in some of the most competitive U.S. industries should greatly enhance U.S. exports.

The U.S. objective of zero-for-zero tariffs was achieved in a number of sectors. These include agriculture and construction equipment, beer, distilled spirits, furniture, paper, pharmaceuticals, toys, medical equipment, and steel (the Multilateral Steel Agreement negotiations

52 ACTPN, p. 42.
53 ACTPN, pp. 44-51.
54 Stern Group, "Benefit and Cost Estimates of GATT Round Success or Failure," October 1990.
55 DRI/McGraw Hill, "Impacts of Trade Liberalization under the Uruguay Round" (1993).

are continuing). While these agreements to eliminate tariffs are significant, the lengthy phase-out periods—up to ten years in some sectors—unfortunately will reduce total export benefits for these industries by several billion dollars. Sectors in which tariff elimination was sought, but not fully achieved include electronics, non-ferrous metals, wood products, and distilled spirits.

The Agreement on Textiles and Clothing[56] provides for a scheduled phase-out of all quotas under the Multifibre Arrangement (MFA) over a ten-year period.[57] This is a major achievement for American consumers. The U.S. International Trade Commission has estimated that textile and apparel restraints currently cost the United States more than $18 billion annually in lost GDP, as consumers have to spend more of their incomes on these products and thus cannot buy goods and services from other sectors of the economy, where new jobs and greater competitiveness could be developed.[58] The increase in imports, as quotas are relaxed, will occur by imposing an additional growth rate on rates already established under bilateral agreements. The increases will occur in three stages: 16 percent for years one through three, 25 percent for years four through seven, and 27 percent for years eight through ten.

The agreement also sets out a schedule for shifting products from MFA coverage into the GATT during the quota phase-out. Again, integration will be staged over ten years. Products representing 16 percent of import volume, based on 1990 imports, will be integrated on the day the agreement goes into effect, 17 percent after three years, and 18 percent after seven years. All remaining products will be integrated after ten years. Each importing country may decide, within established product categories, which products to integrate at each stage, thus allowing products with a greater employment or political impact to be integrated last.

GOVERNMENT PROCUREMENT

Agreement on a GATT Code for government procurement was reached in the 1979 Tokyo Round, and the Uruguay Round further tightens the code to eliminate a government's favoritism toward its own nationals when buying goods and services. Expanding the Government Procurement code will also be a key issue in the telecommunications negotiations, which were not resolved in the GATS Agreement.[59]

The new agreement expands GATT coverage to new sectors of procurement, and strengthens the procurement rules. It includes for the first time the procurement of services, construction, and limited coverage of regional governments and government-owned utilities. A more stringent enforcement mechanism should result in more fair bidding and transparent procedures.

Timely and transparent procedures are established for companies to challenge alleged procedural irregularities before an impartial and independent review panel. Procedures include the

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56 MTN/FA, II-A1A-5, pp. 1-32; ACTPN, pp. 33-34.

57 The MFA was the result of multilateral negotiations in 1973 that involved approximately 50 countries. It allows for country-specific quotas on most types of textiles and apparel. For the most part, the quotas are imposed by developed countries against imports from developing countries.

58 U.S. International Trade Commission, *The Economic Effects of Significant U.S. Imports Restraints*, USITC Publication 2699 (November 1993), pp. 11-21.

59 See the GATS Annex on Telecommunications, MFN/FA, II-A1B, pp. 36-39; ACTPN, pp. 55-58.

suspension of a government contract award while the challenge is under consideration and compensation for loss or damages. However, there is no provision to permit reversal of an improperly awarded contract.

The United States has agreed to place procurement by all executive agencies subject to the Federal Acquisition Regulations under the new government procurement agreement, with the exception of minority and small business set-aside programs and sensitive service sectors such as transportation and certain research and development activities. Coverage of lower-level government and government-owned utilities is also anticipated. In the United States, 24 state governments will be covered on a voluntary basis, and commitments from additional state governments are expected.

These agreements and ongoing negotiations are seen generally as a prerequisite to genuine market access for U.S. firms in the key and highly competitive infrastructure sectors of heavy electrical and telecommunications equipment.[60]

THE ANTIDUMPING AGREEMENT

American companies have made heavy use of U.S. laws designed to protect them from imports sold allegedly below cost in the U.S. market, a practice known as "dumping." Needless to say, these firms are concerned about how the new agreement might affect these legal actions. GATT Article VI permits countries to enact anti-dumping and countervailing duty laws, and the United States was one of the first to establish these protections for domestic industries. Essentially, when an industry wins an antidumping case, a tariff is imposed on the competitors' imports, assuring that the successful litigant can raise its prices— consumers and other industries that need the imported goods have no standing in the litigation. Petitions for antidumping relief are judged in the complainant's home court, and defendants are almost always at a disadvantage. Under these conditions, the danger of an unfair process in the name of "fair trade" is very large. The Antidumping Agreement contains several improvements in the way this troublesome trade regulation is administered. In the United States, the International Trade Commission (ITC) and the Department of Commerce's International Trade Administration (ITA) share enforcement responsibilities. The ITA investigates whether dumping has occurred, and the ITC investigates whether damage to domestic industry has occurred. For the most part, the procedures followed in the United States by the ITA and ITC, while still heavily biased toward findings of guilt, are incorporated into the new GATT agreement.

The Uruguay Round agreement would force several complex changes. According to the Advisory Committee report:

> The Uruguay Round Agreement on the Implementation of Article VI ("Antidumping Agreement") contains four types of provisions that affect antidumping measures. First, the Antidumping Agreement contains provisions to require countries to incorporate adequate and effective procedural rules into their antidumping regimes, including transparency and due process requirements.

60 ACTPN, pp. 81-85.

Second, the Antidumping Agreement contains provisions affirming some basic substantive practices of the United States (e.g. testing whether home market prices are below the cost of production when calculating the size of the dumping margin and cumulating the imports from all countries subject to investigation when examining the question of injury to the domestic industry.

Third, the Antidumping Agreement contains provisions that may affect U.S. antidumping laws and practices. Some of these provisions were supported by U.S. industries concerned with access to foreign markets and maintaining their competitiveness in the face of foreign countries' antidumping laws and access to foreign-made components to maintain their competitiveness. Other U.S. industries opposed them because of concerns about unfair trade practices by foreign companies in U.S. markets. The most notable provisions are the following:

- ✔ rules for conducting cost of production tests, specifically for (a) period of measurement, (b) the threshold before ignoring below-cost sales, and (c) for evaluating start-up operations;
- ✔ rules containing options for calculating profitability in constructed value calculations;
- ✔ rules containing options for comparing transaction-specific export prices with weighted-average prices in the comparison market;
- ✔ rules for determining when a dumping margin is *de minimis* and when the level of imports is negligible, both of which determine whether an antidumping case can be prosecuted;
- ✔ rules for determining whether the petitioner or petitioners represent a sufficient portion of the domestic industry to have [legal] standing to file the petition; and
- ✔ rules requiring a reexamination every five years during the life of an antidumping order of whether the injury likely would continue if the order were revoked (and revocation if it would not).

Fourth, the Antidumping Agreement contains new dispute settlement provisions. Because dispute settlement decisions will be more binding on the parties than in the past, the standards of review used by the panels take on critical importance. The Antidumping Agreement contains two specific standards. With regard to factual determinations, if the national investigating authorities' establishment of the facts was proper and their evaluation of them was unbiased and objective, then their evaluation must be upheld even if the panel might have reached a different conclusion. With regard to interpretation of the Antidumping Agreement, if the panel finds that a relevant provision of the Antidumping Agreement has more than one permissible interpretation and if the investigating authorities relied on one of those interpretations, the decision of the investigating authorities must be upheld.[61]

The U.S. negotiators sought these standards of review during the final days of the Uruguay Round negotiations in response to pressure from members of Congress and some U.S. industries that make frequent use of the antidumping process. Their concern was that the WTO

might be less sympathetic to the theory of dumping than the ITC has been. The consequence of this result is that U.S. exporters will also have less protection from foreign antidumping actions. Producers in the United States who must import supplies to remain competitive[62] were also hurt by the Clinton Administration's last-minute demand for changes in the original Uruguay Round Antidumping proposal, which would have placed stricter controls on the use of antidumping laws to eliminate competition. The costs of production are seldom reflected in the kinds of investigations that support antidumping actions and economic "opportunity costs" are never considered. Antidumping laws are almost always used in lieu of the safeguards procedures to slow down or evade the need to meet competition and improve productivity.

In general, the Antidumping Agreement would seem to move in a trade liberalizing direction, but unfortunately the implementing legislation that is being urged by the U.S. Department of Commerce and the U.S. Trade Representative would be severely protectionist in fact. Other countries will most likely increase the severity of their anti-American dumping legislation to mirror any changes the United States adopts. The number of foreign antidumping cases against U.S. exporters already exceeds the number of such cases against any other country.[63]

SUBSIDIES AND COUNTERVAILING DUTIES

Government subsidies to export industries are among the most contentious areas of international trade. Historically, the United States has offered fewer subsidies than most other countries. The U.S. response to this international practice has been to protect affected domestic industries by means of countervailing duties, and to try through negotiation to encourage foreign governments to reduce their subsidies.

Under the new GATT agreement all members of the WTO will be required to adhere to the Agreement on Subsidies and Countervailing Measures (The "Subsidies Agreement"),[64] with its well-defined disciplinary framework. Its provisions will extend beyond the current 25 signatories to the current GATT Subsidies Code. The Advisory Committee report refers to the new disciplines and the clear statement of which subsidies are and are not allowable as "constructive," and providing U.S. firms with "a solid basis for complaint and the hope of an effective remedy when U.S. exports are undercut by subsidized foreign competition in foreign markets."[65]

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61 ACTPN, pp. 87-88.

62 See George F.W. Telfer, "US Steel Users Attack Restrictions on Imports," *Journal of Commerce*, March 22, 1994, p. 5A.

63 The changes in U.S antidumping laws that are being proposed for the Uruguay Round implementing legislation, which has not yet been introduced, would be a serious new barrier to trade. Undersecretary of Commerce Jeffrey Garten and Deputy USTR Rufus Yerxa appear to support amending U.S. antidumping laws to include provisions that would impose draconian new tests and standards in antidumping cases, which would have the effect of dramatically increasing the tariffs authorized under U.S. antidumping laws. In some cases, antidumping tariffs could exceed 100 to 200 percent. These proposals would make it much easier for complainants to win cases to obtain those tariffs, and to assure those tariffs would be renewed at the end of the five-year period for review. A bill introduced on April 13, 1994, by Representatives Ralph Regula (R-OH) and Norman Mineta (D-CA), H.R. 4206, is a model for this kind of protectionism via the administrative process. If protectionist revision of U.S. antidumping laws is included in the implementing legislation, many strong supporters of the new GATT agreement may be tempted to oppose the legislation.

64 MTN/FA, II-A1A-13, pp. 1-50; ACTPN, pp. 91-103.

65 ACTPN, p. 98.

The Advisory Committee's view of these provisions is correct. They will give much clear guidance to companies and government and, hopefully, avoid many disputes in the future. The Advisory Committee report summarizes the main provisions thus:

> The Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement") begins with an expanded definition of what constitutes a subsidy. It then reorganizes the 1979 Code's structure for disciplining the use of subsidies, categorizing subsidies into three groupings: (1) those that are completely prohibited (so-called red light subsidies), (2) those that are actionable (yellow light subsidies), and those that are non-actionable (green light subsidies)
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> The Subsidies Agreement expands upon the definitional framework in the 1979 GATT Subsidies Code. A subsidy shall exist if (1)(a) there is a financial contribution by a government or comparable public body (or if a government or comparable body directs a private body to undertake such activity) or (b) there is an income or price support mechanism and (2) there is a benefit conferred. The Subsidies Agreement contains examples of various forms of financial contribution.[66]

In order to take action against a subsidy, either by means of a multilateral disputes settlement panel challenge or by means of a unilateral countervailing duty action, the Agreement specifies that the subsidy must be "specific" (following the general lines of the current U.S. specificity test). The Subsidies Agreement's specificity test also requires that account be taken of the extent of economic diversification within the country or province providing the subsidy as well as the length of time that a subsidy program has been in operation.[67]

According to the Advisory Committee report:

> As in the 1979 Code, prohibited subsidies include all subsidies that are provided contingent upon export performance. The Subsidies Agreement contains essentially the same list of illustrative export subsidies as in the 1979 Code, but adds subsidies that are contingent upon the use of domestic over imported goods. If a Member country believes that another Member is providing either type of subsidy, the complaining member can request a disputes settlement panel ruling on whether the subsidy is a prohibited one, with the potential relief of immediate withdrawal of the subsidy or the authorization of countermeasures.[68]

One significant change in existing GATT regulations governing illegal subsidies is, however, somewhat disadvantageous to the U.S. The illustrative list allows export rebates on certain energy taxes. U.S. exporters have enjoyed the benefits of relatively low energy taxes in contrast to Europe, but this new provision means European firms may receive an offset to their energy taxes if they export.[69] This is a significant change from current GATT rules and

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66 ACTPN, pp. 92-93.
67 MTN/FA, II-A1A-13, pp. 38-39; ACTPN, p. 93.
68 ACTPN, pp. 93-94.
69 ACTPN, p. 103.

will provide a possible new competitive cost advantage to energy-intensive producers in Europe.

The Subsidies Agreement defines actionable subsidies much more explicitly than in the past. These are defined as those adversely affecting another member by (1) injury in its own market, (2) nullification or impairment of GATT benefits in the market of the subsidizing country, or (3) serious prejudice to that member's interests in third-country markets. What constitutes "serious prejudice" is specified to include total *ad valorem* subsidization of a product exceeding five percent (this provision will not apply to civil aircraft), subsidies to cover operating losses by an industry (or by an enterprise in some circumstances), and direct forgiveness of debt and grants to cover debt repayment.[70] This is a major advance in the international regulation of government subsidies.

In connection with the provision on serious prejudice, the Subsidies Agreement contains an annex directing how to calculate the *ad valorem* subsidy. Unlike the approach available under the countervailing duty provisions, the calculation for purposes of the presumption of serious prejudice under Article VI(1)(a) must be done on the basis of the cost to the granting government.[71] This is an important U.S. achievement. It means that subsidies must be defined in terms of the government's financial contribution and not in terms of the benefit to the recipient.[72] That is important because government financing is objective and transparent, but benefits are often difficult to quantify and can even accrue only indirectly to beneficiaries.

A complaining member can seek a disputes settlement panel decision to require that the government granting the subsidy either take steps to remove the adverse effect on the complaining member or end the subsidy. The Agreement again provides that a complaining member can use this mechanism in tandem with countervailing duty actions but can only impose one form of relief (countermeasures or countervailing duties).

Three specific forms of government assistance would not be subject to actions. First, explains the Advisory Committee report:

> ...assistance for research activities, with the assistance covering no more than 75 percent of the costs of industrial research or 50 percent of the costs of "pre-competitive development activity", is not actionable. Pre-competitive activity is defined to include activity through the creation of a first prototype which would not be capable of commercial use. It does not include routine or periodic alteration or improvement to on-going operations.[73]

The "green light" for certain research and development activities reflects a shift in U.S. attitudes toward these kinds of subsidies during the course of the negotiations. Prior to 1990, the operating assumption of both the American negotiators and the U.S. private sector was that U.S. interests with respect to research and development subsidies were largely defensive, with the aim of limiting what competitors could do. But the Clinton Administration sees such subsidies as integral to the creation of new government-business partnerships, which are popular among industrial policy advocates. Besides the general problems with industrial policy, the

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70 MTN/FA, II-A1A-13, pp. 5-8.
71 MTN/FA, II-A1A-13, pp. 47-48.
72 ACTPN, p. 102.
73 ACTPN, p. 95.

explicit inclusion of "precompetitive development activity" opens the door for subsidies ventures that in a competitive market should only—if at all—be funded through private investment.[74]

If foreign governments take full advantage of the "green light" for research and development subsidies, industrial policy advocates in the United States would demand European-style industrial policies in order to compete. Senator John C. Danforth (R-MO), a leading critic of the green light provisions, has argued: "If we subsidize, we must find billions of dollars and count on the government to make intelligent choices about which industries get the money. But if we decide not to play the game, we lose....Airbus picked up one-third of the world market for civilian aircraft without ever earning a profit. If we fail to subsidize while opening the door to others, Airbus will be the model for the future."[75]

Second, certain forms of assistance to depressed regions would not violate the Subsidies Agreement. This provision was included at the insistence of Germany and Canada, which have large, special problems associated with regional underdevelopment. The danger, of course, is that this may become a loophole, leading to subsidies for companies that agree to locate in such regions but whose viability in competition depends entirely on the subsidies.

Third, some help to facilities for implementing new environmental regulations also is permissible. "The assistance can be for no more than 20 percent of the cost of adaptation," explains the Advisory Committee report, "and must be directly linked to the environmental issue."[76] As in the case of export rebates of energy taxes, however, there is a danger that otherwise illegal subsidies for export enhancement may be cloaked as environmental assistance. The green light for environmental subsidies undoubtedly will be a source of future controversy.

The Advisory Committee report makes clear that even in these permissible cases, the WTO may still have a role:

> For all of these non-actionable subsidies, there still is the possibility of relief through the WTO (but not through countervailing measures) if they create serious adverse effects on another member. Members must notify the WTO of any non-actionable subsidies before they are introduced. If other members believe the subsidies "would cause damage that would be difficult to repair," then they may request consultations. If the consultations do not produce a resolution, the Subsidies Committee will review the facts and may recommend modifications. If such modifications are not made, appropriate countermeasures will be authorized.[77]

Like the Antidumping Agreement, the Subsidies Agreement clarifies how investigation shall be conducted. Among the most notable safeguards is the rule that a case cannot be prosecuted if the level of subsidization is *de minimis* or if the level of imports is negligible (unlike the Antidumping Agreement, there is no definition of "negligible").

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74 ACTPN, pp. 100-01.
75 Letter to the author.
76 ACTPN, p. 95.
77 MTN/FA, II-A1A-13, pp. 13-14; ACTPN, p. 96.

The rule for determining whether the petitioner or petitioners represent a sufficient portion of the domestic industry to have legal standing to file the petition (same text as in the Antidumping Agreement).

The rule requiring a reexamination every five years during the life of a countervailing duty order, to determine whether the injury would likely continue if the order were revoked, and to revoke it if the injury would not continue (same text as in the Antidumping Agreement).[78]

Regarding U.S. law, the Advisory Committee report points out specifically:

> Like the Antidumping Agreement, the Subsidies Agreement does codify the U.S. practice of cumulating the imports from all countries subject to investigation when examining the question of injury to the domestic industry. The Subsidies Agreement also contains provisions specifically directed at U.S. countervailing duty methodology. In particular, there are mandatory "guidelines" for how to determine if the recipient of a subsidy has received a benefit.[79]

The Subsidies Agreement contains a special provision covering developing countries and countries transforming themselves from centrally planned to market economies. For both, waivers are available for a certain number of years, depending upon a variety of circumstances. There are also special, higher thresholds for undertaking countervailing duty investigations against developing countries.[80] "While one can debate the wisdom of the specific terms for phase-in conformity by developing countries," comments the Advisory Committee report, "all such countries ultimately will be a part of the same framework of obligations. While developing countries should have a transition period to allow them to eliminate the subsidies that have characterized much of their economies, it is important that they assume the obligations of the GATT as soon as possible."[81]

THE SAFEGUARDS AGREEMENT

GATT has permitted countries to take "temporary emergency action against surges of imports which cause, or threaten to cause, serious injury to the country's domestic producers of those goods."[82] These are known as "safeguard actions" or "escape clause actions."

The Uruguay Round Agreement on Safeguards (The "Safeguards Agreement")[83] includes several constructive rules clarifying how this mechanism should be used. These are:

- ✘ There must be transparency in investigations (such as public advance notice and public hearings).
- ✘ Any action taken must be temporary (limiting the chosen relief to no more than eight years in duration, with developing countries permitted two extra years).

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78 ACTPN, pp. 96-97.
79 MTN/FA, II-A1A-13, p. 20; ACTPN, p. 97.
80 MTN/FA, II-A1A-13, pp. 32-35.
81 ACTPN, p. 99.
82 ACTPN, p. 133.
83 MTN/FA, II-A1A-14, pp. 1-9; ACTPN, pp. 133-136.

✘ There must be a progressive reduction of the chosen import relief.

The Safeguards Agreement defines the central requirements for safeguard actions—serious injury, threat of serious injury, and it defines criteria for the domestic industry to be protected. The Agreement then establishes what factors to consider in determining whether injury has occurred and requires a causal link between the increased imports and the injury before any safeguard action may be taken.

The United States has a strong interest in ensuring that other WTO members use stringent standards and procedures, similar to those of the United States, before resorting to safeguard relief. To avoid misuse of safeguard actions, suspension of the ordinary rules of trade should occur only if the required level of injury has a high threshold. Otherwise "injury" is indistinguishable from an ordinary competitive disadvantage. The Safeguards Agreement's definition of serious injury as "significant," incorporates the same test as in U.S. law.

In order to encourage member countries to employ the safeguard mechanism instead of more trade-distorting measures, the Safeguards Agreement provides that as long as the relief is in response to an absolute increase in imports, the affected exporting members cannot require compensation from the importing country for the first three years in which the safeguard measure is in effect. However, the Safeguards Agreement contains an important principle, similar to that in U.S. law, to assure it is not invoked lightly. This involves the definition of the causal relationship: "When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports."[84]

Finally, the Safeguards Agreement bans the use of voluntary export restraints, orderly marketing arrangements, export price or import-price monitoring schemes, export or import surveillance, or similar protective restrictions. WTO members are required to phase out such restrictions within four years, but each member has the right to exempt one such existing arrangement until the end of 1999.[85]

CUSTOMS-RELATED MEASURES AND TECHNICAL BARRIERS

Although much less controversial than the other sections of the Uruguay Round agreement discussed above, customs-related measures and other technical aspects of trade can have a significant effect on import and export costs. The agreements on customs-related measures, including rules of origin, customs valuation, and preshipment inspection will all apply to WTO members uniformly. The Agreement on Rules of Origin[86] establishes clear methods for determining rules of origin in all GATT countries. Under the Valuation Agreement,[87] a significant advance on existing GATT rules is that all WTO members will be required to use market transaction prices for valuation, as opposed to published or list prices, or administered control prices. This is important because many commodities compete by pricing at discounts from set levels, or trade at prices reflecting changed conditions (such as used cars, which were valued as new for customs purposes by some countries). In addition, the Advisory Committee report

84 MTN/FA, II-A1A-14, p. 3.
85 MTN/FA, II-A1A-14, p. 6.
86 MTN/FA, II-A1A-11, pp. 1-11; ACTPN, pp. 118-122.
87 MTN/FA, II-A1A-9, pp. 1-31; ACTPN, pp. 122-134.

wisely concludes that "the Agreement on Pre-shipment Inspection represents a clearly positive outcome of the Uruguay Round. The rules should help stop pre-shipment inspection companies from using practices that may discriminate against U.S. exporters, although further discipline should be sought in the future."[88] The problem today is that conflict of interest and the inconsistent application of standards have been observed in some countries.

U.S. regulators were successful in achieving the Agreement on Import Licensing Procedures,[89] which strengthens and clarifies the rules on import licensing. This is important because inconsistent administrative licensing procedures can easily operate as informal import quotas, which are illegal.

The Agreement on Technical Barriers to Trade (The "TBT Agreement")[90] will apply to all WTO members and provide improved GATT discipline over standards requirements, preventing their use as disguised trade restrictions. The agreement, notes the Advisory Committee report, "extends GATT disciplines to processes and production methods, expands disciplines to all conformity assessment procedures, and improves transparency in the development of standards and conformity assessment procedures. Furthermore, international and regional standards and conformity assessment bodies will be subject to some GATT discipline."[91]

The Agreement on Sanitary and Phytosanitary Measures (The "S&P Agreement"),[92] which every WTO member will join, provides significant protection against inappropriate use of S&P measures to disguise illegitimate trade barriers as health regulations, and especially will benefit consumers who will gain improved access to safe products at lower prices. The S&P Agreement requires countries to accept other governments' equivalent measures for sanitary compliance and assures that any S&P rule does have a scientific basis and transparent application.

According to the Advisory Committee report:

> The S&P Agreement encourages harmonization of S&P measures, especially through the use of international standards, while at the same time providing a strong check against downward harmonization. U.S. federal or state governments will be able to adopt S&P measures with a scientific basis, even if they are more strict than international standards. The agreement provides significant hurdles to any foreign challenge to an S&P measure, providing that S&P measures are legitimate unless a challenger can demonstrate that another reasonably available measure achieves the chosen level of protection while being "significantly less restrictive to trade."[93]

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88 ACTPN, p. 19. See MTN/FA, II-A1A-10, pp. 1-10; ACTPN, pp. 124-126
89 MTN/FA, II-A1A-12, pp. 1-8; ACTPN, pp. 127-132.
90 MTN/FA, II-A1A-6, pp. 1-23; ACTPN, pp. 110-116.
91 ACTPN, pp. 17-18.
92 MTN/FA, II-A1A-4, pp. 1-14; ACTPN, pp. 104-109.
93 ACTPN, p. 16.

FUTURE GATT NEGOTIATIONS

Advocates of international environmental regulations are proposing that the World Trade Organization immediately begin a new round of negotiations to write additional rules for trade that could limit economic growth and regulate agricultural and industrial production, as well as defining "worker rights." The consensus of GATT negotiators in December, when the pressure of a deadline forced the issue, was not to include an environmental agreement, nor to establish a Committee on Trade and the Environment in the WTO.

The Clinton Administration is one of the leading advocates among trading nations of expanding the power of the WTO to include environmental issues and "worker rights." The "worker rights" issue was raised at the last minute by the United States, against overwhelming international opposition.[94] U.S. Trade Representative Mickey Kantor announced on March 22, 1994, an agreement among 25 nations to begin negotiations on environmental issues, and to create a special committee on trade and the environment within the WTO.[95] It is not clear what success the Clinton Administration will have. The less-developed nations, who will have more votes in the WTO than the United States, are the main opponents of extending strict environmental rules to world trade.

It is clear the debate about government control over economic policy in the name of protecting the environment and "worker rights" will be spirited. There are legitimate concerns about these issues becoming the vehicle for government economic planning and for the creation of large new international bureaucracies.[96] Alarmingly, the preamble to the WTO Agreement mentions "the optimal use of the world's resources in accordance with the objective of sustainable development,"[97] which is a term often used by advocates of reduced economic growth. Fortunately, the WTO Agreement contains no further reference to the concept and the majority in the World Trade Organization are not likely to be friendly to this new rationale for central planning.

CONCLUSION

After the Second World War, there was a consensus that many of the crises of the interwar period were related to trade protection. Economic nationalism in the 1930s clearly had contributed to hostilities, and the political control of resources was an explicit part of the Axis Powers' war aims. The fortunate demise of the proposed International Trade Organization, which in the intellectual climate of the times probably would have resembled an international economic planning agency, and the almost coincidental founding of the GATT led to a "rules-based" international trading system governed by voluntary compliance, out of self-interest, by an ever-increasing number of developing countries.

The new GATT agreement is far-reaching and may well represent the international equivalent for the kind of free and fair trade provided domestically to the United States by the Interstate Commerce clause of the U.S. Constitution. As this country was emerging from the Brit-

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94 "U.S. Worker Rights Proposal Stalls Preparations for Marrakech," *Inside U.S. Trade,* April 1, 1994, p. 1.

95 Peter Behr, "Trade, Environment Face Off," *The Washington Post,* March 23, 1994, pp. F1, F10.

96 Cf. Andrew J. Cowin, "George Bush's Trip to the U.N. 'Earth Summit', Rio de Janeiro, June 3-14, 1992," Heritage Foundation *Talking Points*, May 22, 1992.

97 MTA/FA, II, p. 1.

ish mercantilist empire, there were clear dangers that local interests in each state would erect trade barriers. The Constitution avoided that danger, and there can be no doubt that the rise of the United States to dominate the world economy in the 20th century is directly related to the creation of the vast U.S. free trade zone.

As important to the United States' economic progress as free trade was the uniform rule of law that made inter-regional trade possible. Similarly, the GATT's most important benefit has been to discourage trade practices by its member governments that discriminate against foreign producers, and to require equality of treatment. Central to the GATT's system of fair trade are the principles of most favored nation status, which forbids a government to favor some foreigner producers over others, and national treatment, which forbids a government to favor its own nationals over foreigners. The United States could never have realized its potential for world economic leadership if the individual states had been allowed to impose the barriers that already were beginning to appear in 1787.

The creation of the World Trade Organization as a permanent rule-enforcing assembly for nations eager to expand exports is an historic achievement. It will give consumers in all nations better access to the most technologically and scientifically advanced goods and services, and to allow them to benefit from the free movement of capital investment. Without this uniform system of international trade law and the new rules in the Uruguay Round agreements, including the strengthened enforcement provisions, the U.S. would find it much harder to continue its economic progress into the 21st century.

The concern that United States sovereignty would be compromised by participation in the World Trade Organization is a dangerously confused argument, which is exploited by some opponents of open trade and will be voiced in the upcoming congressional debate over the new agreement. It is important that lawmakers remember that the sovereignty argument cannot possibly be valid when it is used to justify the special privileges of a few against the economic interests of the whole population. The ultimate sovereignty that must be protected is the sovereignty of ordinary Americans to be as free as possible to make the economic and other decisions that affect their jobs and families.

The GATT Codes and the essentially negative, disciplining, and restrictive authority the World Trade Organization will hold over 123 member governments are steps forward for individual rights and the free market, just as the U.S. Constitution is a charter for limiting the sovereign power of the government, in favor of individual rights and private property. As Representative Armey has argued, to "take the power to block free exchanges between individuals —in the form of tariffs and non-tariff barriers—out of the hands of the governments...restores the sovereign freedom of individuals to dispose of their property as they see fit—e.g., to sell or buy from citizens of other countries without government interference. Restoring individual sovereignty is the most important benefit...."[98]

The World Trade Organization promises to bring to the world economy the essential system of the rule of law, without the constraining and distorting forces of a sovereign national political process. When evaluating the GATT implementing legislation, lawmakers must not forget this essential separation in a free market between the political process, so heavily influenced by narrow economic interests, and the personal economic interests of every constituent. The

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98 House Republican Conference, *op. cit.*, p. 9.

rule of law is essential to economic growth and progress, but politics is often destabilizing and detrimental to progress. The GATT agreement, and the WTO it creates, seems well structured to keep economic freedom dominant over the interest-group political pressures that compete to influence governments.