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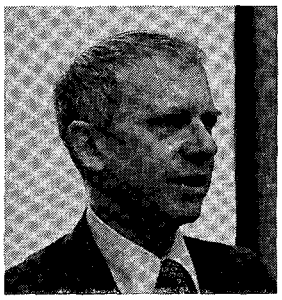

Trends in International Business Law: Towards a New Ethnocentricity?

*Detlev F. Vagts**

Many legal practitioners and academicians who are sensitive to changes within the area of international business law have sighted signals of a trend toward greater ethnocentricity in the United States.[1] Whether such a trend exists is not an issue that can be disposed of categorically, for the signals must be interpreted in light of the institution in question and the sector of economic activity involved. Moreover, an accurate resolution of the issue requires a comparison of the current signals with those of previous periods. Indeed, the post-Smoot-Hawley Tariff era of the late 1930's and the older mercantilist epoch were periods during which signals indicated strong tendencies toward beggar-my-neighbor policies.[2] On the other hand, the post-World War II era associated with Bretton Woods issued signals that represented a swing toward the recognition of a need for internationally even-handed policies. Since the late 1960's, however, there have been an increasing number of signals which indicate that the United States may be about to return to a policy of economic self-sufficiency and independence.

Several factors would provide explanations for such a trend. The most obvious is the U.S. experience in Vietnam. Prior to the involvement of the United States in Southeast Asia, the American public believed it had a unique duty to protect the world from malignant and expansive dictatorships. While Americans have retained a distaste for what they believe are human rights violations, they no longer have the desire to take dangerous or expensive risks.

Secondly, a complex but definite relationship exists between a military or political sense of adventure on one side and an activist eco-

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1 Ethnocentricity is defined in WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY as the act of centering upon race as a chief interest or end. For the purposes of this piece, the author limits the use of the term to describe the narrow pursuit of national economic gain.

2 For a recent official expression of such concern, see address by John Shenefield, Chief of the Antitrust Division of the Department of Justice, before ALI-ABA course of study on International Antitrust (May 26, 1978), *reprinted in* 5 TRADE REG. REP. (CCH) ¶ 50,371.

nomic aid posture on the other side. The Marshall Plan was only the most conspicuous part of that complex. United States policies regarding the General Agreement on Tariffs and Trade (GATT) and the International Monetary Fund were both guided by an instinct that the United States should not enforce a narrow, wooden rule of reciprocity against countries struggling with conditions that the United States did not have to confront. Foreign nations were allowed to maintain exchange controls, limit trade concessions, and borrow at non-business rates. With surprising speed Europe and Japan recovered their old prosperity and became dangerously prosperous rivals. United States efforts to replicate the success of aid and cooperation programs in the lesser developed countries were much less successful. No solution could be found to the problem of creating an actively developing industrial system where none had existed before. As it was faced with the necessity for maintaining lengthy and expensive supporting operations, Congress lost its former enthusiasm and shrank appropriations to a rather modest portion of the GNP.

Thirdly, Americans are concerned with a perceived economic threat from the revived northern industrial countries and the more competitive and aggressive of the lesser developed nations. This concern is enhanced by a certain apprehension that the United States has reached an "industrial climacteric" similar to that which had caused Great Britain to fall behind its German and American rivals in the early part of the twentieth century.[3] Pessimistic views have been expressed about the discipline of our labor force, the effectiveness of our research and development efforts, and the capacity of our management. Into this state of mild unease came the crashing impact of the October War and the Organization of Petroleum Exporting Countries' (OPEC) price hike.[4] The quantum leap in energy costs rapidly infiltrated the whole economy and accelerated inflationary pressures. Though the United States did not suffer as acutely as its friends and rivals, this consolation provided scant comfort. Americans worried about the capacity of other raw material exporting nations to repeat the OPEC success and responded nervously to these nations' vehement demands for a more equal allocation of the benefits within the world economic order.

Like the United States, other advanced industrial nations suffered from these developments. Each had a motivation to turn inwards in

[3] See D. LANDES, THE UNBOUND PROMETHEUS 326-58 (1969), for an exploration of the causes of Britain's relative decline before 1914.

[4] *See generally* Jackson, *The New Economic Policy and United States International Obligations*, 66 AM. J. INT'L L. 110 (1972).

self-defense. While the European Common Market expanded its membership to include nine states, it became more apprehensive of what lurked outside its boundaries. Often the threat involved American farmers or Japanese factory workers. In addition, the energy crisis and the increase in the cost of raw materials had a heavy impact upon Europe and Japan. While neither was involved in the Vietnam War, each determined that it no longer possessed a special mission to improve the conditions of the lesser developed world.

Several domestic political developments within the United States have also contributed to an inward emphasis. There has been a shift from an "imperial" presidency, as embodied in the Nixon era, to one tightly watched and controlled by a suspicious Congress. Unlike the President who must maintain a posture of world leadership by balancing the interests of the United States with those of other nations, U.S. congressmen are responsible almost exclusively to their constituencies. The effect of this shift was compounded by the devolution of power within the Congress from an authoritative leadership group to broader segments within that body. The new style of congressional management has tended to distribute more veto powers. The consequences have been ambiguous. At times, attempts to impose burdens on foreign trade or investment have floundered because of the difficulty of obtaining a consensus. On the other hand, inertia has weighed against a change in the direction of liberality towards foreign interests.

Within the executive branch, there has appeared a gradual devolution of power away from the Department of State. Greater operational authority is in the hands of the Departments of Treasury, Commerce, and Agriculture. These agencies tend to see economic matters more starkly since they are unaware of the web of political interactions which would be apparent to a professional diplomat. The domestic departments have vocal and effective constituencies to remind them of the need to protect the American economy. On the other hand, their constituencies are at times broad enough to make clear to them that international economic relations are both complex and reciprocal.

Finally, Americans appear to have developed a greater psychological aversion to thinking in large scale terms. There is a sense that a city, or at most a state, is the appropriate unit for coping with problems. In fact, there is a pervasive sense that *no* government is as helpful as is private enterprise. There is a renewed interest in how much the "sunbelt" or the Northeast has received in federal monies in comparison with other parts of the country. Amid such localism, there is little room for consideration of the international aspects of a situation.

Despite the signals of a trend toward ethnocentricity, other factual

aspects of our situation indicate otherwise. More Americans than ever before have traveled abroad. They can make overseas telephone calls at lower rates. Exports and imports comprise an increasingly larger share of our GNP. Americans are aware of their reliance on imports for their growing energy and raw material needs. Thus our inward-looking tendencies produce tensions against the dynamics of the real economic world.[5] It is probable that nowhere are those tensions as keenly felt as in the offices of the multinational enterprises. Within those offices, decisions must be made to further global strategies against the background of a world where national boundaries threaten to become more, rather than less, significant.[6] The effects of the strain are felt indirectly by all of us.

TRADITIONAL CONFLICTS OF LAW

We look first for the effects of the new ethnocentricity in the traditional conflicts of law field. There the principal institution involved is the judiciary, and the raw impact of interest politics is more muted than in the corridors of the Congress or the bureaucracy. The search for traces of ethnocentricity is complicated by the diffuseness of the issues, the decentralized nature of the judiciary, and by the intermixture of international and interstate issues. In a theoretical sense the choice of law field is now more vulnerable to parochial pressures. Traditional rules in the sense of the first Restatement moved to choose the appropriate law by virtue of an abstract connecting rule. For example, the law applicable to a tort could be determined by the place where the injury occurred. In spite of this rule, a forum could avoid the application of that law, but only by declaring the result to be contrary to public policy. This rule served to highlight any existing clash between the two states. Modern views on conflicts of law rules have blurred this process.[7] One rule simply prescribes the application of the "better law." This approach gives free rein to a court's preference for applying the more familiar rules of its own jurisdiction. Still, the relatively small number of international cases would render it premature to draw any conclusions regarding a trend.[8]

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[5] *See* Rosencrance, Alexandroff, Koehler, Kroll, Laqueur & Stocker, *Whither Interdependence?* 31 INT'L ORG. (1977); Waltz, *The Myth of National Interdependence*, in INTERNATIONAL CORPORATION 205 (C. Kindleberger ed. 1970).

[6] *See* Vagts, *The Multinational Enterprise: A New Challenge for Transnational Law*, 83 HARV. L. REV. 739 (1970).

[7] For recent reviews of conflicts developments, see Leflar, *Choice of Law: A Well-Watered Plateau*, 41 LAW & CONTEMP. PROB. 10 (1977); von Mehren, *Choice of Law and the Problem of Justice*, 41 LAW & CONTEMP. PROB. 27 (1977).

[8] This is especially true if one discounts cases arising in Canada as not quite international in character.

In the jurisdiction-foreign judgments area the courts have clearly moved towards a position more sensitive to and respectful of foreign institutions. In particular, the Supreme Court's decisions in cases involving choice of forum and arbitration clauses have explicitly approved the diversion of cases from our national judiciary system.[9] The Court expressly mentioned the need to take a less parochial attitude toward foreign tribunals. In the lower courts, the authority of nineteenth century rulings hostile to foreign judgments has been undermined. Judgments from abroad are now recognized in much more sympathetic opinions, even though most of these cases involve the rather familiar procedures of British and Canadian courts.[10]

Conflicts questions also arise on the diplomatic level. Efforts to dispose of conflicts questions either by allocating functions or by making uniform the substantive rules are constantly followed by U.S. representatives.[11] The United States participates in the Hague Conferences, in the United Nations Conference on International Trade Law (UNCITRAL), and in bilateral negotiations. Observers have seen a threat to the universality of the process in the tendency of the European Economic Community (EEC) countries to concentrate on working out differences through Community channels rather than through more global institutions.[12] Moreover, the work of the truly global agencies is troubled by the diversity of the nations involved and the inability of many to field teams of experts in the relevant areas.

OUTWARD REACH

The endeavor of U.S. authorities to extend the reach of American legal rules indicates a recognition by the United States of the impact of overseas events. However, this ethnocentric effort threatens to override or supplant foreign rules with more familiar American precepts. At times, it has an acute tendency to place the United States on a collision course with other nations jealous of their sovereign prerogatives or hostile to American policy. Moreover, the pejorative connotations at-

9 Scherk v. Alberto-Culver Co., 417 U.S. 506 (1974); M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972).

10 *See, e.g.*, British Midland Airways, Ltd. v. Int'l Travel, Inc., 497 F.2d 869 (9th Cir. 1974); Somportex, Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972).

11 For a review of progress on these fronts, see Nadelman, *Clouds Over International Efforts to Unify Rules of Conflict of Laws*, 41 LAW & CONTEMP. PROB. 54 (1977).

12 There are, however, some by-products of community activity such as the United States-United Kingdom negotiation of a draft treaty on enforcement of judgments. 16 INT'L LEGAL MATERIALS 71 (1977) (initialed Oct. 2, 1976, but not yet submitted for advice and consent).

tached to the word "extraterritorial" are indicative of the ease with which an international issue may be created.

During the years immediately following World War II, American efforts to extend the application of U.S. laws were generally met with widespread international consensus. Nevertheless, several attempts by the United States managed to provoke foreign reaction. For example, U.S. courts applied the Sherman Act in a series of spectacular antitrust cases to transactions that largely took place abroad, but which had appreciable repercussions within the United States.[13] The cases involved agreements among the major concerns of industrialized countries that attempted to adjust to the pre-World War II depression. In the more optimistic post-war period, the United States found these agreements unappealing. In several cases, the participation of businesses closely allied to the Nazi regime served to enhance the moral fervor of the antitrust division.[14] The foreign governments involved responded often with protests and, less frequently, court decrees or legislation calculated to cancel out American action.[15] As the courts disposed of the pre-war cases, the number of international cases on the docket of the Antitrust Division of the Department of Justice declined. The Division became more cautious as a result of its experience and brought fewer cases in which difficulties could be encountered. Meetings between Division representatives and foreign officials at the Organization for Economic Cooperation and Development (OECD) Conferences. Understandings were reached with Canada and Germany that consultations would be made prior to initiation of litigation.[16] As the major industrial countries became more aware of antitrust policies, the peculiarity of American attitudes became less striking and less controversial.

A somewhat different tack was taken by the cold-war embargo pro-

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13 *See, e.g.*, United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945); United States v. Imperial Chem. Indus., Ltd., 100 F. Supp. 504 (S.D.N.Y. 1951), *final decree iss'd*, 105 F. Supp. 215 (S.D.N.Y. 1952); United States v. Nat'l Lead Co., 63 F. Supp. 513 (S.D.N.Y. 1945), *aff'd*, 332 U.S. 319 (1947).

14 Standard Oil Co. v. Clark, 163 F.2d 917 (2d Cir. 1947); United States v. General Elec. Co., 80 F. Supp. 989 (S.D.N.Y. 1948).

15 *See generally* materials collected in H. STEINER & D. VAGTS, TRANSNATIONAL LEGAL PROBLEMS 1020-47 (2d ed. 1976).

16 Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany relating to Mutual Cooperation Regarding Restrictive Business Practices, 27 U.S.T. 1956, T.I.A.S. No. 8291 (1976). *See* Campbell, *The Canada-United States Antitrust Notification and Consultation Procedure*, 56 CAN. B. REV. 459 (1978). The work product of the OECD is represented primarily by the periodic reports of the Committee of Experts on Restrictive Trade Practices.

visions of the Trading with the Enemy Act.[17] Initially, a fairly general agreement to embargo the Soviet bloc nations was orchestrated by the United States with the aid of their NATO allies under the COCOM umbrella.[18] As that concensus faded, France and Canada sought a rapprochement with China that outran U.S. progress in that direction. With regard to Cuba, most countries never shared the hostile attitude of the United States. The provisions of the Act were gradually undermined by the desire of American business to retain business relationships, the public's eagerness for a restoration of diplomatic relations, an administrative concern for the disapproval expressed by U.S. allies, and a congressional urge to confine the executive's powers. The liberal rules which are presently in effect reflect these pressures.[19]

While these traditional areas of outreach show signs of moderation, new forms of outreach have developed. The Arab boycott legislation is one such example.[20] The statute that was enacted responds to foreign governmental actions that are in themselves extraterritorial in nature. The American statute has extraterritorial characteristics as well, since it applies to the conduct of Americans abroad. Such conduct includes actions by subsidiaries of American-based multinational enterprises. To date, the foreboding expressed by some business leaders about the intergovernmental reactions of the Arab countries has not been borne out, although compliance has cost U.S. firms some business.

Another new development in the application of U.S. law abroad deals with the problem of bribery. Through the Foreign Corrupt Practices Act of 1977,[21] the United States confronted a widespread practice that no nation publicly favors. Diplomats recommended a multilateral

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17 Trading with the Enemy Act, 50 U.S.C. app. §§ 1-44 (1976) (originally enacted as Act of Oct. 6, 1917, ch. 106, §§ 1-19, 40 Stat. 411).

18 COCOM (Coordinating Committee) was formed by several nations including the U.S. to perform the day-to-day tasks of coordinating trade controls applying to the European Soviet Bloc. S. METZGER, LAW OF INTERNATIONAL TRADE 1065 (1966). For a thorough study of U.S. export controls, see Berman & Garson, *United States Export Controls—Past, Present and Future*, 67 COLUM. L. REV. 791 (1967).

19 The International Emergency Economic Powers Act of 1977, Pub. L. No. 95-223, 91 Stat. 1626 (1977) (codified at 50 U.S.C. §§ 1701-06), limited the president's powers in comparison with the TRADING WITH THE ENEMY ACT, H.R. REP. No. 459, 95th Cong., 1st Sess. (1977); S. REP. No. 466, 95th Cong., 1st Sess. (1977), *reprinted in* [1977] U.S. CODE CONG. & AD. NEWS 4540.

20 Export Administration Act of 1969, Pub. L. No. 91-184, 83 Stat. 841 (codified at 50 U.S.C. app. § 2402(5) (1976)). For an analysis of the boycott legislation including study of the extraterritorial reach both of the Arab boycott and of the U.S. response thereto, see Steiner, *International Boycotts and Domestic Order: American Involvement in the Arab-Israeli Conflict*, 54 TEX. L. REV. 1355 (1976).

21 The Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (1977) (amended various sections of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m(b) and 78ff) (to be codified at 15 U.S.C. § 78dd(1)-(2)).

approach which would work out cooperative arrangements to deal with cases as they arose.[22] Congress, however, adopted a unilateral approach that made it illegal for an American-based firm to make an illicit payment to a foreign official. The Act also mandated the maintenance of more accurate corporate records and the institution of control procedures designed to uncover and prevent illegal payments. If the Act is applied literally by the courts, trials may be held in the United States where American defendants stand accused, but where the other parties to the transactions are absent. There are additional difficulties with respect to the production of witnesses and documents. Any damage to U.S. international relations by the Act, however, would be less than that already caused by the initial revelations of U.S. payments to officials in Italy, the Netherlands, and Japan.

As American concern for the environment has not yet been shared by foreign nations, further outreach problems have developed.[23] Along with recent developments in environmental areas, public and private pressures upon American-based firms to make their employment practices abroad conform to United States rules against discrimination are mounting. Moreover, shareholders' resolutions have produced curious effects outside the United States. For example, demands that corporate management refrain from boycotts, bribery, activity in South Africa, or from selling artificial milk by inappropriate means, have altered the way in which American-based multinationals behave abroad.[24]

DOMESTIC PREFERENCES

Until 1960, the United States could claim its policy on investment flows was essentially neutral. Admittedly, a few benefits were accorded to investments in underdeveloped countries which we wished to aid. For instance, the U.S. provided guarantees against expropriation and inconvertibility, along with benefits under the Internal Revenue Code.[25] With the advent of the 1960's, the U.S. began to reexamine the

22 For efforts at an international agreement, see Remarks of Feldman, Sensitive Payments Abroad: International and Domestic Aspects, 71st Ann. Proc. Am. Soc. of Int'l L. 1 (1977).

23 For material on environmental impact statements relating to imports abroad, see 1976 DIGEST OF U.S. PRAC. IN INT'L L. 586-90.

24 Note, *Influencing Multinational Corporations: The Infant Formula Marketing Controversy*, 10 N.Y.U. J. INT'L L. & POL. 125 (1977).

25 For a review of U.S. investment guarantee programs, see T. MERON, INVESTMENT INSURANCE IN INTERNATIONAL LAW 49-119 (1976); for a review of our tax laws in relation to "Less Developed Countries," see Hellawell, *United States Income Taxation and Less Developed Countries: A Critical Appraisal*, 66 COLUM. L. REV. 1393 (1966), and, more recently, Liebman, *A Formula for Tax-Sparing Credits in U.S. Tax Treaties with Developing Countries*, 72 AM. J. INT'L L. 296 (1978).

international investment process, largely because of the deterioration of the United States balance of payments and the weakening of the dollar. The 1962 Revenue Act sought to encourage domestic investment by eliminating incentives for investment abroad. President Kennedy additionally obtained from Congress the interest equalization tax designed to discourage foreigners from resorting to the U.S. securities market. In 1965, the Johnson Administration began to urge compliance with voluntary guidelines which limited the outflow of investment abroad. These guidelines became mandatory with the enactment of the Foreign Direct Investment Regulations on January 1, 1968.[26] Although multinationals were able to maintain much of their momentum by borrowing abroad for their foreign needs, the rules imposed stress upon economic relationships with other industrial states. This was particularly true where it required dividend repatriation at times when the interests of foreign subsidiaries would indicate otherwise.

A few years later, scholars began to express a broader concern about investments abroad. Initially, the growing body of scholarly literature about multinationals caused host countries to fear that they could not regulate such powerful guests into conforming with national policies.[27] Anxiety developed in the United States as well. Multinationals were charged with exporting jobs and technology, escaping stricter American regulation, and avoiding U.S. taxation. With the support of the labor unions, the Burke-Hartke Bill[28] was introduced to curb the export of technology by forfeiting U.S. patent protections, and by tariff and tax measures. Although the Burke-Hartke Bill never succeeded in surmounting administration and business resistance, some traces of it can be found in the limitations Congress imposed on guarantees by the Overseas Private Investment Corporation (OPIC).[29] OPIC is restricted in the amount of benefits it may grant large multinationals, and it is forbidden from supporting operations that will pro-

26 Symposium, *Transatlantic Investment and the Balance of Payments*, 34 LAW & CONTEMP. PROB. (1969).

27 For an American work reflecting these attitudes, see R. BARNET & R. MÜLLER, GLOBAL REACH, THE POWER OF THE MULTINATIONAL CORPORATIONS (1974).

28 For a contemporaneous analysis of Burke-Hartke (Foreign Trade & Investment Act of 1973), S. 151 & H.R. 62, 93d Cong., 1st Sess. (1973), see Fisher, *The Multinationals and the Crisis in United States Trade and Investment Policy*, 53 B.U. L. REV. 308, 335-55 (1973).

29 The OPIC legislation is found at 22 U.S.C. §§ 2191-2200(a) (1976), and was most recently amended by Overseas Private Investment Corporation Amendments Act of 1978, Pub. L. No. 95-268, 92 Stat. 213 (1978). *See* H.R. REP. No. 670, 95th Cong., 2d Sess. (1978), *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 1090; S. REP. No. 505, 95th Cong., 2d Sess. (1978).

duce products to compete in American markets.[30]

While efforts were made to curb the export of U.S. technology, the devaluation of the dollar and the Arab wealth resulting from the revolution in oil prices also focused attention on the flow of foreign investment into this country. A concern arose about the passage of control over American enterprise into the hands of European and Near Eastern capitalists. Extensive surveys indicated that Europeans had too many problems at home to invest on a wholesale basis in the U.S. and that Arab money was not seeking control.[31] In this milieu, the Supreme Court has declared state laws making it more difficult for aliens to work or invest in this country to be unconstitutional.[32]

Equally important in evaluating a trend toward ethnocentricity is the United States policy toward trade. A policy of free trade recognizes the claims of the law of comparative advantage and seeks to optimize the welfare of the world population by freeing trade to seek its own level. An ethnocentric approach seeks, by excluding imports, to protect entrepreneurs, investors, and workers within the country. The impetus to lower trade barriers appears to have slackened since the post-war decade, while protectionist voices have grown louder. In 1971, the Nixon Administration temporarily raised all tariffs by ten percent.[33] A more permanent reaction may be found in a series of U.S. actions designed to protect American industries from increasing foreign competition. For example, government actions have included the negotiation of special agreements with foreign governments and producers for the limitation of imports of textiles and steel. In addition, there has been a sharp increase in the number and importance of proceedings under the antidumping legislation.[34] As the amount of losses absorbed by governmental owners of steel industries indicate that foreign producers are practicing dumping, the American reaction seems to be a fairly orthodox and legitimate one.

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30 International Bank for Reconstruction and Development Act, Pub. L. No. 95-118, § 901, 91 Stat. 1071 (1977) (to be codified at 22 U.S.C. § 262g).

31 *See, e.g.*, H.R. REP. No. 1183, 93d Cong., 2d Sess. (1974). The surveys were authorized by the Foreign Investment Study Act of 1974, Pub. L. No. 94-479 §§ 1-11, 88 Stat. 1450-54 (1974) (codified at 15 U.S.C. 78b (1976)). The results are reported in 1-9 U.S. DEPT. OF COMMERCE, FOREIGN DIRECT INVESTMENT IN THE UNITED STATES (1976). For a discussion of direct foreign investment by the Arab nations, see Note, *U.S. Regulation of Direct Foreign Investment: Current Developments and the Congressional Response*, 15 VA. J. INT'L L. 611, 622 (1975).

32 *See, e.g.*, *In re* Griffiths, 413 U.S. 717 (1973). *But see* Espinoza v. Farah Mfg. Co., 414 U.S. 86 (1973).

33 United States v. Yoshida Int'l, Inc., 526 F.2d 560 (C.C.P.A. 1975).

34 B. Fisher, Dumping: Confronting the Paradox of Internal Weakness and External Challenge (unpublished article, 1978).

A reliable assessment of the American policy on trade cannot be made until Congress has either ratified or vetoed the agreements negotiated at the latest GATT round. Unlike prior rounds where the emphasis was on the reduction of tariff rates, this round dealt primarily with rules designed to restrict nontariff trade barriers. If Congress substantially accepts this set of rules, a major step against ethnocentricity will have been taken. The United States will have surrendered two specially American defensive tactics: the American selling price system of valuing imports[35] and the domestic international sales corporation.[36] The first imposes a heavy tariff burden on products by valuing them at the higher American price in place of the price at which they are sold abroad. The second provides a rather intricate subsidy for exports by allowing the income tax to be deferred on such revenue.

CONCLUSION

This *tour d'horizon* of American international business policy in the late 1970's is more encouraging than one might have imagined. Although protectionist, ethnocentric forces are certainly present, the gains won by these forces have been neither permanent nor extensive. Successive administrations have supported an open trade and investment system with sufficient ardor to defeat drastic protectionist moves. Had the ten percent increase in tariff become permanent, had the Burke-Hartke Bill been enacted *en bloc* into law, and had the boycott legislation not been amended, the United States could justly be charged with having led a flight from an open world economy to one of self-sufficiency and independence. As these events did not occur, there is reason to hope that an ethnocentric trend will not prevail.

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35 *See* sections 402 and 402a of the Tariff Act of 1930 (codified as amended at 19 U.S.C. §§ 1401a, 1402 (1976)).

36 For a challenge to this institution, see Jackson, *The Jurisprudence of International Trade: The DISC Case in GATT*, 72 AM. J. INT'L L. 747 (1978).