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Edward John Ray

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*Edward John Ray**

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* Chairman, Department of Economics, Ohio State University. The author is particularly grateful to Johannes Denekamp for valuable research assistance.

I. INTRODUCTION

Repeating the current litany of concerns about an apparent rise in protectionist rhetoric in the United States and abroad is not the aim of this Article. Rather, its focus is on describing and explaining changes in the pattern of protectionism that have emerged in the United States and other industrialized nations since World War II through use of a simple analytical framework. With generous reference to the abundant literature on the political economy of trade restrictions, this Article also attempts to explain the shift in protectionism from tariff to non-tariff barriers over the last two decades. It also describes how the changing pattern of protectionism is likely to influence future trade policy in both the United States and abroad.[1]

The model constructed in this Article explains how the efforts of special interest groups within a nation interact with its domestic political and foreign policy objectives to influence the nation's overall structure of trade regulations. Section II of the Article, therefore, begins by providing a simple analytical framework which can help to explain the evolution of both the pattern and the level of protectionism in the United States and other countries.[2] Section III of the Article reviews the history

[1] There are a number of useful surveys of the literature of United States trade policy in the post-World War II period. *See generally* Baldwin, *The Political Economy of Postwar U.S. Trade Policy*, BULL. N.Y.U. GRAD. SCH. BUS. No. 4 (1976)[hereinafter *Political Economy*]; Baldwin, *The Changing Nature of U.S. Trade Policy Since World War II*, in THE STRUCTURE AND EVOLUTION OF RECENT U.S. TRADE POLICY 5 (R. Baldwin & A. Krueger eds. 1984)[hereinafter *Changing Nature*]; R. BALDWIN, THE NEW PROTECTIONISM: A RESPONSE TO SHIFTS IN NATIONAL ECONOMIC POWER (National Bureau of Economic Research Working Paper No. 1823)(1986)[hereinafter NEW PROTECTIONISM]; W. Kaempfer, Explaining the Mode of Protection: A Public Choice Perspective (1987)(unpublished thesis, University of Colorado); S. Marks, Empirical Analysis of the Determinants of Protection: A Survey and Some New Results (1987)(unpublished manuscript, Pomona College & Claremont Graduate School).

[2] There have been numerous studies of the determinants of trade restrictions within individual nations. *See generally* Baack & Ray, *The Political Economy of Tariff Policy: A Case Study of the United States*, 20 EXPLORATIONS ECON. HIST. 73 (1983); Caves, *Economic Models of Political Choice: Canada's Tariff Structure*, 9 CAN. J. ECON. 278 (1976); R. CAVES & R. JONES, WORLD TRADE AND PAYMENTS: AN INTRODUCTION 211 (2d ed. 1977); Cheh, *United States Concessions in the Kennedy Round and Short-Run Labor Adjustment Costs*, 4 J. INT'L ECON. 323 (1974)[hereinafter *U.S. Concessions*]; Cheh, *A Note on Tariffs, Nontariff Barriers and Labor Protection in United States Manufacturing Industries*, 84 J. POL. ECON. 389 (1976)[hereinafter *A Note on Tariffs*]; Deardorff & Stern, *American Labor's Stake in International Trade*, in TARIFFS, QUOTAS AND TRADE: THE POLITICS OF PROTECTIONISM 125 (1979); Fieleke, *The Incidence of the U.S. Tariff Structure on Consumption*, 10 PUB. POL'Y 639 (1971); Helleiner, *The Political Economy of Canada's Tariff Structure: An Alternative Model*, 10 CAN. J. ECON. 318 (1977); Marvel, *Foreign Trade and Domestic Competition*, 18 ECON. INQUIRY 103 (1980); Marvel & Ray, *The Kennedy Round: Evidence on the Regulation of International Trade in the United States*, 73 AM. ECON. REV. 190 (1983)[hereinafter *The Kennedy Round*]; Marvel & Ray, *Intraindustry Trade: Sources and Effects on Protection*, 95 J. POL. ECON. 1278 (1987)[hereinafter *Intraindustry Trade*]; Pugel & Walter, *U.S. Corporate Interests and*

of United States trade policy and summarizes the current economic and political climate for protectionist legislation in the United States. The Article will then expand its analysis in Section IV by attempting to explain historical events more fully in terms of the framework set out in Section II. Section V describes the reasons behind the growth in nontariff barriers ("NTBs") over the past several decades. Finally, Section VI attempts to explain the current pattern of international trade restrictions,[3] and to forecast the direction in which events are likely to move in

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the Political Economy of Trade Policy, 67 REV. ECON. & STAT. 465 (1985); Pincus, *Pressure Groups and the Pattern of Tariffs,* 83 J. POL. ECON. 757 (1975); Ray, *The Determinants of Tariff and Non-Tariff Trade Restriction in the United States,* 89 J. POL. ECON. 105 (1981)[hereinafter *Determinants of Tariff*]; Riedel, *Tariff Concessions in the Kennedy Round and the Structure of Protection in West Germany,* 7 J. INT'L ECON. 133 (1977); Stern, *The U.S. Tariff and the Efficiency of the U.S. Economy,* 54 AM. ECON. REV. PAPERS & PROC. 459 (1964); Stone, *A Comment on Tariffs, Nontariff Barriers and Labor Protection in the United States Manufacturing Industries,* 86 J. POL. ECON. 954 (1978); F. TAUSSIG, THE TARIFF HISTORY OF THE UNITED STATES (1931); Tosini & Tower, *The Textile Bill of 1985: The Determinants of Congressional Voting Patterns,* 54 PUB. CHOICE 19 (1987).

3 There have been numerous studies of the determinants of trade restrictions among trading partners, particularly regarding industrialized and developing country trade. *See generally* B. BALASSA, THE STRUCTURE OF PROTECTION IN DEVELOPING COUNTRIES (1971)[hereinafter THE STRUCTURE OF PROTECTION]; Balassa, *The Impact of the Industrial Countries' Tariff Structure on their Imports of Manufactures for Less Developed Areas,* 34 ECONOMICA 372 (1967)[hereinafter *Tariff Structure Impact*]; Bhagwati, *On the Equivalence of Tariffs and Quotas,* in TRADE, TARIFFS AND GROWTH (J. Bhagwati ed. 1969); D. CLARKE, REGULATION OF INTERNATIONAL TRADE: THE UNITED STATES' CARIBBEAN BASIN ECONOMIC RECOVERY ACT (1987); Deardorff & Stern, *The Structure of Tariff Protection: Effects of Foreign Tariffs and Existing NTBs,* 67 REV. ECON. & STAT. 539 (1985); Grossman, *Import Competition for Developed and Developing Countries,* 64 REV. ECON. & STAT. 271 (1982); Krugman, *New Theories of Trade Among Industrial Countries,* 73 AM. ECON. REV. PAPERS & PROC. 343 (1983); Ray, *The Optimum Commodity Tariff and Tariff Rates in Developed and Less Developed Countries,* 56 REV. ECON. & STAT. 369 (1974)[hereinafter *The Optimum Commodity Tariff*]; Ray, *Tariff and Nontariff Barriers to Trade in the United States and Abroad,* 63 REV. ECON. & STAT. 161 (1981)[hereinafter *Tariff and Nontariff Barriers*]; Ray, *The Impact of Special Interests on Preferential Tariff Concessions by the United States,* 89 REV. ECON. & STAT. 187 (1987)[hereinafter *Impact of Special Interests*]; E. Ray, U.S. Protection and Intraindustry Trade: Evidence and Implications (1987)(unpublished manuscript)[hereinafter U.S. Protection]; Ray & Marvel, *The Pattern of Protection in the Industrialized World,* 66 REV. ECON. & STAT. 452 (1984); Verreydt & Waelbroeck, *European Community Protection Against Manufactured Imports from Developing Countries: A Case Study in the Political Economy of Protection,* in IMPORT COMPETITION AND RESPONSE 369 (J. Bhagwati ed. 1982).

Along quite different lines, a number of papers have speculated about changes that might be made in the mechanisms that determine trade policies to encourage a continuation of the trade liberalization of the last forty years. These papers address the trade policy determinants of not only the United States, but other General Agreement on Tariffs and Trade ("GATT") members as well. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187. *See generally* S. Arendt, Aspects of Trade and Protection (1987)(unpublished manuscript, University of California, Santa Cruz & Commons Institute of International Studies); R. BALDWIN, ALTERNATIVE LIBERALIZATION STRATEGIES (National Bureau of Economic Research Working Paper No. 2045)(1986); Goldstein & Krasner, *Unfair Trade Practices: The Case for a Differential Response,* 74 AM. ECON. REV. PAPERS & PROC. 282 (1984); R. Snape, Bilateral-Multilateral Tension in Trade Policy (1987)(unpublished manuscript, Monash University & World Bank); C. Wihlborg, Proposals

the years to come.

II. AN ANALYTICAL FRAMEWORK

A. The Micro and Macro Views of Policy Decisionmaking

Historically, there have been two generally accepted explanations of how trade policy is determined. The first—the micro view—is that trade policy is the aggregate outcome of industry battles over protection; government policy simply mirrors the preferences of industrial constituents. The second—the macro view—is that the international policy of a given government may be difficult to trace back to individual industry interests. The central government acts as an independent agent reflecting aggregate or collective interests. In this view, national objectives are the primary determinants of domestic and international policies. National governments interact to determine international trade policies. In this context, protectionist positions are heavily influenced by the means available to nations for adjudicating trade disputes between countries.

Studies stressing the macro perspective have attempted to demonstrate how the mechanisms for adjudicating trade disputes between countries might be changed to move the United States and the rest of the world back toward a more consistent trade liberalization stance.[4] Implicit in many of these papers is the notion that government trade policies are constrained by domestic concerns, such as full employment, price stability, and economic growth, that are not necessarily related to the wants of any particular interest group, but are of great concern to the populace as a whole. In this view, trade policy is an integral part of both national domestic policy and foreign policy.

The micro perspective presumes that special interest groups shape the pattern of protection within a given country.[5] This perspective often leaves the impression that government policy is either a weighted sum of the preferences of special interest groups adopted in a passive fashion or

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for Reforming National Structures for Policy Making in International Trade (1987)(unpublished manuscript, University of Southern California & Claremont Graduate School). While the present Article will touch upon many of the points raised in the literature *supra*, it will not include detailed attributions of arguments or explanations of empirical findings. Readers interested in such details should refer to the original works.

[4] *See generally Political Economy*, *supra* note 1; *Changing Nature*, *supra* note 1; NEW PROTECTIONISM, *supra* note 1; R. BALDWIN, *supra* note 3; Goldstein & Krasner, *supra* note 3; R. Snape, *supra* note 3; C. Wihlborg, *supra* note 3.

[5] *See generally* Cheh, *U.S. Concessions*, *supra* note 2; Cheh, *A Note on Tariffs*, *supra* note 2; D. CLARKE, *supra* note 3; Deardorff & Stern, *supra* note 2; Pugel & Walter, *supra* note 2; Pincus, *supra* note 2; Ray, *The Optimum Commodity Tariff*, *supra* note 3; Ray, *Determinants of Tariff*, *supra* note 2; Ray, *Tariff and Nontariff Barriers*, *supra* note 3; Ray, *Impact of Special Interests*, *supra* note 3; Riedel, *supra* note 2; Stone, *supra* note 2; F. TAUSSIG, *supra* note 2; Tosini & Tower, *supra* note 2.

the end product of a sinister calculation by a group of frightened politicians who are committed to nothing but keeping themselves in office.

While there are times when governments appear to behave in a way that is consistent with one or the other of these views, there is little evidence to suggest that either is superior to the other as a general model for predicting government behavior. Within the context of the Stigler-Peltzman-Becker framework,[6] one can argue that in conjunction with the equilibrium distribution of rents established in a regulated market, there is in fact also a political equilibrium that is the product of both self-interest (the micro view) and shared values (the macro approach). This Article argues that contemporary trade policy is best understood in this light. That is, trade policy actually results from the interaction of self-promoting economic interest groups with national economic and political policies. These latter "national" policies represent shared or consensus values which are slow to change and thus are quite durable. This Article describes these values and their effectiveness in checking protectionist demands over the last decade.

B. A Combined Framework

What follows is a simple attempt to define an analytical framework with which one can analyze the post-war pattern of protectionism generally described in Section IV. The debate over trade policy in Congress in the last decade has resulted in the kind of policy drift consistent only with a genuine clash between long-held national principles and the pressures that are generated by special interest groups. The model proposed here is that United States trade policy is the joint product of these two

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[6] Recent articles have extended the work by Stigler on the political economy of industrial regulation. *See, e.g.*, Becker, *Comment*, 19 J.L. & ECON. 245 (1976)[hereinafter *Comment*]; Becker, *A Theory of Competition Among Pressure Groups for Political Influence*, 98 Q.J. ECON. 371 (1983); Peltzman, *Toward a More General Theory of Regulation*, 19 J.L. & ECON. 211 (1976); Stigler, *The Economic Theory of Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3 (1971). This literature has provided insight into the problems of voter support faced by a government that accedes to the wishes of special interest groups at the expense of the general voting public. *See* Peltzman, *supra*; Becker, *Comment*, *supra*. Becker has expanded upon his earlier argument that government regulations establish a pattern for the distribution of economic rents and that changes in the pattern are likely to occur only if political or economic conditions change enough to disturb the initial equilibrium distribution. Economic rents are pure profits or monopoly profits that can be redistributed without changing resource allocation decisions. An equilibrium distribution of rents is simply an allocation of monopoly profits that will persist through time unless it is disturbed by changing economic or political conditions. While it is useful to think of trade policy as an attempt to distribute rents generated by trade restrictions and to explain policy changes as the product of changed political or economic fortunes, such an approach can only have predictive content if we can explain precisely how changing economic and political conditions influence policy. How trade is regulated or restricted determines who gets rents and who does not. Therefore, special interests attempt to influence both the extent to which trade is restricted and the method of restricting trade.

clashing forces. This framework combines elements of both the micro and macro perspectives within it; both national political objectives and economic special interest groups play a significant role in defining trade policy.

The first step in demonstrating the model's efficacy is to show that shared national values actually exist. There is a great deal of evidence supporting this proposition, as seen in the hypothesis that governments in industrialized countries are committed to the shared value of providing a trade restriction safety net[7] for weak industries. Two researchers have demonstrated empirically that declining industries not only were favored by minimal Kennedy Round tariff cuts, but were also given enhanced protection in the form of NTBs.[8] In addition, it has been argued that shifts in United States trade policy, including the adoption of the Generalized System of Preferences ("GSP") and the Caribbean Basin Initiative ("CBI"),[9] resulted from a national foreign policy commitment to aid developing nations trying to compete effectively for exports of manufactured goods.[10] These programs are clearly inconsistent with the longstanding United States policy of adhering to the most favored nation ("MFN") principle.[11] This inconsistency suggests an activist government that is not simply responding to special interests or voters.

Although the aforementioned policies suggest that shared values

7 This paper uses the term "safety net" here in the same sense that the Reagan Administration referred to Social Security and other domestic welfare programs as a safety net for low-income individuals in the United States.

8 Marvel & Ray, *The Kennedy Round*, *supra* note 2, at 190, 192; Ray & Marvel, *supra* note 3, at 457. "Non-tariff barrier" ("NTB") describes many different types of non-tariff trade restrictions. Such restrictions may be formalized agreements (such as voluntary export restraints ("VERs")), restrictive unilateral government policies or technical standards, or cultural barriers to the purchase of goods produced abroad. For a review of the NTBs that are the subject of much of the current international negotiation, see e.g, Marks & Malgrem, *Negotiating Nontariff Distortions to Trade*, 7 LAW & POL'Y INT'L BUS. 327 (1975).

9 The Generalized System of Preferences ("GSP") is intended to provide developing countries with preferential treatment by granting them duty-free access to United States markets for many of their exports. *See* Sapir & Lundberg, *The U.S. Generalized System of Preferences and Its Impact*, in THE STRUCTURE AND EVOLUTION OF RECENT U.S. TRADE POLICY 196 (1984). The Carribean Basin Initiative ("CBI"), adopted in 1983 and implemented in 1984, seeks to provide Caribbean countries with duty-free access to United States markets for key exports. Carribean Basin Economic Recovery Act, 19 U.S.C. §§ 2701-06 (1986 Cum. Supp.); *see also* D. CLARKE, *supra* note 3.

10 Ray, *Impact of Special Interests*, *supra* note 3, at 193.

11 The main purpose of the most favored nation ("MFN") principle is to secure freer trade through negotiated reciprocal reductions in tariffs between members of the GATT. All contracting parties undertake to negoiate tariff reductions with one another and to extend the same reductions to other members. For example, if A and B negotiate both a reduction in B's tariff on A's exports of stereos to B and a reduction in A's tariffs on B's exports of automobiles to A, A and B have to extend the same reductions on stereos and cars to all parties to GATT. A. MACBEAN & P. SNOWDEN, INTERNATIONAL STUDIES IN TRADE AND FINANCE 10 (1981).

play an important role in decisionmaking, one must be aware that special interests are also a contributing factor. For example, there is evidence that special interest groups influenced the content of the GSP and effectively undermined its goal of opening up United States markets for key exports from developing countries.[12] One might therefore be led to believe that United States policy is merely the servant of economic special interest groups, and that policies like the GSP and CBI are part of a cruel charade. A brief discussion of the "pure" special interest group model of trade policy decisionmaking is thus in order.

The special interest group model cannot be understood unless one is quite specific about the makeup of the various special interest groups which try to influence trade policy and which groups constitute the winners and losers. One important group is consumers, who always have an interest in freer trade for access to a variety of products at the least possible cost.[13] In addition, highly competitive export-oriented firms and their workers will favor free trade because domestic trade restrictions may lead to retaliation from abroad and reduce foreign market access. In contrast, producers and workers in less competitive or import sensitive sectors of the economy will always favor protection. Trade restrictions can preserve jobs and protect profits that would otherwise be lost to foreign competitors.

Four modest extensions complete a summary of the key elements of all of the special interest models and aid in the construction of a paradigm. First, assume that consumers are a diverse group who cannot form an effective coalition to promote free trade, and the price of producing an effective lobby for protection increases with the size of the interested group. One may conclude that concentrated industries with a handful of dominant firms will be more effective in obtaining protection than industries with many small firms. Second, firms that purchase capital equipment or other intermediate goods abroad will surely favor freer trade for those goods. Third, these importing industries are likely to be more concentrated than consumers, creating a presumption that protection will be biased toward final consumer goods and away from intermediate inputs. Fourth, the government serves simply as the agent for all of these interests while pursuing a trade policy consistent with its own survival or electability.[14]

12 *See* Ray, *Impact of Special Interests*, *supra* note 3, at 183.

13 In fact, it is reasonable to assume that as incomes rise, consumer preference for diversity intensifies.

14 Empirical evidence supporting this simple, stylized view of how trade policy is determined is extensive. It includes Caves, *supra* note 2; Cheh, *U.S. Concessions*, *supra* note 2; Cheh, *A Note on Tariffs*, *supra* note 2; D. CLARKE, *supra* note 3; Deardorff & Stern, *supra* note 2; Marvel, *supra* note

The pure special interest model clearly presents an incomplete picture of how trade policy is formed, however. Most plainly, it ignores foreign policy.[15] The United States-Israel and United States-Canada free trade agreements, and attempts to provide preferential access to United States markets for manufactured imports from developing countries through the GSP and the CBI, suggest that as a nation we have staked out international political positions which do not easily follow from the pure special interest model. The current battle between the executive branch and Congress over trade policy shows that at a time when special interest groups are quite outspoken in their demands for government trade relief, the government is working hard to maintain the nation's long-standing commitment to continued trade liberalization. This type of conflict cannot be explained by a model in which the government proceeds to make policy decisions based solely on its appraisal of the wishes of special interest groups.

In light of the foregoing, it becomes clear that the federal government, as a distinct, separate entity, is itself a key player in the trade policymaking process. Particular government actions are guided by established national policies subject to feedback from special interest groups. When both national preferences and special interest group preferences favor trade liberalization (as this Article will argue they did in the early post-World War II period), national policy will be unambiguously in favor of freer trade. When national preferences are for freer trade and competition, but special interest preferences are on balance protectionist (as this Article will argue they have been in recent years), United States policy on international trade will reflect the kind of ambiguity we are now observing. The presumption is that national policy can be turned away from the current pro-trade stance if a special interest group bias continues to remain strong for a number of years.

The primary distinction between the model proposed here and the normal special interest group models is that the government is explicitly included as an active player with a long-term agenda of its own. The government is sensitive to special interest group pressures but is not their

2; Marvel & Ray, *The Kennedy Round*, *supra* note 2; Pugel & Walter, *supra* note 2; Pincus, *supra* note 2; Ray, *The Optimum Commodity Tariff*, *supra* note 3; Ray, *Determinants of Tariff*, *supra* note 2; Ray, *Tariff and Nontariff Barriers*, *supra* note 3; Stone, *supra* note 2; Tosini & Tower, *supra* note 2.

15 Domestic policy concerns also do not necessarily follow the special interest model. Examples of national policies which have evolved over many years and appear to respond slowly, if at all, to interest group pressures include: 1) the civil rights movement of the 1960s; 2) the development, expansion, and finally the indexing of social security payments in the early 1970s; and 3) the developing consensus on national catastrophic insurance.

captive. At the same time government policy is not unrelated to the concerns of special interest groups. If special interest group preferences persist in favoring a particular stand on trade issues, the national agenda may shift to adopt that position. This model highlights the dynamic interaction between individual and collective interests which is so important to an understanding of current United States policy.[16] As this Article proceeds, the value of this model as an analytical tool will become increasingly apparent.

III. THE PATTERN OF PROTECTION IN THE UNITED STATES

The value of providing some historical perspective to any study of trade policy or protectionism is suggested by the now common caution that history does indeed repeat, but never in exactly the same way. Drawing simpleminded historical parallels can thus be as foolhardy as ignoring history altogether. If analyzed properly, however, history can provide useful insights. For example, in the late nineteenth century the United States built a world class navy in order to assume the role of a major player in international political affairs. Coincidentally, that same period saw the emergence of major manufacturing sectors such as steel and textiles as serious competitors in world markets. That combination of national ambitions and private economic interests played a critical role

16 While this model has not been tested explicitly, there are a number of trade studies that do provide support for the view that national as well as special interest considerations have influenced the structure of trade restrictions in the United States. One study has demonstrated that United States tariffs were structured in the late-19th century to promote industrialization of the country. *See* Baack & Ray, *supra* note 2, at 79. Specifically, it found that tariff protection was greatest for fast growth industries in the late-19th century United States and that tariffs were reduced or removed as industries (including steel) became competitive in world markets. *Id.* at 83. In addition, Marvel and Ray provide evidence consistent with the view that the Kennedy Round tariff cuts and the simultaneous expansion in the use of NTBs in the United States were intended to minimize the impact of trade liberalization on weak industries without augmenting the profitability of fast growth industries. Marvel & Ray, *The Kennedy Round, supra* note 2, at 193. In particular, they found that Kennedy Round cuts were greatest in fast growth, "R&D" intensive industries and least in slow growth or declining industries and in consumer manufacturing in which the United States was losing its competitive edge in international trade. Furthermore, they provide statistical evidence that nontariff trade restrictions were added to tariff protection for weak industries including manufactured consumer goods. *Id.* at 193-96.

In a third study, Ray argues that the timing and nature of the GSP and CBI legislation can be understood best when viewed as a compromise between a national commitment to aid developing country industrialization and the desire of affected special interest groups to blunt the threat of cheap imports in their domestic product markets. Ray, *Impact of Special Interests, supra* note 3, at 187. Ray provides direct evidence that both the GSP and CBI provided developing countries with duty free access to United States markets for manufactured exports. But that access was biased away from declining, noncompetitive industries such as textiles and processed foods. Unfortunately, those are the industries that could most benefit from access to the United States market. *Id.* at 190.

in shifting United States trade policy away from highly protective tariffs toward freer trade at the turn of the last century.

In the late twentieth century the United States faces changed political and economic fortunes that threaten to end four decades of commitment to trade liberalization. The framework outlined above can explain these changes, if considered in the historical context of the last 100 years. The shift in political support toward protectionist legislation in the United States in the last decade, for example, is not without precedent. Political support for trade liberalization within the United States during the 1950s and 1960s is also not without precedent. A brief review of United States history demonstrates how economic interest groups can and have reinforced or undermined federal government trade policies.

A recent study of trade policy in the United States during the last half of the nineteenth century[17] identified a number of important relationships behind the trade policy of the time. First, contrary to the general thrust of United States trade policy throughout most of the post-World War II period, the United States pursued a policy of high tariffs throughout its period of rapid industrialization between 1870 and 1914. Based on a sample of 97 manufacturing industries (including every industry that proved to be significant in 1914), the average United States tariff rate was 45.8% in 1870, 40.6% in 1910 and 26.3% in 1914 following the substantial tariff cuts associated with the Underwood-Simmons Tariff Act of October 1913.[18]

Second, contrary to the characterization offered in Taussig's classic study,[19] United States tariff policy appears to have been systematically geared to accommodate rapid industrialization. Specifically, the study found that tariff protection was concentrated on finished manufactured goods rather than intermediate goods.[20] That same general strategy has been used by developing countries in this century to promote import substitution in manufacturing.[21] While the results of contemporary cases are somewhat mixed, the historical evidence suggests that throughout the period from 1870 to 1914, those manufacturing sectors which were highly protected by the tariff structure in 1870 emerged as the most rapidly expanding industries in the United States.[22] Finally, the study noted that tariffs were systematically higher on liquor, tobacco products, and

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[17] Baack & Ray, *supra* note 2, at 73.

[18] *Id.* at 77. *See* Underwood Tariff Act, ch. 16, 38 Stat. 114 (1913)(current version at 19 U.S.C. §§ 128, 130, 131; 46 U.S.C. § 146 (1982)).

[19] F. TAUSSIG, *supra* note 2.

[20] Baack & Ray, *supra* note 2, at 80.

[21] *Id.* at 77.

[22] *Id.* at 79.

other price inelastic commodities[23] which one would expect to be reliable sources of federal government revenue at a time when tariffs funded well over half of the federal budget.[24]

The point to emphasize is that during its industrialization period the United States was highly protectionist, used tariff policy to promote the growth of its manufacturing sector, and relied heavily on tariffs to fund central government programs. Those policies can be seen in many developing countries today and present a sharp contrast to the trade liberalization stance that the United States has professed for the last fifty years.[25]

Except for the brief interval of time associated with the Smoot-Hawley Tariff of 1930,[26] (resulting in tariffs reaching an all time high average of 59% in 1932), tariffs have declined steadily in the United States from 1914 to 1986 (when the General Agreement on Tariffs and Trade ("GATT") Tokyo Round tariff cuts were scheduled to be fully implemented).[27] The rapid decline in United States tariffs from 59% in 1932, to a little over 7% after the implementation of the Kennedy Round tariff cuts by the early 1970s, paralleled changes in other industrialized nations and contributed to a genuine sense of progress toward free international trade. The model set forth in Section II should be able to explain how these changes came about.[28]

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23 Price inelastic goods are those for which price increases induce little or no decrease in the quantity demanded.

24 Baack & Ray, *supra* note 2, at 77, 80.

25 For a discussion of protectionist policies in developing countries, see B. BALASSA, *supra* note 3; Bhagwati, *Shifting Comparative Advantage, Protectionist Demands, and Policy Responses,* in IMPORT COMPETITION AND RESPONSE (J. Bhagwati ed. 1982); A. KRUEGER, LIBERALISATION ATTEMPTS AND CONSEQUENCES (1978); Ray, *The Optimum Commodity Tariff, supra* note 3.

26 Smoot-Hawley Tariff Act, ch. 497, 46 Stat. 590 (1930), as amended by the Trade Agreements Act of 1979, 19 U.S.C. §§ 2501 et seq. (1982 & Supp. III 1985) and the Trade and Tariff Act of 1984, 19 U.S.C. §§ 2101 et seq. (1982 & Supp. III 1985).

27 The United States played a major role in establishing GATT in 1947 and in promoting its expansion from the original 22 member countries to more than 90 today. It also played a key role in setting the trade liberalizing agenda in the seven rounds of GATT trade negotiations. These rounds took place in 1947, 1949, 1950, 1955, 1960-61, 1962-67, and 1973-79. *See* Jackson, Louis & Matsushita, *Law and World Economc Interdependence,* in IMPLEMENTING THE TOKYO ROUND 1, 11 (1984). The last three rounds have come to be known as the Dillon, Kennedy, and Tokyo Rounds, respectively. The Tokyo Round tariff cuts were scheduled to be fully implemented by 1986. For a good discussion of GATT's background and operation, see G. CURZON, MULTILATERAL COMMERCIAL DIPLOMACY: THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND ITS IMPACT ON NATIONAL COMMERCIAL POLICIES AND TECHNIQUES (1965). The latest round of multilateral trade negotiations (the Uruguay Round) convened in Geneva in late 1987. *See* Minsterial Declaration on the Uruguay Round, Sept. 20, 1986, *reprinted in* GENERAL AGREEMENT ON TARIFFS AND TRADE, BASIC INSTRUMENTS AND SELECTED DOCUMENTS, 33d Supp., 19 (1987). However suspect United States motives may seem, President Ronald W. Reagan has been among those calling for the current negotiations.

28 A number of studies that have focused on the consequences of multilateral trade concessions have found that the benefits to participating countries have far outweighed any adverse effects associ-

Another important aspect of the pattern of protectionism in the past several decades is the growth in NTBs. Even before the Kennedy Round concluded, a number of authors noted either that: 1) the multilateral agreements were not providing substantial access to industrial country markets for the manufactured exports of developing countries;[29] or 2) remaining NTBs might affect trade differently than would tariffs.[30] Unfortunately, NTBs have yet to be successfully addressed in any of the GATT negotiating rounds. The negotiators at the Kennedy Round meetings abandoned their efforts to deal with NTBs when it became clear that their work on tariff cuts would warrant their full attention.[31] The negotiators at the Tokyo Round did succeed in hammering out codes of conduct for the use of NTBs, but actual agreements to reduce them in line with tariff cuts remained for later rounds of multilateral negotiations.

The fact that international negotiations have not dealt effectively with NTBs is a crucial element in any explanation of the shifting pattern of protectionism in the last twenty-five years. If trade policy is determined by the impact of economic special interests within a country on the national political agenda through the political process, the outcome at any point will surely be influenced by underlying political and economic circumstances. Which positions ultimately prevail, however, will also depend upon the means available for controlling trade flows. This Article argues that as NTBs have become more effective and more prevalent protectionist devices, they have also increased the likelihood that protectionist interests will be successful in any given set of political and economic circumstances.

IV. Explaining the History of Protectionism in the United States

The changing pattern of protectionism in the United States over the course of the last century is not difficult to explain if one keeps the model set forth in Section II in mind. This model suggests that trade policies are ultimately defined by governments which act in accordance with

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ated with short-term adjustment costs. *See, e.g.*, Baldwin, *Trade and Employment Effects in the United States of Multilateral Tariff Reductions*, 66 AM. ECON. REV. PAPERS & PROC. 142 (1976); Baldwin & Lage, *A Multilateral Model of Trade Balancing Tariff Concessions*, 53 REV. ECON. & STAT. 237 (1971).

29 *See generally* B. BALASSA, THE STRUCTURE OF PROTECTION, *supra* note 3; Balassa, *Tariff Structure Impact*, *supra* note 3.

30 *See generally* Bhagwati, *supra* note 3; Fischelson & Flatters, *The (Non)Equivalence of Optimal Tariffs and Quotas Under Uncertainty*, 5 J. INT'L ECON. 385 (1975); Kreinen, *More on the Equivalence of Tariffs and Quotas*, 23 KYKLOS 75 (1970).

31 *See* L. GLICK, MULTILATERAL TRADE NEGOTIATIONS: WORLD TRADE AFTER THE TOKYO ROUND 8 (1984).

shared social values subject to special interest group pressures. Changes in political and economic conditions and innovations in methods of protection contribute to changes in the protectionist regime within any given country. Applying the model to historical trends provides worthwhile examples of the changing nature of protectionism.

A. Partisan Politics and the Model

After the end of the Civil War, Congress was dominated by eastern economic interests which strongly supported rapid industrialization. This support produced a consensus that the United States should promote industrialization. The rapid industrialization that subsequently occurred undercut arguments that further protection was needed. Consequently, export interests became more important over time and, on balance, special interest groups favored free trade. This shift from protectionism to substantial trade liberalization took nearly twenty years.[32] The sixteenth amendment to the United States Constitution, passed in 1913 and authorizing the collection of income taxes, resolved a conflict between the general consensus to liberalize trade and the need to finance rapidly expanding federal programs.[33]

A striking paradox in United States trade policy that the proposed analytical framework must explain are the positions on trade policy which have historically been taken by the two primary political parties. Throughout the late nineteenth century, Democrats opposed the high tariffs adopted by Congress and fought to reduce them. Republicans were equally staunch in their support for high tariffs. By contrast, in the post-World War II era Democrats have systematically championed protectionist legislation over the objections of the Republicans. This apparent reversal of the major parties with respect to trade restrictions is explained by reference to the proposed model.[34]

What has changed since World War II is not the respective parties' constituencies but rather the economic interests of those constituencies.

32 Democrats with traditional strength in the South and West favored freer trade throughout the late nineteenth century, in support of western agricultural interests and consumers who wanted cheap imports. As industrialization proceeded, pro-business Republicans joined the Democrats, shifting from favoring protection to favoring foreign sales and foreign direct investments.

33 Tariffs were previously a major source of revenue for the United States government and had to fund massive expenditures such as the nation's first major peacetime military build-up in the country's history that began in the early 1880s.

34 One key factor, of course, was the elimination of any further need for tariff revenues. Both Republicans (who had earlier supported protectionism because that policy aided manufacturers) and Democrats (who had supported trade liberalization because it helped their predominantly agriculture-based constituents) endorsed reductions in tariffs once the government finance bottleneck had been removed, and it became clear that manufacturers wanted to go after foreign market sales.

Even before the depression of the 1930s solidified labor support for the Democrats, the basic division between Democrats and Republicans put farmers and industrial workers in the Democrat camp and business in the Republican camp. During the 1950s and early 1960s both Democrats and Republicans supported trade liberalization because United States agricultural and manufactured products dominated competition in world markets. Democrats, however, became divided on the trade issue during the late 1960s and early 1970s. It then became clear that despite continued United States competitiveness in agricultural products and capital equipment, some industries (like textiles, footwear, steel, and automobiles) were beginning to lose sales to foreign competitors. Democrats pushed programs to provide unemployment assistance to steel and auto workers, and they also supported trigger prices and quotas in steel and textiles. Although most of the push for protection has come from Democrats, by the late 1970s Republicans from "rust belt" states (like Michigan, Ohio, Indiana, and Illinois) which were particularly affected by the decline in United States steel and auto sales, also supported relief from import competition. The positions of the two major political parties on trade issues have thus changed in response to the changing preferences of their constituent special interest groups; this shift lends credence to the model proposed above.

B. Historical Data and the Model

An examination of historical data highlights the long-term relationship between tariffs in the United States and key economic variables related to our model for the period 1913 to 1980.[35] This relationship helps illustrate the direct and predictable link between changes in domestic and international economic conditions and United States trade policy over the course of the last century. Specifically, analysis shows that when special interests and national policies coincided to support or oppose trade restrictions, United States trade policies were unambiguous. When the net impact of special interest groups is poised in opposition to declared national policy on trade issues, as seems to be the case today, actual trade policy appears contradictory, ambiguous, or both.

It is clear that tariffs have declined substantially between 1913 and 1980, while per capita income has increased.[36] A more careful look at the data makes it clear that rising incomes in the period from 1913 to 1920 were accompanied by tariff cuts from 17.4% to 6%. As income

[35] *See* Baack & Ray, *supra* note 2. The underlying economic figures and data are provided in Appendix A to this Article.

[36] *See* app. A, chart A-1.

fluctuated during the 1920s and plummeted during the early 1930s, tariffs rose quickly to almost 12% in 1921 and a high of 24% in 1932.[37] In 1933, average income reached a low point in the United States and, as incomes recovered throughout the post-World War II period, tariff rates generally declined.[38] That inverse relationship between tariffs and incomes is consistent with the assumption that rising incomes are associated with increasing consumer preferences for product variety which consequently leads to pressure for liberalization in international trade.

Data from 1913 to 1980 illustrate the relationship between tariff protection and business cycles,[39] as indicated by the occurrence of recessions in the United States economy in that period.[40] Based on the model discussed in Section II, one would expect special interest groups to be most united against free trade when economic conditions are depressed and most solidly in favor of free trade during relatively prosperous times and the data bear out this expectation. Tariffs increased with the recession of 1921 and 1922 and with the beginning of the depression in 1930. Until 1939, the average tariff rate on imports did not fall below the pre-Depression 1929 level of 13.5%. The consequent steady decline in tariffs ended during the recession in 1950, and tariffs rose slightly in 1951. Similarly, tariffs increased slightly during the recessions of 1958 and 1974-75 and following the recession in 1961.

Economic declines, and the job losses and business failures that they inevitably bring, have served to rally support for restrictions on international trade. It is therefore not surprising that pressures to restrict trade were less during the 1950s and 1960s, when recessions were less frequent and severe, than during the 1970s and early 1980s, when the United States experienced its most severe recessions since World War II.[41]

An interesting relationship also exists between tariff protection and the relative commodity export strength of the United States in interna-

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37 *See* app. A, table A-1. The measure of tariffs referenced in this section is the average tariff rate across all imports, rather than the tariff rate on dutiable imports used in much of the empirical literature.

38 *See* app. A, chart A-1.

39 Business cycles are most simply defined as periods of national economic activity that include an expansion, peak, slowdown, and negative economic growth. In the post World War II period, expansions have averaged two to four years, and slowdown periods or recessions have averaged one to two years.

40 *See* app. A, chart A-2.

41 The United States is committed as a matter of national policy to protecting jobs and declining industries. Marvel and Ray identified that "safety net" aspect of United States trade policy when they observed that Kennedy Round tariff cuts were the least for slow growth and declining industries. *See* Marvel & Ray, *The Kennedy Round, supra* note 2, at 193-96.

tional trade.[42] This relationship[43] once again highlights the association between special interest group demands for protection from import competition and the ability of United States firms to compete. One expects support for trade liberalization to increase and fall in concert with the success or failure of United States companies in selling more goods and services abroad than foreigners sell in the United States. This expectation, too, is supported by the data. For every year from 1936 to 1970, net merchandise exports from the United States were positive and often quite high relative to the sum of imports and exports. The relative net export figure averaged 37.7% during the 1940s, 10.7% during the 1950s, and 9.8% during the 1960s.[44] During the early post-war period, the United States took the lead in promoting trade liberalization, not only because of its advantage in international competitiveness, but also because this stance helped achieve the foreign policy goals of re-industrializing war-torn Europe and Japan and including developing nations as trading partners in the world economy. In the context of the framework set forth above, it is worth noting that throughout the 1950s and the 1960s these foreign policy goals reinforced the international economic interests of the highly competitive United States business community.

Tariff movements and changes in the relative size of the trade sector[45] in the United States since 1913 also bear out the usefulness of the

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42 The rapidly changing nature of world commodity markets throughout the 1960s raised questions about the causes of a country's economic competitiveness and how it evolves over time. Two commentators provided early insight into the changing nature of comparative advantage in the United States. Among their principal findings were that the United States was relatively strong in exporting technologically sophisticated products that required skilled labor, and relatively weak in competing for international sales of goods that could be mass produced using cheap, low-skilled labor. *See* Baldwin, *Determinants of the Commodity Structure of U.S. Trade*, 61 AM. ECON. REV. 126, 142 (1971); Hufbauer, *The Impact of National Characteristics and Technology on the Commodity Composition of Trade in Manufactured Goods*, in THE TECHNOLOGY FACTOR IN INTERNATIONAL TRADE (R. Vernon ed. 1970). Those findings quite naturally led to attempts to estimate whether or not the Kennedy Round had yielded a pattern of protection of less competitive, domestically produced, low-skill, labor intensive goods. Two investigations demonstrated a systematic bias in post-Kennedy Round protection in the United States in favor of these products. *See* Cheh, *U.S. Concessions*, *supra* note 2, at 335; Cheh, *A Note on Tariffs*, *supra* note 2, at 394. Another scholar provided empirical evidence that United States tariff protection in the early 1930s was structured to protect the special interests to compete effectively against imported goods for domestic sales of their products. *See* Pincus, *supra* note 2. This built upon earlier work by Olson and Stigler. *See generally* M. OLSON, THE LOGIC OF COLLECTIVE ACTION (1968); Stigler, *supra* note 6. Other researchers provided empirical evidence to support the contention that in Canada, too, the structure of tariff rates across industries seemed to be related to the needs of special interests rather than the economic benefit of society as a whole. *See* Caves, *supra* note 2, at 296; Helleiner, *supra* note 2, at 325.

43 *See* app. A, chart A-3.

44 *See* app. A, table A-1 & chart A-3.

45 The trade sector is measured by the value of commodity imports and exports as a percentage of gross national product.

model.[46] Over this period, the larger the trade sector was (compared to the overall economy), the stronger the special interest group concern, and the more likely it was that domestic economic conditions would be linked to trade policies.

These observations follow directly from the argument in Section II that trade policy is the result of government enforced consensus policies tempered by the influence of special interest groups. This argument is further supported by recent trends in the relative net export figures of the United States. In contrast to prosperous post-World War II years, the United States relative net exports dropped to −4.2% during the 1970s, and was −16.0% from 1981 through 1986.[47] Moreover, the net merchandise export position for the United States has been negative for each of the last ten years.[48] It is therefore no accident that the United States commitment to liberalization has seemed less certain over this period. In fact, based on the framework set forth in Section II and earlier in this section, one would have expected the recent deterioration in the net merchandise export position of the United States to have generated special interest group efforts to undermine commitment to trade liberalization. This is exactly what happened.

The rapid deterioration in the merchandise export position of the United States since the mid-1970s has created a collision of interests between trade sensitive industries and government. That conflict is evident in the current disagreement between the Congress and the executive branch over trade policy. In addition, it is worth noting that the rapid expansion in the relative size of the trade sector over the past twenty years represents a return to pre-World War II proportions. During that period tariffs averaged well over 10%, and domestic economic problems were closely identified with international economic conditions. This rapid growth of the trade sector—accompanied by a deterioration in the United States trade balance and the two worst recessions since World War II—has fueled the protectionist argument that our domestic economic problems are somehow the fault of our trading partners. Because tariff increases are prohibited by the GATT agreements, protectionism has had to take the form of NTBs since the 1970s.

By the mid-1970s it was clear that while tariffs were declining in the United States and other industrial countries, there remained systematic

46 *See* app. A, chart A-4.

47 *See* app. A, table A-1 & chart A-3. Relative net exports are the percentage of the total trade deficit or surplus relative to the total trade volume of the United States. The figures cited in the text above should be compared to the average 17.25% relative net export figure for the United States up until 1969.

48 *See* ECONOMIC REPORT OF THE PRESIDENT (1987)[hereinafter ECONOMIC REPORT].

differences in protection across industries. However, there was no consensus that NTBs were a serious threat to further trade liberalization. Further, there was no particular concern that NTBs might disguise the extent of protectionism and thereby foster a false perception among policymakers that gains in international economic cooperation were actually being achieved. It was not until the emergence of national and international economic crises in the late 1970s that the power of special interest groups in setting trade policies and the effectiveness of NTB protectionism was recognized.

V. The Shift from Tariffs to Non-Tariff Barriers

A. The Growth in Non-Tariff Barriers

The rise of NTBs as trade restriction devices over the past several decades is a development inextricably linked to governmental preferences as to the form of protection for import sensitive industries. While protection in general was diminishing among industrial countries in the early post-World War II period, the trade restrictions known as NTBs were expanding in several specific areas. For example, in 1956 the United States persuaded Japan to adopt one type of NTB, a voluntary export restraint ("VER"),[49] on exports of cotton textiles to the United States;[50] the United Kingdom concluded a similar agreement with Hong Kong.[51]

There are numerous other examples of NTBs in the post-World War II era.[52] A number of factors help explain this shift in trade policy. The

49 VERs serve to undermine the GATT's philosophical commitment to reduce trade barriers. GATT specifically restricts the use of quantitative restrictions unless they are applied on a most-favored-nation ("MFN") basis and compensation is provided to affected countries. Affected countries have the right to retaliate against offending nations. GATT, *supra* note 3, pt. I, art. I. But VERs are technically not barred by the GATT, because they are self-imposed limits on trade by the *exporting* country rather than discriminatory quantitative restrictions by an importing country, which would be prohibited.

50 Specific studies of VERs include that of Tosini & Tower, *supra* note 2.

51 Needless to say, United States imports continued to grow as exports from Hong Kong were diverted from the United Kingdom to the United States.

52 Congressional approval of the Trade Expansion Act of 1962, giving the President authority to proceed with the Kennedy Round, was gained only after the administration concluded the Short-Term Arrangement on Cotton Textiles in 1961 and the Long-Term Agreement on Tariffs and Trade ("LTA") in 1962. *See* Trade Expansion Act of 1962, Pub. L. No. 87-794, 76 Stat. 872 (1962)(current version at 19 U.S.C. §§ 1801 et seq. (1982)); Short-Term Arrangements Regarding International Trade in Cotton Textiles, July 21, 1961, 12 U.S.T. 1674, T.I.A.S. No. 4884; Long-Term Arrangements Regarding International Trade in Cotton Textiles, Feb. 9, 1926, 13 U.S.T. 2672, T.I.A.S. No. 5240.

Passage of the Trade Act of 1974, authorizing the President to proceed with the Tokyo Round of trade liberalization, was jeopardized until the Multifiber Arrangement ("MFA") was signed in December 1973, expanding the LTA to include manufactured fibers and wool. *See* Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (1975), as amended by the Trade and Tariff Act of 1984, 19

first is that the existence of effective income tax systems in the industrialized countries makes them less dependent on the use of tariffs to finance central government operations than is the case for most developing nations. Second, as explained below, special interest groups that are too large to win tariff protection (because of public resentment) may be able to secure NTBs. These demands for protection, along with the relatively greater number of trade restrictions that are available to industrial country governments, make the industrialized nations likely candidates for the adoption of innovations in NTBs. Finally, there is always some domestic and international political advantage to being able to assist special interests in a less publicizable way. NTBs have the advantage of being more difficult to assess in terms of winners and losers and their general welfare effects. For these reasons, industrial countries that are not required to use tariffs for revenue purposes and prefer the political advantages of NTBs in masking government support for special interest groups are likely to prefer NTBs to tariffs.[53]

The first factor in the industrialized nations' shift to NTBs is the fact that these countries no longer require tariff-related income. Historically, the development of nation-states meant that central governments needed funding. Tariff revenues were one fairly easy way to get that funding. It was not until the early twentieth century that tariffs ceased to provide the majority of federal government revenue in the United States. In many developing countries, tariffs continue to play a major role in financing national government expenditures.[54] It is therefore not surprising that developing countries still rely more heavily on tariffs than do the industrialized nations.[55] Nor is it surprising that, once freed of the need for tariff-generated revenues, the industrialized nations would lead the way in developing NTB innovations for regulating international trade.

U.S.C. §§ 2101 et seq. (1982 & Supp. III 1985); Multifiber Arrangement, Dec. 20, 1973, 25 U.S.T. 1001, T.I.A.S. No. 7840. MFA IV, concluded in December 1986, added silk, linen, ramie, and jute to the list of controlled fibers. By the end of 1986, the United States had agreements on almost 650 quotas with 41 different countries.

[53] Each of these reasons for the growth of NTBs, along with clarifying examples, is discussed *infra* notes 54-60 and accompanying text. Useful discussions of this issue can be found in Ray, *Determinants of Tariff, supra* note 2, and Ray, *Tariff and Nontariff Barriers, supra* note 3.

[54] The preference for tariffs in developing countries is a direct outgrowth of the fact that their other fiscal or revenue raising mechanisms are typically not well developed. In developing countries, tariffs serve the double duty of providing protection to domestic producers and of providing a major share of the taxes collected by the national government. Quotas and other NTBs are more difficult and expensive to administer than tariffs and therefore less attractive as a primary source of revenue for government programs. Industrial countries that can use income taxes, value added taxes, and other instruments to raise revenue are more likely to consider NTBs as means for restricting trade than are developing countries.

[55] Ray, *The Optimum Commodity Tariff, supra* note 3, at 372, 373.

A number of historical examples illustrate the link between the need for revenues and the existence of tariffs. First, trade liberalization in England in the 1840s occurred only after the central government instituted an income tax system. A second example is found in the United States. One of the most hotly contested domestic political issues during the 1890s was whether the expanding economic role of the central government should be financed primarily with tariff revenues or through the adoption of an income tax system. The ratification of the sixteenth amendment in 1913 was a critical factor in the first dramatic tariff cuts in the United States in over fifty years.[56]

The second advantage of NTBs is that while GATT is equally outspoken in its condemnation of tariff and NTB restrictions on trade, it has been much easier to ascertain the quantitative effects of tariffs than it has been to gauge the effect of NTBs like product standardization requirements, government procurement practices, and others. Therefore, as successive GATT rounds achieved further reductions in tariff rates, NTBs were used either to support already weak industries, or compensate industries that were adversely affected by tariff cuts. That shift is evidenced by multifiber agreements beginning in the early 1960s and in the NTB protection given to the footwear, steel, and auto industries.

A third explanation for the rise in NTBs is that they can be used effectively by special interest groups incapable of getting government support for tariff protection.[57] One study provides empirical support for the notion that, other things being equal, NTBs are found predominantly among less concentrated industries.[58] The importance of this finding derives from this Article's earlier assumption that concentrated industries with a small number of dominant firms have been most successful in gaining government trade protection, and that less concentrated multifirm industries are notably less successful.[59] The study's findings suggest, however, that where NTBs are at issue rather than tariffs, effective coalitions with even large numbers of participants are quite possible, and more likely to be successful.

There is at least one other plausible explanation for the rise in NTB's. Consider an industry composed of fifty firms that are each losing domestic sales to foreign firms and therefore have a collective interest in getting the government to restrict imports with a tariff on foreign goods. One problem which the group faces is a firm's electing not to help in the

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56 *See* Baack & Ray, *supra* note 2, at 624.

57 *See* Ray & Marvel, *supra* note 3.

58 *See* Ray & Marvel, *supra* note 3.

59 *See supra* note 14 and accompanying text.

lobbying effort, thereby benefiting from the reduction in foreign competition along with the other forty-nine which worked for that outcome. The one firm is therefore a free rider[60] because it benefits from the collective effort of the other producers without bearing any of the costs. The more firms there are in an industry, the more likely it is that the free rider problem will prevent an effective coalition from being formed because each of the fifty firms has an incentive to try to get others to do the work and be a free rider.

If, however, the same group of fifty firms could get the government to restrict imports of competitive goods and distribute import licenses among those producers that participated in the coalition to limit imports, the group would have a means by which it could reward participants and exclude free riders. In this case, each participant in the coalition gains not only the benefits of reduced foreign competition but also part of the economic rent which would have gone to the government with a tariff (in this case, excess price) associated with the domestic sale of foreign goods. Firms which try to free ride will still benefit from the increased price of foreign goods but can be prevented from importing and selling foreign goods at the higher domestic price. They will not capture any of the tariff equivalent rents generated by the quota. This reduces the free rider problem substantially and enhances the prospects for a successful coalition.

Another example of an NTB would be "buy American" government purchase plans which provide government contracts to domestic firms that lobbied for the program while excluding free riders from access to those government contracts. Large coalitions which could not get tariff protection might succeed in getting "buy American" status associated with their products. What is disturbing is that the relatively greater effectiveness of NTBs as means of rewarding participants and excluding free riders may increase the overall extent to which protection is granted to domestic industries.

B. Empirical Evidence for the Rise in Non-Tariff Barriers

The GATT Kennedy Round failed to deal with the problem of NTBs and focused instead on tariff reduction. The Tokyo Round developed codes with respect to the *use* of NTBs, but left the issue of how to dismantle them for later GATT rounds.[61] In effect, then, these Rounds

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60 A free rider in this context is a firm that can benefit from a policy change which other firms in the industry paid for without having to pay anything itself.

61 In a way, the successful elimination of many of industrialized countries' tariffs may have played a role in promoting NTBs in the same way that arms agreements may at times promote the

left countries free to develop NTBs as a response to domestic political economic interests.

A pair of studies found clear evidence of this, demonstrating first that NTBs had been used in the United States and abroad to substitute for lost tariff protection resulting from the Kennedy Round, and second, that NTBs were systematically used to complement tariff protection in industries which were already receiving relatively high tariff protection.[62] These studies indicated that industries which had the highest tariff rates before the Kennedy Round still had the highest tariff rates after the round was implemented. Furthermore, NTBs introduced during the late 1960s and 1970s did not go to industries with low tariff rates after the Kennedy Round; rather, NTB protection was given to those industries which benefited most from tariff protection before and after the Kennedy Round.[63]

Another study provided a more precise test of the substitution and complementary protective effects of NTBs which were implemented in response to the Kennedy Round tariff cuts. The study demonstrated that industries (like steel, textiles, processed foods, and consumer durables) which experienced small if any tariff cuts during the Kennedy Round were precisely the industries which gained NTB protection. In short, NTBs were not used only to substitute for the general loss of tariff protection but also to increase protection for industries least affected by Kennedy Round tariff cuts.[64] One can conclude, therefore, that the Kennedy Round was more effective in changing the *form* of protectionism than in changing the *relative level* of protectionism.

C. Voluntary Export Restraints

There is one NTB innovation particularly worth mentioning in the current context. The VER poses a particular problem for international trade negotiations. Although GATT explicitly condemns the use of quantitative trade restrictions (and allows for retaliatory sanctions by injured parties), it is difficult to imagine a means of policing self-imposed

development of new weapons systems. Unless there is an honest intent to disarm, there is a strong incentive to develop new systems that bypass agreed on restrictions. So, too, if the commitment to trade liberalization is less than sincere, there is an incentive to surrender tariff protection while adopting new trade regulations that are even more effective.

62 *See* Ray, *Determinants of Tariff, supra* note 2; Ray, *Tariff and Nontariff Barriers, supra* note 3.

63 *See id.*

64 *See* Marvel & Ray, *The Kennedy Round, supra* note 2.

export restrictions negotiated bilaterally. VERs effectively bribe[65] foreign governments and producers with tariff-equivalent revenue[66] if they agree to limit exports. This system avoids open confrontations that ordinary quotas invite, and, as in the case of Japanese restrictions on automobile exports to the United States, can be worth billions of dollars to exporters and to the government of the exporting country. Since VERs produce transfers of wealth to the exporting country, these exporters are unlikely to complain to the GATT Council. This in turns suggests that VERs are likely to become the trade restriction of choice for all but the poorest nations.[67]

Moreover, in contrast to tariffs and multilateral quotas, VERs are extremely well suited to the needs of special interest groups seeking protection. First, they are bilateral agreements worked out by consenting rather than competing nations. They can be structured to provide protection to import sensitive industries and to provide rents to both governments and producers in the exporting countries. This means that producers in both the importing and exporting countries can collude with their governments in restraining competition and capturing monopoly rents at the expense of the consuming public. VERs present no incentive for retaliation and GATT has no effective means for preventing such collusive agreements. Multilateral tariffs and quotas, on the other hand, are likely to generate retaliation; this possibility reduces the likelihood that special interest groups within a country will succeed in having them adopted.

United States trade policy has become clouded by the conflict between protectionist groups and the free trade oriented government. Despite the vacillations, however, the severity of the protectionist threat is easily underestimated. NTBs are an especially dangerous weapon in the protectionist arsenal. The fact that NTBs can reduce the free rider problem and increase the likelihood that special interest groups will be successful in their quest for protection means that NTBs markedly enhance the protectionist threat.

This point is important and bears repetition. Imposing tariffs is a hostile economic action, multilateral in effect and easily observed. Given

65 A bribe is meant in the sense that the foreign government and producers gain the distribution of rents which would go to the government if a tariff were imposed.

66 The value of the rent captured by foreign governments and producers should be equal to the rent that would be generated by an equally restrictive tariff.

67 The poorest nations will always prefer tariffs to NTBs generally because tariffs provide capital to finance government expenditures. *See supra* note 55 and accompanying text. Moreover, it is unclear if developing country imports are at a level that demands VER protection, which is typically reserved for developed, if failing, industry.

the common desire of developed nations to liberalize trade after World War II, the GATT member states had no trouble rejecting unilateral impositions of tariffs without just cause. So effective was this commitment that tariffs declined dramatically throughout the period. Special interest groups seeking added tariff protection for their industries generally failed in their efforts because of the obvious international economic and political harm. Multilateral quotas have many of the same characteristics as tariffs and are not a likely vehicle for successful protection. VERs, on the contrary, are not multilateral in effect and are not likely to draw complaints from the participating countries. They are therefore likely to become an increasingly popular protectionist vehicle and deserve close observation.

VI. CONSEQUENCES OF TRADE POLICY CONFLICTS

A. Special Interests and Trade Strategies

The public dialogue over trade policy in the United States changed in the early 1970s, when the Organization of Petroleum-Exporting Countries ("OPEC") demonstrated its power to manipulate international trade. OPEC's actions simultaneously undermined United States national security and undercut its collective political commitment to international economic cooperation. The subsequent rise in oil prices affected a few key industries severely; this in turn adversely affected the economic base upon which the United States commitment to trade liberalization rested.

The first oil crisis in 1974 led to public discussion of possible retaliatory moves against OPEC. The proposed alternatives included the imposition of an oil import quota, the withholding of bushels (of wheat) for barrels (of oil), and the creation of an industrial country buyers' cartel to negotiate guaranteed long-term prices for OPEC oil.[68] Fortunately, none of those alternatives was adopted. It was obvious, however, that the United States trade position had moved from a strong commitment to trade liberalization to the view that freer trade was only one of many options.

Many factors contributed to the abandonment (by the time of the Tokyo Round Agreements concluded in 1979) of any continuing commitment to unqualified free trade by the United States.[69] Numerous conflicts and special bilateral agreements with our trading partners have

[68] For a more detailed discussion of OPEC, see A. MACBEAN & P. SNOWDEN, *supra* note 11.

[69] These factors included accelerating inflation in the United States, high energy prices, government regulations on domestic oil prices and auto emmissions, and the emergence of West Germany and Japan as genuine competitors for steel and auto sales in the United States.

underscored this fact.[70] Domestic political events, like Walter Mondale's campaign argument that trade policy should be based on "fair" trade (as opposed to "free" trade) have also contributed to the changing trade environment. Although Mondale lost his presidential bid, the United States is still wrestling with the question of whether to advocate multilateral free trade or shift to more limited bilateral agreements with individual trading partners.

The ambivalence of the United States position on multilateral free trade was recently demonstrated by the Reagan administration's call for the next round of GATT negotiations at the same time it was negotiating a bilateral free trade agreement with Israel and attempting a similar arrangement with Canada. Other examples of the shift from multilateralism in United States trade policy include the recent graduation of certain countries from the GSP (the GSP is itself a multilateral derogation from the MFN principle). The executive branch is not alone in its confusion—Congress is now in conference on a comprehensive trade bill that, among other things, threatens bilateral trade restrictions against countries that have large trade surpluses with the United States. Regardless of how well-intentioned or effective such programs may be, they clearly imply that the United States is no longer unqualifiedly committed to MFN trade policies.

The current conflict over trade policy between industry special interest groups and the national government has resulted in some surprising and disturbing changes in United States trade policy. These changes have been demonstrated by recent empirical work. One study examined the post-Kennedy Round structure of tariff and NTB protection in the United States, Canada, Japan, and the European Economic Community ("EEC" or "Community").[71] The statistical evidence indicated that by the mid-1970s protectionist interests had become strong enough to cripple legislation intended to assist developing countries in their efforts to expand exports of manufactured goods to the United States and other

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70 Examples of these conflicts and agreements include:

1) trigger prices for steel imports;

2) Japanese voluntary export quotas on auto exports to the United States;

3) government loan guarantees to Chrysler;

4) multifiber agreements;

5) semiconductor agreements between the United States and Japan not to compete against each other for sales;

6) arguments between the United States and the European Economic Community ("EEC") over wheat sales to Egypt and compensation payments to the United States for lost export sales in Spain resulting from its membership in the EEC; and

7) arguments with Canada over Canadian lumber product sales in the United States.

71 Ray & Marvel, *supra* note 3.

industrial nations. This trend continues into the 1980s as protectionist interests continue to gain strength. The issue is no longer whether protectionist special interest groups are sufficiently powerful to undermine the effectiveness of trade liberalizing legislation but rather whether or not there is any life left in the free trade movement.

A review of some empirical work in the area helps to illustrate how special interests have undermined trade liberalizing legislation. One general finding was that the post-Kennedy Round structure of tariffs and NTBs among the industrialized nations was systematically biased against imports of consumer durables, processed agricultural products, and textiles.[72] These products constitute the manufacturing areas in which developing countries are expected to have the best chance of competing for sales. This suggests that trade liberalization under GATT did not help increase developing country access to industrial country markets for manufactured goods.[73]

Many developing countries complained that the Kennedy Round had not provided them many potential export gains. Most industrial countries (including the United States) adopted their own GSPs to provide developing countries with duty free access to developed markets. Unfortunately, the same special interests in the United States which sought to minimize trade liberalizing aspects of the Kennedy Round worked to prevent the GSP[74] from undercutting the residual protection still in place after the Kennedy Round. One recent study found that the GSP and the CBI were both sabotaged in this manner. Based on an analysis of United States imports in 1984, it is apparent that the GSP and CBI did not provide preferential access to United States markets for exports from developing countries in consumer goods, textiles, or manufactured foods. Indeed, the study found that the programs had not even improved access for those goods heavily protected by tariffs before the preferences were granted.[75] If both the GSP and the CBI began as genuine efforts to provide developing countries with access to United States markets for key manufactured exports, the fact that special interest groups were able to influence the final legislation to the point of making it irrelevant in both cases is a bit chilling. In terms of our model, it suggests that our long-standing national commitment to trade liberaliza-

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72 *See id.*

73 Papers dealing with the impact of United States trade policies on imports from developing countries include D. CLARKE, *supra* note 3; Grossman, *supra* note 3; E. Ray, U.S. Protection, *supra* note 3; Ray & Marvel, *supra* note 3.

74 The GSP was first adopted in the United States in 1975 and renewed in 1985.

75 Ray, *Impact of Special Interests*, *supra* note 3, at 187 n.2, 190.

tion is close to being canceled by the power of special interest groups to thwart government efforts at international economic cooperation.

A further example of bias against developing countries is found in the argument that intra-industry trade,[76] or trade in closely related products, may serve as a continuing impetus for trade liberalization over time.[77] In the context of the model, the argument states that as intra-industry trade expands, the clash between import and export interests diminishes and therefore the relevance of special interest groups in shaping trade policy declines. Thus, continued intra-industry trade should reduce protectionist pressures.

Another empirical study, however, found that while intra-industry trade does indeed reduce protection in the form of tariffs,[78] intra-industry trade occurs primarily in made-to-order, labor-intensive, intermediate goods that are produced in small firms.[79] Those are not the kinds of goods commonly exported from developing countries. The study, therefore, suggests that although expanding intra-industry trade may promote further trade liberalization, it is likely to help industrialized countries at the expense of developing nations.[80]

Additional insights into future protectionist trends from the model follow from an examination of protectionism in the EEC. One study found that of all the industrialized areas, the EEC exhibited the most pervasive use of trade restrictions if tariffs and NTBs are viewed together.[81] This suggests that one effect of the expansion of the EEC to include less homogeneous members such as Spain and Portugal may be to increase the Community's common external trade restrictions. If so, it may mean that as the EEC has expanded, the trade diverting effect of having additional members has begun to outweigh its positive effect on trade expansion.[82]

To understand this point, one needs some background in how com-

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76 Intra-industry trade has been expanding rapidly in recent years.

77 *See* Krugman, *supra* note 3.

78 This occurs because export interests undercut the effectiveness of importers in obtaining tariff protection on closely related goods. *See* Marvel & Ray, *Intraindustry Trade, supra* note 2, at 1286-87.

79 *Id.* at 1283-85.

80 One of the authors of that study analyzed the characteristics of United States bilateral intra-industry trade with Canada, Japan, the EEC, Mexico, Brazil, South America, and the Caribbean Basin using 1984 trade data for manufacturing. The results indicated that intra-industry trade with developing countries and regions is systematically biased away from industries that enjoy substantial tariff or NTB protection in the United States (such as textiles, consumer manufactures, and processed food products). *See* E. Ray, U.S. Protection, *supra* note 3.

81 Ray & Marvel, *supra* note 3, at 452 n.3.

82 *Id.* at 452, 453.

mon external trade barriers are agreed to within the EEC. When a country like Spain joins the EEC, it must adopt the external trade restrictions which special interest groups within the EEC have already secured. Since Spain's production mix and competitive industries are somewhat different from those of other members, however, Spain will also bring its own special interest groups to the EEC bargaining process. Those groups seek supporters in other EEC countries and in some cases succeed in generating additional trade restrictions not present before the new member joined the community. The aforementioned increase in protection is a consequence of these new trade restrictions on imports from non-member nations. As indicated earlier, the magnitude of the increase in trade diversion resulting from the continued expansion of the EEC is demonstrated by the finding that the EEC has uniformly higher levels of protection across manufacturing than any of the other major industrial areas.[83] Expansion of the EEC, therefore, to include countries like Spain and Portugal (whose economies are quite different from those of existing members) enhances competition within the Community, but also increases the likelihood that special interest groups will gain the political clout needed to generate new trade restrictions to be implemented against non-EEC members.

B. The Current Transition in United States Trade Policy

To understand why United States trade policy is in transition now, one must look to the rapid increase in the trade sector relative to overall economic activity in the United States in the last fifteen years.[84] The rise in international trade relative to GNP[85] and the deterioration in the merchandise trade balance in the United States was related to the rapid rise in oil prices in 1974 and again in 1980. In turn, these rises played a significant role in generating the recessions of 1974-75 and 1980. This combination of increased trade relative to GNP, the deterioration in the trade balance, and economic recessions, surely contributed to public sympathy for the idea that economic problems in the United States were induced by foreign economic conditions and policies. It is therefore not surprising that both the Carter and Reagan administrations experienced substantial political pressure to do "something" about the international trade situation in the late 1970s and early 1980s.

What is not clear, however, is why protectionist pressures have increased in the last few years. Since 1983, there has been a continuous

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83 *Id.*

84 This discussion is based on the data found in Appendix B.

85 *See* app. B, chart B-1.

economic recovery and expansion in the United States. The dramatic decline in OPEC oil prices in 1986—a decline not fully reversed in 1987—should, according to the proposed framework, have helped avoid a decline in relative net exports. Such a decline would have led to increased pressure for trade restrictions. Despite declining oil prices, however, the relative net merchandise export position of the United States continued to deteriorate throughout the first six years of this decade from an average of −9.3% for 1981 through 1983, to −20.4% in 1984, −22.5% in 1985, and −25.1% in 1986.[86] Given the model, which projects a direct relationship between net export position and the extent to which special interest groups favor trade liberalization,[87] this recent deterioration should have been expected to lead special interest groups to step up their lobbying against trade liberalization.

The next logical question is: why has the merchandise trade position of the United States continued to deteriorate throughout the 1980s? The primary cause of the continuing deterioration in the net merchandise export position[88] of the United States was the dramatic increase in the trade weighted value of the United States dollar between 1980 and 1985, an increase that only began to reverse itself in 1986. Based on an index of exchange rates with 1973 equal to approximately 100, the value of the dollar increased almost 60% between 1980 and 1985.[89] By itself, that change in the value of the dollar would lower the price of imports 60% and raise the foreign price of our exports by 60%. Not surprisingly, that kind of change in import and export prices generated a serious deterioration in our commodity trade position. Currently, however, there is a reversal in this process. With some lag, one can expect the rapid fall in the value of the dollar that began in 1986 and has continued throughout 1987 to reduce the merchandise trade deficit further, and in the process reduce the pressure on Congress for protection from industry special interest groups. How much improvement will occur depends upon interest rate stability in the United States, and the extent to which high interest rates (presumably associated with large federal government deficits) persist, and upon the continuing rapid expansion of the economies of our major trading partners relative to that in the United States.

Another determinant of protectionist pressure in the United States is the national unemployment rate.[90] This Article argued earlier that

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86 *See* ECONOMIC REPORT, *supra* note 48.

87 *See supra* note 14 and accompanying text.

88 Also known as the commodity trade position.

89 *See* ECONOMIC REPORT, *supra* note 48, at 113-16; *see also* app. B, chart B-2.

90 *See* app. B, chart B-3.

there is a national commitment to provide a safety net for failing industries and jobs. To the extent that the unemployment problem has become more severe in the United States in recent years, this model leads one to expect our commitment to free international trade to weaken. The overall unemployment picture has worsened significantly since 1974. The civilian unemployment rate in the United States averaged 5.49% in the post-war period before that time and 8.43% between 1975 and 1986. The average unemployment rate since 1974 has exceeded the unemployment rate in any year between 1947 and 1974. Given this, it is not surprising that politicians have been especially sensitive to the possible impact of free trade on domestic unemployment.

There is one quite positive aspect of the foregoing discussion that should be noted before proceeding to an assessment of possible future trends in international trade and economic conditions. Although the three factors cited above[91] have combined to intensify pressure on the federal government to restrict trade, basic United States policy continues to tilt toward trade liberalization, despite protectionist victories like the proliferation of NTBs and the undermining of the effectiveness of programs like the GSP and the CBI. The pure special interest group explanation of trade policy would not predict such a persistent commitment to freer international trade, given economic conditions in the United States between 1974 and 1986. Moreover, current shifts in economic conditions in the United States and abroad are away from the patterns that contributed to the original intensification of protectionist pressures. If those trends continue, it is likely that the traditional commitment to trade liberalization in the United States will both continue and become more apparent to our trading partners than it has been in recent years.

C. The Emerging Pattern of Protectionism

The direction that trade policies will take in the United States and abroad over the next few years will obviously be affected by economic conditions, particularly in the major industrial countries. The description in Section II of the basic model and the sections that followed, made it clear that the prospects for renewed international economic cooperation depend directly on the net export position of the United States, the severity of the unemployment problem in the industrial nations, and growth in real income over time. This Section discusses the likelihood

[91] To reiterate, these three factors are: 1) the increase in the importance of the trade sector relative to GNP in the United States; 2) continued high unemployment rates; and 3) the prolonged adverse movement in the United States commodity trade statistics.

that economic conditions will change in ways which will promote or impede trade liberalization.

A key factor in the emerging pattern of protectionism will be the level of international trade in the coming years. Current estimates of the average growth rates for imports and exports for developed countries for the 10 years ending in 1988 are 4.6%, compared to the ten-year averages of 6.3% (imports) and 7.3% (exports) for 1969 through 1978.[92] This suggests that the slow-down in growth of world trade that began in the decade after 1969 has continued in the last decade. A pure special interest analysis would lead one to conclude that the lack of dramatic growth in world trade among the industrialized nations of the sort realized in the first two decades after World War II, will continue to blunt enthusiasm for further trade liberalization. On the other hand, the expected improvement in the export performance of the United States relative to growth in imports for 1987 and 1988[93]—which is largely associated with the fall in the international value of the United States dollar—should help to swing the net impact of industry special interest groups within the United States back toward favoring freer trade.[94]

The slow-down in the rate of growth of imports and exports applies to developing countries as well. The decline in export growth in developing countries became particularly severe after 1980. One factor in this was low growth among their trading partners. Developing countries' trading partner growth declined from an average of 4.9% between 1969 and 1978, to 2.8% per year from 1979 to 1988.[95] It is critical to developing countries that exports to hard-currency, industrialized nations continue. Unless economic conditions begin to favor growth in the

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92 *See* app. C, table C-1.

93 *See id.*

94 The presumption that the decline in the value of the dollar will substantially improve the United States balance of trade position may prove incorrect for at least three reasons.

1) The value of the dollar has declined relative to the Japanese yen and the Deutsche mark, but it has remained stable relative to the currencies of many other trading partners, particularly developing nations. Thus the falling value of the dollar is likely to encourage exports to—and discourage imports from—only a few of the major trading partners of the United States.

2) United States exports to developing countries grew rapidly during the years prior to the world debt crisis. The debt problems of developing countries have persisted and efforts to handle these problems have resulted in slower real growth and dampened demand for imports from the United States.

3) The rate of inflation in the United States has begun to accelerate and rates of interest are beginning to rise. If that process continues, the dollar will rise in value on world markets and net exports will decline. Whether or not the recent decline in the value of the dollar persists is particularly important from a timing standpoint. Success in the current round of multilateral trade negotiations in Geneva depends heavily on the leadership provided by the United States, and the extent of such leadership will surely depend upon the international trade situation during the negotiations.

95 *See* app. C, table C-2.

industrial countries, the capital scarcity problem facing the developing countries is likely to become increasingly onerous.

The foregoing limits on possible hard-currency earnings through exports to industrialized countries would be bad even if many of the developing countries were not already faced with staggering international debts. Current actions by major banks such as Citicorp, Chase Manhattan, and Morgan Guaranty to write off bad loans to developing countries have created a misleadingly optimistic impression. While the banks themselves have been successfully working their way out from under the burden of their bad loans to developing countries, the burden of those debts on the developing countries themselves has actually gotten worse.[96] Generally, bankers consider an external debt to export ratio in excess of 300% to be unsustainable. Only those developing countries that have been successful in exporting manufactured goods have been able to avoid external debt problems of close to crisis proportions.[97] The magnitude of the debt problem facing the most heavily indebted and the poorest developing countries has actually increased in the last five years.

Further perspective on the magnitude of the external debt problem can be seen in the ratio of external debt to domestic productive capacity. Except for countries exporting manufactured goods, the external debt burden on developing countries is half their domestic output, and is continuing to increase relative to the ability of developing countries to create goods and services.[98]

The international debt crisis is far from over. Developing countries should not miss the opportunity in Geneva during the GATT Uruguay Round to stress the need for a relatively unrestricted opportunity for their manufactured exports to compete in the industrialized countries.

Finally, the effectiveness of the next round of negotiations must be measured by the degree to which they curb the use of NTBs. The relative effectiveness of NTBs as a means of avoiding the free rider problem of effective coalition formation or to buy off foreign exporters, virtually assures us that the protectionist threat will never be safely put to rest. To the extent, however, that a framework for reducing their impact can be built, NTB damage to free trade can be limited.

VII. CONCLUSION

In conclusion, it seems clear that the period of United States dominance in international economic competition is over, and with it the una-

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96 Data on the external debt problem of developing countries is found in Appendix D.

97 *See* app. D, table D-1.

98 *See* app. D, table D-2.

nimity with which United States politicians pushed for trade liberalization in the early post-World War II period. It is also clear that NTB innovations to restrict trade have had the net effect of strengthening protectionist interests. On balance, however, the continued growth within the United States and the accompanying decline in the unemployment rate to 6% by August 1987[99] has reduced the pressure to use protectionist measures to provide a safety net for industries and workers. The decline in the dollar has already begun to reduce the commodity trade deficit and moderate the impact of special interest groups. Thus, the United States has not abandoned its commitment to further trade liberalization, although the commitment does remain somewhat shaky.

The world seems poised for a long struggle over international economic cooperation, however. Without greater growth rates in industrial and developing countries, the drive to liberalize world trade will be thwarted by special interest groups. Yet without further—and genuine—liberalization in world trade, the prospects for accelerated real growth rates are not good. It is hoped that this Article has identified some of the factors that determine the nature of the ongoing struggle between free trade and protectionist interests, and shown the importance of NTBs as hindrances to further world economic growth. While this work may not provide the answers, it may provide conceptual tools with which to face the problem.

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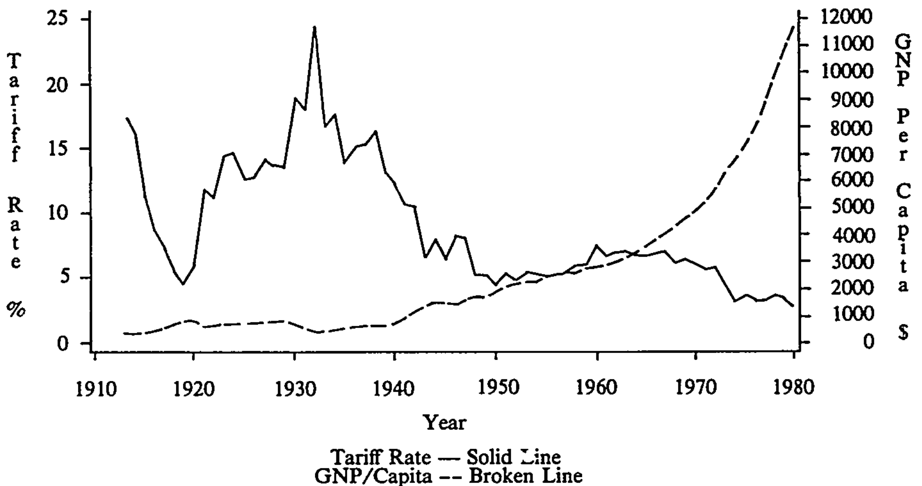
[99] 110 MONTHLY LABOR REVIEW 77 n.2 (Aug. 1987).

Appendix A

CHART A-1

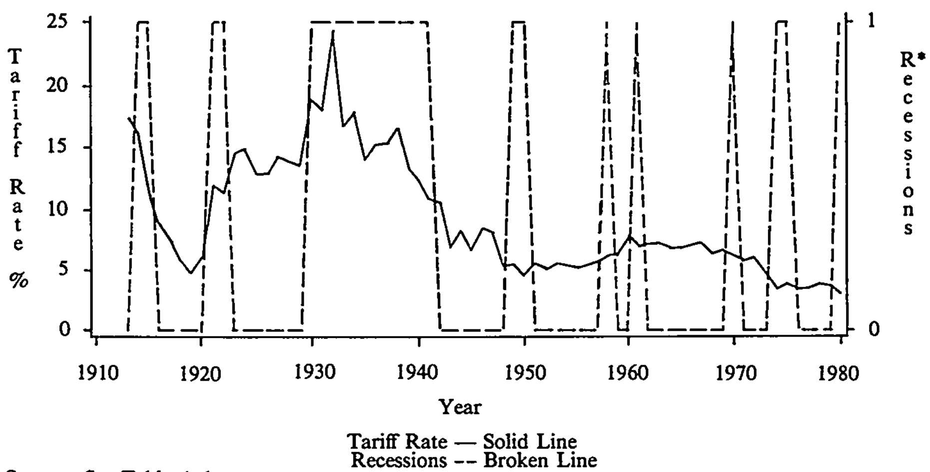
PROTECTION AND INCOME GROWTH: 1913-1980



Source: See Table A-1

CHART A-2

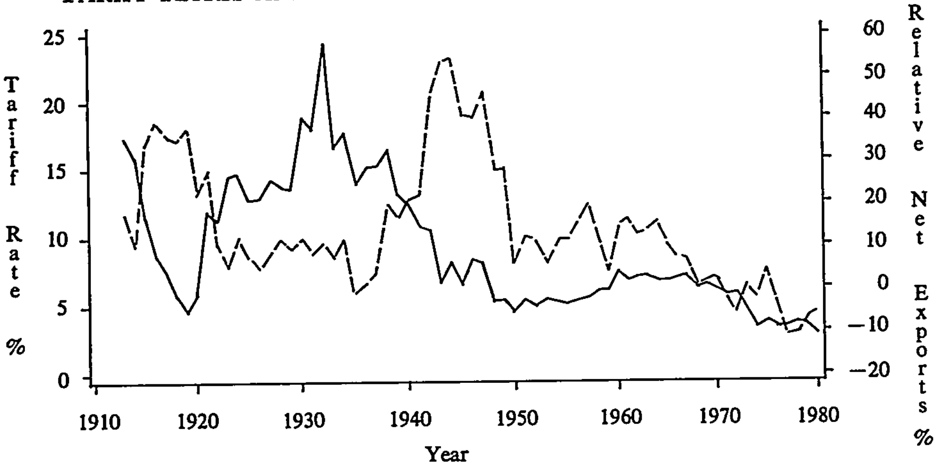
TARIFF RATES AND BUSINESS CYCLES: 1913-1980



Source: See Table A-1
* Value is 1 during a recession and 0 otherwise

CHART A-3

TARIFF RATES AND RELATIVE EXPORT STRENGTH: 1913-1980

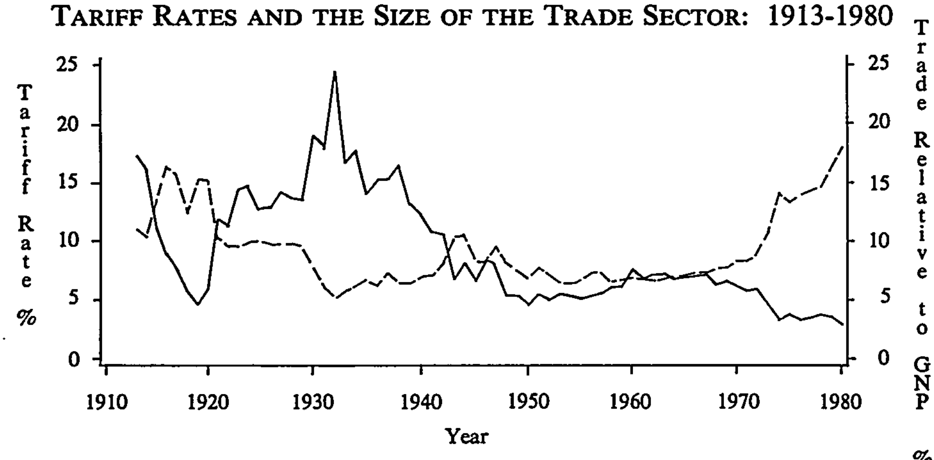


Tariff Rate — Solid Line
Recessions -- Broken Line

Source: See Table A-1

CHART A-4

TARIFF RATES AND THE SIZE OF THE TRADE SECTOR: 1913-1980



Tariff Rate — Solid Line
Relative Trade Strength -- Broken Line

Source: See Table A-1

TABLE A-1

U.S. TARIFFS AND ECONOMIC CONDITIONS

YEAR	Tariff Rate (%)[1]	GNP per Capita ($)[2]	Recessions (1.0)[3]	Relative Net Exports (%)[4]
1913	17.4353	407	0	17.4080
1914	16.1058	389	1	10.2596
1915	11.5713	398	1	34.0607
1916	8.7984	473	0	39.2960
1917	7.5170	585	0	36.0698
1918	5.8008	740	0	34.9135
1919	4.6172	804	0	37.9947
1920	5.9975	860	0	22.3368
1921	11.9970	641	1	28.1364
1922	11.1948	673	1	10.4738
1923	14.5352	760	0	4.9188
1924	14.8110	742	0	12.5460
1925	12.7607	804	0	7.7403
1926	12.8762	826	0	4.4789
1927	14.2807	797	0	8.0460
1928	13.6808	805	0	11.5859
1929	13.4946	848	0	9.0112
1930	18.9111	738	1	11.7304
1931	17.8469	615	1	8.1058
1932	24.4047	467	1	10.7641
1933	16.6060	444	1	6.9624
1934	17.7784	516	1	11.8720
1935	13.9461	570	1	−1.1919
1936	15.1929	647	1	0.8567
1937	15.2894	706	1	4.0712
1938	16.5295	656	1	19.7563
1939	13.2352	698	1	16.2960
1940	12.2683	757	1	20.9030
1941	10.6850	937	1	22.0002
1942	10.5459	1175	0	44.8368
1943	6.6971	1405	0	53.3428
1944	8.2689	1522	0	54.1795
1945	6.5014	1518	0	40.7947
1946	8.3679	1484	0	39.7897
1947	7.9859	1617	0	45.8722
1948	5.3328	1770	0	27.4133
1949	5.3390	1731	1	27.9719
1950	4.4819	1889	1	5.8183
1951	5.4492	2144	0	12.0658
1952	4.9179	2217	0	10.7506
1953	5.4305	2299	0	6.1444
1954	5.2352	2259	0	11.0643
1955	5.0750	2420	0	11.1633
1956	5.3269	2507	0	15.6560
1957	5.5301	2592	0	19.0881
1958	6.0377	2582	1	11.7891
1959	6.0418	2755	0	3.6137
1960	7.4946	2802	0	14.2641
1961	6.7636	2855	1	16.1382
1962	7.0416	3028	0	12.3280
1963	7.0837	3152	0	13.3483
1964	6.7142	3323	0	15.4810
1965	6.7082	3556	0	10.3100
1966	6.9395	3845	0	6.9845
1967	7.08773	4023	0	6.643
1968	6.18250	4351	0	0.920
1969	6.47838	4656	0	1.378
1970	6.10568	4841	1	2.647
1971	5.68464	5189	0	−2.542
1972	5.89100	5649	0	−6.100
1973	4.52205	6258	0	0.642
1974	3.21663	6705	1	−2.646
1975	3.74945	7173	1	4.410
1976	3.28413	7878	0	−4.015
1977	3.39510	8708	0	−11.329
1978	3.73863	9720	0	−10.620
1979	3.51196	10741	0	−6.900
1980	2.87247	11566	1	−5.376

[1] Tariff Rate = (Customs Revenue/Merchandise Imports) × 100

[2] GNP/Capita = Nominal Gross National Product/Population

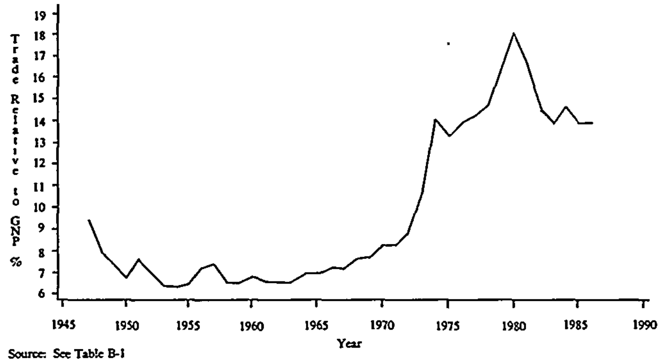
[3] Recessions = A dummy variable with a value of 1 for years in which unemployment was 10% or higher in the nonfarm sector of the United States economy, and 0 otherwise.

[4] Relative Net Exports = $\frac{\text{(Merchandise Exports − Merchandise Imports)}}{\text{(Merchandise Exports + Merchandise Imports)}} \times 100$

Sources: See Appendix E

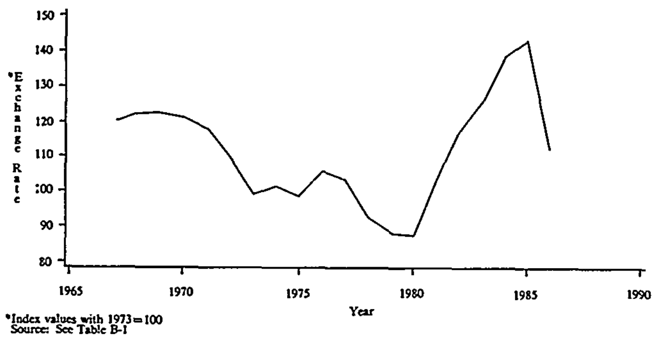
Appendix B

CHART B-1
TRADE RELATIVE TO GNP: 1947-1986



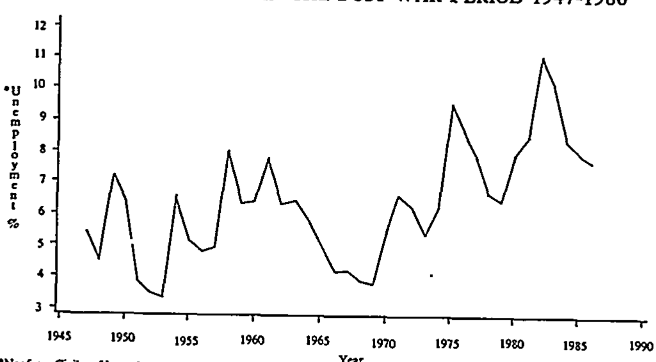
Source: See Table B-1

CHART B-2
THE VALUE OF THE TRADE WEIGHTED U.S. DOLLAR: 1967-1986



*Index values with 1973=100
Source: See Table B-1

CHART B-3
U.S. UNEMPLOYMENT IN THE POST-WAR PERIOD 1947-1986



*Nonfarm Civilian Unemployment
Source: See Table B-1

TABLE B-1

U.S. TRADE AND ECONOMIC CONDITIONS: 1947-1986

YEAR	Trade Relative to GNP (%)[1]	U.S. Dollar Exchange Rate[2]	Civilian Unemployment Rate (%)[3]
1947	9.4699	—	5.40
1948	8.0238	—	4.49
1949	7.3890	—	7.28
1950	6.7319	—	6.35
1951	7.6849	—	3.86
1952	6.9797	—	3.50
1953	6.3761	—	3.34
1954	6.3465	—	6.55
1955	6.4871	—	5.12
1956	7.1992	—	4.78
1957	7.4000	—	4.92
1958	6.5306	—	8.01
1959	6.5111	—	6.33
1960	6.7904	—	6.39
1961	6.6010	—	7.79
1962	6.5477	—	6.33
1963	6.5799	—	6.45
1964	6.9192	—	5.84
1965	6.9364	—	5.04
1966	7.2422	—	4.17
1967	7.1861	120.0	4.22
1968	7.6186	122.1	3.91
1969	7.6899	122.4	3.81
1970	8.2360	121.1	5.44
1971	8.2495	117.8	6.60
1972	8.8689	109.1	6.21
1973	10.6988	99.1	5.35
1974	14.0812	101.4	6.19
1975	13.2409	98.5	9.62
1976	13.8838	105.6	8.67
1977	14.2055	103.3	7.88
1978	14.6895	92.4	6.69
1979	16.3906	88.1	6.43
1980	16.0023	87.4	7.96
1981	16.4498	102.9	8.53
1982	14.4927	116.6	11.11
1983	13.8215	125.3	10.10
1984	14.6699	138.3	8.40
1985	13.8387	143.2	8.00
1986	13.8783	112.0	7.74

[1] Trade Relative to GNP = (Merchandise Exports/Nominal GNP) × 100

[2] United States Dollar Exchange Rate = Based on a market basket of currencies with 100 equal to real value of dollar in 1973.

[3] Civilian Unemployment Rate = The nonfarm civilian unemployment rate, constructed as (civilian unemployment/nonfarm employment × 100

Sources: See Appendix E

Appendix C

TABLE C-1

DEVELOPED COUNTRIES: EXPORT VOLUMES, IMPORT VOLUMES, AND TERMS OF TRADE, 1969-88[1]

	Average Annual Changes (%)										
	1969-78[2]	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
EXPORT VOLUMES[3]											
Canada	6.8	4.0	2.6	4.9	−0.8	.4	18.5	5.9	2.6	3.3	4.0
United States	6.8	14.1	9.0	−1.6	−10.9	−3.8	7.5	1.6	7.8	12.7	13.4
Japan	11.4	0.2	17.1	10.6	−2.3	8.7	16.0	4.4	−1.4	−4.0	2.5
France	10.1	8.7	3.3	4.1	−3.8	3.4	5.7	1.7	0.2	3.0	4.1
Germany, Fed. Rep. of	5.9	5.1	1.4	6.5	2.9	−0.2	9.6	6.4	1.2	0.5	2.4
Italy	8.1	7.7	−7.8	5.5	−0.5	3.5	6.6	7.5	2.2	2.5	3.5
United Kingdom	5.6	4.8	0.9	−0.8	2.6	1.8	8.4	5.5	3.7	2.4	2.4
Other industrial countries	7.1	8.2	1.9	2.2	1.0	5.6	8.8	4.9	4.0	3.4	3.5
All industrial countries	7.3	7.2	3.9	3.7	−2.0	2.8	9.7	4.4	2.9	2.4	4.6
IMPORT VOLUMES[4]											
Canada	7.5	14.6	5.1	10.1	−16.2	9.5	19.3	9.3	6.0	4.9	3.3
United States	7.5	1.6	−7.9	0.6	−3.7	13.0	24.3	5.1	14.6	1.8	4.0
Japan	7.8	11.3	−5.0	−2.2	−0.5	1.2	10.8	0.4	13.5	8.5	7.0
France	8.8	11.6	5.8	−3.9	3.3	−1.3	2.7	4.9	7.9	4.8	5.4
Germany, Fed. Rep. of	10.1	7.8	−0.2	−5.0	1.0	4.1	5.5	4.6	6.1	3.6	3.5
Italy	6.2	13.2	2.6	−11.1	3.3	2.0	9.1	8.9	6.0	7.5	6.0
United Kingdom	3.6	13.6	−5.4	−3.7	5.4	8.1	11.1	3.4	6.2	6.0	4.6
Other industrial countries	6.2	9.4	1.0	−3.4	1.3	1.0	7.1	5.6	7.0	4.0	4.4
All industrial countries	6.3	8.9	−1.6	−2.3	−0.3	4.8	12.4	5.0	8.9	4.3	4.6
TERMS OF TRADE[3]											
Canada	0.3	8.6	7.8	1.7	−2.3	−0.1	−0.5	−1.5	−3.7	0.4	−0.6
United States	1.7	−3.9	−13.5	1.9	3.0	3.3	2.0	−1.0	0.9	−5.4	0.3
Japan	−1.1	−15.9	−19.5	1.5	0.9	2.9	2.4	4.6	40.3	5.2	0.5
France	−0.2	−0.5	−6.3	−4.8	1.9	2.6	0.9	2.6	10.9	0.7	−0.3
Germany, Fed. Rep. of	0.7	−5.4	−6.4	−6.7	3.8	1.7	−2.3	1.4	15.1	3.3	−0.9
Italy	−1.8	−1.8	−6.2	−10.5	6.8	4.6	−1.5	0.6	16.9	3.1	—
United Kingdom	−1.3	4.3	4.7	0.9	0.1	0.3	−2.2	1.3	−5.4	0.9	0.6
Other industrial countries	−0.4	−1.0	−4.0	−2.1	1.5	−0.8	1.0	0.4	3.3	0.1	0.3
All industrial countries	−0.6	−2.9	−7.1	−2.1	2.1	1.6	0.3	0.9	9.4	0.6	−0.1

[1]Trade in goods only.
[2]Compound annual rates of change.
[3]Composites for country groups are averages of percentage changes for individual countries weighted by the average U.S. dollar value of their respective merchandise exports over the preceding three years.
[4]Composites for country groups are averages of percentage changes for individual countries weighted by the average U.S. dollar value of their respective merchandise imports over the preceding three years.

Source: INTERNATIONAL MONETARY FUND, WORLD ECONOMIC OUTLOOK 140, Table A-22 (Apr. 1987).

TABLE C-2
Developing Countries: Merchandise Trade, 1969-88[1]

	Average Annual Changes (%)										
	1969-78[2]	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
Developing Countries											
Value (in U.S. dollar terms)											
Exports	19.8	34.6	31.7	−1.7	−11.8	−4.6	6.6	−3.8	−6.2	8.4	9.2
Imports	18.4	21.3	26.8	8.9	−7.5	−6.4	0.2	−3.6	0.9	8.3	7.4
Volume											
Exports	4.6	4.4	−4.2	−6.0	−7.6	3.2	7.1	1.0	8.2	2.8	5.8
Imports	7.2	3.5	7.3	7.8	−4.0	−2.4	1.8	−0.2	−3.1	−0.2	2.9
Unit value (in U.S. dollar terms)											
Exports	14.6	28.9	37.4	4.6	−4.5	−7.6	−0.4	−4.7	−13.3	5.5	3.2
Imports	10.5	17.2	18.2	1.0	−3.6	−4.2	−1.5	−3.4	4.2	8.4	4.3
Terms of trade	3.7	10.0	16.3	3.6	−1.0	−3.5	1.1	−1.4	−16.8	−2.7	−1.0
Purchasing power of exports[3]	8.5	14.9	11.4	−2.7	−8.5	−0.5	8.2	−0.4	−10.0	—	4.7
Real GNP Growth of Trading Partners	4.9	4.1	2.6	2.2	0.7	2.6	4.3	2.7	2.9	2.8	3.1
Non-fuel Exporters											
Value (in U.S. dollar terms)											
Exports	16.4	24.7	22.7	2.2	−4.6	3.7	11.8	−0.3	9.3	9.2	9.6
Imports	15.9	27.3	26.1	4.6	−8.7	−3.1	4.0	0.2	5.6	11.5	8.3
Volume											
Exports	6.1	6.9	8.5	5.2	1.1	8.2	11.6	5.2	7.7	3.9	6.2
Imports	4.8	7.4	4.9	3.2	−5.2	1.7	5.3	4.5	3.9	3.3	4.0
Unit value (in U.S. dollar terms)											
Exports	9.7	16.6	13.1	−2.8	−5.7	−4.1	0.2	−5.2	1.5	5.1	3.2
Imports	10.5	18.6	20.2	1.4	−3.7	−4.6	−1.2	−4.1	1.7	7.9	4.2
Terms of trade	−0.8	−1.7	−5.9	−4.2	−2.1	0.6	1.4	−1.1	−0.2	−2.6	−1.0
Purchasing power of exports[3]	5.3	5.1	2.1	0.8	−0.9	8.8	13.1	4.0	7.5	1.2	5.1

[1] Excluding China prior to 1978.
[2] Compound annual rates of change.
[3] Export earnings deflated by import prices.

Source: International Monetary Fund World Economic Outlook 141, Table A-23 (Apr. 1987).

Appendix D

TABLE D-1
DEVELOPING COUNTRIES: EXTERNAL DEBT RELATIVE TO EXPORTS, 1979-88[1]

	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
	Ratio of external debt to exports of goods and services[2] (%)									
DEVELOPING COUNTRIES	90.8	81.6	94.6	120.1	133.3	133.7	147.8	167.5	168.6	160.7
By region										
Africa	107.1	90.2	116.3	153.8	170.4	170.1	181.0	219.6	227.7	220.0
Asia	75.7	71.9	74.5	88.4	93.6	88.1	100.0	101.6	100.0	95.8
Europe	130.1	127.4	136.7	147.0	150.0	146.4	161.9	160.7	156.8	148.6
Middle East	32.6	26.6	33.2	45.7	59.8	69.7	82.2	120.4	129.0	127.3
Western Hemisphere	197.7	183.5	210.3	273.8	290.3	277.1	295.5	354.7	367.6	342.2
By predominant export										
Primary product exports	165.5	159.1	193.2	240.8	254.8	251.3	268.3	287.3	297.8	284.3
Agricultural exporters	181.3	182.3	210.5	259.9	274.9	261.9	280.8	304.9	321.0	305.3
Mineral exporters	132.2	114.4	153.0	194.2	204.8	220.6	230.7	237.4	234.7	225.9
EXPORTERS OF MANUFACTURES	79.1	75.1	74.3	80.2	81.5	75.8	84.0	80.8	77.8	73.7
By financial criteria										
Countries with recent debt-servicing problems	164.3	151.2	185.8	241.5	254.3	247.2	263.9	302.4	312.7	295.8
Countries without debt-servicing problems	85.9	79.1	81.1	92.8	100.0	96.3	109.2	114.0	112.4	107.0
By miscellaneous criteria										
Fifteen heavily indebted countries	182.3	167.1	201.4	269.8	289.7	272.1	284.2	337.9	349.6	324.7
Small low-income countries	229.9	227.2	272.3	325.0	341.9	352.1	398.8	432.7	451.1	449.1
Sub-Saharan Africa[3]	149.2	146.3	181.3	213.9	226.9	222.8	256.6	282.3	294.3	301.1

[1]Excludes debt owed to the Fund.
[2]Ratio of year-end debt to exports of goods and services or gross domestic product for year indicated.
[3]Excluding Nigeria and South Africa.

Source: INTERNATIONAL MONETARY FUND, WORLD ECONOMIC OUTLOOK 186, table A-50 (Apr. 1987).

TABLE D-2
DEVELOPING COUNTRIES: EXTERNAL DEBT RELATIVE TO GDP, 1979-88[1]

	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
				Ratio of external debt to GDP[2] (%)						
DEVELOPING COUNTRIES	24.7	24.4	27.6	32.0	34.3	35.3	37.5	39.8	41.3	39.7
By region										
Africa	30.6	27.2	31.4	37.5	39.8	40.3	44.9	49.2	54.4	52.6
Asia	16.7	17.2	19.1	22.1	23.4	24.0	27.2	29.6	31.7	30.6
Europe	30.9	35.1	40.8	43.0	49.2	54.7	57.9	52.6	51.2	49.4
Middle East	18.6	16.2	18.8	21.9	24.1	25.6	27.5	31.4	31.5	31.7
Western Hemisphere	32.2	32.2	35.7	42.9	47.3	47.6	46.8	48.5	49.8	47.0
By predominant export										
Primary product exports	29.4	30.2	34.9	40.4	42.9	45.5	48.2	47.9	48.4	46.6
Agricultural exporters	26.6	28.5	33.4	38.2	40.3	42.4	44.2	44.2	45.0	43.4
Mineral exporters	42.4	36.6	40.5	50.3	54.7	60.7	71.1	68.7	67.7	65.3
EXPORTERS OF MANUFACTURES	19.1	19.6	21.4	22.8	23.1	23.7	26.1	26.5	27.2	26.0
By financial criteria										
Countries with recent debt-servicing problems	34.0	33.6	38.5	45.5	50.0	51.1	52.2	54.8	57.5	54.7
Countries without debt-servicing problems	20.1	20.5	22.1	24.9	26.3	27.3	30.7	32.5	33.7	32.5
By miscellaneous criteria										
Fifteen heavily indebted countries	30.2	30.8	34.6	41.7	47.0	46.8	46.3	48.4	50.8	47.9
Small low-income countries	34.1	33.5	40.6	46.0	47.5	49.4	58.4	67.6	77.6	77.5
Sub-Saharan Africa[3]	38.8	36.4	44.	51.9	55.7	59.4	65.6	68.2	73.8	74.7

[1]Excludes debt owed to the Fund.
[2]Ratio of year-end debt to exports of goods and services or gross domestic product for year indicated.
[3]Excluding Nigeria and South Africa.

Source: INTERNATIONAL MONETARY FUND, WORLD ECONOMIC OUTLOOK 187, table A-50 (Apr. 1987).

Appendix E

DATA SOURCES

Nominal GNP	1913-1928:	HISTORICAL STATISTICS OF THE UNITED STATES, Fl, at 224
	1929-1976:	NATIONAL INCOME AND PRODUCT ACCOUNTS 1929-1976, 1, 2
	1977-1986:	ECONOMIC REPORT OF THE PRESIDENT 1983, 1987
GNP per capita	1913-1928:	HISTORICAL STATISTICS OF THE UNITED STATES, Series F-5, 224
	1929-1976:	NATIONAL INCOME AND PRODUCT ACCOUNTS 1929-1976, 318, 319
	1977-1980:	ECONOMIC REPORT OF THE PRESIDENT 1983, 1987
Customs Revenue	1913-1970:	HISTORICAL STATISTICS OF THE UNITED STATES, Series Y344, Y353, 1105-06
	1971-1980:	ECONOMIC REPORT OF THE PRESIDENT 1974 ECONOMIC REPORT OF THE PRESIDENT 1981
Merchanise Imports	1913-1970:	HISTORICAL STATISTICS OF THE UNITED STATES, Series U9, 864
	1971-1986:	ECONOMIC REPORT OF THE PRESIDENT 1974, 1980, 1987
Merchandise Exports	1913-1970:	HISTORICAL STATISTICS OF THE UNITED STATES, Series U2, 864
	1971-1986:	ECONOMIC REPORT OF THE PRESIDENT 1974, 1982, 1987
Recessions	1913-1941:	See nonfarm unemployment rate
	1942-1980:	STATISTICAL ABSTRACT OF THE UNITED STATES, 1984, NO. 19, 545
Trade Weighted Dollar	1967-1986:	ECONOMIC REPORT OF THE PRESIDENT 1987
Nonfarm Unemployment Rate	1913-1970:	HISTORICAL STATISTICS OF THE UNITED STATES, Series D-10, 126
	1971-1986:	ECONOMIC REPORT OF THE PRESIDENT 1983, 1987