Bargaining Challenges and Conflicting Interests: Implementing the DOHA Round

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BARGAINING CHALLENGES AND CONFLICTING INTERESTS: IMPLEMENTING THE DOHA ROUND

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INTRODUCTION

In the early to mid-1990s a new liberal world order came together. Communism collapsed in the United Soviet Socialist Republic ("U.S.S.R") and Eastern Europe. China was moving toward broader market incentives and decentralization. Europe took big steps at Maastricht and Amsterdam toward further economic and political integration, with more market discipline.\(^1\) Meanwhile, the United States enjoyed military ascendancy, its economic recovery was becoming a boom in 1994-1995, and the U.S. dollar regained strength as the dominant reserve currency.\(^2\) Then the Uruguay General Agreement on Tariffs and Trade ("GATT") Round culminated in the GATT 1994-WTO trade agreements\(^3\) signed at Marrakech, Morocco. Many observers saw in these events a "Grand Bargain," framing a new confidence in the global marketplace and euphoria seemed justified, at least for some years.\(^4\)


2. See id. (highlighting the development of the WTO and its role in shaping U.S. trade policy); see also World Trade Organization Hearing Before the House Comm. on Ways and Means, 103rd Cong. 69-94 (1994) (statement of William A. Lovett) [hereinafter WTO Hearing] (previewing the debate in 1994 over U.S. trade policy and what aspects of the U.S. economy were relevant at the time of the several WTO negotiations); William A. Lovett, A Train Wreck in Progress?, 24 FORDHAM INT'L L. J. 410, 410-13 (2000) [hereinafter Lovett, Train Wreck] (explaining the political and economic circumstances that led to the structure and framework of the WTO).


Developing nations would benefit as the United States, European Union, and Japan relocated much of their manufacturing to lower wage countries. Advanced nations would also expand service activities and investment in poor countries, thus resulting in an increase in prosperity as well. For five to six years, a broad faith in the globalization process seemed to encompass most parts of the world. Many emerging and transforming market nations experienced a rapid expansion of capital flows. Foreign investment took many forms—expanded multinational corporation ("MNC") affiliates, intellectual property interests, bank lending, bond issues, stock purchases, and other direct investments. Most countries hoped to gain in this general growth of freer trade. Some countries gained a great deal. Americans enjoyed an economic boom. The U.S. gross national product ("GNP") expanded by more than fifty percent between 1993-2000, the Dow Jones industrial average more than tripled, while the NASDAQ ballooned six fold.

In many developing countries confidence in shared benefits has eroded. Even among advanced countries, a sizeable dissenting class questions globalization. Displaced workers, depressed districts and cities, disrupted businesses, less prosperous farmers,

Lovett, Post-Cold War Era]; Lovett, Train Wreck, supra note 2, at 410–26. See also WTO Hearing, supra note 2 (highlighting the numerous ways in which the Uruguay Rounds of the WTO were harmful to U.S. trade policy); Globalisation and Its Critics: A Survey of Globalisation, ECONOMIST, Sept. 29, 2001, at 3, 3–30 [hereinafter Globalisation and Its Critics] (discussing the proponents of globalization arguments); see also infra Tables 1, 2, and 3 (documenting the increased size and danger of U.S. trade and current account deficits).

5. See Globalisation and Its Critics, supra note 4, at 3-30 (discussing the pros and cons of globalization for the rich and poorer countries of the world). Some argue that the belief that globalization actually brings work and money to poorer countries is true. Id. at 10-13.

6. See Lovett, Train Wreck, supra note 2, at 410–11 (noting the role of the asymmetrical and non-reciprocal benefits that come to MNCs due to globalization).


8. See supra note 4 and accompanying text (expressing many doubts and protests against the negative consequences of globalization); see also Globalisation and Its Critics, supra note 4, at 3 (commenting that to a minority, globalization is representative of a force for “oppression, exploitation, and injustice”).
environmentalists, and the insecure want to cut back on globalization, to set limits, and/or provide stronger safeguard relief.\footnote{9. See LAWRENCE MISHEL & DAVID M. FRANKEL, THE STATE OF WORKING AMERICA (biennial series 1994–2001) (discussing life of the American worker and its effect on economic policies and conditions); BENNETT HARRISON & BARRY BLUESTONE, THE GREAT U-TURN: CORPORATE RESTRUCTURING AND THE POLARIZING OF AMERICA 21–52 (1988) (discussing the de-industrialization of America and how former President Reagan’s economic policies damaged the American standard of living); BACK TO SHARED PROSPERITY: THE GROWING INEQUALITY OF WEALTH AND INCOME IN AMERICA (2000) (compiling the essays of several economic, political, and social scholars who discuss the effects of the growing income of inequality in the United States); see also Globalization’s Last Hurrah?, 128 FOREIGN POL’Y 38, 46 (2002) (ranking economic, social, technological, and political integration levels in sixty-five countries); Allen Breed, Textile Industry Repeats a Common Cycle: Go Where the Labor is Cheaper, ASSOCIATED PRESS, Jan. 5, 2002 (describing a brochure of pictures and articles published depicting textile mills allegedly forced to be shut down by modernization and globalization); Raymond Colitt, Serious Ideas Behind the Theatrics: World Social Forum: Anti-Globalisation Lobby Has Recovered Its Momentum, FIN. TIMES, Feb. 5, 2002, at 14 (commenting on the anti-globalization movement and a proposal for a forum for exchange of ideas); James Harding, Globalisation’s Children Strike Back: As the IMF, World Bank and the WTO Brace for Huge Protests Against Free Market Capitalism, James Harding Uncovers the Workings of the Anti-Globalisation Movement, FIN. TIMES, Sept. 11, 2001, at 14 (noting the background of several individuals who intended to participate in the protests of the WTO meetings in Washington); Robert Guy Matthews, U.S. Industry Leaders Have Mixed Views About A New Round of WTO Talks, WALL ST. J., Nov. 16, 2001, at 2 (highlighting the U.S. industrial leaders’ viewpoints about the upcoming WTO round, stating that supporters feel it can create a more level playing field for the developing world while critics argue that it will hurt U.S. industries); Paul Craig Roberts, Trading Away Our Living Standards, WASH. TIMES, Feb. 14, 2002, at A21 (discussing the various strides that have been made in corporate society because of globalization, but noting that the United States’ three largest trade deficits resulted also from globalization). Roberts argues that the United States cannot make its own clothing, vehicles, or oil. Id. See also Philip Stephens, A Poor Case for Globalisation, FIN. TIMES, Aug. 17, 2001, at 15 (discussing the call of the protestors similar to those in Seattle in Autumn 1999 who want a fairer capitalism and one that does not exploit the poor at the expense of the rich); Philip Stephens, The Choice for the Superpower: The Global Backlash Against International Economic Integration Will Resume and Present the U.S. With a Dilemma, FIN. TIMES, Dec. 21, 2001, at 21 [hereinafter Stephens, Choice for the Superpower] (describing the mounting protest against globalization).}

The real and complicated problem (understood in the GATT 1947 agreement) is what limits, offsets, and safeguards are desirable for the global economy. Unfortunately, important aspects of the GATT 1994-WTO arrangements have proven to be seriously misguided blunders in retrospect. See Lovett, Train Wreck, supra note 2, at 411 (arguing that the GATT 1994-WTO regime created insecurity
Many emerging market nations boomed for a while. A growing parade of financial-devaluation crisis followed this boom in countries such as Mexico, Thailand, Malaysia, Indonesia, South Korea, Russia, Brazil, Venezuela, Ecuador, Turkey, Argentina, and others, which gradually undermined enthusiasm about the blessings of unrestricted capital inflows and complete openness. Then caution and renewed mercantilism replace the great faith in “hands off” total market freedom for trade in goods, services, and finance. Meanwhile, many other nations in Africa, the Mid-East, and the former U.S.S.R., never received adequate new capital inflow and remained stagnant or worse. The “Grand Bargain” did not work that well for them, and many countries and interests now feel shortchanged.

Suddenly, on September 11, 2001 (“September 11th”), as the United States and global economy slowed markedly, terrorist bombings occurred at the U.S. World Trade Center and the Pentagon. The United States found itself at war. Quickly these bombings were traced to Osama bin Laden, al-Qaeda, and the Taliban in Afghanistan. A broad coalition of nations expressed support for the United States. Significant U.S. Air and Naval Special Forces deployed to the Arabian Sea, the Turkestanis, and Pakistan. Soon the United States launched air strikes against Taliban-al-Qaeda (Osama Bin Laden) targets, and U.S. forces helped the Northern Alliance and other Afghan dissidents to overthrow the Taliban. The United States worked for a more “responsible” government in Afghanistan. Meanwhile, the United States created new defense and emergency outlays. Homeland defense measures include increased airport security, public health safeguards, immigration control, partial call-up of reserves, larger air and naval spending, aid for the lives and aspects of industrial workers, farmers, and business enterprises).

10. See infra notes 45-51 (discussing in depth the wave of financial crisis around the world).

11. See Stephens, Choice for the Superpower, supra note 9, at 21 (discussing ways in which policy makers will begin to act in response to the slowing economy and toward any type of an Argentinean-type situation).

to new allies, World Trade Center reconstruction, and some bail-out financing for distressed sectors of the economy.\textsuperscript{13}

In the world economy, a shock wave of increased risk, slowed trade and foreign investment, reduced travel and tourism, and tighter consumer spending in some sectors, brought a global slowdown, at least temporarily. How quickly could things recover? Most observers now agree that substantial new uncertainties, security dangers, and disruptions will afflict the global economy in 2002-2004, and perhaps beyond.\textsuperscript{14}


14. See Gerard Baker & Quentin Peel, Anxious World Reflects on a Murky Picture: Economic Uncertainty and Political Insecurity Will Preoccupy the World Economic Forum in New York This Week, FIN. TIMES, Feb. 1, 2002, at I (describing how the attacks in the United States on September 11th not only affected the U.S. economy, but also the global economy); Ed Crooks, Global Prospects: All Eyes on U.S. to Lead Recovery, FIN. TIMES, Feb. 1, 2002, at 11 [hereinafter Crooks, Global Prospects] (reporting that even if the United States does recover strongly this year and into the next, threats to derail its momentum still exist). Crooks warns, however, of actions that could threaten the economic recovery. \textit{Id.} For example, the risk of dollar devaluation if there is a bad U.S. current account of deficiency. See Crooks, Global Prospects, supra, at 11. He notes that, "[a] dollar crash, accompanied by a further slump in stock prices and other U.S. assets, would be such a grim outcome for the U.S. and the rest of the world that there is a general interest here in ensuring that faith in the future of the U.S. is maintained." \textit{Id.} Ed Crooks & Richard Waters, World Economic Upturn Likely To Be Weak, FIN. TIMES, Feb. 4, 2002, at 7 (characterizing financial and market analysts’ mood as optimistic regarding the upswing of the U.S. economy but that recovery would be slow); Greg Ip & Jacob M. Schlesinger, Did Greenspan Push His Optimism About the New Economy Too Far?, WALL ST. J., Dec. 28, 2001, at I (discussing the impact of Chairman Greenspan’s push for rapid productivity growth and rising living standards as the new economy and its possible effects on interest rates in 2002); Joseph Kahn, The World’s Economies Slide Together Into Recession, N.Y. TIMES, Nov. 25, 2001, at A1 (noting that the world is experiencing a recession not seen for over two decades and that this recession may have been the consequence of increased economic integration).

Further disruptive news to foreign confidence in the dollar could come from renewed U.S. fiscal deficits, Enron repercussions, political gridlock and divisiveness, or less fortunate military campaigns than that against Afghanistan. \textit{Id.} See also Ronald McKinnon, Spend Now, Pay Later: George W. Bush’s Budget Risks Widening the US’s Balance of Payments Deficit, FIN. TIMES, Feb. 5, 2002, at
Does this mean the global economy experiment failed? Was it all an illusion? Not exactly. There is a need for realism. It is also crucial to think together about trade, finance, and security. Sound financing, reliable trade flows, and adequate security arrangements go together in the global economy. A breakdown in security clearly imperils trade and finance. Strained trade-finance thus undermines security, at least in those countries most badly affected by failing economies and widespread suffering.15

Now the trade regime suffers from excessive rigidities, structural trade imbalances, and insecurities. Unconditional most favored nation ("MFN") status worked well enough between 1947-1967 to reassure nations fearing a U.S. lead in technology and industry. By the early 2000s, however, almost all countries needed more reciprocity and shared benefits. Until recently, the finance regime seemed to be in better shape. Floating exchange rates, International Monetary Fund ("IMF") assistance, and global capital markets provide "flex." Nevertheless, excessive speculation, hot money flows, and devaluation crises were disruptive. Many complained that poor countries needed more financing.16 Yet, the poor nations typically lack responsible governance, secure property,
infrastructure, and education. More money, investment, and trade could help, but also needed is the establishment of effective security and governmental responsibility, meaning that there needs to be a renewed emphasis on a healthy security regime. Corrupt and failing regimes, thuggery, and terrorism are serious problems. In the early post-Cold War euphoria, a major draw down in military force levels (between 1991-2001) seemed reasonable for the Western-style democracies. By early 2002, unfortunately, the world looked less safe. Challenges to security afflict many parts of the world. The Mid-East, some of Latin America, parts of the former U.S.S.R., some of the Balkans, much of Africa, and borderlands around China and India, had become insecure. Now the United States suffers from a continuing threat of terrorism.

In this context, the Doha WTO trade negotiation round was launched. Unquestionably, the new September 11th global security threats helped nudge the world’s leading trade powers into papering over differences, and into accepting a limited agenda of WTO negotiations for the next few years. Realistic observers, however, emphasize the largely “defensive” character of world trade bargaining now. Keeping things together, not getting hurt, and not

17. See Adam Hersh, Limits to Free Trade, WASH. POST, Nov. 16, 2001, at A46 (criticizing the World Bank and IMF for providing poor countries with the false hope that globalization and free trade will solve their poverty problems when it will take much more to bring citizens of poor countries above the poverty line).

18. See Peter Riddell, Far From the Headlines, The World Is Changing, TIMES (LONDON), Nov. 19, 2001, at 16 (discussing the importance of the Doha Round of the negotiations and stating that the negotiations have taken on new significance after September 11th due to an increased desire to fight back against terrorists who reject globalization).

19. See Frances Williams, WTO Members Agree Talks Procedure, FIN. TIMES, Feb. 2, 2002, at 6 (noting that WTO members agreed on a procedure five days later than planned for upcoming negotiations designed to facilitate participation of poorer nations); Graham Searjeant, A Pointless Breakthrough in Doha, TIMES (LONDON), Nov. 16, 2001, at 26 (arguing that the Doha negotiations, characterized as one for developing countries, is really not accomplishing its stated goals). Searjeant explains that for every gain for a poorer country, the European Union or some other industrialized country is gaining a new limitation or exception. Id. See also Hersh, supra note 17 (criticizing the World Bank and the IMF for making false promises regarding globalization and free trade on poorer nations); Guy de Jonquieres & Frances Williams, Moore Spells Out Dangers of Failure at WTO Talks, FIN. TIMES, Nov. 10, 2001, at 13 (noting the warning given by WTO Director-General Mike Moore that if the Doha talks failed, the global system of
allowing trade and finance-security relations to unravel are the overriding objectives.²⁰

Big breakthroughs in further trade-openings for newly independent countries (“NICs”) and lesser developed countries (“LDCs”) are not in the cards. There is a need for efforts to keep trade flowing in the more open Organization for Economic Co-operation and Development (“OECD”) member countries, and to contain WTO disputes.²¹ Some work can be done at the multilateral WTO level, but most work must occur bilaterally among the leading trade blocs (i.e., United States, North American Free Trade Association (“NAFTA”), European Union, Japan, China, Russia, Association of South East Asian Nations (“ASEAN”), Organization of Petroleum Exporting Countries (“OPEC”), and the IMF). Bilateral relations are increasingly crucial in a slowed global marketplace, as

free trade would crumble into a myriad of regional trade agreements); Guy de Jonquieres, New Battles Loom After WTO Success at Doha, FIN. TIMES, Feb. 1, 2002, at 3 (describing the sense of accomplishment felt at Doha because not only had the Round been free from the “strain of Seattle,” but the aftermath of September 11th also fostered a spirit of unity).

20. See James Toedtman, Economy Watch: Brave New World for International Trade, NEWSDAY, Dec. 30, 2001, at F2 (noting that Robert Zoellic, a top U.S. trade negotiator, managed to get House approval from Trade Promotion Authority, which based part of its approval on public support for globalization and economic growth after September 11th); Democrats For Poverty, WASH. POST, Nov. 18, 2001, at B6 (stating that U.S. Democratic leaders did not rush to give the executive trade promotion authority for the WTO summit, even though it would mean that issues combating world poverty would be addressed). The article states that this would also mean that U.S. anti-dumping legislation might have been discussed and that Democrats were not willing to risk the injury that might be caused to U.S. industries if anti-dumping laws were taken away. Id. See also G. Ganapathy Subramaniam, The Declaration for TRIPs and Public Health Is Biggest Trophy for India, ECON. TIMES (NEW DELHI), Nov. 18, 2001 (discussing India’s activities in increasing its position in the global trading community after the Doha talks due in part to India’s Union Commerce and Industry Minister Murasoli Maran), available at http://economictimes.indiatimes.com/articleshow.asp?art_id=197826820&s Type=1 (last visited March 8, 2002).

21. See Helene Cooper, Poorer Nations Win Gains in Global Trade Deal as U.S. Compromises, WALL ST. J., Nov. 15, 2001, at 1 (noting that the European Union and the United States made more concessions than expected, but concessions for individual members on special concerns were more troubling); Geoff Winestock & Helene Cooper, WTO Envoys Agree to Ease Access to Key Drugs, WALL ST. J., Nov. 13, 2001, at 17 (stating that the WTO negotiations had succeeded in creating a deal whereby poor countries could import and export generic drugs despite patents held by drug companies).
most nations struggle to restore and safeguard reasonable economic growth. Meanwhile industrial surpluses, discounting, and "dumping" will get worse in many sectors. Thus, trading conflicts will liven up even more in the coming years. This need not imply a "breakdown" in the global economy. Nobody wants that much disruption. Most countries, however, no longer trust pure market forces or unrestricted "neo-liberalism" as the optimal solution for their national economies or world affairs.

Unavoidably, perhaps, this means that international trade investment finance will become somewhat more "political" and less "tidy" in a free market sense. The Japanese, much of the European Union, and most developing countries have always been comfortable with partial government influence or sponsorship in trade-finance relations. In contrast, the United States tends to idealize a more "hands off" global marketplace, at least since the 1960s. Some quickness and efficiencies flow from the U.S. approach. Successful industrial challenges from Japan, South Korea, Southeast Asia, and China show, however, that the U.S. model is not necessarily the only alternative. Unfortunately, the growing sense of crisis, strain, and vulnerability for many countries in the later 1990s and early 2000s means that global competition requires more counter-sponsorship (in many ways) from the U.S. government to ensure that U.S. companies and interests get their fair share of global markets. Any serious, unbiased observer of the globalization controversy must appreciate the substantial erosion of "neo-liberalism" and unrestricted faith in free world markets. However, also undermined are "crony

22. See JOHN H. JACKSON ET AL., INTERNATIONAL ECONOMIC RELATIONS 199 (4th ed. West 2002). A slowed, uneven global marketplace, with significant imbalances, dangers of excess capacity, and increasing competitive pressures is more like the GATT 1947 environment than the free markets euphoria, emerging markets boom, and faith in globalization of later 1993-1995 (when the GATT 1994 agreements crystallized). Meanwhile, since the mid-1970s the creation of almost two thousand bilateral investment treaties has improved trade-investment relations. Now the United States has more than thirty of these relationships and the list is growing under the Bush administration. Id. See also infra note 83 and accompanying text (discussing the four main reasons the WTO system is flawed).

capitalism” and heavier-handed statism. This leaves a middle zone of centrist respect for stronger accountability, healthy market forces, transparency, intelligent use of government stimulus, safeguarding, redeployment, and measures that can improve the industrial-trade performance of most nations. A challenge to the IMF, World Bank, and the new WTO is to play skillful, facilitative roles, and not interfere with successful governments and sound economic-industrial performance. People will expect their national governments to deliver reasonable economic growth, broadly shared prosperity, and modest inflation. How much of a role should be played by U.S. trade law remedies, like countervailing duty proceedings against dumping or foreign subsidies? What about Section 337 actions dealing with intellectual property, Section 301 proceedings, or WTO complaints by the U.S. against foreign governments? Those wanting an elimination of all such “trade intervention” activities proved to be unrealistic. In fact, U.S. merchandise trade and current account deficits have increased substantially since the GATT 1994–WTO agreement. Ironically, the U.S. dollar became stronger in recent years, as well. How much longer can these asymmetries, trading imbalances, and high dollar value continue?

U.S. trade policy leaders need to catch up with public attitudes. The majority of Americans have long favored a reciprocity approach to freer trade as opposed to unilateral or one-way freer trade. In 1999, only twenty-eight percent believed that “[t]he U.S. should

24. See generally ALFRED ECKES, JR., OPENING AMERICA’S MARKETS (1995) (discussing the overall history of U.S. trade policy and ways in which the U.S. government sought to balance as many of its interests as possible, while managing to avoid diminishing benefits of free trade).

25. See infra Tables 1, 2, and 3 (charting various values, including current account deficit, GNP, gross federal debt, and trade balances with different regions).

26. See Leo Ceodrowicz, HEAVY BREATHING ON A TRADE CRUSADE: RUNNING WITH THE FT: PASCAL LAMY, THE WORKAHOLIC EU TRADE COMMISSIONER, MAINTAINS A FRUGAL AND DISCIPLINED DAILY ROUTINE, FIN. TIMES, Dec. 1, 2001, at 3 (describing the routine of Pascal Lamy and his success at the Doha Round). Lamay used two aspects from the WTO discussions in Seattle to his advantage in the Doha Round: (i) realizing that with consensus based decision-making one needs the support of the developing world, which commands two-thirds of WTO membership; and (ii) listening to questions raised by anti-globalization protestors to understand what issues and concerns needed to be addressed. Id.
lower its trade barriers even if other countries do not,” whereas sixty-nine percent felt “[t]he U.S. should only lower its barriers if other countries do.”27 Similar outlooks can be traced back to the 1940s and 1950s.28 To be sure, U.S. Cold War trade policies allowed unequal or asymmetrical openness as a strategy of “trade not aid” to support allies in Europe, Asia, and other parts of the world.29 However, when slumps and extensive job losses threaten broad American prosperity, the public naturally turns against global integration that does not deliver general prosperity.30 Other countries reason the same way.

I. STRAINS IN THE TRADE REGIME

The GATT 1994-WTO trade regime has three major characteristics: (i) extensive asymmetries or unequal openness, entrenched by the WTO’s Dispute Resolution process; (ii) strong conservative momentum with little incentive for favored “protected” interests (free riders) to open themselves up or to equalize import access; and, (iii) voting in the WTO that relies mainly upon “one country one vote” (i.e., United Nations General Assembly voting style), so that the great majority of developing countries need not yield to pressures for greater reciprocity from nations that may be losing net market shares, real incomes, or jobs to “emerging nations.”31 Tragically, however, the crucial 1991-1993 Uruguay


28. See id. (2001) (documenting that in 1946 only thirty-five percent of Americans responded that it would be good if the United States reduced its tariffs on goods bought from other countries).

29. See LOVETT, U.S. TRADE POLICY, supra note 1, at 4 (recounting U.S. “trade not aid” policies that allowed generous aid to its allies and trading partners).

30. See Globalisation and Its Critics, supra note 4, at 3-5 (summarizing public attitudes towards globalization where loss of employment and profits occur).

31. See LOVETT, U.S. TRADE POLICY, supra note 1, at 10–11 (outlining the characteristics of the GATT 1994-WTO regime). The WTO’s voting structure is greatly flawed. See JOHN H. JACKSON, RESTRUCTURING THE GATT SYSTEM 96–97 (1990) (analyzing the problem of a possible WTO voting structure). Jackson outlined a voting structure as an assembly (one vote per member), plus a smaller “executive council.” Id. at 96. Jackson stated:

The OTC draft [1955] provided for an executive committee of 17 members, elected by the assembly but always including the five most economically important members and representatives varying levels of development, types
Round Negotiations failed to implement reasonably weighted voting and decision-making policies. This contrasted dramatically with the IMF, which adjusted its weighted voting system skillfully in the early to mid-1990s in an effort to accommodate China, India, Russia, and Saudi Arabia with Executive Board representation equal to that of the United States, United Kingdom, Japan, Germany, and France, along with adjusted country quotas that reflect economic strength and population.\textsuperscript{32}

Sadly now, the dominant WTO voting procedure is "one country one vote," such that developing countries have more than three-fourths of the WTO's one hundred and forty-four country voting membership, and the European Union ("EU") is another voting majority (with fifteen members, another fifteen to twenty EU candidates, and roughly sixty-five to seventy Lomé Convention states).\textsuperscript{33} This played out in the recent logjam of conflicting proposals for another WTO round of trade negotiations, and the voting structure limits much change in "multilateral" trading relations. According to "bicycle theory" advocates, however, MNC interests want to "keep full control" of trade negotiations so that no general unraveling or widespread relapse into "protectionism" might occur.\textsuperscript{34}

\textit{id}. Jackson's study is widely considered among trade experts as the most important single inspiration for the current WTO. Id.\textsuperscript{32}

\textit{See} Lovett, U.S. TRADE POLICY, \textit{supra} note 1, at 173-77 (analyzing the voting structure in the IMF by charting various directors and their total votes in comparison to their percentage of the total fund); \textit{see also} John H. Jackson, The Jurisprudence of GATT & the WTO 407 (2000) (noting the potential problem of bloc voting and discussing what risks that might entail for the United States). \textit{See} Lovett, U.S. TRADE POLICY, \textit{supra} note 1, at 10 (discussing the WTO voting structure).\textsuperscript{33}

\textit{See} Lovett, \textit{Train Wreck}, \textit{supra} note 2, at 415 (discussing the "bicycle theory" employed in the 1980s and early 1990s that justified free trade and MNC control over the multilateral trade agenda despite "mistakes and weak

\textit{of economies, and geographical areas. This structure tries hard to avoid the problems of the extremes of one vote per nation, on the one hand, and a "consensus system" that can result in a virtual veto... on the other hand. One way to do this is to explicitly recognize some effective economic power differences among nations (the IMF and World Bank use a weighted voting system), but to do so in a way that prevents the powerful from having "unfair" influence. Without such recognition, however, major powers are unlikely to comply... with norms of one vote per nation system. Id. Jackson's study is widely considered among trade experts as the most important single inspiration for the current WTO. Id.\textsuperscript{34}}
A big complication, however, is the very large, U.S. "structural" trade and current account deficit problem.\textsuperscript{35} For more than twenty years, the United States has run large external deficits, totaling more than $3,600 billion of merchandise trade deficits and $3,100 billion in current account deficits. Annual U.S. trade-current account deficits exceeded four percent of U.S. gross domestic product ("GDP") in 2000-2001.\textsuperscript{36} Extraordinary U.S. external deficits of this magnitude are not sustainable over the long run.\textsuperscript{37} Recent tolerance by the global economy is reflected in two factors: (i) continued dominance of the U.S. dollar as a primary reserve in the 1990s; and (ii) enjoyment of the U.S. bull market (and somewhat higher U.S. interest rates) by the EU, Japan, and other OECD, NIC, and LDC investors as a parking place for investment resources (at least between 1993 and 2000). Now that the U.S. stock market and economy slumped substantially, the European Monetary Union's ("EMU") euro might better challenge the dollar's dominance. As the European Central Bank ("ECB") held its interest rates steadier in the spring of 2001, deeper interest rate cuts by the U.S. Federal Reserve brought short-term U.S. rates below EU rates. Thus, a more equal euro challenge should develop in the coming years.\textsuperscript{38}

\textsuperscript{35} See infra Tables 1, 2, and 3 (documenting the current account deficits and level of international transactions over the past forty years).

\textsuperscript{36} See Crooks, Global Prospects, supra note 14 (reporting the U.S. current account deficit remains at four percent of GDP).

\textsuperscript{37} See Lovett, Train Wreck, supra note 2, at 420 (warning that the United States cannot continue to live beyond its means in light of its trade and current account deficits).

\textsuperscript{38} See id. at 424 (considering whether the euro is strong enough to provide comparable reserve currency to replace the U.S. dollar). See also C. RANDALL HENNING & PIER CARLO PADOAN, TRANSATLANTIC PERSPECTIVES ON THE EURO 5-63 (2000) (discussing the origins of the euro and highlighting the interplay between the U.S. and European economies). The EMS made steady progress between 1998 and 2002. Id. at 95-100 (explaining the role of the EMS as a coordinating device for exchange rates). In the spring of 1998, prospects for the euro and EMS remained uncertain because of difficulties in reducing budget deficits, social insurance, and chronic under-employment. Id. More recently, however, the Stability and Growth Pact and later 1990s prosperity helped to cut EU budget deficits and reduce unemployment. Id.
Optimists believe that a “soft landing” for the dollar in the U.S. economy is achievable.\textsuperscript{39} Not only could U.S. industry stock and markets recover gracefully without much jolting or disruption, but excessive U.S. trade and current deficits might also ease gradually. The euro, many say, is not strong enough yet as a rival capital market to seriously challenge the over-valued dollar for some years at least.\textsuperscript{40} Observers hope this gives enough time for current U.S. trading imbalances to work themselves down slowly and relatively painlessly.\textsuperscript{41} This would be greatly preferred to serious disruptions.\textsuperscript{42} But U.S. growth performance could weaken, slowed by partisan bickering and fiscal gridlock, and/or by a diversion of foreign investment to other markets (e.g., the euro area). Renewed security problems could develop over the Persian Gulf, North Korea, Taiwan Straits, Colombia, and the Panama Canal. Conflict between Israel and the Palestinians seems intractable to many observers. Terrorist attacks have become disruptive and worrisome. Natural disasters have hit some areas (earthquakes, heavy flooding, hurricanes/typhoons, harvest failures, volcanic eruptions, and plagues). Meanwhile, escalated U.S. and/or EU political tensions, rivalries, and uncoordinated economic policies might allow

\textsuperscript{39} See Lovett, \textit{Train Wreck}, supra note 2, at 420 (outlining the four camps of U.S. economic growth and stock market wealth). These four camps are divided as follows: “(1) Onward and upward at unusually high growth rates say the most optimistic, with faith in the Internet, faster growth, and the unique virtue of U.S. capitalism; (2) A soft landing with slowed growth, but no recession, is the hope of many . . . (3) Unstable stagnation . . . and (4) Crunch and slow recovery.” \textit{Id.}

\textsuperscript{40} See \textit{id.} at 424 (recounting experts’ opinions that the euro will not be strong enough to replace the U.S. dollar as reserve currency).

\textsuperscript{41} See \textit{id.} (commenting on optimists’ hopes that U.S. trading imbalances will recover without any major repercussions).

\textsuperscript{42} See infra note 41 and accompanying text (discussing the lack of full appreciation given to U.S. trade-current account deficits); see also \textit{Wanted: S2 Billion a Day}, \textit{ECONOMIST}, Feb. 14, 2002 (arguing that the level of current account deficits today cannot exist for much longer, likening the effect of the realization of the deficit to an impending doom on the economy). Is there any guarantee that increased U.S. external debt loads (about $2,700 billion or twenty-seven percent of U.S. GDP) and very large U.S. trade and current account deficits (now $400 billion annually, and totaling more $3,000 billion since the early 1980s) cannot cause a loss of confidence in the U.S. stock market? What if EU, Japanese, NIC, and LDC portfolio managers decide to move out of the dollar, U.S. securities markets, and investment activity? The dollar could fall substantially, reinforcing sales of U.S. stocks, mutual funds, and “overpriced U.S. assets.” \textit{Id.}
economic strains to get out of hand, even in relatively prosperous times. Certainly, nobody predicted the Great Depression of 1929. Many had believed that new levels of prosperity were spreading worldwide. The Kellogg-Briand Pact of 1928 had just outlawed war in a context of confidence in general disarmament and the League of Nations.

Many believe, however, that the United States should somehow deploy stronger trade, industrial, fiscal, and tax policies to improve U.S. growth prospects. As U.S. growth slows and a recession broadens, budget deficits are expected. Within limits, Keynesian fiscal deficit policies (new spending and tax relief for economic recovery) make sense. From 1992 to 1996, elimination of excessive U.S. budget deficits allowed lower interest rates, and stronger

43. See supra note 4 and accompanying text (selecting the best mix of policies). Between 1982 and 2002, William A. Lovett argued for more effective U.S. fiscal and budget discipline (reduced deficits), monetary discipline (reasonable restraint-relaxed in recessions), wage-price discipline (ample competition and supervision), and stronger balance of payments discipline (tougher trade policy and minimal trade-current account deficits). Id. See also WILLIAM A. LOVETT, INFLATION AND POLITICS 185–95 (1982) [hereinafter LOVETT, INFLATION AND POLITICS] (recommending steps to improve growth in the U.S. economy); WILLIAM A. LOVETT, BANKING AND FINANCIAL INSTITUTIONS IN A NUTSHELL 429–40 (5th ed. 2000) (outlining current economic problems and suggesting more effective U.S. economic policy). With these policies, U.S. productivity and growth would be steadier and healthier. Id. U.S. federal debt (now $5,800 billion) and external debts ($2,700 billion) would be much lower, U.S. exports stronger, and U.S. imports not so large. The WTO would also be more limited and less polarizing. See supra notes 4 and 15 and accompanying text (providing reference to papers addressing trade-related security challenges and current WTO policy).

44. See LOVETT, U.S. TRADE POLICY, supra note 1, at 5 (stating that many nations learned that Keynesian budget deficit policies should be implemented in times of recession). In recessions, it makes sense to run moderate government deficits, ease monetary policy, and lower interest rates. See LOVETT, INFLATION AND POLITICS, supra note 43, at 57–78 (discussing varying proposed responses to recessions). Excess trade and current account deficits, however, along with large net foreign debts, normally impose constraints. Id. Yet, the United States enjoyed strong economic growth between 1982 and 1991, and pro-business policies, renewed between 1993 and 2000, with stronger budget discipline (helped by reduced defense spending and social security surpluses-depression babies retiring later and in fewer numbers). Id. These factors, once combined with a U.S. stock market boom, promote confidence in the U.S. markets. The lack of safe, credible reserve currency alternatives for medium-term global investment and liquidity helped to sustain increasing net foreign investment into the United States. Id. at 110-15.
economic growth between 1993 and 2000. The United States, had other good luck as well. Improved computerization, high tech innovations, lower production costs (partly from moving plants overseas), and major inflows of foreign investment into the U.S. all played a role. What brought increased foreign investment into the United States, especially between 1995 and 2000? The euro zone had slower growth and many worries. World capital surged heavily into emerging markets between 1990 and 1994, but then slowed considerably after Mexico’s crisis and devaluation in late 1994.45 Then the Asian crises in 1997-1998 brought a lot more flight capital into the United States.46 The U.S. stock market boom was enhanced, which also attracted more foreign capital from Europe, Asia, Latin America, and elsewhere. Luckily, when the U.S. stock bubble sagged sharply in 2001, other foreign stock markets sagged as much or more. Interestingly, this prevented any stampede out of the dollar into the euro or other markets for some time.47

In early 2002, however, the euro replaced long established national currencies in twelve of the fifteen EU member economies.48 Euro notes and coins finally replaced German marks, French and Belgian francs, Italian lire, Spanish pesetas, and Dutch guilders. Only Denmark, Sweden, and the United Kingdom held out for

45. See Lovett, *Train Wreck*, supra note 2, at 420 (describing how the U.S. dollar, its stock markets, and debt markets were more attractive as safe havens as the Mexican, Asian, Russian, Brazilian, and other foreign currency crises and devaluations occurred in 1994-1995 and 1997-1998).

46. See id. (commenting on the impact that foreign currency crises and devaluations had on the U.S. dollar and its stock markets).

47. See infra notes 95-98 and accompanying text (addressing the need for improved financial structure in light of recent financial crisis in Argentina and events like the Enron bankruptcy). Increased foreign investment into the United States after the early 1990s was revealed dramatically in the expanding U.S. current account deficits (and net foreign inflows of capital) between 1991-2001, i.e., from around $110 billion to $450 billion annually. See infra Tables 1, 2, and 3 (charting the U.S. GNP, federal debt, import and exports, providing statistics for regional trade balances, and charting U.S. international business transactions from 1998 to 2001).

48. See Andrew Borowiec, *In With the New: Euro Debuts With Fanfare, Trepedation*, WASH. TIMES, Jan. 1, 2002, at C7 (discussing the debut of the euro in twelve countries); see also Euro 2002 Information Campaign (providing detailed information about implementation of the euro), at http://www.euro.ecb.int (last visited March 6, 2002).
awhile, retaining their kroners and pounds sterling. The ECB emerged from its trial period with increasing confidence. The ECB's moderate, sensible policies took a middle path, thus avoiding undue restrictiveness, while remaining reasonably firm against inflation.\(^49\)

Now that the euro is securely established (after a lengthy, gradual gestation process), the U.S. dollar has an equal, solid rival as a reserve currency and money market. While European stock markets are not so broadly developed or as fully trusted as U.S. markets by global investors, the Enron-Anderson stock fraud-auditing scandal of 2001-2002 plays an important role in highlighting problems within U.S. markets as well.\(^50\)

This means, realistically, that the U.S. dollar and capital market no longer enjoy a free ride as the only large, reasonable haven to place global liquidity and medium-term investments. Confidence in the dollar and U.S. stock markets will depend increasingly upon real U.S. earnings, industrial growth, and export growth. In other words, the U.S. dollar will be measured more by its fundamentals, as are all other currencies. In this regard, global investors and capitals will not so easily tolerate the big U.S. trade and current account deficits.\(^51\)

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\(^49\) See Edmund Andrews, *European Central Bank President Stepping Down*, N.Y. TIMES, Feb. 8, 2002, at W1 (discussing the impact of the change in the ECB presidency); Tony Barber, *Duisenberg Ends Speculation As He Sets Leaving Date: ECB President Says He Will Step Down in Summer 2003 But Fails to Endorse Likely Successor Jean-Claude Trichet*, FIN. TIMES, Feb. 8, 2002, at 1 (reporting Wim Duisenberg's decision to step down as ECB president); Peter Norman, *Germany May Take Its Own Medicine*, FIN. TIMES, Jan. 30, 2002, at 6 (discussing the European Commission's possible warning to Germany for danger of violating the EU's stability and growth pact); see also Tony Barber, *Robust Dollar Tempers New Cash "Europhoria, "* FIN. TIMES, Jan 30, 2002, at 6 (reporting a rise in the euro was followed by a steep decline). The most important factor in the euro's decline seems to be productivity, with faster declines in U.S. employment than output, whereas in the euro area output fell faster than employment. There is a need for more complete data on the "fundamentals," i.e., growth, productivity, employment, inflation, and profits to resolve these issues. *Id. But see* Tony Barber, *Euro "Very undervalued, " Says Noyer*, FIN. TIMES, Feb. 14, 2002, at 8 (discussing ECB Vice President Noyer's remarks on the value of the euro in comparison to the U.S. dollar).


\(^51\) See The U.S. Trade Deficit: Causes, Consequences and Recommendations
Achieving a “better,” sustainable U.S. external balance will regain importance as a discipline and constraint upon U.S. trading policies. “Join the Club” will be the prevailing reaction of foreign central bankers, finance ministers, and money traders around the world. Why was the U.S. dollar king for so long? Simply because no other country was really large and strong enough, economically, to rival the U.S. and its dollar when the British Empire weakened and began to disintegrate in the later 1940s.\(^2\) Now, in 2002, the EU’s integration success and its new composite currency, the euro, brought into being a worthy and comparable rival.

II. IMPROVING U.S. COMPETITIVENESS AND TRADING BALANCES

Like the British Empire, and the United States in the late 1940s, the European Union and the United States in the early twenty-first century should remain allies and mutually important trading partners. Economic competition, however, continues with outstanding trade frictions. This rivalry can promote efficiency and joint welfare within limits. The same applies to U.S. relations within NAFTA (United States, Canada, and Mexico), most of the Caribbean, Latin America, Australia, New Zealand and Oceania, East Asia (Japan, South Korea, China, and Taiwan), ASEAN and the Indian subcontinent, Eastern

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52. See Lovett, Post-Cold War Era, supra note 4, at 136-39 (providing historical background and events regarding the British Empire and its economy). Great Britain’s economy became badly strained in six years of World War II. Id. at 138. The British were fighting against Germany, largely alone, between June 1940 and June 1941, and without major help from Russia and the U.S. until the fall of 1942. Id. The costs for Britain of drastic mobilization, heavy fighting, post-War conversion, expensive efforts to contain Russia, and disrupted British exports were severe. Id. By contrast, U.S. GNP doubled between 1940 and 1945, its industry and technology flourished, and U.S. exports dominated world markets in the later 1940s to early 1950s. See ALEC CAIRNCROSS & BARRY EICHENGREEN, STERLING IN DECLINE, THE DEVALUATIONS OF 1931, 1949 AND 1967 111-39 (1983) (discussing the devaluation of sterling following the end of World War II). See generally ROBERT SKIDELSKY, JOHN MAYNARD KEYNES: FIGHTING FOR BRITAIN, 1937-1946 (2000) (explaining the financial strains for Great Britain from World War II, which undermined the pound sterling as a reserve currency).
Europe and the former U.S.S.R., and parts of the Mid-East and Africa. Major cross-investments, technology flows, and active trading can be beneficial to most countries. Each nation, though, should take care that its engagement with world markets is healthy and productive.

Nations are primarily responsible for their own welfare, economic productivity, and prosperous trading relations. Within limits, of course, collaboration among groups of countries (or the overall global economy) may be jointly beneficial, too. Each country, however, must be its own manager and strive for a fair share of mutual trading and technology sharing gains. Bilateral, regional, and multilateral arrangements are means to these ends. Our competitive global marketplace is somewhat disorderly, with rivalries and incomplete information. Bad or disruptive behavior, however, can be limited to some extent, and more productive collaboration can be encouraged. Within this welter of government and market activity, “business” enterprises and people are struggling to succeed, protect themselves, and prosper. The art of sensible regulation within and among nations, ideally at least, is devoted to improving the welfare of the many nations, peoples, and enterprises of our world. Views differ, however, on the proper roles of government activity, private enterprise, and reasonable regulation. The spectrum ranges from conservative free market to social market economies, with some protectionist mercantilism for most NICs and LDCs. Consequently, complete agreement or consensus is unrealistic. Some discord and conflict are probably inevitable, with mood swings and shifts in fashion.

The original GATT in 1947 promoted open trading and non-discrimination through tariff reductions, the most favored nation (“MFN”) principle, and national treatment obligations. GATT 1947 demonstrated an understanding of important limits. Countries could still protect national defense industries, regulated agriculture, health, safety, and culture. Furthermore, countervailing duties were allowed

53. See Lovett, Current World Trade Agenda, supra note 4, at 2035-40 (surveying the residual effects of GATT 1994-WTO on NICs, LDCs, and other countries, including the United States).

against “unfair trade practices,” i.e., foreign subsidies and “dumping” (discount sales into other markets at lower than domestic or normal prices). Safeguard relief limited disruptions from imports although “compensation” caused countries to lose exports. Import restrictions could achieve balance of payments relief, although such actions were supposed to be non-discriminatory and taken in consultation with the IMF.  

Successive GATT rounds between 1947 and 1979 brought broad tariff reductions among advanced industrial nations. Developing countries were allowed, however, to keep much higher tariffs. OECD nations accepted this asymmetry because they enjoyed a continuing prosperity edge, and MNCs found it convenient to relocate more manufacturing to lower wage nations.

By 1982 to 1984, a global recession and debt overload crisis threatened to disrupt things. There was fear of a general financial breakdown and a return to widespread protectionism like the 1930s. Between 1947 and 1982, U.S. international economic policies (freer trade, help for allies, and collective security of Western nations against Communism) were largely agreed. But in the 1980’s, significant divisions developed in the United States between those wanting more limits, reciprocity, and safeguarding (e.g. the Omnibus Trade bills sponsored by many Democrats in Congress), and those wanting more open, albeit non-reciprocal trading that especially benefited MNCs. At issue was the extent to which U.S.-led,

55. See LOVETT, U.S. TRADE POLICY, supra note 1, at 5 (discussing GATT 1947 and its allowance for safeguard relief and antidumping and countervailing duties for subsidy relief under Article VI).

56. See id. GATT 1947 was a good framework for freer world countries in the late 1940s and at least into the 1980s. Some believe these arrangements are still the best available. GATT 1947 served well to expand trade, investment, and technology sharing, even though it placed a few checks on international trade to foster fuller employment and limit costly disruptions. GATT 1947 also operated to enforce substantial reciprocity of benefits as well. From a “social market economy” viewpoint, GATT 1947 is an excellent architecture, but it serves well also to mediate among a broad spectrum of countries (free market, through moderate welfare states, to more statist and/or socialist countries). Id.

asymmetrically open-trade policy would pass through benefits to almost all people (or just to limited classes of MNC beneficiaries—favored industries, services, and higher income stockholders). These big political issues are still controversial.

After Reagan won re-election in November 1984, the United States took the lead and most countries accepted the Uruguay GATT Round negotiations. The United States played an important role in framing the goals and concessions for this round’s conclusions from 1991 through 1993. We are living with the mixed results today. Threatened communities, industries, and workers, as well as many environmentalists and varied critics of large MNCs, are still opposed to non-reciprocal freer trade. However, in periods spanning from 1982 to 1991 and 1993 to 2000, the U.S. economy enjoyed relatively good growth, so that a more unilateral U.S. freer trade policy of the GATT 1994-WTO Agreement (favoring MNCs) was tolerated by the public majority. Nevertheless, this political consent was conditional upon the large U.S. majority benefiting from the policy.

The GATT 1994-WTO Agreement lowered tariffs on manufacturers in many developing countries by roughly one-third (from fifty percent to thirty-five percent, or twenty-five percent to fifteen percent). The United States, European Union, and Japan, at least in terms of tariffs, remained much more open. Hopes for improved investment and intellectual property protections were added under the General Agreement on Trade Services (“GATS”) and GATT Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPs”), and at least an aspirational goal of greater openness for markets in services was agreed. (In fact, a more important wave of bilateral investment treaties between 1975 and 1993 had greatly strengthened foreign investor confidence in many developing countries.) Antidumping remedies were only slightly weakened in GATT 1994, but most developing nation subsidies and industrial policies were tolerated. The dispute resolution process was fundamentally transformed. Now WTO panels could bind nations to a new “rules-based process” of enforcement for accumulated GATT rules and concessions. In fact, on June 10, 1994, United States Trade Representative (“USTR”) Mickey Kantor promised Congress that it was only a theoretical possibility that GATT panels could ever rule against U.S. interests,
since the United States always favored free trade. This estimate proved quite inaccurate and naive.

By the end of 2001, seven years after Congress approved the Uruguay Round agreements in November 1994, the United States had lost twenty significant WTO disputes, and another twelve lesser decisions. More alarming was a trend of challenges to U.S. trade

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58. See WTO Hearing, supra note 2 (reciting Kantor’s testimony); see also infra note 60 (citing U.S. implementation of Uruguay Round Agreement).

59. See infra note 61 and accompanying text (showing the mixed results for the United States in WTO disputes).

60. See 19 U.S.C. § 3512 (1994) (codifying the Uruguay Round Agreements signed by President Clinton). The statute provides:

(A)(1) United States law to prevail in conflict.

No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.

(2) Construction.

Nothing in this Act shall be construed:

(A) to amend or modify any law of the United States, including or any law relating to--

(i) the protection of human, animal, or plant life or health,

(ii) the protection of the environment, or

(iii) worker safety, or

(B) to limit any authority conferred under any law of the United States, including § 2411 of this title [Section 301 of the Trade Act of 1974].

61. See Snapshot of WTO Cases Involving the United States (summarizing preliminary assessments of WTO complaints and litigations between 1994-February 6, 2002), at http://www.ustr.gov/enforcement/snapshot.html (last updated Feb. 6, 2002). The preliminary assessment shows fifty-five complaints filed against the United States and fifty-seven complaints filed by the United States. Id. With the United States as respondent, there were seventeen U.S. losses, including: Tuna/Dolphin; Gasoline from Venezuela & Brazil; Underwear from Costa Rica; Wool shirts from India; Shrimp/turtle law; DRAM’s from Korea; Leaded bars from UK; Music licensing in U.S. copyright law; 1916 Revenue Act; Bonding requirement on EU goods; Wheat gluten import safeguard; Stainless steel from Korea; Lamb meat import safeguard; Hot-rolled steel from Japan; Cotton yarn from Pakistan; Section 211 of Omnibus Appropriations Act; and Taxes on Foreign Sales Corporations. The United States conceded on twelve cases: Autos from Japan; Wool coats from India; Various products from EU; Tomatoes from Mexico; Poultry from EU; Urea from Germany; Brooms from Colombia; Helms Burton Act; TV’s from Korea; Cattle Swine & Grain from Canada; Textiles from EU; and Massachusetts government procurement. Id. In addition, eight cases remain in
law remedies (antidumping, counter-vailing duties, and Section 301 cases).\textsuperscript{62} Partly because of attitudes signaled by Presidents Clinton and Bush and their USTRs, U.S. trade partners do not fear tough U.S. trade law enforcement for effective reciprocity. Rather, the United States has been relatively accommodating, except for the foreign sales corporations tax waiver provision and agriculture cases involving bananas, beef hormones, a threat of further EU challenges to genetically modified food products, and recent steel safeguard relief. To date, the United States has not yet blocked progress on the Doha Round, or suggested possible withdrawal from the WTO.\textsuperscript{63}

litigation (panels or appeals), five cases are in consultation, and eight are being monitored or inactive. \textit{Id.} The United States has won only two cases as respondent: Sections 301-310 of the Trade Act of 1974; and CVD regulations. \textit{Id.} With the United States as complainant, the United States lost three cases: Japan-film imports; EU/Ireland/UK tariff classification of computer equipment; Korea-airport procurement. \textit{Id.} The United States prevailed in fifteen cases: Japan-liquor taxes; Canada-magazine imports; EU-banana imports; EU hormone treated beef imports; India-patent protection; Argentina-textile imports; Indonesia auto regime; Korea liquor taxes; Japan fruit imports; Canada-dairy sector; Australia-leather subsidies; India-import licensing; Mexico-antidumping duties on corn syrup; Canada-patent law; Korea-beef imports. \textit{Id.} Unfortunately, in many of these wins there has been no effective enforcement. The United States Trade Representative ("USTR") claims to have resolved nineteen U.S. complaints to its satisfaction, two remain in litigation, five are in consultation, with eleven inactive or being monitored for progress. \textit{Id.} See also \textit{WTO United Front Against U.S. Law, GAZETTA MERCANTIL ONLINE}, Feb. 5, 2002, at 1 (discussing a coalition formed to challenge the "Byrd Amendment"). In addition to these cases, on February 5, 2002, Brazil and twenty-eight other countries filed a new WTO case against the United States that challenges the U.S. "Byrd amendment," which allows monies collected from antidumping and subsidy cases under U.S. trade laws to be allocated to U.S. companies that bring these complaints. \textit{Id.} More cases will follow on steel safeguards.


63. See WTO Agreement, art. XV (establishing permission for withdrawal after
President George W. Bush seems to believe in freer trade, perhaps more than Clinton.\footnote{See Edward Alden, \textit{Bush's Trade Gap: The Fate of the President's Liberalisation Agenda Hangs On Tomorrow's Vote on Fast-Track Authority}, \textit{FIN. TIMES}, Dec. 5, 2001, at 14 (discussing the uphill battle faced by the Bush Administration to get congressional approval for "fast-track" trade negotiating authority).} Congress, though, was unwilling to grant additional fast-track authority to Clinton between 1994 and 2000. In 2001, President Bush pushed hard for new Trade Promotion Authority ("TPA").\footnote{See Helene Cooper et al., \textit{House Votes Wide Trade Powers for Bush}, \textit{WALL ST. J.}, Dec. 7, 2001, at A3 (reporting House approval by a single vote for fast-track authority to negotiate trade deals by President Bush).} The U.S. House of Representatives agreed, but by only one vote (215-214).\footnote{See David Sanger, \textit{Bush Declares Free Markets Are Essential for Americas}, \textit{N.Y. TIMES}, Jan. 17, 2002, at A9 (stating President Bush's support for free market reforms and a return to "an era of protectionism").} House members required significant protectionist concessions to secure even this thin majority.\footnote{The U.S. Senate waited until Spring 2002 to act in anticipation of the President announcing his disposition of U.S. International Trade six months notice).} The U.S. Senate waited until Spring 2002 to act in anticipation of the President announcing his disposition of U.S. International Trade Authority ("TPA").\footnote{Edward Alden, \textit{Bush Faced By Fresh Hurdle Over Fast-Track}, \textit{FIN. TIMES}, Feb. 8, 2002, at 11 (noting that the newest hurdle for the Bush Administration are demands by Senate Democrats to expand benefits for workers unemployed because of international competition); Edward Alden & James Kynge, \textit{Trade Deal Authority: Florida Offers Bush a Route to Fast-Track}, \textit{FIN. TIMES}, Dec. 5, 2001, at 11 (describing obstacles faced by the Bush Administration in rallying support for fast-track authority from the Florida's House delegation).} While the first fast-track passed easily in 1974, serious opposition began to surface following a series of big trade deals completed in the early 1990s. \textit{Id.} Fast-track began to lapse in 1994; and 1997-1998 demonstrated the rejection of efforts to revive it. \textit{Id.} See also Edward Alden & Peronet Despeignes, \textit{Bush Faced By Fresh Hurdle Over Fast-Track}, \textit{FIN. TIMES}, Feb. 8, 2002, at 11 (noting that the newest hurdle for the Bush Administration are demands by Senate Democrats to expand benefits for workers unemployed because of international competition); Edward Alden & James Kynge, \textit{Trade Deal Authority: Florida Offers Bush a Route to Fast-Track}, \textit{FIN. TIMES}, Dec. 5, 2001, at 11 (describing obstacles faced by the Bush Administration in rallying support for fast-track authority from the Florida's House delegation).
Commission recommendations for significant safeguards and antidumping relief for the U.S. steel industry. It is not clear how much U.S. negotiating leverage really exists for the Doha Round in the next several years. Partisan conflict clearly returned to Congress in early 2002, highlighted by the Enron-Anderson stock fraud-auditing scandal. Most now expect a closely contested fall 2002 election for upcoming congressional control. The bi-partisan mood after September 11th is fading.

Meanwhile, apart from U.S. politics, trade experts are raising questions regarding the wisdom of the new WTO Dispute Settlement process, increasingly stubborn conflicts, and winner/loser contentiousness. Many argue now that conciliation, mediation, and

68. See Elizabeth Olson, Squabbles at the Start for World Trade Talks, N.Y. TIMES, Jan. 29, 2002, at W1 (discussing problems arising following the announcement of the new global round of trade talks in Doha, Qatar). The U.S. Senate plans to delay its vote on “fast track” trade deal authority until after President Bush resolves how much safeguard relief will be given to the U.S. steel industry. See Anne E. Kornblut & Sue Kirchhoff, Bush Slaps Tariffs on Steel Imports U.S. Initiative Seeks Levies Up to 30%, BOSTON GLOBE, Mar. 6, 2002, at F1 (reporting President Bush’s decision to impose “stiff” tariffs on steel imports despite protests by foreign allies).

69. See Boyer, supra note 65, at A8 (reporting stalled talks between House Republican and Democratic negotiators as President Bush failed to persuade a number of undecided Democrats); Carter Dougherty, Congress Leery on Trade Bill After Pact, WASH. TIMES, Nov. 16, 2001, at C9 (describing skepticism by key members of Congress following a global trade pact to free up world commerce); Carter Dougherty, Labor Agency Worker Retraining Program Likely to Continue, WASH. TIMES, Feb. 19, 2002 (reporting a renewal of a Department of Labor worker retaining program, despite its poor record for helping people who lost jobs to free trade); George Edmondson, Georgians Say Bush Pledged to Help Textile Industry, ATLANTA J. CONST., Dec. 23, 2002, at 13A (stating that Georgia Congressmen Mac Collins and Saxby Chambliss who voted to give President Bush more power to negotiate trade treaties believe in the President’s commitment to help the textile industry); Juliet Eilperin, Will Lawmaker Pay for Trade Vote? In Reversal From ’94, Democrats Target Republican Who Gave Bush Win, WASH. POST, Dec. 14, 2001, at A56 (commenting on the effect of the deciding vote cast by Rep. Robin Hayes that gave President Bush enhanced authority to engage in international trade agreements); Charles Rangel, The Wrong Approach To Trade, FIN. TIMES, Nov. 15, 2001, at 17 (arguing that Republican attempts to pass a fast-track trade authority endangers “a rare opportunity to build a broad bipartisan consensus” that supports new job opportunities and improved living standards).

70. See CLAUDE E. BARFIELD, FREE TRADE, SOVEREIGNTY, DEMOCRACY: THE FUTURE OF THE WORLD TRADE ORGANIZATION 7 (2001) (arguing that “the new ‘judicialized’ WTO dispute settlement system is substantively and politically
voluntary arbitration under GATT 1947 worked better for trade relations. Some believe that the increasingly polarized, unyielding conflicts over WTO panel and appellate body decisions will not be sustainable. WTO reform or abolition should come soon, say the skeptics.

Barfield explains that the underlying texts have too many gaps, ambiguities, and contradictions to serve as an adequate basis for a "rules based" system. Id. Further, WTO panels and appellate body litigation are producing difficult political conflicts. Id. Studies conducted by Robert Hudec have led Barfield to conclude that the old GATT dispute resolution process has received a "bad rap." Id. at 40. Mediation and conciliation got good results more than ninety percent of the time. Id. Barfield's book cites extensively to many recent trade lawyers and scholars to document and elaborate this thesis. Id.

71. See JACKSON, supra note 31, at 98-99 (proposing in 1990 a WTO with a more limited five-part dispute settlement process). The five-part process includes: (i) bilateral consultation; (ii) mediation and conciliation; (iii) an impartial finding or ruling; (iv) a "political filter" of acceptance by a representative body; and, (v) a sanctioning process such as withdrawal of concessions. Id. at 98. This was wiser, more realistic, and more sustainable than the WTO of 1994 and its eight years of panel-appellate body experience. See generally Lovett, Train Wreck, supra note 2, at 410-16 (discussing general problems with the GATT 1994-WTO regime). Some WTO enthusiasts are trying to make a global economic constitution on neo-liberal lines out of GATT 1994 and the DSU. Most developing countries will not allow such disruptive foreign interventions, and certainly not China, India, or Russia. Id. at 416. Nor, in the end, will the OECD nations, including the United States, European Union, and Japan. Id. While some international law scholars always wanted to move toward global legal governance, the GATT 1994-WTO framework does not meet this foundational need. Id.

72. See generally Lovett, Current World Trade Agenda, supra note 4 (discussing unresolved problems of asymmetries affecting the United States and OECD nations). The WTO's political mandate is totally lacking. Nobody intended (certainly not the U.S. Congress) for this flawed and unbalanced trade agreement to become an economic constitution of the whole world. Massive asymmetries and developing country preferences (from Article II schedules of concessions through many other GATT provisions) undercut any possible claim to long run viability or fairness for the United States and other OECD nations. Id. Ironically, most LDCs are unhappy now with the world trade order, too. Id. Moreover, the present one country-one vote voting structure failed to create a framework that protected large country interests (except for the EU confederation with its many direct and influenced votes). See Lovett, Train Wreck, supra note 2, at 411 (arguing that the WTO's decision-making and voting structure is a "contradictory mess."). While GATT 1947 and GATT 1994-WTO are stepping stones toward greater regulation of world trade, they are more like the American Continental Congress (1775-81) and later Articles of Confederation (1781-89). Pervasive asymmetries and unfair, unbalanced voting prevent the initial WTO from meeting the needs of a healthy, sustainable global economic constitution. See id. at 417 (describing that from the standpoint of a "healthy, balanced, and sustainable global economy," the GATT
Furthermore, from a constitutional structural viewpoint, many insist now that the GATT-WTO “rules network” simply lacks the precision, completeness, and coherence to justify any rigid, strict pattern of WTO panel and appellate decisions.73 Many trade issues are not that clear. Yet, an aggressive, rapid-fire “black or white” set of WTO “answers” leaves losing parties with a sense of grievance. In other words, there is an inherent ambiguity (reasonable countries can respond in diverse ways) for economic, regulatory, and environmental decision-making. The WTO’s dictatorial, czar-like powers, exceed the WTO’s original mandate and political support as a fledgling organization.

While some scholars hail the new WTO and its “decisions” as a world economic constitution, opposition is growing among developing countries, OECD nations, and NGOs spanning the political spectrum. Many advise, therefore, at least a tactical retreat by the WTO, with more cautious and corrective constraints, in order to preserve the WTO’s existence in a vortex of difficult political decisions.74

The Doha Round was contentious from the beginning. Developing countries wanted to renege on intellectual property, as well as other concessions granted to advanced nations and to MNCs, and they demanded “implementation” that expands developing country exports. Japan was defensive with little willingness for concessions in a sustained slump and debt overload crisis. The European Union was cautious and bargaining hard, and unlikely to offer much leeway in its agricultural protection (the “CAP”). This leaves great pressure on President Bush and the United States to offer substantial concessions at a time when the country suffers from very large trade

1994-WTO regime is “needlessly flawed”). The current WTO is to be understood only as a provisional, transitory arrangement. Id.

73. See generally BARFIELD, supra note 70 (noting the varying opinions of legal scholars regarding the shortcomings of the current GATT-WTO dispute resolution system and contradictory structures put in place to settle international disagreements).

74. See id. at 6 (claiming that criticism from both right and left, together with an expanding range of NGOs and many divergent countries, offer too many wide and difficult political challenges for the present WTO). Barfield urges for a more limited, cautious range of resolution. Id. An emphasis is needed on conciliation and mediation in trade-economic conflicts among nations. Id. at 7.
and current account deficits. The United States is almost completely open to most imports already, so how much more openness can it concede? The real leverage of the United States is implicit, i.e., “Would you like to enjoy continued access to the giant U.S. markets?” Thus far, USTR Zoelick has not revealed any “mailed fist” underneath the soft glove of USTR diplomacy (except, perhaps, for steel safeguards). President Bush and Zoelick may not fully understand what they are up against.

After Doha, most developing nations want more safeguard relief (often against each other), an assurance of substantially increased exports, and a reduced risk of devaluations and financial crises. Many feel shortchanged from the 1990s boom. Europe and Japan still enjoy export surpluses against the United States and would like to keep them. Yet, the United States suffers increased and big trade and current account deficits. How is the United States supposed to improve its external balances in this situation? Increased foreign investment and net lending to the United States create a growing charge on U.S. earnings from the world economy, which gradually aggravates the external accounts problem for the United States.\(^5\) The awkward implication for the United States and its trade partners (who are both responsible for this mutual imbalance) is that the United States must finance and service this growing net obligation to foreign peoples with increased exports of U.S. goods and services. Strangely, however, neither the United States nor most of its trade

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75. See Lovett, U.S. Trade Policy, supra note 1, at 136-72 (providing a careful estimate of the U.S. net investment position for 1998). In 1980, the United States enjoyed a net creditor position of around $+141 billion on a 1980 GNP of $2,626 billion (less than +.05 percent). Id. at 6 n.7. After $–1,650 billion in U.S. accumulated current account deficits between 1981 and 1997, the U.S. net investment could be estimated reasonably at $–1,250 to $–1,500 billion on a 1997 GNP of $8,000 billion (roughly negative sixteen percent of GNP net external indebtedness). Id. After at least another $–1,350 billion of U.S. current account deficits between 1998 and 2001, i.e., net capital inflows, the U.S. net investment position for year end 2001 was at least $–2,500 to $–3,000 billion on a 2001 GNP of $10,000 billion (approximately negative twenty-seven percent net external indebtedness). Id. This tallies closely with Ronald McKinnon's net investment position of $–2,700 billion. See McKinnon, supra note 14, at 15 (raising concerns that foreign indebtedness will rise given the country’s net debtor position of $2.7 billion). See also Baker, supra note 14, at 10 (juxtaposing the economic policies of George W. Bush and Ronald Reagan and discussing the potential imbalances posed by these policies).
partners seem adequately aware of their mutual predicament. Sadly, the GATT 1994-WTO arrangements have merely entrenched U.S. trade and current account deficits. Moreover, the forthcoming Doha WTO Round seems likely, many believe, to increase the U.S. trade and current account deficits even further.\(^7\)

III. NEW U.S. POLICIES AND DIFFICULTIES AHEAD

Obviously, the United States should expand exports of goods and services, reduce trade and current account deficits, and, if necessary, cut imports. This is hard to achieve quickly and will find initial resistance from many U.S. trading partners. Without a major dollar devaluation, achievement of this swing in trade balances leaves many in doubt.

“Soft landing” optimists say that large foreign investments into the U.S. could still be forthcoming in sufficient volume for years. Maybe. The net result of most Doha WTO Round proposals from the developing countries and other OECD nations, however, will only entrench the current U.S. structural trade deficit problems.

The best mix of U.S. policies should emphasize greater realism and broader understanding of this predicament. Unfortunately, adequate appreciation of the U.S. “structural” trade-current account deficits is sorely lacking. One possible explanation is that from the 1970s to the 1990s, international finance experts looked mainly at the “fundamentals,” i.e., key indicators of national economic performance. Most crucial were economic growth, low inflation, market indexes (including equity markets), budget deficits, and trade and current account deficits. By these standards, the United States, with the only viable reserve currency in the world, looked good between 1983 and 1991, and very good between 1994 and 2000. The dissonant U.S. external deficits were explained away as a confidence in the United States by foreign investors who lacked sufficient investment opportunities in their own markets.

\(^{76}\) See Crooks & Waters, supra note 14, at 7 (discussing the various economic factors that are likely to contribute to a more tenuous international economy and continued problems with the U.S. dollar and deficits).
U.S. economic leaders never found it appropriate to warn of these dangers (Fred Bergston of Institute for International Economics being a rare exception). Furthermore, the “structural” asymmetries aggravated by GATT 1994 and the WTO Agreement were not adequately understood by the majority of U.S. economists. Most U.S. trade economists assumed that freer trade in the long run must flow from the new trade regime. The short and medium-run asymmetries that increased U.S. trade and current account deficits were neglected. Hot money flows and devaluations in Mexico, Asia, Brazil, Russia, and now Argentina aggravated these international trade-finance imbalances. Therefore, a top priority is a change in U.S. and foreign mindsets. Across-the-board recognition of interdependence is a must. Most other countries accept serious balance of payments discipline for themselves. Excessive trade and current account deficits in most other nations bring prompt penalties, i.e., devaluation, reduced incomes, and belt tightening. At several stages in the post-World War II era (1968-1971; 1976-1980), the U.S. dollar did sag somewhat in foreign confidence, with far more limited U.S. balance of payment deficits than occurred between 1985 and 2002. Reflecting on the lessons of 1968 through 1971 and 1975 through 1980, some of the reasons as to why the U.S. dollar could decline due to seemingly intractable U.S. trade and current account deficits include: (i) renewed U.S. fiscal deficits caused by political gridlock; (ii) costly and unsuccessful wars (unlike the quick results in Afghanistan in 2001-2002); (iii) a failure of the U.S. economy and manufacturing to rebound solidly from 2002 to 2005; (iv) a substantial fall in U.S. stock prices; (v) more success and growth in the EU; (vi) a renewed world energy crunch and OPEC embargo; and, (vii) other serious misadventures.

77. See generally Claude Smadja, The End of Complacency: Prescription of Capitalism As An International Panacea Has Reached Its Peak, 113 FOREIGN POL’Y 67 (1998) (asserting that the world’s financial crisis is the result of “complacency and arrogance” by developed countries’ leaders who assume the world should be organized after its own model); George Soros, Capitalism’s Last Chance, 113 FOREIGN POL’Y 55 (1998) (arguing that the financial and political crisis will lead to the “disintegration of the global capitalist system if left unchecked”); Robert Wade, The Coming Fight Over Capital Flows, 113 FOREIGN POL’Y 41 (1998) (reviewing the growing conflicts over international financial issues between the United States, Europe, and Asia).

78. A special factor of U.S. vulnerability is that U.S. international currency
Once properly informed, however, most U.S. trade partners will appreciate the need for external account discipline for Americans since they learned the same discipline for themselves over the last fifty to sixty years and more. The need for import/export adjustments is mutual. The United States can still assert GATT 1947 offset remedies (antidumping and subsidy relief measures under Article VI, safeguard restrictions under Article XIX, and balance of payments relief under Article XII) to help cut imports and restore its overall trade balance over some years. Most countries, however, prefer gradual corrections rather than any drastic slump in their exports to the United States, which would bring recession, serious unemployment, and political strains for their own governments. This implies that some countries continued to tolerate the U.S. external account deficits (extended over approximately four to six years). In a rather bizarre way, both the United States and its bigger trading partners share an unrealistic illusion. The United States is too dependent on its enlarged trade and current account deficits, and net capital imports, while many of its trading partners depend too much on their large trade surpluses with the U.S.

reserves are now much thinner (or “weaker”). See 2001 ECON. REP. OF THE PRESIDENT, at Table B-111 (reporting International Reserves for the period of 1962-2000). In 1962, the United States had seventeen billion special drawing rights (“SDR”) in reserves and roughly a third of all international reserves held by industrial countries. Id. By August 2000, the most recent data available, the United States held only three percent, or fifty billion SDRs. Id. The euro countries held 204 billion SDRs. Id. Japan held 206 billion SDRs. Id. All developing countries, including China and India, held 861 billion SDRs (thirteen times the size of the U.S. international reserves). Id.

79. See Trade Law Act of 1974, 19 U.S.C. § 2411 (2001) (defining unjustifiable trade practices and discrimination under Section 301). The United States might also assert Section 301 unfair trade practice claims under its own trade law, but this would be resented and lead to WTO complaints against the United States, with likely adverse rulings by the WTO. See also LOVETT, U.S. TRADE POLICY, supra note 1, at 143 (arguing that consolidated action should be brought by the U.S. government against large, disproportionate trade surplus countries under Section 301). It is better for the United States to concentrate on the already widely accepted GATT Article VI (CVDs for dumping or subsidies), safeguard relief under Article XIX, and/or balance of payments relief under Article XII. See GATT 1994, arts. VI, XII, and XIX. See also LOVETT, U.S. TRADE POLICY, supra note 1, at 143 (noting actions that could be brought by the U.S. government under GATT Article VI, XII, and XIX).
U.S. leadership must prepare to take stronger action if threatened by a major net outflow of investment funds, and deeper recession and/or dollar devaluation crisis. U.S. policy responses should target "fundamental flaws" in the current world trade regime. Specifically the United States needs to: (i) correct unsustainable trade imbalances and asymmetries that cannot continue much longer; (ii) move away from unconditional, non-reciprocal MFN in GATT Article I that entrenches unbalanced trade and investment flows; (iii) understand that reciprocal trading-investment relationships will be achieved more sensitively through bilateral and regional bargaining; and, (iv) withdraw from the WTO, if necessary, to rebalance U.S. trade flows. The present WTO, with one hundred and forty-four members (the United States having only one vote), is incapable of prompt, responsible action to reform trading relationships in any serious global U.S. dollar crisis. Nor is the WTO inclined to help the United States ease its balance of payments problems. Fortunately, the global marketplace increasingly recognizes this "logjam problem." Chances are that another WTO round will not substantially change anything. This is why multinational lobbying interests lobby hard for maintenance of the current system.

Yet, the United States must act promptly and effectively in a global-dollar crisis. It is important, psychologically, that the United States acts with ample "consultation" among significant trade partners and with "sensitivity" to the vital interests of other countries. The global marketplace is bound together in mutual interdependence—for both good and ill.81

80. See Lovett, U.S. Trade Policy, supra note 1, at 12 (requiring changes to U.S. trade, current account, and external deficits for a healthier and more prosperous U.S. policy). In early GATT round years (1946-1967), when the United States enjoyed a big financial, industrial, and technology lead over its trade partners, U.S. support for "unconditional MFN" was very reassuring to "catch up" countries in Europe, Japan, and developing nations. Id. at 8. However, by the later 1990s it became clear that reciprocity ("conditional MFN") is now more appropriate for world trade, except for the poorest and least developed countries that need more kindness and protection for infant industries. Id. at 7.

81. See infra Tables 1, 2, and 3 (summarizing the current account deficits and level of international transactions over the past forty years). Focusing on U.S. balance of payments relief, from the standpoint of most countries (and their own historical experience), will be the most compelling, necessary, and understandable. The United States must explain that a chronically, heavily unbalanced trading
Accordingly, the strongest U.S. policy should emphasize GATT Article XII (balance of payments relief measures) with special attention focused on a careful joint and independent action to eliminate excessive and unsustainable U.S. trade deficits with key trading partners. Most of the U.S. trade-current account deficit problem arises out of only a few relationships: U.S.-Japan trade; U.S.-China Trade; U.S.-ASEAN trade; and, to a lesser extent, U.S.-EU trade and U.S.-NAFTA trade. This is a short and manageable list of bilateral-regional relationships. GATT Article XII (balance of payments relief) and the GATT 1994 Understanding on Balance of Payments Problems provides for IMF consultation. Fortunately, the IMF’s Executive Board is a more flexible, workable institution (with weighted voting and healthy traditions) than the WTO’s General Council and occasional trade round negotiations (with consensus agreement expectations) and entrenched asymmetries.82

relationship between the United States and its significant trading partners is simply unsustainable. Id. There are a limited number of countries with special strategic relationships that deserve special consideration. Turkey, Afghanistan, the Gulf oil states, Panama, Russia, Israel, Egypt, Jordan, and a few others could justify continuing trade surpluses with the United States on these strategic grounds. However, the big U.S. trade deficits are with China, Japan, ASEAN, INDIA, the European Union, Mexico, and Canada. Id.

82. See Robert Guy Matthews, Trade Panel Rules for U.S. Steelmakers: Bush Now Is Likely to Raise Big Hurdles for Imports, WALL ST. J., Oct. 23, 2001, at A2 (discussing U.S. International Trade Commission’s (“ITC”) conclusion that the domestic steel industry was indeed “seriously injured” by the influx of steel from foreign markets since 1998). Anti-dumping and safeguard relief will be more contentious, but the United States must emphasize that its companies, unions, and communities deserve the support of the U.S. government. Certainly most U.S. trade partners support their own industries. Of special significance in this regard is the U.S. steel industry, which is vital for U.S. national security under Article XXI of the GATT. Id. See also William R. Hawkins, Negotiating from Strength on Trade, UNITED PRESS INT’L, Jan. 31, 2002 (examining possible U.S. reactions to threats by the European Union, Japan, South Korea, and Brazil to file complaints with the WTO if the United States places high tariffs on steel imports); Joseph Kahn, U.S. Trade Panel Backs Putting Hefty Duties on Imported Steel, N.Y. TIMES, Dec. 8, 2001, at C1 (reporting the ITC’s decision that increased tariffs on steel imports as a necessary remedy to the market struggles of the U.S. domestic steel producers); Robert Guy Mathews, The U.S. Won’t Take “No” For an Answer at Paris Steel Summit, WALL ST. J., Dec. 14, 2001, at A1 (predicting the likely refusal by foreign steel producers to cut their production as was proposed by President Bush and the possible consequences if such actions lead to a confrontation between the United States and its allies); John D. Rockefeller IV, Supporting American Steel, WASH. POST, Jan. 8, 2002, at A17 (examining the
Interestingly, the new Bush administration and USTR Robert Zoellick have already implemented a broader trade negotiating strategy. The United States now gives emphasis to three simultaneous tracks for trade negotiations: (i) multilateral negotiations and the WTO; (ii) regional negotiations and the Free Trade Area for the Americas (FTAA); and, (iii) bilateral trade relations. This is the only sensible option for U.S. trade policy. See also U.S. Senate Applies Pressure on Steel, GAZETA MERCANTIL ONLINE, Jan. 18, 2002 (stating the Senate’s agreement to wait until March 4, 2002 for a decision by President Bush on steel safeguards before voting on TPA); Robert Guy Matthews & Geoff Winestock, EU Plan on Steel Imports Gets Bush Veto, WALL ST. J., Feb. 8, 2002, at A2 (discussing President Bush’s refusal to accept the EU proposal for bolstering the U.S. steel industry). But see Peter Marsh, Steel Trade War May Yet be Averted, FIN. TIMES, Feb. 9, 2002, at 2 (proposing possible international mediation solutions that may help avoid an international conflict over increased steel tariffs).

83. See JOHN H. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 169-172 (1999) (explaining how the use of bilateral trade agreements can facilitate cooperation within the international marketplace and analyzing the benefits and drawbacks of such agreements). Many countries, including the United States, European Union, Japan, and others, are emphasizing bilateral “outreach” and “maintenance” negotiations for trade, finance, and security relationships. Bilateral dealings are also a better vehicle for enforcing reasonable reciprocity and limiting “free rider” problems. Id. Zoelick plans bilateral arrangement talks with Chile, Singapore, Australia, Central America, and Africa. See also Andrew Bounds, The U.S. Takes Central America in From the Cold, FIN. TIMES, Jan. 28, 2002, at 10 (describing historic economic struggles of Central American countries and recent efforts by the United States to assist such struggles with free trade agreements); Raymond Colitt, EU Seeks to Hasten Deal With Mercosur, FIN. TIMES, Feb. 16, 2002, at 10 (explaining that EU officials hope to advance trade talks with Mercosur at a speed that will allow them to reach an agreement prior to finalization of the Free Trade Agreement for the Americas (“FTAA”) planned for 2005); Edna Fernandes, India Faces Up to the Economic Flip Side of China’s WTO Entry, FIN. TIMES, Jan. 28, 2002, at 5 (citing the potential impact of China’s membership in the WTO on its economic relationship with India and both countries’ hopes to enhance their bilateral trade relationship); France to Assist Vietnam with WTO Entry Bid, ASIA PULSE, Feb. 8, 2002 (reporting France’s commitment to helping Vietnam join the WTO through assistance programs); Saridet Marukatat, Bilateral Free Trade Pact With the U.S. Considered, BANGKOK POST, Dec. 18, 2001 (discussing Thailand’s possible entrance into a free trade agreement with the United States and the potential impact such agreement would have on both nations’ economies); Mark Mulligan & Thierry Ogier, Mercosur Bloc Sees Silver Lining for Region’s Trade, FIN. TIMES, Jan. 7, 2002, at 8 (reporting on hopes of Mercosur member states that the new president of Argentina will refocus energies on creating a strong South American trade
The United States must be prepared, if necessary, to exercise its withdrawal rights under Article XV of the WTO Agreement.84 The United States need only give six months notice for withdrawal, but this is a serious step, requiring strong justification.85 Withdrawal would signal to all U.S. trade partners that bilateral and regional understandings would govern further trade access into U.S. markets.86 Most countries will quickly accommodate and sign up for

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84. See GATT 1994, art. XV.

85. See id. at art. XV (allowing WTO withdrawal for any member after six months notice to the Director General).

86. See generally LOVETT, U.S. TRADE POLICY, supra note 1, at 51-106 (providing a critical review of recent U.S. trade policies that have failed to enforce sufficient reciprocity and overall trade balance). Lovett offers an alternative system to promote a more realistic, balanced, and sustainable pattern of world trade growth because the WTO, as presently constituted, is incapable of correcting the four flaws stemming from the current WTO. Id.

The crucial problems are four-fold. First, there is a voting imbalance. Although Article IX of the WTO Agreement expresses a desire for "consensus," it provides clearly that if there is no consensus, then decision-making shall be by voting, i.e., one-country-one vote. Id. at 10. This framework gives the EU fifteen votes, plus another ten to fifteen in additional EU member candidates (not to mention approximately sixty Lomé convention states with strong ties to the EU). Id. Russia will have a group of former U.S.S.R. members under its influence, while China and India (like most LDCs) have much less free trade obligation than OECD states. Id. Japan is disadvantaged like the United States, but not to the same degree. A new weighted voting system for the WTO comparable to the IMF is essential. Id.
alternative arrangements. A convenient structure might be the

at 10-11. Second, entrenched asymmetries in access and tariffs characterize the current WTO system. The United States is the most open major marketplace in the world, but the EU and Japan are significantly less open. See LOVETT, U.S. TRADE POLICY, supra note 1, at 140-41 (stating that Japan's trade remains "heavily imbalanced" since the early 1980s and that many asymmetries still exist between the European Union and the United States). Most NICs and LDCs still have substantial tariffs and even greater access. Id. See also Alan W. Wolf, America's Ability to Achieve Its Commercial Objectives and the Operation of the WTO, 31 LAW & POL'Y INT'L BUS. 1013, 1015 (2000) [hereinafter Wolf, America's Ability] (evaluating the shortcomings of the Uruguay Round of trade negotiations and the unwillingness of developing countries to live up to their commitments in world trade). Third, the WTO results in structural U.S. trade and current account deficits. U.S. trade and current account deficits increased substantially between the early 1990s and 2000-2001. See Lovett, Train Wreck, supra note 2, at 411 (stating that the WTO-Uruguay Round provided for substantially enlarged U.S. trade and current account deficits during the 1990s and into 2000-2001). See also infra Table 1 and 2. These large external deficits are unsustainable and danger to the trade flows of both the U.S. and its major trading partners. See LOVETT, U.S. TRADE POLICY, supra note 1, at 141 (warning that if the United States continues a trend of asymmetries that cause "structural" trade deficits, the "inevitable conclusion will be further erosion" to the United States' industrial, technological, and prosperity foundations). Lastly, the WTO's dispute resolution process is unsatisfactory. Litigious countries and the win/lose WTO dispute resolution process creates contentious hardened trade conflicts. See Alan W. Wolf, Problems With WTO Dispute Settlement, 2 CHI. J. INT'L L. 417, 417-20 (2001) [hereinafter Wolf, WTO Dispute Settlement] (outlining unintended consequences of a binding dispute settlement and problems caused to the United States and other nations). Many decisions seem unreasonable to the "losers." Id. In contrast, the prior GATT dispute resolution process's emphasis on diplomacy, mediation, and conciliation was largely successful. Criticism of the new WTO dispute resolution process stems from excessive biases against workers, the environment, the United States, and for favoring MNCs, and it is widening trade wars. See LOVETT, U.S. TRADE POLICY, supra note 1, at 10-11, 102-03 (noting that the WTO's mandatory dispute resolution process seemed to primarily serve the interests of MNCs, while the United States and other agricultural exporters gained little in terms of market access to Europe and Japan). Confidence in WTO dispute resolution is rapidly eroding. See generally Wolf, WTO Dispute Settlement (specifying problems arising out of the WTO's dispute settlement regime).

The U.S. has a strong record of encouraging freer trade in the post-World War II era. See LOVETT, U.S. TRADE POLICY, supra note 1, at 4 (providing history and background of the United States' movement toward freer trade). However, the current WTO experiment is failing. See Lovett, Train Wreck, supra note 2, at 418-19 (arguing that the GATT 1994-WTO has "unwisely weakened U.S. industrial safeguards, unfair practice remedies, and trade balance discipline). Simply put, the current WTO structure is "bad architecture." See Lovett, Train Wreck, supra note 2, at 417 (describing the Uruguay Round, GATT 1994, and the WTO deals as "badly designed architecture").
following “A, B, C, D” tiered access to U.S. markets. First, “A Class” countries with minimal tariffs and open capital markets would enjoy minimal U.S. tariffs and restrictions. Most OECD countries fit this framework already. Second, “B Class” countries would face eight to ten percent U.S. tariffs. This would apply to nations using ten to twenty percent average tariffs and somewhat restricted capital markets. Third, “C Class” countries would face fifteen to twenty percent U.S. tariffs. This would face nations with twenty-five to fifty percent tariffs and substantial capital and intellectual property restrictions. Fourth, “D Class” countries who now offer only very limited access to their own markets with little or no opportunity for capital flows and/or intellectual property protection countries would face greatly restricted access to U.S. markets.

With this reciprocity-based ladder of conditional access to U.S. markets, countries could choose the degree of openness they prefer in trading with the United States, and vice versa. Special GSP preferences could still be given to the poorest countries, i.e., those not yet capable of handling more reciprocal trade with the U.S. and other OECD nations. This new “A, B, C, D Class” System of graduated access would solve the “free rider” and “asymmetry” problems left uncorrected by the Tokyo GATT Round (1974-79) and the Uruguay-WTO Round (1985-94). This class system would better balance trade flows and provide for the elimination of the U.S. “structural” trade and current account deficits after a few years. This “A, B, C, D Class” System would greatly encourage more openness among developing countries, unlike the present, locked-into-place, asymmetrical WTO trade structure that perpetuates “free rider” problems. 87

An interesting question is whether the United States should consider WTO withdrawal and tougher trade bargaining in the early stages of its new War on Terrorism and the WTO negotiating round launched at Doha, Qatar in November 2001. Given the present situation perhaps the United States should not consider these options.

right away. The United States, however, should not subsidize a new WTO round with costly one-way concessions any longer. 88 In the long run, U.S. partners in the global economy-security system should carry their fair share of the load. Americans have carried heavier defense burdens than most of their allies for fifty years (except for a few nations with special vulnerability, e.g., Israel or South Korea.) When the United States enjoyed substantially higher living standards and an industrial lead, a policy of unequal trade openness seemed acceptable. 89 Now American tolerance for "free riding" and unequal burden sharing is approaching its limits. 90 U.S. trade bargaining in the next WTO round should be more realistic and reciprocity oriented. 91

88. See Lovett, Train Wreck, supra note 2, at 417 (describing the shortcomings and pitfalls arising out of the GATT 1994-WTO regime). The best way to phase in the new trade policy and a broader, more equal, and free trade in the global marketplace is an immediate, extended discussion of the basic shortcomings in the current GATT 1994-WTO framework. The existing, badly imbalanced state of affairs cannot last much longer. However, the new "A, B, C, D Class" tiered access system would be a great improvement. Id.

89. See LOVETT, U.S. TRADE POLICY, supra note 1, at 4 (describing the willingness of the United States to accept unequal reciprocal trade deals with developing nations and other trading partners).

90. See Jarreau, supra note 87, at 25 (describing the "free-rider" problem of those WTO members who made weak or no commitments to provide access to their financial services markets).

91. See Ed Crooks, World News: G7 to Discuss Threat of Global Economic Imbalances, FIN. TIMES (LONDON), Apr. 15, 2000, at 7 (explaining that a warning by the IMF that the United States' highly-valued stock market and consumer boom could create dangerous imbalances, including a record-breaking trade deficit and setting off a global recession). If the United States does not overhaul and correct the current WTO unbalanced structure, U.S. trade and current account deficits will probably get worse. See Wanted: $2 Billion a Day, ECONOMIST, Feb. 16, 2002 (commenting that the U.S. external deficit cannot afford to continue to grow). Until the stress of aggravated U.S. imbalances (excess imports with insufficient exports) forces a major U.S. dollar devaluation, and more drastic, faster reductions in U.S. imports (with counter-devaluations from desperate U.S. trade partners), U.S. stock prices will fall substantially. Additionally, growing recession and unemployment will afflict the United States and its major trade partners. Id. In these circumstances, healthy trade structure reform, and overhaul will be more difficult. Significantly, increased protectionism and serious trade wars will follow as in the 1930s. See, e.g., LOVETT, U.S. TRADE POLICY, supra note 1, at 63-73 (describing the era of American protectionism during the 1930s and efforts to effect a general tariff revision). Even worse, as in the 1930s, damage to mutual confidence among nations is likely with expanded risks of international conflict.
Fortunately, the logjam of conflicting agendas and demands at Doha gives a strong hint as to constraints and the limited “give” in global trade arrangements. NICs want more safeguard relief from the advanced countries and each other, less risk to employment, business potential, and growth prospects from the world market. LDCs agree, but stress their lack of sufficient participation in recent export expansion and foreign capital investments. On the other hand, most advanced countries (like the United States, European Union, and Japan) are conflicted. They seek expanded exports and growth, but many domestic interests want to limit dislocations for labor, business, and environmental progress. There is an erosion of the faith that freer world markets guarantee good results. Most nations represented at the Doha Ministerial have interests and sectors that offer little room for additional concessions or risky openings, except from other nations. Yet, MNC lobbies feel strongly that protection of their opportunities is essential to prevent an unraveling of global prosperity.

IV. STRAINS IN THE FINANCE REGIME

Floating exchange rates, global capital markets, international banking, and IMF stabilization assistance to countries suffering balance of payments and adjustment problems are essential features of international finance. In many ways, the finance system works reasonably well. Financial market disciplines, reinforced by IMF

Id. See also LOVETT, INFLATION AND POLITICS, supra note 43, at 60-61 (discussing economic decline in the 1930s).

92. See Lovett, Train Wreck, supra note 2, at 413 (stating that the WTO’s “logjam” of conflicting interests is better understood in the context of rival freer trade outlooks competing in modern world politics).

93. See id. at 417 (commenting that NICs want to limit further trade opening and increase safeguard relief).

94. See id. (describing the LDCs desire to cut back on safeguards to foreign investors and to prevent financial crises and devaluations that undercut their gains from expanding exports and manufacturing).

95. See id. at 415-16 (stating that MNC interest groups do not want to “rock the boat,” and want to protect the entrenchment and extension of a global economy). Overhaul of the present WTO system would better serve the MNC lobbies. MNC’s legitimate interests in a more stable, sustainable trade-finance system would be better “protected” by timely overhaul and a clean reconstruction job for the world trading system. Id.
surveillance, force most countries to live within their means, and they have worked since the 1980s to greatly reduce inflation in many countries.96

IMF decision-making and conditionality disciplines evolved during the 1950s and 1960s. The IMF’s Executive Board established weighted voting according to capitalization (overall size of economies) early on.97 Super-majority requirements assure blocking

96. See Lovett, U.S. Trade Policy, infra note 1, at 5 (stating that following the Great Depression and early post-World War II, most countries were forced to “live within their means” and maintain current account discipline). See generally Charles Kindleberger, Financial History of Western Europe (2d ed. 1993) (surveying European financial history from earliest times to present); Cairncross & Eichengreen, infra note 52 (describing the prevailing situation, alternative policy options available, arguments for and against devaluation and assessments of effects on prices, labor costs, money supply, and trade and payment flows); Harold James, International Monetary Cooperation since Bretton Woods 53-620 (1996) (providing a comprehensive account of the management of the international monetary system from the 1944 Bretton Woods conference to present day documents, including the structure and movements of the world economy); Peter Kenen, The International Financial Architecture: What’s New? What’s Missing (2001) (assessing efforts to reduce the risk of future economic crises by increasing the availability of information about economic conditions in emerging-market countries and strengthening the financial systems of those countries); Managing the World Economy: Fifty Years After Bretton Woods 341-95 (Peter Kenen ed., 1994) (discussing the framework of international institutions that will be required to meet challenges of the twenty-first century and how to adapt existing institutions and build new institutions to ensure future prosperity and security); Gerald Meier, The International Environment of Business: Competition and Governance in the Global Economy (1998) (providing a conceptual framework for the managerial tasks of diagnosing; predicting, and responding to changes in the world economy); R. Taggart Murphy, The Weight of the Yen 41-319 (1997) (providing an analysis of America’s troubled economic relationship with Japan); Franklin Root, International Trade and Investment (Peter Kenen ed., 7th ed. 1994) (covering issues of international trade, governmental trade policies, international capital flows, and financial markets and governmental macro policies affecting trade and capital flows among countries); George Soros, The Crisis of Global Capitalism, Public Affairs (1998) (explaining the collapsed global economy and how theoretical assumptions have combined with human behavior to lead to present day economic troubles).

97. See Lovett, U.S. Trade Policy, supra note 1, at 173-77 (describing the IMF’s Executive Board structure and the weighted voting system). See also Jackson, supra note 31, at 96-98 (detailing the WTO’s structure and voting system and differences with IMF and World Bank that use a weighted voted system).
votes for both creditor countries and debtor nations, and for the United States alone. Accordingly, IMF assistance is generally available for most countries, but not too generously. Most IMF assistance packages try to coordinate international bank financing and continued access to global capital markets for other foreign investments. Stretching out or rescheduling obligations provide a means to deal with excess debt buildups. This preserves national credit-worthiness and limits disruptive defaults or financial breakdowns that could undermine later financial support and investor confidence. Accordingly, assurance of the stability of global financial obligations and international bank lending is possible.

Unfortunately, during the euphoria of the 1990s, excessive capital inflows hit many emerging markets. Not surprisingly, these countries welcomed the additional prosperity. Speculative excess and asset bubbles, however, proved unsustainable in some countries. Nervous domestic and foreign investors soon thereafter reversed net capital flows, greatly shrinking foreign exchange reserves. In many of these emerging market countries large current account deficits accumulated when their governments became dependent upon net foreign capital inflows to sustain their economies. When confidence broke down, currency devaluation, banking crises, capital flight, and disruptive recessions often followed.98

Lessons drawn from these recent financial crises reflect the need for more care and caution in global finance. There is a distinct need for improved transparency, higher quality accounting, and more investor prudence. Strengthening banking and insurance company regulation requires stronger capital requirements, tough prudential supervision, and closure before insolvency. Securities and Exchange Commission-type securities disclosure and regulation is also necessary for all countries seeking investment from global capital markets. Furthermore, improved business bankruptcy laws and administration (like Chapter 11 bankruptcy proceedings in the United States) must be fashioned to assure more efficient salvage for distressed business-industrial enterprises.99

ALISON HARWOOD ET AL., FINANCIAL MARKETS AND DEVELOPMENT: THE CRISIS IN EMERGING MARKETS 1-413 (1999) (explaining that many countries that suffered during the East Asian financial crisis borrowed from international debt markets but ran semi-controlled local financial sectors).

In some countries, restrictions are appropriate to limit excess capital inflows and inhibit speculative "bubbles." Whether it is possible to engineer limits on capital flight for countries under strain is more doubtful. If business confidence is breaking down, capital flight and devaluation are hard to avoid. While failing governments normally try to "keep the lid on" a little while longer, these efforts are merely a warning to "head for the exit." The global economy cannot currently support many such naive investors and companies.  

Exchange rate regimes are a crucial variable. Reasonable flexibility with floating potential seems necessary for most countries. Rigid pegging or fixed rate regimes are vulnerable to stress, eroded confidence, and periodic breakdown (except for little countries or island states that are closely linked in trade-investment flows to major nations such as the United States, European Union, United Kingdom, etc.). Adoption of a major country's currency can work for such nearby satellite states. The recent stress on Argentina's "dollarization" policy, however, illustrates serious difficulties for larger countries in simply adopting a distant country's currency with no close linkage in trade or investment flows.

Resurgent budget deficits and inflation pressures for Argentina, combined with a slowdown and increased unemployment, undermined confidence in the Argentine Currency Board and its dollarization program, which collapsed in political crisis late in 2001.  

ECONOMIC REFORM (2001) (warning that fundamental aspects of Japan's economic system are not changing significantly and prolonged weakness in the Japanese economy could have serious negative consequences for U.S. foreign policy and trade). See generally KENEN, supra note 96 (determining causes of previous financial crises and offering solutions for prevention in the future); RYOICHI MIKITANI & ADAM POSEN, JAPAN'S FINANCIAL CRISIS AND THE PARALLELS TO U.S. EXPERIENCE (2000) (comparing the response of Japanese policy in the 1990s to that of the U.S. monetary and financial policy and the American Savings and Loan crisis of the late 1980s).

100. See generally MALAYSIAN ECLIPSE, supra note 98, at 1-256 (examining the Malaysian economic crisis of 1997-1998); see also, Alex Berenson, Oversight: The Biggest Casualty of Enron's Collapse: Confidence, N.Y. TIMES, Feb. 10, 2002, at 1 (describing the impact on investors and worldwide corporations following the collapse of Enron).

101. See generally Interview with Lance Taylor, Argentina: A Poster Child for
A dangerous problem remains for the poorest countries that often lack adequate infrastructure, secure property, market institutions, and government competence. These countries often feel left out in the march of economic progress. Many suffer because repressive governments do not feel much responsibility to their peoples beyond political sloganeering. The most tragic situations involve grievously “failed” states, where barbarism, vicious civil wars, or thuggery has taken over a people or an area (like Liberia, Rwanda, Zaire, or Sierra Leone). Unfortunately, failed states present urgent security problems that often spill over into their neighbors or even more widely in the world community. With light arms, explosives, rockets, and other weapons readily available (often supplied by outside terrorist or

the Failure of Liberalized Policies, CHALLENGE, Nov.-Dec. 2001, at 28-44, available at http://www.mesharpe.com/cha_4406.htm (last visited Mar. 8, 2002); see also Larry Rohter, Argentina Paying Heavily for Squandering Blessings, N.Y. TIMES, Feb. 8, 2002, at A1 (describing the economic plight of Argentina and loss of confidence in political and social institutions); Argentina’s Bank Chief Forced to Quit, FIN. TIMES, Jan. 18, 2002, at 1 (reporting resignation of Argentina’s central bank chief due to pressures imposed on the government to overthrow bank controls); Thomas Catán & Mark Mulligan, Argentina Set for Devaluation of the Peso, FIN. TIMES, Jan. 5, 2002, at 8 (reporting Argentina’s president’s decision to devalue the peso by thirty to forty percent as part of an emergency plan to restore order to the country’s economic situation); Pamela Druckerman, Investors’ in Argentina Fell Burned By the Big Banks, WALL ST. J., Nov. 29, 2001, at A14 (stating that foreign investors hold $95 million of Argentina’s $132 billion debt); Sebastian Edwards, A Simple Answer for Argentina: Follow Chile’s Example, WALL ST. J., Jan. 25, 2002, at A19 (suggesting that Argentine President Duhalde take a lesson from Chile’s economic crisis of 1982 when the Chilean peso was devalued by seventy-eight percent); Paul Krugman, Crying With Argentina, N.Y. TIMES, Jan. 1, 2002, at A21 (commenting on the causes of Argentina’s economic slump); Marc Lifsher, As Argentina Teeters, the Ecuadoran Success Story Looms, WALL ST. J., Nov. 29, 2001, at A14 (reporting that Ecuador’s decision to replace the sucre with the U.S. dollar helped to revitalize the economy, a reform that might similarly benefit hard-pressed Argentina); Amity Shlaes, The Argentine Peso Holds Lessons for the Euro: It is Dangerous to Elevate a Currency as a Political Emblem if the Need for Other Economic Reforms is Obscured, FIN. TIMES, Jan. 8, 2002, at 19 (raising issues regarding economic reforms in Argentina and dangers associated with elevating a currency as a political emblem); Martin Wolf, Argentina’s Agonising Options: Confidence in the Peso Has Gone: The Government Needs to Answer Six Questions Before Deciding the Next Step, FIN. TIMES, Dec. 5, 2001, at 21 (speculating on Argentina’s next step as the government imposes restrictions on withdrawals from banks and on access to dollars for international transactions); Martin Wolf, Duhalde Pledges to Work with IMF, FIN. TIMES, Jan. 16, 2002, at 1 (commenting on President Eduardo Duhalde’s decision to work with the IMF on an economic plan).
criminal organizations), these problems are not financial. For example, the current problems of Afghanistan, after a ten-year war against Russian intervention and civil wars following, led to the ascendancy of the Taliban. Even decent, well-governed countries with sound economic policies are vulnerable to this manner of attack and destabilization. Sadly, as the world learned in the mid-to-late 1930s, there is no substitute for timely, effective, and courageous collective security measures.\(^{102}\) When rogue states, fanatical terrorists, or irresponsible thugs gain momentum and intimidate peaceful countries, the destabilization of healthy trade-finance in many nations is likely.\(^{103}\)

102. *See generally* HENRY D. SOKOLSKI, **BEST OF INTENTIONS: AMERICA’S CAMPAIGN AGAINST STRATEGIC WEAPONS PROLIFERATION** (2001) (relating the history of nonproliferation and relating it to present day problems such as horizontal proliferation); RICHARD N. HAASS, **THE RELUCTANT SHERIFF: THE UNITED STATES AFTER THE COLD WAR** 103-34 (1997) (proposing that the United States adopt a foreign policy based on the notion of regulation where countries settle disputes peacefully and governments act more responsibly toward their own citizens and neighbors); DONALD KAGAN & FREDERICK W. KAGAN, **WHILE AMERICAN SLEEPS: SELF-DESTRUCTION, MILITARY WEAKNESS, AND THE THREAT TO PEACE TODAY** (2000) (arguing for a necessary change to preserve peace and security in the United States); JANNE E. NOLAN, **AN ELUSIVE CONSENSUS: NUCLEAR WEAPONS AND AMERICAN SECURITY AFTER THE COLD WAR** (1999) (analyzing the contemporary U.S. security debate based on utility and missions of nuclear weapons after the Cold War); PRESENT DANGERS: **CRISIS AND OPPORTUNITY IN AMERICAN FOREIGN AND DEFENSE POLICY** (Robert Kagan & William Kristol eds., 2000) (describing emerging dangers to American peace established at the end of the Cold War and a call for foreign policy of “benevolent hegemony” as a means to secure peace and advance American interests and principles around the world); **THE EMERGING STRATEGIC ENVIRONMENT: CHALLENGES OF THE TWENTY-FIRST CENTURY** (Williamson Murray ed., 1999) (addressing fundamental issues of emerging strategic environments in Europe and the Middle East and its strategic problems).

103. *See generally* A CENTURY’S JOURNEY: **HOW THE GREAT POWERS SHAPE THE WORLD** (Robert A. Pastor ed., 1999) (analyzing the international system in the twentieth century in an effort to understand the twenty-first century); MICHAEL SHEEHAN, **BALANCE OF POWER: HISTORY & THEORY** (1996) (examining guiding principles behind international politics and history of the balance of power system since the eighteenth century). *See also* LOVETT, **U.S. TRADE POLICY**, *supra* note 1, at 172–82 (discussing trade imbalances challenging America’s role in the global economy).


TABLE 1

U.S. GNP, DEBT, AND EXTERNAL ACCOUNTS
1961-2001 (IN BILLIONS OF U.S. $)\(^\text{104}\)

<table>
<thead>
<tr>
<th>Year</th>
<th>GNP</th>
<th>Gross Fed'! Debt</th>
<th>Merchand. Imports(^\text{105})</th>
<th>Merchand. Exports(^\text{106})</th>
<th>Merchand. Trade Balance</th>
<th>Current Acc‘t Balance (^\text{107})</th>
<th>Customs Value Trade Balance (^\text{108})</th>
<th>Customs Value Current Acc‘t Balance (^\text{109})</th>
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<td>310.3</td>
<td>17.2</td>
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<td>1965</td>
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<td>322.3</td>
<td>21.4</td>
<td>26.7</td>
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<td>-5.7</td>
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105. Merchandise imports are based on cost-insurance-freight ("C.I.F.") values. However, C.I.F. figures are not available from 1961-1966. Those imports are based on census values. C.I.F. figures from 1967-1973 are based on estimates.

106. Exports are based on free-along-side ("F.A.S.") value.

107. Current account balance reflects the net balance on merchandise trade, services trade, investment income, and other unilateral transfers. However, the years 1961-1964 only show the results of merchandise imports, exports, services, and income from investments.

108. Annual rate, seasonally adjusted.

109. Quarterly rate, not seasonally adjusted.
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<td>1994</td>
<td>7,071.1</td>
<td>4,643.7</td>
<td>689.2</td>
<td>512.6</td>
<td>-176.6</td>
<td>-143.9</td>
<td>-166.2</td>
<td>-133.5</td>
</tr>
<tr>
<td>1995</td>
<td>7,420.9</td>
<td>4,920.9</td>
<td>770.9</td>
<td>582.1</td>
<td>-188.8</td>
<td>-144.4</td>
<td>-173.6</td>
<td>-129.1</td>
</tr>
<tr>
<td>1996</td>
<td>7,831.2</td>
<td>5,181.9</td>
<td>817.8</td>
<td>622.8</td>
<td>-195.0</td>
<td>-152.0</td>
<td>-191.2</td>
<td>-148.2</td>
</tr>
<tr>
<td>1997</td>
<td>8,305.0</td>
<td>5,369.7</td>
<td>898.3</td>
<td>687.6</td>
<td>-210.7</td>
<td>-178.1</td>
<td>-199.0</td>
<td>-166.4</td>
</tr>
<tr>
<td>1998</td>
<td>8,750.0</td>
<td>5,478.7</td>
<td>942.6</td>
<td>682.1</td>
<td>-260.5</td>
<td>-229.8</td>
<td>-220.6</td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>9,236.2</td>
<td>5,606.1</td>
<td>1,059.9</td>
<td>695</td>
<td>-364.9</td>
<td>-330.0</td>
<td>-331.5</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>9,700(e)</td>
<td>5,686</td>
<td>1,259.3</td>
<td>781.9</td>
<td>-415.9</td>
<td>-380.5</td>
<td>-447.7</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>10,120(e)</td>
<td>5,772(e)</td>
<td>1,207(e)</td>
<td>756(e)</td>
<td>-459(e)</td>
<td>-426(e)</td>
<td>-426(e)</td>
<td></td>
</tr>
</tbody>
</table>
TABLE 2
U.S. EXPORTS, IMPORTS, AND TRADE BALANCE
BY COUNTRY AND AREA, NOT SEASONALLY ADJUSTED,
2001 (IN BILLIONS OF $U.S.)\(^{110}\)

<table>
<thead>
<tr>
<th>Countries or areas</th>
<th>Trade Balance (Customs Imports)</th>
<th>Exports (F.A.S.)</th>
<th>Imports (Customs Basis)</th>
<th>Imports (C.I.F. Basis)</th>
</tr>
</thead>
<tbody>
<tr>
<td>N. America(^{111})</td>
<td>-77.4</td>
<td>246.5</td>
<td>323.9</td>
<td>328.1</td>
</tr>
<tr>
<td>W. Europe</td>
<td>-60.1</td>
<td>161.4</td>
<td>221.5</td>
<td>227.8</td>
</tr>
<tr>
<td>Euro Area</td>
<td>-50.4</td>
<td>102.8</td>
<td>153.2</td>
<td>157.6</td>
</tr>
<tr>
<td>EFTA Area</td>
<td>-3.2</td>
<td>11.1</td>
<td>14.3</td>
<td>14.7</td>
</tr>
<tr>
<td>E. Europe(^{112})</td>
<td>-6.9</td>
<td>6.3</td>
<td>13.3</td>
<td>14.0</td>
</tr>
<tr>
<td>Former USSR</td>
<td>-3.9</td>
<td>3.8</td>
<td>7.7</td>
<td>8.1</td>
</tr>
<tr>
<td>Pacific Rim</td>
<td>-181.4</td>
<td>167.2</td>
<td>348.6</td>
<td>363.7</td>
</tr>
<tr>
<td>Asia Near East</td>
<td>-16.3</td>
<td>17.7</td>
<td>34.0</td>
<td>36.1</td>
</tr>
<tr>
<td>Asian NIC's(^{113})</td>
<td>-19.7</td>
<td>66.7</td>
<td>86.4</td>
<td>89.5</td>
</tr>
<tr>
<td>Asia-South</td>
<td>-11.1</td>
<td>4.3</td>
<td>15.5</td>
<td>16.4</td>
</tr>
<tr>
<td>ASEAN</td>
<td>-29.4</td>
<td>40.0</td>
<td>69.4</td>
<td>72.4</td>
</tr>
<tr>
<td>APEC</td>
<td>-270.3</td>
<td>426.6</td>
<td>696.8</td>
<td>717.7</td>
</tr>
</tbody>
</table>

---

111. Canada and Mexico.
112. Includes the former U.S.S.R.
113. Hong Kong, Korea, Singapore, and Taiwan.
<table>
<thead>
<tr>
<th>Countries or areas</th>
<th>Trade Balance (Customs Imports)</th>
<th>Exports (F.A.S.)</th>
<th>Imports (Customs Basis)</th>
<th>Imports (C.I.F. Basis)</th>
</tr>
</thead>
<tbody>
<tr>
<td>South and Central America\textsuperscript{114}</td>
<td>-8.6</td>
<td>54.1</td>
<td>62.7</td>
<td>66.7</td>
</tr>
<tr>
<td>NATO Allies</td>
<td>-106.6</td>
<td>309.1</td>
<td>415.7</td>
<td>424.6</td>
</tr>
<tr>
<td>OPEC</td>
<td>-37.7</td>
<td>18.5</td>
<td>56.2</td>
<td>60.3</td>
</tr>
</tbody>
</table>

\textsuperscript{114} Includes Caribbean Basin Countries.
<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exports</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goods</td>
<td>670.2</td>
<td>684.4</td>
<td>772.2</td>
<td>744(e)</td>
</tr>
<tr>
<td>Services</td>
<td>263.7</td>
<td>271.9</td>
<td>293.5</td>
<td>290(e)</td>
</tr>
<tr>
<td>Income Receipts</td>
<td>258.3</td>
<td>276.2</td>
<td>352.9</td>
<td>316(e)</td>
</tr>
<tr>
<td><strong>Imports</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goods</td>
<td>-917.2</td>
<td>-1,029.9</td>
<td>-1,224.4</td>
<td>-1,186(e)</td>
</tr>
<tr>
<td>Services</td>
<td>-181.0</td>
<td>-191.3</td>
<td>-217.0</td>
<td>-208(e)</td>
</tr>
<tr>
<td>Income Payments</td>
<td>-270.5</td>
<td>-294.6</td>
<td>-367.7</td>
<td>-331(e)</td>
</tr>
<tr>
<td><strong>Unilateral Transfers</strong></td>
<td>-44.1</td>
<td>-48.0</td>
<td>-54.1</td>
<td>-52(e)</td>
</tr>
</tbody>
</table>


116. Balance of payments basis (using customs value imports, and not C.I.F., for imports).
<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>U.S. Assets Abroad</strong></td>
<td>-292.8</td>
<td>-430.2</td>
<td>-581.0</td>
<td>-480(e)</td>
</tr>
<tr>
<td><strong>Foreign Assets in U.S.</strong></td>
<td>502.6</td>
<td>753.6</td>
<td>1,024.2</td>
<td>888(e)</td>
</tr>
<tr>
<td><strong>Balance on Current Account</strong></td>
<td>-220.6</td>
<td>-331.5</td>
<td>-444.7</td>
<td>-426(e)</td>
</tr>
<tr>
<td><strong>Net Financial Flows</strong></td>
<td>209.8</td>
<td>323.4</td>
<td>443.3</td>
<td>400(e)</td>
</tr>
</tbody>
</table>