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Trade Policy

Country Economics Department
The World Bank
March 1990
WPS 402

The GATT as International Discipline Over Trade Restrictions

A Public Choice Approach

J. Michael Finger

Postwar institutions held at bay the dominance of producer interests over consumer interests. But producer pressures toward protection are now dominant and even with the emergence of market-opening instruments like "301" the forecast for free trade is pessimistic: a buildup of trade restrictions and fewer breezes to disperse them.

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This paper — a product of the Trade Policy Division, Country Economics Department — is part of a larger effort in PRE to understand the economics of the emergence of "fairness" as a standard for regulating international trade and its implications for the continued openness of the international trading system and its continued functioning as an important vehicle for development. Copies of the paper are available free from the World Bank, 1818 H Street NW, Washington DC 20433. Please contact Nellie Artis, room N10-013, extension 38010 (27 pages).

The General Agreement on Tariffs and Trade (GATT) was built on a mercantilist sense of economic welfare and a mercantilist sense that domestic producers had a higher claim than foreign producers to the domestic market.

The trade negotiations process did not attack this claim. It gave producers in each country an opportunity to increase its value through mutually beneficial exchanges with producers in other countries.

The process worked as long as institutions forced all producers in a country (import competing and exporting) to reach a collective decision on trade policy — as long as the trade remedies were subjugated by strategic and diplomatic concerns so that they did not give import competing interests an alternative.

Pressure from import competing producers, whose interests are netted out in the trade negotiations process, eventually expanded the trade remedies into a policymaking institution that now eclipses the trade negotiations.

Another mutation of GATT institutions has begun with the development in the United States of "301" — which provides a way for exporting producers to advance their interests without bearing the burden of suppressing or buying off import competing interests. Indeed, "301" attacks foreign restrictions not with the possibility of *fewer* U.S. restrictions, but with the threat of *more*. Trade remedy processes have been installed in many countries, so "301s" should not be far behind.

The GATT system was devised to promote global security and free trade. It has been altered until, in the present system, export interests will generate trade conflicts and import competing interests will generate trade restrictions.

Simply put, the institutions that shape the relevant public choices do not bring out the appropriate economic interests, and the resulting policy choices are not those that promote economic efficiency.

Produced at the PRE Dissemination Center

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by
J. M. Finger

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THE GATT AS INTERNATIONAL DISCIPLINE OVER TRADE RESTRICTIONS: A PUBLIC CHOICE APPROACH

J.M. Finger

> Institutions do matter -- over the long run perhaps far more than the adoption of this or that policy option or the election of this or that politician or party.
>
> (Buchanan 1984, p. 5)

Reciprocal reductions of tariffs have been one of the success stories of post-World War II international cooperation. Through these reductions, negotiated since 1947 at a series of multilateral GATT "rounds," industrial country tariffs on manufactured goods which ranged from 30 percent to 60 percent have been reduced to an average of 4 percent to 8 percent. Parallel negotiations, in a different forum, restored the convertability of currencies and eliminated most of the quantitative restrictions in place in the industrial countries at the end of WWII. Together, these changes created a truly open international trading system among the major trading nations.

Yet there is increasing concern that the open international trading system is being seriously eroded. Even while the tariff cuts were being agreed and implemented, voluntary export restraints, grey area measures, and other questionable trade practices began to appear, and to close down the trading system. Free trade is advancing, it seems, at the same time as protection is becoming more frequent.

As this essay will demonstrate, public choice theory provides the keys to understanding this apparent incongruity. The first key is to note

that the institutions through which tariff decisions are made within the post-WWII GATT system are different from those through which decisions on other forms of trade restrictions are made. And, as James M. Buchanan reminds us in the sentence quoted above, institutions do matter, so much so, this paper will explain, that one institutional process can be moving the trading system toward free trade while another moves it toward protection.

But institutions are not immutable. Interests, over time, can reshape them. Post WWII institutions for a while held at bay and even rolled back the dominance of concentrated producer interests over more dispersed consumer interests. But, this paper will argue, the shoe is on the other foot now. The processes that create trade restrictions are now dominant, and the forecast for the international trading system is pessimistic: continuing buildup of trade restrictions and continuing diminution of the breezes that disperse them.

I. THE LOGIC OF NEGOTIATED REDUCTIONS

Each country has the sovereign right to regulate its imports, and most tend to overdo it. This matter is well understood. When import restrictions are decided unilaterally, producer interests (the benefits of protection) are more effectively represented in the policy decision process than consumer interests (the costs of protection) and the overall national economic interest is not well served. When import restrictions are determined through a process of negotiation with one's trading partners, an additional interest group is made effective. Determining trade restrictions on a reciprocal basis ties together (a) the access a country allows foreign suppliers to its domestic market, and (b) the access the

country's exporters will have to foreign markets. This link brings exporters' interests to bear on the import restrictions, and the bias toward protection will be less. 1/ As to the legal technicalities, each participating country agrees through the GATT to allow other participants access to its market at least as favorable as the tariff schedule it annexed to the agreement. When agreement involves reductions of tariffs, the new rates are "annexed" in such schedules. Each country's schedule, the parties agree, is subject to most-favored-nation (MFN) treatment within the group.

The US reciprocal trade agreements program and the adaptation through the GATT of the same process on a multilateral basis are familiar examples. An equally appropriate, though perhaps less familiar example is provided by Jan Tumlir (1985). Before the first World War, European states maintained among themselves a system of bilateral commercial treaties in which tariffs were contractually bound for long periods, usually 10 years. The treaties were tied to each other by the inclusion of an unconditional most favored nation (MFN) clause in each. As in the later "GATT system," national legislatures tended to delegate the power to negotiate tariffs to the executive. Within this institutional structure, the participating countries were able to maintain an open trading system. The system's legal structure was a series of bilateral treaties of friendship, commerce and navigation, linked together by including the MFN clause in each -- quite different from the multilateral agreement that is the legal structure of the GATT. However, the public choice structures of the two were similar,

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1/ For lengthier expositions see Hauser (1986), Roessler (1986), and Moser (1988).

as were the successes of the two systems to generate an open trading system.

II. THE LOGIC OF TRADE REMEDIES

While the first functional part of the GATT provides the mechanics through which countries exchange access to each other's markets, the second functional part defined the circumstances under which a country might go back on such an exchange. It specifies when a country may impose restrictions to safeguard the balance of payments, may introduce antidumping and countervailing duties, etc. The inclusion of such provisions for trade restrictions in an agreement intended to promote free trade can be explained in two ways. First, including them in the GATT was part of the price national governments paid their import competing interests not to block the country's participation in the negotiations to reduce tariffs. Second, specifying the circumstances under which a government can restrict imports may help the government to resist pressures to do so in other circumstances.

Within a property rights conception, the GATT is a contract through which a nation exchanges access to its domestic market for access to the domestic markets of the other nations. This exchange of market access is subject to extensive and specific reservations as to the circumstances under which and the procedures through which a country may reduce this access, i.e., impose import restrictions. However, which GATT provisions advance the agreement's objective and which provide for exceptions depends on where one's interests lie. The GATT, when read by an import competing enterprise, becomes a statement of the circumstances in and procedures by which a nation may impose import restrictions, subject

however to the reservations the nation has placed upon itself in the granting of access to foreigners. The trade policy of one of the more protectionist candidates for his party's 1984 US presidential nomination was summed up in the slogan, "The GATT permits such actions -- and it's time we took them."

Taken a step further, into national laws and regulations which provide actual legal substance to a protectionist perspective on this contract, the circumstances under which a country may impose import restrictions become the rights of particular interests within the country to protection from import competition.

The mechanics of these provisions is easier to explain in concrete terms than in generalities, so I will use the United States an an example. Current US law provides six tracks to which a domestic firm or industry may petition the US government for relief from import competition, i.e., for protection. These are:

(1) Escape clause or safeguards ("201" cases);

(2) Antidumping;

(3) Antisubsidy or countervailing duty;

(4) Unfair trade practices actions ("301" cases);

(5) Unfair import practices ("337" cases);

(6) Market disruption ("406" cases).

The centerpiece of an escape clause or safeguards case is an investigation by the International Trade Commission of injury to a US industry resulting from increased imports. An investigation begins when an industry "petitions" the ITC for "import relief." If the injury determination is affirmative, the ITC recommends a remedy to the President. This remedy might be imposition of tariffs, imposition of quantitative

restrictions or other forms of import controls or it might be adjustment assistance without the imposition of any border measure to restrict imports. US law does not however require the President to follow the ITC's recommendation, but if the President chooses not to implement import relief when the ITC has so recommended or to implement a form of import relief different from that recommended by the ITC, his decision is subject to Congressional override.

The escape clause does not raise questions about the "fairness" of imports, but other trade remedy tracks do. Antidumping petitions are filed simultaneously with the ITC and with the International Trade Administrations (ITA) of the Department of Commerce. An antidumping case entails two separate investigations: a material injury investigation (conducted by the ITC) and a sales at "less than fair value" investigation (conducted by the ITA). If both material injury and sales at less than fair value are found to exist, the Department of Commerce is required by law to issue an antidumping order. An antidumping order means that unless the exporter raises his price accordingly he must pay an antidumping duty. Most choose to raise their price. The antidumping law provides specific opportunities for an agreement to be reached between the petitioning domestic party and the foreign party to terminate the case. Grounds for such agreed termination are almost always an enforceable and monitorable commitment by the foreign seller to eliminate the dumping practice, usually by raising the price he charges in the US market.

Countervailing duty cases, like dumping cases, are carried out under the authority of the Department of Commerce, the ITA. Cases involve an investigation of subsidy conducted by the ITA, and in most instances, an injury investigation conducted by the ITC. Injury investigations are

carried out in all cases concerning duty free goods and in those cases involving signatories to the GATT-subsidies code, against Taiwan and against all countries to whom the US has extended by treaty, unconditional most-favored-nation status. As with antidumping law, the countervailing duty law provides opportunities for a case to be terminated upon agreement between the petitioning party and exporter. Again, such agreement is conditioned upon an enforceable and monitorable commitment by the foreign party to eliminate the subsidy practice.

"Section 301" follows a similar petition-investigation format, but is an outlet mainly for complaints by US exporters of unfair treatment in foreign markets. It will be discussed below. Section 406 provides an easier safeguards procedure that may be used only against imports from communist countries. "337" cases are mainly about patent infringement.

In recent years, these trade remedies have eclipsed the trade negotiations process and have come to dominate trade policy. Again, the US case being the archetype example of GATT-consistent institutions, is the easiest to document. In the 1950s and 1960s, US trade legislation was mostly about granting the President authority to negotiate tariff reductions. But over time, a larger and larger share of trade legislation has dealt with the expansion and strengthening of trade remedies, particularly those that appear to correct "unfair" foreign trade practices. For example, the widely circulated and frequently praised US Chamber of Commerce explanation of the 1988 US trade bill devotes 16 pages to the import relief clauses and 6 pages to "301." "Negotiating authority" gets 2 pages, the same number as "Adjustment Assistance" for which the Congress has provided no funding.

"Unfair" foreign practices provide the screen behind which a government can enjoy being seduced by special interests and yet pretend to act nobly. U.S. Treasury Secretary James A. Baker III, in defending the Reagan Administration's trade policy, pointed out in 1987 "We have not neglected our responsibilities to fair trade. ... President Reagan, in fact, has granted more import relief to US industry than any of his predecessors in more than half a century." 2/ Half a century covers every president since Herbert Hoover, the president who signed the Smoot-Hawley tariff.

Table 1 tabulates 1980-1986 trade remedies cases in countries that are the major users of such GATT-formal mechanisms. Of a total of 2024 cases, only 45 were safegaurds cases, i.e., only 45 did not accuse the foreign party of unfairness. 3/

From a public choice perspective, the intriguing matter is not that the special-interest arming trade remedies have come to dominate the trade negotiations. The intriguing question is why it took so long. How did the liberalizing trade negotiations dominate trade policy from the end of WWII perhaps through most of the 1970s?

2/ Baker, p. 4.

3/ Unfairness provides the political rhetoric and the administrative process through which an interest group presents i case, but the unfair trade procedures do not always provide the form of the resulting trade restriction. Finger and Murray (1989) document that almost half of US antidumping and countervailing duty cases end up with negotiated export restraints.

Table 1: NUMBER OF ADMINISTERED PROTECTION CASES, 1980-86

	1980	1981	1982	1983	1984	1985	1986	1980-1986
Safeguards								
United States	2	6	4	2	6	3	5	28
Australia	1	0	1	2	0	0	0	4
Canada	0	1	2	0	0	1	0	4
EC	3	1	1	1	1	0	2	9
Countervailing actions								
United States	8	10	123	21	51	39	30	282
Australia	0	0	2	7	6	3	3	21
Canada	3	0	1	3	2	3	4	16
EC	0	1	3	2	1	0	0	7
Antidumping actions								
United States	22	14	61	47	71	65	71	351
Australia	62	50	78	87	56	60	63	456
Canada	25	19	72	36	31	36	74	293
EC	25	47	55	36	49	42	40	294
Other unfair trade practices - US	28	19	73	39	33	39	28	259
All Categories								
United States	60	49	261	109	161	146	134	920
Australia	63	50	81	96	62	63	66	481
Canada	28	20	75	39	33	40	78	313
EC	28	49	59	39	51	42	42	310
Total	179	168	476	283	307	291	320	2024

Sources: United States data, US International Trade Commission, ALLAD-CASIS Database; Other Countries, Finger and Olechowski (1987) - Tables A8.1, A8.3, for numbers of antidumping and countervailing duty cases; GATT Secretariat, for numbers of safeguards cases.

An obvious possibility -- that the trade remedies processes did not exist until recently -- turns out not to be true. Provisions for safeguards, antidumping and countervailing duties are in the GATT because they existed in national legislation when the GATT was negotiated, and national governments would not give them up.

Part of the answer to why the trade remedies did not generate many trade restrictions was that the people who made up the government did not want them to. To many of them, trade policy was less economics than international diplomacy and the idea was widely shared that freedom of commerce could be an important instrument for maintaining world peace. To Cordell Hull, Secretary of State for President Franklin D. Roosevelt, the link was straightforward "[U]nhampered trade dovetailed with peace; high tariffs, trade barriers and unfair economic competition with war." 4/ The Cold War with Russia allowed a vulgar version of this idea to generate wide public support for the government's trade policy: If the United States did not provide markets for these countries they would be taken over by the Communist Bloc.

And in I.M. Destler's informative phrase, the trade remedies provided "protection for Congress" against the wrath of special interests that would press a Congressman who was sympathetic to the general thrust of US trade policy. The ideology of interdependence to preserve global stability was part of it, but not all of it. Economics did matter, but not in the way an economist would explain the "gains from trade." In this regard the old metaphor about prosperity is informative: a rising tide

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4/ Quoted by Cooper, p. 299, from Cordell Hull's Memoirs. Cooper provides similar quotes from Presidents Franklin D. Roosevelt and Harry S. Truman.

lifts all boats. The 1950s and 1960s were generally prosperous times in which the US enjoyed substantial trade surpluses. 5/ Directing a protection-seeking industry into a maze of administrative procedures bought time, and before the industry came to realize there was no prize at the end of the maze it realized that business was better, and pressed the case no further. Besides, the system satisfied the American sense of fairness. There was a place to complain, they listened, they investigated, they held hearings. One had one's day in court. To complain further would be un-American, maybe even pro-Communist, if the closing of the US market tipped a country over to the Russian side in the Cold War. In sum, the trade remedies procedures could be calibrated to produce trade restrictions at a much lower rate than the trade negotiations were removing them.

Import politics

But things would not stay that way forever. Consider one of E.E. Schattschneider's observations about the pressure group politics of the 1930 tariff: "A policy that is so hospitable and catholic as the protective tariff disorganizes its opposition. (p. 88) The same would turn out to be true for the trade remedies. Yearly, the political motives for the trade liberalization program waned, and the capacity of the rest of the world to export to the United States increased. It is hard to remember American idealism after WWII to build a better world, also hard to remember

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5/ There has been a considerable amount of research on how aggregate economic conditions affect pressures for protection. Coughlin, et al, Feigenbaum, Ortiz and Willett and Takacs are good examples that provide additional references.

that forty years ago everyone knew that the LDCs would never export manufactured goods. To reverse the thrust of US trade policy it was not necessary to create a new mechanism, only to recalibrate the trade remedies process so that it provides more import relief. And year by year the trade remedies process expanded:

(1) Technical changes expanded definitions of "injury," "dumping," etc. i.e., expanded the specification of when an industry had a right to "import relief."

(2) Loopholes were closed, loopholes that the President had exploited to set aside determinations that an industry was eligible for import relief.

(3) Judicial review was imposed, to force administration of the trade remedy laws toward what Congress intended, away from the loopholes the President tried to find to allow him to meet his international obligations to keep the US market open to import competition. 6/

The unfair trade laws in the judgment of two of Washington's top trade lawyers are now "the usual first choice for industries seeking protection from imports into the United States." 7/ They have been made broad enough that they can now give expression to almost every pressure for protection. 8/

6/ Details of these changes are provided by Finger (1990).

7/ Horlick and Oliver, p. 5.

8/ This brings to mind another lesson that E.E. Schattschneider drew from the politics of the Smoot-Hawley tariff: "One of the great defects of the protective system is that it provides no clear basis for discrimination, and that, since discrimination is politically difficult, Congress destroys the essential character of the policy in order to make it politically strong." (p. 85)

Is export politics really dead?

But the trade negotiations are still around, are they not? Do not the trade negotiations still provide the mechanics through which the politics of export expansion will dominate the politics of import restrictions?

The answer is "No." U.S. exporters no longer need the trade negotiations to advance their interests. They have "301."

Section 301 was added to the list of trade remedies by the 1974 trade bill and has been modified and extended by the 1979, 1984, 1989 trade bills. It authorizes the US Trade Representative 9/ to take action against foreign trade practices that violate international agreements or burden or otherwise restrict US commerce in an unreasonable or discriminatory fashion. The instrument explicitly covers services, investment and intellectual property.

"301" deals with two categories of practices: (a) violations of US rights under a trade agreement, and (b) otherwise unjustifiable, unreasonable or discriminatory action or policy that burdens or restricts US commerce. When the GATT is the agreement that the petitioner alleges is violated, the US Trade Representative is required to submit the matter to the GATT dispute settlement process simultaneous with his investigation under "301." If the US Trade Representative determines that a foreign violation of a trade agreement (category "a," above) does exist the Trade

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9/ Until the 1988 amendments "301" authority was given to the President.

Representative must retaliate. 10/ But, the section also allows the USTR to waive retaliation if the GATT dispute settlement process decides against the United States, the foreign government takes action to remove or offset the violation, or if retaliation would "backfire" or significantly harm US commercial interests or US national security. The law defines "unreasonable" as an act, policy or practice that is unfair and inequitable, though not necessarily a violation of explicit US legal rights. When the US Trade Representative finds actions or policies of this sort, she has the authority to retaliate, but is not required to do so.

The intent, and to a large extent the use of "301" has been to advance the interests of US exporters. Of forty-seven cases that had come to conclusion by December 31, 1988, twenty-seven ended with some liberalization of a foreign restriction, one with a liberalization by the United States, eleven ended when USTR found that the foreign practice was legitimate or did not burden US commerce and 8 ended with a trade restricting action by the United States. 11/

The menace of "301" is not that it serves US export interests but that it unchains them from the necessity to oppose US import competing interests. It arms the US negotiator not with the authority to remove US import restrictions, but with the threat to impose new ones. It provides the domestic political mechanics to press for export expansion without paying the price of removing US import restrictions.

10/ Since 1988, retaliation may not be on the case's subject product or service, e.g., if the subject practice affects US exports of rice, retaliation cannot be a restriction on US imports of rice.

11/ The numbers in this paragraph are from the author's tabulation of information given in US International Trade Commission, Operation of the Trade Agreements Program, 1975 through 1988 editions.

The basic public choice mechanics of the trade negotiations have been undone. Export interests no longer have to find the courage and the organization to overcome import-competing interests. The two interest groups can view the trade negotiations in the same manner. The multilateral negotiations, like the drafting of a US trade bill, can be mostly a matter of searching for words to express a common standard of "fairness." What policies this standard in fact allows and disallows is left to be worked out in the bilateral disputes brought forward under "301" and other countries' equivalent instruments. The multilateral negotiations used to be a counter to the domestic politics of trade policy. Now they are an extension of it.

III. THE CODES APPROACH

By the middle 1960s, new trade restrictions were appearing in noticeable regularity. Most of the industrial countries had begun to limit textile imports and Japan, in acceding to the GATT, had been asked to restrain its exports of several products. Though many believed that the most effective way to retard the spread of new trade restrictions was to proceed with negotiations to reduce tariffs -- the "bicycle theory," it was sometimes called -- there was a growing feeling that the trend of nontariff barriers (NTBs) was shaking itself loose from the momentum of the negotiations to reduce tariffs, and some attempts at agreement to control NTBs were made at the 1960's Kennedy Round. Even though the Kennedy Round achieved broader and deeper tariff cuts than any other round, the NTB negotiations met with little success.

The international community then made NTBs the major concern of the 1974-79 Tokyo Round. There, agreement was reached on six NTB "codes,"

the major of which were the subsidies, countervailing-duties code and the antidumping code. The codes are elaborations of the initial GATT specifications that were intended to limit when and how a country could impose an import restriction. The logic here, as in the original GATT, is that if the circumstances under which a country may impede trade are specified, the frequency with which it does so will be less. The formulators of this approach hoped that codification would make national procedures to impose trade restrictions the same in one country as in another, and that as precedents built up each national government would have effective means for handling pressures for protection. Petitioners would be assured that their cases were decided on the same grounds as anyone else's (and that these grounds were the right grounds) and would thus be brought toward accepting a possibly negative decision.

As to effects, all reviewers agree that the subsidies code had had little effect, either on the extent of subsidization or on the propensity of importing countries to take countervailing actions. 12/ The antidumping code earns lower marks. The number of cases by code signatories -- 1288 over the seven years 1980-86, more than half of which led to antidumping duties or a restrictive consent arrangement -- is alarming. Even more alarming is the considerable progress the code has made to promote the acceptance by one country of another's trade restricting actions -- as if the objective were to bring order and agreement to the process of closing down the international trading system rather than to keep it open.

It is not hard to explain why the codes have not retarded the spread of trade restrictions. First, the codes provide a more elaborate

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12/ Stern and Hoekman (1987).

specification of the circumstances under which a country could impose trade restrictions. But the specification of these circumstances, while legally complex, incorporates a very narrow economic perspective -- the effects of imports on competing domestic producers. The institutional structure gives voice to no countervailing economic interests, and the more elaborate the institutional structure becomes the harder it is for countervailing interests to make their voices heard.

A related matter: while the intent of the codes drafters may have been to reduce the degree of ambiguity over what "dumping" and other operative terms meant, it seems instead to have submerged an unchanged degree of ambiguity to a much more technical level. William B. Carmichael, drawing on twelve years' experience as head of the Australian Industries Assistance Commission, concluded that "the processes to be followed in antidumping investigations are not amenable to precise and consistent application. This means that the task of administering the legislation is not simply a task of following a set of unambiguous rules. To determine, for example, which good sold in the home market is like the good sold for export involves judgment and discretion about which technical rules to apply. That determination also demands expertise in the application of the technical procedures." (1986, p. 2).

It now requires more, and more expensive legal, accounting, and economic skills to get to the level at which there is ambiguity, i.e., discretion, to be exploited. In short, more elaborate procedures make collective action even more expensive and thus tips the "concentrated vs. dispersed" dimension of the matter even further toward the more concentrated interests, the producer interests. Finally, the creation of more elaborate and more legalistic processes tends to legitimize the

resulting restriction -- in effect, to misuse the public's respect for due process.

IV. VOLUNTARY EXPORT RESTRAINTS

When one recognizes which economic interests are given voice and what property rights are recognized and given exchange value in the GATT, it is easy to understand why the negctiated, or voluntary export restraint has become a popular form of trade restriction. While legally speaking, the GATT consistency of a VER is questionable, a VER is, from a public choice perspective, the ultimate or archetype GATT solution to a trade dispute.

First, a VER displays the involved parties' respect for the mercantilist sense of property rights the GATT negotiating procedure recognizes and reinforces. The country wanting to withdraw access it has previously traded away negotiates to do so, and pays for it through higher price of imports generated by the restricted supply. Within this mercantilist sense of economic welfare, of each nation's property and of what has been exchanged, a VER is the least cost solution for each government -- certainly less costly than the compensation or retaliation that the letter of the GATT suggests. If say, the US "paid for" new limits on imports of Japanese autos by liberalizing imports of Japanese electronics, the US economy would bear the adjustment cost of a shift of resources from electronics to autos, and the US government would have the political problem of explaining why the US electronics industry has to pay for the protection given to autos. The Japanese economy is in the mirror-image situation -- resources would have to move from the autos to the electronics industry. If the US refused to provide compensation and the

Japanese government retaliated against imports of US beef, the situation would be similar. So long as the institutional structure "sells" a mercantilist conception of costs and benefits, a VER, providing compensation through higher auto prices, avoids the political and economic problems that would occur if the "injury" ware borne by one sector and the "compensation" received by another.

GATT's "enforcement" provisions reinforce this mercantilist sense of national property rights. First of all, the power the GATT has been given to enforce its rules is quite different from the way one would think of enforcement in the context of a penal code and a police force. There is no police force. Rather, there is a "dispute settlement" process, whose power over national trade policies is limited to the power of persuasion, armed by appeal to an agreed international standard. Consistent with the absence of police powers, the thrust of the GATT's dispute settlement procedure is toward helping and encouraging the disputing parties to work things out. Robert Hudec, a leading expert on GATT dispute settlement, puts it this way, "The first principle of GATT dispute settlement theory is that a negotiated solution is the best solution." 13/

The procedures themselves are proof that Hudec's interpretation is correct. Under GATT's procedures, the government of a country that felt its "benefits" under the GATT were being "nullified or impaired" by say, a United States action, must begin by asking for consultations with the United States, and the United States is obligated to enter into such consultations. The complaining country, the plaintiff, may refer the matter to the CONTRACTING PARTIES i.e., the entire GATT membership, after

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13/ Hudec 1978, p. 6.

one round of consultation, but normal practice is for several rounds of consultation, sometimes with additional countries participating, and frequently with the informal assistance or good offices of the GATT staff.

If an acceptable solution does not result, the complaining party may notify the CONTRACTING PARTIES that it wishes them to take up the matter. The GATT membership, called the GATT "Council" when they meet to conduct GATT affairs, then appoints a "panel" to look into the matter. A panel includes three to five individuals, but no nationals of countries party to the dispute.

The panel reviews written submissions from the disputant parties, listens to their oral arguments -- generally speaking, does what is necessary to understand the case and to prepare its report. This report presents the facts of the matter as the panel has determined them, the panel's findings and conclusions on how GATT rights and obligations have been affected, and its recommendations for appropriate actions by the parties to the dispute. But the panel's process is as important as its report, and the process is arranged to promote an agreed outcome. The panel is required to consult regularly with the disputants and to give them the opportunity to develop a mutually satisfactory solution. In this spirit, the panel's final report is delivered first to the parties to the dispute. One to two months later, if the dispute has not been withdrawn, the panel report is submitted to the CONTRACTING PARTIES and placed on the Council agenda for discussion. Consensus voting is the normal procedure, hence the report is not considered adopted if any country objects to its acceptance.

If the panel's report is adopted but its recommendations are not implemented within a reasonable period of time, the plaintiff may ask the

CONTRACTING PARTIES to help to find an appropriate solution. Under the GATT the CONTRACTING PARTIES ultimately can authorize the plaintiff to retaliate against the defendant's action. But only once, in 1952, has the dispute settlement procedure gone to that point. 14/ As GATT's drafters intended, a deal of some sort is almost always worked out.

V. CONCLUSIONS

The GATT was built on a mercantilist sense of economic welfare and a mercantilist sense that domestic producers had a higher claim than foreign producers to the domestic market. The trade negotiations process did not attack this claim -- it gave producers in each country an opportunity to increase its value through mutually beneficial exchanges with producers in other countries.

The process worked as long as institutions forced all producers in a country (import competing and exporting) to reach a collective decision on trade policy -- as long as the trade remedies were subjugated by strategic and diplomatic concerns so that they did not provide import competing interests an alternative.

Pressure from import competing producers, whose interests are netted out in the trade negotiations process, eventually expanded the trade remedies into a policymaking institution that now eclipses the trade negotiations. Another mutation of GATT institutions has begun with the development in the United States of "301." "301" provides a way for exporting producers to advance their interests without bearing the burden of suppressing or buying off import competing interests. "301" attacks

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14/ Plank 1987, p. 92.

foreign restrictions not with the possibility of fewer US restrictions, but with the threat of more. Trade remedies processes have been installed in many countries, "301s" should not be far behind.

The GATT system was devised to promote global security and free trade. It has been altered until, in the present system, export interests will generate trade conflicts and import competing interests will generate trade restrictions. Simply put, the institutions that shape the relevant public choices do not bring out the appropriate economic interests, and the resulting policy choices are not those that promote economic efficiency. To a reader familiar with economic history, this should not be a surprise. Institutions do not always get the underlying interests right -- or as Douglas North might put it, not even often. "The fact that growth has been more exceptional than stagnation or decline suggests that 'efficient' property rights are unusual in history." (North, p. 6)

REFERENCES

Baker, James A. III. "Remarks by Secretary of the Treasury James A. Baker III before a Conference Sponsored by the Institute for International Economics," published in Treasury News, Washington, D.C., September 14, 1987.

Blackhurst, Richard. "Strengthening GATT Surveillance of Trade Related Policies," in Hilf and Petersmann, 1988.

Buchanan, James M. "Alternative Perspectives on Economics and Public Policy," Policy Report, Cato Institute, vol. 6, no. 1, pp. 1-5, January 1984.

_____. "The Constitution of Political Economy," American Economic Review, vol. 77, no. 3, pp. 243-250, June 1987.

Carmichael, William B. "Review of the Customs Tariff (Antidumping Act), Submission to the Gruen Review, Canberra, processed.

Chamber of Commerce of the United States. The Omnibus Trade and Competitiveness Act of 1988, Washington, D.C., 1988.

Contracting Parties to the General Agreement on Tariffs and Trade. Basic Instruments and Selected Documents, Twenty-sixth Supplement, Protocols, Decisions, Reports 1978-79 and Thirty-fifth Session, Geneva, March 1980.

Cooper, Richard N. "Trade Policy as Foreign Policy," in Robert M. Stern (ed) U.S. Trade Policies in a Changing World Economy, Cambridge, Mass.: MIT Press, 1987.

Coughlin, Cletus C., Joseph V. Terza, and Noor Aini Khalifah. "The Determinants of Escape Clause Petitions," The Review of Economics and Statistics, vol. 71, no. 2, May 1989, pp. 341-347.

Destler, I.M. American Trade Politics: System Under Stress, Washington, D.C., Institute for International Economics, 1986.

Eichengreen, Barry. "The Political Economy of the Smoot-Hawley Tariff," NBER Working Paper #2001, Cambridge, Massachusetts, August 1986.

Feigenbaum, Susan, Henry Ortiz, and Thomas D. Willett. "Protectionist Pressures and Aggregate Economic Conditions: Comments on Takacs, Economic Inquiry, 23, January 1985, 175-182.

Finger, J. Michael. "Incorporating the Gains from Trade into Policy," The World Economy vol. 5, #4, December 1982.

_____. "Ideas Count, Words Inform," in R.H. Snape (ed) Issues in World Trade Policy, London: Macmillan, pp. 257-280, 1986.

_____. "Protectionist Rules and Internationalist Discretion in the Making of National Trade Policy," in H. J. Vosgerau (ed) New Institutional Arrangements for the World Economy, New York: Springer-Verlag, 1988.

_____. "Antidumping and Antisubsidy Measures," in Finger and Olechowski, pp. 153-161, 1987.

_____. Economists, Institutions and Trade Restrictions: A Review Article, World Bank, PPR Working Paper #WPS78, September.

Finger, J.M. and Andrzej Olechowski (eds). The Uruguay Round: A Handbook for the Multilateral Trade Negotiations, Washington, D.C.: The World Bank.

Goldstein, Judith and Stefanie Ann Lenway. "Interests or Institutions: An Inquiry to Congressional-ITC Relations," International Studies Quarterly, vol. 33, no. 3, September 1989, pp. 303-328.

Grinols, Earl. "Procedural Protectionism: The American Trade Bill and the New Interventionist Mode," paper presented at the NBER, CEPR

International Seminar in International Trade, August 24-25, 1988, Oxford, England.

Hausser, Heinz. "Domestic Policy Foundation and Domestic Policy Function of International Trade Rules," Aussenwirtschaft, vol. 41, no. 2/3, 1986, pp. 171-184.

Hiff, Maynard and Ernst-Ulrich Petersmann. The New GATT Round of Multilateral Trade Negotiations: Legal and Economic Aspects, Kluwer Law and Taxation Publishers, Deventer (The Netherlands), 1988.

Horlick, Gary N. and Geoffrey D. Oliver. "Antidumping and Countervailing Duty Law Provisions of the Omnibus Trade and Competitiveness Act of 1988," in Journal of World Trade, 1989, Vol. 23, No. 3, pp. 5-49.

Hudec, Robert E. Adjudication of International Trade Disputes, London: Trade Policy Research Centre, Thames Essay No. 16, 1978.

_____. "The Legal Status of GATT in the Domestic Law of the United States," The European Community and the GATT, Meinhard Hilf, Francis G. Jacobs and Ernst-Ulrich Petersmann (eds), The Netherlands: Kluwer Law and Taxation Publishers, pp. 187-249, 1986.

_____. Developing Countries in the GATT Legal System, London: Gower for the Trade Policy Research Centre, 1987.

_____. "Reforming GATT Adjudication Procedures: The Lessons of the DISC Case," Minnesota Law Review, no. 72, no. 6, June 1988, pp. 1443-1509.

Hufbauer, Gary C. "Analyzing the Effects of US Trade Policy Instruments," National Science Foundation, Washington, October 1981, mimeograph.

Jackson, John H., Jean-Victor Louis and Mitsuo Matsushita. Implementing the Tokyo Round, National Constitutions and International Rules, Ann Arbor: University of Michigan Press, 1984.

_____. "Comment on 'Protectionist Rules and Internationalist Discretion in the Making of National Trade Policy'," in the New Institutional Arrangements for the World Economy, H.J. Vosgerau (ed), New York: Springer-Verlag, 1988.

Moser, Peter. "Does GATT Matter: The Effect of the GATT on US Trade Policy," Center for the Study of Public Choice, Fairfax, Virginia, July 1988, manuscript.

North, Douglas C. Structure and Change in Economic History, New York: W.S. Norton, 1981.

Olson, Mansur. The Logic of Collective Action: Public Goods and the Theory of Groups, New York: Schocken Books, 1968.

Plank, Rosine. "An Unofficial Description of How a GATT Panel Works and Does Not," Swiss Review of International Competition Law, no. 29, March; reprinted in the Journal of International Arbitration, vol. 4, no. 4, pp. 53-102, 1987.

Roessler, Frieder. "The Constitutional Function of International Economic Law," Aussenwirtschaft, vol. 41, no. 2/3, pp. 303-328, 1986.

Salvatore, Dominick. "Import Penetration, Exchange Rates, and Protectionism in the United States," Journal of Policy Modeling, 9 Spring 1987, 125-141.

Stern, Robert and Bernard Hoekman. "The Codes Approach," in Finger and Olechowski, chapter 9, 1987.

Takacs, Wendy E. "More on Protectionist Pressure and Aggregate Economic Conditions: A Reply," Economic Inquiry 23, January 1985, 183-184.

_____. "Pressures for Protectionism: An Empirical Analysis," Economic Inquiry, 19 October 1981, 687-693.

Tumlir, Jan. Economic Policy as a Constitutional Problem, Fifteenth Wincott Memorial Lecture delivered at the Royal Society of Arts, October 25, 1984, Institute of Economic Affairs, for the Wincott Foundation, London.

_____. Protectionism, American Enterprise Institute, Washington, D.C. 1985.

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