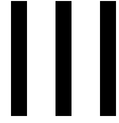


POLARIZATION: 1995–

9

The Decline of Traditional Protectionism

The decade following completion of the North American Free Trade Agreement (NAFTA) and the Uruguay Round brought no comparable breakthroughs in American trade policy. During this period, the United States reestablished itself as the world's leading economic power, with rejuvenated productivity and growth. But there were no major new multilateral trade deals, though several sectoral agreements were concluded. A narrow group of industries, mainly steel, continued to exploit antidumping laws. The new World Trade Organization (WTO) established a credible dispute settlement process, and its membership grew to 148 countries by the end of 2004. Particularly notable was the entry in 2001 of the People's Republic of China after that nation had concluded a broad market-opening deal with the United States two years earlier.

World trade continued to grow—and US trade continued to expand as a share of national production. After receding in the early 1990s, the US trade deficit rose to heights that dwarfed those of the 1980s, both in absolute terms and as a proportion of total trade and GDP. Yet the new import surge did not trigger the sort of broad protectionist response that dominated the earlier high-deficit period of the mid-1980s. Only steel mounted a strong campaign for new trade relief, winning a number of antidumping cases and securing significant—albeit temporary—escape clause protection from President George W. Bush in 2002. Other indus-tries pursued mixed strategies. Even textiles, faced with the phaseout of quotas under the Multi-Fiber Arrangement (MFA), emphasized free trade agreements that encouraged

processing of US fiber and cloth in partner nations. Concerns did mount sharply in early 2005 about the US-China trade imbalance and the low fixed exchange rate of China's currency, the renminbi. They were voiced particularly by members of Congress and by Americans worried about the financial risks posed by global imbalance.[1] The mainstream business community was significantly less engaged in the issue, however, than it had been about the overvalued dollar 20 years before.

The weakness of traditional business protectionism was the product of the broader globalization process—major US firms overwhelmingly saw their futures as intertwined with global markets. But if capital was internationally mobile, labor was not. US production workers continued to suffer losses from trade competition, and the AFL-CIO remained a foe of new trade liberalization. Its resistance helped limit further reduction of US trade barriers, notwithstanding structural shifts within the business community. But the major new challenges to trade liberalization were the rising concerns over the impact of trade on labor and the environment, and the deepening of partisanship in Washington.

From the Nixon presidency through the early years of the Clinton administration, a pervasive sense of national decline burdened US trade policy. US growth performance was inferior to that of major trading partners. As a result, other nations—and Japan in particular—were seen as overtaking the United States. President George H. W. Bush's trip to Tokyo seeking trade concessions in January 1992 came to symbolize the perceived US plight. East Asia expert Chalmers Johnson spoke for many with his pithy aphorism, "The Cold War is over; Japan won."

Initially the Clinton administration accepted this view and gave, in the new president's words, "heightened" attention to the US-Japan economic relationship.[2] Enormous senior-level negotiating energy yielded modest results, epitomized by the resolution of a particularly fractious dispute over auto trade in June 1995 in which both sides claimed victory.[3] But even as the trade negotiators were climbing down from confrontation, their nations' economic fortunes were reversing themselves. Japan, beset

1. C. Fred Bergsten, "An Action Plan to Stop the Market Manipulators Now," *Financial Times*, 14 March 2005.

2. I. M. Destler, *The National Economic Council: A Work in Progress* (Washington, DC: Institute for International Economics, Policy Analyses in International Economics 46, November 1996), especially 37–38.

3. Leonard Schoppa, *Bargaining with Japan: What American Pressure Can and Cannot Do* (New York: Columbia University Press, 1997), chapter 9; I. M. Destler, "Has Conflict Passed Its Prime? Japanese and American Approaches to Trade and Economic Policy," *Maryland/Tsukuba Papers on U.S.-Japan Relations*, I. M. Destler and Hideo Sato, eds., Center for International and Security Studies at Maryland (March 1977), 21.

by the bursting of bubbles in land and stock prices, and resulting weakness in its banking system, suffered its worst economic decade since World War II and its aftermath. The United States, by contrast, was reaping the benefits of the revolution in information technology to a degree few had anticipated.[4]

Economic Resurgence

For the United States, the economic numbers were of a sort undreamed of since the stagflation of the 1970s. The annual unemployment rate dropped below 5 percent for five consecutive years (1997–2001); the last time it had been that low for even a single year was 1973. Yet prices remained stable—increases in the Consumer Price Index averaged 2.6 percent and never reached 3.5 percent over 1991–2002. And growth in GDP averaged 4.1 percent in 1996–2000, even though unemployment was low at the beginning of this period.[5] Over 1994–2003, growth in the United States substantially exceeded that of Europe and Japan for the first time since the 1940s.[6]

With the growth of the economy came an even more rapid rise in international commerce. From 1992 to 2000, total US merchandise trade (exports plus imports, measured in current dollars) more than doubled. The increase was greater than any since the 1970s and early 1980s, when inflation ballooned all trade statistics.

How could the US economy do so well? Inflation was certainly dampened by global competition—producers faced severe losses in market share if they increased their prices. But the underlying cause was a surge in business productivity. Just as the productivity slowdown starting in 1973 had been a source of economic woe thereafter, a surge in output per hour now brought unexpected gains. Driven by the application of computer technology, business productivity began in 1996 to post regular annual gains in the neighborhood of 2 percent plus. From 1997 to 2002, productivity jumped by 16.3 percent, the greatest five-year gain since the 1960s. As this indicates, the productivity surge continued unabated into the 21st century, even though overall US economic performance fell off beginning in late 2000.[7] (In 2001–02, both exports and imports were below 2000 levels.)

All Americans have not gained from this overall resurgence, of course. For more than a quarter century, US income distribution has been growing

4. For a comprehensive comparison of the two economies during the 1990s, see C. Fred Bergsten, Takatoshi Ito, and Marcus Noland, *No More Bashing: Building a New Japan–United States Economic Relationship* (Washington, DC: Institute for International Economics, 2001), chapters 1–3.

5. *Economic Report of the President*, February 2005, tables B-42, B-64, and B-4.

6. US GDP growth averaged 3.3 percent a year. For the European Union, that figure was 2.3 percent and for Japan, 1.2 percent (*Economic Report of the President*, February 2005, table B-112, and, 2003, table B-112.)

7. *Economic Report of the President*, February 2005, tables B-49 and B-50.

less equal. In particular, globalization has favored those with education and skills, while the incomes of males with just a high school education have suffered an absolute decline.[8] Indeed, the very flexibility and market orientation that has enabled Americans to exploit the computer age more effectively than have Europeans and Japanese has also generated greater income inequality. Drawing on "globalization balance sheet" studies at the Institute for International Economics and a broader survey of relevant economic literature, J. David Richardson finds that "Americans with average skills, women, blue-collar union members, and insular communities . . . seem to be on the periphery of globalization's gains."[9] They suffer from both competitive pressure on wage levels and a greater possibility of job displacement. However, as the productivity surge continues, it generates overall national gains sufficient to cushion such losses—a matter that will be addressed in chapter 12.

The resurgence of the US economy assuaged American fears of being supplanted by other advanced industrial nations. It did not, however, have a major positive impact on US trade politics or policy. In fact, the decade that followed the Uruguay Round proved one of modest accomplishment. It would take seven years to launch a new global trade round, and eight years to renew fast-track negotiating authority. And neither of these steps would be accomplished under Bill Clinton.

Clinton and Barshefsky: Business (Mostly) As Usual

In early 1996, Secretary of Commerce Ron Brown died in a plane crash during an official mission to Croatia. US Trade Representative (USTR) Mickey Kantor was named to succeed him, and his deputy, Charlene Barshefsky, assumed the USTR position—for a year in an acting capacity, thereafter with Senate confirmation and the full authority of the office. She held the post until the end of the Clinton administration. Like most USTRs, she lacked a strong relationship with the president of the sort that Kantor had enjoyed. She was regarded as more trade centered and less partisan, however, which made it easier for her to work with the Republican majorities in Congress.

There was unfinished business from the Uruguay Round, and US negotiators completed much of it. An Information Technology Agreement was negotiated in 1996 and went into effect the following year. It provided for reciprocal elimination of tariffs on information technology prod-

8. See, for example, Frank Levy and Richard J. Murnane, "Got a Routine Job? Not for Long," *Washington Post*, Outlook Section, 4 July 2004, 3.

9. J. David Richardson, *Global Forces, American Faces: US Economic Globalization at the Grass Roots* (Washington, DC: Institute for International Economics, January 2005 draft), 6.

ucts by countries constituting at least 90 percent of global trade in these products. This was followed in February 1997 by an Agreement on Basic Telecommunications Services, under which 69 nations constituting over 90 percent of global telecommunications revenues made commitments to liberalize regulation and improve market access in a sector long characterized by heavy-handed governmental restrictions. An Agreement on Financial Services, completed in December 1997, opened the major world markets in such areas as banking, securities, insurance, and financial data.

Barshefsky's USTR was effective in negotiating these accords, and her personal persistence was critical to the greatest trade policy achievement of her tenure—completion in 1999 of a comprehensive, market-opening agreement with the People's Republic of China that was a prerequisite to that country's entry into the WTO.[10] But there was little progress toward fulfillment of the two broad US regional commitments of 1994—free trade within the Asia Pacific Economic Cooperation (APEC) forum, and the projected Free Trade Area of the Americas (FTAA). NAFTA was implemented on schedule, with some fractious exceptions involving Mexican tomatoes and trucks, and US-Mexican trade grew enormously. But the treaty remained controversial, particularly after the peso crisis of 1994–95 turned the bilateral trade balance from a projected modest surplus to a substantial and persistent deficit.

The USTR under Barshefsky completed a free trade agreement with Jordan in October 2000, and launched talks on a free trade agreement with Singapore and Chile during its final year. Overall, however, with the important exception of the China deal, the Clinton administration proved more effective in completing the work of its predecessors than in carrying out major new initiatives.

Trade Remedies, Especially Antidumping

Continuity was also the rule in the use of trade remedy procedures. As shown in table 9.1, resort to the standard escape clause (Section 201) remained minimal—no more than two cases in any year. There was a slight rise in countervailing duty (CVD) petitions in 1998–2001,[11] but the numbers were a fraction of those in the early 1980s. The main action remained in the venerable sphere of antidumping.[12]

10. See chapter 10 for details. That chapter also discusses the two prominent Clinton administration failures: its campaign to renew fast-track trade authority and its effort to launch a new global trade round.

11. Typically, two-thirds of them (36 of 54) involved steel products.

12. The case data underlying the numbers presented here are posted on the Web site of the Institute for International Economics, www.iie.com.

Table 9.1 Antidumping, countervailing duty, and Section 201 investigations initiated from 1979 to 2004

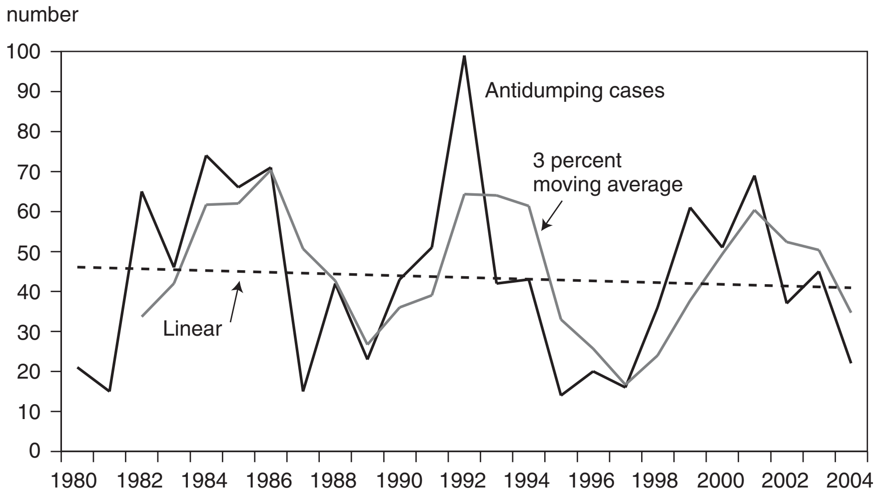
Year	Antidumping cases	Countervailing duty cases	Section 201 cases
1979	26	40	4
1980	21	14	2
1981	15	22	1
1982	65	140	3
1983	46	22	0
1984	74	51	7
1985	66	43	4
1986	71	27	1
1987	15	8	0
1988	42	11	1
1989	23	7	0
1990	43	7	1
1991	51	8	0
1992	99	43	1
1993	42	5	0
1994	43	7	0
1995	14	2	1
1996	20	1	2
1997	16	6	1
1998	36	12	1
1999	61	16	2
2000	51	12	2
2001	69	13	1
2002	37	5	0
2003	45	6	0
2004	22	4	0
Total	**1,113**	**532**	**35**

Sources: Author's calculations, based on tallies from the US International Trade Commission (especially its annual *The Year in Review* reports); ALLAD-Casis and ALLCVD databases; Bruce Blonigen, US Antidumping Case-Specific Data, 1980–85; and the *Federal Register*.

As analyzed in chapter 6, US officials resisted—and largely offset—a major international effort during the Uruguay Round to constrain the use of the antidumping remedy. The details of this effort, within the executive branch and in "nonmarkup" drafting sessions with Congress, are set forth admirably and persuasively by Robert E. Cumby and Theodore H. Moran.[13] But at the time, the net effect did not appear to this author to make relief easier to obtain, and experience since then supports this assessment. The number of new antidumping cases dropped sharply in 1995–97, then rose sharply in the next four years. A simple statistical "t-test" indicates no

13. See Cumby and Moran, "Testing Models of the Trade Policy Process: Antidumping and the 'New Issues,'" chapter 6 in Robert Feenstra, ed., *The Effects of U.S. Trade Protection and Promotion Policies* (Chicago: University of Chicago Press for the National Bureau of Economic Research, 1997).

Figure 9.1 Total antidumping cases, 1980–2004



trend (upward or downward) in the numbers of cases submitted over the 1980–2002 period and no significant change either way under the new rules enacted in 1994 (figure 9.1). This stands in contrast to the general increase following the legislative changes of 1974 and 1979 and the transfer of administrative authority to the Department of Commerce in 1980.

The pattern of disposition of the cases was essentially unchanged as well (table 9.2). Department of Commerce findings of "no dumping" became even rarer (5 percent over 1980–2003, and 3 percent over 1995–2003); findings by the US International Trade Commission of "no injury" rose slightly (to 44.3 percent for 1995–2003, compared with 43.2 percent for the entire period). The net effect was basically a wash—51.8 percent of all antidumping cases carried to completion led to imposition of antidumping duties over the full period, and 52.6 percent after 1994.[14]

More than ever, the primary US user of the antidumping remedy was now the steel industry (498 of 1,067 cases since 1980, 186 of 349 after 1994). And the disposition was similar, though a large percentage of no-injury

14. Using a slightly different database for numbers of antidumping cases, Douglas Irwin has reached conclusions that go beyond the above but are not inconsistent with this analysis. He finds that "the number of imported products involved [in antidumping cases] has actually fallen since the mid-1980s," and that one important cause of "the increased number of cases in recent decades" is the rise of "petitions that target multiple source countries." He finds that "the annual number of antidumping cases is influenced by the unemployment rate, the exchange rate, import penetration . . . and changes in the antidumping law and its enforcement in the early 1980s." See *The Rise of U.S. Antidumping Actions in Historical Perspective*, National Bureau of Economic Research Working Paper 10582, June 2004.

Table 9.2 Antidumping cases and results, 1980–2003

				Cases affirmed		No dumping		No injury	
Year	Total	Cases withdrawn	Cases completed	Number	Percent	Number	Percent	Number	Percent
1980	21	9	12	4	33.3	1	8.3	7	58.3
1981	15	4	11	7	63.6	1	9.1	3	27.3
1982	65	24	41	14	34.1	3	7.3	24	58.5
1983	46	5	41	19	46.3	5	12.2	17	41.5
1984	74	41	33	9	27.3	6	18.2	18	54.5
1985	66	16	50	29	58.0	2	4.0	19	38.0
1986	71	7	64	44	68.8	3	4.7	17	26.6
1987	15	1	14	9	64.3	0	0.0	5	35.7
1988	42	0	42	22	52.4	3	7.1	17	40.5
1989	23	3	20	14	70.0	0	0.0	6	30.0
1990	43	2	41	19	46.3	5	12.2	17	41.5
1991	53	4	49	24	49.0	2	4.1	23	46.9
1992	99	11	88	45	51.1	1	1.1	42	47.7
1993	42	6	36	19	52.8	2	5.6	15	41.7
1994	43	3	40	21	52.5	1	2.5	18	45.0
1995	14	1	13	8	61.5	0	0.0	5	38.5
1996	20	0	20	17	85.0	1	5.0	2	10.0
1997	16	1	15	8	53.3	0	0.0	7	46.7
1998	36	0	36	22	61.1	0	0.0	14	38.9
1999	61	4	57	24	42.1	1	1.8	32	56.1
2000	51	0	51	34	66.7	5	9.8	12	23.5
2001	69	6	63	23	36.5	1	1.6	39	61.9
2002	37	4	33	13	39.4	0	0.0	20	60.6
2003	45	10	35	21	60.0	2	5.7	12	34.3
Total	**1,067**	**162**	**905**	**469**	**51.8**	**45**	**5.0**	**391**	**43.2**

Sources: US International Trade Commission, annual *The Year in Review* reports; Bruce Blonigen, US Antidumping Case-Specific Data, 1980–85; and the *Federal Register*.

findings in 2001 and 2002 drove the overall steel success rate down below 50 percent (table 9.3). Steel also continued to be the principal source of year-to-year variation in cases submitted.

One product of the Uruguay Round agreements was a "sunset" requirement—antidumping orders could no longer remain in place indefinitely, but had to be reviewed every five years. Typically, the Clinton administration leaned against this reform by delaying sunset reviews to the last feasible time period allowed, but the result was still a sharp drop in antidumping orders in effect between 1998 and 2000. At the end of 2003, there were 291 operative antidumping orders (including eight suspension agreements), down from the 1998 peak of 313 (figure 9.2).

In summary, the US antidumping process continued to be biased against defendants, as discussed in chapter 6. But it also continued to be marginal insofar as overall US trade was concerned.[15]

15. In "Testing Models of the Trade Policy Process," Cumby and Moran assert that the Clinton administration's action under congressional pressure to reinforce the antidumping laws

Table 9.3 Steel antidumping cases and results, 1980–2003

Year	Total	Cases withdrawn	Cases completed	Cases affirmed		No dumping		No injury	
				Number	Percent	Number	Percent	Number	Percent
1980	9	8	1	0	0.0	1	100.0	0	0.0
1981	6	2	4	3	75.0	0	0.0	1	25.0
1982	49	24	25	7	28.0	1	4.0	17	68.0
1983	15	3	12	8	66.7	1	8.3	3	25.0
1984	52	38	14	2	14.3	2	14.3	10	71.4
1985	40	14	26	16	61.5	1	3.8	9	34.6
1986	12	3	9	8	88.9	0	0.0	1	11.1
1987	2	0	2	1	50.0	0	0.0	1	50.0
1988	5	0	5	3	60.0	1	20.0	1	20.0
1989	1	0	1	0	0.0	0	0.0	1	100.0
1990	7	0	7	0	0.0	3	42.9	4	57.1
1991	11	0	11	9	81.8	0	0.0	2	18.2
1992	66	0	66	34	51.5	0	0.0	32	48.5
1993	13	2	11	6	54.5	1	9.1	4	36.4
1994	24	1	23	10	43.5	1	4.3	12	52.2
1995	4	0	4	1	25.0	0	0.0	3	75.0
1996	6	0	6	5	83.3	0	0.0	1	16.7
1997	11	0	11	6	54.5	0	0.0	5	45.5
1998	24	0	24	17	70.8	0	0.0	7	29.2
1999	35	0	35	17	48.6	0	0.0	18	51.4
2000	36	0	36	28	73.3	1	3.3	7	23.3
2001	46	3	43	9	20.0	1	0.0	33	80.0
2002	17	1	16	3	18.8	0	0.0	13	81.3
2003	7	0	7	5	71.4	0	0.0	2	28.6
Total	**498**	**99**	**399**	**198**	**49.6**	**14**	**3.5**	**187**	**46.9**

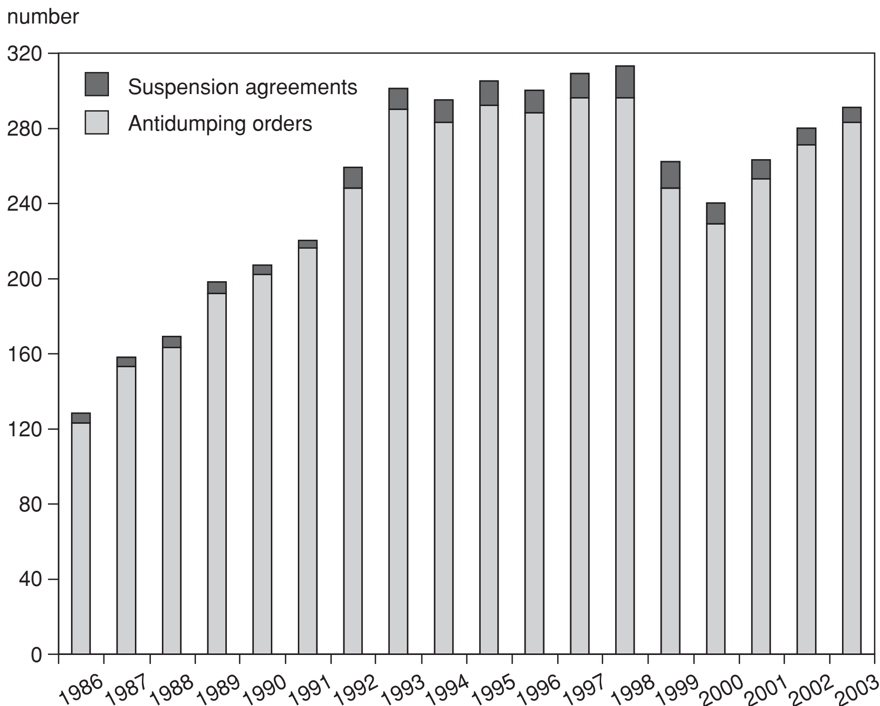
Note: All suspended cases are counted as completed and affirmative.

Sources: US International Trade Commission, annual *The Year in Review* reports; Bruce Blonigen, US Antidumping Case-Specific Data, 1980–95; and the *Federal Register*.

goes against the "model" of "protection for Congress," developed in chapter 2 of this book, that features congressional deference to executive branch decisions, and executive branch exploitation of this deference to move trade policy in a liberal direction through negotiated reductions in US trade barriers. They are right in the sense that Congress was not deferential and that the Kantor USTR Office did not tilt in the liberal direction on antidumping. However, the model developed in chapter 2 explicitly includes administrative remedies (see "the rules," pp. 21–24 and subsequent sections) as an important element of the system, a counterbalance to its generally liberal tilt, allowing for protection in exceptional cases for producers following procedures defined in trade statutes. And as set forth in chapter 6, Congress has regularly made trade protection easier to obtain under these statutes—in particular in the 1974 law authorizing the Tokyo Round agreements and the 1979 law implementing them. Thus, antidumping has always been part of the broader US trade policymaking system, and it has never (since the Kennedy Round, at least) been a sphere where Congress granted leeway to the leadership of the executive branch.

There is another reason, however, to believe that the model set forth in chapter 2 is of diminishing utility in explaining US trade policymaking. This is the decline of traditional, business-based protectionism as the overriding political problem that policy must address. Chapter 12 considers the implications.

Figure 9.2 Number of antidumping orders and suspension agreements in effect, 1986–2003



Source: US International Trade Commission, annual *The Year in Review* reports, 1987–2003.

The most visible change in US antidumping law since 1995 has been the "Byrd amendment," which provides that the proceeds of antidumping duties be passed on to the petitioners. This was neither proposed nor reviewed by the trade policy committees but rather was slipped into a 2000 appropriations bill by the crafty senior senator from West Virginia, Robert Byrd. Once enacted, it proved difficult to remove. But it also highlighted the increasing challenge to US trade remedy laws powered by a new force in the global trade regime: the WTO's dispute settlement procedures that came into existence in 1995. Within months of its enactment, the Byrd amendment was challenged by 11 nations as inconsistent with the Uruguay Round antidumping agreement. In January 2003, it was ruled a violation of US trade commitments under that agreement.

The World Trade Organization

When the Reagan administration was dissatisfied with Japanese implementation of the bilateral semiconductor agreement in the spring of 1987,

it imposed sanctions (100 percent tariffs on selected electronic products) under Section 301 of the Trade Act of 1974. These sanctions survived, in modified form, for the life of the agreement. When the Clinton administration was dissatisfied with what it saw as Japanese intransigence on market access for autos and auto parts in the spring of 1995, it also imposed sanctions under Section 301—100 percent tariffs on imports of luxury automobiles. This time, however, the government of Japan launched a WTO case charging the United States with breach of its trade obligations. Within weeks, the United States settled for far less than it had sought, the sanctions were lifted, and the WTO case became moot.

Why the difference? In both situations, the US sanction was inconsistent with a binding international tariff commitment. But in the former case the Japanese had no recourse, as the dispute settlement process operative through 1994 under the General Agreement on Tariffs and Trade (GATT) gave the defendant nation the power to block a decision. The WTO's dispute settlement mechanism removed this power, as the United States in fact had sought. The Japanese case against US auto sanctions was only the sixth filed with the fledgling organization, but the parameters were clear to both parties. The United States could no longer retaliate, unilaterally, without the risk of being "taken to court" and losing.

Thus the dispute settlement mechanism took the bite out of Section 301. The United States no longer had the leeway to retaliate against foreign impediments to US exports that it deemed "unreasonable." Beginning in 1995, Section 301 cases against WTO members were overwhelmingly channeled through the WTO process.[16] And such cases were frequent: From 1995 to the end of the Clinton administration, the United States submitted 68 complaints to the WTO, an average of 11 per year. During the first Bush term, by contrast, the United States filed just 12 cases, or three per year.

The new dispute settlement mechanism proved popular with other nations as well. A total of 324 cases were filed as of 31 December 2004, an average of 32 per year. Over half (168) involved the United States, 80 as plaintiff and 88 as defendant. And the frequency of other nations' cases against the United States has been increasing. During the six Clinton years, 50 complaints (8.3 per year, on average) were filed against the United States by other countries. This rose to 9.5 per year (38 in all) in President Bush's first term.

When the USTR took other nations to court, the new organization proved an effective instrument of US trade policy. Of the 22 cases the USTR brought before the WTO as of 31 December 2004 that were litigated

16. Of the 25 Section 301 investigations launched from 1995 through 2001, 17, or 68 percent, were brought to the WTO.

to completion, 18 were decided in favor of the United States.[17] This added up to an impressive 82 percent overall success rate. Among the more prominent were early challenges to the European Union on its ban on imports of beef grown with hormones, and its system for the importation of bananas. A more recent case involved Japanese restrictions on the import of apples.

But when the tables were turned, and other nations brought cases against the United States, US law or practice was usually found wanting. The United States was found in violation of its trade obligations in 74 percent (25 of 34) of WTO panel or appellate body decisions reached by January 2005.[18] Prominent among these were a European challenge to the US system of subsidizing exports through a favorable tax treatment regime (the foreign sales corporation, or FSC), a US law banning imports of shrimp not caught with turtle-excluder devices, and President George W. Bush's decision in 2002 to impose Section 201 (escape clause) safeguards on certain imports of steel.[19]

A nation that loses a WTO case is obligated to change its law or practice to bring it into line. But in contrast to, say, a US Supreme Court decision invalidating a specific US statute, compliance does not flow directly from a WTO decision. Rather, the ball passes back to the national government, which may or may not act. If it does not, the plaintiff is entitled to retaliate, and a separate WTO process is available to determine the damage done by the barrier and hence the damage the plaintiff can do in return. Overall, compliance has been the norm: "In a majority of cases over the last seven years where the complaining country won a WTO dispute, the losing state removed or revised the offending trade barriers."[20] High-profile cases can be harder, however. In the beef hormones case, the European Union has failed to comply, accepting instead imposition of equivalent trade barriers by the United States (and Canada). Since July 1999, the

17. This counts as single cases those submitted separately but reviewed together (e.g., three linked cases against the EU's import regime for bananas). If such cases are counted individually, the United States won 22 and lost six, a success rate of 79 percent. This excludes 25 (27) that were negotiated, nine that are pending , and 14 (16) that are inactive. The case data upon which these summary statistics are based are posted at www.iie.com.

18. If cases are counted individually (e.g., the eight separate country filings in 2002 against US steel safeguards), the United States won nine and lost 37, or 80 percent of WTO cases that were litigated to completion. Excluded are 14 (16) cases that were negotiated, 17 that are pending, and nine that are inactive.

19. The Bush administration reported, in mid-2004, an overall WTO won-lost record of 13–10 (56 percent) during its tenure, and 18–15 (54 percent) during the Clinton years. See "Real Results: Leveling the Playing Field for American Workers and Farmers," Trade Facts Press Release, Office of the US Trade Representative, 8 July 2004.

20. Susan Esserman and Robert Howse, "The WTO on Trial," *Foreign Affairs*, January/February 2003, 132–33.

United States has imposed 100 percent duties on imports of selected products of EU countries, adding up to $116.8 million in value. On the banana case, the first European response was judged inadequate by the WTO; thereafter the United States and the European Union resolved the matter in bilateral negotiations.

The US compliance record is likewise mixed, even allowing for the delays needed to enact legislation. Action was prompt when the WTO ruled that President Bush's steel tariffs were improperly imposed and the European Union threatened sanctions—Bush simply ended his tariffs, declaring that they had accomplished their purpose (and mentioning neither the WTO nor the European Union in his short statement). Compliance was dragged out on eliminating the FSC—members of Congress agreed on the goal but differed on the means—and the European Union began imposing escalating retaliatory tariffs in early 2004 to spur US action. The United States has complied by changing standards for reformulated gasoline found to discriminate against imports and changing the law requiring turtle-excluder devices for shrimp harvesting so that it did not favor certain countries over others. More elusive has been action to repeal the Byrd amendment. Overall, looking at decisions more than two years old, the United States has complied in 16 of 21 cases.[21]

Has the cumulation of decisions against the United States provoked a broad reaction against the WTO? To date, the answer is no—opinion surveys show no decline in general public support.[22] Advocates of US trade remedy laws—antidumping in particular—have expressed concern from the outset: When Senator Bob Dole (R-KS) won President Clinton's endorsement of his proposal for a "WTO Dispute Settlement Review Commission"[23] in late 1994, he had defense of US "unfair trade" laws in mind. But when the House first voted in 2000 on whether to withdraw from the organization, as required by the Gingrich amendment (described in chapter 8), only 56 members voted in favor (33 Republicans, 21 Democrats, two independents). Since that vote, however, US losses in WTO cases have continued to mount, and the preponderance of them have involved antidumping, countervailing duties, or safeguard actions. Moreover, of the 17

21. These are cases that the United States lost on core issues, which ended before 31 December 2002. The United States has been noncompliant in three cases (WT/DS176–United States–Section 211 Omnibus Appropriations Act; WT/DS184–United States–Antidumping measures on certain hot-rolled steel products from Japan; and WT/DS217 & DS234–United States–Continued Dumping and Subsidy Offset Act of 2000 [Byrd Amendment]), and has complied partly in two cases.

22. When asked in 2003–04 whether "the US should comply" if "the World Trade Organization . . . rules against the US," 67 percent of respondents said yes, up slightly from 65 percent in 1999. See Program on International Policy Attitudes (PIPA), *Americans on Globalization: A Study of US Attitudes on Globalization*, 22 January 2004, 8.

23. The proposal was never enacted. See pages 227–28, chapter 8 for details.

cases pending against the United States as of the end of 2004, all but three involved those same three areas. So it is plausible to expect a somewhat larger anti-WTO vote when the issue comes up automatically again in 2005.

Like the US Supreme Court, at times, the WTO and its appellate body have been charged with "judicial activism"—a tendency to overinterpret the trade agreements it is enforcing rather than defer to national authorities in ambiguous cases. This charge has focused particularly on national procedures enforcing trade remedies: For example, there is nothing in the Uruguay Round agreements that explicitly outlaws channeling antidumping proceeds to successful plaintiffs, however opprobrious critics may find the practice.

The larger WTO problem, however, is structural imbalance: The efficient and binding dispute settlement problem is married to a highly cumbersome and inefficient "legislative" process.[24] The WTO capacity to make new rules or amend old ones is constrained by the norm of consensus decision making among its 148 members. In practice, trade rules are rarely amended except as the outcome of global trade rounds, with more than a decade from one to the next.[25] And the path to such agreements is not straight, as reflected in the failures of key GATT and WTO Ministerial Meetings in 1982, 1990, 1999, and 2003. Hence the WTO lacks the capacity to rein in its judges if they do not show restraint.

Adverse WTO decisions also pose a challenge to the trade policy process in the United States when they find US statutes inconsistent with trade obligations. In such cases, the president and the USTR must seek direct legislative action, and Congress must therefore take the heat for changes. Nor is it usually possible to subsume such changes within broad trade legislation, since major trade bills are years apart. It is therefore no surprise that all three cases of clear US noncompliance call for legislative action.

Reemergence of the Trade Deficit—and Its Lesser Political Impact

Driven by a strong dollar, the US merchandise trade deficit soared in the 1980s to unprecedented, 12-digit dimensions. Industry after industry was

24. Highlighting this imbalance from different perspectives are Claude Barfield, *Free Trade, Sovereignty, Democracy: The Future of the World Trade Organization* (Washington, DC: American Enterprise Institute Press, 2001), and Theodore R. Posner and Timothy M. Reif, "Homage to a Bull Moose: Applying Lessons of History to Meet the Challenges of Globalization," *Fordham International Law Journal* 24, November–December 2000. See also John H. Jackson, "The Role and Effectiveness of the WTO Dispute Settlement Mechanism," *Brookings Trade Forum 2000* (Washington, DC: Brookings Institution, 2001), 179–220.

25. The Kennedy Round was concluded in 1967, the Tokyo Round in 1979, the Uruguay Round in 1994. The Doha Round will not be wrapped up before 2006 at the earliest.

hit, and demanded trade protection: textiles, steel, autos, shoes, machine tools, semiconductors, etc. The Reagan administration resisted to some degree, but also granted some form of trade relief to most of them.

The trade deficit receded late in that decade, facilitating compromises in (and enactment of) trade legislation in 1988. The deficit dropped below $100 billion in 1991 and 1992 and grew only modestly through 1997. Thereafter it skyrocketed—from $198.1 billion in 1997 to $452.4 billion in 2000, $549.4 billion in 2003, and $665 billion in 2004.[26] In that year, the United States imported $1.473 trillion in goods and exported just $808 billion.

In absolute terms, this deficit dwarfed the $159.6 billion that had triggered so much anxiety in 1987. But total US trade had soared also, roughly tripling between 1987 and 2000. As a proportion of trade, the deficit was comparable in those years—24 percent in 1987 and 23 percent in 2000. But it reached a new peak of 29 percent in 2004, meaning that the country imported more than $9 in goods for every $5 that it exported, a truly remarkable ratio. As a proportion of GDP, the deficits of the early 21st century came to exceed their 1980s counterparts, reaching a record 5.7 percent in 2004.

The deficits were and are a macroeconomic phenomenon, and the proximate causes varied.[27] Throughout, they reflected an unpleasant reality: Americans were saving too little, and consuming more than they were producing. But such lofty explanations were no consolation to US-based goods producers who felt the heat. And for them, the new deficits were at least comparable to the 1980s. Looking directly at the goods with which domestic producers competed, the value of imports rose 83 percent from 1994 to 2000, compared to 81 percent from 1982 to 1988.

And just as in the early 1980s, the rising dollar meant that the dollar statistics understated the increase in import volume, because they came in at lower prices. If we look at a better measure of quantity—price-deflated import data—we find greater impact. From 1982 to 1986, the value of US imports rose by 48 percent, but the quantity went up 65 percent. From 1996 to 2000, the value of US imports rose by 52 percent, but the quantity (measured in chained 2000 dollars) went up 63 percent.

Finally, if we use quantity measures again and look at the ratio of imports to US goods production—a good proxy for overall market pressure

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26. See table 3.1 in chapter 3. Here and throughout, this book focuses on the trade balance in goods, not the overall balance in goods and services now highlighted by the Department of Commerce, nor the still broader balance on the current account. The reason is that trade policy is still mostly about goods (though services have undeniably grown in importance), and the products and producers in farms and factories have dominated the trade policy process.

27. In the late 1990s, a strong dollar, a surge in investment that precipitated capital inflows, and the Asian financial crisis dampened exports. By 2003, the new Bush budget deficit was an important contributor, as was Reagan's before.

on domestic producers—we find that this ratio rose from 27.5 to 36.1 between 1996 and 2000 before leveling off at 36.5 in 2003.[28]

Thus, in terms of increases in import pressure, the late Clinton years look very much like the middle Reagan years. Yet the political response was very different. In the first period, multiple industries sought protection, Congress seized the initiative in trade policy, and many experts trembled over whether open US policies could survive. In the second period, only one dog barked—steel. It had won comprehensive (if temporary) protection under Reagan from 1985 onward in the form of a number of export restraint agreements with key producers. But steel won no such protection under Clinton (aside from a number of antidumping cases), and just 21 months of relief from George W. Bush, who imposed tariffs on a range of steel products in March 2002 but removed them in December 2003 after a WTO finding that they were illegal.

Why weren't more injured claimants demanding import relief post-1995? One reason was certainly the overall strength of the US economy as compared with the mid-1980s: With a happier economic mood, campaigns for trade relief were harder to sustain. Together with this was the fading of the prime trade "adversary," Japan (though China seemed poised to take its place). But there was also precious little new business protectionism after the stock market bubble burst in 2000 and the economy entered recession and slow growth in the early George W. Bush years.

Textiles? Its leaders were certainly concerned about trade, and sought to shape trade rules to their advantage. But as they lost the MFA, and failed to get its phaseout period extended beyond 2004, they were crafting a very sweet deal for themselves in NAFTA by focusing on a relatively arcane matter: its "rules of origin."[29] Since the member nations were eliminating tariffs among themselves but maintaining different tariff levels vis-à-vis the outside world, they needed criteria to determine whether a good crossing an intra-NAFTA border came from inside or outside the NAFTA region. The question is complicated by the globalization of manufacturing: A product may draw its main raw material from country A, be assembled in country B with inputs from countries C and D, etc. For autos, NAFTA used a percentage rule: A car was North American in origin if 62.5 percent of its value was added within the region.[30]

28. This was parallel to the rise (using 1982 as a base year) from 18.9 to 25.8 between 1980 and 1986, as reported in chapter 8. The quantity measures and ratios are calculated from data in tables B-9 and B-25 of the *Economic Report of the President*, various years.

29. For a broader discussion, see Destler, "Rules of Origin and US Trade Policy," in Olivier Cadot, Antoni Estevadeordal, Akiko Suwa, and Thierry Verdier, eds., *The Origin of Goods: Rules of Origin in Preferential Trade Agreements* (Oxford and London: Oxford University Press and Center for Economic Policy Research, forthcoming).

30. See Frederick W. Mayer, *Interpreting NAFTA: The Science and Art of Political Analysis* (New York: Columbia University Press, 1998), especially 157–62.

For textiles, the rule was even more restrictive. As set forth in chapter 8, NAFTA provides that for apparel to be deemed North American, three processes must all take place within the region: the making of the fiber, its conversion into fabric, and then the crafting of the garment. This "triple transformation test" (also known as the "yarn forward rule") is anything but free trade: A recent broad analysis that examines rules of origin for 20 product sectors in five separate free trade agreements finds the NAFTA textile-apparel rules the most restrictive of all.[31] But it represents a separation of US mills from their long-standing domestic apparel allies—to whom they long expected to sell most of their cloth—in favor of a strategy that sees expanding international trade as inevitable and potentially profitable.

Of course, there was no guarantee that this particular strategy would continue to be effective: By the early 2000s, textile officials were having second thoughts as, with the lifting of some MFA quotas, Chinese apparel began displacing Mexican apparel in the US market, notwithstanding the latter's NAFTA advantages. The final phaseout of the MFA at the end of 2004 could only bring further changes. But their realistic options fell well short of the comprehensive trade protection they had long championed.

No other industries rose up to claim the protectionist banner. There were flare-ups over China in late 2003 and thereafter, as congressional critics linked a sharp post-2000 drop in US manufacturing employment to the rise of the bilateral trade deficit with China and that country's fixed (arguably undervalued) dollar exchange rate. And in early 2004, Democratic presidential contenders vied with one another to show toughness on trade, with the "outsourcing" of jobs by US corporations the latest dragon to be decried if not cleaved. But while the winner of the Democratic nomination, Senator John F. Kerry (D-MA), denounced "Benedict Arnold corporations," all he could promise as a remedy was to amend US tax law to make it neutral as regards whether those firms produced at home or abroad.

And the fact that US business was the target of such criticism was itself very telling. Through much of US history, it was manufacturers who led the charge for high tariffs. In the decades following 1934, it was protection-seeking firms and sectors whose efforts needed to be resisted or deflected in order for trade liberalization to proceed. By the dawn of the 21st century, business was clearly identified with trade expansion, by critics and advocates alike.

The Globalization of US Business

US markets have steadily become more internationalized during recent decades. Goods production has in fact declined as a share of the total

31. Antoni Estevadeordal and Kati Suominen, "Rules of Origin in FTAs: A World Map," table 7. www.iadb.org/intal/foros/LAestevadeordal.pdf (accessed 15 April 2005).

economy, from 43 percent in 1970 to 35 percent in 2000. But over the same period, *trade in goods* has grown from 4 to 10 percent of GDP.[32] Thus the ratio of trade (average of imports and exports) to goods production has risen even faster, from .09 to .29. Producers export a larger share of their output. They also import a larger share of their products' final value. And those that lag in exploiting the gains from international specialization face uphill competition from those that do exploit them.

In the context of a globalizing economy, a pure protectionist position becomes harder and harder to sustain, while support for maintaining open markets is easier to find. When, in late 2003, President Bush weighed how to respond to the adverse WTO ruling on steel, press reports highlighted the concerns of steel-*user* industries in Pennsylvania, West Virginia, and Ohio as much as they stressed the steel-*producing* interests in those key electoral states. White House political adviser Karl Rove was reported to be taking the steel users' interests fully into account.

There remained entrenched redoubts of protection, of course, most of them agricultural. The 2002 farm bill flew in the face of long-standing US trade-negotiating goals by increasing producer subsidies. Sugar survived under an import quota system that made US prices a multiple of those in the global market, and opened up economic opportunity for producers of corn sweetener as well. US rigidity on sugar was evident in early 2004: Central America was granted little increased sugar access in the Central American Free Trade Agreement (CAFTA),[33] and Australia was granted none at all in its free trade agreement. Orange juice was another well-protected market, which Brazil clamored to enter. Sugar and oranges both stood in the way of a comprehensive Free Trade Area of the Americas, and US cotton subsidies undercut the livelihoods of African farmers and helped trigger the breakup of the Cancún Ministerial of the Doha Round. In the spring of 2004, a WTO panel held that US cotton subsidies were in excess of those allowed under the Uruguay Round agreements (a finding later affirmed by the appellate body).

These still-restricted US markets remained barriers both to trade and to progress in trade negotiations. But they were now exceptions, not the rule. As recently as the 1980s, it was plausible to argue that the threat of a type of Smoot-Hawley protection was real, that concessions to one or two new industries could put the United States on a "slippery slope," and that the

32. Trade here is the average of exports and imports, (X + M)/2. Properly speaking, trade/GDP and trade/goods production should be seen as ratios, not percentages, since trade statistics represent the final value of goods bought and sold, and GDP and goods production represent just value added in the United States. All statistics are calculated from the *2004 Economic Report of the President*, tables B-1, B-8, and B-13.

33. USTR calculated this as "about one and a half teaspoons per week per American." Nonetheless, domestic sugar producers launched a fierce campaign to defeat CAFTA in 2005.

trade bicycle would fall down if the country did not move forward. It is much harder to make this argument today.

There remains one strong institutional opponent to further trade liberalization as currently practiced, and that is organized labor. Decades ago, unions' trade stances tended to be aligned with their industries—apparel workers were antitrade, while Walter Reuther's United Auto Workers backed the Kennedy Round. Now capital is increasingly mobile but labor is generally not. Thus workers find their trade interests less and less in line with those of their employers. The growing divergence is reflected in employers' readiness to suggest they might move to Mexico if unions do not make wage concessions, and workers' tendency to take the threat seriously whether or not it is real. Workers tend to see trade as a threat; union leaders see it as an issue for mobilizing support. Partly for this reason, when faced with comprehensive trade bills like fast track and trade promotion authority (as well as NAFTA and CAFTA), labor has sought to defeat the legislation rather than to bargain and shape its details.

Two Questions

The globalization of business in general raises two large questions. One involves the "model" or "system" of trade policymaking described and endorsed in earlier chapters and editions of this book. Are institutions and practices built to counter and limit producer protectionism still appropriate? Or are they obsolete? If the opponents such as sugar producers cannot be bought off by modest protectionist concessions, should proponents shift their tactics? Should they abandon their preference for "inside politics" and rely more on open substantive debate? Should they embrace the "dirty little secret" that imports are good for the economy (albeit not good, of course, for everyone within the economy)? These basic questions will be addressed in this book's concluding chapter.

The second question is in the nature of a puzzle. If business protectionism—long the primary impediment to trade liberalization—is only a shadow of its former self, why doesn't trade legislation sail through the Congress? Why couldn't President Clinton win approval of fast-track legislation when he pressed it in 1997? Why did Bush win it by only one vote in 2001–02, and only through concessions to the very protectionist interests here alleged to be so weakened?

Part of the answer lies in a hard political truth: Producer interests may no longer be protectionist, but this does not necessarily make them proactive forces for additional reductions in trade barriers. For one thing, they may already have won, in prior negotiations, most of the gains that trade liberalization can offer them. There has also been a trend within the corporate community toward relentless pursuit of the "bottom line" of profits and share value. In the past, company executives pushed goals like

trade liberalization because of potential future gains, and they joined with like-minded colleagues toward this end. Now they are more likely to focus their energies on just one or two key targets—and trade policy seldom ranks that high.

Beyond this, the explanation for limited trade policy progress is a complex one. As always, personalities have played a key role. But above all, two new dimensions of policy conflict arose to complicate trade policy in the 1995–2004 period. The first was the rise of concerns about trade's social impact, particularly on labor and the environment. The second was the exacerbation of partisanship in Washington, impeding cooperation and compromise across party lines.

During the Clinton administration, the main impediment was increasing concerns over labor and environmental standards. As chapter 10 will show, these concerns divided liberals from conservatives and fractured the long-standing, centrist consensus in favor of open trade.

Then, just as the trade community was grappling with this issue, policy succumbed to increasingly bitter partisanship and ideological divisions—in Washington generally, but particularly on Capitol Hill, and above all in the House of Representatives. This polarization emerged full-blown during the first administration of George W. Bush. That story is told in chapter 11.