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## Essay

# Trade and Democratic Values

Frederick M. Abbott\*

The attention of government was turned away from guarding against the export of gold and silver to watch over the balance of trade as the only cause which could occasion any augmentation or diminution of those metals. From one fruitless care it was turned away to another care much more intricate, much more embarrassing, and just equally fruitless.

ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (1776)<sup>1</sup>

The U.S. Congress stands at the threshold of defining American trade policy for the twenty-first century. The results of the North American Free Trade Area negotiations should be placed before the Congress in 1992. The GATT Uruguay Round negotiations will likely conclude in 1993 or 1994. Congress is considering the customary extensions and amendments of trade negotiating and administration authority. As it does so, there is an intense pressure on the Congress to assume an active and direct approach to the regulation of U.S. trade relations. This pressure arises from diverse sources.

There is first the general state of the U.S. economy. The rate of economic growth in 1992 is uncharacteristically low in comparison to prior post-World War II economic expansions; too low to reduce a persistently high rate of unemployment.<sup>2</sup> A sub-

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1. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (1776), *republished in* 39 BRITANNICA GREAT BOOKS 184 (1952).

2. See, e.g., *Jobless Rate Dips a Notch to 7.7% in Mixed Showing*, N.Y. TIMES, Aug. 8, 1992, at A1; *Fed Downgrades the Nation's Business Prospects*, N.Y. TIMES, Aug. 6, 1992, at C2; *White House Is Ready for a Rosier Outlook*, N.Y. TIMES, May 22, 1992, at D1.

stantial federal budget deficit<sup>3</sup> is forecast and state budgets are in poor condition.<sup>4</sup> This generally unhealthy economic picture is coupled with a significant balance of trade deficit.<sup>5</sup>

A second more specific set of pressures arises from industries which have been adversely affected by foreign competition — most particularly the automobile industry, but similarly the steel, textile and other industries. Prominent leaders of these industries claim that foreign competitors take unfair advantage of open U.S. markets.<sup>6</sup> Intense lobbying to limit foreign access to U.S. markets has yielded at least preliminary results in Congress.<sup>7</sup> Private antidumping and countervailing duty petitions are proliferating.<sup>8</sup>

A third set of pressures arises from labor groups whose members are affected by competition from foreign labor mar-

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3. See *U.S. Budget, Mid-Year Estimates Show Lower Deficit, Higher Growth Rates*, OMB Director Says, Daily Rep. for Executives (BNA) 143 (July 24, 1992). An Office of Management and Budget mid-year review of the federal budget shows a projected deficit of \$333.5 billion for fiscal 1992 and \$341 billion for fiscal 1993. The economic growth projection for 1992 is 2.7 percent.

4. See, e.g., *States' Strained Finances Reveal Recession's Toll*, N.Y. TIMES, July 28, 1992, at B6. This report, based on a study by the National Conference of State Legislatures, indicates that "states are in worse fiscal condition than they were after any of the five previous national recessions, and . . . they report that the 1993 fiscal year looks bleak."

5. In April and May of 1992, the merchandise trade deficits of the United States were \$6.97 billion and \$7.38 billion, respectively. See *U.S. Trade Deficit Soars 25 Percent in April, Commerce Department Reports*, 9 Int'l Trade Rep. (BNA) 1084 (June 24, 1992); *May Trade Deficit Up 4.5 Percent in Third Monthly Rise, Says Commerce*, 9 Int'l Trade Rep. (BNA) 1253 (July 22, 1992). In 1991 the total U.S. merchandise trade deficit was \$66 billion. See *infra* text accompanying note 42.

6. See, e.g., Lee Iacocca, *O.K., O.K., Call Me a Protectionist*, N.Y. TIMES, Feb. 10, 1991, § 4, at 17; *Blunt Talk by Iacocca, Just Back from Japan*, N.Y. TIMES, Jan. 11, 1992, § 1, at 33.

7. The Trade Expansion Act of 1992 (HR 5100) passed by the House of Representatives on July 8, 1992, would, *inter alia*, require the United States to negotiate an agreement with Japan in which that country would agree to voluntarily limit its automobile exports to the United States, as well as require cars produced in U.S.-based factories of Japanese car makers to have 70 percent U.S. content by 1994. See *House Passes Comprehensive Trade Bill with Limit on Imports of Japanese Autos*, 9 Int'l Trade Rep. (BNA) 1204 (July 15, 1992). On July 31, 1992, the House of Representatives passed a bill (HR 4318) that would reclassify minivans as trucks for tariff purposes and thereby sharply increase the applicable tariff. It appears that most European-produced minivans would be exempt and that the measure would principally affect Japanese-produced imports. See *House Passes Bill that Will Increase Tariffs on Minivans; Veto Threatened*, Int'l Trade Daily (BNA), Aug. 3, 1992, available in LEXIS, Itrade Library, BNABTD File.

8. See, e.g., *Steel Firms File 84 Countervailing Duty, Dumping Petitions Against 21 Countries*, 9 Int'l Trade Rep. (BNA) 1162 (July 8, 1992).

kets, principally in developing countries.<sup>9</sup> A fourth and final set of pressures arises from environmental interest groups which seek to preserve a vital global environment.<sup>10</sup>

This essay concerns the fundamental principles that will guide congressional deliberations regarding trade policy in the coming months and years. There is no question but that Congress must respond effectively to progressive social demands, such as demands that the environment not be sacrificed to an unbridled adherence to the concept of free trade. At the same time, Congress must not lose sight of certain fundamental principles that have guided U.S. trade policy since the Second World War. The underlying commitment of the United States to liberal trade policy is not based on a simplistic commitment to comparative advantage as an end in itself, but is deeply rooted in a commitment to democratic values. At the close of the Second World War, the United States rejected central government economic planning and broke the government-industrial alliances that had dominated pre-war Germany and Japan. Despite the apparent success of the liberal global trading system established at the close of the war, there is, at this particular juncture in history, perhaps the most intense demand in the United States for trade protective measures since the 1930s.

Legislative enactment of import quotas and measures with equivalent effect represents the division of markets among producers, in effect establishing an international cartel arrangement (under the auspices of international governmental agreement). The division of markets by and among competitors and potential competitors is precisely the problem to which competition law is addressed. Moreover, inherent in the formation of a federal government-industrial alliance to manage U.S. trade relations is a restriction of the decision-making sphere and influence of the individual. Such restriction would constitute a threat to democratic values.

Before allowing itself to be persuaded that a hands-on approach to industrially-oriented trade management will serve the

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9. See, e.g., Testimony of Owen Bieber, President of the United Automobile Workers, before the House Subcommittee on Commerce, Consumer Protection and Competitiveness on HR 4100 (the Trade Enhancement Act of 1992), Federal Info. Sys. Corp., Mar. 5, 1992, available in LEXIS, Nexis Library, CURRNT File.

10. For a report on some of the trade-related activities of environmental interest groups in 1991, see Frederick Abbott, *International Trade Rules, World Market Conditions and Environmental Effects*, in 2 Y.B. INT'L ENVTL. L. 227 (1992).

national interest, Congress should consider the lessons of history. Although a persuasive textbook case might be made for managed trade, central government control over trade has consistently resulted in dramatic economic and social failure, or economic success coupled with social conditions that would be intolerable in the United States.

The liberal trading system must become more responsive to the interests of the environment and human well-being. It is capable of being adapted to meet the demands of the twenty-first century. This essay offers a few modest suggestions as to how this goal might be accomplished. The central message of this essay, however, is that adherence to the underlying principles of the liberal trading system and the accomplishment of progressive social goals are not mutually exclusive. It is imperative that progressive social goals not be confused with the interests of industries that have failed to respond to international competition.

## I. THE LESSONS OF HISTORY

The liberal trading system is grounded in economic theory, but theory did not give rise to the present structure of international trade relations. The present international trade regime arose from the ashes of the Second World War as part of a triumvirate of new international institutions. The Second World War was the watershed event in human history that led to a fundamental rethinking of the bases of international relations. The most manifest defect in pre-war thinking — the lingering belief that international disputes might be settled by resort to arms — was addressed by creation of the United Nations. The United Nations was designed to preserve the minimum world public order necessary for political, economic and social progress.

The war left the economies of Europe in shambles.<sup>11</sup> Economic uncertainty in the pre-war years had contributed to the rise of the Axis governments which ultimately led their nations to war.<sup>12</sup> The severely restrictive trade policies of Western Europe and the United States after World War I had exacerbated the slide into global economic depression which preceded the

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11. A comprehensive description of the economic conditions in post-war Europe can be found in EUROPEAN CUSTOMS UNION STUDY GROUP, GENERAL REPORT OF THE ECONOMIC COMMITTEE (1948) [hereinafter GENERAL REPORT].

12. Harold Lasswell, an American social scientist, wrote in 1935 with stunning foresight of the potential in Europe for authoritarian government and aggression based on economic uncertainty. HAROLD D. LASSWELL, WORLD POLITICS AND PERSONAL INSECURITY (1935).

war.<sup>13</sup> Architects of the post-war international order were committed not only to avoiding the economic policies which contributed to war,<sup>14</sup> but were deeply committed to democratic values.<sup>15</sup> These leaders believed that the establishment of democratic institutions in the defeated Axis countries would provide the best long-term foundation for peaceful international relations.<sup>16</sup> Liberal economic policy and democratic government were understood to be linked together; or, conversely, centrally-planned economies and authoritarian governments were understood to be closely allied — a conclusion which pre-war Europe seemed to confirm.<sup>17</sup>

The reconstitution of the international order involved the imposition of democratic political institutions in Germany and Japan overseen by Allied representatives, as well as the curtailment of the role of the German and Japanese governments in

13. See ROBERT E. HUDEC, *THE GATT LEGAL SYSTEM AND WORLD TRADE DIPLOMACY* 5-7 (2d ed. 1990).

14. See *id.* at 5-10.

15. See, e.g., HAROLD D. LASSWELL, *WORLD POLITICS FACES ECONOMICS* (1945).

16. *Id.* See also HAROLD ZINK, *AMERICAN MILITARY GOVERNMENT IN GERMANY* 165-86 (1947); *infra* note 18.

17. The largely American architects of the post-War order had been influenced by the so-called Freiburg School in Germany, whose members included Franz Boehm, Walter Eucken and Wilhelm Ropke. Friedrich von Hayek, an Austrian who settled in England, was influential in arguing the case for economic liberalism and democratic values in the 1930s and 1940s. Hayek later emigrated to the United States and became a founder of the libertarian movement. See, e.g., FRIEDRICH A. HAYEK, *INDIVIDUALISM AND ECONOMIC ORDER* (1948). A just-completed article by David Gerber presents a comprehensive analysis of the Freiburg School and its impact on American and European policy. The article notes that much of the important work by the German legal scholars and economists of the Freiburg School has not been translated into English. David Gerber, *German Neo-Liberalism, Competition Law and the "New" Europe* (copy in author's files). See also DENNIS L. BARK & DAVID R. GRESS, 1 *A HISTORY OF WEST GERMANY, FROM SHADOW TO SUBSTANCE* 191-209 (1989); HAROLD ZINK, *THE UNITED STATES IN GERMANY 1944-1955*, at 169-92, 251-68 (1957).

A most notable American study of pre- and post-war industrial policy and the impact of such policy on political institutions is LASSWELL, *supra* note 15. A classic study of democratic values written in the form of a proposal for the training of lawyers as they returned from the War is Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 *YALE L.J.* 203 (1943), reprinted in MYRES S. MCDUGAL ET AL., *STUDIES IN WORLD PUBLIC ORDER* 42 (1987). Myres S. McDougal and Harold D. Lasswell described and analyzed the threat to democratic values presented by totalitarian systems of government in *The Identification and Appraisal of Diverse Systems of Public Order*, 53 *AM. J. INT'L L.* 1 (1959), reprinted in MCDUGAL ET AL., *id.* at 3.

economic planning.<sup>18</sup> The forcible democratization of the authoritarian governments and the severe curtailment of the role of these governments in economic affairs reflected the commitment of American post-war planners to democratic values and to liberal economic policy.

Because the economic effects of the war were felt throughout the world, the shaping of global economic stabilization and growth required a broad plan. Post-war planners recognized the need to create a stable international financial system to assure government liquidity and to provide the means for each country to participate in the new international economy.<sup>19</sup> A stable and growing international economy required that each state, including the underdeveloped countries, be assured of the means to participate. The International Monetary Fund and International Bank for Reconstruction and Development were established to provide stability and liquidity in world financial markets as well as to provide funds for development.

The third in the triumvirate of international institutions planned for the post-war era was to be the International Trade Organization (ITO). The ITO would have established rules for the conduct of trade, rules to protect against restrictive business practices, and an international institution to make decisions and resolve disputes.<sup>20</sup> The ITO Charter was sent to the U.S. Congress for approval in 1949. Hearings were held but the Charter was otherwise not acted upon. The president withdrew it from consideration in 1950 and the Charter effort died both domestically and internationally.<sup>21</sup> The Charter effort apparently failed in the Congress as a result of protectionist opposition and a lack of support by liberal trade proponents who believed that the Charter did not go far enough.<sup>22</sup> The General Agreement on Tariffs and Trade (GATT), which had been drafted and signed as an interim measure to provide a framework for reciprocal tariff reduction negotiations, took the place of the ITO Charter

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18. For Germany, see, e.g., Gerber, *supra* note 17, at 61-70; BARK & GRESS, *supra* note 17, at 191-209; ZINK, THE UNITED STATES IN GERMANY, *supra* note 17, at 264-68. For Japan, see, e.g., EDWIN M. MARTIN, THE ALLIED OCCUPATION OF JAPAN 45-92 (1948); KAZUO KAWAI, JAPAN'S AMERICAN INTERLUDE 34-70, 91-110, 133-61 (1960); JAPAN'S PROSPECT (School for Overseas Administration, Harvard University ed., 1946).

19. See, e.g., INTERNATIONAL FINANCIAL STABILIZATION (M. Shields ed., 1944), and particularly, *The Views of Jacob Viner, id.* at 53-68.

20. See HUDEC, *supra* note 13, at 11-47 (discussing structure and outcome of ITO negotiations).

21. *Id.* at 59-61.

22. *Id.* at 59-60.

as the legal foundation of the liberal international trading system.<sup>23</sup>

The liberal trading system is founded on the economic theory of comparative advantage elaborated by David Ricardo in 1817.<sup>24</sup> Ricardo demonstrated that all nations benefit from trade by specializing in the production of goods and services in which they are comparatively the most efficient. States which are absolutely the most efficient in the production of all goods and services, as well as states which are not absolutely the most efficient in the production of any good or service, benefit from the operation of comparative advantage. As Samuelson and Nordhaus observe, on a global level all nations benefit from the effect of specialization as the world economy moves closer to its production possibility frontier.<sup>25</sup> While Ricardo may have been the first to provide the mathematical model of comparative advantage, the basic idea that individual states benefit from international trade by concentrating their productive efforts in areas of particular efficiency, and by trading with other states for less efficiently produced goods, is clearly elaborated in Adam Smith's *Wealth of Nations*.<sup>26</sup> Smith was highly critical of distortions introduced into British trade by governmental restriction in the form of tariffs and quotas, and he faulted the policy of granting export subsidies.<sup>27</sup>

It is short-sighted, however, to view the foundation of the liberal trading system solely through the lens of comparative advantage. Liberal international trade policy — that is, the policy idea that individual state governments should not interfere with the movement of goods and services<sup>28</sup> across national frontiers — relies on the decisions of individual private actors to determine the sectors in which capital is employed for productive purposes and relies on the decisions of individual private consumers to determine which goods and services it is in their interests to consume. National governments retain control over

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23. *Id.* at 49-73.

24. DAVID RICARDO, ON THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION 77-93 (1817).

25. PAUL A. SAMUELSON AND WILLIAM D. NORDHAUS, ECONOMICS 898 (13th ed. 1989).

26. SMITH, *supra* note 1, at 194-95.

27. *Id.* at 182-239.

28. The author is well aware that GATT rules as presently formulated do not apply to trade in services. This, however, is a gap in current liberal trade rules which the Uruguay Round negotiations are undertaking to fill. See Frederick M. Abbott, *GATT and the European Community: A Formula for Peaceful Coexistence*, 12 MICH. J. INT'L L. 1 (1990).



domestic economic policy and may, through a variety of techniques such as manipulating fiscal and monetary policy, enhance or restrict the ability of private actors within the state to employ capital or consume goods. Governments, however, are limited in their restrictive capacity by the rules of the liberal trading system which limit tariffs and prohibit quotas except in narrowly defined circumstances, and are required to treat foreign goods on the same basis as domestic goods.

Adam Smith insightfully observed that the alternative to private decision making with respect to trade, that is, government decision making, is troubling.<sup>29</sup> In the first instance, there is no reason to believe that any government or individual legislator understands the international trading system and its relationship to the national economy such that we would believe that they could control trade patterns in the national interest. Second, if legislators were to assume the power to manage trade decisions, we would certainly see expansion of the influence of business lobbyists vying for special dispensations. It would take a certain naivete to assume that legislators would suddenly begin to act solely with the general public interest in mind. Third and finally, government would essentially assume control of the power to decide what the individual consumer would consume and to what sectors productive capital would flow. Few consumers are insensitive to price and fewer still are insensitive to quota limitations. Few producers would elect to direct capital to an enterprise whose export opportunities were restricted.

The critical message of the Second World War to many of those who influenced the structure of the post-war order was a distrust of central government planning.<sup>30</sup> The economic policies of the Axis governments were described by Harold Lasswell:

In more industrialized countries [referring specifically to Germany and Japan], the control exercised by a dominant few is chiefly through the monopoly of violence, propaganda, and administration. Extremes of riches and poverty may be accentuated; the chasm between upper and lower [classes] is not filled by middle-income groups. There is a minimum of freedom in the choice of economic activity, in moving from one job or enterprise to another, in bargaining to settle the terms of work or trade. Decisions that restrict freedom in the market are made by despotic, not democratic, procedures. Little effort is made to root out social, political, and economic discriminations, which are as often used to play one part of the population against another and to prevent the

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29. This text paragraph summarizes some of Smith's observations, *supra* note 1, at 182-239.

30. See HAYEK, *supra* note 17.

growth of a united and free commonwealth. Let us call this *unbalanced industrialization* or, synonymously, predatory or exploitative industrialization.<sup>31</sup>

Distrust of central government planning bred by the war strongly pervaded reactions to the economic policies of the Soviet Union which were rightly perceived as authoritarian. Distrust of central government planning was an essential factor in the founding of the modern liberal trading system.

There was thus a line from Adam Smith to David Ricardo to the Freiburg School to the American architects of the post-war trading system which held that liberal economic policy provided for the maximum global output of goods and services, and served to limit government restriction of individual freedom. By the end of the Second World War, the proximate relationship between liberal economic policy and democratic values was apparent.

A liberal trading order, in which comparative advantage could freely operate, was understood by Adam Smith and those who followed to have political and social downsides. Each nation open to free competition would be continually adjusting its internal economy to respond to conditions created by external forces. Industries unprotected from external competition would be forced to upgrade plant and equipment or lose market share. Workers would be subject to dislocation as a result of events beyond government control. The trade balance would fluctuate as the domestic economy responded to changing conditions. All of these conditions naturally would give rise to demands for protective measures from those affected. Adam Smith suggested a gradual approach to the relaxation of trade restrictions so as to permit manufacturers to reemploy their capital without great loss. He advocated the repeal of laws restricting the movement and employment of laborers to enhance their ability to find alternative employment.<sup>32</sup> Recognizing that the risk of political and social unrest would inhere in a trading system that produced potentially rapid internal changes in economic conditions, the architects of the post-war liberal trading system built in various

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31. LASSWELL, *supra* note 15, at 46. Lasswell observed: Unbalanced (predatory, exploitative) industrialization, by holding down consumption, instigates social unrest at home.

The ruling groups in Japan and Nazi Germany, fearful of unrest among peasants and workers, maintained rigid despotic regimes. They encouraged war psychology as an instrument of industrial discipline. (Symbols, in the short run at least, are cheaper than goods).

*Id.* at 47.

32. SMITH, *supra* note 1, at 200-01.

safeguard measures which would enable states adversely affected to take certain remedial steps on a short-term basis. These measures were not intended to permit calcification of domestic industries, but rather to ameliorate the shock of rapidly changing conditions.

Liberal trade policy took a greater hold in Europe as economic conditions remained depressed in the late 1940s. European and American planners saw the integration of the European economies as a mechanism for accelerating economic growth, as well as for enhancing social stability.<sup>33</sup> The construction of production facilities designed to serve a pan-European market would clearly be more efficient than facilities designed to serve local markets. Moreover, the founders of the European Community opened a liberal economic avenue which the architects of the global liberal trading system could not realistically open — namely, the avenue of free mobility of persons. On a global basis, the rigid structure of the nation-state system and the wide disparity in the distribution of resources made free movement of persons politically infeasible. The founders of the Community believed that the nations of Europe were sufficiently compatible on the level of culture and wealth distribution to permit such movement. Of course, the founders of the Community had political and social goals above and beyond those of economic integration, but chose to direct their initial efforts primarily at the level of economic liberalization of markets.

In the same post-war time frame, the countries of Eastern Europe, dominated by the Soviet Union, followed an entirely different political and economic path. In the East both internal and external economic relations were centrally planned. Political activity, the movement of individuals and access to information were tightly controlled. The policies followed by the Eastern bloc countries represented the virtual antithesis of the liberal political, economic and trade policies followed in the West.

The disparity in post-World War II development between the countries of Eastern and Western Europe could hardly be exaggerated. The countries of Western Europe without exception evolved into stable and prosperous democracies. Today, the political institutions of the European Community and the Coun-

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33. See GENERAL REPORT, *supra* note 11. See also Mauro Cappelletti et al., *Integration Through Law: Europe and the American Federal Experience, A General Introduction*, in 1 INTEGRATION THROUGH LAW 3 (Mauro Cappelletti et al. eds., 1986).

cil of Europe are at the forefront of the protection of human rights. Germany's constitution prohibits participation by the military in foreign activity. Intra-Community barriers to trade and travel have been significantly reduced. A common monetary policy is evolving and the level of interstate political cooperation continues to increase. The twelve European Community countries and seven European Free Trade Association countries have preliminarily agreed on enhanced integration and the formation of cooperative institutions.

Meanwhile, the economies of Eastern Europe have disintegrated, along with the political and social institutions which ran them. Eastern Europe faces a dangerous period of social instability as internal and external markets now are liberalized. Already this instability has evidenced itself in civil war and the deprivation of human rights on a significant scale. The hope for 1992 is that the disturbances affecting Yugoslavia and Romania do not erupt on a pan-Russian scale.

The best evidence that the liberal trading system works is not found in treatises on international economics. It is found in the growing ranks of countries which have abandoned restrictive trade policies in favor of open policies. Acceptance by states of the rules of the liberal trading system continues to increase as formal membership in the GATT has exceeded 100 countries, with more than 25 additional countries applying GATT rules on a *de facto* basis. Not only do the former Comecon states seek to formally join the liberal trading system, but the People's Republic of China, the final large-scale bastion of central government economic planning, also expresses its willingness to conform to the rules of the liberal international trade regime. A number of Latin American states which had adopted protectionist trade policies in the 1960s and 1970s abandoned those policies in the 1980s in favor of open markets and achieved dramatic improvements in domestic economic growth rates. Countries throughout Latin America pursue economic integration and open markets, with increasing attention to a fully open hemispheric market. At the same time, democratic government appears to have superseded military authority in a number of these same Latin American states.

There are those who question whether the liberal trading system should receive credit for the expansion of global trade, successful development in Western Europe, and post-war growth in the United States. They are preparing to deconstruct the liberal trading system, presumably with the end of sug-

gesting a better model. Viewing the current recession in the United States and the social ills pervading the country they ask, "If this is success, what would failure look like?" They will acknowledge that failure looks like the former Soviet Union and the Eastern bloc, but suggest that the failures there may have had causes other than authoritarian economic policies. The longer answer to their question is painfully simple. Failure also looks like Nazi Germany and pre-war Japan. Failure looks like Brazil and Argentina during their protectionist periods. Failure looks like the protectionist policies of India.

Certain countries have succeeded in achieving high economic growth rates with neo-mercantilist managed trade policies. Japan is the most notable example. Japan, however, embodies a culture wholly different than that of the United States or Western Europe. The Japanese economy relies on the sacrifice of its workers to excessively long hours of employment and extremely limited job and social mobility. The Japanese government has severely restricted the ability of individuals to spend their income and savings. Such policies would be socially intolerable in the West as unjustifiable intrusions on individual freedom. Moreover, there is growing evidence that Japanese economic planning cannot shield that country from the effects of internal and external market forces. Recently, growth has dramatically slowed and capital flows have turned inward. The hyper-inflated real estate market, buoyed by collusive dealing, may contain the seeds of an economic crisis. The ability of Japan to outperform the international economy in the long run should perhaps not be taken for granted.

It may well be that a persuasive textbook case can be made for substituting managed trade for liberal trade policy. The historical case for centrally-directed economic policy, however, is terribly unpersuasive on economic, social and political grounds.

## II. DEMOCRATIC VALUES

The core values of democracy were identified by Harold Lasswell and Myres McDougal in a 1943 article.<sup>34</sup> The war years lent a certain fragility to democratic values in the United States as large scale government intervention in the economy became a necessary element of war preparation. Lasswell and McDougal observed that the overriding value of a democratic society is realization of the dignity of the individual in a community of mu-

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34. Lasswell & McDougal, *supra* note 17.

tual deference. They meant that each human being should be free to develop and express his or her own personality, constrained only by the threat of harm to others. Each human being should be free to make his or her own decisions, participate in the decisions of his or her community and hold and express personal opinions. In order to pursue individual and collective development, individuals should have access to the information and knowledge necessary to make informed decisions. They should be free from government coercion, except as necessary to prevent harm to others. In a democracy, individuals should be free from discrimination on the basis of race, sex or religion. The maintenance of a democratic society requires that individuals have access to the minimum level of wealth necessary for survival and security. A democratic society will thus seek to avoid extreme disparities in wealth in order to assure an acceptable minimum standard of living for all.

Liberal trade policy is inexorably linked to the furtherance of democratic values. In the first instance, the liberal trading system seeks to promote democratic values by assuring a minimum standard of living for all individuals. Liberal trading rules maximize the global creation of wealth through the operation of comparative advantage. By maximizing the global output of goods and services, the liberal trading system seeks to assure the economic conditions which are a prerequisite to free society. Individuals deprived of the minimum wealth necessary for survival and security are deprived of the right to achieve a dignified existence. Moreover, conditions of intense material deprivation threaten the minimal social order necessary to maintain democratic values.

In theory, the liberal trading system should achieve a reasonable distribution of wealth among nations as the operation of comparative advantage improves standards of living in both developed and developing states. Unfortunately, the liberal trading system alone cannot achieve a true, equitable distribution of resources on a global basis because disparities in wealth among nations result from natural factors. This fact of nature is aggravated by the nation-state system which limits human mobility. Reallocation of wealth would optimally take place as a matter of social choice by the states with a comparative excess of wealth. In the real world, the liberal trading system has recognized that developing countries should be accorded trade preferences intended to accelerate their level of development — even though such preferences reduce aggregate global economic output.

In the second instance, the liberal trading system promotes democratic values by minimizing government coercion with respect to individual decision making. While this might be viewed as a component of the comparative advantage equation, it is also a value in itself. Freedom from trade restriction provides individual consumers in each country with the opportunity to choose among goods and services from the widest variety of sources.<sup>35</sup> Access to the widest array of goods and services enhances the capacity of individuals to develop and express their own personalities. Market access rules likewise enhance the capacity of individuals to be informed as to the relative performance of their own economy and to evaluate the effectiveness of their own system of production. Open markets facilitate the flow of information across borders as trade contacts increase awareness of world developments. Open markets permit manufacturers and service providers to make decisions concerning production and distribution based on actual anticipated demand for their products. In a planned international economy, the right of individuals to make choices concerning the production and consumption of goods and services is limited to the right to choose among options made available by government authorities.

An international economy managed by national governments in their own perceived interests will restrict the operation of comparative advantage by restricting the efficient flow of goods and services. Competition will be limited and industry will avoid specialization toward its most productive sectors. Consumers will pay higher prices for less efficiently produced goods and services and suffer a decline in their standard of living. All nations will suffer economically as productivity falls. Producers and consumers will lose their freedom of choice. Economic activity will move in the direction dictated by central government planners as opposed to the open market. A managed international economy ultimately will be destructive of democratic values.

### III. THE NEW ERA

As the liberal trading system approaches the twenty-first century, new realities must be faced. Advances in technology make each of us aware of the close global interdependence of national economies as well as the close interdependence of pri-

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35. Liberal trade rules seek to assure that foreign goods will have an equal right of market access alongside domestically produced goods and further seek to preclude the arbitrary exclusion of foreign goods from access to markets.

vate individuals and interest groups. Awareness of this interdependence has enhanced our sense of social justice. Technological development has enhanced our understanding of the international economic system, though not nearly so well as we might like.

Liberal trade is an ideal or guiding principle. The guiding principle is that government regulation of trade should be minimized because it distorts trading patterns which would otherwise operate to maximize the operation of comparative advantage. In a more realistic sense, the goal of the liberal trading system is to prevent governments from using trade policy as a means of seeking economic advantage. There has never been free trade in an absolute sense and there never will be. Adam Smith recognized that in regard to matters of vital national security the principle of free trade should be sacrificed. He advocated a gradual approach to trade liberalization, and free mobility of labor at a time when mobility of labor was severely restricted by domestic regulation. Our conception of social justice has advanced. The modern concept of the liberal trading system must be understood to incorporate the achievement of progressive social goals.

The protection of important social interests now takes precedence over untrammelled access to markets. The evolution of a socially aware liberal trade policy is seen nowhere more clearly than in the European Community. The evolution of the Community environmental regime illustrates the point.<sup>36</sup> The Treaty of Rome said nothing about the environment. Nonetheless, the Council adopted rules to protect the environment on the basis that such protection was an essential goal of the Community. The Court of Justice confirmed this exercise of authority. The member states adopted measures to protect the environment, some at a highly restrictive level. The Court of Justice confirmed the right of the member states to restrict free trade for the essential goal of protecting the environment, provided that measures are nondiscriminatory and proportional. The Community ultimately modified its charter to make protection of the environment an explicit objective and to enhance the authority of its institutions to take environment-related action. Liberal trade policy has not been sacrificed. It has been adapted to meet the changing needs of society.

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36. See, e.g., Frederick M. Abbott, *Regional Integration and the Environment: The Evolution of Legal Regimes*, 68 CHI.-KENT L. REV. (forthcoming 1992).



Advances in technology have fueled a deeper understanding of how the international trade and economic system functions. We understand that fiscal and monetary policy can be adjusted to accelerate or decelerate the growth rate of the domestic economy in the short run. We understand that the rate of domestic growth will affect the volume of exports and imports, though not as to each necessarily to the same extent. We know that an appreciating currency will generally increase the volume of imports and decrease the volume of exports. We realize that monetary policy can be used to influence the short-term trend in currency movement, appreciating or depreciating value, lowering or raising the volume of imports and exports. We know that an increased savings rate will encourage investment, reducing domestic consumption as well as the volume of consumer imports. We can grasp that protectionist trade measures, by reducing imports in the short-term, are likely to cause the domestic currency to appreciate and in the long-term lead to a higher volume of imports and a lower volume of exports.<sup>37</sup> Yet having alluded to a few basic assumptions about the international economic system, the truth is that much of what makes the system function as it does is not fully understood.

An important study of the U.S. external deficit was published by the Brookings Institution in 1988. This study incorporated the research of a preeminent group of economists, including individuals responsible for constructing international econometric models for the Federal Reserve Board, the Japanese Economic Planning Agency, and the OECD's Economic and Statistics Department. Each attempted to explain the causes of the U.S. current account deficit and to develop a model to predict the future trend of the deficit. The study is illuminating for a number of reasons, not the least of which is the insight provided into the state of the economic art. To quote:

Among the proximate factors used by models to explain the external deficit, two are overwhelmingly important: strong U.S. domestic demand growth during a world recession and a relatively feeble recovery abroad, and the large appreciation of the dollar from 1980 through early 1985. An additional factor that seems to be important, but not adequately captured by the models, is the debt crisis and persistent weakness of activity in developing countries, which were important U.S. markets.

The existence of several factors all working in the same direction,

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37. See W. CONDON, PROTECTION AND LIBERALIZATION: A REVIEW OF ANALYTICAL ISSUES (IMF Occasional Paper No. 54) (1987), at 5-6 (discussing impact of trade restrictions on currency values).

tending to widen the deficit, means paradoxically that the deficit is too easy to explain. The deterioration can be accounted for in different ways by giving different weights to the various factors.

For example, Helkie and Hooper report that the Multicountry Model (MCM) of the Federal Reserve Board staff suggests that if U.S. and foreign GNPs had remained at their 1980 levels, all other things being equal, about a fourth of the deterioration in the U.S. external deficit (measured in constant prices) would not have occurred. . . .

Other models give a somewhat different breakdown. . . .

Economists are less secure when analyzing the fundamentals that drive the proximate determinants of the external deficit. Growth differentials between the United States and other OECD countries are substantially explicable by policy differences, particularly relative fiscal policies, which were expansionary in the United States after 1981 and equally contractionary elsewhere. On the basis of actual fiscal and monetary policies, however, the full models from which the current account sectors were extracted on average would have predicted only a half or less of the actual rise in the dollar. No empirical economic model can successfully explain the remaining appreciation, particularly not the surge in 1984 and the first months of 1985. That failure means in turn that the models are capable of predicting only half to two-thirds of the external deficit on the basis of policies alone. The failure to predict more is essentially a failure to predict exchange rates.

The inadequacy of models in predicting exchange rates could be interpreted as evidence that the models will understate the effectiveness of macroeconomic policies in reducing the deficit because they will understate the policies' exchange rate effects. That inference is not robust, however, if other factors independent of policy (for example, volatile shifts in private sector expectations) significantly determined exchange rates during the early 1980s and could similarly drive them in the future.<sup>38</sup>

The Brookings Institution study suggests that it is possible to identify the major factors which cause the current account of the United States to fluctuate. It is not yet possible, on the other hand, to isolate individual cause and effect relationships with assurance. Moreover, the study suggests that highly indeterminate factors such as private sector expectations may play a significant role in the fluctuations. This underlines the inherent difficulty in managing the international trading system. Protectionist measures will not only have the impact of reallocating domestic resources away from comparatively more productive sectors, causing a decline in aggregate output and an increase in prices, but such measures will have secondary effects in the fiscal and monetary areas which may be unpredictable. Adam Smith's distrust of the ability of legislators to manage the British

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38. Ralph C. Bryant & Gerald Holtham, *The U.S. External Deficit: Diagnosis, Prognosis, and Cure*, in *EXTERNAL DEFICITS AND THE DOLLAR* 61-62 (Ralph C. Bryant et al. eds., 1988).

external trade in 1776 must be shared by those of us contemplating the ability of the U.S. Congress to manage American external trade today. While our collective capacity to understand the variables affecting international trade flows has improved, so too has the complexity of the system which we seek to understand.

Evolution in the ability of economists to model the international economic system and to make more accurate predictions regarding the impact of fiscal and monetary policy does not touch upon the fundamental lesson of comparative advantage and its specialization effect. It is as true today as it was in 1776 and 1817 that nations which allow free competition will enhance their overall production efficiency and increase the aggregate value of the goods and services they produce.

#### IV. CHALLENGES TO THE LIBERAL TRADING SYSTEM

American presidents in an unbroken line from Franklin Roosevelt to George Bush have advocated liberal international trade policies. In the period of these presidencies the U.S. economy has expanded dramatically and United States citizens enjoy one of the world's highest standards of living.<sup>39</sup> Whether or not there is a provable direct causal link between liberal trade policy and U.S. economic growth, there is sufficient evidence in the global community of states following restrictive trade policy during the same period and experiencing economic stagnation to give us serious pause before adopting the latter course. The importance of external trade to the U.S. economy should not be understated. In 1989, total U.S. GNP was \$5.2 trillion.<sup>40</sup> Exports of goods and services accounted for \$626 billion (or 12 percent) of that total. Exports of goods and services in 1989 increased by 11 percent over the prior year. Imports of goods and services in 1989 accounted for \$672 billion (or 12.9 percent) of total GNP. Imports increased by 6 percent over the prior year.<sup>41</sup> Total U.S. merchandise exports in 1991 totalled \$422 billion, while total merchandise imports totalled \$488 billion.<sup>42</sup> Merchandise exports in 1991 represented an increase of more than 7 percent from 1990, while merchandise imports declined by about one and

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39. OECD ECONOMIC SURVEYS, UNITED STATES, 1989/1990 (1990), at 146-47 (Basic Statistics: International Comparisons).

40. *Id.* at 7.

41. *Id.* at 27.

42. U.S. Department of Commerce, *Current International Trade Position of the United States, March 1992*, BUSINESS AMERICA, Mar. 9, 1992, at 16-17.

one-half percent.<sup>43</sup> Over the past several years, the growth rate of U.S. exports has substantially exceeded the growth rate of U.S. imports, and net export growth has made a positive contribution to U.S. Gross Domestic Product.<sup>44</sup>

The negative U.S. balance of trade is frequently singled out by members of Congress as a root cause of current economic distress. By focusing on the dollar size of the trade imbalance, politicians of course divert attention from the myriad of other factors contributing to recession. Those other factors, such as the federal budget deficit, deregulation of the savings and loan industry, and military spending, are more directly within the control of the Congress and so perhaps are less compelling targets. Even so, it painfully oversimplifies matters to suggest that an excess of imports over exports is a major cause of recession.

The United States imported \$51.5 billion worth of petroleum and petroleum products in 1991.<sup>45</sup> Those petroleum products were presumably purchased at market prices which reflected their value to U.S. industry and consumers. Those petroleum products were used in the various productive and non-productive enterprises in which Americans engaged. There would have been some greater benefit to the U.S. economy if those same products were purchased from oil producers who drilled in Texas and sold in Illinois. More American workers would have been employed and producers would have generated some profit. But there would have been nowhere close to \$51.5 billion worth of greater benefit to the national public welfare. U.S.-produced oil would not have generated more energy. U.S. manufacturers would not have produced better products more efficiently. United States petroleum reserves would have been depleted and assets on the national balance sheet dissipated.

What about Japanese cars? Americans don't buy them and throw them away. We use them. They become part of our capital stock. Buying American-made cars would employ more U.S.

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43. In 1990, merchandise exports were \$393.6 billion and imports were \$495.3 billion. *Id.*

44. OECD ECONOMIC SURVEYS, *supra* note 39, at 12, 25 and 52; U.S. Department of Commerce, *supra* note 42, at 16-17. The most recent figures from the Department of Commerce show a continuation of the trend in net export growth reported in the OECD Survey.

45. U.S. Department of Commerce, *supra* note 42, at 16. Note that the Department of Commerce published two different petroleum import figures for 1991, the second being somewhat lower at \$50.4 billion. The Department acknowledged the discrepancy but did not explain it in this publication. *Id.* at 17.

workers and generate some profit for American producers. These factors in isolation would increase U.S. GDP. But if the Japanese are selling cars which have better wear characteristics and are cheaper than American cars when all factors are taken into account, we as a nation also save capital by buying them. We invest that capital elsewhere. We may have spent \$33 billion on Japanese cars in 1991,<sup>46</sup> but we did not lose \$33 billion. If we were smart, we also gained something close to \$33 billion worth of cars, all of which is entered on the asset side of our national balance sheet. If the Japanese actually sell cars in the United States for less than they cost the Japanese to produce (or at least for less than their fair market value) — a charge which is made from time to time — our capital increase exceeded our expenditure and the national balance sheet improved.

Needless to say, the foregoing observations themselves oversimplify the effects of a trade imbalance on national welfare. The Brookings Institution Study suggests some of the complex issues which must be dealt with in determining those effects. The U.S. Department of Commerce publishes excellent statistical surveys of U.S. trade performance and evaluates that performance for its impact on domestic welfare in a variety of instructive ways.<sup>47</sup> The point to emphasize is that, while it is generally better for the American economy if money is spent on products produced in the United States than if it is spent on products produced in foreign countries, spending money on products produced in foreign countries does not necessarily harm the U.S. economy. Moreover, managed trade policy which would raise barriers to the U.S. import market inevitably would cause foreign countries to raise barriers to their markets. Over the long term, as foreign markets closed to U.S. exports and as consumer prices in the United States rose, it is inevitable that the standard of living in the United States would deteriorate.

Persistent trade deficits with Japan, South Korea, Taiwan and other Asian countries appear to result from two primary factors. Certain Asian states have achieved a high level of efficiency in the production of various goods such as automobiles and consumer electronic products and so possess market advantages in selling these products. Consumers in the United States benefit from this efficiency by obtaining products at a lower cost. U.S. manufacturers have been forced either to improve their

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46. *Id.*

47. *See, e.g.*, U.S. DEPARTMENT OF COMMERCE, UNITED STATES TRADE PERFORMANCE IN 1988 (1989).

own production efficiency or shift the employment of capital into sectors in which they are comparatively more efficient. In this regard, the liberal trading market is functioning as intended. The U.S. economy should adapt to foreign competition and, as productivity increases, trade deficits should be reduced.

Liberal trade policy assumes that industry and labor in each country will from time to time be displaced as a result of international competition. A variety of short-term governmental measures are accepted as necessary to alleviate the shock of such dislocation. Ultimately, however, the industrial sector must be prepared to adjust to changing global economic conditions. Barriers to foreign imports would lead to a less productive industrial sector and undermine the capability of U.S. industry to compete in world markets.

The human element in the reallocation of industrial resources presents a significant social problem. The long-term benefits of comparative advantage are of little immediate help or comfort to displaced workers. Family adjustment assistance is and will continue to be a necessary component of a humane liberal trading regime. Most important, however, is the obligation of the political, economic and social system to provide the opportunity for worker retraining. In Adam Smith's era, the primary obstacles to the free movement of workers may have been restrictive guilds and residence restrictions. The problem of the modern worker is education and training. Government funds must be allocated to provide educational opportunities for displaced workers seeking new employment, and taxes imposed if need be to pay for these opportunities.

Although production efficiency accounts for part of the trade imbalance in favor of Asian states, unfair trading practices have also contributed. Japanese markets, for example, appear to be extremely difficult for U.S. manufacturers and service providers to penetrate because of structural impediments. While Japan may nominally comply with accepted international trade rules with respect to legal barriers to the import of goods and services, customary local industrial practices and a complex regulatory framework operationally act as barriers to such imports. To the extent that the Asian countries which have persistently high trade surpluses with the United States operationally interfere with U.S. exports, remedial action must be taken. The fiscal and monetary policies of these countries should also be questioned if they are designed to artificially depress the value

of local currency, thereby depressing real export prices and increasing real import prices.

Optimally, the United States should pursue justified remedial action in a multilateral context so as to enhance the democratic character of the liberal trading system. In the final analysis, unilateral action may well be warranted. The key point, however, is that Asian trading practices which interfere with U.S. export opportunities and artificially increase U.S. imports are fundamentally inconsistent with liberal trade policy, whether or not the specific practices at issue are presently the subject of an express rule of international trade law. The appropriate remedy for such unfair practices is not the abandonment or dismantling of the liberal trading system. The appropriate remedy is specific measures intended to conform unfair trading practices to acceptable international standards.

A second challenge to the liberal trading system is the disparity in labor conditions between the industrialized and developing countries. Liberal trade policy forces workers in the United States to compete with workers in less developed countries who are willing to forego social benefits, such as medical insurance, which are a necessary feature of an acceptable standard of living in a developed country. This is an extremely difficult problem to deal with in a global economy characterized by extreme disparity in the distribution of resources. For the foreseeable future, workers throughout the OECD countries will face a disparity in minimally acceptable working conditions between themselves and workers in developing countries, particularly with respect to lower end manufacturing employment.

A reasonable solution to this problem is the negotiation of multilateral agreements on minimum worker standards in addition to those which have already been negotiated in fora such as the International Labor Organization. Because of the wide gap in labor conditions between the developed and developing countries, multilateral agreements which establish conditions acceptable to workers in the OECD countries are probably not achievable in the near term. The optimum solution to this problem is to improve the productivity not only of U.S. industry, but also of the providers of social services such as health care. This will enable the U.S. worker both to earn a reasonable wage and to receive adequate social services. While erecting import barriers to protect labor benefits may maintain worker standards in the very near term, the practice is bound to adversely affect the U.S. economy in the longer term. American consumers depend

on foreign exporters to provide a range of goods at low prices. A protected U.S. market will necessarily lead to higher prices and a reduced standard of living as consumers are forced to purchase from less efficient suppliers. While there is no ready salve to the problems faced by U.S. labor groups in an interdependent global economy, again the case must be made that enhanced education will increase the comparative value of U.S. labor. Education offers the best hope for improving the standard of living for American workers while at the same time not depriving workers in developing countries of decent living conditions.

Environmental issues pose another great challenge to the liberal trading system. A trading system which minimizes restraints on the cross-border movement of goods may encourage manufacturers to seek out least restrictive national regulatory regimes and to use such regimes as export platforms. States attempting aggressive regulatory protection of the environment are hampered by the implicit or explicit threat of industry to move to less restricted areas. Developing countries may become environmental dumping grounds for the industrial countries. On a related front, American environmental interest groups lobbied successfully for the enactment of legislation designed to protect non-human species on an extraterritorial basis.<sup>48</sup> A GATT panel recently decided that such U.S. legislation is inconsistent with rules of the liberal trading system, causing great concern among environmental interest groups.<sup>49</sup>

There are few areas of social concern as to which states on a wide multilateral basis have been obligated to adopt minimum regulatory standards. Private business enterprises have historically been entitled to seek out minimum regulatory environments for a variety of motives. It is only when international concern reaches a certain threshold level of intensity that demands for the imposition of minimum international standards emerge. Only in the past decade has concern for the environment emerged on a worldwide basis at a level which has demanded the attention of national and international governmental organizations.

The liberal trading system has the flexibility to respond to environmental concerns. The liberal trading system has long

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48. Marine Mammal Protection Act of 1972, Pub. L. No. 92-522, 86 Stat. 1027 (1972) (as amended; codified in part at 16 U.S.C. 1361ff (1988)).

49. *United States — Restrictions on Imports of Tuna*, GATT Doc. DS21/R (Sept. 3, 1991) (GATT panel report), reprinted in 30 INT'L LEGAL MAT. 1598 (1991). See Abbott, *International Trade Rules*, *supra* note 10.



recognized the right of states to adopt measures to protect local environments, so long as such measures are adopted in good faith — i.e., they are not merely disguised barriers to trade. Additional attention to the impact of trade on the environment is now needed and reform of the liberal trading system is already under discussion. The optimum solution to environmental issues from the standpoint of the liberal trading system is the negotiation of international standards on protection of the environment, since this form of solution tends to limit the advantages conferred on any particular participant in the system. A major difficulty which inheres in this solution is that the standards sought by environmental interest groups in the OECD countries are objectionable to developing countries because of their cost. This problem has no easy solution because it calls for a balancing of the right of individuals in developing countries to achieve a minimum standard of living against the right of individuals in developed countries to improve a comparatively high standard of living.

In the present circumstances, the solution to the problem of different national priorities with respect to the environment and disparate levels of development may be best met by following the model of the Treaty of Rome before amendment by the Single European Act.<sup>50</sup> States should be permitted to adopt legislation to protect the environment, even if that legislation restricts trade, provided that the legislation is nondiscriminatory and proportional to the objective sought. States should be required to adopt minimum regulatory standards if they have agreed to those standards. A non-consensual type of institutional arrangement with respect to the establishment of minimum standards, such as was added to the Treaty of Rome by the Single European Act in 1987, may be the next phase in the evolution of the global regime for protection of the environment.

The protection of non-human species is likewise a problem of global concern which optimally would be resolved through multilateral negotiation. The absence of a mechanism to protect environmental interests outside the territorial limits of nations is a gap in the international legal order which needs to be filled. Until it is, conflicts such as that involving U.S. legislation to protect dolphins outside U.S. waters and the interests of other states in rejecting unilateral assertions of control over global trade policy will persist.

There is a high level of recognition within the liberal trad-

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50. See, e.g., Abbott, *Regional Integration*, *supra* note 36.

ing order of the need to protect the environment and of the competing interests at stake. It seems likely that the solutions to environmental issues can be found without undermining the foundations of the liberal trading system.

Finally, critics argue that the liberal trading system is principally responsive to private business enterprise. They contend that the general public interest is ignored in trade negotiations. There is little doubt that private business lobbyists exert considerable influence over trade negotiators, whether in Washington, Brussels, Berlin or Tokyo. While executive branch officials in the United States are appointed to pursue the public interest, because of the revolving door between government and private employment there is great pressure on these officials to pursue the interests of private business enterprise. Since the activities of private business lobbyists, in the absence of corruption, are inherently democratic, it would be unwise to attempt to eliminate their efforts. Moreover, it is undeniable that private business enterprises have a considerable stake in the outcome of trade negotiations and that the interests of business may not be well understood in the absence of representation.

The better solution, and one which has recently been pursued with considerable success, is active lobbying by cohesive public interest groups. Environmental and labor interest groups prompted significant changes to USTR negotiating positions with respect to the North American Free Trade Area negotiations, and these efforts may prove a useful model for the future. Likewise, environmental interest groups were able to achieve a significant success in delaying adoption of the GATT panel report regarding the Marine Mammal Protection Act. Interest group lobbying has become increasingly effective on a global scale, especially the efforts of environmental and human rights interest groups. A continuation and intensification of these efforts will affect the dynamic of trade negotiations in the public interest.<sup>51</sup>

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51. It has long been recognized that concentration of industrial power may pose a threat to liberal economic policy. Massive concentration of industrial power represents a threat to individual freedom of choice and the quality of life of the consumer. See, e.g., Stefan A. Riesenfeld, *Consumer Protection and the Antitrust Laws*, 40 RABELS ZEITSCHRIFT 579, 579 (1976). Just as private business enterprises have taken on a global character, so too must enforcement of competition laws take on an increasingly global character in order to protect democratic values.

#### IV. CONCLUSION

In any dynamic trading system, conflict will arise between competing interests. The liberal trading system has repeatedly demonstrated the flexibility to resolve competing claims through negotiation and compromise. Social needs such as adequate environmental protection can and will be accommodated within the conceptual framework of liberal trade policy. Fifty years of post-World War II history demonstrate that the individual decisions of private actors within liberal trade structures are conducive to both long term economic growth and democracy. Central government economic planning, both before and after the war, has a nasty record. Where it has succeeded, it has proven a breeding ground for exceedingly unhealthy government policies with respect to individual rights and interests. Where it has failed it has produced economic and social crisis. It would be a grave mistake to conclude that the present difficulties confronting the U.S. economy could and should be solved by intensifying government management of trade flows.

The liberal trading system promotes democratic values. In the first instance it seeks to maximize the global output of goods and services. This increases the aggregate wealth available for distribution. The specialization effect of comparative advantage inclines each nation to engage in the productive activities which will tend to maximize its own wealth. In the second instance the liberal trading system promotes democratic values by emphasizing the role of individual decision making. A modern conception of the liberal trading system recognizes that attaining progressive social goals may take precedence over the free movement of goods and services. The capacity of the liberal trading system to evolve recommends it as the structural framework for the future conduct of American trade.