INTERNATIONAL TRADE LAW: RECENT DEVELOPMENTS†

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Any review of recent developments in international trade law, whether global or inter-American, must take into account the great change in the realities of trade over the last decade. A noticeable break has occurred in the continuum of general agreement among nations as to first principles and as to how those principles should be applied. Indeed, as was pointed out by Peter Drucker in *The Age of Discontinuity*, a remarkable consistency of common doctrine existed in the years between World War I and the late 1960's. During that period, despite cataclysmic wars and the emergence of new regimes in Eastern Europe and in China, international trade responded to the philosophy that the doctrines of comparative advantage should govern relations between nations. The principles proposed by Adam Smith and refined by David Ricardo and others continued to be the basis of trade agreements for most of the world.

Thus, the 1947 General Agreement on Tariffs and Trade (GATT)[1] was a document which incorporated general agreement among what were then the main trading nations of the world. The developing nations represented in the GATT negotiations concurred after concessions thought to be appropriate to their needs were adopted. For the most part, those developing nations were considered to be somewhat in the situation of new industries in developed nations—that is, entitled to special attention and assistance until they could get on their feet. This was to be short-term, and they were in the end to be incorporated into a global economy for which efficiency, in a basically free trade world, would be the governing principle.

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1. General Agreement on Tariffs and Trade, *opened for signature*, October 30, 1947, 61 Stat. pt. 5, at A3, T.I.A.S. No. 1700, 55 U.N.T.S. 194 [hereinafter cited as GATT]. GATT has been extensively modified and amended. A more current version of GATT can be found in GATT, 4 BASIC INSTRUMENTS AND SELECTED DOCUMENTS (rev. vol. 1969). GATT as amended is also reprinted in J. JACKSON, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS (Doc. Supp. 1977).

Underlying the GATT was the additional belief that special or preferential treatment is inconsistent with free and efficient international trade. The immediate subject of contention in 1946-47 was the system of "imperial preferences," under which the United Kingdom gave special tariff and other treatment to British territories and colonies. This system, largely a response to the United States regressive tariffs of 1930, was considered to be incompatible with an open global economy and, after attracting much attention, was almost entirely eliminated when Britain joined the European Economic Community (EEC). There were lingering exceptions favoring certain preferences, in addition to those linked to economic development, but these were thought to be consistent with the goal of expanding world trade.

Since 1947 both the theory and practice of international trade have changed dramatically. On one hand, there has been growing insistence by developing nations that the application of the principles of comparative advantage is not necessarily beneficial to nations suffering from congenital and structural disadvantages. Some of the aspirations of the developing nations have been embodied in various documents—United Nations resolutions, national policies, negotiating positions in global and regional forums—which together comprise what may be called a prescription for a New International Economic Order.[2]

On the other hand, industrialized nations have undergone equally important, but not always frankly acknowledged, changes in perception. Assuming sound policies and management, industrialized Western economies (including Japan) had anticipated an endless continuation of increasing production and freer trade between nations. Although this perception was accurate for many years, these nations have recently encountered recession and unemployment. This new and unpleasant reality has caused reliance upon doctrines of protection and subsidy to replace professed beliefs in the virtues of open trading systems. In Geneva, at the so-called Tokyo Round, the current Multilateral Trade Negotiations (MTN) epitomize these two perspectives. Although the MTN are based on a stated reaffirmation that all will benefit from freer trade, nations are in fact retreating from free trade principles.[3]

I. Indicia of Change

A. National Objectives

"Industrial policy" is the phrase of the day in respect to national

2. G.A. Res. 3201, U. N. GAOR, Supp. (No. 1), U.N.Doc. A/9556 (1974).
3. *Slowly From Tokyo*, The Economist, Oct. 22, 1977, at 84.

economic objectives. In a 1977 Paris meeting one German scholar interpreted this somewhat ambiguous phrase to mean that trade policy and the desirability of reducing barriers to international trade must not take precedence over policies designed to maintain or increase levels of employment. "Industrial policy" might thus appear either innocuous or meaningless. In reality, the phrase means that restrictions imposed on imports in order to protect domestic employment are justifiable and even desirable, despite the professed devotion to the MTN negotiations in Geneva.

It is, of course, irrational to expect any government to be indifferent to industrial failures and high rates of unemployment. It may be equally irrational, however, to expect nationalistic policies to provide adequate remedies. In fact, such policies have been tried in many different types of economies and have generally proved inadequate.

B. Subsidies

Consistent with the post-World War II belief in the virtues of a market economy, subsidies have long been regarded as abnormalities. Subsidies were to be kept to a minimum, phased out as quickly as possible and used only as temporary support for ailing sectors of the economy. This principle, however, was never consistently put into practice. For example, in all countries agricultural subsidization has been routine policy and difficult to phase out. In many countries subsidies have recently become an inherent part of "industrial" as well agricultural policy. As subsidies are increasingly interwoven with macroeconomic policy, it becomes more difficult to deal with them as a separate issue. The case concerning Michelin tires imported into the United States from Canada is illustrative.[4] In that case, the Canadian Government, seeking to promote economic development and employment in Nova Scotia, one of the poorest of its provinces, provided generous incentives, including tax exemptions, for industries to establish themselves in the Province. After the Michelin company set up its facility, which manufactured tires primarily for export to the United States, United States manufacturers successfully argued that a subsidy was being paid on exports against which a countervailing duty should be levied in the United States. The case suggests both that subsidies, of one sort or another, may well be a part of development policy, and that it is often difficult to determine whether a subsidy is being paid to promote exports.

4. Treasury Dept. Decision Concerning Countervailing Duties on Michelin Tires Imported From Canada, 38 Fed. Reg. 1018 (1973).

C. Third World Development

There is an increasing tendency by Western nations to regard Third World economic development not as a benefit but as a threat to the stability of industrialized market economies. Under the aegis of the Council on International Economic Cooperation, the North-South dialogue of midsummer 1977 in Paris declared its intent to enhance Northern measures designed to promote industrial development in the Southern tier of nations.[5] Subsequent statements, however, have cast some doubt on these intentions. For example, it was early in 1977 that the French Prime Minister first used the phrase "organized free trade," which seemed to ignore the contradiction between the words "organized" and "free." The resulting furor was sufficient that the phrase was amended to "orderly growth of trade." There is some question whether or not a substantive difference exists between the two phrases. Each phrase indicated concern, according to a distinguished French expert, about the possible emergence of "new Koreas." In other words, parallel with the expressed commitment to assist in the industrial development of the developing nations, worries exist about the growth of industrial and manufacturing capacities in developing countries. This is especially notable in those sectors of national economies in which unemployment is a problem within the industrial countries themselves. These sectors (such as textiles, footwear, and steel) are also of special interest to the developing nations.

D. Economic Indicators

A fourth element of discontinuity also suggests an important change in perceptions. Traditionally, a trade surplus and an appreciating currency have been regarded as indicators of economic health and good management. Now, at least in some instances (in West Germany and Japan, most notably), it has been suggested that these are reasons for lamentation rather than for rejoicing.

II. A RE-EXAMINATION OF PROTECTIONISM

The foregoing itemization suggests that while the industrial world reaffirms its commitment to freer trade and continues to attempt to bring the MTN to a successful conclusion, mechanisms designed to protect national economies have become the norm. Some protective mechanisms, such as long-term arrangements with respect to textiles and man-made fibers, have long been in existence, and some of these

5. Conference on International Economic Cooperation, Final Communiqué, *reprinted in* U.S. Dep't of State Press Release, No. 257, June 3, 1977.

measures take the form of so-called "voluntary agreements." Similarly, the United States has negotiated with Japan a "trigger price" agreement on steel imports, which protects the United States steel industry against "excessively" low-priced Japanese exports. The latest full-scale revision of United States trade law, the Trade Act of 1974,[6] illustrates the institutionalization of this type of protectionism. The Act emphasizes "sectoral" negotiations, as demonstrated by the legitimization of "voluntary agreements." In addition, the Act facilitates the use of restrictive measures against "disruptive" imports and provides for retaliation against "unfair trade practices."

Other recent events are more consistent with a liberal trade policy. These include the commitments recently undertaken at the August 1978 Bonn summit meeting by the governments of Japan and West Germany to accelerate growth in those countries. These commitments were somewhat reluctantly accepted because of fears in those countries, especially in West Germany, of worldwide inflation and its effects. Consumer organizations have expressed the different view that a liberal trade policy is essential to creating jobs in export-related industries, to controlling inflation, and to promoting industrial efficiency.

The totality of the picture is far from clear and protectionism either in theory or in practice has certainly not won the battle. A fundamental re-examination of protectionist policies, however, is evidently taking place.

Within the ambit of this re-examination, the charge is often made that the problems of overcapacity and overproduction can be placed at the door of the Third World. Some of the statistics would appear to support this claim. The exports of textiles and clothing from developing countries to industrial nations rose at an annual rate of twenty-five percent in the period 1972-76, from US$3.5 billion to US$8.5 billion. Exports of manufactured goods, such as office and telecommunications equipment, watches and electrical goods, increased thirty-three percent per year, from US$1.1 billion to US$3.5 billion.[7]

Where developing nations have exports consisting mainly of manufactured goods (South Korea and Hong Kong are the outstanding examples of this relatively small group), exports in 1976 were forty-seven percent higher than in the previous year. Conversely, the United States balance of trade in manufactured goods with the developing world deteriorated by about US$2 billion in 1976 and probably somewhat more in 1977.[8]

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6. 19 U.S.C. § 2101 (1975) [hereinafter cited as Trade Act].
7. *From Free Trade to Adjustment*, THE ECONOMIST, Dec. 31, 1977, at 75.
8. *Id.* at 76.

It is notable that in many cases these exports from the developing countries were made possible by investments and capital from Japan, Western Europe, and the United States, producing allegations from labor unions that the transnational corporations are "exporting jobs." Overall, the economic impact which these facts and figures suggest tends to engender support for import restrictions, many of which already exist.

As a result of this perceived need for protectionism, application of the Generalized System of Preferences (GSP) to products already subject to import restrictions is frequently denied. The comparative advantage of developing nations is likely to be most evident in industries in which there is a large labor component of costs. This tends to restrict GSP application precisely where it would be of most benefit to the developing nations. Another result of the concern over rising exports in labor-intensive sectors and consequent prejudicial effects is the argument that preferential treatment ought to be limited to industries in which decent working conditions and wages prevail, or to situations in which it can be demonstrated that the benefits of preference are equitably distributed to workers. Otherwise, it is suggested, the poor of the rich countries will be subsidizing the rich of the poor nations.

It is clear, however, from an examination of the balance of exports and imports of manufactured goods between the industrialized countries and the developing world that, on the whole, developing nations have helped rather than injured the trade balances of the industrialized nations. The United States leads the industrialized nations in maintaining a close ratio of imports of manufactured goods from the developing nations to exports of such goods. A comparison of the figures from 1972 to 1976 shows that in 1972 the United States exported US$7.6 billion in manufactured goods to the developing nations against US$6.1 billion in imports; the 1976 comparison is US$18.4 billion for exports and US$14.8 billion for imports of such goods. The ratio of imports to exports is far more disproportionate for other industrialized nations and the imbalance is increasing. For the EEC, 1972 exports of manufactured goods to the developing non-oil-producing nations were US$12.8 billion, with imports of only US$4.2 billion; 1976 exports of manufactured goods to those developing nations came to US$25.7 billion, with only US$11.0 billion of imports. Japanese statistics reflect an enormous excess of exports over imports in manufactured goods with the developing nations other than oil producers: 1972 showed US$7.1 billion of exports against imports of US$1.2 billion; for 1976, the export figure was US$16.4 billion against the import figure of

US$3.5 billion of manufactures from developing nations.[9] At least as to manufactured goods, the developing nations have contributed to a high and sustained level of exports from the industrialized nations.

In this overall appraisal, it is also relevant to note the record of the socialist countries vis-à-vis manufactured goods imported from the developing nations. The Communist nations, which direct all trade on a centralized basis, do not admit very much in the way of manufactured goods imported from the developing nations. For example, developing non-oil-producing countries' exports of manufactured goods to Western industrial nations equal forty percent of their imports of such items; but exports to the Communist countries offset only twenty-five percent of their imports of manufactured goods from Communist nations.

III. The Shifting Structure of International Trade

Clearly, a number of factors in present world trade trends are troublesome, and competing objectives are difficult to reconcile. For the industrialized nations, recession has led to unemployment in some sectors and to demands that employment not be sacrificed to the mandates of a liberal trade policy. The developing nations look toward an increasing share of world trade and a favorable shift in its terms, as they progress from exporting raw and semi-finished materials to exporting manufactured goods. Consequently, continued affirmations of liberal trade policies have clashed with the realities of governmental action to protect and promote domestic economic interests, thereby stimulating a serious reappraisal of previously unchallenged dogmas. A 1977 GATT review of international trade in 1975-76 states: "The spread of protectionist pressures may well prove to be the most important current development in international economic policies, for it has reached a point at which the existence of an international order based on agreed and observed rules may be said to be open to question."

Protectionism, it is often argued, is seldom a benefit to the nation which practices it. Barriers to imports put no brake on inflation; they encourage inefficiencies and injure consumers in exchange for benefits which supposedly, but not always, accrue to industrialists and certain categories of workers. On the other hand, the argument has been made concerning both industrialized and developing nations for certain special categories of protectionism.

For the industrialized nations, it is accepted that the adjustments which imports might require in the national economy should be cushioned by safeguard measures. For instance, a nation may be accorded

9. *Id.*

the ability to take temporary and limited steps to protect its economy from an unexpected consequence of trade liberalization. The GATT itself concedes that a contracting state might be able to modify its trade concessions if, for example, a domestic industry is unexpectedly seriously injured or threatened with injury as a result of a lowered tariff.[10] In addition, nations such as the United States have enacted measures of "adjustment assistance," such as training workers in threatened industries for other types of employment.[11] Adjustment assistance measures are obviously preferable, at least in the eyes of the other contracting party, to the withdrawal of a previously granted concession.

The current trend indicates even greater use of protectionist measures. For example, the United States Trade Act provides for the possible withdrawal of concessions or for other restrictive measures if imports injure or threaten to injure a domestic industry, even if the imports do not result from a trade concession.[12] Theoretically, if the injury occurs only because the domestic industry is inefficient, protection would be withheld, but proof in such cases is difficult. Clearly, protectionist measures can now be implemented much more easily than ever before.

On the other side, some forms of protectionism have long been accepted for the developing nations. These were considered, however, to be exceptions to the general rule that trade and tariff concessions would result from a mutual bargain with substantial reciprocity on the two sides. But the exception has become the rule. Reciprocity, from the developing nations, it is now argued, is neither necessary nor desirable. Formerly any deviation from reciprocity was held to be justified only as a temporary measure when necessary to allow more time for the development of particular industries and to provide short-term protection against large and established competitors. This doctrine has now been transformed into general acceptance of "special and differential" treatment of the developing nations on a non-reciprocal basis. The rule is made explicit in Part IV of the GATT which provides: "The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of the less developed contracting parties."[13] The GSP is one manifestation of this principle. It has been suggested, as at least partial justification, that there is an inherent reciprocity in any trade concession unilaterally made by an industrialized

10. GATT, *supra* note 1, art. XIX.
11. Trade Act, *supra* note 6, §§ 222, 236.
12. *Id.* §§ 201, 202, 203.
13. GATT, *supra* note 1, art. XXXVI.

to a developing nation because the foreign exchange earned by the developing nation from improved access to the industrialized nation's markets would be promptly expended on imports.

The current popularity in fact if not in theory of protectionism, in developed and developing nations (to say nothing of socialist economies) puts the traditional post-World War II system under considerable strain. In addition to open or concealed restraints on imports is the difficulty of dealing with the numerous governmental measures intended to encourage exports. Where the measure has an obvious intent, as does a direct subsidy to exports, it may perhaps be dealt with by traditional mechanisms, such as countervailing duties. But many such measures are broader in their impact, and probably in their intent, than mere export promotion. The desire of the Canadian Government to promote economic development in an impoverished section of Canada, which was previously cited, is surely within the responsibilities of government. Nevertheless, the tax and other benefits thus given to domestic industry in the exporting country which has competition in the importing country may be considered a subsidy against which countervailing duties ought to be levied. How far this principle goes is a question which remains unanswered.

Other national policy objectives impinge upon the liberal trading system. Stability, especially in primary commodities, is desirable. Therefore, commodity agreements are proposed, but few have proved to be effective. In any case, they tend to "cartelize" trade in an important sector with the attendant high costs and inequities of cartels.

Another important aspect of the shifting structure of international trade is the increasing quantity of trade among nations in manufactured goods moving between transnational entities. Trade within the structures of the transnational enterprise has increased at a rate faster than that which characterizes trade between independent companies. The reasons for these phenomena include the marketing skills and contacts of transnational companies, the ability to evaluate and enter markets, and the financial strengths and diversity of operations which make it possible that isolated failure will not be a fatal disaster.

The transnationals have thereby contributed substantially to the growth of international trade, especially by increasing the exports of manufactured goods from developing nations. Nevertheless, the increasing concentration of international trade within the transnational structure raises numerous economic and political issues, including the possibility that corporate global policy may determine the crucial economic issues.

Finally, the present institutional structure of international trade, which is largely built upon the GATT, is extremely flimsy. The GATT itself was intended to be an agreement, not an organization. It was to have been administered by the International Trade Organization, a proposal which failed. Similar proposals have been made. One, for example, is the establishment of a World Trade Organization with sufficient flexibility to administer various codes dealing with functional subject areas and membership divisions under uniform rules of interpretation and enforcement. This, however, seems at the present time overly ambitious, especially in view of widely fluctuating exchange rates, the increasing number of "special" situations of crisis industries, and the above-mentioned views favoring protectionism. These factors lead one to question whether the GATT would even be negotiable under today's circumstances.

IV. The Growth of Preferential Agreements

One feature of the present trading system which warrants special attention is the exemption built into the GATT from the outset for customs unions and free trade areas.[14] The heart of the GATT, which reflected the consensual economic wisdom of its time, was that traditional doctrines of comparative advantage should underlie its provisions. This theory was mainly implemented by the adoption of most-favored-nation (MFN) treatment as its cornerstone.[15] Upon that cornerstone was erected a structure which provided not only for rules and procedures, but also for the process of comprehensive bargaining sessions with principal suppliers. The results of these sessions would then be incorporated into schedules annexed to the GATT and the benefits thereby generalized to all contracting parties.

There was little room in this system for preferential arrangements. Indeed, one of the objectives of many of the original GATT negotiators was to eliminate what was considered to be the prejudicial and limiting results of the imperial preference system, *i.e.*, the granting of special tariff and trade treatment by members of the British Commonwealth to each other. For these reasons, the exemption in the GATT for customs union and free trade areas was carefully negotiated to assure that such preferential arrangements were fully justified by increases in overall trade, and that they did not impose excessive costs on those outside the system. Formation of the European Free Trade Association followed the creation of the EEC, as both were considered to be within the explicit terms of the GATT. Even so, there was extensive argument as to whether these associa-

14. *Id.* art. XXIV.
15. *Id.* art. I.

tions did not in fact qualify. In any case, they were shortly followed by a number of other preferential arrangements, constituting not only serious derogations from the most-favored-nation principle, but also raising a number of issues of special concern to Latin American countries.

Since 1947, when the GATT was adopted by twenty-three signatories, there have been at least thirty-four preferential arrangements concluded and notified to the GATT. It is estimated that about twenty-five percent of world trade now falls within these arrangements. Such agreements are far removed from the original exception which looked toward eventual political and economic unity within a customs union. As a result, the original Director-General of the GATT, Sir Eric Wyndam-White, has stated that it "would strain credibility" to claim that the most-favored-nation is a guiding principle of world trade today.

The consequences for Latin America and the majority of other American nations are substantial. The fact is that costs have outweighed benefits for all nations outside of these regional preferential systems. Even in the United States, some have suggested that there should be a fundamental change in United States foreign policy toward the EEC. In terms of other nations, policies designed to protect the domestic European market for agricultural and other products have caused significant difficulties. This was especially the case when, in the Yaounde Conventions[16] between the EEC and certain African nations, preferences in the EEC market were conditioned upon "reverse preferences" in the markets of the African states.

Reverse preferences were eliminated in the Lomé Convention, signed in February 1975.[17] But the Lomé Convention, while extending the preferential system to forty-six developing nations in Africa, the Caribbean and the Pacific, does not include preferential treatment in the European markets for the nations of Latin America or Southeast Asia. The consequence is a substantial reduction of market opportunities in Europe for the excluded countries. Indeed, many observers have noted that EEC actions have been prejudicial to United States trade.

Preferential arrangements among the developing countries are not to any serious extent in question. Both the Latin American Free Trade Association (LAFTA) and the Central American Common Market

16. Yaounde Convention, July 20, 1963, 7 J.O. COMM. EUR. 1430 (1964); Second Yaounde Convention, signed July 29, 1964, *entered into force* Jan. 1, 1971, 13 J.O. COMM. EUR. (No. L 282) 6 (1970).

17. EEC Convention of Lomé, April 1, 1975, 19 J.O. COMM. EUR. (No. L 25) 2, 41 (1976).

(CACM) were in fact notified to the GATT and resulted only in a request that periodic reports be filed. Nevertheless, North-South preferential treatments distort market availability. To non-participating nations, especially developing nations, preferential treatments are therefore matters of serious concern.

Clearly, Latin America has been injured by the EEC arrangements. New offsetting regional and preferential arrangements have been suggested, one of which would include the United States, Canada, Latin America, and some of the Pacific developed nations such as Australia and New Zealand. The contention is that such a combination of nations would offset to some extent the increasing concentration of trade among the EEC nations themselves, and among those developing nations with which they have particularly strong political ties. It is at least conceivable that such a policy may emerge if the EEC and the GATT continue to advocate open trade, while maintaining a more or less limited system for imports coupled with increasing exports.

Many nations are concerned about the Common Agricultural Policy of the EEC which tends to exclude external agricultural imports. This has been the subject of intense and often difficult bargaining over the years, with little accomplished to permanently alleviate existing tensions. The trade of the now expanded EEC, which has virtually taken into its trade arrangements the members of the former European Free Trade Association as well as many of the Mediterranean nations, is increasingly limited to trade within the group itself. When exclusionary policies of this kind are maintained, the potential effects on the trade of nonmembers may lead to economic retaliation or to the formation of other trading groups. Limited retaliation has in fact already occurred, and if increased, a drift toward a series of regional trading groups may be the unfortunate result.

V. Conclusions

The problems are such that the recently retired Managing Director of the International Monetary Fund (IMF), at a presentation made in Mexico in April 1978, said that one of the most ominous features of the world economic scene is the slow growth of world trade, which is impairing the effectiveness of the adjustment efforts of deficit countries, and promoting the spread of protectionist trade measures. The question then is what should be done, especially in the context of the inter-American system.

A preliminary observation is that the trade and investment relations of American nations is far from a closed Western Hemisphere matter. Increasingly, relations with non-hemispheric nations have become extremely important, not only to the United States, which has always had its major trading partners in the industrial nations, but also to many of the nations of Latin America. The formation of a retaliatory inter-American group would not seem justified politically or economically. While the larger previously mentioned trading group is more viable, it too would narrow rather than open world trade channels.

Consequently, though cooperation on a regional basis is a matter of grave importance as well as of historical fact to the nations of the inter-American system, it should be only one aspect of a more open, rather than a regionalized, world trading system. This means, for one thing, that there are no simple regional solutions. The following, however, are seven measures which would have a beneficial effect on the Western Hemisphere nations and would facilitate their great contribution to an expanding system of open world trade:

(a) The GATT should be restructured. Always a somewhat makeshift organization, it served its purpose admirably during a period when trade was growing. The GATT, however, has found it increasingly difficult to adequately deal with the new issues of international trade policy which it now confronts. A more formal structure is needed, with a stronger sense of commitment by its members.

(b) Since such a restructuring of the GATT will be difficult, it is useful to consider several interim measures. One of these would be adoption, within the GATT, of a more effective means for reconciling disputes, for considering such issues as subsidies and countervailing duties, and for providing a mechanism for the adjustment process. Another might be the establishment by industrial nations of a special code of trade liberalization whereby the benefits but not the burdens would be made available to developing nations.

(c) A series of special agreements in various areas of trade policy might be negotiated. Some of these might take the form of commodity agreements, based upon the Integrated Program for Commodities which was put forward by the United Nations Conference on Trade and Development (UNCTAD) Secretariat in 1975.[18] Such a program should enhance rather than replace mar-

18. UNCTAD, *An Integrated Programme for Commodities*, U.N. Doc. TD/B/C.1/ L.52 (Draft Resolution, Geneva Feb. 21, 1975). The Draft Resolution was adopted in the Nairobi Convention; UNCTAD, Commodities, Action on Commodities, including decisions on an integrated programme, in light of the need for change in the world commodity economy, U.N.Doc. TD/184 (Item 8, Nairobi March 4, 1976).

ket mechanisms and would aim to stabilize prices around long-term trends. The program might be complemented by compensatory financing similar to that offered since 1975 by the IMF Compensatory Finance Facility.

(d) Questions as to whether developing countries in fact benefit from the principle of non-reciprocity in trade negotiations deserve serious study. The apparent benefits are in many cases ephemeral. The GSP, for example, has apparently not been a major factor in trade between industrialized and developing countries. The benefits may have accrued to importers in the industrial countries as much as to exporters in the developing nations. Among developing nations, those which are close to "developed nation status" would seem to be the chief beneficiaries. Finally, the investments in developing countries which should be stimulated by export opportunities is uncertain, especially when the exports rest upon a unilateral, noncontractual and temporary basis (such as with the GSP).

(e) The position both of state-trading economies and of state-trading industries should be examined in the light of current practice. It is very difficult to measure objectively the value of commodities as well as the value of trade concessions in terms of tariffs since trade lies in the hands of state monopolies, not with a multiplicity of importers. Increasingly, this is the position of many state-controlled industries, even in market-economy nations. It is difficult to bring situations such as these within the ambit of agreements like the GATT which essentially depend upon the forces of competition. Similar issues arise from private trade restraints characterized by cartels, market-sharing or dividing agreements.

(f) The structure of international agreements on subsidies and their relationship with intergovernmental actions needs continuing study and further refinement in order to be effective. As previously mentioned, the *Michelin* case[19] raises the fundamental issue of the integrity of governmental economic development policies. The question is whether such measures should be considered subsidies when their effect, but not their primary purpose, is to facilitate exports. In any such discussion and study, various export incentives used by many nations must be evaluated. These incentives would include the Domestic International Sales Corporation (DISC), an innovation of the United States which decreases and defers taxes paid on profits from exports as against those from do-

19. See note 4 *supra* and the accompanying text.

mestic commerce. Another example would be the numerous facilities extended by the Japanese Government to its exporters which have been at least partially responsible for the overwhelming growth of Japanese exports in recent years. Because of the many measures which effectively provide an incentive to exports, this topic is indeed one of the most troublesome of those still remaining before the current MTN in Geneva.

(g) The scope of regional trading preferences needs serious examination. Common markets or free trade areas have been regarded as a justifiable deviation from the principle of the MFN treatment only if such arrangements result in creating rather than diverting trade. A number of present preferential trade agreements, however, are plainly diversionary rather than beneficial in their impact. In many situations these arrangements merely provide a loose form of preference, sometimes limited only to a few products. In other situations, as for example the Yaounde and Lomé Conventions which link a number of nations to their former colonial-associated states, definite prejudice may be felt by the excluded developing nations, mainly those of Latin America. As the web of association expands this situation demands renewed scrutiny.

The conflict between free trade and protectionism has ancient roots. Plato is said to have felt that foreign trade was inimical to the atmosphere of an ideal state and that the austere self-sufficiency of Sparta was preferable to the cosmopolitanism of Athens, which enjoyed much free trade. It is likely, however, that most people would prefer the Athenian ideal. Beyond these philosophical concepts lies the thesis, which seems to have been substantiated by experience, that trade liberalization brings both impact and dynamic effects of a beneficial nature. This is accomplished not only by making resources immediately available on a more efficient basis than would otherwise exist, but also by stimulating competition and efficiency in the total utilization of a nation's resources of labor, land, capital, and skills. The international trading system and institutions which have served the world well for nearly three decades no longer respond effectively to the present realities so as to provide these benefits of trade liberalization. This does not mean that the objectives of an open and expanding world trading system should be abandoned. Rather, in approaching the complexities of trade liberalization, consideration must be given to, among other issues, how the principles of "special and preferential" treatment fit into such a concept and whether the idea of non-reciprocity is useful or not. Almost certainly, restricting the entry or the exit of goods, services, and resources is a minimally acceptable solution to the myriad problems of international trade. The lesson of history for developed and developing nations alike is that laws and institutions ought to be based on an open trade objective which may, in fact, be approached only gradually.