

# **Republican Commissioners' Views**

## **Trade policy and organization in the era of globalization**

### **Globalization has increased prosperity worldwide**

Since World War II, both Democratic and Republican administrations have worked to enhance global economic integration and to create and improve a series of international organizations, including the General Agreement on Tariffs and Trade and the World Trade Organization, to promote global trade and economic growth. In that period of time, globalization -- defined as the free flow of goods, services, capital, and ideas -- has helped to lift millions of people out of poverty and raise standards of living worldwide, including in the United States. The benefits of free trade are so substantial to our nation's prosperity that it is important for government, business, and academic leaders to explain more clearly that economic integration is still the best means to raise standards of living and contribute to global stability.

### **Trade raises standards of living**

The arguments for open trade are clear. Consumers gain because they can buy better goods and services at lower prices. Manufacturers gain by having access to raw materials and goods that make them more competitive. The economy gains as a result of increased competition, which encourages innovation and technological development. In short, open markets create a more efficient and productive economy that grows more rapidly, contributing to greater prosperity for our people.

As the world's largest exporter, importer, and investor, Americans have a major interest in ensuring that our market and global markets are open. Today, our trade and investment earnings and payments account for about one-third of our approximately \$10 trillion economy. Roughly 80 percent of world economic consumption takes place outside of the United States. Overseas customers buy more than half of our computers, cotton, aircraft, and soybeans; more than one-third of our construction machinery, semiconductors, and machine tools; and over a quarter of our farm machinery, flat glass, and corn. We need access to foreign markets to sell the goods we produce. Economic studies conclude that the jobs that trade creates pay better wages, provide greater benefits, and offer more security than jobs unconnected to trade.

Too often, those who talk positively about trade do so in terms suggesting that exports are good, implying that imports are bad---which is really an argument for mercantilism, not open trade. But open trade---imports as well as exports---is essential to our economic well-being. Although

about 90 percent of what Americans consume is produced here at home, we need some foreign goods, like oil, to keep our economy running at full speed. And, as nations sell us the products they produce, they earn the foreign exchange with which to buy goods and services from us. If trade ended tomorrow, not only would jobs at big companies disappear, jobs would also vanish at smaller companies that depend on foreign markets or require products or technologies not available domestically. And, if our borders were closed, our workers, who are also consumers, would pay more for a range of goods.

These are the reasons economists almost universally favor open trade. But the arguments for free trade extend well beyond economic theory. There is a high correlation between open markets and economic growth. Countries that have pursued policies to open and deregulate their economies have performed much better than those with protected and over-regulated markets.

Because our barriers to trade and investment are generally lower than those that exist in most other countries, it is in our nation's interest to persuade our trading partners to lower their barriers. As they remove these restrictions, we gain disproportionately in terms of new opportunity.

## **The World Trade Organization is key to enabling our trade to expand**

The WTO was created on January 1, 1995, as the successor to the General Agreement on Tariffs and Trade in the last round of global trade talks, at the conclusion of which more than one hundred nations entered into agreements to strengthen and modernize the global trading system. These agreements included commitments to reduce tariffs on average by 40 percent, open services markets, improve competition in agriculture, and strengthen protection for intellectual property rights. The member nations also agreed to an improved dispute settlement mechanism in the WTO. A member that believes another member has violated its trade commitments can request a panel be formed to determine if a violation has occurred and the amount of damage it suffered where a violation was found. Having a mechanism to resolve trade disputes can help lessen the risk of trade wars that would hamper economic growth.

## **The WTO cannot override U.S. laws**

Misunderstandings about the powers of the WTO are widespread. For example, neither the members of WTO nor the WTO panels (that, upon request, render opinions on whether certain conduct violates rules that the WTO members have adopted) have the power to override a member's domestic laws. If a WTO panel finds a member nation to be in violation of its trade commitments, the panel's authority is limited to issuing a decision to that effect. A nation found in breach of its commitments under WTO agreements can decide to amend its law and/or its practices to bring them into conformity with its commitments or ignore the commitment and pay compensation in the form of enhanced trade benefits to the aggrieved party. If the nations

involved in the dispute disagree on the adequacy of the benefits offered or the nation in violation refuses to offer benefits, the WTO governing body may authorize the injured party to withdraw trade benefits that it had previously granted to the offending country. For example, the United States imposed tariffs on a range of European Union exports after the EU refused to change its policies following a decision against its limitations on imports of bananas from Central America.

## **U.S. benefits from the WTO dispute settlement process**

Since 1995, when the new Dispute Settlement Understanding went into force, the United States has been heavily involved in its use, both initiating and responding to complaints. Of the 204 cases brought before the WTO since January 1995, the United States initiated fifty-five complaints and was the target of forty complaints. Overwhelmingly, the process has served our national interest by resolving the vast majority of conflicts that could have limited our trade. The U.S. Trade Representative reports that of the fifty-five complaints that the United States has filed,

- thirteen cases were resolved to U.S. satisfaction without litigation;
- the United States prevailed in litigation in another thirteen cases;
- twenty-four remain either in the panel or appellate stages or are in consultations, monitoring progress, or are otherwise inactive; and
- in only three cases was the outcome adverse to the United States.

Our government responds to WTO panel rulings against us not because we fear retaliation from the complaining nation, but because we believe that the rules-based system that the United States helped to build is in very much in our nation's interest and that to disregard the WTO's rulings would undermine that system.

## **Institutional improvements at the WTO**

In its five years of existence, many, including the director general of the WTO, have recognized that the institution could benefit from some organizational improvements. In the area of management, scholars have pointed to the need—with 138 nations as members and thirty more seeking to join—of developing a more effective mechanism for building consensus.<sup>1</sup> In the area of dispute settlement, legal experts have recommended a number of improvements.<sup>2</sup> Illustrative of the recommendations are

- developing rules to govern when parties who claim to have an interest in the case should be permitted to participate in a proceeding as amicus curiae to the panel;
- improving the rules governing "preliminary rulings" to weed out cases that lack merit;
- enhancing the list of potential panelists by establishing a permanent roster similar to that maintained by the appellate body;
- providing procedures for the appellate body to remand a case to the panel;

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<sup>1</sup> Jeffrey J. Schott and Jayashree Watal, "Decision Making in the WTO" in *The WTO After Seattle*, Jeffrey J. Schott, ed. (Washington, D.C.: Institute for International Economics, 2000.)

<sup>2</sup> John Jackson, "Dispute Settlement and a New Round" in *The WTO After Seattle*, Jeffrey J. Schott, ed. (Washington, D.C.: Institute for International Economics, 2000).

- opening panel hearings to government and nongovernment observers; and
- providing timeframes for disseminating nonconfidential summaries of briefs upon request.

These and other institutional improvements should be negotiated within the WTO. They could be resolved in connection with a new round of trade negotiations.

## **The U.S. needs fast-track negotiating authority**

If the United States is to continue to achieve the growth that comes from commerce beyond our borders, our trade negotiators need Congress to enact "fast-track" trade negotiating authority. "Fast-track" is shorthand for a bargain struck between the President and Congress to allow our government of separated powers to negotiate trade agreements. Historically, it has consisted of several interrelated commitments between the Congress, which is constitutionally empowered to regulate foreign commerce, and the President, who is constitutionally empowered to negotiate with foreign nations.

First, under "fast-track," Congress sets specific negotiating objectives for the administration. Second, "fast-track" requires the administration to consult closely with Congress during a trade negotiation. Finally, it requires Congress to vote for or against---but not amend---the trade agreement when it is presented. Any member of Congress who believes that the administration has not consulted sufficiently, or that the final agreement is not in the national interest, can vote against the agreement. Without such rules limiting amendments, our trading partners will not make the hard political decisions required in trade negotiations, knowing that in response to special pleading, members of Congress will seek to add or subtract from the bargain struck.

For the past six years, Congress has denied the President the "fast-track" authority that it has given every President since 1974, and in that period the United States has not pressed forward on any major trade initiative. The problem is that there is a sharp disagreement, reflected in Congress, over what U.S. trade negotiating objectives ought to be. Some members believe that the United States must continue to lead the world in opening the global economy; they support the WTO---convinced that will raise living standards and provide the wealth and open interaction that will help deal with social issues, including improving the environment and labor standards. Other members want trade agreements to deal not only with trade issues, but also to deal with a range of social issues, including the environment and labor standards. Positions have hardened, and a stalemate exists with respect to trade policy. The fact is that other countries are signing trade arrangements and opening markets for their products, but not for ours. As a result, we are losing billions of dollars of exports. In the past five years, some twenty significant trade agreements have been negotiated in Asia and Latin America without U.S. participation.

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## **Issues of labor and the environment**

All Commissioners agree that labor and environmental issues are extremely important. Half concluded that labor and environmental issues should be addressed in their own separate fora. The other half of the Commission members want to make any future round of comprehensive trade negotiations contingent on including labor and environmental standards. Further, all agreed that it is in our national interest to support strengthening of international labor rights. However, while half the Commissioners believe that this objective should be advanced in the WTO, the other half of the Commissioners concluded that these issues were not appropriate for resolution in the WTO. Their concern is that the WTO has neither labor expertise nor credibility with respect to labor issues, which are often complex and controversial. Their view is that the International Labor Organization is a better institution in which to advance this objective.

## **The International Labor Organization**

The International Labor Organization, which has been in existence since 1919, has both experience and expertise with respect to labor issues that the WTO lacks. In fact, at the WTO 1996 ministerial meetings in Singapore, WTO members voted that the ILO, rather than the WTO, should be the forum where the social dimensions of liberalized world trade are debated.<sup>3</sup> All WTO members are also members of the ILO. The ILO, now comprising 174 countries (98 percent of the world's people), was established to raise labor standards and improve working conditions throughout the world. It does this through the adoption of labor standards in the form of binding multilateral conventions, which members agree to honor, and nonbinding recommendations. To date, the ILO has adopted 183 conventions, eight of which are recognized as "core" labor standards.

The ILO is a unique tripartite body, where government delegates are joined by delegates representing a country's worker and employer organizations. Thus, unions are on an equal basis with both government and employer delegates and have standing to initiate cases. Since 1980, U.S. labor unions have initiated only ten cases in the ILO.

The U.S. government is limited in its use of the ILO as the enforcement mechanism for international labor standards because our government has ratified only eighteen of the 183 ILO conventions and only two of its eight conventions dealing with "core labor standards."<sup>4</sup> Governments can initiate complaints only with respect to conventions they have ratified. While the United States has not ratified many ILO conventions, we have adopted and enforce domestic labor standards that largely conform to ILO norms, and, in some instances, exceed them.

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<sup>3</sup> Congressional Research Service, "The International Labor Organization and International labor Issues in the 105th Congress," Report 97-942 (Dec. 18, 1998), p.3.

<sup>4</sup> The United States has ratified conventions on prohibiting forced labor for certain purposes (Convention No. 105) and on prohibiting child labor. A convention on nondiscrimination in employment has been submitted to the Senate for ratification. Other core standards seek to suppress forced labor (except in five specific categories of work or compulsory service), provide for freedom of association and collective bargaining, set a minimum age for work, and provide for equal pay. See Kimberly A. Elliott, "The ILO and Enforcement of Core Labor Standards," International Economics Policy Briefs (Washington, D.C.: Institute for International Economics, July 2000); and Elliott, "Getting Beyond No...! Promoting Workers Rights and Trade," in The WTO After Seattle, Jeffrey J. Schott, ed. (Washington, D.C.: Institute for International Economics, 2000).

The six "core" labor standards conventions that the United States has not ratified are

- Convention No. 29 on suppression of forced labor,<sup>5</sup>
- Convention No. 87 on freedom of association and the right to organize,
- Convention No. 98 on the right to organize and bargain collectively,
- Convention No. 100 on equal remuneration,
- Convention No. 111 on discrimination, and
- Convention No. 138 on minimum age.

The U.S. State Department has pointed out that the lack of ratification prevents the United States from initiating complaints and that it inhibits the United States from encouraging wider international observance of the standards set by the ILO.<sup>6</sup>

In addition, there is a debate regarding the extent of the ILO's enforcement powers. Until 1946, the ILO's constitution provided that members could take "measures of an economic character" in cases of noncompliance. A constitutional review following World War II dropped the specific wording regarding measures of an economic character and adopted the current broader wording of article 33 to "leave the Governing Body discretion to adapt its action to the circumstances of the particular case." It specifies:

*In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.*

Some scholars believe that since article 33 specifically leaves to "the Governing Body the discretion to adapt its action to the circumstances of the particular case," the new language does not exclude the possibility of any sanctions, including economic sanctions. Hence, in this view, the ILO retains the ability to authorize members to take economic sanctions against a member failing to comply with an ILO convention that it had ratified.<sup>7</sup>

However, ILO and U.S. Department of Labor officials interviewed by Commission staff do not believe that the ILO has the authority to authorize members to take economic action against a noncompliant member. Some legal scholars agree.<sup>8</sup>

<sup>5</sup> The objective of Convention No. 29, which the United States has not ratified, is the suppression of the use of forced or compulsory labor in all its forms in the shortest possible time. The convention has general applicability but does not apply to five specific categories of work or compulsory service, including compulsory military service; certain civic obligations, prison labor, work exacted in cases of emergency, and minor communal services. Convention No. 105, which the United States has ratified, is a prohibition on the use of forced or compulsory labor for certain purposes, including as a means of political coercion; as a means of economic development; as a means of labor discipline; as a punishment for having participated in strikes; and as a means of racial, social, national, or religious discrimination.

<sup>6</sup> "The International Labor Organization and International labor Issues" (Washington, D.C.: CRS.)

<sup>7</sup> Elliott, "Getting beyond No!"

<sup>8</sup> See, for example, Lisa Baltazar, "Government Sanctions and Private Initiatives: Striking a New Balance for U.S. Enforcement of Internationally-Recognized Workers' Rights," *Columbia Human Rights Law Review* (Summer 1998), and Elisabeth Cappuyns, "Linking Labor Standards and Trade Sanctions: An Analysis of Their Current Relationship," *Columbia Journal of Transnational Law* (1998).

## **Cooperation between the WTO and the ILO**

It is conceivable that a conflict could arise between the ILO and the WTO if countries impose economic sanctions authorized by the ILO. Theoretically, a nation that was the target of ILO sanctions could file a WTO complaint against those nations imposing the sanctions alleging that the sanctions imposed by ILO members violated their WTO obligations. However, article V of the WTO directs the WTO's General Council to make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibility related to those of the WTO, and the ILO enjoys explicit observer status at the WTO. As a practical matter, it is difficult to see that a nation sanctioned by the ILO would anticipate success in bringing a WTO case to complain about an economic measure imposed for violation of a convention it had signed. The principles of comity would have apt application in such a circumstance. The Commission supports efforts to enhance cooperation between the WTO and the ILO.

## **Recommendations regarding the WTO and the ILO**

To strengthen U.S. participation in the ILO and to ensure that the ILO has adequate authority to authorize actions against nations in violation of labor standards, most Commissioners recommend that

- the United States reconsider the merits of ratifying the ILO "core labor standards conventions,"
- U.S. business as well as labor become more active in shaping the future agenda of the ILO,
- the Governing Body of the ILO (comprised of representatives of all member nations) determine whether it has the authority to take economic action in appropriate cases to enforce its labor standards and to consider seeking such authority if it does not, and
- the ILO and the WTO cooperate to avoid conflicting determinations.

## **FUTURE U.S. TRADE AGENDA:**

### **A new global trade round**

Because overseas trade increases world and national prosperity, advances the rule of law, and enhances world stability, it is in the interest of the United States to continue to press to open global markets. A new, multilateral round of trade talks that secures reciprocal commitments to open markets from all of the 138 WTO member nations would have the broadest impact. The United States has a number of specific interests, including

- reducing tariffs, trade-distorting domestic supports, and export subsidies in agriculture;
- opening up a range of services including audiovisual, construction, express delivery, telecommunications, and energy services;
- reducing industrial tariffs in such areas as fish, forestry products, chemicals, medical equipment, environmental, and energy products;
- strengthening protection for intellectual property rights;
- making institutional improvements at the WTO, including increased transparency;
- extending the moratorium on taxes on electronic commerce; and
- increasing transparency in government procurement.

Other nations, particularly developing nations, have expressed interest in having the negotiations cover such issues as accelerated opening of textile markets, review of antidumping laws, and improved representation in WTO deliberations.

The United States will have to demonstrate a willingness to discuss the full range of interests expressed if it is to secure a new round. The process of negotiation will determine what and how the issues are addressed.

## **Regional and bilateral trade policies**

While our trade policy should rely primarily on the WTO to promote more open global markets, we should also continue efforts to open national markets through regional and bilateral negotiations and agreements. Liberalization in regional markets will not only improve our access in the participating markets, it can also encourage nonparticipating nations to take similar action. The United States can often achieve broader, deeper, and swifter liberalization on a regional basis than is possible in complex multilateral negotiations. Also, regional agreements can serve as the building blocks to reaching broader global liberalization.

The two regions particularly important to U.S. interests are Latin America and the Asia-Pacific region, where commitments have been made to eliminate trade barriers by a specific date. In December 1994, the thirty-four heads of state agreed in Miami to negotiate a hemispheric free trade agreement by 2005; in November 1994, the members of the Asia Pacific Economic Cooperation Forum (which now number twenty-one economies, including China) agreed to open their borders to trade and investment--- developed nations removing their barriers by 2010 and developing nations by 2020. It is in our national interest to press ahead with both initiatives.

Because the United States has such a broad range of trade interests, it must also negotiate bilaterally with its trading partners. It should look for opportunities to obtain market access, as well as to deal with problems. We should persuade our trading partners that history shows that open economies grow much faster -- and in the case of developing countries roughly five times faster -- than those that are closed, as discussed more fully in Chapter 2.

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## **Improving trade agreement monitoring and enhancing compliance**

The value and credibility of trade agreements depend on their implementation as well as on the terms of the agreement. Agreements that are not faithfully carried out diminish public confidence in the trading system. The federal government is now subject to results-based evaluations pursuant to the 1993 Government Performance and Results Act. Trade agreements should be subject to the same type of evaluation. As noted earlier, the American Chamber of Commerce in Japan concluded that Japan had successfully implemented only 53 percent of its agreements with the United States. U.S. trade policy involving Japan must give greater emphasis to compliance. Overall, the U.S. government must give greater attention to monitoring and enforcing all of our trade agreements.

Businesses that are affected by particular trade agreements have a key role to play in monitoring their enforcement. They are closer to marketplace activity than government and can see transgressions firsthand. Government must also be engaged in monitoring the implementation of trade agreements for several reasons. First, comprehensive monitoring is needed to set priorities for the enforcement activities that government undertakes. Second, monitoring can provide direction and lessons for subsequent negotiations. These negotiations can be improved by building on successfully implemented agreements and by remedying problems identified in implementation of past agreements. Third, government monitoring tells other nations that the United States takes compliance seriously. Fourth, government monitoring shields businesses that in some cases fear that foreign governments will retaliate if they complain; hence they are unwilling to "rock the boat" by complaining about trade agreement violations. Finally, effective monitoring and enforcement are essential for U.S. trade policies to gain the public support essential to their success.

The priority given to monitoring and enforcing of trade agreements is reflected in the organization, staffing, and funding of the trade policy agencies. The Department of Commerce unit charged with monitoring compliance with trade agreements is not adequately staffed. The size of its China office declined from eight officers to four between fiscal years 1992 and 1999. Its Western European office is down from thirty-one to eighteen officers, and its Japan office is down from seventeen to eight. During that time, U.S. trade with China expanded by 186 percent, with Western Europe by 30 percent, and with Japan by 64 percent.<sup>9</sup> While the general staffing levels need not match the expanded trade, the increased number of trade agreements that the department must monitor and enforce, and the large number of trade disputes with major trading partners, indicates that substantial staff reductions are not an appropriate response to the rising importance of trade policy.

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<sup>9</sup> Trade is measured by imports plus exports. Data are preliminary and not adjusted for inflation.

In a recent report, the U.S. General Accounting Office reached a similar conclusion:

- The task of monitoring and enforcing foreign compliance with trade agreements has become more complex, and the number of trade agreements and trade agreement partners has grown as the issues covered by trade agreements have expanded. In the past, trade agreements primarily helped to reduce the tariffs charged on merchandise imports. However, current trade agreements address more complicated types of import restrictions, such as product standards and food safety regulations, and cover a broader range of issues, such as trade-related investment measures or intellectual property rights.
- Although the Office of the U.S. Trade Representative and the Departments of Commerce and Agriculture have taken steps to improve their monitoring and enforcement efforts, certain capacity weaknesses limit their ability to handle the federal monitoring and enforcement workload.<sup>10</sup>
- Ensuring that trade agreements are monitored and enforced will not be easy. It will be necessary to ensure that U.S. trade policy agencies be organized to put much greater emphasis on enforcement. Further, they should be staffed and funded adequately so that "improved enforcement" does not become an empty promise.

## **Recommendations to improve the monitoring of and compliance with trade agreements**

To improve monitoring of and compliance with trade agreements, the Commissioners recommend that

- the President's budget for the next fiscal year include adequate staffing in the Department of Commerce, particularly the Market Access and Compliance unit, and in the Office of the U.S. Trade Representative for the task of monitoring and enforcing existing trade agreements; and
- the U.S. trade policy agencies be organized to put increased emphasis on enforcement.

## **U.S. trade laws: enhancing industry adjustment to import surges**

### **Antidumping laws**

Economists have questioned key elements of antidumping laws, noting that businesses commonly price products differently in different markets and at different times. Variations in prices are seen mainly as reflecting cost or customer demand. This common practice is referred to as "pricing to the market." There is no intent to exploit unfair advantages over competitors in these pricing decisions. In some cases, however, the price differences reflect predatory intent to use a

<sup>10</sup> U.S. General Accounting Office, International Trade: Strategy Needed to Better Enforce Trade Agreements (NSIAD-00-76, Mar. 14, 2000), pp. 4-5.

price war to drive other businesses out of the market. U.S. domestic law recognizes a distinction between price discrimination (that is, charging different prices in different markets) reflecting cost or competitive pressures in the different markets and price discrimination reflecting predatory pricing. Our antidumping laws, however, do not recognize any such distinction. In many dumping complaints, the foreign producer is alleged to be pricing products in the United States at lower than cost. In defining cost, however, the law stipulates an arbitrary (and often unrealistic) full allocation of costs plus a profit margin of 8 percent.

From a U.S. producer's perspective, the antidumping laws provide some shelter against foreign producers who regard the U.S. market as the major destination for surplus production. In many large, capital-intensive industries, such as steel and automobiles, the global productive capacity exceeds global demand for the final product. Antidumping laws also provide some counterbalance where foreign governments' grant of subsidies and protected domestic markets have encouraged the excess capacity. Many petitioners favor antidumping actions because the decisions must be made within defined timeframes (with specified limits on their extension) and without presidential review, notwithstanding that the actions are very expensive to file and prosecute.

## **An alternative for responding to import-related disruption: Safeguard actions of section 201**

U.S. trade law and WTO agreements provide an alternative remedy for the problems of import surges while avoiding many of the difficulties of antidumping law. Section 201 of the U.S. Trade Act of 1974, the "escape clause," authorizes the President to grant temporary relief to industries to facilitate their adjustment to import competition. There is no need to demonstrate that the imports were unfairly traded. After a petition for relief is filed (usually by affected industries), the International Trade Commission investigates and determines whether "serious injury or threat thereof" exists from imports. If it finds injury or threat of injury, it forwards its determination with a recommendation for relief for the petitioner to the President. The President has broad authority to accept, reject, or change any relief recommended by the ITC based on "national interest." Section 201 is generally consistent with WTO "safeguards" provisions. Import relief under section 201 is limited to an eight-year period, and the relief granted must be progressively reduced over the relief period.

Section 201 of the U.S. Trade Act of 1974 offers several advantages over the antidumping law:

- Import relief is granted on a nondiscriminatory basis against imports of the specified product from all nations. In contrast, antidumping complaints focus on imports from specific nations, and antidumping duties, if imposed, are placed only on the imports from the specified supplier. Generally, other exporting nations are contributing to the global overcapacity of the product, particularly if those nations shield their industry behind trade restrictions.

- While it is not required, industries petitioning for relief under section 201 often will present adjustment plans as part of their petition that can be quite helpful in the adjustment process. Industries or companies receiving import relief through antidumping duties have no incentive to develop such plans and may face the same problems from other imports not covered by the antidumping duty.

## **Recommendations to improve industry adjustment to import surges**

To improve the laws permitting industry to seek protection against import surges while they adjust, the Commissioners recommend that the U.S. government take the following actions:

- *Expedite the 201 process.* When an industry is being seriously injured by imports, "justice delayed is justice denied." Imports can increase rapidly, in particular when there is significant global overcapacity. Therefore, in such circumstances, provide for faster action in section 201 cases.
- *Use auctions to allocate quotas.* One form of relief permitted under section 201 and the relevant WTO agreement is limiting imports to a fixed amount. When such a quota is imposed, the foreign producers' sales volume is restricted. With supply limited, they, as well as domestic producers, often raise their prices. The domestic industry benefits from greater opportunity to sell into the market. Consumers bear the burden of this relief by paying higher prices for the domestic as well as the imported product. Although the current law provides for the use of auctions to allocate quotas, the quota provisions have never been used. By auctioning quotas, the United States could obtain revenue that would otherwise accrue to the foreign producers. Their bids would represent the value that they associate with selling in the U.S. market. Furthermore, auctioning the quotas helps to ensure that the most efficient among foreign producers continue to supply the U.S. market.
- *Consider making the International Trade Commission's recommendation binding at the end of sixty days, unless the President issues a determination to change or reject it.* Currently, the President has the authority to change or reject the International Trade Commission's recommendation for relief and is to do so within sixty days of the ITC recommendation. However, in many cases, the time has been extended (sometimes for months), leading to great uncertainty for both petitioners and importers. Extended delays in presidential determinations undercut the effectiveness of section 201 and increase the relative attractiveness of bringing antidumping cases even though they are more costly.
- *Evidence a willingness in a new round of global trade talks to agree to changes in and even a possible elimination of antidumping laws.* Section 201, perhaps even strengthened by changes recommended above, constitutes a better method of giving

domestic industries time to adjust to a surge of import competition than do our antidumping laws. The use of antidumping laws by other governments has escalated dramatically and is becoming a major impediment to U.S. exports. Relative to imports, for the period 1995-98, Canada and the European Union used antidumping remedies twice as frequently as the United States. Developing nations made even greater use of such laws. Compared to the United States, Argentina initiated dumping cases twenty-six times as often, Brazil initiated cases nine times as often, India initiated cases nineteen times as often, Mexico initiated cases three times as often, and Korea initiated cases twice as often. Compared to other major developed nations, U.S. exports are far more likely to be the target of foreign antidumping cases. In the period 1995-98, U.S. exports were as much as three times more likely to be the target of foreign antidumping litigation than exports from Japan and the major European economies. A number of developing nations have indicated that one of their key interests in a future multilateral trade negotiation is the elimination of antidumping laws. Willingness to negotiate with them on this issue in exchange for their agreeing to address one of our key trade concerns would well serve our nation's interests.

## Avoid protectionist legislation

The United States has been and remains the country with the most powerful influence on the direction of the world trading system. The dramatic decline in world trade barriers over the past half-century, and the realization of all of the attendant benefits, would not have been possible without U.S. leadership and example. The United States is a positive role model for other countries when it adopts trade-liberalizing measures.

As Nobel laureate Professor Milton Friedman testified before the Commission:

*The best way to open other markets is for us to set them an example.<sup>11</sup>*

However, when the United States adopts protectionist measures, the measures can make the United States a negative role model. This can have serious adverse consequences because, when the United States adopts protectionist legislation, other countries are quick to seize on the example and follow suit. As discussed above, while antidumping laws originated in the United States, we are not the most frequent user of such measures. Exports from the United States are now much more likely to face barriers imposed under (foreign) antidumping laws than imports into the United States.

Recently, the U.S. Congress passed legislation that makes a very troubling change in the U.S. antidumping and countervailing duty laws. It was attached to H.R. 4461, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for Fiscal Year 2001, without committee hearings or review. This legislation amends the Tariff Act of 1930 to give affected American firms the proceeds of countervailing duty and antidumping orders

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<sup>11</sup> Hearing of the U.S. Trade Deficit Review Commission, November 15, 1999, Palo Alto, CA.

duties imposed on foreign competitors. Under this provision, U.S. firms that prevailed in antidumping and countervailing duty cases would not only get protection from lower-cost foreign competitors, but they would also get a direct subsidy from the proceeds of duties collected on the affected imports. This legislation would greatly increase the incentive for companies to file unfair trade cases, as the companies would in effect collect a bounty if they prevail. Furthermore, such legislation will undoubtedly encourage other countries to pass similar laws, creating new funds with which to try to stop U.S. exports. The protectionist attraction of such measures is that, in addition to limiting imports with the imposition of tariffs, they also provide an automatic funding source for domestic subsidies.

When President Clinton signed H.R. 4461 into law on October 28, 2000, he took strong exception to this provision of the bill:

*...I note that this bill will provide select U.S. industries with a subsidy above and beyond the protection level needed to counteract foreign subsidies, while providing no comparable subsidy to other U.S. industries or to U.S. consumers, who are forced to pay higher prices on industrial inputs or consumer goods as a result of the antidumping and countervailing duties. I call on the Congress to override this provision, or amend it to be acceptable, before they adjourn.*

## **Recommendation regarding the new provisions of the antidumping law**

We support the President in his opposition to this new legislation, and we recommend that Congress promptly repeal it.

## **Coordinating trade, security, and foreign policies**

In today's interconnected world, policymakers will err if their focus on foreign policy includes only considerations of national security or their focus on trade policy includes only commercial concerns. Our national security in this era of globalization depends on trade and other economic policy as well as on foreign policy considerations. During the Cold War, the United States was required at times to subordinate trade policy to its foreign policy goals. Today, it is important for trade and foreign policies to work in harmony, mutually reinforcing a range of goals. However, over the past decade, excessive use of trade and economic sanctions and export controls has at times interfered with thoughtful implementation of our trade and foreign policy.

## **Trade sanctions**

Increasingly over the past decade, the United States has imposed economic sanctions unilaterally to reflect disapproval of, or to induce changes in, a range of foreign government policies or

practices. Often these sanctions ban U.S. exports to a targeted nation. Unilateral sanctions rarely work and often have the unintended consequence of creating market opportunities for foreign competitors of U.S. exporters. Maintaining sanctions that are not observed by other nations, including our closest allies, undermines the credibility and moral force of the sanctions and creates unwarranted international friction, as well as weakening the U.S. competitive position.

## **U.S. export control policy**

In addition to maintaining export controls on munitions and other military materials, the United States maintains controls over the export of high-technology goods that can have a military application, even where the goods are primarily commercial in their application. Various proposals have been made for substantial or complete elimination of controls on "dual-use" technologies.

The effectiveness of the controls today is increasingly questioned, for it is close to impossible to control the sale of dual-use products worldwide. In most cases, companies in other nations will serve as willing suppliers. Too often the maintenance or imposition of export controls on dual-use technologies results in U.S. businesses losing potential exports without the offsetting gain in national security that is the rationale for this policy.

## **Recommendations to improve the coordination of trade, security, and foreign policies**

To achieve more effectively the objectives of our trade, security, and foreign policies, the Commission recommends the following actions:

- The U.S. government should refrain from applying trade sanctions unilaterally, except where such an action is clearly in our national interest. In those exceptional circumstances, the executive branch of government should move quickly and forcefully to persuade other nations to join in the sanctions so that the sanctions have a greater likelihood of success. If the executive branch is unable to persuade other governments to support the sanctions within a reasonable period, the sanctions should expire, absent a presidential determination of national interest to maintain them.
- Congress should limit the imposition of unilateral trade sanctions by the legislative and the executive branches of government by requiring a higher threshold of national interest and limiting the duration of sanctions.
- The imposition unilaterally of controls on the export of dual-use technologies should be avoided except in exceptional circumstances where the President can certify that the imposition of controls is essential to our national security. Exceptional circumstances should be limited to those instances where the controls have a high likelihood of success. This recommendation does not apply to controls in place under multilateral agreements or controls on munitions and technologies that have only a military application.