Fairness: The Scylla and Charybdis of U.S.–Japan Relations

フェアネス：日米関係のスキュラとカリュブディス

Roger Benjamin and Loren Yager
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Prepared for the
Center for Asia-Pacific Policy
The RAND Center for Asia-Pacific Policy (CAPP), formerly the Center for U.S.-Japan Relations (CUSJR), conducts research and supports an array of interactions and exchanges designed to improve public policies toward the Asia-Pacific region. The rapidly growing importance of the Asia-Pacific region necessitated a shift in emphasis from a bilateral, U.S.-Japan focus to a multilateral, regional approach to research.

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This report argues that the existing trade dispute institutions, such as the General Agreement on Trade and Tariffs (GATT) and the International Trade Commission, are no longer venues for the major economic fairness questions posed by American firms and industries against their Japanese counterparts. Instead, the political arena is now the preferred locus of action. This shift brings with it a policy dilemma to which Tokyo and Washington have difficulty responding.

This study expands on an earlier report (Benjamin, et al. 1991) that found empirical evidence of growing public perception of unfairness in bilateral trade and investment by the other country in Japan and the United States. Moreover, that study found there is no common American or Japanese definition of unfairness in economic relations. The first report argued that the result is a negative policy spiral between the two countries that threatens the U.S.-Japan relationship. This study focuses on the evolution and use of the concept of fairness in the international trade dispute institutions where the term originated, to provide a better understanding of the institutional and legal contributions to the fairness dilemma in U.S.-Japan relations.

The report is designed to contribute to dialogue on the problem of fairness in U.S.-Japan relations. The report should be of interest to public and private groups in Japan, the United States, and elsewhere concerned with the U.S.-Japan relationship.
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4.1. Three-Quarters of the Bilateral Deficit Covered by Trade Agreements .......................... 39
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This study reports on research conducted in the second phase of a project on fairness in U.S.-Japan economic relations. The first phase found that specific trade disputes often appear intractable, as the fairness debate itself does. Americans charge unfairness by Japan, arguing that U.S. companies do not receive the same treatment in Japan that Japanese companies receive in the United States. The Japanese argue that Americans use the fairness issue to mask domestic macroeconomic failures. This second phase extends the research to understand how the concept of fairness has evolved out of the trade-dispute institutions that originally gave rise to the concept of fairness.

Fairness has been part of the legal vocabulary of international trade discussions since the 1800s. Indeed, the present confusing use of fairness-related terminology outside and inside government evolves from the use of the same vocabulary within the trade-dispute institutions and in international trade discussions. Outside of government, terms related to fairness are used commonly and without any precision or consistent meaning. In contrast, the International Trade Commission and the GATT have constructed complex legal interpretations of fairness over the years.

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1The reference to Scylla and Charybdis in the title is from the classic Greek myth found in Homer’s *Iliad* and *Odyssey* that presents Scylla and Charybdis as the guards of the straits of Messina, the first a six-headed monster who devoured sailors, and the second a terrifying whirlpool.
From a U.S. perspective the development of the institutions for moderating international trade disputes can be divided into four periods. The first, 1947 through 1962, can be called the period of the GATT. During this time, U.S. leadership focused on trade liberalization for the purpose of rebuilding the war-torn economies. This often meant that international rules, including those governing fairness with regard to dumping and subsidies, developed along the lines of U.S. rules. The second period began with the Trade Expansion Act of 1962 and ended with the oil crisis of 1974. Partly as a result of the success of the multilateral tariff reductions begun in 1947, attention in the United States had shifted to the negative impacts of trade on domestic industries. Despite the intentions to shift toward such remedies as trade adjustment assistance, the changes in the 1962 trade act had mixed success at best.

Attention to the impact of trade on the domestic economy was further heightened during the period of the two oil crises, roughly from 1975 to 1983. As a result of these two external shocks, U.S. trade policy underwent a significant shift toward more aggressive market-opening measures and changes designed to provide greater remedies to domestic claimants. Some of these changes showed that the United States was no longer willing to abide by the original definitions of fairness embodied in the GATT laws and earlier legislation. As oil prices decreased, the era of the strong dollar and the huge trade imbalance with Japan ushered in what might be called the Japan period. Much of the U.S. policy during this period has dealt with the challenges presented by Japan, and many of the later measures mentioned Japan specifically in the legislation.

Three factors appear to have contributed to the shift in U.S. policy in dealing with fairness in trade relations between the United States and Japan. The first explanation offered for this shift is the increased impact of trade on the U.S. economy. The change in the importance of trade to the U.S. economy has been especially dramatic since 1974. These changes mean that international events have an increasingly important impact on the domestic economy. In addition to the increase in trade, a number of the measures of performance of the U.S. economy have declined over the last two decades. In terms of the broadest measure of the economy, gross domestic product (GDP) growth, the annual growth rates have steadily decreased over the past several decades. These higher levels of growth also make the
industrial and regional downturns—including those that might have been created by trade pressures—somewhat less painful. A second indication of the slowed performance of the U.S. economy is demonstrated by the drop in productivity growth from 1950 to the present. This lower rate of productivity growth, especially in relation to Japan, made it difficult to maintain a rough balance of exports and imports without the help of currency devaluations. The final indication of the weakened performance of the U.S. economy is the upward trend in the unemployment rate during the postwar years. Because these economic shocks have longer and more painful effects, it is perhaps not surprising that U.S. trade policies have turned to mechanisms that attempt to insulate the economy. As a result, the preferred solution of larger industries and those with a link to national security was to resort to collective action in Washington. Given Japan’s economic success during these same periods of American economic turbulence, it is not surprising that its industries are the focus of much of this attention.

The problem of interface is a third explanation for the shift to political measures for solving trade disputes between the United States and Japan. Interface problems result from a lack of congruence between the values, institutions, and overall social fabric between the two societies. It is thus difficult for negotiators from radically different societies to find common ground. The historical review sets the stage for an analysis of how the international trade dispute institutions have functioned during the escalation of trade tensions between Japan and the United States. In the case of the GATT, the progress of negotiations within the various rounds is one indication of the functioning of the organization, and the pattern of cases filed with the GATT is another indication. In terms of the U.S.-Japan negotiations within the GATT, Japan was a relatively minor player in the early rounds. Japan’s economic position had changed significantly by the time of the Tokyo Round (1973–1979), and the image of Japan as an import-dependent country shifted to one of an export powerhouse. Because Japan did not want its growing surplus to be a major issue, it was relatively accommodating in the negotiations. In the most recent round, however, Japan began to use the GATT more aggressively to combat the unilateral actions taken by the United States under the Trade Act of 1988. By this time, the focus of U.S. trade policy had shifted to its newly legislated set of procedures.
Surprisingly, during the period of increasing trade tensions and fairness grievances against Japan in the late 1980s, the United States filed only one complaint against Japan. In general, the United States has not extensively used the GATT as a forum for possible remedy against Japan.

The U.S. International Trade Commission is a key agency in terms of fairness disputes with other nations. The focus here is on complaints of unfair dumping and subsidies, because those issues are important in the fairness debate, and because the investigations are specific to a country and a product.

The number of fairness cases involving Japan has decreased sharply in the latter half of the 1980s. This is especially true in the case of subsidies, where no cases have been filed since 1986. This result is surprising, since the U.S. trade deficits with Japan and fairness-related complaints in the media continued to rise into the late 1980s. It also appears inconsistent with the shift in trade legislation, which moved from an emphasis on trade liberalization in the 1950s to a more aggressive response to Japanese export successes in the United States in the second half of the 1980s.

Since 1980, these two nations have increasingly responded by instituting "voluntary" agreements, which are then implemented by the U.S. Trade Representative's Office and the Department of Commerce. Voluntary restraint agreements (VRAs) and voluntary export restraints (VERs) have the following characteristics. First, they target specific industries. Second, the agreements typically set price floors and/or quotas on the goods that can be imported into the United States or exported to Japan. Finally, many of the agreements are "voluntary" only in name because the Japanese faced the prospect of formal trade restrictions being imposed upon them if they failed to adopt the "voluntary" restrictions suggested by their American counterparts.

Automobiles and semiconductors are only two of an increasing number of industries covered by VERs or VRAs. Five industries covered by such agreements account for three-quarters of the U.S. trade deficit with Japan. The United States now operates an ad hoc form of managed trade with Japan. In some cases, the number of units is controlled, in some cases a floor price is established, in some cases
only certain products are covered, and in some cases the agreements cover exports as well as imports. It may be hypothesized that whenever a major U.S. industry falls into a substantial deficit with Japan, the inclination is to seek a managed agreement.

The details of U.S.-Japan trade policy for the next few years have not yet been determined in detail. The Clinton administration has indicated a preference for results-oriented negotiations designed to give American industries a specified share of the Japanese market. The Japanese government, for its part, has stated repeatedly that it is not willing to enter into results-oriented agreements of the kind the Semiconductor Agreement represents. Nonetheless, the trade policy is likely to take on many of the characteristics of the agreements of the past few years. In any case, a results-oriented approach represents a clear shift away from fairness rules.

One of the contentious issues is likely to be the role of numerical targets or “reference indicators” in the policy. Managing trade also requires attention to details that are not easily resolved. Given the inherent difficulties of managed trade, the best case will be a continuation of the contentious discussions over the agreements, since the effectiveness of these agreements depends on some extent on the political will to carry them out. An additional issue is the question of how the broader questions will be addressed, since managed trade appears likely to be used for particular industry solutions.

These political measures have not resolved the larger problem of the strained economic relationship between Japan and the United States. One of the problems with ad hoc managed trade, such as the United States now conducts with Japan, is that it does not address trade systematically through policy, but handles each problem piecemeal in response to the political clout the affected industries or firms have with the Congress or the president. These agreements cannot be expected to change the fundamentals of the economic relationship, and there is no reason to believe that resolving today’s problem will prevent another issue from being raised tomorrow. In fact, the opposite is true, since handling a complaint today makes it more likely that another issue will be brought forward tomorrow.

The level of the bilateral trade deficit is one closely watched indicator of the U.S.-Japan economic relationship, as it appears to be related
to the level of debate about fairness in the two nations. Current
trends suggest that, in the immediate future, the deficit will increase
and will place additional strain on the relationship.

Other economic factors are also important in assessing the future of
the bilateral trade relationship. The outlook for somewhat more
rapid growth in the United States provides some reason for optim-
ism. In addition, the aggressive policy toward Japan that developed
after 1984 was based to some extent on the perception of Japan
as an economic juggernaut. At least for the time being, that percep-
tion is not accurate. In Japan, it may be that the rapid growth made
it politically possible to negotiate arrangements that were not opti-
mal because of the expectations of rapid improvement in the econ-
omy. Those expectations, and the acceptance of the agreements,
may no longer be forthcoming.

The appreciation of the yen against the dollar by approximately 20
percent will also have an impact on the relationship. Although the
change is not nearly as large as the increase in the yen engineered by
the Plaza Accord in 1985, other differences suggest that the impact
may be equally significant, especially for the Japanese economy. In
the current situation, there are no cushions in terms of cost advan-
tages over U.S. firms or healthy profit margins on exports.

The two nations are not aware of the policy dilemma that confronts
them at this time. The fairness rules that governed most trade be-
tween the two nations until a decade ago are no longer used to re-
solve U.S.-Japan disputes. It is politically unrealistic for the Japanese
government to assume that the United States and the European
Community will not become much more aggressive in demanding
access to Japanese markets in the presence of Japan’s $107 billion-
plus (1992) current-account trade surplus. In announcing Walter
Mondale as the new ambassador to Japan, President Clinton
“wanted to get economic problems out of the headlines and on the
negotiating table.” Over the longer term, that may be a possibility,
but, at least in the short term with the shift toward managed trade,
that seems unlikely at best.

Threshold events provide forks in the road, making it very difficult
for leaders to retrace their steps to recover from a negative path
taken. Regardless of whether these possible policy trends and policy
initiatives together improve U.S.-Japan relations over the longer term, the fairness problem should be recognized by leaders in both countries for the land mine that it is.
総 論

本調査は、日米の経済関係におけるフェアネス（公平さ）問題についてのプロジェクトの第2フェーズで実行された研究の報告書である。第1フェーズでは、このフェアネスの意味そのものが本来そうであるように、特定の貿易紛争は捉えどころがなくしばしば手に負えなくなることが分かった。米国側は、日本企業が米国で享受しているのと同じ水準の処遇を、米国企業が日本で受けていないと主張し、日本の不公平さを非難する。他方で、日本企業は米国側が自国内のマクロ経済の失敗を布き隠すためにこのフェアネスの問題を持ち出しているのだ、と主張する。今回の第2フェーズでは、もともとフェアネスという概念そのものの発端になった、貿易紛争調整制度からどのようにしてフェアネスという概念が生まれてきたのかを理解するために、この研究の枠を拡大して行く。

フェアネスは、1800年代以降の国際貿易議論に係わる法律用語の一つである。実際、フェアネスに関連した用語の、現在みられるような政府内外での混乱した使い方は、貿易紛争調整制度や国際貿易議論における、この用語の使い方にその根拠がある。政府と関係ないところでは、フェアネスに関連した用語は普通一般に使われ、特に厳密な定義や一貫した意味を持つものではない。これに対し、国際貿易委員会（I T C）および関税貿易一般協定（GATT）は長年の間、フェアネスについて複雑な法的解釈を定めている。

(1) この節のスキュラとカリュブディスのたとえは、メッシナ海峡の彫人としてスキュラとカリュブディスを描いたホーマー作のイリヤッドとオデッセイのギリシャ古文様に由来する。スキュラは船乗りたちを食う6頭の海の怪であり、またカリュブディスは恐ろしい暗礁のことである。
米国の観点からみた場合、国際貿易紛争の緩和を目指した諸制度の発展は、4つの期間に分割できるだろう。1947年から1962年までの第一の期間は、GATTの期間と呼ばれ得だろう。この期間中、米国政府首脳の関心は戦争で疲弊した諸国の経済を再建することを目的にした、貿易の自由化にあった。これはしばしば、ダンピングや補助金に係わるフェアネスを規定するための規則を含む、国際規則が米国域のルールに添って発展したことを、意味する。第2の期間は、1962年の通商拡大法（TEA）で始まり1974年のオイルショックで終わった。部分的には、1947年に始まった多国間関税引下げが成功した結果として、米国の関心は貿易の国内産業に及ぼすマイナスの影響に集まった。貿易調整制度など経済政策の採用に向けた動きにも係わらず、1962年通商法の改正は精々までに模様の成功でしかなかった。

ほぼ1975年から1983年にかけて起きた2度のオイルショックの期間中に、貿易の国際経済に及ぼす影響についての米国内の関心がさらに深まることになった。これら2度の外部原因によるショックの結果として、米国の通商政策は、国内で騒ぎ立てる人たちを対象にした大幅な救済策の提供を目指し、より先鋭的な市場開放措置や変革に向け、大幅な政策の変更を経験することになった。これらの変革のいくつかは、米国がGATTの規則とかそれ以前の規制に盛られたフェアネスに関する元来の定義を、もはや守る意味のないことを示すものであった。石油価格が低下するにともない、強いドルの時代と対日貿易の膨大な赤字が、日本の時代といわれるものを招来した。この時代の米国の政策の多くは、日本がもたらしたチャレンジ（挑戦）に立ち向かうものであったし、その後の諸施策の多くは、その法制のなかで日本をねらい打ちにしたものであった。

日米の貿易関係のなかでフェアネスを取り上げる際の米国の方針に変化をもたらした、3つの要素があるように思える。この変化を説明する第一の要素は、米国経済への貿易の影響の増大である。米国経済への貿易の影響度の変化は1974年以後、特に急激であった。これらの貿易の重要性の変化は、海外の出来事が国内経済にますます重大な影響をもたらすことを意味す
る。貿易量の増大に加え、米国経済を表す数多くの実績指数が過去20年間に低下した。経済を最も大々みにした尺度である、国内総生産（GDP）の伸び、すなわちこの年間の伸び率は過去数十年間にわたって一貫して低下してきた。また経済成長の伸び率が高い場合には、貿易からのプレッシャー（圧力）から生まれるマイナスの影響を含め、産業の後退や地域の停滞を幾分かでも和らげることになる。米国の経済効率の低下を示す第2番目の指標は、1950年から現在に至るまでの生産性の伸びの低下に表れている。特に日本と比較した場合の、生産性の伸びの低下は、経済的衝撃が長くかつ深刻な苦痛をもたらす影響をもたらすことから、米国の通商政策が自国経済の成長を図った制度への依存に傾くのではなく、新たな解決策を、政府に対し集団行動を採ることであった。このような米国の経済的風雪の時代と日本経済的成功を考えれば、日本の産業界が米国の関心の中心になったのは当然のことである。

日米間の貿易紛争の解決のために政治手段に依存する傾向がみられるが、これが3つ目の説明であり、インターフェース（日米間の接点）の問題である。インターフェースの問題は、日米両国社会の間に存在する価値観や制度、そして社会的組成全体の間に存在する一致点の欠落から生じるのである。このように、非常に深い社会的背景を持った交渉者が、共通の地盤を見つけ出すことは難しいことである。過去の事例が、日米間の貿易摩擦が激化する際に国際連合労働調整制度がどのように役割を果たしてきたのかを分析するための手段を提供してくれている。GATTの例でみると、いろんな（GATT）交渉の間の折衝の進展具合はGATTの機能を示す一つの指標になる。またGATTに提訴された事例パターンはもう一つの指標になる。GATTの枠組での日米間の交渉でみると、初期の頃は日本の経済ポジションは比較的マイナーな位置にあった。日本の経済ポジションは東京ラウンド（1973年から1979年）の時期に大幅に変化し、輸入依存国としての日本のイメージは輸出大国へと変化した。日本は自国の増大する貿易黒
字が大きな問題になることを懸念したため、日本は交渉時に比較的柔軟な姿勢を貫いた。しかし、最近のラウンド（GATT交渉）では、1988年通商法に基づき米国が採用した一方的行動に対抗するため、日本はGATTの場を積極的に活用し始めた。この時点では、米国の通商政策の焦点は、新しく法制化された一連の（国内の法的）手順に頼るようになっていった。

驚いたことに、1980年代後半の貿易摩擦の激化の時期や日本に対するフェアネスの不平を含む時期の間に、米国は日本に対し抗議を行ったのはただの1回にすぎなかった。一般的にいって、米国は日本に対する考えられる救済措置の場としてはGATTをそんなに広く活用しなかった。

米国国際貿易委員会（USITC）は、他の国々とのフェアネス紛争の責任機関である。この場合の焦点は、アンフェア（不公平）なダンピングや補助金に対する措置に関するものである。なぜなら、これらの問題はフェアネス紛争の際に重要な要素になるし、またこの調査も国別および商品別になるからである。

日本に関連したフェアネス紛争の事例数は1980年代後半に急減した。補助金の事例について、このことは特に関題は問う。なぜなら、1986年以後は、1件の事例の報告もない。米国の対日貿易赤字や報道機関でのフェアネス関連の苦情が1980年代後半にかけて増加し続けていることを考えると、このことは驚きである。この結果はまた、1950年代に貿易の自由化に力を注いだことから、1980年代後半の日本の対米輸出の成功に対するより先進的な対応へと、その重点が移った貿易規制の動向とも矛盾しているように思われる。

1980年以降、日米両国は、米通商代表部（US TR）と商務省（DC）が事実行に移した、「自主」協定の設定によって（貿易摩擦）に対応する度合いを深めた。自主規制協定（VRA）および輸出自主規制（VER）は次のような特徴を持つものである。第1に、これらの規制は特定の業界を対象にしたものである。第2に、これらの協定では、米国への輸入商品
または日本への輸出商品に対し最低価格や、または数量制限を設定することが一般的なケースである。最後に、協定の多くが表面だけの「自主」である。なぜなら、米国の相手側業界が示した「自主」規制を日本側が遵守しなかった場合には、公式の取り引き規制が日本側に課せられる事態に（日本側としては）直面するからである。

自動車および半導体は、ますます増加傾向をたどるV E RまたはV R Aの対象になった数多くの業界のなかの2つにすぎない。このような協定の対象となっている5つの中業界で、米国の対日貿易赤字の4分の3を占めている。米国は、対日商品／分野別管理貿易を実行中である。ある場合には数個が制限され、ある場合には最低価格が決められ、ある場合には特定の品のみが対象になり、そしてある場合には協定は輸入はもちろん、輸出についてもその対象にしている。主要な米国産業が相当な対日赤字を計上するような場合には、いつでも、管理貿易を指向する傾向があると考えることができるだろう。

今後の数年間の日米通商政策の詳細はまだ決まっていない。クリントン政権は、米国企業に日本市場の一定割合を与えることを目指し、結果重視の交渉に専念することを示唆している。日本政府側は、半導体協定に代表されるような結果重視の協定を結ぶ意向のないことを繰り返し述べている。しかし、貿易政策は、過去数年間の協定の特徴の多くを折り込むことになる可能性が強い。いずれにせよ、結果重視のアプローチ（手法）は、フェアネス・ルールからの明かなる逸脱である。

異論の起こる問題点のひとつは、この政策のなかの、数字目標や、『基準指標』の役割に関するものになるだろう。管理貿易では、容易に解決点の見いだせない細目に注意を払う必要がある。管理貿易の本来的な難しさを考えた場合、見落のケースは、このような協定についての根気よしぶ議論を続けることだろう。なぜなら、これらの協定の有効性は、協定を実行しようとする政治的意図に、ある程度左右されるからである。もうひとつは、管理貿易が特定の産業の問題解決に活用される傾向のあることから、より幅広い
問題にどう取り組むかの点である。

これらの政治的アプローチも、日米間の緊張した経済関係という、より大きな問題の解決策をみつけることはできなかった。米国が現在日本との間で実行しているような、目的分野別管理貿易に付帯した問題点のひとつは、このアプローチが基本方針に基づき秩序正しく貿易問題を取り上げるのではなく、影響を受けた業界または企業が議会や大統領に対し行使する政治的影響力に応える形で、それぞれの問題が断片的に取り上げられていることである。これらの協定が経済関係のファングメンタルズ（基本条件）を根本から変えるものになるとは考えられず、当面の問題の解決が他の問題の将来の発生の防止に役立つとも考えられない。実際は、この反対である。つまり、当面の苦情の処理は、もうひとつの問題の先送りになる可能性が高いのだから。

両国間の貿易赤字の水準は、日米の経済関係の注目にすべきひとつの指標になる。なぜなら、これが、両国間のフェアネスに関する議論の熱の中に入れ方に関連しているように思えるからである。最近の傾向は、近未来に、この赤字が増加し両国間の関係の緊張強まることを示唆して入る。

他の経済要素がまた、両国の貿易関係の将来の予測に不可欠である。米国のやや急速な経済成長の予測は、実証論のある程度の根拠になる。さらに、１９８４年以後に展開した急進的な対日政策は、日本を巨大経済国と誤認した点に、ある程度その根拠があった。しかし、少なくとも当面は、この認識は正しくない。日本では、このような経済の急成長が、日本経済の急速な引き続き改善を見越し（日本にとっても）最善はいかえいないような協定の交渉を政治的に行う可能にしたのかかもしれない。これらの（日本側の甘い）期待やこのような協定の受諾は、もはや現実のものでないかもしれない。

約２０％に達する円の対ドル相場の上昇は、両国関係に影響を与えている。この上昇は１９８５年のブラザ合意がもたらした円の上昇ほど大きくはないが、円高以外の他の著落はこの円高の影響が、特に日本経済にとって、ブラザ合意と同じく深刻なものであることを示している。現在の状況では、米
国企業に対する（日本企業の）コストの有利性をもって、対馬合う利益率などの点で（円高の）緩衝になりうるような条件が（日本側には）見つからない。

日米両国は現時点では、それぞれが直面するこのような政策の手法に努めて気付いていない。10年前まで両国間の大部分の貿易を取り仕切ってきたフェアネス・ルールは、日米の紛争の解決にはもはや役立つものではない。日本での1070億ドル以上（1992年）に達する貿易黒字を考慮した場合、米国やEC（ヨーロッパ共同体）が日本市場へのアクセス要求の手を緩めることが期待されるのは、政治的にみて現実的とはいえないと。クリントン大統領は、ウォルター・モンデール氏を新任の日本大使に任命するにあたり、「経済問題を新会議に努力を尽くすのを止め、交渉のテーブルにのせた」と伝えた。長期的にみた場合には、この可能性も認められるが短期的にみた場合には、管理貿易を指向し、このような可能性はなさそうである。

指導者が重大な分岐点（局面）に立ったとき、いずれの道をとるかその選択が求められるが、自らが選択した道（マイナス）の道から脱却するため引き返すことは極めて難しい。このような政策動向や政策行動を長期的にみた場合には日米関係を改善することになるのかどうかは別にして、このフェアネス問題を、現存する危険な地雷として両国の指導者たちが認識することが肝要である。
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Chapter One

INTRODUCTION: THE QUESTION OF FAIRNESS

THE GROWING—AND MUTUAL—PERCEPTION OF UNFAIRNESS

Recent data, including opinion polls and content analysis, suggest a growing perception of unfairness in the U.S.-Japan economic relationship. In a series of polls jointly conducted by U.S. and Japanese news organizations,1 45 percent of American respondents said Japanese firms are competing unfairly with American companies. This was the highest such response since the question was first asked in 1985. However, Japanese respondents overwhelmingly reject the charge, with only 12 percent saying that Japanese companies compete on unfair terms. Eighty-five percent of Japanese agreed with the statement that the United States is blaming Japan for its own economic problems.

Other organizations had similar results. For example, an opinion poll conducted in 1992 found that only 35 percent of Americans feel that the Japanese are “devoted to fair play.”2 Only slightly more Japanese (43 percent) feel that Americans are devoted to fair play. On more specific matters, such as the cause of the trade deficit, the Japanese and Americans disagree about who is to blame. Twice as many Americans as Japanese feel that Japan unfairly keeps American

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products out of the country, while twice as many Japanese as Americans feel that the higher quality of Japanese products is the primary factor.

A similar picture is provided by a content analysis of major U.S. and Japanese newspapers (Benjamin et al., 1991). The frequency with which the terms *fairness* and *unfairness* have been used in articles citing the other nation and economic issues has grown rapidly over the recent decade. Numerous commentators have suggested that the bilateral deficit is the primary problem, and the frequency of the fairness references increases and decreases according to the size of this deficit (Benjamin et al., 1991, pp. 18-23). However, this does not explain the complaints at the industry level or the general trend toward larger numbers of complaints. Other factors, such as a trend toward disputes in high-technology industries and issues relating to foreign investment, appear to be increasing in importance.

**THE LACK OF A COMMON STANDARD OF FAIRNESS**

One of the reasons for this mutual perception of unfairness is that the terms *fair* and *unfair* do not have a specific *application* in international economic policy:

> The distinction between fair and unfair trade has become increasingly blurred in recent years, partly because of some fundamental disagreement about what should be called unfair.... Societies and their economic systems differ so dramatically that what seems unfair to members of one society may seem perfectly fair to those of another society. (Jackson, 1991, p. 218.)

Many trading practices are considered unfair because they distort free-market principles, e.g., focusing on protecting infant industries and market share rather than profits. But such principles are difficult to apply to nonmarket economies, and even to some industrial market economies, since there are substantial differences in government involvement.

Japanese and Americans, living in radically different social and cultural contexts, interpret fairness differently both in abstract terms and within the context of actual disputes. Americans frequently argue for reciprocal treatment—that they should be treated in Japan
the same way Japanese are treated in the United States. The Japanese typically respond that American businessmen receive what is called national treatment, i.e., they are treated the same way Japanese businessmen are treated in Japan.

U.S. fairness grievances tend to be expressed as specific claims about economic matters, such as lack of access to markets in Japan for particular products or dumping of specific Japanese products in the United States. Japanese fairness grievances emphasize broader issues, such as American interference in Japanese domestic politics and economy. The Japanese view U.S. macroeconomic policy as the principal cause of the fairness dispute. This lack of agreement even on the terms of the debate has led to the current impasse. Neither side agrees on the nature—and therefore the cause—of the problem.

As a nation that continues to espouse free trade, how is it that the United States has allowed this relationship to develop in this way? How can a country such as Japan, which has gained so much of its success in the world trading system, allow developments to threaten that system? This study addresses these questions by tracing the history of how the fairness disputes have developed and suggesting reasons why they are so difficult to resolve.

This study suggests that three factors are responsible. First, the fairness rules themselves are based on a weak foundation, and the clear justification of the original rules has been lost. Second, the tolerance of the United States for disruption due to international economic events and especially shifts in trade flows has decreased as the performance of the U.S. economy has slowed. Third, Japan presents a number of particular difficulties regarding the trade rules because its economy functions in a way that cannot be easily addressed through the existing set of trade-dispute institutions. These factors have led to a set of disputes that are not easily resolved in the existing set of trade-dispute institutions. As a result, a new set of institutions and arrangements has evolved to address these disputes. However, it is not clear whether these new arrangements will resolve the fairness dispute or will exacerbate the problem.
ORGANIZATION OF THIS REPORT

Chapter Two provides the historical context for the concept of fairness in international trade and, in particular, how it has developed in U.S.-Japan trade relations. This background includes a summary of the development of two common fairness issues—dumping and subsidies—and a summary of recent stages in U.S. trade policy. The chapter also provides evidence that the changing performance of the U.S. economy has played an important role in U.S. fairness policy toward Japan. The difficulty involved in the interface between two such distinct systems is also partly responsible for the intractable nature of the disputes.

Chapter Three of the study is a close look at some of the key institutions and arrangements that have evolved to deal with trade disputes. The negotiations and decisions of the multilateral General Agreement on Tariffs and Trade (GATT) are analyzed, as are the decisions of the U.S. International Trade Commission. Two additional bilateral arrangements between the United States and Japan, the voluntary export agreement on automobiles and the Semiconductor Trade Agreement, are also provided for a contrast to the traditional institutions.

Chapter Four is an assessment of the current situation with regard to fairness in U.S.-Japan trade relations. Instead of a system of fairness rules and institutions, the situation is characterized by a number of negotiated agreements, only some of which have developed out of fairness complaints. The chapter also summarizes the consequences of these agreements and suggests reasons why the new political and economic environments in the United States and Japan might affect the course of these agreements in the future.
THE ORIGIN OF RULES GOVERNING UNFAIR TRADE

Fairness has been part of the legal vocabulary of international trade discussions since the 1800s. Indeed, the present confusing use of fairness-related terminology outside and inside government evolves from the use of the same vocabulary within the trade-dispute institutions and in international trade discussions. On the one hand, terms related to fairness outside of government are used commonly and without any precision or consistent meaning. In contrast, the International Trade Commission and the GATT have constructed complex legal interpretations of fairness over the years.

The origin of the trade rules governing fairness and, to a large extent, the confusion over the meaning of fairness can be understood through a review of the rules surrounding dumping and subsidies in international trade. The development of the rules has created the situation in which we now find ourselves, that is, with a set of laws that have no clear economic justification and that are easy to confuse with media-generated perceptions of the fairness problem.

Dumping

In international trade law, the first use of the concept of unfair trade appears in reference to dumping. In 1771, Alexander Hamilton warned about imports underselling competitors in order to frustrate
the efforts of foreigners to introduce a new business in the U.S.\(^1\) In 1824, Senator Henry Clay mentioned unfair trade in calling for tariffs on "unprotected manufacturers."\(^2\)

The first antidumping law was passed in 1904 in Canada to reduce imports of U.S. steel (Barcelo, 1991, p. 314). The United States followed with an antidumping statute in 1916, as an extension of the antidiscrimination provisions of the Clayton Antitrust Act, which had been enacted two years earlier.\(^3\) The standard at that time was stringent: The act required proof that foreign companies conspired to harm or destroy an American industry. This meant that some evidence of predatory intent on the part of the exporter was necessary, such as an effort to destroy the domestic competition so that prices could be raised at some later date. Whether it was because there were no cases of predatory intent or because evidence of such intent would be difficult to demonstrate, there were no successful findings of dumping in the following years. As a result, the act was not considered strong enough to deter this practice. The U.S. Tariff Commission (the predecessor of the USITC), in a study presented to Congress, recommended that dumping be defined as selling "at a price substantially less than the actual market value or wholesale price of such articles at the time of exportation." (U.S. Tariff Commission, 1919.) This set the stage for cost-based investigations of dumping and for elimination of the requirement that predatory intent be demonstrated from the Antidumping Act of 1921 (Bovard, 1991, p. 111; Barcelo, 1991, p. 315).

These changes contributed to the confusion about unfair trade, since the legal definition moved away from the aspect of trade that can reasonably be considered unfair, i.e., predatory intent. A similar problem seems to have developed around other terms in the dumping vocabulary:

The physical connotation of dumping suggests the unloading of unwanted things on someone's property. Likewise, the term

\(^{1}\)Alexander Hamilton (in Viner, 1966, p. 23).
\(^{2}\)Cited in U.S. Department of the Treasury (1957), pp. 18–19.
\(^{3}\)In this case, the act was inspired primarily by what was perceived as German dumping in the United States (Bovard, 1991, p. 109).
"material injury" in a legal application suggests a violation of the private rights of an individual for which redress may be sought under the law. The value-charged language flowing from the business code facilitates the political acceptance of continued and increasing anti-dumping protection even if its rationale is dubious or non-existent by relevant policy standards. (Stegemann, 1991, p. 389.)

The Antidumping Act of 1921 established definitions and procedures for investigating charges of dumping, defined as whether “foreign merchandise is being, or is likely to be, sold at ‘less than its fair value,’” and whether an industry in America is being or is likely to be injured “or is prevented from being established, by reason of the importation of such merchandise.” These two considerations became the basis for the modern rules regarding dumping. During the Depression, dumping was not a concern, because tariff rates insulated most industries from competition. Thus, there were no further developments in antidumping legislation until the preparation of the GATT in 1946 and 1947. The GATT adopted antidumping restrictions similar to those of the 1921 U.S. law, including the definition of price discrimination, limitation of the antidumping duty to the amount of the dumping margin, and requirement of an injury determination (Barcelo, 1991, p. 316).

Subsidies

The history of subsidies is similar to that of dumping. The original laws addressed relatively clear trade problems. The first antisubsidy laws were designed to respond to “export bounties,” such as those for agricultural goods. For example, in the 1890s, American law for the first time imposed countervailing duties on sugar from those countries with export bounties. In 1897, the law was rewritten to apply to all products currently covered by duties. The purpose of the broader statute was as much to disguise the protection it afforded the sugar producers as to prevent an increase in the use of export bounties (Barcelo, 1991, p. 322, note).

As in the case of dumping, the original purpose of the laws may have been sound, but now there is no clearly defined link with unfair practices. In fact, there is reason to believe that, in most cases, the importing country is made better off by the subsidies. In addition, export subsidies are difficult to distinguish from the production sub-
sidies governments use to counteract market failure. The early GATT rules were relatively silent on subsidies, but more recent GATT anti-subsidy provisions (Article VI) authorize GATT parties to counteract against both domestic production bounties and export bounties (subsidies) with disregard to what actually defines a subsidy. This distinction may not have originally been thought important, since it was not used against a production subsidy until 1973, when the U.S. used it against Canada (Barcelo, 1991, p. 324).

In the cases of both dumping and subsidies, the rules that developed to regulate "fair" trade had built-in flaws that inevitably led to confusion and implementation problems.

RECENT HISTORY OF U.S. TRADE DISPUTES

From the U.S. perspective, the development of the institutions for moderating international trade disputes can be divided into four periods. The first, 1947 through 1962, can be called the period of the GATT. During this time, U.S. leadership focused on trade liberalization for the purpose of rebuilding the war-torn economies. This often meant that international rules, including those governing fairness with regard to dumping and subsidies, developed along the lines of U.S. rules. The second period began with the Trade Expansion Act of 1962 and ended with the oil crisis of 1974. Partly as a result of the success of the multilateral tariff reductions begun in 1947, attention in the United States had shifted to the negative impacts of trade on domestic industries. Despite the intention to shift toward such remedies as trade adjustment assistance, the success of the changes in the 1962 Trade Act in providing remedies was mixed at best.

Attention to the impact of trade on the domestic economy was further heightened during the period of the two oil crises, roughly from 1975 to 1983. As a result of these two external shocks, U.S. trade policy underwent a significant shift toward more aggressive market-opening measures and changes designed to provide greater remedies to domestic claimants. Some of these changes showed that the United States was no longer willing to abide by the original definitions of fairness embodied in the GATT laws and earlier legislation. As oil prices decreased, the era of the strong dollar and the huge trade imbalance with Japan ushered in what might be called the
Japan period. Much of the U.S. policy during this period has dealt with the challenges presented by Japan, and many of the later measures mentioned Japan specifically in the legislation.

Trade Liberalization: 1947 to 1963

Originally, the GATT stemmed from the Atlantic Charter (August 1941) and the Lend-Lease Agreement (February 1942), which both argued for a world trading system based on nondiscrimination and the free exchange of goods and services (see Van Meerhaeghe, 1987). After World War II, in exchange for a loan of $3,750 billion from the United States, Britain undertook to abolish discrimination in foreign trade and to cooperate in the establishment of an international organization to support free trade. Led by the United States, a drafting committee comprising the major European nations, the Benelux countries, and Canada developed the GATT charter, which was signed in October 1947. Membership has gradually been extended to include over 100 countries as current signatories of the GATT.

Two developments contributed to the formation of the GATT in the postwar period. One was the entry of the United States into 32 bilateral trade agreements between 1934 and 1945. These agreements were negotiated under the authority of the Reciprocal Trade Agreement Act of 1934 and demonstrated the U.S. emphasis on free trade. The second development was a growing concern that ill-considered economic policies had been at least partly responsible for the disasters that led to World War II. Two of the disasters often mentioned in this regard were the Great Depression and the harsh demand for German reparations. The new goal was to create institutions that would prevent these mistakes from happening again. The results were the International Monetary Fund and World Bank in 1944 and the GATT in 1947 (Jackson, 1991, p. 31).

The central objectives of the early GATT were tariff reductions and extension of Most Favored Nation status to new parties to the GATT. In addition to these objectives, Part II of the GATT may be seen as setting a code of conduct for signatories to the agreement. This code includes rules and definitions regarding fair and unfair trade. However, the emphasis during this period was on trade liberalization. The successful completion of five rounds of negotiations by 1961 is due to the fact that these rounds were devoted almost exclu-
sively to tariff reductions. This suggests that the first priority of the United States and other nations was not the fairness code as it stood in the original agreement.

**Trade Expansion: 1963 to 1974**

The Trade Expansion Act of 1962 had a number of features that signaled a shift in priority from trade liberalization to what might be called trade expansion. Some of these entailed a shift toward U.S. unilateral definitions of fair trade actions that were designed to more aggressively pursue open markets and provide relief to injured domestic industries. For example, Section 252 provided broad discretion to the president to retaliate against unjustifiable barriers in agriculture and limited authority against unreasonable barriers in other areas (Bayard and Elliott, 1992, p. 686). Section 252 was the predecessor to Section 301 of the later trade acts and has become one of the central instruments of U.S. "fair trade" policy (Low, 1993, p. 55). The final indication of the shift in priorities was the creation by Congress of the Office of the Special Trade Representative (USTR). At that time, Congress questioned the State Department's ability to negotiate the best possible agreement for U.S. interests and created this new office for the upcoming Kennedy Round (Cohen, 1988, p. 66).

Despite the apparent intention of the act, there were relatively few successful complaints. For example, there were only 15 affirmative countervailing duty findings out of more than 200 investigations through 1974, and only four of 30 import relief petitions were granted by that time (Destler, 1992, p. 141).

One of the other changes made in the 1962 act was the addition of Trade Adjustment Assistance to offset the effect of the GATT. This section offered relief to industries, firms, and workers seriously injured or threatened with injury as a result of increased trade due to trade agreements. Claims had nothing to do with unfair trade; the purpose was to ease adjustment through loans, technical assistance, and tax benefits to firms and through retraining, unemployment compensation, and relocation allowances to workers. From 1962 through 1969, not a single petition won favorable action, but by the early 1970s, approximately 50,000 workers and 30 firms had received

Reacting to the Oil Crises: 1975 to 1983

A more aggressive emphasis is evident in the legislation passed after 1974. In particular, Section 301 of the 1974 Trade Act granted the president authority to “take all appropriate and feasible steps within his power to obtain the elimination of restrictions and subsidies” imposed by trading partners (Adams, 1990, p. 42).

The Section 301 provisions of the 1974 act were similar to those of Section 252 of the 1962 act, but they reflected the dissatisfaction of Congress with the modest use that the president had made of the earlier legislation . . . Section 301 was the first formal articulation of a willingness by the Congress to see the administration act independently in a manner potentially inconsistent with the GATT. (Low, 1993, p. 56.)

The 1974 act also broadened the definition of unfair trade practices to include discriminatory rules of origin, government procurement practices, licensing systems, quotas, exchange controls, and others. In effect, the U.S. legislation regarding fairness rules was becoming more aggressive, and the United States appeared more willing to risk international rebuke.

The second major piece of legislation during this period was the 1979 Trade Agreements Act. The main purpose of the 1979 act was to implement the measures negotiated in the Tokyo Round. It emphasized stricter enforcement of administrative and countervailing laws and required listing of foreign government actions that were litigable as subsidies. In addition, it required that an injury investigation be completed and placed time limits on investigations. Moreover, since the Treasury Department was deemed too closely associated with the president and the State Department, the 1979 act shifted responsibilities from the Treasury Department to the Department of Commerce, which was felt to be a more neutral arena within which to adjudicate trade disputes. As in the previous period, the changes were not immediately reflected in a sharp increase in protectionist rulings.
In 15 of the 33 cases from 1975 through 1985 before the USITC, the duties were rejected by the president, even though injury was found (Baldwin 1991, p. 263). The president was faced with the knowledge that any action on his part could generate a response by the affected trading partner. As a result, the feeling persisted that the administration was not sensitive enough to the needs of troubled industries.

**The Japan Period: 1984 to the Present**

During 1983 and 1984, Congress continued to be actively involved in the establishment of trade policy. In 1984, it passed legislation including both trade expansion for the United States and trade restrictions on imports from other countries. In the Trade and Tariff Act of 1984, special protection was extended to steel, footwear, copper, ferro-alloys, wine, textiles, bromine, and dairy products. Many of the provisions were a direct result of the ballooning trade imbalance with Japan; however, Japan was not specifically singled out in the legislation (Adams, 1990; p. 42). This changed in 1985 when both houses of Congress passed resolutions denouncing the trade practices of Japan (Cohen, 1988, p. 211).

Further evidence that Japan was the focus of fairness issues in trade policy came in the Omnibus Trade and Competitiveness Act of 1988. This act singled out Toshiba for retaliation because of its sales of military technology to the Soviet Union. However, far more important was the establishment of the Super 301 process requiring USTR to designate priority countries and practices. In the first round of Super 301 designations, the administration named India, Brazil, and Japan as the priority countries. However, Brazil and India appear to have been named to avoid isolating Japan as the principle target. Japan referred to the Super 301 as the “nuclear weapon” of trade policy (Mastanduno, 1992, p. 730).

The 1988 act also mandated bilateral efforts to make mutual structural adjustments, and one such effort, the Structural Impediments Initiative (SII), began in June 1989 (Jackson, 1991, p. 105; Adams, 1990, p. 44). The Japanese government agreed to hold discussions with its American counterparts aimed at mutual accommodation or adjustment to the criticisms offered by one side or the other. The SII talks were an extraordinary affair in the sense that each side agreed with basic criticisms related to the trade dispute problems posed by
the other government, and both agreed to take corrective action. Specifically, the Americans demanded that the Japanese government adopt a stimulus package for their domestic economy that would stimulate consumer spending. The Americans also argued that the Japanese government should adopt a number of measures, including changes in taxes on land and the distribution system, that would help foreign firms.

The Japanese government has carried out some of these measures, such as the stimulus program, although they might well have been adopted for purely domestic purposes. By comparison, although the U.S. government acknowledged the legitimacy of the Japanese argument that the structural deficit of the federal government and the low savings and investment rate are the major contributors to the U.S. trade deficit with Japan, the American government had not successfully addressed these problems until the recent 1993 Clinton administration budget agreement.

**REASONS FOR THE SHIFT: A CLOSER LOOK**

Three factors appear to have contributed to the shift in U.S. policy in dealing with fairness in trade relations between the U.S. and Japan. Two are primarily economic explanations. The first is that trade has had an increasingly important impact on the U.S. economy because of the rapid growth of imports and exports in the postwar period. The second is that the U.S. economy has not performed in the last two decades as well as the previous several decades by a number of measures; as a result, the U.S. has become less tolerant of shocks that affect the well-being of groups in American society. The third is the difficulty of achieving a rapprochement between two such different governmental structures, which, in turn, are anchored in radically different social and cultural settings. Each of these factors, discussed below, is based on distinctive academic literatures.

None of these factors alone is responsible for the shift in U.S. policy. Taken together, however, the factors add up to a changed environment within which U.S.-Japan relations occur. Together, the three factors may be taken as a necessary if not sufficient condition for the shift in emphasis.
Impact of Trade on the U.S. Economy

The first explanation offered for this shift is the increased impact of trade on the U.S. economy (Bhagwati, 1988; Encarnation, 1992; Stokes, winter 1992–93, pp. 36–64). As Figure 2.1 shows, trade flows have increased sharply in relation to gross domestic product (GDP) in the postwar period. The chart is divided into the four periods described in the previous section. The change in the importance of trade to the U.S. economy has been especially dramatic since 1974. For example, in the periods from 1950 to 1962 and from 1962 to 1974, the sum of imports and exports averaged 9 and 11 percent of GDP, respectively. However, during the years from 1975 to 1984, the share increased to 18 percent. Sharp increases in oil prices contributed to the jump in the 1973 to 1974 period and again at the beginning of the 1980s. These changes mean that international events have an increasingly important impact on the domestic economy.

Figure 2.1—U.S. Exports Plus Imports as a Percentage of GDP, 1950–1992

SOURCE: U.S. Department of Commerce.
In comparison, Germany, Great Britain, France, and Italy have all had export plus import percentages of gross national product (GNP) above 40 percent since the 1960s. Thus, the current importance of trade to the U.S. economy is comparable to the situation many other advanced industrial societies reached decades earlier. In this sense, the U.S. economy is still not as internationalized as other advanced industrial societies. While the change in the importance of international economic activity to the U.S. economy is important, the rate of increase in the level of global economic interdependence may be even more important, because the escalating rate of change itself may have an unsettling effect on domestic political, as well as economic, institutions.

**Faltering Economic Performance**

In addition to the increase in trade, there has been a decline in a number of measures of performance of the U.S. economy over the last two decades. In terms of the broadest measure of the economy, GDP growth, there has been a steady decrease in the annual growth rates over the past several decades (Figure 2.2). Using the periods described in the previous section, real growth rates were 3.8 percent on average from 1950 to 1962, 3.6 percent from 1963 to 1974, 2.5 percent from 1975 to 1983, and only 2.2 percent from 1984 through 1992.

Higher levels of economic growth are important in that they reflect the ability of the economy to absorb and reapply the workers and other resources displaced during economic downturns. These higher levels of growth also make the industrial and regional downturns—including those that might have been created by trade pressures—somewhat less painful.

A second indication of the slowed performance of the U.S. economy is the drop in productivity growth over the postwar period. Although there is much debate over the causes of the slowdown, the importance of productivity growth for a rising standard of living is not a matter of debate. Figure 2.3 shows the growth of output per hour in the business sector in the United States, again with the years divided into the same four periods. From 1950 to 1962, output per hour increased at an average rate of 3.3 percent per year. In the subsequent
periods, however, the rate slowed to 2.4 percent, 1.2 percent, and finally to 1 percent in the 1984 through 1992 period.

While other industrial nations also experienced productivity slowdowns, the slower growth in the United States allowed other nations to converge on U.S. levels of output per hour. This lower rate of productivity growth, especially in relation to Japan, made it difficult to maintain a rough balance of exports and imports without the help of currency devaluations. These devaluations do not contribute to a rising standard of living, because they lead to higher prices for U.S. consumers.

The final indication of the weakened performance of the U.S. economy is the upward trend in the unemployment rate during the post-war years. From 1950 to 1974, the unemployment rate in the United States averaged 4.7 percent. However, as a result of the oil crisis and the recession in the early 1980s, rates peaked at double those levels, and the average annual rate from 1975 to 1984 was 7.6 percent. From 1984 to 1992, the average rate declined to 6.3 percent.
As in the case of the lower economic growth, these higher rates of unemployment reflect the economy's inability to recover from business cycles and industrial and regional contraction. Because these economic shocks have longer and more painful effects, it is perhaps not surprising that U.S. trade policies have turned to mechanisms that attempt to insulate the economy.

The figures document the increased sensitivity of the American economy to international economic forces. The argument made is that the increased trade, i.e., increased global interdependence of the U.S. economy, and declining economic performance weaken the ability of the American political system to tolerate external shocks (Thurow, 1992; Stokes, 1991; pp. 2023–2026). At the height of its dominance of the global economy, trade had a relatively small influence on the U.S. economy, and in any event, the growing economy would absorb any dislocated workers. With robust annual productivity increases, both individual workers and the interest groups representing them could look forward to a positive future. As interna-
tional trade increased and productivity growth slowed, it became more difficult for the government to maintain a hands-off approach. As a result, the preferred solution of larger industries and those with a link to national security was to resort to collective action in Washington. Given Japan’s economic success during these same periods, it is not surprising that its industries are the focus of much of this attention (Friedburg, 1989; Baldwin, Richard E., 1991; Cohen, 1988; Tyson, 1992).

The Interface Problem: Disparate Capitalist States in Collision

The problem of interface is a third explanation for the shift to political measures for solving trade disputes between the United States and Japan. The problems of interface are those resulting from a lack of congruence between the values, institutions, and overall social fabrics of the two societies (Jackson, 1991). It is thus difficult for ne-
g oliators from radically different societies to find common ground (Caporaso, 1989; Krasner, 1984).

Japan and the United States are both advanced capitalist societies, playing by the same market rules but with different emphases. The Japanese emphasize economic growth, market share, and long-term planning, while the Americans focus on profits and a shorter planning horizon (Calder, 1989; Dore, 1986; Encarnation and Mason, 1990; Goldsmith, 1983; Ikenberry, 1989; see also Johnson; 1988). However, it is in the structure and content of the two states that differences sharpen. For this discussion, it is useful to look at national differences with regard to two component parts of the state: (1) the administrative order, i.e., the ensemble of public institutions that are charged with formal political authority, and (2) the legal order, i.e., property and individual rights codified by custom and law through the litigation system (Benjamin and Duvall, 1985).

Japan’s administrative order comprises a small, distinctive, and cohesive elite. All levels of the state emphasize harmony and consensus and the subordination of the individual to the group. Citizens defer to the elite, and the legal order does not challenge or constrain the administrative order (Inoguchi, 1991; Koh, 1990). Questions of fairness are interpreted in terms of what is best for the group and the nation as a whole. The administrative order thus has primacy over the legal order.

There is no corresponding consensus in the United States about the primacy of the administrative order, which is not cohesive, but divided among the Congress, the presidency, and the judiciary. Rather, the legal order constrains and challenges the administrative order. Questions of fairness are interpreted in terms of individual rights, so that litigation is the primary mode of resolving disputes (Huntington, 1981; Inglehart, 1990; Wolin, 1989; Morone, 1990). Because of this emphasis, the legal order is seen as having primacy.

Is it any wonder, then, that the debate over trade matters between Japan and the United States is confusing to all parties concerned? It is not simply a matter of economics; the public discourses of the two states are foreign to each other. The fairness grievances of the Americans are difficult for the Japanese to understand, because the
grounds on which the claims are being made are different—the individual versus the group, the firm or industry versus the nation (Calder, 1989, p. 521).
A number of institutions address various aspects of the trade disputes between Japan and the United States. The multilateral institutions include the GATT, the Organization of Economic Cooperation and Development (OECD), and the United Nations (UN).\textsuperscript{1} Although economic and trade issues are discussed within the OECD and the UN, the GATT is the main forum for multilateral trade disputes.\textsuperscript{2} Two institutions with domestic jurisdiction are the Japanese Courts and the U.S. Federal District Courts. While the former could be used by foreign firms seeking redress for alleged trade-related violations, they typically have not been used for this purpose. The latter have been used for disputes involving contracts, patent infringements, intellectual property rights, and trademarks. The other institution that plays a key role in U.S.-Japan fairness disputes is the USITC.

The historical review sets the stage for an analysis of how the international trade dispute institutions have functioned during the escalation of trade tensions between Japan and the United States. In the case of the GATT, the progress of negotiations within the various rounds is one indication of the functioning of the organization, and the pattern of cases filed with the GATT is another indication. In an analysis of the USITC, the pattern of cases is a more useful indicator,

\textsuperscript{1}For a complete listing of the hundreds of international economic institutions, see the latest \textit{Yearbook of International Institutions}, Union of International Associations, Munich, Germany.

\textsuperscript{2}See Barcelo (1991), Jackson (1991), and Adams (1990) for definitions and full descriptions of the GATT.
since there have been many more "investigations," and the policy is made through these decisions on these individual cases. While numbers do not tell the entire story, it is important to observe the pattern of cases dealt with in the international trade dispute institutions, because it provides an indication of the salience of the institutions themselves. What has been the trend over time? Most importantly, are the fairness grievances over economic relations between the United States and Japan reflected in these trends?

Although certain trade issues have always been outside of the trade institutions, there has been increasing attention to negotiated options in recent years. Such industries as agriculture and textiles have historically been the subjects of special negotiations, but many other industries are now subject to special agreements. Two of the most important of these agreements, on automobiles and semiconductors, are summarized in this chapter.

THE MULTILATERAL INSTITUTION: THE GATT

A review of the GATT's role in fairness issues between the United States and Japan involves both an examination of the rounds of negotiations, and an analysis of the cases brought before the GATT.

GATT Negotiations

In terms of the U.S.-Japan negotiations within the GATT, Japan was a relatively minor player in the early rounds. In fact, it took some urging of reluctant countries by the United States for Japan to obtain full membership. At that time, the concerns had to do with Japan's low wage and unfair competition. In the Kennedy Round (1963-1967), the primary U.S. concern was the unified European Economic Community (EEC). While there were several opportunities to invoke

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3As stated in a recent GATT report, there is no trade law in Japan that provides for specific procedures to deal with trade disputes with its trading partners (GATT, 1990, p. 265). For this reason, we do not review the closest "counterpart" organization in Japan, the Fair Trade Commission, since it has not been active in resolving disputes between U.S. and Japanese parties.

4Now known also as the European Community (EC).
GATT provisions against Japan, it preferred to settle the differences outside of the GATT (Adams, 1990, p. 56).

Japan’s economic position had changed significantly by the time of the Tokyo Round (1973–1979), and the image of Japan as an import-dependent country shifted to one of an export powerhouse. Because Japan did not want its growing surplus to be a major issue, it was relatively accommodating in the negotiations. However, while Japan tried to address EEC issues within the GATT, the United States and Japan used the GATT mainly as an additional forum through which to conduct negotiations that were begun before the round. In the most recent round, however, Japan began to use the GATT more aggressively to combat the unilateral actions taken by the United States under the Trade Act of 1988 (Adams, 1990, p. 61). By this time, the focus of U.S. trade policy had shifted to its newly legislated set of procedures.

GATT Disputes

The GATT disputes between the United States and Japan show a pattern similar to that described in the various rounds of negotiations. During the first two decades of the agreement, there were no formal disputes between the two parties. However, in the late 1970s, the United States filed GATT Article XXIII complaints against Japan for silk yarn and leather and filed additional complaints in the early 1980s on tobacco, leather, and leather footwear. GATT panels are established at the request of member countries for the purpose of determining whether other countries were acting inconsistently with the General Agreement. These complaints were filed in response to import restrictions in the Japanese market. However, in all but one case, the GATT complaints ended with a bilateral solution, rather than a panel report commenting on the import restrictions (GATT, 1990, p. 261).

In the second half of the 1980s, the United States filed three additional complaints with the GATT concerning Japan’s import restrictions on agricultural products, on fish, and on beef and citrus. Two of the three complaints were settled through bilateral arrangements. Since the beef and citrus dispute in 1988, the United States has filed no additional complaints against Japan. These eight complaints by the United States constitute half of the total number of complaints
filed against Japan in the GATT. The United States has filed a total of 53 complaints against all other nations through 1991. These complaints are concentrated among a few targets, such as the EEC, with 14; Japan, 9; Canada, 7; and France, 5 (GATT, 1992, p. 238).

The overall number of complaints the United States has filed against Japan is small, and, when filed, the complaints have tended to be in food and agricultural products. Surprisingly, during the period of increasing trade tensions and fairness grievances against Japan in the late 1980s, the United States filed only one complaint against Japan. In general, the United States has not extensively used the GATT as a forum for possible remedy against Japan.

Since the GATT is a multilateral institution, Japan can also use Article XXIII to file complaints against the United States.\(^5\) However, Japan has only used this GATT mechanism three times. Two of these were against the EC, one regarding videotape recorders and the other regarding electronic parts and components. Japan’s complaint against the United States was in response to the punitive tariffs that were instituted after the first year of the Semiconductor Trade Agreement. The action did not progress beyond consultations. Japan has also expressed its reservations regarding the 301 clause of U.S. trade policy, but has not pursued a formal complaint under Article XXIII (GATT, 1990, p. 264). Japan appears increasingly willing to use the GATT forum to raise concerns about U.S. policies but is still reluctant to utilize the formal mechanism established in the agreement.

AN EXAMINATION OF THE TRENDS IN USITC INVESTIGATIONS

The USITC is a key agency in terms of fairness disputes with other nations.\(^6\) The relatively long history and large number of decisions offer greater potential for analysis than the GATT or the Japanese counterpart of the USITC, the Japanese Fair Trade Commission,

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\(^5\)The United States has been the most frequent target of GATT Article XXIII complaints, with a total of 40 through 1991.

\(^6\)The USITC investigations described in the following analysis are actually multipart investigations that involve a sequence of decisions by both the USITC and the International Trade Administration of the Commerce Department. For details regarding the procedures, see the USITC's Annual Report 1992 or Boltuck (1990), p. 23.
since the number of investigations in those organizations is so small. The focus here is on complaints for unfair dumping and subsidies because of the importance of those issues in the fairness debate, and because the investigations are specific to a country and a product. As a result, it is possible to follow the general trend of investigations for specific nations, such as Japan, for a number of decades.\(^7\)

However, there are limitations on the usefulness of the concept of investigations for analytical purposes. First, the unit of analysis—investigations—is highly variable in its importance. Some investigations may involve products with large dollar values (such as minivans from Japan), while others may be of limited importance (such as shop towels from Bangladesh). Second, the number of complaints may not be a consistent indicator because filing complaints may also involve strategic behavior on the part of firms who may flood the USITC with complaints as a tactic. This was the case with the steel industry in the early 1980s, when a large number of steel cases were filed under section 701 for countervailing duties, both to overload the system and to make a political statement. Finally, the course of previous decisions may also cause firms exporting to the United States to modify their behavior and charge higher prices to avoid potential charges of dumping or subsidies. However, it is possible to use the record of investigations to observe the larger trends, especially as they relate to the numbers, the countries involved, and the success rate of the filings.

### Dumping Investigations

Before 1979, USITC conducted its investigations of dumping under the Antidumping Act of 1921. There were relatively few investigations in the 1960s, and the number peaked in the early 1970s, partly as a result of a large number of steel cases (see Figure 3.1).\(^8\) During

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\(^7\)The data used for this analysis have been compiled primarily from USITC annual reports. Each investigation is counted at the time of the resolution, whether it is a decision or termination for some other reason.

\(^8\)See Low (1993), pp. 101–107 for a more detailed description of steel complaints in the USITC.
this period, slightly less than half of the 195 investigations were affirmed, with an almost identical percentage of Japanese cases being affirmed.

The number of cases involving Japan also peaked in the early 1970s; overall, Japan accounted for 27 percent of the cases during this period (see Figure 3.2). The remainder of the investigations were concentrated among major U.S. trading partners.

Dumping investigations since 1979 have been handled under a new set of procedures. As shown in Figure 3.3, the number of investigations during the 1980s and early 1990s has been substantially greater than in the previous period. The number peaked in the early 1980s, again because of a large number of steel investigations. The number of cases has declined somewhat since 1986. Of the investigations against all countries, 39 percent were affirmed, while 56 percent of the cases against Japan were affirmed. Part of the difference can be explained by the fact that many steel cases did not reach a final decision, and relatively few of the steel cases involved Japan.

Japan remained the most frequent target of the investigations, with 13 percent of the investigations (see Figure 3.4), although this is only
Figure 3.2—Investigations Under the Antidumping Act of 1921, by Country

Figure 3.3—Antidumping Investigations Under Section 731, 1979–1992
half of the level of the previous period when Japan was the target of 27 percent of the investigations. Although other countries were named in a significant number of investigations, one change from the previous period is that the cases are no longer concentrated among a few countries. For example, the top five countries from 1961 to 1979 were the targets of 63 percent of all investigations, while from 1979 to 1992, the top five countries were the target of only 38 percent. In addition, the targets commonly include a number of developing nations.

Subsidy Investigations

The USITC also conducts investigations for subsidized imports under Section 701 of the Tariff Act of 1930. The data from 1979 through 1992 show a relatively large number of investigations from 1979 through 1986, with a huge spike in 1982 that was due to steel investigations (Figure 3.5). Since 1987, there have been relatively few investigations under Section 701. In contrast to the dumping investigations, relatively few (20 percent) of the subsidy investigations are affirmative. In part, this is also due to the large number of steel cases that are terminated or withdrawn prior to a final decision.
Japan has not been a major target of investigations for unfair subsidies, with only seven cases over the 13-year period. In these subsidy cases, European nations have been the most common target (Figure 3.6).

**Summary of Trends in USITC Dumping and Subsidy Investigations**

The number of fairness cases involving Japan decreased sharply in the latter half of the 1980s. This is especially true in the case of subsidies, where no cases have been filed since 1986. This result is surprising, since the U.S. trade deficits with Japan and fairness-related complaints in the media continued to rise into the late 1980s. It also appears inconsistent with the shift in legislation that occurred in the four periods described in Chapter Two. The legislation moved from an emphasis on trade liberalization in the 1950s to a more aggressive response to Japanese export successes in the United States in the second half of the 1980s. However, in terms of the number of investigations, Japan was a more common target of investigations in the earlier periods than during the late 1980s.
There are two potential reasons for this shift. First, the institution may have become less significant in terms of its importance in the resolution of fairness disputes between the United States and Japan. Instead of bringing cases to the USITC, the firms used other methods of settling the disputes. These might include political solutions, such as voluntary restraint agreements, which are addressed in more detail below. Second, Japanese exporters might have reacted to the earlier successful efforts of U.S. firms in the USITC and changed their export behavior accordingly. That is, the Japanese might have changed their pricing and other practices so that dumping and subsidy claims would not be filed. However, the large number of agreements that were negotiated in the political arena suggests that the former explanation is more likely, that the USITC has at least temporarily lost much of its role in settling international trade disputes. Additional evidence is provided in a recent study of pricing in U.S. and Japanese markets, where Japanese goods are frequently lower in price in the United States than in Japan (Yager, 1991).
FROM INSTITUTIONAL TO POLITICAL "SOLUTIONS"

If the USITC is no longer the primary venue for resolution of fairness grievances, where have they gone? The answer is: the political arena. Firms and industries in financial trouble that is due to loss of market share from imports apply a variety of tactics and pressure to the Congress and the president. Since 1980, these two nations have increasingly responded by instituting "voluntary" agreements, which are then implemented by the USTR Office and the Department of Commerce.

Voluntary restraint agreements (VRAs) and voluntary export restraints (VERs) have the following characteristics. First, they target specific industries. There are now agreements between the United States and Japan with respect to textiles (1972), steel (1969), beef and citrus (1983–1984), automobiles (1981), auto parts (1992), machine tools (1985), and semiconductor chips (1986 and 1991). Second, the agreements typically set price floors and/or quotas on the goods that can be imported into the United States or exported to Japan. Alternatively, a market share percentage may be negotiated. Although the agreements are of limited duration, they are usually renewed. Finally, many of the agreements are "voluntary" in name only, because the Japanese faced the prospect of formal trade restrictions being imposed upon them if they failed to adopt the "voluntary" restrictions suggested by their American counterparts.

The cases involving automobiles and semiconductors illustrate the development and implementation of these agreements. Interestingly, the auto case had nothing to do with fairness; it was simply a case in which the industry requested relief from imports to aid restructuring. On the other hand, in advance of the semiconductor agreement, no less than six fairness complaints were outstanding (Low, 1993, p. 120).

Automobiles

In 1979, the American automobile industry was in trouble. Oil prices had increased again, and fuel efficient Japanese imports had captured over 25 percent of the U.S. market. A further drop in sales of J.S. vehicles and an increase in Japanese market share occurred in 1980. During this period, unemployment among vehicle manufac-
turers peaked at 250,000, while their suppliers laid off an additional 650,000. Automobile manufacturers General Motors and Ford experienced huge losses, while Chrysler had to go to Washington for a federal bailout. The deficit with Japan in this industry was $11.2 billion in 1980 (U.S. Department of Commerce, 1983, p. 30-1).

Ford and the United Auto Workers joined together to file a petition to the USITC asserting that they had suffered injury (loss of market share) because of the rise in Japanese imports. The USITC denied their petition, finding that the primary cause of the problem was not imports from Japan (Destler, 1992, p. 79). They also filed a request with the president for relief in the form of subsidies under the Trade Adjustment Assistance act. This legislation required only that a company or industry demonstrate that it was losing market share to imports. This tactic also failed, because the Reagan administration was unsympathetic to the legislation. Instead, the administration eliminated the Trade Adjustment Assistance program.

At the same time, the three automakers pursued an unprecedented program of lobbying in Washington, and Congress responded by threatening to pass legislation limiting automobile imports from Japan. Faced with the prospect of protectionist legislation and with signals from the administration that restraints would be welcomed, the Japanese "voluntarily" agreed to limit exports to the United States to 1.68 million automobiles per year beginning in 1981 (Low, 1993, p. 113).

However, the VERs did not resolve the issue of auto imports from Japan, because the level and other details have been an issue since that time. The voluntary limit has been increased and decreased, reaching a peak of 2.3 million cars annually in 1985, but reduced in 1992 to 1.65 million units, and the treatment of captured and transplant autos has been an issue.\(^9\) Not only did the auto agreement survive, it also spawned an agreement in sales of autos and auto parts to Japan. During the 1992 visit of President Bush and the auto industry executives to Japan, an agreement was reached with the Japanese to purchase $19 billion and 20,000 units from U.S. firms.

\(^9\) Captive autos are made in Japan but sold in the United States under a U.S. nameplate, while transplant autos are made in the United States but sold under a Japanese nameplate.
(Low, 1993, p. 117). However, arguments over the details of the agreement had erupted even before the president and the auto executives returned to the United States.

What has been the actual result of this agreement? One of the effects is that the exporting firms were forced to establish a 'cartel' to limit shipments, and auto prices have increased significantly as a result. However, there are other long-term, unanticipated effects. Japanese automakers significantly increased their investment in auto plants in the United States. Toyota, Honda, Nissan, Mazda, Mitsubishi, and Subaru all established transplant automobile assembly plants during the 1980s. While the Japanese automakers exported fewer than 1.5 million cars to the United States in 1991 and 1992, the automobiles they produce within the United States have more than made up the difference. By 1992, the Japanese automakers produced approximately 1.6 million vehicles in the United States, so their share of the market including the transplants had exceeded 30 percent. Moreover, Japanese automobile exports to the United States had shifted from the low end and middle of the market to the more profitable top end of the market. The deficit with Japan in motor vehicle trade was over $20 billion in both 1991 and 1992, and the deficit in auto parts was about $10 billion in both years (U.S. Department of Commerce, 1993, Ch. 35).

The 1990s began as another difficult period for U.S. automakers. The value of industry output decreased 14 percent from 1989 to 1991. In 1991, the Big Three experienced combined losses of more than $7.5 billion. General Motors announced it would close at least 22 plants in 1992, with a loss of 70,000 jobs. Analysts began speculating on the possible demise of General Motors, and the board of trustees replaced the president in 1992, an event without precedent in the history of the corporation. However, in this case, imports from Japan do not appear to be the influence that they were a decade earlier. In contrast to the early 1980s, imports have not fared much better during the recent slump, either in terms of sales or profits. More importantly for the outlook for the remainder of the 1990s is that, in 1992, there was an average price differential between comparable Big Three and Japanese-nameplate cars of about $2,000 in favor of Detroit. Ten years before, Japanese manufacturers could deliver autos to this country for roughly $1,500 per car less than U.S. manufacturers (U.S. Department of Commerce, 1993, p. 35-7; U.S. Depart-
ment of Commerce, 1983, p. 30-6). Given that the agreements have survived all these changes in the industry, it appears that they have become a permanent part of the U.S.-Japan relationship.

Semiconductors

By 1985, the American companies that had originally developed the semiconductor had ceded much of the market in the United States and abroad to Japanese companies; the industry had a deficit of $2.5 billion with Japan at that time. The U.S. companies filed petitions with the USITC against Japanese companies, alleging dumping (imports) and unfair trade practices, i.e., collusion of Japanese companies that resulted in American semiconductors being kept out of the Japanese market. However, following the pattern of negotiation preceding the VRA signed by Japanese automobile manufacturers, the petitions to the USITC were suspended when the USTR Office negotiated the Semiconductor Trade Agreement of 1986. Floor prices for Japanese semiconductors imported to the United States were set, and the American companies were promised 20 percent of the Japanese domestic market for semiconductors by 1990.

Even more than the auto agreement, the semiconductor pact has been a source of continuous bickering between the two nations.\textsuperscript{10} The first major issue was the adherence of the Japanese producers to the floor prices on exports to the U.S. market. After much discussion, the United States applied punitive tariffs to selected Japanese consumer products exported to the United States for failure to comply with the terms of the pact.\textsuperscript{11} Unfortunately for U.S. consumers, however, Japanese tightening of supplies occurred at the same time as demand increased in the personal computer industry. Prices for semiconductor chips soared to many times the preagreement level, and personal computer buyers faced higher prices for computers with less capability. As in the case of the auto industry, the existing producers earned huge profits because of the restricted supplies.

\textsuperscript{10}The agreement has also had international repercussions. The EEC filed a GATT complaint against Japan with reference to the requirements for third-country sales and market-access provisions.

\textsuperscript{11}This led to the sole Japanese formal complaint to the GATT mentioned above.
However, unlike the automobile industry, virtually all of the semiconductor producers at the time were Japanese, so the policy had the effect of transferring wealth from U.S. semiconductor consumers to Japanese producers.

After this “resolution” of the U.S. market questions, the focus of the debate turned to the level of sales by U.S. firms in the Japanese market. Since the signing of the agreement, there had been charges about the existence of a “secret” side letter that suggested 20 percent as a goal for U.S. sales in Japan. Whether this was merely a target or more of a guarantee and whether the U.S. industry was supposed to be progressing toward that goal in the interim years were hotly debated issues.\textsuperscript{12} The five-year deal ended on an acrimonious note without U.S. manufacturers meeting the 20 percent level, but a new five-year accord was signed in June 1991. This pact stated the commitment to raise the U.S. market share to 20 percent by the end of 1992. Although it appeared that this goal too would be missed, a sharp increase in purchases of U.S. semiconductors pushed U.S.

\textsuperscript{12}See, for example, Mastanduno (1992), p. 737.
firms to the 20-percent mark. As a result, the case has been used as an exemplar by the Clinton administration in demands for more results-oriented agreements with the Japanese.
Chapter Four

THE CURRENT SITUATION AND THE OUTLOOK FOR THE FUTURE

The U.S.-Japan trade relationship has passed through four phases since World War II. The two earliest periods witnessed U.S. efforts toward trade liberalization and expansion. After 1974, however, U.S. attention shifted to fairness issues and the effects of imports on U.S. producers and workers. Recourse to the international (GATT) or the domestic (USITC) institutions for resolving fairness disputes against Japan and other countries peaked during this period. Since 1984, however, U.S. use of institutions for resolving fairness complaints involving Japan has decreased. In the most recent period, the major disputes between Japan and the United States have been solved through negotiations rather than in the institutions. Issues of fairness appear less central to the solutions.

This shift toward negotiated agreements is not as evident in U.S. policy toward other nations. For example, the United States has negotiated a new framework for resolving fairness disputes with Canada as part of the Canadian-U.S. Free Trade Agreement. Disputes concerning dumping or countervailing duties are handled through binding panel rulings, and the procedures appear to be successful (Hubbauer and Schott, 1992, p. 39). This agreement is significant, since Canada is the largest trading partner of the United States, and there have been a significant number of disputes between the two parties. Establishing a separate judicial system is a far different outcome from a shift to negotiated agreements.
U.S. firms are still using the trade dispute institutions with other nations, notably China and other developing nations.\(^1\) However, the move toward negotiated agreements with Japan may have signaled a broader shift in U.S. policy. For example, a set of rulings on 72 dumping and countervailing duties on steel products in July 1993 provided an indication of why U.S. industries might prefer negotiated agreements. The USITC decided that, in 42 of the 72 cases, the steel industry was not entitled to protection.\(^2\) The ruling created a furor in the industry and caused steel stocks to lose $1.1 billion in value within 90 minutes after the decision was announced.\(^3\) The steelmakers requested that the commission vote again on the investigations, and also asked the White House to replace one of the commissioners whose term has expired.

**THE CURRENT SITUATION: MANAGED TRADE**

Automobiles and semiconductors are only two of an increasing number of industries covered by VERs or VRAs. Five industries covered by such agreements account for three-quarters of the U.S. trade deficit with Japan (see Table 1). As the table indicates, the United States now operates under an *ad hoc* form of managed trade. In some cases, the number of units is controlled (autos); in some cases a floor price is established (semiconductors); in some cases only certain products are covered (steel); and in some cases the agreements cover both exports and imports (auto parts and semiconductors). It may be hypothesized that, whenever a major U.S. industry falls into a substantial deficit with Japan, the inclination is to seek a managed agreement.

Moreover, despite the use of the word *voluntary*, these agreements have been anything but voluntary. Each of the various agreements

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\(^1\) However, the use of safeguard procedures, where "injury" to an industry need only be shown, has decreased significantly, especially in the late 1980s, with only 3 complaints having been filed against all nations. See Nivola (1993), p. 24.

\(^2\) Section 701 ( antidumping), investigation numbers 319 to 354, and Section 731 ( countervailing duty), investigations 573 to 626; Source: USITC Dockets Office, Washington, D.C.

Table 4.1

Three-Quarters of the Bilateral Deficit Covered by Trade Agreements (1992)

<table>
<thead>
<tr>
<th>Industry</th>
<th>Bilateral Deficit ($B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steel</td>
<td>2.4</td>
</tr>
<tr>
<td>Autos</td>
<td>20.5</td>
</tr>
<tr>
<td>Auto parts</td>
<td>12.3</td>
</tr>
<tr>
<td>Machine tools</td>
<td>1.8</td>
</tr>
<tr>
<td>Semiconductors</td>
<td>2.0</td>
</tr>
<tr>
<td>Total</td>
<td>38.0</td>
</tr>
<tr>
<td>Total deficit</td>
<td>49.4</td>
</tr>
</tbody>
</table>


was negotiated under varying types of threats of other action, whether it was USITC decisions or protectionist legislation by Congress. At least for Japan, the political arena is where major trade problems are being handled.

New Forms of Managed Trade

The details of U.S.-Japan trade policy for the next few years have not yet been determined in detail. The Clinton administration has signaled a preference for results-oriented negotiations designed to give American industries a specified share of the Japanese market. The Japanese government, for its part, has stated repeatedly that it is not willing to enter into results-oriented agreements of the kind the Semiconductor Agreement represents. Nonetheless, the trade policy is likely to take on many of the characteristics of the agreements of the past few years. In any case, a results-oriented approach represents a clear shift away from fairness rules.

One of the contentious issues is likely to be the role of numerical targets or "reference indicators" in the policy. The term itself brings back the debates that were part of the semiconductor trade agreement, where the importance of the 20-percent share of the Japanese market as a goal, target, guarantee, etc., was a matter of almost continuous debate. In addition, the current lack of agreement among the Japanese ministries as to the desirability of this type of frame-
work also suggests that not all the players in Japan will work with equal vigor to make the agreements a success. Finally, the outlines of the new policy were established shortly before the Liberal Democratic Party lost control of the government, so the willingness of future governments to carry on this policy is open to question.

Managing trade also requires attention to details that are not easily resolved. For instance, the percentage of a product that defines it as being domestic will have to be specified as part of the agreements. In both the automobile and the semiconductor industries, there have been a number of foreign-operated and jointly operated production facilities, and it is not clear how production from these facilities should be counted. In addition, certain firms produce goods that are not sold on the market (such as semiconductor chips within IBM). It is not clear whether and how these types of production should be counted in the agreements.

Given the inherent difficulties of managed trade, the best that can be expected to happen will be a continuation of the contentious discussions over the agreements, since the effectiveness of these agreements depends to a large extent on the political will to carry them out. As a result, this ad hoc managed trade policy provides an incentive for participants to galvanize public opinion and political pressure in favor of the agreements. However, if the inevitable disagreements over the agreements are not contained, these policies could lead to an overall deterioration in U.S.-Japan relations. Eventually, such moves could lead to a reduction of the volume of trade and investment between the two countries and subsequently to a reduction of the variety, quantity, and quality of goods and services available to consumers in both countries.

An additional issue is the question of how other, broader questions will be addressed, since managed trade appears likely to be used for particular industry solutions. Some framework for talks that address cross-sectional issues may be created to address issues from the SII talks in areas such as the treatment of foreign investment and issues regarding the distribution system in Japan. The Clinton administration may be more willing to reopen these talks because of the success in passing a deficit-reduction agreement, since the Japanese stressed the linkage of the budget and trade deficits in the previous SII talks.
Economic Consequences of Past Agreements

Some of the more recent managed trade agreements, such as the Semiconductor Trade Agreement, have had both import and export components. Most of the attention to date has been focused on the import aspects of these agreements. For example, Hillman characterizes the voluntary agreements thus:

The foreigners agree to restrain exports, which is to the political advantage of the home government, which at the same time has not actively restrained imports via tariffs or legislated quota restrictions. The home government has however fostered collusion abroad by facilitating preassignment of import shares within the foreign voluntary export restraint, and has thereby resolved the monitoring problem for the foreign cartel. The VER may have facilitated a rent transfer to foreigners. (Hillman, 1992, p. 10.)

This characterization appears accurate for both examples cited in this study, autos and semiconductors. There is little evidence that these agreements have helped the competitiveness of those American industries where agreements have been struck, and in any case, foreign investment and joint ventures have transformed the industries. In both industries, consumers paid producers higher prices for the restricted goods. However, in the semiconductor case, the producers were almost exclusively foreign by the time of the agreement, so the shift of profits was from domestic consumers to foreign producers. In addition, specific market factors, such as the sharp increase in demand for computers, led to price increases for the semiconductors that were much higher than the floor prices negotiated in the agreement.

These events suggest that managing trade is a difficult proposition under the best conditions and is made more difficult by the fact that the types of voluntary restraints available are far from optimal from the U.S. standpoint. For example, the floor prices that were part of the original semiconductor agreement proved unsuccessful in increasing the prices of Japanese chips in the United States. Following U.S. retaliation, the Japanese enforced a quota on exports, but quotas can cause large price swings in situations where demand changes.

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4See, for example, Dinopoulos and Keinen (1991).
On the other hand, a duty would not have had the price destabilizing effect of the quotas and would have transferred the rents to the U.S. Treasury rather than the foreign manufacturer. However, the use of duties would conflict with the international trade rules. As a result, U.S. government efforts to manage trade are unlikely to be successful, at least from the management standpoint, because of the difficulties involved and the limited range of available instruments.

The economic effects of the export aspects of these agreements are more difficult to assess. Industries covered by negotiated agreements appear to have performed significantly better in increasing exports to Japan than U.S. exports in general (Gold and Nanto, 1991). In any case, such agreements are less obviously harmful to U.S. consumers than the import agreements. The agreements should have no direct impact on U.S. consumers and may have a positive impact on U.S. producers if those sales generate profits, scale economies, or other advantages in the international marketplace. On the other hand, the export agreements have potentially negative effects on existing and potential foreign competitors, who may feel that they are at a disadvantage competing with producers who have a guaranteed share of the market. In fact, these aspects of the Semiconductor Trade Agreement led to the GATT complaint by the EEC. In addition, most nations could be expected to oppose negotiated agreements, since bargaining clout is largely based on access to a large domestic market. Other than the United States, few nations could be expected to negotiate these types of agreements successfully. For this reason, Japan may have some success in gathering international support against U.S. efforts to impose managed trade solutions.

**Political Consequences**

A basic problem of the auto and semiconductor trade agreements is that they have not resolved the problems they were meant to address. The semiconductor agreement was recently extended, and a new agreement was recently struck on auto parts. As a result, the issues remain unresolved and periodically reappear in the press and on Capitol Hill. One issue is that the agreements provide an incen-

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5In the semiconductor case, the "consumers" of semiconductor chips were the producers of personal computers.
tive for U.S. firms to take their complaints to the public and to Washington so that the political pressure remains on the Japanese. In addition, the only real incentive for the Japanese to participate in the talks is to resolve the issues in the least damaging manner.

Moreover, these political measures have not resolved the larger problem of the strained economic relationship between Japan and the United States. One of the problems with the *ad hoc* managed trade the United States now conducts with Japan is that it does not address trade systematically through policy but handles each problem piecemeal in response to the political clout the industries or firms have with the Congress or the president. Although political measures have not produced satisfactory results, it is unlikely that U.S. firms and industries will return to the trade-dispute institutions, because there is no incentive to do so when industries can achieve their immediate objectives through Congress or the Executive Branch. These agreements cannot be expected to change the fundamentals of the economic relationship, and there is no reason to believe that resolving today's problem will prevent another issue from being raised tomorrow. In fact, the opposite is true, since handling a complaint today makes it more likely that another issue will be brought forward.

Finally, the shift to negotiated settlements instead of rule-based trade is likely to have international repercussions. Exporters from other nations who are competing with U.S. firms for a share of the Japanese market are the most directly affected, since they may be at a disadvantage in selling to a market that is governed by an agreement with the United States. The EEC claim to the GATT on semiconductors was a complaint of this type, but many other nations would have even less hope than the EEC to gain a successful resolution to this type of problem.

THE NEW ENVIRONMENT IN THE UNITED STATES AND JAPAN

While the political and economic environment of U.S.-Japan trade policy is continuously changing, the changes in recent years and months have been especially significant. New parties have taken power in both nations, and both nations are slowly emerging from
recessions that have changed many features of the domestic economies.

The new leaders in the United States and Japan are faced with a policy dilemma. On the one hand, the trade-dispute institutions have lost their effectiveness in dealing with trade between the two countries. On the other hand, the political agreements have not increased the international competitiveness of the U.S. industries they cover, though they may have helped U.S. exports to Japan. Given the negative climate of U.S.-Japan economic relations, a revitalization of the existing trade-dispute institutions is unlikely. However, the economic and political environments in the two nations provide some insights into these new policies.

The New Economic Environment

The level of the bilateral trade deficit is one closely watched indicator of the U.S.-Japan economic relationship, as it appears to be related to the level of debate about fairness in the two nations (see Benjamin, 1991). In the immediate future, current trends suggest that the deficit will increase. The current upswing through a combination of a slowdown in U.S. exports to Japan because of the Japanese recession and an increase in imports from Japan as a result of the modest recovery in the United States. The appreciation of the yen against the dollar in 1993 is also likely to add to the bilateral deficit in the short run. The increasing bilateral deficit will place additional strain on the relationship.

However, other economic factors are also important in assessing the future of the bilateral trade relationship. For instance, the economic data presented earlier in this study suggested that the ability of the United States to tolerate the effects of trade on the economy appeared to decrease as the performance of the economy slowed. For that reason, it is useful to consider the future course of the two economies and how that might affect the future of U.S.-Japan economic relations.

One observation is that Japan's growth rates are likely to be lower than those of the United States for the early years of the 1990s. This
Table 4.2
Real GDP Growth Rates for the United States and Japan

<table>
<thead>
<tr>
<th></th>
<th>Japan (%)</th>
<th>United States (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981–1991 (average)</td>
<td>4.2</td>
<td>2.2</td>
</tr>
<tr>
<td>1992</td>
<td>1.3</td>
<td>2.1</td>
</tr>
<tr>
<td>1993a</td>
<td>1.0</td>
<td>2.6</td>
</tr>
<tr>
<td>1994a</td>
<td>1.3</td>
<td>3.1</td>
</tr>
</tbody>
</table>


aProjections.

is in sharp contrast to the decade ending in 1991, when the Japanese economy grew at almost double the rate of the United States. At least in the United States, slower growth has been associated with a more aggressive trade policy, one that is less based on application of fairness rules. In turn, the relationship between slower growth and aggressive trade policy may be due to the fact that the labor and other resources dislocated by changes in the international economy were not as quickly reemployed in the growth sectors of the economy. As a result, the outlook for somewhat more rapid growth in the United States provides some reason for optimism. In addition, the aggressive policy toward Japan that has developed since 1984 is based to some extent on the perception of Japan as an economic juggernaut. At least for the time being, that perception is not accurate.

In Japan, it may be that the rapid growth made it politically possible to negotiate arrangements that were not optimal because of the expectations of rapid improvement in the economy. Those expectations, and the acceptance of the agreements, may no longer be forthcoming. Many of the VRAs divide the export pie among the major manufacturers, substantially reducing the opportunities for new firms to gain market share. When other growth opportunities exist, such as in the domestic economy, it may be possible for the government to accommodate these firms. In a stagnant economy, however, accommodation may be more difficult.

In addition to these indicators of the health of the two economies, the appreciation of the yen against the dollar by approximately 20
percent will also have an impact on the relationship. Although the change is not nearly as large as the increase in the yen engineered by the Plaza Accord in 1985, other differences suggest that the impact may be equally significant, especially for the Japanese economy. The increase in the yen may have a more direct impact on corporate profits in the 1990s than in the second half of the 1980s. During that period, the sharp rise in the yen was offset by a number of factors, such as increased productivity, lower costs of imports, and a relatively buoyant and import-resistant domestic economy. Productivity growth may help again in this instance, and the cost of some imported components will decrease and lead to lower costs. However, other key factors that allowed the Japanese to adjust easily to the previous appreciation of the currency suggest that the transition to a higher value of the yen will be more difficult this time.

With the yen-dollar exchange near 100, the outlook for Japanese export profits is even worse. The shift in relative costs in the automobile industry is illustrative of the changes. In the early 1980s, the Japanese were able to land a car in the United States for some $1,500 less than a comparable U.S. car. Since Japanese firms were unable to take full advantage of their lower costs because of the auto restraint agreement, Japanese firms made significant profits on their export sales through the time of the yen appreciation. The currency change led to increased prices for Japanese cars and lower profits on those sales, but had the advantage of allowing greater investment in the United States. By the early 1990s, however, the price differential had reversed, and this was before the recent appreciation of the yen. In the current situation, there are no cushions in terms of cost advantages over U.S. firms or healthy profit margins on exports. In addition, advantages of the strong yen for foreign investment are less important, since many of the Japanese manufacturers already face overcapacity.

Another difference between the previous and current yen appreciations is that in the current instance, Japanese producers will not be able to rely on the domestic market for profits. One reason is that the

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6The increase in the value of the yen will eventually contribute to a decrease in the U.S. bilateral trade deficit with Japan, although in the first year, the deficit is likely to go up. See, for example, Bergsten (1981).
drop in import prices had little effect on consumer prices in Japan.\textsuperscript{7} For that reason, the lower prices for imported goods after the Plaza Accord did not necessarily hurt the domestic market share—and profits—of Japanese firms. It is not clear how much the situation has changed since that time, but competition from imports has increased in the economy, and the Japanese consumer may have become increasingly bargain oriented. As a result, the yen appreciation might have an effect on Japanese profits both in export markets and in the domestic markets. In addition, corporate profits in Japan are already depressed, having decreased for three years in a row for the first time since World War II.\textsuperscript{8} However, it also should be noted that the yen’s appreciation makes it more costly for American companies to set up facilities in the Japanese market.

The New Political Environment

One of the first signals of a new political environment in the United States was the choice of a trade economist, Dr. Laura Tyson, as chair of the Council of Economic Advisors in the Clinton administration. The appointment was controversial both because of her specialty in trade policy and because she advocated a more activist role for the government.

My trade policy is a defensive one. I recommend that the nation’s trade laws be used to deter or compensate for foreign practices that are not adequately regulated by existing multilateral rules. (Tyson, 1992, p. 13.)

However, the activist trade policy does not appear to be among the highest priorities of the administration. Domestic issues, such as the budget and health reform, have been given first priority; in the international arena, the completion and ratification of the North American Free Trade Agreement and the current GATT Uruguay Round appear to have precedence. As a result, at least in the United States, the U.S.-Japan relationship may not be the direct focus of much early policy attention. However, to the extent that these other

\textsuperscript{7}Bank of Japan, Research and Statistics Department (1987), p. 4.

\textsuperscript{8}Economist, June 5, 1993.
issues are resolved, there should be a longer term beneficial impact on the U.S.-Japan economic relationship. For example, if the budget pact does succeed in reducing the U.S. budget deficit, this might be expected to lead to eventual reductions in U.S. borrowing abroad and the bilateral trade deficit with Japan. Success with the health plan could be helpful for the same reasons. However, these benefits are not secure and, in any case, will not accrue until a number of years into the future. It is more difficult to determine the effect that the NAFTA and GATT negotiations will have on the U.S.-Japan relationship. In some ways, the move toward free trade might spill over beyond these arrangements. On the other hand, an increasing deficit with Japan might be a sign of the inability of the Clinton administration to handle trade policy, so strong action on the bilateral deficit might be the price necessary to gain approval of these general pacts.

The change in administration in the United States was routine compared to the change in government in Japan. Since the July 1993 elections, when the Liberal Democratic Party lost its majority and the first non-LDP government was formed in August, the effect on trade policy with the United States has been only one of the concerns. The new Japanese administration also has other priorities, including political reform and the need to bring Japan out of its recession. However, these priorities will also affect the bilateral relationship in more direct ways than those mentioned for the U.S. budget and health policies. For example, whatever type of stimulus policy is created to help pull Japan from the prolonged downturn may potentially increase U.S. exports to Japan. Similarly, the extent to which the new government uses political reform to shift Japan from a producer to a more consumer-oriented society, U.S. exports may increase.

The major problem is that leaders in the two nations are not aware of the policy dilemma that confronts them jointly at this time. The fairness rules that governed most trade between the two nations until a decade ago are no longer used to resolve U.S.-Japan disputes. It is politically unrealistic for the Japanese government to assume that the United States and the European Community will not become much more aggressive in demanding access to Japanese markets in the presence of Japan's $107 billion-plus (1992) current-account trade surplus. In this light, the focus on domestic policy in Japan is dangerous, since the stronger yen propels Japan to an even larger
place in the international economy. However, the poor state of the Japanese corporate sector will make it difficult to enact measures that will open up Japan and will further prolong the recovery of the powerful corporate interests.

The United States also does not appear to be realistic in its assessment of the situation. In announcing Walter Mondale as the new ambassador to Japan, President Clinton "wanted to get economic problems out of the headlines and on the negotiating table."9 Over the longer term, that may be a possibility, but at least in the short term, with the shift toward managed trade, that seems unlikely at best.

Recognition of the policy dilemma may lead to improved domestic policy responses in Tokyo and Washington, D.C. American foreign economic policy is no longer clearly subordinated to political and national security policy. The Clinton administration is focused on the need to deal with the federal deficit, health care, education and training, and other infrastructure investment issues that give promise of making long term macroeconomic adjustments in the trade deficit with Japan. The immediate question is whether the administration will accept that it has an ad hoc managed trade policy with Japan in place and that it has a responsibility to undertake changes in the policy that avoid the negative outcomes noted above. At the very least, frank recognition of the current policy box Washington is in would present policy leaders with a fresh opportunity to address it.

For Japan, there are three issues. First, the policy dilemma presents Japanese political and economic leaders with the challenge of creating a new policy toward the United States. The Japanese government is likely to come under much greater pressure to give U.S. and European firms a much greater share of the Japanese market. Second, the Japanese government appears less willing to continue to allow Washington pressures, such as the SSI, to shape domestic policy responses. In turn, however, that means the political reform efforts now under way take on added importance if the Japanese government is to become more effective. Therefore, third, recognition of

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9Economist, June 19, 1993, p. 28.
the trade policy deadlock with the United States, with a similar deadlock likely in store with the EC, may also contribute to the movement to shift Japan from a producer to a consumer economy or at least change the present imbalance in favor of producers. Japan may be headed in the direction of greater private and public consumption, but agreement that the current account surplus is unsustainable will accelerate the momentum for change.

Threshold events provide forks in the road, making it very difficult for national leaders to retrace their steps to recover from a negative path taken. Regardless of whether these possible political and economic trends and policy initiatives together improve U.S.-Japan relations over the longer term, the fairness problem should be recognized by leaders in both countries for the land mine that it is.


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