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## The World Trade Organization and Participatory Democracy: The Historical Evidence

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## The World Trade Organization and Participatory Democracy: The Historical Evidence

*Peter M. Gerhart\**

### ABSTRACT

*Although the World Trade Organization (WTO) is one of the most significant international institutions, its function, domain, and legitimacy are still heavily contested. The Author examines the history of the founding of the General Agreement on Tariffs and Trade (GATT), the WTO's predecessor, to see what history reveals about the role that GATT was originally expected to fulfill. The Author's interpretive examination shows that GATT's founders recognized that trade policy must be internationalized in order to give one country an opportunity to participate in the policy-making of other countries; otherwise, a country can impose costs on other countries without representation from those countries. This review therefore supports the vision of the WTO as an institution of international participatory democracy; suggests that the WTO is a political, not just an economic institution; and rebuts the notion that the domain of the WTO is limited to helping countries overcome protectionist interests at home.*

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## I. INTRODUCTION: WHY THE HISTORICAL RECORD MATTERS

Although the World Trade Organization (WTO) is one of the most important international economic institutions, its function, domain, and legitimacy are still heavily contested. The WTO's role as a multilateral institution that oversees the international trading system is clear, but it is not at all clear why an international organization is needed to oversee national trade policy<sup>1</sup> or what the scope and penetration of that oversight should be.<sup>2</sup> The WTO is under constant academic and popular scrutiny in an effort to determine the rationale for its work and to assess, given that rationale, the borders and reach of its work.<sup>3</sup>

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1. To economists an international organization to oversee national tariff policy is paradoxical because free trade ought to be the policy chosen by each country on its own. See, e.g., Paul Krugman, *What Should Trade Negotiators Negotiate About?*, 35 J. ECON. LIT. 113 (1997). Because border restrictions hurt consumers more than they help producers or generate revenue, unilateral "disarmament" of barriers to trade ought to occur spontaneously, without the need for an international organization or negotiations, as countries follow their own self-interest. See generally CHARLES P. KINDLEBERGER, *INTERNATIONAL ECONOMICS* 17 (5th ed. 1973); PAUL R. KRUGMAN & MAURICE OBSTFELD, *INTERNATIONAL ECONOMICS, THEORY AND POLICY* 1-159 (2000); Alan O. Sykes, *Comparative Advantage and the Normative Economics of International Trade Policy*, 1 J. INT'L ECON. L. 49 (1998).

2. The body of work that seeks to define how various "non-trade subject matter" ought to be treated within the WTO is large and growing, encompassing subjects as diverse as human rights and corruption. See generally, *Symposium: The Boundaries of the WTO*, 96 AM. J. OF INT'L L. 1 (2002).

3. Recent articles discussing the nature of the WTO's mandate include: Joel P. Paul, *Do International Trade Institutions Contribute to Economic Growth and Development?*, 44 VA. J. INT'L L. 285 (2003); Ernst-Ulrich Petersmann, *Human Rights and the Law of the World Trade Organization*, 37 J. WORLD TRADE 241 (2003); Andras Sajo, *Socioeconomic Rights and the International Economic Order*, 35 N.Y.U. J. INT'L L.

This Article examines the history of the founding of the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT), in the 1940s to see what light history sheds on how to understand the WTO and its function. The connection between GATT and the founding of the WTO is direct, albeit separated by forty-five years, because the WTO takes the place of the organization that was envisioned when GATT was signed.<sup>4</sup> Although GATT's history has been well documented in other works, both contemporaneously<sup>5</sup> and retrospectively,<sup>6</sup> few works ask how history can aid understanding the function and domain of GATT, and its successor, the WTO. That interpretive task is undertaken in this Article.

The main contours of the interpretation advanced in this Article will not surprise informed readers. GATT's founding recognized that tariffs are a particularly troublesome source of economic friction between countries.<sup>7</sup> Tariffs came to be understood as a way by which the problems of one country were exported to, and visited upon, other countries—a form of economic aggression akin to war. Because a tariff is essentially a tax on the opportunities of foreign producers, it is a form of taxation without representation—a tax on foreign producers over which the foreign producers have no say. Tariffs therefore inevitably invite retaliation because retaliation through government-

& POL. 221 (2002); Carlos Manuel Vazquez, *Trade Sanctions and Human Rights—Past, Present, and Future*, 6 J. INT'L ECON. L. 797 (2003).

4. The founding of the WTO is the culmination of the original vision of GATT's founders. After World War II, it was envisioned that countries would form the International Trade Organization (ITO) to oversee a wide variety of economic relations. Countries negotiated a set of rules, the General Agreement on Tariffs and Trade, that would govern tariff negotiations while the ITO was being established, and it was contemplated that those rules would later be folded into the mandate of the ITO. When the ITO failed to be implemented, the agreement covering tariff negotiations continued, albeit without a formal organizational structure or accepted legal status. An informal organization was built to administer the negotiations, and that organization came to be called GATT, a name that until 1994 referred to both the rules for the trading system and the organization that sponsored the negotiations and facilitated dispute resolution. GATT the organization was then subsumed into the World Trade Organization when the WTO was established and given official legal status following the Uruguay Round of negotiations in 1994. The brief history of the ITO is recounted in JOHN H. JACKSON, *WORLD TRADE AND THE LAW OF GATT* (1969). On the ITO, see CLAIR WILCOX, *A CHARTER FOR WORLD TRADE* (1949) [hereinafter WILCOX, *TRADE CHARTER*]; William Diebold, *The End of the ITO*, in *ESSAYS IN INTERNATIONAL FINANCE* 16 (1952).

5. WILCOX, *TRADE CHARTER*, *supra* note 4.

6. RAJ BHALA & KEVIN KENNEDY, *WORLD TRADE LAW* § 1-4(d)-(e)(2) (1998); RICHARD N. GARDNER, *STERLING-DOLLAR DIPLOMACY IN CURRENT PERSPECTIVE* (1980) [hereinafter GARDNER, *STERLING DIPLOMACY*]; DOUGLAS A. IRWIN, *FREE TRADE UNDER FIRE* (2002) [hereinafter IRWIN, *UNDER FIRE*]; JOHN H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS* 30-35 (1989); THOMAS ZEILER, *FREE TRADE, FREE WORLD: THE ADVENT OF GATT* (1999); Douglas A. Irwin, *The GATT in Historical Perspective*, 85 AM. ECON. REV. 323 (1995).

7. See *infra* notes 73-85 and accompanying text.

imposed tariffs is the only “voice” that foreign producers have to counter foreign taxation. The historical record makes it clear that an international institution was understood to be needed to forestall such aggression by providing a forum in which one country could voice its concerns about the policies of another country.<sup>8</sup> Thus, history shows that GATT’s founding was driven by the understanding that every country had an interest in the tariff policies of other countries and therefore an interest in having a right to participate in the making of those policies.

Although not surprising, this historical interpretation is important for two reasons. First, it suggests that the rationale for the founding of GATT was political, not economic. The gains expected from GATT were not the familiar gains of trade and specialization that result in economic interdependence. Instead, the gains were to come from participatory lawmaking and political interdependence. Second, it suggests that GATT was not founded out of a need to overcome protectionist interests at home—or to set up an international organization to counter domestic protectionist interests—but out of a need to counter protectionist interests abroad. GATT founders understood that a tariff policy that meets domestic objectives within a country may be objectionable not because it is bad for the country imposing the tariff, but because of its effect on producers in other countries.

This Article concludes that the historical account of the origins of GATT (and through GATT, the WTO) undercuts one common contemporary interpretation of the scope and function of the WTO—namely, the notion that GATT was established to help countries suppress the special interests that seek to influence trade policy.<sup>9</sup> GATT was not founded to help a country achieve a more efficient economy by overcoming protectionist sentiment at home or to benefit consumers by lowering tariffs. That was the *effect* of GATT—and a most salubrious one at that—but the *purpose* of GATT was to

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8. See *infra* notes 73-85 and accompanying text.

9. The notion that GATT was designed to fight special interests in the domestic economy is emphasized in JAN TUMLIR, PROTECTIONISM: TRADE POLICY IN DEMOCRATIC SOCIETIES 61-70 (1985); Robert E. Hudec, “Circumventing” Democracy: *The Political Morality of Trade Negotiations*, 25 N.Y.U. J. INT’L L. & POL. 311 (1993); John O. McGinnis & Mark L. Movsesian, *The World Trade Constitution*, 114 HARV. L. REV. 511 (2000); G. Richard Shell, *Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization*, 44 DUKE L.J. 829 (1995) (discussing models that can aid interpretation of WTO treaties, including the Efficient Market Model, which relies on this vision). Similar arguments have been made in the context of European Constitutionalism by Ernst-Ulrich Petersmann. See ERNST-ULRICH PETERSMANN, CONSTITUTIONAL FUNCTIONS AND CONSTITUTIONAL PROBLEMS OF INTERNATIONAL ECONOMIC LAW (1991) (discussing the constitutional function of trade laws).

allow a country to influence the policy of foreign countries that reduced opportunities for a country's exporters—what this author has called the “participatory vision.”<sup>10</sup> GATT was founded by countries that were outward-looking, not inward-looking.

Before elaborating on these claims, the interpretive puzzle underlying this study should be clarified. Free trade across borders is in all consumers' interest because they get better products at better prices. Protectionism in the form of tariff or non-tariff barriers can be understood in one of two ways. Protectionism may result because special interests (i.e., producers and workers who compete against imports) capture the political process in order to divert some of the consumer value to themselves. Protectionism may also result because policymakers decide to advance some non-efficiency interests above the consumer interest. Neither basis for understanding why countries restrict trade has an *a priori* claim over the other; tariff barriers can be explained on the basis of political failures or because efficiency is sacrificed in the name of non-efficiency values.

The reasons that countries resort to reciprocal commitments to reduce tariffs are also ambiguous. Naturally, any country wants to break down foreign barriers to trade. A country benefits absolutely when a foreign country reduces its trade barriers, since such a policy makes a country's exports more valuable (by removing a barrier that would reduce demand). The motivation for reciprocal negotiations, however, is not so clear.<sup>11</sup> In reciprocal negotiations a country lowers its tariffs to induce a reciprocating country to lower its tariffs. This can be understood in two ways: first, as an attempt to help its producers gain access to the foreign market as an end in itself; or, alternatively, as an effort to strengthen the political power of a country's exporters so that the exporters can present a political

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10. I have written about this central function of the WTO in earlier work. See Peter M. Gerhart, *The Two Visions of The World Trade Organization*, 24 U. PA. J. INT'L ECON. L. 1 (2003).

11. Economists Kyle Bagwell and Robert W. Staiger have helpfully modeled the dilemma by recognizing that tariffs may reflect non-efficiency, distributional concerns that arise when a country determines its tariff policy—what they call the “political economy approach to trade agreements.” Kyle Bagwell & Robert W. Staiger, *The Economics of the World Trading System* 3 (2002). Such tariffs create an externality (which they call a terms of trade externality) because the tariffs, although appropriate for the domestic market (from the political economy perspective), impose costs on foreigners. Concerns over market access to foreign markets can then be understood as equivalent to the terms of trade externality, making it possible to reconcile the political perspective of this article (concern over foreign market access) with the economic perspective (concern over the terms of trade externalities). *Id.* at 5, 35. Reciprocal trade agreements can then be understood as either an attempt to overcome the distributional interests that impair the efficiency of the market imposing the tariffs, or as a way of dealing with the externalities that countries impose on each other through their tariffs.

counterweight to the special-interest producers that seek protection from competition. Again, when a country reduces its tariff barriers in order to get another country to reduce its tariff barriers, there is no *a priori* basis for determining whether the purpose was to help exporters as exporters or to help exporters as a way of overcoming protectionist special-interest objections to free trade.

Because neither competing explanation for tariffs or negotiations to break down tariffs has an *a priori* claim to be recognized as accurate, no conclusions can be drawn about why tariffs have come down in the context of reciprocal negotiations from the bare fact that they have come down. The United States moved from a policy of protectionism to a policy supporting bilateral and multilateral tariff reductions, but there is no *a priori* reason to attribute that change to either of the competing explanations.

In other words, the GATT/WTO system can be understood in one of two ways. One can understand the tariff negotiations that are at the heart of the GATT/WTO system as, on the one hand, an attempt by countries to use the interests of their export industries to overcome the special interests that support protectionist policies or, on the other hand, as an attempt to open new markets for export industries as an end in itself, with the benefits to the consumer (which come when a foreign country reduces its tariffs) as a beneficial by-product of that goal. Because a reduction in protectionism occurs under either causal account, the successful negotiation of lower tariffs in a multilateral round achieves both goals and is consistent with either motivation.

One might ask, of course, why it is important to understand the reason for engaging in reciprocal tariff reductions. After all, the outcome has two jointly produced results—it enhances the welfare of domestic consumers by reducing protectionism, and it enhances the welfare of domestic exporting producers. It should not matter which of these outcomes is the goal of the enterprise and which is the beneficial by-product of the enterprise. Why does one care which is the tail and which is the dog?

The answer is important because if the historical purpose of the GATT/WTO system is only to allow countries to use the interests of exporting producers to defeat the special interests that sought protectionism, then the WTO's function and legitimacy, at least from the historical standpoint, can be understood in a very narrow way. Under that view, the rationale underlying the GATT/WTO system would explain the extension of the GATT/WTO domain only to situations in which a country needed to defeat the special interests that would otherwise capture the political process and secure tariff and non-tariff barriers for themselves. This would be a limited ambit of operation, leaving the WTO out of fields such as intellectual property, labor, and environmental rights. By contrast, if the

historical rationale for reciprocal trade agreements is to open foreign markets as an end in itself, then that rationale can easily justify extension beyond the ambit of trade policies and also support a vision of the WTO that would allow it to provide a forum for negotiations or a far wider range of issues, potentially encompassing any domain in which the policy of one country hurts the interests of another country. This latter view opens up a far wider domain for the WTO, providing support for the WTO's expansion into intellectual property rights and a rationale for its expansion into other forms of rights.

The analysis in this Article therefore has a significant effect on how to understand the WTO—its function, its legitimacy, and its domain. It suggests that the WTO's legitimacy lies in its ability to allow one country to have a voice concerning the harmful policies of other countries. It suggests that the WTO's role as a negotiating forum need not be limited to the subject of tariffs and other trade-distorting measures. And it suggests that the domain of the WTO need not be limited to trade but can conceivably expand to any situation in which one country's policy adversely affects the well-being of people in other countries.

These matters are explored in this Article as follows. In Part II, a brief overview of the events that lead to the founding of GATT is provided. This provides the context in which the later, interpretive discussion takes place. This discussion highlights the increased internationalization of tariff policy in Europe in the nineteenth century, the economic isolation and economic nationalism of the United States before 1934, and the eventual emergence of the United States to lead internationalization after World War II. Part III analyzes the transformative event in the United States that symbolized the shift from isolation to internationalization—the passage of the Reciprocal Trade Agreements Act in 1934. Understanding how this transformation shifted United States trade policy from the domestic to the international sphere is an important part of understanding the ideological shift that led eventually to the establishment of GATT.

In Part IV of the Article, the subsequent evolution in United States trade policy is outlined. Here the story of the United States emerging from the Great Depression and World War II as the fulcrum for the establishment of the United Nations and other international institutions is conjoined with another development. The Keynesian revolution taught countries, especially the United States, that they could address full employment objectives by manipulating aggregate demand rather than by working to improve demand in particular industries. The effect of the Keynesian revolution was to liberate tariff policy from its prior moorings, which had justified tariffs and tariff policy by the need to ensure jobs. After the Keynesian revolution, the goal of creating jobs could be relegated to macro-



economic policy, which removed any pretense that tariffs were a necessary part of a program for achieving full employment. As a result, the transfer of trade policy from the domestic to the international sphere was complete.

## II. A BRIEF OVERVIEW OF TRADE INTERNATIONALIZATION

Although GATT's founding was proximately the result of American leadership during the Great Depression and World War II, the movement to internationalize tariff policy began in Europe, for it was in Europe that the international repercussions of tariff policy were first understood.

The creation of the *Zollverein* among the German states<sup>12</sup> and analogous nation building in Italy were, of course, early forerunners of tariff cooperation across discrete political boundaries. Even after the modern nation-states of Europe emerged, however, the size and proximity of European nations quickly made cooperation across boundaries important for national prosperity. At the end of the nineteenth century, European nations therefore led the movement toward harmonization and globalization—a fact reflected not only in treaties on matters such as intellectual property, communications, transportation, and standards<sup>13</sup> but also in coordination of tariff policy.<sup>14</sup> According to one authority:

The European states maintained among themselves a commercial treaty system in which tariffs were contractually bound for long periods, usually ten years. The bilateral treaties were interlinked by the unconditional most-favored-nation (MFN) clause contained in each. Through the unconditional MFN clause, each of the treaty partners pledges to grant the other, freely—indeed automatically—any privilege or favor in commercial matters that it has hitherto granted or may subsequently grant to any third country. The MFN clause linked the bilateral treaties into a system in which a change in any country's

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12. The *Zollverein* were the customs unions that broke down the economic barriers between German principalities. See generally WILLIAM O. HENDERSON, *THE ZOLLVEREIGN* (1939); ARNOLD H. PRICE, *THE EVOLUTION OF THE ZOLLVEREIGN: A STUDY OF THE IDEAS AND INSTITUTIONS LEADING TO GERMAN ECONOMIC UNIFICATION BETWEEN 1815 AND 1833* (1949); EMMANUEL N. ROUSSAKIS, FRIEDRICH LIST, *THE ZOLLVEREIGN, AND THE UNITING OF EUROPE* (1968).

13. For historical accounts of European internationalism in the context of Pre-World War I globalization, see F.B. SAYRE, *EXPERIMENTS IN INTERNATIONAL ADMINISTRATION* (1919); L.S. WOOLF, *INTERNATIONAL GOVERNMENT* (1916).

14. See WENDY A. BRUSSE, *TARIFFS, TRADE, AND EUROPEAN INTEGRATION, 1947-1957, FROM STUDY GROUP TO COMMON MARKET 1-10* (1997); JOHN M. HOBSON, *THE WEALTH OF STATES: A COMPARATIVE SOCIOLOGY OF INTERNATIONAL ECONOMIC AND POLITICAL CHANGE* (1997); A.G. HOPKINS, *GLOBALIZATION IN WORLD HISTORY* (2002); JOHN A. KROLL, *CLOSURE IN INTERNATIONAL POLITICS, THE IMPACT ON STRATEGY, BLOCS, AND EMPIRES* (1995).

import policy was bound to affect all its trading partners. In practice this meant that tariff changes required negotiation.<sup>15</sup>

Europe's search for mechanisms of international cooperation continued after World War I through the League of Nations, whose members sought mechanisms for cooperation on tariff policy.<sup>16</sup> Although a series of meetings and conferences were unsuccessful at establishing a workable framework for tariff negotiations, League conferences demonstrated the common understanding of League members that national tariff policies were a matter of international, not merely national, interest.

In these early efforts at tariff and economic negotiations the United States was largely an observer, for not only had the United States abstained from the entire project of the League, but during this period, as before, the United States thought of tariff policy as a domestic, not international, matter. From its inception, the United States was a highly protectionist country; indeed, tariffs continually increased through 1935, except for two periods.<sup>17</sup> Tariffs were set directly by Congress; they were higher under Republican Congresses than under Democratic Congresses, but the debate was always about the basis and degree of protection, not whether to have it. The zenith of U.S. protectionism—actually the straw that broke the back of protectionism—came in 1930 when, in the teeth of the Great Depression, Congress passed the Smoot-Hawley Act, a veritable orgy of unpatterned and unprincipled tariff increases that were the highest in the history of the United States.<sup>18</sup> It is ironic that the

15. TUMLIR, *supra* note 9, at 19-20. It is of interest that European countries delegated negotiating authority to the executive, not only because this was a practical necessity if tariffs were to be negotiated, but also because the most favored nations requirement, by requiring that tariff reductions be offered to all treaty partners, were a natural limitation on the exercise of the negotiating power.

16. WILCOX, *TRADE CHARTER*, *supra* note 4, at 5-8 (summarizing the following main conferences: 1922 Brussels convention on monetary and fiscal policy, failed Genoa conference of 1922, simplification of customs formalities at a Geneva conference in 1923, World Economic Conference in 1927, Geneva conference of 1927, and conferences of February and March 1930). See generally ANTHONY M. ENDRES & GRANT A. FLEMING, *INTERNATIONAL ORGANIZATION AND THE ANALYSIS OF ECONOMIC POLICY, 1919-1950* 105-108 (2002) ("Geneva economists remained consistent advocates of free trade."); MARTIN HILL, *THE ECONOMIC AND FINANCIAL ORGANIZATION OF THE LEAGUE OF NATIONS: A SURVEY OF TWENTY-FIVE YEARS EXPERIENCE* (1946).

17. Tariffs declined slightly from 1832 to the beginning of the Civil War and from 1913 until 1922. RAYMOND A. BAUER ET AL., *AMERICAN BUSINESS AND PUBLIC POLICY: THE POLITICS OF FOREIGN TRADE* 11 (2d ed. 1972) [hereinafter BAUER ET AL., *BUSINESS AND POLICY*]. Tariffs during the pre-Civil war period were highly influenced by the need to find compromises between the North (which generally favored protectionism) and the South (which disparaged protectionism as it sought international markets for its agricultural products).

18. See IRWIN, *UNDER FIRE*, *supra* note 6, at 150 ("From the Morrill tariff of 1861 until 1930, [yielding to protectionist interests] was the standard way of doing

Smoot-Hawley legislation was passed in May 1930, just two months after major countries in the League of Nations had adopted a convention calling for a moratorium on tariff increases<sup>19</sup> and just six months before League members were to implement a protocol for a round a tariff negotiations.<sup>20</sup> The effect of Smoot-Hawley was immediate and devastating. The League of Nations conference was scuttled, and one by one countries began to react to Smoot-Hawley and the global depression by raising their own tariffs.<sup>21</sup> Economic war had broken out.

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business [for Congress]. Yet the Smoot-Hawley tariff of 1930 was longer, more complex, more controversial, and more openly the product of political games than the previous tariff legislation. Congress reopened the tariff issue in 1929 in order to help farmers from the declining crop prices, but the process spun out of control as other industries got into the act and demanded higher tariffs as well.”). The classic study of the political process that led to Smoot-Hawley is E. SCHATTSCHNEIDER, *POLITICS, PRESSURES AND THE TARIFF* (1935) [hereinafter SCHATTSCHNEIDER, *POLITICS AND PRESSURES*]. A distinctive and somewhat more nuanced view is contained in Barry Eichengreen, *The Political Economy of the Smoot-Hawley Tariff*, 12 RES. IN ECON. HIST. 1 (1989). See also ROBERT A. PASTOR, *CONGRESS AND THE POLITICS OF U.S. FOREIGN ECONOMIC POLICY 1929-1976* 70, 80 (1980) [hereinafter PASTOR, *CONGRESS AND ECONOMIC POLICY*] (criticizing Schattschneider for over-reliance on committee hearings, to the exclusion of mark-up sessions, and pointing out the partisan nature of the battle and Hoover’s capitulation to the logrolling).

19. The United States did not attend the conference at which this pledge was made, and only eleven of the twenty-seven countries that attended agreed to the pledge. CHARLES KINDLEBERGER, *THE WORLD IN DEPRESSION, 1929-1939* (1975) [hereinafter KINDLEBERGER, *DEPRESSION*].

20. *Id.* at 7-8.

21. Clair Wilcox, a close observer of the trends, presented the consensus view of the effect of Smoot-Hawley: In the few months following its passage,

[t]ariffs were raised in Canada, Cuba, France, Mexico, Italy, Spain, Australia, and New Zealand. Quantitative restrictions and exchange controls had been imposed by twenty-six countries by the end of 1931. The United Kingdom abandoned free trade and adopted a general tariff in February 1931. The nations of the British Commonwealth, meeting in Ottawa the following summer, established the system of imperial [tariff] preferences.

WILCOX, *TRADE CHARTER*, *supra* note 4, at 8. The League of Nations itself reported that Smoot-Hawley was “the signal for an outburst of tariff-making activity in other countries, partly as least by way of reprisals.” LEAGUE OF NATIONS, *WORLD ECONOMIC SURVEY* (1933). The correlation between Smoot-Hawley and retaliation by other countries does not itself prove that Smoot-Hawley was the mechanism that caused the retaliation. After all, other countries were also feeling the effects of the Great Depression, and that may have been an independent reason for them to shrink into isolationism. The causal mechanism is supported by historical studies; see, e.g., JOSEPH M. JONES, *TARIFF RETALIATION: REPERCUSSIONS OF THE HAWLEY-SMOOT BILL* (1934)—although many claim that Jones overemphasizes the causal relationship. See Barry Eichengreen, *The Political Economy of the Smoot-Hawley Tariff*, in *RESEARCH IN ECONOMIC HISTORY* 12 (Roger Ransom ed., 1989); KINDLEBERGER, *DEPRESSION*, *supra* note 19, at 132 (noting difficulty of disengaging “reason from excuse”); Anthony O’Brien, *Smoot-Hawley Tariff*, at <http://www.eh.net/encyclopedia/obrien.hawley-smoot.tariff.php>. Douglas Irwin suggests that Smoot-Hawley had the indirect effect of

The effect, of course, was to make all countries worse off and to deepen the Great Depression by reducing the buying power of consumers, whose income was previously reduced by already-existing depressed economic conditions.<sup>22</sup> Countries thought that they could export a little unemployment by foisting it off on foreigners, but the collective consequence of the multilateral tariff increases was to cripple demand for goods from any country. This economic war was fought on many fronts, for this was the era of beggar-thy-neighbor policies; as Claire Wilcox described it:

Exports were forced; imports were curtailed. All of the weapons of commercial warfare were brought to play; currencies were depreciated, exports subsidized, tariffs raised, exchange controlled, quotas imposed, and discrimination practiced through preferential systems and barter deals. Each nation tried to sell much and buy little. A vicious restrictionism produced a further deterioration in world trade.<sup>23</sup>

From this experience, the world learned a valuable lesson. When the policy of one country adversely affects another, the other country is likely to take retaliatory action because retaliation is a potent way by which a form of redress may be sought. Although counterproductive (because it leaves both countries worse off and leads to counter-retaliation), in the absence of any other mechanism for objecting to the harmful policy of another country, retaliation is a natural political reaction.

It was not difficult for people to connect the economic warfare that characterized the Great Depression with the hostilities of World War II, finding the peacetime economic rivalry to be a contributing factor to the War.<sup>24</sup> Accordingly, when Allied leaders met during the War to envision a post-War world that would give them the political and economic security they had barely known in their lifetimes, they

signaling "a breakdown in policy discipline and triggered tariff increases as other countries followed the United States example." Douglas A. Irwin, *From Smoot-Hawley to Reciprocal Trade Agreements: Changing Course of U.S. Trade Policy in the 1930s*, in *THE DEFINING MOMENT: THE GREAT DEPRESSION AND THE AMERICAN ECONOMY IN THE TWENTIETH CENTURY* 337 (Michael D. Bordo et al. eds., 1998) [hereinafter IRWIN, SMOOT-HAWLEY TO RTAA].

22. Douglas Irwin states the consensus view when he says that Smoot-Hawley "was almost surely not responsible for causing the Great Depression." Nor was Smoot Hawley entirely responsible for the collapse in trade. *Id.* at 336-37. The combined impact of the global depression and new tariff barriers, however, was dramatic. For example, United States exports decreased from \$5 billion in the years of the late 1920s to \$1.5 billion in 1932. WILLIAM DIEBOLD, JR., *NEW DIRECTIONS IN OUR TRADE POLICY* 6 (1941) [hereinafter DIEBOLD, *NEW DIRECTIONS*].

23. WILCOX, *TRADE CHARTER*, *supra* note 4, at 8-9. For a detailed account of the use of monetary policy and devalued exchange rate during this period, see BARRY EICHENGREEN, *GLOBALIZING CAPITAL* 72-92 (1996) [hereinafter EICHENGREEN, *GLOBALIZING CAPITAL*].

24. See *infra* text accompanying notes 72-79.

envisioned not only an institution for national security (the United Nations) but also institutions for economic security—specifically, the Bretton Woods institutions that emerged later as the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (later the World Bank),<sup>25</sup> and the proposed International Trade Organization (ITO).<sup>26</sup> The IMF was to ensure against economic warfare through competitive devaluations; the World Bank was to provide loans for redevelopment after the War; and the ITO was to monitor other economic and social relations between countries. The ITO was scuttled when the U.S. Congress was seized with another bout of isolationism,<sup>27</sup> but the idea of multilateral tariff negotiations prevailed. GATT soon emerged as an organization that grew naturally from the needs of the multilateral negotiations, and its strength grew as the international trading system flourished in the face of the Cold War.

When Allied leaders were searching for a model to guide the multilateral tariff negotiations, they did not have to look far. In the midst of the Great Depression, the Roosevelt administration had reversed United States tariff policy and negotiated bilateral and multilateral reductions in tariffs in order to find a way out of the Depression. The vehicle for this new policy was the Reciprocal Trade Agreements Act of 1934,<sup>28</sup> in which Congress temporarily surrendered its power to set tariffs and granted the President the power (for three years) to lower U.S. tariffs when the reduction was matched by a reciprocal reduction of another country. Under this power, the United States rejoined the world trade community, reignited the League's cooperative attempts, and initiated a series of negotiations intended to lower tariffs on a wide range of goods from a wide range of countries. Although the tariff reductions before World War II were modest, the process was reignited after World War II. In effect, the London conference, planned for 1930 under the auspices of the League of Nations, was reconvened after the interruption of the Great Depression and World War II—this time at the call of the United States. One can understand the founding of GATT, then, as a function of growing internationalization that started in the prior

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25. See, e.g., U.S. GOV'T PRINTING OFFICE, PROCEEDINGS AND DOCUMENTS OF UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE (Bretton Woods, N.H., July 1-22, 1944); THE BRETTON WOODS - GATT SYSTEM: RETROSPECT AND PROSPECT AFTER FIFTY YEARS (Orin Kirshner ed., 1996); INTERNATIONAL FINANCIAL STABILIZATION: A SYMPOSIUM (Murray Shields ed., 1944); GEORGE SCHILD ET AL., AMERICAN ECONOMIC AND POLITICAL POST-WAR PLANNING IN THE SUMMER OF 1944 (1945).

26. See *supra* note 4 and accompanying text.

27. See *supra* note 4 and accompanying text.

28. An Act to Amend the Tariff Act of 1930, ch. 474, § 350(a), 73 Stat. 943 (1934).

century, with leadership provided when the United States emerged from its isolationism in the middle of the twentieth century.<sup>29</sup>

Two pivotal events fueled U.S. leadership: the Reciprocal Trade Agreements Act and the Keynesian revolution.

### III. THE U.S. TRANSFORMATION: THE RECIPROCAL TRADE AGREEMENTS ACT OF 1934

The transformation from the protectionism of the Smoot-Hawley Act of 1930 to the expansionist philosophy of the Reciprocal Trade Agreements Act of 1934 (RTAA) turned the United States from an inward-looking, isolationist, and protectionist country into one focused both on international economic affairs and on exports. In the process, the United States took the leadership role in international economic policy. How should this transforming event be understood and interpreted?<sup>30</sup>

The transformation in U.S. trade policy was not merely a natural offshoot of the larger U.S. transformation from isolationism to internationalism; it was, more precisely, a transformation in the way that tariff policy was perceived. As other commentators have noted,<sup>31</sup> and as is shown below, tariff policy was previously perceived to be a matter of domestic concern only. Tariff policy took into account and

29. Professors Bagwell and Staiger, in their account of United States leadership, emphasize the prior attempts at policy coordination between countries suffered because countries could not find the successor formula for organizing such coordination. See Bagwell & Staiger, *supra* note 11, at 45. As they point out, the RTAA provided that framework, while post-war leadership by the United States made the framework on appealing to use. See also CAROLYN RHODES, *Reciprocity, U.S. Trade Policy, and the GATT Regime* 56 (1993).

30. This was not, of course, a transformation that occurred over a four year period only, for the seeds of the transformation date back to the earlier part of the century, when President Wilson's internationalism following World War I encompassed, among other things, a call for multilateral reductions in trade barriers. See HAMILTON FOLEY, *WOODROW WILSON'S CASE FOR THE LEAGUE OF NATIONS* 174-76 (1923). The seeds sown by Wilson were suppressed in the isolationism of the 1920s but finally bore fruit under Roosevelt and Truman. John Maynard Keynes identified Wilson's failure as a lack of implementation plans:

When it came to practice, his ideas were nebulous and incomplete. He had no plan, no scheme, no constructive ideas whatever for clothing with the flesh of life the commandments which he had thundered from the White House . . . . [H]e could not frame their concrete application to the actual state of Europe.

JOHN MAYNARD KEYNES, *ESSAYS IN BIOGRAPHY* 21-22 (1951).

31. See EDWARD KAPLAN, *AMERICAN TRADE POLICY, 1923-1995* 46 (1996) [hereinafter KAPLAN, *TRADE POLICY*]; STEPHANIE ANN LENWAY, *THE POLITICS OF UNITED STATES INTERNATIONAL TRADE: PROTECTION, EXPANSION, AND ESCAPE* 21 (1985) [hereinafter LENWAY, *TRADE POLITICS*].

responded to domestic concerns, but no attention was paid to the effect of tariffs on foreigners or to the international consequences of tariffs.<sup>32</sup> The RTAA transformed U.S. trade policy by reflecting a new understanding—that tariffs have external, international implications. Tariffs invite or encourage retaliation; they are a source of friction between countries; and they are bad for U.S. citizens because they are bad for foreigners. This transformation is the foundational story behind the establishment of GATT.

This transformation can be understood symbolically, even before it is traced historically, in the words and thoughts of the principal architect of this transformation, Cordell Hull. His distinguished career of public service spanned five decades and culminated in his service as Roosevelt's Secretary of State in the 1930s. Cordell Hull always favored free trade, but his reasons for favoring free trade shifted during the course of his career. As he wrote:

The year 1916 is a milestone in my political thinking. Then for the first time I enlarged my views on trade and tariffs from the national to the international theater. Hitherto I had fought hard for lower tariffs, largely because of their immediate domestic effect. I believed that high tariffs meant a higher cost of living for American citizens. They assisted in building up monopolies and trusts. By cutting down the sales by other countries to us, they also cut down the purchase by other countries from us.

But toward 1916 I embraced the philosophy I carried throughout my twelve years as Secretary of State, into the Trade Agreements, into numerous speeches and statements addressed to this country and to the world. From then on, to me, unhampered trade dovetailed with peace; high tariffs, trade barriers, and unfair economic competition, with war. Though realizing that many other factors were involved, I reasoned that, if we could get a freer flow of trade—freer in the sense of fewer discriminations and obstructions—so that one country would not be deadly jealous of another and the living standards of all countries might rise, thereby eliminating the economic dissatisfaction that breeds war, we might have a reasonable chance for lasting peace.<sup>33</sup>

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32. Richard Gardner has noted that the United States followed:

a political system which tended to subordinate national to local interests and, as a corollary of this, international considerations to consideration of a domestic character. The bargaining among sectional groups, so essential a part of the American legislative process, often produced unfortunate results when it came to matters affecting the relations of the United States with the rest of the world.

GARDNER, *STERLING DIPLOMACY*, *supra* note 6, at 3.

33. CORDELL HULL, *MEMOIRS* 81 (1948) [hereinafter *HULL MEMOIRS*]. As early as 1916, Hull, then a Congressman, proposed, on the floor of the House of Representatives, a series of negotiations to consider "all international trade methods, practices, and policies which, in their effects are calculated to create destructive commercial controversies or bitter economic wars, and to formulate agreements with respect thereto. . . ." *Id.* at 82. A careful analysis of Hull's thinking on trade issues is

Hull's transformation was not a transformation from protectionism to free trade but a transformation in the reasons why he favored free trade. Early in his career, Hull favored low tariffs because he understood the economic case for free trade, which is essentially a domestic case—that free trade is beneficial for consumers and is good for the domestic economy.<sup>34</sup> He understood that lower tariffs would, by lowering prices, increase national wealth by freeing consumer resources for other uses.<sup>35</sup> This is a purely domestic rationale, grounded on purely domestic considerations, and built on the notion that the advantage of free trade to a country's consumers always outweighs the disadvantages to its producers.<sup>36</sup> Hull's personal transformation was to realize that the value of free trade is not just domestic and is not just in consumer purchasing power.<sup>37</sup> Free trade removed an unnecessary irritant in the relationship between countries by removing a policy that adversely affected producers in other countries.<sup>38</sup> With this understanding, free trade was an instrument of international, not domestic policy, and was therefore a matter of international, not national, politics.<sup>39</sup> This transformation from the domestic agenda to the international agenda, from the economic case for free trade to the political case for

contained in William R. Allen, *The International Trade Philosophy of Cordell Hull, 1907-1933*, 63 AM. ECON. REV. 101 (1953).

34. See, e.g., Allen, *supra* note 33.

35. *Id.*

36. This is, of course, the standard economic rationale for free trade. See sources cited *supra* note 1.

37. As one commentator has noted:

As a Wilsonian, Hull argued against the unequal and monopolistic benefits conferred by tariffs. Hull saw imports as largely noncompetitive with domestic industry, however, and he showed little understanding of the principle of comparative advantage. Hull relentlessly attacked the assumption that the United States could export without importing, pointed to the contradiction between U.S. trade and financial policies, and staunchly defended the most-favored-nations principle as a way of reducing discrimination abroad. More important to Hull, however, were international leadership and the connection he drew between protectionism, nationalism, and international conflict. For Hull, free trade was a universal political solvent that would dissolve underlying international conflicts.

Stephan Haggard, *The Institutional Foundations of Hegemony: Explaining the Reciprocal Trade Agreements Act of 1934*, 42 INT. ORG. 91, 104 (1988) [hereinafter Haggard, *Institutional Hegemony*].

38. *Id.*

39. Hull also recognized, of course, that reducing foreign tariffs would also enhance the prosperity of the country by allowing it to sell abroad the "immense surplus in a steadily increasing number of industries." HULL MEMOIRS, *supra* note 33, at 85. This export-oriented rationale for free trade emphasizes the domestic benefits of free trade but requires international negotiations to reduce foreign barriers.



free trade, is the transformation that occupied the country in the middle decades of the twentieth century.

Until the 1930s, the United States viewed tariffs solely as a domestic policy matter, with the international consequences of tariffs playing at most a subservient role. Beginning with the founding of the republic, tariffs were justified on a series of policy goals—to raise revenue, to protect infant industries, to equalize the cost of production, and to preserve jobs.<sup>40</sup> Each such policy reason saw tariffs as an instrument of domestic policy, with no thought given to the international implications of the policy.

Early U.S. tariffs were purely revenue measures. Tariffs made up ninety percent of the federal government's revenue until 1861.<sup>41</sup> Naturally, even revenue measures could be used for protectionist purposes,<sup>42</sup> but the early tariffs were moderate,<sup>43</sup> and tariffs for revenue are fundamentally different from tariffs for protection. Using tariffs for revenue presumes that the imports that will be taxed are those that will not be discouraged by the tariff; otherwise, the tariffs will not be a source of revenue. The objective of a revenue tariff is not to identify imports that should be reduced but to identify imports that will not be reduced substantially by the tariff. Thus, when Madison proposed the first tariff in 1789, he proposed that the duty should fall on "such articles . . . only as are likely to occasion the least

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40. PASTOR, CONGRESS AND ECONOMIC POLICY, *supra* note 18, at 73; SIDNEY RATNER, THE TARIFF IN AMERICAN HISTORY (1972).

41. See, e.g., RATNER, *supra* note 40.

42. When Madison proposed the first tariff bill in 1789, representative Clymer of Pennsylvania wanted to include steel on the list of taxable items because

the manufacture of steel in America was rather in its infancy; but as all the materials necessary to make it were the product of every state in the Union, and as the manufacture was already established, and attendant with considerable success, he deemed it prudent to emancipate our country from the manacles in which she was held by foreign manufacturers. . . .

C.A. BEARD, ECONOMIC ORIGINS OF JEFFERSONIAN DEMOCRACY 163 (1915). In his history of United States tariff policy, Franklin Taussig emphasized the protective nature of the first tariff act. See FRANKLIN TAUSSIG, THE TARIFF HISTORY OF THE UNITED STATES 15 (7th ed. 1922) [hereinafter TAUSSIG, TARIFF HISTORY]. He reached this conclusion, however, by emphasizing the exceptions to the general duty of five percent, which was the non-protectionist, revenue-generating duty. *Id.* He admits, moreover, that for twenty years following the publication of Alexander Hamilton's Report on Manufactures in 1792, which advanced the infant industry argument for the young country, "the duties were increased from time to time as more revenue was needed, but they were in all cases moderate." *Id.* at 16.

43. The first tariff averaged 8.5 percent, and through the first half of the nineteenth century the tariff increased only as revenue needs increased. See PASTOR, CONGRESS AND ECONOMIC POLICY, *supra* note 18, at 73.

difficulty."<sup>44</sup> As one commentator stated, "Madison did not intend that his bill should act as a regulator of imports."<sup>45</sup>

As the country weaned itself from revenue tariffs, policy-makers employed various protectionist ideologies to interpret the need for, and to shape the contours of, tariffs. At first, policy-makers used the infant industry argument as the explicit basis of U.S. tariff policy, but as the United States emerged from the Civil War and began its own industrial revolution and capitalist expansion, that rationale became increasingly untenable.<sup>46</sup> Beginning late in the nineteenth century, therefore, the tariff came to be seen as a protector of general welfare and full employment, with the primary focus being the need to protect high wages in the United States from competition from goods produced in low wage countries.<sup>47</sup>

Throughout the early twentieth century, the tariff policy debate was conducted solely in terms of domestic interests, with little attention given to the external effects, or international consequences of, tariffs.<sup>48</sup> So entrenched was this domestic, general welfare view of tariff policy that just before he left office, President Hoover vetoed a bill from the new Democratic Congress that called for an international conference to reduce tariffs, declaring "[f]rom [the first legislative act of Washington's administration to this day], one of our firm national policies has been that tariffs are solely a domestic question in protection of our own people"; an international conference would represent a "radical change in historic policies."<sup>49</sup> He repeated

44. D.R. DEWEY, *FINANCIAL HISTORY OF THE UNITED STATES* 80 (1922).

45. BAUER ET AL., *BUSINESS AND POLICY*, *supra* note 17, at 12.

46. TAUSSIG, *TARIFF HISTORY*, *supra* note 42, at 463, is the classic study of the infant industry argument and its influence on United States tariff policy. See *id.* at 1-7 for Taussig's understanding of the infant industry lens through which he wrote his book.

47. The idea that tariffs should be based on the need to compensate for the low prices of goods produced in countries with lower wage rates surfaced as early as the 1840s. See *id.* at 65. In 1909, the Payne-Aldrich Tariff Act set minimal rates but allowed the President to modify the rates to equalize the cost of production between domestic and foreign goods, the so-called flexible tariff. The flexible tariff provision lapsed during the administration of President Theodore Roosevelt, but was reinserted in the Fordney-McCumber tariff of 1922. See PASTOR, *CONGRESS AND ECONOMIC POLICY*, *supra* note 18, at 75-76.

48. Indeed, to the extent that the international ramification of tariffs mattered, they were cited as a reason not to lower tariffs. Republican opponents of free trade would ask, for example, why the United States would want to benefit producers in foreign countries.

49. Veto of a Bill to Amend The Tariff Act of 1930, *PUB. PAPERS* 204 (May 11, 1932) [hereinafter *HOOVER'S PAPERS*]; see WILLIAM MYERS AND WALTER H. NEWTON, *THE HOOVER ADMINISTRATION, A DOCUMENTED NARRATIVE* 493-95 (1936). One interpretation of Hoover's politics suggests that President Hoover did not draw a connection between domestic protectionism and its effects on America's exports and world trade. JOAN HOFF WILSON, *AMERICAN BUSINESS AND FOREIGN POLICY, 1920-33* 75, 88-100 (1971) [hereinafter *WILSON, AMERICAN BUSINESS*].

the general welfare rationale for supporting protection by stating that there has "never been a time in the history of the United States when tariff protection was more essential to the welfare of the American people than at present."<sup>50</sup>

The RTAA abandoned this domestic focus. Congress authorized the President to enter into binding negotiations with foreign countries and, when called for by those negotiations, to raise or lower any import duty up to fifty percent.<sup>51</sup> The proclaimed import duties would apply on a most favored nations basis—that is, to all countries without discrimination.<sup>52</sup> The negotiating authority lasted three years, and during that time Congress would not overturn any decision of the President.<sup>53</sup> After the three-year period, the rates of duty proclaimed by the President would last indefinitely unless abrogated by Congress upon six months' notice.<sup>54</sup> Congressional power over the negotiations was only to decide whether to renew the negotiating authority after the three-year period.<sup>55</sup>

In one fell swoop, the locus of tariff making was moved from Congress to the President and made a part of international policy-making through negotiations. The Act, which still forms the template that animates U.S. trade policy, simultaneously accomplished both a domestic political triumph and an international relations coup.

On the domestic front, by moving lawmaking authority to the President, the RTAA removed Congress from any direct role in setting tariffs and thereby "reduced access to legislative mechanisms that supported redistributive bargains and logrolling coalitions that had led to high tariffs."<sup>56</sup> Transferring tariff power to the President

50. HOOVER'S PAPERS, *supra* note 49, at 205.

51. KAPLAN, TRADE POLICY, *supra* note 31, at 44-54.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. IRWIN, UNDER FIRE, *supra* note 6, at 155. This feature has led many commentators to suggest that the RTAA came about because Congress, after seeing the impact of Smoot-Hawley, realized that it had to get out of the tariff-making business. See, e.g., ROBERT BALDWIN, THE POLITICAL ECONOMY OF U.S. IMPORT POLICY (1985); GRACE BECKETT, THE RECIPROCAL TRADE AGREEMENTS PROGRAM (1941); PASTOR, CONGRESS AND ECONOMIC POLICY, *supra* note 18; JAMES SUNDQUIST, THE DECLINE AND RESURGANCE OF CONGRESS (1981); Judith Goldstein & Stefanie Lenway, *Interests or Institutions: An Inquiry in Congressional-ITC Relations*, 33 INT'L STUD. Q. 303 (1989); Helen Milner & B. Peter Rosendorff, *Trade Negotiations, Information, and Domestic Politics: The Role of Domestic Groups*, 8 ECON. & POL. 145 (1996). As Karen E. Schnietz has shown, however, the claim can only be that New Deal Democrats in Congress understood the damage done by the Smoot-Hawley legislation; all but nine of the ninety-five legislators who voted for Smoot-Hawley voted against the RTAA, evidently without taking any lesson from Smoot-Hawley. Karen E. Schnietz, *The Institutional Foundation of United States Trade Policy: Revisiting Explanations for the 1934 Reciprocal Trade Agreements Act*, 12 J. POL. HIST. 417, 418-21 (2000) [hereinafter

also reduced the pressure for higher tariffs because the President represented a broad-based domestic constituency and was more in touch with international concerns than Congress.<sup>57</sup> Although the President's presumed national outlook did not often induce use of the veto power against high tariffs set by Congress,<sup>58</sup> it could seemingly have influence once Congress was in a reactive, rather than a proactive, posture. Moreover, the RTAA "locked in" tariff reductions. Had the Democratic Congress merely reduced the high tariffs legislatively—the approach that Democrats had traditionally followed when they took over Congress—the tariffs could simply have been increased when Republicans again gained control of Congress—just as they had been in earlier times when the Republicans regained control from the Democrats. By attaching tariff reductions to reciprocal promises by other countries, the RTAA made it more difficult for a Republican Congress to reverse course. The threat of retaliation by foreign governments acted as a counterweight to Republican protectionist proclivities.<sup>59</sup>

On the international front, the delegation of authority to the President made it easier for the President to negotiate with foreign

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Schnietz, *Institutional Foundation*]. The related argument that Congress delegated its power to the president because it found the tariff setting workload to be intolerable has also been effectively rebutted. Michael Bailey et al., *The Institutional Roots of American Trade Policy: Politics, Coalitions, and International Trade*, 49 *WORLD POL.* 309 (1997) [hereinafter Bailey et al., *Institutional Roots*].

57. As Douglas Irwin has written:

The national electoral base of the president is often thought to make the executive more apt to favor policies that benefit the nation as a whole, whereas the narrower geographic representative structure of Congress leads its members to have more parochial interests. Furthermore, the president is more likely than Congress, to take into account trade policy's ramifications for foreign policy.

IRWIN, UNDER FIRE, *supra* note 6, at 155-56. See also Haggard, *Institutional Hegemony*, *supra* note 37, at 93 (noting that increased executive influence over trade policy resulted in a relative decline of protectionism); Schnietz, *Institutional Foundation*, *supra* note 56, at 429 (pointing out that even Republican presidents were more moderate in their protectionism than Republican legislators). For a generalized model showing the effect of constituency size on highly focused interests, see Barry Weingast et al., *The Political Economy of Benefits and Costs: A Neoclassical Approach to Distributive Politics*, 89 *J. POL. ECON.* 642 (1981).

58. The debacle of the Smoot-Hawley tariff has often been attributed to President Hoover, who initiated the process in order to fulfill a campaign promise to farmers and then stood idly by while the process spun out of control. See generally LAWRENCE CHAMBERLAIN, *THE PRESIDENT, CONGRESS, AND LEGISLATION* 131 (1946) ("Presidential leadership was not conspicuous in the formulation of the Hawley-Smoot Tariff Act of 1930."); PASTOR, *CONGRESS AND ECONOMIC POLICY*, *supra* note 18, at 80-82.

59. This feature of the RTAA is stressed in Schnietz, *Institutional Foundation*, *supra* note 56, at 421-38; Bailey et al., *Institutional Roots*, *supra* note 56, at 318.

countries. Before the RTAA, the President could implement international tariff negotiations only by submitting them to Congress in the form of a treaty. Because a treaty required a two-thirds vote in the Senate, a minority of senators could easily block the implementation of any international agreement.<sup>60</sup> Now Congress had given up its right to block the implementation of reciprocal trade treaties and had left itself only the power to revoke the negotiating authority and legislate new tariffs prospectively.<sup>61</sup> The power given to the President mirrored the power that most other heads of state had with respect to tariff negotiations.<sup>62</sup>

Finally, the RTAA gave encouragement to exporters, whose interest in freer trade and reciprocal tariff reductions had been unrecognized in U.S. policy. As Douglas Irwin explained:

The RTAA helped to bolster the bargaining and lobbying position of exporters in the political process. Previously, the main trade-related special interest groups on Capital Hill were domestic producers facing import competition since the benefit of high tariffs to those producers

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60. See Schnietz, *Institutional Foundation*, *supra* note 56, at 433 (pointing out that "eighteen of the twenty-one trade agreements proposed during the nineteenth century failed, either because the Senate outright rejected them or because Senate amendments made the agreements unacceptable to the other country"). Of the twelve reciprocal treaties negotiated by President McKinley, Congress approved none. Needless to say, before the RTAA of 1934, foreign countries did not view negotiations with the United States over tariffs to be a realistic possibility. According to a 1933 report by the United States Tariff Commission, "[t]he greatest single obstacle to the completion of reciprocity arrangements appears to be the difficulty in securing the assent of two-thirds of the Senators to such arrangements." *Id.* Cordell Hull himself experienced problems with international negotiations that depended on treaty ratification by the Senate. As he wrote:

While I was at London [at the trade conference of 1933] the President had instructed the State Department to begin the negotiation of treaties calling for Senate ratification, and we duly entered into negotiations with Argentina, Brazil, Colombia, Portugal, and Sweden. Only with Columbia was a treaty signed, and this was not even submitted to the Senate for approval, hence did not become effective.

HULL MEMOIRS, *supra* note 33, at 354.

61. See Schnietz, *Institutional Foundation*, *supra* note 56, at 436 (adding that protectionist Republicans "were reduced to mere lobbyists on tariff issues, rather than powerful political actors").

62. As one commentator has written:

Executives of twenty-six foreign nations may change duty rates without reference to the legislature and twelve others may make such changes provisional upon approval by the legislature. Additional consideration must be given the fact that most foreign nations operate on the ministerial principle, which makes ratification of such treaty rates a matter of course, in the absence of some larger disagreement as to the policy between the minister and his party.

*The Trade Agreements Act of 1934*, 46 YALE L.J. 647, 665-66 n.109 (1937).

were relatively concentrated. Exporters were harmed by high tariffs, but only indirectly. The cost to exporters of any particular import duty was relatively diffuse, and therefore exporters failed to organize an effective political opposition. The RTAA explicitly linked foreign tariff reductions that were beneficial to exporters to lower tariff protection for producers competing against imports. This fostered the development of exporters as organized groups opposing high domestic tariffs because they wanted to secure lower foreign tariffs on their products. In addition, the lower tariffs negotiated under the RTAA increased the size of export sectors and decreased the size of sectors that competed with imports, and thereby increased the political clout of interests supporting renewals of RTAA.<sup>63</sup>

In summary, the RTAA had four effects that would shape U.S. and global trade policy for the next seventy years. It reduced the power of protectionist interests, enhanced the power of exporter interests, put decision-making in the hands of the President with a national (not parochial) constituency, and emphasized the international implications of tariff making. By suppressing protectionist interests and making tariff policy responsive to broader national interests, the Act clearly tipped the balance of policy-making away from higher tariffs. By energizing and enabling the political interests of exporters, the Act gave the President the power to put together domestic political coalitions supporting free trade.<sup>64</sup> By making national tariff policy a matter of international diplomacy, the Act shifted the focus of policy from domestic matters to the burdens imposed on foreigners, indicating that tariff policy was now being informed by new values.

But which were effects and which were causes? The historical record makes the answer clear. The RTAA was designed to recognize that setting tariffs is a matter of international policy-making. The purpose the shift to reciprocal reductions, and the driving force behind it, was the recognition that tariff policy made in one country

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63. IRWIN, UNDER FIRE, *supra* note 6, at 156. The enhanced weight behind export interests became, over time, self-reinforcing; the RTAA gave voice to exporters' interests and as barriers to foreign markets dropped, those interests intensified. This gave the reciprocal tariff reduction program a self-generating dynamic that soon led Republicans to support the program. See IRWIN, SMOOT-HAWLEY TO RTAA, *supra* note 21. For a formal model showing the effect of reciprocal tariff reductions on domestic exporter interests, see Bailey et al., *Institutional Roots*, *supra* note 56, at 325-29 ("[I]ncreasing trade leads members of Congress and foreign actors to place more weight on access to foreign markets, indifference curves shift out, and greater liberalization is possible.").

64. Douglas Irwin has pointed out, for example, that Republican members of Congress were won over to the concept of reciprocal, negotiated reductions in tariffs by their exporting constituents after World War II, but not before, indicating that it was the emergence of the export interest as a political force that triggered Republican interest in free trade. Douglas Irwin, *Interests, Institutions, and Ideology in Securing Policy Change: The Republican Conversion to Trade Liberalization After Smoot-Hawley*, 42 J.L. & ECON. 643, 653 (1999).

had adverse effects on other countries and therefore was a matter of international, not just domestic, interest. The preamble to the Act is explicit on this point: the President's power to act is contingent on his finding "as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States."<sup>65</sup> Both the adverse effect of foreign tariffs on U.S. export interests and the adverse effect of U.S. tariffs on foreign interests became relevant to determining the appropriate shape of U.S. tariff policy; that shape could only be determined practically by delegating the policy-making authority to the President, because only the President could enter into the kind of negotiations in which the joint interests of countries could be explored.

The internationalist underpinnings of the RTAA are apparent in the two principal arguments supporting its passage: jobs for exporters and the international consequences of tariffs. President Roosevelt wanted jobs for exporters, not free trade.<sup>66</sup> Interest in exports as a way of increasing domestic production and jobs was the political motive behind the RTAA,<sup>67</sup> which Roosevelt presented as a response to the Depression.<sup>68</sup> Douglas Irwin has nicely captured the primary

65. An Act to Amend the Tariff Act of 1930, ch. 474, § 350(a), 73 Stat. 943, 943 (1934).

66. Both President Roosevelt and many within his administration were ambivalent about tariff liberalization. See Haggard, *Institutional Hegemony*, *supra* note 37, at 96-97, 107-10. Indeed, early in the New Deal the efforts to create jobs resulted in proposals for higher tariffs; both the National Industrial Recovery Act (NIRA) and the Agricultural Assistance Act (AAA) permitted imports to be limited if imports interfered with the operation of these programs. See JUDITH GOLDSTEIN, IDEAS, INTERESTS, AND AMERICAN TRADE POLICY 139 (1993); HULL MEMOIRS, *supra* note 33, at 353. President Roosevelt had earlier rejected Hull's proposal to reduce tariffs across the board by ten percent. Haggard, *Institutional Hegemony*, *supra*, note 37, at 112.

67. In the early 1930s, "[e]xport-oriented manufacturers, commercial interests, and the internationalized financial community of New York strongly favored reciprocal trade agreements; a network of interlocking foreign trade associations were active in lobbying the State Department towards that end." Haggard, *Institutional Hegemony*, *supra* note 37, at 98 (citations omitted). See also LLOYD GARDNER, ECONOMIC ASPECTS OF NEW DEAL DIPLOMACY 40-42 (1964) (explaining the "most-favored-nation" principle and its opposition); WILSON, AMERICAN BUSINESS, *supra* note 49, at 98-100 (distinguishing New Deal reciprocity from free trade); Thomas Ferguson, *From Normalcy to New Deal; Industrial Structure, Party Competition and American Public Policy in the Great Depression*, 38 INT'L ORG. 41 (1984) (discussing in-depth Roosevelt and his successive New Deals).

68. See Robert Baldwin, *The Changing Nature of U.S. Trade Policy Since WW II*, in STRUCTURE AND EVOLUTION OF RECENT U.S. TRADE POLICY 8-10 (Robert Baldwin & Anne Kruger eds., 1984); John Cuddington & Ronald McKinnon, *Free Trade versus Protectionism: A Perspective*, in TARIFFS, QUOTAS, AND TRADE: THE POLITICS OF PROTECTIONISM (1979); GARDNER, STERLING DIPLOMACY, *supra* note 6, at 20-22; LENWAY, TRADE POLITICS, *supra* note 31, at 65 (The Act "was presented to Congress as

thrust behind Franklin Roosevelt's campaign to secure passage of the RTAA:

In order to reduce foreign barriers against U.S. exports, stimulate export growth, and thus help recover from the depression, the Roosevelt administration sought better access to foreign markets by offering lower tariffs at home in exchange for lower tariffs abroad. The Administration sold the RTAA as an emergency measure to spur economic recovery from the depression. . . . Democrats supported the RTAA on the hope that the executive branch, now given more authority over trade policy, would reach trade agreements that would stimulate exports as well as moderate import duties.<sup>69</sup>

The export orientation of the Act was confirmed by the Act's preamble, which affirmed the purpose to "expand[] foreign markets for the products of the United States . . . so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets."<sup>70</sup> This emphasis was repeated in Hull's own testimony before Congress, where he confirmed that "the primary object of this new proposal is both to reopen the old and to seek new outlets for our surplus production, through the gradual moderation of the excessive and more extreme impediments to the admission of American products into foreign markets."<sup>71</sup>

These sentiments were echoed repeatedly in the course of approval of the legislation. Professor Schnietz has summarized the evidence:

In presenting the RTAA to Congress, Roosevelt predicted that "important branches of agriculture, such as cotton, tobacco, hogs and rice, and those branches of American industry whose mass production methods have led the world, will find expanded opportunities and productive capacity in foreign markets." Many legislators agreed. Senator Arthur Capper, a progressive Kansas Republican, supported the RTAA because he believed it would open up export markets to U.S. agricultural products. Representative Henry Rainey (D-Ill.) was similarly supportive. And Representative Thomas Ford (D-Calif.) was jubilant about the RTAA's reciprocity feature and the proliberalization lobby that it might create. Export-oriented interest groups also understood how vital the RTAA and its reciprocity feature were to opening up foreign markets. A representative of the National Automobile Chamber of Commerce displayed a sophisticated understanding of trade economics when he argued the RTAA would "restore many of the jobs destroyed by trade strangulation in the past,

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an emergency remedy for U.S. exports."); Haggard, *Institutional Hegemony*, *supra* note 38, at 101.

69. IRWIN, UNDER FIRE, *supra* note 6, at 153-54.

70. An Act to Amend the Tariff Act of 1930, ch. 474, § 350(a), 73 Stat. 943, 943 (1934).

71. *Reciprocal Trade Agreements: Hearing on H.R. 8430 Before the House Comm. On Ways and Means*, 73d Cong. 2, 4 (1934) (statement of Cordell Hull).



and through revival of the purchasing power of our workingmen, will help to reestablish a larger domestic demand for goods of all kinds."<sup>72</sup>

If jobs for exporters were the practical lever behind the RTAA, the ideological lever was the effect of tariffs on foreigners—their international political effect. Although the RTAA was sold as a job-creating measure, the Act also recognized the interdependence of tariff policy-making.<sup>73</sup> Here the practical political energy of Franklin Roosevelt met the driving internationalism of Cordell Hull.<sup>74</sup> Roosevelt wanted jobs for his people; Hull recognized that our tariffs deny jobs to foreign producers who are in a position to operate efficiently across borders, while foreign tariffs impose the same disability on U.S. producers. Roosevelt had the politically potent argument; Hull had the intellectually coherent one.

Hull's position recognized the intense interest that each country has in the tariff policies of other countries. He could not have been more specific:

To me it seemed virtually impossible to develop friendly relations with other nations in the political sphere so long as we provoked their animosity in the economic sphere. How could we promote peace with them while waging war with them commercially? When I came into the State Department I found in the files no fewer than thirty-four formal and emphatic diplomatic protests presented by as many nations following the passage of the Smoot-Hawley high-tariff Act. Nor had their protests been confined to words. Goaded by what they regarded as almost an embargo keeping out their exports to the United States, they retaliated in kind.<sup>75</sup>

In this view, tariffs are not bad because they hurt consumers in the country imposing the tariff. They are bad because they hurt foreigners and therefore international relations.<sup>76</sup> That is why the

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72. Schnietz, *Institutional Foundation*, *supra* note 56, at 437.

73. MICHAEL BUTLER, *CAUTIOUS VISIONARY: CORDELL HULL AND TRADE REFORM, 1933-1937* 53-55 (1998) (discussing the potential effects of discriminatory trade policy).

74. Several accounts of the passage of the RTAA emphasize the importance of Cordell Hull's internationalist ideology on both President Roosevelt and Congress. See, e.g., *id.* (illustrating Cordell Hull's determination, persistence, and legislative experience as determining factors at every stage of the Trade Agreements Act); WAYNE COLE, *ROOSEVELT AND THE ISOLATIONISTS, 1932-45*, 95-112 (1983); ALFRED ECKES, *OPENING AMERICA'S MARKET: U.S. FOREIGN TRADE POLICY SINCE 1776* (1995); IRWIN GELLMAN, *SECRET AFFAIRS: FRANKLIN ROOSEVELT, CORDELL HULL, AND SUMNER WELLES* 94 (1995); WILLIAM LEUCHTENBURG, *FRANKLIN D. ROOSEVELT AND THE NEW DEAL, 1932-40* 203-05 (1963); DEXTER PERKINS, *THE NEW AGE OF FRANKLIN ROOSEVELT, 1932-45* 88 (1948); ARTHUR SCHLESINGER, JR., *THE COMING OF THE NEW DEAL* (1957); Judith Goldstein, *The Impact of Ideas on Trade Policy: The Origins of U.S. Agricultural and Manufacturing Policies*, 43 INT'L ORG. 31, 61-66 (1989).

75. HULL MEMOIRS, *supra* note 33, at 355.

76. Contemporary understanding was that the delegation of tariff-making power was "to be used by the President as an instrument to increase trade, and thereby

President's power to change tariffs is explicitly grounded on the "burden" they impose on international trade.<sup>77</sup>

These twin political levers supporting the RTAA—export jobs and the international political consequences of tariffs—represent both continuity and contrast when compared to pre-existing trade policy and ideology. Tariff policy continued to be an employment policy, just as it had been before 1934. President Roosevelt, who knew that he could not unilaterally lower tariffs at a time of great unemployment, shifted his focus from import-competing jobs to export-related jobs, but he continued to focus on jobs. The RTAA continued the belief that tariff policy should maximize jobs as a part of the government's employment policy.

At the same time, the RTAA represented a dramatic shift away from the notion that tariffs are a matter solely of domestic policy. Although domestic interests still mattered, the country could not ignore the international implication of tariffs—namely, the effect on foreigners. Tariff policy was turned from an inward-looking political battle between domestic interest groups to an outward-looking search for transnational cooperative solutions.

The transformation was not, in other words, conversion to free trade itself. As Douglas Irwin has pointed out, "politicians did not undergo an ideological conversion to free trade, and there was no apparent shift in the underlying trade-related interest groups between the passage of Smoot-Hawley and the RTAA in 1934."<sup>78</sup> The conversion was not in appreciating the domestic, economic rationale for free trade, but in appreciating the international effects of trade policy; the ideological conversion was from a domestic to an international orientation.

Significantly, this export-oriented, job-creating rationale for the Act would not have been possible had foreign countries not raised their tariffs in response to the Smoot-Hawley tariffs of 1930 and the worldwide depression. Had foreign countries not choked off U.S. exports, the President would not have been able to gather political support for the Act as an employment measure because there would have been no way to present the RTAA as a way of opening up foreign markets and thus no need to transfer the tariff-setting authority to

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contribute to peace, and other ends within the interest of diplomatic policy." *Trade Agreements Act*, *supra* note 62, at 666. See Richard Cooper, *Trade Policy as Foreign Policy*, in U.S. TRADE POLICIES IN A CHANGING WORLD 299 (Robert Stern ed., 1987) (discussing the view that unhampered international trade would raise the standard of living in foreign countries and eliminate dissatisfaction that breeds war); Stephen Krasner, *State Power and the Structure of International Trade*, 28 *WORLD POL.* 317 (1976).

77. See sources cited *supra* note 59.

78. IRWIN, *UNDER FIRE*, *supra* note 6, at 154.

the President. It was only because the President needed to break down foreign barriers to U.S. exports that the President could get political support to transfer power over tariffs from Congress to the executive.<sup>79</sup> Moreover, even Democrats did not favor unilateral tariff reductions;<sup>80</sup> the decision to eschew unilateral cuts lends support to the notion that tariffs were now perceived to raise international, not domestic, policy issues.

In other words, the fundamental insight that drove the RTAA was the recognition that tariffs have international repercussions—namely, that higher tariffs have an adverse effect on foreign producers and provoke international friction.<sup>81</sup> Without these dynamics, the need for Presidential control of tariff rates in the context of international negotiations would have been unnecessary. This insight provides a complete justification for the Act.<sup>82</sup>

Notably missing from the RTAA debate was reference to the interests of domestic consumers or the need to overcome the influence of protectionist interests on Congress. As one writer noted in 1941, imports were the “step-child”<sup>83</sup> of the trade agreements concept; increasing imports was thought to be important in trade negotiations only to allow foreign producers to earn dollars to buy American goods.

Reduction of American tariffs, obviously necessary as a bargaining instrument, was also advocated as an indispensable means of providing foreign countries with the dollars to purchase American goods, an argument which carried much conviction in a period of exchange difficulties when international lending had ceased. Our tariff reductions were called “concessions,” a term implying sacrifices on our part, and treated as a necessary evil justified by increased exports. The State Department made no attempt to counteract the idea that enlarging exports was the sole goal of the trade agreements program; in fact, the Department advertised increased exports as a first line of political support in defense of the program.<sup>84</sup>

79. IRWIN, SMOOT-HAWLEY TO RTAA, *supra* note 21.

80. See Bailey et al., *Institutional Roots*, *supra* note 56, at 317.

81. It is of interest—and somewhat paradoxical—that at the same time that Roosevelt was encouraging international cooperation over trade in order to enhance United States exports, he was allowing the dollar to devalue, thereby further encouraging exports, although in this case without the cooperation of, and at the expense of, other countries. See Haggard, *Institutional Hegemony*, *supra* note 37, at 102. It was not until World War II that the Roosevelt administration would promote cooperation on exchange rate policy as well as a tariff policy.

82. Bailey et al., *Institutional Roots*, *supra* note 56, at 317-24, have developed a sophisticated model of reciprocal bargaining under the RTAA. They conclude that: “The RTAA makes perfect sense given the preferences of American political actors and an assumption of strategic behavior. No extra assumptions about congressional laziness or congressional antipathy toward special interests are necessary.” *Id.* at 321.

83. DIEBOLD, *NEW DIRECTIONS*, *supra* note 22, at 15.

84. *Id.* at 16. The emphasis on the importance of exports never faltered after World War II started, even though trading relations changed dramatically and many

To be sure, Republican members of Congress understood that the effect of the RTAA would be to weaken their power and that this would weaken the power of protectionist interests in industry.<sup>85</sup> But their objection was primarily to the loss of their power and not to the loss of protection for their constituents. Senator William Borah's comments are representative: "What kind of a miserable politician would I be, having been selected by my people to represent them, to barter away my power and surrender my influence in such matters."<sup>86</sup> Moreover, the recognition of the effects of the legislation by its opponents does not support the notion that curtailing the power of protectionist interests in Congress was the purpose of the legislation.

The historical record's failure to refer to the benefits of imports for consumers or the need to blunt protectionist forces is striking: it suggests that addressing tariffs as a matter of domestic policy to promote economic efficiency was not at the heart of the Roosevelt program.<sup>87</sup> Moreover, the passage of the RTAA and the emergence of

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countries abrogated their commitments to lower tariffs—which they were allowed to do under the trade agreement's war clause. United States exports continued to grow as the United States became a major supplier of war material, but some exporters lost foreign markets because of the higher tariffs and sought to have the United States retaliate with higher tariffs. When asked whether the United States should withdraw its lower tariffs in retaliation, the State Department again said that the low tariffs were necessary so that foreigners could sell goods in the United States that would earn the dollars they needed to buy United States goods. Again, exports were the goal of United States policy and imports became the means of financing that goal. *Id.* at 48-49.

85. See Schnietz, *Institutional Foundation*, *supra* note 56, at 436-37.

86. *Id.* at 435. One of the reasons that Republicans phrased their objections to the RTAA in terms of Congressional prerogatives, of course, was that they planned to challenge the constitutionality of the delegation of the power to the President. *Id.*

87. Indeed, it is not clear that the RTAA significantly blunted the power of protectionist influences in Congress. First, President Roosevelt was forced to revise the legislation so that the power delegated to him lasted only three years; when he went back to seek renewal, the protectionists in Congress had the opportunity to derail the reciprocal trade agreements program. Second, the protectionist interests were not cut out of the lawmaking process; their participation was channeled through the executive branch rather than directly through Congress, but any group that had influence within the President's party could still lobby for protection. Indeed, during his presidential campaign, President Roosevelt had suggested that tariff making be delegated to the Tariff Commission, with only limited amendments allowed by Congress, for exactly this reason. See Haggard, *Institutional Hegemony*, *supra* note 37, at 106-07. The Act set up an elaborate series of notice and opportunities to be heard, including through an interdepartmental group that would work with the Secretary of State to guide the negotiations. See *Trade Agreements Act*, *supra* note 62, at 649-50. Initial secrecy surrounding the program was later removed in order to give interested parties an opportunity to state their views. *Id.* at 667. Because protectionist interests remained a political force, and perhaps out of political caution in the years before the program's first renewal, the United States looked for concessions that did not threaten powerful interests. And the concessions made by the United States in the early years of the program were hardly sweeping. They included binding goods that were already on the

the United States as an exporting powerhouse after World War II could hardly have been anticipated in 1934, making the anti-protectionist story behind the RTAA a fragile one.

Had President Roosevelt's goal been to suppress protectionist interests, he could have reached it in other, more direct ways. In particular, he could have revived old proposals to commit tariff making to an administrative agency with explicit standards for setting tariffs. Such an approach, which was almost adopted earlier in the century,<sup>88</sup> would have insulated the decision-makers from protectionist interests and allowed them to give greater weight to consumer interests.<sup>89</sup> In the alternative, Roosevelt might have asked for power to reduce tariffs unilaterally;<sup>90</sup> he might have relied on the provisions of the flexible tariff, which, by authorizing Presidential revisions of the tariff schedule, was designed—even by Republicans—to counter the logrolling tendencies of Congress.<sup>91</sup> He was convinced, however, that trade and tariff policy needed a reciprocal and international, not unilateral, approach, and he therefore opted to embed U.S. policy in the policy of other countries.

In sum, the RTAA was a pivotal event because it gave political punch to the interests of exporters and recognized that one nation's tariff policy is interdependent with the tariff policies of other nations. It was not a complete victory for internationalism, however, because it was supported on the basis of its ability to create jobs. Presumably the emphasis on the use of tariffs to create jobs could revert to supporting protectionism as soon as producers competing against imports gained more political strength—or could promise more new jobs—than export industries. Over the next decade, however, the rationale for supporting reciprocal trade negotiations would change; the creation of jobs would no longer be the dominant theme, and the

free list because there were no competing domestic products (like coffee, tea, and rubber), and specialty items in which particular countries had a high interest in selling in the United States (like high-grade steel, matches, cement, laces, coal-tar dyes, manganese, whisky, perfumes, and cheeses). *Id.* at 650.

88. This is the story of the establishment of the International Trade Commission and the proposal to give it tariff-setting authority.

89. Indeed, during his presidential campaign, President Roosevelt had suggested that tariff making be delegated to the Tariff Commission, with only limited amendments allowed by Congress, for exactly this reason. See Haggard, *Institutional Hegemony*, *supra* note 37, at 106-07.

90. As Richard Gardner said, the RTAA "had some defects as an instrument for more liberal trade" in that it did not allow unilateral, across-the-board tariff reductions. GARDNER, *STERLING DIPLOMACY*, *supra* note 6, at 21-22.

91. The flexible tariff provisions had been included in the Smoot-Hawley legislation at the insistence of President Hoover, who threatened to veto the legislation if it did not contain them. See PASTOR, *CONGRESS AND ECONOMIC POLICY*, *supra* note 18, at 82. It was that feature of the bill that appealed to both moderate Republicans and Democrats. *Id.* at 82-83.

emphasis on exports would be downplayed. In its place, support for reciprocal tariff negotiations, and thus for an institution like GATT, would come from the recognition that because tariffs hurt foreigners, the world needs a process by which one country can influence the policies of another country.

#### IV. THE SECOND TRANSFORMATION: THE KEYNESIAN REVOLUTION

The RTAA was renewed in 1937 and 1940, substantially on the same grounds that had led to its enactment in 1934.<sup>92</sup> It was later renewed during wartime conditions in 1943 and again in 1945 (the renewal that gave rise to the first negotiations under GATT).<sup>93</sup> During the War, the philosophy supporting reciprocal negotiations began to focus more and more on the international political consequences and less and less on jobs. As planning for the post-War world took place in the early 1940s, the notion that trade negotiations would be a source of stability and peace became the predominant paradigm supporting the formation of a stronger and institutionalized system of trade negotiations.<sup>94</sup> The war metaphor and its cognate, the

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92. When Cordell Hull spoke about renewal, he put jobs and prosperity second to the importance of promoting good international relations. In his February 26, 1939 testimony before the House Ways and Means Committee, Hull stated:

In the face of grave hindrances growing out of fears of war and preparations for war, the operation of the reciprocal trade agreements program had the effect of inducing many important nations to halt their runaway races in the erection of excessive economic barriers to trade and gradually to move in the opposite direction; while still other nations were induced to slow down their efforts to attain economic self-containment. Furthermore, the program was an important factor in bringing about a development of closer general relationships with and among many nations, while it was making its important contribution to income and employment in the United States.

HULL MEMOIRS, *supra* note 33, at 748. By this time, on the eve of war, even Roosevelt was supporting reciprocal negotiations on the ground that the Act was "an indispensable part of any stable and enduring peace." *Id.* at 747.

93. See PASTOR, CONGRESS AND ECONOMIC POLICY, *supra* note 18, at 93-96 (discussing how bilateralism had reached its point of usefulness and 1934 negotiating authority had been "used-up").

94. See, e.g., GARDNER, STERLING DIPLOMACY, *supra* note 6, at 8-9 ("The principal planners shared a genuine belief in the critical importance of economic factors. 'If goods can't cross borders, soldiers will' was a slogan well suited to the rationalist and materialist elements in the American intellectual heritage.") Similarly, Harry Hawkins, who was the State Department architect of postwar planning (as Director of the Office of Economic Affairs) said in 1944:

We've seen that when a country gets starved out economically, its people are all too ready to follow the first dictator who may rise up and promise them all jobs. Trade conflict breeds non-cooperation, suspicious, bitterness. Nations which are economic enemies are not likely to remain friends for long.

peace and stability metaphor, became the driving force behind the effort to create an international institution to oversee trading relations between countries.<sup>95</sup>

These war and stability metaphors were based on the interdependence of policy-making between countries and on the notion that because policy made in one country would affect other countries, policy made without regard to other nations would breed ill will and economic friction. This latter notion was made explicit by President Truman when he rallied support for an international mechanism to allow one country to object to the trade policies of another country:

One nation may take action in the interest (whether fancied or real) of its own producers without notifying other nations, or consulting them, or even considering how they might be hurt. It may cut down its purchases of another country's goods, by raising its tariff or imposing an embargo or a system of quotas on imports. And when it does this, some producers in the other country will find the door to it suddenly slammed and bolted in his face. Or a nation may subsidize its exports, selling its goods abroad below their cost. And when it does this, a producer in some other country will find his market flooded with the goods that have been dumped. In either case, the producer gets angry, just as you or I would get angry if such a thing were done to us. Profits have disappeared; workers are dismissed. He feels that he has been wronged, without warning and without reason. He appeals to his government for action. His government retaliates, and another round of tariff boosts, embargoes, quotas, and subsidies is under way. This is economic war. And in such a conflict there can be no hope of victory.

The alternative to economic warfare is agreement to abide by common rules, to cooperate in the solution of common problems, to enter into consultation where interests come into conflict, to submit disputes to peaceful settlement. But there can be no assurance that nations, in general, will follow this course, completely or consistently, unless there is an international organization in the field of trade. An international organization would apply to commercial relationships the same principles of fair dealing that the United Nations is applying to political affairs. Instead of retaining unlimited freedom to commit acts of economic aggression, its members would adopt a code of economic ethics and agree to live according to its rules. Instead of taking action that might be harmful to others, without warning and without consultation, countries would sit down around a table and talk things out. In any dispute, each party would present its case. The interests of all would be

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Harry C. Hawkins, *The Importance of International Commerce to Prosperity* (Radio broadcast, Apr. 2, 1944), in COMMERCIAL POLICY SERIES 74, at 3. The peace and stability metaphor was one that Hull had sounded earlier in the century as a young Congressman. See *supra* note 33.

95. For general accounts of the development of United States economic policy in the context of foreign policy see WILLIAM Y. ELLIOTT, UNITED STATES FOREIGN POLICY (1952); PATRICK J. HEARDEN, ARCHITECTS OF GLOBALISM: BUILDING A NEW WORLD ORDER DURING WORLD WAR II (2002); GEORGE KENNAN, AMERICAN DIPLOMACY 1900-1950 (1952); WALTER LIPPMANN, U. S. WAR AIMS (1944).

considered, and a reasonable solution would be found. In economics, as in politics, this is the way to peace.<sup>96</sup>

The message is clear. Trade restrictions are not a problem because of their domestic effects; trade restrictions are a problem because they adversely affect foreign producers. Because foreign producers have no right to participate in the political process that generates the trade restrictions, they get angry, and in the absence of any other recourse, they ask their governments to retaliate, making producers in both countries worse off. An international organization would allow a government to represent its injured producers in negotiations with the country imposing the trade barrier.<sup>97</sup> An international organization would allow countries to represent their people when they are adversely affected by another country's policy. The need for negotiations to resolve political problems caused by trade barriers became the common goal supporting an international framework to allow international trade negotiations.<sup>98</sup>

This emphasis on the use of tariff policy and trade negotiations to break down barriers to exports is entirely consistent with the way

96. President Harry S. Truman's Address on Foreign Economic Policy at Baylor University, PUB. PAPERS 168-69 (Mar. 6, 1947).

97. President Truman made this connection explicit, for his speech continued:

Instead of adopting measures that might be harmful to others, without warning and without consultation, countries would sit around the table and talk things out. In any dispute, each party would present its case. The interest of all would be considered, and a fair and just solution would be found.

*Id.* at 169.

98. See, e.g., PERCY W. BIDWELL, A COMMERCIAL POLICY FOR THE UNITED NATIONS (1945); J.B. CONDLIFFE, AGENDA FOR A POSTWAR WORLD 34 (1942) ("It is a delusion that nations can protect themselves, much less gain, at the expense of others."); J.B. CONDLIFFE, THE RECONSTRUCTION OF WORLD TRADE (1940) (generally discussing the complications of tariffs and the conditions of economic cooperation); HERBERT FEIS, THE SINEWS OF PEACE (1944) (analyzing how trade relations that a country maintains with others will govern all its other economic ties); ALVIN H. HANSEN, AMERICA'S ROLE IN THE WORLD ECONOMY 95 (1945) ("The [Trade] Authority should study the proposal from the point of view of whether the suggested changes in trade policy would . . . have important adverse economic effects upon other countries and upon the world prosperity in general."); MICHAEL A. HEILPERIN, THE TRADE OF NATIONS 82 (1952) ("Like a cancerous growth, trade restrictions tend to spread more and more widely. If they remain unchecked, they strike at the very existence of good international relations. It is the general public that foots the bill, while special interests collect the pecuniary benefits."); CALVIN B. HOOVER, INTERNATIONAL TRADE AND DOMESTIC EMPLOYMENT 92-93 (1943) (suggesting at the time that "the reduction of tariffs through the renewed negotiation of reciprocal trade agreements should be continued"); OTTO T. MALLERY, ECONOMIC UNION AND THE DURABLE PEACE 137 (1943) ("emphasizing the necessity of solving through an economic organization some of the toughest economic problems . . ."); OSWALD G. VILLARD, FREE TRADE—FREE WORLD (1947) (arguing for the removal of tariffs and all other handicaps to international trade).



the United States envisioned and used trade negotiations during the War. Throughout the War, the dominant U.S. trade concern was the preferential trade arrangements within the British Commonwealth, preferences that restricted U.S. sales within the so-called Sterling zone. The Atlantic Charter, signed by the United States and Britain in 1941, was an explicit use by the United States of negotiating power to break down policies that gave Britain preferential access to the resources of its colonies.<sup>99</sup> With the Atlantic Charter, the countries pledged themselves to a system in which they would

[e]ndeavor with due respect for their existing obligations, to further the enjoyment by all states, great or small, victors or vanquished, of access, on equal terms, to the trade and raw materials of the world which are needed for their economic prosperity, [and further that they] desired to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement, and social security.<sup>100</sup>

If the need for an international negotiating forum was the driving force behind the establishment of GATT, yet another shift influenced the rhetoric and rationale for an international mechanism to control national tariff policy. Whereas jobs in the export sector were uppermost in the minds of politicians when they crafted the RTAA, the emphasis on jobs fell away by the end of the War. In the interim, the Keynesian revolution had persuaded leaders of industrial countries that control of the business cycle and unemployment could be achieved by manipulating aggregate demand, that is, by running government deficits during recessions and surpluses during expansions, rather than by intervening in particular industries with tariffs or subsidies.<sup>101</sup> The goal of full employment did not change, but

99. The story of the Atlantic Charter is told in GARDNER, *STERLING DIPLOMACY*, *supra* note 6, at 40-53. British influence over the post-War multilateral trade system was limited by British desire to maintain preferences for colonies and former colonies. See Jay Colbert, *War-time Anglo American Talks and the Making of GATT*, 10 *WORLD ECONOMY* 381 (1987).

100. WILLIAM BROWN, *THE UNITED STATES AND THE RESTORATION OF WORLD TRADE* 47 (1950).

101. See, e.g., Bradford De Long, *Fiscal Policy in the Shadow of the Great Depression*, in *THE DEFINING MOMENT: THE GREAT DEPRESSION AND THE AMERICAN ECONOMY IN THE TWENTIETH CENTURY* 67-68 (Michael D. Bordo et al. eds., 1998).

Before the Great Depression the U.S. government did not have a fiscal policy, at least not in the sense that economists have meant for the past two generations. The government did not attempt to tune its deficit or surplus to achieve the goal of full employment or low inflation . . . . Later depression-era federal deficits were more voluntary: the government came to make a virtue out of necessity and to trumpet the potential macroeconomic benefits of a depression deficit. Thus the U.S. government abandoned the principle that the only good peacetime budget was a balanced budget. And the depression era-deficits were continued and vastly expanded during World War II.

leaders no longer viewed tariffs as a way of advancing that interest; government interest in full employment was shifted from the regulatory sphere of tariffs to the tax-and-spend tools of fiscal policy.<sup>102</sup> The United States acted on this conviction in the Employment Act of 1946,<sup>103</sup> which then served as a backdrop to the liberal trade regime that the United States promoted.<sup>104</sup>

The Keynesian revolution removed any reason for using tariff and trade policy as part of domestic employment policy. Trade policy was freed from any substantive domestic moorings. Nowhere is this transformation and connection clearer than in the *Proposals for Expansion of World Trade and Employment*<sup>105</sup> that the U.S. State Department issued in November 1945.<sup>106</sup> In the *Proposals*, the United States and Great Britain set out a blueprint for a post-War world and called for an international conference under United

On the Keynesian revolution in general, see JOHN MAYNARD KEYNES, *THE GENERAL THEORY OF EMPLOYMENT INTEREST AND MONEY* (1936); HERBERT STEIN, *THE FISCAL REVOLUTION IN AMERICA* 131-68 (1969); PETER TEMIN, *LESSONS FROM THE GREAT DEPRESSION* 86, 107-13 (1989).

102. Richard Gardner traces the linkage between free trade and full employment to the British-United States conferences in 1943 in *STERLING DIPLOMACY*, *supra* note 6, at 103-09. He emphasizes that maintaining full employment was thought to be a prerequisite to free trade. *Id.* at 104. My account stresses the shift from using trade policy to achieve full employment to reliance on monetary and fiscal policy, a point of emphasis of the British government. *Id.* at 105.

103. Employment Act of 1946, ch. 33, 79 Stat. 23 (1946). See generally STEPHEN BAILEY, *CONGRESS MAKES A LAW: THE STORY BEHIND THE EMPLOYMENT ACT OF 1946* (1950); WALTER HELLER, *NEW DIMENSIONS IN POLITICAL ECONOMY* (1966).

104. The change noted here is part of the larger transformation of international law that occurred when the United States projected the regulatory state of the New Deal into international, multilateral institutions. See Anne-Marie Burley, *Regulating the World: Multilateralism, International Law, and the Projection of the New Deal Regulatory State*, in *MULTILATERALISM MATTERS: THE THEORY AND PRAXIS OF AN INSTITUTIONAL FORM* 125, 129 (John Ruggie ed., 1993) (“[T]he domestic origins of the specific contours of the postwar international order lie in the historical experience of one liberal state: the United States during the New Deal.”).

105. *Proposals on World Trade and Employment*, Joint Statement by the United States and the United Kingdom, 13 DEP’T ST. BULL. 912 (1945) [hereinafter UNITED STATES PROPOSALS].

106. These proposals, in turn, were distilled from, and reflected, a growing consensus. COMMITTEE ON ECONOMIC DEVELOPMENT, *INTERNATIONAL TRADE, FOREIGN INVESTMENT AND DOMESTIC EMPLOYMENT* (1945); COMMITTEE ON INTERNATIONAL ECONOMIC POLICY, *WORLD TRADE AND EMPLOYMENT* 3-21 (1944); HOUSE SPECIAL COMMITTEE ON POSTWAR ECONOMIC POLICY AND PLANNING, *POSTWAR FOREIGN ECONOMIC POLICY OF THE UNITED STATES* (1945); NATIONAL PLANNING ASSOCIATION, *AMERICA’S NEW OPPORTUNITIES IN WORLD TRADE* No. 37-38 (1944). Several other works echoed these themes after the *Proposals* were published. See, e.g., TWENTIETH CENTURY FUND, *REPORT OF THE COMMITTEE ON FOREIGN ECONOMIC NATIONAL RELATIONS* (1947), reprinted in NORMAN S. BUCHANAN & FRIEDRICH A. LUTZ, *REBUILDING THE WORLD ECONOMY: AMERICA’S ROLE IN FOREIGN TRADE AND INVESTMENT* 293-315 (1947); NATIONAL FOREIGN TRADE COUNCIL, *A PROPOSED FOREIGN ECONOMIC POLICY FOR THE UNITED STATES* (1946).

Nations' sponsorship for the following summer.<sup>107</sup> The thrust of this document emphasized the importance of international coordination of trade and economic policies: its rationale echoes the interdependence theme:

Unless [the countries] act together, they will act at cross purposes and may well do serious damage to each other. But if they do act together, there is every possibility that the peoples of the world may enjoy, in our lifetime, a higher degree of prosperity and welfare than they have ever had before.<sup>108</sup>

Although acknowledging the economic case for free trade—that “trade connects employment, production, and consumption and facilitates all three”—the thrust of the *Proposals* was to build mutual prosperity through mutual cooperation. According to the *Proposals*:

The fundamental choice is whether countries will struggle against each other for wealth and power, or work together for security and mutual advantage. . . . The experience of cooperation in the task of earning a living promotes both the habit and the techniques of common effort and helps make permanent the mutual confidence on which the peace depends.<sup>109</sup>

The breadth of this document is remarkable. The *Proposals* are not limited to an expansion of the reciprocal trade agreement program on a multilateral basis; its subject matter goes far beyond trade barriers, border measures, or trade preferences.<sup>110</sup> Instead, the *Proposals* contemplated cooperation across a wide range of economic matters, with a distinct emphasis on preserving harmony between nations by preventing settled relations from being disrupted.<sup>111</sup> In addition to the outlines for an international trade organization and rules governing trade restrictions, the *Proposals* contained recommendations for attacking “private combines and cartels,” proposals concerning “disorder in the markets for certain primacy commodities,” and proposals to address “irregularity, and fear of irregularity, in production and employment” (that is, proposals

107. UNITED STATES PROPOSALS, *supra* note 105, at 913-14, 918-29.

108. *Id.* at 914.

109. *Id.*

110. *See id.* at 918.

Collective measures to safeguard the peoples of the world against threats to peace and to reach just settlements of disputes among nations must be based not only on international machinery to deal directly with disputes and to prevent aggression, but also on economic cooperation among nations with the object of preventing and removing economic and social maladjustments, of achieving fairness and equity in economic relations between states, and raising the level of economic well-being among peoples.

111. *Id.*

concerning the business cycle).<sup>112</sup> The concern, in short, encompassed any economic force that could create tension between countries by disrupting existing expectations and pitting the economic prosperity of one country against that of another.

The proposals concerning business cycles are of greatest interest here because these proposals reflected the new ideology about the nature of international cooperation and the maintenance of employment. Two principles capture the point. First, each country was to accept responsibility for maintaining employment at home. Here the full force of the Keynesian revolution was reflected: "Each of the signatory nations will take action designed to achieve and maintain full employment within its own jurisdiction, through measures appropriate to its own political and economic institutions."<sup>113</sup> Although this responsibility for ensuring employment does not explicitly draw on principles for manipulating aggregate demand, and thus does not advert explicitly to the new possibilities for governmental programs intend to correct downturns in the business cycle, the invocation to "take action" rings with the possibility that governments can play an active role in dealing with business cycles.

The Keynesian overtones of this first principle were fully supported in the second principle: "No nation will seek to maintain employment through measures which are likely to create unemployment in other countries or which are incompatible with international undertakings designed to promote an expanding volume of international trade and investment in accordance with comparative efficiencies of production."<sup>114</sup> The collective message of the two provisions is clear: under the *Proposals*, each country would maintain employment but not by measures that would increase unemployment abroad. Employment would be maintained by aggregate policies that stimulate the economy, not by policies that create jobs at the expense of another country.

Here is the ideological shift against tariff and non-tariff barriers that was the most important element of the post-War equation—the shift from the use of trade restrictions as a means of preserving jobs to putting the obligation on countries to create jobs by other means. The idea that governments could control unemployment by explicit macroeconomic policy provided the explicit backdrop of liberal trade.<sup>115</sup> Tariff policy lost its legitimacy, in part, because its rationale

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112. See *id.* at 916-18.

113. *Id.* at 919.

114. *Id.*

115. As one commentator said close to that time:

as a mechanism to preserve jobs was destroyed by the Keynesian revolution. The policy tool of protectionism was no longer a necessary tool of job creation and was therefore no longer a sufficient basis for inflicting economic harm on people in another country.

With the publication of the *Proposals*, the free-trade paradigm that informed the post-War negotiations over international economic cooperation was now complete. Domestic policies that hurt the prosperity of other countries would be subject to negotiations because each country needed to have a forum in which the harmful policies of other countries could be challenged. Joint prosperity was to be preserved by asking each nation to use its macroeconomic policy tools to maintain full employment without seeking to rely on measures that would create jobs at the expense of people in other countries.<sup>116</sup> The rest flowed from this paradigm. Succeeding international conferences endorsed this paradigm—and it became fully reflected in

It must be recognized that the reestablishment and the survival of liberal trade policies will depend upon the ability of nations to achieve and maintain high and stable levels of employment and upon their willingness to afford to the producers of staple commodities some measure of protection against the sudden impact of violent change.

WILCOX, TRADE CHARTER, *supra* note 4, at 19-20.

116. The distributive aspects of the *Proposals* are also noteworthy. Although this agenda was driven in part by the importance of an efficient economic system and the search for global prosperity, efficiency was not the only value underlying the proposals. In particular, the proposals recognized the value of social stability and existing expectations—values that would also be protected through the international system. UNITED STATES PROPOSALS, *supra* note 105, at 917. Most notably, the *Proposal* contemplated that the world system would deal with situations in which “[t]here is suddenly too much of some commodities and prices react accordingly. Many countries learned after the last war that such changes can be devastating.” *Id.* Although acknowledging that the market should deal with most such occasions, moderation was sometimes in order: “But if the changes come too fast they may bring serious distress to many small producers and to their own communities. It is important that the needed changes be made gradually.” *Id.* The *Proposals* accordingly recognized that “it may be necessary to restrict production or exports, to fix prices, or to allocate shares of markets among producing countries”—subject to tight controls on their use and longevity. *Id.* Under this view, collective action to control markets was sometimes better than either a purely free market solution or the unilateral action that would inevitably accompany such disruptions. The *Proposals* encapsulate the essence of the “embedded liberalism” that made up the post-War ethic. See John Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, 36 INT’L ORG. 379, 399 (1982).

[G]overnments . . . would seek to encourage an international division of labor which, while multilateral in form and reflecting *some* notion of comparative advantage (and therefore gains from trade), *also* promised to minimize socially disruptive domestic adjustment costs as well as any national economic and political vulnerabilities that might accrue from international functional differentiation.

the rules adopted to govern the trading system (that is, the General Agreement itself), in the draft of the Charter for the new International Trade Organization (ITO), and in GATT as it emerged as an organization designed to take the place of the ITO.

## V. CONCLUSION

If history is to be the guide, the WTO should not be understood in narrow economic terms—i.e., simply as an organization that was established to bring the fruits of free trade to consumers. The WTO does that, but economic benefits alone were not the benefits sought by those who established the WTO's predecessor, GATT. Instead, GATT was established on the ground that policies made in one country often adversely affect people in other countries who, in the absence of any institutional framework, have no ability to influence those policies. GATT was established to provide a forum in which one member country would challenge the economic policies of another country. This is an intensely political purpose.

To be sure, the metaphors that provided ideological support for the foundation of GATT—the metaphors of beggar-thy-neighbor policies and economic warfare—grew out of the particular experiences of the Great Depression and World War II, but they contained a truth that is the central kernel of internationalism in general and that is undiminished by time: that policy made in one country often has effects on people in another country. Whenever such cross-border effects of policy-making and lawmaking occur, they create tensions. They challenge the value systems of the people involved and the ideal of participatory decision-making. It is a credit to the wisdom of the leaders who oversaw the development of the post-War international architecture that they recognized the importance of creating international institutions to address these value-laden tensions and allow participation across borders.

This recognition of the need for international institutions that allow governments to represent the interests of their people in the policy decisions made by other governments does not, of course, settle any debate about the domain or scope of the WTO. By itself, this notion does not help us determine whether and how to incorporate issues relating to human rights or labor rights into the WTO. It does suggest, however, that the essential domain of the WTO is not about subject matter but rather about process. Our understanding of the legitimacy of the WTO can therefore begin with an understanding that the process set up through the mechanisms of the WTO to allow values and interests to be represented across borders is an essentially democracy-enhancing process. It suggests that as one searches for a definition of the scope and reach of the WTO's power, one ought to

keep in mind that the WTO offers the advantage of process that might fruitfully be used whenever national differences over policy have cross-border effects. The lesson of history is that those who established the institutional framework within which the WTO now operates understood that process matters because the WTO holds domain over essentially political, not economic, issues.