

# NOTES

## THE GROWING SHADOW OF TRADE PROTECTIONISM

*History has taught us an important lesson: free trade serves the cause of economic progress and it serves the cause of world peace.*<sup>1</sup>

Frequent calls are being made to end the United States' free trade policy with foreign nations. Critics of free trade claim that United States products cannot compete in a world market where most countries consider "free trade" the exception, not the rule. Critics also argue that a "free trade" policy harms both the United States laborer and businessman. Support increases for imposing trade barriers on foreign competitors attempting to cut into the United States market.

Cries for a "protectionist" trade policy, oddly enough, have emerged most recently from diverse camps on the political spectrum: industrial labor groups<sup>2</sup> and conservative Republicans.<sup>3</sup> These groups aim to protect the ailing auto and steel industries in the United States, as well as create a perception abroad that the United States demands fair treatment from foreign nations on trade issues. With the market glutted by ever increasing imports of cheaper and more fuel efficient automobiles from Japan and Western Europe,<sup>4</sup> as well as imports of other cheap steel and steel products,<sup>5</sup> United States industry and labor have teamed to prod the President and Congress to act on the increasingly unfavorable balance of trade.<sup>6</sup>

No industry has suffered more as a result of the unfavorable balance of trade than has the United States auto industry. This note will analyze the recently introduced Fair Practices in Automotive Products Act, designed to protect the American auto industry from the threat of

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1. President Ronald Reagan, Radio Address to the Nation, 18 WEEKLY COMP. PRES. DOC. 1511 (Nov. 26, 1982).
  2. *House Passes Auto Domestic Content Bill*, CONG. Q. WEEKLY REP., Dec. 18, 1982, at 3072.
  3. *The new politics of U.S. protectionism*, BUS. WEEK, Dec. 27, 1982, at 39.
  4. "As the demand for small, fuel-efficient vehicles climbed from 37 percent [of the U.S. market] in 1970 to around 65 percent today, the variety, quality, and fuel efficiency of many foreign models made them attractive to U.S. buyers." STAFF OF SUBCOMM. ON TRADE OF THE HOUSE COMM. ON WAYS AND MEANS, 97TH CONG., 2D SESS., DOMESTIC CONTENT LEGISLATION AND THE U.S. AUTOMOBILE INDUSTRY: ANALYSIS OF H.R. 5133, THE FAIR PRACTICES IN AUTOMOTIVE PRODUCTS ACT 17 (1982) [hereinafter cited as COMMITTEE REPORT].
  5. In the winter of 1982, Europeans were selling carbon steel in the United States at \$500 a ton, with government subsidy of \$130 a ton. Meanwhile, only 31% of steel plant capacity has been in use in America. Letter to New York Constituents from Senator Daniel Moynihan (D-N.Y.) (Dec. 3, 1982) [hereinafter cited Moynihan Letter].
  6. The United Auto Workers say the United States-Japan trade deficits in autos have totaled \$47 billion over the past 5 years. Wall St. J., Dec. 16, 1982, at 2, col. 3.

foreign auto imports. This "domestic content" legislation<sup>7</sup> would impose "minimum domestic content ratios" on foreign automobile importers.<sup>8</sup> The legislation, theoretically, would restore auto industry jobs by restricting the number of imported cars and parts that enter the United States market. Realistically, however, such legislation represents the United States' attempt to unilaterally revive an industry which no longer holds a competitive edge.

#### THE NEED FOR AN AUTOMOBILE TRADE POLICY

Many argue that the United States needs to revise its trade policy.<sup>9</sup> Adverse changes in the international economy have required that the President and Congress take some initiative to cure these ills.<sup>10</sup> To understand the current situation it is essential that one have a clear picture of the United States auto industry as it stands against its most serious competitor, the Japanese auto industry.

In 1982, United States auto production fell nineteen percent from the previous year, to its lowest level in twenty-four years.<sup>11</sup> United States automakers assembled five million cars in 1982, down from 1981's disappointing figure of 6.2 million units.<sup>12</sup> As one might suspect, the United States auto industry has taken a beating at the hands of the Japanese in the area of subcompact autos.<sup>13</sup> United States automakers are selling fewer and fewer "entry level" models.<sup>14</sup> In 1982, Japan sold forty-nine percent of the 3.2 million subcompact cars marketed in the United States.<sup>15</sup> That figure was up from forty-eight percent in 1981 and forty-five percent in 1979.<sup>16</sup>

The causes for the disparity between Japanese and American auto sales in the United States are numerous. First, United States auto manufacturers cannot presently build a subcompact auto and sell it at a profit.<sup>17</sup> According to some estimates, America's "Big Three" automakers<sup>18</sup> lose as much as \$1,000 on every subcompact they sell.<sup>19</sup> Second, United States auto workers earn approximately \$8 an hour

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7. H.R. 5133, 97th Cong., 2d Sess. (1982); S. 2300, 97th Cong., 2d Sess. (1982).

8. *Id.*

9. COMMITTEE REPORT, *supra* note 4, at 7.

10. "It has been the mass purchasing of foreign products, including oil, over the past 30 years which is principally responsible for the disastrous state of the United States economy today. Further, it can be stated, without equivocation, that the the nation's economy, despite the handwringing protests of free trade advocates, will continue to decline steeply unless substantial tariffs and quotas are imposed." *Mattera, Imports Aided Economic Slide*, Chicago Trib., Jan. 25, 1983, at 11, col. 1.

11. Wall St. J., Jan. 5, 1983.

12. *Id.*

13. Wall St. J., Jan. 7, 1983, at 1. A "subcompact" auto refers to the smallest passenger vehicles allowed on the highway.

14. "Entry level" models refer to the models consumers most often purchase as their first car.

15. Wall St. J., Jan. 7, 1983, at 1.

16. *Id.*

17. *Id.*

18. General Motors, Ford Motor Co., and Chrysler Corp.

19. Wall St. J., Jan. 7, 1983, at 1.

more than Japanese workers,<sup>20</sup> despite the fact that Americans build cars more slowly than do the Japanese.<sup>21</sup> Third, American consumers perceive Japanese cars to be more comfortable and less prone to mechanical failure than their American counterparts. As a result, thousands of American workers have lost their auto manufacturing jobs.

Between December 1978 and April 1982, in the United States, the number of automobile manufacturing jobs plummeted from 762,400 to 459,700.<sup>22</sup> The Congressional Budget Office attributes these declines to four factors: (1) slow economic growth and record high interest rates; (2) increased productivity growth in the United States auto industry, as manufacturers attempted to meet heightened foreign competition; (3) increased auto imports; and (4) increased "offshore sourcing" of automobile components as auto makers attempted to reduce production costs.<sup>23</sup>

Presently, Japan voluntarily imposes auto export quotas on itself.<sup>24</sup> With these quotas, Japan limits auto exports to the United States to 1.68 million units annually.<sup>25</sup> Japan originally intended this self-restraint to produce a seventeen percent share of the total United States market. Dismal United States auto maker sales the past two years allowed the Japanese instead to capture 21.7% and 22.6% of the market in 1981 and 1982, respectively.<sup>26</sup>

This situation has forced the United States auto industry to acknowledge the choke hold that the Japanese presently have over the Americans.<sup>27</sup> Chrysler Corporation Chairman Lee Iacocca advocates a further reduction in the number of cars Japan may export to the United States, from 1.68 million to 1.5 million.<sup>28</sup> Iacocca believes "it is time we told the Japanese to knock it off."<sup>29</sup> Further, United States auto makers complain that the Japanese yen is undervalued and that Japan's tax structure provides powerful incentives for its auto makers to export their product.<sup>30</sup>

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20. *Id.*

21. According to James Harbour, an automobile consultant in Detroit, better factory layouts and more flexible use of workers enables Japanese auto makers to assemble a small car with approximately 15 man-hours of labor, compared with as much as 30 hours for American producers. *Id.*

22. COMMITTEE REPORT, *supra* note 4, at 7.

23. *Id.*

24. Wall St. J., Jan. 11, 1983.

25. *Id.*

26. *Id.*

27. Robert Stempel, general manager of GM's Chevrolet division, says, "If I had a better subcompact than the Chevette, I wouldn't be able to increase volume with it much" because it would be overpriced in a heavily competitive market. Peter Griffin, a part-owner of Ford and Datsun dealerships in New York and Connecticut, stated "I wouldn't put an Escort side by side with a Datsun because I wouldn't be able to explain the price difference." Wall St. J., Jan. 7, 1983, at 4.

28. Wall St. J., Jan. 11, 1983.

29. *Id.*

30. In his essay, Lawrence Mattera, one of the founders of the National Council on Economic Policy, reports that until recently, our trading partners levied an average duty of 15% on

As the trade war rages between the United States and Japanese auto industries, the American unemployment figure nears eleven percent. Analysts predict a slow, uneven recovery from the recession,<sup>31</sup> and that 1983's average unemployment rate will settle around the 10.5% mark.<sup>32</sup> The unemployment figures in the auto industry are likewise high,<sup>33</sup> and do not hold out much hope for the laid-off auto worker's future.<sup>34</sup>

One can trace the genesis of the auto industry's decline to its failure to retool and produce subcompact cars during the 1974 Arab oil embargo. The industry had a responsibility to its consumers to recognize the demands the embargo would produce, but failed to timely recognize those demands. Five years later, when oil supplies were again depleted during the Iranian revolution, the American consumer discovered that his own auto industry had neglected to heed the warnings of the first embargo. In short, the domestic consumer felt betrayed by the industry. Since the late 1970s, American buyers, failing to support domestic auto manufacturing, have opted for the cheaper and more fuel efficient foreign autos.

Given the plight of the American auto worker and the frustration of American manufacturers, efforts to spark political action come as no surprise.<sup>35</sup> As Senate leaders openly threaten "limited warfare" against Japan and Western Europe on trade issues,<sup>36</sup> one staff member predicts that a trade reciprocity bill that died in the Senate last year "will come back with more teeth in it."<sup>37</sup> Within this political climate, "domestic content" legislation, designed to protect the American auto industry from foreign competition, is a measure likely to rise again in the near future.

#### EXAMPLES OF PROTECTIONISM IN THE 20TH CENTURY

The concept of developing trade policies designed to protect domestic industries is not new to the United States. In fact, debates over adoption of protectionist legislation have raged in Congress since the 1930's. Two measures, the Tariff Act of 1930, and the Buy American Act, in 1933, deserve brief analysis. These measures are chosen for

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American cars, while we charged only three percent on theirs. Chicago Trib., Jan. 25, 1983, at 11.

31. Wall St. J., Jan. 10, 1983.

32. *Id.*

33. As of March, 1982, 250,000 auto workers were reported on indefinite layoff. For each layoff by an auto maker, an estimated 2.2 persons are laid off in the firms supplying the auto industry. COMMITTEE REPORT, *supra* note 4, at 100 (issue brief by Dick D. Nanto, Economics Division of the Congressional Research Service).

34. Some analysts have estimated that mere automation within the auto industry could eliminate up to 200,000 jobs by 1985. For the 1980s, the "growth rate" within the industry could actually turn out to be an annual decline of 1.7% of the employment force. *See* CONG. BUDGET OFFICE, DISLOCATED WORKERS: ISSUES AND FEDERAL OPTIONS. 97th Cong., 2d, Sess. (July, 1982).

35. Wall St. J., Jan. 10, 1983.

36. *Protectionism will be even harder to resist*, BUS. WEEK, Jan. 10, 1983, at 27-28.

37. *Id.*

contrasting purposes: one act remains in force today, while the other failed shortly after its adoption.

First, the failure. The Tariff Act of 1930,<sup>38</sup> better known as the Smoot-Hawley Tariff, is a prime example of "protectionism." During this period, as America entered the Great Depression, factories began closing and workers stood in unemployment lines. Congress feared that American jobs were being sacrificed as a result of liberal entry of foreign goods and decided to discourage imports. Tariffs on the imports of most goods were increased and the President was empowered to increase duties by up to fifty percent on goods coming from countries refusing to deal fairly with the United States.<sup>39</sup>

This tariff policy had a devastating impact on the United States and the world. In two years, as foreign nations began to build protective tariffs of their own, American imports and exports had declined by two-thirds.<sup>40</sup> Up to this time, America had premised its foreign commercial policy on the equality-of-treatment principle allowing for autonomous tariffs. This policy permitted foreign nations to place tariffs on those American imports which could be produced most cheaply in the United States, and permitted the United States to place tariffs on foreign goods which could be produced most cheaply abroad. The Smoot-Hawley Tariff, however, placed tariffs on a great range of foreign products which United States manufacturers could not produce in quantities approaching domestic consumption needs. Foreign countries, convinced that the United States was determined to shut out their products, retaliated by raising their own tariffs. A "Catch-22" situation developed, and the world settled into a deepening depression.<sup>41</sup>

Despite the failure of the Smoot-Hawley protectionist legislation, one measure adopted in the 1930's, and still in force today, was the Buy American Act.<sup>42</sup> Since 1933, this Act has required government agencies to prefer American made goods and materials over foreign goods and materials when awarding government supply, service, and construction project contracts.<sup>43</sup> Government agencies are free from the strictures of the Act only when the procuring agency has determined that the use of domestic items would be "inconsistent with public inter-

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38. Tariff Act of 1930, 46 Stat. 590, ch. 497 (1930).

39. "(d) Duties to offset Commercial Disadvantage-whenver the President shall find as a fact that any foreign country places any burden or disadvantage upon the commerce of the United States . . . he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rates of duty as he shall determine will offset such burden or disadvantage, not to exceed 50 per centum ad valorem or its equivalent." *Id.* at 705.

40. Moynihan Letter, *supra* note 5.

41. For a fine analysis of the Smoot-Hawley Tariff's effect on the world economy, see J.M. JONES, TARIFF RETALIATION: REPERCUSSIONS OF THE HAWLEY-SMOOT BILL (1934).

42. 41 U.S.C. § 10a (1976).

43. A basic requirement of the Act is that the items acquired be intended for the "public use." *Id.*

est," or the cost would be "unreasonable."<sup>44</sup> Enacted in 1933, along with President Roosevelt's other New Deal measures, the Buy American Act provided one means to protect the American worker.<sup>45</sup> As Senator James J. Davis (Pa.) noted at the time, "the adoption of this amendment will mean work for our workers. It will help stem the tide of foreign competition and thus prevent further reduction of wages for the American worker."<sup>46</sup>

The Fair Practices in Automotive Products Act, a measure likely to come before the 98th Congress as it tackles the auto industry dilemma, can be seen to fit clearly within the context of 20th century protectionism.

### THE FAIR PRACTICES IN AUTOMOTIVE PRODUCTS ACT

On December 15, 1982, by a vote of 215-188, the House of Representatives approved H.R. 5133, the Fair Practices in Automotive Products Act.<sup>47</sup> Although the approval came only after adoption of a "weakening" amendment,<sup>48</sup> the bill's foundation remained intact. The Act would institute minimum "domestic content" requirements for most passenger vehicles and light trucks sold in the United States.<sup>49</sup> In the Senate, however, the Finance Committee failed to report the bill, thus killing its chances for passage in the 97th Congress.<sup>50</sup>

H.R. 5133 would have placed "domestic content" requirements on each domestic and foreign automaker producing more than 100,000

44. *Id.*

As might be expected, litigation arising from the Act has centered on the definition of "domestic construction material" as contained in the Act's corresponding regulations. 41 C.F.R. § 1-18.6 (1982). § 1-18.601 defines "domestic construction material" as "an unmanufactured construction material which has been mined or produced in the United States, or a manufactured construction material which has been manufactured in the United States if the cost of its components which are mined, produced or manufactured in the United States exceeds 50 percent of the cost of all its components."

Also, disappointed bidders have challenged the agency's determination that acquisition of domestic items would be "unreasonable." *Allis-Chalmers v. Friedkin*, 635 F.2d 248 (3rd Cir. 1980).

45. 635 F.2d at 257.

46. 76 CONG. REC. 1933 (1933) (Remarks of Senator Davis). For a fine analysis of the original application of the Buy American Act, see Knapp, *The Buy American Act: A Review and Assessment*, 61 COLUM. L. REV. 430 (1961). For a current analysis of case law application of the Act, see Annot., 58 A.L.R. FED 312 (1982).

It is remarkable how the floor debates in the House of Representative on the "domestic content" legislation in 1982 were so strikingly similar to the debates in Congress over its 1933 Buy American Act. For example: "Mr. Chairman, I think the real point the gentleman from Arkansas is making is that this particular bill is not a bill to deal strictly with problems of the automobile workers. It is to deal with problems of all Americans, the farmer, the automobile worker, all other workers." 128 CONG. REC. H9883-84 (daily ed. Dec. 15, 1982). (statement of Rep. English).

47. *Id.* at H9909.

48. The amendment, adopted by a vote of 195-194, stipulated that provisions of the bill would not supercede the requirements of international treaties, conventions or agreements on tariffs and trade. *Id.* at H9898-99.

49. COMMITTEE REPORT, *supra* note 4, at 7.

50. CONG. Q. WEEKLY REP., Dec. 31, 1982, at 3156. The Senate Finance Committee held hearings December 17 and 18, 1982, but did not report a bill.

units for sale in the United States market. Any material or part produced in the United States and used in the manufacture of a motor vehicle is defined as a "domestic part," and goes to make up the domestic "content" of an auto.<sup>51</sup> H.R. 5133 would have applied to "any on-the-highway, four-wheeled or three-wheeled, passenger automobile; and any automobile truck having a gross vehicle weight of less than ten thousand pounds."<sup>52</sup> The content requirements, would have been graduated according to the volume of vehicles sold by each manufacturer.<sup>53</sup> After the first year, increasingly stringent requirements would have been imposed until 1985, when the bill's provisions were to be fully phased in.<sup>54</sup> Adoption of the bill would have meant that Japanese automobiles, the sales of which numbered over 2.2 million cars in the United States in 1982,<sup>55</sup> would have been required to contain thirty percent of American "content" in 1983, sixty percent in 1984, and ninety percent in 1985.<sup>56</sup>

#### ANALYSIS OF DOMESTIC CONTENT LEGISLATION

In its report to the House Ways and Means Committee, the Congressional Budget Office (CBO) presented a laundry list of primary and secondary effects the domestic content requirements would have on the United States economy and the domestic auto industry.<sup>57</sup> The legislation's secondary effects include the following: a general slowdown in

51. S. 2300, 97th Cong., 2d Sess. § 2 (1982).

52. COMMITTEE REPORT, *supra* note 4, at 8.

53. *Id.*

54. The table below sets forth the auto content requirements.

No. Vehicles Sold in U.S.	Required minimum percentage of U.S. Content Requirement		
	1983	1984	1985
fewer than 100,000	0	0	0
100,000 to 149,999	8.3	16.7	25.0
150,000 to 199,999	16.7	33.3	50.0
200,000 to 499,999	25.0	50.0	75.0
500,000 or more	30.0	60.0	90.0

S. 2300, 97th Cong., 2d Sess. § 101 (1982).

55. Wall St. J., Jan. 6, 1983, at 2.

56. COMMITTEE REPORT, *supra* note 4, at 8.

57. Among the primary economic effects:

- (1) The bill would displace about 2.4 million foreign cars by 1990, increasing the demand for domestically produced vehicles by about 1.6 million units;
- (2) employment in auto and auto-related industries would rise by about 211,000 jobs more than otherwise by 1990;
- (3) the implied restrictions on auto imports would invite retaliatory trade measures by U.S. trading partners, resulting in higher domestic auto prices and with it the overall rate of inflation;
- (4) as a result of the displacement of resources caused by assumed retaliatory trade restrictions imposed by U.S. trading partners, by 1990 the Consumer Price Index would stand about 0.2 percent higher; real Gross National Product would be about 0.3 percent lower; and the overall unemployment rate would stand 0.1 percent higher than otherwise; in the absence of retaliation from trading partners, real GNP would increase 0.4 percent by 1990; unemployment would drop from 0.2 to 0.4 percentage points; and the Consumer Price Index would increase by 0.3% to 0.7 percent in 1990.

*Id.* at 9-12.

foreign economic activity; appreciation of the dollar on the world's currency exchanges; losses in United States auto production efficiency; and larger auto industry wage rate increases.<sup>58</sup>

Proponents of domestic content legislation argue that in the short run unemployment would be reduced because foreign auto manufacturers would establish more production facilities in the United States.<sup>59</sup> Opponents contend that this overestimates the commitment that the Japanese auto industry would make to secure its spot in the United States marketplace. It is one thing to establish foreign auto dealerships in America, but it is quite another and more complex situation to relocate the means of production from abroad to the United States.

Even if Toyota and Nissan, the largest automobile importers to the United States, located their production facilities here, adoption of domestic content legislation would require that these companies, by 1985, place ninety percent American "content" in their autos. Given this hypothetical situation, not only would these companies have to relocate their assembly, stamping, engine, and transmission facilities to the United States, but they would also have to purchase domestic parts and materials, or relocate their Japanese suppliers as well.<sup>60</sup> This hypothetical, however, appears unlikely to occur. The legislation's ultimate effect, and perhaps its supporters' intention, would be to force the Japanese to hold their American exports under 100,000 units, or else face the prospects of having to mix American component parts into their autos.<sup>61</sup> This amounts to nothing less than outright imposition of quotas on foreign imports.

Support for the domestic content legislation has emerged from both the auto industry and the United Auto Workers (UAW). Conservative political groups, have also supported adoption of the legislation. Richard Viguerie, conservative fund-raiser and publisher of *Conservative Digest*, states: "we should let our trading partners . . . know that their automobiles, electronic components, cameras, watches, steel, and other products will not continue to be welcome into our economy unless they show a greater willingness to give American products the same consideration."<sup>62</sup> Similarly, Senator Jesse Helms (R-N.C.) wants more United States agricultural export subsidies to "fight fire with fire" by matching European subsidies.<sup>63</sup>

The UAW has pushed heavily for passage of domestic content legislation. The UAW estimates that enactment of a domestic content bill would create or preserve 941,000 auto-related jobs in the United States,<sup>64</sup> and that any inflation resulting from the bill's implementation

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58. *Id.* at 12.

59. *Id.* at 78.

60. *Id.* at 28.

61. *Id.* at 29-30.

62. *The New Politics of U.S. Protectionism*, BUS. WEEK, Dec. 27, 1982, at 39.

63. *Id.*

64. COMMITTEE REPORT, *supra* note 4, at 68.

would be "quite modest."<sup>65</sup> "Whatever one concludes about increased prices," says the UAW, "they must be compared with the benefits of employing an additional 941,000 workers."<sup>66</sup>

The UAW also discounts the possibility of trade retaliation by foreign countries should Congress enact domestic content legislation. They point to the "more restrictive trade policies employed by the Europeans," but which have not, the UAW claims, been challenged under the General Agreement on Tariffs and Trade of 1947.<sup>67</sup> The UAW believes that "an acceptable international policy toward the auto industry can be negotiated only when the United States shows that it is prepared to counteract the policies of others. As the last major auto producer to take action to assure the viability of its auto industry, the United States can hardly be considered to have initiated a 'trade war.'"<sup>68</sup>

Opposition to the domestic content legislation has generally emerged from those who adhere ideologically to a concept of "free trade," and from those who merely feel the bill's concept is impracticable. Senator John C. Danforth (R-Mo.) reflected the general skepticism toward the measure when he stated that the overwhelming majority of Congressmen viewed the bill as a "perfectly ridiculous piece of legislation."<sup>69</sup> While House proponents were working for passage, opponents argued that the bill would undoubtedly aid auto workers but would ultimately lead to higher automobile prices and could possibly trigger retaliation by United States trading partners.<sup>70</sup> Many in Congress who opposed the bill did believe that some trade policy reform was in order.<sup>71</sup>

Despite the UAW's support for domestic content legislation, and its rather optimistic predictions regarding the legislation's effect on the United States economy, the Congressional Budget Office, in its report

65. *Id.* at 71.

66. *Id.* at 72.

67. *Id.* The General Agreements on Tariffs and Trade of 1947 is a vehicle by which nations may meet to discuss trade and reduce tariffs. The agreement originally intended that all nations adhere to a policy of free trade (low tariffs, or none at all), but today only the United States remains a free economy with a minimum of government subsidy. All in all, GATT has been relatively powerless in the past several years. *See generally*, Moynihan letter, *supra* note 5.

68. COMMITTEE REPORT, *supra* note 4, at 73.

69. *House Passes Auto Domestic Content Bill*, CONG. Q. WEEKLY REP., Dec. 18, 1982, at 3072. Other Congressmen commented that "[the bill] is deeply flawed legislation. It will not-repeat, will not-put American auto workers back to work. Frankly, there is cause for serious concern that the bill will cost jobs by accelerating foreign trade barriers against U.S. exports." 128 CONG. REC. H9906 (daily ed. Dec. 15, 1982) (statement of Rep. Rostenkowski, D-Ill.). Comments were also made that "[f]ree trade is beneficial to American jobs and to the American consumer. Trade restrictions such as the domestic content bill are clearly detrimental to American jobs and American consumers." *Id.* (statement of Rep. Derwinski, R-Ill.).

70. CONG. Q. WEEKLY REP., Dec. 18, 1982, at 3072.

71. "We have a fine line between two very harsh positions. We cannot continue to let the U.S. be the patsies of our trading partners, but we can't let legislation like the local content bill get so far out of line that we start an international trade war." Remarks by Rep. Michael Barnes (D-Md.), quoted in *The New Politics of U.S. Protectionism*, BUS. WEEK, Dec. 27, 1982, at 38.

to the Ways and Means Committee, generally opposed the bill. The Budget Office argued that whatever benefits would accrue to the United States auto industry, they could be "more than offset" by the costs imposed on the rest of the United States economy.<sup>72</sup> The CBO report reflects the Reagan Administration's fears that passage of domestic content legislation would not only prompt retaliation from United States trading partners, but also raise American auto prices by up to ten percent, and cost the economy from three to five billion dollars overall.<sup>73</sup>

Opposed by the Ways and Means Committee and the Reagan Administration, domestic content legislation appears doomed. Passage of H.R. 5133 by the House during the 97th Congress' "lame duck" session, however, raises doubts about the blatant political motives for the bill's earlier support.

By approving the Fair Practices in Automotive Products Act in December, 1982, the House of Representatives adopted the strongest piece of protectionist legislation since the Smoot-Hawley Tariff in 1930.<sup>74</sup> Congressmen genuinely felt that the American economy would sink deeper and deeper into the recessionary abyss unless the legislature acted. At the very least, the measure's passage sent a message to the United States' trading partners that unless trade barriers were eased abroad, most notably in Japan, United States domestic pressures might grow so strong as to make adoption of some form of United States trade barriers inevitable.<sup>75</sup>

Though protectionism is tempting, it is a trap that the United States must avoid.<sup>76</sup> Protectionist policies, at best, provide only quick-fix solutions to much deeper problems. Adoption of such a rigid trade policy as domestic content legislation, as the Smoot-Hawley Tariff has proven, leads to retaliation after retaliation by trading partners. Consumers

72. COMMITTEE REPORT, *supra* note 4, at 10. The CBO does not mince words in its analysis:

The net benefits to the U.S. economy implied by [the economic analysis] results, however, are the consequence of the low level of economic activity and resource utilization that many forecasters anticipate for the next several years. If the U.S. economy were operating closer to full capacity, the beneficial effects would be cancelled out entirely. Indeed, in a fully employed economy, the net effects . . . would probably be negative. The employment and output gains in the U.S. auto industry would be at the expense of production and unemployment elsewhere in the economy . . . Thus, even without retaliation, the net effect of [domestic content legislation] on the U.S. economy would be negative.

*Id.* at 11.

73. Morrow, *The Protectionist Temptation*, TIME, Jan. 10, 1983, at 68.

74. Rep. William Dannemeyer (R-Cal.) proposed an amendment to the domestic content bill to rename it the "Smoot-Hawley Trade Barriers Act of 1982," and states that its purpose was "to reduce competition in the auto industry, protect jobs in one industry to the detriment of jobs in other industries, and to increase the price of automobiles to consumers." The House rejected the amendment by the vote of 92-301. See debate and vote on amendment, 128 CONG. REC. H9865-9909 (daily ed. Dec. 15, 1982).

75. Sen. John Danforth (R-Mo.) dismisses this argument, stating that "a country begins very quickly to lose its credibility if the signals it chooses to use are asinine on their face." CONG. Q. WEEKLY REP., Dec. 19, 1982, at 3072.

76. See generally Morrow, *supra* note 73, at 68.

will ultimately pay the price for the American auto industry's lack of foresight and failure to produce small, cheap, efficient, and comfortable cars. As Senator John Chaffee (R-R.I.) recently noted, "it is very easy to kick the Japanese around to account for our own deficiencies" in business, labor, and government economic policies.<sup>77</sup> While Chrysler President Iacocca has called for further reduction in Japanese imports to the United States,<sup>78</sup> he fails to note that the present limit is self-imposed by the Japanese. Iacocca has not expressly endorsed the establishment of unilateral quotas or tariffs, yet supports the domestic content concept, which indirectly imposes those quotas.

### CONCLUSION

The auto industry, its workers, and the consumers, must all realize that America will no longer have a monopoly on world automobile production. We must admit to ourselves that other nations can now produce some goods better and much more cheaply than American manufacturers, just as America produces many other goods, including food, much better and more cheaply than other nations. Adoption of a trade barrier such as the domestic content bill means America is unwilling to be honest with itself.

The best method to extinguish talk of a protectionist trade policy is to restore confidence in our own economy. America's and the world's economic problems are not caused by a single nation and cannot be solved by unilateral "trade" policies. Trade negotiations, economic summits and the like will produce the best long-term solutions to trading inequities. The recent visit to America by Japanese Prime Minister Nakasone had several encouraging results,<sup>79</sup> the greatest being that leaders of the two "warring" nations openly discussed the problems facing their respective countries.

By endorsing the domestic content legislation, those seeking to protect the American auto industry have endorsed the imposition of a powerful trade barrier, without having to use loaded words such as "tariff" or "quota." Congress and the President must be prepared to reformulate economic policy to reduce unemployment and the budget deficits. Only in that manner will Washington convey a message to the hapless auto industry, its workers, and the employed and unemployed

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77. Chicago Sun Times, Jan. 22, 1983, at 15.

78. Morrow, *supra* note 73, at 68.

79. Both President Reagan and Prime Minister Nakasone warned against protectionist trends that could set off disastrous trade wars. Nakasone has recently initiated tariff cuts on 323 items, raised Japan's defense budget, ended a 16-year ban on exporting military technology to the United States, and vowed to streamline import procedures. By these actions, Nakasone risks political embarrassment at home. Chicago Sun Times, Jan. 22, 1983, at 15.

across the nation, that the only thing we have to “fear” is protectionism itself.

*Thomas J. Brilbeck\**

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\* B.A. State University of New York at Geneseo, 1981; J.D. Candidate, Notre Dame Law School, 1984.