SUBSIDIES LAW AND ADJUSTMENT POLICIES: THE 1982 EEC-US STEEL DISPUTE REVISITED

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In recent years most of the developed nations have shared problems of competitiveness and obsolescence in the manufacturing sectors of their economies, especially in the steel industries. Proposals for domestic adjustment policies, including government intervention to revitalize these industries, have prompted increased attention in some countries and implementation in others. Brian Zimbler explores the ramifications of such government intervention to support industrial competitiveness by examining the relationship between adjustment policies and the traditional agreements and rules which govern international trade. Finding that present rules are ill-suited for coping with widespread use of adjustment policies, Zimbler suggests — reasoning from the U.S. and international legal experience with the 1982 EEC-US steel dispute — that the developed countries should develop a cooperative and complementary set of adjustment policies through international negotiation in order to concentrate on sharing gains rather than apportioning losses.

INTRODUCTION

The increasing efforts of developed nations to pursue "positive adjustment policies" may pose significant dilemmas for international trade regulation. Since at least the mid-1970s, many observers have advised the developed economies to modernize their outdated industrial bases, reduce surplus capacity in sectors which have lost comparative advantage to the developing or "newly-industrializing" states, and shift resources to high-technology, knowledge and skill-intensive areas like computers or scientific equipment.[1] Some observers believe that government intervention should play an important role in the "reindustrialization" or adjustment of the developed economies, since private capital markets and deeply-entrenched labor and business

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1. *See, e.g.*, Reich, *Beyond Free Trade*, 61 For. Aff. 773 (1983), and Lindbeck, *Can the Rich Countries Adapt?*, OECD Observer 6 (Jan. 1981).

constituencies have failed to initiate modernization on their own.[2] When sectors targeted by government action produce goods for export, however, publicly supplied capital and other types of "adjustment" aid may contravene international agreements, including the General Agreement on Tariffs and Trade (GATT) Code on Subsidies and Countervailing Duties. The potential conflicts between national adjustment policies and international restrictions on export subsidies highlight the inevitable tension between national sovereignty and attempts at international trade liberalization.[3] What seems a vital government adjustment program in the home country may be perceived by its foreign trading partners as an unfair subsidy, artificially lowering the price of goods the foreign partners import and driving firms in their own import-competing sectors out of the market.

This article will suggest that existing international and U.S. trade laws provide an insufficient response to the conflict-laden pressures which adjustment policies and subsidy laws place on the international economic system. Some developed economies may need to "restructure" their traditional, heavy-industry sectors, perhaps even dismantling them to a large degree. But government aid to export-oriented sectors may threaten or injure import-competing firms in other states, provoking foreign application of countervailing duties to neutralize the effects of such aid. Conversely, some governments may employ subsidies as non-tariff barriers to protect ailing industries from international competition, justifying the subsidies as "domestic policies" permitted under current international agreements.

The 1982 dispute between the European Economic Community (EEC) and the United States provides an example of this scenario. U.S. firms filed countervailing duty suits in response to alleged dumping and subsidization of steel products by numerous EEC states.[4] The defendant states claimed that while they conducted programs to subsidize the restructuring of their steel industries, such programs did not violate international trade standards, and hence did not justify application of countervailing duties by the U.S. Although this EEC defense was rejected by U.S. authorities, the dispute was settled by an import quota agreement, with the subsidy issue left unresolved. Of course, the quota agreement neither obliges the parties to continue their internal adjustment processes — since it guarantees them a fixed market share through 1985 — nor enhances international trade liberalization. Better coordinated, more rational international policies

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2. Ohlin, *Subsidies and other Industrial Aids*, in International Trade and Industrial Policies 25-27 (S.J. Warnecke ed. 1978) (Hereinafter cited as ITIP.)
3. On national sovereignty and its clash with international trade policies, see W. Diebold, Industrial Policy as an International Issue 43-58 (1980).
4. A general description and analysis of dumping problems is beyond the scope of this paper. *But see infra* note 61.

on subsidy and adjustment issues might have generated a more satisfactory result.

Part one of this article will examine the nature of subsidies, contrasting their usefulness as tools of domestic adjustment policy with their potential for export promotion and trade distortion. Part two reviews the EEC-U.S. dispute over steel, suggesting that while both parties may have had strong needs to "reindustrialize" their domestic steel industries and cut surplus capacity, the U.S. never accepted the legal validity of subsidized EEC steel imports. Part three explores the impact of international and U.S. trade laws upon the steel dispute example, noting especially the failure of the law to encourage rational attitudes toward adjustment. Part four will consider possible new perspectives which might prompt industrial states to consider the benefits of planned, mutual adjustment at shared cost, and to revise their subsidy policies accordingly.

I. THE NATURE OF SUBSIDIES

Subsidies are often supported as exceptions to the theory of a liberalized, self-regulating world economy. Modern theory suggests that trade flows are determined by comparative advantage, and that restraints on government intervention will enable the world economy to generate efficient patterns of production and distribution.[5] However, national governments frequently place priority on goals other than the maximization of world production or international trade, a fact which may lead them to select such trade-distorting policy tools as the subsidy. For the purposes of this article, a subsidy is defined as "any government action which causes a firm's, or a particular industry's, total net private costs of production to be below the level of costs that would have been incurred in the course of producing that same level of output in the absence of government action."[6] Within the context of a single national economy, subsidies chosen for purely internal objectives may be labelled "domestic" subsidies. In the wider context of international trade, subsidies primarily designed to increase a state's foreign sales of certain goods will be called "export" subsidies. The varied forms which subsidies may take include direct or indirect tax advantages, grants or credits, provision of special government services, equity or debt capital, outright purchase of a firm by a public agency,

5. On the benefits of trade liberalization, see, e.g., Blackhurst, Marian, and Tumlir, *The Issue of Further Reductions in Barriers to International Trade*, ch. 8 in International Trade and Finance (R.E. Baldwin and J.D. Richardson 2d ed. 1978).
6. Malmgren, *Negotiation of Rules on Subsidies in a World of Economic Interventionism*, ch. 10 in ITIP, *supra* note 2, at 219.

or other mechanisms which benefit selected firms or industries.[7] General subsidies distributed evenly to all industries throughout an economy provide no advantage in international trade, and hence will not be considered in this article.

A. Subsidies as Policy Instruments

As a means of promoting domestic or export policy objectives, a subsidy's operation is straightforward. Domestically, subsidies alter the distribution of goods and resources by encouraging firms to produce more of the subsidized good than they would under normal conditions, relative to other goods.[8] Overseas, an export subsidy permits exporters to offer larger amounts of the subsidized good to foreign buyers, at any given world price, than they would normally. If the price-elasticity of foreign demand relative to local demand is high, total exports may increase substantially.[9] Ideally, subsidies allow domestic exporters to increase their share of foreign markets.

For policymakers willing to distort market forces, the obvious advantage of subsidies is that they allow the attainment of specific objectives. On the domestic scene, subsidies may permit the economy to attain a certain production mix which the market has failed to generate on its own.[10] This in turn may redistribute income or fulfill certain national employment goals. Abroad, subsidies increase penetration of foreign markets and, given the right conditions, may result in greater total sales.[11] Of course, importing states' use of countervailing duties may nullify the potential power of such devices. Such duties are an acceptable practice when subsidized goods cause "material injury" to home industries and they may also apply to markets in third countries, when subsidized goods compete within them on a privileged basis. A derivative advantage, of course, is enjoyed by consumers in the importing country, who buy subsidized goods at prices below those of the domestic market.

The disadvantages of subsidies — aside from their propensity to provoke countervailing duty action pushed by angry import-competing firms, in

7. *See* Mutti, Taxes, Subsidies, and Competitiveness Internationally 9-13 (1978); R.G. Hawkins, The United States and International Markets 82-84 (1972); for examples in more detail, see I. Stoler, Subsidies and Countervailing Measures: The Tokyo Round Trade Agreements 28-32 (1980).
8. This assumes consumers face world prices. See R. Caves and R. Jones, World Trade and Payments 219-220 (3d ed. 1981).
9. R.G. Hawkins, *supra* note 7, at 69-71.
10. *See, e.g.*, Baldwin, *The Tokyo Round of Multilateral Trade Negotiations*, ch. 15 in International Trade and Finance, *supra* note 5, at 233-34.
11. For instance, the exported good must be a sufficient — if not perfect — substitute for the goods it competes with abroad. *See* Mutti, *supra* note 7, at 31.

effect setting off trade wars — lie essentially in their conscious distortion of domestic and international market forces. The subsidies may create an inefficient allocation of world resources, resulting eventually in a reduction of world income. In the long run, losses in welfare experienced by a subsidizing state as a result of such world production and income shifts may outweigh the gains derived from the subsidy.[12] For instance, subsidy policies might distort the trade flows generated by trading states' underlying comparative advantage, leading the "wrong" states to specialize in production of certain goods. These policies might result in the sacrifice of potential gains from trade.[13]

Yet, despite these drawbacks, governments still provide a rationale for using subsidies as a means to promote the restructuring or streamlining of ailing industries. The argument runs as follows: although capital markets have failed to cut surplus capacity, retool existing plants which have profit potential and replace old equipment with new processes, governments may effectively step in to make "declining" or import-battered home industries competitive once again. In short, "market failure" may justify the use of a subsidy.[14] Furthermore, while such a subsidy may distort international trade flows in the short run, it may also facilitate the domestic adjustment process, eventually enhancing world efficiency. Such long-run world efficiency benefits may justify the short-run costs in trade distortion which subsidies entail. A more general version of this argument defends use of the "escape clauses" in GATT to apply tariff and non-tariff barriers in pursuit of temporary adjustment objectives.[15]

The argument for subsidies seems even stronger when such "externalities" as the social costs of adjustment efforts are taken into account. Trade assistance to troubled export industries has traditionally sought to retrain workers and facilitate their transition to new jobs.[16] Most developed countries, including the United States, have adopted major programs to assist and relocate workers in industries targeted for capacity reduction or other adjustment measures.[17] If the beneficiaries of such programs

12. R.E. Baldwin, Nontariff Distortions of International Trade 7, 49 (1970).

13. *See, e.g.*, Malmgren, *supra* note 6, at 220.

14. On reducing surplus capacity, for example, see Zysman and Cohen, *Double or Nothing: Open Trade and Competitive Industry*, 61 For. Aff. 1113, 1122-26 (1983), and Reich, *supra* note 1, at 794-95.

15. *See* Diebold, *supra* note 3, at 73-76.

16. The differences between subsidizing industry and facilitating worker or capital adjustment have puzzled some observers. *See* Hinton, *Comment*, in Prospects for Partnership: Industrialization and Trade Policies in the 1970's (H. Hughes ed. 1973), at 178-80.

17. *See, e.g.*, Prospects for Partnership, *supra* (hereinafter Prospects), at 164-69; Richardson, *Trade Adjustment Assistance under the United States Trade Act of 1974: An Analytical Examination and Worker Survey*, in J.N. Bhagwati, Import Competition and Response (1982), at ch. 12; Braun, *The European Economic Community Approach to Adjustment*, in Prospects, *supra*, at 202.

eventually shift to new productive activities, the programs may be viewed as successful "adjustment aid"; until a shift occurs, they may be classified as pure subsidies.[18] Of course, even well-intended adjustment expenditures may merely become programs to preserve or revive an industry, transforming once-legitimate adjustment efforts into protection.[19]

B. Prohibition of Subsidies

The GATT rules governing subsidies seek to prevent manipulation of trade by aggressive exporting states, and to avoid the consequent distortion of international trade behavior. Existing international agreements have several objectives. First, they partly insulate domestic economies from the uncertainty created by sudden flows of low-cost, subsidized imports. Domestic producers may then invest and plan without fear of disruptions. The resulting market smoothness and benefits to consumers should outweigh any "transitory" windfalls they might gain from subsidized imports.[20] Second, the existence of rules provides a formal limitation on government policies, thus decreasing the chances that weak-willed administrations will provide subsidies in acquiescence to political pressures.[21] Third, when adjustment involves mere "correction of book values" — revaluation of failing industries' assets to reflect current conditions — restraints on government aid may force investors and creditors to face reality, increasing levels of information and efficiency in the economy.[22]

Proponents of government-sponsored adjustment, however, might find a rigid rule against export subsidies unduly narrow. First, they would argue, home governments should perhaps accept subsidized imports as sources of windfall consumer benefits which improve the terms of trade. In addition, low-cost imports may enable the government or business actors to transfer resources to other sectors without jeopardizing supply in the import-competing sector.[23] Second, international trade rules not flexible enough to adapt to differing situations may invite states to break or ignore them, undermining overall compliance with international trade

18. Verreydt and Waelbroeck, *European Community Protection against Manufactured Imports from Developing Countries*, in J.N. Bhagwati, *supra* note 17, ch. 13, at 372.
19. Ohlin, *National Industrial Policies and International Trade*, ch. 10 in Toward a New World Trade Policy: The Maidenhead Papers (C.F. Bergsten ed. 1975), at 174.
20. Tumlir, *The New Protectionism, Cartels, and the International Order*, in Challenges to a Liberal International Economic Order (Amacher and Ryan eds. 1979) at 253.
21. *Id.*, at 254.
22. *See id.*, 245-46.
23. For this argument applied to steel, see *World Steel Trade: Current Trends and Structural Problems. Hearing Before the Subcommittee on Trade of the Committee on Ways and Means, House of Representatives*, 95th Cong. 1st Sess., Sept. 20, 1977 (hereinafter *World Steel Trade*) at 231.

law.[24] In this case, a firm antisubsidy rule may be unrealistic, and therefore a counterproductive policy. Third, to the extent that real costs are involved in shutting down or retooling old plants, retraining workers, and absorbing the short-term operating losses of firms which promise long-term profit, government subsidies may enhance the adjustment process. An antisubsidy rule without an "adjustment" exception could shut off all exports by the adjusting industry, reducing its revenues and thus increasing the adjustment burden borne by the government. Adjustment could be delayed substantially if governments preferred to furnish year-to-year protection measures, rather than the relatively higher-cost single doses of capital required for restructuring.[25]

In summary, subsidies may be regarded as either effective devices of national adjustment policy or illegitimate means of providing unfair advantages to a nation's export goods. The degree to which subsidies should be allowed depends on the potential injury they may cause to foreign markets and industries, the gains from adjustment likely to be achieved by their use in particular states, and the long-term benefits which national adjustment policies may hold for other members of the international economic system. In other words, it would make sense for states to encourage national "adjustment" policies, including subsidies, as long as the eventual world benefits of a state's adjustment outweighed the resulting welfare losses incurred by its trading partners. For example, if a state's adjustment permitted it to convert an inefficient industry into a streamlined one — producing goods at a higher productivity rate and lower capacity than before — both the state and its trading partners would reap benefits from greater world efficiency and specialization.[26] Alternatively, trading partners might accept an exporting state's subsidy policies because they "cushion" its adjustment, and because its domestic political conditions would otherwise not have allowed such large-scale internal changes. All of this implies, of course, that subsidy policies enacted without other states' consent will provoke controversy. Further, if numerous states pursue their own *ad hoc* internal adjustment policies — each by means of subsidies — the effects of such conflicting policies on international trade could be catastrophic.[27]

24. Flexible negotiations and case-by-case rulemaking in GATT have won praise as a successful form of multilateral treatymaking and treaty operation. *See* McRae and Thomas, *The GATT and Multilateral Treaty Making: The Tokyo Round,* 77 Am. J. Int'l L. 51 (1983).

25. For example, some EEC states in the mid-1970's used subsidies to encourage capacity reduction and better quality construction. If these measures failed, outright protection — rather than abandonment or full-scale revitalization of the industry — was likely to follow. See Diebold, *Subsidies and other International Economic Issues,* ch. 8 in ITIP, *supra* note 2, at 184-85.

26. *See* Malmgren, *supra* note 6, at 224-225.

27. *Id.,* at 225, and W. Diebold, *supra* note 3, at 26-27.

II. THE EUROPEAN ECONOMIC COMMUNITY AND THE UNITED STATES: TWO AILING STEEL INDUSTRIES CONFRONT EACH OTHER

Despite dramatic growth in both world steel demand and production during the 1960s and early 1970s,[28] the industry had reached a point of decay and crisis by the 1980s.[29] In the developed countries, declining world output provoked a variety of responses, many marked by resistance to market forces. The EEC states at first directly subsidized their steel industries to pursue employment and "regional development" objectives, then stepped up aid to keep the newly-expanded industries from going bankrupt under unfavorable world conditions. Price reductions to increase penetration of American and other markets became an important part of this strategy, and combined with a cartel and limited protection in Europe to preserve domestic prices and market shares. The U.S. industry sought to insulate itself from competition and foreign price-cutting largely by attempts at direct protection.[30] At the same time, the developing countries became steelmaking competitors in terms of price and production efficiency, posing a long-term threat to the once-dominant status of U.S. and EEC producers.[31] Since the U.S. and EEC states had traditionally traded heavily with each other, their declining domestic price competitiveness and demand produced a shared impact. The current crisis became a "competitive struggle over where capacity reductions [would] occur."[32]

A. EEC SUBSIDIES AND THE DAVIGNON PLAN

Government intervention in the EEC steel industry has been a basic fact of postwar economic life. While British Steel Corporation — a producer of 28 million tons annually — became nationalized in 1967, the industries in France, Belgium, and Italy also came under growing government control.[33] The major French steel conglomerates Usinor and Sacilor were fully nationalized in 1981, although the government had long before acquired 90 per cent participation via debt and equity capital.[34] Complaints

28. Total production grew from 340 million tons in 1960 to 709 million in 1974. W.T. Hogan, World Steel in the 1980's: A Case of Survival (1983) at 2.
29. *See, e.g.*, *Steelmakers of the world repent . . .* , Economist, Oct. 1, 1983, at 74-75.
30. D.F. Barnett and L. Schorsch, Steel: Upheaval in a Basic Industry (1983) at 47, 239-42.
31. The Third World expanded production from 60.3 million tons to 100.8 million between 1974 and 1980. W.T. Hogan, *supra* note 28, at 2. On the industrial development of Third World countries relative to the developed ones, see generally L. Anell, Recession, The Western Economies and the Changing World Order (1981) at 72-81.
32. *See* D.F. Barnett and L. Schorsch (hereinafter Barnett), *supra* note 30, at 47, *and* Walter, *Protection of Industries in Trouble — the Case of Iron and Steel*, 2 The World Economy 155, 171 (1979).
33. W.T. Hogan (hereinafter Hogan), *supra* note 28, at 5.
34. *See Numéro Spécial Nationalisations*, Regards Sur L'Actualité, March 1982, No. 79, at 78.

by remaining private steel firms charged that the subsidized producers operated from an unduly advantaged position, creating new challenges for EEC competition policy. In addition to individual state intervention, the treaties of the EEC and European Coal and Steel Community (ECSC) provide for Social Funds to retrain and resettle workers displaced by the adjustment processes inherent in European integration. These funds provided $600 million (half of all public spending on worker adjustment) for steel and other industries between 1953 and 1970.[35]

As steel markets experienced severe demand reductions in the mid-1970s, neither traditional government help nor EEC moral suasion — such as a warning in the early 1970s that continued steel industry expansion would require "rationalizing" and modernizing existing plants[36] — were sufficient to quell protectionist tendencies. Individual states began to impose protectionist measures against steel imports. For instance, the United Kingdom became quite active in establishing dumping investigations and "nuisance" measures against Spain, Japan, and some centrally planned economies by 1977.[37] Most states also stepped up long-term financing to cover industry losses.[38] Even the ECSC, recognizing the growing difficulties of member state industries, provided $280 million in loans to steel producers between 1976 and 1978.[39] Finally, in the face of Community-wide excess capacity of 60 to 70 percent, the EEC Commission assumed a still more active role: its Simonnet plan of 1976 called for voluntary production cutbacks. When this proved inadequate, the first Davignon plan of 1977–78 established minimum internal and import prices for all Community-located steel purchases.[40] Specific provisions of the plan — which was voluntary — included a negotiated agreement with foreign producers to limit their exports to 1976 levels; establishment of the Eurofer cartel agreement to ensure minimum domestic selling prices; and permission for construction of new steel plants in the Community only when producers agreed to dismantle old plants of equivalent volume.[41] Eventually, the

35. Braun, in Prospects, *supra* note 17, at 203-204. Currently, EEC social policies on behalf of workers continue. *See, e.g.*, Resolution of the European Coal and Steel Community Consultative Committee on social policy for the coal and steel industries, O.J. Eur. Comm. (No. C 276) 2-3 (Oct. 19, 1982).

36. *See* Commission des Communautés Européennes (CECA), Collection Objectifs Généraux "Acier": Mémorandum sur les objectifs généraux de la sidérurgie de la Communauté pour les années 1975-1958, at 81-82 especially (1971).

37. S.A.B. Page, *Protectionism and its Consequences for Europe*, 20 J. Common Market Stud. 17 (1981) at 25. British Steel losses were 20 percent of sales by 1977. Tumlir, *supra* note 28 at 242. However, the remaining private steelmakers in the United Kingdom had regained relative health, by then. *See* Walter, *supra* note 32, at 172.

38. *See, e.g.*, E. Dourille, La sidérurgie dans le monde depuis 1952 at 175-76 (1981).

39. Mutti, *supra*, note 7, at 27.

40. *See generally* Page, *supra* note 37, at 25, *and* Walter, *supra* note 32, at 74, 172.

41. Walter, *supra* note 32, at 174.

plan included country-by-country quotas and price cuts negotiated directly between producers and EEC Industry Commissioner Viscount Davignon. Some quotas required reduced output of up to 25 percent.[42]

The combined weakness of world markets and the failure of EEC producers to respect the quotas set in 1978 caused the collapse of the original Davignon plan by 1980. Producers' fear of labor unrest and loss of market shares may explain their lack of compliance.[43] In response, and despite strong opposition from some companies, the EEC declared an "emergency" situation in the steel industry — under authority granted by Article 58 of the Treaty — to take stronger action. A system of mandatory cutbacks in production, supported by sanctions for noncompliance, came into effect. In 1981, this system gave way to Eurofer II, a renewed voluntary agreement for minimum prices and maximum production levels.[44]

To implement the second Davignon scheme, the Commission promulgated special rules for individual state aid to the steel industry. The rules sought to promote thoroughgoing modernization and capacity reduction as part of a "Community steel policy." They required that aid be of restricted duration, "transparent" and openly given, nondiscriminatory in its application to public and private firms, and coordinated with the Commission.[45]

The 1980 Davignon plan prompted some moves to restructure and dismantle obsolete facilities, and individual companies and states apparently developed programs to stay within the new quotas and price guidelines.[46] Further, some governments and employers weathered heavy labor unrest to implement production cutbacks and plant closings. Strikes were particularly severe in Germany, France, and the United Kingdom, yet one analyst suggests that these states made "creditable progress" in rationalizing their steel industries.[47] Of course, the risk remained that subsidies, production quotas and minimum prices would become mechanisms to avoid basic restructuring on the part of some member governments, deterring competition within the Community as well as in international markets.[48] EEC subsidy expenditures from 1976 through 1982 totalled over $14 billion,

42. Hogan, *supra* note 28, at 20-21.
43. *See* Commission of the European Coal and Steel Community, Investment in the Community Coalmining and Iron and Steel Industries (1980) at 14.
44. The quotas for flat-rolled products, sheet and strip derivatives, and some other goods remained under Article 58 after 1981. *See* Hogan, *supra* note 28, at 21-23.
45. *See* Commission Decision No. 257/80/ECSC of 1 Feb. 1980, establishing Community rules for specific aids to the steel industry, O.J. Eur. Comm. (No. L 29) 5-7 (Feb. 6, 1980).
46. For a survey, see Hogan, *supra* note 28, at 23-32.
47. *See* Verreydt and Waelbroeck, *supra* note 18, at 389.
48. For comments along these lines by the director of EEC competition policy, see Etzenbach, *Aides Sectorielles et Droit Communautaire: Le Cas de la Sidérurgie, du Textile et de la Construction Navale*, in Aides et Mesures de Sauvegarde en Droit International Economique (P. Demaret ed. 1979) at 79-82.

or $46 per ton produced.[49] This figure appears even more significant in light of the fact that exporters to U.S. markets undercut the U.S. list price for steel by $100 per ton in 1977. The actual subsidy amount may have been higher, since another estimate put total EEC subsidy expenditures from 1975 to 1983 at $30 billion.[50]

Critics of the Davignon program have suggested that the independent objectives of EEC governments will eventually cause its dismantling, since national policy remains a stronger priority for them than Community solidarity.[51] Others have pointed out that the EEC seems unlikely to meet its stated goal of phasing out all subsidies by 1985, raising questions about: (a) the temporary or emergency character of its aid programs;[52] (b) the ability of producers to circumvent minimum price standards undetected;[53] or (c) the fact that even temporary subsidies may entail long-range market distortions with unseen costs for the subsidizing states' trading partners.[54] Still, the EEC Commission has continued to enforce the Davignon program in hopes of some successful adjustment.[55] Indeed, it negotiated a series of more severe reduction agreements in 1983. At the same time, some EEC steelmakers called for increased protection to maintain the Davignon quotas and prices. The Community has so far resisted the temptation to add new protection, but has created new safeguards to discourage price wars between EEC producers.[56]

B. THE RESPONSE: U.S. PROTECTIONISM

Since President Truman's failed attempt at temporary nationalization of U.S. steel plants during wartime, the U.S. government has been closely involved in steel pricing and production policy. In the early 1950s, the Truman administration mandated the construction of increased steel capacity, which it considered vital to national security in light of possible world steel shortages. Until the late 1960s, the U.S. government was closely

49. Crises in the Steel Industry: An Introduction and The Steel Industry in Transition, Subcommittee Staff and Congressional Budget Office Materials prepared for the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, March 1982 (hereinafter Crises in the Steel Industry) at 40.
50. Hogan, *supra* note 28, at 6, 49.
51. W. Diebold, *supra* note 3, at 117-18.
52. Economist, Oct. 1, 1983, at 74, col. 3-4.
53. *Growing old,* Economist, Dec. 25, 1982, at 82, col. 2. Indeed, some report that price and quota rules have been disregarded. *See Alas, poor Etienne,* Economist, Nov. 20, 1982, at 70.
54. *See Why Our Trade Remedy Laws Need Amending,* AISI Steel Comments, July 8, 1983, at 3.
55. *See Steel is sicker than ever,* Economist, Oct. 2, 1982, at 49.
56. Total EEC production is to be reduced 26.7 million tons from its 1980 levels. *See La CEE demande de nouvelles fermetures d'usines sidérurgiques en Europe,* Le Monde, July 1, 1983, at 1, col. 2. On new safeguards, *see* Economist, Aug. 21, 1982, at 55, and N.Y. Times, Dec. 23, 1983, at D4, col. 3.

involved in steel industry wage negotiations, particularly when these involved strikes and protracted bargaining. In part, government policy sought to minimize the effects of new wage increases on inflation.[57] Trade was not an issue of major importance at this stage, although industry management was already attempting to demonstrate that the threat of "low-paid foreign competition" could result in large-scale exports of employment. To avoid this, it urged labor to modify its demands. Generally, both labor and industry leaders had reason to favor liberal trade policies, because total U.S. steel exports exceeded total steel imports through the mid-1960s.[58]

A drastic change began in the late 1960s, as surges of new foreign competition led both steel workers and industry leaders to request new U.S. trade barriers. Once imports had risen to almost 17 percent of the U.S. steel market, the Nixon administration negotiated self-administered quota agreements with the major exporting countries. These were the "Voluntary Restraint Agreements" (VRAs), which included characteristics somewhat different from more traditional import quotas applied by importing states.[59] While VRAs had only limited usefulness and expired in the short-lived world steel boom of 1973–74,[60] they established a pattern of protectionist responses to U.S. steel problems which was to persist. After imports rose again, the Carter administration dealt with steel industry antidumping suits by proposing the Solomon Plan. This plan included tax and development aid for the steel industry, as well as the "trigger price mechanism" (TPM) under which steel imports falling below a certain price level would trigger automatic, accelerated dumping investigation. At first, this appeared to assure that imports would not exceed 15 percent of the total market. Gradually, however, it became clear that enforcement of the TPM program was lax. Furthermore, it induced a combination of voluntary Japanese import restraint and high U.S. internal steel prices, creating a perfect opportunity for increased European steel exports to enter the U.S. at prices below those prevailing in the EEC. The U.S. finally dropped TPM in 1982.[61]

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57. Barnett, *supra* note 30, at 234-38.
58. Bernstein, *The Trade Policy of the United Steelworkers of America*, ch. 14 in Toward a New World Trade Policy, *supra* note 19 (hereinafter New World Trade Policy), 229-31.
59. *See* Bergsten, *On the Non-Equivalence of Import Quotas and "Voluntary" Export Restraints*, ch. 15 in New World Trade Policy, *supra* note 19.
60. Because they only limited aggregate tonnage, TPM rules allowed exporters to shift to higher value products and maintain or increase their dollar share of U.S. markets. Barnett, *supra* note 30, at 239.
61. *Id.* 239-41. *See also* Rosegger, *Trigger Prices Under Floating Exchange Rates: A Dubious Experiment in Trade Policy*, 14 Case Western Reserve J. Int'l L. 493 (1982). Generally, current U.S. antidumping law has been criticized as using cost criteria which neither fit its objectives nor

Since the late 1970s, U.S. steelmakers have stressed the need for general protectionist measures to stave off low-priced imports, which they argue are unfairly subsidized and produced by exploited, low-wage laborers.[62] The steel industry has also suggested that the U.S. needs direct government action to offset the effect of foreign subsidies, since "artificial exchange rates, tax rebates, and below-cost prices have provided foreign producers with a margin of advantage they would not be able to derive from production cost advantages alone."[63] For instance, U.S. producers claimed that EEC subsidies in 1979–81 cost them an estimated $3.2 billion in lost revenue.[64] Most recently, steel industry efforts to oppose imports have become quite aggressive. In late 1983 Bethlehem Steel Corporation filed suits for relief under Section 201 of the Trade Act, arguing that imports were "severely injuring" the domestic industry.[65] Steel producers have promised more suits, and have called on Congress to set 15 percent market share limits on foreign steel imports for a five-year period.[66] Moreover, Congressional receptivity to such measures may be increasing.[67] In addition, steel produced by various Third World states, as well as by the Europeans, has prompted countervailing duty and dumping suits by U.S. producers. In particular, they have claimed that international development loans give Third World steel producers an unfair advantage.[68]

Specialty steel imports have provoked unusually heated complaints from U.S. producers as well. In response, the Reagan administration doubled import tariffs on specialty steel in July 1983, with plans to reduce them progressively over the next three years. This brought about a vivid reaction from EEC officials, who threatened tariff retaliation against certain U.S.

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properly measure the extent of import activity in question. *See, e.g.*, Kawahito, *Steel and the U.S. Antidumping Statutes*, 16 J. World Trade L. 152 (1982). Dumping and TPM measurements have been shown to depend on the parameters of models employed in their calculation. *See* B.J. Eichengreen and H. van der Ven, U.S. Antidumping Policies: The Case of Steel, NBER Working Paper Series, March 1983.

62. *See Dumping and Subsidization in Plain English: Why Are They Unfair?*, AISI Steel Comments, Nov. 15, 1982, at 3-4, and text accompanying note 58, *supra*. *See also Steel Industry Seeks Cut in Imports from Japan*, AISI Steel Comments, Jan. 4, 1983, and *Surging Unfair Trade from Developing Countries*, AISI Steel Comments, Nov. 11, 1983.

63. *See Multilateral Trade Negotiations: Hearings Before the Subcommittee on Trade of the Committee on Ways and Means, House of Representatives*, 96th Cong., 1st Sess., April 23-27, 1979, at 323 (statement of Rep. Gaydos, Congressional Steel Caucus). For analysis along similar lines, see Gold, *Protectionism and Steel: The Need to Replace Outworn Perspectives*, 14 Case Western Reserve J. Int'l L. 447 (1982).

64. *Dumping and Subsidization in Plain English*, *supra* note 62, at 4.

65. N.Y. Times, Nov. 17, 1983, at D1, col. 6. On the Trade Act, see *infra* Part III.B.

66. N.Y. Times, Nov. 11, 1983, at D4, col. 3; Nov. 21, 1983, at D1, col. 3; and Feb. 9, 1984, at D1, col. 3.

67. *See, e.g.*, Economist, Dec. 25, 1982, at 86.

68. *See* 9 U.S. Import Weekly 254 (Nov. 16, 1983), and N.Y. Times, Dec. 31, 1983, at D4, col. 1.

export goods if the U.S. measures were not withdrawn. By January 1984, the EEC had submitted a list of several U.S. products targeted for retaliation — including basic chemicals and sporting goods — while efforts to settle the dispute continued. The Europeans apparently rejected U.S. offers of compensation for injury to EEC specialty steel producers. Several non-EEC states signed quota agreements with the U.S. rather than suffer the burden of new tariffs.[69]

Aside from calls for protection, the U.S. steel industry has also sought increased government assistance to help it invest in more modern, larger plants, and regain its international competitiveness. Such requests opened a wide-ranging debate between proponents of large-scale reinvestment in the steel industry and critics of such investment. Critics felt that at best, government spending to ease the adjustment of the U.S. economy *out* of major steel production might be appropriate. In response, the industry argued that it could again become a major world producer, fulfilling total U.S. domestic needs and possibly regaining its former status as an exporter. In order to match foreign competition, it argued that it needed only to renovate aging and outdated plants to take advantage of modern technologies and economies of scale. "Brownfield" investment, under this view, would be a successful variant of the industry's traditional "massive modernization" strategy.[70] The average U.S. plant's annual production capacity of three million tons per year might have to be doubled for new, integrated plants to regain comparative advantage[71] and to preserve existing levels of jobs and production. Since import pressures had resulted in a lack of private investor confidence in U.S. steel prospects, however, the steel industry would need direct government investment to avoid involuntary liquidation and return the industry to "world class" status.[72] In fact, a "broad policy of cooperation between government and industry" might be required to ensure the revival of U.S. steel production.[73] A 1977 Putnam-Hayes study commissioned by the American Iron and Steel Institute (AISI) argued that U.S. producers could be "fully competitive" with their European and Japanese rivals, at least under conditions of relative free trade and fair pricing by foreign exporters.[74]

69. *See* N.Y. Times, Oct. 31, 1983, at D1, col. 6; Wall St. J., Oct. 18, 1983, at 3, col. 4; and N.Y. Times, January 11, 1984, at D1, col. 3.
70. On "massive modernization" and its pitfalls, see Barnett, *supra* note 30, at 170-81.
71. *See* Economist, Dec. 25, 1982, at 82.
72. *Steel Imports and the Administration of the Antidumping Laws, Hearing Before a Subcommittee of the Committee on Government Operations, House of Representatives*, 96th Cong., 1st Sess., Dec. 20, 1979 (hereinafter *Steel Imports*), at 9 (statement of A.A. Monnett, U.S. Steel Corporation).
73. *U.S. Trade Policy: Hearing Before the Subcommittee on Trade of the Committee on Ways and Means, House of Representatives*, 96th Cong., 2d Sess., June 26 and July 21, 1980, at 307-08 (statement of W.J. DeLancey, AISI Chairman).
74. A.W. Harris, U.S. Trade Problems in Steel 11-12 (1983).

The estimated costs of the programs for "massive modernization" have varied. Under the Carter administration, a Steel Tripartite Committee of industry, labor and government representatives suggested a $5 billion annual infusion would be needed for new steel investment. In 1980, the AISI cited needs of $8 billion (1982 dollars) annually.[75] Other estimates have ranged as low as $2.5 billion annually.[76] Various mixes of public and private financing for these investments have been suggested: on the public side, relaxation of costly pollution control or antitrust standards and special tax measures are frequently cited as possible sources of new industry capital.[77]

Critics of steel "revitalization" proposals have called for phasing out most U.S. steel production in favor of more promising uses of national resources. At a minimum, critics would scale down current steel investment levels and reduce excess capacity. This might entail, for example, closing the many "small, inefficient plants" which currently operate, "while revitalizing the larger, well-located facilities near the Great Lakes."[78] One prominent expert has suggested that U.S. steelmakers switch over to a long-term strategy which stresses dynamic cost reductions and high operating rates. This would mean large-scale reductions in current capacity, adjustment to price-taking behavior, and adoption of capital-saving technologies used by the modern "mini-mills."[79] Given the ailing state of the industry, however, such proposals also assume that government must play a major role in steel restructuring, though with far different goals in mind than the proponents of a massive steel revival.[80]

Adjustment supporters assume that pursuit of any other option is impractical, since comparative advantage in large-scale, non-specialty steel production has already shifted to the developing world.[81] Consequently, it does not make sense for the U.S. to waste resources on steel investments, even to compete with EEC producers for the remaining market share which developed states may be able to conserve. New investments to make

75. Barnett, *supra* note 30, 171, at 265.

76. Hogan, *supra* note 28, at 124.

77. *See World Steel Trade, supra* note 23, at 233-67 (Council on Wage and Price Stability report), and Economist, Nov. 26, 1983, at 74.

78. *Steel Imports, supra* note 72, at 36 (statement of R.W. Crandall, Brookings Institution).

79. Barnett, *supra* note 30, at 272-81.

80. *Id.*, 281-89. As of January 1983, U.S. steel mills were operating at less than 30 percent of capacity, losses had totalled $2.5 billion for 1982, and 60 percent of the steel work force was unemployed. A number of major firms were close to bankruptcy. Business Week, Jan. 17, 1983, at 64.

81. U.S. steelmakers have recently found it cheaper to purchase raw or semi-finished steel from Latin America or Europe than to produce steel product factors themselves, although the effects of subsidies or "dumping" practices may explain some cost differentials. *See, e.g., American Steelmakers Bring In Foreign Metal To Hold Down Costs,* Wall St. J., Dec. 20, 1983, at 1, col. 6, and N.Y. Times, Oct. 18, 1983, at D1, col. 3.

steel production competitive would be a "rather expensive form of employment creation," relative to other uses of capital; one estimate suggests that an additional $4 to $6 billion of annual expenditures on steel would amount to only 35,000 new jobs, for a cost of $114,000 to $171,000 per worker.[82] Indeed, the unusually high cost of U.S. steel industry labor may have played a decisive role in the weakening position of U.S. steel products, according to a 1977 Federal Trade Commission (FTC) study.[83] Other studies confirm that real hourly wages for steel laborers have climbed much faster than average U.S. industry wages, though steel labor productivity has improved at an average rate.[84]

Furthermore, some analysts contend that foreign subsidies have not been a significant reason for the poor performance of U.S. industry, since they were not of sufficient size to distort basic forces of comparative advantage.[85] Foreign subsidies, in fact, may have been offset by U.S. government tax breaks, specific export incentives such as the DISC program, loans, worker assistance, and other aids to the domestic industry.[86] Several studies estimate that gains to import purchasers would have outweighed losses to industry and labor if the U.S. had lifted all import barriers on steel in selected recent periods.[87] Overall, such observations lend credence to the conclusion of a 1977 Merrill Lynch report that the U.S. steel industry would not be "economically sound" even if free trade conditions prevailed.[88] They also support criticism of "massive modernization" investments propounded by AISI and the industry.[89] In line with recent suggestions that modern government adjustment assistance and otherwise unprotected exposure to the "hard competition" of foreign steel producers

82. *Steel Imports*, *supra* note 72, at 35-36.
83. A.W. Harris, *supra* note 74, at 11-13.
84. Office of Technology Assessment, U.S. Industrial Competitiveness 70 (1981). As of August 1982, U.S. steel workers received $23 per hour in costs and benefits, the highest blue-collar wages in the country. Economist, Aug. 7, 1982, at 23.
85. *See* H.G. Mueller and K. Kawahito, Errors and Biases in the 1978 Putnam, Hayes and Bartlett Study on the Pricing of Imported Steel (Middle Tennessee State University Monograph Series No. 17, 1979), especially at 37.
86. *See* van der Ven, *Steel Deadlock: A Primer*, Europe, July-August 1982, at 27. On the legal status of export incentive programs like DISC (Domestic International Sales Corporations) and other tax measures, see Cox, *Domestic International Sales Corporations (DISCs): How They Provide A Tax Incentive for Exports*, 14 Vanderbilt J. Transnat'l L. 535 (1981), and Kwako, *Tax Incentives for Exports, Permissible and Proscribed: An Analysis of the Corporate Income Tax Implications of the MTA Subsidies Code*, 12 L. & Pol'y in Int'l Bus. 677 (1980). On offsetting generally, see Note, *Offset Policy Under the New Countervailing Duty Law*, 15 Cornell Int'l L. J. 429 (1982).
87. For the period 1969-73, for example, see Jondrow, *Effects of Trade Restrictions on Imports of Steel*, in The Impact of International Trade and Investment on Employment 11-25 (Department of Labor, 1978).
88. A.W. Harris, *supra* note 74, at 11.
89. See, e.g., H. Mueller, Three Essays on the Economics of the Steel Industry 4-8 (Middle Tennessee State University Monograph Series No. 22, 1980), for a critique of the AISI "Orange Book."

will best promote U.S. industry adjustment,[90] the Reagan administration has in fact committed itself to a policy of reliance on market forces, perhaps supplemented by limited assistance to "individual workers."[91]

Aside from their intrinsic importance to U.S. investment decisions, the debates outlined above have a major bearing on U.S. attitudes toward EEC subsidies as well. On the one hand, proponents of U.S. steel industry revitalization apparently consider foreign subsidies a major threat; on the other hand, supporters of adjustment away from large-scale steel production — even to a limited extent — are less concerned about foreign government practices. To the degree that EEC subsidies make a real contribution to the European adjustment process, U.S. adjustment proponents might even welcome such additional steps toward rationalization of the chaotic world steel situation.

C. THE US-EEC STEEL DEBATE: 1982 COUNTERVAILING DUTY SUITS

Unfortunately, the U.S.-EEC steel dispute of 1982 never openly addressed the crucial issues of adjustment which both Community and U.S. producers faced. Instead, it remained a legal dispute over the status of EEC subsidies under U.S. law, to be resolved through determination of narrow legal issues. In the fall of 1982, despite suggestions that U.S. legal mechanisms might be employed to promote more efficient international adjustments, the United States seemed prepared to impose countervailing duties. This did not occur because a U.S.-EEC import quota agreement swept aside both legal and policy issues. Although the agreement may have held short-term economic and political benefits for all parties, it left an unfulfilled need for new means or forums by which the developed producers could agree on mutually beneficial adjustment plans.

The immediate cause of the dispute had been a surge in U.S. steel imports during 1981: they had climbed to 19.1 percent of the U.S. market, a 28 percent increase from the previous year. European imports then constituted a full third of 1981 imports, and had risen 66.8 percent since 1980.[92] With the TPM an ineffective barrier against such imports, seven major U.S. steel producers[93] filed 38 antidumping and 94 countervailing duty petitions against 11 countries, including Belgium, France, West

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90. *See, e.g.*, Dirlam and Mueller, *Import Restraints and Reindustrialization: The Case of the U.S. Steel Industry*, 14 Case Western J. Int'l L. 419 (1982).

91. *See* U.S. International Economic Policy in the 1980's: Selected Essays Printed for Use of the Joint Economic Committee, U.S. Congress, Feb. 11, 1982, at 58.

92. Recent Development, *International Trade: Countervailing Duties and European Steel Imports*, 23 Harv. Int'l L. J. 44 (1983) (hereafter Recent Development), at 445 n. 19.

93. These were U.S. Steel, Bethlehem, Republic, Inland, Jones & Laughlin, National and Cyclops.

Germany, Italy, Luxembourg, the Netherlands, and the United Kingdom, in January 1982.[94] The petitions sought relief under the Tariff Act of 1930[95] and the Trade Agreements Act of 1979.[96] The countervailing duty petitions requested application of duties equal to the amount of foreign subsidies provided,[97] while the antidumping complaints asked for duties equal to the difference between export states' market prices and current U.S. prices.[98] Under U.S. law, such duties could be applied only if subsidized or dumped goods constituted a threat or fact of "material injury" to U.S. industry.[99] The U.S. Commerce Department (Commerce) and International Trade Commission[100] (ITC) would make the required determinations.[101]

In February, in a complex series of events, Commerce determined that 109 of the 132 petitions warranted full investigation.[102] The ITC found preliminary indications of fact or threat of material injury to the U.S. steel industry in 38 of the subsidy and dumping cases.[103] After a delay, Commerce announced in June that it had preliminarily found that subsidies ranging from less than one percent to 40 percent had been provided by all seven EEC state defendants, as well as by South Africa and Brazil.[104] Later, Commerce also found Belgium, France, Italy, West Germany, the United Kingdom and Romania guilty of dumping at margins of up to

94. The others were Spain, Romania, Brazil and South Africa.
95. 19 U.S.C. sections 1671-1677 (Supp. III 1979).
96. 19 U.S.C. sections 1671-1677g (Supp. V 1981). This Act amended the Tariff Act to include provisions agreed upon at the Tokyo Round Multilateral Trade Negotiations (MTN). This was the seventh round of negotiations held under the auspices of GATT; it lasted from 1973 until 1979. On the subsidy and countervailing duty additions made, see GATT, Tokyo Round of Multilateral Trade Negotiations 53-61 (1979), and 6 MTN Studies, Agreements Being Negotiated at the Multilateral Trade Negotiations in Geneva — U.S. International Trade Commission Investigation No. 332-101 (Subcommittee on International Trade, Committee on Finance, U.S. Senate, Aug. 1979).
97. Under Section 701(a) of the Tariff Act, 19 U.S.C. 1671 (a).
98. Under Section 731 of the Tariff Act, 19 U.S.C. 1673.
99. Sections 701(a) and 731, Tariff Act; 19 U.S.C. sections 1671 (a), 1673. See also *infra* Part III.
100. On the functions and powers of the ITC, see Note, *Remedying Unfair Trade Practices in Imports: A Study of the International Trade Commission,* 2 Boston Univ. Int'l L. J. 133 (1983).
101. 19 U.S.C. section 1671 (a).
102. 47 Fed. Reg. 5,739-54 (1982).
103. It had considered only 92 of the 109 cases found meriting investigation by Commerce. 47 Fed. Reg. 9,087-113 (1982). Allegations that U.S. producers had lost sales because of the defendant states' underselling, plus unusually high U.S. import levels for these states, apparently had a major influence on the ITC decision. *See, e.g.,* 47 Fed. Reg. 9092-93 (Belgian and British hot-rolled carbon steel plate) and 9100 (German galvanized carbon steel sheets).
104. 47 Fed. Reg. 26,300-48 (1982). Subsidy breakdowns appeared in [Apr.-Sept.] U.S. Import Weekly No. 132, June 16, 1982, at 329-32. The states concerned had to post bonds for the estimated subsidy amounts, pending final determination, under 19 U.S.C. 1671(b). Duties were eventually levied against South African steel. Brazil applied an offsetting export tax to negate its subsidy, resulting in suspension of the U.S. suits against it.

41 percent.[105] On the countervailing duty issue, Commerce finally released revised, conclusive determinations of the subsidies provided to foreign producers in late August.[106] At that time, it found only 16 of 38 producers to have received government subsidies, at rates ranging up to 26 percent. Commerce also ruled that West German and Luxembourg producers had received subsidies of less than two percent. About 50 percent of the total imports investigated were found to have received no or only *de minimis* subsidies, and did not require U.S. action.[107] The Italian firm Italsider was found to have benefitted from subsidies of 18 to 26.05 percent, and British Steel Corporation to have received a 20 percent aid. Overall, the ruling meant that duties could potentially be applied in sufficient degree to reduce EEC exports to the U.S. by about one million tons annually, or about one-sixth of the total. For some producers, exports to the U.S. became virtually prohibited. Of course, the U.S. would not apply duties until the ITC affirmed conclusively that the subsidies identified by Commerce had caused "material injury" or threat to the U.S. industry; the ITC so ruled in October for 14 of the 16 subsidy cases.[108]

However, countervailing duties never became effective because of a last-minute negotiated settlement of the dispute between the EEC defendants, U.S. producers, and the U.S. government. Objections by the West German and Netherlands governments had been overcome in early fall, and a tentative solution was worked out.[109] However, U.S. industry complaints that the proposed terms remained too favorable to EEC producers delayed the final agreement. On October 21, a quota agreement limiting EEC exports to about 5.13 percent of total U.S. steel consumption was ironed out, with separate export quotas for various steel products.[110] The EEC agreed to pursue a settlement in the interest of avoiding further "external perturbations" in exports to the U.S. steel market.[111] It moved quickly to ratify the agreement negotiated with U.S. Secretary of Commerce Malcom Baldridge, established a system of export licenses and monitoring to enforce the new quotas, created rules for allocating the quotas among

105. 47 Fed. Reg. 35,646-71 (1982).
106. 47 Fed. Reg. 39,304-93 (1982).
107. *See* Mueller and van der Ven, *Perils in the Brussels-Washington Steel Pact of 1982,* The World Economy 259 (1983), at 260. Some final determinations were far lower than the estimates released by Commerce in August. For instance, subsidies to British Steel had originally been cited at 40 percent.
108. *See* N.Y. Times, Oct. 16, 1982, at 37, col. 2.
109. Recent Development, *supra,* 452 & n. 77. *See also* Economist, Oct. 23, 1982, at 50. For an earlier version of the accord, see N.Y. Times, Aug. 7, 1982, at 33, col. 1.
110. *See* Wall St. J., Oct. 22, 1982, at 3, col. 1; *N.Y. Times,* Oct. 22, 1982, at 1, col. 5; Mueller and van der Ven, *supra* note 107, at 2615.
111. Opinion of the European Coal and Steel Community Consultative Committee, O.J. Eur. Comm. (No. C. 276) 3 (Oct. 19, 1982).

member states and producers, and reserved power to punish violations.[112] U.S. producers, in return, withdrew their dumping and countervailing duty suits.[113]

Critics of the U.S. producer suits reiterated that EEC subsidies were both permissible under international law[114] and necessary to restructure and to reduce the surplus capacity of the EEC steel industry.[115] By taking action to reduce EEC steel exports to the U.S., the U.S. producers sought to make Europeans pay for the ailing state of the U.S. industry, the critics argued, though Europeans bore little responsibility for its woes. Instead of barring all "subsidized" goods from U.S. markets, they suggested that it might be more beneficial for the United States to allow or even encourage efforts to further "adjustment" and capacity reductions in the EEC steel industry.[116] Indeed, some experts inside and outside the United States, including the Federal Trade Commission (FTC), agreed that a rational U.S. policy on subsidies would

> focus attention on government aid abroad which causes distortions in American trade and would disregard aid which corrects imperfections or market failures in the foreign countries' home markets.[117]

Presumably, such imperfections could include a failure to adjust.

One analysis of the 1982 countervailing duty cases has suggested that the Commerce decision erred in counting numerous instances of government equity participation as illegal subsidization, both on legal and policy grounds. Commerce had reasoned that government investments in "creditworthy" firms were consistent with "commercial considerations," and hence not countervailable. By contrast, government debt forgiveness or investment to aid firms with a "history of deep or significant continuing losses" was not judged commercially reasonable, unless specific objective

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112. *See* Council Regulation (EEC) No. 2869/82 of 21 Oct. 1982 on the conclusion of an Arrangement with the United States of America relating to steel, O.J. Eur. Comm. (No. L 307) 1 (Nov. 1, 1982) *and* Council Regulation (EEC) No. 2870/82 of 21 Oct. 1982 on the restriction of exports of certain steel products to the United States of America, O.J. Eur. Comm. (No. L 307) 3 (Nov. 1, 1982); *see also* Arrangement, O.J. Eur. Comm. (No. L 307) 13-17 (Nov. 1, 1982), parts 3-10.
113. As provided in part 2(a) of the Arrangement, *supra* note 112.
114. *See* N.Y. Times, Feb. 10, 1982, section IV, at 3, col. 1, *and* Part III, *infra.*
115. *See, e.g.*, van der Ven, *supra* note 86, at 24, and *supra* Part I.A.
116. See, e.g., comments by numerous deputies of the European Parliament, Debates of the European Parliament, O.J. Eur. Comm. (Annex)(No. 1-287) 201,204-08 (July 8, 1982).
117. Mueller and van der Ven, *supra* note 107, at 276. The Federal Trade Commission Report, part of an *amicus* brief submitted for the countervailing duty cases, was filed in May 1982. Barshefsky, Mattice and Martin, *Government Equity Participation in State-Owned Enterprises: An Analysis of the Carbon Steel Countervailing Duty Cases,* 14 L. & Pol'y in Int'l Bus. 1101, 1135 n. 149 (1983).

circumstances created a sound commercial justification for the provision of funds, at least at the time the government granted aid. Instead of pursuing such logic, Commerce might well have taken a different tack: it could have found some investments in failing enterprises fully consistent with "commercial considerations," by the same logic which causes private shareholders or creditors to lend or reinvest additional funds pending a failing firm's reorganization. The basic theory is that more of the original funds can be preserved through firm reorganization than in a full-fledged liquidation procedure. Further, government funds for closure of plants or worker retraining did not contribute to the "manufacture, production or export" of the goods in question, and might thus not be classed as subsidies at all under the Trade Agreements Act. Aside from these legal points, it was argued that U.S. policy interests should have favored restructuring of unprofitable EEC steel plants, since this process eliminated some of the distortions which international and U.S. trade law sought to prevent.[118]

Whether such legal and policy arguments are correct or not, the 1982 steel dispute failed to address them directly. Consequently, it never provoked discussion of the basic issues of adjustment and comparative advantage in steel which underlay U.S.-EEC differences. Instead, the U.S. industry managed to keep control of the dispute by virtue of its rights to file and maintain countervailing duty suits under U.S. law. The industry forced a compromise settlement, with quotas comparable to the levels of EEC market share which would have followed the application of countervailing duties. The dispute's outcome has led some observers to conclude that current U.S. trade laws lend themselves to protectionist objectives.[119]

III. International and U.S. Law on Subsidies and Adjustment

A basic feature of current international and U.S. subsidy law is its failure to focus on the complex issues of adjustment and comparative advantage raised, though not addressed, by the EEC-U.S. steel dispute. As a general rule, the law permits subsidies for purely domestic purposes, but forbids government export aid which injures foreign states' import-competing industries. In a world where the major developed states may have lost comparative advantage in such basic industries as steel, however, such rules are insufficient to guide efficient transition or long-term trade liberalization. Instead, they allow intransigent but outmoded industries to block the adjustment efforts of other states, with long-term costs for world production and trade.

118. *See*, Barshefsky, Mattice and Martin (hereinafter Barshefsky), *supra* at 117-138.
119. *See* Mueller and van der Ven, *supra* note 107, at 260-61, 275.

A. International Law: the GATT Rules

The basic law on subsidies is contained in GATT Articles VI and XVI,[120] as modified by the GATT Code on Subsidies and Countervailing Duties established at the Multilateral Trade Negotiations (MTN) in 1979.[121] Article 8 of the Code commits signatories to avoid causing injury to the domestic industries of another signatory, impairment of the benefits enjoyed by it under GATT, or serious prejudice to its interests.[122] Such impairment or serious prejudice might arise within the domestic markets of the importing state, through displacement of products exported to the subsidizing state's markets, or through displacement of non-subsidizing states' products from third state markets. Article 11, however, provides that these rules should not restrict the right of signatories to use subsidies as "important instruments for the promotion of social and economic policy objectives." Such objectives are to include measures

> (a) [to effect] the elimination of industrial, economic and social disadvantages of specific regions,
> (b) to facilitate the restructuring, under socially acceptable conditions, of certain sectors, especially where this has become necessary by reason of changes in trade and economic policies, including international agreements resulting in lower barriers to trade, [and]
> (c) generally to sustain employment and to encourage re-training and change in employment. . .

Subsidies in pursuit of these objectives may specifically give "advantage to certain enterprises" through such means as government-supplied loans, support services, tax incentives, and equity or debt capital. The only qualification is that signatories shall "seek to avoid" causing Article 8 injury or harms through subsidies, particularly where the subsidies concerned "would adversely affect the conditions of normal competition." When a signatory believes the domestic subsidies of another have caused prohibited injury to its industry, impairment of its benefits or serious prejudice to its interests, it may request consultations with that signatory under Article

120. General Agreement on Tariffs and Trade, T.I.A.S. No. 1700, 55 U.N.T.S. 187. Article VI provides for countervailing duties to offset subsidies harming trade; Article XVI delineates illegal export subsidies for primary and some nonprimary products. Article XVI(B) does not prohibit domestic subsidies, although it requires signatories furnishing them to notify others, and to be willing to consult on their possible limitation.

121. Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, in GATT, Basic Instruments and Selected Documents, 26th Supp., 1978-79, 35th Sess., March 1980, at 56-83.

122. Art. 8.3. Separate provisions prohibit certain export subsidies. *See* Arts. 8-10, *and* Low, *The Definition of "Export Subsidies" in GATT,* 16 J. World Trade L. 375 (1982).

12.3. Matters not satisfactorily resolved within 60 days may be referred to the Committee on Subsidies and Countervailing Measures — created under Article 15 — for conciliation procedures. The Committee then may work with the parties in establishing an acceptable solution; failing this, it may make recommendations to the parties, and authorize sanctions for noncompliance which may include loss of GATT benefits or countervailing duties.[123]

In short, GATT rules specifically allow the sorts of adjustment measures which the EEC states sought to implement through their steel subsidy programs. Restructuring aids, including government finance and equity participation, are explicitly permitted by Articles 11.1 (a) and (b) of the Code, and worker assistance programs are explicitly allowed by 11.1 (c). Of course, U.S. objections that subsidized EEC imports injured the U.S. steel industry or prejudiced U.S. interests might well have been made under Article 12 and pursued through the mechanisms provided, but the U.S. failed to invoke its rights under the Code. The United States may have lacked confidence in the Subsidy Committee's potential empathy for the U.S. position, or simply preferred to retain domestic legal control over the outcome of the dispute.

Another reason for U.S. reluctance to employ GATT forums may have been the OECD General Orientations on Positive Adjustment Policies established at the OECD Ministerial Meeting in May 1978.[124] The General Orientations listed a number of criteria which should guide governments in granting adjustment aid to restructure domestic industries, including the following:

> (i) action should be temporary and should, wherever possible, be reduced progressively according to a pre-arranged timetable;
> (ii) such action should be integrally linked to the implementation of plans to phase out obsolete capacity and re-establish financially viable entities . . .
> (iii) the cost should be made as evident as possible to decisionmakers and the public at large . . .
> (iv) where public funds are being injected into the private sector, it is desirable that private risk capital should also be involved . . .
> (vii) while recognizing that governments must pay due regard to the interests of national security, care should be taken

123. *See* Arts. 17, 18.
124. *See generally* Sarna, *International Guidelines for Industrial Adjustment Policies*, 15 J. World Trade L. 490 (1981), at 493-95, and W. Diebold, *supra* note 3, at 81-84.

> to see that arguments based on considerations of self-sufficiency should not be misused to justify measures for protection and support.[125]

Overall, the General Orientations sought to encourage "real" positive adjustment and restructuring into areas of comparative advantage, rather than import barriers or protection policies which would increase — not reduce — trade distortions.[126] Of course, the EEC states might have argued strongly that their subsidies fell within the OECD guidelines. After all, they were temporary; followed a timetable for extinction by 1985; were designed to phase out surplus capacity; and had been made largely public through the Davignon and Eurofer plans. U.S. arguments in response would have had to rely on delays or noncompliance with Davignon prescriptions, the "hidden" nature of many EEC state subsidies, and the absence of private capital backing for some of the firms concerned. On their face, these seem relatively weak arguments by which to prompt the GATT Subsidies Committee to impose countervailing duties on EEC producers, although they might have provoked criticism of EEC practices or recommendations for change. However, the fact that the EEC steel subsidies both complied with at least the major principles of the General Orientations and seemed largely consistent with their spirit and purpose, also made them a potential weapon for the EEC against the U.S. Further, the voluntary nature of the OECD guidelines meant they were a relatively weak weapon for either side.

The overall effect of the international rules and guidelines outlined above has been minimal: until 1982, no major disputes over the subsidy practices of signatories had been referred to the Subsidies Committee.[127] Critics suggest that existing rules leave their enforcement up to individual states, which inevitably means that such enforcement will be uneven and characterized by political motives. Generally, critics find the rules weak and imprecise.[128] More important, perhaps, is the fact that the rules do not require developed states to confer about their adjustment plans. They encourage signatories to consider the effects of their subsidy plans on the benefits and interests of others, but do not promote overall global planning

125. Sarna, *supra*, at 493-94. These are similar to the standards by which the EEC Commission judges acceptable adjustment subsidies within the Community. *See, e.g.*, ITIP, *supra* note 2, at 161.

126. Sarna, *supra* note 124, at 494.

127. *See* S.J. Anjaria *et al.*, Developments in International Trade Policy (IMF Occasional Paper No. 16, Nov. 1982), at 57. *But cf.* Harris, *The Post-Tokyo Round GATT Role in International Trade Dispute Settlement*, I Int'l Tax & Bus. Lawy'r 142 (1983), at 163. Some individual product subsidies have been referred to the Committee for conciliation, including EEC pasta, wheat flour and sugar aids complained of by the U.S. *See* GATT, Basic Instruments and Selected Documents, 29th Supp., 1981-82, 38th Sess., 46-47.

128. *See* Sarna, *supra* note 124, at 496.

for smooth adjustment. In consequence, an inherent ambiguity allows disputes like the EEC-U.S. steel conflict to persist. For example, even if it followed the rules, the EEC might have calculated that its 1981 import penetration of U.S. markets neither seriously prejudiced U.S. interests nor injured its industry. The ailing industry should have expected continued imports, it might be argued; besides, lax enforcement of the TPM until 1982 may have created legitimate foreign expectations that imports outside its parameters would be tolerated.[129] At the same time, the U.S. might have considered that the EEC had caused injury or prejudice in violation of Article 11.1 of the Code. Without a commitment to EEC adjustment plans, indeed, the U.S. had no apparent reason to facilitate EEC steel subsidies, especially given the strong internal pressure on U.S. officials to oppose such subsidies.

B. U.S. Law and Protectionism

Existing U.S. trade laws may tend to encourage manipulation by domestic producers for protectionist purposes. At a minimum, they do little to encourage U.S. consideration of foreign or international adjustment policies. Despite these criticisms, U.S. law does appear to be fully consistent with GATT subsidy provisions and the Subsidies Code.[130] As reviewed above, the Trade Agreements Act amended Title VII of the Tariff Act to permit countervailing duty actions against GATT signatories[131] who provide illegal subsidies to products imported into the U.S. Duties may be applied only after existence of a subsidy has been determined, and after a fact or threat of "material injury"[132] to a U.S. industry has been shown. Although the Subsidies Code only provides for the application of countervailing duties against domestic subsidies upon recommendation of the Subsidies Committee, U.S. law authorizes duties against any subsidies which cause material injury, whether "export" or "domestic."[133] U.S. officials have justified this relatively stringent treatment of domestic subsidies by reference to the policy objectives of the Subsidies Code, which recognize the potential

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129. U.S. producers operated at 85 percent of capacity in the first half of 1981, prompting EEC imports below the trigger price. *See* Hogan, *supra* note 28, at 130.

130. *See* United States International Trade Commission, Annual Report 1981, at 5-6.

131. Separate rules apply for states which are neither signatories of GATT nor entitled to "most favored nation" status. *See* E. McGovern, International Trade Regulation 272-73 (1982).

132. "Material retardation" of establishment of an industry is also sufficient injury for application of countervailing duties. 19 U.S.C. section 1671(a). U.S. law previously required only formal findings of subsidization for application of countervailing duties, avoiding the "injury" requirements of GATT Article VI(6)(a). *See* Note, *The Trade Agreements Act of 1979: Material Injury Standard,* 14 J. Int'l L. & Economics 87, 90-91 & n. 30 (1979). In return for the provisions of the Subsidies Code creating possible countervailing duties against domestic subsidies, the U.S. adopted the "material injury" standard in 1979. *See id.* at 90 and Feller, *Observations on the New Countervailing Duty Law,* 11 L. & Pol'y in Int'l Bus. 1439, 1470-75, 1483-87 (1979).

133. *See generally* I. Stoler, *supra* note 7, at 16-17.

adverse effects of domestic subsidies on other states.[134] Consistent with this analysis, the Trade Agreements Act adds four examples of domestic subsidies to the list provided by the Code. These are provision of capital or loans on terms "inconsistent with commercial considerations," provision of goods or services at special rates, grants or debt forgiveness to cover operating losses of a specific industry, and assumption of manufacture, production or distribution costs.[135] Aside from countervailing duties, plaintiffs may also ask the U.S. President to take action against domestic subsidies alleged inconsistent with the Subsidies Code, under Section 301 of the Trade Act of 1974 (as amended by Section 901 of the Trade Agreements Act).[136]

The broad reach of existing U.S. laws allows domestic producers to question foreign subsidies by charging that they cause "material injury," providing a powerful means for protectionist-minded producers to challenge their foreign rivals, and to increase the uncertainties associated with exporting to the U.S. market.[137] The Trade Agreements Act defines potentially injurious subsidies to include the sorts of "adjustment" aid which GATT and OECD pronouncements have assigned largely to the realm of individual states' national policy. In consequence, U.S. law exploits the ambiguity of current international rules and standards to provide means of opposing foreign adjustment efforts or increasing the costs of such efforts substantially. While it allows them, the GATT system establishes no special protection for subsidized foreign adjustment efforts, with the result that U.S. definitions of "material injury" may cover a wide range. Indeed, the 1982 steel case rulings of Commerce and the ITC provide an example of U.S. failure to recognize EEC restructuring aid as a legitimate form of subsidy. The problem with U.S. law is that it may overlook occasions where tolerance of foreign adjustment subsidies would be in the best long-term interests of world economic efficiency, as suggested in Part I above.

IV. RECOMMENDATIONS FOR CHANGE: AN INTERNATIONAL INDUSTRIAL POLICY?

An underlying premise of this article is that, given the shifting nature of comparative advantage in the present world economy, developed nations

134. *Id.*, at 4. The inclusion of domestic subsidies in U.S. mandatory countervailing duty law does not appear to violate the Subsidies Code. *See* Article 11.4, *supra* note 121.
135. 19 U.S.C. 1677(5). *See* E. McGovern, *supra* note 131, at 274, *and* Victor, *The New Antidumping Law: Antidumping and Judicial Review Provisions of the Trade Agreements Act of 1979*, in Basics of Antidumping and Other Import Relief Laws (1979) at 51.
136. *See* I. Stoler, *supra* note 7, at 12-15, *and* Fisher and Steinhardt, *Section 301 of the Trade Act of 1974: Protection for U.S. Exporters of Goods, Services, and Capital*, 14 L. & Pol'y in Int'l Bus. 569 (1982).
137. Domestic producers may also make claims based on U.S. antidumping laws. *See* van der Ven, *supra* note 86, at 26-27.

may face opportunities in which the short-term costs of accepting subsidized imports will not exceed the potential long-term advantages which restructuring by other important trading states would entail. For example, the reduction of surplus European steel capacity may improve long-run world efficiency and promote gains from trade, creating benefits in which the U.S. would share. In order to promote such adjustment and ensure its rapid occurrence, it might be a rational policy for the U.S. to share some of the costs of EEC steel adjustment. Accepting subsidized imports would be one means of cost-sharing, and hence might be rational even when such imports caused "material injury" to U.S. industry. In fact, if U.S. steel industry adjustment is also a desirable objective for national policy, and gains to steel-import consumers outweighed the costs of retraining workers and closing plants, then a program of tolerated EEC subsidies might not really be a "cost" at all. Of course, such logic is highly speculative, and this article has made no attempt to measure or estimate the probable relative costs of accepting subsidized EEC steel imports, cutting U.S. surplus capacity, or implementing other changes. Still, the possibilities outlined above suggest that adjustment and comparative advantage should be the explicit focus of future debates about the proper relationship of the U.S. and EEC steel industries, and about the legal systems structuring that relationship. The preceding examination of existing international and U.S. legal mechanisms — highlighted by their influence or lack of influence in the 1982 steel dispute — suggests that current procedures and rules have not focused on adjustment at all.

Proponents of free-market economics have generally criticized "industrial policies" as potentially mischievous, ill-conceived, or naive.[138] However, an "international industrial policy" for steel might provide a new means of smoothing the path to restructuring international steel production, and resolving conflicts over government subsidization which could derail the adjustment process. Several forms for such an international policy have been suggested. First, an outright cartel might be created between all steel-producing states of the developed world. Presumably, such a cartel could establish firm quotas for construction of new capacity and promote the phasing-out of inefficient plants.[139] On the negative side, a cartel might also employ oligopoly tactics to shut out the newly-industrializing and Third World states from developed-world markets, resisting long-run forces of comparative advantage rather than supporting their free operation.[140] Critics of a "world steel pact" have also pointed out that it

138. *See, e.g.*, Herbert Stein, *Don't Fall for Industrial Policy*, Fortune, Nov. 14, 1983, at 64-78.

139. *See* Greenhouse, *A World Steel Pact Is Debated*, N.Y. Times, Jan. 13, 1984, at D2, col. 1. On the problems of creating a US-EEC cartel, see, e.g., *America and Europe in a Steel Trap*, Economist, June 19, 1982, at 82-83.

140. A.W. Harris, *supra* note 74, at 233.

would involve "limitless haggling over market shares and untold administrative problems"[141] — little better than the current situation. Ultimately, as one piercing critique of the steel cartel strategy suggests, a present-day cartel would face the same obstacles as the International Steel Cartel of the 1920s and 30s:

> In a world of shifting comparative advantage in industrial production, an attempt at an 'orderly' run-down of obsolete plants will be frustrated by the diminution of impersonal market forces. The process of deciding how to allocate production shares within the huge steel industry deteriorates, under a cartel regime, to acts of negotiation between firms and governments, whereby influence replaces economics as the agent of distribution. Any such effort to arrogate the infinitely complex and interacting forces of international markets is an experiment devoid of tenable theoretical underpinnings.[142]

Second, improvements in GATT procedures or alternative dispute resolution mechanisms might provide new means to deal with conflicts over subsidies and adjustment. While various observers have suggested that current GATT mechanisms are deficient,[143] few convincing suggestions for improving them have been forthcoming. One plan has proposed a neutral international panel to hear trade disputes: unlike GATT bodies, the panel would be uninfluenced by interested state members, and hence be able to arrive at rational, impartial decisions which balanced particular state wishes against the imperatives of international adjustment.[144] A different observer has contrasted the merits of a neutral panel with suggestions for GATT administrative reform, including an expanded role for the GATT Secretariat in researching and mediating conflicts. Generally, objections to the panel approach emphasize a probable lack of state compliance with unpopular decisions, a phenomenon familiar to other international bodies. Objections to GATT administrative reform point out that GATT's present reputation for failure in dispute settlement may be unredeemable and that a body without credibility will not be effective.[145] Aside from questions of enforcement, a basic problem of such proposals is their assumption that a relatively "impartial" body could somehow be established, and that it

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141. Greenhouse, *supra*, note 139 col. 2.
142. Jones, *Forgetfulness of Things Past: Europe and the Steel Cartel*, 2 The World Economy 139 (1979), at 150.
143. *See, e.g.*, Mueller and van der Ven, *supra* note 107, at 277 & n. 25.
144. Herzstein, *The Role of Law and Lawyers Under the New Multilateral Trade Agreements*, in Basics of Antidumping and Other Import Relief Laws, *supra* note 135, at 226-32.
145. *See* Harris, *supra* note 127 at 169-76.

would render fair and rational decisions based on objective, formal principles.[146]

Third, either binding or informal forums might be created within which states could consult on mutual investment, production and adjustment plans. A new international organization or agency could be organized to coordinate such consultations; however, ultimate decision-making would rest with individual nation-state members, not with a supra-national authority. A basic aim of the forum would be to change national perceptions about the adjustment process. For example, evidence demonstrating likely future patterns of comparative advantage could be presented, and options for restructuring the national industries lacking or losing such advantage discussed. Calculations of comparative advantage and application of other economic concepts could include consideration of political and social "externalities"; for instance, likely pollution, worker retraining and labor unrest costs could be explicitly factored into deliberations.[147] Where adjustment seemed mutually advantageous, a joint fund for "international adjustment assistance" could be set up to speed the restructuring process in individual states.[148]

Several rough versions of the international steel forum have been floated in recent years. Steel industry spokesman R. Heath Larry proposed a forum of developed and developing state producers in 1976, though some aspects of his proposal appear strikingly similar to a program for cartelisation.[149] Other plans have included measures of moral suasion to encourage adjustment, such as a "pledge" to that end; the creation of specific suggested guidelines which various individual governments should follow to promote efficient world adjustment, written by a panel of experts; and rules which would "oblige nations to submit their individual assistance projects to collective scrutiny and periodic supervision," presumably so that international pressure could be brought against states whose subsidy programs seemed particularly exploitative or inefficient.[150] Some helpful and specific rules on subsidy practices might be developed for multilateral application as well — such as the EEC principles that subsidies must be transparent and temporary.[151] While this article has emphasized the usefulness of such plans in disputes

146. For extensive discourse on the lack of formalist and objectivist foundations for modern legal institutions, and the inevitability of biases in legal structures, see Unger, *The Critical Legal Studies Movement*, 96 Harv. L. Rev. 563 (1983).

147. This suggestion is prompted by Cooper, *U.S. Policies and Practices on Subsidies in International Trade*, in ITIP, *supra* note 2, at 118-19.

148. *See* Lea, *International Adjustment Assistance*, ch. 18 in New World Trade Policy, *supra* note 19.

149. *See, e.g.*, W. Diebold, *supra* note 3, at 113-16.

150. *See, e.g.*, Sarna, *supra* note 124, at 496.

151. *See* Malmgren, in ITIP, *supra* note 2, at 226-27.

between developed nations, they would also have obvious applications to North-South trade conflicts.

Ultimately, the forum would differ from a cartel by focusing on successful world adjustment and shared gains, rather than the protection of particular states' existing market shares, revenues and uses of labor. The vision of such a forum assumes that steel-producing states will begin to trade their current, potentially short-sighted emphasis on national policies and perspectives for a more coherent world view. Some critics believe that states will never abandon their "national orientation" to the extent necessary for an effective "international industrial policy."[152] If true, this objection means that divergent national policy priorities will always subvert attempts at international adjustment coordination. The opposite view holds that the possibilities for gain through systematic organization of national adjustment policies are great, and that individual states might well perceive and act upon these possibilities.[153]

Whether or not they are given serious consideration, such radical proposals for reform of international procedures affecting the steel industry indicate that there are alternatives to the current system. If the developed states are ever to make the transition from protection-dependent, outmoded heavy-industry producers to modern, efficient economies assured of their specialization in areas of comparative advantage, new mechanisms must be created to encourage rational adjustment policies. Much has been made of the need to open markets to the developing states, and to assist their efforts to create infrastructures and industries.[154] The prospects of a successful North-South policy will seem bleak indeed, however, until the developed world has first solved its own internal disputes over processes of subsidization and adjustment.

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152. *See, e.g.,* Ohlin, ch. 10 in Towards a New Trade Policy, *supra* note 19, at 180-81.
153. *See, e.g.,* W. Diebold, *supra* note 3, at 26-27, 120-25, and 266-76.
154. *See, e.g.,* North-South: A Program for Survival (1980).