

Cato Institute Policy Analysis No. 164: The Myth of Fair Trade

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Executive Summary

Americans' freedom and prosperity are being sacrificed on the altar of fair trade. Each year protectionists discover new moral pretexts for further restricting how American citizens may spend their paychecks. Fair trade is a moral delusion that could be leading to an economic catastrophe.

Unfortunately, the louder politicians have demanded fair trade, the more U.S. trade policies have become a travesty of fairness. The U.S. government has created a trade lynch law that can convict foreign companies almost regardless of how they operate. Between 1980 and 1989, the U.S. Commerce Department found only 5 percent of the foreign companies it investigated not guilty of dumping.[1] Two thousand foreign companies have been penalized since 1980 for selling their products to Americans at prices lower than those approved by the U.S. government.

When politicians call for fair trade with foreigners, they routinely use a concept of fairness that is diametrically opposed to the word's normal meaning. In exchanges between individuals--in contract law--the traditional test of fairness is the voluntary consent of each party to the bargain: "the free will which constitutes fair exchanges," as Sen. John Taylor wrote in 1822.[2] When modern politicians speak of unfair trade, they do not mean that buyers and sellers did not voluntarily agree but that federal officials disapprove of the bargains American citizens chose to make. Fair trade, as the term is now used, usually means government intervention to direct, control, or restrict trade. Fair trade means government officials decide what Americans should be allowed to buy and what prices they should be forced to pay. Fair trade is paternalism in international commerce.

Fair trade often means that some politician or bureaucrat picks a number out of thin air and imposes it on foreign businesses and American consumers. Fair trade means that Jamaica is allowed to sell the United States only 970 gallons of ice cream a year, that Mexico is allowed to sell Americans only 35,292 bras a year, that Poland is allowed to ship us only 350 tons of alloy tool steel, that Haiti is allowed to sell the United States only 8,030 tons of sugar.[3] Fair trade means permitting each American citizen to consume the equivalent of only one teaspoon of foreign ice cream, two foreign peanuts, and one pound of imported cheese per year. Fair trade means the U.S. government imposes import quotas on tampons, typing ribbons, tents, twine, table linen, tapestries, and ties. Fair trade means that the U.S. Congress can impose more than 8,000 different taxes on imports, with tariffs as high as 458 percent.[4]

In practice, fair trade means protectionism. Yet every trade barrier undermines the productivity of capital and labor throughout the economy. A 1979 Treasury Department study estimated that trade barriers routinely cost American consumers 8 to 10 times as much as they benefit American producers.[5] A 1984 Federal Trade Commission study estimated that tariffs cost the American economy \$81 for every \$1 of adjustment cost saved.[6] Restrictions on clothing and textile imports cost consumers \$1 for each 1 cent of increased earnings of American textile and clothing

workers.[7] According to the Institute for International Economics, trade barriers are costing American consumers \$80 billion a year--or more than \$1,200 per family.[8]

We will examine the U.S. anti-dumping law, U.S. counter-vailing duty law, U.S. retaliations against alleged foreign unfair trade barriers, and the moral essence of fair trade.

The "Dumping" Myth

Economic xenophobia is the core of the U.S. anti-dumping law. The Commerce Department acts as if every sale of a foreign product at a low price is a Trojan Horse--an insidious attempt to undermine the American economy. While American politicians lecture the world on fair trade, our antidumping laws are an inquisitorial nightmare for foreign companies, a mockery of due process and justice.[9]

Dumping occurs when a company charges a lower price for a product in an export market than in its home market. Differential pricing according to demand and market conditions is a normal business practice, yet the U.S. government considers it highly pernicious when done by foreign companies exporting to the United States.

Dumping has long been portrayed as a serious threat to the American economy. A 1921 House of Representatives report warned against "a now common species of commercial warfare of dumping goods on our markets at less than cost or home value if necessary until our industries are destroyed." [10] The Senate Judiciary Committee warned in 1986 that "the unlawful dumping of foreign goods . . . has become a serious threat to American industries." [11] In 1989 a federal judge characterized dumping as inherently "predatory" and declared that dumping involves an element of "wrong-doing." [12]

U.S. anti-dumping practices routinely expel foreign corporations from the U.S. market as punishment for normal business practices. The anti-dumping law forces foreign companies to run a nearly endless gauntlet of American bureaucrats. A more perceptive federal judge concluded that the anti-dumping law allowed American companies to conduct "economic war" against their foreign competitors. [13]

While many people consider dumping an arcane subject, penalties for dumping have forced Americans to pay more for photo albums, pears, mirrors, ethanol, cement, shock absorbers, roofing shingles, codfish, televisions, paint brushes, cookware, motorcycle batteries, bicycles, martial art uniforms, computers and computer disks, telephone systems, forklifts, radios, flowers, aspirin, staplers and staples, paving equipment, fireplace mesh panels, dry cleaning, and many other things. Anti-dumping laws increasingly prevent American businesses from obtaining vital foreign supplies and machinery. Commerce Department officials now effectively have direct veto power over the pricing policies of thousands of foreign companies. Anti-dumping law constitutes potential political price controls over almost \$500 billion in imports a year.

Anti-dumping law exists to prevent foreign companies from selling goods in the United States at "less than fair value." What is less than fair value? The Commerce Department's creative definitions would challenge even a medieval scholastic. Technically, "less than fair value" means selling a good in the United States for less than its price in the foreign home market or for less than its cost of production plus a large profit. Commerce Department regulations state, "Fair value . . . is an estimate of foreign market value." [14]

The "crime" of dumping results solely from applying different tests of fairness to U.S. and foreign prices. The Treasury Department, in a 1957 report on dumping, defined "fair value" for foreign prices: "the word 'fair' as used here simply means what one ordinarily conceives of as the 'fair market' value--what a willing buyer will pay a willing seller." [15] But U.S. anti-dumping law rejects voluntary agreement as the measure of fairness of U.S. prices for imported products. The U.S. price of an imported product is "fair," not according to whether a foreign seller and American buyer voluntarily agree, but according to whether the foreign company can pass dozens of arbitrary tests imposed by the U.S. government.

Commerce convicted a Brazilian company for selling its frozen concentrated orange juice for 1.96 percent less than fair price. [16] The United States has a 40 percent tariff on orange juice, so Commerce subtracted 40 percent from the Brazilian company's U.S. sale price before comparing it with the Brazilian price. The Brazilian government imposes a

3.5 percent export tax on orange juice, and shipping and insurance costs probably added at least another 2 or 3 percent. Thus, Brazil was selling orange juice for at least 45 percent more in the United States than in Brazil. But the Commerce Department still considered the U.S. price unfairly low.

Anti-dumping laws are a relic of the days of fixed exchange rates. Commerce will convict a foreign company for a price difference as small 0.5 percent between its U.S. and foreign prices. Yet the dollar routinely fluctuates 10 or 15 percent or more in value annually.[17] Naturally, the number of dumping convictions has soared as exchange rates have become more volatile.

Commerce officials have used the capricious rules on exchange rates to encourage American companies to file antidumping cases against foreign competitors. In early 1988 the newsletter Inside U.S. Trade reported: "The Commerce Department is trying to cajole industries into filing dumping cases against Japanese imports for products that it feels are being sold at prices that do not sufficiently reflect the recent appreciation of the Japanese yen, according to many sources including Commerce officials. Commerce has been unofficially compiling a list of products suspected of being dumped by Japanese companies." [18] One Commerce official declared that the agency was "trying to force Japanese concessions on contentious trade issues--such as restrictive bidding on construction projects and agricultural quotas--by 'creating an anti-Japanese climate.'" [19]

Commerce sometimes penalizes foreign companies for selling different products for different prices. In 1984 an Italian company was convicted of having a less-than-fair- value margin of 1.16 percent on its sales of pads for woodwind instruments. Commerce compared the price of a smaller woodwind pad sold in the United States with that of a larger woodwind pad sold in Italy. Since the smaller pad sold for less than the larger pad, the Italian company was dumping.[20] In a brief defending its action to the Court of International Trade, the U.S. government admitted that it had not compared the sales price of identically sized pads--and then claimed that Commerce has unlimited discretion to accept or deny comparisons of that sort.[21]

In a Japanese TV case, one company had its dumping margins increased because it donated unsold television sets to charity. Commerce assessed the firm as if the television sets had been "sold" for \$0 in the U.S. market--the ultimate act of unfair trade.[22] Companies have also received higher dumping margins for selling TVs to employees at a large discount and for selling damaged or defective televisions at a markdown.[23]

In the case of stainless steel products from the Swedish company Avesta, Commerce compared sale prices of small quantities of steel sold in Sweden with the prices of large quantities of steel sold in the United States. As Avesta's brief noted, "Over two-thirds of the sales in Sweden were for quantities less than 500 kilograms, and the average price of these sales is over 22 percent greater than the average price for sales with total order quantities between 501 and 5,000 kilograms, and over 60 percent greater than the average price of sales with total order quantities over 5,000 kilograms." [24] Because Avesta sold 5,000-kilogram quantities for lower prices than 500-kilogram quantities, it was acting unfairly.[25]

U.S. anti-dumping law also imposes a cost-of-production test on foreign companies. If a foreign company is not making an 8 percent profit on its exports, the Commerce Department automatically penalizes the company for selling at a loss. The 8 percent assumption is totally arbitrary and extremely biased against foreign companies. The International Trade Commission reported that average "profits before income taxes for all U.S. corporations in 1986 were 6 percent of sales." [26] Thirteen of the 15 largest companies in the Fortune 500 failed the 8 percent profit test in 1989.[27]

Cost-of-production analyses tend to be sinkholes of quibbles and capricious judgments. Commerce usually considers only the cost of production during the six-month period in which it is examining the foreign company's U.S. sales. A major issue in a case involving Canadian raspberries was how to amortize the cost of a raspberry plant-- whether 10, 15, or 25 years was the proper time frame.[28] In one cost-of-production analysis, Commerce included the expenses Suzuki incurred in defending itself before the U.S. Consumer Product Safety Commission on charges that its all-terrain vehicles were unsafe.[29] In a 1990 sweater investigation, Commerce penalized two Korean firms for making donations to local charities, claiming that the unrelated donations were part of the cost of making sweaters and should have been reflected in higher sweater prices.[30]

Commerce effectively wrecked the exports of hundreds of Taiwanese sweater companies because a few small Taiwanese companies could not quickly respond to Commerce's massive information requests. Commerce sent the Taiwanese firms a 100-page single-spaced questionnaire in English; the average Taiwanese firm was commanded to quickly provide over 200,000 bits of information. Commerce conceded in its Federal Register notice that "none of the investigated [Taiwanese] companies refused to provide the information requested, refused verification, or otherwise significantly impeded the Department's investigation." [31] The management of one Taiwanese sweater company consisted of the owner and his wife. Commerce imposed punitive duties on the company, declaring that "lack of manpower" to answer the questionnaire was no excuse. Commerce imposed punitive duties on another Taiwanese company largely because the company's factory had burned down and it had lost many of its records. Since the United States also imposes a 34 percent tariff on the sweaters, hundreds of Taiwanese sweater companies are effectively locked out of the U.S. market.

Every dumping duty is an attempt to create an artificial scarcity, to deter foreign companies from exporting, and to decrease the supply of goods on the American market in order to allow American companies to charge higher prices. Politicians measure the success of the anti-dumping law by the number of foreign companies that are banned from the U.S. market or are forced to sharply raise their prices here. Sen. Arlen Specter (R-Pa.) declared at a 1986 Senate Finance Committee hearing on the administration of the antidumping laws: "I am not looking for more people to collect damages from, frankly, I am trying to stop the [foreign] goods from coming in." [32]

The anti-dumping law turns foreign companies into economic lepers. Perpetual jeopardy is the natural condition of companies under anti-dumping orders. Although a company may be complacent with a 1.93 percent margin established in an initial dumping investigation, Commerce can raise the dumping margin to 92 percent with only a short notice in the Federal Register. [33] An anti-dumping order can easily torpe-do a foreign company's exports to the United States.

Federal officials have bragged about the chilling effect of anti-dumping laws. Deputy Assistant Secretary of Commerce Gilbert Kaplan told the Senate Finance Committee in 1986: "The minute a case is filed, an importer or a customer faces an undetermined liability, an undetermined price basically, for items, for an indeterminate period of time, into the future. . . . If you are a purchaser, you have to think very long and hard before buying from an exporter given that undetermined liability that you are going to face for quite a number of years." [34] Secretary of Commerce Malcolm Baldrige declared in 1986: "The [dumping] penalty is actually applied to the U.S. importer, but it means that if he's got to pay that penalty, he just ain't going to import any more. That's the stick that you're looking for." [35] The anti-dumping law provides a way for Commerce to beat up on American companies that import foreign products.

Commerce officials are sometimes quite candid about their biases. In a 1991 speech, Marjorie Chorlins, deputy assistant secretary of Commerce for import administration, thanked the American Wire Producers Association for their frequent use of the anti-dumping law against wire imports and declared, "The partnership which the AWPA and Import Administration have enjoyed over the past ten years has been active and rewarding." [36] In 1989 Secretary of Commerce Robert Mosbacher described himself as "the advocate for U.S. business in the [Bush] Administration." [37] Mosbacher is the highest "judge" in the Commerce Department in dumping cases. Since the judge has proudly declared his bias in favor of U.S. businesses, it is not surprising that anti-dumping proceedings are often a kangaroo court.

The basic premise of anti-dumping law--that it is a crime for a company to sell the same product for two different prices in two different markets 15,000 miles apart--is an economic absurdity. Price differentials usually prove nothing except that prices are different. If a businessman sells ice cream to Eskimos and to people on a tropical island--and the people on the tropical island willingly pay more--does that mean the businessman is unfairly dumping ice cream on the Eskimos because he is selling it to them at a lower price? Are the Eskimos harmed by the price differential between the arctic and the tropics?

Although fear of predatory pricing was the fount of the U.S. anti-dumping law, the list of products that have been hit with dumping duties makes a mockery of the predatory argument. Did Washington bureaucrats really believe in 1972 that Canadian companies were conspiring to dump ice cream sandwich wafers in the United States to destroy their American competition? [38] And what good would it have done to corner the ice cream sandwich wafer market

anyhow? If the Canadians had obliterated their U.S. competition and tripled the price of ice cream sandwich wafers, Americans would simply have bought more ice cream cones and fewer ice cream sandwiches.

The Specter of Foreign Subsidies

U.S. trade policy appears to assume that every handout given to a foreign business is automatically a stab in the back of a competing American corporation. Foreign subsidies have long been a prime hobgoblin of American protectionists. Rep. Thomas Hartnett (R-S.C.) warned in 1986 that "foreign governments, through the introduction of subsidies, rebates, and other economic incentives have made fair competition an impossibility." [39]

The United States imposes countervailing duties on imported products that allegedly received foreign government subsidies. The CVD is supposed to insulate the United States from the effect of a foreign subsidy, thereby preventing foreigners from cornering the American market. The U.S. government does not hesitate to penalize foreign companies even when it is providing larger subsidies to competing American firms.

U.S. CVD policy presumes that regardless of how large a benefit foreign subsidies provide to American consumers, the subsidies must be penalized. CVDs have boosted prices Americans pay for wool, steel, ham, castor oil, cotton yarn, orange juice, scissors, carnations, sugar, pistachios, roses, auto glass, cement, leather apparel, cookware, lamb meat, shop towels, agricultural tools, footwear, ball bearings, rice, and aspirin. Disputes over foreign subsidies have greatly antagonized our trading partners.

American CVD law effectively hangs a sign at the U.S. border warning foreign companies: "Nonvirgins need not apply." But the U.S. government is constantly amending its definition of "virginity." While governments disagree about whether subsidies are good or evil, no other government in the world has such an expansive definition of subsidies as does the U.S. government. Over time, the administration of U.S. CVD laws has become increasingly protectionist, arbitrary, and divorced from economic rationality.

In April 1986 Commerce imposed a 0.82 percent surtax on Thai rice imports. Commerce, after an exhaustive investigation, concluded that a Thai government price support program provided a subsidy equal to 0.004 percent of the value of Thai rice exports to the United States, a government cooperative assistance program provided a 0.09 percent subsidy, a mortgage program provided a 0.02 percent subsidy, discounts to rice millers provided a 0.01 percent subsidy, and so on. [40] While the Thai government was providing a trickle of aid to Thai farmers, it was also imposing export taxes on rice. The U.S. Department of Agriculture, in an unrelated study, concluded that, after subtracting the amounts spent on credit, fertilizer, and marketing assistance from the export taxes, Thai government policies imposed a net 5 percent tax on rice production in 1985. [41]

At the same time the U.S. Department of Commerce was nickel-and-diming Thai rice growers, the U.S. Department of Agriculture was bankrupting them. The U.S. government spent \$2 billion in 1986 to flood international markets with American rice, driving down the world rice price by 50 percent. The Thai rice program spent less than \$100 for each Thai rice grower, while the U.S. program spent the equivalent of over \$1 million for each full-time American rice grower between 1985 and 1990. [42] Thailand's average per capita income is \$860, while the average American full-time rice grower was a millionaire even before receiving lavish subsidies in the mid and late 1980s. [43]

In 1983 the United States imposed a CVD on Argentine wool. [44] Commerce justified the penalty on the grounds that the Argentine government, through a regional development program, paid a bonus of 6 percent for products exported from Argentina's southern ports. (The United States has a similar program: the Appalachian Regional Commission, which has given billions of dollars in grants and loans to businesses in that region.) While Argentine sheep producers were allegedly receiving a 6 percent subsidy, the Argentine government was also imposing a 17 percent tax on wool exports. Commerce disregarded the export tax because "the export taxes and duties and the [export subsidy] programs were enacted under separate laws." [45] In the same year that Commerce began penalizing Argentine wool growers for receiving a 6 percent subsidy, the U.S. Department of Agriculture's wool program gave American wool growers direct payments equal to 150 percent of the value of their wool. [46]

In 1990 Commerce imposed a 14.17 percent surtax on Argentine leather imports because the Argentine government had banned the export of cattle hides in 1985. [47] (The United States imposed a similar ban on the export of hides in

1966.) Commerce alleged that the export ban on Argentine cattle hides was equivalent to a direct subsidy to the Argentine leather-tanning industry. Commerce created a simple test of the fairness of Argentine prices: "the best measure we have of what [Argentine] prices would have been in the absence of the current embargo is a benchmark based on U.S. hide prices." [48] The fact that U.S. hide prices were higher than Argentine prices in the years 1985-89 proved that the Argentine leather producers were subsidized. But in the late 1980s Argentina suffered from hyperinflation, massive currency devaluations, a deterioration in the quality of cattle hides, and government policies that severely disrupted the economy and exchange rates. Commerce disregarded all those factors in judging Argentine prices by U.S. prices.

In some cases foreign companies and governments must spend more defending themselves than the total amount of the alleged subsidy. In January 1990 Commerce issued a preliminary determination alleging that a Singapore government research contract provided a subsidy to a Singapore software manufacturer. [49] Commerce claimed a subsidy existed because Commerce's contrived estimate of the Singapore government's future revenues from the research results was \$42,891.57 less than the amount the Singapore government paid the private firm to do the research. In the final determination, Commerce conceded that no subsidies existed. Commerce's investigation cost the Singapore government and the software company over \$170,000--almost four times the amount of the alleged subsidy. [50] Commerce's lengthy investigation of a Singapore software firm for allegedly receiving a \$42,891 subsidy showed truechutzpah, as the U.S. government, a few months before Commerce's investigation began, committed \$100 million to SEMATECH, a U.S. public-private semiconductor research consortium. [51]

A major goal of CVDs is to force foreign governments to end their subsidies and play fair. But even when foreign governments reduce or abolish their subsidies, Commerce still routinely refuses to abolish the CVDs. Commerce also refuses to repeal CVDs levied on companies that can prove that they do not receive government subsidies. Leonard Shambon, the chief of the Compliance Division, which oversees CVD orders, observed in 1987, "In the area of countervailing duties, the actual prospects for receiving a revocation because of the elimination of subsidies are dim, if not nonexistent." [52] There were no revocations of CVD penalties between April 1981 and June 1987. [53]

Protectionists often justify CVDs by warning that foreign governments must be penalized or they will monopolize the American market. If we look at the list of nations currently hit with CVDs, we see that the vast majority are Third World nations--countries that are unable to pay their own bills, much less take over the world. Of the 76 current CVD orders, 8 are against Argentina, 7 are against Brazil, 10 are against Mexico, 5 are against Peru, 2 are against Venezuela, 1 is against Zimbabwe, 1 is against Ecuador, and 2 are against Iran. [54] Almost half of all CVD actions have been against nations that have effectively defaulted on their foreign debt--not exactly a sign of imminent economic hegemony. Despite the widespread perception that Japan heavily subsidizes its industry, there are no CVD orders against Japanese products.

The effect of foreign subsidies on exports is usually far less than the effect of gyrations of currency exchange rates. Though business subsidies, as are every other type of misguided government intervention, are pervasive in Latin America, they are dwarfed by changes in the exchange rate. The average CVD on Argentine exports was 5 percent, and the Argentine exchange rate fluctuated 244 percent between 1980 and 1987. The average Brazilian CVD was 12 percent, and the Brazilian exchange rate fluctuated 135 percent. For Chile, the average CVD was 12 percent, and exchange values fluctuated 223 percent; for Colombia, the values fluctuated 7 and 189 percent; for Costa Rica, 17 and 152 percent; for Mexico, 10 and 204 percent; and for Peru, 25 and 131 percent. [55]

Countervailing duty laws are premised on the idea that even minimal subsidies from a government are "magic beans" that enable a company to grow into the sky and conquer the world--that government aid is a steroid that vastly increases the strength of a foreign company. But the history of government subsidies is one of burning money almost as fast as tax collectors can scoop it up. Export subsidies are usually artillery shells that explode in the face of the nation that fires them.

International disputes over subsidies resemble a couple of drunks lying in a gutter, each accusing the other of overimbibing. While the U.S. government calculates foreign subsidies out to the millionth of a percentage point, it pours tens of billions into the coffers of American business. During the 1980s, when the Commerce Department launched over 300 CVD investigations of foreign firms, U.S. government policy provided \$260 billion in benefits to

American farmers, over \$5 billion to the merchant marine, over \$30 billion to small businesses, and over \$30 billion in subsidized credit to exporters.[56] Total U.S. government subsidies and liabilities for aid to business since 1980 exceed \$500 billion. That amount is probably 20 times greater than the total foreign subsidies paid on products exported to the United States.

The clearest proof that foreign subsidies do not pose a grave threat to the United States is that few foreign countries have been troubled by the effect of subsidized imports. Switzerland, Austria, Sweden, and Norway have never imposed a single CVD; yet neither U.S., nor European, nor Asian subsidies have allowed foreign companies to corner those markets. Hong Kong imposes no CVDs, no dumping duties, and almost no tariffs. With that "bare-the-throat" policy, Hong Kong has had the highest economic growth rate in the world since 1960; Hong Kong's per capita income increased from \$180 in 1948 to over \$9,000 in 1989. Hong Kong's per capita income now exceeds that of Israel, Ireland, and Saudi Arabia.[57]

We have no national interest in obsessing over misguided foreign tax and economic policies. Does the U.S. government need to "countervail" every foolish act by every other government in the world? Most CVDs amount to economic shadowboxing--American bureaucrats and politicians thrashing the air to pummel imaginary enemies. Or, more accurately, U.S. countervailing policies resemble the scene from Don Quixote in which Quixote beats Sancho Panza and insists that he is actually beating a horde of evil demons. CVDs have had far more effect on American consumers than on foreign governments.

The U.S. subsidies policy is based on a doctrine of immaculate competition--any foreign company with the slightest taint must be sent to bureaucratic purgatory. Commerce essentially tries to apply the "Caesar's wife" standard to international commerce, demanding that foreign companies be free of even the suspicion of receiving aid from their governments. That is profoundly unrealistic and hypocritical.

The 301 Solution

When U.S. Trade Representative Carla Hills took office in February 1989, President Bush presented her with a crowbar to symbolize her task of prying open foreign markets.[58] Section 301 of the Trade Act of 1974--the main U.S. crowbar--authorizes the U.S. government to investigate and retaliate against foreign trade barriers that are judged to be unfair. Under section 301, U.S. producers may petition the Office of the U.S. Trade Representative to take action against a foreign practice or barrier, or the USTR can initiate an investigation. Once the USTR officially decides a foreign barrier is unfair, the United States gives the foreign government a deadline by which it must reform its policy or face American retaliation. As the Wall Street Journal noted, "American [trade] retaliation is supposed to be the nuclear deterrent that forces the rest of the world into submission." [59]

It is surprising how often the United States itself engages in the same practices that section 301 penalizes. The first section 301 case targeted Guatemala for requiring that cargo being shipped to Guatemala be carried by Guatemalan ships. The United States itself has extensive cargo preference laws, which the General Accounting Office estimated in 1985 added over \$100 million to the cost of providing food donations to foreign countries.[60]

In 1976 the United States brought suit against Taiwan because of "confiscatory tariff levels on imports of major home appliances." [61] (The Taiwanese tariff on refrigerators and air conditioners was 60 percent.) [62] But the United States has confiscatory tariff levels on many items, including a 151 percent tariff on low-priced watch parts exported from Taiwan.[63]

Many section 301 complaints have involved agricultural export subsidies, including European Community export subsidies for poultry, wheat, and wheat flour and Taiwan rice subsidies. In recent years the U.S. government has also provided export subsidies for all of those items; it has paid export subsidies of 111 percent for poultry, 78 percent for wheat flour, 94 percent for wheat, and over 100 percent for rice.[64] The United States denounces Japanese rice import quotas, though unlimited U.S. export subsidies have done far more to distort the world rice market than has Japan's ban on rice imports. The United States brought a case against Korea for its beef import quotas, even though the United States also has beef import quotas. Five section 301 cases involved allegations that foreign governments subsidized their steel industries--as does the United States.[65] The Footwear Institute of America persuaded the USTR to launch seven section 301 cases against foreign trade barriers on footwear--even though the United States itself maintains

tariffs of up to 67 percent on footwear.

In May 1988 the United States launched an investigation of Japanese citrus quotas. In the press release announcing the case, U.S. Trade Representative Clayton Yeutter noted, "The Florida citrus industry . . . believes that removal of Japan's unfair barriers could cut the price of oranges for Japanese consumers by one-third." [66] By amazing coincidence, that is roughly the amount that the price of orange juice in the United States could fall if the 40 percent tariff on Brazilian orange juice imports were abolished.

In August 1988 the USTR settled a second unfair agricultural trade case with Japan. Under heavy U.S. pressure, the Japanese agreed to end their quotas on ice cream, cheese, and sugar; of course, American trade policymakers believed that the United States had a right to continue its own import quotas on the same items. [67]

In December 1988 the European Community banned the import of American beef produced with growth hormones. That action outraged the United States, as U.S. policymakers believed there was no scientific evidence that the beef hormones had adverse effects on humans. The EC ban was unjustified, but the United States has an equally unjustified ban on imports of German ham. German ham has an international reputation as a luxury product, yet the United States insists that it is not safe enough for Americans.

The United States retaliated against the EC beef ban by imposing 100 percent tariff surcharges on European hams and pork shoulders, cranberry juice, instant coffee, alcoholic beverages containing less than 7 percent alcohol, and pet food packaged for retail sale. The U.S. retaliation devastated some American businesses. As the Journal of Commerce noted: "A Chicago food importer's mid-size business will lose almost \$3 million in revenue this year as a result of the trade sanctions. . . . National Food Trading Corp. saw 10 percent of its export business evaporate when the peeled tomatoes it imports from Spain were hit with the 100 percent tariff." [68] The importer of Riunite wine dodged the super tariff by raising the alcohol content of the wine by 25 percent. (Some Americans who drink low-priced sweet wine and were not aware of the U.S.-EC trade war may have been awarded drunk driving tickets as a result.) Christina McCown, a spokesperson for the USTR, justified the 100 percent tariff: "The amount of retaliation equals the amount lost in U.S. exports. We were not trying to cause any U.S. businesses a hardship." [69] The beef war sought to placate American cattlemen by padding the pockets of American pet food makers.

Other U.S. trade retaliations have also harmed U.S. companies. As Jim Powell noted: "In 1978, American broadcasters filed a complaint because Canada had abolished tax deductions for advertising on stations in the United States. The United States retaliated by removing tax deductions for advertising on Canadian-owned stations. The consequence, of course, was that American advertisers had a harder time reaching the Canadian market. Twelve years later, these retaliatory measures are still in place--and Canada has not changed its original policy." [70]

Section 301 victories often skewer American consumers. In the 1985 settlement of a dispute over Japanese leather quotas, Yeutter declared: "The agreement is a significant victory for the principle of free and fair trade. . . . This is far preferable to protectionist measures that would restrict imports without increasing U.S. exports." [71] Yet as part of its "victory for free trade," the United States raised tariffs on Japanese leather imports from 12 to 40 percent--with the explicit goal of sharply reducing Japanese exports to the United States.

In 1988 the United States decided to punish Brazil for its denial of patent protection to American chemical and pharmaceutical companies operating in Brazil. The USTR imposed a retaliatory 100 percent duty on Brazilian penicillin and tetracycline, among other products. Apparently, some higher justice was served by punishing Americans with pneumonia (forcing them to pay higher prices for their drugs) in order to placate wealthy American multinational corporations. [72] Six months later Brazil announced cessation of interest payments on the \$22 billion it owed U.S. banks.

American trade negotiators are often blinded by moral arrogance. Carla Hills told the House Ways and Means Committee in 1989, "I hasten to tell other nations that we are the freest and most open market in the world and that even in those areas that are most restricted, we do import per capita far more than our largest trading partners." [73] As Hills must know, Hong Kong has far fewer trade barriers than the United States, as do the United Arab Emirates and Singapore. Sweden and Austria also may be more open than the United States. And, in making her claim that "even in

those areas that are most restricted, we do import per capita far more than our largest trading partners," Hills forgot that Canada, the largest trading partner of the United States, imports far more sugar, peanuts, and cotton per capita than does the United States. The assertion that the United States has the world's most open markets has long been a cardinal tenet of American trade theology and is often made as a prelude to demanding new trade barriers, somewhat like people loudly announcing that they are good Christians before slamming the door in their neighbor's face.

The U.S. government has done more to reduce exports than has any other government in the world. The amount of increased exports gained due to all the section 301 cases in the last decade is less than the annual estimated amount of U.S. exports lost thanks to the Export Control Administration. As George Gilder notes, "By constantly imposing special export controls for nonsensical national security concerns and changing policy from month to month in response to utterly spurious emergencies, the U.S. government has become the chief obstacle to U.S. competitiveness in electronics." [74] The National Academy of Sciences estimated in 1987 that unnecessary Commerce Department export controls on U.S. technology and products that pose no threat to national security reduced American exports by \$9 billion. [75] U.S. agricultural exports would be far higher if the government abolished federal farm programs. A study by Andrew Feltenstein of Kansas State University estimated that unilaterally abolishing farm programs would have reduced the U.S. trade deficit by \$42 billion in 1986. [76] A 1988 study by Purdue professors Thomas W. Hertel, former USDA chief economist Robert L. Thompson, and Marinos E. Tsigas concluded that the misallocation of resources and capital to agriculture depressed the productivity of other sectors of the U.S. economy and reduced American manufacturing exports by \$7.5 billion and service exports by \$3.4 billion. [77] An American Enterprise Institute study concluded that U.S. tobacco exports would double if the government abolished its tobacco quota and price support system. [78] The USDA imposes severe limitations or quotas, or both, on the export of lemons, almonds, raisins, peanuts, and peanut butter. [79]

The Morality of Fair Trade

Every restriction on imports is an attempt by the U.S. government to compel some Americans to pay higher prices to other Americans than they otherwise would have paid. Consumers do not offer to voluntarily pay higher prices; they pay higher prices only because 17,000 U.S. Customs Service officials leave them no choice.

Trade is not simply a matter of exchanging widgets for gadgets; it affects the way people live their daily lives. Since practically no one can make all the things he wears, eats, and uses, a person's standard of living and opportunity in life depend largely on his opportunities for trading the product of his labor with others. Pervasive trade barriers effectively force people to use inferior building blocks for their lives. Trade barriers are an attempt by politicians to control the market. And politicians cannot control the market without commanding everyone who must rely on that market.

Trade barriers raise prices, and price hikes have the same effect as a federal decree that some Americans shall no longer be allowed to buy the restricted product. As John Stuart Mill noted in "On Liberty," "Every increase of price is a prohibition to those whose means do not come up to the augmented price." [80] The Joint Economic Committee observed in 1956, "For a government official to make a moral judgment on how we ought to spend our money is an invasion of liberty and privacy which is acceptable only where obvious public harm follows." [81] Government cannot drive up prices without knocking some people out of the market--without taking a notch out of someone's living standard, changing the types of clothes some people wear, the cars some people drive, the food some people eat, the medical care some people receive. The 1986 Softwood Lumber Agreement added \$1,000 to the cost of constructing a new house in the United States, [82] thereby knocking as many as 300,000 people out of the home-buying market [83] and effectively decreeing that many families would be forced to live in trailer homes instead of real houses. If the federal government intervened to cause old people's bones to automatically break when they fell, that intervention would be denounced as the height of idiotic tyranny. But apparently federal intervention in the form of a quota that imposes the equivalent of a 170 percent tariff on dairy imports, [84] thereby ensuring that many Americans will have calcium deficiencies and weak bones, is okay. What is the moral difference between putting a 50 percent surcharge on imported clothing [85] and commanding millions of poor people to wear tattered garments?

Every trade restraint is a moral issue, forcibly sacrificing some Americans for the benefit of others. Treasury Secretary Robert Walker observed in 1845, "If the marshall were sent by the federal government to collect a direct tax from the whole people, to be paid over to the manufacturing capitalists to enable them to sustain their business, or realize a

larger profit, it would be the same in effect as the protective duty."[86] If a businessman pulls a gun on a customer and demands 20 percent more for a product, that is robbery. If a politician intervenes to the same effect, it is fair trade. As the Supreme Court said in 1875, "To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called a taxation."[87]

Protectionism rests on a moral glorification of an economy's least competitive producers. Sen. Ernest F. Hollings (D-S.C.) announced in 1988: "The market will take care of consumers. The Government must take care of producers. No government was ever organized to get everybody something for a cheap price. The market does that."[88] (Hollings made that observation in a speech calling for further government suppression of the market.) Protectionism is a Dred Scott policy for consumers--the federal government promises not to let American buyers escape from American businesses that want to charge consumers higher prices.

Fair trade is based on the doctrine that producers have rights and consumers have duties. Fair trade assumes that the consumer's freedom of choice is an injustice to the producer. The soul of protectionism is that government should force customers to carry a company that cannot stand on its own two feet. Protectionism is an economic no-fault insurance policy: no matter how often an American company crashes in the marketplace, the consumer must pay the bill.

Federal officials have long talked and acted as if they had a *droit du seigneur* over American consumers. U.S. Deputy Trade Representative Linn Williams declared on December 4, 1989, "I should also note that the U.S. has 'contributed' a substantial part of its domestic market to imported steel."[89] It is outrageous for a high-ranking government official to speak of the U.S. government allowing some Americans to buy imported steel as a contribution--as if government officials own the consumers' dollar and can decide to "contribute" it to whom they choose. That statement epitomizes the notion that government officials own the market they seek to control. Rep. Joseph M. Gaydos (D-Pa.), executive chairman of the House Steel Caucus, declared in 1988, "We're not going to allow domestic companies, if we can help it, to buy [steel] overseas."[90] Federal officials talk as if they have the right to dispose of the dollars of any American company or citizen that needs to buy steel, or sugar, or cheese, or an auto. In 1990 Sen. Jesse Helms (R-N.C.) denounced U.S. textile policy "that gives our market to foreigners."[91] Helms apparently believes that the U.S. Congress should have the right and power to give the market to whom it chooses. To talk of giving the market is, in reality, to talk of giving away the dollars of anyone who must depend on that market. For politicians to allocate market share is to treat consumers like serfs who can be freely traded by their lords.

Medieval theologian Duns Scotus declared that a price was just when "the owners of things . . . preserve equality of value in the things exchanged, according to right reason judging of the nature of the thing exchanged in relation to its human use."[92] U.S. trade law assumes that goods have an objective value in themselves that can be determined in a bureaucratic vacuum thousands of miles from the market where the product is exchanged. The soul of American trade law is that bureaucrats and politicians, not buyers and sellers, are the proper judges of fair value. All the absurdities, biases, and scholastic methods follow from that principle. Fair trade essentially substitutes the moral and political values of federal policymakers for the economic values of private citizens.

Conclusion

Fair trade is an income redistribution system based on the capture of political power. In the end, the morality of fair trade is pure *realpolitik*--the deification of power as an end in itself. Should the capture of political machinery give some Americans a right to put their hands in other Americans' pockets? Should politicians have the right to reduce one man's standard of living in order to buy another man's vote?

There is no way that restricting Americans' opportunity to buy and sell can make America a richer land. Protectionism is the ultimate "less is more" policy--a policy based on the idea that the United States will become richer if the government forces Americans to pay higher prices for fewer goods. Every trade barrier imposes an opportunity cost on the American economy.

Every unnecessary burden the U.S. government places on American industry and agriculture means lost exports and reduced income for American citizens. The fewer crutches the government provides, the faster American industry will run. Should we hold U.S. productivity hostage to the stubbornness or stupidity of other nations' trade policymakers?

Should the United States wait until it receives a foreign bribe before it looks to its own interests? Are dairy import quotas--and the brittle bones of the American elderly--an asset that we should demand to be compensated for giving up? Are the tattered clothes of many poor Americans something the nation should be proud of? Is a federal sugar policy that drives American food manufacturers overseas a national asset?

The rising phobia of imports and trade balances misses the purpose of trade. Trade allows consumers everywhere a chance to benefit from increases in productivity anywhere. As Emerson observed, "If a talent is anywhere born into the world, the community of nations is enriched." [93] Trade binds humanity together in laboring for mutual benefits. The expansion of trade between the end of World War II and the 1980s produced the greatest era of prosperity in world history.

The fundamental issue is not whether foreign governments treat American companies fairly but whether American citizens receive fair treatment from their government. Even if trade barriers exist abroad, U.S. politicians should not perpetuate them here. We should cease punishing American consumers for the alleged sins of foreign governments.

Notes

[1] U.S. Congress, Senate Finance Committee, Remedies against Dumping of Imports (Washington: Government Printing Office, July 18, 1986), p. 37 (testimony of Gilbert Kaplan). Also see U.S. International Trade Commission, Operations of the Trade Agreements Program, annual reports 1987-89.

[2] John Taylor, Tyranny Unmasked (Washington: Davis and Force, 1822), p. 38.

[3] For details on the trade barriers cited in this paragraph, see James Bovard, The Fair Trade Fraud (New York: St. Martin's, 1991).

[4] Office of the U.S. Trade Representative, "U.S. Proposal for Uruguay Round Market Access Negotiations," March 15, 1990. This document was a bit difficult to read because it had "SECRET" stamped all over it.

[5] Dave Larsons, "The Cost of Import Protection in the United States," U.S. Treasury Department, 1979; cited in Michael Finger, H. Keith Hall, and Douglas Nelson, "The Political Economy of Administrative Protectionism," American Economic Review 72, no. 3 (June 1982): 453.

[6] David Tarr and Morris Morkre, "Aggregate Cost to the United States of Tariffs and Quotas on Imports," Federal Trade Commission, 1984.

[7] Martin Wolf, "Why Voluntary Export Restraints? An Historical Analysis," World Economy 12, no. 3 (September 1989): 284. Wolf was citing a 1984 study by the Trade Policy Research Centre.

[8] Paul Blustein, "Unfair Traders: Does the U.S. Have Room to Talk?" Washington Post, May 24, 1989.

[9] U.S. trade laws require that the Commerce Department judge whether a foreign product is being dumped or subsidized. After Commerce finds dumping or subsidization, the U.S. International Trade Commission judges whether dumped imports have injured U.S. corporations. The ITC finds injury in the large majority of cases.

[10] Richard Martin, Anti-Dumping Law in a Liberal Trade Order (New York: St. Martin's, 1980), p. 72.

[11] U.S. Congress, Senate Finance Committee, p. 124 (quoted in testimony of Peter Suchman).

[12] N. David Palmeter, "The Rhetoric and Reality of the United States Anti-dumping Law," Mimeo, November 27, 1989, p. 1. The quote is from a decision in the case of Algoma Steel Corp. Ltd. et al. v. United States, 865 F.2d 240, 242 (Fed. Cir. 1989).

[13] Zenith Radio Corp. v. Matsushita Elec. Indus. Co., 513 F. Supp. 1100 (1981), p. 1333.

[14] Federal Register, March 28, 1989, p. 12786.

[15] U.S. Department of the Treasury, "Report of the Secretary of the Treasury to the Congress on the Operation and Effectiveness of the Anti-dumping Act and on Amendments to the Act Considered Desirable or Necessary," 1957, pp. 1819.

[16] Federal Register, March 17, 1987, p. 8326.

[17] Washington lawyer David Palmetter observes: "In the U.S., exchange rates in anti-dumping proceedings are determined by applying an outdated regulation, a relic of an era that ended in the early 1970s when the fixed exchange rate system established at Bretton Woods was abandoned. . . . The rate established by the Federal Reserve is a quarterly one, set in advance, and based on transactions at the end of the previous quarter. . . . This average rate is used throughout the quarter unless, on any particular day, it varies from the average by more than five percent, in which case the daily rate is used." N. David Palmetter, "Exchange Rates and Anti-dumping Determinations," *Journal of World Trade* 22, no. 2 (1988): 73.

[18] *Inside U.S. Trade*, January 29, 1988, p. 1.

[19] *Ibid.*

[20] *Luciano Pisoni Fabbrica Accessori Instrumenti Musicali v. United States*, Court of International Trade, no. 841001435, June 12, 1986. 640 F. Supp. 255 (CIT 1986).

[21] *Ibid.*

[22] Interview with Washington trade lawyer, December 9, 1989.

[23] Letter to William D. Hunter, deputy chief counsel for import administration, U.S. Department of Commerce, from Lawrence Walders of the law firm of Graham and James, March 20, 1989, p. 18.

[24] Post-Hearing Brief in *Avesta*, U.S. Department of Commerce investigation no. A401-0-603, September 17, 1987, p. 8.

[25] Federal Register, October 9, 1987, p. 37810.

[26] U.S. International Trade Commission, "Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade," ITC publication no. 2065, February 1988, p. ix.

[27] Hideotoshi Ukawa, "Uruguay Round: Japanese Priorities," presented at a conference jointly sponsored by the *Journal of Commerce* and the National Foreign Trade Council, New York City, June 6, 1990.

[28] U.S. Department of Commerce, Administrative Hearing, *Certain Red Raspberries from Canada*, investigation no. A-122-401, March 22, 1985, p. 48.

[29] Federal Register, January 31, 1989, p. 4870.

[30] Federal Register, August 10, 1990, p. 32668.

[31] Federal Register, August 23, 1990, pp. 34585-602.

[32] U.S. Congress, Senate Finance Committee, p. 23.

[33] Palmetter, "Rhetoric and Reality," p. 8.

[34] U.S. Congress, Senate Finance Committee, p. 39.

- [35] The White House, "Press Briefing by United States Trade Representative Clayton Yeutter and Secretary of Commerce Malcolm Baldrige," July 31, 1986, p. 7.
- [36] Marjorie A. Chorlins, speech to the American Wire Producers Association annual meeting, Scottsdale, Arizona, January 31, 1991.
- [37] "Secretary Mosbacher Discusses Trade Issues at 'Europe 1992' Conference in Washington," Business America, March 13, 1989, p. 12.
- [38] Federal Register, May 14, 1972, p. 5293.
- [39] Congressional Record, August 6, 1986, p. 19361.
- [40] Federal Register, April 9, 1986, p. 12356.
- [41] U.S. Department of Agriculture, Estimates of Producer and Consumer Subsidy Equivalents, Government Intervention in Agriculture, 1982-87 (Washington: U.S. Department of Agriculture, 1990), p. 286.
- [42] A 1985 Congressional Budget Office report estimated that there were 4,000 full-time rice producers in the United States. (Full-time was defined as gross sales of over \$100,000 of rice per year.) Congressional Budget Office, "Diversity in Crop Farming," 1985, p. 46. USDA spending on rice subsidies exceeded \$4 billion between 1985 and 1990. See U.S. Department of Agriculture, "Annual Budget Summary," 1986-91. For more details on the rice program, see James Bovard, *The Farm Fiasco* (San Francisco: ICS Press, 1989), pp. 81-82.
- [43] For Thailand's per capita income see World Bank, *World Development Report 1986* (New York: Oxford University Press, 1986), p. 180. For the wealth of U.S. rice growers, see Congressional Budget Office, "Diversity in Crop Farming," p. 46.
- [44] Federal Register, April 4, 1983, p. 14423.
- [45] Federal Register, June 18, 1987, p. 23197.
- [46] U.S. Department of Agriculture, *Agricultural Statistics 1987* (Washington: Government Printing Office, 1988), p. 292.
- [47] Federal Register, October 2, 1990, p. 40280.
- [48] *Ibid.*
- [49] Federal Register, January 17, 1990, p. 1597.
- [50] Interview with Celia Khoo, embassy of Singapore, Washington, May 17, 1990.
- [51] Congressional Budget Office, *Using R&D Consortia for Commercial Innovation: SEMATECH, Xray Lithography, and High-Resolution Systems* (Washington: Government Printing Office, 1990), p. 15.
- [52] Leonard Shambon, "Revocation under the Anti-dumping and Countervailing Duty Laws? You Should Live So Long!" in *Commerce Department Speaks 1987*, ed. Wendell Willkie II (New York: Practising Law Institute, 1987), p. 284.
- [53] *Ibid.*, p. 285.
- [54] U.S. International Trade Commission, *Operations of the Trade Agreements Program*, ITC publication 2317, September 1990, p. 194.
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[56] For an excellent analysis and survey of current U.S. government subsidies, see Doug Bandow, *The Politics of Plunder* (New Brunswick, N.J.: Transaction Books, 1990).

[57] Alvin Rabushka, *From Adam Smith to the Wealth of Nations* (New Brunswick, N.J.: Transaction Books, 1985), p. 129; World Bank, *World Development Report 1990* (New York: Oxford University Press, 1990), p. 179.

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[62] *Federal Register*, December 1, 1977, p. 61103.

[63] Office of the U.S. Trade Representative, "U.S. Proposal for Uruguay Round Market Access Negotiations," p. 416.

[64] General Accounting Office, "Activity under the Export Enhancement Program," February 1990, p. 32.

[65] Ernst & Young Consulting, "Report on Government Assistance to the U.S. Steel Industry," prepared for the Canadian Steel Producers Association, October 1989, p. 4.

[66] Office of the U.S. Trade Representative, "Yeutter Accepts Florida Citrus Industry 301 Petition," press release no. 88/31, May 25, 1988.

[67] Office of the U.S. Trade Representative, "Summary of Settlement--U.S. & Japan GATT Agricultural Case," August 1988.

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[69] *Ibid.*

[70] Jim Powell, "Forget the Crowbar," *Reason*, March 1990, p. 36.

[71] Office of the U.S. Trade Representative, "Yeutter Announces Japan Leather Agreement," press release no. 85/34, December 21, 1985.

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[75] *Congressional Record*, April 28, 1987, p. H2586.

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- [77] Thomas W. Hertel, Robert L. Thompson, and Marinos E. Tsigas, "Economic Side Effects of Unilateral Trade and Policy Liberalization in U.S. Agriculture," paper prepared for the Global Agricultural Trade Study, 1988, p. 37.
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- [79] James Bovard, *The Farm Fiasco* (San Francisco: ICS Press, 1989), pp. 72, 180f.
- [80] John Stuart Mill, *Utilitarianism, Liberty, and Representative Government* (New York: E.P. Dutton, 1951), p. 210.
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- [85] The White House, *Economic Report of the President* (Washington: Government Printing Office, 1989), p. 172.
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- [87] William O. Douglas, *An Almanac of Liberty* (New York: Doubleday, 1954), p. 129.
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- [89] Linn Williams, speech to the American Institute for Imported Steel, New York City, December 4, 1989.
- [90] Marilyn Werber, "Pennsylvanian Congressmen Speak Out against Steel Imports," *American Metal Market*, February 18, 1988.
- [91] Peter Truell, "Textile Makers Demanding More Protection Threaten Hopes for Seamless U.S. Trade Policy," *Wall Street Journal*, May 16, 1990.
- [92] V. A. Demant, ed., *The Just Price* (London: Student Christian Movement Press, 1930), p. 64.
- [93] Ralph Waldo Emerson, *The Conduct of Life* (Boston: Houghton Mifflin, 1888), p. 85.