GATT and the VRA: Japanese Automobile Imports and Trade Protectionism

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I. Introduction

The automobile industry is one of the largest and most visible participants in the international trade system. Public awareness of the fluctuations in international automobile trade has come about as a result of recent developments and concerns affecting the American automobile industry. United States lawmakers are currently faced with pressure to take measures to aid the industry and preserve the jobs that the industry provides. In dealing with this pressure, the lawmakers must take into account the applicable provisions of the General Agreement on Tariffs and Trade (GATT). Article XIX of GATT provides an escape clause that permits a signatory nation to temporarily disregard the concessions agreed upon under GATT. A nation will attempt to invoke the protection

2. One important development was the United States Government bail-out of the Chrysler Motor Corporation in 1981. This action spurred public debate over whether the federal government should loan money to ailing private industries. Because of the bail-out, the American public experienced a heightened awareness of the current status of the American automobile industry and the perceived injurious Japanese import situation.
3. One important concern has been the loss of employment and profitability of the domestic automobile industry. As a result of these concerns, a protectionist attitude has developed among those directly involved in the domestic automobile industry, including labor unions. Essentially, protectionist sentiments are well summarized by the familiar slogan, “Buy American.”
4. For purposes of this Comment, only the Article XIX escape clause provision will be analyzed and applied to the automobile import problem.
6. Article XIX of GATT provides as follows:

Emergency Action on Imports of Particular Products

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (a) of this paragraph, so as to cause or
of the escape clause when a product is being imported in such increased quantities as to cause or threaten serious injury to domestic producers of like or directly competitive products. Over the years, many of the provisions of GATT, including the escape clause, have been creatively ignored in order to create protectionist, bilateral restraint agreements. For example, the United States and Japan currently utilize a Voluntary Restraint Agreement (VRA) to control the importation of Japanese automobiles. Agreements similar to the VRA have come under strict scrutiny in the international trade arena because of their illegality under GATT.

This Comment discusses the international trade implications of the VRA on Japanese — American automobile trade and the utilization of GATT as a legal instrument for addressing the problem at hand. The Comment begins with a basic overview of the development of the import problem and the current status of the VRA. The

threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3.(a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1(b) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

(b) notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

7. GATT, art. XIX (1)(a), supra note 5.
8. See infra text accompanying note 97.
9. See infra notes 117-188 and accompanying text.
Comment will then discuss the traditional applications of the Article XIX escape clause provision of GATT, its shortcomings, and potential changes that would increase GATT's effectiveness in dealing with the Japanese import problem and escape clause actions. While other legal commentators have addressed these same issues, changes in the domestic automobile industry since the original imposition of the VRA mandate a reexamination of the situation in light of new developments.

II. Review of the Development of the Automobile Import Problem

The domestic automobile industry has acted as a catalyst for growth in the American economy for over seventy-five years. The industry promoted widespread demand for the automobile, which was instrumental in converting the agrarian society into a more modern and mobile consumer society. The automobile single-handedly changed the face of the American economy by providing consumer access to goods and services, a steady flow of commerce among cities and states, and millions of jobs for citizens in production, distribution, and aftermarket products.

In the 1960s, automobile manufacturing was centered in the United States and Western Europe. Chrysler, Ford, and General Motors dominated the domestic industry, while the Volkswagen Beetle was the only major imported automobile. At the time, Americans did not need to consider lightweight, fuel-efficient automobiles because of the relatively abundant supply of affordably priced gasoline. Thus, the American automobile industry produced large, heavy vehicles with high horsepower, gas-guzzling eight-cylinder engines. However, across the Atlantic, the Europeans were building small, fuel-efficient automobiles in preparation for already rising gasoline prices.

During this time of prosperity for American automakers, the Japanese automobile industry was merely in its developing stages. It was not until 1960 that Japanese manufacturing even reached a pro-

10. The term "problem" is used merely as a reference to the American automobile industry's perception that the influx of Japanese automobiles has caused substantial injury to the domestic industry.
12. Id.
13. Id.
15. Id.
16. Id.
duction level of 165,074 automobiles. During the ensuing ten years, however, the Japanese refined their production methods and increased output. During 1970, they produced 3,178,078 vehicles, an increase in production capacity of roughly three million vehicles. In record time, Japan had become a world-class competitor in the production of subcompact automobiles. In so doing, it established a reputation for efficiently producing quality automobiles with a reputation of reliability and high fuel economy.

At the same time that Japanese automobiles were gaining popularity, events on the world oil market substantially changed the complexion of the American automobile industry. By 1973, Americans faced the first worldwide petroleum shortage since the advent of the automobile. The shortage of oil and the forecasted gasoline prices led to a diminished demand for the heavy, gas-guzzling American automobiles. By early 1979, after substantial OPEC price increases, the American automobile consumer was convinced that smaller was indeed better. After the second oil crisis in 1980, Americans were assured that the oil shortage was not just a temporary occurrence. At this juncture, American automobile consumers began to purchase the smaller, economical Japanese imports in record numbers.

The combination of the gas shortage and the availability of the Japanese imports produced a crisis for American producers. Sales of domestic automobiles dropped rapidly and most analysts predicted a continuing downward trend. Industry employment fell enormously in a very short time as the industry found itself noncompetitive after having enjoyed unparalleled success in the past. As a result, the industry began a major overhaul of production facilities and automotive design in an effort to recapture the market share lost to the Japanese imports. The industry began retooling and redesigning existing production and assembly lines, investing in more modern production facilities, downsizing most model lines, and increasing worker productivity. Both fixed and variable costs were cut as the industry utilized less expensive and lighter materials and computer-aided design and manufacturing techniques.

17. Id.
18. Id.
19. Id.
20. Id.
21. McDonald, supra note 11, at 260.
22. "OPEC" is the abbreviation for the Organization of Petroleum Exporting Countries.
23. McDonald, supra note 11, at 260.
25. Id.
26. Id. at vii.
27. Id.
While these measures eased the crisis, the industry sought additional help. The automobile industry representatives claimed that they needed a respite from the influx of Japanese automobiles if they were effectively to meet the Japanese import challenge. In 1981, in response to intense political pressure from the United States, Japan voluntarily agreed to limit automobile exports to the United States. More than five years later, the restraint remains in effect, and it appears that it will continue for at least another year.

III. Current Status of the Automobile Import Problem

In January 1986, Senator John Danforth of Missouri led a congressional delegation to Japan to deliver a letter to Prime Minister Yasuhiro Nakasone and Michio Watanabe, the Japanese Minister of International Trade and Industry. The letter contained the rather curt warning that the United States considered it an inopportune time for the Japanese to increase their automobile exports to the United States. Essentially, the trip was part of the intense political pressure placed upon Japan to continue the Voluntary Restraint Agreement that was established in April 1981. Evidently, the pressure worked. For the sixth consecutive year, Japan agreed to extend the Voluntary Restraint Agreement for twelve months beginning in April 1986. Shipments of Japanese automobiles from April 1986 to March 31, 1987 will be limited to a total of 2.3 million vehicles.

The extension of the VRA was a politically heated issue. According to Keiichi Konaga, Vice Minister of the Ministry of International Trade and Industry, the Japanese Government believed that there was no economic justification for continuing the VRA. However, due to strong political pressure from the United States Government and the threat of imminent protectionist legislation, the Japanese Government felt compelled to continue the export limits.

Pressure to abolish the import restrictions is currently building within the United States as well as in Japan. Several factors account for the increased desire to re-open the domestic automobile market to free competition. First, the statistics show that employment in the domestic industry has improved remarkably since the imposition of the VRA. Similarly, the automakers have recovered from the losses experienced in the late 1970s and have realized profits in 1983 and

28. See infra text accompanying note 135.
29. See infra text accompanying note 31.
31. Id.
32. Id.
34. See infra note 147 and accompanying text.
Second, after extensive economic analysis of the VRA, it is widely believed that the VRA has had an enormous cost to the American consumer. Last, it is generally believed that the United States, as a signatory nation under GATT, has an obligation to follow the rules espoused in GATT when dealing in international trade. The VRA is a bilateral agreement made outside the auspices of GATT and contradictory to its terms.

In sum, the decisions facing government officials today in regard to the continuance of the VRA will have significant implications for the future legitimacy of GATT in the international trade arena. These implications will be discussed in Section V. However, to fully understand the implications of restrictive bilateral agreements such as the VRA in connection with GATT, it is necessary to first examine the applicable provisions and procedures of GATT itself.

IV. The General Agreement on Tariffs and Trade as a Tool for Governing International Trade

A. Background

The world multilateral trade system works predominantly within the auspices of the General Agreement on Tariffs and Trade. Ninety countries are full signatories, one country applies the GATT rules provisionally, and thirty-one nations apply its rules de facto. Some major trading countries, such as the Soviet Union,

35. See infra note 154 and accompanying text.
36. See infra notes 161-168 and accompanying text.
38. GATT membership as of the end of 1984 is as follows: Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Belize, Benin, Brazil, Burkina Faso, Burma, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Egypt, Finland, France, Gabon, Gambia, Germany (Fed. Rep. of), Ghana, Greece, Guyana, Haiti, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Korea (Rep. of), Kuwait, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Malta, Mauritania, Mauritius, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Senegal, Sierra Leone, Singapore, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tanzania, Thailand, Togo, Trinidad and Tobago, Turkey, Uganda, United Kingdom, United States, Uruguay, Yugoslavia, Zaire, Zambia, Zimbabwe.

Tunisia applies GATT membership rules provisionally.

39. Report of Eminent Persons, supra note 37, at 743. The nations that apply GATT de facto pending final decisions as to their future commercial policy are as follows: Algeria, Angola, Antigua and Barbuda, Bahamas, Bahrain, Botswana, Brunei Darussalam, Cape Verde, Dominica, Equatorial Guinea, Fiji, Grenada, Guinea-
China, Iran, Saudi Arabia, and Mexico, do not adhere to the obligations of GATT. GATT provides the basic rules for the movement of articles of trade and ways in which participating countries can consult and resolve trade disputes that arise.

The development of international trade occurred rapidly and required a set of governing rules to which each nation could adhere in order to effectuate legitimate trade agreements. GATT supplied these rules and continues to do so today. Fundamentally, GATT is binding only upon signatory nations. However, virtually all trading nations look to its provisions as a governing force in international trade. Thus, many international legal scholars believe that GATT acts as a guiding hand in the international trade arena, whether or not the trading nations profess to follow its provisions.

Critics assert that one of GATT's principle shortcomings is its unresponsiveness to modern trade intricacies. In practice, many of the signatory nations ignore relevant procedures required by GATT for retaliatory actions. Furthermore, the critics state that GATT is not accomplishing one of its primary objectives. In particular, the critics claim that GATT has failed to provide adequate directives to help governments deal with the pressures from domestic producers who seek protectionist actions.

A related problem occurs when GATT is used in a context that its framers never intended. Initially, the instrument was intended to function as a reciprocal tariff reduction agreement. More recently, however, it has been utilized to resolve international trade conflicts and to address nontariff concessions. As GATT is increasingly used for purposes for which it was not intended, the shortcomings of the instrument begin to surface, creating obstacles that interfere with effective utilization of its provisions.

In an attempt to update GATT provisions and to assure its continued vitality as a governing body of international law, GATT members hold negotiations at regularly scheduled intervals. Seven major GATT rounds of negotiations on tariffs and trade have been held since the inception of the agreement. The rounds have had a
remarkable record of lowering the general level of tariffs at each conference. As tariffs ceased posing major problems, the focus of the conferences shifted primarily to nontariff barriers in trade. Indeed, such nontariff barriers were the primary focus of the most recent Tokyo Round.

Many noted international legal scholars have examined GATT and its implications upon international trade law. While the conclusions of those who study the treaty vary, one general conclusion always prevails — GATT is remarkably complex and difficult to apply. Nevertheless, GATT does contain several basic assumptions that must first be examined before turning to its particular provisions.

First, GATT advocates nondiscrimination among trading nations, with all signatory nations enjoying "unconditional most-favored-nation treatment." Some exceptions have been allowed to

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1. Geneva, Switzerland (1947)
2. Annecy, France (1948)
3. Torquay, England (1950)
4. Geneva, Switzerland (1956)
5. Geneva, Switzerland (1960 - 1961) - The Dillon Round
7. Geneva, Switzerland (1973 - 1979) - The Tokyo Round

Id.

47. These rates are now generally fixed or bound at levels ranging typically from four to ten percent of the import value of the item. Report of Eminent Persons, supra note 37, at 725.
49. CURRENT LEGAL ASPECTS OF INTERNATIONAL TRADE LAW, supra note 46, at 4.
50. J. JACKSON, WORLD TRADE AND THE LAW OF GATT vii (1969). In the preface to his book on GATT, John Jackson includes the statements of a few individuals who have examined GATT only to be confused and perplexed by its provisions. Those statements are as follows:

"Anyone who reads GATT is likely to have his sanity impaired." - Senator Millikin on GATT, at the 1951 Senate Hearings, Senate Finance Committee, page 92;

"[O]nly the learned can communicate with it, and then only in code." - Herbert Feis, speaking of the ITO Charter, quoted in WILCOX, A CHARTER FOR WORLD TRADE 189 (1949), from H. FEIS, INTERNATIONAL ORGANIZATION 42 (1948);

"I think your difficulty ... is the inherent complexity of the subject. . . . I must admit I am thoroughly confused." — Winthrop Brown, one of the draftsmen of GATT, testifying at the 1951 Senate Hearings, Senate Finance Committee, pages 1061, 1076.

Id.

51. Report of Eminent Persons, supra note 37, at 724. Essentially, unconditional most-favored-nation status (MFN) prohibits the signatory nation from treating any other nation
this provision, so long as certain criteria are met. However, the principal concern of GATT is nondiscrimination, and the concept of reciprocity among trading nations plays an important role in trade negotiations and membership in GATT.

A second basic presumption of GATT is that import protectionism is detrimental to the system of international trade. All nontariff and quantitative restrictions should be eliminated in favor of freer trade. Occasionally, trade tariffs may be imposed upon all nations equally and indiscriminately when it is determined that domestic industries are being injured by increased imports.

Last, an important concept embodied in GATT, and critical for the enforcement of GATT obligations, is the provision for surveillance. Participating nations have an ongoing obligation to publish trade measures and to consult with other governments so that compliance with GATT can be established. In this manner, the entire GATT contingency, as well as the GATT Council, act as a watchdog to help enforce the provisions of the agreement.

Some legal commentators have referred to the law of GATT as "soft law" because of its many exceptions and provisions for suspension or withdrawal of GATT obligations. One such provision is the Article XIX escape clause, which allows a signatory nation to suspend its obligations under GATT in the event of certain articulated contingencies. This provision is discussed in detail in the following sub-section.

B. The Article XIX Escape Clause

There are several safeguard clauses in GATT. However, one that plays a crucial role in the implementation of GATT obligations is contained in Article XIX, which is entitled "Emergency Action on Imports of Particular Products." The placement of this safeguard clause in GATT represents two contradictory objectives. The first objective is to encourage member nations to adhere to commitments for trade liberalization. The second objective, contrary to the first, is to allow nations to retain the leverage to protect their domestic mar-

52. *Id.* at 743. Exceptions have been provided for customs unions and free-trade areas that provide preferential treatment towards each other as long as no new trade barriers are raised and all trading within the group is unrestrained. Additionally, a 1979 exception allows trade preferences to be given to developing countries.

53. *Id.* at 744.

54. *Id.*

55. See infra note 86 and accompanying text.


57. *See, e.g., Comment, supra* note 1, at 331.

58. J. JACKSON, supra note 50, at 556.
ket from perceived injurious imports. These contradictory objectives thus present an obvious drafting problem. On one hand, the safeguard must be perceived to be strict enough to assure all signatory nations that the provision will be enforced. At the same time, it must be flexible enough so that it does not discourage nations from agreeing to it. Indeed, with the strong political and economic interests that are inherently involved in the decision to curb imports, it is debatable whether an agreeable provision is possible to formulate.

Article XIX has been invoked 123 times as of December 1984. However, many signatory nations have chosen to look for relief outside of Article XIX in the form of voluntary export restraints or other bilateral measures. This shift is due to increased disenchantment with Article XIX, which is perceived as complicated and difficult to invoke. More specifically, some of the complaints lodged against the practical application of Article XIX concern inadequacies in its rules, lack of precision, limitations in conditions governing its application, the obligation to give compensation, supervision by contracting parties, and the risk of retaliation.

To address what was perceived to be the deterioration of and disenchantment with the Article XIX rules, the nations present at the 1973 Tokyo Round of GATT negotiations decided to undertake an "examination of the adequacy of the multilateral safeguard system, considering particularly the modalities of application of Article XIX, with a view to furthering trade liberalization and preserving its results." Upon the completion of those negotiations in 1979, it was apparent that a revision of the Article XIX escape clause was necessary. One suggested revision was the "proposed safeguards code," which was aimed at overhauling the process by which a nation would invoke the escape clause. Under the proposed code, a regimented set of procedures would have to be followed whenever the utilization of Article XIX was contemplated. This idea acted as a catalyst in persuading the contracting nations to establish a more acceptable means of imposing safeguard measures. It was believed that widespread participation in the revamping of the escape clause would lead to greater adherence to the more favorable provision ulti-
mately enacted.

At the end of the Tokyo Round in 1979, the question of change for Article XIX was left essentially unanswered. However, it was taken up again at the GATT Ministerial Conference in November 1982. These discussions also ended without a definitive conclusion, and the discussion is an ongoing concern today. Undoubtedly, the objective of the reconsideration of Article XIX is to improve the safeguard system through more predictable, clearer language and to provide greater security and equity for both importing and exporting countries.

Regardless of its perceived shortcomings, the signatory nations continue to rely upon Article XIX as the law. In fact, utilization of Article XIX provides exporting countries with better leverage in resisting the pressure from importing countries requesting voluntary import restrictions. The exporting country could simply demand that the importing country adhere to GATT law and, if the latter should refuse, the exporting country could appeal to all of GATT's contracting parties.

The legislative history of GATT indicates that the inclusion of an escape clause by the drafters of the treaty was strongly advocated by the United States delegates. These delegates requested that an escape clause be included to protect against injury to domestic industries from inflexible trade agreements. Often, trade agreements were negotiated without escape clause provisions and market conditions subsequently changed. Without an escape clause, the contracting party would have to adhere to certain trade concessions, even though the concessions could potentially cause substantial harm to a competing domestic industry.

GATT requires that certain prerequisites be met before Article XIX is invoked. Generally, these prerequisites are to be strictly

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68. O. Long, supra note 38, at 59.
69. Id.
70. Id. at 59-60.
71. In December 1984, there were 15 reported cases of GATT contracting parties utilizing the Article XIX escape clause. Id. at 60.
72. Id.
73. Id.
74. J. Jackson, supra note 50, at 553.
75. Id.
76. The purpose of including the escape clause in GATT, according to a United States delegate, was to give more flexibility to the commitments undertaken in Chapter IV. Some provision of this kind seems necessary in order that countries will not find themselves in such a rigid position that they could not deal with situations of an emergency character. Therefore, the Article would provide for a modification of commitments to meet such temporary situation.
77. In order to invoke Article XIX, the following must be established:
   (1) There are imports in such increased quantities:
construed. In order to effectively apply GATT law and the provisions of the escape clause, each of the prerequisites must be thoroughly examined.

First, in order to invoke the protection of the escape clause, Article XIX requires that there be an increase in quantities of imports. This requirement appears to be easily construed — if the quantity of imports of a certain good increases, the prerequisite is met. Included by implication is the idea that the increase in imports could be "relative" to the amount of domestic consumption. That is, the number of imported units could remain at the same level, but a decrease in domestic consumption would trigger a "relative increase." The inclusion of the concept of a relative increase opens this Article XIX prerequisite to broad interpretation and possible manipulation by those countries that want to invoke the protection of Article XIX.

A second requirement of an Article XIX action is the showing that the increased imports were (a) the result of unforeseen developments and (b) the result of fulfilling GATT obligations. Generally, the requirement that the increased imports result from the imposition of a GATT obligation encompasses a broad range of situations, since virtually all internationally traded goods are covered by the GATT obligation prohibiting quantitative restrictions. Thus, a nation seeking to invoke the protection of the escape clause could show that it had quantitative import restrictions on a particular good, but these restrictions were eliminated as a result of the GATT obligation. As a result of such elimination, the nation experienced an increase in the imports of that particular item. If the nation originally did not have quantitative restrictions on particular goods, however, it could still argue that the absence of import barriers, or the promise

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(2) The increased imports are a result both of
(a) unforeseen developments; and
(b) compliance with GATT obligations; and
(3) The increased imports cause serious injury or threaten serious injury.
Additionally, Article XIX paragraph 1(b) sets out a prerequisite involving preference concessions.

Id. at 557.
78. GATT, art. XIX, para. 1(a), supra note 5.
79. J. JACKSON, supra note 50, at 558. For example, if the United States imports one million Japanese automobiles per year, and two million automobiles are domestically purchased, and American consumers purchase all of the automobiles available, then the total import share of the domestic automobile market would be 33⅓%. If, however, the domestic purchases fell to one million units, and the Japanese imports remained at the same quantity, the proportion of imports to domestic consumption has increased and thus, a "relative increase" has occurred. Therefore, the Article XIX prerequisite for increased imports is met.
80. Without the provision for a "relative increase," an exporting nation could effectively avoid the first prerequisite to an Article XIX escape clause action by maintaining a constant percentage of the particular exported goods.
81. J. JACKSON, supra note 50, at 559.
82. Id.
to refrain from enacting future import barriers, led to the increased imports.\footnote{83} The additional "unforeseen development" requirement is much more nebulous and difficult to define than the "GATT obligation" requirement.\footnote{84} Nevertheless, economic and social conditions affecting the international trade arena are laden with possibilities for unexpected and unforeseen occurrences. Indeed, a nation seeking the protection of the escape clause could effectively argue that the increase in imports itself is an unforeseen development.\footnote{88}

A third requirement of an Article XIX action concerns whether the increased imports cause or threaten serious injury to domestic producers of like or directly competitive products.\footnote{86} This prerequisite requires a determination of (a) whether "serious injury" exists or is threatened and (b) whether such injury is actually caused or threatened by increased imports.\footnote{87} GATT does not define the term "serious injury"; therefore, it has been left to the interpretation of various GATT Working Parties.\footnote{88}

The fourth requirement to an Article XIX action concerns preference concessions.\footnote{89} A nation that has enjoyed a preference\footnote{90} in another market and is subsequently injured by reason of a change in that preference may fall within the provisions of the escape clause. In order to do so, it must meet the additional aforementioned prerequisites.

The remedy afforded a nation that qualifies for an Article XIX escape clause action is essentially "to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in re-

\footnote{83}{Id. at 560.}
\footnote{84}{The GATT Working Party that was established to study the United States invocation of Article XIX against the Czechoslovakian hatters' furs concluded that "[U]nforeseen development" should be interpreted to mean developments occurring after the negotiation of the relevant tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated." Id. at 560-61 (quoting Report on the Withdrawal by the United States of a Tariff Concession Under Article XIX of the GATT, Geneva, Nov. 1951 (Sales No. GATT/1951-53)) (see infra note 88) [hereinafter Hatters' Fur Case].}
\footnote{85}{Id. at 561.}
\footnote{86}{Id.}
\footnote{87}{Id.}
\footnote{88}{The GATT Working Party in the Hatters' Fur case attempted to determine what constituted serious injury to the domestic producers of hatters' furs. In so doing, they were unsuccessful in establishing a standard or test that subsequent cases could follow. They did conclude, however, that Czechoslovakia (the complainant) had failed to show that serious injury, in fact, did not occur. J. JACKSON, supra note 50, at 562-63.}
\footnote{89}{GATT, art. XIX, para. 1(b), supra note 5.}
\footnote{90}{The following situation is illustrative of an instance in which a preference concession would invoke the Article XIX escape clause. The United States exports certain goods to Japan and, in return, obtains a preference from Japan. Under GATT, Japan granted Great Britain a concession to reduce the preference to the United States. As a result, Great Britain's exports to Japan tend to oust the United States producers in the Japanese market. Here, Japan may have the right under Article XIX to withdraw the concession to Great Britain, which in turn would be beneficial to the United States.}
spect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.\textsuperscript{91} In pursuing this remedy, the nation must follow some specific guidelines, and it may open itself to retaliatory action by the affected nations.\textsuperscript{92}

For example, GATT Article XIX, paragraph three, authorizes the target country to retaliate against the nation that is claiming the escape clause protection.\textsuperscript{93} However, the drafters of Article XIX envisaged that the parties would come to agreement under the provisions of paragraph two, which contains a notice provision requiring the parties to consult about the proposed action,\textsuperscript{94} thereby alleviating the need for retaliatory action. There was hope that any disputes would be resolved through negotiation and arrangement of counterbalancing concessions.\textsuperscript{95} Thus, it behooves the nation seeking to invoke the escape clause to resolve the problem through negotiation and mutual agreement, for if an agreement is not reached, the target nation is entitled to respond according to the dictates of Article XIX.\textsuperscript{96}

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\textsuperscript{91} GATT, art. XIX, para. 1(b), \textit{supra} note 5.

\textsuperscript{92} Jackson summarizes the guidelines as follows:

1. Generally, written advance notice must be given the Contracting Parties and an opportunity to consult afforded; an exception to this is made for "critical circumstances where delay would cause damage which it would be difficult to repair";

2. The phrasing of the remedy implies that the obligation withdrawn must relate causally to the increase in imports;

3. The withdrawal is to be only "to the extent and for such time as may be necessary to prevent or remedy such injury";

4. The withdrawal is to be "in respect of such product," i.e., the imported product causing the injury;

5. Although nowhere expressly mentioned in the language, the preparatory work and subsequent GATT practice make it clear that the withdrawal or suspension shall be on a non-discriminatory MFN basis.

J. Jackson, \textit{supra} note 50, at 564.

\textsuperscript{93} GATT, art. XIX, para. 3, \textit{supra} note 5.

\textsuperscript{94} J. Jackson, \textit{supra} note 50, at 564, qualification number (1).

\textsuperscript{95} For example, if the United States feels that Japanese imports of automobiles are causing "substantial injury" to the domestic automobile industry, the United States could withdraw from the GATT obligation. The GATT drafters assumed that this would be accomplished through raising automobile tariffs. The Japanese, having been given notice of the impending tariff change, would then meet with the United States trade representatives to consult about the proposed action. The United States may then offer Japan a lower tariff concession on computer products imported to the United States that would adequately compensate the Japanese for the withdrawal of the automobile concessions. Conversely, Japan could withdraw a concession on the United States exports of grain to Japan. In so doing, a balance could be amicably negotiated. \textit{Id.} at 565.

\textsuperscript{96} Jackson summarizes those actions as follows:

1. Thirty days written notice of the action must be given and the action must occur no later than ninety days after the initial action by the invoker. This time limit may be uniformly extended by action of the contracting parties under the waiver power when such extension is requested;

2. The counterresponse allowed is to suspend the application of substantially equivalent concessions or other GATT obligations to the trade of the invoker. This implies discriminatory treatment against the invoker, contrary to the invoker's right of suspension or withdrawal; and

3. The Contracting Parties do not disapprove.
C. Proposals for Reform

Since the implementation of GATT, signatory nations have creatively attempted to avoid the dictates of Article XIX by alleging new injuries and resolutions in order to justify protectionist sanctions. Discriminatory, bilateral, and restrictive agreements, all of which fall outside of the scope of GATT, have been invoked. Japan, in particular, has been involved in many of the restraint agreements, partly because of its own protectionist reputation and partly because of its unparalleled success with exported products. While such agreements provide a temporary solution to increased import problems, the closed, restricted markets created by imposing bilateral restrictions inevitably will have a choking effect on the free movement of goods in international trade.

Some economists presuppose that dissolution of international trade barriers will lead to a better allocation of world resources. Production of certain goods would fall upon those who are the most capable of cheaply and efficiently producing the goods. Consequently, the inefficient producer would be forced to relinquish its share of the market to a more competitive foreign importer. Thus, some domestic industries would bear the burden of the shift to freer trade. Employment in the particular industry would suffer as the more competitive foreign producer begins to take over the market.

Therefore, one of the most pressing economic and political challenges before a government attempting to dissolve international trade barriers ultimately would be worker displacement and unemployment. In response to this displacement and unemployment, the affected domestic industry would most likely appeal to its own lawmakers to help alleviate the problems allegedly created by the increased imports. The pressure placed upon the government would most likely be in the form of a request for protectionist legislation. Thus, even though the government could expect to benefit in the long run from freer trade, it might nonetheless feel compelled to respond to the pleas for relief from the domestic industry.

One suggestion to alleviate the rapid influx of an imported good is a more gradual move to a freer market. For instance, if the American automobile industry perceives the increased imports of Japanese automobiles as threatening serious injury to the domestic

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Id. at 566.
98. Id. The United States and Japan are currently utilizing a Voluntary Restraint Agreement on the export of Japanese automobiles. See supra text accompanying notes 28-29.
99. Jackson refers to this concept as the “cost of market adjustment.” See J. Jackson, supra note 50, at 568.
100. Report of Eminent Persons, supra note 37, at 721.
101. J. Jackson, supra note 50, at 570.
automobile industry, the two nations could agree to a "schedule" of imports that would allow the ailing industry to compensate over time. Herein lies the shortcoming of GATT. Article XIX of GATT focuses upon the ailing nation's protectionist feelings rather than a workable manner of market readjustment.\(^ {102} \) The inclusion of a provision for an "import schedule" in the Article XIX escape clause provision would encourage compliance with the GATT provisions without the enactment of domestic protectionist legislation. Additionally, the provision would allow the threatened nation to substantially comply with the provisions of GATT while at the same time avoiding the political pressures from the ailing industry. In the absence of a provision that allows for market readjustment, some exporting countries have developed self-limiting restrictions in response to pressure from the importing nations. These restrictions,\(^ {103} \) which are violative of Article XIX, will be examined more thoroughly herein.

In November 1983, the Director-General of GATT appointed seven eminent persons,\(^ {104} \) knowledgeable in the application of GATT in international trade, to study and report independently upon the problems facing the international trade system and GATT. The group concluded their study in March 1985 with a report that articulated fifteen recommendations for the multilateral trade system.\(^ {105} \) Several of the recommendations warrant discussion in the

\(^{102}\) Id. at 570-71.

\(^{103}\) See supra note 48 and accompanying text.

\(^{104}\) The following is a list of the seven individuals appointed to study GATT:

1. Senator Bill Bradley — Senator Bradley is a member of the Senate Committee on Finance and the Subcommittee on International Trade.

2. Pehr G. Gyllenhammar — Mr. Gyllenhammar chairs the informal Roundtable of European Industrialists.

3. Guy Ladreit de Lacharriere — Mr. de Lacharriere is the Vice President of the International Court of Justice.

4. Fritz Leutwiler — Mr. Leutwiler served as Chairman for the investigation and report and served until 1984 as Chairman of the Swiss National Bank and President of the Bank for International Settlements.

5. Indrarasad G. Patel — Mr. Patel serves as Director of the London School of Economics and Political Science.

6. Mario Henrique Simonsen — Mr. Simonsen serves as Director of the Postgraduate School of Economics of the Getulio Vargas Foundation, Rio De Janeiro.

7. Sumitro Djojohadikusomo — Mr. Djojohadikusomo serves as Professor of Economics at the University of Indonesia.

Report of Eminent Persons, supra note 37, at 740.

\(^ {105}\) The fifteen proposals for action are as follows:

1. In each country, the making of trade policy should be brought into the open. The costs and benefits of trade policy actions, existing and prospective, should be analyzed through a "protection balance sheet." Private and public companies should be required to reveal in their financial statements any subsidies received. Public support for open trade policies should be fostered.

2. Agricultural trade should be based on clearer and fairer rules, with no special treatment for particular countries or commodities. Efficient agricultural producers should be given the maximum opportunity to compete.
context of the Japanese — American automobile trade situation.

One of the conclusions of the study indicates that the application of import restrictions such as voluntary restraint agreements, orderly marketing agreements, and discriminatory import restrictions all directly contravene the dictates of GATT. Since these agreements were designed to avoid the rules of GATT, they have the effect of weakening the authority of the GATT system. Therefore, the suggestion is that a program should be implemented to systematically abolish all of the illegal restrictions by first identifying the ille-

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3. A timetable and procedures should be established to bring into conformity with GATT rules voluntary export restraints, orderly marketing agreements, discriminatory import restrictions, and other trade policy measures of both developed and developing countries which are inconsistent with the obligations of contracting parties under the GATT.

4. Trade in textiles and clothing should be fully subject to the ordinary rules of the GATT.

5. Rules on subsidies need to be revised, clarified and made more effective. When subsidies are permitted they should be granted only after full and detailed scrutiny.

6. The GATT “codes” governing non-tariff distortions of trade should be improved and vigorously applied to make trade more open and fair.

7. The rules permitting customs unions and free-trade areas have been distorted and abused. To prevent further erosion of the multilateral trading system, they need to be clarified and tightened up.

8. At the international level, trade policy and the functioning of the trading system should be made more open. Countries should be subject to regular oversight or surveillance of their policies and actions, about which the GATT Secretariat should collect and publish information.

9. When emergency “safeguard” protection for particular industries is needed, it should be provided only in accordance with the rules: it should not discriminate between different suppliers, should be time-limited, should be linked to adjustment assistance, and should be subject to continuing surveillance.

10. Developing countries receive special treatment in the GATT rules. But such special treatment is of limited value. Far greater emphasis should be placed on permitting and encouraging developing countries to take advantage of their competitive strengths, and on integrating them more fully into the trading system, with all the appropriate rights and responsibilities that this entails.

11. Governments should be ready to examine ways and means of expanding trade in services, and to explore whether multilateral rules can appropriately be devised for this sector.

12. In support of improved and strengthened rules, GATT’s dispute settlement procedures should be reinforced by building up a permanent roster of non-governmental experts to examine disputes, and by improving the implementation of panel recommendations. Third parties should use their rights to complain when bilateral agreements break the rules.

13. We support the launching of a new round of GATT negotiations, provided they are directed toward the primary goal of strengthening the multilateral trading system and further opening world markets.

14. To ensure continuous high-level attention to problems in international trade policy, and to encourage prompt negotiation of solutions to them, a permanent Ministerial-level body should be established in GATT.

15. The health and even the maintenance of the trading system, and the stability of the financial system, are linked to a satisfactory resolution of the world debt problem, adequate flows of development finance, better international coordination of macroeconomic policies, and greater consistency between trade and financial policies.

Id. at 720.

106. Id. at 734.
gal restrictions, then converting them into nondiscriminatory measures, and ultimately eliminating them over a period of time agreeable to the nations involved.\textsuperscript{107}

Another conclusion of the study is that whenever the safeguard provision of Article XIX has been invoked, it has been invoked in a discriminatory manner.\textsuperscript{108} Indeed, the disagreement over this central and crucial element of GATT and its application has led to the weakening of GATT authority. Most of the discussion concerning the application of the escape clause centers around whether the safeguard clause may be imposed on one or more countries alleged to have been causing the harm or whether it should apply to all suppliers of the similar good indiscriminately.\textsuperscript{109} Clearly, GATT requires the nondiscriminatory application. However, those who oppose that approach claim that across-the-board restrictions would unnecessarily disrupt the balance of trade. In response to this assertion, proponents of GATT claim that across-the-board restrictions put more pressure on the domestic industry to adjust and become more competitive in the particular industry. Additionally, the government's decisionmakers will be more reluctant to impose restrictions on all of its suppliers than they would be to coerce one supplier to enter into export restraints.\textsuperscript{110} Thus, the nondiscrimination requirement places a heavy burden upon the decisionmaker to resist the temptation of suggesting or imposing such restrictions.

In order to prevent any such deviation from the rules of GATT, the GATT requirements could be reinforced to absolutely forbid discriminatory acts in escape clause actions.\textsuperscript{111} More specifically, the provision could expressly prohibit voluntary restraint agreements and similar bilateral agreements. In addition, specific multilateral sanctions would follow from any violation. Thus, the threat of enforceable sanctions would act as an incentive for the signatory nations to toe the line in respect to GATT obligations, specifically in regard to nondiscriminatory use of the escape clause.

Additionally, the nation invoking the escape clause protection of Article XIX should be limited to imposing tariffs as opposed to quantitative restrictions.\textsuperscript{112} A tariff is a "list or schedule of articles on which a duty is imposed upon their importation into the United States, with the rates at which they are severally taxed."\textsuperscript{113} Specifically, they are "protective if designed to relieve domestic businesses

\begin{thebibliography}{113}
\bibitem{107} \textit{id}.
\bibitem{108} \textit{id} at 736.
\bibitem{109} \textit{id}.
\bibitem{110} \textit{id}.
\bibitem{111} \textit{id}.
\bibitem{112} \textit{id}.
\bibitem{113} \textit{Black's Law Dictionary} 1306 (5th ed. 1979).
\end{thebibliography}
from effective foreign competition; discriminatory if they apply unequally to products of different countries; and retaliatory if they are designed to compel a country to remove artificial trade barriers against the entry of another nation's products.\textsuperscript{114} Since GATT was originally established to monitor and control tariff concessions,\textsuperscript{115} its use should be limited to this basic concept. The unilateral imposition of tariffs in the event of an Article XIX escape clause action would be easily accomplished, and statistical evidence would readily illustrate their effectiveness.

Finally, the tariffs imposed under the escape clause would be systematically phased out over a predetermined period of time.\textsuperscript{116} The effected industry would then have a more definitive standard upon which to gauge its timetable for recovery. Also, the GATT committee responsible for policing the legality of the tariff concessions would be able to monitor the phasing out process with some accuracy.

V. The Voluntary Restraint Agreement as an Instrument to Control the Japanese Automobile Import Problem

A. Background

From the late 1960s to the early 1980s, the American automobile market underwent substantial changes in the domestic market share of American versus imported automobiles. In 1957, the import share of the market was merely 200,000 automobiles, representing roughly three percent of the market.\textsuperscript{117} By 1969, the amount increased to one million automobiles. Less than ten years later, in 1977, sales of imported automobiles surpassed the two million mark.\textsuperscript{118} This trend continued as the domestic producers' share of the market dropped considerably from 1978 to 1981.\textsuperscript{119} In January 1986, the International Trade Commission reported that 635,904 domestic automobiles and 237,281 imported automobiles had been sold to American consumers. This figure for imported automobiles represents 27.2 percent of the market, an increase from 24.9 percent from January 1985.\textsuperscript{120} A recent Department of Commerce report predicts

\textsuperscript{114.} Id.
\textsuperscript{115.} See supra note 47 and accompanying text.
\textsuperscript{116.} Report of Eminent Persons, supra note 37, at 736.
\textsuperscript{118.} Id.
\textsuperscript{119.} Id. at 1.
\textsuperscript{120.} U.S. INT'L TRADE COMM'N, PUB. NO. 1814, THE U.S. AUTOMOBILE INDUSTRY:
that by 1988, more than four million of the 11.2 million automobiles purchased by American consumers will be made abroad.\textsuperscript{121}

The Japanese share of the United States automobile market more than doubled from 1976 to 1980.\textsuperscript{122} The International Trade Commission reports that from January 1985 to December 1985, 2,527,479 Japanese automobiles were imported into the United States for consumer purchase. The comparable period from January 1984 to December 1984 indicates that total Japanese imports for consumer purchase during that period amounted to 1,948,714 automobiles.\textsuperscript{123} Thus, Japanese imports in 1985 increased by 578,765 automobiles over the 1984 figure. Statistics show that the United States trade deficit for automobiles increased by almost fifty percent from 1979 to 1984.\textsuperscript{124} A significant part of that deficit can be attributed to the additional 353,000 Japanese automobiles imported during that period.\textsuperscript{125} The automobile deficit has remained substantially unchanged since the 1981 imposition of the VRA.\textsuperscript{126} During this turbulent period of American automotive history, the industry suffered record losses,\textsuperscript{127} decreased automobile sales, and loss of employment.\textsuperscript{128}

Economists and automobile industry analysts have proposed various theories as to the cause of the industry's problems. One common assertion that has generally been agreed upon is that the precipitating factor for the industry's demise was probably the change in

\begin{table}[h]
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\begin{tabular}{|c|c|c|c|c|c|c|}
\hline
\hline
Japan & 1,617 & 1,992 & 1,911 & 1,801 & 1,871 & 1,970 \\
Canada & 677 & 595 & 564 & 702 & 835 & 1,060 \\
West Germany & 395 & 338 & 234 & 260 & 240 & 335 \\
All other & 217 & 188 & 147 & 163 & 188 & 235 \\
\hline
Total & 2,906 & 3,113 & 2,856 & 2,926 & 3,134 & 3,600 \\
\hline
\end{tabular}
\caption{United States imports of automobiles from major sources during 1979-84. (Figures are in thousands of units.)}
\end{table}
consumer preferences caused by higher oil prices. The oil shortages, which were triggered by the Iranian Revolution in 1979, created an American market for small, fuel-efficient automobiles. The domestic automakers were unable to meet this demand, thereby causing the American consumers to turn to fuel-efficient compact and subcompact Japanese automobiles. Soon thereafter, the domestic automobile manufacturers singled out the imported Japanese automobiles as being a major contributing factor for the loss of employment and the general decline in demand for American automobiles. For the first time in its history, the American automobile industry became noncompetitive in an area in which it was previously unparalleled in performance and quality. By early 1981, political pressure was building to impose some form of import restrictions on the Japanese automobiles. In response to the political and economic pressure to obtain import relief, Japan's Ministry of International Trade and Industry chose to avoid potentially restrictive import legislation and voluntarily imposed an export restraint of 1.6 to 1.7 million automobiles annually. Thus, a formal voluntary restraint agreement was officially announced by MITI on May 1, 1981. The VRA remains in effect today and was recently extended to limit shipments of Japanese automobiles to a total of 2.3 million vehicles until March 31, 1987.

The United States was not the first country to appeal to the Japanese for export relief. Italy made a request for relief in the 1950s when a bilateral agreement was reached, whereby each country agreed to accept one thousand automobiles from the other. In 1975, the United Kingdom negotiated an export agreement for Japanese automobiles, and in 1977, France did the same. Likewise, in 1981, West Germany, Belgium, Canada, and the Netherlands negotiated automobile export agreements with Japan. The only major European automobile-producing country that has not entered into a VRA with Japan is Sweden. However, in 1983, Sweden's foreign minister stated that its government was closely monitoring the situa-

130. ITC PUB. NO. 1648, supra note 117, at 29.
131. Id. at 1.
132. Hereinafter MITI.
133. ITC PUB. NO. 1648, supra note 117, at 1. This figure has been adjusted annually. Hereinafter VRA.
134. ITC PUB. NO. 1648, supra note 117, at 2.
135. See supra text accompanying notes 31-32.
137. Id. at 2-3.
138. Id. at 3.
All of these agreements remain in effect today and are subject to review annually.

The VRA was initially imposed so that the American automakers would have a chance to retool and cut costs to meet the Japanese challenge. Ironically, this was being accomplished before the imposition of the VRA. By 1981, the average weight of American cars had been reduced by thirty percent from that in 1973. Similarly, fuel economy had increased as much as twenty-five percent over the 1973 figure. Investment in the manufacturing operations had risen by eighty-eight percent from 1975 to 1980. However, since the VRA was imposed in 1981, the domestic automobile manufacturers have decreased real investment expenditures by thirty percent. In light of the opportunity afforded the industry to increase their competitiveness, it is rather startling to discover that investment has declined.

B. Effect of the VRA

Employment figures for the automobile industry are important indicators for determining the effect of a bilateral trade agreement such as the VRA. The VRA was ostensibly imposed to protect the jobs of American automakers. Employment figures for the six major automobile manufacturers showed a substantial drop of employment from 1979 to 1982. However, since 1982, the industry has rapidly recovered. As of June 1984, the industry employment figures showed an increase in workers either called back to work or hired. According to the International Trade Commission, as of January 1986, the domestic industry employed a total of 877,000 workers. Layoffs of domestic autoworkers declined from 250,000 in 1981 to 60,000 in 1985. As of January 1986, the Commission reported 37,000 automobile workers on indefinite layoff. The 1986 layoff statistic constitutes a substantial reduction from the amount reported in January 1985. Indeed, it appears that something has occurred to preserve the autoworkers' jobs.

140. Id.
141. Id.
142. Competitiveness Hearings, supra note 129, at 130.
143. Id.
144. Id.
145. Id.
146. The total employment figures for 1979 indicate that 929,214 workers were employed in the industry. By 1982, that figure had decreased to 622,885. Thus, 306,329 workers either were laid off, retired, or were terminated. ITC Pub. No. 1648, supra note 117, at 9.
147. Industry employment figures increased from the 1982 low of 622,885 to 720,448 by June 1984. This represents an increase totalling 97,563 workers. Id.
149. Competitiveness Hearings, supra note 129, at 35.
150. ITC Pub. No. 1814, supra note 120, at 1.
The VRA cannot be attributed as the sole cause of the decrease in unemployment. As gas prices began to ease, the American consumer again indicated a preference for the medium- to large-sized automobile. Thus, the industry that had been labelled as unresponsive to consumers' needs while only producing medium- to large-sized automobiles suddenly encountered a resurgence in consumer demand for those very models. Consequently, part of the reason for the higher employment in the industry can be attributed to an improved economy and the demand for the larger automobiles. In any event, whether the increase in employment figures is attributed to either domestic economic recovery or the VRA, it is nonetheless evident that the domestic industry has indeed recovered. Therefore, the VRA as a tool to avert unemployment is no longer necessary.

It is undisputed that the VRA was initially established to help the American automobile industry regain its competitive advantage in the American market. As of late 1984, that goal was clearly accomplished. The big three automakers not only recovered, but their profits soared to an all-time high and continue to do so today. Compiled financial data, which encompasses the six domestic producers of automobiles, indicate that the industry experienced a net loss on operations each year from 1979 to 1982. However, following the imposition of the VRA, the industry showed profits in 1983 and in 1984.

Experts attribute this economic turnaround by the domestic industry to a combination of factors. One such factor contributing to the industry's increased profitability, other than the improved economy, was the imposition of the VRA, which restricted the amount of Japanese automobiles available to the American consumer. The domestic producers capitalized upon the void created as a result of a high demand for automobiles and the restricted amount of available automobiles.

The domestic automakers commonly known as the "big three" are General Motors, Chrysler, and Ford. Competitiveness Hearings, supra note 129, at 24.

151. Id.
152. Id.
153. ITC Pub. No. 1648, supra note 117, at 3 n.8. The six domestic manufacturers included in this data are General Motors, Ford, Chrysler, American Motors, Honda, and Volkswagen. Id.
154. Id. at 13. The following financial data represents the International Trade Commission figures used in the determination of net profit or net loss of the six domestic producers of automobiles:

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<tbody>
<tr>
<td>Net sales</td>
<td>88,413</td>
<td>72,100</td>
<td>80,734</td>
<td>79,495</td>
<td>108,003</td>
<td>131,000</td>
</tr>
<tr>
<td>Cost of goods sold</td>
<td>88,813</td>
<td>76,767</td>
<td>83,030</td>
<td>80,048</td>
<td>102,673</td>
<td>119,600</td>
</tr>
<tr>
<td>Net profit or (loss)</td>
<td>(400)</td>
<td>(4,667)</td>
<td>(2,296)</td>
<td>(553)</td>
<td>5,330</td>
<td>10,400</td>
</tr>
</tbody>
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Note: 1984 figures were estimated on the basis of January-June 1984 data.
Id.
imported automobiles. In effect, the domestic industry has realized a net profit of 12.9 billion dollars during the years the VRA has remained operative. Based upon the rate of sales observed since the imposition of the VRA, it is projected that profits will continue to increase as long as the VRA is continued.

Studies have determined that if the VRA had not been imposed since 1981, sales of domestically produced automobiles would have been lower than actually experienced. Conversely, sales of Japanese imports would have reached higher levels in an unrestricted market. In fact, although the sales of the imported Japanese cars would not have continued to increase at the rate seen in the 1970s, the International Trade Commission concluded that the Japanese share of the United States automobile market would have increased from twenty-one percent in 1980 to twenty-eight percent in 1984 with no import restrictions. While limiting the sales of Japanese automobiles, the VRA helped to boost sales of domestically produced vehicles. During the first year of the VRA, the increase in domestic sales was negligible. However, during the following three years, sales ranged from three to eight percent higher than they would have been without the VRA.

The VRA has also been blamed for across-the-board increases in prices for domestic and Japanese automobiles. One economist has estimated that the VRA cost the American consumer approximately thirteen billion dollars by increasing the average price of new cars sold in the United States by 1,500 dollars. Other industry experts have suggested a more conservative figure of 700 dollars added to the price of each domestically produced automobile by 1984. Regardless of the estimate one chooses to use, it is evident

<table>
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<th>Year</th>
<th>Actual</th>
<th>Estimated</th>
<th>Difference</th>
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<tr>
<td>1981</td>
<td>$8,929</td>
<td>$8,851</td>
<td>$78</td>
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<tr>
<td>1982</td>
<td>$9,889</td>
<td>$9,719</td>
<td>$170</td>
</tr>
<tr>
<td>1983</td>
<td>$10,504</td>
<td>$10,078</td>
<td>$426</td>
</tr>
<tr>
<td>1984</td>
<td>$10,998</td>
<td>$10,329</td>
<td>$659</td>
</tr>
</tbody>
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Id.
that the VRA increased the price that the American consumer paid for an American automobile. Additionally, the price of used automobiles skyrocketed as a result of the higher prices being asked for new automobiles.\textsuperscript{165}

The restricted market also drove up the price of Japanese automobiles. By decreasing the supply of Japanese automobiles, which were in high demand, the dealers found themselves in a sellers' market and utilized this leverage to increase the price of domestically sold Japanese automobiles. Thus, the American consumer paid thirty-nine percent more for a Japanese automobile in 1984 than was paid in 1980.\textsuperscript{166} Evidence indicates that the price of Japanese automobiles in the United States would have been significantly lower during 1984 without the VRA.\textsuperscript{167} In fact, it is firmly believed that the average price of a Japanese automobile would have been lowered by up to thirty percent in 1984 if the VRA had not been operative.\textsuperscript{168}

C. The Economic and Political Cost of the VRA

Economic theorists have identified the restraint of free trade as a costly venture for the consumers in any nation. One such prominent economist was Adam Smith, who stated as follows:

\begin{quote}
In every country it always is and must be the interest of the great body of the people to buy whatever they want of those who sell it cheapest. . . . The proposition is so very manifest that it seems ridiculous to take any pains to prove it; nor could it ever have been called in question, had not the interested sophistry of merchants and manufacturers confounded the common-sense of mankind.\textsuperscript{169}
\end{quote}

A principal tenet of protectionism is that, ultimately, someone will pay the price. Clearly the most logical reaction for the worker who is being displaced by a foreign competitor is to seek help from the lawmakers. The lawmakers, who are sensitive to the public outcry, will be influenced by the strong contingency representing the threatened industry. Such influence is easily imposed upon government officials because there is rarely anyone who will lobby as

\begin{itemize}
\item \textsuperscript{165} Competitiveness Hearings, supra note 129, at 28.
\item \textsuperscript{166} ITC Pub. No. 1648, supra note 117, at 36. In 1980, the average transaction price for a Japanese automobile was $6,709. By 1984, that figure had risen to an average transaction cost of $9,300. \textit{id}.
\item \textsuperscript{167} Estimates for 1984 indicated that subcompact prices would have been 21\% lower; compact automobile prices, 29\% lower; sporty automobiles, 39\% lower; and intermediate-sized automobiles, 43\% lower. \textit{id}. at 37.
\item \textsuperscript{168} \textit{id}.
\item \textsuperscript{169} Competitiveness Hearings, supra note 129, at 127.
\end{itemize}
equally and as vocally for unrestricted trade. Additionally, any restrictions imposed appear to have a miraculous effect upon the industry. The industry workers keep their jobs and the product maintains its share of the market.

Most economists argue, however, that these results are generally short-lived and may lead to retaliatory repercussions that cause the consumer to pay more in the long run. These repercussions have an effect upon the international diplomatic relations with the targeted nation. It is generally believed that attempts to restrict, regulate, and manage trade by supplementing multilateral trading arrangements with bilateral discretionary actions and exclusive trading arrangements lead to greater hostility among trading nations.

Such has been the case with the VRA. The American consumers have had to pay more for domestically produced automobiles as well as imported automobiles. Additionally, the VRA has caused political hostility between Japan and the United States. Each year, as the termination date for the VRA approaches, United States trade representatives and government officials pressure MITI to extend the VRA. This pressure has led to increased hostility between the two nations and will inevitably lead to Japanese retaliation in the future.

Most economists agree that restrictive trade agreements have detrimental effects upon the industry and its work force. Several reasons lend support to this assumption. First, the idea that jobs will be saved by a protectionist action such as a VRA is shortsighted. As a result of less import competition, the protected industry will experience an increase in sales and gross profits. The profits will usually be reinvested in capital expenditures for automated machinery, which ultimately replaces the less efficient workers. Thus, the protectionist import restrictions merely postpone the loss of jobs. In the long run, the loss in employment will be the same, possibly greater.

Second, the jobs that are saved through the import restrictions will consequently cause a loss of jobs in the export industry. If the United States purchases fewer Japanese automobiles because of the VRA, it follows that the Japanese will have less money with which to purchase American products. Thus, the export industry will suffer a loss in revenue and, subsequently, a decreased need for workers.

171. Id.
172. Id.
173. See supra note 164 and accompanying text.
174. See supra note 166 and accompanying text.
175. See supra note 33 and accompanying text.
177. Id.
Last, it is asserted that any time a country inhibits the selling of a product within its own borders, those who buy the product are going to have to pay more money to acquire it.\textsuperscript{178}

It can be argued that all three of the aforementioned situations have occurred in the domestic automobile industry. First, there is a move toward higher technology in areas of automobile production. Automated machinery in production areas such as welding and painting is already in place. Thus, many workers are losing their jobs to more efficient, automated machinery. Second, analysts argue that the Japanese are more reluctant to purchase American exported goods as a result of the VRA.\textsuperscript{179} Therefore, employment figures could ultimately decline in the export industry. Indeed it has been suggested that the number of jobs that are lost in the export industry will surpass the jobs saved in the automobile industry by the VRA. Last, statistics show that the American automobile consumer has had to pay more money for an automobile as a result of the VRA.\textsuperscript{180}

Change in the automobile industry is inevitable. However, the way to go about that change is not through short-term and short-sighted quotas or voluntary restraint agreements.\textsuperscript{181} One way to alleviate the loss of employment and hardships caused by the change is through aid to workers under the Trade Act of 1974.\textsuperscript{182} The Act provides for worker retraining, job search and relocation allowances, and unemployment benefits for workers displaced because of more competitive imported products.\textsuperscript{183} By relocating the productive workers in more competitive industries, the workers will realize increased job security without the artificial government protection. They would not be deceived by the false hope of job security in a protected industry, but rather will experience increased security in the more competitive industry. It is true that vocational retraining is an expensive proposition and requires a great deal of organization to effectively apply. However, it appears that the inevitable loss of employment in the automobile industry through automation will have a higher public cost than retraining productive workers for work in more competitive industries.

In sum, proponents of protectionism will always find a reason for protection to be continued. Once protectionism is imposed, moreover, the industry will not willingly relinquish government protection.

\textsuperscript{178} Williams, VRA Point/Counterpoint: A Healthy Dose of Restraint or a Liberal Draft of Competition, AUTOMOTIVE INDUSTRIES, July 1985, at 40, 41.
\textsuperscript{179} Id.
\textsuperscript{180} See supra note 161 and accompanying text.
\textsuperscript{181} Report of Eminent Persons, supra note 37, at 729.
\textsuperscript{182} The Cost of Protecting Detroit, CONSUMER REPORTS, Mar. 1985, at 149, 150.
\textsuperscript{183} Id.
from its competitors. Nevertheless, the immediate benefits are usually short-lived, the unfounded sense of security eventually fades, and protectionism results in a detriment in the long run. An illustrative case of the failure of protectionist measures can be seen in the case of the domestic steel industry. That industry cried out for protection, alleging that imported steel was causing loss of employment and profits. Subsequently, protectionist measures were invoked. Ultimately, those who ostensibly benefitted from the protection found it to be only a temporary respite from the greater harm that has come to plague the industry today. In the case of the VRA, the protectionism has immediately benefited the stockholders, management, and workers of the domestic automobile industry at the expense of the American consumers. In the long run, it costs the American consumers more money to preserve the autoworkers' jobs and, ultimately, the unfounded sense of market security will cause a greater loss of employment. The legislators and automobile industry lobbyists should learn the lesson demonstrated by the ill-contrived protectionist measures implemented for the domestic steel industry — the costs of import protectionism are too high. In short, it is apparent the the VRA is an embarrassment to the sanctity of the free market system and an unnecessary burden on the American public.

VI. The Outlook for the Future in Light of GATT and Voluntary Restraint Agreements

The VRA limiting the number of Japanese automobiles to be imported into the United States should not be renewed when it expires on March 31, 1987. The American automobile manufacturers have had stellar years in 1983 and 1984. While this success is partly due to the imposition of the VRA, falling oil prices as well as the reversion to a consumer preference for medium- and large-sized automobiles also contributed greatly to the recovery. The American automobile industry is now capable of meeting the threat imposed by the Japanese imports. Thus, the VRA is no longer necessary and, in fact, is detrimental to United States involvement in international trade. Therefore, it is time to relinquish the protectionist measures that were invoked by the United States Government.

If the VRA is abolished in 1987, there is no real danger of an uncontrollable surge of Japanese imports flooding the American

185. Williams, supra note 178, at 41.
186. Id.
188. Id.
market. As gasoline prices continue to fall, the demand for larger American automobiles will increase and the demand for Japanese imports will be reduced. Additionally, now that the Japanese have opened United States production facilities, it is unlikely that imports would increase substantially because it would effectively harm their own interests. Finally, the protection offered by the VRA has provided time for the American automakers to diversify their product lines. Thus, the domestic automobile industry is now capable of producing fuel-efficient compact and subcompact models to compete with similar Japanese models.

Not only has the VRA outlived its usefulness, but many noted economists believe that the VRA is now actually hurting the United States economy. The VRA increases the price of imported and domestic automobiles, both new and used. It harms the American export industry by reducing the amount of currency available to the Japanese for purchasing American exports. It exposes the United States to the risk of retaliatory trade practices by the Japanese. Finally, it deprives the domestic marketplace of control over the allocation of employment resources by artificially increasing demand for American automobiles.

In addition to benefiting the American economy, abolition of the VRA will strengthen the entire system of international trade. As previously mentioned, bilateral agreements such as the VRA are outside the auspices of GATT; thus, they undermine its authority. Because of the United States relative power in the international trade arena, its failure to comply with GATT raises questions as to the agreement’s continuing legitimacy for governing international trade. Eliminating bilateral restrictive agreements in favor of compliance with the escape clause of GATT restores vitality to GATT law. The need for retaliatory action is diminished and nondiscriminatory trade practices are thereby encouraged.

In addition to abolishing all existing bilateral agreements outside the authority of GATT, steps must be taken to prevent their utilization in the future. GATT’s provisions must be revised and strengthened. An express prohibition against bilateral agreements such as the VRA must be included. The original goal of nondiscrimination between trading partners must be reasserted. Protection from imports should be in the form of tariffs instead of quantitative import restrictions. Mandatory sanctions should be imposed for violating GATT’s provisions. These measures would help reestablish free trade among nations while still allowing each nation to respond effectively to threatened serious injury to domestic industries. Furthermore, these measures would enable GATT to address the intricacies of modern trade practices.
By abolishing the VRA, the United States will move closer to the goal of remaining competitive in international trade. In the long run, the consumer will benefit. As economist Adam Smith proclaimed:

It is the maxim of every prudent master of a family, never to attempt to make at home what it will cost him more to make than to buy. The taylor [sic] does not attempt to make his own shoes, but buys them of the shoemaker. The shoemaker does not attempt to make his own clothes, but employs a taylor [sic]. The farmer attempts to make neither the one nor the other, but employs those different artificers. . . . What is prudence in the conduct of every private family, can scarce be folly in that of a great kingdom. If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage. The general industry of the country . . . will not thereby be diminished, no more than that of the above-mentioned artificers; but only left to find out the way in which it can be employed to the greatest advantage. 189

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189. Id. at 133.