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DUTIES TO OFFSET COMPETITIVE ADVANTAGES*

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AND
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During the 99th Congress, several bills were introduced that would have imposed duties to offset the competitive advantages allegedly enjoyed by foreigners because of more lenient environmental and safety standards overseas. These bills were based on a misconception about the gains from trade and, if they had been enacted, would have made the United States poorer.

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I. INTRODUCTION

During the 99th Congress, four bills were introduced to impose duties on imports of coal and copper that would have imposed duties to offset the lower costs incurred by foreign producers to meet their nations' less stringent environmental, health, welfare and safety requirements.³ The bills died when Congress adjourned. However, because of

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3. Offsetting tariffs have been proposed in other areas. For example, an amendment for section 301 of the Trade Act of 1974, 19 U.S.C. § 2411 (1982 & Supp. 1986), would require that the President take action to eliminate or offset the competitive advantages enjoyed by foreign countries that prohibit collective bargaining, pay inadequate wages, or provide inadequate working conditions. H.R. 4800, 99th Cong., 2d Sess. § 112 (1986); *see also* H.R. Rep. 581, 99th Cong., 2d Sess. 26-34 (1986).

the prominent role trade policy is expected to play in the 100th Congress, the same bills, or at least similar ones, are likely to be reintroduced.⁴ Although there are differences among the four bills, they share some basic characteristics.⁵ All of the bills observe that foreign producers do not have to meet the same costly statutory and regulatory requirements as U.S. producers.⁶ The bills also assert that such cost differences provide foreign producers with an unfair competitive advantage.⁷ Finally, they employ the same remedy. Each bill would impose a tariff on imports to offset the cost advantage foreign producers allegedly enjoy by virtue of not having to meet U.S. regulatory standards.⁸

Bills to offset competitive advantages should not be enacted because they are based on incorrect notions about the gains from trade. Drafters and supporters of these bills fail to appreciate the benefits of obtaining goods at lower cost. Such bills serve to reduce trade and would cause the United States to become poorer. These bills are modern variations of the discredited scientific tariff,⁹ which was first en-

4. Farnsworth, *Record Trade Deficit Seen As Election Issue*, N.Y. Times, Aug. 30, 1986, at 31, col. 2; *Washington Wire*, Wall St. J., Nov. 21, 1986, at 1, col. 6.

5. As of September 1, 1986, three coal bills and one copper bill had been introduced. The two coal bills pending in the House, H.R. 422, 99th Cong., 1st Sess. (1985), and H.R. 1905, 99th Cong. 1st Sess. (1985), are nearly identical. The third coal bill was introduced in the Senate, S. 2356, 99th Cong., 2d Sess. (1986), as a companion to the second house bill, to which it is very similar. The copper bill is S. 353, 99th Cong., 1st Sess. (1985). A bill similar to S. 353 was first introduced, on October 20, 1977, as H.R. 9695, 95th Cong., 1st Sess. (1977).

6. S. 2356, 99th Cong., 2d Sess. § 2(5) (1986); S. 353, 99th Cong., 1st Sess. § 2 (1985); H.R. 1905, 99th Cong. 1st Sess. § 2(5) (1985); H.R. 422, 99th Cong. 1st Sess. § 2(5) (1985).

7. *Id.*

8. S. 353, 99th Cong., 1st Sess. § 4 (1985); H.R. 1905, 99th Cong., 1st Sess. § 4 (1985); H.R. 422, 99th Cong., 1st Sess. § 3 (1985). Although Senator Rockefeller describes S. 2356 as the Senate companion to H.R. 1905, 131 Cong. Rec. S. 4685 (daily ed. Apr. 22, 1986), S. 2356 places a flat tariff on coal imports without increasing or decreasing the tariff by the difference between domestic and foreign compliance costs. S. 2356, 99th Cong., 2d Sess. § 4 (1986).

9. The logic of the scientific tariff carried to its ultimate conclusion would result in an end to all trade. As Paul Samuelson, a Nobel Laureate in economics, and Peter Temin have stated:

[I]f taken literally, [the scientific tariff] would mean the end to all trade! In its usual form, tariffs should be passed to equalize the cost of production at home and abroad. [A previous chapter] showed all the advantage from trade to rest on *differences* in cost or advantage. If tariffs were passed raising the costs of all imports to that of the highest home producer, no goods would come in at all.

P. Samuelson & P. Temin, *Economics* 698 (10th ed. 1976) (emphasis in original).

acted as part of the Fordney-McCumber Tariff of 1922, and then reenacted as part of the Smoot-Hawley Tariff of 1930.¹⁰ The scientific tariff attempted to equalize costs of production across nations. Finally, if such bills are enacted, they will violate the General Agreement on Tariffs and Trade ("GATT"). Under GATT, countries injured by an offsetting U.S. tariff have the right to retaliate.

II. PROPOSED LEGISLATION

A. *The Coal Bill*

The most recent and detailed bill introduced in the House of Representatives to offset the advantages enjoyed by foreign producers is H.R. 1905, which would apply to coal imports.¹¹ The first section of H. R. 1905 sets forth the Congressional findings on which the proposed tariff is based. The section states that (1) the United States possesses vast coal reserves, (2) Congress is concerned by what it perceives to be United States dependence on foreign energy sources, (3) the United States does not restrict coal imports, (4) many foreign nations impose a variety of constraints on imported coal, and (5) "foreign coal producers are not required to comply with stringent environmental, health, welfare and safety standards thereby giving foreign coal producers a competitive advantage over domestic coal producers."¹²

The two-fold purpose of the bill is set out in section 2(b). First, the bill would establish as a base an \$8 a ton duty on coal imports from countries that have historically been net exporters of coal to the United States.¹³ Second, the bill would increase the duty to "offset any com-

10. Tarriff Act of 1930, ch. 479, 46 Stat. 590 (codified as amended in scattered sections of 18, 19 and 28 U.S.C.) (the Smoot-Hawley Tariff); Tariff Act of 1922, ch. 356, 42 stat. 858 (the Fordney-McCumber Tariff).

11. H. R. 1905 is entitled "A Bill to Offset the Comparative Advantage which Foreign Coal Producers Have as a Result of not Having to Meet Environmental, Health, and Safety Requirements of the Kinds Imposed on United States Coal Producers and for Other Purposes." H.R. 1905, 99th Cong. 1st Sess. (1985). The bill, which was given the short title of the "Coal Trade Equalization Act of 1985," was introduced on April 2, 1985 by Congressman Rahall of West Virginia for himself and for 19 other members of Congress. H.R. 1905 is almost identical to H.R. 422, which had been introduced by Congressman Rahall only three months earlier. S. 2356 was introduced in the Senate in 1986 as a companion to H.R. 1905.

12. H.R. 1905, 99th Cong., 1st Sess. § 2(a) (1985).

13. See H.R. 1905, 99th Cong. 1st Sess. § 4(2) (1985), which sets the duty on imported coal at \$8 a ton. The current rate of duty for all classifications of coal is zero. Zero is both the column 1 rate, which applies to countries that have most-favored-nation status, and the column 2 rate, which applies to countries enumerated in general headnote 3(d) of the Tariff Schedules of the United States ("TSUS"). The United

petitive advantage obtained by foreign producers of coal who are not required to meet environmental, health and safety standards equivalent to those imposed in the United States."¹⁴

The mechanics of the offsetting duty provision are contained in section 4 of the bill. Section 4 amends the Tariff Schedules of the United States ("TSUS") by providing a mechanism to increase or decrease the duty on coal upon petition by any interested party to the Secretary of Commerce. The amount of increase or decrease in the duty would be determined by calculating the difference between the environmental, health, welfare and safety costs incurred by U.S. producers with those incurred by foreign producers.¹⁵ Section 4 also pro-

States bound the duty rate for coal at zero in the 1947 Geneva Round of tariff negotiations in the GATT.

14. H.R. 1905, 99th Cong., 1st Sess. § 2(b)(1985).

15. Section 4 of H.R. 1905 reads in relevant part as follows:

SEC. 4. AMENDMENTS TO THE TARIFF SCHEDULES.

Subpart J of part 1 of schedule 5 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended (1) by inserting immediately before item 521.11 the following new headnote:

"SUBPART J HEADNOTE:

"1. (a) If the Secretary of Commerce (hereinafter in this headnote referred to as the 'Secretary') determines and certifies under subdivision (b) of this headnote that the duty imposed under item 521.34 on coal that is the product of a foreign country must be increased or decreased, the President shall immediately proclaim the duty as appropriately adjusted to reflect that increase or decrease.

"(b)(i) Any interested party may petition the Secretary, in such manner as the Secretary shall prescribe, to determine whether the duty imposed under item 521.34 on coal that is the product of a foreign country should be increased or decreased in accordance with clause (iii) of this headnote.

(ii) Upon receiving a petition under clause (i) of this headnote, the Secretary, after consulting with the Administrator of the Environmental Protection Agency, the Secretary of the Interior, and the Secretary of Labor, shall determine the environmental, health, welfare, and safety cost for the foreign country concerned and the United States environmental, health, welfare, and safety cost.

(iii) Based on the determinations made under clause (ii) of this headnote with respect to a foreign country,

if -

"(I) the United States environmental, health, welfare, and safety cost exceeds the foreign, environmental, health, welfare and safety cost, the Secretary shall immediately certify the amount of the difference to the President as the amount by which the duty imposed under item 521.34 on coal that is the product of that foreign country must be increased; or

"(II) if the foreign environmental, health, welfare and safety cost exceeds the United States environmental, health, welfare and safety cost, the Secretary shall immediately certify the amount of the difference to the President as the amount by

vides that coal will enter duty-free from countries that "historically" have imported more coal from the United States than they have exported to it.¹⁶ If a coal exporting country does not fit within the "historical-importer" exemption, the bill provides that the amount of the offsetting duty is determined by comparing environmental, health, welfare and safety costs in the United States with those of the exporter's country. If U.S. costs exceed the exporter's costs, the \$8 a ton duty on coal imported from that foreign country is increased by the difference.¹⁷ Alternatively, if foreign costs exceed the U.S. costs, the duty is decreased by the difference.¹⁸

Section 4(d) sets out the procedure for calculating the offsetting duty. According to the bill, the phrase "environmental, health, welfare and safety purposes" generally refers to:

- (I) the protection of the environment from the adverse effects resulting from coal mining and processing;
- (II) the protection of the health and welfare of workers engaged in coal mining and processing; and
- (III) the safety of workers engaged in coal mining and processing.¹⁹

Section 4(d) then defines the foreign environmental, health, welfare and safety cost as:

the average cost per ton incurred in the mining and processing of coal that is attributable to compliance with laws and regulations of

which the duty imposed under item 521.34 on coal that is the product of that foreign country must be decreased.

16. The bill does not state what period should be used to determine whether or not a country is a historical net exporter of coal to the United States. In 1984, only the Republic of South Africa, Colombia, Poland, and Argentina exported more coal to the United States than they imported. *The Position and Competitiveness of the United States in World Coal Trade*, USITC Pub. 1772, Inv. No. 332-182, at 28 (table 10), 34 (table 15) (Oct. 1985). Thus, these four countries are most likely to have to pay duties if the bill is enacted.

17. H.R. 1905, 99th Cong., 1st Sess. § 4(1)(b)(iii)(1985).

18. *Id.* at § 4(1)(b)(iv). There are a number of other sections to the bill. Section 3 requires the Secretary of the Interior to investigate and report to Congress on the relationship between coal imports, the federal coal leasing program, and the condition of the United States coal industry. If the Secretary finds that coal imports are adversely affecting the leasing program and the domestic industry, he is directed to include appropriate legislative recommendations in his report. Section 5 amends the Trade Act of 1974 to remove coal from the list of articles eligible for the Generalized System of Preference. Section 6 makes the bill effective upon its enactment.

19. *Id.* at § 4(d)(i).

the foreign country (and political subdivisions of that country) in which the mining and processing occurs that pertain to environmental, health, welfare and safety purposes.²⁰

The bill attempts to compare the cost of foreign and domestic coal that compete in the same region. Thus, the United States environmental, health, welfare and safety cost is defined as:

The average per ton cost that is attributable to compliance with all Federal, State, and local laws and regulations that pertain to environmental, health, welfare and safety purposes, and incurred in the mining and processing of coal within the . . . district or districts . . . that could be reasonably expected to serve, or are serving, those markets in the United States that are being penetrated by coal that is the product of the foreign country.²¹

B. *The Copper Bill*

The copper bill, S. 353, is entitled "A Bill to Increase the Duty on Imported Copper by an Amount Which Offsets the Cost Incurred by Copper Producers in the United States in Meeting Domestic Environmental Requirements."²² The bill lists the following two purposes: (1) to enhance the world environment by encouraging foreign copper producers to adopt environmental measures substantially equivalent to those employed in the United States and (2) to offset the cost advantage enjoyed by foreign copper producers who do not employ environmental measures substantially equivalent to those imposed on domestic producers.²³ Unlike the coal bills, the copper bill purports to have as one of its objectives the improvement of the environment in other countries. The mechanism for calculating the duty on imported copper is similar to the mechanism found in the coal bills.²⁴

20. *Id.* at § 4(d)(ii).

21. *Id.* at § 4(d)(iii).

22. S. 353, called the Copper Environmental Equalization Act of 1985, was introduced by Senator DeConcini of Arizona on January 31, 1985. 131 Cong. Rec. S913 (daily ed. Jan. 31, 1985).

23. S. 353, 99th Cong., 1st Sess. § 2 (1985).

24. Section 3 of the bill raises the duty on imports of copper-bearing ores and materials, copper metal, alloys, and its basic shapes and forms to 15 cents a pound on the copper content, which is in addition to the duties imposed on the imports elsewhere in the TSUS. Section 4 provides that the duty on imported copper will be adjusted by the difference between the U.S. environmental cost of production and the sum of the foreign environmental cost of production and the amount of duty, which is set at 15 cents a pound by section 3. Thus, if the U.S. environmental cost of production exceeds

Senator Dennis DeConcini of Arizona, has made the only comprehensive statement in support of any of these bills. In support of the Copper Bill, Senator DeConcini argued that the domestic copper industry was suffering from unfair foreign competition. He stated:

At the heart of the copper industry's financial woes is unfair foreign competition. Domestic producers must compete in the same international markets as foreign producers who may receive subsidies from their own government or assistance for plant expansion and rehabilitation through multilateral international financing organizations. At the same time, such plants do not have to invest substantial sums of money to meet environmental standards like we do in the United States.²⁵

Senator DeConcini went on to argue that the price of copper produced in the United States exceeds the price of imported copper because of high United States wages, as well as strict domestic health and environmental regulations:

Certainly wage scales and employee benefits, health and safety requirements, and environmental regulations add to the costs of our domestic copper production. Consequently, the price per pound of copper produced in the United States is higher than copper produced in many foreign countries. However, the added costs to protect labor and our environment, I believe, are for the most part warranted and worthwhile. These requirements reflect certain values which we, as Americans, feel are important sacrifices we must make in order to protect the strength of our Nation, and in particular, the strength of our domestic labor force and long-term environmental health.²⁶

the foreign cost by more than 15 cents a pound, then the duty on imported copper from that country will be increased by the difference. Alternatively, if the sum of the foreign environmental cost of production and the duty exceeds the U.S. cost, then the duty on imported copper would be reduced by the difference. Section 9 defines the term "environmental cost of production" as:

any cost incurred in the mining, milling, smelting, or refining of, or in any other phase of the processing of, an article of copper that is attributable to compliance with any law or regulation of the country in which such processing occurs which is designed for the purpose of protecting the environment.

Id. at § 9(1).

25. 131 Cong. Rec. S913 (daily ed. Jan. 31, 1985).

26. *Id.*

Senator DeConcini also noted that the costs of environmental controls in the United States range from 10 to 15 cents on each pound of copper produced, and that some foreign copper producers are not faced with any environmental regulations. Senator DeConcini argues that such a bill would achieve equity, without negatively impacting countries that compete fairly and have strong environmental regulations. The Senator concludes as follows:

Until recently, Mr. President, our domestic copper industry was internationally competitive. As times and laws have changed, however, we have placed ourselves at an unfair economic disadvantage. We, as a nation, need to assess our trade practices and priorities. I believe environmental equalization is a very good place to start. It will not only protect our industry here at home but it will make a major contribution toward improving our global environment.²⁷

III. OFFSETTING DUTIES AS ECONOMIC POLICY

A tariff is a tool of economic policy, and it must stand or fall on its economic effects. To understand how these proposed tariff bills would affect American consumers and workers, it is first necessary to take a short digression into economics, at the heart of which is the notion of trade, or, in the jargon of economics, mutually beneficial exchange. Individuals and nations, engage in trade in order to obtain goods and services they value more than those they give up in exchange. Through this process, trade allows individuals and nations to improve their allocation of consumption goods.²⁸ Production and trade are related be-

27. *Id.* at S914.

28. A traditional example of how trade allows individuals to improve their allocation of consumption goods involves two prisoners of war, one English and one French, who each have a Red Cross parcel that contains one tin of coffee and one tin of tea. The English soldier will drink coffee, but he values a tin of tea as much as the world environment by encouraging foreign copper producers to adopt environmental measures substantially equivalent to tins of tea. If the two soldiers are prevented from trading, they will each have their original allocation of one tin of tea and one tin of coffee. This original allocation is called the endowment. Using tins of tea as a unit of value, the Englishman values his endowment as much as 1.5 tins of tea (1 unit for the tin of tea and .5 units for the tin of coffee), and the Frenchman values his endowment as much as 3 tins of tea (1 unit for the tin of tea and 2 units for the tin of coffee). The valuations would be reversed if tins of coffee were used as the unit of measurement. If the two soldiers are now permitted to trade, then the Frenchman would trade tea to the Englishman for coffee. If the soldiers trade all of their coffee and tea, so that the Englishman ends up with the 2 tins of tea and the Frenchman with the 2 tins of coffee, then using tins of tea as the measure of value, the Englishman will end up with 2 tins

cause they are alternative ways of obtaining the same goods and services. Whether a nation chooses trade or production depends on which is cheaper.²⁹ Nations specialize in producing the goods and services they can produce *relatively* cheaply and trade these goods and services for those goods and services it would cost them relatively more to produce. Thus, trade allows individuals and nations to specialize in the production of certain goods and services and thereby increase the aggregate amount that can be produced and consumed. This is known as the principle of "comparative advantage."³⁰

Tariffs decrease the incentive for nations to specialize, and thus reduce the aggregate production and consumption of goods and services.³¹ Furthermore, the tariffs provided for in the coal and copper

of tea and the Frenchman will value his 2 tins of coffee as much as 4 tins of tea. Once again, the valuations are just reversed if coffee is used as the measure of value. Regardless of the measure used, however, both the Englishman and the Frenchman are made better off by exchange. Both soldiers value their new parcels as much as they would value a parcel of 1.33 tins of both tea and coffee. Because they each began with 1 tin of tea and 1 tin of coffee, the process of exchange has created the equivalent of .67 tins of coffee and .67 tins of tea. This example is derived from A. ALCHIAN & A. ALLEN, *EXCHANGE AND PRODUCTION THEORY IN USE* 39-46 (1969). A similar example can be found in any basic economics text. *See e.g.*, J. HIRSHLEIFER, *PRICE THEORY AND APPLICATIONS* 190-97 (2d ed. 1980).

29. A simple diagrammatic demonstration of this principle is contained in J. HIRSHLEIFER, *supra* note 28, at 203-11.

30. The law of comparative advantage was first articulated by the English economist David Ricardo, who in 1817 showed that a nation can raise its real income by specializing in the production of those goods that it can produce efficiently. D. RICARDO, *PRINCIPLES OF POLITICAL ECONOMY AND TAXATION* (1817). The law of comparative advantage is based on relative advantage, not absolute advantage. It implies that a country will engage in trade even if it is more productive at producing every good than its trading partners. For example, assume that in the United States a bushel of wheat can be produced with 1 hour of labor, and a gallon of wine with 2 hours, but that in France a gallon of wine requires 5 hours and a bushel of wheat 4 hours. Without trade, a gallon of wine would sell for 2 bushels of wheat in the United States and 1.25 bushels in France. If the United States and France engaged in trade, the United States could get wine more cheaply by trading for it instead of producing it, even though the United States is a more efficient producer of both wheat and wine. Similarly, France could get wheat more cheaply by trading wine to the United States. Because the United States could obtain wine and France could obtain wheat more cheaply by specializing and trading, they can both increase the amount of both wine and wheat they consume through trade. *See generally* W. ETHIER, *MODERN INTERNATIONAL ECONOMICS* ch. 1 (1983); J. HIRSHLEIFER, *supra* note 28, at ch. 7; P. LINDERT & C. KINDLEBERGER, *INTERNATIONAL ECONOMICS* 18-25 (7th ed. 1982); P. SAMUELSON & W. NORDHAUS, *ECONOMICS* ch. 38 (12th ed. 1985).

31. *E.g.*, R. CAVES & R. JONES, *WORLD TRADE AND PAYMENTS* 205-10 (4th ed. 1985); W. ETHIER, *supra* note 30, at 168-71.

bills are based on the same flawed reasoning as was the scientific tariff.³² The scientific tariff was intended to equalize the cost of production at home and abroad by imposing a tax to offset any foreign cost advantage. Proponents argued that the scientific tariff was fair because it provided "a level playing field."³³

A strict application of the scientific tariff would end all trade.³⁴ Trade comes about because of differences in the cost of production among nations.³⁵ By raising the cost of imports to the level of the domestic product, the scientific tariff would remove the incentive to import, and would deny the United States the benefits of trade.³⁶ For example, if a scientific tariff were rigorously enforced, neither the United States nor Colombia would have the incentive to trade computers for coffee. Instead, the United States would have to produce all of the coffee it consumes domestically at a tremendous cost in real resources.³⁷

In contrast to the scientific tariff, which would offset all of the

32. See *supra* note 9 and accompanying text.

33. The scientific tariff is still in effect, although its scope has been severely limited, because it does not apply to goods that have been the subject of a tariff concession. Section 336 of the Tariff Act of 1930, 19 U.S.C. § 1336 (1983). Because tariff concessions have been granted on most articles through the GATT multilateral trade negotiations, few goods could be the subject of an investigation under section 336. Section 336 empowers the U.S. International Trade Commission to investigate and report to the President on the differences in the costs of production of domestic and competitive imported articles and to specify the rates necessary to equalize the differences. See J. DOBSON, *TWO CENTURIES OF TARIFFS* 101-05 (1976). For example, if it costs \$3 to produce a bushel of grapes in the United States and \$2 to produce the same bushel in France, then the scientific tariff on a bushel of grapes would be \$1. The tariff and its trade inhibiting effect are directly proportional to the magnitude of the cost difference. Thus, coffee could be grown in the United States using green houses, but it would cost a lot more. A scientific tariff would make coffee prohibitively expensive.

34. See D. SALVATORE, *INTERNATIONAL ECONOMICS* 213 (1983); P. SAMUELSON & P. TEMIN, *ECONOMICS* 698 (10th ed. 1976).

35. E.g., R. CAVES & R. JONES, *supra* note 31, at 36-37; W. ETHIER, *supra* note 30, at 18-21; P. SAMUELSON & W. NORDHAUS, *supra* note 30, at 831-34.

36. Paul Samuelson and Peter Temin have commented about the scientific tariff as follows:

There is nothing scientific about such a tariff. It is a grave reflection on the economic literacy of the American people that this least defensible of all protectionist arguments has tremendous political importance in our history.

P. SAMUELSON & P. TEMIN, *supra* note 34, at 698. See also W. ETHIER, *supra* note 30 at 216.

37. It might be argued that no one would grow coffee in the United States because it would be too expensive, so the scientific tariff does not apply. Although coffee could not be profitably grown in the United States at the current market price, the scientific tariff would protect someone who wanted to grow coffee in the United States by raising the price to a level at which it could be profitably grown.

differences in the cost of production across nations, the coal and copper bills would only offset some of the differences, specifically the costs of complying with government-mandated environmental and health regulations. These compliance costs are among the social costs of producing coal and copper in the United States. The social costs of producing coal and copper domestically also include the harm to workers and the damage to the environment, as well as the costs that are incurred to reduce these harms, whether they are mandated by a government or not.³⁸

In order to limit the environmental damage caused by coal and copper production, there are a wide variety of environmental regulations that apply to domestic industries.³⁹ The justification for such environmental regulations is well-known in the economic literature. Pollution is known as an "externality."⁴⁰ Individual firms have little incentive to reduce pollution because they bear only a small fraction of the cost of the ill effects.⁴¹ There will, therefore, be too much pollution in an unrestricted market because the polluters and the affected public are not in a contractual relationship.⁴² Environmental regulations, which often require large expenditures by the affected manufacturers, limit the amount of pollution that can be produced.⁴³

38. Even at very large cost, the ill effects to workers and the environment could not be eliminated entirely.

39. For a discussion of regulations affecting the coal industry, see M. ZIMMERMAN, *THE U.S. COAL INDUSTRY: THE ECONOMICS OF POLICY CHOICE* chs. 1 & 4 (1981).

40. A common definition of an externality is "[a]n effect of one economic agent on another that is not taken into account by normal market behavior." W. NICHOLSON, *INTERMEDIATE MICROECONOMICS AND ITS APPLICATIONS* 690 (3d ed. 1983).

41. See R. STROUP & J. BADEN, *NATURAL RESOURCES: BUREAUCRATIC MYTHS AND ENVIRONMENTAL MANAGEMENT* 86-87 (1983).

42. The absence of a contractual relationship is critical. In an important article, Ronald Coase showed that if negotiating costs are small, then the allocation of resources will be efficient, even if the actions of one party adversely affect the other party. Coase, *The Problem of Social Cost*, 3 *J. L. & ECON.* 1 (1960).

43. See KALT, *THE IMPACT OF DOMESTIC REGULATORY POLICIES ON INTERNATIONAL COMPETITIVENESS* 1-12 (Harvard Institute of Economic Research Discussion Paper No. 114, March 1985). It is generally recognized that from an efficiency standpoint such regulations should simulate the precautions manufacturers would take if they were required to pay for the effects of the pollution. What is now the classic response to externalities was provided by A.C. Pigou, an economist at Cambridge University in the 1920's. Pigou argued that a tax on polluters equal to the harm they cause would result in the efficient allocation of resources. Pigou's idea is that the market is efficient when all costs are internalized and that a properly calculated tax that internalizes the effect of the pollution will produce the same result as would be produced by market forces. A. PIGOU, *THE ECONOMICS OF WELFARE* (4th ed. 1946). Alternatively, if the "correct" level of pollution is known, regulations can be promulgated to achieve the level. See Davis & Kamien, *Externalities, Information, and Alternative Collective*

The justification for safety regulations is less compelling because the health dangers of production are already incorporated into the costs of production. If employers systematically took too few safety precautions, employees would either find alternative employment or require too high a wage for the employer to be able to compete in the product market. The employment contract between employer and employees covers not only wages, but also a level of safety, with more dangerous jobs generally commanding a higher wage.⁴⁴

Regulations that set a separate, higher standard are generally based on paternalism.⁴⁵ The implicit or explicit assumption is that someone other than the employees knows what is best for them.⁴⁶ To say that regulations are paternalistic, however, is not necessarily to criticize them. On the other hand, to admit that these regulations promote a valuable end does not imply that they are costless.⁴⁷

Whether such regulations are paternalistic or attempt to correct for externalities, it still must be recognized that the costs of complying with environmental and safety precautions and the costs from the harm that the regulations do not prevent are part of the social cost of production. Stiff regulations do not make these costs disappear, they only shift the allocation by reducing the costs from job-related accidents and environmental harm while raising the cost of compliance.⁴⁸

Action, in *ECONOMICS OF THE ENVIRONMENT* ch. 4 (2d ed. 1977).

44. See J. GRIFFIN & H. STEELE, *ENERGY ECONOMICS AND POLICY* 168 (1980); P. SAMUELSON & W. NORDHAUS, *supra* note 30, at 619; Cohen, *Toward An Economic Theory of the Measurement of Damages in a Wrongful Death Action*, 34 *EMORY L. J.* 295 (1985); Council Econ. Advisors, *Risk and Responsibility*, AN *ECONOMIC REPORT OF THE PRESIDENT* ch. 6 (1987).

45. A more cynical view of these regulations is that they are barriers to entry and that they actually foster collusive pricing among those already in the regulated industry. If this is true, then a tariff on imports would only promote further collusive pricing. See Neumann & Nelson, *Safety Regulation and Firm Size: Effects of the Coal Mine Health and Safety Act of 1969*, 25 *J. L. & ECON.* 183 (1982) (enforcement of act reduced competition from small mines, benefiting larger mines); Pashigian, *The Effect of Environmental Regulation on Optimal Size and Factor Shares*, 27 *J. L. & ECON.* 1 (1984) (environmental regulation benefited large firms by reducing entry of small firms).

46. One efficiency enhancing argument in favor of safety regulations is that society bears part of the cost of industrial accidents. See VAUPEL, *ON THE BENEFITS OF HEALTH AND SAFETY REGULATION IN THE BENEFITS OF HEALTH AND SAFETY REGULATION* 8-10 (A. Ferguson & E. LeVeen eds. 1981).

47. Complying with federal regulations is costly. Moreover, because compliance is expensive, regulations can reduce domestic production in favor of increased imports. For estimates of the effect of environmental regulations on United States trade, see Kalt, *supra* note 43, at 13-21.

48. Although regulations cannot entirely eliminate these costs, over some range

Even though federal and local environmental and safety regulations may promote valuable social goals, they cannot justify offsetting tariffs. When a product is imported, instead of produced domestically, the actual costs of production are saved. In addition, the importing country saves the costs of complying with the environmental and safety regulations, as well as the costs from pollution and injury.⁴⁹ If the goods that the United States gives up in exchange for imported copper and coal cost less to produce than it would have cost to produce the coal or copper domestically, then the United States is richer for having imported the coal or copper.⁵⁰ This is the principle of comparative advantage once again. It follows that offsetting duties raise the cost to the United States of consuming coal and copper and, as a result, make the United States poorer.⁵¹ Therefore, the presence of domestic environmental and safety regulations does not justify placing a tariff on competing imports.

There are many legitimate reasons why the costs of complying with environmental and safety regulations might be lower abroad than in the United States. First, the costs of achieving the same level of protection might be higher in the United States. For example, if land reclamation is a relatively labor intensive activity, and if foreign wages are relatively low, then the cost of reclaiming land will be higher in the

they may be able to reduce the social cost of production. The regulations are said to be efficient when they minimize the sum of the compliance and injury costs. See R. STROUP & J. BADEN, *supra* note 41, at ch. 7.

49. The costs of conforming with federal, state and local environmental and safety regulations can be very high. For example, assuming the price of copper is as high as one dollar a pound, then, according to Senator DeConcini's estimate that it costs copper producers between 10 and 15 cents a pound to comply with federal regulations, the cost of compliance accounts for more than ten percent of the price. In addition, there may be significant costs from pollution and industrial accidents.

50. This phenomenon was observed by Adam Smith. "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." A. SMITH, *WEALTH OF NATIONS* 424 (Mod. Lib. ed. 1937) (London 1776).

51. How can such bills be passed if international trade results in the maximization of social welfare in the participating countries? The answer is that attempts to restrain trade succeed because, although the costs of the restraint exceed the benefits, the benefits are concentrated on a well organized few while the costs are spread over many. Offsetting the cost advantages of foreign coal producers harms American consumers in the aggregate more than it benefits domestic coal workers in the aggregate. The benefit to each coal worker, however, far exceeds the cost to any individual consumer. Since coal workers are better organized, one would expect such a trade restraint to succeed. See W. ETHIER, *supra* note 30, at 216-19 (1983); Godak, *Industry, Structure, and Redistribution Through Trade Restrictions*, 28 J. L. & ECON. 687 (1985).

United States.⁵² Similarly, the costs of reclaiming land depends on the topography of the land being mined and the richness of the ore.⁵³ It is conceivable that these costs are higher in the United States, especially for coal mined in mountainous regions and for copper, which has been depleted more in the United States than in other countries.⁵⁴

Second, some nations may value environmental and safety precautions less than the United States does. Similarly, such nations may not be willing to pay as high a price for safety and a clean environment. Protecting the environment and the health of workers is expensive.⁵⁵ Many countries that are poorer than the United States might not be willing to pay the high costs that the United States is willing to pay to protect its workers and environment.⁵⁶

Third, some of the precautions mandated in the United States by regulation may be adopted through nonregulatory means abroad. For instance, firms may make expenditures to avoid the imposition of a pollution tax or to avoid a suit for being a nuisance. In addition, as noted earlier, it is in the interest of a business to provide the level of safety for which its workers are willing to pay, even if that level is above that required by law. Finally, because of moral suasion or stronger government involvement in the daily operations of business short of regulation, a foreign firm may make expenditures that would be required by

52. Even within the United States there is substantial variation in the cost of reclaiming land. M. ZIMMERMAN, *supra* note 39, at 189.

53. J. GRIFFIN & H. STEELE, *supra* note 44, at 169.

54. "[T]he average grade of U.S. copper ore is 35 percent below the average grade in foreign countries." *Unwrought Copper: Report to the President on Inv. No. TA-201-52*, USITC Pub. 1549, at A-71 (July 1984).

55. For an estimate of the cost of environmental regulations that apply to the coal industry, see M. ZIMMERMAN, *supra* note 39, at 146-50, 189 (1981). Zimmerman also argues that the Coal Mine and Health Safety Act, which was passed in 1969, has reduced productivity, thereby raising costs. *Id.* at 10 (citing J. Baker, Determinants of Coal Mine Labor Productivity Change, Final Report to the U.S. Dept. of Energy, Contract No. DOE-AC05-760R00033).

56. These bills are not likely to have a significant effect on environmental and safety precautions taken abroad because of the small portion of coal and copper production that is exported to the United States. For example, Chile, the largest exporter of copper to the United States in 1983, sold 30% of its mined copper in the United States. Canada, the second largest exporter of copper to the United States, sold only 15% of its mined ore in the United States. Similarly, less than 5% of the coal mined in Canada and South Africa in 1984 was sold in the United States. See *Unwrought Copper: Report to the President on Inv. No. TA-201-52*, USITC Pub. 1549, at A-47-53 (tables 20-24) (July 1984); *The Position and Competitiveness of the United States in World Coal Trade*, USITC Pub. 1772, Inv. No. 332-182 at 2 (table 1), 28 (table 10) (Oct. 1985).

law in the United States. The bills do not provide credit for any such expenditures.

Before concluding this section, one additional justification for the tariffs must be addressed. The strongest motives for tariffs have been the desire to save jobs and to reduce unemployment.⁵⁷ Although a tariff on imported coal will certainly increase jobs in the coal mining industry, it will at most only marginally increase the total number of jobs in the United States, and only temporarily.⁵⁸ Tariffs are not an effective means of creating a permanent increase in total employment.⁵⁹

IV. GATT CONSIDERATIONS

Attempts to encourage United States production and employment through import restraints have a long history.⁶⁰ The most notable legislative action was the passage of the Smoot-Hawley Tariff in 1930. This Act significantly raised tariffs and was a major contributor to the decrease in world trade, and is sometimes blamed for contributing to the global economic depression that followed.⁶¹ Fewer than five years later,

57. P. SAMUELSON & W. NORDHAUS, *supra* note 30, at 866.

58. Pearson and Salembier, *Adjustment, Protection, and Employment*, in *INTERNATIONAL TRADE AND FINANCE: READINGS 83-84* (3d ed. 1986).

59. P. LINDERT & C. KINDLEBERGER, *supra* note 30, at 73-77; P. SAMUELSON & W. NORDHAUS, *supra* note 30, at 866; PEARSON & SALEMBIER, *supra* note 58, at 83-84. From an efficiency perspective, rather than taxing imports of coal and copper, it might be more appropriate to subsidize imports. Even with environmental regulations, there will still be pollution. Thus, the private cost of production will be below the social cost, and the price of domestic coal and copper will not reflect its true cost to the United States. See R. MUSGRAVE & P. MUSGRAVE, *PUBLIC FINANCE IN THEORY AND PRACTICE 702-13* (1976). In such a case, it would be appropriate to either tax domestic coal and copper or subsidize imports by an amount equivalent to the monetary value of the harm caused by the pollution that is not borne by the domestic firm. It is important to note that the tax or subsidy would be related to domestic pollution, not the relative cost of domestic and foreign environmental and safety regulations.

60. For a history of United States tariffs, see J. DOBSON, *supra* note 33, at 5-45.

61. Wilfred Ethier of the University of Pennsylvania described the effects of the Smoot-Hawley Tariff of 1930, which raised United States tariffs to an all-time high of 59 percent in 1932, as follows:

The result was little short of catastrophic. Within two years, sixty foreign countries had instituted tariff increases of their own. These countries were concerned both to retaliate against the United States and to stimulate domestic employment in the face of the deepening world depression. The mutual increases in protection canceled each other out, and the resulting dramatic shrinkage in world trade simply made the Depression worse for all. By 1932 American imports were only 31 percent of their 1929 level, and exports collapsed in even greater proportion.

W. ETHIER, *supra* note 30, at 222 (emphasis deleted).

the United States retreated from the protectionist position it had adopted and began to enter into bilateral negotiations with foreign countries "as a means of assisting in the present emergency in restoring the American Standard of living, in overcoming domestic unemployment and the present economic depression, in increasing the purchasing power of the American public, and in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce"⁶² Because international trade agreements typically contained most-favored-nation provisions, the United States eventually found it advantageous to engage in multilateral negotiations and became a signatory to the GATT.⁶³ The GATT preamble states that it is directed to "the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce."⁶⁴

As part of the GATT negotiations, the United States and the other signatories agreed not to increase their import duties on specific commodities.⁶⁵ The current U.S. tariff treatments of coal and copper were bound as part of this process. The GATT, however, contains several provisions that allow for the imposition of tariffs or quotas, and sometimes both. GATT signatories can impose duties on dumped⁶⁶ or subsidized imports⁶⁷ that injure a domestic industry.⁶⁸ Neither of these

62. Act of June 12, 1934, Pub. L. No. 73-316, 48 Stat. 943 (amending the Tariff Act of 1930 28 U.S.C. §§ 547-50).

63. See J. JACKSON, *WORLD TRADE AND THE LAW OF THE GATT* 219-21, 45-46 (1969); K. DAM, *THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION* 61-64 (1970).

64. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. pt. 1, T.I.A.S. No. 1700, 55 U.N.T.S. 194, Preamble (hereinafter "GATT").

65. J. JACKSON, *supra* note 63, at 201-11; K. DAM, *supra*, note 63, at 17, 18, 25-55 (1970).

66. Dumping, for purposes of GATT and U.S. law, in the simplest case, involves the sales of products abroad at less than what they are sold for in the home market. See 19 U.S.C. § 1673 (Supp. 1986). The Second Antidumping Code was signed by most parties to the GATT, including the United States in 1979.

67. A countervailing duty can be placed on foreign subsidies that are industry specific. Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of GATT, Apr. 12 1979, 26 B.I.S.D. 56 (1980), T.I.A.S. No. 9619. In 1979, at the urging of the United States, the GATT Code on Subsidies and Countervailing Duties was adopted. Later that year, Congress passed the Trade Agreements Act of 1979 to bring United States antidumping and countervailing duty law into conformity with the GATT. 19 U.S.C. § 2503 (1980 & Supp. 1986).

68. No countervailing or antidumping duty may be imposed unless it is determined that the subsidy or dumping is causing or threatening to cause material injury to an established industry, or is materially retarding the establishment of a domestic industry. GATT, *supra* note 64, art. VI, sec. 6(a). Moreover, it must be shown that the

exemptions, however, would apply to a law that imposes tariffs to offset the competitive advantage enjoyed by a foreign producer because its costs of complying with local environmental and safety regulations were lower.⁶⁹

The tariff is not justified under the GATT Escape Clause, which reserves to member nations the right to withdraw tariff concessions.⁷⁰ The Escape Clause, as incorporated into U.S. law,⁷¹ permits a signatory to increase its tariffs or quotas on a product that is imported in such increased quantities as to cause or threaten serious injury to the competing domestic industry.⁷² The bills seeking to offset foreign competitive advantages do not require that imports be increasing. In addition, the bills bypass the causation and serious injury tests.

Additional exceptions from GATT obligations are contained under the rubric "General Exceptions."⁷³ Three of these merit discussion:⁷⁴

[N]othing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- . . .
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.⁷⁵

Exceptions (b) and (g) permit import restrictions that are generated by health or conservation concerns. Exception (b) might justify import restrictions on DDT or inflammable dolls.⁷⁶ Under exception

imports, through the effects of the subsidy or dumping, are causing injury. GATT Antidumping Code, Article III, Section 4; GATT Subsidies Code, Article VI, Section 4.

69. If imports of copper are being subsidized, as Senator DeConcini argues, remedies are already available under United States law. *See* 19 U.S.C. § 1673 (1982).

70. GATT, *supra* note 64, art. XIX.

71. 19 U.S.C. §§ 2251-2253 (1982).

72. The GATT only requires that the increased imports be a cause of serious injury. United States law requires that the imports be at least as important a cause as any other. The GATT, however, requires that the increased imports result from GATT concessions, whereas United States law has no such requirement.

73. GATT, *supra* note 64, art. XX.

74. For a complete list of the General Exceptions, *see* J. JACKSON, *supra* note 63, at 839-40.

75. GATT, *supra* note 64, art. XX (a), (b) & (g).

76. In 1969, France applied exception (b) to restrict imports of animal semen and certain live plants. GATT, Analytical Index: Notes on the Drafting, Interpretation and Application of the General Agreement, Art. XX-5 (May 1985).

(b), the United States could also claim that it is necessary to intervene in foreign economic decisions that produce pollution affecting the United States (acid rain, for example), but the health and safety concerns related to coal and copper mining and processing are strictly local. Moreover, rather than protecting workers and the environment, the coal and copper bills would increase domestic health and environmental harm. The offsetting tariffs would increase coal and copper prices, thereby drawing more mines into production and thus subject the United States to even more health and environmental damage.⁷⁷ As for exception (g), increasing domestic production of coal and copper would obviously defeat any domestic policy directed toward preserving natural resource reserves.⁷⁸

Exception (a) permits import restrictions necessary to protect public morals. One could argue that it is immoral to pollute and that the United States is justified in restricting imports to deter foreign nations from polluting their own environments. The GATT exception, however, is directed toward domestic morality, not foreign.⁷⁹ For example, this exception properly could have been invoked during prohibition to prohibit the importation of alcohol.⁸⁰

77. The only reduction in pollution from raising the duty on coal is from the reduced demand for coal to burn. The coal bill, however, is not concerned with pollution from burning coal, which occurs in the United States whether the coal is mined domestically or imported. It is only concerned with costs incurred by U.S. producers that foreign producers avoid. Moreover, any concern with pollution from burning coal would be better addressed by placing a tax on burning coal. This is known as the specificity rule. See P. LINDERT & C. KINDLEBERGER, *supra* note 30, at 140-41.

78. A GATT panel determined that a U.S. prohibition of imports of tuna from Canada was not justifiable under exception (g). See GATT, Analytical Index: Notes on the Drafting, Interpretation and Application of the Articles of the General Agreement, Art. XX-9 (May 1985). It is unclear what imports the United States could restrict to aid in the preservation of exhaustible resources. Perhaps, restraints on gas guzzling automobiles and coal mining equipment could be justified under this exception.

79. See J. Jackson, *supra* note 63, at 742-45. The provisions enacted according to this exception can be found in section 305 of the Tariff Act of 1930 as amended, 19 U.S.C. § 1305 (1982). All deal with domestic morality.

80. The GATT apparently does allow for some paternalism. Exception (e) allows restraints of trade "relating to the products of prison labor." The United States prohibits the importation of goods made from convict labor under Section 307 of the Tariff Act of 1930, 19 U.S.C. § 1307 (1982). As part of the Smoot-Hawley Act, this provision is more likely based in protectionism than in paternalism. The 1930 Act amended an earlier provision by enlarging its scope to include not only convict labor, but also forced or indentured labor: "While the sponsor of these changes based his views on moral concerns—namely that forced labor is morally wrong and that the United States should not condone its use by importing such goods—it appears that Congress' motivation in passing the amendment was largely economic." U.S. International Trade Com-

According to its sponsor, the first purpose of the copper bill is to improve the world environment by encouraging foreign producers to adopt environmental regulations similar to those employed in the United States.⁸¹ Even assuming that exception (a) is broad enough to allow the United States to impose a tariff to encourage foreign governments to adopt environmental regulations as strict as those in the United States, the copper bill is not drafted to achieve this purpose. The bill would increase the tariff on copper by the amount by which U.S. compliance costs exceed foreign compliance costs. Unless the costs of controlling pollution are the same in the United States and abroad, a tariff related to costs will not bring about the same level of pollution. Moreover, the tariff depends entirely on the difference in the cost of complying with the government regulations and does not take into account the actual level of pollution or precautions taken in response to non-regulatory pressures. Finally, because the United States imports such a small portion of the copper exports of other countries, it is unlikely that any country would significantly change its regulations in response to the tariff.⁸² Thus, the first purpose of the copper bill is not likely to be realized.

The security exception to the GATT, contained in Article XXI, reads in relevant part:

Nothing in this Agreement shall be construed

. . . .
 (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

. . . .
 (ii) relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment.⁸³

This exception might be thought to cover the coal and copper bills be-

mission, *International Practices and Agreements Concerning Compulsory Labor and U.S. Imports of Goods Manufactured by Convict, Forced, or Indentured Labor*, USITC Pub. No. 1630, Inv. No. 332-178, at 2 (Dec. 1984).

81. 131 CONG. REC. S914 (daily ed. Jan. 31, 1985) (statement by Sen. DeConcini).

82. See *supra* note 56.

83. GATT, *supra* note 64, art. XXI.

cause coal and copper are used by the military.⁸⁴ There are two problems with this interpretation. First, nearly every product, imported or not, is used by the military to some degree. Thus, if the tariff on any product used by the military could be increased without violating GATT, the Agreement would fall apart.⁸⁵ Second, even if the GATT exception applied, it would be unwise to impose a tariff to encourage domestic production of coal and copper for national defense when the United States could probably satisfy its military demand for coal and copper more cheaply by stockpiling coal and copper.⁸⁶

Because the tariff increases contemplated under the coal and copper bills do not fall within any of the GATT exceptions, the enactment of any of these bills would violate U.S. GATT obligations. If the United States were unilaterally to increase its tariffs on coal or copper, signatories to the GATT that were adversely affected would be entitled to compensation. This compensation usually takes the form of a "substantially equivalent" increase of a tariff on a U.S. export.⁸⁷ Such a tariff would be likely to reduce profits and domestic employment in the affected industry. Thus, in addition to extra health and environmental harm to the United States, whatever employment gains occur in the short-run from the coal and copper tariffs could be offset by decreases brought on by retaliation under GATT.

V. CONCLUSION

Several bills were introduced in the 99th Congress that would have imposed duties to offset competitive advantages allegedly enjoyed by foreign producers that do not have to meet environmental and safety standards as strict as those in the United States. Invoking the "level playing field," supporters of these bills argued that offsetting tariffs are justified by the existence of environmental and safety externalities in

84. Although no reference to national defense is contained in any of these bills, other bills have been introduced in Congress that would impose tariffs for national defense reasons. *See, e.g.*, S. 2779, 99th Cong., 2d Sess. (1986) ("A Bill to Amend the Internal Revenue Code of 1954 to Impose a Fee on the Importation of Crude Oil and Refined Petroleum Products to Protect the National and Energy Security Interests of the United States.").

85. In November 1975, Sweden placed quotas on certain footwear, claiming that the "decrease in domestic production has become a threat to the planning of Sweden's economic defense in situations of emergency as an integral part of its security policy." This justification was viewed with skepticism within GATT. GATT, Analytic Index, *supra* note 76, at XXI-3.

86. *See* P. LINDERT & C. KINDLEBERGER, *supra* note 30, at 149-50; P. SAMUELSON & P. TEMIN, *supra* note 34, at 693.

87. *See* GATT, *supra* note 64, art. XXVIII, sec. 1.

the United States. Although such externalities can justify environmental and safety regulations in the United States on domestic production, they cannot justify tariffs on goods produced abroad. As the late Professor Harry Johnson concluded:

[T]ariffs and other trade interventions justified on grounds of the existence of domestic distortions cannot lead to the maximization of real income. The only forms of intervention that can do so are interventions that offset the existing distortions without introducing new distortions: such interventions are confined to taxes and subsidies on domestic consumption, production, or factor use.⁸⁸

Those concerned about the decrease in domestic production caused by U.S. health and safety regulations have several alternatives: (1) weaken such regulations, (2) subsidize domestic production, (3) do nothing, or (4) enact offsetting tariffs. Of these, enacting offsetting tariffs is the least justified.

88. Johnson, *Optimal Trade Intervention in the Presence of Domestic Distortions*, in *INTERNATIONAL TRADE: SELECTED READINGS* 148 (J. Bhagwati ed. 1981).