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THE IMPACT OF THE TRADE WARS BETWEEN THE UNITED STATES AND JAPAN ON THE FUTURE SUCCESS OF THE WORLD TRADE ORGANIZATION

I. INTRODUCTION

Trade wars between the United States and Japan threatened the newly created World Trade Organization's (WTO) ability to settle disputes. Japan's refusal to open its automotive market to the United States caused the United States to threaten sanctions upon many of Japan's luxury cars. These unilateral sanctions by the United States arguably violated the WTO Agreement and its dispute resolution mechanisms. After almost two years of threats and negotiations, the two countries finally arrived at a mutual agreement without having to resort to a WTO investigation. The outcome of the trade wars between the United States and Japan will have a tremendous impact on future trade disputes between the United States and other countries, as well as on the success of the WTO which was created to handle such disputes.

This comment discusses the trade wars between the United States and Japan and analyzes whether the threatened unilateral sanctions by

the United States against Japan violated the newly created WTO and its dispute resolution mechanisms. Section II is a general overview of the WTO, including its origin, scope, structure, and dispute resolution mechanisms. Section III states the pertinent provisions of the Trade Act of 1974 and gives a brief overview of the sanctions available and procedures used. Section IV begins with the history of the trade wars between the United States and Japan and proceeds through the various phases of the dispute that ultimately ended in a settlement between the countries. Section V covers the implications of the trade wars between the United States and Japan and whether or not settlement was a victory, not only for the countries, but for the WTO as well.

II. OVERVIEW OF THE WORLD TRADE ORGANIZATION

The original General Agreement on Tariffs and Trade (GATT) was signed in 1947 during negotiations aimed at the establishment of the International Trade Organization (ITO).¹ The GATT was intended to implement and protect the integrity of tariff reduction commitments, contained trade-related provisions and was to merge with the ITO once it came into existence.² However, the ITO never came into effect and thus, there was no operative body in support of the GATT.³ Since the ITO failed, the GATT became the "principal international agreement regulating trade between the nations."⁴ The GATT was somewhat successful in reducing world tariff levels but it failed when it came to the regulation and administration of world trade relations. It was apparent that the GATT lacked the organizational framework and mechanisms for dispute resolution, which were desperately needed to regulate world trade.⁵

1. FRANK W. SWACKER ET AL., *WORLD TRADE WITHOUT BARRIERS: THE WORLD TRADE ORGANIZATION (WTO) AND DISPUTE RESOLUTION* 444 (1995); PIERRE PESCATORE ET AL., *HANDBOOK OF WTO/GATT DISPUTE SETTLEMENT* 8 (1995). The ITO would have administered trade agreements and governed trade disputes.

2. See General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3, 55 U.N.T.S. 188.

3. SWACKER ET AL., *supra* note 1, at 444. One of the reasons for the failure of the ITO was that it was not accepted by the U.S. Congress. It was never brought before Congress for a vote. Thomas J. Dillon, Jr., *The World Trade Organization: A New Legal Order for World Trade?*, 16 MICH. J. INT'L L. 349, 352, 356 (1995).

4. KENNETH W. DAM, *THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION* (Midway reprint 1977); ROBERT HUDEC, *THE GATT LEGAL SYSTEM AND WORLD TRADE DIPLOMACY* (1975).

5. Dillon, *supra* note 3, at 354.

A. *Scope of the WTO*

The WTO was designed to remedy the GATT's organizational and structural shortcomings. The WTO provided the common institutional framework for the conduct of trade relations of its members in matters covered by the GATT and its side agreements⁶ and any other trade agreements its Members may execute.⁷ The Uruguay Round Final Act offered a new GATT 1994 that incorporated the original GATT 1947 and its side agreements.⁸ The GATT 1994 "amends, modifies and expands many existing GATT obligations through new agreements" and "also expands obligations of the WTO Members beyond those of the GATT Contracting Parties," that includes a new agreement for dispute resolution.⁹ The purpose of the WTO "is to encourage world economic and political convergence through comprehensive trade policy surveillance and integrated dispute settlement systems, developmental assistance to less developed nations, and environmental protection."¹⁰ The WTO has the following functions: implement, administer, and operate covered agreements; provide forums for negotiations between its members; settle disputes that arise under the covered agreements; administer the Trade Policy Review Mechanisms; and achieve "greater coherence in global economic policy making."¹¹

B. *Structure of the WTO*

The WTO is a "three-tiered" organization headed by the Ministerial Conference, which consists of representative WTO Members.¹² The WTO Agreement provides that all decision-making powers shall be in this Conference, which meets every two years.¹³ In the interim, the functions of the Ministerial Conference are to be performed by the General Council, or executive agency, also consisting of representative

6. PESCATORE ET AL., *supra* note 1, at 12. These agreements are referred to as Multilateral Trade Agreements. See also Final Act Embodying the Results of the Uruguay Round of the Multilateral Trade Negotiations, Apr. 15, 1994, 33 I.L.M. 1143, 1145 [hereinafter Final Act].

7. Final Act, *supra* note 6, at 1144; see also *id.* at 1145.

8. Dillon, *supra* note 3, at 358.

9. *Id.* See also Final Act, *supra* note 6, at 1153. These new obligations include agreements on financial services through the GATT's accord, intellectual property rights in the TRIPs Agreement, dispute resolution under the Dispute Resolution Understanding, and national trade policy review through the Trade Policy Review Mechanism. These agreements, including the GATT, are called Multilateral Trade Agreements and are binding on all WTO Members. *Id.* at 1144.

10. Dillon, *supra* note 3, at 361.

11. *Id.* at 364; see also Final Act, *supra* note 6, at 1145.

12. Dillon, *supra* note 3, at 362.

13. *Id.* at 363; Final Act, *supra* note 6, at 1145.

WTO Members.¹⁴ In addition, the Ministerial Conference functions as the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB).¹⁵ The General Council's duties entail the daily functions of the WTO, and it is basically the "heart and soul" of the WTO.¹⁶ The WTO will basically continue the practice of decision-making by consensus previously used by the GATT.¹⁷ However, unless otherwise provided in the WTO Agreement, if a decision cannot be made by consensus, the matter should be decided by a majority vote.¹⁸

The DSB is the central part of the dispute resolution mechanism of the WTO and its functions are performed by the General Council. The WTO procedures vary depending on the agreement but all agreements go through the following stages: "consultation, panel investigation and report, appellate review, decision adoption, and implementation."¹⁹ There is also a parallel procedure for binding arbitration available if the parties unanimously agree to follow its procedure. Moreover, the losing party may request arbitration to determine the appropriateness of the retaliatory measure to be implemented under the circumstances.²⁰ The parties may request a consultation, at which time the DSB mechanisms have not yet been activated, if the dispute concerns the Covered Agreements.²¹ If consultations fail to produce a solution satisfactory to all parties, there is an automatic establishment of the panel or Appellate Body, unless the members present at the meeting of the DSB decide not to by consensus.²² If the panel convenes, they will investigate the matter and submit a report to the DSB authorizing any appropriate action. Unless the DSB rejects the report by consensus and without amendment, the report must be adopted. Alternatively, the report may be appealed to the Appellate Body by any party to the dispute. Unless the DSB vetoes the Appellate Body Decision by consensus, it must be unconditionally accepted by the parties.²³

The dispute resolution mechanisms of the WTO are a "significant improvement over the previous GATT dispute resolution system and solve[s] many of its shortcomings."²⁴ First the Dispute Settlement Understanding (DSU) creates a "unified dispute settlement system,"

14. Dillon, *supra* note 3, at 363; Final Act, *supra* note 6, at 1145.

15. Final Act, *supra* note 6, at 1145.

16. *Id.*

17. Dillon, *supra* note 3, at 365; Final Act, *supra* note 6, at 1148.

18. Dillon, *supra* note 3, at 365.

19. *Id.* at 368.

20. *Id.* at 367; Final Act, *supra* note 6, at 1226.

21. Dillon, *supra* note 3, at 368.

22. *Id.* at 367-68; Final Act, *supra* note 6, at 1227, 1230-35.

23. Dillon, *supra* note 3, at 368.

24. *Id.* at 373.

alleviating the problems of determining which procedures to apply. Second, the DSU established the Appellate Body for "review of legal issues decided by panels."²⁵ Finally, the DSU ensures panels and Appellate Bodies will be established through a consensus procedure and adoption of their decisions, without modification.²⁶

The DSU provides the basic framework for the settlement of disputes under the Covered Agreements.²⁷ The understanding provides very specific procedures for dispute resolution. However, there are cases where additional or special rules may be provided in the individual agreements themselves, in which case the special provisions control.²⁸

1. Consultation Phase

Under the new dispute resolution mechanism of the WTO, there are four basic phases: consultation, panel phase, Appellate Body Review, and arbitration (an optional alternative procedure).²⁹ First, when a member country believes another member "has infringed upon obligations assumed under a Covered Agreement," it may request a consultation.³⁰ The consultation phase could be construed as negotiations and can continue informally after the panel phase begins.³¹ Once a member requests a consultation, the respondent must reply and the parties must enter into such consultations within thirty days from the request.³² The parties are obligated to "obtain a satisfactory adjustment of the matter"³³ in confidential negotiations within sixty days.³⁴ If settlement cannot be reached, the complaining party may request a panel.³⁵

In the alternative, parties may unanimously agree to use arbitration, good offices, conciliation, or mediation, which, unlike consultation, may be terminated at any time and by any party. This is different

25. *Id.*

26. *Id.*

27. See Final Act, *supra* note 6, at 1244. The Covered Agreements include the Multilateral Trade Agreements, excluding the Trade Policy Review Mechanism, the Dispute Settlement Understanding and the Plurilateral Agreements. *Id.*

28. *Id.* at 1255, 1266.

29. Dillon, *supra* note 3, at 375.

30. *Id.* at 381. See also Final Act, *supra* note 6, at 1228-29. The consultations are intended to secure a positive solution to a dispute and do not simply exist as a formality before the establishment of a panel. *Id.* at 1277.

31. Dillon, *supra* note 3, at 381.

32. *Id.* See also Final Act, *supra* note 6, at 1228-29.

33. Final Act, *supra* note 6, at 1229. See also Dillon, *supra* note 3, at 381.

34. Negotiations may occur sooner if the case is urgent. Final Act, *supra* note 6, at 1229. See also Dillon, *supra* note 3, at 381.

35. Final Act, *supra* note 6, at 1229.

than consultation because arbitration, good offices, conciliation, or mediation require a mutual agreement of the parties.³⁶ Once these avenues have been exhausted, the complaining party may request a panel, unless the DSB decides against the use of a panel by consensus.³⁷

2. Panel Phase

The panels "conduct confidential deliberations, set deadlines, receive 'pleadings' and rebuttals, and hear oral arguments" from the parties.³⁸ The panel will issue a written report to the DSB, upon the completion of discovery and deliberations. This report contains the panel's "findings of law and fact, a description of the applicability of relevant provisions, and the basic rationale behind its decision."³⁹ The report will be adopted after it is submitted to the DSB. The DSB, by consensus, can decide not to adopt the report or a party to the dispute may appeal the decision to the Appellate Body.⁴⁰

3. Appellate Body Review

The appellate procedures may be implemented unless the DSB rejects them by consensus. Unlike the panel, which applies the facts to the law, the Appellate Body may only determine questions of law and legal interpretation.⁴¹ These appellate proceedings are to be confidential and the opinions are submitted by non-bias Members in an anonymous fashion.⁴² The parties to the dispute may only make written submissions to the Appellate Body⁴³ that will either uphold, modify, or reverse the panel's findings.⁴⁴ Unless the DSB vetoes the Appellate Body's findings by consensus, the decision will be adopted.⁴⁵

C. Conclusion

In sum, every member of the WTO has agreed to avail themselves of these dispute resolution procedures and to be bound by the awards and decisions of the panel or Appellate Body. Also, the WTO Members must conform their national laws, regulations, and administrative procedures to those of the WTO Agreement. If a member violates the

36. Dillon, *supra* note 3, at 381. See also Final Act, *supra* note 6, at 1229.

37. Dillon, *supra* note 3, at 383.

38. *Id.* at 384; see also Final Act, *supra* note 6, at 1233, 1235.

39. Dillon, *supra* note 3, at 385; Final Act, *supra* note 6, at 1234.

40. Dillon, *supra* note 3, at 385; Final Act, *supra* note 6, at 1235.

41. Dillon, *supra* note 3, at 384.

42. *Id.* at 385; Final Act, *supra* note 6, at 1236.

43. Dillon, *supra* note 3, at 385.

44. *Id.*

45. *Id.*

WTO Agreement's requirements, the member leaves itself open to an action before the DSB. It is understood by the parties that the WTO has the ultimate decision of the disputes between its members and interprets the member's obligations to each other and to the WTO.⁴⁶

The WTO and its policies do not affect the sovereignty of the United States to pass laws, enforce existing laws, or set its own standards; only Congress has the power to change the laws of the United States.⁴⁷ Therefore, if there are any inconsistencies between the Agreements or WTO decisions, the United States may decide how the dispute should be settled.⁴⁸

III. THE TRADE ACT OF 1974

One of the primary mechanisms used by the United States to pry open trade markets of other countries is section 301 of the Trade Act of 1974.⁴⁹ Section 301 is used to retaliate against foreign countries accused of unfair trade practices by imposing punitive penalties against the offending governments.⁵⁰ The authority to impose sanctions upon the exports of goods and services is one of the wide variety of retaliatory options available to the United States.⁵¹ Although section 301 is said to "undermine the multilateralism of the GATT system," it does result in "a more open trading system and an improved allocation of resources."⁵² Often a country's concern for its reputation is not enough to induce it to honor its promises to other nations. Sanctions provide a useful incentive for compliance of reciprocal trade agreements.⁵³ Also, many trade agreements are not equipped to provide third-party dispute resolution to force nations to comply with the

46. *Id.* at 391.

47. See *The World Trade Organization: Hearings of the House Ways and Means Comm.*, 103d Cong., 2d Sess., 7-10 (1994) (statement of Mickey Kantor, U.S. Trade Representative).

48. *Id.*

49. Pub. L. No. 93-618, § 301, 88 Stat. 1978, 2041 (as amended by Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 1301(a), 102 Stat. 1988, 1164-68 (codified at 19 U.S.C. §§ 2411-20 (1988)) [hereinafter Omnibus Trade Act]. See also Masaichi Nosaka, *U.S. Decides to Impose Sanctions Against Japan*, DAILY YOMIURI (Japan), May 11, 1995, available in LEXIS, News Library, DAYOMI File; David M. Pedley, *A Definition for "Unreasonable" in Section 301 of the Trade Act of 1974: A Consideration of the United States-Thailand Tobacco Dispute*, 5 EMORY INT'L L. REV. 285 (1991).

50. Evelyn Iritani, *New Trade Gripe May be More Strain than Gain; News Analysis: White House Probe into Kodak's Claim Japan Has Closed its Film Market May Bruise Multilateral Trade*, L.A. TIMES, July 4, 1995, at D1. See also Alan O. Sykes, *Constructive Unilateral Threats in International Commercial Relations: The Limited Case for Section 301*, 23 LAW & POL'Y INT'L BUS. 263 (1992).

51. Sykes, *supra* note 50, at 288.

52. *Id.* at 266.

53. *Id.* at 270.

agreements. Therefore, sanctions provide an alternative that allows the United States to take matters into its own hands.⁵⁴

Section 301(a)⁵⁵ is mandatory in nature, requiring the United States Trade Representative (USTR) to "take action" when it is determined that the United States is being denied rights under an existing trade agreement.⁵⁶ Section 301(b)⁵⁷ is discretionary when there is no express agreement, giving the USTR the option to take appropriate action "if an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. Commerce."⁵⁸

The goal of section 301 is to "provide the President with 'negotiating leverage' to 'insure fair and equitable conditions for United States commerce' and 'to eliminate [trade] barriers . . . and . . . distortions . . . on a reciprocal basis.'"⁵⁹ In order to further these goals, the President has been authorized to take punitive actions against any "foreign government act, policy, or practice that burdens or restricts

54. *Id.* at 266.

55. The amended § 301(a) provides:

(1) If the United States Trade Representative determines under § 304(a)(1) . . . that

(A) the rights of the United States under any trade agreement are being denied; or

(B) an act, policy, or practice of a foreign country—

(i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable and burdens or restricts United States commerce; the Trade Representative shall take action authorized in subsection (c), subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice.

Omnibus Trade Act § 1301, 19 U.S.C. § 2411(a) (1988).

56. Pedley, *supra* note 49, at 287.

57. Section 301(b) provides:

If the Trade Representative determines under section 301(a)(1) . . . that—

(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

(2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c), subject to the specific direction, if any, of the President regarding any such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of the act, policy or practice.

Omnibus Trade Act § 1301, 19 U.S.C. § 2411(b) (1988).

58. *Id.*

59. Pedley, *supra* note 49, at 288; S. REP. NO. 1298, 93d Cong., 2d Sess. 164, *reprinted in* 1974 U.S.C.C.A.N. 7136, 7302.

United States Commerce" and that is determined to be "unjustifiable," "unreasonable"⁶⁰ or "discriminatory."⁶¹ The threat of unilateral sanctions can serve as a valuable and important tool in trade disputes between countries.

IV. THE TRADE WARS BETWEEN THE UNITED STATES AND JAPAN

The United States has become the largest debtor nation in the world due to its annual trade deficits sustained with other countries. The best example of this deficit can be demonstrated by the United States' relationship with Japan. In 1994, the United States had a trade loss with Japan in excess of fifty billion dollars, resulting from "antiforeign and unfair trade practices" adopted by Japan.⁶² Japan has refused to open its automotive market to the United States thereby creating a tremendous loss in trade with the United States.⁶³ In 1994, the trade gap between the United States and Japan reached sixty-six billion, with autos and auto parts comprising nearly sixty percent of the United States' deficit.⁶⁴

Several factors perpetuate the auto dispute between the United States and Japan. First, Americans seem to prefer Japanese-made automobiles and, as a result, buy more Japanese cars than Japanese buy American-made cars. This results not only in the Japanese having a tremendous surplus in autos and auto parts but also the confidence in knowing that Americans prefer Japanese products.⁶⁵ Second, American auto manufacturers have been unable to offer many products for sale in Japan that compete with the Japanese market. Specifically, "[e]ighty percent of the Japanese automobile market is for cars with

60. An "unreasonable" practice has been defined by statute as one that "while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise [deemed] unfair [or unreasonable]." Pedley, *supra* note 49, at 289; 19 U.S.C. § 2411(d)(3)(A) (1988).

61. Pedley, *supra* note 49, at 288; 19 U.S.C. § 2411(a) (1988). The retaliatory measures authorized in this section give the President the power to:

(A) suspend, withdraw, or prevent the application of [or refrain from proclaiming] benefits of trade agreement concessions to carry out a trade agreement with the foreign country . . . ;

(B) impose duties or other import restrictions on the goods of, and . . . fees or restrictions on the services of, such foreign country for such time as the Trade Representative [deems] appropriate

19 U.S.C. § 2411(c)(1) (1988).

62. SWACKER ET AL., *supra* note 1, at 8.

63. *U.S. Filing Formal Complaint in Trade Dispute With Japan*, BALTIMORE SUN, May 10, 1995, available in LEXIS, News Library, BALSUN File [hereinafter *U.S. Filing*].

64. *Id.*

65. See Brent Scowcroft, *Auto Face-off and Leadership Role in Trade*, WASH. TIMES, June 25, 1995, at B1.

engines under 2000 cc.," and American manufactures have traditionally manufactured automobiles with larger engines.⁶⁶ Finally, barriers such as "Japanese governmental regulations and business practices discourage imports of automobiles" to Japan.⁶⁷ American manufacturers and other nations' competitors experience difficulties in selling their autos and auto parts in Japan. This final barrier to the trade could be easily removed with a little cooperation by the Japanese government.⁶⁸

The United States has continually requested that Japan remove this unfair competition, but to no avail.⁶⁹ However, now that the United States and Japan are both members of the WTO, Japan will be forced to remove this unfair competition or receive sanctions by the WTO. It is projected that once Japan (and other countries) are forced to remove unfair trade competitions with the United States, the annual trade deficit will "decrease drastically."⁷⁰

As part of the negotiations between the countries, the Clinton Administration sought the following promises from Japanese automakers: to purchase more American-made auto parts in their U.S. and Japanese factories, to increase the "number of Japanese dealerships stocking American cars," and to relax regulations that impede "the sale of replacement auto parts at Japanese repair shops."⁷¹ However, the Japanese negotiators did not agree and refused to be responsible for reaching any target goals. Instead, the Japanese claim they merely agreed to a voluntary "partial deregulation of their inspection system" and to informing Japanese auto dealers that they may voluntarily sell foreign cars through their dealerships without "permission or interference from Japanese auto makers."⁷² Japan claims these goals are voluntary in nature, and, therefore, may not be enforced under U.S. trade laws if the goals are not reached.⁷³ However, the United States felt Japan's failure to reach these goals by a "wide margin would be indicative of the continuation of restrictive trade practices" thereby making continuation of these unfair trade practices actionable.⁷⁴

The Clinton Administration initially set a deadline of September 30, 1994, to impose unilateral trade sanctions under section 301⁷⁵

66. *Id.*

67. *Id.*

68. *Id.*

69. *See U.S. Filing, supra* note 63.

70. *Id.*

71. *Id.*

72. Clyde V. Prestowitz, Jr., *The Looking-Glass Deal; Japan and the U.S. Leave the Tough Trade Questions for Later*, WASH. POST, July 2, 1995, at C1.

73. *Id.*

74. *Id.* The United States also believed the attention generated by these goals would pressure Japan to meet these goals. *Id.*

75. *See U.S. Super 301 Action Against Japan's Automotive Industry Would Violate GATT*,

against Japan in the auto and auto parts sectors, believing the only way to obtain access to the Japanese markets was to "take some action against their imports."⁷⁶ These sanctions would be aimed at over one billion dollars in Japanese products such as "Japanese luxury cars, minivans and autoparts."⁷⁷ Since Japan heavily depends on its luxury car industry to survive, this would clearly take its toll on the Japanese economy⁷⁸ by pricing these models "out of the market."⁷⁹ It appeared that Japan would be forced to either cave in and open its markets or be forced to take this dispute to the WTO for settlement.

A study by the Japan Automobile Manufacturers Association released on September 19, 1994, found that these sanctions would not only violate the GATT, but trigger trade confrontation with Japan. This would consequently damage the world trading system and the new dispute resolution mechanisms of the WTO Agreement that the United States "fought hard to obtain."⁸⁰ Similarly, even though other countries supported the United States' idea to open Japan's closed markets, they were concerned that these disputes would destroy the authority of the WTO.⁸¹ It is clear that the United States' imposition of unilateral sanctions against Japan violates the GATT, and the dispute resolution mechanism of the WTO that expressly prohibits unilateral sanctions.⁸² Japan claimed the WTO had established a system for resolving international trade disputes that should have been followed by the United States, whereas the United States insisted that it has the right to impose sanctions under section 301.⁸³

Although it was believed that settlement between the nations would occur,⁸⁴ on May 9, 1995, the Senate passed, by a vote of eighty-eight

Undermine World Trade Says JAMA, U.S. NEWswire, INC., Sept. 19, 1994, available in LEXIS, News Library, USNWR File.

76. *U.S. Filing*, *supra* note 63.

77. Michelle Magee, *U.S. Sanctions Would Hobble Japan's Economy*, S.F. CHRON., May 18, 1995, at A1. These luxury models would include Toyota Lexus, Nissan Infinity, Honda Acura, Mazda Millenia and Mitsubishi Diamante, whose total exports in 1994 amounted to one-tenth of Japan's overall trade surplus with the United States. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. William Drozdiak, *U.S. Fails to Win EU Support for Anti-Japan Trade Sanctions*, WASH. POST, May 25, 1995, at A34.

82. *Acura to Washington; Sanctions Clobber Americans*, PR Newswire, June 8, 1995, available in LEXIS, World Library, PRNEWS File.

83. Omnibus Trade Act, *supra* note 49, § 1301(a).

84. *U.S. Filing*, *supra* note 63. A trade specialist at the Economic Strategic Institute in Washington believed sanctions were unlikely to manifest using as an example the negotiations between the United States and China regarding protection of U.S. copyrights wherein the parties settled immediately before punitive tariffs on Chinese products were to take effect. *See*

to eight, a resolution that endorsed the use of unilateral sanctions if negotiations were not successful.⁸⁵ The United States felt, based on past experience, that Japan would only open their markets when faced with punitive sanctions.⁸⁶

However, if the bilateral negotiations between the United States and Japan were unsuccessful and the United States imposed sanctions on Japan, the Japanese Government would have been forced to take the case to the WTO.⁸⁷ Had it gone this far, Japan would have probably prevailed since the United States, under the WTO Agreement, was under an obligation to pursue a remedy with the WTO before imposing unilateral trade sanctions.⁸⁸

The Clinton Administration was criticized for seeking a commitment from the Japanese government to force Japanese businesses to buy a specified quality of autos and auto parts from the United States. This was thought to be inconsistent "with the idea of free trade."⁸⁹ Members of the Republican Party felt a better plan for establishing free trade between the countries would be the negotiations of a bilateral dispute resolution agreement between the United States and Japan.⁹⁰

In May, 1995, trade talks broke off mainly because of the demand on Japanese automakers to commit to future purchases of American-made auto parts. This demand was rejected by Japan because it was felt to violate the WTO's basic market regulations and discriminate against other nations. Also, Japan took the position that the United States' threat of unilateral sanctions was repugnant to the WTO rules for dispute resolution and that the "U.S. request to discuss the Most Favored Nation (MFN) procedures only on U.S. cars and auto parts . . . would violate the principle that MFN treatment must be extended to other nations as well."⁹¹ The Japanese Government filed a complaint with the WTO upon receiving an announcement that the United States would impose "punitive tariffs on [thirteen] of Japan's

also Nosaka, *supra* note 49.

85. *U.S. Filing*, *supra* note 63.

86. Prestowitz, *supra* note 72, at C1.

87. Yomiuri Shimbun, *Government May Ask WTO to Tackle Auto Dispute*, DAILY YOMIURI (Japan), Apr. 26, 1995, available in LEXIS, World Library, DAYOMI File; see also *Filing*, *supra* note 63.

In fact, once sanctions are announced, Japan intends to terminate the negotiations and bring the dispute to the WTO. See Nosaka, *supra* note 49, at 1.

88. *U.S. Filing*, *supra* note 63.

89. *Republican Raps U.S. Policy on Japan Auto Issue*, Jiji Press Ticker Service, Apr. 4, 1995, available in LEXIS, World Library, JIJI File.

90. *Id.*

91. Mitsuhiko Morimoto, *Japan Advised to Settle Auto Dispute Through Talks*, DAILY YOMIURI (Japan), May 22, 1995, available in LEXIS, World Library, DAYOMI File.

luxury cars."⁹² The United States also filed a counter-complaint with the WTO in an effort to prove that Japan's unfair trade practices also violated the "spirit of the WTO".⁹³

V. IMPLICATIONS OF FILING A COMPLAINT WITH THE WTO

A. *The Impact on the WTO*

Japan's decision to file a complaint with the WTO had its advantages and disadvantages. One positive effect was that Japan could obtain the opinion of a third party regarding their dispute with the United States, where in the past, the two countries had been forced into compromise.⁹⁴ The WTO may also be used as a forum that will enable other countries to better understand the dispute between the United States and Japan.⁹⁵

Other countries also benefit from the United States and Japan filing their complaint with the WTO. European nations had concerns that MFN principles might be overlooked during the wars between the United States and Japan, while other nations, such as the Asian nations, were concerned that once the dispute was settled, the United States would demand that they open their markets as well.⁹⁶ With the WTO solving the trade dispute between United States and Japan, the results were said to have been "internationally acceptable."⁹⁷ Finally, filing a complaint would establish international trade rules.⁹⁸

On the other hand, it was indicated that the United States and Japan might be better off settling their dispute through their own negotiations. Because the newly created WTO does not yet have the experience and ability to function effectively, the United States and Japan would be testing its ability to settle their dispute. Since Japan was more than likely to win its case, the United States could have been forced into leaving the WTO on the grounds that it received unfair treatment.⁹⁹

The WTO's Director General, Renato Ruggiero, stated that he would prefer to not have the trade wars between the United States and Japan as the first test of the WTO's authority.¹⁰⁰ Ruggiero feared the

92. *Id.*

93. *Id.*

94. See Drozdiak, *supra* note 81, at A34.

95. *Id.*

96. *Id.*

97. *Id.*

98. Drozdiak, *supra* note 81, at A34.

99. Nosaka, *supra* note 49. This may occur because the WTO permits its members to withdraw their membership if they feel they have received "unfair treatment more than three times in five years." *Id.*

100. See David E. Sanger, *U.S. and Japan Told to Solve Trade Dispute*, N.Y. TIMES, June

newly formed WTO would be torn apart by the war between the countries, and he feared the countries would not comply with the WTO's rulings¹⁰¹ even though both countries agreed they would. He also expressed his concern that the United States was "no longer confident" with its leadership on international economic issues or about relying on institutions, such as the WTO, to solve its trading problems with other nations.¹⁰²

B. The Impact of the Trade Wars with Other Nations

The trade wars between the United States and Japan have caused tension with other open trading nations. As long as the United States applies unilateral pressures to other nations, it undermines the support for the open multilateral trading system that is crucial to the world economy.¹⁰³ Japan may lose the support of European and Asian nations, who depend on open trade, and who will be inclined to side with the United States on the issue of unfair trade practices, even though they will be critical of the threatened sanctions.¹⁰⁴ The United States, on the other hand, runs the risk of being isolated from other countries. Although the European nations overall were pleased with the United States' handling of these trade disputes, the Europeans agreed with Japan that the punitive tariffs "could trigger a dangerous round of trade wars."¹⁰⁵ The European nations also fear that any compromise to open Japan's market for autos and auto parts would financially hurt the European countries, in favor of the "Big Three American"¹⁰⁶ car makers.¹⁰⁷ Korea also has a stake in the WTO's success and will likely be affected by the weakening of the WTO and multilateral trading system.¹⁰⁸

14, 1995, at D1.

101. *Id.*

102. *Id.* Apparently this fear stemmed from the United States' decision to impose unilateral punitive sanctions against Japan while also filing a complaint against Japan with the WTO.

103. See *South Korea: U.S. Trade Tensions with Japan and their Implications for Korea*, KOREA ECON. DAILY, June 24, 1995, available in LEXIS, World Library, TXTLNE File [hereinafter *Implications for Korea*].

104. *Id.*

105. See Morimoto, *supra* note 91.

106. The "Big Three" carmakers include General Motors, Ford, and Chrysler. See Ben Okamoto, *Auto Dispute Was Rooted in Politics*, DAILY YOMIURI (Japan), July 1, 1995, available in LEXIS, World Library, DAYOMI File.

107. See Morimoto, *supra* note 91.

108. *Implications for Korea*, *supra* note 103.

C. *Was Settlement a Victory?*

The United States and Japan reached an eleventh-hour agreement on June 28, 1995, after almost two years of disagreement and seven days of intense negotiations.¹⁰⁹ The United States agreed not to impose sanctions if Japan agreed to open its auto and auto parts markets to U.S. manufacturers. President Clinton was pleased because the agreement was "specific," "measurable," and would "achieve concrete results."¹¹⁰ The deal will generally increase the sales of American-made autos and auto parts in Japan, create thousands of new jobs for Americans, expand the number of dealerships selling American-made automobiles in Japan, and expand the number of Japanese-made automobiles in the United States.¹¹¹

The question remains, however, whether or not this settlement was a victory for the countries and for the WTO. The United States was successful in closing its gap in trade with Japan. However, the United States has been highly criticized for its threat of sanctions against Japan and has managed to turn other countries against it. The tactics used by the United States, according to most trade specialists, clearly violated the WTO rules.¹¹²

On the other hand, arguments can be made that the U.S. strategy was successful in meeting its goals. First, the Clinton Administration never actually imposed sanctions and therefore did not "technically violate the WTO" agreement.¹¹³ The fact that an agreement was reached with Japan proves that the United States was dedicated to its obligations under the WTO.¹¹⁴ It could also be said that the United States' settlement with Japan was a victory because if this dispute had been taken to the WTO, not only would the United States' sanctions against Japan had been lifted, but the United States could have received counter-sanctions by Japan.¹¹⁵ Finally, the WTO allows cross-retaliation by the winner of the dispute. Had the United States lost, which was almost certain to happen, then Japan could have sanctioned the United States, furthering the trade wars and ultimately imposing taxes on the United States' taxpayers.¹¹⁶ Another future problem avoided by the agreement is the threat that the tariffs, had they been imposed,

109. *Clinton Hails U.S.-Japan Car Trade Accord*, XINHUA NEWS AGENCY (Japan), June 28, 1995, available in LEXIS, World Library, TXTLNE File.

110. *Id.*

111. *Id.*

112. *Id.* See also James Sheehan, *Free Trade Casualties*, WASH. TIMES, July 5, 1995, at A15.

113. Sheehan, *supra* note 112, at A15.

114. *Id.*

115. *Id.*

116. *Id.*

would have forced "layoffs at Japanese car dealerships" thereby creating the risk of "Japanese retaliation."¹¹⁷

There are mixed feelings as to whether the settlement of the U.S.-Japan dispute was a victory for the WTO. This would have been the first major case to test the waters of the WTO's dispute resolution mechanisms. Instead, the WTO was deprived of this opportunity.¹¹⁸ Moreover, there is the fear that the countries lacked respect for the WTO and therefore would not abide by its rulings. If the WTO does not gain respect of the Member countries, it is unclear how it will be able to regulate trade between the nations.

VI. CONCLUSION

The WTO Agreement clearly sets forth the procedures to be utilized by its member countries when a trade dispute arises, and it clearly forbids the use of unilateral sanctions. However, the United States argued that the WTO dispute resolution procedures were not capable of resolving this type of dispute, claiming it had the authority under section 301 to threaten unilateral sanctions against Japan. The question of whether or not the United States would have violated the WTO Agreement by imposing unilateral sanctions is a moot point since the countries have reached an agreement. However, the effect of the trade wars between the United States and Japan will have an effect upon how the countries will interact regarding trade disputes in the future and as to the success of the WTO.

Had the United States and Japan taken this dispute to the WTO, it may have forced the WTO to deal with a problem that it was unprepared to handle. Also, the United States and Japan may not have complied with the orders set down by the WTO. This lack of disrespect would have been fatal to the newly created organization. Finally, the United States argues that the WTO was not specific about handling this type of trade dispute, therefore they were justified in threatening sanctions under section 301. Possibly the WTO will reform its Agreement to include these types of disputes in the future. Until then, the fate of the WTO is undecided.

Heather L. Drake

117. Paul Richter, *U.S.-Japan Trade Accord: Pact Gives Clinton Pluses on the Political Front*, L.A. TIMES, June 29, 1995, at A6.

118. Clare Nullis, *U.S.-Japan Tiff Sneaks Past World Trade Body*, AUSTIN AM.-STATESMAN, June 30, 1995, at D2.